



McDonald  
Vague

business recovery partners

**EXFTX Limited (In Liquidation)  
("Feltex")  
(This company was called Feltex Carpets Limited  
until 1 December 2006)**

**Liquidators' Twenty First Report  
For the period from 13 June 2016 to 12 December 2016**

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## 1. INTRODUCTION AND APPOINTMENT

John Trevor Whittfield, Peri Micaela Finnigan and John Lawrence Vague, Insolvency Practitioners of Auckland, were appointed jointly and severally as liquidators of EXFTX Limited ("the company") on 13 December 2006 by the High Court at Auckland.

John Lawrence Vague resigned in December 2008 and John Trevor Whittfield and Peri Micaela Finnigan (both of whom were already appointed) were appointed as his successor. In August 2010 John Trevor Whittfield resigned and Iain McLennan was appointed as his successor.

Pursuant to Section 255(2)(d) of the Companies Act 1993 ("the Act"), the liquidators herewith report on the progress of the liquidation. This twenty first report should be read in conjunction with the liquidators' previous reports. 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 not **attached** due to reasons of commercial confidentiality.

## 2. RESTRICTIONS

This report has been prepared in accordance with section 255(2)(d) of the Act. 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

### *Asset Realisations*

McGrath Nicol + Partners (NZ) Limited, the receivers' appointed by the ANZ, retired on 10 April 2013. We understand that they consider that they have realised all charged assets.

We intend to carry out a review to see if there may be any residual assets that have not been identified by the receivers and which may be able to be recovered.

We have to date only been able to seek to realise litigation remedies. We consider that we have now realised those actions that were and are the most likely to provide an economic return to creditors.

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#### 4. INVESTIGATIONS AND LEGAL ISSUES

The liquidators have settled all claims. The terms are confidential.

#### 5. CREDITORS CLAIMS

##### 5.1 Secured Creditors

The ANZ Bank retired its receivers on 10 April 2013. The ANZ has lodged satisfaction of security notices on the Personal Property Security Register and there are accordingly no further secured claims against any funds or assets under the control of the liquidators.

##### 5.2 Preferential Creditors

Employee and Inland Revenue Department preferential entitlements have been paid by the receivership. We have one preferential claim from the NZ Shareholders Association for winding up costs totalling \$6,522.

##### 5.3 Unsecured Creditors

As at the date of this report we are considering unsecured claims totalling \$25,601,101, as follows.

##### 5.4.1 Employees and Trade \$13,842,420

As at the date of preparing this report 614 unsecured creditors claims have been received which total \$13,842,420.

The claims can be broken down as follows;

|           |             |
|-----------|-------------|
| Trade     | \$5,718,271 |
| Employees | \$8,124,149 |

We have accepted that the amounts owed to trade creditors are correct.

We have not yet confirmed the amounts owed to employees, but we consider it likely that a significant amount of these claims will be rejected.

We intend to proceed to formalise admissions and rejections of employee claims.

##### 5.4.2 Unsecured Shareholder Claims \$11,758,682

166 shareholders have lodged claims as unsecured creditors totalling \$6,287,619. Most of these claims relate either in part or in total to shares purchased in the IPO.

There are two types of claims that we have received from shareholders, as creditors, and that we have had to consider.

One relates to the Initial Public Offering of Feltex ("IPO").

The other relates to market disclosures that Feltex was obligated to meet under the Securities Market Act ("SMA") continuous disclosure provisions and in our opinion failed to do so (consistent with the findings of the Securities Commission – as it then was).

We now address each:

**A) IPO \$2,342,048**

Further detailed information was sought from these shareholder claimants. A letter dated 19 March 2007 requested further information. This letter is still posted on our website [www.mvp.co.nz](http://www.mvp.co.nz) (look immediately below our logo on the right of the home page).

No shareholder claimants have responded to that requirement and a final letter is being sent to them about this matter.

The liquidators have not made any final decisions on Shareholder claims arising from the IPO however any claim that is not substantiated will not be able to be accepted in any event and in our view faces considerable hurdles.

**B) Market Disclosure**

This matter remains the issue of separate legal proceedings taken by a group of shareholders. We are monitoring the outcome of that proceeding.

**C) Other Shareholder Claims \$3,367,964**

While we have not made any absolute decisions with regard to these claims it is our intention to treat any shareholders who have lodged claims or part thereof that do not fall within the above two categories as being rejected.

## 6. LIQUIDATORS' FEES

Liquidators' fees accrued to 12 December 2016 are \$945,216 excluding GST. The fees are based on 3,501.16 hours of work undertaken as follows:

| <b>Work Category</b>                     | <b>Hours</b>           | <b>\$</b>               |
|--|------------------------|-------------------------|
| Appointment functions                    | 424.78                 | 90,224                  |
| Asset realisations                       | 14.50                  | 5,239                   |
| Creditors' claims, enquiries and reports | 367.35                 | 79,088                  |
| Taxation & Management                    | 469.47                 | 92,706                  |
| Investigations                           | 2225.06                | 677,959                 |
| <b>Total</b>                             | <b><u>3,501.16</u></b> | <b><u>\$945,216</u></b> |

Fees taken to 12 December 2016 amount to \$876,440. Liquidators' fees in a Court ordered liquidation is to be approved by the Court and if required a retrospective application for fee approval will be made by the liquidators.

Section 284 (1) of the Act provides that an application (with the leave of the Court) may be made by a creditor, shareholder or director of a company in liquidation to review or fix the remuneration of the liquidators. In circumstances where no application has been made to review or fix the liquidators' remuneration the Court will be less inclined to rigorously examine the fees submitted by the liquidators for subsequent approval.

## **7. DIVIDENDS**

As a result of the removal of any secured claim against Feltex and the settlements that we have achieved on the legal cases against the directors and then against Ernst & Young, together with settlements on two other voidable transaction matters, we expect to be in a position to pay a dividend to admitted creditors between 1cent and 3cents in the dollar on an accepted claim amount.

Whilst this is a very modest dividend it is nevertheless a dividend. The only actions we have been able to take for significant sums have been expensive and fiercely contested by the directors and then Ernst & Young each who have steadfastly denied any liability.

We have not had funding from creditors to be able to pursue those matters and had to resort to litigation funding. In the end sensible commercial decisions had to be taken. However, we feel that we have seriously tested the matters that concerned us and although the outcomes were not as we would have wished for entering into the claims, we are satisfied to be able to pay a dividend.

The precise figure will be dependent upon what costs are needed to be incurred in finalising the creditor claims positions. We are hopeful that it may not be a contentious area as there seems little practical benefit to individual shareholders to pursue disputes. However, we have a process that must be gone through and that will occur.

In the event that we identify any other assets that the receivers have not, then any net recoveries would be additional to the above.

## **8. MATTERS DELAYING COMPLETION OF THE LIQUIDATION**

The resolution of creditor claims, and asset review will determine when the liquidation can be concluded.

## **9. DISCLAIMER**

The Liquidators do not accept any responsibility or liability for any errors, omissions or misinformation contained in this report. The liquidators do not accept responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction, or use of this report.

## **10. WEBSITE [www.mvp.co.nz](http://www.mvp.co.nz)**

Creditors are advised that this report and all subsequent reports will be available on the liquidator's website. The liquidators will provide a regular bulletin updating creditors with current progress in actions taken. This bulletin will be lodged on the website to reduce costs. Please send us your email address if you would like further reports sent to you.

## **11. CONCLUSION**

Based on the above the liquidators cannot yet estimate an expected date of completion.

## 12. CONTACT DETAILS

Any queries can be directed to Iain McLennan or Peri Finnigan of these offices on (09) 303 0506 or by visiting our website at [www.mvp.co.nz](http://www.mvp.co.nz).

The Liquidators can be contacted at:

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Yours faithfully  
for EXFTX LIMITED (IN LIQUIDATION)



IAIN MCLENNAN  
LIQUIDATOR



PERI M FINNIGAN  
LIQUIDATOR

DATED this 10<sup>th</sup> day of June 2019