

IMPROPERGANDA LIMITED ALSO TRADING AS BORKOWSKI (IN LIQUIDATION)
COMPANY NUMBER: 2521915

**FIRST PROGRESS REPORT TO THE CREDITORS AND CONTRIBUTORIES PURSUANT TO RULE
4.49B OF THE INSOLVENCY RULES 1986
FOR THE YEAR ENDED 3 JULY 2013**

Court and number	High Court of Justice No 767 of 2011
Office Holders	Neil Francis Hickling and Paul Michael McConnell
Firm	Smith & Williamson LLP
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DX address	MDX 716307 Worcester 1
Reference	IM060/NFH/PMM/MB
Type of Appointment	Compulsory Liquidation
Date of Appointment	4 July 2012

1 AN OVERVIEW OF THE CASE

1.1 Appointment

1.1.1 Improperganda Limited also trading as Borkowski ("the Company") was the subject of a Winding up Order made on 16 March 2011 on a petition presented to court on 2 February 2011 by HM Revenue and Customs

1.1.2 Neil Francis Hickling and Paul Michael McConnell, Partners of Smith & Williamson LLP were appointed as Joint Liquidators on 4 July 2012.



1.2 Strategy

- 1.2.1 The Official Receiver's report to creditors dated 25 May 2011 disclosed that the company had no assets, but had liabilities of £979,534 39. However the Official Receiver's subsequent enquiries disclosed cash held in a bank account and that the shares held in a subsidiary company had been transferred for no consideration prior to the liquidation. Consequently the Secretary of State decided to appoint independent Liquidators.
- 1.2.2 Upon the Joint Liquidators appointment, the Official Receiver's handover report disclosed the following assets:-

	£
Cash at Bank	4,847.25
Antecedent Recovery of the company's shareholding in Beatwax Ltd	228,013.00
	<hr/>
	232,860.25

- 1.2.3 The Joint Liquidator's initial strategy upon appointment was to take control of the funds held in the company's bank account with Royal Bank of Scotland PLC and to investigate the company's investment in Beatwax Limited and the transaction between the company and Beatwax Limited in the period from December 2009 to the liquidation.
- 1.2.4 There is no creditors committee appointed.

2 EXPLANATION OF OFFICE-HOLDERS CHARGING AND DISBURSEMENT RECOVERY POLICIES

2.1 Time recording

- 2.1.1 The Worcester office of Smith & Williamson LLP ("SWL") is one of several offices throughout the country, mainly the South of England, which undertakes insolvency work. The firm's accounting and administrative functions are centrally based in the SWL central London office.
- 2.1.2 Time expended and disbursements expended (referred to as outlays) are recorded on the central computer system. Time is recorded in minimum units of 3 minutes.
- 2.1.3 Hourly charge out rates are calculated by reference to the SWL national scale of rates adjusted for the individual office within SWL. Hourly rates are adjusted annually in line with the company's year end at each 30 April.
- 2.1.4 Time incurred by support staff is directly charged at the applicable hourly rates.
- 2.1.5 The time recording system records the time incurred between the different categories of work recommended by SIP 9.

2.2 Disbursements

- 2.2.1 Category 1 disbursements do not require approval by creditors. The type of disbursements that may be charged as a Category 1 disbursement to a case generally comprise external supplies of incidental services specifically identifiable to the case, such as postage, case advertising, invoiced travel and external printing, room hire and document storage. Also chargeable will be any properly reimbursed expenses incurred by personnel in connection with the case. Please note that in some circumstances storage costs may be Category 2 disbursements.

- 2.2.2 Category 2 disbursements do require approval from creditors. These are costs incurred in connection with the appointment but may not be invoiced directly to the case. They may also include payments made to parties who are not strictly independent and may also include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis, such as internal room hire, document storage or business mileage. Category 2 disbursements will also include business mileage at HM Revenue & Customs' approved mileage rates at the relevant time.
- 2.2.3 All fees and disbursements invoices raised by SWL are subject to the addition of Value Added Tax currently at the standard rate of 20%

3 SUMMARY NARRATIVE DESCRIPTION OF WORK CARRIED OUT

3.1 Administration and Planning

- 3.1.1 Filing of appointment documentation.
- 3.1.2 Notification of the Joint Liquidator's appointment to the creditors and other interested parties.
- 3.1.3 Setting up the case on IPS case management system and setting up case files.
- 3.1.4 Reviewing documentation and other available information and determining the Initial strategy upon appointment.
- 3.1.5 Undertaking a 6 monthly progress review of the case due on 4 January 2013.
- 3.1.6 Applying for the Insurance bond in respect of the company's assets following appointment.
- 3.1.7 Undertaking quarterly reviews of the Insurance bond due on 4 October 2012, 4 January 2013 and 4 April 2013
- 3.1.8 Preparing a corporation tax return for the year ended 16 March 2012 to 15 March 2013 and submitting the return to H M Revenue & Customs. Making payment of the applicable corporation tax due on the return.
- 3.1.9 Taking delivery of the company's available accounting records and preparing an inventory of the records received. Returning the accounting records to the Official Receiver at their request in relation to possible disqualification proceedings.

3.2 Investigations

Information Gathering

- 3.2.1 The Joint liquidators have received copies of the questionnaires and narrative statements completed by the directors, and have reviewed the same.
- 3.2.2 The joint Liquidators and their staff have had extensive communications with the Official Receiver's office.
- 3.2.3 Enquiries have been undertaken with the company's former accountant and a request was made for the accountant's files. To date the company's accountant has provided some files to the Official Receiver which the Official Receiver has forwarded on to the joint liquidators. However the accountants' correspondence files and taxation files have not been received. The joint Liquidators will shortly be taking advice from Solicitors in relation to this matter.

- 3.2.4 In October 2012 the Joint Liquidators were requested to return the company's books and records to the Official Receiver in connection with potential proceedings pursuant to the Company Directors Disqualification Act 1986. As a result the joint liquidators and their staff have had to attend the Official Receiver's office in London to review the books and records.

Company Insolvency

- 3.2.5 The company's accounts for the year ended 30 November 2008 disclose that the company had available assets of £163,919.
- 3.2.6 The company's accounts for the year ended 30 November 2009 shows that the company made a loss after tax of £378,218 as a result of which, the company had a deficiency of £214,299 as at 30 November 2009.
- 3.2.7 No further accounts were prepared after 30 November 2009.
- 3.2.8 The company's accounts for the year ended 30 November 2008 disclose a liability of £172,248 to H M Revenue and Customs. The company's accounts for the following year ended 30 November 2009 disclose that the liability had increased by a further £218,295, making the total liability due to H M Revenue & Customs as at 30 November 2009 to be £390,543.
- 3.2.9 H M Revenue & Customs filed a petition for the winding up of the company on 2 February 2011.
- 3.2.10 The joint liquidators have received a claim from H M Revenue and Customs of £1,047,483.60, a breakdown of which is shown in paragraph 5.2 of this report. The majority of the tax liability relates to the 2009/2010 and 2010/2011 tax years.
- 3.2.11 It would appear from the accounting information and from information obtained from H M Revenue and Customs that the company was both balance sheet insolvent as its liabilities exceeded its assets, but the company was also insolvent as it was unable to pay its liabilities as and when they fell due.

Shareholding in Beatwax Limited

- 3.2.12 The annual return for Beatwax Limited for the year ended 6 February 2010 showed that the company owned the entire share capital of Beatwax Limited, and therefore Beatwax Limited was a wholly owned subsidiary of the company. The company transferred its shares in Beatwax Limited to an associated company on 30 November 2010 which is detailed in paragraph 3.2.2 below. Subsequently Beatwax Limited was an associated company pursuant to the definition of associates in the Insolvency Act 1986, as it had common directors.
- 3.2.13 The joint liquidators have been provided with a copy of a share transfer agreement dated 30 November 2010 between the company and Beige London Limited (formerly Borkowski PR Limited) disclosing that the shares in Beatwax Limited were transferred to Beige London Limited on 30 November 2010 for the sum of £7.00. Beige London Limited is an associated company pursuant to the definition of associates in the Insolvency Act 1986, as there are common directors.
- 3.2.14 The accounts for Beatwax Limited for the year ended 30 November 2009 which were approved by the board of directors on 20 November 2010, showed that funds available for its shareholder amounted to £261,832.

3.2.15 The Joint Liquidators have also obtained the files of the Solicitors who acted for the company prior to the date of liquidation, and who provided specific advice in relation to the transfer of the shares that the company held in Beatwax Limited. The files show that the Solicitors advised the company directors of their fiduciary duties and also advised that if the company was wound up then a liquidator could seek to set aside the transaction if it was considered to be a transaction at an undervalue.

3.2.16 The joint liquidators are not aware of any valuation of the shares prior to the date of the sale transfer agreement. The joint Liquidators will be seeking advice from Solicitors in relation to the sale of Beatwax Limited to establish if there has been a transaction at an undervalue.

Loan Account with Beatwax Limited

3.2.17 The accounts for Beatwax Limited for the year ended 30 November 2009 which were approved by the board of directors on 20 November 2010 showed that the company owed Beatwax Limited the sum of £380,402. Conversely the company's accounts for the year ended 30 November 2009 showed that under the heading of "other creditors", liabilities totalling £698,284 included the sum of £380,402 which was due to Beatwax Limited.

3.2.18 The accounts for Beatwax Limited for the year ending 30 November 2010 disclose that there were no monies owing by the company. The balance sheet as at 30 November 2010 discloses that debtors had reduced by £410,797 and that cash at bank had increased by £339,198.

3.2.19 A detailed review of the company's bank statements has been conducted and transactions between the company and Beatwax Limited have been identified. The review of the transactions showed that during the period 1 December 2009 to 7 February 2011, the company made payments to Beatwax Limited totalling £458,246 which effectively repaid the loan due to Beatwax Limited of £380,402 as at 30 November 2009 and the advance of additional funds.

3.2.20 It appears that the payments made by the company to Beatwax Limited totalling £458,246 during the period 1 December 2009 to the date of liquidation were paid at a time when the company was insolvent. However for the period 30 November 2009 to 30 November 2010 Beatwax Limited was a wholly owned subsidiary, although it ceased to be such following the sale to Beige London Limited.

3.2.21 Our recent enquiries have shown that Beatwax Limited was the subject of a Winding up Order made on 15 July 2013. The joint liquidators are in the process of liaising with the Official Receiver to obtain information relating to the assets and liabilities of Beatwax Limited. However at this stage we have not received detailed information in that respect.

3.2.22 The joint Liquidators intend to take legal advice in relation to the payments made to Beatwax Limited, which on the face of it might constitute preference payments pursuant to section 239 of the Insolvency Act 1986.

Sale of the company's business and assets prior to liquidation

3.2.23 The Company's client base, goodwill and office equipment were sold to an associated company Beige London Limited prior to the company being wound up. The agreed price for the client base and goodwill was £150,000 and the agreed price for the sale of the office equipment was £10,000 plus VAT.

3.2.24 The Company's accountant has provided documentation relating to the sale of the assets by the company to Beige London Limited including a copy of a valuation prepared by a firm of agents and valuers.

- 3.2.25 The directors have advised that only the sum of £60,000 was paid to the company by Beige London Limited for the client base and goodwill, and that the difference of £90,000 is the cost that Beige London incurred to complete the contracts that the company could not fulfil.
- 3.2.26 The Joint Liquidators have reviewed the company's bank statements and have identified the payments made by Beige London Limited into the company's bank account during January and February 2011.
- 3.2.27 Enquiries are on-going regarding whether or not full consideration was paid for the company's assets by Beige London Limited. However, information held on Companies House shows that Beige London Limited were due to file their annual accounts by August 2012, and these accounts are overdue.

Employee Benefits Scheme

- 3.2.28 The joint liquidators' review of the company's bank statements shows various payments made under the Employee Benefits scheme. The joint liquidators' enquiries are at an early stage, and as such no further information can be provided at this stage.

3.3 Asset Realisations

Cash at Bank

- 3.3.1 Upon their appointment the Joint Liquidators were advised that there was a credit balance in the company's bank account with Royal Bank of Scotland PLC ("RBS"). The credit balance was requested and the amount of £4,897.25 has been recovered for the benefit of the creditors. This amount is reflected in the attached receipts and payments account.

3.4 Creditors

- 3.4.1 Setting up creditors on IPS case management system.
- 3.4.2 Writing to all known creditors on 14 August 2012 to advise them of the Joint Liquidator's appointment and forwarding Proof of Debt forms for completion and return to the Liquidators in respect of creditor claims in the liquidation.
- 3.4.3 Recording creditors' claims when received from time to time.
- 3.4.4 Responding to creditors' enquiries as required from time to time.

4 LIQUIDATOR'S RECEIPTS AND PAYMENTS ACCOUNT

The receipts and payments account for the period ended 3 July 2013 (Appendix 1) discloses a balance of £1,352.26.

4.1 Realisation of assets

- 4.1.1 In the period ended 3 July 2013 the only realisation has been cash at bank totalling £4,897.25 which is referred to in paragraph 3.3.1 above.
- 4.1.2 The only other realisation has been gross interest totalling £4.78 which has been received from The Insolvency Services Account on the funds held in the liquidation from time to time.

4.2 Costs and expenses of the Liquidation

Expenses paid during the year ended 3 July 2013

- 4.2.1 The Official Receivers costs in respect of the Liquidation amounted to £1,235 which were charged in the period prior to the appointment of the Joint Liquidators.
- 4.2.2 Secretary of State fees are charged at 100% of all realisations in excess of £2,000 up to a limited of £3,700. Thereafter secretary of state fees are charged at 75% for the next £1,500 and 15% for all further realisations up to £401,200. The Secretary of State fees paid to date total £2,225.82.
- 4.2.3 Corporation Tax of 95 pence has been paid which relates to the accounting period 16 March 2012 to 15 March 2013.
- 4.2.4 Banking fees of 88 pence have been paid.

Unpaid Expenses

Company	Expenses Incurred	Expenses Outstanding £
HM Revenue & Customs	Petition Costs	1 515.00
Smith & Williamson LLP	Courier Charges	177.00
Smith & Williamson LLP	Specific Bond	210.00
Smith & Williamson LLP	Company and Land Registry searches	57.58
Smith & Williamson LLP	London Gazette	63.50

- 4.2.5 HM Revenue and Customs as the petitioning creditor has advised that their associated costs for presenting the winding up petition are £1,515
- 4.2.6 Courier charges of £177 plus VAT relate to the cost of sending the company's books and records to the Official Receiver in London. The cost has been paid from this firms office account and will be claimed as an expense of the liquidation when funds permit
- 4.2.7 The costs of the specific bond amounting to £264.00 plus VAT relates to the premium for the Insurance bond cover that the Liquidator is required to obtain in respect of the value of the assets under their control. The cost has been paid from this firms office account and will be claimed as an expense of the liquidation when funds permit.
- 4.2.8 Company searches and land registry searches totalling £57.58 plus VAT have been incurred. The cost has been paid from this firms office account and will be claimed as an expense of the liquidation when funds permit.
- 4.2.9 The sum of £63.50 plus Vat has been paid to the London Gazette in relation to the advertisement of the joint liquidators' appointment. This cost has also been paid from this firms office account and will be claimed as an expense of the liquidation when funds permit.

5. CREDITOR CLAIMS

- 5.1 The Official Receiver's report to the creditors dated 25 May 2011 disclosed liabilities totalling £979,534 39 as follows:-

	£
Building Societies	70,380.00
Crown	870,904.31
Trade creditors	17,096 25
Credit Companies	1,762.50
Solicitors	3,077.33
Public Utility Companies	15,314.00
Total liabilities	<u>978,534 39</u>

However the liabilities detailed in the Official Receiver's report dated 25 May 2011 were overstated by £1,000.

- 5.2 To date the following claims have been received:-

	£
H M Revenue & Customs	1,047,483.60
Total claims received	<u>1,047,483.60</u>

The claim received from H M Revenue & Customs is for the following periods:-

Tax Year	Type	Amount £
2008/2009	NIC/PAYE underpayment	36,566 37
2008/2009	NIC - Penalty	100 00
2009/2010	PAYE Tax underpayment	179,278.38
2009/2010	NIC/PAYE underpayment	183,386.81
2010/2011	PAYE/TAX underpayment	264,607.42
2010/2011	NIC underpayment	184,737.00
2010/2011	PAYE penalty	200.00
2009/2010	VAT	16,951.90
2010/2011	VAT	161,058.59
2011/2012	VAT	8,753.00
	Interest	11,844.16
		<u>1,047,483.60</u>

6. LIQUIDATOR'S REMUNERATION

- 6.1 Statement of Insolvency Practice 9 (SIP9) a guidance note of best practice, concerns insolvency practitioners remuneration and expenses. A time and charge out summary for the period from 4 July 2012 to 3 July 2013 is attached as Appendix 2 of this report. Time costs in that period amount to 93.20 hours at an average hourly rate of £221.74 totalling £20,666.25.

In common with all professional firms, our scale rates increase from time to time over the period of administration on each insolvency case. Full details including any increases relating to this case are available on application. The applicable hourly rates from for the years ended 30 April 2013 and 30 April 2014 are given in Appendix 3 of this report.

- 6.2 The Joint Liquidators are seeking approval from the creditors for remuneration to be paid on a time costs basis and a creditors meeting is being convened on 30 September 2013 at 10.30 am for that purpose.
- 6.3 Subject to approval being received from the creditors, there are currently insufficient funds in the estate to pay the Joint Liquidators outstanding time costs. Whether or not the Joint Liquidators will be able to draw remuneration will be subject to future realisations.
- 6.4 Creditors attention is drawn to Rule 4.49E of the Insolvency Rules 1986, whereby within 21 days of receipt of this progress report, a secured creditor, or unsecured creditor with the concurrence of 5% in value of the unsecured creditors, including the value of their own claim, or with the permission of the Court, may make a request in writing to the joint Liquidators for further information about remuneration or expenses.
- 6.5 Creditors' attention is also drawn to Rules 4.131 of the Insolvency Rules 1986, which states, Inter alia, a secured creditor or any unsecured creditor with the concurrence of at least 10% in value of the unsecured creditors, including the value of their own claim, or with the permission of the Court may apply to the Court for an Order that the remuneration and expenses of the joint Liquidators are excessive or inappropriate. Any such application must be made within 8 weeks from receipt of this report. Formal notice of any such application must be sent to the joint liquidators at least 14 days before the hearing

7 LIQUIDATOR'S DISBURSEMENTS

- 7.1 No Category 2 disbursements have been paid in the period covered by this report:
- 7.2 Creditors approval to recover the Category 2 disbursements referred to in paragraph 2.2.3 of this report is to be obtained from the creditors meeting to be held on 30 September 2013 at 10 30 am to approve the Liquidator's remuneration.

8 SUPPORTING DOCUMENTS

- 8.1 A receipts and payments account for the period ended 3 July 2013 is attached as Appendix 1 of this report.
- 8.2 A time and charge out summary for the period from 4 July 2012 to 3 July 2013 in the format recommended by Statement of Insolvency Practice number 9 is attached as Appendix 2 of this report.
- 8.3 A schedule of applicable charge out rates for the years ended 30 April 2013 and 2014 is attached as Appendix 3 of this report.

9 ANTICIPATED OUTCOME

- 9.1 The funds held in the Liquidation amounted to £1,352.26 as at 3 July 2013.
- 9.2 The Joint Liquidators Investigations are continuing in relation to the transfer of the company's investment in Beatwax Limited, and the repayment of the loan of £380,402 and subsequent payments of £77,844 to Beatwax Limited after 30 November 2009 and before the liquidation.
- 9.3 On current information dividend prospects for creditors are uncertain, and creditors will be notified of any significant developments in future annual progress reports.



P M McConnell
Joint Liquidator

2 September 2013

**Improperganda Limited also trading as Borkowski
(In Liquidation)
Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 04/07/2012 To 03/07/2013	From 04/07/2012 To 03/07/2013
	ASSET REALISATIONS		
228,013 00	Shares & Investments	NIL	NIL
4,847 25	Cash at Bank	4,897 25	4,897.25
	DTI Interest Gross	4 78	4.78
		<u>4,902 03</u>	<u>4,902 03</u>
	COST OF REALISATIONS		
	O R's Debit Balance (Net)	1,235 00	1,235 00
	Sec of State Fees	2,225 82	2,225 82
	Corporation Tax	0 95	0 95
	DTI Banking Fees	88 00	88 00
		<u>(3,549 77)</u>	<u>(3,549 77)</u>
	UNSECURED CREDITORS		
(17,096 25)	Trade & Expense Creditors	NIL	NIL
(3,077 33)	Solicitors	NIL	NIL
(70,380.00)	Banks/Institutions	NIL	NIL
(870,904 31)	Inland Revenue	NIL	NIL
(1,762 50)	Credit Companies	NIL	NIL
(15,314 00)	Public Utility Companies	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<u>(745,674.14)</u>		<u>1,352.26</u>	<u>1,352.26</u>
	REPRESENTED BY		
	ISA Interest Bearing		1,352 26
			<u>1,352.26</u>

Note

IMPROPERGANDA LIMITED- IN LIQUIDATION

TIME AND CHARGE-OUT SUMMARY

Classification of work function	Hours					Time Cost £	Average Hourly Rate
	Partners & Associate Directors	Managers & Assistant Managers	Other Professionals	Support Staff	Total Hours		
Administration and Planning	4 70	7 00	1 75	11 00	24 45	4,268 75	174 59
Investigations	0 00	58 35	0 25	7 00	65 60	15,696 25	239 27
Realisation of assets	0 00	0 80	0 00	0 50	1 30	238 75	183 65
Trading	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Creditors	0 00	1 85	0 00	0 00	1 85	482 50	250 00
Total Hours	4 70	68 00	2 00	18 50	93 20	20,666 25	221 74
Total Fees Claimed £	1,527 50	17,538 75	292 50	1,307 50		20,666 25	

APPENDIX 3

SCHEDULE OF APPLICABLE CHARGE-OUT RATES

Grade	Hourly Rates	
	Year ended 30/04/2013	Year ended 30/04/2014
	£	£
Partners	375	350-375
Associate Directors	325	295-325
Managers & Assistant Managers	200-275	190-285
Other Senior Professionals	145-185	100-170
Assistants and Support Staff	70-75	28-75