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I901124

15 May 2009

Second Report to the Creditors of:

Image International Pty Ltd (In Liquidation) ("the Company")
ACN 009 144 923 - ABN 61 009 144 923

1. Introduction

- 1.1. This report to creditors should be read in conjunction with the first report to creditors dated 11 November 2008 (**First Report**).
- 1.2. The First Report outlined a number of claims of the Liquidator against the Company director and other parties which, if successful, were estimated to generate a dividend to non-priority creditors of up to 13 cents in the dollar.
- 1.3. Creditors were informed in the First Report that two of those claims were being pursued in Supreme Court of Western Australia proceedings. Those proceedings are CIV 2416 of 2008 and CIV 2201 of 2008 (**Proceedings**). The Proceedings remain on foot and are being defended.
- 1.4. The sole director of the Company has now approached the Liquidator through an intermediary with a proposal to settle the Proceedings and all other claims against the director in consideration of a payment of \$600,000 plus interest.
- 1.5. As the settlement proposal includes terms which require the compromise of debts due to the Company and also of the Liquidator entering into an agreement which extends beyond three months, the settlement proposal must be approved by creditors pursuant to the provisions of the Corporations Act 2001.
- 1.6. The purpose of this report is therefore to provide creditors with information necessary to properly consider and, if appropriate, approve the settlement proposal.
- 1.7. The balance of this second report is set out in the following main headings:

Section	Details	Page No.
2	Settlement Proposal	2
3	Dividends to Creditors	5
4	Receipts and Payments	6
5	Meeting of Creditors	6
6	Liquidator's Remuneration	6
7	Liquidator's Opinion	7

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International, an affiliation of independent
accounting and consulting firms.

2. Settlement Proposal

- 2.1. A Deed of Settlement and Release (**the Deed**) has been prepared and entered into by the following parties:
- a) The Company;
 - b) Mary-Anne Kenworthy;
 - c) Mark Anthony Conlan as liquidator of the Company;
 - d) Eurocars (Wholesale) Pty Ltd;
 - e) Rodney Slater; and
 - f) Warren Desmond George and Ivuska George.
- 2.2. The Deed is subject to approval of the creditors of the Company and in consideration of payment of the sum of \$600,000 plus interest thereon (**Settlement Sum**) by Eurocars Wholesale Pty Ltd (**Eurocars**) to the Liquidator, the Liquidator will:
- 2.2.1. Discontinue the Proceedings and fully release the Company director from all other claims of the Company and of the Liquidator. In particular, the following claims:
- a) \$505,541 - being a loan payable by the director to the Company – legal action not commenced;
 - b) \$278,599 - being an indemnity claim against the W & I George Trust – Supreme Court of Western Australia proceedings CIV 2416 of 2008;
 - c) \$40,576 - being a subrogated loan payable by the director to the Company – legal action not commenced;
 - d) Business Licence fees and a declaration of ownership of Langtrees of Burswood and Langtrees of Kalgoorlie – Supreme Court of Western Australia proceedings CIV 2201 of 2008. The two businesses have a combined value of between \$800,000 and \$1,000,000.
- 2.2.2. Transfer ownership of the property at 3/25 Clydesdale Street, Burswood WA to Warren George and Ivuska George, subject to discharge of the National Australia Bank mortgage registered over it;
- 2.3. The Company director and other parties to the Proceedings agree to fully release the Company (and the Liquidator) from any claims they may have; and
- 2.4. The Company does not return to control of the director but continues on a path to deregistration.

Payment of the Settlement Sum

- 2.5. Eurocars intends to pay the Settlement Sum over a period of 12 months from two sources.
- 2.6. The first source will be the sale of a property owned by Ms Kenworthy at 10-14 Helena Street Midland WA. The property has been valued under instructions from the

Liquidator at Fair Market Value \$510,000 (and Forced Sale Value \$440,000) and is presently subject to a conditional contract of sale at \$450,000.

- 2.7. The conditions are unlikely to be satisfied before 31 May 2009.
- 2.8. The balance of the Settlement Sum will be paid from rental income derived from the Langtrees businesses at Burswood WA and Kalgoorlie WA (refer paragraphs 6.3.3.8 to 6.3.3.16 of the First Report).
- 2.9. To secure payment of the Settlement Sum, Ms Kenworthy will provide the Company with a registered first mortgage over the Midland property and registered second mortgages over her Burswood and Kalgoorlie properties. Eurocars will also provide a registered second mortgage over a property it owns in Burswood WA.
- 2.10. The mortgages will include terms that require payment of the principal sum of \$600,000 within 12 months of execution of a deed of settlement and interest calculated at the Westpac Business Development Loan rate (presently 7.44% p.a.) plus a margin of 2% p.a.
- 2.11. All of the security properties have been valued by licensed valuers and the equity available to support the mortgages is assessed at approximately \$3.63 million.
- 2.12. The director of Eurocars, Mr Rod Slater, will also provide a personal guarantee to the Company to support the second mortgage. Mr Slater has provided a statement of his personal assets and liabilities which shows he has a surplus of assets over liabilities of approximately \$530,000.

The Proceedings

Indemnity Claim – CIV 2416 of 2008

- 2.13. I initiated legal proceedings seeking withdrawal of a caveat lodged by the beneficiaries of the W & I George Trust over the residential property at 3/25 Clydesdale Street, Burswood WA, in order to sell the property and recover costs incurred by the Company in acquiring, improving and maintaining the property. The background to this action is set out in the First Report at paragraphs 5.41 to 5.53.
- 2.14. In a Defence filed by the Caveators, they plead little more than a bare denial of my claims with very little documentation to support their position.
- 2.15. I have not replied to the Defence and the matter presently stands adjourned pending the outcome of the settlement proposal.
- 2.16. While my lawyers consider the prospects of success to be reasonable, the inherent risks in litigation are considered a little higher in this matter because the defendants have shifted position in the preliminary stages of the action.
- 2.17. Legal costs in taking the matter up to and including a trial are estimated at between \$172,000 to \$212,000.

Business Licence Claim – CIV 2201 of 2008

- 2.18. The background to this matter was set out in paragraphs 6.3.3.8 to 6.3.3.16 of the First Report.

- 2.19. I initiated legal proceedings on 18 September 2008 alleging in summary that:
- 2.19.1. The Company owned the businesses of Langtrees of Perth and Langtrees of Kalgoorlie (**Businesses**);
 - 2.19.2. Ms Kenworthy was a director the Company at all material times; and
 - 2.19.3. She breached her statutory and fiduciary duties to the Company by purporting to licence the **Businesses** to an unrelated third party and retaining licence fees paid by that party.
- 2.20. My statement of claim seeks declarations (as to ownership), compensation or damages, interest and costs. Those claims have not been fully quantified as yet but they are likely to be in the order of several hundred thousand dollars.
- 2.21. The director disputes the Company's claim to the business assets and in a Defence filed in the Proceedings she pleads that:
- 2.21.1. The Company did not own the **Businesses**;
 - 2.21.2. It is illegal for the Company to carry on the **Businesses** under a Western Australia Police Service containment policy applying to brothels;
 - 2.21.3. Under her agreement with the third party, none of the leasing fee related to a licence of the **Businesses**; and
 - 2.21.4. Equity and public policy should not allow the Company the proceeds of an illegal business.
- 2.22. As to the Company's prospects of success, there are a number of issues which will weigh upon a final determination at law. They include the vexed issue of prostitution in Western Australia and the absence of any licence agreement.
- 2.23. On the basis of material available to date, my lawyers consider the Company has reasonable prospects of succeeding in its claim. However, these proceedings are at an early stage (pre-discovery) and the documentary evidence and oral evidence of Ms Kenworthy has not yet been provided.
- 2.24. Legal costs to take the action up to and including a trial are estimated to be between \$132,000 and \$182,000.

Other Claims

- 2.25. I have identified two other claims against the director, being a claim by right of subrogation for repayment of a debt of \$40,576 as set out in paragraphs 5.31 to 5.33 of the First Report and a claim for repayment of a director's loan of \$505,541 as detailed in paragraphs 6.59 to 6.63 of the First Report.
- 2.26. I have not initiated legal proceedings for recovery of those loans as I have limited funds and I considered those funds would be best directed to prosecuting the Proceedings.
- 2.27. On the basis of defended legal proceedings, legal costs in pursuing both of these claims are estimated to be in the order of \$50,000 to \$75,000.

Analysis of Settlement Proposal

- 2.28. The following table shows the estimated various financial outcomes between the settlement proposal and litigation, on a best case and worst case scenario. That is, either all claims fail or all claims succeed.
- 2.29. Obviously, some claims may succeed and others fail thereby resulting in an outcome somewhere between the best outcome and the worst outcome.

	Settlement Proposal	Favourable Judgment	Adverse Judgment
	\$	\$	\$
Indemnity Claim		278,599	
Licence Claim		670,000	
Subrogated Claim		40,576	
Director's Loan		505,541	
Gross Return	613,500	1,494,716	Nil
Success Fee*		597,886	
Legal Costs**	116,262	187,600	750,000
Net Return/(Loss)	497,238	709,230	(750,000)

*payable to litigation funder at 40% of judgment

**includes costs orders against losing party in litigation

- 2.30. Additionally, a court declaration that the Company is the owner of the Businesses would allow me to seek out purchasers of the Businesses which are valued at \$800,000 to \$1,000,000.
- 2.31. No creditor has expressed a willingness to provide funding to continue the Proceedings to a final determination and to commence fresh proceedings in respect of the other claims against the director.
- 2.32. I would therefore need to seek funding from a litigation funder to continue the Proceedings and commence fresh proceedings. Such arrangements generally attract a success fee of between 35% to 40% of any judgment sum.
- 2.33. If I was unable to secure external funding, I may be forced to abandon the Proceedings and may not be able to commence other actions against the director.

3. Dividends to Creditors

- 3.1. In the First Report to creditors I estimated a dividend range of 0 to 13 cents in the dollar (Annexure F of the First Report).

- 3.2. If the settlement proposal is approved, I now estimate a dividend range of 7.7 cents to 13.1 cents in the dollar. A detailed analysis of the dividend estimation is annexed as Annexure "A".
- 3.3. The high range dividend is dependent on recovery of lease payments due to the Company from the lessee of the Outskirts Retreat business (the lessee is presently in default) and interest arising from the proposed settlement. Any interest will be determined by the timing of Settlement Sum receipts.
- 3.4. The timing and amount of any dividend will be dependent on the timing of Settlement Sum receipts which may extend out to 30 April 2010.

4. Receipts and Payments

- 4.1. A summary of receipts and payments for the period of the date of appointment to 13 May 2009 is attached to this report as Annexure "B".
- 4.2. It shows that I have received \$1,397,498.73 from the date of my appointment to 13 May 2009 and expended \$1,301,866.88 of that to leave a balance of \$95,631.85 cash at Bank.
- 4.3. Proceeds from sale of land and payments to secured creditors largely comprise the total receipts and payments to 13 May 2009.

5. Meeting of Creditors

- 5.1. A meeting of creditors has been convened for 2 June 2009 at the offices of RSM Bird Cameron Partners, 8 St Georges Terrace, Perth WA. A formal notice of the meeting is enclosed with this report.

6. Liquidator's Remuneration

- 6.1. At a meeting of creditors held on 3 December 2008 the Liquidator's remuneration for the period from 12 December 2007 to 30 September 2008 was fixed in the sum of \$250,000 plus GST.
- 6.2. At that meeting, creditors also fixed the Liquidator's future remuneration from 1 October 2008 in the sum of \$45,000 plus GST (**Future Remuneration Period**).
- 6.3. Attached as Annexure "C" is a description of work performed or to be performed in the Future Remuneration Period and attached as Annexure "D" is a calculation of actual remuneration incurred in the Future Remuneration Period to 13 May 2009 and an estimate of work to be performed from 14 May 2009 to finalisation, in the combined amount of \$194,000 plus GST.
- 6.4. At the forthcoming meeting, creditors will be asked to consider and, if appropriate, resolve:


"That the future remuneration of the liquidator, his partners and his staff from 1 October 2008 previously fixed on a time basis in accordance with the hourly rates charged by RSM Bird Cameron Partners from time to time to an overall limit of \$45,000 plus GST be increased to an overall limit of \$194,000 plus GST, and the liquidator be authorised to make periodic payments on account of such accruing remuneration."

- 6.5. It should be noted that, of the overall limit of future remuneration of \$194,000, costs of \$135,452.16 plus GST have actually been incurred to 13 May 2009.
- 6.6. My remuneration and that of my staff has been calculated on a time basis using hourly rates charged by RSM Bird Cameron Partners from time to time in accordance with the Insolvency Practitioners Association of Australia code of professional practice.

7. Liquidator's Opinion

- 7.1. Substantial legal costs have been incurred in this matter and, based upon the present pleadings, costs are only likely to escalate rapidly if the Proceedings are continued to trial.
- 7.2. Further significant legal costs would also be incurred if I was to initiate legal proceedings in the other claims I have identified.
- 7.3. To continue the Proceedings, or initiate fresh proceedings, I would require funding from external sources. No creditor has indicated a willingness to fund litigation. From my experience, it may be difficult to attract funding from a litigation funder.
- 7.4. Whilst my legal advisers consider the prospects of success in the Proceedings are reasonable, success in litigation is never certain and there is a risk of substantial adverse costs in the event the litigation fails. I would require indemnity for such costs before continuing the Proceedings.
- 7.5. From my investigations and enquiries, I consider Eurocars has good prospects of completing the settlement as contemplated.
- 7.6. The Settlement Sum should deliver dividends to unsecured (non-priority) creditors commensurate with those I previously estimated but without the costs and attendant risks of litigation.
- 7.7. I therefore recommend that creditors resolve to approve of me entering into a Deed of Settlement and Release and to give effect to the Deed in the terms outlined in section 2 of this report.

I invite creditors to contact Mike Edmondson of my office if they have any queries in relation to this report.


A MARK CONLAN
Official Liquidator

Annexure "B"

Image International Pty Ltd (In Liquidation)
ACN 009 144 923

Official Liquidators' Summary of Receipts and Payments
From 12 December 2007 to 13 May 2009

RECEIPTS	(\$)
Bank Interest	1,884.56
Cash from Company's Bank Account	49,877.18
Cash from Solicitor's Trust account	25,833.36
Cash on Hand	635.61
Commission Received	151.74
GST	3,532.99
Indemnity - W & I George Trust Account	9,151.44
Insurance Claim Received	2,440.00
Interests in Land	1,227,430.97
Rent Received - Commercial	32,000.03
Sale of Plant & Equipment	44,560.85
Total Receipts	1,397,498.73
PAYMENTS	
Australian Taxation Office (BAS)	10,620.64
Bank Charges	353.95
Commission Paid	19,517.36
Courier / Transport	1,397.00
Insurance	367.75
Legal Fees	15,005.87
Liquidator's Expenses	49,456.18
Liquidator's Remuneration	3,420.00
Other Government Charges	2,591.90
Other Property Expenses	4,003.73
Petitioners Costs	2,618.18
Rates - Council	6,206.03
Secured Creditors	1,186,268.58
Stamp Duty	39.71
Total Payments	1,301,866.88
Cash at Bank as at 13 May 2009	95,631.85

Remuneration Report - Liquidator's Future Remuneration
General Description of Work to be completed for the period 1 October 2008 to Finalisation

Task Area	General Description	Includes / delete or add details as appropriate to the work done
Assets [\$85,292.88]	Plant and Equipment	<ul style="list-style-type: none"> • Liaising with valuers, auctioneers and interested parties • Reviewing asset listings
	Sale of Real Property	<ul style="list-style-type: none"> • Liaising with valuers and agents
	Assets subject to specific charges	<ul style="list-style-type: none"> • Liaise with chargeholder • Have asset valued • Realise asset by auction or private sale • Pay amount secured to charge holder
	Debtors	<ul style="list-style-type: none"> • Correspondence with debtors • Reviewing and assessing debtors ledgers • Liaising with debt collectors and solicitors
	Stock	<ul style="list-style-type: none"> • Conducting stock takes • Reviewing stock values • Instructing auctioneers
	Other Assets	<ul style="list-style-type: none"> • Tasks associated with realising other assets
	Leasing	<ul style="list-style-type: none"> • Reviewing leasing documents • Liaising with owners/lessors • Tasks associated with disclaiming leases
Creditors [\$39,446.11]	Creditor Enquiries	<ul style="list-style-type: none"> • Receive and follow up creditor enquiries via telephone • Maintaining creditor enquiry register • Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Secured creditor reporting	<ul style="list-style-type: none"> • Preparing reports to secured creditor • Responding to secured creditor's queries
	Creditor reports	<ul style="list-style-type: none"> • General reports to creditors
	Dealing with proofs of debt	<ul style="list-style-type: none"> • Receipting and filing POD's when not related to a dividend • Corresponding with OSR and ATO regarding POD's when not related to a dividend
	Meeting of Creditors	<ul style="list-style-type: none"> • Preparation meeting notices, proxies and advertisements • Forward notice of meeting to all known creditors • Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement
Employees [\$68.97]	Employees enquiry	<ul style="list-style-type: none"> • Receive and follow up employee enquiries via telephone
	Other employee issues	<ul style="list-style-type: none"> • Correspondence with Centrelink
Investigation [\$34,082.78]	Conducting investigation	<ul style="list-style-type: none"> • Collection of company books and records • Correspondence with ASIC to receive assistance in obtaining company's books & records and Report as to Affairs • Reviewing company's books and records • Review and preparation of company nature and history
	Litigation / Recoveries	<ul style="list-style-type: none"> • Internal meetings to discuss status of litigation • Preparing brief to solicitors • Liaising with solicitors regarding recovery actions • Attending to negotiations • Attending to settlement matters
	ASIC reporting	<ul style="list-style-type: none"> • Preparing statutory investigation reports • Preparing affidavits seeking non lodgements assistance • Liaising with ASIC

Annexure "C"

Dividend [\$6,017.14]	Processing proofs of debt	<ul style="list-style-type: none"> • Preparation of correspondence to potential creditors inviting lodgement of POD • Receipt of PODs • Maintain POD register • Adjudicating PODs • Request further information from claimants regarding POD • Preparation of correspondence to claimant advising adjudication
	Dividend procedures	<ul style="list-style-type: none"> • Preparation of correspondence to creditors advising of intention to declare dividend • Advertisement of intention to declare dividend • Obtain clearance from ATO to allow distribution of company's assets • Preparation of dividend calculation
Administration [\$29,092.12]	Document maintenance/file review/checklist	<ul style="list-style-type: none"> • First month, then 6 monthly administration review • Filing of documents • File reviews • Updating checklists
	Insurance	<ul style="list-style-type: none"> • Identification of potential issues requiring attention of insurance specialists • Correspondence with Willis regarding initial and ongoing insurance requirements • Reviewing insurance policies • Correspondence with previous brokers
	Bank account administration	<ul style="list-style-type: none"> • Preparing correspondence opening and closing accounts • Requesting bank statements • Bank account reconciliations • Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> • Preparing and lodging ASIC forms including 505, 524, 911 etc • Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	<ul style="list-style-type: none"> • Notification of appointment • Preparing 'BAS'
	Planning / Review	<ul style="list-style-type: none"> • Discussions regarding status of administration
	Books and records / storage	<ul style="list-style-type: none"> • Dealing with records in storage • Sending job files to storage

Image International Pty Ltd (In Liquidation)
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Remuneration Report - Liquidator's Future Remuneration
Calculation of Remuneration from 1 October 2008 to Finalisation

Employee	Position	Average \$/hour (excl GST)	Total hours	Total (\$)	Assets	Creditors	Employees	Investigation	Dividend	Administration
Mark Conlan	Partner	376.21	64.13	24,124.59	8,492.01	10,908.11		3,182.01	1,128.63	413.83
Neil Cribb	Partner	376.21	1.60	601.93	75.24	526.69				
Greg Dudley	Partner	376.21	0.70	219.45	125.40					94.05
Andy Gilmour	Partner	450.00	2.00	900.00	900.00					
Mike Edmondson	Manager I	271.70	182.70	75,813.05	44,611.52	10,823.31		7,526.81	2,173.60	10,677.81
Clare Hayman	Manager I	271.70	0.30	81.51						81.51
Stuart Moore	Manager I	322.22	13.50	4,350.00	4,350.00			19.86		
Geoff Lasscock	Supervisor	198.55	0.10	19.86						
Lailitha Samykanno	Supervisor	198.55	0.50	99.28						99.28
Breck Robertson	Senior I	156.75	457.67	71,740.37	26,000.39	16,515.15		17,445.59	2,351.25	9,427.99
Benjamin Ward	Senior I	156.75	15.26	2,392.51	692.34	407.00		344.86		948.31
Nikhil Gohil	Intermediate I	137.23	37.80	5,187.46		54.34		5,078.77		54.35
Nicole Reichert	Intermediate II	135.85	1.20	163.02		163.02				
Nicholas Dorkham	Intermediate II	114.95	2.20	252.90	45.98					137.95
Terri Hoy	Personal Assistant	130.43	19.14	2,496.73		36.37				2,460.36
Hayley Forshaw	Secretary	147.20	33.27	4,897.82		12.12		484.88	363.66	4,037.16
Hayley Moir	Secretary	110.00	1.50	165.00						165.00
Joanna Tonge	Assistant	60.00	0.30	18.00						18.00
Corey Turner	Junior	62.70	7.60	476.52						476.52
TOTAL (excluding GST)			841.48	194,000.00	85,292.88	39,446.11	68.97	34,082.78	6,017.14	29,092.12
TOTAL (including GST)				19,400.00						
				213,400.00						

Average hourly rate

230.55

Average hourly rate

Disbursements

Type A:	\$ 2,000.00
Type B1:	3,000.00
Type B2:	0.00
TOTAL	<u>5,000.00</u>
GST	<u>500.00</u>
TOTAL (including GST)	<u>5,500.00</u>

Notes:
Type A: externally provided - professional services
Type B1: externally provided - non professional services
Type B2: internally provided