



IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERCIAL COURT  
CORPORATIONS LIST

Case: S ECI 2020 01581  
Filed on: 30/03/2020 07:39 PM

No.

IN THE MATTER OF AUS STREAMING LIMITED (IN LIQUIDATION) ACN 600 577 348

BETWEEN

**Petrus Caspardus Stephanus Helberg**

Plaintiff

and

**Ronald John Dean-Willcocks (and the others in the attached Schedule)**

Defendants

### AFFIDAVIT OF PETRUS CASPARDUS STEPHANUS HELBERG

Date of document: 30 March 2020  
Filed on behalf of: The Plaintiff  
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I, **PETRUS CASPARDUS STEPHANUS HELBERG**, 19 Lurnea Road, Glen Iris, in the state of Victoria 3146, make on oath and say:

- 1 I am a director of Helberg Holdings Pty Ltd ACN 124 297 767 (**Helberg Holdings**).
- 2 I am duly authorised to make this affidavit on behalf of Helberg Holdings.
- 3 Except where otherwise stated, I make this affidavit from my own knowledge.
- 4 In this affidavit, I refer to various documents and page numbers. Except where otherwise stated, those are references to the paginated bundle of documents which has been exhibited to this affidavit and marked "**Exhibit PCSH-1**".
- 5 I swear this affidavit in support of the application filed by the Plaintiff on or about the date of this affidavit seeking orders pursuant to sections 75-41(3) and 90-15(1) read

with section 90-20 of Schedule 2 (*Insolvency Practice Schedule (Corporations)*) (**IPS**) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that, amongst other things:

- a. the resolution of the creditors of Aus Streaming Limited (In Liquidation) ACN 600 577 348 (**Aus Streaming**) terminating the Deed of Company Arrangement (**DOCA**) and appointing the first defendant, Ronald Dean-Willcocks, and second defendant, Cameron Hamish Gray, as liquidators of Aus Streaming passed on 4 March 2020 be set aside and that Aus Streaming be wound up by order of the Court with Craig Crosbie and Daniel Walley of PricewaterhouseCoopers appointed as its liquidators;
- b. alternatively, the resolution voted on by the creditors of Aus Streaming terminating the DOCA and appointing Messrs Dean-Willcocks and Gray as liquidators of Aus Streaming passed on 4 March 2020 be set aside, the proposal be considered and voted on at a meeting of the creditors of Aus Streaming convened at a place and at a time as ordered by the Court, and that any related creditor (as defined in section 75-41(4) of the IPS) not be entitled to vote on the proposal or a resolution to amend or vary the proposal;
- c. further alternatively, Messrs Dean-Willcocks and Gray be replaced as liquidators of Aus Streaming by Messrs Crosbie and Walley; and
- d. further alternatively, Messrs Crosbie and Walley be appointed as special purpose liquidators of Aus Streaming for the purpose of investigating the circumstances relating to the Investments as defined in paragraphs 43 and following of this affidavit, and prosecuting any claims in respect of the Investments that they may determine should be pursued for the benefit of Aus Streaming's creditors and/or its shareholders.

## **A INTERESTS IN AUS STREAMING**

6 I am personally a creditor of Aus Streaming in the amount of \$230,000 plus interest representing the unpaid balance of the employment entitlements (which totalled \$255,000) owed to me pursuant to a settlement agreement dated 3 November 2017 (**Settlement Agreement**) and referred to in the Administrators Report to Creditors dated 26 April 2018. Copies of:

- a. the Settlement Agreement appears at pages 2 to 6 of **Exhibit PCSH-1**;
- b. the Administrator's Report to Creditors dated 26 April 2018 appears at pages 7 to 70 of **Exhibit PCSH-1**; and

- c. the Proof of Debt lodged by me in the external administration of Aus Streaming appears at page 71 of **Exhibit PCSH-1**.

7 My company, Helberg Holdings, is a shareholder of Aus Streaming, holding  
5,000,000 shares which were provided to it under the terms of the Settlement  
Agreement. Helberg Holdings acquired the shares at \$0.86, with their value totalling  
\$4,300,000.

**B MY EMPLOYMENT HISTORY**

8 I am a chartered accountant with approximately 40 years of experience in audit, with  
expertise in the mining sector.

9 From 1983 to 1994, I was employed by Transnet SOC Ltd, in Johannesburg, South  
Africa, where I became Head of internal Audit from 1992 to 1994.

10 From 1995 to 2000, I was Business Finance Manager at Anglo American Platinum  
Ltd, the largest platinum mining company globally based in South Africa.

11 From 2001 to 2003, after moving to Melbourne, I was General Manager Enterprise  
Wide Audit at the Commonwealth Bank of Australia.

12 From 2004 to 2006, I was a Partner at Ernst & Young in their Business Risk division.

13 From 2006 to 2012, I was Global Head of Corporate Assurance at Rio Tinto.

14 From 2012 to 2014, I was Executive General Manager Internal Audit at CIMIC Group  
Limited (formerly Leighton Holdings).

15 From 2015 to 2016, I was a Partner at KordaMentha in their Corporate Services  
division.

16 From 2016 to 2018, I was Executive Chairman of a start-up company, Spiral Energy  
Pty Ltd.

17 From April 2016 to August 2017, I was employed in the Aus Streaming business via  
the following series of arrangements:

- a. On 18 April 2016, I entered into an employment agreement with Aus Streaming  
Investments Limited (**ASI**), a company formed under the laws of the Republic  
of the Marshall Islands (Company Number 62737); and

- b. In around May 2017, my employment agreement was varied and my  
employment was transferred from ASI to Aus Streaming. I resigned from Aus



Streaming on 21 August 2017. My employment with Aus Streaming is discussed further below.

18 Since November 2018, I have been employed by Orica Limited as the Head of Group Risk.

**C ADMINISTRATION AND LIQUIDATION OF AUS STREAMING**

19 On 5 January 2018, a creditors' statutory demand was issued to Aus Streaming by a creditor, Salamander Business Services Pty Ltd, in the amount of \$82,250.

20 On 3 February 2018, Messrs Dean-Willcocks and Gray of DW Advisory were appointed as Administrators of Aus Streaming pursuant to a resolution of the board of directors of Aus Streaming on that date. At the time, the directors of Aus Streaming were Mr Christopher Every (**Mr Every**) and Mr David Sutton (**Mr Sutton**) (collectively, the **Aus Streaming Directors**). A copy of the resolution appears at pages 72 to 74 of **Exhibit PCSH-1**.

21 On 5 June 2018:

- a. Messrs Dean-Willcocks and Gray were appointed Deed Administrators of Aus Streaming; and
- b. a DOCA was executed. A copy of the DOCA appears at pages 75 to 123 of **PCSH-1**.

22 Between March 2019 and 3 February 2020, variations to the DOCA had been proposed and passed to vary the date and payment of the Deed Fund (as defined in the DOCA) based upon the listing of TOR Mining Capital Limited (**TOR**) (discussed below). Copies of the reports to creditors and minutes of meetings regarding subsequent variations appear at pages 124 to 200 of **Exhibit PCSH-1**.

23 On 16 May 2019, the DOCA was varied by resolution of the creditors of Aus Streaming. A copy of the DOCA as varied appears at pages 201 to 260 of **Exhibit PCSH-1**.

24 On 4 March 2020, the creditors of Aus Streaming resolved (amongst other things) to terminate the DOCA and appoint Messrs Dean-Willcocks and Gray as liquidators. The resolution was passed based on the votes of Messrs Every and Sutton who were apparently authorised by other related party creditors of Aus Streaming, as deposed to further below.

**D HISTORY OF THE AUS STREAMING GROUP BEFORE MY EMPLOYMENT**

25 The company search for Aus Streaming's holding company, ASAF Critical Metals Ltd (**ASAF**) shows that it was incorporated in Canada in June 2013. A copy of the company search for ASAF appears at pages 261 to 264 of **Exhibit PCSH-1**. To the best of my knowledge, ASAF is an unlisted public company.

26 On 17 July 2013, ASI, then known as ASAF Critical Metals Limited, was incorporated in the Marshall Islands (See 2015 FY Annual Report of ASI at pages 265 to 277 of **Exhibit PCSH-1**). To the best of my knowledge, ASI is also an unlisted public company. I do not know why it had the same name as ASAF (when called ASAF Critical Metals Limited).

27 On 8 July 2014, Aus Streaming was registered. It is an unlisted public company. An ASIC company search of Aus Streaming appears at pages 278 to 284 of **Exhibit PCSH-1**.

28 On 8 September 2014, ASI changed its name from ASAF Critical Metals Limited to Aus Streaming Investments Limited. A copy of the audited financial statements for ASI for the financial year ended 30 June 2015 appears at pages 265 to 277 of **Exhibit PCSH-1** (page 2 of those financial statements states ASI's change of name).

29 On 30 June 2015, Murchison Holdings Limited ACN 004 707 260 (**MCH**) announced it had signed a Placement Confirmation Letter with ASAF which in turn had signed a Placement Acceptance Form which provided, amongst other things, for the acquisition by MCH of all the issued securities in ASI in consideration for the issue of shares in MCH to the shareholders of ASAF. A copy of MCH's announcement to the ASX dated 30 June 2015 referring to this transaction is at pages 285 to 289 of **Exhibit PCSH-1**.

30 The financial statements of ASI for the year ended 30 June 2015 (dated 11 November 2015) state that on 18 June 2015, ASAF transferred equity investments with a combined value of US\$224,967,440 to ASI which it subsequently agreed to capitalise (see page 2 of the financial statements at pages 265 to 277 of **Exhibit PCSH-1**). These financial statements were audited by BBK Partnership, Chartered Accountants, an auditing firm based in the United Kingdom.

31 The audited financial statements of Aus Streaming for the year ended 30 September 2016 (dated 24 March 2017) state that Aus Streaming held unlisted equity securities in unlisted energy and resource companies to the value of \$138,566,155 that it acquired "during the year" (page 16 of the financial statements). The financial



statements also state that Aus Streaming received capital contributions of \$138,534,413 from its parent company, ASAF (page 17 of the financial statements). The 2016 financial statements of Aus Streaming are at pages 290 to 310 of **Exhibit PCSH-1**. These financial statements were audited by Nexia Perth, an auditing firm based in Australia.

**E MY EMPLOYMENT WITH ASI AND AUS STREAMING**

32 In or around early April 2016, I was:

- a. approached by Mr Ilmars Draudins (a shareholder of ASAF and also a financial broker who marketed and sold investments in Aus Streaming); and then subsequently;
- b. interviewed by Mr Andrew Turner (**Mr Turner**), Mr Every and Mr Sutton (collectively referred to in this affidavit as the **ASAF Directors**) about joining the Aus Streaming business in an executive position. As mentioned above, Messrs Every and Sutton were also the Aus Streaming Directors.

33 Mr Turner and Mr Sutton said to me during my interview with them that Aus Streaming was a stable, profitable company with a metal streaming business that would revolutionise the Australian and international metals/resources markets by merging with an existing ASX listed entity, MCH (referred to in paragraph 29 above).

34 On 18 April 2016, I entered into an employment agreement with ASI (**Employer**). My employment agreement confirmed that ASI had agreed to become a wholly owned subsidiary of MCH, and stated that upon completion of that transaction, MCH apparently agreed to change its name to AUS Streaming Limited. When this occurred, my Employment Agreement would become an employment agreement to provide the Services to Aus Streaming (instead of ASI). The MCH transaction never in fact occurred, but my employment did nonetheless transfer across to Aus Streaming.

35 The ASAF Directors were keen for me to join the Aus Streaming business due to my experience. Mr Turner and Mr Sutton said to me, during the discussions referred to above, that the objective was to expand Aus Streaming's business and secure further metal streaming agreements based on the large portfolio of assets Aus Streaming held. Mr Turner also said to me that Aus Streaming had a portfolio of mining investments and assets that underpinned its balance sheet which had been audited.

36 With the prospect of joining a company that:

- a. was setting up the first Australian listed metal streaming company;
- b. was due to merge with MCH (an existing listed ASX company);
- c. had independently audited financial statements; and
- d. had what appeared to me to be reputable market facing directors and management (i.e. principally Mr Every, Mr Sutton and ASAF's director, Mr Turner),

I decided to accept the employment offer.

37 I was made aware by Mr Turner that MCH had announced the proposed merger to the ASX on 30 June 2015 (a copy of which announcement appears at pages 285 to 289 of **Exhibit PCSH-1**). I relied upon this ASX announcement and took comfort from it in relation to the assets and financial position of the Aus Streaming business.

38 My total remuneration package at the time was about A\$500,000, consisting of a base salary of A\$350,000 with a share incentive scheme if I satisfied the performance criteria set out in my employment contract.

39 On 15 August 2016, I joined ASI as Executive Chairman. My understanding at that stage was that the MCH merger with ASI was to occur, which would have resulted in the business transferring to Aus Streaming, based in Australia.

40 My day to day role and responsibilities included:

- a. setting up all processes to effectively run the Aus Streaming business;
- b. identifying suitable mining investment opportunities that lend themselves to profitable metal streaming transactions. Hundreds of mining companies were initially reviewed for suitability;
- c. setting up external agreements for all service providers including mining commercial modelling, opportunity identification and prioritisation, desk top mining technical assessment and opportunity risk assessment;
- d. overseeing the desktop and on-site mining technical evaluations including geological assessment, mining processing, commercial and owner structure and commercial modelling;
- e. preparing a complete business case and motivation for each opportunity and presenting to the ASI Board for consideration and approval;



- f. negotiating with mine-owners amicable metal streaming contracts typically for the life of mine production at a negotiated price point that ensures the mine stays viable and provides adequate return for ASI; and
- g. participating in negotiations regarding the expected conclusion of the MCH transaction.

41 My role as Executive Chairman of ASI (and subsequently Aus Streaming when my employment agreement was “rolled over” to that company) did not encompass managing the cashflow of the Aus Streaming business. That was primarily Mr Sutton’s responsibility. Prior to me becoming a director of Aus Streaming, I did not have access to the financial information of the Aus Streaming business, such as cash flow statements.

42 I became a director of Aus Streaming on 31 May 2017 so that I could get access to the financial information of the Aus Streaming business and obtain information from Aus Streaming’s auditors, neither of which was made available to me as Executive Chairman. However, I resigned from my appointments with Aus Streaming about three months later, on 21 August 2017, because I could not get satisfactory information regarding its alleged Investments and/or any assets underlying the Investments. The reasons for my resignation are explained in further detail below.

## **F THE ALLEGED INVESTMENTS BY AUS STREAMING**

43 According to the Administrators’ Report to Creditors dated 28 February 2018, (which appears at pages 311 to 338 of **Exhibit PCSH-1**):

- a. Aus Streaming was incorporated as a special purpose vehicle focused on critical metals to facilitate the entry of its parent company, ASAF, into the metal streaming business, and was dormant from 8 July 2014 to 30 September 2015 (page 4 of the Administrators’ Report to Creditors);
- b. on 6 September 2016:
  - i. Aus Streaming entered into an agreement with ASAF to borrow a senior secured loan of US\$500,000 plus interest of 6% per annum for the purpose of working capital. The loan was to mature on 30 September 2019. As at the date of the Administrators’ appointment (3 February 2018) US\$423,366.83 had been drawn down (page 4 of the Administrators’ Report to Creditors);



- ii. ASAF “vended in” various equity investments in mining funds to Aus Streaming with a combined value of US\$105,807,999 (A\$138,566,166) (page 4 of the Administrators’ Report to Creditors); and
- c. Aus Streaming made investments by taking shares in foreign unlisted energy and resource companies, AGB Resource Capital Ltd (**AGB Resource**), Frontier Mining Value Ltd (**Frontier**), Indus Infrastructure Partners Ltd (**Indus**), OTH Mineral Streaming Ltd (**OTH**), TOR Mining Capital Limited (**TOR**) (collectively, the **Investment Companies**) with a book value of \$145,588,045.24 as listed below (**Investments**) (page 9 of the Administrators’ Report to Creditors):

<b>Investment</b>	<b>No. of Shares</b>	<b>Book Value</b>
AGB Resource	400,000	10,371,360
Frontier	7,500,000	14,322,000
Indus	27,328,571	30,498,685.24
OTH	2,000,000	7,936,000
TOR	47,500,000	82,460,000
<b>TOTAL</b>		<b>\$145,588,045.24</b>

- 44 The financial statements of ASI for the year ended 30 June 2015 (dated 11 November 2015), among other things:
- a. stated that on 18 June 2015, ASAF transferred equity investment with a combined value of US\$224,967,440 to Aus Streaming which it subsequently agreed to capitalise (page 2 of the financial statements); and
- b. included an independent auditor’s report by BBK Partnership, which states that “...in forming our opinion on the financial statements, which is not qualified, we have considered the adequacy of the disclosures made in note 3 on page 8 concerning the valuation of unquoted equity investments which are mainly in development stage companies. In view of the significance of these investments we consider this note should be drawn to your attention but our opinion is not qualified in this respect” (page 6 of the financial statements).
- 45 A copy of the financial statements for the year ended 30 June 2015 appears at pages 265 to 277 of **Exhibit PCSH-1**.
- 46 The financial statements of Aus Streaming for the year ended 30 September 2016 (dated 24 March 2017), stated, among other things:




- a. Aus Streaming was incorporated by its parent company, ASAF as a special purpose vehicle focused on critical metals to facilitate ASAF's entry into the streaming business (page 3 of the financial statements);
- b. on 6 September 2016, Aus Streaming entered into an agreement with its parent company, ASAF to borrow a senior secured loan of US\$500,000, plus interest of 6 percent per annum for the purpose of funding working capital. The loan matured on 30 September 2019 (page 3 of the financial statements);
- c. also on 6 September 2016, Aus Streaming's parent company, ASAF, "vended in" various equity investment in mining funds to Aus Streaming having a total combined value of US\$105,807,999 (A\$138,566,165) (page 3 of the financial statements); and
- d. included an independent auditor's report from Nexia Perth which stated that the financial report of Aus Streaming was in accordance with the Corporations Act and complied with international Financial Reporting Standards (pages 6 and 7 of the financial statements).

47 A copy of the financial statements for the year ended 30 September 2016 appears at pages 290 to 310 of **Exhibit PCSH-1**.

## **G MY UNDERSTANDING OF THE INVESTMENTS**

48 Paragraph 43 above sets out the findings of Messrs Dean-Willcocks and Gray in relation to the Investments, which is different to my understanding of the Investments. My understanding of the Investments is explained below.

49 My understanding of the way that the Aus Streaming business operated – based on my discussions with Messrs Every, Sutton and Turner referred to above – was that ASAF sourced funds from the public, the bulk of which was the Australian public, and used those funds to make the Investments. This apparently had occurred (or, in the case of Aus Streaming, was to occur) as follows:

- a. ASAF was to "invest" in a number of mining and metal streaming companies related to Messrs Every or Sutton, such as Aus Streaming and Infrastructure Commodities (Mauritius) Ltd (**ICML**) (of which Mr Every was a director. A copy of ICML's 2018 Annual Report (which lists Mr Every as a director at page 14) is at pages 339 to 403 of **Exhibit PCSH-1**);
- b. the subsidiaries of ASAF (i.e. Infrastructure Commodities Ltd (**ICL**) (the parent company of ICML), TOR and Aus Streaming) were then to acquire investments

in mining and metals, which were to be valued by Mr Sutton's firm, Avalon Pacific Capital Pty Ltd (**Avalon**), for audit and investor purposes;

- c. the subsidiaries of ASAF were to be spun off and listed in various jurisdictions. For example, ICML was listed in Mauritius. It was planned that Aus Streaming would be listed in Australia;
- d. the ASAF shareholder register was then to be duplicated such that those shareholders would hold shares directly in the newly listed companies. This is what happened in respect of ICML, but did not occur with Aus Streaming. The investments were either to be a cash or share swap, although as discussed further below, I am unable to confirm conclusively what in fact happened with respect to Aus Streaming. A copy of the shareholders list of ASAF (which was to be replicated in the ASAF subsidiaries referred to above) is at pages 404 to 430 of **Exhibit PCSH-1**; and
- e. the shareholders in the newly listed companies (including Aus Streaming) were then to engage brokers to sell their shares.

50 It remains unclear to me whether ASAF funds were in fact invested directly into the "Investments", or through Aus Streaming which then made the purported Investments on behalf of ASAF, or some other scenario unknown to me.

51 The reason I say it is unclear is because:

- a. ASI's audited financial statements for the year ended 30 June 2015, state that ASAF transferred equity investments to ASI to the value of US\$224,967,440; however
- b. Aus Streaming's audited financial statements for the year ended 30 September 2016 (referred to in paragraph 46 above) state that capital contributions to the value of \$138,534,413 were received from ASAF during the year.

## H **ATTEMPTS TO VERIFY INVESTMENTS AND MY RESIGNATION FROM THE AUS STREAMING BUSINESS**

52 When I was first employed by ASI, the ASAF Directors (referred to in paragraph 32 above) represented to me that the Investments (as defined in paragraph 43c above) were to be liquidated and/or sold to capitalise Aus Streaming, or as a last resort, used as collateral to secure a loan to enable Aus Streaming to meet its ongoing financial commitments, including in relation to the metal streaming agreements referred to in the following paragraph.

53 In undertaking my role at ASI / Aus Streaming, and in acting in reliance on the abovementioned representations, I negotiated metal streaming agreements with three mining companies:

- a. International Tungsten Services Co. Ltd, which operates a tungsten mine in Ok Bank, South Korea;
- b. Hain Resources Ltd, which operates a large molybdenum mine in South Korea owned by the South Korean government (KORES); and
- c. Cleveland Mining Company Ltd, which operates a gold mine in Queensland, (collectively referred to as the **Metal Streaming Contracts**),

under the on-going assurance by the ASAF Directors that the Investments would be sold or at a minimum used as collateral to secure new loans to enable Aus Streaming to meet its ongoing commitments. These Metal Streaming Contracts, although executed, did not become unconditionally binding on Aus Streaming because I was not prepared to cause Aus Streaming to enter into any binding contracts without being confident that Aus Streaming could meet its financial commitments under the contracts.

54 It became apparent to me during the process of negotiating the Metal Streaming Contracts that I could not verify the existence and value of the Investments and the assets underlying them. My inability to verify the existence and value of the Investments made it very difficult to secure additional investments for Aus Streaming because potential investors pulled out of deals.

55 I made numerous attempts during the course of my employment with ASI / Aus Streaming to verify the existence and value of the Investments. In particular:

- a. I reviewed the audited financial statements provided to me, in respect of the Aus Streaming business, shortly after my employment in April 2016. Because I was not a director of Aus Streaming, I was not permitted access to the financial records of the Aus Streaming business provided to its Board;
- b. I sent various emails to Aus Streaming's external auditors, Nexia Perth, to confirm that Aus Streaming's 2016 financial statements were a true and fair reflection of the state of the company. A copy of some examples of these emails appears at 431 to 446 of **Exhibit PSCH-1**;



- c. I also addressed a number of requests to the ASAF Directors, and more specifically, Mr Turner, who also acted as a shadow director of Aus Streaming at the time, about the validity, existence and value of the Investments;
- d. I could not find any documents at the offices of Aus Streaming or anywhere else which verified the Investments. Although I requested and kept on asking the ASAF Directors and subsequently Messrs Dean-Willcocks and Gray in their relevant capacity for documents verifying the existence and value of the Investments, I was not provided with and could not locate any bank statements, share certificates, or transfer forms, or financial statements relating to the Investments or the Investment Companies (referred to in paragraph 43 above), which provided any corroborating evidence of the Investments;
- e. on or about 13 June 2017, I arranged a call with the partner in charge of the Aus Streaming account at Nexia Perth, Mr T J Spooner, to obtain copies of their audit working papers. One of the other Aus Streaming directors at the time, Mr John Reeve, also participated in the call. I was not provided with the audit working papers but Nexia Perth provided me with a copy of its report to the board of Aus Streaming prepared following its audit of Aus Streaming's 2016 financial statements. A copy of this report is at pages 447 to 455 of **Exhibit PCSH-1**;
- f. the auditor's report to the board of Aus Streaming did not provide confirmation that any independent third party had substantiated the existence or value of the Investments. In fact, Mr Spooner confirmed to me during my discussion with him that Nexia Perth relied solely on management confirmations (i.e. statements from Messrs Every, Sutton and Turner, the latter of whom was a director of ASAF but directed Messrs Sutton and Every as to how Aus Streaming was managed) and "third party" reports prepared by Mr Sutton's company, Avalon, as to the value of the Investments and Aus Streaming's ownership of those Investments. No independent confirmations regarding the Investments were apparently requested or obtained by the external auditors. In any event, I have not seen anything to that effect despite my requests to the external auditors.

56 Despite my numerous attempts to verify the existence and value of the Investments - by my own investigations referred to in paragraph 55 above - I was not able to do so, nor was I given any confirmation that they existed and would be applied to the benefit of Aus Streaming and its creditors.





57 In the lead up to my resignation, I corresponded with the ASAF Directors frequently. By way of example on 7 August 2017, in an email to Mr Turner (director and Company Secretary of ASAF) and Mr Every, I stated, among other things:

*"...my main issue, as well as most brokers and investment advisors I presented to over the past 6 months, have been a problem with the opaqueness of the PE Assets. This is the root cause of no investment interest and therefore is blocking the listing [of Aus Streaming]. I have on numerous occasions over the past 6 months brought this to your attention and to date you have not been able to provide me with sufficient evidence of the existence and fair value of these assets. We have been unsuccessful to raise any funds to provide for adequate operating capital and to fund the deals John and I have contracted for Aus Streaming."*

...

*"On my initiative John and I have attempted, without success to obtain visibility of the A\$138m of PE assets in the balance sheet of Aus Streaming Ltd. This includes setting up meetings with the Nexia team to understand what audit procedures they conducted in the 31 December 2016 audit, I contacted directly the largest PE investment TOR Mining Capital Ltd and several other communications. I remain unclear as to the 'bricks and mortar' of the PE assets."*

...

*"As I mentioned before, I am now convinced the root cause of Aus Streaming not being able to raise the required capital to properly fund the on-going operating capital and the funds to execute the deals, is the lack of visibility of the PE assets. I have raised this many times with you without any success of satisfying myself if these investments are real and what the fair value is."*

A copy of the email from me to Messrs Turner and Every appears at page 456 to 459 of **Exhibit PCSH-1**.

58 After my resignation, between February 2018 and May 2018, I made numerous requests in writing for Messrs Dean-Willcocks and Gray and the ASAF Directors (Messrs Turner Every and Sutton), to substantiate the existence and value of the Investments. Despite these requests, no evidence was provided and my requests were basically ignored. Copies of this correspondence is at pages 460 to 470 of **Exhibit PCSH-1**.

59 Examples of the correspondence I sent include:

- a. On 27 February 2018 (at page 460 to 461 of **Exhibit PCSH-1**), I emailed Messrs Dean-Willcocks and Gray in their relevant capacity requesting, among other things, that the following matters be addressed in their report to creditors:
  - i. a list of all the claims/creditors, including the reason for the claims as well as any preferred creditors;
  - ii. a list of Aus Streaming's assets (including the Investments);
  - iii. the last valuation of the Investments;
  - iv. the last trades in the Investments, the buyer and also the details of the broker who did the transaction(s);
  - v. the latest audited financial statements of Aus Streaming; and
  - vi. any funds currently available in Aus Streaming.
  
- b. On 9 April 2018 (at page 460 of **Exhibit PCSH-1**), I emailed Messrs Dean-Willcocks and Gray in their relevant capacity requesting, among other things:
  - i. the latest audited financial statements of Aus Streaming;
  - ii. the latest valuations of the Investments (noting that the overall valuation increased from A\$138 million to A\$145 million);
  - iii. individual valuation reports from the firm that performed the valuations; and
  - iv. an update on the sale of assets.
  
- c. On 4 May 2018 (at page 467 to 468 of **Exhibit PCSH-1**), I emailed Messrs Dean-Willcocks and Gray in their relevant capacity stating, among other things:
  - i. *"The fact that a company claims to have over \$145m in assets cannot manage to secure funding from a financial institution to pay its creditors is of concern to us."*
  - ii. *"It is essential at this time for the directors to provide a schedule of the assets that have the greatest probability of being liquidated early (within the 9 month period). If there is no list of assets that will be liquidated it should be of concern to us and to yourself."*

d. On 10 May 2018 (at page 469 to 470 of **Exhibit PCSH-1**), I emailed Aus Streaming's directors, Messrs Sutton and Every stating, among other things:

- i. *"Stockbrokers and potential investors (including ourselves) have clearly relied on the unqualified financial statements approved by the directors of the company as a good investment and that the company is solvent as per the directors declaration ... We feel that to require visibility over the [Aus Streaming] investments is not unreasonable to give the creditors peace of mind around nature, value and timetable for sale, as part of the DOCA."*
- ii. *"The liquidators (and creditors through them) and possibly regulators in a liquidation scenario are, as you are aware, entitled to independently interrogate the value of any assets – and uncover any irregularities around the 'assets' if this is the case."*
- iii. *"Some of us are shareholders in both ASAF and ASL and we are mindful that there has been no communication to ASAF shareholders on the voluntary administration of ASL, to whom ASAF allegedly made a capital contribution over \$138 million in September 2016."*

Copies of the correspondence from me to the aforesaid persons appear at pages 460 to 470 of **Exhibit PCSH-1**.

## I REQUESTS FOR VERIFICATION OF INVESTMENTS

### I.1 Correspondence with Deed Administrators

60 In addition to the correspondence referred to above, I made the following requests for information and documents from Messrs Dean-Willcocks and Gray in their relevant capacity.

61 On 12 February 2020, I instructed Johnson Winter & Slattery (**JWS**) to write to Messrs Dean-Willcocks and Gray in their relevant capacity to request documents and information to verify the existence of the Investments (**Information Request**) so that I could consider my position in respect of the variation to the DOCA ahead of the meeting scheduled for 19 February 2020. The letter from JWS dated 12 February 2020 appears at pages 471 to 478 of **Exhibit PCSH-1**.

62 On 14 February 2020, Brown Wright Stein (**BWS**), lawyers acting for the Deed Administrators, responded, stating, among other things, that without funding they could not respond to the Information Requests in JWS' letter of 12 February 2020.

The letter from BWS dated 14 February 2020 appears at pages 479 to 481 of **Exhibit PCSH-1**.

63 On 18 February 2020, I instructed JWS to send a further letter to BWS requesting that the meeting of creditors on 19 February 2020 be adjourned so that Messrs Dean-Willcocks and Gray in their relevant capacity could attend to the Information Request. The letter from JWS dated 18 February 2020 appears at pages 482 to 483 of **Exhibit PCSH-1**.

64 Later the same day, JWS received a letter from BWS providing copies of reports to creditors and stated, among other things, that:

- a. they undertook investigations and were satisfied that they complied with their obligations;
- b. it was not for Messrs Dean-Willcocks and Gray in their relevant capacity to undertake any further investigations into the Investments; and
- c. in circumstances where Messrs Dean-Willcocks and Gray in their relevant capacity were unfunded, it was reasonable for them not to respond to the Information Request.

65 The letter from BWS dated 18 February 2020 appears at pages 484 to 686 of **Exhibit PCSH-1**.

66 On 20 February 2020, BWS sent a letter to JWS providing shareholder and value confirmation letters signed on behalf of the Investment Companies with accompanying documents which included financial projections (**Investment Company Projections**). The letter from BWS and its enclosures dated 20 February 2020 appears at pages 687 to 1012 of **Exhibit PCSH-1**.

67 In relation to the Investment Company Projections provided by Messrs Dean-Willcocks and Gray under cover of a letter from BWS to JWS dated 20 February 2020, I make the following observations:

- a. no independent audited financial statements were provided for any of the Investments;
- b. no independent valuations were provided for any of the Investments despite their stated material value and being the only assets of Aus Streaming;
- c. the value of the Investments were projected to increase substantially, which does not sit well with the fact that Aus Streaming could not pay a modest debt

(of \$82,250, referred to in paragraph 19 above), and could not pay any of the instalments payments under the DOCA over two years;

- d. I believe that the Investment Company Projections were prepared by one of David Sutton's companies, Avalon or Dayton Way Financial Pty Ltd, as the format and content are the same as previous valuations prepared for Aus Streaming which I sighted. All Aus Streaming investor "valuations", forecasts and papers were in exactly the same format and style;
- e. the Investment Company Projections were provided to Messrs Dean-Willcocks and Gray by Messrs Sutton and Every, who had difficulties managing the affairs of Aus Streaming, which allegedly resulted in its external administration;
- f. the Investment Company Projections were signed by an "authorised person" but there are no details regarding the individuals who signed the documents, or proof from the Investment Companies via director's delegation that the signatures are authorised;
- g. the table below summarises the Investment Company Projections. It demonstrates their spurious nature, and in particular that they are not proper valuations which can be relied upon to substantiate the net asset value of the Investments. The table suggests that by 2020, the value of the Investments would have grown to \$1,331b (excluding AGB), from the value of \$106m as stated in paragraph 46(c) above. ICP refers to the investment company projection of the relevant Investment Company.

<b>Movement in fair value of investment (US\$)</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Frontier</b>	-	\$62m	\$169m	\$536m	\$669m	\$609m
<b>ICP p7</b>						
<b>Indus</b>	-	\$63m	\$19m	\$288m	\$900m	\$900m
<b>ICP p7</b>						
<b>OTH</b>	-	\$nil	\$42m	\$220m	\$344m	\$440m
<b>ICP p7</b>						
<b>TOR</b>	\$40m	\$214m	\$225m	\$287m	\$324m	-
<b>ICP p7</b>						



Movement in fair value of investment (US\$)	2017	2018	2019	2020	2021	2022
Total	\$40m	\$339m	\$455m	\$1,331b	\$2,237b	\$1,949b

- h. it is not clear whether Messrs Dean-Willcocks and Gray obtained any confirmation that the individuals who signed the Investment Company Projections were independent and had no connection to ASAF. I am not aware of whether any conflicts of interests were requested to be disclosed by Messrs Dean-Willcocks and Gray and/or whether any were received;
- i. on or about 5 March 2020, Messrs Dean-Willcocks and Gray provided me with a letter they had sent to ASAF, which among other things, advises ASAF that the Aus Streaming DOCA was terminated and that Messrs Dean-Willcocks and Gray were appointed liquidators of Aus Streaming, and also requests certain books and records. No such requests had been made by the liquidators to my knowledge prior to JWS pressing them for information in their correspondence referred to above;
- j. on or about 11 March 2020, Messrs Dean-Willcocks and Gray provided me with a letter they had received from ASAF. In response to their aforementioned letter of 5 March 2020. This letter, among other things, asserts that ASAF holds security over the shares of Aus Streaming; and
- k. on or about 16 March 2020, Messrs Dean-Willcocks and Gray provided me with a letter they had sent to ASAF, which among other things, requests documents and records from the ASAF Directors.

Copies of the correspondence referred to above appears at pages 1013 to 1021 of **Exhibit PCSH-1**.

- 68 After receipt of the Investment Company Projections, I instructed JWS to write to BWS, the Aus Streaming Directors and Nexia Perth, the external auditors of Aus Streaming.
- 69 On 25 February 2020, JWS wrote to BWS, requesting that Messrs Dean-Willcocks and Gray provide, among other things:

- a. documents relating to or substantiating the Investments, which were considered by them in order to conclude that the DOCA would be in the best interests of creditors and recommend it to the creditors in their report dated 26 April 2018;
- b. recent financial statements of Aus Streaming which they considered since recommending the DOCA that would support their view that Aus Streaming is likely to comply with the terms of the DOCA (and not trigger the termination provisions in clause 15.1 of the DOCA), including audited financial statements for the financial years 30 June 2018, 30 June 2019 and reviewed financial statements for the half year ended 31 December 2019; and
- c. audited financial statements of the Investment Companies for the financial years ended 30 June 2018, 30 June 2019 and reviewed financial statements for the half year ended 31 December 2019.

70 The letter from JWS to BWS dated 25 February 2020 appears at pages 1022 to 1023 of **Exhibit PCSH-1**.

71 On 27 February 2020, JWS received a letter from BWS. The letter from BWS to JWS appears at pages 1024 to 1067 of **Exhibit PCSH-1**.

72 In response to my request for documents by JWS' letter of 25 February 2020 that the Deed Administrators relied upon in substantiating the Investments in order to recommend the DOCA to creditors, it was stated that the Deed Administrators relied on:

- a. documents previously provided under cover of BWS' letter dated 20 February 2020, namely the Investment Company Projections, as well as:
  - i. minutes of a meeting of the board of directors of Aus Streaming held on 6 September 2016. At this time, Aus Streaming's directors were the Directors and Mr Darrel Causbrook;
  - ii. the audited financial report of Aus Streaming for the year ended 30 September 2016. Nexia Perth relied upon the say so of Aus Streaming's then directors (i.e. Messrs Every, Sutton and Causbrook) as a means to verify the existence of the Investments, without any independent, third party confirmation;
  - iii. a letter from ASAF to Aus Streaming dated 17 March 2017 stating that ASAF vended the Investments to Aus Streaming, by detailing the



number of shares and the value of the shares in each of the Investment Companies;

- iv. share certificates for OTH dated 7 September 2016, AGB Resource dated 9 September 2016, and TOR dated 13 September 2016. Upon closer inspection, there are no signatures or official seals on the share certificates and they appear to be presented in the same format. In addition, no share certificates were provided for Frontier and Indus; and
- v. a report as to affairs from Mr Sutton dated 14 February 2018 and report as to affairs from Mr Every dated 28 February 2018, who are the current directors of Aus Streaming;

b. Messrs Dean-Willcocks and Gray reviewed the websites of the Investment Companies. I refer to paragraph 83 below relating to my Website Searches of these companies; and

c. Messrs Dean-Willcocks and Gray relied on the reasons as stated in the report to creditors dated 26 April 2018 regarding the DOCA.

73 In response to my request for audited financial statements of Aus Streaming by JWS' letter of 25 February 2020 as stated in paragraph 69(b) above, Messrs Dean-Willcocks and Gray responded as follows:

- a. they treated the request for "recent" statements as being those lodged within the last 12 months, rather than acknowledging the request as including statements for the financial years ended 30 June 2018, 30 June 2019 and the half year 31 December 2019, and stated they were not in possession of any "recent" statements;
- b. Aus Streaming does not trade;
- c. clause 15.1 of the DOCA does not provide Messrs Dean-Willcocks and Gray with an automatic right to terminate in the event of default, as a meeting of creditors has to be convened. I do not dispute the mechanism in the DOCA for termination, but I questioned what view Messrs Dean-Willcocks and Gray had formed and why they formed the view that Aus Streaming could comply with the terms of the DOCA.

74 In response to my request for audited financial statements of the Investment Companies by JWS' letter of 25 February 2020 as stated in 69(c) above, Messrs Dean-Willcocks and Gray responded as follows:




- a. they were not in possession of the requested financial statements; and
- b. they reviewed a confidential draft prospectus of TOR which includes financial statements for 31 December 2018, which they declined to provide to maintain confidentiality obligations, but noted that I had a copy. (I was provided with an early draft that was poor and not ready for lodging to any stock exchange, and that he was not provided with any further recent information.)

## I.2 Correspondence with Directors of Aus Streaming

75 On 25 February 2020, JWS also wrote to the Aus Streaming Directors, requesting, among other things:

- a. audited financial statements of Aus Streaming for the financial years ended 30 June 2017, 30 June 2018, and 30 June 2019, and the reviewed financial statements of Aus Streaming for the half year ended 31 December 2019;
- b. any other documents which elaborate on the value of the Investment Companies, for example, audited financial statements of the Investment Companies from the period that the investments were made by Aus Streaming;
- c. the name and contact details of:
  - i. the lawyers acting for TOR in relation to its listing;
  - ii. the chartered accountant's engaged by TOR in relation to its listing;
  - iii. any sponsoring broker assisting with the listing of TOR;
- d. a copy of the prospectus of TOR;
- e. any other relevant information in their possession detailing the pre-eminent listing of TOR.

76 The letter from JWS to the Aus Streaming Directors dated 25 February 2020 appears at pages 1068 to 1069 of **Exhibit PCSH-1**.

77 On 27 February 2020, JWS received a response from Mr Sutton, with an email signature which described him as Executive Chairman of APC Securities Pty Ltd, which is one of the major creditors and shareholders in Aus Streaming, confirming receipt of JWS' letter and stating, among other things, that he had "*...passed it on to representatives of the company who reside overseas. They have indicated that a response will be provided to you by close of business UK time on Friday 29<sup>th</sup> February*". No response has been provided as at the date of this affidavit. The email

from Mr Sutton dated 27 February 2020 appears at page 1070 to 1071 of **Exhibit PCSH-1**.

### **I.3 Correspondence with auditors of Aus Streaming, Nexia Perth**

78 On 25 February 2020, JWS wrote to Nexia Perth, requesting, among other things:

- a. audited financial statements of Aus Streaming for the financial years ended 30 June 2017, 30 June 2018, and 30 June 2019 and the reviewed financial statements of Aus Streaming for the half year ended 31 December 2019; and
- b. any other documents which elaborate on the value of the Investment Companies, for example, audited financial statements of the Investment Companies from the period that the Investments were made by Aus Streaming, or any other documents Nexia Perth obtained in the process of its audit of Aus Streaming to verify the value or existence of the Investments made by Aus Streaming.

79 On 25 February 2020, Mr Theuns Klopper of Nexia Perth responded by email sent at 6:21pm (AEDT) stating, among other things, that:

- a. he could not be of much assistance in providing audited financial reports for 30 June 2017, 30 June 2018, 30 June 2019, and 31 December 2019;
- b. the last audit Nexia Perth did for Aus Streaming was for the year ended 30 September 2016; and
- c. he had no record of any further work done for them after 30 September 2016.

80 On 25 February 2020 at 6:28pm (AEDT), Mr Paul Buitendag of JWS sent an email to Mr Klopper, among other things:

- a. indicating that the company search of Aus Streaming stated Nexia Perth to be the auditors from 13 December 2016 with no cease date; and
- b. requesting whether Nexia Perth undertook any steps to hand over the audit of Aus Streaming to another audit firm.

81 On 25 February 2020 at 6:40pm (AEDT), Mr Klopper responded by email stating, among other things, that:

- a. the audit partner, Mr TJ Spooner passed away on 2 December 2019;



- b. he could not locate any further correspondence relating to Aus Streaming after the September 2016 audit; and
- c. they were likely not to have been contacted for the 2017 audit before Aus Streaming went into administration and the ASIC records had not been updated.

82 The correspondence with JWS and Nexia Perth dated 25 February 2020 appears at pages 1072 to 1080 of **Exhibit PCSH-1**.

## J SEARCHES

### J.1 Website Searches

83 I caused JWS to undertake internet searches of the Investment Companies (**Website Searches**). Although websites exist for all of them except for Indus, I note the following:

- a. there is no information online about the Investment Companies' current projects;
- b. no financial statements of any form are available online, which detail the performance of the Investment Companies. The only document available on a general internet search, but not on TOR's website, is an announcement of TOR's half year results for 30 June 2017;
- c. TOR's site provides a link to download a presentation dated 2018 entitled "*The Time is Right to Invest in the Mining Sector*", which provides general information about investing in the sector, statistics about international growth in the area, and TOR's projected performance (not current or past performance);
- d. there is a substantial amount of general information including when they were established and for what purpose. ABG, Frontier and TOR state they are private equity investment companies. OTH states that it provides streaming and royalty finance; and
- e. AGB Resources' website states that: "*This website is not intended to reach, or to be accessed by, the general public and hence is password protected. This website is available only to AGB Resources Capital existing clients and qualified individuals. If you wish to access this website, you need to confirm you are not a US person under the U.S Securities Act of 1933. We do not solicit investment from, to or within the United States of America.*"




84 Copies of pages from the websites of the Investments Companies (excluding Indus, which does not exist), and the search result for Indus, appear at pages 1081 to 1102 of **Exhibit PCSH-1**

85 I also note that according to the:

a. Investment Company Projections:

- i. AGB Resources is located in Singapore;
- ii. Frontier is located in Singapore;
- iii. Indus is located in Canada;
- iv. OTH is located in Canada; and
- v. TOR is located in located in Ireland;

which are different to the Website Searches which state that:

- vi. AGB Resources has contact details for the company in the British Virgin Islands;
- vii. Frontier has contact details for the company in Singapore;
- viii. Indus has no website;
- ix. OTH has contact details for the company in Ireland; and
- x. TOR provides contact details for the company in Gibraltar.

## J.2 Company Searches

86 I also caused JWS to request a company search of ASAF. The search provides very little information. It states that:

- a. ASAF is registered in British Columbia, Canada;
- b. its directors are:
  - i. Mr Every (also one of the Aus Streaming Directors);
  - ii. Christopher Tawney;
  - iii. Tes Management Limited,

Mr Tawney, and Tes Management Limited are also listed as directors of OTH.

- c. *"The Subject [ASAF] is reportedly an investment holding company with a portfolio of mining assets. Reportedly, these assets were to be distributed to ASAF shareholders as they achieved liquidity until 31<sup>st</sup> December 2018. However, we were unable to confirm this information, as we were unable to contact the Subject";*
- d. its shareholder register and its financial statements were not able to be located;
- e. does not list any auditors;
- f. does not list a local phone number or facsimile number;
- g. a Google search of the address listed in the search for ASAF is 150-10451 Shellbridge Way, Richmond, B.C, Canada, produces a result for company "Raydwell", which is a consultancy that provides advice and services to companies and individuals who seek to do business in China;

87 The company search of ASAF appears at pages 1103 to 1106 of **Exhibit PCSH-1**.

88 I also caused JWS to request a company search of TOR, which appears at pages 1107 to 1109 of **Exhibit PCSH-1**. The search provides very little information. It states that:

- a. the status of TOR as being "struck off" with status date of 16 September 2018;
- b. the names of the directors are not available;
- c. is has 500,000,000 shares;
- d. its shareholder structure is not available;
- e. its address is suite 9919, 27 Pembroke Street Upper Dublin 2. A Google search of this address directs you to the contact page for OTH and is listed as OTH's contact address.

89 I also caused JWS to request a company search of OTH, which appears at 1110 to 1112 of **Exhibit PCSH-1**. The search provides very little information. It states that:

- a. its address is 150-10451 Shellbridge Way Richmond, British Columbia V6X 2W8 Canada, which is the same address as ASAF;
- b. its shareholder structure is not available;
- c. its directors are:




- i. Basil Roland Parker;
- ii. Christopher Tawney;
- iii. Tes Management Limited;

Mr Tawney, and Tes Management Limited are also listed as directors of ASAF.

90 I also caused JWS to request a company search of Indus, which appears at 1113 to 1115 of **Exhibit PCSH-1**. The search provides very little information. It states that:

- a. regarding the address "Al Maiden Tower 2, 202 Al Maktoum Street Dubai, British Columbia", it could not be verified or confirmed as the company could not be contacted;
- b. a further address is provided, namely Unit 150-10451 Shellbridge Way Richmond, British Columbia V6X 2W8 Canada, again being the same address listed in the searches of ASAF and OTH;
- c. its director is Sean Dushyant Manchanda;
- d. its shareholder structure could not be determined; and
- e. its financial statements are not available.

## **K CONCERNS**

91 Based on the matters deposed to above in relation to the Investments, I have significant concerns that serious matters have not been properly investigated by Messrs Dean-Willcocks and Gray. My concerns are set out in paragraphs 92 to 97 and 106 to 108 below.

### **K1 Defendants' failure to investigate the Investments**

92 I have concerns which relate to the investigations by Messrs Dean-Willcocks and Gray in relation to the Investments. For example:

- a. whether the Investments actually exist. To date, I have not seen any documents to substantiate the Investments and that they have not been independently verified (as deposed to above), and have until very recently been informed that the Defendants have no funds to investigate these matters and therefore do not intend to do so;
- b. whether misconduct has occurred in the management of Aus Streaming by its directors, Messrs Sutton and Every and its shadow director, Mr Turner;

- c. whether the conduct of Messrs Dean-Willcocks and Gray in their relevant capacity during the administration or deed administration of Aus Streaming have adversely impacted the value of Aus Streaming's assets (i.e. the Investments) by failing to investigate and realise the Investments for the benefit of Aus Streaming's creditors in the two years since they have been appointed. In my respectful view, it should have been obvious to Messrs Dean-Willcocks and Gray in their relevant capacity, given the repeated failure of Aus Streaming to pay any of the instalments payable to creditors under the DOCA, that there is significant doubt over the veracity of the Investments that required investigating before recommending that creditors approve the DOCA and repeated variations of it over two years;
- d. I question why Messrs Dean-Willcocks and Gray in their relevant capacity were not able to provide evidence such as bank statements, share transfers, or other such documents to verify the transfer of funds and shares from ASAF to Aus Streaming and the payment to each investment company on Aus Streaming's behalf. No primary source documents to this effect have been provided, and I consider these documents should have reasonably been in the possession of Messrs Dean-Willcocks and Gray in their relevant capacity, and easy to provide;
- e. I question how ASAF, as a company with allegedly hundreds of millions of dollars under investment:
- i. has another business (Raywell) trading from its registered address, which is also the address of OTH and Indus;
  - ii. provides no phone number or facsimile number in its company search;
  - iii. does not have its shareholder structure, nor its financial statements readily available via its company search;
- f. I question how Messrs Dean-Willcocks and Gray in their relevant capacity did not query:
- i. whether TOR's status as being "struck off" in its company search, would have any implications on its potential listing and what the effect of that is on the Investment of Aus Streaming in that company;
  - ii. why TOR, a company which has contact details on the internet in Gibraltar, provides in its company search, an address in Ireland, which is the same as the contact address on OTH's website;



- iii. why according to their company searches, ASAF, OTH and Indus, share the same address, which also happens to be the address of another business, Raywell;
- iv. why OTH has a different address listed on its website as compared to the address on its company search;
- v. why such little information is available in the company searches of ASAF, TOR, OTH and Indus.

93 I question the independence and objectivity of Messrs Dean-Willcocks and Gray as liquidators, having regard to their conduct as Administrators/Deed Administrators, and in particular, whether they intend or have the resolve to investigate and clarify the existence and value of the Investments given they are unfunded and do not have the organisational resources to deal with the international nature of the purported Investments and assets or experience in the liquefying of metal streaming assets, and they have not done so over a period of more than two years.

**K2 Defendants' conduct as Administrators and Deed Administrators of Aus Streaming**

94 I have concerns which relate to the conduct of Messrs Dean-Willcocks and Gray in their relevant capacity as Administrators/Deed Administrators of Aus Streaming. For example, if there has been mismanagement of Aus Streaming, how far that mismanagement stretches and whether investigations need to be made into ASAF and its interests and investments in other companies, including the Investments, and the implications it may have not only for the creditors and shareholders of Aus Streaming but the investors in ASAF who were to have become shareholders in Aus Streaming as set out above.

95 In support of the above, I have had numerous conversations (in addition to the aforementioned written correspondence) with Messrs Dean-Willcocks and Gray in their relevant capacity, since my resignation in August 2017, warning them of my serious concerns regarding the alleged Investments, my inability to verify the existence of the Investments and that the financial statements of ASI and Aus Streaming did not reconcile with each other. Despite those warnings, Messrs Dean-Willcocks and Gray in their relevant capacity brushed aside my concerns, and have never adequately responded to me.

96 Despite those numerous warnings referred to above, Messrs Dean-Willcocks and Gray in their relevant capacity, in their Report to Creditors dated 26 April 2018

(referred to in paragraph 6b), still recommended to creditors that the proposed return to creditors under a DOCA would have exceeded the potential return to creditors in a liquidation scenario (see page 20 of the Report to Creditors).

97 The DOCA proposal, as set out in the Report to Creditors dated 26 April 2018 stated that the DOCA was to be funded by the sale of Aus Streaming's investments, and Mr Andrew Turner, on behalf of ASAF advised the following (see page 15):

- a. the "how" - ASAF had a global network and access to, for example, investor groups and placement agents. ASAF would approach its network to sell the selected shares via private Share Purchase Agreements once the plan was approved;
- b. the "process" – once the plan was approved, ASAF, would conduct sales diligence and research on the underlying portfolio companies... and select the most attractive assets to sell out first. This would possibly involve having research reports commissioned to assist in the sales process. ASAF would then put together an investment term sheet and sale materials, executive summaries, marketing presentations etc. Once Critical Metals [ASAF] had an investment marketing package reflecting the salient sales points and opportunity (**Marketing Package**), it would contact its global investor network and seek to have sales completed in as timely a manner as possible;
- c. the "timing" – ASAF believed from their prior experience that to put the information together and commence marketing, would take approximately 90 days to prepare the sale materials, and would be ready to commence selling from 1 July [2018]. To quote: "In an ideal world the sales process will take no more than 3 months, however, there are various factors which need to be taken into account, including overall market conditions, the illiquidity of the shares, and the narrow market place that exists in placing the shares for these types of assets, as such the sales could take up to a maximum of 18 months (the end of August 2019), however every effort will be made to complete the sales process way before this. In addition, the shares are likely to be sold in tranches, as such when funds are made available from the sales, they will be paid across on closing of the sale of that tranche of shares to repay creditors."
- d. ASAF was to provide Messrs Dean-Willcocks and Gray in their relevant capacity with the Investment Marketing Package to be provided to prospective purchasers of the Aus Streaming's investments by no later than the date which was two months after the execution of the DOCA, after which ASAF would



provide Messrs Dean-Willcocks and Gray in their relevant capacity with an update on the sale of the Aus Streaming's investments every six (6) weeks until the Deed Fund has been paid in full; and

- e. the sell down of Aus Streaming's investments could take up to a maximum of 18 month (collectively, referred to as the **Sales Process**).

98 At the meeting of creditors which occurred on 15 May 2018, the creditors of Aus Streaming resolved to execute the proposed DOCA. For reasons which presently remain unexplained, Messrs Dean-Willcocks and Gray in their relevant capacity did not enact or comply with the Sales Process, and instead repeatedly varied the DOCA as set out in paragraphs 101, 102 and 103 below.

### **K3 DOCA Structure and Variations to the DOCA**

99 The relevant clauses of the DOCA are below:

- a. clause 5.1 provides for a Deed Fund of \$1,201,481.86 (which was increased pursuant to the variation below to \$1,216,481.86);
- b. clause 5.2 provides that Aus Streaming must pay the Deed Fund from the Company's investments but does not define them;
- c. clause 1.1 defines:
  - i. Deferred Parties as set out below and Schedule 1 provides the estimated value of their claims totalling \$1,015,951:
    - (a) Mr Every (director) = \$333,333;
    - (b) Mr Sutton (director) = \$25,000;
    - (c) APC Securities Pty Ltd = \$1,000;
    - (d) Ecbatan Limited = \$8,268;
    - (e) GGP Management Services Ltd = \$525,000;
    - (f) Hamirah Holdings Ltd = \$117,500;
    - (g) HFI Holdings Ltd = \$5,850;
  - ii. the Secured Creditor as ASAF;
  - iii. a Creditor as any person who was owed a debt by the Fixed Date (of 3 Feb 18);

- iv. Participating Creditors as Creditors who prove their claims;
- d. clause 5.4 provides that the Deed Fund was to be paid by minimum payment of \$100,000 within 6 months of the date of the DOCA, and the balance of the Deed Fund, in full, to the Administrators within 12 months of the date of the DOCA;
- e. clause 6.1 provides that Deed Fund to be distributed as follows:
  - i. first, Administrator's disbursements;
  - ii. second, Administrator's Costs;
  - iii. third, Priority Creditors;
  - iv. fourth, Participating Creditors; and
  - v. finally, Interest on claims by Participating Creditors.
- f. clause 8.1 provides that the DOCA discharges debts of Participating Creditors and by clause 9.1 payment to Participating Creditors extinguishes claims of the Creditors;
- g. clause 13.1 (c) provides that unsecured claims of the Deferred Parties will not be extinguished by the DOCA;
- h. clause 16 provides that the stewardship and control of Aus Streaming returns to the directors of the company upon execution of the DOCA (as at 5 June 2018).

100 Two Deeds of Deferral appear as schedules 1 and 2 to the DOCA:

- a. the First Deed of Deferral, in respect of unsecured creditors, being the Deferred Parties stated above, provides that:
  - i. Deferment Period is the date of the deed to the latter of the termination of the Deed or DOCA effectuation date (cl. 1(a));
  - ii. Deferred Parties must not make any claim during the Deferment Period (cl.2(a)(ii));
- b. the Second Deed of Deferral, concerning the Secured Creditor, ASAF, provides that:
  - i. the Secured Party covenants:

(a) not to enforce its security interest over the assets of Aus Streaming during the Deferment Period (cl. 3(2)(a));

(b) to consent to the sale of the investments [not defined] and all things necessary to allow Aus Streaming to sell investments free from encumbrances (cl 3(2)(b));

ii. Secured Party acknowledges that they will not to claim or enforce any security against the Company during the Deferment Period (cl. 4(1)(b)); and

iii. Secured Party acknowledges that it unless the DOCA is terminated, it will receive a distribution in the order of priority payments set out in the DOCA (cl. 4(2)).

101 On 16 May 2019, a variation to the DOCA was signed varying, among other things:

a. clause 5.4 to provide that Aus Streaming pay the Deed Fund as follows:

i. \$100,000 on 15 June 2019;

ii. \$100,000 on 15 August 2019;

iii. \$100,000 on 15 October 2019;

iv. the balance to be paid by 15 December 2019; and

b. clause 5.1 to increase the Deed Fund to \$1,216,481.86.

102 On 17 June 2019, at a meeting of creditors, it was resolved, among other things, that clause 5.4 of the DOCA be further varied to provide that Aus Streaming pay the Deed Fund as follows:

a. \$250,000 to be paid by the earlier of seven (7) business days after the public listing of TOR or 31 December 2019;

b. 50% of the remaining Deed Fund to be paid 90 days from the date of the first payment; and

c. the remaining 50% of the Deed Fund to be paid 180 days from the date of the first payment.

103 On 3 February 2020, Messrs Dean-Willcocks and Gray in their relevant capacity issued a report to creditors on proposed variation, among other things, to clause 5.4 DOCA that the Deed Fund be paid as follows:



- a. \$250,000 to be paid by the earlier of seven (7) business days after the public listing of TOR or 31 March 2019;
- b. 50% of the remaining Deed Fund to be paid 90 days from the date of the first payment; and
- c. the remaining 50% of the Deed Fund to be paid 180 days from the date of the first payment.

104 As set out from the preceding variations to the DOCA, Messrs Dean-Willcocks and Gray in their relevant capacity did not comply with their duties to implement and/or ensure compliance with the Sales Process, but instead simply recommended to creditors that the DOCA should be varied over and over again.

105 Each time that Messrs Dean-Willcocks and Gray in their relevant capacity recommended to creditors that the DOCA be varied, they were obliged to independently assess whether such a variation was in the best interests of creditors. I cannot understand how Messrs Dean-Willcocks and Gray in their relevant capacity recommended to creditors to continually vary the DOCA in instances where it was apparent that the contributories to the Deed Fund could not or were otherwise unwilling to comply with the terms of the DOCA, including any implementation of the Sales Process.

#### **K4 Concerns regarding the DOCA supported by the Deed Administrators**

106 I also question:

- a. how Messrs Dean-Willcocks and Gray in their relevant capacity were able to form and maintain the view that the DOCA was (and remained until 4 March 2020) in the best interests of Aus Streaming's creditors, and that Aus Streaming is able to comply with the terms of the DOCA in circumstances where the Investments are not verified, there was continuous delay in the listing of TOR, and no transparency regarding TOR's prospectus;
- b. why Messrs Dean-Willcocks and Gray in their relevant capacity failed to seek independent third-party confirmation of the existence of the Investments, rather than simply accepting the information and assurances provided to them by the Aus Streaming Directors;
- c. whether Messrs Dean-Willcocks and Gray in their relevant capacity failed to undertake proper due diligence to confirm the value and existence of the

Investments for lack of funds, and, if so, whether this is a justifiable reason for failing to carry out their duties;

- d. whether Messrs Dean-Willcocks and Gray in their relevant capacity had the requisite international experience and resources available to act as Administrators and Deed Administrators (and now as liquidators) where investments were allegedly made all over the world;
- e. why the failure of Aus Streaming to crystallise assets from the Investment Companies for two years has not raised doubt or suspicion as to Aus Streaming's ability to achieve liquidity for the purpose of the DOCA;
- f. why the websites of the Investment Companies did not raise suspicion as to the legitimacy or otherwise of their content;
- g. whether Messrs Dean-Willcocks and Gray in their relevant capacity considered that the failure of Aus Streaming to file any financial statements since 30 September 2016 raised any concerns;
- h. given that the value of the DOCA fund which was approximately \$1.2m, a small amount in comparison with the alleged Investments purported to be worth \$145m, why Messrs Dean-Willcocks and Gray in their relevant capacity did not make inquiries as to whether the DOCA fund could be raised by the sale of assets from one or more of the other Investment Companies in order to achieve liquidity rather than relying solely on the listing of TOR;
- i. whether Messrs Dean-Willcocks and Gray in their relevant capacity should have accepted the Investment Company Projections to be true and fair valuations of the net asset value of the Investments, to support their decision to recommend the DOCA as being in the best interests of creditors. If the Investment Company Projections were in fact true, then whether Messrs Dean-Willcocks and Gray questioned:
  - i. Aus Streaming's inability to pay creditor's debts, which in comparison to the projections were modest; and
  - ii. why the plans around the Marketing Package were unsuccessful to liquefy \$2m of assets to satisfy creditors;
- j. why Messrs Dean-Willcocks and Gray in their relevant capacity did not much earlier trigger termination clause 15.1 of the DOCA, which provides that:

*“in addition to any power of the Administrators at law, if the Company is unable to comply with any of the fundamental provisions of this Deed, including the payment of any and all monies due pursuant to this Deed and/or the Administrators form the view that the Company is unlikely to be able to comply with the terms of this Deed, the Administrators shall be entitled to convene a meeting of Creditors at which meeting the Creditors may resolve to:*

*(a) vary this Deed;*

*(b) terminate this Deed;*

*(c) terminate this Deed and wind up the Company appointing the Administrators as its liquidator;*

*(d) enforce the terms of this Deed; or*

*(e) approve any other proposal permitted by the Corporations Act.”*

**K5 Concerns Regarding Shareholding in Aus Streaming**

107 I am concerned about and doubt whether the creditors of Aus Streaming will be paid the debts owed to them; and I hold concerns regarding the purported value of the shareholdings in Aus Streaming. I am also concerned that the shareholders of ASAF, who invested funds in ASAF, will not share in the benefit of the Investments because the effect of the purported “vending” as described above, results in Aus Streaming paying back the loan account owed to ASAF only, and retaining the benefit of the Investments within Aus Streaming.

**K6 Potential Claims Against Defendants**

108 I am further concerned that given the matters deposed to above, there are a number of potential claims against Messrs Dean-Willcocks and Gray as outlined below:

- a. if the Investments do in fact exist, and have suffered a decline in value, there may be a claim against Messrs Dean-Willcocks and Gray in their relevant capacity based on their failure to enact the sales process obligations contained in the DOCA, which required them to, within 60 days of execution of the DOCA, take positive steps to enact the sales process, which did not occur;
- b. furthermore, there are positive obligations on Messrs Dean-Willcocks and Gray in their relevant capacity to provide creditors and/or creditor shareholders with information relating to the sales process. Despite request, this did not occur,

and I believe there may be an available claim against them for aiding and abetting Aus Streaming in misleading investors, if it is established that the Investments do not exist or are not of their alleged value;

- c. if the Investments do not exist or are not of the alleged value, there may be claims not only against Messrs Dean-Willcocks and Gray, but also against the ASAF Directors who allegedly confirmed the existence and value of the Investments, and against the external auditors of Aus Streaming and them based on, among other things, misleading conduct;
- d. they were appointed as administrators on 3 February 2018. If the Investments (or the underlying transactions relating to the Investments) occurred within the six month relation back period prior to the appointment date, there may be available claims for voidable transactions. Messrs Dean-Willcocks and Gray in their relevant capacity have advised that they are under no obligation to, and do not intend to, investigate these transactions in circumstances where they are unfunded, and may be investigating themselves for wrongdoing and/or breaches of the Corporations Act, particularly in circumstances where the three year limitation period is set to expire in under a year from the date of this application and any available claims may become statute barred; and
- e. at the meeting of creditors held on 4 March 2020 (discussed below), Messrs Dean-Willcocks and Gray, indicated that, after the liquidation of Aus Streaming, they would await a response from the ASAF Directors, which they would provide within 45 days before convening a meeting of the committee of inspection. The effect being that the ASAF Directors purport to raise the funds to pay creditors, and Messrs Dean-Willcocks and Gray are awaiting confirmation as to how that is to occur. This is a further concern given Messrs Dean-Willcocks and Gray reliance on ASAF Directors and their lack of scrutiny and independence; and
- f. because of these potential claims against Messrs Dean-Willcocks and Gray in their relevant capacity, I would like an independent or special purpose liquidator to investigate and prosecute, as part of their mandate, potential claims against them in addition to any claims against Aus Streaming or the ASAF and/or Aus Streaming Directors, and external auditors. I do not consider that Messrs Dean-Willcocks and Gray in their relevant capacity will independently perform their statutory duties, particularly in instances where they may be investigating claims against themselves.





**L MEETING OF CREDITORS ON 4 MARCH 2020**

109 Creditors were initially advised by Messrs Dean-Willcocks and Gray in their relevant capacity on 3 February 2020 that the meeting was being convened on 19 February 2020 to consider a further variation and extension of the DOCA. Due to inquiries by JWS, that meeting was adjourned to 4 March 2020.

110 On or around 3 March 2020, the purpose of the meeting was changed to vote instead on a resolution to wind up Aus Streaming and appoint Messrs Dean-Willcocks and Gray as its liquidators.

111 Immediately upon becoming aware of the change in scope and purpose of the meeting, on 4 March 2020, on my instructions, JWS wrote to BWS setting out my concerns in relation to the Investments and the lack of investigation undertaken by them in their relevant capacity over a period of about two years relating to the Investments. A copy of JWS' letter appears at pages 1116 to 1134 of **Exhibit PCSH-1**.

112 On 4 March 2020, Messrs Dean-Willcocks and Gray in their relevant capacity held a meeting of the creditors of Aus Streaming to consider and vote on resolutions relating to the continuation of the DOCA and their remuneration.

113 On my instructions, Mr Paul Buitendag of JWS attended by telephone the meeting of creditors on my behalf to vote against the resolution to appoint Messrs Dean-Willcocks and Gray as liquidators of Aus Streaming and the approval of their further remuneration. I also attended by telephone.

114 I am in favour of Aus Streaming being wound up so that proper investigations can be undertaken regarding the Investments, but I consider, for the reasons outlined above and in JWS' letter of 4 March 2020, that Messrs Dean-Willcocks and Gray are not suitable to undertake such investigations. They remain unfunded to conduct such investigations and have repeatedly said to me and to JWS (through their lawyers) that they are not obliged to undertake investigations in the circumstances

115 The resolution to wind up Aus Streaming and appoint Messrs Dean-Willcocks and Gray as its liquidators was passed based on votes cast by Messrs Sutton and Every (both directors of Aus Streaming) on their own behalves and on behalf of two related creditors of Aus Streaming:

- a. ASAF (Aus Streaming's holding company); and





- b. APC Securities Pty Ltd (**APC**). Mr Sutton is a director of APC, as disclosed at pages 8 and 10 of the Administrators' Report to Creditors dated 26 April 2018, which is at pages 7 to 70 of **Exhibit PCSH-1**).

116 Following the meeting of creditors, I instructed JWS to obtain details of the voting on the resolution to wind up Aus Streaming and to appoint Messrs Dean-Willcocks and Gray as its liquidators. Messrs Dean-Willcocks and Gray's staff provided a schedule setting out the results of the "poll" to JWS on 5 March 2020. A copy of the schedule is at pages 1135 to 1137 of **Exhibit PCSH-1**. In respect of these results I note that:

- a. resolution 1(b) – that the DOCA be terminated and Aus Streaming be wound up with Messrs Dean-Willcocks and Gray becoming its liquidators – was passed by a vote of 8 (in favour) to 4 (against). The 8 votes in favour comprised 70.54% of the admitted debt. The 4 votes against comprised 25.27% of the admitted debt. (One of the creditors at the meeting with 4.19% of the admitted debt abstained from voting on this resolution);

- b. the 8 creditors who voted in favour of resolution 1(b) are all either:

- i. directors of Aus Streaming (that is, Mr Every and Mr Sutton); or
- ii. entities connected to them (i.e. APC Securities Pty Limited, ASAF, Ecbatan Limited, GGP Management Services Limited, Hamirah Holdings Limited and HFI Holdings Limited), who are each "Deferred Creditors" (as defined in the DOCA). The schedule of voting on the resolution referred to above confirms that Mr Every, Mr Sutton or Mr Turner (director of ASAF) held proxies at the meeting of creditors to vote on behalf of each of these entities. A copy of company search for APC Securities Pty Limited is at pages 1138 to 1143 of **Exhibit PCSH-1** and a copy of the search for ASAF is at pages 1103 to 1106 of **Exhibit PCSH-1**.

117 On 11 March 2020, I instructed JWS to write to the solicitors acting for Messrs Dean-Willcocks and Gray in their relevant capacity notifying them of my intention to apply for orders for the liquidators' replacement and seeking their consent to the appointment of special purpose liquidators to investigate the Investments. A copy of JWS's letter appears at pages 1144 to 1145 of **Exhibit PCSH-1**.

**M CONSEQUENCES OF MY CONCERNS**

- 118 Due to the matters articulated above, I remain concerned whether Messrs Dean-Willcocks and Gray are or remain the appropriate people to make all necessary investigations in relation to assets available to creditors in the liquidation of Aus Streaming or to properly conduct the winding up in the interests of the company and its creditors. It may be the case that Messrs Dean-Willcocks and Gray in their relevant capacity have breached their duties to both Aus Streaming and its creditors by recommending the DOCA to creditors, and several variations of it, without at any stage until March 2020 having taking any action to verify the existence of the Investments.
- 119 I consider that an independent liquidator or special purpose liquidator can investigate the circumstances surrounding the Investments and investigate the source of the funds used to “invest”, which entities in fact received those funds, whether the shares in the “invested companies” were re-issued in the names of the investors (which was predominantly comprised by members of the Australian public), or whether the shares are held in the name of Aus Streaming.
- 120 From the information available to me, I believe there are hundreds of millions of dollars sourced from investors (including the Australian public), which is unaccounted for. I am concerned these investment monies sourced from the public never made their way into the intended investment vehicles. Furthermore, it should not have been difficult for the Aus Streaming Directors to provide confirmation of the Investments or provide adequate documentation evidencing the Investments. I am concerned that despite requesting these documents for over a two-year period, my questions regarding the Investments remain unanswered. I am concerned that despite multiple information requests from Messrs Dean-Willcocks and Gray in their relevant capacity, they have been unable to provide any adequate documentation evidencing the Investments. Given the scale of the Investments, these documents should be easy to obtain and provide to creditors, and I am bewildered and perplexed that despite numerous requests, I remain unable to verify the existence of the Investments.



121 Based on the matters deposed to above and in JWS' letter of 4 March 2020, I support the appointment of new, independent liquidators being appointed to Aus Streaming either in addition to, or in place of, the current liquidators to properly investigate the Investments and whether Aus Streaming has any valid claims in respect of the Investments that may benefit its creditors.

SWORN by **PETRUS CASPARDUS** )  
**STEPHANUS HELBERG** at )  
Melbourne in the State of Victoria on )  
30 March 2020



Before me:

Signature of Witness:



Name of Witness: Irene Solomonidis

Address of Witness: Level 34, 55 Collins Street, Melbourne, VIC 3000

An Australian legal practitioner and a person authorised under s 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.

**Irene Solomonidis**  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Uniform Law (Victoria)

An Australian legal practitioner and a person authorised under s 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.

