



Your Ref:

Our Ref:

HAM:MQ:circ060514

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CIRCULAR TO CREDITORS AND ACCOUNT HOLDERS

Dear Sir/Madam

RE: SPORTS ALIVE PTY LTD
(IN LIQUIDATION)
ACN 069 087 332 - ABN 49 069 087 332 (the company)
Formerly Trading At Level 1, Thoroughbred Park Canberra Racecourse,
Randwick Road, LYNEHAM ACT 2602, and
Level 1, 552 City Road, SOUTH MELBOURNE VIC 3205

I refer to my previous circulars to creditors and account holders, including my most recent circular dated 16 May 2013.

Please find enclosed my Liquidator's Report to Creditors which provides an update of our acts and dealings and on the conduct of the liquidation to date.

Please continue to monitor the website, www.bentcogle.com.au for further developments.

If you have any queries please contact Michael Quin of this office or myself, or email sportsalive@bentcogle.com.au.

DATED this 6th day of May 2014.

HAMISH MacKINNON
JOINT LIQUIDATOR

**LIQUIDATOR'S REPORT TO CREDITORS OF
SPORTS ALIVE PTY LTD (IN LIQUIDATION)
ACN 069 087 332 (the company)
PURSUANT TO SECTION 508 OF THE CORPORATIONS ACT 2001 (the Act)**

I refer to the appointment of Keith Sutherland and I as joint and several Liquidators of the abovenamed company on 26 August 2011, and to my previous reports dated 23 March 2012, 23 November 2012 and 16 May 2013. Pursuant to Section 508(3) of the Act, I provide this report of our acts and dealings and the conduct of the winding up to date.

Receipts & Payments

A summary of our receipts and payments in the liquidation to date is enclosed. There is presently \$836,838.98 held in the liquidation bank account and on term deposit.

My previous reports detailed the major receipts in the liquidation as follows:

Cash at Bank	\$45,522.67
Sale of Database	\$120,000.00
ATO GST Refund	\$318,111.33
Term Deposit	\$274,261.54
Debtors	\$129,224.30
Plant & Equipment	\$4,744.94
Other Assets	\$21,000.00

Creditors should refer to the comments in my report dated 23 March 2012 for further information with regards to the above receipts. Since my previous reports to creditors, I have also made the following recoveries in the liquidation:

Unfair Preference Recoveries:

- State Revenue Office (SRO)	\$76,998.35
- Australian Taxation Office (ATO)	\$300,000.00
- Telstra Ltd	\$34,946.00

NAB Term Deposit Monies \$182,205.17

The unfair preference recoveries related to monies paid by the company in the relation back period (six months prior to liquidation) which resulted in an unfair preference being received by some

creditors. These monies were successfully recovered or claims settled following demands made or proceedings issued by me.

The claims made against the above creditors were for the following amounts, plus interests and costs:

- Australian Taxation Office	\$244,230.40
- State Revenue Office	\$76,998.35
- Telstra Ltd	\$113,518.00

The claim against the SRO was paid in full.

The claim against the ATO was complicated as the ATO joined the following directors for the amounts noted below due to the indemnity provision of Section 588 of the Act:

- Craig Coleman	\$84,365.40
- Stephen Chant	\$187,175.40
- Daniel Finley	\$187,175.40
- Colin Hiles	\$187,175.40

At the mediation I agreed to settle with the ATO for an amount of \$300,000.00 (which included interest and part of my legal costs). I understand that the ATO settled the indemnity claim against the above directors as well, however I am not privy to the settlement sums.

The claim against Telstra was settled after proceedings were issued. Telstra claimed the Running Account defence which I accepted and agreed to pay the full amount that Telstra had benefited from during the relation back period excluding interests and costs.

The NAB term deposit monies related to funds totalling \$250,000.00 being held in a National Australia Bank (NAB) term deposit. NAB argued that it was entitled to set off monies paid by it as a result of credit card charge back claims made by various account holders against the monies held on term deposit. I ultimately agreed that the NAB was entitled to set off a total of \$67,794.83 against the term deposit monies, and the balance of \$182,205.17 was paid to the company.

In addition to the above, monies totalling \$298,172.25 which were being held in a separate bank account pending the outcome of a Supreme Court of Victoria hearing into whether the monies held should be treated as general funds or segregated funds for the benefit of account holders, were transferred into the general liquidation bank account after the Court ruled that the monies were

not segregated monies held for the benefit of account holders. My further comments regarding the Court's ruling are set out later in this report.

Investigations

As previously advised, I reported to the Australian Securities & Investments Commission (ASIC) pursuant to Section 533 of the Act. ASIC responded requesting that I submit a supplementary report with regards to the matters noted. I have lodged a voluminous supplementary report with ASIC. I understand that ASIC is only proceeding with a director banning application against Stephen Chant.

I have also investigated the following matters:

Unfair Preferences

As noted above, I have pursued unfair preference claims against various parties, and have to date recovered monies from State Revenue Office, Australian Taxation Office and Telstra Ltd.

I have also issued proceedings against Bet Options for payments made to it during the relation back period totalling \$412,298.03. This claim was recently the subject of a mediation, however the mediation did not result in the matter being settled. Accordingly I expect that the matter will proceed to trial.

I have also made unfair preference claims against the following parties, and have instructed solicitors to issue proceedings against them for recovery of the monies paid:

- Tote Tasmania \$112,788.48
- Bet 247 Pty Ltd \$333,620.10

Insolvent Trading Claims

I have investigated whether the company may have traded whilst it was insolvent, and whether I may therefore have a claim against the company's director and former directors for debts incurred by the company whilst it was insolvent.

I am considering whether I pursue insolvent trading claims against the director/ former directors, and note that the claims may not be commercial to pursue for the following reasons:

- After examining the directors, I have doubts about their ability to pay or settle an insolvent trading claim,
- The Directors and Officers insurance policy does not cover insolvent trading claims,

- Some of the directors may be able to successfully argue one or more of the defences available under Section 588FGB of the Act, and
- Insolvent trading claims in general are costly and difficult to prove.

I will make my final determination in regards to these claims once the unfair preference claims are resolved.

Claim Against Unitholders

The company's holding company, Bet Worldwide Pty Ltd (BWW), is the trustee of the Bet Worldwide Unit Trust which owns all the shares in the company. BWW was placed in liquidation on 18 May 2012.

Under the Bet Worldwide Unitholders' Agreement (BWUA), the unitholders were required to contribute funds to the business (i.e. the business operated by Sports Alive) as required. A demand was made on the unitholders by Stephen Chant as director of BWW in May 2012, after the liquidation of the company, but prior to BWW being placed in liquidation. To date, unitholders have not made any payments under the demand.

I have considered whether the company has a claim against the unitholders pursuant to the BWUA. It appears that the company does not have a claim against the unitholders as it is not a party to the BWUA, and therefore the claim could only be made by the liquidators of BWW. Accordingly it will be up to the liquidators of BWW as to whether they pursue a claim against the unitholders. I note the liquidators of BWW are without funding and I do not know if they will pursue the claim against the unitholders. If the liquidators do recover funds then I will lodge a claim with them on behalf of the company.

Claim Against Tote Tasmania (Tote)

I have investigated whether the company would have a claim against Tote based on assurances supposedly provided by Tote to the company that it would be investing additional monies in the company, in particular given that the CEO of Tote, Craig Coleman, was also chairman of the board of directors of the company. It appears that the claim against Tote would have little prospect of success, and I therefore will not be pursuing this claim further.

As noted earlier, I have instructed solicitors to issue proceedings against Tote with regards to an unfair preference claim of \$112,788.48.

Breach of Directors' Duties

In addition to the potential claims against the director/ former directors for insolvent trading as noted earlier in this report, I have also investigated whether I could pursue a claim for breach of directors' duties by failing to ensure that account holders' monies were maintained on trust in accordance with the relevant ACT legislation.

The company maintained a Directors' & Officers' insurance policy (D&O policy). I believe that a claim for breach of directors' duties would have a very good prospect of success based on evidence heard in the director examinations and the Supreme Court hearing into segregated accounts, and that such a claim may, if successful, be recoverable through the D&O policy.

I am also of the opinion that any monies recovered through such a claim would be recovered for the benefit of account holders only, and not for the general body of creditors.

At present, I am holding sufficient funds to enable me to pay a dividend to the priority creditors, being for outstanding employee entitlements, including superannuation. I do not have sufficient funds to enable me to pay a dividend to secured and unsecured creditors (which includes account holders).

Accordingly, I am not able to use monies which at present would be available for distribution to the priority creditors only, to pursue claims which would benefit the account holders only.

Therefore, I am calling on account holders to fund a claim for breach of directors' duties. I am also currently seeking funding from a litigation funder to pursue the claim.

I will be reporting separately to the Committee of Inspection, and will convene a meeting of the Committee of Inspection in the near future to consider how to fund the claim. If any account holder or group of account holders wishes to discuss the prospect of funding such an action, they are requested to contact Michael Quin of this office or myself as soon as possible.

If I am unable to obtain sufficient funding to pursue the claim then I will not be able to issue proceedings against the directors.

Segregated Monies

As previously advised, I issued an originating process in the Supreme Court of Victoria to determine whether monies held by the company on term deposit with the Bank of Queensland (BOQ) and National Australia Bank Ltd (NAB) in three separate term deposit accounts were held

as segregated accounts for the benefit of the account holders, or whether the funds were funds held generally by the company.

The decision was handed down on 4 March 2013. Justice Robson of the Supreme Court of Victoria found that the monies held on term deposit were not held as segregated monies for the benefit of account holders only, but rather the funds were taken to be company monies. Please refer to my Circular to Creditors and Account Holders dated 16 May 2013 which includes a copy of the judgement.

Debtors

Debtor collections in the liquidation to date total \$135,613.20.

I have instructed solicitors to issue proceedings against a number of the larger outstanding debtors whose debts total \$88,424.55

Distributions to Creditors

I have distributed an amount of \$81,082.19 to the secured creditor, Morlend Finance Corp (VIC) Pty Ltd under its fixed charge.

Monies totalling \$413,693.96 were advanced under the Department of Employment's General Employee Entitlements & Redundancy Scheme (GEERS). These monies were distributed to the relevant employees.

The Department is entitled to claim as a priority creditor in the winding up for monies advanced under GEERS.

Based on funds received to date, there will only be sufficient monies available to pay a dividend to priority creditors. There are presently insufficient monies to pay a dividend to unsecured creditors.

Position on Liquidation

Set out below is an estimate of the current liquidation position, based on funds currently held in the liquidation bank accounts. The schedule indicates that the monies held will be absorbed in meeting the further costs of the liquidation, including liquidators' fees and legal costs in pursuing various claims, and in paying a dividend to priority creditors only.

There are presently insufficient monies to enable me to pay a further distribution to the secured creditor, and to pay a dividend to unsecured creditors. If further recoveries are made in respect of the claims noted in this report, the funds will be distributed firstly to the remaining priority creditors before funds become available for distribution to the secured and unsecured creditors.

Cash at Bank		\$	36,838.98
Term Deposit			500,000.00
Total Monies Held		\$	536,838.98
Plus GST Refund			2,799.50
Total Funds Available		\$	539,638.48
Less:			
Liquidators' Remuneration, unbilled	\$	228,607.01	
Future Remuneration, say		80,000.00	
Liquidators' Disbursements, unbilled		2,186.42	
Future Disbursements, say		4,000.00	
Future Legal Fees, say		60,000.00	\$ 374,793.43
Funds Available			\$ 164,845.05
Less Priority Creditors 1 (Wages/ Superannuation):			
Superannuation, per Report as to Affairs	\$	260,224.43	
Outstanding Wages - GEERS		72,100.04	
Outstanding Wages - Other Employees		2,002.61	334,327.08
Funds Available/ (Shortfall)			(\$169,482.03)
Less Priority Creditors 2 (Leave Entitlements):			
Outstanding leave entitlements - GEERS	\$	199,211.77	
Outstanding leave entitlements - Other Employees		5,343.75	204,555.52
Funds Available/(Shortfall)			(\$374,037.55)
Less Priority Creditors 3 (PILN/ Redundancy):			
PILN/ Redundancy - GEERS			142,382.15
Funds Available/(Shortfall)			(\$516,419.70)
Less Secured Creditor:			
Morlend Finance Corporation (VIC) Pty Ltd			3,810,857.81
Funds Available/(Shortfall)			(\$4,327,277.51)
Less Unsecured Creditor Claims, estimate			
			9,028,718.79
Total Funds Available/(Shortfall)			(\$13,355,996.30)

Liquidators' Fees

Creditors have previously approved my fees in conducting the liquidation up to an amount of \$200,000.00, plus GST which I have drawn.

My unbilled fees to 24 April 2014 total \$228,607.01 plus GST. I will be seeking further approval for my fees to date and going forward from the Committee of Inspection in the near future. Full details concerning my fees to date and expected future fees will be provided to the Committee of

Inspection prior to seeking their approval for my further remuneration at a meeting of the Committee of Inspection.

Acts & Dealings to be Carried Out

As required by the Corporations Act, set out below is a description of the acts and dealings that remain to be carried out in order to complete the winding up:

- complete further investigations,
- pursue voidable transaction, insolvent trading and other claims against various parties, as noted in this report,
- distribute monies to creditors as required.

Estimated Date of Completion

Given that the litigation is in progress and due to commence against various parties, it is difficult to estimate when the liquidation may be finalised. However, for the purposes of complying with the requirements of the Act, I estimate that the winding up may be completed by 31 December 2015.

If creditors have any queries or wish to discuss any aspect of the liquidation please do not hesitate to contact Michael Quin of this office or myself.

DATED this 6th day of May 2014.



HAMISH MacKINNON
LIQUIDATOR

Sports Alive Pty Ltd
(In Liquidation)

Receipts & Payments Summary
for the period ended 30 April 2014

Receipts:	
Cash at Bank	\$ 45,242.40
Accounts Receivable	135,613.20
Conduct Monies	50.00
GEERS Advance	413,693.96
GST Refund	318,111.33
Interest Income	29,953.84
Repayment of Charge Back Claims	16,639.00
Sale of Add-on Software	21,000.00
Sale of Plant & Equipment	4,744.94
Sale of Database	132,000.00
Sale of Domain Names	2,100.00
Sundry Receipt	300.00
Term Deposit Monies - Bendigo Bank	274,547.93
Term Deposit Monies - NAB	182,205.17
Unfair Preference Recoveries	411,944.35
Workcover Refund	1,231.53
GST Receipts	<u>49,108.00</u>

Total Receipts \$ 2,038,485.65

Payments:	
Advertising	\$ 2,057.44
ASIC Filing Fees	138.00
Auctioneer's Charges	1,992.10
Cartage	1,542.69
Computer Maintenance	462.00
Conduct Monies/ Examination Expenses	1,839.05
Courier	899.60
Distribution to Secured Creditor	81,082.19
Domain Name Renewals	177.00
FOI Application Fee	25.10
GEERS Distributions	404,098.16
GST Payable	3,433.00
Insurance	1,263.95
Internet Service	417.00
Legal Fees	416,638.35
Liquidators' Remuneration	220,000.00
Locksmith Fees	993.11
Mediation Costs	2,192.50
Mail Redirection	262.00
Mailout Expenses	19,605.46
Postage & Stationery	1,529.22
Printing & Copying	9,682.75
Professional Fees	8,545.64
Search Fees	1,648.07
Securing / Protecting/ Storage of Assets	4,735.92
Security	528.00
Stamp Duty	71.40
Storage of Records	1,838.75
Sundry Expenses	170.71
Superannuation	91.80
Supreme Court Filing Fee	938.50
Telephone & Fax	676.47
Travel	932.00
Unclaimed Dividends	9,595.80
Wages	<u>1,542.94</u>

Total Payments \$ 1,201,646.67

Net Receipts/ Cash at Bank \$ 836,838.98

Representated By:	
Liquidation Bank Account	\$ 336,838.98
Term Deposit	<u>500,000.00</u>

Total Cash at Bank \$ 836,838.98