

NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Title:	IN THE MATTER OF VOYAGER RESORT LIMITED (IN LIQUIDATION) ACN 010 547 618
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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FEDERAL COURT OF AUSTRALIA

District Registry: Brisbane
Number: QUD13 of 2025

In the matter of: **VOYAGER RESORT LIMITED (In Liquidation) ACN 010 547 618**

Plaintiffs: **BRADLEY VINCENT HELLEN AND NIGEL MARKEY AS JOINT
AND SEVERAL LIQUIDATORS OF VOYAGER RESORT
LIMITED**

LIQUIDATOR'S WRITTEN SUBMISSIONS

Application for approval of remuneration

Background

- [1] Since 2 May 2023, the plaintiffs have been and remain the liquidators of Voyager Resort Ltd (in liq) (**Company**), an unlisted public company which owned and operated a moribund timeshare **scheme** from the former Voyage Resort on the Gold Coast.
- [2] The plaintiffs seek the Court to approve their remuneration as liquidators. The application is under s 60-10 of the *Insolvency Practice Schedule* and r 9.4 of the *Corporations Rules*. Previous remuneration was approved by creditors,¹ but the plaintiffs have since declared dividends that paid out all creditors in full.² Thus, there are no remaining creditors able to vote at a meeting of creditors.

Remuneration approval

Service

- [3] Rule 9.2(2) required the plaintiffs to serve a form 16 and Mr Hellen's affidavit on, relevantly, each creditor who was present, in person or by proxy, at any meeting of creditors, the five largest creditors by amount of debt, and any shareholder with at least 10% shareholding at least 21 days before filing this application.³
- [4] There has been one meeting of creditors.⁴ Two creditors attended.⁵ On 24 April 2025, each was served.⁶
- [5] No shareholder owns more than 10% of the issued shares.⁷

¹ Second Hellen affidavit, ex BVH-170 pp 198-205.

² First Hellen affidavit, [42].

³ *Corporations Rules 2001*, r 9.2(2).

⁴ Second Hellen affidavit, [13](c).

⁵ Second Hellen affidavit, ex BVH-170 pp 198-205.

⁶ Affidavit of Georgia Antonia Crisafulli affirmed 23 May 2025 (**Crisafulli Affidavit**)

⁷ First Hellen affidavit, [29]-[38] and exhibits cited there.

[6] The 21 days elapsed on 15 May 2024.

[7] No party served a notice of objection.⁸

Previous remuneration approved

[8] On 27 July 2024, the creditors approved remuneration to be calculated at hourly rates up to \$795,095.75 ex GST.⁹

[9] That has not entirely been exhausted. At the date of Mr Hellen's affidavit, \$750,877.25 ex GST has been billed.¹⁰

[10] The application seeks a further

Section 60-10

[11] Section 60-10 provides:

(1) A determination, specifying remuneration that an external administrator of a company (other than an external administrator in a members' voluntary winding up) is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:

(a) by resolution of the creditors; or

(b) if there is a committee of inspection and a determination is not made under paragraph (a)--by the committee of inspection; or

(c) if a determination is not made under paragraph (a) or (b)--by the Court.

...

(3) A determination under this section may specify remuneration that the external administrator is entitled to receive in either or both of the following ways:

(a) by specifying an amount of remuneration;

(b) by specifying a method for working out an amount of remuneration.

[12] Thus, Mr Hellen seeks the Court's order under 60-10(1)(c). In doing so, the Court may specify remuneration, stating an amount or a method for working out the amount. He seeks the latter – at his firm's hourly rates¹¹ up to a limit of \$128,238 (exclusive of GST).¹²

[13] Section 60-12 of the *Insolvency Practice Schedule* provides:

In making a remuneration determination under paragraph 60-10(1)(c) or (2)(b), or reviewing a remuneration determination under section 60-11, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

⁸ To the extent that any response was received, they appear at the Crisafulli affidavit ex GAC-4 and GAC-5

⁹ Second Hellen affidavit, [12].

¹⁰ Second Hellen affidavit, [20].

¹¹ Second Hellen affidavit, ex BVH-170, p 208.

¹² Second Hellen affidavit, [31].

- (a) the extent to which the work by the external administrator was necessary and properly performed;
- (b) the extent to which the work likely to be performed by the external administrator is likely to be necessary and properly performed;
- (c) the period during which the work was, or is likely to be, performed by the external administrator;
- (d) the quality of the work performed, or likely to be performed, by the external administrator;
- (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the external administrator;
- (f) the extent (if any) to which the external administrator was, or is likely to be, required to deal with extraordinary issues;
- (g) the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
- (h) the value and nature of any property dealt with, or likely to be dealt with, by the external administrator;
- (i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;
- (j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the external administrator in performing the work;
- (k) whether the external administrator was, or is likely to be, required to deal with one or more controllers, or one or more managing controllers;
- (l) if:
 - (i) a review has been carried out under Subdivision C of Division 90 (review by another registered liquidator) into a matter that relates to the external administration; and
 - (ii) the matter is, or includes, remuneration of the external administrator;
 the contents of the report on the review that relate to that matter;
- (m) any other relevant matters.

[14] The following further principles may be distilled from relevant cases:

- (a) the overarching principle is that a liquidator or receiver is entitled to fair and reasonable remuneration: *Conlan v Adams* (2008) 65 ACSR 521, [28] (McLure JA with whom Buss JA and Newnes AJA agreed).
- (b) the question of fairness and reasonableness must be decided by the Court, even in the absence of a contradictor: *ASIC v Groundhog Developments Pty Ltd* [2011] QSC 263, [13] (Dalton J).
- (c) such an application is to be determined in a summary way in which the rules of evidence are not strictly observed: *Venetian Nominees Pty Ltd v Conlan* (1998) 20 WAR 96, 102 (Kennedy and Ipp JJ).

- (d) there must be evidence before the Court which shows that the work done was appropriate and necessary: *Venetian Nominees Pty Ltd v Conlan* (1998) 20 WAR 96, 104 (Kennedy and Ipp JJ).
- (e) the detail of evidence adduced should be proportionate to the size of the administration and the amount of work done: *Re Stockford Ltd; Korda and Anor* (2004) 52 ACSR 279, 295 (Finkelstein J).
- (f) Mr Hellen's expressed views about the reasonableness of the remuneration is relevant but not decisive. While the Court does not gainsay the considered oath of an officer of the Court, it does not uncritically accept such assertions: *Owen, in the matter of Rivercity Motorway Pty Ltd (admins apptd) (recs and mgrs. apptd) v Madden (No 2)* [2012] FCA 312, [26] (Logan J).
- (g) the determination of whether the remuneration claimed is fair and reasonable does not call for an item-by-item analysis of the work claimed that would be involved in the taxation of solicitors' costs: *ASIC v Atlantic 3 Financial (Aust) Pty Ltd* [2004] QSC 133, [16] (Mullins J).
- (h) even where there is detailed evidence before the Court, there is no touchstone or reliable independent measure of reasonableness other than judicial impression: *Owen, in the matter of Rivercity Motorway Pty Ltd (admins apptd) (recs and mgrs. apptd) v Madden (No 2)* [2012] FCA 312, [20] (Logan J).

The remuneration should be approved

- [15] Mr Hellen seeks approval of his remuneration on a time-recorded basis. He and his staff charge in six-minute units and record the details of the time charges in an electronic system within APS.¹³
- [16] The remuneration billed to date is supported by invoices.¹⁴ The future remuneration sought is supported by a fee estimate itemised at the fee earner level.¹⁵ That is, the relevant levels of fee earners allocate a time estimate.
- [17] The Court should be satisfied that the remuneration for which approval is sought is fair and reasonable because the relevant considerations in s 60-12 of the Insolvency Practice Schedule support that conclusion.
- [18] **As to s 60-12(a) to (c) and (j)**, Mr Hellen summarised the work that he and his staff have performed. The work was self-evidently necessary, including statutory tasks, creditor

¹³ Second Hellen affidavit, [14]-[15].

¹⁴ Second Hellen affidavit, ex BVH-170 at pp 209-229.

¹⁵ Second Hellen affidavit, ex BVH-170 at pp 231.

management and in particular, shareholder management.¹⁶ The work was performed over two years.

- [19] As to the necessary work, “the less complex work is performed by junior staff members and the more complex work is performed by senior staff members”.¹⁷
- [20] As to work that was not necessary, “where there was work which could have been performed by me or my staff, but which was, in my judgment, not necessary for the efficient conduct of the administration, that work was not performed.”¹⁸
- [21] **As to s 60-12(d)**, there is no challenge to the quality of Mr Hellen’s work.
- [22] **As to s 60-12(e) and (f)**, this factor (complexity and extraordinary issues) looms large. The administration is concerned with administering a \$15M dividend from the statutory trustees¹⁹ and \$2M of collections.²⁰ The liquidators have then undertaken a process to pay a tax-effective dividend to more than 1,100 shareholders.²¹ The liquidators have also dealt with more than 2,000 shareholder queries.²²
- [23] **As to s 60-12(g) (risk)**, this factor is not relevant.
- [24] **As to s 60-12(h)**, this factor (value of the property), the current assets total about \$22.5M.²³
- [25] **As to s 60-12(i)**, this factor (creditor pool and complexity) is highly relevant. The creditor pool was small, but the contributory pool is large. The sheer volume and the nature of some disputes about entitlement to dividends added complexity and cost to the administration.
- [26] **As to s 60-12(k)**, this factor (dealing with controllers) is not relevant.
- [27] **As to s 60-12(l)**, this factor (dealing with a reviewing administration) is not relevant.
- [28] Lastly, the Court can take comfort from, and act on, the evidence of Mr Hellen, who is an officer of the Court with more than 30 years’ experience in insolvency, when he deposed that:²⁴

25 In my experience as a registered liquidator, and from my knowledge and supervision of the work undertaken during the relevant period, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and the records are accurate.

26 I am also satisfied that the quantum is reasonable and proportionate, having regard to the asset and creditor position of the company, the number of stakeholders, the state of the company records,

¹⁶ Second Hellen affidavit, [14]-[27].

¹⁷ Second Hellen affidavit, [23].

¹⁸ Second Hellen affidavit, [24].

¹⁹ Second Hellen affidavit, [17](f).

²⁰ Second Hellen affidavit, [17](g).

²¹ Second Hellen affidavit, [17](l)-(o).

²² Second Hellen affidavit, [18](d).

²³ First Hellen affidavit, ex BVH-12.

²⁴ Second Hellen affidavit, [28]-[30].

the complexity of the work being undertaken and the accuracy necessary to achieve desired outcomes.

...

32 In seeking the Court's approval, I acknowledge that:

- (a) the remuneration for which approval is sought is a cap, not a fixed fee;
- (b) the Liquidators will continue to record and charge remuneration for actually done on a time actually incurred basis; and
- (c) any part of the remuneration that is approved that is unused will not be claimed by the Liquidators.

Orders sought

[29] The plaintiffs seek the following orders:

1. The Court approves the plaintiffs' remuneration at the hourly rates (Second Hellen affidavit, ex BVH-170, p 208) up to a limit of \$128,238 (exclusive of GST).
2. The remuneration approved under order 1 is in addition 2 to the remuneration approved by creditors on 27 July 2024 of \$795,095.75 ex GST.
3. The plaintiffs' costs of this application on an indemnity basis be paid from the assets of the Voyager Resort Ltd (in liq).

M J Downes
Counsel for the plaintiffs
23 May 2025