

# RSM Bird Cameron Partners

Chartered Accountants

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18 November 2009

## Report to the Creditors of:

### **Supa Steel (WA) Pty Ltd (In Liquidation) ACN 112 395 721 (“the Company”)**

#### **1. Introduction**

- 1.1. I refer to my appointment as Joint and Several Administrator of the Company on 2 July 2009 and my subsequent appointment as Joint and Several Liquidator on 6 August 2009.
- 1.2. This report is to be read in conjunction with the Statement of Administrators’ Opinion (“the VA Report”) dated 30 July 2009. A copy of the VA Report can be obtained from our website at [www.rsmi.com.au](http://www.rsmi.com.au)
- 1.3. I now report on the relevant matters identified in the VA Report and the progress of the Liquidation, particularly in relation to the focus of work since the date of my appointment as Liquidator which has included:
  - 1.3.1. The marketing and sale of the Company’s Commercial Premises at Bibra Lake (“the Property”);
  - 1.3.2. Sale of the Company’s plant and equipment;
  - 1.3.3. Ongoing recovery of outstanding debtors and retentions; and
  - 1.3.4. Further investigations into and the quantification of:
    - 1.3.4.1. Claims against the Directors for insolvent trading and breach of Director’s duties; and
    - 1.3.4.2. Voidable Transactions against related and unrelated parties.
- 1.4. To facilitate the timely distribution of funds to priority and unsecured creditors, creditors are hereby invited to submit formal proofs of debt by Monday, 11 January 2010. Further details are provided in Section 7.

Document1

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Major Offices in:  
Perth, Sydney, Melbourne,  
Adelaide and Canberra  
ABN 36 965 185 036

RSM Bird Cameron Partners is an  
independent member firm of RSM  
International, an affiliation of independent  
accounting and consulting firms.

## 2. Meeting of Creditors

- 2.1. A meeting of creditors will be convened at the offices of RSM Bird Cameron, 8 St George's Terrace, Perth, WA, 6000 on Tuesday, 8 December at 11.00am WST. For your attention and information please find enclosed:
- 2.1.1. Form 529 – Notice of Meeting;
- 2.1.2. Form 532 – Appointment of Proxy; and
- 2.1.3. Form 535 – Formal Proof of Debt or Claim.
- 2.2. Proxy forms or facsimile copies of proxy forms must be lodged with me by no later than 5.00pm (WST) on 7 December 2009. Where a facsimile copy of a proxy is lodged, the original must be lodged within 72 hours after issue of the faxed copy. A person claiming to be an attorney of a creditor must show to the Chairperson the instrument by which he/she was appointed attorney.
- 2.3. Attendance by telephone conference will be available. If you wish to attend by telephone please contact Ben Ward of my office on (08) 9261 9449 at least 24 hours prior to the meeting.
- 2.4. The balance of this report is under the following main headings:

Section	Details	Page
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### Annexure

- A Estimated Dividend to Unsecured Creditors
- B Schedule of RSM Bird Cameron Partners hourly rates and general description of staff experience
- C ASIC Information Sheet – Approving Fees: A Guide for Creditors
- D Summary of Remuneration by Employee for the period 6 August 2009 to 15 November 2009
- E General description of work completed by task for the period 6 August 2009 to 15 November 2009
- F Summary of the envisaged tasks to be undertaken by the Liquidator from 16 November 2009
- G Statement of the Liquidators' Receipts and Payments

### 3. Cessation of Business

- 3.1. As noted in the VA Report, no offers were received for the business as a going concern.
- 3.2. Subsequent to the second meeting of creditors held on 6 August 2009, I continued to work with the Directors with a view to concluding the Company's projects in order to crystallise work in progress into debtors and to release monies owed as retentions.
- 3.3. The business ceased to trade on 12 August 2009 at which time all remaining staff, including the Directors, were terminated.

### 4. Asset Realisations

#### Debtors

- 4.1. Set out below in Table 1 is a summary of the debtor position as at 15 November 2009:

	<b>Pre-Apt Debtors</b>	<b>VA Debtors</b>	<b>Total</b>	<b>Written Off</b>	<b>Received</b>	<b>Balance</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Debtors	729,771	188,525	918,296	90,694	601,203	226,399
Retentions	439,270	-	439,270	22,915	3,188	413,167
<b>Total</b>	<b>1,169,041</b>	<b>188,525</b>	<b>1,357,566</b>	<b>113,609</b>	<b>604,391</b>	<b>639,566</b>

**Table 1: Summary of Trade Debtors as at 15 November 2009**

- 4.2. Of the remaining debtors to be collected, a number are in dispute. The disputed debtors are claiming that the Company breached its contractual obligations in respect to the date of practical completion and/or non rectification of defects. We continue to liaise with the relevant debtors in order to reach a commercial outcome failing which legal proceedings may be commenced.
- 4.3. In respect to the outstanding retentions, whilst we continue to liaise with the relevant debtors on the scheduled release dates, it is apparent that some of the monies held will be applied against rectification works.
- 4.4. Investigations of the debtors' claims and recovery of the outstanding amounts are ongoing. Whilst I still consider that further recoveries are likely, an estimate of \$350,000 has been made for dividend estimate purposes only. However, this estimate may increase or decrease given the nature of the disputes and the passing of time.

#### Plant and Equipment

- 4.5. An on site auction was conducted at the Property on Wednesday, 16 September 2009.
- 4.6. Advertisements were placed in The West Australian on Saturday 5 and 12 September 2009 and interested parties were given the opportunity to inspect the plant and equipment on Tuesday, 15 September 2009.

- 4.7. Plant and equipment realisations totalled \$77,776 (excluding GST) before auctioneers' costs. Total realisations exceeded auction valuations.

#### **Land and Buildings**

- 4.8. As noted in the VA Report, shortly after my appointment as Joint and Several Administrator I instructed a licensed valuer to undertake a valuation of the Property, with a view to selling the Property as part of a sale of the business as a going concern. Indicative offers received were well below valuation.
- 4.9. Accordingly, as Liquidator I proceeded to engage a reputable commercial real estate agent to market and sell the Property which was offered to the market on an "offers invited" basis with offers closing on 16 October 2009, if not sold prior. This time line enabled a proper and extensive marketing campaign.
- 4.10. Consequently, interest in the Property was considerable, with three (3) formal offers received.
- 4.11. On 19 October 2009 I accepted an unconditional offer of \$1.95 million plus GST which was considerably more than the original valuation obtained.
- 4.12. We are currently working towards settlement which has been scheduled for 30 November 2009. Upon settlement, the secured creditor will be satisfied in full and an estimated surplus of approximately \$400,000 will become available to the Company for the benefit of priority and unsecured creditors.

#### **Shareholders' Loan**

- 4.13. As detailed in the VA Report, my preliminary investigations revealed that the Company had continued to pay the lease payments on Company vehicles held by Mr and Mrs Ford, despite neither party being a director or employee of the Company. I estimated that these payments totalled \$20,748.
- 4.14. Demands for the repayment of these monies will be issued prior to the forthcoming meeting of creditors. However, both parties are currently the subject of Family Court proceedings and any commercial recovery may be unlikely.

### **5. Voidable Transactions**

- 5.1. As part of our preliminary investigations, we identified a number of voidable transactions that could be pursued for the benefit of creditors.
- 5.2. We now provide an update on these matters.

#### **Unfair Preferences**

- 5.3. The VA Report noted numerous transactions involving payments to various creditors totalling \$754,150 which may be recoverable by a future liquidator.
- 5.4. A more detailed analysis of the Company's books and records has now been undertaken and has resulted in further payments being identified as possible unfair preferences. Claims now total \$1,056,586.
- 5.5. Demands will be issued prior to the forthcoming meeting of creditors.

- 5.6. Some of the identified claims may require formal legal proceedings to be initiated in order to achieve a commercial recovery.

### **Unreasonable Director Related Transactions**

- 5.7. Our preliminary investigations identified a number of transactions which may be recoverable against related parties. These primarily related to payments totalling \$107,000 to Steel Detailing Australia Pty Ltd (“SDA”) during the period 1 September 2008 to 2 July 2009.
- 5.8. SDA has withdrawn its claim as a creditor which was between \$198,885 (as stated by the Company’s records) and \$402,473.50 (as claimed by SDA).
- 5.9. I believe this position to be a reasonable commercial outcome for the benefit of creditors. The withdrawal of SDA’s claim is to the ultimate benefit of creditors as known unsecured creditor claims have reduced by between \$200,000 to \$400,000.
- 5.10. Accordingly, no further action will be taken in this matter.

### **6. Claims Against the Directors**

- 6.1. Our preliminary investigations identified likely claims against the Directors for insolvent trading estimated at that time of \$697,000. During the VA period, these claims were discussed with the Directors and based on these discussions, I believed that a commercial resolution may have been possible.
- 6.2. However, as Liquidator I have now completed a more thorough investigation of these matters and have determined that claims for insolvent trading and breach of director duties against the Directors total \$4,380,382.37 as shown below in Table 2:

	\$
Insolvent Trading	1,968,198.71
Breach of Director’s Duties	2,412,183.66
<b>Total</b>	<b><u>4,380,382.37</u></b>

**Table 2: Summary of claims against the Directors for Insolvent Trading & Breach of Duties**

### **Demands Issued**

- 6.3. Demands have recently been issued to Paul and Tony D’Alessandro (“the Current Directors”) for payment of the above amounts. Prior to the demands being issued I sought a meeting with the Current Directors in order to discuss the claims and to canvass again the merits to all parties of a commercial settlement. However, the Current Directors rejected my request for such a meeting. I subsequently received a telephone call from a solicitor acting on their behalf advising that the claims will be defended.
- 6.4. Since the date of my demand being issued, I have engaged solicitors to pursue the matter further.
- 6.5. A similar demand was also issued to the Company’s former Director, Jason Ford in the amount of \$2,983,581.61. Mr Ford’s claim is limited to the relevant period of his

directorship. However, as previously advised, Mr Ford is currently the subject of Family Law proceedings so any commercial recovery may be unlikely.

- 6.6. An outline of the basis of the claims is detailed below.

**Insolvent Trading Claims - \$1,968,198.71**

- 6.7. The Company was insolvent from 1 September 2008.
- 6.8. The VA Report noted 1 January 2009 as the possible date of insolvency, however a further and more detailed review of the Company's records indicates that 1 September 2008 is a more accurate date. This date has been determined having given consideration to the following factors:
- 6.8.1. Repayment arrangements entered into with major supply creditors and the Australian Taxation Office from May 2008;
  - 6.8.2. Major steel suppliers stopping credit from August 2008;
  - 6.8.3. The Company's declining working capital position from 1 July 2008;
  - 6.8.4. Expiry of temporary overdraft facility on 2 September 2008 and the inability to obtain further funding from the secured creditor or an alternative financier; and
  - 6.8.5. Letters issued to major suppliers by the Company's accountant asking for "patience" due to Company restructure and cashflow issues.
- 6.9. I consider that a director of similar competency occupying a position equivalent to those occupied by the Directors, in a company in like circumstances to those in which the Company found itself, would have or should have been aware, at the relevant time, that there were reasonable grounds to suspect that the Company was or may be insolvent.
- 6.10. I do not believe any of the defences pursuant to section 588H of the Corporations Act 2001 ("the Act") would be available to the Directors given the Company's circumstances.

**Breach of Directors' Duties - \$2,412,183.66**

- 6.11. Directors have extensive duties of a statutory and fiduciary nature pursuant to Sections 180 to 183 of the Act and common law.
- 6.12. Where a company is or may be insolvent, the directors also owe a duty to the company creditors.
- 6.13. The claim for breach of director duties is founded upon transactions arising during the period 1 September 2008 to 2 July 2009 whereby the Directors directed the repayment of funds to creditors that held personal guarantees provided by the Directors.
- 6.14. Consequently, I believe the Current Directors have breached their statutory and fiduciary duties, namely section 180 to 182, whereby they failed to exercise their powers and discharge their duties in good faith and that their actions were for their personal gain.

## Director's Personal Financial Position and Bankruptcy Proceedings

- 6.15. The VA Report indicated that the Current Directors held both residential and investment properties either individually or in joint names with their spouses.
- 6.16. Further investigations have revealed that of the four (4) properties held by the Directors, two (2) are currently being marketed for sale.
- 6.17. I am also aware that the Current Directors are both currently subject to bankruptcy proceedings initiated in a Queensland court by Steelforce pursuant to personal guarantees held. Both bankruptcy hearings have been adjourned to 25 November 2009.

### Active Pursuit of Claim

- 6.18. Should the bankruptcy proceedings not result in the bankruptcy of the Current Directors, I will immediately proceed to commence formal proceedings for the insolvent trading and breach of duties claims.
- 6.19. I remain receptive to a commercial settlement of the matter in the interests of creditors.

## 7. Dividend

### Secured Creditor

- 7.1. As detailed in the VA Report, Westpac Banking Corporation ("the Bank") holds a first ranking fixed and floating charge over the Company's assets.
- 7.2. Since the date of liquidation and subsequent to the sale of the Company's plant and equipment, a payment of \$52,178.75 was made to the Bank. This payment was made pursuant to the Bank's fixed charge over plant and equipment.
- 7.3. Below in Table 3 is a summary of the Bank's claim estimated to the date of settlement of the Property:

	\$
Business Cheque Account	2,661
Business Loan	1,097,396
Business Loan	409,623
<b>Sub-Total</b>	<u>1,509,680</u>
Contingent Liability – Bank Guarantees	102,862
<b>Total</b>	<u><u>1,612,542</u></u>

**Table 3: Summary of the Secured Creditor's Claim**

- 7.4. As noted above, the Bank's debt will be satisfied in full upon the settlement of the Property.
- 7.5. In addition to the principal debt, the Bank holds a number of bank guarantees in respect of various contracts. Since the date of my appointment, three (3) guarantees have been released. At the date of this report, the remaining Bank guarantees total \$102,862.

- 7.6. Upon settlement of the Property, the balance remaining in respect to the Bank guarantees will be held in a term deposit pending the release or calling upon of the guarantees.
- 7.7. Accordingly, should the guarantees not be called upon, further funds would become available to satisfy creditor claims.

**Priority Employee Entitlements**

- 7.8. Employee entitlements are afforded a priority under Section 556 of the Act and include entitlements for wages, superannuation, annual leave and long service leave.
- 7.9. Set out in Table 4 is a summary of employee entitlements detailed in the RATA and our current estimate of possible claims:

	<b>RATA</b>	<b>Liquidators’ Estimate</b>
	\$	\$
Payment in Lieu of Notice	-	46,436
Wages		1,139
Annual Leave	112,754	83,599
Superannuation	100,000	241,500
<b>Total</b>	<b>212,754</b>	<b>372,674</b>

**Table 4: Summary of Estimated Employee Entitlements**

- 7.10. As stated in the VA Report, the amount shown in the Company’s records for superannuation may be understated. Work continues to be undertaken to determine the actual amount owed for superannuation.
- 7.11. As the Company is in liquidation, former employees of the Company are entitled to receive outstanding entitlements under the Federal Government program known as General Employee Entitlements and Redundancy Scheme (“GEERS”). However, GEERS have advised that it will not proceed with paying any of the three (3) claims received to date on the basis that the Liquidator will be in a position to pay employee entitlements in full.
- 7.12. Upon the settlement of the Property sufficient proceeds will be available to enable the payment of a priority dividend. To facilitate the payment of an interim dividend on 22 January 2010, priority creditors are hereby invited to submit a Formal Proof of Debt. To this end please find attached:
- 7.12.1. Form 547 – Notice of Intention to Declare a Dividend; and
- 7.12.2. Form 536 – Formal Proof of Debt or Claim (Employees).
- 7.13. The Form 536 is to be completed and returned to this office by no later than close of business, Monday 11 January 2010.

**Unsecured Creditors**

- 7.14. A distribution to unsecured creditors will only take place after the satisfaction of the secured creditor, priority creditors and costs of the liquidation.

- 7.15. I estimate that the dividend for ordinary unsecured creditors will range between 27.21 cents in the dollar and 70.26 cents in the dollar with the most likely return estimated at 54.03 cents in the dollar.
- 7.16. Attached as Annexure A is a table detailing the dividend estimate.
- 7.17. The quantum of a dividend to unsecured creditors is subject to future costs, the level of creditor claims including priority employee entitlements and recoveries in relation to:
  - 7.17.1. Debtors and retentions;
  - 7.17.2. Unfair preferences;
  - 7.17.3. Claims against the Directors; and
  - 7.17.4. Release of bank guarantees.
- 7.18. To facilitate the payment of a dividend at the earliest time, I hereby invite creditors to submit a Formal Proof of Debt by Monday, 11 January 2010. In this regard please find attached:
  - 7.18.1. Form 534 - Notice Inviting Formal Proof of Debt; and
  - 7.18.2. Form 535 – Formal Proof of Debt or Claim.

## **8. Report to Australian Securities and Investments Commission (“the ASIC”)**

- 8.1. A report was submitted to the ASIC pursuant to Section 438D of the Act during the VA period. The ASIC have responded stating that it will await the receipt of our report pursuant to Section 533 of the Act.
- 8.2. Section 533 of the Act requires a Liquidator to make a report to the ASIC where:
  - 8.2.1. A director or officer has committed an offence in accordance with the Act; or
  - 8.2.2. If the Liquidator is unable to pay a dividend to unsecured creditors of more than 50 cents in the dollar.
- 8.3. Notwithstanding the current dividend estimates a possible distribution to unsecured creditors of greater than 50 cents, it is my intention to make a report to the ASIC pursuant to Section 533 of the Act. The contents of that report remain confidential.

## **9. Liquidators’ Remuneration**

- 9.1. Our remuneration and that of our partners and 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.
- 9.2. In accordance with the Insolvency Practitioners of Australia Code of Professional Practice, the following annexures provide relevant details and disclosures:

- 9.2.1. Annexure B – A schedule of RSM Bird Cameron Partners standard hourly rates and general description of staff experience; and
- 9.2.2. Annexure C – ASIC Information Sheet – Approving Fees: A Guide for Creditors.

### **Current Remuneration**

- 9.3. At the meeting of creditors held on 6 August 2009, creditors resolved:

*“The remuneration of the Liquidators to be hereby affixed on a time basis in accordance with the hourly rates set from time to time by RSM Bird Cameron Partners subject to an initial limit of \$100,000 plus GST beyond which the Liquidators may seek further approval and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration.”*

- 9.4. In accordance with this resolution liquidation fees of \$100,000 have been drawn.
- 9.5. A remuneration report is attached as Annexures D & E which summarises the remuneration by employee and a general description of work completed by task for the period 6 August 2009 to 15 November 2009.
- 9.6. At the forthcoming meeting creditors will be asked to consider and, if deemed appropriate, resolve:

*“That the remuneration of the Liquidators, their partners and staff from 6 August 2009 to 15 November 2009 be hereby affixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time in the amount of \$192,572.00 plus GST and that the Liquidator be authorised to make periodic payments on account of such accruing remuneration.”*

- 9.7. The amount \$192,572 includes the previous amount of \$100,000 approved by creditors on 6 August 2009. Accordingly, \$92,572 represents remuneration not previously considered by creditors.

### **Future Remuneration**

- 9.8. Future work to be undertaken will focus upon but will not be limited to:
  - 9.8.1. Progressing the claims against the Directors;
  - 9.8.2. Progressing the claims and possible recovery actions in respect of voidable transactions;
  - 9.8.3. Recovery of outstanding debtors and retentions;
  - 9.8.4. Providing a report to ASIC pursuant to Section 533 of the Act; and
  - 9.8.5. Attending to statutory duties and reporting requirements.
- 9.9. Attached as Annexure F is a summary of the envisaged tasks to be undertaken after 16 November 2009.

- 9.10. At the forthcoming meeting, creditors will also be asked to consider and, if thought appropriate, resolve:

*“That the remuneration of the Liquidators, their partners and their staff from 16 November 2009 is hereby affixed on a time basis in accordance with the hourly rates set from time to time by RSM Bird Cameron Partners, subject to a limit, for the time being, of \$100,000 plus GST, beyond which the Liquidators may seek further approval, and that the Liquidators be authorised to make periodic payments on accounts of such accruing remuneration”.*

**10. Liquidators’ Statement of Receipts and Payments**

- 10.1. A Statement of the Liquidators’ Receipts and Payments for the period 6 August 2009 to 15 November 2009 is attached as Annexure G.

Should you have any queries regarding please contact Clare Hayman or Ben Ward of this office on (08) 9261 9100.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Crabb', written over a horizontal line.

NEIL CRABB  
Joint and Several Liquidator

Estimated Return in a Winding Up as of 15 November 2009

	Possible / Likely \$	Low \$	High \$
<b><u>Assets</u></b>			
Cash at bank	56,375	56,375	56,375
Debtors	350,000	200,000	500,000
Land & Buildings (less selling costs)	1,911,000	1,911,000	1,911,000
Voidable Recoveries:			
- Insolvent Trading & Breach of Duties Claim	800,000	400,000	1,600,000
- Unfair Preference Claims	650,000	530,000	1,000,000
<b>Total Assets Available for Distribution</b>	<b>3,767,375</b>	<b>3,097,375</b>	<b>5,067,375</b>
<b><u>Distribution per s556(1) of Corporations Act 2001</u></b>			
Costs, Charges & Expenses of Liquidators			
- Legal Fees	(50,000)	(25,000)	(100,000)
- Fees & Disbursements as at 15 November 2009	(93,000)	(93,000)	(93,000)
- Future Fees of the Liquidation	(150,000)	(100,000)	(250,000)
<b>Total Estimated Costs</b>	<b>(293,000)</b>	<b>(218,000)</b>	<b>(443,000)</b>
<b>Available for Distribution to Creditors</b>	<b>3,474,375</b>	<b>2,879,375</b>	<b>4,624,375</b>
Secured Creditor (incl interest) to 30 Nov 09	(1,509,681)	(1,509,681)	(1,509,681)
Secured Creditor - Contingent Bank Guarantee's	(102,863)	(102,863)	(102,863)
	<b>(1,612,543)</b>	<b>(1,612,543)</b>	<b>(1,612,543)</b>
Employee Entitlements (Pre-appointment)	(372,674)	(372,674)	(372,674)
<b>Estimated Surplus Funds for Distribution to Unsecured Creditors</b>	<b>1,489,158</b>	<b>894,158</b>	<b>2,639,158</b>
Unsecured Creditors	2,756,257	3,286,257	3,756,257
Estimated Return to Unsecured Creditors (cents/\$)	54.03	27.21	70.26

## Schedule of Hourly Rates at 1 July 2009 & General Guide to Staff Experience

Classification	Rate (\$)	Experience
Partner/Appointee	500.00	The Partner/Appointee is a registered Liquidator and member of the ICAA and IPAA bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.rsmi.com.au">www.rsmi.com.au</a>
Director	500.00	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and IPAA with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Manager I	390.00	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and IPAA; very strong knowledge of relevant insolvency legislation and issues.
Manager II	250.00	Generally, 5 – 7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and IPAA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	220.00	Generally, 4 – 6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior I	195.00	Generally, 2 – 4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA program. Good knowledge of basic insolvency legislation and issues.
Senior II	165.00	Generally, 2 – 3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Intermediate I	145.00	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Intermediate II	125.00	0 – 1 year experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Personal Assistant	170.00	Appropriate skills including machine usage.
Secretary	135.00	Appropriate skills including machine usage.
Junior	100.00	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

**Notes:**

1. The hourly rates are exclusive of GST.
2. The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
3. Time is recorded and charged in six-minute increments.
4. Rates are subject to change from time to time. Disbursements are recovered on the following basis.

<b>Disbursements</b>	<b>Charges (Excluding GST)</b>
Postage	At cost
Telephone	At cost
Photocopying	20 cents a copy
Facsimile	At cost
Company Search	At cost
Advertising	At cost
Storage – Per Box	At cost
Storage – Per File	At cost
Couriers	At cost

The Partners of RSM Bird Cameron Partners are members of the Insolvency Practitioners Association of Australia and follow the IPAA Code of Professional Practice.

A copy of the Code of Professional Practice may be found on the IPAA website at [www.ipaa.com.au](http://www.ipaa.com.au).



**ASIC**

Australian Securities & Investments Commission

## INFORMATION SHEET 85

### Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

#### Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

## Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

**Table 1: Who may approve fees**

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ <sup>1</sup>	✓	✓
Administrator of a deed of company arrangement	✓ <sup>1</sup>	✓	✓
Creditors' voluntary liquidator	✓ <sup>1</sup>	✓ <sup>5</sup>	✗ <sup>3</sup>
Court-appointed liquidator	✓ <sup>1</sup>	✓ <sup>4, 5</sup>	✓ <sup>2</sup>

<sup>1</sup> If there is one.

<sup>2</sup> If there is no approval by the committee or the creditors.

<sup>3</sup> Unless an application is made for a fee review.

<sup>4</sup> If there is no creditors' committee or the committee fails to approve the fees.

<sup>5</sup> If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

### Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

### Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general* proxy or a *special* proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

## Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

## Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

## Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

## What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

## Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

## Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at [www.asic.gov.au/complain](http://www.asic.gov.au/complain), or write to:

ASIC Complaints  
PO Box 9149  
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through [infoline@asic.gov.au](mailto:infoline@asic.gov.au), or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

## To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets):

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at [www.ipaa.com.au](http://www.ipaa.com.au). The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

SUPA STEEL (WA) PTY LTD (In Liquidation)

ACN: 112 395 721

Remuneration Report

Part 2: Calculation of Remuneration

Period From 06 August 2009 to 15 November 2009

Employee	Position	Hourly rate (ex GST)	Total actual hours	Total (\$)	Task Area						
					Assets (\$)	Creditors (\$)	Employees (\$)	Trade on (\$)	Investigation (\$)	Dividends (\$)	Administration (\$)
Mark Conlan	Partner	500.00	0.1	50.00		50.00					
Neil Cribb	Partner	500.00	71.1	35,550.00	16,950.00	3,500.00	150.00	4,050.00	7,350.00	100.00	3,450.00
Greg Dudley	Partner	500.00	11.8	5,900.00	1,300.00	850.00	100.00	350.00	2,100.00		1,200.00
Clare Hayman	Manager 1	320.00	154.4	49,408.00	20,960.00	3,552.00	128.00	6,368.00	15,456.00		2,944.00
Benjamin Ward	Senior 1	195.00	359.3	70,063.50	19,890.00	4,134.00	2,886.00	8,755.50	27,183.00	936.00	6,279.00
Breck Robertson	Senior 1	195.00	59.8	11,661.00	7,546.50	643.50	487.50	585.00	273.00		2,125.50
Shara Billing	Senior 1	195.00	0.2	39.00				39.00			
Nikhil Gohil	Intermediate I	165.00	4.4	726.00	346.50	231.00	33.00	49.50	66.00		
Sarah Kopcheff	Intermediate II	145.00	52.8	7,656.00	1,754.50	493.00	145.00	3,349.50	1,305.00	174.00	435.00
Johmathon Busing	Intermediate II	130.00	31.5	4,095.00	858.00	247.00	468.00	78.00	2,145.00		299.00
Nicholas Dorkham	Intermediate II	125.00	2.5	312.50							312.50
Terri Hoy	Personal Assistant	170.00	25.3	4,301.00	1,173.00	153.00		1,156.00		51.00	1,768.00
Hayley Forshaw	Secretary	135.00	16.0	2,160.00	324.00	189.00	13.50	432.00	148.50		1,053.00
Corey Turner	Junior	100.00	6.5	650.00	240.00	120.00		90.00			200.00
<b>TOTAL (excluding GST)</b>			<b>795.7</b>	<b>192,572.00</b>	<b>71,342.50</b>	<b>14,162.50</b>	<b>4,411.00</b>	<b>25,302.50</b>	<b>56,026.50</b>	<b>1,261.00</b>	<b>20,066.00</b>

GST \$19,257.20  
**TOTAL (including GST) \$211,829.20**

Average Hourly Rate \$242.02

Disbursements

Type	\$
NGA-ADVERTISING	7,743.73
NGA-COURIER	11.00
NGA-SEARCH FEES	1,063.80
NGA-STORAGE	3.00
NGA-SUNDRY PAYMENTS	327.70
NGA-TAXIS/BUSES	42.09
RECOUPS-FAXES	79.00
RECOUPS-KM CLAIMS	811.24
RECOUPS-PARKING	178.23
RECOUPS-PHOTOCOPYING	1,325.80
RECOUPS-POSTAGE	263.70
RECOUPS-SUNDRY	321.99
RECOUPS-TELEPHONE	3.16

**TOTAL 12,174.44**  
 GST 1,217.44

**TOTAL (Including GST) 13,391.88**

**SUPA STEEL (WA) PTY LTD (In Liquidation)**

ACN: 112 395 721

**Remuneration Report**

**Part 1: Description of Work Completed**

**Period From 06 August 2009 to 15 November 2009**

Task Area	General Description	Includes [delete or add as required]
Assets [\$71,342.50]	Plant and Equipment	Preparation of asset list Liaising with valuers, auctioneers and interested parties Valuation Report
	Debtors	Reviewing and assessing debtors ledgers Correspondence with debtors
	Stock	Conducting stocktakes/reviews Reviewing stock values Liaising with purchasers
	Assets Subject to Specific Charges	Review of security documents Liaising with valuers, auctioneers and interested parties
	Other Assets	All tasks associated with realising other assets
	Sale of Land and Buildings	Liaising with interested parties and selling agent Liaising with purchasers re settlement Assessment of offers / Sale negotiations
Creditors [\$14,162.50]	Creditor Reports and Enquiries	Receive and follow up creditor enquiries via telephone / email Review and prepare correspondence to creditors via letter/fax/email Preparing report to creditors
	Secured Creditor Reports	Preparing reports to secured creditor Liaising with secured creditors Responding to secured creditor queries
	Meetings of Creditors	Preparation of notices, proxies and advertisements Preparation for meeting including adgenda,attendance register,list of creditors,advertisement, draft minutes Finalisation and lodgement of minutes with ASIC Stakeholders queries re meeting outcomes
	Proofs of Debts - Receipt	Receipting and filing POD's
Employees [\$4,411.00]	Employees Enquiries	Receive and reply to employee queries Preparation of letters to employees regarding entitlements and options
	GEERS	Correspondence with GEERS Preparing notification spreadsheet and quotation to GEERS
	Calculation of Entitlements	Review of company records to calculate employee entitlements Reconciliation of superannuation amounts Reviewing awards
	Employee Dividend	Correspondence with employees Correspondence with ATO regarding SGC proof of debt
	Workers Compensation Claims	Review of insurance policies Liaising with claimant, insurer and solicitors re claims Correspondence with Willis and existing brokers
	Other Employee Issues	Correspondence with Child Support Correspondence with Centrelink
Trade On [\$25,302.50]	Trade On Tasks	Assessment of activities and cashflow projections Attendance on site, liaising with management and employees Liaising with suppliers Authorising purchase orders, purchase order register
	Budgeting & Financial Reporting	Review of existing budgets and financial statements Meetings to discuss trading position/wind down Trading profit or loss calculations
	Processing Receipts	Preparation of receipt forms for input into internal computer system Liaising with accounts receivable regarding receipts
	Processing Payments	Preparation of payment forms for input into internal computer system Liaising with accounts payable regarding payments

Investigation [\$56,026.50]	Conducting Investigations	Collection / copying relevant company books and records Searches (property, charges, ASIC) Review of company records / financial statements Review of cashbook for voidable transactions Preparation of investigation file
	Litigation / Recoveries	Determination of potential actions and brief to solicitors Quantifying preference claims, seek advice from solicitors Quantifying insolvent trading claims, liaise with solicitors re claim Liaising with solicitors and defendants
Dividend [\$1,261.00]	Processing Proofs of Debt	Correspondence to creditors calling for POD's
Administration [\$20,066.00]	Checklists / File Review	Initial and bi monthly reviews File review Checklist completion
	Directors / Officers	Correspondence and meetings with Directors including interviews
	ASIC Forms	Preparing and lodgement of ASIC forms including 524,505, 911 etc Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	Preparation and lodgement of BAS returns Completing Group certificates
	Bank Account Administration	Bank account reconciliations Bank correspondence
	Insurance	Liaising with Willis and prior broker Review of existing policies and determination of any underinsurance Work of insurance claims
	Books and Records / Storage	Dealing with records in storage Sending VA/liquidation files to and from storage
Remuneration	Workpapers re WIP reports / Billings Schedule of Fee approvals Preparation of billing reports	

**SUPA STEEL (WA) PTY LTD (In Liquidation)**

ACN: 112 395 721

**Remuneration Report****Summary of Envisaged Tasks to be Completed by the Liquidator**

Period From 16 November 2009

Task Area	General Description	Includes [delete or add as required]
Assets [\$12,500]	Debtors	Collection of pre- and post-appointment debtors Correspondence with debtors
	Sale of Land and Buildings	Concluding sale process Settlement of sale and collection of sale proceeds
Creditors [\$20,000.00]	Creditor Reports and Enquiries	Receive and follow up creditor enquiries via telephone / email Review and prepare correspondence to creditors via letter/fax/email Preparing report to creditors
	Secured Creditor Reports	Preparing reports to secured creditors Liaising with secured creditors via telephone / email Responding to secured creditor queries
	Meetings of Creditors	Preparation of notices, proxies and advertisements Forwarding notice of meeting to all known creditors Preparation for meeting including agenda, attendance register, list of creditors, advertisement, draft minutes Finalisation and lodgement of minutes with ASIC Stakeholders queries re meeting outcomes
	Proofs of Debts - Receipt	Receipting and filing POD's
Employees [\$7,500.00]	Employees Enquiries	Receive and reply to employee queries Preparation of letters to employees regarding entitlements and options
	Calculation of Entitlements	Review of company records to calculate employee entitlements Reconciliation of superannuation amounts Reviewing awards Liaising with solicitors regarding employee entitlements
	Employee Dividend	Correspondence with employees Correspondence with ATO regarding SGC proof of debt
	Other Employee Issues	Correspondence with Child Support Correspondence with Centrelink
Investigations [\$40,000.00]	Conducting Investigations	Collection / copying relevant company books and records Searches (property, charges, ASIC) Review of company records / financial statements Review of cashbook for voidable transactions Preparation of investigation file
	Litigation / Recoveries	Determination of potential actions and brief to solicitors Demands for unfair preference recoveries Demands for Insolvent Trading recoveries / Breach of Directors Duties Liaising with solicitors and defendants regarding recovery actions
	ASIC Reporting	Preparation of statutory investigation reports (eg 533) Liaising with ASIC
Dividend [\$12,500.00]	Processing Proofs of Debt	Correspondence to creditors calling for POD's Receipt of POD's Maintenance of POD register Adjudicating POD's Request further information re POD's Advice to Creditors regarding outcome of adjudication
	Dividend Procedures	Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file Preparation of payment vouchers to pay dividend Preparation of correspondence to creditors enclosing payment of dividend

Administration [\$7,500.00]	Checklists / File Review	Bi monthly reviews File review Checklist completion
	Directors / Officers	Correspondence and meetings with Directors including interviews
	ASIC Forms	Preparing and lodgement of ASIC forms including 524,505, 911 etc Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	Preparation and lodgement of BAS returns Completing Group certificates Completing FBT returns/ payroll tax / stamp duty etc
	Bank Account Administration	Closing administration bank accounts Bank account reconciliations Bank correspondence
	Insurance	Notification to Willis and prior broker Review of existing policies and determination of any underinsurance Work on insurance claims
	Finalisation	Notify ATO of finalisation Cancel ABN/GST/PAYG registration Completing checklists Finalising WiP
	Books and Records / Storage	Dealing with records in storage Sending job files to and from storage
	Remuneration	Workpapers re WIP reports / Billings Schedule of Fee approvals Preparation of billing reports

**Supa Steel (WA) Pty Ltd (In Liquidation)**  
**ACN 112 395 721**

**Liquidators' Summary Of Receipts And Payments**  
**For the Period 6 August 2009 to 15 November 2009**

**RECEIPTS**

	\$
Sales	139,857.78
Recovery of Pre-Appointment Debtors	102,410.90
Balance of Cash Transfer from Voluntary Administration Period	275,294.36
Sale of Plant & Equipment	77,776.37
Bank Interest	593.74
Sale of Scrap Metal	666.00
Retentions Recovered	3,188.20
Australian Taxation Office (BAS)	7,844.23
	<u>607,631.58</u>

**PAYMENTS**

Purchases During Trade-on Period	44,353.97
Drafting	1,000.00
Security Expense	180.00
Electricity	147.69
Hire of Equipment	3,692.22
Insurance	25,537.14
Lease payments	3,378.95
Repairs and Maintenance	668.02
Telephone & Fax	2,920.52
Transport and Courier	1,119.00
Vehicle Running Costs	1,563.58
Wages & Salaries	14,896.73
Sub-Contractors	11,749.15
Stamp Duty	1,167.11
Government Charges	2,882.78
Child Support	1,512.19
Agents and Valuers Fees	6,966.90
Bank Charges	93.80
Commission Paid	6,180.30
Legal Fees	2,551.24
Other Property Expenses	181.82
Postage	76.36
Voluntary Administrators' Remuneration	197,010.00
Voluntary Administrators' Out of Pocket Expenses	1,079.33
Liquidators' Remuneration	100,000.00
Liquidators' Out of Pocket Expenses	11,912.30
Telephone and Fax	585.71
Distribution to Fixed and Floating Charge Holder (Westpac) - Fixed Component	52,178.75
Australian Taxation Office (BAS)	42,294.59
Australian Taxation Office (PAYG)	13,376.00
	<u>551,256.15</u>
Cash at Bank	<u>56,375.43</u>