


**FERRIER HODGSON**
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**Date** 29 May 2009  
**Attention** Company Announcements  
 Australian Stock Exchange  
**Facsimile** 1300 135 638  
**From** Steven Sherman  
**Pages** 90  
**Subject** **Ventracor Limited (Administrators Appointed)**  
**ACN 003 180 372**

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Dear Sir / Madam

Please refer to the attached report to creditors dated 20 May 2009 with respect to Ventracor Limited (ASX: VCR).

Yours Faithfully  
**Ventracor Limited**

  
**Steven Sherman**  
 Joint Administrator

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CORPORATE ADVISORY

FORENSICS

CORPORATE RECOVERY

**Ventracor Limited  
(Administrators Appointed)  
ACN: 003 180 372  
("the Company")**

**Report to Creditors  
Pursuant to Section 439A(4)  
of the  
Corporations Act 2001 ("the Act")**

**Steven Sherman & Peter Gothard**

**20 May 2009**



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## Glossary of Terms

Abbreviation	Description
ABN	Australian Business Number
ACN	Australian Company Number
Act	The Corporations Act 2001
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
Board	Board of directors
BTT	Bridge To Transplant
DOCA	Deed of Company Arrangement
ERV	Estimated Realisable Value
FDA	Food and Drug Administration
GEERS	General Employee Entitlements Redundancy Scheme
Group	Ventracor Limited and its subsidiaries as listed in Annexure 2
ISO	International Organisation for Standardisation
LVAD	VentrAssist LVAD
NBV	Net Book Value
R&D	Research and Development
SGC	Superannuation Guarantee Charge
SPP	Share Purchase Plan
Statement	Directors' Statement about the Company's Business, Property, Affairs and Financial Circumstances
TGA	Therapeutic Goods Administration
the Company	Ventracor Limited
WIP	Work In Progress



## **1. Executive Summary**

### **1.1 Introduction**

Peter Gothard and I were appointed Voluntary Administrators of Ventracor Limited on 19 March 2009, pursuant to Section 438A of the Corporations Act 2001 ("the Act").

Creditors ratified our appointment as Voluntary Administrators at the first meeting of creditors held on Tuesday 31 March 2009.

### **1.2 Background**

As creditors will be aware, the Company was primarily involved in the development of an implantable blood pump, the VentrAssist LVAD, the LVAD is designed for patients with end stage heart failure.

The history of the Company and its activities are detailed further in Sections 3 and 4 of this report.

### **1.3 Reasons for Failure**

Having undertaken a preliminary investigation of the business and financial affairs of the Company, I consider that the primary factors that contributed to the business failing was the present economic crisis relative to the availability of viable finance options and a loss of shareholder confidence in the Company. The combined impact of these factors resulted in a reduction in the current and estimated future available finance to commercialise the LVAD.

In the 14 months prior to the appointment of the Administrators the Directors explored several avenues to secure ongoing operational finance for the Company including a Share Placement Plan in late 2008. In addition and following the Company's inability to raise sufficient additional working capital from its shareholders, the Company sought market interest in relation to identifying a strategic partnership or a party who may be interested in acquiring the Company.

This exercise was ultimately unsuccessful in terms of identifying multiple parties who were prepared to commit to a detailed due diligence and possible sale transaction. It did however identify one offshore party who after limited due diligence provided a conditional offer to acquire key operational components of the Ventracor Group activities. The key condition of the offer was that the transaction required shareholder approval. After considering the Company's financial position at the relevant time, and the projected time/cost to complete the possible sale transaction, the directors resolved to appoint the Administrators on the basis that the Company was likely to become insolvent in the short term.

### **1.4 Results of Investigations**

Section 438A of the Act requires that the Administrators undertake an investigation into the affairs of the Company and consider the existence and impact of actions taken by the Company and the possibility of their recoverability in the event of a liquidation of the Company.

The results of our preliminary investigations suggest that there would not be recoveries available to a Liquidator which if successfully pursued would benefit of creditors. Details of the issues considered in the preliminary investigations are set out in Section 8 of this report.



## 1.5 Options and Recommendations

Pursuant to Section 439A(4)(b) of the Act, I am required to provide creditors with a statement setting out my opinion on whether it is in the creditors' interests for the:

- Administration to end;
- Company to be wound up; or,
- Company to execute a Deed of Company Arrangement ("DOCA").

A DOCA has been provided by a Shareholder Group. For the reasons outlined in Section 9, and notwithstanding that it is estimated to provide creditors with a return of 100¢ in the \$ on eligible claims, I am of the opinion that this proposal is not in the interests of creditors and as such, it is not recommended.

In the alternative, a "General" DOCA has been proposed by the Administrators which if approved may provide an opportunity for there to be an enhanced return for the Company's creditors and where relevant shareholders. Absent the General DOCA being considered and approved I have recommended that the Company proceed to liquidation as creditors are not, on the information presently available materially disadvantaged by this course of action. At this time, in both the General DOCA and liquidation scenario, it is anticipated a sale of the business assets can be effected, which is likely to result in creditors being paid 100¢ in the \$, in relation to their eligible claims.

Details of the respective DOCA proposals the current status of the sale negotiations, together with our recommendation and reasoning are outlined in Section 9 of this report.

## 1.6 Second Meeting of Creditors

In accordance with an order of the Supreme Court of NSW dated 21 April 2009, the convening period for the second meeting of creditors was extended until 19 June 2009. The order provided for the meeting to be called at any time during the extension period as determined by the Administrators on the provision of 5 business days notice to creditors.

I advise that the second meeting of creditors is convened for Friday, 29 May 2009, and will be held at the offices of Clayton Utz, Level 34, 1 O'Connell Street, Sydney NSW at 10:00am. Please refer to Annexure 9 for a copy of the Notice of Meeting.

Attached to this report as Annexure 8 is a Proxy Form (Form 529) and as Annexure 7, an Informal Proof of Debt. Proxies to be used at the meeting should be submitted to the Administrators office (either via fax to 02 9286 9888 or via e-mail to [ben.hynes@fh.com.au](mailto:ben.hynes@fh.com.au)) by 4:00pm on Thursday, 28 May 2009.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at the meeting unless they have previously lodged particulars of their claims against the company with the Administrators.

In the event that you have lodged an Informal Proof of Debt with the Administrator for the first meeting of creditors, you are not required to submit a separate Proof for the second meeting unless you are intending to amend your claim against the Company.



## 2. Introduction

### 2.1 Appointment of Administrators and First Meeting of Creditors

Peter Gothard and I were appointed Voluntary Administrators of Ventracor Limited on 19 March 2009, pursuant to Section 436A of the Corporations Act 2001 ("the Act").

Creditors ratified our appointment as Voluntary Administrators at the first meeting of creditors held on Tuesday 31 March 2009. A Committee of Creditors was not formed.

The second meeting of creditors is convened for Friday, 29 May 2009, and will be held at the offices of Clayton Utz, Level 34, 1 O'Connell Street, Sydney NSW at 10:00am.

I have conducted an investigation into the affairs of the Companies pursuant to Section 439A of the Act. The results of my investigations are set out in this report.

### 2.2 Purpose of Report

Section 439A(4) of the Act explains the purpose of an Administrator's report in providing that the notice (of second meeting) must be accompanied by a copy of:

- (a) *A report by the Administrator about the company's business, property, affairs and financial circumstances; and*
- (b) *A statement setting out the Administrator's opinion about each of the following matters:*
  - *Whether it would be in the creditors' interests for the company to execute a Deed of Company Arrangement; and*
  - *Whether it would be in the creditors' interest for the administration to end;*
  - *Whether it would be in the creditors' interest for the company to be wound up;*

*His or her reasons for those opinions and provide such other information known to the Administrators as will enable the creditors to make an informed decision about each of the above matters ; and*

- (c) *If a Deed of Company Arrangement is proposed – a statement setting out details of the proposed deed.*

### 2.3 Non-Disclosure of Certain Information

There are sections of this report wherein I considered it inappropriate to disclose certain information to creditors. This information is limited to the identity of the investors relative to the funding of a proposed sale of the assets of the Company and the Ventracor Group as outlined in Section 9.3.

I fully recognise the need to provide creditors with complete disclosure of all necessary information relating to the Company. However, I believe this information is commercially sensitive and it is not in creditors' interests for me to disclose the information publicly at this stage. I am of the opinion that the subject information does not materially affect the ability of creditors to assess the available options.



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Where necessary in this report, I have provided a combined or Group estimate of relevant issues in respect of the potential realisations of assets when comparing estimated dividends under the available options. The necessity for this is essentially linked to the nature of the assets, the structure of the Ventracor Group and the terms of the current proposals under consideration.

## **2.4 Declaration of Independence, Relevant Relationships and Indemnities**

The Administrators provided a Declaration of Independence, Relevant Relationships and Indemnities to creditors with their first circular to creditors and also tabled the declaration at the first meeting of creditors. I am not aware of any issues in the Intervening period which could impact our independence relative to this Administration or the declarations that have been given in this regard.



### 3. Company Information

A search of the ASIC database disclosed the following information.

#### 3.1 Incorporation Date and Registered Office

The Company was incorporated on 17 October, 1986. The Company's registered office is listed as Level 28, 71 Eagle Street, Brisbane, QLD.

#### 3.2 Statutory Information

The Company's officers over the past 12 months were:

Name	Role	Appointment Date	Cessation Date
John Frederick Ward	Director	30 August 2001	Present
Andrew Ross Hamicks	Director	12 November 2004	Present
William Edward Curran	Director	2 May 2007	Present
Elizabeth Ann Nosworthy	Director	11 July 2002	Present
Jeffery Harold Goodman	Director	15 August 2007	Present
Peter Andrew Crosby	Director	1 August 2006	Present
John Clarence Massey	Director	8 July 1998	3 April 2008
Graeme Francis Fallet	Secretary	4 October 2006	Present
Camilla Louise Newcombe	Secretary	29 March 2007	Present

##### 3.2.1 Shareholders

The Company's shareholders are essentially retail investors. General detail of the shares on issue are as follows:

Type	Details	Allotment	Total Paid on Shares Issued
Ordinary Shares	Current	306,680,515	\$199,759,745

### 3.3 History of the Company

The Company was incorporated as a private company (Micromedical Industries Pty Ltd) in October 1986. The Company specialised in the research, development, manufacture and marketing of medical monitoring device products. Micromedical Industries Pty Ltd listed on the Australian Securities Exchange ('ASX') in November 1988.

In 1998 the Company's sole focus became the development of an implantable blood pump, the VentrAssist LVAD, the LVAD is designed for patients with end stage heart failure. To reflect the change in focus of the Company it changed its name to Ventracor Limited in July 2002.

Following the first human implant in 2002 the number of implants steadily increased as the market accepted the products capabilities to the extent that in December 2006 the CE Mark approval was attained in Europe, followed by TGA approval in Australia in August 2007 and FDA approval in the US for the Bridge To Transplant (BTT) trial.



During this period the successful raising of capital from shareholders enabled the Company to develop the global commercialisation of the LVAD, establish separate entities in the US and Europe, as well as develop a distribution network throughout the Asian region.

In January 2008 the Board of Directors identified that a further funding requirement existed and engaged an external consulting group to conduct a strategic review to help frame the future direction of the Company.

### 3.4 Financing Attempts

The Company last raised capital in March 2006. Since that time the Company was aware that future funding would be required, however, the source of this funding had not been determined. In the 14 months prior to the Administrators being appointed a number of different options relative to securing the projected necessary working capital were explored and exhausted a number of different options:

- **February 2008** – Pacific Strategic Partners were engaged to conduct a strategic review, this identified a significant funding requirement and also outlined a number of financing options that were considered by the Company.
- **April 2008** – Cowen & Co, a US investment bank were engaged to identify strategic partners and potential large institutional investors. Approximately 127 parties were identified as potential interested parties, however only 8 parties expressed any interest in conducting due diligence. The economic downturn in 2008 impacted significantly on this exercise and as a result no viable party(s) were identified from this process.
- **November 2008** – ABN Amro Morgans were engaged to perform a two step financing exercise;
  - Share Purchase Plan (SPP), in conjunction with;
  - An institutional share placement.

Despite extending the SPP deadline insufficient funds were raised and the funds committed by shareholders in this process, and as a result the monies raised, approximately \$3.0M, was returned. The planned institutional share placement process was not successful.

- **December 2008** – Cowen & Co were re-engaged to identify suitable strategic partners or to identify party(s) who may be interested in acquiring the business. This process identified a number of parties who conducted due diligence, but no viable offers to purchase the business as a going concern deemed capable of acceptance by the board of directors were received.

For further detail in relation to the above please refer to Section 6.4. We have also attached as **Annexure 1** is a copy of the Chairman's address to the Annual General Meeting dated 28 November 2008 providing further detail in relation to these financing activities.

### 3.5 Structure

The Group structure, attached as **Annexure 2**, summarises the core activities of the subsidiary entities.

Ventracor Ltd is the parent company, with separate 100% entities established in the respective offshore jurisdictions.



The main production facilities and head office of the Company are located in Australia, with infrastructure developed largely in the US and the Netherlands to support clinical trials and R&D in pursuit of the global commercialisation of the LVAD

As all production is undertaken in Australia the Company operated intercompany loan accounts between the Group companies to support the establishment and maintenance of the subsidiary operations.

At the date of our appointment approximately \$63M was owed to the Company from its subsidiaries, details of which are summarised below:

Intercompany Loans		19 Mar 2009
		\$'000
Ventracor Inc		47,239
Ventracor UK Ltd		8,473
Ventracor BV		7,698
Ventracor GmbH		(8)
<b>TOTAL</b>		<b>63,402</b>

At this time the overseas entities are not in administration or any equivalent local formal insolvency proceeding. We have considered but have decided not to pursue calling the Intercompany Loans as such an action would in all likelihood precipitate an insolvency of the relevant subsidiary entities, thereby jeopardising the potential return from these entities. It is anticipated that if there was an insolvency event in the respective subsidiary, the current funds on hand would be quarantined to first meet the liabilities of the respective entities in their respective jurisdictions (plus the costs of the separate insolvency proceedings in each jurisdiction). In addition, while the basis of our continuing negotiations with Siqro Inc. has been relative to a Group asset sale, the value of these assets is only preserved where the business continues as a going concern, and accordingly, a global insolvency may adversely impact the Group's overall capacity to continue to operate.

The directors of the subsidiary companies have assisted in the administration of Ventracor Ltd and continue to work closely with the Administrators to ensure a smooth resolution of the Group's affairs for the benefit of all creditors.



## 4. Historic Financial Information

I have been provided with the consolidated management accounts for year ended 30 June 2007 and 2008 and for the 8 month period to 28 February, 2009. The consolidated management accounts for the year ended 30 June, 2007 and 2008 were the basis of the Group's financial statements for these periods. PricewaterhouseCoopers have audited the financial statements of the Group up to the year ending 30 June, 2008. In the independent auditor's report to members dated 27 August 2008, it was identified that there was significant uncertainty whether the Group would continue as a going concern. I am informed that this opinion reflected the projected need for greater certainty relative to the Company's future funding requirements

The management accounts for the 8 month period to 28 February 2009 are unaudited.

Further comment on the adequacy of the Company's books and records is contained in Section 8. 3.

### 4.1 Historical Profit & Loss

Summarised below are the historical trading results for the financial years ending 30 June 2007 – 2008 and for the period to 28 February 2009.

Profit and Loss Summary - Company	Notes	30 June 2007	30 June 2008	28 February 2009
		\$'000	\$'000	\$'000
Sales	1	7,823	15,189	9,925
Gross Profit		3,633	7,065	3,999
Operating Expenses	2	(28,233)	(87,084)	(12,429)
EBITDA		(24,600)	(80,019)	(8,430)
EBIT		(27,608)	(83,093)	(10,434)
Net Profit/(Loss)	3	(21,312)	(83,082)	(5,560)

Items of note regarding the above are:

**Note 1** – Sales reflects sales to hospitals in Australia and the supply of LVAD's to subsidiaries to meet the external demand for LVAD's in their respective jurisdictions. The majority of the Company's sales relate to the subsidiary sales (2007 - \$6.4M, 2008 - \$13.0M, 2009 - \$9.0M).

**Note 2** - In 2008 the Company's operating costs were considerably higher than the prior year, this reflected the Company's decision to impair \$41M of inter group loans. This is standard accounting practice reflecting the likely recoverability of these debts at that time.

**Note 3** - The Company incurred significant trading losses since incorporation, this is reflective of the nature of its activities and the length of time required to complete clinical trials and to commercialise the technology in the various regions of operation. Until regulatory approval is achieved in all trading jurisdictions the Group forecast to incur trading losses. The uptake in clinical trials in the US and regulatory approval in Australia and Europe combined with an internal review of expenditure assisted to contain the Group trading loss in 2008 and 2009, however, the Company still estimated that it would be a minimum of 18 months before regulatory approval in the US may be achieved.



## 4.2 Historical Balance Sheet

A summary of the Company's Balance Sheet for the past three (3) financial years is set out below together with my preliminary comments:

Balance Sheet - Company	Notes	30 June 2007	30 June 2008	28 Feb 2009
		S'000	S'000	S'000
<b>ASSETS</b>				
Cash at Bank	1	47,936	14,979	3,780
Debtors	2	1,052	1,532	2,511
Intercompany Loans	3	23,665	-	2,588
Inventory	4	2	4,650	4,815
<b>Total Current Assets</b>		<b>72,656</b>	<b>21,161</b>	<b>13,695</b>
Non-Current Assets	5	7,674	6,421	4,847
<b>Total Assets</b>		<b>80,330</b>	<b>27,582</b>	<b>18,542</b>
<b>LIABILITIES</b>				
Current Liabilities	6	(5,137)	(4,500)	(2,005)
Contingent Liabilities		-	-	-
Employee Entitlements		-	-	-
Non-Current Liabilities	7	(172)	(432)	(234)
<b>Total Liabilities</b>		<b>(5,309)</b>	<b>(4,932)</b>	<b>(2,239)</b>
<b>Net Current Assets</b>	8	<b>67,519</b>	<b>16,661</b>	<b>11,690</b>
<b>Surplus</b>	1	<b>75,021</b>	<b>22,650</b>	<b>16,303</b>

Items of note regarding the above are:

**Note 1** – The Group has historically been reliant upon shareholders through capital raisings. The Group has no external debt finance, and as such there are no secured creditors. The last capital raising took place in March 2006. Since that time trading losses principally in relation to the investment in the overseas entities associated with the commercialisation of the LVAD has resulted in a significant diminution to the cash balance and the net asset surplus.

**Note 2** – Debtors relate to external trade debtors and prepayments (primarily relating to annual insurance premiums).

**Note 3** – In June 2008 the Company impaired all of the intercompany loans reflecting that it did not anticipate recovering the initial set up costs in relation to the overseas subsidiaries.

**Note 4** – Prior to 30 June 2008 the Company did not capitalise inventory due to the low levels of historic sales.

**Note 5** – Non-Current Assets relate primarily to specialist production plant and electronic equipment.

**Note 6** – Current Liabilities consist mainly of trade creditors and annual leave staff accruals. The significant reduction in the balance at February 2009 compared to prior years is largely a function of the Company's overall reduction in operating expenditure.

**Note 7** – Non-Current Liabilities relate to long service leave staff accruals.



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**Note 8** – The table above highlights that in the 3 years preceding the appointment of the Administrators, the Company maintained a strong balance sheet and had sufficient working capital to meet its short term liabilities.

This historical balance sheet needs to be considered relative to the estimated realisable values given the current circumstances. For further detail please refer to Section 9.4 of this report.



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## 5. Reasons for Appointment

As outlined in our first report, the directors of the Company appointed the Administrators when they formed the view that the Company was likely to become insolvent in the short term and before any additional capital could be raised. Following the appointment, I requested written explanations from the Directors of the Company as to the cause(s) of the failure. The information/commentary provided by the Directors is outlined below:

- The Company's business model was reliant on external funding to commercialise the LVAD.
- The deterioration in the global debt markets towards the end of 2007 and the subsequent impact on the equity markets significantly limited the Company's ability to raise capital.
- The issue of an Urgent Field Safety Notice on the VentrAssist LVA4 following reports of a lead fracture in a number of patients, significantly slowed the sale process with one interested party.

As a result of the above issues and having regard to the issues outlined in Section 3, the Company's forecasts indicated that the Group was likely to become cash flow insolvent prior to completing a potential sale of the business, and accordingly the Directors at that time resolved to appoint Administrators.



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## 6. Activities following Appointment

The tasks undertaken by the Administrators following our appointment on 19 March 2009 are extensive. The principal activities are summarised below.

### 6.1 Statutory Duties

The Administrators have completed a number of statutory duties required by the Act, including;

- Lodged notice of appointment;
- Held the first meeting of creditors and attended to the related statutory requirements;
- Prepared a First and Second Report for Creditors; and
- Undertaken preliminary investigations into the affairs of the Company.

### 6.2 Administrative and Trading Duties

A summary of the general administrative duties addressed by the Administrators in the period from appointment include, but are not limited to:

- Assessed and monitored the impact of Administration on the subsidiary entities;
- Addressed the ongoing trading and operational requirements including the establishment of new supply chains;
- Liaised with Directors and senior management regarding ongoing issues relative to the Company's as well as the subsidiary entities' activities;
- Ensured that ongoing activities would best facilitate a possible business sale;
- Liaised with Group's existing bank service provided to ensure release of operational cash and to establish/maintain new banking facilities;
- Reviewed existing insurance and assessed its adequacy and where necessary, extended insurance cover;
- Communication with creditors to ensure ongoing supply agreements;
- Review and monitoring of Company and Group cash flow forecast;
- Held frequent employee update sessions; and
- Extensive communications with the Company's shareholders including holding a shareholder briefing session.

### 6.3 Shareholder Communications

During the course of the Administration to date, I have been contacted by numerous shareholders both via telephone and e-mail. The common themes raised in these shareholder communications have included:



- 
- Preliminary support for a further Share Purchase Plan ("SPP");
  - Replacement of the current board; and
  - Suggestion that surplus cash from the subsidiaries be used to fund the operations of Ventracor Limited.

In accordance with the provisions of the Corporations Act, the Administrators are not obliged to report to and meet with shareholders, however, given both the level of interest and concern as well as the misinformation that was in circulation concerning the Company and its affairs, an informal shareholder briefing was held on 7 April 2009 to address the above and other relevant issues raised by shareholders.

In addition, I have provided where appropriate further information to shareholders via the posting of information on the Ferrer Hodgson website. This information primarily addressed the impact of the Voluntary Administration on shareholders, and the avenues available to shareholders who at that time may have had an interest in providing additional financial support to the Company. A copy of this letter is attached as Annexure 3.

#### 6.4 Sale of Business

From information made available as part of my investigation I have provided below greater detail of the fund raising activities undertaken by the Company and the eventual attempts to ultimately sell the Company. This information is relevant to ensure that creditors have an understanding as to the background of the position at the time of our appointment and relevantly the matters that are now before creditors for their consideration.

During February 2008, the Company engaged Pacific Strategic Partners to undertake a strategic review with the principal purpose of identifying key corporate objectives having regard to the expected funding requirements identified at that time to have occurred in/or around July 2008. The outcomes of this review can be summarised as:

- Too early to sell the Company and there was no apparent benefit in expanding the product portfolio;
- The Company should prepare to be acquisition ready;
- Having regard to the future funding needs the introduction of a limited number of institutional investors was suggested as a possible alternative to a SPP.

During April 2008, the Company engaged Cowen & Co, a US based investment bank with specialist medical expertise to assist in identifying strategic investors. In addition, the Company sought supplementary advice from ABN Amro Morgans Corporate Limited with respect to capital raising options. The Company ultimately pursued (unsuccessfully) the progression of additional capital raising via the issuance of convertible notes principally on the advice of ABN Amro Morgans.

In June 2008 the Company re-engaged with Cowen & Co to identify possible candidates to take up a private placement shares and where necessary this strategy was to be supplemented by a rights issue of up to \$30M. During July 2008, Cowen & Co identified approximately 120 possible investors and from these candidates and following numerous investor presentations, five potential investors emerged.

Of these, one party conducted extensive due diligence and a term sheet was issued however they ultimately withdrew in September 2008 due to exposure to Lehman Brothers.



Resulting from this process the Company formed the view that a lead investor was required and the process undertaken by the Company at that point in time had failed to identify such a party.

During October 2008, Cowen Healthcare Royalty Partners ("CHRP"), an affiliate of Cowen & Co which invests principally in commercial stage or near commercial stage medical products put forward an investment proposition involving potentially \$30M in debt and \$4.5M in equity. Before this process could be progressed, CHRP withdrew the proposal in November 2008 following an investment committee review.

In late November 2008 the Company again re-engaged with ABN Amro Morgans to manage the SPP. This SPP raised approximately \$3M, significantly under the Company's target of \$10M and consequently, the \$3M was returned to participating shareholders.

Following the failure of the various capital raising activities, in December 2008, the Company engaged Cowen & Co to identify a buyer(s) and/or strategic partners. Cowen & Co identified 50 possible candidates. A data room was established with 28 of the 50 parties receiving Company presentations, resulting in eight (8) parties undertaking due diligence. From this process, five (5) possible partners/buyers emerged, including Sigro Inc.

At the time of my appointment, only Sigro Inc. had submitted an offer to the board of Ventracor. The salient terms of the offer made by Sigro Inc. prior to my appointment are outlined below:

- An asset purchase across of assets held by all active Ventracor Group companies (not a business acquisition);
- Continuity of employment for most employees;
- Conditions precedent to the transaction of:
  - An assignment of key premises leases;
  - Transfer/assignment of key intellectual property;
  - Exclusivity to 30 April 2009;
  - Provision of minimum inventory levels; and
  - Approval by shareholders.
- Indicative purchase price of US\$6M.

Given the terms of the offer, in particular the conditionality and related timing, the board formed the opinion that the Company had inadequate resources to enable it to progress the offer and made a decision to appoint the Voluntary Administrators.

For further details relating to the current status of negotiations with Sigro Inc. please refer to Section 9.3.

## 6.5 Receipts and Payments

Attached as Annexure 4 is a summary of the receipts and payments in relation to the Administration for the period of 19 March 2009 to 13 May 2009.



## 7. Statement of Position

### 7.1 Summary

Section 438B of the Act requires a director to give an administrator a statement about company business, property, affairs and financial circumstances. Summarised below are details of the statement provided by the directors:

Statement as at 19 March 2009	Report Reference	Cost or Net Book Value	Directors' ERV
		\$'000	\$'000
<b>ASSETS</b>			
Interest In Land	7.1.1	-	-
Sundry Debtors *	7.1.2	63,620	5,859
Cash on Hand and at Bank	7.1.3	2,815	2,815
Stock on Hand	7.1.4	3,458	2,939
Work In Progress	7.1.4	1,984	1,984
Plant & Equipment	7.1.5	4,702	4,702
Other Assets	7.1.6	682	181
<b>Sub Total</b>		<b>77,260</b>	<b>18,478</b>
Assets Subject to Specific Charges		0	0
Less Amounts owing under Charges		0	0
<b>TOTAL AVAILABLE ASSETS</b>		<b>77,260</b>	<b>18,478</b>
<b>LIABILITIES</b>			
Less: Priority Creditors			
- Employee Entitlements Payable in Advance of Secured Creditors	7.1.7	(1,172)	(1,172)
- Secured Creditors		0	0
- Partly Secured Creditors		0	0
<b>Total Priority Creditors</b>		<b>(1,172)</b>	<b>(1,172)</b>
Contingent Liabilities	7.1.8	(5,180)	(5,180)
Provision against Intercompany Loans	7.1.2	(61,178)	0
<b>TOTAL LIABILITIES</b>		<b>(67,530)</b>	<b>(6,352)</b>
<b>Available to Unsecured Creditors</b>		<b>9,731</b>	<b>12,128</b>
Ordinary Unsecured Creditor Claims	7.1.9	(1,564)	(1,564)
<b>ESTIMATED SURPLUS / (DEFICIENCY)</b>		<b>8,167</b>	<b>10,562</b>

\* Sundry debtors includes Intercompany Loans



My comments on the estimated statement of position are as follows:

### 7.1.1 Interest in Land

A property search indicates that the Company does not currently own any real property in Australia or offshore.

The properties at Chatswood and Kirrawee are both leasehold properties, included in the Plant & Equipment NBV of \$4.7M is approximately \$270K of leasehold improvements in relation to specialist manufacturing and production facilities installed by the Company at these premises.

### 7.1.2 Sundry Debtors

The table below provides a breakdown of the sundry debtors:

Sundry Debtors	Book Value	Estimated Realisable Value
	\$'000	\$'000
Ventracor Inc	47,239	2,368
Ventracor UK Ltd	8,473	851
Ventracor BV	7,898	2,422
Ventracor GmbH	(8)	-
Total Intercompany Receivables	63,402	5,641
Trade Debtors	197	197
GST on Purchases	18	18
Employee Advances	3	3
<b>TOTAL</b>	<b>63,620</b>	<b>5,859</b>

The table above highlights that a considerable deficit exists between the book value of Receivables from Subsidiaries of \$63.4M and the realisable value of \$5.6M, the realisable value is based on the Directors assessment of the recoverability or net assets of the subsidiary entities.

The table below outlines the history of the intercompany loans over the past 4 years:

Intercompany Loans	30 June 2006	30 June 2007	30 June 2008	28 Feb 2009
	\$'000	\$'000	\$'000	\$'000
Ventracor Inc	4,058	14,875	26,048	47,239
Ventracor UK Ltd	2,020	9,101	9,350	8,473
Ventracor BV	-	120	5,379	7,898
Ventracor GmbH	-	-	-	(8)
<b>TOTAL</b>	<b>6,078</b>	<b>23,776</b>	<b>40,777</b>	<b>63,402</b>

Due in part to the limited market within Australia the Company established overseas entities in Europe and the US to help progress the broad market commercialisation of the LVAD.



The nature of the Group's activities were such that overseas entities were funded through intercompany loans. The significant debtor balances due from the subsidiaries is reflective of the considerable cost in establishing the necessary infrastructure in these entities.

Review of the historical balances indicates that the majority of the initial investment took place during 2006 and 2007, with the intercompany loans funding staff and premises costs to enable completion of clinical trials and R&D activities. Interest accrued on the loans at a commercial rate.

Since mid 2008 both the US and European entities were operationally cash neutral, the increase in the balances after this time largely relates to accrued interest and the revaluation of the loans, in line with exchange rate movements.

As outlined in Section 4.2, in June 2008 the Company provided in full for the intercompany loans, this reflected the fact the initial set up costs were deemed not to be recoverable.

Trade debtors relate solely to the amounts outstanding from the two Australian hospitals currently utilising the LVA technology. \$190K of the total trade debtors of \$197K have been collected during the Administration and has been banked to the Administrator's Ventracor Ltd bank account.

### 7.1.3 Cash in Hand and at Bank

At the time of our appointment, the Administrators took control of the Company's banking facilities, transferring the cash balances from the Australian and overseas bank accounts controlled by the Company into the Administrator's Ventracor Ltd bank account. The balance of cash on hand and at bank on 19 March 2009 was approximately \$2.8M.

There remains a further \$350K that is currently held in the pre appointment bank account as cash collateral against the pre-administration credit card facility and bank guarantee with respect to the lease of the Chatswood premises. I anticipate that these monies will eventually be collected in full.

### 7.1.4 Stock on Hand and Work in Progress

The Company's stock records show that the combined value of stock and WIP at the time of appointment was \$5.4M, the Directors estimate the realisable value to be \$520K lower than book value.

Stock and WIP	Book Value	Estimated Realisable Value
	\$'000	\$'000
Stock on Hand	3,458	2,939
WIP	1,984	1,984
<b>TOTAL</b>	<b>5,441</b>	<b>4,922</b>

The reduction in the realisable value of stock on hand (finished goods and raw material stock) is reflective of the write down in value of LVA4 finished stocks to a salvageable value, following the Field Safety Notice issued in February 2009. The directors have estimated that all remaining LVA4 WIP stock can be utilised in future production. Further commentary relative to the Stock/WIP is outlined in Section 9.3.

To date, only a small number of retention of title claims have been received, with these having been addressed to the satisfaction of the parties.



Although sales have been minimal during the administration period, significant time has been spent in preserving value in WIP, by ensuring production decisions will provide the greatest flexibility for the continuity of the business.

### 7.1.5 Plant & Equipment

A summary of the plant and equipment is presented below;

Plant and Equipment	Book Value	Estimated Realisable Value
	\$'000	\$'000
Production Plant and Equipment	3,539	3,539
Electronic Equipment	785	785
Leasehold Improvements	270	270
Other	108	108
<b>TOTAL</b>	<b>4,702</b>	<b>4,702</b>

The majority of the production facilities and equipment is subject to ISO requirements, in order to retain these standards plant and equipment has continued to be subject to periodic maintenance.

The directors' estimate of realisable value is based upon a possible sale of the assets to a single party on an in-situ basis. In the event that there was to be a break-up sale of the business / plant and equipment it is estimated that the equipment may realize between 10-30% of the Book Value.

### 7.1.6 Other Assets

Other assets consist of prepayments, investments in subsidiaries and a bank guarantee.

Of the NBV of \$682K, approximately \$180K is forecast by the Directors to be recoverable primarily from satisfying a property rental guarantee, this guarantee relates to cash held by the bank against a guarantee issued to the landlord of the Chatswood premises. No forecast return is expected from the \$500K of prepayments.

### 7.1.7 Priority Creditors

The estimate of the priority claims owed to employees as at the date of Administration is as follows:

Employee Entitlements	Total Employee Entitlements
	\$'000
Wages and Expenses	0
Superannuation *	0
Annual Leave	936
Long Service Leave	236
Redundancy	0
Pay in Lieu of Notice	0
<b>TOTAL</b>	<b>1,172</b>

\* Following review of the payroll records, I have identified an amount of approximately \$75K due to employees in respect of Superannuation for the period of March 2009.



In the event of liquidation, admitted employee claims are afforded priority of repayment pursuant to Section 556 of the Act.

The Act provides that "Excluded Employees", which includes company directors and their spouses, are each restricted to a total maximum priority claim of \$2,000 for unpaid wages and \$1,500 for annual leave entitlements.

Amounts owed to Excluded Employees that exceed the statutory cap for wages and superannuation and annual leave/long service leave, and all payments owing in respect of retrenchment, being redundancy and payment in lieu of notice, rank *pari passu* for dividend with unsecured creditors.

Further details on the estimated employee entitlements, are provided in Section 9.

### 7.1.8 Contingent Liabilities

The Directors have identified the below contingent liabilities:

Contingent Liabilities	Estimated Contingent Liability \$'000
Commercial Ready Grant – Federal Government	2,800
Retention Payments	81
Cowen & Co	1,798
ABN Amro Morgans	500
<b>TOTAL</b>	<b>5,180</b>

The Commercial Ready Grant relates to government funding of a specific research project. Present indications are that unless relevant intellectual property is transferred without consent, the government has indicated that it may not demand repayment of the Grant. This position may vary in the event that there was no sale of the business and the Company were to proceed to liquidation.

Retention payments relate to loyalty incentives for various employees. These retention commitments have time based milestones which are unlikely to be met.

Cowen & Co and ABN Amro Morgans acted as the Groups financial advisors/facilitators during the capital raising and sale exercises undertaken during 2008/2009.

Despite the failure to achieve a sale of business at the time, Cowen & Co's contract provides for a fee to be paid of US\$1.125M on a sale of the Company or its underlying assets.

The contingent liability with ABN Amro Morgans relates to \$500K becoming payable if a sale of the business takes place in the 6 months from engagement, with this period expiring in May 2009.

### 7.1.9 Unsecured Creditors

Based on the books and records of the Company, the liability to unsecured creditors as at the date of Administration was estimated to be \$1.584M. This in general reflects an average ageing of approximately 34 days on these operational expenses.

All creditor claims, in the event of a dividend being declared be subject to the receipt and adjudication of formal proofs of debt from creditors.



## 8. Administrators' Investigations

The Act requires an administrator to carry out preliminary investigations into a company's business, property, affairs and financial circumstances. Section 438A of the Act requires an administrator to investigate the affairs of the company and consider the existence and impact of possible courses of action that may be available to the company and in particular, those that may be available in the event of liquidation.

As outlined above, as a result of the legislative timetable associated with a Voluntary Administration, the investigation into these issues is by necessity brief and the results are at best a preliminary assessment.

A more detailed investigation of the relevant issues, which would be conducted in the course of liquidation, will better assess the significant issues and the possible financial impact to the creditors of the Company. In this context the investigations of a Voluntary Administrator into the business property, affairs and financial circumstances of a company primarily focus on insolvent and voidable transactions or other amounts that may be recoverable by a liquidator pursuant to Part 5.7B of the Act. Further, investigations centre on transactions entered into by the Company that a liquidator might seek to void or otherwise challenge in the event the Company is wound up. Investigations allow the Administrators to advise creditors what funds might become available to a liquidator such that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the Company.

Funds recovered would be available to the general body of unsecured creditors.

A liquidator may recover funds from each type of voidable transaction detailed in this report. A deed administrator does not have recourse to these voidable transactions. A liquidator may also recover funds through other avenues, for example, through action seeking compensation for insolvent trading.

An administrator is not obliged to carry out investigations to the same extent as a liquidator. A liquidator may require further detailed investigations including where relevant, the conduct of public examinations of relevant Company officers before forming a concluded view on any recovery action.

I have investigated matters to the extent possible in the time available. The dividend estimate in a liquidation scenario set out in Section 9 of this report reflects the projected outcome of these investigations.

The Administrators' knowledge of the Company's affairs comes principally from the following sources:

- The directors' Statement and a detailed questionnaire concerning the Company's affairs prepared by the directors.
- Discussions with the directors and their advisors.
- A search of the ASIC records relating to the Company and any related entities.
- Searches obtained from the RTA and the Land Titles Office.
- An examination of the Company's books and records including its financial statements and management accounts.



## 8.1 Company's Solvency

### 8.1.1 Overview

An essential element the recovery of funds by a Liquidator through the voiding of certain transactions or through other legal action, such as seeking compensation from Directors for insolvent trading, is determining the Companies' solvency or otherwise at the relevant time.

Establishing insolvency is a complex matter due in part to the complexity of corporate financial transactions and the lack of clear prescriptive legal authority on proof of insolvency.

Notwithstanding, there are two primary tests used in determining a company's solvency, at a particular date; namely:

- Balance sheet test;
- Cash flow or commercial test.

The Courts have widely used the cash flow or commercial test in determining a company's solvency at a particular date.

Section 95A of the Act also contains a definition of solvency. That definition reflects the commercial test in stating that a person is solvent if, "the person is able to pay all the person's debts as and when they become due and payable".

However, the commercial test is not the sole determinant of solvency. Determining solvency derives from a proper consideration of a company's financial position in its entirety and in the context of commercial reality. Relevant issues include, but are not limited to, the following:

- The degree of illiquidity. A temporary lack of liquidity is not conclusive;
- Regard should be had to:
  - cash resources;
  - monies available through asset realisations, borrowings against the security of assets or equity/capital raising.
- All of a company's assets might not be relevant when considering solvency. For example, where a company proposes selling assets which are essential to its business operations, the proceeds of those assets should not be taken into account.
- The voluntary and temporary forbearance by creditors not to enforce payment terms;

It is not appropriate to base an assessment of whether a company can meet its liabilities as and when they fall due on the prospect that a company might trade profitably in the future.

In summary, it is a company's ability using such resources as are available to it through the use of its assets, or otherwise, to meet its debts as they fall due, which indicates solvency.



## 8.2 Preliminary Determination

My preliminary determination is that the Company was not insolvent at the date of appointment. In conjunction with my discussions with management I have conducted the following preliminary investigations to substantiate this position:

- Net asset and working capital analysis on a Group and Company basis.
- Comparative review of the Company's aged payables for the 6 months preceding my appointment.
- A preliminary review of the Company's operational banking facilities.
- A review of any statutory and tax commitments outstanding.

The table below shows the working capital and net asset position of the Company for the 4 years preceding my appointment. It can be seen that in the relevant periods the Company had both sufficient working capital and substantial level of net assets.

Balance Sheet Summary	Jun 06	June 07	June 08	Feb 09
	\$'000	\$'000	\$'000	\$'000
Current Assets	59,728	72,658	21,163	13,697
Current Liabilities	(3,070)	(5,137)	(4,500)	(2,005)
Working Capital	56,658	67,519	16,663	11,692
Non Current Assets	8,889	7,674	6,421	4,848
Non Current Liabilities	(105)	(172)	(432)	(234)
Net Assets	65,442	75,021	22,652	16,304

\* The above position includes Intercompany Loans

As outlined above, determining a date of insolvency is an essential preliminary threshold to the assessment of any realisations that may be available through recoveries of voidable transactions as detailed in Section 8.4 of the report. On the basis of my preliminary investigations that the Company was not insolvent at the date of Administration, as a consequence, at this time there is estimated to be no recoveries available to creditors with respect to antecedent transactions in the event that the Company is liquidated.

## 8.3 Presumption of Insolvency – Inadequate Books and Records

Failure to keep or retain adequate books and records in accordance with Section 286 of the Act provides a rebuttable presumption of insolvency under Section 588E of the Act. A liquidator can rely on the presumption of insolvency in litigation including:

- Compensation claims arising from insolvent trading; and,
- Recovery of voidable transactions from related entities.

The presumption cannot be relied upon in the recovery of unfair preference from an unrelated entity.

My preliminary view is that the Company maintained adequate books and records in accordance with Section 286. Accordingly, the presumption of insolvency under Section 588E would not be available.



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## **8.4 Voldable Transactions**

### **8.4.1 Unfair Preferences**

A payment to a creditor is preferential if it is made at a time when the Company is insolvent and it results in the recipient receiving a greater return than they would receive if the payment were set aside and the creditor lodged a claim in the liquidation.

Should a liquidator establish any such unfair preference payments, these amounts may be recouped thereby increasing the funds available to ordinary unsecured creditors. If a creditor disgorges an unfair preference payment to a liquidator, the creditor is entitled to prove for dividend. Therefore, whilst recovering an unfair preference increases the pool of funds available to creditors, it also increases total creditor claims.

I have reviewed the Company's cashbooks and other relevant records to determine whether any creditor may have received an unfair preference. Our preliminary investigation into the Company's affairs does not reveal any unfair preference payments.

### **8.4.2 Uncommercial Transactions**

A transaction is an uncommercial transaction if it is made at a time when the company is insolvent and it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction having regard to:

- The benefits or detriment to the company of entering into the transaction;
- The prospective benefits to other parties to the transaction upon entering into it.

Should a liquidator establish any such uncommercial transactions, those transactions may be set aside and where a recovery is effected it would increase the funds available to ordinary unsecured creditors in any resultant liquidation.

My preliminary investigations do not disclose any transactions of an uncommercial nature which may lead to recoveries by a liquidator in the event that the Company is wound up.

### **8.4.3 Unfair Loans**

Section 588FD provides that a loan to a company is unfair if the interest and charges are extortionate. In considering whether interest and charges are extortionate, regard must be had to:

- Risk the lender is exposed to;
- Value of security;
- Term;
- Repayment schedule;
- Amount of loan.

Based on my investigations to date, the Company was not a party to any unfair loans.



#### 8.4.4 Unreasonable Director-related Transactions

Pursuant to Section 588FDA of the Act, a transaction is an unreasonable director-related transaction of a company if:

- The transaction is a payment, transfer of property, issue of securities or incurring of an obligation by the company;
- Made to the director or close associate of the director; and
- A reasonable person in the company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the company or other parties.

Should a liquidator establish any such transactions, they may be set aside thereby increasing the funds available to unsecured creditors.

My preliminary investigations have identified that the only material director related transactions to have occurred relate to the director's remuneration as outlined in the Annual Report to members, and approved by members at the annual general meetings. Accordingly, my preliminary investigations do not reveal any unreasonable director related transactions.

#### 8.4.5 Obstruction of Creditors' Rights

Section 588FE of the Act provides for the voiding of transactions designed to defeat, delay or interfere with creditors rights.

My preliminary investigations do not disclose any such transactions.

### 8.5 Insolvent Trading

#### 8.5.1 Directors' Liability

Section 588G of the Act imposes a positive duty upon company directors to prevent insolvent trading. If a director is found guilty of an offence in contravening Section 588G, the Court may order him or her to pay compensation to the company equal to the amount of loss or damage suffered by the creditors of the company.

The Court may also impose upon the directors' one of two types of civil penalty orders. The first can include a fine not exceeding \$200,000 or an order prohibiting directors from participating in the management of a company. The second, where there is criminal intent and a conviction, a director could also be imprisoned for up to five years or and/or fined.

ASIC usually applies for civil penalty orders while applications for compensation payable to the company are usually made by a liquidator, or in specified circumstances a creditor. The substantive elements of Section 588G are:

- A person must be a director of a company at a time when the company incurs a debt;
- The company must be insolvent at that time or becomes insolvent by incurring the debt;
- The director must have reasonable grounds for suspecting that the company is insolvent or would so become insolvent by incurring the debt;



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Summarised below are the defences contained in Section 588H:

- The directors had reasonable grounds at the time the debt was incurred to expect the company to be solvent and would remain solvent even after the debt was incurred;
- The directors relied on another person to provide information about whether or not the company was solvent;
- The directors were ill or for some other good reason did not take part in the management of the company;
- The directors took reasonable steps to prevent the incurring of the debt.

A liquidator must form an opinion as to the date the company became insolvent and determine the debts incurred from that date; thereby quantifying the loss to the company.

Based on my preliminary determination in Section 8.2 of this report, I am of the opinion that there are no grounds to pursue the directors for insolvent trading as at the date of appointment preliminary investigations indicate that the Company was not insolvent.

Notwithstanding the above, should a liquidator be appointed and where further evidence comes to light which may impact this preliminary conclusion, it may be necessary, for the liquidators to liaise with creditors with a view to progressing relevant investigations, including but not limited to a public examination of key personnel.

In this context, the costs of proceeding with an insolvent trading action must be considered as would the financial capacity of the directors to discharge any judgement which may be obtained against them. Further commentary on this issue is outlined in Section 8.7.

Presently, the results of the preliminary investigations suggest that there are no grounds to warrant an insolvent trading action.

## **8.6 Director Duties**

Based on the preliminary investigations, I have not identified any breaches by the directors of their statutory or fiduciary duties.

## **8.7 Other Matters Arising from Investigations**

### **8.7.1 Avoidance of Employee Entitlements**

Provisions contained in Part 5.8A of the Act commenced operation on 30 June 2000 and aim to protect the entitlements of a company's employees from agreements that deliberately defeat the recovery of those entitlements upon insolvency.

Under section 596AB(1) of the Act, it is an offence for a person to enter into a transaction or relevant agreement with the intention of, or with intentions that include:

- Preventing recovery of employee entitlements; or
- Significantly reducing the amount of employee entitlements recoverable.

The offence created in Part 5.8A is not limited to a company's, directors, officers or employees. The section is applicable to any individual regardless of their relationship to the company or employees.

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If a breach is proven, Part 5.8A provides for the imposition of both criminal and civil penalties. Under s596AC(1), a civil penalty, in the form of compensation, is available to employees where:

- Section 596AB(1) is contravened;
- The company is being wound up; and,
- Employees suffered loss or damage.

It should be noted a company need not have been insolvent at the time.

A liquidator may take action to recover compensation as a debt due to the company. Employees would have priority to the compensation under s556 of the Act.

While the liquidator has priority standing to take the action for any contravention, an employee may sue directly for compensation in certain circumstances pursuant to s596AF(1) of the Act.

Based on my preliminary investigations, there does not appear to be any contravention of Part 5.8A by any person.

#### **8.7.2 Falsification of Books**

Pursuant to Section 1307 of the Act, it is an offence for a person to engage in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books effecting or relating to affairs of a company.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1307 will not result in recovery of funds by a liquidator.

My preliminary investigations do not reveal any evidence of falsification of books.

#### **8.7.3 False or Misleading Statements**

Pursuant to Section 1308 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge, is false or misleading in a material particular.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1308 will not result in recovery of funds by a liquidator.

My preliminary investigations have not revealed any evidence of any false or misleading statements.

#### **8.7.4 False Information**

Pursuant to Section 1309 of the Act, it is an offence for an officer or employee to make available or give information to a director, auditor, member, debenture holder, or trustee for debenture holders of the company that is to the knowledge of the officer or employee:

- (a) False or misleading in a particular manner; or
- (b) Has omitted from it a matter the omission of which renders the information misleading in a material respect.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1309 of the Act will not result in any recovery by a liquidator.



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My preliminary investigations do not reveal any evidence of any false information.

#### **8.7.5 Conclusion**

As a result of the preliminary Investigations, I have estimated that there are not likely to be any actions available to a Liquidator for the future benefit of creditors. It should be noted that the results of these preliminary investigations do not preclude ASIC from conducting its own independent enquiries into the affairs of the Company and its officers and where appropriate initiating relevant proceedings to recover monies for the benefit of creditors and/or to seek banning orders against Company officers. As at the date of this report, we are not aware of any investigation and/or action having been initiated by ASIC in this regard.



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## 9. Creditors' Options, Dividend Estimates & Cost Estimates

Pursuant to Section 439A(4)(b) of the Act, I am required to provide creditors with a statement setting out my opinion on whether it is in the creditors' interests for the:

- Administration to end;
- Company to be wound up; or
- Company to execute a DOCA.

In forming an opinion, it is necessary to consider, amongst other relevant issues, an estimate of the dividend creditors might expect, and the likely costs under each option. The relevant options/considerations with respect to Ventracor Limited are as follows:

- Administration to End;
- Shareholders DOCA;
- Sale of Assets – Winding Up;
- Sale of Assets – General DOCA; and
- Winding Up Absent a Sale.

Details with respect to each of these options is outlined below.

### 9.1 Administration to End

Creditors may resolve that the administration should end if it appears the Company is solvent or, for some other reason, control of the Company should revert to its directors.

Based on my preliminary investigations including an analysis of the available financial information, the current book value of the Company's assets are in excess of its current liabilities (excluding contingent claims). This however is not the sole determinant of a decision as to whether the Administration should end. The Board of Directors' conclusion that the Company was likely to become insolvent remains relevant. Having regard to the projected financial position, there are insufficient assets to address accrued, contingent and future liabilities. As a consequence, under these circumstances it is not appropriate to recommend that the Administration should end.

The prospects of addressing the current and future claims of creditors as well as the assets associated with continuing the operations of the business have to the extent possible been addressed in the options associated with the General DOCA as well as the possible sale of the business assets.



As part of the Shareholder DOCA proposal, details of which are attached to the report as Annexure 6, it has been suggested that an option under the proposal may be to return control of the Company to the existing, and in turn, reconstituted board on the premise that creditors will be paid in full. Whilst a more detailed commentary on this specific proposal is provided at Section 9.2, in summary at this point in time the Shareholder DOCA provides minimal detail in relation to key aspects of the proposal. As such, we are unable to recommend that the Administration should end and control of the Company revert to the board of directors.

## 9.2 Proposed Shareholders Group Deed of Company Arrangement

On 13 May 2009, I was provided with an Alternative DOCA Proposal ("Shareholders DOCA") from what is described as The Shareholders Group. This Shareholders DOCA was provided as an update to the initial DOCA Proposal put forward by The Shareholders Group on 20 April 2009. A copy of the revised Shareholders DOCA has been attached as Annexure 5.

Our comments in relation to the Shareholders DOCA are as follows:

- The objective of the Shareholders DOCA is to pay all creditors (including those of the subsidiary entities), 100 cents in the dollar. This is consistent with the outcome for creditors provided by the Liquidation and General DOCA outlined in Sections 9.3.1 and 9.3.2 respectively.
- The Shareholders DOCA indicates that the funding available is limited to \$12M and would be provided principally by four "cornerstone investors". The proponents of the DOCA have indicated that they have been unable to quantify the amount of working capital required to fund the business going forward. Notwithstanding the DOCA as presented does not address how the funding for the business going forward may be sourced other than to suggest that the broader shareholder group will again be requested to consider the provision of working capital by way of a further SPP and/or capital raising process. This observation is relevant in both options outlined in the Shareholder DOCA. In both scenarios, it suggests that there would be a continuation of the business, the future funding for which is not outlined with any specificity.
- The Shareholders Group has not provided the Administrator with the identity of their proposed cornerstone investors or confirmation that the \$12M identified in the Shareholders DOCA has been raised and is presently available to complete a transaction.
- There is no nomination for the appointment of a Deed Administrator to preside over the proposed Shareholders DOCA. The current Administrators have not been requested to consider acting or to consent to act as Deed Administrators.
- A condition precedent of the Shareholders DOCA is that the Funders and Ventracor enter into a Deed of Priority to provide the Funders with a 1<sup>st</sup> ranking Fixed and Floating charge over the assets of Ventracor in relation to any amounts loaned under the DOCA. The effect of creating such a charge would be to provide the Funders with first right of recourse to the Fixed assets of Ventracor, as opposed to the current position whereby employees have priority over the funds realised from all assets of the Company. The terms of the loan have at this time not been particularised.



- There are numerous references throughout the Shareholders DOCA to an alleged restriction on the access to books and records of the Company and accordingly they have indicated that further due diligence will be required with respect to the salient components of the offer including projected cashflow, and creditor claims. As outlined in a letter from our legal advisors (Clayton Utz) to the Shareholders Group legal advisors (Turner Freeman) on 18 May 2009, the allegation of restricted access was re-affirmed as inaccurate as the advisors to the Shareholders Group have been provided with substantial amounts of historical information under a documented Confidentiality Agreement.

On 6 May 2009, an e-mail was sent to Mr Louttit outlining the legal impediments to, and the Administrators' concerns in relation to making inherently unreliable cash flow forecasts available (which, due to disclosure obligations may ultimately have been required to be released to the market at large). The proposed solution put to Mr Louttit by the Administrators to enable him access to the information was declined.

Notwithstanding this, on 8 May 2009, with the exception of cash flow projections, all information requested by the Shareholders Group advisor (Jamieson Louttit) for the purposes of preparing the Shareholders DOCA, was provided by the Administrators.

At the time of issue of this report, I am not aware as to whether a response to the Clayton Utz letter of 18 May 2009 has been issued by Turner Freeman.

- In general terms I have requested clarification from The Shareholders Group as to what mechanism the DOCA proposes relative to the proposed shareholders meeting and possible termination of the Voluntary Administration (contemplated on Page 5 of the Shareholders DOCA). At the time of issue of this report, I am yet to receive a response.
- I have also requested clarification of The Shareholders Group strategy with respect to the proposed removal of the Company's suspension notice on the ASX (given the cleansing notice and/or prospectus issues requirements dependent on this). At the time of issuing this report, I am yet to receive a response.
- A term of the proposed Shareholders DOCA is that Mr Peter Crosby (former CEO of Ventracor) be offered re-employment on the same terms as his previous employment with Ventracor, as if he had not had his employment terminated, on the basis that all amounts relating to Mr Crosby's termination are waived. Given the level of shareholder dissatisfaction expressed to us in relation to Mr Crosby, this we understand is aimed at reducing the unsecured creditor pool, however, Mr Crosby has indicated that he is not inclined to accept an offer of re-employment.
- In addition, the Shareholder DOCA also proposes that employees terminated during the Administration period may be offered re-employment on the same terms of their previous employment with Ventracor, as if they had not had their employment terminated, on the basis that all amounts relating to their termination are waived. Employee consent to such a compromise would therefore be a further condition precedent, and it is, at present, unclear as to whether these employees would accept such a compromise.

It should be recognised that for the purposes of providing a comparison, the Shareholder DOCA also assumes the treatment of all creditors on a Group basis. Our estimated return to creditors based on the terms of the Shareholders DOCA is set out below:



Estimated Return to Creditors Arising from the Shareholders DOCA		\$'000
<b>ESTIMATED GROUP CASH AVAILABLE AT PROPOSED DATE OF DOCA</b>		<b>3,534</b>
<b>ADD: ESTIMATED PROCEEDS FROM PROPOSED DOCA</b>		<b>9,433</b>
<b>ESTIMATED CASH AVAILABLE TO MEET GROUP LIABILITIES</b>		<b>12,967</b>
<b>LESS: CASH REQUIRED TO EXTINGUISH SUBSIDIARY LIABILITIES</b>		<b>(4,899)</b>
<b>ESTIMATED CASH AVAILABLE TO MEET VENTRACOR LTD LIABILITIES</b>		<b>8,018</b>
<b>ADMINISTRATOR'S &amp; DEED ADMINISTRATOR'S FEES AND COSTS</b>		
Estimated Trading Liabilities, Accruals & General Contingency		(822)
Administrator's Remuneration and Disbursements (includes estimated future)		(530)
Deed Administrator's Remuneration and Disbursements (estimated future)		(250)
Legal Fees and Disbursements (includes estimated future)		(500)
		<b>(2,152)</b>
<b>ESTIMATED CASH AVAILABLE TO MEET PRIORITY EMPLOYEE CLAIMS</b>		<b>5,866</b>
<b>ESTIMATED PRIORITY EMPLOYEE CLAIMS IN THE EVENT OF A DOCA</b>		<b>(425)</b>
<b>ESTIMATED DIVIDEND TO EMPLOYEE CREDITORS (CENTS IN 5)</b>		<b>100.00</b>
<b>ESTIMATED CASH AVAILABLE TO MEET KNOWN UNSECURED CREDITORS</b>		<b>5,441</b>
Trade Creditors and Accruals at date of Administration		(1,353)
Unsecured Component of Employee Entitlements		(1,380)
Estimated Contingent Liabilities expected to crystallise in the event of a DOCA		(2,134)
<b>TOTAL KNOWN UNSECURED CREDITOR CLAIMS</b>		<b>(4,867)</b>
<b>ESTIMATED DIVIDEND TO UNSECURED CREDITORS (CENTS IN 5)</b>		<b>100.00</b>

\* Where a Shareholders DOCA is executed, it is not proposed that there will be an immediate return to shareholders.



### 9.3 Sale of Assets – Through a Winding Up or General DOCA

As outlined in Section 6.4 of this report, subsequent to our appointment I made contact with those parties who had expressed a possible interest in the Company but for whatever reason did not progress the matter at that time. In addition to re-engaging with the parties identified from the Company's sale process we have also, where appropriate, engaged with additional parties who since commencement of the Administration have indicated an interest in the assets of the group. At this point in time this "interest" has essentially not progressed beyond an exchange of confidentiality agreements and at this time additional options are not available for assessment and commentary. Given the current limited available resources by which to sustain the Company's/Group's operations, further significant time is not available to simply explore whether this preliminary interest materialises to provide for further options for consideration by the Company's creditors.

Following this process, Siqro Inc. again was the only company who actively re-engaged and has submitted an offer to acquire the business assets. I have progressed negotiations with Siqro to a point that on 24 April 2009 I entered into a non-binding, non-exclusive Heads of Agreement with Siqro Inc. in relation to the possible sale of substantially all of the assets of the Group. The salient terms of this "agreement" are outlined below:

- The offer to buy reflects an asset purchase across all active Ventracor Group companies (not a business acquisition), including:
  - Goodwill;
  - All plant and equipment;
  - All inventory and work in progress (excluding, if Siqro Inc. wishes, LVA4 finished goods);
  - The benefit of substantially all supplier and distributor contracts, leases and licenses; and
  - The transfer/assignment of key intellectual property and key premises leases.
- Continuity of employment for most employees, with contractor arrangements to be offered to certain other employees.
- Siqro Inc. to use its best endeavours to obtain committed finance shortly following execution of the Heads of Agreement.
- Conditions precedent to the transaction include:
  - An assignment of key premises leases;
  - Transfer/assignment of key intellectual property; and
  - Assignment/novation of key business contracts.
- Purchase price of US\$8M (an increase of US\$2M on the initial offer).

Since execution of the Heads of Agreement, there have been ongoing discussions with executives of Siqro Inc., primarily to ensure that the required finance had been obtained and to confirm Siqro's capacity to complete the proposed transaction.

During this process, Siqro has recognised the importance of ensuring that their funding extend beyond that required to simply acquire the business, and accordingly they have pursued funding from



their investors to enable them to have working capital to continue the operations going forward in the event that they are the successful purchaser.

On 19 May 2009, Siqro provided us with a copy of a US\$40M term sheet executed by their lead investor outlining a commitment of US\$10M of the investment, with Siqro indicating that this commitment will enable them to finalise the balance of their targeted capital commitment prior to the completion of a transaction. As at the date of this report, Siqro have indicated that they have committed funding in place of between US\$28-32M.

On the basis of their due diligence, Siqro expect that this funding will provide sufficient cash resources to trade the Group for a minimum of 12 months (June 2010), excluding any further investment which may be secured in the interim.

Negotiations with Siqro have progressed to the stage where we have issued a Draft Sale Agreement, the terms of which are currently being considered by both parties. In the period between the issuing of this report and the second meeting of creditors, it is our intention to progress these negotiations to the extent possible to where a Sale Agreement has been agreed and where possible executed conditional on the decision of creditors at the second meeting relative to the Company's future.

In addition to the above, I am also in advanced discussions with Siqro regarding the possibility of securing "bridging finance" given the current limited cash resources of Ventracor Ltd. On the expectation that there will be a delay between any exchange of a Sale Agreement and completion of a transaction principally to facilitate completion of the conditions precedent and to effect the necessary funding drawdowns (Siqro have indicated a likely completion date of 12 June 2009), Siqro has recognised that there will be a level of funding required in order to maintain the viability of the Group through to completion. I expect to progress these discussions such that, consistent with the approach in relation to the Sale Agreement, any bridging finance arrangement can be agreed and executed, pending the resolution of creditors at the second meeting. I will where appropriate update creditors on these issues at the time of the meeting.

It should be noted that where an agreement is not reached with respect to the bridging finance and the estimated completion remains in line with the timeframe outlined above, it is unlikely that the Company will have the cash resources to continue to trade without impacting the sale or at best materially adversely impacting the projected returns.

Given the general nature of the prospective sale, there are two options through which there can be an execution of the proposed sale to Siqro Inc. In this particular external administration situation:

- i) To resolve to wind up the Company (i.e. place it into Liquidation), with the sale to be completed by the Liquidator; or
- ii) To resolve to execute what we have described as a General Deed of Company Arrangement ("General DOCA"), proposed by the Administrators of Ventracor, with the sale to be executed by the proposed Deed Administrators.



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Further details of these two alternatives, and the projected returns to creditors in each scenario are provided below.

### **9.3.1 Sale of Assets – Winding Up (Liquidation)**

Where a Deed of Company Arrangement is not approved at the second meeting of creditors, the most likely outcome is that the Company will proceed to Liquidation.

Based on the current terms as discussed/negotiated with Siquro the liquidation of the Company will not prevent a Liquidator from proceeding with a sale of the assets. The ancillary effect of the appointment of a Liquidator is that a Liquidator has the power to pursue recoveries relating to antecedent transactions, a course of action not available to an Administrator or a Deed Administrator.

Notwithstanding the impact of a liquidation, our preliminary investigations do not presently indicate that a liquidation will result in any greater return to creditors. Our estimated return to creditors (employees and unsecured) in the case of Liquidation and a sale to Siquro substantially in the form of the terms of the Heads of Agreement is outlined below.

Importantly, it needs to be understood that the present offer by Siquro is based on an acquisition of key assets across all subsidiaries as well as Ventracor Limited. At this time none of the subsidiary companies are the subject of any formal insolvency, and as such, to facilitate the proposed sale each subsidiary will need to be a party to any sale.

Consequently, to enable the end benefit to accrue to the creditors of Ventracor Limited we need to take account of the creditor position relative to each vendor subsidiary. At this time and given the estimated outcome of the sales process, it is estimated that all Group creditors can be treated equally in terms of projected returns in that 100 cents in the \$ is estimated to be available to both subsidiary creditors and creditors of Ventracor Limited. This would not be possible but for the co-operation of the subsidiaries.

Obviously at this point in time these are best estimates and may be subject to variation having regard to the final sale outcome and final admitted creditor claims.



<b>Estimated Return to Creditors Arising from Sale of Assets Through Liquidation</b>		<b>AS'000</b>
<b>ESTIMATED GROUP CASH AVAILABLE AT PROPOSED DATE OF SALE</b>		<b>3,434</b>
<b>ADD: ESTIMATED PROCEEDS FROM PROPOSED SALE OF BUSINESS</b>		<b>10,487</b>
Less: Proposed Adjustments to Purchase Price for Liabilities Assumed.		(1,093)
Add: Recovery upon Replacement of Bank Guarantee		178
		<b>9,541</b>
Add: Estimated Future Recoveries of Outstanding Group Debtors		387
<b>ESTIMATED CASH AVAILABLE TO MEET GROUP LIABILITIES</b>		<b>13,343</b>
<b>LESS: ESTIMATED CASH REQUIRED TO EXTINGUISH SUBSIDIARY LIABILITIES</b>		<b>(3,349)</b>
<b>ADD: ESTIMATED RECOVERIES FROM VOIDABLE TRANSACTIONS</b>		<b>0</b>
<b>ESTIMATED CASH AVAILABLE TO MEET VENTRACOR LTD LIABILITIES</b>		<b>9,994</b>
<b>ADMINISTRATOR'S &amp; LIQUIDATOR'S FEES AND COSTS</b>		
Estimated Trading Liabilities, Accruals & General Contingency		(822)
Administrator's Remuneration and Disbursements (includes estimated future)		(530)
Liquidator's Remuneration and Disbursements (estimated future)		(300)
Legal Fees and Disbursements (includes estimated future)		(500)
		<b>(2,152)</b>
<b>ESTIMATED CASH AVAILABLE TO MEET PRIORITY EMPLOYEE CLAIMS</b>		<b>7,842</b>
<b>ESTIMATED PRIORITY EMPLOYEE CLAIMS IN THE EVENT OF A SALE</b>		<b>(1,570)</b>
<b>ESTIMATED DIVIDEND TO EMPLOYEES, CREDITORS (CENTS IN 5)</b>		<b>100.00</b>
<b>ESTIMATED CASH AVAILABLE TO MEET KNOWN UNSECURED CREDITORS</b>		<b>6,272</b>
Trade Creditors and Accruals at date of Administration		(1,353)
Unsecured Component of Employee Entitlements		(1,380)
Estimated Contingent Liabilities expected to crystallise on a Sale *		(2,134)
<b>TOTAL KNOWN UNSECURED CREDITOR CLAIMS</b>		<b>(4,867)</b>
<b>ESTIMATED DIVIDEND TO UNSECURED CREDITORS (CENTS IN 5)</b>		<b>100.00</b>
<b>ESTIMATED SURPLUS AVAILABLE TO SHAREHOLDERS</b>		<b>1,405</b>

\* As outlined in Section 7.1.8 of this report, present indications are that the government will not demand repayment of the \$2.8M relating to the Commercial Ready Grant, and accordingly this has been excluded from the above calculation.

The above dividend calculations are an estimate only and may change due to:

- Any bridging finance that may be agreed with Sigro Inc is expected to be in addition to the proposed purchase price and is not presently included in the calculations above;
- The actual amounts realised from the sale of assets;
- Total liabilities once proofs of debt are lodged and adjudicated upon;



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- Costs of litigation where relevant (e.g recovering assets, debtors and voidable transactions); and
  - Costs of the administration and liquidation which creditors will need to consider and approve.

In the event of a surplus being generated from a liquidation sale, consideration would need to be given to effecting a return to shareholders. At this time, this report, including the relevant financial analysis, does not assess the cost/timing associated with a possible distribution to shareholders.

### 9.3.2 Sale of Assets – General DOCA

As an alternative to an immediate liquidation of Ventracor, an alternate DOCA (The General DOCA) should also be considered. This DOCA proposal would have the following salient terms:

1. A Deed Fund would be created into which the following realisations would be paid:
  - a. Proceeds of any sale of the assets to Siquo or any other party as appropriate;
  - b. Realisations from assets presently excluded from the proposed sale; and
  - c. Realisations from the issuing of additional shares in the Company associated with any future sale of the listed corporate entity.
2. Under the terms of the General DOCA, the option of pursuing market interest, if any, in the corporate shell would eventuate only in the instance that realisation from the sale and other assets did not result in a return to creditors of 100 cents in the \$, and also having regard to the commerciality of pursuing such a sale. In essence the third proposed realisation would remain an option for creditors.
3. A distribution to eligible creditors be effected when proceeds are received in accordance with the priorities pursuant to s556 of the Corporations Act and the Corporations Regulations;
4. The Deed Administrator in conjunction with creditors and/or a creditors committee would determine as to whether there is any market interest in the listed corporate shell and progress any reasonable sale;
5. Take all necessary steps to realise/protect the value of any excluded asset in relation to the proposed sale to Siquo or any other party;
6. In the event that a sale to Siquo does not proceed to completion it would be a review event under the proposed General DOCA and a meeting of the creditors would be convened to consider continuation of the DOCA or an immediate liquidation of the Company. If this situation arises this possible future asset may be a valuable component of any future dividend;
7. In the event that realisation of available assets from the proposed Deed Fund facilitated a payment of a dividend to eligible creditors of 100 cents in the \$, the General DOCA would end and any surplus from realisations would be paid to the Company, the Incumbent Board of Directors;
8. The DOCA would also contain general provisions to facilitate the termination/extension of the DOCA, to be determined appropriate by a resolution by creditors;
9. Professional fees and expense of the Deed Administrator are estimated to equate to that which has been forecast in relation to the Liquidation scenario. However, given the open nature of the proposed realisation/Deed Fund components, as it relates to the possible realisation of the corporate shell, we are unable with any degree of certainty to justly estimate the fee which may



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be incurred. Accordingly, we would also propose in the event that the General DOCA was to be approved that it provide for the election of a Committee of Inspection who would amongst other issues, be requested to consider and if thought appropriate approve the remuneration of the Deed Administrators; and

10. Steven Sherman and Peter Gothard would act as the Deed Administrators and would consent to such an engagement if it was the will of the creditors.

The General DOCA if approved would need to be executed within 15 business days. It is our opinion that the General DOCA proposal does not disadvantage any presently known creditor as the proposed Deed Fund includes the proceeds of any sale and, assuming it completes, the monies would be distributed to eligible claimants in the ordinary course as it would be in the event the sale completes and the Company were to proceed to liquidation.

As the General DOCA would also contain an ability for the DOCA to be terminated on the resolution of creditors the consequence of which would be the liquidation of the Company, accordingly, any investigative work or matter which may necessarily be progressed by a liquidator would in that case only be postponed and not abandoned.

The opportunity provided by the General DOCA is to enable the Deed Administrators to identify, where possible, any interest in the listed corporate shell and assuming a commercially acceptable arrangement is able to be concluded it would potentially enhance the monies available for distribution to creditors and potentially shareholders. It is proposed that this course of action would only be taken in the event that any sale of the business assets resulted in a dividend to creditors of less than 100 cents in the \$. The General DOCA would simply keep this option alive as a sale of a listed corporate shell is extremely difficult in the event that the Company is in liquidation.

In this regard, I refer you to the estimated flow of funds and projected return to creditors that has been provided relative to the Liquidation scenario. An indicative value for the potential realisation from a sale of the corporate structure may range between \$500-750K (gross of realisation costs) which would be available to creditors and potentially also shareholders as an ordinary dividend when realised.



## 9.4 Winding Up – No Sale

Should the options of a sale to Sqro Inc. or the Shareholders DOCA not be exercised, the operations of the Company would cease as there are presently no guaranteed resources to continue operation and the Company will proceed to be wound up. Based upon the information in this report, where the Company is wound up under these circumstances, I estimate a dividend to creditors as follows:

Estimated Liquidation Dividend	Note	High	Low
		\$'000	\$'000
<b>ASSET REALISATIONS</b>			
Plant & Equipment	1	1,175	750
Intercompany Loans	2	2,900	2,200
Cash	3	2,815	2,637
Trade Receivables	4	197	190
Inventory	5	544	0
Other Assets		0	0
		<b>7,631</b>	<b>5,777</b>
Less: Realisation Costs		(150)	(100)
Less: Trading surplus/(Deficit) and General Contingency		(2,000)	(2,000)
<b>NET REALISATIONS</b>		<b>5,481</b>	<b>3,677</b>
<b>ADMINISTRATOR'S &amp; LIQUIDATOR'S FEES AND COSTS</b>			
Administrators' Fees and Disbursements (includes estimated future)		(530)	(530)
Legal Fees and Disbursements (includes estimated future)		(400)	(400)
Liquidators' Fees and Disbursements		(200)	(200)
<b>ESTIMATED FUNDS AVAILABLE FOR DISTRIBUTION</b>		<b>4,351</b>	<b>2,547</b>
Employee Entitlements	6	(4,322)	(4,322)
<b>Estimated Dividend to Priority Employee Creditors (Cents in \$)</b>		<b>100.00</b>	<b>0.00</b>
<b>Total Funds Available after Priority Claims</b>		<b>29</b>	<b>0</b>
Total Voidable Transaction & Other Recoveries		0	0
<b>Total Funds Available to Ordinary Unsecured Creditors</b>		<b>29</b>	<b>0</b>
Known Unsecured Creditor Claims *	7	(2,546)	(8,348)
<b>Estimated Dividend to Ordinary Unsecured Creditors (Cents in \$)</b>		<b>0.00</b>	<b>0.00</b>

Items of note regarding the above are:

**Note 1** – on the basis that the majority of Ventracor's plant and equipment is specialised and customised for the production of the LVAD product, it is assumed that realisations from the sale of such equipment would be at a significant discount to book value.

**Note 2** – the estimated realisation from Intercompany Loans has been calculated giving consideration to the financial position of the subsidiary entities, an estimate of the value of the respective assets within those subsidiaries (varying assumptions have been made for both a High and Low case), the liabilities to be extinguished in a liquidation scenario, and accordingly the likely surplus available to repay the intercompany loans due to Ventracor Limited.



**Note 3** – this represents the cash at bank and cash on hand at the date of appointment. The variance between the Low and the High case is represented by the \$178K currently held in the pre appointment bank account as cash collateral against the bank guarantee with respect to the lease of the Chatswood premises. In the event that the Company is liquidated and the lease is terminated, this amount may not be recoverable.

**Note 4** – trade debtors relate solely to the amounts outstanding from the two Australian hospitals currently utilising the LVA technology. \$190K of the total trade debtors of \$197K have been collected during the Administration and have been banked to the Administrators account.

**Note 5** – it has been assumed that in a liquidation scenario where there is no sale and accordingly, no transmission of business, there is unlikely to be a market for the stock and WIP. In the High case, we have estimated that a realisation of 10% of book value may be achieved however this may be optimistic given regulatory considerations.

**Note 6** – where the Company is wound up absent a sale of the business, it is expected that the employment of all Ventracor Limited staff will be terminated. In both the High and Low cases, the estimated employee entitlements reflect the estimated priority claims relating to outstanding superannuation, annual leave, long service leave, bonus, notice and redundancy.

**Note 7** - Known Unsecured Creditor Claims include claims expected to be triggered in the event of a liquidation where there is no sale of assets/business including statutory excluded employee unsecured entitlements (both High and Low case) and Contingent Creditor Claims and Lease Termination Costs (Low case only).

The estimated return to employee and unsecured creditors in the event that a General DOCA was entered into may be enhanced by any return that may be secured from a sale of the corporate shell. The projected indicative impact to the estimated dividend may be an additional 10 cents in the dollar for employees in the Low Case and a further 19.6 cents in the dollar for unsecured creditors in the High Case.



## 9.5 Summary of Estimated Returns to Employee and Unsecured Creditors

The table below provides a summary of the estimated returns to employees and creditors for each of the scenarios outlined above:

Scenario	Estimated Dividend to Employees	Estimated Dividend to Unsecured Creditors	Estimated Surplus Available to Shareholders
	Cents in \$	Cents in \$	\$'000
A - Shareholders DOCA	100.00	100.00	N/A
B - Sale of Assets – Liquidation	100.00	100.00	1,405
C - Sale of Assets – General DOCA	100.00	100.00	1,805
D - Liquidation – No Sale (High)	100.00	1.13	0
E - Liquidation – No Sale (Low)	58.93	0.00	0
F - General DOCA then Liquidation – No Sale (High)	100.00	20.78	0
G - General DOCA then Liquidation – No Sale (Low)	69.00	0.00	0

## 9.6 Administrator's Recommendation

In each of scenarios A – C outlined in the table in Section 9.5 it is presently projected that both employee and unsecured creditors may receive 100 cents in the \$ in relation to claims outstanding as at the date of the Administration. In addition, assuming the projected sale to Sipro completes and the Shareholder Group are able to meet without recourse the necessary funding requirements of their DOCA proposal, the proposals provide potential ongoing employment opportunities for all or substantially all of the Ventracor Group employees.

Having regard to the general aims and objectives of Part 5.3A of the Corporations Act in relation to Voluntary Administration, the available proposals provide a return to creditors greater than, what is projected to be available in an immediate liquidation scenario absent a sale of the business assets. To this extent the process has provided viable options for creditors' consideration.

Notwithstanding the relative equality of scenarios A – C, in relation to the projected returns, it is our opinion that the Shareholders DOCA has uncertainty and at present a number of outstanding practical issues which casts general doubt over the projected outcomes. This doubt does not question the integrity of the parties or their general intent but the uncertainty associated with potential completion risk and the risk relative to the future funding of ongoing operations makes it a proposal which when compared to the alternatives, I am unable to recommend.

It should be recognised that there is presently deal completion risk in relation to the Sipro sale in both an immediate liquidation and the General DOCA scenarios. Notwithstanding, the greater certainty of funding in these scenarios and is an element which needs to be given careful consideration by creditors.

In addition the proposed General DOCA would also prospectively reduce risk associated with liquidation relative to occupancy and other key contracts. With respect to these relevant counterparties, I do not consider that the General DOCA proposal disadvantages their current position, as at this time no monies are outstanding and the prospect of a sale would provide an opportunity for continuing business relations.



It should also be recognised that, whilst they are arguably not creditors, the patients who have received the LVAD technology and who remain implanted are parties affected by the outcome of this process and the uncertainty of an outcome relative to their future care should in this circumstance also be considered. In raising this issue I am not suggesting that the Shareholder Group have not been cognisant of this issue, it is simply raised in the context of highlighting the need to assess the certainty of an outcome in the consideration of the overall options.

In addition to the above issues the proposed General DOCA provides for a possible future opportunity to secure a benefit in relation to the corporate shell and accordingly may enhance the projected return for what is estimated to be a minimal increase in costs. As a result, entering into the General DOCA on terms generally in the form as outlined in Section 9.3.2 is the recommended course of action. Failing creditors support for this course we would recommend that the Company proceed to Liquidation.

A liquidation assuming the proposed Sigro sale completes is not projected to materially impact, if at all, the projected return to creditors.

## 10. Remuneration and Disbursements

Pursuant to Section 446E of the Act, I enclose as Annexure 6 the Administrators' Remuneration Report. At the second meeting of creditors, I intend seeking approval of the remuneration set out in the remuneration report. Details of disbursements incurred are also included in the remuneration report.

## 11. Conclusion

This concludes my report detailing my preliminary investigations into the affairs of the Company. I trust that creditors will find this report informative and useful.

Should creditors require any further information with respect to the contents of this report or matters pertaining to the Administration generally please contact Mathew Hosking of this office on (02) 9286 9999.

Dated 20 May 2009

A handwritten signature in black ink, appearing to read 'Steve Sherman', written over a horizontal line.

**Steve Sherman**  
Joint Administrator



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**LISTING OF ANNEXURES**

<b>Annexure 1</b>	<b>Chairman's Address dated 28 November 2008</b>
<b>Annexure 2</b>	<b>Organisation Structure</b>
<b>Annexure 3</b>	<b>Letter to Shareholders dated 16 April 2009</b>
<b>Annexure 4</b>	<b>Summary of Receipts and Payments to 13 May 2009</b>
<b>Annexure 5</b>	<b>Shareholders Group DOCA Proposal</b>
<b>Annexure 6</b>	<b>Administrator's Remuneration Report</b>
<b>Annexure 7</b>	<b>Informal Proof of Debt Form</b>
<b>Annexure 8</b>	<b>Proxy Form (Form 532)</b>
<b>Annexure 9</b>	<b>Notice of Meeting (Form 529)</b>

# **ANNEXURE 1**

Ventracor Limited 2008 AGM



## CHAIRMAN'S ADDRESS

The last year has been a combination of great progress for your Company, and also one of great disappointment for many of us because of the decline of the share price. In the last few months in particular, we have seen wide variation in reaction by our shareholders – and I remind you that there are over 17,000 shareholders of Ventracor. Many shareholders recognise our operational progress, and are scratching their heads, like us, to understand why our share price has come under so much pressure, and does not reflect the Company's great achievements. That said, it is certainly understandable why speculative stocks like Ventracor have been particularly hard hit in the recent global market downturn.

Let me empathise with those of you who, like me, have been long term shareholders. It hasn't been a comfortable ride so far but hopefully your loyalty will be rewarded. Ventracor has always been a speculative investment with potentially high rewards, both clinically and financially. To develop the VentrAssist and commercialise it for worldwide distribution has been a long and expensive task, and we have progressed substantially towards the finishing line, which is now in sight.

Despite the market sentiment expressed in our share price, the Company has made great strides in 2008. The first VentrAssist LVAD was implanted in June 2003 and now, five years later, we are reaching completion of the US Bridge to Transplant clinical trial which, we hope, will lead to full US regulatory approval from the Food and Drug Administration. This is the time line we laid out in the Prospectus for the 2006 Rights Issue.

Historically, Ventracor has raised capital from its shareholders to achieve milestones and, upon achievement of those milestones, additional capital has been sought for the next steps. As a development stage company with small revenues, debt financing has historically not been an option for Ventracor. It is with this background that Ventracor found itself this year caught up in the global economic crisis which has dried up conventional and traditional sources of equity funding. We again approach our shareholders to continue to support the company to enable us to realise the value, and the dream, that has inspired and motivated so many of us over the years. In order to cross the finish line, the Company needs more capital.

### *The Share Purchase Plan*

As you are all aware, the Company has initiated a Share Purchase Plan and will also seek to place an additional 15% of the Company's capital through a share placement upon completion of the SPP. I would like to talk about the SPP, and address some of the questions that we have heard in our communications with shareholders.

Ventracor has made tremendous progress in the journey from a blue sky opportunity to a real medical device company, with revenues, a global presence, and success in our sights. However we now find ourselves in the unfortunate collision of global financial turmoil and our need for additional capital. We have done what we can, as a company, to reduce our costs and our capital needs, but we cannot get our capital needs to zero.

Your company is at a crucial time in its history. With significant achievements behind us, and the possibility of great success in the future, we are faced with the very real risk that the Company will not have the capital to survive to deliver the returns that you, as shareholders, are entitled to expect. That is why we are asking you to help the Company remain viable by participating in the Share Purchase Plan.

As you all know, through no fault of our own, information about the SPP did not reach all shareholders at the date we expected. As a result of this, we announced earlier this week that the SPP will be kept open until 9 December, to allow all shareholders to fully appreciate

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our progress, and to make an informed decision about participating in the SPP. Over the last few weeks, we have spoken with many shareholders about the SPP, and I thought it might be helpful to address up front the most commonly heard questions about the share price, the Company's financial state, and the Share Purchase Plan.

#### *Shareholder Questions about the SPP*

We take serious comments and questions by our shareholders seriously, and the CEO, the CFO, and the Manager of Investor Relations often communicate by phone or in person with individual shareholders. On occasion, I also communicate directly with shareholders. We have also endeavoured to keep the entire market informed of our progress and actions through frequent shareholder communications, such as ASX releases, information updates on our web site, or shareholder newsletters. We are acutely aware of our obligations to always be in compliance with the ASX continuous disclosure rules.

*A. A question we often hear is "Why are you doing an SPP? Why didn't the Company raise capital sooner, what have you been doing about it, and why haven't you been successful?"*

At the beginning of the calendar year, the Board commissioned a major strategic review of the Company's position and our future capital needs. As a result Ventracor started a program in early 2008 to raise capital. Upon advice from our Australian corporate financial advisor, we set out to attract US institutional equity investors who could take a significant stake in our company. As some of you may know, the US has a substantial market of knowledgeable institutional investors who specialise in investment in the medical device industry. We initially worked with one US based corporate advisor and eventually engaged a highly reputable US investment bank, who took on the assignment in April after conducting their own exhaustive due diligence.

By the end of July, we had a term sheet in place with very credible US investors for a financing consisting of a placement and rights issue of a convertible note, with strong interest from a syndicate of US investors to take any shortfall in the rights issue. We were well down the path of definitive legal documents, had put in place the formal due diligence process to allow us to conduct the rights issue, and had a draft of the rights issue prospectus. Then on 15 September, Lehman Brothers, the large US investment bank, declared bankruptcy, which sent ripples of chaos around world financial markets. As a result of exposure to Lehman Brothers, one of the cornerstone investors of our financing withdrew, leaving it virtually impossible to continue with this financing structure.

Our Australian advisors continued to encourage us to look for US investors. By early October we had identified a new potential lead investor, and by the end of October we had a term sheet in place for a combination of equity and non-dilutive debt financing based on a royalty stream from future product sales. The Board believed that this debt financing structure would be possible for Ventracor, given its expectations of a significant and growing revenue stream. Due diligence was proceeding well, and by early November we had draft definitive documentation. At this time the new investors suddenly withdrew, citing changes in market conditions which affected their risk/reward balance. This was partly precipitated by the volatility of the Australian dollar.

At all times, the Directors, with advice from our Australian investment advisors, had kept the idea of a Share Purchase Plan or Rights Issue in place, and the decision was made in early November to embark on the Share Purchase Plan and placement, which you have seen. Our Australian investment advisors recommended an SPP over a rights issue to give all shareholders the opportunity to participate at a similar level, regardless of size of holding. Large shareholders who qualify as institutional or sophisticated investors can always apply to participate in the placement, at the same price.

Ventracor Limited 2008 AGM – Chairman's Address



So with this narrative which unusually for an Australian company, reveals historical discussions and incomplete confidential negotiations that were never consummated, I hope you can appreciate that the Board and Management has been working very hard to secure financing since early this year. We understand shareholders' frustration that a financing is not yet complete. It is however easy to be critical in the absence of all the facts. I therefore hope you can also appreciate that we were not at liberty to reveal our activities and negotiations until those negotiations reached a definite conclusion.

The last part of the question is why we have not been successful in raising capital? Again, there is a multi faceted answer to that question. The fact that we have not yet been successful should not be seen as any reflection on the amount of effort that has gone into the process or, in our view, the long term value of Ventracor. Firstly, the chaos in global financial markets has seen unprecedented amounts of cash redeemed from mutual funds, pension funds, and other investment vehicles. This has meant that those fund managers have had to sell stock, often at a loss, to raise the cash for those redemptions. The global lack of credit has meant that large companies have had to turn to equity to finance continuing operations, adding to the competition for capital. The scarcity of available capital is not unique to Ventracor, and you will all have heard in the news the stories about lack of capital and credit affecting many companies worldwide.

Secondly, the market capitalisation of a company often defines the type of investor that company can attract. As our market capitalisation has fallen with declining share price, our ability to attract larger institutions has declined. This coupled with Ventracor falling outside the ASX top 200 and 300 indexes over the last couple of years inhibits the company from attracting large institutional investors.

Finally, some investors have asked why we did not move Ventracor to a US stock exchange, as has happened with some other Australian companies in our industry. We have consistently heard from many shareholders that they want Ventracor to remain an Australian based and listed Company, so the Board has not been prepared to run against that perceived sentiment of our large retail shareholding base. There is also a substantial cost involved in such a move that we have been reluctant to undertake at a time when our clinical trials are not yet even complete and our funding position is so critical.

The end result is that although the Company has been working hard for many months to attract capital, and had some encouraging developments, we have not been successful. The Board has reached the conclusion that we owe it to provide you, our shareholders, with an opportunity to help keep the company viable, so that the future we all believe in can be realised.

*B. Why should I buy shares in the SPP?*

The Company has demonstrated progress to full commercialisation with steadily growing revenues over the last three years. We are getting close to completion of the US BTT Trial, and FDA approval as a result of that trial will unlock the very large potential market in the US. On current indications, we are positioned to be second in the market with a very competitive product. That large potential market is rapidly being validated with growing sales of the first of the new generation devices to be approved by the FDA earlier this year.

Thoratec, the market leader in the LVAD industry, has a market capitalisation of over US\$1.2B, on revenues of about US\$250M, for a price to sales multiple of over 4.5. At our current share price, our enterprise value is less than one times sales at our current revenue run rate. Ventracor has a chance to realise the full value of the enterprise by continuing to the finish line of regulatory approval, to allow commercialisation in the US. We hope that our Australian shareholders share our view that Ventracor is undervalued by any fundamental

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measure, and take up their full entitlement in the Share Purchase Plan to enable us to reach that goal.

*C. My Shares in Ventracor have declined in price, why should I Invest more?*

The Directors understand this sentiment of many shareholders. We also understand that in these stressful economic times, some shareholders will not have the resources to take up their full entitlement, but can choose to participate in the SPP at lower amounts according to their appetite. The best way to realise the value of a past investment in Ventracor is to help ensure the survival and growth of the Company. Participation in the Share Purchase Plan at \$0.081 is an opportunity to purchase shares at a guaranteed price not subject to the vagaries of the market. Purchasing the shares in the SPP makes that capital available to the Company to continue its growth, avoiding running the risk that the Company may be forced, at some time in the future, to go into Voluntary Administration.

*D. If the Company doesn't raise all it needs in the SPP and the Placement, what happens then?*

As mentioned in my letter that accompanied the SPP, the Board has committed that if the total amount raised under the Plan and Placement, together with any other committed funding available to the Company (considering then current projected revenue and any revised planned expenditure requirements) is not sufficient to fund the Company's operations to 30 June 2009, the Board will not allot any shares under the Plan or the Placement and all application moneys paid by Eligible Shareholders under the Plan will be fully refunded (without interest).

If that happens it is expected that the Board will immediately start a formal process to sell the company. The company has prepared itself for just such an occurrence with the appointment of a US based investment bank that would assist with the process.

The time that the existing cash will last depends on our continuing revenues, and our ability to make any further changes to our monthly expenditure. The Board will monitor the Company's cash position very carefully, and if there is any risk that the Company might be about to trade while insolvent, the Board will have no choice but to put the Company into voluntary administration.

Sale of the Company or voluntary administration are very serious but real consequences if the SPP and Placement do not raise the funding I've just described, and that is why shareholder support under the SPP offer is so critical.

*E. How much more capital will be needed, and when will you be cash flow positive?*

There are many factors that determine how much more capital is needed. Some factors inside the Company's control are expenditure management, cash management like collecting receivables, and achieving further manufacturing efficiencies. Some factors outside the Company's direct control include sales growth, foreign exchange currency rates, changes in FDA and other regulations, and the patient outcomes in the clinical trials. The biggest single factor is the time to regulatory approval to market in the US.

As you see in the SPP letter, FDA approval is expected in the second half of 2010. With our current revenue projections and exchange rate assumptions, our projections show Ventracor to be cash flow positive by the second quarter post FDA approval.

We will need to obtain additional cash prior to this. However, as our revenues continue to grow and our net cash spend decreases, we have greater possibility to raise this capital through non dilutive financing such as debt, strategic partnership, or a royalty or licensing structure. But we also recognise that this may not be possible depending on financial market

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conditions, and additional equity financing may be necessary. The Board will endeavour to secure additional capital without requiring substantial shareholder dilution.

We will need to fund growth in working capital and for manufacturing plant expansion, but we expect that as we will be cash flow positive at that time with growing revenues, we should be able to fund that with a working capital facility. The recommencement of an accelerated advanced product R&D programme would hopefully be able to be funded out of cash flow once this revenue run rate has been achieved.

F. If the company does raise what it needs in the SPP, what happens then?

We will continue with operations to achieve the key objectives as mentioned in the letter that accompanied the SPP offer. In particular, the most important goal is to conclude the US BTT Trial and present the clinical results. We believe that this is the most important short term value creating event.

We will continue to seek additional capital, with a preference for non-dilutive financing.

We will continue our ongoing discussions with strategic investors, partners and/or acquirers.

Other Shareholder Questions

I hope I have addressed the key questions relating directly to the Share Purchase Plan and, if not, there will be opportunity later in this meeting to take questions from the floor. The main questions we hear outside the SPP relate to the share price, and the prospects for near term profitability. As the answers to these could be pertinent to investment decisions concerning the SPP, I will address them now.

1 "Why is the share price so low and falling?"

We do not have a single or simple answer to this question. Clearly, the global financial markets have been in turmoil for some time. The Australian share market has lost over half the value from its peak, and once outstanding companies have suffered huge losses of value. Ventracor has not been immune from that turmoil, and our share price has fallen along with the ASX over the last year. But there are other factors affecting our share price as well.

We have heard from several shareholders that Ventracor has been the target of short selling in the last year, and as a result some once large shareholders have had margin calls which have forced them to sell large parcels of our stock, usually at a loss. Those large numbers of shares flooding the market have contributed to the fall in price. The Company has no way of influencing or controlling that activity.

As we have informed the market, Ventracor has needed to raise additional capital, and awareness of this appears to have been a contributor to the fall in share price. This "financing overhang" has had a feedback effect. Some shareholders believe that our need to raise capital means that we would issue new shares at a discount, in line with our own historical practice. Therefore the sentiment is that it is better to sell shares and buy them back later at a discount. This selling pressure pushes the share price down and results in a feedback loop with no end.

From our calls with shareholders, it is clear that some people do not have a clear understanding of the nature of our business, and their expectations on the timing of profitability, sales growth, or dividend payments have not been met. Regardless of how those expectations were formed, if they are not met, the resultant negative shareholder sentiment can be infectious, and can lead to stock price decline. Let me be quite clear, Ventracor is and has always been a company where the ultimate long term success

Ventracor Limited 2008 AGM -- Chairman's Address



depends on our ability to obtain regulatory approval to sell our product in the US market. We are in clinical trials in the United States, and until we obtain regulatory approval, there are externally imposed limits to our growth, and we are legally prohibited from marketing our products in the United States. In the medical device business, FDA marketing approval has often been accompanied by rapid and dramatic rise of share price, as we have seen Thoratec enjoy in the last year with FDA approval of their second generation Heartmate II LVAD. We anticipate that our share price will also be in a position to rapidly appreciate with FDA approval, but achieving that approval is not without risk. The Company has been at pains to inform the market of those risks at the same time as indicating the upside potential. We encourage all shareholders to ensure that an investment in Ventracor matches their individual or corporate risk/reward profile.

2 We often get asked "When will you be profitable?"

As you have seen with our recent announcements, the Company has taken steps to reduce our operating expenditure in particular by suspending advanced product development projects, and we expect that action will help to reduce the revenue run rate needed to achieve profitability. In the United States, during clinical trials, the number of hospitals we can sell to and the number of devices we can sell is limited by the terms of FDA approval of our clinical trial, and our growth is constrained during this time. Thus long term sustainable profitability depends primarily on achievement of full regulatory approval to market the VentrAssist in the United States. We have informed the market of our best projections of those timelines, ever since the Rights Issue prospectus in 2006, in which we projected completion of BTT enrolment by the end of 2008. It is unlikely that contributions from other markets, although significant, will be enough to reach profitability before we get US regulatory approval.

*Concluding Remarks*

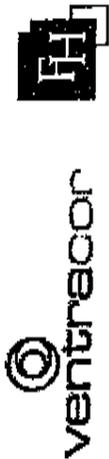
Having covered these matters, I would like to acknowledge and thank the tremendous contribution of the many patients who have participated in the various clinical trials of the VentrAssist as well as the physicians and other health care professionals who have supported us. Without them we would have not been able to report our strong progress today. I also wish to acknowledge the great contribution of the Management and staff, who have continued to get on with the tasks at hand despite the unfolding uncertainty over our financial position.

I would also like to acknowledge our previous Chairman, John Massey who resigned from the Board earlier this year. His tireless work and dedication laid the platform on which many of our recent achievements have been built.

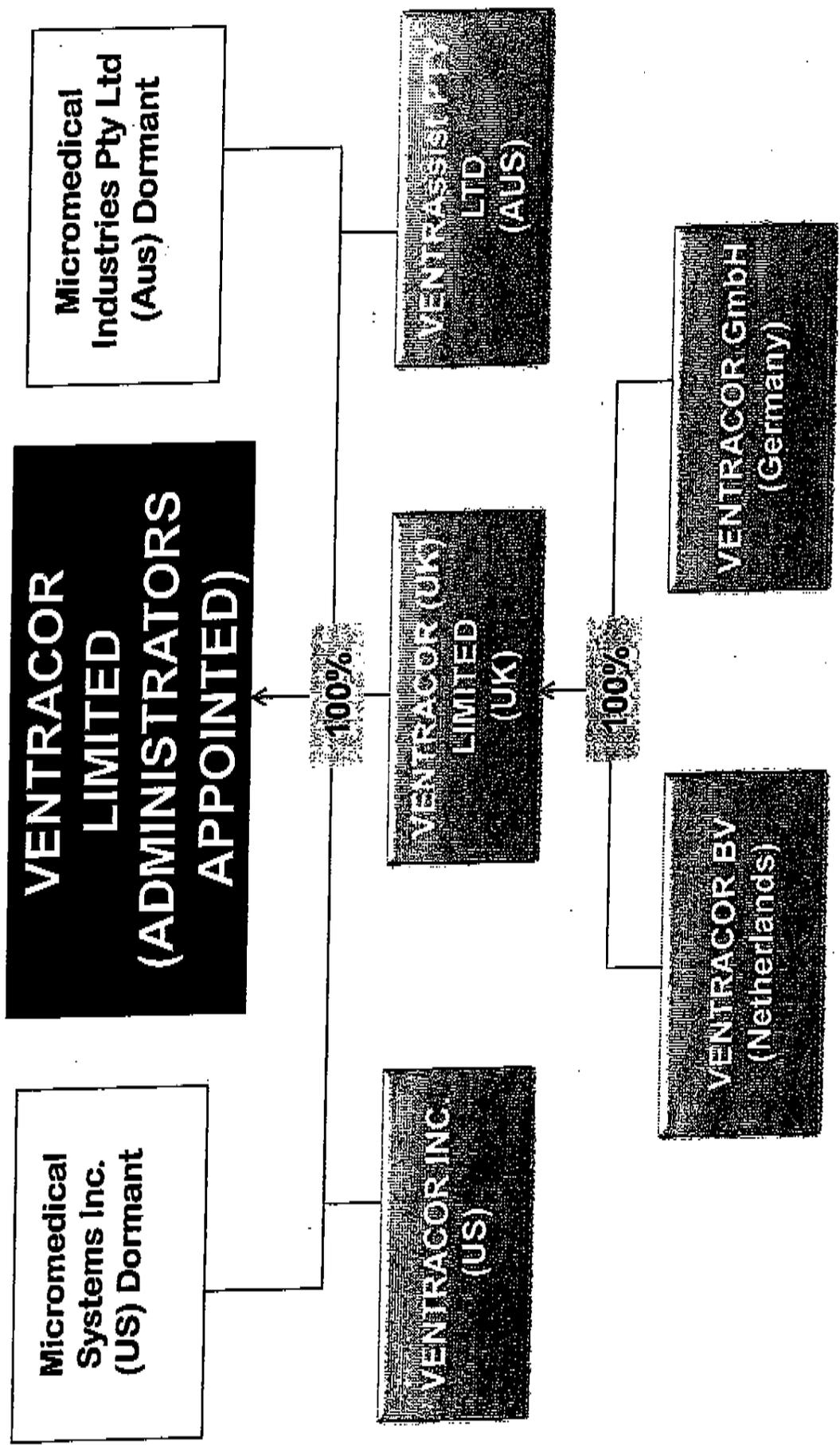
To conclude let me again empathise with those of you who, like me, have been long term shareholders. It hasn't been a comfortable ride so far but hopefully your loyalty will be rewarded in the coming years. Ventracor has always been a speculative investment with potentially high rewards, both clinically and financially. The clinical rewards are being realised and a successful outcome from the current SPP and placement brings with it the prospect of financial rewards.

When considering your participation in the SPP, it is important to understand where we are up to, what we have achieved, and the outlook for our future. To that end, I now call on our Chief Executive Officer and Managing Director Peter Crosby to provide an overview of your Company's operations over the past year.

# **ANNEXURE 2**



# Ventracor Group



# **ANNEXURE 3**


**SYDNEY**

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 phone +61 2 9286 9999  
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 email fh Sydney@fh.com.au  
 www.ferrierhodgson.com  
 DX 10103  
 Sydney Stock Exchange

16 April 2009

**To: Shareholders of Ventracor Limited (Administrators Appointed)**

Dear Sir/Madam

**Re Ventracor Limited (Administrators Appointed)**  
**("the Company") ACN 003 180 372**

Having received emails from in excess of 70 shareholders of the Company since our appointment as voluntary administrators on 19 March 2009 variously requesting that the Voluntary Administrators do certain things and/or the provision of documents or information, we took the unprecedented step of convening an informal information briefing for shareholders on 7 April 2009.

Notwithstanding the information briefing, it is apparent that a small minority of the Company's 17,000 shareholders have a fundamental misunderstanding of the voluntary administration process in general and the nature of our role as Voluntary Administrators. While it is a matter for shareholders to obtain independent advice in relation to the voluntary administration process and how it affects them, it is with a view to addressing the misunderstanding at a very basic and broad level that we have issued this notice.

**1. Role of the Voluntary Administrators**

Our role as joint and several Voluntary Administrators of the Company is, in view of the Company's insolvency, to administer the business, property and affairs of the Company in a way which results in a better return for the Company's creditors than would result from an immediate winding up of the Company.

The voluntary administration process is regulated by Part 5.3A of the *Corporations Act 2001 (Act)* and envisages:

- a. the convening of two instrumental meetings of creditors of a company in voluntary administration;
- b. the Voluntary Administrators' preliminary investigations and report to creditors; and
- c. various other actions by the Voluntary Administrators,

be undertaken within a very short timeframe (within a period of approximately 33 business days from the start of the administration).

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 BRISBANE  
 MELBOURNE  
 NEWCASTLE  
 PERTH  
 HONGKONG  
 JAKARTA  
 KUALA LUMPUR  
 MANILA  
 MUMBAI  
 SHANGHAI  
 SINGAPORE  
 TOKYO

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 Kroll Worldwide  
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 UNITED KINGDOM

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## 2. Participation of Shareholders in the Voluntary Administration Process

There is no framework in the Act or under the law for shareholder involvement in the above process or for voluntary administrators to respond to shareholder demands. The focus of the Act (and the law relating thereto) on the rights of a company's creditors (rather than its shareholders) derives from the insolvency of the Company and the need for creditor protection which flows from that.

In this regard, it is important for shareholders of the Company to be mindful of the fact that the Company's available cash flow is limited and all actions undertaken by the Voluntary Administrators in performance of their duties pursuant to Part 5.3A of the Act are to be financed from that limited cash flow. The remaining funds, together with any assets realised will, after deduction of the payments accorded statutory priority under the Act, constitute the fund to be distributed to the Company's creditors.

Responding to each shareholder demand and request for information and/or documents, is as you will appreciate, is both inconsistent with that process and inconsistent with safeguarding the interests of the Company's creditors. Having regard to the above, shareholders must be cognisant that the Voluntary Administrators, while sympathetic to shareholders, cannot engage in ongoing correspondence with shareholders or accede to shareholders demands for documents and/or regular information updates. To do so at the level demanded by some shareholders would:

- a. impinge upon the Voluntary Administrators' ability to carry out the tasks required of them pursuant to Part 5.3A of the Act; and
- b. result in costs being incurred in the conduct of the administration which would diminish the pool of assets available for distribution to creditors of the Company.

It is purely for the above reasons that the Voluntary Administrators do not have the luxury of engaging any ongoing discussions or correspondence with the Company's 17,000 shareholders.

## 3. Avenues available for Shareholders

For avoidance of doubt, and in response to various shareholder demands, it is neither open to the Voluntary Administrators, nor is it possible within the statutory timeframe and limitations, for a further share purchase plan to be put to shareholders.

That is not to say that there are no avenues open to shareholders who wish to see the Company survive. Shareholders who wish to commit additional funds towards recapitalising or refinancing the Company have the option of

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doing so in the form of a 'Deed of Company Arrangement' pursuant to Part 5.3A of the Act.

#### 4. Deed of Company Arrangement proposals

The formulation of any proposed Deed of Company Arrangement must be undertaken by the parties proposing it (and not by the Voluntary Administrators) and, given the complexities involved, input and advice from an experienced insolvency practitioner will be required on any deed proposal.

Should shareholders wish to pursue this avenue, they will need to urgently communicate with each other directly and provide the Voluntary Administrators with a form of the proposed Deed of Company Arrangement which can be considered by the Voluntary Administrators and outlined in the Voluntary Administrators' report to creditors (which must be issued on or before 20 April 2009).

#### 5. Next step in the Administration - Second Meeting of Creditors

The second meeting of creditors of the Company to be convened in accordance with Part 5.3A of the Act will be convened on or around 30 April 2009.

On that date the creditors of the Company will be given an opportunity to consider the following:

- a. any proposed Deed of Company Arrangement;
- b. the return of the Company to its directors; and/or
- c. the liquidation of the Company.

#### 6. Next update on the Administration

The Voluntary Administrators' report on the outcome of the second meeting of creditors, and the creditors' consideration of the matters outlined at 5 (a)-(c) above, will be posted on this site in due course.

# **ANNEXURE 4**

**Ventracor Limited**  
**(Administrators Appointed)**  
**Summary of Receipts and Payments for AUD Administrators Account**  
**for the period 19 March 2009 to 13 May 2009**

Receipts	Receipts to Date	Payments	Payments to Date
----------	---------------------	----------	---------------------

Cash on Appointment	1,620,510.39	Wages (Net of PAYG)	(527,612.39)
Debtors	190,960.00	Rent and Rates	(138,317.72)
Sales	14,950.00	Raw Materials	(114,261.19)
		Superannuation	(75,481.16)
		Payroll Tax	(42,321.73)
		Royalties	(39,233.52)
		Repairs and Maintenance	(18,728.72)
		Contractor Costs	(19,660.00)
		Hire and Leasing	(19,375.96)
		Legal Fees	(18,824.50)
		Salary Continuance Insurance	(12,875.00)
		Telephone and Fax	(10,932.45)
		Couriers	(6,909.04)
		Travel Expense	(8,270.76)
		Employee Reimbursements	(5,132.38)
		Salary Sacrifice	(4,320.00)
		Patent Fees	(3,104.27)
		Annual Leave (Terminations)	(1,873.48)
		Payroll Processing	(1,353.52)
		Sundry Expenses	(17,198.59)
<b>Total Receipts</b>	<b>1,826,420.39</b>	<b>Total Payments</b>	<b>(1,062,766.39)</b>
		<b>Cash at Bank as at 13 May 2009</b>	<b>743,634.00</b>

**Ventracor Limited**  
**(Administrators Appointed)**  
**Summary of Receipts and Payments for USD Administrators Account**  
**for the period 19 March 2009 to 13 May 2009**

Receipts	Receipts to Date US\$	Payments	Payments to Date US\$
Cash on Appointment	887,915.18	Raw Materials	(30,082.58)
		Patent Fees	(1,824.30)
<b>Total Receipts</b>	<b>887,915.18</b>	<b>Total Payments</b>	<b>(31,906.88)</b>
		<b>Cash at Bank as at 13 May 2009</b>	<b>656,008.30</b>

# **ANNEXURE 5**

## Alternative DOCA Proposed

**Ventracor Limited**  
**(Administrator Appointed)**  
**ACN: 003 180 372 ("Ventracor")**

Date: 13 May 2009

### Proposed by

The Shareholders Group (refer attached) consists of existing shareholders that have been issued share capital of Ventracor.

The Shareholders Group have received support and interest of other existing Shareholders which represent a substantial proportion of approximately 18% of the total shares issued of Ventracor and representing 798 in number.

### Objectives

- Pay all Creditors 100 cents in the dollar.
- Removal of suspension notice on the ASX (Australian Stock Exchange).
- To ensure the continuing success of Ventracor.

### No access to Books and Records

We have not been provided access to the books and records of Ventracor (or its subsidiaries) and accordingly due diligence is not possible. For this reason the Alternative DOCA Proposal is based on estimates only.

### Creditors

The Administrator has advised that creditors are owed the following amounts:

	Country	Estimated Amount Owed AUD\$
<b>Ventracor Limited</b> (Holding Company)	Australia	
- Employee entitlements		3,899,716
- Trade Creditors		930,213
- Trade Accruals		327,370
<b>Australian subsidiaries</b>		
- VentrAssist Pty Limited	Australia	Included In Holding Company estimates
- Micromedical Industries Pty Limited	Australia	
<b>Overseas subsidiaries</b>		
- Ventracor Inc	USA	2,026,677
- Micromedical Systems Inc	USA	Included In Ventracor Inc above

- Ventracor (UK) Limited	UK	142,473
- Ventracor BV	Netherlands	294,650
- Ventracor GmbH	Germany	139,821
<b>Administrators costs and expenses (estimate to completion) Re: Ventracor Limited</b>	<b>Australia</b>	
- Fees		640,000
- Legal costs		350,000
- Payroll costs		367,000
- Trading costs		95,499
- Trading costs (not Invoiced)		219,569
		<u>AUD\$9,432,987</u>

It is noted that the estimates in AUD\$ and foreign currency conversions have been provided and calculated by the Administrator.

It is proposed to pay all creditors (and the Administrators costs and expenses) of Ventracor and its Subsidiaries 100 cents in the dollar. These Funds are estimated at AUD\$9.433 Million as outlined above.

Due Diligence will be required to confirm the amounts owed to creditors.

#### Contingent Creditors

The Administrator has advised that contingent creditors are owed the following amounts:

	Country	Estimated Amount Owed AUD\$
Ventracor Limited (Holding Company)	Australia	
- Commercial Ready Grant		2,800,000
- Financial Advisors		2,298,000
		<u>AUD\$5,098,000</u>

It is noted that the Administrator has not provide details on the contingent liabilities and crystallisation issues.

These are to be provided by the Administrator as part of the Due Diligence process.

#### Funder

The Funder will be 4 cornerstone investors and pledges from the Shareholders Group and other shareholders who have indicated support and financial pledges.

The Funder is limiting the amount to AUD\$12 Million.

#### Funder Option 1

The Funds are to be paid/ loaned by the Funder, estimated to be \$9.433 Million, at a date agreed by the Funder and Administrator.

In payment of the Funds (or such lesser sum required to be paid to creditors) to Ventracor, the Administrator or such other party as agreed, the Funder will be provided a Fixed and Floating Charge by Ventracor over all of the assets of Ventracor.

If applicable a Deed of Priority will be entered into to provide the Funder with a 1<sup>st</sup> ranking charge.

The Funder will make an offer (the quantum of shares to be issued is yet to be determined) to Shareholders to convert the monies to equity (i.e. a Debt to Equity Swap). The Debt to Equity Swap will be agreed by resolution between the Funder and the Shareholders at an Extraordinary Meeting of Members, by resolution immediately after the Meeting of Creditors or Termination of the Voluntary Administration (as applicable).

#### **Funder Option 2**

If shareholders reject the Debt to Equity Swap, then there will be an Option for the Funder to acquire the business pursuant to an Agreement for Sale of Business for the purchase of the business and all assets of Ventracor, including but not limited to:

- Intellectual Property and the rights.
- Work in Progress
- Debtors
- Stock
- Plant & Equipment.
- Shares in the subsidiaries of Ventracor (in Australia and overseas).
- Licences
- Goodwill
- Etc

The Agreement for Sale of Business will also make provision for the transfer of employees, leases, rental arrangements etc.

The value of the Agreement for the Sale of Business Agreement will be equivalent to the existing value of the offer provided to the Administrator under the Non Binding Agreement by any current proposed purchaser with whom the Administrator is currently negotiating with, the value of which is to be determined as at the date of this Alternative DOCA Proposal, plus 1%, limited to a maximum of AUD\$12 Million.

If the Sale of Business does not proceed (for whatever reason) then the Funder will have a right to call on the loan and enforce its rights.

#### **Ongoing Cashflow**

We have not been provided with any cash flow forecasts by the Administrator.

The Administrator has indicated that he is unwilling to support any proposal unless the proposer can show it has the ability to support Ventracor in the long term.

From the Administrators comments we have thus assumed that Ventracor is cash flow negative.

The Shareholder Group is prepared to support Ventracor, however as it has not been provided access to books and records of Ventracor and it is unable to quantify the amount of working capital required.

Despite requests, the Administrator has not quantified the cash requirements to achieve positive cashflow.

Due Diligence is therefore required.

#### **Existing Board of Directors**

It is our understanding that the Existing Board of Directors is as follows:

- John Ward
- John Massey (it is our understanding that Mr Massey is no longer a member of the Board)
- William Curran
- Jeffrey Goodman
- Ross Harricks
- Elizabeth Nosworthy
- Peter Crosby

It is proposed that the existing Board of Directors of Ventracor (except Mr Crosby) will resign and/or be replaced by the Administrators or Shareholders nominations (to be determined).

The Existing Board of Directors will waive all rights and claims to amounts payable as a result of their resignation and/or termination.

Due Diligence is therefore required.

#### **Peter Crosby**

The Administrator has advised that Mr Crosby's employment has been terminated.

Mr Crosby will be offered re-employment on the same terms as his previous employment with Ventracor, as if he had not had his employment terminated, on the basis that all amounts relating to Mr Crosby's termination are waived.

#### **Current Employees**

All employees (other than the Existing Board of Directors, or as otherwise determined) will be offered continuous employment and transmission of employee entitlements.

On this basis there will be no necessity to pay existing Employees any redundancy or retrenchment monies.

#### **Terminated Employees**

The Administrator has advised and provided a list of Employees who have had their employment terminated.

Subject to the technical, sales and marketing and administrative requirements of Ventracor in moving forward with its business and development of its products, those Terminated Employees may be offered re-employment on the same terms as their previous employment with Ventracor, as if they had not had their employment terminated, on the basis that all amounts relating to their termination are waived.

#### **Shareholder Meeting**

The Administrator or the Existing Board of Directors is to immediately call an Extraordinary Meeting of Member for the specific purpose of proposing the following resolutions.

- Confirm the Appointment of the interim Board of Directors
- Approve the Debt to Equity Swap.

It is noted that the Administrator is not to unreasonably withhold consent or to unreasonably refuse to cause such Notice of Meeting of Members to be sent to shareholders prior to the termination of the Voluntary Administration.

#### **Termination of Voluntary Administrator/s**

The Administrator will support an application for the immediate termination of the Voluntary Administrator of Ventracor on the basis that Ventracor is now 'solvent' and it is in the interests of Creditors and Shareholders for Ventracor to continue as a going concern.

OR

The Administrator will immediately call a meeting of Creditors on the basis that the Administrator will recommend to creditors that Ventracor be handed back to the Interim Board of Directors.

#### **Conditions**

1. Access and Inspection of all the books and records of Ventracor for the purpose of conducting due diligence;

It is noted that Ventracor had a Secure Data Room prior to the appointment of the Administrator however for whatever reason, the information and/or documentation has not been updated subsequent to this time.

2. That the Funder, Ventracor and any other secured creditor will enter into a Deed of Priority to provide the Funder with a 1<sup>st</sup> ranking charge.
3. Removal of suspension notice on the ASX (Australian Stock Exchange).
4. That the existing Board of Directors, Shareholders and/or Officers of Ventracor resign and/or be replaced by the Administrators or Shareholders.

That an Interim Board of Directors be appointed to Ventracor consisting of the following persons:

- Michael Spooner

- Senior Sydney commercial solicitor;
- Director of another life sciences company
- TBA
- TBA  
TBA
- Peter Crosby (To be determined)

The appropriate Consent to Act as Director is attached.

The remuneration and all other benefits of the Interim Board of Directors are to be determined.

## CONSENT TO ACT AS DIRECTOR/ SECRETARY

**Ventracor Limited  
(Administrator Appointed)  
ACN: 003 180 372**

I, \_\_\_\_\_ of \_\_\_\_\_ in the state  
of New South Wales, confirm and consent to act as Director and/or Secretary of the  
above Ventracor.

Yours faithfully

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**The Shareholders Group the subject of this Alternative DOCA Proposal**

<b>Name of Shareholder</b>	<b>Address</b>	<b>No of Shares Held</b>	<b>% of Total Share Capital</b>
<b>Nabil Antonios</b>	Unit 8, 32 Millatt Street Hurstville NSW 2220	15,000	0.0049%
<b>Paul Donohue</b>	78 Narellan St ARANA HILLS QLD 4054	97,000	0.0130%
<b>Paul Gellatly (held in the name of PLC Programming Services Pty Limited)</b>	4 Camber Court Shailer Park QLD 4128	334,125	0.1090%
<b>Rod Hurley</b>	46 Park Rd ST LEONARDS NSW 2065	19,250	0.0065%
<b>Paul Jeffery</b>	Unit 1, 1 Bariston Avenue Cremorne NSW 2090	51,376	0.0168%
<b>Vijay Kakani</b>	PO Box 189 Inglewood WA 6932	575,000	0.1875%
<b>John Pais</b>	Unit 1/ 1 Bariston Ave, CREMORNE NSW 2090	385,000	0.1255%
<b>Michael Spooner</b>	47 Yarawa Street, Kenmore, Brisbane QLD 4069	Nil	Nil
<b>Scott Tucker</b>	19 Discovery Street Red Hill ACT 2603	830,000	0.2706%
<b>Scott Tucker (and Elizabeth Tucker)</b>	Refer above	50,000	0.0163%
<b>Valvora Pty Limited (related to Scott Turner)</b>	19 Discovery Street Red Hill ACT 2603	620,000	0.2022%
<b>Total of the Shareholders Group</b>		<b>2,976,751</b>	

It is noted that the Shareholders Group (as outlined above) have received support and interest of other existing Shareholders which represent a substantial proportion of approximately 18% of the total shares issued of Ventracor and representing 798 in number.

# **ANNEXURE 6**

**CORPORATIONS ACT 2001****Section 449E****VENTRACOR LIMITED  
(ADMINISTRATORS APPOINTED)  
ACN 003 180 372****REMUNERATION REPORT**

The Administrators' Remuneration Report, prepared pursuant to Section 449E of the Corporations Act 2001, takes the following format.

**Part A**

- A1 Schedule of hourly rates and general guide to staff experience
- A2 Tasks undertaken by the Administrators and remuneration calculation for the period **19 March 2009 to 13 May 2009**.
- A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period **14 May 2009 to 29 May 2009**.
- A4 Resolutions to be put to creditors at the meeting convened for **29 May 2009**

**Part B**

- B1 Administrators' disbursements
- B2 Summary of Receipts and Payments for the period **19 March 2009 to 13 May 2009**
- B3 Other creditor information on remuneration

The Remuneration Report must be read in conjunction with the report to creditors dated **20 May 2009**.



### PART A

## A1 SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE

Title	Rate (\$)	Experience
Partner/Principal/ Appointee	595	The Partner/Appointee is a registered liquidator and member of the ICAA and IPAA bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.ferrierhodgson.com">www.ferrierhodgson.com</a>
Director	495	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and IPAA with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	440	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and IPAA; very strong knowledge of relevant insolvency legislation and issues.
Manager	370	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and IPAA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	310	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior 1	280	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA program. Good knowledge of basic insolvency legislation and issues.
Senior 2	250	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Intermediate 1	220	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Intermediate 2	190	0 - 1 year's experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing more complex administrative tasks.
Professional Staff Junior	150	0 - 1 year's experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes directions from senior staff in completing administrative tasks.
Senior Secretary	165	Appropriate skills including machine usage.
Computer Operator	120	Appropriate skills including machine usage.
Clerk	135	Generally non qualified administrative assistant. Classification depends on experience, salary and complexity of work to be completed.
Typist	85	Appropriate skills including machine usage.
Office Assistant	65	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

#### Notes:

- The hourly rates are exclusive of GST.
- The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.



**A2. Tasks undertaken by the Administrators and remuneration calculation for the period 19 March 2009 to 13 May 2009.**

	Debtors	<ul style="list-style-type: none"> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Correspondence with debtors</li> </ul>
	Sale of Business	<ul style="list-style-type: none"> <li>▪ Review of pre appointment financing attempts and correspondence with Interested parties</li> <li>▪ Initial discussions with a number of Interested parties regarding possible purchase of business</li> <li>▪ Compiling due diligence Information for interested parties</li> <li>▪ Oversee due diligence process of interested parties</li> <li>▪ Lengthy negotiations with particular Interested party, in conjunction with directors and senior management</li> <li>▪ Settlement of Heads of Agreement</li> <li>▪ Engagement of solicitors to prepare sale term documents and advise on transfer and structure of sale</li> <li>▪ Preparing numerous correspondence with respect to sale terms with interested parties</li> <li>▪ Numerous meetings with various stakeholders that is: landlords, utility providers, distributors, interested purchasers with respect to their position on an eventual sale</li> <li>▪ Numerous discussions with shareholders and shareholder representatives regarding possible Deed of Company Arrangements / interest in group assets</li> <li>▪ Numerous discussions with shareholders and shareholder representatives to facilitate due diligence process</li> </ul>
	Sale of Assets	<ul style="list-style-type: none"> <li>▪ Commissioning of valuation to itemise assets and quantify value</li> <li>▪ Determining transfer requirements of intellectual property and trading agreements</li> <li>▪ Discussions with various Interested parties / facilitate due diligence</li> </ul>
<b>Assets</b> <b>236.10 hours</b> <b>\$106,336.60</b>	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Initial circular to creditors</li> <li>▪ Prepare report pursuant to section 439A of the Act</li> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> <li>▪ Dealing with creditor queries on the status of the administration and the status of their claims relative to projected outcomes</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting.</li> </ul>
<b>Creditors</b> <b>156.90 hours</b> <b>\$49,581.50</b>		



		<p>March 2009</p> <ul style="list-style-type: none"> <li>▪ Preparation and lodgement minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>
	Shareholders	<ul style="list-style-type: none"> <li>▪ Attend to ongoing correspondence from shareholders to address claims made against the Company and informal proposals for action to be taken by the Administrator</li> <li>▪ Convene an informal briefing session for shareholders, held on 7 April 2009 to address queries raised by shareholders, provide an update on the administration and shareholders' status relative to creditors in a Voluntary Administration</li> </ul>
<p><b>Employees</b> 105.30 hours \$41,194.00</p>	Employee Administration	<ul style="list-style-type: none"> <li>▪ Ongoing discussions and correspondence with employees regarding the administration</li> <li>▪ Calculation of employee entitlements outstanding and liabilities going forward</li> <li>▪ Processing of wages and partial entitlement payments</li> <li>▪ Provide ongoing instructions to employees and management</li> <li>▪ Prepare termination notices and other related employee correspondence</li> <li>▪ Maintain an Employee Q&amp;A process to ensure that all employee queries are addressed</li> <li>▪ Regular employee briefing sessions to provide updates on progress of the administration and sale process</li> <li>▪ Attend regular management meetings to discuss work streams, work plans and staff resources</li> </ul>
<p><b>Investigation</b> 41.20 hours \$14,133.00</p>	Conducting Investigation	<ul style="list-style-type: none"> <li>▪ Collection of company books and records</li> <li>▪ Reviewing company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of company history and salient historical trading results</li> <li>▪ Conducting and summarising statutory searches</li> <li>▪ Preparation of comparative financial statements</li> <li>▪ Review of specific transactions (finance / capital raisings)</li> <li>▪ Liaising with directors regarding historic transactions</li> <li>▪ Preparation of investigation file</li> </ul>
<p><b>Trade On</b> 429.20 hours \$150,396.50</p>	Management of Chatswood and Kirrawee Sites	<ul style="list-style-type: none"> <li>▪ Attend Chatswood site to secure premises and assets.</li> <li>▪ Attend Kirrawee site to secure premises and assets</li> <li>▪ Facilitate attendance by Ventracor representatives at the 1SHLT conference</li> <li>▪ Obtain information from employees and management on site and general trading / regulatory obligations</li> <li>▪ Understand business operations, product specifications and reporting lines</li> <li>▪ Prepare forecast cash flows to determine funding requirements going forward</li> <li>▪ Discussions with overseas subsidiaries and assessing short term and long term funding and resourcing requirements</li> <li>▪ Inspect plant and observe operations</li> <li>▪ Arrange for Occupational Health &amp; Safety inspection of site</li> <li>▪ Establish administration procedures on site, including authorisation of purchase orders</li> <li>▪ Attend meetings with interested parties and provision of necessary information</li> <li>▪ Provide instructions to employees and management</li> </ul>



		<ul style="list-style-type: none"> <li>▪ Address Retention of Title Issues</li> <li>▪ Set up new administration accounts with suppliers</li> <li>▪ Notify all suppliers about administration and terms of continued supply</li> <li>▪ Deal with operational issues and control decision making</li> <li>▪ Attend to and resolve all retention of title Issues</li> <li>▪ Ensure that all operating plant and equipment processes remain compliant with regulatory requirements</li> <li>▪ Ongoing discussions and meetings with production/manufacturing management staff to ensure that sufficient resources are available to meet production targets</li> <li>▪ Numerous discussions with management to ensure that appropriate controls and measures are maintained to preserve relationships with patients and clients</li> </ul>
<b>Administration</b> 187,10 hours \$52,438.00	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence with creditors, suppliers, statutory authorities, etc.</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Filing of documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Willis Australia regarding Initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> <li>▪ Identification of future insurance requirements and ensuring appropriate policies are in place, including Product Liability / Product Warranty</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Monitoring retention of cash to ensure that amounts withheld by Westpac are ultimately released</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
<b>\$414,078.50</b>		



**A2 (cont) Tasks undertaken by the Administrators and remuneration calculation for the period 19 March 2009 to 13 May 2009**

Name	Position	Hourly Rate (\$/hour ex GST)	Total Actual Hours	Total (\$)	Assets		Creditors		Employees		Trade On		Investigation		Administration			
					hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$		
Heiman	Partner	595.00	162.80	96,868.00	62.30	37,088.00	2.50	1,488.00	10.00	5,950.00	77.50	46,112.00	1.50	892.00	9.00	5,355.00		
Lawson	Director	485.00	9.50	4,702.00									9.50	4,702.00				
Cave	Director	495.00	5.50	2,722.00											5.50	2,722.00		
Timshaw	Manager 1	440.00	2.70	1,188.00							2.70	1,188.00						
Cartlines	Manager 1	440.00	244.20	107,448.00	97.80	43,032.00	28.20	12,408.00	55.30	24,392.00	43.50	19,140.00	3.00	1,320.00	16.40	7,216.00		
Dulson	Manager 2	370.00	241.10	89,207.00	60.30	22,311.00	38.10	14,097.00	8.80	3,182.00	87.50	36,075.00	1.30	481.00	35.30	13,051.00		
Myers	Supervisor	310.00	4.70	1,457.00									4.70	1,457.00				
Gordon	Senior 1	280.00	0.10	28.00											0.10	28.00		
Lynes	Senior 2	250.00	127.10	31,775.00	6.00	1,500.00	82.90	15,275.00	3.50	875.00	17.40	4,350.00			37.30	9,325.00		
Hosking	Senior 2	250.00	247.00	61,750.00	9.70	2,425.00	20.50	5,125.00	26.70	6,675.00	149.40	37,350.00	21.00	5,250.00	19.70	4,925.00		
Jeffery	Senior 2	250.00	0.30	75.00			0.30	75.00										
Mr Bachir	Intermediate 2	180.00	4.20	788.00											4.20	788.00		
Ultra Medevan	Intermediate 2	190.00	0.10	19.00			0.10	19.00										
Mr Lewis	Senior Secretary	165.00	28.50	4,702.00														
Mr Magliardo	CP Operator	120.00	12.00	1,440.00											12.00	1,440.00		
Mr Ho	Junior	150.00	64.80	9,720.00			4.30	645.00	1.20	180.00	41.20	6,180.00	0.20	30.00	17.90	2,685.00		
Mr Howard	Junior	150.00	1.20	180.00											1.20	180.00		
<b>TOTAL</b>					1,155.80	414,078.50	236.10	108,336.50	158.90	49,581.50	105.30	41,194.00	428.20	150,395.50	41.20	14,133.00	187.10	52,438.00
<b>TOTAL GST</b>						41,407.85												
<b>TOTAL (including GST)</b>						455,486.35												
<b>Average hourly rate (ex GST)</b>					358.26	450.39	316.01	391.21	350.41	343.03	280.27							



**3 Schedule of anticipated tasks and Administrators' estimated prospective remuneration for the period 14 May 2009 to 29 May 2009**

Based on the following anticipated tasks of the Administration, I estimate the Administrators fees at **\$100,000.00 (exclusive of GST).**

<b>Assets</b>	<b>Debtors</b>	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> </ul>
<b>\$40,000.00</b>	<b>Sale of Business / Assets</b>	<ul style="list-style-type: none"> <li>▪ Progression of conditional sale of business and assets</li> <li>▪ Maintaining condition of plant and assets to regulatory requirements</li> <li>▪ Advanced negotiations with interested parties</li> <li>▪ Assessing terms of offers received and Impact on the Group</li> <li>▪ Progressing transfer of relevant Intellectual property and trading agreements</li> <li>▪ Preparation of sales contracts and other related transactional documents</li> </ul>
<b>Creditors</b>  <b>\$15,000.00</b>	<b>Dealing with proofs of debt</b>	<ul style="list-style-type: none"> <li>▪ Receipting and filling POD's</li> </ul>
	<b>Creditor Enquiries</b>	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Addressing queries related to the s.439A report</li> </ul>
	<b>Meeting of Creditors</b>	<ul style="list-style-type: none"> <li>▪ Finalising report to creditors</li> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors and advertisement of meeting</li> </ul>
<b>Employees</b>  <b>\$10,000.00</b>		<ul style="list-style-type: none"> <li>▪ Ongoing discussions and correspondence with employees regarding administration</li> <li>▪ Calculation of employee entitlements outstanding and liability going forward</li> <li>▪ Adjudication of employee proof of debt forms</li> <li>▪ Progressing employee related issues relative to a possible sale of the business</li> </ul>
<b>Trade on</b>  <b>\$25,000.00</b>	<b>Management of Chatswood site</b>	<ul style="list-style-type: none"> <li>▪ Attending to ongoing trading</li> <li>▪ Deal with operational issues and control decision making</li> <li>▪ Manage cash flow of the business</li> <li>▪ Review forecast cash flow, assessing current position and future funding requirements</li> <li>▪ Discussion with overseas entities</li> <li>▪ Attend to regulatory requirements</li> <li>▪ Provide instructions to employees and management</li> </ul>



<b>\$10,000.00</b>	Administration	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence with creditors, suppliers and shareholders</li> </ul>
		Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ First month administration review</li> <li>▪ Filing of documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
		Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Wills regarding initial and ongoing insurance requirements</li> </ul>
		Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
		ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Preparing BAS'</li> </ul>
		Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
<b>\$100,000.00</b>			

The remuneration estimate may be summarised as follows:

	Assets	Creditors	Employees	Trade on	Administration
Amount	40,000.00	15,000.00	10,000.00	25,000.00	10,000.00

#### A4 Resolutions to be put to creditors at the meeting convened for 29 May 2009.

At the meeting of creditors convened for 29 May 2009, creditors will be asked to consider the following resolutions:

*"That the remuneration of the Administrators, as set out in the Administrators' remuneration report dated 20 May 2009 for the period 19 March 2009 to 13 May 2009 be fixed and paid in the sum of \$414,078.50 plus any applicable GST"*

*"That the remuneration of the Administrators, as set out in the Administrators' remuneration report dated 20 May 2009 for the period 14 May 2009 to 29 May 2009 be charged on a time cost basis in line with the Schedule of hourly rates, I estimate these costs to be in the region of \$100,000.00 plus any applicable GST"*



## **PART B**

### **B1 Administrators' Disbursements**

Disbursements are divided into three types D1, D2 and D3.

- D1 Disbursements are all externally provided professional services and are recovered at cost. An example of a D1 disbursement is legal fees.
- D2 Disbursements are externally provided non professional costs such as travel, accommodation and search fees. D2 disbursements are recovered at cost.
- D3 Disbursements are internally provided non professional costs such as photocopying and document storage. D3 disbursements are charged at cost except for photocopying, printing and telephone calls which are charged at a rate which is intended to recoup both variable and fixed costs. The relevant rates are set out below.

Disbursements	Charges (Excluding GST)
Postage	At cost
Telephone	At cost
Photocopying	50 cents per copy
Facsimile	At cost
File Set Up	At cost
Advertising	At cost
Storage – Per Box	60c / month
Storage – Per File	At cost
Couriers	At cost

Disbursements incurred to date are shown in the Summary of Receipts and Payments. Creditor approval for the payment of disbursements is not required. However, the Administrators must account to creditors. Creditors have the right to question the incurring of disbursements and can challenge disbursements in court.

### **B2 Summary of Receipts and Payments for the period 19 March 2009 to 13 May 2009**

A summary of which is attached as Annexure 4 to the Report to Creditors dated 20 May 2009.

### **B3 Other creditor information on remuneration**

The partners of Ferrier Hodgson are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice. A copy of the Code of Professional Practice may be found on the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au)



An information sheet concerning approval of remuneration in external administrations can also be obtained from the IPA website.

Queries regarding remuneration should be directed to Ben Hynes of this office on (02) 9286 9936.

Dated this 20<sup>th</sup> day of May 2009

A handwritten signature in black ink, appearing to read 'Steven Sherman', written over a circular scribble.

**Steven Sherman**  
Administrator

# **ANNEXURE 7**

Ref C-

**INFORMAL PROOF OF DEBT FORM**

Regulation 5.6.47

**VENTRACOR LIMITED  
(ADMINISTRATORS APPOINTED)  
ACN 003 180 372**

Name of creditor:

Amount of debt claimed:

(see note)

Consideration for debt:

Whether debt secured or unsecured:

If secured, give details of security including dates, etc:

Balance, if any, after deducting value of security (see note):

.....  
Creditor (or person authorised by creditor)

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**NOTE:**

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his claim has been admitted, wholly or in part, by the Administrator, or
- b. he has lodged with the Administrator particulars of the debt or claim, or if required, a formal proof of debt.

For the purposes of Part 5.3A, a secured creditor may vote (Regulation 5.6.24):

- a. for the whole of his debt without regard to the estimated value of his security.

Proxies must be made available to the Administrator

# **ANNEXURE 8**

Ref: C-

**FORM 532  
CORPORATIONS ACT 2001**

Regulation 5.6.29

**VENTRACOR LIMITED  
(ADMINISTRATORS APPOINTED)**

**APPOINTMENT OF PROXY CREDITORS MEETING**

I/We<sup>1</sup> \_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_

a creditor of Ventracor Limited, appoint<sup>2</sup> .....

or in his absence..... as \*my/our

\*general or special proxy at the meeting of creditors to be held on 29 May 2009, or at any adjournment of that meeting;

**For                      Against                      Abstain**

- |      |   |                          |                          |                          |
|------|---|--------------------------|--------------------------|--------------------------|
| 1.   | That the remuneration of the Administrators, as set out in the Administrators' remuneration report dated 20 May 2009 for the period 19 March 2009 to 13 May 2009 be fixed and paid in the sum of \$414,078.60 plus any applicable GST   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.   | That the remuneration of the Administrators, as set out in the Administrators' remuneration report dated 20 May 2009 for the period 14 May 2009 to 29 May 2009 be charged on a time cost basis in line with the Schedule of hourly rates, these costs are estimated to be in the region of \$100,000.00 plus any applicable GST | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 A. | A resolution that the company execute a Deed of Company Arrangement – The General DOCA proposal; OR   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 B. | A resolution that the Administration end and control of the Company revert to the Board of Directors; OR  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 C. | A resolution that the company be wound up   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4.   | If a resolution is passed that the Company execute a Deed of Company Arrangement or the Company is wound up, a resolution that a Committee of Inspection be appointed   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



# **ANNEXURE 9**

Ref: A1/B9

**FORM 529  
CORPORATIONS ACT 2001**

Subregulation 5.6.12(2)

**NOTICE OF MEETING OF CREDITORS**

**VENTRACOR LIMITED  
(ADMINISTRATORS APPOINTED)  
ACN 003 180 372**

NOTICE is given that a meeting of the creditors of the company will be held at the offices of Clayton Utz Lawyers, Levels 34, No. 1 O'Connell Street SYDNEY NSW 2000 on Friday, 29 May 2009 at 10:00am.

**AGENDA**

1. To consider the Administrator's report to creditors.
2. To consider the circumstances leading up to the administration and the various options available to creditors.
3. To determine the remuneration of the Voluntary Administrators.
4. For creditors to resolve upon one of the following:
  - That the Company execute a Deed of Company Arrangement – the General DOCA proposal; or
  - That the administration should end; or
  - That the Company be wound up.
5. If a resolution is passed that the Company execute a Deed of Company Arrangement or the Company is wound up, to consider the appointment of a Committee of Inspection.
6. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrators by 4.00pm on the day prior to the meeting. A corporation may only be represented by proxy or by an attorney appointed pursuant to Corporations Regulations 5.6.28 and 5.6.31 respectively or, by a representative appointed under Section 250D of the Corporations Act 2001.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at the meeting unless they have previously lodged particulars of their claims against the company with the Administrators.

DATED this 20<sup>th</sup> day of May 2009

**Steven Sherman**  
Administrator