

INSOLVENT ESTATE : S W ESTERHUYSEN ("the Insolvent")
MASTER'S REFERENCE NUMBER : T317/03

REPORT by the TRUSTEE, JOHANNES FREDERICK KLOPPER, in terms of SECTION 81 of the INSOLVENCY ACT NO 24 OF 1936, as amended, ("the Act"), to be submitted at the SECOND MEETING of CREDITORS to be held before the MAGISTRATE, RANDBURG on WEDNESDAY, 4 JUNE 2003 at 09:00

INTRODUCTION

A provisional Order was granted against the abovementioned estate by the Honourable High Court of South Africa (Witwatersrand Local Division) on 28 January 2003. The order was made final on 4 March 2003. The Master of the High Court appointed me as provisional trustee on 12 February 2003. I was appointed final Trustee after the first meeting of creditors was held before the Magistrate, Randburg on 23 April 2003.

SECTION 81(1)(a) : ASSETS AND LIABILITIES

- 1 On completion of our investigations into the affairs of the estate the financial position of the estate as at the date of sequestration would appear be as follows:

ASSETS	AMOUNT	AMOUNT
<u>Immovable Property</u> (to be investigated-see number 2 below)		
<u>Movable Property</u> Share in Izululehluza Investments (As per statement of Affairs)- value is to be determined		200,000.00
<u>LIABILITIES:</u>		
Secured Creditor Concurrent Creditors (approximate)	3,655,311.00	
<i>SHORTFALL</i>		<i>3,455,311.00</i>
TOTAL	3,655,311.00	3,655,311.00

Notes:

- 1 These figures are subject to change and verification.
- 2 The insolvent's former wife is the owner of the immovable property and they are still living together in the property. This aspect consequently needs to be investigated.

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MARITAL STATUS

The Insolvent is divorced, but he is still living in the same property as his former wife.

SECTION 81(1)(b) : CAUSES OF INSOLVENCY

The Insolvent was an Insolvency Practitioner, but was removed from office as Trustee/Liquidator in insolvent estates, liquidated companies and close corporations where he was appointed as such, by the Master of the High Court on 10 April 2000, as a result of maladministration of the various estates. The Insolvent misappropriated monies by failing to properly account for the proceeds of estate assets sold, resulting in a shortfall and loss to each estate. On the Insolvent's own admission he failed to open separate trust accounts for each and every estate as was required in terms of the Act. The proceeds of certain assets were paid into the trust account of Stuarttrust (Pty) Limited of which the Insolvent was the sole director. The Insolvent further attributes his Insolvency to the fact that he lost control of the day to day running of the business of Stuarttrust (Pty) Limited due to golf and other personal interests at the time. Further investigations in this regard need to be conducted.

SECTION 81(1)(c) : BOOKS AND RECORDS

The Insolvent did not maintain books and records in his personal capacity, although he was required in terms of the Act to keep records of the funds under his control by virtue of his appointment as trustee of insolvent estates.

SECTION (81)(1)(d) : CONTRAVENTIONS AND OFFENCES

Upon information available to us at this point in time it does not appear as if the Insolvent contravened any provisions of the Act, save for the contraventions of the Act in his capacity as trustee of insolvent estates, which may lead to criminal charges against the insolvent.

SECTION 81(1)(e) : ALLOWANCES TO THE INSOLVENTS

There is nothing to report under this heading.

SECTION 81(1)(f) : TRADING

There is nothing to report under this heading.

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SECTION 81(1)(g) : LEGAL PROCEEDINGS

At this point in time of our investigation into the affairs of the estate there does not appear to be any legal actions, which were pending by or against the estate as at the date of sequestration, except for normal debt recovery.

SECTION 81(1)(h) : UNCOMPLETED CONTRACTS

To the best of our knowledge and belief there is nothing to report under this heading.

SECTION 81(1)(i) : FURTHER ADMINISTRATION

We have reported above on the administration of the estate to date and appropriate resolutions will be submitted to this meeting to enable us to wind up the administration of the estate, and confirm that the second meeting will be adjourned for purpose of interrogation.

DIVIDEND PROSPECTS

There is a real danger of contribution being levied against concurrent creditors, should the assets referred to above realise insufficient to cover the administration.

SIGNED at RANDBURG on this 16th day of May 2003.

J F KLOPPER

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS HELD
BEFORE THE MAGISTRATE, RANDBURG ON WEDNESDAY, 4 JUNE 2003 AT 09:00**

RESOLVED THAT:

- 1 The report of the Trustee, as the case may be, hereinafter referred to as ("the Trustee"), as submitted be received and adopted and all his actions referred to therein be and are hereby confirmed, ratified and approved.

- 2 All actions of whatsoever nature heretobefore taken by the Provisional Trustee and/or Trustee be and are hereby confirmed, ratified and approved.

- 3 The Trustee be and is hereby authorised in his sole and absolute discretion to:
 - 3.1 Take legal advice on any question of law affecting the administration and distribution of the estate;

 - 3.2 Institute or defend on behalf of the estate any action or other legal proceedings of a civil nature for the recovery of monies due to the corporation or otherwise and subject to the provisions of any law relating to criminal procedure, institute any criminal proceedings;

 - 3.3 Hold any enquiry into the affairs of the insolvent and/or any matter relating thereto;

 - 3.4 Investigate and institute legal proceedings for the recovery of any voidable or undue preferences, voidable dispositions of property or any other impeachable transactions of whatsoever nature and to abandon same at any time;

 - 3.5 Write up the books of the insolvent as may be required, and if necessary, to produce a balance sheet, audited or not, as at the date of sequestration, either for the purpose of investigating the affairs of the insolvent, establishing the claims of creditors, or any other purpose.

- 4 The Trustee be and is hereby authorised in his sole and absolute discretion to employ and engage the services of attorneys and/or counsel (senior and/or junior) and/or accountants and/or bookkeepers and/or any employee of the insolvent and/or recording agents and/or any other person

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who in the sole discretion of the Trustee may be of assistance in the winding-up of the estate in relation to any matter referred to in 3 above and further to pay all the costs thereof of whatsoever nature out of the estate as costs incurred in the sequestration.

- 5 The Trustee be and is hereby authorised to collection any debts due to the estate and for the purpose thereof to sell or compound or compromise any of these debts for such sum and upon such terms and conditions as he in his sole discretion may deem fit, and to accept any part of the debt in settlement thereof, and to grant an extension of time for the payment of any such debt, and to abandon any debt which he in his sole discretion may deem to be irrecoverable.

- 6 The Trustee be and is hereby authorised to dispose of any movable and immovable property of the estate, whether in his possession or under his control now or to come into his possession or under his control in the future by public auction, private treaty or public tender upon such terms and conditions as he in his sole and absolute discretion shall determine and to abandon any such assets for which he can find no purchaser or abandon them to a secured creditor at the value placed thereon by such creditor or at such value as is agreed upon by the Trustee and the creditor if such creditor's claim is secured by such assets and to sign all such documents as may be necessary to give effect to such disposition.

- 7 The Trustee be and is hereby authorised and empowered in his sole discretion to compromise and admit any claim against the corporation of whatsoever nature and howsoever arising and whether disputed or not and whether actual, contingent, prospective, conditional, unconditional, assessed, unassessed, liquidated or unliquidated as a liquidated claim in terms of Section 78(3) of the Insolvency Act No 24 of 1936 as amended, at such amount as may be agreed upon by the Trustee provided that proof thereof has been tendered at a meeting of creditors.

- 8 The Trustee be and is hereby authorised to make application for the destruction of books and records of the estate six months after the confirmation of the final account.

- 9 The Trustee be and is hereby authorised to submit to the determination of arbitrators any dispute concerning the estate or any claim or demand by or upon the estate.

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- 10 The Trustee be and is hereby authorised to carry on or discontinue any part of the business of the estate insofar as may be necessary for the beneficial winding-up thereof

- 11 The Trustee be and is hereby authorised to exercise *mutatis mutandis* the powers conferred upon a Trustee by Section 35 (uncompleted acquisition of immovable property before sequestration) and 37 (effect of sequestration upon a lease) of the Insolvency Act No 24 of 1936, as amended ("the Act").

- 12 The Trustee be and is hereby authorised to allow the insolvent to retain for his/her own use the whole or such part of his household furniture and tools and other essential means of subsistence as he may determine.

- 13 The Trustee be and is hereby authorised to release, as he in his absolute discretion decides, any assets belonging to the solvent spouse which is proved to have acquired or safeguarded as provided for in Section 21(2) of the Insolvency Act No 24 of 1936, as amended.

- 14 The Trustee be and is hereby authorised to make any allowance out of the estate to the insolvent which he in his sole discretion may deem to be necessary for the support of the insolvent and his/her dependants.

- 15 The Trustee be and is hereby authorised to perform any act or exercise which he is not expressly empowered to perform in terms of the provisions of the Act.

- 16 The further administration of the affairs of the estate be left entirely in the hands of and at the discretion of the Trustee.

q.q. CREDITORS