



PITCHER PARTNERS

**One.Tel Limited
(In Liquidation)**

Special Purpose Liquidator's
Report to Creditors
3 August 2009

Paul G Weston
Special Purpose Liquidator

Pitcher Partners NSW Pty Limited
Level 22 MLC Centre, 19 Martin Place
Sydney NSW 2000
Telephone (02) 9228 2262
Email dcooksley@pitcher-nsw.com.au

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1. GLOSSARY

Definitions

ASIC v Rich	Australian Securities and Investments Commission v John David Rich and others (Supreme Court of NSW proceedings 5934 of 2001)
COI	Committee of Inspection of One.Tel
DD Agreement	Due Diligence Agreement entered by the SPL with an off-shore funder on 22 October 2008, following Court approval
GPLs	General Purpose Liquidators of One.Tel, Mr Steven Sherman and Mr Peter Walker of Ferrier Hodgson appointed as voluntary administrators on 29 May 2001 and subsequently as liquidators on 24 July 2001
One.Tel	One.Tel Limited (In Liquidation)
PBL	Publishing and Broadcasting Limited, now known as Consolidated Media Holdings Limited
RRI	One.Tel renounceable rights issue underwritten by PBL and News Limited announced to the market on 19 May 2001
SPL	Special Purpose Liquidator of One.Tel, Mr Paul Weston, appointed 23 December 2003
SPL Proceedings	Proceedings commenced by way of Statement of Claim filed in the Supreme Court of NSW on 25 May 2007 on behalf of the SPL and One.Tel as plaintiffs and PBL, News Limited and others as defendants as detailed in section 8 of the SPL's Report to Creditors dated 3 August 2007

Judgments & Articles

December 2008 Judgment	Judgment of Justice Barrett delivered on 12 December 2008 and reported as <i>Onefone Australia Pty Limited v One.Tel Limited</i> [2008] NSW SC 1335 http://www.lawlink.nsw.gov.au/scjudgm ents/2008nswsc.nsf/aef73009028d6777ca25673900081e8d/6f44a0ed04c5ee78ca25751c001f05c7?OpenDocument
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April 2009 Judgment

Judgment of Justice Barrett delivered on 24 April 2009 and reported as *Onefone Australia Pty Limited v One.Tel Limited* [2009] NSW SC 321
<http://www.lawlink.nsw.gov.au/scjudgments/2009nswsc.nsf/aef73009028d6777ca25673900081e8d/2bdf1f2af9815654ca2575a2001aac8e?OpenDocument>

June 2009 Judgment

Judgment of Justice Barrett delivered on 12 June 2009 and reported as *Onefone Australia Pty Limited v One.Tel Limited* [2009] NSW SC 540
<http://www.lawlink.nsw.gov.au/scjudgments/2009nswsc.nsf/aef73009028d6777ca25673900081e8d/254b36a85ac72390ca2575d3001bb91e?OpenDocument>

Powers Article

Article by Lindsay Powers entitled “The liability of members of creditor committees – the price for staying ‘Close to the Action’ ” (2005) 13 *Insolv LJ* 195 (referred to in December 2008 Judgment)

2. INTRODUCTION

- 2.1 I was appointed as SPL of One.Tel on 23 December 2003 by the Supreme Court of New South Wales. Creditors should note that, although I was appointed in December 2003, my investigations only commenced in earnest after April 2006 pursuant to orders of the Court. A detailed explanation of that issue is contained in my report to creditors dated 3 August 2007.
- 2.2 The purpose of this report is to give an update of events that have occurred since my last report to creditors dated 4 August 2008. This report should be read in conjunction with that last report and my earlier reports to creditors dated 9 June 2004 and 3 August 2007, copies of which can be found at the following link <http://www.pitcher.com.au/creditors-report.pro>
- 2.3 If wholly successful, the SPL Proceedings may result in recovery of \$132 million together with statutory interest on that amount from May 2001, a total in excess of \$230 million (less funding costs) as at the date of this report. The principal defendants have the resources to satisfy a judgment of such order. I also note again the significance of this amount, in the context of the total admitted creditor claims of approximately \$353 million, as last reported by the GPLs. A recovery of \$230 million would equate to a dividend of about 65 cents in the dollar (subject to less funding costs).
- 2.4 In my 2007 and 2008 reports, I gave detailed accounts of events in the periods covered by those reports. In accordance with my previous practice, and in the interests of brevity, I do not propose to reiterate the detailed subject matter of those earlier reports. These are, of course, available for perusal via the internet link set out above.
- 2.5 My 2007 and 2008 reports to creditors were published whilst I was a partner of the firm of Deloitte Touche Tohmatsu. Creditors are advised that with effect from 1 July 2009 I became a partner of the firm of Pitcher Partners. That change has no material effect upon my role or appointment as SPL of One.Tel.
- 2.6 Pitcher Partners is a professional firm of accountants, auditors and advisors. Pitcher Partners is represented by separate and independent partnerships in Sydney, Melbourne, Perth, Brisbane and Adelaide, and is a member firm of Baker Tilly International, represented internationally by 145 firms in 110 countries.
- 2.7 Pitcher Partners comprises of over 83 partners and 850 staff nationally and it is one of the largest middle market accounting groups in Australia. In Sydney, the firm comprises 18 partners and over 170 staff.

3. CHRONOLOGY OF SIGNIFICANT EVENTS

- 3.1 In order to assist creditors, I provide below a summary of significant events in chronological order that have occurred since my appointment as SPL. This is not meant as a comprehensive record of all events.

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Date	Event
23 Dec 2003	SPL appointed by the Court
Apr 2004	Limitation period of SPL's claim due to expire on 29 May 2004 extended by consent of PBL and News Ltd to 29 May 2007 and SPL placed "in hibernation" by the Court, to await outcome of ASIC v Rich
26 Apr 2006	Court orders SPL to commence investigations into the RRI circumstances
Apr/May 2007	SPL public examinations of certain persons
25 May 2007	SPL Proceedings filed in Court (but not served pending completion of investigations and securing funding)
29 May 2007	End of limitation period for certain elements of SPL's claim
22 Aug 2007	AGM of creditors
Sept 2007	COI members each sign confidentiality undertaking in favour of SPL
20 Oct 2007	Jodee Rich settles GPLs bonus proceedings and ceases to be a One.Tel creditor
Early Nov 2007	Mr Rich proposes that the SPL retain Paul Lindholm as an intermediary to settle the SPL Proceedings
15 Nov 2007	PBL unsuccessfully seeks to intervene in extension application. Court extends time to serve SPL Proceedings until 25 May 2008
21 Nov 2007	COI also proposes that the SPL retain Mr Lindholm as an intermediary
14 Dec 2007	SPL advises COI members of his decision not to retain Mr Lindholm as an intermediary. COI "instruct" the SPL to retain Mr Lindholm as an intermediary
18 Dec 2007	SPL confidential letter to COI members setting out his reasons for not retaining Mr Lindholm as an intermediary
17 Jan 2008	Mr Lindholm meets with SPL, advising "your COI leaks like a sieve" and relates to SPL sections of SPL's confidential letter to COI
11 Mar 2008	COI meet with Mr Lindholm and Mr Jalland of PBL without informing the SPL
Late Mar 2008	Bruce Hambrett of Baker & McKenzie first retained by COI, without informing the SPL

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Date	Event
8 Apr 2008	COI meeting unanimously refuses to approve SPL fees and legal expenses for February 2008. SPL advises COI members of his intention to shortly provide Mr Lindholm with the confidential funding package. SPL advises COI members of his intention to meet with Mr Jalland as previously arranged. COI members oppose such a meeting taking place
11 Apr 2008	SPL sends final funding package to various Australian and offshore funders and thereafter, over ensuing months, SPL negotiates with a number of Australian and offshore funders
24 Apr 2008	Mr Hambrett, without informing the SPL, provides Mr Lindholm with a letter confirming COI's support for him to seek a settlement offer from the defendants to the SPL Proceedings. Letter directs Mr Lindholm not to disclose to the SPL his discussions with the defendants
5 May 2008	COI meeting approves SPL's fees and legal expenses for February 2008 but does not approve for March 2008
12 May 2008	Court extends time to serve SPL Proceedings until 25 November 2008
4 Jun 2008	COI meeting where COI propose they retain Mr Hambrett to conduct "high level" review of March/April fees and legal expenses. 50% of March/April fees and legal expenses approved pending his review. COI does not disclose to SPL Mr Hambrett's retainer since March 2008
27 Jun 2008	Mr Hambrett and Mr Salier, on behalf of the COI, meet with the SPL and disclose for the first time that the COI has been dealing with Mr Lindholm and that an insufficient settlement offer had been received by the COI through Mr Lindholm. Mr Hambrett urges the SPL to cease any further involvement with Mr Lindholm as a potential funder due to his conflicted position
30 Jun 2008	Extensive correspondence commences between SPL's lawyers and Mr Hambrett seeking full disclosure by COI members of their dealings with Mr Lindholm
21 Jul 2008	COI meeting considers SPL fees and legal expenses for the May/June 2008 period. Agreed that Mr Hambrett would reconsider his earlier fees review and include in his review the May/June 2008 fees and legal expenses
12 Aug 2008	The COI declines to approve March/April 2008 SPL fees and legal expenses, thereby requiring the SPL to seek Court approval
22 Aug 2008	AGM of creditors

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Date	Event
3 Oct 2008	SPL applies for Court approval of SPL March to June 2008 fees and legal expenses. COI provided with a copy of the application and supporting evidence
13 Oct 2008	COI files its own application opposing the SPL's fees application and seeking various orders including an order that there be a Court review of the SPL's decision not to consult with the COI in relation to funding and the SPL's decision not to act in accordance with the COI's directions concerning, inter alia, the retainer of Mr Lindholm.
22 Oct 2008	After several months of negotiation, SPL agrees on terms of a due diligence agreement with an offshore funder. Court approves the DD Agreement, which the SPL enters into. Court extends time to serve SPL Proceedings until 25 May 2009. COI not consulted before hearing as by this time SPL has reached the view that the COI could not be entrusted with confidential information, and should not be involved in any considerations that may put at risk the SPL's Proceedings and their funding.
4 Nov 2008	Hearing of the applications of the SPL and the COI commences before Justice Barrett including cross examination of COI members, Ms Galloon and Mr Roth, and the SPL
6 Nov 2008	Third day of hearing: COI withdraws its opposition to the SPL's fees application, withdraws its own application and advises the Court of its support for the DD agreement. The fees hearing continues without the COI
12 Dec 2008	The December 2008 Judgment delivered, approving all fees and legal expenses claimed. Justice Barrett rules on nature of COI's limited powers, including no power to give directions to the SPL
29 Jan 2009	COI meeting approves the SPL's fees for June to December 2008, but declines to approve legal expenses for that period, approving interim payment of two thirds pending Court approval
19 Mar 2009	Hearing of SPL's application for approval of his legal expenses for June to December 2008
24 Apr 2009	Court extends time to serve SPL Proceedings until 25 November 2009 and delivers April 2009 Judgment
25 May 2009	COI meeting approves SPL remuneration for January to April 2009 but again declines to approve legal expenses, approving interim payment of two thirds pending Court approval

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Date	Event
12 Jun 2009	Court delivers June 2009 Judgment, finding no reason why the SPL's legal expenses could not be paid, and directing that orders be drafted to create a new regime for payment of SPL's legal expenses
16 Jul 2009	Court makes orders creating new regime for SPL's legal expenses, removing the COI from the approval process
31 Jul 2009	COI meeting resolves against approving the SPL's remuneration for May and June 2009

4. REVIEW OF THE LAST YEAR OF THE SPECIAL PURPOSE LIQUIDATION

Confidentiality Restrictions

- 4.1. In this section I provide creditors with a summary of the work carried out by me from 4 August 2008 (being the date of my last report to creditors) to the date of this report. To a greater extent than in previous years, a substantial part of this work was of a privileged and confidential nature. Further, as noted below, there were a number of Court applications made during this period where the Court has made confidentiality orders. Accordingly, I am only able to provide creditors with certain limited information and this report has been prepared on that basis.

Litigation

- 4.2. The Statement of Claim in the SPL Proceedings has yet to be served upon any of the defendants, whilst I pursue litigation funding, as noted below.
- 4.3. A factor in my litigation funding negotiations is that judgment has not yet been delivered in ASIC v Rich. That case and the SPL Proceedings involve a number of significant common issues, and I expect that a number of matters relevant to securing funding will become more clear-cut after judgment is delivered in ASIC v Rich.
- 4.4. Whilst the hearing of ASIC v Rich concluded on 22 August 2007, as at the date of this Report, the Court is yet to hand down judgment.

Funding

- 4.5. In my last Report, I referred to a comprehensive funding package which had been delivered to a number of offshore litigation funders. Subsequently, I had lengthy negotiations over several months with a number of offshore parties with a view to securing the best funding terms for the SPL Proceedings.
- 4.6. Following these negotiations with offshore litigation funders, I selected one of these funders whom I considered offered the most attractive funding terms and the capacity

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to fund. After detailed negotiations with that funder, in about mid October 2008, I agreed draft terms of a due diligence agreement with that offshore funder (“**Funder**”). The due diligence agreement annexed a draft funding agreement.

- 4.7. On 21 October 2008 I applied to the Court for approval of the draft due diligence agreement. The application was supported by affidavits sworn by me containing full and comprehensive details of my dealings and negotiations with various potential funders, including the Funder.
- 4.8. By orders made on 22 October 2008, the Court approved my entry into a formal agreement with the Funder upon the terms of the draft due diligence agreement I had put before the Court for that purpose. Confidentiality orders were also made by the Court on that occasion, and on 10 November 2008, which preclude disclosure of the evidence referred to above.
- 4.9. In consequence, I am not at liberty to make any further disclosures to creditors in relation to the subject matter of the due diligence agreement (“**DD Agreement**”) which I subsequently entered into with the Funder pursuant to the orders of the Court referred to above.
- 4.10. I was not in a position to disclose to the COI my confidential dealings with the Funder, due to my strongly held views as to breaches of confidentiality by the COI referred to below. The COI’s senior counsel and solicitor after later reviewing a copy of the DD Agreement (on a confidential basis) informed the Court of their view that:

“...it was more than reasonable for [me] to enter into the DD Agreement and that the proposed funding agreement annexed to it, is a more than appropriate agreement.”

- 4.11. I have maintained a close liaison with the Funder since the date of the DD Agreement, pursuant to its terms. As at the date of this report, the DD Agreement remains on foot and the Funder’s due diligence is proceeding pursuant to its terms.
- 4.12. In my recent extension application, referred to below, after full disclosure by me to the Court of all relevant confidential funding steps, Justice Barrett, when delivering the April 2009 Judgment, observed:

“that the parties [to the DD Agreement] appear to have proceeded with reasonable despatch and diligence, although there were some delays caused largely by other persons.”

- 4.13. Based on my most recent communication with the Funder, I remain confident that funding of the SPL Proceedings will be secured within a reasonable period of time.

Extension of time for service

- 4.14. As set out in my last report, the extended time limit for service of the Statement of Claim in the SPL Proceedings would have expired on 25 November 2008, in the absence of further extension of that time limit by the Court.
- 4.15. As the due diligence process provided for in the DD Agreement was and remains ongoing, it was necessary for me to make application to the Court for further extensions of the time limit for service of the Statement of Claim in the SPL Proceedings. Accordingly:
- (a) on 22 October 2008, , I sought and obtained an extension of the time limit until 25 May 2009; and
 - (b) on 24 April 2009 I sought and obtained an extension of the time limit until 25 November 2009.
- 4.16. On each application, I have made full disclosure to the Court, in confidential affidavits, of my activities since the previous extension application including all of the confidential steps taken by me to secure funding as part of the ongoing due diligence. As noted above, due to my strongly held views as to breaches of confidentiality by the COI, I determined it was inappropriate and against the interests of One.Tel and its creditors to make such disclosure to the COI.

Other Work

- 4.17. During the period covered by this report I have held meetings with representatives of major creditors of One.Tel, to update them on the progress of my administration, and to discuss with them any specific concerns or issues they may have wished to raise with me.
- 4.18. I have made Court applications to extend the time for service of the Statement of Claim in the SPL Proceedings pending finalisation of funding, for approval of my fees and legal expenses and, I was obliged to participate in the proceedings brought by the COI on and after 13 October 2008.
- 4.19. I have had ongoing meetings and communications with the GPLs from time to time as required.
- 4.20. A very substantial amount of time and cost has been spent dealing with COI issues, which I detail below.

5. COMMITTEE OF INSPECTION ISSUES

Executive Summary

- Three of the four COI members do not appear to have a direct relationship with a One.Tel creditor, in that they are not officers or employees of any One.Tel creditor.
- In November 2008, the Court heard applications by me and the COI concerning my administration. Optus joined as an applicant with the COI members, who arguably had no standing as they were not creditors.
- After two days' hearing, the COI members and Optus withdrew their applications and formally expressed the COI's full support regarding the DD Agreement.
- The December 2008 Judgment sets out the role of the COI, including that it has no power to give directions to which I must have regard.
- The Powers Article referred to in the December 2008 Judgment, notes that COI members are fiduciaries and are not to act under another's instructions, not to take advantage of confidential information and are to avoid conflicts of duty and interest.
- I have grave concerns regarding the conduct of COI members which I consider involves serious breaches of their fiduciary duties and their written confidentiality undertakings to me. The COI members take a contrary view.
- The conduct includes serious leaks of confidential information, covert dealings with an unauthorised intermediary and meeting with a senior PBL executive to discuss settlement of the SPL Proceedings, all without my knowledge at the time.
- COI members have failed to comply with their fiduciary duty to fully disclose to me details of these dealings until the November 2008 hearing.
- In light of my concerns, I have reached the view that the COI cannot be entrusted with further confidential information and to do so may prejudice my administration.
- The issues with the COI have resulted in substantial fees and expenses being incurred, on both sides, substantially paid out of One.Tel's assets.

Background

- 5.1 In the period under review, issues concerning the COI have occupied a significant amount of my time and that of my legal team, which I comment on more fully in Section 6 below.

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- 5.2 The current constitution of the COI and the identity of the creditor of One.Tel who sponsored each as a member of the COI is:

John Deloughery – Roadhound and others

Barbara Galloon – Optus

Gary Phillips – Kevin Beck

Alex Roth – Roadhound.

Of the above persons, only Ms Galloon (as an employee of Optus) has a direct relationship with a creditor of One.Tel. My understanding is that the remaining three COI members are not creditors of One.Tel themselves, nor are they officers or employees of any One.Tel creditor and appear to have no overt business relationship with any creditor of One.Tel.

- 5.3 In the period covered by this report, significant issues have arisen between the COI and me concerning certain aspects of my administration and in relation to my fees and legal expenses (which I will deal with below).
- 5.4 By virtue of confidentiality orders made by the Court, I am not in a position to elaborate in any degree of detail in this report. Suffice it to say that the COI instructed its own lawyers to oppose my fees application and to file an application on 13 October 2008 to make certain challenges to the orders obtained by me and to seek certain other relief. Optus sought to be, and was, joined as an applicant as there was a question whether COI members (as non-creditors) had standing to bring the application.
- 5.5 After the filing of evidence on both sides, preparation by both sides for a contested hearing, and two days' hearing before Justice Barrett (during which certain members of the COI and myself were cross-examined in open court in relation to matters then in contention) the COI and Optus obtained leave to discontinue their applications, withdrew their opposition to my fees application and formally expressed the full support of the COI for my earlier actions concerning the DD Agreement.
- 5.6 The entire cost of the above proceedings is payable from the assets of One.Tel as costs and expenses of the winding up.

Role of the COI

- 5.7 In the December 2008 Judgment, Justice Barrett gave a helpful summary of a number of current legislative provisions relevant to this matter.
- 5.8 Justice Barrett noted that the COI in the One.Tel liquidation had no power to give directions to which a liquidator must have regard. His Honour ruled that the COI's position involved, at the very most, a privilege "*to be consulted, to advise and to warn*". I am not bound therefore to have regard to any directions the COI may purport to give me, although in the past I have always given due consideration to the COI's views and purported directions.

5.9 In the December 2008 Judgment it was noted (paragraph 31):

“The starting point in any discussion of liquidator’s remuneration is the proposition that a liquidator in any type of winding up has a clear entitlement to remuneration and a clear entitlement to have his or her remuneration fixed. There is no expectation that a liquidator will act gratuitously. The right to remuneration is not subject to negotiation or to discretionary withdrawal. The only question that can ever be contentious is the amount of the remuneration.”

5.10 In the Powers Article referred to in the December 2008 Judgment, the author notes that members of a committee of inspection are, beyond doubt, fiduciaries. As a result a number of obligations arise including, but not limited to, the following:

- Not to act under the instructions of another.
- Not to act for their own benefit or for the benefit of a third person.
- Not to take advantage of confidential information.
- To avoid conflicts of interest and duty.
- To avoid conflicts of duty and duty.

5.11 The Powers Article expands on the potential conflict between the obligations of a committee member to act in the interests of creditors generally as distinct from the interests of a particular committee member’s employer or appointor:

“Committee members are not elected to represent their own interests or the interests of those who employ them. Their duty is to creditors generally...At the very least, the employee should not participate in any committee business which could give rise to such a conflict, or which could involve the disclosure of confidential information which the employee might otherwise have a duty to disclose to his or her employer.”

Conduct of the COI

5.12 I regret to report that I have grave concerns in relation to the conduct of the COI relative to my administration. I consider that the current COI members have been in serious breach of their duties to One.Tel and its creditors which has significantly hampered, and substantially added to the cost of, my administration during the reporting period. I am therefore obliged to report on the conduct of the COI, subject to the constraints imposed by the confidentiality orders made by the Court.

5.13 The COI members take a contrary view, claiming that they have not breached their duties.

5.14 In September/October 2007 I required all members of the COI (and Stuart Salier, Optus Deputy General Counsel and regular attendee at COI meetings from that time) to sign formal confidentiality undertakings, before I gave the COI access to a number of confidential and privileged preliminary Opinions of counsel in relation to the causes of action being investigated by me.

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- 5.15 Mr Salier initially attended a COI meeting in October 2007 as proxy for Ms Galloon who was then on leave. He then attended COI meetings initially in his capacity as legal advisor to Ms Galloon and later as informal advisor to the other COI members.
- 5.16 In my last report I advised creditors that in September 2007 I had delivered to certain Australian based litigation funders (who had previously expressed interest in funding the SPL Proceedings) a funding package of preliminary legal opinions and relevant documents. Mr Lindholm of Phoenix Capital was one of these funders. Phoenix Capital signed a confidentiality agreement, at my request. I informed COI members of the identity of all of the Australian based funders to whom I had delivered a funding package, including Mr Lindholm.
- 5.17 By about late October/early November 2007, Mr Rich had settled the GPLs' Bonus Proceedings, and withdrew his claims as a creditor of One.Tel and those of companies associated with him. At about this time, he proposed to me that I retain Mr Lindholm to act as an intermediary between myself and the defendants to the SPL Proceedings for the purposes of discussing settlement. I considered and rejected that proposal as not being in the best interest of One.Tel and its creditors.
- 5.18 During the November 2008 hearing, Ms Galloon admitted on oath that in December 2008 she sent an email to the CEO of Optus and another Optus employee, which I consider contained confidential information. Ms Galloon admitted that she sent this email because of concerns she had about the commercial relationship between her employer Optus on the one hand and PBL (a defendant in the SPL Proceedings) on the other hand. Contrary to my view, Ms Galloon does not consider the information to be confidential.
- 5.19 Shortly thereafter, the COI also purported to direct me to retain Mr Lindholm as an intermediary between myself and the defendants to the SPL Proceedings for the purposes of discussing settlement. After giving due consideration to the COI's views, I made the decision that it was not appropriate for Mr Lindholm to be given this role, a decision I communicated to the COI by confidential letter with a detailed explanation for my decision.
- 5.20 Early in 2008, at a meeting with Mr Lindholm, he told me "*your COI leaks like a sieve*". During that same conversation, Mr Lindholm was able to tell me details from my confidential letter to the COI. Ms Galloon has agreed on oath that my concern about the leaking of confidential information regarding my special purpose liquidation was "sensible", notwithstanding that all members of the COI denied being responsible for passing on information either directly or indirectly to Mr Lindholm.
- 5.21 In March 2008, contrary to my clearly stated decision not to involve Mr Lindholm as an intermediary, members of the COI attended a meeting with Mr Lindholm and Guy Jalland, a senior executive of PBL. COI members deliberately decided not to inform me of that meeting, which took place in circumstances where Ms Galloon has confirmed on oath that she understood at the time Mr Lindholm was a representative of PBL and receiving confidential information from me separately in his professed capacity as a potential funder of the SPL Proceedings. It was only in the context of the Court proceedings some months later, in November 2008, that I became aware of the extent of the COI's conduct.

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- 5.22 With the COI's knowledge, in April 2008, I delivered a final funding package to all potential Australian based and offshore litigation funders. By that time, all COI members had been dealing with Mr Lindholm, without my knowledge, for more than a month. Despite several opportunities to do so, COI members failed to advise me to retrieve all of the confidential information I had previously supplied to Mr Lindholm in his capacity as a potential funder and failed to warn me that I should not deliver the final funding package to Mr Lindholm. The final funding package was subsequently delivered to Mr Lindholm.
- 5.23 Ms Galloon stated on oath that, in March 2008, the COI retained a solicitor, Bruce Hambrett of Baker & McKenzie, for the purpose of advising the COI in relation to its dealings with Mr Lindholm and the PBL interests. Ms Galloon confirmed however, that it was not until around May or June 2008 that Mr Hambrett's name was first mentioned by her to me as a lawyer who might be able to assist the COI. Ms Galloon was also not able to explain why it was not until 27 June 2008 that the COI sought to inform me of their understanding of Mr Lindholm's conflicted position, save to say that she assumed I would be "*fairly angry*" when I found out about the COI's covert dealings with Mr Lindholm.
- 5.24 On 24 April 2008, following a request from Mr Lindholm, Mr Hambrett provided him with a letter confirming the COI's support for him to seek a settlement offer from the defendants to the SPL Proceedings. The letter directed Mr Lindholm not to disclose to me his discussions with the defendants. I only became aware of this letter about 3 months later, after Mr Lindholm mentioned its existence as his "mandate" letter.
- 5.25 I was informed by Mr Salier during a COI meeting in June 2008, that Optus was paying the fees of Baker & McKenzie in relation to its retainer by the COI (in the context of the Hambrett "fees review" only) and that Optus would later seek reimbursement from the GPLs out of the assets of One.Tel. I have informed the COI and the GPLs of my view that these fees relate to my administration and that I oppose payment of any fees out of One.Tel's assets that relate to the COI's conduct referred to above. The COI have declined to provide me with copies of Baker & McKenzie's invoices which prevents me from determining what amounts might be properly payable out of One.Tel's assets.
- 5.26 In light of the above matters and other confidential matters which I am not at liberty to disclose, I had reached the view that the COI could not be entrusted with further confidential information, and should not be involved in any considerations that may put at risk the purpose of my appointment as ordered by the Court and, in particular, the SPL Proceedings and their funding. I regret to advise that my view has not changed, and the evidence that became available at the hearing in November 2008 has only served to reinforce my view.
- 5.27 My dealings with the COI issues including those described above, and other COI issues which must remain confidential, have resulted in substantial fees and expenses being incurred on both sides. These substantial fees and expenses, in the region of approximately \$1.5 million, are detailed below.

6. SPECIAL PURPOSE LIQUIDATOR'S FEES AND EXPENSES

- 6.1 In my last report, I advised that my fees and expenses (including legal costs) for the period December 2003 to June 2007 totalled \$3,332,035 and that my fees and expenses (including legal costs) inclusive of GST for the period July 2007 to June 2008 were \$4,220,243. All such fees and legal expenses were either approved by the COI or in the absence of such approval, by the Court.
- 6.2 In my last report, I advised that the COI at that time had approved 50% of my fees and legal expenses for March and April 2008, and that approval of the balance of those fees and expenses plus my fees and legal expenses for May and June 2008 was under consideration by the COI. The COI failed to approve those fees, and objected to my legal expenses in their entirety.
- 6.3 In late May 2008, the COI proposed the appointment of Mr Hambrett to conduct a "high level" review of my fees and legal expenses for March and April 2008, later extended to include May and June 2008. Following Mr Hambrett's review, the COI informed me that it could not form the view that **any** of my fees and legal expenses for March and April 2008 were necessarily and reasonably incurred, and that I should apply to the Court for approval of these fees and legal expenses.
- 6.4 It was accordingly necessary for me to make application to the Court for approval of the balance of my unpaid fees and legal expenses for March and April 2008 and all of my fees and legal expenses for May and June 2008. Following the hearing of my application in early November 2008, by orders made on 12 December 2008, all such fees and legal expenses were approved by the Court without any reduction, despite initial opposition by the COI. The COI did not withdraw from its intervention in my fees application until after the very substantial costs and expenses of preparing for, and the hearing itself, had been incurred.
- 6.5 I have estimated my legal fees during the last financial year arising from COI issues including those referred to in this report, are in the region of \$1 million. These legal fees were substantially incurred to the end of December 2008.
- 6.6 It would not have been necessary for me to incur the very substantial legal fees which arose from the Court proceedings heard in November 2008 summarised in this report, but for the conduct of the COI referred to in 5.4 and 6.3 above. In addition to my very substantial fees and legal fees, the COI's legal expenses in relation to those Court proceedings, apparently amounting to about \$260,000, have been paid by the GPLs out of the assets of One.Tel. I understand that these COI legal expenses relate to work performed over an approximate 6 week period in October and November 2008. My legal expenses referred to in paragraph 6.5 relate to work performed over a 12 month period.

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- 6.7 I understand there are further COI legal expenses paid by Optus which will be sought to be reimbursed by the GPLs out of the assets of One.Tel.
- 6.8 Creditors are referred to the table below, and will note the significant increase in my fees and legal expenses for the months of October and November 2008 in particular. This table does not include any of the legal costs of the COI in this period.
- 6.9 As One.Tel is registered for GST, the GPLs are entitled to recover the GST element of the fees and expenses set out in the table below. The table is a summary of the SPL's fees and expenses, including legal costs, (exclusive of GST) for the period July 2008 to June 2009.

Period	SPL Fees \$	Disbursements \$	Total exc. Legal Costs \$	Legal Costs \$	Total inc. Legal costs \$
<i>December 2003 to June 2008 , inclusive of GST</i>	2,204,760	158,733	2,363,492	5,201,669	7,565,161
December 2003 to June 2008 , exclusive of GST	2,004,327	144,303	2,148,630	4,731,013	6,879,643
July 2008	41,575	2,268	43,843	161,521	205,364
August 2008	38,810	1,733	40,543	162,397	202,940
September 2008	28,010	1,254	29,264	178,814	208,078
October 2008	60,256	2,725	62,981	252,832	315,813
November 2008	115,903	5,063	120,966	253,040	374,006
December 2008	58,410	2,638	61,048	91,503	152,551
January 2009	23,150		23,150	51,555	74,705
February 2009	32,459		32,459	104,546	137,005
March 2009	19,592		19,592	81,077	100,669
April 2009	27,376	4,837	32,213	91,919	124,132
May 2009	46,106		46,106	69,351	115,457
June 2009	9,806	7,682	17,488	70,610	88,098
Total July 2008 to June 2009	501,453	28,200	529,653	1,569,165	2,098,818
Accumulated total for Special Purpose Liquidation	2,505,780	172,503	2,678,283	6,300,178	8,978,461

- 6.10 My fees for the period July to December 2008 were approved by the COI at a meeting of the COI held on 29 January 2009. Unfortunately, at that meeting, the COI again resolved that it was unable to determine whether my legal expenses for that period were properly incurred and that I should make a further application to the Court for approval of my legal expenses.

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- 6.11 As a result of the above resolution by the COI, I applied to the Court for approval of such legal expenses. I also applied to change the previous legal expenses regime, in consequence of the COI's position, so as to avoid further costly Court applications.
- 6.12 The application was heard on 19 March 2009 and the reserved judgment was delivered on 12 June 2009. The Court found no reason why the legal expenses under review could not be paid and directed that orders be drafted creating a new regime for payment of my legal expenses.
- 6.13 Following correspondence between my solicitors and those of the GPLs and a short hearing before Justice Barrett, orders were made by the Court on 16 July 2009. The Court orders involved a significant change to the regime for payment of my legal expenses. The requirement that the COI approve or not object to my legal expenses has been removed. In its place, I am required to certify to the GPLs that my legal expenses have been properly incurred and are payable by me in performing my duties.
- 6.14 My certification must include confirmation that my legal expenses claims have been provided to the COI. The Court has granted liberty to the GPLs and me to seek directions in relation to my legal expenses, including any issues raised by the COI.
- 6.15 In the course of a usual liquidation, a liquidator is not required to obtain the approval of creditors, the COI or the Court before paying legal expenses. This is the position of the GPLs regarding their legal expenses. The past and present regimes concerning the payment of my legal expenses involve a process significantly more elaborate than that applying in the course of a usual liquidation. This arises from the fact that, as a special purpose liquidator, I have no control over the assets of One.Tel.
- 6.16 Under the new legal expenses regime, I will continue to provide COI members with a fully itemised invoice from my lawyers, as I have done previously. I am hopeful that the new regime will avoid, in the future, the substantial costs of Court applications which have been incurred previously.
- 6.17 In relation to my fees, I continue to be required by statute to first seek approval by the COI, failing which I must apply to the Court. At the last COI meeting on 31 July 2009, the COI voted against approval of any of my fees for May and June 2009. I must therefore make another Court application.

7. COMMITTEE OF INSPECTION MEETINGS

- 7.1 The following table lists COI meetings convened by me in the period covered by this report and attendance by committee members at those meetings.

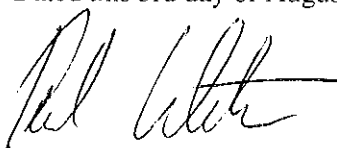
	Date	Committee Members Present
1.	29 January 2009	Three of four
2.	25 May 2009 (adjourned from 18 May 2009)	Four of four
3.	31 July 2009	Four of four

- 7.2 All minutes of COI meetings convened by me have been lodged with ASIC in accordance with the *Corporations Act*. These minutes are publicly available documents. Should any creditor wish to review these minutes please contact my office. Minutes of many of the meetings are brief and do not purport to provide a verbatim account of the meeting. This is because many of the matters discussed at COI meetings are privileged and confidential and releasing the information may adversely affect the SPL Proceedings.
- 7.3 I did not convene any COI meetings after the meeting held on 21 July 2008, referred to in my last report, until I sought to convene a COI meeting immediately following the December 2008 Judgment. During the intervening period, I was communicating regularly with the COI through our respective lawyers, and I considered there was no purpose to be served in holding a COI meeting. COI members were unavailable to meet before the Christmas period so I convened the meeting to be held on 29 January 2009 which I was advised was a suitable date.
- 7.4 In addition to the meetings convened by me, as referred to in the above table, I am aware that the COI has convened its own meetings, both formal and informal. I have not attended any of these meetings, and do not know how many such meetings have been held. However, I note the COI has lodged minutes of a COI convened meeting held on 28 April 2009.

8. MEETING OF CREDITORS

- 8.1 The Annual General Meeting of creditors is scheduled for 26 August 2009. The meeting has been convened by the GPLs pursuant to section 508 of the *Corporations Act*, which requires a liquidator to hold an annual general meeting of creditors every year within 3 months of the anniversary of the commencement of the winding up, and put before the meeting an account of their activities during the preceding year.
- 8.2 I have deemed this an appropriate time to provide creditors with an update of my activities to coincide with the Annual General Meeting scheduled by the GPLs in accordance with arrangements for the corresponding meetings in previous years.
- 8.3 At this meeting, after the GPLs have dealt with matters pertaining to the liquidation generally, I will be addressing the meeting regarding the contents of this report and answering any questions creditors may have. I do not have any resolutions that I will be putting to the meeting for voting.
- 8.4 Creditors requiring any further information prior to the meeting are requested to direct their enquiry to Daniel Cooksley of this office on (02) 9228 2262.

Dated this 3rd day of August 2009



Paul Weston
Special Purpose Liquidator