



# Walton Construction Pty Ltd (In Liquidation) (Receivers & Managers Appointed) ACN: 060 900 218

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**Joint and Several Liquidators' Annual Report to Creditors**  
**8 November 2016**

**Michael Gerard McCann**  
Joint and Several Liquidator

**Graham Robert Killer**  
Joint and Several Liquidator

**Andrew Stewart Reed Hewitt**  
Joint and Several Liquidator

# Glossary

<b>the Act</b>	Corporations Act 2001	<b>Mawson Group</b>	Mawson Restructure and Workouts Pty Ltd and Mawson CFO Advantage Pty Ltd, collectively restructuring advisors to the Group
<b>the Administrators</b>	The former Administrators of the Company, being Messrs Stirling Horne, Jason Stone and Glenn Franklin of PKF Lawler	<b>NAB</b>	National Australia Bank Ltd
<b>AI</b>	Assetinsure Pty Ltd	<b>PE</b>	Public Examinations held during the following periods: <ul style="list-style-type: none"><li>• 30 November 2015 to 2 December 2015; and</li><li>• 16 February 2016 to 17 February 2016.</li></ul>
<b>ASIC</b>	Australian Securities and Investments Commission	<b>Peloton</b>	Peloton Builders Pty Ltd (In Liquidation)
<b>ATO</b>	Australian Taxation Office	<b>PPSR</b>	Personal Property Securities Register
<b>BAS</b>	Business Activity Statements	<b>Receivers and Managers</b>	Messrs Sal Algeri and Glen Kanevsky of Deloitte as Receivers and Managers of the Company
<b>c</b>	circa	<b>QBCC</b>	Queensland Building Construction Commission, formerly known as Queensland Building Services Authority
<b>the Company, WC</b>	Walton Constructions Pty Ltd (Receivers and Managers Appointed) (In Liquidation)	<b>QHT</b>	QHT Investments Pty Ltd, an entity ultimately controlled by Patrick McCurry (Mawson Group)
<b>the Court</b>	Federal Court of Australia	<b>RATA</b>	Report as to Affairs
<b>the Director, CW</b>	Statutory Director of Company, Craig Hall Walton	<b>Walton Group</b>	Collectively the Company and WCQ
<b>EBITDA</b>	Earnings before interest, taxes, depreciation and amortisation	<b>WIP</b>	Work in progress
<b>FY 12 / FY 13</b>	Financial Years ended 2012 and 2013	<b>WCQ</b>	Walton Construction (Qld) Pty Ltd (In Liquidation)
<b>the Group</b>	The Company and WCQ collectively	<b>WFT</b>	Walton Family Trust
<b>k</b>	thousand	<b>WHT</b>	Walton Holdings Trust
<b>LAS</b>	Lewton Asset Services Pty Ltd (In Liquidation)	<b>WPDUT</b>	Walton Property Development Unit Trust
<b>the Liquidators</b>	Messrs Graham Robert Killer, Andrew Stewart Reed Hewitt and Michael Gerard McCann as Official Liquidators of the Company	<b>WQT</b>	Walton (Qld) Trust
<b>m</b>	million	<b>YTD</b>	Year to date

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# Section 1 Overview

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# Overview

## 1.1 Appointment of External Administrator

- On 3 October 2013, Messrs Stirling Horne, Jason Stone and Glenn Franklin of PKF Lawler were appointed Joint and Several Administrators of the Company. Subsequently, Messrs Horne, Stone and Franklin were appointed Joint and Several Liquidators of the Company pursuant to a resolution passed by creditors at a meeting on 8 November 2013.
- Messrs Graham Robert Killer, Andrew Stewart Reed Hewitt and I, Michael Gerard McCann, were appointed Joint and Several Liquidators of the Company on 29 July 2014 pursuant to an Order of the Federal Court of Australia.
- The appointment by the Court on 29 July 2014 effectively replaced the incumbent Liquidators (PKF Lawler).

## 1.2 Issues encountered on appointment

- At the time of our appointment, our ability to progress investigations into the Company's affairs was limited by the following factors:
  - Limitation of funding (no funds were available from the former Liquidators)
  - Inability to access the Company's electronic records (eg. email, fileservers and accounting system discussed further below).
- Pursuant to Section 545 of the Act, Liquidators are not obliged to incur any expense in relation to winding up the Company, unless there is sufficient available property, or they are directed to do so by ASIC or the Court.
- In order to progress our investigations, the Liquidators sought and obtained external funding from ASIC and QBCC to preserve books and records, recover electronic accounting records, conduct a public examination and prepare supplementary s533 reports to ASIC.
- The funding deed entered into with the QBCC contemplated examining 6 examinees and for counsel to attend the public examination for a period of 5 days. The funding amount provided by the QBCC was exhausted prior to completion of the public examination. However the Liquidators completed and extended the public examination and their investigations on an unfunded basis pending the outcome of certain recovery actions and claims.

## 1.3 Progress to date

- Since completing the Public Examination, the Liquidators have:
  1. Successfully negotiated the release of AI's security from the Personal Property Securities Register (c.\$1.4m benefit);
  2. Sought and obtained legal advice as to any claims which might be successfully brought against NAB and have recently negotiated the release of surplus funds from NAB (c.\$1m to date with another payment due shortly);
  3. Issued demands and corresponded with Craig Walton's legal representatives regarding loan accounts totalling \$1.65m;
  4. Corresponded with the Liquidators of LAS regarding WC's claim for breach of the asset sale agreement with LAS (\$1.4m);
  5. Investigated and collated evidence supporting the voidable transaction claims against Mawson Group, Crisp Legal, GMK Partners and the ATO and issued demand letters / Statement of Claims where relevant;
  6. Completed and lodged supplementary Section 533 reports with ASIC regarding areas of potential misconduct by the Director and other parties;
  7. Attended the court ordered mediation with QHT regarding the voidable transaction claim brought by WCQ (at the request of Mawson Group this mediation included discussion around additional claims brought by WC);
  8. Settled the cost claim with Illawarra Hotel Company.
- The Liquidators have liaised extensively with the Committee of Inspection ("COI") in respect of each of the above matters, holding 5 formal meetings and numerous informal meetings and discussions with Committee members.
- In the absence of a new source of third party funding (eg. ASIC or FEG) our ability to continue our investigations and any consequent litigation may be subject to the extent of recoveries made in the Administrations. In consultation with the COI, we have therefore focused our efforts on:
  - pursuing recoveries for the benefit of creditors; and
  - Continuing to assist ASIC with its inquiries.

# Overview

## 1.4 Outstanding Acts and Dealings

- Before we are in a position to finalise this matter, the following tasks will be attended to:
  - Continue to attend to requests for release of bank guarantees from subcontractors;
  - Continue to liaise with Deloitte and NAB in order to receive the final release of surplus monies;
  - Finalise the recovery of debtors;
  - Progress the voidable transaction claims identified in this report;
  - Progress the recovery of related party loans identified in the report;
  - Call and hold further meetings of the Committee of Inspection; and
  - Attend to any further queries raised by creditors, employees and other key stakeholders regarding the liquidation.

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## Section 2 Conduct of Liquidation

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# Issues Encountered on Appointment

## 2.0 Executive Summary

- This section discusses key processes undertaken during the course of the liquidation to date. For ease of reference we have structured our report into the following categories which are discussed in the ensuing sections:
  1. Issue encountered on Appointment
  2. Illawarra Cost Claim
  3. Debtors
  4. Investigations
  5. Secured Creditors
  6. Related Party Loan Accounts
  7. Claims against Company Advisors and LAS

## 2.1 Issues encountered on appointment - Physical Books and Records

- At the time of our appointment the former Liquidators held 1,739 boxes of the Walton Group's books and records (c.1,474 boxes in a Melbourne storage facility and 265 boxes in a Brisbane storage facility).
- To date, we have:
  - relocated the books and records from PKF's storage facilities to the Liquidators' storage facilities; and
  - conducted a high level review of the records (a substantial portion of these records are dated beyond the statutory 7 year period to keep records and/ or not relevant to the Liquidation, the Public Examination or investigations of the Company's affairs).
- The cost of storing these records amounts to **c.\$10k** per annum. We sought and obtained funding from ASIC to assist covering the costs of storing these records for a period of 12 months. We are currently in the process of determining whether we will be able to destroy any of the aforementioned records not required for claims or investigations, prior to the Company's eventual dissolution.

## 2.1 Issues encountered on appointment - Electronic Records

- Until recently, our ability to progress our investigations into the Company's affairs has been hindered by the ability to access the Company's:
  - electronic accounting system (access obtained in November 2015);
  - the email exchange server (access obtained July 2015); and
  - the file server (access obtained July 2015).
- We have summarised below our understanding of the history of the Company's electronic records:
  - PKF Lawler advised in its s439A report that "*upon execution of the asset sale agreements with LAS and PB in late September 2013, the Company vacated its head office*" and "*the Company records, including the IT infrastructure was moved to the premises of PB/ LAS which had recently been established at Salmon St, Port Melbourne*".
  - The AS400 server and the email exchange servers were included the sale of business transaction with LAS on 20 September 2013.
  - A consultant that acted for the Company at the time (Evette Gardner - IMC Enterprises) advised that the Jobpac ledger for LAS was established on 5 October 2013 (the day after PKF Lawler's appointment as Administrators).
  - We understand that PKF Lawler engaged Stoplevel Pty Ltd to image the Company's records. Stoplevel Pty Ltd has advised that the imaging services it provided were incomplete and did not include the Jobpac data.
  - The data we obtained from Stoplevel appears to have been date stamped 21 October 2013.
  - Ms Gardner also advised that on 23 February 2014 the Jobpac, email and file exchange servers were relocated to premises of Peloton Builders in Queensland.
  - Jirsch Sutherland, the administrator of Peloton, advised in its s439A report that "*shortly prior to our appointment, the Company's server and network drives experienced substantial technical problems and, as a result at the date of our appointment, we were unable to access any of the information stored on the server or network drives*".



# Issues Encountered on Appointment

## 2.1 Issues encountered on appointment - Electronic Records

### *Email and File Exchange Data*

- Email and file exchange data was obtained from the below data sources:
  - The Stopleveline data (14 drives of Company data in total imaged by Stopleveline at the request of PKF Lawler);
  - The Company's servers in possession of Jirsch Sutherland ("Jirsch") (12 servers in total including the Jobpac server);
  - Electronic data produced on summons obtained from Saxby Lawyers. This contains documents produced on summons from Craig Walton, David Scott and Melissa Chalker; and
  - A copy of the data obtained by an investigative journalist from the Australian Broadcasting Corporation ("ABC").
- Our forensics team has imaged and indexed the following electronic records:
  - The Stopleveline image obtained by PKF; and
  - Electronic data produced on summons obtained from Saxby Lawyers.
- We have used a software platform to search, analyse and extract large volumes of data from the indexed images.

## 2.1 Issues encountered on appointment - Electronic Records

### *Electronic Accounting Records*

- The Company used 'Jobpac' as its electronic accounting system. Jobpac was stored on an IBM AS400 server that was originally located at its head office at Yarra Street, Melbourne.
- After agreeing funding with ASIC, we engaged Saxon's to attempt to restore the server held by Jirsch Sutherland. After conducting initial trials and inquiries, Saxon's advised that the next stage of costs to attempt repairing the server would likely be \$40,000 and that these efforts to repair the server could ultimately prove unsuccessful.
- A former consultant to the Company (IMC) held the necessary hardware to restore the back-up tapes. Given the advice of Saxon's and the restrictions of our funding from ASIC, we engaged IMC and succeeded in recovering 1 of the 5 back-up tapes which we understand were taken as at 15 February 2014.
- We instructed Jobpac to restore and migrate the back-up image into their current (cloudbased) version of Jobpac (version 9). This process ultimately proved successful and in mid November 2015 we obtained access to the computerised accounting records of:
  - Walton Construction Pty Ltd
  - Walton Construction Pty Ltd (NSW Branch)
  - Walton Construction (Qld) Pty Ltd
  - Walton Family Trust
  - Walton Family Trust (NSW Branch)
  - Walton (Qld) Trust
- We subsequently obtained access to the accounting records of the 'newco' entities Tantallon Constructions Pty Ltd or Lewton Asset Services Pty Ltd on 4 April 2016.

# Illawarra Cost Claim / Debtors

## 2.2 Illawarra Cost Claim

- We have recently settled the cost claim against Illawarra Hotel Company for \$820k. This follows multiple rounds of negotiations since receiving an initial settlement offer of \$387,806 on 3 November 2016.
- This claim originated long before the Company entered administration and related to a disputed construction debt. Costs were awarded to Walton against Illawarra in the associated litigation. These costs were the remaining claim to be recovered in the liquidation. Based on the positions adopted by the parties' prior to the liquidator's involvement, the range of costs potentially recoverable was variously estimated between \$499,838 and \$2,109,879.
- The most significant dispute raised by Illawarra is the quantum of costs that Walton claimed it has spent on these proceedings. Illawarra asserted a number of things. It says it does not know whether Walton (through its lawyers) have included costs not properly referable to the litigation (such as costs of the earlier negotiations and reference). Most importantly it simply did not accept that the quantum of costs claimed as having been spent by Walton were reasonable nor sustainable on an assessment given the nature of the matter.
- The parties entered into a Deed of Settlement in order to try and agree an orderly process to assess costs. This process had failed and substantial costs to lawyers and cost experts had been incurred.
- We engaged independent lawyers (CBP Lawyers) to review this claim. CBP Lawyers advised that:
  - The cost and work conducted pursuant to the Deed of Settlement to date would have no impact on any formal cost assessment and that a bill of costs in assessable form relating to every item in the matter would need to be prepared from scratch, costing well over \$150,000 (costs assessors only);
  - In addition this, there would be substantial solicitors costs (not recoverable pursuant to the Settlement Deed);
  - it is likely the costs recoverable on assessment could be slightly in excess of \$1,100,000 (due to the expense and detail required an itemised assessment of costs was not undertaken and this was a considered estimate not a certified assessment);

- if the costs claimed by Walton were as excessive as Illawarra claimed, then the costs to be recovered on an assessment may be significantly reduced and the amount ultimately awarded to Walton may be less than the offer to settle made by Illawarra. The reverse was of course possible and the assessor may find that a higher amount is the correct amount;
- Alternatively, if a cost assessor was unable to determine how the courts orders ought to be applied, it may have been necessary for the parties to apply to the Court for clarification of its orders (incurring further costs which may not have been recoverable from Illawarra).
- Based on the above, CBP advised that a settlement sum of \$820,000 was reasonable and highly commercial in the circumstances of a liquidation without funds and given the uncertainty that any costs of the assessment process would be recovered.

## 2.3 Debtors (Customers)

- As previously discussed, we did not have access to the Company's electronic accounting records at the time of appointment. Since obtaining access to the electronic accounting records of both the Company and Lewton Asset Services Pty Ltd, we have conducted a detailed review of the debtors.
- We have continued to issue letters of demand to all debtors listed in the Company's electronic records. Should the responses to the demand letters not be satisfactory we have the ability to include any debtors in a further round of Public Examinations if considered appropriate to do so.
- To date, we have recovered a total of c.\$138k in retention monies from the following parties:
  - Deakin University have remitted retention monies of c.\$12k;
  - Geelong Grammar have remitted retention of \$56k;
  - Bankstown City Council have remitted retention monies of c.\$64k; and
  - Bayside City Council have remitted retention monies of c.\$4k.
- The previous administrators, PKF, had collected \$678,973 in debtors.

# Investigations

## 2.4 Details of public examinations

- As previously advised the public examination (PE) of the Director and other examinable persons associated with the Group was conducted over December 2015 and February 2016. The following individuals were examined:

Name	Position	Company
Craig Walton	Director	Walton Group
Melissa Chalker	Financial Controller	Walton Group
Anthony Barnett	Auditor	GMK Partners
Patrick McCurry	Engagement Partner	Mawson Group
Phillip Spry	Associate Director	Mawson Group
Geoff Green	Head of Strategic Business Services	National Australia Bank
Julian Kirzner	Director	Mawson Group
Marek Petrovs	Advisory Board Member	Walton Group
Daniel Casey	Director	Lewton Asset Services
Norman Metz	Auditor	GMK Partners

- Documents were summonsed from the below individuals:

Name	Position	Company
Damian Gorman	Head of Credit	Assetinsure
Michael O'Neil	Advisory Board Member	Walton Group
Rod Kol	VIC State Manager	Walton Group
Glenn Crisp	Senior Partner	Crisp Legal
David Scott	Construction Manager	Mawson Group
Tim Christie	NSW State Manager	National Australia Bank
Tim Hulse	QLD State Manager	Mawson Group
James Clancy	Partner	Crisp Legal

- The issues explored during the PE included, and were not limited to:
  - the structure and operations of the Group and the role of each of the entities;
  - the roles of key employees and advisors within the Group;
  - the July 2012 restructure of the Company and WCQ;
  - the sale of the Company's assets to Lewton Assets Services Pty Ltd in September 2013;
  - the sale of WCQ's assets to Peloton Builders Pty Ltd in September 2013;
  - the Group's inter company loans; and
  - the insolvency of the Group.
- Since the Public Examination we have completed our investigations. This has resulted in the identification of various potential claims. In respect of these claims we have in many instances initiated demands and recovery actions. The status of these are described in brief in the following sections of this report.
- Further, our investigations enabled us to report to ASIC on potential offences committed by officers of the Company and others.

## 2.4 Supplementary report to ASIC pursuant to Section 533 Corporations Act

- The ASIC requested a supplementary report pursuant to Section 533 of the Corporations Act. The purpose of the report is to report on investigations of potential misconduct by the Company's Director, advisors and others including the following:
  - insolvent trading;
  - director misfeasance;
  - shadow director activity (including the role of the Mawson Group);
  - fraudulent transactions/ representations (including possible misrepresentation to principals regarding subcontractor payments); and
  - Other offences and areas of concern identified during the course of our investigations
- ASIC has recently contacted us requesting further information which may support future actions by them.

# Secured Creditors

## 2.5 Secured Creditor - National Australia Bank (NAB)

- NAB claimed a right of set off over all term deposit accounts held by the Company and WCQ to secure its exposure for bank guarantees and commercial lending facilities to the Walton Group.
- By July 2014, the Bank had collected the vast majority of its bank guarantees and indicated that it expected to hold surplus funds of c.\$1.4m which following the release of AssetInsure's security, would be available to WC and WCQ.
- NAB requested a release from the Company/Liquidator's prior to releasing the monies.
- We sought and obtained legal advice as to any claims which might be successfully brought against NAB, including but not limited to its conduct in respect of:
  - Processing the \$1.3m payment from the WCQ's account to Peloton on the day Administrators were appointed;
  - The strategy pursued by Craig Walton and Mawson Group to support the Company whilst 'managing-down' the NAB's Bank Guarantees exposure;
  - The manner in which the Bank applied cash deposits held by WC and WCQ against liabilities of the broader Walton Group.
- Based on the material available, our legal advisors could not identify any claims that could support recovery action being commenced against NAB.
- A deed which provided a limited release to NAB in respect of insolvent transactions under the Corporations Act was entered into with NAB on 25 August 2016.
- NAB provided the first instalment of surplus funds in the amount of \$987,734 on 15 September 2016. These monies relate to WCQ.
- Deloitte recently advised that a final distribution of c.\$411k will be made to the Walton Group in the coming weeks. Of this amount, c.\$45k will come to the Company whilst the remainder will be allocated to WCQ.

## 2.5 Secured Creditor - Assetinsure

- As previously advised, Assetinsure ("AI") had a second ranking security interest over WC and WCQ and may potentially have had a claim to certain surplus funds available from NAB and debtor realisations.
- We received legal advice suggesting the extent of AI's security may be limited to the value of bonds issued after 20 May 2013.
- During the course of our investigations we identified an issue with timing of registration of AI's security on the personal property security register and challenged the security of AI on the basis it was registered out of time.
- Whilst not agreeing with the Liquidator's assertion, AI withdrew its security from the Personal Property Securities Register. Consequently, AI had no right to the surplus funds from NAB and all monies will be received by the Walton Group.

# Related Party Loan Accounts

## 2.6 Director and Related Party Loan Accounts

- During the public examination, Mr Walton acknowledged that his loan account balance with WC was approximately \$1m, but he had no capacity to repay same. This loan balance was not disclosed in Mr Walton's Report as to Affairs for the Company
- A detailed review of the Jobpac records (access to these records was only obtained in late 2015) identified that WC had the following loan account balances:

Name	30/06/2012	31/03/2013	30/06/2013	30/09/2013
Craig Walton	1,617,964	1,515,926	1,376,620	1,445,773
Melissa Walton	15,444	15,444	15,444	15,444
Matthew Walton	16,477	16,477	16,477	16,477
Ganomix Pty Ltd	-	4,086	4,186	4,256
Walton Holdings (Aust) Pty Ltd ATF Walton Holding Trust	-	192,037	237,766	291,153
11 Yarra Street Pty Ltd ATF 11 Yarra St Unit Trust	-	144,160	192,053	221,343
Walton Construction (Int) Pty Ltd	-	317,523	317,523	316,911
Walton Construction (WA) Pty Ltd	-	1,000	1,000	1,000
<b>Total</b>	<b>1,649,885</b>	<b>2,206,652</b>	<b>2,161,070</b>	<b>2,312,357</b>

- The most recent financial statements (FY2015) for the above corporate entities suggest they hold less than c.\$110k in realisable assets collectively. Of this sum c.90k is held in Ganomix in which we only have a 4k claim.
- On 22 December 2015, we issued demands to Craig Walton, Melissa Walton and Matthew Walton for the repayment of the loan balances which totalled c\$1.65m as at the time the Administrators were appointed.
- In early 2016, we received responses from Wisewould Mahony Lawyers (the legal representatives for the Walton Family) disputing the quantification of the loan balances and suggesting that a significant portion of the loan balance was over 6 years old and statute barred from recovery action.
- Our lawyers have issued correspondence to Wisewould Mahony regarding above. We have received the surplus monies from NAB so are now in a position to progress this matter and effect a recovery and/or bankrupt the Company director, Craig Walton.
- The outcome of these claims (which may result in the bankruptcy of Mr Walton) may determine whether the Liquidator's will consider prosecuting Mr Walton in respect of insolvent trading.

# Claims against Company Advisors and LAS

## 2.7 Voidable Transactions

### General

- As part of my role as Liquidator of the Company, I am required to undertake investigations into antecedent transactions such as unfair preference payments and uncommercial transactions that could be deemed voidable and recoverable for the benefit of the creditors of the Company. Under section 588FE (2) of the Corporations Act 2001 ("the Act") a transaction is voidable by a Liquidator if:
  - a) *It is an insolvent transaction of the company; and*
  - b) *It was entered into, or an act was done for the purpose of giving effect to it:*
    - i. *During the 6 months ending on the relation-back day; or*
    - ii. *After that day but on or before the day when the winding up began.*
- From my investigations into the Company's affairs it appears the Company was insolvent from 31 March 2013 at the latest, when it was unable to pay its debts as and when they became due and payable. In this matter the relation-back period begins on 3 April 2013 ending on the relation-back date 3 October 2013.
- Pursuant to section 588FB(1), a transaction of a company is an **uncommercial transaction** of the company if, and only if, it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:
  - a) *the benefits (if any) to the company of entering into the transaction; and*
  - b) *the detriment to the company of entering into the transaction; and*
  - c) *the respective benefits to other parties to the transaction of entering into it; and*
  - d) *any other relevant matter.*
- Under section 588FA(1)(b) of the Act **preference payments** refer to transactions that constitute unfair preferences given to a creditor of the company where the transactions "*result in the creditor receiving from the company, in respect of an unsecured debt that the company owes to the creditor, more than the creditor would receive from the company in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in the winding up of the company.*"

### GMK Partners Pty Ltd

- On 24 August 2016 we demanded GMK Partners Pty Ltd repay \$92,406 representing the net value of preferential payments it received from the Company during the 6 month period proceeding the appointment of external administrators on 3 October 2013.
- On 28 November 2016, GMK Partners offered to settle the matter for \$30,500
- We are currently in the in the process of negotiating a settlement of this claim.

### Mawson Restructures and Workouts Pty Ltd ("Mawson")

- From our investigations into the affairs of the Company we have formed the view that certain payments received by Mawson were either uncommercial in nature and/or received in preference to the general body of unsecured creditors.
- On 24 August 2016 we issued a demand letter in the amount of c.\$1.64m for all payments made to Mawson Restructures and Workouts Pty Ltd after an initial phase 1 diagnostic review. This includes the c.\$1.17m 'success fee' levied by Mawson Group on the day immediately proceeding the sale of the Company assets to Lewton Asset Services Pty Ltd ("LAS")
- We are of the view that these payments are voidable insolvent transactions.
- Mawson Group has refuted our claim and extensive rounds of correspondence have ensued with Mawson Group.
- Mawson's requested this matter be included in discussions at the mediation against QHT Investments Pty Ltd though after extensive dialogue between the parties, neither QHT nor Mawson were prepared to put forward an offer to settle either of the claims.
- We are currently considering the merits of filing a statement of claim to preserve and pursue this claim.



# Claims against Company Advisors and LAS

## 2.7 Voidable Transactions (Cont)

### Challenging the payment of \$274k to Lewton Asset Services on 2 October 2013

#### Current Status

- We are currently seeking legal advice as to the likelihood of success in pursuing this claim as a breach of director duties for Craig Walton or individuals who could be considered shadow directors.

#### Background

- On 2 October 2013, the day before the Company entered administration, a request for c.\$274k to be paid to LAS, was sent to NAB by an individual (possibly in capacity of shadow director) on behalf of the Company.
- Craig Walton was not copied into this email however he did ultimately authorise the transaction.
- The amount paid by the Company to LAS matches precisely to the value of subcontractor retentions detailed in schedule 7 to the ASA. However, we are not aware of any contractual requirement by the Company to account to LAS for same.
- We consider the \$274,618 payment provided no commercial benefit to the Company. It may have been initiated to improve the position of QHT (a Mawson related entity) which had a \$18.9m claim against LAS. Furthermore, this amount was paid when the company was insolvent.

### Crisp Legal Pty Ltd

- In 2016 we issued a demand letter to Crisp Legal Pty Ltd in the amount of \$351,057 representing the net value of preferential payments it received from the Company during the 6 month period proceeding the appointment of external administrators on 3 October 2013.
- It was subsequently identified that Crisp Legal Pty Ltd, the legal entity operating the Crisp Legal Practice entered administration on 22 April 2016.
- The Administrators of Crisp Legal advised that a distribution to creditors or Crisp Legal Pty Ltd is unlikely.

## 2.7 Claim in the Liquidation of LAS

- We previously lodged a claim in the Liquidation of LAS for breach of the asset sale agreement (being the quantum of liabilities assigned to LAS under the asset sale agreement that were not ultimately paid by LAS). The Liquidator of LAS disputed the legal basis of WC's claim.
- We sought legal advice on this matter and with the benefit of access to the accounts of LAS, revised the claim in LAS administration to \$1,444,585. The table below splits the total claim into specific sections:

Claim	Amount (\$)
Non-transferring key employee entitlements	242,211
Project liabilities	1,051,394
Plant and equipment liabilities	150,980
<b>Total</b>	<b>1,444,585</b>

- The Liquidator of LAS rejected this claim and no distribution was received.
- We sought legal advice regarding the merits of appealing the Liquidators' rejection. It was not considered commercial to pursue an appeal given the relatively small potential recovery (c.\$40k).

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## Section 3 Outstanding Acts and Dealings

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# Outstanding Acts and Dealings

## 3.1 Outstanding Acts and Dealings

- Before we are in a position to finalise this matter, the following matters will be attended to:
  - Continue to attend to requests for release of bank guarantees from subcontractors;
  - Continue to liaise with Deloitte and NAB in order to receive the final release of surplus monies;
  - Finalise the recovery of debtors;
  - Progress the voidable transaction claims identified in this report;
  - Progress the recovery of related party loans identified in the report;
  - Call and hold further meetings of the Committee of Inspection; and
  - Attend to any further queries raised by creditors, employees and other key stakeholders regarding the liquidation.

## 3.2 Return to Creditors

- We currently hold insufficient funds to discharge priority creditor claims (c.\$1.4m) in full. This position is unlikely to change in the absence of a significant recovery from one or more of the following sources:
  - Debtors
  - Mawson Restructures and Workouts and associated entities
  - Craig Walton and Walton associated entities
  - Crisp Legal
- The prospect of a material distribution to unsecured creditors is therefore dependant upon the outcome of the aforementioned recovery actions. We have, and will continue to liaise with the committee of creditors in this respect.

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## Section 4 Summary Receipts and Payments

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

**04. Summary Receipts and Payments**

05. Estimated Completion Date

# Summary of Receipts and Payments

## 4.1 Summary of Receipts and Payments

- A summary of the Liquidators' receipts and payments since our appointment on 29 July 2014 to 8 November 2016 is summarised in the table below:

	(\$)
	(Incl GST)
<b>Receipts</b>	
Debtor Recoveries	134,436
FEG Advance	152,681
Advance by ASIC for disbursements	20,496
Fees paid by QBCC	112,288
Fees paid by AI	10,062
Fees paid by ASIC	17,936
Fees paid by Meridian Lawyers	1,120
Fees paid by FEG	3,927
Goods and Services Tax	8,834
Interest	17
Loan from WCQ	50,000
Other Income	510
<b>Total Receipts</b>	512,307
<b>Payments</b>	
Appointee Disbursements	(26,224)
Appointee Fees	(104,054)
Appointee Fees - Public Examination (QBCC)	(112,288)
Bank Charges	(194)
FEG Employee Distribution	(127,623)
Legal Fees	(80,821)
PAYG Withholding Tax	(25,058)
<b>Total Payments</b>	(476,262)
<b>Reconciled Cash at Bank</b>	<b>36,045</b>

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## Section 5 Estimated Completion Date

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Estimated Completion Date

# Estimated Completion Date

## 5.1 Estimated Completion Date

- We anticipate that the liquidation may be finalised by December 2018. However, this is contingent on the settlement of outstanding claims any recovery actions commenced against the Director and third parties.

Should you have any queries with respect to this report, please contact Mr Zac Dullard of my office on (07) 3222 0341 or [zac.dullard@au.gt.com](mailto:zac.dullard@au.gt.com).



Michael McCann  
Joint and Several Liquidator