SENATE INQUIRY INTO LIQUIDATORS AND ADMINISTRATORS - SUBMISSION BY CARLOVERS CARWASH LIMITED ("CARLOVERS") AND ITS MAJOR SHAREHOLDER AND CREDITOR THE BERJAYA GROUP OF MALAYSIA ("BERJAYA")

Our experience with the Australian insolvency industry has been an extremely disappointing and unpleasant one.

The Carlovers group was under the administration of Mr. Stuart Ariff from July 2003 to November 2007. The administrations were supposed to end after twelve months but lasted more than four and a half years. Mr. Ariff refused to bring the administrations to an end even when his fees and disbursements had soaked up all monies in deed funds and there were no more monies left for creditors.

The administrations ended up costing the company more than $11 million, more than double the company's original deficiency of $4.5 million declared by Mr. Ariff just after his appointment, and about six times more than original cost of the deed of company arrangement approved by the company's creditors. Despite this, the creditors did not receive any money from the administration process.

Mr. Ariff was able to steal millions of dollars from the company by taking false or non-existent fees and disbursements. He also over-serviced, prolonged settlements, charged excessively high fees, took fees not approved by creditors, and even arranged associate companies to circumvent creditor approval for payment of remuneration. Monies stolen were used for personal benefit, or squirreled to family members and associates for safekeeping. He and his associates even managed to launder an entire equipment business unit from the company!

Berjaya made many complaints to ASIC and even initiated and funded a public examination without success. Mr. Ariff took funds from our company to pay lawyers and his insolvency associates to defend himself, and took advantage of ASIC inaction and his own position as an "officer of the court" to delay or avoid justice. ASIC finally acted when the media got involved but by then it was too late.

Mr. Ariff was then allowed by the legal system to keep attacking the company even after the company had been returned to its directors by falsely claiming a further $4 million in unpaid fees. The company subsequently spent a further 2 years fighting him in the courts. Overall Berjaya had spent more than $1.8 million in legal fees to rescue Carlovers from Mr. Ariff who even resorted to his underworld connections to send "negotiators" to intimidate Berjaya to drop legal proceedings and to pay him what he wanted.

ASIC eventually secured a somewhat hollow victory against Mr. Ariff who was banned for life and ordered to make compensation to his victims for $4.9 million. Mr. Ariff was able to keep one step ahead of the law and ASIC. Mr. Ariff had time to move his assets to safety and declare bankrupt. His victims are not expected to receive any compensation and are still waiting for criminal actions to commence.

Disappointments

The most disappointing aspect of this matter was that when we raised the alarm and desperately needed help, there was no one to turn to.

We lodged 3 formal complaints (plus numerous other informal complaints) with the industry regulator between 2005 and 2007 but ASIC did not believe us. And when ASIC finally did, their response was too slow, too little and too late.

As for the respective insolvency and legal industries, they were more interested in protecting Mr. Ariff, and took the opportunity to make money from our predicament at the same time. His legal advisers put up barrier after barrier hoping that we would eventually run out of stamina and financial resources to continue the legal fight. The court chose to believe the dishonest pleadings and ramblings of a supposed "officer of the court" and his lawyers that the matter was merely a commercial dispute, rather than the genuine pleadings from a struggling company under siege and its creditors that the matter was a criminal one involving fraud and gross misconduct. The appointed mediator chose to ignore our complaints and tried to convince us that Mr. Ariff had done no wrong and that it was better to pay up and settle. The insolvency practitioner appointed by Mr. Ariff

as an "independent expert" to review his fees and disbursements chose to give one of the most laughable and one-sided "independent" reports ever written. As for the supposed industry bodies such as the IPA, they were hopelessly marketing focused organizations who simply failed to even take time to investigate.

To add insult to injury, Mr. Ariff has to date not been charged with any crime under the Australian criminal justice system. In most other countries Mr. Ariff would have faced charges of criminal breach of trust, embezzlement, theft and false accounting to say the least and if convicted, spend time behind bars. Instead he is walking free and he and his ill gotten gains are enjoying protection under the umbrella of bankruptcy.

Submissions and Recommendations

Based on our experience, we would advise anyone to think long and hard before appointing an insolvency administrator. An insolvency administrator could end up costing you more money than dealing directly with your creditors.

The combination of excessive legal powers and "trust" conferred on the insolvency industry by the law, combined with zero or next-to-zero regulation by the industry regulators and industry bodies, provides a perfect environment for abuse and misconduct.

This undesirable combination has effectively made the insolvency industry judge, jury and executioner in the struggling small business sector. This is a serious concern to the small business community. There is potential for a lot of businesses, people and families to be harmed. Not many people have $1.8 million to fight insolvency administrators backed by large resources and legal teams.

There are just too many criticisms of liquidators ranging from excessively high fees, over-servicing, protracted settlements, lack of transparency, conflicts of interest, abuses of power and gross misconduct. We believe this is a systemic problem within the insolvency industry.

ASIC should be given more resources and more powers so that it can investigate and address complaints quickly and efficiently. At the moment too many bad apple cases of negligence, fraud and misconduct are slipping through the cracks.

The insolvency industry profit driven and therefore cannot be trusted to regulate itself. The system must be restructured and corrected into one that is strong, robust and just. On this basis, we provide some suggestions for your consideration:

1) The industry should be restructured so that it is effectively run by the government. The directors of an insolvent company first's port of call should be ASIC who then puts the job out to tender preferably on a fixed price basis and appoints an appropriate insolvency practitioner to put the company into voluntary administration. The voluntary administrator then comes up with a recommendation for a deed of company arrangement or for liquidation. The recommendation is reviewed and sanctioned by ASIC before it is put to a vote before the creditors. ASIC should hold the casting vote currently held by the administrator. ASIC is to also choose the lawyers and independent experts that assist the insolvency administrators as the case maybe.

   We believe the extra resources that ASIC will require to take on this huge but necessary responsibility will be more than covered many times over by the huge amounts of money that will be saved by tightening up the irregularities and loopholes for abuse current present within the industry. More importantly, it will restore confidence in the Australian small business sector.

2) The government should establish and fund a new industry body that looks after the rights of the directors, shareholders and creditors, and to whom directors, shareholders and creditors can go to for honest accurate advice or help. It will be like a dedicated ombudsman, de facto watchdog and de facto "victims" association all put into one.

3) In the interim, the government should pass laws to force insolvency practitioners and their industry bodies to properly educate the public about the administration process and their rights and obligations including the inclusion

of clear and adequate warnings. Not unlike the mandatory health warnings within tobacco advertising.

Carlovers Carwash Limited
Berjaya Corporation Berhad