

Form 59  
Rule 29.02

## Affidavit

No VID 95 of 2010

Federal Court of Australia  
District Registry: Victoria  
Division: General

**In the matter of the *Corporations Act 2001***

and

**In the matter of Mark Ronald Letten (and others described in the Schedule)**

**Australian Securities and Investments Commission**

Applicant

**Mark Ronald Letten and others**

Respondents

Affidavit of: **Nicholas James Kelton (Second Affidavit)**

Address: 600 Bourke Street, Melbourne, Victoria

Occupation: Solicitor

Date: 13 September 2011

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Signed:

*Nick Kelton*

Taken by:

*Kelton*

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@malleasons.com](mailto:nick.kelton@malleasons.com)

**Address for service**

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

Form approved 01/08/2011

3	Exhibit <b>NJK-23</b> , email from Andrew Kennedy and attachments	4	3
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I, Nicholas James Kelton, of 600 Bourke Street, Melbourne, Victoria, solicitor, make oath and say:

- 1 I am a Senior Associate at Mallesons Stephen Jaques. I have the day to day care and conduct of this matter under the supervision of my Partner, Tony Troiani.

**Trustee Indemnity Application**

- 2 On 30 August 2011, I caused copies of the interlocutory process dated 29 August 2011 ("**Indemnity Application**") and the 30th Affidavit of Damian John Templeton ("**30th Templeton Affidavit**") to be sent by courier to:

- (a) all of the creditors of the eighteenth defendant, The Glen Centre Hawthorn Pty Ltd ("**TGCH**") who have submitted a proof of debt in the winding up of TGCH as listed in the 30th Templeton Affidavit;
- (b) all of the creditors of the twentieth defendant, Twinview Nominees Pty Ltd ("**Twinview**") who have submitted a proof of debt in the winding up of Twinview as listed in the 30th Templeton Affidavit;
- (c) ASIC;
- (d) Westpac; and
- (e) Mr Letten;

Now produced to me marked **NJK-22** is a true copy of the letters sent to the above parties.

- 3 I am instructed by Jason Colosimo of KPMG, and believe:
- (a) On 30 August 2011, the 30th Templeton Affidavit (along with exhibits DJT-137 to 141 inclusive) and the Indemnity Application, were uploaded to the secure data room available at [www.kpmg.com.au/lettenschemes](http://www.kpmg.com.au/lettenschemes). The data room is accessible by all investors who have previously been issued with a user ID and password.
  - (b) On 1 September 2011, the 30th Templeton Affidavit (including exhibits DJT-138 to 141 inclusive) and the Indemnity Application were uploaded to [www.kpmg.com.au/lettenschemes](http://www.kpmg.com.au/lettenschemes) which is available to public. The attachments feature

Signed:

*Nick Kelton*

Taken by:

*[Signature]*

in three locations being: the homepage under the "distribution" heading, the Twinview Joint Venture webpage and The Glen Centre Joint Venture webpage.

- 4 On 31 August 2011, I received an email from Andrew Kennedy, a representative of ABK Group Pty Ltd ("**ABK**") who are an alleged creditor of TGCH. Mr Kennedy informed me that the Templeton Affidavit did not contain all of the materials in support of the proof of debt of ABK. I assisted in the preparation of the 30th Templeton Affidavit and the failure to include the additional materials submitted by ABK as part of its proof of debt was an oversight. I also had a telephone discussion with Mr Kennedy on this day in which these matters were discussed. During that telephone discussion Mr Kennedy indicated that he wished to appear at the hearing and be heard in respect of the questions set out in the Indemnity Application.

Now produced to me marked **NJK-23** is a true copy of the email received from Mr Kennedy on behalf of ABK which attaches the additional materials submitted in support of ABK's proof of debt.

- 5 On 31 August 2011, I received a fax from Mills Oakley who act for Bridgehead Properties Pty Ltd ("**Bridgehead**"). Bridgehead have submitted proofs of debt in respect of both TGCH and Twinview. The fax indicates, inter alia, that Bridgehead intends to appear at the hearing on 14 September 2011 at 9.30am.

Now produced to me marked **NJK-24** is a true copy of the fax from Mills Oakley.

- 6 On 13 September 2011, I caused a copy of the Preliminary Submissions of the Receivers to be provided to the parties referred to in paragraph 2 above.

Now produced to me marked **NJK-25** are true copies of the email I sent and the covering letters in respect of the parties where the submissions were sent by courier.

- 7 I am informed by Darren Lewis of KPMG, and believe, that the Preliminary Submissions were loaded onto the KPMG website on 13 September 2011 into the secure data room referred to at paragraph 3(a) above. Mr Lewis has also informed me that the Preliminary Submissions will be loaded onto the public section of the website (referred to in paragraph 3(b) above) in coming days.

#### **Mirvac Application**

- 8 By email dated 19 August 2011, I provided copies of the Interlocutory Process dated 19 August 2011 ("**Mirvac Application**"), the 29th Affidavit of Mr Templeton and the Receivers' submissions to the following relevant parties:

- (a) Westpac (via its solicitors, Allens Arthur Robinson);
- (b) Mr Letten (via his solicitors, Baker & McKenzie);
- (c) ASIC;
- (d) Mirvac (via its solicitors, Corrs Chambers Westgarth); and

Signed:

*Nick Nelson*

Taken by:

*Kishy*

(e) the guarantors of the Reef House facilities, namely the Avelsgaard interests (via their solicitors, Kahns Lawyers).

Now produced to me marked **NJK-26** is a true copy of this email chain.

9 On 23 August 2011, I received a letter from Kahns Lawyers which indicated that their clients did not propose to make any submissions in respect of the Mirvac Application.

Now produced to me marked **NJK-27** is a true copy of this letter.

**SWORN** by the deponent  
at Melbourne  
in State  
on 13 September 2011  
Before me:

)  
)  
)  
)

*Nick Uelha*

Signature of deponent

*Kiely*

Signature of witness

Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.  
Name of witness

Address of witness

Signed:

*Nick Uelha*

Taken by:

*Kiely*

Form 59  
Rule 29.02

**Affidavit**

No VID 95 of 2010

Federal Court of Australia  
District Registry: Victoria  
Division: General

**In the matter of the Corporations Act 2001**

and

**In the matter of Mark Ronald Letten (and others described in the Schedule)**

**Australian Securities and Investments Commission**

Applicant

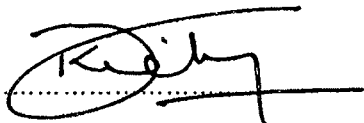
**Mark Ronald Letten and others**

Respondents

**EXHIBIT "NJK-22"**

This is the exhibit marked "NJK-22" referred to in the affidavit of **NICHOLAS JAMES KELTON** sworn 13 September 2011.

Before me:.....



Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

**Address for service**

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

Form approved 01/08/2011

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# MALLESONS STEPHEN JAQUES

**Attention:** Ms Helen Joyce  
Baker & McKenzie  
Level 29, Rialto  
525 Collins Street  
Melbourne VIC 3000  
**By courier**

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which your client may wish to be heard.

We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

# MALLESONS STEPHEN JAQUES

**Attention:** Ms Anna Schwartz  
Allens Arthur Robinson  
Level 27  
530 Collins Street  
Melbourne VIC 3000  
**By courier**

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which your client may wish to be heard.

We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

# MALLESONS STEPHEN JAQUES

**Attention: Mr Tony Tsiavis**  
ASIC  
Level 24  
120 Collins Street  
Melbourne VIC 3000  
**By courier**

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which ASIC may wish to be heard.

We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

# MALLESONS STEPHEN JAQUES

**Attention: Ms Daniela Zaric**  
Australian Taxation Office  
2-12 Macquarie Street  
Parramatta NSW 2150  
**By courier**

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which the ATO may wish to be heard.

We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

# MALLESONS STEPHEN JAQUES

**Attention: Mr Andrew Brown**  
Bridgehead Properties Pty Ltd  
c/- Mills Oakley  
PO Box 453 Collins Street West  
Melbourne VIC 8007  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which your client may wish to be heard.

We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

# MALLESONS STEPHEN JAQUES

Resolve Air Conditioning and Mechanical Services Pty Ltd  
212 Springvale Road  
Springvale VIC 3171  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which you may wish to be heard.

We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Nick Kelton', with a long, sweeping horizontal line extending to the right.

# MALLESONS STEPHEN JAQUES

Louton Pty Ltd &  
Robuck Metals Pty Ltd  
c/- Evans Ellis Lawyers  
Suite 1144  
1 Queens Road  
Melbourne VIC 3004  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

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Yours faithfully



# MALLESONS STEPHEN JAQUES

ABK Group Pty Ltd  
12 Commercial Road  
Mentone VIC 3194  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

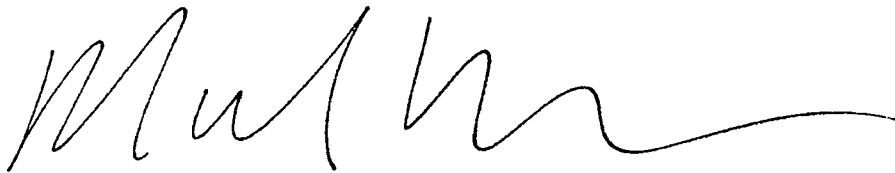
Dear Sirs

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Yours faithfully



# MALLESONS STEPHEN JAQUES

Metropolitan Fire and Emergency Board  
456 Albert Street  
East Melbourne VIC 3002  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

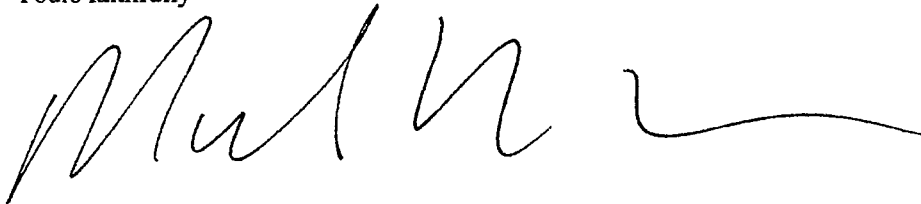
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Yours faithfully



# MALLESONS STEPHEN JAQUES

Illario G Gortese Architects Pty Ltd  
9 Evans Place  
Hawthorn East VIC 3123  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten  
Federal Court of Australia Action No. VID 95 of 2010**

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We confirm that the matter has been listed for a short directions hearing before Justice Gordon on 14 September 2011 at 9:30am. Please contact Nick Kelton if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nick Kelton', with a long horizontal flourish extending to the right.

# MALLESONS STEPHEN JAQUES

Gross Waddell Pty Ltd  
Level 6  
172-192 Flinders Street  
Melbourne VIC 3000  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose papers filed by the Receivers and Managers in the above action relating to an application on which you may wish to be heard.

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Yours faithfully



# MALLESONS STEPHEN JAQUES

Breese Pitt Dixon Pty Ltd  
c/- David King, Accountant  
1/19 Cato Street  
Hawthorn East VIC 3123  
By courier

30 August 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

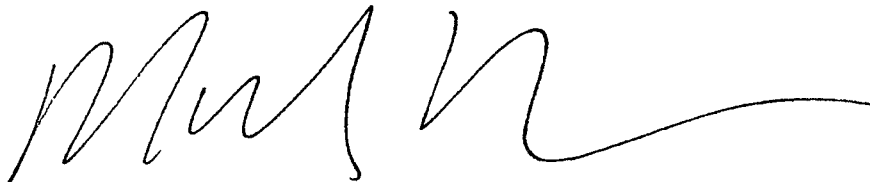
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Yours faithfully



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No VID 95 of 2010

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Applicant

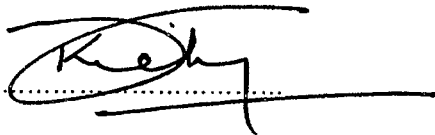
**Mark Ronald Letten and others**

Respondents

**EXHIBIT "NJK-23"**

This is the exhibit marked "NJK-23" referred to in the affidavit of **NICHOLAS JAMES KELTON** sworn 13 September 2011.

Before me:.....



Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

**Address for service**

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

10849986\_1

Form approved 01/08/2011

## McCluskey, Sara

---

**From:** Andrew Kennedy [a.kennedy@amlbtv.com]  
**Sent:** Wednesday, 31 August 2011 3:29 PM  
**To:** Kelton, Nick  
**Cc:** abkgroup  
**Subject:** ASIC v Letten - ABK Group Pty Ltd Proof of Claim Clarifications

**Attachments:** 2003 JV Glen Centre E-mail #1.pdf; 2003 JV Glen Centre E-mail #2.pdf; The Glen Centre Hawthorn - Ammended Formal Proof of Claim.pdf



2003 JV Glen Centre E-mail #1...Centre E-mail #2...Hawthorn - Amm...

Nick,

As discussed, following is the e-mail that was sent with the formal proof of claim form explaining our claim but was not included in the Affidavit.

We also wish to advise that an amount of \$50,000 was missing from your Affidavit outlining the proof of debt submitted (refer point three below and formal proof of debt claim attached). Also the e-mails referred to in the e-mail below were not notated as #1 and #2 in the Affidavit (refer attached e-mails).

If you have any questions or require further information I can be contacted on 0414 856 169.

Regards

Andrew Kennedy  
Director  
ABK Group Pty Ltd

-----Original Message-----

**From:** Andrew Kennedy  
**Sent:** Friday, July 08, 2011 10:47 AM  
**To:** 'AU-FM Letten\_Schemes'; 'lettenschemes@kpmg.com.au'  
**Cc:** abkgroup; Lewis, Darren  
**Subject:** RE: Circular to Investors - 10 June 2011

Jason,

Following is our response to your request for extra information/clarification on the Glen Centre Claim. Please find attached the amended formal proof of claim form 535 in accordance with the details outlined below.

### 1. Breach Details

Our claim that the manager breached its obligations under clause 9.1 of the Joint Venture Agreement relates to an investigation into this and other LGH Company's by ASIC. We were contacted by Glen Childs of ASIC who outlined several criminal breaches that were being investigated against Mark Letten who was the director of this and the controlling company LGH Holdings. Please refer to attached "Glen Centre Investment Screed 23Jan06" which states the following: "Please note that LGH Holdings Ltd has a significant financial interest in this project and is a related party to the transaction. LGH controls the company that will manage the property."

We do not have specific details of these breaches, as they are kept by ASIC, but the important ones relate to the fact that funds that were invested by our company in this project were not kept in that project but instead moved around between projects as cash flow required. Therefore "the Manager" breached clause 3.2 of the Joint Venture Agreement.

As a result of this purported misappropriation of our funds and criminal activity of the director, the "The Manager" breached its obligations to us as Joint Venture Partners. As a result of these breaches our claim is that ABK Group Pty Ltd has an

action against "the Manager" to be indemnified out of the trust assets as a liability of the Glen Centre Hawthorn Pty Ltd.

2. \$3,850 Equity Substantiation

We could not find any official receipt for this claim. All we can provide is the original Investment return document which outlines a gain to be paid of 7% of the investment (\$55,000). See attached document "Glen Centre Profit March 2008".

3. \$50,000 Loan Details

Please find attached a receipt for \$50,000 being a loan to the Joint Venture for use in the Glen Centre Project. We have attached an e-mail from LGH indicating that this money was allocated primarily to the Glen Centre Project (E-mail #1). We have also attached an e-mail from LGH outlining that these funds would attract a tax deduction from this project which shows that these funds were a loan or liability to the Glen Centre Project (E-mail #2).

If you require further clarification or information please call to discuss.

Regards

Andrew Kennedy  
Director  
ABK Group Pty Ltd

-----Original Message-----

From: AU-FM Letten\_Schemes [mailto:au-fmletten\_schemes@kpmg.com.au]  
Sent: Thursday, July 07, 2011 4:05 PM  
To: Andrew Kennedy  
Cc: abkgroup; Lewis, Darren  
Subject: RE: Circular to Investors - 10 June 2011

Dear Andrew

The liquidators have considered the claim received from you and require further information before they adjudicate on it.

The claim received purports an entitlement to rank as a proper trust creditor of The Glen Centre Hawthorn Pty Ltd (Receivers and Managers Appointed) (In Liquidation) ("The Glen"). You are required to provide full details of the basis upon which ABK Group claims to be a proper trust creditor. In this regard the liquidators note that:

- \* the schedule to the Joint Venture Agreement refers to the contribution as being equity with "nil" debt contributed.
- \* no evidence has been provided to substantiate the claim to the extent of the purported investment in 2008 of \$3,850.

Further you have claimed that The Glen breached its obligations and ABK Group Pty Ltd suffered loss. Please provide full details of the claimed breach of The Glen's obligations.

Please provide full details substantiating your claim including responding to the matters raised in this correspondence as soon as possible and by no later than 5pm on Friday 8 July 2011.

Kind regards

Jason Colosimo  
Senior Analyst, Restructuring Services  
Advisory

KPMG  
147 Collins Street  
Melbourne VIC 3000 Australia

Tel +61 3 9838 4238  
Fax +61 3 9288 6666  
jcolosimo@kpmg.com.au

kpmg.com.au

Protect the environment: please think before you print

-----Original Message-----

From: Andrew Kennedy [mailto:a.kennedy@amlbtv.com]  
Sent: Tuesday, 5 July 2011 11:30 AM  
To: AU-FM Letten\_Schemes; AU-FM Letten\_Schemes  
Cc: abkgroup  
Subject: RE: Circular to Investors - 10 June 2011

Damian,

In response to your Circular to Investors dated 10 June 2011 (your ref. 11905966 1) we wish to make a claim against The Glen Centre Hawthorn Pty Ltd for the amount of \$40,000 being the equity contributed to the Joint Venture.

We claim that The Glen Centre Hawthorn Pty Ltd ("the Manager") breached its obligations under clause 9.1 of the attached Joint Venture Agreement. As a result, ABK Group Pty Ltd suffered the loss of its equity in this project.

As a result of "the Manager" breaching its obligations under clause 9.1 of the Joint Venture Agreement, we claim that ABK Group Pty Ltd has an action against "the Manager" to be indemnified out of the trust assets as a liability of the Joint Venture.

We look forward to your response on this matter.

Regards

Andrew Kennedy  
Director  
ABK Group Pty Ltd

---

From: AU-FM Letten\_Schemes [mailto:au-fmletten\_schemes@kpmg.com.au]  
Sent: Friday, 10 June 2011 6:44 PM  
Subject: Circular to Investors - 10 June 2011

Dear Sir / Madam

Please find attached a Circular to Investors dated 10 June 2011 in relation to the Letten Schemes.

Should you have any further questions please email [lettenschemes@kpmg.com.au](mailto:lettenschemes@kpmg.com.au).

Regards

Damian Templeton

Joint and Several Receiver and Manager

Damian Templeton and Phillip Hennessy were appointed joint and several receivers and managers by the Federal Court of Australia of the property of a number of companies and schemes on 25 February 2010, 4 March 2010 and 30 July 2010. Full details of the companies and schemes are located at the following dedicated website: <http://www.kpmg.com.au/lettenschemes>. The receivers and managers have the power to manage the companies and schemes. They act as agents of the companies and, to the extent permitted by law, exclude all personal liability.

Damian Templeton and Phillip Hennessy are both registered and official liquidators, registered by the Australian Securities and Investments Commission under the

Corporations Act 2001.

KPMG

147 Collins Street

Melbourne VIC 3000 Australia

kpmg.com.au <<http://kpmg.com.au/>>

Protect the environment: think before you print

\*\*\*\*\*

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\*\*\*\*\*

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Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.901 / Virus Database: 271.1.1/3691 - Release Date: 06/10/11 04:34:00

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.901 / Virus Database: 271.1.1/3746 - Release Date: 07/07/11 04:34:00

**Andrew Kennedy**

---

From: kennedy [abkgroup@bigpond.net.au]  
Sent: Tuesday, June 24, 2008 10:10 PM  
To: Andrew Kennedy  
Subject: FW: JV Update  
Attachments: HGCC-Report No. 14 Feb 2008 .doc

-----Original Message-----

From: Jacinta Lock [mailto:jlock@igh.com.au]  
Sent: Tuesday, 24 June 2008 3:40 PM  
To: abkgroup@bigpond.net.au  
Subject: RE: JV Update

Hi Andrew,

The 211 Wellington Road settlement is a very complicated settlement whereby we have to retain a portion of the proceeds of the sale for one year from June 2008. The final part of the 2002 JV can't be released until this year long clause has elapsed.

The 2003 JV is primarily invested in the Glen Centre which is presently growing in value at a good rate. The initial plan was to have it sold by now, but this has been revised to take advantage of the full growth potential. Did you receive Report 14 which was sent in February? If not, I have attached a copy for you now. It covers what is left to do to enable a closing down of the JV. Kind regards, Jacinta

-----Original Message-----

From: abkgroup@bigpond.net.au [mailto:abkgroup@bigpond.net.au]  
Sent: 20 June 2008 10:28 AM  
To: Jacinta Lock  
Subject: JV Update

Jacinta,

A few weeks ago you mentioned that there would be no returns of capital this year on the year end JV's. Your previous correspondence was that 2003 returns would commence about the second quarter of this year and the 2002 returns after the Wellington Rd sale which is due to conclude around September.

Could you please advise what is happening with these two JV's

In addition we have not had an update about the status of the 1999 and 2000 year end JV's for awhile. Could you please update status.

Regards

Andrew Kennedy

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.872 / Virus Database: 271.1.1/3311 - Release Date: 12/15/10 18:34:00

**Andrew Kennedy**

---

**From:** Kennedy [abkgroup@bigpond.net.au]  
**Sent:** Friday, July 08, 2011 8:10 AM  
**To:** Andrew Kennedy  
**Subject:** FW: Year End JV Project Descriptions

-----Original Message-----

**From:** Jacinta Lock [mailto:jlock@lgh.com.au]  
**Sent:** Wednesday, 27 June 2007 2:22 PM  
**To:** abkgroup@bigpond.net.au  
**Subject:** RE: Year End JV Project Descriptions

Hi Andrew,  
I have half an answer. I met with Mark yesterday and he said that they didn't do this for the Joint Ventures after the 2001. Mark said that your Project Manager should have explained to you that they wouldn't be doing this- the only information they wanted to provide was that there was a planned tax deduction, and a possible return. And basically people could take it or leave it on those terms. They didn't want to give any information on the projects it was invested in etc. because people had no end of questions on the 2001 information provided.  
The second half of your question regarding the feasibility & profit outcomes, I don't have the answer to this for you yet. I should be hearing back from Paul on this within the week.

Kind regards,  
Jacinta

-----Original Message-----

**From:** abkgroup@bigpond.net.au [mailto:abkgroup@bigpond.net.au]  
**Sent:** 27 June 2007 11:46 AM  
**To:** Jacinta Lock  
**Subject:** Year End JV Project Descriptions

Jacinta,

Just a quick note to follow up on the request for the year end JV documentation requested.

In summary I am looking for the attached information regarding the feasibility and profit outcomes for the 2001 year end JV.

In addition I do not have any documentation for the 2002 and 2003 year end JV's.

Regards

Andrew Kennedy

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.901 / Virus Database: 271.1.1/3748 - Release Date: 07/07/11 04:34:00

FORM 535  
CORPORATIONS ACT 2001

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (General Form)

The Glen Centre Hawthorn Pty Ltd  
(Receivers and Managers Appointed) (In Liquidation)  
A.C.N. 089 906 543

To the Official Liquidator of The Glen Centre Hawthorn Pty Ltd (Receivers and Managers Appointed) (In Liquidation),

1. This is to state that the Company was, on <sup>(1)</sup> Friday, 13 May 2011 and still is, justly and truly indebted to <sup>(2)</sup>

ABK GROUP PTY LTD OF 12 COMMERCIAL RD MENTONE 3194  
for  
ONE HUNDRED & EIGHT THOUSAND EIGHT HUNDRED dollars and ..... cents.

Particulars of the debt are: **FIFTY**

Date	Consideration <sup>(3)</sup>	Amount			Remarks <sup>(3)</sup>
		Net	GST	Gross	
15/2/2007	JV Equity			\$ 40,000	JV Document (incl Schedule)
MARCH 2007	"			\$ 4,000	Receipt
MAY 2007	"			\$ 11,000	Receipt
MARCH 2008	"			\$ 3,850	Investment Returns
30/6/2003	JV Loan			\$ 50,000	Receipt

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following. <sup>(3)</sup>

3. <sup>(6)</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3. <sup>(6)</sup> I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

Dated this 5<sup>th</sup> Day of JULY 2011

Signature of Signatory *Andrew Kennedy*

NAME IN BLOCK LETTERS ANDREW KENNEDY

Occupation DIRECTOR

Address 12 COMMERCIAL RD MENTONE 3194

See Directions overleaf for the completion of this form

OFFICE USE ONLY

Creditor Code/Proof No		ADMIT - Ordinary	\$
Date Received	/ /	ADMIT - Preferential	\$
Entered MYOB		Reject	\$
AMT. Per RATA	\$	H/Over for Consideration	\$
PREP BY/AUTHORISED		TOTAL PROOF	\$
DATE AUTHORISED	/ /		

Form 59  
Rule 29.02

**Affidavit**

No VID 95 of 2010

Federal Court of Australia  
District Registry: Victoria  
Division: General

**In the matter of the *Corporations Act 2001***

and

**In the matter of Mark Ronald Letten (and others described in the Schedule)**

**Australian Securities and Investments Commission**

Applicant

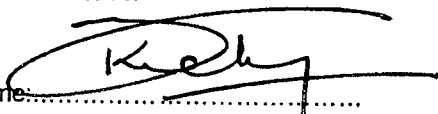
**Mark Ronald Letten and others**

Respondents

**EXHIBIT "NJK-24"**

This is the exhibit marked "NJK-24" referred to in the affidavit of **NICHOLAS JAMES KELTON** sworn  
13 September 2011.

Before me:.....

  
Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

**Address for service**

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

10849986\_1

Form approved 01/08/2011



Mills Oakley Lawyers  
ABN: 51 493 069 734

31 August 2011

Your ref:  
Our ref: APB/APB/5084070

All correspondence to:  
PO Box 453  
Collins Street West  
MELBOURNE VIC 3007

Mr Tony Troiani  
Mallesons Stephen Jaques  
Level 50, Bourke Place, 600 Bourke  
Street  
MELBOURNE VIC 3000

Contact  
Andrew Brown 03 9805 0961  
Email: abrown@millsokley.com.au

Partner  
Andrew Brown 03 9805 0961  
Email: abrown@millsokley.com.au

Facsimile No.: 9643 5999  
No. of Pages: 1

Dear Mr Troiani

**Australian Securities & Investments Commission (ASIC) v Mark Letten & Ors  
(Proceeding) Federal Court of Australia VID 95 of 2010  
Bridgehead Properties Pty Ltd**

We refer to your letter of 30 August 2011. We confirm that our client intends to appear at the hearing on 14 September 2011 at 9:30am.

We agree with your view that the investor claims are not proper claims against assets of these companies and are dealt with as part of the pool as a result of the previous pooling orders.

**Nicholson Street Property**

As you are aware our client has a significant debt outstanding to it with respect to this property. We understand that settlement of the property was completed on 30 June 2011.

We are instructed to enquire as to the status of the proposed liquidation of this company and the proposed timing of payment of monies creditors in that matter.

Would you kindly advise us of the position of your clients in advance of the hearing on 14 September 2011.

Yours faithfully

  
**ANDREW BROWN  
PARTNER**

**NOTICE**

The information contained in this email/facsimile is confidential and intended only for the use of the addressee and it may also be privileged. If you are not the intended recipient, any use, disclosure or copying is prohibited. If you have received this email/facsimile in error, please telephone the sender and return it by mail to the sender.

Mills Oakley Lawyers  
ABN: 51 493 069 734  
info@millsokley.com.au  
www.millsokley.com.au

Melbourne  
Level 6, 530 Collins Street  
Melbourne, Vic 3000  
PO Box 453, Collins Street West  
Melbourne Vic 3007  
T: 61 3 9870 9111  
F: 61 3 9805 0933  
DX 558 Melbourne

Sydney  
Level 34, 60 Margaret Street  
Sydney, NSW 2000  
PO Box H316  
Australia Square NSW 1215  
T: 61 2 8288 5800  
F: 61 2 9247 1315  
DX 13025 Sydney, Market Street

Brisbane  
Level 2, 217 George Street  
Brisbane, Qld 4000  
PO Box 12808, George Street  
Brisbane, Qld 4003  
T: 61 7 3228 0400  
F: 61 7 3012 8777  
DX 40160 Brisbane Uptown

Federal Court of Australia  
District Registry: Victoria  
Division: General

**In the matter of the Corporations Act 2001**

and

**In the matter of Mark Ronald Letten (and others described in the Schedule)**

**Australian Securities and Investments Commission**

Applicant

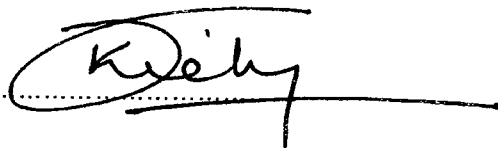
**Mark Ronald Letten and others**

Respondents

**EXHIBIT "NJK-25"**

This is the exhibit marked "NJK-25" referred to in the affidavit of **NICHOLAS JAMES KELTON** sworn  
13 September 2011

Before me:.....



Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

**Address for service**

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

**Kelton, Nick**

---

**From:** Kelton, Nick  
**Sent:** Tuesday, 13 September 2011 12:16 PM  
**To:** Renee Campbell  
**Cc:** Schwartz, Anna; 'Tony Tsiavis'; Anna Skreiner; Clint Hinchey; Joyce, Helen; 'Wolff, Alex (Melbourne)'; Royan, Naomita; 'Andrew Kennedy'; 'Andrew Brown'; 'ben.skinner@eelaw.com.au'; Troiani, Tony  
**Subject:** Letten - trustee indemnity application  
**Attachments:** 10849897\_1 Letten - trustee indemnity question submissions.DOCX

Dear Ms Campbell

I attach a preliminary submission from the Receivers setting out the issues which form the basis for the questions posed in their interlocutory process dated 29 August 2011. This matter is listed for a short directions hearing tomorrow at 9.30 am. I confirm that it is not intended that the substantive application will be argued tomorrow, rather the Receivers will be seeking a timetable for dealing with the matter.

We will file a copy of the preliminary submissions at the registry.

Please do not hesitate to contact me if you have any questions.

Kind regards

**Nick Kelton | Senior Associate**  
**Mallesons Stephen Jaques**  
Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000  
T +61 3 9643 4508 | M +61 409 776 179 | F +61 3 9643 5999  
[nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com) | [www.mallesons.com](http://www.mallesons.com)

Metropolitan Fire and Emergency Board  
456 Albert Street  
East Melbourne VIC 3002  
By courier

13 September 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose preliminary submissions of the Receivers in respect of the matter which is listed for hearing before Justice Gordon on 14 September 2011 at 9.30 am. It is not intended that the substantive application will be heard at this time, rather the Receivers will be seeking a timetable for dealing with the matter.

Please contact Nick Kelton if you have any questions.

Yours faithfully

*Malleson Stephen Jaques*

Illario G Gortese Architects Pty Ltd  
9 Evans Place  
Hawthorn East VIC 3123  
By courier

13 September 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

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Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

Gross Waddell Pty Ltd  
Level 6  
172-192 Flinders Street  
Melbourne Vic 3000  
By courier

13 September 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

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Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

Breese Pitt Dixon Pty Ltd  
c/- David King, Accountant  
1/19 Cato Street  
Hawthorn East Vic 3123  
By courier

13 September 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose preliminary submissions of the Receivers in respect of the matter which is listed for hearing before Justice Gordon on 14 September 2011 at 9.30 am. It is not intended that the substantive application will be heard at this time, rather the Receivers will be seeking a timetable for dealing with the matter.

Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

# MALLESONS STEPHEN JAQUES

**FILE COPY**

Resolve Air Conditioning and Mechanical Services Pty Ltd  
212 Springvale Road  
Springvale VIC 3171  
By courier

13 September 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten  
Federal Court of Australia Action No. VID 95 of 2010**

We enclose preliminary submissions of the Receivers in respect of the matter which is listed for hearing before Justice Gordon on 14 September 2011 at 9.30 am. It is not intended that the substantive application will be heard at this time, rather the Receivers will be seeking a timetable for dealing with the matter.

Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

Attention Ms Daniela Zaric  
Australian Taxation Office  
2-12 Macquarie Street  
Parramatta NSW 2150  
By courier

13 September 2011

Nick Kelton  
Direct line  
+61 3 9643 4508  
Partner  
Tony Troiani

Dear Sirs

**ASIC v Letten**  
**Federal Court of Australia Action No. VID 95 of 2010**

We enclose preliminary submissions of the Receivers in respect of the matter which is listed for hearing before Justice Gordon on 14 September 2011 at 9.30 am. It is not intended that the substantive application will be heard at this time, rather the Receivers will be seeking a timetable for dealing with the matter.

Please contact Nick Kelton if you have any questions.

Yours faithfully

*Mallesons Stephen Jaques*

Federal Court of Australia  
District Registry: Victoria  
Division: General

No VID 95 of 2010

**In the matter of the *Corporations Act 2001***

and

**In the matter of Mark Ronald Letten (and others described in the Schedule)**

**Australian Securities and Investments Commission**

Applicant

**Mark Ronald Letten and others**

Respondents

**EXHIBIT "NJK-26"**

This is the exhibit marked "NJK-26" referred to in the affidavit of **NICHOLAS JAMES KELTON** sworn  
13 September 2011

Before me:.....



Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

**Address for service**














Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

10849986\_1

Form approved 01/08/2011

**RE: Letten | Proposed directions regarding proceeds of sale of the Reef House Resort**

**From:** Kelton, Nick **Sent:** 19 August 2011 4:32 PM  
**To:** Renee Campbell  
**Cc:** Tony Tsiavis; Joyce, Helen; Janet Whiting; Schwartz, Anna; Royan, Naomita; Jason Quah; Troiani, Tony; Mark.Worsnop@kahns.com.au  
**Attachments:**  Exhibit DJT - 125.pdf  Exhibit DJT - 126.pdf  Exhibit DJT - 127.pdf  
 Exhibit DJT - 128.pdf  Exhibit DJT - 129.pdf  Exhibit DJT - 130.pdf  
 Exhibit DJT - 131.pdf  Exhibit DJT - 132.pdf  Exhibit DJT - 133.pdf  
 Exhibit DJT - 134.pdf  Exhibit DJT - 135.pdf  Exhibit DJT - 136.pdf  
**Reference:** A01Z21XA0032M  
**Folders:**  \.Open\KPMG - receivership of Letten (03-5503-4607)\Correspondence

Dear Ms Campbell

I attach the exhibits to Mr Templeton's affidavit as per my email below.

Kind regards

**Nick Kelton | Senior Associate**  
**Mallesons Stephen Jaques**

Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000  
T +61 3 9643 4508 | M +61 409 776 179 | F +61 3 9643 5999  
nick.kelton@mallesons.com | www.mallesons.com

---

**From:** Kelton, Nick  
**Sent:** Friday, 19 August 2011 4:28 PM  
**To:** 'Renee Campbell'  
**Cc:** 'Jason Quah'; 'Janet Whiting'; 'Schwartz, Anna'; 'Joyce, Helen'; 'Royan, Naomita'; 'Tony Tsiavis'; 'Mark.Worsnop@kahns.com.au'; Troiani, Tony  
**Subject:** RE: Letten | Proposed directions regarding proceeds of sale of the Reef House Resort

Dear Ms Campbell

Further to my email below, I attach the following materials on behalf of the Receivers for the proposed hearing on 14 September 2011:

- \* Interlocutory Application dated 19 August 2011;
- \* Affidavit of Damian John Templeton sworn 18 August 2011 (exhibits to follow by separate email); and
- \* Submissions of Receivers.

Hard copies of the materials will be served on all parties shortly (including a working set for Justice Gordon).

Kind regards

**Nick Kelton | Senior Associate**  
**Mallesons Stephen Jaques**

Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000  
T +61 3 9643 4508 | M +61 409 776 179 | F +61 3 9643 5999  
nick.kelton@mallesons.com | www.mallesons.com

---

**From:** Kelton, Nick  
**Sent:** Tuesday, 2 August 2011 11:21 AM  
**To:** 'Renee Campbell'  
**Cc:** 'Jason Quah'; Janet Whiting; 'Schwartz, Anna'; Joyce, Helen; 'Royan, Naomita'; 'Tony Tsiavis'; 'Mark.Worsnop@kahns.com.au'; Troiani, Tony  
**Subject:** Letten | Proposed directions regarding proceeds of sale of the Reef House Resort

Dear Ms Campbell

Further to our recent telephone discussion, it appears the Receivers and Mirvac have agreed a timetable for the proposed application for directions before Her Honour which has been pencilled in for 14 September 2011, as set out below:

1. The Receivers will file and serve their submissions (including the questions on which directions are sought) and evidence by **19 August 2011**;
2. Mirvac any any other interested party is to file and serve any submissions and evidence by **5 September 2011**;
3. The Receivers to file and serve any responsive submissions and/or evidence by **12 September 2011**.

We do not consider the hearing will take longer than half a day.

In the meantime, I confirm that the Receivers have some further unrelated applications for which they will require time before Justice Gordon. I understand you have pencilled in 14, 15 and 16 September for these following our recent discussion. I will be in touch as soon as possible with further details concerning those proposed applications.

Please do not hesitate to contact me if you have any questions.

Kind regards

**Nick Kelton | Senior Associate**  
**Mallesons Stephen Jaques**  
Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000  
T +61 3 9643 4508 | M +61 409 776 179 | F +61 3 9643 5999  
nick.kelton@mallesons.com | www.mallesons.com

Federal Court of Australia  
District Registry: Victoria  
Division: General

**In the matter of the Corporations Act 2001**

and

**In the matter of Mark Ronald Letten (and others described in the Schedule)**

**Australian Securities and Investments Commission**

Applicant

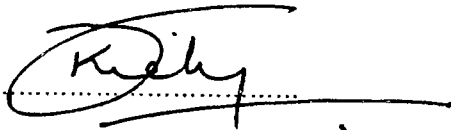
**Mark Ronald Letten and others**

Respondents

**EXHIBIT "NJK-27"**

This is the exhibit marked "NJK-27" referred to in the affidavit of **NICHOLAS JAMES KELTON** sworn  
13 September 2011

Before me:.....



Benjamin George Kiely  
Level 50, 600 Bourke Street, Melbourne, Vic. 3000  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Act 2004.

Filed on behalf of the Receivers and Managers

Prepared by Tony Troiani

Law firm **MALLESONS STEPHEN JAQUES**

Tel +61 3 9643 4508

Fax + 61 3 9643 5999

Email [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

**Address for service**

Level 50, Bourke Place, 600 Bourke Street, Melbourne Vic 3000 Australia

Ref: N Kelton:MAT: 03-5503-4607

# KAHNS

## LAWYERS

---

Partner Contact: Mark Worsnop  
Our Ref: MW:101315  
Your Ref: MAT:03-5503-4607

23 August, 2011

ATT: Nick Kelton  
Malleson Stephen Jacques  
Level 50 Bourke Place,  
600 Bourke St  
Melbourne VIC 3000

By E-mail: [nick.kelton@mallesons.com](mailto:nick.kelton@mallesons.com)

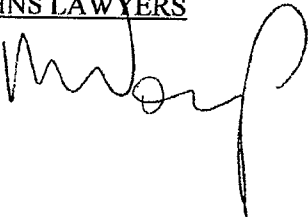
Dear Sir,

RE: **Federal Court Proceeding Number VID 95 2010**

We refer to your letter of 19 August 2011. As discussed in our telephone conversation on 3 August 2011, it is not the intention of our client to make any additional submissions to Her Honour Justice Gordon in this proceeding. We appreciate you informing the Court when the matter returns.

Yours faithfully,  
KAHNS LAWYERS

Per:



---

**Level 9, 341 Queen Street, Melbourne Victoria 3000**

*PO Box 13226, Law Courts, Melbourne Victoria 8010*

*Telephone: +61 (3) 9642 1833 Facsimile: +61 (3) 9642 0018*

*Email: [kahns@kahns.com.au](mailto:kahns@kahns.com.au) Website: [www.kahns.com.au](http://www.kahns.com.au)*

*Kahns Lawyers has limited liability by a scheme approved under Professional Standards Legislation*

KA:UAMW7131.DOC