EDI Realisations Limited formerly Marshall Editions Limited

Receipts	Administrators Estimated outcome statement 13.03.02	09-Jan-02 to 08-Jul-07	09-Jan-02 to 08-Jul-02	09-Jul-02 to 08-Jan-03	09-Jan-03 to 08-Jul-03	09-Jul-03 to 08-Jan-04	09-Jan-04 to 08-Jul-04	09-Jul-04 to 08-Jan-05	09-Jan-05 to 08-Jul-05	09-Jul-05 to 08-Jan-06	09-Jan-06 to 08-Jul-06	09-Jul-06 to 08-Jan-07	09-Jan-06 to 08-Jul-07
CVA Financing	-	**524,000.00**			524,000.00								
Book Debts	**903,000**	**960,966.60**	643,835.77	235,386.40	81,744.43								
Intellectual Property	**550,000**	**439,000.00**	439,000.00										
Repayment of Cuper RdLoan	-	**102,500.00**		102,500.00									
Other Book Debts	-	**51,320.29**	51,320.29										
Furniture & Equipment	-	**7,896.00**	7,896.00										
Trading receipts	**27,000**	**155,400.80**	6,405.27	123,498.56	25,496.97	-	-	-	-	-	-		
Bank Interest, gross	-	**80,660.11**	1,687.41	3,169.67	3,630.72	3,569.19	6,838.71	10,099.88	9,319.27	10,219.62	11,869.44	11,164.84	9,091.36
Various refunds	-	**2,260.24**	260.24								2,000.00		
Vat payable	-	**103,389.29**	1,381.80	-	64,627.71	5,563.06	1,601.12	-	-	20,575.90	-	9639.70	
	1,480,000	**2,427,393.33**	1,151,786.78	464,554.63	699,499.83	9,132.25	8,439.83	10,099.88	9,319.27	30,795.52	13,869.44	20,804.54	9,091.36
Payments													
Royal Bank of Scotland	**see note below***	**940,000.00**	225,000.00	715,000.00									
Administrators' Fees	**171,000**	**410,866.86**			280,000.00		21,754.83		53,969.03		25,143.00		30,000.00
Administrators' expenses	**112,000**	**(10,305.44**	4,304.17	2,047.95	48.08	82.27	3,745.71	36.51	40.75	-	-		
Legal Fees	**-**	**(234,100.62**		24,545.03	2,625.00	2,270.00		5,059.00	21,402.00	25,417.00	26,106.40	37,648.46	89,027.73
Debt collection costs	**-**	**(86,626.96**	22,024.03	35,084.02	29,518.91								
Insurance of assets	**-**	**(3,230.58**		3,230.58									
Other Book Debts	-	**50,994.83**		50,994.83									
Trading payments	-	**247,860.57**	188,717.97	35,826.92	-	23,315.68	-	-	-	-	-		
VAT rec'able	-	**130,795.21**	5,426.14	11,123.99	54,625.19	397.25	4,335.31	885.33	13,189.94	4,447.98	8,958.16	6,588.31	20,817.61
	283,000	**2,114,781.07**	445,472.31	877,853.32	366,817.18	26,065.20	29,835.85	5,980.84	88,601.72	29,864.98	60,207.56	44,236.77	139,845.34
	1,197,000 *	**312,612.26**	**706,314.47**	**293,015.78**	**625,698.43**	**608,765.48**	**587,369.46**	**591,488.50**	**512,206.05**	**513,136.59**	**466,798.47**	**443,366.24**	**312,612.26**

*** Total realisations per the Administrators EOS less estimated costs. Shows a surplus of £1,183,000 available to RBS and £14,000 available to preferential creditors.**

	From 9 January 2002 to 23 March 2003		From 29 March 2003 to 3 October 2003		From 4 October 2003 to 2 April 2004		From 3 April 2004 to 17 September 2004		From 18 September 2004 to 1 April 2005		From 4 April 2005 to 3 October 2005		From 4 October 2005 to 4 April 2006		From 4 April 2006 to 6 October 2006		From 7 October 2006 to 13 April 2007		From 14 April 2007 to	**From 9 January 2002 to 13 April 2007**	
	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £	Total Hours	Total cost £		**Total Hours**	**Total cost £**
Statutory & compliance	50.00	7,595.00	7.60	1,258.50	5.00	818.00	19.10	3,307.50	23.60	4,654.00	14.10	2,527.00	4.30	915.00	1.50	225.00	1.40	273.00		**126.60**	**21,573.00**
Claim to funds													70.60	15,060.00	47.50	9,975.00	104.00	30,085.00		**222.10**	**55,120.00**
Creditors, claims & correspondence	220.00	24,650.00	1.50	207.50	7.10	847.50	3.60	416.00	4.40	678.00	29.00	4,630.00	4.00	840.00	11.20	1,917.50	3.50	827.50		**284.30**	**35,014.00**
Employees, claims & correspondence	75.00	9,365.00					1.50	277.50												**76.50**	**9,642.50**
Shareholders	2.00	3,345.00					0.50	90.00												**2.50**	**3,435.00**
Cashiering	69.00	6,945.00	16.70	1,727.50	11.00	1,271.50	10.20	1,264.50	7.90	1,032.50	17.10	2,131.50	13.40	1,742.00	9.20	1,092.00	7.80	1,246.00		**162.30**	**18,452.50**
Tax	14.00	2,175.00					3.10	470.00	0.30	42.00	1.50	210.00								**18.90**	**2,897.00**
VAT matters													1.20	180.00	1.20	180.00	1.50	292.50		**3.90**	**652.50**
General	31.00	0.00			1.50	242.50	12.30	2,018.50	1.90	380.00										**46.70**	**2,641.00**
Assets	764.00	101,600.00	43.00	4,975.00	3.50	502.50	1.00	180.00												**811.50**	**107,257.50**
Trading	838.00	108,180.00																		**838.00**	**108,180.00**
Directors	35.00	5,565.00																		**35.00**	**5,565.00**
Investigation	7.00	600.00																		**7.00**	**600.00**
Fund Management															3.00	450.00	6.10	1,122.00		**9.10**	**1,572.00**
Statergy & Planning															5.50	1,155.00	1.50	412.50		**7.00**	**1,567.50**
Total hours	2,105.00		68.80		28.10		51.30		38.10		61.70		93.50		79.10		125.80			**2,651.40**	
Total cost		270,020.00		8,168.50		3,682.00		8,024.00		6,786.50		9,498.50		18,737.00		14,994.50		34,258.50			**374,169.50**
Council Fees														5250.00		5100.00		4050.00	7200.00		**21,600.00**
Evershed Fees										21105.50		19217.50		26132.50		77501.00		114252.95	74926.59		**333,136.04**
	As per Administrators R&P legal fees paid before 18 September 2004							**29,440.03**													**362,576.07**

Applicants
A W Graham
Fourth
"AWG4" to "AWG6"
December 2007

IN THE HIGH COURT OF JUSTICE **NO 146 OF 2002**

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF EDI REALISATIONS LIMITED (FORMERLY MARSHALL EDITIONS LIMITED) (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

MICHAEL VINCENT MCLOUGHLIN AND ALLAN WATSON GRAHAM
The Joint Administrators of EDI Realisations Limited

Applicants

and

(1) HM REVENUE AND CUSTOMS

(2) NEWSCREEN MEDIA GROUP PLC

(3) THINK ENTERTAINMENT PLC

(4) MR CHRISTOPHER JONES

Respondents

FOURTH WITNESS STATEMENT OF ALLAN WATSON GRAHAM

I, ALLAN WATSON GRAHAM, of KPMG LLP, St Nicholas House, Park Row, Nottingham, NG1 6FQ will say as follows:

Introduction

1. I am a licensed Insolvency practitioner and a partner in KPMG LLP of St Nicholas House, Park Row, Nottingham, NG1 6FQ. I am the same Allan

Watson Graham who made witness statements in this matter in March 2006, on 8 December 2006 and 15 January 2007.

2. I make this witness statement pursuant to paragraph 3 of the Order made in these proceedings on 17 July 2007, as varied by the Order made on 21 November 2007.

3. Save as otherwise stated, the facts and matters set out in this witness statement are within my own knowledge and are true. Where I refer to matters of which I do not have personal knowledge, they are true to the best of my information and belief.

4. There is now produced and shown to be marked "AWG4" and "AWG5" paginated bundles of true copy documents.

5. References to page numbers in this witness statement are to the corresponding page of the exhibits to my earlier witness statements, being "AWG1", "AWG2" or "AWG3" or to the corresponding pages of exhibits to witness statements made by the Respondents' representatives being exhibit "CAJ1" to the first witness statement of Mr Christopher Andrew Jones ("Mr Jones"), exhibit "JHT1" to the first witness statement of Mr John Hedley Twizell ("Mr Twizell") and exhibit "MGH1" to the first witness statement of Mr Mark Gregory Hardy ("Mr Hardy") or to the corresponding pages of the exhibit to a witness statement made by an employee of my solicitors being exhibit "MJW1" to the first witness statement of Mr Mark James Wood ("Mr Wood").

6. In this statement I adopt the same definitions as I used in my earlier witness statements. These are summarised at pages 1 to 2 of "AWG3".

Background

7. On 9 January 2002, administration orders (pages 1 to 32 of "AWG1") were made in relation to EDI Realisations Limited (at the time called, 'Marshall Editions Limited') ("EDI") and 15 related companies (together "the Group") by Mr Justice Lawrence Collins. Pursuant to these orders my partner, Michael Vincent McLoughlin and I ("the Joint Administrators") were appointed joint administrators of the 16 companies.

8. The companies placed into administration included the EDI's parent company, Newscreen Media Group plc (at the time called 'Just Group plc') ("Newscreen"), Newscreen Licensing Limited (at the time called 'Just Licensing Limited') ("Licensing") and Newscreen Entertainment Limited (at

the time called 'Just Entertainment Limited') ("Entertainment"). A structure chart of the Group is at pages 33 to 35 of "AWG1".

9. I have been informed by Mr Jones that, prior to the making of the administration orders, a shareholders' action group called the 'Just Action Group' ("JAG") had been formed with the objective of preserving the value of the Group. Between around February and July 2002, JAG and their advisers, who included Mishcon de Reya ("Mishcons") and Begbies Traynor, formulated Company Voluntary Arrangement proposals ("CVAs") with the Joint Administrators. It was acknowledged throughout this period that Begbies Traynor would produce the CVA proposals, being the intended supervisors of the CVAs, but that the Joint Administrators would propose the CVAs, because only the Joint Administrators had the power to propose the CVAs (s.1 of the Insolvency Act 1986 ("the Act")).

10. On 17 June 2002, the Joint Administrators proposed the CVAs, in our capacity as administrators of Newscreen, Licensing and Entertainment (pages 62 to 77 of "AWG1").

11. On 8 July 2002, a conditional share offer was sent by the directors of Newscreen to its shareholders inviting them to apply for shares in Newscreen (the "Offer") (pages 58 to 61 of "AWG1"). The funds to be provided by the shareholders under the terms of the Offer were to be used to assist in securing the acceptance of the CVAs.

12. The terms of the Offer referred to previous share offers which were made on behalf of JAG and made it clear that any application for shares pursuant to a previous JAG offer would now be superseded (page 58 of "AWG1"). Mishcons dealt with the administration of the Offer on behalf of JAG, and the subscription monies were paid to Mishcons.

13. The proposals (pages 62 to 77 of "AWG1") were approved by the creditors of Newscreen, Licensing and Entertainment on 2 August 2002 and David Hudson and Jamie Taylor of Begbies Traynor were appointed as supervisors of the CVAs. The Chairman's report of the creditors' meetings is at pages 78 to 95 of "AWG1".

14. I included further information about the circumstances in which the CVAs were proposed and approved in my first and third witness statements (in particular paragraphs 7 to 11 of the former and paragraphs 2.4 to 2.30 of the latter).

15. In broad terms the purpose of the CVAs was to enable Newscreen, Licensing and Entertainment to continue to trade. Following the approval of the CVAs, the companies intended to collect royalties from existing signed contracts, develop existing licenses and seek new opportunities. The said contracts and licenses related to the companies' rights in "Butt Ugly Martians" and "Jellables/Jellikins", being the Group's remaining intellectual property, following the disposals that had occurred during the Administrations. It was envisaged that the companies would also acquire shares in a company called Target Distribution Limited, to provide the companies with new licensing opportunities (paragraphs 4.1 and 5.2 of the CVA at pages 64 and 65 of "AWG1").

16. As shown in the statement of affairs attached to the CVA proposals, the Group was indebted to National Westminster Bank plc ("the Bank") in the sum of £10,450,000. The Group's indebtedness to the Bank was secured by debentures and an unlimited composite cross guarantee across the Group dated 3 May 2001 ("the Guarantee"). Copies of the debenture entered into by the Bank and EDI dated 18 April 2001, the debenture entered into by the Bank and Newscreen dated 18 April 2001 and the Guarantee appear at pages 36 to 57 of "AWG1".

17. In order to secure the support for the proposed CVAs from the Bank, JAG needed to raise sufficient funds to pay the Bank, the preferential creditors' claims and the costs of the Administrations in full.

18. By June 2002, JAG held shareholder funds totalling approximately £1,850,000 and a meeting was held to discuss the payments that would need to be made to the Bank, the preferential creditors and the Joint Administrators. Following the meeting Mr Craig Johansen, who at the material time was an employee of KPMG, sent an email to the attendees (and others) in which he summarised the main points discussed, which included the manner in which the preferential creditors in Newscreen and EDI would be dealt with (pages 77 to 79 of "AWG3"). The email explained that the funds held by JAG, totalling approximately £1,850,000, would be applied as follows:

18.1 £1.3M to the Bank;

18.2 £322K, "in escrow to cover PAYE/NIC preferential claim in EDI Realisations Ltd";

18.3 £192K, "to Inland Revenue to settle PAYE/NIC clam in Just Group plc" (i.e. Newscreen); and

18.4 approximately £36K, "as contribution towards the costs of implementing the CVA".

19. On 23 August 2002, £1,850,000 was paid by Mishcons to Newscreen, pursuant to and in accordance with the terms of the CVA. Subsequently, the indebtedness of the Group to the Bank was satisfied in full and Newscreen paid £524,000 to EDI. Also, HM Revenue & Customs had submitted a claim for £324,613.22 in EDI's Administration. This claim had not been paid when the Joint Administrators issued their application for directions. As at that date, the Joint Administrators held £516,903.05 in the bank accounts described in paragraph 2 of my first witness statement.

20. Based on the advice I received, I considered that there was a real prospect that the Funds were trust assets which were to be applied in accordance with the terms of the CVAs (albeit there was considerable doubt as to the identity of the beneficial owner of the Funds).

21. The Joint Administrators therefore required the directions of the Court in relation to the Funds.

22. Our investigations had revealed that one or more of the following parties could be entitled to the Funds:

22.1 EDI;

22.2 HM Revenue & Customs;

22.3 certain former shareholders of Newscreen who contributed to the fund of £1,850,000 which was paid to Newscreen;

22.4 Newscreen; and

22.5 Think.

Respondents to the application:

(a) HM Revenue & Customs

23. I was advised that HM Revenue & Customs may be entitled to have recourse to the Funds to meet their claims on the basis that a trust in their favour

arose on the payment of monies by Newscreen to EDI for the purpose of meeting their claim, as a preferential creditor in EDI's Administration.

24. The only known preferential creditors of EDI was HM Revenue & Customs and a few small employee claims. HM Revenue & Customs had submitted a claim for £324,613.22. Accordingly, I suggested that HM Revenue & Customs be made a respondent to the application.

(b) The former shareholders of Newscreen who contributed to the fund of £1,850,000

25. I had been unable to establish how much money was raised by the members of JAG, but my investigations had revealed that it was at least £1,850,000. This information was been obtained as a result of communications with Mishcons.

26. Both the Joint Administrators and the solicitors acting on our behalf, namely Eversheds, had attempted on numerous occasions to obtain confirmation from Mishcons as to who they were acting for and accordingly, who may be beneficially entitled to the Funds (pages 104 to 113 of "AWG1"). Mishcons had suggested by email that Newscreen was entitled to the Funds (page 114 of "AWG1"). I was advised, however, that this email did not provide sufficient information, as it failed to provide adequate detail in relation to the administration of the Offer and whether the relevant sections of the Offer letter were completed by the shareholders. In particular, while the letter confirmed that the shareholders paid the monies across for the specific purpose of purchasing shares in Newscreen, it did not address whether the Offer was over-subscribed and, if so, whether these funds were returned to the shareholders.

27. In such circumstances, I considered that it may be appropriate for a shareholder representative to be given the opportunity to argue that certain shareholders had a beneficial interest in the Funds. Accordingly, I sought to identify a member of JAG who would be a suitable representative. This task proved difficult, because the members of JAG held widely differing views, as was readily apparent from the exchanges which occurred on the JAG/Think website (pages 115 to 200 of "AWG1").

28. Mr Jones had maintained that the Funds should be paid to the shareholders of Newscreen/Just Action Group because they had contributed the money or to the Joint Liquidators of Newscreen and Think.

(c) Newscreen

29. Following the approval of the CVAs, the administration order in respect of Newscreen was discharged on 23 April 2004 (pages 201 to 203 of "AWG1").

30. On 21 May 2004, Newscreen entered into members' voluntary liquidation, and Geoffrey Martin and Mr Twizell of Geoffrey Martin & Co were appointed joint liquidators ("the Joint Liquidators"). The Joint Liquidators were authorised to enter into a reconstruction pursuant to section 110 of the Act (pages 204 to 218 of "AWG1"). On 21 June 2004, pursuant to the agreement under section 110 of the Act, the entirety of Newscreen's assets were transferred to Think Entertainment plc ("Think") in consideration of the issue of shares in Think to the shareholders of Newscreen pro rata to their shareholdings in Newscreen.

31. On 8 May 2005, Newscreen entered into creditors' voluntary liquidation, as the Joint Liquidators had formed the opinion that Newscreen was unable to meet its liabilities within the time scale set out in the directors' declaration of solvency. The Joint Liquidators' report to creditors dated 8 June 2005 is at pages 219 to 239 of "AWG1".

32. The Joint Liquidators of Newscreen had claimed to be entitled to the Funds. The correspondence in this regard is at page 240 of "AWG1". Accordingly, I suggested that the Joint Liquidators of Newscreen be made respondents to the application for directions.

33. The Joint Liquidators maintained in their letter dated 29 September 2006 (pages 58 to 60 of "AWG2") that the Funds should be paid to Newscreen because the Funds were transferred by Newscreen to the other group companies.

(d) Think

34. Think was the transferee of the assets of Newscreen pursuant to the agreement under section 110 of the Act. Mr Hardy, a director of Think, had informed KPMG that he believed that following, and as a result of, the section 110 transfer, Think was entitled to the Funds. Accordingly, I suggested that Think be made a respondent to the application for directions.

Interpreting the CVAs

35. The Respondents were unable to agree what was required to happen to the Funds pursuant to the terms of the CVAs. Whereas HM Revenue & Customs

asserted that the CVAs required HM Revenue & Customs' claim in EDI's Administration to be paid out of the Funds, Newscreen asserted that the CVAs only required HM Revenue & Customs' claims in Newscreen, Licensing and Entertainment to be paid out of the Funds. Think and Mr Jones, on the other hand, challenged the CVAs, asserting that the creditors who had approved the CVAs and the JAG members who had advanced monies had been misled.

36. The CVAs contained an estimate of £198,000 in respect of preferential creditors' claims. However, it appeared that this estimate was only in respect of preferential creditors' claims in Newscreen's, Licensing's and Entertainment's Administrations. When the CVAs were read in their entirety, it appeared that the intention was that all the preferential creditors' claims across the Group were to be paid. In the CVAs:

36.1 Paragraph 1.1 defined:

"Preferential Creditors" as *"Creditors to the Group whose claims as at the Fixed Date are Preferential under Sections 4 and 386 of the Act"*; and

"Group" as *"Just Group Plc and subsidiary companies"*.

36.2 Paragraphs 2.11 and 2.12 made it plain that EDI was part of the Group.

36.3 Paragraph 4.8 provided:

"The claims of the Preferential Creditors are estimated at £198,000. The agreed preferential claims will be met in full from funds currently held by the Solicitors on behalf of the Shareholders. Sufficient funds to meet the estimated Preferential Claims will be passed immediately to the Supervisor."

36.4 Paragraph 4.10(a) provided:

"The sum of £1.3 million will be paid to the Administrators immediately following the agreement of the Voluntary Arrangement. The funds to meet this payment have been raised by Shareholders and are held by Solicitors on behalf of Shareholders. The funds will be used towards discharging the estimated shortfall to the Bank."

36.5 Paragraph 4.10(b) provided:

"A further £322,000, which has been raised by Shareholders, will be held in escrow. These funds will not be utilised until the validity of the Bank's fixed

charge on book debts has been agreed. The conduct of this matter will be determined solely by the Bank, but will in any event settled not more than 24 months from the date of approval of the Arrangement. In the event that the Bank's charge is not valid these funds will be passed to the Bank in reduction of its liability. The funds will be returned to the New Company only if the Bank's fixed charge on book debts is valid and to the extent that there is no remaining shortfall to the Bank. If such a shortfall exists, the funds will be used first to discharge any remaining shortfall to the Bank."

36.6 Paragraph 4.11 provided:

"A second further letter from JAG to the Shareholders has been issued inviting further funding. The funds raised as part of this exercise will be used as follows:-

(a) The first £200,000 will be paid to the Administrators in reduction of any remaining outstanding liability to the Bank and the Administration."

36.7 Paragraph 6.2.8 provided:

"The Supervisors shall distribute the funds retained in the Voluntary Arrangement in the following order of priority:-

6.2.8.1 (a) All fees, costs, charges and expenses of the Administration that have been properly incurred by the Administration in carrying out their duties.

.....

6.2.8.2 In paying the Preferential Creditors."

36.8 I included further information about the interpretation of the CVAs in my third witness statement (in particular paragraphs 2.22 to 2.30).

Application

37. In January 2006 the Joint Administrators made an application for directions in relation to the Funds. The application was supported by a witness statement, which I made in March 2006.

38. That witness statement was not intended to provide a comprehensive history of the case. Rather, it was made as a preliminary step in the proceedings and in support of the relief set out in the application. It was anticipated that a more detailed witness statement would be required at a later stage in the

proceedings, in the event that the respondents were unable to agree the manner in which the Funds were to be distributed.

39. The Funds were the only monies held within EDI's Administration. Accordingly, they represented the only monies available to satisfy the costs of the application for directions. Therefore, in order to ensure that remuneration and costs were met, the Joint Administrators were advised to seek an order which provided that in the event that the Funds were determined to be trust assets, our remuneration and costs relating to the investigation of the ownership of the Funds, including the costs of the application for directions, would be met from the Funds. The Joint Administrators were advised that the decision in *Re Berkeley Applegate (Investment Consultants) Ltd (No.2)* (1988) 4 BCC 279 demonstrates that there is jurisdiction to make such an order.

The First Hearing

40. This matter first came before the Court on 20 March 2006. The hearing was attended by Counsel for the Joint Administrators and Mr Jones. A copy of the transcript of this hearing is at pages 1 to 10 of "AWG6". Chief Registrar Baister determined the parties who should be joined as Respondents to the application and ordered that:

40.1 The Joint Administrators' remuneration, costs and expenses of and incidental to their investigation of the ownership of the Funds (as defined at paragraph (2) of the application and my evidence in support), to include the costs of and incidental to the application, be paid out of the Funds.

40.2 The following parties to be joined as Respondents to the application:

40.2.1 HM Revenue & Customs;

40.2.2 Newscreen;

40.2.3 Think; and

40.2.4 Mr Jones.

40.3 Mr Jones do notify this order to the other members of JAG by publicising it on the JAG website.

40.4 There be liberty to apply to be joined to this application.

40.5 The application be adjourned to 15 May 2006 at 12:30pm, time estimate 30 minutes.

The Second Hearing

41. This matter came before the Court again on 15 May 2006. The hearing was attended by Counsel for the Joint Administrators, Counsel for the liquidator of Newscreen, Mr Hardy on behalf of Think and Mr Jones in person. No one appeared for HM Revenue & Customs. The transcript of this hearing is at pages 11 to 22 of "AWG6".

42. Counsel for Newscreen stated that the liquidator was without funding and applied without notice for an order that the costs and expenses of and incidental to his involvement in the application be paid out of the Funds. In support of this application he stated that:

"The practicality of these proceedings is they are extremely contentious, extremely complicated, there are a number of different vested interests and the chances of our clients procuring any funding from any of these other bodies, creditors, or contributors I would respectfully suggest is absolutely zero and there is such a degree of conflict, counterclaim, counter accusation going on here." (page 17 of "AWG6")

43. Mr Registrar Simmonds doubted that he had jurisdiction to make such an order. The learned Registrar invited Newscreen to make an application to the Judge forthwith in the event that it wished to pursue an application for such relief. No such application was ever made.

44. Counsel for Newscreen also submitted that the Joint Administrators should be directed to file further evidence before the Respondents should be obliged to respond. Mr Registrar Simmonds rejected this submission (pages 17 to 20 of "AWG6").

45. It was ordered by Registrar Simmonds that:

45.1 the Respondents do file and serve evidence in answer by 4.30 pm on 16 July 2006;

45.2 the Joint Administrators do file and serve evidence in reply (if so advised) by 4.30 pm on 7 August 2006;

45.3 as to costs of Newscreen:

45.3.1 the Joint Liquidators do file and serve evidence in support of his application to benefit from a Berkeley appointment provision;

45.3.2 the other parties be at liberty to file evidence in answer;

45.3.3 the question of Newscreen's application be adjourned to the Judge for a date to be fixed; and

45.3.4 the parties do attend the listing office forthwith.

46. The Respondents were required to file and serve evidence by 16 July 2006. However, they failed to serve and file evidence as ordered. None of the Respondents applied for an extension to the timetable.

47. Rather than filing evidence in accordance with the direction of the Court, Mr Hardy, on behalf of Think, and Mr Jones sent a large volume of correspondence to my solicitors (it runs to about 200 pages and can be found in exhibit AWG2). This correspondence included serious allegations of misconduct which were made without the provision of any or any sufficient particulars (in particular (i) paragraphs 5 and 6 of my second witness statement which summaries the conduct of Mr Hardy, on behalf of Think, and Mr Jones since the second hearing of the application; (ii) pages 68 to 128 of "AWG2" as an example of the correspondence written by Mr Hardy; (iii) pages 129 to 227 of "AWG2" as an example of the correspondence written by Mr Jones; and (iv) pages 228 to 251 of "AWG2" as evidence of the hostile state of relations between Mr Hardy and Mr Jones.

48. The conduct of Mr Hardy, on behalf of Think, and Mr Jones was placing a huge costs burden on the Joint Administrators. While the bald assertions of misconduct and fraud were inexpensive to make, it was very time consuming and expensive to respond to such allegations. As detailed at paragraph 10 of my second witness statement, the need to respond to these allegations significantly reduced the level of the Funds.

49. Although the Joint Administrators' approach was to deny Mr Hardy's and Mr Jones' allegations (in so far as the allegations related to matters that were within the Joint Administrators' own knowledge), some of their allegations were connected with the manner in which the CVAs had been proposed and approved and therefore they concerned the very source of the Funds. If these allegations had been substantiated, then they could have had a very material impact upon the outcome of the application.

The Third Hearing

50. Given the Respondents' failure to serve evidence in answer and the conduct of Mr Hardy, on behalf of Think, and Mr Jones, the Joint Administrators instructed their solicitors to issue an application for further directions which was issued on 10 October 2006. On 14 December 2006, Newscreen filed and served the witness statement of Mr Twizell. This statement was five months late.

51. On 15 December 2006, the Joint Administrators served a skeleton argument (pages 38 to 46 of "AWG6") in which they indicated their intention to seek orders:

51.1 that Mr Hardy, on behalf of Think, and Mr Jones serve evidence in answer within 7 days and in the event of their failure to do so they be debarred from participating in the application and from claiming any entitlement to the Funds; and

51.2 that the Joint Administrators do not need to respond to the correspondence which is received from Mr Hardy, on behalf of Think, and Mr Jones.

52. Also Newscreen served a skeleton argument dated 15 December 2006 (pages 47 to 55 of "AWG6") in which they indicated their intention to seek an order for my cross examination. In particular, they stated:

"Ordinarily, it would not be necessary to ask administrators in such an application to be tendered for cross examination. They do not normally have any direct evidence to give. This case is different. They are at the very epicentre of this matter and plainly have much to give to assist the court (as Mr Graham asserts in paragraph 4.4. of his second witness statement). In this case it is submitted that he ought to be ordered to attend to be cross examined on the evidence that he has served. A direction to this effect is respectfully requested.".

53. The application was heard on 18 December 2006. The hearing was attended by Counsel for the Joint Administrators, Mr Krelling of HM Revenue & Customs, the solicitor for the liquidator of Newscreen, Mr Hardy on behalf of Think and Mr Jones in person.

54. Although Counsel for the Joint Administrators applied for the directions set out in the skeleton argument dated 15 December 2006 (pages 38 to 46 of "AWG6") the learned registrar declined to give those directions. The following exchange occurred:

"MR ALLISON: The other matter that I mentioned was if we could, to the extent that you feel willing and able to do so, is to give us some clear guidance on the fact that we do not need to answer each and every document that comes in from Mr Hardy and Mr Jones in particular, we fear otherwise there won't be any money there by the time this gets completed, which we don't think can be in the interests of any of these parties.

REGISTRAR DERRETT: Yes, yes Mr Allison, and whilst I think that is quite correct, the more you have to deal with correspondence necessarily or unnecessarily received (inaudible) deplete this fund, however I have to say that I do not consider it appropriate for this Court to make such an order, it is really a matter for you and - for the solicitors and the administrators to determine how they should respond to correspondence. Obviously if it is regarded that the letters coming in are not relevant to this application then a limited response should be made.

MR ALLISON: Madam, that is probably sufficient guidance for us as your Officers of the Court in this regard, that we only need to respond to matters relevant to this application.

REGISTRAR DERRETT: Yes, I mean clearly if wide ranging allegations are being made at the end of the day it has to be a matter for you if you choose not to respond to them, but equally I would say to Mr Hardy and Mr Jones obviously you should confine yourself in respect of this application to the matters which are relevant to this application because ultimately it will simply be dissipating funds." (pages 23 to 37 of "AWG6", at page 34 lines 1 to 18).

54.1 Registrar Derrett ordered that:

54.2 The First Respondent file and service any evidence on which it intends to rely by 4pm on 15 January 2007.

54.3 The Joint Administrators file and serve evidence in reply to that of the First Respondent by 4pm on 29 January 2007.

54.4 The Joint Administrators file and serve evidence in reply to that of the Second and Fourth Respondents by 4pm on 15 January 2007.

54.5 All parties file and serve listing certificates and certificates of readiness by 4pm on 5 February 2007.

54.6 There be a non-attendance pre-trial review on 12 February 2007.

The Fourth Hearing

55. The matter came before the Court next on 17 July 2007. Counsel for the Joint Administrators, Counsel for HM Revenue & Customs and Mr Jones attended. Newscreen and Think were not represented.

56. The Court was informed of the terms of an agreement reached between the Joint Administrators, HM Revenue & Customs and Mr Hardy on behalf of Think, which provided that:

56.1 The Funds shall be paid 60% to HM Revenue & Customs and 40% to the joint liquidators of Newscreen.

56.2 HM Revenue & Customs and Newscreen (acting by its joint liquidators) acknowledge and agree that upon receipt of any sums paid pursuant to this Schedule, they will have no further claim against the Joint Administrators or as between themselves in relation to the beneficial ownership of the Funds.

56.3 Think acknowledges and agrees that save for the appropriate share of the sums payable to the joint liquidators of Newscreen, pursuant to an agreement dated 9 May 2006, it will have no further claim against the Joint Administrators or any of the other Respondents in relation to the beneficial ownership of the Funds.

57. Registrar Nicholls ordered that:

"1 The balance of the funds as defined in paragraph 2 of the Application and in paragraph 2 of the First Witness Statement of Allan Graham filed in support of the Application ("the Funds") remaining in the hands of the Applicants following:

(a) the discharge from the Funds of all remuneration, cost and expenses of and incidental to the Applicants' application for the discharge of the administration order pursuant to section 18 of the Insolvency Act 1986 ("the Act") and their release pursuant to section 20 of the Act;

(b) the discharge of all remuneration, costs and expenses of the Applicants of and incidental to the investigation into the ownership of the Funds (including for the avoidance of doubt any remuneration, costs and expenses incurred pursuant to paragraph s 2 to 5 of the Order herein); and

(c) the discharge of all remuneration, costs and expenses of the Applicants to which the Applicants are entitled pursuant to s. 19(4) Insolvency Act 1986 shall be paid out in accordance with the terms of the agreement between the Applicants, the First Respondents, the Second Respondents and the Third Respondents and set out at paragraph 1 of Schedule 1 hereto.

2 The Applicants' remuneration, costs and expenses of and incidental to their investigation of the ownership of the Funds, as set out in the Order of Chief Registrar Baister dated 20 March 2006 ("the Order"), be the subject of a detailed assessment by an assessor as set out at paragraph 4 if not agreed. For the avoidance of doubt (a) the remuneration, costs and expenses of the Applicants incurred in relation to the detailed assessment shall constitute remuneration, costs and expenses within the meaning of paragraph (1) of the Order; and (b) the legal costs of the Applicant shall be assess pursuant to CPR 48.8.

3 The Applicants do by 4 pm on 31 August 2007 file and serve upon the parties by way of witness statement details of their remuneration, costs and expenses in relation to such investigation. For the avoidance of doubt, the remuneration, costs and expenses of the Applicants incurred in relation to the preparation of the witness statement shall constitute remuneration, costs and expenses within the meaning of paragraph (1) of the Order.

4 The detailed assessment be stayed until 4 pm on 28 September 2007, whilst the parties try to agree the Applicants' remuneration, costs and expenses as aforesaid. The Applicants shall notify to the Court in writing at the end of that period whether agreement has been reached (and, if so, shall submit a draft Consent Order recording such agreement). In the event that no such agreement has been reached the Applicants, the First Respondent and the Second Respondent shall by 4pm on 19 October 2007 lodge an agreed order which provides for the following matters:

(a) the appointment of a named assessor by the parties to conduct the detailed assessment ("the Assessor");

(b) the fact that the Assessor shall be remunerated from the Funds in the conduct of the detailed assessment;

(c) the date by which each party should lodge papers with the Assessor for the purpose of the detailed assessment'

(d) a list of issues for determination by the Assessor;

(e) the date by which the Assessor shall provide his draft report to the parties ("the Draft Report");

(f) the date by which the parties shall submit any comments to the Assessor in relation to the Draft Report; and

(g) the date by which the Assessor shall provide his final report.

5 In the event of that the parties are unable to agree an order for the timetable for the detailed assessment by 4 pm on 19 October 2007, an application shall be made to the Court for directions to be given for the conduct of the detailed assessment.

6 For the avoidance of doubt, the remuneration, costs and expenses of the Applicants incurred in relation to the agreement or attempts to agree the remuneration, costs and expenses as aforesaid and any ancillary work upon the same shall constitute remuneration, costs and expenses within the meaning of paragraph (1) of the Order.

7 Save as aforesaid, there be no order as to costs."

Respondents' Arguments

58. I set out below some further information concerning the Respondents' arguments. Each of these arguments were developed during the course of the application.

(a) HM Revenue & Customs

59. The Revenue's position was initially unclear having indicated that they did not wish to attend the hearing on 15 May 2002 and participate in the proceedings (page 3 of "AWG2").

60. However by letter from HM Revenue & Customs to the Clerk to Registrar Derrett dated 15 January 2007 (pages 56 to 58 of "AWG6"), HM Revenue & Customs stated that:

"HMRC considers it clear in the light of authority (particularly Re Leisure Study Group Ltd [1994] 2 B.C.L.C. 65 and Re N.T. Gallagher & Sons Ltd

[2002] EWCA Civ 404, [2002] B.C.L.C. 133, [2002] 3 All E.R. 474), that the monies paid into the CVA in this case are held on trust, and remain so notwithstanding the failure of the CVA. (As to this last matter, I would refer, in particular, to paragraphs 48-50 and paragraph 54 of the Judgement of the Court of Appeal in Re N.T. Gallagher & Sons Ltd (ante).)

On the question of the construction of the CVA, HMRC adopts the analysis contained at paragraphs 9-13 of the Applicant's skeleton argument dated 15 December 2006. The monies paid into the CVA should now, be applied, in accordance with clause 6.2.8.2 of the CVA Proposal, "In paying the Preferential Creditors" as defined in clause 1 of the CVA Proposal, that is to say "Creditors of the Group whose claims as at the Fixed Date are Preferential under Sections 4 and 386 of [the Insolvency Act 1986]". There can, I would respectively suggest, be no doubt that HMRC falls within the scope of that definition and, as such, is entitled to the appropriate proportion of the monies held." HM Revenue & Customs repeated these assertions in their skeleton argument dated 13 July 2007 (pages 59 to 70 of "AWG6" at paragraph 20 and 21).

(b) Newscreen

61. The reasons for Mr Twizell's belief that Newscreen was entitled to the monies that were the subject of the application were set out in his witness statement dated 14 December 2006 and were based on the following facts:

61.1 A copy of the declaration of solvency prepared at the time of the members' voluntary liquidation, together with some notes that were prepared for the board of Newscreen for the purpose of assisting them in connection with the statutory declaration of solvency, showed a figure of £315,000 as being "other debtors". Within this figure, there was a sum of £300,000 representing an asset that Newscreen expected to recover from the Joint Administrators (paragraph 6(a) of Mr Twizell's first witness statement and page 4 of "JHT1").

61.2 Certain notes contained a reference to a conversation that allegedly took place on 4 March 2004 with, "KPMG" in which "KPMG" indicated that they expected a surplus of up to £385,000 to be available and that this would be returned to Newscreen via its solicitors, Mishcon de Reya (paragraph 6(b) of Mr Twizell's first witness statement and page 7 of "JHT1").

61.3 Based on this figure the directors, who were taking advice at the time from Deloitte & Touche, wrote this figure down to £300,000 in the final statutory declaration (paragraph 6(c) of Mr Twizell's first witness statement).

61.4 In consequence, he expressed a belief that there was clearly expressed by the Joint Administrators a belief on their part that the party justly and truly entitled to the funds was Newscreen (paragraph 6(d) of Mr Twizell's first witness statement).

61.5 The original CVA document contained conflicting references to preferential creditors. In the definition section it referred to all Just Group companies' preferential creditors, whereas at Clause 4.8 it provides, *"the claims of preferred creditors are estimated at £198,000."* Mr Twizell therefore expressed the belief that only the preferential creditors to be paid out of the Funds were Newscreen Licensing and Entertainments were (paragraph 11(b)(i) of Mr Twizell's first witness statement).

61.6 Mr Twizell also stated that:

61.7 *"I can only presume that Clause 4.8 contains the correct figure for the preferential claims (198,000) as there were 16 companies within the Just Group and I do not believe that the figure stated represented the outstanding balance on all the group companies as the time the proposal was signed. Indeed, given that the EDI's preferential creditors were estimated at some £323,000 in the administrators' estimated outcome in March 2002, this estimate of £198,000 could not possibly have included EDI's preferential creditors."* (paragraph 11(b)(ii) of Mr Twizell's first witness statement).

61.8 Further, he stated that *"I do not see why Newscreen would enter into a CVA to satisfy all the preferential creditors of all its subsidiary companies; and why the shareholders of Newscreen would agree to raise new monies to fund these third party settlements at a time when they were desperate for working capital in the companies covered by CVA to support the development of its IP rights"* (paragraph 11(b)(iii) of Mr Twizell's first witness statement).

Mr Hardy

62. Mr Hardy alleged that:

62.1 The Joint Administrators withheld information from the shareholders of Newscreen (pages 104-106 and 230-237 of "AWG2").

62.2 The payment of £524,000 by the Joint Administrators from the CVA trust monies to the account of EDI was neither a purpose of nor authorised by the CVAs (Mr Hardy's first witness statement).

62.3 The funds transferred from Newscreen to other Group companies should not have been transferred by the Joint Administrators (pages 104-106, 109-111 and 230-237 of "AWG2").

62.4 The application is an abuse of the process of the court and the perversion of the course of justice, as the monies in EDI should never have been there in the first place, (Mr Hardy's first witness statement and paragraph 10 of Mr Hardy's skeleton argument dated 18 December 2006)

62.5 The evidence adduced by the First and Second Respondents in the application alone shows clear wilful and deliberate criminal conduct by the Joint Administrators and their instructed Solicitors and Counsel (paragraph 16 of Mr Hardy's skeleton argument dated 18 December 2006).

63. Mr Hardy has also corresponded with Thames Valley Police and copied these emails to Eversheds and other Respondents. Copies of these emails are at pages 252 to 255 of "AWG2".

64. Mr Hardy and Mr Jones have also been corresponding between themselves, accusing each other of misrepresentations and false statements. These have been copied to Eversheds and other Respondents (pages 228 to 251 of "AWG2").

Mr Jones

65. Mr Jones has alleged that:

65.1 The appointment of the Joint Administrators may be unlawful as a result of the provision of misleading, incomplete and false information in a witness statement made by David Newcombe (pages 190-191 of "AWG2").

65.2 He has obtained admissions of fraud, false accounting and deception in recorded conversations with former Newscreen directors and associates (pages 135-137, 148-149, 163-166, 190-191, 214-215, 219-221 of "AWG2" and Mr Jones' first witness statement at paragraph 3.2).

65.3 The Funds were raised fraudulently (pages 148-149, 163-166, 190-191 of "AWG2" and Mr Jones' first witness statement at paragraph 3.4).

65.4 He and fellow shareholders were deceived by Newscreen's board and by KPMG in 2002 (pages 148-149, 163-166, 190-191 of "AWG2" and Mr Jones' first witness statement at paragraph 1.6).

66. The Joint Administrators requested copies of the statements made to Mr Jones to enable them to consider the issues raised fully. However, Mr Jones refused to provide copies in various emails, including his email dated 21 July 2006 (pages 214-215 of "AWG2").

The Joint Administrators' response to the Respondents' Arguments

67. The allegations of false accounting, deception, conspiracy and fraud were never sufficiently particularised and, in any event, unfounded, in so far as those allegations were made against the Joint Administrators and their solicitors.

68. The Joint Administrators responded to the Respondents' arguments in an appropriate manner. This involved providing all the Respondents with information to enable each of them to formulate their case. This information was provided in my witness statements and in correspondence. Further details about the Respondents' requests for information are included in my second witness statement (in particular paragraphs 3 to 7). Because the Joint Administrators' solicitors had been involved in this matter at the time when the CVAs were proposed and Mr Johansen had died, the Joint Administrators had to rely on their solicitors for a great deal of assistance in relation to the investigations into the material events during the process by which the CVA was approved.

Settlement

69. The Joint Administrators encouraged the Respondents to explore the possibility of a negotiated settlement and attempted to facilitate a meeting, but without success (pages 8-11, 14-15, 16, 17-18, 19, 39-40, 41-43, 44, 45-48, 49-50, 89, 90-92, 102-103, 107-108, 109, 183-184, 185-186 of "AWG2").

70. Also, very clear indications were given by Registrars Baister, Derrett and Simmonds to the Respondents that they should consider mediation to resolve their differences. Despite these, no mediation occurred.

71. Perhaps the clearest indication was given by Registrar Simmonds on 15 May 2006 when he stated:

"I haven't seen enough of this to be able to form a view of cutting through, but what does worry me here very considerably is that this fund is going to be dissipated in costs and I ask parties here today to consider that real possibility and whether any form of mediation may be more efficient and produce funds to potential beneficiaries than wasting and flittering it away amongst lawyers."

(pages 11 to 22 of "AWG6" at page 22, lines 20 to 24).

72. Registrar Nicholls, at the hearing on 17 July 2007, also commented that if the parties did not come to an agreement in respect of the costs of the application, then in all likelihood there would be nothing left of the Funds.

73. The parties' subsequent attempts to reach an agreement in respect of these costs are summarised in Mr Wood's first witness statement, which was made on 13 November 2007. This witness statement was made in support of an application to extend the timetable set out in the order made by Registrar Nicholls on 17 July 2007, when the Respondents were unable to agree to the Joint Administrators' proposal that the timetable should be extended by the agreement of the parties to enable negotiations to continue.

74. There has been further correspondence between the parties in relation to the costs which, if considered material, can be exhibited to a later witness statement.

75. I now expect that the costs of the Application and the costs assessment, which pursuant to the Order made on 17 July 2007 are to be met out of the Funds on the bases set out therein, will exhaust the Funds and therefore, that there will be no distribution to the Respondents.

76. The balance of the Funds under the control of the Joint Administrators continue to be subject to the ongoing costs of the Administration, the Application, the costs of the assessment and will be subject to the costs of exiting the Administration in due course.

77. I have exhibited to this witness statement bills of costs in respect of the Joint Administrators' work and their solicitors' work (exhibits "AWG4" and "AWG5" respectively). I am advised that I should explain two aspects of the approach taken by both the Joint Administrators and their solicitors to the involvement of members of their staff and attendance at meetings:

77.1 Both the Joint Administrators and their solicitors have had different grades of fee earner working on this matter, ranging from Partner to Assistant

Manager in the Joint Administrators' case and ranging from Partner to Trainee Solicitor in their solicitors' case. The main objective of this approach was to ensure that work was carried out at the most appropriate level, thereby reducing the Joint Administrators overall cost of the application. However, this approach was also necessary in order to ensure that the matter was progressed in a timely manner, bearing in mind the Respondents' approach to the application. The involvement of several individuals at both the Joint Administrators and their solicitors has, of course, resulted in discussions between those individuals about allocation of work, developments and the like and this is reflected in the overall costs.

77.2 On certain occasions both the Joint Administrators and their solicitors had more than one member of staff at meetings or at hearings. The main reasons for this were that the Respondents' approach to the application were so diverse that different members of staff concentrated on different issues and it was necessary to have detailed notes of meetings and/or hearings and it would have been impossible, for example, for the same person to conduct the meeting and at the same time keep a detailed note.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: .....

Full Name: Allan Watson Graham

Date: 21 December 2007