

# Meltzer Mason Heath

Chartered Accountants practising as insolvency specialists

Refer to: Lloyd Hayward

No. of Company: 1722586

## Liquidators' Further Report Whitaker Limited (In Liquidation) For the period to 13 July 2009

### Introduction

Whitaker Limited was placed into liquidation by the High Court in Auckland on 14 July 2008 and Jeffrey Philip Meltzer and Lloyd James Hayward were appointed joint and several Liquidators.

In accordance with section 255 of the Companies Act 1993 the Liquidators are obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six months. This report covers the period to 13 July 2009.

### Schedule of Receipts and Payments

There have been no receipts or payments in the period

### Asset Realisations

Deposits paid by purchasers were paid to Blue Chip New Zealand Limited on the instruction of the company. Blue Chip New Zealand Limited is insolvent and in liquidation. At this time the prospect of recovery of these monies is unknown.

### Dividends

There have been no dividends paid during the period covered by this report. At this time the Liquidators do not expect that there will be any dividend available for creditors.

**The following sections of this report incorporate comments relating to all of the Blue Chip companies to which we have been appointed.**

As mentioned in our previous report, the Liquidators filed an Application for Directions with the High Court in Auckland under section 284 of the Companies Act 1993. The Application was for a direction as to whether the products sold by Blue Chip to investors breached any New Zealand legislation, in particular, provisions of the Securities Act 1978.

While the Application was made at the same time as the investor groups' proceedings against developers for recovery of deposits, which were being heard initially by the Court during May 2009 the Court decided that the Application should not be heard with these proceedings.

Jeff Meltzer  
Karen Mason  
Arron Heath



Court directed that the Application proceed separately and that all parties potentially affected by the Application should be served with notice of the proceedings.

Sufficient funding is not presently available to enable the Liquidators to proceed with the Application for Directions. While funding is still being sought by the Liquidators they are not confident that it can be obtained and, as at the date of this report, the Liquidators cannot commit to proceed to a point where a Court direction is made.

During the period covered by this report the Liquidators have undertaken investigations into possible breaches by directors of the reckless trading and associated provisions of the Companies Act 1993 and advice given to the Blue Chip Group in relation to its products. These may, in turn, involve some responsibility by other parties. Those investigations are at a sufficiently advanced stage for the Liquidators to seek an opinion from Queens Counsel on possible causes of action and the strength of any claims. If it is concluded that there are strong claims, a funding proposal can be promoted to potential funders. Again, there is presently no certainty of funding.

Creditors and investors may be aware that criminal charges have been laid by the National Enforcement Unit ("NEU") of the Companies Office against Blue Chip's co-founder, Mark Bryers. On 21 August 2009 Mr Bryers pleaded guilty to three charges, including failing to attend the Creditors' Meeting for Bribanc Property Group Limited (In Liquidation). Sentencing for the three guilty charges and ongoing hearings for other charges faced by Mr Bryers will take place during October 2009. The Liquidators understand that investigations into the conduct of persons involved in the management and operation of Blue Chip companies are ongoing. The Liquidators continue to assist the various agencies investigating these matters as and when requested.

Investors may also be aware that the investor groups' proceedings concluded during July 2009. At the date of this report a judgment in those proceedings had not yet been issued. As mentioned in our previous report, if the investors are successful, this will benefit only those investors (2006 and subsequent years) whose deposits are held in a solicitor's trust account. Pre-2006 investors (who agreed to release their deposits to Blue Chip in return for receiving some form of return on the funds paid) will benefit only if the Liquidators are successful with their separate recovery initiatives.

The Liquidators' current view is that it is unlikely that creditors will receive a dividend from the liquidations. While the Liquidators have continued to seek funding, the current economic climate, together with the risks inherent in all litigation matters, means that the actions are not presently attractive to funders. That position may change if a positive direction can somehow be obtained from the Court.

Please contact Lloyd Hayward of this office should you require any further information.

Dated this 28<sup>th</sup> day of August 2009

L J Hayward  
**Liquidator**