

JUDICIAL MANAGEMENT

IN

SOUTH AFRICA.

IT'S ORIGIN, DEVELOPMENT AND PRESENT
DAY PRACTICE AND A COMPARISON WITH
THE AUSTRALIAN SYSTEM OF OFFICIAL
MANAGEMENT.

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ABSTRACT.

Judicial management is a system which aims at rehabilitating a company which has got into difficulties and in normal circumstances would be wound-up if the system did not exist.

When judicial management was introduced into South African companies' legislation in 1926, it was unique to South Africa. It was subsequently adopted by Rhodesia who based their companies' legislation on the South African companies' legislation and in the early 1960's a similar system, known as Official Management, was introduced into Australian Companies' legislation.

This dissertation looks at the origins of judicial management and traces its development over the years to the present day, and its incorporation into other spheres of legislation, namely, Banking legislation, Building Society legislation and Insurance legislation. It examines in detail the present system of Judicial Management and Official management and highlights the deficiencies in and recommends improvements to the Judicial Management provisions of the South African Companies Act.

All available judicial management files have been researched in the various offices of the Master of the Supreme Court to ascertain the incidence of success both before and after the 1973 Companies Act (No. 61 of 1973) and to ascertain the type and size of companies which were being placed in judicial management.

Apart from limited statistics supplied to various commissions of enquiry into the companies act, no such detailed research has been undertaken in South Africa into judicial management cases.

As far as the writer is aware, no comparison has ever been made between the system of Judicial Management and the system of Official Management except in the briefest outline, nor has the origin and development of Judicial Management been researched in detail.

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C H A P T E R I

H I S T O R I C A L B A C K G R O U N D

The first South African Companies Act

No consolidated Companies legislation existed in South Africa before 1926 and each Province had its own Companies Act. The Transvaal Act No. 3 of 1909 (which was based on the English Companies Act of 1908) was the most up to date at that time. The Cape Act was adequate, but the Acts applied in Natal and the Orange Free State were not.

A change in legislation relating to companies had been necessary for some time and in 1922 the first consolidated Companies Bill was introduced into Parliament. The second reading of this Bill was taken in February 1923¹ and the matter was referred to a select committee and subsequently shelved later that year.

In 1923 the only record of Parliamentary proceedings was the daily report that appeared in the *Cape Times*. (Hansard had ceased operating during the war years and had not restarted publication). Information as to why the Bill was shelved is therefore sketchy. In any event, it was revived in 1926 and eventually passed on to the Statute Book later that year. (Act No. 46 of 1926).

1 *Cape Times* 2 Feb 1923

A novel concept

Sections 195 to 198 of the Bill introduced a novel concept and made a completely new departure in Company Law. They authorised the Court in certain cases where a winding-up order is applied for to make an order for the appointment of a judicial manager. When the Bill was before Parliament, discussions of the clauses dealing with judicial management first arose in the second reading speech of Sir Drummond Chaplin who said : "I am informed that this is an entirely new procedure in this country, and it is supposed to be taken from American practice".²

He went on to say that he was informed it had not worked well in America, and often it was costly to creditors and caused enormous delay. He also suggested that there should be some special business qualifications insisted upon in the people who were to be appointed; that there should be strict supervision of fees charged; and that the Court should be given power to order the final liquidation of the company if the supervisor's report so recommended.

In reply, the Minister of Justice who piloted the Bill through the House said :

"In regard to the point made by the honourable member for Peninsula (South) (Sir Drummond Chaplin) ... these sections are derived from the practice in England and America under which receivers in equity are appointed, in the case of an important concern in regard to which

there is some fear that it will go into liquidation; one which can pay its debts and which can be helped by someone officially appointed for this purpose. Powers of that kind would be used sparingly by the courts. To take a hypothetical case. You might have a large wool factory getting into difficulties and which ought to be helped, because it is an institution which helps the country. Then your court could intervene, when it is shown that this concern is solvent, and thus help it through its difficulties. I quite admit that this is a power that would not be used in any country very much, and has not been used much in England or America, but it might be used to save a concern, and it is for such sparing use that it has been inserted in the Bill. The concerns you would like to help with this power are industrial concerns such as factories manufacturing articles in South Africa. You might be able to help a few of these concerns out of the mire at times".³

These remarks are the only official comments on record for the introduction of judicial management into our legal system. It is quite clear from these remarks that judicial management was only to be applied in very limited circumstances - the object being to protect a vital industry. This was considered a very desirable feature in a young country where primary industries and industrial undertakings needed every encouragement.

Nothing in the new sections indicated that judicial management was to be restricted to companies which were of "help" to the country. In practice, this initial objective of aiding vital

industries has been overlooked and judicial management is applied to any company of any size providing the Court is satisfied that there is a probability of the company overcoming its difficulties.

The Act of 1926 therefore made a completely new departure in Company Law. It set up a system of judicial management for companies which were unable to pay their debts or whose affairs were in such a condition that, ordinarily, it would be just and equitable to wind them up. If the Court was of the opinion that there was a reasonable probability that, if the company were placed under proper management, it would be enabled to meet its obligations, it was empowered to grant a judicial management order. The effect of such an order was to keep the company alive but to take it out of the control of directors, who presumably had mismanaged the company's affairs.

The immediate object was to secure for the company a moratorium against its creditors. The ultimate object was that by providing the company with efficient management, it might be restored to normal control after paying off the creditors.

Difficulties which arose in practice

The system enjoyed a limited success but there were a number of practical difficulties. The Millin Commission, when reporting on proposed amendments to the Companies Act in 1948 stated :

"It is evident that Parliament, in creating this system of dealing with companies unable to pay their debts did not anticipate the difficulties which almost immediately

arose in practice. The great difficulty was for the Court to know how to decide whether or not there was a reasonable probability that the company, if placed under judicial management, would be enabled to meet its obligations and remove any occasion for winding-up. Where application was made for winding-up and judicial management was proposed as an alternative on behalf of the company, the facts were disputed but the Court had, at any rate, the opportunity of hearing a case against as well as for judicial management. But where a direct application for judicial management was made, creditors seldom appeared to oppose and the information before the Court was largely *ex parte*. The figures to be mentioned in what follows show that in the great majority of cases belief in the probability of rehabilitation under a judicial management order was not justified. The truth is that people discovered very soon that by getting a judicial management order for a company which had come to grief and was in fact incapable of rehabilitation, it was possible to secure a liquidation of the company's assets free from all the controls and safeguards provided in the winding-up provisions of the statute; and it is to be feared that many of the cases in which judicial management orders have been granted in the past twenty years were of this type".⁴

Amendments in 1932

The Amendment Act No. 11 of 1932 did nothing to remedy the defect referred to above and it was not until 1939 that the Act was extended in an attempt to improve the situation.

4 Final Report of the Company Law Amendment Enquiry Commission
UG 69 1948 p 93 para 258

The 1932 Act did, however, make some far reaching changes which were motivated in part by the economic depression prevailing at the time. In the second reading of the Amendment Bill, Dr. Bremer said that, as a result of the depression, companies which receive and lend out money on mortgages, might be faced with :

" ... a sudden and serious call on their resources ... Where these companies have only themselves or a few shareholders to consider, the matter is perhaps not so important, but where it is a case of companies which have lent money to large numbers of farmers and where the shortage of money might put such companies into liquidation, we have to face the position that large number (*sic*) of farmers may also be suddenly called upon to repay their bonds".⁵

Again it will be seen that the "public interest" aspect of judicial management is stressed. The Bill, however, made no provision to limit judicial management to those cases where "public interest" was a consideration.

An important amendment introduced by the 1932 Act was an addition to section 196(1) which provided that the Court could order the stay of any action against the company while under judicial management and such actions could only be proceeded with with the leave of the Court. This was the first occasion on which the principle of a moratorium was introduced into the judicial management provisions.

5 Union of SA House of Assembly Debates vol 18 1932 col 1867

Two other innovations were :

- (1) Section 197(A) provided for the setting aside, in judicial management, of dispositions of the company's property which could be set aside under the law relating to insolvent estates and
- (2) Section 197(B) provided for the application of the assets in payment of costs of the judicial management and the claims of the creditors as nearly as possible as they would be applied in insolvency.

The system was still defective in spite of the amendments. There was, for example, an entire absence of any machinery for finding out whether or not there had been any undue or voidable preferences. Nor was there yet any provision for assisting the Court to check the facts alleged in support of an application for a judicial management order.

The Lansdown Commission and the 1939 Act (No. 23)

The system seems to have worked reasonably well, however, judging by the remarks of the Commission which reported in 1936 on the Companies Act. The Chairman of the Commission, Mr. C. Lansdown, reported :

"The evidence submitted to us tends to show that the provisions of the Companies Act, 1926, as to placing a company in certain circumstances of difficulty under judicial management instead of winding it up have worked satisfactorily and that these provisions, which

we believe to be peculiar to the South African Act, fulfil a distinct use".⁶

The Lansdown Commission found, however, that the provisions of the Act relating to judicial management were defective in two aspects. Firstly the Courts were often not in possession of sufficient evidence to be able to decide on the merits of granting an application and, in certain cases, it was necessary for a preliminary investigation to be carried out. It was therefore recommended that in every case an application for judicial management must first be referred to the Master of the Supreme Court for a report. Section 195 of the Companies Act was subsequently amended to give effect to this recommendation. This proved to be a dead letter because the Masters did not have at their disposal any means of carrying out a proper investigation. Secondly, the provisions were defective in respect of the information which had to be furnished to the Registrar of Companies. Section 197 dealing with the duties of a judicial manager was subsequently extended to provide for an annual report, similar to that furnished by companies in terms of Section 26 of the 1926 Act, to be sent to the Registrar each year while the company was in judicial management.

Retrograde step in the 1939 Act

Although not recommended by the Lansdown Commission, the 1939 Act substituted a new section 197(B) which directed the judicial manager to apply any moneys of the company which may from time to

6 Report of Company Law Commission UG 45 of 1936 p 36 para 223

time become available "in paying the costs of the judicial management and the claims of creditors of the company", with the provision that "if he continues the business of the company in accordance with the judicial management order, he may use any such moneys in the conduct of the business". It was also provided in this section that the costs of the judicial management and the claims of creditors were to be paid in accordance with the law relating to insolvency, as if these costs were costs of sequestration and the claims, claims against an insolvent estate. This was probably a retrograde step, for, by placing emphasis on the use of the company's funds for the payment of creditors' claims and making the running of the business a secondary matter, sight was lost of the whole purpose of judicial management. The new section 197(B) acted as encouragement to judicial managers to make no serious attempt to carry on the company's business but to proceed at once to liquidate its assets for the purpose of paying creditors. Judicial management thus became established as a process of winding-up without any kind of control by the Court.

The Millin Commission and the 1952 Amendment Act (No. 46)

This aspect of the 1939 Act was criticised by the Millin Commission which reported in 1948. To rectify the position whereby a judicial manager could take it upon himself to liquidate the company, the Commission proposed :

- (1) that the judicial manager could not sell assets without leave of the Court except in the ordinary course of the company's business, and

- (2) to make it a duty to apply for a winding-up order if, at any time, he was of the opinion that the continuance of the judicial management order would not enable the company to pay its debts in full, and
- (3) that any moneys becoming available during judicial management should be applied first to the payment of costs and in the conduct of the company's business and only thereafter to the payment of pre-judicial management creditors.

The Millin Commission, like the Lansdown Commission before it, found that although there had been meagre results as far as successful judicial managements were concerned, there was no demand for the abolition of the system. The Commission reported :

"In spite of these unimpressive results of the system of judicial management, we found no witnesses in favour of abolishing it. All witnesses, both official and private, agreed that in the few cases in which judicial management had been successful, the success had been conspicuous and had been of great benefit to both shareholders and creditors. In the early days of our enquiry occurred the judicial management order in the case of the *New Union Goldfields Limited*. It was generally thought that but for this form of order being available, the company would have had to be wound up with great loss to shareholders and creditors; whereas, under judicial management, there were fair prospects of advantage to both. We therefore recommend that the system be retained, but that it be drastically overhauled".⁷

The main suggestions for overhaul were :

- (1) That judicial managers were not to liquidate assets, except in the normal course of business.
- (2) That although the 1939 Act had attempted to assist the Court to check the facts alleged in support of a judicial management application, by referring the application to the Master, this system had in fact become a dead letter, because the Masters did not have any suitable means of carrying out the necessary investigations. It was therefore proposed that the Master be given powers of investigation.
- (3) That judicial managers be appointed by the Master (and not the Court) as in the case of trustees or liquidators. Also that persons who are disqualified from becoming trustees or liquidators should be disqualified as judicial managers.

Despite overhaul of the system, the incidence of success does not seem to have improved as a result of the 1952 Amendment Act which embodied the proposals of the Millin Commission. The Companies Act Commission of Enquiry under the chairmanship of the Hon. Acting Justice van Wyk de Vries reported in 1970 :

"The Masters of the Supreme Court have all urged the Commission to recommend the abolition of judicial management. They have submitted that the statistics prove that judicial management has been successful in only a small percentage of cases and that in many instances it should never have been resorted to. Furthermore, that the system of judicial management is being abused and that it usually proves to be the

first step in an inevitable succession of events leading to the winding-up and ultimate dissolution of the company".⁸

The van Wyk de Vries Commission and the 1973 Act (No. 61)

The van Wyk de Vries Commission, which was appointed in October, 1963 and reported in 1970, found that although the incidence of successful judicial managements was low,⁹ they felt that the successful cases justified the retention of the system.

They found that the crux of the criticism against the system was that too many orders were granted in circumstances not warranting judicial management. The Commission said that, in their opinion, the position of a company and its business should be investigated and assessed more thoroughly before a final judicial management order be granted. They came to the conclusion that the view of the body of creditors should be an essential element of whether a judicial management order should be granted. They stated :

'We believe that the body of creditors, being vitally involved, would produce a dispassionate and balanced opinion as to the possibility of rehabilitating a company. An opinion arrived at by the creditors after thorough investigation of the affairs of the company would in the ordinary course of events be of assistance to the Court. Often creditors would be businessmen and it is not unlikely that they would have knowledge and experience of the type of business conducted by the company. Despite the alleged apathy of creditors in

8 Main Report of the Companies Act Commission of Enquiry
RP 45 1970 chapter XX p 145 para 51.02

9 "In the whole of SA during the period 1960 to 1963, 175 orders were granted; 102 proceeded to winding-up; 21 were discharged; and 45 not yet finalised" para 51.02 of the Report. (These figures are quoted but do not tally).

these matters we feel that the Act should provide that their collective view should be made available to the Court before a final order is granted".¹⁰

The recommendations of the van Wyk de Vries Commission which aimed at instituting suitable machinery to provide the Court with a proper and reliable assessment of the likelihood of rehabilitation of the company, were embodied in Act No. 61 of 1973. This Act repealed all previous Company Acts and consolidated all South African company legislation into one Act.

Sections 195 to 198 of the 1926 Act relating to judicial management have been replaced by sections 427 to 440 of the new Act. Although there are substantial textual amendments and certain new concepts have been introduced, the basic principles remain unaltered. The case law under the old provisions is still authoritative provided the necessary allowances are made for the changes.

THE ORIGIN OF JUDICIAL MANAGEMENT

It has been stated¹¹ that the concept of judicial management may have been suggested by the discussions in *Moss Steamship Co Ltd v Whinney*¹² and in *Parsons v Sovereign Bank of Canada*.¹³

10 Companies Act Commission of Enquiry 1970 p 146 para 51.05

11 Paterson & Ednie *Australian Company Law* 2nd ed vol 2 p 2442

12 1912 AC 254 at 260

13 1913 AC 160 at 166-7

In the former case, Lord Halsbury said :

"A great many joint stock companies obtain their capital, or a considerable part of it, by the issue of debentures, and one form of securing debenture-holders in their rights is a well known form of application to the Court, which practically removes the conduct and guidance of the undertaking from the directors appointed by the company and places it in the hands of a manager and receiver, who thereupon absolutely supersedes the company itself, which becomes incapable of making any contract on its own behalf or exercising any control over any part of its property or assets".

and in the latter case, Lord Haldane said :

"In order to answer this question it will be convenient in the first place to look at the position in point of law of the receivers and managers. A receiver and manager appointed, as were those in the present case, is the agent neither of the debenture-holders, whose credit he cannot pledge, nor of the company, which cannot control him. He is an officer of the Court put in to discharge certain duties prescribed by the order appointing him; duties which in the present case extended to the continuation and management of the business. The company remains in existence, but it has lost its title to control its assets and affairs, with the result that some of its contracts, such as those in which it stands to an employee in the relation of master to servant, being of a personal nature, may, in certain cases, be determined by the mere change in possession, and the company may be made liable for a breach. But it does not follow that all the contracts of the company are determined even, to put the highest case, when a mortgagee acting under a power in his mortgage assumes control of the business of the mortgagor.

The mortgagee may be in a position to say that he has authority to carry out in the name of the mortgagor contracts with a third person - e.g. for the manufacture and delivery of goods; and the third person may have no right to allege a breach on the ground of mere change of those who actually manufacture and deliver the goods for the company. Such a contract usually involves no stipulation as to the identity of those by whom the work of the company is to be performed, and the legal *persona* of the company may continue to subsist. In the present case the receivers and managers were by the terms of the orders of the Court obviously intended to carry on the actual business of the company with as little breach of continuity as possible; and there was no reason why they should not use the name and powers of the company for the purpose of fulfilling existing orders. It is no doubt true that *prima facie* any new contracts they made would ordinarily be made by them personally in reliance on their right of indemnity out of the assets, as happened in the recent case before the House of Lords of *Moss Steamship Co Ltd v Whinney (1)* where a new contract made by the receiver was held, as matter of construction, to have been entered into by him personally. But in the present case the contracts were contracts entered into before the receivers and managers were appointed, and had been entered into in the ordinary course of the business of the company in manufacturing and delivering paper; and there is, in their Lordships' opinion, no ground for presuming that the receivers and managers intended to act otherwise than in the name of the company to carry to a conclusion the business which was current, or that they meant to repudiate the obligations of the company. In the absence of a liquidation the *persona* of the contracting company remained legally intact though controlled by the receivers and managers".

Both these cases summarise very well the position of a receiver and manager under British Law at the time. We also know, because it was stated in the debate in the House of Assembly at the time, that judicial management is "derived from the practice in England and America under which receivers in equity are appointed".

There is, however, no evidence to suggest that the South African Legislature particularly had these two cases in mind when it drafted the provisions relating to judicial management.

The reference to the American system is interesting and it may well have been certain practices in the American system which had equal weight in motivating the South African Legislature. During the last half of the 19th century, a procedure for re-organising insolvent railroad corporations was developed in the United States under the title of "federal equity consent receivership".

J.A. MacLachlin, former Professor of Law at Harvard University, wrote the following :

"Certain United States district judges became expert in resuscitating insolvent railroad corporations. A few unsecured creditors of a failing railroad, citizens of some state or states other than that in which the railroad was incorporated, would file a general creditors' bill, showing the need of conserving the liquid assets of the road. A federal court would then have jurisdiction of the proceeding by reason of diversity of citizenship of the parties. Collusive proceedings were entertained in order to keep the railroad running under the protection of a federal court. A plan of reorganization could be negotiated, approved by the court and consummated through

judicial sale, typically by the issuance of securities of a new corporation with a revised capital structure. The equity receivership practice was elaborated and partly codified and reformed by sec. 77, added in 1933 to the U.S. Bankruptcy act of 1898. Initial experience with this statute led to substantial amendments in 1935. The court administers the property through an official called a trustee, but he has the powers of an equity receiver, as well as "legal title" as a statutory successor to the debtor, a concept developed with reference to trustees in strict bankruptcy".¹⁴

Receiver and Manager

This is a concept which is unknown in South African Company Law.

In essence, a receiver is appointed to take charge of the property which constitutes the security of a debenture and his sole function is to protect the interests of debenture-holders or other secured creditors.

Where debenture-holders wish, and are in a position to enforce their security (usually because interest or principal is overdue) they may appoint a receiver who takes possession of the security, collects the income from such property and applies it in accordance with the provisions of the debenture instrument.

Where it is necessary to carry on the business in addition to receiving rents or debt collecting, a receiver and manager is appointed. This is so because mortgagees' or debenture-holders' security can include the goodwill of a company.

The distinction between a receiver and manager has been judicially commented on as follows :

" 'A receiver' is a term which was well known in the Court of Chancery, as meaning a person who receives rents or other income paying ascertained outgoings, but who does not, if I may say so, manage the property in the sense of buying or selling or anything of that kind. We were most familiar with the distinction in the case of a partnership. If a receiver was appointed of partnership assets, the trade stopped immediately. He collected all the debts, sold the stock-in-trade and other assets, and then under the order of the Court the debts of the concern were liquidated and the balance divided. If it was desired to continue the trade at all, it was necessary to appoint a manager, or a receiver and manager as it was generally called. He could buy and sell and carry on the trade So that there was a well known distinction between the two. The receiver merely took the income, and paid necessary outgoings, and the manager carried on the trade or business in the way I have mentioned".¹⁵

It can be seen how the concept of judicial management probably devolved from the practice in Britain to appoint receivers and managers. There are, however, some vital distinctions which separate the two systems.

Firstly, a receiver and manager is concerned with one section of creditors - namely secured creditors, whereas a judicial manager acts not only in the interest of the whole body of creditors but also of the shareholders. Secondly a receiver and manager is not

15 Per Ressel M R, *In re Manchester and Milford Railway Company. Ex parte Cambrian Railway Company.* (1880) 14 Ch D 645 at 653

concerned or charged with managing the company so as to rehabilitate the business - his concern is merely to keep the company trading so as to protect the goodwill until the company can be sold. A judicial manager's duty, on the other hand, is to so manage the company as to bring about its revival so that the management may ultimately be handed back to the former shareholders.

Official Management in Australia

The trend in South African Law to involve the creditors to a greater degree is tending towards the Australian system of "official management". Apart from Rhodesia¹⁶ which copies the 1926 South African Act, Australia was the second country to embrace the principle of judicial management. In the Australian system, emphasis is on control by the creditors, not by the Court. The Australian system might well be entitled "creditor management", "for the Court plays only an appellate and referential role".¹⁷

There is no doubt that the Australian system of official management was based on the South African system of judicial management.¹⁸

Official management was introduced into Australia in Part IX of the Australian Uniform Companies Act (1961-1962). This is a Commonwealth Act and therefore is not binding on the various States except those territories which fall under Commonwealth jurisdiction.

16 See Annexure 1

17 Paterson & Ednie *op cit* p 2442

18 Paterson & Ednie *op cit* p 2440; Afterman & Baxt *Casebook on Corporations and Associations* 1972 ch 20; *Re Testro Bros. Consolidated Ltd.* 1965 VR 18

It was an attempt, however, to establish a uniform system of company law in Australia, and all States embraced, in varying degrees, the main principles of the Uniform Companies Legislation. When introducing the second reading of the Companies Bill in the Parliament of New South Wales in November 1961, the Minister of Justice, Mr. Mannix (Liverpool) said :

"Hon. members will recall that a bill to consolidate and amend the law relating to companies was introduced by me in this House on 9th November last. That bill had been drawn in conformity with the terms of the first draft of a uniform companies bill following decisions reached by a committee of Ministers of each State and the Commonwealth. These committee meetings, which commenced in June, 1959, aimed at achieving uniformity of company law throughout the Commonwealth

The bill now submitted reflects the agreement by State and Commonwealth Ministers at their last meeting in Adelaide. It is obvious that in this State, the major commercial State in the Commonwealth, local, as well as other, considerations will have necessitated some modifications of the uniform bill"¹⁹

Mr. Mannix went on to say :

"I should now like to refer to certain portions of the bill which will introduce into the companies legislation of this State provisions which, it is believed, are not yet to be found in any part of the world other than South Africa. I refer to the provisions of the bill relating to official management. These are designed to provide an alternative to the winding-up and eventual dissolution where there is reason to expect that, with expert

19 New South Wales Parliamentary debates : Session 1961-62 : Companies Bill : Second reading, 16 Nov 1961. p 1956

management and some forbearance on the part of creditors, the affairs of the company may be rehabilitated. Apart from the advantages to creditors, rehabilitation of a company means preservation of employment and the protection of funds contributed by shareholders. It is thought that a committee of experienced creditors in close touch with the business is best fitted to decide whether rehabilitation or liquidation is in the best interests of all concerned and may be best able to assist any efforts towards the recovery of the company. The bill provides that where a company is unable to pay its debts when they become due and payable, in lieu of proceedings being taken with a view to the winding-up of the company, the company may, and shall if so requested by a creditor having an unsatisfied judgement for not less than £250, cause a meeting of its creditors to be summoned for the purpose of placing the company under official management and appointing an official manager.

It has been suggested that the provisions of the present Act relating to arrangements and compromises with creditors are capable of achieving most of the benefits which are claimed will flow from the introduction of the official management provisions. It is thought, however, that the proposed provisions are considerably more flexible and may well be an extremely useful addition to the company legislation of this State. Nevertheless, as this portion of the legislation is of a novel nature, its practical application will be closely watched and the question of its retention will be determined by the extent to which it serves the interests of the community".²⁰

20 New South Wales Parliamentary debates : Session 1961-62 :
Companies Bill : Second reading, 16 Nov 1961. p 2606

As stated above, all six States and the Commonwealth territories adopted a system of official management into their various statutes during the early 1960s.

This was not, however, the first time that the concept of judicial management had appeared in Australia. The concept was first introduced in Division 8 of Part III of the Life Insurance Act 1945 (Com) which commenced on 20th June 1946. This Act is now entitled the Life Insurance Act (1945-1973) and Division 8 is headed "Judicial Management and Winding-up". Sections 59 to 66 relate to judicial management and sections 67 to 72 to winding-up.

In terms of section 59, the Commissioner (of Insurance) as a result of an investigation under Division 7 may apply for the company to be (a) placed under judicial management and (b) wound up. The company itself may also make such application after giving notice of its intention to do so.

Once application is made, all actions against the company are stayed and can only be proceeded with with leave of Court. The section also specifically states that "a company shall not be judicially managed except under the provisions of the Act".

In other words, judicial management of an insurance company is a system distinct from official management in terms of the Companies Act.

Section 60 provides that the Court appoints the judicial manager, determines his remuneration and vests the management of the company

in the judicial manager. He may not, however, without the leave of the Court, issue any further policies. The Court issues such directions to the judicial manager as to his powers and duties as it deems desirable, and the judicial manager acts under the control of the Court.

Section 61 deals with the cancellation of the judicial management order.

Section 62 provides that the judicial manager shall conduct the management of the company with the greatest economy compatible with efficiency and that he shall prepare a report stating which of the following courses is in his opinion most advantageous to the interests of the policyholders :

- (a) To transfer the business to another company;
- (b) To carry on the business;
- (c) The winding-up of the whole or part of the business;
- (d) Such other course as he deems desirable.

Section 63 indemnifies the judicial manager against any claims or action arising in respect of anything done in good faith in the exercise of his duties.

Section 64 provides for the Court to make an order giving effect to the course which it considers should be followed after hearing the Commissioner, the judicial manager and any other person that the Court considers is entitled to be heard.

Section 65 deals with the transfer of the business of the company to another company where this course of action has been decided as being the most appropriate.

Section 66 allows the Court to cancel or vary any contract which the Court is satisfied is detrimental to the interest of policy owners.

In *Insurance Commissioner v Associated Dominions Assurance Society Pty Ltd*²¹ Fullagar J. said that this was only the second occasion on which the jurisdiction given by the Act had been invoked. The first occasion had been in 1947 before Williams J. and a winding-up order had been asked for and granted. The *Associated Dominions* case is the only time an application had been made under the Act for a judicial management order. The judge found, however, that the company had no reasonable prospect of recovery and ordered that the company be wound up.

South African Insurance Act

The Australian Life Insurance Act (1945-1973) was clearly based on the Insurance Act No. 27 of 1943 (a South African Act) as the marginal notes of the Australian Act refer to sections 30 and 31 which deal with the judicial management of insurance companies in South Africa. Chapter II of the South African Act deals with judicial management and winding-up of insurance business. The judicial management provisions of the South African Act are similar to those of the Australian Act which is not surprising as the

21 (1953) 89 CLR 78 at 79

judicial management provisions of the latter Act were based on the former. There is one material difference which is contained in subsection (6) of section 31. This reads :

"The law relating to the judicial management of companies shall apply *mutatis mutandis* in connection with the judicial management of the business of a registered insurer under this Act, except in so far as those provisions are inconsistent with any provision of this Act or of an order of Court under paragraph (c) of sub-section (3) of section 30, or with any direction issued by the Court under this section".

The judicial management provisions of the South African Act could give rise to an interesting situation. Like the position under the Australian Act, the judicial manager may not, without leave of Court, issue any further policies (except paid-up policies). If the Court refuses to allow the issue of further policies, and clearly this is contemplated, then the company will gradually run down as it is improbable that a company can rehabilitate itself on the issue of paid-up policies only. Your judicial manager is then, in effect, a receiver or liquidator, and he would be subject to the provisions of the Companies Act relating to judicial management, the whole purpose of which is the rehabilitation of the business.

Banks Act

Judicial management also appears in the South African Banks Act. It was first introduced in Act No. 38 of 1942 which was repealed by Act No. 23 of 1965. Section 40 of the 1965 Act, which contained

almost identical wording to the 1942 Act, provided for the appointment of a curator by the Minister if a banking institution was in financial difficulties. Thereupon, the provisions of sections 196 and 198 of the Companies Act 1926 applied *mutatis mutandis* in relation to the institution and to the curator as if the curator had been appointed as judicial manager under section 195. However, the powers conferred upon the Court and the Master in terms of these sections, devolved upon the Minister of Finance and the Registrar of Banks respectively. An interesting proviso was that the Minister did not have the power to stay any legal proceedings against the institution. This precluded a moratorium being granted against the institution's creditors which is usually the case under the judicial management provisions of the Companies Act. The Banks Act No. 23 of 1965 has been amended from time to time but the amending Act No. 101 of 1976 substituted a new section 40, which differs from the original section 40.

The amendment was necessary as a result of the substantial change made to the judicial management provisions in the 1973 Companies Act. The new section 40 still makes applicable a number of the judicial management sections of the Companies Act. Sections 427 to 432 are omitted as the appointment of a curator is made by the Minister of Finance and not a Court and there is no provisional procedure. One important change is that subsection (6) of section 40 stays all actions and proceedings against the institution while it is under curatorship. All the other judicial management sections

apply except part of section 434, section 435 (pre-judicial management creditors may consent to preference), section 438 (position of auditor) and section 439 (application to judicial management of certain winding-up provisions).²²

There is no provision in the Australian Commonwealth Banking Act which relates to judicial management.²³

Building Societies Acts in South Africa and Australia.

The Building Societies Act No. 24 of 1965 also applied the provisions of the Companies Act which relate to judicial management *mutatis mutandis* to building societies.²⁴ It also allows the Registrar of Building Societies and the society itself (which is not a company) to make application for a judicial management order.²⁵ The only other deviation from the Companies Act is in relation to the appointment of the judicial manager who must be a person recommended by the Registrar of Building Societies.²⁶

The Permanent Building Societies Act No. 18 of 1967 (New South Wales) provides in section 86 for the provision of Part IX of the Companies Act, 1961, to apply *mutatis mutandis* to a Building Society.

Apart from South Africa, Rhodesia and Australia, the only other independent State which has a system of judicial or official management is the former territory of Papua New Guinea which celebrated its independence from Australian Commonwealth jurisdiction in September 1975. Its present Companies Act is based on the Uniform Companies legislation which was in force at the time.

22 See Annexure II for full text of section 40

23 Banking Act 1959-1973 (Com)

24 Section 56

25 Section 56(2)

26 Section 61

C H A P T E R I I

JUDICIAL MANAGEMENT PROVISIONS IN THE SOUTH AFRICAN COMPANIES ACT No. 61 OF 1973 AND COMMENTARY ON THE RELEVANT SECTIONS

PURPOSE OF JUDICIAL MANAGEMENT

The purpose for which judicial management was introduced into South African legislation has already been discussed in the first Chapter. It was, as was stated in the debates in the House of Assembly of 1926, to offer 'important' concerns, which were in temporary financial difficulties, a measure of protection in the hope that with better management they would overcome their difficulties and thus avoid the harmful effect on the economy of the liquidation.¹

The real object was to protect vital industries in a young developing country which could not afford to have commercial enterprises "dissipated by winding-up and dissolution due to some temporary setback".² Although it is clear from the debates at the time that the initial objective was to protect important or vital undertakings, the wording of the original Act (and the present Act) did not specifically restrict the privilege to any particular type or size of undertaking, and in practice it has been applied to the whole spectrum of business enterprise from small private concerns to large industrial undertakings. It is submitted, however, that the Courts when considering whether it is "just and equitable" to grant an order, should take into consideration the effect of the possible liquidation on the economy and community.

1 Union of SA House of Assembly Debates vol 6 25 Feb 1926 col 983

2 Henochsberg *Companies Act* 3rd ed p 745

It should be noted, as stated by Gibson, that :

"Judicial management is a special and extraordinary procedure which finds no place in the English companies legislation and guidance on the interpretation of those sections of our Act which deal with the procedure cannot, therefore, be sought from decisions of the English courts".³

The original Companies Act (Act No. 46 of 1926) which first introduced the concept of judicial management, had only four sections dealing with judicial management (sections 195 to 198). Subsequent amending Acts in 1932, 1939, 1952, 1957⁴ and the new Act No. 61 of 1973 added to and expanded the original sections as practical difficulties became obvious. The present Act now has thirteen sections dealing with judicial management. There has been one further amendment to the judicial management provisions in an amending Act of 1976.⁵

SECTION 427 : CIRCUMSTANCES IN WHICH A COMPANY MAY BE PLACED UNDER JUDICIAL MANAGEMENT

- (1) *When any company by reason of mismanagement or for any other cause -*
- (a) *is unable to pay its debts or is probably unable to meet its obligations; and*

3 J T R Gibson *S A Mercantile and Company Law* 4th ed p 444

4 Act No. 11 of 1932
Act No. 23 of 1939
Act No. 46 of 1952
Act No. 68 of 1957

5 Act No. 111 of 1976, s 29

Section 427 cont.

- (b) *has not become or is prevented from becoming a successful concern,*
and there is a reasonable probability that, if it is placed under judicial management, it will be enabled to pay its debts or to meet its obligations and become a successful concern, the Court may, if it appears just and equitable, grant a judicial management order in respect of that company.
- (2) *An application to Court for a judicial management order in respect of any company may be made by any of the persons who are entitled under section 346 to make an application to Court for the winding-up of a company, and the provisions of section 346(4)(a) as to the application for winding-up shall mutatis mutandis apply to an application for a judicial management order.*
- (3) *When an application for the winding-up of a company is made to Court under this Act and it appears to the Court that if the company is placed under judicial management the grounds for its winding-up may be removed and that it will become a successful concern and that the granting of a judicial management order would be just and equitable, the Court may grant such an order in respect of that company.*

Commentary :

This section is basically the same as the original section 195(1) and (2) introduced in 1926 although it has been reworded and rearranged.

Section 427 cont.

The original section 195(2)(b) allowed any Minister of State or the Master to apply for judicial management if the company had received any loan from the Government which was not repaid. This has been omitted from the 1973 Act, presumably because the Government would then be a creditor and is therefore covered by section 427(2) which refers to section 346 which gives the right to any creditor or shareholder or the company itself to make the application. The right of the company to make application is a new addition.

The 1932 amending Act (No. 11 of 1932) introduced section 195(3) which provided for a stay of legal proceedings against the company on the granting of a judicial management order. This has been omitted from section 427 but is covered in section 428(2). It was superfluous in the old Act because section 196(1)(d) gave the Court power to direct that all actions or proceedings against the company be stayed.

Section 195(4) of the old Act was introduced in 1939 as a result of recommendations made by the Lansdown Commission. They found that it was difficult for the court to decide whether or not the company had a reasonable probability of becoming a successful concern because the Court was often not in possession of sufficient evidence. Accordingly, Act No. 23 of 1939 introduced a new subsection (4) to section 195 which allowed the Court to refer any application to the Master for investigation and report before granting the application.

Section 427 cont.

This, however, did not really assist the Court as the Master's powers of investigation were very limited and as a result of the recommendation of the Millin Commission, section 195(4) was replaced in 1952 by subsections (4), (5), (6), (7), (8) and (9), which gave the Master wide powers of investigation into the affairs of the company. Subsection (7) also provided for the appointment of an inspector by the Minister to investigate the affairs of the company.

Except for reference to section 346 of the Act which, *inter alia*, requires a copy of the application for a judicial management order to be lodged with the Master and for the Master to report to the Court, the subject matter of subsections (4) to (9) of the former section 195 have been omitted from the new section 427 because it is now the duty of the provisional judicial manager to investigate and report on the affairs of the company as set out in section 430(c).

Under what circumstances

Section 427 of the Act sets out the circumstances in which a company may be placed under judicial management. A judicial management order may be granted in the following two circumstances :

- (1) Where application is made to Court for such an order and it is shown :
 - (a) that the company, by reason of mismanagement or any other cause is unable to pay its debts or is probably unable to meet its commitments, and

Section 427 cont.

- (b) that the company has not become or is prevented from becoming a successful concern, and
 - (c) that there is a reasonable probability, if placed under judicial management, that it will be able
 - (i) to pay its debts, or
 - (ii) to meet its obligations, and
 - (d) that it will become a successful concern, and
 - (e) that it is just and equitable to grant such an order.
- (2) When application is made to Court for a winding-up order and it appears to the Court :
- (a) that if placed under judicial management the grounds of winding-up may be removed, and
 - (b) that it will become a successful concern, and
 - (c) that it is just and equitable to grant such an order.

In both circumstances the Court has discretion and is not compelled to grant a judicial management order, even if all the requirements appear to be fulfilled, although it seems inconceivable that the Court would not grant the order if all the requirements are fulfilled.

Just and equitable

In both sets of circumstances set out in section 427 above, the Court must be satisfied that it is "just and equitable" for it to make such an order. This implies that the Court must take into account the interests of shareholders and creditors⁶ and, it is submitted, the

6 *Repp v Ondundu Goldfields Ltd* 1937 CPD 375 at 378

Section 427 cont.

surrounding circumstances. One of the primary objects of judicial management is to preserve the company as a factor in the country's economy.

The words "just and equitable" appear in other sections of the Act, namely sections 97(1), 252(3) and 344(h). However, it is the submission of the writer that these words as they appear in section 427 should be interpreted to conform with the spirit of Chapter XV, and cases which define these words where they are used in other sections of the Act should be regarded only as illustrative. In the House of Lords case, *Ebrahami and Westbourne Galleries Ltd and others*,⁷ when dealing with section 222(f) of the English Companies Act (which corresponds to section 344(h) of the South African Act) it was held that it was incorrect to create categories or headings, and that whilst illustrations might be used, "general words should remain general and not be reduced to the sum of particular instances".

In *Reich v Harthorn Syndicate (Pty) Ltd and another*⁸ it was held that the words "just and equitable" as they appeared in section 195 of the 1926 Act had the same meaning as the word "desirable" which appeared in the same section. Section 427 of the 1973 Act, which corresponds to section 195 of the old Act, does not use the word desirable, which has been replaced by the words "just and equitable".

7 (1972) 2 WLR 1289 (HL)

8 1930 NPD 233

Section 427 cont.

Statistics show that a large proportion of the companies which have been placed in judicial management are small private companies whose demise would have little or no effect on the economy of the country. Doubts have been expressed by our Courts in the past as to whether judicial management is a suitable remedy for small companies.

In *Silverman v Doornhoek Mines Ltd*⁹ it was stated : "It is a special privilege given in favour of a company and is to be authorised only in very special circumstances".

In *Ronaasen and others v Ronaasen & Morgan (Pty) Ltd*¹⁰, Centlives A.J. said, "I doubt whether section 195 of the Companies Act which provides for the placing of a company under judicial management, was intended to apply to a proprietary company of this description".

The learned judge went on to describe how the company had a limited share capital and only three shareholders and was in fact a partnership under the guise of a company.

Again in the case of *Rustomjee v Rustomjee (Pty) Ltd*¹¹ Jansen J. commented, "It seems doubtful whether in law judicial management proceedings are really appropriate to a small private company". He went on to cite the case of *Ronaasen & Morgan (Pty) Ltd* referred to above.

9 1935 TPD 349 at 353; see also *Weinberg and another v Modern Motors (Cape Town) (Pty) Ltd* 1954(3) SA 998(C) at 1000

10 1935 CPD 562 at 563 and 564

11 1960(2) SA 753(D) at 758

Section 427 cont.

In the unreported case of *Swarajia Naidoo v Sarkhot (Pty) Ltd*¹², the Hon. Mr. Justice Broom, Judge President of Natal, in a judgment delivered on the 12th August 1959, said, "I share the doubts expressed in *Ronaasen's* case, 1953 CPD 562, whether the judicial management machinery was designed for a small proprietary concern of this sort".

The last judicial pronouncement on this topic appears in the case of *Tobacco Auctioneers Ltd v A W Hamilton (Pvt) Ltd*¹³. Here Goldin J. had this to say,

"Doubt has been expressed in several cases whether in law judicial management proceedings are really intended to apply to a small company (see *Ronaasen's* case and the *Rustomjees'* case). In my respectful view the fact that a company is a private company with no more than two or three members or even with a few issued shares, is not in itself sufficient reason for holding that section 262 does not apply to it or is not an appropriate form of relief. The extent and scope of the business activities of a company¹⁴, its assets and liabilities and the nature of its difficulties are all relevant factors in deciding whether section 265 is applicable".

The aforementioned case (*Tobacco Auctioneers Ltd*) far from over-ruling the doubts expressed in the previous cases, did in fact stress that the size of the company is one of the factors to be considered when granting a judicial management order. The earlier cases referred to small private companies but it is submitted that the learned judges in those cases were not necessarily confining their remarks to the

12 Unreported : 12th August, 1959, Durban. See Annexure III.

13 1966(2) SA 451(R) at 453

14 The underlining is mine, i.e. its effects on the economy.

Section 427 cont.

capital structure of the company but also to the extent of the business activities of the company and the effect that its possible liquidation would have on the economy of the country. It is submitted that too many orders of judicial management are being granted in respect of "small" companies and that the Courts should follow the dictates of Goldin J. in the *Tobacco Auctioneers Ltd* case (*supra*) when deciding whether it is just and equitable to grant a judicial management order. Our Courts have understandably shied away from defining "just and equitable" and refer to "special privilege" and "special circumstances" without further clarification. It is submitted that the effect on the economy and/or community should be a factor to be considered. The mere fact that a few creditors may benefit should not be the criterion, as creditors in the nature of their business expect to take commercial risks. Likewise, shareholders in a company must realise that they are venturing risk capital. Why should a special system be set up by the Legislature to bail out shareholders and creditors who may have made unwise investments ? There is surely a further requirement - further special circumstances which should be present before an order is granted.

In testifying before the van Wyk de Vries Commission of Enquiry into the Companies Act, the Assistant Master at Pietermaritzburg (Mr. de Beer) said he could,

"still see the justification for a judicial management where the concern serves the required need of the country as a whole, e.g. manufacturers of medical equipment,

Section 427 cont.

medicines, steel products, etc., but not a second rate proprietary hotel on the South Coast or a little family general dealer's business, etc."¹⁵

It is difficult to lay down exact criteria which must be applied but quite obviously judicial management was not introduced to protect the small one-man business, whereas it was designed to afford protection to a large public company employing a large labour force and whose liquidation would have an adverse effect on the economy and the community.

It is the writer's belief that the Legislature should amend the Act so as to make it clear that it is a "special privilege only to be granted in special circumstances". The debates in 1923 and 1926 show clearly that this was the intention of the Legislature at the time. It is a pity that the Courts have not developed the trend of questioning the applicability of judicial management to small business undertakings.

In considering whether it is "just and equitable" to make an order, the Court must also take into account other interested parties. Both the interests of creditors and shareholders must be borne in mind.¹⁶ Under the old Act, the Court would pay particular attention to the interests of creditors. The new Act has lessened the emphasis which the Court will now apply to creditors' interests, as creditors

15 Commission of Enquiry into the Companies Act 1970 : working paper no 19 : judicial management p 19

16 *Repp v Ondundu Goldfields Ltd (supra)*; *Samuels v Nicholls and another* 1948(2) SA 255(W); *De Jager v Karoo Koeldranke en Roomys (Edms) Bpk* 1956(3) SA 594(C)

Section 427 cont.

themselves now play an active role in deciding whether the provisional order should be made final.¹⁷

It is unlikely that the Court will grant a judicial management order if it is not in the interests of creditors, although the wording of the Act does not specifically refer to creditors' interests. But it is difficult to conceive of it not being in creditors' interests if the company becomes a successful concern and can meet its obligations - provided this is achieved within a reasonable time period.

In *Marsh and another v Plows (SA) Ltd*¹⁸ it was held that it was not just and equitable that an execution creditor should be delayed in the exercise of his rights where there was no unanimity amongst either shareholders or creditors as to whether an order for judicial management or winding-up should be granted.

Although the Court must consider the interests of creditors it is unlikely to refuse to grant a judicial management order merely because a creditor will be delayed in the payment of his debt. Baker A.J. in *Millman N O v Swartland Huis Meubileerders (Edms) Bpk : Repfin Acceptances Ltd intervening*¹⁹ said,

" though I have found no reported instance where a Court has refused an order on the sole ground that a major (or any) creditor would be delayed in receiving payment of what was owed to him or it. In all the cases

17 See section 431(2)(a)

18 1949(1) PH E4

19 1972(1) SA 741(C) at 747

Section 427 cont.

which I have read there has been some additional factor to induce the Court to refuse the order. Usually a creditor who opposes a judicial management on the grounds of prejudice comes to Court with an alternative application for a winding-up, on the basis that there is no real prospect of achieving the object of turning the company into a solvent and functioning concern".

Not an adjunct to winding-up

Judicial management contemplates the continuation of a company's business, not its ultimate liquidation. The fact that it may be more advantageous to dispose of the business of a company under judicial management than under the winding-up provisions, is not a factor which will induce the Court to grant a judicial management order.²⁰

In *Millman N O v Swartland Huis Meubileerders (Edms) Bpk (supra)*

Baker A.J. said,

"The essential thing which an applicant for a judicial management order must establish, at least *prima facie* at the initial stage, is the prospect of ensuring the company's viability; and from this viability flows the prospect of

20 *In re Mulvihals Mineral Water Works (Pty) Ltd* 1936 CPD 135
Marais v Leighwood Hospitals (Pty) Ltd 1950(3) SA 567(C)
Pax Clothing Co Ltd v Vaskis Tailoring (Pty) Ltd 1953(2) PH E13
Irvin and Johnson Ltd v Oelofse Fisheries Ltd 1954(1) SA 231(E)
De Jager v Karoo Koeldranke en Roomys (Edms) Bpk (supra)
Millman N O v Swartland Huis Meubileerders (Edms) Bpk (supra)
Tenowitz and another v Tenny Investments (Pty) Ltd 1979(2) SA 680(E)

Section 427 cont.

ultimate solvency. But if ultimate solvency is not in fact expected by the applicant for an order, he is not entitled to ask the Court to prolong the existence of the company "21

Provision is made in section 386(4)(f) to carry on the business of a company in liquidation so far as may be necessary for the beneficial winding-up thereof.

Judicial management is not an adjunct to winding-up, but it is an alternative and the fact that the Legislature has now devoted a separate chapter to judicial management emphasises the Legislature's intention.

Reasonable probability of success

The Court will not grant a judicial management order unless it is reasonably satisfied of the probable ultimate success of the undertaking.

De Villiers J.P in *Weinberg and another v Modern Motors (Cape Town) (Pty) Ltd (supra)* cautioned petitioners as follows :

"I would like to make it clear that in these matters petitioners and their advisers should bear in mind that the Court may sometimes in the past have granted rules *nisi* of this description without having insisted on full information, information sufficient to satisfy it that the applicant has put up a case showing a reasonable probability of success. This amounts to a finding of fact

Section 427 cont.

based on the evidence before it. A mere confident hope expressed in affidavits and not sufficiently supported by concrete evidence is not enough".²²

In the recent case of *Kotzé v Tulryk Bpk en andere*²³ it was stated that primarily a creditor is entitled to liquidation as a means of getting back his money or part thereof. Judicial management is an exceptional means of redeeming the situation which should only be used when it appears reasonably probable that the outcome thereof will be beneficial to creditors and shareholders. It must be borne in mind that it is an encroachment on the right of the creditor to demand the use of his money.

In nearly all applications for judicial management, the company concerned has a liquidity problem and it is usually necessary to convince the Court that credit facilities will be available to enable the company to continue to operate if the Court is to be satisfied that there is a reasonable probability of success. The Court may require evidence that a resolution in terms of section 435(1) is likely to be passed by creditors before it grants the final order.

It is interesting to note that section 427(3) of the 1973 Act does not refer to a "reasonable probability" but it is unlikely that the Court would not adopt the same test as is required by section 427(1).

22 at 1001; see also *Noordkaap Lewendehawe Ko-operasie Bpk v Schreuder en 'n ander* 1974(3) SA 102(AD), where a "reasonable probability" as opposed to a "reasonable possibility" was stressed.

23 1977(3) SA 118(T)

Section 427 cont.

The crucial test is whether the company will have a reasonable chance of recovery under judicial management and if that is not so, other considerations are irrelevant.²⁴

In *Kotzé v Tulryk Bpk en andere* (*supra*)²⁵ it was held that although a reasonable probability must exist, it was going too far to say that this must be a strong probability. But this test, i.e., a strong probability, must exist when granting a final order under section 432 on the return day.²⁶

Although section 427 does not specifically say so, it would seem that the postulated test of a reasonable probability that the company concerned will be enabled to pay its debts applies at the stage when the provisional judicial management order is sought.²⁷

Judicial managers are usually skilled financial and administrative managers; they seldom have technical skills. Where, therefore, the mismanagement complained of is due to bad or inadequate technical management, the Court should consider the availability and cost of acquiring the right technical skills when considering the "reasonable probability of success" of the proposed judicial management.

The fact that the paid-up share capital of a company has been lost is a factor that will weigh heavily with the Court in considering

24 See Cilliers and Benade *Company Law* 2nd ed p 471; and *Guttman and others v Sunlands Township (Pty) Ltd (in liquidation)* 1962(2) SA 348(c)

25 but cf *Silverman v Doornhoek Mines Ltd (supra)* at 353

26 *Tenowitz and another v Tenny Investments (Pty) Ltd (supra)*

27 *ibid*

Section 427 cont.

whether there can be any reasonable probability of a judicial management succeeding.²⁸

Become a successful concern

The provisions of the 1926 Act required a reasonable probability that the company would :

- (1) be able to meet its obligations and that
- (2) any reasons for its liquidation would be removed before the Court would grant a judicial management order.

The intention of the Legislature was to preserve the company as a factor in the economy of the country and it was, therefore, held in a number of decided cases²⁹ that it was further necessary to show that, in addition to the two requirements referred to above, the company would also become a successful concern. If this third requirement were not necessary, it would be possible for a company, say a building company, to obtain a moratorium by way of judicial management, finish its existing contracts (thus meeting its obligations), generate sufficient money thereby to repay its creditors (thus removing the occasion for liquidation), and then because of lack of credit facilities, cease to operate. This clearly was not the object of judicial management.

28 *Irvin and Johnson Ltd v Oelofse Fisheries Ltd (supra)*
De Jager v Karoo Koeldranke en Roomys (Edms) Bpk (supra)

29 *Silverman v Doornhoek Mines Ltd (supra)*
Pax Clothing Co Ltd v Vaskis Tailoring (Pty) Ltd (supra)
Weinberg and another v Modern Motors (Cape Town) (Pty) Ltd (supra)
Ex parte Mayhew 1959(1) PH E9
Millman N O v Swartland Huis Meubileerders (Edms) Bpk (supra)

Section 427 cont.

It must be shown that, if given a moratorium against its creditors, there is a probability that the company will within a reasonable time be able to meet its obligations and once again operate successfully.

The question of interest on pre-judicial management creditors' claims should be considered when preparing viability forecasts for the company, as section 434(3) stipulates that the claims of creditors are to be paid *mutatis mutandis* in accordance with the law relating to insolvency. In terms of section 103(1)(b) of the Insolvency Act, if there is a surplus after paying all creditors in full, unsecured creditors are entitled to be paid interest on their claims from date of sequestration to date of payment. Interest is calculated at the rate of 6% p.a. unless the amount of any claim bears a higher rate of interest by virtue of a stipulation in writing.

The doubts which were expressed in *Guttman and others v Sunlands Township (Pty) Ltd (in liquidation) (supra)* that this third requirement was a necessary factor, have been dispelled by the inclusion in the 1973 Act (section 427(1)(b)) of the words "and become a successful concern". It is interesting to note that the words "become a successful concern" which do not appear in the 1926 Act, as amended, are frequently repeated in the 1973 Act.³⁰

Within a reasonable time

The Act does not lay down any time period in which the company must

30 ss 430(c)(ii) and (vi); 431(2)(a); 432(2); 433(2)

Section 427 cont.

fulfil the requirements of meeting its obligations, removing the occasion for its liquidation and becoming a successful concern. Our Courts have held, however, that unless a company can rehabilitate itself within a reasonable time, they will not grant an order of judicial management because creditors cannot be expected to wait indefinitely. In *Irvin and Johnson Ltd v Oelofse Fisheries Ltd* (*supra*) Reynolds J. said,

"But it is obvious that there must be a time limit, settled in each case, for the creditor can hardly be made to wait indefinitely. Hence it seems that the chance of paying its debts must be such that the facts show with at least reasonable probability that the company will be able to pay its debts in a reasonable time".³¹

Unfortunately, none of our cases have attempted to set any limit on what is considered to be a reasonable time.³²

If creditors of a company under judicial management cannot expect to be paid within a reasonable time, this is also a ground for the discharge of the judicial management order.³³

It is interesting to note that in Australia, official management of a company is for an initial period of two years and thereafter any extension must be sanctioned by special resolution of creditors and no extension is to be for more than twelve months at a time.³⁴

31 at 237

32 *Repp v Ondundu Goldfields Ltd* (*supra*)
Marsh and another v Plows (SA) Ltd (*supra*)
Marais v Leighwood Hospitals (Pty) Ltd (*supra*)
Ex parte Mayhew (*supra*)
Jagger-Mosenthal Ltd v J M van der Walt (Pty) Ltd 1969(1) SA 124(O)
Tenowitz and another v Tenny Investments (Pty) Ltd (*supra*)

33 *Marais v Leighwood Hospitals* and *Jagger-Mosenthal* cases (*supra*)

34 Uniform Companies Legislation : s 202 Part IX of the New South Wales Companies Act No. 71 of 1961 as amended

Section 427 cont.

By mismanagement or any other cause

The words "by mismanagement or any other cause" are so all embracing in meaning that they are superfluous and could be omitted from section 427(1) without altering its meaning in any way.

It is not only mismanagement which could cause a company to get into difficulties and thus be unable to meet its obligations. A variety of causes could bring about such a state of affairs. In *Lenning and another v Orenstein & Koppel (SA) Ltd*³⁵ a company was placed under judicial management where it was shown that the vast majority of the shares of the company were held by enemy aliens in time of war and the company could therefore not operate effectively. Examples of "other causes" could be :

- (1) Cessation of a company's activities due to litigation, e.g. where a building company is forced to stop building due to a temporary interdict granted by a Court pending the outcome of a legal dispute;
- (2) Temporary illiquidity of a property company, for example due to unforeseen delay in the proclamation of township land;
- (3) Temporary labour unrest resulting in disruption of the work force.

The Court will only grant an order of judicial management on the grounds of "mismangement" where it is satisfied that the mismangement complained of is not something which the company itself could

35 1940 WLD 59; see also *Martin v Mercedes Office Machine (SA) Co (Pty) Ltd* 1940(1) PH E12

Section 427 cont.

rectify through its own machinery, e.g. by appointing a new directorate.³⁶ Our Courts are reluctant to interfere in the internal affairs of a company and in internal disputes between shareholders unless there is good reason for so doing, i.e. fraudulent, illegal or oppressive conduct on the part of the company or its members.³⁷

In the 1952 amending Act, section III bis was added to the 1926 Act (now section 252 of the 1973 Act) and introduced the possibility of applying for relief in circumstances of oppression. Cases decided prior to 1952 must be judged accordingly.

The mismanagement must be such as would justify the Court in winding-up the company under the "just and equitable" rule. In *In re Winchester Tea Lounge Ltd*³⁸ Lewis A.J. stated that the mismanagement must be "such mismanagement as would justify the Court in winding up the company under the "just and equitable" rule, i.e. such mismanagement ... as has resulted in a deadlock in the internal administration of the company".

The application to Court should contain the fullest possible details of the mismanagement of which the applicant is complaining.

36 *Maynard v Office Appliances (SA) (Pty) Ltd* 1927 WLD 290;
Repp v Ondundu Goldfields Ltd (supra)

37 *Reich v Harthorn Syndicate (Pty) Ltd and another (supra)*

38 1936 EDL 188 at 198; see also *Rustomjee v Rustomjee (Pty) Ltd (supra)*

Section 427 cont.

Where the company is unable to pay its debts or is probably unable to meet its obligations

The expression "unable to pay its debts" is found in a number of other sections of the Act, i.e. sections 339, 345, 360(1), 366(1)(c), 386(4)(d), 414(1), 415(1) and 416(1)(a).

Its meaning in section 427 is the same as that in section 345. A company may be technically solvent in the sense that its assets exceed its liabilities, but it may be commercially insolvent in the sense that its assets are not easily realisable and therefore its liquidity is such that it cannot meet its day to day expenses.

In *Rosenbach & Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd*³⁹, Caney J. said,

"The proper approach in deciding the question whether a company should be wound up on this ground appears to me, in the light of what I have said, to be that, if it is established that a company is unable to pay its debts, in the sense of being unable to meet the current demands upon it, its day to day liabilities in the ordinary course of business, it is in a state of commercial insolvency; that it is unable to pay its debts may be established by the means provided in para (a) or para (b) of s 112 (now section 345) or in any other way by proper evidence. If the company is in fact solvent, in the sense of its assets exceeding its liabilities, this may or may not, depending upon the circumstances, lead to a refusal of a winding up order; the circumstances particularly to be taken into

Section 427 cont.

consideration against the making of an order are such as show that there are liquid assets or readily realisable assets available out of which, or the proceeds of which, the company is in fact able to pay its debts".⁴⁰

A further circumstance in which a company may be placed under judicial management is where it is probably unable to meet its obligations. This is not the same as being unable to pay its debts. A company may be able to pay its current debts but it may foresee that it will not be able to meet its obligations in the future. These obligations need not necessarily be the payment of debts but can be any other obligation such as the fulfilment of a contract.

Who may apply and the procedure to follow

Section 427(2) states that application may be made for a judicial management order by any persons who are entitled under section 346 to make an application for a winding-up order, namely :

- (a) the company itself
- (b) any creditor (including a contingent creditor)
- (c) any member
- (d) jointly, any or all of the parties mentioned in (a), (b) and (c)
- (e) in the case of the company being wound up voluntarily, by the Master (or any creditor or member).

Although not covered by the provisions of the Act, it seems it is possible for a liquidator of a company to apply for a judicial management order. Although this has not occurred very frequently, there have been

40 See also *Barclays Bank (D C and O) and another v Riverside Dried Fruit Co (Pty) Ltd* 1949(1) SA 937(C)
Irvin and Johnson Ltd v Oelofse Fisheries Ltd (supra)
Chandlers Ltd v Dealesville Hotel (Pty) Ltd 1954(4) SA 748(O)

Section 427 cont.

a few cases where a provisional liquidator has applied for and obtained a judicial management order.⁴¹ There has been one case where the liquidator of a company in final liquidation obtained a final judicial management order.⁴² Presumably the Courts consider this an application under section 346(1)(a), i.e. an application by the company itself.

A copy of the application and of every affidavit confirming the facts therein must be lodged with the Master before the application is presented to the Court.

The Master may report to Court where an application for a provisional winding-up order is being sought⁴³ but this does not apply to a provisional judicial management order.

Section 432(2)(d) however, requires the Court to consider, *inter alia*, the Master's report before granting a final order.

Where a company applies for an order placing itself under judicial management it must do so by passing a special resolution unless it is relying on circumstances set out in section 344(b) to (h) in which case it seems that an ordinary resolution would be sufficient.⁴⁴

41 *Common Fund Investment Society Ltd v C O C Trust Co Ltd*
1968(4) SA 137(C)

42 See *In re A H Olver N O : Intafine Leasing and Finance (Pty) Ltd* Unreported case No. M.1830/76 CPD dated 16. Feb 1977.
Annexure IV

43 s 346(4)(b)

44 *Ex parte East London Cape (Pty) Ltd* 1931 EDL III

Section 427 cont. Section 428

In *Clarke v Protein Foods (Pvt) Ltd*⁴⁵ it was held that where a shareholder wishes to appeal against the refusal of an order for judicial management in respect of his company, he must do so timeously as the affairs of a commercial company change from day to day.

An application for judicial management is now no longer by way of petition but by way of notice of motion with supporting affidavits.⁴⁶

SECTION 428 : PROVISIONAL JUDICIAL MANAGEMENT ORDER

- (1) *The Court may on an application under section 427 (2) or (3) grant a provisional judicial management order, stating the return day, or dismiss the application or make any other order that it deems just.*
- (2) *A provisional judicial management order shall contain -*
 - (a) *directions that the company named therein shall be under the management, subject to the supervision of the Court, of a provisional judicial manager appointed as hereinafter provided, and that any other person vested with the management of the company's affairs shall from the date of the making of the order be divested thereof; and*

45 1971(1) PH E1

46 See ss 195 (3), (4) and (5) of the 1926 Act as compared with s 427 of the new 1973 Act

Section 428 cont.

- (b) *directions as to the rate of remuneration of the provisional judicial manager; and*
- (c) *such other directions as to the management of the company, or any matter incidental thereto, including directions conferring upon the provisional judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders as the Court may consider necessary,*

and may contain directions that while the company is under judicial management, all actions, proceedings, the execution of all writs, summonses and other processes against the company be stayed and be not proceeded with without the leave of the Court.

- (3) *The Court which has granted a provisional judicial management order, may at any time and in any manner, on the application of the applicant, a creditor or member, the provisional judicial manager or the Master, vary the terms of such order or discharge it.*

Commentary :

Subsection (1) is a completely new section, not only as regards a "provisional" order, but in that it allows the Court to make any order. There is no counterpart in the 1926 Act.

Section 428 cont.

Subsection (2)(a) is identical to the old section 196(1)(a) except that it now refers to a provisional judicial manager. This section (with the exception of the word 'provisional') has remained unchanged since the original 1926 Act. There was a small amendment introduced in 1952 which was only a change of wording and did not affect the meaning of the section. The words "judicial manager" were substituted for the words "persons named therein".

Subsections (2)(b) and (c) follow the old subsections 196(1)(c) and (d) which appeared in the original Act but the last paragraph after (d) which deals with the stay of proceedings was introduced in the 1932 amending Act.

Subsection 428(c) has been reworded to include the word "provisional".

Subsection (3) is in content the same as 196(2) except that it has been expanded to include those who may apply to Court to vary the order.

The original 1926 Act contained a similar section which was reworded in the 1952 amending Act. The original section allowed the Court not only to vary the order but to substitute some other person as judicial manager. This power of substitution was omitted in 1952 because from then on the Master and not the Court appointed the judicial manager.

Under the 1926 Act it had become established practice for the Courts to grant a rule *nisi* and not a final order of judicial management in

Section 428 cont.

the first instance, although in certain circumstances a final order could be granted.⁴⁷ Certain authorities still think that the Courts may be able to grant a final order in the first instance even under the provisions of the 1973 Act.⁴⁸ This was in fact the position in the *Intafine* case mentioned in the previous section.

However, in view of the very clear provisions of section 428 and the tenor of Chapter XV taken as a whole, it is respectfully submitted that a Court should grant a provisional order in the first instance, regardless of any special circumstances.

Any other order

Although section 428(1) gives the Court power to "make any other order it deems just", it seems clear that this means any order other than a final judicial management order. The Court could, for example, grant a simple adjournment so as to obtain further information. It could issue a rule *nisi* calling on certain interested parties to show cause why a provisional order should not be granted. It is unlikely that it would grant a winding-up order under the "just and equitable" provisions of section 344(h) in the absence of a counter application for winding-up by persons nominated in section 345(1).

The return day in terms of section 432(1) shall not be later than sixty days after the date of the provisional judicial management order but it may be extended if good cause is shown.

47 *Ex parte National Overseas & Grindleys Bank Ltd : In re Rose Chrome Mines Ltd* 1958(2) PH E7; *Common Fund Investment Society Ltd v C O C Trust Co Ltd (supra)*

48 See Henochsberg *op cit* p 750

Section 428 cont.

Limited power of the Court to make orders

The power of the Court to make orders in terms of sections 427 to 440 is limited to the provisions expressed in such sections. It does not possess any general power. Although in certain cases⁴⁹ the Courts have made orders which appear to fall outside the express powers given, the matter was settled in the Appellate Division ruling given in *Wire Industries Steel Products and Engineering Co (Coastal) Ltd v Surtees N O and Heath N O*⁵⁰ where Schreiner J.A. said,

"There is, as I have said, no express power to interfere with the legal rights of other persons in these provisions, while the appearance, one after another, of express provisions empowering the Courts to make orders which, in certain fields, bring about such interference tends strongly to negative the existence of any general power outside the limits of such express provisions".

Jurisdiction

The provisional judicial manager is subject to the supervision of the Court, and the Court which made the judicial management order is the Court which has jurisdiction. Even where the registered office of the company is subsequently moved to another Province, the Court which granted the order retains jurisdiction.⁵¹

49 *Ex parte Bell : In re Belgeric Gold Mining Co Ltd* 1938(1) PH E12
Ex parte Morley & Co : In re Mining Material Merchants Ltd v Miodownik & Co (Pty) Ltd 1940 WLD 95

50 1953(2) SA 531(AD) at 539
See also *Klopper en 'n ander N N O v Die Meester en andere N N O* 1977(2) SA 477(T)

51 *Ex parte Pan African Tanneries Ltd (under judicial management)* 1950(4) SA 321(O)

Section 428 cont.

Remuneration of judicial Manager

Section 428(2)(b) states that the order shall contain directions as to the rate of remuneration of the provisional judicial manager. Section 432(3)(b) contains an identical provision relating to the remuneration of the judicial manager. The Court is thus empowered to give any directions it sees fit regarding the rate of remuneration and these directions are addressed to the Master who ultimately scrutinises the judicial manager's account.

Over the years various practices have been followed by our Courts. The law, however, is quite clear, namely, that the Court has complete discretion to fix the rate of remuneration with or without consultation. It would, however, be unusual for the Court itself to fix the remuneration of a provisional judicial manager without consultation with the Master, but it could clearly do so if, for example, there had been a meeting of creditors who recommended a rate of remuneration and gave appropriate reasons.

There have been very few reported cases dealing with the question of remuneration and those cases have, in the main, concerned themselves with determining a formula for arriving at a 'fair' remuneration.

In *Hoek and others v Pan African Tanneries Ltd and another*⁵² it was pointed out "that the practice in the W L D had always been to direct that the remuneration be fixed by the Court, and that was done with the assistance of, and on recommendation by, the Master".

Section 428 cont.

As no scale of fees for judicial management is laid down in the Act, it was suggested in *Hoek's* case that the tariff of fees laid down in Tariff B of the Second Schedule to the Insolvency Act No. 24 of 1936 and in para III of the Fifth Table of the Third Schedule to the Companies Act could be applied. In giving judgment, Clayden J. had this to say,

"The very object of judicial management is to preserve the company. And there would be little incentive to proper judicial management if the judicial manager knew he would only be paid a percentage of the property realised by him. And again a company with total property of small value might require infinitely more work in management than one having very valuable assets. Every case would tend to be one of special circumstances, and in most cases the tariffs would be of little assistance".⁵³

The learned judge went on to say that a possible yardstick for determining a fair rate of remuneration of judicial managers was the remuneration being paid to the former management.

In practice, the judicial manager seldom steps into the shoes of the former management on a full time basis. After the initial period of investigation and re-organisation which may occupy most of his time, his role usually settles down to a supervisory one with only intermittent calls on his time. In many cases the judicial manager has to keep on the existing management and does not necessarily replace it.

In *In re N Gordon (Pty) Ltd*⁵⁴ the Court stated that it was the

53 *supra* at 70

54 1957(4) SA 628(W)

Section 428 cont.

prevailing practice when granting an order for judicial management to direct that the remuneration be determined at a later stage by the Court. Presumably this practice was to allow time for the Court to assess, through the office of the Master, the extent and complexity of the work involved. Where there is disagreement between the Master and the judicial manager on the quantum of the fee, the Court will allow the judicial manager an opportunity of stating his case.

Various formulae have been suggested and used in the past when determining a fair rate of remuneration for judicial management. In some instances fees have been based on a percentage of turnover; (a liquidator is allowed 6% on turnover if he continues to trade).

It was suggested by the Judge President of the Transvaal when making recommendations to the van Wyk de Vries Commission⁵⁵ that remuneration of a judicial manager could be determined by taxation with the right of appeal to the Court as in other cases of taxation.

The Commission when considering this request concluded :

"The Master is not in favour of the suggestion that the remuneration should be taxed by him, subject to review by the Court. His argument is that the remuneration of the Judicial Manager cannot be compared with the fees of an executor or trustee or even a liquidator. A Judicial Manager is called upon to manage a business under very difficult circumstances. His functions will

55 Commission of Enquiry into the Companies Act 1970 : working paper no 19 : p 22

Section 428 cont.

will in many cases be comparable to those of a manager, general manager or managing director of a business, and the Master argues that he cannot be expected to have knowledge of fair remuneration in respect of such managerial functions. On the other hand, it does appear that the Master acquires some experience of these matters in dealing with the remuneration of Judicial Managers in many cases over the years, and that his views ought to carry some weight. It is, however, a difficult sort of case to reconcile with the usual taxing procedure. It appears that in the other Divisions, there is consultation between the judge concerned and the Master before the matter is raised in court. This is not the practice in the Transvaal. It is suggested, however, that this matter be left over for further discussions with the Judge President and the Master's Office".⁵⁶

During the past few years it has become the practice for the Court to order that the judicial manager's remuneration will be determined by the Master, and the various Masters' Offices have established a practice of fixing a rate of remuneration on an hourly or time basis.

On the 26 June 1975 the Master in Cape Town, Mr. Watruss, (now Chief Master in Pretoria) called a meeting of all practising judicial managers in the Cape Provincial Division to discuss and establish a fair rate of remuneration in judicial management. The outcome of this meeting resulted in the following scale of fees being stipulated by the Master in a circular dated 26 June 1975.⁵⁷

56 Commission of Enquiry into the Companies Act 1970 : working paper no 19 : p 39

57 See Annexure V

Section 428 cont.

1. JUDICIAL MANAGEMENT FEES
- 1.1 Fees payable to Judicial Manager
- 1.1.1 A basic fee of R30,00 per hour
- 1.1.2 Could be increased to R35,00 or decreased to R25,00 in exceptional cases. The Master will use his discretion in such cases.
- 1.2 Fees payable to senior principals assisting him
R5,00 less than the Judicial Manager's fee
ex. Judicial Manager's fee - R30,00
 Principal's fee - R25,00
- 1.3 Rest of staff
Their fee will be based on the tariff laid down by the National Council for Chartered Accountants for governmental work. This paper is dated 1st August 1973.
- 1.4 A sworn affidavit reflecting the following information should be lodged with the Master when this fee is claimed -
- 1.4.1 The salaries of each individual not being the Judicial Manager himself or one of his principals. This will thus only apply to the rest of the staff.

Mr. Watruss has since become Chief Master in Pretoria and the same scale of fees is now being applied in the Transvaal. Although the Chief Master cannot impose his rulings on other Masters, the Masters in the other Divisions all seem to be following the practice of an hourly rate although the actual rate per hour differs with certain Masters, but is usually between R25,00 and R35,00 per hour.

Section 428 cont.

This system seems to have been readily accepted by all parties concerned. It must be remembered, however, that the Court still has sole discretion in deciding how the fees are to be determined, and although it is unlikely to break from what is an acceptable practice, it could, if special circumstances warrant it, adopt a different method.

Such other directions as to the management of the company, or any matter incidental thereto

The power of the Court to make orders in terms of sections in Chapter XV is limited to the provisions expressed in such sections and the Court has no power to interfere with the rights of other persons. This matter has been discussed under section 428⁵⁸ but it is appropriate to set out more fully the remarks of Schreiner J.A. in the case of *Wire Industries Steel Products and Engineering Co (Coastal) Ltd v Surtees N O and Heath N O (supra)*⁵⁹ :

"It is clear that no power to interfere with such rights is expressly given. Indeed the power to authorise the borrowing of money, with which the paragraph concludes, is expressly made subject to the right of creditors It was not until the year 1939 that a preference in favour of creditors whose claims have arisen out of the conduct of the business by the judicial manager was also expressly provided for, in cases where creditors whose claims arose before the judicial management order have at a meeting agreed thereto.

58 p 56 *supra*

59 at 539 - 540

Section 428 cont.

There is, as I have said, no express power to interfere with the legal rights or lawful interests of other persons in these provisions, while the appearance, one after another, of express provisions empowering the Courts to make orders which, in certain fields, bring about such interference tends strongly to negative the existence of any general power outside the limits of such express provisions. But, even apart from these indications, "directions as to the management of the company or any matter incidental thereto" is an expression which can be given useful content without interpreting it as including the drastic power to modify the rights of third parties. Drastic the power would certainly be; but it would also be vague and undefined, being limited only by what the Court might deem fit. It is unnecessary to speculate upon the possible interferences with rights of pledge, set-off and the like which might arguably be warranted, if it were once conceded that a general power to modify rights is by implication given to the Courts. I do not think that the most liberal approach to the interpretation of the sections can support the implication of a general power of the kind in question

The history of the legislation regarding judicial management indicates that the Legislature, having broken new ground in 1926, was concerned from time to time to modify the provisions, in accordance with the needs of the situation as shown by experience. Particularly in such a case does it seem necessary that the Courts should confine themselves to the limited powers which were unquestionably given in the legislation and not assume wider powers which it might seem desirable that they should have".

This case, which dealt with the power of the Court to alter the term

Section 428 cont.

of an existing contract, overruled the judgment in the *Norman Kennedy* case.⁶⁰

There have been a number of reported cases since the *Wire Industries* case (*supra*) which have agreed with the limitation of the Court's power to make orders in general terms.⁶¹

The power to raise money, subject to the rights of creditors

The words, "subject to the rights of creditors" were discussed in the case of *Standard Bank of S A Ltd v Pharmacy Holdings Ltd*⁶² where Galgut J. said,

"These words cause me some concern. I do not know why the word "right" has been used but (I) have experienced difficulty in determining what Parliament intended. Prior to judicial management directors could raise loans on the security of the assets of a company provided that undue preferences are not thereby given. It seems that these words were added merely to indicate that a judicial manager in raising loans could do no more than the directors of a company".

60 *Norman Kennedy v Norman Kennedy Ltd : judicial managers Norman Kennedy Ltd N O v Reinforcing Steel Co Ltd and others* 1947(1) SA 790(C)

61 *K and L Timbers (Natal) Ltd v Merryweather Builders (Pty) Ltd and another* 1956(2) SA 136(N)
Goode Durrant & Murray (SA) Ltd v Glen & Wright N N O 1961(4) SA 617(C)
Acton N O v Pretoria City Council and another 1962(1) SA 115(T)
Dower v Queenstown Board of Executors & Trust Co Ltd 1963(2) SA 381(E)
Lief N O v Western Credit (Africa) (Pty) Ltd 1966(3) SA 344(W)
Klopper en 'n ander N N O v Die Meester en andere N N O (supra)

62 1962(1) SA 245(W) at 246

Section 428 cont.

Section 196(1)(d) of the 1926 Act to which Galgut J. was referring is substantially the same as section 428(2)(c) of the 1973 Act.

It is interesting to note that no such restriction, namely making the power to raise money "subject to the rights of creditors", exists in the case of a winding-up by the Court.⁶³

It is clear from the judgment in the *Standard Bank* case (*supra*) that the Court cannot grant a judicial manager the power to raise money by giving a lender preference over secured pre-judicial management creditors, as this would be interfering with the rights of creditors.

The Court should only grant an order in terms of section 428(2)(c) where it is absolutely satisfied that the failure to do so will prejudice creditors and shareholders.

It must be noted that section 435 of the Companies Act allows the judicial manager to convene a meeting for the purpose of passing a resolution whereby pre-judicial management creditors are preferred. This resolution does not, however, affect secured creditors.

A Court cannot grant a judicial manager power to raise money by calling up uncalled share capital.⁶⁴

Directions that all actions etc. be stayed

Most orders for judicial management contain directions that all actions, proceedings, the execution of writs, summonses and other processes

63 See s 386(5)

64 See *De Jager v Karoo Koeldranke en Roomys (Edms) Bpk (supra)*
(Note : Any existing company which has issued share capital which is not fully paid remains subject to the provisions of the 1926 Act. See s 4(2) of the 1973 Act)

Section 428 cont.

against the company be stayed. This is because in most judicial management applications the company concerned has liquidity problems and needs a moratorium against its creditors in order to give it time to get on an even keel.

In fact it is so common that section 428 could be expanded to include a further subsection providing for such stay of proceedings in all cases. It is generally accepted by most authorities⁶⁵ that judicial management implies a moratorium, but unless a specific order is made this would not be the case. In *Estate Loock v Graaf-Reinet Board of Executors*⁶⁶ it was stated "A judicial manager is appointed because the Court thinks that the company, if it has a sort of moratorium - that is what a judicial management amounts to - will pull through and will be able to go on". If, by these words, the learned judge intended to imply that judicial management necessarily involves a moratorium, the history of the legislation does not bear this out.⁶⁷ The provision that allowed the Court to grant an order staying all actions against a company in judicial management was only introduced in the 1932 amending Act.

If no stay of actions is granted, the judicial manager could raise the defence against any pre-judicial management creditor, that he

65 Oscar Britzius *South African Company Secretarial Practice* p 567; Gibson *op cit* p 444; Henochsberg *op cit* p 427; David Shrand and A A F Keeton *The Registration Management and Winding-up of Companies in South Africa* p 271

66 1935 CPD 117

67 The Millin Commission's Report falls into the same error (see UG 69 1948 para 257)

Section 428 cont.

does not have the funds to pay that creditor and he is charged in terms of section 434(2) not to do so unless he has a surplus after paying the costs of judicial management and has sufficient funds for the conduct of the company's business.⁶⁸ It is therefore preferable to have an order staying all actions to avoid the unnecessary costs and waste of time of the judicial manager in contesting actions for payment.

In *Millman N O v Swartland Huis Meubileerders (Edms) Bpk (supra)* it was held that section 196(1) (now 428(2)(c)) "empowers the Court to direct that all actions be stayed and not merely some to the exclusion of one or more others".

Contrary to what some authorities⁶⁹ feel, it is submitted that persons wishing to proceed with an action would have to make a separate application to Court to do so and could not be given this relief in the judicial management order.

In *Samuel Osborn (SA) Ltd v United Stone Crushing Co (Pty) Ltd (under judicial management)*⁷⁰ it was held that "all actions" refers to future as well as pending proceedings. The learned judge went on to say, when considering that proceedings may not be proceeded with, without leave of Court,

".... it is inequitable that by the refusal of leave, the applicant should be deprived of the possession and

68 This was formerly s 197(B)(1) bis which was introduced in the 1952 amending Act.

69 Henochsberg *op cit* p 753 para 2

70 1938 WLD 229; see also *Irvin and Johnson Ltd v Oelofse Fisheries Ltd (supra)*

Section 428 cont.

use of the property, with at least the potential risk of depreciation, for the benefit of creditors, of whom it is not one, (the transaction related to a hire-purchase contract which applicant had cancelled because of default) when the applicant stands to gain nothing by the eventual success of the judicial management

In the present case, from the point of view of the civil law, the respondent has no more right to the retention of the applicant's property than if it had got into possession of such property by a criminal act. The respondent company, in effect, is asking the Court by the exercise of discretion in its favour to aid and abet in the continuance of an illegality. The position is different where, e.g., leave is sought to claim a money judgment where liability is not disputed. In such a case there would be no point in obtaining judgment without the right to execute and the result of granting leave to execute in such a case might well result in a preference to a creditor to which in law he is not entitled".⁷¹

Although this case was decided under the 1926 Act, the principle remains valid.

Where, however, there was doubt as to whether the creditor had grounds for cancellation of certain agreements and he wished to institute action for cancellation and subsequent return of the equipment, and such action would result in the demise of the company, the Court refused to grant the order.⁷²

71 *supra* at 235

72 *Western Bank Ltd v Laurie Fossati Construction (Pty) Ltd (under judicial management) : Western Bank Ltd v Laurie Fossati Plant Hire (Pty) Ltd (under judicial management)* 1974(4) SA 607(E)

Section 428 cont.

In *Ross v Northern Machinery and Irrigation (Pty) Ltd*⁷³ the Court granted the applicant leave to institute action for arrear salary and for damages for wrongful dismissal by the judicial managers. The Court, however, will not give the applicant leave to enforce the judgment without the Court's permission; the object being merely to facilitate the ascertainment of the rights of the claimant and not to give him preference over other creditors.

Although a creditor, in a judicial management situation, is not entitled to enforce a right, it does not follow that the debtor is entitled to delay performance of the corresponding obligation. In the case of *New Union Goldfields Ltd v Cohen and others*⁷⁴ it was held that prescription of a creditor's claim against the company was not suspended while the company was under judicial management. Likewise, a landlord under a lease may not sue for the payment of rental while the company is under judicial management without leave of the Court, but notwithstanding this bar, the lessor will be entitled to cancel the lease if there is a forfeiture clause and the lessor will then be a trespasser.

The terms of the order may be varied

Subsection (3) gives the applicant, any creditor or member, the provisional judicial manager, or the Master, the right at any time to apply to the Court to vary the terms of such order or to discharge it.

73 1940 TPD 119

74 1954(2) SA 397(AD)

Section 428 cont.

In *Ruskin N O v Tiger Hardware and Plumbing Requisites*⁷⁵ it was held that a provisional judicial manager has *locus standi* to apply on the return day for the discharge of the provisional order and for its replacement by a winding-up order. The learned judge, Trollip J., based his decisions on the wording of the 1926 Act as amended and there have of course been substantial changes in the 1973 Act, particularly relating to the duties of a provisional judicial manager. Some of the reasoning would no longer be valid because of the specific duties now assigned to a provisional judicial manager, in particular his duty to report to creditors before the return day. In practice, the Master is unable to convene the first meeting of creditors before the return day which is usually about three weeks after the provisional order is granted. The return day is then usually postponed for a further period to enable the meeting to be held. However, the provisional judicial manager might have come to the conclusion at a very early stage that the judicial management could not work and that the company should be placed in liquidation.

In the unreported case of *Christopher Bellingan v Isothern (Pty) Ltd*⁷⁶ it was held that the provisional judicial manager has no *locus standi* to apply for the liquidation of the company. It is the writer's view that this decision is incorrect and the matter is discussed fully *infra* at page 99 *et seq.*

Where delay would not be disastrous the powers of a provisional judicial

75 1968 (1) S A 505 T

76 1976 CPD Unreported case M.1954/75. See Annexure VI

Section 428 cont. Section 429

manager should not be varied on application made after the issue and before the return day of the rule *nisi*.⁷⁷

The Court will not vary the order unless it furthers the purpose of the judicial management. It may be for a specific reason, e.g. to allow three joint judicial managers to act in the temporary absence of their fourth joint judicial manager.⁷⁸

SECTION 429 : CUSTODY OF PROPERTY AND APPOINTMENT OF PROVISIONAL JUDICIAL MANAGER ON THE GRANTING OF JUDICIAL MANAGEMENT ORDER

Upon the granting of a provisional judicial management order -

- (a) all the property of the company concerned shall be deemed to be in the custody of the Master until a provisional judicial manager has been appointed and has assumed office;*
- (b) the Master shall without delay -*
 - (i) appoint a provisional judicial manager (who shall not be the auditor of the company or any person disqualified under this Act from being appointed as liquidator in a winding-up) who shall give such security for the proper performance of his duties in his capacity as such, as the Master may direct, and who shall hold office until discharged by the Court as provided in section 432(3)(a);*
 - (ii) convene separate meetings of the creditors, the members and debenture-holders (if any) of the company for the purposes referred to in section 431.*

77 *Ex parte Morgan and another : In re Textile Mills (1947) Holdings Ltd 1958(2) PH E15*

78 *Ex parte Busansky N O and others 1949(2) SA 598(W)*

Section 429 cont.

Commentary :

Section 429 is virtually the previous section 196 bis of the 1926 Act, which section was introduced by Act No. 46 of 1952 as a result of recommendations made by the Millin Commission.

Before the introduction of section 196 bis, the Court was asked to appoint a provisional judicial manager on the granting of a provisional order, which appointment was then confirmed on the return day. Creditors therefore had little voice in the matter. The Millin Commission therefore recommended⁷⁹ that the Master appoint a final judicial manager after meetings of creditors and shareholders in the same manner as a liquidator is appointed.

The Millin Commission also recommended that the same disqualifications apply to judicial managers as to liquidators and also that the company's auditor be disqualified since his services as an auditor continue, and also that judicial managers be required to furnish security for the due performance of their duties. These recommendations were incorporated in the 1952 amending Act.

As a result of the appointment of a judicial manager being taken out of the hands of the Court and handed over to the Master, certain changes were necessary to section 196 and thus 196 bis (1) provided for all property to be deemed to be in the control of the Master until he appointed a provisional judicial manager.

Section 429 cont.

Although section 429 is in content virtually the same as the previous section 196 bis, the section has been reworded and re-arranged. It also has allowed, in section 429(b)(ii), for the wider powers and duties now given to provisional judicial managers. Under section 196 bis (4) separate meetings of creditors and members were convened by the Master for the purpose of enabling creditors to nominate the person or persons whom they wish to be appointed as judicial managers. Now under section 429(b)(ii) a separate meeting of debenture-holders (if any) has also to be convened.

The Master in area where registered office is situate

Section 12 of the Act founds jurisdiction with the Court where a company has its registered office or where it has its main place of business. Section 1 defines Master as the Master of the Supreme Court having jurisdiction in the area where the registered office of such company is situated. This means that where a company has its registered office in a different Provincial or Local Division to its principal place of business, and if application for liquidation or judicial management is brought in the Court having jurisdiction by reason of its principal place of business, then a Master in a different Local or Provincial Division to that in which the application was granted would take control of the assets of the company, appoint the provisional judicial manager and generally take charge of the administration of the company. This is an anomaly in

Section 429 cont.

the Act and should be rectified. It should clearly be the Master of the Court that grants the order.

Appointment of provisional judicial manager

The Master has complete discretion in making the appointment of a provisional judicial manager although in practice he is guided by the wishes of creditors. Section 431(4) states that the provisions of the Act relating to the appointment of a liquidator shall apply *mutatis mutandis* to the appointment of a final judicial manager. Section 369 states that the Master shall nominate the person or persons nominated by the meetings referred to in section 350 and 364. Section 350 relates to voluntary winding-up. The meetings referred to in section 364 are meetings of members and of creditors, each of whom nominates a person for appointment as final liquidator.

Section 365(2) applies the provision of the law relating to insolvency in respect of voting, i.e. sections 52 and 54 of the Insolvency Act. Section 54(3)(b) states that if one person has obtained a majority of votes in value and another a majority in number, both such persons shall be elected trustees.

The Insolvency Act deals only with meetings of creditors whereas in the case of a company, the Act also requires a meeting of members for the nomination of a liquidator. Each meeting could nominate two different persons for appointment, i.e. one person on number of creditors, a different person on value of creditors, a third person on number of members' votes and a fourth on value of members' votes.

Section 429 cont.

The Act has provided in section 369(2)(b) that in such a case, i.e. where the said meetings have nominated different persons, the Master shall decide the difference and appoint all or any of the persons so nominated, as he thinks fit.

In the case of a judicial management, however, section 429(b)(ii) has introduced a third meeting, namely that of debenture-holders, whose wishes must be considered when making the appointment of a final judicial manager. If all three meetings nominate the same person, then, subject to the provision of section 370, the Master must appoint that person. If different persons are nominated, then he may appoint any one or all of them.

As mentioned above, the Master has complete discretion in the appointment of a provisional judicial manager but the Master tends to apply the criteria for the appointment of a final judicial manager. The practice does, however, vary amongst the various Masters. In the Transvaal and Natal, for example, the Master will be guided only by value when making an appointment of a provisional liquidator. In the Cape both number and value are considered.

It is interesting to note that section 431(2)(b) provides for the nomination of "the person or persons who shall be submitted ... for appointment as final judicial manager or managers". It would seem, therefore, that in confining itself to the singular in Section 429(a), the Legislature intended a sole-appointment for a provisional judicial manager and that the Master may be incorrect in making joint provisional

Section 429 cont.

appointments, although section 7 of the Interpretation Act (No. 33 of 1957) provides for the singular to include the plural unless the contrary appears from the text. Section 374 gives the Master the right to appoint a co-liquidator at any time. However, as mentioned previously, the definition of liquidator includes a provisional liquidator whereas the definition of judicial manager refers specifically to a final judicial manager. It is doubtful, therefore, whether the Master may use his discretion to appoint a co-provisional judicial manager.

Although section 429(a) refers to the appointment of a provisional judicial manager in the singular, joint appointments are frequent in practice. However, as judicial managers are usually rewarded on a time basis, it is preferable not to burden an already ailing company with unnecessary expense, and joint appointments should only be made in large and complex cases.

In *Goodman and another v Capital Match Corporation Ltd*⁸⁰ it was held that as few judicial managers should be appointed as is compatible with the reasonable needs of the particular company, and in general different classes of persons need not be appointed as judicial managers.

The provisional judicial manager shall not be any person disqualified under this Act from being appointed a liquidator

Section 372 sets out in full persons disqualified from appointment as

80 1950(1) PH E3; followed in *Ex parte Morley & Co : In re Mining Material Merchants Ltd v Miodownik & Co (Pty) Ltd (supra)*; also *Ex parte Uis Tin Mining Co (South West Africa) Ltd and others*. 1954(2) PH E10

Section 429 cont.

a liquidator and section 373 deals with circumstances in which the Court may disqualify a person from being appointed or acting as a liquidator. A practice has developed recently in the Cape Courts for the Court, when granting an order for provisional judicial management, to stipulate that no person who is the judicial manager or liquidator of a subsidiary or associated company may be appointed as judicial manager or liquidator of the company which forms the substance of the application.⁸¹ This is clearly incorrect as the Court has no authority to prescribe to the Master who he may or may not appoint, except in terms of section 373 which has limited application.

In the recent case of *Theron v Natal Markagente (Edms) Bpk*⁸² it was held that nobody should be appointed as a judicial manager, provisional or otherwise, unless he is disinterested and free to act independently and impartially. In this case the applicant's attorney had been appointed provisional judicial manager and the Court felt that the attorney for the party seeking relief can seldom, if ever, be relied upon for impartial advice. Didcott J., went on to say,

"It is true that Mr. Meyer (the attorney) was not hit by any specific statutory disqualifications Nobody should be appointed as a judicial manager, provisional or otherwise, unless he is disinterested and free to act independently and impartially. Such have frequently been held to be the essential attributes of a liquidator despite the legislation's silence on the point."

81 Unreported case of *S J Stott v Bondvoy Properties (Pty) Ltd* 11 Mar 1977 CPD Case No. M.405/77. see Annexure VII

82 1978(4) SA 898(N)

Section 429 cont.

The learned judge then cited a number of cases and went on to say that this principle of impartiality should apply to judicial managers and particularly to provisional judicial managers as they had to advise creditors as to whether judicial management should ensue.

Shall give such security for the proper performance of his duties

The security given is usually in the form of a bond or guarantee issued by an insurance company or a bank. The amount is set by the Master and is usually for the gross value of the assets of the company. Details of the company's assets are normally set out in the affidavit which accompanies the application to Court.

Who shall hold office until discharged by the Court in terms of section 432(3)(a)

Section 432(3)(a) states, *inter alia*, that a final judicial management order shall vest the management of the company in the final judicial manager and shall where necessary discharge the provisional judicial manager.

Where the provisional judicial manager is appointed as the final judicial manager, it is not necessary for him to be discharged. This is made clear by the words "where necessary" at the end of section 432(3)(a).

This provision does not affect in any way the operation of sections 372 or 373, which sections are made applicable by section 429(b)(i), as the Court may in terms of section 373 disqualify a person from holding office without discharging him in terms of section 432(3)(a).

Section 429 cont.

Convene meetings of creditors, the members and debenture-holders

Separate meetings must be convened and held in the manner prescribed by section 412.⁸³ It is not clear why debenture-holders are given special attention, because they are creditors of the company, just like any other creditors. A debenture may be secured or unsecured. In *Coetzee v Rand Sporting Club*⁸⁴ Ward J. said ,

"I am not aware that the word 'debenture' has been defined precisely. Bowen L.J. says in *English and Scottish Mercantile Investment Co v Brunton* (1892) 2QB 700 at 712 'It seems that there are three usual forms of debentures The first is a simple acknowledgment, under seal, of the debt; the second an instrument acknowledging the debt and charging the property of the company with repayment; and the third an instrument acknowledging the debt, and charging the property with repayment, and further restricting the company from giving any prior charge'. It does not follow that there may not be other forms, but it is not necessary to go into that. I think the word imports an acknowledgment of debt. It is derived from *debentur*. Stroud says it seems to have originated from *debentur mihi* with which various forms of acknowledgment commenced".

Section 1 of the Act defines debenture as including debenture stock, debenture bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

83 See comment under s 431 *infra*

84 1918 WLD 74 at 76

Section 430

SECTION 430 : DUTIES OF PROVISIONAL JUDICIAL MANAGER UPON APPOINTMENT

A provisional judicial manager shall -

- (a) assume the management of the company and recover and reduce into possession all the assets of the company;*
- (b) within seven days after his appointment lodge with the Registrar, under cover of the prescribed form, a copy of his letter of appointment as provisional judicial manager; and*
- (c) prepare and lay before the meetings convened under section 429(b)(ii) a report containing -*
 - (i) an account of the general state of the affairs of the company;*
 - (ii) a statement of the reasons why the company is unable to pay its debts or is probably unable to meet its obligations or has not become or is prevented from becoming a successful concern ;*
 - (iii) a statement of the assets and liabilities of the company;*
 - (iv) a complete list of creditors of the company (including contingent and prospective creditors) and of the amount and nature of the claim of each creditor;*
 - (v) particulars as to the source or sources from which money has been or is to be raised for purposes of carrying on the business of the company; and*
 - (vi) the considered opinion of the provisional judicial manager as to the prospects of the company becoming a successful concern and of the removal of the facts or circumstances which prevent the company from becoming a successful concern.*

Section 430 cont.

Commentary :

This section is an innovation flowing from the recommendations of the van Wyk de Vries Commission. Although subsection 430(a) is the same as the previous subsection 197(a), the rest of the section dealing with the duties of the provisional judicial manager are new provisions for the purpose of furnishing information from which creditors and members can decide whether to proceed with judicial management or convert to liquidation. Previously the Court, particularly in an unopposed application, had very little information on which to base its decision when granting a final order of judicial management.

Although the previous Act in subsections 195(5) and (6) provided for a report by the Master and gave him power to call for books and information relating to the company's affairs, it proved to be a dead letter because firstly the Master's Office is overburdened and not a suitable vehicle for this type of investigation and secondly there was no provision for the collective opinion of creditors to be made available.

Subsections 195(5) and (6) were introduced in 1952 as a result of the findings of the Millin Commission which stated that the Court did not have sufficient information on which to grant a final order, but these sections proved to be inadequate for the two reasons given above.

Section 430 cont.

Subsection 195(7) of the 1926 Act also allowed the Court to call for an investigation into the affairs of the company in terms of section 95 bis (1)(a)(ii) of the 1926 Act by an inspector appointed by the Minister. Section 95, however, related to circumstances where there was a suggestion of fraud or because members had not been given all the information which they might reasonably expect. But this investigation would usually only be prompted where the application was opposed; but as already stated, the majority of applications are unopposed.

The introduction of section 430 has now removed the need for subsections 195(5), (6), (7), (8) and (9) of the 1926 Act. Subsection 195(7) of the old Act is now replaced by section 258 of the new Act but does not apply to companies under judicial management. The judicial manager, however, does have power under subsections 433 (j) and (k) to conduct an examination of the company's affairs and report thereon and in terms of section 439 (which makes applicable section 417) may inquire into the conduct of any persons involved with the company.

Assume management and recover all assets

The provisional judicial manager steps into the "shoes" of the directors of the company - such directors being divested of any managerial function unless specifically assigned a particular function by the provisional judicial manager.

Section 430 cont.

A provisional judicial manager's first task is to recover the assets of the company, which includes the collection of debts due to the company. He should immediately take stock so as to ascertain what assets the company has.

It is submitted that the learned author Henochsberg is incorrect when he says⁸⁵ that the provisional judicial manager can, with the authority of the Court, call up uncalled share capital. Section 4(2) of the 1973 Act states that : "any existing company which has issued any shares which are not fully paid up, shall remain subject to the provisions of the repealed Act"

Consequently the judgment in *De Jager v Karoo Koeldranke en Roomys (Edms) Bpk (supra)* is still valid. In giving judgment, Rosenow, A.J. said,

"... in the view of the Legislature, the calling up of uncalled share capital, at the stage reached when a company is placed under judicial management, is a matter relating rather to liquidation and in terms of para (h) of section 197 the judicial manager must not take it upon himself to liquidate. It may be argued that under section 196(1)(d) the Court is vested with wide powers relating to the management of the company, but on the other hand it is difficult to see how the Court can grant the judicial manager a power that the Court itself does not possess, inasmuch as, in terms of section 150, the Court can only make calls after making a winding-up order".⁸⁶

85 Henochsberg *op cit* notes on p 755

86 at 600

Section 430 cont.

Lodge letter of appointment

The prescribed form is CM 40 and is the same form as is submitted by a liquidator. It must be affixed with a R2,00 revenue stamp.

Change of company's name

In terms of section 49(5), if a company is under judicial management, the statement "under judicial management" shall be included in the name of the company concerned. A similar change of name is required where a company is in liquidation. Section 49(7) requires the liquidator or the judicial manager, as the case may be, to apply to the Registrar within seven days after his appointment (or discharge) for such statement to be added (or omitted). The prescribed form is CM 9C and must be affixed with a R1,00 revenue stamp.

The definition of judicial manager means a final judicial manager, unlike the definition of liquidator which includes a provisional liquidator. It would seem therefore that there is no obligation on a provisional judicial manager to apply for a change of name, although in practice it is done.

Provisional judicial manager's report

The provisional judicial manager must prepare and lay before meetings of creditors and members a report containing :

- (i) An account of the general state of affairs of the company.

This section of the report should state the nature of the company's business; and its standing in the market place.

Section 430 cont.

It should also comment on its previous trading results, giving the date of its last audited financial statements and the state of the company's books and records. Details of turnover should be supplied with a comment on the trend since the last financial statements. Lastly the provisional judicial manager should comment on whether there is adequate management to run the business, particularly on the technical and marketing side as a judicial manager's strength usually lies on the administrative side.

- (ii) Reasons why the company is unable to pay its debts or is probably unable to meet its obligations. The meaning of the phrases "unable to pay its debts" and "unable to meet its obligations" are discussed under section 427 *supra*.

Invariably, a company is unable to pay its debts because of an inadequate cash flow. The report must give the underlying reasons for the liquidity crisis so that creditors and the Court can decide on whether such causes can be overcome.

- (iii) A statement of the assets and liabilities of the company.

Where possible the last available balance sheet should be set out with full up-dating and supportive notes. In particular the notes should deal with :

- (a) the market value of the assets,
- (b) the condition of stock and its possible redundancy,
- (c) the recovery of debtors,
- (d) whether any of the assets are encumbered and if so, to whom and how,
- (e) contingent liabilities.

Section 430 cont.

- (iv) A complete list of creditors of the company (including contingent and prospective creditors) and of the amount and nature of the claim.

It is seldom possible to compile a "complete" list without an actual audit of the company's books. As complete a list as is reasonably possible is what is required.

- (v) Funds to carry on the business.

As liquidity problems are usually the immediate cause of a company being placed under judicial management, it is important to show that the company will have access to funds necessary to carry on the business if the order is granted.

Provided the book debts of the company have not been ceded to a creditor as security for a loan, then the moratorium which is usually part of the Court order, means that the company should immediately have an improved cash flow. Pre-judicial management creditors do not have to be paid for the time being. However, the loss of confidence which usually accompanies a judicial management order frequently means that creditors who continue to supply the company demand cash or offer very short credit facilities. The report should state, if possible, whether the company's major suppliers have indicated if they will continue to supply and on what terms. Also whether facilities can be obtained from a financial institution such as the company's bankers or shippers. Here it is important to mention if there are unencumbered assets which may be offered as security in order to obtain such facilities.

Section 430 cont.

The report should also comment on whether there are any redundant assets or parts of the business which are out of keeping with any profitable business of the company which the final judicial manager could apply, in terms of section 434(1), to sell and thus provide additional funds.

- (vi) The considered opinion of the judicial manager as to the prospects of the company becoming a successful concern. The possibility of rationalisation of the business and the reduction of unnecessary expenditure should be mentioned under this heading. The provisional judicial manager will presumably base his opinion on a projected profit and loss account and a projected cash flow statement and if they are available they should be attached to the report as annexures.

In *Ladybrand Hotel (Pty) Ltd v Segal and another*⁸⁷ Erasmus J. made the following comments on the duties of a provisional judicial manager :

"The duties of a provisional judicial manager are dealt with by section 430 of the Act. Subsection (c) thereof enjoins him to prepare and lay before the meetings of creditors convened under section 429(b)(ii) a report containing the information mentioned in subsection (c). Subsection (c)(vi) gives him the right to express his considered opinion as to the prospects of the company becoming a successful concern and of the removal of the facts or circumstances which prevent the company from becoming a successful concern. The Act gives him as far as I can see this right only in respect of his report

Section 430 cont.

Section 431

which must be submitted to the creditors at the meetings concerned and it is no business of his to submit, if and when he prefers, further uncalled for reports or opinions and facts exclusively to an applicant company with a view to fostering its application. Neither is the Judge called upon by the Act to consider such further ill-conceived reports by the provisional judicial manager".

Exemption from liability in respect of the report

Section 8(2) of the Act states that no action shall be instituted against, *inter alia*, a provisional judicial manager or a judicial manager in respect of any opinion expressed or statement made in good faith in the ordinary course of his duties unless it was made maliciously or negligently.

May anticipate the return day

Although no duty is cast on the provisional judicial manager, he has the right, in terms of section 428(3) to apply to Court, at any time, for the order to be discharged.

SECTION 431 : PURPOSE OF MEETINGS CONVENED UNDER SECTION 429(b)(ii)

- (1) *Any meeting convened under section 429(b)(ii) shall be presided over by the Master or a magistrate having jurisdiction in the area where the meeting is held and shall be convened and held in the manner prescribed by section 412 in respect of a meeting in the winding-up of a company.*

Section 431 cont.

- (2) *The purpose of any such meeting shall be -*
- (a) *to consider the report of the provisional judicial manager under section 430(c) and the desirability or otherwise of placing the company finally under judicial management, taking into account the prospects of the company becoming a successful concern;*
 - (b) *to nominate the person or persons (not being disqualified under section 429(b)(i)) whose names shall be submitted to the Master for appointment as final judicial manager or managers; and*
 - (c) *in the case of any such meeting of creditors, the proving of claims against the company.*
- (3) *The chairman of any such meeting shall prepare and lay before the Court a report of the proceedings of such meeting, including a summary of the reasons for any conclusion arrived at under subsection (2)(a).*
- (4) *The provisions of this Act relating to the proof of claims against a company which is being wound up and to the nomination and appointment of a liquidator of any such company shall mutatis mutandis apply with reference to the proof of claims against a company which has been placed under judicial management and the nomination and appointment of a judicial manager of such a company.*

Section 431 cont.

Commenatary :

This is a new section as under the 1926 Act no meetings of creditors or members were called until after the final order had been granted. Section 196 bis (4) provided for meetings of creditors and members to be called after the final order to nominate persons whose names should be submitted for appointment as judicial managers and also for the proof of claims in that it applied sections 124, 125 and 127 of the 1926 Act to judicial management.

This is, therefore, a new section flowing from the recommendations of the van Wyk de Vries Commission so that these steps are now taken prior to a final order; it also incorporates the consideration by members and creditors of the provisional judicial manager's report which did not formerly exist.

Convening of meetings

Any meeting convened under section 429(b)(ii) shall be convened and held in the manner prescribed by section 412. Section 412 applies the provisions of the Insolvency Act (Act No. 24 of 1936) to the manner in which meetings of creditors are to be held. In the case of meetings of contributories, the meeting is to be held in the manner prescribed by regulation.

In terms of section 39 of the Insolvency Act, the Master nominates where the meetings are to be held and he will choose a place which he considers most convenient for all parties concerned. In practice

Section 431 cont.

he chooses the magisterial district in which the company has its principal place of business. All meetings of creditors held in a district in which there is a Master's Office shall be presided over by the Master. Meetings of creditors held in any other district are presided over by the magistrate of that district.

In terms of sections 40(1) and (2) of the Insolvency Act, the meeting must be convened by notice in the *Government Gazette*, although in terms of the proviso to section 364(2)⁸⁸ the Master may direct the company concerned or its provisional liquidator to send a notice of the meeting by post to each creditor of the company.

No notice period is stipulated within which the Master must publish his notice.

In terms of regulation 7(1)⁸⁹ meetings of members, contributories or debenture-holders referred to in section 429(b)(ii) of the Act shall be summonsed by the Master by notice in the *Gazette* on a date not less than ten days before the date upon which the meeting is to be held. There is a similar proviso as contained in section 364(2) mentioned above.

The purpose of such meetings

There are three main objects. Firstly to recommend whether the company should be placed under final judicial management. Secondly to nominate

88 Which is made applicable by the words "save as otherwise provided in this Act" in s 412

89 Regulations in terms of s 15 of the Companies Act 1973 (Act No. 61 of 1973) for the winding-up and judicial management of companies. Published under Government notice No. 2490 dated 28 Dec 1973 contained in Regulation Gazette No. 1909 (vol 102, No. 4128)

Section 431 cont.

a person or persons for appointment as final judicial manager, and thirdly, in the case of a creditors' meeting, to prove claims.

In practice few, if any, creditors attend these meetings. The substantial changes introduced by the 1973 Act sought to obtain far greater participation of creditors but except in a very large matter and except for some institutional creditors, few creditors show interest and leave the decision to the provisional judicial manager. Creditors usually return completed proof of claim forms, together with a blank power of attorney form to vote at the meeting for the appointment of the final judicial manager. The provisional judicial manager then asks a colleague to vote, using the various powers of attorney to accept his report and to nominate him as the final judicial manager.

Chairman's report

The Chairman of the meetings, who is usually an assistant Master (nominated by the Master) or a magistrate, must prepare a report recording the resolutions taken in terms of subsection (2)(a), summarising any arguments which may have been advanced for or against placing the company under final judicial management. The provisional judicial manager's report is usually attached to this report but if it is not, the applicant should place it before the Court on the return day in view of the provisions of section 432(2)(b). The record of resolutions will show the number and value of creditors who voted for

Section 431 cont.

and against the resolution. In addition, in terms of section 432(2)(c) the Court requires details in number and value of creditors who did not prove claims and the nature of their claims.

Proof of claims

Claims are proved in the same manner as the proof of claims against a company which is being wound up. Claims in a winding-up are proved in terms of section 366, which applies, *mutatis mutandis*, the provisions of the law relating to the proof of claims against an insolvent estate.⁹⁰

Nomination and appointment of a judicial manager

The provisions of the Act relating to the nomination and appointment of a liquidator shall apply *mutatis mutandis* to the nomination and appointment of a final judicial manager. This matter has been dealt with under section 429 above.⁹¹

It should be noted that section 371 which is made applicable *mutatis mutandis* in terms of section 431(4) provides for written representation to be made to the Minister of Justice by any person aggrieved by an appointment made by the Master or by his refusal to accept a nomination for appointment.

Where all meetings nominate the same person for appointment, then the Master is obliged in terms of section 369(2)(a) to appoint that person, subject to the provision of section 370. Where the meetings

90 See ss 44 to 51 of the Insolvency Act. (No. 24 of 1936).

91 pp 74 to 76 *supra*

Section 431 cont.

nominate different persons he must nominate all or any of them as he thinks fit, in terms of section 369(2)(b). It is submitted that he must appoint at least one of the persons so nominated although he has the power to nominate any other person as a co-judicial manager in terms of section 374 which is made applicable *mutatis mutandis* in terms of section 431(4).

Prior to Act No. 46 of 1952, the Court was required to appoint a provisional judicial manager or a final judicial manager. Appointments are now made by the Master and decisions in cases such as *S A Neckwear (Pty) Ltd v Dagbreek Kontant Winkel (Edms) Bpk*⁹² and *Ex parte Morley & Co : In re Mining Material Merchants Ltd v Miodownik & Co (Pty) Ltd (supra)* are therefore no longer applicable. The former case decided that a provisional judicial manager is entitled to be heard on the question whether or not he is to be appointed a final judicial manager. The latter case dealt with the appointment of a co-judicial manager because of his special knowledge of the type of business.⁹³ While such cases may guide the Master when he uses his discretion in making an appointment they are not binding on him.

There is no specific provision for the filling of a vacancy where this occurs in a judicial management. However, section 431(4) applies the provisions of the Act relating to the appointment of liquidators, *mutatis mutandis*, to the appointment of judicial managers and such a situation would therefore be covered by section 377.

92 1952(3) SA 697(0)

93 See also *In re United Provident & Assurance Association of South Africa Ltd, Toucher & others v Barrow & others* 1932(2) PH E16

Section 431 cont. Section 432

Co-judicial managers must act jointly

The judicial managers of a company must act jointly. The will of the majority may not prevail where one of the judicial managers dissents.⁹⁴

Security

A final judicial manager must furnish security for the proper performance of his duties to the Master as section 431(4) applies the winding-up provisions, *mutatis mutandis*, to the appointment of a judicial manager. Section 375 of the winding-up provisions requires a liquidator to furnish such security before the Master will appoint him.

SECTION 432 : RETURN DAY OF PROVISIONAL ORDER OF JUDICIAL MANAGEMENT AND POWERS OF THE COURT

- (1) *Any return day fixed under section 428(1) shall not be later than sixty days after the date of the provisional judicial management order but may be extended by the Court on good cause shown.*
- (2) *On such return day the Court may after consideration of -*
 - (a) *the opinion and wishes of creditors and members of the company:*
 - (b) *the report of the provisional judicial manager under section 430;*

Section 432 cont.

(c) *the number of creditors who did not prove claims at the first meeting of creditors and the amounts and nature of their claims;*

(d) *the report of the Master; and*

(e) *the report of the Registrar,*

grant a final judicial management order if it appears to the Court that the company will, if placed under judicial management, be enabled to become a successful concern and that it is just and equitable that it be placed under judicial management, or may discharge the provisional order or make any other order it may deem just.

(3) *A final judicial management order shall contain -*

(a) *directions for the vesting of the management of the company, subject to the supervision of the Court, in the final judicial manager, the handing over of all matters and the accounting by the provisional judicial manager to the final judicial manager and the discharge of the provisional judicial manager, where necessary;*

(b) *directions as to the rate of remuneration of the final judicial manager;*

(c) *such other directions as to the management of the company, or any matter incidental thereto, including directions conferring upon the final judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders, as the Court may consider necessary.*

Section 432 cont.

(4) *The Court which has granted a final judicial management order, may at any time and in any manner vary the terms of such order on the application of the Master, the final judicial manager or a representative acting on behalf of the general body of creditors of the company concerned by virtue of a resolution passed by a majority in value and number of such creditors at a meeting of those creditors.*

Commentary :

Subsections (1) and (2) are completely new; previously a provisional judicial manager did not report to Court and nor did the Court consider the wishes of the creditors and members of the company before granting a final order. These provisions flow from the recommendations of the van Wyk de Vries Commission which recommended fuller investigation by a provisional judicial manager and greater involvement of creditors before the Court is asked to grant a final order. Previously sections 195(4) and (5) had merely called for a report from the Master.

Subsection (3) is a new section but it follows closely the old 196(1) and (2) and has been modified to allow for section 428 which now provides for a provisional judicial manager. This section makes no reference to "stay of proceedings" as does section 428 of the new Act and 196 of the old Act. Presumably this is covered by the provisional order which says that "while the company is under judicial management, all actions etc. are stayed".

Section 432 cont.

Subsection (4) is similar to 196(2) of the 1926 Act but it has been expanded to state who may apply to vary the order.

The return day

The applicant for a provisional judicial management order has the right to anticipate the return day and apply for the discharge of the rule.⁹⁵ No notice thereof need be given to other creditors.

Henochsberg states :

"If it emerges before the return day, as a result of the meetings referred to in section 431 or otherwise, that there is no longer any reasonable probability that the company will, under judicial management, be enabled to become a successful concern and that it should be placed in liquidation, there is no reason why the provisional order should be unnecessarily prolonged but, on the contrary, good reason for it to be discharged as soon as possible".⁹⁶

This view appears to be sound, as section 428(3) allows the Court, at any time, on the application of the applicant, a creditor or member, the provisional judicial manager or the Master, to discharge the order. Although section 428(3) does not specifically state that these persons may also simultaneously apply for a winding-up order it would seem to be implied. It is clear that the applicant has the right to anticipate the return day and apply for the discharge of the provisional judicial management order and at the same time apply for a provisional winding-up order.⁹⁷

95 See *Turner v V L Brink Ltd* 1959(4) SA 328(C) and *Ex parte Simon* 1964(3) SA 157(SR)

96 Henochsberg *op cit* notes to s 432 on p 759

97 See *Ex parte Simon (supra)*

Section 432 cont.

An application for the discharge of a provisional judicial management order can only be made on one of two grounds, namely, either the company is viable and therefore does not need the relief provided by the order, or alternatively the company is irretrievably insolvent and should be wound up. In the former case, where the company is found to be viable, little harm, if any, could result by delaying until the return day and then asking for the discharge of the order. On the other hand, if the company is hopelessly insolvent, even a week's delay in applying for a winding-up order may result in the loss of a considerable amount of money. In giving, *inter alia*, the Master and the provisional judicial manager the right, in section 428(3), to anticipate the return day and apply for the discharge of the order, it would seem that it was this latter situation that the Legislature sought to remedy.

Although the provisional judicial manager has the right in terms of section 428(3) to anticipate the return day, it has been held that he does not have *locus standi* to simultaneously apply for the winding-up of the company.

In the unreported case of *Christopher Bellingan v Isotherm (Pty) Ltd*⁹⁸ (*supra*) Burger J. said,

'Mr. Selikowitz on behalf of the judicial manager submitted that he had *locus standi* and quoted the case of *Ruskin N O v Tiger Hardware Plumbing and Plumbing Requisites (sic)* 1968(1) SALR p 505, and he also referred me to Henochsberg on

Section 432 cont.

Companies, 3rd ed at p 759. The decision in *Ruskin's* case is based upon the wording of sections 197 and 198 of the old Companies Act No. 46 of 1926 (as amended). The wording of the new Act No. 61 of 1973 differs materially from that. In particular, sections 430 and 433 of the new Act draw a distinct difference between the duties of the provisional and the final judicial manager. The power for liquidation of the company is specifically given to the final judicial manager only. (See section 433(2)). This was not the case under the earlier Act.

It seems to me that the attention of the learned author Henochsberg on the Companies Act, 3rd edition, has not been drawn to the change in the wording of the old Act".

The learned judge went on to say that it was also strange that the final judicial manager has to give fourteen days notice to creditors in terms of section 433(2), whereas if the views of Henochsberg are correct, the provisional judicial manager need not give any notice at all. The application was refused on the ground that the provisional judicial manager did not have the *locus standi* to apply for the winding-up of the company.

It is the respectful submission of the writer that this reasoning is not sound. It is true that section 433(2) imposes a duty on the final judicial manager to apply for liquidation if at any time he is of the opinion that the continuation of the judicial management will not enable the company to overcome its difficulties. It is also true that no similar duty is imposed on the provisional judicial manager in section 430. The significant word is "duty", i.e. there is an onus on the

Section 432 cont.

final judicial manager to apply for liquidation once he has come to that opinion. The counterpart to section 433(1) in the 1926 Act was added by the 1952 amending Act as a result of the findings of the Millin Commission (*supra* Chapter I). The intention was to prevent judicial managers from disposing of the assets of the company and conducting an unofficial winding-up.

Section 428(3), however, confers a right, as opposed to an obligation, on the provisional judicial manager, to apply for the discharge of the order at any time. There would be little point in giving the right if it were only to apply to cases where the provisional judicial manager felt that the company was viable, because no harm can result from waiting for the return day to apply for such discharge. Conversely there would be no sense in allowing him to apply for the discharge of the order, where the company was hopelessly insolvent, if he could not at the same time apply for a winding-up order.

The fact that a final judicial manager must give creditors fourteen days notice of his intention to apply for a winding-up order does not affect the argument.

A provisional order is granted on limited facts and prior to a thorough investigation. A final order is only granted once the provisional judicial manager has made an in depth investigation into the company's affairs and reported thereon. The Court will only grant a final order after considering such report and the views of creditors and members and the report of the Master, and only if it is of the opinion that the company will become a successful concern.

Section 432 cont.

It is only to be expected that if the final judicial manager then wishes to reverse what has been so carefully decided, he should give creditors, who participated in the original decision making process, the opportunity of again being involved in the decision to reverse the previous decision.

On good cause shown

In *Cohen Bros v Samuels*⁹⁹ Innes C.J. said,

'Mr. Tindall says the Court has never defined a good cause. In the nature of things it is hardly possible, and certainly undesirable, for the Court to attempt to do so. No general rule which the wit of man could devise would be likely to cover all the varying circumstances which may arise in applications of this nature. We can only deal with each application on its merits, and decide in each case whether good cause has been shown'.

After consideration of

The opinion and wishes of creditors and members will be expressed in the Chairman's report of meetings held in terms of section 431. Section 432(2)(a) refers only to creditors and members and does not refer specifically to debenture-holders although section 429(b)(ii) requires a separate meeting to be held for them. They are, however, creditors of the company¹⁰⁰ and the Chairman of a debenture-holders meeting would submit his report in respect of such meeting.

99. 1906 TS 221 at 224

100 See discussion under section 429(b)(ii) *supra* p 79

Section 432 cont.

The Chairman of the meeting of creditors will have recorded the creditors who proved claims and voted, and the value of those claims. The provisional judicial manager's report must set out the known creditors of the company and the value of their claims. It is therefore possible to estimate the creditors who did not prove claims. It is usually, however, only an estimate as it is often not possible to state with any certainty who are creditors of a company as at the date of the provisional judicial management order.

Where a magistrate presides over the meetings of members and creditors and not the Master, the function of the magistrate is merely to submit a report of the proceedings at each meeting and in particular the reasons for the conclusion on the desirability or otherwise of the judicial management. It is not his function to provide his own views and comments on the merits of the application.¹⁰¹

Master's report

Section 432(2)(d) requires the Master to lodge a report. Under winding-up provisions, however, the Master is not obliged to lodge a report before the Court will grant a winding-up order,¹⁰² and it is merely sufficient to prove that a copy of the papers was forwarded to the Master.

Section 427 applies the provisions of section 346(a) *mutatis mutandis* to an application for a judicial management order. Section 346(a) requires that a copy of the application and of every affidavit confirming the facts stated therein be lodged with the Master.

101 *Ladybrand Hotel (Pty) Ltd v Segal and another (supra)*

102 Section 346(4)(b) and *McLeod v Gesade Holdings (Pty) Ltd*
1958(3) SA 672(W)

Section 432 cont.

Section 346(b), although not made applicable by section 427, states that the Master may report to the Court any facts ascertained by him which appear to him to justify the Court in postponing the hearing or dismissing the application.

As the Act is silent about what must be contained in the Master's report in a judicial management he presumably can, as in section 346(b), report on any facts which appear to him to justify the Court in postponing or dismissing the application. He will also, presumably, go further when reporting in terms of section 432 and provide the following additional information :-

- (1) Whether the meetings were convened in terms of section 429(b)(ii) and presided over by him;
- (2) Whether in terms of section 430(c) the judicial manager laid his report before the meeting and whether judicial manager was present;
- (3) Whether or not any claims were submitted for proof and if so what proportion of total creditors as reflected in the judicial manager's report did these constitute;
- (4) Whether the meeting was attended by the directors of the company;
- (5) Whether members and creditors who had proved claims voted for a person or persons to be nominated as the final judicial manager;
- (6) Whether members and creditors who had proved claims were in favour of placing the company into final judicial management.

Section 432 cont.

Registrar's report

The matters on which the Registrar is required to report are not stipulated in the Act. The Registrar's Office advises that his report to Court contains the following information :

"Whether any judicial management or winding-up order has been issued against the company by any other Court which might have jurisdiction, whether at any previous stage in its history a judicial management order or a winding-up order has been issued against the company or whether it has at any time compromised with its creditors and the names of any of its directors which appear on the register to be maintained in terms of section 421 of the Companies Act 1973 (No. 61 of 1973).

Furthermore the report will confirm the correctness of the information furnished to the Court in so far as the company's file is concerned".¹⁰³

If it appears to the Court that it will be enabled to become a successful concern

One of the requirements for granting a provisional judicial management order is that it must be shown that there is a reasonable probability of the company being able to overcome its difficulties and become a successful concern. The words "reasonable probability" do not appear in section 432 and it must appear to the Court that the company will¹⁰⁴ be enabled to become a successful concern. This is considerably stronger than the requirement of "reasonable probability" but the Court then is in possession of far more detail and has the benefit of the provisional judicial manager's investigation into the affairs of the company.

103 See letter dated 30 May 1979. Annexure VIII

104 my emphasis

Section 432 cont.

In *Tenowitz and another v Tenny Investments (Pty) Ltd (supra)* it was stated :

"The test propounded in section 432 of the Act for the granting of a final judicial management order is also more stringent than that under section 195 of the old Companies Act, No. 46 of 1926, which only postulated the reasonable probability test. The use of the word 'will' in section 432 of the Act would seem to suggest that there must be a strong probability amounting almost to a near certainty that the company concerned will become a successful concern if placed under judicial management".¹⁰⁵

If our Courts are to apply, in the future, the test of 'near certainty' then very few companies are likely to be placed into final judicial management. The uncertainty of a company's future sales and supplies which the stigma of judicial management creates makes it extremely difficult to forecast with 'near certainty' what the outcome will be. This may be a step in the right direction as statistics show that far too many companies have been placed into judicial management only to proceed to liquidation.

As was stated in the *Tenowitz* case (*supra*) : "Where a company is unable to pay its debts ... an unpaid creditor has a right *ex debito justitiae* to have it placed in liquidation. The alternative procedure of judicial management must be regarded as a special or extraordinary remedy".¹⁰⁶

105 at 683

106 at 683; see also *Kotzé v Tulryk Bpk en andere (supra)*

Section 432 cont.

A final order shall contain

The words "where necessary" in subsection (3)(a) refer to the situation where the final judicial manager is some person other than the provisional judicial manager. If the two positions are filled by the same person then the provisions of subsection (3)(a) fall away.

Remuneration of a judicial manager has been fully dealt with under section 428 (*supra*).

The limited power of the Court to make orders in terms of the judicial management provisions is discussed fully in section 428 (*supra*) as is also the power to raise money.

Other sections of the Act permit the Court to make certain orders, e.g. section 434(1) may permit the sale of assets and section 439(2) may order that sections 414, 415, 416 and 418 shall apply to judicial management. Such orders can clearly be incorporated in the final judicial management order in terms of subsection (4).

It should be noted that subsection (3) does not refer at all to "a stay in proceedings" against the company while it is under judicial management. This was presumably an oversight by the Legislature as it is provided for specifically in the provisional order in section 428.

The Court may vary the order

The terms of the order may be varied on application of the Master, the final judicial manager or a representative of the general body of creditors.

Section 432 cont.

Such representative must be authorised to act by a resolution passed by a majority in value and number of creditors. The winding-up regulations applicable to the 1926 Act¹⁰⁷ provided that meetings in a judicial management shall be convened in such a manner as the Court, or failing the Court, the Master shall direct. These rules were repealed by regulation 26 of regulations in terms of section 15 of the Companies Act 1973, and there are no similar provisions in the new winding-up regulations.

The learned author, Henochsberg, states :

"A creditor who has failed to induce the Master, or the judicial manager to apply for what he deems to be a desirable variation, must be regarded as having *locus standi* to apply to the Court for an order directing how the meeting of creditors is to be convened and as to who will preside over it".¹⁰⁸

However, section 412 which is made applicable by section 439 applies the law relating to insolvency in relation to any meeting of creditors, save as is otherwise provided in the Act. Section 41 of the Insolvency Act provides for creditors representing one quarter in value of proved claims to compel the judicial manager to convene a general meeting of creditors for obtaining direction on any matter relating to the administration of the company. Presumably such meeting could decide whether to apply for a variation of the order and appoint a representative to act for them. The Legislature in repealing the former winding-up rules in the 1926 Act which dealt with this matter and in not providing similar provisions in the regulations in terms of the 1973 Act, presumably felt that the situation was adequately covered by the provisions of the Act.

107 Rule 26(1)(iii)

108 Henochsberg *op cit* p 760

Section 432 cont.

The consequences of a judicial management order

Moratorium

The granting of a judicial management order has two immediate effects. Firstly it divests the directors of their control of the company and places that control in the hands of a judicial manager nominated by the Master. Secondly, it provides the company with a moratorium against all pre-judicial management creditors.¹⁰⁹ This moratorium flows from section 434(2) which requires the judicial manager first to pay the costs of the judicial management and debts incurred by him in the conduct of the company's business and only if circumstances permit, to pay the claims of pre-judicial management creditors. It is usually reinforced by the Court ordering a stay of actions against the company while under judicial management except with the leave of Court.

It has repeatedly been held by our Courts that judicial management does not bring about a *concursum creditorium*.¹¹⁰ On liquidation a concourse of creditors comes into existence. The estate is, so to speak, frozen and it is no longer possible for any one creditor to do anything which would have the effect of altering the rights of other creditors. This, however, is not the situation in judicial management. The business continues as normal, except pre-judicial management creditors are temporarily under a moratorium.

109 See Gibson *op cit* p 444 and *Estate Loock v Graaf-Reinet Board of Executors (supra)*

110 *Ruskin N O v Amalgamated Minerals Ltd* 1951(1) PH E15(W)
C C A Little & Sons v Niven N O 1965(3) SA 517(SR)
Lief N O v Western Credit (Africa) (Pty) Ltd (supra)

Section 432 cont.

Secured creditors

If the Court has not granted an order in terms of section 428 staying all actions against the company while it is under judicial management, then the rights of a secured creditor to execute on his security are not affected by the judicial management. A judicial management order merely provides the judicial manager with a defence, in terms of section 434(2), against a secured creditor who is demanding payment of an amount owing, that circumstances do not permit the payment of a pre-judicial management debt. Such non payment would probably breach the contract and the creditor would then be entitled to execute on his security.

Where the Court has granted an order staying all actions against the company while under judicial management, then the secured creditor would require the leave of the Court to execute on his security. In all such cases the Court has a discretion but it is unlikely to interfere with a secured creditor's rights if such interference will result in prejudice to that creditor. In *Western Bank Ltd v Laurie Fossati Construction (Pty) Ltd (under judicial management) : Western Bank Ltd v Laurie Fossati Plant Hire (Pty) Ltd (under judicial management) (supra)*¹¹¹ the Court refused to grant a lessor leave to institute action for the recovery of his plant where it felt the lessor would probably not suffer prejudice and the granting of the application would assist in destroying the company.

In Australia, the rights of secured creditors are not affected by the official management.¹¹²

111 See also *Irvin and Johnson Ltd v Oelofse Fisheries Ltd (supra)* and *Samuel Osborn (SA) Ltd v United Stone Crushing Co (Pty) Ltd (under judicial management) (supra)*

112 s 198(3) of the Uniform Companies Legislation

Section 432 cont.

Contracts

Judicial management has no effect on contracts and they continue as normal. The judicial manager may decide to cancel a contract but should the other party suffer damage as a result of such cancellation, an action for damages would lie against the company, but such action could only be brought with the Court's consent while the company is under judicial management.

There is nothing to prevent the judicial manager from coming to an arrangement with a pre-judicial management creditor providing it is in the interests of the company. Thus, where a creditor has a cession of book debts, the judicial manager can agree that this cession continues in order to obtain the use of the cash flow guaranteed by debtors' payments. Likewise he can agree to a notarial bond continuing over the movables of a business in order to prevent the bondholder attaching these assets.

The judicial manager is entitled in terms of section 434(1) to dispose of the company's assets if in the ordinary course of business, and both these cases would fall into that category.

Leases

Similarly a judicial manager may pay arrear instalments due under a lease agreement to prevent the article being repossessed. In *Western Bank Ltd v Laurie Fossati Construction (Pty) Ltd (under judicial management)* : *Western Bank Ltd v Laurie Fossati Plant Hire (Pty) Ltd (under judicial management)* (*supra*) the Court refused to grant an application

Section 432 cont.

for leave to institute action for the cancellation of certain lease agreements and certain ancillary relief where the Court came to the conclusion that the applicant might well suffer no prejudice if the application was refused and that to grant the application would assist in bringing about the destruction of the company which would probably make a substantial profit if allowed to continue.

There appear to be only two other reported cases in which the question of leave to sue, where the Court made an order in terms of section 428(2) (formerly section 196) has been considered, namely *Irvin and Johnson Ltd v Oelofse Fisheries Ltd (supra)* and *Samuel Osborn (SA) Ltd v United Stone Crushing Co (Pty) Ltd (under judicial management) (supra)*. In the former case, the Court stated : "The words 'all actions' (in section 196) can hardly mean only actions already instituted and intend to allow them to be instituted later but not carried into effect".¹¹³

Later in the case, Reynolds J. stated "specially since a Court sparingly exercises its powers under section 196(1)".¹¹⁴

In the latter case, the Court gave leave to a creditor to proceed with an action against the company although it would mean that the company would not continue to carry on business. The Court was satisfied that it was an open question whether the judicial management would be a success, that all the facts regarding the applicant's claim had not been before the Court when the order was granted, that the company was in illegal possession of the subject matter of the application and that the applicant might suffer irremediable loss if he were not allowed to proceed.

113 at 237 A

114 at 244 A

Section 432 cont.

Cession of book debts

In *Goode, Durrant & Murray (SA) Ltd v Glen & Wright N N O (supra)* it was held that there was nothing in the Companies Act pertaining to judicial management which would prevent a cessionary from instituting action against the company's debtors. Diemont J., in his concluding remarks stated,

"The cessionary was irrevocably empowered (before the judicial management order) ... 'to collect, sue and recover the said debts or any of them'. The judicial management order did not qualify this power which is still of full force and effect. On the other hand the fact that the company is now administered by judicial managers does not place the cessionary in a stronger position viz a viz the other creditors. Where debts have been extinguished by payment to the cedent and the proceeds have come into the hands of the judicial managers, such proceeds are not subject to applicant's pledge".¹¹⁵

A judicial management order does not bring about a *concursum creditorum* as in a winding-up.¹¹⁶

Set-off

In *Ruskin N O v Amalgamated Minerals Ltd (supra)* it was held that the placing of a company under judicial management is not much more than substituting a new manager in place of the directors and settling the order in which creditors are to be paid. It therefore cannot be inferred that a judicial management order has the effect of preventing ordinary set-off taking place in the absence more particularly of an appropriate resolution under section 197(B)(1)(b) (now section 435).

115 at 622

116 See *Goode, Durrant & Murray case (supra)*; *C C A Little & Sons v Niven NO (supra)* and *Lief N O v Western Credit (Africa) (Pty) Ltd (supra)*

Section 432 cont.

Section 433

When section 197(B)(2) used the word "paid" it referred to the voluntary acts of the judicial manager, who was required to pay claims in a certain order. It did not refer to the involuntary extinguishing of a debt by an operation of law as in set-off. *Ruskins* case was quoted with favour by Quenet J.P. in *C C A Little & Sons v Niven N O (supra)*.¹¹⁷

Prescription

In *New Union Goldfields Ltd v Cohen and others (supra)* it was held that prescription was not interrupted by the granting of a judicial management order. Greenberg J.A., who delivered judgment, remarked ,

"In cases of insolvency and liquidation of companies provisions is made for the interruption of prescription by s 6(1)(d) and the omission to deal with companies under judicial management may be a *casus omissus* which would be a matter for the Legislature".¹¹⁸

The learned judge was referring to section 6 of the Prescription Act.¹¹⁹

SECTION 433 : DUTIES OF FINAL JUDICIAL MANAGER

A judicial manager shall, subject to the provisions of the memorandum and articles of the company concerned in so far as they are not inconsistent with any direction contained in the relevant judicial management order -

- (a) take over from the provisional judicial manager and assume the management of the company;*

117 at 519

118 at 403

119 Act No. 18 of 1943

Section 433 cont.

- (b) *conduct such management, subject to the orders of the Court, in such manner as he may deem most economic and most promotive of the interests of the members and creditors of the company;*
- (c) *comply with any direction of the Court made in the final judicial management order or any variation thereof;*
- (d) *lodge with the Registrar -*
 - (i) *a copy of the judicial management order and of the Master's letter of appointment under cover of the prescribed form;*
 - (ii) *in the event of the judicial management order being cancelled, a copy of the order cancelling it,*
within seven days of his appointment or of the cancellation of such judicial management order, as the case may be;
- (e) *comply with the requirements of section 173 with which the company would have been obliged to comply if it had not been placed under judicial management;*
- (f) *keep such accounting records and prepare such annual financial statements, interim reports and provisional annual financial statements as the company or its directors would have been obliged to keep or prepare if it had not been placed under judicial management;*
- (g) *convene the annual general meeting and other meetings of members of the company provided for by this Act and in that regard comply with all the requirements with which the directors of the company would in terms of this Act have been obliged to comply if the company had not been placed under judicial management;*

Section 433 cont.

- (h) *convene meetings of the creditors of the company by notices issued separately on the dates on which the notices convening annual general meetings of the company are issued or on which any interim report is sent out to members and in the case of a private company not later than six months after the end of its financial year, and submit to such meetings reports showing the assets and liabilities of the company, its debts and obligations as verified by the auditor of the company, and all such information as may be necessary to enable creditors to become fully acquainted with the company's position as at the date of the end of the financial year or the end of the period covered by any such interim report or, in the case of a private company, as at a date six months after the end of its financial year;*
- (i) *lodge with the Master copies of all the documents submitted to the meetings as provided in paragraphs (g) and (h);*
- (j) *examine the affairs and transactions of the company before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the company has contravened or appears to have contravened any provision of this Act or has committed any other offence, and within six months from the date of his appointment submit to the Master such reports as are in terms of section 400 required to be submitted to the Master by a liquidator, and in relation to which the provisions of that section shall apply;*
- (k) *examine the affairs and transactions of the company before the commencement of the judicial management in order to ascertain*

Section 433 cont.

- whether any director, past director, officer or past officer of the company is or appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company, and within six months from the date of his appointment prepare and submit to the Master and to the next succeeding meeting of members and of creditors of the company, a report containing full particulars of any such liability; and*
- (1) *if at any time he is of opinion that the continuation of the judicial management will not enable the company to become a successful concern, apply to the Court, after not less than fourteen days' notice by registered post to all members and creditors of the company, for the cancellation of the relevant judicial management order and the issue of an order for the winding-up of the company.*

Commentary :

This section is the counterpart of section 197 in the 1926 Act as amended but it has been expanded to widen the scope of the judicial manager's duties.

The original section 197 in Act No. 46 of 1926 was very short and set out only three duties for the judicial manager :

- (a) to undertake the management of the company;
- (b) to conduct the management as he may deem most conducive for shareholders and creditors, and
- (c) to comply with any directions the Court may have given.

Section 433 cont.

It was not amended by the 1932 amending Act but the amending Act of 1939 added two new duties, following the recommendations of the Lansdown Commission. These were firstly (para d) that the judicial manager must furnish the Registrar of Companies with a copy of the judicial management order and secondly (para e) that the judicial manager must send to the Registrar each year a return similar to the annual return.

The 1952 amending Act extended para (a) to provide for the judicial manager to take into possession all the assets of the company as well as to undertake the management of the company. This Act also added three further duties :

- (f) to keep the same books and accounts as directors were obliged to keep;
- (g) to convene meetings which the directors were obliged to convene;
- (h) to apply to Court to cancel the judicial management order if he felt the judicial management would not enable the company to eventually meet its obligations and become successful.

The 1973 Act has made little change to these eight subsections.

Subsection (a) is new because the judicial manager must now take over from the provisional judicial manager.

Subsections (b), (c) and (d) are, apart from slight rephrasing, similar to the previous subsections.

Subsection (e) is new in that it now requires the judicial manager to submit the annual return required of all companies to the Registrar

Section 433 cont.

whereas the previous subsection (e) required a return which furnished information similar to that in the normal annual return.

Subsections (f) and (g) apart from rephrasing are the same as the previous subsections (f) and (g).

Subsections (h) and (i) are new although they really replace section 196(1)(b) requiring a report to be made every six months to creditors and the Master of all information necessary to enable them to become fully acquainted with the company's position. Subsections (j) and (k) are completely new, having no counterparts in the previous Act.

Subsection (j) imposes a duty on the judicial manager to expose and report on any offences and is similar to the duty imposed on a liquidator in terms of section 400. Subsection (k) requires the judicial manager to ascertain whether any officer of the company is liable personally for damages or debts of the company.

Subsection (l) is the repeat of subsection 197(h) except fourteen days' notice to members and creditors is now required instead of seven.

Effect of the order

The effect of a judicial management order is to take away management and control from the directors and place it in the hands of the judicial manager.

Take over management

If not the same person as the provisional judicial manager, subsection (a) requires the judicial manager to take over from the provisional judicial

Section 433 cont.

manager and assume management of the company. The management must be, in terms of subsection (b), for the benefit of the company and its creditors. He must clearly act in accordance with the memorandum and articles of association of the company, unless the judicial management order stipulates otherwise. Subsection (c) requires the judicial manager to comply with any direction given in the judicial management order.

Lodge with Registrar

The judicial manager must, in terms of subsection (d), lodge with the Registrar of Companies a copy of the judicial management order together with his letter of appointment under cover of the prescribed form¹²⁰ and if the judicial management order is cancelled, a copy of the order cancelling it. The prescribed form is only required on appointment, not on cancellation.

In terms of section 14 of the Act, the Registrar of the Court which granted the order is obliged to transmit a copy of that order both to the Registrar of Companies and the Master. There is, therefore, a duplication in that the Registrar of Companies receives copies of the order both from the Registrar of the Court and the judicial manager. It is submitted that the Legislature should only require the judicial manager to submit a copy of his letter of appointment.

120 The prescribed form is C M 40 required in terms of the Administrative Regulations as promulgated under Government Notice R 1928

Section 433 cont.

Annual return

Subsection (e) obliges the judicial manager to comply with the requirement of section 173 of the Act which requires a company to lodge, within one month of its financial year end, an annual return in the prescribed form.¹²¹

Accounting records

The judicial manager is required to keep accounting records and prepare financial statements and reports as required by Chapter XI of the Act.¹²² In other words, the company is obliged to continue to comply with the normal accounting requirements of the Act as if it had not been placed under judicial management. In terms of section 296(2) the annual financial statements shall include a directors' report which would now be a report by the judicial manager.

Convene meetings

Subsection (g) requires the judicial manager to convene the annual general meeting and other meetings of members which are required by the Act,¹²³ and comply with all the requirements with which the directors of the company would in terms of this Act have been obliged to comply if the company had not been placed under judicial management.

In the case of a public company, one of the requirements is to send to every member and debenture-holder, an interim report fairly presenting

121 Form CM 23

122 ss 284 to 310

123 ss 179, 180 and 181

Section 433 cont.

the business operations and results of the company during the first six monthly period after its financial year.¹²⁴ This report is posted to members and debenture-holders and the judicial manager does not present it to a meeting.

Under subsection (h) however, it would seem from the wording, that the judicial manager must convene a meeting of creditors to coincide with the annual general meeting and, in the case of a public company, a meeting at which he presents an interim report. The wording of subsection (h) seems to require a report in the case of a private company to be submitted to a meeting of creditors six months after the financial year end. The wording of the section is cumbersome and could be improved. In practice the various Masters do not interpret the section as requiring an interim report in the case of private companies.

At the creditors meetings he must submit reports which show the assets and liabilities of the company, its debts and obligations as verified by an auditor, and all information as may be necessary to enable creditors to become fully acquainted with the company's position.

There seems to be some doubt as to the manner of calling such meetings.

The learned author Henochsberg states :

"The manner of calling any such meeting is, or as nearly as may be, such as is prescribed under the law relating to insolvency, i.e. s. 40(1), (2) of the Insolvency Act, in view of the provisions of s. 439(1) read with s. 412(1)(a), i.e., on not less than ten days' notice published in the *Gazette*".¹²⁵

124 s 303

125 Henochsberg *op cit* notes on p 763

Section 433 cont.

There are two factors which militate against his view. Firstly the *Gazette* is only published weekly and, therefore, it is not always possible to publish notice to creditors on the same day¹²⁶ on which notices are sent to members. Secondly the wording of subsection (h) is such as to suggest that all that is required is a notice similar to that which is sent to members. This is suggested by the words "by notices issued separately on the dates on which the notices convening annual general meetings are issued" If the Act is amended, it is suggested that the point be clarified by the insertion of the word "written" before the word "notices" as the Legislature clearly wished to place creditors in the same position as members as far as the receiving of reports is concerned.

In *The Master v Bell N O*¹²⁷ it was held that if a judicial manager cannot supply a proper balancing audit when required to file a report in terms of section 196 (section 196(b) is similar to 433(h)), then an interim report such as is envisaged in section 99(2) (now section 301(2)) must be filed, which will enable the judicial manager to continue the audit while informing creditors of what is happening.

Duty to expose offences and report thereon

Subsection (j) requires the judicial manager to examine the affairs of the company to ascertain whether any director or former director or officer of the company has contravened any provision of the Act. This is similar to the power given to a liquidator in terms of section 400 of the Act.

126 my emphasis

127 1955(3) SA 100(T)

Section 433 cont.

Section 439(2) makes applicable the provisions of section 417, and if the Court considers it necessary, sections 414, 415, 416 and 418.

These sections provide the necessary machinery for the judicial manager to fulfil his duty. Subsection (j) of section 433 makes applicable the provisions of section 400(3) which states that any report submitted to the Master dealing with contraventions or offences shall be confidential and not available for inspection by any persons.

Subsection (k) requires examination of the company's affairs to ascertain whether any director or officer of the company is liable for damages or compensation to the company.

Judicial manager's immunity regarding reports

Section 8(2) of the Act states that no action may be instituted against, *inter alia*, a judicial manager in respect of any opinion expressed or certificate given or report or statement made in good faith in the ordinary course of his duties under the Act, unless it is proved that he acted maliciously or negligently.

Apply for the cancellation of the order

Subsection (l) is a re-enactment of section 197(h) of the 1926 Act and the judicial manager must apply for the cancellation of the order as soon as it is clear that the company is unlikely to pay its way and become a successful concern.¹²⁸

128 See *In re Winchester Tea Lounge Ltd (supra)*
Marais v Leighwood Hospitals (Pty) Ltd (supra)
Jagger-Mosenthal Ltd v J M van der Walt (Pty) Ltd (supra)

Section 433 cont.

In *Joubert N O v Consolidated Sand and Stone Supplies (Pty) Ltd and others*¹²⁹ it was held that in an application by a judicial manager of a company for its liquidation under section 197(h) (now 433(l)) of Act No. 46 of 1926, the onus is on the judicial manager to present facts to satisfy the Court that the judicial management will not enable the company to meet its obligations.

Before cancelling a judicial management order and issuing a winding-up order the Court usually issues a rule *nisi* to allow interested parties to state their views.¹³⁰ Where, however, the judicial manager has applied in terms of section 433(l) and has given all creditors not less than fourteen days' notice by registered post of his intention to apply to Court on a specified day for the cancellation of the judicial management order and for the issue of a winding-up order, there would seem to be no need for the issue of a rule *nisi*. However in *K & L Timbers (Natal) Ltd v Dow (Pty) Ltd*¹³¹ the Court issued a rule although under the 1926 Act only seven days' notice was required. The Court, however, has a discretion to cancel the judicial management order and issue a final winding-up order.¹³²

129 1972(3) SA 88(C); see also *Ex parte Muller N O : In re P L Myburgh* 1979(2) SA 339(N)

130 See comments under s 440 *infra* p 171.

131 1960(2) SA 194(N)

132 See *Ex parte Cornell N O : In re Dudfield Bretherton & Co (Pty) Ltd* 1959(1) SA 4(N); *In re Idstein (Pty) Ltd* 1957(1) SA 640(W). A contrary view was taken in *Heyns N O v Sullivan Crystal Minerals (Pty) Ltd* 1957(2) PH E16

Section 433 cont.

Section 434

Security

In *Cooper N O v G W van Graan (Pty) Ltd*¹³³ it was held that a judicial manager applying in terms of section 197(h) of Act No. 46 of 1926 for cancellation of the judicial management order and for a winding-up order should not be required to provide security in terms of section 113 of the Act.

SECTION 434 : APPLICATION OF ASSETS DURING JUDICIAL MANAGEMENT

- (1) *A judicial manager shall not without the leave of the Court sell or otherwise dispose of any of the company's assets save in the ordinary course of the company's business.*
- (2) *Any moneys of the company becoming available to the judicial manager shall be applied by him in paying the costs of the judicial management and in the conduct of the company's business in accordance with the judicial management order and so far as the circumstances permit in the payment of the claims of creditors which arose before the date of the order.*
- (3) *The costs of the judicial management and the claims of creditors of the company shall be paid mutatis mutandis in accordance with the law relating to insolvency as if those costs were costs of the sequestration of an estate and those claims were claims against an insolvent estate.*

Section 434 cont.

Commentary :

There was no section in the original 1926 Act which dealt with the application of assets during judicial management. The 1932 amending Act introduced section 197(B) which provided for the assets to be applied in payment of the costs and expenses of judicial management and the payment of creditors in a similar manner to that under the law of insolvency.

The 1939 Act repealed this section and introduced a new section 197(B) which directed in subsection (1) the judicial manager to apply any moneys which may from time to time become available in paying the costs of judicial management and the claims of creditors with the proviso in subsection (1)(a) that if he continues the business in accordance with the judicial management order he may use any such moneys in the conduct of the business.

As stated before, this was probably a retrograde step because it encouraged judicial managers to make no serious attempt to carry on the business but to proceed at once to liquidate.

The 1939 Act also provided in subsection (1)(b) for pre-judicial management creditors to consent to preference; in subsection (2) for the costs of judicial management and the claims of creditors to be paid in similar manner to those under the law of insolvency; and in subsection (3) for the provisions relating to meetings of creditors and voting under the law of insolvency to apply in the case of judicial management.

Section 434 cont.

As a result of the recommendations of the Millin Commission, the 1952 amending Act drastically altered subsection (1) by providing in a new subsection (1) that the judicial manager may not sell assets without leave of Court and in subsection (1) bis that he was to apply any moneys which became available in the conduct of the business and only to pay the claims of pre-judicial management creditors in so far as circumstances permitted. The rest of section 197(B) was left as it was in the 1939 Act.

The last addition to the 1926 Act was introduced in 1957 (Act No. 68 of 1957) which provided for the preference given to pre-judicial management creditors in subsection (1) ter (a) of section 197(B) to remain in force should the company subsequently go into liquidation.

The 1973 Act has basically incorporated the whole of section 197(B) of the 1926 Act as amended. Sections 434(1), (2) and (3) are almost identical to sections 197(B)(1), (1) bis and (2). The other subsections of the old section 197(B) are covered by other sections of the new Act.

Sale of assets without leave of Court

Before the recommendations of the Millin Commission were given effect to in the 1952 amending Act, judicial managers frequently proceeded to liquidate the assets of a company and pay its creditors without obtaining a liquidation order and in certain cases the Courts even gave their approval for this procedure.¹³⁴

134 See *Ex parte Judicial Manager of Bloemfontein Milk Bars (Pty) Ltd* 1943 OPD 5; *Ex parte Judicial Manager of Border & Allan (Pty) Ltd* 1942 OPD 182; *In re Virginian Cheese and Food Factory (Pty) Ltd* 1940 GWLD 69

Section 434 cont.

The Millin Commission made two proposals to stop the practice whereby a judicial manager can take it upon himself to liquidate the company :

- (1) that he shall not without the leave of Court sell any of the company's assets save in the ordinary course of business, and
- (2) to make it his duty to apply to Court for a winding-up order if at any time he is of the opinion that the continuance of the judicial management order will not enable the company to pay its debts.

Both these proposals were introduced into the 1952 amending Act, the former became section 197(B)(1) (now section 434(1)) and the latter section 197(h) (now section 433(2)).

It is now clear that as soon as a judicial manager is satisfied that the continuation of the judicial management will not achieve its purpose, he must immediately apply for a liquidation order. Where, however, he is satisfied that the judicial management cannot any longer succeed and at the same time he has received an offer for the assets of the business, the Courts have allowed the judicial manager to sell the assets without first applying for a winding-up order. In *Ex parte Joubert N O*, Viljoen J. in giving judgment made the following remarks :

"In the present case I do not know what the position of the company is or will be after the sale of the assets referred to. (The sale was of all the assets of the company). I deduce that the company will be insolvent to a considerable extent. Although a condition will supervene which is not entirely consistent with the continued appointment of a judicial manager, because all

Section 434 cont.

the assets will be sold and there will be nothing for him to administer, there may be certain formal matters relating to the sale to be attended to by him, as well as certain administrative duties to be performed. However, as soon as these matters have been attended to, I take it that the applicant will in due course apply for the winding-up of the company".¹³⁵

It is clear that in terms of section 197(B)(1) of the 1926 Act and section 434(1) of the 1973 Act the Court has the power to sanction the sale of assets. It is, however, respectfully submitted that any such sale must fall within the spirit of the judicial management provisions, i.e. it must be part of the process of enabling the company to overcome its difficulties and become a successful concern. It has been stated¹³⁶ that judicial management is not an alternative to winding-up. As soon as it becomes apparent that the judicial management will not succeed, the company should immediately be placed into liquidation. It is therefore submitted that the judgment in *Ex parte Joubert N O (supra)* is incorrect, although it was followed in the unreported case of *M I Cato and others : In re Tollman Hotels & Tourist Industries Ltd and others.*¹³⁷

A different set of circumstances exists where, for example, the company is trading profitably under judicial management and an offer is then received to buy all or most of the assets. If such an offer was acceptable to both creditors and members, then it should be sanctioned by the Court. It is unlikely that members would accept an offer unless creditors were paid in full and some dividend accrued to members.

135 1970(3) SA 511(T) at 514

136 *supra* p 40 and cases referred to under note 20

137 Case No. 2235/75 dated 27 Aug 1975 WLD per Margo J. See Annexure IX

Section 434 cont.

A situation may arise, however, where the company is trading profitably and an offer is received which creditors wish to accept (even though a dividend of less than a rand in the rand would result) but which members do not wish to accept. In such a case, it is submitted, the Court should then look at the length of time it will take to rehabilitate the company and if this period is a "reasonable time" then the judicial management should be allowed to continue. If such period is not a reasonable period of time, then the company should be placed into liquidation.

The underlying principle is that if the company will not become a successful concern within a reasonable period of time it should be placed into liquidation and the Court should not allow an unofficial liquidation to take place under judicial management by sanctioning the sale of all or most of the company's assets, i.e. the assets which enable the company to carry on its business.

There will, however, be cases where it is in the interests of the judicial management to dispose of part of the company's fixed assets because such assets are redundant or in order to rationalise the business and improve the company's liquidity.

Save in the ordinary course of business

Henochsberg submits "that the words have the same meaning as the words 'except in the ordinary course of that business' occurring in section 34 of the Insolvency Act".¹³⁸

138 Henochsberg *op cit* notes on p 766

Section 434 cont.

That section relates to the voidable sale of a business. In enacting section 34 of the Insolvency Act and section 434(1) of the Companies Act, the Legislature was seeking to remedy two different situations. In the former case it sought to protect the general body of creditors from an unfair disposition of a trader's assets made prior to his impending insolvency. A judicial manager being an officer of the Court and having no beneficial interest in the company is unlikely to enter into transactions with the object of preferring one creditor above another or giving any creditor an undue advantage. In enacting section 434(1), the Legislature was seeking to remedy the situation where a judicial manager could unofficially liquidate the company under the guise of judicial management. They were seeking to prevent the disposal of the skeleton of the business on which the trading operations are hung.

There have been no reported cases dealing with the definition of the words "save in the ordinary course of business" as they appear in section 434(1). There have been a number of cases dealing with the words "except in the ordinary course of business" as they appear in section 34 of the Insolvency Act. In *Hendricks N O v Swanepoel*¹³⁹ it was held that to determine whether a disposition falls within the meaning of the words "otherwise than in the ordinary course of business" occurring in section 29 of the Insolvency Act, the Court must approach the matter objectively and, having regard to the terms of the relative transaction and the circumstances in which it was entered into, decide whether or not it can be said that it was one which would normally be entered into by solvent businessmen.¹⁴⁰

139 1962(4) SA 338(AD)

140 See also *Joosab v Ensor N O* 1966(1) SA 319(AD)

Section 434 cont.

Moneys shall be applied

Subsection (2) requires the final judicial manager¹⁴¹ to first pay the costs of the judicial management and the expenses incurred in the conduct of the company's business and only if there is then money which is surplus to these requirements, is it to be used in paying pre-judicial management creditors.

The section refers only to the judicial manager which, by definition, does not include the provisional judicial manager. This would appear to be an omission by the Legislature as this section should also clearly apply to the provisional judicial manager.

The emphasis is again placed on running the business in an attempt to revive it before consideration is given to pre-judicial management creditors . This does not mean that pre-judicial management creditors can be completely disregarded, as the main purpose of judicial management is to enable a company to become a successful concern and thus meet all its obligations.

The subsection refers to two kinds of payments, apart from payments to pre-judicial management creditors. Firstly there are payments described as the costs of obtaining the order, and all costs incidental thereto, *inter alia*, Master's fees, the cost of obtaining a bond of security, the cost of advertising meetings and the judicial manager's fees.

A judicial manager's duties are not confined merely to managing the company's affairs. There are a number of other duties imposed upon him

141 See definition in s (1) of judicial manager

Section 434 cont.

which are outside the normal conduct of the company's business, such as the duties imposed by sections 433(d), (h), (i), (j), (k) and (l). Even though the judicial manager spends a considerable amount of his time in managing the normal business of the company, it is submitted that all his fees would be classified as a "cost of judicial management".¹⁴² The second type of payments are those connected with the actual conduct of the company's business, i.e. the expenses of actually running the business, *inter alia*, wages, insurance and the cost of purchases.

It should be noted here that in terms of section 37(3) of the Insolvency Act, which is made applicable in terms of section 434(3), rent falling due after the sequestration order is included in the costs of sequestration.

Payments made in the conduct of the company's business may well include payments of amounts owing at the date of judicial management, where such payments are necessary to keep a contract alive. In *C C A Little & Sons v Niven N O (supra)*¹⁴³ it was held that there was no unlawful preference where a judicial manager paid what was owing under a pre-judicial management contract in order to keep the contract alive and obtain performance in terms of that contract.

Costs of judicial management and claims of creditors to be paid

In terms of subsection (3) the "costs of judicial management" shall be paid *mutatis mutandis* in accordance with the law relating to insolvency. The costs of sequestration are set out in section 97(2) of the Insolvency Act. These include, and rank in the following order,

142 S 97 of the Insolvency Act includes trustees' remuneration as such a cost.

143 cf *Parity Insurance Co Ltd (in liquidation) v Hill* 1967(2) SA 551(AD)

Section 434 cont.

- (1) Fees payable to the Master, and
- (2) The taxed costs incurred in connection with the application to Court (for the judicial management order); the remuneration of the trustee (judicial manager) including the costs incurred in giving security for his proper administration; any expenses incurred by the Master in carrying out the provisions of the Act and the salary or wages of any person engaged in connection with the administration of the estate (judicial management).

In *Cooper and others v Trustee In Insolvent Estate Pretorius and another*¹⁴⁴ it was held that the costs of a sequestration included the total costs of the preparation of a petition for voluntary surrender and professional services rendered in connection with a proposed compromise, although the surrender proceedings were abandoned in favour of a compulsory sequestration order.

Subsection (3) also deals with the payment of creditors' claims and states that they are to be paid in accordance with the priorities laid down by the Insolvency Act.

This section refers only to the payment of claims while the company is under judicial management because should it be placed into liquidation, then all creditors' claims would be dealt with by the liquidator in accordance with the relevant provisions of the Act relating to winding-up.

A judicial management is often a lengthy process, sometimes taking many years. During this period the company may generate funds which are

Section 434 cont.

surplus to the requirements set out in section 434(2), namely, surplus to the costs of the judicial management and the costs incurred in the conduct of the company's business. In such event, the judicial manager may wish to make an interim or part-payment to pre-judicial management creditors. It is this situation (or where the judicial management finally succeeds and the company reverts to its former management) that the section contemplates.

As subsection (3) applies the law of insolvency, *mutatis mutandis*, to the payment of pre-judicial management claims (the judicial management creditors are paid by the judicial manager in the ordinary course of business), these claims would have to be proved in the manner laid down in section 44 of the Insolvency Act in the case of liquidated claims and in terms of section 48 in the case of conditional claims. In a judicial management there is only one meeting of creditors at which claims may be proved, namely the meeting called by the Master in terms of section 429(b)(ii) read with section 431. As section 431 makes applicable the provisions of the Act relating to a company being wound-up in as far as the proof of claims is concerned, and as these provisions (section 366) make applicable the provisions of the law relating to insolvency, then any creditor who has not proved his claim at the meeting of creditors convened in terms of section 429(b)(ii), can require the judicial manager to convene a special meeting of creditors for the proof of claims.¹⁴⁵

Secured claims will have a first charge over the relative encumbered assets. Section 95 of the Insolvency Act deals with the application of

145 See s 42 of the Insolvency Act

Section 434 cont.

the proceeds of realised encumbered assets. Any shortfall in meeting a secured claim out of the proceeds of the encumbered asset would then rank as a concurrent claim.

Preferent creditors must clearly be satisfied before concurrent creditors.

In *Judicial Managers New Union Goldfields Ltd v New Witwatersrand Gold Exploration Co Ltd*¹⁴⁶ it was stated by De Villiers J. that money in the hands of the judicial manager after paying or making provision for all preferent or secured charges or claims can be regarded as "free residue". This case decided that under the provision of section 197(B)(2) of Act No. 46 of 1926 (now section 434(3) of the 1973 Act) regard being had to the meaning of the words *mutatis mutandis*, the law relating to insolvency must be applied with only such changes as the difference between the provisions of the Companies Act in relation to judicial management and the Insolvency Act in respect of sequestration render necessary.

The case dealt with the provisions of section 103(2) of the Insolvency Act which provides for interest at the rate of 6% per annum on unsecured claims from the date of sequestration (judicial management) to date of payment.

Although section 434(3) requires the claims of creditors in a judicial management to be paid *mutatis mutandis* in accordance with the law relating to insolvency, it has been held in various cases that no *consensus creditorum* comes about in a judicial management.¹⁴⁷

146 1950(4) SA 135(W) : confirmed 1951(1) SA 545(AD)

147 *Ruskin N O v Amalgamated Minerals Ltd (supra)* and *C C A Little & Sons v Niven N O (supra)*

Section 435

SECTION 435 : PRE-JUDICIAL MANAGEMENT CREDITORS MAY CONSENT TO PREFERENCE

- (1) (a) *The creditors of a company whose claims arose before the granting of a judicial management order in respect of such company may at a meeting convened by the judicial manager or provisional judicial manager for the purpose of this subsection, resolve that all liabilities incurred or to be incurred by the judicial manager or provisional judicial manager in the conduct of the company's business shall be paid in preference to all other liabilities not already discharged exclusive of the costs of the judicial management and thereupon all claims based upon such first-mentioned liabilities shall have preference in the order in which they were incurred over all unsecured claims against the company except claims arising out of the costs of the judicial management.*
- (b) *If a judicial management order is superseded by a winding-up order -*
- (i) *the preference conferred in terms of paragraph (a) shall remain in force except in so far as claims arising out of the costs of the winding-up are concerned; and*
 - (ii) *all claims based on such liabilities incurred by the judicial manager shall be taken to have been proved and the provisions of section 366 shall not apply in respect thereof.*

Section 435 cont.

(2) *The law relating to insolvency shall mutatis mutandis apply in connection with the convening of a meeting of creditors referred to in subsection (1), the conduct of that meeting, the right to vote thereat, the manner of voting and the calculation of the value of votes, as if such meeting were a meeting of creditors of an insolvent estate.*

Commentary :

This section covers the remaining subsections of section 197(B) in the 1926 Act (as amended) which were not covered under section 434, i.e. subsection 435(1)(a) replaces 197(B)(1) ter (a), dealing with pre-judicial management creditors consenting to preference which was first introduced in the 1939 amending Act, but now provides for a provisional judicial manager to convene the meeting as well as the judicial manager. Section 435(1)(b) replaces 197(B)(1) ter (b), which was introduced by the 1957 amending Act and provides for preferences conferred on pre-judicial management creditors to remain should the company go into liquidation. This subsection (1)(b) also introduces a new provision which provides for claims which are based on liabilities incurred by the judicial management to be taken as proved without the necessity of complying with section 366.

Section 435(2) replaces section 197(B)(3) and is almost identical to it, except the proviso has only recently been added by an amending Act of 1976.

Section 435 cont.

Unsecured claims

The first thing to be noticed is that this section refers only to unsecured claims. Secured claims will have preference in respect of the relative encumbered assets. Unsecured preferent claims are not mentioned but as these are unsecured they will, like concurrent claims, be subject to the preference conferred by section 435. This is a little harsh on preferent creditors and it is submitted that they, like secured creditors, should be exempt from the preference referred to.

Effect of resolutions

We have seen in section 434 that the judicial manager is bound to make payment to post-judicial management creditors in preference to pre-judicial management creditors from money becoming available to him (except moneys from the sale of encumbered assets).

The effect of a resolution passed in terms of section 435 is to preserve this preference should the company go into liquidation, because without it, both pre-judicial management and post-judicial management concurrent creditors would rank on the same footing.

Object of resolutions

The object in passing such a resolution is to induce suppliers to supply the judicial manager with goods on normal credit terms. In the absence of such preference, suppliers would probably supply for cash or, at any rate, on very shortened credit terms. The preference conferred by section 435 is a type of security for goods or services supplied on a credit basis to the judicial manager.

Section 435 cont.

In the order in which they were incurred

It is submitted with respect that the effect of the resolution is not to oblige the judicial manager to pay debts in the order in which they were incurred as claimed by the learned author Henochsberg.¹⁴⁸ The judicial manager is already obliged to pay post-judicial management creditors in preference to pre-judicial management creditors in terms of section 434. Therefore the words "shall have preference in the order in which they were incurred over all unsecured claims" clearly refer to a situation where the company is placed into liquidation. It is therefore the liquidator who is charged with paying the claims in the order in which they were incurred. In any event, as the learned author Henochsberg points out, there are numerous situations which occur in the day to day running of a company which make it impossible to pay creditors in the order in which the claims arose. "... payments have to be made for public services under pain of having them discontinued if they are not currently paid for before the respective payments are overdue, such as for light, heating, power, water and telephones".¹⁴⁹

In addition, as most companies under judicial management suffer from a liquidity problem, it is the judicial manager's duty to secure the best possible credit terms he can. Different companies will supply on varying credit terms. Where two companies have supplied goods to the judicial manager on the same day, the one on a thirty day basis and the other on a ninety day basis, the judicial manager will clearly not pay both creditors in the order the claims were incurred, but a liquidator would, should the company go into liquidation.

148 Henochsberg *op cit* general notes on p 770

149 *ibid*

Section 435 cont.

Not already discharged

A judicial manager may, in order to keep a contract alive, be obliged to pay a claim that was due at the date of judicial management. He would only do so if a greater benefit were to accrue to the company than having the contract cancelled. The words "not already discharged" refer to such *bona fide* payments which then cannot be set aside should the company go into liquidation.

A pre-judicial management debt may also be discharged by the operation of set-off against a post-judicial management debt. In *Ruskin N O v Amalgamated Minerals Ltd (supra)* it was held that "The Insolvency Act itself did not prohibit set-off, but it was a fact that insolvency resulted in a *concursum creditorum* that prevented set-off".¹⁵⁰

Section 197(B)(2) envisaged no such position as was contemplated by the Insolvency Act. All it did was to settle the order of preference of the claims of creditors. Set-off was involuntary and took place by operation of law, without any act or intention on the part of the parties, and it might even take place without the knowledge of the parties, in the course of a running account. When section 197(B)(2) used the word "paid", it referred to the voluntary acts of the judicial manager, who was required to pay the claims in a certain order. It did not refer to the involuntary extinguishing of a debt by an operation of law as in set-off.¹⁵¹

150 at 53, 54

151 See also *C C A Little & Sons v Niven N O (supra)*; *In re Trans-African Insurance Co Ltd (in liquidation)* 1958(4) SA 324(W); *Great North Farms (Edms) Bpk v Ras* 1972(4) SA 7(T)

Section 435 cont.

Damages not preferent

In *General Leasing Corporation Ltd v Thorne N O*¹⁵² it was held that damages resulting from a breach of contract by the judicial manager were not liabilities as contemplated by section 435(1) and consequently did not rank in preference to pre-judicial management debts.

Convened by the judicial manager

In *K & L Timbers (Natal) Ltd v Merryweather Builders (Pty) Ltd and another (supra)* it was held that the Court had no right to grant the preference to post-judicial management creditors referred to in section 197(B)(1) ter (now 435(1)(a)) and so deprive creditors of their rights to vote and their rights of discussion under that section. It was held further that the meeting of creditors to pass such a resolution in terms of that section, must be convened by the judicial manager. (Section 435(1)(a) also now allows the provisional judicial manager to convene the meeting). If such meeting is convened by anyone other than the provisional judicial manager or the judicial manager, it is submitted that it will not bind creditors who did not attend the meeting and creditors who did attend but voted against the resolution. The meeting would not be properly convened and even creditors who voted for such a resolution may not be bound. In *Klopper en 'n ander N N O v Die Meester en andere N N O (supra)* it was held that the Court is not empowered to grant a judicial management order in terms whereof later creditors who contract with the judicial manager obtain preference over existing creditors without

Section 435 cont.

invoking the provisions of section 197(B)(1) ter of the Companies Act 1926. It was further held that where the "costs incurred by the judicial manager" should be regarded as "costs of administration in the winding-up" these must be construed as management costs and excluded from the expenditure incurred by the judicial manager in the conduct of the company's business.

Subsection (2) : The law relating to insolvency shall apply

This particular section of the Act relating to judicial management probably creates more uncertainty than any of the other provisions as presently drafted which apply to judicial management.

The wording of the section is quite clear. The law relating to insolvency shall *mutatis mutandis* apply as regards the convening of meetings of creditors, the conduct of the meeting, the right to vote and the manner and calculation of the value of votes.

A resolution in terms of section 435 cannot be passed at the meeting of creditors convened in terms of section 429(b)(ii) because the meeting is convened by the Master and not by the judicial manager.¹⁵³ The only other meeting which could be appropriate, in terms of the Insolvency Act, would be a general meeting in terms of section 41. Section 40 prescribes the manner of convening such a meeting which requires publication of the notice of the meeting in the *Government Gazette* and in one or more newspapers in the relevant district and must be in both official

153 See *K & L Timbers (Natal) Ltd v Merryweather Builders (Pty) Ltd and another (supra)*

Section 435 cont.

languages. Section 39 stipulates that all meetings of creditors shall be presided over by the Master or an officer in the public service designated by the Master. Section 52 provides that only creditors who have proved claims in terms of sections 44 and 48 may vote at such meetings. Finally, section 53 provides that a simple majority in value will carry a resolution. It must be noted that a secured creditor may not vote, in terms of section 52(5), on a resolution in terms of section 435 except in so far as his claim exceeds the value of his security.

If a meeting in terms of section 435 had to comply with all the requirements listed above, it could only be held after the meeting convened in terms of section 429(b)(ii) at which claims are proved and then only on a date which is convenient to the Master as he must preside at such meeting. In addition notice must be published in the *Government Gazette*. In practice the Master cannot convene his first meeting in under four weeks from the granting of the provisional order. Firstly it takes a few days for the Court Order to be delivered to him by the Registrar of the Court and for the necessary file to be opened; secondly the Government Printer requires details of any advertisement which is to appear in the *Gazette* at least ten days prior to the date of publication; thirdly the *Gazette* does not appear daily and the advertisement would not necessarily appear ten days after the notice being sent, and finally, the notice must be published at least ten days before the meeting is to take place. In the absence of any delays and allowing for normal administrative routine, it is just possible to convene the first meeting in four weeks.

Section 435 cont.

In the majority of cases, particularly in recent years where there has been a heavy burden on the liquidations and judicial managements sections of the Master's Office, it is usually at least six weeks before the first meeting takes place.

After the first meeting, the Master has then to allocate a date for the general meeting to be convened in terms of section 435 as he must preside at such meeting. Here again the provisional judicial manager must give the Government Printer at least ten days notice before publication and such notice must appear at least ten days before the meeting. As the *Gazette* is not printed ten days after a judicial manager posts his advertisement to the Government Printer, and as judicial managers' meetings before the Master are not held ten days after the *Government Gazette* is published (in the Cape they are only held on Fridays), it is not practically possible to convene such a meeting in under four weeks from the first meeting. In practice, therefore, at least ten to twelve weeks will be required to convene a meeting in terms of section 435 if the law relating to insolvency is to be applied rigidly.

This time lag is clearly detrimental to the company's chances of survival as the whole object of section 435 is to enable the company to obtain credit from its suppliers.

The wording of subsection (2) of section 435 is unfortunate because if strictly interpreted, the above procedure must be followed, whereas it is clear that this is not what the Legislature intended. The inclusion of a

Section 435 cont.

provisional judicial manager in subsection (1) in the 1973 Act was on the recommendation of the van Wyk de Vries Commission who reported, "the relevant section should expressly state that the provisions for the protection of persons who lend and advance money or extend credit to the company should extend during the period of provisional judicial management".¹⁵⁴

As the provisional order is usually made final before the expiration of three months from the granting of the provisional order, it is clear that the Legislature envisaged a shorter procedure than that outlined above.

In practice the Courts frequently grant as part of the provisional order a direction that the provisional judicial manager is authorised to convene on seven days' written notice a meeting of the creditors of the company with a view to having them pass a resolution to the effect that all or any liabilities incurred or to be incurred by him as provisional judicial manager are to be paid in preference to all other liabilities of the company exclusive of the costs of the judicial management.¹⁵⁵ The words "written notice" imply that no publication is necessary and "seven days' notice" varies the notice period required by the Insolvency Act.

In such cases, it is the usual practice for provisional judicial managers to convene a meeting for the purpose of passing the resolution envisaged in section 435(1) by giving seven days' notice by registered post to all creditors who appear, from the books of the company and from information

154 RP 45 1970 p 147

155 See provisional order in *Fairweather Fashion Holdings Ltd (under provisional judicial management)* See Annexure X

Section 435 cont.

available, to be creditors of the company. Such meeting is usually presided over by the provisional judicial manager and in view of the uncertainty which prevails, the provisional judicial manager usually gets all creditors who vote in favour of the resolution which confers preference on post-judicial management creditors to pass a further resolution, namely : that the creditors undertake that at a statutory meeting to be called in due course, they will support a resolution in the above terms. Provided that more than 50% of known creditors voted for both resolutions, i.e. the resolution conferring preference and the resolution agreeing to support such a resolution at a statutory meeting of creditors, then the post-judicial management creditors are reasonably protected.

This matter has never been decided upon by our Courts although the matter was discussed at some length in *Capra v Wenman, Williams & Co.*¹⁵⁶

The proviso which was added to subsection (2) by Act No. 111 of 1976 now gives the provisional judicial manager the right to call a meeting in terms of subsection (1), provided he receives the consent of the Master or the Court. It is not clear why this proviso has been added but it was probably an attempt to clear the doubt concerning the validity of a meeting called in terms of subsection (1) if the provisions of the Insolvency Act are not rigidly followed. It is the writer's respectful view that it has not done so. Subsection (2) still makes applicable the law relating to insolvency which therefore requires that only creditors

156 1959(2) SA 468(W); see also Henochsberg *op cit* p 771

Section 435 cont.

who have proved claims at the first meeting may vote; it also requires that the Master, or a public servant designated by him, must preside over the meeting, and the formalities regarding advertising must be complied with.

In *Judicial Managers New Union Goldfields Ltd v New Witwatersrand Gold Exploration Co Ltd (supra)* it was held, regard being had to the meaning of the words "*mutatis mutandis*", that the law relating to insolvency must be applied with only such changes as the difference between the provisions of the Companies Act in relation to judicial management and the Insolvency Act in respect of sequestration render necessary.

All these facts militate against an early meeting which in most cases is essential to the viability of the company.

The position as it stands at the moment is clearly unsatisfactory and it is submitted that subsection (2) of section 435 should be amended to allow the Court to determine the manner in which such meeting is to be convened and to provide for known creditors to vote at each meeting and not only creditors who have proved claims.

The Court has no power to grant a judicial management order whereby later creditors, who contract with the judicial manager, can obtain preference over existing concurrent creditors without the application of the provisions of section 435.¹⁵⁷

157 *Klopper en 'n ander N N O v Die Meester en andere N N O (supra)*

Section 436

SECTION 436 : VOIDABLE AND UNDUE PREFERENCES IN JUDICIAL MANAGEMENT

- (1) *Every disposition of its property which if made by an individual could for any reason be set aside in the event of his insolvency, may, if made by a company unable to pay its debts, be set aside by the Court at the suit of the judicial manager in the event of the company being placed under judicial management, and the provisions of the law relating to insolvency shall mutatis mutandis apply in respect of any such disposition.*
- (2) *For the purposes of this section the event which shall be deemed to correspond with a sequestration order under the Insolvency Act, 1936 (Act No. 24 of 1936), in the case of an insolvent, shall be the presentation to the Court of the application in pursuance of which a judicial management order is granted.*

Commentary :

This section is practically the same as section 197(A) of the 1926 Act. Section 197(A) was first introduced in the 1932 amending Act. There has been a change in wording as the section now makes applicable the provisions of the law relating to insolvency, whereas the former section 197(A) made applicable the provisions of the law relating to insolvent estates, the effect of which is discussed below.

In a number of decided cases¹⁵⁸ it was held that the wording of former section 182 which applied the provisions of the law relating to insolvent

158 *R v City Silk Emporium (Pty) Ltd and Meer* 1950(1) SA 825(G)
R v Schreuder 1957(4) SA 27(T)
Cooper and Cooper v Ebrahim 1959(4) SA 27(T)

Section 436 cont.

estates to a company being wound up meant that the section was merely administrative. Section 339 replaces the former section 182 and makes the provisions of law relating to insolvency applicable, *mutatis mutandis*, in respect of any matter not specially provided for by the Act. This change of wording, i.e. the law relating to insolvency (and not insolvent estates) has been followed throughout the Act where the words "law relating to insolvent estates" formerly appeared.¹⁵⁹ The new wording is clearly wider and applies where applicable all the provisions of the Insolvency Act including its penal sanctions.

Sections of Insolvency Act which are applicable

The sections of the Insolvency Act which deal with dispositions which may be set aside are section 26 (dispositions without value), section 29 (voidable preferences), section 30 (undue preference to creditors) and section 31 (collusive dealings before sequestration).

Section 34 deals with the "voidable sale of a business" but Henochsberg states¹⁶⁰ that this is not a disposition which can be set aside because that section makes it void and that section is therefore not made applicable by section 340. Section 340 deals with voidable and undue preference in winding-up proceedings. The same argument presumably holds valid under judicial management provisions. However in notes on section 436, Henochsberg states :

"Although it is submitted in the notes of section 339 that section 34 of the Insolvency Act applies to the case of a company being wound up it can, in the nature of things,

159 See section 340

160 Henochsberg *op cit* p 592. note : "Be set aside"

Section 436 cont.

never apply to a company under judicial management in so far as alienation of its business prior to judicial management is concerned".¹⁶¹

It is difficult to see what relevance section 339 has as section 436 does not apply the provisions of the law relating to winding-up. Section 34 of the Insolvency Act cannot be made applicable in judicial management by reason of the provisions of section 339 which relate to winding-up and it can only apply in judicial management if the Courts consider that it falls within the ambit of section 436. There has been no judicial pronouncement on this matter as yet.

It should be noted that section 88 of the Insolvency Act provides that a mortgage bond which is passed for the purpose of securing the payment of a debt not previously secured will not confer any preference unless lodged and registered within certain time limits.

This section relating to voidable preferences applies only to a company under judicial management that is unable to pay its debts. There are circumstances where a company that is able to pay its debts may be placed under judicial management and in those circumstances this section would not be applicable.

It can also be argued that if a stage in the judicial management is reached where the company which could not previously, but now can pay all its debts when they become due, the judicial manager's right to institute proceedings under this section would fall away.

161 Henochsberg *op cit* p 772 under general note

Section 436 cont.

Who may institute proceedings

It would seem that only the judicial manager may institute proceedings under section 436. Under section 340 of the winding-up provisions no mention is made of who may institute such proceedings and the provisions of section 32 of the Insolvency Act would then apply which provide for the trustee / liquidator to take such proceedings. That section also provides for any creditors to institute proceedings should the trustee fail to do so. It is not clear, however, in view of the specific mention of the judicial manager in section 436 whether a creditor may take action if the judicial manager does not do so.

Subsection (2)

The significance of this section is in relation to the time limits set in sections 26 and 29 of the Insolvency Act. The first step in judicial management proceedings is for the attorney to lodge a copy of the application and supporting affidavits with the Master. Proof of such lodging with the Master and a certificate from him that security has been furnished for the payment of all fees and charges¹⁶² necessary for the prosecution of the (winding-up proceedings) judicial management proceedings¹⁶³ and of all the costs of administering the company until a provisional judicial manager has been appointed, is then filed together with the application for judicial management with the Office of the Registrar of the Court. This filing of the application with supporting documents is the presentation to Court referred to in subsection (2).

162 Section 9(3) of the Insolvency Act

163 Section 346 is made applicable *mutatis mutandis* by section 427(2)

Section 437

SECTION 437 : PERIOD OF JUDICIAL MANAGEMENT TO BE DISCOUNTED IN
DETERMINING PREFERENCE UNDER MORTGAGE BOND

The time during which any company being a mortgagee debtor in respect of any mortgage bond, is subject to a judicial management order, shall be excluded in the calculation of any period of time for the purpose of determining whether such mortgage bond confers any preference in terms of section 88 of the Insolvency Act, 1936 (Act No. 24 of 1936), as applied to the winding-up of companies by this Act.

Commentary :

This is a brand new section introduced as a result of one of the recommendations of the van Wyk de Vries Commission and has no parallel in the previous Acts.

A mortgage bond registered over the assets of a company as security for a claim which was not previously secured, normally does not confer preference for six months after registration of the bond but does so after six months.¹⁶⁴ As the granting of a judicial management order prevents a company being wound-up and could result in a preference being acquired by the mere effluxion of time, the opportunity for abuse presented thereby was removed by section 437.

Henochsberg comments :

"The exclusion of the time when the company was under judicial management in the calculation of either period seems apposite only to a case where the company is wound-up after it has been under judicial management and that this provision would,

Section 437 cont.

Section 438

accordingly, more appropriately have been included in the Chapter dealing with winding-up".¹⁶⁵

Section 88 of the Insolvency Act states in essence that a mortgage bond, other than a Kustingbrief, whether special or general passed for the purpose of securing the payment of a debt not previously secured, which was incurred more than two months prior to the lodging of the bond for registration, shall not confer any preference if the estate of the debtor is sequestrated within six months after such lodging.

A Kustingbrief is a special mortgage bond, passed simultaneously with transfer to secure the balance of the purchase price of immovable property.¹⁶⁶

SECTION 438 : POSITION OF AUDITOR IN JUDICIAL MANAGEMENT

Notwithstanding the granting of a judicial management order in respect of any company and for so long as the order is in force, the provisions of this Act relating to the appointment and reappointment of an auditor and the rights and duties of an auditor shall continue to apply as if any reference in the said provisions to the directors of the company were a reference to the judicial manager.

Commentary :

This section is exactly the same as the old 195 bis which was introduced in the 1952 amending Act.

165 Henochsberg *op cit* general note on p 773

166 Willie *The law of mortgage and pledge in South Africa* 2nd ed 1961 p 44

Section 438 cont.

Section 439

In *Ex parte Judicial Managers of C T C Bazaars (SA) Ltd and of another*¹⁶⁷
it was stated :

"The Act makes no provision as to what is to happen to the auditors when a company is placed under judicial management. So far as I can see, and as far as Counsel has been able to find, there is no provision as to what has to happen even in the case of winding-up : yet in practice certainly the auditors do not continue".

The learned judge then went on to conclude that auditors were not needed in a judicial management as the Master acted as auditor.

The introduction of section 195 bis as inserted by section III of Act No. 46 of 1952 changed the position and the auditors now continue in office during judicial management. Their function, however, ceases on liquidation.

SECTION 439 : APPLICATION TO JUDICIAL MANAGEMENT OF CERTAIN PROVISIONS OF WINDING-UP

- (1) *In every case in which a company is placed under judicial management, the provisions of sections 12(2), 360, 412, 423, 424 and 425 shall apply as if the company under judicial management were a company being wound up and the judicial manager were the liquidator.*
- (2) *The provisions of section 417 and, if the Court so orders, any provision of sections 414, 415, 416 and 418, shall apply in a judicial management as they apply in a winding-up of a company which is unable to pay its debts, any reference to the liquidator being taken to be a reference to the judicial manager.*

Section 439 cont.

Commentary :

The two subsections are virtually the same as subsections 197(C)(1) and (2) which were introduced in the 1952 amending Act except the other sections of the Act to which reference is made have been renumbered because of the renumbering of the 1973 Act. Also the reference to contributories has been dropped from both subsections because the concept of a contributory has undergone a complete change in the 1973 Act resulting from the recommendations of the van Wyk de Vries Commission that the concept virtually disappear.

In *Ex parte Judicial Manager of Die Transvaalse Begrafnis Genootskap (Edms) Bpk*¹⁶⁸ de Villiers J. pointed out that there was no such parallel between judicial management and liquidation that one could say that the machinery provided for in liquidation should by implication be applicable to judicial management. As a result of the deficiency in the Act which this decision highlighted, an amending Act in 1952 made applicable to judicial management a number of provisions relating to winding-up.

These sections are :-

- (1) Section 12(2) states that any person aggrieved by any decision or order of the Registrar may bring the same under review by the Supreme Court within the area of the jurisdiction where such person is resident or in the case of a company where it has its registered office or main place of business.¹⁶⁹

168 1946 TPD 649

169 For definitions of "review" see *Legal & General Assurance Society Ltd v Lieberum N O and another* 1968(1) SA 473(AD)

Section 439 cont.

- (2) Section 360 : Inspection of records of company being wound-up. Any member or creditor of a company being wound-up may apply to Court for permission to inspect the books of the company whether in possession of the company or the liquidator and the Court may impose any condition it thinks fit.

A person who is not a member or a creditor is not entitled to an order under this section.¹⁷⁰

The right conferred by any law upon a Department of State to inspect the books and papers of a company being wound-up is not affected by this section.

The Court has a discretion whether or not to authorise the inspection and would only do so if it facilitated the judicial management and was not an attempt to hinder it. There have been no reported cases on inspections of records of a company under judicial management but there are cases of companies in liquidation where the Court has taken this view.¹⁷¹

- (3) Section 412 : Meetings of creditors and voting at meetings of creditors. This section provides that :
- (1) In any winding-up, meetings of creditors and members shall, save as is otherwise provided for in the Act, be convened and held in the following manner :

170 *Anchor Holdings Ltd v Cox and others* 1964(2) SA 405(W)

171 *Blom v Promit Beleggings (Edms) Bpk (Jubilant Investments (Pty) Ltd and another intervening)* 1970(2) SA 774(E)

Section 439 cont.

- (a) In the case of meetings of creditors, as nearly as in the manner prescribed for the holding of meetings of creditors under the law relating to insolvency.

The relevant provisions of the law relating to insolvency are those contained in sections 39 to 42 of the Insolvency Act.

Section 39 deals with the time and place of meetings of creditors. In essence it provides that any meetings of creditors shall be presided over by the Master and at such time and place as he considers most convenient for all parties.

Section 40 deals with the first and second meetings of an insolvent estate. As there is no second meeting in a judicial management, only the first meeting is relevant.¹⁷²

The first meeting must be convened by the Master by notice in the *Government Gazette* at least ten days before the meeting is to be held.

Section 41 deals with general meetings of creditors. The trustee of an insolvent estate may at any time and shall, wherever he is so required by the Master or by a creditor or creditors representing one-fourth of the value of all claims proved, convene a meeting of creditors

172 See s 429(b)(ii) read with s 431(1)

Section 439 cont.

for the purpose of giving him directions concerning any matter relating to the administration of the estate. Such meeting shall be convened by notice in the *Gazette*¹⁷³ and in at least one newspaper circulating in the district in which the insolvent resides or carries on his principal place of business and such notice must be in both official languages.¹⁷⁴

As section 439 makes applicable the provisions of section 412 which make applicable the provisions of section 41 of the Insolvency Act, the judicial manager may himself, or if required to do so by the Master or creditors representing one quarter of the value of proved claims, convene a general meeting for obtaining directions on any matter relating to the administration of the company. It should be noted that the regulations¹⁷⁵ provide for a liquidator to summon a general meeting of creditors but no reference is made to a judicial manager although regulation 7 specifically refers to a provisional judicial manager and therefore the provisions of the Insolvency Act apply in regard to general meetings.

Section 42 deals with special meetings of creditors and relates only to the proof of claims which were not proved at the first meeting. It must be convened by the trustee by notice in the *Gazette*. This would enable any judicial

173 No notice period is stipulated in the Act, but the practice is to follow the first meeting procedure, namely, at least ten days' notice.

174 See s 40(3)(c) of Insolvency Act

175 Appendix III to the Act r 10

Section 439 cont.

management creditor who had not proved a claim at the first meeting to subsequently prove a claim.

The presiding officer must keep a record of the proceedings of all meetings which record must be certified at the conclusion of the proceedings.¹⁷⁶ The presiding officer has the power to adjourn the meeting from time to time.¹⁷⁷ The place where the meeting is held must be accessible to the public and publications of statements made at such meetings is privileged to the same extent as publications of statements in a court of law.¹⁷⁸

- (b) In the case of meetings of members, in the manner prescribed by regulation. The regulations referred to are regulations in terms of section 15 of the Companies Act for the winding-up and judicial management of companies and are regulations Nos. 7 to 16 of Appendix III of the Act. In terms of regulation 7(i), a meeting of members or debenture-holders in terms of section 429(1)(b)(ii) shall be summoned by the Master by notice in the *Gazette* on a date not less than ten days before the date upon which the meeting is to be held and shall state the time and place. The Master may also direct the company or the provisional judicial manager to send notice of such meeting by post to every member and debenture-holder.

176 S 39(3) of Insolvency Act

177 S 39(5) of Insolvency Act

178 S 39(6) of Insolvency Act

Section 439 cont.

Regulation 8 deals with general meetings of the company but refers only to section 386(1)(d) which gives a liquidator the power to summon a general meeting of the company. No reference is made to the judicial manager but as he steps into the shoes of the directors of the company he can convene general meetings of members in terms of sections 180 and 181 of the Act.

- (2) The provisions of section 52 of the Insolvency Act (Act No. 24 of 1936) shall *mutatis mutandis* apply to the right of any creditor to vote at a meeting of creditors in a winding-up of a company.

Section 52 of the Insolvency Act deals with voting at special meetings of creditors. Every creditor of an insolvent estate is entitled to vote at any meeting of creditors as soon as his claim has been proved. There are exceptions which are set out below.

The vote of any creditor is recorded according to the value of his claim except where the Act provides that votes shall be recorded in number. The Act provides that at a meeting convened for the election of a trustee and a meeting for the purpose of considering an offer of compromise, votes shall be recorded in number and in value.^{179.}

A creditor's claim shall not be recorded in number unless it is of the value of at least R60,00. A creditor may not vote

Section 439 cont.

on any claim ceded to him after the commencement of the sequestration proceedings, nor may he vote on the question as to whether steps should be taken to contest his claim.

A creditor holding any security for his claim shall, except in the elections of a trustee and upon any matter affecting his security, be entitled to vote only in respect of the amount by which his claim exceeds the amount of the proceeds of the realisation of his security in terms of section 83.

- (4) Section 423 : If it appears that any person who took part in the promotion or formation of the company or any past or present director or any officer of the company has misappropriated or retained or become liable for any money or property of the company or has been guilty of any breach of faith or trust in relation to the company, the Court may order such person to repay or restore such property with interest or to contribute a sum by way of compensation in respect of the misappropriation, retention, breach of faith, or trust as the case may be.
- (5) Section 424 : Where it appears that the business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court may declare any person who was knowingly party to such conduct to be personally liable for all the debts or other liabilities of the company.
- (6) Section 425 : This section deals with the application of the criminal provisions of the law relating to insolvency.

Section 439 cont.

Any person who is or was a director or officer of a company (under judicial management), who has committed any act or omission in relation to any assets, books, records, documents, business or the affairs of the company which would have constituted an offence under the law relating to insolvency, shall be liable to the penalties provided under the Insolvency Law.

The sections of the Insolvency Act which may apply are :-

- 132 Concealing or destroying books or assets;
- 133 Concealment of liabilities or pretext to the existence of assets;
- 134 Failure to keep proper records;
- 135 Undue preferences, contracting debts without expectation of ability to pay;
- 136 Failure to give information or to deliver assets, books, etc.
- 137 Offering inducements;
- 138 Failure to attend meetings and give information;
- 139 Failure to give evidence or giving false evidence;
- 142 Removing or concealing property or failure to disclose property;
- 145 Obstructing the trustee.

- (7) Section 415 : The Master may at any meeting of creditors call and interrogate under oath any director or any other person who might have been subpoenaed to give evidence on any matter relating to the company or its business. Any creditor or the liquidator may interrogate the person so called.

Section 439 cont.

(8) Section 416 : This section makes applicable sections 66, 67, and 68 of the Insolvency Act in relation to :

(a) any person who in terms of section 414(1) is required to attend any meeting of the company and

(b) any person subpoenaed in terms of section 414(2).

Section 66 of the Insolvency Act deals with the enforcing of summonses and the giving of evidence. Section 67 deals with the steps to be taken on suspicion of an offence and section 68 deals with the presumptions as to the record of proceedings and validity of acts at meetings of creditors.

(9) Section 417 : This section deals with the summoning and examination of persons in regard to the affairs of the company.

The Court may summon before it any director or officer of the company known or suspected of having in his possession any property of the company or believed to be indebted to the company or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(10) Section 418 : This section deals with the examination of persons before a Commissioner. The Court seldom itself conducts the examination for which section 417 provides and usually appoints a Commissioner for that purpose. Section 418 provides the relevant machinery.

Certain winding-up provisions not applicable

It should be noted that certain winding-up provisions are not made applicable to judicial management.

Section 439 cont.

Section 440

A judicial manager is not required to apply for leave of absence as does a liquidator in terms of section 378.

Section 431(4) deals with the appointment of a judicial manager but there is no specific provision for his removal as there is in the case of a liquidator in terms of section 379. This would appear to be an oversight by the Legislature.

Finally, in terms of section 384(3), no person who is employed by or who employs a liquidator may receive any remuneration for services rendered other than the liquidators' fee laid down by the Act. This prevents additional fees such as auctioneers' fees, insurance commissions, etc. being earned by the liquidator's company. No such provision seems to apply to a judicial management.

SECTION 440 : CANCELLATION OF JUDICIAL MANAGEMENT ORDER

- (1) *If at any time on application by the judicial manager or any person having an interest in the company it appears to the Court which granted a judicial management order that the purpose of such order has been fulfilled or that for any reason it is undesirable that such order should remain in force, the Court may cancel such order and thereupon the judicial manager shall be divested of his functions.*
- (2) *In cancelling any such order the Court shall give such directions as may be necessary for the resumption of the management and control of the company by the officers thereof, including directions for the convening of a general meeting of members for the purpose of electing directors of the company.*

Section 440 cont.

Commentary :

Subsection (1) is almost identical to the original section 198 of the 1926 Act. There has been a slight change of wording in the 1973 Act.

Subsection (2) was introduced in the 1952 amending Act and the same wording has been carried through in the 1973 Act.

Section 440 as a whole is therefore a repeat, with slight modification, of section 198 of the 1926 Act as amended from time to time. The words "any person interested" which appeared in former section 198 have been replaced by the words "any person having an interest". This is clearly an improvement.

It must be noted that in terms of section 433(1) a judicial manager must apply to Court, after not less than fourteen days' notice by registered post to all members and creditors, for the cancellation of the judicial management order and for the issue of a winding-up order, if at any time he is of the opinion that the continuation of the judicial management will not enable the company to become a successful concern. Although there is no case law on the subject, it is submitted that it would not be appropriate for a judicial manager to circumvent the fourteen day notice period to all members and creditors by applying in terms of section 440 for the cancellation of the judicial management order where he was of the opinion that its continuation would not enable the company to become a successful concern.

In *Ex parte Muller N O : In re P L Myburgh (supra)* it was held that a

Section 440 cont.

judicial manager applying for the cancellation of a judicial management order and its replacement by a winding-up order must prove :

- (1) that he possesses the requisite *locus standi* under section 433(1) because he formed the opinion, *bona fide*, that the perpetuation of the judicial management will not transform the company into a successful concern, and
- (2) that the judicial management order should be cancelled under section 440(1) because its continued operation is undesirable.

However, any other person having an interest in the company may apply in terms of section 440 for the cancellation of the judicial management order if for any reason it is undesirable that the order shall remain in force. This would include a situation where it can be shown that creditors would not be paid in full within a reasonable time.¹⁸⁰

Under section 440, application may be made without prior notice to members and creditors.

It should be noted that there are instances, other than for the winding-up of the company, where it would be appropriate for a judicial manager to apply under section 440 for the discharge of the order. A clear case is where the company has been restored to a sound business footing.

Another instance is where the Court sanctioned a scheme of arrangement and subsequently discharged the judicial management order.¹⁸¹

180 *Jagger-Mosenthal Ltd v J M van der Walt (Pty) Ltd (supra)*

181 *Ex parte Botha and others : In re Public Utility Transport Corporation Ltd* 1952(4) SA 244(T)

Section 440 cont.

Any person having an interest

In *K & L Timbers (Natal) Ltd v Dow (Pty) Ltd (supra)*, Burne A.J. said that it was beyond question that a creditor is a "person interested". The learned judge was dealing with the position under the 1926 Act whereas the 1973 Act now refers to "any person having an interest in the company". Quite clearly both creditors and members are persons who have an interest in the company and could therefore apply. The case also held that the fact that the creditor had been the petitioner in the original application did not preclude that creditor from applying under section 198 (now section 440) for a cancellation of the provisional judicial management order and the issue of a winding-up order.

In *Samuels v Nicholls and another (supra)* it was held that section 198 of the former Companies Act was not intended to provide a creditor or a shareholder, who did not oppose the grant of the judicial management order, with the right one month later to press for the liquidation of the company because he had changed his mind. Clayden J. in giving judgment stated :

"This is not a case, therefore, of facts which were not brought to the notice of the Court and which might have led to a different order. When the judicial management order was granted Morris Samuels thought one way. Now he thinks another way. If the Court on full consideration of the facts at that time, including what Morris Samuels then thought, granted an order for judicial management, in my view an extremely strong case would have to be made out to show why some weeks later, by reason of the financial position of the company, it is, in the words of section 198 'undesirable that such order should remain in force' ".¹⁸²

Section 440 cont.

Where, however, new facts emerge which, had they been known by the Court when the provisional order was applied for, would probably have resulted in its not being granted, the Court, at the insistence of the petitioning creditor, would discharge the judicial management order and grant a provisional winding-up order. In *K & L Timbers (Natal) Ltd v Dow (Pty) Ltd (supra)* Burne A.J. said,

"The facts of *Samuels'* case were that a creditor had on a set of facts been in favour of judicial management. About a month later, and on the same set of facts, he sought to obtain a winding-up order. Clayden J. (as he then was), refused to allow him to do this because the effect of the creditor's attitude was to endeavour to achieve a virtual appeal against the propriety of the original judicial management order".¹⁸³

The learned judge then went on to say that new facts had emerged, which, had they been known at the time, would probably have resulted in a winding-up order being granted rather than a judicial management order and he accordingly cancelled the judicial management order and issued a winding-up rule.

Jurisdiction

In *Ex parte Kelroe-Cooke and another*¹⁸⁴ it was held that only the Court which granted the judicial management order has the power to cancel it. Where an application was made to the Natal Provincial Division for an order cancelling a judicial management order granted by the Durban and Coast Local Division, it was held that it was not proper for the Provincial Division to issue a rule *nisi* returnable in the Local Division

183 at 196

184 1956(2) SA 125(N)

Section 440 cont.

and that the Provincial Division had no jurisdiction to entertain the application.

Courts' discretion

The Court has a discretion in granting an order under this section as to whether it will grant a final order or issue a rule *nisi*. Usually the Court will issue a rule *nisi*, particularly where there is opposition to the order asked for or where it appears that all interested parties are not in agreement with the course of action proposed. In *Ex parte Judicial Managers Iron Craft and Electric Co (Pty) Ltd*¹⁸⁵ the Court was not satisfied that all parties concerned in the matter had agreed to an outright order for the cancellation of the judicial management and revesting the management in the directors. It therefore held that the opposing creditor and any others should be given an opportunity to place their case before the Court and ordered that a rule *nisi* be issued in terms of the prayers asked.

In *Ex parte Judicial Managers of Suid-Afrikaanse Nasionale Redery (Edms) Bpk*¹⁸⁶ the Court held that although it has a discretion to discharge the judicial management order and to grant a winding-up order straight away, it would be more equitable to issue a rule *nisi*. Where the Court wishes to make a winding-up order simultaneously with the cancellation of the judicial management order, a final cancellation order is granted and a rule *nisi* is usually issued calling on interested parties to show

185 1954(1) PH E3

186 1954(2) PH E13

Section 440 cont.

cause why the company should not be wound-up.¹⁸⁷

As stated above, the Court has a discretion and need not issue a rule *nisi*. Thus, where a large majority of creditors were in favour of an advantageous sale of the assets of the company, the Court confirmed the sale and ordered the cancellation of the judicial management order without the issue of a rule *nisi*.¹⁸⁸

Likewise where all interested parties agreed to the granting of an order setting aside the judicial management, the Court did not first issue a rule *nisi*.¹⁸⁹

A judicial management order must be cancelled before a provisional winding-up order can be granted. In *Borton and another N N O v Bonnievale Cannery and Packers Ltd*¹⁹⁰ it was held that the Court cannot issue a rule *nisi* which operates as a provisional winding-up order and which at the same time calls upon interested parties to show cause why a judicial management order should not be cancelled.

187 See *Ex parte Bloemfontein Board of Executors & Trust Co Ltd*
1938(1) PH E7
Ex parte Beak N O : In re Westelike Begrafnis (Edms) Bpk
1951(1) SA 362(SWA)
Jagger-Mosenthal Ltd v J M van der Walt (Pty) Ltd (supra)
Joubert N O v Consolidated Sand and Stone Supplies (Pty) Ltd
and others (supra)

188 *Ex parte Judicial Manager of Border and Allan (Pty) Ltd (supra)*;
see also *Ex parte Joubert N O (supra)*

189 *Ex parte Connolly : In re Union & Rhodesian Publishing Co (Pty) Ltd*
1937 WLD 10

190 1958(4) SA 443(C)

Section 440 cont.

It should be noted that mismanagement or complete incompetence on the part of the judicial manager does not constitute a ground for the cancellation of the judicial management order. In *Samuels v Nicholls and another (supra)* it was held that the proper remedy was to apply for the judicial manager's removal in terms of section 196(2) of the 1926 Act, which provided that the Court could at any time substitute some other person as judicial manager. No similar provision is included in the 1973 Act. Henochsberg states :

"Where a judicial manager fails to comply with any of the duties imposed on him by the Court the Court has discretionary power to remove him from his office, or, if the interests of the parties concerned favour it, to take action less drastic than removal. (*The Master v Bell N O*, 1954(2) PH E21; *The Master v Bell N O*, 1955(3) SA 100(T))".¹⁹¹

These cases, however, were decided under the provisions of the 1926 Act when section 196(2) still applied.

There is no provision in the 1973 Act for the removal of a judicial manager and this is clearly an omission by the Legislature.

Give direction for the resumption of the management

Where a company under judicial management has been restored to a sound business footing and the judicial manager applies for the judicial management order to be cancelled on the ground that its purpose has been fulfilled, the Court must give direction for the resumption of the management of the company by its officers including, where necessary,

191 Henochsberg *op cit* p 750 notes : Supervision of the Court

Section 440 cont.

directions for the calling of a general meeting of members for the election of directors. In *Ex parte Niven*¹⁹² the Court appointed a manager to carry on the business, after the cancellation of the order, until such time as new directors were elected.

C H A P T E R I I I

O F F I C I A L M A N A G E M E N T I N A U S T R A L I A

Australia is a federation and thus has two sets of laws. The Commonwealth Parliament has special powers which relate, in the main, to matters of national interest, whereas the State Parliaments have wider and more general powers.

The Commonwealth also legislates on general matters for its territories, principally the Australian Capital Territory and Northern Territory. Thus the Commonwealth enacts a Companies Act for its territories, while each of the six States enacts its own Companies Act.

In the early 1960's, there came into existence what is called the "Uniform Companies Legislation". This was an attempt by the Commonwealth and the various States, working together, to produce a Uniform Companies Act. It is not, however, one federal Act as the Commonwealth and the various States each have their own Companies Act, but in the main, there is uniformity between the various Acts.

In 1974/75 the Interstate Corporate Affairs Commission was established and comprised New South Wales, Queensland, Victoria and Western Australia. This Commission attempts to introduce consistent practices in company matters between the four participating States and reinforces the 1961/62 Uniform Companies Legislation by establishing uniform procedures. In addition the four participating

States endeavoured in 1976 to remove all inconsistencies in their common substantive company law. These States comprise between them 85% in number of Australian companies¹ and have a combined population of 11 941 800 out of the total population of 13 915 500.²

In addition to the Corporate Affairs Commission, there is the Standing Committee of Commonwealth and State Attorneys-General which was established in 1958 and which works towards uniform legislation in various areas, one of which is company legislation.

There is thus near uniformity in the companies legislation of the four participating States who between them control the major share of Australian business.

This was illustrated by the remarks of the Attorney-General of New South Wales, Mr. McCaw who, when introducing the second reading of the Companies (Amendment) Bill in 1966 stated,

"The original draft of this bill was before the Standing Committee of the Attorneys-General in January, 1965, and was circulated throughout Australia It was approved unanimously at the Hobart conference in January of this year, and I commend it to the House".³

In Chapter III it is proposed to deal only with the official management provisions contained in the Companies Acts of the four participating States as they comprise the major share of Australian business and it is considered too cumbersome to include the differences in the Acts of the remaining two States and of the Capital Territories.

1 P H Lane *An Introduction to the Australian Constitution* 2nd ed p 4

2 *Europa Year Book* 1978 p 1549 population as at 30 June 1976

3 New South Wales : Parliamentary Debates (Third Series)
Session 1965-66 : vol LXI p 4189

The Acts of South Australia, Tasmania and the Capital Territories do not contain any major differences in principle in their provisions which relate to official management.

Set out below are the sections of the New South Wales Act and differences in wording of the Acts of the other three participating States are noted, for ease of reference, immediately below the section concerned.

The New South Wales Act is Act No. 71 of 1961 which has been amended from time to time but only certain of these amendments affected the official management provisions. The major change occurred in 1966 when Act No. 21 of 1966 was promulgated. This Act repealed the whole of Part IX of the 1961 Act, which dealt with official management, and replaced it with a new part IX. Since then Acts No. 11 of 1971, No. 61 of 1971 and No. 1 of 1976 have made partial amendments to the new Part IX which was introduced by the 1966 Act.

The sections of the Act which relate to official management are sections 198 to 215 and are contained in Part IX.

These sections are then followed by a commentary which is far shorter than the commentary on the South African legislation. The main reason for this is the dearth of reported cases on official management. In South Africa, for example, there are approximately 175 reported cases on judicial management. The writer, however, could find only 21 reported cases in the various States and Commonwealth Law Reports which related to official management.

Although South African case law is not binding in Australia, South African cases are cited by some authorities⁴ on particular points where there is compatibility between the two systems.

In *Re Bradford Roofing Industries Pty Ltd (in liq); P G H Industrial Products Pty Ltd v Walker and others*⁵ Wallace P. when discussing whether priority for liabilities incurred by an official manager continues after termination of the period of official management, said,

"Prior to an amendment made in 1957 there had apparently been some conflict of judicial decision in South African courts on the question whether the judicial management liabilities retained the statutory preference when the management was superceded by a winding-up order, but in 1957 the matter was expressly provided for by s 197(B)(1) ter (b) - Henochsberg, 2nd ed at p 455, but I agree with the note in Paterson and Ednie, *Australian Company Law*, at p 461, that 'because of substantial differences in principle between the two systems, care should be exercised in applying South African decisions to Australian circumstances'."

4 Paterson and Ednie *Australian Company Law* 2nd ed

5 (1967) 70 State Reports (NSW) 13 at 24

Section 198

SECTION 198 : INTERPRETATION

(1) In this Part -

"Special notice"^a in relation to a meeting of creditors of a company means notice of the meeting posted to each of the creditors not less than fourteen days nor^b more than twenty-one days before the date of the meeting.

"Special resolution"^c in relation to a meeting of creditors of a company means a resolution passed by a majority of the creditors voting either in person or by proxy on the resolution, being a majority consisting of creditors representing at least three-fourths in value and one-half in number of creditors entitled to vote and so voting on the resolution, every creditor to whom the company owes a debt of less than twenty dollars being reckoned^d in value only for the purpose of calculating such^e majority.

(2) For the purposes of any^f special resolution required under this Part to be passed at a meeting of creditors of a company, no corporation that is deemed by virtue of subsection (5) of section 6 to be related to the company shall be^g entitled to vote on such^h resolution.

(3) Subject to the provisions ofⁱ subsection (2)^j nothing in this Part shall prejudice^k or otherwise affect^l the rights of any secured creditor of the^m company.

Section 198 cont.

- a QLD : insert *used*
- b QLD : delete *nor* and substitute *or*
- c QLD : insert *used*
- d VIC : delete *reckoned* and substitute *a reckoning*
- e WA : delete *such* and substitute *that*
- f QLD : delete *any* and substitute *a*
- g QLD WA : delete *shall be* and substitute *is*
- h WA : delete *such* and substitute *the*
- i QLD : delete *the provisions of*
- j VIC QLD WA : insert *of this section*
- k QLD WA : delete *shall prejudice* and substitute *prejudices*
- l QLD WA : delete *affect* and substitute *affects*
- m QLD : delete *the* and substitute *a*

Commentary :

Special notice and special resolution were formerly defined in section 215 of the 1961 Act (No. 71) which introduced official management into the New South Wales legislation.

Subsection (2) was introduced in the 1966 amending Act (No. 21 of 1966) and subsection (3) dealing with the position of secured creditors was formerly contained in section 202(3) of the 1961 Act.

The terms "special notice" and "special resolution" appear in other parts of the Act.⁶ They are, however, specifically and differently defined for the purpose of official management. The time periods are different, and in the case of official management, the notice is to be sent to creditors and not members.

Words such as "company" and "corporation" are defined under section 5 of the New South Wales Act.

6 See ss 144 and 145

Section 198 cont.

Related company

For the purposes of any special resolution required to be passed at a meeting of creditors of a company for the purpose of placing it under official management, no corporation that is deemed to be "related" to the company may vote on such a resolution. A related company is defined in section 6(5) and includes not only the relationship between a subsidiary and a holding company but also the relationship between two subsidiary companies of the same holding company. This bar on related companies being permitted to vote as creditors on a special resolution for placing a company under official management was only introduced in 1966.

In the second reading debate on the Companies (Amendment) Bill, the Attorney-General who piloted the Bill through the House commented,

"At the introductory stage I pointed out another defect in the legislation. At times, companies related to the company in difficulties are creditors of that company. As members will appreciate, these related companies possessing votes can use the influence of their votes to frustrate the wishes of other creditors. To prevent this sort of thing from happening the bill provides that companies deemed under the legislation to be related to the company which is contemplating going under official management, shall have no votes in the carrying of a special resolution to place the company under official management. It is thought this will cure one of the defects which have been found in the legislation".⁷

There is no similar concept of a "related company" in South African law, so that subsidiary or associated companies can vote both on the

7 New South Wales : Parliamentary Debates (Third Series)
Session 1965-66 : vol LXI p 4185

Section 198 cont.

appointment of a judicial manager and on whether they are in favour of the company being placed into judicial management.

Secured creditor

Secured creditor is defined in the Bankruptcy Act 1966 (Com)⁸ and means any person holding a mortgage, charge or lien over the property of the debtor as security for a debt.

In *Toft v Golding Constructions Pty Ltd*⁹ it was stated that

"Section 199 of the *Companies Act*, 1961, (which is included in Part IX of the Act) provides, *inter alia*, that except by leave of the court no action or proceeding in any court shall be proceeded with or commenced against a company under official management until it ceases to be under official management. Section 202(3) provides that nothing in Part IX of the Act shall prejudice or otherwise affect the rights of any secured creditor".

The Court held that -

"by virtue of section 202(3), section 199 provides no defence to an action of ejection brought without the leave of the court against a company under official management by a mortgagee in aid of a right of entry on default conferred by the mortgage".

This case was decided under the legislation which existed prior to the 1966 amending Act which altered the numbering of the sections, but the principle remains valid.

8 s 5

9 (1963) NSW 1268

Section 198 cont.

In *Re N A Kratzmann Pty Ltd, Ex parte Roof & Building Services Pty Ltd*¹⁰ it was held that a sub-contractor who has given notice to the employer under the Constructors' and Workmens' Liens Act, 1906 and 1921, of his claim to a charge over moneys payable by the employer to the contractor is a "secured creditor" within the meaning of section 202(3), (now section 198(3)) of the Companies Act of 1961, and it is not necessary for the sub-contractor to obtain leave to commence proceedings to enforce his charge against a company which has summoned a meeting of its creditors to appoint an official manager. Hart J. in giving judgment said "If the applicant was not a secured creditor I would not give him leave as these liens can upset the intended effect of Part IX".¹¹

The moratorium which Part IX gives the company when it is placed under official management is therefore subject to the rights of secured creditors. The official manager can exercise powers and the company can enjoy immunities only to the extent to which a secured creditor does not intervene. A secured creditor may therefore be said to stand outside the official management. It is therefore questionable whether secured creditors should receive notice of a meeting called to place a company under official management.

The South African Act makes no such clear reference to the position of secured creditors in its judicial management sections and consequently some doubt revolves around the exact position of secured creditors in the South African Law.

10 (1964) QWN 11

11 at 29

Section 199

SECTION 199 : POWER OF COMPANY TO CALL MEETING OF CREDITORS TO
APPOINT OFFICIAL MANAGER

- (1) *Where it is resolved by the majority of the directors of a company present at a meeting of the directors specially called for that purpose that the company is unable to pay its debts as and when they become due and payable, the company may, and, where the company is so requested in writing by a creditor of the company who has a judgement against the company unsatisfied to the extent of not less than five hundred dollars the company shall, by giving notice thereof in accordance with subsection (9)^a, within forty-two days of^b the passing of the resolution of the directors or the receipt by the company of the request by the judgement creditor or, where in the opinion of the Commission^c the company would not be able properly to comply with the requirements of this section, within such further period as the Commission^d allows, call a meeting of its creditors for the purpose of placing the company under official management and appointing an official manager of the company.*
- (2) *If default is made in complying with subsection (1)^e the company and every officer of the company who is in default shall be guilty of an offence against this Act.*
- Penalty : Four hundred dollars. Default penalty : One hundred dollars.*
- (3) *The company shall prepare a statement of the affairs of the company in the prescribed form made up to a date not earlier than the date*

Section 199 cont.

of the passing of the resolution of the directors or the receipt by the company of the request by the judgement creditor under subsection (1)^f.

- (4) Each director of the company shall furnish to the company a certificate under his hand certifying whether the statement of affairs does or does not, to the best of his knowledge, information and belief, give a true and fair view of the state of affairs of the company^g as at the date to which it is made up and, subject to subsection (7)^h, a company shall be deemed not to have prepared a statement of its affairs in accordance withⁱ subsection (3)^j unless each director^k has furnished to the company^l such a certificate.^m
- (5) Where a director certifies that theⁿ statement does not give a true and fair view of the state of affairs of the company, he shall also state in the certificate the grounds on which he formed that opinion.
- (6) A director of a company shall not furnish a certificate concerning a statement of the affairs of a company for the purpose^o of subsection (4)^p unless he has made such inquiries as are reasonably necessary to determine whether the statement does or does not give a true and fair view of the state of affairs of the company as at the date to which it is made up.
- (7) Where the Commission^q is satisfied that it is impracticable for a company to obtain the certificate of a director of the

Section 199 cont.

company^r, the Commission^s may dispense with the obtaining of the certificate from that director.

- (8) A company^t or a^u director who fails to comply with, or a director who fails^v to take all reasonable steps to secure compliance by the company with, any provision of subsections (3), (4), (5) and (6)^w shall be guilty of an offence against this Act.

Penalty : Four hundred dollars. Default penalty : One hundred dollars.

- (9) Notice of the^x meeting^y shall be given to the creditors of the company by means of a notice in the prescribed form -

- (a) posted to each of the creditors; and
- (b) published at least once in a daily newspaper circulating generally throughout the State,

not less than ten days nor^z more than twenty-one days before the day fixed for the holding of the meeting.

- (10) The company shall attach to every notice posted to the creditors under subsection (9)^{aa} -

- (a) a summary of the affairs of the company in accordance with^{bb} the prescribed form;
- (b) a notice that the statement required to be prepared by the company under subsection (3)^{cc} is available at the registered office of the company and that a copy of the statement will be posted by return mail to any creditor who requests it or will be handed to any creditor who calls at the office and requests it; and

Section 199 cont.

(c) a copy of the certificate furnished by each director of the company in accordance with subsection (4)^{dd}.

(11) If default is made in complying with subsection (10)^{ee}, or with any request made under paragraph (b) of that subsection, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Four hundred dollars. Default penalty. (sic)

(12) Notwithstanding subsection (10)^{ff}, the company may attach to every^{gg} notice posted to the creditors under subsection (9)^{hh} a complete copy of the statement of affairs of the company required to be prepared by the company under subsection (3)ⁱⁱ and if the company does so attach the complete copy it will not be required to^{jj} comply with^{kk} paragraphs (a) and (b) of subsection (10)^{ll}.

(13) The^{mm} meetingⁿⁿ shall be called for a time and place convenient to the majority in value of the creditors.

(14) The chairman of the^{oo} meeting shall be appointed by a resolution of the creditors of the company present at the meeting who are entitled to vote on a special resolution and the chairman so appointed shall at the meeting determine whether the time and place of the meeting are convenient to the majority in value of the creditors and his decision shall be final; but if the chairman decides that the time and place of the meeting are not convenient to that majority, the meeting shall lapse.

Section 199 cont.

(15) *Within seven days after the first notice calling the^{pp} meeting^{qq} is posted to any^{rr} creditor, the company shall lodge with the Commission^{ss} a copy of that notice and shall attach thereto a certified copy of the statement of affairs of the company required to be prepared by the company under subsection (3)^{tt} and certified copies of the certificates furnished by the directors under subsection (4)^{uu}.*

- a QLD WA : insert of this section*
- b QLD : delete of and substitute after*
- c VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner*
- d VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner*
- e VIC QLD WA : insert of this section*
- f VIC WA : insert of this section*
- g QLD : delete of the company*
- h VIC QLD WA : insert of this section*
- i QLD : insert the provisions of*
- j VIC WA : delete subsection (3) and substitute the last preceding subsection
QLD : insert of this section*
- k QLD : insert of the company*
- l QLD : delete to the company*
- m QLD : insert to the company*
- n QLD : delete the and substitute a*
- o QLD : delete purpose and substitute purposes*
- p VIC QLD WA : insert of this section*
- q VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner*
- r QLD : insert for the purposes of this section*
- s VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner*
- t QLD : insert that*
- u QLD : delete or a and substitute and every*
- v QLD : delete with, or a director who fails and substitute or*
- w VIC QLD WA insert of this section*

Section 199 cont.

- x* QLD : delete *the* and substitute *a*
y QLD : insert *under this section*
z QLD : delete *nor* and substitute *or*
aa VIC QLD WA : insert *of this section*
bb VIC WA : delete *accordance with*
cc VIC QLD WA : insert *of this section*
dd VIC QLD WA : insert *of this section*
ee VIC QLD WA : insert *of this section*
ff VIC QLD WA : insert *of this section*
gg QLD : delete *every* and substitute *a*
hh VIC QLD WA : insert *of this section*
ii VIC QLD WA : insert *of this section*
jj QLD : delete *will not be required to* and substitute *need not*
kk QLD : insert *the provisions of*
ll VIC QLD WA : insert *of this section*
mm QLD : delete *the* and substitute *a*
nn QLD : insert *called pursuant to this section*
oo QLD : delete *the* and substitute *a*
pp QLD : delete *the* and substitute *a*
qq QLD : insert *pursuant to this section*
rr QLD : delete *any* and substitute *a*
ss VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
tt VIC QLD WA : insert *of this section*
uu VIC QLD WA : insert *of this section*

Commentary :

Section 198 of the 1961 Act (No. 71) dealt with the power of a company to call a meeting of creditors for the purpose of appointing an official manager and section 200 dealt with the submission of a statement of affairs.

Section 199 of the Act as amended now deals with these two matters and the provisions relating particularly to the statement of affairs have been considerably expanded.

Section 199 cont.

Under South African Law, there are a number of grounds for placing a company under judicial management¹² whereas under the Australian Law, the only ground is the inability of the company to pay its debts.

Statement of affairs

The provisions of section 199 relating to the statement of affairs are an improvement on the original legislation and are designed to protect creditors against unrealistic claims of directors as to the prospects of a company's ability to rehabilitate itself. Each director is now required to furnish a certificate in terms of subsection (4) stating that the statement does or does not in his view give a true and fair view of the state of affairs of the company. Prior to the 1966 amendments, dissenting directors could remain silent.

The provisions of subsections 199(3), (4), (5) and (6) compel each director to place his views on record. The company is obliged to prepare the statement of affairs in the prescribed form.¹³

Under South African legislation the company is not obliged to prepare a statement of affairs and it is the duty of the provisional judicial manager to prepare a report¹⁴ which contains much of what is required in the statement of affairs.

12 See s 427 of the South African Companies Act (No. 61 of 1973)

13 Form 56

14 See s 430 of the South African Companies Act (No. 61 of 1973)

Section 199 cont.

Notice of meeting

In terms of section 199(1) the meeting must be held within forty-two days of the passing of the resolution by the directors or the receipt of the request of a judgment creditor. This period may be extended if the Commission is of the opinion that the company would not properly be able to comply with the requirements of the section within that time.

The Commission is the Corporate Affairs Commission constituted under the Securities Industry Act 1970.¹⁵

Notice of the meeting is to be given to creditors in the prescribed form. The company is required to attach to every notice posted to creditors a summary of the affairs of the company in the prescribed form.¹⁶

True and fair view

Each director must give a certificate certifying whether he considers the statement of affairs gives a "true and fair" view of the state of affairs of the company. The expression "true and fair" occurs elsewhere in the Act particularly in Part VI. Paterson and Ednie suggest,

"Traditionally, the requirement that the balance sheet give a true and fair view of the state of affairs of the company ... has been met by use of the historical cost method of accounting (that is, recording assets at cost).

15 See s 5, NSW Act No. 71 of 1961

16 Form 59

Section 199 cont.

But in more recent times, and especially since this and other methods of accounting have been subjected to critical analysis following some spectacular company crashes in the 1960's, there has been increasing questioning of the historical cost method as a vehicle for showing the true and fair view of the financial position of the company. In very recent times the incidence of inflation has caused further questioning, accountants and others must do their best to interpret the requirement of a true and fair view in the light of the scope and intendment of the uniform companies enactment, and by giving true information which is fair to the interests of shareholders, creditors and the investing public".¹⁷

Unable to pay its debts

The phrase "unable to pay its debts" is not defined under Part IX, whereas section 222(2) in Part X which deals with the winding-up of companies does define that phrase for winding-up purposes.

It has been stated therefore that the phrase as used in section 199

"has the meaning given to it in normal business usage and the question of fact of whether or not a company is unable to pay its debts as and when they fall due has to be determined on normal commercial and accounting principles".¹⁸

In the case of *Re European Life Assurance Society*¹⁹ it was held that "unable to pay its debts" meant unable to pay when the debts became due. The fact that the assets if and when realised would exceed the liabilities does not disprove insolvency.

17 Paterson and Ednie *op cit* p 2233

18 *Australian Corporate Affairs Reporter* Vol I 14 - 610

19 (1869) LR 9 Eq 122

Section 199 cont.

In *Sandell v Porter and another*²⁰ Barwick C.J. when referring to similar wording in the Bankruptcy Act said,

"Insolvency is expressed in s. 95 of the *Bankruptcy Act* 1934-1960 (Cth) as an inability to pay debts as they fall due out of the debtor's own moneys. But the debtor's own moneys are not limited to his cash resources immediately available. They extend to moneys which he can procure by realization by sale or by mortgage or pledge of his assets within a relatively short time - relative to the nature and amount of the debts and to the circumstances, including the nature of the business, of the debtor. The conclusion of insolvency ought to be clear from a consideration of the debtor's financial position in its entirety and generally speaking ought not to be drawn simply from evidence of a temporary lack of liquidity. It is the debtor's inability, utilizing such cash resources as he has or can command through the use of his assets, to meet his debts as they fall due which indicates insolvency".

The South African Law goes further and includes the expression "and is probably unable to meet its obligations". A company may be presently paying its debts but it may be foreseen that at some stage in the future it may probably not be able to meet its obligations timeously.

Chairman of meeting

In terms of subsection 14 a chairman of the meeting is appointed by a resolution of those creditors present who are entitled to vote on a special resolution. Presumably secured creditors would not be entitled to vote as their rights are unaffected by official management.

Section 199 cont. Section 200.

Once an official manager has been appointed, he shall be chairman of any meeting of creditors or the company.²¹

SECTION 200 : STATEMENT OF AFFAIRS OF COMPANY TO BE SUBMITTED TO MEETING^a

- (1) At the^b meeting of creditors of the^c company called under^d section 199 the directors of the company shall submit to the meeting the statement of affairs of the company required to be prepared by the company under subsection (3) of section 199^e.
- (2) The directors of the company shall appoint one of their number to attend the meeting.
- (3) The director so appointed shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed official management.
- (4) If default is made in complying with any provision of this section the company and every director who^f is in default shall be^gguilty of an offence against this Act.
Penalty : Four hundred dollars.

- a WA : insert of creditors of company
b QLD : delete the and substitute a
c QLD : delete the and substitute a
d WA : insert subsection (1) of
e QLD WA : delete section 199 and substitute that section
f WA : delete who and substitute that
g WA : delete shall be and substitute is

21 See s 203, *infra*

Section 200 cont.

Commentary :

This section is similar to section 200 in the 1961 Act (No. 71) but has been broadened to require a director to attend the meeting in order to explain the circumstances leading up to a proposal for official management and also, presumably, to answer any questions relating to the company's affairs.

The statement of affairs is to be done in the prescribed form²² and contains a full description of all assets, whether contingent or not, giving both the book value and the estimated realisable value. The statement must also set out a full description of all liabilities, including contingent liabilities, and full details of any security held by a creditor and full details of any preferential creditors. Regulation 15²³ requires a copy of the statement of affairs that is lodged with the Corporate Affairs Commission to be certified in writing by a director or the secretary of the company to be a true copy of the original statement.

Prior to the 1966 amendments the statement of affairs was required to be signed by the directors and auditors of the company.

In *In the matter of Excelsior Textile Supply Pty Ltd*²⁴ it was held that the statement of affairs may be acted upon by the meeting of

22 Form 56 : Apart from the official management sections, "statement of affairs" appears in other parts of the Act, namely ss 193 and 194 dealing with receivers, s 234 dealing with liquidators and s 260(4). In each case Form 56 is the prescribed form

23 Companies Regulations 1976

24 (1964) VR 574

Section 200 cont. Section 201

creditors notwithstanding the fact that it had not been signed by the auditor of the company. Gillard J. stated "the mere failure to observe faithfully the provisions of s 200(a) does not, in my opinion, invalidate the meeting or any resolutions passed thereat. The provisions of s 200 are, in my view, directory and enabling only".²⁵

The 1966 amendments dispensed with the requirement of the auditors having to sign the statement of affairs, but section 199(4) requires each director to furnish a certificate certifying whether the statement gives a true and fair view of the affairs of the company. The section goes on to say that unless each director has furnished such a certificate, the company shall be deemed not to have prepared a statement of affairs, thus making it mandatory for the directors to do so.

SECTION 201 : POWER TO ADJOURN MEETING

- (1) *A meeting called under^a section 199 may by resolution be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than thirty days after the date for which the meeting was called.*
- (2) *Where a^b meeting is^c adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.*

Section 201 cont.

(3) Where a^d meeting is^e adjourned to a date later than eight days after the passing of the resolution by which it is so^f adjourned the company shall cause notice of the time, date and place of the resumption thereof to be published at least once in a daily newspaper circulating generally throughout the State at least seven days before the date of that resumption.^g

- a WA : insert subsection (1) of
b WA : delete a and substitute the
c WA : insert so
d WA : delete a and substitute the
e QLD WA : insert so
f QLD : delete so
g QLD : delete of that resumption and substitute fixed for the resumption of the meeting

Commentary :

Originally the power to adjourn the meeting was contained in section 200(b) of the 1961 Act (No. 71). That section provided for the meeting to be adjourned by resolution from time to time except that it could not be adjourned to a date later than thirty days after the date of the service of the notices calling the meeting.

Act No. 21 of 1966 introduced a new section, being the present section 201, which dealt with the adjournment of the meeting. Section 201 is more comprehensive than the original section and lays down stricter requirements regarding time limits, the place of the adjourned meeting and publications of notice to ensure that creditors are fully informed as to what is happening.

Section 201 cont. Section 202

Creditors may resolve to adjourn a meeting called in terms of section 199 from time to time and to a time and date specified in the resolution. The adjourned date must not be later than thirty days after the date for which the meeting was originally called. There could therefore be a number of adjournments but none may extend more than thirty days beyond the original date.

The meeting is to be held at the same place as the original meeting unless otherwise specified in the resolution.

Subsection (3) which requires publication of the notice of an adjourned meeting, if the adjournment is for more than eight days, in a newspaper at least seven days before the adjourned meeting is to be held, could cause practical difficulties. If the adjournment is for nine days, this would leave only two days in which to arrange for the advertisement to appear.

SECTION 202 : POWER OF CREDITORS TO PLACE COMPANY UNDER OFFICIAL MANAGEMENT

- (1) *Where at a meeting of creditors of a company called under^a section 199 the creditors have passed a resolution to the effect that in their opinion the company is unable to pay its debts as and when they become due and payable but that if the company were placed under official management there would in their opinion be a reasonable probability that it would be able to pay its debts, the creditors may at the meeting by special resolution -*

Section 202 cont.

- (a) determine that the company shall be placed under official management for such period commencing on the date of the passing of the resolution and not exceeding two years from that date, as shall be^b specified in the resolution.
 - (b) appoint a person named in the resolution who -
 - (i) has consented in writing to act as official manager of the company;
 - (ii) is not the auditor of the company; and
 - (iii) has furnished to the company a certificate under his own hand that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness to them, to be the official manager of the company during the period of the official management; and
 - (c) determine the amount of the salary or remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.
- (2) Within seven days of^e the passing of the resolutions referred to in subsection (1)^d the company shall -
- (a) cause a notice in the prescribed form of the passing of the resolutions to be lodged with the Commission;^e
 - (b) cause notice^f that the company has been placed under official management and of the full name of the official manager to be published in a daily newspaper circulating generally throughout the State; and

Section 202 cont.

(c) send by post to each of the creditors and members of the company a notice in the prescribed form of -

(i) the special resolution; and

(ii) the right to apply to the Court under section 211.

(3) If default is made in complying with subsection (2)^g the company and every officer of the company who is in default shall be^h guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty. (sic)

(4) Anyⁱ creditor to whom the company owes, or any^j representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company, may within fourteen days of^k the appointment of a person as official manager of the company under subsection (1) of this section or subsection (3) of section 204 apply to the Court for the termination of that appointment and if in the opinion of the Court the person so appointed is not suitable for the position^l the Court may make an order terminating his^m appointment and appointing asⁿ official manager^o a registered company auditor (other than the auditor of the company)^p who has consented in writing to act as^q official manager.^r

(5) Where under subsection (4)^s the Court has made an order appointing a person to be the official manager of a^t company the provisions of this Part shall^u apply to that person as if he had been appointed^v official manager of the company at a meeting of creditors under subsection (1)^w as at the date of the^x order of the Court.^y

Section 202 cont.

(6) Where the Court makes an order under subsection (4)^b the person obtaining the order shall -

(a) within seven days after the making of the order lodge with the Commission^{aa} notice in the prescribed form of the making of the order and its date; and

(b) within seven days of^{bb} the passing and entering of the order lodge with the Commission^{cc} an office copy of the order.

(7) If^{dd} a person^{ee} fails to comply with the provisions of subsection (6)^{ff} he^{gg} shall be^{hh} guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

- a WA : insert subsection (1) of
- b VIC WA : delete shall be and substitute is
- c QLD : delete of and substitute after
- d VIC QLD WA : insert of this section
- e VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner
- f WA : insert of the fact
- g VIC QLD WA : insert of this section
- h WA : delete shall be and substitute is
- i QLD WA : delete Any and substitute A
- j WLD WA : delete any and substitute a
- k QLD : delete of and substitute after
- l WA : delete for the position and substitute to be the office manager of the company
- m WA : delete his and substitute the
- n QLD : insert the
- o QLD : insert of the company
- p WA : delete (other than the auditor of the company)
- q QLD : insert the
- r QLD : insert of the company
WA : insert and is not the auditor of the company

Section 202 cont.

- s VIC QLD WA : insert *of this section*
t QLD : delete *a* and substitute *the*
u WA : delete *shall*
v QLD : insert *as the*
w VIC QLD WA : insert *of this section*
x WA : delete *the* and substitute *that*
y WA : delete *of the Court*
z VIC QLD WA : insert *of this section*
aa VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
bb QLD : delete *of* and substitute *after*
cc VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
dd VIC WA : delete *If*
ee VIC WA : insert *who*
ff VIC QLD WA : insert *of this section*
gg VIC WA : delete *he*
hh QLD WA : delete *shall be* and substitute *is*

Commentary :

The power of creditors to appoint an official manager was dealt with in section 201 of the 1961 Act (No. 71). An important change was made in the 1966 amending Act as it now requires that creditors must be of the opinion that there is a reasonable probability that the company will be able to rehabilitate itself.²⁶

Two resolutions have to be passed by creditors in order to place the company under official management. The main resolution is a special resolution to place the company under official management but first an ordinary resolution whereby creditors resolve that the company is unable

Section 202 cont.

to pay its debts must be passed and in addition they must resolve that in their opinion there would be a reasonable probability that the company would be able to pay its debts if placed under official management.

When introducing the amending legislation by which the requirement of "reasonable probability" for this resolution was inserted into the Act, the Attorney-General for New South Wales explained,

"at the introductory stage I intimated that creditors are sometimes inclined to grasp at any scheme or proposal, even at those that have only fair hopes of achievement, rather than to see a company wind up. It has therefore been thought proper to include a provision in this bill that will very deliberately attract the attention of creditors to the purpose of official management".²⁷

The Attorney-General went on to say that members would appreciate that this would not be a particularly strong provision because at best it merely called the attention of creditors to the purpose of official management.

The resolution to place a company under official management is subject to appeal in terms of section 211 and the Court may cancel the resolution if, *inter alia*, it is of the opinion that there is no reasonable prospect of the company being rehabilitated.

Reasonable probability

In *Re Knit 'N Wool Centre Pty Ltd*²⁸ Gowans J. found that even on the most optimistic assessment of the company's profit earnings, it would

27 New South Wales : Parliamentary Debates (Third Series)
Session 1965-66 : vol LXI p 4185

28 (1969) VR 244

Section 202 cont.

take some ten years to pay off the whole of the debts owing by the company. This would require an extension of the two year period of official management some seven or eight times before the company would probably be released from official management. He felt that on this basis the lengthy programme of recovery did not justify the opinion that the official management would present a reasonable prospect of the company being rehabilitated.

In South Africa the phrase "reasonable probability" has been the subject of considerable judicial comment. In *Weinberg and another v Modern Motors (Cape Town) (Pty) Ltd*²⁹ De Villiers J.P. said.

"I would like to make it clear that in these matters petitioners and their advisers should bear in mind that the Court may sometimes in the past have granted rules *nisi* of this description without having insisted on full information, information sufficient to satisfy it that the applicant has put up a case showing a reasonable probability of success. This amounts to a finding of fact, based on the evidence before it. A mere confident hope expressed in affidavits and not sufficiently supported by concrete evidence is not enough".

In *Bahnemann v Fritzmores Exploration (Pty) Ltd*³⁰ the Court refused to confirm a provisional order for judicial management even where all the largest and main creditors supported the application, as it was not satisfied that there was any probability let alone a reasonable probability of the company being able to pay its debts in full if the order was granted.

29 1954(3) SA 998 (C) at 1001; see also *Silverman v Doornhoek Mines Ltd* 1935 TPD 349 and *Pax Clothing Co Ltd v Vaskis Tailoring (Pty) Ltd* 1953(2) PH E13

30 1963(2) SA 249 (T)

Section 202 cont.

It is submitted that the learned authors Paterson and Ednie are wrong when they state,

"In an application for a judicial management order it is not essential that the Court should be satisfied that eventually the company will be able to function satisfactorily. It suffices that the Court should be of the opinion that the company will be able to pay its debts and get on an even keel".³¹

That was the position prior to the 1973 Act. The wording of section 432 which deals with the granting of a final judicial management order does not include the "reasonable probability" qualification which is required for a provisional order, but requires that the Court must be satisfied that the company will become a successful concern.

In *Tenowitz and another v Tenny Investments (Pty) Ltd*³² it was stated by Smalberger J. that the use of the word "will" in section 432 would seem to suggest that there must be a strong probability amounting almost to a near certainty that the company will become a successful concern if placed under judicial management.

For such period not exceeding two years

In *D J B Electrical Industries Pty Ltd and Companies Act*³³ the liquidator applied to Court to question whether official management creditors were entitled to priority in that the resolution appointing the official manager had failed to stipulate the period of the official management. The matter was decided on a point of estoppel and Street J. refrained

31 Paterson and Ednie *op cit* p 2449

32 1979(2) SA 680 (E)

33 (1967)1 NSW 395

Section 202 cont.

from expressing an opinion on whether specification of a period was essential to the validity of the official management resolution, stating, "This is a point upon which divergent views are held within the legal profession. It has not, so far as I am aware, been the subject of judicial decision".³⁴

The above case referred to the position which existed prior to the 1966 amending Act which, although it requires the resolution to specify a period, now sets a maximum period at two years. If no period were specified in the resolution under the existing legislation, presumably it could be argued that the maximum period of two years had been intended.

Date of commencement

A defect which caused a considerable amount of concern under Act No. 71 of 1961, stemmed from the hiatus which arose because under the 1961 Act the official management only commenced at least fourteen days after passing of the resolution by creditors. Under the present Act, as amended, the official management commences on passing of the resolution.³⁵ This is an improvement as creditors were loth to trade with the company during the "hiatus" period and the official manager elect could be personally liable for actions during that period. A right of appeal is preserved for creditors³⁶, but the administration may proceed pending the outcome of the appeal.

34 at 398

35 s 202(1)(a)

36 s 202(4)

Section 202 cont. Section 202A

Number of official managers

Although the section refers to an official manager in the singular, it was held in *Re St George District Builders & Consultants Pty Ltd and the Companies Act 1961*³⁷ that a plurality of persons may be appointed as official managers.

In the interests of economy it is important to limit the number of official managers and only appoint more than one if special reasons exist to suggest a plurality of appointments.

Salary

The meeting of creditors has power to determine what salary should be paid to the official manager. In practice, this is often delegated to the committee of management.

In South Africa the Court determines the judicial manager's salary, but this power is invariably delegated to the Master of the Supreme Court.

Prescribed forms

The prescribed form referred to in subsection (2)(a) is Form 60, and in subsection (2)(c) is Form 60A, and in subsection (6)(a) is Form 60B.

SECTION 202A : APPOINTMENT OF COMMITTEE OF MANAGEMENT

- (1) At any^a meeting of the creditors of a company held under this Part the creditors may determine that a committee of management^b be appointed for the purposes of this Part.

Section 202A cont.

- (2) A committee of management of a company shall consist of five natural persons, of whom three shall be appointed by the creditors of the company by special resolution and two shall be appointed by the members of the company at a general meeting of the company.
- (3) A person shall not be^c eligible to be appointed^d a member of a committee of management of a company -
- (a) by the creditors of the company, unless he is -
- (i) a creditor of the company;
- (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor;
- or
- (iii) a person authorised in writing by a creditor of the company to be a member of the committee of management;
- or
- (b) by the members of the company, unless he is -
- (i) a member of the company;
- (ii) the attorney of a member of the company by virtue of a general power of attorney given by the member;
- or
- (iii) a person authorised in writing by a member of the company to be a member of the committee of management.

- a QLD : delete any and substitute a
- b WA : insert of the company
- c QLD : delete shall not be and substitute is not
- d QLD : insert as

Section 202A cont.

Commentary :

The appointment of a committee of management was formerly covered by section 201(1)(c) of the 1961 Act (No. 71), which required the members of the committee to be creditors or members themselves.

The Act as it is presently drafted allows a natural person to be the appointee of any creditor including a corporate creditor, or any member, including a corporate member.

The creditors have a discretion as to whether they should appoint a committee of management although in practice such a committee is invariably appointed.

In *Re Bradford Roofing Industries Pty Ltd (in Liq) and Companies Act*³⁸

Street J. commented that

"in general, the Act appears to contemplate that a committee of management will provide a similar link between the official manager on the one hand and the creditors and members on the other hand to that which a committee of inspection provides between a liquidator and the creditors and members in a winding up".

Although the appointment of a committee of management is discretionary, its composition is mandatory. It must comprise three persons appointed by creditors and two persons appointed by the members. It is not clear what the position would be if the members refused to appoint any person and it seems that members could defeat the wishes of creditors in relation to the appointment of a committee.

Section 202A cont. Section 202B.

The functions of the committee of management are set out in section 214, but its main function is to give assistance and advice to the official manager on the conduct of the company's business. Section 208 also requires the committee's consent in relation to the sale of the company's assets under certain circumstances.

The South African Law does not provide for a committee of management in its judicial management provisions although in practice the judicial manager often forms such a committee which is usually comprised of the major creditors. Such a committee has no legal standing and consequently no rights and its function is purely advisory.

SECTION 202B : NOTICE OF APPOINTMENT AND ADDRESS OF OFFICIAL MANAGER

- (1) *A person who has been appointed^a official manager of a company shall within fourteen days thereafter lodge with the Commission^b notice in the prescribed form of his appointment as official manager and of the situation of his office and, in the event of any change in the situation of his office, shall within fourteen days after the change lodge with the Commission^c notice thereof in the prescribed form.*
- (2) *A person shall, within fourteen days after his resignation or removal from office as official manager of a company, lodge with the Commission^d notice thereof in the prescribed form.*
- (3) *If a^e person^f fails to comply with any of the^g provisions^h of this section heⁱ shall be^j guilty of an offence against this Act.*

Penalty : One hundred dollars. Default penalty.

Section 202B cont.

Section 203.

- a QLD : insert *as the*
- b VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- c VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- d VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- e VIC QLD WA : delete *If a* and substitute *A*
- f VIC QLD WA : insert *who*
- g QLD : delete *of the*
- h QLD : delete *provisions* and substitute *provision*
- i VIC QLD WA : delete *he*
- j WA : delete *shall be* and substitute *is*

Commentary

Under the 1961 Act, the official manager was not obliged to notify the Commission of his appointment but merely of his resignation.³⁹

Under the existing Act as amended he is now also obliged to notify the Commission of his appointment as well as his resignation in the prescribed forms.⁴⁰

The section also imposes a continuing duty on the official manager to notify the Commission of any change of address within fourteen days.⁴¹

SECTION 203 : EFFECT OF^a RESOLUTION

- (1) *Where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection (1) of section 202 -*

39 S 205(d) of Act No. 71 of 1961

40 Form 60C and Form 61 respectively

41 The prescribed form is Form 60D

Section 203 cont.

- (a) *the company shall be under official management for the period specified in the special resolution unless^b extended or earlier^c terminated under this Part;*
- (b) *the directors of the company shall cease to hold office;*
- (c) *the person appointed^d official manager of the company shall assume and be responsible for the management of the company and shall perform all of the duties and may perform any of the functions and exercise any of the powers of the directors of the company; and*
- (d) *the affairs of the company shall be conducted subject to the provisions of this Part.*
- (2) *The official manager^e shall be^f chairman of any meeting or adjourned meeting of the company or its creditors which^g takes place while he holds office as official manager.*

- a WA : insert *special*
- b VIC WA : insert *the official management is*
QLD : insert *that period is*
- c QLD : delete *earlier* and substitute *is sooner*
- d QLD : insert *as the*
- e QLD : insert *of a company that is under official management*
- f QLD : insert *the*
- g QLD WA : delete *which* and substitute *that*

Commentary :

Section 202 of the 1961 Act (No. 71) which was headed "Effect of resolution" dealt with matters which are now covered by sections 198(3), 203, 203A and 208(5).

Section 203 cont.

The present section 203 deals only with the following -

- (a) The company is under official management for the period specified in the special resolutions.⁴²
- (b) The directors cease to hold office.
- (c) The official manager assumes the management of the company and is required to perform the duties and exercise any powers of the directors, and
- (d) the affairs of the company must be conducted subject to the provisions of Part IX.

The official manager is subject not only to the normal duties of the directors but also to those duties set out in section 206.

Although the section vests the official manager with powers of the directors of the company, doubt has been raised as a result of the South African case of *De Jager v Karoo Koeldranke en Roomys (Edms) Bpk*⁴³ where Rosenow A.J. held that the calling up of uncalled share capital, at a stage reached when a company is placed under judicial management, is a matter relating rather to liquidation and a judicial manager must not take it upon himself to liquidate. He could, however, do so with the consent of the shareholders.

Part IX of the Act provides for a stay of proceedings against the company while under official management⁴⁴ and as that is an effect resulting from the passing of a resolution to place the company under official management, it is difficult to understand why the Legislature

42 Maximum period of two years per s 202(1)(a)

43 1956(3) SA 594 (C) at 599

44 s 203B *infra*

Section 203 cont.

Section 203A

does not include it under this section. However, the appointment of an official manager is not a bar to a petition by the Attorney-General for a winding-up order.⁴⁵

Where the directors of a company under official management had power to borrow money up to a certain limit, the official manager was not bound to consult creditors before exercising that power, there being nothing in the Act to require him to do so.⁴⁶

An official manager or deputy official manager is now defined as being an "officer" of the company.⁴⁷

SECTION 203A : SIX-MONTHLY^a MEETINGS OF CREDITORS AND MEMBERS

- (1) *Subject to subsection (2)^{b c}, within two months after the expiration of the period of six months commencing on the date of his appointment as official manager and of each subsequent period of six months or, if the Commission^d at any time before the expiration of any such period requires or permits him^e to do so in respect of a lesser period specified by the Commission^f, within two months after the expiration of the period so specified,^g the official manager of a company shall -*
- (a) *prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he thinks necessary*

45 *Re Testro Bros. Consolidated Ltd* (1965) VR 18

46 *In re J Walsh & Sons Pty Ltd* (1972) TasSR (NC) 17 275

47 s 5

Section 203A cont.

- to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period; and*
- (b) *call a meeting of the creditors and members of the company to consider the statement and report so prepared.*
- (2) *Where under subsection (1)^h the Commissionⁱ has required or permitted the preparation of a statement and report at the end of a period of less than six months the next period of six months shall commence^j at the expiration of that lesser period.*
- (3) *With each statement referred to in subsection (1)^k the official manager shall furnish a statement^l signed by him and, where the company is required under this Act to appoint a person to be its auditor^m, by that auditor, stating whether or not in his or their opinion, as the case requires, the statement is drawn up so as to give a true and fair view of the affairs of the company.*
- (4) *Notice of a meeting called under subsection (1)ⁿ shall be given to the creditors and the members of the company by advertisement published at least once in a daily newspaper circulating generally throughout the State and the advertisement shall specify the time (being a time not less than fourteen days after the date of publication of the advertisement)^o place and object of the meeting, and the address at which and the hours between which the statements and report referred to in this section may be inspected.*
- (5) *Copies of the statements and report referred to in this section shall be kept by the official manager of the company and shall be*

Section 203A cont.

open to the inspection of any creditor or member of the company at the registered office of the company.

(6) *The official manager shall -*

(a) *give written notice that the statement referred to in subsection (1)^p has been prepared^q to every creditor and member of the company when next forwarding^r any report, notice of meeting, notice of call or dividend relating to the company; and^s*

(b) *in the notice inform creditors and members of the company at what address and between what hours the statement may be inspected.*

(7) *Within seven days after a meeting is held under subsection (1)^t the official manager shall lodge with the Commission^u a notice in the prescribed form of the holding of the meeting and of its date^v with copies of the statements and report referred to in this section.*

(8) *Where the statement referred to in subsection (1)^w is not accompanied by a statement signed by a registered company auditor, the Commission^x may cause the statement referred to in subsection (1)^y to be audited by a registered company auditor appointed by the Commission^z and, for the purposes of the audit, the official manager shall furnish that auditor with such books, vouchers and information as the^{aa} auditor may require.*

(9) *The costs of an audit under subsection (8)^{bb} shall be fixed by the Board and shall be part of the costs of the official management.*

Section 203A cont.

(10) An official manager who fails to comply with any provision of this section^{cc} and any auditor of a company who fails to supply to the official manager at his request the statement that the auditor is required to provide under subsection (3) shall be^{dd} guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

- a QLD : delete *six-monthly* and substitute *half-yearly*
- b VIC : delete *subsection (2)* and substitute *the next succeeding subsection*
- c QLD WA : insert *of this section*
- d VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- e WA : delete *him* and substitute *the official manager*
- f VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- g WA : delete *period so specified* and substitute *six month period or any period specified by the Commissioner*
- h VIC QLD WA : insert *of this section*
- i VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- j QLD : delete *shall commence* and substitute *commences*
- k VIC QLD WA : insert *of this section*
- l VIC WA : delete *a statement* and substitute *statements*
- m QLD : insert *also signed*
- n VIC QLD WA : insert *of this section*
- o QLD : insert *and the*
- p VIC QLD WA : insert *of this section*
- q VIC QLD WA : delete *prepared* and substitute *made up*
- r WA : insert *to him*
- s QLD : delete *and*
- t VIC QLD WA : insert *of this section*
- u VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*

Section 203A cont.

- v* QLD : insert *together*
- w* VIC QLD WA : insert *of this section*
- x* VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- y* QLD : delete *referred to in subsection (1)*
- z* VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- aa* WA : delete *the* and substitute *that*
- bb* VIC QLD WA : insert *of this section*
- cc* QLD : insert *that is applicable to him*
- dd* QLD WA : delete *shall be* and substitute *is*

Commentary :

Section 202(2) of the 1961 Act (No. 71) dealt with reports that had to be furnished to six-monthly meetings of creditors and members.

Section 203A of the Act as amended, while covering the same topic, has been expanded to provide for more stringent requirements relating to notices of meetings, inspections of statements and reports and the audit of such statements.

This section places a duty on the official manager to call regular six-monthly meetings of creditors and members in order to enable them to consider the official manager's report and statement of affairs for the six-monthly period under review.

Although the official manager convenes the meeting in terms of subsection (4) by advertisement in a daily newspaper, he need only give written notice in terms of subsection (6) to members and creditors that the statement is prepared when he next forwards any report or notice to them. Such event might occur after the meeting to consider the statement

Section 203A cont.

has taken place and it is not clear why the official manager should wait until he next addresses a notice or a report to members and creditors.

The phrase "true and fair" as it appears in subsection (3) has been discussed under section 199 *supra*.

The prescribed form referred to in section 203A(7) is Form 61A.

The "Board" which fixes the auditor's remuneration in terms of subsection (9) is the Companies Auditors Board constituted under the Act.⁴⁸

The learned authors Wallace and Young, state that "it is not clear what purpose such a meeting is intended to serve. It seems clear that the meeting has no power to do anything".⁴⁹

Quite clearly the purpose of the meeting is to keep creditors and members informed of the progress of the official management. If they are not happy with the progress they may then apply to Court in terms of section 210(1) for an order to terminate the official management.

The South African Act⁵⁰ also requires the judicial manager to convene regular six-monthly meetings of members and creditors to consider the state of affairs of the company.

48 s 5

49 Wallace and Young *Australian Company Law and Practice* 1965 supplement 30 June 1967 p 75

50 Act No. 61 of 1973 s 433(h)

Section 203B

SECTION 203B : STAY OF PROCEEDINGS

- (1) *Where a company is under official management, no action or proceedings in any Court shall except with the leave of the Court and, if the Court grants leave^a, in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the company until the company ceases to be under official management.*
- (2) *Where a foreign company which is incorporated in a State or Territory of the Commonwealth and which is registered in New South Wales^b or a recognised company is under official management in the State or Territory of its incorporation no action or proceedings in any Court shall except with the leave of the Court and, if the Court grants leave^c, in accordance with such terms and conditions as the Court may impose, be commenced or^d proceeded with against the company until the company ceases to be under official management in the State or Territory of its incorporation.*
- (3) *At any time^e after a company has, in accordance with section 199, called a meeting of its creditors for the purpose of placing the company under official management, and^f before the passing of a special resolution by the creditors under subsection (1) of section 202 determining that the company be placed under official management, the company or any creditor thereof may, if any action or proceeding against the company is pending, apply to the Court*

Section 203B cont.

to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

- a VIC WA : delete *if the Court grants leave*
- b VIC WA : delete *New South Wales* and substitute *this State*
QLD : delete *New South Wales* and substitute *Queensland*
- c VIC WA : delete *if the Court grants leave*
- d VIC WA : delete *or* and substitute *and*
- e WA : insert *(a)*
- f WA : insert *(b)*

Commentary :

Section 203B which was introduced by the 1966 amending Act continues the blanket stay of proceedings, formerly provided by the old section 199, during the period of official management, but it must be noted that this stay of proceedings has been withdrawn in respect of the period prior to commencement of the official management. Under the old section 199, the stay of proceedings became operative once the notices convening the meeting of creditors had been served, and anyone wishing to institute actions against the company had to obtain leave to do so from the Court. This situation was absurd. Paterson and Ednie state, "There is little doubt that, in order to obtain the immediate relief afforded by the legislation in that form, many companies invoked the provisions of Part IX in circumstances where there was no hope of their financial salvation".⁵¹

Under section 203B the stay is only operative from the time of passing the special resolution.

51 Paterson and Ednie *op cit* p 2459

Section 203B cont.

If an alert creditor endeavours to bring an action before the stay operates, he may be resisted as subsection (3) provides for the company or any creditor to ask the Court to stay any legal proceedings against the company.

"Thus the claimant who races away with his case when official management proposals are first mooted in an effort to beat the sec. 203B stay, may be brought back to the field by a sec. 203B(3) application to the Court".⁵²

The position of secured creditors was discussed under section 198, and the stay of proceedings does not prevent a secured creditor from exercising his rights.⁵³

Leave to commence proceedings

The appointment of an official manager is not a bar to a petition by the Attorney-General for a winding-up order. This was decided in the case of *Re Testro Bros. Consolidated Ltd (supra)*.⁵⁴ In that case an inspector, appointed under Part VI of the Act, recommended winding-up. The resulting petition by the Attorney-General was resisted by the official manager on the ground, *inter alia*, that since leave of the Court had not been obtained pursuant to section 199 (now section 203B), the winding-up proceedings could not be heard. The learned judge, Sholl J. considered that section 199 aimed at preserving the Court's control over the administration of the company's affairs and therefore the Court could exercise its discretion as it saw fit. The Court therefore gave leave *nunc pro tunc* for the petition to proceed.⁵⁵

52 *Australian Corporate Affairs Reporter* Vol I 14 - 705

53 See s 198(3) and *Toft v Golding Constructions Pty Ltd (supra)*, also *Re N A Kratzmann Pty Ltd, Ex parte Roof & Building Services Pty Ltd (supra)*

54 Not following *In the matter of Excelsior Textile Supply Pty Ltd (supra)*

55 See also *Battiston v Maiella Construction Co Pty Ltd* (1967) VR 349

Section 203B cont.

In *Murray v Cold Road Pty Ltd, ex parte Cold Road Pty Ltd*⁵⁶ a prosecution was brought against a company under official management for alleged breach of the Roads (contribution to maintenance) Act. The defence argued that the proceedings were not competent because the leave of Court had not been obtained to proceed. The Court found, however, that the Interpretation Acts require that express words must be found in a statute before it can be held that the Crown is bound thereby. The Court ruled that the Crown is not bound by section 199 (now 203B).

In *Battiston v Maiella Construction Co Pty Ltd (supra)* it was held that section 199 (now section 203B) did not render the proceedings commenced without the leave of Court during the official management void in law. Such proceedings are liable to be set aside or stayed on application under section 203B, but in the absence of any action to stay or set them aside, the writ and proceedings instituted thereby continue in existence. The prohibition against proceedings ceases to be effective when the official management comes to an end.

In South Africa, the stay of proceedings does not follow automatically on the granting of a judicial management order. It must specifically be made part of the order of Court which grants the judicial management order. It has been decided in South Africa that the stay of proceedings applies to pending as well as future proceedings.⁵⁷ Leave was given in

56 (1969) QWN 15

57 *Samuel Osborn (SA) Ltd v United Stone Crushing Co (Pty) Ltd (under judicial management)* 1938 WLD 229 and *Irvin and Johnson Ltd v Oelofse Fisheries Ltd* 1954(1) SA 231 (E)

Section 203B cont.

*In the matter of Hollywood Homes Pty Ltd; Christ & Marx v Hollywood Homes Pty Ltd*⁵⁸ to commence an action in order to enable a party entitled to a statutory lien to enforce same. In this case the suppliers of goods were granted leave to commence an action for enforcement of a lien under the Workmen's Liens Act 1899 - 1936 and to serve the proceedings on the company, but not to proceed beyond that stage without further leave. In the South African case of *Ross v Northern Machinery and Irrigation (Pty) Ltd*⁵⁹ it was held that leave to sue did not necessarily include the right to execute. There may be good reason for allowing an applicant to establish his claim but to then let him proceed to execution might result in his obtaining a preference as against other creditors. Further leave of the Court would be required in order to proceed to execution.

In the case of *Re Delta Constructions Pty Ltd (under official management)*⁶⁰ it was held that a presentation of a winding-up petition by the official manager was an action or proceeding against the company so that leave of the Court under section 203B of the Act was required before such petition could be presented.

The official manager can apply in terms of section 210(1) for the termination of an official management order if at any time he feels it undesirable that the company should continue under official management. That section however does not give the Court the power to terminate the official management order and grant a winding-up order and a further application for winding-up would be necessary.

58 (1964) SASR 116

59 1940 TPD 119

60 (1967-8) P & NGLR 380

Section 203B cont.

The South African law allows the judicial manager to apply for the cancellation of the judicial management order and at the same time apply for a winding-up order.

Foreign company

A foreign company is defined in the interpretation section of the Act, being section 5. The stay of proceedings now applies to actions against a foreign company incorporated in an Australian State or Territory which has been placed under official management. Where a foreign company incorporated in any State or Territory of the Commonwealth is placed under official management in the State or Territory of its incorporation no action may be proceeded with against the company in the Court of any State or Territory in which it is registered as a foreign company except with the leave of Court.

No action or proceedings

This phrase has been held to mean, *inter alia*, a petition by a creditor for a winding-up order,⁶¹ a sale in execution⁶² and an execution under a judgment.⁶³

As section 199 requires notice of the meeting to place a company into official management to be advertised, it would be no defence for any person to argue that he commenced or continued a proceeding in ignorance of the impending meeting.

61 *In the matter of Excelsior Textile Supply Pty Ltd (supra)* at 578 and *Re Testro Bros. Consolidated Ltd* at 31

62 *In re Perkins BeachLead Mining Co* (1877) 7 Ch D 371 at 371

63 *In re Artistic Colour Printing Co* (1880) 14 Ch D 502 at 504

Section 203B cont.

Section 203C

On such terms and conditions as the Court thinks fit

In the South African case of *Wire Industries Steel Products and Engineering Co (Coastal) Ltd v Surtees N O and Heath N O*⁶⁴ it was stated that "the Courts should confine themselves to the limited powers which were unquestionably given in the legislation and not assume wider powers which it might seem desirable that they should have".

SECTION 203C : POWER TO EXTEND PERIOD OF OFFICIAL MANAGEMENT

- (1) Before^a the period of official management of a company is due to expire, the official manager shall call a meeting of creditors of the company to be held on a day^b not earlier than three months and not later than one month before the day^c on which the period is due to expire to consider and, if thought fit, pass a special resolution extending the official management for such further^d period, not exceeding twelve months, as is specified in the resolution.
- (2) Where a special resolution extending the period of official management of a company is passed at a meeting called in accordance with this section, the company shall continue under official management during the period specified in the resolution unless the official management is further extended or is sooner terminated under this Part.
- (3) The^e meeting^f shall be called by the official manager by -

Section 203C cont.

- (a) *posting to each of the creditors a notice stating the place, date, time and purpose of the meeting; and*
- (b) *publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State, not less than seven days nor^g more than fourteen days before the day of the meeting.*
- (4) *The official manager shall, within seven days after the passing of a special resolution under subsection (1)^h, lodge with the Commissionⁱ a copy of that resolution.*

<i>a</i>	<i>VIC :</i>	<i>delete Before and substitute Whenever</i>
<i>b</i>	<i>VIC :</i>	<i>delete day and substitute date</i>
<i>c</i>	<i>VIC :</i>	<i>delete day and substitute date</i>
<i>d</i>	<i>QLD :</i>	<i>delete further</i>
<i>e</i>	<i>QLD :</i>	<i>delete The and substitute A</i>
<i>f</i>	<i>QLD :</i>	<i>insert under this section</i>
<i>g</i>	<i>QLD :</i>	<i>delete nor and substitute or</i>
<i>h</i>	<i>VIC QLD WA :</i>	<i>insert of this section</i>
<i>i</i>	<i>VIC :</i>	<i>delete Commission and substitute Registrar</i>
	<i>QLD WA :</i>	<i>delete Commission and substitute Commissioner</i>

Commentary :

This is a new section introduced by the 1966 amending Act and has no counterpart in the original official management provisions.

Under the old provisions no time limit was set for the official management whereas under the new provisions of the 1966 Act a maximum period of two years is stipulated. Under the original section 201(1) it was not possible, within the terms of that section, to set an indeterminate period for the official management, but it was possible for

Section 203C cont.

the period set to be limited by a future event. In *Pacific Acceptance Corporation Ltd (Official Manager Appointed) v Donald F Pettigrew Pty Ltd*⁶⁵, the company had been placed under official management until repayment was made of all amounts due to unsecured creditors or until the official manager resigned or his appointment was terminated by the creditors.

This case held that an official management which was commenced prior to the coming into operation of the 1966 amending Act was subject to section 203C so that the official manager had to call a meeting of creditors pursuant thereto in order to extend the official management period. The decision is now only of academic interest as it is inconceivable that there are any companies still under official management which commenced prior to 1st July 1966.

The special resolution referred to in this section is the same type of resolution which is defined in section 198 *supra*.

In terms of section 206(1)(f), if a meeting of creditors called under section 203C does not extend the period of official management, then the official manager must within seven days call a meeting of members which must be held within twenty-one days of the section 203C meeting. Such a meeting of members would then decide whether to elect directors to take office once the official management period expires.

In South Africa there is no time limit set when a judicial management order is granted and consequently there is no equivalent provision

Section 203C cont. Section 204

which provides for an extension of the judicial management period.

The South African Courts have however, repeatedly stressed when granting a judicial management order, that the company must be able to rehabilitate itself within a reasonable time, but the Courts have never stipulated any period as being reasonable.⁶⁶

SECTION 204 : TERMINATION OF APPOINTMENT OF OFFICIAL MANAGER

- (1) *The appointment of a person as^a official manager of a company may be determined -*
- (a) *by his resignation in writing signed by him and tendered to either^b -*
 - (i) *a^c committee of management appointed pursuant to this Part, or*
 - (ii) *a meeting of creditors of the company;*
 - (b) *by^d special resolution of the creditors passed at a meeting of creditors of which special notice stating the purpose of the meeting has been given; or*
 - (c) *by an order of the Court.*
- (2) *The appointment of a person as official manager of a company shall be determined by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the company if -*
- (a) *the official manager is bankrupt or has made any arrangement or composition with his creditors generally; or^e*

66 See *Irvin and Johnson Ltd v Oelofse Fisheries Ltd (supra)* and other cases quoted under the Commentary to s 427 in Chapter II *supra*

Section 204 cont.

- (b) *the official manager is mentally ill^f or is^g a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or^h*
- (c) *having been appointed official manager by order of the Court under subsection (4) of section 202 he ceases to be a registered company auditor; or*
- (d) *having been appointed official manager he becomes anⁱ auditor of the company.*
- (3) *Where a vacancy occurs in the office of official manager of a company the committee of management may appoint, or if there is no committee of management a meeting of creditors of the company called for that purpose by any two of their number may by special resolution appoint, as official manager a person who is qualified for appointment as such.*
- (4) *The provisions of paragraph (c) of subsection (1) of section 203 shall^j apply to a person appointed^k official manager under subsection (3)^l.*

- a QLD : insert *the*
- b QLD : delete *either*
- c VIC WA : delete *a* and substitute *the*
- d QLD : insert *a*
- e QLD : delete *or*
- f VIC QLD WA : delete *mentally ill* and substitute *of unsound mind*
- g VIC QLD WA : delete *is*
- h QLD : delete *or*
- i VIC QLD WA : delete *an* and substitute *the*
- j QLD : delete *shall*
- k QLD : insert *as*
- l VIC QLD WA : insert *of this section*

Section 204 cont.

Commentary :

The termination of the appointment of an official manager was formerly covered by section 203 of the 1961 Act (No. 71).

The present section 204 has been expanded to provide that the appointment of an official manager shall be terminated if he is bankrupt or has compromised with his creditors or is mentally ill. In addition if he was appointed by the Court as official manager in terms of section 202(4) and then ceases to be a registered company auditor or if he becomes the auditor of the company, his appointment as official manager must terminate.

If there is no committee of management, then the application for termination of his appointment must be made by a creditor or member in terms of section 204(2). Presumably if no member or creditor was moved to bring the application, then some other party, such as the Attorney-General, could apply by means of section 204(1)(c).

In *Re Testro Bros. Consolidated Ltd (supra)*, Sholl J. said,

"It was argued for the respondents that s.203(c) was merely a referential provision, referring only to the powers contained in ss. 209 and 210, and was not an independent source of power. But I think it is. The ultimate control of the Court over the company's affairs is not abrogated by the adoption of Part IX. Parliament has been careful to see to that, and I am of opinion that s.203(c) may be availed of by anybody (including the Attorney-General) in order to bring official management to an end in a suitable case".⁶⁷

Section 204 cont.

This case was decided under the provisions of the Act before they were amended in 1966. The section in the present Act which corresponds with section 203(c) is section 204(1)(c).

It was also said in the *Testro Bros.* case (*supra*) that notwithstanding that the Rules of Court contemplate a summons for the termination of the appointment of an official manager, a summons may in a proper case be dispensed with.

Under the previous legislation, there was no provision for filling a vacancy in the office of official manager. This created a doubt as to whether the official management terminated on a vacancy occurring. This deficiency in the earlier legislation was commented on by Street J. in *Re Pullins of Newcastle Pty Ltd*⁶⁸ when he said,

"It appears to have been assumed by the Legislature that the determination of the appointment of the official manager or the cancellation of his appointment will vacate an official management. As the whole concept of official management depends upon a named person having and exercising certain powers and functions, if no person occupies the office in question then those powers and functions cannot be exercised and in a factual or objective sense the company is not under official management".

The introduction of section 204(3) which allows for a vacancy to be filled, now makes it clear that a determination made under section 204 is of the appointment of the person and does not bring the official management to an end.

SECTION 205 : APPOINTMENT OF OFFICIAL MANAGER NOT TO^a AFFECT
APPOINTMENT AND DUTIES OF AUDITOR

Notwithstanding the appointment of an official manager of a company and for so long as the company is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors shall^b continue to apply to and in relation to the company, and in the application of those provisions to and in relation to the company any reference therein to the directors of a company shall be read as^c reference to the official manager of that^d company.

- a* WA : delete *not to* and substitute *does not*
b QLD WA : delete *shall*
c QLD WA : insert *a*
d VIC QLD WA : delete *that* and substitute *the*

Commentary :

This section was numbered 204 in the 1961 Act (No. 71) and there has been only a slight alteration in the wording.

The provisions of the Act relating to the appointment and re-appointment and the rights and duties of auditors are contained in Part VI of the Act.

When judicial management was first introduced into South Africa the Act made no provision for what was to happen to the auditors when a company was placed under judicial management. In the case of *Ex parte Judicial Managers of C T C Bazaars (SA) Ltd and of another*⁶⁹, Davis J. said,

69 1938 CPD 496 at 497

Section 205 cont.

Section 206

"So far as I can see, ... there is no provision as to what has to happen even in case of winding up : yet in practice certainly the auditors do not continue. The person who has charge of the books and accounts is the liquidator, and there is no longer any need for what has been called by a Judge in England the "watch dog", namely, the auditor, because the Master is now the watch dog. Similarly, in my opinion, when there is a judicial management there is no longer any need for the services of the auditors, for here again it seems to me the Master will act as the necessary auditor".

The position was changed in South Africa by the 1952 amending Act which provided for the position of the auditors to be unaffected by a judicial management order. This was an obvious and necessary amendment which was adopted by the Australian system. The essence of judicial management is to replace the management of the company with more effective management and to provide the company with a temporary moratorium against its unsecured creditors, but in all other respects the company should be allowed to continue operating with as little change in the surrounding circumstances as possible.

SECTION 206 : DUTIES OF OFFICIAL MANAGER

- (1) *Subject to the provisions of^a this Act, the official manager of a company shall -*
- (a) *as soon as may be after his appointment as such take into his custody or under his control all the property and things in action to which the company is or appears to be entitled;*

Section 206 cont.

- (b) *subject to any direction given pursuant to paragraph (c)^b conduct the business and management of the company in such manner as he may think most economical and most beneficial to the interests of the members and creditors of the company;*
- (c) *comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which the creditors of the company have been given special notice;*
- (d) *comply with all requirements of this Act applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on a company or on the directors of a company by or under this Act;*
- (e) *if so directed by a^c committee of management of the company acting under subsection (4) of section 214 or by a^d creditor or creditors of the company to whom the company owes not less than twenty per centum in value of the total unsecured debts of the company, by notice posted to each of the creditors, call a meeting of creditors of the company;*
- (f) *if a meeting of creditors held under subsection (1) of section 203c does not^e resolve to extend the period of the official management, within seven days of such failure to extend the period^f by notice posted to each of the*

Section 206 cont.

members of the company call a meeting of the members to be held on a day^g not later than twenty-one days after the meeting of creditors under subsection (1) of section 203c^h for the purpose of -

- (i) reporting to the members accordingly; and
- (ii) enabling the members if they think fit to elect directors of the company to take office upon the termination of the period of official management.

(2) A meetingⁱ called under paragraph (f) of subsection (1)^j shall be deemed to have been properly called and empowered under the memorandum and articles of the company to appoint or elect directors, and directors so appointed or elected shall take office on the termination of the period of official management of the company.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts he shall call a meeting of the members of the company for the purpose of considering and, if thought fit, passing a special resolution that the company be wound up voluntarily.

(4) Upon determining to call a meeting of members under subsection (3)^k the official manager shall -

- (a) call a meeting of the creditors of the company for the day, or the day next following the day on which the meeting of members is proposed to be held;

Section 206 cont.

- (b) *cause the notice of the meeting of creditors to be sent by post to the creditors^l simultaneously with the sending of the notices of the meeting to the members;*
 - (c) *call the meeting of creditors for a time and place convenient to the majority in value of the creditors and give the creditors at least seven clear days' notice by post of the meeting; and*
 - (d) *cause notice of the meeting of the creditors to be advertised at least seven days before the day^m of the meeting in theⁿ Gazette and in a daily newspaper circulating generally throughout the State.*
- (5) *At the meeting of creditors of the company called under subsection (4)^o the official manager shall lay before the meeting a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors of the company and the estimated amount of their claims.*
- (6) *Where a meeting of members^p called under subsection (3)^q has passed a special resolution to the effect that the company be wound up voluntarily the company shall, and the creditors^r may, at their respective meetings called under subsections (3) and (4)^s nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, but if no person is nominated by the creditors the person nominated by the company shall be liquidator.*

Section 206 cont.

- (7) *Notwithstanding the provisions of subsection (6)^t, where different persons are nominated^u any member or creditor^v may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.*
- (8) *On the appointment^w of a liquidator the company shall cease^x to be under official management.*
- (9) *The person who immediately prior to^y the appointment^z of the liquidator^{aa} was the official manager shall within seven days after the holding of the meetings referred to in subsections (3) and (4)^{bb} lodge with the Commission^{cc} a notice in the prescribed form of the holding of the meetings and the dates thereof with a copy of the statement referred to in subsection (5)^{dd} attached to such notice.*
- (10) *Every^{ee} person who fails to comply with any of the provisions of subsections (1), (3), (4), (5) and^{ff} (9)^{gg} shall be^{hh} guilty of an offence against this Act.*

Penalty : Four hundred dollars. Default penalty : One hundred dollars.

- a QLD WA : delete the provisions of
b VIC QLD WA : insert of this subsection
c VIC WA : delete a and substitute the
d QLD : delete a and substitute any
e WA : delete does not and substitute fails to

Section 206 cont.

- f QLD : delete *of such failure to extend the period and substitute after the date of the meeting*
- g VIC WA : delete *day* and substitute *date*
- h QLD : delete *subsection (1) of section 203c* and substitute *that subsection*
- i WA : insert *of members of the company*
- j VIC QLD WA : insert *of this section*
- k VIC QLD WA : insert *of this section*
- l WA : insert *of the company*
- m VIC WA : delete *day* and substitute *date*
- n VIC WA : insert *Government*
- o VIC QLD WA : insert *of this section*
- p QLD : insert *of a company*
- q VIC QLD WA : insert *of this section*
- r WA : insert *of the company*
- s VIC QLD WA : insert *of this section*
- t VIC QLD WA : insert *of this section*
- u QLD : insert *to be liquidator*
- v WA : insert *of the company*
- w QLD : insert *pursuant to this section*
- x QLD : delete *shall cease* and substitute *ceases*
- y QLD : delete *prior to* and substitute *before*
- z QLD : insert *pursuant to this section*
- aa QLD : insert *of a company*
- bb VIC QLD WA : insert *of this section*
- cc VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- dd VIC QLD WA : insert *of this section*
- ee QLD : delete *Every* and substitute *A*
- ff WA : delete *and* and substitute *or*
- gg VIC QLD WA : insert *of this section*
- hh WA : delete *shall be* and substitute *is*

Section 206 cont.

Commentary :

The duties of an official manager were formerly set out in section 205 of the 1961 Act (No. 71).

The duties of an official manager are now more fully set out in section 206. The duties have been expanded because of certain new concepts introduced in 1966, *inter alia*, the formation of a committee of management and provision for the extension of the official management period. In addition should the official manager form the opinion that the continuance of the official management will not enable the company to pay its debts, he must not only inform the creditors and members, but must convene a meeting of members for the consideration of a special resolution that the company be wound up voluntarily.

A company may be wound up voluntarily if the company so resolves by special resolution.⁷⁰

Special resolutions

Special resolution is used in two different senses in section 206. Firstly under subsection (1)(c) there is a special resolution which creditors can pass and this would be a special resolution in terms of section 198. Secondly there is a special resolution of members referred to in subsection (3) in relation to voluntary winding-up and the appropriate resolution would be one passed at a meeting of members in terms of section 144. Such a resolution requires for its passage a majority of not less than three quarters of the issued shares.

Section 206 cont.

Control or custody of property

The learned authors Paterson and Ednie state,

"Under the South African legislation, property of the company is deemed to be in the custody or control of the Master until the appointment of a judicial manager. Under the uniform enactments, since the official manager stands in the shoes of the directors, the property of the company remains vested in the company and is recovered by the official manager in the name of the company".⁷¹

This statement is correct in so far as it goes but tends to give the impression that in South Africa under judicial management the property of the company vests in the Master or the judicial manager once appointed. The position, however, is no different in South Africa in that the property although under the control of the Master, or judicial manager, is still vested in the name of the company and would have to be recovered in the name of the company. C

Memorandum and Articles

Under the 1961 Act, section 201 (now 202) provided that the management by the official manager shall be subject to such conditions as are mentioned in the resolution. Section 205 (now 206) defining the duties of an official manager stated that, subject to the provisions of the Act and to such provisions of the Memorandum and Articles as are not inconsistent with the provisions of Part IX, the official manager shall undertake the management of the company and comply with the directions of creditors.

71 Paterson and Ednie *op cit* p 2466

Section 206 cont.

Under the 1961 Act it would seem that section 205 restricted the powers of the official manager to those encompassed by the Memorandum and Articles of the company, although it seemed uncertain whether the same limitations applied to the conditions of the official management imposed in terms of section 201 (now 202) in view of the words in that section which read "and subject to such conditions as are mentioned in that resolution".

The 1966 Act did not repeat these words or any similar wording in section 202 and the reference to the Memorandum and Articles has been deleted from section 206 dealing with the duties of an official manager. Section 202(c) does however provide for the official manager to comply with "any directions of the creditors" that are agreed by special resolution and in view of the dropping of any reference to Memorandum and Articles and to the clear wording of section 202(c) it still seems an open question whether the creditors may impose conditions contrary to the provisions of the Memorandum and Articles.

In South Africa the judicial management provisions provide that the judicial management order, which may incorporate directions for the management of the company, prevails over the Memorandum and Articles.⁷²

There is quite clearly a marked difference between the two systems which was emphasised in an article written by E.J. Hajek where he said, "but the judicial management order is an order of the Court and not analogous to the creditors' resolution in official management".⁷³

72 s 433

73 E J Hajek, Official Management in *The Australian Lawyer*.
vol 6 1965 p 70

Section 206 cont.

Any creditor or member may apply to Court, in official management, to have the resolution amended.⁷⁴

Presumably such an amended resolution, being an order of Court, would prevail over the Memorandum and Articles of the company.

Conduct of the business of the company

Provision is made for creditors to appoint a committee of management⁷⁵ in which case that committee shall assist and advise the manager on any matter relating to the management of the company. It can also call a meeting of creditors to give directions to the official manager. In terms of section 206(1)(e) a creditor or creditors representing not less than twenty per centum in value of unsecured debts can direct the official manager to call a meeting of creditors.

In such manner as he may deem most economical and most beneficial

Except where the Court has amended a special resolution to give certain powers to the official manager, it is submitted that these words⁷⁶ would not allow the official manager to step outside the objects clause set out in the Memorandum. The official manager is also restricted in disposing of the company's assets except in the ordinary course of business.⁷⁷

Comply with directions of creditors

Subsection 1(c) could place the official manager in a dilemma if the

74 s 211

75 s 202A

76 s 206(1)(b)

77 s 208

Section 206 cont.

creditors' directions are contrary to his own *bona fide* thoughts under subsection 1(b). He does however have the right to apply to Court for directions,⁷⁸ a right which he did not have under the 1961 Act.

In *In re J Walch & Sons Pty Ltd (supra)* it was held that where the directors of the company had power to borrow money up to a certain limit, the official manager was not bound to consult creditors before exercising that power, there being nothing in the Act to require him to do so.

Burbury C.J. commented as follows,

"The Official Manager (just as a trustee, receiver and manager, liquidator or an official receiver in bankruptcy) occupies a fiduciary office and must exercise his powers *bona fide* and in the best interests of those on whose behalf he exercises them and to whom he is ultimately responsible. But this is not to say that he is bound to consult those concerned and to obtain their consent to the exercise of a particular power. In particular, the fact that he is bound to comply with directions given by the creditors from time to time does not mean that he is bound to seek their directions. Whether he does so is a matter for his business judgment. If, of course, a proposed transaction involves the disposal of any of the Company's assets other than in the ordinary course of the business of the Company, he will need to obtain the consent of the Committee of Management under sec. 208(3), or leave of the Court under sec. 208(4). And if he is in doubt whether any transaction is within his powers, or, because of its nature he has some doubt whether he should enter into it, he may, just as a liquidator or trustee may, protect himself by seeking the opinion of the Court".⁷⁹

78 s 208A

79 This case was not fully reported and the writer can find no copy of the judgment. The above quotation was taken from *Australian Corporate Affairs Reporter* vol 1 14 - 725 p 13603

Section 206 cont.

Continuance of official management will not enable the company to pay its debts

As the official manager is appointed for a specific period, it is questionable whether the test to be applied is not whether the company will ultimately be able to pay its debts, but whether it will be able to do so within the period stated in the resolution. However, in view of the fact that provision is made for an extension of the period, the test is probably whether it will be able to pay its debts within a reasonable time.

On appointment of a liquidator the company shall cease to be under official management⁸⁰

*In Re G C Distributors Pty Ltd (in liq)*⁸¹ Street C.J. said,

"There has been some dispute as to the effect of the winding-up proceedings upon the course of the official management. In my view the terms of s.206(8) operate to cause a cessation of the official management on the date that the winding-up order was made and Commins was appointed liquidator, Moreover, not only did the company then cease to be under official management, but it is necessarily implicit that at the same time Genner ceased to be official manager. It may be recognized that under s.210 there is express provision made that where the court orders the termination of an official management, then upon that date the official manager shall cease to be the official manager of the company. This does not, however, necessarily require s.206(8) to be construed as involving a continuation in office by the official manager, even though the official management has ceased automatically on the appointment of a liquidator".

80 s 206(8)

81 (1974)1 NSWLR 155 at 158

Section 206 cont.

Section 207

The learned judge then went on to consider whether the term liquidator included provisional liquidator and came to the conclusion that in this context it did not.

In South Africa it is not possible to have both a judicial manager and a provisional liquidator at the same time. In *Borton and another N N O v Bonnievale Cannery and Packers Ltd*⁸² it was held that the Court cannot issue a rule *nisi* which operates as a provisional winding-up order and which at the same time calls upon interested parties to show cause why a judicial management order should not be cancelled.

SECTION 207 : UNDUE PREFERENCES^a IN CASE OF OFFICIAL MANAGEMENT

- (1) Any^b transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which,^c had it been made or done by or against an individual, would in his bankruptcy be void or voidable shall^d, in the event of the company being placed under official management, be^e void or voidable in like manner.
- (2) For the purposes of this section the date which^f corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be^g the date of the commencement of the official management of the company.

a QLD WA : delete preferences and substitute preference

b WA : delete Any and substitute A

Section 207 cont.

- c* QLD : delete *which* and substitute *that*
- d* QLD WA : delete *shall* and substitute *is*
- e* QLD WA : delete *be*
- f* QLD WA : delete *which* and substitute *that*
- g* QLD WA : delete *shall be* and substitute *is*

Commentary :

Undue preferences were formerly covered by section 206 of the 1961 Act which referred to "dispositions of property" which could be set aside. Section 207 of the 1966 Act dropped the words "dispositions of property" and substituted "any transfer, mortgage, delivery of goods, payment, execution or other act relating to property". These words are similar to the group of words in section 293 which deals with undue preferences in a winding-up.

The Bankruptcy Act 1966 (Com.) provides in sections 120 to 122 for transactions which may be rendered void or voidable.

Section 120(1) provides that a settlement of property not being a settlement made in favour of a purchaser or encumbrancer in good faith and for valuable consideration is, if the settler becomes a bankrupt within two years after the date of the settlement, void as against the trustee in the bankruptcy.

Section 121(1) provides that a disposition of property with intent to defraud creditors, not being a disposition for valuable consideration in favour of a person who acted in good faith, is, if the person making the disposition subsequently becomes a bankrupt, void as against the trustee in the bankruptcy.

Section 207 cont.

Section 122 provides that a conveyance or transfer of property or a charge on property by a person who is unable to pay his debts as they become due from his own money in favour of a creditor, having the effect of giving that creditor a preference, priority or advantage over other creditors, if made within a specified time, is void as against the trustee in a bankruptcy.

In *Re an Application by J G A Tucker and Reid Murray Developments (Qld) Pty Ltd*⁸³ dealing with section 206(1) of an earlier Queensland Act, now embodied in section 207, it was held that the use of the words "in like manner" indicated that the intention was that the dispositions of property to which the section applied were to be voidable as against the official manager, and that the section did not give to any other person the right to avoid such dispositions. Thus, in the event of a winding-up, the right to avoid would not enure for the benefit of the liquidator who would have to rely on the provisions of section 293.

In South Africa, the section dealing with voidable preferences⁸⁴ applies only to a company under judicial management that is unable to pay its debts. There are circumstances where a company that is able to pay its debts may be placed under judicial management and in those circumstances the section would not apply.

In Australia only companies that are unable to pay their debts may be placed under official management and thus the words "unable to pay its debts" are not repeated in section 207. It is questionable, however,

83 (1969) QDR 193

84 s 436

Section 207 cont.

whether the official manager would be able to institute proceedings under this section if a stage were reached where the company could pay all its debts.

It is also not clear what the position is regarding a payment that is void as opposed to being voidable. What would be the position if the official management were terminated ?

In *Downs Distributing Co Pty Ltd v Associated Blue Star Stores Pty Ltd (in liq)*⁸⁵ the following phrases used in Bankruptcy legislation were considered, viz. :

"In the ordinary course of business". This does not include the settlement of a debt between traders by a transaction involving the redelivery of goods sold together with other goods; it refers to a transaction into which it would be reasonable for a creditor and debtor to enter as a matter of business in the circumstances of the particular case uninfluenced by any belief on the part of the creditor that the debtor might be insolvent.⁸⁶

"In good faith". The circumstances must be such as to lead to an inference by the Court that there was reason to suspect according to the standards of an ordinary reasonable man that the debtor was unable to pay his debts as they became due, and that the effect of the transaction would be to give the creditor a preference over other creditors.

85 (1948) 76 CLR 463

86 See also *Re E J Taylor & Son Pty Ltd (in Liq)* (1964) ALR 595

Section 207 cont.

Section 208

"The creditor had reason to suspect". This refers to an objective test and should not be interpreted as meaning that the creditor had in his mind some knowledge or belief which to him amounted to a reason to suspect.

The date of commencement of the official management is the date of the passing of the special resolution to place the company under official management.⁸⁷

SECTION 208 : APPLICATION AND DISPOSAL OF ASSETS DURING OFFICIAL MANAGEMENT

- (1) *The official manager^a may sell or otherwise dispose of any assets of the company if the sale or disposition is in the ordinary course of the business of the company.*
- (2) *The official manager^b may sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the^c assets in question^d together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed in the aggregate four hundred dollars.*
- (3) *The official manager^e may with the consent of the committee of management^f sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business*

87 See s 202(1)(a)

Section 208 cont.

of the company if the value of the^g assets in question^h together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed in the aggregate two thousand dollars.

(4) The official managerⁱ may with the leave of the Court sell or otherwise dispose of or mortgage or charge any assets of the company.

(5) The moneys of the^j company that become^k available to the^l official manager during the official management^m shall be applied by him in the following order --

(a) firstly, in payment of the costs of the official management including his remuneration, the remuneration of the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with the provisions of Division 3 of Part VI;

(b) secondly, in payment of the liabilities of the company incurred in the course of the official management,ⁿ and

(c) thirdly, in payment of any other liabilities of the company.

(6) Subject to subsection (5)^o, the claims of the creditors of the company referred to in paragraph (c) of subsection (5)^p shall be paid in accordance with Part X, as if those claims were claims against a company being wound up and the provisions of that Part with^q necessary adaptations shall^r apply to and in relation to those claims accordingly.

Section 208 cont.

- a QLD WA : insert of a company
- b QLD WA : insert of a company
- c QLD : delete *the* and substitute *those*
- d QLD : delete *in question*
- e QLD WA : insert of a company
- f WA : insert of the company
- g QLD : delete *the* and substitute *those*
- h QLD : delete *in question*
- i QLD WA : insert of a company
- j QLD : delete *the* and substitute *a*
- k QLD : delete *become* and substitute *became*
- l WA : delete *the* and substitute *its*
- m QLD WA : insert of the company
- n WA : insert thereof
- o VIC QLD WA : insert of this section
- p VIC QLD WA : insert of this section
- q QLD : insert *the*
- r QLD WA : delete *shall*

Commentary :

The disposal of the company's assets was formerly covered by section 207 of the 1961 Act which clearly followed the wording of the South African Act.

Section 208 of the 1966 Act extends the previous powers of the official manager to sell assets of the company (otherwise than in the ordinary course of business) but only up to an aggregate of \$400, or, with the consent of the committee of management, up to an aggregate of \$2000. Any sale of assets over that figure, if not in the ordinary course of business, must be sanctioned by the Court. Presumably if there is no committee of management, recourse to the Court would be necessary for any amount over \$400.

Section 208 cont.

The limits are probably too low, although in South Africa the judicial manager must apply to Court for any sale of assets, except those in the ordinary course of business.

One of the delegates to the Corporate Affairs Seminar held in Brisbane on 22nd March 1972 commented as follows,

"In commercial life quick action is often necessary, and this is especially true in the administration of ailing companies. Consequently, an approach to the Court on so small a matter as \$2001 seems unduly restrictive, particularly when one considers the nature of "assets" which would represent \$2000 of our debased currency".⁸⁸

The purpose of this section is to prevent an official manager from liquidating the company under his control. In South Africa it was found that prior to the introduction of the section⁸⁹ which precluded the sale of assets, except in the ordinary course of business, judicial managers frequently proceeded to liquidate the assets of a company and pay its creditors without obtaining a liquidation order and in certain cases the Courts gave their approval for this procedure.⁹⁰ Clearly this is not the object of judicial or official management. As Street J. observed,

"It seems fair to regard an official manager's function as being primarily one of keeping the wheels of a company turning, and thereby restoring it to prosperity. He is appointed to control the company 'in lieu of' the appointment of a liquidator, and there is a very real distinction

88 Murray Brown, *Official Management*. Paper presented at the Corporate Affairs Seminar. Brisbane. 22 Mar 1972. p 4

89 s 434 (formerly 197B)

90 See *Ex parte Judicial Manager of Bloemfontein Milk Bars (Pty) Ltd* 1943 OPD 5

Section 208 cont.

between a 'manager' and a 'liquidator'. It is with this basic concept in mind that s.207 must be construed".⁹¹

In South Africa the Court has sanctioned the sale of all the company's assets where the judicial manager was satisfied the judicial management could not succeed and without first applying for a winding-up order,⁹² as it appeared to be for the benefit of all creditors and would result in a saving of costs. It is submitted that this is wrong in South African Law⁹³ and would also be wrong in Australian Law. Section 206(3) places a duty on the official manager, as soon as he is of the opinion that the official management will not enable the company to pay its debts, to call a meeting of creditors for the purpose of passing a special resolution to voluntarily wind-up the company. Such a meeting of creditors cannot sanction the sale of the company's assets, unless under \$2000, and although they may resolve to apply to Court for such sanction, it would seem incorrect to circumvent the winding-up provisions of the Act merely because a majority of creditors found it more convenient to do so.

Disposition of assets

In *North West Construction Co Pty Ltd (in liq) v Marian*⁹⁴ it was held that an authority given to a director to receive moneys on a company's behalf was not a disposition of property.

91 *Re Bradford Roofing Industries Pty Ltd (in liq) and Companies Act (supra)* at 681

92 *Ex parte Joubert N O* 1970(3) SA 511(T)

93 See discussion in Chapter II, pp 129 and 130

94 (1965) WAR 205

Section 208 cont.

Ordinary course of business

It was argued in *Re Bradford Roofing Industries Pty Ltd (in liq) and Companies Act (supra)* that the phrase "in the ordinary course of the company's business" should be construed in the same way as similar words in section 92 of the Bankruptcy Act. However, Street J. in giving judgment said,

"I take the view that I must approach the construction of the phrase "in the ordinary course of the company's business" where it appears in s.207(1) as an independent problem, and that it is not correct to apply to s.207(1) decisions which have been given upon similar words appearing in other contexts".⁹⁵

The learned judge then went on to say,

"Perhaps a satisfactory working phrase to describe the particular concept enacted in s.207(1) is that the transaction must be one of the ordinary day-to-day business activities, having no unusual or special features, and being such as a manager of a business might reasonably be expected to be permitted to carry out on his own initiative without making prior reference back or subsequent report to his superior authorities such as, for example, to his board of directors. Borrowing, with minor adaptations, from the judgment of Rich, J. in *Downs Distributing Co Pty Ltd v Associated Blue Star Stores Pty Ltd (in liq)* (1948) 76 CLR 463, at p.477, the requirement is that the transaction must fall into place as part of the undistinguished common flow of the company's business, that it should form part of the ordinary course of the company's business as carried on, calling for no remark and arising out of no special or particular situation".⁹⁶

95 at 680

96 at 681

Section 208 cont.

Liabilities incurred in the course of the official management

In *Proctor v Carapark Productions Pty Ltd*,⁹⁷ it was held by Deputy Master Olsson that "liabilities incurred by the official manager" in section 202(1) - (which is similar to the wording in the present section 208(5)(b)) - means the same as "debts incurred" in section 297(2) and that the claim by a former general manager against a company under official management for damages for wrongful dismissal, must be "proved" in the official management and could not be established by action.

In the South African case of *General Leasing Corporation Ltd v Thorne N O*⁹⁸ a contrary view was taken. Van Wingen A.J.P. concluded that liabilities upon which the section wished to confer preference were those which resulted from contracts entered into by the judicial manager in the course of borrowing moneys or acquiring goods or services on credit in the course of conducting the company's business. He then held that a claim for damages for breach of contract by the judicial manager did not fall into that category.

Priorities in the application of assets

Subsection (5) deals with how moneys that become available to the official manager should be applied, namely (a) in paying the costs of the official management including the official manager's remuneration, (b) in paying liabilities incurred in the course of the official management and (c) in the payment of any other liabilities, namely the unsecured pre-official management creditors.

97 (1965) South Australia : Case No. 1624

98 1975(4) SA 157(C)

Section 208 cont.

The previous comparable section was not as wide and led to difficulties in practice. In *Re Bradford Roofing Industries Pty Ltd (in liq) and Companies Act (supra)*⁹⁹ Street J. held that under the section as it formerly stood, the relevant priority did not extend beyond the termination of the official management. This decision, that where a winding-up occurs after the completion of the term of official management there is no priority for official management creditors over other unsecured creditors, has been superseded by the amendments to the Uniform Companies Act 1961.¹⁰⁰

In *Re Pullins of Newcastle Pty Ltd (supra)*¹⁰¹ Street J. also held that on the making of a winding-up order, there is nothing in the provisions of the Act to prevent creditors whose debts arose during the official management preceding the making of the order, in a case where the winding-up order is made during the currency of the period of that official management, from retaining, amongst ordinary creditors, the preferred status given their debts by section 202(1)(c) of the Act. In giving judgment, the learned judge said,

'Not only do I see no valid reason to deny them this preferred status, but considerations of practicality and fairness tend strongly in support of their retaining their preferred status. It is one thing to say to an official management creditor that once the period mentioned in the resolution has come to an end then his statutory priority inevitably ends also (as I held in *Re Bradford Roofing Industries Pty Ltd* (1966)¹ NSW 674); unfortunate though this may be as regards some official management creditors they have the remedy in their own hands, namely,

99 Affirmed sub. nom. *Re Bradford Roofing Industries Pty Ltd (in liq); P G H Industrial Products Pty Ltd v Walker and others (supra)*

100 Act No. 21 of 1966 (NSW)

101 See also *In re Wayman Earthmovers Pty Ltd* (1971)² SASR 97

Section 208 cont.

to ensure that they recover payment of their claims prior to the termination of the period mentioned in the resolution, this being a date which would be known to them at the time of their extending credit to the company under official management. But it is quite another thing for a person extending credit to a company under official management, having in mind a stated period of official management during which, and no longer, his priority will subsist, to be met with an unexpected foreshortening of the official manager's term of office by a winding-up and to be told that he has thereby lost the priority which the statute conferred upon him".¹⁰²

The question of priorities between official management creditors and pre-official management unsecured creditors is now dealt with by section 292(1)(a)(b) of Part X, which relates to winding-up of companies. This section gives priority to debts of the company "properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management" where the winding-up of a company commences within two months after the termination of the official management. The judgment in the *Bradford Roofing* case (*supra*) is therefore now confined to those cases where winding-up commences more than two months after the termination of the official management.

Secured creditors

Prior to the substantial amendment to Part IX in 1966, section 207 (which now corresponds to section 208(5)) in subsection (3) provided a specific saving in favour of secured creditors by making the section subject to

Section 208 cont. Section 208A

the provisions of section 202. The new provisions (section 208) do not specifically refer to secured creditors and the omission was explained by Lush J. in *Australia & New Zealand Bank Ltd v Emgo Equipment Pty Ltd*¹⁰³ :

"Similarly, when one looks at s.208(5), it becomes apparent that the reason for the omission from that section of the specific saving in favour of secured creditors in its predecessor s.202 is to be found in the opening words. Section 208(5) refers to the moneys of the company that become available to the official manager during the official management. Section 202 was not introduced by any such words, but simply said that during the period mentioned in a resolution for official management the costs of the official management, and liabilities incurred by the official manager, should be payable in preference to unsecured debts. The absence of the present introductory words makes a vast difference to the significance of the priority conferred by the original s.202. In the new legislation the presence of the introductory words makes it unnecessary to save the rights of secured creditors. This flows from the fact that the natural and proper meaning of the words "the moneys of the company that become available to the official manager during the official management" is moneys which come to his hands without any restriction in law or equity upon his right to them or his right to use them for the company's purposes".

SECTION 208A : OFFICIAL MANAGER MAY^a APPLY TO COURT FOR DIRECTIONS

The official manager^b may apply to the Court for directions in relation to any particular matter arising out of the exercise of his powers or functions as official manager.

Section 208A cont.

- a QLD : delete *Official manager may* and substitute *Right of official manager to*
WA : delete *Official manager may* and substitute *Power of official manager to*
- b QLD : insert *of a company*

Commentary :

This is a new section and has no counterpart in the 1961 Act. It is clearly an improvement.

Section 206(1)(c) requires the official manager to comply with any directions of the creditors which are agreed by special resolution. If such directions are in conflict with the official manager's own views, he could presumably apply under this section for guidance.

In South Africa the Court is given power to include in the judicial management order "such other directions as to the management of the company, and any matter incidental thereto"¹⁰⁴

In *Wire Industries Steel Products and Engineering Co (Coastal) Ltd v Surtees N O and Heath N O (supra)* Schreiner J.A. said,

"There is as I have said, no express power to interfere with the legal rights or lawful interests of other persons in these provisions, while the appearance, one after another, of express provisions empowering the Courts to make orders which, in certain fields, bring about about such interference tends strongly to negative the existence of any general power outside the limits of such express provisions. But, even apart from these indications, 'directions as to the management of the company or any matter incidental thereto' is an

Section 208A cont.

Section 209

expression which can be given useful content without interpreting it as including the drastic power to modify the rights of third parties the Courts should confine themselves to the limited powers which were unquestionably given in the legislation and not assume wider powers which it might seem desirable that they should have".¹⁰⁵

SECTION 209 : APPLICATION OF CERTAIN PROVISIONS IN WINDING UP TO OFFICIAL MANAGEMENT^a

Where a company is under official management, the provisions of sections 218(1)(g)^b, 248, 249, 306, 374C and 374D shall^c apply as if the company under official management were a company being wound up and the official manager were the liquidator and any reference in those sections to contributories shall^d read as a reference to members.^e

- a* QLD : delete heading and substitute *Application to official management of certain provisions relating to winding up.*
- b* VIC QLD WA : delete *sections 218(1)(g)* and substitute *paragraph (g) of subsection (1) of section 218 and of sections*
- c* QLD WA : delete *shall*
- d* VIC QLD WA : insert *be*
- e* QLD : insert *of the company*

Commentary :

The section replaced the former section 208 of the principal Act but it is narrower because section 250 is omitted and the Court is not empowered to apply other sections of the Act as it was under former section 208(2).

Section 209 cont.

Section 218(1)(g) provides that any dividend due to a member shall not be regarded as a debt of the company where such debt would compete with other creditors who are not members but such debt would be taken into account for the purpose of any adjustment of rights between members themselves.

Section 248 provides for the Court to order the inspection of the company's books and papers.

Section 249 provides for the summoning of persons who are or were connected with the company and for their examination under oath.

Section 306 deals with the prosecution of delinquent officers and members of the company. It should be noted that subsection (3) would only apply to a liquidator and not to an official manager.

Section 374C provides that if an officer of the company was party to contracting a debt by the company which he knew at the time the company had no reasonable probability of being able to pay, he is guilty of an offence.

In terms of section 5 an official manager or deputy official manager is an officer of the company, and it also includes any director, secretary or employee of the company.

Section 374C also provides that if any business of the company was carried on for any fraudulent purpose, then any person who was knowingly a party to such carrying on is also guilty of an offence.

Section 209 cont. Section 210

Section 374D deals with the power of the Court to declare a person who has been convicted under section 374C to be liable for the payment of all or part of the debts of the company, depending on whether he was convicted under subsection (1) or (2) of section 374C.

SECTION 210 : POWER OF COURT TO TERMINATE OFFICIAL MANAGEMENT AND GIVE DIRECTIONS

- (1) *If at any time, on the application of the official manager or of any creditor or member of a company, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled, or for any reason it is undesirable that the company should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and upon that date the official manager shall cease to be the official manager of the company.*
- (2) *On making an order under subsection (1)^a, the Court may also give such directions as it deems fit for the resumption of the management and control of the company by its officers, including directions for the calling of a general meeting of members of the company to elect directors^b to take office upon the termination of the official management.*
- (3) *The costs of any proceeding before the Court under this section and the costs incurred in calling a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, be part of the costs of the official management of the company.*

Section 210 cont.

- a VIC QLD WA : insert of *this section*
b WA : insert of *the company*

Commentary :

Former section 209 of the principal Act dealt with the cancellation of the official management.

The present section 210 is wider in scope than the former section, and the Court is now empowered at any time on the application of the official manager, a creditor or a member, to terminate the official management and if necessary may give directions for the resumption of the management and control of the company by its officers.

Under section 204(1)(c) the Court has power to terminate the appointment of the official manager but this does not necessarily mean the termination of the official management as provision is made in section 204(3) for the filling of a vacancy.

In addition the appointment of a liquidator automatically terminates the official management.¹⁰⁶

In South Africa it is not possible to obtain a winding-up order until the judicial management order has been discharged¹⁰⁷ and consequently a liquidator cannot be appointed while a judicial manager still holds office.

The person who obtains an order under this section must lodge an office copy of such order within seven days of it being passed with the Commissioner for Corporate Affairs and copy of the order must be published in a daily newspaper circulating generally throughout the State.¹⁰⁸

106 S 206(9)

107 *Borton and another N N O v Bonnievale Cannery and Packers Ltd (supra)*

108 S 211A

Section 210 cont.

There is no reported case law on this section and consequently the following South African cases may be of guidance.

In the case of *Samuels v Nicholls and another*¹⁰⁹ it was held that section 440 of the South African Act, which corresponds to section 210 of the Australian legislation, does not provide a creditor, who did not oppose the grant of a judicial management order, and, so far as the facts were concerned, who actually agreed with it, with the right one month later, on the same set of facts, to press for liquidation because he had changed his mind.

This same case also established that an allegation of mismanagement by the judicial manager is not a ground for cancelling the judicial management order nor is the fact that the judicial manager is quite unsuited to his work. The proper remedy in such cases would be to apply for the removal of the judicial manager.

Where, however, new facts emerged, which, had they been known to the Court at the time when the provisional order was applied for would probably have resulted in its not being granted, the Court, at the instance of the petitioning creditor, discharged the judicial management order and granted a provisional winding-up order.¹¹⁰

On making an order in terms of section 210 the Court may, in terms of subsection (2), give such directions as it deems fit for the resumption of the management and control of the company by its officers, including directions for the calling of a general meeting to elect directors.

109 1948(2) SA 255(W)

110 *K & L Timbers (Natal) Ltd v Dow (Pty) Ltd* 1960(2) SA 194(N)

Section 210 cont.

Section 211

In the South African case of *Ex parte Niven*¹¹¹ the Court appointed a manager to carry on the business, after cancellation of the judicial management order, until such time as new directors were elected.

SECTION 211 : RESOLUTION TO PLACE COMPANY UNDER OFFICIAL MANAGEMENT
EFFECTIVE, SUBJECT TO APPEAL

- (1) *Notwithstanding that a resolution has been passed under subsection (1) of section 202 determining that a company shall be placed under official management, and notwithstanding anything contained in subsection (1) of section 203 -*
- (a) *any^a creditor to whom the company owes, or any^b representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company; or*
 - (b) *any^c member holding, or any^d representative of a group of members holding collectively, not less than ten per centum of the paid up capital of the company; or*
 - (c) *in the case of a company not having a share capital, any^e member holding, or any^f representative of a group of members holding collectively, not less than ten per centum of the total voting rights of all members having a right to vote at all general meetings,*
- may apply to the Court for the variation or cancellation of the resolution at any time within a period of fourteen days after the passing thereof and the Court may, if it is of the opinion that*

Section 211 cont.

there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

(2) *Where the Court makes an order^g cancelling the^h resolution under subsection (1)ⁱ the Court may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately prior to its being^j placed under official management.*

(3) *Upon cancellation of the resolution by the Court under subsection (1)^k, the company shall cease^l to be under official management and the person appointed^m official manager of the company shall ceaseⁿ to be the official manager^o and upon any variation of the resolution by the Court under this section, the resolution shall have^p effect as so varied; but notwithstanding that the resolution may be so varied or cancelled by the Court, the acts of an official manager prior to^q any such variation or cancellation shall be^r valid and binding on the company and on the members and creditors thereof.*

- a QLD : delete any and substitute a
- b QLD : delete any and substitute a
- c QLD : delete any and substitute a
- d QLD : delete any and substitute a
- e QLD : delete any and substitute a
- f QLD : delete any and substitute a
- g QLD : insert under subsection (1) of this section
- h QLD : delete the and substitute a

Section 211 cont.

- i* VIC WA : insert *of this section*
QLD : delete *under subsection (1)*
- j* QLD : delete *prior to its being* and substitute *before it was*
- k* VIC QLD WA : insert *of this section*
- l* QLD WA : delete *shall cease* and substitute *ceases*
- m* QLD : insert *as the*
- n* QLD WA : delete *shall cease* and substitute *ceases*
- o* QLD : insert *thereof*
- p* QLD WA : delete *shall have* and substitute *has*
- q* QLD : delete *prior to* and substitute *before*
- r* QLD WA : delete *shall be* and substitute *are*

Commentary :

This matter was formerly covered by section 210 of the principal Act.

The section has however been expanded and reworded.

Within fourteen days of the passing of the official management resolution persons of certain specified classes may apply to Court for a variation or cancellation of the resolution; the Court then, if it is of opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution was not in the interests of the creditors or members, may vary or cancel the resolution.

Resolution has been passed

In *Re St George District Builders & Consultants Pty Ltd and the Companies Act 1961 (supra)* it was suggested that the right of appeal conferred by section 210 (now section 211) referred only to resolutions which had been validly passed. McLelland C.J. in Eq. commented as follows,

"It appears to me that the appeal mentioned in s.210 is an appeal with respect to a resolution validly passed under

Section 211 cont.

the terms of s.201(1) and the whole basis of the applicants' claim here, as I understand it, is that the resolution which was passed was not a valid resolution under the section but one made without power. Accordingly, even though I had been in favour of the applicants on the principal submission, I do not think that they could have succeeded on this motion".¹¹²

No reasonable prospect of being rehabilitated

In *Re Knit 'N Wool Centre Pty Ltd (supra)* Gowans J. in deciding the interpretation of the phrase "reasonable prospect of the company being rehabilitated" said,

"One of the dictionary meanings of 'rehabilitation' is 'restoration to a former capacity'. In this context, therefore, I take it that s.211 is concerned with a reasonable prospect of the company being restored to a former capacity to pay its debts as and when they became due and payable. A 'reasonable prospect' must take into account not only the attainment of that condition, but also the time within which it will be attained".¹¹³

The learned judge then decided that a programme of recovery which would require nine or ten years in order for the company to be able to meet its obligations did not amount to a reasonable prospect of rehabilitation.

Creditors' views not decisive

In *Re Quality House Pty Ltd*¹¹⁴ it was held that on the hearing of a summons under section 210(2) (now section 211) the Court must make an original decision on the evidence then before it as to whether the company should remain under official management. The Court is not

112 at 1267

113 at 249

114 (1966)2 NSW 130

Section 211 cont.

restricted to examining the material which the meeting of creditors, which passed the resolution, had before it nor are the wishes of the majority of creditors a necessarily decisive factor.

The learned judge's reasons for this approach were as follows,

"Although s. 210 differs in a great many important respects from the sections the High Court and the Full Court were considering in those cases, it has this much in common : each of the sections gives to persons whose rights are affected a right of appeal to a court against an act or decision of a non-judicial nature. In so far as the word "appeal" may be susceptible of being read down in some contexts, the jurisdiction under s. 210 to amend, vary or cancel and the stated considerations with reference to which this jurisdiction is to be exercised make clear that the present appeal is an appeal in the fullest sense of the word. The Court's function is one which involves the making of an original decision on the evidence before it as to whether the company should remain under the present official management or under some amended or varied form of official management, or whether it is preferable that there be no official management; the considerations that are relevant to that decision are whether or not the resolution is reasonable and, in particular, its effect upon the interests of the creditors and the members of the company.

The process of official management is, of course, concerned essentially with the effectuation of the rights of the creditors of a company, and there is some analogy to be drawn in an appeal of this nature from the discretionary elements that enter into the decision of whether or not an insolvent company should be wound up where there is a contested hearing under s. 222 of the Companies Act. But the analogy is not to be taken too far. The doctrine of

Section 211 cont.

class right recognized in the winding-up cases has a place in an appeal under s. 210. But there is less significance to be attached to the wishes of a majority of the creditors (e.g. *Macrae (P. & J.) Ltd.* (1961) 1 All E.R. 302; (1961) W.L.R. 229, 328). The whole essence of an appeal under s.210 is that a majority decision of a creditors' meeting is being called in question. The fact that the creditors have passed a resolution for official management is the element which founds the Court's jurisdiction to entertain the appeal. The wishes of the creditors as embodied in the resolution may have evidentiary weight of differing degrees according, *inter alia*, to the view taken of the reliability of the information before them and of any particular elements that may have affected the voting of individual creditors. But the degree of importance which in the particular case the Court may think appropriate to be given to the views of the creditors can never be so great as to translate those views beyond being an evidentiary fact; the decision upon the reasonableness of the resolution is the Court's and the Court's alone".¹¹⁵

The *Quality House* case was quoted with approval by Gowans J. in *Re Knit 'N Wool Centre Ltd (supra)* where he said,

"The opinion of the majority of the creditors, or of the members, cannot be taken as conclusive, since if that were so there would be nothing for the Court to determine. There is no reason, however, why they should not be accorded an evidentiary value : cf. per Street J. in *Re Quality House Pty Ltd*".¹¹⁶

It is the view of the authors of *Australian Company Law*¹¹⁷ that the Court would not readily interfere with a majority decision, "reached with due regard for the forms and procedures laid down by the uniform

115 at 132

116 at 252

117 Paterson and Ednie *op cit* p 2477

Section 211 cont. Section 211A

enactments and free of all taint of unfairness, collusion or other vitiating circumstance".

On an application under section 211 for a cancellation of the resolution the onus is clearly on the applicant to convince the Court to form the necessary opinion. Gowans J. in the *Knit 'N Wool* case (*supra*) said,

"In effect, section 211(1) provides a mode of appeal to the Court against the acts of the directors and of the prescribed majority of creditors, and I think it follows on conventional principles that it is for the challenger to establish the case for cancellation of the resolution, where this is sought, that is to bring the Court to adopt the opinion necessary for the exercise of the power to cancel".¹¹⁸

A cancellation order by the Court determines the official management but section 211(3) validates and makes binding on the company, members and creditors any acts of the official manager in the period after his appointment and before the cancellation order.

SECTION 211A : LODGMENT OF OFFICE COPY OF COURT ORDER

- (1) *Where the Court makes an order under section 210 or section 211 the person obtaining the order shall within seven days after the order is made lodge with the Commission^a notice in the prescribed form of the making of the order and^b the date thereof.*
- (2) *The person who obtained the order^c shall lodge with the Commission^d an office copy of the order within seven days of^e the passing and entering of the order.*

Section 211A cont.

(3) *Where the Court makes an order under section 210 or section 211 terminating the official management of a company the person obtaining the order shall within seven days after the passing and entering of the order publish a copy of the order at least once in a daily newspaper circulating generally throughout the State.*

(4) *A person who fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.*

Penalty : One hundred dollars. Default penalty. (sic)

- a VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner*
- b QLD : insert of*
- c QLD : delete obtained the order and substitute obtains such an order as is mentioned in subsection (1) of this section*
- d VIC : delete Commission and substitute Registrar
QLD WA : delete Commission and substitute Commissioner*
- e QLD : delete of and substitute after*

Commentary :

This is a new section which provides that notice of the making of the order must be given in the prescribed form¹¹⁹ within seven days after it is made. The person obtaining the order must also lodge an office copy of the order with the Commissioner within seven days after it is passed and entered. Within the same time, if the order terminates the official management, a copy of the order must also be published at least once in a daily newspaper circulating generally throughout the State.

SECTION 212 : RELEASE OF OFFICIAL MANAGER

- (1) Where a person ceases to be the official manager of a company he shall, notwithstanding that he has so^a ceased to be the official manager^b, within fourteen days thereafter, prepare a report showing how the official management was conducted by him and for this^c purpose shall have^d a right of access to the records and books of the company.
 - (2) A person shall within twenty-eight days of his ceasing^e to be official manager^f call a meeting of the creditors of the company.
 - (3) Notice of the^g meeting^h shall be given to the creditors of the company by -
 - (a) posting to each of the creditors a notice and a copy of the report referred to in subsection (1)ⁱ; and
 - (b) publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State, not less than seven days nor^j more than fourteen days before the day of the meeting.
 - (4) At the^k meeting of creditors^l called under subsection (2)^m the person who wasⁿ official manager^o shall present his report to the meeting and shall give such explanations thereof as may be reasonably requested by any creditor^p.
 - (5) Within seven days after the holding of the meeting^q the person who was^r official manager^s shall lodge with the Commission^t notice of the holding of the meeting and of its date^u with a copy of the report prepared under subsection (1)^{v w}.
- Penalty : One hundred dollars. Default penalty.

Section 212 cont.

(5A) If the meeting is not held on the day for which it is called under subsection (2)^{xx}, the person who was official manager shall, within seven days after that day, lodge with the Commission^y -

(a) a notice that the meeting was not held on that day; and

(b) a copy of the report prepared under subsection (1)^z.

Penalty : One hundred dollars. Default penalty.

(6) The expenses incurred by the person who was^{aa} official manager^{bb} in connection with the preparation of the report referred to in subsection (1)^{cc} and in relation to the calling and holding of the meeting referred to in subsection (2)^{dd} shall be deemed to be part of the costs of the official management and deemed to have been incurred during the period of the official management.

(7) Subject to subsection (8)^{ee}, where a person ceases to be the official manager of a company, the adoption by the meeting of creditors of the company of the report prepared by him under subsection (1)^{ff} and of his explanations shall discharge^{gg} him from all liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as official manager.

(8) The adoption of the report referred to in subsection (1)^{hh} andⁱⁱ the explanations^{jj} thereof shall^{kk} not so^{ll} discharge the person who was official manager if such^{mm} adoption was obtained by fraud or byⁿⁿ suppression or concealment of any material fact nor^{oo} discharge him from any liability that by virtue of any enactment or rule of law would otherwise attach to him in respect

Section 212 cont.

of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

- (9) If the report referred to in subsection (1)^{pp} and the explanations thereof^{qq} are not, within two months after notice of the meeting has been given under subsection (3)^{rr} to creditors of the company, adopted by a meeting of creditors the person who was^{ss} official manager^{tt} may apply to the Court for an order of release.
- (10) The Court may grant or refuse the application and may direct that Court costs incurred by the person who was official manager in connection with his application for release following his ceasing to be official manager shall be part of the costs of the official management and deemed to have been incurred during the period of the official management and the order, if granted, shall have^{uu} effect as if the^{vv} report^{ww xxx} and explanations^{yy} had^{zz} been adopted by a meeting of creditors of the company.
- (11) Where the Court grants an application under subsection (10)^{a*}, the person who was the official manager shall lodge^{b*} with the Commission^{c*} an office copy of the order^{d*} within seven days of the passing and entering of the order.

Penalty : One hundred dollars. Default penalty.

- a QLD : delete so
- b QLD : insert thereof
- c QLD : deleie this and substitute that
- d QLD : delete shall have and substitute has
WA : delete shall have and substitute the person has
- e QLD : delete of his ceasing and substitute after he has
ceased

Section 212 cont.

- f* QLD WA : insert of a company
- g* QLD : delete *the* and substitute *a*
- h* QLD : insert under subsection (2) of this section
WA : insert referred to in subsection (2) of this section
- i* VIC QLD WA : insert of this section
- j* QLD : delete *nor* and substitute *or*
- k* QLD : delete *the* and substitute *a*
- l* QLD : insert of a company
- m* VIC QLD WA : insert of this section
- n* QLD : insert *the*
- o* QLD : insert of the company;
- p* WA : insert of the company
- q* QLD : insert of the creditors of a company called under
subsection (2) of this section
WA : insert referred to in subsection (4) of this section
- r* QLD : insert *the*
- s* QLD : insert of the company
- t* VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- u* QLD : insert together
- v* VIC QLD WA : insert of this section
- w* QLD : insert in default whereof he shall be guilty of an
offence against this Act.
- x* WA : insert of this section
- y* VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- z* WA : insert of this section
- aa* QLD : insert *the*
- bb* QLD : insert of a company
- cc* QLD WA : insert of this section
- dd* QLD WA : insert of this section
- ee* VIC QLD WA : insert of this section
- ff* VIC QLD WA : insert of this section
- gg* QLD : delete *shall discharge* and substitute *discharges*
- hh* VIC QLD WA : insert of this section
- ii* QLD : delete *and* and substitute *with*

Section 212 cont.

- jj* VIC : delete *explanations* and substitute *explanation*
kk WA : delete *shall* and substitute *referred to in subsection (4) of this section does*
ll QLD : delete *shall not so* and substitute *does not*
mm QLD WA : delete *such* and substitute *the*
nn QLD : insert *the*
oo QLD : delete *nor* and substitute *and does not*
WA : delete *nor* and substitute *or*
pp VIC QLD WA : insert *of this section*
qq WA : insert *referred to in subsection (4) of this section*
rr WA : insert *of this section*
ss QLD : insert *the*
tt QLD : insert *of the company*
uu WA : delete *shall have* and substitute *has*
vv QLD : insert *statement*
ww VIC QLD : delete *report* and substitute *reports*
xx WA : insert *referred to in subsection (1) of this section*
yy WA : insert *referred to in subsection (4) of this section*
zz QLD : delete *had* and substitute *have*
*a** QLD WA : insert *of this section*
*b** QLD : insert *an office copy of the order*
*c** VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
*d** QLD : delete *an office copy of the order*

Commentary :

The release of the official manager was covered by former section 211 of the 1961 Act. Section 212 of the present Act has been considerably expanded and now provides certain time limits which were not present under the original Act. In addition amending legislation in 1971 made provision for certain expenses to be deemed to be part of the costs of official management.

Section 212 cont.

Where an official management is determined¹²⁰, the official manager must within fourteen days prepare a report showing how the official management was conducted, and to do this he has the right of access to the company's records. Within twenty-eight days of the official management being determined, he must call a meeting of creditors at which he presents his report and answers any queries.

The section requires that notice of the meeting together with a copy of the official manager's report must be posted to creditors and that notice must be published in a daily newspaper circulating generally throughout the State.

Within seven days of the meeting being held the official manager must lodge a notice of the meeting in the prescribed form¹²¹ with the Commissioner together with a certified copy of his report.

If the meeting adopts the report the official manager is then discharged from all liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as official manager, unless such discharge was obtained by fraud or by suppression or concealment of any facts.

An official manager is now included in the definition of an officer of the company¹²² and as such is afforded the protection of section 365 of the Act, whereby the Court has power to grant relief to an officer of the company in certain circumstances. The section provides that where a person has acted honestly and reasonably, having regard to all

120 For ways in which it may be determined see ss 204, 210 and 211

121 Form 61F

122 s 5

Section 212 cont. Section 213

the circumstances of the case including those connected with his appointment, the Court may relieve him wholly, or in part, from a liability resulting from negligence, breach of duty or trust.

It is not clear whether adoption of the report by creditors could relieve the official manager of any liability to members of the company.

If the report is not accepted by the creditors within two months after the notice of the meeting has been given, the former official manager may apply to Court for release.

In South Africa a judicial manager is not required to prepare a report showing how the judicial management was conducted when the judicial management order is cancelled.

SECTION 213 : DOCUMENTS OF COMPANY UNDER OFFICIAL MANAGEMENT TO STATE THAT FACT

- (1) *Where a company is under official management, every invoice, order for goods or business letter issued by or on behalf of the company or the official manager thereof, being a document on or in which the name of the company appears, shall have the words "under official management" immediately following the name of the company where it first appears therein.*
- (2) *If default is made in complying with subsection (1)^a, the company and every officer of the company who^b is in default shall be^c guilty of an offence against this Act.*

Penalty : One hundred dollars.

Section 213 cont.

Section 214

- a VIC QLD WA : insert *of this section*
- b WA : delete *who* and substitute *that*
- c WA : delete *shall be* and substitute *is*

Commentary :

This section was formerly section 212 of the 1961 Act, although there has been a slight change of wording.

In terms of the definition section¹²³, document includes summons, order and other legal process, and notice and register. The term document was discussed fully in the case of *Hill v R.*¹²⁴

SECTION 214 : FUNCTIONS OF COMMITTEE OF MANAGEMENT AND APPOINTMENT OF DEPUTY OFFICIAL MANAGER

- (1) *A committee of management appointed pursuant to this Part shall assist and advise the official manager on any matters relating to the management of the company on which he requests their advice and assistance.*
- (2) *Either^a a committee of management or a meeting of creditors convened by the official manager -*
 - (a) *may appoint a person who -*
 - (i) *has consented in writing to act as deputy official manager of the company;*
 - (ii) *is not the auditor of the company; and*
 - (iii) *has certified in writing that he is neither an*

123 s 5

124 (1945) KB 329 at 332 and 333

Section 214 cont.

undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness, to be^b deputy official manager^c who, in the absence of the official manager shall, subject to any written directions given to him by the official manager, act as the official manager and, while so acting, shall have^d the powers, duties and functions of the official manager;

- (b) may remove the deputy official manager and may, if it feels it is necessary, appoint another person to be deputy official manager in his place;
- (c) may determine the amount of the salary or the remuneration of the deputy official manager.

(3) A person who is appointed deputy official manager of a company shall within fourteen days thereafter lodge with the Commission^e a notice in the prescribed form of his appointment as deputy official manager and of the situation of his office, and in the event of any change in the situation of his office he^f shall, within fourteen days thereof, lodge with the Commission^g notice thereof in the prescribed form.

Penalty : One hundred dollars. Default penalty.

(3A) A person who ceases to be deputy official manager shall within fourteen days of his so ceasing to be deputy official manager, lodge with the Commission^h notice thereof in the prescribed form.

Penalty : One hundred dollars. Default penalty.

Section 214 cont.

- (4) A committee of management may at any time and from time to time direct the official manager of the company to call a meeting of the creditors of the company or the members thereof or of both and the official manager shall give effect to the direction.
- (5) Subject to this section and to the regulations, the provisions of subsections (2) to (9), both inclusive, of section 242 shallⁱ apply to and with respect to a committee of management and the proceedings of and vacancies in a committee of management and to and with respect to the removal of members thereof, any reference in those provisions to the committee of inspection being read as a reference to the committee of management, any reference therein to the liquidator being read as a reference to the official manager and any reference therein to a contributory being read as a reference to a member of the company.

- a QLD : delete *Either*
- b VIC WA : insert *a*
QLD : insert *the*
- c QLD : insert *of the company*
- d WA : delete *shall have* and substitute *has*
- e VIC delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- f QLD : delete *he*
- g VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- h VIC : delete *Commission* and substitute *Registrar*
QLD WA : delete *Commission* and substitute *Commissioner*
- i WA : delete *shall*

Commentary :

Functions of the committee of management and the appointment of a deputy official manager were formerly covered by section 213 of the 1961 Act.

Section 214 cont.

Section 214 has been expanded to provide for a meeting of creditors as well as a committee of management being able to appoint a deputy official manager and to determine his salary. The deputy official manager is also required to give notice to the Commissioner of his appointment and release.

The main function of a committee of management is set out in subsection (1), namely, to assist and advise the official manager on any matters relating to the management of the company.

Section 214(5) applies the provisions of section 242 (2) to (9) to such committees of management, and to their proceedings, to vacancies thereon, and to the removal of their members. Section 242, which is in Part X of the Act, deals with committees of inspection in the case of a winding-up.

In *Re Bradford Roofing Industries Pty Ltd (in liq) and Companies Act (supra)* Street J. said,

"In general the Act appears to contemplate that a committee of management will provide a similar link between the official manager on the one hand and the creditors and members on the other hand to that which a committee of inspection provides between a liquidator and the creditors and members in a winding up".¹²⁵

The committee of management cannot force their views on the official manager as they can only give advice and directions if the official manager requests such advice.¹²⁶

The committee of management, however, has the power¹²⁷ to direct the official manager to call a meeting of creditors which could then give directions which the official manager must follow.

125 at 681

126 subs (1)

127 subs (4)

Section 214 cont. Section 215

In terms of section 214(2) the deputy official manager shall act in the absence of the official manager and while so acting shall have the powers, duties and functions of the official manager.

In *Brunet v R.*¹²⁸ it was ruled that "absence" connotes physical non-presence for whatever cause. This would presumably include absence from any cause such as illness, but would not cover the case of his resignation, or death.

Where a vacancy occurs in the office of official manager a person who is qualified for appointment may be appointed as such.¹²⁹ The Act does not, however, provide for the deputy official manager, if there is one, to act in the interim.

The Act contains no provision for the release of a deputy official manager but as he is acting in the place of the official manager, presumably the release of the official manager automatically releases the deputy.

SECTION 215 : ACCIDENTAL OMISSION TO GIVE NOTICE

The accidental omission to give notice of a meeting held for the purposes of this Part to, or the non-receipt of a notice of the^a meeting by, any^b person shall not invalidate the meeting or the proceedings at the meeting unless the Court, on the application of a creditor or member of the company or the official manager of the company concerned^c, otherwise declares.

- a QLD : delete *the* and substitute *such a*
- b QLD : delete *and* and substitute *a*
- c QLD : delete *concerned*

128 (1918) 42 DLR 405

129 s 204(3)

Section 215 cont.

Commentary :

In terms of section 366(1), which deals with irregularities in proceedings, no proceeding under the Act shall be invalidated by any defect, irregularity or deficiency of notice or time, unless the Court is of the opinion that substantial injustice would be caused thereby and which cannot be remedied by an order of Court.

C H A P T E R I V

Criticisms of the present system and recommendations for its improvement.

Statistics

Volume two of this thesis contains statistics relating to all judicial management files which were available for research in the six Master's Offices in South Africa.

In all a total of 1280 files were researched¹ in the six Master's offices. The results show the following :-

807 cases went into liquidation

197 cases were offers of compromise

141 cases were successful

50 files were not available

19 cases show that the court refused to grant an order

43 cases are still in judicial management

23 files lacked information about the outcome

1280 Total

Offers of compromise invariably mean that creditors are paid less than the full value of their claim and they therefore should be regarded as unsuccessful. If this premise is accepted then the figures show that out of 1145 cases where a result could be determined, 1004 cases were not successful i.e an incidence of success of just over 12%.

1 See Table on p. iv of Volume Two

Statistics were extracted by the various Master's Offices for both the Millin Commission of Enquiry² and the van Wyk de Vries Commission of Enquiry³ but these only covered limited periods. The Millin Commission found that in the Transvaal between 1940 and 1947 only 5 cases were successful out of 36, and in the Cape from 1927 to 1947 only 4 were successful out of 30 cases.⁴ These figures give a success ratio of 13.6%.

The van Wyk de Vries Commission found "that in the whole of South Africa during the period 1960 to 1963, 175 orders were granted; 102 proceeded to winding-up; 21 were discharged; and 45 not yet finalised"⁵. These figures do not tally but as a discharged order could be an offer of compromise, it is difficult to determine the success ratio. If we assume that all 21 orders which were discharged were successes, this gives an incidence of success out of the determinable results of 17%. It appears therefore, from all statistics that are available that the incidence of success is well below 20% and probably nearer 15%.

These results are disappointing but the writer does not believe that the system should be abolished because of the meagre results. There have been some notable successes and the system is worth retaining. A method must be evolved, however, to prevent frivolous applications.

It was argued above⁶ that judicial management is a special privilege which should be reserved for companies whose demise would have an

2. U.C. 69 - 1948

3. R.P. 45 - 70

4. at p.94 paragraph 261

5. at p.145 paragraph 51.02

6. Chapter II p.34 *et seq*

adverse effect on the economy and community and it should not apply to small proprietary businesses.

Statistics show⁷ that in the Cape over a 15 year period there were 137 judicial managements and that only seventeen of these companies had gross assets of over R500 000⁸ at the date of provisional judicial management. There were 16 cases where no information was available as regards the value of the assets, but of the rest there were 52 cases where the gross assets were R100,000 or less, and thirteen cases where the gross assets were less than R10,000.

The writer repeats and endorses the remarks of Mr. de Beer, former Assistant Master at Pietermaritzburg who, when testifying before the van Wyk de Vries Commission, said he could,

" still see the justification for a judicial management where the concern serves the required need of the country as a whole, e.g. manufacturers of medical equipment, medicines, steel products, etc., but not a second rate proprietary hotel on the South Coast or a little family general dealer's business, etc".⁹

Clearly the system of judicial management was not introduced to protect the type of business referred to by Mr. de Beer.

It is clearly desirable to set some sort of limit on the size and type of business to which judicial management should apply. The writer suggests that the law should be changed so as to make the judicial management provisions applicable only to public companies. It is acknowledged that some public companies are small and some private companies are large when one considers their impact on the economy and community, but by and large public companies are larger

7. Vol Two p.vii
8. as estimated by the Master
9. Chapter II, p.37

than private companies and their demise is likely to have a far greater impact on the economy and community than the demise of a private company.

STATISTICS IN AUSTRALIA

There seems to have been far fewer cases of Official Management in Australia than cases of judicial management in South Africa over a comparable period. In New South Wales, for example, which is the state with the largest share of Australian business, there were 212 cases of official management over a 14 year period from 1962 to 1975.¹⁰

Figures published for 1976 and 1977¹¹ show 33 cases in 1976 and none in 1977. This makes a total of 245 cases over 16 years compared with 662 cases in the Transvaal over a 19 year period (1960 - 1978).

There is also no requirement in the New South Wales legislation for the Corporate Affairs Commission to oversight Official Managements¹² and consequently it is not possible to obtain official information as to the incidence of success of failure

COMPARISON WITH AUSTRALIA

Because of the lack of official statistics in Australia, it is not possible to tell whether their system of official management produces better results than the system of judicial management.

Although the two systems have much in common, the basic difference lies in the method by which companies are placed into either judicial management or official management. In South Africa only the Courts

10. See letter from Corporate Affairs Commission dated 12.1.76
Annexure XI

11. Report of Corporate Affairs Commission dated 13.12.77.

12. See Annexure XI

may place a company into judicial management whereas in Australia it is a creditors special resolution which places a company under official management and "the Court plays only an appellate and referential role."¹³

It is the writer's view that the South African system is preferable because the view of creditors are not always objective whereas a Court will consider the facts impartially. The present system of judicial management does provide for the views of creditors to be considered once the provisional judicial manager has made his investigations and given a report at the first meeting of creditors. The court, however, is not bound to follow the views of creditors and has discretion to grant whatever order it decides after considering all the factors.¹⁴ If the national or public interest is a factor to be taken into account for the retention of the system of judicial management, and it is the writer's view that it should, then it is vital that the final decision be made by an impartial arbiter.

The basic difference between the two systems is that the Australian system is free of judicial supervision whereas the South African system is subject to the supervision of the Courts. The Australian system is "creditor management" as opposed to "judicial management".

Apart from the basic difference referred to above, there are a number of differences in detail. Some of these differences flow as a result of the basic difference, for example, the creditors choose the official manager whereas the Master of the Supreme Court chooses the judicial manager, (even though he must consider the wishes of creditors). There is also no provisional procedure in the Australian system because the

13. Paterson & Ednie *op.cit* p. 2442

14. Sect 427 of the South African Act.

creditors decide whether to place a company into official management, whereas in the South African system, the provisional procedure is designed to obtain the views of creditors before the Court makes a final order.

There is little merit in examining differences which flow from the basic difference. There are, however, a number of areas where the two systems are compatible in principle but differ in detail and an examination of these areas provides some useful suggestions for improving the system of judicial management.

The writer ^{pro}_Aposes dealing with these suggestions *seriatim* as they occur in the Australian legislation.

- 1) Section 198 (2) of the New South Wales Act prohibits a "related company" from voting on a special resolution to place a company under official management. A related company is defined in section 5 of the Act but in essence is the relationship between a holding company and its subsidiary or the relationship between the two subsidiaries of the same holding company.

"Related companies" are frequently creditors of a company which is being placed in judicial management and as such possess voting power and can frustrate the wishes of other creditors when voting at the first meeting of creditors on whether to accept the judicial manager's report and can also influence the choice of the person to be nominated as judicial manager.

The writer believes that the South African Act would be improved by introducing the concept of a related company and preventing such company from voting on the appointment of a judicial manager and on voting on a resolution to place a company into judicial management.

- 2) Section 198 (3) of the New South Wales Act states that the official management provisions shall not prejudice or affect the right of secured creditors.

In South Africa, a secured creditor may not institute action against a company under judicial management if an order has been granted staying all action against that company but the Courts are unlikely to interfere with a secured creditors rights if such interference will result in prejudice to that Creditor.¹⁵

There may be merit in incorporating a similar provision into the South African legislation although the existing system does not really prejudice the rights of secured creditors.

- 3) Section 427 of the South African Act provides a number of grounds for placing a company under judicial management whereas section 199 (1) of the New South Wales Act has only one ground for placing a company into official management namely the inability to pay it's debts.¹⁶

The Australian system could probably be improved by widening

15. See Chapter II p.110

16. See Chapter II p.47 and Chapter III p.190

the grounds for placing a company under official management.

- 4) Section 199 (4) of the New South Wales Act now makes it obligatory for all the directors of a company which is recommending official management to state whether or not the statement of affairs which the company must prepare, gives a true and fair view of the company's position.

Although the South African system provides for the provisional judicial manager to prepare a report on the company's state of affairs, it would be an improvement if the directors were required to state whether in their opinion the judicial manager's report presented a true and fair view of the company's prospects.

- 5) Section 202 A of the New South Wales Act provides for Creditors to appoint a committee of management. The functions of such committee are set out in section 214. Their main function is to advise the official manager on any matters relating to the management of the Company. They do not have any power to enforce their views but they can direct the official manager, in terms of sub-section 4, to call a meeting of creditors to give directions to the official manager which he must follow.¹⁷

The South African Act has no similar provision although in practice judicial managers frequently form a committee of creditors to guide and assist them in the management of the company's affairs.

Judicial Managers usually have legal and administrative skills but can hardly be expected to be familiar with the intricacies of a wide range of different businesses. A panel of creditors

17. See Chapter III p. 209 and P.283

who presumably would be familiar with the type of business in question, should be of value in assisting the judicial manager. The South African Act would be improved by providing for the appointment of a Committee of management.

- 6) The Australian legislation provides for an automatic stay of proceedings against the company when it is in official management¹⁸ whereas such a stay must be incorporated in the Court order in South Africa. The writer believes that an automatic stay of proceedings should be incorporated into the South African Act.¹⁹

- 7) The Australian legislation allows an official manager to dispose of assets up to a limited amount without having to obtain the leave of Court,²⁰ whereas in South Africa any disposal of assets, no matter how small in value, must be sanctioned by Court.²¹ It is submitted that it would be an improvement to the South African Act if the judicial manager were allowed to dispose of assets up to a limited amount without the necessity of applying for Court sanction. Provided the amount was limited to a reasonable figure the object of section 434, which is to prevent the judicial manager from liquidating the company, would not be circumvented. In Australia the amount above which the official manager must obtain Court sanction to sell assets is set at \$2000, but the writer suggests that this figure is far too low and recommends

18. Section 203B

19. See Chapter II p.65 *et seq.*

20. Section 208

21. Section 434

a figure of R10,000 if the South African Act is to permit such disposal. Such an amendment would avoid trivial applications to Court.

- 8) Although not part of the official management provisions, Section 218 (1) g of the New South Wales Act provides that members of a company in liquidation are not to be paid any claim for dividends until all other creditors have been paid in full.

This seems a reasonable provision to incorporate into the South African legislation.

DEFICIENCIES IN THE SOUTH AFRICAN ACT

The South African Act does not stipulate any time period in which a company must rehabilitate itself. Our Courts have held, however, that unless a company can rehabilitate itself within a reasonable time, they will not grant a judicial management order.¹⁸

In Australia a company is placed into official management for a period not exceeding two years¹⁹ and the period can only be extended by special resolution of creditors.²⁰

This matter may be resolved by judicial pronouncement shortly, as at the time of writing a company known as LAZTEX (PTY) LTD is applying to Court in the Witwatersrand Local Division²¹ for the cancellation of the judicial management order against Corlett Drive Estates Ltd which was granted in November 1974.

18. See Chapter II p.45 *et seq.* and the cases mentioned

19. Section 202

20. Section 203C

21. Case No. 79/16023

One of the grounds on which the applicant bases its action is that Corlett Drive Estates Ltd has been under judicial management for a period exceeding five years and there is no immediate prospect of creditors being paid in full and that the judicial management has failed in that the company has not been rehabilitated within a reasonable time. A ruling by the Court on the question of what constitutes a reasonable time would be welcome. As the law presently stands a provisional judicial manager finds it difficult to recommend that a company will rehabilitate itself within a reasonable time as the legislature has provided no guidelines.

A further deficiency in the South African Act was mentioned in Chapter II²² namely that jurisdiction is founded on the Master in the area where the registered office of the company is situate which is not necessarily the Master of the Court which grants the order. This is clearly incorrect and the section which defines Master, namely section 12, should be amended.

Section 433 (h) of the South African Act is badly worded as it is not clear whether a judicial manager must submit a report every six months in the case of private companies.²³ In practise the Masters do not interpret the section as requiring an interim report in the case of private companies.

Section 435 (2) which applies ~~that~~ the law relating to insolvency in connection with convening a meeting of creditors in terms of section 435 has been discussed at length in Chapter II.²⁴ This section is clearly in need of amendment as it is impracticable for the law relating to insolvency to apply to the convening of a section 435 meeting.

22. at p.73

23. See Chapter II p.122

24. p.144 *et seq.*

There is also no provision in the South African Act for the removal of a judicial manager as there is in the case of a liquidator in terms of section 379. This would appear to be an oversight by the legislature.

A final recommendation for improving the present system requires a change of practise rather than a change to the Act. The present practise is for the Courts to grant a provisional winding-up order when it has been decided that as a result of the provisional judicial manager's findings that the company cannot rehabilitate itself. It would save both time and money if the Court granted a final winding-up order in those circumstances. There appears to be no need for a provisional winding-up order as the provisional judicial management period gives all interested parties a chance to consider the matter and intervene on the return day if they deem it necessary.

CONCLUSION

Although the incidence of success of judicial management cases is low, the writer believes that the system has merit. There appear, however, to be too many orders being granted in the case of small proprietary companies. Judicial management is a special privilege and should only be invoked where the community interest will be served.

A COMPARISON BETWEEN THE PROVISIONS RELATING TO JUDICIAL
MANAGEMENT IN THE SOUTH AFRICAN COMPANIES ACT No. 46 OF
1926 AS AMENDED AND THE RHODESIAN COMPANIES ACT,
CHAPTER 190., AS AMENDED. (1975)

South African
Act.Rhodesian Act.

Sect. 197 C
(1) & (2)

Section 270 of the Rhodesian Act deals with the application of certain provisions in winding-up to Judicial Management. Although the wording is different, this Section is similar to Section 197 C of the South African Act.

Sect. 270

SECTIONS APPLICABLE

	Report by Master on fraud or other matters	189
*	Property in custody of Master until Liquidator appointed and Master may appoint Provisional Liquidator.	191 (2)
*	Master shall fill vacancy in post of Liquidator	191 (3)
180	Meeting of Creditors and contributors	192
189	Inspection of books by creditors and contributors	208
155	Summoning persons suspected of having property of company	210
156	Ordinary Public examination of promoters and directors	211
*	Persons disqualified for appointment of liquidator	245
*	Power of Court to declare person disqualified or remove from office.	246
*	Liquidator to give security	247
*	Co-liquidator	248
*	Voting at meetings of creditors and contributors	260
*	Orders to be sent to Master & Registrar	269
180 bis	Summoning directors & others to attend meeting of creditors	240
180 ter	Examination of directors and others at meeting of creditors	241
180 quat	Application of certain provisions of Insolvency law	243
	Leave of absence or resignation of liquidator	259
194	Special Commissions for taking evidence	268

SA Act compared to Rhodesian Act contd.

<u>South African Act.</u>		<u>Rhodesian Act.</u>
167(j)	Act does not invalidate contractual restriction of liability of contributions	+
185	Application of Criminal Provisions of Insolvency Law	+
185 bis	Responsibility of Directors for fraudulent conduct of business	+
186	Prosecution of delinquent directors	+
195	Placing of company under Judicial Management	271
195 (1)	Identical to South African Act except for words "having jurisdiction" after Court.	271 (1)
(2)(a)	Identical wording	(2)
(b)	Subsection in South African Act dealing with application by a Minister of State is omitted in Rhodesian Act, presumably therefore it is covered by the word "creditor" in Sub-section (a)	
(3)	Identical wording except for difference in Section numbers	(3)
(4)	Petition to be lodged with Master for comment by him	
(5)	Similar wording. Rhodesian Act says Court <u>may</u> refer case to Master but South African Act says <u>shall</u> refer.	(4)
(6)	Slight difference in wording	(5)
(7)	Identical wording except for difference in Section numbering	(6)
(8)	Identical wording except for difference in Section numbering	(7)
(9)	Identical wording except for difference in Section numbering	(8)
195 bis	Position of company's auditor in Judicial Management Identical wording	273
197	Duties of Judicial Manager Preamble to sections is similar in content in both Acts except the Rhodesian Act refers to Section 321 which section empowers the Chief Justice to make rules concerning the procedure to be followed in	274

SA Act compared to Rhodesian Act contd.

South African Act.

Rhodesian Act.

a winding-up. There is no similar section in the South African Companies Act and consequently no reference to such a section.

197	(a)	Slight difference in wording	274	(a)
	(b)	Similar wording		(b)
	(c)	Similar wording		(c)
	(d)	Difference in (1) time limit in which to submit e (ii) what to submit, to the Registrar of Companies In South Africa both the Court Order and the Master's letter of appointment are sent to the Registrar. In Rhodesia, only the latter.		(d)
	(e)	Similar content, although slight change of wording and and difference in Section numbers.		(e)
	(f)	Similar wording		(f)
	(g)	Identical wording		(g)
	(h)	Similar wording but different time limits for notice (i e seven days and 14 days) and difference in Section numbers referred to.		(h)
197	A	Voidable and undue preferences	275	
	(1)	Similar wording		(1)
	(2)(a)	Similar wording - different section numbering		(2)(a)
	(b)	Similar wording - different section numbering		(b)
197	B	Applications of Assets during Judicial Management	276	
	(1)	Identical wording		(1)
	(1) bis	Identical wording		(2)
	(1) ter(a)	" "		(3)
	(1) "	(b) No corresponding section in Rhodesian Act allowing the preference to remain if winding-up follows Judicial Management.		-
	(2)	Similar wording		(4)
	(3)	In content, the same. but different wording		(5)
198		Cancellation of the Judicial Management Order, similar wording.	277	

SA Act compared to Rhodesia Act contd.

South African
Act.

Rhodesian Act.

198 bis

No equivalent section, dealing with "appointment of and security to be given by Judicial Manager" in the Rhodesian Act because this is covered by Section 270 of the Rhodesian Act (application of certain provisions in winding-up to Judicial Management) which makes applicable more sections of the winding-up procedure to Judicial Management than does the South African Act, inter alia giving security, appointment of Provisional Liquidator, disqualification and voting at meetings of creditors.

-

* Note: These matters are covered by Section 196 bis of the South African Act.

+ Note: There appear to be no equivalent provisions in the Rhodesian Act.

39. Power of inspection of Registrar

(1) In addition to the powers and duties conferred or imposed upon him by this Act, the Registrar shall have all the powers and duties conferred or imposed upon him by the Inspection of Financial Institutions Act, 1962 (Act No. 68 of 1962).

(2) Any reference in this Act to an inspection or investigation made under this section shall be construed as a reference to an inspection made under the Inspection of Financial Institutions Act, 1962.

*40. Appointment of Curator to banking institution

(1) If any banking institution is in financial difficulties, the Minister may, if he deems it desirable in the public interest, after consultation with the institution and with the written consent of such institution, appoint a curator to the institution and thereupon the provisions of paragraphs (b) to (g), inclusive, and (i) to (l), inclusive, of section 433 and sections 434 (2), 436, 437 and 440 of the Companies Act, 1973 (Act No. 61 of 1973), shall apply mutatis mutandis, in so far as such provisions are not inconsistent with the provisions of this section, in relation to the institution and to the curator: Provided that for the purposes of this section the powers conferred and the duties imposed by the said provisions upon the court, the Master and the judicial manager, respectively, shall devolve upon the Minister, the Registrar and the curator, respectively.

(2) The Minister shall appoint a curator by letter of appointment which shall set out -

- (a) the name of the institution in respect of which the curator is appointed and the address of its head office;
- (b) directions in regard to the security which the curator has to furnish for the proper performance of his duties;
- (c) directions in regard to the remuneration of the curator;
- (d) such other directions as to the management of the institution or any matter incidental thereto, including directions in regard to the raising of money by the institution, as the Minister may deem necessary.

(3) The Minister may, in the letter of appointment or at any time subsequent thereto, empower the curator in his discretion but subject to any condition which the Minister may impose -

- (a) to suspend or reduce, as from the date of his appointment as curator or any subsequent date, the right of any creditor of the institution to claim or receive interest on any moneys owing to him by the institution;
- (b) to make payments, whether in respect of capital or interest, to any creditor or creditors of the institution at such time, in such order and in such manner as he may deem fit;
- (c) to cancel any agreement between the institution and any other party to advance moneys due after the date of his appointment as curator, or to cancel any agreement to extend any existing facility, if, in the opinion of the curator, such advance or any loan under such facility would not be adequately secured

or would not be repayable on terms satisfactory to the curator or if the institution lacks the necessary funds to meet its obligations under any such agreement or if it would not otherwise be in the interests of the institution.

(4) The Minister may, at any time and in any manner, amend or withdraw the directions in the letter of appointment, and powers granted by him under subsection (3), to the curator.

(5) On the appointment of a curator -

(a) the management of the institution in question shall vest in the curator, subject to the supervision of the Registrar, and any other person vested with the management of the affairs of the institution shall be divested thereof; and

(b) the curator shall recover and take possession of all the assets of the institution.

(6) While such institution is under curatorship -

(a) all actions, legal proceedings, the execution of all writs, summonses and other legal process against the institution shall be stayed and not be instituted or proceeded with without the leave of the court;

(b) the operation of set-off in respect of any amount owing by a creditor to the institution shall be suspended.

(7) The Registrar shall as soon as is practicable notify the appointment of a curator and the powers granted to him on his appointment, and any amendment or withdrawal of such powers, by notice in the Gazette.

(8) A curator appointed by the Minister under this section after 28 November 1976 but prior to the commencement of the Financial Institutions Amendment Act, 1977, shall be deemed to have been appointed, as from the date of his original appointment, in terms of, and to have been vested with all the powers which can be granted to a curator under, the provisions of this section, as amended by that Act.

41. Application of winding-up provisions of Act 46 of 1926

(1) Subject to the provisions of sub-sections (2), (3) and (4), the provisions of the Companies Act, 1926, which relate to the winding-up or judicial management of companies shall apply mutatis mutandis and in so far as they are applicable, in connection with any banking institution, even though any such provision may be inconsistent with any provision in any other law.

(2) When the provisions of sub-section (1)bis of section one hundred and thirteen of the said Act are applied in connection with any banking institution, they shall be construed as if there had been inserted the words "with the Registrar of Banks and" before the words "with the Master", the words "Registrar of Banks or the" after the words "and the", and the words "Registrar of Banks or the" before the word "Master" where it occurs for the last time.

(3) When the provisions of sub-section (2) of section one hundred and sixty-three of the said Act are applied in connection with any banking institution, they shall be construed as if the words "to the Registrar of Banks" had been inserted after the word "Registrar".



IN THE SUPREME COURT OF SOUTH AFRICA.

NATAL PROVINCIAL DIVISION.

Durban East 1201

Durban,
12th August, 1959.

In the matter of

SWARAJIA NAIDOO

Applicant.

versus

SARKHOT (PTY) LTD.

Respondent.

BEFORE: The Honourable Mr. Justice Broome, Judge President.

For the Applicant: Mr. J. J. Broome.

For the Respondent: Mr. A. Jacobs.

J U D G M E N T.

BROOME, J.P.:

On 3rd July last the petitioner obtained a provisional order of winding up against the company. This is the extended return date of the rule.

The petitioner is a director and the majority shareholder of the company and also a major creditor. Mr. Jacobs appears to-day for the manager of the company whom I shall call the respondent. He resists the confirmation of the rule and alternatively submits that as an alternative to a final winding-up order the case be submitted to the Master in terms of Section 195 sub-section (5) of the Act with a view to a judicial management order being granted instead of a final order of winding-up.

It is quite clear from the papers that it would be competent on the information before the Court for a final winding-up order to be made. The company is not in a position to pay its creditors and it has large prospective liabilities which must have a bearing upon its ability to pay its day-to-day creditors within a reasonable

The company was formed in 1956 and since that date until last May it carried on a trading business on certain land owned by it; it also carried on small-scale agricultural activities on the land. It is a proprietary company with only four shareholders. The first complete year of the company's activities resulted in a small profit; the second financial year which ended in June, 1957, resulted in a loss of some £500. No further figures are available.

In May of the present year the company's premises and land were very seriously damaged by floods which resulted in a capital loss to the company which was not covered by insurance. As I have said, the petitioner is a large creditor. The land owned by the company is of considerable value as apparently is also the trading licence which it holds. These, however, are capital assets. As a trading concern it has never been prosperous. As I have said, it made a loss for the last complete year in respect of which we have information and since then it has suffered this serious loss which has resulted in the premises being closed for a considerable time and the business of the company being brought to a standstill. I should say that the company's cash resources amounted to a small sum in the bank and it has not been shown to have any other liquid resources.

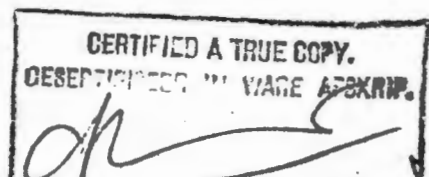
In these circumstances I am of the opinion that not only is it competent for the Court to make a winding-up order but that such an order should be made unless circumstances are shown which render the alternative of a judicial management order preferable. As to that I share the doubts expressed in Ronaasen's case, 1935 Cape Provincial Division, Page 562, whether the judicial management machinery was designed for a small proprietary concern of this sort. But however that may be I would favour that alternative if I were satisfied that such a step would have a reasonable prospect of putting the company onto its feet again as a trading concern.

just keeping its head above water. Now that that further disaster has been inflicted upon it it seems to me to be highly problematical whether as a trading concern it has any future at all. I point out that the fact that it has capital assets of some value can have little relevance on a question of whether judicial management is an appropriate step. The machinery of judicial management seems to me to have been designed primarily to assist trading concerns which have a potential but which owing to some temporary problem, whether inexperienced management or otherwise, are not making a success. That cannot possibly^{be} said of the company in this case. That being so, I am bound to allow strong weight to the views of the petitioner who, as I have said, is the majority shareholder and a major creditor and a director of the company.

I come to the conclusion then that the company has been shown to be unable to pay its debts and I am also satisfied that it would be just and equitable for it to be wound up. I discard the alternative of judicial management because I am satisfied that as a trading concern the company has no reasonable prospects of a prosperous future.

There will therefore be a final order of winding-up in the usual form.

W. Roome



CASE NO. M 1830/76

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CAPE TOWN 16th FEBRUARY 1977

Before the Honourable Mr. Justice Diemont

In the matter of the application of

ALBERT HENTHORNE OLVER, N.O. First Applicant

and

ALBERT HENTHORNE OLVER, and
NEVILLE RALPH RUBINSTEIN NN.O. Second Applicant


for an order discharging

INTAFINE ACCEPTANCES LIMITED (in liquidation)
INTAFINE LEASING & FINANCE (PROPRIETARY) LIMITED (in liquidation)
INTAFINE (H.P.) (PROPRIETARY) LIMITED (in liquidation)

from liquidation and placing

INTAFINE LEASING & FINANCE (PROPRIETARY) LIMITED
under judicial management in terms of Section 427 read
with Section 432 of the Companies Act, 1973, as amended.

UPON/.....



UPON the motion of Mr. D.A. Ipp, Counsel for the Applicant, and upon reading the notice of motion and other documents filed of record -

IT IS ORDERED

THAT

1. (a) INTAFINE ACCEPTANCES LIMITED (in liquidation) be and is hereby discharged from liquidation

(b) INTAFINE LEASING & FINANCE (PROPRIETARY) LIMITED (in liquidation) be and is hereby discharged from liquidation.

(c) INTAFINE (H.P.) (PROPRIETARY) LIMITED (in liquidation) be and is hereby discharged from liquidation.

2. That INTAFINE LEASING & FINANCE (PROPRIETARY) LIMITED ("Leasing") be placed under judicial management in terms of Act 61 of 1973 as amended subject to the following terms:

(a) While this order is in force Leasing shall be under the management, subject to the supervision of the Court, of a judicial manager or managers, to be appointed by the Master of the above Honourable Court

As/.....



- (b) As from the date of the granting of the order any other person or persons vested with the management of Leasing's affairs be divested thereof
- (c) The judicial manager or managers discharge the duties prescribed by section 430 of Act No. 61 of 1973
- (d) The judicial manager or managers be empowered, without the authority of the shareholders, but subject to the authority of creditors and the Master, to borrow money with or without security on behalf of the said Leasing for the purpose of paying essential running expenditure in and about the business of Leasing including salaries, wages and rental for business premises required by Leasing and to pledge the credit of Leasing for any goods or services required.
- (e) While Leasing is under judicial management all actions, proceedings, the execution of all writs, summonses and other process against Leasing be stayed and not be proceeded with without the leave of this Court being had and obtained.

(f)/.....



(f) The rate of remuneration of the judicial manager or managers be fixed by the Master in accordance with the services rendered and disbursements incurred, or should the Master so request, the rate of remuneration shall be fixed by the Court after the Master has reported thereon.

(g) The judicial manager or managers are hereby authorised to convene upon ten (10) days written notice a meeting of creditors of Leasing for the purpose of considering and passing, if deemed fit, a resolution to the effect that all or any liabilities incurred or to be incurred by the judicial manager or managers in the conduct of Leasing's business shall be paid in preference to all other liabilities of Leasing, exclusive of the costs of the judicial management and in the order in which they may be incurred, so as to obtain for such new liabilities the preferences provided in section 435(1)(a) of the Companies Act No. 61 of 1973 as amended.


h)/.....



(h) The costs of this application be costs in the judicial management.

(i) That service of this order be effected by publication in each of The Cape Times, Die Burger and The Star newspapers within 10 days of the granting of this Order.

BY ORDER OF THE COURT

AVP 
REGISTRAR

ROUTLEDGE-MacCALLUMS,
107 St. Georges Street,
CAPE TOWN

MINUTES OF A MEETING HELD AT THE MASTER'S
OFFICE ON 26 JUNE 1975 IN RESPECT OF MATTERS
RELATING TO INSOLVENCIES, LIQUIDATIONS AND
JUDICIAL MANAGERMENTS

1 JUDICIAL MANAGEMENT FEES

1.1 Fee payable to Judicial Manager

- 1.1.1 A basic fee of R30-00 per hour
- 1.1.2 Could be increased to R35-00 or decreased to R25-00 in exceptional cases. The Master will use his discretion in such cases.

1.2 Fees payable to senior principals assisting him

R5-00 less than the Judicial Manager's fee

<u>ex.</u> Judicial Manager's fee	-	R30-00
Principals fee	-	R25-00

1.3 Rest of Staff

Their fee will be based on the tariff laid down by the National Council for Chartered Accountants for governmental work. This paper is dated 1 August 1973.

- 1.4 A sworn Affidavit reflecting the following information should be lodged with the Master when this fee is claimed:-
- 1.4.2 The salaries of each individual not being the Judicial Manager himself or one of his principals. This will thus only apply to the rest of the staff.

2 JUDICIAL MANAGEMENT - GENERALLY

- 2.1 Claims are proved in the same way as that pertaining to insolvencies.
- 2.2 The Master will only report to Court if requested to do so by the Court.

3 PROVISIONAL APPOINTMENTS

Each application for the Appointment of Trustee, Liquidator or Judicial Manager in a specific estate, must reach the Master at or before 2.30 p.m. the day after the Court Order was made.

After the Master has informed an applicant that his application was successful, he will reserve the appointment for 48 hours to enable the applicant to lodge the following documents:-

- 3.1 An Affidavit of non-interest
- 3.2 A Bond of Security for the value of the assets reflected in the petition to Court, unless the Master requires more or less security than that. If any debtors' are reflected in the petition, security equal 50% of their face value will be acceptable.

If these documents are not received within the specific time limit, the reservation will fall away and the Master will appoint someone else.

If an applicant wants an urgent appointment, it is up to him to obtain the Court Order as the Master will not make any appointment without this Order.

The Master further reserves the right to retain or alter the reservation, thus appointing someone else if he finds that the successful applicant's application is not in order or to make a co-appointment.

4 PROOF OF LATE CLAIMS

Section 44 (1) should be borne in mind.

There is no time limit for late claims. Where companies are concerned, the Liquidator may, however, apply to the Master requesting him to determine such a limit.

Where the Trustee/Liquidator has already compiled a Liquidation Account and a late claim is proved, forcing the Liquidator to alter his account, said creditor has to bear the costs of the alteration.

5 POSTAGES AND PETTIES

The Master allows 50c per proven creditor and 40c per creditor to whom a Trustee's Report was sent. He is still contemplating a request for a minimum amount of R21-00 per estate.

6 INVESTMENTS BY TRUSTEE/LIQUIDATOR

The interest on these investments must be calculated to the date the amount will be withdrawn, which should actually be the date of the account. Proof of withdrawal must be lodged with the account.

7 BANK STATEMENTS

When an account is lodged, the Master requires a Banking Statement up to date of the account.

8 EXTENSIONS

An application for extension of time to lodge an account must be made before the account is due. A Second Liquidation account must be lodged 6 months after the date of the First account.

In terms of Section 404 of the Companies Act, Liquidators need not advertise for an extension of time in which to lodge the account.

9 CONTRAVENTIONS UNDER SECTION 400 (2)

The Master requires a comprehensive report in terms of Section 400 (2), if in any respect the Companies Act has been contravened. If there, however, were no contraventions and this fact is mentioned in the Liquidator's Report, no report

10 SECTION 69 (1) - INSOLVENCY ACT

It must be borne in mind that a Trustee can only take charge of the assets of an insolvent after the Deputy-Sheriff has made his inventory.

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No. M.1954/75

Cape Town, 22nd January 1976

In the matter between:

CHRISTOPHER BELLINGAN . . . applicant
and
ISOTHERM (PTY) LTD . . . respondent

BURGER, J: A provisional order for judicial management of the company was made on the 17th December 1975, it was returnable on the 28th January 1976.

The applicant was appointed provisional judicial manager on the 22nd December 1975, and after investigation of the affairs of the company he called a meeting of creditors on the 19th January when he reported to the creditors that in his opinion the company was insolvent and that there was no hope of a judicial management succeeding. There is no indication whether 14 days notice of the meeting was given or not.

The creditors, of whom 20 were present at this meeting agreed that a judicial manager should apply for the liquidation of the company forthwith. A large number of creditors were not present, the 20 creditors present represented an amount of R148 314. The total indebtedness of the company was over R200 000 at that stage.

The report of the judicial manager was decisively to the effect that the judicial management could not succeed in saving the company. There was, however, no indication in the report that he intended to apply for the discharge of the provisional order and for the liquidation of the company in the report. Therefore the creditors not present at the meeting did not have any indication that such an application would be made.

The Master in his report to this Court on the application of the judicial manager queried the locus standi of the provisional judicial manager to apply for the liquidation of the company.

Mr. Selikowitz on behalf of the judicial manager submitted that he had locus standi and quoted the case of Ruskin N.O. v. Tiger Hardware Plumbing and Plumbing Requisites,

1968(1) SALR, p.505, and he also referred me to Henochsberg on Companies, 3rd Edition at p. 759. The decision in Ruskin's case is based upon the wording of section 197 and 198 of the old Companies Act No. 46 of 1926 (as amended). The wording of the new Act No. 61 of 1973 differs materially from that. In particular, sections 430 and section 433 of the new Act draw a distinct difference between the duties of the provisional and the final judicial manager. The power for liquidation of the company is specifically given to the final judicial manager only. (See section 433 L.) This was not the case under the earlier Act.

It seems to me that the attention of the learned author Henochsberg on the Companies Act, 3rd Edition, has not been drawn to the change in the wording of the old Act. The comment on the wide powers of the provisional judicial manager does not take into account the changed wording of the new Act where the power to apply for liquidation is specifically given to the final judicial manager only and not to the provisional judicial manager. It is also strange that the final judicial manager has to give 14 days' notice to creditors in terms of section 433 L., whereas if the views of the learned authors are correct, the provisional manager need not give any notice at all of his intention to apply for liquidation of the Company. In my view the provisional judicial manager does not have locus standi to apply for the final liquidation of the company.

From the affidavit of the judicial manager it would appear that there is every reason why the provisional order should be discharged. When one looks at the affidavit of the original applicant however, an entirely different picture is painted. Under the circumstances it seems advisable that the matter could best be dealt with on the return date on the 28th January 1976. Any creditor would then be able to apply for the final liquidation of the company if so advised.

The application is refused.

PRB
/77

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)
CAPE TOWN: Friday, 11 March 1977
Before the Honourable Mr Justice Burger. Case No. M 405/77

In the matter between

SUSAN JANE STOTT

Applicant

and

BONDVOY PROPERTIES (PROPRIETARY) LIMITED

Having heard Counsel for the Applicant and having read the documents filed of record -

IT IS ORDERED

That Respondent is placed under a Provisional Order of Judicial Management in the custody and control of the Master of this Court in terms of the Companies Act 1973, pending the confirmation or discharge of the Rule Nisi referred to hereinafter.

That from the date of this Order the persons hitherto vested with the management of Respondent company's affairs be divested thereof, and that subject to the supervision of this Honourable Court, Respondent company be under the management of the Provisional Judicial Manager or Managers who might be appointed in terms of the said Act.

That all actions and consequences of all Writs, Summonses and other process against Respondent Company be stayed and

/not.....

CERTIFIED A TRUE COPY OF THE ORIGINAL.
GEBESTATIGDE WARENE AFSKRIF VAN DIE OORSPRONKELIKE
N.....
ASST.-CRIFFIER VAN DIE HOOGGERECHTSHOF, K.P.A.
ASST.-REGISTRAR OF THE SUPREME COURT, C.P.D.
12/

3.

not proceeded with without leave of this Court first being had and obtained.

4. That the remuneration of any Provisional Judicial Manager or Manager be fixed by the said Master.
5. That in addition to any general powers vested by law in the Judicial Manager, the Provisional Judicial Manager or Managers, shall have all the powers presently vested in the Board of Directors of Respondent Company and he shall
 - (i) with leave of the Court be empowered to raise money with or without security on behalf of Respondent Company subject to the rights of creditors, and in any way without the authority of shareholders, for the conduct of its business, and
 - (ii) to pledge the credit of Respondent Company for any goods or services rendered in connection with its business.
6. That a Rule Nisi be issued calling upon all persons concerned to show cause, if any, to this Court on 6/4/77
 - a) Why the Provisional Order of Judicial Management should not be made final and Respondent company placed under Judicial Management in terms of Section 427 read with Section 432 (2) of the Companies Act 1973, and why the Court shall not grant such Order with the following directions :
 - (i) That Respondent company shall be under the management, subject to the supervision of the Court, of such Final Judicial Manager or Managers as may be appointed;
 - (ii) That the Provisional Judicial Manager shall within seven (7) days hand over all matters and account to the Final Judicial Manager/s;

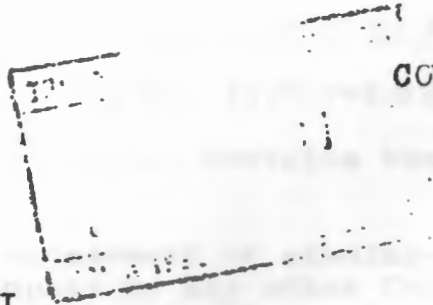
/iii).....



- (iii) That the said Final Judicial Manager or Managers shall upon appointment proceed forthwith to take over management of Respondent company;
 - (iv) That the Final Judicial Manager/s shall proceed to comply with the duties contained in Section 433 and 434 of the said Act;
 - (v) That all actions and executions of all writs, summonses and other process against Respondent company be stayed and not be proceeded with without the leave of this Court being obtained;
 - (vi) That the said Final Judicial Manager/s be authorised and empowered to raise money in any way without the authority of the shareholders subject to the rights of creditors on behalf of Respondent Company for the conduct of its business and to pledge the credit of Respondent company for any goods or services required in connection with its business;
 - (vii) That the remuneration of the said Final Judicial Manager/s shall be fixed by the said Master.
- b) Why the costs of this application shall not be costs in the Judicial Management.
7. That service of this Order be effected at the registered office of Respondent company and by one publication in the Cape Times and one publication in Die Burger newspapers.

8. That the provisional and/or final judicial manager of Respondent shall be a person other than the judicial manager, whether provisional or final, of the parent company or any associated company of Respondent.

BY ORDER OF THE COURT,



[Handwritten Signature]
COURT REGISTRAR

17
Buirski H & I

REGISTRASIEKANTOOR VIR MAATSKAPPE

COMPANIES REGISTRATION OFFICE

DEPARTEMENT VAN HANDEL
EN VERBRUIKERSAKE

Zanzgebou Proesstraat 116 Pretoria

Posbus 429 Pretoria 0001

Telegramadres 'Maatcom'



Republiek van Suid-Afrika—Republic of South Africa

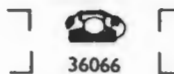
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

Zanza Building 116 Proes Street Pretoria

PO Box 429 Pretoria 0001

Telegraphic Address 'Maatcom'

Verw. No. M26/1/6
Ref.



C. J. V. CRAFFERT

← Naam
Name

30-5-1979

The Board of Executors
P.O.Box 86
CAPE TOWN
8000

Sirs

REPORT UNDER SECTION 432 OF THE COMPANIES ACT 1973

Your letter AHO/ng dated 15 May 1979 refers.

My report to the Supreme Court contains the following information:

Whether any judicial management or winding-up order has been issued against the company by any other Court which might have jurisdiction, whether at any previous stage in its history a judicial management or winding-up order has been issued against the company or whether it has at any time compromised with its creditors and the names of any of its directors which appear on the register to be maintained in terms of section 421 of the Companies Act 1973 (Act 61 of 1973).

Furthermore the report will confirm the correctness of the information furnished to the Court insofar as the company's file is concerned. Also will it be confirmed that the annual duty of the company has been paid up to date or not.

Yours faithfully

REGISTRAR OF COMPANIES

IN THE SUPREME COURT OF SOUTH-AFRICA

(WITWATERSRAND LOCAL DIVISION)

CASE NO. : 2235/75

DATE : 27.8.75

B E F O R E : THE HONOURABLE MR. JUSTICE

M A R G O

In the matter between :

MICHAEL IVAN CATO

10

LESLIE COHEN

ALBERT RUSKIN

Applicants

in re :

TOLLMAN HOTELS & TOURIST INDUSTRIES LIMITED

TOLLMAN HOTELS (PROPRIETARY) LIMITED

REPUBLICAN CATERERS & HOTELS (PROPRIETARY) LIMITED

SALISBURY HOTEL (PROPRIETARY) LIMITED

20

TOLLMAN HOTELS & LIQUOR STORES (PROPRIETARY) LIMITED

TOLLMAN AIRPORT INN (PROPRIETARY) LIMITED

EXECUTIVE SUITES (PROPRIETARY) LIMITED

=====

J U D G M E N T

=====

MARGO, J. :

This is an application by three persons who are the provisional judicial managers of seven companies which are associated in what I may call the Tollman Hotel Group. Each of these seven companies is under ju-

30

/dicial

dicial management order.

The applicants have reported in other proceedings, to which I have been referred, that there is no hope of salvaging the fortunes of these companies in judicial management, and that their inevitable fate will be a winding-up unless some other means be found of solving their present troubles.

The present application, which is brought on a certificate of urgency, is for leave to dispose of the entire assets of the respective companies under an agreement which has been proposed by an offeror. The proceeds of such agreement would ensure some dividend to concurrent creditors of each of the companies. It appears from the papers that all the creditors of the several companies involved were notified of meetings that have taken place in the past few days, the purpose of which was to discuss and agree to the disposal of the assets of these companies on terms acceptable to the creditors. The urgency arises from the fact that the assets of these companies consist principally of hotel properties or the like, which are going concerns, and that unless these assets be taken over by the offeror under the proposed agreement, or be otherwise disposed of, immediately, they will deteriorate and their practical value will diminish rapidly.

The overwhelming majority of the creditors have approved of the proposed disposal, but it must be noted that some creditors have adopted a negative attitude in not participating in the deliberations or in the meetings, and that a small minority of creditors have opposed the disposal of the assets.

30

The order I am now asked to make is one

/sanctioning ...

sanctioning the disposal by the judicial managers, in terms of the form of agreement annexed to the papers, of the assets of the respective companies, or alternatively of the shares therein so as to give control of the assets to the purchaser. A schedule has been annexed indicating that if these companies were to be placed under a winding-up order there would, in all probability, be no dividend paid to concurrent creditors, whereas if the immediate disposal of assets were to be sanctioned in terms of the proposed agreement, there would be some dividend payable to concurrent creditors, and 10 with further developments as envisaged in that agreement, there would probably be a subsequent and more substantial dividend payable to the concurrent creditors.

Mr. Schwartz, who appeared for the applicants, has drawn my attention to two decisions in which the court had sanctioned the disposal of the entire assets of the company by a judicial manager. The first case is Ex Parte Vermaak, 1964 (3) S.A. 175 (0), a decision of Smit, J.P. In that case it was said that it is not normally the duty of a judicial manager to sell the assets 20 of a company, and that he does not have the right to do so; but that where such would be for the benefit of all creditors, and they authorise it, there can be no real objection to the Court's sanctioning it. The other decision is Ex Parte Joubert N.O., 1970 (3) S.A. 511 (T). There Viljoen, J. granted an application by a judicial manager for an order authorising him to accept an offer to buy the assets of the company, where all the creditors had been notified of the offer, though no formal meeting had been held and they had not received notice of 30 the application. The learned Judge in that case considered

/that

that a rule nisi was not even necessary.

In general the Court, in giving directions to a judicial manager, will not encourage circumvention of the machinery prescribed by the legislature for the orderly administration of the company in judicial management. But it seems to me that there may be justification for relief where the protection of the interests of creditors in general require the disposal of the assets of the company or a part of such assets without delay, where the creditors have been consulted and approve of such disposal, 10 and where that step would not be unfair to any dissenting creditor.

I have been persuaded in the present case by MR. Schwartz, and I am fortified by the authorities to which he has referred, that it would be proper to sanction the disposal by the judicial managers, in terms of the agreement annexed to these papers, of the assets of the companies under provisional judicial management.

I wish to emphasise that the circumstances are exceptional, and that the urgency which has 20 arisen in the present case has impelled me to deliver ex tempore a judgment which I would, in the ordinary course, have taken time to consider.

An order is granted authorising the applicants to dispose of the assets of the companies named in the application, in terms of the agreement which is Annexure 'A' to the affidavit of Michael Ivan Cato. I shall order further that the costs of this application shall be costs of the judicial management of each of the companies in equal shares. 30

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)
CAPE TOWN: Wednesday, 28 September 1977
Before the Honourable Mr Justice Broeksma

In the matter

HARRY MAX FLORENCE

Applicant

and

FAIRWEATHER FASHION HOLDINGS LIMITED

Respondent

Having heard Counsel for the Applicant
and having read the documents filed of record:

IT IS ORDERED

That an Order is granted:-

1. Placing the Respondent under Provisional Judicial Management in the custody and control of the Master of the above Honourable Court in terms of Section 427 of the Companies Act No 61 of 1973 as amended.
2. 2.1 That as from this date the persons hitherto vested with the management of the company's affairs shall be divested thereof;
- 2.2 That the company shall be under the management, subject to the supervision of the court, of a Provisional Judicial Manager who might be appointed by the said Master, and any Judicial Manager who might be appointed thereafter as provided for in the Act;

2.3 / ...



- 2.3 That the remuneration of the Provisional Judicial Manager shall be fixed by the Master;
- 2.4 That all actions and the execution of all writs, summonses and other processes against the Respondent shall be stayed and shall not be proceeded with, without the leave of this Court being had and obtained;
- 2.5 Without derogating from all and any general powers vested by law in the Provisional Judicial Manager, he shall have all the powers presently vested in the board of directors of the Respondent and he shall further, with the consent of the Master and subject to the rights of creditors, be empowered to borrow money with or without security on behalf of the Respondent for the conduct of its business, and to pledge to the credit of the Respondent for any goods or services required in connection with its business;
- 2.6 That the Provisional Judicial Manager be authorised to convene, upon seven (7) days written notice, a meeting of the creditors of Respondent for the purpose of considering and passing, if deemed fit, a resolution to the effect that all or any liabilities incurred, or to be incurred by the Provisional Judicial Manager in the conduct of the Respondent's business, shall be paid in preference to all other liabilities of the Respondent, exclusive of the costs of the Provisional Judicial Management and in the order in which they may be incurred, exclusive of the costs of the Provisional Judicial Management.
3. That a Rule Nisi be hereby issued calling upon all persons concerned to show cause, if any, to this court on ^{9 NOVEMBER 1977} ~~a date to be fixed~~ ~~at 10.30 a.m.~~ by the ~~above Honourable Court~~, why the Provisional Order of Judicial Management / ...

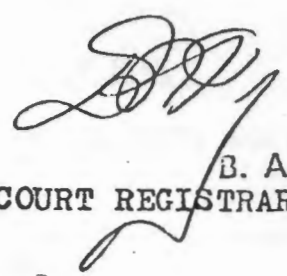
Management shall not be made final and the said company to be placed under Judicial Management in terms of Section 427 of the Companies Act No 61 of 1973, as amended, and why the court shall not grant such Order with the further direction :

- 3.1 that the Respondent shall be under the management, subject to the supervision of the court of the aforesaid Judicial Manager;
- 3.2 that the said Judicial Manager shall, upon appointment, proceed to take over the management of the company and that he shall render accounts in terms of Section 432(3) of the Companies Act No 61 of 1973 as amended, and that he shall include therein an account of any monies distributed to creditors in accordance with the provisions of Section 434(1) of the Companies Act No 61 of 1973, as amended;
- 3.3 that generally the Judicial Manager shall have the power to exercise all such powers under the provisions of the Companies Act No 61 of 1973, as amended, as he may find it necessary to use in order to conduct the business of the Respondent with a view to the just and expeditious payment of the debts of the Respondent, and in accordance with the provisions of Section 434(1) of the aforesaid Act;
- 3.4 that the remuneration of the said Judicial Manager shall be fixed by the Master of the above Honourable Court;
- 3.5 that the costs of this application shall be borne by the Respondent under Judicial Management.

4. / ...

4. That service of this order be effected on all creditors who have claims in excess of R200 and by one publication in each of THE ARGUS and THE CAPE TIMES newspapers.

BY ORDER OF THE COURT,



B. A. POVEY,
COURT REGISTRAR

2
Abrahams & Gross,
Greenmarket Place,
54 Shortmarket Street,
CAPE TOWN.



CORPORATE AFFAIRS COMMISSION

175 CASTLEREAGH STREET, SYDNEY, N.S.W. 2000

G.P.O. Box 7018

PHONE 20635 Ext.

In reply please quote:

Mr. A.H. Olver,
 Director,
 The Board of Executors,
 P.O. Box 86,
 CAPE TOWN.
SOUTH AFRICA. 8000

G.2010 (PLK:VK)

12th January, 1976.

Dear Mr. Olver,

Official Management in N.S.W.

I refer to your letter of 24th October, 1975, and apologise for the delay in replying.

The following table indicates the number of companies placed under Official Management each year since 1962.

<u>1st January to 31st December</u>	<u>Number of Companies</u>
1962	20
1963	27
1964	46
1965	31
1966	3
1967	7
1968	9
1969	28
1970	14
1971	13
1972	2
1973	8
1974	3
1975	1

There is no requirement in the existing legislation for the N.S.W. Corporate Affairs Commission to oversight Official Managements. Therefore I am unable to substantively answer your query about the incidence of success of Official Managements. An example, however, of one company placed under Official Management and successfully trading its way out of financial difficulties is that of Pacific Acceptance Corporation Limited. Should you wish to obtain further information concerning this company, you may either contact the former Official Manager, Mr. F.H. Edmonds, Accountant of "Camyr Allyn", East Gresford, N.S.W., 2491 or the company itself at its registered office, 29 The Crescent, Homebush N.S.W. 2140.

The Companies Act, 1961, was amended in 1966. Prior to this Official Management had become a way of deferring liquidation because of the relatively lesser requirements at that time for companies placed under Official Management. The necessity to hold six-monthly meetings and lodge reports with the Corporate Affairs Commission introduced by the 1966 amendments, made Official Management a less desirable alternative.

I regret that I am unable to advise you of the incidence of successful Official Managements in New South Wales.

Should you require any further information, please do not hesitate to contact me.

Yours faithfully

JUDICIAL MANAGEMENT

STATISTICS

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JUDICIAL MANAGEMENT STATISTICS

COMMENTARY

No official statistics relating to Judicial Management are kept in South Africa. All judicial management cases are subject to the supervision of the Master of the Supreme Court of the Provincial or Local Division in which the company, which has been placed in judicial management, has its registered office.

Each Master's office in the six Provincial and Local divisions is responsible for keeping a file for such judicial management. The Companies Act (and Regulations) does not stipulate what should be kept in these files. Although there is no consistency between the various Master's offices, and even no consistency within any one Master's office, it would seem that the files should contain at least ¹.

application to Court in terms of section 427,
provisional judicial management order,
report pursuant to section 430,
minutes of meetings convened in terms of section 429,
Master's report,
final judicial management order,
bond of security,
certificates of appointment of provisional judicial
manager and judicial manager,
such reports as are lodged pursuant to section 433;
correspondence

In practice a lot of files are incomplete and it is difficult to determine the outcome of the judicial management.

There is also no uniform system of keeping the judicial management records among the various Master's offices. In addition to judicial managements, the Masters of the Supreme Court are also responsible, inter alia, for company liquidations, personal insolvencies, deceased estates of individuals and cases which fall under the Agricultural Credit Act.

(1) See letter from Master of the Supreme Court (Cape Town) dated 2 November 1979. Annexure "A".

In no Master's office are judicial management files kept separately. In most cases they are filed with company liquidations. In some cases they are filed with both company liquidations and personal insolvencies.

The system adopted in the Master's office in Cape Town is the one that comes closest to keeping a statistical record of judicial management cases. In Cape Town, company liquidation files and judicial management files are separated from personal insolvency files. A register is kept of all cases of company liquidations and judicial managements in which the name of the company and the file number is recorded and a note of whether it is a compulsory liquidation, a voluntary liquidation or a judicial management. In the Cape Town office it is therefore a relatively simple task to extract from the company register the file reference of all judicial management cases. The Cape Town register also records, in most cases, whether the company subsequently went into liquidation or whether it was reconstituted. The register however, gives no details concerning the Judicial Management except the name of the company and the file number.

The systems, however, vary considerably throughout South Africa.

In Grahamstown, for example, although company liquidations and judicial managements are separate from personal insolvencies, the Register does not distinguish between the two and it is therefore necessary to peruse every company file to establish the judicial management cases.

In Kimberley company files were kept separate from personal files until 1968 when for some reason both company files and personal files were joined together. The register, like Grahamstown, did not distinguish between liquidations and judicial managements.

In Bloemfontein both personal files and company files are stored together and the register does not distinguish between liquidations and judicial managements.

In Pietermaritzburg the register demarcated judicial management files and in Pretoria it was only since 1975 that the register distinguishes between liquidations and judicial managements.

It is surprising that a uniform system has not been adopted in the various Masters offices, as it is the practice to move officials from one Master's office to another. It is also surprising that no attempt has been made to keep records so as to be able to extract information concerning judicial managements, particularly as the various Commissions of Enquiry into the Companies Act have called for statistics on judicial management.

The system presently being used in Cape Town requires no further effort than the systems being used in other Masters offices and with a little additional work could provide a reliable record of the number of judicial management cases each year and the ultimate result of the judicial management. The additional effort required would be that upon the completion of a judicial management, whether it be successful or unsuccessful, a note is recorded against the original entry in the Company Register.

The length of time for which records are kept by the Masters office also varies from centre to centre and the method of disposal of old records is similarly inconsistent. In certain centres old records are sent to the Archives and in others they are destroyed.

Subject to the limitations stated above the writer researched every available file on judicial management in the six Masters offices in South Africa. No research was undertaken in South West Africa although

a letter from the Master of the Supreme Court in Windhoek² shows that there were only three successful cases out of thirty five cases between 1926 and 1975.

The following table summarizes the number of cases in each Masters Office and the outcome of the cases. In some cases files were not available because, inter alia, they were with the Attorney General's office and therefore restricted and in other cases it was not possible to determine from the file the outcome of the judicial management.

In a number of cases the judicial management order was cancelled and an offer of compromise sanctioned. The writer regards these as unsuccessful because an offer of compromise is, in nearly every case, an offer of less than one hundred cents in the rand, i.e. creditors were not paid in full.

	1967-78 Blmfn.	1948-78 C.T.	1958-78 G.town	1958-78 Kimby	1960-78 PmB	1960-78 Pta	Total
Unsuccessful	32	145	45	11	169	405	807
Offers of compromise	13	29	9	-	24	122	197
Successful	4	21	4	-	39	73	141
File not available	1	11	-	-	3	35	50
Order not granted	1	3	-	1	9	5	19
Still in J.M.	1	13	2	-	14	13	43
Indeterminable result	-	2	5	1	6	9	23
Total	52	224	65	13	264	662	1280

(2) See Annexure "B".

Files were only researched up to 1978 as the majority of the 1979 cases would still be in judicial management and no result could therefore be ascertained at this stage. The above table shows that the incidence of success on all cases researched is 141 successes as compared to 1004 failures, if offers of compromise are counted as failures. This gives a success ratio of 12.5% of all cases where a result could be determined.

There were, however, substantial changes to the legislation in the 1973 Companies Act and the writer has, therefore, taken two five year periods, one immediately before and one immediately after 1973 to determine whether the amendments which were introduced in 1973 altered the incidence of success.

Set out below is a table giving details of the outcome of these judicial management cases where a result could be established for two periods 1968 - 1972 and 1974 - 1978.

1968 - 1972							
	Blmfnt.	C.T.	Grahst.	Kimbyl.	PmB.	Pta.	Total
Unsuccessful	16	24	20	3	59	98	220
Offers of Compromise	7	5	2	-	9	76	99
Successful	4	5	-	-	4	31	44
Final order not granted	2	10	1	-	30	67	110
Total	29	44	23	3	102	272	473

1974 - 1978							
	Blmfnt.	C.T.	Grahst.	Kimbyl.	PmB.	Pta	Total
Unsuccessful	9	45	2	3	81	145	285
Offers of Compromise	6	10	-	-	13	24	53
Successful	-	-	-	-	26	16	42
Final order not granted	12	37	2	1	30	150	232
Total	27	92	4	4	150	335	612

In the period 1968 - 1972 there were 44 successful cases against 319 unsuccessful (including offers of compromise) i.e. a success ratio of 12%. In the period 1974 - 1978 there were 42 successful cases against 338 unsuccessful, i.e. a success ratio of 11%. The ratio of success does not seem to have been influenced by the changes introduced in the 1973 October.

What is significant is that during 1968 - 1972 110 orders were not made final out of a total of 473 applications (23%), whereas in the 1974 - 1978 period 232 orders were not made final out of a total of 612 applications (38%). This trend was to be expected as the 1973 Act introduced a provisional procedure which was designed to provide a more thorough investigation of the companies' affairs and prospects that had hitherto existed. Finally bonds of security were scrutinised for the period 1964 - 1978 in the Master's office in Cape Town to ascertain the size of company which was being placed into provisional judicial management. The bond of security reflects the estimated gross value of the assets of the company as determined by the Master when the provisional order is granted. These figures show the following:

<u>Value of Assets</u>	<u>No. of Companies</u>
R0 - to R10 000	13
R11 000 to R50 000	27
R51 000 to R100 000	12
R101 000 to R500 000	52
R501 000 to R1 Million	7
Over 1 Million	10
No information	16
	<hr/>
Total	137
	<hr/>

Information for each judicial management case that was available is set out in the following pages and grouped under each of the six Master's Offices in South Africa.

Each case endeavours to set out:-

1. The name of the company.
2. The Master's reference number.
3. The nature of the company's business.
4. The date of the Provisional Order.
5. The date of the Final Order.
6. The name of the judicial manager.
7. The outcome, i.e., successful, unsuccessful, or offer of compromise.
8. Any comments which could be gleaned from the files as to the cause of failure and the prospects of the judicial management.
9. In some cases, the amount of the bond of security.

BLOEMFONTEIN

Records of Judicial Management cases 1967 - 1978. All records prior to 1967 have been destroyed.

1. G.W. VAN GRAAN (PTY) LTD 31/67
- WHOLESALE DEALER IN MOTOR ACCESSORIES
- Provisional Order: 20/4/67
 Final Order: 22/2/68
 Judicial Manager: B. ST C. COOPER
- Unsuccessful: Liquidation
- Judicial Management stigma plus a credit squeeze affected trading.
2. INKPOT STATIONERS (EDMS) BPK. 74/67
- STATIONERS AND SUPPLIERS OF OFFICE MACHINERY
- Provisional Order: 3/8/67
 Final Order: 29/6/67
 Judicial Manager: J. VAN DER PULL
- Unsuccessful: Liquidated 5/3/70
3. LUYT ENGINEERING & STEEL ERECTORS (PTY) LTD 107/67
- ENGINEERS AND MANUFACTURERS OF STEEL PRODUCTS
- Provisional Order: 3/8/67
 Final Order: 7/9/67
 Judicial Manager: R.J. ROSSOUW
- Unsuccessful: Liquidated 14/12/72

Company got into trouble through bad tendering and bad work, which had to be redone, thus causing losses which were not at first apparent.

4. MASS AVERSPREIDERS (EDMS) BPK. 147/67
- TRADERS IN AGRICULTURAL LIME TO FARMING COMMUNITY
- Provisional Order: 6/10/67
 Final Order: 16/11/67
 Judicial Manager: T.G. DU PLOOY
- Unsuccessful: Liquidation 28/5/70
5. TYTHE (PTY) LTD T 156/67
- File missing
6. HAMILTON PARK HOTELS (EDMS) BPK. 7/68
- HOTEL
- Provisional Order: 19/1/68
 Final Order: 18/2/68
 Judicial Managers: H.L. ISRAEL
 P.R. SERFONTEIN
- Offer of compromise sanctioned 29/8/68
7. G.I. WELDING (PTY) LTD 47/68
- STEEL CONTRUCTION BUSINESS
- Provisional Order: 11/4/68
 Final Order: 2/5/68
 Judicial Manager: A.J. CORNELISSEN
- Unsuccessful: Liquidation 17/12/70
- The company tendered on lines which did not show a profit and also through lack of working capital

8. M.A.C. INVESTMENTS (EDMS) BPK. 57/68
- SUPERMARKET
- Provisional Order: 29/4/68
 Final Order: Nil
 Judicial Manager: J.P.W. MAREE
- Unsuccessful: Liquidated. 24/5/68
- Should not have been in Judicial Management.
9. P.S.H.V. HANDELAARS (EDMS) BPK.
- Provisional Order: 8/8/68
 Final Order: 29/8/68
 Judicial Manager: J.A. JOUBERT
- Unsuccessful: Liquidated 24/10/68
10. TEGNESE ONTWERP (EDMS) BPK. 163/68
- Provisional Order: Nil
 Final Order: 25/10/68
 Judicial Manager: P.R. SERFONTEIN
- Unsuccessful: Liquidated 5/12/68
11. SIRKEL SEWE BELEGGINGS (EDMS) BPK. 177/68
- INVESTMENT COMPANY
- Provisional Order: Nil
 Final Order: 5/11/68
 Judicial Manager: J.F. GREYLING
- Successful: Discharged 15/7/74

- | | | |
|-----|---|------------------------|
| 11. | <u>EPALUM (PTY) LTD</u> | 188/68 |
| | Provisional Order: | Nil |
| | Final Order: | 28/11/68 |
| | Judicial Manager: | L.P. FOURIE (ATTORNEY) |
| | <u>Unsuccessful:</u> | Liquidated 26/9/69 |
| 12. | <u>MULAPE (EDMS) BPK.</u> | 190/68 |
| | Provisional Order: | Nil |
| | Final Order: | 28/11/69 |
| | Judicial Manager: | L.P. FOURIE |
| | <u>Unsuccessful:</u> | Liquidated 6/2/70 |
| 13. | <u>MARIO MOTORS (PTY) LTD</u>
GARAGE | 191/68 |
| | Provisional Order: | Nil |
| | Final Order: | 28/11/68 |
| | Judicial Manager: | |
| | <u>Unsuccessful:</u> | Liquidated 5/3/69 |
| 14. | <u>SHORLEEN (EDMS) BPK.</u> | 192/68 |
| | Provisional Order: | Nil |
| | Final Order: | 28/11/68 |
| | Judicial Manager: | L.P. FOURIE |
| | <u>Unsuccessful:</u> | Liquidated 28/9/69 |

15. RUSANNA (EDMS) BPK.

194/68

Provisional Order: Nil
 Final Order: 28/11/68
 Judicial Manager: L.P. FOURIE

Unsuccessful: Liquidated 2/1/70

16. ROMA OUTFITTERS (PTY) LTD

30/69

CLOTHING SHOP

Provisional Order: Nil
 Final Order: 3/4/69
 Judicial Manager: A.J. CORNELISSON

Successful: Discharged 26/6/69

17. E.B. CONTRUCTION (PTY) LTD

114/69

BUILDING CONTRACTOR

Provisional Order: 4/9/69
 Final Order: 30/10/69
 Judicial Manager: V.H. NEUMANN

Unsuccessful: Liquidated 19/8/71

Bad management and poor control, "coupled with the obvious unwillingness of the public to support a company under Judicial Management", led to liquidat

18. NAMENSPRUIT BOERDERY (EDMS) BPK.

23/70

FARMING OPERATIONS

Provisional Order: 24/2/70
 Final Order: Nil
 Judicial Manager: B. ST C. COOPER

Successful: Company fully revested

19. EDERSHEIM (EDMS) BPK. 24/70
 FARMING COMPANY
 Provisional Order: 24/2/70
 Final Order: Nil
 Judicial Manager: B. ST.C. COOPER
Successful: Company reconstituted April 1970
20. MICHEL LOUIS & SONS (PTY) LTD 75/70
 WHOLESALE MERCHANTS AND PROPERTY INVESTMENTS
 Provisional Order: 11/6/70
 Final Order: 2/7/70
 Judicial Manager: B. VAN DER WESTHUIZEN
 Offer of compromise sanctioned 9/9/71
21. TALSOP GROOTHANDEL & KLEINHANDEL (EDMS) BPK. 82/70
 WHOLESALE MERCHANTS AND RETAILERS
 Provisional Order: Nil
 Final Order: 16/7/70
 Judicial Manager: L. HORWITZ
 Unsuccessful: Liquidated 1/10/70
22. T. SCARCELLA (PTY) LTD 111/70
 BUILDING CONTRACTOR
 Provisional Order: Nil
 Final Order: 10/9/70
 Judicial Manager: J.J. WESSELS
Unsuccessful: Liquidated 30/11/72

23. SALUTIO INVESTMENTS (PTY) LTD 139/70

Provisional Order: 2/10/70
 Final Order: 12/11/70
 Judicial Manager: P.T.C. THORNE

Unsuccessful: Liquidated 1/7/71

24. HAMILTON NYWERHEDE (PTY) LTD 162/70

GENERAL DEALERS AND MANUFACTURERS OF TRUCK BODIES

Provisional Order: 2/12/70
 Final Order: 4/2/71
 Judicial Manager: G. BRAMLEY

Offer of compromise sanctioned 1/3/71

25. WELKOM HUISHOUDELIKE VOORSIENERS (PTY) LTD 80/71

SUPPLIERS OF HOUSEHOLD GOODS

Provisional Order: Nil
 Final Order: 8/7/71
 Judicial Manager: A.J. CORNELISSON

Unsuccessful: Liquidated 17/12/71

26. BRAKSPRUIT TRADING STORE (PTY) LTD 142/71

GENERAL DEALER

Provisional Order: 18/11/71
 Final Order: 9/12/71
 Judicial Manager: C.B. SMITH

Offer of compromise sanctioned, 30c in the R1.

Native compound closed down, less customers, too much stock, needed time to reduce stock.

27. V.J.B. CONSTRUCTION, MECHANICAL & CIVIL ENGINEERS (PTY) LTD 144/71
- ENGINEERS
- Provisional Order: 24/12/70
 Final Order:
 Judicial Manager: A.M. LAPINSKY
- Unsuccessful: Liquidated 5/4/73
28. ODENDAALSRUS PREMIER VLEISMARK (EDMS) BPK. 160/71
- RETAIL BUTCHER
- Provisional Order: 13/3/72
 Final Order: 7/1/72
 Judicial Manager: J.C.B. JOOSTE
- Offer of compromise Business sold, offer of 15c in Rand
29. BRAVO DRANKHANDELAARS (EDMS) BPK. 39/72
- BOTTLE STORE
- Provisional Order: 1/3/72
 Final Order: 23/3/72
 Judicial Manager: P.R. SERFONTEIN
- Offer of compromise sanctioned 6/9/73
30. PAX IRRIGATION FARMS (PTY) LTD 45/72
- FARMING COMPANY
- Provisional Order: 9/3/72
 Final Order: 23/3/73
 Judicial Managers: J.J. DU PLOOY
 D.W. VISSER
- Unsuccessful: Liquidated 28/2/73

31. J.R. & M. MOFFET (PTY) LTD 83/72
 BUILDING CONTRACTORS
 Provisional Order: 1/5/72
 Final Order: 27/7/72
 Judicial Manager: L. COHEN
 D. PERRY (C.A.)
 Offer of compromise sanctioned, 74c in Rand
32. M.H. STEYN ENTERPRISES (PTY) LTD 51/73
 SUPPLIERS & FITTERS OF SHOP FRONTS AND KITCHEN FITTINGS
 Provisional Order: 5/4/73
 Final Order: 26/4/73
 Judicial Manager: J.H. SCHOEMAN
 Offer of Compromise: 15/11/73
Unsuccessful: Liquidated 1/8/74
33. S.A. MEUBELVERVOER (EDMS) BPK. 51/73
 FURNITURE REMOVALS
 Provisional Order: 12/10/73
 Final Order: 14/12/73
 Judicial Manager: L.D.Y. BOOYSEN
Unsuccessful: Liquidated
34. P. & M. MANAGEMENT HOLDINGS (PTY) LTD 143/73
 Provisional Order: 12/10/73
 Final Order: 1 /11/73
 Judicial Manager: I.D.Y. BOOYSEN
Unsuccessful: Liquidation /4/74

35. SWEMCOR (EDMS) BPK. 55/74
- ENGINEERING CONTRACTORS
- Provisional Order: Nil
 Final Order: 8/5/74
 Judicial Manager: H.J.F. STEYN
- Unsuccessful: Liquidated 27/2/75
36. LADYBRAND HOTELS (PTY) LTD 72/74
- HOTEL WITH BAR AND OFF-SALES
- Provisional Order: 8/7/74
 Final Order:
 Judicial Manager: J.J.A. KLEYNHANS
- Unsuccessful: Liquidated 5/12/74
38. FOODHAND VIRGINIA (EDMS) BPK. 59/75
- Provisional Order: 17/4/75
 Final Order: 17/7/75
 Judicial Manager: H.L. RENDER
- Still Under Judicial Management
39. SLABBERT TRADING (PTY) LTD 136/75
- REPAIRS OF MACHINERY
- Provisional Order: 27/11/75
 Final Order:
 Judicial Manager: O.B. KELLNER
- Unsuccessful:

40. DORINGPARK - UITSIG (EDMS) BPK. B57/76
41. LARONE WONINGS (EDMS) BPK. B58/67
 ERECTION AND LETTING OF DWELLINGS AND HOLIDAY COTTAGES
- | | |
|----------------------|--------------|
| Provisional Order: | 11/5/76 |
| Final Order: | Nil |
| Judicial Manager: | H.J.F. STEYN |
| <u>Unsuccessful:</u> | Liquidation |
42. JAMANEL (EDMS) BPK. B70/76
 OWNER OF AN HOTEL IN PRETORIA
- | | |
|----------------------|------------------|
| Provisional Order: | 14/6/76 |
| Final Order: | 19/8/76 |
| Judicial Manager: | A.J. CORNELISSEN |
| <u>Unsuccessful:</u> | Liquidation |
43. DUPLEN FINANSIERINGS (EDMS) BPK. B93/76
 PRODUCER AND RETAILER OF AFRICAN FOODSTUFFS
- | | |
|--------------------|---------------|
| Provisional Order: | 23/7/76 |
| Final Order: | 21/10/76 |
| Judicial Manager: | J.J. DU PLOOY |
- Offer of compromise sanctioned 6/4/78

44. PARYS MANUFACTURERS (EDMS) BPK.

A96/76

Provisional Order: 2/8/76
 Final Order: Nil
 Judicial Manager: G.D. KOTZE

Unsuccessful: Liquidation

45. OVS KONSTRUKSIE (EDMS) BPK.

B108/76

CONSTRUCTION AND EARTHWORK CONTRACTORS

Provisional Order: 27/8/76
 Final Order: Nil
 Judicial Manager: H.J.F. STEYN

Provisional Order discharged 26/5/77

46. H. & L. ELECTRICAL (PTY) LTD

A 127/76

Provisional Order: 23/9/76
 Final Order: Nil
 Judicial Manager: P.J. OOSTHUIZEN

Unsuccessful: Liquidation

47. JURIVAN (EDMS) BPK.

B125/77

PRODUCER AND SELLER OF BANTU FOODSTUFFS

Provisional Order: 11/7/77
 Final Order: Nil
 Judicial Manager: D.G. POGGENPOEL

Unsuccessful: Liquidation

48. KELLNER STREET PROPERTIES (EDMS) BPK B 29/78
49. LARIENT HERLE (PTY) LTD B 30/78
50. GAMMA COPE (PTY) LTD B 31/78
51. ANJA INVESTMENTS (PTY) LTD B 32/78
52. RODUN (PTY) LTD B 33/78
 GROUP OF COMPANIES
 LETTING OF DWELLINGS

Provisional Order: 21/2/78
 Final Order: Nil
 Judicial Manager: J.J. DU PLOOY

Offer of compromise sanctioned 1/3/79.

CAPE TOWN

Records of Judicial Management cases 1948 - 1978. All records prior to 1948 have been destroyed.

1. AVALON HOLDINGS LTD 1016

CHAIN OF TWELVE CINEMAS

Provisional Order: 1/10/48
 Final Order:
 Judicial Managers: J.M. BARTON
 I. FRANK

Unsuccessful: Liquidation

Provisional Order superceded by Order of Court 26/11/48 - Compulsory liquidation. Cinema was inefficiently run, and one Judicial Manager required to be in Transvaal/Natal for company affairs.

£100 000 owing to A.B. Moosa and the Executors of the Estate of Late A.I. Kajee from whom cinemas were purchased. Lengthy discussions with above.

Company turnover was £12 000 per month, and much work and responsibility were required.

2. MASTER DRY CLEANERS AND LAUNDRIES (PTY) LTD 1018

DRY CLEANERS AND LAUNDRY

Provisional Order: 27/10/48
 Final Order: Nil
 Judicial Managers: H. BLAKE
 W. GOLDBERG

Rule nisi discharged 19/1/49. Abramas Gotlied and David Silberstein won the case.

3. APEX BUILDING AND CONSTRUCTION CO. (PTY) LTD 1020

BUILDING CONTRACTORS

Provisional Order: 11/11/48
 Final Order: Nil
 Judicial Manager: K. WHITE

Discharged 2/3/49 – Offer of compromise

The committee felt that this was not a case where a Judicial Management order should have been granted as the application had been made on information which was incomplete and estimated, and as a result of further enquiries the auditor of the company indicated that he would not be able to make available reasonably accurate financial statements for some considerable time.

4. PLOWS S.A. LTD 1028

ELECTRICAL AND MECHANICAL ENGINEERS AND DEALERS
 IN PRODUCTS ALLIED THERETO

Provisional Order: 19/1/49
 Final Order: Nil
 Judicial Managers: J.M. BORTON
 L. BISSET

Unsuccessful: Liquidated 12/2/49

5. SOUTH WEST AFRICAN MINERALS EXPLORATION CO LTD 1038

MINING COMPANY

Provisional Order: 10/3/49
 Final Order: 24/3/49
 Judicial Manager: A. THAL

Unsuccessful: Provisional Liquidation Order 7/9/49

6. ST GEORGES INVESTMENT CORPORATION (PTY) LTD 1041

Provisional Order: 31/3/49
 Final Order: 29/4/49
 Judicial Managers: A. THAL
 J.M. BORTON
 A. RABINOWITZ (Removed 20/7/49)

Successful: Discharged 30/11/49

7. KARROO COLD STORAGE BACON AND POLONY FACTORY (PTY) LTD 1042

BACON, POLONY DEALERS IN BEAUFORT WEST

Provisional Order: 6/4/49
 Final Order: 27/4/49
 Judicial Managers: H.W. GIRD
 J.M. BORTON

Unsuccessful: Liquidated 21/4/50

A drought struck Beaufort West in the next five months after 27/4/49. It would take a number of years for all debts to be paid. At a company meeting it was decided to advertise the company as a "going concern". The highest bid was £9 500, and this was approved by the Supreme Court which placed the company in liquidation.

8. MODEL LAUNDRY LTD 1046

LAUNDRY BUSINESS

Provisional Order: 21/4/49
 Final Order: 19/5/49
 Judicial Manager: J.M. BORTON

Unsuccessful: Provisional Liquidation Order 2/8/49

Judicial Manager cancelled 2/9/49

9. CAPE GYPSUM CO LTD

1046

Provisional Order: 11/5/49
 Final Order: 20/7/49
 Judicial Manager: K. SANDLER
 H.L. GETZ

Successful: Discharged 20/5/50

10. ROSE ELECTRICAL (PTY) LTD

1051

ELECTRICAL CONTRACTORS

Provisional Order: 11/5/49
 Final Order: Nil
 Judicial Manager: A. THAL

Provisional Order cancelled 11/11/49

11. ARCADIA CAFE AND BAKERY (PTY) LTD

1054

BAKERY AND CAFE AT BEAUFORT WEST

Provisional Order: 22/4/49
 Final Order: 19/5/49
 Judicial Managers: J.M. BORTON
 W. GOLDBERG

Unsuccessful: Liquidation 15/11/49

Company advertised as a "going concern" and sold to highest bidder.

12. ERIC MULLER (PTY) LTD 1057

LANDSCAPE GARDENERS

Provisional Order: 10/6/49
 Final Order: 18/8/49
 Judicial Manager: K. WHITE

Unsuccessful: Liquidation May 1951

Extension of Judicial Manager for 6 months 9/12/49
 Extension of Judicial Manager for 12 months 9/6/50
 Unable to pay administration accounts.

13. KING CONSTRUCTION (PTY) LTD 1059

CONSTRUCTION COMPANY IN KING WILLIAMS TOWN

Provisional Order: 17/2/49
 Final Order: 12/5/49
 Judicial Manager: W.J. CLEMENT

Unsuccessful: Liquidated August 1964 in Grahamstown

G.C. Muller offered to pay all preferent creditors in full and concurrent creditors 2s/6d in the £1.

14. CAPE OPTICAL COMPANY (PTY) LTD 1081

OPTICAL COMPANY IN CAPE TOWN

Provisional Order: 4/10/49
 Final Order: 10/10/49
 Judicial Managers: B. FORTES
 L. MAISTER

Successful: Discharged 4/1/50

15. LEIGHWOOD HOSPITALS (PTY) LTD 1084
 HOSPITAL
 Provisional Order:
 Final Order:
 Judicial Manager: J.M. BORTON
 Superceded 17/2/50
 File incomplete
16. MORNAY HOLIDAY FARM (PTY) LTD 1082
 HOLIDAY RESORT
 Provisional Order: 14/9/49
 Final Order: 5/10/49
 Judicial Manager: K. WHITE
Unsuccessful: Liquidation: see 1150
17. RIVERSIDE DRIED FRUIT CO (PTY) LTD 1083
 DRIED FRUIT MANUFACTURERS
 Provisional Order: 5/10/59
 Final Order: Nil
 Judicial Manager: J.M. BORTON
Unsuccessful: Liquidation Order 11/10/49
18. GREMLINS (PTY) LTD 1101
 IN LADIES MILE
 Provisional Order: 18/1/50
 Final Order: Nil
 Judicial Manager: J.M. BORTON
Successful: Provisional Order discharged 17/2/50

19. R.S. STORES (PTY) LTD 1104

RETAIL STORE

Provisional Order: 8/2/50
 Final Order: 15/3/50
 Judicial Manager: K. WHITE

Unsuccessful: Liquidation 15/6/50

20. LOEDOLF INVESTMENTS (PTY) LTD 1110

HOTEL

Provisional Order: 24/3/50
 Final Order: 6/4/56
 Judicial Manager: K. WHITE

Unsuccessful: Liquidation Order 10/1/51

The company was acquired and carried on the business known as the "Swartland Hotel" in Malmesbury. During the Judicial Management period, expenditure of a capital nature was incurred with regard to the renovation of the premises, so as to comply with the requirements of the liquor licensing board. The financial records indicated a downward trend in the turnover and creditors, after due consideration, decided to apply for a liquidation order.

21. UNE VOLKSPERS BPK. 1111

PUBLISHERS AND PRINTERS

Provisional Order: 28/3/50
 Final Order: 14/4/50
 Judicial Managers: J.M. BORTON
 L.J. BOTHA

Unsuccessful: Liquidation 6/4/51

Inadequate distribution

22. PROTEA CLOTHING FACTORIES (PTY) LTD

CLOTHING MANUFACTURERS

Provisional Order: 19/4/50
 Final Order: 15/6/50
 Judicial Managers: L. GER
 J.M. BORTON

Unsuccessful: Liquidation 20/8/52

Company run at a loss

23. MURRAY IRVING (PTY) LTD

1143

MANUFACTURERS OF WOODEN TOYS AND NOVELTIES IN TWO
 FACTORIES IN PAARDEN EILAND

Provisional Order: 7/9/50
 Final Order: 4/10/50
 Judicial Managers: L. MEYEROWITZ
 A. THAL

Unsuccessful: Liquidation Order 8/3/51

24. DE AAR GARAGE (PTY) LTD

1167

GARAGE

Provisional Order: 28/4/51
 Final Order: Nil
 Judicial Manager: R.E. MOSTERT

Unsuccessful: Judicial Management Order discharged 19/6/51

25. KNYSNA COLD STORAGE AND FISHERIES CO (PTY) LTD 1173
- RAN ONE OR MORE TRAWLERS AND SUPPLIED SEAFOODS TO VARIOUS PLACES
- Provisional Order: 16/5/51
 Final Order: Nil
 Judicial Managers: J. STERN
 C.F.H. RICHARDSON
- Unsuccessful: Liquidation
- Trawler required repair at great expense
26. MODEL FASHION CREATORS (PTY) LTD 1202
- MANUFACTURED LADIES COSTUMES
- Provisional Order: 30/1/52
 Final Order: 28/2/52
 Judicial Managers: H. TARLEY
 J.H. LEVIEN
- Offer of compromise and Judicial Management Order cancelled 7/5/52
27. SPHERE PHOTO ENGRAVING CO (PTY) LTD 1204
- Provisional Order: 19/2/52
 Final Order: Nil
 Judicial Manager: A. THAL
- Unsuccessful: Liquidation
 Judicial Management Order cancelled

28. SACHERS' CATERERS (PTY) LTD 1214

CARRIED ON BUSINESS AS HOTELIERS AT THE BARBIZON
PLAZA HOTEL, BELONGING TO SACHERS CAPE INVESTMENTS
(PTY) LTD

Provisional Order: 30/4/52
Final Order: 16/5/52
Judicial Managers: J.M. BORTON
C.S. CORDER

Unsuccessful: Liquidation, see No. 1267

29. UNITED SOAPS LIMITED 1242

SOAP MANUFACTURERS

Provisional Order: 14/11/52
Final Order: 4/12/52
Judicial Managers: N.B. GLENDAY
J.J. VOORENDYK

Offer of compromise from committee of shareholders 23/5/53

30. WELLCUT GARMENT MANUFACTURING CO (PTY) LTD 1258

CLOTHING MANUFACTURERS

Provisional Order: 15/1/53
Final Order: 4/2/53
Judicial Manager: H. BAKER
K. WHITE

Company advertised as a going concern after Court ordered a meeting
(Order 17/6/53), an offer of compromise from Fashion Wear Ltd was
accepted, and the Judicial Management Order cancelled 20/8/53.

31. S. SAEVITZON AND CO LTD 1259

Provisional Order: 19/12/52
 Final Order: Nil
 Judicial Managers: J.M. BORTON
 J.H. LEVIEN

Unsuccessful: Provisional Liquidation Order 4/2/53

The company should never have been placed under Judicial Management.
 A fictitious figure was handed to the court increasing the assets.

32. FRIEDLANDS STORES (PTY) LTD 1283

GENERAL DRAPERS IN CAPE TOWN

Provisional Order: 8/5/53
 Final Order: 27/5/53
 Judicial Manager: K. WHITE

Successful: Discharged 31/10/56
 Company fully revested

Overpurchasing and overstocking by Managing Director

33. IMPAX S.A. (PTY) LTD 1293

MANUFACTURERS OF LIGHT METAL CONTAINERS

Provisional Order: 1/7/53
 Final Order: 5/8/53
 Judicial Managers: M.E. RISIEN
 A.G. LONGMORE

Successful: Judicial Management Order cancelled 25/6/58

Company was returned to the Directors, the business was carried on profitably and all debts were paid off.

34. TABLE BAY SHIPWRIGHTS & BOAT BUILDERS CO (PTY) LTD 1302

BOAT BUILDERS

Provisional Order: 21/8/53
 Final Order: 10/9/53
 Judicial Manager: K. WHITE

Unsuccessful: Liquidation

The chairman pointed out that the question of set-off was of utmost importance to creditors. The operation of set-off would not be stayed under Judicial Management proceedings, but if the affairs of the company were handled by way of liquidation proceedings, then set-off would be stayed.

35. SUID-AFRIKAANSE NASIONALE REDERY (EMDS) BPK. 1309

SHIP OWNERS

Provisional Order: 16/9/53
 Final Order: 30/9/53
 Judicial Manager: J.M. BORTON

Unsuccessful: Liquidation

The company managed two ships during Judicial Management, one ran between Durban and Walvis Bay, the other coal charters to the West Coast and Madagascar. Freight earned covered only operation costs.

36. LIONS HEAD MANUFACTURING CO (PTY) LTD 1329

FURNITURE MANUFACTURERS

Provisional Order: 11/11/53
 Final Order: Nil
 Judicial Manager: J.M. BORTON

Unsuccessful: Liquidation

No working capital

37. EXCELDA PRINTING CO LTD 1355

PRINTERS

Provisional Order: 24/2/54
 Final Order: 17/3/53
 Judicial Manager: J.M. BORTON

Successful: Judicial Management Order discharged 28/4/55
 Company returned to directors.

Trading loss caused Judicial Management.

38. NORMAN KENNEDY (PTY) LTD 1361

CONSTRUCTION COMPANY

Provisional Order: 25/3/54
 Final Order: 22/4/54
 Judicial Manager: J.M. BORTON

Unsuccessful: Winding up Order 12/4/55

Company hopelessly insolvent. Staff was unco-operative as a result of the previous manager.

39. TRU PRODUCTS (PTY) LTD 1369

Provisional Order: 14/4/54
 Final Order: 12/5/54
 Judicial Manager: J.C.F. HARFORD

Unsuccessful: Liquidation 28/7/54

Difficulty in bringing account books up to date, and information was withheld so that company would be placed under Judicial Management.

40. MODERN MOTORS CAPE TOWN (PTY) LTD 1377

GARAGE BUSINESS - DEALERS IN SECOND HAND VEHICLES

Provisional Order: 21/5/54
 Final Order: 18/6/54
 Judicial Manager: A. DE V. JOUBERT
 J.M. BORTON

Unsuccessful: Liquidation

Deterioration in trading results, Cost of continuing company outweighed advantages to be gained in continuing company.

41. L. SATILL AND CO (PTY) LTD 1385

MENS AND LADIES OUTFITTERS

Provisional Order: 10/6/54
 Final Order: 14/7/54
 Judicial Manager: L. MAISTER

Unsuccessful: Liquidation 5/4/55

It was both necessary to reduce the overheads and to make more direct contact with debtors. It was also necessary to purchase goods to maintain sales. Due to the delay which had taken place between the original meeting and the date on which Judicial Management Order had been granted the business had been carried on on a restricted budget and the stocks had been depleted as the chairman was obviously loth to purchase in the event of the company going into liquidation.

42. WESTERFORD PRINTING AND PACKAGING (PTY) LTD 1389

PRINTING BUSINESS

Provisional Order: 21/7/54
 Final Order: Nil
 Judicial Manager: J.M. BORTON
 M.L. GLUCKSTEIN

Unsuccessful: Provisional Liquidation Order 24/8/54
 Final Liquidation Order 12/10/54

43. WESTERN WOOLS (EDMS) BPK 1410

WOOL MANUFACTURER

Provisional Order: 23/9/54
 Final Order: 13/10/54
 Judicial Manager: P.R. RORICH

Offer of compromise – the company's assets were increased by purchasing more equipment and the company ran smoothly.

44. ELECTRICRAFT (PTY) LTD 1430

DESIGNERS, MANUFACTURERS, SUPPLIERS AND DEALERS IN ELECTRICAL EQUIPMENT

Provisional Order: 5/1/55
 Final Order: Nil
 Judicial Manager: K. WHITE

Successful:

Offer of payment accepted and company returned to its original directors.

45. CASSIEM'S MOSLEM MEAT PURVEYORS (PTY) LTD 1497

BUTCHERY

Provisional Order: 31/8/55
 Final Order: Nil
 Judicial Managers: J. EPSTEIN
 P.J.D. DE VILLIERS

Offer of compromise was accepted and the Provisional Order discharged 24/10/55

46. SPRINGBOK WYNKELDERS (EDMS) BPK. 1569
- BOTTLE STORE
- Provisional Order: 16/5/56
 Final Order: Nil
 Judicial Manager: W. GOLDBERG
- Unsuccessful: Provisional Order discharged 20/6/56
 Liquidation
47. KAAPLAND KELDERS (EDMS) BPK. 1570
- BOTTLE STORE
- Provisional Order: 17/5/56
 Final Order: Nil
 Judicial Manager: W. GOLDBERG
- Unsuccessful: Provisional Order discharged 20/6/56
 Liquidation
48. ALBERT MOORE (PTY) LTD 1589
- STAINLESS STEEL MANUFACTURERS
- Provisional Order: 28/6/56
 Final Order: 1/8/56
 Judicial Managers: N. HYDE-JONES
 J.M. BORTON
 J.R. WINEARLS
- Successful: Discharged 5/3/58
- Trading was re-established and profits increased.

49. A.I. DE VILLIERS (PTY) LTD 1632

BUSINESS CONCERNING ONIONS AND POTATOES

Provisional Order: 1/11/56
 Final Order: Nil
 Judicial Managers: L. MAISTER
 W. GOLDBERG

Unsuccessful: Liquidation

50. ALETTA MODES (PTY) LTD 1656

LADIES DRESS SHOP

Provisional Order: 28/1/57
 Final Order: 5/3/57
 Judicial Manager: L.C. DAVIES

Unsuccessful: Judicial Management Order cancelled
 Liquidation 20/5/58

No purpose would have been served by continuing the business after all stocks had been sold.

51. M. GENN AND CO (PTY) LTD 1710

HARDWARE BUSINESS

Provisional Order: 7/8/57
 Final Order: 28/8/57
 Judicial Managers: P.J.D. DE VILLIERS
 J.M. BORTON

Offer of compromise

The company continued in the hopes that profits would increase so that it could be advertised as a going concern.

52. HI-FIDELITY AND MUSIC CENTRE (PTY) LTD 1719

SUPPLIERS OF MUSICAL EQUIPMENT

Provisional Order: 24/9/57
 Final Order: 13/11/57
 Judicial Manager: P.J.D. DE VILLIERS

Unsuccessful: Cancelled 25/3/58
 Liquidation

No offer of compromise. Creditors decided that it would be better if the company was liquidated.

53. GEM BOX (PTY) LTD

JEWELLERS

Provisional Order: 18/2/58
 Final Order: Nil
 Judicial Manager: A. DE V. JOUBERT

Unsuccessful: Discharged 29/4/58

54. PORTERFIELD ESTATES LTD 1769

WINE AND BRANDY COMPANY

Provisional Order: 11/6/58
 Final Order: 23/7/58
 Judicial Managers: J.M. BORTON
 C.A.O. KEY

Unsuccessful: Liquidated 11/11/58

55. BONNIEVALE WINE AND BRANDY CO 1770
- WINE AND BRANDY COMPANY
- Provisional Order: 13/6/58
 Final Order: 23/7/58
 Judicial Managers: J.M. BORTON
 C.A.O. KEY
- Unsuccessful: Liquidated 11/11/58
- Subsidiary of Porterfield Estates Ltd
56. LION WINE AND SPIRIT CO LTD 1771
- WINE AND SPIRIT COMPANY
- Provisional Order: 13/6/58
 Final Order: 23/7/58
 Judicial Managers: J.M. BORTON
 C.A.O. KEY
- Unsuccessful: Liquidated 11/11/58
- Subsidiary of Porterfield Estates Ltd
57. CROWN CANNERS AND PACKERS LTD 1772
- FRUIT CANNING FACTORY
- Provisional Order: 13/6/58
 Final Order: 23/7/58
 Judicial Managers: J.M. BORTON
 C.A.O. KEY
- Unsuccessful: Liquidated 11/11/58
- Subsidiary of Porterfield Estates Ltd

58. BONNIEVALE CANNERS AND PACKERS LTD 1773

FRUIT CANNING FACTORY

Provisional Order: 13/6/58
 Final Order: 23/7/58
 Judicial Manager: J.M. BORTON
 C.A.O. KEY

Unsuccessful: Liquidation 22/10/58

Subsidiary of Porterfield Estates Ltd

59. STANDARD WINE AND BRANDY CO LTD 1774

WINE AND BRANDY COMPANY

Provisional Order: 13/6/58
 Final Order: 23/7/58
 Judicial Managers: J.M. BORTON
 C.A.O. KEY

Unsuccessful: Liquidation 30/9/58

Subsidiary of Porterfield Estates Ltd, with branches in Cape Town, Johannesburg, Port Elizabeth, East London, Durban and Bloemfontein.

60. FEDERAL WINE AND BRANDY CO LTD 1820WHOLESALE LIQUOR MERCHANTS WITH HEAD OFFICES IN
CAPE TOWN

Provisional Order: 14/11/58
 Final Order: 5/12/58
 Judicial Manager: J.M. BORTON

Unsuccessful: Liquidation

61. FEDERAL DISTILLERIES LTD

1821

DISTILLERIES

Provisional Order: 14/11/58
 Final Order: 8/12/58
 Judicial Manager: J.M. BORTON

Unsuccessful: Liquidation 17/4/59

Offices in Roeland Street, Cape Town

62. HOFMEYR AND GREWAR (PTY) LTD

1826

Provisional Order: 17/12/58
 Final Order: Nil
 Judicial Managers: S.D.N. VENTER
 P.J.D. DE VILLIERS

Superseded 27/2/59

Unsuccessful: Liquidation

63. E.W. BLACK (PTY) LTD

1841

BUILDING CONTRACTORS AND PROPERTY SPECULATORS

Provisional Order: 13/3/59
 Final Order: Nil
 Judicial Manager: P.J.D. DE VILLIERS

Unsuccessful: Liquidation

64. GEO RAYMOND AND SON (PTY) LTD 1860

WHOLESALE BUSINESS

Provisonal Order: 19/5/59
 Final Order: 9/6/59
 Judicial Managers: A. DE V. JOUBERT
 P.J.D. DE VILLIERS

Unsuccessful: Liquidation

65. V.L. BRINK 1869

CAR DEALER

Provisional Order: 19/6/59
 Final Order: Nil
 Judicial Managers: H.D. WRIGHT
 N. GLEN

Unsuccessful: Discharged 28/8/59
 Liquidation 1/10/59

Offer was made to purchase assets, and franchise would be granted to offerer .
 Judicial Managers advised liquidation and acceptance of offer.

66. MONTE CHRISTO DRIVE-IN CINEMA (PTY) LTD 1872

DRIVE IN CINEMA

Provisional Order: 1/7/59
 Final Order: 27/8/59
 Judicial Manager: A. DE V. JOUBERT

Offer of compromise: Discharged 10/2/60

Efforts to increase revenue succeeded in that advertising revenue was increased and films supplied by new distributing company were shown to good effect. . Business showed seasonal trend with decline in the winter months. Despite increase in receipts during the summer months, past losses had to be absorbed and it was doubted whether profits would be substantial enough to enable large claims by concurrent creditors to be paid within a reasonable time.

67. MILLER'S TRUST FORESHORE (PTY) LTD 1874

Provisional Order: 1/7/59
 Final Order: Nil
 Judicial Manager: A. DE V. JOUBERT

Unsuccessful: Liquidation
 Provisional Liquidation Order 27/8/59
 superseded 10/2/60

68. PAN AFRICAN FILM SERVICES (PTY) LTD 1915

PHOTOGRAPHIC DEALER AND FILM LIBRARY

Provisional Order: 24/11/59
 Final Order: Nil
 Judicial Managers: J.M. BORTON
 J. HADDOW

Unsuccessful: Liquidation
 Provisional Liquidation Order 29/6/60

During the entire period of existence the company was unable to declare a dividend to its shareholders, and the loss over the last three years more than absorbed the accumulated profits. Prospects of improvement was not optimistic, as the competition in the photographic field was too keen.

69. COOPER WOMARANS AND COMPANY (PTY) LTD 1977

SUPPLIERS OF TOOLS ETC. TO ENGINEERING INDUSTRY

Provisional Order: 2/9/60
 Final Order: 27/9/60
 Judicial Managers: W. HANCKE
 J.J. LE ROUX

Unsuccessful: Liquidation

Notwithstanding every possible economy, the Judicial Managers were unable to carry on the business successfully because the gross profit earned on the turnover was

insufficient to provide for the overheads necessary to maintain such business. The financial difficulties arose because of lack of capital which necessitated considerable payment of interest and finance charges in respect of its mortgage indebtedness, its bank overdraft and the liability to its shippers. Further reasons were lack of proper management of the business in its expanded form and the then recession in trade.

70. WENDELL SMITH (PTY) LTD 1990

Provisional Order: 14/12/60
 Final Order: 18/1/61
 Judicial Manager: J.N. RAUBENHEIMER

Unsuccessful: Liquidation 17/5/63

71. MODERN SHOES LTD 1991

SHOE MANUFACTURERS

Provisional Order: 14/12/60
 Final Order: 18/1/61
 Judicial Manager: J.N. RAUBENHEIMER

Unsuccessful: Liquidation 17/5/63

72. GORDONS BAY HOTEL (PTY) LTD 1989

File Missing

73. LANDDIENS WILLIE KRUGER (EDMS) BPK 2062

File Missing

74. GENERAL MARINE AND TEXTILE ENGINEERING CO (PTY) LTD 2063

ENGINEERING SHOP AND FOUNDRY

Provisional Order:	23/6/61
Final Order:	17/9/61
Judicial Managers:	R.R. ASHLEY J.R. HADDOW

Unsuccessful: Liquidation

No marked improvement and the Judicial Managers saw no justification in assuming that conditions would improve. It was obvious that there was little chance of the company accumulating sufficient funds to make any substantial payments to creditors in reduction of their liabilities within a reasonable period, it therefore appeared not to be in the interests of creditors for the Judicial Management to continue.

75. MANGOLD MACHINA LTD 2075

DISTRIBUTORS OF AGRICULTURAL MACHINERY

Provisional Order:	23/6/61
Final Order:	17/9/61
Judicial Managers:	R.R. ASHLEY J.R. HADDOW

Unsuccessful: Liquidation

One of the main causes of the company's difficulties was the lack of administrative control and proper record of stocks. Considerable difficulty was experienced in obtaining the information necessary to enable the Judicial Managers to assess the company's stock requirements and to place orders where necessary to replenish the stocks. Judicial Management continued for five months but despite all steps taken, no prospect of re-establishing the company on a profit earning basis was foreseen.

76. HEYNES MATHEW LTD

2089

WHOLESALE, RETAIL AND MANUFACTURING CHEMISTS

Provisional Order: 9/10/61
 Final Order: 8/11/61
 Judicial Managers: C.S. CORDER
 A.B. MURPHY
 I. MACKENZIE
 W.L. DU PLESSIS

Successful: Discharged 8/4/64

Measures taken to reduce overhead expenses and instil confidence in the company were successful. During Judicial Management, the company's turnover was well maintained with prospects of substantial profits. Under normal circumstances the Judicial Managers would have felt justified in viewing the company's prospects with cautious optimism. As a result of substantial guarantees given by the company in support of S.A. Druggists – its future was linked with that group as a whole – prospects could not therefore be considered solely on the merits of its own future potentialities.

77. SUNLANDS CONSTRUCTION CO (PTY) LTD

2098

CONSTRUCTION COMPANY

Provisional Order: 10/11/61
 Final Order: 13/12/61
 Judicial Managers: J.M. BORTON
 P.J.D. DE VILLIERS

Unsuccessful: Liquidation 18/4/62

The company was in financial difficulty but the general consensus of creditors was that it should not be liquidated until it had completed a contract for the building of a swimming pool at Newlands for the City Council. Judicial Management was thus merely on a short term arrangement for the duration of the contract.

78. KAROO KNITTING MILLS (PTY) LTD

2110

KNITTING MILLS

Provisional Order: 30/11/61
 Final Order: 27/12/61
 Judicial Manager: H. GREENWOOD

Offer to purchase shares and enter the Scheme of Arrangement with the company's creditors was accepted 22/3/62

Judicial Management would not have succeeded in this case as the reasons for the company's difficulties lay in poor management and insufficient working capital. The former was rectified but negotiations for introducing new capital showed no success.

79. UNION DIES AND TOOLS (PTY) LTD

2131

MANUFACTURERS OF TOOLS

Provisional Order: 15/2/62
 Final Order: Nil
 Judicial Managers: J.M. BORTON
 P.J.D. DE VILLIERS

Successful: Discharged 5/5/65

Judicial Management at first showed little improvement in the company's affairs, but as it was decided that it would not be in the interests of the company's creditors for the company to be placed in liquidation, Judicial Management was continued. By September 1964, the economies which were introduced showed increase in gross profit earned, and this enhanced the prospects of finding fresh capital and enabled reconstruction to be affected.

80. SUPERCAST (PTY) LTD 2132

MANUFACTURERS OF PLASTIC PRODUCTS

Provisional Order: 16/2/62
 Final Order: 22/3/62
 Judicial Managers: J.M. BORTON
 P.J.D. DE VILLIERS

Unsuccessful: Liquidation 7/4/65

In this case, Judicial Managers found themselves in the position of being Judicial Managers to a company which did not carry on any business and the assets of which were valueless. The company was presumably placed under Judicial Management to protect its subsidiary, Union Dies and Tools (Pty) Ltd. The Judicial Managers felt that no purpose would be served by continuing Judicial Management, but no fees were available to pay the application to court to discharge the order and place the company in liquidation.

81. DELMAC (PTY) LTD 2133

MANUFACTURERS OF PLASTIC PRODUCTS

Provisional Order: 16/2/62
 Final Order: 22/3/62
 Judicial Managers: J.M. BORTON
 P.J.D. DE VILLIERS

Unsuccessful: Liquidated 7/4/65

Subsidiary of Supercast (Pty) Ltd

82. SUNLANDS TOWNSHIP (PTY) LTD 2134

PROPERTY DEVELOPERS

Provisional Order: 9/2/62
 Final Order: 28/2/62
 Judicial Managers: J.M. BORTON
 P.J.D. DE VILLIERS

Offer of compromise accepted and sanctioned 6/8/63

No prospect of sufficient funds being accumulated to allow distribution to

concurrent creditors. However, if the company had been placed in liquidation it would have lead to the majority of the suspensive sales agreements being con-
 curred and properties subject to these agreements being repossessed. The
 liquidators would then have had to sell the properties for cash, subject to the
 Group Areas Development Act. The Judicial Managers were of the opinion that
 the properties would not realise more than the amounts of existing mortgages
 and concurrent creditors would have received nothing.

83. W. HARPER (PTY) LTD 2141

BUILDING CONTRACTORS

Provisional Order: 9/3/62
 Final Order: 11/4/62
 Judicial Managers: J.M. BORTON
 P.J.D. DE VILLIERS
 J.D. ALLEN

Unsuccessful: Provisional Liquidation Order 19/6/63

Judicial Managers advised liquidation as competition in the building industry
 was still too keen to give prospects of the company obtaining new work of
 sufficient volume at prices which would allow the company to recoup losses
 and reach settlement with creditors.

84. A & G MOTORS (PTY) LTD 2201

File Missing

85. TRANSICA MOTORS (PTY) LTD 2235

TRANSPORT SERVICES

Provisional Order: 26/4/63
 Final Order: 17/5/63
 Judicial Managers: J.M. BORTON
 J.R. HADDOW

Unsuccessful: Provisional Liquidation Order 30/12/64

Since the time of incorporation, the company had derived the greater portion of revenue
 from services to Simpson Road Construction Co, which went into liquidation and no
 alternative source of revenue could be found.

86. TABLE MOUNTAIN PLANT HIRE (PTY) LTD

2236

PLANT HIRE BUSINESS

Provisional Order: 29/4/63
 Final Order: 22/5/63
 Judicial Managers: J.M. BORTON
 J.R. HADDOW

Successful: Order cancelled 30/12/64

As from the date of liquidation the company showed a material improvement in its financial position in that its liability to Hire Purchase creditors was liquidated and in addition, contingent liabilities in respect of guarantees given on behalf of associated companies were reduced. Turnover with firms other than Simpson Road Construction Company improved.

87. TABLE MOUNTAIN BRICK AND TILE CO (PTY) LTD

2237

MANUFACTURERS OF BRICKS, TILES AND HOLLOW BLOCKS

Provisional Order: 30/4/63
 Final Order: 22/5/63
 Judicial Managers: J.M. BORTON
 J.R. HADDOW

Successful: Discharged 4/8/65

In an endeavour to increase turnover and provide an outlet for the Company's pre-mixed bitumen output, the Judicial Manager acquired the sole rights for the Cape Province for the manufacture and sale of cold premix asphalt products.

88. NORMAN ENGINEERING WORKS (PTY) LTD

C 2297

GENERAL ENGINEERS, VEHICLE BODY BUILDERS, PANEL BEATERS

Provisional Order: 4/2/64
 Final Order: Nil
 Judicial Manager: K.D. PENKIN

Unsuccessful: Liquidation 3/3/64
 Bond of Security: R9 000

89. FLEMISH FOOD PRODUCTS (PTY) LTD C 2333
 WHOLESALE AND RETAIL BUTCHERS
- Provisional Order: 28/8/64
 Final Order: 18/9/64
 Judicial Manager: I. GREEF
- Offer of compromise, Order discharged 9/3/66
 Bond of Security: R2 000
- First liquidation, Ref No. C 2330. Eventually unsecured creditors received 1 cent in the Rand.
90. SOUTH WESTERN DISTRICTS BRICK AND TILE CO (PTY) LTD C 2388
 MANUFACTURERS OF BRICK AND TILE PRODUCTS
- Provisional Order: 23/4/65
 Final Order: 30/5/65
 Judicial Manager: M.C. BOTHA-CRONJE
- Unsuccessful: Liquidation 25/2/66
- Bond of Security: R200 000
91. B.E.E. & B.E.E. FISHING CORPORATION (PTY) LTD C 2411
92. YELLOW FIN TUNA CORPORATION (EDMS) BPK C 2412
93. BONITO FISHING CORPORATION (EDMS) BPK C 2413
94. SENER REFRIGERATING (PTY) LTD C 2414
95. ALL SEAS FISHING CORPORATION (EDMS) BPK C 2415
96. CAPE POINT FISHING CORPORATION (EDMS) BPK C 2416
- GROUP OF FISHING COMPANIES

/contd.

Provisional Order: 12/8/65
 Final Order: Nil
 Judicial Managers: J.A.M. ARCHER
 D.C. HEESE
 J.M. BORTON

Unsuccessful: Liquidations 19/8/65

Bonds of Security: R 250 000
 R 250 000
 R 50 000
 R 200 000
 R 50 000

97. RECORD FOOTWEAR FACTORY (PTY) LTD

C 2463

FOOTWEAR MANUFACTURER

Provisional Order: 1/12/65
 Final Order: Nil
 Judicial Manager: J.M. BORTON

Unsuccessful: Liquidation 5/10/66

Bond of Security: R 100 000

98. ROSEN'S UPHOLSTERY WORKS 1964 (PTY) LTD

C 2472

FURNITURE UPHOLSTERING AND RECONDITIONING

Provisional Order: 22/12/65
 Final Order: 26/1/66
 Judicial Manager: W. HANKE

Offer of compromise 8/2/67, concurrent creditors not paid in full.

Bond of Security: R 10 000

99. PATRICIA PERS (EDMS) BPK C 2487

PRINTERS OF NEWSPAPERS

Provisional Order: 15/3/66
 Final Order: Nil
 Judicial Manager: W. HANKE

Unsuccessful: Liquidation 31/3/66

Bond of Security: R 80 000

100. SHERLEYS PRODUCTS (PTY) LTD C 2507

MANUFACTURERS OF LADIES AND CHILDRENS APPAREL

Provisional Order: 1/6/66
 Final Order: 6/7/66
 Judicial Manager: J.R. HADDOW

Successful: Discharged 4/6/69

Bond of Security: R 150 000

101. LOLA ZINN FURNITURE (PTY) LTD C 2520

FURNITURE MANUFACTURERS

Provisional Order: 3/3/66
 Final Order: Nil
 Judicial Manager: J.R. HADDOW
 P.J.D. DE VILLIERS

Unsuccessful: Liquidation 5/10/66

Bond of Security: R 200 000

102. KLEENMAIN PRODUCTS (PTY) LTD C 28/67

MANUFACTURERS OF FROZEN SUCKERS

Provisional Order: 15/2/67
 Final Order: Nil
 Judicial Manager: A. DE V. JOUBERT

Provisional Order discharged 12/4/69, offer of compromise accepted.

Bond of Security: R 30 000

103. WOODCRAFT COMPANY OF GEORGE (PTY) LTD C 143/67

TIMBER MERCHANTS AND SAWMILL OWNERS

Provisional Order: 1/8/67
 Final Order: 22/8/67
 Judicial Manager: A. J. BURGER

Unsuccessful: Liquidation C 38/68

Bond of Security: R 50 000

104. DU TOITS KLOOF POULTRY FARM (PTY) LTD C 7/68

POULTRY FARM

Provisional Order: 10/1/68
 Final Order: 7/2/68
 Judicial Manager: A. DE V. JOUBERT

Successful: Company fully re-vested to former management

Bond of Security: R 30 000

105. VREDERUS FARMS (PTY) LTD

C 12/68

POULTRY FARMERS

Provisional Order: 10/1/68
 Final Order: 7/2/68
 Judicial Manager: A. DE V. JOUBERT

Unsuccessful: Liquidation 9/8/68

Bond of Security: R 30 000

106. RONNIE SINGER PRODUCTIONS (PTY) LTD

C 46/68

RESTAURANT AND NIGHT CLUB

Provisional Order: 27/2/68
 Final Order: Nil
 Judicial Manager: F.D. GLAUM

Unsuccessful: Liquidation 25/4/68

Bond of Security: R 2 000

107. VIVEDGE ENTERPRISES (PTY) LTD

C 59/68

RESTAURANT

Provisional Order: 18/3/68
 Final Order: Nil
 Judicial Manager: I. GREEF

Unsuccessful: Liquidation 7/5/68

Bond of Security: R 5 000

108. TRUBELLA (PTY) LTD

C 96/68

LINEN SHOP

Provisional Order: 17/4/68
 Final Order: Nil
 Judicial Manager: K.D. PENKIN

Unsuccessful: Liquidation 16/5/68

Bond of Security: R 20 000

109. THE COLONIAL ORPHAN CHAMBER TRUST CO LTD

C 177/68

Provisional Order: Nil
 Final Order: 22/5/68
 Judicial Manager: H.D. WRIGHT (C.A.)

Assets as per Balance Sheet: R 2 120 000

Company bought by Syfrets and order cancelled 27/11/68

On 17/5/68, the Minister of Finance appointed a curator of the Colonial Orphan Chamber in terms of Section 40 of the Banks Act. This was a wholly owned subsidiary. As the assets exceeded the liabilities, Judicial Management was granted due to mismanagement and collusive dealings by the directors.

110. MARK DEON BUILDERS (PTY) LTD

C 127/68

BUILDERS

Provisional Order: 6/6/68
 Final Order: 3/7/68
 Judicial Manager: K.D. PENKIN

Appears successful:

Bond of Security: R 28 000

111. J.G. PRODUCTS (PTY) LTD C 193/68
 MANUFACTURING ENGINEERS
- Provisional Order: 20/8/68
 Final Order: 10/9/68
 Judicial Manager: K.D. PENKIN
- Successful: Revested to former management 15/8/69
- Bond of Security: R 25 000
112. LAMETER (PTY) LTD C 134/69
 MANUFACTURERS OF WROUGHT IRON WORK
- Provisional Order: 4/9/69
 Final Order: 24/9/69
 Judicial Manager: D.J. RENNIE
- Unsuccessful: Creditors not paid in full, discharged 1974
- Assets per assessment: R 11 000
113. TAFELBERG MAKELAARS (EDMS) BPK C 136/69
 DEALER IN FURNITURE AND ELECTRICAL GOODS
- Provisional Order: 3/9/69
 Final Order: 24/9/69
 Judicial Managers: A. DE V. JOUBERT
 R. MILLMAN
- Offer of compromise sanctioned 20/5/70
- Bond of Security: R 20 000

114. DE VRIES HOLDINGS SOUTHERN CAPE (PTY) LTD C 137/69
- GARAGE OWNERS**
- Provisional Order: 3/9/69
 Final Order: Nil
 Judicial Managers: R. MILLMAN
 D. GLAUM
- Unsuccessful: Liquidation 24/9/69
- Bond of Security: R 20 000
115. TAFELBERG MEUBILEERDERS (PAARL) EDMS) BPK C 172/69
- FURNITURE FACTORY**
- Provisional Order: 8/10/69
 Final Order: 22/10/69
 Judicial Managers: A. DE V. JOUBERT
 R. MILLMAN
- Offer of compromise sanctioned 20/5/70
- Bond of Security: R 20 000
116. UNIFAM (PTY) LTD C 178/69
- File Missing: Liquidation C 208/69
117. BOLAND BOUERS (EDMS) BPK C 190/69
- BUILDING CONTRACOTRS**
- Provisional Order: 14/11/69
 Final Order: 12/12/69
 Judicial Manager: D. GLAUM
- Offer of compromise sanctioned 7/10/70, order discharged
- Assets as per balance sheet: R 306 000

118. WILLETTON DISTRIBUTORS (PTY) LTD C 217/69
- RETAIL SOFT GOODS
- Provisional Order: 15/12/69
 Final Order: 17/12/69
 Judicial Manager: K.D. PENKIN
- Unsuccessful: Liquidation C 217/69
- Bond of Security: R 10 000
119. GEORGE HARDWARE (PTY) LTD C 158/70
- HARDWARE BUSINESS
- Provisional Order: 22/7/70
 Final Order: 11/8/70
 Judicial Managers: G. S. THOMAS
 L.O. TEUBES
- Unsuccessful: Liquidation
- Bond of Security: R 10 000
120. RELIANCE UPHOLSTERY AND BEDDING (PTY) LTD C 137/71
- FURNITURE FACTORY
- Provisional Order: 28/5/71
 Final Order: 23/6/71
 Judicial Managers: J.R. HADDOW
 B.K.S. VAN ZYL
- Unsuccessful: Liquidation
- Bond of Security: R 100 000

121. PLUNGE POOLS (PTY) LTD C 166/71

SWIMMING POOL CONTRACTORS

Provisional Order: 16/6/71
 Final Order: Nil
 Judicial Manager: R. MILLMAN

Unsuccessful: Liquidation C 186/71

Bond of Security: R 2 000

122. R.O.K.O. PLUMBERS (PTY) LTD C 180/71

PLUMBING AND DRAINAGE CONTRACTORS

Provisional Order: 23/6/71
 Final Order: 14/7/71
 Judicial Manager: D.J. RENNIE

Unsuccessful: Liquidation C 370/71

Bond of Security: R 2 000

123. DESMOND CROWIE CONSTRUCTION CO (PTY) LTD C 258/71

CONSTRUCTION COMPANY

Provisional Order: 23/8/71
 Final Order: Nil
 Judicial Manager: M. T. EAST

Unsuccessful: Liquidation 14/9/71

Assets per statement of affairs: R 237 000

124. PICKFORD REMOVALS AND STORAGE (PTY) LTD C 382/71
 CARTAGE CONTRACTORS AND STORAGE AGENTS
- Provisional Order: 14/12/71
 Final Order: 12/1/72
 Judicial Manager P.B. OERTEL
 A.H. OLVER
- Unsuccessful: Liquidation 7/11/72
- Bond of Security: R 342 000
125. PICKFORD HOLDINGS (PTY) LTD C 383/71
 INVESTMENT COMPANY
- Provisional Order: 15/12/71
 Final Order: 12/1/72
 Judicial Managers: P.B. OERTEL
 A.H. OLVER
- Unsuccessful:
- Bond of Security: R 198 000
126. WIMBLEDON CONCRETE INDUSTRY (PTY) LTD C 4/72
 CONCRETE MANUFACTURERS
- Provisional Order: 29/12/74
 Final Order: 8/2/75
 Judicial Manager: J.L.J.B. CROUS
- Successful: Order discharged 1/5/75
- Bond of Security: R 13 000

127. STEPHANS PLANT HIRE (PTY) LTD C 48/72
128. ASPHALT ROADS AND ROOFING CONTRACTORS (PTY) LTD C 49/72
129. ASPHALT ROADS AND ROOFING (NORTHERN CAPE) (PTY) LTD C 50/72

CIVIL ENGINEERS, ROAD CONSTRUCTORS AND HARD SURFACE CONTRACTORS

Provisional Order: 7/2/72
 Final Order: 24/2/72
 Judicial Manager: G.D. KOTZE

Successful in part: Discharged

Northern Cape Company sold all its assets and the other two companies curtailed their operations, so that eventually the order was discharged.

Bond of Security: R 50 000
 R 200 000
 R ?

130. DENIS MEYER (PTY) LTD C 85/72

DISCOUNT FURNITURE, CARPETING AND APPLIANCE BUSINESS

Provisional Order: 17/2/72
 Final Order: 10/3/72
 Judicial Manager: D.A. MORRIS

Unsuccessful: Liquidation C 230/72

Bond of Security: R 175 000

131. ESTO LEATHER WORKS (PTY) LTD

C 100/72

MANUFACTURERS OF LEATHER GOODS

Provisional Order: 25/2/72
 Final Order: 9/5/72
 Judicial Manager: J.J. ROUSSEAU

Unsuccessful: Liquidation 6/9/72

Bond of Security: R 70 000

132. FORUM CONSTRUCTION CO (PTY) LTD

C 156/72

BUILDING AND CONSTRUCTION

Provisional Order: 10/3/72
 Final Order: Nil
 Judicial Manager: D.J. RENNIE

Unsuccessful: Liquidation 19/12/73

Bond of Security: R 10 000

133. POLVAC RADIO AND TELEVISION CORPORATION (PTY) LTD

C 164/72

RETAIL RADIO AND TELEVISION

Provisional Order: 24/3/72
 Final Order: 12/4/72
 Judicial Manager: M.J. STARK

Unsuccessful: Liquidation 17/11/72

Bond of Security: R 44 000

134. TIMBER UNITS (PTY) LTD C 229/72
 MANUFACTURERS OF FRUIT BOXES
 Order Refused
135. LYNIQUE (PTY) LTD C 235/72
 RETAILER OF CLOTHING AND SOFT GOODS
 Provisional Order: 26/5/72
 Final Order: 30/5/72
 Judicial Manager: P.C. THORNE
Unsuccessful: Liquidation No. C 292/72
 Bond of Security: R 75 000
136. PENINSULA FOOD PRODUCTS (PTY) LTD C 237/72
 BAKERY BUSINESS
 Provisional Order: 30/5/72
 Final Order: 28/6/72
 Judicial Manager: P.T.C. THORNE
 Offer of compromise
 Bond of Security: R 15 000
137. CONSOLIDATED STONE SUPPLIERS (PTY) LTD C 282/72
 STONE QUARRY BUSINESS
 Provisional Order: 9/6/72
 Final Order: Nil
 Judicial Manager: M.T. EAST
 Offer of compromise sanctioned 4/8/72, order therefore discharged
 Bond of Security: R 75 000

138. UNSGAARD & SAMSON (PTY) LTD

C 298/72

PACKAGING FIRM

Provisional Order: 28/6/72
 Final Order: Nil
 Judicial Managers: M.T. EAST
 A.H. OLVER
 P.B. OERTEL
 A.H. GUNN

Unsuccessful: Provisional Liquidation Order 26/7/72
 Offer of compromise 3/11/72

Bond of Security: R 2 400 000

139. DUCTWORK INSTALLATIONS (PTY) LTD

C 328/72

MANUFACTURERS OF DUCTING AND OTHER EQUIPMENT ALLIED
TO AIRCONDITIONING

Provisional Order: 4/8/72
 Final Order: 6/9/72
 Judicial Manager: F.D. GLAUM

Unsuccessful: Liquidation 28/3/73

Share Capital: R 100
 Assets per Balance Sheet: R 26 000
 Bond of Security: R 15 000

140. DUNCAN MOTOR SPARES (PTY) LTD

C 347/72

SUPPLIERS OF USED MOTOR SPARES AND MOTOR VEHICLES

Provisional Order: 3/8/72
 Final Order: 8/9/72
 Provisional and Final
 Judicial Manager: D.J. RENNIE

Unsuccessful: Liquidation No. C 67/73

Share Capital: R 200
 Assets as per Balance Sheet: R 166 000
 Bond of Security: R 50 000

141. PHOTO PROCESS (PTY) LTD C 479/72
 PHOTO ENGRAVERS, DESIGNERS AND PHOTOGRAPHERS
 Provisional Order: 28/11/72
 Final Order: 14/12/72
 Judicial Manager: L. MAISTER
Unsuccessful: Liquidation 12/12/74
 Bond of Security: R 7 000
142. C.C. CANNING AND CO (PTY) LTD C 495/72
 PANEL BEATERS AND SPRAY PAINTERS
 Provisional Order: 8/12/72
 Final Order: Nil
 Judicial Manager: D.F. WATERS
Unsuccessful: Liquidation 24/1/73
 Bond of Security: R 17 500
143. POP INN TAKEAWAY FOODS (PTY) LTD C 115/73
 TAKE AWAY SNACKS
 Provisional Order: 28/3/73
 Final Order: 13/4/73
 Judicial Manager: C.W. IPSER
Unsuccessful: Liquidation C 210/74
 Assets: R 4 202,30

144. MERCANTILE ATLANS PRINTING (PTY) LTD C 162/73

LITHOGRAPHERS AND CARTON MANUFACTURERS

Provisional Order: Nil
 Provisional Judicial Mananagers: M. T. EAST
 J. J. ROUSSEAU

Unsuccessful: Provisional Liquidation 5/2/73
 Liquidation 20/3/73

Assets: R 312 700

This file appears only to deal with the liquidation of the company. There was a petition to take it out of liquidation into Judicial Management, but this was opposed by creditors and withdrawn.

145. MAISON LA FAYETTE ET CIE (PTY) LTD C 223/73

LADIES DRESS SALON

Provisional Order: 10/2/65
 Final Order: Nil
 Judicial Manager: A. DE V. JOUBERT

Unsuccessful: Liquidation 2/2/65

Assets as per balance sheet: R 13 000

146. FRED PIKE (PTY) LTD C 147/74

BUILDING CONTRACTORS

Provisional Order: 19/4/74
 Final Order: 14/6/74
 Judicial Manager: D. J. RENNIE
 Scheme of Arrangement: 27/12/74

Bond of Security: R 275 000

147. HOTEL DA GAMA STRAND (PTY) LTD

C 235/74

HOTEL AND LIQUOR RETAILERS

Provisional Order: 1/7/74
 Final Order: 28/8/74
 Judicial Managers: J.C. VAN WYNGAARDEN
 B.M. HURWITZ

Unsuccessful: Liquidation Order 16/1/75

Bond of Security: R 40 000

148. GUBELA AND RICHTER (PTY) LTD

C 276/74

MANUFACTURER OF PAINT, SUPPLIER OF ROAD MAKING EQUIPMENT

Provisional Order: 31/7/74
 Final Order: Nil
 Judicial Manager: D.J. RENNIE

Unsuccessful: Liquidation Order 18/10/74

Bond of Security: R 240 000

149. ROAD BUILDERS (PTY) LTD

C 302/74

ROAD BUILDING COMPANY

Provisional Order: 16/8/74
 Final Order: Nil
 Judicial Managers: R. MILLMAN
 A.D. GUNN

Unsuccessful: Liquidation order 5/9/74

Bond of Security: R 1 300 000

150. THE SIMPSON ROAD CONSTRUCTION CO (PTY) LTD C 303/74
 ROAD CONSTRUCTION COMPANY
- Provisional Order: 16/8/74
 Final Order: Nil
 Judicial Managers: R. MILLMAN
 D. RENNIE
 A.H. GUNN
- Unsuccessful: Liquidation 28/8/74
- Bond of Security: R 1 950 000
151. TABLE MOUNTAIN PLANT HIRE (PTY) LTD C 304/74
 HIRING OF INDUSTRIAL PLANTS
- Provisional Order: 16/8/74
 Final Order: 27/11/74
 Judicial Managers: A. GUNN
 P.C. THORNE
- Offer of compromise, discharged 18/6/75
- Assets as per Balance Sheet: R 613 165
152. BACKLO MANAGEMENT CO (PTY) LTD C 460/74
153. CRAVATEUR TIE CO (PTY) LTD C 471/74
154. MONATIC ALBA LTD C 472/74
155. RICH RAGS (PTY) LTD C 474/74
- PART OF BACK CLOTHING CORPORATION LTD (C 458/74)
- All files to District State Attorney

156. LA PROVENCE VEGETABLES (PTY) LTD C 209/75

MARKET GARDENING, FRUIT AND VEGETABLES

Provisional Order: 13/5/75
 Final Order: Nil
 Judicial Manager: F.D. GLAUM

Unsuccessful: Provisional Order discharged 8/9/75
 Liquidation No. C 334/75

Bond of Security: R 350 000

157. HEIDEBRUIN PLASE (PTY) LTD C 214/75

MARKET GARDENERS AND FRUIT

Provisional Order: 13/5/75
 Final Order: Nil
 Judicial Manager: F.D. GLAUM

Unsuccessful: Provisional Order discharged 8/9/75

Bond of Security: R93 500

158. R.E.W. CONSTRUCTION (PTY) LTD C 336/75

CONSTRUCTION COMPANY

Provisional Order: 7/8/75
 Final Order: 9/10/75
 Judicial Managers: P. THORNE
 F.D. GLAUM

No details are available whether Judicial Management was a success or not.

Bond of Security: R 311 000

159. TRONNEES BEHERENDE MAATSKAPPY (EDMS) BPK.

C 351/74

CONTROLLING COMPANY OWNING THEE RETAIL CLOTHING AND
FURNITURE COMPANIES

Provisional Order: 19/8/75
 Final Order: Nil
 Judicial Manager: R. MILLMAN

Unsuccessful: Provisional Order discharged 3/9/75
 Liquidation Order 3/9/75

Bond of Security: R 750 000

160. TRONNEES MEUBELS BEHERENDE (EDMS) BPK.

C 352/75

FURNITURE RETAILERS

Provisional Order: 19/8/75
 Final Order: Nil
 Judicial Manager: J.J. ROUSSEAU

Unsuccessful: Liquidation Order 3/9/75

Bond of Security: R 500 000

161. TRONNEES KLERASIE (EDMS) BPK.

C 354/75

CLOTHING RETAILER

Provisional Order: 19/8/75
 Final Order: Nil
 Judicial Manager: J.J. ROUSSEAU

Unsuccessful: Liquidation Order 3/9/75

162. DELFREE WHOLESALE (PTY) LTD

C 355/75

CONTROLLING COMPANY OF TWO RETAIL CLOTHING COMPANIES

Provisional Order: 19/8/75
 Final Order: Nil
 Judicial Manager: J.J. ROUSSEAU

Unsuccessful: Liquidation Order 3/9/75

Bond of Security: R 250 000

163. ISOTHERM (PTY) LTD

C 555/75

REFRIGERATION ENGINEERS

Provisional Order: 17/12/75
 Final Order: Nil
 Judicial Manager: R. GORDON

Unsuccessful: Liquidation Order 28/1/76

Bond of Security: R 251 000

164. NURSERY FAYRE (PTY) LTD

C 22/76

RETAIL CHAIN STORE SELLING BABYWARE, PRAMS ETC.

Provisional Order: 28/1/76
 Final Order: 11/6/76
 Judicial Manager: D. RENNIE

Appears still to be under Judicial Management

Bond of Security: R 390 000

165. CASCADE TISSUE COMPANY (PTY) LTD 25/76
 MANUFACTURER OF TISSUE PAPER AND BAGS
- Provisional Order: 21/1/76
 Final Order: 21/4/76
 Judicial Managers: D.J. RENNIE
 F.D. GLAUM
- Unsuccessful : Liquidation
- Bond of Security: R 81 000
166. INDENTA AGENCIES (PTY) LTD C 26/76
 BUYING AND SELLING SCRAP TEXTILE PIECES
- Provisional Order: 1/7/76
 Final Order: 16/9/76
 Judicial Managers: R. MILLMAN
 F.D. GLAUM
- Still under Judicial Management
- Bond of Security: R 581 000
167. PARKADE PAPERBACKS (PTY) LTD C 38/76
 BOOKSELLERS
- Provisional Order: 12/4/76
 Final Order: 7/7/76
 Judicial Manager: R. MILLMAN
- Offer of compromise
- Bond of Security: R 262 000

168. PAPERBACKS HOLDINGS (PTY) LTD

C 148/76

RETAIL BOOKS AND STATIONERY

Provisional Order: 12/4/76
 Final Order: Nil
 Judicial Manager: R. MILLMAN

Unsuccessful: Liquidation No. C 245/76

Bond of Security: R 350 000

169. SALTRA (PTY) LTD

C 205/76

TRANSPORT CONTRACTORS

Provisional Order: 26/5/76
 Final Order: Nil
 Judicial Manager: P. THORNE

Unsuccessful: Liquidation Order 23/5/76

Bond of Security: R 82 000

170. CHAPMAN'S PEAK HOTEL (PTY) LTD

C 260/76

HOTEL WITH OFF-SALES LQUOR LICENCE

Provisional Order: 1/7/76
 Final Order: 16/9/76
 Judicial Managers: D. RENNIE
 I. RESS

Offer of compromise accepted 26/10/77

Bond of Security: R 105 000

171. HOUT BAY HOTEL (PTY) LTD

C 261/76

HOTEL

Provisional Order: 1/7/76
 Final Order: 16/9/76
 Judicial Manager: I. RESS

Offer of compromise accepted 26/10/76

Bond of Security: R 165 000

172. DISCOKNIT (PTY) LTD

C 304/76

DISCOUNTER IN MATERIALS AND CURTAINING

Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Managers: N. RUBENSTEIN
 S. GUTMAN

Unsuccessful: Liquidation No. C 404/76

Bond of Security: R 101 500

173. FIVE STAR (PTY) LTD

C 306/76

PROPERTY INVESTMENT COMPANY

Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Managers: A.H. OLVER
 R. GORDON

Unsuccessful: Liquidation Order 28/9/76

174. MAGNETITE INVESTMENTS (PTY) LTD

C 311/76

PROPERTY INVESTMENT COMPANY

Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Managers: A.H. OLVER
 R. GORDON

Unsuccessful: Liquidation No. C 441/76 - 28/9/76

Bond of Security: R 2 212 000

175. AQUAMARINE INVESTMENTS (PTY) LTD

C 316/76

PROPERTY INVESTMENT COMPANY

Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Managers: A.H. OLVER
 R. GORDON

Unsuccessful: Liquidation Order 28/9/76

Bond of Security: R 10 113 000

176. KARA CONSTRUCTION CO (PTY) LTD

C 321/76

BUILDING CONTRACTOR

Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Managers: E.B. WALLACE
 M.T. EAST

Unsuccessful: Liquidation 28/9/76

Bond of Security: R 1 556 000

177. VICTOR JONES (PTY) LTD C 326/76

PROPERTY ADMINISTRATORS

Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Managers: E.B. WALLACE
 M.T. EAST

Unsuccessful: Liquidation Order 28/9/76

Bond of Security: R 128 600

178. ETCO MAGOU BROUERY (EDMS) BPK. C 329/76

BREWERS OF NON-ALCOHOLIC BEVERAGE

Provisional Order: 12/8/76
 Final Order: Nil
 Judicial Manager: J. RENNIE

Transferred to Transvaal where registered office was T 1252/76

Bond of Security: R 60 000

179. C. HALL CARPETS (PTY) LTD C 336/76

SUPPLIERS AND FITTERS OF CARPETS

Provisional Order:
 Final Order:

Unsuccessful: Liquidation Order 7/9/76

File incomplete, as the Liquidation files do not deal with the Judicial Management.

180. SCHEP AND SCHEP (PTY) LTD C 1/77
 BUILDING CONTRACTORS AND CIVIL ENGINEERS
 Provisional Order: 5/11/77
 Final Order: Nil
 Judicial Manager: L. MAISTER
Unsuccessful: Liquidation Order 25/5/77
 Bond of Security: R 230 000
181. MAINE CHANCE FARMS (PTY) LTD C 103/77
 STUD FARMING
 Judicial Management Order never granted.
182. VALHALLA FLATS CLIFTON (PTY) LTD C 118/77
 PROPERTY HOLDING COMPANY SELLING FLATS UNDER
 SECTIONAL TITLE
 Provisional Order: 4/3/77
 Final Order: Nil
 Judicial Manager: A.H. OLVER
Unsuccessful: Liquidation Order 29/4/77
 Bond of Security: R 500 000
183. BONDVOY PROPERTIES (PTY) LTD C 127/77
 PROPERTY OWNING COMPANY
 Provisional Order: 11/3/77
 Final Order: 22/6/77
 Judicial Manager: E.B. WALLACE
 Still under Judicial Management
 Bond of Security: R 200 000

184. BONDVOY ONE (PTY) LTD C 135/77

PROPERTY HOLDING AND DEVELOPING COMPANY

Provisional Order: 11/3/77
 Final Order: Nil
 Judicial Manager: A.H. OLVER

Unsuccessful: Liquidation Order 15/6/77

Bond of Security: R 390 000

185. CLAREKLOOF (PTY) LTD C 165/77

PROPERTY HOLDING AND DEVELOPING COMPANY

Provisional Order: 25/4/77
 Final Order: Nil
 Judicial Managers: A.H. OLVER
 N.R. RUBENSTEIN

Unsuccessful: Liquidation Order 15/6/77

Bond of Security: R 313 000

186. GROWELL (PTY) LTD C 225/77

GARDEN LANDSCAPERS

Provisional Order: 27/4/77
 Final Order: Nil
 Judicial Manager: N.R. RUBENSTEIN

Offer of compromise sanctioned 25/11/77

Bond of Security: R 39 000

187. ARKAT BELEGGINGS (PTY) LTD C 227/77
- FINANCIER AND DEVELOPER – COLOURED HOUSING
- Provisional Order: 20/4/77
 Final Order: Nil
 Judicial Manager: J.J. FOURIE
- Unsuccessful: Liquidation Order 10 /8/77
- Bond of Security: R 163 000
-
188. SOUTHERN BEARINGS AND ENGINEERING (PTY) LTD C 258/77
- ENGINEERING FIRM
- Provisional Order: 28/4/77
 Final Order: Nil
 Judicial Manager: F.D. GLAUM
- Offer of compromise sanctioned 3/11/77
- Bond of Security: R 260 000
-
189. PALACE HOTEL KENILWORTH (PTY) LTD C 259/77
- HOTEL
- Provisional Order: 28/4/77
 Final Order: 19/10/77
 Judicial Manager: D.J. RENNIE
- Still under Judicial Management
- Bond of Security: R 50 000

190. KENILWORTH PALACE INVESTMENTS (PTY) LTD C 260/77
 PROPERTY OWNING COMPANY (HOTEL)
 Provisional Order: 28/4/77
 Final Order: 19/4/77
 Judicial Manager: D.J. RENNIE
 Still under Judicial Management
 Bond of Security: R 750 000
191. CALIFORNIA STYLE HEALTH STUDIOS (PTY) LTD C 366/77
 HEALTH STUDIO
 Provisional Order: 29/6/77
 Final Order: Nil
 Judicial Managers: D. COHEN
 S. GUTMAN
 Offer of compromise, Provisional Order discharged 28/9/77
 Bond of Security: R 8 250
192. UNITED AFRICA ELECTRIC "UNIAFEL" (PTY) LTD C 370/77
 MANUFACTURER AND MERCHANT OF ELECTRICAL AND ENGINEERING
 COMPONENTS
 Provisional Order: 29/6/77
 Final Order: Nil
 Provisional Judicial Manager: A.H. OLVER
 Offer of compromise sanctioned 18/1/78
 Bond of Security: R 311 000

193. CLARES PLIFIX (PTY) LTD

C 424/77

RETAIL OF HOUSEHOLD GOODS

Provisional Order: 29/7/77
 Final Order: 18/10/77
 Provisional and Final
 Judicial Managers: B.W. SMITH
 P.F. KAMPERS

Unsuccessful: Liquidation No. C 54/78

Bond of Security: R 85 000

194. UNI AFEL HOLDINGS (PTY) LTD

C 461/77

PROPERTY INVESTMENT COMPANY

Provisional Order: 16/8/77
 Final Order: Nil
 Provisional Judicial Manager: E.B. WALLACE

Unsuccessful: Liquidation No. C 560/77

Bond of Security: R 400 000

195. SANNES SIVIELE KONTRAKTEURS (EDMS) BPK

C 476/77

CONSTRUCTION COMPANY

Provisional Order: 23/8/77
 Final Order: 4/1/78
 Judicial Manager: E. LE ROUX

Unsuccessful: Liquidation 21/2/79

Bond of Security: R 190 000

196. BOSCON FASHIONWEAR (PTY) LTD C 488/77
- MANUFACTURERS OF LADIES CLOTHING
- Provisional Order: 30/8/77
 Final Order: 17/5/78
 Judicial Manager: E.B. WALLACE
- Unsuccessful: Liquidation
- Bond of Security: R45 000
-
197. S.A. CABINET WORKS (CAPE) (PTY) LTD C 493/77
- FURNITURE MANUFACTURER
- Provisional Order: 21/9/77
 Final Order: Nil
 Judicial Managers: A.H. OLVER
 D.J. RENNIE
- Unsuccessful: Liquidation 13/6/77
- Bond of Security: R 2 890 000
-
198. NORRISTAN WYNBOERE (EDMS) BPK. C 494/77
- FARMING COMPANIES
- Provisional Order: 1/9/77
 Final Order: 18/11/77
 Judicial Managers: P.R. SERFONTEIN
 E. LE ROUX
- Still under Judicial Management
- Bond of Security: R 34 400

The following companies, belonging to the same group as Norristan Wynboere (Edms) Bpk., are still in Judicial Management.

199.	<u>JONKERMOED WYNBOERE (EDMS) BPK.</u>	C 492/77
200.	<u>KLIPBULT WYNBOERE (EDMS) BPK.</u>	C 495/77
	Bond of Security:	R 122 600
201.	<u>BLOEMDAL VRUGTEPLAAS (EDMS) BPK.</u>	C 496/77
202.	<u>MUSKADEL WYNPLAAS (EDMS) BPK.</u>	C 497/77
	Bond of Security:	R 171 100
203.	<u>TAAIPIT-EN-KROMHOUT (EDMS) BPK.</u>	C 501/77
	Bond of Security:	R 116 600
204.	<u>SAAI-EN-MAAI (EDMS) BPK.</u>	C 502/77
	Bond of Security:	R 116 600
205.	<u>S.A. CABINET WORKS LTD</u>	C 498/77
	OWNER OF LAND AND BUILDINGS	
	Provisional Order:	21/9/77
	Final Order:	Nil
	Provisional Judicial Managers:	E.B. WALLACE H. ZINMAN
	<u>Unsuccessful:</u>	Liquidation 29/6/77
	Bond of Security:	R 1 177 000

206. PARADISE INVESTMENTS CO (PTY) LTD C 500/77

INVESTMENT COMPANY

Provisional Order: 31/8/77
 Final Order: Nil
 Judicial Manager: R. GORDON
Unsuccessful: Liquidation 26/10/77
 Bond of Security: R 330 000

207. ELECTRICAL HOUSE (CAPE TOWN) (PTY) LTD C 512/77

PROPERTY OWNING COMPANY

Provisional Order: 31/8/77
 Final Order: 7/12/77
 Judicial Manager: L. MAISTER
 Bond of Security: R 322 000

208. S.A. LIGHTING (E.P.) (PTY) LTD C 514/77

RETAILERS OF ELECTRIC LIGHT FITTINGS

Provisional Order: 31/8/77
 Final Order: 7/10/77
 Judicial Manager: D.J. RENNIE
Unsuccessful Liquidation : C198/78
 Bond of Security: R 160 500

209. S.A. LIGHTING (PTY) LTD C 517/77

RETAILERS OF ELECTRIC LIGHT FITTINGS

Provisional Order: 31/8/77
 Final Order: 7/12/77
 Judicial Manager: D.J. RENNIE

Unsuccessful: Liquidation

Bond of Security: R 704 000

210. ATLANTIC KNITTING MILLS (PTY) LTD C 544/77

MANUFACTURERS OF LADIES AND CHILDRENS UNDERWEAR

Provisional Order: 15/9/77
 Final Order: Nil
 Provisional Judicial Manager: A.H. OLVER

Unsuccessful: Liquidation Order 14/12/77

Bond of Security: R 1 850 000

211. MADAME LORRAINE FASHION HOLDINGS (PTY) LTD C 545/77

OPERATES TWELVE RETAIL OUTLETS FOR LADIES CLOTHING

Provisional Order: 15/9/77
 Final Order: 21/12/77
 Judicial Manager: F.D. GLAUM
 P.J.A. FOURIE

Unsuccessful: Liquidation : C671/78

Bond of Security: R 484 000

212. FASHION HOUSE HOLDINGS AND ADMINISTRATORS (PTY) LTD C 547/77

OPERATES SEVERAL STORES SELLING LADIES CLOTHING

Provisional Order: 15/9/77
 Final Order: 21/12/77
 Judicial Managers; F.D. GLAUM
 P.J.A. FOURIE
 Unsuccessful: Liquidation : C675/78
 Bond of Security: R 151 000

213. MADAME LORRAINE (WOODSTOCK) (PTY) LTD C 548/77

RETAIL OF LADIES CLOTHING

Provisional Order: 15/9/77
 Final Order: 21/12/77
 Judicial Managers: P.J.A FOURIE
 F.D. CLAUM
 Bond of Security: R 27 000
 R 16 000
 Unsuccessful: Liquidation

214. FAIRWEATHER FASHION HOLDINGS LTD C 568/77

HOLDING COMPANY OF THE RABIE GROUP

Provisional Order: 28/9/77
 Final Order: 13/12/77
 Judicial Manager: A.H. OLVER
 Unsuccessful: Liquidation No. C 120/78
 Bond of Security: R 165 000

215. GOLDFLEX PRODUCTS (PTY) LTD

C 573/77

DISTRIBUTORS OF UPHOLSTERY PRODUCTS

Provisional Order: 28/9/77
 Provisional Judicial Managers: P.J.A. FOURIE
 D.J. RENNIE

Unsuccessful: Liquidation 11/1/78

Bond of Security: R 430 000

216. J. & R. CURITZ (PTY) LTD C 18/78

WHOLESALE DEALER IN CLOTHING

Provisional Order: 16/1/78
 Final Order: 10/3/78
 Judicial Manager: R. MILLMAN

Offer of compromise accepted 20/12/78

Bond of Security: R 200 000

217. DONELLS CAPE (PTY) LTD

C 23/78

RETAIL SELLERS OF CLOTHING

Provisional Order: 18/1/78
 Final Order: 17/3/78
 Judicial Managers: A. DE V. JOUBERT
 D.J. SCHOLTZ

Unsuccessful: Liquidation C692/78

Bond of Security : - R300.000

218. O.C. FISHER AND R. KROUKAMP (PTY) LTD C 31/78
 LETTERPRESS PRINTERS
 Provisional Order: 19/1/78
 Final Order: Nil
 Judicial Manager:
 No information. Liquidation was gathered from Findlay and Tate to The Master, noting that the company was in liquidation, letter dated 22/11/78.
219. SCOTTY DISTRIBUTORS (PTY) LTD C 65/78
 RETAIL AND WHOLESALE SUPPLIERS OF HI-FI EQUIPMENT
 Provisional Order: 29/1/74
 Final Order: Nil
 Judicial Manager: J.R. GLANVILLE
Unsuccessful: Liquidation Order 10/12/74
 Bond of Security: R 401 500
220. DIE URKER (EDMS) BPK. C 491/78
 File transferred to Windhoek
221. DIE URK (EDMS) BPK. C 492/78
 File transferred to Windhoek
222. SIBER AND CO (PTY) LTD C 659/78
 GENERAL DEALER
 Provisional Order: 26/10/78
 Final Order: 20/12/78
 Judicial Manager: B.W. SMITH
 Still under Judicial Management
 Bond of Security: R 77 000

223.

EMPLOYEES SUPPLY CORPORATION (PTY) LTD

C 716/78

RETAILERS IN FURNITURE

Provisional Order: 24/11/78
 Final Order: Nil
 Judicial Managers: R. MILLMAN
 E.B. WALLACE

Unsuccessful: Liquidation 20/12/78

Bond of Security: R 400 000

224.

CHASSIS CENTRE (PTY) LTD

C 726/78

MANUFACTURERS OF HEAVY VEHICLE BODIES

Provisional Order: 5/12/78
 Final Order: Nil
 Judicial Manager: R. MILLMAN

Unsuccessful: Liquidation 23/2/79

Bond of Security: R 540 000

GRAHAMSTOWN

Records of Judicial Management Cases 1958 – 1975. This office only opened in 1958, and prior to that date all matters were handled in Cape Town.

1. GLENFIELDS ESTATES (PTY) LTD C 28/58

FRUIT GROWERS (MAINLY PINEAPPLES)

Provisional Order: 5/12/58
 Final Order: 26/2/59
 Judicial Manager: A.K. MC GLASHAN

Unsuccessful: Liquidation Order No. C13/60

Due to inclement weather conditions great losses were incurred.

2. PIRIE (PTY) LTD C 4/59

BOTTLING COMPANY

Provisional Order: 26/2/59
 Final Order: 26/3/59
 Judicial Managers: L.J. FREEBORN
 J.W. DOWER

Unsuccessful: Liquidation Order No. C 17/60

The bottling plant was very old and required extensive repairs. Poor sales due to cool weather caused a cash flow problem.

3. MANNING MOTORS (PTY) LTD C 18/59

MOTOR DEALERS

Provisional Order: 28/5/59
 Final Order: 25/6/59
 Judicial Manager: A.K. MC GLASHAN

Unsuccessful: Liquidation

Assets were found to be overstaed.

4. KAFFRARIAN HOTELS (PTY) LTD C 22/59

OWNER OF VARIOUS HOTELS, EAST LONDON'S BEACH HOTEL
AMONG OTHERS

Provisional Order: 25/6/59
Final Order: 30/7/59
Judicial Managers: M. BELCHER
K.N. PATTERSON

Unsuccessful: Liquidation Order No. C 8/60

The Judicial Managers were faced with the worst trading months.

5. QUEENSTOWN BOARD OF EXECUTORS AND TRUST CO LTD C 20/60

DEPOSIT RECEIVING INSTITUTION AND TRUST COMPANY

Provisional Order: 28/1/63
Final Order: 21/3/63
Judicial Managers: C.A. LANHAM
P.Z.R. BOOYSEN

Successful: Order cancelled 17/12/65

The Judicial Managers were able to sell the company's property in Queenstown and so pay creditors in full. Quote from the petition for the Judicial Management Order: " to relieve the tremendous financial impact the failure of this company will inevitably have on the financial, economic and commercial structure of the community of Queenstown. Liquidation would mean calling up bonds on farms and a forced liquidation would be devastating in its effect and will create a hardship and precipitate a considerable number of insolvencies.

6. ABERDEEN GARAGE (PTY) LTD C 32/61

GARAGE TRADING IN NEW AND USED CARS

Provisional Order: 20/9/61
Final Order: 13/10/61
Judicial Manager: C.J. VAN HEERDEN

Unsuccessful: Liquidation Order No. C 20/63

Too many mechanics employed before Judicial Management.

7. ANTRONEL (PTY) LTD

C 3/62

PROPERTY OWNING COMPANY

Provisional Order: 3/2/62
 Final Order: 9/8/62
 Judicial Manager: J.A.C. JOUBERT

Successful: Order discharged

The directors of the company were fully reconstituted.

8. ABERDEEN TRADING CO (PTY) LTD

C 14/62

TRADERS

Provisional Order: 15/6/62
 Final Order: 19/7/62
 Judicial Manager: S.E. BOTHA

Unsuccessful: Liquidation Order No. C 1/64

The books and records of the company were in a poor state and completely inadequate. The previous manager was considered not able to meet the commitments demanded of him.

9. QUODMORE (PTY) LTD

C 19/62

COMPANY OWNING NORMANDIE HOTELS

Provisional Order: 13/9/62
 Final Order: 4/10/62
 Judicial Manager: A. K. MC GLASHAN

Unsuccessful: Liquidation Order No. C 19/63

Judicial Management commenced at a bad time of the year – the properties needed renovation and new stores, which were not forthcoming.

10. R. BRANDT & CO (PTY) LTD C 20/62

COMPANY OWNING RIO CINEMA

Provisional Order: 18/9/62
 Final Order: 20/11/62
 Judicial Manager: M. KATZ

Offer of compromise sanctioned

The books of the company were in complete disorder. The Judicial Management was about to apply for a Liquidation Order when the offer of compromise was made.

11. BROADWAY MANUFACTURING CO (PTY) LTD C 30/63

GARMENT MANUFACTURERS IN PORT ELIZABETH

Provisional Order: 21/1/64
 Final Order: 16/12/64
 Judicial Managers: A.C. BOOTH-JONES
 M. KATZ

Offer of compromise sanctioned, but the company was subsequently liquidated. Fire caused damage to the company and Judicial Management.

12. KING PRINTING COMPANY (PTY) LTD C 9/66

NEWSPAPER PUBLISHERS

Provisional Order: 17/3/66
 Final Order: 14/4/66
 Judicial Managers: F.W. COOPER
 I.D. LOUW

Successful: Management fully re-vested in Directors.

The company was part of a group (see C 10/66 to C 14/66). The assets of the company were sold to F. Ginsberg & Co (Pty) Ltd (C 12/66) and creditors were paid in full.

13. F. HOWE (PTY) LTD C 10/66
PRINTERS AND PACKAGERS
14. J.A. DE MEYER (PTY) LTD C 11/66
PRINTERS AND PACKAGERS
15. F. GINSBERG & CO (PTY) LTD C 12/66
HOLDING COMPANY AND MANUFACTURERS OF
SOAP AND CANDLES
16. BURGESS AND COMPANY (PTY) LTD C 13/66
ENGINEERING CONTRACTORS
17. SOUTH AFRICAN PRINT AND PACKAGING (PTY) LTD C 14/66
SALES COMPANY FOR ALL PRINTING AND PACKAGING

Provisional Order: 17/3/66
Final Order: 14/4/66
Judicial Managers: F.W. COOPER
I.D. LOUW

Offer of compromise for group of companies accepted 13/6/68
of 5c in the R1..

18. QUAL-O-MATIC PRECISION COMPONENTS (PTY) LTD C 15/66
MANUFACTURERS OF PRECISION COMPONENTS FOR THE
MOTOR TRADE

Provisional Order: 22/3/66
Final Order: 19/4/66
Judicial Manager: M. KATZ

Unsuccessful: Liquidation Order 24/2/68

In the petition to the Court, this company was described as a vital industry because it supported the motor industry in South Africa. It got into difficulties because of a shortage of capital, and all machinery was on Hire Purchase. The industry had been commanded by the Government to reduce its stock to four months' supply.

19. BELMONT CAFE (PTY) LTD

C 32/66

CAFE

Provisional Order: 16/8/66
 Final Order: 20/9/66
 Judicial Manager: S. FANAROFF

Unsuccessful: Liquidation

The Judicial Manager found that the share capital of the company had been lost and the company therefore had to be liquidated.

20. CASTOR LOVE AND SONS (PTY) LTD

E 62/67

MAIN MANUFACTURING AND SERVICE COMPANY OF A
GROUP OF COMPANIES

Provisional Order: 14/7/67
 Final Order: 15/8/67
 Judicial Managers: J.L. TOOLE
 J.M. BURTON

Unsuccessful: Liquidation Order No. E 44/69

The group started as metal window manufacturers and later were the manufacturers of precision cartons and wheels etc. Approximately 90% of the South African wool clip is processed on equipment manufactured by the group and therefore it claimed to be a vital industry. Government curtailment of development of housing schemes adversely affected the group.

21. CASTOR LOVE METAL PRODUCTS (PTY) LTD

E 68/67

MANUFACTURERS OF METAL WINDOWS

Provisional Order: 1/8/67
 Final Order: 5/9/67
 Judicial Managers: J.M. BORTON
 M. KATZ

Unsuccessful: Liquidation Order No. E 121/67

22. CASTOR LOVE BORDER (PTY) LTD E 70/67

MANUFACTURERS OF METAL WINDOWS AND DOORS

Provisional Order: 1/8/67
 Final Order: 5/9/67
 Judicial Managers: J.M. BORTON
 M. KATZ
 K.M. PATERSON (replaced M. Katz)

Successful: Management revested in Directors 14/1/71

The company manufactured metal doors and windows for Bantu Housing Schemes Incorporated in conformity with Government requirements for the development of Border industry.

23. CASTOR LOVE STRUCTURAL (PTY) LTD E 69/67

STRUCTURAL ENGINEERS

24. CASTOR LOVE & ELLIOTT (PTY) LTD E 71/67

MERCHANTS AND STOCKISTS OF STEEL

25. CASTOR LOVE STEEL (PTY) LTD E 72/67

BUYERS OF STEEL FOR THE CASTOR LOVE GROUP

26. CALSO ASSEMBLES (PTY) LTD E 73/67

ASSEMBLERS OF VEHICLE COMPONENTS IN PORT ELIZABETH

Provisional Order: 1/8/67
 Final Order: 5/9/67
 Judicial Managers: J.M. BORTON
 M. KATZ
 (Messrs. Davies and Gray had been appointed
 Provisional Judicial Managers)

Unsuccessful: Liquidation Orders Nos. E 86/68
 E 114/68, 79/68, 122/67

The Castor Love Group of companies had further associate companies, but these were not placed under Judicial Management.

27. KUHN FERGUSON & ASSOCIATES (PTY) LTD

E 74/67

INSTALLERS OF EQUIPMENT MANUFACTURED BY THE
CASTOR LOVE GROUP

Provisional Order: 5/12/67
Final Order: 19/12/67
Judicial Managers: J.M. BORTON
M. KATZ
K.M. PATERSON (replaced M. Katz)

Unsuccessful: Liquidation Order No. 80/68
7/5/68

The company was entirely dependant on the Castor Love Group for its
business.

28. VANDES GARAGE (PTY) LTD

TWO GARAGES IN MIDDELBURG AND CRADOCK

Provisional Order: 10/5/67
Final Order: 8/6/67
Judicial Manager: K.M. PATERSON

Unsuccessful: Liquidation Order No. E 100/67

29. VUKANI DRY CLEANERS (PTY) LTD

E 111/67

DRY CLEANERS

Provisional Order: 7/12/67
Final Order: Nil
Judicial Manager: K.M. PATERSON

Unsuccessful: Liquidation Order No. E 146/68

30. A. A. GAYLARD & CO (PTY) LTD E 17/68
 OWNER OF PLANT AND MACHINERY WHICH IT LEASED TO
 ALOE PRODUCTS (PTY) LTD TO MAKE SWEETS
- Provisional Order: 7/2/68
 Final Order: Nil
 Judicial Manager: J. A. C. JOUBERT
- Unsuccessful: Liquidation 14/3/68
31. QUMBU STORES (PTY) LTD E 25/68
 RETAIL STORE
32. R. A. GAYLARD (PTY) LTD E 26/68
 GENERAL DEALER
33. UMTATA MOTORS (PTY) LTD E 27/68
 GARAGE
34. GAYLARD (TSOLO) (PTY) LTD E 28/68
 RETAIL STORE
35. STUTTERHEIM STORES (PTY) LTD E 29/68
 BAZAAR
- Provisional Order: 22/2/68
 Final Order: 21/3/68
 Judicial Manager: J. A. C. JOUBERT
- Unsuccessful: Liquidation Orders Nos. 113/68, 60/68,
 112/68, 65/68.

The entire Gaylard group of companies was placed in liquidation.

36. TRANSAIR (PTY) LIMITED.

E 35/68

GENERAL DEALER

Provisional Order : 29/2/68

Final Order : 28/3/68

Judicial Manager : J.A. C. JOUBERT

Unsuccessful: Liquidation Reference : 111/68

Also part of Gaylard Group.

37. STEYN MOTORS (VENTERSTAD (PTY) LIMITED

E 52/68

GARAGE & DEALERS IN MOTOR ACCESSORIES

Provisional Order : 21/3/68

Final Order: 18/4/68

Judicial Manager : E.R. MILLER

Unsuccessful: Liquidation reference E 136/68

Had Mercedes & Toyota agencies and after granting of the Judicial Management order, these agencies were terminated.

38. I. WALT & CO (PTY) LIMITED

E 119/68

GENERAL WHOLESAL MERCHANTS (Foodstuffs)

Provisional Order: 9/9/68

Final Order: 15/10/68

Judicial Manager : K. M. PATERSON

Offer of Compromise in 1970

39. BEAUMONT & RICE REMOVALS (PTY) LTD E 127/71

FURNITURE MOVERS (PART OF PICKFORDS GROUP)

Provisional Order: 14/12/71
 Final Order: 13/1/72
 Judicial Managers: A.H. OLVER
 P.B. OERTEL

Offer of compromise sanctioned 2/11/72

40. W.H. GAZE INVESTMENTS CO (S.A.) (PTY) LTD E 3/72
 HOLDING COMPANY
41. W.H. GAZE (S.A.) (PTY) LTD E 4/72
42. W.H. GAZE (KARROO) (PTY) LTD E 5/72
43. ASPHALT SURFACES (PTY) LTD E 6/72
44. ASPHALT SURFACES (BORDER) (PTY) LTD E 10/72
45. PROTEA BITUMEN AND CHEMICAL CORPORATION (PTY) LTD E 11/72
46. E.P. EARTHWORKS (PTY) LTD E 12/72
47. P.E. PLANT HIRE (PTY) LTD E 13/72
48. E.L. PLANT HIRE (PTY) LTD E 14/72
49. W.H. GAZE PROPERTY CO (PTY) LTD E 15/72
50. CAPE ELECTRICAL AND MECHANICAL SERVICES (PTY) LTD E 16/72
51. ASPHALT SUPPLIERS E.P. (PTY) LTD E 20/72

THE GAZE GROUP OF COMPANIES CONDUCTED BUSINESS OF BUILDING, CIVIL ENGINEERING, HOT ASPHALT ROAD AND AIR FIELD SURFACING, PLUMBING, DRAINAGE, PLANT HIRE AND BITUMEN AND ALLIED PRODUCT MANUFACTURE.

Provisional Order: 12/1/72
 Provisional Order of Winding Up: 2/3/72
 Judicial Managers: M.E. EAST
 N.F. MITCHELL

Unsuccessful.

52. ICERANA (PTY) LTD

ICE RINK

Provisional Order: 19/9/72
 Final Order: 21/11/72
 Judicial Manager: K.M. PATERSON

Unsuccessful: Liquidation August 1975

53. EAST GRIQUALAND FARM SUPPLY (PTY) LTD

E 4/73

DEALERS IN MAIZE PRODUCTS, STOCK FEEDS, HARDWARE ETC.

Provisional Order: 25/1/73
 Final Order: 22/2/73
 Judicial Managers: K.M. PATERSON
 A.T.N. NELISSEN

Unsuccessful: Liquidation Order No. E 85/73

"Upon taking office as Judicial Managers, the state of affairs can best be described as a shambles"

54. BUTLER CONSTRUCTION (PTY) LTD

E 81/73

BUILDERS AND CONSTRUCTORS IN QUEENSTOWN

Provisional Order: 19/7/73
 Final Order: 9/8/73
 Judicial Manager: K.M. PATERSON

Unsuccessful: Liquidation Order No. E 80/74

55. DAN KEEVY EARTHMOVERS (PTY) LTD E 126/73

EARTHMOVERS AND PIPELAYERS

Provisional Order: 8/11/73
 Final Order: Nil
 Judicial Manager: J.R. GLANVILLE

Unsuccessful: Liquidation Order No. E 150/73

"Within the course of the first day of Judicial Management it transpired that the machinery, which was under base of hire purchase had in fact been handed back and cancellations of contracts were signed. It did not seem feasible that any of the contracts could be completed."

56. GOODEARTH ESTATES (PTY) LTD E 139/73

PROPERTY OWNING COMPANY

Provisional Order: 3/12/73
 Final Order: 10/1/74
 Judicial Manager: K.M. PATERSON

"Consideration must be given to the liquidation of the company as the Laurie Fossati Group cannot afford the cost of hiring such expensive premises.

57. LAURIE FOSSATI PLANT HIRE (PTY) LTD E 138/73

58. LAURIE FOSSATI ROADS HIRE (PTY) LTD E 140/73

59. LAURIE FOSSATI CONSTRUCTION HIRE (PTY) LTD E 141/73

The Master's file on this group of companies is not complete.

60. KINGMAN & COMPANY (PTY) LTD E 64/74

IRRIGATION ENGINEERS AND CONTRACTORS IN STUTTERHEIM

Provisional Order: 11/7/74
 Final Order: Nil
 Judicial Manager: B. GODLONTON

Unsuccessful: Liquidation Order No. E 127/74

"It became apparent at a very early stage that the Judicial Management would not succeed."

61. DEALS CENTRAL HOTEL CO LTD E 95/74

DEALS HOTEL IN EAST LONDON

62. DEALS HOTEL (PTY) LTD E 96/74

KINGS HOTEL IN EAST LONDON

63. HOGSBACK MOUNTAIN HOTEL (PTY) LTD E 98/74

HOGSBACK HOTEL

Provisional Order: 26/6/74
 Final Order: 17/10/74
 Judicial Managers: K. TEBUTT
 B. GODLONTON

Still under Judicial Management, which so far seems to be successful.

64. KAPELUS & ALGOA FURNISHERS E.P. (PTY) LTD E 140/74

RETAILERS OF HOUSEHOLD FURNITURE

Provisional Order: 1/10/74
 Final Order: 12/11/74
 Judicial Managers: B. VAN ZYL
 S. ISAACSON

Still under Judicial Management: an offer of compromise of 100c in the R1 over three years is being suggested.

65. ALLOY DIECAST HOLDINGS LTD

E 156/74

HOLDING COMPANY CONTROLLING THROUGH VARIOUS SUBSIDIARIES, VARIOUS FRANCHISES, TRADEMARKS, LICENCES ETC. RELATING TO THE LOCK AND SAFE INDUSTRY

Provisional Order:	31/10/74
Final Order:	Nil
Judicial Managers:	B. GODLONTON C.R. LANSDOWN

Unsuccessful: Liquidation Order No. E 194/74

"A subsidiary, which owed its holding company R 2 million went into liquidation and in view of this the holding company is hopelessly insolvent and therefore must be wound up.

KIMBERLEY

Records of Judicial Management cases 1958 _ 1977. Prior to 1958 all files were forwarded to the Archives and so no record of which were Judicial Management files was available, therefore it was not possible to obtain access to them.

1. KIMBERLEY PANEL BEATERS (PHIL SPITZ) (PTY) LTD

KC 71

MOTOR DEALERS NAD PANEL BEATERS

Provisional Order: 17/4/64
 Final Order: 15/5/64
 Judicial Manager: D. DE WITT

Unsuccessful: Liquidation Order No. KC 81

Bond of Security: R 40 000
 Income for 1964: R 53 000

"Apparently the company was placed under Judicial Management as an offer to take it over was made and it was necessary to preserve the assets of the company while negotiations were taking place."

2. OLD BILL INN (PTY) LTD

KC 79

HOTEL

Provisional Order: 23/2/65
 Final Order: 2/4/65
 Judicial Manager: J.W. WILMANS

Unsuccessful: Liquidation 6/8/65

Bond of Security: R 32 800
 Creditors: R 29 481

Formally compromised with creditors 16/4/63

3. BRITZ & PARKER (PTY) LTD

KC 82

ELECTRICAL, MECHANICAL, HARDWARE AND DOMESTIC
APPLIANCE SUPPLIERS

Provisional Order: 20/7/65
Final Order: 20/8/65
Judicial Managers: D. DE WITT
A. RUSKIN

Unsuccessful: 10/12/65

Bond of Security: R 207 000
Creditors: R 186 000

4. POTGIETERS MOTORS (PTY) LTD

KC 87

MOTOR DEALERS AND REPAIRERS

Provisional Order: 23/12/65
Final Order: Nil
Judicial Managers: H.W. DICKENS
P.R. SERFONTEIN

Unsuccessful: Liquidation Order No. KC 88 18/2/66

Bond of Security: R 420 000

5. DANWOOD PROPERTIES (PTY) LTD

KC 94

PROPERTY OWNING COMPANY

Provisional Order: 30/3/66
Final Order: 12/4/66
Judicial Manager: D. DE WITT

Unsuccessful: Liquidation

Bond of Security: R 595 000
Creditors: R 595 000

Building had not been completed as extra finance was needed.

6. DODEN BOSSIE CHEMICALS (PTY) LTD K 63/68

MANUFACTURERS OF SOAPS AND INSECTICIDES

Provisional Order: 7/11/68
 Final Order: 12/12/68
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation Order No. K 14/70

Bond of Security: R 266 148
 Creditors: R 205 981
 Turnover: R 54 000

7. CALKEM SUPERMARKET (PTY) LTD K 43/68

SUPERMARKET

Provisional Order: 24/7/68
 Final Order: 1/10/68
 Judicial Managers: C.J. ROUX
 J.W. WILMANS

Unsuccessful: Provisional Liquidation Order 19/11/70

The supermarket was not situated in a suitable area and lost patronage of black clientele after commencement of Judicial Management, and key members of staff resigned.

8. CONSTEEL (PTY) LTD K 29/70

CONSTRUCTION FIRM

Provisional Order: 20/8/70
 Final Order: 11/3/71
 Judicial Managers: B.J. VAN ZUYDAN
 F.E. AULSEBROOK

Unsuccessful: Liquidation 12/5/71

The Judicial Managers entered into a contract with the Railways for the construction of houses. If this could have been completed there would have been a good possibility of recovery, but shortage of materials and labour added to the non-completion of the contract.

9. BLAaubANK BOERDERy (EDMS) BPK. K 4/75

FARMING CO-OPERATIVE

Provisional Order: 15/11/74

Order not granted

10. HAROLD HORN HOMES (PTY) LTD K 8/75

BUILDERS AND BUILDING CONTRACTORS

Provisional Order: 2/5/75
 Final Order: 27/6/75
 Judicial Manager: A.S.P. MEYER

Unsuccessful: Liquidation 16/7/76

Bond of Security: R 49 850
 Creditors: R 95 000
 Contracting Income 1973: R 132 627

"Lack of funds and the inability to obtain overdraft facilities – therefore had to carry on building out of the proceeds of draws. This crippled the completion of work.

"Prices have also increased and contract prices fixed, therefore liquidation inevitable."

In the preliminary report the Provisional Judicial Manager did say that success was dependent on obtaining credit facilities – but surely she should have tied this up before a final order was requested?

11. BESTWAY CLEANERS (PTY) LTD K 10/75

DRY CLEANERS AND LAUNDERERS

Provisional Order: 4/4/75
 Final Order: Nil
 Judicial Manager: J.W. WILMANS

Unsuccessful: Liquidation 30/5/75

12. MENWILL CONSTRUCTION (PTY) LTD

K 26/76

CONSTRUCTION COMPANY

Provisional Order: 19/7/76
Final Order: 10/9/76
Judicial Manager: J.W. WILMANS

Order cancelled 11/11/77

13. HENPROP (EDMS) BPK.

K 13/77

HARVEST CONTRACTORS

Provisional Order: 14/4/77
Final Order: 1/7/77
Judicial Manager: J.W. WILMANS

Unsuccessful: Liquidation 10/2/78

No orders were granted in 1978.

PIETERMARITZBURG

Records of Judicial Management cases 1960 – 1979. All records prior to 1960 have been destroyed.

1. SANTA CRUZ (PTY) LTD CA 1244

FLAT LETTING COMPANY

Provisional Order: 10/6/60
 Final Order: Nil
 Judicial Managers: A.L. NORDEN

Unsuccessful: Liquidation

2. EMPANGENI HOTEL (PTY) LTD CA 1253

HOTEL

Provisional Order: 26/7/60
 Final Order: Nil
 Judicial Managers: C.A. MILNE
 M.J. ENSOR

Unsuccessful: Liquidation 14/10/60

Money earned from the business was used to finance other projects.

3. HOO-FOSTER (PTY) LTD CA 1296

SUPPLIERS OF MOTOR VEHICLES AND FARM IMPLEMENTS IN ZULULAND

Provisional Order: 20/1/61
 Final Order: 17/2/61
 Judicial Manager: H.C. LANGHAM

Unsuccessful: Liquidation Order No. CA 1305

4. M.M. AMOD & CO (PTY) LTD CA 1404

WHOLESALEERS

Provisional Order:

Final Order:

Judicial Manager:

Unsuccessful:

Liquidation Order No. CA 1481

File incomplete

5. MEDINA ESTATES (PTY) LTD CA 1405

File missing

6. NEL MOTORS (PTY) LTD CA 1444

GARAGE

Provisional Order:

4/4/62

Final Order:

Nil

Judicial Manager:

A. MORRISON

Unsuccessful:

Liquidation Order No. CA 1451

7. SPRITE CANVAS (PTY) LTD CA 1449

MANUFACTURERS OF CANVAS GOODS

Provisional Order:

9/5/62

Final Order:

6/6/62

Judicial Manager:

W.D. FIELDING

Successful:

Order cancelled 10/6/64

"Increased attention was given to the buying of raw materials and new manufacturing programmes, which resulted in an increase in profits."

8. PORT NATAL CONSTRUCTION (PTY) LTD CA 1479

EARTH MOVERS AND ROAD LEVELLERS

Provisional Order: 14/9/62
 Final Order: 19/10/62
 Judicial Manager: G. J. CHRISTIE

Unsuccessful: Liquidation Order No. CA 1533

The demand for services was inconsistent.

9. AUTO-REFINISHERS (PTY) LTD CA 1528

AUTO REPAIR BUSINESS

Provisional Order: 15/5/63
 Final Order: Nil
 Judicial Manager: T. C. BIRKETT

Successful: Order discharged 28/9/64

Business was conducted on a purely cash basis after Judicial Management. No further debts were incurred by ordering new supplies and profits increased sufficiently to pay all creditors.

10. MARGATE DEVELOPMENT CORPORATION (PTY) LTD CA 1532

PALM BEACH HOTEL

Provisional Order: 7/6/63
 Final Order: 9/8/63
 Judicial Managers: D. M. LEVITT
 C. H. LAWRENCE

Unsuccessful: Liquidation Order 23/1/67

11. RICHMOND STORES (PTY) LTD CA 1539

GENERAL DEALER

Provisional Order: 13/7/63
 Final Order: Nil
 Judicial Manager: P.T.C. THORNE

Unsuccessful: Liquidation Order No. CA 1546

Failure was due to extended credit facilities, thefts and fire.

12. P.U.C. PROMOTIONS (PTY) LTD CA 1540

Provisional Order:
 Final Order:
 Judicial Manager:

Unsuccessful: Liquidation Order No. CA 1547

File incomplete

12. CHAS MERRYWEATHER BUILDERS (PTY) LTD CA 1566

BUILDERS

Provisional Order: 16/1/64
 Final Order: 28/2/64
 Judicial Manager: A. GOWANS

Successful: Order discharged 12/7/69

Judicial Management entered into two contracts with the provincial authorities which carried the company over the period of crisis.

13. B. BENJAMIN (PTY) LTD CA 1576

WHOLESALE COMPANY

Provisional Order: 13/3/64
 Final Order: 10/4/64
 Judicial Managers: J.A. BRUCE
 M.J. ENSOR

Unsuccessful: Liquidation 22/4/64

Judicial Managers did not support the issue of a final order.

"Usually when a company is placed under Judicial Management there is at least a vestige of an administrative and business organisation which was non-existent in this case."

14. YEOMAN IRON CLAD CLOTHING MANUFACTURERS (PTY) LTD CA 1577

CLOTHING MANUFACTURERS

Provisional Order: 13/3/64
 Final Order: 10/4/64
 Judicial Managers: J.A. BRUCE
 M.J. ENSOR

Unsuccessful: Discharged 22/4/64

Subsidiary of B. Benjamin (Pty) Ltd, and the Judicial Managers considered it hopeless for the same reasons.

15. CINEMA & ELECTRICAL DISTRIBUTORS (PTY) LTD CA 1613

ELECTRICAL AND PHOTOGRAPHIC WHOLESALE MERCHANTS

Provisional Order: 11/12/64
 Final Order: Nil
 Judicial Manager: G.H. CHRISTIE

Unsuccessful: Liquidation 24/12/64

16. LIVE-IN HOMES (PTY) LTD CA 1656

BUILDERS AND CONTRACTORS

Provisional Order: 8/9/65
 Final Order: 8/10/65
 Judicial Manager: H.M. MATTHIS

Unsuccessful: Liquidation Order No. CA 1662

The company underquoted its contracts and employed too much personell.

17. R. TREVOR (PTY) LTD CA 1661

BUILDERS AND CONTRACTORS

Provisional Order: 29/9/65
 Final Order: 22/10/65
 Judicial Manager: H. MATTHIS

Offer of compromise sanctioned 10/12/65

18. MARGATE SHOPPING CENTRE (PTY) LTD CA 1671

COMPANY OWNING MARGATE BAKERY

Provisional Order: 1/11/65
 Final Order: 10/12/65
 Judicial Manager: D.N.LEVITT

Unsuccessful: Liquidation Order No. CA 1733
 10/5/66

The company was hopelessly mismanaged.

19. MARGATE WHOLESALERS (PTY) LTD

CA 1681

WHOLESALERS

Provisional Order: 16/11/65
 Final Order: 15/12/65
 Judicial Managers: W.G. THORNTON-DIBB
 D.N. LEVITT

Unsuccessful: Liquidation 1/6/66

The Judicial Managers advised that the assets of the company be sold — they were not authorised to accept an offer which was made and the company went into liquidation. The liquidators then sold it to the original offerers.

20. TRANS DRAKENSBERG BANK LTD

CA 1686

BANK

Provisional Order: 13/12/65
 Final Order: 28/1/68
 Judicial Managers: W.L. DU PLESSIS
 D.A. CORNELL

Successful: Discharged 10/3/72

Drastic reductions in staff and the loss of confidence in a bank under Judicial Management, but the Judicial Managers collected all monies owing to the bank and continued business by obtaining loans.

21. AGRICULTURAL AND COMMERCIAL UTILITY TRANSPORT SERVICES (PTY) LTD

CA 1724

TRANSPORT SERVICE

Provisional Order: 21/4/66
 Provisional Order extended to: 10/6/66
 Judicial Manager: H.M. MATTHIS

Successful: Discharged 22/7/66

22. I.H. BLOOM (PTY) LTD N 4/67
- RETAILERS OF GEM STONES
- Provisional Order: 20/1/67
 Final Order: 24/2/67
 Judicial Manager: M.J. ENSOR
- Unsuccessful: Liquidation
- The business could not continue without the purchasing of new stones which of necessity had to be selected by an expert, and as no one was willing to undertake the responsibility could be found, Judicial Management could not succeed.
-
23. DEMCOR CONSTRUCTION COMPANY (PTY) LTD N 52/67
- CONSTRUCTION COMPANY
- Provisional Order: 4/4/67
 Final Order: Nil
 Judicial Manager: A. MORRISON
- Unsuccessful: Liquidated 13/12/68
-
24. PORT NATAL SUPPLIERS (PTY) LTD N 105/67
- SELLING ORGANISATION FOR MOOI RIVER BACON FACTORY & CLAIRES
-
25. DYNCHURCH INVESTMENTS (PTY) LTD N 106/67
- PROPERTY OWNING COMPANY FROM WHICH PORT NATAL SUPPLIERS OPERATED.
-
26. MOOI RIVER BACON FACTORY (PTY) LTD N 107/67
- MANUFACTURERS OF BACON AND MEAT PRODUCTS
-
27. CLAIRES ESTATES (PTY) LTD N 108/67
- FARMING COMPANY AND SUPPLIERS OF EGGS

29. CLAIRES MANUFACTURING (PTY) LTD N 109/67
 MANUFACTURERS OF POULTRY LAYING CAGES
- Provisional Order: 7/6/67
 Final Order: 21/7/67
 Judicial Managers: M.J. ENSOR
 S.N. COLAM
- Port Natal Suppliers and Mooi River Bacon Factory had offers of compromise sanctioned on 6/9/68 and 29/9/67 respectively. The other companies seem to have been successful and re-vested in the directors during August and September of 1968. Claires Manufacturing and Dynchurch Investments cannot really be said to have failed at all – it was only because they were inextricably interwoven with other associate companies that they went into Judicial Management. In the case of Port Natal Suppliers the Judicial Managers stated that "the only choice open to creditors is to accept the offer or agree to liquidation." Judicial Management was therefore obviously not successful.
30. BELVEDERE TIMBER STRUCTURE (PTY) LTD N 156/67
 MANUFACTURERS OF TIMBER STRUCTURES
- Provisional Order: 8/9/64
 Final Order: 16/10/64
 Judicial Manager: A. GOWANS
- Unsuccessful: Liquidated 11/9/67
31. TILEBEAM AFRICA (PTY) LTD N 162/67
 SELLERS OF CONCRETE PRODUCTS
32. TILEBEAM INDUSTRIES (PTY) LTD N 163/67
 OWNER OF PROPERTY FROM WHICH TILEBEAM GROUP OPERATED

33. TILEBEAM NATAL (PTY) LTD N 164/67

PRESTRESSED AND REINFORCED CONCRETE ENGINEERS

Provisional Order: 11/8/67
 Final Order: Nil
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidated 15/9/67

34. SEVEN Q ESTATES (PTY) LTD N 188/67

PROPERTY OWNING COMPANY

Provisional Order: 22/9/67
 Final Order: 20/10/67
 Judicial Manager: M.J. ENSOR

Unsuccessful: Liquidated 18/12/67

The sole asset of the company was a farm, which was not being farmed but was situated in an area where subdivision was imminent. However because of lack of books and records and the inability to determine the true position it seemed that Judicial Management could not continue.

35. CARSET CONSTRUCTION COMPANY (PTY) LTD N 205/67

CONSTRUCTION COMPANY

Provisional Order: 12/10/67
 Final Order: Nil
 Judicial Manager: S.N. COLAM

Unsuccessful: Liquidated

36. CONSTRUCTION PLUMBERS (PTY) LTD N 206/67

PLUMBING COMPANY

Provisional Order: 13/10/67
 Final Order: 10/11/67
 Judicial Manager: S.N. COLAM

Unsuccessful: Liquidation 29/3/68

37. W.G. RENKEN (PTY) LTD N 209/67

EARTHMOVING BUSINESS

Provisional Order: 20/10/67
 Final Order: Nil
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 3/9/71

The company had difficulty in hiring equipment and the prices for tendering were too competitive.

38. CONSTRUCTION AND GENERAL ENGINEERING (PTY) LTD N 223/67

CIVIL ENGINEERS AND INDUSTRIAL PAINTERS

Provisional Order: 1/11/67
 Final Order: 8/12/67
 Judicial Manager: S.N. COLAM

Unsuccessful: Liquidation 13/9/68

The credit squeeze, four months of continuous rain and inept management of Construction Plumbers, an associate company (N 206/67).

39. CEMLIN (PTY) LTD

N 232/67

MINING OF LIME AND MANUFACTURERS OF BUILDING
MATERIALS FROM LIME

Provisional Order: 7/11/67
Final Order: Nil
Judicial Manager: J.A. BRUCE

Unsuccessful: Liquidation Order No. N 256/67
8/12/67

The previous director was insolvent and absconded.

40. AZALEA HOMES (PTY) LTD

N 245/67

ESTATE AGENTS

Provisional Order: 2/11/67
Final Order: Nil
Judicial Manager: D.V. HOLMES

Unsuccessful: Liquidation 8/1/68

41. RAPSON MOTORS (PTY) LTD

N 255/67

GARAGE IN LADYSMITH

Provisional Order: 7/12/67
Final Order: Nil
Judicial Manager: A. MORRISON

Successful: Discharged 28/2/68

Failure was due mainly to internal squabbles and mismanagement.

42. REFRIGERATION DEVELOPMENT (PTY) LTD

N 11/68

MANUFACTURERS OF REFRIGERATORS

Provisional Order: 19/1/68
 Final Order: 9/2/68
 Judicial Manager: J.A. BRUCE

Unsuccessful: Liquidation 2/8/68

The company had first gone into Provisional Liquidation on 3/11/67 but this order was set aside and Provisional Judicial Management granted.

43. SPOTSALES (PTY) LTD

N 217/68

DISCOUNT STORE

Provisional Order: 15/11/68
 Final Order: 13/12/68
 Judicial Manager: M.J. ENSOR

Unsuccessful: Liquidation 14/4/69

44. BERNARD SMITH EARTHWORKS (PTY) LTD

EARTHMOVING COMPANY

Provisional Order: 20/12/68
 Final Order: Nil
 Judicial Manager: S.N. COLAM

Unsuccessful: Liquidation 23/4/71

The first two month of Judicial Management were successful, however seasonal decline in productivity was too great to be combatted.

45. EVANS AGRICULTURAL IMPLEMENTS (PTY) LTD N 12/69

MANUFACTURERS OF CRANES

Provisional Order: 27/1/69
 Final Order: 26/2/69
 Judicial Manager: C. T. HILL

Unsuccessful: Liquidation Order No. N 96/71

46. JUBANA (PTY) LTD N 67/69

COAL MINE

Provisional Order: 2/5/69
 Final Order: 7/7/69
 Provisional Judicial Manager: M. J. VAN LINGEN
 Replacement Judicial Managers: I. J. BOTHA
 P. D. SNYMAN
 Judicial Manager: M. P. J. SNYMAN

Order set aside:

The company ceased operations during the Judicial Management period and a dispute arose over the sale of assets which is still continuing.

47. JAMES THOMAS & CO (PTY) LTD N 81/69

BUILDING CONTRACTORS

Provisional Order: 2/6/69
 Final Order: 27/6/69
 Judicial Managers: S. N. COLAM
 A. BRODIE

Unsuccessful: Liquidation Order No. N 216/70

48. PHILRON PLANT HIRE (PTY) LTD N 99/69
 HIRED PLANT AND MACHINERY TO SUBSIDIARIES OF
 THE JESSMAR GROUP OF COMPANIES
49. DURBAN JOINERY WORKS (PTY) LTD N 100/69
 JOINERY WORKS
50. VAN DEN BERG CONSTRUCTION (PTY) LTD N 101/69
 BUILDING CONTRACTOR
51. JESSNAR PROPERTIES (PTY) LTD N 102/69
 HOLDING COMPANY
- Provisional Order: 25/7/69
 Final Order: 22/8/69
 Judicial Manager: A. MORRISON
- Unsuccessful: Liquidation 20/2/70
- The future of Jessnar depended on the ability of the subsidiaries to repay loans. Philron had no capital to replace vehicles and it was difficult to arrange favourable leases once Van Den Berg Construction had completed its contracts – liquidation was therefore recommended.
52. KARLANN (PTY) LTD N 12/70
 GENTLEMENS OUTFITTERS
- Provisional Order: 30/1/70
 Final Order: 26/2/70
 Judicial Manager: A. MORRISON
- Unsuccessful: Liquidation 3/4/70
53. JUBANA (PTY) LTD N 35/70

No Master's file, but the register refers to N 67/69

54. MARINE SANDALS (PTY) LTD N 50/70

FOOTWEAR MANUFACTURERS

Provisional Order: 13/4/70
 Final Order: Nil
 Judicial Manager: R. MILLMAN

Unsuccessful: Liquidation 17/4/70

Although it was decided to liquidate the company, trading continued so as to sell the company as a going concern.

55. GLENLUCE GARAGE (PTY) LTD N 74/70

GARAGE

Provisional Order: 12/5/70
 Final Order: Nil
 Judicial Manager: J. A. BRUCE

Unsuccessful: Liquidation 10/7/70

56. MECHANICAL FIELD SERVICES (PTY) LTD N 83/70

MACHINERY AND PLANT REPAIRS ON SITE

Provisional Order: 22/5/70
 Final Order: 12/6/70
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 27/11/70

"Fall off in demand, due partly to bad economic climate, and a number of employees left due to the uncertainty of Judicial Management.

57. MAPLE LEAF PRODUCTS 1966 (PTY) LTD N 88/70
 MANUFACTURERS OF PROCESSED FOODS
 Provisional Order: 29/5/70
 Final Order: 26/6/70
 Judicial Manager: A. MORRISON
Unsuccessful: Liquidation Order No. N 206/71
 The company got into difficulties due to moving premises from Pinetown to Verulam.
58. CONSTEEL (PTY) LTD N 134/70
 BUILDING CONTRACTORS
 Apparently the order was taken in Pietermaritzburg, but the Judicial Manager was appointed in Kimberley.
59. PINETOWN EARTHMOVING CONTRACTORS (PTY) LTD N 181/70
 EARTHMOVING CONTRACTORS
 Provisional Order: 30/10/70
 Final Order: 27/11/70
 Judicial Manager: A. MORRISON
Unsuccessful: Liquidation 2/3/71
60. DURBAN KNIFE AND STEEL COMPANY (PTY) LTD N 185/70
 SELLERS OF STEEL GOODS
 Provisional Order: 6/11/70
 Final Order: 11/12/70
 Judicial Manager: M. J. ENSOR
 Offer of compromise sanctioned 1/10/71
 Judicial Management advised acceptance of the offer as liquidation would have been the only alternative and less beneficial to creditors.

61. HUGHES & MARKOVIC (PTY) LTD

N 191/70

MERCHANTS

Provisional Order: 27/12/70
 Final Order: 22/1/71
 Judicial Manager: G.D. GIFFORD

Unsuccessful: Liquidated

"It is our opinion that with the active support and assistance of those creditors who are able to supply us with goods, the company will succeed. In the absence of such support, however, the company will not be able to alleviate its position and should be wound up without delay."

62. BUILDERMASTER (PTY) LTD

N 28/71

BUILDING CONTRACTORS

Provisional Order: 5/2/71
 Final Order: 5/3/71
 Judicial Manager: M.J. ENSOR

"Normally speaking the financial position of the company is such that Judicial Management is not justified. In view of the fact that there are several contracts to be completed, however, it would be advantageous to continue and on completion to reconsider the company's position".

63. GEMBODIES (PTY) LTD

N 60/71

MOTOR VEHICLE BODY BUILDER

Provisional Order: 12/3/71
 Final Order: Nil
 Judicial Manager: J.A. BRUCE

Unsuccessful: Liquidation 23/4/71

The company had difficulty in obtaining supplies of steel and felt that little benefit could be derived from Judicial Management.

64. UNDERBERG & DISTRICT STORES (PTY) LTD N 67/71

GENERAL MERCHANTS

Provisional Order: 12/3/71
 Final Order: Nil
 Judicial Manager: G.W. BOYES
 J. JACKSON

Unsuccessful: Provisional Liquidation 28/6/71

65. ACME ENGINEERS & CONSTRUCTION ENTERPRISES (PTY) LTD N 73/71

CONSTRUCTION FIRM

Provisional Order: 26/3/70
 Final Order: 24/4/70
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 12/5/71

66. VERGENOEG SISAL DECORTICATORS (PTY) LTD N 84/71

SISAL DECORTICATING FACTORY AND FARM

Provisional Order: 31/3/71
 Final Order: 7/5/71
 Judicial Manager: S.N. COLAM

Offer of compromise sanctioned and discharged in 1973.

Associated with Gauche Brothers (Pty) Ltd and Cotcane (Pty) Ltd.

67. GAUCHE BROTHERS (PTY) LTD N 88/71

FARMING BUSINESS

Provisional Order: 31/3/71
 Final Order: 7/5/71
 Judicial Manager: S.N. COLAM

Offer of compromise sanctioned 22/12/72

Drought caused financial difficulties, but good rains led to transformation in state of farm and efficiency in operations.

68. HAMMOND ELECTRICAL (PTY) LTD

N 92/71

ELECTRICAL CONTRACTORS

Provisional Order: 2/4/71
 Final Order: 14/5/71
 Judicial Manager: J. A. BRUCE

Unsuccessful: Liquidation 6/9/71

Contract had to be abandoned due to lack of funds.

69. AUSSIE'S RADIO TAXIS (PTY) LTD

N 113/71

TAXI AND TOURS BUSINESS

Provisional Order: 16/4/71
 Final Order: 21/5/71
 Judicial Manager: G. GIFFORD

Successful: Discharged 20/12/74

The tour section of the company overcapitalised and did not get the bookings it expected; the taxi section was making a profit, and the Judicial Managers decided to sell the tour section and improve management of the taxi section.

70. HANS SCHRODER (PTY) LTD

N 147/71

DEALERS IN MOTOR SPARES AND ACCESSORIES

Provisional Order: 3/7/71
 Final Order: Nil
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 9/7/71

71. POLYCRATE (PTY) LTD N 156/71
 MANUFACTURERS OF PLASTIC CONTAINERS
- Provisional Order: 25/6/71
 Final Order: 30/7/71
 Judicial Manager: B. RULTEN
- Order was cancelled possibly because of an offer of compromise – no information in Master's file.
72. PETER WALTERS (PTY) LTD N 234/71
 CIVIL ENGINEERS AND EARTH MOVERS
- Provisional Order: 27/8/71
 Final Order: 24/9/71
 Judicial Manager: M.J. ENSOR
- Unsuccessful: Provisional Liquidation 22/8/72
- Heavy losses were incurred on a certain contract.
73. SHERIFF ENGINEERING (PTY) LTD N 257/71
 STRUCTURAL STEEL ENGINEERS
- Provisional Order: 17/9/71
 Final Order: 22/10/71
 Judicial Managers: H.S. SPAIN
 A.L. SCHAFFER
- Unsuccessful: Liquidation
- A dispute arose over one of the contracts.

74.	<u>NATIONAL COMPUTER SERVICES (PTY) LTD</u>	N 309/71
	COMPUTER BUREAU	
	Provisional Order:	8/12/71
	Final Order:	14/1/72
	Judicial Managers:	K.S. BURNS B. RULTEN
	<u>Unsuccessful:</u>	Liquidation
75.	<u>KEYDATA (PTY) LTD</u>	N 321/71
	COMPUTER BUREAU	
	Provisional Order:	14/12/71
	Final Order:	14/1/72
	Judicial Manager:	B. RULTEN
	<u>Unsuccessful:</u>	Provisional Liquidation Order 27/10/72 Liquidation Order No. N 342/72
76.	<u>HILLSAV PROPERTIES</u>	N 3/72
	PROPERTY COMPANY	
77.	<u>SIDERAL INVESTMENTS (PTY) LTD</u>	N 4/72
	INVESTMENT COMPANY	
78.	<u>SIDERAL FINANCE COMPANY (BEREA) (PTY) LTD</u>	N 5/72
79.	<u>SIDERAL FINANCE COMPANY (SOUTH) (PTY) LTD</u>	N 6/72
80.	<u>SIDERAL FINANCE COMPANY (BEACH) (PTY) LTD</u>	N 7/72
81.	<u>SIDERAL FINANCE COMPANY (NORTH) (PTY) LTD</u>	N 8/72
82.	<u>SIDERAL LEASING (PTY) LTD</u>	N 9/72
83.	<u>SIDERAL FACTORS (PTY) LTD</u>	N 10/72
84.	<u>SIDERAL FINANCE COMPANY (NATAL) (PTY) LTD</u>	N 11/72

85.	<u>SIDERAL FINANCE COMPANY (BLUFF) (PTY) LTD</u>	N 12/72
86.	<u>SIDERAL SHIPPERS (PTY) LTD</u>	N 13/72
87.	<u>TELFUN FINANCE CORPORATION (PTY) LTD</u>	N 14/72
88.	<u>HAYCOURTH FINANCE (PTY) LTD</u>	N 15/72
89.	<u>GITSAV PROPERTIES (PTY) LTD</u>	N 16/72
90.	<u>I.M.D. INVESTMENTS (PTY) LTD</u>	N 17/72
91.	<u>TOTISAV PROPERTIES (PTY) LTD</u>	N 18/72
92.	<u>BEACH ROAD FLATS (PTY) LTD</u>	N 19/72
93.	<u>MAINSAV PROPERTIES (PTY) LTD</u>	N 20/72
94.	<u>HALUNN PROPERTIES (PTY) LTD</u>	N 21/72
95.	<u>LYNCH ENTERPRISES (PTY) LTD</u>	N 22/72
96.	<u>RESCOR (PTY) LTD</u>	N 23/72
97.	<u>SIDERAL FINANCE CORPORATION (PTY) LTD</u>	N 25/72

HOLDING COMPANY FOR THE ABOVE GROUP OF COMPANIES

Provisional Order:	18/1/72
Final Order:	Nil
Judicial Managers:	K.S. BURNS R. MILLMAN

Unsuccessful: Liquidation 11/2/72

The group borrowed funds from the public and applied these to discount bills, promissory notes and post dated cheques and in financing operations of various subsidiary companies, particularly in the property field.

"There was no chance of success from the start."

98. PRINSLOO CONSTRUCTION (PTY) LTD N 39/72

EARTHWORKS, ROAD AND BRIDGE CONSTRUCTORS

Provisional Order: 28/1/72
 Final Order: 10/3/72
 Judicial Manager: G.J. CHRISTIE

Still under Judicial Management, but heading for liquidation.

Business became too competitive and had to pay large sums for rental and hire of machinery, therefore business was transferred from Pretoria to Natal in the hope of becoming profitable.

99. TYRE REMOULding EQUIPMENT CO (PTY) LTD N 43/72

TYRE RETREADERS

Provisional Order: 7/2/72
 Final Order: Nil
 Judicial Manager: S.N. COLAM

Unsuccessful: Liquidation 26/5/72

The company was connected with New Parade Service Station which was liquidated.

100. AUTOSPRAY DURBAN (PTY) LTD N 75/72

SPRAY PAINTERS AND PANEL BEATERS

Provisional Order: 15/2/72
 Final Order: 17/3/72
 Judicial Managers: G. GIFFORD
 K.D. KRUMM

Unsuccessful: Liquidated 8/10/72

101. AUTOSPRAY PIETERMARITZBURG (PTY) LTD

N 88/72

PANEL BEATERS

Provisional Order: 23/2/72
 Final Order: Nil
 Judicial Manager: D. V. HOLMES

Unsuccessful: Liquidation 12/4/72

102. BURMEISTER CONSTRUCTION (PTY) LTD

N 92/72

CIVIL ENGINEERING CONTRACTORS

Provisional Order: 25/2/72
 Final Order: 17/3/72
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 29/9/72

No more tenders were accepted as the Judicial Manager refused to tender below cost.

103. M.M. ARNOD & CO (PTY) LTD

N 103/72

GENERAL DEALERS

Provisional Order: 8/3/72
 Final Order: 3/5/72
 Judicial Managers: M.J. ENSOR
 B.J. VAN ZUYDAN

Unsuccessful: Liquidation Order No. N 24/73

Failure was due to irreconcilable differences between family shareholders and lack of capital needed to renovate premises and adapt business to compete with chain stores.

104. MEDINA ESTATES (PTY) LTD

N 104/72

FAMILY OWNED PROPERTY COMPANY

Provisional Order: 8/3/72
 Final Order: 3/5/72
 Judicial Managers: J.A. BRUCE
 B.J. VAN ZUYDAN
Order set aside : 10.12.79

Judicial Management could be successful if an agreement can be reached regarding the disposal of certain properties between various sectors of the family.

105. WILLIAM SERGEANT (PTY) LTD

N 121/72

BUILDING CONTRACTORS

Provisional Order: 21/3/72
 Final Order: 21/4/72
 Judicial Manager: S.N. COLAM

Unsuccessful: Liquidation Order No. N 38/73

Failure was due to decline in the general economic climate.

106. FALSE BAY CANNERS (PTY) LTD

N 123/72

PINEAPPLE CANNERS

Provisional Order: 22/3/72
 Final Order: Nil

No further information is available. The company's registered offices were in Cape Town so it is possible that the Order was transferred.

107. CAMPERS JOY PRODUCTIONS (PTY) LTD

N 129/72

MANUFACTURERS OF CARAVANS

Provisional Order: 28/3/72
 Final Order: 28/4/72
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 10/1/75

the company's expenses were of a fixed nature and monthly sales were erratic. The company was not stable enough to warrant anything other than liquidation.

108. SKYLONE CONSTRUCTION CO (NATAL) (PTY) LTD

N 133/72

BUILDERS

Provisional Order: 24/3/72
 Final Order: 28/4/72
 Judicial Manager: G. GIFFORD

Unsuccessful: Liquidation Order No. N 45/74

109. E.S. & B. GORDON (NATAL) (PTY) LTD

N 147/72

WHOLESALEERS

Provisional Order: 16/4/72
 Final Order: 19/5/72
 Judicial Manager: M.J. ENSOR

Scheme of arrangement sanctioned 26/7/74

"We feel that Judicial Management has served a very real purpose in that it has enabled the Judicial Managers to conduct investigations into various matters, in particular the debtor position which in our opinion was only possible while the company continued running as a business."

110. E.A. FISHER MOTORS (PTY) LTD

N 152/72

DEALERS IN NEW AND USED CARS

Provisional Order: 21/4/72
 Final Order: 2/6/72
 Judicial Managers: D.W. STRACHAN
 R.K. BAKER

Successful: Discharged 20/12/74

"Judicial Managers obtained new tenant for premises" – see N 161/72

111. SARARI MOTELS (PTY) LTD

N 154/72

HOTEL

Provisional Order: 24/4/72
 Final Order: 26/5/72
 Judicial Managers: J.A. BRUCE
 R.T.I. SMITH

Successful: Company reconstituted 17/8/73

The business was eventually sold.

112. E.A. FISHERS MOTORS (PINETOWN) (PTY) LTD

N 161/72

MOTOR DEALERS

Provisional Order: 3/5/72
 Final Order: 9/6/72
 Judicial Managers: D.W. STRACHAN
 R.K. BAKER

Successful: Shares and loan account sold 28/9/73

110. E.A. FISHER MOTORS (PTY) LTD

N 152/72

DEALERS IN NEW AND USED CARS

Provisional Order: 21/4/72
 Final Order: 2/6/72
 Judicial Managers: D.W. STRACHAN
 R.K. BAKER

Successful: Discharged 20/12/74

"Judicial Managers obtained new tenant for premises" – see N 161/72

111. SAFARI MOTELS (PTY) LTD

N 154/72

HOTEL

Provisional Order: 24/4/72
 Final Order: 26/5/72
 Judicial Managers: J.A. BRUCE
 R.T.I. SMITH

Successful: Company reconstituted 17/8/73

The business was eventually sold.

112. E.A. FISHERS MOTORS (PINETOWN) (PTY) LTD

N 161/72

MOTOR DEALERS

Provisional Order: 3/5/72
 Final Order: 9/6/72
 Judicial Managers: D.W. STRACHAN
 R.K. BAKER

Successful: Shares and loan account sold 28/9/73

113. FACITUS NATAL (PTY) LTD

N 219/72

MANUFACTURERS OF PRE-FABRICATED CLADDING SYSTEMS

Provisional Order: 23/6/72
 Final Order: 21/7/72
 Judicial Manager: B. RULTEN

Unsuccessful: Liquidation 25/9/72

Even with economising the company would not have been able to achieve even running costs. In the circumstances Judicial Management would not have enabled the company to meet its obligations.

114. FASHION FLAIR DRESS MANUFACTURERS (PTY) LTD

N 227/72

CLOTHING MANUFACTURERS

Provisional Order: 7/7/72
 Final Order: 18/8/72
 Judicial Manager: G. GIFFORD

Unsuccessful: Provisional Liquidation Order No. N 105/73

Failure was due to mismanagement on the part of the directors who did not grasp the disastrous direction in which the company was heading.

115. ORION WEAVING (PTY) LTD

N 238/72

TEXTILE WEAVERS

Provisional Order: 27/7/72
 Final Order: 25/8/72
 Judicial Manager: G.J. CHRISTIE

Offer of compromise sanctioned 10/8/73

One of the directors had misappropriated funds.

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116. JOSINI BELEGGINGS (EDMS) BPK.

N 258/72

HOTEL AND BOTTLE STORE

Provisional Order: 9/8/72
 Final Order: 8/9/72
 Judicial Manager: B. RULTEN

Scheme of arrangement sanctioned 18/4/75

117. NEW SCOTTBURGH HOTEL (PTY) LTD

N 352/72

HOTEL

Provisional Order: 17/11/72
 Final Order: 12/1/73
 Judicial Manager: M.J. ENSOR

Unsuccessful: Liquidation 2/11/73

118. NIELSWING (PTY) LTD

N 379/72

MANUFACTURERS OF "SWINGBALL"

Provisional Order: 1/12/72
 Final Order: 5/1/73
 Judicial Manager: M.J. ENSOR

Offer of compromise sanctioned 15/2/74

Liquidation of an associate company placed a serious burden on Nielswing (Pty) Ltd

119. BERNIE'S AMUSEMENTS (PTY) LTD

N 383/72

AMUSEMENT PARK

Provisional Order: 8/12/72
 Final Order: 16/2/73
 Judicial Manager: K.D. KRUMM

Unsuccessful: Liquidation 3/9/73

Failure was due to inclement weather conditions and lack of funds.

120. NEVFLING BELEGGINGS (EDSM) BPK.

N 387/72

PROPERTY OWNERS

Provisional Order: 1/12/72
 Final Order: 26/1/73
 Judicial Managers: A. MORRISON
 M.G. MEEHAN

Scheme of arrangement sanctioned in 1975.

121. UMVOTI EARTHMOVERS (PTY) LTD

N 6/73

CONSTRUCTIONAL ENGINEERS, EARTHMOVERS AND ROAD BUILDERS

Provisional Order: 19/1/73
 Final Order: 21/2/73
 Judicial Manager: B. RULTEN

Still under Judicial Management

Failure was caused by an accident between two large trucks and work was suspended for three months. Furthermore the managers were technical men who had little experience in administration.

In the last report by the Judicial Managers it was recommended that the company be liquidated.

122. GLENCOE HOTEL (PTY) LTD

N 17/73

HOTEL

Provisional Order: 24/1/73
 Final Order: 7/3/73
 Judicial Manager: B. RULTEN

Unsuccessful: Liquidation 16/9/74

Attempts to find a purchaser failed and the company's business deteriorated further due to lack of liquidity.

123. J.P. DEVELOPMENT CO (PTY) LTD

N 80/73

BUILDING CONTRACTORS

Provisional Order: 2/4/73
 Final Order: Nil
 Judicial Manager: K.D. KRUMM

Unsuccessful: Liquidation

124. JACKEMWICK FARMING (PTY) LTD

N 108/73

PIG FARMERS

Provisional Order: 17/5/73
 Final Order: Nil
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 144/73

Failure was due to insufficient capital to purchase breeding stock and adverse weather conditions caused loss of young stock.

125. ROSEMED INVESTMENTS (PTY) LTD N 112/73

HOTEL

Provisional Order: 18/5/73
 Final Order: Nil
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation

126. FRERE PROPERTIES (PTY) LTD N 135/73

PROPERTY OWNING COMPANY

Provisional Order: 7/6/73
 Final Order: 6/7/73
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order 10/8/73

127. RICHLEIGH SHOES (PTY) LTD N 120/73

128. BOSTONIAN SHOES (PTY) LTD N 121/73

129. COURTESY SHOES (PTY) LTD N 122/73

130. TAILORED SHOES (PTY) LTD N 123/73

131. NATIONAL FOOTWEAR CO (PTY) LTD N 124/73

132. RICHLEIGH ASSOCIATES (PTY) LTD N 125/73

GROUP OF COMPANIES MANUFACTURING SHOES

Provisional Order: 4/6/73
 Final Order: 7/6/73
 Judicial Managers: J.R.R. WELLS
 A.H. GUNN

Successful: Discharged

The companies were fully re-vested with their assets.

133. THE AFRICAN CONGREGATIONAL CHURCH CO LTD

N 26/74

OWNERS OF CERTAIN PROPERTIES

Provisional Order:	29/5/73
Final Order:	3/7/73
Judicial Managers:	J.L. CASTLEDEN D.A. JOUBERT

Still under Judicial Management

"The company has no creditors, nor at this stage any members. Once the Church has advised us of the future members of the company we shall proceed with the transfer of shares to new members and apply for cancellation of the Judicial Management Order. The company was originally struck off the register in 1950 and was reinstated in 1973."

134. EAGLE DESIGN (PTY) LTD

N 41/74

MANUFACTURERS, DESIGNERS AND SELLERS OF PLASTIC AND FIBREGLASS FURNITURE

Provisional Order:	28/2/74
Final Order:	Nil
Judicial Manager:	P.T.C. THORNE

Scheme of arrangement sanctioned 7/6/74

135. MODPLAS (PTY) LTD

N 44/74

MANUFACTURERS, DESIGNERS AND SELLERS OF PLASTIC AND FIBREGLASS FURNITURE

Provisional Order:	6/3/74
Final Order:	Nil
Judicial Manager:	P.T.C. THORNE

Scheme of arrangement sanctioned 2/6/74

136. WELDUN INDUSTRIES (PTY) LTD N 53/74
 CLOTHING MANUFACTURERS
 Provisional Order: 26/2/74
 Final Order: 8/3/74
 Judicial Manager: K.D. KRUMM
Unsuccessful: Liquidation
137. RAVEN SUPERMARKET (PTY) LTD N 55/74
 GENERAL DEALER
 Provisional Order: 11/3/74
 Final Order: Nil
 Judicial Manager: K.D. KRUMM
Unsuccessful: Liquidation Order No. N 94/74
138. MOONSAMY PADAYACHEE ENTERPRISES (PTY) LTD N 103/74
 CINEMA
 Provisional Order: 14/5/74
 Final Order: Nil
 Judicial Manager: F.A. KRAUSE
Unsuccessful: Liquidation 27/9/74
139. CYLGRAY INVESTMENTS (PTY) LTD N 116/74
 RESTAURANT OWNERS
 Provisional Order: 28/5/74
 Final Order: Nil
 Judicial Manager: M.J. ENSOR
Unsuccessful: Liquidation 21/7/74

"Every aspect of the company's affairs was in a state of catastrophic chaos. I can therefore only suggest that the company be placed in liquidation.

140. RODSPEC INVESTMENTS (PTY) LTD

N 116/74

PROPERTY OWNING COMPANY

Provisional Order: 11/6/74
 Final Order: 5/7/74
 Judicial Manager: M.J. ENSOR

Offer of compromise sanctioned 27/6/75

141. LENMAR ROAD (PTY) LTD

N 183/74

142. LENMAR PLANT HIRE (PTY) LTD

N 184/74

HIRING OF EARTHMOVING AND CONSTRUCTION PLANTS

Provisional Order: 7/8/74
 Final Order: Nil
 Judicial Manager: K.D. KRUMM

Unsuccessful: Liquidation 16/9/74

143. LITHOTONE (PTY) LTD

N 194/74

PRINTING FIRM

Provisional Order: 20/8/74
 Final Order: 22/11/74
 Judicial Manager: B. RULTEN

Offer of compromise sanctioned 21/1/77

144. GEOFF REYNOLDS (PTY) LTD

N 215/74

MOTOR REPAIR AND SALE OF VOLKSWAGEN ENGINES

Provisional Order: 12/9/74
 Final Order: Nil
 Judicial Manager: A. MORRISON

Unsuccessful: Liquidation 8/11/74

145. J.J. BIERMAN & C.J. SWART BOERDERY (EDMS) BPK. N 220/74

FARMING BUSINESS

Provisional Order: 17/9/74
 Final Order: Nil
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation 25/10/74

146. N.P.D.C. (PTY) LTD N 239/74

DRY CLEANERS AND STEAM LAUNDERERS

Provisional Order: 4/10/74
 Final Order: 6/12/74
 Judicial Manager: F.D. MULLER

Unsuccessful: Liquidation Order No. N 31/79
 25/1/79

The company was unable to meet operating expenses and losses.

147. MAISON BROTHERS (PTY) LTD N 251/74

FOOTWEAR MANUFACTURERS

Provisional Order: 15/10/74
 Final Order: 22/11/74
 Judicial Manager: M.J. ENSOR

Unsuccessful: Provisional Liquidation Order No. N 295/74

The products were of inferior quality and there was a lack of adequate productive systems.

148. IMPACT PRINTING SERVICE (PTY) LTD

N 254/74

PRINTING SERVICE

Provisional Order: 11/10/74
 Final Order: Nil
 Judicial Manager: K.D. KRUMM

Unsuccessful: Liquidation 22/11/74

149. GLENANIL TRANSPORT SERVICES (PTY) LTD

N 274/74

BUS COMPANY

Provisional Order: 7/11/74
 Final Order: Nil
 Provisional Judicial Manager: M.J. ENSOR

Provisional Order discharged 22/8/75

Unsuccessful: Liquidation Order No. N 254/75

Reasons for failure included the delay in statutory increased in bus fares and difficulty in obtaining spare parts from overseas, as well as increased costs of spares and fuel.

150. P.L. MYBURGH (EMDS) BPK.

N 287/74

BUILDING CONTRACTORS

Provisional Order: 20/11/74
 Final Order: 17/1/75
 Judicial Manager: I.C. MULLER

Unsuccessful: Liquidation

The company failed as it was undercapitalized and needed bridging finance to cover working expenses while waiting for retention monies due on various government housing scheme contracts. Also escalation of building materials which were not recoverable, a factor which added to the general decline of the company.

151. BAUR FURNITURE FACTORS (PTY) LTD

N 30/75

FACTORING COMPANY

Provisional Order: 28/2/75
 Final Order: Nil
 Judicial Manager: M.J. ENSOR

Order was set aside 28/5/76.

No documents in Master's file, save correspondence regarding an action against the erstwhile Judicial Manager for fees which have not been paid to date.

152. BLACK FOREST BAKERY (PTY) LTD

N 50/75

BAKERY

Provisional Order: 19/2/75
 Final Order: 4/4/75
 Judicial Manager: B. RULTEN

Unsuccessful: Provisional Liquidation Order 11/4/75
 No. N 115/75

Due to price increase in baking materials and resistance by consumers to the price increase, turnover dropped.

153. H.J. STRANACK & CO LTD

N 64/75

MANUFACTURERS OF CHEST FREEZERS

Provisional Order: 4/3/75
 Final Order: 23/3/75
 Judicial Managers: R.R. BARNES
 J.S. EVANS

Unsuccessful: Provisional Liquidation No N 48/76
 Liquidation 13/2/76

Overdraft facilities were restricted – in August 1974 the Government took monetary measures to curtail credit to try and control inflation. There was also a shortage of raw materials.

154. STOTT DEVELOPMENT CO (PTY) LTD

N 140/75

BUILDING CONTRACTORS

Provisional Order: 9/5/75
 Final Order: 4/7/75
 Judicial Manager: R.K. BAKER

Unsuccessful: Provisional Liquidation Order No. N 202/78
 4/7/75

Lack of building contracts and no working capital led to failure.

155. LEGIOEN FILM PRODUKSI E

N 159/75

FILM MAKERS AND SUPPLIERS OF FILM EQUIPMENT

Provisional Order: 3/6/75
 Final Order: 18/7/75
 Judicial Manager: K.D. KRUMM

Unsuccessful: Liquidation Order No. N 223/75

Ventured into making two film features, but one of them was banned immediately and the second film suffered a similar fate, and the company became illiquid.

156. LITOROL PERS (EDMS) BPK.

N 160/75

PRINTERS, PUBLISHERS AND FILM MAKERS

Provisional Order: 3/6/75
 Final Order: 17/10/75
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 379/76
 17/9/76

The company was associated with N 159/75, and became illiquid.

157. PLASTIGAN (PTY) LTD N 191/75
 REPROCESSOR OF SUB-STANDARD POLYMERS
- Provisional Order: 27/6/75
 Final Order: 22/8/75
 Judicial Managers: K.D. KRUMM
 H.L. KING
- Scheme of Arrangement sanctioned 1/12/77
- All assets released to Omega Barfil. Scheme proposed by Ombar Service (Pty) Ltd
158. COMPLETE AIR (PTY) LTD N 214/75
 INSTALLATIONS AND SUPPLIERS OF AIR CONDITIONING UNITS
- Provisional Order: 15/7/75
 Final Order: 23/1/76
 Judicial Managers: G.A. PRING
 O.R. LEE
- Still under Judicial Management
- Difficulties arose from collecting debtors' monies.
159. GLENANIL TRANSPORT SERVICES (PTY) LTD N 254/75
 In Liquidation — see N 274/74
160. TOWNBUSH ROAD PROPERTIES (PTY) LTD N 271/75
 PROPERTY DEVELOPMENT COMPANY
- Provisional Order: 22/9/75
 Final Order: 20/2/76
 Judicial Manager: M.J. ENSOR
- Unsuccessful: Provisional Liquidation Order 12/11/76
- The company overtraded to the extent that it completely outreached its liquid resources. Judicial Manager was of the opinion that it would only become viable if substantial investments were made, which was not possible due to the markets prevailing state.

161. PINECLIFF HOLDINGS (PTY) LTD

B 272/75

INVESTMENT COMPANY, WITH INVESTMENTS IN PROPERTY
SECTOR

Provisional Order: 20/9/75
Final Order: 14/11/75
Judicial Managers: M.J. ENSOR
H.S. SPAIN

Judicial Management Order discharged 6/2/76

No purpose would have been served by placing the company in liquidation, as the investments of the company were valueless and costs of liquidating the company were too high.

162. PINECLIFF ESTATES (PTY) LTD

N 273/75

TOWNSHIP DEVELOPMENT COMPANY

Provisional Order: 22/9/75
Final Order: 14/11/75
Judicial Managers: M.J. ENSOR
H.S. SPAIN
Unsuccessful: Liquidated 25.9.79

The company is in the process of transferring its various plots of land to deed of sale buyers, and it is envisaged that after this has taken place the company will be liquidated.

163. A.J. INVESTMENTS (PTY) LTD

N 274/75

SUB-LESSOR OF CARAVAN SITE

Provisional Order: 22/9/75
Provisional Judicial Managers: M.J. ENSOR
H.S. SPAIN

Successful: Provisional Order discharged 14/11/75

Provisional Judicial Managers were of the opinion that no good purpose would have been served by liquidating the company as it has no tangible assets to meet the cost of continued Judicial Management or liquidation.

164. ZINKWAZI PARK (PTY) LTD

N 275/75

CARAVAN SITE OWNER

Provisional Order: 22/9/75
 Final Order: Nil
 Provisional Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Offer of compromise submitted by bondholders.

No information in Master's file regarding reports or offer documents – the information was obtained from a handwritten comment.

165. ZINKWAZI MARINA (PTY) LTD

N 276/75

CARAVAN PARK LESSEE

Provisional Order: 22/9/75
 Final Order: Nil
 Provisional Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Unsuccessful: Provisional Order discharged 14/11/75

No purpose would have been served by placing the company in liquidation as it had no tangible assets and liquidation costs could not have been met.

166. MIDMAR HEIGHTS (PTY) LTD

N 277/75

PROPERTY DEVELOPMENT COMPANY

Provisional Order: 22/9/75
 Final Order: Nil
 Provisional Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Unsuccessful: Provisional Order discharged 13/8/76

Order was discharged and properties were to be sold in terms of Section 14 of the Sale of Land by Instalments Act. From reports in the Master's file, the properties were eventually sold to pay outstanding rates.

167. MANORS PARK EXTENSION (PTY) LTD

N 278/75

PROPERTY OWNING COMPANY

Provisional Order: 22/9/75
 Final Order: 3/12/76
 Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Unsuccessful: Provisional Liquidation Order No. N 193/76
 7/5/76

Judicial Managers were of the opinion that the company should be wound up as the only asset was a dwelling house and there was dispute as to the director's loan accounts which had been ceded to creditors of various associate companies and this dispute could best be resolved by the liquidation of the company.

168. GAREME INVESTMENTS (PTY) LTD

N 279/75

PROPERTY OWNING COMPANY

Provisional Order: 22/9/75
 Final Order: Nil
 Provisional Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Provisional Order discharged 6/2/76

Provisional Judicial Managers were of the opinion that the company was incorrectly placed under provisional Judicial Management as it had no financial difficulties and the only reason for the order was that the company's directors were common to a number of companies which had simultaneously been placed under Judicial Management.

169. TREVICRAFT PLASTRON (PTY) LTD

N 288/75

EPOXY COATING CONTRACTORS

Provisional Order: 29/9/75
 Final Order: 21/11/75
 Judicial Manager: J.A. BRUCE

Unsuccessful: Provisional Liquidation Order No. N 350/75

170. SANDY'S CONFECTIONARY (PTY) LTD

N 295/75

BAKERS AND CONFECTIONERS

Provisional Order: 3/10/75
 Final Order: 21/11/75
 Judicial Manager: F.D. MULLER

Scheme of Arrangement sanctioned 20/2/76 and Provisional Order discharged.

The efforts to expand by opening additional outlets failed in that insufficient control was shown over both branches. Pilferage and theft took place, resulting in loss of profits.

171. NOORD NATAL HARDEHOUT (PTY) LTD

N 326/75

GENERAL DEALER OF BUILDING MATERIAL

Provisional Order: 7/11/75
 Final Order: 5/12/75
 Judicial Manager: D.V. HOLMES

Unsuccessful: Provisional Liquidation Order 13/2/76

Lack of experienced management, excessive employment of local labour, inefficient bookkeeping and lack of liquid capital led to liquidation

172. MESSOR DEVELOPMENTS (PTY) LTD

N 331/75

PROPERTY DEVELOPER AND BUILDING CONTRACTOR

Provisional Order: 7/11/75
 Final Order: 19/12/75
 Judicial Manager: F.D. MULLER

Unsuccessful: Provisional Liquidation Order 19/12/75

No allowances were made for the escalation of building material and rise in costs of labour. The result was that contracts completed were running at a loss to the company.

173. FIFTH AVENUE CLOTHING MANUFACTURERS (PTY) LTD N 339/75

CLOTHING MANUFACTURERS

Provisional Order: 21/11/75
 Final Order: 6/2/76
 Judicial Manager: B. RULTEN

Unsuccessful: Provisional Liquidation Order 2/4/76

The company used to purchase all the materials for the garment manufacture, and employed an "in-house" designer. Direct selling agents were employed to sell directly to the retail trade, which resulted in extensive periods of credit.

174. PIETERMARITZBURG MEALS SERVICE (PTY) LTD N 377/75

CATERING SERVICE

Provisional Order: 19/12/75
 Final Order: 30/4/76
 Judicial Managers: D. V. HOLMES (resigned 12/11/76)
 E. L. GREENE (appointed 12/11/76)

Still under Judicial Management

The marketing of pre-cook frozen meals was not successful due to the lack of marketing facilities and the refusal of certain local authorities to grant licences. Lack of support from factory workers for whom hot midday meals were provided.

175. OVERVLOED (PTY) LTD N 27/76

FURNITURE MANUFACTURERS

Provisional Order: 9/2/76
 Final Order: 7/5/76
 Judicial Managers: B. RULTEN (resigned 23/9/77)
 M. C. VAN ROOYEN (appointed 23/9/77)

Still under Judicial Management

Profits earned from the furniture industry were used to finance ventures into the farming industry with unsatisfactory results due to stringent weather conditions. As a result of incorrect information, creditors withdrew their funds which resulted in a serious cash flow problem.

176. MODERN ELECTRICAL (PTY) LTD

N 71/76

GENERAL DEALERS IN ELECTRICAL FITTINGS AND EQUIPMENT

Provisional Order: 20/2/76
 Final Order: 30/4/76
 Judicial Manager: C. J. WILKINSON

Unsuccessful: Provisional Liquidation Order 26/4/79

Failure was due to general slow-down in the economy, large amounts were unrecoverable from debtors and a large proportion of stock was obsolete.

177. NUROCK FURNISHERS (PTY) LTD

N 89/76

ELECTRICAL APPLIANCE AND FURNITURE DEALERS

Provisional Order: 10/3/76
 Final Order: 2/4/76
 Judicial Managers: M. J. ENSOR
 F. D. MULLER

Scheme of Arrangement sanctioned 9/7/76

The main supplier advised that only cash dealings were acceptable. Word spread to other creditors, resulting in a shortage of funds and monies having to be borrowed.

178. STEADS CENTRE (UMBILO) (PTY) LTD

N 119/76

SCHOOL CLOTHING, SPORTS GOODS AND EQUIPMENT SHOP

Provisional Order: 26/3/76
 Final Order: 14/5/76
 Judicial Manager: M. J. ENSOR

Offer of compromise sanctioned 26/9/76

Judicial Management Order discharged 18/10/76

Competition from discount stores and excess of stock was purchased. The company was unable to obtain overdraft facilities.

179. NATAL DIATOMITE (PTY) LTD

N 140/76

MINE AND MINE FILLER MINERAL SUPPLIERS

Provisional Order: 14/4/76
 Final Order: 18/6/76
 Judicial Manager: K.D. KRUMM

Scheme of arrangement sanctioned 13/12/76

Creditors were pressing for payment and the company had an enormous overdraft which had to be repaid. Prices were undercut by powerful competitors.

180. THE KATHORIAN TRADING COMPANY (PTY) LTD

N 179/76

TEXTILE WHOLESALERS

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets were handed back to the directors. (No reasons given in Master's file)

181. H. VAN DUYN, MOL AND MASTERBROOK (PTY) LTD

N 232/76

BUILDING CONTRACTORS

Provisional Order: 18/6/76
 Final Order: 30/7/76
 Judicial Manager: B. RULTEN

Unsuccessful: Provisional Liquidation Order 11/3/77

Inadequate finances and also late payments of extra work on existing contracts led to the downfall of the company. Large amounts of cash had been expended on the purchase of plant and equipment contracts.

182. MBOZAMO HOLDINGS (PTY) LTD

N 321/76

PASSENGER TRANSPORT COMPANY

Provisional Order: 13/8/76
 Final Order: 5/11/76
 Judicial Manager: M. J. ENSOR.

Unsuccessful: Liquidation Order No. N 549/76

In order to assist its customers, fares were kept low. Vehicles depreciated rapidly due to lack of spares and high cost of maintenance. Inexperienced personnel added to the company's difficulties.

183. GRAY ARCH METAL SPRAY COMPANY LTD

N 345/76

METAL SPRAYING

Provisional Order: 26/8/76
 Final Order: 8/10/76
 Judicial Manager: M. J. ENSOR

Unsuccessful: Provisional Liquidation Order No. 448/76

The company secured a large government contract and purchased new machinery and geared itself for operation on the contract, but due to cuts in Government spending the commencement date of the contract was indefinitely postponed.

184. BELL AND SKELTON (NATAL) (PTY) LTD

N 346/76

BUILDING CONTRACTORS

Provisional Order: 26/8/76
 Final Order: 29/10/76
 Judicial Manager: B. RULTEN

Unsuccessful: Provisional Liquidation Order 19/1/77

Inability to complete contracts for the Natal Provincial Administration.

185. MATTIODA CONSTRUCTION S.A. (PTY) LTD

N 365/76

CIVIL ENGINEERING CONTRACTOR

Provisional Order: 3/9/76
 Final Order: 29/1/76
 Judicial Manager: C.G. FOOT

Unsuccessful: Liquidation No. N 309/76

The company experienced difficulty completing a part rail link between Vryheid and Richards Bay for the S.A.R. & H. timeously and was consequently faced with penalties for late completion and/or non completion as per contract.

186. PETER SCOTT MUSICAL COMPANY (PTY) LTD

N 370/76

RETAILERS OF MUSICAL INSTRUMENTS

Provisional Order: 13/9/76
 Final Order: 12/11/76
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 382/77

Deterioration in business climate led to the inability of the company to meet post Judicial Management creditors.

187. KIRKENES (PTY) LTD

N 386/76

PROPERTY OWNING COMPANY

Provisional Order: 1/10/76
 Final Order: 12/11/76
 Judicial Manager: J.S. EVANS

Unsuccessful: Liquidation Order No. N 480/76
 25/3/77

The company underestimated the costs of an experiment to the property and was unable to meet the escalations in costs.

188. KUSVAKANSIEHUUR (EDMS) BPK.

N 392/76

LETTING AGENTS FOR HOLIDAY ACCOMODATION

Provisional Order: 6/10/76
Final Order: 13/11/77
Provisional Judicial Manager: K.D. KRUMM

Unsuccessful: Liquidation Order No. N 21/77
12/1/77

Due to the fact that the holding company was placed in liquidation , this company was unable to obtain an estate agent's licence.

189. KEUR & DE JONGH (PTY) LTD

N 393/76

BUILDING CONTRACTORS

Provisional Order: 1/10/76
Final Order: 5/11/76
Provisional Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 482/76
19/11/76

Expected upswing in prices in immovable property belonging to the company in Newcastle and Ladysmith did not materialise.

190. DUMAR CONSTRUCTION (PTY) LTD

N 398/76

EARTH MOVERS AND TRANSPORT CONTRACTORS

Provisional Order: 8/10/76
Final Order: 14/1/77
Judicial Manager: C.J. WILKINSON

Still under Judicial Management

Illiquid position was due to the equipment being sold to Delport Plant Hire, who failed to meet payments. The equipment was repossessed, but its condition had so deteriorated that new equipment had to be purchased, which resulted in new leases which the company was unable to meet.

191. BALLITO BESIGHEIDSENTRUM (EDMS) BPK.

N 413/76

BUSINESS AND SHOPPING CENTRE

Provisional Order: 8/10/76
 Final Order: 14/1/77
 Judicial Manager: K.D. KRUMM

Still under Judicial Management

The Judicial Manager was of the opinion that Judicial Management could only succeed if an offer of compromise were made. Liquidation would be disastrous because of prevailing property prices in the area where the centre is situated.

192. DAVERLY MANUFACTURING (PTY) LTD

N 436/76

RETAILER OF LOUVRE CABINETS, DOORS AND CUPBOARDS

Provisional Order: 3/11/76
 Final Order: Nil
 Provisional Judicial Manager: M.J. ENSOR

Unsuccessful: Liquidation No, N 554/76
 17/12/76

Company's liquidity was siphoned off to a subsidiary company and the administration of this company was in complete disorder.

193. NEW LYRIC THEATRE (PTY) LTD

N 437/76

ENTERTAINMENTS THEATRE

Provisional Order: 3/11/76
 Final Order: 17/12/76
 Judicial Manager: M.J. ENSOR

Unsuccessful: Provisional Liquidation Order No. N 97/77

Director was siphoning cash to his loan account and to associate companies.

194. RIC-LYR THEATRES (PTY) LTD

N 438/76

INTER ALIA FINANCIERS

Provisional Order: 3/11/76
 Final Order: 17/12/76
 Judicial Manager: M.J. ENSOR

Unsuccessful: Provisional Liquidation Order No. N 565/77
 21/10/77

Certain monies were drawn by an associate company, which was subsequently liquidated.

195. KARA WHOLESALERS (PTY) LTD

N 499/76

GENERAL DEALER

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets were handed back to the directors. (No reasons given in Master's file)

196. POPATLALL'S (PTY) LTD

N 500/76

GENERAL DEALER

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR

Successful: Order discharged 15/4/77

Assets handed back to the directors. (No reasons given in Master's file)

197. PEEKAY SARRIE HOUSE (PTY) LTD

N 501/76

GENERAL DEALERS

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

198. POPATLALL'S SARRIE BOUTIQUE (PTY) LTD

N 502/76

GENERAL DEALER

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

199. ASHKAY INVESTMENTS (PTY) LTD

N 503/76

PROPERTY HOLDING AND TRADING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

200. POPATLALL KARA (PTY) LTD

N 504/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M. J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

201. KARA HOLDINGS (PTY) LTD

N 505/76

INCOME AND INVESTEMENT HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M. J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

202. DUNPROP INVESTMENTS (PTY) LTD

N 506/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M. J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

203. MADRINA INVESTMENTS (PTY) LTD

N 507/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/11/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

204. PRIMLAND PROPERTIES (PTY) LTD

N 508/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/11/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

205. GREYPINE HOLDINGS (PTY) LTD

N 509/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Juoicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

206. FLORIN HEIGHTS (PTY) LTD N 510/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

207. DESAHAR INVESTMENTS (PTY) LTD N 511/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

208. ROSLYN HEIGHTS (PTY) LTD N 512/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M.J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to directors (No reasons given in Master's file)

209. SHARON KEYS (PTY) LTD

N 513/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M. J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets handed back to the directors (No reasons given in Master's file)

210. PRINCEBOND PROPERTIES (PTY) LTD

N 514/76

PROPERTY HOLDING COMPANY

Provisional Order: 6/12/76
 Final Order: 4/2/77
 Judicial Managers: M. J. ENSOR
 L. COHEN

Successful: Order discharged 15/4/77

Assets were handed back to the directors (No reasons given in Master's file)

211. SUZETTE SEWING CENTRE (PTY) LTD

N 552/76

RETAILERS OF MATERIAL AND HABERDASHERY

Provisional Order: 17/12/76
 Final Order: 21/1/77
 Judicial Manager: R. M. ARUNDEL

Still under Judicial Management

Too much capital was tied up in stock, and the company was unable to obtain long term credit facilities to enable it to overcome its liquidity problem.

212. PROSTEEL (PTY) LTD

N 19/77

PRINTING AND SANDBLASTING CONTRACTORS

Provisional Order: 12/1/77
 Final Order: 4/3/77
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 160/77

Mismanagement and the inability to meet its commitments out of its existing income led to liquidation.

213. MICRIC DISTRIBUTORS (PTY) LTD

N 50/77

DISTRIBUTION AGENTS

Provisional Order: 4/2/77
 Final Order: 18/3/77
 Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Unsuccessful: Liquidation Order No. N 162/77
 29/4/77

The company relied solely on one source to supply goods which it in turn distributed. The source company was placed under Judicial Management and subsequently liquidated.

214. MICRIC DISTRIBUTORS (TVL) (PTY) LTD

N 51/77

DISTRIBUTION AGENTS

Provisional Order: 4/2/77
 Final Order: 18/3/77
 Judicial Managers: M.J. ENSOR
 H.S. SPAIN

Unsuccessful: Liquidation Order No. N 164/77
 29/4/77

The company was associated with Micric Distributors (Pty) Ltd, and the causes of liquidation were similar.

215. MICRIC DISTRIBUTORS (CAPE) (PTY) LTD

N 52/77

DISTRIBUTION AGENTS

Provisional Order: 4/2/77
 Final Order: 18/3/77
 Judicial Managers: M. J. ENSOR
 H. S. SPAIN

Unsuccessful: Liquidation Order No. N 163/77
 29/4/77

This company, too, was associated with Micric Distributors (Pty) Ltd, with similar causes for liquidation.

216. TONGAAT DEVELOPMENT CO (PTY) LTD

N 53/77

TOWNSHIP DEVELOPMENT COMPANY

Provisional Order: 28/1/77
 Final Order: 22/4/77
 Judicial Manager: G. J. GRAHAM

Unsuccessful: Liquidation Order No. N 256/77
 13/5/77

The only source of finance was for the deed of sale debtors and the repayment of a large debt by one of the directors, whose estate was subsequently sequestrated.

217. E. MURPHY (PTY) LTD

N 63/77

MANUFACTURERS OF WINDOWS, DOORFRAMES AND LOUVRE DOORS

Provisional Order: 16/2/77
 Final Order: 1/4/77
 Judicial Manager: J. S. EVANS
 R. J. STRYDOM

Unsuccessful: Provisional Liquidation Order 24/5/78

The building industry was affected economically by lack of capital available for building contracts by both the private and public sector.

218. KAZI'S AGENCIES (PTY) LTD

N 68/77

WHOLESALEERS AND AGENTS

Provisional Order: 16/2/77
 Final Order: Nil
 Judicial Manager: B. RULTEN

Unsuccessful: Liquidation Order No. 191/77
 26/3/77

Reasons for the company's liquidation were, amongst others, drop in turnover, competition from newly opened wholesalers nearby and the resignation of key staff members.

219. DADDY'S GARAGE (PTY) LTD

N 76/77

MOTOR GARAGE

Provisional Order: 25/2/77
 Final Order: 13/5/77
 Judicial Manager: W.W. FOURIE

Still under Judicial Management

The general economic conditions of the country and the motor business in particular as well as cash flow problems and lack of experienced management led to Judicial Management.

220. GLENDÉE MEATS (PTY) LTD

N 92/77

BUTCHERY AND MEAT PROCESSING FACTORY

Provisional Order: 1/3/77
 Final Order: 29/4/77
 Judicial Managers: R.K. BAKER
 B.A. CHARLTON

Order discharged 29/6/78

All assets were handed back to the shareholders, and an offer of compromise was made.

221. VOYSEY BOND & CO (PTY) LTD

N 99/77

PROPERTY HOLDING COMPANY

Provisional Order: 2/3/77
 Final Order: 29/4/77
 Judicial Managers: S.N. COLAM
 P.G.F. THORNE
 A. GARAS

Unsuccessful: Liquidation 28/2/78

The prevailing state of the property market and the lack of liquidity led to liquidation.

222. V.I.P. LTD

N 100/77

PROPERTY OWNING AND INVESTMENT COMPANY

Provisional Order: 2/3/77
 Final Order: 29/4/77
 Judicial Managers: S.N. COLAM
 P.G.F. THORNE
 A. GARAS

Unsuccessful: Liquidation Order No. N 33/78

Illiquidity was due to the sharp rise in mortgage rates and consequent reverse cash flows on many property investments.

223. TRADE TOOLS (PTY) LTD

N 168/77

TOOL SUPPLIERS AND RETAILERS

Provisional Order: 25/3/77
 Final Order: 20/5/77
 Judicial Manager: K.D. KRUMM

Still under Judicial Management

Over-commitment on its lease agreements. Bankers had a valid cession of the company's debtors and called up their overdraft. This removed all cash flow from the company. Considerably large loans were made to an associate company known as Foxbar Holdings (Pty) Ltd.

224. NALPROP (PTY) LTD

N 279/77

PROPERTY INVESTMENT COMPANY

Provisional Order: 3/6/77
 Final Order: Nil
 Provisional Judicial Managers: R.K. BAKER
 H.K. LUND

Unsuccessful: Liquidation 29/6/77

The order was discharged as it was found that the company had no assets.

225. DURBAN APARTMENTS (PTY) LTD

N 280/77

PROPERTY INVESTOR

Provisional Order: 3/6/77
 Final Order: Nil
 Provisional Judicial Managers: R.K. BAKER
 H.K. LUND

Unsuccessful: Liquidation 29/6/77

The affairs of the company had been grossly mismanaged and amounts of cash could not be accounted for.

226. MOVIS COAL (PTY) LTD

N 305/77

COAL MINE

Provisional Order: 24/6/77
 Final Order: Nil
 Provisional Judicial Managers: M.J. ENSOR
 P.J.E. MEINTJIES

Unsuccessful: Liquidation Order No. N 533/77
 14/10/77

The company was undercapitalised and had to lease capital equipment at exorbitant cost to fulfill its various supply contracts.

227. ST DAVID'S COLLIERY (PTY) LTD

N 306/77

COAL MINE

Provisional Order: 24/6/77
 Final Order: 24/6/77
 Provisional Judicial Managers: M.J. ENSOR
 P.J.E. MEINTJIES

Unsuccessful: Liquidation Order No. N 587/77
 14/10/77

The company was undercapitalised and had to lease equipment at tremendous cost to fulfil its supply contracts.

228. OCEAN VIEW HOTEL LTD

N 325/77

HOTEL

Provisional Order: 1/7/77
 Final Order: 30/9/77
 Judicial Manager: J.S. EVANS

Liquidation:

Tenant unable to pay rental for the property
 Property sold and company liquidated.

229. SABIE MANSIONS (PTY) LTD

N 334/77

COMPANY ADMINISTERING BLOCKS OF FLATS

Provisional Order: 24/6/77
 Final Order: 16/9/77
 Judicial Managers: P.G.F. THORNE
 G.B. CHRISTIE

Successful: Discharged 29/3/79

Judicial Managers were released from office and the liquidators of V.I.P (Pty) Ltd, the holding company, were appointed as directors.

230. DRIVE YOURSELF (PTY) LTD

N 348/77

CAR HIRE SERVICE

Provisional Order: 8/7/77
 Final Order: 2/9/77
 Judicial Managers: K.D. KRUMM
 J.P. GREENWOOD

Offer of compromise sanctioned 2/3/79, and the order was discharged.

231. B.P. VAN NIEKERK EN SEUNS (EDMS) BPK.

N 353/77

FARMING COMPANY

Provisional Order: 8/7/77
 Final Order: 31/8/77
 Judicial Managers: P. QUINTON
 J.S. EVANS

Unsuccessful: Provisional Liquidation Order No. N 395/77
 7/10/77

Reasons for liquidation were that a large contingent liability was undisclosed at the commencement of Judicial Management, and the company had over-borrowed and overcommitted itself on hire purchase financing.

232. PHUZANI MELKERYE (EDMS) BPK.

N 354/77

DAIRY, BOTTLERS AND DISTRIBUTORS OF MILK

Provisional Order: 8/7/77
 Final Order: 31/8/77
 Judicial Managers: D.B. BREYTENBACH (removed)
 P. QUINTON
 J.S. EVANS

Unsuccessful : Discharged 7/10/77

Its holding company, B.P. van Niekerk & Seuns (Edms) Bpk. was also put under Judicial Management. The company had extended its credit beyond hope of repayment.

233. LĒEUNEK BELEGGINGS (EDMS) BPK.

N 355/77

FARMING SUBSIDIARY COMPANY

Provisional Order: 8/7/77
 Final Order: 31/8/77
 Judicial Managers: P. QUINTON
 J.S. EVANS

Unsuccessful: Order discharged 7/10/77

Company was established to supply vehicles to its holding company which was placed in liquidation. No record of liquidation file.

234. KALMIC FURNISHERS (PTY) LTD

N 378/77

FURNITURE RETAILERS

Provisional Order: 25/7/77
 Final Order: 6/9/77
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 477/77
 13/9/77

Hire Purchase agreements were entered into indiscriminately, with no thought given to credit worthiness. No attempt was made to balance cash sales against hire purchase sales to ensure sufficient funds were generated to meet monthly commitments. Lack of good management overall and inexperienced staff added to the difficulties.

235. SHANSUN FURNISHERS (PTY) LTD

N 379/77

RETAIL FURNITURE DEALERS

Provisional Order: 25/7/77
 Final Order: 6/9/77
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order No. N 476/77
 13/9/77

Bad management throughout, inexperienced staff and hire purchase agreements were entered into indiscriminately.

236. TOMMY WILLIAMS DANCING SCHOOL (PTY) LTD

N 423/77

DANCING STUDIO

Provisional Order: 12/8/77
 Final Order 14/10/77
 Judicial Manager: R. DOUGLAS
 M. KERR

Still under Judicial Management

The company was unable to pay its debts due to the fact that profits from the Johannesburg studio were used to fund losses incurred by Cape Town, Durban and Pretoria studios. Losses were also incurred by T. E. Williams Jnr from other business ventures.

237. VONGO (PTY) LTD

N 458/77

FARMING OPERATIONS

Provisional Order: 14/9/77
 Final Order: 19/10/77
 Judicial Manager: K.D. KRUMM

Unsuccessful: Provisional Liquidation Order 19/10/77

Potential mining rights and an anticipated takeover by ESCOM did not materialize.

238. HOFBRAUHAUS (PTY) LTD

N 468/77

RESTAURANT

Provisional Order: 2/9/77
 Final Order: 25/11/77
 Judicial Manager: R.K. BAKER
 G.J. GRAHAM

Unsuccessful: Provisional Liquidation Order No. N 106/78
 3/3/78

Insufficient turnover to cover overhead charges

239. RANDA (PTY) LTD

N 484/77

CLOTHING MANUFACTURERS

Provisional Order: 16/9/77
 Final Order: Nil
 Judicial Manager: B. RULTEN

Unsuccessful: Provisional Liquidation Order No. N 377/77

Shortfall in cash flow due to discretion exercised by the factoring company who were unable to satisfy themselves as to the security of the debtors they factored.

240. PIETER ANNANDALE (PTY) LTD

N 499/77

IMPORTERS, MANUFACTURERS AND DISTRIBUTORS OF
MOTOR GAS VEHICLE CONVERTERS

Provisional Order: 30/9/77
 Final Order: 10/2/78
 Judicial Manager: K.D. KRUMM

Unsuccessful:

Bad management of the company's affairs led to liquidation

241. SWEETHEART PLASTICS (PTY) LTD

N 546/77

MANUFACTURERS OF PLASTICS

Provisional Order: 2/11/77
 Final Order: Nil
 Judicial Manager: F.D. MULLER

Unsuccessful: Provisional Liquidation Order No. N 351/78
 25/8/78

Insurers disputed the insurance claim for a fire on the premises.

242. ESCOMBE WHOLESALERS LTD

N 553/77

WHOLESALERS

Provisional Order: 7/11/77
 Final Order: Nil
 Judicial Manager: A. MORRISON

Unsuccessful: Provisional Liquidation Order No. N 70/78

Wholly owned subsidiary of Marshal Industries Ltd, which was also placed under Provisional Judicial Management.

243. MARSHALL TIMBERS (PTY) LTD

N 573/77

MERCHANDISERS TO BUILDING AND FURNITURE INDUSTRY

Provisional Order: 10/11/77
 Final Order: 2/2/78
 Judicial Managers: G.I. LIPSCHITZ
 G.T. GRAHAM
 A. MORRISON

Successful: Discharged 25/1/79

The existing directors of the company were authorised to resume management and control of the company.

244. DONNELLAN & PENNY LTD

N 575/77

Provisional Order: 11/11/77
 Final Order: Nil
 Judicial Managers: A. MORRISON
 G.J. LIPSCHITZ
 G.J. GRAHAM

Unsuccessful: Provisional Liquidation Order No. N 4/78
 16/2/78

92% of the company was owned by Marshall Industries Ltd, which was also placed under Judicial Management and this resulted in all funds being frozen by the company's bankers as well as creditors who stopped supplying.

245. LAGER CENTRE CINEMA (PTY) LTD

N 578/77

CINEMA

Provisional Order: 11/11/77
 Final Order: Nil
 Judicial Managers: J.S. EVANS
 R.J. STRYDOM

Unsuccessful: Provisional Liquidation Order No. N 87/78
 17/3/78

Arrears in various lease agreements, monies advanced and repayments were in arrears by a large amount.

246. ENTEMBENI FARM (PTY) LTD

N 579/77

SUGAR CANE FARM

Provisional Order: 14/11/77
 Final Order: 13/1/78
 Judicial Manager: S.N. COLAM

Unsuccessful: Provisional Liquidation Order No. N 26/78
 13/1/78

Severe and unusual rain storm caused by a cyclone, inclement weather conditions and a severe drought which followed were responsible for failure. Added to this were expensive and unnecessary equipment and labour and planting of cane occurred in a haphazard manner, and no provision was made for the reaping of later crops.

247. WAVERLEY PROPERTIES (PTY) LTD

N 25/78

PROPERTY ADMINISTERING COMPANY

Provisional Order: 18/1/78
 Final Order: 26/6/78
 Judicial Manager: M.J. ENSOR

Offer of compromise sanctioned 11/8 /78 between creditors of the company and S.A. Eagle Insurance Company Ltd.

248. CLIFFORD ENGINEERING (PTY) LTD N 160/78

ENGINEERING COMPANY

Provisional Order: 20/4/78
 Final Order: 14/6/78
 Judicial Managers: S.N. COLAM
 A.J. MC EWEN

Unsuccessful: Provisional Liquidation Order 14/6/78

The company was unable to meet its obligations because it was totally reliant upon the Conac Group for provision of its working capital, and therefore had no funds with which to make payment of its liabilities.

249. CONAC ENGINEERING (PTY) LTD N 161/78

ENGINEERING CONTRACTORS

Provisional Order: 20/4/78
 Final Order: Nil
 Judicial Managers: S.N. COLAM
 A.J. MC EWEN

Unsuccessful: Provisional Liquidation Order 14/6/78

Illiquidity was the result of undercapitalised group expansion programmes and internal administration inadequacies.

250. CONAC HOLDINGS (PTY) LTD N 162/78

HOLDING COMPANY TO VARIOUS ENGINEERING CONTRACTORS

Provisional Order: 20/4/78
 Final Order: Nil
 Judicial Managers: S.N. COLAM
 A.J. MC EWEN

Unsuccessful: Provisional Liquidation Order 14/6/78

Undercapitalised expansion programmes, depressed market in structural steel, bad administration and lack of working capital.

251. NATAL MARKAGENTE (EDMS) BPK.

N 167/78

MARKET AGENTS AND TRANSPORTERS

Provisional Order 26/4/78

Final Order:

11/8/78

Judicial Managers:

L.R. MEYER

S.N. COLAM

Unsuccessful:Provisional Liquidation Order No. N 450/78
29/11/78

The company purchased vehicles not suited to the purpose, lack of proper management, especially in the transport section. Repair facilities were inadequate and there was an insufficient cash flow as a result of debtors not paying their bills.

252. FELEIGH (PTY) LTD T/A ARCHER ENGINEERING

N 180/78

STRUCTURAL ENGINEERS

Provisional Order:

1/5/78

Final Order:

5/7/78

Judicial Manager:

K.D. KRUMM

Unsuccessful:

Provisional Liquidation Order No. N 270/78

Various disputes due to reckless buying in materials for chrome and glass furniture. The company became involved in structural steel fabrication and found that whilst rates were reasonable, the time taken to complete the work resulted in great losses.

253. HOFMAN BENSE (PTY) LTD

N 208/78

Provisional Order:

23/5/78

Final Order:

15/9/78

Judicial Managers:

C.R. LANSDOWN

B. RULTEN

Unsuccessful:

Provisional Liquidation Order 15/9/78

Illiquidity of the company was a result of difficulty in obtaining funds from its holding company.

- 254. NU SHOP HOLDINGS (PTY) LTD N 217/78
- 255. NU SHOP GAY BOYS AND GIRLS (PTY) LTD N 218/78
- 256. NU SHOP VICTORIA STREET (PTY) LTD N 219/78
- 257. NU SHOP ALICE STREET EXTENSION (PTY) LTD N 221/78
- 258. NU SHOP EXTENSION (PTY) LTD N 222/78
- 259. NU SHOP GREY STREET (PTY) LTD N 223/78
- 260. NU SHOP MARKET BRANCH (PTY) LTD N 224/78
- 261. NU SHOP ALICE STREET (PTY) LTD N 226/78

GROUP OF COMPANIES TRADING AS RETAIL DRAPERS, SPECIALISING IN CHILDREN'S CLOTHING UNDER THE GENERAL NAME OF NU SHOP

Provisional Order: 2/5/78
 Final Order: Nil

Provisional Order discharged 2/5/78

Reasons for bringing the Order was apparently a dispute between family shareholders, who held shares in a recently liquidated company which manufactured and supplied materials to subsidiaries of Nu Shop Holdings (Pty) Ltd. It seems that the differences were resolved on the date of application for the Provisional Order. (Not in Master's file)

- 262. ORION INDUSTRIES (PTY) LTD N 300/78

MANUFACTURERS OF ENGINEERING TOOLS, DYES AND STEEL PRESSERS

Provisional Order: 21/7/78
 Final Order: 13/9/78
 Judicial Manager: W.A. MCFARLANE

Still under Judicial Management

High development costs for export order caused initial cash flow problems.

263. HUGGY PRESENTATIONS (PTY) LTD

N 308/78

TOY MANUFACTURERS

Provisional Order: 21/7/78

Final Order : 27/9/79

Judicial Manager : P. J. MEINTJIES

Still under Judicial Management

The reasons for the company's failure was a shortage of working capital and lack of suitable administrative personnel.

264. HAMMARSDALE ENGINEERING COMPANY (PTY) LTD

N 451/78

ENGINEERING CONTRUCTION AND MAINTENANCE COMPANY

Provisional Order: 30/11/78

Final Order: 8/3/78

Judicial Manager: C.E. DOUGLAS

Unsuccessful: Liquidation 25/7/79

Lack of working capital, rising costs of steel, fuel and wages, inability to obtain contract guarantees and suitable personnel.

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PRETORIA

Records of Judicial Management cases 1960 – 1978. All records prior to 1960 have been destroyed.

1. PLAYHOUSE THEATRE (PTY) LTD CA 7475

THEATRE PROPRIETORS

Provisional Order: 9/2/60
 Final Order: 18/5/60
 Judicial Manager: J.R.R. WELLS

Successful: Order cancelled 18/5/60

Offer of compromise sanctioned 19/5/60

Business had failed because of improvements to the theatre and failure to meet expenses due to the option to hire not being taken up, and the consequent remaining empty of the building for months.

2. TULLY'S ELECTRICAL (PTY) LTD CA 7457

ELECTRICAL CONTRACTORS AND SUPPLIERS OF ELECTRICAL APPLIANCES

Provisional Order: 26/2/60
 Final Order: 15/3/60
 Judicial Manager: D.A. HAMMERSCHLAG

Unsuccessful: Liquidation No. CA 7755

The firm's share capital was lost or useless, and no capital was available to pay debts.

3. HIGHVELD MOTORS (PTY) LTD CA 7495

SERVICE STATION

Provisional Order: 15/3/60
 Final Order: 5/4/60
 Judicial Manager: G.L. MUNTINGH
 C.F. DE WET (from 6/6/60)

Successful: Discharged

All assets were sold to one of the directors in his capacity of trustee.

4. FELS MINERAL AND EXPORT CORPORATION (PTY) LTD CA 7499

BUYERS OF BASE MINERALS, ORES, METALS AND CHEMICALS

Provisional Order: 24/3/60
 Final Order: Nil
 Judicial Manager: W.B. DANKS

Unsuccessful: Liquidation No. CA 7601
 1/7/64

In an effort to streamline production at two mines, new equipment had been installed. Delays in the supply and installation had resulted in loss of production for four or five months.

5. DALY'S MOTORS (PTY) LTD CA 7501

GARAGE

Provisional Order: 28/3/60
 Final Order: 19/4/60
 Judicial Manager: J.S. KUHN

Unsuccessful: Liquidation 21/4/64

Management had been slack for some years owing to the continued absence of chief shareholders. The manager was dismissed but it was too late to make good his losses.

6. FAY MODES (PTY) LTD CA 7503

MEN'S AND LADIES' OUTFITTERS

Provisional Order: 17/3/60
 Final Order: 20/3/60
 Judicial Manager: C.H. DU PLOOY

Unsuccessful: Liquidation No. CA 7741
 18/10/60

Business continued losing under Judicial Management. It was not in a position where turnover may show a profit.

7. SILHOUETTA SLIMMING SALON (PTY) LTD CA 7411

OPERATION OF SLIMMING SALON

Provisional Order: 5/4/60
 Final Order: 3/5/60
 Judicial Manager: J.L. SACKE

Unsuccessful: Liquidation No. CA 7635
 5/7/60

Business had been running at a loss for some time, partly due to a heavy rental. Judicial Managers attempted to increase turnover by extensive advertising but failed.

8. ERASMUS MANGANESE (PTY) LTD CA 7523

PRODUCERS AND DEALERS IN MINERALS

Provisionla Order: 21/4/60
 Final Order: 10/5/60
 Judicial Manager: J.R.R. WELLS

Unsuccessful: Liquidation No. CA 7632
 26/7/60

Plant and movable assets required overhaul and repair. No cash was available for this. Company was associated to Fels Mineral and Export Corporation (Pty) Ltd, CA 7499

9. ROBERTS VICTOR DIAMONDS LTD CA 7530

DIAMOND MINING COMPANY

Provisional Order: 26/4/60
 Final Order: 8/8/60
 Judicial Managers: J.D.W.H. VAN DER VIJVER
 B.G.S. DE WET

Unsuccessful: Liquidation No. T 798/67

Little capital was available for mining operations, and there was no trading between 1963 and 1966. Accusations were made of mmanagement by Judicial Manager De Wet.

10. TOLWE MINING COMPANY (PTY) LTD CA 7543

MANGANESE MINING COMPANY

Provisional Order: 12/5/60
 Final Order: 18/10/60
 Judicial Manager: J.R.R. WELLS

Unsuccessful: Liquidation No. CA 7737

Machinery was in bad repair, insufficient funds were available to resume operations. Connected to Fels Mining and Export Corporation (Pty) Ltd.

11. CHARCOAL OVEN RESTAURANT (PTY) LTD CA 7566

RESTAURANT BUSINESS

Provisional Order: 18/5/60
 Final Order: 9/8/60
 Judicial Managers: S. SIMON
 A. RUSKIN

Unsuccessful: Liquidation No. CA 57/61
 28/2/61

Failure of business was put down to drop in trade and mismanagement. The Judicial Manager advised that to continue the business would only cause further losses.

12. EXCHANGE INVESTMENTS (PTY) LTD CA 7567

PROPRIETORS OF DUNRCBIN HOTEL

Provisional Order: 19/5/60
 Final Order: 14/6/60
 Judicial Manager: S. SIMON
 C.A. BRUYNS

Unsuccessful: Liquidation No. CA 7613
 24/6/60

Application was made by the creditors that Judicial Management would serve no purpose as assets had been misrepresented.

13. TYNE'S ENGINEERING WORKS (PTY) LTD

CA 7577

STEEL FURNITURE AND OTHER STEEL PRODUCTS

Provisional Order: 30/5/60
 Final Order: 28/6/60
 Judicial Manager: G.W. LAMPERT

Unsuccessful: Liquidation No. 7698 20/9/60

Judicial Manager was suspicious of theft of assets and remarked on mysterious disappearance of a set of books after they left the auditor.

Cash promised for the continuation of the business was not forthcoming.

14. DINWOODIES (PTY) LTD

CA 7596

WHOLESALE AND MANUFACTURING CHEMISTS AND DRUGGISTS

Provisional Order: 9/6/60
 Final Order: 28/6/60
 Judicial Manager: R.A. GOLD

Offer of compromise sanctioned 13/3/62

Prior to death of the managing director affairs of the firm had been difficult and confused. The period of Judicial Management enabled the firm to re-establish itself.

15. WILSON'S MOTORS (PTY) LTD

CA 7599

MOTOR DEALERS

Provisional Order: 16/6/60
 Final Order: 12/7/60
 Judicial Manager: C.W. TASMER

Unsuccessful: Liquidation No. 7738 18/10/60

Liabilities of the firm were considerably in excess of assets and trading during the period June 1960 - August 1960 showed no excess of income over expenditure.

16. SANDREW (PTY) LTD CA 7628

PEACEHAVEN RESIDENTIAL - CONNECTION WITH DUNROBIN HOTEL
CA 7567

Provisional Order : 5/7/60
Final Order: 26/7/60
Judicial Manager: C.A. BRUYNS & G.L. PALMER

It is impossible to say whether a successful conclusion was reached. The evidence of the sale of this hotel in 1961 and it is stated that it is impossible to conduct the business on a profitable basis owing to a lack of suitable tenants and boarders.

14/2/63 - Judicial Manager continuing until situation is resolved.
11/7/73 - Letter of release of Judicial Manager

17. G & F INVESTMENTS LTD CA 7639

PART OF HOLDING OF SOUTH AFRICAN CLUB, OWNERS OF RIDGEWAY COURT

Provisional Order: 12/7/60
Final Order: 15/9/60
Judicial Manager: H.W. VAN DER VIJVER

Successful:

The company entered into 2nd bond agreements without reference to committees and South African Club, (A financial Club), itself in financial difficulties.

Judicial Management enabled the company to realize on property and pay off creditors

18. ROTHCHILD AFRICA (PTY) LTD CA 7670

ESTATE AND PROPERTY AGENTS

Provisional Order: 11/8/60
Final Order: 13/9/60 extended to 20/9/60
Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. CA 20/61 17/1/61

Judicial Manager applied for urgent liquidation on the grounds that liabilities far exceeded assets.

19. GRANITE AND MARBLE INDUSTRIES (PTY) LTD

CA 7675

STONE MASONS AND TOMBSTONE MANUFACTURERS

Provisional Order: 16/8/60
 Final Order: 31/8/60
 Judicial Manager: W.B. RORKE

Offer of compromise 30/3/65

Liabilities exceeded assets but in first report matters were improving under judicial management. Second report shows deterioration and compromise was agreed upon 30/3/65.

20. PRIVATE CAR SALES (PTY) LTD

CA 7683

SECOND HAND CAR DEALERS

Provisional Order: 16/8/60
 Final Order: 6/9 /60
 Judicial Manager: W.B. RORKE

Unsuccessful: Liquidation No. 7729 4/10/60

Business in debt, but as sales had been good it was hoped Judicial Management would give company time to meet debts.

21. TRANSVAAL HOUSING CORPORATION (PTY) LTD

CA 7714

BUILDING AND CONSTRUCTION CONTRACTORS

Provisional Order: 20/9/60
 Final Order: 25/10/60
 Judicial Manager: M. KROPMAN

Unsuccessful: Liquidation No. CA 167/61 28/3/61

At inception the company spent capital on materials and labour. Business was fair but various monies could not be collected. Company had not been in operation since October 1960 and Judicial Manager found assets in the form of tools had been neglected and there was no co-operation.

22. TRIANA MODISTE (PTY) LTD

CA 7753

DEALERS IN LADIES' FASHIONS

Provisional Order: 1/11/60
 Final Order: 29/11/60
 Judicial Manager: A.M. HOFFMAN

Successful: Discharged 9/5/61

Insufficient liquid assets to meet pressure by creditors. Resorted to Judicial Management to gain time to pay creditors as business was basically sound.

23. WHYLEO PROPERTIES (PTY) LTD

CA 7754

FORMED TO ACQUIRE IMMOVABLE PROPERTY IN UNION OF SOUTH AFRICA

Provisional Order: 3/11/60
 Final Order: 20/11/60
 Judicial Manager: G.B. CHRISTIE

Unsuccessful: Liquidation No. CA 7810 6/12/60

All assets in fixed property and no cash to meet creditors.

24. NORMAN BERMAN MOTORS (PTY) LTD

CA 7769

MOTOR GARAGE AND DEALERS IN NEW AND USED MOTOR VEHICLES

Provisional Order: 17/11/60
 Final Order: 13/12/60
 Judicial Manager: L.D. DRUKER

Successful: Discharged 18/4/61

Lull in trading and in spite of profit there was a shortage of capital to finance the bulk of transactions which were on credit.

25. VANKARS (PTY) LTD

CA 7770

GARAGE, AND DEALERS IN NEW AND SECOND HAND CARS

Provisional Order: 17/11/60
 Final Order: 13/12/60
 Judicial Manager: L.D. DRUKER

Successful:

Close connection with CA 7769 - Norman Berman Motors (Pty) Ltd. Both under Judicial Management and discharged.

26. ARMRITCH (PTY) LTD

CA 7799

WHOLESALE SUPPLIERS TO MOTOR TRADE

Provisional Order: 14/12/60
 Final Order: 24/1/61
 Judicial Manager: G.A.K. DEY

Unsuccessful: Liquidation No. CA 484/61 12/12/61

Company had entered into transactions extraneous to its business, with companies which had subsequently been liquidated.

Otherwise the company was felt to be sound. There was, however, a deterioration in trade in this area and the best salesmen were not attracted to a firm under Judicial Management: it was felt to be in the best interests of the creditors to liquidate.

27. ASMARA TRANSPORT (PTY) LTD

CA 1/61

CARTAGE CONTRACTORS

Provisional Order: 30/12/60
 Judicial Manager: G.W. LAMPERT

Successful: Discharged 18/4/61

Breakdowns and collisions of trucks caused loss of business and heavy expenses. Further losses had been caused through burglary.

28. BUHEL & VAN TINTERIN (PTY) LTD CA 77/61

BUILDING CONTRACTORS

Provisional Order: 27/2/61
 Final Order: 21/3/61
 Judicial Manager: O.C. BUCHEL

Successful: Compromise accepted 28/7/64

Special building had been carried out with insufficient capital. There was insufficient turnover to warrant high overheads. (Mismanagement)

Two contracts were outstanding which were expected to show good profit.

29. TRANSVALIA MEUBELS LTD CA 85/61

FURNITURE DEALERS

Provisional Order: 7/3/61
 Final Order: 10/5/61
 Judicial Managers: C.W. TASMER
 A.J. MEINTJES

Successful: Discharged: 19/9/61

A business venture in 1954 had resulted in a substantial loss but this company was still able to meet liabilities. In 1959 and 1960 the company expanded further and made larger purchases with insufficient liquid assets due to failure to collect monies owing.

30. DENIS MOTORS (PTY) LTD CA 95/61

MOTOR DEALERS

Provisional Order: 14/3/61
 Final Order: 11/4/61
 Judicial Manager: A.J. MEINTJES

Unsuccessful: Liquidation No. CA 452/61

Lifting of restrictions on the import of new cars in 1960 caused the piling up of second hand cars with consequent dead capital. Judicial Manager was unable to put the business on a good footing.

31. ACAR ENGINEERING WORKS (PTY) LTD CA 148/61

MANUFACTURING OF 3 - 10 TON UNDERGROUND DIESEL LOCOMOTIVES,
PRECISION MANUFACTURING AND GENERAL ENGINEERING

Provisional Order: 20/4/61
Final Order: 30/5/61
Judicial Manager: W.B. DANKS

Unsuccessful: Liquidation No. CA 175/61 30/5/61

The company had been in provisional liquidation in 1958. It was found to be in a desperate financial position and no longer able to continue business.

32. CLARK MOTOR HAWK - BETHAL (EDMS) BPK CA 173/61

GARAGE AND MOTOR DEALERS

Provisional Order: 9/5/61
Final Order: 6/6/61
Judicial Manager: G.M. LAMPERT

Unsuccessful: Liquidation No. CA 438/61 24/10/61

Since much business was done with farmers who had had a bad season the expectation was that debts would be paid when conditions improved. A lucrative agency had been acquired but retention monies were not available. Expectations were not realised.

33. W.J. LEITH & CO (PTY) LTD CA 180/61

CIVIL ENGINEERS - BUILDING MAINLY RAILWAY SIDINGS

Provisional Order: 16/5/61
Final Order: 6/6/61
Judicial Manager: F.R. ST JOHN ACTON

Offer of compromise sanctioned 17/10/67

There had been a large turnover, but director's salaries were high and little control over men or use of vehicles. A profit was made in 1966 due to proper management and the acceptance of labour contracts which did not require capital.

34. G.W.S. MOTORS (PTY) LTD CA 201/61

GARAGE PROPRIETORS

Provisional Order: 30/5/61
 Final Order: 20/6/61
 Judicial Manager: F.R. ST JOHN ACTON

Successful: Discharged 12/11/63

The business was connected with CA 180/61. During Judicial Management it concentrated on its more lucrative activities.

35. GENERAL ELECTRONIC AND MECHANICAL CONSTRUCTION (PTY) LTD CA 204/61

IMPORTERS, EXPORTERS, DESIGNERS, MANUFACTURERS AND REPAIRERS OF RADIOS AND RADIO APPARATUS

Provisional Order: 30/5/61
 Final Order: 30/6/61
 Judicial Manager: C.R. BODEN

Unsuccessful: Liquidation No, CA 10/64
 24/12/63

The business was owed large amounts by a company that had gone into liquidation. This was also the period of change to very high frequency broadcasting.

36. CASIVAN (PTY) LTD CA 207/61

LICENSED HOTEL

Provisional Order: 1/6/61
 Final Order: 20/6/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. 441/31
 14/11/61

A sizeable overdraft existed due to mismanagement and insufficient profit. Sallaries were too high and large amounts of capital were drawn by the directors. Hotel was dirty, run down and of dubious reputation.

37. STEPHANIE HOTEL LTD CA 223/61

PRIVATE HOTEL - STEPHANIE GORDON HOTEL

Provisional Order: 6/6/61
 Final Order: 27/6/61
 Judicial Managers: S.R. WAKELY SMITH
 A.H. GUNN

Unsuccessful: Liquidation No. CA 342/61 29/8/61

Good class hotel of good reputation. Business run down and making insufficient profit. Insufficient capital for the Judicial Managers to improve and run the concern efficiently.

38. COLIN GORDON HOSPITAL (PTY) LTD CA 226/61

LARGE SCALE NURSING HOME BUSINESS

Provisional Order: 6/6/61
 Final Order: 27/6/61
 Judicial Manager: P.R. NELL

Unsuccessful: Liquidation No. CA 146/62 8/5/61

Though company was making profit, Nat Gordon, (dec. March 1962), who had absolute control of holding company, used monies for other purposes. Several offers of compromise refused.

39. C.C. BOEMER (PTY) LTD CA 256/61

GARAGE, GENERAL DEALERS, IMPORTERS, AGENTS

Provisional Order: 27/6/61
 Final Order: 18/7/61
 Judicial Manager: J. UYS

Suggested liquidation 24/10/61, but no court order filed.

Company dependant on farming community who had had three bad seasons. There was a trade recession and import restriction on motor vehicles. However it was believed that an 18 month moratorium may result in full payment.

40. ANKERETTE (EDMS) BPK.

CA 288/61

LADIES' OUTFITTERS

Provisional Order: 25/7/61
 Final Order: 15/8/61
 Judicial Manager: L.I. DREYER

Unsuccessful: Liquidation No. CA 167/62

Inexperienced managers pleaded that given time and good management creditors would be paid in full.

41. AFFLECK'S INVESTMENTS (PTY) LTD

CA 297/61

HOLDING AND FINANCE COMPANY OF 5 SUBSIDIARIES

Provisional Order: 5/8/61
 Final Order: 29/8/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. CA 378/61

There was a drop in sales of the group and lack of liquidity. No useful purpose could be served by keeping the company, only to administer the affairs of subsidiaries, most of which were under Judicial Management.

42. AFFLECK'S (BENONI) (PTY) LTD

CA 308/61

RETAIL FURNISHERS

Provisional Order: 15/8/61
 Final Order: 15/9/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. CA 434/61

Subsidiary of CA 297/61. Large rental and overheads made profit impossible.

43. AFFLECK'S & CO (PTY) LTD

CA 309/61

FURNITURE RETAILERS

Provisional Order: 15/8/61
 Final Order: 26/9/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. 377/61 26/9/61

Close examination of books showed a hopelessly insolvent subsidiary of 297/61

44. AFFLECK'S (KROONSTAD) (PTY) LTD

CA 310/61

FURNITURE RETAILER

Provisional Order: 15/8/61
 Final Order: 15/9/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. CA 433/61

Subsidiary of 297/61

45. AFFLECK'S (PRETORIA) (PTY) LTD

CA 311/61

FURNITURE RETAILER

Provisional Order: 15/8/61
 Final Order: 15/9/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No CA 431/61

Subsidiary of 297/61

46. AFFLECK'S (ROSETTENVILLE) (PTY) LTD

CA 312/61

FURNITURE RETAILER

Provisional Order: 15/8/61
 Final Order: 15/8/61
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. CA 432/61

Subsidiary of 297/61

47. ALET SNACK BAR (PTY) LTD

CA 348/61

RESTAURANT AND CAFE

Provisional Order: 29/8/61
 Final Order: 23/1/62
 Judicial Manager: S.W. LIEF

Unsuccessful: Liquidation No. 28/62 23/1/62

Business undercapitalized, but small profit. In December 1960 business was burgled and uninsured. Under Judicial Management turnover dropped.

48. LAWRENCE H. TEARLE & CO (PTY) LTD

CA 355/61

PUBLISHERS OF TECHNICAL JOURNALS

Provisional Order: 6/9/61
 Final Order: 7/11/61
 Judicial Manager: T.N. WHITTET

Unsuccessful: Liquidation No. 426/61

Previous managing director died and employees dismissed. Vain attempts were made by Judicial Manager to sell advertising space and it was decided that it was in the best interests of creditors to sell the journals.

49. MOUNTAIN VIEW STORES (PTY) LTD CA 369/61

OPERATING 11 NATIVE STORES IN BARBERTON DISTRICT

Provisional Order: 19/9/61
 Final Order: 17/10/61
 Judicial Manager: J.D.J. BRITS

Offer of compromise sanctioned 28/1/64

Too many shops resulted in lack of supervision and losses through mismanagement and theft. Best interests of creditors to dispose of business.

50. S.A. MICA PROCESS CO (PTY) LTD CA 371/61

MINERAL PROCESSING PLANT

Provisional Order: 19/9/61
 Final Order: 8/11/61
 Judicial Manager: J.N. KATZ

Unsuccessful: Liquidation No. CA 408/61 17/10/61

Continued breakdown of machinery caused further loss during Judicial Management

51. S.A. DRUGGISTS LTD CA 382/61

DISTRIBUTORS OF DRUGS, MEDICINES AND PHARMECEUTICAL PRODUCTS THROUGHOUT REPUBLIC

Provisional Order: 30/9/61
 Final Order: 24/10/61
 Judicial Manager: C.S. CORDER
 I. MACKENZIE
 W.L. DU PLESSIS

Successful: Judicial Management cancelled 7/4/64, and management reverted in Board of Directors.

Company connected with Standard Finance Company, liquidated 2/10/61. Standard bank holding large overdraft insisted on Judicial Management. All debts paid and liquidity restored.

52. P. VENTER & PARTNERS (PTY) LTD

CA 385/61

MECHANICAL AND CIVIL ENGINEERS

Provisional Order: 28/9/61
 Final Order: 24/10/61
 Judicial Manager: R.M. CROSS

Unsuccessful: Liquidation No. CA 156/64
 30/6/64

Exceptional rains in the area and difficulties with a provincial contract led to failure. Judicial Management was essential for completion of construction work, as liquidation at this stage would have been disastrous for the creditors.

53. LENNON LTD

CA 389/61

CHEMISTS, DRUGGISTS AND DISTRIBUTORS OF DRUGS, MEDICINES,
AND PHARMECEUTICAL PRODUCTS.

Provisional Order: 6/10/61
 Final Order: 31/10/61
 Judicial Managers: C.S. CORDER
 A.B. MURPHY
 I. MACKENZIE
 W.L. DU PLESSIS

Successful: Order cancelled 19/4/63

Management was fully revested in the directors. The holding company, S.A. Druggists Ltd, CA 380/61 was under control of Standard Finance Company and a liquidity problem arose through lack of efficient management and control and involvement in inter-company transactions. Closing of the business would affect goodwill.

54. PHARMACY HOLDINGS LTD

CA 390/61

**CHEMISTS, DRUGGISTS AND DISTRIBUTORS OF DRUGS, MEDICINES
AND PHARMACEUTICAL PRODUCTS**

Provisional Order:	6/10/61
Order varied:	17/10/61
Order cancelled:	14/11/61
Judicial Managers	C.S. CORDER A.B. MURPHY I. MACKENZIE W.L. DU PLESSIS

There is no information concerning the final outcome. It was a subsidiary of S.A. Druggists and Standard Finance Corporation. In 1960 it incurred a trading loss as well as payed the Heller Organisation a large administration fee. Moratorium requested to enable the Judicial Managers to reorganize the business and re-establish liquidity.

55. PIANO AND ELEKTRO (EDMS) BPK.

CA 392/61

DEALERS IN FURNITURE AND ELECTRICAL WARE

Provisional Order:	3?10/61
Final Order:	Nil
Judicial Manager:	A.J. MEINTJIES

<u>Unsuccessful:</u>	Liquidation No. CA 428/61 7/11/61
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The company moved to more expensive premises and most sales were on hire purchase, which caused a liquidity problem. The Judicial Manager found it impossible to place the company on a sound footing.

56. HYDRAULIC ENGINEERING AND SUPPLY CO LTD

CA 396/61

**MANUFACTURERS AND SUPPLIERS OF HYDRAULIC AND ENGINEERING
EQUIPMENT**

Provisional Order:	11/10/61
Final Order:	21/11/61
Judicial Manager:	B. KATZENELLENBOGEN

<u>Unsuccessful:</u>	Liquidation No. CA 486/61
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The business was heavily in debt, but the general feeling was that should it go into liquidation, valuable goodwill would be lost. However the Judicial Manager found that engineering contracts were conducted on a "trial and error" basis and there were few drawings and plans and many complaints from clients.

57. STUART JONES AND DAVID ANDERSON LTD CA 400/61

DISTRIBUTORS OF DRUGS, MEDICINES AND PHARMECEUTICALS

Provisional Order:	13/10/61
Final Order:	7/11/61
Judicial Managers:	C.S. CORDER A.B. MURPHY I. MACKENZIE W.L. DU PLESSIS

Successful: Order cancelled 4/12/62

The company was a subsidiary of S.A. Druggists Ltd and Standard Finance Corporation.

58. RANDFONTEIN INVESTMENTS (PTY) LTD CA 416/61

PROPERTY OWNING COMPANY

Provisional Order:	25/10/61
Final Order:	5/12/61
Judicial Manager:	L.D. DRUKER

Successful: Offer of compromise sanctioned 2/4/63

The entire income was derived from one block of flats. On the death of the Managing Director, the other directors failed to conduct business adequately. The affairs of the company were eventually placed in order apart from a mortgage bond held by a building society.

59. JOHN HARRISON & CO (PTY) LTD CA 487/61
 BUILDING CONTRACTORS
 Provisional Order: 12/12/61
 Final Order: 30/1/62
 Judicial Manager: J.P. GROENEWOUD
Unsuccessful: Liquidation
60. JOHN BULL INVESTMENTS (PTY) LTD CA 488/61
 PROPERTY OWNING COMPANY
 Provisional Order: 12/12/61
 Final Order: 27/2/62
 Judicial Manager: J.P. GROENEWOUD
Unsuccessful: Liquidation
61. CLEVELEYS (PTY) LTD CA 489/61
62. ANCHORSHOLME (PTY) LTD CA 490/61
63. BERGO PROPERTIES (PTY) LTD CA 491/61
64. MOUNT FLORIDA HOTELS (PTY) LTD CA 492/61
65. PHOENIX ESTATE (PTY) LTD CA 493/61
66. W.H. HARRISON CO (PTY) LTD CA 494/61
67. RED AND WHITE ROSE INVESTMENTS (PTY) LTD CA 495/61
68. MINNESOTA INVESTMENTS (PTY) LTD CA 496/61
69. SUMMERSEAT PROPERTIES (PTY) LTD CA 497/61
70. PENDLEHILL PROPERTIES (PTY) LTD CA 498/61
71. WAVELL HALL (PTY) LTD CA 499/61
72. ROSEMARY COURT (PTY) LTD CA 501/61

ALL PART OF JOHN BULL GROUP

73. SOUTH AFRICAN BOARD OF EXECUTORS AND TRUST CO LTD CA 24/62

ADMINISTRATION AND MANAGEMENT OF ESTATES

Provisional Order: 19/1/62
 Final Order: 10/4/62
 Judicial Manager: S.W. LIEF

Unsuccessful: Liquidation No. CA 116/62

Mismanagement and irregularities alleged, but it was thought that under Judicial Management large sums owing could be collected. The Judicial Manager found that rehabilitation was impossible.

74. NICOLLS "THE PRINTERS" (PTY) LTD CA 29/62

PRINTING COMPANY

Provisional Order: 24/1/62
 Final Order: 13/2/62
 Judicial Manager: R.J. KIDD

Unsuccessful: Liquidation No. CA 237/62

Volume of sales was insufficient to cover overheads and a heavy rental. Promises of funds were repudiated and the decision for immediate liquidation was made.

75. CAVENDISH INVESTMENTS (PTY) LTD CA 54/62

PROPERTY OWNING COMPANY

Provisional Order: 27/2/62
 Final Order: 21/3/62
 Judicial Managers: G.W. LAMPERT
 J. STEYN

Unsuccessful: Liquidation No. CA 231/62

There was an amount owing to the constructors of the building and no cash available to meet debts. As the building was fully let there was no likelihood of raising the rent.

76. DIE BOEREBANK BPK. CA 64/62

DEPOSIT RECEIVING INSTITUTION

Provisional Order: 5/3/62
 Final Order: Nil
 Judicial Managers: D.J. DU PREEZ
 N.R. LAKE

Unsuccessful: Liquidation No. CA 165/62

Irregularities in management led to liquidation.

77. B & B ENGINEERING (PTY) LTD CA 74/62

GENERAL ENGINEERING BUSINESS

Provisional Order: 14/3/62
 Final Order: Nil
 Judicial Manager: A.H. GUNN

Unsuccessful: Provisional Liquidation 10/4/62

There was no control of staff and insufficient turnover to cover overheads.

78. ABE-KATZ INVESTMENT (PTY) LTD CA 115/62

T/A CADORA CONFECTIONERY - BAKERS AND CONFECTIONERS

Provisional Order: 10/4/62
 Final Order: 1/5/62
 Judicial Manager: C.A.G. COOPER

Unsuccessful: Liquidation No. CA 311/62

Products were of poor quality, there was insufficient accounting control over retail outlets and ingredients in factory. The company's reputation suffered because of poor quality and competition.

79. WESTERN TRANSVAAL LEAD MINES LTD

CA 119/62

PROPERTY OWNING COMPANY

Provisional Order: 10/4/62
 Final Order: 31/7/62
 Judicial Manager: G.W. LAMPERT

Unsuccessful: Liquidation No. CA 262/63

Belief that the city would expand in the direction where the property was located did not materialise, none of it was sold and large amounts were owing on overdue rates.

80. GLENDOWER BOTTLE STORE (PTY) LTD

CA 122/62

RETAIL BOTTLE STORE

Provisional Order: 14/4/62
 Final Order: 8/5/62
 Judicial Manager: A. RUSKIN

Offer of compromise sanctioned 11/9/62

Failure was due to the contravention of the Liquor Act and fraud by the directors, with the result that the licence was immediately transferred to a third party.

81. DERMOT PROPERTIES (PTY) LTD

CA 127/62

PROPERTY OWNING COMPANY

Provisional Order: 24/4/62
 Final Order: 29/6/62
 Judicial Managers: S.R. WAKELY-SMITH
 C.R. BIRD

Unsuccessful: Liquidation No. CA 291/62

Alterations to the three flats in the building was necessary because of a contravention of Municipal by-laws. No useful purpose could be served by Judicial Management.

82. ACME TOOLS AND INDUSTRIES (PTY) LTD CA 134/62

HARDWARE AND PLUMBING SUPPLIERS

Provisional Order: 2/5/62
 Final Order: 13/6/62
 Judicial Manager: O. GETZ

Unsuccessful: Liquidation No. CA 247/62

Recession in building trade, debtors not honouring their promissory notes and general liabilities far in excess of assets led to liquidation.

83. MERSAND (PTY) LTD CA 136/62

GENERAL DEALERS

Provisional Order: 27/4/62
 Final Order: 12/6/62
 Judicial Manager: S. BER

Unsuccessful: Liquidation No. CA 374/62

Business had been lucrative but since the controlling interest had been sold the new director had placed the concern into debt by withdrawal of cash to conduct business of a private nature. Judicial Management could not be successful as the company was "hopelessly insolvent".

84. TRINIDAD AND GENERAL ASPHALT CONTRACTING CO LTD CA 143/62

WATERPROOFING ENGINEERS AND CONTRACTORS

Provisional Order: 8/5/62
 Final Order: 29/5/62
 Judicial Manager: K.C. WHYTE

Offer of compromise sanctioned 25/6/63

The company restricted its activities to make good deficiencies on a large contract. Mismanagement and accounting problems added to the difficulties.

85. GRENFELL STORES (PTY) LTD CA 158/62

WHOLESALE MERCHANTS

Provisional Order: 22/5/62
 Final Order: 12/6/62
 Judicial Management: S. BER

Unsuccessful: Liquidation No. CA 374/62

Business had been good but since controlling interests had been sold, the new director put the concern into debt by large withdrawals of cash to finance private business ventures, and the company was "hopelessly insolvent".

86. BEVILACQUA ROMANI (PTY) LTD CA 157/62

BUILDING CONTRACTORS

Provisional Order: 19/5/62
 Final Order: 26/6/62
 Judicial Manager: P. DE KLERK

Unsuccessful: Liquidation No. CA 339/63

Insufficient financial resources to withstand large amounts owing in retention monies. Judicial Managers recommended liquidation after the completion of an outstanding contract.

87. VAN RIEBEECKSTAD DEVELOPMENT COMPANY (PTY) LTD CA 182/62

PROPERTY OWNING COMPANY

Provisional Order: 5/6/62
 Final Order: 3/7/62
 Judicial Manager: F.B. WILLIAMSON

Unsuccessful: Liquidation No. CA 340/62

In 1958 a falling off in property market and lack of confidence in mines in the area resulted in few stands being sold, and no agreement was possible.

88. F. VAN NIEKERK AND SONS (PTY) LTD CA 207/62

PROPERTY OWNING AND FARMING COMPANY

Provisional Order: 26/6/62
 Final Order: 17/7/62
 Judicial Manager: A. RUSKIN

Successful: Discharged 7/12/65

Farming suffered due to droughts and illness of the Managing Director. Judicial Management seriously hampered sale of stands as no guarantee of transfer of purchaser could be given.

89. LICHTENBURG BOUWARE (PTY) LTD CA 216/62

DEALERS IN BUILDING MATERIALS

Provisional Order: 5/7/62
 Final Order: 14/8/62
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. CA 318/63

Failure was due to building recession, a fire destroyed a shed and action was taken against the Insurance Company, who repudiated the claim. The company was making a profit but had cash flow problems.

90. S. SEEF AND COMPANY LTD CA 217/62

ESTATE AGENTS

Provisional Order: 9/7/62
 Final Order: Nil
 Judicial Managers: A. RUSKIN
 R.D. MEESER

Unsuccessful: Liquidation No. CA 228/62

Short term loans were invested in long term securities, the company over-traded and was undercapitalised. The widow of the Managing Director requested Judicial Management to allow time for the assets to be realised. There would be a disastrous effect if all properties should be put on the market simultaneously.

91. PROPERTY CERTIFICATES LTD CA 222/62

FINANCIAL AND INVESTMENT COMPANY

Provisional Order: 11/7/62
 Final Order: Nil
 Judicial Managers: R.D. MEESER
 A. RUSKIN

Unsuccessful: Liquidation No. CA 224/62

The company ran parallel with S. Seef and Co. Ltd, and the reasons for Judicial Management and subsequent failure were similar.

92. CATERING EQUIPMENT SUPPLIES CO (PTY) LTD CA 225/62

MANUFACTURERS AND SELLERS OF CATERING EQUIPMENT

Provisional Order: 13/7/62
 Final Order: 7/8/62
 Judicial Manager: R. WAKELY-SMITH

Unsuccessful: Liquidation No. CA 14/64
 14/1/64

Books were not properly kept for some years and widening activities led to difficulties. The company was undercapitalised and the heavy competition resulted in sales being made at uneconomic prices.

93. THE SOUTH AFRICAN UNIPLUG CO LTD CA 239/62

ENGINEERING COMPANY

Provisional Order: 30/7/62
 Final Order: Nil
 Judicial Managers: J.R.R. WELLS
 L.D. DRUKER

Unsuccessful: Liquidation No. CA 308/62
 16/10/62

There were no liquid resources and the necessary finance could not be raised. Products were not readily saleable as they were highly priced and the premises were unsatisfactory.

94. DIAMOND DRY CLEANERS (PTY) LTD

CA 245/62

DRY CLEANERS AND DYERS

Provisional Order: 31/7/62
 Final Order: 21/8/62
 Judicial Manager: L.I. DREYER

Successful: Offer of compromise sanctioned 24/12/63

The company lacked effective management due to the death of one of the directors. Overheads were excessive and insufficient effort was made to meet competition. In addition, one of the directors borrowed heavily and this caused cash flow problems.

95. UNIPLUG (PTY) LTD

CA 253/62

ENGINEERING COMPANY

Provisional Order: 7/8/62
 Final Order: Nil
 Judicial Managers: J.R. WELLS
 L.D. DRUKER

Unsuccessful: Liquidation No. CA 309/62
 16/10/62

Failure was attributed to losses sustained prior to sale of assets, public flotation of S. A. Uniplug Co. Ltd was a failure and accommodation transactions by the company resulted in over-payments to certain parties.

96. FRITZMORR EXPLORATION (PTY) LTD

CA 276/62

ACQUISITION OF MINERAL AND MINING RIGHTS AND DEVELOPMENT
CONTRACTING FOR SUPPLY OF IRON ORE

Provisional Order: 1/9/62
 Final Order: Nil
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. CA 361/62
 13/12/62

The iron ore mined was of poor quality and mismanagement led to over-commitment.

97. JOHN H. FAURIE (PTY) LTD CA 290/62

BUILDING CONTRACTORS

Provisional Order: 25/9/62
 Final Order: 16/10/62
 Judicial Manager: S.R. WAKELY-SMITH

Unsuccessful: Liquidation No. CA 29/63
 29/1/63

The building slump resulted in no more new contracts and fierce competition. The Judicial Managers found that liabilities far exceeded expected profits.

98. MONSEIGNEUR RESTAURANTS (PTY) LTD CA 305/62

RESTAURANT BUSINESS

Provisional Order: 16/10/62
 Final Order: 27/11/62
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. CA 36/63

Business was short of capital.

99. AFRICAN MUTUAL CREDIT ASSOCIATION LTD CA 347/62

INVESTMENT SOCIETY

Provisional Order: 29/11/62
 Final Order: Nil
 Judicial Managers: N.R. LAKE
 P.K. MCKINNON
 S.R. JONES

Unsuccessful: Liquidation No. CA 79/63

All funds were invested with Crusader Investments Co Ltd, CA 7/63, Amca Services Ltd, CA 348/62 and Business Buying and Investment Co Ltd, CA 349/62. These companies were all placed under Judicial Management. They, in turn, invested in 44 other companies which were all engaged in business of a speculative nature and sustained heavy losses.

100. AMCA SERVICES LTD

CA 348/62

HOLDING COMPANY FOR AMCA GROUP OF COMPANIES AND
COLLECTION AGENCY FOR AFRICAN MUTUAL CREDIT ASSO-
CIATION.

Provisional Order: 30/11/62
Final Order: Nil
Judicial Managers: N. R. LAKE
P. K. MCKINNON
L. D. DRUKER

Unsuccessful: Liquidation No. CA 150/63

As this company was associated with African Mutual Credit Association Ltd, the reasons for failure were similar.

101. BUSINESS BUYING AND INVESTMENT COMPANY LTD

CA 349/62

INVESTMENT AND HOLDING COMPANY

Provisional Order: 30/11/62
Final Order: Nil
Judicial Managers: E. H. REID
N. R. LAKE

Unsuccessful: Liquidation No. CA 312/63

As this company was associated with African Mutual Credit Association Ltd and Amca Services Ltd, the reasons for failure were similar.

102. ORIENT MANGANESE COMPANY LTD

CA 350/62

MANGANESE MINE

Provisional Order: 30/11/62
Final Order: Nil
Judicial Managers: P. K. MCKINNON
E. H. REID

Unsuccessful: Liquidation No. CA 183/65

Incorrect mining methods and resources were drained by heavy charges by AMCA Group. During Judicial Management work was hampered by breakdowns and floods.

103. PROVINCE MINES LTD CA 352/62

INVESTMENT, HOLDING , PROPERTY OWNING AND MINING COMPANY

Provisional Order: 30/11/62
 Final Order: Nil
 Judicial Managers: L.D. DRUKER
 S.R. JONES

Unsuccessful: Liquidation No. CA 187/63

In May 1962 this company, together with Orient Manganese Company, CA 350/62, bound itself as surety for Fritzmoor Exploration, CA 276/62, which collapsed, causing a heavy drain on the companies' resources.

104. GERBL BOUKONTRAKTEURS (EDMS) BPK. CA 364/62

BUILDERS AND BUILDING CONTRACTORS

Provisional Order: 18/12/62
 Final Order: 22/1/63
 Judicial Manager: J.C. OELOFSE

Successful: Discharged 13/8/63

The company was involved in a lucrative contract which, on completion, should enable the company to pay off creditors. The Judicial Manager stated that Creditors held the Managing Director responsible for the difficulties.

105. SPRINGBOK COMMISSION AGENCIES (PTY) LTD CA 366/62

MARKET COMMISSION AGENTS

Provisional Order: 21/12/62
 Final Order: Nil
 Judicial Manager: J. STEYN

Unsuccessful: Liquidation No. CA 19/63

Business deteriorated due to the death of the Managing Director and the other directors were unable to carry on the volume of business adequately.

106. E.F. KNOEFEL (PTY) LTD

CA 2/63

BUILDERS AND CONTRACTORS

Provisional Order: 3/1/63
 Final Order: 29/1/63
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. CA 182/63

Substantial losses were incurred due to poor condition of the building trade. On completion of contracts there was no possibility of the company paying its debts.

107. CRUSADER INVESTMENT CO LTD

CA 7/63

INVESTMENT COMPANY OWNING A BLOCK OF FLATS AND A GROUP OF HOTELS IN LIQUIDATION

Provisional Order: 11/1/63
 Final Order: Nil
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. CA 169/63

The company was without control as the directors, (also the directors of Amca) were on a fraud charge. The request was that this company be placed under Judicial Management that the affairs of the group could be handled as an entity.

108. VREDEFORT BAZAAR (PTY) LTD

CA 64/63

GENERAL DEALERS

Provisional Order: 20/2/63
 Final Order: 19/3/63
 Judicial Manager: R.H. VINGOE

Unsuccessful: Liquidation No. CA 274/63

Large amounts were owing by farmers whose crops are harvested in July and August. The Judicial Managers found insufficient assets.

109. JOROY ESTATES (PTY) LTD

CA 86/63

MILK DISTRIBUTORS T/A BRIDGEWATER FARM DAIRIES

Provisional Order: 20/3/63
 Final Order: 21/5/63
 Judicial Manager: J. STEYN
 A. RUSKIN

Successful: Discharged 28/1/64

The company recovered from its former setbacks and its profit earning capacity manifested itself after a longer trading period.

110. ARCHITRACTORS (PTY) LTD

CA 99/63

BUILDING CONTRACTORS

Provisional Order: 22/3/63
 Final Order: 16/4/63
 Judicial Manager: C. FRAM

Offer of compromise sanctioned 8/10/63

Large building contracts had to be completed which enabled the company to pay its creditors and continue business.

111. YALE ELECTRIC CO (PTY) LTD

CA 151/63

MANUFACTURERS OF STOVES AND ELECTRICAL APPLIANCES

Provisional Order: 21/5/63
 Final Order: Nil
 Judicial Manager: E.H. REID

Unsuccessful: Liquidation No. CA 255/63

The Judicial Manager found the firm hopelessly insolvent.

112. BUHRS BUILDING (PTY) LTD CA 173/63

BUILDING CONTRACTORS

Provisional Order: 4/6/63
 Final Order: Nil
 Judicial Manager: C. FRAM

Unsuccessful: Liquidation No. CA 184/63
 18/6/63

The company was mismanaged due to the ill health and subsequent death of the Managing Director.

113. TRAVEL AND TRADE PROMOTIONS (PTY) LTD CA 181/63

PRODUCERS OF TRAVEL PUBLICATIONS

Provisional Order: 4/6/63
 Final Order: 25/6/63
 Judicial Manager: C. MENT
 G.W. LAMPERT

Unsuccessful: Liquidation No. CA 251/64
 17/11/64

The introduction of a second magazine seemed to trigger off losses.

114. REFOIL OIL AND PROCESSING COMPANY (PTY) LTD CA 193/63

TRADE MARK - DORMANT COMPANY

Provisional Order: 18/6/63
 Final Order: 16/7/63
 Judicial Manager: S.R. WAKELY-SMITH

Successful: Discharged 20/10/64

The directors re-instated the company in existence solely for the trade mark, "Refoil", therefore there were no assets or liabilities. The parent company was Kudu Oil.

115. KUDU OILS (PTY) LTD

CA 208/63

REFINERS OF CRUDE OIL

Provisional Order: 18/6/63
 Final Order: 16/7/63
 Judicial Manager: S.R. WAKELY-SMITH

Offer of compromise sanctioned 23/3/65

There was insufficient capital at the outset and the company took time to settle due to the inexperience of its employees. Further capital was sought and an offer of compromise was accepted.

116. PLASTER OF PARIS SUPPLIES AND INDUSTRIES TVL (PTY) LTD

CA 242/63

MANUFACTURERS, SUPPLIERS AND PRODUCERS OF PLASTER OF PARIS PRODUCTS

Provisional Order: 6/8/63
 Final Order: 29/10/63
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Discharged 30/6/64

Insufficient capital and difficulty in finding suitable staff caused the failure of the company.

117. JANKS MOTORS (PTY) LTD

CA 256/63

CAR DEALERS

Provisional Order: 20/8/63
 Final Order: 10/9/63
 Judicial Manager: J.R.R. WELLS

Offer of compromise sanctioned 23/2/65

High overheads and ill health of the Managing Director led to difficulties.

118. NATAL SOUTH SEA INVESTMENT TRUST LTD CA 265/63

ACQUIRING STANDS, BUILDING AND SELLING FLATS IN MARGATE

Provisional Order: 3/9/63
 Final Order: 1/19/63
 Judicial Managers: B.B. OERTELL
 N.W. BOYES
 D.N. LEVITT

Unsuccessful: Liquidation No. CA 190/65
 22/6/65

Attempts to raise a bond failed. Judicial Management was requested to gain time to reconstruct the company, but this, too, failed.

119. WESTERN HOTELS (PTY) LTD CA 269/63

HOTEL AND BOTTLE STORE

Provisional Order: 10/9/63
 Final Order: 1/10/63
 Judicial Managers: J.C. STEYN
 P.C. NEL

Unsuccessful: Liquidation No. CA 94/64

The staff was incompetent, and systems of control inadequate. The directors interfered with the progress of Judicial Management .

120. HOWEC METALS (PTY) LTD CA 317/63

SMELTERS AND FOUNDERS – MANUFACTURE AND SALE OF ALUMINIUM ALLOYS

Provisional Order: 22/10/63
 Final Order: 12/11/63
 Judicial Managers: C.F. SIMMONS
 S.R. WAKELY-SMITH

Unsuccessful: Liquidation 8/12/64

The company was in liquidation, but was placed under Judicial Management in the hope that a new smelting furnace might prove successful. This failed too, however

121. A.B. RADIO SALES (PTY) LTD CA 375/63

RADIO, WATCH AND GENERAL DISTRIBUTORS

Provisional Order: 17/12/63
 Final Order: 14/1/64
 Judicial Manager: M.I. SHORE
 C.D. KRUGER

Unsuccessful: Liquidation No. CA 138/64
 12/5/64

Misappropriation of stock and funds by the manager led to insufficient liquid resources.

122. MALLIN DIAMOND MINES LTD CA 11/64

MINING OPERATIONS

Provisional Order: 13/1/64
 Final Order: 11/2/64
 Judicial Manager: J.R.R. WELLS

Unsuccessful: Liquidation No, CA 32/64
 18/2/64

Floods in the mine in 1960 caused extensive damage and resulted in marginal operations.

123. CLAXTON PUBLIC BAZAARS (PTY) LTD CA 25/64

RETAILERS IN GROCERIES, HARDWARE AND SOFTS

Provisional Order: 31/1/64
 Final Order: Nil
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. CA 42/64
 25/2/64

No capital but the business was good until a price war by a nation wide chain store lead to difficulties. The Judicial Managers found that liabilities far exceeded assets and recommended liquidation.

124. TRAMORE INVESTMENTS (PTY) LTD

CA 17/64

ASSETS WERE MINING RIGHTS BUT THE COMPANY WAS DORMANT

Provisional Order: 14/1/64
 Final Order: 11/2/64
 Judicial Manager: W.M. BALLANTYNE

Unsuccessful: Liquidation No. CA 272/64

Judicial Management was sought in the hope that negotiations concerning the sale of mining rights to Union Corporation would enable the company to settle its debts, but the sale did not take place.

125. STABILITY MINING CORPORATION (PTY) LTD

CA 81/64

ACTED AS AGENTS IN SALE OR PRODUCTION OF MINING VENTURES

Provisional Order: 1/4/64
 Final Order: 1/5/64
 Judicial Manager: L. D. DRUKER

Successful: Cancelled 8/4/65

Subsequent to Judicial Management, registration of certain contracts was concluded and debts were paid in full except for those of an associated company and directors who agreed to reduce or suspend their claims.

126. PONGOLA AGENTSKAPPE BPK.

CA 102/64

AGENTS FOR FARMERS REQUISITES, GENERAL DEALER AND GARAGE

Provisional Order: 28/4/64
 Final Order: 26/5/64
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 444/67

The company was illiquid due to purchase of property, mismanagement, loss of oil stock and through carrying unproductive lines.

127. EAGLE EXPORT CORPORATION (PTY) LTD CA 123/64

RETAILERS OF FURNITURE, HOUSEHOLD AND ELECTRICAL
APPLIANCES

Provisional Order: 22/5/64
Final Order: Nil
Judicial Manager: J. STEYN

Unsuccessful: Liquidation No. CA 139/64

Overbuying of stock and advertising in 1963 resulted in increased liabilities and heavy losses.

128. HEDLEY'S HARDWARE AND PAINT CENTRE (PTY) LTD CA 146/64

HARDWARE AND PAINT RETAILERS

Provisional Order: 24/6/64
Final Order: 29/7/64
Judicial Manager: L.R. TOBIAS

Offer of compromise sanctioned 17/11/64

The company was undercapitalized and overtraded. Judicial Management resulted in injection of capital and the company was put on a sound footing.

129. AFRICAN COAL AGENCY (PTY) LTD CA 199/64

COAL SUPPLIERS

Provisional Order: 4/9/64
Final Order: 22/9/64
Judicial Manager: G.W. LAMPERT

Offer of compromise sanctioned 19/1/65

Price war was uneconomical to supply consumers and customers lost. Stopping of road levy increased the price of coal, and there was a shortage. The Judicial Manager considered it unprofitable to continue trading but an offer of compromise was made and accepted.

130. MULTI-FASHIONS (PTY) LTD CA 224/64

CLOTHING MANUFACTURERS

Provisional Order: 13/10/64
 Final Order: Nil
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. CA 269/64

Business was undercapitalised.

131. PHALABORWA CRUSHERS (EDMS) BPK. CA 237/64

STONE CRUSHERS

Provisional Order: 3/11/64
 Final Order: 24/11/64
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. CA 28/65

Income was insufficient to meet hire purchase commitments on equipment and it proved impossible to raise funds to run the company efficiently.

132. PHALABORWA VERVOERMAATSKAPPY (EDMS) BPK. CA 14/65

TRANSPORT CONTRACTORS

Provisional Order: 26/1/65
 Final Order: Nil
 Judicial Managers: A.H. GUNN
 C.H. LAWRENCE

Unsuccessful: Liquidation No. CA 48/65

The building of a railway line between Phalaborwa and Hoedspruit took away most of the business, so the company moved to the East Rand. Directors in each centre therefore had difficulty in co-ordination. The Judicial Managers found contracts unprofitable and business was spread over too wide an area.

133. STANDARD SAW MILLS (PTY) LTD

CA 32/65

SAW MILLERS

Provisional Order: 11/2/65
 Final Order: 2/3/65
 Judicial Manager: J.E. LABUSCHAGNE

Successful: Discharged 10/12/68

Investment in a similar business drained capital, and there was gross mismanagement of the company's affairs. A new manager was appointed and arrangements were made for the discharge of debts.

134. WELVERDIEND BOTTLE STORE (PTY) LTD

CA 34/65

BOTTLE STORE

Provisional Order: 18/2/65
 Final Order: Nil
 Judicial Manager: G.W. LAMPERT

Outcome unknown

Turnover dropped when the Managing Director fell seriously ill.

135. NAIRN CHEMICAL COMPANY (PTY) LTD

CA 31/65

MANUFACTURERS OF RUST-PROOFING CHEMICALS AND RUST
PROOFING SERVICES

Provisional Order: 3/2/65
 Final Order: Nil
 Judicial Manager: S.V.W. VAN DEN HOVEN

Unsuccessful: Liquidation No. CA 45/65

There were technical and staff difficulties. According to the Judicial Manager the company should not have been placed under Judicial Management as it could not operate at a profit under the present conditions.

136. HENRY PLEN AND COMPANY (PTY) LTD

CA 58/65

SHIPPERS AND FINANCIERS

Provisional Order: 11/3/65
 Final Order: 13/4/65
 Judicial Managers: C. FRAM
 K.C. WHYTE

Unsuccessful: Liquidation No. CA 135/65
 8/6/65

The spread of assets and liabilities rendered the company highly illiquid, and according to the Judicial Manager no satisfactory solution could be found.

137. BEUKMANS OF BELLEVUE (PTY) LTD

CA 78/65

FURNITURE DEALERS

Provisional Order: 26/3/65
 Final Order: Nil
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. CA 121/65
 21/4/65

There were allegations of mismanagement, but there is no Judicial Manager's report.

138. HOYBOR CASTINGS (PTY) LTD

CA 81/65

ENGINEERING AND MINING SUPPLIERS

Provisional Order: 31/3/65
 Final Order: 18/5/65
 Judicial Manager: S.R. WAKELY-SMITH

Unsuccessful: Liquidation No. CA 120/65

Shortages of steel and insufficient electric power since inception of the company. Profits were only marginal and therefore prospects of Judicial Management were doubtful.

139. MAYS MOTORS (PTY) LTD

CA 92/65

GARAGE AND USED CAR DEALER

Provisional Order: 7/4/65
 Final Order: Nil
 Judicial Manager: J.N. WHITTET

Unsuccessful: Liquidation No. CA 139/65

Due to the acquisition of two further businesses, the company experienced illiquidity. Liabilities also far exceeded assets.

140. ZELIGSON AND FRAM (PTY) LTD

CA 109/65

PRINTERS

Provisional Order: 4/5/65
 Final Order: 1/6/65
 Judicial Manager: H. KRYSTALL

Unsuccessful: Liquidation No. CA 178/65

The sudden death of the chief shareholder and manager the company got into difficulties. Clients were personal friends of the manager and the Judicial Manager found it difficult to conduct business.

141. VAC-U-SEAL COOKERS (PTY) LTD

CA 171/65

MANUFACTURERS OF COOKING UTENSILS

Provisional Order: 3/8/65
 Final Order: 9/7/65
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. CA 230/65

Negligent administrative practices led to a state of insolvency from which, the Judicial Manager stated, the company would never recover.

142. VIVO-CORUNDUM MINES (PTY) LTD CA 186/65

METAL MINE

Provisional Order: 20/6/65
 Final Order: Nil
 Judicial Manager: L.D. DRUKER

Judicial Management Order set aside on 31/8/65

No report, but the petitioner states that no provision was made for meeting expenses.

143. TRAPONE CONSTRUCTION (PTY) LTD CA 197/65

BUILDING CONTRACTORS

Provisional Order: 3/8/65
 Final Order: Nil
 Judicial Manager: J. PERKEL

Unsuccessful: Liquidation No. CA 5/66

The company relied on financial assistance from a company which had gone into liquidation. Difficulty was experienced in obtaining cash and there was no trading after Judicial Management.

144. PRECISION BOLTS (PTY) LTD CA 216/65

MANUFACTURERS OF SMALL PARTS FOR VALVES, SHOCK ABSORBERS AND OTHER MACHINERY

Provisional Order: 31/8/65
 Final Order: Nil
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. CA 249/65

The works manager seemed incapable of running a factory and this incurred great losses. New manufacturing licences involved expense and therefore liabilities exceeded assets.

145. THERMECH ENGINEERING TRANSVAAL (PTY) LTD

CA 221/65

ENGINEERS, GENERAL CONTRACTORS AND FABRICATORS

Provisional Order: 7/9/65
 Final Order: 28/9/65
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. CA 263/66

Proceeds of a certain contract were ceded to another company which was in trouble, and there was no prospect of creditors being paid in full.

146. TRANSVAAL BOOT AND SHOE MANUFACTURING CO (PTY) LTD

CA 229/65

FOOTWEAR MANUFACTURERS

Provisional Order: 23/9/65
 Final Order: Nil
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. CA 252/65

The company had been mismanaged for some time, and no useful purpose would be served by continuing it.

147. ALIX COURT (PTY) LTD

CA 287/65

PROPERTY INVESTMENT COMPANY

Provisional Order: 17/11/65
 Final Order: 7/12/65
 Judicial Manager: T.N. WHITTET

Successful: Discharged 13/12/66

During Judicial Management Super Construction (Pty) Ltd, CA 289/65, completed a block of flats which were subsequently sold.

148. SUPER CONSTRUCTION (PTY) LTD CA 289/65

CONSTRUCTION COMPANY

Provisional Order: 17/11/65
 Final Order: 7/12/65
 Judicial Manager: T.N. WHITTET

Successful: Discharged 13/12/66

Due to the credit squeeze Alix Court (Pty) Ltd defaulted on instalment payments for building of flats which were half completed. Under Judicial Management the contract was completed and creditors paid.

149. HENSHALL'S GARAGE (LOWVELD) (PTY) LTD CA 290/65

150. HENSHALL'S GARAGE (BARBERTON) (PTY) LTD CA 291/65

MOTOR DEALERS AND GARAGE PROPRIETORS

Provisional Order: 19/11/65
 Final Order: 7/12/65
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation

The Managing Director had embarked on other ventures and neglected the business. The Judicial Manager collected all outstanding debts and as the companies were insolvent Judicial Management would serve no purpose.

151. TOY WOOD AND COAL (PTY) LTD CA 293/65

DEALERS IN WOOD AND COAL IN ORKNEY AND POTCHEFSTROOM

Provisional Order: 19/11/65
 Final Order: 14/12/65
 Judicial Manager: B.G.S. DE WET

Unsuccessful: Liquidation No. CA 112/66

The company was mismanaged and there were no cash resources.

152. WIENTAL ESTATES (PTY) LTD CA 300/65

CIVIL AND STRUCTURAL ENGINEERS

Provisional Order: 23/11/65
 Final Order: Nil
 Judicial Manager: R. TOBIAS

Unsuccessful: Liquidation No. T 222/67
 4/4/67

The company had been under provisional liquidation, but under Judicial Management it was felt that contracts could be completed. There was a dispute with a Government Department but continuation of this was felt not to be in the interests of creditors.

153. NADINE (EDMS) BPK. CA 4/66

LADIES OUTFITTERS

Provisional Order: 29/12/65
 Final Order: 25/1/66
 Judicial Manager: C.H. DU PLOOY

Unsuccessful: Liquidation No. T 311/67
 18/4/67

Business was aimed mainly at university students, but trading was slack during the holidays and the books were not properly kept.

154. D.H.V. INGENIEURSWERKE (EDMS) BPK. CA 11/66

CONTRACTORS TO CIVIL ENGINEERS

Provisional Order: 6/1/66
 Final Order: 15/2/66
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. CA 252/66
 16/8/66

Contracts forming the main source of revenue were not successful, inability to pay debts and there was no hope of forthcoming contracts.

155. S. VELDMAN AND COMPANY (EDMS) BPK. CA 22/66

MANUFACTURERS OF WOODEN HOUSES AT INDUSTRIAL SITES

Provisional Order: 21/1/66
 Final Order: 22/2/66
 Judicial Manager: M. SCHWARTZ

Offer of compromise sanctioned 29/7/66

There was an agreement that another company should take over, but it was repudiated. During this time no business was done. Assets would barely have covered the costs of Judicial Management, and an offer of compromise was recommended.

156. AFRICAN ELECTRONIC CONTROL EQUIPMENT (PTY) LTD CA 29/66

MANUFACTURERS OF ELECTRONIC EQUIPMENT

Provisional Order: 2/2/66
 Final Order: Nil
 Judicial Manager: S.W. LIEF

Unsuccessful: Liquidation No. CA 79/66
 8/3/66

The company was unable to meet its obligations because of mismanagement. Overheads were high, control of staff poor and little control was kept over the purchase of raw materials.

157. MOGOL MOTORS (PTY) LTD CA 45/66

DEALERS IN MOTOR VEHICLES AND GARAGE

Provisional Order: 21/2/66
 Final Order: Nil
 Judicial Manager: C.W. TASMER

Unsuccessful: Liquidation No. CA 57/66

Excessive trade-in allowances were given and the company failed to sell these vehicles. This resulted in loss of liquidity and the inability to purchase spare parts in bulk. Drought affected the farmers, the company's chief customers.

158. CLARKE AND DE JAGER INVESTMENTS (PTY) LTD CA 46/66

PROPERTY OWNING COMPANY

Provisional Order: 21/2/66
 Final Order: 15/3/66
 Judicial Manager: C.W. TASMER

Unsuccessful: Discharged 21/9/71

The company was associated with Mogol Motors (Pty) Ltd, CA 45/66, and the reasons for failure were similar.

159. DECLA (PTY) LTD CA 47/66

MOTOR VEHICLE DEALERS AND GARAGE

Provisional Order: 21/2/66
 Final Order: Nil
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. CA 58/66

A large overdraft with Barclays Bank guaranteed by Central Service Farm Implements (Pty) Ltd, CA 49/66, which went into liquidation, was called up.

160. WARMBATHS MOTORS (PTY) LTD CA 48/66

MOTOR VEHICLE DEALERS AND GARAGE

Provisional Order: 21/2/66
 Final Order: Nil
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. CA 81/66
 15/3/66

The franchise of Massey Ferguson tractors and vehicles was discontinued and made business impossible.

161. CENTRAL SERVICE FARM IMPLEMENTS (PTY) LTD CA 49/66

MOTOR VEHICLE DEALERS AND GARAGE

Provisional Order: 21/2/66
 Final Order: 15/3/66
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. CA 174/66

The company had guaranteed a large overdraft with Barclays Bank, and no finance was available.

162. VAALWATER MOTORS (PTY) LTD CA 50/66

MOTOR VEHICLE DEALERS AND GARAGE

Provisional Order: 21/2/66
 Final Order: Nil
 Judicial Manager: C.W. TASMER

Unsuccessful: Liquidation No. CA 59/66

The company was associated with Mogol Motors (Pty) Ltd, CA 45/66, and Clark and De Jager Investments (Pty) Ltd, CA 46/66, and the reasons for failure were similar.

163. PARTRIDGE TRANSFORMERS (PTY) LTD CA 55/66

MANUFACTURERS OF ELECTRONIC EQUIPMENT

Provisional Order: 25/2/66
 Final Order: Nil
 Judicial Manager: S.W. LIEF

Unsuccessful: Discharged 19/4/66

The company was associated with African Electronic Control Equipment (Pty) Ltd, CA 29/66, and was unable to pay its debts.

164. RUBBER AND PLASTICS INDUSTRIES (PTY) LTD

CA 64/66

RUBBER MOULDERS AND EXTRUDERS

Provisional Order: 25/2/66
 Final Order: 19/4/66
 Judicial Manager: A. RUSKIN

Offer of compromise sanctioned 9/4/68

Substantial contracts with the Railways were not renewed, but business was combined with new contracts and succeeded.

165. O.F.S. JUTE COMPANY (PTY) LTD

CA 71/66

CONSIGNMENT AGENTS AND JUTE BAG DEALERS

Provisional Order: 1/3/66
 Final Order: 23/3/66
 Judicial Managers: F.J. CILLIE
 C.A. BRUYNS

Unsuccessful: Liquidation No. CA 344/66

After UDI many lucrative contracts failed and there were no more raw materials to be imported from Rhodesia.

166. GRACIOUS LIVING (PTY) LTD

CA 92/66

DEALERS IN HIGH CLASS FURNITURE AND ORNAMENTS

Provisional Order: 22/3/66
 Final Order: Nil
 Judicial Manager: G.D. KOTZE

Unsuccessful: Liquidation No. T 152/67

As a result of a claim not being settled in error, court judgement was given against the company and creditors demanded immediate payment. Anticipated high turnovers at Christmas did not materialise.

167. M.C. SONNEKUS MEUBLES (EDMS) BPK. CA 109/66

FURNITURE DEALERS

Provisional Order: 29/3/66
 Final Order: 26/4/66
 Judicial Manager: G.D. KOTZE

Unsuccessful: Liquidation No. CA 196/66

The credit squeeze resulted in difficulty in financing business, which depended on hire purchase. The Judicial Manager recommended liquidation as discounting facilities were not available.

168. UNION WIDE BUILDERS SUPPLIES (PTY) LTD CA 117/66

BUILDERS SUPPLIERS

Provisional Order: 12/4/66
 Final Order: 3/5/66
 Judicial Manager: F.R. ST J. ACTON

Unsuccessful: Liquidation No. T 740/68
 24/9/68

The company was a supplier to 30 contractors in a group of companies which were owned by associates and creditors. The Judicial Manager could not press debtors for payment as they in turn would go into liquidation, and the resolution was to continue Judicial Management until the contracts were completed.

169. COMBRINK ALGEMENE HANDELAARS (EDMS) BPK. CA 128/66

GENERAL DEALERS

Provisional Order: 21/4/66
 Final Order: 7/6/66
 Judicial Manager: M. SCHWARTZ

Offer of compromise sanctioned 1/8/67

There was insufficient capital at the outset.

170. H.M. SCHNETLER (PTY) LTD

CA 139/66

BUILDING CONTRACTORS

Provisional Order: 26/4/66
 Final Order: 17/5/66
 Judicial Manager: O.C. BUCHEL

Unsuccessful: Liquidation No. T 511/68
 2/7/68

Judicial Management was requested to enable the company to complete certain contracts.

171. MELROSE FOOTWEAR (PTY) LTD

CA 147/66

FOOTWEAR MANUFACTURERS

Provisional Order: 29/3/66
 Final Order: 26/4/66
 Judicial Managers: A.I. KALVARI
 M. SCHWARTZ

Unsuccessful: Liquidation No. CA 325/66

The company overcapitalised in plant and machinery and was committed to too many heavy payments.

172. D.F. JOUBERT AND COMPANY LTD

CA 178/66

FURNITURE RETAILERS

Provisional Order: 1/6/66
 Final Order: Nil
 Judicial Manager: A. RUSKIN
 S. V.N VAN DER HOVEN

Offer of compromise sanctioned 15/11/66

The company traded at a loss in 1965 and the entire share capital was lost.

173. J.H. CURTIS AND SONS (PTY) LTD CA 225/66

ELECTRICAL AND MECHANICAL ENGINEERS AND CONTRACTORS

Provisional Order: 9/8/66
 Final Order: 13/9/66
 Judicial Managers: C. FRAM
 L. KAPLAN

Successful: Discharged 1/3/67

The company sustained substantial losses during 1965 due to unprofitable contracts. Due to the volume of work the company had to employ unreliable artisans. Good contracts, better management and retrenchment of staff and sale of motor vehicles brought about the recovery of the company.

174. C.R. OPPERMAN (PTY) LTD CA 240/66

BUILDING CONTRACTORS AND DEALERS IN PROPERTY

Provisional Order: 23/8/66
 Final Order: Nil
 Judicial Manager: C.R. LANSDOWN
 D.P. KLEYN

Unsuccessful: Discharged 4/10/66

Speculative building was highly successful up to 1966 but the raising of the bond rate limited credit and the necessity to reduce the overdraft caused loss of liquidity and difficulty in selling houses in various stages of completion.

175. ITALIC CONSTRUCTION COMPANY (PTY) LTD CA 247/66

BUILDERS

Provisional Order: 23/8/66
 Final Order: 18/10/66
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 868/69

Mismanagement and failure to procure sufficient funds to complete buildings under construction led to liquidation.

176. FULMARK CORPORATION (PTY) LTD CA 281/66

AIR CONDITIONING AND REFRIGERATING ENGINEERS AND CONTRACTORS

Provisional Order: 25/10/66
 Final Order: 22/11/66
 Judicial Manager: C. DU T. KRUGER

Offer of compromise sanctioned 11/7/67

During February 1966 there was a phase of illiquidity. Creditors agreed to freeze claims until September, but no further funds were available. Judicial Management found that the company had overtraded and was mismanaged.

177. ALLAN'S WIRE PRODUCTS (PTY) LTD CA 300/66

MANUFACTURERS AND SELLERS OF WIRE PRODUCTS

Provisional Order: 8/11/66
 Final Order: 30/11/66
 Judicial Manager: C.A. BRUYNS

Offer of compromise sanctioned 12/9/67

Ill health and subsequent death of the managing director resulted in mismanagement. Judicial Management was necessary to place the company on a sound footing.

178. PHALABORWA RUSKAMP EN DRANKWINKEL (EDMS) BPK. CA 314/66

BOTTLE STORE

Provisional Order: 25/11/66
 Final Order: Nil
 Judicial Managers: A. RUSKIN
 M. DU PREEZ

Unsuccessful: Liquidation No. T 40/67

The company was hopelessly insolvent and therefore unable to purchase stock.

179. PHALABORWA HOTEL (EDMS) BPK.

CA 315/66

HOTEL

Provisional Order: 25/11/67
 Final Order: Nil
 Judicial Managers: A. RUSKIN
 M. DU PREEZ

Unsuccessful: Liquidation No. T 117/67
 7/2/67

The Judicial Managers found the business hopelessly insolvent.

180. H.F. CLARK (PTY) LTD

CA 324/66

BUILDING CONTRACTORS

Provisional Order: 6/12/66
 Final Order: Nil
 Judicial Manager: C. FRAM

Offer of compromise sanctioned 4/4/67

There was a dispute between the company and a quantity surveyor about building a block of flats.

181. OOS RAND DRUKKERS (EDMS) BPK.

CA 331/66

PRINTERS AND PUBLISHERS

Provisional Order: 12/12/66
 Final Order: Nil
 Judicial Manager: B.G.S. DE WET

Unsuccessful: Liquidation No. T 84/67

Since inception the company had never operated at a profit.

182. RAY'S TRANSPORT (PTY) LTD T 250/67

TRANSPORT CONTRACTOR

Provisional Order: 19/4/67
 Final Order: Nil
 Judicial Manager: C.A. BRUYNS

Unsuccessful: Liquidation No. T 443/67
 27/6/67

Lack of capital, illiquidity and mismanagement of the company caused its downfall.

183. CHRIDON REFRIGERATION AND ELECTRICAL (PTY) LTD T 278/67

ELECTRICAL CONTRACTORS

Provisional Order: 25/4/67
 Final Order: Nil
 Judicial Manager: H.S.E. JONES

Unsuccessful: Liquidation No. T 441/67

The company could not complete its contracts in the rainy season, the builders were on holiday and there were no cash resources.

184. UMBRIC (PTY) LTD T 292/67

HOTELIER AT HOTEL SAVOY

Provisional Order: 9/5/67
 Final Order: 6/6/67
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 750/67
 27/10/70

A large amount of capital was invested to improve the dilapidated condition of the hotel to star ranking. In view of property development in the area it was decided to carry on business on a cash basis as no further liabilities were being incurred.

185. SPRINGBOK CONSTRUCTION (PTY) LTD

T 310/67

BUILDING CONTRACTORS

Provisional Order: 12/5/67
 Final Order: Nil
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 480/67

There was a dispute concerning a large amount owing on contracts, and others were incomplete. In his report, the Judicial Manager stated " I am of the opinion that the company cannot be salvaged by Judicial Management and in the interests of the creditors that it be wound up."

186. A.B.C.D. HOMES (PTY) LTD

T 357/67

MANUFACTURERS AND SELLERS OF FACTORY MADE HOUSES AND OTHER STRUCTURES

Provisional Order: 30/5/67
 Final Order: Nil
 Judicial Managers: G.W. COX
 A.H. GUNN

Unsuccessful: Liquidation No. T 577/67

The business was mismanaged almost since its inception due to inexperienced staff. No further cash resources were available.

187. WALLY HAMMAN CONSTRUCTION (PTY) LTD

T 370/67

CIVIL ENGINEERS

Provisional Order: 7/6/67
 Final Order: 4/7/67
 Judicial Managers: S.W. LIEF
 J.R.R. WELLS

Offer of compromise sanctioned 29/10/68

Due to the company's being behind schedule on two large contracts, it stood to lose very heavily. Judicial Management negotiated penalties, which were minimised and liquidation was thus avoided.

188. RHINO MOTOR BODY CONSTRUCTION COMPANY (PTY) LTD

T 426/67

MANUFACTURERS OF MOTOR PARTS

Provisional Order: 20/6/67
 Final Order: 11/7/67
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 819/67
 7/11/67

Judicial Management resulted in debtors avoiding payments, which aggravated the liquidity situation. There were no new contracts and key employees resigned.

189. E.X. LINDEGGER (PTY) LTD

T 583/67

GENERAL ENGINEERING — MANUFACTURERS OF CRANES, HOISTS AND CONVEYORS

Provisional Order: 11/8/67
 Final Order: Nil
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. T 758/67

The company was inactive during the first part of 1967. The company was in the process of executing orders for which payment would not be made until completion.

190. THE BARD INVESTMENTS (PTY) LTD

T 591/67

T/A TIFFANY'S RESTAURANT AND SHAKESPEARE BAR

Provisional Order: 15/8/67
 Final Order: 12/9/67
 Judicial Manager: C.H. LAWRENCE

Offer of compromise sanctioned 7/8/68

Through mismanagement the business fell into debt. Judicial Management advised creditors to accept the offer of compromise, as in the event of liquidation assets would not even cover the cost of Judicial Management.

191. KLIPNAN INVESTMENTS (PTY) LTD

T 610/67

BOTTLE STORE

Provisional Order: 22/8/67
 Final Order: 17/10/67
 Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. T 313/68

The business was run on a cash basis but credit had been allowed and debts were not paid. No good purpose would be served by continuing Judicial Management.

192. ANDY'S CARAVAN AND HARDWARE (EDMS) BPK.

T 615/67

DEALERS IN CAMPING EQUIPMENT, CARAVAN PARTS, BUILDING MATERIALS AND HARDWARE

Provisional Order: 22/8/67
 Final Order: 12/9/67
 Judicial Manager: P.T.C. THORNE

Unsuccessful: Liquidation No. T 825/67

Much stock was second hand and the liabilities were not accurately reflected. Present monthly takings were not profitable and no purpose would be served by continuing Judicial Management.

193. TIGER HARDWARE AND PLUMBING REQUISITES (PTY) LTD

T 631/67

GENERAL DEALER IN HARDWARE AND TENDERER OF HARDWARE FOR LARGE CONSTRUCTION FIRMS

Provisional Order: 29/8/67
 Final Order: 13/2/67
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. T 391/69

An overdraft was recalled which resulted in a lack of working capital.

194. KLIPTOWN BOTTLE STORE (PTY) LTD T 662/67

RETAIL BOTTLE STORE

Provisional Order: 12/9/67
 Final Order: 17/10/67
 Judicial Manager: M. SCHWARTZ

Offer of compromise sanctioned 17/9/68

There was little administrative control and indiscriminate credit was allowed.

195. CARSET CONSTRUCTION COMPANY (PTY) LTD T 747/67

CIVIL ENGINEERING CONTRACTORS

Provisional Order: 11/10/67
 Final Order: 3/11/67
 Judicial Manager: S.N. CCLAM

Unsuccessful: Liquidation No. T 915/67

It was considered that completion of a contract for building of a bridge would bring in cash for distribution, but no resources were available for completion.

196. ARMOCON (EDMS) BPK. T 764/67

CONSTRUCTION ENGINEERS

Provisional Order: 24/10/67
 Final Order: Nil
 Judicial Manager: C.C. STEYN

Unsuccessful: Liquidation No. T 795/67

Certain work had been condemned and therefore not paid for. The Judicial Manager was convinced that, as work on a bridge contract had been defective, the company could not continue business or rectify the defects.

197. SOETMELKSVLEI CONSOLIDATED COAL MINE (PTY) LTD

T 866/67

COAL MINE

Provisional Order: 24/11/67
 Final Order: 27/12/67
 Judicial Manager: C.F. SIMMONS

No information is available as to whether Judicial Management was successful or not.

198. CAP ENGINEERING (PTY) LTD

T 101/68

ENGINEERING WORKS

Provisional Order: 6/2/68
 Final Order: Nil
 Judicial Manager: P.T.C. THORNE

Unsuccessful: Liquidation No. T 182/68

Heavy penalties were incurred through default on a contract. Due to a dispute in this regard no cash was available, and the Judicial Manager recommended liquidation.

199. S.T.P. KRUGER KONSTRUKSIE (EDMS) BPK.

T 146/68

CIVIL ENGINEERING CONTRACTORS

Provisional Order: 28/2/68
 Final Order: 26/3/68
 Judicial Manager: J.H. NIEWOUDT

Successful: Discharged 17/11/70

Substantial losses were incurred on a road building contract because of rain. The affairs of the company improved to such an extent that all debts were paid in full.

200. YORKE ROYSTON (PTY) LTD

T 226/68

MANUFACTURERS AND SUPPLIERS OF ELECTRICAL AND MECHANICAL GOODS

Provisional Order: 19/3/68
 Final Order: 23/4/68
 Judicial Managers: A.H. GUNN
 P.B. OERTEL

Offer of compromise sanctioned 8/10/68.

Mismanagement by director and inadequate sales organisation as well as substantial withdrawals by him caused a state of illiquidity.

201. CONTEMPO-LITHO (PTY) LTD

T 251/68

PRINTERS

Provisional Order: 22/3/68
 Final Order: 21/5/68
 Judicial Manager: B.G.S. DE WET

Unsuccessful: Liquidation No. T 1027/73

High discounts were allowed to obtain cash to continue the business, but the company remained illiquid.

202. SPEEDSEAL PLASTICS (PTY) LTD

T 264/68

MANUFACTURERS AND DISTRIBUTORS OF PLASTIC OFFICE EQUIPMENT

Provisional Order: 29/3/68
 Final Order: 14/5/68
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. T 763/68

The company's poor financial situation was attributed to association with two companies, Plastorama and Foremost Packaging Corporation (both in liquidation), all under the directorship of one man deceased 26/3/68.

203. CORONATION FREEHOLD ESTATES TOWN AND MINES LTD T 499/68

PROPERTY OWNING AND MINING COMPANY

Provisional Order: 25/6/68
 Final Order: 20/8/68
 Judicial Managers: C.R. LANSDOWN
 W.L. DU PLESSIS

Unsuccessful: Liquidation No. T 152/70

There was a setback in diamond mining activities due to mudrush and illiquidity. There was a belief that a diamond pipe was sufficiently rich to warrant Judicial Management, but it was impossible to resuscitate the mine without the injection of substantial funds which were not available.

204. ACE TEXTILES (PTY) LTD T 513/68

TEXTILES KNITTING COMPANY

Provisional Order: 4/7/68
 Final Order: Nil
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 576/68

There was not enough capital from the start. A move to larger premises resulted in loss of production and the Judicial Manager was unable to raise funds to resume trading.

205. GENERAL TRACTOR AND AUTO SPARES (PTY) LTD T 546/68

DEALERS IN SPARE PARTS FOR VEHICLES

Provisional Order: 23/7/68
 Final Order: 20/8/68
 Judicial Manager: C.N. LAWRENCE

Unsuccessful: Liquidation No. T 920/68

Initial overbuying of stock caused cash flow problems. The drop in turnover during Judicial Management showed that continuation would result in greater losses to creditors.

206. MAURICE THE FLORIST (PTY) LTD

T 550/68

FLORIST

Provisional Order: 23/7/68
 Final Order: 20/8/68
 Judicial Manager: J.C. PORTER

Unsuccessful: Liquidation No. T 27/69

Lack of capital and the need to give more credit to customers than the size of the business could cope with as well as high overheads resulted in failure.

207. FABERECT CORPORATION (PTY) LTD

T 569/68

FABRICATION OF STEEL STRUCTURES AND PRESSURE VESSELS

Provisional Order: 30/7/68
 Final Order: 8/10/68
 Judicial Managers: C.C. STEYN
 C.H. LAWRENCE

Offer of compromise sanctioned 11/2/69

Mismanagement and theft caused illiquidity.

208. CHARLES BRAND (PTY) LTD

T 570/68

BUILDERS AND CONTRACTORS

Provisional Order: 31/7/68
 Final Order: Nil
 Judicial Managers: A.H. GUNN
 C.R. LANSDOWN

Offer of compromise sanctioned 22/10/68

The company sought the assistance of another company who advanced cash and later made the offer of compromise.

209. FOLB AND SONS MALT FACTORY (PTY) LTD T 591/68

DEALERS IN KAFFIR CORN AND MANUFACTURERS OF KAFFIR
CORN MALT AND SPROUTS

Provisional Order: 6/8/68
Final Order: Nil
Judicial Manager: C.F. SIMMONS

Unsuccessful: Liquidation No. T 693/68

A low quality of Kaffir corn was purchased resulting in a low grade product. Major customers were lost, turnover dropped and there was an oversupply.

210. DAVIDSON CONSTRUCTION (PTY) LTD T 595/68

CONSTRUCTION ENGINEERS AND BUILDING CONTRACTORS

Provisional Order: 21/5/68
Final Order: 22/7/68
Judicial Manager: M. SCHWARTZ

Offer of compromise sanctioned 6/5/69

Illiquidity in 1967 was due to the credit squeeze.

211. MEYERTON SUPERMARKET AND DELICATESSEN (PTY) LTD T 625/68

SUPERMARKET AND DELICATESSEN

Provisional Order: 13/8/68
Final Order: 3/9/68
Judicial Manager: L.D. DRUKER

Offer of compromise sanctioned 18/2/68

Due to oversight in settling an account with a creditor, it sued and judgement was given against the company. Other creditors became suspicious and demanded immediate settlement, which the company was unable to do.

212. EGGBEAT (PTY) LTD

T 689/68

RESTAURANT AND CAFE

Provisional Order: 10/9/68
 Final Order: 8/10/68
 Judicial Manager: C.F. SIMMONS

Unsuccessful: Liquidation No. T 9/71

The business had operated at a loss since its inception as it had been run by inefficient hired staff. The Judicial Manager found it impossible to carry on business at a profit, and it was sold 18/2/69.

213. T.M.C. LEATHER AND FUR COMPANY (PTY) LTD

T 823/68

TANNER AND PROCESSOR OF HIDES

Provisional Order: 29/10/68
 Final Order: Nil
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 300/69

One of a group of companies known as Tiger Estates (Pty) Ltd, T 825/68.

214. TIGER PLANT HIRE AND INVESTMENT (PTY) LTD

T 824/68

HIRING PLANT AND EQUIPMENT INCLUDING AIRCRAFT

Provisional Order: 29/10/68
 Final Order: 3/12/68
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 299/69

Though the liabilities exceeded the assets, the company was in a position to continue trading as its overheads were low.

215. TIGER ESTATES (PTY) LTD

T 825/68

FARMING BUSINESS

Provisional Order: 29/10/68
 Final Order: Nil
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 135/69

The activities of the group were too diversified, and due to the illness of the director there was little control.

216. TIGER CONSTRUCTION COMPANY (PTY) LTD

T 826/68

BUILDING CONSTRUCTION SPECIALISING IN WATER AND SEWERAGE RETICULATION

Provisional Order: 29/10/68
 Final Order: Nil
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 130/69

The company bought equipment on hire purchase and due to lack of working capital could not keep up payments and the equipment was repossessed.

217. GOVENDER'S BOTTLE STORE (PTY) LTD

T 884/68

BOTTLE STORE, BAR AND RESTAURANT

Provisional Order: 19/11/68
 Final Order: Nil
 Judicial Manager: C.A. BRUYNS

Offer of compromise sanctioned 11/3/69

In 1968 an amendment to the Liquor Act prevented the company from delivering liquor to black townships. This had been a substantial part of the company's business.

218. BROWN'S HOTEL (PTY) LTD

T 921/68

HOTEL IN WARMBATHS

Provisional Order: 26/11/68
 Final Order: 7/1/69
 Judicial Manager: G.D. KOTZE

Offer of compromise sanctioned 20/5/69

An increase in the bond to effect repairs and renovations to comply with the requirements for classification by the liquor board caused illiquidity. Further assistance was needed and this was obtained during the period of Judicial Management.

219. VOLT ELECTRONICS (PTY) LTD

T 940/68

MANUFACTURERS AND LESSORS OF BURGLAR ALARMS AND
BURGLAR ALARM SYSTEMS

Provisional Order: 17/12/68
 Final Order: 21/1/69
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. T 325/69

High costs of establishing the business left the company short of working capital. The Judicial Manager found no justification for continuation as the rentals were not as substantial as expected.

220. HEINRICH SCHAFFRATH (PTY) LTD

T 1/69

ORGAN BUILDERS

Provisional Order: 24/12/68
 Final Order: 28/1/69
 Judicial Manager: G.D. KOTZE

Successful: Discharged 24/3/70
 Liquidation 2/2/71

There was a backlog of valuable contracts due to the difficulty in finding skilled staff.

221. HOOFSTAD FINANSIELE ADVISEURS (EDMS) BPK.

T 2/69

ROADHOUSE

Provisional Order: 9/12/68
 Final Order: Nil
 Judicial Manager: C.H.H. SCHEEPERS

Unsuccessful: Liquidation No. T 203/69.

Hiring of two stands at the Pretoria show was a financial failure and put the company in an illiquid position. Judicial Management could not serve any purpose.

222. WESPO INDUSTRIES (EDMS) BPK.

T 20/69

ENGINEERS AND TOOLMAKERS

Provisional Order: 10/1/69
 Final Order: 28/1/69
 Judicial Manager: G.D. KOTZE

Unsuccessful: Liquidation No. T 276/69

The Judicial Manager found the business hopelessly insolvent and recommended immediate liquidation.

223. WADEVILLE METAL MANUFACTURING COMPANY (PTY) LTD

T 125/69

FOUNDERS AND GENERAL ENGINEERS

Provisional Order: 25/2/69
 Final Order: 22/4/69
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. T 304/69

The company was undercapitalised and the Judicial Manager was not able to raise funds.

224. VAN JAARVELD TRANSPORT (PTY) LTD

T 233/69

TRANSPORT CONTRACTORS

Provisional Order: 1/4/69
 Final Order: 29/4/69
 Judicial Manager: V.E. BLACK (resigned)
 L. KLOPPER (appointed 13/7/72)

Unsuccessful: Liquidation No. T 832/72

The company transported coal, but there was a slack period in the coal mining industry. Large amounts were spent in expanding the firm which caused illiquidity.

225. LUNGA PAUSA (PTY) LTD

T 237/69

HOTEL AND OFF SALES

Provisional Order: 3/4/69
 Final Order: 29/4/69
 Judicial Manager: J.H. JOUBERT

Assets sold by court order 27/5/70

There was a financial setback for the company when its liquor licence lapsed due to an oversight. Stocks were overpurchased and the hotel was overstaffed. Judicial Management was forced to sell the assets.

226. EUREKA BUILDING CONTRACTORS (PTY) LTD

T 275/69

BUILDING CONTRACTORS

Provisional Order: 18/4/69
 Final Order: 6/5/69
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. T 789/69

The building boom resulted in a shortage of skilled labour, and failure to complete contracts timeously. After all contracts were completed the company was liquidated.

227. P.P.A.P. PROPERTIES (PTY) LTD T 285/69

PROPERTY OWNING COMPANY

Provisional Order: 22/4/69
 Final Order: 27/5/69
 Judicial Manager: G.W. LAMPERT

Successful: Discharged 26/11/74

The company was in financial difficulties as rentals were insufficient to meet interest on bonds and current rates and taxes. Rentals were raised to keep up bond instalments and several offers for properties were made.

228. DON JUAN (EDMS) BPK T 361/69

RETAILERS IN MENS AND BOYS CLOTHING

Provisional Order: 28/5/69
 Final Order: Nil
 Judicial Manager: C.W. TASMER

Unsuccessful: Liquidation No. T 573/69

At a very early stage it was apparent that the company could not pay its creditors as there was insufficient capital.

229. GREY BOORKONTRAKTEURS (PTY) LTD T 440/69

DRILLING CONTRACTORS

Provisional Order: 24/6/69
 Final Order: 15/7/69
 Judicial Manager: C.H. LAWRENCE

Unsuccessful: Liquidation No. T 16/70

The death of the Managing Director who controlled and supervised affairs, and the death of another key member of the firm resulted in difficulties. Debtors, most of them farmers, could not honour their obligations due to a drought and the remaining director lacked experience in running the firm smoothly. As the company was not making a profit, liquidation was recommended.

230. SLATTERY PROPERTIES (PTY) LTD

T 677/69

PROPERTY OWNING COMPANY

Provisional Order: 24/9/69
 Final Order: 10/2/70
 Judicial Managers: J.L. NEL
 W.L. DU PLESSIS

Successful: Discharged 22/8/72

T.D. Slattery and Son (Pty) Ltd occupied property owned by this company and were unable to pay the rent.

231. T.D. SLATTERY AND SON (PTY) LTD

T 678/69

MANUFACTURERS AND DISTRIBUTORS OF AGRICULTURAL MACHINERY

Provisional Order: 24/9/69
 Final Order: 10/2/70
 Judicial Managers: J.L. NEL
 W.L. DU PLESSIS

Successful: Discharged 22/8/72

The company's main product was the "Slattery Combine". Due to a good maize season in 1967 the company experienced record sales. The General Manager increased production but two poor seasons left the company with surplus stock. Loans were raised for increased production, but the company was unable to make repayments. After a complete managerial re-organisation and two years of Judicial Management the company showed a profit. Massey-Ferguson purchased some of the share capital provided the companies were reconstituted.

232. SLATTERY RESEARCH AND DEVELOPMENT (PTY) LTD

T 680/69

RESEARCH INTO AGRICULTURAL MACHINERY

Provisional Order: 24/9/69
 Final Order: 10/2/70
 Judicial Manager: J.L. NEL
 W.L. DU PLESSIS

Successful: Discharged 22/8/72

233. SLATTERY INVESTMENTS (PTY) LTD

T 779/69

INVESTMENT AND HOLDING COMPANY

Provisional Order: 21/10/60
 Final Order: 24/2/70
 Judicial Managers: J.L. NEL
 W.L. DU PLESSIS

Successful: Discharged 22/8/72

Financial difficulties were due to those of T.D. Slattery and Son (Pty) Ltd,
 T 678/69.

234. ELBREE PRECISION ENGINEERING (PTY) LTD

T 785/69

MANUFACTURER OF MACHINERY, TOOLS, ELECTRICAL
EQUIPMENT, MECHANICAL AND OPTICAL TOOLS AND CON-
STRUCTIONAL WORK

Provisional Order: 11/11/69
 Final Order: Nil
 Judicial Manager: P.T.C. THORNE

Judicial Management set aside 27/1/70.

Costs of production had been underestimated, technicians were inefficient
 and there was a lack of ready cash. No further information is available
 whether Judicial Management was successful or not.

235. BRIAN CONSTRUCTION (PTY) LTD

T 843/69

CONSTRUCTION COMPANY

Provisional Order: 17/12/69
 Final Order: 13/1/70
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 711/70

Losses were incurred through bad weather and there was no continuity
 of building contracts. Difficulty with a large contract which was delayed
 by the Municipality caused illiquidity as the company was depending on the
 proceeds of this to repay creditors.

236. ETOSHA CONSTRUCTION COMPANY (PTY) LTD

T 851/69

BUILDING AND CONSTRUCTION COMPANY

Provisional Order: 19/12/69
 Final Order: 20/1/70
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 345/70

Every effort was made to complete contracts that were outstanding but the Provincial Authorities were not satisfied.

237. W. & D. CONTRACTORS (PTY) LTD

T 54/70

BUILDING CONTRACTORS

Provisional Order: 3/2/70
 Final Order: Nil
 Judicial Manager: L. COHEN

Offer of compromise sanctioned 26/5/70

The company was operating at a profit but diversification caused illiquidity. A large contract which was believed to be profitable was not, and liquidation was recommended.

238. DOMINION EARTHWORKS (PTY) LTD

T 67/70

ROAD BUILDERS IN BOTSWANA AND MALAWI

Provisional Order: 11/2/70
 Final Order: Nil
 Judicial Managers: C.F. SIMMONS
 C.A. BRUYNS

Unsuccessful: Liquidation No. T 383/70

Disputes with the City Council of Johannesburg and the Government of Malawi caused illiquidity, and there was no prospect of Judicial Management succeeding.

239. KYALAMI EXCAVATORS (PTY) LTD

T 137/70

EXCAVATION, SITE LEVELLING AND HIRING OF EXCAVATION
EQUIPMENT

Provisional Order: 27/2/70
 Final Order: 31/3/70
 Judicial Manager: M. SCHWARTZ

Offer of compromise sanctioned 19/10/71

Certain contracts were not as lucrative as anticipated and payments on others were outstanding. The Judicial Manager recommended liquidation, but on the offer being made it was accepted.

240. J. & R. TRANSPORT (PTY) LTD

T 143/70

TRANSPORT COMPANY

Provisional Order: 3/3/70
 Final Order: Nil
 Judicial Manager: R.R. BARNES

Unsuccessful: Liquidation 28/4/70

Management was uneconomic, there were no funds to continue trading and efforts to raise cash were unsuccessful.

241. JASSAT BROTHERS (KLERKSDORP) (PTY) LTD

T 315/70

RETAIL STORES

Provisional Order: 8/5/70
 Final Order: Nil
 Judicial Manager: R.H. VINGOE

Successful: Discharged 2/6/70

Due to the ill health of the Managing Director the company was mismanaged. On the death of the Managing Director the company was again placed under Judicial Management. See T 654/70.

242. ROVIC DIAMONDS (PTY) LTD

T 469/70

DIAMOND MINING COMPANY

Provisional Order: 10/7/70
 Final Order: 27/10/70
 Judicial Manager: C. LIPSCHITZ

Offer of compromise sanctioned 24/8/71

Preparation for mining took longer than anticipated. A shortage of capital was the result of the poor investment climate in South Africa. The method of mining resulted in theft and mismanagement, and the price of diamonds dropped. Centralisation improved security but the difficulties remained and it was decided to sell the company.

243. VANRAFF BELEGGINGS (EDMS) BPK.

T 495/70

BOTTLE STORE

Provisional Order: 23/7/70
 Final Order: Nil
 Judicial Managers: L.KLOPPER
 A.J. MEINTJIES

Unsuccessful: Liquidation No. T 612/70

Mismanagement, and undercapitalisation caused difficulties in the company.

244. GOLLUBS (PTY) LTD

T 501/70

MANUFACTURERS AND IMPORTERS OF MACHINERY FOR THE BUILDING INDUSTRY

Provisional Order: 24/7/70
 Final Order: Nil
 Judicial Managers: J. PERKEL
 L. DRUKER

Unsuccessful: Liquidation No. T 521/70

The Managing Director's special skills were needed for the business, and Judicial Management resulted in cancellation of contracts.

245. ULBRICK INVESTMENTS (PTY) LTD

T 532/70

HOUSE TO HOUSE SALES OF DEEP FREEZE REFRIGERATORS

Provisional Order: 6/8/70
Final Order: 6/10/70
Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 1449/72

The company had a contract to supply packs of fresh meat to the buyer of deep freezers, but the second company faced criminal charges of dealing without a licence. The company was subsequently liquidated with large amounts owing to Ulbrick Investments.

246. TIMS CONTRACTORS (PTY) LTD

T 553/70

EXCAVATORS, DEMOLISHERS AND EARTH MOVERS

Provisional Order: 11/8/70
Final Order: 8/9/70
Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 94/71

Provisional Liquidation Order was set aside 14/7/70 in favour of Judicial Management. The claim of a liquidating creditor was purchased in an effort to assist the company.

247. JASSAT BROTHERS (KLERKSDORP) (PTY) LTD

T 654/70

RETAIL STORES

Provisional Order: 10/9/70
Final Order: 27/10/70
Judicial Manager: R.H. VINGOE

Successful: Cancelled 21/6/72

The licence of the business could not be transferred to an Indian because the company was in liquidation. This was a result of legislation in the Group Areas Act. When the estate of the deceased was liquidated there was sufficient cash available to the heirs to rescue the company.

248. B.S. CONTRACTORS (PTY) LTD

T 680/70

PLUMBING CONTACTORS

Provisional Order: 6/10/70
 Final Order: 27/10/70
 Judicial Manager: L. KLOPPER

Unsuccessful: Liquidation No. T 1380/72

Judicial Management was forced to apply for liquidation as the company had no more contracts to complete, and none more were forthcoming.

249. GARLAND CONTRACTORS (PTY) LTD

T 734/70

LANDSCAPE GARDENERS

Provisional Order: 20/10/70
 Final Order: 17/11/70
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 54/71

The company was undercapitalised and had no facilities to complete its contracts. No purpose could be served by continuation of Judicial Management.

250. NAGILA INVESTMENTS (PTY) LTD

T 744/70

NAGILA RESTAURANT

Provisional Order: 23/10/70
 Final Order: 24/11/70
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 112/71

A fire on the premises caused extensive damage, and the company was unable to continue business.

251. ALOE ENGINEERING INDUSTRIES (PTY) LTD

T 751/70

MANUFACTURERS OF STAINLESS STEEL WARE AND ALLIED PRODUCTS

Provisional Order: 28/10/70
 Final Order: 12/1/71
 Judicial Manager: R. MILLMAN

Offer of compromise sanctioned 20/7/71

Mismanagement in marketing and over-investment in plant and machinery led to difficulties. There was a lack of costing systems and a disproportionate rise in administration expenses. Under Judicial Management a profit was made and negotiations were made to pay creditors in full over a period.

252. E.F. EVERSMEYER AND COMPANY (PTY) LTD

T 872/70

DEALERS IN BAKING EQUIPMENT AND INGREDIENTS

Provisional Order: 17/11/70
 Final Order: Nil
 Judicial Manager: B.G.S. DE WET

Offer of compromise sanctioned 27/4/71

A subsidiary company, trading unprofitably, caused heavy losses. The company was undercapitalised for a large turnover.

253. SNELBOU (EDMS) BPK.

T 881/70

BUILDERS OF REINFORCED CONCRETE HOUSES AND BUILDINGS

Provisional Order: 1/12/70
 Final Order: Nil
 Judicial Manager: C.J.J. VAN DER MERWE

Unsuccessful: Liquidation No. T 7/71

Illiquidity and a shortage of working capital caused difficulties. Losses were incurred due to rising costs of material and labour.

254. KRUMACH CONSTRUCTION (PTY) LTD

T 70/71

BUILDING CONTRACTORS

Provisional Order: 29/1/71
 Final Order: Nil
 Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 153/71

Shortage of working capital and mismanagement caused illiquidity.

255. BLUE REEF CONSTRUCTION (EDMS) BPK.

T 80/71

BUILDING CONTRACTORS

Provisional Order: 2/2/71
 Final Order: 23/2/71
 Judicial Managers: B.G.S. DE WET
 W. HANCKE

Unsuccessful: Liquidation No. T 239/71

Bad management resulted in no confidence in the company and there was no financial backing.

256. KADISH HOLDINGS (PTY) LTD

T 103/71

WHOLESALE DEALERS IN NEW AND RECONDITIONED FURNITURE
AND HOUSEHOLD GOODS

Provisional Order: 8/2/71
 Final Order: 30/3/71
 Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 1054/73

Certain debtors failed to meet their obligations and an offer of compromise did not meet with the requirements. Ill health of a former director who had continued in the employ of the company caused the closing of the business.

257. P.G.J. KOORNHOOF UMZUMBE BPK.

T 104/71

ESTATE DEVELOPERS AND OWNERS

Provisional Order: 8/2/71
 Final Order: Nil
 Judicial Managers: B.G.S. DE WET
 W. HANCKE

Unsuccessful: Liquidation No. T 402/71

Blue Reef Construction, T 80/70, had built holiday homes for the company and a large sum was needed to transfer the property. Judicial Management would not be able to help put the company in a position to pay debts in full.

258. ALRODE ENTERPRISES (PTY) LTD

T 114/71

TRANSPORT BUSINESS

Provisional Order: 9/2/71
 Final Order: 9/3/71
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 1110/71

The Judicial Manager found the company progressively unable to pay the debts owing and recommended liquidation.

259. A.S. DUNSTAN (PTY) LTD

T 120/71

BUILDING CONTRACTOR IN TRANSVAAL AND NATAL

Provisional Order: 15/1/71
 Final Order: 9/3/71
 Judicial Manager: P.D. ALEXANDER

Offer of compromise sanctioned 22/8/72

Large losses in contracting were the result of mismanagement and over-competitive prices. Judicial Management was anticipated to last two years as the situation was in the process of improving.

260. SIRCLES (KLERKSDORP) (PTY) LTD T 139/71

SUPERMARKET

261. SIRCLES (PTY) LTD T 146/71

SUPERMARKET

262. SIRCLES (POTCHEFSTROOM) (PTY) LTD T 147/71

SUPERMARKET

Provisional Order:	23/2/71
Final Order:	23/3/71
Judicial Manager:	R.R. BARNES

Offer of compromise sanctioned

the affairs of the group of companies was interwoven – one of the group was in liquidation and two others under Judicial Management. The Judicial Manager advised that the offer of compromise be accepted as this would be more advantageous to creditors than liquidation.

263. K.S. LAVERS AND COMPANY (PTY) LTD T 157/71

METAL AND WOOD PATTERN MAKERS, FOUNDERS AND GENERAL AND ELECTRICAL ENGINEERS

Provisional Order:	23/2/71
Final Order:	20/4/71
Judicial Managers:	S.R. JONES K.S. LAVERS

Offer of compromise sanctioned 26/10/71

Reduction of overdraft facilities resulted in illiquidity. There was a lack of efficient credit control and the premises were overcrowded. The Judicial Management stated in its first report that prospects looked slightly brighter than at first anticipated.

264. FOURIE EN RAS (EDMS) BPK.

T 158/71

PROPERTY, HOTEL AND BOTTLE STORE OWNERS

Provisional Order: 9/3/71
 Final Order: 27/4/71
 Judicial Manager: P.J. ERASMUS

Unsuccessful: Liquidation No. T 108/72

Inefficient handling of cash resources and stocks resulted in a shortage of cash in spite of business being satisfactory. The Judicial Manager stated that while the business should be a good one, expenses were too high to make it a paying proposition.

265. SCHUTTE-ROCA CONSTRUCTION (PTY) LTD

T 177/71

BUILDING CONTRACTORS

Provisional Order: 5/3/71
 Final Order: Nil
 Judicial Managers: L. COHEN
 L. D. DRUKER

Unsuccessful: Liquidation No. T 282/71

Mismanagement and allegations of theft led to an inquiry and the company was subsequently liquidated.

266. INTEREP SIVIELE KONSTRUKSIE (EDMS) BPK.

T 212/71

CONSTRUCTION ENGINEERS

Provisional Order: 23/3/71
 Final Order: 27/4/71
 Judicial Manager: P.T.C. THORNE

Unsuccessful: Liquidation No. T 478/72

Too many contracts were accepted for the capital available. The Judicial Manager recommended liquidation as the company was hopelessly under-capitalised and could not tender for new contracts.

267. TINWELL VERF EN YSTERWARE (EDMS) BPK.

T 241/71

PAINT AND HARDWARE BUSINESS

Provisional Order: 30/3/71
 Final Order: 27/4/71
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 924/71
 19/10/71

268. PREMIER HARDWARE (PTY) LTD

T 254/71

MERCHANTS AND SUPPLIERS OF BUILDING MATERIALS

Provisional Order: 1/4/71
 Final Order: 27/4/71
 Judicial Managers: L.D. DRUKER
 L. COHEN

Offer of compromise sanctioned 27/6/72

99% of the shares were held by A.D. Robinson (Pty) Ltd, T 255/71 which owed the company large sums of money and was itself under Judicial Management.

269. A.D. ROBINSON (PTY) LTD

T 255/71

BUILDING CONTRACTORS

Provisional Order: 1/4/71
 Final Order: 27/4/71
 Judicial Managers: L.D. DRUKER
 L. COHEN

Successful: Cancelled 4/1/72

A dispute with a firm supplying goods for the completion of a contract had been a contributory cause of difficulty. Arrangements were made with the creditor which resulted in both companies being discharged and control was re-vested in the directors.

270. BEACON BATTERY MANUFACTURING COMPANY (PTY) LTD T 264/71

BATTERY MANUFACTURERS

Provisional Order: 7/4/71
 Final Order: 4/5/71
 Judicial Managers: C.R. LANSDOWN
 A. RUSKIN

Offer of compromise sanctioned 14/3/72

An expansion programme led the company into difficulties as it had borrowed heavily and had no liquid assets. Subsidiaries were closed down which put the company on a sounder financial footing.

271. ELDORADO MEUBELBELANGE BPK. T 281/71 A
 272. ELDORADO MEUBILEERDERS (EDMS) BPK. T 281/71 B
 273. ELIM MEUBILEERDERS (EDMS) BPK. T 281/71 C
 274. ELDORADO MUSICA (EDMS) BPK. T 281/71 D
 275. HILTON MEUBILEERDERS (EDMS) BPK. T 281/71 E
 276. COMAT MEUBILEERDERS (EDMS) BPK. T 281/71 F

FURNITURE RETAILERS

Provisional Order: 7/4/71
 Final Order: 27/4/71
 Judicial Managers: P. V. W. DE VRIES
 C. R. LANSDOWN

Offer of compromise sanctioned 14/12/71

Due to lack of working capital and current trade conditions, efforts to continue business under Judicial Management were unsuccessful, and it was recommended that an offer of compromise be accepted.

277. DAVID GREEN (PTY) LTD

T 286/71

LANGHAM HOTEL AND LANGHAM OFF SALES

Provisional Order: 14/4/71
 Final Order: Nil
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 420/71

The company was in fact insolvent and Judicial Management would therefore serve no purpose.

278. JACGEO CONSTRUCTION (PTY) LTD

T 309/71

CIVIL ENGINEERS AND BUILDING CONTRACTORS

Provisional Order: 21/4/71
 Final Order: 11/5/71
 Judicial Managers: B. KATZENELLENBOGEN
 J. STEYN

Offer of compromise sanctioned 18/1/72

The company took on various civil engineering contracts at the insistence of the director, and on his advice tendered incorrectly, thus incurring heavy losses. The Judicial Manager was confident that the company would rehabilitate itself.

279. UNITED MARKETING (TVL) (PTY) LTD

T 310/71

DISTRIBUTOR OF CLOTHING DIRECT TO THE PUBLIC

Provisional Order: 21/4/71
 Final Order: Nil
 Judicial Managers: C.A. BRUYNS
 F.J. DOUWES

Unsuccessful: Liquidation No. T 758/71

Failure of debtors to settle, overstocking and the increasing number of "lay byes" resulted in illiquidity.

280. NORTHERN BAKERS (PTY) LTD

T 316/71

BAKERS AND CONFECTIONERS

Provisional Order: 30/3/71
 Final Order: 27/4/71
 Judicial Manager: B.G.S. DE WET

Offer of compromise sanctioned 13/7/71

When the director took over the business it was considerably in debt, half of which had been paid and turnover was improving.

281. PHILDIX ENGINEERING COMPANY (PTY) LTD

T 318/71

MANUFACTURERS OF ENGINEERING PARTS

Provisional Order: 24/4/71
 Final Order: Nil
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. T 351/71

Breakdown in the manufacturing process due to the difficulties in procuring certain equipment led to problems.

282. ROSAN ENGINEERING (PTY) LTD

T 319/71

MANUFACTURERS OF ENGINEERING PARTS

Provisional Order: 22/4/71
 Final Order: 18/5/71
 Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. T 1065/71

A complete lack of funds hindered production but the Judicial Manager kept the factory running until contracts for the Armaments Board were completed.

283. TARLAY CONSTRUCTION (PTY) LTD T 320/71
 CIVIL ENGINEERS – ROAD MAKING
 Provisional Order: 23/4/71
 Final Order: 8/6/71
 Judicial Manager: L.D. DRUKER
 Offer of compromise sanctioned 11/4/72
 The company was illiquid and delays in delivery of materials aggravated the situation. Judicial Management was felt not to be successful but an offer of compromise was made and accepted.
284. K.G. WHITTAKER (PTY) LTD T 321/71
 BUILDING CONTRACTOR
 Provisional Order: 23/4/71
 Final Order: 3/8/71
 Judicial Manager: C. LIPSCHITZ
Unsuccessful: Liquidation No. T 1095/71
 The former director sustained heavy losses, and while the present director brought in a large amount of capital the company was still illiquid. During Judicial Management Provincial contracts were cancelled and continued trading would result in further losses.
285. EDEN CENTRE (PTY) LTD T 329/71
 PROPERTY OWNING COMPANY
 Provisional Order: 28/4/71
 Final Order: 1/6/71
 Judicial Manager: P.B. OERTEL
Unsuccessful: Liquidation No. T 351/73
 Various shops and flats in the property were not let and this caused an illiquidity problem. Under Judicial Management the position deteriorated as there was a fall off in demand for shops in the area.

286. GOOLAM HOUSEN (PTY) LTD

T 346/71

PROPERTY OWNING COMPANY

Provisional Order: 28/4/71
 Final Order: Nil
 Judicial Manager: R.H. VINGOE

Unsuccessful: Liquidation No. T 1012/71

Although several properties were owned and were free of a bond, the company was unable to pay its debts.

287. JACGEO INVESTMENTS (PTY) LTD

T 387/71

INVESTMENT AND PROPERTY OWNING COMPANY

Provisional Order: 11/5/71
 Final Order: 8/6/71
 Judicial Manager s: J. STEYN
 B. KATZENELLENBOGEN

Unsuccessful: Liquidation No. T 777/71

There were hopes that liquidity might be restored through the sale of properties, but it was not deemed economic to pursue efforts of selling as the income was not sufficient to cover bond repayments.

288. ENGINEERING AND GARAGE EQUIPMENT SALES (PTY) LTD

T 390/71

SALES COMPANY FOR MAC'S METAL WORKS (PTY) LTD

Provisional Order: 18/5/71
 Final Order: Nil
 Judicial Manager: N.J. ANTONY

Unsuccessful: Liquidation No. T 517/71

The company was established to take over the sales side of Mac's Metal Works, which had moved its premises to the border area. Considerable difficulties, such as poor roads and faulty telephone lines resulted in poor production and the new company operated at a loss. Mac's Metal Works improved, but this company's losses were too great for recovery.

289. HANTOEKOER (EDMS) BPK.

T 407/71

MANUFACTURERS AND MARKETERS OF SHOP AND OFFICE
EQUIPMENT

Provisional Order: 11/5/71
 Final Order: 8/6/71
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 996/71

Mismanagement and high overheads contributed to the company's downfall. Judicial Management was requested in order to complete contracts which had not been finished or had been faulty.

290. VLAKPLAATS BRICKWORKS (PTY) LTD

T 449/71

BRICK MANUFACTURERS

Provisional Order: 3/6/71
 Final Order: 29/6/71
 Judicial Manager: P.D. ALEXANDER

Unsuccessful: Liquidation No. T 967/71

The sudden cancellation of a substantial and regular contract resulted in the inability to find alternative orders at short notice. Liquidation was recommended when there were not sufficient orders, but an offer of compromise was made in December 1972.

291. C. AND L. HYDRAULIC AND ENGINEERING SERVICES (PTY) LTD

T 497/71

HYDRAULIC ENGINEERS

Provisional Order: 17/6/71
 Final Order: 20/7/71
 Judicial Manager: L. COHEN

Offer of compromise sanctioned 1/2/72

Although the company was in possession of substantial assets and was trading profitably it was illiquid and unable to meet debts. There was an expectation that given a moratorium it would be able to complete certain contracts.

292. PINCTUS PAINTERS (PTY) LTD

T 576/71

PAINTING CONTRACTORS

Provisional Order: 8/7/71
 Final Order: 3/8/71
 Judicial Manager: R.J. WOODNUT

Unsuccessful: Liquidation No. T 346/72

The company diversified its activities and the directors realised that they were unable to manage operations in Natal. A debtor of the company was unable to make payment as it was under Judicial Management. Added to this were the recession in building and escalating costs of materials.

293. S.A. SPORTS DISTRIBUTORS (PTY) LTD

T 599/71

DISTRIBUTORS OF SPORTING GOODS

Provisional Order: 15/7/71
 Final Order: 3/8/71
 Judicial Managers: G.W. COX
 C.R. LANSDOWN

Offer of compromise sanctioned 14/12/71

The company was a subsidiary of Ward and Salmons Stores (Pty) Ltd.

294. WARD AND SALMONS STORES LTD

T 600/71

PUBLIC COMPANY – HOLDING COMPANY FOR WARD AND SALMONS HOLDINGS

Provisional Order: 15/7/71
 Final Order: 3/8/71
 Judicial Managers: C.R. LANSDOWN
 G.W. COX

Unsuccessful: Liquidation No. T 1499/72

The group of companies owed Alwarvo (Pty) Ltd (under Judicial Management 1/7/71 in the Cape) in the amount of R 546 000 as it had acted as a purchasing agent for the companies. Apportioning of the debt was impossible.

295. WARD AND SALMONS (PTY) LTD

T 601/71

SPORTING GOODS DISTRIBUTORS

Provisional Order: 15/7/71
 Final Order: 3/8/71
 Judicial Managers: G.W. COX
 C.R. LANSDOWN

Offer of compromise sanctioned 14/10/71

Reasons for failure were put down to mismanagement.

296. MUTUAL FURNITURE MANUFACTURERS (PTY) LTD

T 657/71

FURNITURE MANUFACTURERS

Provisional Order: 5/8/71
 Final Order: 30/11/71
 Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 141/72

Failure of the company was due to an expansion programme with resultant loss of production. There was a dispute between a 50% shareholder and the director, and the shareholder withdrew his equity. Disagreements continued under Judicial Management and liquidation resulted.

297. A. PASSETTI'S ELECTRICAL AND MECHANICAL ENGINEERING (PTY) LTD

T 662/71

MANUFACTURERS OF ELECTRICAL EQUIPMENT

Provisional Order: 4/8/71
 Final Order: 31/8/71
 Judicial Manager: R.R. BARNES

Offer of compromise sanctioned 27/1/73

Expansion and a move to new premises appear to be the reasons for illiquidity. Prospects improved under Judicial Management due to selling of some property. Continuation was advised until a reasonable offer of compromise was received.

298. TEMSA (PTY) LTD

T 679/71

CARTAGE CONTRACTORS

Provisional Order: 10/8/71
 Final Order: 7/9/71
 Judicial Manager: L. COHEN

Unsuccessful: Liquidation No. T 1159/71

Mismanagement and lack of proper control led the company into difficulties. Expectations of improvement were unfounded and the Judicial Manager recommended liquidation.

299. PARKMORE CONSTRUCTION (PTY) LTD

T 696/71

CIVIL ENGINEERING CONTRACTORS

Provisional Order: 12/8/71
 Final Order: 5/10/71
 Judicial Managers: B.G.S. DE WET
 M. SCHWARTZ

Unsuccessful: Liquidation No. T 372/72

Delays in payment due to illiquidity in economic sector resulted in the inability to keep up hire purchase payments. The Judicial Managers became aware of irregularities and the company had no hope of recovery.

300. BRUUN INVESTMENTS (PTY) LTD

T 733/71

BUILDING CONTRACTORS

Provisional Order: 24/8/71
 Final Order: 19/10/71
 Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 733/71

Mismanagement, rising costs in building materials and bad debts led to illiquidity. Time was granted to complete a substantial contract which was subsequently cancelled and liquidation was inevitable.

301. COLAND CARPETS (PTY) LTD T 752/71
 SELLERS AND FITTERS OF WALL TO WALL CARPETS
 Provisional Order: 31/8/71
 Final Order: 28/9/71
 Judicial Manager: M. SCHWARTZ
Unsuccessful: Liquidation No. T 595/73
 The company's period of credit was reduced to thirty days by suppliers and there were insufficient funds available to complete lucrative contracts. Many contracts were cancelled due to delays in installation of Judicial Management.
302. AMURON INVESTMENT CORPORATION (PTY) LTD T 783/71
 HOLDING AND FINANCIAL COMPANY
303. SPECIALISED ELECTRONICS (PTY) LTD T 784/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
304. SPECIALISED ELECTRONIC SYSTEMS (PTY) LTD T 785/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
305. SPECIALISED ELECTRONIC SYSTEMS (PTY) LTD T 786/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
306. AMURON PROPERTY INVESTMENT (PTY) LTD T 787/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
307. AMURON HOLIDAY INVESTMENT (PTY) LTD T 788/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
308. GROTEK OIL AND GAS EXPLORATION SYNDICATE (PTY) LTD T 789/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD

309. GEMINI IMPORT AND EXPORT COMPANY (PTY) LTD T 790/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
310. SPECIALISED CONTRACTORS (PTY) LTD T 791/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
311. PAYROLL PROCESSORS (PTY) LTD T 792/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
312. COMPUTER SUPPORT SERVICES (PTY) LTD T 793/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
313. SPECIALISED COMPUTERS (PTY) LTD T 794/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
314. SPECIALISED COMPUTER SERVICES (PTY) LTD T 795/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
315. SPECIALISED MARINE AND AVIATION RADARS (PTY) LTD T 796/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD
316. TIRANDATA (PTY) LTD T 797/71
 SUPPLIERS OF EQUIPMENT TO THE ARMAMENTS BOARD

Provisional Order: 14/9/71
 Final Order: 26/10/71
 Judicial Managers: J.P.A. ALBERTS
 J.D. HARE

Successful: Cancelled 1/2/72

Mismanagement and the appropriation of money which should have been used to pay creditors for building of a new factory. There was an approved take-over by Barlow Rand Ltd. Negotiations began soon after the beginning of Judicial Management and therefore the Judicial Managers did not submit reports.

317. MOULDED COMPONENTS AND ROTO MOULDING S.A. (PTY) LTD T 807/71

MANUFACTURERS OF PLASTIC ARTICLES

Provisional Order: 17/9/71
 Final Order: 7/3/72
 Judicial Manager: C.F. SIMMONS

Offer of compromise sanctioned 8/10/74

Due to the death of the director concerned with administration and his withdrawal of funds prior to his death confusion had resulted. Judicial Management was recommended as other companies in the group of four would be drawn into liquidation .

318. RAYLES JEWELLERS (PTY) LTD T 810/71JEWELLERY MANUFACTURERS SUPPLYING TO D. PETERS
JEWELLERY COMPANY (PTY) LTD

Provisional Order: 7/9/71
 Final Order: 19/10/71
 Judicial Manager: L. KAPLAN

Offer of compromise sanctioned 21/6/72

The company was illiquid as it was owed a large sum by an associate company and had purchased machinery, but arrangements concerning this had fallen through.

319. D. PETERS JEWELLERY COMPANY (PTY) LTD T 811/71

DISTRIBUTORS OF JEWELLERY

Provisional Order: 7/9/71
 Final Order: 19/10/71
 Judicial Manager: L. KAPLAN

Offer of compromise sanctioned 21/6/72

The company was illiquid as it owed Rayles Jewellers a large sum. The director stated that illiquidity was due to a period of 18 months in which purchasers may request alteration to articles of jewellery before payment is made.

320. PRESTA WERKSWINKELS (EDMS) BPK.

T 866/71

MANUFACTURERS AND DISTRIBUTORS OF CRUTCHES

Provisional Order: 28/9/71
 Final Order: 7/12/71
 Judicial Manager: T.C. MULLER

Offer of compromise sanctioned 8/10/74

A contract was undertaken to make school desks, but insufficient experience caused losses. The Managing Director was ill and Judicial Management was requested until his son could make an offer to shareholders.

321. INTERNATIONAL WALLCOVERINGS (PTY) LTD

T 867/71

DEALERS IN WALLPAPER AND GOODS CONNECTED WITH
INTERIOR DECORATING

Provisional Order: 18/9/71
 Final Order: 17/11/71
 Judicial Manager: C. LIPSCHITZ

Offer of compromise sanctioned 16/1/73

Insufficient capital and there was a lull in trading due to the recession in the building industry.

322. PROPELLOR HAMERMEUL VERVAARDIGERS (EDMS) BPK.

T 908/71

PROPERTY OWNING COMPANY ADMINISTERED JOINTLY WITH
P.J.H. BELEGGINGS (EDMS) BPK.

Provisional Order: 12/10/71
 Final Order: Nil
 Judicial Manager: G.W. LAMPERT

Unsuccessful: Liquidation No. T 1236/71

Properties were not leased and therefore the majority shareholder was unable to continue bond payments — a dispute arose amongst shareholders and attempts by the Judicial Manager to resolve these were unsuccessful.

323. P. J. H. BELEGGINGS (EDMS) BPK.

T 909/71

PROPERTY OWNING COMPANY

Provisional Order: 12/10/71
 Final Order: Nil
 Judicial Manager: G. LAMPERT

Unsuccessful: Liquidation No. T 1166/71

Properties were not leased and the majority shareholder was unable to continue bond payments. A dispute arose between shareholders and the Judicial Manager was unable to resolve it. Liquidation was inevitable.

324. PRESTIGE SLIDE FASTENERS (PTY) LTD

T 961/71

ZIP MANUFACTURERS

Provisional Order: 26/10/71
 Final Order: 7/12/71
 Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 362/72

A technical error in manufacture caused loss of monies and goodwill. There was a dispute concerning a bank overdraft and assets had been misrepresented. Trading continued until all trading potential had become exhausted.

325. RAND INVENTIONS (PTY) LTD

T 962/71

INVENTORS, DEVELOPERS, MANUFACTURERS AND DISTRIBUTORS OF INDUSTRIAL MACHINES

Provisional Order: 26/10/71
 Final Order: 7/12/71
 Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 361/72

Illiquidity was due to a dispute with the bank who refused further overdraft facilities. Assets were overstated and considerable capital was necessary to continue profitable trading.

326. RAND FLEMKO ENGINEERING (PTY) LTD

T 963/71

MANUFACTURING, ASSEMBLING, DISTRIBUTING AND EXPORTING
SLIDER MOUNTING AND BOTTOM STOP INDUSTRIAL MACHINES

Provisional Order: 26/10/71
Final Order: 7/12/71
Judicial Manager: L. COHEN

Unsuccessful: Liquidation No. T 360/72

Working capital was insufficient to fulfil lucrative contracts. The Judicial Manager found the company unable to trade further without considerable capital.

327. PINK PANTHER (PTY) LTD

T 1027/71

OPERATING A CHAIN OF LADIES' BOUTIQUES

Provisional Order: 9/11/71
Final Order: Nil
Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. T 1247/71

Lack of capital, high overheads and the tardiness of customers in paying accounts were responsible for difficulties. Two businesses were sold in order to save the company, but creditors demanded payment and the company had to be liquidated.

328. SWIFT PLANT HIRE (PTY) LTD

T 1055/71

LETTING HEAVY EQUIPMENT ON HIRE

Provisional Order: 16/11/71
Final Order: 11/1/72
Judicial Managers: G.L. QUIN
C. KILIAN

Unsuccessful: Liquidation No. T 585/72

A contract was completed for a company which went into liquidation and could not meet its obligations. Trading loss was also due to mismanagement and unwise purchases. Most assets were under lease or hire purchase agreement.

329. CAMPING DEVELOPMENT CORPORATION (PTY) LTD T 1087/71

FINANCIAL HOLDING COMPANY

330. GAYADVENT (PTY) LTD T 1088/71

HIRING OF MARQUEES, TENTS AND CAMPING EQUIPMENT

331. V.S. SIMPSON (PTY) LTD T 1089/71

RETAILERS OF CAMPING EQUIPMENT AT VARIOUS SHOPS
AND MANUFACTURERS OF FINISHED CANVAS GOODS

The Company was later known as:

CAMPING AND DEVELOPMENT CORPORATION (TVL) (PTY) LTD

332. CAMPING AND DEVELOPMENT CORPORATION (LADYSMITH)
(PTY) LTD T 1234/71

MANUFACTURERS OF CAMPING AND OUTDOOR EQUIPMENT

333. DURBAN AWNING AND TENT COMPANY (PTY) LTD T 1109/71

RETAILERS OF CAMPING EQUIPMENT

Provisional Order:	26/11/71
Final Order:	28/12/71
Judicial Manager:	F.D. GLAUM

Offer of compromise sanctioned 24/8/73

A merger of Natal and Transvaal companies in 1968 with the intention of improving liquidity and replacing two factories with one in a border area caused a delay in production and marginal profits. Failure in the accounting department resulted in increased illiquidity.

The Judicial Manager found that a proper structure of authority did not exist because of a dispute amongst the directors. Fast expansion resulted in a lack of middle management. There were no systems for buying control and a sale of the less profitable parts of the business was advised.

334.	<u>ROUX ELECTRIC (PTY) LTD</u>	T 1163/71
	ELECTRICAL CONTRACTORS	
	Provisional Order:	7/12/71
	Final Order:	4/1/72
	Judicial Manager:	C.C. STEYN
	<u>Unsuccessful:</u>	Liquidation No. T 223/72
	<p>Illness and the death of the Managing Director resulted in loss of control. A substantial sum was to be realised on the completion of a certain contracts if time allowed. The Judicial Manager found that completion of the contracts was impossible as qualified artisans were not available and some of the debtors were insolvent. Liquidation was therefore inevitable.</p>	
335.	<u>MODHOMES HOLDINGS (PTY) LTD</u>	T 1187/71
	HOLDING COMPANY	
336.	<u>MODHOMES (PTY) LTD</u>	T 1188/71
337.	<u>LIBERTAS MEUBELS (PTY) LTD</u>	T 1189/71
338.	<u>MODHOMES (VILLIERIA) (PTY) LTD</u>	T 1190/71
339.	<u>MODHOMES (PIETERSBURG) (PTY) LTD</u>	T 1197/71
340.	<u>MODHOMES (POTGIETERSRUST) (PTY) LTD</u>	T 1198/71
341.	<u>MODHOMES WHOLESALE (PTY) LTD</u>	T 1199/71
342.	<u>LIBERTAS (ANDRIES STREET) (PTY) LTD</u>	T 1217/71
343.	<u>MODHOMES WAREHOUSE SALES (PTY) LTD</u>	T 1218/71
344.	<u>PRESIDENT ELECTRIX (PTY) LTD</u>	T 1219/71
345.	<u>BABYLAND (NATAL) (PTY) LTD</u>	T 1228/71
346.	<u>MODHOMES USED SALES (PTY) LTD</u>	T 1229/71
347.	<u>BABYLAND (PTY) LTD</u>	T 1237/71
348.	<u>BABYLAND JOHANNESBURG (PTY) LTD</u>	T 1238/71

349. BABYLAND EASTERN TRANSVAAL (PTY) LTD T 1239/71

350. BABYLAND (CAPE) (PTY) LTD T 1227/71

GROUP OF COMPANIES RETAILING IN FURNITURE AND SOFT
GOODS

Provisional Order:	10/12/71
Final Order:	Nil
Judicial Managers:	W. HANCKE B.G.S. DE WET

Offer of compromise sanctioned 4/4/72

Illiquidity was the result of further credit facilities being refused by creditors until companies had been placed under Judicial Manager. The position was due to mismanagement and lack of control in the purchase of stock and collection of outstanding debts.

351. WOLKNIT KORPORASIE BPK. T 1204/71

MANUFACTURERS OF KNITWEAR, ESPECIALLY SOCKS

Provisional Order:	13/12/71
Final Order:	11/1/72
Judicial Managers:	C.R. LANSDOWN J.L. NEL

Offer of compromise sanctioned

Associated with Golden Florin, T 1205/71, which was operating at a loss and proved a drain by borrowing heavily from the company.

The Judicial Managers felt that this company could operate at a profit with the injection of capital and should therefore continue under Judicial Management.

352. GOLDEN FLORIN TEXTILE MANUFACTURING COMPANY (PTY) LTD T 1205/71

MANUFACTURE OF KNITWEAR, ESPECIALLY PULLOVERS

Provisional Order: 13/12/71
 Final Order: Nil
 Judicial Managers: C.R. LANSDOWN
 J.L. NEL

Unsuccessful: Liquidation No. T 53/72

Failure was due to mismanagement and bad book-keeping. A lack of capital resulted in low productivity and a loss of turnover. Having failed to raise sufficient capital, the Judicial Managers recommended liquidation.

353. E. STEINBERG (PTY) LTD T 1206/71

CARTAGE CONTRACTORS

Provisional Order: 14/12/71
 Final Order: 18/1/72
 Judicial Manager: P.B. OERTEL

Unsuccessful: Liquidation No. T 1501/72

Subsidiary of Pickfords Holdings (Pty) Ltd. The whole group was illiquid but could be financed under Judicial Management. Amounts due by the group of companies was not forthcoming, and liquidation was recommended.

354. A. VAN DER MEER KONSTRUKSIES (EDMS) BPK. T 34/72

BUILDING CONSTRUCTION COMPANY

Provisional Order: 3/12/71
 Final Order: 14/3/72
 Judicial Manager: L.D. DRUKER

Offer of compromise sanctioned 9/1/73

The company continued with contracts with financial assistance from a major creditor. Judicial Management was felt to be too cumbersome a system and an offer of compromise was made and accepted.

355. DE KAAP HARDWARE AND BUILDERS (PTY) LTD T 61/72
- BUILDING CONTRACTORS
- Provisional Order: 25/1/72
 Final Order: Nil
 Judicial Manager: V.A. VAN DIGGELEN
- Unsuccessful: Liquidation No. T 1273/72
- The Managing Director contracted without proper specifications and contracts were underquoted. Little or no payment was obtained for work done. The Managing Director was sequestrated and Judicial Management would serve no purpose.
356. MOEPEL BOERDERY (EDMS) BPK. T 91/72
- FARMING IN BRONKHORSTSPRUIT DISTRICT
- Provisional Order: 25/1/72
 Final Order: 9/5/72
 Judicial Manager: P.F. MEYER
- Unsuccessful: Liquidation No. T 715/73
- Insufficient capital and the credit squeeze made it impossible to raise any money. Inexperience of the manager resulted in the failure of the first crop. Further crop failures occurred during Judicial Management.
357. M.G.S. HANDY HOUSE (PTY) LTD T 130/72
- RETAILERS OF DOMESTIC APPLIANCE AND HARDWARE
358. PRETORIA BOLT AND NUT COMPANY (PTY) LTD T 150/72
- DEALERS IN TOOLS, HARDWARE, GARDEN EQUIPMENT, NUTS AND BOLTS
359. JOHANNESBURG BOLT AND NUT COMPANY (PTY) LTD T 151/72
- DEALERS IN TOOLS, HARDWARE, GARDEN EQUIPMENT, NUTS AND BOLTS

360. GREATREX LTD T 155/72
 DEALERS IN TOOLS, HARDWARE AND GARDEN EQUIPMENT
361. TARGET GREATREX (PTY) LTD T 154/72
 DEALERS IN TOOLS, HARDWARE AND GARDEN EQUIPMENT
362. M.G.S. HANDY HOUSE BENONI (PTY) LTD T156 /72
 RETAILERS OF DOMESTIC APPLIANCES AND HARDWARE
- Provisional Order: 8/2/72
 Final Order: Nil
 Judicial Manager: C. DU TOIT KRUGER

Offer of compromise sanctioned 6/6/72

Greatrex Holdings Ltd, the holding company for the above group of companies, was in Provisional Liquidation. Reductions of stock through lack of finance and reductions of credit facilities aggravated the uncertainty caused by the liquidation of the holding company. Trading continued under Judicial Management until an offer of compromise was made.

363. RANDCOOL (EDMS) BPK. T 213/72
 IMPORTING AND MARKETING OF VEHICLE AND BUILDING AIR
 CONDITIONING UNITS
- Provisional Order: 16/2/72
 Final Order: 14/3/72
 Judicial Manager: J.J. DE WET

Offer of compromise sanctioned 6/2/73

Large capital outlay on research, training of artisans and on equipment affected the liquidity of the company. Business was expanded to automatic door installations. The Judicial Manager considered the offer of compromise to be a profitable one for creditors.

364. C.E. FOLKEY (PTY) LTD T 240/72

COMMERCIAL PRINTERS

Provisional Order: 22/2/72
 Final Order: 28/3/72
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 25/73

Ill health and subsequent resignation of the director caused losses, especially in the stationary department. The Judicial Manager found the company to be hopelessly insolvent and it was not in the interests of the creditors to continue business.

365. SMIT WONINGS (EDMS) BPK T 260/72

BUILDING CONTRACTORS

Provisional Order: 29/2/72
 Final Order: Nil
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 460/72

If given moratorium to complete contracts, it was hoped that the company would be in a position to pay creditors.

366. CONLEC BUILDING AND ELECTRICAL COMPANY (PTY) LTD T 264/72

MANUFACTURERS OF ELECTRICAL EQUIPMENT

Provisional Order: 29/2/72
 Final Order: 28/3/72
 Judicial Manager: T.C. MULLER

Offer of compromise sanctioned 23/4/74

In the opinion of the Judicial Manager, the company should, under better control and management, be a profitable concern.

367. J.F. SMIT ELEKTRIESE KONTRAKTEURS (EDMS) BPK T 265/72
 ELECTRICAL CONTRACTORS
 Provisional Order: 29/2/72
 Final Order: 28/3/72
 Judicial Manager: T.C.MULLER
Unsuccessful: Liquidation No. T 1000/74
 Liquidity problems were due to the general economic situation and the limiting of credit facilities. The company operated successfully for a time under Judicial Management.
368. TZANEEN HOTEL (PTY) LTD T 304/72
 HOTEL AND BOTTLE STORE
369. VENABLES HOLDINGS (PTY) LTD T 305/72
 CLEARING HOUSE FOR FINANCIAL TRANSACTIONS
370. TZANEEN HOTEL INVESTMENTS (PTY) LTD T 306/72
 INVESTMENT HOLDING COMPANY
371. TZANEEN QUARRIES (PTY) LTD T 307/72
 STONE CRUSHERS
372. ABATEL HOLDINGS (PTY) LTD T 308/72
 INVESTMENT HOLDING COMPANY
373. LETABA CATERERS (PTY) LTD T 309/72
 LICENSED HOTEL

374. VENABLES BOTTLE STORE (PTY) LTD

T 310/72

BOTTLE STORE

Provisional Order: 13/3/72
 Final Order: 11/4/72
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation 23/5/72

Tzaneen Hotel (Pty) Ltd, T 304/72, Tzaneen Hotel Investments, T 306/72 and Abatel Holdings (Pty) Ltd, T 308/72 were successful and Judicial Managemet was cancelled.

The failure of the rest of the group was due to the ill health of the Managing Director. Management was taken over by his sons who had little experience. Further losses were caused by losses of fruit trees due to a fungus on a farm belonging to the group.

375. SARDIS RESTAURANT (PTY) LTD

T 316/72

RESTAURANT

Provisional Order: 13/3/72
 Final Order: 18/4/72
 Judicial Manager: B.G.S. DE WET

Offer of compromise sanctioned 8/5/73

There were five different types of business and it was difficult to keep control over pilfering.

376. ENTERPRISES SWANEPOEL (PTY) LTD

T 353/72

ROAD BUILDERS

Provisional Order: 21/2/72
 Final Order: Nil
 Judicial Managers: C.R. LANSDOWN
 C.J. JOUBERT

Unsuccessful: Liquidation No. T 556/72

Necessary expansion caused a liquidity problem.

377. RAND INVENTIONS (PTY) LTD

T 361/72

INVENTORS, DEVELOPERS, MANUFACTURERS AND DISTRIBUTORS OF INDUSTRIAL MACHINES

Provisional Order: 26/10/72
 Final Order: 7/12/72
 Judicial Manager: L. COHEN

Unsuccessful: Liquidation No. T 114/73

Assets were not accurately stated, and there was insufficient capital to continue trading. Continued Judicial Management would not be in the interests of creditors.

378. J.C. BEUKES EN SEUN (EDMS) BPK.

T 393/72

BUILDING CONTRACTORS

Provisional Order: 4/4/72
 Final Order: 16/5/72
 Judicial Manager: R.B. SCHICKERLING

Unsuccessful: Liquidation No. T 905/72

Rise in building costs meant loss of profit as the contracts were made before these escalations. Expansion resulted in the Director's attention being turned away from building to administration.

379. E.S. AND B. GORDON HOLDINGS LTD

T 436/72

HOLDING COMPANY

Provisional Order: 18/4/72
 Final Order: 6/2/73
 Judicial Managers: L. COHEN
 G.W. COX

Unsuccessful: Liquidation No. T 84/75

On taking over of the Gordons group of companies, it was discovered that there had been mismanagement, irregularities and incompetence amongst senior executives, many of whom resigned. Judicial Management was sought to ease the burden of the remaining executives, but the company failed.

380. KROESE VERSPREIDERS (EDMS) BPK.

T 471/72

WHOLESALEERS IN SOFT GOODS

Provisional Order: 25/4/72
 Final Order: Nil
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 671/72

Devaluation and reduction of a period of credit caused problems. The Judicial Manager was of the opinion that Judicial Management could not succeed as there was no cash in the estate and stocks could not be replenished.

381. THE J.R. WATKINS COMPANY (AFRICA) (PTY) LTD

T 501/72

MANUFACTURERS, DISTRIBUTORS OF COSMETICS, SPICES AND HOUSEHOLD PRODUCTS

Provisional Order: 3/5/72
 Final Order: 30/5/72
 Judicial Manager: C.R. LANSDOWN

Offer of compromise sanctioned 1/5/73

Due to mismanagement stocks were allowed to accumulate and outstanding debts were not collected. Parent group in America provided substantial financial assistance.

382. LATEGANS BOERDERYE (EDMS) BPK.

T 506/72

FARMING COMPANY

Provisional Order: 5/5/72
 Final Order: Nil
 Judicial Manager: J.C. STEYN
 T.C. MULLER

Successful: Order set aside 1/8/72

Large capital improvements were made, there was a backlog in payments on instalments for equipment and poor crops.

383. PATRIA SPORT (EDMS) BPK.

T 625/72

GENERAL DEALER IN SPORTS EQUIPMENT AND AMMUNITION

Provisional Order: 30/5/72
 Final Order: 8/8/72
 Judicial Manager: L. KLOPPER

Unsuccessful: Liquidation No. T 1574/72

The company expanded rapidly although there was insufficient capital and not enough trained personnel.

384. PATRIA SPORT VERVAARDIGERS (EDMS) BPK.

T 626/72

MANUFACTURERS OF SPORTS EQUIPMENT

Provisional Order: 30/5/72
 Final Order: 8/8/72
 Judicial Manager: L. KLOPPER

Unsuccessful: Liquidation No. T 1574/72

The company was connected to Patria Sport (Edms) Bpk, T 625/72, and the reasons for failure were similar.

385. HENRY GREGAN SPARES (PTY) LTD

T 690/72

MOTOR SPARES RETAILER

Provisional Order: 13/6/72
 Final Order: 25/7/72
 Judicial Manager: L. KLOPPER

Unsuccessful: Liquidation No. T 1249/72

The Judicial Manager found the company hopelessly insolvent and recommended liquidation.

386. P.C. ZANEN S.A. (PTY) LTD

T 754/72

ROAD CONSTRUCTION COMPANY

Provisional Order: 27/6/72
 Final Order: 25/7/72
 Judicial Managers: A.H. GUNN
 V.A. VAN DIGGELEN

Unsuccessful: Liquidation No. T 575/73

Considerable losses on two contracts caused illiquidity. Continuation of Judicial Management would not enable the company to meet its obligations.

387. QUICK-CUT LITHO (PTY) LTD

T 786/72

PRINTERS

Provisional Order: 4/7/72
 Final Order: Nil
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 598/73

The delay in liquidation was caused by attempts of the directors to effect an offer of compromise with the creditors.

388. AIR POWER (PTY) LTD

T 979/72

IMPORTER, DISTRIBUTORS, MAINTAINERS AND DESIGNERS
OF HYDRAULIC AND PNEUMATIC DRILL

Provisional Order: 8/8/72
 Final Order: Nil
 Judicial Manager: N. SIFRIS

Unsuccessful: Liquidation No. T 1488/72

The purpose of Judicial Management was to gain time to interest an overseas company in investing, but this failed and there was no other alternative but to liquidate.

389. ALEXANDER ENGINEERING COMPANY (PTY) LTD T 1055/72

GENERAL ENGINEERING COMPANY, CURRENTLY MANUFACTURERS OF ELECTRIC DOMESTIC APPLIANCES

Provisional Order: 22/8/72
 Final Order: 17/10/72
 Judicial Manager: R.S. HISLOP

Successful: Cancelled

Undercapitalisation and inefficient administration caused difficulties. With injection of further capital the company recovered completely.

390. VANDRU BELEGGINGS (EDMS) BPK. T 1084/72

LICENSED HOTEL

Provisional Order: 22/8/72
 Final Order: 19/9/72
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 155/73

The company was in liquidation which was replaced by Judicial Management on the advice of the liquidator who stated that with proper control the company would become profitable. Profit was insufficient to satisfy creditors.

391. DORRON MANUFACTURING (EDMS) BPK. T 1123/72

MANUFACTURERS OF MECHANICAL HOUSEHOLD AND PLAYGROUND EQUIPMENT

Provisional Order: 5/9/72
 Final Order: 17/10/72
 Judicial Manager: T.C. MULLER

Offer of compromise sanctioned 19/3/72

Production losses and illiquidity was due to moving the factory to a Bantu homeland.

392. KOOP WHOLESALERS (PTY) LTD T 1125/72

RETAIL TRADER

Provisional Order: 5/9/72
 Final Order: Nil
 Judicial Manager: L. COHEN

Offer of compromise sanctioned 12/12/72

Due to the ill health of the director, a committee of creditors was appointed to run the group of companies. This proved a failure and Judicial Management was sought.

393. FIVE AND TEN CENT WHOLESALERS (PTY) LTD T 1165/72

394. HARRY NEIFELD AND ASSOCIATES (PTY) LTD T 1166/72

395. WHOLESALE SUIT AND CRIMPLENE SELLERS (PTY) LTD T 1167/72

396. MADDISON SQUARE OUTFITTERS (PTY) LTD T 1168/72

RETAIL TRADERS

Provisional Order: 19/9/72
 Final Order: Nil
 Judicial Manager: L. COHEN

Offer of compromise sanctioned 12/12/72

The above group of companies were connected with Koop Wholesalers (Pty) Ltd, and the reasons for failure were similar.

397. WADEVILLE CARRIERS (PTY) LTD T 1213/72

CARTAGE CONTRACTORS

398. J.C. PANEL BEATERS (PTY) LTD T 1214/72

PANEL BEATING BUSINESS

399. J.C. PANEL BEATERS (TRUCK DIVISION) (PTY) LTD T 1215/72

PANEL BEATING BUSINESS

Provisional Order: 28/9/72
 Final Order: Nil
 Judicial Managers: R. MILLMAN
 C.R. LANSDOWN

Successful: Order set aside 19/12/72

Fall in profits was caused by an increase in rental. The Chairman had signed a surety Agreement for the companies in favour of another company which was in financial difficulties, causing illiquidity as the bank refused further financial assistance.

400. ELMARETCH INGENIEURS WERKE (EDMS) BPK.

T 1244/72

MANUFACTURERS OF FARM IMPLEMENTS

Provisional Order: 3/10/72
 Final Order: 14/11/72
 Judicial Manager: V.A. VAN DIGGELEN

Unsuccessful: Liquidation No. T 1233/73

Substantial losses were incurred due to the return of a faulty machine. Judicial Management was faced with a period of severe drought, but to liquidate would result in losses by the creditors and production continued.

401. EDISON ROAD INVESTMENTS (PTY) LTD

T 1432/72

PROPERTY OWNERS

Provisional Order: 14/11/72
 Final Order: 28/11/72
 Judicial Manager: P.D. BERMAN

Unsuccessful: Liquidation No. T 687/73

The company was a subsidiary of P.C. Zanen, T 754/72, under Judicial Management, and its affairs were so inextricably bound up with the holding company that no prospect of success could be anticipated.

402. ZANEN FIXED PROPERTIES LTD

T 1433/72

INVESTMENT COMPANY

Provisional Order: 14/11/72
 Final Order: 28/11/72
 Judicial Manager: P.D. BERMAN

Unsuccessful: Liquidation No. T 688/73

The company was bound as a security for its holding company. P.C. Zanen, T 754/72.

403. A. AND I. BRAKE CLUTCH SPECIALISTS (PTY) LTD

T 1498/72

MANUFACTURERS AND DISTRIBUTORS OF BRAKE AND CLUTCH PARTS

Provisional Order: 29/11/72
 Final Order: Nil
 Judicial Manager: L. COHEN

Successful: Discharged 17/4/73

The company had been in liquidation but was released by an offer of compromise 26/10/72. The sole shareholders were drowned in 1972. The company was solvent but an illiquidity problem arose.

404. H.L. PELSER MOTOR AND DIESEL INGENIEURS (EDMS) BPK.

T 23/73

MECHANICAL ENGINEERS

Provisional Order: 4/1/73
 Final Order: 6/2/73
 Judicial Manager: C.E.A. VAN ZYL

Unsuccessful: Liquidation No. T 402/73

Low turnover and large amounts owing on hire purchase agreements and there was insufficient capital. The Judicial Manager recommended liquidation.

405. NICEMIL (PTY) LTD

T 140/73

PHARMACY AND GENERAL DEALER

Provisional Order: 6/2/73
 Final Order: Nil
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Order set aside 6/3/73

Capital resources were drained by too-high salaries for the directors. The company was mismanaged and there was no sufficient capital.

406. TRANSERECT (PTY) LTD

T 232/73

CARTAGE CONTRACTOR

Provisional Order: 20/2/73
 Final Order: Nil
 Judicial Manager: C.A. BRUYNS

Unsuccessful: Discharged 20/2/73

There was a decline in general business activity and the company was in competition with the South African Railways and therefore obtained fewer permits from the transport Board.

407. KINGSLEY INDUSTRIES (PTY) LTD

T 292/73

DESIGNERS AND MANUFACTURERS OF CONTRACT AND UP-
HOLSTERED FURNITURE

Provisional Order: 13/3/73
 Final Order: 24/4/73
 Judicial Manager: R.R. BARNES

Unsuccessful: Liquidation No. T 614/73

In order to establish itself, the company incurred high advertising and travelling expenses. There was no possibility that the company would succeed under Judicial Management.

408. HERALDIC PRESS (PRETORIA) (EDMS) BPK.

T 340/73

PRINTERS

Provisional Order: 21/3/73
 Final Order: 1/5/73
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 1057/73

New management lost some old clients and the company experienced some unprofitable trading months. On examination, the Judicial Manager stated that the company had no hope of recovery.

409. DEB VERVOER (EDMS) BPK.

T 487/73

CARTAGE CONTACTORS

Provisional Order: 24/4/73
 Final Order: Nil
 Judicial Managers: L. COHEN
 I.L. VAN DIGGELEN

Unsuccessful: Liquidation No. T 746/73

The company was in no position to fulfil its contracts and therefore Judicial Management could serve no purpose.

410. AFRICAN COPPER CORPORATION (PTY) LTD

T 534/73

MAIN ASSETS WERE COPPER CLAIMS IN THE NORTHERN TRANS-VAAL

Provisional Order: 27/3/73
 Final Order: 3/5/73
 Judicial Manager: R.J. WOODNUT

Unsuccessful: Liquidation No. T 319/74

The company was a subsidiary of African Copper and Mutual Holdings Ltd. An agreement was made with an outside company to exploit claims, but these were cancelled. The company had no resources with which to develop its claims and commence mining.

411. BOSHOEK KONSTRUKSIE (EDSM) T 605/73
- BUILDING CONTRACTORS**
- Provisional Order: 22/5/73
 Final Order: 19/6/73
 Judicial Manager: J.P. VAN DER MERWE
- Unsuccessful: Liquidation No. T 1003/73
- The company took on a large contract to erect shops and a recreation hall with insufficient capital. Building could not continue without further financial aid, and this was not forthcoming.
412. UNIVERSAL PRODUCTIONS AND PROMOTIONS (PTY) LTD T 629/73
- PROFESSIONAL FUND RAISING AND WELFARE ORGANISATION AND CHARITABLE INSTITUTION**
- Provisional Order: 25/5/73
 Final Order: Nil
 Judicial Manager: L.D. DRUKER
- Successful: Order set aside 26/6/73
- The director left the country and slanderous reports immediately appeared in the press concerning fraudulent practices, however, nothing was proved.
413. SASBOU (EDMS) BPK. T 676/73
- BUILDING CONTRACTORS, ESPECIALLY FOR THE S.A.R.**
- Provisional Order: 5/6/73
 Final Order: 24/7/73
 Judicial Manager: T.C. MULLER
- Unsuccessful: Liquidation No. T 484/74
- The contract for the S.A.R. was too large, and a second company was contracted. The work, however, was not satisfactory and the S.A.R. threatened to cancel the contract. Correction of faulty work caused serious cash flow problems.

414. MANGANESE ORE AND EXPLORATION (EDMS) BPK. T 836/73

MANGANESE MINING

Provisional Order: 12/7/73
 Final Order: 7/8/73
 Judicial Manager: J.L. VAN DIGGELEN

Unsuccessful: Liquidation No. T 1041/74

Capital outlay at the outset was unexpectedly high. The directors were inexperienced and there was not enough capital to purchase machinery. Judicial Management could not possibly succeed under the circumstances.

415. THE DOD INDUSTRIAL CONSTRUCTION GROUP (PTY) LTD T 875/73

CONSTRUCTION OF INDUSTRIAL BUILDINGS, THE MAIN COMPONENT BEING STEEL

Provisional Order: 20/7/73
 Final Order: Nil
 Judicial Manager: L. COHEN

Unsuccessful: Liquidation No. T 1056/73

The company undertook a large contract for a shopping centre but it was inexperienced in this type of structure and many difficulties added to expense. There seemed no prospect for recovery.

416. QUIRINAL HOTEL (PTY) LTD T 884/73

LICENSED HOTEL

Provisional Order: 24/7/73
 Final Order: 28/8/73
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. T 1278/73

Extensive renovations were undertaken to up-grade the hotel to four star rating. This disrupted business, patronage declined and additional overdraft facilities were reduced. The Judicial Manager found the company illiquid and applied for liquidation.

417. GALFER AFRICAN COMPANY (PTY) LTD T 916/73

MANUFACTURERS AND DISTRIBUTORS OF BRAKE LININGS
FOR SOUTH AFRICA AND EXPORT

Provisional Order: 3/8/73
Final Order: Nil
Judicial Manager: J.G.A. LEYDS

Unsuccessful: Liquidation No. T 1246/73

Delays in delivering imported machinery and materials essential for production and illness of one of the directors led to difficulties. The Judicial Manager kept the company in production in the hope that a compromise could be reached.

418. AUCAMP HARDWARE (PTY) LTD T 982/73

DEALER IN HARDWARE

Provisional Order: 17/7/73
Final Order: 14/8/73
Judicial Manager: J.L. VAN DIGGELEN

Unsuccessful: Liquidation No. T 1041/74

Mismanagement in that too much credit was allowed, no effort was made to collect debts and the bookkeeping system was inadequate. The Judicial Manager found that continuance of Judicial Management would serve no purpose.

419. CONDEV CONSTRUCTION (PTY) LTD T 987/73

BUILDING CONTRACTORS

Provisional Order: 15/8/73
Final Order: Nil
Judicial Manager: L.D. DRUKER

Unsuccessful: Liquidation No. T 1263/73

The company was unable to pay wages although it was in possession of lucrative contracts.

420. J.J. ALLMANN SALES CORPORATION (PTY) LTD T 1074/73

ENGINEERS, SUPPLIERS OF MACHINERY, DIE CASTING MOULDS
AND RAW MATERIALS TO THE PLASTIC INDUSTRY

Provisional Order: 5/9/73
Final Order: Nil
Judicial Manager: A.H. GUNN

Unsuccessful: Liquidation No. T 1333/73

Irregularities on the part of management led to difficulties. The Judicial Manager found the company completely without finance to continue trading.

421. MARITZ ENGINEERING (EDMS) BPK. T 1127/73

ENGINEERING WORKSHOP AND MECHANICAL CONSTRUCTION

Provisional Order: 18/9/73
Final Order: 16/10/73
Judicial Manager: L. KLOPPER

Offer of compromise sanctioned 2/7/74

Mismanagement, weak cost control and low tenders led the company into difficulties. The Judicial Manager found the company insolvent and advised that an offer of compromise be accepted.

422. ATOMIUM ONDERNEMINGS (EDMS) BPK T 1211/73

CIVIL ENGINEERS

Provisional Order: 9/10/73
Final Order: 13/11/73
Judicial Manager: G.D. KOTZE

Offer of compromise sanctioned 2/4/76

Slow payment by debtors caused illiquidity, and cash was lent to a company which went into liquidation. The company received more contracts during the Judicial Management period as the directors could concentrate on the technical aspects instead of administration.

423. VAN LILL HOTELS (PTY) LTD

T 1251/73

HOTEL PROPRIETOR

Provisional Order: 24/10/73
 Final Order: Nil
 Judicial Managers: C.F. SIMMONS
 C. LIPSCHITZ

Unsuccessful: Liquidation No. T 1454/73

The director had to rely on the manager to run the business and this resulted in lack of supervision and control. There was much waste in the catering department because of this. The Judicial Manager sold the hotel as a going concern.

424. KANBOU ONDERNEMINGS (EDMS) BPK.

T 1371/73

BUILDING CONTRACTORS

Provisional Order: 27/11/73
 Final Order: Nil
 Judicial Managers: P.D. ALEXANDER
 P.J.E. MEINTJIES

Unsuccessful: Liquidation No. T 125/74

Houses were erected for property developers who had not paid for them, and this caused illiquidity.

425. OOSTELIKE KLERKSDORP BELEGGINGS (EDMS) BPK.

T 43/74

TOWNSHIP DEVELOPER

Provisional Order: 22/1/74
 Final Order: Nil
 Judicial Managers: C. LIPSCHITZ
 B.G.S. DE WET

Successful: Order set aside 9/4/74

Due to a dispute between the directors and management, the company had come to a standstill. The dispute was resolved and the directors were fully re-vested.

426. OVERVAAL MONTEERDERS EN DISTRIBUEERDERS (EDMS) BPK T 55/74

FILLING STATION AND GARAGE

Provisional Order: 24/1/74
 Final Order: Nil
 Judicial Manager: M. SCHWARTZ

Unsuccessful: Liquidation No. T 374/74

Too much credit was given, trade-in prices were too high and it proved impossible to sell vehicles. The franchise for Mazda cars was cancelled.

427. MIDLOTHIAN STEEL (PTY) LTD T 178/74

CONSTRUCTION BUSINESS

Provisional Order: 21/2/74
 Final Order: Nil
 Judicial Manager: L. COHEN

Offer of compromise sanctioned 9/4/74

The director had involved the company in liabilities without the consent of other directors, and this placed the company in an illiquid position.

428. WILDCAT (PTY) LTD T 258/74

CHILDREN'S TOY MANUFACTURERS

Provisional Order: 13/3/74
 Final Order: Nil
 Judicial Manager: C.R. SIMMONS

Unsuccessful: Liquidation No. T 514/74

The company specialized in go-karts for children, but due to the petrol prices there was a drop in turnover.

429. RAVENNA CHEMICAL PRODUCTS (PTY) LTD T 462/74

MANUFACTURERS OF SYNTHETIC LEATHER AND POLYURETHANE
FOAM FOR FURNITURE, MOTOR, LUGGAGE AND FOOTWEAR IN-
DUSTRIES

Provisional Order: 19/5/74
Final Order: Nil
Judicial Managers: C.R. LANSDOWN
A.H. GUNN

Unsuccessful: Liquidation No. T 652/74

There were delays in starting production and sales which caused illiqui-
dity, and no further capital was available.

430. DEMOCON CONSTRUCTION (PTY) LTD T 577/74

CIVIL ENGINEERING CONTRACTORS

Provisional Order: 14/6/74
Final Order: Nil
Judicial Managers: G.D. KOTZE
L. COHEN

Unsuccessful: Liquidation No. T 1243/74

Rain at the site of a large building contract delayed work for three months.
Subcontraction on another contract failed which resulted in non-payment
by the Provincial Administration. Judicial Managers found recovery unlikely.

431. DEMOCON PLANT HIRE (PTY) LTD T 578/74

PLANT HIRERS

Provisional Order: 14/6/74
Final Order: Nil
Judicial Manager: G.D. KOTZE
L. COHEN

Unsuccessful: Liquidation No. T 1244/74

The company to which Democon had hired machinery failed to make payment.
Rain in the area resulted in loss of hiring time and insufficient working capital.
Prospects of recovery seemed non-existent and liquidation was recommended.

432. BIRCHMEB (EDMS) BPK.

T 593/74

RETAILERS OF FURNITURE AND HOUSEHOLD GOODS

Provisional Order: 11/6/74
 Final Order: Nil
 Judicial Manager: J.M.J. VAN VJUREN

Unsuccessful: Liquidation No. T 648/74

There were allegations of misappropriation of funds and goods by one of the directors.

433. REEF DEVELOPMENTS A (PTY) LTD

T 710/74

PROPERTY OWNING COMPANY

Provisional Order: 23/7/74
 Final Order: Nil
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. T 13/76

There was a dispute between the company and the Town Council of Roodepoort concerning the letting of properties and this affected rental income. The Judicial Manager found that a considerable sum would have to be spent to comply with the Council's requirements and liquidation was recommended.

434. BELMAX ELECTRICAL (RIET FONTEIN) (EDMS) BPK.

T 765/74

WHOLESALEERS IN ELECTRICAL EQUIPMENT

Provisional Order: 2/8/74
 Final Order: Nil
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 1008/74

The company's biggest customers were under Judicial Management and subsequently liquidated. The business moved to Rietfontein to save stocks and salaries, but there was insufficient capital to withstand losses and the companies were liquidated.

435. BELMAX ELECTRICAL (PRETORIA) (EDMS) BPK. T 766/74

WHOLESALEERS IN ELECTRICAL EQUIPMENT

Provisional Order: 2/8/74
 Final Order: Nil
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 1009/74

The company was associated with Belmax Electrical, T 765/74, and the reasons for failure were similar.

436. DODO SHIPPING COMPANY (PTY) LTD T 767/74

HOLDING COMPANY

437. S.A.M. IMPORT AND EXPORT COMPANY (PTY) LTD T 768/74

SHIP OWNERS

438. WORLD WIDE MARKETING AND DEVELOPMENT COMPANY (PTY) LTD T 769/74

EXPORT AGENTS

Provisional Order: 2/8/74
 Final Order: Nil
 Judicial Managers: R.R. BARNES
 G.D. KOTZE

Unsuccessful: Liquidation Nos. T 867/74, T 868/74, T 869/74

The ship was unseaworthy and heavy expenses were incurred in repairs and running costs. There was insufficient capital to withstand this and the Judicial Managers found no reason in continuing Judicial Management.

LIQUIDATION

1/15/75

Special Order:

Nil

Special Order:

Nil

Special Manager:

L.C.W.

Successful:

Liquidation No. 1/15/75

... of machines ordered to improve production ...
... were borrowed from ...
... of recovery.

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439. M. V. R. BRICK AND TILE (EDMS) BPK T 839/74

BRICK MAKERS

Provisional Order: 20/8/74
 Final Order: Nil
 Judicial Manager: L. COHEN

Unsuccessful: Liquidation No. T 479/75

Delays in deliveries of machines ordered to improve production resulted in difficulties and large sums were borrowed from J.A. Meyer and Sons. The Judicial Managers found no prospects of recovery.

440. J. A. MEYER AND SONS (EDMS) BPK. T 840/74

FARMERS

Provisional Order: 20/8/74
 Final Order: Nil
 Judicial Manager: L. COHEN

Unsuccessful: Liquidation No. T 1042/74

Failure of crops and money loaned to M. V. R. Brick and Tile which was not returned caused illiquidity which the company could not accomodate.

441. MOSENTHALS GUARANTEE AND TRUST COMPANY (PTY) LTD T 993/74

INVESTMENT COMPANY

Provisional Order: 4/10/74
 Final Order: Nil
 Judicial Managers: B.G.S. DE WET
 P.B. OERTEL

Unsuccessful: Liquidation No. T 1054/74

Overdrafts were reduced which resulted in a shortage of working capital, and the company had difficulty in meeting "call demands". Due to Judicial Management no further funds were being invested by the public and the Judicial Managers stated that there was no possibility that the company could be a success.

442. MOSENTHALS FINANCIAL HOLDINGS LTD

T 1010/74

HOLDING COMPANY

Provisional Order: 8/10/74
 Final Order: Nil
 Judicial Managers: B.G.S. DE WET
 P.B. OERTEL

Offer of compromise sanctioned 29/4/75

The group's activities were divided into three groups: financial investment, sawmills and timber growers and property administration.

443. MOSENTHALS TIMBER HOLDINGS LTD

T 1011/74

TIMBER GROWERS AND SAWMILL

Provisional Order: 8/10/74
 Final Order: Nil
 Judicial Managers: B.G.S. DE WET
 P.B. OERTEL

Offer of compromise sanctioned 29/4/75

There was a need for Judicial Management in order to protect creditors and shareholders and that the Judicial Managers could examine the affairs of the entire group.

444. HAVENTUISTES (PTY) LTD

T 1034/74

BUILDING CONTRACTORS AND ESTATE AGENTS

Provisional Order: 9/10/74
 Final Order: Nil
 Judicial Managers: I.J. OXLEE
 L. VAN DIGGELEN

Unsuccessful: Liquidation No. T 1207/74

The company was unable to find additional funds to finance building operations. Judicial Management could not possibly succeed under the circumstances and liquidation was recommended.

445. GOVERNMENT GOLD MINING AREAS (MODDERFONTEIN)
CONSOLIDATED LTD T 1075/74

GOLD MINING

Provisional Order: 24/10/74
Final Order: Nil
Judicial Manager: R.R. BARNES

Offer of compromise sanctioned 1/7/75

Money had been borrowed to set up the mine and extraction plant but there was insufficient capital available to complete the plant, and potential was not exploited. The Judicial Manager found it advisable to carry on operations on a small scale as some companies were interested in it.

446. MINI SAFE COMPANY (PTY) LTD T 1099/74

MARKETING AND MANUFACTURERS OF SAFES

Provisional Order: 29/10/74
Final Order: Nil
Judicial Manager: C.F. SIMMONS

Unsuccessful: Liquidation No. T 212/75

There was a shortage of capital and marketing was not successful.

447. EQUIP-ALL (PTY) LTD T 1301/74

**MANUFACTURERS AND DISTRIBUTORS OF POWER GENERATORS
AND ENGINEERING EQUIPMENT**

Provisional Order: 17/12/74
Final Order: Nil
Judicial Manager: C. LIPSCHITZ

Unsuccessful: Liquidation No. T 1194/75

There was a shortage of working capital and a slow down in trading operations. Difficulty was experienced in collecting monies from debtors and in maintaining production. In spite of initial optimistic views, the Judicial Manager found that the company could not become successful.

448. VANTAGE PROPERTY TRUST (PTY) LTD T 178/75
- PROPERTY DEVELOPERS
- Provisional Order: 13/2/75
 Final Order: Nil
 Judicial Manager: C. LIPSCHITZ
- Unsuccessful: Liquidation No. T 835/75
- The general decline in the property market during the latter part of 1974 resulted in a shortage of working capital. Difficulty was experienced in obtaining mortgage finance where construction had begun.
449. CHEETAH FILM PRODUCTIONS (EDMS) BPK. T 279/75
- FILM MAKING COMPANY
- Provisional Order: 28/2/75
 Final Order: Nil
 Judicial Manager: T.C. MULLER
- Successful: Discharged 20/6/75
- Financial support for making a film was withdrawn due to a disagreement among directors and shareholders. The Judicial Manager was of the opinion that Judicial Management would be successful.
450. THE LIGHTHOUSE HOLDINGS (PTY) LTD T 303/75
- WAREHOUSE AND SUPPLY CENTRE FOR OTHER COMPANIES
451. DAVCOL HOLDINGS (PTY) LTD T 304/75
- RETAILERS IN ELECTRICAL FITTINGS
452. THE LIGHTHOUSE (PTY) LTD T 305/75
- RETAILERS OF ELECTRICAL FITTINGS
453. LITEFIT (PTY) LTD T 306/75
- RETAILERS OF ELECTRICAL FITTINGS

454. JENLYD INVESTMENTS (PTY) LTD T 307/75

RETAILERS IN ELECTRICAL FITTINGS

Provisional Order: 11/3/75
 Final Order: 9/9/75
 Judicial Managers: L. COHEN
 C.R. LANSDOWN

Unsuccessful: Liquidation 9/9/75 (for Litefit (Pty) Ltd)

The bulk of supplies imported arrived earlier than anticipated and this caused liquidity problems throughout the group. The Judicial Managers found that most of the companies were trading profitably and a forced sale would not benefit creditors, and liquidation was only recommended for Litefit (Pty) Ltd, T 306/75. No further court orders are recorded for the other companies.

455. LUFURN HOLDINGS (PTY) LTD T 355/75

RETAILERS OF FURNITURE, HOUSEHOLD GOODS AND APPLIANCES

Provisional Order: 14/3/75
 Final Order: Nil
 Judicial Managers: L. COHEN
 C.R. LANSDOWN

Unsuccessful: Liquidation No. T 574/75

A subsidiary of Lucy's Holdings Ltd, T 356/75. Long term credit was granted to all customers and this resulted in insufficient cash resources to meet commitments. The Judicial Managers found the company to be profitable and well managed but its affairs were interwoven with other companies of the group and liquidation was inevitable.

456. LUCY'S HOLDINGS LTD T 356/75

HOLDING COMPANY

File not available.

457. LUCY'S FINANCE COMPANY LTD T 357/75

FINANCIAL ADMINISTRATING COMPANY OF A GROUP OF 57 COMPANIES OF WHICH LUCY'S HOLDINGS LTD WAS THE HOLDING COMPANY

Provisional Order: 14/3/75
 Final Order: Nil
 Judicial Managers: P.D. ALEXANDER
 B.G.S. DE WET

Unsuccessful: Liquidation No. T 801/75

Assets were mainly on hire purchase and monies owing by fellow subsidiaries could not be paid as most of them were in liquidation.

458. LEN HAASBROEK HOLDINGS (EDMS) BPK. T 370/75

BUILDING CONTRACTORS

Provisional Order: 18/3/75
 Final Order: Nil
 Judicial Manager: H. PISTORIUS

Unsuccessful: Liquidation No. T 570/75

Increased building costs, large amounts owing by debtors, high retention amounts and a weak administration led the company into difficulties.

459. REGENCY LAMPSHADES (PTY) LTD T 372/75

BUYING COMPANY FOR THE LIGHTHOUSE GROUP

Provisional Order: 18/3/75
 Final Order: Nil
 Judicial Managers: L. COHEN
 C.R. LANSDOWN

Unsuccessful: Liquidation No. T 833/75

Trading losses sustained over a period of time and the small likelihood of receiving payment from the Lighthouse Group contributed to the company's failure.

460. LYDJEN (PTY) LTD T 404/75

WAREHOUSE FOR THE LIGHTHOUSE GROUP

Provisional Order: 25/3/75
 Final Order: Nil
 Judicial Managers: L. COHEN
 C.R. LANSDOWN

Unsuccessful: Liquidation No. T 620/75

Assets consisted of loans to the Lighthouse Group and thus there was little or no prospect of success.

461. CONSOLIDATED DENTAL HOLDINGS (PTY) LTD T 432/75

HOLDING COMPANY AND WHOLESALE SUPPLIER OF DENTAL EQUIPMENT AND MATERIALS

462. DEN-TAL-EZ (SOUTH AFRICA) (PTY) LTD T 433/75

RETAIL SUPPLIER OF DENTAL EQUIPMENT

463. A.G. JANSSENS AND SONS (PTY) LTD T 434/75

RETAIL SUPPLIERS OF DENTAL EQUIPMENT

464. TAYLOR AND HORNE (PTY) LTD T 435/75

RETAIL SUPPLIER OF DENTAL REQUIREMENTS AND MACHINERY

Provisional Order: 2/1/75
 Final Order: Nil
 Judicial Manager: E. SMITH

Successful: Order set aside 29/7/75

The company was overstocked as they were expecting an oil embargo. The general slowdown in the economy brought about a fall off in turnover and debtors delayed in settling accounts. Consolidated Dental Holdings (Pty) Ltd bought shares in A.G. Janssens and Sons (Pty) Ltd, and these had not yet been fully paid for. The Judicial Manager found that there was likelihood of success as the companies were all solvent and well managed.

465. BENROSE TRACTOR AND EXCAVATOR SPARES (PTY) LTD T 511/75

SELLING NEW AND USED SPARE PARTS FOR HEAVY DUTY
EARTH MOVING AND OTHER EQUIPMENT

466. REGIONAL ELECTRICAL CONTRACTORS (PTY) LTD T 512/75

BUYING AND SELLING USED HAND EARTH MOVING AND CON-
STRUCTION EQUIPMENT

467. MACHINERY AUCTIONS (PTY) LTD T 513/75

BUYING AND SELLING USED HAND EARTH MOVING AND CON-
STRUCTION EQUIPMENT

Provisional Order: 23/4/75
Final Order: Nil
Provisional Judicial Manager: J.G.A. LEYDS

Unsuccessful: Liquidation Nos. T 763/75, T 764/75, T 765/75
10/6/75

Tightening of overdraft facilities by the banks caused an insufficient cash flow. The companies failed to employ suitable staff to recondition machinery and equipment. The opinion of the Provisional Judicial Manager was that there was little hope for success.

468. FLAMBOYANT MEUBELVERVAARDIGERS (EDMS) BPK. T 519/75

FURNITURE MANUFACTURERS

Provisional Order: 24/4/75
Final Order: Nil
Judicial Manager: T.C. MULLER

Offer of compromise sanctioned 20/6/75

Losses were caused by the incorrect selling price of two models of chairs. The length of credit granted caused delays in debt collection and there was not enough capital to withstand this.

469. PIEFRAN MOTORS (EDMS) BPK. T 614/75

DEALERS IN SECOND HAND CARS

Provisional Order: 13/5/75
 Final Order: Nil
 Judicial Manager: C.R. LANSDOWN

Unsuccessful: Liquidation No. T 935/75

No working capital and the slackness in the used car market as well as being in arrears with hire purchase commitments led the company into difficulties.

470. NOLEC (PTY) LTD T 631/75

CIVIL AND CONSTRUCTION ENGINEERS

Provisional Order: 14/5/75
 Final Order: Nil
 Judicial Manager: C. LIPSCHITZ

Successful: Order set aside 13/1/76

Heavy rainfall at the construction site led to delays and contracts were cancelled. This resulted in a shortage of working capital. The Judicial Manager advised continuation of the company as hope of recovery was good.

471. P.J. BOTHA BOUERS (EDMS) BPK. T 641/75

BUILDER ON SPECULATION BASIS

Provisional Order: 20/5/75
 Final Order: Nil
 Judicial Manager: P.D. ALEXANDER

Unsuccessful: Liquidation No. T 869/75

The current economic climate caused arrears in monthly payments by purchasers, and others were unable to obtain bonds. This resulted in inadequate capital and workmanship deteriorated. Liquidation was advised as there seemed little hope of recovery.

472. DICO SHEET METAL WORKS (PTY) LTD T 711/75

ENGINEERING CONTRACTOR AND MANUFACTURER

Provisional Order: 28/5/75
 Final Order: Nil
 Judicial Managers: C. SIMMONS
 A. RUSKIN

Unsuccessful: Liquidation No. T 969/75

A dispute arose with a customer concerning payment for a large contract and this resulted in illiquidity. Allegations were made by a creditor that there had been irregularities in the company.

473. TOLLMAN HOTELS AND LIQUOR STORES (PTY) LTD T 826/75

HOTEL

474. TOLLMAN'S AIRPORT INN (PTY) LTD T 827/75

HOTEL

475. REPUBLICAN CATERERS AND HOTELS (PTY) LTD T 828/75

HOTELIER "MOULIN ROUGE HOTEL"

476. TOLLMAN HOTELS (PTY) LTD T 829/75

HOTELIER "TOLLMAN TOWERS HOTEL"

477. EXECUTIVE SUITES (PTY) LTD T 831/75

HOTELIER "THE WILDERNESS HOTEL"

478. SALISBURY HOTEL (PTY) LTD T 832/75

HOTELIER "THE DIPLOMAT"

Provisional Order: 23/6/75
 Final Order: Nil
 Judicial Managers: L. COHEN
 M.I. CATO
 A. RUSKIN

Unsuccessful: Liquidation Nos. T 1140/75 - T 1146/75

The companies were undercapitalised and the holding company failed to advance further funds. Due to much publicity Judicial Management had an adverse effect on trading:

479. VAAL ROAD WORKS (PTY) LTD T 1002/75

CONSTRUCTION AND EARTH WORKS COMPANY

Provisional Order: 15/7/75
 Final Order: Nil
 Judicial Manager: C.H. DU PLOOY

Unsuccessful: Liquidation No. T 1335/75

Heavy rains on site affected the contract and there was not enough capital to see the company through. In addition, severe faults were discovered in the workmanship and these had to be rectified at great expense.

480. AFRICAN HOSIERY AND SPINNING MILLS (PTY) LTD T 1052/75

MANUFACTURERS OF WOOLLEN AND TEXTILE GOODS

Provisional Order: 8/8/75
 Final Order: 16/9/75
 Judicial Manager: A.H. GUNN

Successful: Order set aside 13/4/76

There was insufficient capital to tender for Government orders due to the trade recession, but the company continued satisfactorily under Judicial Management.

481. LOUW KUHN TRADING (PTY) LTD T 1059/75

JUVENILE OUTFITTER

Provisional Order: 12/8/75
 Final Order: Nil
 Judicial Manager: G.H.J. VENTER

Rule nisi discharged 30/12/75

The business was reasonable but overstocked. An offer of compromise was made but there is no order on file sanctioning this.

482. ANANDA (EDMS) BPK.

T 1268/75

HOLIDAY RESORT

Provisional Order: 7/10/75
 Final Order: Nil
 Judicial Manager: A.J. WESSELS

Successful: Discharged 9/1/76

The opening of an off-sales involved a large amount of capital, and the bank reduced its overdraft. There was no credit control in the purchase of liquor and large sums were borrowed by the director. However, turn-over increased and the directors were re-vested.

483. BRITS DIESELDIENSTE (EDMS) BPK.

T 1283/75

GARAGE AND SHOPOWNERS

Provisional Order: 12/10/75
 Final Order: Nil
 Judicial Manager: No Judicial Management appointment

Provisional Judicial Management Order
 set aside 13/10/75

A new car agency had been taken up in the years 1974/1975 with the necessary purchase of spares, and difficulty was experienced in obtaining finance.

484. LINDRENE CENTRE (EDMS) BPK.

T 1486/75

PROPERTY OWNERS AND DEVELOPERS

Provisional Order: 25/11/75
 Final Order: Nil
 Judicial Manager: J.J. DE WET

Unsuccessful: Liquidation No. T 278/76

Bond rates increased and so did building costs. Lack of finance resulted in a slow-down in building and it was unlikely that the company could become successful as high rentals made letting difficult.

485. SUPREME HOUTWERKE (EDMS) BPK. T 1495/75
 FURNITURE MANUFACTURERS
 Provisional Order: 25/11/75
 Final Order: Nil
 Judicial Manager: A.S.P. MEYER
Successful: Order set aside 23/4/76
 Lack of capital and low production caused illiquidity. The Judicial Manager was of the opinion that the company could succeed if credit facilities could be obtained and production increased.
486. M. BORCHERDS AND SONS INVESTMENTS (PTY) LTD T 1504/75
 PROPERTY OWNING AND CARAVAN PARK COMPANY
487. MILNE PARK INVESTMENTS (PTY) LTD T 1505/75
 PROPERTY OWNING AND RENTING COMPANY
488. CLOVER LEAF MOTORS (PTY) LTD T 1509/75
 PROPERTY OWNING AND RENTING SITE ON WHICH BROMER'S
 FACTORY PREMISES WERE SITUATED
489. C.H. MULLER AND SONS (PTY) LTD T 1510/75
 PROPERTY OWNING AND RENTING COMPANY
 Provisional Order: 1/12/75
 Final Order: Nil
 Judicial Manager: A. RUSKIN
Unsuccessful: Liquidation Nos. T 227/76, T 189/76, T 188/76
 T 190/76 dated 27/1/76

The companies' affairs were interrelated and were dependent on Bromer Motor Assemblies (Pty) Ltd (ceased operation and in liquidation) for financial support. The Judicial Manager found all the companies devoid of funds and the prospects of success were remote.

490. TELEMETRY EQUIPMENT (PTY) LTD T 1530/75

WHOLESALE SUPPLIERS AND MANUFACTURERS OF HI-FIDELITY AND ANCILLIARY EQUIPMENT

Provisional Order: 4/12/75
 Final Order: Nil
 Judicial Manager: M.I. CATO

Unsuccessful: Liquidation No. T 232/76

The Bank of Switzerland demanded immediate repayment of an overdraft of R 200 000. The Judicial Manager found the operating margin unprofitable and recommended immediate liquidation.

491. R.C. AND J.M. HOLLOWAY EARTHWORKS AND TRANSPORT (PTY) LTD T 1558/75

CONTRACTORS FOR EARTHWORKS, EXCAVATION, LEVELLING, BACKFILLING, COMPACTION, BLASTING AND DEMOLITION

Provisional Order: 9/12/75
 Final Order: Nil
 Judicial Manager: I.S. FYNN

Unsuccessful: Liquidation No. T 92/76

The affairs of the company were neglected and mismanaged. The company was unable to pay arrear instalments on equipment and fixed expenses were excessive.

492. RENE CORTEZ INTERNATIONAL (PTY) LTD T 1588/75

SUPERMARKET

Provisional Order: 17/12/75
 Final Order: Nil
 Judicial Manager: R.R. BARNES

Unsuccessful: Liquidation No. T 121/76

The company was formed to take over business from French Gold Fields (Pty) Ltd (in liquidation) but financial resources were over-extended in purchasing the business and financing additional stock requirements.

493. BOJO PHOTOLITHOGRAPHERS (PTY) LTD T 1590/75

PRINTERS, ENGRAVERS, AND PHOTOLITHOGRAPHERS

Provisional Order: 17/12/75
 Final Order: Nil
 Judicial Manager: A. J. HESSELS

Unsuccessful: Liquidation No. T 152/76

Expansion caused liquidity problems – contracts were cancelled and the price of raw materials increased. The company could have become successful provided sufficient cash resources could be obtained to meet obligations.

494. JAVA PARK DEVELOPMENT COMPANY (PTY) LTD T 430/76

PROPERTY DEVELOPMENT COMPANY

Provisional Order: 2/4/76
 Final Order: Nil
 Judicial Manager: B. G. S. DE WET

Unsuccessful: Liquidation No. T 757/76

Insufficient capital and the present economic climate, which was unfavourable for raising loans led to difficulties. The assets had been over-bonded and the company was not in a position to furnish security to potential lenders. Business had come to a standstill prior to the Provisional Judicial Management Order.

495. A. B. C. GARAGE (PTY) LTD T 811/76

SERVICE STATION AND GARAGE

Provisional Order: 24/6/76
 Final Order: 24/9/76
 Judicial Manager: I. J. OXLEE

Unsuccessful: Liquidation No. T 1402/77

Capital was invested in property which was showing no return. The business was situated in an Asiatic area and general negotiations were retracted. The company's assets were heavily bonded and was unable to meet its obligations.

496. GENTNER MANUFACTURING (PTY) LTD T 980/76
 File not available
497. F.J.H. BELEGGINGS (EDMS) BPK. T 933/76
 DAIRY AND CATTLE FARM
 Provisional Order: 13/7/76
 Final Order: Nil
 Judicial Manager: A.J. HESSELS
Unsuccessful: Liquidation No. T 1702/76
 Lack of capital and insufficient cash flow to service the various bonds on the properties led to difficulties. If suitable purchasers could have been found for some of the properties, the business might have been successful.
498. F.J. VAN HESLAND MOTORS (EDMS) BPK. T 988/76
 GARAGE AND RETAILERS OF FARMING EQUIPMENT
 Provisional Order: 27/7/76
 Final Order: 12/10/76
 Judicial Manager: T.J. VAN H. LOCHNER
 Still under Judicial Management
 Failure was due to lack of working capital, debtors were farmers and could not pay their debts and poor administration. The chances of success are good.
499. DONMIRA (PTY) LTD T 1035/76
 CIVIL ENGINEERING AND CONTRACTING COMPANY
 Provisional Order: 27/7/76
 Final Order: Nil
 Judicial Manager: A.S.P. MEYER
Successful: Order set aside 9/10/76
 Various business undertakings in the past had proved unprofitable, but for the last two years the company changed to civil engineering which proved more profitable. All creditors were eventually repaid.

500. GASSENTRAAL (EDMS) BPK. T 1049/76
 DISTRIBUTORS OF GAS AND GAS APPLIANCES
 Provisional Order: 4/8/76
 Final Order: Nil
 Judicial Manager: B.G.S. DE WET
Unsuccessful: Liquidation No. T 1271/76
 Stock in hand was old and could not be sold at a profit. High overheads and a lack of capital resulted in the company being unable to continue business.
501. BERKELY MEWS (PTY) LTD T 1065/76
 FLATS: HILLCREST MANSIONS
502. BERNASH COURT (PTY) LTD T 1066/76
 FLATS: BERNASH COURT
503. BLONDELL INVESTMENTS (PTY) LTD T 1067/76
 FLATS: PORTERS CENTRE
504. BRANKSOME TOWERS (PTY) LTD T 1068/76
 FLATS: BRANKSOME TOWERS
505. CLARENDON COURT (PTY) LTD T 1069/76
 FLATS: CLARENDON COURT
506. CONSTITUTION SQUARE T 1070/76
 ONE HALF OF FLATS CONSTITUTION SQUARE WITH GROSVENOR CRESCENT FLATS
507. DAFIELD INVESTMENTS (PTY) LTD T 1071/76
 FLATS: DAFIELD COURT
508. EARLRIDGE COURT (PTY) LTD T 1072/76
 FLATS: EARLRIDGE COURT

509. EILLOC (PTY) LTD T 1073/76
FLATS: GAINSBOROUGH MANSIONS
510. FIXED PROPERTY MORTGAGE TRUST LTD T 1074/76
FLATS: ALBYN COURT
511. GERALDINE COURT (PTY) LTD T 1075/76
FLATS: GERALDINE COURT
512. GLEN ISLE INVESTMENTS (PTY) LTD T 1076/76
FLATS: GLEN ISLE
513. GLENEAGLE MANSIONS (PTY) LTD T 1077/76
FLATS: DELMONICA
514. GRANITE INVESTMENTS (PTY) LTD T 1078/76
FLATS: CLARENDON HEIGHTS
515. GROSVENOR CRESCENT (PTY) LTD T 1079/76
ONE HALF OF CONSTITUTION SQUARE
516. HENSAR INVESTMENTS (PTY) LTD T 1080/76
FLATS: HOUGHTON VIEW
517. HERMANNA INVESTMENTS (PTY) LTD T 1081/76
FLATS: HERMANNA COURT
518. JACO TILERS (PTY) LTD T 1082/76
FARMLAND
519. LINATE (PTY) LTD T 1083/76
FLATS: EIFFEL COURT

520. LINMEYER PROPERTIES (PTY) LTD T 1084/76
 FLATS: LINMEYER MANSIONS
521. M.R. (PTY) LTD T 1085/76
 FLATS: WASHINGTON COURT
522. MARGATE COURT (PTY) LTD T 1086/76
 COTTAGE
523. MARGATE PROPERTY HOLDINGS (PTY) LTD T 1087/76
 FLATS: LA MICH
524. METROPOLITAN HEIGHTS (PTY) LTD T 1088/76
 FLATS: METROPOLITAN HEIGHTS
525. MARLETTA BAY INVESTMENTS (PTY) LTD T 1089/76
 LAND ADJACENT TO MARGATE PROPERTIES
526. PARK MEWS (PTY) LTD T 1090/76
 FLATS: PARK MEWS
527. PATRIMONIAL INVESTMENTS (PTY) LTD T 1091/76
 FLATS: LA CONTESSA
528. PENTAGON INVESTMENTS (PTY) LTD T 1092/76
 FLATS: ALPINE HEIGHTS
529. PORTLAND MEWS (PTY) LTD T 1093/76
 FLATS: CARMEL COURT, AND ANLAR HOTEL
530. RAYNOL INVESTMENTS (PTY) LTD T 1094/76
 FLATS: EATSLEIGH COURT
531. REGENT MEWS (PTY) LTD T 1095/76

- FLATS: MONTREAL MANSIONS
532. BECKER STREET INVESTMENTS (PTY) LTD T 1096/76
HOUSE
533. ROODIA INVESTMENTS (HOUGHTON) (PTY) LTD T 1097/76
FLATS: GROSVENOR HOUSE
534. STEFFAN MANSIONS (PTY) LTD T 1098/76
FLATS: STEFFAN MANSIONS
535. TAMERLANE INVESTMENTS (PTY) LTD T 1099/76
FLATS: SAN FRANCISCO
536. TERMINUS BUILDINGS (PTY) LTD T 1100/76
FLATS: MYRA COURT
537. THE ELMS (PTY) LTD T 1101/76
FLATS: THE ELMS
538. UDINE (PTY) LTD T 1102/76
FLATS: CASTLE UDINE
539. UNIPERM ESTATE (PTY) LTD T 1103/76
THREE COTTAGES
540. WALTERS FINANCE AND TRUST COMPANY (PTY) LTD T 1104/76
FLATS: HOUGHTON GARDENS
541. WILDOR (PTY) LTD T 1105/76
FLATS: SEVENOAKS
542. WULGIN (PTY) LTD T 1106/76
FLATS: TRINITY COURT

543. YEO STREET PROPERTIES (PTY) LTD T 1107/76

COTTAGE

544. RICHGOLD (PTY) LTD T 1108/76

FLATS: PALATINE PLACE

Provisional Order:	9/8/76
Final Order:	Nil
Judicial Managers:	M.I. CATO L.D. DRUKER A. RUSKIN B.G.S. DE WET

Unsuccessful: Liquidation 5/10/76

The above group of companies were owned to a large extent by Mr Chaim Wainer, and were commonly known as the Wainer Group. The affairs of the group were interwoven and intermingled, especially in view of the fact that all the companies operated on only one bank account. Wainer tried to increase the income of the buildings which were subject to rent control by converting same into boarding houses or by altering or renovating same and caused flats and buildings to be sold in terms of the Sectional Titles Act of 1971. Wainer was subsequently charged and convicted of offences under the rents and housing Act and resigned directorship of the companies at the end of 1974.

No person was able to say which monies belonged to which companies. Some of the flats were sold although a Sectional Title Register had not yet been opened and the latter could not be opened unless the requirements of the local authorities were complied with. To comply with these requirements, a substantial outlay of expenses was required for which the companies had no funds.

The bond holders of the various properties would also not agree to any transfer being registered if the bonds were not repaid and while the companies were still under Judicial Management.

The Judicial Managers found that the cash flows were insufficient to pay costs of maintenance, interest on the bonds, etc. and that there was also a possibility of the existing Deeds of Sale being cancelled or declared invalid.

As the affairs of each company in the Wainer Group were inextricably involved with the affairs of the remaining companies, the fate of one would have a substantial influence on the fate of the remaining companies.

In the opinion of the Judicial Managers it was not possible in the economic climate pertaining at that stage for the companies to be able to raise sufficient monies to meet the obligations under the mortgage bonds, and to repay all the liabilities. Most of the companies were subsequently placed under Final Winding-up Order.

545. ETCO MAGOU BROUERY (EDMS) BPK. T 1252/76

BREWERS OF NON-ALCOHOLIC BEVERAGE

Provisional Order: 12/8/76
 Final Order: 29/9/76
 Judicial Manager: D.J. RENNIE

Unsuccessful: Liquidation No. T 477/77
 16/2/77

Lack of capital and insufficient cash flow led the company into difficulties. The company had no unencumbered assets, and a large amount was expended monthly on hire purchase commitments.

546. TIDAL WAVE PLANT HIRE (PTY) LTD T 1264/76

HIRERS OF COMPACTION EQUIPMENT

Provisional Order: 7/9/76
 Final Order: 16/11/76
 Judicial Manager: R.J. BAILLIE

Successful: Order set aside 5/7/77

The company was undercapitalised and had large lease and hire purchase commitments. There was a poor record of payment by debtors. Poor control and mismanagement aggravated the circumstances, as did mismanagement. However, outstanding debtors accounts were collected and some leased equipment was sold under Judicial Management.

547. J. COLIN CHARAD PROJECTS (PTY) LTD T 1479/76

FACTORING INVOICES ON SALES BY A GROUP OF COMPANIES

548.	<u>PARISIAN DIAMONDS (PTY) LTD</u>	T 1480/76
	THE COMPANY HAD NOT CARRIED ON ANY BUSINESS	
549.	<u>I. CHARAD AND SONS (PTY) LTD</u>	T 1481/76
	STATIONERY AGENTS	
550.	<u>SAJAX HOLDINGS (PTY) LTD</u>	T 1482/76
	FACTORING OF INVOICES	
551.	<u>FIRST LINEN KO (PTY) LTD</u>	T 1493/76
	FACTORING INVOICES	
552.	<u>C.W. EDDING & CO (SOUTH AFRICA) (PTY) LTD</u>	T 1484/76
	WHOLESALE STATIONERS	
553.	<u>DRAGON STATIONERY COMPANY (PTY) LTD</u>	T 1485/76
	WHOLESALE STATIONERS	
	Provisional Order:	7/10/76
	Final Order:	Nil
	Judicial Managers:	G.H.J. VENTER A. RUSKIN
	<u>Unsuccessful:</u>	Liquidation 30/11/76 Liquidation Nos. T 1861/76, T 1860/76, T 1864/76, T 1865/76, T 97/77, T 1863/76

The companies were all hopelessly undercapitalised, and irregularities took place concerning the deceased Managing Director. J. Colin Charad & Sons had loaned substantial amounts to associate companies, which were hopelessly undercapitalised. In the case of Parisian Diamonds, the only asset was a loan account from a company in liquidation.

In order to raise money, the companies resorted to factoring their sales in order to fund operations. In addition, an expensive fleet of cars was leased to other companies, but most of these cars did not seem necessary for business. The Managing Director had transferred many of the profits into his private loan account before his death and it appeared that most of the debts were irrecoverable. There seemed no prospect of the companies succeeding under Judicial Management.

554. PATTIES STEEL TILE AND ROOFING (PTY) LTD T 1691/76
File not available
555. ROVIC DIAMONDS (PTY) LTD T 1701/76
File not available
556. NORTHCLIFF BELEGGINGS MAATSKAPPY (EDMS) BPK. T 1754/76
DRIVE IN THEATRE
557. SILWERDOEK VERTONINGS (EDSM) BPK T 1755/76
DRIVE IN THEATRE
558. DAKOTA INRY TEATER BELEGGINGS (EDMS) BPK. T 1756/76
DRIVE IN THEATRE
559. DAKOTA DRIVE IN SERVICE STATION (PTY) LTD T 1757/76
SERVICE STATION
560. UMDLOTI BESIGHEIDSENTRUM (EDMS) BPK. T 1758/76
PROPERTY OWNING COMPANY
- Provisional Order: 26/11/76
Final Order: 11/1/77
Judicial Managers: P.D. BERMAN
C. LIPSCHITZ
- Unsuccessful: Liquidation 11/1/77

The above group of companies had a substantial claim against Rovic Diamonds (Pty) Ltd, under Judicial Management, in the amount of approximately R 99 000. Rovic could not pay its debts, and this was largely responsible for the failure of the companies. Other reasons, such as drive in theatres which were affected by Television, many movable assets were on lease and Umdloti Property Company could not find enough tenants for its newly erected buildings. Had Rovic been able to repay its debts, the companies might have been successful.

561. KORFHUISE BPK.

T 1803/76

SELLERS OF CLUSTER HOUSES IN TERMS OF THE SECTIONAL
TITLES ACT

Provisional Order: 30/11/76
 Final Order: 8/3/77
 Judicial Manager: T.C. MULJER

Unsuccessful: Liquidation No. T 1299/77

The company lacked capital and there was no cash flow. An amount of R 200 000 which was previously thought to be recoverable was not forthcoming. Had this amount been recovered, the company could have been successful. All assets were shares in a property owning company known as Alanorbes (Edms) Bpk.

562. HEAVY CARRIERS (EDMS) BPK.

T 1883/76

EXCAVATING AND SELLING BUILDING SAND

Provisional Order: 14/12/76
 Final Order: 8/2/77
 Judicial Manager: T.C. MULLER

Unsuccessful: Liquidation No. T 1286/77

The affairs of the company were interwoven with Siebert's Transport (Edms) Bpk., under Judicial Management. High running and maintenance costs could not be met as both companies did not have sufficient capital.

563. ALANORBES (EDMS) BPK.

T 1921/76

File not available

564. COLRUVE ENGINEERING AND ERECTORS (PTY) LTD

T 87/77

ENGINEERS

Provisional Order: 18/1/77
 Final Order: Nil
 Judicial Manager: Not stated

Unsuccessful: Liquidation No. T 525/77

Funds to finance the running of the company were lacking. The main assets which could produce a cash flow were sundry debtors, many of them disputing the claims. Assets in the form of movable property was mortgaged to the bank in security of an overdraft. The company had no hope of succeeding under Judicial Management.

565.

WEIDOW CONSTRUCTION (PTY) LTD

T 88/77

CONSTRUCTION COMPANY

Provisional Order:	25/1/77
Final Order:	Nil
Judicial Manager:	G.H.J. VENTER

<u>Unsuccessful:</u>	Liquidation No. T 565/77 22/3/77
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The company was engaged in the building of houses on contract as well as a number of speculations. It had effected payment of the sum of R 16 570 to a firm of brokers in order to ensure that the required bonds would be available to potential purchasers of the various properties. Despite the payment as aforesaid no such bonds were forthcoming due to the depressed conditions of the property market at that stage, as well as the fact that bonds in excess of R 18 000 were virtually unobtainable. The company was forced to sell some of its property without collecting the full purchase price and without obtaining securities for the balance of the purchase price. The Judicial Manager took steps to register second mortgage bonds in favour of the company in cases where the balance of the purchase price still remained outstanding. The company's equity in the various properties on book value amounted to approximately R 145 000, but due to the present property market the Judicial Manager was doubtful whether it would realise R 90 000. Furthermore, a substantial proportion of the R 145 000 consisted of second mortgage bonds which were only payable late in 1978. The only source of finance of the company was from its day to day cash flow and drawings from building societies. The Judicial Manager was of the opinion that the company would not be able to effect payment of the claims of the creditors in the foreseeable future, and recommended liquidation.

The Liabilities of the company were as follows:

First Mortgage Bond Holders :	R 155 000
Trade Creditors:	R 113 000

566. LOUIS GARAGE (PTY) LTD

T 139/77

MOTOR DEALER UNDER GENERAL MOTORS FRANCHISE INCLUDING RETAILING OF PARTS AND SERVICING.

Provisional Order: 2/2/77
 Final Order: 22/3/77
 Judicial Managers: P.J.J. Cornish and A.A. Clow

Still in Judicial Management

Reason for the initial failure of the Company was adverse trading causing a reduction in working capital - curtailment of credit facilities - lack of financial management control.

Since March 1977 the Company has operated successfully and reduced the main debt to General Motors from R1 340 932 at 31/12/77 to R100 000 at 30/6/79. The profitability of the Company was set back by the massive petrol price rise and General Motor's inability to introduce the small Opel Kadet last year.

The Judicial Managers are not sure when creditors will be paid in full.

567. LOUIS GARAGE (S.A.) (PTY) LTD

T 140/77

HOLDING COMPANY

568. LOUIS GARAGE (BENONI) (PTY) LTD

T 141/77

PROPERTY OWING COMPANY

569. LOUIS GARAGE (BOKSBURG) (PTY) LTD

T 142/77

File not available

570. LOUIS GARAGE (BRAKPAN) (PTY) LTD

T 143/77

TO ACQUIRE PREMISES IN BRAKPAN TO ENABLE AN ASSOCIATE COMPANY
TO OPERATE THERE

Provisional Order:	2/2/77
Final Order:	22/3/77
Judicial Managers:	P.J.J. Cornish and A.A. Clow

Still in Judicial Management

This Company obtained rent from Louis Garage (Pty) Ltd. As Louis Garage (Pty) Ltd is also in Judicial Management the future prospects of this company depend entirely on Louis Garage (Pty) Ltd.

Since March 1977 Louis Garage (Pty) Ltd have operated profitably and reduced their main debt from R1 340 932 at 31/12/77 to R100 000-00 at 30/6/79. The Judicial Managers anticipate the order being set aside by June 1979.

571. WILNIC PROPERTIES (PTY) LTD

T 144/77

A member of the Louis Garage Group.

PROPERTY DEVELOPMENT

Provisional Order:	2/2/77
Final Order:	22/2/77
Judicial Managers:	P.J.J. Cornish and A.A. Clow

Still in Judicial Management

The Judicial Managers endeavoured to sell the property but have received no reasonable offers to date.

The Judicial Management of the company is not really successful but the Judicial Managers feel that a better price will be received for the property while under Judicial Management as compared to liquidation.

572. LOUGAR INVESTMENTS (PTY) LTD

T 145/77

(A subsidiary of Louis Garage (S.A.) (Pty) Ltd.)

FINANCING HIRE PURCHASES FOR LOUIS GARAGE (S.A.) (PTY) LTD

Provisional Order:	2/2/77
Final Order:	22/3/77
Judicial Managers:	P.J.J. Cornish and A.A. Clow

Successful:

Judicial Management order set aside on 29/8/78.

A contingent liability in respect of a guarantee given to General Motors Acceptance Corporation Ltd for R2 631 638-00 was the only major liability. General Motors Acceptance Corporation agreed to cancel the guarantee.

575. NICOLIAN PROPERTIES (PTY) LTD

T 145/77

A member of Louis Garage Group.

TO ACQUIRE AND DEVELOP PROPERTY IN THE BENONI AREA

Provisional Order:	2/2/77
Final Order:	22/3/77
Judicial Managers:	P.J.J. Cornish and A.A. Clow

Successful:

Final Judicial Management order set aside on 29/8/78.

All property which the Company formerly acquired has now been disposed of with the exception of 2 plots which were sold under Deed of Sale.

The interest from the sales on installments was insufficient to cover the bond interest and other expenses.

Action: the 2 plots were realised and all debts paid except R2 608-94 owing to the Holding Company which was written off.

574. BURTON CONSTRUCTION (PTY) LTD

T 157/77

CONSTRUCTION AND CIVIL ENGINEERING COMPANY

Provisional Order: 3/2/77
 Final Order: Nil
 Judicial Manager: R.S. Hislop

Unsuccessful: Liquidation No. T 786/77

Substantial losses had been incurred on various contracts and suppliers demanded cash payment on delivery. This resulted in a cash flow problem as the company was undercapitalised. The Judicial Manager predicted success but one of the creditors insisted on liquidation as he stated that the assets had been overemphasised.

575. TRACTOR TRANSPORT AND EQUIPMENT (PTY) LTD

T 207/77

GENERAL ENGINEERS AND ROLLING STOCK MANUFACTURERS

Provisional Order: 8/2/77
 Final Order: 8/3/77
 Judicial Manager: M. Cato

Unsuccessful:

The company required large contracts to make containers, tankers etc. in order to be successful, but these were not forthcoming and the necessary finance could not be obtained to cover overheads until new contracts came in.

Liquidation order granted on 25/7/78.

576. A.B. SILVER AND COMPANY (PTY) LTD

T 229/77

ELECTRICAL CONTRACTORS

Provisional Order: 14/1/77
 Final Order: 29/3/77
 Judicial Manager: C. Lipschitz

Offer of compromise sanctioned 26/9/78

Increase in wages resulted in contracts being completed at a loss and too much labour was employed on one contract. The company over-stocked in anticipation of the rising cost of building materials and experienced difficulty in obtaining payment for work done.

However, the Judicial Manager was of the opinion that contracts on hand were likely to be profitable and that sufficient monies could be collected to pay creditors.

577. RANDPAVE (PTY) LTD

T 231/77

HOLDING COMPANY TO A GROUP OF COMPANIES TRADING IN
THE LAYING OF BRICK DRIVEWAYS

Provisional Order: 15/2/77
Final Order: Nil
Judicial Manager: P.D. ALEXANDER

Offer of compromise sanctioned 19/4/77

Monies recoverable from debtors were not forthcoming and there was a general slow-down in the building industry. Loan accounts to subsidiary companies proved irrecoverable as a result of their illiquidity.

578. SPICER-MITCHELL (PTY) LTD

T 238/77

CONSTRUCTION AND ENGINEERING COMPANY

Provisional Order: 15/2/77
Final Order: Nil
Judicial Manager: C. LIPSCHITZ

Offer of compromise sanctioned 24/5/77

Turnover decreased and the company found itself in an illiquid state. Collections from debtors proved disappointing, but existing contracts seemed lucrative enough to enable the company to continue until an offer was made.

579. EXQUISITE PRAM MANUFACTURERS (PTY) LTD

T 300/77

MANUFACTURERS OF PRAMS AND FURNITURE

Provisional Order: 22/2/77
Final Order: Nil
Judicial Manager: B. G.S. DE WET

Unsuccessful: Liquidation No. T 574/77

The company had no source of income for financing the continued trading of the company, the debtors being discounted and ceded. The company also had no unencumbered assets to tender as security for future loans. There seemed no prospects of success.

580. EXQUISITE PRAM MANUFACTURERS (BABALEGIE) (PTY) LTD T 317/77

MANUFACTURERS OF PRAMS AND FURNITURE

Provisional Order: 22/2/77
 Final Order: Nil
 Judicial Manager: B.G.S. DE WET

Unsuccessful: Liquidation No. T 576/77

The company was associated with Exquisite Pram Manufacturers (Pty) Ltd, and the reasons for failure were similar.

581. HUP CONSTRUCTION COMPANY (PTY) LTD T 373/77

CONSTRUCTION COMPANY

Provisional Order: 1/3/77
 Final Order: Nil
 Judicial Manager: R.J. BAILLIE

Unsuccessful: Liquidation No, T 295/78

Monies earned from contracts would not have been sufficient to effect payment of the claims by creditors in full. Some unwise investments had been made in fixed property and these would not realise even the book value. In addition there was a possibility that claims would be lodged in respect of contracts being behind schedule.

582. WESTGATE OFFICE EQUIPMENT (PTY) LTD T 458/77

MANUFACTURERS AND WHOLESALERS OF METAL OFFICE EQUIPMENT

Provisional Order: 9/3/77
 Final Order: Nil
 Judicial Manager: P.D. ALEXANDER

Order set aside 21/6/77

An offer of compromise was subsequently made and sanctioned.

To continue business a substantial amount of capital was necessary, but not forthcoming. There was a fall-off in demand for the company's products

583. and in addition there was an undisclosed liability .

MAP CENTRE (PTY) LTD

T 468/77

MANUFACTURERS OF MAPS AND TOURIST INFORMATION

Provisional Order: 8/3/77
 Final Order: Nil
 Judicial Manager: G.B. CHRISTIE

Unsuccessful: Liquidation No. T 1022/77

The company had no capital and debtors accounts were ceded to a bank but repayments were very slow. Wages, rent and salaries were excessive.

584. FRAPPANT (PTY) LTD

T 469/77

SHOP-FITTERS

Provisional Order: 8/3/77
 Final Order: Nil
 Judicial Manager: A. RUSKIN

Unsuccessful: Liquidation No. T 837/77

Credit facilities had been curbed by the bank and many book debts had been factored. The company had no funds to continue business.

585. TOWNMARK PROPERTY DEVELOPMENT (PTY) LTD

T 566/77

File not available

GRECO TRADING COMPANY (PTY) LTD

T 596/77

GENERAL MERCHANTS OF MINING AND BUILDING REQUIREMENTS

Provisional Order: 29/3/77
 Final Order: Nil
 Judicial Manager: N. BOWMAN

Unsuccessful: Liquidation No. T 940/77

While the company was under Judicial Management, the former directors gave no assistance with the continuation of trading operations. They also aligned themselves with one of the competitors and refused to waive loan accounts held. Liquidation was recommended in order to avoid further depreciation of the assets left.

586. ERISMA ENGINEERING (PTY) LTD

T 602/77

ENGINEERING BUSINESS

Provisional Order: 29/3/77
 Final Order: Nil
 Judicial Manager: G.H.J. VENTER

Successful: Order set aside 14/6/77

The company was undercapitalised, debtors of the company had been factored with another company and substantial orders had been cancelled. It cannot be ascertained how the company became successful.

587. EXIBICON (EDMS) BPK.

T 731/77

BUILDING CONTRACTORS

Provisional Order: 19/4/77
 Final Order: 12/7/77
 Judicial Manager: N. BOWMAN

Unsuccessful: Liquidation No. T 265/77

Many purchasers of properties on which the company had built houses had defaulted, vacated properties purchased under Deed of Sale or could not cover the cost of transfer duty and registration. As a result of this the company's cash flow was reduced and a potential source of finance was stopped when the financing company was no longer prepared to grant loans. The company therefore had no monies available to service the first and/or second bonds so that interest was accruing rapidly.

At a meeting of creditors, it was decided that Judicial Management was no longer acceptable and that the company should be liquidated.

588. S.J.P. KRUGER KONSTRUKSIE (EDMS) BPK. T 738/77

CIVIL ENGINEERS

Provisional Order: 20/4/77
 Final Order: Nil
 Judicial Manager: D.A. KAHAN

Unsuccessful: Liquidation No. T 1072/77

The company had lent its subsidiaries vast amounts and these proved irrecoverable. Substantial losses had been incurred on two contracts and management and administration were weak in certain areas.

589. APPLIED MATERIALS (EDMS) BPK. T 865/77

HIRING EXCAVATION MACHINERY AND DEALERS IN SPARE PARTS

Provisional Order: 10/5/77
 Final Order: Nil
 Judicial Manager: A.R. GALLOWAY

Unsuccessful: Liquidation No. T 1238/77

Insufficient cash flow and capital were the result of banks reducing overdraft facilities. Control of work was weak as it was conducted over a wide area, overheads were high and the profit margin low.

590. KOFFIEBON (PTY) LTD T 871/77

RESTAURANT

Provisional Order: 13/5/77
 Final Order: Nil
 Judicial Manager: N. BOWMAN

Unsuccessful: Liquidation No. T 1727/77

The company had been sold twice in a short period of time. During these periods turnover decreased and there were cases of mismanagement. When the original owners took possession of the business again, it was apparent that with the limited capital enough stocks could not be bought to bring them up to a reasonable standard. The Judicial Manager recommended liquidation.

591. EAST RAND METALLOGRAPHIC LABORATORIES (PTY) LTD

T 1023/77

TESTER AND EXAMINER OF STEEL TO ASCERTAIN CAUSES OF FAILURE AND/
OR ITS MOLECULAR STRUCTURE

Provisional Order: 14/6/77
Final Order: 16/8/77
Judicial Manager: I.S. Fynn

Offer of Compromise

On 14/8/79 an order was granted removing the company from Judicial Management and sanctioning the offer.

This company was complemented by other companies which were bought by one body. Therefore the Judicial Management order was set aside in order to sanction an Offer of Compromise.

592. NORICUM (PTY) LTD

T 1024/77

HEAT TREATMENT SPECIALISTS (IN RESPECT OF METALS)

Provisional Order: 14/6/77
Final Order: 16/8/77
Judicial Manager: I.S. Fynn

Offer of Compromise

The reasons for the initial failure of the company were that in 1976 a company which owed Noricum was liquidated - during late 1976 and early 1977 turnover dropped - general declining economic conditions - creditors were unwilling to extend credit.

Compromise sanctioned on 14/8/79 together with East Rand Metallographic Laboratories and Overseas Metallographic Laboratories.

593. OVERSEAS METALLOGRAPHIC LABORATORIES (PTY) LTD

T 1025/77

HEAT TREATMENT OF TOOL AND DIE STEEL

Provisional Order:	14/6/77
Final Order:	16/8/77
Judicial Manager:	I.S. Fynn

Offer of Compromise

Compromise sanctioned on 14/8/79 together with Noricum (Pty) Ltd and East Rand Metallographic Laboratories.

Insufficient working capital - pricing structure too low - general declining economic conditions - creditors unwilling to extend credit.

594. DELDRAAD (EDMS) BPK

T 1155/77

MANUFACTURER AND DEALER IN STEEL AND IRON PRODUCTS

Provisional Order:	6/7/77
Final Order:	Nil
Judicial Managers:	A.J. Hessels A.J. Meintjies

Unsuccessful: Liquidation No. T 1683/77

The company entered into various lease agreements with regard to building and machines, but due to the depressed state of the building industry much of it could not be used. The margin of profit was low and there were high overheads.

595. AGRICULTURAL SUPPLY ASSOCIATION (PTY) LTD

T 1247/77

File not available

596. EDEN HOTELS (PTY) LTD

T 1270/77

HOTEL : SLEEPY HOLLOW HOTEL AND OFF SALES

Provisional Order: 26/7/77
 Final Order: Nil
 Judicial Manager: N. Bowman

Unsuccessful: Liquidation No. T 1835/77

The company conducted its business from leased premises, but at the time of Judicial Management no legal lease existed, and there seemed no possibility of obtaining a new lease. The company was owed a large sum of money by a company in liquidation, and so a major portion of its assets and not recoverable.

597. EDEN HOLDINGS (PTY) LTD

T 1300/77

PROPERTY OWING COMPANY

Provisional Order: 27/7/77
 Final Order: Nil
 Judicial Manager: D.A. Kahan

Successful: Order set aside 8/11/77

The company owned the property on which the Sleepy Hollow Hotel conducted business. When the company was liquidated Eden Holdings could not afford its bond repayments. The Judicial Manager found a new tenant for the property and this enabled the company to repay creditors.

598. WEATHERITE (PTY) LTD

T 1547/77

File not available

599. AIRKOOL (PTY) LTD

T 1547/77

SELLING AIR CONDITIONER UNITS FOR COMMERCIAL AND INDUSTRIAL PURPOSES

Provisional Order: 13/9/77
 Final Order: 28/10/77
 Judicial Manager: M. Cato

Offer of Compromise

An Offer of Compromise was sanctioned on 9/5/78.

General decline in economy - high interest costs to be paid due to undercapitalisation - pressure from finance houses to reduce their loans at a faster rate - cash flow insufficient to meet current overheads.

600. COMMUNIFACT (PTY) LTD

T 1562/77

PUBLISHERS OF S.A. MOTOR AND DIE MOTOR

Provisional Order: 16/9/77
 Final Order: 18/10/77
 Judicial Manager: J.J. Alberts

Unsuccessful: Liquidation No. T 380/78

Book debts had been ceded and the present economic climate adversely affected advertising revenue and sales. Many subscribers had not met their debts and these were not followed up.

601. THORPE TIMBER COMPANY (PTY) LTD

T 1643/77

RETAILERS IN TIMBER AND BUILDERS HARDWARE

Provisional Order: 4/10/77
 Final Order: 13/12/77
 Judicial Manager: I.S. Fynn

Offer of compromise sanctioned 15/11/78

The company erected new premises on the site of an old operating concern that had burnt down some years previously. Expenses were higher than at first anticipated and expensive capital equipment was leased. As there were delays in the installation of the equipment, operations started later than expected and this caused a cash flow problem.

602. TRIQMF ONDERNEMINGS BPK

T 2039/77

HOLDING AND MANAGEMENT COMPANY OF THE TRIQMF GROUP
PROPERTY DEVELOPMENT, SMALLER INDUSTRIAL INTERESTS AND
HOLIDAY ACCOMMODATION HOMES

Provisional Order:	13/12/77
Final Order:	21/3/78
Judicial Manager:	P.T.C. Thorne

Still in Judicial Management

The Chairman and Managing Director of the company was sequestered and another company which was owed R370 000 was liquidated - this led to loss of public confidence and Triomf existed on money borrowed from the public.

The Judicial Manager is realising the assets of the subsidiaries and feels confident that eventually all creditors will be paid.

603. TRIQMF MAKELAARS (EDMS) BPK

T 2/78

ESTATE AGENCY TO MANAGE PROPERTIES WITHIN THE TRIQMF GROUP
AND NORMAL ESTATE AGENCY

Provisional Order:	20/12/77
Final Order:	25/4/78
Judicial Manager:	P.T.G. Thorne

Still in Judicial Management

The company is a wholly owned subsidiary of Triomf Ondernemings Bpk, which was placed under Judicial Management. Loans to this company were then irrecoverable. The only reason this company was not placed in liquidation was because a substantial portion of the company's assets consist of debtors earned but not due and if the company was placed in liquidation these would have been irrecoverable.

604. GRUNO (EDMS) BPK

T 3/78

MERCHANTS AND CONTRACTORS OF STEEL PRODUCTS

Provisional Order: 20/12/77
 Final Order: 25/4/78
 Judicial Manager: P.T.C. Thorne

Unsuccessful:

Wholly owned subsidiary of Triomf Ondernemings Bpk. with the collapse of Triomf the public lost confidence and no other liquid resources were available.

A substantial profit was made for the year ended 30/4/77. For the year ended 28/2/79 a loss of R28 434-00 was incurred.

The Judicial Manager then pr-posed the liquidation of the company.

605. BIG ROCK (PTY) LTD

T 4/78

PROPERTY DEVELOPMENT (INTO RESIDENTIAL AND HOLIDAY TOWNSHIPS IN E. TVL.)

Provisional Order: 20/12/77
 Final Order: 25/4/78
 Judicial Manager: P.T.C. Thorne

Indeterminable

A wholly owned subsidiary of Triomf Ondernemings Bpk. As Triomf was placed in Judicial Management confidence was lost in this company.

As at 31/8/79 it did not appear as if the Judicial Manager would be successful unless Hillrand Ltd submitted an Offer of Compromise. Sales of erven were slower than expected, escalation of property development costs, lack of suitable finance.

606. DOORMASTER (PTY) LTD

T 60/78

MANUFACTURING AND SELLING OF DOORS

Provisional Order: 10/1/79
 Final Order: 21/3/78
 Judicial Manager: J.P. van Niekerk

Still in Judicial Management

The initial collapse of the company was due to :

incorrect costing
 no attention to sales promotion
 no flexibility in sales prices

Judicial Management reduced labour force and increased productivity and introduced flexible sale prices.

He feels confident of the success of the Judicial Manager.

607. COMMERCIAL AND INDUSTRIAL DENTAL COMPANY (PTY) LTD

T 201/78

SUPPLIERS OF CONSUMABLE DENTAL PRODUCTS

Provisional Order: 8/2/78
 Final Order: Nil
 Judicial Managers: N. Bowman
 J.R.R. Wells
 P.J.E. Meintjies

Unsuccessful: Liquidation No. T 2022/78

The company was undercapitalised and overstocked. One of the shareholders was indebted to the company in the amount of R159 000, very little of which was recoverable. Further difficulties were the result of the recession in the economy and key staff members resigning.

608. HOFMAN PROPERTY DEVELOPMENT COMPANY LTD

T 463/78

HOLDING COMPANY OF A LARGE GROUP OF PROPERTY OWNING
SUBSIDIARIES. AS WELL AS IN CONSTRUCTION, STEEL, ELECTRICAL
SUPPLIERS AND PROPERTY ADMINISTRATORS

Difficulties arose because the company could not complete certain capital developments and failed to fully let certain buildings owned by subsidiaries. Some subsidiaries had a negative, some a positive cash flow, and it would take some time before the Judicial Managers could ascertain which companies were illiquid.

An offer of compromise was to have been submitted by the Trust Bank of Africa Ltd before the end of May 1978, but it appears that this either did not occur or it was not acceptable.

The major capital developments which were to be completed were in Durban and consisted of:

Maharani for which an amount of R1,35 000 000 was required for the installation of the lifts.

Anvil Properties (Pty) Ltd for which an amount of approximately R1 000 000 was required to complete the building.

Durban Commercial Properties Holdings (Pty) Ltd for which an amount of R350 000 was owing in respect of its creditors. The funding of the bond and current losses for the year required approximately R1 300 000.

Point Circle (Pty) Ltd for which an annual amount of R400 000 was required to fund annual losses.

609. A. QUIDING AND SONS (PTY LTD

T 528/78

File not available.

610. GERMISTON PLUMBING WHOLESALERS (PTY) LTD

T 552/78

WHOLESALERS OF PLUMBING EQUIPMENT

Provisional Order: 30/3/78
 Final Order 30/5/78
 Judicial Manager: L.P. van Sittert

Unsuccessful:

Provisional winding-up order dated 19/9/78 and made final on or about 25/11/78.

Acute shortage of working capital - equipment bought on open account and payment dependant on monies received from debtors - general economic downturn - debtors took longer to pay. Judicial Manager felt if he could get finance to overcome liquidity problem the company's debts could be paid.

The Judicial Manager's first report was dated 2/5/78. The Provisional Liquidation order was 19/9/78. No information on file why the Judicial Manager failed.

611. CENTRAL AFRICAN BUYING SERVICES (PTY) LTD

T 591/78

EXPORTERS OF METALS, BUILDING MATERIALS AND GENERAL GOODS

Provisional Order: 4/4/78
 Final Order: Nil
 Judicial Manager: M. Holzman

Unsuccessful: Liquidation No. T 1201/78

Failure was due to the illness of the Managing Director and the accidental death of a key employee. Debtors proved slow in repaying debts and many debts were irrecoverable. The company could not operate successfully as the orders that the deceased employee had brought to the company were not repeated and no suitable person could be found to replace him.

612. CUNMAC BLASTING AND DRILLING SERVICES (PTY) LTD

T 608/78

PLANT HIRE AND BLASTING BUSINESS

Provisional Order: 11/4/78
 Final Order: Nil
 Judicial Manager: P.J.E. Meintjies

Unsuccessful: Liquidation No. T 948/78

At the date of Judicial Management the company was not engaged in any work and thus no surplus money was available. The Managing Director, who was a main contributor for new contracts, had died, and thus no work was forthcoming. The Judicial Manager recommended liquidation, as it was his opinion that it is not the purpose of a Judicial Manager to canvass for new contracts.

613. HENDOL INVESTMENTS (PTY) LTD

T 628/78

(A member of the Dawie Fourie Group)

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order: 11/4/78
 Final Order: 23/5/79
 Judicial Managers: D.J. Jordaan and B.G.S. De Wet

Offer

Compromise sanctioned on 30/10/79

614. GOLFERS PARADISE (EDMS) BPK

T 638/78

(A member of the Dawie Fourie Group)

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order: 11/4/78
 Final Order: 23/5/78
 Judicial Managers: D.J. Jordaan and B.G.S. De Wet

Offer

Compromise sanctioned on 30/10/79

615. YORFOUR (EDMS) BPK T 640/78

File not available

616. FOURIE & VILJOEN (EDMS) BPK. T 641/78

(A Dawie Fourie Company)

BUYING, SELLING OF LAND AND DEVELOPEMENT OF PROPERTY

Provisional Order:	11/4/78
Final Order:	23/5/78
Judicial Managers:	D.J. Jordaan and B.G.S. De Wet

Still in Judicial Management

The success of the Judicial Management depends on the outcome of negotiations for a settlement figure in respect of property owned by the company in Marlboro which was expropriated.

617. FERNDALE UITBREIDING AGT (EDMS) BPK T 642/78

File not available

618. D.J.F. HALFWEGHUIS (EDMS) BPK T 644/78

(A member of the Dawie Fourie Group)

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order:	11/4/78
Final Order:	23/5/78
Judicial Managers:	D.J. Jordaan and B.G.S. De Wet

Offer

Compromise sanctioned on 30/10/79.

619. BOSCHKOP 199 (EDMS) BPK.

T646/78

(A member of the Dawie Fourie Group)

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order:	11/4/78
Final Order:	23/5/78
Judicial Managers:	B.G.S. De Wet and D.J. Jordaan

Still in Judicial Management

A member of a group of 15 companies. It owns property in Marlboro which was expropriated. The success of the company is dependant on whether the Judicial Managers can negotiate to obtain settlement for the land or not.

Last report on file is dated 30/6/78.

620. UNAVAILABLE (EDMS) BPK

T 647/78

(A member of the Dawie Fourie Group)

PROPERTY DEVELOPMENT

Provisional Order:	11/4/78
The final order was granted but it was not on file	
Judicial Managers:	D.J. Jordaan and B.G.S. De Wet

Offer of Company

The company owns property in Marlboro which was expropriated. The Judicial Managers were negotiating with Community Development to agree to settle for a price.

Last Judicial Manager's report dated 30/6/78.

However, an Offer of Compromise was sanctioned on 30/10/79 and the Judicial Management order was cancelled.

621. B.V.D. EIENDOMME (EDMS) BPK.

T 648/78

(A member of Dawie Fourie Group)

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order: 11/4/78
 No Final Order on file
 Judicial Managers: D.J. Jordaan and B.G.S. De Wet

Offer of Compromise

Offer sanctioned on 30/-0/79

622. DAWIE FOURIE KONSTRUKSIE (EDMS) BPK

T 649/78

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order: 11/4/78
 Final Order: 30/5/78
 Judicial Managers: D.J. Jordaan and B.G.S. De Wet

Still in Judicial Management

The success of the Judicial Management depends on the outcome of negotiations for a settlement figure in respect of property owned by the company in Marlboro, the property having been expropriated.

623. D.V.D.A. BELEGGINGS (EDMS) BPK

T650/78

(A Dawie Fourie Company)

BUYING, SELLING OF LAND AND DEVELOPMENT OF PROPERTY

Provisional Order: 11/4/78
 Final Order: 23/5/78
 Judicial Managers: D.J. Jordaan and B.G.S. De Wet

Still in Judicial Management

Same report as in the other subsidiaries appropo negotiations with the Department of Community Development.

NOTE: Numbers 613 to 624 are all members of the Dawie Fourie group of companies. Of these 15 companies, only 3 own property in Marlboro and it would appear from the files that the success of the entire group depends on the expropriation price received. The last report by the Judicial Managers in all these files is dated 30/6/78.

624. PORTION NINETY KLIPFONTEIN (EDMS) BPK.

T 651/78

Provisional Order: .11/4/78
 Final Order: 23/5/78
 Judicial Managers: B.J.J. Jordaan and B.G.S. De Wet

Indeterminable

The Master has handed his file over to the Deputy State Attorney because Masters Fees were not paid to him. The file was handed over on 5/10/79.

625. MAXJACK INVESTMENTS (PTY) LTD

T 762/78

ADMINISTRATION COMPANY FOR A GROUP TRADING AS
 FURNITURE RETAILERS

Provisional Order: 2/5/78
 Final Order: Nil
 Judicial Manager: A.J. Hessels

Unsuccessful: Liquidation No. T 1094/78

Two retail companies had ceased operations some time previously, and this company's annual source of income depended on administration fees for services rendered. When the two companies stopped operating, a serious cash flow resulted and goods could not be obtained on credit. There seemed very little possibility for recovery and the Judicial Manager recommended liquidation.

626. CHROMESTYLE (PTY) LTD

T 851/78

MANUFACTURERS OF CHROME FURNITURE

Provisional Order: 16/5/78
 Final Order: Nil
 Judicial Managers: N. Bowman and G.E. Taylor

Unsuccessful: Liquidation No. T 932/78

Finance for continued operations was not forthcoming and the company owed Customs and Excise an amount of R20 000. As there were no funds, goods and machinery were attached and there was no hope of success.

627. ORANJE SOUTWERKE (EDMS) BPK

R 863/78

PACKERS AND MARKETERS OF SALT

Provisional Order: 18/5/78
 Final Order: Nil
 Judicial Managers: A.H. Gunn and T.H. Rheeder

Unsuccessful: Liquidation No. T 1013/78

The company was placed in liquidation before the Judicial Managers could submit a report, but records on file show that it was involved in various legal disputes, and in view of these further credit was unobtainable. The company had previously been placed under Judicial Management, No. T 809/78, but this was discharged as an offer of compromise had been made. The offer, however, had not been sanctioned by court. In addition, the company contended that they had a claim against the previous Judicial Manager, and this was also contested. The books of the company were "a complete mess" and it could not be ascertained which were assets and which were liabilities. Various key members had resigned and could not be replaced.

628. UPINGTON SUPER SOUT (EDMS) BPK

T 864/78

PRODUCER OF SALT HARVESTED FROM SALT PANS

Provisional Order: 18/5/78
 On 14/6/78 extended to 8/8/78
 Judicial Manager: B.G.S. De Wet

Unsuccessful:

Provisional Order of winding-up granted on 4/7/78.

After numerous extensions the Provisional Order of winding-up was discharged on 24/11/78.

On 1/2/78 General Mining (the major creditor) took control of this company and an associate Oranje Salt Works (Pty) Ltd by being appointed manager, secretary, and technical adviser. They found the books and records of the company to be in a hopeless state.

The Judicial Manager requested a liquidation but subsequent to that the order was discharged and there is nothing on file to indicate why.

629. AFRICAN PLANT HIRE (PTY) LTD

T 875/78

HIRER AND RE-HIRER OF PLANT HIRE EQUIPMENT TO CONSTRUCTION,
CIVIL ENGINEERING AND MINING INDUSTRIES

Provisional Order:	23/5/78
Final Order:	4/7/78
Judicial Managers:	C. Kilian and L. Wolf

Still in Judicial Management

Reasons for initial downfall of the Company:-

R34 000-00 was misappropriated in October 1977
R75 000 was invested in T.L.B. Plant Hire (Pty) Ltd

which was then placed in Judicial Management.
Cash flow was insufficient to meet normal running expenses.

By reducing the Lease and H.P. monthly payments by 30% and maintaining a turnover of R100,000-00 per month, the Judicial Managers feel confident that the company's future prospects are good.

630. MURMASH (PTY) LTD

T 1030/78

File not available

631. IVORS CONSTRUCTION AND GENERAL ENGINEERING (PTY) LTD

T 1083/78

ENGINEERS AND MANUFACTURERS

Provisional Order:	20/6/78
Final Order:	1/8/78
Judicial Manager:	M.I. Swartz

Unsuccessful:

Provisional winding-up order	3/4/79
Final win-ing-up order	25/4/79

Illiquidity because company's funds used to finance its associated companies. The company was unable to pay the Pre Judicial Management liabilities and was therefore liquidated.

632. B.B. ROOMYS MAATSKAPPY (EDMS) BPK T 1102/78

MANUFACTURERS AND DISTRIBUTORS OF ICE CREAM

Provisional Order: 27/6/78
 Final Order: Nil
 Judicial Manager: R.G. Baillie

Offer of compromise sanctioned on 23/1/79

Turnover was insufficient to cover expenses and a large contract had been cancelled as the company could not fulfil its obligations. Equipment on lease became unprofitable and the company had not sufficient capital to see it through the winter months when trading was exceptionally low.

633. HONDA ENGINEERING SERVICES (PTY) LTD T 1183/78

File not available

634. ROGLAM CREATIONS (PTY) LTD T 1211/78

MANUFACTURERS OF CLOTHING

Provisional Order: 18/7/78
 Final Order: Nil
 Judicial Manager: R.G. Baillie

Unsuccessful: Liquidation No. T 1687/78

The company was undercapitalised from the beginning and became illiquid. Credit for raw materials was refused and this aggravated the situation. Pre-Judicial Management debtors accounts had been ceded to a creditor. All post-Judicial Management sales could not be made on a purely cash basis and the cash flow problem deteriorated. The Judicial Manager was of the opinion that the company could not succeed.

635. DEUMA BELEGGINGS (EDMS) BPK T 1213/78

File not available.

636. LIGHTMAN ELECTRICAL WHOLESALERS (PTY) LTD. T1318/78

WHOLESALE TRADER IN ELECTRICAL MERCHANDISE

Provisional Order: 8/8/78
 Final Order: 24/4/78
 Judicial Managers: L.B. Marais and B.G.S. De Wet

Unsuccessful:

Provisional Liquidation Order: 30/10/79
 Final Liquidation Order : 20/11/79

The downfall of the company was due to :-

Cash flow, (creditors hesitant to supply large orders), high legal fees, Judicial Management costs and extra-ordinary audit fees.

637. KALKPUTO LANDGOED (EDMS) BPK T 1508/78

File not available

638. LUIKANEL LANDGOED (EDMS) BPK. T 1509/78

File not available

639. RICHARD GOLDMAN MATERIALS HANDLING (PTY) LTD T 1518/78

HIRERS OF PLANT AND EQUIPMENT

Provisional Order: 14/9/78
 Extended on 14/11/78 to 9/1/79
 Extended on 23/1/79 to 6/3/79
 On 6/3/79 the order was discharged
 Judicial Manager: R. Hellmann

Offer of Compromise

Judicial Management was of the opinion that shortage of working capital and illiquidity were causes of company being unable to pay its debts.

An Offer of Compromise was sanctioned on 6/3/79.

640. KASTEELBERG BELEGGINGS (EDMS) BPK T 1639/78

File not available

641. MARNUS BELEGGINGS (EDMS) BPK T 1643/78

File not available

642. MURVISTA PROPERTIES (EDMS) BPK T 1645/78

File not available

643. DELTA CONSTRUCTION (PTY) LTD T 1653/78

CIVIL ENGINEERING, CONSTRUCTION AND OPEN CAST MINING

Provisional Order:	6/10/78
Final Order:	Nil
Judicial Manager:	B.G.S. De Wet

Offer of compromise sanctioned 16/1/79

An amount of R285 000 was due to the company from Vryheid Minerale (Edms) Bpk. A dispute about ownership of mineral rights had arisen between the two companies and the company could not continue with its work which resulted in a cash flow problem. The Provisional Judicial Manager managed to recover R130 000 which was sufficient to finance the company. In the opinion of the Judicial Manager, the company could become a successful concern with the necessary supervision and control. Many overheads, for example excessive lease rentals of machinery. If these were reduced the company could obtain further cash resources.

644. LEHNBECKER AND FICK EARTHMOVING AND ROAD CONTRACTORS (PTY) LTD T 1710/78

EARTHMOVERS AND CIVIL ENGINEERING BUSINESS

Provisional Order:	29/10/78
Final Order:	Nil
Judicial Manager:	J.G.A. Leyds

Unsuccessful: Liquidation No. T 1821/78

Poor weather conditions and high overheads in the form of maintenance and excessive lease rentals caused cash flow problems. Even with profitable trading under Judicial Management it would take too long to repay creditors, which would not be to their advantage. Liquidation was recommended as the only alternative.

645. INCONTRA PROPERTIES (EDMS) BPK. T 1837/78

PROPERTY RENTING

Provisional Order: 14/11/78

Return day extended numerous times and eventually the order was set aside on 27/2/79

Judicial Manager: B.G.S. De Wet

Offer of Compromise

The initial downfall of the company was because the company signed sureties for associated companies in the group. These other companies were liquidated and creditors looked to Incontra for payment.

An offer of compromise was sanctioned on 20/11/79.

I cannot ascertain why it was necessary to apply to Court for sanctioning of the offer as the Provisional Order was set aside some 11 months before.

646. REDDIE FRESH HOLDINGS (EDMS) BPK. T 1880/78

File not available

647. TREGONINGS GARAGE (PTY) LTD T 1895/78

DEALER IN MOTOR CARS, SPARES AND SERVICING

Provisional Order: 28/11/78

Final Order: 6/3/79

Judicial Managers: P.J.J. Cornish and G.N. Sproule

Still in Judicial Management

Reasons for initial downfall:

Weak management - illiquidity and subsequent decrease in working capital curtailment of credit by bankers and General Motors Acceptance Corp. of S.A. (Pty) Ltd.

The Judicial Managers obtained further overdraft and credit facilities, introduced incentive schemes to salesmen and the public appear to be buying more General Motors cars. Creditors may be repaid within 1 year if current sales are maintained and the new Opel Kadet is introduced soon.

648. GEBCO SPRINGS (PTY) LTD

T 2071/78

SPRING MANUFACTURER AND GENERAL ENGINEERING

Provisional Order: 19/12/78
Final Order: Nil
Judicial Manager: R.G. Baillie

Unsuccessful: Liquidation No. T 210/79

The company was undercapitalised from its inception and at the end of the year any excess of income over expenditure was withdrawn by the directors in the form of directors fees. No funds were available to finance further trading and outstanding debtors accounts had been ceded as security and the Judicial Manager found it impossible to obtain finance for further trading. Liquidation was recommended.



Verw. Nr./Ref. No. 7/1/3

NAVRAE/ENQUIRIES: MR DAVIS/MdV

Tel. No. 45 1411

KANTOOR VAN DIE—OFFICE OF THE

MEESTER VAN DIE HOOGGEREGSHOF
MASTER OF THE SUPREME COURT
PRIVAATSAK/PRIVATE BAG 9018
ROELANDSTR. 37 ROELAND ST.
KAAPSTAD/CAPE TOWN
8000

Mr A H Olver
Director,
The Board of Executors
P O Box 86
8000 CAPE TOWN

2 November 1979

Deat Mr Olver,

RE: JUDICIAL MANAGEMENT RECORDS.

Thank you for your letter dated 26th October 1979.

While I have no authority to speak on behalf of other masters' offices, my recollection of those in Grahams-town and Pietermaritzburg is that the practice was no different from that in Cape Town.

I am not aware, of course, of the identity of those offices where you encountered very limited information in certain of the files and must assume that this applied in general to those particular offices. Perhaps you would be kind enough to say what the nature of such limited information is.

There is no standard procedure or rule of the masters' offices, as such, which stipulates what documents are to be filed. Insofar as my office is concerned the documents contained in a particular file are, in the main, the following:

application to Court in terms of section 427,
provisional judicial management order,
report pursuant to section 430,
minutes of meetings convened in terms of section 429,
Master's report,
final judicial management order,
bond of security,
certificates of appointment of provisional judicial
manager and judicial manager;
such reports as are lodged pursuant to section 433;
correspondence.

Yours faithfully

signature removed

MASTER OF THE SUPREME COURT

Geliewe in u antwoord te verwys na:
In reply please quote:

AJS/EJS
REPUBLIEK VAN
SUID-AFRIKA.



REPUBLIC OF
SOUTH AFRICA.

ANNEXURE B.

.....No.

.....22933. Telefoon.
.....Telephone.

Kantoor van die Weesheer,
Office of the Master of the Supreme
Court of South Africa,
P.P.B. X 13190,
WINDHOEK.

Boedel van
Estate of

27th May, 1975.

The General Manager and Secretary,
The Board of Executors,
P.O. Box 86,
CAPE TOWN.
8000.

Sir,

Re: JUDICIAL MANAGERMENTS : YOUR REF. D/JC.

1. I acknowledge receipt of your letter of the 20th May, 1975, which I received today.
2. Although the number of judicial managements fished out is very small, it took two members of my staff quite some time to accomplish the task.
3. From the time that the Companies Act (1926) came into force here in this Territory, we have had at most 35 judicial managements.
4. Of the number of 35 judicial managements referred to at most 3 judicial managements managed to help the Companies back on this ^{out} feet again.
5. As I have never really studied the position closely, I can only draw on my personal experience with judicial managements over the years whilst being actively concerned with these matters in the Master's Office.
6. Experience has taught me to be rather sceptical about judicial managements, because they usually end up as dismal failures, usually with very bad results for Creditors.

7. My approach has always been that where a Company is basically sound but under bad or inexperienced management or where it has good assets but is just momentarily short of ready cash or working capital, an experienced judicial manager could guide it back to normal.
8. Judicial Management is supposed to give the Company a breather always for the benefit of its Creditors with, say, the same objects and intents as the approach to the Farmers Assistance Act.
9. When you look at the powers given to the Judicial Manager, you come to the conclusion that he really has carte blanche and that all depends on him.
10. Here comes my serious scepticism:
 - (a) Professional Liquidators offer themselves as Judicial Managers. The Judicial Manager appointed in the particular*field and with him as pilot the ship will be guided right onto the rocks.
 - (b) The Judicial Manager is really not interested in saving the Company even if he would, may be, have been able to do so because he is a professional liquidator and not an able administrator: His approach is to smash and not to build up.
 - (c) In 99% of the Judicial managements, judicial management wards off the initial blow and thereafter unnecessarily prolongs the agony of the Company and successfully plunges it into destruction, much to the detriment of the original Creditors.
 - (d) Through his powers allotted to him the judicial Manager induces persons to come to the aid of the stricken Company but it is nearly always a case of throwing good money after bad.
 - (e) Where it would take the smart judicial Manager at most three months or even less time to sum up the true position and go to Court straightaway to apply for liquidation, about 80% of these gentlemen would allow months and years to slip by whilst he feeds the hungry Creditors on bright promises based on entirely stark unrealities.

* in the particular instance, very often does not have the experience in the particular. . . .

- (f) For the judicial manager there is money in management or mismanagement and more money in liquidation: How then can judicial management succeed?
- (g) Over the years I have dealt with dozens and scores of judicial managements but I have very seldom seen the right man in the right position even though he has been placed there by credulous Creditors.
- (h) How many judicial managers really understand the aims and objects of this game? How many of them really understand what legislature had in mind with judicial management? I have met precious few.
11. It is my humble opinion then that there are very few instances where judicial management has any chance of success and that in most cases the Company must go in liquidation straightaway. If it is used to momentarily ward off the blow of the hasty Creditor the judicial manager must take stock of the true position forthwith and be honest and fair to Creditors and immediately apply for liquidation.
12. Professional Liquidators take on dozens and scores of appointments as trustees or liquidators and where judicial management really differs greatly from the other assignments of trustees and liquidators they mostly miss the aims and objects of it and they are also far too busy to give it their undivided attention. Professional Liquidators are tuned in to demolish and not to create and build up with love and care.
13. If you think that I am rather hard on the average judicial manager, I will say to you that I was really pleased to come across a few exceptionally good ones where I did not hesitate to recommend good remuneration for them and where I felt that they really did a splendid job either in putting the Company back on its feet (especially by properly fulfilling its obligations) or by dealing it a swift blow by way of liquidation.

14. The proof of the pudding is in the eating and if I tell you that over a period of about 25 years I have seen so few Companies placed back on their feet by judicial Managers that I hardly need all the fingers on my two hands to count them, *it* may prove my point.
15. Please excuse me for getting rid of some ideas gleaned over the years as far as judicial Management is concerned but I just thought that these views may be of some help to your colleague.

Yours faithfully,

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MASTER OF THE SUPREME COURT.

Best regards.

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