



McDonald
Vague

business recovery partners

Caldera Health Limited (In Liquidation)

Liquidators' Second Report for the period from 14 October 2019 to 13 April 2020

McDonald Vague Limited

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1 INTRODUCTION AND APPOINTMENT

Peri Micaela Finnigan and Boris van Delden, Insolvency Practitioners of Auckland, were appointed jointly and severally as liquidators of Caldera Health Limited ("the company") on 14 October 2019.

Pursuant to Section 255(2)(d) of the Companies Act 1993 ("the Act"), the liquidators herewith report on the progress of the liquidation. This second report should be read in conjunction with the liquidators' previous report. This report is being sent to all shareholders and all creditors who have filed a claim in the liquidation.

A Statement of Realisations and Distributions is **attached**.

2 RESTRICTIONS

Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever to any party as a result of the circulation, publication, reproduction or use of this report.

We reserve the right (but are under no obligation) to review and, if we consider necessary, revise this report in respect of any information existing at the date of this report which becomes known to us after that date.

3 CONDUCT OF THE LIQUIDATION DURING THE PRECEDING SIX MONTHS

3.1 Asset Realisations

The liquidators have now sold all the company assets and recovered proceeds (refer 3.6 and 3.7). The debtor balance expected on appointment was disputed and not recovered (refer 3.3).

3.2 Liquidation Progress

The liquidators employed certain scientific staff to assist with the management of the sale process and the clean-up of premises/records/data/samples for confidentiality and health and safety reasons. These costs are reflected in the costs of the liquidation and trading period.

The chemical disposal was estimated by Waste Management Ltd to be a cost of upwards of \$20,000. The liquidators engaged qualified scientists to assist with the disposal at a much lesser cost. Many of the chemicals were uplifted by various scientists and university staff with knowledge of the chemicals. The costs of disposal were maintained at a minimum with the assistance of the

laboratory manager who worked tirelessly throughout the process to assist with asset realisations and the safe treatment of chemicals and the disposal of bio-hazardous waste and other waste products.

The premises were vacated in late 2019. All trading costs including rent and power and clean-up have been paid.

The secure confidential patient documents are now held at a storage facility with specific instructions on who may access them (*an HDEC approved qualified scientist who managed the original study*). The liquidators gained no access to this information and ensured confidentiality was maintained. The cost of this storage facility has been paid. The records are required to be maintained by HDEC for 10 years (which is at a cost) and then are required to be destroyed.

3.3 Callaghan Innovation Debtor **(Statement of Affairs: \$105,849)**

A claim for payment under the Callaghan Innovation Growth Grant was submitted by Caldera Health Limited (now in liquidation) on 11 October 2019.

Callaghan Innovation rejected the payment of the final quarterly funding claim of \$121,727 plus retentions on grounds there was no contractual obligation to make payment and based on the intention of the Research and Development Grant. The funding agreement stated that the investment must support long term growth and enhance Research and Development activity in New Zealand. Payment to a liquidation did not meet this test despite the debt relating to the pre liquidation period.

The liquidators gained legal advice on this and presented a strong legally backed argument. The matter was presented to the Committee and Board and rejected at both levels. The liquidators have drawn the conclusion that they will not achieve a different outcome by endeavouring to challenge the Callaghan decision. The outcome is disappointing as this funding would have funded employee entitlements as preferential creditors. The employees consequently have suffered a shortfall.

3.4 Bank Account **(Statement of Affairs: \$14,887)**

The funds held at bank were recovered. A sum of \$14,887 was received.

3.6 Fixed Assets **(Statement of Affairs: \$100,000)**

The liquidators marketed the business for sale by tender as a whole and also asked for interest in the physical assets and intellectual property. The tender attracted a lot of interest and competing interest in certain of the larger laboratory equipment items. No offer was presented for the whole of the business assets. The tender led to the sale of some of the larger equipment but left a lot of scientific equipment unsold. The balance of assets was sold by way on an online auction. The auctioneer marketed the sale to their own database and also to the names of parties introduced by Caldera directors and staff.

A sum of \$93,395 was recovered from sale by tender and auction of laboratory equipment.

3.7 Computer and Office Equipment

(Statement of Affairs: \$8,000)

The office equipment realised \$2,760 at an online auction. The computer equipment realised \$5,691.

3.8 Intellectual Property

The Intellectual Property was reviewed by a number of interested parties (including offshore interest) and due diligence carried out. Despite considerable effort and time to satisfy due diligence requirements whilst protecting confidentiality (by redacting documents) only one formal offer was presented, and that offer was accepted. There was genuine interest in NZ and offshore however the time periods sought to conduct due diligence with no guarantee of a firm offer were not attractive to extend the period. Other parties withdrew interest after careful consideration.

The sale of patents and Intellectual Property was at a modest recovery and somewhat disappointing. At the outset, the directors estimated little value to be gained for the IP given other studies overseas that had been commercialised. The aim of Caldera was to develop a more accurate test for diagnosing prostate cancer by using urine. The results showed that prostate cancer could be predicted using urine EVs with a similar accuracy to commercially available tests. Caldera's test although successful was not more accurate at predicting prostate cancer than what was on the market and was fundamentally why it failed to secure ongoing funding.

The purchaser has advised that the intention of the purchase is to continue further studies and apply the technology to a variety of biofluids for various clinical, diagnostic and research purposes. The purchaser intends to publish scientific papers that used the results from Clinical study 3 (the urine study comparing total and prostate EVs) and also the HEADLAB method. Publishing papers will have some benefit to the employees that were involved in the study.

The costs of transferring patents/Intellectual Property are at the cost of the purchaser.

4 INVESTIGATIONS

The liquidators have completed their investigations into the books, records, and affairs of the company. Certain creditors raised concerns that were investigated. This included gaining advice on a letter of comfort provided by certain shareholders at time of audit to support continued trading.

The letter of comfort was not a binding legal commitment nor was there an intention to create legal relations. The letter of comfort was given in the context of completing the audit of the financial statements. Creditors did not rely on a letter of comfort to supply. The Company at that time was undertaking a trial of its technology to establish a milestone i.e. whether the technology could be commercialised. Financial support was provided to assist the company to reach that milestone but that it would not continue if the milestone was not met as it became clear at that point that the Company did not have technology that was sufficiently valuable to attract further capital investment. The directors took prompt action to cease trading once the conclusion was drawn that the studies were not financially viable to commercialise.

There were no matters that came to the knowledge of the liquidators that could eventuate in a benefit to creditors.

5 CREDITORS' CLAIMS

5.1 *Secured Creditors*

No secured claims have been received.

5.2 *Preferential Creditors*

Distribution to Employees

The liquidators paid the employees a distribution of \$17,930 towards preferential entitlements. This equated to approximately 11 cents in the dollar on total employee preferential entitlements.

The costs to sell down the assets, cover premises costs and to employ staff to manage the process plus commissions reduced the moneys available for preferential creditors.

Inland Revenue

The Inland Revenue Department has not submitted a preferential claim in the liquidation, but we are aware that there are amounts due for GST and PAYE. There are no funds available to make a distribution towards the IRD's preferential claim. At date of liquidation the directors advised the IRD was owed \$59,522 for current obligations for PAYE and Kiwisaver.

5.3 *Unsecured Creditors*

As at the date of preparing this report 25 unsecured creditors claim forms have been received which total \$329,874. This includes employee unsecured claims of \$244,116 and trade/unsecured creditors of \$85,758. There are about a further 23 creditors who have not submitted claims (for debts owing of about \$50K). In the interests of minimising liquidators' fees, the liquidators have not attended to the formality of accepting or rejecting creditors' claims since we are not in a position to pay a distribution.

6 FUNDS / LIKELY OUTCOME

There will be a short fall on the amount due to the preferential employees and other preferential creditors. Therefore, at this stage the liquidator does not anticipate paying a distribution to unsecured creditors.

7 MATTERS DELAYING THE COMPLETION OF THE LIQUIDATION

The following matters are outstanding:

- Completion of liquidation and final distribution of funds held

8 ESTIMATED DATE OF COMPLETION

Based on the information contained in this report the liquidators presently propose to complete all outstanding matters with a view to retiring as liquidators within the next two months.

9 CONTACT DETAILS

Enquiries should be directed to the writer by email to pfinnigan@mvp.co.nz.

The Liquidators can be contacted at:

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PERI M FINNIGAN
LIQUIDATOR

DATED this 14th day of April 2020

Realisations and Distributions

Caldera Health Limited (In Liquidation) 14 October 2019 to 13 April 2020

| Realisations | As Per Statement of Affairs \$ | Cash Received \$ |
|---------------------------------------|--------------------------------------|------------------------|
| Bank Account Closure | 14,887 | 14,887 |
| Debtors | 105,849 | Nil |
| Interest | - | 31 |
| Sale of Computer and Office Equipment | 8,000 | 8,451 |
| Sale of Laboratory Equipment | 100,000 | 93,395 |
| Sale of Intellectual Property | Unknown | 1,500 |
| Pre liquidation GST Refund | - | 890 |
| Total Realisations | \$228,736 | \$119,154 |
| Payments | | |
| Liquidators Fees | | |
| Liquidators Fees | | 47,341 |
| Disbursements | | 871 |
| Total Liquidators Fees | | \$48,212 |
| Other Costs of Liquidation | | |
| Accounting Consultant | | 1,050 |
| Cleaning Costs | | 1,921 |
| Computer Services | | 938 |
| Legal Fees | | 4,430 |
| Telephone Costs | | 178 |
| Power Costs | | 2,783 |
| Reimbursement Costs | | 355 |
| Rent | | 4,600 |
| Commission – Sale of Assets | | 3,325 |
| Labour – Sale of Assets | | 1,500 |
| Asset Removal Costs | | 2,530 |
| Waste Disposal Costs | | 1,684 |
| Wages and PAYE | | 20,401 |
| Residents Withholding Tax on Interest | | 9 |
| Total Costs of Liquidation | | \$45,703 |

| Distributions | |
|---|------------------|
| Preferential Wages and Holiday Pay | 17,930 |
| Total Distributions to Unsecured Creditors | \$17,930 |
| | |
| Total Payments | \$111,844 |
| | |
| BALANCE HELD | \$7,310 |

Note: the above figures are GST exclusive