ADVANTAGE ADVOCACY LIMITED

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FRIDAY 22 MAY 2009

LDC and F and I stakeholders
Nelson, Auckland, Whangarei and Australia

Att: Peter **MYTTON**

BY FACSIMILE AND EMAIL, AND ON ADVANTAGEADVOCACY.CO.NZ

Dear Reader

Re: Investigation into the allegations made against;

Murray SCHOLFIELD, Andrew John HARDING, (Finance and Investments partnership (hereinafter referred to as "F and I")), and;

David Gordon MILLER, Chris John HARDIMAN, John Charles JANNETTO, and Kevin ELLIOTT, Ross Andrew STEVENSON, Richard Alfred JENKINS (LDC Finance Limited (directors at various times)), and;

Paul Francis BROWNIE (Halifax Finance Limited (director)). and;

Michael STYANT, Matthew LANCASTER and John GLASS (trustees, or managers at Perpetual Trust Limited)

Malcolm HOLLIS, John FISK, Rhys CAIN, Maurice NOONE accountants of Pricewaterhousecoopers (and receivers of LDC Finance Limited and F and I)

THE MYTTON REPORT (Where has all the money gone, when will we ever learn)

1. This report aptly named by the writer as **THE MYTTON REPORT; (AN INDEPTH INVESTIGATION INTO THE MISSING MILLIONS)** after its instigator Mr Peter **MYTTON**) was supposed to have been written within 4 weeks of the writer and other Advantage Advocacy Limited staff traveling to Nelson and Christchurch in mid July 2008 to interview persons of interest in the investigation.

2. That time frame has proved impossible to meet because of the complexity and magnitude of the investigations and to complete the investigation to the writers satisfaction the writer required certain parties to commit, or omit to do, certain acts enabling the writer to, in the writers opinion, safely draw strong, and at times

inescapable, negative inferences against particular individuals, or a number of individuals as a group.

About the writer, and why the report is on the Internet.

3. The writer has been involved in numerous justice campaigns and other matters that have at various times been of some media interest. Most of the writers' campaigns take on what New Zealanders loosely refer to as "the system". That "system" being totality of the agencies of government.

4. The internet is an incredibly powerful shield to protect freedom of speech by allowing concerned citizens to place before fellow citizens their concerns as to the behaviour of certain government agencies and other powerful private organisations, in this case the Securities Commission, Pricewaterhousecoopers, and Perpetual Trust Limited.

5. Most New Zealanders are gullible, no matter their protestations that it is not so. A significant amount of that gullibility comes from the fact that the "protection" agencies of our "system", such as the Securities Commission and the Serious Fraud Office, are not doing their respective jobs, and so they catch a very small smaller number of offenders. These agencies "spin" this lack of performance as being proof positive that New Zealand is corruption and white collar crime free, when in fact it is more likely that the country is ravaged by both, but the crimes go undiscovered because no one proactively looks for corruption which is manifestly necessary, because corruption is by its nature "hidden" and "self sealing" when leaks appear.

Tertiary education often prevents performance in the real world, so why do we rely on it to our detriment.

6. The writer has written this report in the hope that New Zealanders will demand a higher level of performance from the "system" and this would require the removal of the persons responsible for its failure, and the replacements to be of a suitable background to insure that the public, in this case the investing public, are safe from man made ravages. One of the requirements the writer believes needs to be addressed is the placement of street savvy persons in the ranks of government agencies. Who

better to catch a crook than one who knows how crooks think. A person who knows how a crook thinks has not necessarily been a crook but is prepared to think the worst of people and act accordingly. Our government agencies are full of pseudo intellectual pompous wielders of power, when in fact we need more instinctive martinets who relish in proving what is bad about the system so that curative change is an inevitable result. The writer has no problem with university degrees other than they have considerably less worth than society alarmingly gives to them. The height of the value of a degree is the passing of the final exams. To say that a B Com or an LLB makes for a good accountant, lawyer, or a business person is a falsehood. Our society has to look to people with real life experience to enable them to prevent harm coming to others by being able to identify the problem as it arises and then prevent the problem from forming into a critical destructive mass. Specifically the report is written to assist the stakeholders in F and I and LDC Finance Limited respectively to learn what happened to the missing millions and that there is an appropriate course to follow that will lead to restorative justice and the stakeholders being reunited with their missing millions.

7. Whilst "knowledge is the answer" to every question, a commerce or law degree cannot ready you for the more than likely criminal "tricks of the trade" that inevitable lead to the rich getting richer taking from the poor. After all it is often the street savy lawyers who have a penchant for getting into trouble themselves that make great defence counsel. It is not the law degree that makes them good, but it is their other "knowledge" that makes them capable of thinking outside the square.

The Securities Commission's performance

8. Some of the stakeholders involved with LDC Finance Limited and F and I did phone the Securities Commission making them aware of the "missing millions" and were basically fobbed off with a statement to the effect that the Commission was currently looking into a large number of finance companies that had failed. The Commissions "Statement of Purpose" provides as follows; (emphasis that of the writers)

"Our purpose is to foster capital investment in New Zealand by;

- *Promoting the efficiency of New Zealand securities markets,*

- ***Enhancing the integrity of those markets***
- *Promoting the cost-effective regulation of those markets,*
- ***Strengthening public and institutional confidence in these markets****, both in New Zealand and overseas*

To achieve this purpose we direct our work to promoting

- ***Good standards of disclosure****,*
- *Reliable and ethical procedures for effecting transactions,*
- *Flexibility in development of best regulatory practice,*
- *Sound principles for market regulation,*
- *Cost effective rules of law,*
- ***Compliance with the law****,*
- *Good working relationships with overseas regulators,*
- ***Public understanding of the law and practices of securities"***

9. Given the very large number of collapses and the small number of arrests it would seem that these white collar criminals are smarter than the Commissions investigators, or alternatively the Commission has caught all of those responsible for criminal offending, and the other collapses are just down to bad luck.

10. As any business person "worth their salt" will tell you there is very little good or bad luck in business. Mostly there are good and bad decisions and people, pure and simple.

11. It is the writer's opinion that the Securities Commission has abysmally failed in virtually all of its regulated and stated purposes, but especially those bolded above. The Commissions role is to protect stakeholders from fraud first and foremost, not to clean up afterwards as they simply have not got the "brains trust" to complete that job.

12. It is the Police Services and Serious Fraud Offices (if still operating) roles to investigate the competing claims, and if satisfied that a case exists against an individual or a group of individuals, seek a Crown Prosecutors opinion as to whether there is a sufficiency of evidence to make out a breach of the Crimes Act 1961 or any such other relevant Act. The Registrar of Companies also has an investigative and policing role pursuant to the Securities Act 1978 and the Corporations (Investigation and Management) Act 1989. The Commission did send down the Registrar of Companies Mr John **MCPHERSON** (with a warrant) to see Messrs **HARDING** and

SCHOLFIELD soon after the receivership, and cleared them in writing of any dishonesty, but did state that they had a $16m problem on their hands because it was obvious even then that that was to be the possible loss; i.e hardly any funds coming to the F and I stakeholders from the F and I receivables.

13. Equally a Mr **FREW**, an investigator for the Commission traveled to Nelson and spoke to Messrs **HARDING** and **SCHOLFIELD** and again seemed to miss the obvious. The writer concedes that Mr **HARDING** and **SCHOLFIELD** were saying a lot about a conspiracy being hatched against them and were alleging fraud and coercion but the writer wonders how both gentlemen did not ask the obvious questions, but the writer will return to this issue at a later time in the report. It will be very interesting to see what communications occurred between Perpetual Trust Limited, Pricewaterhousecoopers and the Commission as to which entity was responsible for the collapse, and the losses.

14. The writer can say with no real fear of being found wrong that the majority of the public do not understand the law as to securities or indeed how the different securities work, or the risks involved, and most importantly how those risks are increased exponentially when the Commission is asleep on the job which has been the case in the last 5 to 10 years. Having spoken to some financiers it would appear that they too have limited knowledge of crucial aspects of the Act, although the financiers that the writer has spoken to all agree on one point. Always ask your lawyer before committing to a plan and when your lawyer has **not** made it clear how it works, don't get involved.

15. The average New Zealander has not so much entrusted their money to individual finance companies, but that whatever company a member of the public invested in, he or she thought the company was strictly regulated by the Securities Commissions wide powers to protect the public as contained in the Securities Act 1978 and the Securities Regulations 1983. The legislation that brought the Commission into existence resulted from the spectacular Securitibank collapse of 1976.

16. When referring to an average New Zealander the writer is not referring to the first class passengers that have ridden the private and government financial gravy trains

that have just been derailed by the world financial implosion that resulted from greed and wrongly blamed on the "market" rather than the criminals responsible. The apparent skill required of recent to be a market dominating banking or finance executive is to be able to move huge numbers from the loss column to the profit column, and then oddly to pay taxes on actual losses. Of course the motive for such dishonest activity is the continuing, not inconsiderable, pay packet and the other perks involved. The ignominy of this whole farce is that the government has probably made more money than ever whilst the stakeholders have lost, if not everything, a lot.

17. Apparently, the crime is easier to commit than to detect. There would be some initial support for that argument because the offenders are on the inside. But given that these large private institutions were subject to audit by the likes of Pricewaterhousecoopers and Perpetual Trust Limited, one would think that large scale offending was impossible given the checks and balances in place.

18. The writer thinks not! The single task required to solve the whodunit question of the "missing millions" is to look at the "cooked books" and then compare those groupings of numbers with the individual source business documents (such as bank statements). When the contents of the documents are compared are there significant inconsistencies that prima facie make out an offence, unless the inconsistency is reasonably explained. Its not rocket science, so why the lack of explanation for the missing millions?

19. The writers investigation has been about obtaining enough documentation to prove what would be available to be known, or ought to have been known, by anyone with historical or present access to the original source documents. Such persons with access to the original source documents in the case at hand are the directors, managers and the receivers of those finance institutions, and anyone empowered to obtain access to those documents such as a trustee under a trust deed, or anyone else pursuant to the salient provisions of the Securities Act 1978 and the Securities Regulations 1983. Of course a trustee would have to be made aware of a problem and then you would think that they would jump on those that were to blame and seek to save anyone thinking about investing in what was a sunken ship.

20. The **MYTTON** report is about proving certain prejudicial facts against certain individuals, or a number of individuals operating as a group, that make out criminal offending to a prima facie standard.

21. What comes as a result of that occurrence will be up to the agencies in the *"system"* whose job it is to act on prima facie facts proving offending, and to the stakeholders, who have lost large financial reserves that simply cannot be replaced by any other means than restorative justice, by Courts judgments. The writer would comment that he does not believe that the "system" finds itself in the position that it cannot remedy what has transpired as long as it takes note of what evidence is available if one just looked expecting that at every turn evil of some kind may be present. If the "system" does not, it would not be improper to call it *"an ass"*, and those persons in charge *"idiots"*. The writer contends we will not find ourselves in the position as noted in **BRENNAN**, William, Jr in **Re Sawyer**, 360 U.S 622, 634 (1959)

"To say that "the law is an ass, an idiot" is not to impugn the character of those that administer it. To say that prosecutors are corrupt is not to impugn the character of judges who might be unaware of it, or be able to find no method under the law of restraining it."

The case at hand (of the missing millions)

22. In the writers opinion even a cursory investigation by the Commissions investigators would have discovered a prima facie case of significant levels of serious criminal offending and otherwise grossly inappropriate business transacting and non reporting including the following breaches of the Securities Act 1978, the Crimes Act 1961, the Fair Trading Act 1986, the Companies Act 1993 and the Financial Reporting Act 1993, also importing the following penalty or performance-liability, or explanatory provisions relevant to the Acts;

Securities Act 1978

33 Restrictions on offer of securities to the public
34 Restrictions on distribution of prospectuses
36A Subscriptions must be held in trust
37 Void irregular allotments
37A Voidable irregular allotments
53 Issuers to keep proper accounting records
55A Overview of civil liability
55B What are civil liability events

55C When Court may make pecuniary penalty orders and declarations of civil liability
55D Purpose and effect of declarations of civil liability
55E What declarations of civil liability must state
55F Amount of pecuniary penalty
55G Compensation orders
56 Civil liability for misstatements in advertisement or registered prospectus
57 Civil liability for misstatements by expert
58 Criminal liability for misstatement in advertisement or registered prospectus
59 Criminal Liability for offering, distributing, or allotting in contravention of this Act
60 Other Offence
62 Liability of trustees and statutory supervisors

Crimes Act 1961

66 Parties to
71 Accessory after the fact
72Attempts
116 Conspiring to defeat justice
98A Participation in organized criminal group
220 Theft by a person in a special relationship
223 Punishment of theft
228 Dishonestly taking or using documents
237 Blackmail
240 Obtaining by deception or causing loss by deception
242 False Statement by promoter
243 Money Laundering
260 False Accounting
310 Conspiring to commit Offence
311 Attempt to Commit or Procure Offence
312 Accessory after the fact to a Crime

Fair Trading Act 1986

9 Misleading and deceptive conduct generally
11 Misleading conduct in relation to services
13 False or misleading representations

Companies Act 1993

45 Pre-emptive rights
46 Consideration for issue of shares
47 Consideration to be decided by board
52 Board may authorise distributions
56 Recovery of distributions
76 Financial Assistance
77 Company must satisfy solvency test
78 Special financial assistance
79 Disclosure document
81 Enforceability of transactions
84 Transfer of shares
87 Company to maintain share register
90 Directors duty to supervise register
107 Unanimous assent to certain types of action
108 Company to satisfy solvency test
126 Meaning of "director"

131 Duty of directors to act in good faith and in the best interests of company
133 Powers to be exercised for proper purpose
134 Directors to comply with Act and Constitution
135 Reckless Trading
136 Duty in relation to obligations
137 Directors duty of care
171 Personal actions by shareholders against company
174 Prejudiced shareholders
175 Certain conduct deemed prejudicial
179 Investigation of records
189 Company records
190 Form of records`
194 Accounting records to be kept
206 Access to information
208 Obligation to prepare annual report
209 Sending of annual report to shareholders
211 Contents of annual report
213 Failure to disclose
216 Inspection of company records by shareholders
218 Copies of documents
300 Liability if proper accounting records not kept
301 Power of Court to require persons to repay money or return property
365 Registrars powers of inspection
366 Disclosure of information and reports
377 False Statements
378 Fraudulent use or destruction of property
379 Falsification of records
380 Carrying on business fraudulently
385 Registrar may prohibit persons from managing companies

Financial Reporting Act 1993

10 Obligations to prepare statements
11 Content of financial statements
15 Financial statement of issuer and group financial statements of issuers to be audited.

23. No doubt you will be thinking that there are a lot of sections of various Acts to consider. Whilst that is true at a glance, the provisions of significant importance to the writer are those that create a meaningful punishment for certain offensive behaviour being substantial prison terms (up to 10 years) or allow the award of meaningful compensation to a stakeholder from the person guilty of that offensive behaviour. The writer dealing with these sections, as they relate to certain facts, should also serve to explain the length of the report.

24. For the removal of doubt the opinions expressed in this report are those of the writers alone and the writer believes that the opinions are based on sufficient facts to form the allegations made. The average New Zealander will be able to draw their own conclusions from the facts contained in the report. The writer did not set out to come to any predetermined conclusions, and has, most certainly, not ignored or omitted to report facts that the writer is aware of that may serve to exculpate anyone named in the report and accused of wrongdoing.

25. When comparing actions of an individual, or a group of individuals against provisions contained in Acts, the writer has cited as much case law as the writer feels is required to make the point intended, or support the writers opinion. The writer has also included virtually all of the text of an important letter or document, or a section of an act referred to, making the report seem larger than it probably needed to be, if just asserting that an allegation is made out on the content of an annexed document.. The reason for this is four fold.

26. Firstly the writer wishes to operate with clean hands. In other words, to divulge the full context of the meaning of the content of a letter or a section, or interrelated sections, of an Act, when read as a whole.

27. Secondly to have the reader need to refer to the annexed 2000 pages of evidence collated by Advantage Advocacy Limited during its investigation would be burdensome. Electronic copies are available on the Internet, but you will need five reams of paper to print this report and all annexures.

28. Thirdly the letters or other documents provide a substantial amount of information which needs to be addressed by the writer when building the foundation for a particular allegation, or a number of allegations against an individual or group of individuals and it is best that the content of document is contained in one paragraph of the report so you only need to be referred back to that paragraph.

29. Finally the writer believes that the report will "flow better" and be ultimately less burdensome on the reader coming to terms with the full case against various individuals and groups of individuals. Therefore the writer believes including the

entirety of certain relevant documents or sections of acts is appropriate and time saving. The writer has emphasized certain parts of certain documents or sections of Acts or Regulations by underlining or bolding or both.

The writers ethical considerations, and the rules of engagement, when collecting and considering evidence, before making damaging statements, whether overtly, or by implication.

30. This report is not supposed to be an "intellectual exercise and hypothesis of incrimination" although at times you may feel so when reading the report because of the amount of material on law and analogy that deal with, at times, ancillary matters to the actual allegations of wrongdoing. But these matters needed to be addressed relating to fairness, and fairness is the crux of what makes our society tick, not necessarily in reality, but definitely spiritually. By its design this report refers to certain facts which establish a prima facie case of significant wrongdoing, and then to test those facts as they relate to law, and with analogy to other similar situations that may seem fairly innocuous, but for important differences. Obviously there is a start, a middle, and an end. It is not a case of "the ends justified the means", but that the "means will justify the ends". In other words the beginning and middle will make the conclusions safe.

31. A good starting point for the involvement of Advantage Advocacy Limited's advocates in any investigation is found in the applicable rules and common law governing lawyers when investigating matters that may or may not lead to the making of serious allegations against others such as, but limited to the following;

31.1 The germane rules of conduct of the New Zealand Law Society, specifically those that apply to the making of scandalous allegations, whether by letter, in pleadings, or indeed in any other way, against another; (emphasis that of the writers)

"8.05 Rule
A practitioner must not attack a persons reputation without good cause.
Commentary

(1) This rule applies equally both in court during the course of proceedings and out of court by inclusion of statements in documents which are to be filed in court.

(2) A practitioner should not be party to the filing of a pleading or other document containing an allegation of fraud, dishonesty, undue influence, duress or other reprehensible conduct, unless the practitioner has first satisfied himself or herself that such an allegation can be ***properly justified on the facts of the case****. For a practitioner to allow such an allegation to be made* ***without the fullest investigation****, could be an abuse of the protection which the law affords to the practitioner in the drawing and filing of pleadings and other court documents.* ***Practitioners should also bear in mind that costs can be awarded against a practitioner for unfounded allegations of fraud****.*

(3) If necessary, a practitioner ***must test*** *the instructions which have been given****, by independent inquiry, before making such allegations.****"*

31.2 The salient authorities of New Zealand Courts such as **Gazley v Wellington District Law Society** [1976] 1 NZLR 452 and **Mckaskell v Benseman** [1989] 3 NZLR 75. The writer believes that English and Australian cases and learned writings best elucidate the over riding duty of an advocate to insure that they have sufficient evidence to support the making of an allegation that is, by its mere making, damaging. In **Rondell v Worsley** [1969] 1 AC 191 Lord Reid opined;

*"Counsel…has an overriding duty to the court, to the standards of the profession, and to the public, which may and often does lead to a conflict with his clients wishes or with what the client thinks are his personal interests. Counsel must not mislead the court****, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information….The same duty applies to drawing pleadings…as applies to counsels conduct during trial****."*

31.3 In relation to an allegation of effectively alleging fraud or dishonest or grossly inappropriate behaviour; see **Halsburys laws of England** at para 470, page 377 line 36;

"A barrister may only suggest that a witness is guilty of fraud, misconduct or crime if such allegations go to a matter in issue which is material to the client's case. ***Where the only such matter is the credibility of the witness, the barrister must be satisfied as for the reasons of such allegations being made***

and that they are supported by such reasonable grounds*. A barrister may regard instructions from his professional client that such allegations are well founded as reasonable grounds to support such allegations****; but he may not rely on a statement from any other person unless he has ascertained so far as is practicable that the person can give satisfactory reasons for his statements****..*

Page 375 Para 467,468

"He may not make any allegation unsupported by his instructions and he may not allege fraud unless ***(1) he has clear instructions to plead fraud; (2) he has before him reasonably credible material which, as it stands, establishes a prima facie case of fraud. "***

31.4 The noted Australian case of **Strange v Hybinett** [1988] VR 418, wherein a member of the inner bar, (Queens Counsel), made accusations of collusion against a solicitor for the opposing side and others during a proceeding. In this case it was held;

"Legal practitioners-Counsel's duties-attack on witness-allegation of corruption – ***duty of counsel to ensure evidence exists justifying allegation.***

(1) Counsel's right of audience carries with it complete immunity from liability for defamation. But, as with every substantial right, ***there is a corresponding duty on counsel to ensure that privilege is not abused****.*

(2) *Where there are grounds to doubt the evidence of a witness, counsel may be justified in submitting that the evidence of that witness ought not to be accepted. However,* ***before making allegations of corruption or otherwise suggesting that an individual has deviated from standards of personal or professional propriety, counsel must be scrupulous to ensure that sufficient evidence exists to warrant that allegation."***

31.5 In the **Strange v Hybinett** case Justice Gray quoted from various authorities, which are of relevance to the matters at hand. At page 424 line 4, Gray J quotes from a passage of **Lord MACMILLAN'S** book "**Law and Other Things**", at pp 191-2:

"Written pleadings are frequently sent to counsel for revisal containing serious allegations of fraud, dishonesty, or misconduct. ***The consequence of lodging such pleadings in Court may be to cause irreparable injury to the person thus publicly accused****. For an advocate to allow such charges to be launched with his name attached to them without the fullest investigation would be to abuse the absolute protection against actions for slander which*

the law affords counsel. Counsel is not worthy of that protection unless he justifies it by the most scrupulous care in his written or oral attacks on character. ***He must insist on being supplied with all information which is thought by his client to justify his attack.*** *And then he must decide for himself whether the charges made are such as can be justifiably made. In exercising his judgment in such a manner the advocate is fulfilling one of the most delicate duties to society which his profession casts upon him.* ***It is no small responsibility which the state throws upon the lawyer in thus confiding to his discretion the reputation of the citizen. No enthusiasm for his clients case, no specious assurance from his client that the insertion some strong allegations will coerce a settlement, no desire to fortify the relevance of his clients case, entitles the advocate to trespass, in matters involving reputation, a hairs breath beyond what the facts as laid before him and duly vouched and tested will justify. It will not do to say lightly that the court will decide the matter. It is for counsel to see that no mans good name is wantonly attacked****."*

31.6 The writer also brings your attention to the sagacious thoughts of Hibery J as they relate to the ethical restrictions on counsel, and as the writer suggests any advocate conducting a sustained, but appropriate, attack on a persons reputation especially in the day of the internet trial per se: Published in 1946- **Duty and Art in Advocacy** at p 19 the learned judge commented;

"The man who is worthy of his calling will always remember that the right of audience, which he enjoys, and the privilege which covers all he says and does in the course of a trial, ***lays upon him a heavy obligation never to abuse the occasion.*** *He must decide what he says and what he asks.* ***With him rests the selection of the language to be used and the questions to be asked."***

31.7 Later in the Courts judgment in **Strange v Hybinett** the Court qualified as to what counsel was required to do before casting an allegation into the air, or as the writer has already stated on the internet, be it by imputation in the nature or formulation of a question, or by a specific allegation of fact;

"No question which conveys a definite and damaging imputation on the character of a party or witness ought to be put ***unless the solicitor instructing counsel vouches the truth of the matter and can show that there is material in existence for making the allegation****."*

31.8 This extract from **Oldfield v Keogh** also appears in **Strange v Hybinett** at page 424 line 43 and emphasizes the need to secure, before the making by a

witness or advocate, a serious allegation of wrongdoing against another, corroborating evidence that makes the allegation seem appropriate in the circumstances;

> *"In Oldfield v Keogh, Jordan C.J., in dealing with the imputation in that case, said (at p210); "It is difficult to speak with becoming moderation of the charge.* ***There is not a tittle of evidence to support it."***
> *I find myself labouring under the same difficulty in this case. I regret to say that, in my opinion,* ***senior counsel did abuse the privilege conferred upon him by his right of audience. As I have said I am satisfied that a miscarriage of justice resulted****.*

32. As important to making sure that sufficient evidence is available to make an allegation that will on the face of it make a person consider the likely guilt or innocence of the accused person, it is equally unlikely in this day and age that readers of this report will not be able to judge the cause and effect of the evidence placed before them when considering if the allegations are safely made out. If not safely made out then the impact of the allegation against the accused is nothing, and if safely made out the impact is properly significant. The writer must, and has, also considered the ramifications of the Defamation Act1992 relating to section 8 [Truth] and section 9 [Honest opinion] whereas counsel, or a witness making allegations in Court, or contained in legal documents is saved by section 14 [Absolute privilege in relation to judicial proceedings and other legal matters]. The writer, as every investigator starts out in an investigation, wants to get to the truth and to obtain justice for those afflicted by wrong but is mindful of what Paul Lloyd **STRYKER** had to say about enthusiasm and chivalry when it comes to the exercise of good judgment in his learned writings;

> *"A tendency toward enthusiasm and a chivalrous instinct have more than once been weighed as evidence of a lack of judgment"*

33. The real issue for any accused or indeed accuser is whether the evidence is likely true or likely false, and actually material to the allegations. As we all know just the mere making of an allegation of wrongdoing does not make anyone guilty of wrongdoing, nor does the mere protestation of innocence make one innocent of wrongdoing. The writer believes that objectivity is elementary to the investigators role; **BEVERIDGE**,

W.L.B, The Art of Scientific Investigation, (Second Edition; London: William Heinemann; 1953), page 111;

"What we must aim at is honest, objective judgment of the evidence, freeing our minds as much as possible from opinion not based on fact, and suspend judgment where the evidence is incomplete. There is a very important distinction between a critical attitude of mind (or critical "faculty") and a skeptical attitude"

34. This is not to say that an investigator cannot after obtaining a certain amount of evidence be certain, as far as he is concerned that a suspect is "guilty as", and this stage must be reached before he decides to make public his allegations in language that is suitable depending on the amount of evidence at hand and the seriousness of the allegations and the possibility that other victims may exist that may have further evidence. Equally it is trite of human frailty that a witness could be lying, or mistaken, in their evidence for either side. It is the balancing of the alleged facts likely proving guilt against the alleged facts that serve to establish innocence. Obviously incontestable evidence will serve to prove the truth, but cases are rarely decided by a mass of this material because if such material existed to this extent for the accused the charges should not be made, or if made, withdrawn. That is to say that innocence or guilt is most often not an admission by either side but a contest of wills.

35. What can be said about evidence with certainty is that some evidence carries more weight. A witness who has an association with the accused may make a statement that seeks to wrongly clear the accused, or blame the accused for actions they may have committed themselves. Whereas a clearly independent witnesses account properly carries more weight. A witness who gives evidence that sees them also in a bad light is more credible than a witness that blames only others, but not himself for his predicament when it is obvious that he is somewhat blameworthy.

36. A prejudicial business record made in the normal course of business, (that does not serve the accused protestations of innocence), by an independent party whom obtains no benefit, or otherwise has no interest in the outcome of any proceeding, rightly carries significantly more weight, than say a conflicting document that serves the

accused, allegedly made by the accused at the time of the offending, but only provided by the defendant just prior to the trial, or in a criminal trial, at trial.

37. Documentary evidence in such cases as the matter at hand can require interpretation by considering what actually occurred, against that which was suggested to be done, or was otherwise recorded in the document. An example is where someone suggests in a document a particular course of action is appropriate, that if carried out would actually be an offence, although their understanding of it being an offence is not made out in the document. If it was plain that the person suggesting the course of action would have known that course of action, if carried out, would constitute a criminal offence, or even if not criminal, say inappropriate actions in the circumstances then, even if the course of action was not committed, the evidence would indicate that the person suggesting the course of action is of bad character and likely to have committed to another course of action that was equally criminal or otherwise objectionable that was actually carried out. There are many other such interpretive examples but the writer will attempt to deal with these as they arise.

38. Most importantly to the matter at hand the more serious the charge of wrongdoing the greater the need for powerful conclusive evidence. All of the above considerations is not to say that one piece of evidence that strongly indicates guilt is not enough on its own to make an allegation worth making and may in the end be enough to prove guilt, but to simply indicate that before making any allegation, an investigator should, as a ubiquitous duty, seek to find all evidence for and against the need to make a damaging allegation. The integrity of the investigation decides the justice of the case to be made in Court. The Courts role is to see that fair play, as much as it can, is present, but it is extremely rare that the Court will, of itself, discover a truth different to that which a strong prosecution case makes out. The writer reiterates that he believes he has done this to the best of his ability given his resources and access to documentation and witnesses and has always been mindful of the frailty of justice, or moreover the frailty of the observance of justice by mankind;

*"Justice" said Daniel Webster in his eulogy of Mr. Justice Story, "is the great interest of man on earth". Much as we wish this were so**, there is unfortunately a staggering mass of evidence to the contrary"*** **VANDERBIL**, Arthur T, **The Challenge of Law Reform** (Princeton, New Jersey, Princeton University press, 1955), p.3

Of relative justice the law may know something; of expediency it knows much; ***with absolute justice it does not concern itself****"* **HOLMES**, Dr Oliver Wendell, VIII **The works of Oliver Wendell Holmes**; Pages from an Old Volume of Life, "Crime and Automatism" (Boston; Houghton, Miffen and Company, 1891),p.324.

Justice has been described as a lady who has been subject to so many miscarriages as to cast serious reflections upon her virtue" **PROSSER**, William L, **The Judicial Humourist** (Boston: Little, Brown, and Company, 1952, Preface, p.viii.

*"...a long line of cases shows that it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. ....****Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice****"* Lord **HEWART Rex v Sussex Justices** [1924], 1 K.B 256, 259.

The likelihood of overt acts of individuals, by commission or omission, proving a conspiracy to defraud or commit other offending.

39. As will become clear certain individuals have acted to commit further acts in order to exculpate themselves from previous wrongdoing, but have then done additional acts in furtherance of their conspiracy to defraud stakeholders. The allegation of conspiracies at work, loom large at the commencement of the investigation. As a rule counsel hate the word conspiracy as such allegations are often thought "difficult to prove" to the criminal threshold and one ignored in the civil courts. But nevertheless there are occasions where such allegations are appropriate and should be made. Conspiracy law allows evidence not normally admissible in criminal cases, to be admissible in conspiracy cases, although such evidence comes with a handicap of weight or worth to be attributed to that evidence, as it is normally hearsay evidence of co-conspirators.

40. The writers' investigations have uncovered behaviour that is rather unusual or inventive in the way that investments are executed and companies formed respectively. A large amount of time has been spent "uncovering" who is the "real owner" of various commercial interests and thus who would have the maximum to lose or gain by committing to a certain course of action. It would appear to the writer that the unnecessarily convoluted way in which investments have been owned and controlled would infer that the only reasonable explanation would be that the

behaviour was intentional with the purpose to disguise ownership (and thus control) at various points in time. This would raise the question what honest purpose requires a mask?.

41. Of course there are explanations for masking the ownership of assets like an impending divorce, or eluding the tax inspector. Are these actions by themselves fraud, probably not, but they are probably dishonest as people are designing a scheme to hide the truth. And so the writer must also bring in the element of fraud, or other criminal acts, to the equation of the reason for the masking behaviour.

42. It became very clear early on in the investigation that the writer was dealing with individuals who had extremely high opinions of their intellect, and social and professional standing in Nelson and its surrounding areas.

43. There appeared to be an absolute arrogance to their beliefs and behavioural patterns, to the point where even a relatively experienced business person may consider them to be wholly confident that they had acted appropriately and were "kosher". The alternate position is of course that they were wholly confident that they had "covered their tracks and bases".

44. However being an 'expert', or alleging expertise also has its significant downside to serious fraud offending involving, in part or whole, a conspiracy between various individuals who are professionals or 'experts' in their respective fields. If the acts committed are so obviously fraud, or such other wrongdoing, then where can they hide, although the writer does remind the reader that ignorance of the law is no defence pursuant to the Crimes Act 1961. With professionals the law of conspiracy has a special threshold for their involvement in a conspiracy. Where a solicitor or any other professional advisor is alleged to have been a conspirator, it must be shown that the professionals assistance or agreement had gone beyond anything by his or her professional or contractual obligations; **R v Tighe and Maher** (1926) 26 SR (NSW) 94, adopted in **R v Gunthorpe** 9/6/93 CA 46/93.

45. Put simply, if it can be proven from the evidentiary content that resulted from an investigation that the 'expert' charged with wrongdoing could not have genuinely

believed that what he or she were doing was anything but 'wrong' before committing to the plan of action that was unquestionably executed, then the normal onus to prove guilt by the prosecutor moves to the accused effectively having to somewhat prove their innocence, (by having an alternate reasonable or believable excuse for their actions other than that powerfully inferred by the facts) which is a higher hurdle than creating a single doubt such as offering the excuse of *"I forgot about that requirement to report that fact to that person, silly me"*.

46. In other words if a professional did not resign from representing the interests of parties that were obviously involved in an agreement to commit a criminal act, and assisted the parties in furtherance of the agreement to the extent that the professional became an active player then they would be safely cast as a conspirator. Even the act of obtaining the assistance of others to aid the agreement is to become a conspirator; **R v Siracusa** (1990) 90 Cr App R 340; **R v Henderson and Panagaris** (1984) 37 SASR 82.

47. An omission to do something that ought to have been done can be an act in a conspiracy as could arguably be willful blindness where it was evident from the facts that once both conspirators knew the common design was an offence, and one conspirator who was charged with reporting such behaviour, or investigating such behaviour, failed to do so. In **Severinson v DSW** 31/5/94, HC Hamilton AP1/94 Penlington J said that willful blindness is a form of knowledge which requires that the accused suspects the fact in issue, and deliberately fails to pursue an inquiry that is required, for fear of finding the truth he suspects is available or in order that he can maintain a denial of actual knowledge.

48. Under conspiracy law the conclusion of the actual agreement between two or more persons to commit to a course of action that they believe will result in the commission of a crime is the act that is inimical to the public good and justly is a crime pursuant to section 310 of the Crimes Act 1961. The commission of a conspiracy is not that the agreement, if even carried out, would result in the commission of a criminal offence, but that the individuals who made the agreement thought the course of action in agreement, if carried out, would be result in a criminal act; **R v Anderson** [1986] AC 27; [1985] 2 ALL ER 961.

49. A classic case is where two drug addled addicts amass certain chemicals that they believe will, when combined, make a prohibited drug, and the truth is that the chemical cocktail could never have resulted in a prohibited drug. The mere belief that their agreement would result in the manufacture of a prohibited substance is the commission of the crime of conspiracy. New Zealand has followed the Canadian cases in this regard with **R v Sew Hoy** (1993) 10 CRNZ 581(CA) not following the English case of **DPP v Nock** [1978] 2 ALL ER 654. In **USA v Dy**nar (1997) 147 DLR (4th) 399, 431 – 6; 115 CCC (3d) 481, 513 - 518 it was held that "impossibility" could only be a defence to conspiracy charges where the conspiracy was to commit an "imaginary" crime. That would be to commit something lawful in the belief that it was actually unlawful. Conspirators can be charged with the crime of conspiracy and with the individual overt acts that are substantive criminal offences in the conspiracy. The relevant law and policy provisions are available in **R v Humphries** [1982] 1 NZLR 353, 355 (CA) where the court found that it was appropriate that joinder of four substantive counts of separate offences to the actual conspiracy charge were allowed to proceed to trial because the crown case alleged a continuing conspiracy, of which the substantive offences were no more than incidents.

50. Various individuals that are involved in a conspiracy do not need to even be in an agreement with all of the conspirators involved or know of the result of the entire agreement. A conspirator need not know what he has agreed to do is unlawful. A conspirator can enter and leave and re-enter a conspiracy numerous times and a conspiracy can have numerous lesser agreements as part of a much larger plan. All that a conspirator needs to believe is that his involvement with others is for the intention of carrying out the purpose of the agreement; **Churchill v Walton** [1967] 2 AC 224; [1967] ALL ER 497. The writer believes that various conspiracies have occurred in the matters at hand. In **R v Gemmell** 2 NZLR 740 (Court of Appeal) **MCMULLIN** J refers to the locus classicus definition of the elements of a conspiracy found in the judgment of **WILLES** J delivered to the House of Lords on four questions posed by the then Lord Chancellor Lord **CAIRNS**, in **Mulcahy v R** (1868) LR 3 HL 306. **WILLES** J said; (emphasis that of the writers)

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. ***When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise,*** *actus contra actum, capable of being enforced, if lawful,* ***punishable if for a criminal object or for the use of criminal means or for the use of criminal means****. And so far* ***as proof goes, conspiracy, as Grose J said in Rex v Brissac 4 East, 171, is generally "matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purposes in common between them****" (ibid,317)"*

51. For professionals or experts alleged to have been involved in a conspiracy, with related offences to their profession or expertise, the law of inference weighs in dramatically and for certain individuals, in the events the writer has uncovered, prejudicially. Such powerful inferences often require an accused, or in the civil setting the defendant, who is by the nature of their qualifications or experience presumed "an expert", to take the stand and give evidence, inclusive of providing corroborative documentary material. A failure to do so, without a very good excuse, would infer guilt before a Court. The law in this regard, relating to a civil case, can be found in 2 **Wigmore on Evidence** (Chadborn Revision 179), para 285 at page 192; (emphasis that of the writers).

"The failure to bring before the Tribunal some circumstance, document, or witness, when either the party himself, or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, ***and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party.*** *These inferences are always open to explanation by circumstances, which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted."*

52. Once there is evidence that a particular person is a party to the conspiracy, the Courts will accept hearsay evidence of the statements or conduct of alleged co-conspirators acting in furtherance of the common design, even where the statements were made, or the conduct took place, in the absence of the accused; **R v Buckton** [1985] 2 NZLR 257 (CA) and **R v Ahern** (1988) 80 ALR 161. The writer believes that the individuals charged in this report with misfeasance/skullduggery believed that they had successfully duped everyone involved inclusive of somewhat wary, (but not wary enough) legal counsel (Mr **FITCHETT**) and that any inquiry into the matters of deceit would be simplistic and perfunctory in order to preserve "what little remained"

after they had all but emptied the pantry. A conspiracy can last for many years, and inside a "global" conspiracy their can be many lesser conspiracies made up of other agreements ultimately inimical to the public interest. The Court of Appeal had this to say about the duration of a conspiracy in **R v Johnston** (1986) 2 CRNZ 289, 291;

"A conspiracy does not end with the making of the agreement. The conspiratorial agreement continues in operation and therefore in existence until it is ended by completion of its performance or abandonment or in any other manner by which agreements are discharged"

Simple, circle or chain conspiracy

53. There are effectively three accepted kinds of conspiracies although the law on conspiracy is expanding as societies practices change. The most common is the simple conspiracy where everyone knows everyone else and is aware of their involvement in the agreement, not that they will know the true identity of each person, but maybe know their position in the agreement.

54. Then there are two more complex conspiracies. The first known as the "circle" or "wheel" and the second is referred to as a "chain" conspiracy. Both are discussed in **R v Meyrick** (1929) 21 CR App R 94, 101-102. The "circle" conspiracy involves one global agreement between numerous parties with one central person, or groups of persons, managing the involvement of others that do not have any contact with anyone else but the central management entity. This is much like the spokes all leading to the hub of a wheel; compare **Ex O Coffey, re Evans** [1971] NSWLR 434. In a "chain" conspiracy the overall agreement is made by a series of groups of conspirators where say only one conspirator from a group has contact with another member of another group, and so on, thus forming the "chain".

55. The writer also believes the individuals involved in the matter at hand, (and the individuals as a group), felt that what they had done had been "signed off" by individuals and organizations that would appear independent (and beyond reproach) to outsiders, and thus impregnable from successful assail from interested (and thus prejudiced) stakeholders. A key focus in this report is to expose the overt acts by the various individuals involved and to show an uninterrupted flow of evidence towards

an inescapable conclusion. That being significant wrongdoing pursuant to the provisions of the various Acts specified at paragraph 22 of this report.

56. And the perpetrators had another string to their bow. As part of their plan they made their would-be future adversaries act in breach of the law, and have threatened and intimidated their would-be future adversaries by announcing that the only alternate action left, other than to join the plan being actually hatched against them was to admit their previous wrongdoing and probably face imprisonment. The persons threatened with prison could never have gone to prison, and could have availed themselves of a rather simple legal alternative.

57. But the pressure exerted on particular individuals was so well orchestrated that the writer accepts that best judgment came last, and the good professionals were particularly bad at their jobs and the bad professionals were particularly good at their jobs. Such a contest can only have one result.

58. The writer believes that the ultimate reason for the success of the scam, till now, has been the desire of everyone involved not to 'rock the boat' least success in turning out the miscreants is that the boat sinks and all are lost. It is important for the reader to understand that a 'conspiracy' charge can relate to a non Crimes Act offence. That is to say that a much lesser criminal offence may still be subject to the Crimes Act offence of conspiracy, but if someone is found guilty of such a conspiracy the maximum penalty is that found in the statute containing the substantive offence.

Inference evidence

59. The inimical agreement will often be proved by way of inference evidence that consistently makes out that the parties accused of reaching agreement would have likely come to that agreement because of what transpired to prove an agreement was likely in place. If the facts tend not to logically prove an agreement was in place, then it is mere speculation, and that is not proof; **R v Laugalis** (1993) 10 CRNZ 350; 1 HRNZ 466 (CA). However the inferences need not be such that there is no other reasonable explanation for the likelihood of the agreement not being in existence, or that the inferences are "irresistible" that the agreement was in existence; **R v Hart**

[1986] 2 NZLR 408, 413; (1986) 3 CRNZ 474, 479 (CA). The burden is to prove beyond reasonable doubt that the accused was a party to the conspiratorial agreement.

60. The writer has attempted to place before you an easy to read but comprehensive document that makes out certain facts, that if proven in a court of law, would be a serious breach of numerous statutes that would enable compensation from various sources, and to bring about punishment of those ultimately responsible for what has occurred. The writer believes that the corporate veil can be properly circumvented and the blame and consequence apportioned to the individual businessmen and professional advisors involved.

61. The writer reiterates that this report is lengthy because of the sheer mass of material that has had to have been read, considered and put into context. The report itself is dwarfed by that undertaking. Additionally the writer wanted the reader to be aware of the writers thought processes as the writer came across information.

62. That is to say that the reader is virtually experiencing the investigation through the writers actual experiences at the various points of the investigation, and not a document that just reports "conclusions".

Harnett Précis

63. At the conclusion of this report Advantage Advocacy Limited will have completed the second stage of the investigation being a précis of the content of the report and the probable grounds for prosecution of civil and criminal proceedings against certain individuals named in the report.

64. This part of the report is named the **HARNETT PRECIS** after Bruce Richard **HARNETT** an Auckland entrepreneur and philanthropist who always wants justice for the little guy, in this case the stakeholders in both LDC Finance Limited and F and I, and more widely Mr **HARNETT** feels the report represents the likely offending that has occurred in numerous failed finance companies.

65. Mr **HARNETT** has been of significant assistance in so many ways but more relating to enabling the writer to undertake and finish the report. For every dollar that an investor gets back as a direct or indirect result of the contents of this report they should say thank you to Messrs **HARNETT** and **MYTTON**.

Quick read

66. If reading such a voluminous report is thought too time consuming, it may prove beneficial to adopt the following process in wanting to get to the crux of the allegations. Having said the above the writer suggests that if the reader wants to know the "pitfalls" of investment and what to look for when considering an investment from the cynical angle the report is probably worth a read. The writer suggests that the reader recommences their perusal at page 221 paragraph 472 of this report where the writer has copied the written statement of Mark **FORD** director and owner of the Helilogging Group. Mr **FORDS** statement as the sole director and shareholder of Helilogging Holdings Limited is damning and the writer immediately deals with its obvious significance relating to the solvency of LDC Finance Limited and Halifax Finance Limited at crucial times. The readers next step once fully informed of Mr **FORDS** cogent evidence, would be to go to page ____ paragraph _____ where the **HARNETT PRECIS** commences. After reading both the reader may desire to take a more in-depth look at the evidentiary matrix that supports particular allegations of interest contained in the **HARNETT PRECIS** which précis helpfully refers the reader to page and paragraph of the report where the cogent evidence can be found.

Documents in annexed dossier

67. Annexed (to the actual physical report) is a dossier of 5 ring binders. If you are reading an electronic copy you have the ability to request a CD for a minimal cost containing true copies of documents that the writer will refer to and rely upon to make out the allegations against;

67.1 Messrs **MILLER**, **JANNETTO**, **ELLIOT**, **HARDIMAN** and **BROWNIE**; the respective actual and deemed directors of

- LDC Finance Limited,
- Helilogging Limited,
- Helilogging Holdings Limited,
- M and S Trading Limited,
- Taranaki Timber and Treatments Limited
- GKW Limited
- GKW Holdings Limited
- Halifax Finance Limited
- Motueka Wood Products
- Motueka Vehicle Sales Limited

67.2 Messrs **NOONE**, **HOLLIS,** and **CAIN** Chartered Accountants or senior associates of Pricewaterhousecoopers, and

67.3 Messrs **GLASS**, **LANCASTER** and **STYRANT** Trustees or Senior Executives of Perpetual Trustees Limited

Writers' initial and present thoughts on Messrs SCHOLFIELD and HARDING

68. The writer accepts that Messrs **SCHOLFIELD** and **HARDING** did some very stupid things, and some things, which were in breach of various provisions of statute, some entirely innocently, and some under threat of coercion or blackmail. The writers initial reaction to Messrs **SCHOLFIELD** and **HARDING** was that no one could be that naïve and ineffective in their handling of the problems that were presented to them at various times, and that they were likely largely to blame for the missing millions. Numerous witnesses could attest to the writers' position in this regard. But the writer was not aware of the stress that these two men were under, not as a result of anything Messrs **SCHOLFIELD** and **HARDING** had proactively done, but as a direct result of surreptitious and nefarious actions of others designed to make Messrs **SCHOLFIELD** and **HARDING** commit to a course of action in accordance with the others wishes that also saw the others significantly benefit and Messrs **SCHOLFIELD** and **HARDING** suffer intolerable circumstances, inclusive of wrongly thinking that if they acted honorably they would go to prison.

69. But the writer does accept, without reservation, that these two men have acted honourably relating to their obligations to stakeholders by paying over to the stakeholders virtually all of their considerable assets, which ironically was part of the plan hatched by those responsible for their unfortunate demise. But they did not use their protest of innocence as an excuse to prevent the evil day of reckoning where they handed over their life's work and achievements to stakeholders that they held, and still hold dear. Instead they absorbed that pain as best they could quietly hoping that one day there would be one achievement left that was not out of their reach given their ages. That being the day that they were proclaimed innocent of any actual wrongdoing in relation to the "missing millions" and when they could hold their heads up high in their home town.

70. How a man acts in certain circumstances has many components of reasoning and fact. A man concerned about his freedom when he feels he has done nothing wrong, (and as it turns out had done no wrong) may in fact commit an offence in an attempt to maintain a freedom that is not actually in jeopardy. An older man, although with many more years business experience, may be easier fooled by a fraudulent scam, than say a much younger man, who is aware that such scams are common place in the modern business environment. As they used to say many years ago a handshake is the real contract. Those days are gone and it is incontestably true that Messrs **SCHOLFIELD** and **HARDING**, as businessmen, were ill prepared for what evil was to knock unannounced at F and I's doorstep in mid 2006 and continues in place till the present day.

71. It is obvious that Messrs **SCHOLFIELD** and **HARDING** are by far and away the biggest victims of the offending of others, whilst those responsible for the "missing millions" have in a further irony, successfully blamed Messrs **SCHOLFIELD** and **HARDING** for the "missing millions". Whilst this report was not undertaken to exonerate these two men of any offending, but rather to find sufficient evidence to prove wrongdoing, the writer is pleased that the reports contents only proves, as against Messrs **HARDING** and **SCHOLFIELD**, that they have no place in modern business where integrity is a marketing, rather than a business reality.

B. WRITERS INVESTIGATIONS INTO THE NELSON AND SURROUNDING AREAS AND OTHER SALIENT ISSUES

72. The writer and senior advocate Mr Phillip **NOTTINGHAM** traveled to Nelson at midday on Tuesday 8 July 2008, and after interviewing various persons of interest and completing some inquiries departed in the mid afternoon of Friday 11 July 2008.

73. The initial persons spoken to by the writer were Messers **HARDING**, **SCHOLFIELD**, and **MILLER**. Messrs **BROWNIE, ELLIOT, STEVENSON, JENKINS** and **HARDIMAN** made themselves unavailable for questioning, (after the writer had spoken to Mr **MILLER),** and in telephone conversations with the writer were "very un-cooperative".

74. Mr **BROWNIE** wanted to know how the writer had obtained a private number and when the writer explained why the writer wanted to speak to him Mr **BROWNIE** invited the writer to "f__k off c__t" and threatened the writer with "gang contacts" who would give the writer a sound beating.

75. The writer informed Mr **BROWNIE** that he was happy to meet with Mr **BROWNIE** and his gang affiliates at any time of his choosing, but that the gang members were not persons of interest, but may become persons of interest at the meeting depending on their behaviour. The writer then stated that he would seek to talk to Mr **BROWNIE** at his home that afternoon at 3.00pm. The writer attended at Mr **BROWNIES** house at the time stated, but Mr **BROWNIE** and his gang affiliates did not make the meeting. A perusal of the house saw that Mr **BROWNIE** was in the throes of moving out with only a few chairs left inside the house. The writer returned on numerous occasions hoping to have a chat with Mr **BROWNIE** but never made contact. It appeared that Mr **BROWNIE** was visiting the property late at night or in the very early morning.

76. The writer also spoke with Mr Alan **TURLEY**, an investor in Halifax Finance Limited, LDC Finance Limited and F and I, and a Mr Rolly **FAWCETT** an investor in LDC Finance Limited. Both men had lost substantial amounts of money.

77. The writers main lines of inquiry related to;

77.1 How did each person spoken to understand;

77.1.1 The solvency of each party to be at various crucial times?

77.1.2 The motivation behind the deals done between the parties?

77.1.3 Their belief of the truth or otherwise of crucial statements or representations made by themselves and/or others at crucial times?

77.1.4 Why the deals struck failed?

77.1.5 Whether any significant misrepresentations were made that would have led a party to act to their injury?

77.1.6 Whether the deals were fully completed and thus superficially at least prima facie binding?

77.1.7 Whether there exist assets purposefully hidden from creditors?

77.1.8 What is the way forward in the dispute now existing between the parties with the goal being a global settlement with the investors extracting the maximum return possible at the minimum cost? (Note if possible considering any evidence of criminal offending of such serious magnitude to impugn the legitimacy of any settlement agreement; Illegal Contracts Act 1970 section 6 and the decision of the High Court in **Polymer Developments Group Ltd v Tilialo** 103,6617 NZBLC.

The deals done between F and I and LDC Finance Limited (in a nutshell) as the writer thought he knew them to be at the commencement of his investigation.

78 The allegations of fraud came from the failure of three well-known finance entities in Nelson. The three entities had a combined stakeholders funds of approximately $50m or so. The finance receivables books amounted to about $70 to 80m. The writer will seek to quickly explain the numbers and how the millions were apparently lost. The following numbers are not exact but are representative of the likely numbers involved.

79 F and I had stakeholders funds of say $17m to $19m and LDC Finance Limited had stakeholders funds of about $27m to $30m. But both LDC Finance Limited and F and I lent bulk-funding money to Halifax Finance Limited, which Halifax Finance Limited then on lent to retail borrowers. It is likely that at least 90% of the Halifax Finance deposits came from F and I and LDC Finance Limited. The split of deposits into Halifax Finance Limited was probably at any given time $7m to 8m from F and I, and up to $10 to $11m from LDC Finance Limited.

80 Up until mid 2006 Halifax Finance Limited had been meeting its commitments to pay interest to F and I Finance Limited for its bulk deposits. Then suddenly all hell broke lose when Halifax Finance Limited's sole director Mr Paul **BROWNIE** informed the partners of F and I that he could no longer service any of the F and I deposits made, and that they best speak to Mr David **MILLER** director of LDC Finance Limited who would explain the alternate course of action available to save mainly F and I because LDC Finance Limited was secured as first debenture holder against the assets of Halifax Finance Limited inclusive of all deposits put in by the partners of F and I.

81 The LDC Finance Limited prospectus of 19 September 2006 disclosed a very healthy book exceeding $30m, with provisioning of only $100,000.00 to $150,000.00 in bad loans meaning that LDC Finance Limited alleged it had the complete upper hand in negotiations as F and I were looking at bad debt provisioning of $6 to $7m because of Halifax Finance Limited problems and F and I not having a first ranking security over Halifax Finance Limited. To be clear it was later alleged by Messrs **SCHOLFIELD**

and **HARDING** that F and I's bad debt provisioning was as a result of LDC Finance Limited's directors conspiring with Halifax Finance Limited's directors to make them continue to invest funds in Halifax Finance Limited on good loans after the directors of LDC Finance Limited and Halifax Finance Limited knew Halifax Finance Limited and LDC Finance Limited were totally insolvent. The purpose of this simple deceit perpetrated against Messrs **SCHOLFIELD** and **HARDING** was to enable LDC Finance Limited to use its first ranking security over Halifax Finance Limited to secure the funds paid into Halifax Finance Limited by F and I when LDC Finance Limited and Halifax Finance Limited finally "declared" insolvency.

82 Without going into overly specific detail at this stage a deal was subsequently struck where LDC Finance Limited would sell 1,500,000 one dollar shares to F and I pursuant to a paper loan for $1.5m from LDC Finance Limited to the partners of F and I and the partners would guarantee that amount by offering security to LDC Finance Limited over the loan book assets of F and I to the value of that loan amount. In return LDC Finance Limited would give some funding (up to $500,000.00) to keep F and I cash flowed.

83 As a result of the agreement of mid 2006 F and I and LDC Finance Limited agreed to jointly collect the Halifax Finance Limited book. Another company SC Management Limited was also engaged to assist in collection. As a result of this agreement F and I realized that the position of Halifax Finance Limited was a lot worse than made out by Mr **BROWNIE** and Mr **MILLER**, and that it appeared that some dealings were "problematic" and that F and I had been misled about the true solvency of LDC Finance Limited reported by the directors of LDC Finance Limited to F and I and in the LDC Finance Limited September 2006 prospectus.

84 In or around December 2006, early 2007 LDC Finance Limited directors Messrs **MILLER** and **JANNETTO** approached Messrs **HARDING** and **SCHOLFIELD** saying that another deal needed to be done and that they had brought on board Mr Maurice **NOONE** from Pricewaterhousecoopers to come up with the "solution" for both sides.

85 Mr **NOONE** visited Nelson on a Saturday in January 2007 to have a look at the books of F and I and at that meeting threatened Mr **HARDING** that if Messrs **HARDING** and **SCHOLFIELD** did not commit to the plan investing another $4m into LDC Finance Limited that Messrs **HARDING** and **SCHOLFIELD** would go to prison because F and I had been taking in money from the public for debt securities without complying with the Securities Act 1978.

86 Mr **NOONE** stated at that time that his plan for the two parties would see F and I basically get back the $4m invested and enable F and I to come very close to meeting, if not meeting in full its obligations to its stakeholders. Mr **NOONE** reiterated that the hole that needed filling in LDC Finance Limited was about $4m. **One must comment at this time that it would seem obvious that to invest $4m to get $4m back appears to be a neutral equation and therefore not to make any sense**. As it will be shown this was in fact correct and of course there was never a hope in hell of that $4m coming back. But of course Mr **NOONE** was portraying himself as a self styled "guru" of money being able to make money "suddenly appear" only to "suddenly disappear" again. Mr **NOONE** wasn't the only magician in the LDC Finance Limited camp. Mr **MILLER**, with his "assistant in magic" Mr **BROWNIE** who was glued to the LDC Finance Limited wallet, was busy with his wand from 2001 onwards. Of course as we know magic is entirely deception.

87 Subsequently an LDC Finance Limited prospectus was issued in late April 2007 reflecting those numbers more or less with the explanation that the directors had been unaware of the hole, and it had been discovered in a review, but was substantially taken care of by the investment of $4m in finance receivables by a Nelson based privately funded finance partnership in consideration of the purchase price for 4,000,000 one dollar shares in the company which paid a regular dividend.

88 Following not a single offer to buy LDC Finance Limited being received from Mr **NOONE** and there being a run on the cash reserves of LDC Finance Limited because of rumours that all was not well, LDC Finance Limited was placed into receivership by Perpetual Trust Limited on 3 September 2007 pursuant to the power contained in its first ranking security over LDC Finance Limited. Perpetual Trust Limited appointed Messrs **HOLLIS** and **FISK** of Pricewaterhousecoopers as receivers.

89 On September 4 2007 after the tragic suicide of Mr **HARDINGS** son just days earlier, Mr **HOLLIS** of Pricewaterhousecoopers approached Mr **HARDING** wanting him to voluntarily appoint Messrs **HOLLIS** and **FISK** as receivers of F and I on the grounds that he would look after the interests of the F and I stakeholders, whilst Mr **HARDING** buried his son and grieved.

90 Almost immediately Mr **HARDING** and Mr **SCHOLFIELD** realized that placing Mr **HOLLIS** as a receiver was a further massive error in judgment. As a result of being appointed receiver of LDC Finance Limited and F and I Mr **HOLLIS** moved to secure the enforcement of the first ranking securities LDC Finance Limited had over F and I, and no doubt did some deal with Halifax Finance Limited relating to LDC Finance Limited's first ranking security over that company.

HOLLIS receiver reports actually prove the existence of the "missing millions"; if you look close enough, and know what you are looking for.

91 At the time of this report being published Mr **HOLLIS** has issued four receivers reports at six monthly intervals, which contents have disclosed that LDC Finance Limited has recovered, or seeks to recover, about $17 to $19m of $21 to 22m of stakeholder funds.

First receivers report dated 3 November 2007

92 The LDC Finance Limited book value of receivables as at date of receivership stood at $27.3m and funds at bank were $3.6m making a total of $30.9m. As at 3 November 2007 Mr **HOLLIS** reported a further downgrade of likely recovery to be $22,062,992.00 in finance receivables with cash at bank being $3,656,287.00 and $818,296.00.00 in "other current assets" and $30,626.00 in "fixed assets" making a total of $26,568,201.00. Against this sum of assets likely to be recovered, the liabilities stood at $293,986.00 in interest due to investors and $43,366.00 in other liabilities likely being costs of receivership. There was also the liability to the stakeholder deposits which stood at $21,588,690.00 making the total liabilities about

$21,926,042.00 giving an alleged surplus of $4,642,169.00 which sounds very good doesn't it? The writer has just received the fourth receivers report and will deal with that report near the end of this report before moving on to the **HARNETT PRECIS**.

Second receivers report dated 30 April 2008

93 In the second receivers report dated 30 April 2008 Mr **HOLLIS** has indicated that the doubtful debt provisioning had now miraculously burgeoned by another $5.2m making likely recoverable amounts from the finance receivables to be $17.1m from the initial $27.3m as at the date of the receivership, or $10.2m had been basically bad in the original book statements at the date of receivership. You must remember that this "position" is after PWC had already had a close look at the LDC books performance. It would be interesting to see how many accounts had not had interest payments met from external sources, rather than "further advances" on "bad security" been given so that the Directors could mislead investors whilst many more millions went down the toilet.

94 In the second receivers report Mr **HOLLIS** advises that $1.4m had been repaid to certain stakeholders who had relied on the accuracy of the LDC Finance Limited's September 2006 prospectus, which was likely misleading and so the stakeholders liabilities had shrunk by the same amount. Why is not Hollis reporting these matters to the Commission or the SFO?.

95 Additionally Mr **HOLLIS** had paid out $25 cents in the dollar to secured stakeholders meaning that stakeholder liabilities had shrunk from $21.588m to about $18.573m, but interestingly interest due to investors was now $1,163,696.00 and accounts payable added a further $134,770.00 making the total liabilities, even with the payout to certain investors, $19.871m. Now what struck the writer was that interest should have been coming in off the LDC Finance book whilst the assets had not been sold.

96 In the second report Mr **HOLLIS** appears to have added in the F and I funds obtained pursuant to the deals done with F and I in mid 2006 and March 2007 giving a surplus over liabilities of $4,602,443.

Third receivers report dated 29 October 2008

97 The writer was not aware of the content of the third receivers report before commencing his investigation, because it came after the commencement of the investigation. However the writer feels it is important that the reader comprehend where the allegation of the missing millions is initially made out not that you would be able to decipher the facts unless being fully aware of what the writer has discovered, and which is contained in this report.

98 Mr **SCHOLFIELD** and **HARDING** knew the truth but were taken out of the equation by wanting to hand over their fortunes to the F and I stakeholders who unfortunately placed their trust in two men that have simply not done their job, although one of the trustees has been hog tied by the other who just happens to be a close friend of a key player in the wrongdoing. Not that he informed the stakeholders of this rather pertinent fact before accepting the position of trustee.

99 In the third receivers report Mr **HOLLIS** confirms that he has paid out $6.2m to secured investors, has paid back $1.4m as voidable allotments, and has $9.5m at the bank of which $7.8m is from him having taken that from F and I (pursuant to the alleged claims relating to the deals done between F and I and LDC Finance Limited) when he was receiver of F and I, and has $3.5m of assets left to sell. One must wonder who the "voidable allotments" were paid to and on what grounds?

100 These numbers are very interesting for the following reasons. From the totals produced from the third receivers report it would appear that the amounts recoverable from the receivership of LDC Finance Limited have been;

Already paid out to secured investors	$6.5m
To be realized	$3.5m
Funds at bank not F and I's ($9.5m less $7.8m)=	$1.7m LDC book funds

Total	$11.7m

101 From this figure of $11.7m, (if you believe Messrs **HARDING** and **SCHOLFIELD** who maintain that probably $6.5m of the $7.2m F and I invested in Halifax Finance was good book), you would then have to deduct at least $6.5m from the monies collected by Mr **HOLLIS** who is wrongly alleging that these amounts are actual LDC Finance Limited receivables, when the money was obtained by exercising the first security over Halifax Finance Limited obtaining F and I funds, rather than realizing "good book" of LDC Finance Limited.

102 The result is that the amounts collected by Mr **HOLLIS** of actual LDC Finance Limited receivables is about $5.2m from a book of $27.3m and cash at bank of $2.2m ($3.6m less $1.4m) or $29.5m in total.

103 It would follow that the $2.2m in cash at bank would have to be deducted from the $5.2m as well because that amount is not receivables leaving $3m in receivables. As you will learn Mr **HOLLIS** has not been completely honest about another amount of about $2m that is not from LDC Finance Limited receivables but from CBH Limited shares that has not been disclosed to LDC Finance Limited stakeholders meaning that a further $2m has to be taken off the $3m left leaving only a million of LDC Finance Limited receivables being collected by Mr **HOLLIS**. Of course these numbers are subject to some small amount of variation in the scheme of things, but nevertheless it would appear that there is some explaining to do about where the money has gone.

104 It could be that the remaining $3.5m (of LDC Finance Limited book) to be realized may only be worth $1m and therefore the amounts collected by Mr **HOLLIS** from LDC Finance Limited, Halifax Finance Limited, and F and I may amount to only $17.5m out of a joint book of close to $50m before things took a turn for the worse in January 2007, or that is what the stakeholders believe. You must remember that the Halifax Finance Limited receivables book were amounts advanced to Halifax Finance Limited by F and I and LDC Finance Limited and therefore these amounts are neutralized and do not add another $17m to 19m onto the total of the books of the three entities.

105 At this stage you must be thinking this is absolute madness. Crazy talk. Well take a look at what has been paid out to F and I investors of their $19 to $20m receivables book. The only payment so far made is 8 cents in the dollar which actually came from personal funds put into the kitty by Messrs **SCHOLFIELD** and **HARDING** after the receivership to avoid bankruptcy, so these monies have **not** come from the F and I receivables book.

106 What there is left of the actual F and I book is about $1.5m in operating book returned to the F and I partnership after Pricewaterhousecoopers departed as receivers after selling off the good F and I receivables book to pay LDC Finance Limited on it various first ranking securities over Halifax Finance Limited and F and I.

107 If finding these numbers a little bit confusing the following schedule may be of assistance;

	F & I	**LDC**
Receivables book/cash at date of receivership	$19m -$20m	**$**29.5m (incl of $2.2m at bank)
Receivables book collected	$2m	$17.5 to $19.5m
Loss as against book val	$17m to $18m	$10m to $12m
Combined losses of irrecoverable receivables	**$27m to $30m**	

108 Looking at those numbers it would appear to lend considerable credence to the fact that, if the F and I loan amounts given to Halifax Finance Limited to on lend to clients vetted by Messrs **HARDING** and **SCHOLFIELD** were all good realising close to 100 cents in the dollar, and as we know the other F and I book sold by the receivers to pay the LDC Finance Limited first ranking security paid mostly 100 cents in the dollar, then LDC Finance Limited was hopelessly insolvent to the tune of $25m to $30m at the date of the receivership, but for the securities over Halifax Finance Limited and F and I. These amounts are what the writer has described as the "missing millions".

109 If the writers hypothesis is correct about the F and I book being mostly good, (which could be proved by the High Court appointing an independent Liquidator to liquidate

LDC Finance Limited, Halifax Finance Limited, and F and I with the Court ordering the liquidator to do a quick money trace on all three accounts), then the following questions would have to be asked of the Directors of LDC Finance Limited, the receivers Messrs **HOLLIS** and **FISK** of Pricewaterhousecoopers and the trustee of Perpetual Trust Limited as a matter of urgency;

109.1 When was the money likely lost?

109.2 How was it lost; i.e., on what specific deals, what alleged asset security, was any interest ever paid, were the directors of LDC Finance Limited directly or indirectly involved with the borrowing entities?

109.3 What about the personal guarantees that must have existed; have they been enforced, and if not, why not?

109.4 How were the losses not reported to, or otherwise known by, Perpetual Trust Limited and Pricewaterhousecoopers given LDC Finance Limited was an issuer pursuant to the reporting, auditing and policing provisions of the Securities Act 1978?

109.5 How did the auditors of LDC Finance Limited Sherwin Chan and Walshe miss the massive losses that appear to exist?

109.6 Why have the receivers (Mr **HOLLIS** of Pricewaterhousecoopers) and the trustee (Mr **STYANT** of Perpetual Trust Limited) not reported the matters to the Securities Commission, the New Zealand Police Service, the Registrar of Companies, and the Serious Fraud Office, given that they surely must have been aware of the losses **and who was responsible**?

109.7 Why are the receivers and the trustee not pursuing the directors of LDC Finance Limited and Halifax Finance Limited for trading recklessly and insolvently causing the collapse of LDC Finance Limited, Halifax Finance Limited and F and I?

109.8 Why have Pricewaterhousecoopers not pursued the directors of LDC Finance Limited and Halifax Finance Limited for personal liability to repay both F and I and LDC Finance Limited stakeholders.

109.9 How have the directors of LDC Finance Limited been able to report substantial profits and pay themselves as shareholders many hundreds of thousands of dollars in dividends when the company must have been hopelessly insolvent?

110 What you will read in this report should astound you and dispel any faith you had in the "system" or its agencies, in this case the Securities Commission.

111 Think about this fact for a moment. Who believed the Germans were capable of killing 6 million Jews, and in fact were designing their death camps in the 1930's. As a rule of thumb it is human nature to tend to disbelieve out of hand the more bizarre or horrendous allegation especially when made against a large number of people from different backgrounds and with different responsibilities.

112 People tend to have faith in the goodness of their fellow man and rightly demand compelling evidence to the contrary. A starting point, which normally leads to disastrous delays, is to look for the motive that makes someone accuse someone else of serious wrongdoing. In other words to shoot the messenger. This is a particular favorite of New Zealand agencies such as the New Zealand Police Service when the rape allegations were initially made against its officers.

113 Whereas the writer is of the mind that the appropriate course in such serious matters is to immediately search for evidence that should be available to prove wrongdoing, and from that point look for other evidence to further corroborate the seriousness of the allegations and ultimately prove not only the wrongdoing but who are the sinister players making the real decisions that led to the wrongdoing. In the case at hand a quick visit to one of the minor players in the scam with a promise of immunity from prosecution would lead to further cogent evidence to charge all of the others involved.

114 The writer concludes that Messrs **SCHOLFIELD** and **HARDING** have had a similar problem the Jews had with their allegations against Hitler, when making allegations of

this magnitude against Pricewaterhousecoopers, Perpetual Trust Limited and the directors of LDC Finance Limited. The initial allegations against the LDC Finance Limited directors could be likely believable, but once the full weight of the apparent credibility of Pricewaterhousecoopers and Perpetual Trust Limited came into play with their respective reports of no wrongdoing whatsoever, the credibility of Messrs **HARDING** and **SCHOLFIELD**, and thus their fortunes, took a massive blow.

115 The **MYTTON REPORT** seeks to correct the imbalance of credibility by bringing to the New Zealand publics awareness certain important allegations supported by cogent evidence and argument that makes out that Messrs **SCHOLFIELD** and **HARDING** are innocent of any significant wrongdoing in the case of the "missing millions" and that they were the subject of an ongoing conspiracy to defraud F and I and its stakeholders. A conspiracy that is still alive as this report goes on the internet, but a conspiracy that will no longer be able to operate as a result of this report; that is if;

- The government agencies responsible for protecting the public, and apprehending and prosecuting offenders do their respective jobs and;

- Messrs **SCHOLFIELD** and **HARDING** get off their behinds, and seek and obtain the support of a majority of the stakeholders of both LDC Finance Limited and F and I to apply to the High Court to remove Pricewaterhousecoopers as receivers and appoint an independent liquidator to LDC Finance Limited, Halifax Finance Limited and if necessary F and I and that such liquidator should be tasked to report on the questions asked at paragraph 103 of this report, and if grounds are made out, to sue for such amounts thought recoverable against;

    - Pricewaterhousecoopers

    - Perpetual Trust Limited

    - Directors of LDC Finance Limited

- Mr Paul Francis **BROWNIE**

- Any other party

Examination of Mr David MILLER, Director of LDC Finance Limited, GKW Limited, GKW Holdings Limited and Miller Holdings Limited,

116 The writer visited Mr **MILLERS** property at 6B Marybank Road Atawhai Nelson unannounced in the early morning of Wednesday 9 July 2008. The writer spoke initially with Mr **MILLERS** wife, Kerry **MILLER**, before Mrs **MILLER** introduced the writer to Mr **MILLER** in their lounge.

117 The writers premise to Mr **MILLER** for the unannounced visit was that several investors/stakeholders wanted to get to the bottom of the dealings between F and I and LDC Finance Limited believing that the partners of F and I Messrs **HARDING** and **SCHOLFIELD**, may have committed criminal offending causing their substantial losses, or in the alternate the directors of LDC Finance Limited may have been somewhat disingenuous.

118 Mrs **MILLERS** offer of coffee and cake was accepted by the writer. The writers' examination of Mr **MILLER** took in excess of an hour with the main emphasis being on the solvency of both F and I and LDC Finance Limited prior to, during, and after the dealings between the two entities. The examination of Mr **MILLER** by the writer was robust and the discourse took place at various places inside and outside Mr **MILLERS** home.

Solvency of F and I and LDC Finance (according to Mr MILLER)

119 Initially Mr **MILLER** attempted to argue that F and I were never insolvent because the assets of the partners (Messrs **HARDING** and **SCHOLFIELD**) could always be applied to cover the partner's liabilities.

120 Mr **MILLER** finally conceded that the potential liability of the partners to pay any creditors to the partnership after the partnership is established as being insolvent does not constitute "solvency" of the partnership prior to the claims of insolvency being made out and subsequently monies paid by the partners because of insolvency of the partnership.

121 In any event the writer opined that the monies paid by the partners have still not covered losses because of the nature of the dealings done between the partners of F and I and the Directors of LDC Finance Limited. Additionally several valuable assets of one of the partners of F and I were protected by trust prior to the partners handing the assets over to the trustees of the informal insolvency proposal.

122 Mr **MILLER** similarly argued that LDC Finance Limited was always solvent prior to and after entering the deal with F and I and that it was only the call on depositor's funds that made the trustee company act to place it into receivership.

123 After several minutes of robust debate as to how the company (LDC Finance Limited) could have been solvent prior to, and post, the deals with F and I considering its current status, if unsuccessful with its defences against the claims made by F and I in proceedings, Mr **MILLER** confided that the directors of LDC Finance Limited had, well before receivership, transferred $2m to $3.5m of assets (by transferring $2m to $3.5m of shares in a company owned by the directors of LDC Finance Limited) into the effective ownership of LDC Finance Limited to insure that it was solvent.

124 Mr **MILLER** could not remember the exact names of the companies involved "because he didn't have much to do with it'.

125 The writer was surprised at this "admission" by Mr **MILLER** because the writer had never heard of this injection of equity into (effectively) LDC Finance Limited being disclosed in any of the other material seen by the writer (at that time) inclusive of the first and second receivers reports (pages 127 to 135, [3 November 2007], pages 136 to 145, 30 [April 2008] of the annexed dossier) which the writer felt, if the receiver was being transparent and honest, should have disclosed this information when completing the reports to the requisite standards of the Financial Reporting Act 1993. Shares held in another company owned by LDC Finance Limited would be recorded by a receiver under the heading of "investments".

126 It would be trite to expect that a partner in Pricewaterhousecoopers, (and charged by that firm to undertake an important receivership of two middle sized finance entities), Mr Malcolm **HOLLIS** would be aware that compliance with s3 of the Financial Reporting Act required; (emphasis that of the writers)

3 meaning of generally accepted accounting practice

For the purposes of this Act, financial statements and group financial statements comply with generally accepted accounting practice only if those statements comply with –

(b) ***Applicable financial reporting standards****; and*

(c) ***In relation to matters for which no provision is made in applicable financial reporting standards and that are not subject to any applicable rule of law, accounting policies that-***

(i) ***Are appropriate to the circumstances of the reporting entity;*** *and*

(ii) ***Have authoritative support*** *within the accounting profession of New Zealand*

127 Compliance by Pricewaterhousecoopers with "applicable reporting standards" that have "authoritative support" would incorporate the following;

127.1 Institute of Chartered Accountants of New Zealand's various standards of accounting practices issued by the Financial Reporting Standards Board of the Institute and approved at various times by the Accounting Standards Review Board (pursuant to the requirements for such clarification and transparency under the Financial Reporting Act 1993) or;

127.2 The various doctrines of the Statement of Standard accounting practices of the New Zealand Society of Accountants respectively which include the following documents that may, if the writer feels it is necessary, be referred to in greater detail by the writer later on in this report;

- FRS-1 **Financial Reporting Standard No 1 1994 Disclosure of Accounting Policies**; Pages 337 to 346 of the annexed dossier.

- FRS-2 **Financial Reporting Standard No 2 1994 Presentation of Financial Reports**; Pages 347 to 370 of annexed dossier

- INTERPTN OF FRS-2 interpretation 1994 **An Interpretation of FRS-2 Presentation of Financial Reports;** Pages 371 to 376 of the annexed dossier

- FRS-9 **Financial Reporting Standard No 9 1995 Information to be disclosed in Financial Statements**; Pages 377 to 394 of the annexed dossier

- FRS-33 **Financial Reporting Standard No 33 Disclosure Of Information by Financial Institutions** Pages 395 to 424 of the annexed dossier

- SSAP-6 **Statement of Standard Accounting Practice No 6 (revised 1985) Materiality In Financial Statements** issued by the Council, New Zealand Society of Accountants Pages 425 to 428 of the annexed dossier.

- SSAP-22 **Statement of Standard Accounting practice No 22 1988 Related Party Disclosures** Pages 429 to 434 of the annexed dossier

- SSAP-17 **Statement Of Standard Accounting Practice No 17 Accounting for Investment Properties and Properties Intended For Sale** Pages 435 to 446 of the annexed dossier

- FRS-38 **Financial Reporting Standard No 38 October 2001 Accounting For Investments In Associates**. This Reporting Standard is a regulation for the purposes of the Regulations (Disallowance) Act 1989 Pages 447 to 486 of the annexed dossier.

128 Such transparency of reporting would of course include;

128.1 The specific naming of the shares involved,
128.2 What agreement surrounded the sale and purchase,
128.3 Who were the respective vendor and purchaser,
128.4 Any liens on the shares,
128.5 Any possible litigation pending as a results of the sale and purchase or any other legal hurdles,
128.6 Estimated value at sale and how it was intended they be liquidated, or otherwise dealt with, and;
128.7 What agreement was in place to enable the proceeds to be ultimately distributed to the stakeholders.

129 The writer pushed Mr **MILLER** hard as to the inconceivability of his apparent lack of knowledge about such an important facet resolving that LDC Finance Limited had been insolvent, and the directors, of which he was one at the material times, had acted to correct this position in such an honourable fashion, and that apparently nobody else spoken to by the writer knew about this injection. The writer thinking that this was the optimum time for a polite warning, informed Mr **MILLER** of his unequivocal responsibilities as a company director (which Mr **MILLER** must have been aware of pursuant to the specific provisions of the Companies Act 1993, the Receiverships Act 1993, the Securities Act 1978, and the Financial Reporting Act 1993 and the possible import of the provisions of the Crimes Act 1961).

130 Not surprisingly, given that at times the writers demeanor had hardly been that of the *corps diplomatique,* Mr **MILLER** became suspicious of who the writer was actually representing and Mrs **MILLER**, who had apparently feigned leaving the house (and was in fact listening behind an ajar door), entered the lounge and the conversation supporting her husband alleging that;

130.1 All investors, and not just F and I investors were hurt and;

130.2 Most of the investors in LDC Finance Limited were friends of their family, or clients of Carren Miller, and therefore it followed;

130.3 They had done nothing wrong and;

130.4 She suspected that the writer was representing Messrs **HARDING** and **SCHOLFIELD** because of the robust manner of examination and what she perceived as intimidation of her husband.

130.5 Mr **SCHOLFIELD** had threatened to kill her husband and that Mr **SCHOLFIELD** had access to guns because he was a collector.

131 The writer answered that whether something had been done wrong and whom was responsible was a matter of evidence and not mere denial, or blaming others, and that it would be good if Mr **MILLER** could be as forthcoming with information to get to the truth of the solvency of the respective parties prior to, during, and post, the deals being done between LDC Finance Limited and F and I and that this was his opportunity to "tell all". In the writers opinion Mr **MILLER** would have been aware that negative inferences could be drawn from silence, let alone an overt lie.

132 The matter of settlement was discussed at some length with Mr **MILLER** alleging that this had always been his agenda, but that he wanted to see what the allegations were and what his, or moreover the company's (LDC'S) defence, was to have been.

133 Mr **MILLER** alleged that he had stated his settlement desire to Messrs **MARSHALL** and **EATON** when they had visited his home. The writer informed Mr **MILLER** that

the writer had, as part and parcel of the writers inquiries, already spoken to Messrs **EATON** and **MARSHALL** and both had informed the writer that he (Mr **MILLER**) had been reasonably confident that LDC Finance Limited would be successful in defending claims made by F and I. I wholly disagreed.

134 At this point Mr **MILLER** became very affable wanting to assure the writer that he wanted the writer involved in any settlement negotiations but that he wanted the parties to file their initial respective documents in the Court case as a first step.

135 The writer stated that it had been a long time since the dispute arose and that "time was of the essence" and that settlement should be able to be completed within a relatively short period, if a settlement was the best course.

136 Mr **MILLER** then stated that he was not the one who could solely decide this as the trustee, Mr Michael **STYANT,** was the person who would probably ultimately decide what occurred.

137 The writer opined that the company was only in receivership, and that therefore the directors had a significant say in the matter and equally had responsibilities under statute to inform the receivers of all assets owned by LDC (whether directly or indirectly), to which Mr **MILLER s**tated that he did not know what his rights were in this regard. The writer asked Mr **MILLER** to get legal advice and to pass that on to the writer. Mr **MILLER** stated that it was Mr **STYANT** that was behind the claim for $7.8m against F and I, and that he thought that the claim for that amount was probably not fair.

138 The writer understood this to be a tactic by Mr **MILLER** to change the subject and was not interested in discussing settlement until Mr **MILLER** had given up hard proof of the injection of the capital as this established the directors belief that LDC Finance Limited was insolvent (due to the size of the injection of capital) and that they had acted to attempt to correct it with the injection of assets apparently not known to anyone else but Mr **MILLER**. Of course if Mr **MILLER** did not know exactly what and where the assets were, Mr **MILLER** may equally be mistaken about what occurred.

139 The writer asked Mr **MILLER** again to name the company whose shares were transferred ultimately to the benefit of LDC Finance Limited to which Mr **MILLER** replied that the company's name was "something like" CBH Limited and it had land assets worth many millions in or around Research Orchard Road, but that it was the $2m to $3.5m worth of shares that had been transferred to re-establish the necessary "ratios" to satisfy the Trustee. The writer stated that the Trustee would have been interested as to **actual** solvency over "apparent ratios".

140 The writer confirmed Mr **MILLERS** agreement to the following scenario. In order to allege an injection of equity into LDC Finance Limited to the value of $2m to $3.5m those shares must be entitled to, or represent ownership of $2m to $3.5m worth of property at the time that the ownership of shares were effectively transferred into LDC Finance Limited's ownership and control. Mr **MILLER** also stated that he thought the land that had been effectively transferred to the ownership of LDC Finance Limited by the share transfer was about 50 to 60 hectares.

141 Immediately after Mr **MILLER** agreed to this position as to ownership of the land being with LDC Finance Limited and thus the stakeholders in LDC Finance Limited, his knowledge of the address of the property and the exact name of the company involved became very "sketchy". Mr **MILLER** stated that he did not know what all of the letters of C, B and H meant but that he thought the letter "C" stood for coastal.

142 Mr **MILLERS** lack of knowledge on other matters relating to a matter of a $2m to $3.5m investment of funds into LDC Finance Limited was, as he put it again, *"because he didn't really have much to do with the company"* (CBH Limited), or words to that effect.

The share deals done by Mr MILLER

143 The writer turned to the specific share deals between the partners of F and I and the directors of LDC.Finance Limited. The writer stated to Mr **MILLER** that the share

deals with F and I did not make sense, or were otherwise anomalous, given the catastrophic failure that was always going to occur given the numbers.

144 The writer opined LDC Finance Limited shares could not have been worth the monies paid by the partners of F and I, and the paper loans created between LDC Finance Limited and the partners of F and I did not actually create any value and were in fact a misrepresentation of equity, and value and were for the purpose of presenting apparent solvency that had been created out of thin air and not tangible assets.

145 The writer confirmed with Mr **MILLER** that no actual monies were transferred from LDC Finance Limited to F and I to enable F and I to purchase the initial 1,500,000 LDC Finance Limited shares in mid 2006. The writer thought this was strange given that the only reason why this would not be done would be if LDC Finance Limited did not have sufficient monies at that time because the money transfer would be effectively swapping cheques. If the shares were worth $1.5 million dollars then why require security against other assets? And was any interest paid on the loan?

146 Another crucial inquiry would be whether the deal was explained accurately in the LDC Finance Limited prospectus in September 2006. In the writers opinion the explanation in the September 2006 prospectus was a sham, but the writer will return to this point.

147 Equally a consideration as to the integrity of the deal would be what was voluntarily disclosed by the LDC Finance Limited directors to F and I. Did F and I rely on just the content of the last LDC Finance Limited prospectus and the investment statement contained therein, or did the directors of LDC Finance Limited give F and I a different picture to what was contained in the prospectus? Another consideration is did the directors of LDC Finance Limited omit to supply relevant facts to F and I before F and I did the deals for 1,500,000 shares in mid 2006 and 4,000,000 shares in March 2007? It was the writers' opinion that the LDC Finance Limited directors must have deceived Messrs **SCHOLFIELD** and **HARDING** because why else would they have even contemplated such a ludicrous deal.

First share deal for sale of 1,500,000 LDC Finance Limited shares to F and I not "lawful" and probably void under the Companies Act 1993

148 Although not raised by the writer to Mr **MILLER**, the writer thought that such a large loan of $1.5m from the company for persons to purchase 1,500,000 shares in LDC Finance Limited would have been in breach of section 80 of the Companies Act 1993 in that the loan amount from LDC Finance Limited to F and I for $1.5m was definitely more than 5 percent of shareholders funds, that being the retained earnings of the company and any other assets surplus to liabilities.

149 To make the deal doable under section 80 of the Companies Act 1993 the reserves of LDC Finance Limited would have to be in the vicinity of $30m. Whilst LDC Finance Limited allegedly had a book of $30m it had stakeholder liabilities of $23m to $27m meaning that these amounts almost neutralized each other and were in any event not retained earnings and thus reserves.

150 More importantly it was the writers opinion that LDC Finance Limited was definitely insolvent at the time of issuing and selling the shares and doing the paper loan to F and I to buy the worthless LDC Finance Limited shares. The importance of the issue of solvency at the time the company gives assistance to persons to buy shares in the company is determined at section 77(1) of the Companies Act 1993 which provides;

> *77. Company **must** **satisfy solvency test** – (1) **A company must not given any financial assistance** under section 76 of this Act **unless** the board of the company is satisfied on reasonable grounds that **the company will**, immediately after the giving of the financial assistance, **satisfy the solvency test**.*

151 The writer was also aware that subsection (b) of section 77 of the Companies Act 1993 required the directors who voted in favour of giving assistance to Messrs **SCHOLFIELD** and **HARDING** of LDC Finance Limited to buy shares in LDC Finance Limited to certify by declaration the following matters;

> *.....**must give a certificate stating that**, in their opinion, **the company will**, immediately after the financial assistance is given **satisfy the solvency test and the grounds for that opinion.'***

152 This declaration of solvency is no valueless or immaterial piece of paper. It requires the directors to specifically declare grounds for their belief as to solvency and such grounds for an issuer under the Securities Act 1978 would be the audited content of prospectuses and investment statements contained therein and the monthly reports to the trustee. The generic "solvency test" for such a declaration is found at section 4 of the Companies Act 1993 which provides;

> ***4 Meaning of solvency test***
>
> ***(1) For the purposes of this Act, a company satisfies the solvency test if---***
> *(a) the company is able to pay its debts as they become due in the normal course of business; and*
> ***(b) the value of the company's assets is greater than the value of its liabilities, including contingent liabilities****.*
> ***(2) Without limiting sections 52 and 55(3), in determining for the purposes of this Act (other than sections 221 and 222 which relate to amalgamations) whether the value of a company's assets is greater than the value of its liabilities, including contingent liabilities, the directors---***
> ***(a) must have regard to---***
> ***(i) the most recent financial statements of the company that comply with section 10 of the Financial Reporting Act 1993; and***
> *(ii)* ***all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities****:*
> *(b)* ***may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances****.*
> *(3) Without limiting sections 221 and 222, in determining for the purposes of those sections whether the value of the amalgamated company's assets will be greater than the value of its liabilities, including contingent liabilities, the directors of each amalgamating company---*
> *(a) must have regard to---*
> *(i) financial statements that comply with section 10 of the Financial Reporting Act 1993 and that are prepared as if the amalgamation had become effective; and*
> ***(ii) all other circumstances that the directors know or ought to know would affect, or may affect, the value of the amalgamated company's assets and the value of its liabilities, including contingent liabilities****:*
> *(b)* ***may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances****.*
> ***(4) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of---***
> *(****a) the likelihood of the contingency occurring****; and*
> *(b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.*

153 Importantly for the directors of LDC Finance Limited, most of which were chartered accountants, they could not rely on a likely inability to comprehend the meaning and application of the solvency test as it related to the valuation of assets and otherwise the position of LDC Finance Limited in regard to subsection 4(2)(a)(i) and (ii) and 4(2)(b) above. The subsections impose a strict adherence to sound accounting practices such as the directors **must have regard to** the most recent financial statements that comply with section 10 of the Financial Reporting Act 1993, and otherwise what the directors ought to have known, and finally that if an asset can only be sold at that time for say $100,000.00 then that was the value of the asset for the purposes of the test, and not a cent more.

Textbook commercial lending

154 As an idea of what are sound commercial practices regarding secured loans the writer is aware that banks recognize the market value of a house as being the purchase price, or a recent registered valuation, whichever is the lesser, and then require a deposit for the purposes of equity. It is accepted that at the time that LDC Finance Limited was operating that deposits were much lower and at times were as low as 5 percent. However if they were low they also required good evidence of historical cash flows to fund the loan and other behavioural evidence that would support the application.

155 In doing so the borrower and the lender or funder are both deemed solvent and able to do business. If the assets offered for security for a loan were depreciating assets such as mechanical items then it would be paramount the agreed schedule of principal reduction payments were going to be met by the borrower keeping the ratio of equity as against borrowing in balance during the term of the loan. Of course the funder demands regular interest payments from the borrower to insure that it also can pay its stakeholders and so the world goes round quite happily.

156 In the case that loans are made on an asset that, subject to development, is increasing in value such as the development of a bare block of land into a residential subdivision then the undeveloped piece of land will require further funding to develop the residential sites that will be worth substantially more per m2 than the bare block.

However costs of roading, pedestrian access, street lighting, drainage, sewerage, power to site, site development, and council contributions will be very considerable indeed.

157 In this case the time honoured and proved process is funding through progress payments which see a funder contribute to the development costs on a historical basis. The funder will normally demand proof of the increase of value through a site inspection by a registered valuer before the funds are released, and then demand proof that the funds released have been applied to creditors immediately after release. This way the funder is insuring a satisfactory, or commercial, equilibrium of equity and borrowing.

158 As a normal requirement the funder will have additional secondary security over other assets of the borrower whilst the progress funding is in place and may release those securities once the developer has finished the development or sold down a portion of the residential sites. If deposits are taken on unconditional contracts for sale and purchase of the developed residential sites subject to title being granted, the funder, before releasing any securities given by the borrower to the funder, will require a commercial cash deposit known colloquially as "hurt money", to be paid by the purchaser to the borrower. These sizeable deposits serve distinct purposes.

159 The first is to insure that it is unlikely that the purchasers are "friendlies", or associates of the borrower. The second is that such deposits "hurt" if the contract is not completed and make it more likely that it will be completed as contracted with the funder getting on settlement a sizeable reduction in lending to the borrower. Thirdly it insures that the borrower has sufficient funds to pay interest payments to the funder and possibly some principle reductions

160 All of the above could be described as hedging against contingent liabilities, or insuring that if something did go wrong the likelihood is that the securities available for immediate sale would be sufficient to cover all of the borrowers liabilities, and as a result all of the funders liabilities to stakeholders.

161 Naturally there is a further margin of safety between the funders' income from the borrower and payments to be made by the borrower to the stakeholders. But when

something goes wrong requiring a forced sale such margins are eaten entirely by legal and sale costs. However if such basic rules are followed you would have to be very very unlucky to lose any money, and if you did not follow such basic rules you could only be described as a moron or a criminal.

162 Axiomatically when something drastic goes wrong the development may be worth considerably less than that originally assumed. It is against this understanding that any director of a substantial funder would consider the funders solvency at any given time.

An example of appropriate downgrading of an assets worth to nothing.

163 The following is an appropriate example of downgrading an assets worth to nothing. A struggling builder purchased a house on a small deposit, with another funder holding the first security. The house was the worst house in the best street. The builder applied to another funder for a second mortgage to do the renovations and supplied a valuation for the property based on the renovations being complete. The valuation showed that upon the work being completed to a satisfactory standard by the builder, there was a sufficient increase in value over and above the required supplementary funding to make the deal work; in other words to give sufficient security to the second funder to cover the borrowers liabilities to the second funder, and the second funders liabilities to its stakeholders.

164 The second funder advances the money as a second mortgage on the house for the work to be done and also takes a further first ranking security over the builders business which is mostly the book value of tools as there is no good will with failure.

165 Only the demolition side of the renovation is carried out before the builders business is placed into liquidation with the liquidators stating that the book value of the tools are negligible; especially as some are financed already, and that most of the tools are in a bad state of repair due to the way the company's assets were carelessly managed when operating insolvently. The house is to be put to auction in its partially demolished state, and the builder has not been paying either the first or the second funders mortgage payments since obtaining funding from the second funder.

166 Given the state of the house at the time of forced sale the first funder sells the house making a substantial loss exacerbated by the lack of payments of interest for some time, and the not inconsiderable costs relating to legal procedures required to be completed before forced sale could have been effected, and real estate agent and marketing costs incurred in realizing the sale.

167 If the house that was sold with a loss to the first funder was the only asset that the second funder had against its liabilities to stakeholders monies then the second funder would be hopelessly insolvent. Again this is not rocket science is it?

168 The writers point is when was the second funder insolvent, or when should the account have been downgraded? Should the account have been downgraded to a total loss;

- Only after the asset and shortfall was realized at sale, or
- When no interest was being paid when it should and work was not being done as per an agreed time schedule.
- When it was obvious that the improvement work funded by the second funder was not going to be done by the builder and the builder had no way of returning the monies advanced;
- When the builders company was placed into liquidation and it was apparent that the secondary security was worthless
- When it was realized that the demolition work undertaken had actually decreased the value of the security meaning that the account was a total loss?

169 The writer believes that accounts are downgraded when there is any significant breach of the accounts performance requirements in order that the funder can seek to work with the borrower to remedy the breach. However if remedy is not available within a predetermined amount of time the account continues to be downgraded very quickly until the decision is made to sell up the asset and thus return the money to the pool to be utilised in a performing account and hopefully make up losses. Of course if the account losses are equal to, or at least 15 to 20% of the funders liabilities to its stakeholders, the funder is insolvent unless the directors obtain equity funds from

another source, but who would want to invest in such an insolvent company with a history of bad decision making.

170 It is the writers' opinion that the non-payment of interest by the builder was a crucial failure and one, which should have brought an instant downgrade unless explained and remedied immediately. The second downgrade would have been when it was obvious that work was not being done to schedule, which probably would have been as a result of the builder having spent the money elsewhere, resulting in the security being now worth considerably less because of the state of demolition. The liquidation of the builders business with confirmation of no surplus assets would have been the last straw.

171 However if the account was managed properly it would have been substantially downgraded the moment the interest was not paid, and the funder should make immediate inquiry as to whether the first funder is being paid its mortgage payments. Appropriate action at that time would be to seek additional security, and if such security was not forthcoming to seek compliance that the builder desist in any demolition work, or immediately repairs such work as undertaken. A demand would also be made requesting clarification as to where the monies that had been advanced to complete the renovation were, and ask for repayment of any monies left if it could be established that the builders financial position was irrecoverable making the allegation that the builder would be trading recklessly, and possibly fraudulently, if he spent the money on anything but the house. The squeaky cog gets the oil or as the writer says the first loss is the least lost.

172 The risk is made even higher when lending by a funder is at very high levels to a small number of borrowers that are doing 'developments' or undertaking such other business activities, that require the agreement of others in the future to enable the added value to be accessed, and it is known or ought to have been known that the agreement required is unlikely to be obtained. An example would be where a council had refused planning permission to rezone an area to residential, but the borrower wanted to pay deposits to builders, start substantial civil works, and do surveying from funds to be borrowed from a funder. A funder would be absolutely insane to get involved in such a

deal because ninety nine percent of the time it will only lead to further irrecoverable losses.

173 A statement by an advisor that the agreement required is likely to come through is not sufficient security to further fund an investment unless the options are entirely unacceptable, and continuing to fund would not amount to unacceptable risk to stakeholders monies. It is also a truism that you can risk your own money but not others, and that is to say that you invest other peoples monies in acceptable risks, which are low risk by the nature of the investment and the way the funder, manages the investment. High-risk ventures are for the "equity boys" who pump in their own money but expect very high returns for the high risk associated with the venture. But of course everything does not always go to plan and this is why certain ethical rules apply. That is why funding for research and development is not committed to by anyone but the Government or a few specialist funders, and the Government requires a dollar for dollar formulae.

174 An example would be a stakeholder funded development had gone bad because of multiple problems such as bad weather, a design problem that required significant remedy, and a second tier funder not renewing funding, and demanding repayment. These matters had caused significant delays and the developer could now not meet due repayments. It is obvious that the appropriate course of action would be to, before putting good money in after bad, approach the stakeholders and inform them of the problem and giving them alternatives as to remedy and the risks and likely returns involved. This approach to stakeholders would have to be manifestly transparent with every conceivable effort made to insure that no misstatements of fact or likely outcome, or omitting to relate what ought to be known by the directors at that time, are committed.

175 The wrong and likely fraudulent approach would be to keep pumping stakeholders money into the development in the hope that the directors beat off failure and public ridicule.

176 This is why there are checks and balances in place in the Securities Act 1978 that require regular reporting as to the solvency of the funder. The Securities Act 1978

requires that independent auditors apply the high standards of disclosure to stakeholders pursuant to the standards referred to in the Financial Reporting Act 1993. There is also the reckless trading provisions of the Companies Act 1993 that have to be imported into any scheme to continue trading. If the directors could not continue the development by honest means then they must admit defeat and seek the protection of the Companies Act 1993 or the Insolvency Act 2006 which have sections relating to compromises with, and protection from creditors.

177 On the positive side a funder lending very high levels to a small number of borrowers makes it easier to trace security fluctuations and to act to remedy the situation at significantly less overall cost. In other words a director of a funder should be able to at the push of a computer button give a reasonably accurate estimation of the funders position on those large accounts.

178 The balance sheet would disclose the secured assets worth if sold in the next month, the behaviour of the account over the term of the loan and the amount now owed. If amounts owed on borrowers accounts were equal, taking into account the costs of sale of the asset, to the secured assets worth at immediate sale, then the position is obviously neutral between solvent and insolvent. If, at the time of pushing the computers button there is a wide margin of deficit between what is owed to the funder on those borrowers accounts and the value of the secured assets worth if sold, then the funder is likely insolvent.

179 In the simplest of terms imaginable the worth of any funder is the difference between the stakeholders funds deposited with the funder and the contract value of any lending done by the funder to borrowers which is properly secured against sufficient assets owned by the borrowers, that if the borrowers defaulted, the sale of the assets would cover all contingent liabilities.

180 The writer believes that most readers will probably not have required this edification on text book commercial lending, but the writer desires to make the obvious point that, if most readers already know what amounts to a commonsense approach to commercial lending, surely there could be no credibility in a chartered accountant not following the basics. As will become evident from what is recorded later in this report a raging

inferno of insolvency was well alight in both LDC Finance Limited and Halifax Finance Limited camps by late 2003. How the fiscal firestorm raged for so long is actually the answer to the question why there was virtually nothing left in 2007. All the money had gone up in the smoke and mirrors game played by the directors of LDC Finance Limited and Halifax Finance Limited, which game ultimately engulfed F and I.

Text book, against double books

181 If say LDC Finance Limited's finance receivable assets had a book value of $32m as at mid 2006, then the above criteria found in the simple house loan, or something very similar, would have to be present in the behaviour of LDC Finance Limited's funding and collection operations for them to be able to report that figure as being accurate.

182 If there was any development funding the application of the simple principles of progress payments and additional security would apply and if any assets were by their nature and intended use depreciating assets then attention to scheduled reduction payments would be paramount to protect actual security in the event of failure. As will be shown LDC Finance Limited and Halifax Finance Limited were not depreciating the value of securities whilst their clients were taking depreciation in their millions. Depreciation of such assets such as Helicopters is a crucial tool to both the lender and the borrower, because it keeps the borrower paying the least tax possible, and the lender keenly focused on where their position as to security is.

183 If one, or several, of these common aspects are not operative the assets value would have to be downgraded. How much downgrading would reflect that the account was outside performance criteria. It is trite to say that if none of the criteria were being met the account should be "closed" and the securities realized ASAP. It is also equally obvious that if the directors of LDC Finance Limited were not following any of the above principles that they were trading recklessly.

184 As it is often stated, "a fool and his money are soon parted" and in other cases a "fraudster soon parts with a stakeholders money". This is why people who invest in finance companies "look at who is running the company". In the case of LDC Finance

Limited, Carren Miller, a long established firm of chartered accountants, "ran the show". Chartered accountants by their nature are supposed to be conservative and sagacious individuals who can quickly separate the wheat from the chaff as far as matters of commerce are concerned.

185 In the case of LDC Finance Limited as at mid 2006 when it stated in its September prospectus that it had bad loan provisioning of between $100k and $150k the directors were clearly informing current and prospective stakeholders that of an LDC Finance Limited receivables book that exceeded $32m that $31.85m at least was good book that was not downgraded and was performing as normal commercial loans with sufficient security **as at that date** to cover all contingent liabilities that they knew about, or ought to have known about. As you will also see the LDC Finance directors paid themselves as shareholders hundreds of thousands of dollars in the March 2006 year corroborating the clean bill of health. It would be apparent that if the true position of LDC Finance Limited was that it was insolvent in 2006 then the directors were running two sets of books. A true set and a false set.

186 But how could this be able to be done given that there was supposedly the protection of the audit by Chartered Accountants Sherwin Chan and Walshe which Wellington firm recorded the following reassuring statements on Prospectuses for current and prospective stakeholders to read and rely upon; see page 283 to 284 of annexed dossier; (emphasis that of the writers)

"Basis of Opinion on the Financial Statements

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements*. It also includes assessing;*

1. The significant estimates and judgments made by Directors in the preparation of the financial statements; and

2. Whether the accounting practices are appropriate, consistently applied and adequately disclosed

We conducted our audit in accordance with New Zealand Auditing Standards issued by the New Zealand Institute of Chartered Accountants. ***We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to obtain reasonable assurance that the financial statements are free from material misstatement,***

<u>whether caused by fraud or error.</u> *In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.*

Basis of Opinion on the Summary of Financial Statements

We have undertaken procedures to obtain reasonable assurance that the amounts set out in the summary financial statements included in the prospectus have been correctly taken from;

1. *The audited financial statements of LDC Finance Limited for the years ended 31 March*

2. *The audited statements of Eagle Finance Limited for the years ended 31 March 2005*

3. *The audited financial statements of LDC Investments Limited (and subsidiary) for the years ended 31 March 2004 and 2003.*

Unqualified Opinion

We have obtained all the information and explanation we have required

In our opinion;

- ***<u>proper accounting records have been kept</u> by the Charging Group as far as appears from our examination of those records; and***

- *The financial statements of the charging Group that we are required by clauses 16 to 31 of the Second Schedule to the Securities Regulations 1983, included on pages 17 to 36 of this Prospectus and that are required to be audited;*

  a) *Comply with these regulations; and*

  b) *Subject to those Regulations, comply with generally accepted accounting practice; and*

  c) ***<u>Give a true and fair view of the financial position of the Charging Group</u>*** *as at 31 March and its financial performance and cash flows for the year ended on that date."*

  d)

187 If the LDC Finance Limited position was dramatically different, and say of a receivables book of $32m $30m was bad and should have been downgraded to some receivables being partially recoverable and most receivables being wholly irrecoverable, then you would think that this position would have been obvious to a blind man and reported. Well of course numbers are but scribbling's on a piece of

paper, and there is no magic whatsoever in writing wrong numbers down instead of the right ones is there? But is it a realistic possibility that Sherwin Chan and Walshe were that negligent or stupid? Another sound alternative to being stupid or negligent is being involved in the making of the fraudulent misstatement is it not?

188 The writer further understood that if LDC Finance Limited did not satisfy the solvency test at the time 1,500,000 LDC Finance Limited shares were sold to F and I, then the deal was voidable because section 81 [enforceability of transactions] of the Companies Act 1993, whilst stating that non compliance with sections 76, 78, 79, and 80 of the Act does not make the transaction un-enforceable, the section makes no mention of section 77 which pertains to the requirement that the company selling the shares must satisfy the solvency test found in section 4 of the Companies Act 1993 and this same solvency test must apply to subsection 107(1)(e) as it relates to subsection 108(5)(a) and (b) if LDC Finance Limited did the deal in any other way. Therefore it would seem obvious that a breach of section 77 and/or 108 of the Companies Act 1993 **does** make the contract for the purchase of shares voidable, not withstanding the common law suit of misrepresentation.

189 This would make sense given that, if LDC Finance Limited was insolvent by a wide margin, the persons buying the shares would be paying for valueless shares, and why would anyone do that knowingly. And what is such a misrepresentation not fraud entitling recompense?.

190 Of additional interest subsection 81(2) of the Companies Act 1993 confirms that subsection (1) of section 81 does not affect the *"liability of a director or any other person for a breach of duty, or as a constructive trustee or otherwise"* meaning that if the director misrepresented the position of the company as to retained earnings or solvency in general that the directors are liable to compensate the afflicted persons either under common law or pursuant to section 301 of the Companies Act 1993.

191 The writer will return to this strict liability found in section 301 of the Companies Act 1993 *"if past or present directors, managers, liquidators, or receivers of the company, have misapplied, or retained, or become liable or accountable for, money or property of the company, or has been guilty of negligence, default, or breach of duty or trust in*

relation to the company". The writer was aware that if the Court finds any one liable it can order compensation to the afflicted parties and can do so pursuant to subsection 301(2) even though the behaviour may *"constitute an offence*", and further any such judgment is *'deemed to be a final judgment within the meaning of section 17(1)(a)) of the Insolvency Act 2006*" pursuant subsection 301(3) which would enable the judgment creditor to seek an order of adjudication of bankruptcy against the judgment debtor within weeks without the judgment debtor being able to waste time with the strategy of vexatious and frivolous appeals. When adjudicated bankrupt the bankrupts assets are to be applied to pay the judgment debts.

192 The solvency of LDC Finance Limited at the time that the directors gave $1.5m of financial assistance to Messrs **SCHOLFIELD** and **HARDING** for the purpose of F and I buying LDC Finance Limited shares to "create" the appearance of additional equity being "pumped" into LDC Finance Limited to give the Trustee some comfort as to ratios of company assets against liabilities is also further brought into doubt by the application of subsection 107(1) (e) and 108(5) of the Companies Act 1993. But was **STYANT** up to the challenge; i.e did **STYANT** know about the smokes and mirrors?

193 Subsections 107(1)(e) and 108(5) of the Companies Act 1993 provide;

> ***107 Unanimous assent to certain types of action***
> *(1) Notwithstanding section 52* ***but subject to section 108****, if all entitled persons have agreed or concur,---*
> ***(e) financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with sections 76 to 80:***
>
> ***108 Company to satisfy solvency test***
> ***(1) A power referred to in subsection (1) of section 107 must not be exercised unless the board of the company is satisfied on reasonable grounds that the company will, immediately after the exercise of the power, satisfy the solvency test….***
> ***(5) In applying the solvency test for the purposes of section 107(1)(e),---***
> *(a)* ***assets excludes all amounts of financial assistance given by the company at any time under section 76 or section 107(1)(e) in the form of loans; and***
> *(b)* ***liabilities includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance under section 76 or section 107(1)(e).***

194 It would seem that no matter how the LDC Finance Limited directors did the deal it meant that the deal was of no worth to LDC Finance Limited. The sale of a company's shares involving company lending to other persons rightly require the threshold of a solvency test, (which the writer thought LDC Finance Limited would have failed if done properly). Importantly the loan amount of $1.5m could **not** have been applied to any solvency test at the time of 'creating' the loan because subsection 108(5)(a) of the Companies Act 1993 excludes the consideration of such company loans "at any time". This would mean that immediately after the loan was "created" the loan amount could not be considered as an asset in the solvency test of the company in any event. The writer felt when examining Mr **MILLER** that the Trustee should have been street savvy enough to know that this deal was "dubious" to say the least.

Mr MILLER agrees to fraud if writer can prove that LDC Finance Limited misrepresented solvency to F and I in mid 2006 and March 2007

195 The writer opined to Mr **MILLER** that, if it could be proven that LDC Finance Limited was insolvent, or even likely insolvent at the time, these actions were misrepresentations designed to induce investors including Messrs **HARDING** and **SCHOLFIELD** to act to their initial jeopardy and then ultimate harm. Mr **MILLER** agreed with the writers' position if it could be proven that LDC Finance Limited was insolvent, or likely insolvent in June 2006, and the directors ought to have known about it then it was a fraudulent act.

196 Mr **MILLER** claimed that the March 2007 deal (for 4,000,000 LDC Finance Limited shares being purchased by F and I for a consideration of F and I handing over $4m of their good book to LDC Finance Limited) was done because Mr **NOONE** of Pricewaterhousecoopers had indicated that he had several buyers who had shown strong interest for the LDC Finance Limited and F and I package, and that a sale would have led to everyone getting off the hook and that it was Mr **NOONE** that had **not** come up with one single offer from anyone. But wait a second Mr **MILLER,** if LDC Finance Limited was solvent, it was not in trouble, so why help out F and I?

197 The writer opined that if it could be proven that such actions were an agreement to continue operating, when clearly insolvent in the unrealistic hope that a future sale

would get the parties enough funds to pay all creditors, then everyone involved would be guilty of a conspiracy to defraud those persons (individually, and as a group or class) subscribing for debt securities as a result of the execution of the plan. Again Mr **MILLER** conceded that if it could be proven that LDC Finance Limited's position was so drastically different to the one pleaded in the Prospectuses, then obviously it would be fraud, but Mr **MILLER** maintained everything that should have been done was done to insure that there was no intentional misstatement in any prospectus.

198 Mr **MILLER** stated that receivership can drastically change the value of assets to which the writer replied that the cash values before receivership were the relevant matters.

199 The writer felt at this stage that Mr **MILLERS** assertions of absolute belief as to the solvency of both LDC Finance Limited and F and I were becoming plainly absurd. The numbers involved meant that Mr **NOONE** would have, in attempting to sell the two businesses individually, or as a package deal, divulged the two entities accounts to a potential purchaser disclosing massive numbers of wholly irrecoverable securities, and thus debts, of the entities to the same value. Simple arithmetic of $20m of realizable assets and $50m in receivables needed an explanation as to how and when the $30m went missing.

200 In relation to stakeholder funds, which jointly (between LDC Finance Limited and F and I) would have been about $43m, this means that at least $23m had gone missing.

201 It was the writers position to Mr **MILLER** that it was inconceivable that Mr **NOONE** could have honestly held a belief that he could have arranged for a buyer, and it was the writers opinion that it would have been dishonest of Mr **NOONE** to have promoted that belief to either the directors of LDC Finance Limited or the partners of F and I. In the simplest of terms imaginable;

> *How can mere swapping of assets between two insolvent entities produce a solvent entity worth more than their joint level of insolvency, and make them both worth more than their joint level of insolvency at point of sale, whether or not "marketed" by Mr **NOONE**?*

202 Mr **MILLER** stated that Mr **NOONE** knew about everything that was done and why it was done, as did LDC Finance Limited lawyers, Buddle Findlay, and the Trustee, Mr **STYANT**. Mr **MILLER** by implication promoted that a lot of the deals were either the brainchild of, or were signed off, by Messrs **NOONE** and **STYANT** because they wanted involvement in insuring that everything done increased the solvency issues that had presented.

203 If what Mr **MILLER** was stating were true then Messrs **NOONE** and **STYANT**, if making actual decisions on LDC Finance Limited's behalf would be possibly caught under the "shadow" or "deemed" or "de facto" director provisions of the Companies Act 1993. Section 126(1) of the Companies Act 1993 provides; (emphasis that of the writers)

> *126. Meaning of "director" –(1) In this Act, "director", in relation to a company , includes –*
> *(a) A person occupying the position of director of the company by whatever name called; and*
> *(i) For the purposes of sections 131 to 141, 145 to 149, 298, 299 and 301 of this Act*
> *(ii) **A Person who** exercises or who is entitled to exercise or who **controls or who is entitled to control the exercise of powers which**, apart from the constitution of the company, **would fall to be exercised by the Board**;*

204. Whether Mr **NOONE** (or any other party involved) was caught as a shadow director or not, their knowledge of, or participation in certain matters, if the actions or omissions of others amounted to offending, could be caught under s66, and s310 of the Crimes Act 1961 which materially provide; (emphasis that of the writers)

> ***66. Parties to offences***
>
> *(1) Everyone is a party to and guilty of an offence who-*
> *(d) Actually commits the offence; or*
> *(e) Does or omits an act for the purpose of aiding any person to commit the offence; or*
> *(f) Abets any person in the commission of the offence; or*
> *(g) **Incites, counsels, or procures any person to commit the offence**.*
> *(2) Where two or more persons **form a common intention to prosecute any unlawful purpose and to assist each other therein**; each of them is a party to every offence committed by anyone of them in the prosecution of the common*

purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

310. Conspiring to commit offence

(1) Subject to the provisions of subsection (2) of this section ***everyone who conspires with any person to commit any offence, or to do or omit, in any part of the world anything of which the doing or omission in New Zealand would be an offence****, is liable to imprisonment for a term not exceeding 7 years if the maximum punishment for that offence exceeds 7 years imprisonment, and in any other case is liable to the same punishment as if he had committed that offence;*

(2) This section shall not apply where a punishment for the conspiracy is otherwise expressly prescribed by this Act or by some other enactment.

(3) Where under this section anyone is charged with conspiring to do or omit any thing anywhere outside New Zealand, it is a defence to prove that the doing, or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

205. The writer also thought at this time of the investigation that the other salient sections of the Crimes Act 1961 that may be able to be imported into the actions or omissions of various parties involved in coming up with any deceitful scams executed at various times were;

s72 Attempts,
92A Participation in organized criminal group,
70 Offence committed other than offence intended, and
71 accessory after the fact

206. The writer did understand that a receiver could not be caught by s126(1) of the Companies Act 1993 ("shadow" or "deemed" director; see amendment to the Companies Act 1993 following authority of the Court of Appeal and the High Court). However Mr **NOONE** and **Mr HOLLIS** were **not** acting in that capacity at that time and thus may well be caught depending on what could be established as to their knowledge and inferred agreement; see **Fatipaito v Bates** [2001] 3 NZLR 386.

207. The writer was also very much aware of the liabilities of directors (or "shadow" or "deemed" directors) under the Companies Act 1993 relating to trading whilst insolvent; see;

- Decision of the High Court in **Mountfort v Tasman Pacific Airlines of NZ Ltd** 1 NZLR [2006] 104 at paragraphs at [20] to [30] and **Fatipaito v Bates** [2001] 3 NZLR 386;

- Section 131 [Duty of directors to act in good faith and in the best interests of company]; Companies Act 1993

- Section 135 [Reckless Trading [not to allow substantial risk of serious loss]; Companies Act 1993

- Section 136 [Duty in relation to obligations [need for belief on reasonable grounds in ability to perform obligations]; Companies Act 1993

- Section 137 [Directors duty of care]; Companies Act 1993

- Section 138 Use of information and advice]; Companies Act 1993

- Section 194 [Accounting records to be kept]; and

- Section 300 [liability if proper accounting records not kept]; Companies Act 1993

- Sections 377 [False Statements]; 378 [Fraudulent use or destruction of property], 379 [Falsification of records]; 380 [Carrying on business fraudulently]; Companies Act 1993

208. Mr **MILLER** stated that it was Pricewaterhousecoopers that had come up with the March 2007 deal and it had been looked at by Buddle Findlay. There were two important points Mr **MILLER** was trying to make in the writers opinion. The first was that Mr **MILLER** was attempting to make others blameworthy and that in every material event, by implication of his statements, he relied on other experts advice pursuant to s138 of the Companies Act 1993 which provides; (emphasis that of the writers)

138 Use of information and advice

(1) Subject to subsection (2) of this section, ***a director of a company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:***
(a) An employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned:
(b) ***A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence:***
(c) Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
(2) ***Subsection (1) of this section applies to a director only if the director—***
(a) Acts in good faith; and
(b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
(c) Has no knowledge that such reliance is unwarranted*.*

209. The writer felt that Mr **MILLERS** (implied) reliance on this provision of the Companies Act 1993 was a weak shield against any attack on Mr **MILLER** given Mr **MILLER** was a chartered accountant and in the ordinary course of day to day business would have given such exact advice to others.

210. But the matter of importance to the writer raised by Mr **MILLER** was the injection of an asset (CBH Limited shares) worth $2m and possibly $3.5m into LDC Finance Limited to cure obvious issues of insolvency.

211. The writer reiterated to Mr **MILLER** that he was entirely unaware of such an injection occurring, but that it did prove that the directors thought there was another large hole to fill and that therefore LDC Finance Limited needed between $7m and $9m to cure its problems, which proved it was definitely insolvent prior to those injections of cash and kind. The writer opined if this was the case then it was more than likely that F and I were misled because who would inject $5.5m to buy shares in a finance company with such a rotten book. Mr **MILLER** denied misleading anyone and stated that F and I might have just made a bad decision in hindsight.

212. The writer stated that it was strange that nobody else knew about the apparent injection of shares, and Mr **MILLER** stated that he would look into it for the writer.

F and I Statement of claim inaccurate

213. Mr **MILLER** stated that the F and I statement of claim was inaccurate in that it grossly overstated the level Halifax Finance Limited bad debts written off by LDC Finance Limited. When asked to point out exactly what was wrong with the emails and other documents in the statement of claim that supported the numbers alleged, Mr **MILLER**, again, became less informative and felt that he should now seek legal advice. The writer feeling that no more information at this stage could be obtained decided to leave and immediately follow up on the leads given by Mr **MILLER**.

214. When leaving the writer confirmed to Mr **MILLER** that the writer would get to the truth of what occurred and Mr **MILLER** said that he would do what he could to settle the matter, as he too thought that this was the best way forward.

215. As stated Mr **MILLERS** comments had given the writer significant fresh and exciting leads, and much to think about including where the CBH Limited shares had gotten to and why seemingly nobody but Mr **MILLER** knew anything about their existence, and even Mr **MILLER** alleged *"he had nothing to do with it"*, and knew very little about it.

216. The writer believes that it was obvious to Mr **MILLER** that the writer had considerable difficulty believing Mr **MILLERS** protestation of knowing virtually nothing about an apparent injection of $2 to $3.5m of assets in order to restore solvency ratios and complete a deal wherein LDC Finance Limited obtained security over $5.5m to $7.5m of F and I assets. Put simply, the writer felt that Mr **MILLER** knew his protestations beggared belief.

217. When leaving Mr **MILLERS** home, the writer had a feeling that the losses actually suffered by LDC Finance Limited were far greater than stated, as at that time, in the Receivers first two reports. The writer did not find Mr **MILLER** a credible person and felt that his accounts were even less credible.

218. Whilst trying to appear to be frank and open Mr **MILLER** had been, in the writers' opinion, anything but that. Any chartered accountant of 40 years experience should have been able to give the writer chapter and verse of the exact financial position of LDC Finance Limited. It was obvious that Mr **MILLER** wanted to test the writers' abilities and perseverance to get to the bottom of what happened to the missing millions. The writer willingly accepted Mr **MILLERS** challenge.

Subsequent communication with Mr MILLER about the matters raised in the interview

219. As indicated to Mr **MILLER** the writer researched the Companies Offices website and located a company named CBH Limited and the directorship details confirmed that Mr **MILLER** was not a shareholder or a director of the company. Although it was noted that Mr Chris **HARDIMAN** a director of, and shareholder in, LDC Finance Limited was a major shareholder.

220. Of more interest to the writer was that CBH Limited's shareholding did not disclose any ownership of shares by LDC Finance Limited or any other related company. The writers research only identified one related company owned by LDC Finance Limited, which was SC Management Limited, but it had been sold to LDC Finance Limited well after LDC Finance Limited fell into receivership, but which interestingly, Mr **MILLER** was SC Management Limited's director.

50 to 60 hectares where Mr MILLER?

221. Inquiry by the writer (relating to the area indicated by Mr **MILLER)** around Research Orchard Road (on the afternoon of 9 July 2008 and the morning of 10 July 2008) did not result in a property being located in the ownership of CBH Limited.

222. The writer phoned Mr **MILLER** at about 10.30am on 10 July 2008 stating that the writer's research had not come up with such a property reported by Mr **MILLER** to the writer, and that the writer found it almost inconceivable that Mr **MILLER,** as a director of LDC Finance Limited, did not know the whereabouts of a large parcel of

land, which was part owned (through shares) by LDC Finance Limited (through a related company) and which equity had had been effectively injected into LDC Finance Limited;

- To maintain ratio and solvency for the purposes of satisfying the Trustee that LDC Finance Limited was operating to the requirements of its deed.

- Would have been reported in LDC Finance Limited's prospectus pursuant to the requirements of the Financial Reporting Act 1993 and the Securities Act 1978.

- Was a crucial specific element to fulfilling obligations LDC Finance Limited had to F and I in completing a multi million deal, wherein F and I in turn purchased millions of dollars in shares in LDC Finance Limited, and gave millions of dollars of security to LDC Finance Limited over its assets to the tune of $5.5 to $7.5m

223. The writer was very much aware that the directors of LDC Finance Limited being Messrs **ELLIOT**, **HARDIMAN**, **JANNETTO** and **MILLER** had a duty of care, or a constructive trust to LDC Finance Limited's shareholders, (and prospective shareholders), inclusive of Messrs **HARDING** and **SCHOLFIELD** to insure that deals were undertaken and completed in good faith. The writer was also aware that through s4 of the Contracts (Privity) Act 1982 the directors of LDC Finance Limited possibly had the same duty to the stakeholders to F and I and LDC Finance Limited; Section 4 of the Contracts (Privity) Act 1982 provides;

Deeds or contracts for the benefit of third parties

Where a promise contained in a deed or contract confers, or purports to confer, a benefit on a person, designated by name, description, or reference to a class, who is not a party to the deed or contract (whether or not the person is in existence at the time when the deed or contract is made), ***the promisor shall be under an obligation, enforceable at the suit of that person to perform that promise:***

Provided that this section shall not apply to a promise, which, on the proper construction of the deed or contract, is not, intended to create, in respect of the benefit, an obligation enforceable at the suit of that person.

Note at s2 of the Act the words "benefit" and "contract" are to be interpreted as meaning;

Benefit includes-….

(d) ***Any extension or other improvement of a right or rights*** *to which a person (other than a party to the deed or contract) is or may be entitled*

Contract includes a contract made by deed or in writing, or orally, or partly in writing and partly orally or implied by law"

224. Mr **MILLER** stated that he had made some inquiry (not mentioning of whom) and had found that the property was in fact being marketed at the moment as Appleby Heights, and gave the writer very specific directions.

225. Mr **MILLER** began to inform the writer of various facts about how the deal had transpired and who was involved after the writer had reiterated to Mr **MILLER** that the only related company to LDC Finance Limited was SC Management Limited.

226. The writer stated to Mr **MILLER** that the shares in CBH Limited were on the face of it not owned by LDC Finance Limited, or any related company such as SC Management Limited, and if that was the case then there had been a clear and unequivocal breach of the agreements of 2006 and 2007 and that Mr **MILLER** should turn his mind to proving that the transfer had occurred otherwise the writer was wasting his time looking at the property in question and was better off advising certain persons of the breach. The writer asked Mr **MILLER** to put such further communication in writing via email and gave Mr **MILLER** the appropriate email address.

227. As you will note from page 1 of the annexed dossier Mr **MILLER** confirms the email address given by the writer to Mr **MILLER** on 10 July 2008 before the writers return to Auckland on Friday 11 July 2008;

"Dermot

Please confirm I have the correct email address for you"

228. The writer followed Mr **MILLERS** now precise instructions (from memory inclusive of how many (estimated) metres it was from a local restaurant) and visited the subject property on at least two occasions prior to leaving Nelson. The writer was impressed with the development but thought it would need significant amounts of cash to effect meaningful development and that any value gain was doubtful even if the money was spent.

229. The writer phoned a couple of agents involved using the nom de guerre Jonathan **EGGLESTON** in readiness to begin a covert operation to get to the bottom of who actually could be proved to own this large valuable piece of lifestyle real estate because the writer was now certain that Mr **MILLER** was being obstructive.

The writers conversations with Mr Rolly FAWCETT and Mr Alan TURLEY

230. The writer spoke with Mr **TURLEY** at his home before leaving Nelson. Mr **TURLEY** supplied information relating to the activities of Mr **BROWNIE** who ran Halifax Finance Limited who had made significant advances of F & I money to Heli-logging Limited and its director Mr Mark **FORD**. Although the information obtained from Mr **TURLEY** was not significant to the matters specifically reported on in this report, the writers subsequent investigations of Heli-logging Limited and Mr **FORD** would impact significantly on the findings made in this report.

231. The writer made contact with Mr **FAWCETT**, an investor in LDC Finance Limited, through another party. Mr **FAWCETTS** major gripe was that he had spoken directly with Mr Chris **HARDIMAN** just days before LDC Finance Limited was placed into receivership. The reason for the conversation according to Mr **FAWCETT** was for Mr **HARDIMAN** to assure Mr **FAWCETT** as to the stability and solvency of LDC Finance Limited before Mr **FAWCETT** would invest over $150,000.00 in a term deposit. According to Mr **FAWCETT** he invested over $100,000.00 in LDC Finance Limited based solely on Mr **HARDIMANS** assurances that all was absolutely in order and thus safe.

232. It is Mr **FAWCETTS** considered opinion, (and it is hard to disagree with) that Mr **HARDIMAN** must have known that LDC Finance Limited was at that time insolvent

and that his advice to invest was dishonest and thus fraudulent. If what Mr **FAWCETT** says is true, and it would seem unlikely that it is not true, then the writer is in full agreement that Mr **HARDIMAN** is prima facie guilty of a significant fraud.

THE WRITERS INVESTIGATIONS MADE FROM AUCKLAND (on the trail of the missing shares worth millions)

233. After the writers return to Auckland various email correspondence has been received from Mr **MILLER** and a true copy of such correspondence is contained in the annexed dossier at pages 1-22. In relation to the ownership of Appleby Hills Mr **MILLER** stated in an email to the writer dated 13 July 2008 the following assertions of fact. See page 3-4 of the annexed dossier; (emphasis and numbering that of the writers)

(1) "*Dermot*
Some questions you asked which I wasn't able to fully answer;

(2) *CBH Ltd*
The development is Appleby Hills not Appleby Heights like I told you. ***It contains 63 sections on 72 Ha on the south side of the highway to Motueka and 15 Ha on the north side of the highway in Research Orchard Road going down to the waters edge. The 15Ha block is in about 5 sections for vineyard lifestyle. I think about 15 sections have been sold****. The agent is Ray White. Not Summit like I told you.*

(3) ***Sorry, I don't deal with CBH***. ***Some of the LDC shareholders own GKW Ltd, which in turn owned 43% of CBH Ltd. That was GKW's only asset.***

(4) ***In July 2006 it was agreed to transfer 50% of the CBH shares to SC Management Ltd as new capital. SC Management was the company LDC and F & I set up for the exclusive purpose of collection of the Halifax loans book. The effect of the transfer of these shares was basically a donation to the cause and it enhanced the F&I prospect of recovery of their Halifax loan to the extent of the eventual recovery on these shares.***

(5) ***At that time, the GKW 43% of the shares were valued on the basis of the undeveloped land and were valued at approx $2.1m in total or approx $1m for the 50% (21.5%) we gave to SC Management. In March 2007 when the further agreement was entered into with F&I, it was agreed to transfer the remaining 50% of shares to SC Management making a total contribution of approx $2m based on undeveloped values. Projections of recovery from these shares on the final development was approx $3.5m in 2006 but that remains to be seen***.

(6) *Sales have been satisfactory so far but the property downturn may have some effect.* ***The transfer of these assets were done in such a way that F&I shares subscription in LDC would rank ahead of any recovery by LDC shareholders on the transfer of the CBH shares.***

(7) ***GKW owed the National Bank $350,000 and when the shares were transferred to SC Management, the shareholders personally repaid the bank so that the full value of the shares was to the benefit of SCM"***

234. It would appear clear that Mr **MILLER** in paragraph (3) is maintaining that *"some of the LDC shareholders own GKW Limited which in turn owned 43% of CBH Limited….that was GKW's only asset"* (CBH Limited owned a major development worth millions). Mr **MILLER** is also saying that he doesn't deal with CBH Limited, and implies that he doesn't have much to do with GKW Limited. As it would turn out Mr **MILLER** is purposefully misleading the writer about the CBH Limited shares being GKW Limited's only asset. It must be remembered that Mr **MILLER** has been very successful for many years misleading over a thousand investors and in duping the Securities Commission and no doubt many other persons and organizations. Mr **MILLER** thought the writer was just another idiot he could do his **MILLER** magic on.

GKW Previously LDC Investments Limited

235. Mr **MILLER** must have known, as GKW Limited's director and major shareholder, that GKW Limited owned 58,595 shares in LDC Finance Limited, and also owned a finance company called Vision Finance which company was somehow "extracted" from LDC Finance Limited assets without it being reported in any set of accounts or prospectuses that the writer has seen. To put the reader in the picture GKW Limited was previously LDC Investments Limited, which operated the receivables book purchased from it by LDC Finance Limited when LDC Finance Limited became an issuer under the Securities Act 1978. Mr **MILLER** would also have been aware that in September 2006 GKW Limited had claimed ownership of a $50,000.00 debt to Heli-logging Limited that should have been included in the sale of the receivables book from LDC Investments Limited to LDC Finance Limited.

236. In paragraph (4) Mr **MILLER** states GKW Limited's shares in CBH Limited worth $2m to possibly $3.5m were handed over to SC Management Limited (which in turn

was owned by LDC Finance Limited) as a "capital" injection to enhance the likelihood of F and I recovering their Halifax loans that SC Management Limited was charged with collection and the value of the LDC Finance Limited shares F and I had purchased. That seemed fair to the writer as a contribution to the cause considering the huge amounts of monies put in by F and I, but the writer still felt that this proved insolvency rather than solvency. But the writer still thought it weird that as at that time SC Management Limited was not owned by LDC Finance Limited.

237. In paragraph (5) Mr **MILLER** gets very specific about the exact dates that the agreements between F and I and LDC Finance Limited (on the CBH Limited shares) were reached and the provisions of the agreements were to be implemented. Mr **MILLER** is clearly stating that there were two agreements reached in June 2006 and March 2007 respectively wherein the directors of LDC were supposed to have on each occasion transferred 50% (21.5%) of the 43% of CBH shares owned by GKW Limited into the ownership and control of SC Management Limited.

238. Of further interest to the writer Mr **MILLER** then states in paragraph (6) that the projected recovery on the CBH Limited shares given to SC Management Limited was $3.5m and that the agreement between F and I and LDC Finance Limited was that F and I investors in shares subscription in LDC Finance Limited *"would rank ahead of any recovery by LDC shareholders on the transfer of CBH shares"*. Mr **MILLER** in a subsequent telephone call between the writer and Mr **MILLER** also stated this position to the writer**.**

239. The writer had explained to Mr **MILLER** the writers' difficulty understanding the following matters as espoused by Mr **MILLER**;

239.1 If LDC Finance Limited was completely solvent then the injection of $2m in CBH Limited shares could only have been for the benefit of F and I stakeholders.

239.2 As there was no evidence that GKW Limited was a shareholder of CBH Limited as pleaded by Mr **MILLER** then why would unrelated persons hand over $2m in share value to F and I investors to "help them out".

239.3 Why would the supposed "white knight" hand over $2m in shares to another company SC Management Limited which was not owned by LDC Finance Limited at that time, when he could have simply handed the money directly to F and I.

240. The following request in an email dated 18 July 2008 was made by the writer to Mr **MILLER**; see page 10A of annexed dossier; (emphasis that of the writers);

Thanks David, ***could you please confirm that the $2m injection of CBH shares by the directors of GKW into SC Management was for the purpose of helping F and I with their recoveries on the Halifax account and that at that time LDC was completely solvent and didn't need the $2m worth of equity, and the $2m was because the GKW shareholders were simply nice guys wanting to help F and I investors****. This will put that matter to bed and I will write to you on Monday about other matters. Have a cracking weekend.*

241. Mr **MILLER** did reply and the writer deals with that reply later in this report. Mr **MILLERS** accounts of what occurred historically are liquid moving with the ebb and flow of questioning, and likely blame. As soon as he feels pressure building up Mr **MILLER** just moves his story in a different direction.

242. In paragraph (7) Mr **MILLER** states that GKW Limited owed the bank $350,000.00 (secured presumably against the shares) and that the shareholders of GKW Limited (seemingly being directors of LDC Finance Limited) repaid the bank that figure owed to enable the full value of the shares to transfer ultimately to the benefit of the stakeholders of F and I. It seems inconceivable that if LDC Finance Limited was solvent that the Directors of LDC Finance Limited would cough up $2m to $3.5m of assets simply for the ultimate benefit of F and I. However if insolvent, and wanting the injection of $5.5m from F and I, this is completely plausible.

243. The writer putting one and one together believed that such an agreement between the LDC Finance Limited shareholders and directors and the partners of F and I Finance may have made the partners of F and I act to allow the $4m GSA to be put across the assets of F and I believing that the purchase of shares in LDC Finance Limited was effective cross investing because in a roundabout way they got their hands indirectly

on an asset that was worth $2m minimum and likely $3.5m in the next year. As stated the writer phoned Mr **MILLER** and stated that as yet the CBH Limited shares were not proven to be owned by LDC Finance Limited or indeed SC Management Limited and thus F and I shareholders ranking ahead of LDC Finance Limited investors relating to a non existent transfer of shares was hardly anything to celebrate.

244. Mr **MILLER**, in that telephone conversation, had stated, (in reply to the writers disbelief that the directors of LDC Finance Limited would inject $2m to $3.5m of their own monies to help out F and I shareholders ahead of LDC Finance Limited investors), the directors of LDC Finance Limited were just nice guys and had put the money up to help F and I investors.

245. Mr **MILLER** later clarified (and to some significant extent changed) the reasons for the injection of the share capital in his email dated 20 July 2008 at 11.48am (page 13 of the annexed dossier). Not surprisingly, given where the writer was going, Mr **MILLER** started to head his emails "without prejudice"; (emphasis and numbering that of the writers)

(1) *"**We are nice guys but not that nice**. **The CBH shares transferred to SCM was part of the consideration provided by both parties"***

(2) *"These shares could **not be transferred direct to LDC as share capital** because this activity was outside LDC's approved activities."*

(3) *"F & I stood to gain from the transfer of the shares **only after LDC received a full recovery of their agreed priority sum from the collection of the Halifax loans plus the realisation of the CBH shares."***

(4) *"**LDC agreed to a reduction in their priority sum and restriction on interest charged to enhance prospects of a recovery by F & I.***

(5) ***If that priority sum was not recovered, then LDC retained the benefit of this capital injection.***

(6) ***If LDC received a full recovery of the agreed priority sum then F & I would benefit to the extent of the value of the shares** or at least the extent that the shares were not applied to the recovery of the priority sum.*

(7) *If LDC received a full recovery of their priority sum from collection of the Halifax loans then it would probably **be correct to say that at that time they***

would not have needed the CBH shares in their capital equity which is why the agreement provided for F & I to receive the benefit.

(8) ***F & I did a full review of the Halifax loans book prior to the 2006 agreement and there was a reasonable expectation that the LDC priority sum would be recovered because at that time a satisfactory recovery from Heli-logging was expected.***

(9) *2007 agreement*
This agreement provided for a priority dividend of $3.5m payable to F & I from either operating profits or capital surplus on sale of LDC. ***If LDC did not receive its priority repayment from SCM and therefore no repayment was made to F & I then the value of the CBH shares would effectively have been retained in LDC****. This would have enhanced LDC's ability to pay the priority dividend to F &I either from operating profits or distribution of capital."*

246. Mr **MILLER** is clearly stating in numbered paragraphs (1) through to (9) that both parties agreed to joint considerations in relation to the agreements of mid 2006 and March 2007 of which LDC Finance Limited's consideration was the input of assets that should ultimately realize upon sale around $3.5m.

247. It cannot be gainsaid why would LDC Finance Limited directors need to transfer $3.5m of assets to LDC Finance Limited if it was solvent, (as claimed at various times by Mr **MILLER**), and especially if it felt the money was never going to be called upon. Of course this ludicrous position is answered in paragraphs (3), and (5) in that the agreements between LDC Finance Limited and F and I considered that it was possible that it may be required that LDC Finance Limited realize the injection of share value (CBH Limited shares) through sale in order to meet their commitments relating to their investment in Halifax Finance Limited.

248. Paragraphs (6) and (7) clearly indicate that the partners in F and I would benefit if the Halifax Finance Limited loan books priority sum to LDC Finance Limited was met and thus would be reason for them to feel more secure in offering a GSA and in buying shares with a subsequent loan secured on the assets of the partnership (which was primarily the value of the book). But only if the directors of LDC FINANCE LIMITED told Messrs **SCHOLFIELD** and **HARDING** that LDC Finance Limited was otherwise solvent with these injections.

249. Paragraphs (4) and (8) seem to be at odds because why would LDC Finance Limited offer a reduction in the priority sums due and interest charged, and indeed put in $3.5m of equity, if everyone thought the priority sum was to be collected. Mr MILLERS position is absurd to say the least.

250. Finally looking at paragraph (6) and importing paragraph (8) why in the world would the directors of LDC Finance Limited inject between $2m and $3.5m of their assets that would only benefit the partners of F & I, if it was thought by the partners of F & I and the directors of LDC Finance Limited that the priority sums would have been met.

251. What possible interest would the directors of LDC Finance Limited have in helping out the partners of F and I to the tune of between $2m and $3.5m (of their own money) once the LDC Finance Limited investors money was recovered. And why would the F and I partners want to invest $5.5m in LDC Finance Limited to gain basically nothing. Again the proposition beggars belief.

252. However as a fraudulent enticement to the partners of F and I to hand over securities for $5.5m to $7.5m, it works. What must be understood by the reader is that Mr **MILLER** "talks a lot" and appears to "believe what he says" which of course is an intrinsic ingredient to insuring that others believe Mr **MILLER**. It is trite is say that the intrinsic ingredient to fraud is deception. It someone is not deceived he cannot be defrauded.

253. Appearances can be deceiving and the writer believes in this case they are. It was the writers opinion that Mr **MILLER** did not believe that LDC Finance Limited had been solvent for many years, but that Mr **MILLER** thought that if he introduced some complexity into the matter of who benefited from what monies invested he could "wriggle" his way out of spot that was getting very tight indeed.

254. From the writers knowledge of events and from reading the statement of claim of F and I against LDC Finance Limited (with attached emails pages 492 to 512 of the annexed dossier), the LDC Finance Limited directors and particularly Mr **MILLER** were encouraging Halifax Finance Limited's director Mr Paul **BROWNIE** to

continue to pay F and I interest, ahead of the interest it owed to LDC Finance Limited (which it could not pay as well), because of LDC Finance Limited's first security ranking over Halifax Finance Limited ahead of F and I.

255. In doing so F and I would continue to put money into Halifax Finance Limited loans that were good which LDC Finance Limited could grab when winding up the insolvent Halifax Finance Limited. The writer began to understand how Mr **MILLER** and the other LDC Finance Limited directors had operated as against other parties and that they would not have done so unless Halifax Finance and LDC Finance Limited were hopelessly insolvent well before the deals for shares were done. In the writers opinion the plan could only work if an agreement existed between the directors of LDC Finance Limited and Halifax Finance Limited to make F and I partners act to their detriment as a direct result of the deceit perpetrated. Such an agreement with a goal of defrauding F and I partners Messrs **SCHOLFIELD** and **HARDING** was an unequivocal breach of the conspiracy and fraud provisions of the Crimes Act 1961.

Inexplicable non-compliance to transfer CBH Limited shares from the ownership of GKW Limited to SC Management Limited

256. As the agreements were reached in July 2006 and March 2007 to transfer each time half of the CBH Limited share parcel from GKW's ownership to SC Management Limited's ownership, then an immediate responsibility to register the transfer of the shares fell to all directors of the companies involved being GKW Limited, SC Management Limited and CBH Limited. Sections 84 and 90 of the Companies Act 1993 provide in this regard; (emphasis that of the writers)

Transfer of Shares – (1) Subject to the constitution of the company, shares in a company may be transferred by entry of the name of the transferee on the share register.

(2) Subject to the constitution of the company, shares in a company may be transferred by entry of the name of the transferee on the share register.

(3) *For the purpose of transferring shares,* ***a form of transfer signed by the present holder of the shares or by his personal representative must be delivered to-***

(a) ***The company; or***

(b) An agent of the company who maintains the share register under section 87(3) of this Act

(4) ***The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee***

(5) *On receipt of a form of transfer in accordance with subsection (2) and, if applicable, subsection (3) of this section,* ***the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless –***

(a) *The board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer,* ***and the resolution sets out in full the reasons for doing so; and***

(b) Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and

(c) The Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated.

(6) Subject to the constitution of a company, the board may refuse or delay the registration of a transfer of shares if the holder of the shares has failed to pay the company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with the constitution.

(7) ***If a company fails to comply with subsection (4) of this section, -***

(a) ***The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act****; and*

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

90. (1) Directors duty to supervise share registry- ***It is the duty of each director to take reasonable steps to ensure that the share register is properly kept and that the share transfers are promptly entered on it in accordance with section of this Act.***

(2) A director who fails to comply with this subsection (1) of this section ***commits an offence and is liable on conviction to the penalty set out on section 373(2) of this Act.***

373(2) A person convicted of an offence against any of the following sections of this act is liable to ***a fine not exceeding $10.000***

(c) Section 90(2) (which relates to the duties of directors in relation to the share register)

257. It was the writers opinion that CBH Limited's directors would have no reason to delay the registration of the transfer of shares or otherwise not comply with the Companies Act 1993 and therefore, it would seem obvious without any reasonable explanation to the contrary, other forces were at play.

258. Equally if the receivers were aware of the share transfer they would have changed any addresses for service and updated the public record and informed the

stakeholders of these actions, unless they were for some strange reason omitting to report such behaviour.

259. What the writer could not understand was how neither GKW Limited nor SC Management Limited were recorded with the Companies Office as shareholders of CBH Limited. Put simply if the CBH Limited shares had not been transferred from GKW Limited to SC Management Limited, then GKW Limited would still have been the named shareholder on the public record.

260. Mr **MILLER** did not feel a need to explain this strange phenomenon. The only sensible explanation could be that another shareholder or "group of shareholders" of CBH Limited in turn were owned by GKW Limited but the writers research of the shareholders ownership did not support his being the case, and if this was the case surely Mr **MILLER** would have known about this further layer of beneficial ownership. For the purposes of record, the break down of CBH Limited provided the following shareholders;

CBH LIMITED	**No: 1214295**
Incorporated: 18/6/ 2002	**Annexed dossier: P96-96a**
Directors	
EDMONDS Christopher John	
HARDIMAN Christopher John	
REDDEN Lynn Michael	
Shareholder	***Shares***
HARDIMAN Christopher	***658***
COASTALLANDHOLDING LIMITED	***558***
BISLEY HOLDINGS LIMITED	***185***
PEARL RIVER HOLDINGS LIMITED	***179***
COLLETT Simon Kyle	
COLLETT Kylie Maree	***125***
LE GROS Paul Donald	
GOJECH LIMITED	***118***
PARKER ORCHARD LIMITED	***84***

TOTAL SHARES	***1,907***

261. The writer then researched the shareholding of the limited liability companies who are shareholders in CBH Limited which had the following results;

COASTAL LANDHOLDING LIMITED	**No: 1115968**	
Incorporated: 12/2/2001	**Annexed dossier: P97-98**	
Directors		
BRADY Michael Grant		
EDMONDS Christopher		
REDDEN Lynn		
Shareholder		***Shares***
ON SHELF NO 2 LIMITED		**499**
PACIFIC COMMERCIAL CAPITAL LIMITED		**105**
SSM LIMITED		**383**
COASTAL M & D LIMITED		**147**
LE GROS Paul Donald		
LE GROS Margaret Jane		**90**
Whalley Robin		
REDDEN Lynn		**40**
TOTAL SHARES		**1600**

BISLEY HOLDINGS LIMITED	**No: 1197120**	
Incorporated: 20/3/2002	**Annexed dossier: P105-106**	
Directors		
ELLIOT Kevin		
Shareholders		**Shares**
RZOSKA ELECTRICAL		**128,025**
MAITLANDS ENTERPRISES LIMITED		**79,900**
ELLIOT Kevin		**47,500**
ELLIOT Catharina Petronella		
MILLER David Gordon		
PLUCK David Stephen		**47,500**
PLUCK Meryl Lynn Joye		
STRANDRING Dennis Ernest		
TOTAL SHARES		**302,925**

PEARL RIVER HOLDINGS LIMITED	No: 1213671
Incorporated: 14/6/2002	Annexed dossier: P111-112
Directors	
LE GROS, Paul Donald	

Shareholder	*Shares*
LE GROS Paul Donald	30
PENKETH Kim	30
LOVETT Raewyn Jeanette	30
MCOMISH Struan Grant	30
TOTAL SHARES	120

GOJECH LIMITED	No: 1240164
Incorporated: 26/9/2002	Annexed dossier: P113-114
Directors	
GILLESPIE Christine	

Shareholder	*Shares*
GILLESPIE Christine	89
GILLESPIE Gordon	25
ASHBY Jeanette and Gary	25
WADDELL, Roger and Adele Smith	10
SCOTT Shaun	1
TOTAL SHARES	150

PARKER ORCHARD LIMITED	No: 2135585
Incorporated: 29/5/2008	Annexed dossier: P115-116
Directors	
BLUDELL, Hillary Lougher	

Shareholder	*Shares*
LEGROS Paul & BUNDELL Hillary Lougher	100
TOTAL SHARES	100

262. A further break down of the shareholders in the companies that own shares in CBH Limited provides the following;

PACIFIC COMMERCIAL CAPITAL LIMITED	No: 881202

COASTAL LANDHOLDING LIMITED SHAREHOLDER COMPANIES

ON SHELF NO 2 LIMITED	No: 1016638
Incorporated: 1/5/2000	Annexed dossier: P99-100
Shares held in Coastal Holdings Limited:	499
Directors	
REDDEN Lynn Michael	
Shareholders	Shares
REDDEN Lynn Michael	100
TOTAL SHARES	100

Incorporated: 28/10/1997	Annexed dossier: P101-102
Shares held in Coastal Holdings Limited:	105
Directors	
BRADY Michael Gerard	

Shareholders	Shares
BRADY Michael Gerard	
BRADY Yolande Eve	995
LEGROS Paul Donald	
BRADY Michael Gerard	5
TOTAL SHARES	1000

COASTAL M & D LIMITED	No: 1956920
Incorporated: 27/6/2007	Annexed dossier: P104a & 104b
Shares held in Coastal Holdings Limited:	147
Directors	
BOYD Yvonne Gina	
BRADY Michael	
EDMONDS Chris	
REDDEN Lynn	

SSM LIMITED	No: 691285
Incorporated: 6/10/1995	Annexed dossier: P103-104
Shares held in Coastal Holdings Limited:	383
Directors	
EDMONDS Christopher John	

Shareholders	Shares
SEA BUS TRUST	100
TOTAL SHARES	100

Shareholders	Shares
BOYD Yvonne Gina	250
PACIFIC COMMERICAL LIMITED	250

ON SHELF NO 2 LIMITED	250
SSM LIMITED	250
TOTAL SHARES	1000

BISLEY HOLDINGS LIMITED SHAREHOLDER COMPANIES

RZOSKA ELECTRICAL LIMITED	No: 706194	
Incorporated: 20/3/1996	Annexed dossier: P107-108	
Shares held in "BISLEY HOLDINGS LIMITED":	128,025	
Directors		
JAMIESON Alan		
JAMIESON Patricia Mary		
Shareholders		Shares
JAMIESON Alan		
JAMIESON Patricia Mary		998
FARNSWORTH David William		
JAMIESON Alan		1
		1
TOTAL SHARES		1000

MAITLANDS ENTERPRISES LIMITED	No: 549983	
Incorporated: 22/6/1992	Annexed dossier: P109-110	
Shares held in "BISLEY HOLDINGS LIMITED":	79,900	
Directors		
CHARLES Dorothy Una		
CHARLES Kevin John		
Shareholders		Shares
CHARLES Dorothy Una		
CHARLES Kevin John		998
ELLIOT Kevin		
CHARLES Dorothy Una		1
CHARLES Kevin John		1

TOTAL SHARES	1000

263. A scenario that could explain the mystery of the public company record not showing SC Management Limited or GKW Limited as being owners of shares in CBH Limited was that the public record was a sham in order to disguise ownership. After all it was over 2 years since the first transfer of 50% of the shares should have occurred and some 15 months since the second 50% of shares should have occurred. As already stated the writer noted that Mr Christopher **HARDIMAN**, a director of LDC Finance Limited owned 658 CBH Limited shares out of a total of 1,907 shares or 34% of the company. The writers research into other historical records for CBH Limited indicated the following machinations of shareholding;

- On 14 June an application was made to the Companies Office to incorporate CBH Limited

- On 16 June lawyer Paul Donald **Le GROS** signs up for 100 shares as director for Pearl River Holdings Limited (see page 1075 of the annexed dossier)

- On 17 June 2002 Christopher **HARDIMAN** signs up for 500 Shares in his own right (see page 1073 of annexed dossier)

- On 18 June 2002 Lyn Michael **REDDEN** signs up for 400 shares as director for Coastal Landholding Limited.

- On 18 June 2002 CBH Limited was incorporated.

- On 9 October 2002 the Companies office received notification that on 30 September 2002 a further 513 shares were issued by CBH Limited and the shares were issued in to the following entities for the following considerations; (see pages 1075 and 1076 of the annexed dossier);

    - 158 fully paid ordinary shares to LDC Investments Limited for the consideration of $200,000.00

- 158 fully paid ordinary shares to Coastal Landholdings Limited for the consideration of $200,000.00

- 79 fully paid ordinary shares to Pearl River Holdings Limited for the consideration of $100,000.00

- 118 fully paid ordinary shares to Gojech Limited for the consideration of $150,000.00.

- On 10 August 2007 a further 185 fully paid up ordinary shares were issued to Bisley Holdings Limited bringing the shares from 1,513 to 1,698 (see pages 1083 to 1086 of the annexed dossier.

- On 27 June 2008 a further 125 fully paid shares were issued to SK and KM **COLLETT** and the Collett Family Trust in equal considerations; (see page 1088 of the annexed dossier)

- On 27 June 2008 a further 84 fully paid up shares were issued to Parker Orchard Limited; (see page 1088 of the annexed dossier)

264. Of obvious interest to the writer there was never any mention of GKW Limited through out the entire period to the current day in the Companies Office records and that further the issuance of 158 shares to LDC Investments Limited was never registered in any other form with the Companies Office and it appears that Mr **HARDIMAN** picked up these CBH Limited shares bringing his total ownership as at 30 September 2002 to 658 which represents 43.5% of the entire shareholding of CBH Limited at that time which was 1,513 shares.

265. Surely this percentile of around 43% was the percentile referred to by **MILLER,** which he thought was owned by GKW Limited. But why would Mr **MILLER** want to disguise the ownership in GKW Limited rather than Mr **HARDIMAN** the writer wondered?

266. The writer will return to this point later in this report but will indicate at this time that the deception of the writer (at that time) by Mr **MILLER** was purposeful because Mr **MILLER** knew that the CBH Limited shares had been mentioned as being owned by GKW Limited in the April 27 2007 prospectus of LDC Finance Limited when in fact all of the LDC Finance Limited directors knew this was a blatant lie in order to mislead investors and no doubt Messrs **SCHOLFIELD** and **HARDING** that the CBH Limited shares had been transferred as agreed as a joint consideration for the transfer of the $4m of finance receivables from F and I to LDC Finance Limited. The LDC Finance Limited prospectus of September 2006 does not mention that half of these CBH Limited shares should have transferred at that time.

267. There is also the issue of the previous finance trading asset (wholesale bulk finance receivables) of LDC Investments Limited being sold to LDC Finance Limited as an "asset" for the purpose of becoming an issuer under the Securities Act 1978 in order that they could subscribe for allotments from the public; (see page 525 of pages 513 to 531 of the annexed dossier).

268. As a result of the transfer of the "book" LDC Investments Limited was allegedly left with $700,000.00 of residual assets which assets were according to the prospectus of LDC Finance Limited the CBH Limited shares that were to be allegedly latterly transferred to SC Management Limited. Remember that GKW Limited was previously named LDC Investments Limited.

269. Once again the CBH Limited shares seem to have materialized in the ownership of LDC Investments Limited when the Companies Office records and the documents filed by CBH Limited never showed this level of ownership.

270. It could be that ownership changed in and out of various parties without it appearing in the Companies Office records as such regular transfers of ownership would need some form of explanation other than the obvious manipulation of ownership for wrongful purposes. However if such transfers were done then surely the banks that had advanced monies on the shares would require notification?

271. As it will become apparent the regular transfer, assignment, conveyance, of all sorts of securities was to be the way Mr **MILLER** and the other directors of LDC Finance Limited operated in order to disguise assets and massive mounting losses, and which massive losses, would ultimately see them callously target an ill prepared and naïve duo in Messrs **SCHOLFIELD** and **HARDING**.

272. The writer felt confident at this stage of the investigation that the CBH Limited share assets had not been transferred as stated because the truth of the matter was that the assets were always going to be called upon and the LDC Finance Limited directors knew it.

273. The writer felt that the CBH Limited shares were used as a "carrot" to lure the somewhat "dim witted" Messrs **HARDING** and **SCHOLFIELD** into "the smoke and mirrors game" engineered by the various inimical agreements between the directors of LDC Finance Limited and others. It is also unfathomable that loans made to the partners of F and I to buy shares in LDC Finance Limited stood up to reasonable credit criteria of which LDC Finance Limited directors stated they used. After all who lends $1.5m using shares in a company which is hopelessly insolvent as security?. That is why they had to secure the advance against the F and I stakeholders funds because they knew that the LDC Finance Limited shares had no value at all, hence the fraud, unjust enrichment, no consideration for money paid etc. etc. etc.!!!

274. As the loan was invented on paper, (creating a false equity in LDC Finance Limited), there was only upside for LDC Finance Limited directors (if they had already known the company was insolvent), which was they would pick up the security being $1.5m of F and I partnership assets if the loan payments were not met. It was the writers goal to prove that the directors of LDC Finance Limited had known or ought to have known that LDC Finance Limited was irrecoverably insolvent with or without the injection of F and I funds. It was the writers' belief that, as at the middle of 2006, Perpetual Trust Limited had started to question the operational procedures of LDC Finance Limited.

275. All of Mr **MILLERS** protestations of this injection of substantial equity being done in consideration of the securities being given by F and I amounted to nothing without proof of the effective sale and purchase and timely transfer of ownership of those shares. When discussing these matters with Mr **CHISNALL**, (lawyer for the F and I partnership) and Messrs **EATON**, and **MARSHALL**, (trustees of **SCHOLFIELDS** and **HARDINGS** assets in agreement with F and I stakeholders informal composition), only Messrs **HARDING** and **SCHOLFIELD** had some knowledge of the agreement stating that they did not know where the paperwork was, but that they had asked the receiver Mr **HOLLIS** on several occasions to find out and had received nothing back, excepting that Mr **HOLLIS** stated that Mr **BROWNIE** was being of considerable assistance at present. The writer wondered how Mr **BROWNIE** could possibly be of assistance.

276. Both Messrs **HARDING** and **SCHOLFIELD** confirmed to the writer that this transfer was crucial to them making the decision to grant a GSA (general security agreement) over the assets (loan book) of F and I and committing to the borrowings for the loan for the shares. Both stated that a sale of LDC Finance Limited by Pricewaterhousecoopers appeared to be the way out, and that they had been assured by Mr **NOONE** that he would deliver a sale that would see a reasonable chance of seeing F and I stakeholders covered.

277. It appeared to the writer that Messrs **HARDING** and **SCHOLFIELD** took the LDC Finance Limited directors and Messrs **HOLLIS** and **NOONE** of Pricewaterhousecoopers at their word and in doing so had paid a very significant price, as indeed did F and I stakeholders.

278. However it was another despicable act by Mr **NOONE** of Pricewaterhousecoopers that finally made Messrs **HARDING** and **SCHOLFIELD** capitulate to the will of LDC Finance Limited directors, which was blackmail. The offence of blackmail is to substantially influence a person by a threat, expressly or by implication, to commit to a course of action in accordance with the perpetrators wishes, or the perpetrator will likely insure that certain information comes to light. The writer will return to this matter at a later time.

Mr MILLER deceives by omission

279. As already stated GKW Limited's previous name was LDC Investments Limited (which was changed to GKW as at 9 June 05). The current directors are Messrs Kevin **ELLIOT** and David **MILLER** (page 119 of annexed dossier). In relation to Mr **MILLERS** statement that he did not have much to do with CBH Limited it would appear that this statement is far from the likely truth given that he alleged that GKW Limited owned 43% of CBH Limited.

280. Of 241,000 GKW Limited (page 119 of the annexed dossier) shares Mr **MILLER** directly owns 32,000 GKW shares, and indirectly through Miller Holdings Limited (page 125 of annexed dossier) Mr **MILLER** and his wife owns 102,400 GKW Limited shares, and through GKW Holdings Limited (page 122 of the annexed dossier) Mr **MILLER** as a shareholder indirectly owns 69,093 GKW shares. Finally Mr **MILLER** could apparently own a further 2133 GKW shares through an investment trust with the other two trustees being Christopher and Catherine **HARDIMAN**.

281. Of further interest Mr **MILLER** was listed as a director of SC Management Limited from 24 October 2007 and so should have been very aware of all of the material facts about the transfer of shares seemingly worth millions. See page 118a of the dossier.

282. It would appear from the writers investigations that Mr **MILLER** owned or controlled directly or indirectly 84.4% or 203,493 GKW Limited shares without seemingly knowing that GKW Limited had sold to SC Management Limited $2m to $3.5m dollars worth of shares it owned in CBH Limited. It would seem obvious that the person most likely to have signed the transfers of shares was the man that was alleging he knew nothing, or very little about it. That man being one David Gordon **MILLER**.

283. As stated previously none of this ownership of CBH Limited shares by SC Management Limited (which is presently 100% owned by LDC Finance Limited)

materialized in the receivers initial report of 5 November 2007, or second report of 30 April 2008, or the third report dated 29 October 2008, (but will be mentioned in the fourth report only after Mr **HOLLIS** becomes aware that the writer has discovered his deceit of the LDC Finance Limited and F and I stakeholders) As already stated the assets being CBH Limited shares held in the ownership of SC Management Limited (which (SC Management Limited) is in turn owned by LDC Finance Limited) should have been reported by the receiver as being non-current assets under the term of "investments" owned by LDC Finance Limited. Equally the CBH Limited shares should have been in the name of SC Management Limited from mid 2006 and March 2007 onwards.

284. The writer was at a loss why Mr **MILLER** appeared to be playing games with peoples lives, after he had played with and lost their money.

The reliance of Mr MILLER on the apparent good names of Pricewaterhousecoopers, Buddle Findlay, and other professionals.

285. It became obvious to the writer that Mr **MILLER** relied heavily on his assertion that everything done had been "signed off" by stalwart legal and accountancy practices Buddle Findlay and Pricewaterhousecoopers respectively. The writer now turns to deal with these entities apparent handling of the matters previous to, and post, the receivership.

Buddle Findlay

286. The writer has not seen any significant documentation from this national law firm. But is aware of certain correspondence wherein they purport to act for both F and I and LDC Finance Limited, which obviously seems a blatant conflict of interest given the nature of what was "going down". The writer assumes that the directors of LDC Finance Limited obtained legal advice from this firm but cannot confirm what that advice was other than Mr **MILLER** did confirm that he had received advices from Buddle Findlay clearing all deals. Therefore the writer comments are mostly drawn from natural inferences given the advices of Mr **MILLER** and notwithstanding those

advices that the directors of LDC Finance Limited are mostly chartered accountants who would have asked for legal advice.

Voidable irregular allotments, the Illegal Contracts Act 1970, and the Interpretations Act 1999.

287. There is one matter on the legal front relating to voidable allotments that has concerned the writer and must have concerned Buddle Findlay if they were aware of it which the writer must assume they were because they are experts.

288. The writer is aware that Mr **FITCHETT**, counsel at various times for Messrs **HARDING** and **SCHOLFIELD**, did voice grave concerns about the legality of the various deals, not just singularly or in isolation, but moreover what the various written and oral agreements constituted as an intention of the parties as a whole. The writer has noted that the materiality of the agreements were not to be fully canvassed or otherwise appropriately explained in the prospectuses issued as a result of the agreements. In the writers opinion the natural inference safely drawn from this lack of material reporting is that the persons responsible for the in-depth reporting of the material agreements in the prospectuses and their likely impact did not want the public to know what was actually "going down" because to do so would have defeated their purpose of deceiving the public.

289. Mr **FITCHETT** however did **not** raise the main concern that the writer has that stands out like the proverbial "sore thumb". Equally the writer must assume that Perpetual Trust Limited was also aware of the issue of voidable allotments because they have raised such allotments with the directors of LDC Finance Limited relating to the gross misstatements in the LDC Finance Limited September 2006 prospectus.

290. The writer is aware that the men at Buddle Findlay apparently disagreed with Mr **FITCHETTS** "general" concerns stating that all was in order for "GO" on what would be the final fatally flawed and totally fraudulent prospectus for LDC Finance Limited issued on 27 April 2007. Importantly this prospectus was ultimately given the green light by Messrs **STYANT** and **LANCASTER**.

Voidable allotments transferred; how then did any of the experts think this was legal and binding?; and what is the position of the receivers now?

291. The one particular factual and legal element of the Mid 2006 and March 2007 agreements between LDC Finance Limited and F and I that stands out as being fundamentally and obviously illegal is the matter of F and I not having a registered prospectus when raising monies from the public. In plain speak all monies raised by F and I were "voidable allotments" pursuant to ss 37(1), and (4) and (5) of the Securities Act 1978. The salient part of the section provides; (emphasis that of the writers)

37 Void irregular allotments

(1) ***No allotment of security offered to the public for subscription shall be made unless at the time of the subscription for the security there was a registered prospectus relating to the security….***

(4) ***Any allotment made in contravention of the provision of this section shall be invalid and have no effect.***

(5) *Where subscriptions for securities are received by or on behalf of an issuer, but by virtue of this section,* ***the securities may not be allotted, or for any reason the securities are allotted, the issuer shall ensure that –***

The subscriptions, together with such interest (if any) as has been earned thereon, ***are repaid to the subscribers as soon as reasonably practicable****.*

292. Section 37(5)(a) of the Securities Act 1978 requiring that where any securities could not be allotted because of a breach of s37 any subscriptions received had to be placed in trust was effectively repealed pursuant to the Securities Amendment Act 2004 which inserted section 36A that requires **ALL** subscriptions for securities to be held in trust on behalf of stakeholders until the securities are allotted or subscriptions are repaid in accordance with the Act.

293. Pursuant to section 37(6) if repayment is outstanding after two months the directors and the issuer are jointly and severally liable for the full amounts of the subscriptions with interest at around 10% per annum. Avoidance of liability by the directors can be found in the safe harbour provision that requires the directors to establish the inability to repay in that time period was not due to misconduct or negligence. The Court of Appeal in **Robinson v Tait** [2002] 2 NZLR 30 confirmed that a director in settling a subscribers claim for a lesser amount than that invested by the subscriber, must insure that the settlement records a release for that director and all other directors, or the subscriber can come back for the full amount. In **Agnew & Ors v Gould & Ors** (1999) 8 NZCLC 262,026 the Court held that if one director is sued for repayment in isolation, he has the right to issue third party proceedings to insure that the directors are defendants to the same claims.

294. The matter of access to such a safe harbour defence to repaying subscriptions was considered by the Court of Appeal in **Reuhman v Paape & O**rs (2002) 9 NZCLC 262,988. The Court confirmed that the statutory duty imposed on the issuer and directors was plain once section 37(6) was invoked; (emphasis that of the writers)

> *...**the obvious statutory intention is that the directors are <u>to ensure</u> that the moneys are <u>not</u> utilised by the issuer**. If they are not held in trust and are used by the issuer – in breach of subs (5) – **the directors themselves are responsible for the repayment regardless of what thereafter happens to the money themselves** – of how they may be lost"*
>
> The Court of Appeal held that the statutory defence only availed;
>
> *...unambiguously, in the context in which it appears, directed towards excusing default **<u>only where a director in question was not personally guilty of misconduct or negligence</u>** in relation to the issuers failure to hold and repay the subscriptions"*

295. It is the plain reading of the entirety of s37 of the Securities Act 1978 that the authors intention was that everyone was barred from raising money from members of the public if not an issuer with a registered prospectus. Subsection 37(4) states that any allotment *"shall be invalid and have no effect"* and subsection 37(5) of the Securities Act 1978 clearly mandates that any subscriptions raised in contravention must be repaid to the original subscriber *"together with interest"* due *"as soon as reasonably*

practical" by the original issuer. Section 2 of the Securities Act 1978 gives the following interpretation to *"allot"* and correspondingly "allotment"; (emphasis that of the writers)

Allot includes sell, issue, ***assign, and convey*** *and allotment has a corresponding meaning*

296. Section 2 of the Securities Act 1978 gives the following interpretation to *"issuer"*; (emphasis that of the writers)

Issuer *means,—*
(a) ***In relation to*** *an equity security or* ***a debt security****, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to an equity security or a debt security, or to a trust deed that relates to a debt security,* ***the person on whose behalf any money paid in consideration of the allotment of the security is received****:*

297. In the 2004 Amendment Act the inserted section 4(5) states that nothing in the Illegal Contracts Act 1970 shall apply to sections 37 and 37A, but this does not void the liability to repay the subscriptions. The change in the law arose as a result of the finding that the Court may be able to validate the subscriptions, but not have the power to forgive the obligation to repay the subscriptions.

298. The Business Law Reform Bill proposed amendments to the Act to include a procedure that grants relief similar to that under the Illegal Contracts Act 1970, but that is specifically created for securities law. New sections 37AA to 37AL and sections 37B to 37G were inserted by the amendment Act, effective 15 April 2004. These empower the High Court to make relief orders in connection with contraventions of sections 37 and 37A. These provisions now provide the only procedure for validation. But that is the key point. The amendment was to create the only process of validation, and if that process could not be followed then the subscriptions have to be repaid to the subscriber or stakeholder (being the member of the public that initially invested the money).

Relief available for otherwise void allotments

299. Section 37AB provides that if the Court has granted relief to the issuer, then ss37(4) and 37(5) do not apply and the allotments are not voided or repayable. Section 37AC mandates that the Court must make a relief order if the applicant is the subscriber. This section will obviously become crucial when considering that Mr **NOONE** never raised this with Messrs **HARDING** and **SCHOLFIELD** when wrongly advising them that unless they bent to his and LDC Finance Limited directors will and hand over $4m of irregular void allotments they would be prison bound. Effectively, pursuant to this section Messrs **HARDING** and **SCHOLFIELD** could have approached their subscribers asking them to either apply to the Court for relief making the allotments effectively legal, or they could have, following the prescribed written form, agreed to the Court making such an order.

300. It is the writers opinion that the transfer of the void irregular allotments from F and I to LDC Finance Limited still create an illegal contract on the basis that F and I breached section 37 of the Securities Act 1978 and was required pursuant to ss 37(5) to repay the subscriptions back to the F and I subscribers and therefore F and I could not legally transfer or sell those debt securities to LDC Finance Limited. Therefore section 4(5) of the Act does not actually restrict the application of the Illegal Contracts Act 1970 to the contract for transfer given that it is accepted that s37 has been breached by F and I. In fact section 4(5) of the Act strengthens that position of illegality of the contract for sale from F and I to LDC Finance Limited. As aforesaid the amendment Act's authors' intention was to insure that the Courts could not validate any voidable irregular allotment other than through the process deemed in the amendments to the Act.

301. Section 6 of the Illegal Contracts Act 1970 provides;

> *6. Illegal contracts to be of no effect*
>
> *(1)* ***Notwithstanding any rule of law or equity to the contrary****, but subject to the provisions of this Act and of any other enactment,* ***every illegal contract shall be***

<u>of no effect and no person shall become entitled to any property under a disposition made by or pursuant to any such contract;</u>
Provided that nothing in this section shall invalidate –

(a) Any disposition of property by a party to an illegal contract for valuable consideration; or

(b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this proviso applies-

If the person to whom the disposition was made was not a party to the illegal contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, an illegal contract and otherwise acts in good faith.

302. Of significant assistance Pricewaterhousecoopers have already complained to the Securities Commission alleging that F and I were in breach of the Act and did raise their subscriptions from the public without a registered prospectus.

303. Additionally Messrs **SCHOLFIELD** and **HARDING** have admitted as much to the investigator from the Commission. Thus the writer considers it is a fait accompli that the import of s6 of the Illegal Contracts Act 1970 into the agreement between F and I and LDC Finance Limited to transfer, sell, assign, or convey, give as security, of subscriptions obtained in breach of section 37 of the Securities Act 1978, in consideration for payment by F and I for shares in LDC Finance Limited, or as security on a loan given by LDC Finance Limited to F and I to purchase shares in LDC Finance Limited, would normally makes such terms of agreement an illegal contract and thus "of no effect" and that LDC Finance Limited is not "entitled to any property….pursuant to any such contract".

304. It would follow that F and I could either by separate summary judgment proceedings, or in the current proceedings through an amendment to the statement of claim, seek an order pursuant to s7(1) of the Illegal Contracts Act 1970 that the contracts or agreements between F and I and LDC Finance Limited concerning the transfer, sale, or assignment, conveyance or giving up as security, of the illegally obtained subscriptions be voided and LDC Finance Limited ordered to return all sums involved to F and I for the immediate repayment to the subscribers pursuant to s37(5) of the Securities Act 1978.

305. See particularly s7(3)(a) and (b) of the Illegal Contracts Act 1970 below. Particularly given that the Securities Act 1978 (or indeed any Act for that fact) is a statement in statute of "public policy" written to safeguard investors by mandating strict behavioural criteria that is enforced "with prejudice" if a party is found blameworthy; see particularly s7(3)(c) of the Illegal Contracts Act 1970 as it relates to "public interest". The deterrents in the Securities Act 1978 are also considerable. For some offending the fines are $500,000.00 for an individual and $5m for a company. Section 7 of the Illegal Contracts Act 1970 provides; (emphasis that of the writers);

7 Court may grant relief
(1) Notwithstanding the provisions of section 6 of this Act, ***but subject to the express provisions of any other enactment, the Court may in the course of any proceedings, or on application made for the purpose, grant to—***
(a) ***Any party to an illegal contract****; or*
(b) ***Any party to a contract who is disqualified from enforcing it by reason of the commission of an illegal act in the course of its performance****; or*
(c) ***Any person claiming through or under any such party— such relief by way of restitution, compensation, variation of the contract, validation of the contract in whole or part or for any particular purpose, or otherwise howsoever as the Court in its discretion thinks just.***
(2) An application under subsection (1) of this section may be made by—
(a) Any person to whom the Court may grant relief pursuant to subsection (1) of this section; or
(b) Any other person where it is material for that person to know whether relief will be granted under that subsection.
(3) In considering whether to grant relief under subsection (1) of this section, and the nature and extent of any relief to be granted, the Court shall have regard to—
(a) The conduct of the parties; and
(b) ***In the case of a breach of an enactment, the object of the enactment and the gravity of the penalty expressly provided for any breach thereof; and***
(c) Such other matters as it thinks proper,—
but shall not grant relief if it considers that to do so would not be in the public interest.
(4) The Court may make an order under subsection (1) of this section notwithstanding that the person granted relief entered into the contract or committed an unlawful act or unlawfully omitted to do an act with knowledge of the facts or law giving rise to the illegality, but the Court shall take such knowledge into account in exercising its discretion under that subsection.
(5) ***The Court may by any order made under subsection (1) of this section vest any property that was the subject of, or the whole or part of the consideration for, an illegal contract in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.***
(6) Any order made under subsection (1) of this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

(7) Subject to the express provisions of any other enactment, no Court shall, in respect of any illegal contract, grant relief to any person otherwise than in accordance with the provisions of this Act.
Subsection (3) was amended, as from 19 December 2002, by section 5 Illegal Contracts Amendment Act 2002 (2002 No 82) by inserting the words ", and the nature and extent of any relief to be granted," after the words "under subsection (1) of this section".

306. At pages 897 to 901 and 886 to 896 of the annexed dossier are the decisions of the High Court in **Porter & Ors v New Zealand Guardian Trust Co Limited** CP 136/91 261,203 7 NZCLC (Tipping J) and **Polymer Developments Group Ltd v Tilialo** (HC) Auck CP 521-IM00 103,661 7 NZBLC respectively and which content would indicate that the contract entered into between parties was illegal, "against public policy" and not subject to any relief or variation under s7 of the Illegal Contracts Act 1970 for LDC, and that F and I would be successful under such a claim that the monies be returned for the benefit of F and I subscribers/stakeholders.

307. The writer believes that the F and I book, which was in breach of this provision in the Securities Act 1978, cannot be deemed legal by mere sale or transfer to LDC Finance Limited (which was an issuer with a registered prospectus), because it was not raised pursuant to LDC Finance Limited's prospectus in any event, and the force of the intention of the legislation is clear reflecting that investors make informed decisions on the contents of the audited prospectus, and it cannot be gainsaid s37 covers the initial issuer which was F and I.

308. In a nutshell the writer believes that the intention of void irregular allotments is to insure compliance with the Security Acts reasoning for existence. Put simply to protect subscribers from foul play or significant negligence. That is to say that if the authors intended that the Illegal Contracts Act 1970 could not be applied to protect the subscribers, then surely the Securities Act 1978 would. Why else would they remove such a protection under another Act unless it was still available in the Securities Act?.

309. This would mean that the Securities Act 1978 still requires that the subscriptions be protected from any foul play, inclusive of the selling or assigning, or transferring of a subscription to an insolvent issuer that has grossly misstated their position in

probably all of its prospectuses. This is to say that a liberal intention of the section of the Act would be that all parties, being initial and secondary parties to the taking or handling of any subscription, are subject to having to repay subscriptions that were initially in breach of the original provision of the Act. The writer believes that such interpretation would be available pursuant to the provision of the Interpretation Act 1999. Interpretation of the wording found in the sections of Acts has been the subject of Courts considerations since the existence of statute law.

No other interpretation possible; Just ask the Master of the Rolls

310. Axiomatically interpreting the provision of authority found in statute is a central purpose of having Courts. It is the writers opinion that the Courts would look at the reason for the recent amendment and conclude that if there was any grey area in the wording, or a simple omission to concisely state the remaining legal tenet that the subscribers had to be repaid by whoever ended up ultimately with the irregular void allotments, that this was an obvious error which was not troublesome to fix by the use of the "purposive" approach found in common law and in the Interpretation Act 1999. In **Liverpool City Council v Irwin** [1976] 1 QB 319, p322 Master of the Rolls Lord **DENNING** in his normal style thought that any interpretation of statute should reflect how the law should be if the author had gotten it right; (emphasis that of the writers)

"Some people seem to think that, ***now there is a Law Commission, the Judges should leave it to them to put it right any defect and to make any new development. The Judges must no longer play a constructive role****. They must be automatons applying the existing rules.* ***Just think what this means****.* ***The Law must stand still until the Law Commission has reported and Parliament passed an act on it; and, meanwhile every litigant must have his case decided by the dead hand of the past.*** *I decline to reduce the Judges to such a sterile role.* ***They should develop the law, case by case,*** *as they have done in the past;* ***so that the litigants before them can have their differences decided by the law as it should be and is,*** *and not by the Law of the past"*

311. In **R v Local Commissioner for Administration for the North and east Area of England; Exparte Bradford Metropolitan City Council** [1979] 2 ALL ER 881 Lord Denning discloses that he is prepared to flout the spirit and the letter of the Law of clear and binding precedent by referring to text books that contain extracts from Hansard which would indicate what the parliamentarians intended

by the passing of the law rather than rely on what they did or did not do correctly to see that intention actually implemented.

312. In **Seafood Court Estates Limited v Ash**er [1949] 2 QB 491, p488 Lord **DENNING** suggested that not only should Judges interpret legislation according to the mischief which the statute was passed to remedy, but when a defect appears in an Act, should look to the purpose of the legislation and remedy its defect; (emphasis that of the writers)

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and , even if it were, it is not possible to provide for them in terms free from all ambiguity…A Judge must not alter the material of which it is woven, but he can and should iron out the creases"

313. In **Major and St Mellons Rural District Council v Newport Corporation** [1950] 2 ALL ER 1226, p1236 Lord **DENNING** went further than suggesting that a Judge of a suitable jurisdiction should just iron out the creases, but where a lacuna appears in an Act, look to the purpose of the legislation and supply the omission; (emphasis that of the writers)

*"**I have no patience with the ultra - legalistic interpretation which would deprive {the appellants} of their rights altogether**. I would repeat what I said in Seafood Court Estates Ltd v Asher. **We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it**. That is an easy thing to do, and it is a thing which lawyers are often too prone. **We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps** and making sense of the enactment than by opening it up to destructive analysis"*

314. In **Eddis v Chichester Constable** [1969] 2 ch. 345, p358 Lord **DENNING** fills in any gaps in his approach to "gaps" in legislation; (emphasis that of the writers)

"I know that this means that we in this Court are filling in a gap left by legislature** - a course which was frowned on some years ago. **But I would rather the Courts fill in a gap than wait for Parliament to do it. Goodness knows when they would get down to it.** I would apply the principle which I stated in Seafood Estates Ltd v Asher, **a Judge should ask himself this question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out"

315. In **Kammins Ballrooms Co. Ltd v Zenith Investments** (Torquay Ltd) [1971] AC 850,81 Lord **DIPLOCK** outlines a new approach to statutory interpretation which he describes as the "purposive approach". The requirements of this approach according to Lord Diplock was that the judge must impute; (emphasis that of the writers)

*"**to parliament an intention not to impose a prohibition inconsistent with the objects which the Statute was designed to achieve, though the draftsman has omitted to incorporate in express words any reference to that intention**."*

316. Again in **Notham v Barnet London Borough Council** the English Courts now pronounce that the literal approach is deceased and has been replaced by the "purposive" approach; (emphasis that of the writers)

"The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the "purposive approach"…In all cases now in the interpretation of Statutes we adopt such a construction as will "promote the general legislative purpose" *underlying the provision.* ***It is no longer necessary for the Judges to wring their hands and say: "There is nothing we can do about it". Whenever the strict interpretation of statute gives rise to an absurd or unjust situation, the judges can and should remedy it - by reading in, if necessary - so as to do what Parliament would have done, had they had the situation in hand"***

317. The purposive approach is alive and well in the Courts today. Indeed arguably this was the angle taken by the Court of Appeal in the famous Ombudsman (Pearce) case which saw the necessity for the prosecution, in any given criminal trial, to have to hand over its evidence well before trial date.

318. In **T v J** [2000] 2 NZLR 236 at 237 at [10] Robertson and Potter JJ referred to *Burrows Statute Law in New Zealand* (2 ed, Wellington Butterworth, 1999), at p221;

"Very Often, new developments, be they technological or social, overtake an old Act. These developments could often not have been foreseen by those who passed it. Questions often arise as to whether these new developments are covered by the Act. ***The Courts normally apply an "ambulatory" or "updating" approach, and find that the Act does cover these developments, provided two conditions***

are satisfied; <u>first, that these developments are within the purpose of the Act and secondly, that the words of the Act, albeit by liberal interpretation, are capable of extending to them</u>"

319. The writer believes the Court would not hesitate to accept the Acts very existence is founded on the single principle of making stakeholders subscriptions safer from loss at the hands of issuers no matter how that loss was so incurred. To think that void irregular allotments could be disadvantaged by the mere sale of the receivables book to another insolvent company is an absolute nonsense and would otherwise be described as "an absurd and unjust situation". Especially where it could be proven that the sale of void irregular allotments was not only to defeat such a claim, but in furtherance of additional criminal actions designed to enrich those never entitled to the funds lawfully.

320. In any event it will be shown that LDC Finance Limited was in contravention of the Securities Act 1978 as it relates to all prospectuses since becoming an issuer, and particularly at the times the various transactions (of course Mr **HOLLIS** has already admitted it relating to the September 2006 prospectus, but not the extent it actually was), between F and I and LDC Finance Limited took place. The contravention in simple terms was that they were wholly insolvent whilst alleging they were profitable, or otherwise solvent.

321. Therefore it follows that such transfer could not be legal given that the LDC Finance Limited prospectuses and investment statements were grossly misleading in any event and thus all subscriptions were voidable, no matter how they were obtained.

Proof that LDC Finance Limited Directors knew the law when it purchased Eagle Finance Limited

322. It is interesting that when LDC Finance Limited purchased Eagle Finance Limited in 2004 that the directors of LDC Finance Limited wrote to the stakeholder subscribers of Eagle Finance Limited asking for their permission to transfer their subscriptions. This act serves to prove that LDC Finance Limited directors were well aware of the requirement to seek approval pursuant to the salient provisions of the Securities Act 1978. This requirement would serve to allow the subscribers to be informed of the

financial position of LDC Finance Limited and to make their own mind up as to whether they would formally subscribe. The LDC Finance Limited Prospectus No 2 dated 20 December 2004 (Pages 613 of the annexed dossier) states; (emphasis that of the writers);

"The Company has agreed to purchase all of the shares in Eagle Finance Limited under an Agreement for the Sale and Purchase of Shares dated 14 October 2004, as discussed ***under the headings "Activities of the Issuer", "Acquisition of Business" and "Material Contracts" above****. Eagle Finance Limited will operate as a subsidiary until it is amalgamated with the Company. It will continue to meet its obligations under its own trust deed until it is discharged. This will only happen once it has no more security holders.* ***From the date of this Prospectus Eagle Finance Limited will cease allotting securities and the consent of it existing security holders will be sought to transfer their deposits by subscribing for securities of the Company under this Prospectus."***

323. What it does not mention is that a refusal would have naturally led to the monies being returned to the subscriber in Eagle, but that is clearly implied. There are the following considerations, which the writer feels were paramount for LDC Finance Limited directors not writing to the affected F and I subscribers. The directors of LDC Finance Limited knew that the stakeholders or subscribers to F and I would want their monies returned from F and I and not to go into LDC Finance Limited. Moreover the subscriptions would have been transferred under the September 2006 prospectus and thus would have been void as it is unequivocally accepted by Pricewaterhousecoopers and Perpetual Trust Limited that the financial position of LDC Finance Limited was massively misstated in the September 2006 prospectus. This aspect will be delved into later. And the final reason is that they thought it was likely that Messrs **SCHOLFIELD** and **HARDING** would actually go and speak to a commercial lawyer that was truly independent and competent and the whole scheme would come apart.

324. As it has already been stated in this report the directors of LDC and indeed Pricewaterhousecoopers were aware of the illegality and breach of F and I operating without a registered prospectus. Pricewaterhousecoopers reported this fact to the directors of LDC Finance limited in a report dated 8 March 2007 (page 487 to 499 of annexed dossier). Mr **NOONE** reports at page 489 and 490 of the annexed dossier concerning F and I;

"3. Is likely in breach of the Securities Act regarding the taking of monies without a prospectus"

325. The writer naturally assumes that Buddle Findley gave wrong advice which they need to be called to account on as the act of transferring these F and I voidable allotments and to report them as an injection of capital for the purpose of purchasing 4,000,000 LDC Finance Limited shares which were actually worth nothing is the promotion of a significant misstatement in the Prospectus No. 5 dated 27 April. Buddle Findley's position would be worse if they were aware of the true financial position of LDC Finance Limited.

326. Additionally where was the advice to F and I from Buddle Findley that F and I should immediately desist in taking further subscriptions from the public. This advice for F and I to desist taking in monies from the public was also not given by Mr **NOONE** when Mr **NOONE** informed Messrs **SCHOLFIELD** and **HARDING** that the only alternative to his plan for F and I to invest a further $4m was a prison term. Surely if Buddle Findley and Pricewaterhousecoopers had any sort of professional ethic they would have informed F and I partners Messrs **HARDING** and **SCHOLFIELD** that they should immediately desist in taking subscriptions from the public and make an application under section 37AC of the Securities Act 1978 to seek the subscribers written approval that the Court give mandatory relief making their operation effectively legal. There would have been some work involved, but not burdensome, and as long as they were honest with their stakeholders, the writer believes that the stakeholders would have backed the two businessmen who had been financiers for more than 3 decades, as against the directors of LDC Finance Limited who had trouble lasting two years without being wholly insolvent.

327. Add to this Mr **NOONES** statement at page (3) of his report to the directors of LDC (page 489 of the annexed dossier) that both entities to the agreements (LDC and F and I) envisaged in the plan were not likely to survive unless his (inherently) high risk plan was executed (which involved the illegal transfer of assets that had been obtained in contravention of the Securities Act 1978 in the first instance), you can argue strongly that Mr **NOONE**, and any of the Pricewaterhousecoopers staff involved,

were wholly knowledgeable that his plan contained in his report dated 8 March 2008, if executed in part or whole, and particularly if not disclosed in its entirety (with accompanying explanation emphasizing its impact and likely outcome) to potential subscribers to the 27 April 2007 No.5 LDC Finance Limited prospectus under the other material matters, financial information, and related parties provisions, of the prospectus, was in contravention of the misstatement provisions of the Act and being a promoter of the plan (and thus prospectus) Mr **NOONE** (and anyone else involved) was in fundamental breach of section 59 of the Securities Act 1978 which provides; (emphasis that of the writers)

59 Criminal liability for offering, distributing, or allotting in contravention of this act
(1) ***Subject to subsection (2) of this section, if an offer of a security is made to the public, or a registered prospectus relating to a security is distributed, or a security is allotted, in contravention of this Act,*** *(or, in the case of an interest in a contributory mortgage, in contravention of regulations made under this Act),—*
(a) The issuer of the security; and
(b) Every person who is a principal officer of the issuer at the time of the contravention; and
(c) ***Every promoter of the security;*** *and*
*(d) Every person who has authorised himself or herself to be named and is named in any advertisement or registered prospectus relating to the security as a director of the issuer or as having agreed to become a director either immediately or after an interval of time—****each commits an offence, and is liable on summary conviction to a fine not exceeding $300,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.***
(2) No person shall be convicted under subsection (1) of this section for any such contravention if—
(a) The contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial, *or was otherwise such as, in the opinion of the Court having regard to all the circumstances of the case, ought reasonably to be excused; or*
(b) In the case of a person other than the issuer, in the opinion of the Court dealing with the case, the contravention did not take place with his or her knowledge and consent.

328. Mr **NOONE** in the writers opinion is likely caught as a "promoter" of the LDC Finance Limited No.5 Prospectus dated 27 April 2005 when you consider that the interpretation of promoter pursuant to s2 of the Securities Act 1978 provides;

*"****Promoter****, in relation to securities offered to the public for subscription,—*
(a) ***Means a person who is instrumental in the formulation of a plan*** *or programme* ***pursuant to which the securities are offered to the public****; and*
(b) Where a body corporate is a promoter, includes every person who is a director thereof; but
(c) ***Does not include a director or officer of the issuer of the securities or a person acting solely in his or her professional capacity****:*

329. It is the writers opinion that subsection (c) "*Does not include a director or officer of the issuer or a person acting solely in his or her professional capacity"* does not apply to Mr **NOONE** because Mr **NOONE'S** professional capacity does not, and cannot include, giving advice that is clearly knowingly in breach of the Act and promoting unlawful acts in breach of the Act, and is also acting in breach of his ethical guidelines as part of a conspiracy to dupe investors. As already stated Mr **NOONE** given the level of his involvement in structuring the companies plans may be caught under the shadow or deemed director provisions of the Companies Act 1993. In any event Mr **NOONE** is, in the writers opinion, caught by section 242 *False Statement By Promoter* and other sections of the Crimes Act 1961 which the writer will deal with later.

330. Returning to Mr **MILLERS** reliance on professional advice as a defence. If Mr **MILLER** is correct about Buddle Findlay being fully cognizant with all of the machinations of the deals done in mid 2006 and March 2007, and the outcome as a result of the deals, then the writer believes that the firms actions must be the subject of serious complaint from a number of entities and those individuals involved subject to investigation for criminal offending. There are always two sides to a story, no matter how unlikely. As they say the prisons are full of innocent men.

331. The writer must say at this stage, in all fairness to the parties accused of wrongdoing in this report, that the lawyers acting for the F and I stakeholders did not raise this legal argument either and the stakeholders should ask why such an obvious argument has not been raised given that it would appear that there can be no defence, in the writers opinion, to such a cause of action.

Lawyers inform Pricewaterhousecoopers to return monies raised as a result of the misleading prospectus No.4 dated 19 September 2006; but why not earlier when surely Pricewaterhousecoopers would have sought the same advice on the same matter?.

332. It is interesting that, according to Mr **HOLLIS** of Pricewaterhousecoopers, the directors of LDC Finance Limited did hold in excess of $2m in a separate trust

account pursuant to the misstatement provisions of the Securities Act 1978 on the basis that the subscribers to the Prospectus (No. 4 dated 19 September 2006) may have relied on materially misleading information about the companies provisioning of bad or doubtful debts being only $100,000.00, to $150,000.00 when in fact the provisioning should have been, according to Pricewaterhousecoopers (own fraudulent estimations) in excess of $4m and probably was $5m at that time. As the reader will become aware the provisioning should have been in the $15 to $25m range.

333. This misstatement will be explained fully in following paragraphs of this report as will the impact of Pricewaterhousecoopers involvement in the "promotion" of the significant misstatements found in Prospectus No.5 dated 27 April 2007. To the writer it is also interesting that it would appear that at no time did Pricewaterhousecoopers advise the directors of LDC Finance Limited to "do the right thing" and give up, throw in the towel etc, prior to the receivership of both LDC Finance Limited and F and I in or around 5 or 6 September 2007. As will become apparent, in the writers opinion, that option could not be explored by the participants to the agreement to defraud F and I stakeholders until the conspiracy was more fully developed and likely completed.

334. In a recorded conversation between the writer and Mr **HOLLIS** (permission was granted by the board of Advantage Advocacy Limited for the writer to record the conversation) Mr **HOLLIS** stated relating to the directors of LDC Finance Limited being aware of the misstatement as to bad debt provisioning and acting to protect investors funds; (transcript of full conversation at pages 66 to 69 of the annexed dossier; but see particularly pages 68 to 69 of annexed dossier discourse numbering 89 to 130); (emphasis and numbering that of the writers)

1.	*DN*	*Ok so basically it all hinges for Rolly on whether or not um you win the litigation?*
2.	*MH*	*Correct*
3.	*DN*	*Right OK*
4.	*MH*	*I assume he is an unsecured investor?*
5.	***DN***	***He is an unsecured investor. Now the other thing was in one of your reports you mentioned there was some information given in the last prospectus that was inaccurate or incorrect in that certain people got paid - back?***
6.	***MH***	***That's right voidable securities money***.
7.	*DN*	*Yeah*
8.	*MH*	*Yep*
9.	***DN***	***So that was voidable securities money was it?***
10.	***MH***	***Yep***

11. DN *So um as it was read in the report it was based on misrepresentations that were made in the prospectus?*
12. MH ***Umm no I don't believe it was misrepresentations made umm it was just at a time when the prospectus itself was potentially misleading***.
13. DN *Yes*
14. MH ***And money invested - invested during that time could have could have had their money back and funds were held aside for that and most of those investors have had their funds returned to them.***
15. DN *Rolly Fawcett.*
16. MH ***Every - every single investor that had an investment at that time or invested during that time.***
17. DN *...that time… yeah*
18. MH ***Yep had their funds returned***.
19. DN *Yeah Rolly Fawcett invested $112,000.00 two days before the company was liquidated sorry placed into receivership*
20. MH *Right*
21. DN *So he would fall under that banner wouldn't he?*
22. MH ***No - no the period of time was - I'm just trying to remember now - about the 17th of February I believe to the till early April 07.***
23. **DN** ***Right and was the prospectus repaired in some way or changed?***
24. **MH** ***Yes it was. Yeah a new prospectus was issued***.
25. DN *Ok what if Mr Fawcett's position was that he read he read the the um prospectus that you're talking about and made his investment albeit at a later date based on that prospectus.*
26. MH *Really well he probably should have looked at the latest prospectus.*
27. DN *Yeah but what - that doesn't change change the change the matter does it, it - it was what he relied upon to make - to make his investment.*
28. **MH** ***Well you know all I can all I can say is that there would have been a new prospectus available at that time and he may - you know perhaps he could have looked at that one. The other point was that the funds were held aside by the company for the period to which the misleading prospectus - if that's what you want to call it-***
29. DN *Yeah*
30. MH *...was in the market so ah therefore you suggest that Mr Fawcett's funds weren't held aside in any event.*
31. DN *Who would who would..*
32. MH *...Even if he had relied on it..*
33. DN ***Who would have held those funds aside knowing that they were a misrepresentation?***
34. **MH** ***The company did they had it in a separate bank account***.
35. DN ***Surely - when did the directors know that that it was a misrepresentation?***
36. **MH** ***Umm ah I'm not sure ah after they became aware that the prospectus was mis- you know was incorrect ah then they had a period of time where they were working through correcting it, then they issued a corrected prospectus***.
37. DN *Right and…*
38. MH ***and the period of time until - the period of time from when they became aware it was misleading until when it was corrected*** *...*
39. DN *Yeah.*
40. MH *...that's the relevant period*
41. DN ***And did they did they subsequently go to the media or the public arenas and inform people that they shouldn't rely on the earlier prospectus or or how how were they sure that people weren't going to go out there and invest on the earlier prospectus that was made public anyway?***
42. **MH** ***Oh I don't know you would have to ask them that all I can say is that they issued a new prospectus.***

335. Mr **HOLLIS** is absolutely correct that the subscriptions were wholly voidable, in that they were illegally taken in, but it is the writers belief that Mr **HOLLIS** is telling a blatant "pork pie" over the directors of LDC Finance Limited keeping money aside in

a separate bank account from the time that the directors became aware of the misrepresentation as at (according to Mr **HOLLIS** in his conversation with the writer; see discourse numbered 22 to 24 above) February-early April 2006, because of the following facts or considerations;

- If that were the case then why was the significant matter concerning millions of dollars only raised after the receivership by the receivers given that Pricewaterhousecoopers were supposedly the ones that informed the directors of the misstatement at least in February 2007; over a year earlier?

- Why didn't the directors just return the affected money straight away as at February 2007, (when they "allege" they became aware of their liability which could have only affected monies received between the date of issuance of the prospectus being 19 September 2006 and early February 2007 because the directors should have stopped taking money in and warned the public of the misstatement)?.

- How can Mr **HOLLIS** ludicrously state that the "specified period" is February to early April 2007? If aware of the misrepresentation in February 2007, then the 'specified period" can only be before February 2007. How could Mr **HOLLIS** feel otherwise and why had he not returned all monies from the date of issuance of the prospectus being 19 September 2006? Surely a misstatement is a misstatement and the date that the misstatement is made is the commencement date of the specified period and the end date of the specified period is when the affected stakeholders are informed and people are not subject to the misstatement. It is not rocket science Mr **HOLLIS**.

- Why would the directors of LDC Finance Limited be taking money in after being told that they had to keep the money in a separate interest bearing account with no benefit to LDC Finance Limited?

- Did the directors inform the Trustee in their monthly certificates to Perpetual Trust Limited?

- If the directors did inform the Trustee of the misstatements amounting to $4m (according to Pricewaterhousecoopers) what investigations did the Trustee do, and why did the Trustee not act to put the company into receivership then, or at lease warn the public?

- Did the directors of LDC Finance Limited take money in after January 2007 when aware of the extent of their insolvency or "the $4m misstatement", and their misrepresentations in the September 2006 prospectus?. If they did so then surely this is fraud and then why is Mr **HOLLIS** not reporting the actions to the appropriate authorities pursuant to section 28 of the Receiverships Act 1993, which impact the writer will deal with later in this report when exploring and commenting on the content of a crucial report to the directors of LDC Finance Limited authored by Mr **NOONE** dated 8 March 2007 and which inculpates Mr **HOLLIS** further to the point where, in the writers opinion, he cannot evade prosecution for serious criminal offending.

- Why did Mr **HOLLIS** allow LDC Finance Limited to do a deal with F and I that was wholly voidable and otherwise illegal, and then not disclose the full facts and impact of those facts to the public in the disclosure that should have been made in prospectus No.5 dated 27 April 2007. From these omissions is he not a "promoter" of a misleading prospectus?

- As the writer will prove the final prospectus was completely misleading, and Mr **NOONE** and **HOLLIS** would have known that from the date it was issued, so why did they not hand back all of the F and I allotments given over immediately and seek to take action against the directors personally. With Messrs **SCHOLFIELD** and **HARDING** shareholders in LDC Finance Limited did not Pricewaterhousecoopers owe them a duty to disclose the actual position of the company. Well the answer to this lack of action is because all of the Pricewaterhousecoopers senior staff "promoted" the miscreant behaviour of the directors of both LDC Finance Limited and Halifax Finance Limited.

- Why did not Mr **HOLLIS** inform the writer that he had known about the misrepresentation since February 2007 because he had been involved in a High Level review of LDC Finance Limited's books and had discovered their insolvency along with Mr **NOONE**?

336. The only reason for Mr **HOLLIS** not informing the writer of his involvement in advising LDC Finance Limited directors of their insolvency is because he knew he was involved in a significant criminal conspiracy to effectively operate a company whilst it was hopelessly insolvent and which plan included the taking of money from the public in clear breach of the Securities Act 1978. The only reasonable answers that avail for the LDC Finance Limited directors not returning the deposits, or otherwise not wanting to return the deposits, or otherwise not wanting to timely inform the public of the misstatements in the various prospectuses, are;

- LDC Finance Limited was hopelessly insolvent, (otherwise what difference would it have made if they had put the money into a separate interest bearing account which would not have entitled them to the interest earned on the amount in any event?).

- The directors could not afford to not take any more monies in as from that date going forward until the date of the issuance of the "fresh" prospectus dated 27 April 2007. The writer believes that the directors would have taken further monies in on account as subscriptions and illegally paid them out probably on interest payments due to investors in breach of the Securities Act 1978 because to not have done so would have placed them in an intolerable position. The provisions are contained in s37A(1)(b) of the Securities Act 1978;

  *At the time of allotment the investment statement or registered prospectus relating to the security is known by the issue of the security, or any director of the issuer**, to be false or misleading in an material particular by reason of failing to refer, or given proper emphasis to adverse circumstances (whether or not the investment statement or registered prospectus became so false or misleading as a result of a change of circumstances** occurring after the date of the investment statement or registered prospectus); or*

- The directors of LDC Finance Limited would also have had to advertise at that time (being February 2007) that the prospectus was grossly misleading and that they had bad debts of $4 to $5m minimum and thus it would have caused the appropriate failure of the company, its liquidation and the discovery of the raging all consuming fire of insolvency and fraud made out in this report. As will become obvious as the reader reads through this report Mr **MILLER** and the other directors of LDC Finance Limited have been aware of the companies insolvency since it became an issuer in 2004, and that the book it purchased off LDC Investments Limited was insolvent to the tune of about $4m to $5m which bad debt had largely arisen from Mr **MILLERS** dealing with Mr Paul **BROWNIE** over the Heli-logging Helicopter deal that was doomed to fail from the start. You will also become very much aware that any accountancy firm with average accountants should have been able to have deciphered when the insolvency commenced, who was largely responsible for the level of insolvency, and who was to blame for continuing to trade whilst insolvent.

337. Mr **HOLLIS** gave this "explanation" for the $2.2m of receivers refunds in the second receivers report dated 30 April 2008 at page 6 and 7 of his report; page 141 to 142 of the annexed dossier; (emphasis that of the writers)

> *(1)* *In our first report on the affairs of the company we stated* ***that $2.2m of funds had been held aside by the Directors of LDC prior to our appointment as receivers and that we were obtaining further information concerning those funds****. The $2.2m represented deposits made during the period 15 February 2007 to 26 April 2007 ("the specified period").*
>
> ***(2)*** ***The funds were set aside by the directors of LDC because of concerns regarding information in the Prospectus No4 dated 19 September 2006.*** *Deposits made during the specified period were made on the basis of information contained in the prospectus.*
>
> ***(3)*** ***The issue with the prospectus arose because the financial information in the prospectus failed to provide adequate provisioning for certain problem loans made by LDC. We have now obtained further information and taken legal advice, and as a result it has been determined that the investors who deposited money during the specified period must be given the opportunity for a full refund of those deposits.***

> ***(4)*** ***Investors who made deposits during the specified period have now received notification regarding this matter and have an opportunity to request that those deposits be returned****. We are currently working through returning those deposits where investors have requested payment, from the funds held aside."*

338. It beggars belief that any funds were set aside by the directors and the writer will later prove that Mr **HOLLIS'S** protestations that funds were set aside in a separate bank account as at February 2007 was a blatant lie not only to the writer but to every stakeholder who read the receivers reports. Mr **HOLLIS** perpetrated this lie in order to protect the directors of LDC Finance Limited from prosecution, and in furtherance of a design by Pricewaterhousecoopers to hide their involvement in an agreement that was definitely inimical to the stakeholders good.

339. Again the writer believes that Mr **MILLERS** belief that the publics perception of the integrity and expertise of professionals such as Pricewaterhousecoopers is soon to be misplaced when the public are aware that Pricewaterhousecoopers are conspirators, not independent advisors, and their reward for the nefarious involvement in a conspiracy to defraud investors is to gouge fees from the deceased corporate carcasses.

Pricewaterhousecoopers "apparent" lack of knowledge of ownership of a $2m to $3.5m asset and other matters of consequence such as Mr NOONES involvement in the conspiracy.

340. The first three receivers reports are found at pages 127-135 (first report 3 November 2007), pages 136-146 (second report 30 April 2008) and pages 147-156 (third report 29 October 2008. The receiver does not even note any non-current assets for disposal as at 3 November 2007, and lists other current and fixed assets, other than finance receivables (being loans made to other entities) as being; (page 131 of the annexed dossier)

> *2.4 Other current Assets*

- *These consist of interest accrued on finance receivables, a deferred tax asset and other general receivables.*
- *The deferred tax asset is unlikely to provide any immediate return, as it will only be realised should the company return to profitability. We will work to maximize realisations of the remaining current assets*

2.5 Fixed Assets

- *This figure represents the office furniture and computer equipment*

341. From the unequivocal statements as to assets made in the three receivers reports, the joint receivers of LDC Finance Limited (and until recently F and I), Messrs Malcolm **HOLLIS** and John **FISK,** would appear to have no knowledge whatsoever about any CBH Limited shares owned by SC Management Limited worth $2m to $3.5M. In specific relation to reports by the receiver the Receiverships Act 1993 provides in sections 23 and 24 the following guidelines about the duties of receivers when reporting on their handling of the company's continuing trading and proposed disposal of assets; (emphasis that of the writers);

23 First report by receiver
(1) Not later than 2 months after his or her appointment, a receiver must prepare a report on the state of affairs with respect to the property in receivership including—
(a) Particulars of the assets comprising the property in receivership; and
(b) Particulars of the debts and liabilities to be satisfied from the property in receivership; and
(c) The names and addresses of the creditors with an interest in the property in receivership; and
(d) Particulars of any encumbrance over the property in receivership held by any creditor including the date on which it was created; and
(e) Particulars of any default by the grantor in making relevant information available; and
(f) ***Such other information as may be prescribed.***
(2) The report must also include details of—
(a) The events leading up to the appointment of the receiver, so far as the receiver is aware of them; and
(b) Property disposed of and any proposals for the disposal of property in receivership; and
(c) Amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed; and
(d) Amounts owing, as at the date of appointment, to creditors of the grantor having referential claims; and
(e) Amounts likely to be available for payment to creditors other than those referred to in paragraph (c) or paragraph (d) of this subsection.
(3) A receiver may omit from the report details of any proposals for disposal of the property in receivership if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.
(4) A receiver who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

24 Further reports by receiver
(1) Not later than 2 months after—
(a) The end of each period of 6 months after his or her appointment as receiver; and
(b) The date on which the receivership ends,— a receiver or a person who was a receiver at the end of the receivership, as the case may be, must prepare a further report summarising the state of affairs with respect to the property in receivership as at those dates, ***and the conduct of the receivership,*** *including all amounts received and paid, during the period to which the report relates.*
(2) The report must include details of—
(a) Property disposed of since the date of any previous report and any proposals for the disposal of property in receivership; and
(b) Amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed; and
(c) Amounts owing, as at the date of the report, to creditors of the grantor having preferential claims; and
(d) Amounts likely to be available as at the date of the report for payment to creditors other than those referred to in paragraph (b) or paragraph (c) of this subsection.
(3) A receiver may omit from the report required to be prepared in accordance with subsection ***(1)(a) of this section details of any proposals for disposal of property in receivership if he or***
she considers that their inclusion would materially prejudice the exercise of his or her functions*.*
(4) Every person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

342. It would appear that Mr **HOLLIS** is already in a lot of trouble for knowing what went on between F and I and LDC Finance Limited as to the deals done in 2006 and 2007 and the various breaches of the Securities Act 1978 relating to prospectuses, but he seems to compound his problems by not outlining his full knowledge of the matters leading up to receivership. Subsection (2)(a) of section 23 of the Receivership Act 1993 is clear about Mr **HOLLIS'S** duties in this regard; (emphasis that of the writers);

(2) The report must also include details of—
(a) The events leading up to the appointment of the receiver, so far as the receiver is aware of them; and

343. It is obvious why Mr **HOLLIS** would not want to report criminal activity. Subsections 1(a), (b) and (c) of Section 23 and subsection 2(a) of Section 24 of the Receivership Act 1993 are clear about his requirement as receiver to dutifully report his knowledge of all assets under his control and any liabilities affecting them.

344. This would mean that Mr **HOLLIS** would have to estimate the assets worth (and then obtain qualified opinion on the assets worth), and describe any liens or other issues affecting the realization of the assets worth, and final amounts to be obtained from disposal to pay creditors. And all of this would have to be done following the normal reporting standards expected of such a firm and are actually mandatory pursuant to the Financial Reporting Act 1993 and the Companies Act 1993. The Receiverships Act 1993 has its own specific provision for reporting standards in s22; (emphasis that of the writers)

22 Accounting records
(1) ***A receiver must at all times keep accounting records that correctly record and explain the receipts, expenditure, and other transactions relating to the property in receivership****.*
(2) The accounting records must be retained for not less than 6 years after the receivership ends.

345. Clearly Mr **HOLLIS**, if aware of the transactions around the CBH Limited shares, had a duty to report the entire nature of the deal, inclusive of the fact that they were a part consideration for F and I partners agreeing to transfer assets that were in any event not legally transferable. The Receiverships Act 1993 defines the receivers moral and legal obligations in this regard further at sections 18 and 19;

18 General duties of receivers
(1) ***A receiver must exercise his or her powers in good faith and for a proper purpose.***
(2) A receiver must exercise his or her powers in a manner he or she believes on reasonable grounds to be in the best interests of the person in whose interests he or she was appointed.
(3) ***To the extent consistent with subsections (1) and (2) of this section, a receiver must exercise his or her powers with reasonable regard to the interests of—***
(a) The grantor; and
(b) Persons claiming, through the grantor, interests in the property in receivership; and
(c) Unsecured creditors of the grantor; *and*
(d) Sureties who may be called upon to fulfill obligations of the grantor.
(4) Where a receiver appointed under a deed or agreement acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver—
(a) Is not in breach of the duty referred to in subsection (2) of this section; but
(b) Is still liable for any breach of the duty referred to in subsection (1) and the duty referred to in subsection (3) of this section.
(5) Nothing in this section limits or affects section 19 of this Act.

19. Duty of receiver selling property
A receiver who exercises a power of sale of property in receivership owes a duty *to –*
(a) The grantor and
(b) ***Persons claiming, through the grantor, interests in the property in receivership; and***

(c) <u>Unsecured creditors of the grantor</u>
(d) Sureties who may be called upon to fulfill obligations of the grantor-
<u>to obtain the best price reasonably obtainable</u> as at the time of sale

346. Subsection (4) of section 18 of the Receiverships Act 1993 allows a receiver to refrain from protecting the interests of the grantor, (in this case the directors of LDC Finance Limited) if to do so, in the judgment of the receiver, was in the overall best interests of the company and its creditors. This is entirely in line with High Court authority relating to directors that have clearly acted recklessly or have operated the company for their benefit at the expense of others. The import of the duty of the Receiver found in section 28 of the Receiverships Act 1993 to report such possible breaches of the Crimes Act 1961, the Financial Reporting Act 1993, the Securities Act 1978, and the Companies Act 1993 supports the tone in subsection (4) of Section 18 of the Receiverships Act 1993.

347. Sections 300 and 301 of the Companies Act 1993 impact significantly on a receiver, or the grantors of a receivership, or indeed anyone promoting or concurring with non-compliance with the expected reporting standards as they relate to a persons liabilities to disclose information (relevant to the company's value, or the liabilities of the directors) to those that require it for proper use or purpose and the personal liability of those that impede the disclosure of such information for the proper use and purpose of others; (emphasis that of the writers)

300 Liability if proper accounting records not kept
(1) Subject to subsection (2) of this section, if—
(a) ***A company that is in liquidation and is unable to pay all its debts has failed to comply with—***
(i) Section 194 of this Act (which relates to the keeping of accounting records); or
(ii) <u>Section 10 of the Financial Reporting Act 1993 (which relates to the preparation of financial statements)</u>; and
(b) The Court considers that—
(i) The failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities
of the company, or has substantially impeded the orderly liquidation*; or*
(ii) For any other reason it is proper to make a declaration under this section,— <u>the Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any one or more of the directors and former directors of the company is, or are, personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.</u>
(2) ***<u>The Court must not make a declaration under subsection (1) of this section in relation to a person if the Court considers that the person</u>****—*

(a) Took all reasonable steps to secure compliance by the company with the applicable provision referred to in paragraph (a) of that subsection; or
(b) Had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.
(3) ***The Court may give any direction it thinks fit for the purpose of giving effect to the declaration.***
(4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence*.*
(5) An order under this section is deemed to be a final judgment within the meaning of section 17(1)(a) of the Insolvency Act 2006.

301 Power of Court to require persons to repay money or return property
(1) If, in the course of the liquidation of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, administrator, liquidator, or receiver of the company, has misapplied, or retained, or become liable or accountable for, money or property of the company, or been guilty of negligence, default, or breach of duty or trust in relation to the company, the Court may, on the application of the liquidator or a creditor or shareholder*,—*
(a) ***Inquire into the conduct of the promoter, director, manager, administrator, liquidator, or receiver;*** *and*
(b) ***Order that person—***
(i) To repay or restore the money or property or any part of it with interest at a rate the Court thinks just*; or*
(ii) ***To contribute such sum to the assets of the company by way of compensation as the Court thinks just; or***
(c) ***Where the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the Court thinks just to the creditor****.*
(2) This section has effect even though the conduct may constitute an offence.
(3) An order for payment of money under this section is deemed to be a final judgment within the meaning of section 17(1)(a) of the Insolvency Act 2006.
(4) In making an order under subsection (1) against a past or present director, the Court must, where relevant, take into account any action that person took for the appointment of an administrator to the company under Part 15A.

348. If Mr **HOLLIS** was hiding the CBH Limited shares from the knowledge of unsuspecting creditors and stakeholders then, upon the appointment of a liquidator, Mr **HOLLIS** (and anyone else involved) could be found to be in contravention of section 301 in that he had been guilty of a breach of trust and found liable for a personal contribution to losses incurred pursuant to subsection (1)(b)(ii). Equally the breach of trust argument against Mr **HOLLIS** and Mr **NOONE** could apply to their treatment of Messrs **SCHOLFIELD** and **HARDING** who were shareholders in LDC Finance Limited.

349. The directors of LDC Finance Limited, if found to have "hidden" assets, or not kept sufficient records to be able to identify assets, would also be caught under sections 300, 301 and section 194 of the Companies Act 1993 which provides the following rules of governance for directors keeping sufficiently informative records;

194 Accounting records to be kept
(1) The board of a company must cause accounting records to be kept that—
(a) Correctly record and explain the transactions of the company; and
(b) ***Will at any time enable the financial position of the company to be determined with reasonable accuracy****; and*
(c) ***Will enable the directors to ensure that the financial statements of the company comply with section 10 of the Financial Reporting Act 1993 and any group financial statements comply with section 13 of that Act; and***
(d) Will enable the financial statements of the company to be readily and properly audited.
(2) Without limiting subsection (1) of this section, the accounting records must contain—
(a) Entries of money received and spent each day and the matters to which it relates:
(b) ***A record of the assets and liabilities of the company****:*
(c) If the company's business involves dealing in goods—
(i) A record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices:
(ii) A record of stock held at the end of the financial year together with records of any stocktaking's during the year:
(d) If the company's business involves providing services, a record of services provided and relevant invoices.
(3) The accounting records must be kept—
(a) In written form and in English; or
(b) In a form or manner in which they are easily accessible and convertible into written form in English.
(4) If the board of a company fails to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

350. Mr **HOLLIS**'**S** various reports on the behaviour of the directors of LDC Finance Limited (relating to their efforts to assist the receiver) would indicate that Mr **HOLLIS** is more than content that the directors have complied with section 194 of the Companies Act 1993. This means that at a glance the directors should have been able to tell what percentage was "bad loans". In his first receivers report dated 3 November 2007 (pages 133 to 134 of the annexed dossier) Mr **HOLLIS** gives the following comments about his actions and the actions of the directors since the company was placed into receivership; (emphasis that of the writers)

Computer back up

We arranged for a computer analyst to complete a full forensic copy of all of the Company's computers ***to ensure that the company's financial data at the time of our appointment was properly protected****.*

Concluding remarks

We have received <u>the full co-operation of the Directors</u> through out the course of the receivership

351. At page 9 of his initial report Mr **HOLLIS** has this to say about the restrictions of the report but that he believes that he has acted in good faith and has not omitted anything, to his knowledge, that is of material importance to readers of the report going forward;

All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon ***is true and accurate in all material respects, <u>and not misleading by reason of omission or otherwise</u>****.*

352. Then there is the issue of any criminal liability of such persons found to be liable pursuant to sections 300 and 301. Subsection (4) of Section 300 and subsection (2) of Section 301 respectively allow for such a declaration of personal liability to contribute to losses, even though it would be clear from the declaration that the person would face criminal liability;

*"****<u>(4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence</u>****.*

<u>(2) This section has effect even though the conduct may constitute an offence.</u>

353. The criminal liability that would be imported into Mr **HOLLIS'S** actions for not reporting the existence of the CBH shares (without reasonable explanation establishing a serious alternative), would be the following. Obviously it would be false accounting and thus a breach of section 260 of the Crimes Act 1960 which provides;

260 False accounting

*Every one is **liable to imprisonment for a term not exceeding 10 years** who, with intent to obtain **by deception any property**, privilege, service, pecuniary advantage, benefit, or valuable consideration, **or to deceive or cause loss to any other person**,—*
(a) makes or causes to be made, or concurs in the making of, any false entry in any book or account or other document required or used for accounting purposes; or
*(b) **omits or causes to be omitted, or concurs in the omission of, any material particular from any such book or account or other document; or***
(c) makes any transfer of any interest in a stock, debenture, or debt in the name of any person other than the owner of that interest.

354. It is also obvious that, if Mr **HOLLIS** was not reporting the existence of the CBH Limited shares being in the ownership of SC Management Limited, which company was in turn owned 100% by LDC Finance Limited, and thus were funds that should have been available to the creditors, Mr **HOLLIS** was making a "false representation" knowing that falsity to be "false in a material matter" or Mr **HOLLIS** was being "reckless as to whether it is false in a material particular" and such an omission was clearly an intent to deceive persons "in circumstances where there was a duty to disclose".

355. It is also obvious that others would have been rewarded from this behaviour, but equally Mr **HOLLIS** would have benefited significantly, either directly or indirectly, say as an example through possibly unquestioned fee rates (gouging) because the directors of LDC Finance Limited were being rewarded with not having to invest $2m to $3.5m of their own monies. Thus the whole matter was a **"**fraudulent device, trick, or stratagem used with intent to deceive" a large number of persons of a very large amount of money. As it will become clear hiding the share value was because the agreement was probably to do so, but then matters worsened and they felt it better to inject the sums but hide the fact that they were doing so in order to call the injection the sale or realization of the finance receivables rather then equity. The writer will deal with this aspect later.

356. This behaviour or "conduct" would be a clear breach of section 240 of the Crimes Act 1961 (see particular subsections 240(1)(a), (2)(a)(i) and (ii)(b) and (c) and subject to severe penalty as provided by section 241. Both provide

240 Obtaining by deception or causing loss by deception
*(1) **Every one is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right**,—*

(a) ***obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly;*** *or*
(b) in incurring any debt or liability, obtains credit; or
(c) induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or
(d) causes loss to any other person.
(2) In this section, deception means*—*
(a) ***a false representation****, whether oral, documentary,* ***or by conduct****,* ***where the person making the representation intends to deceive any other person and—***
(i) ***knows that it is false in a material particular****; or*
(ii) ***is reckless as to whether it is false in a material particular****; or*
(b) ***an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose*** *it; or*
(c) ***a fraudulent*** *device, trick, or* ***stratagem used with intent to deceive any person.***

241 Punishment of obtaining by deception or causing loss by deception
Every one who is guilty of obtaining by deception or causing loss by deception is liable as follows:
(a) ***if the loss caused or the value of what is obtained or sought to be obtained exceeds $1,000, to imprisonment for a term not exceeding 7 years****:*
(b) if the loss caused or the value of what is obtained or sought to be obtained exceeds $500 but does not exceed $1,000, to imprisonment for a term not exceeding 1 year:
(c) if the loss caused or the value of what is obtained or sought to be obtained does not exceed $500, to imprisonment for a term not exceeding 3 months.

357. There would be clearly others involved, but not limited to Messrs **NOONE, ELLIOT, HARDIMAN, JANNETTO, FISK, CAIN, MILLER, GLASS, BROWNIE** and as the reader will learn later Messrs **STYRANT** and **LANCASTER** from Perpetual Trust Limited. It could be implied that the group was involved in money laundering in that the group were attempting to "conceal or disguise the property, and its location, disposition, or ownership of the property" in order that at a future point they would "dispose of the property" for their ultimate benefit at the loss to others being the stakeholders. This would also be the case with the void irregular allotments given that they could never, in the writers opinion, claim ownership of those funds in the name of LDC Finance Limited. Money laundering is defined in section 243 of the Crimes Act 1961 as;

243 Money laundering
(1) ***For the purposes of this section and sections 244 and 245,— conceal, in relation to property, means to conceal or disguise the property****; and includes, without limitation,—*
(a) to convert the property from one form to another:

(b) ***to conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property***

deal with*, in relation to property, means to deal with the property in any manner and by any means; and includes, without limitation,—*

(a) to dispose of the property, whether by way of sale, purchase, gift, or otherwise:

(b) to transfer possession of the property:

(c) to bring the property into New Zealand:

(d) to remove the property from New Zealand

interest*, in relation to property, means—*

(a) a legal or equitable estate or interest in the property; or

(b) ***a right, power, or privilege in connection with the property***

proceeds*, in relation to a serious offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence*

property *means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible;* ***and includes an interest in any such real or personal property***

serious offence *means an offence punishable by imprisonment for a term of 5 years or more; and includes any act, wherever committed, that, if committed in New Zealand, would constitute*

an offence punishable by imprisonment for a term of 5 years or more.

(2) ***Subject to sections 244 and 245, every one is liable to imprisonment for a term not exceeding 7 years who, in respect of any property that is the proceeds of a serious offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of a serious offence, or being reckless as to whether or not the property is the proceeds of a serious offence****.*

(3) Subject to sections 244 and 245, every one is liable to imprisonment for a term not exceeding 5 years who obtains or has in his or her possession any property (being property that is the proceeds of a serious offence committed by another person)—

(a) with intent to engage in a money laundering transaction in respect of that property; and

(b) knowing or believing that all or part of the property is the proceeds of a serious offence, or being reckless as to whether or not the property is the proceeds of a serious offence.

(4) For the purposes of this section, a person engages in a money laundering transaction if, for the purpose of concealing any property or enabling another person to conceal any property,

that person—

(a) deals with that property; or

(b) assists any other person, whether directly or indirectly, to deal with that property*.*

(5) In any prosecution for an offence against subsection (2) or subsection (3),—

(a) it is not necessary for the prosecution to prove that the

accused knew or believed that the property was the proceeds of a particular serious offence or a particular class of serious offence:

(b) it is no defence that the accused believed any property to be the proceeds of a particular serious offence when in fact the property was the proceeds of another serious offence.

(6) Nothing in this section or in sections 244 or 245 limits or restricts the operation of any other provision of this Act or any other enactment.

358. It is the writers opinion that subsection (4) of section 243 of the Crimes Act 1961 catches Messrs **HOLLIS**, **NOONE**, **FISK**, **MILLER**, **ELLIOT**, **HARDIMAN**, **JANNETTO**, **CAIN**, **STYANT** and **LANCASTER** if they purposefully failed to report ownership of the valuable CBH Limited shares, and omitted to report LDC Finance Limited's lack of entitlement to the voidable allotments previously held by F and I.

359. Equally not reporting that LDC Finance Limited had been trading insolvently well before its directors did the deal with F and I is a significant material omission because the stakeholders of LDC Finance Limited and the prejudiced shareholders being Messrs **SCHOLFIELD** and **HARDING** could sue the directors personally under section 301 of the Companies Act 1993 for compensation.

360. In the writers opinion the stakeholders in F and I could arguably sue the directors of LDC Finance Limited through a constructive trust common law argument, or indeed through the provision of section 4 the Contracts (Privity) Act 1982 which allows for a class of person being a third party to sue a party through yet another parties rights in contract. The writer will return to this point at a later time.

361. Notwithstanding the civil remedies available to obtain compensation, this groups actions in dealing in the property in the role of directors/grantors and receivers was for the purpose of "concealment" of that property from the rightful owners and thus the writer opines they are equally caught as being individuals "participating in an organized criminal group". Section 98A of the Crimes Act 1961 provides;

98A Participation in organised criminal group
(1) Every one is liable to imprisonment for a term not exceeding 5 years who participates (whether as a member or an associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group*, and—*
(a) ***knowing that his or her participation contributes to the occurrence of criminal activity; or***

(b) reckless as to whether his or her participation may contribute to the occurrence of criminal activity.
(2) For the purposes of this Act, a group is an organised criminal group if it is a group of 3 or more people who have as their objective or one of their objectives—
(a) ***obtaining material benefits from the commission of offences that are punishable by imprisonment for a term of 4 years or more****; or*

(b) obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of offences that are punishable by imprisonment for a term of 4 years or more; or
(c) the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 years or more; or
(d) conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 years or more.
(3) A group of people is capable of being an organised criminal group for the purposes of this Act whether or not—
(a) some of them are subordinates or employees of others; or
(b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or
(c) its membership changes from time to time.

362. If the writer was correct then this group, (of more than 3 persons obtaining benefits from the commission of serious offences inside New Zealand that had a penalty upon conviction of more than 4 years) would have known that their participation, or were reckless as to whether their participation, contributed to criminal activity, and thus caught by subsections 98A(1)(a) or (b), (2)(b) and (3) (a) through (c) of the Crimes Act 1961.

363. It cannot be gainsaid that, if the receivers had been aware of such an asset being effectively owned by LDC Finance Limited (through its 100% ownership of SC Management Limited) they were duty, and otherwise legally, bound to report on its existence, its estimated worth, any liens or litigation pending over the asset, and their intentions relating to its disposal, and how that disposal value would be divided amongst the beneficiaries. They would also have to report on any other material matters affecting the sale of the shares, particularly any other deals done between the parties that may be voided for any particular matter relating to the share sale agreement not being completed.

364. Clearly none of the above was reported in the first three receivers reports and so axiomatically one must conclude, on the content of the first three receivers reports alone, the receivers were none the wiser, or in the alternate were in collusion with the directors of LDC Finance Limited in concealing the assets for their joint benefit.

Sale of shares controlled by Constitution of Company and Companies Act 1993

365. As a result of CBH Limited's constitution dated 26 June 2002 the receivers, if knowledgeable of the CBH Limited shares and worth, and wanting to realize that worth through sale, would have to comply with cl 11 (Restriction upon transfer of shares); see particularly page 176 of pages 163 to 192 of the annexed dossier. Cl 11(2)(a) provides;

"If any shareholder, manager, protection attorney, or trustee in bankruptcy, or personal representative of any shareholder, desires to sell or to transfer any of the shares which are held by him or her, the ***he or she must first offer them for sale to the existing shareholders in accordance with clauses 11.1 to 11.11****"*

366. None of this type of action has been reported in any public reports by the receiver. Given the market in land since probably late 2006, early 2007, and if the receiver was aware of the shares, he should have immediately advised of his intention to offer the shares to other shareholders of CBH Limited, and to have the shares valued for this purpose to insure that he obtain an immediate "fair consideration" pursuant to the terms of the companies constitution and the requirements of the Companies Act 1993.

367. If the receiver had not done so he could be potentially sued for any loss in value from untimely disposal. See section 19 of the Receivership Act 1993 in relation to a receivers duties relating to the specific disposal of property.

368. As aforesaid, if the receiver was aware of these various illegal deals and the accompanying plan (and obviously not party to them), he had a liability under various sections of the Receivership Act 1993 to delve further and act appropriately. This duty, to remove any doubt, is spelt out in section 28 of the Receiverships Act 1993 which provides;

28 Duty to notify suspected offences against other Acts

(1) A receiver of a grantor that is a company and who considers that the grantor or any director of the grantor has committed an offence that is material to the receivership against –

(a) The Companies Act 1955; or

(bb) ***The Crimes Act 1961****; or*

(b) The Securities Act 1978; or

(c) The Companies Act 1993; or

(d) The Financial Reporting Act 1993; or

(e) The Takeovers Act 1993-
Must report that fact to the Registrar

(1A) A report made under subsection (1), and any communications between the receiver and the Registrar relating to that report, are protected by absolute privilege.

(2) ***A receiver who fails to comply with subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.00"***

369. Equally the directors of LDC Finance Limited had an obligation to hand over all documentation to the receiver, whether they thought it material or not. In the writers opinion any honest and competent receiver would commence the act or receivership by asking the grantor (through its directors) to make available **all** of the company's documentation. And because of the nature of receivership any request for compliance would include a specific request for any written advice from other parties (inclusive of professionals) that materially related to the company's predicament.

370. Unless Mr **NOONES** report dated 8 March 2007 (which the writer will deal with soon) was "hidden" from Mr **HOLLIS a**nd **FISK** one must assume it was supplied with the company's other documents. Even if it was not supplied the writer understands that Mr **HOLLIS** was likely aware of the plan contained in the document having assisted Mr **NOONE** with its formulation. Actual compliance with such a request for documentation by the receiver is normally obtained by the receiver demanding from the directors a declaration pursuant section 12(1)(b) of the Receiverships Act 1993 which provides;

If required to do so by the receiver, verify, by statutory declaration, that the books, documents, and information are complete and correct

371. The writer feels it is strange that the receiver did not take this action as an automatic precaution given the allegations made by numerous parties against the directors, and which allegations were placed in writing. The writer also points out that the receiver enjoys powers to inspect books of CBH Limited pursuant to section 14 of the Receivers Act 1993 which provides; (emphasis that of the writers);

"14 Powers of receivers

*(1) Subject to the deed or agreement or the order of the Court by or under which the appointment was made, **a receiver may** –*

*Exercise, on behalf of the grantor, **a right to inspect books or documents that relate to the property in receivership and that are in the possession or under the control of a person other than the grantor***

372. The writer at this stage of the investigation had drawn conclusions as to why the property (shares in CBH Limited) would not have been mentioned in the reports by the receivers given the deals done but wanted to get all of the evidence available to enable those conclusions to be "safely" drawn to a criminal threshold of beyond reasonable doubt. The writer knew that before that threshold could be passed it was necessary to commit to other aspects of the investigation and then return to this matter as one of the last pieces to the puzzle.

The High NOONE report (and its growing implications relating to Pricewaterhousecoopers receivers not being so innocent); Mr NOONES alleged ability to sell "sunken ships".

373. It was interesting to the writer, to a point, that Mr **NOONE** in his report of 8 March 2007 (pages 487 to 491 of the annexed dossier) to the directors of LDC Finance Limited does not mention this injection of the CBH Limited share value of $2m to $3.5M into SC Management Limited. Which you would think it would if Pricewaterhousecoopers were aware of a deal which involved two separate transfers of equity of $2m to $3.5m by LDC Finance Limited directors in order to shore up solvency and complete a transaction with F and I which would see F and I part with considerable amounts of securities to assist LDC Finance Limited "promote its apparent solvency" in order to seek up to $50m from public subscription.

374. The writer refers to this "piece of work" by Mr **NOONE** as the "**High NOONE**" report given that it promotes a "last ditch" approach to saving the LDC Finance Limited directors necks. It is the writers opinion that the promotion by Mr **NOONE**, (and all Pricewaterhousecoopers staff involved) of the **NOONE** plan contained in his report to the directors of LDC Finance Limited dated 8 March 2007, and the directors of LDC Finance Limited's concurrence, and later implementation of the plan (in

substantial part) into prospectus No 5 dated 27 April 2007, all involved were in breach of section 242 of the Crimes Act 1961 which provides;

242 False statement by promoter, etc
(1) ***Every one is liable to imprisonment for a term not exceeding 10 years who, in respect of any body, whether incorporated or unincorporated and whether formed or intended to be formed, makes or concurs in making or publishes any false statement, whether in any prospectus, account, or otherwise, with intent—***
(a) to induce any person, whether ascertained or not, to subscribe to any security within the meaning of the Securities Act 1978; or
(b) ***to deceive or cause loss to any person, whether ascertained or not; or***
(c) to induce any person, whether ascertained or not, to entrust or advance any property to any other person.
(2) In this section, ***false statement*** *means any statement in respect of which the person making or publishing the statement—*
(a) ***knows the statement is false in a material particular;*** *or*
(b) ***is reckless as to the whether the statement is false in a material particular.***

375. From the writers investigations, as at 8 March 2007, Mr **NOONE** is clearly advising the directors of LDC Finance Limited, (at a time that is only 6 months before the receivership of LDC Finance Limited was instigated and more importantly only 50 days before the registration of the last LDC Finance Limited prospectus dated 27 April 2007; pages 211 to 287 (amended 2 May 2007 pages 288 to 336) of the annexed dossier wherein LDC Finance Limited was attempting to raise $50m NZD pursuant to the transparency and accuracy provisions of the Securities Act 1978), to adopt the following path, plan or strategy; (emphasis and numbering that of the writers);

(1) *"In conclusion, both LDC Finance Limited and Finance and Investments have issues to resolve.* ***Individually, neither is likely to be capable of survival in the short to medium term****, however, working together there is a possibility that both entities could achieve an outcome that could see all investor deposits covered, and indeed, in time to be recovered in full.* ***This however would only come from a "tidying up" and a subsequent sale of LDC Finance Limited, and potentially Finance and Investments business, at a premium to the actual finance receivables outstanding and recoverable…….***

LDC Finance Limited;

(2) *Requires* ***approximately $4million in new equity*** *in order to comply with trust deed covenants*

(3) ***needs to issue a new prospectus as a matter as a matter of priority in order to remove the current and potentially misleading prospectus from the market***

(4) *In order to be capable of seeking interest from potential purchaser* ***needs to "tidy up" the balance sheet through removal of the Halifax Finance Limited advances and the Heli-logging advances.***

(5) *Without* ***the immediate injection of new capital****, bringing the company into compliance with the trust deed, and the issuance of a new prospectus,* ***the directors need to seriously consider whether they can continue to trade without incurring personal liability.***

(6) ***Assuming it is considered the issues of LDC Finance Limited can be met*** *through the injection of new capital by Finance & Investments,* ***and that Finance & Investments can shore up the shortfall from personal capital injected and the proceeds of a successful disposal of LDC Finance Limited and/or Finance & Investments, the following steps and actions should be considered;***

Action

(7) *Finance & Investments injects $4 million of finance receivables into LDC Finance Limited in exchange for $4 million priority "B" class share capital of LDC Finance Limited.*

(8) *A detailed investigation into the Halifax book be completed,* ***and the "good" loans taken over by LDC Finance Limited in exchange for the advances to Halifax***

(9) ***The Heli-logging exposures are "sold" to Halifax****.*

(10) ***Finance & Investments partners inject as much capital as they have access to. These actions should be undertaken and completed by 31 March 2007 in order to prepare LDC Finance Limited for sale****.*

(11) *Successful sale of LDC Finance Limited, and potentially the assets of Finance and Investments.*

Impact

(12) *Enables LDC Finance Limited to meet its trust deed covenants and to issue a new prospectus*

(13) ***tidies up the balance sheet through removal of the Halifax advances and the Heli-logging advances and in turn makes the company significantly more attractive to a potential investor.***

(14) ***Potentially provides the liquidity to enable Finance & Investments to manage its position for the short term***

(15) ***A successful sale could at best, eliminate the shortfall in Finance & Investment, or at least significantly reduce it.***

376. There are a large number of matters of consequence raised by the content of this report by Mr **NOONE** but the writer is most amazed, when considering "fairness and accountability", by the fact that nowhere in the report does Mr **NOONE** suggest that the directors of LDC Finance Limited being Messrs **ELLIOT**, **MILLER**, **HARDIMAN**, and **JANNETO** replenish the coffers with their own coin considering it has been at their hand that Mr **BROWNIE** and Halifax Finance Limited has been in arrears since 2000 and that Mr **BROWNIES** and their actions have now amounted to a complete loss provision (according to Mr **NOONE**) of $5m.

377. As the reader will become aware from the writers investigations of the Heli-logging Group saga the directors of LDC Finance Limited, and particularly Mr **MILLER,** are central to making decisions (in positions of "deemed or de facto" directors) for Halifax Finance Limited, the Heli-logging Group, and of course LDC Finance Limited, when all were hopelessly insolvent. This is not an unusual situation and is referred to as the "domino effect". The crux of the matter is that if the directors of LDC Finance Limited had acted with integrity they would have acted to save F and I from being last in line. But as it will be shown they acted to prevent F and I knowing what was in store so that they could defraud the F and I stakeholders and Messrs **SCHOLFIELD** and **HARDING**.

378. Mr **NOONE** at paragraph (10) above is saying that the directors of LDC Finance Limited should get the partners in F and I to put as much money in as possible in order to *"prepare LDC for sale"*.

379. The report by Mr **NOONE** containing his 'survival plan' raises the following matters that impact on the criminality of the actions of the individuals in making this plan and latterly in execution of the plan;

379.1 At paragraph (1) Mr **NOONE** is clearly stating that if LDC Finance Limited and F and I are left to operate separately with their levels of bad debts (and thus insolvency) neither can survive in the short term. This would seem a reasonable and obvious assumption given the fact that F and I had close on $7.3m (see page 490 of the annexed dossier) of bad debts and LDC Finance Limited had approximately $5.2m. (The writer will submit later in this report

that only about a million of these F and I bad debts are F and I's). All in all looking at the worst case scenario $13 to $15m of bad debt over say a combined book of $50m, or in simple terms they were short probably 30% of their combined books. At this time it is obvious that Mr **NOONE** could have simply stated to the directors of LDC Finance Limited (and in turn the partners to F and I) that the best way forward given their respective perilous positions at that time was to, given that they had failed the solvency test, put the company and partnership into receivership, or better still liquidation which gave the creditors and stakeholders, through an independent liquidator, greater powers to "assess" who was responsible for their significant losses and over what period of time those losses had accumulated and what action, or omission to take action, had been taken, or not, to limit those losses. The writer also imports paragraphs (2), (4), (5), (6), (8), (14) and (15) of paragraph 375 above into reading that Mr **NOONE** knew that the chances of survival were **not present at all** unless the directors executed a very risky enterprise that happened to also be very dishonest. The writer refers you to the sagacious judgment of O'Regan J in **Fatupaito v Bates** 3 NZLR 401 386 at para [67] (after the Court had considered the authorities **Nippon Express (New Zealand) Ltd v Woodward** (1998) 8 NZCLC 261,765, **Re Hilltop Group Ltd (in Liquidation)** (2001) (NZCLC 262,477, and **Re B M & C B Jackson Ltd (in liquidation)**, (HC) CP 26/99, 29 March 2001 (unreported)), wherein the judge found the position regarding what constitutes reckless trading that would allow the Court to make any order to have a director repay monies to a creditor plaintiff to be the following; (emphasis that of the writers)

[67] Having considered them, I think that the position in relation to s135, when read together with s301 is as follows;

Section 135 imposes a duty which is owed by a director to the company rather than to any particular creditor; ***The test is an objective one;*** *Although the law reform process makes its difficult to elicit any legislative intent in relation to the wording of s135,* ***it appears to impose a stringent duty on directors to avoid substantial risks of serious loss to creditors and does not appear to allow such risks to be incurred, even in circumstances where potential for great rewards exists;***
In situations where a company has little or no equity (as is the case here), directors will need to consider very carefully whether continuing to trade has realistic prospects of generating cash which will allow for the servicing

of pre-existing debt and the meeting of commitments which such trading will inevitably attract. *As Anderson J said, the reference to "substantial risk" and "serious loss" does appear to set a higher standard than simply any risk at all to creditors, which* ***must be inevitably where a company is operating at a loss and has few, if any, realizable assets****;*
Where a breach of duty is found, the assessment of the amount to be paid by a director under s301 should be "neither more or less than that [directors] just desserts.

379.2 The formulae for compensation by directors or others found to be to blame for the demise of a company adopted by the Courts has ample room to find the directors of LDC Finance completely liable for all losses incurred by its stakeholders. And it is submitted that at the end of this report the reader will be of the mind that "just desserts" is every last cent. Equally it is submitted that the reader will consider that the others involved being Perpetual Trust Limited and Pricewaterhousecoopers will also be liable to pick up the remaining tab if the directors cannot meet full compensation of the LDC Finance Limited stakeholders.

379.3 The writer also suggests that a company like LDC Finance Limited that is an issuer pursuant to the Securities Act 1978 with its stringent requirements for complete transparency and adequate security at all times impacts significantly on what is likely to be considered being "risky" trading by the Courts in this instance. There can be no reward for the stakeholder by the company risking the investors money further by trading (with its associated costs) and when continuing to trade, its only cited aim is to raise many millions of dollars more to obviously trade in a similar manner, or as an alternative in this case, try and sell the "bad apple" to some un-expecting third party. Given what the writer will reveal in the latter stages of this report the reader will understand that virtually nothing that the LDC Finance Limited directors stated in any financial accounts was "transparent or accurate" and was in most if not all cases, at best obfuscatory, and at worst wholly misleading for the specific intended purpose of deception. This behaviour is at total odds with the intention of the Securities Act 1978. As the Court of Appeal said in **Securities Commissions v Kiwi Co-operative Dairies** [1995] 3 NZLR 26 citing with approval from Justice Richardson in **AIC Merchant Finance Ltd,**

National Mutual Life Nominess Ltd v Watson [1990] 2 NZLR 385, at 391 and 392; (emphasis that of the writers)

The pattern of the Securities Act and the sanctions it imposes makes plain that the broad statutory goal is to facilitate the raising of capital ***by securing the timely disclosure of relevant information to prospective subscribers for securities. In that way the Act is aimed at the protection of investors….***

…It is perhaps true to say that the premise underlying the Securities Act, as with much commercial law, ***is that the best protection of the public lies in full disclosure of the company's affairs and of the security it is offering. That then allows the investor to make an informed decision,*** *which in turn facilitates the functioning of financial matters"*

379.4 Mr **NOONE** in fact hints at the directors of LDC Finance Limited "putting their hands up" at paragraph (5) of paragraph 375 above when he warns the directors that if they do not do commit to his plan and continue to trade, raise money from the coffers of F and I and Messrs **HARDING** and **SCHOLFIELD**, in order to issue a new prospectus pursuant to the Securities Act 1978, to raise yet further monies from the public, (up to $50m), they will incur personal liability from trading recklessly. The writer must say that Mr **NOONE** cannot have believed that this plan was a legitimate alternative to admitting insolvency and appointing a liquidator. To suggest that his plan was anything but incomprehensively reckless and blatantly dishonest by all involved including Mr **NOONE** and all of the Pricewaterhousecoopers staff involved beggars belief.

379.5 Mr **NOONES** advice to the directors of LDC Finance Limited to commit to a deceptive course of action in order to seek further monies from the public through promoting issuance of a further misleading prospectus must also be seen in the light that at paragraph (3) of paragraph 375 above Mr **NOONE** is very much aware that the directors (usually Messrs **HARDIMAN** and **MILLER**) of LDC Finance Limited had been declaring **GROSSLY MISLEADING** monthly declarations to LDC Finance Limited's auditor at Perpetual Trust Limited, (previously Mr John **GLASS** and presently Mr Mark **STYRANT**) pursuant to the reporting covenant terms (pages 816 to 818 of the annexed dossier) of LDC Finance Limited's trust deed (pages 769 to 875 of

the annexed dossier which documents in turn are made and certified pursuant to Clause 4 of Schedule 5 of the Securities Regulations 1983), stating that they, after making due and reasonable enquiry knew the exact financial position of the company inside that given historical period of one month prior to the date of certification; see page 863 and 864 of the annexed dossier which clarifies what would have been signed by Messrs **HARDIMAN** and **MILLER,** (emphasis that of the writers);

The Board certifies, in accordance with clause 8.5(e) of the Trust Deed*; that;*

1. After all due and reasonable enquiries have been made it is satisfied that in respect of the Charging group, at the end of the Month or during the Month (as the context requires);

(a) ***The financial and other information supplied in Appendices 1,2, and 3 of this report is correct****;*

(b) ***The financial limits contained in clause 8.1(a) to (c) and 8.2 (g) and (j) and (l) have not been exceeded and the covenants in the remainder of clause 8.2 have been complied with****;*

(c) The Charging Group;

…….

(iii) has made proper provision for all known or anticipated losses;

(iv) meets the solvency test, and;

(v) will be able to meet all maturing Liabilities as they fall due from anticipated trading transactions and funding sources

(d) There are no

a. material matters or other events or omissions that could have a significant adverse effect or which may affect the position of the security holders, or;

b. *contingent Liabilities* ***or anticipated losses that could affect the groups liquidity or solvency….***

2. ***No event of default or potential event of default howsoever described has occurred and is subsisting under any agreement with any Retail Finance Company.***

379.6 What Mr **NOONE** was referring to being misleading in the last LDC Finance Limited prospectus (see prospectus dated 19 September 2006 pages 723 to 766 of the annexed dossier), and would have been misstated in every monthly certification by the directors was the amount of $100,000.00 to $150,000.00 the LDC Finance Limited Directors certified as being the only *"Bad and*

Doubtful debts" when in fact they would have been aware it was $5m, or considerably more as at the date of the September 2006 prospectus and each month thereafter; see page 743 of the annexed dossier. Such grossly misleading statements of such material importance must be considered as breaches of Clause 4 (2)(a) to (d), (4)(3)(a) and (b) and Clause 5(1)(a) of the Securities Regulations Act 1983 which materially provide;

Obligation to provide regular reports and certificate

(1) The issuer is obliged to provide to the trustee, within 30 days of the end of each month, the monthly management report prepared for the directors of the issuer.

(2) The ***issuer is obliged to provide a monthly report to the trustee, on a form required by the trustee and within 30 days of the end of each month, on-***

(a) ***the liquidity of the issuer; and***

(b) ***the asset quality of the issuer (including arrears reports, and restructured , impaired, past due and bad debts); and***

(c) reinvestment rates; and

(d) ***any breaches by members of the borrowing group of financial covenants in financing arrangements with third parties.***

(3) ***The issuer is obliged to provide a certificate to the trustee, at least once in every 3 months, certifying that at all times during the period covered by the report –***

(a) ***the current prospectus of the issuer has been up to date and not false or misleading in a material particular; and***

(b) ***the issuer has complied with all provisions of the trust deed.***

(4) ***Both the report referred to in sub clause (2) and the certificate referred to in sub clause (3) must be signed by at least 2 directors*** *on behalf of the board of the issuer or, if the issuer has only 1 director, by that director.*

379.7 Given that "bad or doubtful" debts can only be assessed as such by usually the non payment of interest on the debt, or some other form of breach of the agreement, or information coming to light (such as an updated valuation reflecting a significant depreciation in asset worth and likely non performance on expected income in the future) affecting the value of the asset, it would seem logical that such behaviour was tracked over a period of time, and that inquiry was dutifully done to confirm the position and proactive action taken to deal with the problem and report that action to the Trustee in the monthly certifications.

379.8 It is the writers position that any lay person reasonably cognizant of the facts would find it inconceivable that the directors of LDC Finance Limited (being "expert" chartered accountants) would not have operated the company knowing what position that company was in on a day to day basis. In support of this proposition there has not been one single complaint (to the writers knowledge) from the auditors or the trustee about the practices of the directors or the management processes of LDC Finance Limited.

Evidence that the LDC Finance Limited directors knew exact position of Company's worsening level of bad debts from Halifax Finance Limited

379.9 The emails the writer has seen indicating the reporting practices of LDC Finance Limited's management to its directors and its directors instructions to its management show an acute particularity and awareness of problems arising and the need to specifically deal with them by adopting a strategy of heightened observation and if necessary action, or on occasions deliberate inaction to obtain a benefit by apparent deceit. The writer refers you to the following content of emails and notes of meetings or reports annexed to F and I anors statement of claim against LDC Finance Limited anor in the High Court at Christchurch; (emphasis and numbering that of the writers)

(1) ***On 7 December 1999*** *at a LDC board meeting,* ***concern was expressed over loan performance <u>of HFL loans</u>.***

(2) ***On 3 February 2000*** *at a LDC board meeting it was noted under general business:*

<u>"Halifax Finance Limited</u>
General concern

- *Kevin Elliot's proposed plan presented.*
- *Chris to arrange meeting with Paul Brownie to discuss problems and to develop win win situation for both Halifax and LDC*
- ***<u>Stuart Mirfin (manager) expressed concern about some of the lending and was doubtful about security value</u>****. Directors preferred no investigation into security, until meeting with Paul.*
- ***At meeting <u>control of lending</u> was to be discussed****"*

(3) ***On 7 March 2001*** *the manager's report to LDC* ***<u>noted interest arrears from HFL of $339,594.35.</u>***

On 10 September 2001 at a meeting between LDC and HFL it was noted:

"Securities to other Lenders
Paul says finance and investments and advances from investors are unsecured accept (sic) for his personal guarantee. We need to confirm this with Ian Smith, which Paul has authorised. ***If this is the case it significantly improves LDC's security position. Allowing for $402,000.00 capital deficit, there would have to be $1,530,000.00 further bad debts before the first debenture value is below the first debenture advances, this is including a tax credit of $670,000.00 on losses that Halifax was taken over and operated by LDC under the debenture."***

(4) ***On 13 March 2002, David Miller prepared a report to the LDC directors noting provisions for bad debts of $1.933 million.***

(5) ***On 12 February 2003*** *at a board meeting of LDC (Ross's room), with Kevin Elliot, C Hardiman, David Miller, Ross Stevenson and Stuart Mirfin attending, the Board minutes record:*

"Concern was expressed about the high possible profit ***when it is known he has such high possible bad debt content.*** *Chris stated penalty interest and fees relate to this as well as changing computer systems and all interest being charged"*

(6) ***On 25 February 2003 at a board meeting at LDC (boardroom 1.00pm – Kevin Elliot, David Miller, C Hardiman*** *and Stuart Mirfin attending), the following notes were made* ***concerning HFL:***

"Dave produced a paper to support ***a further bad debt write-off, against Halifax for approximately $500,000.00 for the current year****.* ***Dave's paper is attached – write-off of $500,000.00 approximately for the 2003 was expected****.*
The manager produced ***a list of Halifax's borrowers he feels there is little of no chance of recovery and these total $3.394 million****, which includes penalty interest of $1.232 million (this may be able to be deleted if it can be proved this interest has compounded from written-off loans).*
General discussion followed concerning Halifax and Paul Brownie.
Manager to write to Ian Smith and ask for a list of loans he is dealing with on behalf of Halifax and what likelihood of recovery.
Manager to contact Greg Eel at Argos and see if LDC can run a copy of Halifax's accounts*.*
Manager also to write to Paul Brownie informing him that the $768,000.00 written-off in March 2002 is still payable to LDC in the future*.*
Manager to continue to investigate the bad debt write-off of $880,000.00 in the 31 March 2002 books and also prove if any of

the write-offs in the 31 March 2001 year are still being carried forward (England Street requires checking)

(7) ***On 26 February 2003*** *Stuart Mirfin of LDC wrote to HFL advising the* ***LDC had written off $768,000.00 of bad debts against HFL****.*

(8) ***On March 2003****,* ***HFL produced a list of possible bad debts and problem loans for LDC.***

(9) ***On 12 March 2003*** *at a board meeting between LDC and Paul Brownie list of possible bad debts and problem loans with HFL discussed.*

(10) ***On 12 March 2003*** *there was a meeting between LDC directors, David Miller, Kevin Elliot, C Hardiman and Stuart Mirfin, as well as Paul Brownie at the offices of CML. The minutes included the following comments:*

"List of loans to be written off as bad debts prior to 31 March 2003, presented to Paul. Paul accepted the necessity to write-off $614,195.49. *It was explained to him that they could be brought back into his books if recovery was possible…*
List of possible bad debts and problem loans was presented to Paul*, who gave a breakdown of each loan. A number of them were in the hands of Ian Smith/Gary Barkel? For further action and Paul explained what was happening with the balance (we have heard this before)."*

(11) ***In a LDC manager's report dated 19 May 2003*** *it was noted that were interest arrears from HFL of $1,134,910.10;*

(12) ***On 18 November 2003****,* ***David Miller sent an email to Stuart Mirfin and Kevin Elliot noting the report on the Halifax Finance Interest arrears****. The email included the following comments;*

*"I think Halifax is keeping interest payments up to date with F&I. If this is the case, part of this is coming at LDC cash flow disadvantage and needs to be addressed. Some of the F&I loans were applied by Halifax to loans that are having capitalised as referred to above****. If F&I are being paid there is only one place the money is coming from, LDC interest due. I want to fully assess position of F & I securities so we know exactly where we stand. This is part of the reason for the schedule Stuart is preparing. When we have fully assessed this position it may be necessary for us to talk to F&I and come to an arrangement with them on interest capitalisation until such time as these loans are settled."***

(13) ***On 19 November 2003*** *the directors of LDC met at the offices of CML. Present at the meeting were K Elliot, David Miller and Stuart Mirfin. The minutes of this meeting included the following comments:*

"Halifax Finance – ***concern expressed about the self funding when our interest arrears are not being paid****. Dave will speak to Paul on this matter."*

(14) ***A managers report for LDC dated 19 November 2003*** *noted:*

"Halifax Finance have made no interest payments this quarter, with interest arrears now $1,600,000.00. Halifaxs total exposure to LDC is $10,786,911.17. *Should he still be lending* ***when funds should come to LDC?"***

(15) ***On 2 February 2004****, David Miller sent an email to Paul Brownie at HFL. This memo included the following comments:*

"7 Self Funding:
I explained to you how this distorts cash flow because the self funding new loans leaves short of cash to pay interest*. You can only self fund loans after your interest account is paid.*
Funding for new loans should be referred to LDC or F&I and whoever has the available funds can fund the deal. Until such time as we advise otherwise you should approach F&I in the first instance to do new loans because your lack of interest payments, due partly to self funding has tightened our cash flow."

(16) ***On 23 September 2004****,* ***David Miller prepared a report on behalf of LDC concerning HFL.*** *At page 4 of that report under the heading Conclusions, David wrote:*

- *It is not our responsibility to look after F&I and other Lenders.*
- *From a selfish point of view, it would be in LDC interest to appoint a receiver now while third party lending is high. F&I appear to be realising that their security position is weak. They have discussed with Halifax a proposal for Halifax to form a second company over which F&I have a first security and all future F&I funding would be through that company****. It is likely they would then try and extend Halifax lending, which F&I are directly funded, assigned to the new company these proposals would jeopardise LDC"s position and is therefore unacceptable.*** *See moderate tome letter attached.*
- *If F&I try to force the issue LDC would have to consider calling up our loan and appointing a receiver.*

- *We will await F&I reaction.*

- *Paul Brownie said a second general security for F&I has been discussed and he believes this may be acceptable to them. It would also be acceptable to us...*

- *An approach by LDC to F&I will extinguish their confidence in Halifax which is not LDC interest or in F&I and other stakeholders interest.*

Action
1. No approach should be made by LDC to F&I at this stage.

(17) ***On 22 November 2004**, Stuart Mirfin sent an email to David Miller advising that the quarterly interest due 1 October 2004 not being paid. Stuart also made the following comments:*

"I pointed out to him that he needed to make sure his borrowers had the necessary cash flow to make the repayments, as he needed that cash flow to meet his commitments to both LDC and F&I. Received little response from this.
Sometime in the future, F&I are going to be asking the same questions."

(18) ***On 23 November 2004, David Miller sent an email to Stuart Mirfin stating:***

"I am not too concerned about loans being funds by F&I provided the loans are not being assigned to F&I. We get the monthly declaration re non-assignment of loans. ***I think you should check the mortgage loans advanced this month and confirm that they have not been assigned****. IF not then further advances by F&I only enhances LDC position as first registered general security."*

(19) ***On 14 March 2005, David Miller sent an email to Stuart Mirfin stating:***

*"Have you had a chance to check some of the Halifax mortgage securities to ensure that there have been no assignments to F&I or anyone else****. It is important we keep a close eye on this because I think F&I are becoming concerned about their security position."***

(20) ***On 3 October 2005, Stuart Mirfin of LDC wrote to HFL demanding outstanding interest on loans assigned to LDC for the 1 January 2005, 1 April 2005, 1 July 2005 and 1 October 2005 quarters****.*

(21) ***At a date in early 2006**, John Jannetto and David Miller provided LDC with comments on a proposed settlement agreement between*

LDC, F&I and HFL. ***This report noted significant defaults and arrears on the part of Halifax.***

(22) ***At a board meeting of LDC on 25 January 2006*** *it was noted in respect of HFL:*

"Chris excused from discussion because of possible conflict of interest. John tabled proposed letter to F&I and is working with Dave on letter to Halifax. Meeting approved letter to F&I and it is to be posted tomorrow 15/12/05. ***General discussion followed on likely outcomes and how they will be handled****."*

(23) ***On 31 January 2006****, Stuart Mirfin of LDC wrote to Paul Brownie of HFL* ***confirming write-offs of bad debts from HFL of $768,000.00 in the tax year ended 31 March 2002 and $439,200.00 in the tax year ended 31 March 2003.***

(24) ***On 29 March 2006*** *at a board meeting of LDC it was noted:*

"Halifax Finance: Chris excused from this part of the meeting. A meeting between Paul, Dave and John arranged for ***Thursday 30 March 2006 with decision to be on our interest repayment plan and various other matters."***

(25) ***On 11 August 2006****, John Jannetto sent an email to John Glass, David Miller and Mark Russell attaching a signed copy of the F&I funding agreement* ***and noting potential bad debts from Halifax of $6,932,031.00.***

(26) ***On 26 September 2006****, David Miller sent an email to John Glass noting amongst other things:*

*"****With the conclusion of Halifax arrangements, of which you have been fully informed and approved of****, the interest on the SC Management Limited's loan account (formerly Halifax) is to be restricted to actual interest recoveries.* ***The reason for this is that Halifax loans were at high interest rates and also many were in arrears incurring very high penalty rates.*** *Recoverability of interest is therefore questionable and LDC did not want to account for interest until actual recovery is known. To do so could over state LDC profits..."*

379.10 Clearly Mr **MILLER** seems to be the major player in strategy when it comes to deciding what to do about millions of dollars of interest arrears from Halifax Finance owed to LDC Finance Limited, and as a result of the arrears millions of dollars of write-offs and bad debt provisioning that goes back as

far as 2000 to 2004 when the finance book was owned and operated by LDC Investments Limited, which is now, as we know, called GKW Limited. From these emails and notes it would appear that as at 2004 just before LDC Finance Limited purchased the book of LDC Investments Limited, one would assume that LDC Finance Limited's book was in significant trouble to the tune of many millions of dollars. The emails, notes on meetings or reports would appear to state the following facts as obvious.

379.11 The content of the communications between Mr **MILLER**, and directors and advisors and LDC Investment management numbered paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), and (15) of paragraph 379.9 indicate these significant financial problems (involving many millions of dollars over a relatively short period) with Mr Paul **BROWNIES** company Halifax Finance Limited's poor performance in payment and likely bad debt provisioning was known by the directors of LDC Investments Limited as early as 2000 and certainly well before the LDC Investment Limited's book was purchased by LDC Finance Limited in 2004 in order that the directors could issue a prospectus to raise $20m of subscriptions based on allegedly that books previous good performance. The writer has paraphrased the problems into years below;

1999 Halifax Finance Limited bad loans were concerning the board (as will be shown the Halifax bad loans were not the only bad loans on the book as the company was insolvent when it was purchased in 1999 to the tune of $1.2m)

2000 Director Kevin **ELLIOT** presented a plan to the board to control lending of Halifax, as expressions of concern by directors over likely bad debt provisioning. Directors of LDC Investments Limited to attempt to exert *"control over lending practices of Halifax"* (this behaviour will form a crucial element as to what occurs over the next 7 years in the countdown to catastrophic failure)

2001 Interest arrears of Halifax to LDC Investments Limited stands at $339,594.35 in March and $402,000 in September. (this would equate to bad or suspect loans of approaching $3m and as the reader will come to understand these arrears probably related in substantial part to the helicopter loans to Mr **O'MALLY**, which helicopters were later sold to Heli-logging groups Mr Mark **FORD** and which were ultimately sold for a total loss to Halifax Finance Limited and LDC Finance Limited. That's right not a single cent was recovered.

2002 2002 David **MILLER** reports to directors that likely bad debts of Halifax Finance Limited stand at $1.933m. (at this point the writer submits that the directors should have acted and any responsible director would have acted. The writer feels that the directors did not act because they knew that to act would have caused Halifax Finance Limited to fail and that the losses would have been far greater taking into account the amount of exposure they had to Halifax Finance Limited at that time).

2003 David **MILLER** reports to board that bad debts amounting to $1m from Halifax Finance Limited to be written off in 2002-2003 year. Halifax Finance Limited thought to have bad debts of $3.394m on its books. LDC manager Stuart **MIRFIN** writes to Halifax Finance Limited advising it has written off $768,000 of bad debts from Halifax Finance Limited. LDC Finance Limited directors exerting considerable influence over management of Halifax Finance Limited inclusive of obtaining disclosure of internal documentation showing its business with F and I. May 2003 Halifax Finance Limited arrears to LDC Investments Limited stands at $1,134,910.10. Mr **MILLER is** aware that Mr **BROWNIE** is paying all of F and I interest with effectively money owed to LDC Finance Limited. The directors of LDC Finance Limited are becomes further concerned about security when interest arrears from Halifax Finance Limited to LDC Investments Limited standing at $1.6m. (Such a sum of arrears amounts to bad debt provisioning of about $10m at 16%). The writer

opines that this position is irrecoverable and both LDC Investments Limited and Halifax Finance Limited should have been liquidated as to continue to operate was distinctly criminal because the money being taken from stakeholders was as a result of deceit of the stakeholders by the directors. The only reason why one would not liquidate the company would be if the actual level of irrecoverable insolvency was so bad that it could be proved that such action should have been taken in say 2000 and thus personal liability would have been established against the directors.

2004 Problems with Halifax Finance Limited were worsening to the point receivership considered because Mr **MILLER** thinks LDC Investments Limited can obtain funds from third parties (primarily F and I) because LDC Investments Limited has first ranking debenture. Mr **BROWNIE** given management advice from Mr **MIRFEN** of LDC Investments Limited and Mr **MILLER** is being fed information from Mr **BROWNIE** about F and I becoming concerned about their loan book to Halifax Finance Limited, but Halifax Finance Limited offering a second debenture to calm Messrs **SCHOLFIELD** and **HARDING** down. Mr **MILLER** wants constant observation of Halifax Finance Limited security positions. (This direction by Mr **MILLER** to Mr **MIRFIN** clearly indicates that Mr **MILLER** was "on top of" how bad LDC Investment Limited's position was before it became an issuer of debt securities under the Securities Act 1978 in late 2004. It would, in the writers opinion, indicate that the LDC Finance Limited Ship was leaning ominously to port as it left harbour on its maiden voyage into the debt securities market in late 2004).

2005 LDC Investment Limited problems with Halifax Finance Limited increasing and greater concern over security position of LDC Finance Limited as against F and I worries about their security with Halifax Finance Limited. Late 2005 **MIRFIN** writers to Halifax Finance Limited about outstanding interest on all loans for effectively the entire year. (As the reader will become aware from later content of this

report Mr **MIRFIN** had thought that Mr **BROWNIE** was "no good" from the start and was persistently warning the directors of LDC Investments Limited and then LDC Finance Limited that it was all to end in misery. These warnings were as early as 2000. Mr **MIRFIN** advised the directors that the securities offered by Mr **BROWNIE** were wholly inconsistent with the burgeoning debts owed by Halifax Limited to LDC Investments Limited and then LDC Finance Limited).

2006 Early in the 2006 year LDC Finance Limited directors **MILLER** and **JANNETTO** report to board on proposed deal with F and I. Report noted significant defaults and arrears on part of Halifax Finance Limited. Confirmation of LDC Finance Limited write offs to Halifax Finance Limited for the 2002 and 2003 years amount to over $1.2m. Mr **MILLER** notified John **GLASS** of Perpetual Trust Limited on 11 August 2006 that "potential bad debts" from Halifax stand at $6,932,031.00. (This figure of nearly $7m probably only relates to Heli-logging Limited debts, when in fact most of Halifax Finance Limited debts to LDC Finance Limited were bad. But the email confirmation does disclose that Perpetual Trust Limited was aware of the extent of the problem before the issuance of the LDC Finance Limited prospectus of September 2006, which has been agreed by Perpetual Trust Limited as being "misleading").

379.12 The emails from Mr **MILLER** to Mr **GLASS** of Perpetual Trust Limited on 11 August and 26 September 2006 are damning against both Mr **MILLER** and Mr **GLASS** for the following obvious reasons. Mr **MILLER** is clearly informing Mr **GLASS** that it is his opinion that Halifax Finance Limited bad debts were in the vicinity of nearly $7m as at 11 August 2006 (because both men were aware that the Halifax Finance Limited ledger was now being managed by SC Management Limited pursuant to a deal approved by Mr **GLASS** because of the drastic condition of the ledger). Mr **GLASS** was also aware that LDC had arranged for F and I to buy $1.5 million in shares in LDC Finance Limited and those shares to be secured for payment by an agreement over F and I assets (being the book) for the purpose of complying

with the equity ratios. How then can Mr **GLASS** allow LDC Finance Limited directors to seek to register, and to register, a wholly misleading prospectus as at 19 September 2006 purporting that the only provisioning for bad debts was $100,000.00 as a maximum. Surely in doing so Mr **GLASS** must be in breach of clause 9.5(e) of the trust deed which provides; (emphasis that of the writers)

Trustee to Exercise Reasonable Diligence

(e) Notwithstanding any other provisions of the Deed ***the Trustee will exercise reasonable diligence to ascertain whether or not the Company has committed any breach*** *of the provisions of the deed or any collateral security*

379.13 The legal authority on the duty of care provisions in trust deeds relating to due care covering trustees duties of controlling the issuance of prospectuses is covered in **Porter & Others v New Zealand Guardian Trust Co** Limited High Court CP 136/91 (1996) 7 NZCLC 261,202 (pages 897 to 901 of the annexed dossier) and **Purdue & Ors v Boyd Knight** High Court CP226/93 (1998) 8 NZCLC and the appeal judgment in the same matter found at (1999) 8 NZCLC (pages 948 to 963 and 964 to 972 of the annexed dossier respectively). The writer also refers you to s62 of the Securities Act 1978 concerning the liability of Trustees and Statutory Managers, which provides; (emphasis that of the writers)

62 Liability of trustees and statutory supervisors
(1) Subject to the following provisions of this section, ***any provision of a deed or contract relating to debt securities or participatory securities shall be void in so far as it would have the effect of exempting a trustee or statutory supervisor thereof from or indemnifying him or her against liability for breach of trust where he or she fails to show the degree of care and diligence required of him or her as trustee or statutory supervisor having regard to the provisions of any deed conferring on him or her any powers, authorities, or discretions.***
(2) Subsection (1) of this section shall not invalidate—
(a) Any release otherwise validly given in respect of anything done or omitted to be done by a trustee or statutory supervisor before the giving of the release; or
(b) Any provision enabling such a release to be given—
(i) On the agreement thereto of a majority comprising not less than three fourths in value of the security holders voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
(ii) Either with respect to specific acts or omissions or on the trustee or statutory supervisor being wound up or ceasing to act.
(3) Subsection (1) of this section shall not operate—

(a) To invalidate any provision in force at the commencement of this Part of this Actor
(b) To deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him or her while any such provision was in force.

379.14 The writer will return to comment on the application of this section and the authorities to the facts of this matter at a later time.

379.15 The writer must say at this time that it would appear from the emails referred to at paragraph 378.8 of this report that the directors of LDC Finance Limited, but in particular Mr **MILLER**, seem to be controlling Mr **BROWNIE** in his operation of Halifax Finance Limited to the point of being clearly operating (as shadow or deemed directors) the company for their apparent benefit. If this could be proven, and the writer feels that the content of this report will prove so, then Mr **MILLER** and the other directors of LDC Finance Limited would be responsible for the collapse of Halifax Finance Limited, the collapse of F and I (in that they were aware of, (and in fact promoted) the activities of Halifax Finance Limited as against F and I as a creditor) and ultimately the collapse of LDC Finance Limited (in that they allowed Halifax Finance Limited to operate in such a irresponsible manner that collapse of all of the above named entities was a certainty, but that the directors of LDC Finance Limited would attempt to evade responsibility for their behaviour by defrauding the stakeholders of F and I and the partners of F and I). The writer justifies this comment on the following grounds;

- Mr **BROWNIE** was "controlled" by the Directors of LDC Finance Limited in that;

    - Mr **BROWNIE** wrote off debts in Halifax Finance Limited at the request of Mr **MILLER** and LDC Finance Limited directors.

- Mr **BROWNIE** regularly met with Mr **MILLER** and LDC Finance Limited directors and discussed how he was to handle further Halifax Finance Limited lending.

- Mr **BROWNIE** regularly discussed his dealings with F and I with Mr **MILLER** and the LDC Finance Limited directors to the point of seemingly always favouring a better outcome for LDC Finance Limited over F and I.

- Mr **BROWNIE** was allowed to run massive interest arrears to LDC Finance Limited whilst paying F and I to the betterment of LDC Finance Limited and the ultimate detriment of F and I. There can be only one sensible explanation for that behaviour and that is an intention to 'dupe' F and I.

- Mr **BROWNIE** did a deal with **MILLER** and the directors of LDC Finance Limited to hand over the Halifax Finance Limited book and not suffer any consequence as a result of the terrible condition of the book because it is obvious that Halifax Finance Limited had been effectively allowed to run in the manner it had been with the effective consent of the LDC Finance Limited directors and particularly Mr **MILLER**.

- Mr **BROWNIE** has never been taken to task by the directors since the receivership of LDC Finance Limited or indeed by the receiver. **BROWNIES** behaviour is not something that can be forgiven by the directors of LDC Finance Limited due to its impact on the stakeholders, creditors and shareholders position, with Messrs **SCHOLFIELD** and **HARDING** being significant shareholders as a result of the two fraudulent deals. The LDC Finance Limited's directors position relating to Mr **BROWNIE** and Halifax Finance Limited can only be explained because they are likely aware that they are caught by the shadow

director provisions of the Companies Act 1993 and therefore are liable for the reckless trading of Halifax Finance Limited against the interests of the creditors to that company which, as aforesaid are in part the partners to F and I Messrs **SCHOLFIELD** and **HARDING** and as a result of F and I's failure, the stakeholders to F and I through common law and the Contracts (Privity) Act 1982.

379.16 The law governing what constitutes actions that would deem you to be a "shadow" or "deemed" director are found in Fatupaito v Bates [2001] 3 NZLR at 386; see in particular O'Regan J's reference to the decision of the English Court of Appeal in **Re Tasbain Ltd** (No3) [1992] BCC 358 at para [28]; (emphasis that of the writers)

The Court of Appeal found that some of these factors had little weight (e.g. negotiating a moratorium), but that others were more significant, ***particularly monitoring Tasbians trading…"***

And at para [35] his honour cites the case of **Re Hydrodam (Corby) Ltd** [1994] 2 BCLC 180.

The next case is Hydrodam (Corby) Ltd [1994] 2 BCLC 180. Mr Everard particularly emphasized the passage, at P 183, where Millett J distinguished between de facto and shadow directors. Millett J defined a de facto director as one who is held out as a director by the Company, and claims or purports to be a director, although never actually or validly appointed as such, ***who undertakes functions in relation to the company which could properly be discharged only by a director****. Millett J found it was not sufficient to show that a person was involved in the management of the company's affairs or undertook tasks in relation to its business, which can properly be performed by a manager below board level.* ***He then defined a shadow director as one who lurks in the shadows, sheltering behind others who he claims are the only directors of the company to the exclusion of himself****."*

379.17 It cannot be said that writing off debts of many hundreds of thousands of dollars and otherwise managing the other major decisions affecting both Halifax Finance Limited's , LDC Finance Limited's, and F and I's futures were beneath board level. In part it would appear that Mr **MILLER** acted as a de facto director and on occasion "lurked behind the scenes" in the "shadows". The writer also feels that the content of the emails can be seen

as only the tip of the ice berg and that further investigation will reveal other evidence of the relationship. That further investigation should be done by the Government agencies tasked with such a duty. Later on in this report the writer will reveal a deal done between Mr **MILLER** and Mr **BROWNIE** relating to a $1m subordinated loan (that just does not make any sense) from Mr **BROWNIES** family trust to LDC Finance Limited which will disclose the level of control Mr **MILLER** exerted over Mr **BROWNIE**.

379.18 At paragraphs (4), (8) and (9) of Mr **NOONES** report (found at paragraph 375 of this report), Mr **NOONE** is clearly advocating the following inexplicable actions be taken by the directors of LDC Finance Limited in order that they can attract a possibly buyer;

- to "tidy up" their operations by "removal of the Halifax Finance Limited and Heli-logging advances" and to sell LDC Finance Limited Heli-logging advances to Halifax Finance Limited and the good Halifax Finance Limited loans be transferred to LDC Finance Limited"

379.19 The promotion by Mr **NOONE** to LDC Finance Limited directors that they could influence Mr **BROWNIE**, who was still the only director of Halifax Finance Limited, to buy $9m to $10m of bad debts from LDC Finance Limited, and transfer all of his good loans to LDC Finance Limited, confirms that Mr **NOONE** saw Mr **MILLER** and the other directors of LDC Finance Limited as either shadow or de facto directors of Halifax Finance Limited. How else could have Mr **NOONE** sensibly have come to this conclusion?. The writer is aware that there was some deal done between Halifax Finance Limited and SC Management Limited relating to the collection of the Halifax Finance Limited ledger, but that does not impose on Mr **BROWNIE** a state of legally obliged servitude that would see his company able to be stripped of good loans to be replaced with $7m to 9m of irrecoverable loans. As it will turn out, this swapping of bad loans between Halifax Finance Limited and LDC Finance Limited was used frequently as a way of duping stakeholders by hiding bad loans from being disclosed in the accounts. No doubt the plan was devised by Mr **MILLER** as a way of

saying the loans were in fact, through the process of swapping, "washed clean", coming out the other end as apparently "good loans". The process was quite puerile actually, hardly requiring great thought. This loan swapping process would work in the following way. LDC Finance Limited would have a loan to say Heli-logging Holdings Limited for the principal sum of $2m. Since the loan was taken out Heli-logging Holdings Limited had not paid any interest and was in arrears of interest of say $350,000.00. To hide the lack of payment of interest Mr **MILLER** would transfer the loan to the Halifax Finance Limited book as a loan of $2.35m. Halifax Finance Limited may run the loan for say two months whilst no interest was still being paid and then transfer the loan back to LDC Finance Limited for the sum of say $2.4m, but as a fresh loan with no interest arrears. Of course all of this not being reported in the prospectuses and the monthly certifications is a massive misstatement of fact by way of omission to accurately inform the trustee and the public of the nature and real performance of the loan. It would seem impossible that experienced senior accountants like Messrs **NOONE**, **HOLLIS** and **FISK** could not decipher this practice and as a result allege against the directors of LDC Finance Limited that they had knowingly operated a company whilst insolvent. Equally Messrs **STYANT** and **LANCASTER** of Perpetual Trust Limited would have to have been aware of this practice after they placed LDC Finance Limited into receivership.

379.20 The following schedule indicates how loans in the vicinity of $3.4m can burgeon to over $7.462m in just over 4 years if no interest was being paid which was the case with a significant number of the Halifax Finance Limited and LDC Finance Limited loans. The following figures are indicative of the initial loans to Heli-logging Holdings Limited in late 2002 and the fact that Heli-logging Holdings Limited never paid a cent of interest on the initial loan of over $3m till it was liquidated in 2007-2008. As the reader will become aware Heli-logging Group borrowed millions of dollars more over the 2004 to 2006 years and again never paid a cent of interest to either Halifax Finance Limited or LDC Finance Limited. These figures are indicative of such growth in debt and it must be remembered that interest

was being paid by LDC Finance Limited to its stakeholders during this time and that therefore the debt relating to the interest portion is as real as the principal portion, excepting the margin of profit that should have been returned to LDC Finance Limited and Halifax Finance Limited.

March 2002-March 2003

LDC Finance Limited loan to Heli-logging		Annual Interest due and **NOT** paid	Total Owed
Loan (A)	$1,600,000.00	$224,000.00 @14%	$1,824,000.00
Halifax Finance Limited loan to Heli-logging			
Loan (B)	$1,800,000.00	$252,000.00 @14%	$2,052,000.00
Totals	**$3,400,000.00**	**$476,000.00**	**$3,876,000.00**

Joint Journal Transfer of loans (A) and (B) between Halifax Finance Limited and LDC Finance Limited occurs to fraudulently "freshen" the loans as at the start of the March 2003 to March 2004 year.

LDC Finance Limited loan to Heli-logging		Annual Interest due for that year	Total owed
Loan (B)	$2,052,000.00	$287,280.00 @14%	$2,339,280.00
Halifax Finance Limited loan to heli-logging			
Loan (A)	$1,824,000.00	$255,360.00 @ 14%	$2,079,360.00
Totals	**$3,876,000.00**	**$542,610.00**	**$4,418,640.00**

Joint Journal Transfer of loans (B) and (A) back between Halifax Finance Limited and LDC Finance Limited occurs to fraudulently "freshen" the loans as at the start of the March 2004 to March 2005 year.

LDC Finance Limited loan to Heli-logging		Annual Interest due and **NOT** paid	Total Owed
Loan (A)	$2,079,360.00	$291,110.40 @14%	$2,370,470.40
Halifax Finance Limited loan to Heli-logging			
Loan (B)	$2,339,280.00	$373,349.09 @14%	$2,666,779.20
Total	**$4,418,640.00**	**$664,459.49**	**$5,037.249.60**

Joint Journal Transfer of loans (B) and (A) back between Halifax Finance Limited and LDC Finance Limited occurs to fraudulently "freshen" the loans as at the start of the March 2005 to March 2006 year.

LDC Finance Limited loan to Heli-logging		Annual Interest due and **NOT** paid	Total Owed
Loan (A)	$2,370,470.40	$331,865.86 @14%	$2,702,336.26
Halifax Finance Limited loan to Heli-logging			
Loan (B)	$2,666,779.20	$373,349.09 @14%	$3,040,128.29
Total	$5,037,249.60	$705,214.95	$5,742,464.55

Joint Journal Transfer of loans (A) and (B) back between Halifax Finance Limited and LDC Finance Limited occurs to fraudulently "freshen" the loans as at the start of the March 2006 to March 2007 year.

LDC Finance Limited loan to Heli-logging		Annual Interest due and **NOT** paid	Total Owed
Loan (A)	$2,702,336.26	$378,327.08 @14%	$3,080,663.33
Halifax Finance Limited loan to Heli-logging			
Loan (B)	$3,040,128.29	$425,617.96 @14%	$3,465,746.25
Total	$5,742,464.55	$803,945.04	$6,546.409.58

Joint Journal Transfer of loans (B) and (A) back between Halifax Finance Limited and LDC Finance Limited occurs to fraudulently "freshen" the loans as at the start of the March 2007 to March 2008 year.

LDC Finance Limited loan to Heli-logging		Annual Interest due and **NOT** paid	Total Owed
Loan (A)	$3,080,663.33	$431,292.87 @14%	$3,511,956.20
Halifax Finance Limited loan to Heli-logging			
Loan (B)	$3,465,746.25	$485,204.47 @14%	$3,950,950.72
Total	$6,546,409.58	$916,497.34	$7,462,906.92

Joint Journal Transfer of loans (A) and (B) back between Halifax Finance Limited and LDC Finance Limited occurs to fraudulently "freshen" the loans as at the start of the March 2008 to March 2009 year.

LDC Finance Limited loan to Heli-logging		Annual Interest due and **NOT** paid	Total Owed
Loan (A)	$3,511,956.20	$491,673.87 @14%	$4,003,630.07
Halifax Finance Limited loan to Heli-logging			
Loan (B)	$3,950,950.72	$553,133.10 @14%	$4,504,083.82
Total	$7,462,906.92	$1,044,806.97	$8,507,713.89

379.21 If LDC Finance Limited was in very bad shape from say 2004 onwards and virtually had no income from a majority of its finance book receivables it must have been using fresh stakeholders deposits to pay historical interest to historical stakeholders which is fraud.

379.22 The next questions must be; why would Mr **NOONE** think that Mr **BROWNIE** would want to buy millions of dollars of irrecoverable debt from LDC Finance Limited, and at the same time hand over all of Halifax Finance Limited good debt to LDC Finance Limited, in order that LDC

Finance Limited can be presented to the market place for sale (having gotten rid of millions of dollars of debt, and secured millions of dollars of assets, by a stroke of a pen)?. Surely these actions if actually done by Mr **BROWNIE** would have amounted to Mr **BROWNIE** committing fraud because he has to treat creditors fairly no matter whether one party has a first ranking security. There is still a lawful process of making a demand, which would include putting in an independent liquidator, valuing the assets of the company, checking the operation of the company for fraud and other serious misdemeanor and the liquidator deciding whether the first security is due and payable in all respects.

379.23 And where had the bad debt gone? Surely the money was still owed by LDC Finance Limited to the stakeholders, or still formed part of the company's required ratios?. Where was the shortfall of $7m going to come from to fill the hole if they went broke because of the limited chances of success? Well that was in the **NOONE** plan as well, if you read between the lines. Mr **NOONE** must have known that his plan was taking F and I stakeholders for a ride to defraud a further $4 to 5.5M in assets, and in causing the failure of the partnership get Messrs **SCHOLFIELD** and **HARDING** to front say $3.5m to $4m in assets to their stakeholders to calm them down. Clever or just plain criminal?. The following issues are also of considerable importance to the overall knowledge of Mr **NOONE** being aware of the fact that the lose provisioning for bad debts for LDC Finance should have been far greater.

379.24 It is clear from Mr **NOONES** knowledge of the Halifax Finance Limited position of complete insolvency that it cannot pay a cent for the Heli-logging Group receivables, and he does not suggest that it has a value at all when he uses the terms *"are "sold" to Halifax"*. Mr **NOONE** is actually admitting that he is aware that the total Heli-logging Holdings Limited's account of about say $9 to $10m is a complete loss. So where is this complete loss stated in the prospectus and made obvious to enable an average mum and dad investor to understand how bad LDC Finance Limited's **ACTUAL** position is. If the actual irrecoverable position had been stated then the

directors would have had no defence to a claim brought by F and I partners and stakeholders that they had been duped, so of course the real position is hidden.

379.25 The proposition of swapping good and bad loans by Mr **NOONE** is preposterous, unless he knew that such a dishonest deal was likely to be available between Halifax Finance Limited and LDC Finance Limited directors which would explain why Halifax Finance Limited has not been liquidated by the directors of LDC Finance Limited and Mr **BROWNIE** brought to account for reckless trading. As aforesaid it is the writers' belief that Mr **BROWNIE** would turn on Mr **MILLER** and tell all. Are the receivers going to say that it is just not worth chasing Mr **BROWNIE**?. According to Messrs **SCHOLFIELD** and **HARDING** when they have asked Mr **HOLLIS** to chase Mr **BROWNIE**, Mr **HOLLIS'S** reply is that Mr **BROWNIE** is being "helpful". The writer knows how "helpful" Mr **BROWNIE** has been over the years to Mr **MILLER**, and continues to be as "helpful" now that Mr **MILLERS** reckless and dishonest trading has nearly come to its end and is being uncovered for all to see in this report.

379.26 The activity of swapping loans, and Mr **NOONE** seeing no problem with the process, confirms that Mr **NOONE** was very well aware of the "flexibility" of the integrity of the individuals involved and was in fact promoting such a dishonest deal. They must have been like pigs wallowing around in money rather than mud. Unfortunately it was stakeholder's money!

Mr NOONE the snake oil salesman

379.27 What is of significant importance to proving the writers allegations of a conspiracy between certain individuals is that Mr **NOONE** is saying (in his report of 8 March 2007) that unless Halifax Finance Limited falsely asserts that it has "bought" most of the bad debts from LDC Finance Limited, and LDC Finance Limited "obtains" all of the good Halifax Finance Limited book (which was largely, if not all, F and I monies invested in Halifax Finance Limited), then LDC Finance Limited will not be able to be sold to

clear debts and the plan is doomed to fail. Mr **NOONE** is also saying that F and I partners need to invest another $4m in finance receivables and as much other (personal) money as they can to effectively, if you read between the lines, save LDC Finance Limited.

379.28 The importance of this statement by Mr **NOONE** is that he is saying that if the Heli-logging debts were not sold, and the good deals of Halifax Finance Limited not "obtained" by LDC Finance Limited, then there is no chance of him being able to sell LDC Finance Limited for anywhere near what is owed to its stakeholders. It is important that the reader understands that Mr **NOONE** is alleging to the reader of his report that he can obtain a premium above the actual value of the book of LDC Finance Limited, once his plan is implemented, which is an absolute nonsense in the market place that prevailed at that time. Although the report was addressed to the directors of LDC Finance Limited Mr **NOONE** knew that his report would be shown to Messrs **SCHOLFIELD** and **HARDING** and thus it would be important for him to make these assertions as to possible outcomes as if he believed them to be reasonably valid and achievable. Mr **NOONE** is clearly aware that Messrs **SCHOLFIELD** and **HARDING** are already substantial shareholders in LDC Finance Limited and that they would be relying on his integrity in relation to his reported findings in his report being closely representative of his investigation and high level review of the financial position of LDC Finance Limited's finance receivables. It is also important to note that Mr **NOONE** had told Mr **HARDING** in January 2007 that he felt that he could get F and I $4m from the sale of LDC Finance Limited. The writer will return to the importance of this statement by Mr **NOONE** at a later time.

379.29 From the starting point that the Heli-logging debts were not sold from LDC Finance Limited to Halifax Finance Limited and the good Halifax Finance Limited loans were not obtained by LDC Finance Limited it is obvious that the directors of LDC Finance Limited and Mr **NOONE** knew that the deal put to F and I was now **not** going to be done, and that as a result, they knew there was ABSOLUTELY NO CHANCE OF LDC FINANCE LIMITED

BEING SOLD OR SURVIVING SHORT TERM. As a result of LDC Finance Limited's failure the first ranking security over Halifax Finance Limited would be called up and F and I would also fail. So why did they proceed to take F and I's $4m for 4,000,000 worthless LDC Finance Limited shares and why did they promote LDC Finance Limited continuing to trade on taking further substantial amounts of stakeholders money. Then there is the prospectus of 27 April 2007 which does not report this fatal position and in fact reports that sufficient provisioning has been put in place. The prospectus fails to report that the directors must return the full amount of the stakeholders deposits taken in from the date of the misleading September 2006 prospectus as well, but the writer will return to that matter at a later time.

379.30 The only appropriate advice Mr **NOONE** should have given to the directors and shareholders and prospective shareholders of LDC Finance Limited was that the company should be placed into immediate liquidation and an investigation occur as to how it has been run over the last two to three years.

379.31 The agreement between Mr **NOONE** and the LDC Finance Limited directors was to promote this falsehood of a possible sale of LDC Finance Limited being able to assist F and I stakeholders in order to induce Messrs **SCHOLFIELD** and **HARDING** to commit to the plan believing that the F and I stakeholders would be better off. The writer asked these two questions of Mr **MILLER** as at July 25 2008 about whether Mr **NOONE** had brought any prospective purchasers; page 20 of the annexed dossier (emphasis that of the writers).

*"**You spoke of PWC (in particular Mr Noone) stating that he had buyers for LDC (and F and I) were going to hang on the back of that sale because of the purchase of shares) please provide the names of the companies approached and their replies?** Note: please do not state that this is a matter of privacy as the sellers and purchasers are companies*

*Mr Noone must have presented to these companies the same documents that he presented to F and I and LDC saying how bad the position was, **please provide the documents provided to the finance companies by Mr Noone***

that were possible buyers? Note: of course <u>LDC would have copies of such documents and knowledge of such potential purchasers</u>?

379.32 Mr **MILLERS** reply (email dated 25 July 2008) is the following ludicrous position given that the whole alleged reason for the plan (promoted to Messrs **SCHOLFIED** and **HARDING**) was to attempt to sell the "sunken ship" to a successful and wary buyer at a premium above its actual "reported" value in order that somehow Messrs **SCHOLFIELD** and **HARDING** would benefit; page 20 of the annexed dossier (emphasis that of the writers);

*"**We do not know who Mr Noones interested parties were or what information he supplied <u>as this was not disclosed to us</u>.** You should refer inquiry to him"*

379.33 In the writers opinion this is palpable nonsense from chartered accountant Mr **MILLER** and the assurance manager of Pricewaterhousecoopers Mr **NOONE** as the whole plan as described in Mr **NOONES** report of 8 March 2007 was to sell the LDC Finance Limited business. Yet not one letter, email, note or phone call about how the sale process was going, or who the interested parties were. This lack of interest is noteworthy to say the least because the directors of LDC Finance Limited surely would have wanted regular updates as to Mr **NOONES** progress on this front. But when you consider that the **NOONE** plan was not implemented they all would have known that the company was valueless and was about to fail, but that at least they had obtained by false pretence, another $4m to $5.5m of F and I assets to cover some more of their bad debts.

379.34 This also raises the question; How could Mr **NOONE** feel that it was appropriate for Pricewaterhousecoopers, (when he was aware of the criminality of the actions of the directors of LDC Finance Limited), to be receivers of LDC Finance Limited and F and I, and not subsequently report the actions of the LDC Finance Limited directors relating to trading the LDC Finance Limited insolvently and effectively defrauding Messrs

SCHOLFIELD and **HARDING** and the F and I stakeholders, and indeed the LDC Finance Limited stakeholders?

379.35 But of course the facts speak for themselves. Mr **NOONE** felt that he could hide his actions and the actions of the directors of LDC Finance Limited promoting a grossly misleading prospectus dated 27 April 2007 (pages 211 to 287 of the annexed dossier (see also amended prospectus pages 288 to 336 of annexed dossier) by Pricewaterhousecoopers acting as receivers and not liquidators. As liquidators Pricewaterhousecoopers would have to be subject to the concerns of the creditors rather than a grantor, although as already stated subsection (4) of section 18 "General duties of receivers" of the Receiverships Act 1993 allows a receiver to refrain from acting in the interests of the grantor and act to protect the interests of other parties inclusive of creditors or stakeholders.

379.36 It is the writers opinion that a truly independent receiver would have acted to unravel the reasons for the collapse and sought to hold individuals responsible for reckless trading and numerous misleading prospectuses probably from the very commencement of LDC Finance Limited becoming an issuer as at 5 July 2004. The best that Mr **HOLLIS** has managed on this front is to charge that Messrs **SCHOLFIELD** and **HARDING** operated without a registered prospectus, which means that he accepts that all of the funds that he and **NOONE** promoted the transference of to LDC Finance Limited are subject to an illegal contract. Their arrogance and stupidity beggars belief, but the writer does believe that arrogance and ignorance are first cousins.

379.37 To cover all bases, as it would appear that Mr **NOONE** in the report is ludicrously inferring that the LDC Finance Limited directors did not know the September 2006 prospectus was initially grossly misleading, then the directors are caught by s53(1) of the Securities Act 1978 which materially provides; (emphasis that of the writers)

53. Every issuer to keep proper accounting records

(1) Every issuer of securities offered to the public (other than securities that have been redeemed) ***shall ensure that there are kept at all times accounting records that*** *–*

(a) Correctly record and explain the transactions *–*

(i) In the case of an issuer of equity securities, debt securities, or life insurance policies of the issuer;

(ii) In the case of an issuer of participatory securities, units in a unit trust, or interests in a superannuation scheme, of the scheme and;

(b) ***Will at any time enable the financial position*** *of the issuer or scheme, as the case may be****, to be determined with reasonable accuracy****; and*

(c) ***Will enable the issuer to ensure that the financial statements*** *of the issuer or the scheme, as the case may be,* ***comply with the Financial Reporting Act 1993 and any applicable regulations under this Act; and***

(d) Will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited

(2) The accounting records referred to in subsection (1) of this section must be kept in a manner that will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited.

(3) ***Without limiting subsection (1) of this section****, accounting records kept under that subsection shall contain, in respect of the issuer or scheme concerned –*

(a) Entries of money received and spent each day and the matters to which those entries relate:

(b) A record of the assets and liabilities of the issuer or scheme

Back to the previous deal of mid 2006 when F and I purchased 1,500,000 LDC Finance Limited shares for $1.5m when LDC Finance Limited was irrecoverably insolvent.

379.38 The writer was also wondering how Mr **NOONE** had not commented on the following matters that should have concerned him greatly as to the misrepresentations to stakeholders and most likely F and I partners Messrs **SCHOLFIELD** and **HARDING.** As LDC Finance Limited was in the hole for a minimum of $4m according to Mr **NOONE** (as it will be shown this figure is actually probably $25m or more) as at the date of the September 2006 prospectus, what nonsense is the ordinary A shares in LDC Finance Limited being valued at $1.40 (731,000) or a worth of $1,020,000.00 and the preference shares were at $1.00 (1,500,000) or a worth of $1.5m. Shares traded at arms length with such numbers of losses would have no value

whatsoever and Mr **NOONE** would have known this. Relating to the value of shares in LDC Finance Limited the writer asked Mr **MILLER** the following questions in an email dated 25 July 2008; page 20 of the annexed dossier; (emphasis that of the writers)

(1) *What ever the shares were David,* ***what was the "value" obtained for inventing $1.5 million dollar loan by both sides****.* ***LDC apparently invented $1.5m owed to them by F and I (because you never fronted any cash) but as F and I was insolvent, why would LDC lend $1.5m dollars to an insolvent company? This transaction must have been against your guidelines for lending, or was it not against your guidelines at that time***

(2) ***As F and I were insolvent****, or at least in incredibly bad shape,* ***how did you manage to get the loan of $1.5m past the credit department guidelines and your responsibilities to your investors and the trustees?***

(3) ***How was this loan of $1.5m reported to the trustees moving forward from the month the loan was made, and in your prospectus****?*

(4) ***If the loan of $1.5m was reported as equity in the prospectus and in the reports to the trustees, was the share sale and the fact that no money changed hands reported to the trustees and in the prospectus***

(5) How many other such loans (that involved no actual money changing hands and the issue of "preferential shares" took place)

(6) ***Are you saying that the F and I partners were told by LDC that the purchase of $1.5m worth of LDC preferential shares would return them the $1.5m and give them income either through capital growth in share value of dividends. If so could you please supply the information that was given to F and I partners that made them think that giving LDC the right to call on $1.5m of F and I assets was never likely to happen and that the value of their shares in LDC was worth $1.5m.***

379.39 These are important inquiries of Mr **MILLER** for the following reasons. It was around May 2006 that Halifax Finance Limited finally had run out of credit lines and Messrs **BROWNIE** and **MILLER** had to put their hands up and tell Messrs **SCHOLFIELD** and **HARDING** that things were bad at Halifax Finance Limited. Not surprisingly a call from Mr **HARDING** to Halifax Finance Limited to speak to Mr **BROWNIE** got a reply that Mr

HARDING should talk to Mr **MILLER**. In short order Mr **HARDING** received a call from Mr **MILLER** requesting his attendance at the offices of LDC Finance Limited. If Mr **BROWNIE** was in charge of Halifax Finance Limited the meeting would have been called by him at the Halifax Finance Limited Offices and not by Mr **MILLER** at the LDC Finance Limited's offices.

379.40 Mr **MILLER** stated at various meetings during that time to Messrs **HARDING** and **SCHOLFIELD** that Halifax Finance Limited's account with LDC Finance Limited was "up to date" and that he was in a stronger position because LDC Finance Limited had a first ranking debenture over the assets of Halifax Finance Limited, but that he wanted to help out if he could. A quick look back to the content of paragraph 379.9 of this report will indicate that Mr **MILLER** is not capable of telling the truth as the LDC Investment Limited and then LDC Finance Limited ledgers with Halifax Finance Limited were "really bad" and probably largely irrecoverable since 2001. According to Mr **HARDING** Mr **MILLER** always controlled the meetings representing both LDC Finance Limited and Halifax Finance Limited and stated that Halifax Finance Limited was in this position because of its dealings it had undertaken with Heli-logging Limited.

379.41 No mention was made by Mr **MILLER** to Messrs **SCHOLFIELD** and **HARDING** of his in-depth involvement with Halifax Finance Limited and Heli-logging Limited, and his representation of Halifax Finance Limited, LDC Finance Limited, and Heli-logging Limited, when dealing with another company Commercial Factors Limited, (which dealings will be shown as very important to proving Mr **MILLER** was a de facto director of all number of companies that were hopelessly insolvent due to their inter-related dealings over some 30 to 40 year old Wessex and Scout helicopters that the CAA referred to as "old military shitters").

379.42 Messrs **HARDING** and **SCHOLFIELD** were understandably shaken and surprised by F and I's seemingly immediate demise given that up until that time the partnership was well run and profitable, although they were aware

of about $800k of doubtful debts. See Mr **NOONE's** report to LDC Finance dated 8 March 2007 about how the F and I ship was generally run;

"We conclude that at a high level the ledgers overall are reasonably well run"

379.43 It was from this stated position of apparent strength that Mr **MILLER** and certain other directors of LDC Finance Limited (particularly Mr **JANNETTO** who had attended some meetings) suggested the following plan as a solution;

- That F and I purchase $1.5m worth of shares in LDC Finance Limited by LDC Finance Limited writing up a "paper loan" of $1.5m from LDC Finance Limited to F and I with the security for the loan being the assets of the F and I partnership. Mr **MILLER** wanted personal guarantees from Messrs **HARDING** and **SCHOLFIELD**. Mr **MILLER** stated that LDC Finance Limited whilst not having any solvency issues was out of kilter with the various provisions of its trust deed.

- LDC Finance Limited, as a sweetener, would supply a credit facility for $500,000.00 to assist F and I with its solvency-cash flow position going forward because Halifax Finance Limited would no longer be paying any interest. It must be remembered that at this time Messrs **SCHOLFIELD** and **HARDING** did not know that their non survivable position was as a direct result of Mr **MILLERS** and **BROWNIES** operation of Halifax Finance Limited, and their behaviour with the Heli-logging group.

379.44 Messrs **HARDING** and **SCHOLFIELD** did not want to commit to this plan and so approached F and I's bank to arrange a facility for its future needs whilst it tackled the Halifax Finance Limited problem (the Heli-logging Limited problem).

379.45 Unfortunately for Messrs **HARDING** and **SCHOLFIELD** the climate had changed and their trading bank was unsympathetic leaving the only option to accept the offer from Mr **MILLER**.

379.46 It is interesting to note that the $1.5m allegedly loaned by LDC Finance Limited to F and I for the purchase of the $1.5 million $1.00 shares is stated in the September 2006 prospectus under "receipts" (page 310 of the annexed dossier);

Cash Flows from Financing Activities

Cash was provided from	2007	2006
Receipts from investors	-	4,976,084
Receipts from ordinary share capital	**1,500,000**	420,000

379.47 This is in the writers opinion a significant misstatement for the following reasons. The reasons for the deal were not explained in the prospectus and the true position of F and I and LDC Finance Limited were not placed in the prospectus. The shares were valueless, the money had not been "injected" as alleged (and in fact did not exist), both entities financial positions were non survivable, and the security given for the loan was not available to LDC Finance Limited (or indeed for F and I to give) because they were allotments illegally subscribed to F and I in the first instance. The whole stated position was a litany of lies and everyone involved should have known this, and the writer believes Mr **MILLER** and the other directors of LDC Finance Limited and the Pricewaterhousecoopers and Buddle Findlay "suits" would (or at least should) have known the truth, the whole truth and nothing but the truth, and given their standing in the financial community should have acted in the best interest of **THE COMPANY** being the stakeholders, directors, shareholders, and pursuant to the provisions of good faith found in the Companies Act 1993, the creditors. In a nutshell the share deal "suggested" to the subscribing public that someone *"with assets and acumen"* had decided to *"buy into a good thing"* which couldn't have been further from the truth.

380 In the writers opinion it is inconceivable that Mr **NOONE** was not aware that the previous 2006 deal between F and I and LDC Finance Limited, as it was declared in the prospectus, as funds effectively received into the company was a significant misstatement (in that no monies had transferred from LDC Finance Limited to F and I as a loan to F and I, or monies transferred back to LDC Finance Limited from F and I for payment for the shares). It plainly reads as if LDC Finance had received payment in cash of $1.5m for 1,500,000 LDC Finance Limited shares. The reason for the deception was simple. If experienced businessmen were buying LDC Finance Limited shares then surely it was a sound company to invest in. Further the writer believes that the "rumour mill" was starting to make noises about LDC Finance Limited and Halifax Finance Limited and LDC Finance Limited had over 50% basically "on call" deposits. The LDC Finance Limited directors knew that a single rumour would be enough to unravel the extent of the insolvency within days when on call deposits were withdrawn by worried investors.

381 As stated Mr **NOONE** would also have known that LDC Finance Limited was irrecoverably insolvent, and so therefore had misrepresented its position and the value of the shares to Messrs **SCHOLFIELD** and **HARDING** and on that ground alone the two deals were voided.

382 Mr **NOONE** would have known that the security offered was voidable irregular allotments, and LDC Finance Limited could not assist persons to buy shares in the company when it was insolvent, or likely insolvent, or that the loan to assist the purchase of the shares was above 5% of the companies value. See paragraphs 148 to 153 of this report.

383 Equally the funding line of $500,000.00 supplied by LDC Finance Limited to F and I (an insolvent entity) as a "sweetener" to F and I to keep it going because Halifax Finance Limited had stopped paying interest because it too was hopelessly insolvent was not disclosed to the stakeholders. All in all the September 2006 LDC Finance Limited prospectus was about as misleading as a prospectus could possibly get. That is until you unravel the misstatements in the April 2007 prospectus, which Mr **NOONE** and the directors of LDC Finance Limited must have known about.

384 To contemplate (and in fact promote) such behaviour as stipulated in his plan was to "incite and/or counsel" (s66 (1)(d) Crimes Act 1961) all parties to breach ss135 Reckless Trading [not to allow substantial risk of serious loss]; 136 Duty in relation to obligations [need for belief on reasonable grounds in ability to perform obligations]; 137 Directors duty of care, and of course breaches of the already spoken about provisions of the Securities Act 1978 and the Crimes Act 1961. In effect Mr **NOONE** is unequivocally promoting that not to commit to the high risk of failure plan would incur personal liability on the directors of LDC Finance Limited, and that the "reward" for the high risk behaviour would be to diminish their liability by obtaining assets from F and I investors unlawfully.

BROWNIES subordinated loan to LDC Finance Limited to "falsely assert" LDC Finance Limited had sufficient equity when it became an issuer on 5 July 2004. BROWNIE completely controlled by his master, Mr David Gordon MILLER

385 LDC Finance Limited obtained a subordinated loan of $1m from Mr Paul **BROWNIES** family trust and LDC directors Messrs **ELLIOT**, **HARDIMAN**, and **MILLER** used this subordinated loan document as proof of a substantial capital injection when seeking registration as an issuer under the Securities Act 1978 in 2004. In fact the directors included the loan document dated 30 June 2004 in the company's initial prospectus dated 5 July 2004 (pages 572 to 582 of the annexed dossier), when trying to raise $30m from the public. Whilst subordinated loans are not common, they could be described as being a security tool requiring a great deal of care when being prepared to protect the lender because the lender is subject to payment from the borrower after the borrower has preferentially paid others. This is where the content of the **BROWNIE** document is extremely unusual. In particular, but not limited to the following;

385.1 The "Senior Creditors" are not named which is highly unusual because this means that Mr **BROWNIE** has signed a million dollars over to LDC Finance Limited subordinating recoverability of this amount beneath any other creditor at all. The normal course is for the senior creditors to be clearly identified as having an agreed material interest greater than the subordinated

creditor, and the subordinated creditor wanting that amount specified. The writer has shown the **BROWNIE** document to three experienced commercial lawyers who have all commented that the document is "very suspicious or unusual" (one calling the document a complete con) and they would have not advised any client to sign it. At page 576 of the annexed dossier under the heading of "Ranking", the document ludicrously provides;

> ***2.1*** *The subordinated lender hereby agrees and the borrower acknowledges that the senior debt,* ***whether secured or unsecured, shall rank in priority to the subordinated liabilities.***
>
> *2.2* *Save as otherwise provided herein the priorities referred to in clause 2.1 will not be affected by any intermediate reduction or increase in, amendment or variation to, or satisfaction, the senior debt, or nay other circumstances.*
>
> *2.3* ***The provisions of clause 2.1 above shall apply notwithstanding the order in which or dates upon which the senior documents, the subordinated documents or this deed are executed or any of them are registered or notice of them is given to any person****.*
>
> ***2.4*** *The subordinated lender herby agrees and acknowledges that the subordinated liabilities* ***are subordinated to the senior liabilities to the extent and in the manner hereinafter set forth to the prior payment in full of the senior debt.***

385.2 The terms are very oppressive and in fact give Mr **BROWNIE** has no say in what goes on with his (trusts) money. At clause 6 and 7 of the deed (page 578 to 579 of the annexed dossier, it is made clear that Mr **BROWNIE** cannot invoke any defence whatsoever to the way LDC Finance Limited have acted whilst trading. The importance of these provisions should be clear. Why would Mr **BROWNIE** agree to such a deed of loan without the names and amounts involved being set out in a schedule and the particulars of the senior creditors and senior liabilities named. After all it was only a loan to a relatively small finance company, which was supposedly well managed. It beggars belief that Mr **BROWINE** would have agreed to this form unless he was being controlled by the directors of LDC Investments Limited, and given the monies he (pursuant to his personal guarantees) would have owed LDC Investments Limited at that time, he was clearly substantially defenceless to disagreeing. As the reader will see this type of "paper" transaction to "invent" equity or performance in payments is a specialty of Mr **MILLER**.

386 This raises this important question; why would Mr **BROWNIE** (director of Halifax Finance Limited) agree to loan LDC Finance Limited $1m with no security when he would have known (as at the date that he allegedly gave the loan);

386.1 That the book of LDC Investments Limited purchased by LDC Finance Limited had significant arrears and likely bad debts from his company Halifax finance Limited amounting to $1.6m and $3.394m as at 19 November 2003 and 23 February 2003 respectively (when the directors had only claimed $429,200.00 as bad loans (without naming who they were to); see page 555 of the annexed dossier and;

386.2 As part of the over all deal LDC Investments Limited had allegedly retained assets worth $700,000,00 which were in fact (according to the detail of the prospectus) the CBH Limited shares; see page 545 of the annexed dossier and see also page 586 of the annexed dossier under the heading investments in the sale and purchase document between LDC Investments Limited and LDC Finance Limited; (emphasis that of the writers)

"Investments" means the Loan Agreements, Stock and Bonds and the Shares held in the name of the Vendor as at the settlement Date, ***but excludes the shares held by the vendor in CBH Limited, which will not be transferred and will remain the property of the vendor.***

Note: As the reader is aware LDC Investments Limited after the sale of its finance book changed its name to GKW Limited and GKW Limited was supposed to sell the CBH Limited shares to SC Management Limited. But is appears that Mr Chris **HARDIMAN** was the owner of the shares at all times until they were 'allegedly" sold to SC Management Limited on 23 June 2008. Mr **HARDIMAN** was disclosed in the LDC Investment Limited accounts as being a director of LDC Investments Limited and CBH Limited. Interestingly in those accounts it is noted that loans of $1,609,229.00 had been advanced to CBH Holdings Limited and that whilst some interest had been received, interest was "accruing" on a loan which was payable upon "demand". The writer believes that this type of behaviour is the directors using investors

money as their own, and this type of behaviour usually ends in grief because "accruing" interest being payable "upon demand" is "**MILLER** talk" to hide that the loan is not commercial. See page 562 of the annexed dossier.

387. Did not Mr **BROWNIE** wonder why the LDC Investment Limited directors (who were common to the directors in LDC Finance Limited) had not transferred those assets to show capital investment rather than paying allegedly 8% to Mr **BROWNIES** family trust, (no matter that the directors stated they had done so because they wanted to operate as a pure finance company). In both the April 2007 (page 235 of the annexed dossier) and amended May 2007 (page 316 of the annexed dossier) prospectus the directors of LDC say this about the **BROWNIE** subordinated $1m loans ranking;

"The subordinated notes carry an interest rate of 8% and are repayable only at the discretion of LDC Finance Limited. ***The note holders have not rights to demand repayment."***

388 If LDC Finance Limited was solvent and making money to the extent stated in various accounts why had not the directors repaid the loan, or alternately Mr **BROWNIE** wanted repayment of the loan so that he could get say a 14.5% to 19% return on less risky loans in relation to security. At this point the writer will fast forward to the LDC Finance Limited prospectus of 27 April 2007 wherein the following explanation is given by the directors as to when the bad debts of $4m to $5m were incurred; See page 243 of the annexed dossier under Note 19 Restructuring;

This bad debt provision has arisen primarily ***from the companies predecessors (LDC Investment Limited's) policy of lending to retail finance company's***.

389. It is clear from this unequivocal statement that LDC Finance Limited directors as at 27 April 2007, (in line with the content of LDC Investment Limited's and LDC Finance Limited memo's, notes, reports, emails and letters concerning arrears and bad debt provisioning for the years 2000 to 2004 contained in paragraph 379.9 of this report), are admitting that they had known, or should have known, that "the LDC Investments Limited's book" was "bad" to the tune (according to their figures) of $4 to $5m through that period. It follows that a $4m to $5m bad debt provisioning

should have been reported in the initial prospectus dated 5 July 2004, which would have made LDC Finance Limited irrecoverably insolvent, unless that sum was injected in cash or assets by the directors. LDC Finance Limited would still have been insolvent even if you applied the $700,000,00 worth of the CBH Limited shares and it is the writers opinion that this is why those assets were supposedly "clinically" removed to be replaced by the nonsensical and probably fraudulent "subordinated loan" of $1m from Mr **BROWNIE.** That is of course if the CBH Limited shares were ever in the name of LDC Investments Limited (as how would you know given the way the companies were operated).

390. The writer also asks why would the LDC Finance Limited directors want to pay 8% when the equity in the land owned by CBH Limited required no payments and in fact was to grow considerably in value making LDC Finance Limited's position "better". A check of the internal register of CBH Limited and LDC Investments Limited's account should disclose whether LDC Investments Limited owned the CBH Limited shares.

391. The writer contends that, if the CBH Limited shares were in fact owned by LDC Investments Limited at that time, the LDC Investments Limited directors knew those assets were at risk from being engulfed by the raging inferno of insolvency well alit in the LDC Investments Limited's finance receivables book unless they were cut free.

392. It is the writers opinion that it was this very same reason that saw the CBH Limited shares not transfer to the control of LDC Finance Limited at the times they were supposed to in mid 2006 and March 2007.

393. The writer does note that the **BROWNIE** subordinated loan, unlike the CBH Limited shares, which are not reported in the September 2006 prospectus, is noted under "equity" in the second receivers report dated 30 April 2008 at page 143 of the annexed dossier. The subordinated loan is not mentioned in the first or the third receivers' reports. Interest payments on the loan are recorded in the 2007 LDC Finance Limited Accounts, which would seem extraordinary given that surely the loan monies had been "applied" given that the company was insolvent to the tune of $4m to $5m. Were the interests payments actually made? Who would know given the

credibility of the accounting involved and if they were made who actually in the end received them?. If paying Mr **BROWNIES** trust $80,000.00 would you not be immediately seeking to enforce the guarantees for the millions he, (through his personal guarantees) owed LDC Finance Limited? A threat of bankruptcy and an investigation into Halifax Finance Limited's insolvency may be able to break the **BROWNIE** trust if it could be proved that the trust was formed to evade the payment of creditors due at the time the trust was formed.

394. What will become evident from later content of this report is that Mr **BROWNIE** was but a puppet on Mr **MILLERS** strings. But what must be asked at this time; what happens now to the nonsensical loan? Have there been any letters from Mr **BROWNIE** wanting an update from the receivers about his trusts million-dollar loan, and why has Mr **BROWNIE,** on behalf of his trust, not alleged insolvent trading as against the directors of LDC Finance Limited when they took the trusts million dollars. After all the directors have stated in the April 2007 prospectus that the $4m to $5m bad debts arose previous to Mr **BROWNIES** trust lending the million dollars to LDC Finance Limited.

395. Mr **BROWNIES** apparent willingness to sign a subordinated loan document for the benefit of LDC Finance Limited (which shows no sign of commercial sensibility) strongly indicates that he was "subordinate" to the directors of LDC Finance Limited and he was at best a titular head of Halifax Finance Limited from that time going forward. This means that Mr **MILLER** and the other directors were operating both LDC Finance Limited and Halifax Finance Limited knowing both were grossly insolvent. It follows that the LDC Finance Limited directors, operating Halifax Finance Limited (albeit through control of **BROWNIE**), should **not** have been taking any wholesale money from F and I, but were doing so because F and I's money was applied to good loans on Halifax Finance Limited's books (because Messrs **HARDING** and **SCHOLFIELD** decided which Halifax Finance Limited loan proposals they would advance monies to Halifax Finance Limited on), and the LDC Finance Limited directors knew that those F and I funded Halifax Finance Limited Loans would become property of LDC Finance Limited to cover their massive losses pursuant to the first debenture LDC Finance Limited had over Halifax Finance Limited if a receiver was called in. Remember these communications between Mr

MILLER and LDC Finance Limited's accounts Manger Mr **MIRFIN** previously at paragraph 379.9 at subparagraphs (16) and (19);

On 23 September 2004, <u>David Miller prepared a report on behalf of LDC concerning HFL.</u> *At page 4 of that report under the heading Conclusions, David wrote:*

- ***It is not our responsibility to look after F&I and other Lenders****.*
- *From a selfish point of view, it would be in LDC interest to appoint a receiver now while third party lending is high. F&I appear to be realising that their security position is weak. They have discussed with Halifax a proposal for Halifax to form a second company over which F&I have a first security and all future F&I funding would be through that company****. It is likely they would then try and have extend Halifax lending, which F&I are directly funded, assigned to the new company these proposals would jeopardise LDC"s position and is therefore unacceptable.*** *See moderate tome letter attached.*
- *If F&I try to force the issue LDC would have to consider calling up our loan and appointing a receiver.*
- *We will await F&I reaction.*
- *Paul Brownie said a second general security for F&I has been discussed and he believes this may be acceptable to them. It would also be acceptable to us...*
- *An approach by LDC to F&I will extinguish their confidence in Halifax which is not LDC interest or in F&I and other stakeholders interest.*

On 14 March 2005, David Miller sent an email to Stuart Mirfin stating:

*Have you had a chance to check some of the Halifax mortgage securities to ensure that there have been no assignments to F&I or anyone else****. <u>It is important we keep a close eye on this because I think F&I are becoming concerned about their security position</u>***

396. These statements do not sound like a healthy finance company who has just been launched as an issuer to the public does it? But how were they getting away with it with all of the alleged checks and balances that are supposedly in place pursuant to the already detailed provisions of the Securities Act 1978?. How bad were the trustees, if they were not involved in the scam.

The worth of the defence system found in the application of the terms of the trust deed by Perpetual Trust Limited

397. Any defence system surrounding something of great value is only as good as the people that operate it, and good operators never believe that their adversary believes in the "deterrent value" of their defence system. That is to say that to believe that a defence system is impregnable is actually the fundamental weakness of the defence system because the level of fear of penetration is so low that vigilance is considerably lessened sometimes to the fatal level of being non-existent.

398. One only has to think of the arrogance of the French Minister of Defence Andre Maginot, whose Maginot Line of intimidating fortresses connected by complex subterranean railway systems supposedly protected Frances flank on the German border prior to the attack of the Germans in 1940. The line was supposed to make French citizens sleep at night. Sleep indeed they did whilst the Nazi's rolled past into France.

399. Closer to home the writers investigations into the massive immigration scam in 2007 where probably thousands of immigrants got residency whilst the Immigration Service stood back and told the writer that such a scam was not capable of being perpetrated. Unfortunately for the Immigration Service the writer had spent six to eight months filming the scam being perpetrated. The Government did nothing but cover it up. The undercover 'sting' operation obtained boasts from the "boss" that he had an informant high up in the Immigration service. Nothing immediately came of that, excepting that a few months later the chief executive was charged with fraud relating to her resume when applying for the job, and other staff were sacked for "fiddling" with applications for relatives or friends of relatives. It would seem that rot was present but that no one was looking until the writer uncovered evidence that rot was present.

400. Equally the writer uncovered the criminal behaviour of a very large number of New Zealand car dealers in the 1990's and went to Japan to get the evidence that the Serious Fraud Office said could not be found. The writer not only obtained the evidence by going undercover but took along a member of parliament as part of the

front. The writer obtained the evidence and then through lateral thinking legal moves insured that the dealers were charged by the Serious Fraud Office and convicted. Unfortunately for the writer the Government was once again not prepared to put in place sufficient vigilance to insure the offending was not repeated and the offending is again at a similar level to the number of cars imported. Thankfully the price of local cars has fallen to make the option of purchasing a 'clocked" car less attractive.

401. Equally this sort of finance fraud nonsense went on in the 80's with the likes of Registered Securities Limited, Chase Corporation and Equiticorp. And the Government has stood by and done absolutely nothing whilst retirement monies have been robbed from an open safe. Is it robbery when the safe door is ajar and no one seems to actually care about the money inside?

402. It cannot be gainsaid New Zealanders have to demand more from their Government agencies, but unfortunately they are often as dishonest as the people they are supposedly out to catch, and it is better that no offending is reported by not looking for it, than to look for it and risk upsetting someone powerful by catching one of their benefactors. The truth is that what our government departments "defence systems" lack in brains is significantly worsened by elemental cowardice that seems to permeate the top people in the jobs.

403. It follows that the writer does not have much faith in the Securities Commission investigators being able to get to the bottom of what has been clearly a conspiracy to defraud all number of classes of persons right under the nose of the Commission and they have done it for several years without a single problem.

404. From the evidence obtained by the writer it follows, in the writers opinion, that the directors of LDC Finance Limited and LDC Finance Limited (itself) were in significant breach of the provisions of the trust deed and in breach of the salient misstatement provisions of Securities Act 1978, the Securities Regulations 1983, the Financial Reporting Act 1993, and trading in a reckless, and moreover blatantly dishonest, manner throughout that period in breach of ss131, 135 to 137, of the Companies Act 1993 and that the result could be an order for the directors to repay creditors and other persons affected pursuant to s310 of the Companies Act 1993. It

follows that every monthly certification (refer to paragraph 379.5 of this report) omitting to report the actual dire position of the company was a significant breach and an overt act in the conspiracy.

405. The following point is now becoming glaringly obvious. Mr **MILLER** was allegedly writing off debts owed by Halifax Finance Limited to LDC Investments Limited and then LDC Finance Limited and not chasing them, other than to state that at times, even though the debts were written off in the books, he still expected payment from Halifax Finance Limited. Whether the books sent to the tax department were the same books that went into the prospectus who would know. That is a matter for an independent liquidator, the Securities Commission and the Serious Fraud Office to investigate. But the independent liquidator is actually the most important individual because he will represent the stakeholders and have no "political" agenda or master.

406. The writers understanding of the writing-off provisions of tax law is that an effort is required to attempt to enforce payment of the debt normally involving the issuance of proceedings, or some other substantial effort to get paid. An example of another substantial effort would be to call up the security for realization and if any shortfall came of sale, request payment from the guarantor, and if payment for any shortfall not forthcoming file bankruptcy proceedings. If Mr **BROWNIE** had personal assets worth millions (after all he allegedly gave a subordinated $1m loan to LDC Finance Limited (but which the writer believes was only a "paper transaction")) why did not Mr **MILLER** pursue that dutiful course. Why was Mr **MILLER** a chartered accountant being so weak, to the point of appearing incompetent to the clear prejudice of stakeholders that were allegedly his families close friends?.

The reasons for Mr MILLER and the partners of Carren Miller buying LDC Investments Limited.

407. In keeping with this theme of inquiry the writer has obtained true copies of correspondence from Mr **MILLER** dated around early 1999, when Mr **MILLER** was negotiating the purchase of LDC Investments Limited from its owner Mr Lloyd **COLE**, (pages 989 to 994, 996 to 997 of the annexed dossier).

408. Messrs **SCHOLFIELD** and **HARDING** had already been negotiating with Mr **COLE** and had prepared a draft agreement for purchase of LDC Investments Limited at a sum of $641,000.00 to be paid off over roughly three years, (pages 998 to 1003 of the annexed dossier). In that draft agreement it was proposed by Messrs **HARDING** and **SCHOLFIELD** that two bad loans **not** be assigned in the purchase. The two loans were to Warren Green Financing Limited and Mainland Leasing Limited (see paragraph 5.1 (iii) of the agreement found at page 1002 of the annexed dossier). The Greene loan was bad to the tune of about $400,000.00 and the Mainland Leasing loan was bad for about $800,000.00. There was another bad loan in the making according to Messrs **SCHOLFIELD** and **HARDING,** which was to Stoke Finance Limited which amounted to an unhealthy exposure of about $120,000.00. This bad loan to Stoke Finance Limited was to burgeon to over a million of bad loans by the close of business in September 2007. All in all the current bad debts at that time were in the vicinity of $1.2m (definite) and possibly $1.3m.

409. A number of matters of interest arise from these facts. Firstly Mr **GREEN** who owned Warren Green Financing Limited was recently convicted and imprisoned over defrauding Stakeholders of in excess of $2m. Secondly, as stated Stoke Finance went down owing LDC Finance Limited a significant amount of money and it appears very little has been done about chasing up the guarantor of the advances to Stoke Finance Limited. Thirdly and more relevant to LDC Investments Limited Mainland Leasing Limited was wholly insolvent, and a guarantor for the amount of the debt of $788,000.00 was Mr Richard **JENKINS** a partner of Mr **MILLERS** accountancy practice, Carren Miller.

410. It was Mr **MILLER** who entered the negotiations for a joint venture with Messrs **SCHOLFIELD** and **HARDING,** seemingly in the interests of protecting Mr **JENKINS** guarantee being called upon, when one considers the content of Mr **MILLERS** letter to Messrs **HARDING** and **SCHOLFIED** found at page 989 to 991 of the annexed dossier. Of importance Mr **MILLER** states the following; (emphasis and numbering that of the writers);

> *(1) We became aware of the difficulties relating to recovery of the Mainland Leasing loan and were concerned at possible implications for LDC as a client, other clients who have investments with LDC and* ***our partner Richard***

Jenkins who apparently guaranteed the loan some years ago when he was a director but overlooked withdrawing or at least limiting the guarantee when he resigned in June 1996. Richard was in a state of serious ill health at the time which may explain his oversight.

(2) *With a view to understanding the position and possibly suggesting a solution we approached LDC. We were advised that you had made an offer to purchase LDC shares subject to repayment or refinancing of the Mainland debt.* ***We were advised that you were not prepared to take over with the Mainland Leasing loan inclusive, which you confirmed to us yesterday.***

(3) ***It is apparent that the Mainland loan is largely irrecoverable even from the guarantor who in the circumstances is likely to contest the bulk of any claim against him.***

(4) *It seemed clear, therefore, that the terms of your offer as we understood them, could not be met and you were not prepared to take over responsibility for collection of the Mainland loan.* ***We therefore presented a suggested solution to LDC shareholders, which would involve the partners of Carren Miller purchasing the shares and taking over responsibility for collection of the Mainland loan.***

(5) ***Our intention would be to introduce capital to cover any shortfall in the Mainland loan therefore ensuring LDC's solvency****. Richard Jenkins was not part of this approach and knew nothing of it as he has been absent from the office for the past 6 weeks.* ***Our motives are primarily to protect the interests of our clients and partner.***

(6) Obviously we also recognize the possibly long term commercial advantage if all goes to plan.

(7) ***If we purchase LDC, we intend implementing significant changes in loan management procedures including regular internal audit of borrowers****.*

(8) ***LDC shareholders have advised us that they are prepared to sell to us inclusive of the Mainland leasing loan*** *at a price, which we believe is $100,000.00 less than your offer and on similar payment terms.*

(9) We believe that there is only one person primarily responsible for the current difficulties and that is Mr Fisher. This has recreated a number of aggrieved parties and we think it makes sense for all those affected by the situation to co-operate in resolving the matter.

Suggested solution

(10) Without prejudice and as a basis for discussion we suggest the following broad principles of an arrangement.

That you join with the partners of Carren Miller to become equal shareholders of LDC ie 50% Carren Miller 50% yourselves.

A receiver be immediately appointed to Mainland Leasing with a view to pursuing recovery of advances made by Mainland Leasing to Fisher*. The most likely recovery will be any sale value of the farm property in excess of the bank mortgage. The extent of other creditors is unknown.*

After the determination of the net bad debt after allowance for tax benefits, consideration be given to introduction of capital to insure the solvency of the company. *This may be by the way of preference shares carrying a fixed dividend to provide an assured return on this investment.*

LDC to consider a management contract with yourselves to be negotiated according to what services and facilities you provide.

The first 2 years profit to be retained to offset against the expected Mainland Bad Debt*.* ***It is anticipated that profits would be distributed after the two years period provided the company is solvent****. In determining the amount of this profit retention the following would need to be taken into account;*

- *Any recovery from Fisher*
- *Any reduction in LDC share price which currently stands at $100,000.00*
- *Tax recovery*

(11) We jointly undertake an audit of current lending to assess the likelihood of any further losses before any commitment is made to purchase the shares.

Likely affect of proposals

(12) The pooling of yours and our resources in terms of management, financial controls, and audit and access to a large client base should provide the basis of a successful operation.

(13) Losses to people not primarily responsible for the bad debt are avoided.

(14) *Although your proportion of potential profit is less than 100% ownership, so is* ***your proportion of future risk and capital input requirements to ensure solvency and compliance with the Securities Act****.* ***We also believe that greater lending opportunity exists with our clientele.***

Financial projections

(15) ***Attached are projections covering the period of recovery of the Mainland debt and payment for shares and beyond****. These were prepared for our consideration of the matter and may need some minor alteration in the changed circumstances*

(16) We are happy to discuss these broad proposals further with a view to reaching a conclusion fair to all concerned.

411. The writer believes that the content of this letter from Mr **MILLER** (with annexed profit projections at pages 992 to 994 of the annexed dossier) is very important for the following reasons;

- At sub paragraphs (1) to (5) and (13) in the paragraph 410 Mr **MILLER** is stating Carren Millers primary reason for the purchase of LDC is to protect the clients and the firms partner Mr **JENKINS**. This is clearly a conflict of interest in that a guarantee is a guarantee and should be pursued in the interests of the LDC clients, if that is the only source the money can come from. Mr **MILLER** alleges that Mr **JENKINS** may fight any attempt to enforce the guarantee on a $788,000.00 loan. What possible defence would he have and if the defence was viable why not argue it instead of buying the company. In any event Mr **MILLER** is clearly indicating that the reason for the initial purchase is selfish as it relates to Mr **JENKINS** not being made to pay the guarantee.

- Mr **MILLER** does not cover the fact that there were other bad debts to LDC Investments Limited to Mr **GREENE** of probably $400,000.00. At paragraph (5) and (14), in recognition that the company was suffering solvency problems, Mr **MILLER** suggests that the partners of Carren Miller, and Messrs **SCHOLFIELD** and **HARDING** (if they were to become 50% partners) introduce capital to insure the company remains liquid and ensures it does not breach the Securities Act 1978.

- Of most interest to the writer about Mr **MILLER** not being able to allege that he did not know that the misstated $100,000.00 bad debt provisioning in the misleading September 2006 prospectus was in fact $4 to $5m, Mr **MILLER** at paragraphs (7) and (10) indicates that Carren Miller (and no doubt at his implementation) will be, if they purchase LDC, ***"****implementing significant changes in loan management procedures <u>including regular internal audit of borrowers</u>",* and immediately appointing a receiver to *Mainland Leasing <u>with a view to pursuing recovery of advances made</u> by Mainland Leasing to Fisher"*. Clearly these statements by Mr **MILLER** support the content of his

emails found at paragraph 379.9 of this report about his fiscal management prowess, and additionally would serve to support Mr **MILLERS** apparent total control of Halifax and Mr **BROWNIE** considering he has never placed Halifax into liquidation nor sought to bankrupt Mr **BROWNIE** pursuant to personal guarantees. The question must be asked why the receiver has not acted to do so as well? Equally why has the trustee stood back and said nothing?

- Following this train of thought, it beggars belief that Mr **MILLER** did not know exactly what he was misstating in every prospectus issued by LDC Finance Limited and in the required monthly certifications. In relation to Mr **MILLER**, (and indeed all of the other directors) of LDC Investments Limited and then LDC Finance Limited being a shadow or de facto director/s of Halifax Finance Limited (and being completely aware of their monthly, if not daily "bad debt" position) one only has to consider the following instruction to LDC Investments Limited's Manager Mr **MIRFIN** at a board meeting held at 25 February 2003;

  Manager to contact Greg Eel at Argos ***and see if LDC can run a copy of Halifax's accounts.***

- At paragraph (10) Mr **MILLER** is clearly stating that it will be at least 2 years trading and with the introduction of shareholder capital to ensure the company will be solvent, and in the annexed profit projections Mr **MILLER** paints a picture whereby the company could be in a reasonable strong position in 6 years. Of course this would be trading until 2005 to 2006. As the reader will learn the directors or partners of Carren Miller, once having purchased LDC Investments Limited, immediately started doing bulk business with Mr **BROWNIE** and Halifax Finance Limited allowing the careless and disingenuous Mr **BROWNIE** to decide where he spent the money, which was normally on himself or in deals wherein he wanted a significant piece of the action, and wherein there was clearly insufficient security. Mr **BROWNIE** also specialized in involving friends wherein he asked them to be fellow directors of a company, but where in fact Mr **BROWNIE** never became a director of that company because he knew that he was going to use the

company as a conduit for monies obtained from Halifax Finance Limited. In this way Mr **BROWNIE** no doubt thought that he would be able to dodge the liabilities of the Companies Act 1993, but of course section 126(1) clearly allows the Court to find Mr Brownie as a deemed or de facto director. One such case in hand that the reader will learn about is Motueka Vehicle Sales Limited wherein Mr **BROWNIE** defrauded Halifax Finance Limited of in excess of $1.54m, and then in turn defrauded Motueka Vehicle Sales Limited of the same amount. And in doing so he left Mr Hadyn **ELLIS** carrying the can as its only director. Mr **ELLIS** had been a close friend of Mr **BROWNIES** for 20 odd years. With friends like Mr **BROWNIE** who needs enemies. The reader will also learn that Mr **MILLER** knew exactly how crooked Mr **BROWNIE** was, although Mr **MILLER** could and no doubt did teach Mr **BROWNIE** a few tricks of the finance trade.

- Mr **MILLER** at paragraph (11) of paragraph 410 above is saying clearly that he has **not** audited the accounts and therefore is not in a position to say how bad the position is. Mr **MILLER** of course, in 2000; (see paragraph 379.9 of this report wherein the following communications from LDC management and directors) paints a very different picture to Mr **MILLERS** predictions for Messrs **SCHOLFIELD** and **HARDING** when Mr **MILLER** was only dealing with allegedly $800,000.00 of debt owed by Mr **JENKINS**;

(1) ***On 7 December 1999*** *at a LDC board meeting,* ***concern was expressed over loan performance of HFL loans****.*

(2) ***On 3 February 2000*** *at a LDC board meeting it was noted under general business:*

"Halifax Finance Limited
General concern

- *Kevin Elliot's proposed plan presented.*
- *Chris to arrange meeting with Paul Brownie to discuss problems and to develop win win situation for both Halifax and LDC*
- ***Stuart Mirfin (manager) expressed concern about some of the lending and was doubtful about security value****. Directors preferred no investigation into security, until meeting with Paul.*
- ***At meeting control of lending was to be discussed****"*

(3) ***On 7 March 2001*** *the manager's report to LDC* ***noted interest arrears from HFL of $339,594.35.***

- It would appear obvious that given the already bad position concerning the $1.2m bad debts as at April 1999, serious concern over a new comer Halifax Finance Limited as at December 1999 means that another significant bad debt is looming within 6 months of Mr **MILLER** taking the reigns and at March 2001 Halifax Finance Limited interest arrears of $339,594.35 would indicate, depending on the length the interest has not been paid, a bad debt of between $2.5m to $3.5m. This would make the company insolvent of the test found in section 4 of the Companies Act 1993 had been applied.

- This figure of around $3m will be explained later in this report as probably belonging to a company owned by Mr Bruce **OMALLEY** and Mr Tim **WHITTLE** which first purchased the Wessex Mark II and V helicopters that would ultimately, amongst other massive bad debts, bring the company down.

Birds of a feather stick together

- Messrs Bruce Edward **OMALLEY** and Timothy **WHITTLE** of Christchurch are both banned directors and Mr **WHITTLE** is currently serving a substantial jail term for fraud; see pages 1004 to 1005 and 1071 to 1072 of the annexed dossier; see also ***One News*** story on **WHITTLE** at page 1070 of annexed dossier when **WHITTLE** is jailed for 4 years for taking more than $1m in deposits with no intention of delivering any cars. It is interesting to note that as at 25 February 2003 LDC Investment Limited's directors received a report from its Manager Mr Stuart **MIRFIN** that would indicate a debt in the vicinity $4m.

The manager produced ***a list of Halifax's borrowers he feels there is little of no chance of recovery and these total $3.394 million****, which includes penalty interest of $1.232 million (this may be able to be deleted if it can be proved this interest has compounded from written-off loans).*
General discussion followed concerning Halifax and Paul Brownie.
Manager to write to Ian Smith and ask for a list of loans he is dealing with on behalf of Halifax and what likelihood of recovery.

Manager to contact Greg Eel at Argos and see if LDC can run a copy of Halifax's accounts.
Manager also to write to Paul Brownie informing him that the $768,000.00 written-off in March 2002 is still payable to LDC in the future.
Manager to continue to investigate the bad debt write-off of $880,000.00 in the 31 March 2002 books and also prove if any of the write-offs in the 31 March 2001 year are still being carried forward (England Street requires checking)

412. Again the writer points out (not that it may need repeating) that the LDC Finance Limited directors (inclusive of Mr **MILLER**) gave the following explanation for the $4m to $5m of bad debts ("they suddenly became aware of only after Mr **NOONES** "high level" review in early 2007) in their prospectus of 27 April 2007; see page 243 of the annexed dossier under Note 19 Restructuring;

This bad debt provision has arisen primarily ***from the companies predecessors (LDC Investment Limited's) policy of lending to retail finance company's***.

413. The writer believes that the numbers of $4m of bad debt seems to be present right from about 2001 to 2003 onwards and that this position just got worse and worse with the operation of Halifax Finance Limited by Messrs **BROWNIE**, **JANNETTO**, **ELLIOT**, **HARDIMAN**, and particularly Mr **MILLER** at the cost of the solvency of LDC Finance Limited and ultimately F and I. Once again society placed too much emphasis on trust being associated with a University Degree, or belonging to a professional body. The truth of the matter is that trust can only be broken if it is foolishly given. And to substantially associate trust or ability with a university degree or an association to a professional body is extremely naïve.

414. Therefore the writer submits that if the control of LDC Finance Limited can be wrestled away from Pricewaterhousecoopers the LDC Finance Limited finance receivables book (no matter who owned it) can be proven to have been irrecoverably insolvent from around late 2000.

Mr MILLER finally comes clean and provides absolute proof that the CBH shares were "transferred" to SC Management Limited; but from GKW LIMITED?

415. The writer was aware that he needed Mr **MILLER** to "get to the bottom" of where the CBH shares were apparently "hidden". The writer was aware that legal proof of title (and contemporaneous ownership) is being named on the internal share registry hence the directors responsibility found in s90 of the Companies Act 1993 for directors to insure the integrity of accuracy of the share registry. Section 89 of the Companies Act 1993 provides;

"89. Share register as evidence of legal title – (1) Subject to section 91 of this Act, ***the entry of the name of a person in the share registry as holder of a share is prima facie evidence that the legal title to the share vests in that person.***

(4) ***A company may treat the registered holder of a share as the only person entitled to-***
- ***(a) exercise the right to vote attaching to a share; and***
- *(b)* ***receive notices****; and*
- *(c) Receive a distribution in respect of the share; and*
- *(d)* ***Exercise the other rights and powers attaching to a share****;*

416. In the writers opinion it is inconceivable that the directors of LDC would not have transferred the shares to insure that they were acting beyond reproach and could establish that they had followed the agreement with F and I and were now in effective control of the assets acquired in the deal for the benefit of LDC and F and I investors; unless of course, they had no real intention to hand over the asset.

417. Equally if the receiver was aware of the asset and LDC's effective ownership he would have (if acting honestly and diligently) insured that he took control and had the receivers address for service of any documents listed on the internal share registry of CBH limited and of course to insure that the Companies office records were also updated and recorded all of the above in his receivers reports. The writer knew he had to get hold of the internal share registry and contacted Mr **MILLER** in this regard.

418. Mr **MILLERS** response was to finally supply allegedly a true copy of the internal share registry of CBH Limited annexed to an email from Mr **MILLER** dated 18 July 2008 which is found at page 11 and 12 of the annexed dossier. The share registry confirms the following facts pursuant to s89 of the Companies Act 1993;

- SC Management had transferred to its ownership two lots of 329 shares (being 658 shares) on 23 June 2008.

- That the two transfers were transferred per transfer forms executed on 31 March 2007 and 6 May 2008 respectively.

- That the address for service of SC Management Limited is chartered accountants Carran Miller at 38 Halifax Street, Nelson.

- That the share registry is dated June 08 and that the following shareholders own shares in CBH Limited;

S C management Limited	*329*	*39%*
	329	
Coastal Landholding Ltd	*400*	*33%*
	158	
Pearl River Holdings Limited	*100*	*11%*
	79	
Gojech Limited	*118*	*7%*
Bisley Holdings Limited	*143*	*11%*
	30	
	12	
Total	*1698*	

419. The writer found this document, and Mr **MILLERS** ability to get a true copy of the internal share registry of CBH Limited, unusual for the following reasons.

- The address for service of SC Management Limited was still Carren Miller Accountants (Mr **MILLERS** accountancy firm) and Mr **MILLER** had previously alleged he had nothing to do with it. How could he have not known about all of this from the start?

- The address for service for SC Management Limited should have been c/o Pricewaterhousecoopers given that LDC Finance Limited (in receivership) owned 100% of the SC Management Limited shares, and if the receiver had been aware of the ownership by SC Management Limited of a $2m to $3.5m

asset, (being the CBH Limited shares), would have as a result changed the address for contact.

- Mr **MILLER** had always stated that GKW Limited owned and transferred 43% of CBH shares to SC Management Limited and indeed that level of ownership appears in various other documents; see page 558 of the annexed dossier under the heading "Investment in Associates" LDC Investments Limited retains 43.48% of CBH Limited's shares. Now according to the share register SC Management Limited only owned 39%. Where had the 4.48% of CBH Limited shares gone?.

420. The writer wrote to Mr **MILLER** on 25 July 2008 and asked the following question; (see page 17 of the annexed dossier;

Question 8

The shares in CBH sold to SC Management worth $2m. ***Was this reported to Perpetual Trustees and in your prospectus as an asset of LDC as LDC owned all of the shares in SC Management?***

421. Mr **MILLERS** reply to this question is found at page 19 of the annexed dossier;

"Q8. LDC did not own the shares in SCM ***until after the LDC receivership****"*

422. Of course Mr **MILLER** was correct. A check of the company records of SC Management Limited confirmed that as at the date of receivership of LDC Finance Limited (being 4 September 2007) SC Managements 100 ordinary shares were owned by Pikea Holdings Limited which company's 1000 ordinary shares were owned by Mr Neville **PARKER** (see page 117 through to 118f of the annexed dossier).

423. All of SC Management Limited's shares were transferred to LDC as at 29 October 2007 following Mr **MILLER** becoming director of SC Management Limited as at 24 October 2007; see pages 118d and 118a respectively of the annexed dossier.

424. As can be seen at page 118d of the annexed dossier Ms Diane **SMITH,** an employee of Carran Miller Limited, gave the companies office the new address for communication for SC Management Limited as that being still Carran Miller, and not Pricewaterhousecoopers, which should have been the case as LDC Finance Limited (in receivership) now effectively owned the shares of SC Management Limited.

425. Her behaviour seems strange given that she also imputed LDC Finance Limited (in receivership) as the only new shareholder in SC Management Limited being care of Pricewaterhousecoopers.

426. At whose instruction would she have had inputted the Carren Miller address as the address for service of SC Management Limited, when she was aware that the only shareholder in SC Management Limited was a company in receivership with Messrs **HOLLIS** and **FISK** of Pricewaterhousecoopers as joint receivers.

427. As already stated, the question must be asked; if the receivers were aware of the SC Management Limited's ownership of $2m to $3.5M of CBH Limited shares would they not want all documents relating to SC Management served on Pricewaterhousecoopers. It would seem probable that the only persons that could have given Mrs **SMITH** that instruction would be either the company's director Mr **MILLER** or one of the joint receivers of LDC Finance Limited, Messrs **HOLLIS** or **FISK**.

428. It was becoming pretty obvious to the writer that it was now very likely that Messrs **HOLLIS** and **FISK** were involved in disguising the CBH Limited shares being in SC Management Limited's ownership, and effectively the ownership of LDC Finance Limited.

429. It must be remembered that Pricewaterhousecoopers were aware of the LDC Finance Limited directors misstating the financial position of the company by $4 to $5m in a prospectus in September 2006 when attempting to raise $50m from the public when at that time the company was hopelessly insolvent and the directors personal liabilities were exposed. Which receiver, acting diligently, would leave Mr **MILLER** being the

recipient of company documentation, unless of course, he was somehow still under the instruction of Mr **MILLER**.

430. Mr **MILLERS** answer to the writers questions about whether the $2m to $3.5m transfer/sale of the CBH Limited shares from GKW Limited to SC Management Limited was reported to Perpetual Trust Limited at the time the last LDC Finance Limited prospectus was published was that, by inference, the trustee did not know at the time of the prospectus, and the deal was not mentioned in the prospectus, because SC Management Limited was not sold to LDC Finance Limited until two months after the receivership. But hang on Mr **MILLER** stated that the CBH Limited share deal was in two parts, the first being 50% of shares in mid 2006, and the following 50% in March 2007. Mr **MILLER** confirmed to the writer his understanding of Perpetual Trust Limited's knowledge and approval of all deals entered into via his email to the writer dated 28 July 2008 (see page 19 of the annexed dossier);

The agreements were approved by the Trustees before they ***were entered into and any required disclosure made***

431. The writer did not understand Mr **MILLERS** position regarding his answer to the writers question No 8 for the following reasons. How could the deals have been disclosed to the trustee about the share transfers as at mid 2006 for the September 2006 prospectus and the April 2007 share deal for the 2007 prospectus when the shares never transferred until June 2008?. What was the Trustee doing at the time; sleeping like the French in 1940?.

Incompetent or complicit trustee

432. Surely any competent Trustee would have checked that what was promised and agreed had occurred or did he just rely on the good word of the directors of LDC Finance Limited. There are only two choices here. Either the trustee relied on the word of the directors and did not check which discloses incompetence, or in the alternate knew that the shares were not transferred and was complicit in the skullduggery.

433. What does not paint a good picture for the Trustee is that he has never asked where the CBH Limited shares are because they are not reported in the receivers reports and an asset of $2m to $3.5m is hard to miss or lose. But of course the writer is relying on the word of Mr **MILLER**.

434. How could LDC Finance Limited **not** have been in significant breach of the deals it had supposedly completed with F and I (when it obtained securities worth millions over F and I receivables) when;

- SC Management Limited was **not** even owned by LDC in July 2006 and March 2007 and so how could the directors of LDC Finance Limited transfer valuable assets (the CBH Limited shares) to a company it did not own or have control over?

- The CBH Limited shares were not transferred until June 2008 and so how could any benefit be attributed to LDC Finance Limited and F and I during the period the deal was supposed to operate.

- One share transfer form was executed on 6 May 2008 (see page 12 of the annexed dossier) which date has nothing to do with any agreement reached between F and I and LDC Finance Limited, and who did that transfer and why, given Mr **MILLER** was the director of SC Management Limited at that time and just a few months later when initially speaking to the writer protested that *"he had nothing to do with the deals"*.

What does the last prospectus say about the deals between SC Management Limited, LDC Finance Limited and F and I.

435. As the reader may be aware the writer obtained a copy of the last prospectus LDC Finance published as an issuer under the Securities Act 1978. To the writers surprise it contained some mention of the deal between SC Management Limited and LDC Finance Limited as if the deal had been completed prior to the prospectus being published. Again a significant misstatement to obviously induce subscribers to invest

their retirement monies. But as always, with Mr **MILLER** as a director of LDC Finance Limited, it was not that simple. However the September 2006 prospectus does not mention the transfer of 50% of the CBH Limited shares supposedly owned by GKW Limited.

436. The audited accounts for LDC Finance Limited for the year ending March 2007 are pages 193 to 210 of the annexed dossier. The reader will note that it would appear that two directors of LDC Finance Limited have signed the accounts and dated their signatures as being executed on 27 April 2007. At page 210 of the annexed dossier is the Auditors Report (Sherwin Chan & Walshe chartered accountants) indicating that the attached financial statements were completed and that their unqualified opinion of LDC Finances financial position pursuant to the Financial Reporting Act 1993 was expressed on 27 April 2007.

437. Amongst the prospectus dated 27 April 2007 (at page 244 of the annexed dossier) the following is recorded about the GKW deal with SC Management Limited about shoring up the losses it had incurred on the Halifax Finance Limited ledger;

The significant influence of the company over SC Management Limited arises because;

i. ***When the company became concerned about the recoverability of the advances to Halifax Finance Limited****, it was instrumental in setting up SC Management Limited and exercising influence over the manner in* ***which SC Management Limited managed the Halifax Finance receivables ledger;*** *and*

ii. ***The Company arranged for GKW Ltd*** *to transfer certain shares in CBH Ltd to SC Management Ltd,* ***at a loss to GKW Limited in order to procure part of the additional capital which the company required***

438. Unquestionably any reader would think that the CBH Limited shares had been already transferred and were an asset of SC Management Limited, although one would have to draw an inference that LDC Finance Limited owned SC Management Limited which we now know was not the correct position as at that time. As we know LDC Finance Limited became a shareholder in SC Management Limited nearly two months after receivership of LDC Finance Limited. As we know Mr Chris **HARDIMAN** owned the CBH Limited shares until mid 2008.

439. As we also know GKW Limited owned no CBH Limited shares as claimed and one must ask why the deceit?. Alternatively if it was an initial error how come it had not been corrected until mid 2008 and the error and correction positively reported in the receivers reports with an explanation as to how the oversight and misleading information occurred.

440. Interestingly there is no value given at $2m or more. The important aspect is that the shares are given to SC Management Limited at a "loss" to GKW Limited meaning no consideration transferred back from SC Management Limited to GKW Limited.

441. Of course this only goes to intention if we accept that it was the directors intention to hand over the CBH Limited shares, although how could they when they were owned by only one director and the value in any event went to SC Management Limited which was a company **not** owned by LDC Finance Limited.

442. Remember the apparently false reporting of the ownership of the same CBH Limited shares in the initial 2004 LDC Finance Limited prospectus, when it was claimed that the directors of LDC Investments Limited were going to keep the $700,000.00 worth of CBH Limited shares, whilst transferring the entire finance book of LDC Investments Limited to LDC Finance Limited. What is interesting to the writer is that there is no evidence supplied as to how many shares are involved and that those shares are not described in terms of value. Surely this is suspicious given the need for the directors to inform the stakeholders of the exact financial position of the company.

443. Again it is clear that the directors are alleging that their concern over the Halifax Finance Limited is only recent. But as we know this is **not** a truthful statement for the following reasons;

- The directors of LDC Finance Limited have been concerned about the Halifax Finance Limited ledger since 2000. The writer will deal with statements made to the writer about the concern of the LDC Finance Limited directors

over the Halifax ledger by LDC Finance Limited's manager Mr Stuart **MIRFIN** later in this report.

- The bad debt provisioning for Halifax Finance Limited's ledger has been around $4m-$5m since 2003 and this made LDC Finance Limited insolvent and in breach of its ratios. Further the LDC Finance Limited directors would have knowingly misled stakeholders and the Perpetual Trust in every single declaration made about the financial position of the company.

- SC Management Limited was **not** sold to LDC Finance Limited (in receivership) until late October 2007.

- The CBH Limited shares were not sold or transferred to SC Management Limited until 23 June 2008 or some 14 months later.

444. As at 5 May 2007 the Directors of LDC Finance Limited filed an amendment to the 27 April 2007 prospectus (at page 208 of the annexed dossier) where the following is recorded at (b) relating to the CBH Limited shares;

The Company required additional capital in order to address its issues with increased provisioning for bad and doubtful debts. Whilst the companies trustee (Perpetual Trust Limited) had no objection to a subscriber for new share capital in the company paying a subscription price by transferring loan receivables to the company, it was reluctant to approve any other category of asset being transferred to the company as consideration for the issue of the new shares. ***Certain of the directors of the Company (through GKW Limited) own shares in a property owning company (CBH Limited) agreement was reached with SC Management Limited whereby SC Management Limited acquired shares in CBH limited for $2,000,000 and in turn transferred further loan receivables to the company, thereby reducing the size of the debt owed by SC Management Limited to the company and the requirement for provisioning for any potential bad debts by $2,000,000.***

445. What is clear about the content of the amendment is that any reference to Halifax Finance Limited is removed which again is clearly improper by way of omission. Importantly, for all intents and purposes, any reader would consider the CBH Limited shares were now worth $2m. However the last statement is confusing and it maybe that this statement does not give an injection of $2m capital at all to the benefit of stakeholders of LDC Finance Limited or F and I.

446. The amended statement seems to the writer to mean that SC Management paid GKW Limited $2m for the CBH Limited shares, because what does *"acquired shares in CBH Limited for $2,000,000.00"* actually mean when the words are interpreted?

447. Of importance to the writer the statement does not indicate that the CBH Limited shares are indeed worth $2m (by way of independent valuation), and this will become important at a later stage in this report.

448. The shares could have been worth close to nothing. The statement just says that SC Management Limited *"acquired"* the shares for the alleged consideration of $2m. The statement does not actually indicate that anything other than cash was paid to GKW Limited for the CBH Limited shares. A starting point for the writer was to obtain the meaning of the words *"acquired"* and say a related word such as *"purchased"* and see if they are treated as synonymous in a dictionary. The *Random House Websters unabridged dictionary 1999 Version 3.0* provides these meanings for words *"acquire"* and *"purchase"*;

ac·quire *(Ã kw#-rÆ), v.t.,* ***-quired, -quir·ing.***
1. *to come into possession or ownership of; get as one's own: to acquire property.*

pur·chase *(pûrÆchÃs), v.,* ***-chased, -chas·ing,*** *n. –v.t.*
1. *to acquire by the payment of money or its equivalent; buy.*

449. It is clear to the writer that the first reading would indicate that SC Management Limited ***"acquired"*** or ***"purchased"*** the CBH Limited shares for a consideration of $2m in cash paid to GKW Limited which as we know is a company owned by the directors of LDC Finance Limited, and which company was previously called LDC Investments Limited. So SC Management Limited is allegedly paying $2m in cash in March 2007 for shares in a semi developed piece of bare land. Not the smartest move especially when there is not a shred of evidence that the shares are worth $2m.

450. What stumps the writer is that SC Management Limited, as far as the writer is aware, had no assets of its own with which to pay GKW Limited $2m, because it was only

operating in the role of debt collector for both LDC Finance Limited and F and I on the Halifax Finance Limited ledger. Remember the first statement in the prospectus as recorded at paragraph 437 of this report, which clearly denotes the ledger management role of SC Management Limited.

i. ***When the company became concerned about the recoverability of the advances to Halifax Finance Limited****, it was instrumental in setting up SC Management Limited and exercising influence over the manner in* ***which SC Management Limited managed the Halifax Finance receivables ledger;*** *and*

451. And in any event why would SC Management Limited want to pay GKW Limited $2m for shares in CBH Limited? What has crossed the writers mind is did the directors of LDC Finance Limited instruct SC Management Limited to give to GKW Limited $2m of good Halifax Finance Limited receivables as payment for the CBH Limited shares on the basis that the GKW alleged the CBH Limited shares were going to be worth considerably more?. Remember Mr **MILLER** stated to the writer (in a email dated 13 July 2008) that the CBH Limited shares could be worth up to $3.5m; see paragraph sub paragraph (5) of paragraph 233 of this report.

*"****projections of recovery*** *from these shares on the final development* ***was approx $3.5m*** *in 2006 but that remains to be seen"*

452. Even if SC Management Limited had $2m in cash or kind to pay $2m to GKW Limited for $2m worth of CBH Limited shares how does this impact on the recoverability of the Halifax Finance Limited ledger for LDC Finance Limited and F and I. The $2m paid by SC Management Limited goes to GKW Limited, which is owned by the LDC Finance directors. Surely paying $2m in cash or kind to obtain $2m in shares is a neutral transaction.

453. The next point is that the statement contends that somehow SC Management Limited owed LDC Finance Limited millions of dollars when this is palpable nonsense. As stated SC Management Limited was a debt collector or manager of the Halifax Finance Limited ledger which had monies from both LDC Finance Limited and F and I stakeholders. . It did not own any ledger per se. As for SC Management Limited being able to "transfer" loan receivables to LDC Finance Limited to the value of $2m

is also a misstatement. SC Management Limited did not own any "loan receivables" to transfer so what is the author talking about?.

454. These loan receivables were Halifax Finance Limited loan receivables and Halifax Finance Limited had not been liquidated or placed into receivership so SC Management Limited would require Halifax Finance Limited to be paid $2m for $2m of good loan receivables being transferred to LDC Finance Limited which would once again be a neutral transaction. The statement also mentions the transfer of "further loan receivables" to LDC Finance Limited without specifying the actual value of those loan receivables. They could have been completely bad for all the writer knows, or they could have been worth only a couple of hundred thousands in realizable value once cashed and not the $2m stated.

455. Finally there is the issue of preferential payments to certain creditors, or these payments in cash or kind were otherwise unlawful without due process being followed such as Halifax Finance Limited being liquidated because it had been operating whilst insolvent for probably 5 to 6 years and otherwise the director had acted fraudulently in numerous transactions. And as the reader will become aware Mr **BROWNIE** is not alone when in comes to fraudulent or otherwise illegal transactions for the purpose of personal gain.

456. From the plain reading of the statement it would appear that the statement does not of itself indicate that LDC Finance Limited had been "given" an injection of $2m of assets by effectively the directors of LDC Finance Limited in order that the $2m be applied to the shortfall that was obvious between the loan receivables due to LDC Finance Limited from Halifax Finance Limited. To the writer the statement is wholly misleading, and where not factually misleading confusing, and the writer believes that this was the authors intention.

451. In any event the writer repeats that the entire statements in either the original statement in the April 2007 prospectus or the amended statement made in May 2007 are blatantly untrue because;

- SC Management Limited was **not** owned by LDC Finance Limited at that time and thus no transfer could benefit LDC Finance Limited or F and I investors.

- Chris **HARDIMAN** owned the CBH Limited shares and **not** GKW Limited.

- Nowhere is it mentioned that the transfer of the CBH Limited shares was part of an agreement between LDC Finance Limited and F and I so that F and I would transfer $4m of its good book to LDC Finance Limited to enable it to appear solvent for the purpose of sale.

- That Mr **NOONES** report to LDC Finance Limited directors had specified that the sale of the bad debts of Heli-logging had to be sold to Halifax Finance Limited and the transfer of all good loans of Halifax Finance Limited had to be "given" to LDC Finance Limited to even enable Mr **NOONE** to approach prospective purchasers for LDC Finance Limited. Of course this had not been done and so Mr **NOONE** and the directors of LDC Finance Limited, and most likely Messrs **STYANT** and **LANCASTER** of Perpetual Trust, knew that LDC Finance Limited was still hopelessly insolvent and would crash and burn bringing down the F and I stakeholders in the process.

- An agreement to transfer 50% of the CBH Limited shares in mid 2006 to the benefit of F and I had not been completed by LDC Finance Limited directors (who supposedly owned GKW Limited which supposedly owned 43% of CBH Limited shares), when it was part of a deal that saw F and I give security over $1.5m of its good book supposedly as security for a loan given by LDC Finance Limited to F and I which was actually a "paper loan" wrongly/falsely reported in the September 2006 LDC Finance Prospectus as being an injection of $1.5m of capital received by LDC Finance Limited whilst falsely asserting that there was only about $100K of bad debts. This non-compliance with an important part of the agreement, and otherwise deceiving F and I as to the financial position of LDC Finance Limited means that the agreement can be voided by F and I. Further the assets used by F and I to secure the "paper loan" were not F and I's to transfer because they were irregular voidable allotments and neither F and I or

LDC Finance Limited had approached the F and I stakeholders asking their permission and obtaining consent in the proper form.

- The same position applied to the $4m deal for shares in March 2007, but adding in the fact that Mr **NOONE** had blackmailed Messrs **SCHOLFIELD** and **HARDING** with the patently false assertion that if they did **not** go for the **NOONE** plan their illegal activity of trading without a prospectus would come to light and they would go to prison. This action makes the agreement to transfer the $4m of F and I loan receivables to LDC Finance Limited an illegal contract.

452. Additional evidence that the writer will later tend in this report from no other than the receiver Mr **HOLLIS** will establish that ownership of the CBH Limited shares was in fact with Mr **HARDIMAN** all the time. The writer submits that this fact exponentially impacts on the level of inculpation relating to the misstatement by the LDC Finance directors in the prospectus.

453. The writer believes that Messrs **HARDING** and **SCHOLFIELD** were suspicious of the second deal for $4m, but that the real point of no return came when Mr **NOONE** falsely asserted that non-compliance with the **NOONE** plan would axiomatically bring about a prison term for both men due to their non-prospectus status.

454. It would appear there are a lot of dumb people in Nelson. But the writer should not pick on just Nelson people given that Pricewaterhousecoopers is involved in the ludicrous moratorium agreed to by 80% of Hanover Finance Limited investors. After all if you cannot trust the men that work for iconic Pricewaterhousecoopers that reside in the gleaming glass towers of downtown Auckland, what's the world coming to? Well the world has actually come to this point. As the reader will learn you cannot trust Pricewaterhousecoopers pure and simple and it is the writers opinion that the facts contained in this report support a call to have Pricewaterhousecoopers employees Messrs **FISK** and **HOLLIS** resign as receivers and an independent liquidator be appointed, if necessary by order of the High Court.

455. Amongst the LDC Finance Limited auditors report dated 27 April 2007 (at page 207 of the annexed dossier) at 16. Restructuring it is stated by the author;

The Company's directors entered into an agreement on 22 March 2007 which resulted in the introduction of a new level of share capital into the company, ***due to advice received that increased provisioning was required. The agreement was with a privately funded Nelson based finance partnership that subscribed for 4,000,000 ordinary B Shares in the Company****.* ***This consideration was provided by the assignment of certain financing receivables.***

During the year ***a specific bad debt provision of $4,507,000 was required to be recognized by the company in respect of the deterioration of the recoverable value of certain large receivables****. This has resulted in the company making a loss for the year of $4,581,480.* ***This bad debt provision has arisen primarily from the company's predecessors (LDC Investments Ltd) policy of lending to retail finance companies****.* ***The company has largely ceased wholesale lending to retailers and this provision is expected to cover potential losses from this past policy. The provision has been replaced by increased shares subscriptions.***

456. The explanation given by the LDC Finance directors is long winded, confusing, and non specific, and probably written by Mr **MILLER**, or someone under his instruction, to be as uninformative and obfuscatory as possible. Moreover what is this nonsense of a "privately funded" Nelson based finance partnership that subscribed for $4,000,000 ordinary B shares in the company.

457. That statement is an absolute lie and the authors knew it. F and I was operating in breach of the Securities Act 1978 by obtaining money from the public without a registered prospectus and those subscriptions could not legally be assigned or otherwise sold or 'dealt in".

458. And what about assigning $4m of good F an I loans to LDC Finance Limited for B class non voting shares in LDC Finance Limited, a company that had allegedly somehow "overlooked" bad debt provisioning of over $4m in six months. Who in their right mind would inject $4m of good book into such a company without getting a seat on the board and replacing the current management? It just beggars belief. Of course if the purchasers of the B class shares were blackmailed by the assurance manager of Pricewaterhousecoopers that they were going to go to prison if they did not do the deal then that would explain such bad commercial practice.

459. It is accepted by the writer that a large amount of the losses of LDC Finance Limited occurred before 2004 (and had been hidden by the directors); but what did the Trustee Mr **STYANT** have to say about this?. Surely the Trustee must have been aware that if the losses were incurred as a result of pre 2004-2005 loans then all of the prospectuses and monthly certifications by the LDC Finance Limited directors post those dates must have been misleading as the directors of LDC Finance Limited must **not** have reported the losses, and thus the management was otherwise hopelessly incompetent or totally dishonest.

460. The writer believes that as at March 2007 the LDC Finance Directors and Pricewaterhousecoopers knew that it was all over and the fat lady was in warming up her tonsils as they decided to finish off the conspiracy initially began and operated by Messrs **MILLER** and **BROWNIE.**

461. That initial conspiracy was to dupe F and I to put millions of dollars into Halifax Finance Limited loans that were well vetted with sound security in order to enable LDC Finance Limited to grab that F and I money pursuant to their first ranking security to cover its now massive and mounting losses on the Heli-logging group fiasco and other fraudulent practices of largely Mr **BROWNIE**. That was why Mr **MILLER** allowed Mr **BROWNIE** to pay interest to F and I instead of meeting obligations to LDC Finance Limited. Of course the whole truth was that Halifax Finance Limited could not meet its obligations because it was hopelessly insolvent. The question must be asked with what or whose money was LDC Finance Limited paying stakeholder interest payments due; the writer suspects that LDC Finance Limited was paying interest to stakeholders using stakeholders funds.

462. The second part of the conspiracy, which latterly (post January 2007), involved Pricewaterhousecoopers, was "persuading" Messrs **SCHOLFIELD** and **HARDING** to hand over a further $4m of their stakeholders funds and it was only Mr **NOONE** that was capable of "facilitating" this for the LDC Finance Limited directors. Mr **NOONE** chose to personally visit Nelson where he played the dual roll of good guy and bad guy. The bad guy "put the heavy word" on Messrs **HARDING** and

SCHOLFIELD and immediately afterwards the good guy promised to deliver a $4m bonus to F and I upon the sale of LDC Finance Limited.

463. The writer will return to the successful blackmail on one hand, and inducement by fraudulent means on the other, of Messrs **HARDING** and **SCHOLFIELD** by Mr **NOONE**, after dealing with the supply to the reader of incontestable proof as to the level of insolvency of both LDC Finance Limited and Halifax Finance Limited prior to September 2006. The importance of this information is that;

- Messrs **NOONE**, **HOLLIS**, and **CAIN** of Pricewaterhousecoopers would have known all about the level of insolvency of LDC Finance Limited, Halifax Finance Limited and the Heli-logging Group, when persuading F and I partners Messrs **SCHOLFIELD** and **HARDING**, who were at that time also shareholders in LDC Finance Limited, to purchase another 4,000,000 shares for $4m. If aware of the fraud and insolvency in Halifax Finance and LDC Finance Limited, the deception of Messrs **SCHOLFIELD** and **HARDING** by Mr **NOONE** was with the intention to defraud.

- Messrs **NOONE**, **HOLLIS**, and **CAIN** of Pricewaterhousecoopers have **not**, post receivership, reported the previous behaviour of the directors of LDC Finance Limited to the appropriate authorities being the Securities Commission, the New Zealand Police Service, and the Serious Fraud Office, or taken action against the directors of LDC Finance Limited for compensation of the LDC Finance Limited stakeholders pursuant to the salient provisions of the Companies Act 1993. On the face of this activity, or specifically omission to report the behaviour Messrs **NOONE**, **HOLLIS**, and **CAIN** would be committing a conspiracy to defeat the course of justice; Section 116 of the Crimes Act 1961, or were possible accessories after the fact; Section 71 of the Crimes Act 1961.

- Messrs **STYANT** and **LANCASTER**, as it will be shown, were as aware of the level of insolvency and fraud being committed in both LDC Finance Limited and Halifax Finance Limited, (and if not aware, ought to have known, or were

willfully blind to its existence), and have been attempting to stop information coming to light about the behaviour of the directors of LDC Finance Limited and Halifax Finance Limited. Again if this can be proven as true then they too face similar charges.

THE TRUTH AND NOTHING BUT THE TRUTH ABOUT HELILOGGING HOLDINGS LIMITED, TARANAKI TIMBER & TREATMENTS LIMITED, HELILOGGING LIMITED, & M & S TRADING LIMITED AND THE INSOLVENCY OF LDC FINANCE LIMITED AND HALIFAX FINANCE LIMITED.

464. The following twenty or thirty paragraphs are the proof in the pudding as to the level of dishonesty of the directors of both LDC Finance Limited and Halifax Finance Limited because the content proves the level of insolvency of the Heli-logging Group and thus LDC Finance Limited and Halifax Finance Limited, and that the directors of all of the companies involved knew about the likely insolvency as early as mid 2003, and definite and irrecoverable insolvency by mid 2005. The content would also seem to prove how low **MILLER** and Co could go when it comes to feathering their own nests whilst the stakeholders of LDC Finance Limited and Halifax Finance Limited were defrauded of millions and millions of dollars.

Fast FORD

465. The supposed boss of bosses of the Heli-logging Group of companies was Mr Mark **FORD** of Stratford Taranaki, although Mr **FORD** says he was born "up north". Since leaving school Mr **FORD** has had sawdust in his boots having been involved in the forestry or logging industries. He flew helicopters on log recovery for numerous years until allegedly health stopped him flying. He has operated several logging and timber processing companies with mixed success and failure. The writer is reasonably well known in the Taranaki area due to numerous investigations undertaken by the writer in that area, which have received considerable local and national media coverage.

466. Therefore any chance of doing a covert operation was plagued with difficulty so the writer thought it best to approach Mr **FORD** directly. As it would turn out Mr **FORDS** father did know the writer by sight so any covert operation would have been blown at the get go.

467. Mr **FORD** seemed relatively relaxed about the writer investigating the Heli-logging Groups spectacular demise. In our initial telephone conversation the writer asked Mr **FORD** what it was like working with Mr David **MILLER** and he commented that it was analogous to being tied up at the front of a canoe whilst Mr **MILLER** paddled and steered at the back. Mr **FORD** called Mr **MILLER** a control addict. According to Mr **FORD**, it was **MILLERS** way or the highway.

468. Previous to meeting Mr **FORD** the writer had made various inquiries around the area and received mixed reports as to **FORDS** credibility. However it appeared that Mr **FORD** was known as a hard worker and a man that is always looking for the "big buck" and is often the subject of local gossip about his grandiose plans in the logging and aero business. Bearing this in mind, the writer visited Mr **FORD** at his farmlet just south east of Stratford.

469. Present at the interview was Susan **FORD**, Mr **FORD'S** wife and another Advantage Advocacy Limited investigator. Mrs **FORD** struck the writer as being intelligent and knowledgeable about not only business in general, but specifically about the activities and agreements between Halifax Finance Limited, LDC Finance Limited, Commercial Factors Limited and the Heli-logging Group. Both Mr and Mrs **FORD** regretted ever doing business with Halifax Finance Limited and LDC Finance Limited stating that it had left them in significant debt.

470. Mr **FORD'S** knowledge of what occurred was as it should have been given that he was a key man in the enterprise, although the writer was to have a few surprises for Mr **FORD**. Mr **FORD** supplied a statement to the writer, aware that the contents of the statement would be relied upon by the writer to make allegations against the directors of LDC Finance Limited and Halifax Finance Limited whom Mr **FORD** saw as being the same entity. The writer had already spoken with Mr Terry **HAYDON** of

Commercial Factors Limited before visiting Mr **FORD** and so had been informed of certain matters that would enable the writer to examine Mr **FORD** more fully.

471. One of the key matters of interest was whether Mr **HAYDON** had actually thought that Mr **MILLER** was in charge of Halifax Finance Limited. Mr **HAYDON** went further and said that he thought Mr **MILLER** was also in charge of Heli-logging Group and Halifax Finance Limited as well. The writer also spoke with Chartered Accountant John **WHITTFIELD** who was receiver and then liquidator of Heli-logging Holdings Limited who also opined that he felt that Mr **MILLER** was the "key man" relating to the day to day and overall directional control of LDC Finance Limited, the Heli-logging Group, and Halifax Finance Limited. The writer having met Mr **MILLER** had no problem with these impressions of Mr **MILLER** as he had struck the writer' as being a man that wanted to be seen as the *"power broker"* whilst others that surrounded him were sacrificial *"pawns"* whose slaughter was a bearable cost if he got his way.

472. Mr **FORD'S** initial signed statement (pages 1682 to 1697 of annexed dossier; with annexures "**A**" to "**L**" pages 1698 to 1758 of the annexed dossier) provides the following information; (emphasis that of the writers)

> *1. My name is Mark Wayne **FORD** businessman of Stratford. I have been asked by Mr Dermot **NOTTINGHAM**, advocate of Advantage Advocacy Limited, to supply this statement in regard to my experiences in dealing with amongst others Messrs Paul **BROWNIE**, David Gordon **MILLER**, John **JANNETTO**, Chris **HARDIMAN**, Ian **SMITH**, Kevin **ELLIOT**, Bruce **OMALLY**, Graham **TAKARANGI**, Malcolm **HOLLIS**, Phillip **MCKINNON**, John Trevor **WHITTFIELD**, and Stuart **MIRFIN**.*
>
> *2. Mr **NOTTINGHAM** has informed me that he will rely on the content of this statement in making a report to investors in LDC Finance Limited and that it is important that I affirm the truth of the statement. With the limitation of the accuracy of my memory, I do so.*
>
> ***The Heli-logging Enterprise***
>
> *3. I have been involved in the logging industry in one way of another since the beginning of my working life. I have owned and operated several logging operations with a mixture of failure and success. I have been, over the last decade or so, trying to build a core logging business using various types of Helicopters as an efficient way of extracting logs from forested areas for milling. It was this particular type of enterprise, operated from Stratford Taranaki, that got me involved with amongst others, the persons name above.*

4. *In the late nineties I was purchasing Helicopters from Mr Bruce **OMALLEY** of Metro Air Limited from Christchurch. On I believe two occasions I purchased two Scout Helicopters for the sums of $125K and $200K respectively. I refer to these helicopters as "flyers" because they were able to be flown, if not straight away, within a reasonable period of time, from the date of purchase.* ***I financed these Helicopters through Halifax Finance Limited, a Nelson based finance company and it was through this transaction that I met Mr Paul BROWNIE who I understood owned Halifax Finance Limited. I used these Scout helicopters to extract timber from forested areas**.*

2 Wessex Helicopters (plus parts) for $3.2m(NZD)

5. *In or around late 2002 I was contacted by a Mr Ian **SMITH** who introduced himself as being Mr Paul **BROWNIES** solicitor.* ***Mr SMITH stated that Mr OMALLEY of Metro Air Limited was unable to continue to fund a facility to Halifax Finance Limited which had security over two Wessex Helicopters plus a wreck and "enough parts to keep flying them forever".***

6. *I was aware that Mr **OMALLEYS** logging operation using Wessex MKII's had been grounded by the CAA following a fatal accident when one of the helicopters engines had not been operating unbeknown to the pilot when the pilot had attempted to lift a log.* ***I was interested in the deal because of the lifting capacity of the Wessex helicopters, and the promise of an extensive parts itinerary, but felt that the price was exorbitant. Mr SMITH explained that the deal included a finance package that would make the numbers work.***

7. ***I subsequently spoke with Mr BROWNIE who gave me assurances as to the condition of the Helicopters and the extensive itinerary of parts. I signed up on the deal in late 2002, and when everything was delivered, a large number of the parts did not have sufficient paperwork and were therefore useless**.*

8. ***Additionally the two Helicopters that were supposedly "flyers" were not in sufficiently safe condition to fly. I complained bitterly to Mr BROWNIE who did not seem to care much. The purchase price of $3.2m included a period of "free interest".***

9. ***I have subsequently became aware, much later on, that Mr OMALLEY had purchased the Wessex Helicopters subject of the $3.2m loan facility from Halifax Finance Limited for approximately $200,000 to $250,000.00 NZD from an auction in the United Kingdom.***

10. ***I have also been told by Mr OMALLEY that the $3.2m facility that I took over had been used to fund the purchase of a Holiday house in the sounds for Mr OMALLEY and $500K or more payout to Mr BROWNIE**.*

11. *I am also aware that Metro Air Limited had another shareholder Mr Timothy **WHITTLE**, who has since been imprisoned for 4 years on fraud charges relating to taking over $1m of deposits on car purchases where the vehicles never existed.*

12. *I have since been informed that Mr **OMALLEY**, Mr **BROWNIE**, and Mr **WHITTLE** were shareholders in a related company to Metro Air Limited called Aero Enterprises Limited and that both companies were placed into liquidation on 23 November 2006.*

13. *I have also been informed that Mr **WHITTLE** has been banned for life from being a director of a company and that Mr **OMALLY** has been banned from being a director for 5 years.*

14. ***As at June 2003 I was not in a position to try and get the helicopters CAA approved because we required more Helicopters that were "flyers' and parts with appropriate paperwork for the purpose of testing to obtain certification. One of CAA's requirements was we had to have sufficient parts to maintain the aircraft safely**.*

15. ***To this end I informed Mr BROWNIE that I needed additional funding to purchase more helicopters and parts and informed him that I had found 5 Wessex helicopters with a significant itinerary of parts from the UK for the sum of approximately $650k (NZD). Mr BROWNIE informed me that he would arrange for the deal to be put to one of his wholesale funders LDC Investments Limited of Nelson who had actually given Halifax the monies to finance the first advance to Mr OMALLEY, which I had taken over.***

Five more Wessex helicopters (plus parts) for $650K

16. *Me and my wife traveled to Nelson in mid 2003, to meet with the new prospective funder at the office of Mr **BROWNIES** solicitor Mr Ian **SMITH**. At the initial meeting only me, my wife and Mr **BROWNIE** were present.*

17. *We discussed what was to be stated to the prospective new funder in some detail. **Mr BROWNIE told me that if anyone asked how I could buy 5 Wessex helicopters and parts for $650K(NZD) when I had purchased only two Wessex helicopters and some useless parts for $3.2m to state that I was a really good negotiator.***

18. *I didn't really comprehend Mr **BROWNIES** logic because I had actually purchased the two helicopters (and one wreck for parts) for $3.2m and had been in business for many years, so if I had been good at negotiation it would have been apparent well before I decided to buy the two helicopters for $3.2m, or $1.6m each, considering that internet purchases of the same Helicopter (with usable parts) were available at $130K each**. I thought it inescapable that the prospective financier would realize that there was a $1.47m variance in the price between the Helicopters I had purchased from BROWNIE and OMALLEY, and those that I had purchased over the internet.***

19. ***I had already indicated to Mr BROWNIE that I thought that I had paid far too much for the two helicopters and that I felt that he had misrepresented their value to me. Mr BROWNIE just wasn't fazed by any such statement nor the fact that I had informed him that I did not intend to honour the original agreement relating to the price of $3.2m for the two Wessex Helicopters nor the subsequent interest payments.***

I meet Mr David Gordon MILLER Financier

20. *Immediately after the meeting with Mr **BROWNIE** ended Messrs **SMITH**, David **MILLER** and Stuart **MIRFIN** of LDC Investments Limited joined the meeting. My wife left and was not present for second meeting. I understood Mr **MIRFIN** to be the Manager of LDC Investments Limited and Mr **MILLER** to have been a director or the managing director of LDC Investments Limited.*

21. *Mr **MILLER** took immediate control of the meeting and asked about my businesses and personal assets and took notes. **Initial discussions focused on my assets rather***

than what we had purchased and intended to do. It appeared that Mr MILLER was well aware of my operations and I presumed that information had come from Mr BROWNIE. At the meeting it was my opinion Mr BROWNIE appeared to be subservient to Mr MILLER.

22. *It was a relatively short meeting between all of us and at the end, I was asked to leave the room to enable them to discuss the proposal and make a decision.* ***It was obvious that everyone knew that if the deal was not approved that the likely outcome was a catastrophic loss, if the Helicopters were sold.***

23. *Given the price that I had paid for five Wessex helicopters and parts being around $650K, each helicopter was worth around the $130K mark or less, which was in keeping with what I understand was actually paid for them by Metro Air Limited, or Mr* ***OMALLEY*** *and which they have been subsequently been sold for most recently.*

24. ***Therefore the loss, if the two helicopters were sold as at mid 2003 would have been around the $3.3 to $3.5m mark to Halifax Finance Limited, and as a result of Halifax Finance Limited not being able to pay LDC Investments Limited, I understood a similar loss to LDC Investments Limited.***

25. *I had informed Mr* ***MILLER*** *of a significant first mortgage on the property that was owned by my family trust, but he did not seem to care, and wanted to put a security over it.* ***It was obvious that he wanted to obtain as much security as he could, but in reality he must have known that the only significant security from the further suggested purchase would be the five Wessex helicopters and the parts that had been purchased for approximately $650K. I never maintained or was I asked as to the value of the first two helicopters purchased from Metro Air Limited.***

26. *I was of the opinion, as was Mr* ***BROWNIE,*** *that Mr* ***MILLER*** *and LDC Investments Limited had no option but to fund the additional loan for $650K or face the irrecoverable losses associated with Halifax Finance Limited's selling the two helicopters that were in not flyable condition.*

27. *About 15 minutes later Mr* ***BROWNIE*** *met with us alone and informed us with a grin that we (being Heli-logging Holdings Limited) were the proud new owners of 5 more Wessex Helicopters and the associated parts.*

28. *As part of the financing I understood that LDC Investments Limited would place a security over the property owned by the trust and Heli-logging Holdings Limited which they did in or around 10 September 2004.* ***I was surprised that Mr BROWNIE would inform us of a decision made by Mr MILLER as I thought it would be normal for Mr MILLER to want to inform us personally as he was the decision maker for LDC Investments Limited and the money was coming from that company and not Halifax Finance Limited as it could not fund any further monies.***

From $3.2m to $10M on helicopters that were still unapproved to fly for their intended use by the CAA.

29. ***I was to understand from the behaviour of Mr BROWNIE and Mr MILLER at that meeting, and subsequent events and meetings I had with either man alone or together, that Mr MILLER was in effective control of Halifax Finance Limited and Mr BROWNIE, and as it would come to pass Mr MILLER, and the other directors of LDC Finance Limited, would take effective control of every other company, and individual involved, in promoting the attempt to recover the invested monies in the Wessex Helicopters that would burgeon from $3.2m to in excess of $10m as at mid***

***2005** when the CAA finally turned down the application to certify the helicopters for their intended use with Heli-logging.*

30. *During the 2003 to 2004 period further finance facilities were organised through Mr **MILLER**. At times post this time I was unsure whether they came from Halifax Finance Limited or LDC Investments Limited, and latterly LDC Finance Limited. **All I was sure of was that Mr MILLER was in charge. The reason I was unsure as to owed who what was because I thought Halifax had no monies but reports would come through with increasing and decreasing amounts being owed by Heli-logging Holdings Limited and other associated entities to LDC Finance Limited and Halifax Finance Limited. It looked like loans amounts were being swapped between the companies on a regular basis with the result that the loan appeared to come back into either company as if interest had been paid. I can assure you that as far as I am concerned no one has ever paid interest to either Halifax Finance Limited nor LDC Investments Limited or LDC Finance Limited***

31. *I am aware that LDC Investments Limited sold their book to LDC Finance Limited in or around mid 2004 and that from that time going forward LDC Finance Limited gave significant further funding to Heli-logging Holdings Limited and other companies associated with the project. This additional funding was to attempt to get the Helicopters CAA approved for the use of carrying logs underneath.*

Miller takes charge of Heli-logging money when aware of rampant insolvency

32. ***It became abundantly clear to both me and my wife that we were not in control of these additional financial facilities from LDC Finance Limited as would be the normal arrangement.***

33. ***I felt at a total loss because I had the personal guarantees and Mr MILLER was directing what risks I took seemingly for his ultimate protection, that being the bottom line of LDC Finance Limited's balance book which must have been looking very bad indeed unless he could get CAA certification and put the helicopters to work carrying logs.***

34. *Normally, if I was in charge of the finance facility, the money would be drawn down by me and placed into a company bank account I controlled and I would pay creditors as they arose.*

35. ***Mr David MILLER basically took control of the facilities and arranged for the payment of accounts for the companies I owned or should have controlled as a director.***

36. ***I never really gave him permission per se, Mr MILLER just took control and for all intents and purposes became a director of Heli-logging Holdings Limited because I did not approve significant transfers of money to third parties on Heli-logging Holdings Limited, or associated companies accounts in payment of matters that Mr MILLER had negotiated without my input, or alternatively if I had some input, it was ignored in part or whole, by Mr MILLER.***

37. *I annex as the documents marked "**A**", "**B**", "**C**", "**D**", "**E**", true copies of documents Mr **NOTTINGHAM** has given me that he says he obtained from the receivership files of the Heli-logging group. The document marked "A" shows monies allegedly withdrawn from the Heli-logging Ltd accounts and deposited in the Carren Miller Trust accounts. **I note that it would appear that the total amount of $166,420.00 that has been withdrawn from the Heli-logging Limited account and***

paid into the Carren Miller trust account has no reference as to who would ultimately have receive the payment. These payments appear to be made between 20 July 2005 and 22 January 2007.

38. ***I have informed Mr NOTTINGHAM that I have no knowledge whatsoever as to why those payments were made, and they were certainly not approved by me and would not have been approved by me if knowledgeable of them****.*

38. ***I note that the annexed document marked "B" appears to be questions asked by the receiver of Mr MILLER about the Heli-logging group and that Question 3 asks Mr MILLER specifically about $80,000.00 of payments made to MILLER from Heli-logging Holdings Limited's loan from LDC Finance Limited numbered VL1117. I have no knowledge of these payments and certainly did not authorise them and would not have authorised them if aware of them. I do note that from the content of document "B" Mr MILLER answers the receiver that he did receive the payments alleged.***

39. *I note that document "**B**" also contains **a question from the receiver of Mr MILLER about a payment from Heli-logging Limited loan VL 1117 to GKW Limited (question 5). Apparently a payment of $65,096.22 was made from Heli-logging Holdings LDC Finance Limited Account No 2 (LDC loan VL 1117) to GKW Limited on 28 September 2006. I note that Mr MILLER answers the receivers question with the following explanation;***

"This was an advance of $50k on 20.10.04 by LDC Investments Ltd plus interest to date. LDC investments Ltd business was later transferred to LDC Finance Ltd but this loan remained in the old LDC Company because the total loan to HHL exceeded the permissible limit at that time. The name of LDC Investments was later changed to GKW Ltd to avoid confusion."

40. ***I am unaware of this loan of $50k or any interest due. I was unaware of this payment being made and of the reasons for the payment at all. I did not approve of the payment, and would not have approved of the payment if I had been aware of it for the following reasons. Obviously I am saying that as I was unaware of the loan amount the money was not owing. Secondly the company was not in a position to pay back any loans and so therefore no such payment should have been made to a single creditor especially when the payment was made by Mr MILLER to a company largely owned by him being GKW Limited. Effectively Mr MILLER used funds from LDC Finance Limited's stakeholders on my companies loan account to pay his company $65,096.22; an amount I do not believe that my company owed his company.*** *I note that document "**B**" records Mr **MILLER** answering the receivers question about the repayment of the alleged $50K loan that was repaid as at 18 January 2008.*

41. *I note the annexed document marked "**C**" appears to be a copy of an LDC Finance withdrawal slip dated 28 September 2006.* ***The slip appears to indicate that on 28 September 2006 a cheque was drawn from the LDC Finance Limited Heli-logging Holdings No 2 account for the sum of $65,096.22 payable to GKW Limited*** *with a cheque numbered 102278.*

42. *I note with considerable consternation that the slip has the following authorization for the payment written on it;*

"advance to repay loan still held in GKW Ltd ledger as per directors instructions"

43. ***The reason for my concerns are simple. I have been the single director of Heli-logging Holdings Limited and I did not authorise such a payment from that companies No 2 account. Therefore it follows that the person that authorised that payment from Heli-logging Holdings Limited to GKW Limited for $65,096.22 is likely to have a person in control of LDC Finance Limited and that the reference to "as per directors instructions" is a reference to the directors of LDC Finance Limited taking money from Heli-logging Holdings No 2 account without my permission. I believe that this act is theft of money from Heli-logging Holdings Limited, and LDC Finance Limited by the directors of LDC Finance Limited, who are also either directors or shareholders of GKW Limited.***

43. ***I also note that the annexed document marked "D" is an email dated 18 September 2006 from Mr David MILLER to the receiver of Heli-logging Limited Mr John WHITTFIELD which attaches a letter dated 8 September 2006 sent by Heli-logging groups lawyer Mr Graham TAKARANGI to the Inland Revenue Department about the absolute insolvency "by a wide margin" of all of the companies in the Heli-logging group. I am aware of that letter and the Inland Revenue's application to wind Heli-logging Limited up in the High Court.***

44. ***Of importance to me as a director of Heli-logging Holdings Limited and other Heli-logging group companies the letter advises that the group is absolutely insolvent by a significant margin and that Mr MILLER was advancing monies to himself and his associated companies through my companies loan accounts without my permission***. *Mr* ***TAKARANGI*** *advised the Inland Revenue of the following un-survivable position.*

"The result is that Heli-logging Limited have no operating licence and the costs they have incurred have caused the company to be insolvent by a very wide margin…..
Heli-logging Holdings Ltd, due to the lack of value in unregistered helicopters, is also insolvent by a wide margin*"*

45. ***In fact Mr MILLER knew that the LDC and Halifax book of $10m or more was at a complete loss because he had transferred the first ranking debentures to Commercial Factors Limited and that Commercial Factors Limited were owed nearly $2m with helicopter assets of only about $600k***. *As it was I was aware of an agreement between* ***MILLER*** *and Terry* ***HAYDEN*** *of Commercial Factors Limited to sell the Helicopters for $600K as at 31 March 2006, if they were not certified which they were not.*

46. ***Mr MILLER and the other directors of LDC Finance Limited knew that the position of LDC Finance Limited, Halifax Finance Limited, and Heli-logging group were un-survivable and in fact had known of this since 2005***. *I had kept pursuing getting the Wessexes certified because Mr* ***MILLER*** *in theory could take my farm and everything I owned and had threatened to do exactly that when he use to come and stay on my property in his large motor home.*

47. ***The importance of all of this is that it would appear that Mr MILLER was emptying the Heli-logging loan accounts of LDC Finance Limited for probably many hundreds of thousands of dollars without advising me of this action, and if I been aware of it I would not have allowed***. *I annexed as the document marked "****E****" a true copy of the Companies Office record for Heli-logging Holdings Limited (in receivership) showing that I have always been its sole director.*

A piece of land is purchased for $150K and ends up with a tab of $733k as at 8 September 2006 when Mr MILLER is still "debiting" my companies accounts to pay himself and associated company's' large amounts when aware Heli-logging Group, LDC Finance Limited, Halifax Finance Limited and Taranaki Timber and Treatments Limited wholly insolvent by a wide margin.

48. *Sometime in mid 2005 a company was formed called Taranaki Timber and Treatment Limited* ***which was owned 51% by Mr MILLERS private company GKW Holdings Limited, who Mr MILLER had around an 85.3% shareholding in.***

*49. I annex as the document marked "**F**" a true copy of the Companies Office record for Taranaki Timber and Treatment Limited, and as the document marked "**G**" a true copy of the Companies Office records for GKW Holdings Limited, and as the document marked "**H**" a true copy of the Companies Office record for Miller Holdings Limited.*

50. ***Mr MILLER insisted that I and my wife were to be directors of Taranaki Timber and Treatment Limited but that he would effectively control the company as was the case with Heli-logging Holdings Limited****. The company purchased a disused timber mill which was situated at 113 Swansea Street Stratford with funds drawn down from a facility I understood was with LDC Finance Limited.*

51. I was becoming very confused as to how monies were being secured considering the amounts of the advances against the securities involved. As an example I am aware that an account of over $633K was secured presumably over the land at Swansea Street which could only have a value of $150K.

52. I arranged for improvements work on the property that would amount to $30k maximum, ***but I am aware that about $200k was used from this facility to buy further Helicopter parts****.*

53. *I presume it was Mr* ***MILLER*** *or other directors of LDC Finance Limited that arranged for the drawdowns and payments for those parts.* ***I am unaware of where the other $250K went other than I am sure that I did not receive any of it even though I and my wife guaranteed the loans.***

54. The annexed Companies Office records for Taranaki Timber and Treatment Limited (now in liquidation and receivership) shows me and my wife to still be directors having been appointed as at the date of incorporation on 4 July 2005.

55. ***The records also show that GKW Holdings owns 51% of 100 shares in the company and me and my wife to own the remaining 49 shares. Mr MILLER had informed me that he wanted control, but not to appear to be in control****. Mr* ***MILLER*** *used to come to my property at 210 East Road Stratford and park his large mobile home near my house. On one occasion I was told by Mr* ***MILLER*** *that if he had to take my family farmlet because of the helicopter enterprise failing, he would let me lease it back from his finance company as he 'was not that bad a guy" or words to that effect.*

56. The annexed Companies office records for GKW Holdings Limited records David MILLER and Kevin ELLIOT as being directors of the company and shares to be split between amongst others, Messrs STEVENSON, MILLER, JENKINS, HARDIMAN, and ELLIOT who I understand to be either present or past directors of LDC Finance Limited and some of whom are chartered accountants for Carren Miller chartered accountants of level 3 Clifford House 38 Halifax Street Nelson.

57. ***I thought it highly irregular for these men to be shareholders in a company, which was using LDC Finance Limited money to effectively purchase shares in another company for their own benefit for the following reasons***.

58. *I am unaware of Mr* ***MILLER*** *or any of the other shareholders depositing any of their personal funds in the account of Taranaki Timber and Treatment Limited for the payment of the shares in the company, or for payment for any other form of ownership entitlement from the assets of the company upon dissolution of the company, or indeed from any income derived from the company whilst in operation.* ***I am unaware of the Taranaki Timber and Treatment Limited, or GKW Holdings Limited, or any of the shareholders of GKW Holdings Limited, paying any interest to LDC Finance Limited or indeed paying any of the significant losses finally made when the company's only remaining asset, the property at 113 Swansea Street Stratford was sold to a local solicitor for the sum of $150,000.00.***

59. ***Neither am I aware as to whether Mr MILLER or any of the other shareholders signed any personal guarantees relating to the substantial debts incurred by the company***. *As already stated I am aware that Mr* ***MILLER****, and the other directors to a lesser extent, excepting probably Mr* ***JANNETTO*** *who was quite prominent,* ***were again in total control of Taranaki Timber and Treatment Limited***. ***I note from the annexed document marked "D" that Mr TAKARANGI attaches a list of assets for Taranaki Timber and Treatment Limited which discloses a shortfall of nearly $400,000.00. As I say Mr MILLER was the mastermind behind running up that level of indebtedness.***

60. ***I note from the annexed document marked "I" that it would appear that on 20/6/06 the sum of $206,310.94 was advanced to Taranaki Timber and Treatments Limited from Helilogging Holdings Limiteds LDC loan VL 10241 account when Mr MILLER must have been aware that both Heli-logging Holdings Limited and Taranaki Timber and Treatments Limited were insolvent by a 'wide margin'. In fact Mr TAKARANGI had this to say about the solvency of Taranaki Timber and Treatments Limited at page 4 of his letter to the Inland Revenue Department;***

*"****This company has been operating at a very low level having been wound down because of its inability to obtain supplied for its plant because it associated company, Helilogging Limited, has been unable to obtain the appropriate aviation licences to to fly its Wessex Helicopters*** *and its Westland Scout helicopter which had previously operated has also had its licence withdrawn by CAA so that it too cannot source logs in the way it has in the past."*

61. ***I annex as the document marked "J" a true copy of the accounts for Helilogging Limited for the year ending March 2006, which show a net deficit position of $2,254,194.00. I annex as the document marked "K" a true copy of the accounts for Heli-logging Holdings Limited for the year ending March 2006 which shows a net deficit of $3,387,785.00 or a combined net deficit of $5,641,979.00.***

62. ***Therefore when Mr MILLER advanced $206,310.94 from Helilogging Holdings Limiteds loan accounts to Taranaki Timber and Treatments Limited, a company majority owned by Mr MILLER and the other directors of LDC Finance Limited as at 20 June 2006 he did so knowing there was no hope at all of those funds being repaid***.

The "strange" finance facility reports from LDC Finance Limited

63. ***As already commented on there were occasions we received reports from LDC Finance Limited posted to us which were very peculiar for the following reasons which to this day bother me and my wife.***

64. ***One month we would receive a print out saying that owed say $3.5m and the next report would state that the company owed only $1.5m, then a later report would return to the original figure of say $3.5m. We were not confusing facilities as the facility numbers were the same.***

65. ***My wife and I spoke about this and it looked to us as if the figures were being purposefully manipulated because of a possible audit process that required the actual extent of the exposure to the Heli-logging enterprise to be hidden from independent parties****. I annex as the document marked "**K**" a copy of an email (given to me by Mr **NOTTINGHAM**) apparently from Mr **MILLER** to the receivers of Heli-logging Limited as at 22 November 2007 concerning loans assigned between Halifax Finance Limited and LDC Finance Limited. The email reads;*

"The assignment occurred on 25.8.2004 and was recorded on LDC loan to HLL on that date. Halifax didn't get around to recording the assignment in their ledger until 19.1.2005. ***On 27 July 2006 LDC assigned this amount plus $200K accrued interest (total $1.8m) back to Halifax and crated the HLL loan account****. I do not have Halifaxs HLL loan account at that date so I do not know if they debited the HLL loan account."*

66. ***It is clear from the contents of this email that Mr MILLER was 'assigning' loans between Halifax Finance Limited and LDC Finance Limited in such a way that sometimes he forgot to record the 'swap'. The assignments were done in order that the loans would appear as if interest had been paid. My wife and I discussed the impact of the complete non payment of interest or principal to either LDC Finance Limited or Halifax Finance Limited from any of companies associated with the Heli-logging project since we first took over the loans from Metro Air Limited and Mr Bruce OMALLEY, but no one but us seemed to see it as a problem.***

Millions spent on further parts, and MILLER brings in Commercial Factors Limited for a couple of million. Halifax removed as first debenture holder and goes back to third listed security with LDC in second.

67. In 2004 we needed further parts to continue with our application to the CAA. I managed to find a further three Wessex Helicopters and a large stockpile of parts which was held in 100 40 foot containers that were in storage. ***We also purchased some scout helicopters, which were also not certified to fly. LDC Finance also financed these****.*

68. Mr ***MILLER*** *negotiated with Mr Terry Haydon of Commercial Factors Limited to obtain some additional funding for the purchase of the parts and helicopters. I was surprised with what occurred in this deal relating to the ranking of securities over Heli-logging Holdings Limited.*

69. ***Mr MILLER removed Halifax Finances first ranking, and replaced it with a first ranking in favour of Commercial Factors Limited up to $1.2m and then LDC Finance Limited shared a second ranking "pro rata" with Commercial Factors Limited. After that Halifax Finance Limited came last. To me this absolutely proved that Mr MILLER was in control of Halifax Finance Limited. I understood that if the helicopters were sold significant losses would be made by both LDC***

Finance Limited and Halifax Finance Limited, and when I speak of significant I mean probably $8 to $9m minimum.

70. ***Mr MILLER again represented Heli-logging Holdings Limited when dealing with Commercial Factors Limited and I had very little to do with any of the negotiations even though I was supposedly its director.***

71. *In August 2005 the CAA finally issued a decision refusing certification of the Wessex Helicopters as log lifters.* ***As a result of this decision a meeting was held at the Taranaki Timber and Treatment Limited yard in Stratford. Present were me and my wife, my solicitor Mr Graham TAKARANGI, and Messrs BROWNIE, MILLER, and JANNETTO. During the meeting Mr MILLER phoned a solicitor he had engaged on behalf of Heli-logging Limited to give an opinion. Heli-logging paid that account using further draw downs arranged by Mr MILLER. It was agreed to do the JR.***

72. ***Over the next two years Mr MILLER sat back and did not pursue JR as agreed. About a year later we met in a lawyer's office in Auckland when MR MILLER had obtained another legal opinion stating the same opinion to do the JR. At that meeting I remember John JANNETTO was very disgruntled at Mr MILLER for not doing anything much in the intervening period and to hear 2nd opinion was the same as 1st opinion and a further year had gone by and JR had not started.***

73. *Attempts were made to sell the helicopters on line on an international aviation auction but no bids were received.* ***Mr MILLER used Heli-logging facilities with LDC to pay various "agents" to try and dispose of the helicopters with no success. Some of the up front fees paid by Mr MILLER were ludicrous. An example is close to $50,000 NZD to a Malaysian army officer who Mr MILLER had contacted over the Internet. For the $50,000 NZD Mr MILLER obtained a letter in reply saying that the Army officer could not find a buyer.*** *It seemed to me that Mr* ***MILLER*** *was desperate to try or do anything to get LDC Finance out of its position. Other prospective buyers finally were not interested.*

74. *Various agreements were signed between the parties promising the possibility of a judicial review but nothing ever occurred, and finally the helicopters were sold for the following amounts;*

2 Helicopters plus a wreck to me for $500,000.00 (NZD), which I have to pay Commercial Factors in 5 years without any interest. So with normal interest taken out this would amount to probably a very small return.

5 Helicopters sold for about $300,000 NZD to a buyer in the United Kingdom

I am unsure what happened to the other helicopters.

75. *My personal guarantees to LDC Finance Limited and SC Management Limited are now voided. At the end not many of the helicopters were in flyable condition.* ***In fact I estimate that to make the Helicopters flyable would have cost at least another million dollars.***

473. After obtaining Mr **FORDS** initial statement the writer approached Mr **FORD** with further questions and Mr **FORD** gave an additional statement the following day providing the following facts.

1. This statement is in addition to the statement given by me signed 16 January 2009 about the history surrounding the events leading up to the collapse of the Heli-logging group of companies.

*2. After giving my statement to Mr **NOTTINGHAM** I was asked by Mr **NOTTINGHAM** about an invoice created by Heli-logging Limited to Motueka Wood Products Limited for $360,000.00.*

3. I repeat paragraph 2 of my statement signed 16 January 2009.

4. From memory in mid 2005 I approached Mr BROWNIE for additional funding to keep Heli-logging Limited's application to the CAA for approval of the Wessex helicopters funded. My requirements were for about $360K and we needed the money quite urgently.

5. Mr BROWNIE stated that Halifax Finance Limited was "absolutely broke" and could not fund anything at all. I did not approach Mr MILLER because his position was known by me to be similar to Mr BROWNIES. Mr BROWNIE asked me if I had any ideas how to raise money and I could only think of issuing an invoice for future wood cutting to be delivered in the future.

6. Mr BROWNIE suggested that I raise an invoice for $360,000.00 to Motueka Wood products Limited, a company he and Mr Hadyn ELLIS owned in Motueka, and he would undertake to pay it to Mr Terry HAYDON of Commercial Factors Limited within an agreed time if Mr Terry HAYDON would factor the payment deducting about $60,000.00 as a fee. I stated to Mr BROWNIE that he would have to pay the invoice irrelevant of whether the logs turned up at the time that the invoice was payable pursuant to the agreement between him and Mr HAYDON. He said that he would do so and I had no reason to disbelieve him.

7. Subsequently Heli-logging Limited received about $300,000.00 from Commercial Factors Limited of the $360,000.00 invoiced by Heli-logging Limited to Motueka Wood Products Limited. I am aware that Mr BROWNIE did not sign the invoice made out to Motueka Wood Products Limited, but that Mr Hadyn ELLIS, a co director of Motueka Wood Products Limited did. Subsequently Motueka Wood Products Limited did not honor their agreement with Commercial Factors Limited.

8. Subsequently discussions took place between Messrs MILLER and BROWNIE when I was present. Mr MILLER opined that what Mr BROWNIE had done was likely to be considered fraud as he did not have the ability to pay the factored invoice, and the agreement was that he would do so irrelevant of whether I supplied the products.

9. I am aware that a subsequent meeting was held between Mr MILLER and Mr HAYDON, wherein as I believe a result of this behaviour, Commercial Factors Limited replaced Halifax Finance Limited as first debenture holder, and Mr BROWNIE was to pay Commercial Factors Limited an amount of money on a monthly basis. I am aware that proceedings have been issued by Commercial

Factors Limited against Mr BROWNIE in relation to this incident seeking a very significant amount still owing."

474. The content of the two statements completely contradicts the LDC Finance Limited directors protestations in the last April 2007 prospectus that they had just become aware of the high level of bad debts. But the content does support that a large amount of the bad debt was known to exist by the directors as early as late 2002 early 2003. The directors do say in the last prospectus, (almost seemingly in error) in April 2007 that the bad debt arose as part and parcel of lending prior to 2004.

475. The writer intends to paraphrase the content into sections of behaviour by the directors of LDC Finance Limited and LDC Finance Limited.

TRADING WHILST HOPELESSLY INSOLVENT AND THE MASSIVE MISSTATEMENT IN THE SEPTEMBER 2006 PROSPECTUS AT $100K TO $150K BAD DEBT PROVISIONING.

476. It appears from **FORDS** statement that Halifax Finance Limited's debt to LDC Finance Limited relating to the Wessex helicopters was bad in excess of $3m by late 2002 and probably $3.5m or so by mid 2003 when Mr **FORD** was first introduced to Mr **MILLER**. See paragraphs 9, 18, and 23 and 24 of the **FORD** statement.

477. This position seems to corroborate the other email evidence obtained by the writer found at paragraph 379.9 of this report relating to the directors specific management style and knowledge of the exact financial position of the company at any given time. And the reader must remember the evidence the writer has found relating to the insolvency of LDC Finance Limited admitted by Mr **MILLER** when he purchased LDC Finance Limited in 1999 which stood at between $1.2m and probably $1.5m, of which $800K related to a partner of Carren Millers; see paragraph 407 to 411 of this report. And as the reader will become aware there are many other bad debts to be disclosed in the content of this report.

478. Just adding these two numbers up you get to about $4.7m of total losses, which the writer suggests is irrecoverable and this is at mid 2003. In 2004 LDC Finance Limited became an issuer and proclaimed in its prospectus that all was fine when it

would have been anything but that. Mr **MILLER** must have known that the two Helicopters were worth $100k to $130k in 2003 yet did not ask Mr **BROWNIE** how $3.2m was advanced on $250,000.00 worth of helicopters. Surely alarm bells must have been ringing. Why did not Mr **MILLER** act then pursuant to LDC Finance Limited's debenture.

479. Mr **FORD** maintains at paragraph 29 that the indebtedness of the Heli-logging Group to effectively LDC Finance Limited was in excess of $10m when the CAA finally turned down approval of the helicopters for their intended use. It is natural to assume given that Mr **FORD** states at paragraph 66 that Heli-logging Limited never paid any interest at anytime that the total irrecoverable indebtedness would have been around the $12m mark by mid-dish 2006 when LDC Finance Limited suggested to F and I partners Messrs **SCHOLFIELD** and **HARDING** that they buy 1,500,000 shares for $1.5m because LDC Finance Limited want to "give a helping hand to make things right again", or words to that equal affect.

480. According to Mr **FORD** by 2006 the position of LDC Finance Limited and Halifax Finance Limited-s accounts with Heli-logging Group were a total loss because the first ranking debenture to Halifax Finance Limited over the helicopters was replaced by a first ranking debenture to Commercial Factors Limited because both LDC Finance Limited and Halifax Finance Limited were so broke that Mr **BROWNIE** had to commit blatant fraud by deceiving Commercial Factors Limited as to his company Motueka Wood Products Limited being able to pay an account of $360k for wood. See paragraphs 45 and 67 of Mr **FORDS** initial statement of 19 December 2009 and paragraphs 5 to 9 of Mr **FORDS** additional statement. The question must be asked why would Mr **MILLER** continue trading with Mr **BROWNIE** when aware of his disingenuousness.

481. Mr **FORDS** solicitor Mr **TAKARANGI'S** advice to the Inland Revenue Department seems to really put Mr **MILLER** in the hot seat as it is unequivocal in its assertions as to the absolute irrecoverable insolvency of the Heli-logging Group as at 8 September 2006 or just a week before LDC Finance Limited directors declared bad debt provisioning of between $100k and $150K for LDC Finance Limited. See paragraphs 43 to 46 of the **FORD** statement. All of the above means that the directors of LDC

Finance Limited knew as early as 2003 before becoming an issuer that the company was likely irrecoverably insolvent, and then went on to take another $7m to $8m of stakeholders funds and "tip them into the Heli-logging bonfire". It is clear that such risk of other monies belonging to other people proves that the position was intolerable with the only escape being an incredibly high-risk plan using stakeholder's monies. Because the loans were not commercial and the LDC Finance directors were trying to escape personal liability by recklessly using other peoples funds without those persons actual or implied knowledge, and with the deception that the opposite was occurring, this is theft and fraud by the directors. Given the extent of the operation, which must have required agreements between numerous individuals, it would also amount to a conspiracy to defraud. Please refer back to paragraph 379.1 of this report wherein the writer referred to the judgment of O'Regan J in **Fatupaito v Bates** where in his honour dealt with the issue of reckless trading pursuant to section 135 of the Companies Act 1993, and the import of the liability of directors found to have traded recklessly to compensate the creditors or stakeholders as provided for in section 301 of the Companies Act 1993;

it appears to impose a stringent duty on directors to avoid substantial risks of serious loss to creditors and does not appear to allow such risks to be incurred, even in circumstances where potential for great rewards exists;

In situations where a company has little or no equity (as is the case here), directors will need to consider very carefully whether continuing to trade has realist prospects of generating cash which will allow for the servicing of pre-existing debt and the meeting of commitments which such trading will inevitably attract.

Where a breach of duty is found, the assessment of the amount to be paid by a director under s301 should be "neither more or less than that [directors] just desserts.

Further fraud, theft, misappropriation of funds, related party lending etc etc etc

482. As already stated at paragraph 352 of this report section 301(4) of the Companies Act 1993 provides that such orders for compensation may be made even though the person concerned "*is liable to be convicted of an offence"*. As to elements of fraud

where does the writer begin as there are so many occurrences and so much corroborative evidentiary material.

483. Mr **FORD** makes some hefty statements that if true, and it appears that they are corroborated by documentation made by seemingly independent persons, then Mr **MILLER** and Mr **BROWNIE** are guilty, subject of course to the ability to somehow excuse their behaviour, of some very serious criminal offending.

484. It is trite to say that if you know that a company is insolvent, as obviously Mr **MILLER** and **BROWNIE** did, you cannot go taking monies out of the company accounts (even if you are a director) and paying off debt owed to you personally or to a related company that you are involved in. The remaining money or assets left in an insolvent company is ultimately the creditors to be dispersed pro rata, or pursuant to rankings in securities. The Companies Act 1993 has special provision relating to preferential payments.

485. The appropriate course of action relating to an irrecoverably insolvent company is to place the company into liquidation and let the independent liquidator decide who should get paid. But of course a liquidator, as Mr **MILLER** would have known, would have also found the dishonest and illegal practices of the directors going back to 2000 and so that was not an option, otherwise Mr **MILLER** would have done so years previous. It now seems obvious that Mr **MILLERS** intention was to strip the LDC Finance Limited carcass clean leaving the stakeholders to pick over the incinerated bone left by the raging inferno of insolvency that Mr **MILLER** had kept secret for probably 6 years.

MILLER and Co(horts) look after NUMBER ONE

486. But Mr **MILLER**, ever inventive, decided to go several quite ludicrous steps further and take money out of another companies account, that he was not a director or shareholder of, and pay very large amounts to himself and related companies; see paragraphs 37 to 43 of Mr **FORDS** statement of 16 January 2009. Mr **MILLER** did this by authorizing Mr **MIRFIN** and apparently Mr **ELLIOT**, manager and director respectively of LDC Finance Limited, to sign a withdrawal slip on behalf of Heli-

logging Holdings Limited's LDC Finance account in order to pay GKW Limited, a company 80 or so percent owned by Mr **MILLER**, $65,096.22 when Mr **MILLER** knew that LDC Finance Limited and Heli-logging Limited were irrecoverably insolvent. Believe the writer when the writer says this is crazy and brazen behaviour.

487. Mr **MILLERS** excuse for the withdrawal of the money is because he says that LDC Investments Limited did **not** transfer a loan book amount of $50,000.00 to LDC Finance Limited and his excuse is recorded at paragraph 39 of Mr **FORDS** statement as being that the loan was drawn down on 20 October 2004 and **not** transferred to LDC Finance Limited because the loan exceeded the permissible limits at that time. This excuse is nonsense for the following reasons.

488. Firstly the entire LDC Investments Limited's loan receivables book was sold to LDC Finance Limited along with the debt securities on 5 July 2004; (see page 543 of the annexed dossier under the heading of *"material contracts"*). Therefore Mr **MILLERS** statement about the $50,000.00 loan being advanced to Heli-logging Holdings Limited on 20 October of that year, and **not** being transferred in the sale of the book is misleading. The LDC Investments Limited loan receivables book was sold in its entirety as stated in the initial LDC Finance Limited dated 5 July 2004 states; (page 541 and 542 of the annexed dossier under the headings "activities of the issuer" and "acquisition of business"); (emphasis that of the writers)

***"the only asset of LDC Investments Limited that will not be acquired by the company** is shares worth $700,000.00 which are held in an unlisted company CBH Limited a property developer."*

489. Therefore Mr **MILLERS** assertions as to GKW Limited's entitlement to $65k are fraudulent, and the taking of the money theft. The agreement between the directors of LDC Finance Limited and GKW Limited to commit to the course of action to obtain the monies was a conspiracy to defraud.

490. Secondly in the case of the Heli-logging Group the assets would have been effectively the helicopters and ancillary parts. Therefore Mr **MILLERS** reasoning cannot excuse his behaviour because the loan was unsecured and he could **not** demand repayment other than to sue for the monies. Given what had transpired between the parties the

writer contends Mr **MILLER** knew GKW Limited would **not** be successful at either suing Heli-logging Limited, or getting paid even if successful.

491. Secondly the loan, according to Mr **MILLER**, was now owned by GKW Limited, a completely separate entity to LDC Finance Limited and Heli-logging Limited. Therefore Mr **MILLER** had no premise whatsoever to make a withdrawal of effectively LDC stakeholder monies when he had no colour of right, or authorisation. And even if Mr **MILLER** had authorization from Mr **FORD** he still had no colour of right, or legal entitlement to use stakeholder monies to pay an unsecured debt because to do so would be to effectively defraud the stakeholders of their monies invested in LDC Finance Limited on the basis that such monies would be subject to viable and secure debt securities. Clearly paying off an unsecured debt without having security for the advance is **not** a commercial transaction and is dishonest in intent and means by the LDC Finance directors and for that matter the GKW Limited directors.

492. Thirdly the $50,000.00 debt did **not** belong to GKW Limited in any event but would have belonged to the stakeholders of LDC Finance Limited, and thus Mr **MILLER** has converted the amounts to the use of GKW Limited without colour of right and that would also be theft.

493. Finally there is not a shred of evidence that the "debt", if it existed at all, should not have been transferred with the entire book, as the initial prospectus was very clear about LDC Finance Limited receiving the entire loan receivables book of LDC Investments Limited.

494. Therefore any paper "mistake" or other error would have been easily remedied by a simple transfer. After all Mr **MILLER** has been shown as a keen advocate of this business practice. An amount was paid by LDC Finance Limited to LDC Investments Limited for the entire book and that statement of fact is simple. There was no contracting out of this $50,000.00 explained in the prospectus because Mr **MILLERS** excuse is palpable nonsense. If the $50,000.00 was separated where is the consideration back to LDC Finance Limited stakeholders for the lesser book and stakeholders funds. The whole story is a complete nonsense, and the payment was

facilitated for LDC Finance Limited directors to defraud their own stakeholders, who Mr and Mrs **MILLER** proclaimed were mostly their personal friends.

495. The actions of the directors and employees involved were theft and fraud and parties to theft and fraud and the agreement a conspiracy to defraud.

The conductors monthly lifestyle payments from clipping clients tickets

496. The evidence supplied by Mr **FORDS** statement would indicate that Mr **MILLER** had been taking monthly personal life style "top ups" of between $7k and $8k at the expense of Mr **FORDS** personal guarantee to LDC Finance Limited, and expressly without Mr **FORDS** authorization, and whilst aware that there was no chance of that money being repaid to the LDC Finance Limited stakeholders because Heli-logging Group was losing in excess of probably $3m a year and LDC Finance Limited had no hope of getting a cent from its securities over Heli-logging Group assets. The writer wonders if this was the only client Mr **MILLER** was clipping the ticket of. Three or more clients being clipped a similar amount by Mr **MILLER** would soon add up to a major number income.

MILLER and Co up to "All sorts of rorts"

497. The writer was very much intrigued by Mr **MILLER** deciding to use GKW Limited to own 51% of Taranaki Timber and Treatments Limited and not disclosing this ownership in any prospectus of LDC Finance Limited.

498. Surely this is related lending, and related lending that is fraudulent when the security is effectively $150k, and Mr **MILLER** and Mr **BROWNIE** run up LDC Finance Limited and Halifax Finance Limited facilities to the value of nearly $800k. and a bit of timber, and who knows if the timber ever existed given what we know about the deal done between Mr **BROWNIE**, Mr **ELLIS**, Mr **FORD** and Mr **HAYDON** of Commercial Factors Limited that saw Commercial Factors Limited clipped $360,000.00 in entitlements.

499. What is important for the reader to understand about the deal Mr **MILLER** did with the **FORDS** is that Mr **MILLER** instructed the **FORDS** to front Taranaki Timber and Treatments Limited as directors, and to act as guarantors on any facilities obtained by that company from LDC Finance Limited and Halifax Finance Limited. What must be considered is who benefited from this agreement and this should assist with coming to the purpose of the agreement. Clearly LDC Finance Limited and Halifax Finance Limited and their respective stakeholders did **not** benefit as Taranaki Timber and Treatments Limited did **not** pay any interest, had glaringly insufficient assets as security, and most of the monies, if not all of the monies advanced were lost.

500. The **FORDS** may have benefited if the helicopters had been certified but the CAA had turned down the application in mid 2005 (paragraph 29 of the **FORD** statement) and Taranaki Timber and Treatments Limited was formed on 4 July 2005 (paragraph 48 of the initial **FORD** statement), or around the same time, so there could not have been any benefit to the **FORDS** as the entire Helilogging Group was losing money hand over fist; (See paragraph 61 of the initial **FORD** statement). The **FORDS** just brought into further massive debt without knowing exactly where the money was going excepting around $200k for some helicopter parts (paragraphs 52 and 53 of the initial **FORD** statement).

501. It would appear quite obvious that the only persons that benefited would have been the people that had access to the money from the Taranaki Timber and Treatments Limiteds account which we now know to be mainly the directors of LDC Finance Limited and seemingly again the directors of GKW Limited through GKW Limiteds majority shareholding in Taranaki Timber Treatments Limited. As we know the two companies had basically shared directorships and shareholding although they were not subsidiaries. The question must be asked why you would want to act in the position of director, but not actually be one. Sometimes there can be innocent explanations for such behaviour, and normally those explanations relate to not wanting to do the daily grind or that at significant times a director needs to be present in the country and not overseas. Another relatively innocent reason would be to appear to separate ownership as group borrowings to one institution may be too high.

502. But of course where innocent excuses stop is when clearly criminal behaviour prevails. In this case the directors of LDC Finance Limited have special performance parameters with the company being an issuer under the Securities Act 1978. The LDC Finance Limited directors must have known that to lend (as it turns out) around $800k of stakeholders money to a completely insolvent entity being Taranaki Timber and Treatments Limited was not commercial and thus fraud. The taking of the money for their own benefit was conversion and theft and the whole agreement to do so formed a conspiracy. Not to report these matters in the prospectuses and the monthly declarations was also a significant breach of the misstatement provisions of the Securities Act 1978 and the Securities Regulations 1983 and a breach of sections 242, 243 and 260 of the Crimes Act 1961.

503. This behaviour if proven would enable the LDC Finance Limited stakeholders, and any shareholders **not** involved in the activity to seek compensation from the LDC Finance Limited directors pursuant to the section 301 of the Companies Act 1993. The writer also believes that the criminal provisions of the Companies Act 1993 could come into play such as sections 378 and 380.

504. The mens rea is shown by the desire **not** to be directors whilst operating to control the company and then operating the company in a way that was reckless on one hand and fraudulent on the other and putting themselves up for personal guarantees. At paragraph 60 of the initial **FORD s**tatement Mr **FORD** puts the icing on the cake by disclosing that he had no knowledge whatsoever about an advance of $206,310.94 made from Helilogging Holdings Limited to Taranaki Timber and Treatments Limited on 20 June 2006. Mr **FORD** rightly says that he would not have agreed to the advance even if he was approached because Helilogging Holdings Limited was irrecoverably insolvent, as was LDC Finance Limited.

505. It follows that whoever authorised the advance committed fraud and theft for the following reasons. No one but Mr **FORD** should have had authority to increase the Helilogging Holdings Limiteds facility with LDC Finance Limited. No one but Mr **FORD** had the authority to advance monies from Helilogging Holdings Limited to Taranaki Timber Limited. As both companies were hopelessly insolvent the

stakeholders monies advanced could never have been recovered and the persons responsible for the advances would have been aware of this situation.

506. From just what the writer has been able to uncover it would appear that the LDC Finance Limited directors, as it relates to Heli-logging Group, have defrauded or stolen in the ball park of **$880,516.22** being the total of the following sums;

$165,420.00	Payments to Carren Miller and D Miller
$ 65,096.22	Payments to GKW Limited
$650,000.00	Approximate losses to Taranaki Timber and Treatment Limited

The defrauding of F and I partners Messrs SCHOLFIELD and HARDING and Mr MILLERS position as a de facto director of Halifax Finance Limited and Heli-logging Group

507. What is important about the dates of these transactions and the knowledge of the LDC Finance Limited and Halifax Finance Limited directors that LDC Finance Limited and Halifax Finance Limited were irrecoverably insolvent from definitely 2003 onwards is that they must have knowingly mislead Messrs **SCHOLFIELD** and **HARDING** when Halifax Finance Limited was taking F and I stakeholders monies to on lend to retail clients. It follows as night does day that in doing so they must have been aware before taking the funds of F and I that they would claim those funds from F and I pursuant to the first debenture that LDC Finance Limited had secured on Halifax Finance Limited.

508. It is obvious that if Messrs **BROWNIE** and **MILLER** had been honest to F and I about their respective insolvency that F and I would **not** have advanced the funds at all, and thus acted to their detriment. The deceit of F and I was for that very purpose and so a finding of fraud can be found. Remember the emails of Mr **MILLER** found at 379.9 of this report but particularly subparagraphs 379.9(12) and (18) and (19).

509. It is the writers opinion that the first ranking security LDC Finance Limited had over Halifax Finance Limited was part of the deception. If used properly in the interests of the LDC Finance Limited stakeholders and shareholders the directors of LDC Finance

Limited would have put Halifax Finance Limited into receivership pursuant to the power conferred by the security and dealt with whatever arose. They could have sought a moratorium with stakeholders, inclusive of F and I and placed a truly independent receiver in to operate the company.

510. It is the writers opinion that the LDC Finance Limited directors did **not** do so because they were aware that to do so would have led to the discovery of LDC Finance Limited's insolvency because they would **not** have had a friendly party to journal swap their non performing loans with as described in paragraph 379.20, page 124 to 26 of this report.

511. It would appear that Mr **MILLER** was indeed a de facto director of Halifax Finance Limited and was calling the shots to a very large extent by the time that Mr **FORD** met Mr **Miller** in mid 2003. In essence Mr **MILLER** was a de facto director of Halifax Finance Limited and Heli-logging Holdings Limited and Taranaki Timber and Treatment Limited. See paragraph 29, 32 to 62 of the initial **FORD** statement.

512. Mr **MILLERS** behaviour post that date to the present date does nothing else but support this position. As a de facto director of Halifax Finance Limited, Heli-logging Holdings Limited, and Taranaki Timber and Treatments Limited and an actual director of LDC Finance Limited he was directly responsible for the deceit of Messrs **SCHOLFIELD** and **HARDING** and thus in the writers opinion the first ranking security LDC Finance Limited had over Halifax Finance Limited is voidable, and if this was found then the good loans in Halifax Finance Limited contributed to by F and I stakeholders monies would come back to those stakeholders. And what would be unfair about that. The LDC Finance Limited stakeholders would of course have recourse against the LDC Finance Limited directors for the full amounts lost.

513. For the law as to what constitutes an individual being a "de facto", "deemed" or "shadow" director please refer to paragraphs 203 and 379.16 of this report. The writer specifically likes the descriptions as defined in the various New Zealand and English cases cited which are clearly identical to the matters at hand; (emphasis that of the writers);

"But that others were more significant, ***particularly monitoring Tasbians trading****."*

Who undertakes functions *in relation to the company,* ***which could be properly discharged only by a director***

He then defined ***a shadow director as one who lurks in the shadows, sheltering behind others who he claims are the only directors*** *of the company to the exclusion of himself."*

514. It is the writers opinion that the evidence does make out that Mr **MILLER** was in charge of, or exerted significant control over, and was wholly aware of the irrecoverably insolvency of, all of the companies involved in this debacle involving the Wessex Helicopters. It follows that his purpose for the deceit of others that this position was not present was to defraud those persons, and thus the amounts involved are also amounts defrauded. Of course an agreement must have existed between various individuals for this scam to be successful, one of which aspect of the agreement was the swapping of loans in order to record interest was paid, and the massively false assertions as to the realizable value of assets on the various companies debt securities ledgers. These amounts defrauded would include;

$ 7,200,000.00	F and I to Halifax Finance Limited on vetted good loans
$ 5,500,000.00	F and I purchase of shares to LDC Finance Limited and
$ 1,700,000.00	Additional monies claimed by LDC Finance Limited receivers against F and I;
$12,000,000.00	Funds subject to the fraud on the false assertions as to the value of the helicopters and the other assets of the Heli-logging Group
$26,400,000.00	**Total fraud**

515. As the reader will become aware this is just the beginning of the fraud but the numbers involved do begin to "ring true" when you consider the "missing millions".. It would be a simple rule to believe to be true that no sensible businessman would invest in such a disastrous project, if aware of the true position, and it would be equally true that only a dishonest man would present a vastly different picture to the truth in order in induce the man the subject of the deceit to invest to his loss. Add to this that the motive was to use the defrauded funds to cover the losses that would ultimately otherwise be payable by the perpetrator of the deceit and you have the whole conspiracy agreement. It is clear that the LDC Finance Limited directors set

about a conspiracy aided by others to the agreement at different times, to induce, cajole, and threaten, Messrs **SCHOLFIELD** and **HARDING** to act to their, and their stakeholders, detriment.

BROWNIE and ELLIS tag team Commercial Factors Limited

516. It must be said by the writer that Mr Terry **HAYDON** of Commercial Factors Limited has been of immense assistance in the writers investigations allowing the writer to obtain all documentation from Heli-logging Holdings Limited's receivership and liquidation. It was quite an experience to be able to place Messrs **MILLER** and **BROWNIE** at the various crime scenes and to be able to forensically track back to where and when the agreements to commit fraud and other dishonest practices commenced and then to track the overt acts contained in the agreements as they occurred. Unfortunately for Mr **HAYDON** his association with Messrs **MILLER** and **BROWNIE** only led to being defrauded and otherwise losing a million or two.

517. In Mr **FORDS** additional statement at paragraphs 6 to 9 Mr **FORD** recounts what occurred which ultimately led to Commercial Factors Limited being defrauded $360k by Mr **BROWNIE** getting co director of Motueka Wood Products Limited (page 1775 of the annexed dossier) Mr Hayden **ELLIS** to sign a fraudulent order for $360K of wood which was factored by Commercial Factors Limited. As the writer has already stated Mr **MILLER** seems to take Mr **BROWNIE** committing fraud for $360k as nothing unusual. In fact it was Mr **MILLER** that approached Mr Terry **HAYDON** (paragraph 68 of the initial **FORD** statement and paragraph 8 and 9 of the **FORD** additional statement) after this fraud by Mr **BROWNIE** sealing a deal that saw the first securities changed on the helicopters with Commercial Factors Limited getting first security, as long as Commercial Factors Limited agreed to additionally fund over a million dollars to assist buying further parts for the Heli-logging Wessex helicopters. Apparently Mr **MILLER** argued that this was the only likely way that Mr **HAYDON** would see his $360K back from the blatant fraud. The writer disagrees with Mr **MILLERS** position. The police could have been called. [Note: Motueka Wood Products Limited will feature later in this report relating to yet another fraud committed by Mr **BROWNIE** involving $80k to $100k and involving

another company that had Hadyn **ELLIS** as a director. As an aside the $80k to $100k defrauded by Mr **BROWNIE** in this instance came from yet another fraud involving the more princely sum of $1.547m involving Motueka Vehicle Sales Limited (page 1812 of the annexed dossier) and Hillcrest Equities Limited. And of course, where Mr **BROWNIE** goes, Mr **MILLER** is omnipresent ("like a dark shadow') giving a helping hand as only he can "swapping" or "shifting loans" to make it appear like the loan has been "paid".]

518. The writer suggests that this is not unusual behaviour by Mr **MILLER** given what we now know about his other behaviour. Mr **MILLER** also misled Mr **HAYDON** about the ease of getting the helicopters certified and their value after certification. The writer asks the reader to note that Mr **FORD** states at paragraph 69 that it was Mr **MILLER** that organized the removal of the first ranking security enjoyed by Halifax Finance Limited and had it replaced with a first ranking security in favour of Commercial Factors Limited.

519. Axiomatically the following detriment resulted to LDC Finance Limited and F and I. As Halifax Finance Limited had had the first security over the assets of Heli-logging Holdings Limited, the switch in favour of Commercial Factors Limited left LDC Finance Limited without any security at all at second ranking security, because the asset value did not cover the first security now held by Commercial Factors Limited. Previously the first security held by Halifax Finance Limited meant that any monies obtained by the sale of the Heli-logging Group Assets was to go to Halifax Finance Limited and then pursuant to the first ranking security LDC Finance Limited had over Halifax Finance Limited it would be the ultimate beneficiary. And lest we forget F and I may have also benefited in the event that there was an amount left after paying LDC Finance Limited's priority amount. Of course we now know that was an impossibility but that is actually not the point.

520. The points are the following. In order to save Mr **BROWNIE** facing a fraud charge Mr **MILLER** promoted the downgrading of security of Halifax Finance Limited and F and I stakeholders securities. In doing so Mr **MILLER** insured that LDC Finance Limited stakeholders never saw at least $800k. Mr **MILLER** had no colour of right to implement such a deal, and this is a further fraud and/or theft of another $800k that

Mr **MILLER** spent on saving his co-conspirators arse from sitting in a cell. As we now know Mr **BROWNIE** did not make the payments promised under the agreement and is now the subject of legal proceedings.

521. The writer did speak to Mr Hayden **ELLIS** the co director of Motueka Wood Products Limited who alleges that it was all done in an afternoon under great pressure and that he trusted Mr **BROWNIE** who had said that they were going to make say 5% on-selling the wood when it arrived. The writer believes that Mr **ELLIS** was probably told something like that but does not necessarily believe that Mr **ELLIS** accepted that pie in the sky story. As the reader will become aware Mr ELLIS was a close and not so bright associate of Mr **BROWNIE** who was also a director of another company Motueka Vehicle Sales Limited that saw Mr **BROWNIE** steal millions of dollars more from Halifax Finance Limited and ultimately the LDC Finance Limited and F and I stakeholders. Mr **ELLIS** did say that he had been told by Mr **BROWNIE** that Mr **MILLER** had arranged for $100K to be paid from the Helilogging Holdings Limited account to Commercial Factors Limited as part payment of the $360k defrauded. So yet again, if what Mr **ELLIS** says is true, the Machiavellian Mr **MILLER** saw to Mr **BROWNIE** not being charged with fraud by simply committing yet another fraud and theft with the victims being LDC Finance Limited and F and I stakeholders.

BROWNIE, OMALLEY and no doubt WHITTLE allegedly spend the millions on anything but helicopters.

522. Mr **FORD** alleges at paragraph 9 of his initial statement that Mr **OMALLEY** had informed him that his company had purchased the two helicopters subject to the $3.2m facility **OMALLEY** (or an associated company) allegedly ran up with Halifax Finance Limited till late 2002 for a sum around the $200k to 250K mark. At paragraph 10 of his initial statement Mr **FORD** alleges that Mr **O'MALLEY** informed that a significant amount of the $3.2m was spent on a holiday house in the sounds for Mr **O'MALLEY** and $500k being paid to **BROWNIE**. All the writer can say is that $3m that was apparently spare to the purchase price of the helicopters went somewhere it should not have.

523. The writer has spoken to Mr **O'MALLEY** who seemed a polite enough chap as often men like Mr **O'MALLEY** do, but chose **not** to visit him in Christchurch believing that whatever he said was **not** going to be likely reliable, unless it did **not** serve him. Mr **O'MALLEY** did confirm to the writer that the helicopters the subject of the $3.2m loan from Halifax Finance Limited, which loan was transferred to Heli-logging Holdings Limited in late 2002, had been landed in New Zealand at a cost of just over $200k, and that Mr **BROWNIE** had set up another company with Messrs **WHITTLE** and himself with the intention of savagely clipping the ticket going through Halifax Finance Limited and making similar profits that he had made. He informed the writer that Mr **BROWNIE** wanted $500k out of all deals, which did partially corroborate what Mr **FORD** had stated.

524. The writer did make inquiries into the existence of that company Aero Enterprises Limited (page 1004 of the annexed dossier) which discloses that Mr **BROWNIE** is a shareholder, along with Messrs **WHITTLE** and **O'MALLEY** (each having 500 shares page 1804 to 1811 of the annexed dossier)) and it was confirmed that it was placed in liquidation in or around 23 November 2006 with the liquidator stating the following in her report (dated 20 November 2007 page 1033 of the annexed dossier)) about what she suspected had transpired leading to the liquidation;

-Difficulty locating and collecting the company records
-Difficulty locating and corresponding with the Company director
-Investigations into actions against directors <u>including reckless/ insolvent trading actions</u>
-Investigations into the use <u>of a "shadow director</u>".

525. The liquidator was looking at other actions against the directors as well but probably did not have the skill set or resources to undertake those matters. The matter of the use of a "shadow director" is interesting, although probably the liquidator meant that a "deemed" director was present and this person was using Mr **ROBINSON**, the named director at the time of liquidation, as the effective front man to evade personal liability. The company was formed at the hand of Mr Ian **SMITH** (page 1802 of the annexed dossier), Mr **BROWNIES** lawyer (paragraph 5 and 16 of **FORDS** initial statement), and at the time of incorporation (20 June 2001) both Mr **WHITTLE** and

OMALLEY were directors (pages 1803 of the annexed dossier), so the writer assumes these two gentlemen were also clients of Mr **SMITH**, or alternately Mr **BROWNIE** did not want to be named as a director because he would have known what was planned. Mr James Barry **ROBINSON** became a director of Aero Enterprises Limited as at 27 August 2003 when no doubt things were getting hot with loans on helicopters to Halifax Finance Limited. It is the writers' belief that Aero Enterprises Limited would have been involved in the deal with Heli-logging Group in late 2002 but this matter can be cleared up once source documents are located which still will be available from the liquidator.

526. It would appear that wherever Mr **BROWNIE** goes the same sort of commercial misery occurs. It must be said that anyone who would set out to lend money to Messrs **WHITTLE** and **O'MALLEY** would have to have their heads read, unless of course you did want a piece of the multi million dollar action that was built on the deception of others. As stated Mr **OMALLEY** did clarify that Mr **BROWNIE** wanted much more of the action in financing and then "on selling" helicopters. A point must be made about the Helicopters when being sold for such large amounts to the likes of Mr **FORD**. Mr **FORD** would have no doubt claimed $377,377.78 in GST on a purchase price of say $3.4m and then stated that the Helicopters were no good. You wonder why he just did not state that he no longer wanted the Helicopters. Of course that would mean that he would have to pay the GST back, or he could have simply folded the company involved. The writers point is that when the numbers are so large there are always motives on both sides why deals work. The writer is just stating the obvious. As Mr **FORD** continued to buy parts for the Helicopters etc. did LDC Finance Limited grab back the GST quotient as any responsible finance company would do when it was not being paid a cent in interest, and had no security? Just think 12.5% of say $5m to $6m of principal would amount to a significant amount, or was that money just burnt up along with the other missing millions.

527. Mr **FORD** is quite correct that both Messrs **WHITTLE** and **O'MALLE**Y are banned directors and that Mr **WHITTLE** is serving a custodial sentence for taking deposits for cars that did not actually exist. This is not that dissimilar to placing massive false values on helicopters and placing massive encumbrances reflecting those false values. Of course to undertake such criminal behaviour you need the moneyman to be

involved and given the statements of Messrs **FORD** and **OMALLEY** clearly Mr **BROWNIE** was such a money man. Mr **OMALLEY** apparently stated to Mr **FORD** that he thought Mr **BROWNIE** was "father fucking Christmas" when it came to getting millions. As you will learn Mr **BROWNIE** had learnt a thing or two off Mr **WHITTLE** or maybe it was the other way round. As the reader will soon learn Mr **BROWNIE** would better Mr **WHITTLES** effort in car fraud by in excess of $500k.

528. Of course the writer is **not** saying that anyone was deceived here, excepting the LDC Finance Limited stakeholders and F and I partners Messrs **SCHOLFIELD** and **HARDING**, and basically anyone else not involved in the various agreements that formed the various conspiracies.

The value of the various "old military shitter" Helicopters

529. The value of these helicopters at a million or two million each is just an absolute nonsense. They are now selling for as little as $50k NZD at UK auctions for "old military shitters" (words of a CAA inspector after one of them went down killing its pilot). The proposition that because they could fly and lift logs would make them worth millions is a nonsense. You can go out and buy a really old six wheel drive army truck for say $10k or $20k to do the same job as a brand new truck that would probably cost you over $200k. Does the type of job determine the value of the tool?. Of course it doesn't. Further the old truck would require additional maintenance, with the only benefit being that it would probably not devalue greatly, but then again you could not claim depreciation and not all lenders would lend against the purchase meaning you may have to get second tier finance at significant extra cost. The writer has no doubt that Mr **MILLER** obtained various valuations on the helicopters in defence of his lending decisions, but these valuations do not save him. No matter the valuations, he knew that the valuations were grossly misleading or otherwise worthless. There are a number of civil and criminal cases where the Court has found the Valuers liable for part of the agreement to deceive financiers. After all in the end Valuers have to be able to assess value based on applicable historical formulae relating to that aircraft and the valuation would have to reflect present value for the purposes of security, and that value would have to be reflected in material matters in

any prospectuses or declarations by the directors of LDC Finance Limited. Which of course they were not. As you can see by paragraph 74 of the initial **FORD** statement 8 helicopters were all sold for about $800K of which $500k was made up by Mr **FORD** doing a deal to try and assist Mr **HAYDON.**

530. Mr **MILLER** had tried to sell them by Internet auction with **not** a single bidder (paragraph 73 of the initial **FORD** statement). In desperation Mr **MILLER** had fronted $50k NZD to some mysterious Malay Army Officer to try and find a buyer and the $50k got Mr **MILLER** a one-page letter saying that a sale was not possible. No doubt Mr **MILLER** charged this $50k to the Heli-logging Holdings No2 account. Not surprisingly the helicopters needed another million to make them even able to fly (paragraph 75) of the initial **FORD** statement. Going on previous estimates being completely wrong, this figure would probably be closer to $2m.

531. Add to this fact that the parts to make the Helicopters flyable were still in the UK and the parts were, according to information obtained by the liquidator of Heli-logging Holdings Limited Mr **WHITTFIELD**, 80% useless nuts and bolts. And then of course the CAA had said that the helicopters were unsuitable for their intended purpose and the Heli-logging Group had losses of over $5m and borrowings of over $12m and assets of under $1m, none of which assets were effectively of value to LDC Finance Limited or Halifax Finance Limited because the value of the assets did not exceed the value of the monies owed to the first security holder Commercial Factors Limited. So Heli-logging Holdings Limited in the end probably had about $15m in debt and about $1m in assets. It seems a no brainer to the writer that as Heli-logging Group were seemingly the only entity interested in the Wessexs that it was "all over rover" as at about August 2005. The question must be asked why continue on when there was not a realistic hope of getting out.

Swapping of the loans between Halifax Finance Limited and LDC Finance Limited for the purpose of deception as to the true insolvency of both companies.

532. Mr and Mrs **FORD** were not stupid, not that even being stupid you would not be able to work the following out. Everyone involved had to be broke. According to Mr **FORD** being broke was regularly discussed between the parties in 2005 and 2006.

533. The only hope, that had been lost by late 2005, was to get the Wessex helicopters certified for logging, but that never occurred because the writer believes that Mr **MILLERS** attention went from that ludicrous plan to the back up plan to defraud Messrs **SCHOLFIELD** and **HARDING**, and when you think about it Mr **MILLER**, ably assisted at the later stages by Pricewaterhousecoopers staffers Messers **NOONE**, **FISK**, **CAIN** and **HOLLIS**, succeeded in this endeavour, by March 2007, which in all the circumstances was not a bad effort.

534. Mr **FORD** deals with the matter of the swapping of loans between Halifax Finance Limited and LDC Finance Limited in paragraphs 63 to 66 of the initial **FORD** statement. It is clear from the **FORDS** experience that Messrs **MILLER** and **BROWNIE** were sending out statements where the loans were recorded in different companies names at different times. The writer supplied to Mr **FORD** proof positive that Mr **MILLER** had admitted the same to the Heli-logging Holdings Limited liquidator. Mr **MILLER** clearly admits to the swapping of the loans with the appearance that interest had been paid. But it must be said that Mr **MILLER** and Mr **BROWNIE** appear to be very very sloppy with their paperwork. Importantly the loan that Mr **MILLER** is addressing with the liquidator is dated just after LDC Finance Limited became an issuer in July 2004. Sloppiness would creep in if you had been doing it for years and no money actually changed hands, just that the journal entries showed "paid", and "credited" and "debited" etc.

535. It is interesting to note that at page 1735 of the annexed dossier a Halifax Finance Limited account summary for loan number VL101357 which has security over *"3 Wessex Choppers & 3 Scout Choppers"* for Heli-logging Holdings Limited has had someone write in the following instructions with an arrow adjoining the two columns, one column being interest due and the other column being principal owed. They stated;

Add these

Plus accrued = $7,340.21
Total = $600,029.86

536. The handwriting appears to be the same as that found on another Halifax Finance Limited loan account summary for Hillcrest Equities Limited (page 1795 of the annexed dossier) where the writer assumes the same person does the same "math" again in order to create the appearance that interest will have been paid on the loan and thus the loan is "commercial".

Add these
Total at 16/10/07 = $3,030,128.22

537. The writer has been informed that the person responsible for the instructions was none other than Mr **MILLER**. Importantly the transaction end date and the actual date on the second document referring to Hillcrest Equities Limited is 16/10/07 or 6 weeks after the receivership of LDC Finance Limited which means the receivers Messrs **HOLLIS** and **FISK** appear to be allowing Mr **MILLER** to carry on the fraudulent practice.

538. The writer believes Mr **HOLLIS** will probably assert that this practice of accruing interest is normal but that assertion if made would be patently false in these circumstances. Interest can be accrued by agreement if there is sufficient security to do so. But where it is done for the sole purpose of deceiving others into believing that the payments have been made, or that there is sufficient security to accrue interest, or to hide the non payment of interest due, is fraud and to assist in the suppression of that fraud being discovered is a conspiracy to defeat the course of justice, and/or aiding and abetting the commission of an offence, and possibly being an accessory after the fact. Take your pick.

539. Page 1795 of the annexed dossier however refers to a loan to Hillcrest Equities Limited, a company owned by Messrs **BROWNIE** and **ELLIS** which the writer will deal with in much greater detail later in the report, but the writer merely presently comments that the swapping of loans to deceive that the loans were commercial was widely practiced over a large amount of the Halifax Finance Limited and LDC Finance Limited books. As the reader will become aware this non commercial

activity probably affected all of the Halifax Finance Limited book excepting the loans vetted and funded by F and I.

ELLIOT LIES THROUGH HIS FRONT TEETH TO HIS ELDERLY FRIENDS THAT WERE CLIENTS OF CARREN MILLER AND STAKEHOLDERS IN LDC FINANCE LIMITED IN AN ATTEMPT TO KEEP THE SHIP FROM SINKING BEFORE THE CONSPIRATORS DEFRAUDED F AND I.

540. At page 1814 of the annexed dossier is an LDC Finance Limited "Advertising News Letter" importantly dated 3 July 2006 which is around the same time that Mr **MILLER**, Mr **BROWNIE**, Mr **FORD** and Mr **FORDS** lawyer Graham **TAKARANGI** are all aware that the Heli-logging Group has suffered losses of $5m plus, and has borrowings from LDC Finance Limited and Halifax Finance Limited that can never be repaid amounting to $12m or more, and that axiomatically LDC Finance Limited and Halifax Finance Limited are irrecoverably insolvent. The news letter signed by LDC Finance Limited director Kevin **ELLIOT** provides these damning statements given the actual disastrous financial position of LDC Finance Limited; (emphasis and numbering that of the writers);

"Finance Industry

1. *There has been much discussion and commentary about the finance industry following the difficulties experienced by two finance companies.* ***It is interesting to note that both of these companies focused on lending on used vehicles, and that one in particular appears to have suffered a substantial amount of bad debts by lending in the South Auckland area. We advise that LDC Finance Limited has not directly financed vehicles in years and our focus has been on lending in other segments of the finance market, particularly in property and business finance.***

2. *There are other distinctions between LDC Finance Limited and other lenders that are important for you to know.* ***Unlike other lenders, our shareholding is diverse as opposed to one or two shareholders having control of the company and the board of directors. The shareholders of LDC do not own related companies to which it pays fees and our lending is diverse and not weighted in any sector. We do not lend to ourselves.***

3. ***We would also like you to know that our lending criteria are constantly reviewed by the board of directors and our approach to lending is conservative. We do not permit any unsecured lending and have a system in place to review and monitor loans on a monthly basis.*** *If you have any*

questions about our lending policies, please do not hesitate to contact any of the LDC team.

4. ***Finally we are pleased to announce that the independent annual audit completed on the LDC Limited 31 March 2006 accounts, as required by regulations, is now completed and the auditors have rendered an unqualified report."***

541. The writer makes the following points for the readers' consideration. Mr **ELLIOT** alleges through out the advertising newsletter that LDC Finance Limited is clearly different from other finance companies that have failed or are likely to fail from operating in a reckless manner. Mr **ELLIOT** makes that point that certain practices, not in place at LDC Finance Limited are likely to lead to failure.

542. In paragraph 1 of the advertising news letter Mr **ELLIOT** fails to inform the reader that LDC Finance Limited has at least $12m out on helicopters that are worth about $600k and which $12m or more is a total loss because there is a first security with Commercial Factors Limited for probably $1.5 to $2m. However Mr **ELLIOT** does report that lending on "used vehicles" with the likely guarantors being inferentially "assetless South Aucklanders" is a policy likely to lead to bad debts. But surely Mr **ELLIOT** could not consider a guarantor such as **FORD** who has no assets and whose Heli-logging Group had $5m worth of losses as a better bet.

543. In paragraph 2 of the advertising news letter Mr **ELLIOT** states that the LDC Finance Limited's shareholding is diverse, each director effectively is autonomous and not one or two directors control the company's affairs. This is a nonsense because clearly Mr **MILLER** and Mr **JANNETTO** were the key men in LDC Finance Limited.

544. Mr **ELLIOT** says that the company does not pay fees to related companies owned by themselves and do **not** lend to themselves when clearly all of this is **not** true for the following reasons;

- Mr **MILLER** paid out of Heli-logging Holdings Limited's No 2 account (without Mr **FORDS** knowledge) between $7 and $8k a month amounting in toto to $166,420.00 (in supposed fees) to Carren Miller (see paragraphs 37 to 38 of the initial **FORD** statement found at paragraph 472 and page 168 of this report.). All

of this money could have gone to do a review (not that the outcome would have been any better but at least the Directors would have acted in the best interests of the LDC Finance Limited stakeholders.

- Mr **ELLIOT** is a diluted shareholder in Taranaki Timber and Treatments Limited as is Messrs **MILLER**, **JANNETTO** and **HARDIMNAN** through GKW Limited and had approved the advance of probably in the end close to $800k (but $633K as at September 2006) to Taranaki Timber and Treatments Limited when it probably only had assets of $150k and; (see paragraphs 48 to 56 of the initial **FORD** statement found at paragraph 472 and page 170 of this report.)

- Mr **ELLIOT** signed the withdrawal slip (without Mr **FORDS** knowledge) paying out of Heli-logging Holdings Limited in excess of $65k to GKW Limited a month or so later with Messrs **ELLIOT** being a shareholder of GKW Limited (see paragraphs 39 to 43 of the initial **FORD** statement found at paragraph 472 and page 168 and 169 of this report.)

- Mr **MILLER** arranged for a $206,310.94 loan from an LDC Finance Limited Heli-logging Holdings Limited account to be paid to Taranaki Timber and Treatments Limited (without Mr **FORDS** knowledge), (see paragraphs 60 of the initial **FORD** statement found at paragraph 472 and page 171 of this report.)

545. In paragraph 3 of the news letter Mr **ELLIOT** states that LDC Finance Limited is different to "bad" or "likely to fail" lenders because it lends conservatively and the LDC Finance Limited criteria for funding is constantly reviewed by the directors and the loans are "monitored on a monthly basis" presumably by senior management and the board. The writer accepts Mr **ELLIOTS** position that the directors did have their fingers on the virtually lifeless pulse of the company, but Mr **ELLIOT** is falsely asserting that the company was "fit and well", when in fact it was on life support, with the only hope of a few more months of survival being possible if the directors managed to defraud F and I.

546. As the reader will be aware Mr **ELLIOT** is stating the obvious about the directors knowledge of the position of the company when you consider the content of paragraph 379.9 pages 111 to 117, and paragraph 410 to 414, pages 143 to 149 of this report and the content of paragraph 24, 29, and 45 of the initial **FORD** statement found at pages 166 and 169 respectively of this report.

547. It is ludicrous for Mr **ELLIOT** to advertise that LDC Finance Limited operated conservatively and that they did **not** do any unsecured lending. What do you call $12m lent on helicopters worth $800k when there is a first security on the same helicopters to another company exceeding $1m and close to $800k lent on land assets worth $150k?. Then there is the swapping loans ruse with another finance company to hide that no interest was being paid, and conspiring to defraud another finance company so that the defrauded money can be used to keep the ruse up?. Again Mr **ELLIOTS** assertions in this advertising news letter are patently false and made with the intention of misleading current and prospective stakeholders so that they would invest to their detriment; (see the entire initial and additional **FORD** statements found at paragraphs 472 and 473 of this report).

548. In paragraph 4 of the advertising news letter Mr **ELLIOT** is rightly saying that the auditors Sherwin, Chan and Walshe did assert the health of LDC Finance Limited in an unqualified manner in its regulatory audited accounts to March 2006. Of course as the reader will know this set of accounts reflected all of the loan swapping and flat out misrepresentations as to securities values that would have been known to Mr **ELLIOT** and the other LDC Finance Limited directors. The writer refers the reader to s58 of the Securities Act 1978 which provides for Criminal Liability for the intentional promotion of misleading statements in prospectuses and advertising material;

58 Criminal liability for misstatement in advertisement or registered prospectus
(1) Subject to subsection (2) of this section, where an advertisement <u>that includes any untrue statement is distributed</u>,—
(a) The issuer of the securities referred to in the advertisement, if an individual; or
(b) If the issuer of the securities is a body, every director thereof at the time the advertisement is distributed— commits an offence.
(2) No person shall be convicted of an offence under subsection(1) of this section if the person proves either that the statement was immaterial or that he or she had

reasonable grounds to believe, and did, up to the time of the distribution of the advertisement, believe that the statement was true.
(3) Subject to subsection (4) of this section, where a registered prospectus that includes an untrue statement is distributed, every person who signed the prospectus, or on whose behalf the registered prospectus was signed for the purposes of section 41(b) of this Act, commits an offence*.*
(4) No person shall be convicted of an offence under subsection (3) of this section if the person proves either that the statement was immaterial or that he or she had reasonable grounds to believe, and did, up to the time of the distribution of the prospectus, believe that the statement was true.
(5) Every person who commits an offence against this section is liable—
(a) on conviction on indictment to—
(i) imprisonment for a term not exceeding 5 years; or
(ii) a fine not exceeding $300,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued; or
(b) on summary conviction to—
(i) imprisonment for a term not exceeding 3 months; or
(ii) a fine not exceeding $300,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.

549. Clearly large numbers, and serious offending, is involved here because Mr **ELLIOT** signed the advertisement and the statements in the advertisement were known by him to be completely untrue and designed to make stakeholders act to their detriment. The fines, or terms of imprisonment, if convicted, would be likely at the heavy end of the scale at $300k and or 5 years. Of course a prosecutor may decide to proceed under an indictment pursuant to section 242 [False statement by promoter] of the Crimes Act 1961 which has a 10 year maximum penalty; see paragraph 374, page 143 of this report. The Crimes Act provision for this offence at subsection 2(a) and (b);

"In this section ***false statement*** ***means any statement in respect of which the person making or publishing the statement –***
(a) ***Knows the statement is false in a material particular***
(b) ***Is reckless*** ***as to whether the statement is false in a material particular"***

550. Clearly Mr **ELLIOT** knew the statements were absolutely false, but subsection 2(b) of section 242 of the Crimes Act 1961 takes into account reckless behaviour, but Mr **ELLIOT** by his own admission states that the company is run in a certain fashion and so that statement means that he must have been aware of the dire financial position and that the position was irrecoverable. Of course the reader will know from the content of this report disclosing email correspondence that the directors knew exactly

how bad the position was and what they had to do to defraud F and I. The directors denying this would be as silly as a man saying "I snuck up on him in his house and shot him five times in the back of the head, but I wasn't trying to kill him". Interestingly Regulation 17 of the Security Regulations 1983 requires that before any advertisement is distributed a certificate must be completed and signed, generally by two directors, that must certify;

- That the directors signing have read, seen, or listened to the advertisement;
- That it complies with the Securities Act 1978 and the Securities Regulations 1983;
- That it does not contain any matter that is likely to deceive, mislead, or confuse in any material matter;
- That it does not contain any matter that is inconsistent with the registered prospectus

551. Obviously Mr **ELLIOTT** read the advertisement as he signed it. The advert was in keeping with the registered prospectus in that it was grossly misleading, and therefore was in clear breach of the Securities Act 1978 and the Securities Act Regulations 1983. Out of interest the writer informs that the certificate must be kept for at least 12 months from the last date the advertisement was distributed and Regulation 17 places an onus on any publisher, or broadcaster, or other distributor to hold a copy of the certificate or otherwise an offence is committed. As the reader will become aware later in this report the writer is not the only one that believes that the LDC Finance Limited directors knew the company was 'sunk' much earlier. Not to keep the reader in suspense, the others that thought that the directors knew all along are none other than Mr **NOONE** of Pricewaterhousecoppers and Messrs **STYANT** and **LANCASTER** of Perpetual Trust Limited, not that you would think so from their public statements where they extol the absolute virtue of the "good ol boys" of the board of LDC Finance Limited. The reader will be amazed at the juxtaposition of the back room and front room statements made by these icons of the financial world. These guys make Tony **BLAIR** and George **BUSH** look like amateur "spin doctors".

Directors pay themselves hundreds of thousands of dollars in dividends from stakeholder's funds whilst LDC Finance Limited "burning inside out"

552. The writer thinks it is important for the reader and the LDC Finance Limited stakeholders to comprehend that whilst LDC Finance Limited was slightly bow down in the water with an increasing list that was defeating the overworked pumps the directors were having a party on the stern and not sparing the silver service, lobster and champers.

553. It should be noted that the directors of LDC Finance Limited paid themselves $450,000.00 in dividends on ordinary shares in the year to March 2006. Of course as we now know LDC Finance Limited was insolvent when purchased by the directors in 1999, and probably has been insolvent from that date forward. Therefore we are probably looking at millions of dollars of wrongly accounted and paid dividends and other fees.

554. In the year to March 2006 Mr **MILLERS** take home dividend packet (that was publicly known) as shareholder in LDC Finance Limited would have been somewhere in the vicinity $103,000.00. The Trustee, when aware of problems as to solvency of LDC Finance Limited, should have asked Mr **MILLER** and the other directors how they had managed to declare the company solvent pursuant to the requirement found in sub section (2) of section 52 of the Companies Act 1993 that they must sign a declaration supplying reasonable grounds why they believe the company is solvent to make such a distribution, and will remain solvent after the distribution.

52 Board may authorise distributions
(1) **The board of a company that is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test may, subject to section 53 and the constitution of the company, authorise a distribution by the company at a time, and of an amount, and to any shareholders it thinks fit.**
(2) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion.

555. The appropriate test for the declaration is that found in sub section 4 (2)(a) and 4(4)(a) of the Companies Act 1993 being;

(2) **Without limiting sections 52 and 55(3), in determining for the purposes of this Act (other than sections 221 and 222 which relate to amalgamations) whether the value of a company's assets is greater than the value of its liabilities, including contingent liabilities, the directors---**
(a) must have regard to---
(i) the most recent financial statements of the company that comply with section 10 of the Financial Reporting Act 1993; and
(ii) **all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities**:
(b) **may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances….**

(4) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of---
(**a) the likelihood of the contingency occurring**; and
(b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

556. Given that the LDC Finance Limited directors knew that the company was insolvent when making the declarations, and must have known that they were paying themselves dividends with stakeholders money, and not profits as alleged, the directors are committing theft and fraud and numerous other offences under the Securities Act 1978 and the Crimes Act 1961.

557. The reader must be thinking but how could all of this go unnoticed for so long. The answer is simple really. And to begin to answer the question you must first ask a question. Who would look at source documents when chartered accountants owned and ran the company?. Well not the trustees or the auditors apparently. Obviously Mr **NOONE** would have to "disguise" the fact that he was aware of the level of bad debts in the LDC Finance Limited books, and he would have to ignore the swapping of loans between LDC Finance Limited and Halifax Finance Limited, whilst he negotiated with Messrs **SCHOLFIELD** and **HARDING** to get another $4m by fraud and coercion.

558. The writer assures the reader that Messrs **LANCASTER** and **STYANT** of Perpetual Trust Limited will be proven by the content of this report to have actually known the

financial position of LDC Finance Limited before the registration of the last LDC Finance Limited prospectus in late April 2007. This should shock you considering their protestations of no wrongdoing by the LDC Finance Limited directors.

BROWNIE fiddles and then diddles Halifax Finance Limited with loans on ("GHOST") cars.

559. The writer has also heard that Carren Miller represented Mr **BROWNIE** in other dealings (and it is presumed Mr **MILLER** was involved in advice to Mr **BROWNIE**). In one deal done by Mr **BROWNIE** concerning a car sales yard part owned (Motueka Vehicle Sales Limited (page 1812 of the annexed dossier) by Mr **BROWNIE**, Mr **BROWNIE** was allegedly purchasing cars to retail through Halifax Finance Limited facilities.

560. When the facility was completely bad and the monies irrecoverable from the debtors, Mr **BROWNIE** sold the facility to another company that had no "actual" equity left in its assets. That company was another company owned by Mr **BROWNIE** Hillcrest Equities Limited, (pages 1006 to 1007 of the annexed dossier). This behaviour is classic **BROWNIE- MILLER – NOONE** "restructuring" or as the layperson understands such behaviour; blatant fraud. Allegedly, all in all Mr **BROWNIE** and his associate Mr Hayden **ELLIS** sold 146 vehicles with a combined floor plan of $1.547m without paying a single dollar of the floor plan back. The accountants for Hillcrest Equities Limited are Carren Miller, and its registered office and address for service is at the offices of Carren Miller. And the loan monies given to Mr **BROWNIE** to perpetrate this $1.54m fraud came from none other that LDC Finance Limited. Now remind yourself why Mr **HOLLIS** is not after Mr **BROWNIE**?

Hayden ELLIS confirms scale of fraud in car yard

561. The writer spoke to Mr **ELLIS** on several occasions about the car scam. Initially Mr **ELLIS** was defensive about the legality of the deals done but then started to open up. Basically Mr **ELLIS** stated that Mr **BROWNIE** treated the millions in Halifax Finance Limited as his own. Mr **ELLIS** confirmed that money came into Motueka

Vehicle Sales Limited and was then taken out by Mr **BROWNIE** and used on various high risk projects that were failures. Such projects included;

- Motueka Wood Products Limited
- A company that tried to get a contract to clean up a local harbour
- Deposits on various property deals that went bad in Queenstown

562. Mr **ELLIS** alleged that Mr **BROWNIE** was a director of the Motueka Vehicle Sales Limited and had been the effective managing director of the company since it was formed to which the writer replied that this was not the case and that Mr **ELLIS** was the only director and was thus responsible for all of the theft and fraud unless Mr **ELLIS** could prove that Mr **BROWNIE** had operated as a shadow director.

563. Mr **ELLIS** was aware of the "switching" of the securities from Motueka Vehicles Sales Limited to Hillcrest Equities Limited and said that Mr **ELLIS** informed the writer that he thought that the company Hillcrest Equities Limited did not have sufficient assets at that time, but may have had after, but that he would not actually know as Mr **BROWNIE** was the man that made all of the decisions. Mr **ELLIS** was aware that no money had actually been paid back by Motueka Vehicle Sales Limited to Halifax Finance Limited and also confirmed that no interest that he knew about had been paid to Halifax Finance Limited because the car company actually lost money and he was only paid $600.00 a week.

564. The writer asked Mr **ELLIS** if he wondered why Mr **BROWNIE** would have run such a large amount of money through a car company that could not pay the interest, did not have a use for the money, but had Mr **ELLIS** as a sole director, and then use that money on high risk ventures that ultimately lost money.

565. Mr **ELLIS** allegedly began to get the picture, although the writer believes Mr **ELLIS** knew what the picture was all along and was playing dumb. The writers suspicion was further aroused when Mr **ELLIS** attempted to draw analogies with similar behaviours that may have been excusable, until he knew the writer knew all of the facts. These attempts by Mr **ELLIS** to disguise or excuse disingenuous behaviour

disclosed some cunning and intelligence sufficient to understand that the original behaviour complained of by the writer was dishonest, and criminal.

566. Mr **ELLIS** stated that he did book loans from Motueka Vehicle Sales Limited to various entities owned or run by himself and Mr **BROWNIE**. What is a book loan Mr **ELLIS**, and who told you about that practice? Mr **ELLIS** also stated that he was aware that Mr **MILLER** and the other LDC Finance Limited Directors were aware of what was going on. Mr **ELLIS** stated that Mr Chris **HARDIMAN** was in fact the accountant for Motueka Vehicle Sales Limited and was well aware of the position as to the money not being used by Mr **BROWNIE** for the purpose intended. This behaviour certainly supported Mr Rolly **FAWCETTS** allegations that Mr **HARDIMAN** had lied to him about LDC Finance Limited being healthy just days before it collapsed when Mr **HARDIMAN** got Mr **FAWCETT** to invest in excess of $100k.

567. In saying this Mr **ELLIS** was looking to try and make their respective behaviour seem legal. The truth of the matter is that this attempt just makes it worse. The money lent by LDC Finance Limited to Halifax Finance Limited was not the shareholders funds of LDC Finance Limited but were monies raised on debt securities that were supposedly well managed (see LDC Finance Limited advertisement signed by Mr **ELLIOT** at paragraph 540 of this report) but as the reader will know this was not the case. The case was that the directors of LDC Finance Limited and directors and shadow directors of Halifax Finance Limited were using stakeholders funds on basically unsecured high risk ventures. Mr **ELLIS** had;

- Taken in monies on the premise of floor plan requiring management of asset values against borrowings

- Purposefully applied those funds to loans to other entities that had no securities

- Obviously misreported sufficient security in place when clearly this was not the case

- Acted to hide the fraud by agreeing to sign the debt over to another company which did not have sufficient security to cover the loan.

The writer speaks with inside man MIRFIN who confirms virtually everything

568. The reader will remember Mr **MIRFEN** as being the manager responsible for reporting to the board through out 2001 to 2007 as to how bad the books actually were; (see paragraph 379. 9 of this report). The writer spoke with Stuart **MIRFEN** after several weeks of never being able to catch him at home. Mr **MIRFEN** had heard about the writer and had been awaiting the dreaded call. The writer must say that Mr **MIRFEN** sounded far more competent than the description given by Mr **MILLER** who had alleged to the writer that Mr **MIRFEN** was confused most of the time about what actually went on. Of course the writer had expected Mr **MILLER** to say this because Mr **MIRFEN** may well have a different account of what the directors of LDC Finance Limited knew about the level of solvency at particular times

569. Mr **MIRFEN** informed the writer that when he left LDC Finance Limited in late December 2006 early January 2007 he knew the position was very bad and inevitably he would probably be treated as a scapegoat. Mr **MIRFEN** struck the writer as being an old fashioned "bank manager type" which is not a bad thing. Mr **MIRFEN** answered the writers questions directly and fairly succinctly. According to Mr **MIRFEN** he spent most if not all of his working life working in the banking culture and had found it rewarding until his part time involvement with LDC Finance Limited where he felt that none of the normal guidelines were in place, even though he did attempt to instill some. He felt that the directors just ignored him and that he was ultimately proven right.

570. Mr **MIRFIN** confirmed his understanding of the nature of the finance facility LDC Finance Limited had with Halifax Finance Limited and supposedly Halifax Finance

Limited had with Motueka Vehicle Sales Limited; (emphasis and numbering that of the writers);

(1)DN ***Motueka Vehicle Sales though there was a Floor Plan****?*

(2)SM *With Halifax was it…*

(3)DN *Yeah*

(4)SM ***That's right*** *yeah yeah*

(5)DN ***Umm LDC's money was in there***

(6)SM ***Yeah well via Halifax yeah***

(7)DN ***Yeah yeah What were you aware of in relation to the floor plan what sort of*** *…*

(8)SM *It worked quite well for the first few years that I was um at LDC* ***and then all of a sudden I discovered that the money from um Motueka Vehicles was being used to finance other things and we weren't getting paid – the deal was that we were supposed to get paid when a car was sold that – well Halifax was supposed to be paid back for that vehicle.***

(9)DN *Yep*

(10)SM ***What we – what I found was that um the vehicles were not um not – when they were sold they were used for other purposes****.*

(11)DN *Yep*

(12)SM ***And Halifax's debt wasn't reduced****.*

(13)DN *Yep and by 2005 it was 1.547 million or around that sort of…*

(14)SM ***It it it was one of the major contributors of Halifax's problems – just think because they basically used and and I said to the directors you know they he's just using them – the money that should be coming back to Halifax and reducing his exposure to us it was just being used by them.***

(15)DN ***It was being stolen wasn't it***

(16)SM ***Basically yeah well it was stolen from Halifax.***

(17)DN *Yeah correct*

(18)SM ***But but the trouble is these jokers didn't didn't seem to – reality wasn't with them***

(19)DN *Yeah What did the…* ***I mean it just seems incredible to me because I would have been all over Brownie like a cheap suit. What was making these guys not do this I mean there's four directors you know…***

(20)SM ***They were scared of the publicity that it would incur if if we made ah put Brownie into receivership I think whole thing.***

(21)DN ***Right so that was in 2005 you've got a major problem with Brownie on this Motueka Vehicle Sales he's basically nicked all the money then you've got a major problem with Heli-logging for I mean at that time it must have been at least 8 or 9 million dollars you've got a book allegedly of 27 – 28 million dollars um I mean the company must have been insolvent***

(22)SM ***Well the directors were running through the books you know****… the thing was the position didn't …* ***from my perspective at that stage I felt that a good deal of it was recoverable****.*

571. These statements are from the horses mouth which horse was in the wolves lair, being the board room of LDC Finance Limited, where the Machiavellian Mr **MILLER** presided at the head of the table whilst the other directors, his disciples of deceit, and Mr **MIRFEN** took instruction on the machinations of policies of pretense, and manipulation of man, to insure that Mr **MILLER** and the other directors were the least exposed to LDC Finance Limited's historical iniquitousness towards elderly stakeholders. Niccolo **MACHIAVELLI** would have been proud of Mr **MILLERS** efforts, as the infamous Italian Statesmen and author of the book "The Prince" had become famous for his principle that the "ends justifies the means" which certainly Mr **MILLERS** style emulated . See the word "Machiavellian" with at 5 its latest addition;

1. *of, like, or befitting Machiavelli.*
2. *being or acting in accordance with the principles of government analyzed in Machiavelli's The Prince, in which political expediency is placed above morality and the use of craft and deceit to maintain the authority and carry out the policies of a ruler is described.*
3. ***characterized by subtle or unscrupulous cunning, deception, expediency, or dishonesty****: He resorted to Machiavellian tactics in order to get ahead.*
4. *a follower of the principles analyzed or described in The Prince, esp. with reference to techniques of political manipulation.*
5. *As from the publishing of the* ***MYTTON*** *report, Mr David Gordon* ***MILLER***

572. At (1) through to (8) Mr **MIRFEN** is clearly stating that the agreement between LDC Finance Limited and Halifax Finance Limited was that LDC Finance Limited's funds advanced by Halifax Finance Limited to Motueka Vehicle Sales Limited was to be secured by;

- normal operating floor plan procedures requiring any funds advanced to be secured against a vehicle with a retail value above the amount owed and;

- additional equity supplied by the borrower over the entire value of the floor plan making the amount owed less than the wholesale value of all of the vehicles used as security.

573. Mr **MIRFEN** at (10) states that he and the other directors became aware that Mr **BROWNIE** and Mr **ELLIS** were selling the security and simply <u>not</u> paying back Halifax Finance Limited, and using the money for other investments <u>not</u> secured to Halifax Finance Limited nor LDC Finance Limited. This is clearly the directors ignoring fraud and theft and thus either aiding and abetting, conspiring with, or being an accessory after the fact to, fraud and theft of stakeholders funds. It would be no different if any other type of criminal actions were involved. These men had duties and their actions as to willful blindness or whatever other omission or commission cannot be reasonably explained.

574. At (14) to (16) Mr **MIRFEN** agrees wholeheartedly that these actions were theft by Messrs **BROWNIE** and **ELLIS**. At (18) to (22) Mr **MIRFEN** explains that the LDC Finance Limited directors knew about how bad the books were in 2005, and that they would <u>not</u> act against **BROWNIES** repetitious thievery because they were "scared of the publicity" if they put Mr **BROWNIE** into receivership. What about reporting Mr **BROWNIE** to the New Zealand Police Service Mr **MIRFEN**?

575. The reader will now know why the directors of LDC Finance Limited could not then touch Mr **BROWNIE**, nor can touch him now. It would be tantamount to "starting an avalanche in a glass house". Mr Paul **BROWNIE** knew about all of the dirty little

deals done by the directors of LDC Finance Limited inclusive of the directors paying themselves fees, and as shareholders, significant dividends, from effectively stakeholder's monies, whilst the vault had been virtually emptied as a result of the directors outrageous fiscal antics.

576. The directors of LDC Finance Limited were not only as bad as Mr **BROWNIE** but had in fact used Halifax Finance Limited to continue their ruse of the stakeholders by swapping loans. At (22) Mr **MIRFEN** alleges that he thought the position was still recoverable, but did Mr **MIRFEN** know everything, the writer thinks not?. And it must not be forgotten that whilst Mr **MIRFEN** is being somewhat honest about certain matters he is equally likely to try and evade as much blame as he possibly can. The writer did wonder how Mr **MIRFEN** could have stood by and watched innocent elderly stakeholders invest monies into sham prospectuses when he knew the truth virtually from day dot.

577. The following is a transcript of Mr **MIRFEN** informing the writer about his knowledge of the likely solvency of LDC Finance Limited from 2001 onwards;

(23)SM *The basic problem with* ***LDC was the stuff they inherited when they took it over from the Cole family, which was basically Halifax finance****.*

(24)DN ***Yeah there was about $1.2 million dollars worth of problems*** *then wasn't there*

(25)SM ***Yes there was*** *– the thing was that when I started there they had already taken the thing over and* ***I can remember the first thing that I did I had a look through the books and at the first stage I can remember saying to them in the early days <u>there is going to be problems with this Halifax one.</u>***

(26)DN *Right –* ***because there was a loan for $800,000.00 that was bad that one of the directors was a guarantor on***

(27)SM *And* ***<u>the other one that the director was tied up in was written off</u>*** *um relatively early in the piece I think it was*

(28)DN *If it was written off though* ***I mean how was I mean it can be written off but <u>was there any cash put in</u> to um be able to have equity there <u>or was just written off and they continued to trade</u>……<u>but on the 13th of March 2002 David Miller prepared a report to the LDC directors</u>***

noting provisions for bad debt of 1.93 million *now most of that would have been O'Malley wouldn't it*

(29)SM ***I personally think that*** *some of that* ***would have been the Roadrunner*** *or whatever his name was – I can't think of his name*

(30)DN ***Oh yeah that that was to do with those machines***

(31)SM ***Poker machines***

(32)DN *Poker machines wasn't it*

(33)SM ***Yeah yeah***

(34)DN ***That's right there was about 1.2 million there wasn't there***

(35)SM ***Yeah*** *I've got a feeling that uh uh look my memory mightn't be right but* ***I've got a feeling that that would have been the stuff that was would have been considered the bad debt then***

(36)DN ***Yeah because that that was totally bad wasn't it***

(37)SM ***From what we could understand it was because you know that err that was ah that was one that was inherited I think that that was already on the books when Carren Miller bought LDC***

(38)DN *Right so basically you've got the 800,000 to the shareholder of Carren Miller you've got the 400,000 that has been written off then you've got this bad debt provisioning to Roadrunner….* ***I mean they are large bad debts*** *– they are not small numbers because*

(39)SM ***I know I know"***

578. At (23) to (38) above Mr **MIRFEN** is admitting to being aware of the following bad debts as at 2001- 2002 in LDC Investments Limited. There was $1.2m at least to the guy whose nick name was "road runner" on poker machines (actual name Mr Ernie **MADDEN** (whereabouts unknown, could be deceased), $800,000.00 that had been written off to Mr Richard **JENKINS** (a partner in Carran Miller and one of the major reasons the partners bought the company) and $400,000.00 that was written off to Mr Blue **GREENE** a financier that has been recently put in prison for defrauding investors. To this you must add the $1.547m to Motueka Vehicles Sales Limited, and the $3.2m to the **OMALLEY/WHITTLE/BROWNIE** consortium. These amounts add up to a not insignificant $7.147m and of course there were more bad debts;

O'MALLEY/WHITTLE/BROWNIE	$3,200,000.00
GREENE	$ 400,000.00
JENKINS	$ 800,000.00
MADDEN	$1,200,000.00
BROWNIE/ELLIS	$1.547,000.00
Total	**$7,147,000,00**

579. At (38) above Mr **MIRFEN** is in full agreement that the amounts signify large bad debt provisioning. The writer does not believe that the sums are "bad debt provisioning" as such because the sums were either lost or defrauded that is why the company never faced up to them because to face up to the "provisioning" would require the realization of the losses, which would have meant incurable insolvency and the discovery of the fraud. No one in their right mind would have put good money back in the control of the likes of Messrs **MILLER, HARDIMAN, ELLIOT,** and **BROWNIE**. The writer does not believe the LDC Investments Limited shares actually amounted to any value of contribution to equity in the company because the writer believes that the directors would have taken these amounts out in the first two years of ownership in dividends from alleged profits to pay for the purchase of the business in what the directors, no doubt thought, was a smart move. And that is if they actually put any money into the company in the first place.

580. If the company was not making money as alleged, it was theft from the stakeholders to pay dividends to the director shareholders. It is also thought likely that LDC Investments Limited's predicament was a lot worse than even these numbers indicate, which would mean that the directors knowingly sold this pup to mostly elderly clients of Carran Miller when they sold the LDC Investment Limited book to LDC Finance Limited in the middle of 2004, and pretended to inject a million dollars of Mr **BROWNIES** family trusts money into LDC Finance Limited to make it appear solvent whilst they allegedly retained the ownership of the CBH Limited shares in LDC Investments Limited, changing the company name to the now infamous GKW Limited.

581. As we now know the CBH Limited shares were probably not in the ownership of GKW Limited in any event but in the name of Chris **HARDIMAN**. At this point the reader must understand how disgraceful the directors actions were in repaying $65k

from the Heli-logging Holdings Limited's No 2 account to GKW Limited (paragraphs 486 to 495 of this report) just days before they launched the wholly misleading September 2006 prospectus to try and get millions more to burn on their personal lifestyles and to put off the inevitable whilst they turned their attention to defrauding Messrs **SCHOLFIELD** and **HARDING** and the F and I stakeholders.

582. The writer decided to press Mr **MIRFEN** for his position as to what he would have done in 2002 if he had had full control. Mr **MIRFEN** had strong views on the subject relating, surprisingly, to how he felt that the directors may blame him;

(40)DN *Right so so I've got a back ground in car dealing and property developing* ***I would have known that this was in the toilet in 2002*** *– absolutely without any doubt and I would have closed Brownie down –* ***you've said that yourself that was your desire early on to get out that and take the losses take the hit go back to the original investors and say look we may need to trade out of this but …***

(41)SM ***yes and which would have probably worked***

(42)DN ***It could've done - as long as you cut Brownie out***

(43)SM ***Yeah***

(44)DN *But happened was that um Miller – Millers quite a proud guy isn't he – well you could call him proud and you call him arrogant.*

(45)SM *I won't make any comment on Dave*

(46)DN ***OK well I can tell you right now I'm not trying to wind you up – Dave's pretty derogatory towards you***

(47)SM ***Well –look Dermot I've been around long enough to know that somebody was going to be blamed for it – when I left – when I left I said to my wife when I saw it in the paper I said to her I will be blamed for this you know because I'm not there any longer and that sort of thing you know that is probably not news to me but I would have expected that****...*

583. Clearly Mr **MIRFEN** was not a **BROWNIE** fan, but there were plenty of other bad deals done by the directors. Mr **MIRFEN** agreed with the writer that the whole thing should have been wound up years earlier, but was very keen to know how the writer had obtained the minutes of LDC Finance Limited that he had known would have disclosed the dire financial position of the LDC Investments Limited book even

before it was sold to LDC Finance Limited. Mr **MIRFEN** also seemed to think that the matters complained of by the writer were somehow now destined never to be proven and the persons responsible never brought to justice;

(48)DN *Yeah why is that though why would you ...*

(49)SM *Well you know what human natures like – it's not my fault it's someone elses*

(50)SM ***yeah – yeah you may you may be right but that's in the past so we will never know whether that was going to be the case we can only just work with the present really can't we***

(51)DN *No sorry* ***you can its called forensic accounting****, I can go back into LDC's books, look at their assets, go and visit the asset or a similar asset, and go back on historical sales of an asset of that nature at that time – I can do all that and come up with the same conclusions that the directors would have come up with at that time. What you've got to understand in Company law, a directors liability is not what he knew, it is what he ought to have known*

(52)SM ***Yeah yeah look I'm not going to sort of get into a debate over you know the directors but one other thing just interests me – how did you get your hands on the minutes of LDC***

(53)DN *Just through various contacts I mean when the report comes out there's going to be 2000 pages of evidence people are going to be wondering how I got a lot of the evidence*

(54)SM *Yeah*

(55)DN ***But the thing here really realistically is that there were warning signs – massive warning signs that she was all going to turn to custard very early on in the piece and they really didn't do anything proactively or proper to stop it – they hid the problems they didn't tell the investors they certainly didn't tell the investors in the Prospectus's that these problems existed and whilst your putting your head in the sand you're not going to get out of trouble are you***

(56)SM *I don't disagree with you at some stage their heads were in the sand*

584. It really seems game, set and match doesn't it. At (50) to (52) Mr **MIRFEN** effectively corroborates all of the other information contained in this report about what the minutes and emails state. At (56) Mr **MIRFEN** clearly agrees with the writers summation that the directors knew about all of the massive misstatements in the prospectuses and advertisements and used those documents as tools to perpetrate

the frauds as against the LDC Finance Limited and F and I stakeholders, and of course Messrs **HARDING** and **SCHOLFIELD**. At (51) the writer clearly informs Mr **MIRFEN** that it is the writers intention to not only prove the obvious, but to make those responsible compensate the victims.

Mr MILLERS dealings with Mr Peter "piggy bank" HODGKINSON

585. As an indication of how duplicitous and daring Mr **MILLER** can be, the writer has become aware of the following deal done by Mr **MILLER** with a debtor to LDC Finance Limited just before LDC Finance Ltd was placed into receivership. Mr **MILLER** was part owner, with a Mr Peter **HODGKINSON** of a piece of seaside real estate in Nelson. As part of the consideration for Mr **HODGKINSON** selling his share of the site to Mr **MILLER**, Mr **HODGKINSON** dropped the price by $20,000.00 if Mr **MILLER** wrote off $20,000.00 of a debt owed by Mr **HODGKINSON** to LDC Finance Limited.

Mr MILLER helps Mr HODGKINSON dupe a friend and fellow shareholder in CBH Limited

586. The writer has also become aware of a deal done between Mr **HODGKINSON** and Mr Lynn **REDDEN** who is a shareholder in CBH Limited. Mr **REDDEN** has explained that he feels that Mr **HODGKINSON** and Mr **MILLER** "stroked him" in the following way. Mr **HODGKINSON** went to the same church as Mr **REDDEN**. Mr **HODGKINSON** approached Mr **REDDEN** saying that he needed monies to import some cars from Singapore and offered Mr **REDDEN** a type of joint venture in profit shares. Mr **REDDEN** initially advanced around $75k on the understanding that this money would be kept separate from LDC Finance Limited's dealings with Mr **HODGKINSON**. Various vehicles came into the country and were sold. Mr **HODGKINSONS** accountant was none other than Mr Chris **HARDIMAN**, director of LDC Finance Limited.

587. Mr **HODGKINSON** when filling out the loan agreement with Mr **REDDEN** purposefully put in the wrong company name. Because of the friendship Mr **REDDEN** did not ask for a personal guarantee from Mr **HODGKINSON**. Mr

REDDEN became suspicious when certain payments were not met, and certain cars he had paid for had been sold and no money was coming back Mr **REDDENS** way.

588. Sounds familiar doesn't. Mr **REDDEN** then began to step up the heat for payment from Mr **HODGKINSON** and the following occurred. Mr **REDDEN** got a call from Mr **HARDIMAN** with Mr **HARDIMAN** wearing the twin hats of being a director of LDC Finance Limited, and being Mr **HODGKINSONS** car company's accountant. Sounds similar to Mr **MILLER** talking on behalf of Halifax Finance Limited to Commercial Factors Limited when Mr **BROWNIE** committed the $360k fraud and Mr **MILLER** negotiated time by persuading Mr **HAYDON** that to wait and risk more was the only way out, but there was a way out, when clearly there was not (refer paragraphs 517 to 521 of this report).

589. In short Mr **HARDIMAN** alleged that he had been working closely with Mr **HODGKINSON** to sort things out and that he could advise that the company was now in the black and that there was nothing to worry about and that Mr **REDDEN** would only have to wait for his money. Mr **HARDIMAN** then asked Mr **REDDEN** very specific details about what form of, if any, security Mr **REDDEN** had over the assets of Mr **HODGKINSONS** company's assets. Mr **REDDEN** trusting Mr **HARDIMAN**, with Mr **HARDIMAN** being a fellow shareholder in CBH Limited, and a chartered accountant of Carren Miller was as helpful as he could be considering the assurances from Mr **HARDIMAN** that everything was alright. Sounds like a similar story of woe as told by nearly 70 year old Mr Rolly **FAWCETT** at paragraph 231 to 232 of this report. Mr **FAWCETTS** words describing Mr **HARDIMANS** actions to the writer in subsequent telephone conversations were;

"He must have known, he is just a f_ _ king criminal. I lost all of that money because he could not be honest even when he knew it was over. He cannot be human. He is scum"

590. After a time with nothing happening Mr **REDDEN** starting to smell a rat put Mr **HODGKISONS** car company into receivership and then Mr **HODGKINSON**, supported by Messrs **MILLER** and **HARDIMAN** then began a process of defending Mr **REDDENS** actions to get repaid.

591. A Court case ensued and various spurious defences were filed inclusive of the loan agreement being in the wrong name. The District Court Judge presiding over the case adjourned the hearing for a month whilst the parties sorted out why the error on the loan documentation occurred. During that time it would appear from statements made by Mr **REDDEN** to the writer that Mr **HODGKINSONS** company's assets were stripped, inclusive of the monies belonging to Mr **REDDEN**, and paid to LDC Finance Limited.

The writers further investigations of the truth of Mr MILLERS statements about everyone knowing about the CBH Limited shares.

592. It was now obvious that the CBH Limited share sale to SC Management Limited was recorded in the last prospectuses and that therefore the receivers Messrs **HOLLIS** and **FISK** must have been aware of the asset worth $2m to $3.5m being available to LDC Finance Limited. Of course the question must be asked; why had not the receivers reported the asset in their reports. Given the obvious conflicts of Pricewaterhousecoopers being involved as receivers given their previous position as being promoters of a misleading prospectus the writer now felt quite confident that Messrs **HOLLIS** and **FISK** were conspiring to hide the asset, and the impact that the asset had not been sold to SC Management Limited in breach of the agreement with F and I and in breach of the statements in the last prospectus.

593. In line with the writers theory that Mr **HOLLIS** was as "bad" as the Halifax Finance Limited ledger the email that Mr **MILLER** had sent the writer annexing allegedly a true copy of the CBH Limited share registry (page 11 of the annexed dossier) had content of originating emails received from Chris **EDMONDS** (managing director of CBH Limited) and none other than Mr Malcolm **HOLLIS** receiver of LDC Finance Limited. The relevant content provides;

------Original Message---------
From: "Chris Edmonds"
To: "David Miller"
Sent: Friday, July 18, 2008 2.07

Chris
021 654765

03 5476553

--------Original Message----------
From: "Chris Edmonds"
To: "Malcolm Hollis"
Sent: Tuesday June 24, 2008 11.09 AM

>>Please find attached scan of updated register as per our agreement. I expect to have the new funds in the bank by tomorrow. Chris

594. What is important about this message from Mr **EDMONDS** to Mr **HOLLIS** is that Mr **HOLLIS** is now clearly aware of the ownership of the CBH Limited shares by SC Management Limited as at the day after they were transferred. But what were the funds Mr **EDMONDS** had referred Mr **HOLLIS** to about. Had Mr **HOLLIS** been paid some money and if so how much and what for?. The writer will return to this 'transaction" at a later time in this report.

595. The writer felt that it would be prudent to wait to see what the receivers did in their report due in or around late October 2008. Surely now they would have to report the existence of an asset worth according to Mr **MILLER** at least $2m to $3.5m. Had Mr **HOLLIS** not reported the asset earlier because he didn't own it?. But that sounds weak because he must have known about the assets existence in relation to contracts and the prospectus he helped design along with Mr **NOONE**.

596. In the meantime the writer decided to go undercover in an attempt to see what the CBH Limited shares were really worth and how the company operated.

The writer goes undercover as Mr EGGLESTON

597. Relevant emails and attachments between the writer (using a nom de guerre of Jonathan **EGGLESTON** (which "lucky" nom de guerre has been used by the writer in probably 20 covert operations since 1987) and other parties involved promoting the assets of CBH Limited for sale and the values thereof are found at the following pages of the annexed dossier;

Pages 23 - 65. Recent valuations (Telfer Young 22 April 2008) of the assets of CBH Limited which disclose the assets in total of CBH Limited

are worth many millions of dollars, but of course there will be borrowings and costs of development.

Pages 36 - 59. Valuing the blocks owned by CBH Limited for many millions of dollars. See also page 34 disclosing a further record of the internal share registry of CBH Limited disclosing SC Management Limited owning the same number of shares (but a lesser percentile) in CBH Limited.

Page 33. Email advice is received that CBH Limited also owns 50% of Appleby Estates; (which value would be several million).

Pages 32b. Is a list of the sections subject to contract or are sold in Appleby Hills

Page 33-34. Contains a true copy of the share registry of CBH Limited obtained from its Managing Director Mr Chris Edmonds

Page 157-157 Ms Gina Boyd, an accounts person for, and shareholder in CBH Limited sends another true copy of the CBH share register.

598. The writer, using the nom de guerre of Jonathan **EGGLESTON**, has spoken to another shareholder in CBH Limited and recorded the conversation wherein she informs the writer than she has never received notification of such a pre-emptive notice pursuant to CBH Limited's constitution for a sale to anyone else (see paragraphs 365 to 367 of this report) and additionally the writer was informed by CBH Limited's Managing Director, Chris **EDMONDS,** in an email dated 15 August 2008 (see page 30 of the dossier) of the following facts and further omissions by Mr **MILLER**; (emphasis that of the writers);

"I have started collecting the material you requested on the CBH projects, Appleby Hills and Appleby Estates. ***CBH Ltd is a 50% owner of the Appleby Estates project so the interest would be in that proportion****.* ***I am a director of CBH Ltd and once we establish Mrs Hwang's interest and intentions we will need to secure the approval of our shareholders"***

599. It would appear that Mr **MILLER** had forgotten about CBH's ownership of 50% of another multi-million dollar development. Again it would appear certain that Mr **EDMONDS** confirms that all shareholders had pre-emptive rights in the constitution and therefore not contacting other shareholders and informing them of the reasons for sale and their right to purchase the shares voided any sale. Mr **REDDEN**, another shareholder in CBH Limited, has told the writer that the giving of ownership of CBH Limited shares to an insolvent company being ultimately LDC Finance Limited had concerned them and that the previous handling of CBH Limited shares by Mr **HARDIMAN** had concerned them.

600. A further problem for Mr **MILLER** is that the writer had obtained an apparent true copy of the internal share registry from the Managing Director of CBH Limited Mr Chris **EDMONDS** when it was annexed to an email dated 18 August 2008 (see page 33 and 34 of the annexed dossier) from Mr **EDMONDS** when the writer was pretending to be representing a Korean business woman (whose family allegedly had more money than a bull can ….).

601. The register confirms the following shareholder and other information.

S C management Limited	*329*	*35%*
	329	
Coastal Landholding Ltd	*400*	*29%*
	158	
Pearl River Holdings Limited	*100*	*9%*
	79	
Gojech Limited	*118*	*6%*
Bisley Holdings Limited	*143*	*10%*
	30	
	12	
SK and KM Collett Family Trust	***125***	***7%***
Parker Orchard Limited	***84***	***4%***
Total	*1907*	

602. When comparing this breakdown of shareholding in CBH Limited supplied by Ms **BOYD** and Mr **EDMONDS** of CBH Limited management with the copy supplied by Mr **MILLER** found at paragraph 418 of this report certain matters become apparent and must be considered important in the overall picture.

603. Firstly the writer had obtained a share register from Mr **MILLER** who presumably from the email content referred to at paragraphs 590 of this report obtained same from Mr **EDMONDS.** As this was at 18 July 2008 why would there be a difference in shareholding of two more shareholders and 209 shares. Both internal share registers are dated June 2008 and were therefore historical registers at the time the writer obtained them in mid July and August respectively and so therefore should reflect the exact same information.

604. The following could be a reason for the difference. Mr **MILLER** called Mr **EDMONDS** and informed him of his cock up in telling the writer about the transfer. Mr **MILLER** and Mr **EDMONDS** decided to change the register to still reflect the SC Management Limited ownership in shares, but not that some trading in shares had taken place or that new shares had been subscribed.

605. Is this what Mr **EDMONDS** is referring to when addressing Mr **HOLLIS** about "new funds" being in the bank tomorrow?.

606. In any event how could the issue of new shares be done without the consent of other shareholders inclusive of the agreement of the receiver?.

607. Had Mr **HOLLIS** been paid some monies from property transactions involving CBH Limited's Appleby Estates residential sales?. How come he had allowed the shareholding to diminish to 35%?. No matter what was done, surely Mr **HOLLIS** would now have to report the ownership of the CBH Limited shares as an investment through a wholly owned related or associated company. Of course one forgets that Mr **MILLER** was still in charge of SC Management Limited as a director and although LDC Finance Limited was a shareholder, it is the director that makes the decisions and the writer was well aware of Mr **MILLERS** ability to deceitfully work behind the scenes in his particular style. But the writer was now becoming sure that Mr **HOLLIS** was as bad if not worse than Mr **NOONE**. However what is somewhat of use is that Mr **EDMONDS** gives the writer a value of the shares in an email dated 13 August 2008 (page 63 of the annexed dossier) wherein the following statements are made by Mr **EDMONDS**; (emphasis that of the writers);

"CBH Ltd. This company is the owner of "Appleby Hills" which is partly developed. ***15 of the 16 lots created have been sold and settled and a further 47 lots remain to be developed.*** *The company is also 50% owner of a nearby development branded as Appleby Estates, which is fully built and has recently gone to market.*

The company would welcome additional capital to partly replace debt funding. ***Current levels are at $2.6m and we are looking for $1m in additional equity. $500,0000 has recently been subscribed so the financial structure of that investment is well establishe****d. Subject to shareholder approval further capital could be accepted. $1m would buy about 416 of 2436 shares counting the new shares issued."*

608. The values of the CBH Limited shares (according to a man (Mr **EDMONDS**) who thinks he is selling some) is between $2,392.34 and $2,403.85 per share on the writers reckoning. These figures are reliant on the accuracy of the numbers given by Mr **EDMONDS**. Mr **EDMONDS** confirms the writers figures in an email to the writer (page 32a of the annexed dossier) dated 18 August 2008 wherein he states; (emphasis that of the writers)

"The per share value we used in issuing recent shares was $2,400 per share *and the new shareholders were happy to pay that.* ***It would be difficult to move away from that figure now given that those shares were issued very recently****"*

609. One thing can be said with certainty about the new share issue of 209 shares that went to SK and KM Collett Family Trust (125 shares 7%) and Parker Orchard Limited (84 shares 4%) was that CBH Limited needed capital to survive and the shareholders were not approached to sell their shares that would have seen the same funding merely replaced.

610. The fact that additional funding of $1m is required (not taking into account the $500k recently raised by the 209 new shares issued means that Mr **EDMONDS** believes that a minimum of a further $1m is needed to keep the project "settled" for a period by replacing "debt funding". Given that there have allegedly been 15 out of 16 sections already sold at Appleby Hills for allegedly $4,172,000.00 (page 32b of annexed dossier) then it would seem that the two developments (Appleby Hills and 50% of the smaller Appleby Estates) have already gone through the following numbers;

Sold sections	$4,172,000.00
Recent Share subscription	$ 500,000.00
Current debt	$2,600,000.00
Total	$7,272,000.00

611. It must also be remembered that there would have been an original purchase price of the land and thus equity injected into the deal. The writer would assume that this figure would have been a minimum of say $1.5m making the entire amount around $8.772m or $548,250.00 per section given title thus far or a loss of $4.6m which loss is covered by the value of the remaining land which Mr **EDMONDS** states is $5.5m plus whatever value Appleby Hills has.

612. Mr **EDMONDS** does state that there is a further 47 lots to be developed but ominously states in relation to that remaining development potential;

"I will be in touch with you about the spreadsheet ***– I am contemplating an update to show the current position and there will be a bit of work to create a robust result..***

That spreadsheet also contains cost estimates ***for future construction work****.* ***We have just received an accurate estimate for the next two stages and want to update the earlier estimates****".*

613. It is accepted that a large privately owned sewerage plant was put into place at the front of Appleby Hills and the writer does not expect this to service the remaining 47 sections otherwise title would have probably been issued. Of what the writer saw there is still a lot of construction work to be done and the writer believes that the values of the sections thus far sold are 'suspicious' for the following reasons.

- Of 15 sections sold 6 purchasers are represented on the record by Richmond Law
- Simon **COLLETT**, the most recent shareholder in CBH Limited who paid $300,000.00 for 125 CBH shares purchased two of the most expensive sections sold and had 'friendly' terms such as;

  "No later than 30.1.2010 purchaser to complete settlement on settlement of resale"

- A Mr **STEVENSON**, probably Mr Ross **STEVENSON**, current director of Carran Miller, has purchased 2 sections, one sale not requiring any deposit. Mr **STEVENSON** is represented by Richmond Law.
- Mr Mike **HARVEY** who also did not need to pay a deposit is the real estate agent handling the sales program and he is also represented by Richmond Law.

614. The writers' information is that the management of CBH Limited are receiving strong market resistance to the products pricing even though they are offering $30k of free incentives.

615. It is the writers opinion that the initial sales are not reliable numbers and are probably grossly inflated through friendly sales by as much as a third at the time of sale. The practice of setting values by friendly sales is a "usual" practice in development of large subdivisions. In fact financiers normally demand 5% sales and 5% non-refundable deposits subject only to title. As a matter of interest the amount of deposits amount to $278,050.00 over $4,172,000.00 of sales or the devils percentile of 6.66% deposits. If the prices were inflated by a third then the total sales should have been worth say $2,753,520.00 or $183,568.00 per section average and that is being kind. At that value the development would probably break even, or may even lose a bit of money in real terms.

616. But the market in such sections has imploded. A main reason for this is that the cost of building has not realistically gone down a cent. The only factor that can lose value is the price of bare land and it has gone down significantly in value. This opinion is further strengthened by the fact that Mr **EDMONDS** cites an "early" sale at allegedly $393k that actually had a house on it. One would assume that a house with landscaping, septic tank etc would be worth more than $100k more than a section value especially as it was sold when the market was "hot".

617. The writer believes that a sale realization value in the current market would be around the $120k to $140k on the good side if put on the market by tender or auction. The writer believes that even these figures may prove too difficult and is further of the opinion that the lots would not all be sold either.

618. Such a sale value would see actual losses against borrowings and equity especially given the cost of development of the remaining sections, and would certainly value the CBH Limited shares held by SC Management Limited now as virtually valueless

if the current value of $2,400.00 is based on sale values at a minimum twice the actual value.

619. This type of value attrition is in line with the loss in value of other vacant land "with estuary views" a distance from rural townships and still further from provincial cities like Nelson. The writer has personally viewed such sections outside of Whangarei and other mid size provincial cities.

620. Jennian Homes Limited have struck some kind of deal with CBH Limited and Jennian build a lower end product in value probably coming in at the $220k to $295k range for a basic house of say 140m2 house and 35m2 garage. This price would not included additional excavation which could be as much as $15k on these sections, council fees, and landscaping and fencing which could add an extra $20k quite easily. Therefore it follows that at say $120k for a section and say $250k for a very basic 3 bdrm maybe 1 bathroom house and another $35k to cover other basic's then the total developed price is around the $405k mark which would be about right. Of course there are the hidden costs of interest payable and increases in intangibles that may add another $15k to $20k to the price.

621. The $405k sits well against the $393k obtained by Mr **EDMONDS** for the section and older house when the market was "hot". The market was cooling in mid 2005 with development companies already in a lot of strife, but their PR staff kept the wolves at bay and truth be known the banks and finance institutions were probably in too deep to pull the pin or tighten the reigns. Of course the Labour Government were too thick to realize this and decided to increase interest rates to insure an implosion rather than a "settling" effect over time.

622. Now the writer asks the reader to consider why would a developer build a house when there was no profit and most likely a loss, and why would a family build away from schools, transport and the attractions of the city or a retired couple build when they can take advantage of the lower priced market closer to the city and actually probably buy a much better specified house for the same price?. And how many retired people are left in Nelson that have any savings after the number of finance companies have gone broke because of dishonesty and reckless trading allowed to occur because of

the habitual non performance of the Securities Commission and the Trustee companies.

623. As the reader can see there would be no reason to consider buying and building when you are asking in excess of $325k for the sections. The figure of $325k is required to make the developments make sense otherwise you might as well invite the banks in now and limit the losses. These CBH Limited developments were based on the developers unqualified belief that the silly unqualified numbers being paid for 'dirt' with a "peek of an estuary" a reasonable distance from a provincial city were going to continue at the clearly unsustainable levels.

624. It is trite to say that developments built on a wrong premise are doomed to failure if under capitalized and subject to debt exposure. The writer believes that it will be five years or more before the sections are worth anywhere near the money asked as of today, and the debt servicing costs will eat away at any increase. Equally by that time other developers will have purchased land at todays values and will have absorbed a lot of the market before CBH Limited can get off the ground. A development too soon is a profit too far.

625. The writer believes that the CBH Limited shares owned by SC Management Limited are at this point basically worthless unless one of the other shareholders wants to buy them out, and that is not a likely event given the numbers. The writer believes that an astute wealthy businessman who was prepared to take a bit of a gamble may throw $500k at them but that would be it. This would value the CBH Limited shares at around the $759.00 per share maximum. This is why the development is according to Lynn **REDDEN** "parked". It would also be a reason why the shares were hidden from the LDC Finance Limited stakeholders as well, but the writer will return to that in a moment.

Mendacious Messrs NOONE, HOLLIS, and CAINS most disgraceful actions towards Messrs SCHOLFIELD and HARDING

626. Probably the most disgraceful actions of this conspiracy's enterprise were perpetrated by the pin striped emotionless men of Pricewaterhousecoopers. Mr **NOONE** flew personally to Nelson in late January 2007 to see Messrs **HARDING** and **SCHOLFIELD** to "clinch" the F and I $4m for 4,000.000 LDC Finance Limited shares deal wherein F and I pumped $4m into the grossly insolvent fraud ridden corporate cadaver of LDC Finance Limited. Due to what Mr **NOONE** was about to do he could not be acting for F and I or Messrs **SCHOLFIELD** and **HARDING** and therefore his clients must have been Messrs **MILLER**, **HARDIMAN**, **JANNETTO**, and **ELLIOT**. How ever Mr **NOONE** was to play "mind' games with Messrs **SCHOLFIELD** and **HARDING** who were not bright enough to electronically record Mr **NOONE**S antics. Of course ultimately Mr **NOONE** is acting for his own personal benefit and the benefit of the Pricewaterhousecoopers already bulging bvlgari purse.

627. The reason for the writer saying that these actions are the most disgraceful is because they were perpetrated by persons that are seen by somewhat naïve members of our society as being beyond reproach and thus they have an inherent defence to any allegation of wrongdoing, such as did the religious people of the catholic church and the New Zealand Police Service prior to their exposure for being breeding grounds for dishonesty, horrendous crimes against the helpless and frequently very young person. Such commercial bastions of rectitude self propagated this aura of credibility and the various media, always wanting a good times story, until recently, spread it like a disease and that disease has led to the current lack of health and wealth of our economy and ultimately the readers uncertainty about the economy's future.

628. At a meeting, that shall live in infamy, at the offices of F and I finance in the balmy seaside suburb of Tahuna in Nelson, the Assurance Manager for Pricewaterhousecoopers, Mr Maurice **NOONE**, after reviewing F and I's ledgers, stated to Mr **HARDING** that, if they (Messrs **HARDING** and **SCHOLFIELD**) did not commit to the **NOONE** plan that they would be going to prison because they had been operating without a registered prospectus in breach of the Securities Act 1978. Mrs Joy **DRUMMOND**, the office manager for F and I was also present at the offices and witnessed a portion of what was said between Messrs **HARDING** and **NOONE**.

629. This statement by Mr **NOONE** had been in answer to a query from Mr **HARDING** as to the options Mr **NOONE** thought they (Messrs **SCHOLFIELD** and **HARDING**) might have to doing the deal for the extra 4 million shares in LDC Finance Limited for $4m of stakeholders voidable irregular allotments. The writer wants the reader to consider the following matters. Mr **NOONE** could have advised Mr **HARDING** of the following course to resolve the F and I problems;

- Admit their problems to the F and I stakeholders and explain how those problems arose inclusive of the directors of LDC Finance Limited defrauding F and I over the insolvent operation of Halifax Finance Limited and LDC Finance Limited, and seeking agreement from the stakeholders on a plan to take action against the directors of both companies pursuant to the common law and the Companies Act; (ss 126, 135 and 301 of the Companies Act 1993)

- Sought a moratorium on payments of interest to the F and I stakeholders for a period of say 1 year, with a right of renewal for a further say 1 year at half payments due, and a further compromise on amounts owed to the stakeholders upon the offer of injecting the partners assets and other personal assets into the securities realising the maximum amount of return possible from the continuing trading of the business. It is submitted that this was the only sensible thing to do at that time and the matter should have been pressed by any honest accountant. This is especially the case because Messrs **SCHOLFIELD** and **HARDING** were now not comfortable at all with the previous undertakings given by the LDC Finance Directors.

- Gone to the Securities Commission and the stakeholders pursuant to the salient provisions of the various Amendment Acts to the Securities Act 1978 and sought that the stakeholders, the Court, and the Securities Commission agree to the allotments being deemed lawful, or re-allotted upon a prospectus being issued disclosing the real position of the partnership. Whilst this process was in train an enforceable undertaking could have been given to the Securities Commission by the partners pursuant to the 2002 Amendment Act section 69J that they would operate with an independent accountancy firm managing the partnerships affairs

and possibly reporting to the Commission or Court, or both. Such undertakings involving operating without a prospectus have been accepted by the Commission in the past, but it is trite to say that the partners would have to be up-front and frank and Mr **NOONE**, you would think, would be the type of individual capable of representing their interests in this regard. The Commission has stated that such enforceable undertakings will depend on, but are not limited to, the following guidelines relating to the competing interests of the stakeholders, the law of precedent, and whether in the end the matter can be resolved satisfactorily and expediently;

- Whether the person or entity is likely to comply with the undertaking
- The best interests of the investors
- The magnitude and frequency of the breach
- Whether there is acknowledgment and remorse
- Whether the breach is better dealt with by other forms of enforcement
- The nature of any precedent likely set by acceptance of the enforceable undertaking
- Is cost effective
- Whether "criminal conduct" has taken place
- The persons involved have been absolutely honest about the breach and have approached the matter disclosing all material evidence without the need for exhaustive investigation by the Commission or others.

- Normally enforceable undertakings will set out the background to the matter, and will usually describe how the undertaker will;

- Rectify consequences to investors (as best can be had)

- Prevent immediate and possible future problems

- Sought that the Securities Commission not implement any penalty because;

  - the non prospectus status was sought to be dealt with as soon as they were made aware by professional advice, and;

  - their position was as a result of being defrauded, and;

  - they intended to hand over their substantial assets as interim compensation to stakeholders until the claims against those arguably responsible were decided in Court.

- That they could **not** legitimately go for the $4m share deal in any event because Mr **NOONE** had a duty to advise that;

  - he had seen the LDC Finance Limited accounts and they were far worse than they had been informed and that it was his belief that the $4m to be injected by F and I into LDC Finance Limited would be lost because the deal was an obvious sham as had the previous deal for the $1.5m and;

  - the F and I stakeholders funds were voidable irregular allotments and could not be legally transferred for the purchase of LDC Finance Limited shares in any event and could only be repaid to the stakeholders as was the case on the previous transaction and that they should make that position known to the directors of LDC Finance as soon as practical.

630. Mr **NOONE** is **not** above the law. His right to give advice does not include the clearly criminal in that the advice is purposefully wrong or misleading for the benefit of himself and others. Mr **NOONE** cannot agree to be willfully blind to the affects of his advice on others that he is allegedly not representing when the affect is that they

are defrauded as a result of his advice or knowledge. The Crimes Act 1961 does not make the distinction and it should not, as to make that distinction would be to allow a class of person to operate as a criminal organization like the mafia.

631. A company is a separate legal entity. It exists for ultimately the benefit of the shareholders who own the company. And two of the largest LDC Finance Limited shareholders at that time when Mr **NOONE** made the threat and told the lies were Messrs **SCHOLFIELD** and **HARDING** with 1,500,000 LDC Finance Limited shares.

632. Mr **NOONE** knew that Mr **HARDING** saw him as having some "independence" and moreover expertise, and that such a question from Mr **HARDING** disclosed "free and dangerous thought" that could lead to F and I deciding to put its hands up, and this was a matter that had to be shut down by Mr **NOONE** with the only option being the **NOONE** plan.

633. Mr **NOONE** knew that a statement such as "definite jail time" to men in their 60s and 70's would have the affect that it did otherwise he would not have lied about it. It must be understood that men like Mr **NOONE** do not say things that they are not sure of, and in lying to Mr **HARDING**, Mr **NOONE** must have known or at least suspected, that Mr **HARDING** would <u>not</u> question him.

634. It is also crucial that Messrs **SCHOLFIELD** and **HARDINGS** belief was that in continuing on with the operation of F and I without a prospectus they would be continuing to commit a criminal act, and that if the matter was discovered even in a historical sense they would still be likely subject to jail time. Messrs **SCHOLFIELDS** and **HARDINGS** position was only "safe" if the likes of Mr **NOONE** did not blow the whistle, thus making Mr **NOONE** a conspirator in a conspiracy designed to pervert the course of justice.

635. As the writer has already stated it does not matter that the conspiracy to pervert the course of justice does not actually amount to the perversion of justice, in that Mr **SCHOLFIELD** and **HARDING**, could not do jail time, but that agreement resulted

from the parties believing that the intention of the agreement was to avoid the discovery of an offence.

636. However the truth of the matter is that Messrs **SCHOLFIELD** and **HARDING** were in significant breach of the Securities Act 1978 and that therefore Mr **NOONES** plan of avoidance was clearly a conspiracy to pervert the course of justice, but that Mr **NOONE** had "amped" up the detrimental outcome by a falsity to impair the judgment of Messrs **SCHOLFIELD** and **HARDING**, which had up until the "threat" by Mr **NOONE**, been favouring exposure of their unintentional behaviour.

637. Afterall it should have been clear to the Securities Commission, if it had been doing its job, that F and I were operating without a prospectus since 1979.

638. It can also be said that the aim of Mr **NOONES** "threat" no matter which way you look at it was to make Messrs **SCHOLFIELD** and **HARDING**, (unknowingly) to join the conspiracy to defraud F and I and LDC stakeholders.

639. However the writer believes that Messrs **SCHOLFIELD** and **HARDING** did understood that to 'suppress' evidence of serious offending was a perversion of the course of justice.

640. The fact is they were led to believe that if they gave themselves up they would do jail time, and if they suppressed it and were caught they would definitely do jail time. Mr **NOONE** being aware of the lie must have known that his "threat", plan and promise would be doubly menacing and enticing indeed.

Now was this statement made with menaces?

641. Menaces is, in modern terms, probably best spelt out to mean "actions thought likely to intimidate or make someone compliant to another's wishes". The writer believes that the English Courts have the best grasp on blackmail as they leave the intent of the accused in making the statements to the victim to the commonsense of the jury. In other words what would the jury members have thought of the statement made by the

accused to the victim if they had been in the victim's shoes, and they took into account the nature of the victim, and the knowledge of the accused. In **R v Garwood** [1987] 1 WLR 319 (CA) the Criminal Court of Appeal found; (writers emphasis);

...In our judgment it is only rarely that a judge will need to enter on a definition of the word "menaces". It is an ordinary word of which the meaning will be clear to any jury…
It seems to us that there are two possible occasions on which a further direction on the meaning of the word menaces may be required. ***The first is where the threats might have affected the mind of an ordinary person of normal stability but did not affect the person actually addressed. In such circumstances that would amount to a sufficient menace****…*
The second situation is where the threats in fact affected the mind of the victim, although they would have not affected the mind of a person of normal stability. ***In that case, in our judgment, the existence of menaces is proved providing that the accused man was aware of the likely affect of his action upon the accused."***

642. What the court is saying, in the opinion of the writer, is that on some occasions an express threat is made which would obviously likely affect a normal person and so the intent of the accused is obvious. But on occasion there is a threat that is harder to grasp for a normal person, but suffice to say if you take into account the particular circumstances of whom the threat was made to and possibly when, then a finding of menaces can be made out if it can be established that the accused likely knew the effect on the victim would be compliance with the accused's wishes because of the "threat". This is but one way an "implication" element can be brought into the offence.

643. An example of a threat that could not likely be considered blackmail would be where say a dwarf (of course he would have to be evil) that had no legs and arms (poor bastard) from birth said to some able bodied person that, if they did not do something (they otherwise would not do for the tiny limbless one but for the threat), "trunk–cated boy" would personally "kick and punch the shit out of that person". The starting point is would either of the two participants to the conversation believe the threat was serious? The writer will explore further analogies later in this report when dealing with the blackmail section of the Crimes Act 1961.

644. But another scenario, where "short bob square pants" could carry out a malicious threat, could constitute blackmail. An example would be where the deviant dwarf had

stated that "he would get someone else" to do his dirty work. This clearly could be a threat capable of effecting compliance depending on the specific situation.

NOONE plays two, (HARDING and SCHOLFIELD), knick knack paddy whack, NOONE gives the dog of a deal a bone, so the dog of a deal comes rolling home (to Messrs MILLER, HARDIMAN, ELLIOT, AND JANNETTO)

645. The next move by Mr **NOONE** was equally disgraceful. Mr **NOONE** having scared the "jeepers" out of Mr **HARDING** then decided to attempt to "persuade" Mr **HARDING** in a different way.

646. Suddenly Mr **NOONE** stated that he felt that the offer from the LDC Finance Limited directors to F and I of a $2m bonus upon the sale of LDC Finance Limited was not sufficient and that he could get Messrs **HARDING** and **SCHOLFIELD** $4m.

647. After stunning Mr **HARDING** with definite inescapable jail time likely spent with a 500 pound sexually frustrated, and emotionally needy cell mate called "Bubba" just moments before, suddenly Mr **NOON**E had thrown in a $2m "bone" to likely insure Messrs **SCHOLFIELDS** and **HARDINGS** compliance. The writer would suggest that this sort of bad part-good part blackmail scheme is not unusual and is more often than not used by the more intelligent offender.

648. An example would be where a criminal threatens a person that unless they both do a bank robbery that persons wife will become aware of that persons gambling habit which the criminal knows has been funded from joint savings accounts which the husband insures the wife does not receive statements.

649. The criminal then states that he knows that the persons wife, when made aware of the deceit, which is only a matter of time, will definitely leave the person taking the kids and probably all of the remaining assets, and the person would definitely go to prison as a result because he is guilty of stealing the wife's property. It does not matter that the taking of the wife's money might not be theft because it is "joint property", or that a jail term was inevitable even if it was an act of theft. The implication of the threat is obvious enough.

650. The criminal wants the person to commit a criminal act and therefore he needs to exert pressure by saying that something will definitely happen, when it might not, and it is only the criminal that is likely to inform the wife in any event given the criminal needs the persons compliance immediately.

651. After all, the wife has been blissfully unaware of the "habit" and the "missing monies" since the commencement of the marriage and it is unlikely that the ruse would be discovered in the immediate future, or within a time period necessary to impact on whether the person agreed to assist in the banks robbery.

652. When the criminal feels that maybe the person is tired of the guilt involved in deceiving his wife, and wants the wife to know about "their problem" no matter the consequences, the criminal says to the person that, if the person does assist in the bank robbery, the criminal will give the person 50% instead of the 25% originally offered allowing the person to not only replace the misappropriated savings in total, but that the excess of money from the persons 50% of the proceeds of the robbery will allow the person to continue gambling without any guilt.

653. Back to the stakeholders nemesis, Mr **NOONE**. It would seem (to anyone unaware of the truth) Mr **NOONE** was definitely a guy on Messrs **SCHOLFIELDS** and **HARDINGS** side, because not only had he warned Messrs **SCHOLFIELD** and **HARDING** of the definite jail term if they did not follow the **NOONE** plan, (and thus Mr **NOONE**, if this had been true, was guilty of being an accessory after the fact, and axiomatically perverting the course of justice) but that the **NOONE** plan would enrich the F and I stakeholders by $4m and not $2m and in doing so diminish the likely call on Messrs **SCHOLFIELDS** and **HARDINGS** personal assets by F and I stakeholders. A nice guy? Not!

654. But alas Mr **NOONE** was lying again. There was to be no extra $2m benefit of that nature and the suggestion and offer by Mr **NOONE** was a false assertion of a possibility or probability that Mr **NOONE** knew was not a possibility at any time.

655. Mr **NOONE** knew that if Messrs **SCHOLFIELD** and **HARDING** invested the $4m of F and I stakeholders funds for 4,000.000 worthless LDC shares, the money and F and I would be gone, but the writer suspects that Mr **NOONE** knew that the LDC Finance Limited directors and the trustee company Perpetual Trust Limited would look after Pricewaterhousecoopers for their "sterling (or was that stealing) efforts" by giving them the "clean up" or should the writer say "clear out" job.

656. Going back to the bank robber analogy, this is like the criminal offering 50% of the spoils when the criminal intended to give the person nothing, and hold over the persons head, the persons involvement in the bank robbery, and disclosure of the persons significant gambling losses to the persons wife, which would result in the persons wife most likely leaving. A simple plan that should have succeeded and nearly bloody did.

657. Of course Mr **NOONE** knew that Messrs **SCHOLFIELD** and **HARDING** had about $4m of their own cash to pay the F and I stakeholders in the advent of certain failure. As the reader will remember from sub paragraph (10) of paragraph 375 of this report Mr **NOONE** did report to the LDC Finance Limited and effectively the F and I partnership the following proposal; (emphasis that of the writers);

*"**Finance & Investments partners inject as much capital as they have access to. These actions should be undertaken and completed by 31 March 2007 in order to prepare LDC Finance Limited for sale**.*

658. This "suggestion" by Mr **NOONE** was on the basis that he had told Messrs **SCHOLFIELD** and **HARDING** that he had two to three finance institutions interested in buying LDC Finance Limited once the books had been "tidied up", which of course has to be compared to the true position after Messrs **SCHOLFIELD** and **HARDING** had been defrauded for the second time at the hands of the conspirators; see paragraph 379.31 and 379.32 of this report wherein the writer asks the following question and receives the following answer from LDC Finance Limited director Mr David Gordon **MILLER**; (emphasis that of the writers);

Writers Enquiry of Mr **MILLER**

*"**You spoke of PWC (in particular Mr Noone) stating that he had buyers for LDC (and F and I) were going to hang on the back of that sale because of the purchase of shares) please provide the names of the companies approached and their replies?.** Note: please do not state that this is a matter of privacy as the sellers and purchasers are companies.*

*Mr Noone must have presented to these companies the same documents that he presented to F and I and LDC saying how bad the position was, **please provide the documents provided to the finance companies by Mr Noone that were possible buyers? Note: of course LDC would have copies of such documents and knowledge of such potential purchasers?***

Mr **MILLERS** answer;

*"**We do not know who Mr Noone's interested parties were or what information he supplied as this was not disclosed to us.** You should refer inquiry to him"*

659. As an important aside the directors merely control the company's activities on a day-to-day basis effectively informing the shareholders of the company's performance when asked to, and insuring where possible that the company trades solvently and hopefully very profitably.

660. An accountant (such as Mr **NOONE** or Mr **HOLLIS**, or Mr **CAIN** of Pricewaterhousecoopers) hired (paid) by a company, in this case LDC Finance Limited, *(but the writer will revisit this position because Mr **NOONE** was giving advice to F and I partners that F and I partners should have been able to rely upon, otherwise Mr **NOONE** should not have given the advice, or if answering inquiries for the F and I partners, Mr **NOONE** should have placed significant qualifications on such advice in writing. Additionally the writer submits that who pays for the advice does not determine who is receiving and relying on the advice, and it would appear that Mr **NOONE** was advising both LDC Finance Limited and F and I about their "respective positions", with the important exception being that Mr **NOONE** did not inform F and I about the real position of LDC Finance Limited, when aware that F and I partners were relying on the understanding that there would not be any material omission by Mr **NOONE**, and when Mr **NOONE** was aware that Messrs **SCHOLFIELD** and **HARDING** were shareholders (natural persons) who owned as shareholders a significant chunk of LDC Finance Limited, (a legal person), stock, making for a constructive trust or fiduciary duty for Mr **NOONE**, especially as LDC Finance Limited was subject to the reporting provisions of the Securities Act 1978*

and the Securities Regulations 1983), if dissatisfied with the directors actions to the extent that he thought the actions constituted serious criminal offending, could in keeping with his duty to serve the company that pays him legitimately go straight to the shareholders, and/or any substantial creditor in danger of being defrauded, and ultimately the New Zealand Police Service, and report any likely offending. This duty is enshrined in the following sections of the Crimes Act 1961 that deal with being, or being involved with;

- a party to an offence [s66]
- an accessory after the fact, [71]
- Attempts [72]
- defeating or perverting the course of justice etc. [116]
- A conspirator [s310]
- Attempt to commit or procure commission of offence [311]
- Accessory after the fact to a Crime [312]

661. Mr **NOONE** would have also been aware that he was "auditing" LDC Finance Limited and F and I at that time for the purpose of the respective parties merging as one. This would mean that the merger would have resulted in the final end product being governed by the Securities Act 1978 and thus he arguably had liabilities under that Act to report the matters that were obviously illegal other than his obligations under the Crimes Act 1961. if he had no obligations under any Act per se; the writer contends Mr **NOONE** had moral obligations to be a "whistleblower".

Perpetual Trust Limited refusing to "whistleblow" on LDC Finance Limited's house of charred cards to make them tumble down.

662. The reader will also find out from other evidence in this report that Mr **NOONE** was reporting his "progress", whilst "working on Messrs **SCHOLFIELD** and **HARDING**, directly to Messrs **STYANT** and **LANCASTER** of Perpetual Trust Limited pursuant to Perpetual Trust Limited role as trustee. This should have brought the house down before Messrs **SCHOLFIELD** and **HARDING** did the deal, but the

writer believes that Perpetual Trust Limited's executives were more worried about their jobs than the truth. The writer will report on this aspect later in this report.

Back to the blackmail

663. The first thing that struck the writer about the visit to Nelson by the number three of Pricewaterhousecoopers New Zealand on a Saturday was that the information could have been transported to **NOONES** Italian mahogany desk in his monstrous office by disc and probably email. There was no need for a "personal" chat on a summer weekend. Unless of course you wanted to add the "personal touch" normally required when blackmailing a person or persons.

664. Mr **NOONE** had expected Mr **SCHOLFIELD** to have been at that Tahuna meeting as well. Mr **HARDING** has informed the writer that he was aghast by this statement by Mr **NOONE** that it was Mr **NOONE'S** genuine professional belief that Messrs **SCHOLFIELD** and **HARDING** were doomed to a prison sentence if they did not commit to the **NOONE** plan because failure would have been imminent and unavoidable and there was no other legal options that would see them escape prison.

665. In the modern world of "business" no doubt Mr **NOONE** saw Messrs **SCHOLFIELD** and **HARDINGS** concern for the stakeholders as being antiquated and atypical to the Pricewaterhousecooper code of symbiotic unjustifiable client and accountant enrichment at the ghastly cost of irrelevancies such as stakeholders.

666. As stated Mr **NOONES** statements to Mr **HARDING** were witnessed by the F and I office manager Mrs Joy **DRUMMOND**. Mrs **DRUMMOND** has informed the writer that she thought that Mr **NOONES** statement included her. When she questioned Mr **NOONE** as to whether Mr **NOONE** meant that she would be going to prison, he confirmed that she would not be going to prison but Messrs **SCHOLFIELD** and **HARDING** definitely would be if it was discovered that they were operating without a prospectus. Mrs **DRUMMOND** has reported to the writer that she could see that Mr **HARDING** was shocked and upset by, and believed, the statement made by Mr **NOONE**.

667. According to both Messrs **SCHOLFIELD** and **HARDING** the impact of the statement by Mr **NOONE** on Messrs **SCHOLFIELD** and **HARDING** was immense with Messrs **SCHOLFIELD** and **HARDING** effectively doing an about turn from their previous position not really supporting the **NOONE** plan to feeling that they had a choice between a prison term, or following Mr **NOONES** strategy of assisting LDC Finance Limited in the hope that they could pull something out of the financial firestorm raging around them seemingly vaporising their last assets.

668. It must be remembered that Messrs **SCHOLFIELD** and **HARDING** were now aware that they had been lied to about the position of LDC Finance Limited being strong and safe. But they did not know how bad the position of the debt securities against Heli-logging Group or the other companies were.

669. Messrs **HARDING** and **SCHOLFIELD**, according to what they have told the writer, could not understand why Mr **NOONE** was pressurizing them to put more money of their own in to save LDC Finance Limited, but had never asked the directors of LDC Finance Limited to "put up or shut up".

670. This clearly indicates to the writer that Mr **NOONE** was representing the directors of LDC Finance Limited whilst pretending to represent both parties, or at least to appear to give "honest" advice, and a true representation of fact, and possibilities and probabilities to both parties. This is not to say that Messrs **SCHOLFIELD** and **HARDING** trusted Mr **NOONE** 100%. That would be going too far. No they were aware that he would probably be capable of being quite callous, and would serve his best interests first.

671. Mr **HARDING** and **SCHOLFIELD** were aware that the only persons that had ever raised the operating without a prospectus allegation against F and I were the directors of LDC Finance Limited, being particularly Messrs **MILLER** and **JANNETTO**, and Messrs **NOONE**, and **HOLLIS** of Pricewaterhousecoopers.

672. Mr **CAIN** was called to account by Mr **HARDING** and Mrs **DRUMMOND** after receivership and affirmed to Mrs **DRUMMOND** that Mr **NOONE** had been correct

in what he had said. Mr **CAIN** is by far the "simplest" of the three Pricewaterhousecoopers stooges with Mr **HOLLIS** running a close second. The writer says that ignorance and arrogance are close "intellectual" cousins, so the afflicted share the common DNA.

Previous mention of illegal operation just before first deal

673. Messrs **MILLER** and **JANNETTO** had raised the matter of F and I operating without a prospectus in or around May 2006, just before the first deal was done between F and I and LDC Finance Limited for the $1.5m purchase of 1,500,000 LDC Finance Limited shares by F and I with F and I securing the loan of $1.5m for the "purchase" with effectively the illegal subscriptions obtained by F and I from the public.

674. At this meeting Messrs **MILLER** and **JANNETTO** had stated that by F and I and LDC Finance Limited merging F and I would be able to mitigate its previous behaviour of operating illegally. This is a nonsense as the only way such subscriptions can be legalized is through the Securities Act itself which has, since the 2004 amendment Act, a specific procedure which would not have been overly onerous for the partners to undertake if they had obtained competent, rather than crooked, advice.

675. It was the representation to Messrs **SCHOLFIELD** and **HARDING** by Messrs **NOONE** and his fellow unscrupulous and ruthless subordinates at Pricewaterhousecoopers that they were there only to obtain the best possible outcome for all concerned (without exposing any party to unacceptable risk or action that would be considered foolhardy), that made the two partners of F and I not act to obtain further substantial advice.

676. It is equally likely that it crossed Messrs **SCHOLFIELDS** and **HARDINGS** minds that to ask for such advice and have on record that request may prove fatal to any mitigation as to a lack of knowledge of the offending, which could serve them well in

sentencing if they were discovered. People do silly things under pressure and the people creating the pressure rely on this cause and affect to get what they want.

677. The writer, when visiting Mr **NOONE** and Mr **CAIN** in Christchurch at the office of Pricewaterhousecoopers, confirmed with Mr **NOONE**, in front of Mr **CAIN**, that Mr **NOONE** admitted that he had "informed" Mr **HARDING** that the outcome, if anyone complained about F and I operating without a prospectus, would definitely be a prison term. When the writer opined that this may constitute blackmail Mr **NOONE** went rather pale, and Mr **CAIN** laughed. The writer repeats Mr **CAIN** is by far the "simplest".

678. This statement by Mr **NOONE** is highly prejudicial to Mr **NOONE**, (and all others knowledgeable of, or were involved in promoting, or inciting, Mr **NOONES** actions prior to the receivership and post the receivership of LDC Finance Limited and F and I), because the only possible sentence for the offending, (of operating without a prospectus) if charged and convicted, is a fine not exceeding $300,000.00; see section 59(1) of the Securities Act 1978. And additional to this subsection (2) of s59 of the Securities Act 1978 provides; (emphasis that of the writers)

> ***No person shall be convicted under subsection (1) of this section for any such contravention if-***
>
> *(a)* ***The contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial****, or was otherwise such as, in the opinion of the Court having regard to all the circumstances of the case,* ***ought reasonably to be excused.***

679. As already stated this "safe harbour" provision means that Messrs **SCHOLFIELD** and **HARDING** would not have suffered a considerable penalty, and may in fact have been excused completely. Pricewaterhousecoopers (and the writer assumes Messrs **HOLLIS** and **NOONE** on the instruction of, or certainly with the knowledge of the directors of LDC Finance Limited (in receivership)) has since made a complaint against Messrs **SCHOLFIELD** and **HARDING** about their operation of F and I without a prospectus. In keeping with this understanding by the writer it would appear that the Commission has no real concerns about their behaviour.

680. Mr **NOONE** and **HOLLIS** have not obviously thought about the implications of subsequently making a complaint to the Securities Commission, having previously threatened Messrs **HARDING** and **SCHOLFIELD** with a false assertion that, if "someone" reported the actions to the Securities Commission they would "definitely go to prison".

681. It follows that Messrs **NOONE** and **HOLLIS** stood quiet until Messrs **SCHOLFIELD** and **HARDING** weren't compliant with their wishes and that this was the reason for their initial threats to Messrs **SCHOLFIELD** and **HARDING**. Otherwise how did they not report that matter previously to the Securities Commission. What had changed? They did not immediately report this position to the Commission when they took over as receivers of F and I Finance, and since they had been involved in the 'cover-up' from December 2006 to the date they reported the non-prospectus breach in 2008.

682. It does not matter that the complaint and punishment is necessarily correct in law, but that it was their intention to use the "possibility of a complaint" unless Messrs **HARDING** and **SCHOLFIELD** committed to a course of "suggested" actions that would benefit them or their clients Messrs **MILLER**, **JANNETO**, **ELLIOT**, and **HARDIMAN**. Section 237 Blackmail of the Crimes Act 1961 prescribes the following matters as the act of blackmail; (emphasis that of the writers)

> ***237 Blackmail***
> *(1)* ***Every one commits blackmail who threatens, expressly or by implication, to make any accusation against any person (whether living or dead), to disclose something about any person*** *(whether living or dead), or to cause serious damage to property or endanger the safety of any person with intent—*
> *(a)* ***to cause the person to whom the threat is made to act in accordance with the will of the person making the threat;*** *and*
> *(b)* ***to obtain any benefit or to cause loss to any other person***.
> *(2)* ***Every one who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.***
> *(3) In this section and in section 239,* ***benefit*** *means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.*

683. Parliament when settling on the specific wording of this section was careful to insure that the section covered "any benefit" derived from such actions and further prescribed that the maximum penalty be 14 years in section 238 of the Crimes Act 1961; (emphasis that of the writers)

238 Punishment of blackmail
Every one who commits blackmail is liable ***to imprisonment for a term not exceeding 14 years****.*

684. Blackmail can be described as a demand made by a person of another person to make the other person act in accordance with that persons wishes under a threat of some nature. That threat may be in various circumstances quite reasonable and that is why sub section (2) has the words;

...unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose".

685. Such a reasonable situation may be where a person looks like they are about to steal petrol because they have put the gas in the car and returned to the car and started it without paying the cashier. The cashier runs across to the car and threatens to ring the police unless the driver pays for the petrol. Another occasion maybe where a landlord threatens to throw a tenant out of lodgings unless he pays the rent.

686. Of importance ss(1) of section 237 of the Crimes Act 1961 states that the making of a threat is not bound to an express threat, but that an implication of a threat is also captured by the section. Such an implication could be that a person states;

"you better do this, or the Inland Revenue could find out from someone about that GST return".

687. Now this simple statement of itself is not clear in that its meaning can only be obtained from considering the other circumstances that led to and otherwise surrounded the making of the statement, and that followed the statement. For the ease of understanding the following explanations the writer will refer to the person asking for something as the accused, and the person being asked for something as the victim. The following questions would arise to be answered before any conclusions could be drawn;

- What was the accused asking of the victim and could it be obtained by other reasonable and "normal" or "usual" means.

- What was the logical intent and meaning, whether expressed directly or implied, of the accused making the statement to the victim, and the statement itself. In other words why make the statement in such terms, meaning and timing, and was it likely that the accused thought the terms, meaning, and timing would have an impact on the victim.

- Could there be some other reasonable explanation for the content of the statement made by the accused when considered against the background and timing of the statement.

688. One only has to think of the infamous "innocuous but not" statement of the Mafioso;

"I am going to make him an offer he cannot refuse"

689. If for example the accused was saying that the victim should change the paperwork that the victim had submitted to the IRD to diminish the likely interest the IRD would have in auditing the return, then that is not blackmail as the comments made by the accused disclose no personal gain for the accused or any other person, or threat by the accused to the victim to make the victim compliant with a wish of the accused.

690. The accused is merely imparting his opinion of what the accused feels is good advice. The background when examined more closely could be that the accused knew of a number of disgruntled employees of the victims company that were likely knowledgeable of the "deficient" GST return and were likely to inform the IRD. Against this background the statement made by the accused (paragraph 684 of this report) to the victim is clearly not blackmail.

691. But if the situation was that the accused who had made the statement to the victim was a mechanic, and the alleged victim was a customer of the accused who had not paid an account owed to the accused, then the situation could be different.

692. It does not matter whether the account for mechanical work is genuinely owed and not disputed as to quantum. Axiomatically there are legitimate ways to demand payment so why would the accused raise the irrelevant aspect of the customers GST return to the account for mechanical work being owed, but for an alternate reason that would need exploring inclusive of the likelihood of "menaces"; see **R v Lawrence** (1971) 57 Cr App R 64 and **R v Harvey** (1980) 72 Cr App R 139.

693. The following factors would impact on the statement (paragraph 684 of this report) to decide whether it was an attempt at blackmail. Firstly what possible impact or persuasive effect would the accused have on the victim in reporting the victims behaviour in filing legitimate GST returns to the IRD.

694. Therefore it would be sensible to assume that the accused thinks the victim has likely filed an untruthful GST return. It actually does not matter whether the GST return was untruthful or not. It is what the accused intended the impact of the statement to be on the victim that is important.

695. But be clear that no words describing the truthfulness of the GST return had been stated. In **R v Clear** [1968] 1 QB 670 (CA) the Court opined in line with the much later **R v Garwood** [1987] 1 WLR 319 (CA); (emphasis that of the writers)

Sellers LJ;

"... Words or conduct which would not intimidate or influence anyone to respond to the demand would not be menaces....but threats and ***conduct of such a nature and extent*** ***that the mind*** *of an ordinary person of normal stability and courage* ***might be influenced or made apprehensive so as to accede unwillingly to the demand*** *would be sufficient for a jury's consideration...* ***The victim must be deprived of 'that element of free, voluntary action which alone constitutes consent'*** *in the words used by Wilde B in R v Walton and Ogden (1863) Le & Ca 288.*
There may be special circumstances unknown to the accused which would make the threats innocuous and unavailing for the accused's demand, but such circumstances would have no bearing on the accused's state of mind and on his intention*. If an accused knew what that what he threatened would have no effect on the victim it might be different...*

696. The statement *"**conduct of such a nature and extent** that the mind of an ordinary person might be influenced **or made apprehensive** so as to accede **unwillingly** to the demand"* are crucial to the meaning of the offence of blackmail. The "conduct" and the "nature and extent" of such conduct gives clear indicators as to intent of the accused.

697. Going back to the statement under consideration (from paragraph 684 of this report) the statement *"could find out from someone"* does not of the words state that the mechanic demanding payment from the customer is going to go to the IRD about the GST return.

698. But common sense would indicate that a mechanic normally demands payment of an account by initially sending an invoice with an agreed time to pay, and then if that does not bring payment, a late payment letter warning of possible consequences is sent, and then ultimately court proceedings are issued. See **R v Lawrence** (1971) 57 Cr App R 64 and **R v Harvey** (1980) 72 Cr App R 139. So the nature and extent of the conduct would indicate that the accused mechanic is using other means than normal or reasonable to demand payment from the victim.

699. Thirdly lets look at what the statement actually means in the circumstances described. Who but the accused mechanic has brought this matter of the (presumed untruthful) GST return to the attention of the customer victim at the same time as stating (effectively) that;

- if the customer victim does not do what the accused wants the customer victim to do then

- someone (unknown, but by implication the accused mechanic) could report something the accused mechanic believes the customer victim has done, which if reported to the IRD would bring about some unfavorable outcome to the customer victim which is likely worse than being compliant with the accused mechanics demands

- by implication the accused mechanic is making this unreasonable demand because the accused mechanic believes it will make the customer victim do something that the customer victim would otherwise not do, but for the fear of the disclosure of the information, and which compliant action by the customer victim will benefit the accused mechanic in some fashion.

700. With those matters being proven then the jury would properly convict the accused mechanic of blackmail. In dealing with an accused or defendants belief at the time of making the threat or allegation or statement the English Criminal Appeal Court had this to say about certain guidelines.

701. In **R v Harvey** (1980) 72 Cr App R 139 (CA) the appellants had concluded an agreement to pay £20,000.00 ($50,000.00 NZD 29-3-09) to another criminal Mr **SCOTT** for Mr **SCOTT** to purchase on the appellants behalf a large amount of marijuana which Mr **SCOTT** did not subsequently deliver to the appellants displeasure. In retaliation Mr **SCOTT**, his wife and child were kidnapped by the appellants with the appellants threatening Mr **SCOTT** of the consequences for his wife and child if he did not refund the £20,000.00; (emphasis that of the writers);

Bingham J;

Two points emerge with clarity…it matter not what the reasonable man, or any man other than the defendant, would believe save in so far as that may throw light on what the defendant in fact believed. ***Thus the factual question of the defendants belief should be left to the jury****…In order to exonerate a defendant from liability* ***his belief must be that the use menaces is a "proper" means of reinforcing the demand.*** *"Proper"….is…plainly a word of wide meaning, certainly wider than (for example) "lawful". But the greater includes the less* ***and no act which was not believed to be lawful could be believed to be proper within the meaning of the subsection****. Thus no assistance is given to any defendant, even a fanatic, or deranged idealist, who knows or suspects that his threat, or the act threatened, is criminal, but believes it to be justified by his end or his peculiar circumstances.* ***The test is not what he regards as justified, but what he believes to be proper. And where, as here, the threats were to do acts which any man knows to be against the laws of every civilize country, no jury would hesitate long before dismissing the contention that the defendant genuinely believed the threats to be a proper means of reinforcing even a legitimate demand…***
…The jury should have been directed that the demand with menaces was not to be regarded as unwarranted unless the Crown satisfied them in respect of each defendant ***that the defendant did not make the demand with menaces in the genuine belief both; (a) that he had had reasonable grounds for making the demand; and***

(b) <u>that the use of the menaces was in the circumstances a proper</u> (meaning for present purposes a lawful, and not a criminal) <u>means of reinforcing the demand</u>….

702. In looking at Mr **NOONES** statement we should see if it is a demand, either directly or by implication. Mr **NOONE** was definite that prison would be the result (for Messrs **SCHOLFIELD** and **HARDING**) of discovery of the non-prospectus status of their operation of F and I when Mr **NOONE** must have known this was grossly misleading to that extent that it was a blatant lie.

703. Men tell lies for a reason and men such as Mr **NOONE**, with their reputation at stake, would tell lies likely to benefit themselves either directly or indirectly. Not only was prison never an option, but Messrs **SCHOLFIELD** and **HARDING** were likely to be able to not only evade any serious censure, but be able to escape unscathed from a criminal point of view.

704. An analogy to this situation would be where a Police Officer during an examination of a well known suspect which was <u>not</u> proving fruitful, obtained a confession from the suspect to a fine only offence, by alleging that the known facts meant that the suspect could face a much more serious offence involving a definite jail term, even though the facts known to the Police Officer meant that the suspect could never be charged with either offence. The analogy is that the Police Officer made the suspect compliant with his wishes through an allegation by implication that was false. It does not matter how he 'specifically worded" the demand but that the implication was sufficiently clear for the demand with menaces, or by coercive force, to be definable. As an added evidentiary bonus the Police Officer did not state that the suspect <u>must</u> see a lawyer before committing to the confession, and the confession was actually obtained.

705. The analogy in simple terms is that Mr **NOONE** knew that the threat of a definite jail term would likely influence Messrs **SCHOLFIELD** and **HARDING** to accept the lesser of the two evils which was to throw another $4m into LDC Finance Limited. The fact that a jail term was not a possibility evidences the intention. If a jail term was a reality then Mr **NOONE** should have reported the matter to the authorities.

706. On the facts known to Mr **NOONE** neither option was a legitimate option for Mr **NOONE** to allege because Mr **NOONE** knew that the $4m would be immediately lost in real time as LDC Finance Limited was irrecoverably insolvent, and the jail term was impossible.

707. As an evidentiary bonus Mr **NOONE** did not inform Messrs **SCHOLFIELD** and **HARDING** of the matters he was aware of as stated in paragraph 629 and 678 of this report. This is like a Police Officer being aware of not only the suspect he has obtained the confession out of not being the guilty party, but acting in a particular fashion to protect, or obtain a gain, for the guilty party.

708. Who else but Mr **NOONE** was likely to report the non prospectus status?. Well we now know the answer to that question because it was Pricewaterhousecoopers that reported the matter and only after Messrs **SCHOLFIELD** and **HARDING** were not compliant.

709. With Mr **NOONE** lying on both counts in order to influence Messrs **SCHOLFIELD** and **HARDING** he was using on one hand blackmail, and on the other hand an inducement he knew was false. It does not even matter if Mr **SCHOLFIELD** and **HARDING** were induced by the false inducement, rather than the threat of definite imprisonment when that was not possible.

710. Mr **NOONE** really gives no option but compliance with his threat, which is the very essence of blackmail. There is, according to Mr **NOONE** only one option, which he reports as being that Messrs **SCHOLFIELD** and **HARDING** commit themselves and their and their stakeholders assets to the **NOONE** plan, or they will definitely go to prison.

711. Every allegation that Mr **NOONE** promoted as against Messrs **SCHOLFIELD** and **HARDING** was a blatant lie and stated with the obvious intention of falsely informing them that their actions constituted serious criminal offending, and that he alone could save them from a jail sentence, as long as they did as he told them and handed over into the "care" of his clients a further $4m. As all of this was a complete fabrication who else could report it, but Mr **NOONE**.

712. It is submitted that this is no different to the mechanic accused alleging to the customer victim that someone could report a GST return to the IRD unless the customer victim paid the mechanic accused's account, excepting in this case it is clear that Mr **NOONE** knew that his victims, on the facts known to him, would not face prison and probably not even a fine, and his victims should never ever put $4m into the **NOONE** plan.

713. As an alternate consideration, would Mr **NOONE** have believed that Messrs **SCHOLFIELD** and **HARDING** would have agreed to the **NOONE** plan if Mr **NOONE** had not lied to them, whether by commission or omission, on every conceivable material matter. The answer on this point is clear to the writer. Mr **NOONE** knew that if he had told Messrs **SCHOLFIELD** and **HARDING** that any hope of saving the two enterprises was hopeless he had no hope of securing a further $4m from Messrs **HARDING** and **SCHOLFIELD**. That is not rocket science. When that very crucial question was put to him by Mr **HARDING** in the F and I offices in January 2007 Mr **NOONE** "went for it boots and all" and got the commitment he required to further the conspiracy to defraud both LDC and F and I stakeholders.

714. It does not matter that Mr **NOONE** was more honest as at 8 March 2007 in his report. It only matters that he did what he did in January 2007 in threatening Messrs **SCHOLFIELD** and **HARDING** with the false assertion that if they did not commit to the **NOONE** plan that they would be definitely going to prison. Even if Mr **NOONE** had remedied this by informing Messrs **SCHOLFIELD** and **HARDING** at a later time it still would not have mattered. But Mr **NOONE** has continued the conspiracy in all manner of ways as established in this report.

715. Like all crimes the act of blackmail is a factual event in time with no defence of remedy by the commission of exculpating acts at a later date. Finally has Mr **NOONE** benefited?. Yes, with substantial fees, and that benefit continues till this very day.

Maurice, in Maurice's words, "Tidies up" as only Maurice can, so nobody ends up in the can man

716. Further Mr **NOONE** acted like "the cleaner" off the Quentin **TARANTINO** movie "Pulp Fiction". Others who had been sloppy and caused an unfortunate mess sent in their man to (in Mr **NOONES** own words) "tidy up".

717. Like "the cleaner" in the movie Mr **NOONE** accomplished the task showing a mixture of restraint and guile that has no doubt been honed over numerous such escapades. As a final consideration the writer believes that blackmail is on a certain level easier to prove when an uneducated person uses it. That person is more likely to use language that expresses a demand with menaces directly and may even do so in writing.

718. An educated person desirous of using the odious tool will do so likely using language that is ambiguous and do so in a face to face meeting where what was exactly stated is not a matter of exact record. The problem for Mr **NOONE** is that all of the following requirements for a charge of blackmail have been clearly made out;

- there are independent witnesses to the original statements made by Mr **NOONE** and the impact that the statements had on the intended victims Messrs **SCHOLFIELD** and **HARDING** ,

- there is the testimony of the two victims Messrs **SCHOLFIELD** and **HARDING** and the testimony of other witnesses to the impact Mr **NOONES** statements had on the decision making process of the victims Messrs **SCHOLFIELD** and **HARDING**.

- Given the facts that were known there could <u>not</u> have been any real reason greater than the statement by **NOONE** that would have likely influenced the victims Messrs **SCHOLFIELD** and **HARDING** to commit to the **NOONE** plan.

- Pricewaterhousecoopers staff propagated the deception long afterwards to keep the victims Messrs **SCHOLFIELD** and **HARDING** silent.

- Pricewaterhousecoopers staff complained to the Securities Commission after they were aware that the victims Messrs **SCHOLFIELD** and **HARDING** were not going to be compliant with keeping quiet.

- Mr **NOONE** has made a further admission to the events occurring,

- There was never any possibility of a definite prison term for Messrs **SCHOLFIELD** and **HARDING** and so the deception must have been for the purpose of menaces, otherwise why tell a conspicuous lie, (if Messrs **SCHOLFIELD** and **HARDING** had known the truth as to the lie they would have definitely not trusted Mr **NOONE**).

- The **NOONE** plan as a whole, or taken in parts, was a conspiracy to defraud stakeholders in LDC Finance Limited and F and I, and Messrs **SCHOLFIELD** and **HARDING** of many millions of dollars, and so there was a specific identifiable design to cause the victims Messrs **SCHOLFIELD** and **HARDING** loss and the obtain a gain for Mr **NOONE** and his conspirators.

- The **NOONE** plan could never had given a $4m bonus to F and I as alleged and so the inducement was for the purpose of insuring he had two shots in case the blackmail missed the mark, or needed something else to insure the scales were tipped.

- The **NOONE** plan was never implemented and the conspirators continued onto publish a prospectus that was knowingly grossly false in virtually every material particular in furtherance of the inimical agreement,

- Mr **NOONE** always knew that he was giving advice to Messrs **SCHOLFIELD** and **HARDING** that was a litany of coercive or persuasive lies for the purpose of manipulating them to act against their will and best interests of themselves and the F and I stakeholders and which **ACTUALLY** resulted in the victims Messrs **SCHOLFIELD** and **HARDINGS** loss, and his and his conspirators gain.

719. Anyone else involved in promoting Mr **NOONES** course of action, or not reporting the actions of Mr **NOONE** when made aware of them are liable as accomplices, parties, accessories, or co-conspirators depending on the time they became involved, or extent of their knowledge. If so convicted they would equally receive significant deterrent sentences.

IMPACT on the SCHOLFIELDS

720. As a final matter before the writer leaves this issue the writer wishes to report that the impact on Mr **SCHOLFIELD** was particularly significant. There was the very real possibility that he was going to take his life using one of his own weapons in his personal gun collection. Mr **SCHOLFIELD** strikes the writer as one of the "old school" and a personality type very likely to wish to remove himself from being aware of a significant undeserved dishonor such as a prison sentence for simply trying to honestly make a dollar from making dollars for others.

721. According to Mrs **SCHOLFIELD** she could not leave her husband to travel to see her very ill daughter immediately after the statement was made by Mr **NOONE** to Mr **HARDING** (and Mr **HARDING** immediately phoning Mr **SCHOLFIELD**) for the very real fear that she would return to a corpse. This position was made all the worse for Mrs **SCHOLFIELD** because Mrs **SCHOLFIELDS** daughter was to undergo life threatening heart surgery in Waikato Hospital and she could not see her before the operation was to be performed. Mr **SCHOLFIELD** has suffered from chronic depression since the advent of Mr **NOONES** actions, inclusive of not being able to operate normally.

722. The impact on Mrs **SCHOLFIELD** is that she stays inside most days, no longer attends weekly social occasions, and has a problem even walking to the letterbox.

IMPACT on the HARDINGS

723. The impact was significant on Mr **HARDING**, but the Pricewaterhousecoopers suits callousness had not finished with Mr **HARDING**. Mr **HARDINGS** son committed suicide around the time that LDC Finance Limited was placed into receivership.

724. Mr **HARDING** was busy making immediate funeral arrangements for his sons burial when Mr **HOLLIS** approached Mr **HARDING** stating that it was his opinion that F and I should be placed into receivership and that it was his personal undertaking that if he was appointed receiver that he would insure that the interests of the F and I partners and the stakeholders would be his first priority and that this would free up Mr **HARDING** to 'go and grieve for his son'.

725. Of course Mr **HARDING** would have been very much aware of the threat by Mr **NOONE** that unless things were "tidied up" by Pricewatehousecoopers Mr **HARDING** and his lifetime mate Mr **SCHOLFIELD** would be likely spending a significant part of the rest of their lives in very close proximity to each other sharing a 4m by 2.5m cell. Mr **HARDING** was 'susceptible' on all fronts and Mr **HOLLIS** knew it and played a "bluff hand" making Mr **HARDING** throw his lot into the Pricewaterhousecoopers pot.

726. As we know this was yet again another callous and manipulative lie by Mr **HOLLIS**, but as the reader will become aware Mr **HOLLIS** had not even warmed up yet in the lying game stakes.

727. In looking at the alleged facts, the writer believes that there is a prima facie case against Mr **NOONE** for blackmail. If convicted, given Mr **NOONES** very public and professional profile, and the amount of money at stake, and the other harm caused to the immediate victims, and the non-immediate victims, (F and I stakeholders), and the fact that it would have been a cold blooded, premeditated, and meticulously planned process, then a prison term at the higher end of the maximum of 14 years is the likely result. Mr **NOONE** has not gone to the Police or otherwise confessed to his offending and so, if convicted has no mitigation as guided by the sentencing principles found in R v Sandy CA146/99 29 July 1999.

728. In **R v Takao** HC ROT CRI- 2004-2227 29 April 2005, Keane J at [20] opined about the ignominy of the offence of blackmail and the inevitability of a prison sentence reflecting the harm perpetrated, callousness and planning disclosed, and deterrent required; (see also **R v Wilson** (CA 31/81, 5 June 1981, and **R v Paterson** (CA 151/94, 14 July 1994); (writers emphasis)

"Blackmail is an offence, ***which invariably attracts a sentence of imprisonment that denounces and deters.*** *Only exceptionally is emphasis able to be given also to a sentence, which rehabilitates and reintegrates.* ***The offence is regarded as so insidious and abhorrent that nothing less than imprisonment will answer it****.*

729. Keane J adroitly summarised in an inexhaustive list of circumstances, which impact the sentencing deliberations of the Court. His honour considered the following as important as they had appeared in numerous other cases;

- The relationship between the blackmailer and the victim;
- The treat underlying the demand
- The sum demanded
- How persistently the demand is made
- Whether the demand is successful
- The vulnerability of the victim; and the effect on the victim

730. Where there is not threat of violence the cases are seen as less serious, although the writer has not read a case that involves such a conspiracy involving a highly organized group of credible individuals, which succeeded in the blackmail as an overt act in the overall conspiracy. It follows that if the overt act is deemed not to be blackmail, but a conspiracy to pervert the course of justice the writer imagines the same deterrent emphasis will be placed on sentencing, if Mr **NOONE** is charged and convicted.

Mr HOLLIS hangs himself on tape, and in doing so proves the criminal conspiracy's full circle; almost

730 The writer is very much aware of the old sayings *"slowly, slowly, catch the monkey"* and *"patience is a virtue"* and the writers application of those maxims has brought great reward relating to uncovering and exposing what has been a truly terrible set of dishonest actions fuelled by the heady cocktail of greed and self preservation.

731. Inexcusable actions that have caused great harm to a very large number of virtually defenceless (mostly elderly) victims.

732. Victims made all the more defenceless because of their misplaced trust in the wholly miscreant Messrs **MILLER**, **ELLIOT**, **HARDIMAN**, **JANNETTO**, **CAIN**, **HOLLIS**, **FISK**, and **NOONE** and (up until now) the redoubtable name of Pricewaterhousecoopers and Perpetual Trust Limited.

733. The writer was now sure that Mr **HOLLIS** would lie to the writer about the existence of any substantial assets being owned by SC Management Limited and Mr **HOLLIS** did not let the writer down when not reporting his actions in contacting and dealing in the CBH Limited shares with Mr **EDMONDS** (see paragraph 593-594 of this report) in the receivers report dated 29 October 2008.

734. The writer had decided to lie low and not make any overt investigations that involved further contact with the directors of LDC Finance Limited. The writer wanted the conspirators to feel that all of the ripples initiated by the writers initial call upon Mr **MILLER** had expired and the dark pond holding so many secrets in its depths was now calm again. Indeed the writer was glad of any reprieve from having to listen Mr **MILLERS** delusional ramblings he professes to be reasonable explanations for what is otherwise clearly criminal behaviour.

735. It is the writers' opinion that Mr **MILLER** and the other directors of LDC Finance Limited will be mincemeat in front of a good prosecutor fully cognizant of all of the facts, as will all of the others involved in this operation to defraud the F and I and LDC Finance Limited stakeholders.

736. The writer had spoken to Mr **HOLLIS** over the telephone on two or three occasions and found him to be overtly self-assured and thus a perfect target for the writers' next ploy. It was decided at Advantage Advocacy Limited board level to allow the writer to phone Mr **HOLLIS** and record him informing the writer that he knew nothing about SC Management Limited owning $2m to $3.5m worth of CBH Limited shares. As stated we wanted to do this after Mr **HOLLIS** had authored and published the third receivers report dated 29 October 2008 so there could be no room for "movement".

737. The writer phoned Mr **HOLLIS** in early November 2008 and as already stated recorded the conversation (transcript available at pages 66 to 69 of the annexed dossier). The writer stated that he was ringing on behalf of LDC Finance Limited investor Mr Rolly **FAWCETT** to ask Mr **HOLLIS** whether there were any other substantial assets owned by LDC Finance Limited, or an associated entity that had not been disclosed in the three receivers reports to date. Mr **HOLLIS** appears to be very clear that there are no such assets available whatsoever other than those dictated in the report;

(1)DN *OK alright so there's no land or shares that you are aware of that – could be owned by the company*

(2.MH *Oh there could well be but ummm the shares in a couple or one company for example that I'm aware of* ***but I am not aware that they are worth anything***

(3)DN *Right and..*

(4)MH ***They're, they're included in the assets that are in our report***

(5)DN *Right so which shares are those*

(6)MH *Well they're shares in a company that LDC owns*

(7)DN ***Oh OK that's which company is that***

(8)MH ***Ah SC Management***

(9.DN ***Right but – they're not – I've never heard of that company but they're not worth anything***

(10)MH ***No- No***

(11)DN ***Oh so where were they- where were they disclosed in the report***

(12)MH ***Ah under other assets and loans***

(13)DN ***It doesn't say – it doesn't say any shares in any companies***

(14)MH ***No we haven't been that specific and its not worth listing them if they are not worth anything……***

(15)DN *Alright – and there's nothing else like furniture or anything or*

(16)MH ***Not of any substance, not of anything that will make a material difference to the***

(17)DN ***Right have you taken time to get a declaration from the directors of LDC***

(18)MH ***No***

(19)DN ***Don't you think that might be worthwhile***

(20)MH ***Ummmm no I'm not sure that it would be – we've received all the financial information from the directors in terms of LDC and that discloses the assets and liabilities of the company.***

(21)DN *Right*

(22)MH ***I have no – I have no um inclination to go any further than that*****.....**

(23)DN ***Right so its got no assets like um furniture or Mercedes Benzes or land worth***

(24)MH ***No No***

(25)DN ***$10 million bucks or***

(26)MH ***No No'***

738. It is inconceivable that Mr **HOLLIS** is saying anything but that he knows of no other asset of any valuable consideration that is not reported in his three receivers reports. Given what we know Mr **HOLLIS** knew, a home run you would think?. When considering this, think about the effective declarations by Messrs **HOLLIS** and **FISK** in the receivers reports; (refer paragraphs 350 and 351 of this report);

"We arranged for a computer analyst to complete a full forensic copy of all of the Company's computers ***to ensure that the company's financial data at the time of our appointment was properly protected…***

We have received the ***full co-operation of the directors*** *through out the course of the receivership…..*

All information contained in this report ***is provided in accordance with sections 26 and 27 of the Receiverships Act 1993…***

The statements and opinions expressed herein have been made in good faith*, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise"*

739. Messrs **HOLLIS** and **FISK** are undoubtedly stating that they secured all of the source financial information of the company, and that the directors disclosed everything of material importance to the receivers and that in accordance with the salient provisions of the Receiverships Act 1993 (which imports the reporting requirements of the Financial Reporting Act 1993, the Companies Act 1993, and in a negative capacity the Crimes Act 1961) they have dutifully reported their findings in all of the receivers reports.

740. At (2) above Mr **HOLLIS** confirms he is aware of some shareholding in other companies but is unaware that they are "worth anything". At (4) Mr **HOLLIS** says that all material matters *"are included in the assets"* reported in the receiverships reports, but they are worth nothing. But surely if such an asset reported in the prospectus as being worth $2m is now worth nothing that would be reported separately for the purpose of record and "clean and open dealing".

741. Of course as we know Mr **HOLLIS** was emailing Mr **EDMONDS** and would have known that CBH Limited shares were recently sold at $2,400.00 a share, (see paragraphs 593 to 595 and 608 of this report). Surely this fact should have been reported separately as well.

742. At (11) to (14) Mr **HOLLIS** clearly states that SC Management Limited is not worth anything. If you take (9) and (14) this is clearly indicated by Mr **HOLLIS** as being the true position;

(9)DN	***Right but – they're not – I've never heard of that company but they're not worth anything…***
(1$) MH	***No we haven't been that specific and its not worth listing them if they are not worth anything……***

743. At (17) to (22) Mr **HOLLIS** clearly indicates that he trusts the LDC Finance Limited directors and has not bothered to obtain any declarations pursuant to section (12(1)(b) of the Receiverships Act 1993; (refer to paragraph 370 of this report; see also paragraphs 340 to 372 about the duties of a receiver). At (23) and (26) Mr **HOLLIS** puts his position beyond any doubt.

744. Mr **HOLLIS** has not reported to the writer the supposed $2m to $3.5m of CBH Limited shares held in the name of SC Management Limited. Clearly SC Management Limited's ownership of $2m to $3.5m of shares in another company would make it worth that amount on paper, and it would follow that because LDC Finance Limited owned SC Management Limited that it would be better off by that same amount once the shares were realised.

745. Every chartered accountant the writer has addressed on this matter has stated that the asset of shares of that value, or indeed even if valueless must be reported as a separate asset in the proper place with detail of value and plans for realization. The writer did not need to confirm this position with chartered accountants as it simply makes sense.

746. According to Mr **MILLERS** first story about how the deal went down with F and I concerning the CBH Limited shares those $2m worth of CBH Limited shares went to F and I stakeholders first (see sub paragraph ((6) of paragraph 233 of this report).

747. It is inconceivable that Mr **HOLLIS** is saying anything but that he does not know that SC Management Limited owns CBH Limited shares allegedly worth millions of dollars.

748. Obviously the writer knew Mr **HOLLIS** was a liar, and the writer was impressed with Mr **HOLLIS'S** ability to lie through his front teeth, no doubt equal parts natural, and then tuned to perfection through exposure to the Pricewaterhousecoopers ignominious culture of greed and deceit.

749. In not reporting the assets in the receivers report Mr **HOLLIS** is in breach of section 23 and 24 of the Receiverships Act 1993 and upon summary conviction would face up to a $10,000.00 fine (ss (4) of s23 and s24 of the Receiverships Act 1993).

750. But it is respectfully submitted that the Receiverships Act 1993 is the least of Mr **HOLLIS'S** worries and that the Crimes Act 1961 is the Act that will bring appropriate penalty for his actions upon conviction. See particular ss 260(b) of the crimes Act 1961 which has upon conviction a 10 year sentence for "false accounting" (paragraph 353 of this report); (emphasis that of the writers)

> *(b)* ***omits or causes to be omitted****, or concurs in the omission of****, any material particular from any*** *such book or account or* ***other document****.*

751. It is submitted that the receivership reports are such "other documents". The writer felt reasonably comfortable that he had completed the circle of the conspiracy

between, but not limited to, (at various times, and involving differing issues and overt acts), Messrs **NOONE**, **HOLLIS**, **FISK**, **CAIN**, **MILLER**, **HARDIMAN**, **JANNETTO**, **ELLIOT**, and **BROWNIE**, relating, but not limited to;

a. the non disclosure of the CBH Limited shares in the receivers reports and most importantly their exact value and how they were not transferred as required, thus making the deals between F and I and LDC Finance Limited void.

b. the non disclosure of the receivers about their previous involvement in promoting
serious criminal misstatements in the last LDC Finance Limited prospectus.

c. the blackmail of Messrs **SCHOLFIELD** and **HARDING** by Messrs **NOONE** (and probably with the knowledge of all others), and further their agreed suppression of the non prospectus status.

d. the operation (whether directly or indirectly) by the directors of LDC Finance Limited of numerous insolvent companies being Halifax Finance Limited, Heli-logging Group, Motueka Wood Products Limited, Motueka Vehicle Sales Limited, Taranaki Timber and Treatments Limited, and LDC Finance Limited since probably 2001 onwards (with the exception of Heli-logging Group and Taranaki Timber and Treatments Limited which came into the game post late 2002 and 2005 respectively).

e. Using the first ranking security over Halifax Finance Limited as a tool of fraud when paying all interest payments to F and I when Halifax Finance Limited and LDC Finance Limited were insolvent in order that the monies injected by F and I into good loans by Halifax Finance Limited (when F and I would not have acted to their jeopardy if aware of the insolvency of both Halifax Finance Limited and LDC Finance Limited), would be applied against their liabilities. This agreement is a conspiracy to defraud.

f. Covering up the previous offending of the directors in operating and insolvent company whilst being an issuer under the Securities Act 1978 and relating to

the theft and fraud offending committed by LDC Finance Limited directors out of the Heli-logging Group and numerous other companies.

g. That the directors of LDC Finance Limited had mislead Messrs **SCHOLFIELD** and **HARDING** about the solvency of LDC Finance Limited when Messrs **SCHOLFIELD** and **HARDING** committed to buying shares in LDC Finance Limited and thus all of those deals were voidable and the Pricewaterhousecoopers aided and abetted and otherwise conspired with the LDC Finance Limited directors after December 2006.

h. All of the LDC Finance Limited securities over F and I monies or property were voidable because the original subscriptions by F and I stakeholders were voidable irregular allotments pursuant to section 37 of the Securities Act 1978.

i. Not informing the stakeholders in LDC Finance Limited that they had a right to bring proceedings against the directors of LDC Finance Limited personally for publishing misleading prospectuses since becoming an issuer pursuant to section 37A and sections 55, 55A(b), 55D, 55G and 56 and 57 of the Securities Act 1978.

752. The writer had not finished with the "helpful" Mr **HOLLIS** who must have felt quite smug after misleading the writer about his knowledge of any value in SC Management Limited's ownership of CBH Limited shares, or moreover any shares of any nature.

753. Lets be clear about this matter. The question by the writer to Mr **HOLLIS** was sufficiently clear that if Mr **HOLLIS** was aware of any assets owned by SC Management Limited worth say on paper $2m to $3m, or even over $100k, he would have known he would have had to disclose those assets and their worth to the writer. That was if Mr **HOLLIS** was acting honestly. If acting honestly Mr **HOLLIS** would have declared these valuable assets in his receiverships reports and commented on how he intended to dispose of them to meet the stakeholder's demands for repayment.

754. It must be remembered that SC Management Limited was collecting the finance receivables of effectively Halifax Finance Limited and indirectly LDC Finance Limited, but the company only received a small commission on these collections until the receivership, and since receivership was now effectively run by none other than Mr David Gordon **MILLER**, although the receivers of LDC Finance Limited would have some "influence" because LDC Finance Limited owned 100% of SC Management Limited.

755. But Mr **MILLER** "in charge" of another company? What was Mr **HOLLIS** thinking? Well Mr **HOLLIS** was in fact likely taking some instruction from the directors of LDC Finance Limited, and the trustee Mr **STYANT**.

756. As you will read later in this report controlling the directors of LDC Finance Limited was beyond the abilities of Perpetual Trust Limited, not that they tried very hard, and when they did it was far too late, and this "attempt" was only in order to show that they tried to do something before the "doctor declared the 'official' time of death".

757. But when the reader gets to fully understand how much Mr **HOLLIS** is lying to the writer about his knowledge of the illegal activities of the directors of LDC Finance Limited the reader will be in no doubt that there must be a Government Commission of Inquiry into the collapse of not only LDC Finance Limited and F and I but every single finance company handled by Pricewaterhousecoopers and Perpetual Trust Limited. And if the Government did have a Commission of Inquiry why stop there. Lets have a look at all 40 or more companies that have gone broke and their respective trustees.

Compare the numbers involved

758. Of some importance Pricewaterhouscoopers and Perpetual Trust Limited are involved in the receivership or liquidation of over 20, or 50%, of the failed finance companies. Now that coincidence is so unfathomable that **MAULDER** and **SCULLY** from the **X FILES** need to be given a call, or it could be that it was not

something inexplicable and extraterrestrial and that Perpetual Trust Limited's behaviour in the matter at hand was just par for the course. This would seem to be an acceptable proposition given that the behaviour was so egregious and committed over such a protracted period that no other explanation is reasonable other then the men involved 'enjoyed their efforts'.

759. Of considerable interest to the writer Pricewaterhousecoopers "put the deal together" for Eric **WATSON** and the Hanover "junket boys" who have promised their stakeholders that, "if they feel so inclined between $1m dollar birthday parties" they will try and get stakeholders paid back their initial investments without a cent of interest in five years time. The writer for one cannot believe that this deal was sold to the Hanover stakeholders. Incredible audacity really, and it has paid massive personal dividends, and emboldened **WATSON** and his ilk. All in all the investors funds lost to such finance collapses amounted to, as at July 2008, about $4.5 Billion dollars or $1,000.00 for every New Zealander. Of course the true number as at todays date may be in the $6.5b to $10b range.

760. The numbers are far worse for the economy because the money was used by persons in the speculative part of the economy which tends to produce growth in some areas, although having said that, the only 'growth' being produced from a lot of investment was "unsustainable" housing prices fed by insatiable greed for high returns through out the economy rather than sustainability. But what erks the writer is that the losses hide a mountain-sized amount of fraud, which will go unpunished, unless there is a real attempt to investigate the wrongdoing. This attitude, if not changed and acted upon, will come back to haunt us in the future because the behaviour will merely be repeated by largely the same people in the next boom cycle. There are numerous persons the writer could name in this cycle that were responsible for massive losses in previous cycles.

761. Again the writer received permission from the Advantage Advocacy Limited board to record the writers conversation with Mr **HOLLIS** only a few days later**,** (pages 1034 to 1043 of the annexed dossier), with the writer phoning Mr **HOLLIS** to inform of the significant news of the writers discovery of an asset worth several millions of dollars that had been hidden from the receivers knowledge by the miscreant directors

of LDC Finance Limited. Naturally the writer is pretending to Mr **HOLLIS** that the writer still believes Mr **HOLLIS's** original litany of lies. Mr **HOLLIS** and the writer have the following relevant discourse; (emphasis that of the writers);

(1)DN	*Hello who's this?*
(2)Reception	*Pricewaterhousecoopers.*
(3)DN	*Hi how are you, is Malcolm Hollis around?*
(4)Reception	*Malcolm Hollis - one moment please.*
(5)MH	***Hello Malcolm Hollis**.*
(6)DN	*Yeah Malcolm how are you it's Dermot Nottingham*
(7)MH	*How are you Dermot?*
(8)DN	***Good good good, Hey listen as you know I've been doing an investigation into the dealings wheelings and dealings between LDC and F and I***
(9)MH	*Yeah*
(10)DN	***And I've got some good news for you and some bad news well it's good news for everybody really I've discovered a 3 and half million dollar asset that Mr Miller has been hiding.***
(11)MH	***Really***
(12)DN	***Yeah***
(13)MH	***Oh great***
(14)DN	***Ok***
(15)MH	***What is it?***
(16)DN	***It's a block of land called the Appleby Hills and Appleby Estates.***
(17)MH	***Oh I know all about that.***
(18)DN	***What do you know**?*
(19)MH	***We own it. We own part of it.***
(20)DN	***Well where's that reported**?*
(21)MH	***In the assets of LDC***
(22)DN	***Ok so umm if we went through the assets of LDC***
(23)MH	*Yep*
(24)DN	***It would show that umm***
(25)MH	***We own about a 40% share of it.***
(26)DN	*Ok so –*
(27)MH	***I know all about it - I've got a man doing a review of the entire development right now**.*
(28)DN	*Ok* ***so SC Management Limited owns that LDC doesn't own it does it?***
(29)MH	***Ohh just off hand I can't recall how it's owned but I can assure you LDC own it ultimately**.*
(30 DN	*Yeap*

762. Mr **HOLLIS'S** protestations at (21) that he has somehow reported the CBH Limited shares in the assets of LDC Finance Limited in the receivers reports are ludicrous, but of course he has been caught completely off guard and had to come up with something.

763. At (25) Mr **HOLLIS** states that LDC Finance Limited owns about 40% of the CBH Limited development which is quite an admission when only days before he knew nothing about 50 to 60 hectares worth millions whatsoever.

764. You would have to listen to Mr **HOLLIS'S** feigned interest and surprise in the writers statements that the writer had found a $3m asset, because of course Mr **HOLLIS** knew **exactly what he had hidden from view.**

765. The writer wonders where such huge assets are reported in the LDC Finance Limited Receivers Reports because they are not under assets and they are not finance receivables so where would Mr **HOLLIS** say they were remembering his obligations under the Financial Reporting Act 1993, the Securities Act 1978, the Companies Act 1993 and the Receiverships Act 1993 to report all "material matters"; (refer to paragraph 126 to 128.7, 186, 345 to 347 to 349, 379.5 to 379.8, 379.35 of this report).

766. The writer reminded Mr **HOLLIS** about his complete lack of knowledge of SC Management Limited owning anything of value only days earlier. Mr **HOLLIS** had this to say about his lack of memory of what he stated only days earlier; (emphasis that of the writers)

(1)DN	***Yeah well I asked you the other day whether SC Management owned the shares***
(2)MH	***I can't remember what you asked me the other day you asked me if I was aware of all the assets of the company and that's certainly one of them and LDC owns it.***
(3)DN	***Right so where's it reported in your umm****...*
(4)MH	***in the assets of the company***
(5)DN	***Yeah but surely people should know -it should be specific enough***
(6)MH	***I'm not - I I haven't mentioned to any - in any reports specific assets***
(7)DN	***Right***
(8)MH	***That's one of them***

(9)DN ***Right so in fact if we went through the numbers umm yesterday or the other day you said to me that umm SC Management only had in it the loans that were being collected***

(10)MH ***I can't recall what I said to you the other day***

767. At (6) Mr **HOLLIS** accepts that he has not mentioned the asset specifically because he has not mentioned any assets specifically, but that is not true Mr **HOLLIS**. Mr **HOLLIS** has specifically detailed the assets of the company, but omitted to report an asset SC Management Limited did not own until 23 June 2008 and which asset was described in the LDC Finance Limited prospectus of April 2008 as being worth allegedly millions.

768. At (2) and (10) Mr **HOLLIS** alleged that he cannot remember what he said to the writer just days before, when that statement as to a sudden "loss of memory" just beggars belief. Loss of memory that cannot be reconciled with honest belief is frequently used when there can be no reasonable explanation for a very recent contrary position. In other words a pathetic response to a question, other than to admit a lie. A feigned loss of memory is a version of refusing to answer the question due to self-incrimination, but in the end the insincere and unfathomable answer does exactly the opposite.

769. This same pathetic ploy was used by virtually all of the Nazi war criminals in the Nuremberg war trials when the accused "forgot" what orders they gave, or ought to have known were given by others under their command, and which they should have countermanded. It was said that Air Marshall Hermann **GOERING** was respected for his candour and acceptance of his fate. There was to be no such honour found amongst many of the other Nazis and Mr **HOLLIS** and his cohorts at Pricewaterhousecoopers were definitely more of the Herr **GOBBELS** than Herr **GOERING** personality and character types, especially given Mr **HOLLIS'S** and Pricewaterhousecoopers penchant for "propaganda" and cowardly behaviour.

770. Mr **HOLLIS** had to admit knowledge of the asset because the writer knew about it, and Mr **HOLLIS** could not deny knowing about it at this stage because he would have to attack the LDC Finance Limited directors about their dishonesty, which Mr

HOLLIS knew would have been met with the retaliatory statement by the directors that Mr **HOLLIS** knew about it all along, as has been incontrovertibly proven.

771. Additionally how could Mr **HOLLIS** maintain that he did not know about the asset or should not have reported it when it was declared in the last LDC Finance Limited prospectus (April 2007) as having been somehow "invested" into SC Management Limited at that time (refer to paragraphs 435 to 456 of this report). Remember it was never disclosed in the prospectus that LDC Finance Limited did not own SC Management Limited at that time.

772. The truth be known Pricewaterhousecoopers most likely, or moreover must have, believed that the LDC Finance Limited and F and I stakeholders are intellectual inferiors. The writer having attended a meeting of the F and I stakeholders in Nelson on 29 April 2008 can say that the F and I stakeholders were in waters in which they would surely drown if left to their own devices, and if made to panic, would cling on to any available flotsam, rather than learn how to tread water under their own power. If F and I and LDC Finance Limited stakeholders want justice and full compensation then they must learn to survive under their own power and why not? After all is not wisdom attained with age and experience? Unfortunately up until the advent of this report the majority of the LDC Finance Limited and F and I stakeholders are in the same infelicitous position previously suffered by Messrs **SCHOLFIELD** and **HARDING** in that they believe that Pricewaterhousecoopers would be acting in keeping with the facts.

773. In the next part of the recorded discourse Mr **HOLLIS** assures the writer that he knows everything about CBH Limited and in the next breath cannot tell the writer that it owned 50% of another asset (Appleby Estates) worth several million until after the writer informs him of the asset;

(1)MH	***Well I can assure you I know everything about CBH – so and always have done***
(2)DN	***Ok – what else does CBH own***
(3)MH	***its always been disclosed***
(4)DN	***What else does CBH own?***
(5)MH	***Ah I would have to look at the accounts of CBH***

(6)DN	***Why would you look at the accounts of CBH Limited if you had spoken to Chris Edmonds and you've been brought up to speed with value of the all of shareholding in different companies you would know as receiver what else CBH owns***
(7)DN	***I'll tell you what else it owns it owns 50% in Appleby Estates***
(8)MH	***I know that***

774. At (1) Mr **HOLLIS** is assuring the writer as to his absolute knowledge of everything about the CBH Limited share deal. But at (5) Mr **HOLLIS** is actually being very cagey about what CBH Limited owns because he does not know what the writer actually knows. The writer believes that Mr **HOLLIS** would not have believed that the writer would have found out about the CBH Limited ownership of 50% of Appleby Estates and therefore feigned a lack of knowledge.

775. But suddenly, inexplicably, he knows about it once the writer has confirmed his knowledge. Just imagine how insincere that would have sounded if Mr **HOLLIS** had been subject to cross examination in the witness box during a trial and he had completely changed his position once aware that the prosecutor knew of the existence of an asset worth possibly millions. Would the reader, if a jury member during that trial, think a liar of Mr **HOLLIS**?

776. What Mr **HOLLIS** doesn't seem to comprehend is that the writers task in the second recorded call was to make Mr **HOLLIS** very assertive about his level of knowledge of the CBH Limited shares and what CBH Limited owned.

777. In other words to create a clear juxtaposition between Mr **HOLLIS'S** absolute assurance to the writer that no such asset worth possibly one dollar let alone millions existed in one call, and yet in another call just days later absolute knowledge about the existence of such an asset possibly worth millions (as declared in the prospectus of April 2007).

778. Clearly Mr **HOLLIS** knows everything and the position makes his previous situation only days earlier declaring that SC Management Limited owned nothing of value, and that he had disclosed all material matters of value in the receivers report as blatant lies.

779. Next the writer asked Mr **HOLLIS** how he had evaluated the "numbers" as to the value of the CBH Limited shares in the receiver's reports. Surely Mr **HOLLIS** would have some numbers handy when it had been well over a year since the receivership, and the value of the shares had been reported in the April 2007 prospectus at around $2m.

780. If Mr **HOLLIS** had not worked out how much the shares were worth how could he have reported it as a figure in the reports? Surely Mr **HOLLIS** should have explained these material matters in his receivers reports, and could he now explain these matters to the writer? Mr **HOLLIS** had this to say about his efforts to approximate the value of the CBH Limited shares; (emphasis that of the writers)

(1)DN	***Well how much is that worth****?*
(2)MH	***I'm trying to work that out***
(3)DN	***You mean that as of now*** *...*
(4)MH	*Ah*
(5)DN	***Excuse me a year and a half after the receivership you do not know how much it's worth – so if you don't know how much it's worth how could you have reported it as a figure*** *...*
(6)MH	*inaudible*
(7)DN	*let me finish – as a* ***figure in your reports****?*
(8)MH	***because I've done some estimations based on what I have been told……***
(9)DN	***Well tell me what those estimations are****.*
(10)MH	***let me finish – you will appreciate that the value of those shares depends on the value of the sections in that development – what's the property market doing at the moment****?*
(11)DN	***No wait a sec so if you were doing all these estimations why wasn't this disclosed in your report?***
(12)MH	***Because I don't provide that sort of detail***
(13)DN	*What – you don't provide –*
(14)MH	***I don't provide detail on all the estimates throughout the assessment of all the loans and borrowings and assets of the company.***

781. Firstly Mr **HOLLIS** knew that CBH Limited shares that were issued as at July 2008 were sold for $2,400.00 to SK and KM Collet Family Trust and Parker Orchard Limited respectively, so he must be able to rely on this sale to approximate value for

the purpose of disclosure to the LDC Finance Limited stakeholders, or indeed any other party interested in the outcome; (refer to paragraphs 607 to 608 of this report). So how is Mr **HOLLIS** stating that he is still trying to work out values at (2)?

782. When pressed by the writer at (5) and (7) Mr **HOLLIS** at (8) states that he has some idea of the value of the CBH Limited shares, and had included the numbers in his receivers reports because he has relied on estimations. At (12) Mr **HOLLIS** answers the writers question as to why Mr **HOLLIS** had not disclosed the specific dealings in his report that it was normal for that detail to be left out. Mr **HOLLIS** is lying again; (refer to paragraph 126 to 128.7 of this report).

783. Mr **HOLLIS** is asking the writer to believe that in a falling market, a point that he has made at (10), that if acting honestly and competently, he would not have immediately valued the shares by independent valuer, and offered them to the other shareholders, and if the other shareholders were not interested in paying the price, to offer them to the general public. This beggars belief.

784. The writer knows of no one that would <u>not</u> have rather sold their bare land as at late 2007 rather than await what has happened since. Further why would you value shares as at the date of the receivership in September 2007, when you did not own them until June 2008, and wouldn't you report your moves to obtain ownership and report to the New Zealand Police Service, the Serious Fraud Office and the Securities Commission the fact that the directors of LDC Finance Limited had <u>misled</u> the stakeholders in the April 27 (No5) prospectus about;

- GKW Limited owning the CBH Limited shares and;

- Having transferred them to SC Management Limited prior to the issuance of the prospectus and inferring that the shares would somehow benefit the stakeholders and shareholders of LDC Finance Limited (when clearly that was not agreed with the F and I partners, and the transfer never occurred in any event)

785. Mr **HOLLIS** had a bit to say about the LDC Finance Limited stakeholders right to know how he was valuing the CBH Limited shares and what he intended to do with them. From the content of the following discourse it is clear that Mr **HOLLIS** disagrees, or thinks he is omnipotent, or otherwise not bound by the transparency and material matters requirements of the Receiverships Act 1993, the Financial Reporting Act 1993, the Companies Act 1993, and the Securities Act 1978 which must be imported into the legislative mix as LDC Finance Limited is only in receivership, and otherwise is still bound by the need for transparent reporting to the stakeholders about their "missing millions"; (emphasis that of the writers)

(1)MH	*Mmm*
(2)DN	***You have a obligation under the Receiverships Act to be very specific when reporting unless you believe that the value of an asset is going to be affected during the sale process.***
(3)MH	***Yeah***
(4)DN	***Right – now where have you said in any of your reports that you're going to sell CBH shares***
(5)MH	***No where I'm not why would I say that?***
(6)DN	***Well surely it's a realisation of the shares value***
(7)MH	***I don't have to sell the shares to get value out of them***
(8)DN	***Well how how else can you do it?***
(9)MH	***I can finish the development and be paid out um on winding up***
(10)DN	***Ok so where is it mentioned in your report that you were going to finish the development.***
(11)MH	***I haven't mentioned that I haven't mentioned specifics about any loan or any assets***
(12)DN	***Why***
(13)MH	***Because I don't think that it would be a benefit to the investors or readers of the reports***

786. At (2) and (3) Mr **HOLLIS** agrees with the writer as to his obligations to report material matters to the stakeholders. At (4) to (8) Mr **HOLLIS** attempts to evade the writers question about the likely sale of the CBH Limited shares by saying at (9) that it is apparently his intention to "finish the development and be paid out on winding up". But at (5) Mr **HOLLIS** states the following about him not even considering selling the shares to current shareholders;

No where I'm not why would I say that?

787. At (10) to (13) Mr **HOLLIS** reports to the writer that he believes that his disclosure of this program of sale of substantial assets over a considerable time period would not be of "benefit to the investors or readers of the reports".

788. Now wait a second Mr **HOLLIS** lets go back to the last receivers report as at 29 October 2008 wherein Mr **HOLLIS** refers to the assets that are left to dispose off; (see page 152 of the annexed dossier at paragraphs 4.1, 4.3 and 4.4 of Mr **HOLLIS'S** report dated 28 October 2008); (emphasis that of the writers)

> *"**As at the date of this report we estimate the recoverable value of the remaining assets is around $3.5m**.....other current assets consist of interest accrued on finance receivables. **The proceeds from these are not likely to impact significantly on the outcome of the receivership**.....The Company's fixed assets represent the office furniture and computer equipment."*

789. Given that the stakeholders have been duped by non-disclosure since LDC Finance Limited became an issuer this further non-disclosure to the stakeholders is a bit rich from Mr **HOLLIS**.

790. Mr **HOLLIS** in his receivers reports has carefully informed the stakeholders of LDC Finance Limited that they have so many millions of dollars of finance receivables and has explained what the term "finance receivables" means. At page 152 of the annexed dossier (being page 6 of Mr **HOLLIS'S** latest receivers report dated 28 October 2008) Mr **HOLLIS** explains "finance receivables" as;

> *The Company's primary assets are finance receivables **consisting of loans to borrowers**"*

791. The CBH Limited shares are not LDC Finance Limited loans to client borrowers are they?. No they are definitely not!. It cannot be interpreted that Mr **HOLLIS** has stated anything but that the "other current assets" available for sale, other than the finance receivables, are a bit of office furniture and some interest due, but that all of these amounts will in the end be quite paltry in the mix of things.

792. No mention of CBH Limited shares worth millions anywhere to be seen and the only reasonable explanation for this behaviour is a desire to conceal the assets from the knowledge of LDC Finance Limited stakeholders and others that might have an

interest. In the following part of the conversation the writer raises the issue of how Mr **HOLLIS** could report these assets under "finance receivables" when they were clear specific assets of a different type; (emphasis that of the writers)

(1)DN	***Ok so if we go through all of the values and the shares and everything else that is reported in those things <u>there won't be a jump of 2 - 2.1 or 3 million dollars in assets</u>***
(2)MH	***<u>No there won't be</u>***
(3)DN	***Right so when you were saying the liabilities and assets of the companies <u>you said umm you said LDC had x amount of loans and collectables receivables</u>***
(4)MH	*Hmm*
(5)DN	*Right*
(6)MH	***<u>Yep</u>***
(7)DN	***Well shares are different to loans aren't they <u>shares are different to receivables</u>***
(9)MH	*ahhh*
(10)DN	***<u>well how how are they different?</u>***
(11)MH	***<u>Ones an equity investment, ones a cash investment or a loan investment</u>***
(12)DN	*Yeah so where where's the ownership and the equity referred as to in relation to SC Management*
(13)MH	*I can assure you those shares in CBH have always been recognized ultimately as an asset of LDC Finance*
(14)DN	*Right*
(15)MH	*Throughout the entire time of the receivership*
(16)DN	***<u>So why wasn't this reported</u>**?*
(17)MH	***<u>It was</u>**.*
(18)DN	*No no no SC Management – what…*
(19)MH	***<u>I I don't report on any specific assets</u>***
(20)DN	***<u>You don't report on any specific asset</u>***
(21)MH	***<u>No</u>***
(22)DN	***<u>So a holding of shareholding in land</u>***
(23)MH	***<u>Yep</u>***
(24)DN	***<u>is entirely different to a loan</u>***
(25)MH	***<u>Yes</u>***

793. At (2) Mr **HOLLIS** clearly answers the writers question at (1) whether the CBH Limited shares value would be obviously included in the receivers' numbers in the first three reports with an emphatic "yes". From (3) to (11) the writer and Mr **HOLLIS** get to grips with what is different between a "finance receivable" and and "equity investment". A finance receivable is where some one owes you money and you normally have a type of asset as security whereas an equity investment you would have purchased (using cash) something for investment purposes i.e shares or land. In other words you own the actual title to the asset and do not have a "security" over it.

794. At (16) to (20) Mr **HOLLIS** and the writer tussle over whether Mr **HOLLIS** has reported the existence of a separately designated asset before at (22) to (25) Mr

HOLLIS agreeing again that ownership of shares or land is entirely different to ownership of a loan or a finance receivable.

795. As stated Mr **HOLLIS** did not have control of the CBH Limited shares until 23 June 2008 and so how could he have reported ownership, or any value, in the first two reports and why had he waited so long to obtain ownership?

796. As to Mr **HOLLIS'S** protestation that he had not as yet obtained a value of the shares; well again he is lying big time. Firstly he knew the estimate of value in the last prospectus was $2m. He must have been told about the CBH Limited shares from the directors of LDC Finance Limited and he must have been aware of them from working with the directors prior to the last prospectus being launched. Again reference to paragraphs 593 to 609 of this report (that covers the writers covert investigations into the values of the CBH Limited shares as promoted by Mr **EDMONDS**), clearly evidences (at paragraph 608) Mr **EDMONDS** reporting sales of CBH Limited shares for $2,400.00 each.

797. But the writer had one more surprise for Mr **HOLLIS** and that was that the shares had been transferred unlawfully in that the other shareholders had not been given first right of refusal pursuant to the pre-emptive rights clause of CBH Limited's constitution. Mr **HOLLIS** had this to say about that legal hurdle and then states something very interesting about the shares still having been in Mr **HARDIMANS** name (which the writer knew (see paragraph 260, and 263 of this report)) when they were supposedly owned by GKW Limited (a company 83% owned by Mr **MILLER**) according to the last LDC Finance Limited prospectus of April 2007, and that most interestingly that Mr **HOLLIS** would consider selling the shares to other CBH Limited shareholders; (emphasis that of the writers)

(1)DN Right so you're aware that the other shareholders haven't been written to haven't you
(2)MH Haven't been written to?
(3)DN About – follow this Malcolm it's very simple about the pre-emptive rights process
(4)MH Well they can buy the shares if they want them
(5)DN Yeah but they haven't been written to before the shares were transferred into the name of SC Management.You know that and I know it I've spoken to them.

(6)MH Yeah so so……..what are you saying that that the shares are of no value.

(7)DN There's been no legal transfer of the shares.

798. What struck the writer about these comments is the following;

- A receiver acting honestly would check the company's constitution relating to pre-emptive rights because it is a standard clause as indeed would Mr **HARDIMAN** because he is supposedly selling them to SC Management Limited for an undisclosed purpose and sum at this stage (see paragraph 365 to 372 of this report).

- What is the deal that has been done and why has the deal not been explained in the October 2008 receivers report? What are the "good ol boys" hiding?

- Why would the receiver, if aware of the pre-emptive rights, not insure that the other shareholders "signed off" their lack of interest, or more importantly their interest?. Wouldn't he, if acting appropropriately seek expressions of interest and that way he could value the shares, if an offer was made.

- Why would a receiver wait until June 2008 to obtain ownership of supposedly $2m in shares, when this time period is unexplained and if unexplained, is a breach of his role to expediently protect assets of LDC Finance Limited?

- If aware of the shares from day dot why has the receiver not brought Court action to enforce any alleged agreement that was in place?

- Why would a receiver, if admitting now to the writer that the other shareholders could buy the shares, not have offered the shares to the other shareholders for their consideration as to value? Remember Mr **HOLLIS'S** statement at paragraphs 778 (4) and (9) of this report that it was not his intention to sell the shares but to finish the development;

DN ***Right – now where have you said in any of your reports that you're going to sell CBH shares***

MH ***Nowhere I'm not why would I say that****?*

DN ***Well surely it's a realisation of the shares value***

MH ***I don't have to sell the shares to get value out of them***

D ***Well how how else can you do it?***

MH ***I can finish the development and be paid out um on winding up***

- Why had the receiver, after obtaining control of the CBH Limited shares, not changed the Companies Office registered address away from Carren Miller and to Pricewaterhousecoopers when Mr **MILLER** was still in charge of SC Management Limited? (see paragraph 419 of this report). The answer to that is simple. If you want to hide something you do it properly. The motive of not reporting the asset specifically in the reports is made that clearer when the transfer is not registered with the companies office and further the address on the internal registry of CBH Limited saw that all mail still went to Carren Miller and not Pricewaterhousecoopers.

Are the CBH Limited shares encumbered to LDC Finance Limited?

- It may also be that the CBH Limited shares are financed by a 100% loan from LDC Finance Limited and therefore the receivers do not want to admit to this fact because it would establish that there was no injection of $2m into LDC Finance whatsoever and moreover there was a "friendly" loan from LDC Finance Limited to Chris **HARDIMAN** that was not reported under "interested parties" provisions of the Companies Act 1993; Section 140 Companies Act 1993 [Disclosure of Interest]. Additionally this means that all of the undertakings by the LDC Finance Limited directors to Messrs **SCHOLFIELD** and **HARDING**, the LDC Finance Limited stakeholders, and less importantly to Perpetual Trust Limited etc were grossly misleading. If this was the case this further voids the agreements between LDC Finance Limited and F and I, but may explain why Mr **HOLLIS** has been putting the value of the asset under the finance receivables heading, thinking he was being cunning. Being cunning is only a worthwhile pursuit when you get away with it.

799. The writer believes that no 'fanciful' explanation of reasoning for the secrecy and omission to report this behaviour of the receiver around the CBH Limited asset in the receivers reports will wash with the readers of this report or indeed any jury.

800. The writer believes the reasoning for Mr **HOLLIS'S** (and indeed Mr **FISKS**) actions are clear. The receivers wanted to hide the shares, but for what purpose. Well the writer has a theory which he sets out immediately below (but which should include the possibility that the shares are financed by LDC Finance Limited);

- The initial deal struck between F and I and the directors of LDC Finance Limited was to inject the value of the CBH Limited shares in mid 2006 (50%) and March 2007 (50%) into SC Management Limited (a company not then owned by LDC Finance Limited) for the initial benefit of F and I stakeholders as stated by Mr **MILLER** to the writer (see paragraph 233(6) of this report). Messrs **SCHOLFIELD** and **HARDING** had been told by Mr **MILLER** that GKW Limited owned the CBH Limited shares. Remember that Mr **MILLER** and **JANNETTO** met with Messrs **SCHOLFIELD** and **HARDING** numerous times and attempts by Messrs **SCHOLFIELD** and **HARDING** to meet with other directors were not successful because Messrs **MILLER** and **JANNETTO** stated that such a meeting was not necessary. This lack of a meeting with the other directors does not absolve the other directors of involvement, but could equally prove that they did not want to play a "hands on" role, and thought that less interaction with Messrs **SCHOLFIELD** and **HARDING** would serve to be exculpatory. Nothing could be further from reality given their obvious knowledge of what went down prior to and post the receivership.

- Whilst the deal was agreed between the parties, the directors of LDC Finance Limited, who were also mostly common directors of GKW Limited, knew that GKW Limited did not own the CBH Limited shares in any event, and moreover had no intention of transferring any shares in keeping with the deal struck because their sole intention was to defraud F and I stakeholders as has been made out in this report.

- The other part of the deal (described by Mr **MILLERS** as "joint considerations") was completed (wherein F and I gave security over $1.5m of voidable irregular allotments for 1,500,000 worthless LDC Finance Limited shares) with the full knowledge of the Perpetual Trust Limited trustee at that time Mr John **GLASS**. But Mr **GLASS** was well and truly aware of the "likely insolvent nature" of LDC Finance Limited, or ought to have been, and this was the reason for the need for the $1.5m "paper" injection and Mr **GLASS** would have been equally aware of the "non prospectus" status of F and I meaning that he knew that the security offered was worthless; (see paragraph 379.9(25),(26) of this report).

- By December 2006 matters with LDC Finance Limited had not improved but had worsened substantially and desperate actions by desperate men were deemed necessary. Remember at this time the finance companies "bubble" had not burst, no doubt because the likes of Perpetual Trust Limited were screwing the cap on tighter and tighter to keep anything from leaking to the media by aiding and abetting the likes of LDC Finance Limited to do deals that simply had to come apart at some point. To ably assist Perpertual Trust Limited savage the F and I carcass to insure LDC Finance Limiteds survival, Perpetual Trust brought in their "pay by the pound" wolverines Pricewaterhousecoopers in late December 2006.

- Perpetual Trust Limited wanted to "get to grips" with what the true position was in the LDC Finance Limited camp and especially so when Mr **STYANT** replaced Mr **GLASS** as trustee. A bit of "argy bargy" occurred between the LDC Finance Limited directors and the new "kid on the block" trustee Mr **STYANT**, and finally a resolution came about when both sides agreed to let Mr **NOONE** have a look at the LDC Finance Limited books before deciding what action to take.

- Mr **NOONE** merely confirmed the obvious. The directors had been misrepresenting the company's financial position for years. This meant that every single monthly declaration and prospectus had been grossly misleading

and as such fraudulent; (see paragraph 379.5 to 379.8 of this report and the statement by Mr **MILLER** to the writer explaining the "involvement" of the trustee throughout Mr **MILLERS** operational control of the inimical agreement found at paragraph 430 of this report); (emphasis that of the writers);

*"**The agreements were approved by the Trustee** before they were entered into and any required disclosure made"*

- A report on the financial position of LDC Finance Limited was completed by Mr **NOONE** and handed to the new trustee Mr **STYANT** who, being no doubt the "newbie" trustee with no blame for the appalling history, decided to lay at least some guidelines down. This hardline initially worked but then Mr **STYANT**, when made aware of the extent of the problem at LDC Finance Limited, had to play along and in doing so become involved in the conspiracy to defraud not only F and I stakeholders, but also LDC Finance Limited stakeholders.

- It became obvious to everyone (and no doubt reinforced by Mr **NOONES** professional opinion) that the only answer to the LDC Finance Limited position of rampant insolvency was a substantial equity partner, but everyone knew that was simply out of the question because who would inject a large amount of cash into a failed business that still had lots of losses to realize (which were going to be total losses). The simple answer was no one that would require an in-depth audit and then say a three month due diligence period when "inside the company" before committing any funds. But the answer lay closer than Mr **NOONE** thought. In fact Messrs **SCHOLFIELD** and **HARDING** were shareholders with 1,500,000 LDC Finance Limited shares. No doubt frightening reports telling of impending fiscal implosion at LDC Finance Limited were authored by Mr **NOONE**, but kept from the eyes of Messrs **SCHOLFIELD** and **HARDING**. And any request for such records by Messrs **SCHOLFIELD** and **HARDING** was stifled by Mr **NOONES** blackmail of Messrs **SCHOLFIELD** and **HARDING**.

- A "chance meeting" between Pricewaterhousecoopers Mr **NOONE** was no doubt arranged by the directors of LDC Finance Limited in very early January

2007 wherein it was stated by the LDC Finance Limited directors that Mr **NOONE** has been brought on board to insure that everyone "gets out" of the fire. Mr **NOONE** promotes himself as some kind of magical healer who can, "with a stroke of a pen" (or more likely something else he posseses about the size of a biro), cure all financial problems.

- The directors of LDC Finance Limited had been "stroking" their stakeholders for years swapping loans with Halifax Finance Limited and "what not", and so they were aboard already, (in the captains cabin). The initial meeting with Mr **HARDING** in Nelson showed Mr **NOONE** that Mr **HARDING** was not the sharpest tool in the shed, and fortunately for Mr **NOONE** Mr **HARDING** was also "impressionable" when it came to Mr **NOONES** status, qualification, or "professional rank". In other words Mr **NOONE** knew he could bully Mr **HARDING** (and axiomatically Mr **SCHOLFIELD**) with the threat of imprisonment unless they committed to the **NOONE** plan.

- By March 2007 Messrs **SCHOLFIELD** and **HARDING** were committed to the **NOONE** plan no matter what they found out because they thought that the only option was a prison stint with four hundred pound "bubba" as a cell mate. Messrs **SCHOLFIELD** and **HARDING** were 'dads army' almost part time financiers whilst the likes of Pricewaterhousecoopers portrayed themselves as battle hardened 'special operatives' capable of doing the impossible, (and by god, they almost managed to get away with it).

- Once the 'dirty work' on F and I was done by Mr **NOONE** and the misleading prospectus was allowed to be issued by Perpetual Trust Limited, LDC Finance Limited directors felt that they were in a much stronger position to call the shots because they had no doubt been emboldened by the self preservation compliance of Perpetual Trust Limited. Because of the now stronger position that LDC Finance Limited found themselves in the directors did not agree to handing over any CBH Limited shares, (how could they, as Mr **HARDIMAN** owned the shares in any event), to LDC Finance Limited because they knew as did Messrs **NOONE, HOLLIS, CAIN, JANNETTO, HARDIMAN, ELLIOT,**

MILLER, STYANT and **LANCASTER** that the count down to dooms day had begun long before the misleading final prospectus was launched onto the market.

- All through this process the conspirators kept Messrs **SCHOLFIELD** and **HARDING** blissfully unaware of how bad the position was, but they had orchestrated the "prison" threat to keep them in line in any event.

- The conspirators plan was to make LDC Finance Limited last as long as they could and then;

    - Place the company into receivership and <u>not</u> liquidation because receivership does <u>not</u> mandate the same responsibilities or liabilities to creditors other than the debenture holder who was none other than Perpetual Trust Limited.

    - Fool Messrs **SCHOLFIELD** and **HARDING** into appointing Pricewaterhousecoopers as receivers of F and I no doubt relying on the omnipresent threat of imprisonment for operating without a prospectus that was less likely to occur upon Pricewaterhousecoopers appointment considering their alleged previous "friendly warning" and silence on the matter. Mr **HOLLIS** must have thought Santa had come early when Mr **HARDING'S** son took his own life the day before Mr **HOLLIS** went in for the kill (so to speak). Once this had been successfully completed the Pricewaterhousecoopers crowd went about what they do best which does not need any skill, just a wicked soul and black heart and no belief in judgment in the hereafter.

    - The conspirators next steps were;

        - use the initial first ranking security over Halifax Finance Limited to take over all of F and I's funds in Halifax Finance Limited as had been

planned since probably 2002-2003 (see sub paragraphs 379.9(16) to (18) of this report.

- Call the LDC Finance Limited loan to F and I (for $1.5m for the purchase of 1,500,000 worthless LDC Finance Limited shares) in default and grab the monies from the F and I coffers once that had realized the F and I debt securities.

- Call in the $4m GSA for the other fraudulent deal for 4,000,000 worthless LDC Finance Limited shares and seek penalty interest and grab this money also from the F and I coffers.

- Make press statements encouraging the LDC Finance Limited stakeholders to support the directors because they were likely to get 100 cents in the dollar, when they knew this was a lie.

- Run a 'spin campaign' about how Messrs **SCHOLFIELD** and **HARDING** had owned 5,500,000 shares in LDC Finance Limited and that it was their operation of F and I that had caused the collapse of both entities.

- Once F and I was a husk and Messrs **HARDING** and **SCHOLFIELD** had handed over around $3.5m of their assets to the "baying" F and I stakeholders, the conspirators thought there would be no fight left in the mostly elderly stakeholders, and they were nearly right. But they had not counted on Mr Peter **MYTTON,** Ms Leigh **DONAGHUE** and Mr Bruce **HARNETT.** Having said this there has been a number of F and I and LDC Finance Limited stakeholders that have wanted justice to be not only done, but manifestly seen to be done.

801. After all of this nonsense had gone on who would be asking about CBH Limited shares. Well initially Messrs **SCHOLFIELD** and **HARDING** did of Mr **HOLLIS**, but they were quickly fobbed off and the importance of the CBH Limited shares seemed to fall off the radar until they appeared back on the writers screen and stayed

there because of their importance relating to the deals that were agreed, (no matter the initial misrepresentations and fraud perpetrated against F and I), and not completed.

802. It is one point of evidence that cannot be argued. The deals as agreed were not completed and it is clear they were never intended to be completed by the directors of LDC Finance Limited, the trustee and the receivers.

803. This raises the point why complete a deal of sorts over the CBH Limited shares (that we do not know the structure of) in June 2008. Well LDC Finance Limited was in very bad shape and it needed the shares injected or otherwise questions would be asked as to the state of the company given that it was supposedly going to initially pay 100 cents in the dollar.

804. Imagine if LDC Finance Limited lost the case that has been filed by F and I and nearly $8m or possibly $14m or even more went back to F and I. Without the share value injected by CBH Limited where would it be? But the receivers and the directors and the trustee had the following massive problem. If the receiver raised the CBH Limited shares being transferred on 23 June 2008 how does he begin to explain the following matters?

805. LDC Finance Limited directors lied to F and I partners about transferring shares they did not actually own to the benefit of F and I stakeholders in mid 2006 and March 2007 and so this action voided all deals between the parties. As already stated the writer believes that the CBH Limited shares are likely encumbered and thus the allegation that they were given over unencumbered to effectively F and I and LDC is a further lie (see paragraphs 128 and 233(7) of this report which detail what should have been reported by the receivers and what was alleged by Mr **MILLER**), and may have been why there was a significant problem. It is a fact that they were encumbered when they were in the possession of Mr **HARDIMAN** and that on occasions such encumbrance was with LDC Finance Limited.

806. LDC Finance Limited directors lied to LDC Finance Limited stakeholders about transferring shares that they did not actually own to the benefit LDC Finance Limited

stakeholders in mid 2006 and March 2007, and omitted to inform the LDC Finance Limited stakeholders of the actual agreement between F and I and LDC Finance Limited concerning the same shares.

807. That the trustee and Pricewaterhousecoopers must have been complicit with this deception at the time of the 2007 prospectus, and had been most likely made aware of the previous deception in mid 2006.

808. Doesn't it seem odd that a receiver wanting the very best for the LDC Finance Limited stakeholders and just wanting to do the best he could would have offered the CBH Limited shares to the other shareholders in line with the company's constitution. Naturally Mr **HOLLIS** had a problem in that LDC Finance Limited did not own the CBH Limited shares until they were transferred from Chris **HARDIMAN** to SC Management Limited through some secret deal that has not been sufficiently explained in any document that the writer has seen.

809. To explain more fully the deal done by Mr **HOLLIS** on 23 June 2008 for 658 CBH Limited shares was obviously different to;

- the deal described in the April 2007 LDC Finance Limited prospectus wherein LDC Finance Limited acquired an unknown amount of CBH Limited shares from GKW Limited for $2m.

- the deal described by Mr **MILLER** at paragraph 233 to 255 of this report wherein there had been $2m worth of CBH Limited shares transferred into the ownership of SC Management Limited at mid 2006 and march 2007 as part and parcel of joint considerations between LDC Finance Limited and F and I.

810. Would the real deal involving the CBH Limited shares please stand up. What the writer could not understand about this deal involving CBH Limited shares was that no deal actually seemed to "happen". Even in the first LDC Finance Limited prospectus in 2004 it was stated that LDC Investments Limited own CBH Limited

shares to the value of $700k, but the Company office records do not disclose that ownership and they should have been undated every year by Carren Miller.

811. At all material times Mr **HARDIMAN** has owned the shares. In 2006 and 2007 Mr **MILLER** and Messrs **SCHOLFIELD** and **HARDING** remember some form of deal with CBH Limited shares, but that deal never legally occurs meaning the entire deals between F and I and LDC Finance Limited can be voided on this point alone.

812. Then the deal described in the prospectus is a complete sham and misstatement of material fact, as GKW Limited has never owned the CBH Limited shares, and this is proven because Mr **HOLLIS** does a secret deal for the transfer of the CBH Limited shares from **HARDIMAN** in June 2008, and does not report the deal to the LDC Finance stakeholders. As you will find out Mr **HOLLIS** attempts to 'inform' the LDC Finance Limited stakeholders in his fourth report, but the writer will deal with this point later on in this report. The writer can say at this stage though that Mr **HOLLIS** is being far from truthful yet again.

813. At this juncture the picture about the problems with the CBH Limited share deals started to become clear. The first deal struck between Messrs **SCHOLFIELD** and **HARDING** and the directors of LDC Finance Limited for the transfer of 50% of the CBH Limited shares in mid 2006 and 50% in March 2007 was never intended to be honoured by Mr **MILLER**. After all Mr **MILLERS** intention was to defraud Messrs **SCHOLFIELD** and **HARDING** so why would he actually 'swap considerations'. It just does not make sense in any event because Mr **MILLER** was always saying LDC Finance Limited was in perfect health.

814. The second deal done for CBH Limited shares as initially described in the initial 27 April 2007 prospectus was probably to satisfy the trustee that the directors were putting some assets into the company.

815. Of course days later the directors amended the prospectus and in any event did not transfer the shares because GKW Limited did not own them. Clearly the LDC Finance Limited director's intention was never to transfer the CBH Limited shares or they would have, and they would not have lied about who owned the shares. The

writer believes that the trustee found out about this and the directors just said 'tough' to the trustee. As the reader will find out soon the directors told the trustee 'tough' numerous times and treated Mr **STYANT** as their "bitch boy". To Mr **STYANTS** credit he did fight back, but unfortunately for the LDC Finance Limited stakeholders, he fought like a "bitch".

816. The last deal done by **HOLLIS** is probably for the following reasons. Mr **HOLLIS** was now aware that LDC Finance Limited was going to be subject to a concerted attack from F and I, and that the finance receivables from the LDC Finance Limited book were worse than even Pricewaterhousecoopers thought possible. F and I's argument was that the position of LDC Finance Limited was misrepresented to F and I, and that they were otherwise subject to other inappropriate and dishonest commercial practices. If the LDC Finance Limited book was proven to be incredibly bad then the F and I case would be proven as to the level of misrepresentation. Remember it was the second prospectus which sees the write down of finance receivables plummet to $17.3m which is significantly below the nearly $22m of stakeholders funds.

817. If the matters deteriorated further then the position would be that Pricewaterhousecoopers, who had been aware of the condition of the debt securities of LDC Finance Limited through its review in January 2007, must have to prove that the book condition had substantially changed. This would require more than the mere comment being made that it had changed. The writer is sure that most LDC Finance Limited stakeholders do not know that Pricewaterhousecoopers and to a somewhat lesser extent Perpetual Trust Limited were involved in designing and implementing the defrauding of F and I stakeholders and aware that LDC Finance Limited's position was irrecoverable prior to the release of the last prospectus.

818. If the writer was a stakeholder the writer would be knocking on the Security Commissions doors asking how this happened and why they cannot do anything about the actions of the conspirators. The writer has supplied some of the material in this report to the Securities Commission and has heard nothing back as they supposedly await the publication of the report. The writer must inform that a female Securities Commission investigator involved stated to the writer that the writer

should be careful about making defamatory remarks in case they are proven to be wrong and the writer could be sued and bankrupted. Could you imagine a Police Officer saying this to an informant bringing solid leads that could solve a murder inquiry? The writer thought that the woman should be removed from office for being incompetent, because she was in effect perverting the course of justice through stupidity.

819. The writer submits that the desperate need for the F and I money, even though all concerned knew that it was void irregular allotments, meant that Pricewaterhousecoopers, Perpetual Trust Limited and the directors of LDC Finance Limited knew that LDC Finance Limited's own debt securities were virtually worthless, excepting the right to claim effectively F and I money put into Halifax Finance Limited through its first ranking security, and securities obtained from F and I through the conspiracy. Once all of their well laid and perpetrated plans were coming apart after the fact, they needed to inject some assets, and also seek to be able to claim that the directors of LDC Finance Limited had transferred the CBH Limited share assets as stated in the April 2007 prospectus.

820. If the transfer was done 'in secret' a transfer back out again could be done 'in secret' similar to the 'assignments' of loans between Halifax Finance Limited and LDC Finance Limited.

821. That the value of the shares could be hidden amongst the receivables and therefore realized at some time and the money injected as if it were actually finance receivables being collected and not an injection of funds per se, and if they held onto the F and I money those finance receivables could be "written down" to virtually nothing. Additionally if the share value went up considerably then they could 'play some other games' with stakeholders money. After all, given enough time, and most of the stakeholders will have "passed over".

Why did not Mr HOLLIS report the issuance of new shares, and his position as receiver.

822. The writer questioned Mr **HOLLIS** about why he had not reported the issuance of new shares in CBH Limited to SK and KM Collett Family Trust and Parker Orchard Limited in the middle of 2007 after the transfer of CBH Limited shares to SC Management Limited.

(1)DN	***No wait a sec where are they reported, <u>they are not reported on the companies office records – right</u>***
(2)MH	***<u>right</u>***
(3)DN	***<u>they are reported on the internal registry</u> of the company***
(4)MH	***<u>Right</u>***
(5)DN	***Which prima facie pursuant to the Company's Act as you well know gives everyone voting rights in relation to the umm ah movements of that particular um company or whatever it particularly does but there has been ah movements in the company new shares issued and you would have to have paperwork where they've written to you saying that the shares that were issued um do you approve of that.***
(6)MH	***As a minority shareholder do they need to get my approval of that?***
(7)DN	***Well – looking at the constitution – have you read the constitution?***
(8)MH	***No***
(9)DN	*Ok well …*
(10)MH	***My lawyer has***
(11)DN	*Ok so the position here is that …*
(12)MH	***<u>Surely the situation is better if I own those shares</u>***
(13)DN	*Well*
(14)MH	***<u>Rather than Miller owning them</u>***
(15)DN	*Well well no no the the position is it voids the deals were based – you see problem with with…*
(16)MH	***<u>What what you're what you're going to achieve by voiding the transfer of some shares</u> is that you will distance these assets from LDC Finance you don't want that do you?***

823. At (1) to (4) above the writer and Mr **HOLLIS** agree that the CBH Limited shares were transferred on the internal registry of the company, but not on the Company

Office records which are the only records that would allow the public to know about any such transfer.

824. At (5) the writer states to Mr **HOLLIS** that Mr **HOLLIS** should have been aware of the issuance of the new shares to SK and KM Collett Family Trust and Parker Orchard Limited and that he should have received paperwork in relation to this inclusive of a right to approve or attempt to veto such issuance of shares.

825. At (6) Mr **HOLLIS** pretends to believe that he does not know whether a minority shareholder needs to be able to approve such an issuance, and at (8) Mr **HOLLIS** states that whilst he has not read the constitution that his lawyer has at (10).

826. At (13) and (14) though Mr **HOLLIS** gets down to business and makes an interesting 'admission' about Mr **MILLER** allegedly previously owning the CBH Limited shares, and that it was better that Mr **HOLLIS** was now in charge of the shares no matter the way that the shares got there.

827. At (16) Mr **HOLLIS** states that the writers' client Mr Rolly **FAWCETT** cannot benefit from the writer voiding the sale. Mr **HOLLIS** unfortunately believes that the writer is interested in anything but the truth, the whole truth and nothing but the truth. The truth of the matter is that the issuance of new shares can impact on the value of the existing shares and additionally Mr **HOLLIS** would have had to report this issuance and clarification of impact in his receiver's reports after the issuance of the new shares.

828. The next move the writer made on Mr **HOLLIS** was to explain that he could not have known about the shares from day dot, because the shares were not transferred till June 2008, and the agreement Mr **MILLER** says existed is different to the one that Mr **HOLLIS** seems to infer existed. Additionally the writer wanted to cover Mr **HOLLIS'S** involvement in Mr **NOONES** threat to Mr **HARDING**;

(1)DN *Just let me finish Malcolm so you understand where I'm going because it's very important I think…the issue here is that when I spoke to him he said that certain directors of LDC had pumped in ah between 2.1*

and 3.5 million dollars worth of assets he couldn't even - couldn't remember where the assets were the name of the company or in fact um who it was sold to - ok - through research I found out that- he remembered CBH Limited and he thought the first name was coastal CBH something – ***through my research I found out that he wasn't a director or shareholder so I thought he wouldn't know about it however then he told me when I said to him well you must have known because you were a material director at the time LDC did this and I put the acid on him and he came up suddenly with all the facts involving GKW Limited – research of GKW Limited established he through different companies and through different shareholdings was an 84% owner of the um the ah GKW Limited. So as an 84% owner he he must have signed the um the share transfer so he'd know exactly where that money went and he have the – he'd be the only material person that would benefit from the receiver not knowing about those shares –*** ***now as the receiver you didn't know about those shares in the first report because they weren't transferred until June 2008 –*** *you wouldn't have reported them but as you knew as they were transferred you couldn't have reported them as assets as they were transferred in June 2008 you would report them so there would be a dramatic change in the assets that isn't reported Malcolm*

(2)MH *No well you're making some assumptions there I would say.*

(3)DN *Well Malcolm I think you better decide where – which side you're on about this.*

(4)MH *I know very clearly where I am*

(5)DN ***Ok because the inference here is that you knew all about the shares and that you didn't report them***

(6)MH ***That's your assumption***

(7)DN *Ok so if we go through all of the values and the shares and everything else that is reported in those things* ***there won't be a jump of 2 - 2.1 or 3 million dollars in assets***

(8)MH ***No there won't be***

(9)DN ***Right so when you were saying the liabilities and assets of the companies you said umm you said LDC had x amount of loans and collectables receivables***

(10)MH *Hmm*

(11)DN *Right*

(12)MH ***Yep***

(13)DN ***Well shares are different to loans aren't they shares are different to receiv****ables*

(14)MH *ahhh*

(15)DN *well how how are they different?*

(16)MH ***Ones an equity investment, ones a cash investment or a loan investment***

(17)DN *Yeah so where where's the ownership and the equity referred as to in relation to SC Management*

(18)MH ***I can assure you those shares in CBH have always been recognized ultimately as an asset of LDC Finance***

(19)DN *Right*

(20)MH ***Throughout the entire time of the receivership***

(21)DN ***So why wasn't this reported****?*

(22)MH ***It was.***

(23)DN *No no no SC Management – what…*

(24)MH *I, I don't report on any specific assets*

(25)DN *You don't report on any specific asset*

(26)MH *No*

(27)DN *So a holding of shareholding in land*

(28)MH *Yep*

(29)DN *is entirely different to a loan*

(30)MH *Yes*

(31)DN *Right because you know a loan has…*

(32)MH *As is furniture as is cars as is any other type of asset*

(33)DN *No no wait a sec it's a separate asset*

(34)MH *Correct*

(35)DN *Involving in relation to whether or not you complied or LDC complied with it's agreement with F and I now if if…*

(36)MH *Arrg*

(37)DN *no no … let me finish if the transfer had never occurred as in um it never showed* ***up in the companies office right because the internal registry doesn't show um the document I've got doesn't show um ah care of Price Waterhouse Coopers – Now this is in June 2008 now you you said to me prior you*** *you've always been aware of this and you spoke to David Edmonds.*

(38)MH ***Chris Edmonds***

(39)DN *Chris Edmonds sorry now if you spoke to Chris Edmonds when the transfer occurred on June 2008 you must have been –* ***he must have been aware that it was care of Price Waterhouse Coopers and not care of …***

(40)MH ***Yeah of course he would have,***

(41)DN *Carren Miller*

(42)MH *Yep*

(43)DN *Yeah but he he wouldn't have done that and* ***he wouldn't have changed the company records you see because if if um you were aware as a receiver you would have demanded that the company records in the companies office not the internal registry disclosed SC Management as owning shares in CBH Limited because you have – as receiver you have a liability to do that but of coarse if you were trying to hide them you wouldn't do that****.*

(44)MH ***Trying to hide them*** *–*

(45)DN *Well*

(46)MH ***Why would why would I have a motivation to do that***

(47)DN ***Well why would Mr Noone have a motivation to go down to um to Nelson himself and threaten Mr Harding and ah or Mr Harding in particular in a meeting*** *witnessed by three other people that he would serve a term of imprisonment unless he got into this deal*

(48)MH ***I have no idea what you're talking about***

(49)DN *Don't you?*

(50)MH *So you're saying that Mr Noone made some threats to Andrew Harding that he …*

(51)DN *Mr Mr Noone's admitted that to to me*

(52)MH *Right*

(53)DN *In a in a meeting so there's no doubt that it occurred*

(54)MH *That's got nothing to do with me*

829. The writer is trying to get Mr **HOLLIS** to accept the inevitable and admit that he has failed to materially report the existence of the CBH Limited shares to the LDC Finance Limited stakeholders. Mr **HOLLIS** makes it easy to establish this as fact when he admits at (18) that he has always recognized the CBH Limited shares as an LDC Finance Limited asset. Strangely Mr **HOLLIS,** whislst admitting that the CBH Limited shares are not a finance receivable at (16), state that there will not be a jump of $2 to $3m dollars at (8) if the writer was to go through the LDC Finance Limited books.

830. At (1) the writer lays out the story to Mr **HOLLIS** about what Mr **MILLER** had stated about GKW Limited owning the CBH Limited shares and that Mr **MILLER** had been far from honest to the writer about his knowledge about the alleged transactions involving those shares, and that the shares were not transferred until June 2008, so how could Mr **HOLLIS** report their value when SC Management Limited (and thus LDC Finance Limited), did not own them until that time, and it followed that a change of ownership of such a valuable asset would mean a substantial change in the accounts of LDC Finance Limited. At (2) Mr **HOLLIS** states that the writer is assuming that there would be a change in the accounts. At (5) the writer accuses Mr **HOLLIS** of "hiding" the CBH Limited shares and again at (6) Mr **HOLLIS** does not offer an explanation preferring to repeat his mantra of the writer "assuming things".

831. At (19) through to (46) the writer goes through some facts which seem to point out that if everyone was being "forthright" then the CBH Limited shareholding change should have been recorded at the companies office, and reported in the receivers reports along with the fact that the LDC Finance Limited directors had lied through their front teeth in the April 2007 LDC Finance Limited prospectus about an injection of $2m of CBH Limited shares having occurred at that time. At (39) the writer clearly indicates that Chris **EDMONDS** of CBH Limited would have known that the address of Pricewaterhousecoopers should have been entered into the share register

as being the address for service of documents, and not Carren Miller, and Mr **HOLLIS** accepts that Mr **EDMONDS** knew the score, but does not explain why Mr **EDOMNDS** would have put Carren Millers address, other than the obvious. The writer alleges at (43) that Mr **HOLLIS** not insisting on the transparency of the share transfer for the LDC Finance Limited stakeholders to view is somewhat of a negative inference that he is not acting in their best interests, and is in fact trying to conceal the property from them.

832. At (46) Mr **HOLLIS** claims that there is no motivation available for him to do that (which seems strange given that he has openly admitted to concealing the change of ownership and the value of the shares and has not provided a reason for his behaviour other than "he does not have to do anything he does not have to").

833. It is trite that you cannot report ownership of an asset you do not actually own and therefore the shares could not be reported in the first two receivers reports dated 3 November 2007 and 30 April 2008 (pages 127 to 135 and 136 to 146 of the annexed dossier), and the shares had not been legally transferred in any event because the constitution precluded such a sale without the consent of other shareholders which may not have been approved if they knew what was in the background.

834. As already stated no doubt the conspirators will say that the shares were held in trust or some other 'limp wristed" excuse, but even if this was true, it doesn't explain the lack of reporting, nor the lies in the prospectus and the lack of immediate sale to protect the integrity of the deal with F and I. Whereas the non-reporting of the sale clearly has obvious explanations that all fit with criminal intent.

"SHULTZ" HOLLIS "knows nothing" about "KLINKS" NOONES threats

835. At (47) the writer brings up the subject of Mr **NOONES** threat (about definitely going to prison to if he did not commit to the **NOONE** plan) to Mr **HARDING** and Mr **HOLLIS** denies any knowledge of such behaviour by Mr **NOONE**. Of course if it is proven that Mr **HOLLIS** knew of this threat, his denial indicates he knew of its purpose and illegality.

Other CBH Limited shareholders think that Malcolm HOLLIS is a "wally and a w- - -k - r" amongst many, many, many, other things.

836. The writer has spoken to Mr Lynn **REDDEN** about Mr **HOLLIS'S** knowledge and management style. Apparently Mr **HOLLIS** has hired a "side kick" who is a small time developer who attends meetings with Mr **HOLLIS** and the directors of CBH Limited where Mr **HOLLIS** derides the directors of CBH Limited.

837. Mr **REDDEN**, a genuine nice American guy (who has been a "kiwi" for probably two decades) thinks that Mr **HOLLIS** is a "wally and a wanker" which is a description in the vernacular indicating a genuinely held lack of respect for someone's "persona". The writer decided to inform Mr **REDDEN** that he could put the two terms together to save time and effort describing Mr **HOLLIS**. Mr **REDDEN** genuinely felt that "Wally Wanker" described Mr Malcolm **HOLLIS'S** persona, although as the conversation went on Mr **REDDEN** added a long list of derogatory words in front and behind the mention of Mr **HOLLIS**. It would seem to the writer that Mr **HOLLIS** is a bit of a grim reaper.

838. Another matter that needs to be considered is how can Mr **HOLLIS** maintain that he can finish the development when the company's assets belong to the stakeholders and LDC Finance Limited is grossly insolvent and subject to a court case that, when lost, will see it not only penniless, but probably owing many millions of dollars.

839. Mr **HOLLIS'S** position regarding continuing the Appleby Hills and Estates developments is preposterous and dishonest as there is clearly another agenda for the secrecy.

HOLLIS covers the tracks of Messrs STYANT and LANCASTER by a cowardly attack on Messrs SCHOLFIELD and HARDING.

840. At this point of the writers investigation it would be reasonably safe to say that the writer was feeling comfortable that he was making all of the threads come together to make a fairly strong rope around the LDC Finance Limited directors necks, and had

began to get a really tight grip on the reasoning why so much skullduggery has transpired involving Pricewaterhousecoopers and probably Perpetual Trust.

841. In his first report of 3 November 2007 Mr **HOLLIS** had this to say about the reasoning why the directors of LDC Finance Limited had called in the receivers as at 4 September 2007; (writers emphasis)

"Our appointment followed a request from the Directors of LDC for the Company to be placed into receivership. ***The directors had serious concerns as to the state of the debenture*** *and funding finance markets and the ability of the company to obtain new funds and retain existing investments"*

842. But the debenture amounts were only $12,389,343.00 on a book approaching $30m so how could the directors be concerned about the debenture if they had another $18m to play with. And was it the directors that pulled the plug?. The writer thinks not.

843. The nonsense that a run on funds could cause problems does not make sense because deposits withdrawn were simply amounts that would not need to be dealt with when the company was in receivership or liquidation.

844. What will become very clear is that Mr **HOLLIS** and Mr **STYANT** knew that the directors of LDC Finance Limited were in fact "out of control" in charge of a company that was equally "out of money".

845. The writer can only imagine the 'flurry' of communications between Pricewaterhousecoopers and Perpetual Trust Limited seeking accommodations by the LDC Finance Limited directors, and the price extracted by the LDC Finance Limited directors, before an armistice was agreed and the company placed into a "very, very, very friendly occupation" where the directors still influenced day to day decisions.

846. Mr **HOLLIS** does elude to a run on money as a reason for the receivership of LDC Finance Limited but that could have been handled by a simple agreement with the Trustee to cease repaying stakeholders funds until the actual position of LDC Finance Limited was known and could be made public, and then an orderly approach to

trading, possibly seeking a moratorium to do so rather than placing the company into receivership, or even if being placed into receivership, a plan to operate it out of receivership.

847. But the conspirators knew that all of this would likely require the input of the Securities Commission, so best to put the company into 'a place' where its books would not be looked at too closely. What better place than a receivership by Pricewaterhousecoopers, an organization that has previously made complaints to the Security Commission about "bad boy" directors, and indeed in this very case reported the "criminal" actions of Messrs **HARDING** and **SCHOLFIELD** in operating without a prospectus.

848. What is quite amazing is that Pricewaterhousecoopers and Perpetual Trust Limited do not jointly or severally inform the LDC Finance Limited stakeholders at anytime of their prior knowledge of the of the impending disaster, which knowledge was available likely as early as January 2007, but definitely as of March 2007, when the **NOONE** report was authored.

849. At the time of the receivership of LDC Finance Limited Perpetual Trust Limited knew that LDC Finance Limited was but a façade, and that its core no longer existed, but for what it could plunder from F and I through the securities offered on the deals done in mid 2006 and March 2007 to buy worthless LDC Finance Limited shares.

850. The threats against Messrs **SCHOLFIELD** and **HARDING** continued unabated and in any event they had obtained the receivership of F and I as well, where they could complete the "transactions" planned as a core of the conspiracy. It would appear insane that Messrs **SCHOLFIELD** and **HARDING** would lie down as they did, but this lack of grunt, just proves the effect of the coercive practices of the malevolent Mr **NOONE**.

851. Mr **HOLLIS** has maintained that Messrs **SCHOLFIELD** and **HARDING** have been the largest shareholders in LDC Finance Limited, and yet has not seen fit to even send them the receiver's reports. Now why would that be Mr **HOLLIS**?

852. The reason why Mr **HOLLIS** has stated this is because it makes the media think that Messrs **SCHOLFIELD** and **HARDING** were aware of everything and just had sour grapes over the failure that they supposedly caused because they couldn't meet their liabilities under the agreements of mid 2006 and March 2007 when they purchased worthless LDC Finance Limited shares.

853. As the reader will become aware Mr **STYANT** of Perpetual Trust Limited would adopt this strategy as well when Mr **STYANT** thought he was talking to Mr Rolly **FAWCETT**. Unfortunately for Mr **STYANT** he was talking to the writer who had obtained permission from Mr **FAWCETT** to use his name. Mr **STYANT** stated that the collapse of LDC Finance Limited was all because of Messrs **SCHOLFIELDS** and **HARDINGS** investment in Heli-logging Limited. You got to love the audacity don't you? After knowing that Messrs **SCHOLFIELD** and **HARDING** and the F and I stakeholders were ripped off for millions of dollars, Mr **STYANT** is callous enough to blame them for LDC Finance Limited's demise. Has **"STYANT THE TYRANT"** no standards at all?

854. The writer believes that he has proven that Pricewaterhousecoopers knew the position of LDC Finance Limited as early as January 2007 when they joined in the participation of the agreement to defraud Messrs **SCHOLFIELD** and **HARDING** and the F and I stakeholders. The writer knew that Perpetual Trust Limited knew how bad it was because they had agreed to having securities placed over void irregular allotments obtained by F and I so how desperate was that? But now the writer needed to prove the involvement of Senior Executives of Perpetual Trust Limited in the conspiracy to have the matter at hand concluded. Again what better proof of knowledge and involvement than a true record by their own hand.

"TYRANT STYANT" and [bomb them in their beds] "BOMBER LANCASTER" use threats, [possibly blackmail], to try and bring "out of control directors" into line, but in doing so are flagged as conspirators and perverters of the course of justice. The writer gets hold of the 'smoking gun' with bloodied fingerprints. Whose blood?; Stakeholders of course!

855. The following matters also prove Mr **HOLLIS** is a liar by omission to report certain very important points to the writer and to LDC Finance Limited stakeholders. The writer has obtained draft and final version letters dated 31 July and 13 August 2007 authored by Perpetual Trust Limited Senior Executives Messrs Michael **STYANT** and Matthew **LANCASTER** respectively. These letters are the "smoking gun" in Perpetual Trust Limited's hands. What is interesting about the following matters is that Messrs **STYANT** and **LANCASTER** have no actual interest in protecting the "sleeping stakeholders" from obliteration, but rather are only interested in saving their reputations.

856. The writer can tell you that Mr **STYANT** was very unhappy about the two letters being leaked to Rolly **FAWCETT** when Mr **STYANT** thought he was talking to Rolly **FAWCETT** and not the writer. The following matters are raised in the draft letters dated 31 July 2007 to the following parties;

856.1 Draft letter dated 31 July 2007 from Matthew **LANCASTER** head of Corporate Trust of Perpetual Trust Limited to the directors of LDC Finance Limited warning the directors that the impasse that saw Perpetual Trust Limited believing that LDC Finance Limited was in significant breach of its trust deed, and the directors believing they were not, could not continue, and Perpetual Trust was annexing a letter it intended to send to the Registrar of Companies under section 11 of the Corporations (Investigation and Management) Act 1989. (Page 1674 of the annexed dossier).

856.2 Draft letter dated 31 July 2007 from Matthew **LANCASTER** head of Corporate Trust of Perpetual Trust reporting to the Registrar of Companies, Commercial Affairs Division, Ministry of Economic Development attention Mr John **MCPHERSON** stating the following about his belief as to the insolvency of LDC Finance Limited and the miscreant behaviour of the directors of LDC Finance Limited; (Pages 1675 to 1678 of the annexed dossier beginning at paragraph 1 of page 1675; (emphasis that of the writers)

> *"1.* ***Pursuant to sections 11(a) and (b) of the Corporations (investigations and Management) Act 1989 we report on LDC Finance Limited (LDC), a finance company…..***

2. *Perpetual Trust Limited (Perpetual) is the trustee of the debt securities issued to the public subscribers by LDC pursuant to a Debt Securities Trust Deed dated 18 June 2004 (Trust Deed)*

Background

3. *The principal document of concern is Prospectus No. 4 dated 19 September 2006 for the offer of debt securities by LDC, which was registered with the Companies Office on 25 September 2006 (Prospectus).*

4. ***The prospectus was extended by way of certificate pursuant to section 37A(1A) of the Securities Act 1978 on 22 December 2006**.*

5. On or about 15 February 2007, a report was delivered to LDC by Maurice Noone of Pricewaterhousecoopers identifying significant deficiencies in and around the asset quality disclosures of certain loans and by extension the disclosures made in the prospectus. By way of summary, the report took the view that;

(a) ***there were a number of advances against which specific provisions should have been made;***

(b) the asset quality disclosures in the financial statements failed to report the material and substantive elements of impaired and non accrual assets, and

(c) the fair value disclosures in note 13 to the financial statements, in which the carrying value of assets was reported as equaling fair value appeared to be incorrect and misleading.

6. ***We note that the report took the view that this position ought reasonably to have been known to the directors of LDC for some months and expressed the opinion that the Prospectus was likely misleading**.*

7. *For the sake of completeness we note that the asset quality disclosures in question* ***concerned the advances by LDC to, ultimately Heli-logging Limited in the amount of $9.1 million secured against ex-RAF Wessex helicopters.***

8. ***We understand that LDC increased its provisioning from $4 million to $5.2 million as a result of the report, with a consequential reduction in the equity position of LDC**.*

9. ***Perpetual has formed the view that from at least 15 February 2007 LDC and its directors knew or ought reasonably to have known that the Prospectus was false or misleading in a material particular, by reason of failing to refer or give proper emphasis, to adverse***

***circumstances**. Section 37A(1)(b) of the Securities Act 1978 (**Securities Act**) refers.*

10. A subsequent share issue injected further capital into LDC during this period. LDC reported that this corrected its balance sheet position.

11. Notwithstanding the above, Perpetual takes the view that the equity injection does not of itself correct the fact that the Prospectus became misleading after the PWC Report was made available and in the absence of an amendment disclosing the material particulars discussed above remained so for so long as it remained on foot.

12. The Prospectus remained on foot until a new prospectus was filed on 27 April 2007.

13. Perpetual takes the view that all debt securities allotted by LDC between 15 February and 26 April 2006 (Voidable Period) and voidable irregular allotments pursuant to section 37A (1) (b) of the Securities Act.

14. LDC advises that the debt securities issued during the Voidable Period amounted to $[3,166,971].

Section 11 (a)

15. Perpetual is concerned that LDC is carrying a significant undisclosed contingent liability in the amount disclosed above and interest payable on the same, in accordance with sections 37A(3) and 37A(7) of the Securities Act.

16. After considering the cash flow and net balance sheet position of LDC, Perpetual is of the view that the realization of this contingent liability will give rise to serious financial difficulties in the operating position of LDC.

17. Further, the existence of this contingent liability is in Perpetual's view both serious and ongoing in the absence of LDC taking steps to truncate the same in terms of sections 37A(3) and 37(4)(b) of the Securities Act.

Section 11(b)

18. Perpetual is of the view that LDC has breached in a significant respect the following Trust Deed covenants:

a. The total liabilities limitation at clause 8.1(b) of the Trust Deed. Namely LDC permitted its total liabilities to exceed 90%

of its total tangible assets. The point at which this breach commenced is still to be determined, and with reference to PricewaterhouseCoopers' report we note that it may have been ongoing at least for some time prior to that report. The breach ceased upon the introduction of the additional equity referred to at paragraph 10; and

b. The issue of debt securities while in breach of the Trust Deed or in breach of any provisions of the Securities Act at clause 8.4(j) of the Trust Deed. Namely, LDC issued debt securities in the amount of $3,166,971 the Voidable Period when in breach of sections 34(1)(b), 37A(2) and 39 of the Securities Act.

General

19. To date, LDC has refused to accept the occurrences of the Securities Act breaches identified at paragraph 18(b). It has done so on the basis that LDC and its directors did not consider the Prospectus to be false or misleading in a material particular, by reason of failing to refer or give proper emphasis, to adverse circumstances.

20. Perpetual by letter dated 13 July 2007 has required LDC to contact all investors who subscribed for debt securities in LDC during the Voidable Period. As LDC has consistently disputed the breaches, the form and content of any notice cannot be agreed and an impasse has been reached.

21. Perpetual is now considering writing to the effected investors directly.

22. Please feel free to telephone myself or Michael Styant if you would like to discuss these matters further.

856.3 To understand how important the content of this draft letter is one has to break down the information contained in the letter into small understandable bits. At paragraph 4 Mr **LANCASTER** is saying the LDC Finance Limited prospectus of September 2006 was extended by way of certification of the LDC Finance Limited directors pursuant to the provisions of section 37A(1)(A) of the Securities Act 1978, which materially provides; (emphasis that of the writers)

"(1)(A) For the purposes of subsection (1)(c) of this section, if no interim statement of financial position is contained or referred to in a registered prospectus, an issuer may deliver to the Registrar for registration under this act, and the Registrar shall register, a certificate that relates to the registered prospectus and that-

(a) ***Is signed on behalf of all the directors by at least 2 directors of the issuer*** *(or, where the issuer has only 1 director, by that director); and*

(b) Is dated no later than 9 months after the date of the statement of financial position contained or referred to in the Registered Prospectus; and

(c) States that, in the opinion of all directors of the issuer after due enquiry by them,-

(i) The financial position shown in the statement of financial position referred to in paragraph (b) of this subsection has not materially and adversely changed during the period from the date of that statement of financial position to the date of the certificate; and

(ii) The registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, and

(d) ***Where the registered prospectus relates to equity securities, debt securities, or participatory securities, is accompanied by financial statements-***

(i) For the 6 month period from the date of the statement of financial position referred to in paragraph (b) of this subsection; and

(ii) ***Prepared in accordance with regulations if they were required to be contained or referred to in a registered prospectus*** *for those securities, except that they need not be audited.*

856.4 In short Mr **LANCASTER** is saying that the directors obtained an extension to the September 2006 prospectus by certifying under s 37A(1A) of the Securities Act 1978 that as at 22 December 2006 nothing had changed, or adversely or materially affected the financial position as described in the September 2006 prospectus which was that the company had adequately evaluated and described its bad debt provisioning as at $100k to $150k. As LDC Finance Limited operates offering "debt securities" it would have had to produce and file with the interim certificate a reliable and comprehensive set of accounts setting out its financial position in the same manner as if required to be in a prospectus and the writer believes that it is inconceivable that the LDC Finance Limited directors, three of which were chartered accountants, could miss a minimum $10m to $12m hole from one client alone being Heli-logging Limited. The writer refers you back to paragraph 379.9 of this report which clearly indicates that the LDC Finance Limited directors knew the companies exact financial position at all times, (which was anything but solvent), but failed apparently to report this position to its

Trustee, or its stakeholders in any report or other required document since it first became an issuer. The writer refers the reader back to paragraphs 464 to 485 of this report wherein Mr **FORD** of Heli-logging informs of everyone's knowledge about the insolvency of LDC Finance Limited from as early as the middle of 2003, (and importantly in relation to the Trustees responsibilities from 2004 onwards when LDC Finance Limited became an issuer), that it just got steadily worse till it was definitely all over in the middle of 2005, when the directors of LDC Finance Limited, (but particularly Mr **MILLER**) effectively sucker punched Mr Terry **HAYDON** of Commercial Factors Limited to keep the "bonfire burning" for another year, before the directors turned their attention to F and I's fortunes. For your information a "debt security" is defined pursuant to s2 of the Securities Act 1978 as being; (emphasis that of the writers)

Debt security means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and includes—
*(a) A debenture, debenture stock, bond, note**, certificate of deposit**, and convertible note; and*
(b) An interest or right that is declared by regulations to be a debt security for the purposes of this Act; and
(c) A renewal or variation of the terms or conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b) of this definition;—
but does not include—
(d) An interest in a contributory mortgage where the interest is offered by a contributory mortgage broker;
or
(e) Any such interest or right or a security referred to in paragraph (a) or paragraph (c) of this definition that is declared by regulations not to be a debt security for the purposes of this Act:

856.5 We know that the provision for bad debts of $100k to $150k in the September 2006 prospectus was a blatant lie, and as we can see Mr **LANCASTER** says so as well at paragraphs 5 and 6 of his letter of 31 July 2007 where he specifically states that, according to a report by Mr **NOONE** dated on or about **15 January 2007**, LDC Finance Limited was in a significant state of insolvency and the position was significantly misstated in the September 2006 prospectus and the confirmation of that misleading

position was restated by the directors in the December 22 2006 certificate for extension and all investment statements and declarations. Importantly the writer sees that at paragraph 6 of his letter dated 31 July 2007 Mr **LANCASTER** confirms that the report of Mr **NOONE**; (emphasis that of the writers)

*"**took the view that this position ought to have reasonably have been known to the directors of LDC for some months** and expressed the opinion that the prospectus was likely misleading"*

856.6 Likely misleading means blatantly misleading, or that it is unlikely to be truthful. An analogy is that of a doctor asking a person over the phone to check if another person is breathing, and if the person's skin is still warm. If the answer is no to both questions, then the doctor could probably state that the person was "likely dead", but not definitely dead until the doctor inspects the corpse and issues a death certificate. The writers point is that the inspection and issuance of the death certificate is a technicality. An important one, but one for the records, rather than the reality of what was known well before the record was made. These matters are often referred to as "formalities". The statement by the doctor that the person was "likely dead" is not likely to have been given without a sufficiency of evidence making any other possibility "likely". The writer also believes that it is crucial for the case as against Pricewaterhousecoopers, Perpetual Trust Limited, and the LDC Finance Limited directors that it is noted by Mr **LANCASTER** at paragraph 7 of his letter of 31 July 2007 that the level of problem debts is $9.1m, and who it is assessed against is Heli-logging Limited and the writer believes it is impossible that the Trustee or Pricewaterhousecoopers believed that the "old military shitters" that had never returned a dollar and were only good for scrap were worth any money especially as they would have known that LDC Finance Limited were only second security over the Helicopters with Commercial Factors Limited having "morsel rights" twice the actual value of the helicopters. Why was this not reported as well as all of the other bad debts in the 2007 prospectus?

Of importance this information seemed to come from a report in February 2007, some 5 months earlier.

856.7 The writer believes that Mr **LANCASTER** is wrong about the amounts of problems debts as against 'the Heli-logging group' but may be correct about Heli-logging Limited owing $9.1m to LDC Finance directly, or indirectly through monies initially lent by LDC Finance Limited to Halifax Finance Limited and then on lent by Halifax Finance Limited to Heli-logging Limited. However as you will now be aware the level of irrecoverable debt securities may be a lot higher when you take into account complete losses as against LDC Finance Limited and Halifax Finance Limited loans to the following Heli-logging related companies;

- M and S Trading Limited
- Taranaki Timber and Treatments Limited
- Heli-logging Holdings Limited
- Heli-logging Limited

856.8 These amounts may well top $13.5m. The real numbers will only be known when an independent liquidator is appointed to LDC Finance Limited. The crucial point here is that any half reasonable accountant, or trustee, would have assessed that because of the 2nd and 3rd ranking of the debt securities as against the assets of the Heli-logging group, that the entire debt security was worthless and that a total loss was not just "expected" or "possible" but was in fact "known" (or likely) as at the time Mr **LANCASTER** and Mr **STYANT** become involved in designing the April 2007 LDC Finance Limited prospectus. Remember the content of the **NOONE** report of 8 March 2007 referred to at paragraphs 373 to 384 of this report. Mr **NOONE** suggested that the entire Heli-logging debts were "sold" to Halifax Finance Limited (an insolvent company) for nothing, but as a method of removing the "bad wood", proving that they were worthless, and the end result of payment on the Heli-logging group debt securities, as it will be shown, was absolutely "nothing". Now the important point is did Mr **NOONE** disclose the 8 March report to Mr **LANCASTER** and Mr **STYANT.**

856.9 You would think so wouldn't you given the obvious lines (that seem proven to exist) of communication between Pricewaterhousecoopers and Perpetual Trust Limited. If Mr **LANCASTER** did receive the **NOONE** report of 8 March 2007, why did Mr **LANCASTER** not want to inform the Registrar of Companies, pursuant to the salient provisions of the Corporations (Investigation and Management) Act 1989, of Mr **NOONES** incredibly important advice to the LDC Finance Limited directors that unless the company committed to a particular disingenuous course of action, (which in fact it did not do at that time because it would have probably been impossible to do, but the suggestion of that course of action still constituted further criminal offending), then the company was doomed to spectacularly fail within a very short period from March 2007. So in short Mr **LANCASTER**, if aware of the **NOONE** plan advice should have told the Registrar of Companies that everyone, being the directors of LDC Finance Limited, the Trustee, and Pricewaterhousecoopers knew that the prospectus of 27 April 2007 was materially misleading in several significant ways, the most important of which was there was no chance that LDC Finance Limited could survive. Further Mr **LANCASTER** should have immediately gone to the High Court to seek orders controlling the directors, and to the Securities Commission reporting the offending.

856.10 The **NOONE** plan, as you will remember, was to attempt to sell LDC Finance Limited "for a premium above its receivables" (which would be impossible in any event) after the company had "tidied up" it affairs by getting rid of the Heli-logging debts, and robbing Halifax Finance of all of its "good loans".

856.11 Well of course the answer for this omission, if Mr **LANCASTER** was aware of the content of the **NOONE** report dated 8 March 2007, would be that Perpetual Trust Limited would have been in significant breach of its job to protect investors as described in its trust deed pursuant to clause 24 of Part 4 of the Securities Act Regulations Schedule 1983 which provides; (emphasis that of the writers)

Part 4
Content of trust deeds and deeds of participation
Trust deeds
24 Clauses deemed to be contained in trust deeds
1 Clauses 1 to 3 of Schedule 5 to these regulations shall be deemed to be contained in every trust deed required for the purposes of the Act and relating to debt securities (whether or not the trust deed was registered before the date of commencement of these regulations).
(2) ***In addition, clauses 4 to 11 of Schedule 5 are deemed to be contained in every trust deed referred to in sub clause (1) for an issuer that,—***
(a) in the ordinary course of business, continuously offers debt securities to the public for subscription; and (b) carries on the business of lending money or providing financial services; and
(c) is not—
(i) a building society (within the meaning of section 2(1) of the Building Societies Act 1965); or
(ii) a credit union (within the meaning of section 2 of the Friendly Societies and Credit Unions Act1982); or
(iii) a cooperative company registered under Part 2 or Part 3 of the Cooperative Companies Act 1996.
(3) Sub clause (2) applies whether or not the trust deed was registered before the date on which this regulation comes into force.

856.12 Clearly LDC Finance Limited is an issuer that *"continuously offers debt securities to the public for subscription"* and was in fact doing this until it was placed into receivership on 3 September 2007. The Security Act Regulations 1983 provide that the trust deed must include the following provisions as specific clauses of the trust deed (that is registered with the Register of Companies under ss46 and 47 of the Securities Act 1978) and that axiomatically the trustees presence is to insure that each provision is utilised in a manner that protects the investors in the issuer; (emphasis that of the writers)

Schedule 5 reg 24
Clauses deemed to be contained in trust deeds
1 Duties of trustee
2 Right of trustee to obtain information
3 Meetings
4 Obligation to provide regular reports and certificate
5 Obligation to keep trustee informed
6 Obligation to audit or review half yearly financial statements
7 Obligation to provide financial statements to trustee
8 Obligation concerning appointment, etc, of auditors
9 Terms of appointment of auditor

10 Right of trustee to appoint independent auditor
11 Right of trustee to engage expert
1 Duties of trustee
(1) ***The trustee shall exercise reasonable diligence to ascertain whether or not any breach of the terms of the deed or of the terms of the offer of the debt securities has occurred and, except where it is satisfied that the breach will not materially prejudice the security (if any) of the debt securities or the interests of the holders thereof, shall do all such things as it is empowered to do to cause any breach of those terms to be remedied****.*
(2) The trustee shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing group that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the debt securities as they become due.
2 Right of trustee to obtain information
(1) The trustee shall be entitled to receive all notices of and other communications relating to any general meeting of the issuer, which any member of the issuer is entitled to receive.
(2) Any representative of the trustee, being a person authorised to act for the purposes of this clause by resolution of the directors or other governing body of the trustee, shall be entitled to attend any general meeting of the issuer, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns the trustee as such or the holders of debt securities for whom it is trustee.
(3) The issuer shall from time to time—
(a) At the request in writing of the trustee, make available for its inspection the whole of the accounting and other records of the issuer:
(b) Give to the trustee such information as it requires with respect to all matters relating to such records*.*
3 Meetings
(1) At the request in writing of the trustee or of persons holding not less than one tenth in nominal value of the issued debt securities to which the deed relates, the issuer shall summon a meeting of the holders of those securities for the purpose of considering the financial statements of the issuer for its last preceding financial year, or of giving directions to the trustee in relation to the exercise of its powers.
(2) Every meeting summoned pursuant to sub clause (1) of this clause shall be summoned by sending by post a notice, specifying the time and place of the meeting, to every holder of such securities at his last known address not later than 14 days before the date of the proposed meeting. The meeting shall be held under the chairmanship of a person nominated by the trustee or such other person as may be appointed in that behalf by the holders of the securities present at the meeting.
4 Obligation to provide regular reports and certificate
(1) The issuer is obliged to provide to the trustee, within 30 days of the end of each month, the monthly management report prepared for the directors of the issuer.
(2) The issuer is obliged to provide a monthly report to the trustee, in a form required by the trustee and within 30 days of the end of each month, on—

(a) the liquidity of the issuer; and
(b) the asset quality of the issuer (including arrears reports, and restructured, impaired, past due, and bad debts); and
(c) reinvestment rates; and
(d) any breaches by members of the borrowing group of financial covenants in financing arrangements with third parties.
(3) The issuer is obliged to provide a certificate to the trustee, at least once in every 3 months, certifying that at all times during the period covered by the report—
(a) the current prospectus of the issuer has been up to date and not false or misleading in a material particular; and
(b) the issuer has complied with all provisions of the trust deed.
(4) Both the report referred to in sub clause (2) and the certificate referred to in sub clause (3) must be signed by at least 2 directors on behalf of the board of the issuer or, if the issuer has only 1 director, by that director.
5 Obligation to keep trustee informed
(1) The issuer is obliged to advise the trustee, in advance or as soon as it is known, of—
(a) every change in ownership of the shares in the issuer that results in a change to the effective control of the issuer; and
(b) every change of directors of the issuer; and
(c) significant changes in the senior management of the issuer.
(2) The issuer is obliged to notify the trustee, in advance, of any major transaction (as defined in the Companies Act 1993), or any related series of transactions that have the effect of a major transaction, entered into by the issuer.
(3) The issuer is obliged to provide any other reports that the trustee, by written notice, requires the issuer to provide, within the time (which must be reasonable in the circumstances) specified by the trustee.
(4) Reports required under sub clause (3) may be about any of the matters referred to in clause 4 or this clause, or any other matter relevant to the performance of the trustee's duties, and may include forward-looking reports.
6 Obligation to audit or review half yearly financial statements
(1) The issuer is obliged to have the half yearly financial statements of the borrowing group audited, unless the trustee expressly waives this requirement.
(2) If the trustee waives the requirement for half yearly audits, the issuer is obliged instead to have the half yearly financial statements of the borrowing group reviewed by its auditor.
7 Obligation to provide financial statements to trustee
(1) The issuer is obliged to provide the trustee with copies of the annual financial statements and half yearly financial statements of the borrowing group within 3 months of the end of the relevant financial year or half year.
(2) The financial statements given to the trustee must be signed by at least 2 directors on behalf of the board of the issuer or, if there is only 1 director, by that director.
8 Obligation concerning appointment, etc, of auditors
(1) The issuer is obliged to consult with the trustee before recommending the appointment or reappointment of a person as an auditor, and must ensure

that any comments of the trustee concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the auditor.

(2) The issuer is obliged to notify the trustee if an auditor resigns from appointment, or declines to accept appointment or reappointment, and must also pass on to the trustee any explanation provided by the auditor for resigning from appointment or declining to accept appointment or reappointment.

(3) The issuer is obliged to refrain from attempting to prevent a person who has resigned from appointment as an auditor, or declined to accept appointment or reappointment as an auditor, from offering an explanation, or disclosing to the trustee the reason, for resigning or declining appointment or reappointment.

9 Terms of appointment of auditor

(1) The issuer is obliged to ensure that the terms set out in subclause (2) are included in the terms of appointment of its auditor, whether the auditor is conducting an audit or a review.

(2) The terms are as follows:

(a) that the auditor will report separately to the trustee on any matter, immediately upon becoming aware of it, that is (in the opinion of the auditor)—

(i) relevant to the exercise of the powers or performance of the duties of the trustee; or

(ii) likely to call for further investigation by the trustee in the interests of security holders:

(b) that the auditor will report separately to the trustee on whether, during the period covered by the audit or review, and so far as matters observed in the conduct of the audit or review are concerned,—

(i) all reports and certificates given by the issuer to the trustee give a true and fair view of the matters to which they relate; and (ii) any directors' opinions expressed to the trustee are reasonable*:*

*(****c) that the auditor will confirm its audit opinion for the benefit of the trustee:***

(d) that the auditor will provide the trustee with a copy of the management letter, setting out the material findings of the audit or review, that is provided to the board of the issuer*:*

(e) that the auditor will meet with the trustee, without any representative of the issuer being present, to discuss matters arising in the performance of the audit or review and to answer any questions the trustee may have concerning the audit or review.

10 Right of trustee to appoint independent auditor

(1) The trustee is entitled to appoint an independent auditor to audit the financial statements of the borrowing group if—

(a) the auditor appointed by the issuer is not, or is not a partner of, an audit firm that—

(i) has at least 5 partners; and

(ii) receives at least 20% of its revenue from audit or audit-related work; or

(b) in the reasonable opinion of the trustee, the auditor appointed by the issuer does not have sufficient experience or capacity to undertake the audit of the issuer.

(2) The fees and expenses of the independent auditor, which must be reasonable in the circumstances, must be determined by the trustee and paid by the issuer.
(3) If an independent auditor is appointed, the issuer is obliged to cooperate in permitting the auditor to carry out the audit.
(4) The trustee must ensure that the terms of the appointment of the auditor include the terms set out in clause 9(2).
11 Right of trustee to engage expert
(1) The trustee is entitled to engage an expert (such as an auditor, investigating accountant, valuer, or actuary) to assist the trustee to determine the true financial position of the issuer if the trustee considers, on reasonable grounds, that it requires the assistance of the expert.
(2) If the trustee engages an expert under this clause, the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the issuer.

856.13 The particular clauses of distinct reference to Perpetual Trust Limited's duties in a situation like it found itself when made aware of the reports of Mr **NOONE** are found in the following clauses of the trust deed between Perpetual Trust Limited and LDC Finance Limited, and which the stakeholders would have thought Perpetual Trust would have been enforcing at all material times without omission or excuse that was not materially explained in the LDC Finance Limited prospectuses vetted by Perpetual Trust Limited;

856.13.1 **24 1 (1) Exercised reasonable diligence to ascertain whether significant material breach occurred**. In respect of significant breaches by the LDC Finance Limited directors Mr **LANCASTER** stated in his letter of 31 July 2007 at paragraph 18; (emphasis that of the writer)

Perpetual is of the view that LDC has breached in a significant respect the following Trust Deed covenants:

The total liabilities limitation at clause 8.1(b) of the Trust Deed. ***Namely LDC permitted its total liabilities to exceed 90% of its total tangible assets.*** ***The point at which this breach commenced is still to be determined, and with reference to PricewaterhouseCoopers' report we note that it may have been ongoing at least for some time prior to that report.*** *The breach ceased upon the introduction of the additional equity referred to at paragraph 10; and*

The issue of debt securities while in breach of the Trust Deed or in breach of any provisions of the Securities Act at clause 8.4(j) of the Trust Deed. Namely, LDC issued debt securities in the amount of $3,166,971 the Voidable Period when in breach of sections 34(1)(b), 37A(2) and 39 of the Securities Act.

856.13.2 **24 1 (2) Trustee to exercise reasonable diligence to ascertain whether assets of the borrowing group are sufficient to discharge its debts securities**. Obviously importing the content of Mr **LANCASTERS** statements at paragraph 18 of his letter of 31 July 2007, Mr **LANCASTER** had the following to say at paragraph 16 to 17 about his belief that the significant contingent liabilities in accordance with sections 37A(3) and s37A(7) of the Securities Act 1978 were such that he felt that the liability if exercised and repaid would put LDC Finance Limited into serious financial strife;

Perpetual is concerned that LDC is carrying a significant undisclosed contingent liability in the amount disclosed above and interest payable on the same, in accordance with sections 37A(3) and 37A(7) of the Securities Act.

After considering the cash flow and net balance sheet position of LDC, Perpetual is of the view that the realization of this contingent liability will give rise to serious financial difficulties in the operating position of LDC.

Further, the existence of this contingent liability is in Perpetual's view both serious and ongoing in the absence of LDC taking steps to truncate the same in terms of sections 37A(3) and 37(4)(b) of the Securities Act.

856.14 The writer believes that Perpetual Trust Limited should have been acutely aware that the monthly reports from the directors pursuant to the provisions in the Trust deed and subject to clause 4(2)(a) and (b) and 4(3)(a) of schedule 5 of the Securities Regulations 1983 were patently false and deceptive in that they reported that LDC Finance Limited was in a strong position of liquidity and profitability when in fact it was a "hollow husk" contaminated by the disingenuous acts of its directors. The writer believes

that Perpetual Trust had found out as at February 2007 that LDC Finance Limited was insolvent by a wide margin and at that time should have taken such measures as contained in the trust deed and at law to do the following;

856.14.1 **Clause 24 (10) Right of trustee to appoint independent auditor to audit financial statements of the borrowing group and Clause 24 (11) Right of Trustee to engage expert (such as an auditor, investigating accountant, valuer, or actuary).** The writer notes that sub bclause (2) and (3) of Clause 24 (10) and (11) states that the costs of such an appointment of an independent auditor is to be born by the issuer and that further the issuer must be obliged to cooperate in permitting the auditor to carry out the audit. Of course this would be problematical if the directors of LDC Finance Limited were of the mind to disobey the trustees demands to repay $3.166m of voidable irregular allotments and in fact were stating that the accountant Pricewaterhousecoopers and the trustee were wrong about the September 2006 prospectus being misleading, or that they had to repay the allotments, or actually according to the law not allot them in the first place. Mr **LANCASTER** had this to say about the directors' disobedience in that regard and what drastic actions he was considering at paragraphs 19 to 21 of his letter of 31 July 2007 found at paragraph 856.2 of this report;

> ***To date, LDC has refused to accept the occurrences of the Securities Act breaches identified at paragraph 18(b). It has done so on the basis that LDC and its directors did not consider the Prospectus to be false or misleading in a material particular, by reason of failing to refer or give proper emphasis, to adverse circumstances.***
>
> ***Perpetual by letter dated 13 July 2007 has required LDC to contact all investors who subscribed for debt securities in LDC during the Voidability Period. As LDC has consistently disputed the breaches, the form and content of any notice cannot be agreed and an impasse has been reached.***

Perpetual is now considering writing to the effected investors directly.

856.15. It is the writers' opinion that Perpetual Trust Limited did in fact bring in Pricewaterhousecoopers (because why would the directors bring in Pricewaterhousecoopers?), as it would appear that the directors do not accept Perpetual Trust Limited's advice about the voidable irregular allotments, or that they did in fact misrepresent LDC Finance Limited's position as at September 2006.

856.16 It is clear that Mr **LANCASTER** was fully aware that;

856.16.1 the directors of LDC Finance Limited not only breached the Securities Act 1978 in registering a wholly misleading prospectus in September 2006, and according to Mr **NOONE** probably knew that was the position when issuing the prospectus in September 2006 and then certifying that the same misleading information as at 22 December 2006, and;

856.16.2 when the directors were actually made aware of the significant breaches they then breached the Securities Act 1978 and took in $3.166 million of subscriptions between 15 February 2007 and 27 April 2007 and allotted those funds to debt securities in breach of sections 37A(1) of the Securities Act 1978 when fully aware that this was illegal.

856.17 Now why in Gods name was Perpetual Trust Limited not blowing the lid off the fraud and other criminal activity? Remember this is Mr **LANCASTER** making the criminal allegations now, but only in a "draft" letter in order to coerce the directors of LDC Finance Limited to stop acting fraudulently. It is not to warn the LDC Finance Limited stakeholders as alleged, but instead his aim was to cool off his rapidly warming arse that was being heated by the burning books of LDC Finance Limited.

856.18 The writer believes that Mr **LANCASTER** sent a "draft letter" to the directors to warn them of what could occur, if they did not pull their heads in and stop using the voidable irregular allotments obtained when the misleading September prospectus was in play. Mr **LANCASTER** is alleging that he wants the money put into trust or returned, but hang on, hold the phone, Mr **LANCASTER** knew about these voidable irregular allotments since probably September 2006, when Mr **GLASS** would have informed him about the condition of LDC Finance Limited, (refer to paragraph 379.9(26) of this report), so he cannot nearly a year later say he is not "involved" in the "cover up".

WHERE IS THE $3.166M (PLUS INTEREST) LIABILITY DISCLOSED IN THE APRIL 2007 PROSPECTUS (OR IN THE RECEIVERS REPORTS)

856.19 Moreover where are these 'liabilities' of $3.166m explained in the prospectus of April 2007? Surely then Mr **LANCASTER** and Mr **STYANT** are as liable as the LDC Finance Limited directors for this omission in that prospectus? Further at paragraph 9 of their "draft" letter **"BOMBER LANCASTER"** and **"TYRANT STYANT"** confirm that their position was that the LDC Finance Limited directors knowledge was greater than "likely" and that; (writers emphasis)

Perpetual has formed the view that from at least 15 February 2007 LDC and its directors knew or ought reasonably to have known that the Prospectus was false or misleading in a material particular, by reason of failing to refer or give proper emphasis, to adverse circumstances*. Section 37A(1)(b) of the Securities Act 1978 (**Securities Act**) refers.*

856.20 Come on readers, which cop sends out "draft threats" to the known offenders about reporting 'criminal activity' after it has occurred? Imagine a cop saying to a bank robber, "if you don't put the money back in the vault I will report you to CIB". Is not the cop an accessory after the offence, and if the cop knew about it prior to the offence, is he not a conspirator or party to the offence, and in attempting to get the bank robber to return the money but not

face charges, is not the cop perverting the course of justice? It beggars belief what Perpetual Trust Limited executives thought was "legal activity".

856.21 But of course they did not think any of the activity was legal did they? They were conspirators that had gone along for what they thought was to be a 'controlled ride', when suddenly their fellow conspirators wanted to do what they always had which was to push the boat out into still deeper water where, if it sank, and it was going to sink, no one could swim to shore. At paragraph 10 **"BOMBER" LANCASTER** informs that he is aware that an injection of capital was made by 'someone' in order to buy shares and that LDC Finance Limited directors said that this injection corrected their balance sheet as at September 2006. But as we know the $1,500,000.00 was not "injected" as capital as alleged by Mr **LANCASTER**, but was in fact a "paper loan" by LDC Finance Limited to F and I in order for F and I to buy 1,500,000 worthless LDC Finance Limited shares, and which loan was secured against $1,500,000 worth of F and I stakeholders subscriptions which in turn were voidable irregular allotments. Thus Mr **LANCASTER** would have known that the deal was a load of "smoke and mirrors" misleading nonsense and this is why he did not explain the exact nature of the transaction in case the letter got into the wrong hands.

856.22 Mr **LANCASTER** knew that the LDC Finance Limited directors did not amend the "prospectus" by annexing an explanation (by way of an amendment) of the significant change in a material particular as required by section 34(1) of the Securities Act 1978 before continuing to distribute the misleading September 2006 prospectus, or stopped giving out the misleading prospectus as required by section 34(b) of the Act nor does it appear that the trustee demanded that they do so. In fact at paragraph 11 of his "draft" letter Mr **LANCASTE**R states that he believes that this "injection of capital" did not right the position at all (how could it have done when LDC Finance Limited needed 10 or more times that amount), and that at paragraphs 12 through to 14 Mr **LANCASTER** states that the debt securities between 15 February and 26 April (voidable period) amounted to $3,166,971.00. Now what is perplexing to the writer (the writer has raised it previously) is that

how did Mr **NOONE** get to the bottom of how the Helli-logging deals and no doubt other deals were bad as Sherwin Chan and Walshe's "audited" reports proclaimed everything was 'sweet'. The writer submits that the LDC Finance Limited directors "came clean" after pressure was exerted by Perpetual Trust Limited after Mr **GLASS** (Mr **STYANTS** predecessor) left and Mr **STYANT** was made fully aware of the disclosure of the emails sent to Mr **GLASS** from LDC Finance Limited. An example is the following reported at paragraph 379.9(25) and 379.9(26) of this report; (writers emphasis);

> *(25)* ***On 11 August 2006****, John Jannetto sent an email to John Glass, David Miller and Mark Russell attaching a signed copy of the F&I funding agreement* ***and noting potential bad debts from Halifax of $6,932,031.00.***
>
> *(26)* ***On 26 September 2006, David Miller sent an email to John Glass noting amongst other things:***
>
> *"****With the conclusion of Halifax arrangements, of which you have been fully informed and approved of****, the interest on the SC Management Limited's loan account (formerly Halifax) is to be restricted to actual interest recoveries.* ***The reason for this is that Halifax loans were at high interest rates and also many were in arrears incurring very high penalty rates.*** *Recoverability of interest is therefore questionable and LDC did not want to account for interest until actual recovery is known. To do so could over state LDC profits..."*

856.23 These emails clearly disclose that Mr **GLASS** of Perpetual Trust Limited knew that the LDC Finance Limited prospectus of September 2006 was in the words of Justice Mahon "a litany of lies". Of course Mr **LANCASTER** did not know that the writers' investigation would uncover those secret emails between the conspirators. Therefore it follows that Mr **LANCASTER** was intent on misleading the Registrar of Companies about the period of voidability only being from 15 February 2007 to April 26 2007. The reader will remember the letters of Mr **FORDS** barrister Mr **TAKARANGI** that were forwarded by email to Mr **MILLER** just days before the registration of the LDC Finance Limited prospectus in September

2006 and that Mr **FORD** detailed what occurred at paragraphs 472.43 to 472.47 of this report;

I also note that the annexed document marked "D" is an email dated 18 September 2006 from Mr David MILLER to the receiver of Heli-logging Limited Mr John WHITTFIELD which attaches a letter dated 8 September 2006 sent by Heli-logging groups lawyer Mr Graham TAKARANGI to the Inland Revenue Department about the absolute insolvency "by a wide margin" of all of the companies in the Heli-logging group. I am aware of that letter and the Inland Revenue's application to wind Heli-logging Limited up in the High Court.

Of importance to me as a director of Heli-logging Holdings Limited and other Heli-logging group companies the letter advises that the group is absolutely insolvent by a significant margin and that Mr MILLER was advancing monies to himself and his associated companies through my companies loan accounts without my permission. *Mr* ***TAKARANGI*** *advised the Inland Revenue of the following un-survivable position.*

"The result is that Heli-logging Limited have no operating licence and the costs they have incurred have caused the company to be insolvent by a very wide margin…..
Heli-logging Holdings Ltd, due to the lack of value in unregistered helicopters, is also insolvent by a wide margin*"*

In fact Mr MILLER knew that the LDC and Halifax book of $10m or more was at a complete loss because he had transferred the first ranking debentures to Commercial Factors Limited and that Commercial Factors Limited were owed nearly $2m with helicopter assets of only about $600k. *As it was I was aware of an agreement between* ***MILLER*** *and Terry* ***HAYDEN*** *of Commercial Factors Limited to sell the Helicopters for $600K as at 31 March 2006, if they were not certified which they were not.*

Mr MILLER and the other directors of LDC Finance Limited knew that the position of LDC Finance Limited, Halifax Finance Limited, and Heli-logging group were un-survivable and in fact had known of this since 2005. *I had kept pursuing getting the Wessexes certified because Mr* ***MILLER*** *in theory could take my farm and everything I owned and had threatened to do exactly that when he use to come and stay on my property in his large motor home.*

The importance of all of this is that it would appear that Mr MILLER was emptying the Heli-logging loan accounts of LDC Finance Limited for probably many hundreds of thousands of dollars without advising me of this action, and if I been aware of it I would not have allowed. *I annexed as the document marked "****E****" a true copy of the Companies Office record for Heli-logging Holdings Limited (in receivership) showing that I have always been its sole director.*

856.24 There can be no doubt in the writers mind that it is a fact that Perpetual Trust Limited knew, or ought to have known, (as did the directors of LDC Finance Limited), as at the date that the September 2006 prospectus was registered that LDC Finance Limited was "on fire" and that only a miracle could save

her from being consumed by the inferno within the belly of her books. The only thing that could possibly save her from an immediate collapse was another injection of $4m from F and I and all of the conspirators set about "organizing" this, and succeeded as at March 2007, largely due to the threats and inducements brought to their enterprise by Mr **NOONE** of Pricewaterhousecoopers.

856.25 It is the writers belief that the trustee whined at the directors of LDC Finance Limited "kind of on the record" when the writer believes Perpetual Trust Limited knew the days were numbered and massive losses were about to be discovered unless they acted to hide the losses and not act against the directors of LDC Finance Limited. The only action that would suit this selected course would be receivership pursuant to Perpetual Trust Limited's debenture which would mean that they remained in effective control and that there would be no independent inquiry or the ability for the convening of a creditors or stakeholders committee of management as would be the case under the Companies Act 1993 for a Liquidator. But first they had to gain the upper hand, and by divulging that they were prepared to offer the LDC Finance Limited directors up as fodder to the stakeholders, they thought the directors would come into line. The losses that the Trustee had suspected had been present probably for years, but hidden by the directors of LDC Finance Limited, were an unequivocal breach of section 34 of the Securities Act 1978 provides; (emphasis that of the writers);

34 Restrictions on distribution of prospectuses
(1) No registered prospectus shall be distributed by or on behalf of an issuer,—
(a) After it has been amended unless all the amendments have been incorporated in, or attached by way of memorandum to, every copy of the registered prospectus that is so distributed; *or*
(b) <u>If it is false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances</u> (whether or not it became so misleading as a result of a change in circumstances occurring after the date of the prospectus).

856.26 Mr **LANCASTER** would have also been aware that subsection 33(1)(c) of the Securities Act 1978 was thrown to the wind by the LDC Finance

directors. This section provides that no security shall be offered to the public for subscription by an issuer unless the offer is made in, or accompanied by a registered prospectus that complies with the Security Act 1978 and the Securities Regulations 1983. Clearly the 2006 and 2007 prospectuses were grossly (criminally) misleading, as was the certificate of extension, and the issuer LDC Finance Limited was effectively "out of control" in charge of collecting and allotting millions and millions of dollars of stakeholders money, and its Trustee, Perpetual Trust Limited, was incapable, or moreover not desirous, to wrest control pursuant to the powerful provisions it had at its disposal contained in the Securities Act 1978, or otherwise available at law.

856.27 It must be asked whether the directors were continuing to certify the bad debt provisioning at $100K in the time between January-February 2007 and April 2007, as it related to monthly certifications required pursuant to Clause 4 of Schedule 5 of the Securities Regulations 1983; refer paragraph 379.5 and 379.6 of this report and were certifying the bad debts at only around the zero mark after the $4m had been put in by F and I after the March 2007 deal was completed. If so, Perpetual Trust Limited was complicit with this fraudulent statement, and is caught as being likely liable to the LDC Finance stakeholders losses. This would explain why **"BOMBER"** and "**TYRANT"** would feel the need **not** to go to the stakeholders informing them that all was lost. In this ilk the draft letter dated 31 July 2007 to the LDC Finance Directors from Mr **LANCASTER** annexing the draft letter to the Registrar of Companies found at paragraph 856.2 of this report "informs and threatens";

> *"1. We refer to our ongoing discussions with you concerning certain breaches by LDC Finance Limited of the Securities Act 1978 and the Debenture Stock Trust Deed.*
>
> *2.* ***It is clear from our last meeting that we have reached an impasse, not only as to whether or not the breaches occurred but also as to the way forward.***
>
> *3.* ***In the absence of a material change to LDC's approach to this matter, it appears that we now have no alternative but to notify the***

Registrar of Companies pursuant to section 11 of the Act is enclosed for your information.

4. ***This letter is notification to you of our intended action and is provided pursuant to section 12 of the Act.***

5. *Please feel free to telephone myself or Michael Styant if you would like to discuss the outstanding matters further"*

856.28 Sections 11 and 12 of the Corporations (Investigation and Management) Act 1989 materially provide (writers emphasis);

" Disclosure of information to Registrar by trustees or statutory supervisors

(1) ***Every person who holds, or at any time has held, office under the Securities Act 1978*** *or the Retirement Villages Act 2003 as a trustee or statutory supervisor for the holders of any securities issued by a corporation* ***shall disclose to the Registrar information relating to the affairs of that corporation obtained in the course of holding that office if, in the opinion of that person,—***

(a) ***The corporation is insolvent or is likely to become insolvent or is in serious financial difficulties; or***

(b) ***The corporation has breached, or is likely to breach, in a significant respect****,—*

(i) The terms of the trust deed or deed of participation; or

(ii) The terms of the offer of the securities; or

(c) ***The disclosure of the information is likely to assist, or be relevant to, the exercise of powers under this Act****.*

Trustee or statutory supervisor to inform corporation of intention to disclose

(1) Every trustee or statutory supervisor shall, before disclosing any information to the Registrar under section 11 of this Act, ***take reasonable steps to inform the corporation of the intention to disclose information and the nature of that information.***

856.29 Importantly sections 11 and 12 of the Corporations (Investigation and Management) Act 1989 require a trustee company such as Perpetual Trust Limited to act in good faith and section 15 of the act provides for a 'safe haven' for trustees that act in accordance with the principles of timely full disclosure of problems; (writers emphasis);

" Protection of trustees, statutory supervisors, and auditors

*(1) **No civil, criminal**, or disciplinary **proceedings shall lie against any trustee**, statutory supervisor, or auditor **arising from the disclosure in good faith of information to the Registrar pursuant to section 11 or section 13 of this Act**.*
(2) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any trustee, statutory supervisor, or auditor shall make any order against, or do any act in relation to, that person in respect of the fact of such disclosure.
***(3) No information received by the Registrar pursuant to section 11 or section 13 of this Act shall be admissible as evidence in any proceedings against the trustee, statutory supervisor, or auditor concerned**.*
***(4) Nothing in subsection (3) of this section shall limit the admissibility of any information obtained in any other way**.*

856.30 It is clear that with Perpetual Trust Limited's Head of Corporate Trust Mr **LANCASTER** making these serious allegations that they would be in "good faith", but there is a serious omission to detail all of the facts. It is probable that Mr **LANCASTER** and Mr **STYANT** thought they were being bright in detailing their position to the Registrar of Companies feeling that in invoking their "disclosure" under section 11 of the Companies (Investigation and Management) Act 1989 they would also invoke the full protection of section 15 that no civil or criminal proceeding could be brought against them. It is to be said that the draft letter also indicates the likely insolvency of LDC Finance Limited pursuant to 11(a) being that "the corporation is insolvent or is likely to become insolvent or is in serious financial difficulties". Unfortunately for "**BOMBER**" and "**TYRANT**" their disclosure in reality was never made in "good faith" as required by the Act, and additionally all of the information in this report was not obtained pursuant to any disclosure to the Registrar of Companies pursuant to sections 11 and 12 of the Corporations (Investigations and Management) Act 1989 and so subsection (4) of section 15 applies meaning that prosecutions of civil and criminal claims can be made. The second effort by Messrs **LANCASTER** and **STYANT** clearly indicates their involvement in the conspiracy to continue to defraud the LDC Finance Limtied and F and I stakeholders. Firstly the letter to the LDC Finance Limited directors aptly dated 13 August 2007 (page 1678 of the annexed dossier) deletes paragraph 2 and half of paragraph 3 of the 'draft' letter of 31 July 2007 (found at paragraph 848.23 of this report). The omitted material is;

2. ***<u>It is clear from our last meeting</u> that we have reached an impasse, <u>not only as to whether or not the breaches occurred</u> but also as to the way forward.***

3. ***<u>In the absence of a material change to LDC's approach to this matter</u>, it appears that we now have no alternative but to notify the Registrar of Companies***

856.31 Following meetings between Perpetual Trust Limited and LDC Finance Limited "kingpin" directors Messrs **MILLER** and **JANNETTO** the 'draft' letter of Perpetual Trust Limited dated 31 July 2007 to the Registrar of Companies was dramatically changed in important areas which would indicate that "**BOMBER**" and "**TYRANT"** had got their way to a certain extent, but had not, as the wrtier believes, had the voidable allotments amounting to $3.166m put aside as required, and then paid back to the affected stakeholders. The final letter of 13 August 2007 sent to the Registrar of Companies by Messrs **LANCASTER** and **STYANT** made these important changes starting at paragraph 12 of their joint letter to the Registrar of Companies;

12. ***Perpetual takes the view that all debts securities allotted by LDC between 15 February (being the first opportunity for the directors to become aware of misleading aspects of the prospectus and 26 April 2007*** *(being the day before the registration of the new prospectus) (voidability Period) are voidable irregular allotments pursuant to section 37A(1)(b) of the Securities Act.* ***LDC has indicated to Perpetual that in its view the voidability period is bewteen 15 February and 22 March 2007****.*

13. LDC advises that the debt securities issued during Perpetuals Voidability period amounted to $3,166,971.

14. ***The directors of LDC have recently submitted to Perpetual that in the interests of LDC and its depositors, no section 37A mail out should be made. <u>Perpetual has been advised that this decision has arisen from concerns of the LDC depositors about the possibility of any such mail out triggering a run on LDC's deposits</u>****, especially given the delicate market sentiment of investors in the period immeditely following the recent Bridgecorp collapse.*

15. <u>Perpetual is sympathetic to this view of LDC's directors</u>.

16. Perpetual considers for the following reasons that it is obliged to provide this letter pursuant to Section 11;

(a) On the basis that the view expressed in the PWC report about LDC'S doubtful debts was correct, LDC breached the total liabilities limitation at clause 8.1b of its Debt Securities Trust Deed, in permitting its total liabiltities to exceed 90% of its total tangible assets. ***Perpetual notes however, that this breach ceased upon the introduction of the additional equity referred to above****.*

(b) The issue of debt securities while in breach of the Trust Deed or in breach of any provisions of the Securities Act at clause 8.4(j) of the Trust Deed. ***Namely, LDC issued debt securities during the voidability period when in breach of sections 34(1)(b), 37A2 and 39 of the Securties Act****.*

General

17. ***In all the circumstances, Perpetual considers, on the basis of inforamtion provided to it by LDC, that****,*

(a) ***LDC and its directors took prompt action to counteract the negative equity consequences of the views expressed in the PWC report****;*

(b) ***LDC and its directors are working diligently and effectively to recover the debts identified in the PWC report*** *as being doubtful; and;*

(c) LDC's capital and liquidity position is satisfactory.

18. ***Perpetual wishes to make it clear that the matters it is reporting are historic and the Company has now remedied the breaches outlined above****. Perpetual is satisfied that the Company is in compliance with the terms of the Trust Deed"*

PT'S CLAIMS THAT LDC COMPLIANT AND ALL MATTERS HISTORIC (what codswollop)

856.32 What is glaringly obvious about this load of codswollop is that Perpetual Trust Limited was aware that all of the "funds" injected by F and I into LDC Finance Limited to buy shares in LDC Finance Limited were funds that could not have been legally transferred because they were not F and I's to

transfer because they were void irregular allotments pursuant to section 37 of the Securities Act 1978.

856.33 It was also known that the LDC Finance Limited shares were worthless and that this lack of any value was certainly misrepresented to Messrs **SCHOLFIELD** and **HARDING** and therefore there was a breach of a fiduciary duty between the LDC Finance Limited directors and Messrs **SCHOLFIELD** and **HARDING**; especially when **SCHOLFIELD** and **HARDING** were already substantial shareholders when the second deal of $4m for 4,000,000 shares was struck. Therefore the deal was manifestly unfair and otherwise fraudulent, and no valuable consideration was exchanged and LDC Finance Limited was unjustly enriched.

856.34 It was known by LDC Finance Limiteds directors that the financial position of LDC Finance was irrecoverable since probably 2004 prior to it becoming an issuer and Mr **NOONE** had idnciated that he believed that the directors would have known about the companys position at any given time and this is certainly established as being the case in this report. It follows that they misprepresented this position to Messrs **SCHOLFIELD** and **HARDING** when they had a duty to disclose this information.

856.35 It was known at this time that the CBH Limited shares had not been transferred as required in the middle of 2006 and in March 2007, and had not even been transferred as stipulated in the prospectus, so therefore it followed this voided the deal with F and I over all of LDC Finance Limited share purchases irrelvant of all of the other matters. It must be remembered that Perpetual Trust Limited stated that it had considerable input into the design of the April 2007 prospectus inclusive of the statement that purposefully misled the reader as to the 'status' of F and I finance being a "privately funded Nelson based finance partnership" (see paragraph 455 to 458 of this report) for the purpose of disguising the fact that the funds being injected into LDC Finance Limited were voidable iregular allotments and thus were a contingent liability rather than a naked unconditional injection of funds per

se to right the balance sheet. Everyone also knew that this injection was never going to be enough in any event.

856.36 **"BOMBER"** and **"TYRANT"** knew that all of the above created further liabilities for LDC Finance Limited rather than "satisfied the terms of the Trust Deed". But they knew that the 'end was very nigh' and in fact the end came only 22 days later on 4 September 2007. But the reader must understand that receiverships are normally 'looked at at least two weeks earlier" to the event happening and that the original draft letter to the Registrar of Companies was clearly indicting that LDC Finance Limited was likely insolvent. It is submitted by the writer therefore that the content of Messrs **LANCASTER** and **STYANTS** letter of 13 August 2007 was grossly misleading to the Registrar of Companies. One must wonder how it could have been accepted by Perpetual Trust Limited that it could make the statements knowing them to be untrue;

LDC and its directors took prompt action to counteract the negative equity consequences of the views expressed in the PWC report;

LDC and its directors are working diligently and effectively to recover the debts identified in the PWC report *as being doubtful; and;*

LDC's capital and liquidity position is satisfactory.

856.37 The writer must say that Perpetual Trust Limited has not at any stage indicated publicly that it believed that LDC Finance Limited's auditors had not performed, or indeed that the directors had not complied with the salient provisions of the Financial Reporting Act 1993, the Companies Act 1993, or indeed the Securities Act 1978. This lack of apparent complaint does **not** serve Perpetual Trust Limited well for the following obvious reasons. Perpetual Trust Limited Senior Executives are lying to the LDC Finance Limited stakeholders and the media. The only reason one tells a lie of this magnitude is because it would not serve your interests to tell the truth. The current position is contrary to paragraphs 19, 20 and 21 of **LANCASTERS** draft letter to the Registrar of Companies which states that LDC Finance Limited directors do not concede at all that the September 2006 prospectus

was misleading and that this attitude may force the Trustee to write to the affected investors directly. This threat of writing to the affected investors was the 'ace card" as Mr **LANCASTER** knew that this would significantly impact on the accountancy firm of Carren Miller and the "reputations" of the LDC Finance Limited directors. Mr **MIRFEN**, the LDC Finance Limited Manager has stated to the writer that the directors got into this trouble trying to protect their reputations.

856.38. For Perpetual Trust Limited to assert that they cannot conclude when the misleading nature of the reporting occurred, they would have to state that the accounts were in such a mess that this simple exercise could not have been carried out and that would then prove that the directors of LDC Finance Limited were in significant breach of sections 189, 190, and 194 of the Companies Act 1993, (requirement to keep accurate and discernable accounts) and if placed into liquidation with the same finding as to a breach, would be personally liable for the losses incurred pursuant to section 300 of the Companies Act 1993.

856.39 It would also mean that the trustee should act without hesitation to close the shop to protect the investors from further mismanagement. The reason for the statement by Mr **LANCASTER** is simply to protect Perpetual Trust Limited from recourse from the stakeholders. To admit that it was obvious that the directors were in breach since becoming an issuer would be to disclose a serious negligence of the trustee sufficient to constitute a cause of action by the LDC Finance Limited stakeholders against the trustee. See also clause 9.5(e) of the Trust deed and s62 of the Securities Act 1978 dealt with respectively at paragraph 379.12 and 379.13 of this report.

856.40 The writer has already dealt with this matter as it related to Mr **NOONES** and Mr **HOLLIS'S** involvement with the company in March 2007, and after receivership respectively at paragraphs 332 to 339 of this report. Equally LDC Finance Limited, if its position could not be quickly evaluated would be in significant breach of section 53(1) of the Securities Act 1978 which has also been dealt with by the writer as at paragraph 379.35 of this report

but the writer will refer you to specifically subsections (1)(a), (c), (d), and (e), and (3)(b) in that the directors had not kept the records in such a way that the Trustee or any other permitted person could *"at not much more than a glance"* get to understand where the company was at relating to equity/debt ratios.

53.Every issuer to keep proper accounting records
(1) Every issuer of securities offered to the public (other than securities that have been redeemed) ***shall ensure that there are kept at all times accounting records that*** *–*
(a) Correctly record and explain the transactions *–*
(i) In the case of an issuer of equity securities, debt securities, or life insurance policies of the issuer;
(*b)Will at any time enable the financial position of the issuer or scheme, as the case may be, to be determined with reasonable accuracy; and*
(c)Will enable the issuer to ensure that the financial statements *of the issuer or the scheme, as the case may be,* ***comply with the Financial Reporting Act 1993 and any applicable regulations under this Act; and***
(d)Will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited

(3) Without limiting subsection (1) of this section*, accounting records kept under that subsection shall contain, in respect of the issuer or scheme concerned –*
(a) Entries of money received and spent each day and the matters to which those entries relate:
(b) A record of the assets and liabilities of the issuer or scheme

856.41 Equally there has been no allegation that section 51 (Issuers to keep registers of securities) of the Securities Act 1978 had not been complied with. As you will be well aware of by now, Mr **NOONE** apparently recognized the massive hole of basically $9m to $10m straight away when he wrote to the LDC Finance Limited directors as of 8 March 2007 (**NOONE** report) and suggested that they basically throw away the Heli-logging Holdings debt security, as it was worthless. As we now know that amount was probably a lot larger than the $9 to $10m, because a large number of the other deals were obviously rotten.

856.42 It must follow then that LDC Finance Limited's books disclosed the problems, or Mr **NOONE** was made aware of the problems not disclosed by the books by the directors, or Mr **NOONE** figured it out, even though the books were "falsified". Whatever the case, it really does not help Perpetual Trust Limited because the prospectuses and the monthly certificates did not disclose the problems. Additionally it would seem that the prospectus No 5 dated 27 April 2007 at Note 19 Restructuring (see paragraph 174 of this report and page 243 of the annexed dossier) had stated that the bad debt provisioning had arisen before LDC Finance became an issuer in 2004; (emphasis that of the writers)

primarily from the companies predecessors (LDC Investment Limited's) policy of lending to retail finance company's.

856.43 As already stated this statement clearly indicates that the bad debts arose prior to 2004 and not after LDC Finance Limited bought the book from LDC Investments Limited which was owned by mostly common directors. How then could the Trustee state that the voidable irregular allotments arose as at only 15 February 2007 when the April 2007 prospectus said that they arose in the book of LDC Investments Limited prior to LDC Finance Limited buying the book when it contemporaneously became an issuer. It would appear that Messrs **LANCASTER** and **STYANT** have been in such a hurry to get something out to the Registrar of Companies to protect their backsides that they have not realized that no matter what they did an in-depth investigation was going to prove them culpable for being knowledgeable of the defrauding of a large number of persons "on their watch". Of course their belief was that if Pricewaterhousecoopers took over as receivers, who was going to ask questions?

856.44 If the value of the sale of book was misrepresented by the common directors of LDC investments Limited and LDC Finance Limited then the LDC Finance Limited stakeholders have a clear cause of action against the common directors for the misrepresentation that was simply ongoing from that date forward till the present day. That cause of action then entwines

Perpetual Trust Limited, and Pricewaterhousecoopers, upon them becoming knowledgeable of this misrepresentation and doing nothing about it, or alternatively promoting the opposite.

856.45 It is impossible that the directors of LDC Finance Limited could have thought they could satisfy the solvency test as at March 2006 when they required the injection of $1.5m from F and I just months later from the "paper loan" from LDC Finance Limited to F and I to purchase worthless LDC Finance Limited Shares with security for the "paper loan" being voidable irregular allotments. Perpetual Trust Limited's executives must have been, or ought to have been, aware of this. Perpetual Trust Limited's executives must have also been aware that Messrs **SCHOLFIELD** and **HARDING** were being defrauded as were the F and I stakeholders. The must have been aware that the LDC Finance Limited stakeholders were being defrauded as well, and more so if their plan to defraud the F and I stakeholders unraveled as it has.

856.46 As already said because the security offered by F and I to LDC Finance Limited for the $1.5m loan to buy the worthless LDC Finance Limited shares were subscriptions and/or allotments obtained in breach of section 37 of the Securities Act 1978 and void pursuant to s37(4) and repayable to the subscribers pursuant to s37(5) and (6), then the directors would also have known that the security should have been treated as a 'contingent liability' pursuant to s108(5)(b) and an issue to take into account as to likelihood of that contingent liability occurring (being a demand that they be repaid to F and I stakeholders) pursuant to section (4)(4)(a) of the Companies Act 1993 as referred to in paragraph 267.26 above. Subsection (5)(b) of section 108 of the Companies Act stipulates;

(5) In applying the solvency test for the purposes of section 107(1)(e),---
(b) liabilities includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance under section 76 or section 107(1)(e).

856.47 The writer has not seen that the directors of LDC Finance Limited complied with section 76(4) of the Companies Act 1993 relating to the "paper loan" to F and I and such a certificate if given would have to provide specific detail as to how the loan "benefited the company" as the shares, the loan, and the security were absolutely worthless, and in fact, a not too bright scam.

What the Securities Commission could have done upon a complaint from Perpetual Trust Limited

856.48 At any time through out this period Perpetual Trust Limited's executives could have made a complaint direct to the Securities Commission who could have invoked its numerous powers 'to review activities on securities markets, and to comment on those activities to the appropriate body". Section 10(c) has seen this role as a function since the Acts inception. Section 10(caa) was added to the Act in the 1982 Amendment Act, in accompaniment to updates in the Securities Markets Act 1988. This review tool was tested when in 1980 the Commission inquired into a takeover under the Companies Amendment Act 1963 issuing summonses to natural persons to give evidence and supply documentation. The legal persons challenged the Commissions interpretation of section 10(c) contending that it empowered the Commission to matters of inquiry of a "industry kind", and not to individual offers. Quilliam J in New Zealand United Corporation Limited & Ors v Securities Commission (1982) 1 NZCLC 98,266) disagreed holding; (writers emphasis)

> ***The Commission is given the widest of powers and the purpose for that emerges clearly from a consideration of the Act as a whole****. It is to perform the dual functions of law reform agency and public watchdog. Its role is a constantly continuing one. Bearing this in mind the expression "keep under review" can only be given the widest interpretation.* ***It is axiomatic that in the context of general and continuing review there must inevitably be investigation****"*

856.49 In City Realties Limited v Securities Commission [1982] 1 NZLR 74 Court of Appeal judge Cooke J noted the Commissions liability for negligence which matter should be investigated in this case against both the

Commission and the Registrar of Companies. Following this decision it appears that the Commission can review any such individual case, whether or not it is undertaking an "industry wide" review.

856.50 Once a complaint had been made the Commission has numerous avenues to obtain evidence through the process of inspections and summons. Under section 69B of the Securities Act 1978 the Commission can consider any evidence it obtains, even though it may not be admissible in a Court of law. Under section 67 of the Securities Act 1978 the Commission can compel any person to produce for inspection an document kept by that person and to reproduce or assist in reproducing such document required pursuant to the demand. A "document" under the Act has a similar meaning to that found in the Companies Act 1993. The Commission has the power to seize computers and the like in order to copy information.

856.51 In relation to Mr **LANCASTERS** draft letters to the miscreant LDC Finance Limited directors and the Registrar of Companies concerning their criminal behaviour, section 67A of the Securities Act 1978 empowers the Commission to request or approve the Registrar of Companies or any other suitably trained or qualified person to undertake any of its powers contained in section 67. Apparently it is the Commissions practice to request the Registrar of Companies to undertake such work as would have been undertaken in this case, whilst the Commission looks into matters relating to the Securities Markets Act 1988. Obviously the relationship between the Registrar of Companies and the Commission is a close one and if Perpetual Trust had been doing their job they should have written to both the Commission and the Registrar of Companies outlining what had obviously occurred since LDC Finance Limited became an issuer in 2004. If they had done this, it would have been disastrous for their business because LDC Finance Limited was but one of twenty that were about to tip over.

856.52 Importantly, pursuant to section 59A of the Securities Act 1978 it is a serious offence to fail to produce any document pursuant to the Commissions request under section 67 with the penalty being a fine not

exceeding $300,000, and $10,000 per day the failure continues. Importantly evidence obtained during this process can be used in the criminal prosecution of offending pursuant to the provisions of the Act, the Securities Act, the Investment Advisors (disclosure) Act (and any other Acts in the first schedule). Under section 68B of the Securities Act 1978 any evidence obtained may be used, other than as evidence admissible in court, in the furtherance of detecting or prosecuting offending under any other Act. Section 69D of the Securities Act 1978 provides the Commission to issue summonses and if a person can be served, only 24 hours to reasonably appear. Apparently the Commission uses this power to obtain and secure documents at the outset of any investigation.

856.53 The rules of natural justice apply to the way in which the Commission must carry itself and otherwise "do business" but by inference other powers of the Commission, such as those to suspend investment statements and prospectuses, can be exercised without first giving any party an opportunity to be heard.

856.54 Importantly for the matter at hand either of Messrs **LANCASTER** or **STYANT** could have given evidence pursuant to a summons, and subject to section 69T of the Securities Act 1978 be required to give evidence even if that evidence incriminated them, with the safeguard of section 69U providing that the evidence so given could not be used in criminal proceedings against them, (except in a proceeding in respect of the falsity of the testimony). Of course they would not enjoy that immunity if they stated anything different to what the facts in this report clearly prove they were aware of, as they would be committing perjury. An offer of immunity could be put to them in order that it shortens the investigation and possibly trial process, if charges do result from the content of this report.

856.55 It would seem to the writer that it is now very clear that everyone, excepting Messrs **SCHOLFIELD** and **HARDING** knew the score as early as December 2006; that is to say that the LDC Finance Limited Directors, Perpetual Trust and Pricewaterhousecoopers all knew that LDC Finance

Limited had been operating insolvently since well before it became an issuer. It begs the question how the conspirators believed that committing further criminal acts against the F and I stakeholders and Messrs **SCHOLFIELD** and **HARDING** was going to save them. But then again if you look at what has occurred, but for the advent of this report, they may very well have gotten away with it. It also begs the question is such boldness as a result of these particular circumstances, or is it a result of many other similar escapades that have been successful?

856.56 The writer believes therefore the breach of misstatement or falsity provisions of the Act was not an error by the directors, but was an overt criminal act in breach of sections 58 [Criminal liability for misstatement in advertisement or registered prospectus], 59 [Criminal liability for offering, distributing, or allotting in contravention of this Act] of the Securities Act 1978, and sections 98A [Participation in organized criminal group], 240 [obtaining by deception or causing loss by deception], 243 [Money Laundering], 242 [False Statement by promoter, etc], 260 [False Accounting] of the Crimes Act 1961.

856.57 The writer has dealt with these provisions to some extent at paragraphs 353 to 365 of this report but will have to return to these matters again when summarizing in the **HARNETT** Précis.

Sherwin Chan and Walshe, dumb or dirty auditors?

856.58 But it must be asked what were the auditors Sherwin Chan and Walshe doing (auditors of LDC Finance Limited pursuant to section 53E of the Securities Act 1978)?; Sleeping, or complicit?

856.59 When the writer phoned Sherwin Chan and Walshe directly they were evasive and then rude hanging up on the writer after refusing to answer any specific questions. The auditor's response was hardly surprising given that they would have known about a substantial amount of the background

leading up to the April 2007 prospectus. More importantly what numbers were Sherwin Chan and Walshe being given by Messrs **MILLER**, **JANNETTO**, **ELLIOT,** and **HARDIMAN?** Obviously the wrong ones because the directors did not report any problems about the auditor "resigning" to the Trustee pursuant to their obligations under Schedule 5 Clause 8 of the Securities Regulations (refer paragraph 856.12 of this report) and the auditor did not report any problems pursuant to section 50 of the Securities Act 1978 which provides;

50 Duty of auditor to report to trustee or statutory supervisor

1) Whenever the auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) **furnishes to the issuer or its members or shareholders or the security holders any report, financial statements, certificate, or other document that is required by any Act or by any deed relating to the securities to be so furnished, the auditor shall forthwith send a copy to the trustee or statutory supervisor of the securities.**
(2) Whenever, in the performance of the auditor's duties, the auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) becomes aware of any matter that, in the auditor's opinion, is relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor of the securities, the auditor shall, within 7 working days of becoming aware of the matter, send---
(a) to the issuer, a report in writing on the matter; and
(b) to the trustee or statutory supervisor, as the case may be, a copy of that report.
3) The auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) shall from time to time, at the request of the trustee or statutory supervisor, furnish to the trustee or statutory supervisor such information or particulars relating to the issuer as are requested and are within the auditor's knowledge and are, in the auditor's opinion, relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor.
(4) Nothing in this section affects the duties or liability of a trustee or statutory supervisor.

856.60 It is also important at this point to remind the reader of section 62 [Liability of trustees and statutory supervisors] of the Securities Act 1978 which clearly lines up the Trustee for liability if he or she has not shown the prerequisite amount of integrity and "degree of care and diligence" (refer

paragraph 379.13 of this report). It is possibly that they were involved in the conspiracy and self-imposed silence creates a negative inference. What is interesting about the section immediately above is whether Pricewaterhousecoopers is deemed to be an 'auditor' of LDC Finance Limited. Further did Pricewaterhousecoopers furnish its "knowledge" to Sherwin Chan and Walshe, and if it did not why didn't it?. If it did furnish what it had discovered to Sherwin Chan and Walshe it would explain their reaction to the writers appropriate inquiries considering the writer was seeking answers as to how they had signed off on such a ludicrously misleading prospectus and set of accounts.

856.61 The writer personally believes that as the section does not refer to an 'auditor' in any specific reference to another section of the Act and the term is not otherwise defined under section 2 of the Securities Act 1978, and is not clarified in the Companies Act 1993, or the Financial Reporting Act 1993, that the Pricewaterhousecoopers staff are all caught under the provision meaning that they were "duty bound" to report all that they discovered to the trustee, and sub section (4) provides that nothing in the section regarding duties of auditors to report what they find to the trustee, shall "affect the duties and liabilities of a trustee" meaning that the trustee cannot hide behind the duties of an auditor.

856.62 The Trustee is like every other person and is subject to the provision of law. If aware of offending against the Securities Act 1978, or any such other Act relevant to his position as a New Zealand citizen, let alone a trustee, must report that offending. The level of proof only has to be the usual level in such matters. That level of proof is a prima facie case. In other words an allegation supported by some level of documentation or eye witness account such as an admission of wrongdoing, or activity which is clearly a wrongdoing and thus breach of law. An analogy would be where a witness saw a man he knew hit another man he knew over the head with an iron bar. The witness later heard on the news that the man hit over the head had died as a result of being hit with a blunt hard instrument. If he did not report what he had seen because he knew the man that hit the victim, he would be

guilty of being an accessory after the fact or otherwise perverting the course of justice. The seriousness of the offending would increase if the man communicated what he had seen to the offender and they had both agreed to keep silent.

856.63 It seems clear from the tone and content of the letters that both Messrs **LANCASTER** and **STYANT** knew that the letters would serve to intimidate Messrs **MILLER, JANNETTO, ELLIOT,** and **HARDIMAN** to come into line because they knew that these men would realize that an investigation by the Registrar of Companies would prove serious criminal offending. If this was not the case why write the letter?.

856.64 Additionally such a drastic step meant that Messrs **LANCASTER** and **STYANT** were fearful of what the LDC Finance Limited directors were capable of doing based on what they already knew they had done. All of these assumptions are pretty reasonable are they not?

856.65 Clearly Messrs **LANCASTER** and **STYANT**, on the advice from Mr **NOONE** of Pricewaterhousecoopers knew, without any reasonable doubt, that a prima facie case existed that the LDC Finance Limited directors had breached section 58 of the Securities Act countless times. The problem for Messrs **LANCASTER** and **STYANT** was that so had they when signing off the April 2007 prospectus albeit that they would be accessories after the fact or perverters of the course of justice, or conspirators; the list is endless. Section 58 of the Securities Act 1978 provides;

58 Criminal liability for misstatement in advertisement or registered prospectus
(1) Subject to subsection (2) of this section, where an advertisement that includes any untrue statement is distributed,—
(a) The issuer of the securities referred to in the advertisement, if an individual; or
(b) ***If the issuer of the securities is a body, every director thereof at the time the advertisement is distributed— commits an offence****.*
(2) No person shall be convicted of an offence under subsection (1) of this section if the person proves either that the statement was immaterial or that

he or she had reasonable grounds to believe, and did, up to the time of the distribution of the advertisement, believe that the statement was true.
(3) Subject to subsection (4) of this section, where a registered prospectus that includes an untrue statement is distributed, every person who signed the prospectus, or on whose behalf the registered prospectus was signed for the purposes of section 41(b) of this Act, commits an offence*.*
(4) No person shall be convicted of an offence under subsection (3) of this section if the person proves either that the statement was immaterial or that he or she had reasonable grounds to believe, and did, up to the time of the distribution of the prospectus, believe that the statement was true.
(5) Every person who commits an offence against this section is liable—
(a) on conviction on indictment to—
(i) imprisonment for a term not exceeding 5 years; or
(ii) a fine not exceeding $300,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued; or
(b) on summary conviction to—
(i) imprisonment for a term not exceeding 3 months; or
(ii) a fine not exceeding $300,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.

856.66 Clearly the "safe harbour" subsections (3) and (4) do not apply here. Clearly Perpetual Trust Limited as at 31 July 2007 are saying that they and Mr **NOONE** believe that the directors of LDC Finance Limited "likely" knew about the serious misstatement and falsity in the September 2006 prospectus and were now still "falsely" asserting a belief that they had not misled anyone and were otherwise not complying with repaying the subscribers as required by the Act. What is of interest to the writer is that the "draft" letter states unequivocally that the directors are required to repay the voidable allotments of $3.166m and that this liability will cause likely insolvency. Does it not follow that as this was not reported in the April 2007 prospectus that that prospectus was also materially misleading meaning that all monies taken in under that prospectus were voidable irregular allotments? Of course it does! Additionally where in the second letter that was actually sent to the Registrar of Companies dated 13 August 2007 does it state that the $3.166m has been repaid because the second letter does state at paragraph 16(b) that the directors had allotted the funds in that period in clear breach of sections 34(1) (b), 37A and 39 of the Securities Act 1978. Mr **LANCASTER** states;

Namely, LDC issued debt securities during the voidability period when in breach of sections 34(1)(b), 37A2(sic 37A) and 39 of the Securties Act

856.67 The writer can inform the letter of 13 August 2007 sent to the Registrar of Companies does not state that the voidable irregular allotments of $3.166m have been returned with interest to the affected stakeholders as required under the Securities Act 1978. What happened to the money that HAD TO BE RETURNED?. Well Mr **HOLLIS** reckoned at paragraph 334 of this report at 9 to 38 when speaking to the writer about poor Mr **FAWCETTS** lost dough that;

9.DN	***So that was voidable securities money was it?***
10.MH	***Yep***
11.DN	***So um as it was read in the report it was based on misrepresentations that were made in the prospectus?***
12.MH	***Umm no I don't believe it was misrepresentations made umm it was just at a time when the prospectus itself was potentially misleading***.
13.DN	*Yes*
14.MH	***And money invested - invested during that time could have could have had their money back and funds were held aside for that and most of those investors have had their funds returned to them.***
15.DN	*Rolly Fawcett.*
16.MH	***Every - every single investor that had an investment at that time or invested during that time.***
17.DN	*...that time… yeah*
18.MH	***Yep had their funds returned***.
19.DN	*Yeah Rolly Fawcett invested $112,000.00 two days before the company was liquidated sorry placed into receivership*
20.MH	*Right*
21.DN	*So he would fall under that banner wouldn't he?*
22.MH	***No - no the period of time was - I'm just trying to remember now - about the 17th of February I believe to the till early April 07.***
23.DN	***Right and was the prospectus repaired in some way or changed?***
24.MH	***Yes it was. Yeah a new prospectus was issued***.
25.DN	*Ok what if Mr Fawcett's position was that he read he read the the um prospectus that you're talking about and made his investment albeit at a later date based on that prospectus.*
26.MH	*Really well he probably should have looked at the latest prospectus.*
27.DN	*Yeah but what - that doesn't change change the change the matter does it, it - it was what he relied upon to make - to make his investment.*
28.MH	***Well you know all I can all I can say is that there would have been a new prospectus available at that time and he may - you know perhaps he could have looked at that one. The other point was that the funds were held aside by the company for the period to which the misleading prospectus - if that's what you want to call it-***
29.DN	*Yeah*
30.MH	*...was in the market so ah therefore you suggest that Mr Fawcett's funds weren't held aside in any event.*
31.DN	*Who would who would..*
32.MH	*...Even if he had relied on it..*
33.DN	***Who would have held those funds aside knowing that they were a misrepresentation?***

34.MH	***The company did they had it in a separate bank account.***
35.DN	***Surely - when did the directors know that that it was a misrepresentation?***
36.MH	***Umm ah I'm not sure ah after they became aware that the prospectus was mis- you know was incorrect ah then they had a period of time where they were working through correcting it, then they issued a corrected prospectus.***
37.DN	*Right and…*
38.MH	***and the period of time until - the period of time from when they became aware it was misleading until when it was corrected*** *…*

856.68 Is not Mr **HOLLIS** lying to the writer at 12 above that the September 2006 prospectus was not actually a misrepresention as such but was "potentially misleading". The writer did comment that Mr **HOLLIS** was not the sharpest tool in the shed. The prospectus was a so blatantly misleading by as much as probably $15m to $20m that this comment is insulting, but worse a purposeful deception of the writer.

856.69 Mr **HOLLIS** again misrepresents the position at 14 as to most of the the entitled investors getting their voidable irregular allotments back and that the funds were "held aside" by the directors of LDC Finance Limited. Mr **HOLLIS** must have known that the LDC Finance Limited directors and the grantor Perpetual Trust (who appointed Mr **HOLLIS** as receiver) had the 'scrap' as denoted by the draft and actual letter sent by Perpetual Trust Limted to the Registrar of Companies about the very issue of the directors not "putting money aside" and actually "alotting the funds" in serious contravention of the Securties Act 1978. So again we can say that Mr **HOLLIS** is a liar of material significance.

856.70 Importantly the dates that Mr **HOLLIS** says are the "voidable specified period" match the dates stated by Messrs **LANCASTER** and **STYANT** in both of their letters of 31 July and 13 August 2007. This means that there is $3.166m minimum inolved to be returned as voidable allotments so how does Mr **HOLLIS** get to $2.2m in toto.

856.71 According to receivers report number 3 only about $1.4m of voidable irregular allotments were returned to investors and this is clearly unlawful because there is no choice involved here. The Securities Act 1978 states that the stakeholders subscriptions are void and have no effect and that the funds

must be returned to the subscriber or stakholder involved along with interest within a two month period, and if not returned the directors become personally liable. Mr **HOLLIS** is not saying that he contacted all of $3.166m of stakeholders that have claims under s37A of the Securities Act 1978. But he is saying that only $1.4m of stakeholders took up the offer to get 100 cents in the dollar back immediately. As you will find out later Mr **HOLLIS** is even wrong about this figure as in his fourth report he changes this figure to $1.3m which is peculiar because if $1.4m had been paid out, how could it suddenly turn into $1.3m?

856.72 Interestingly Mr **HOLLIS** does not mention that the stakeholders are entitled to interest on their money as well, which again he must have been aware the affected stakeholders obtained automatically. Again Mr **HOLLIS'S** contentions that this matter is no longer extant is codswollop. The writer believes that Mr **HOLLIS** has probably been contacted by numerous stakeholders and he has made up 'some tripe' why they are not entitled to a refund, and only paid out when say contacted by a lawyer representing a stakeholder who has simply demanded Mr **HOLLIS** pay up.

856.73 By not refunding the money as required by law Mr **HOLLIS** is acting to defraud the stakeholders of an entitlement they would have received but for the duplicitious actions of Mr **HOLLIS** and his belligerent brethren at Pricewaterhousecoopers. Mr **HOLLIS** perpetrates this fraud in the second receivers report when he states at page 141-142 of the anenxed dossier; (writers emphasis);

> ***The funds were set aside by the directors of LDC because of concerns regarding information in prospectus No 4 dated 19 September 2006****. Deposits made during this specified period were made on the basis of information contained in that prospectus*
>
> *The issue with the prospectus arose because the financial information in the prospectus failed to provide adequate provisioning for certain problem loans made by LDC.* ***We have now obtained further information and taken legal advice and as a result it has been determined that the investors who deposited money during the specified period must be given the opportunity for a full refund of those deposits.***

Investors who made deposits during the specified period have now received notification regarding this matter and have an opportunity to request that those deposits be returned. We are currently working through returning those deposits where investors have requested repayment from the funds that were held aside.

856.74 Messrs **LANCASTER** and **STYANT** must know this statement is a blatant misinformation by Mr **HOLLIS** as to the proper entitlements of the concerned stakeholders and surely they would receive a copy of the Receivers reports, and probably have some ability to have input in to their content. Firstly Mr **HOLLIS** and Messrs **LANCASTER** and **STYANT** would know LDC Finance Limited directors had no concerns or compunction about not returning the voidable irregular allotments because they alotted them after being told of the problem (not that they did not know about it before hand) and Mr **HOLLIS** would have known this. Secondly there was no legal advice taken because Mr **HOLLIS** already knew the simple law and also knew the facts. Thirdly there is no such law that states that the stakeholders "must be given the opportunity for a full refund of the deposits". The law is that they have to be identified (which they were by Perpetual Trust Limited executives and LDC Finance Limited directors) and returned. The law is that there is a requirement that the deposits be repaid if the stakeholders "ought to have known" within six months of their funds being allotted that the prospectus was misleading or within twelve months of when a certificate of security has been sent to the stakeholder whichever is the lesser. As both Messrs **HOLLIS** and **STYANT** knew what had occurred as at 15 Februray 2007 and probably as at late December 2006, then the monies once identified must be returned as soon as possible. Which stakeholder, if made aware of the level of fraud involved, would not want their money out pronto?. Therefore it is a simple mail out of cheques not the alleged "opportunity to request that the deposits be returned" or a matter of "working through those deposits where investors have requested repayment" as suggested by Mr **HOLLIS**. Mr **HOLLIS** is "conditioning" stakeholders to have to explain to him exactly what they thought was the case, and why they thought they should get their money back, rather than saying to them

that they have a right to the money back because he knows that all of the prospectuses registered by LDC Finance Limited were grossly fraudulent.

856.75 Mr **HOLLIS** is, in the writers opinion, as low as Mr **MILLER**, if not lower. Mr **HOLLIS** is defrauding all those entitled (as of right) to a return of their deposits plus interest. Mr **HOLLIS** cannot even have the defence that he is a businessman that inadvertantly got into trouble, but has wrongly decided to attempt to trade on to the deteriment of creditors. Mr **HOLLIS** has a simple job to do and that is to follow the law as stipulated in the Acts that impact on the business he is managing as a receiver and to act in a commercially appropriate manner in realising the remaining assets. As Mr **HOLLIS** is also a receiver then he must act in a manner that sees him realise his duties under the Receiverships Act 1993 and the Companies Act 1993. Such duties would include acting in good faith and in a transparent manner towards all stakeholders.

856.76 This task should have been completed with absolutely clean hands in a wholly transparent manner which means that none of this deceit needed to take place. The writer submits that the deceit, or lack of transparency, needs to be explained, and where it cannot be reasonably explained, the negative inference should be drawn against Pricewaterhousecoopers and Perpetual Trust Limited.

856.77 The writer has some news for Mr **HOLLIS** that should make him lay awake in bed and that is that no court will accept that an entitled person properly informed of his or her rights to a refund of a voidable irregular allotment would decline such a magnificent refund under any circumstances.

856.78 Further no court will accept that Mr **HOLLIS'S** actions in <u>not</u> refunding the money is anything but a fraudulent omission. It is also **<u>not</u>** important or essential that a motive is established to make such an omission criminal because a loss has been suffered, or likely suffered by the victim, not that even a loss is required, but that a right due to the victim has not been given to the victim.

856.79 In Scott v Metropolitan Police Commissioner AC (1975) 819 at page 820 at F (where the Court Quotes Welham v Director of Public Prosecutions [1961] AC 103 HL), it is important to note that the Court held the following principles apply to a person defrauding another, or others, (as part of a conspiracy) of something that could be tangible or somewhat "intangible" such as a right the victim 'may' have;

"The object of a conspiracy must not be confused with the means by which it it is intended to be carried out. (Post, p839B). ***"To defraud" ordinarily means to deprive a person dishonestly of something which is his or of something to which <u>he is or would, or might</u>, but for the perpetration of the fraud, <u>be entitled</u>*** *(Post, p.839 B-C). Semble. A conspiracy to defraud my exist even though its object was not to secure a financial advantage by inflicting an economic loss on the person at whom the conspiracy was directed"*

856.80 It is therefore submitted that the 'conspiracy' to defraud the persons entitled to $3.166m of voidable irregular allotments can be proved to involve LDC Finance Limited directors, Messrs **LANCASTER** and **STYANT** Perpetual Trust Limited, and Mr **HOLLIS** of Pricewaterhousecoopers because all are aware that at least $3.166m of LDC Finance Limited stakeholders are deemed as entitled to a full refund by the "draft" letter sent to the LDC Finance Limited directors by Mr **LANCASTER** dated 31 July 2007 and actual letter sent by Messrs **LANCASTER** and **STYANT** to the Registrar of Companies dated 13 August 2007.

856.81 Again, in line with the writers submissions that the conspirators "misinformed" the LDC Finance Limited stakeholders as to their "absolute rights" to a full refund if they had relied on the September 2006 prospectus, which stakeholders during that period must have done because you cannot invest or subscribe without being given a prospectus (and what else would they have relied upon), **BUCKLEY** J in London and Globe Finance Corporation Ltd [1903] 1 Ch. 728, 732 similarly found; (writers emphasis);

*"**To deceive is, I apprehend, to induce a man to believe a thing is true which is false**, and which the person practising the deceit knows or believes*

to be false. To defraud is to deprive by deceit. It is by deceit to induce a man to act to his injury. ***More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."***

856.82 It is also submitted that from the contents of this report it can be seen that Perpetual Trust Limited and Pricewaterhousecoopers have been involved in a conspiracy to "hide" or "omit to report" **THE FACT**, or in their jargon "the liklihood" that LDC Finance Limited has been insolvent since its inception and that every single monthly declaration by the directors, every prospectus, every investment statement and advertisement, every quarterly report, and every certificate pursuant to section s37A(1A) of the Securities Act 1978 has been grossly misleading in every important material way.

856.83 The writer believes he knows why Mr **HOLLIS** has misled stakeholders. Imagine if Mr **HOLLIS** returned $3.166m plus accrued interest out of LDC Finance Limited cash. This would mean that the LDC Finance Limited contribution to the overall pool now collected would be, (probably), zero. Get the picture. This would have a number of impacts. Firstly when it is established that the money taken from F and I pursuant to the share deals has to be returned, and the monies invested by F and I in Halifax Finance Limited, after it is proven that LDC Finance Limited directors knew both LDC Finance Limited, and Halifax Finance Limited, were hopelsessly insolvent, has to be returned, how much is left?. Probably $2 to $3m as an absolute maximum, likely including the value of the CBH Limited shares. Arguably interest will be payable on all of the F and I void irregular alloments handed over to LDC Finance Limited on the basis that the LDC Fuinance Limited directors knew of the status before defrauding F and I of those void irregular allotments, but this course of action for interest is subject to the Court feeling that such an award is in line with the oppressive and dishonest conduct of those responsible, because the relief in statute lies against Messrs **SCHOLFIELD** and **HARDING** for interest under the Securities Act 1978.

856.84 Now taking the writers theory a bit further, imagine Mr **HOLLIS** giving back a further $1.8 to $2m voidable irregular allotments to certain investors who may or may not be secured first ranking investors. As a result of these payments there would be likely absolutely nothing left to cover the first debenture of $12m.

856.85 It is submitted that if Mr **HOLLIS** had done his job, he would have found himself with no dosh to pay anyone, and that then the real questions would have started to get asked like;

- Where are all the missing millions" given the alleged status of funds after the "high level review" by Pricewaterhousecoopers and the financial prognosis found in the April 2007 prospectus?, and;

- How come Perpetual Trust Limited allowed the promotion of the September 2006 prospectus when it was aware that it was grossly misleading?; and;

- How come Perpetual Trust Limited and Pricewaterhousecoopers allowed the promotion of the April 2007 prospectus knowing that there was an omission to report the real position of the Helilogging and Halifax Finance Limited recoverability?, and;

- How come Perpetual Trust Limited and Pricewaterhousecoopers allowed the promotion of the April 2007 prospectus knowing that there was an omission to report the real position as to LDC Finance Limited being irrecoverably insolvent given that the **NOONE** plan was <u>not</u> put into place in toto and;

- How come Perpetual Trust Limited and Pricewaterhousecoopers allowed the promotion of reports of LDC Finance Limiteds "solvency" in the first receivers report when they must have been aware of all of the matters contained in this report?; such as, but not limited to;

- The CBH Limited shares not being transferred as agreed thus voiding the deals between F and I and LDC Finance Limited and further making a significant material misrepresentation in the April 2007 prospectus.

- The CBH Limited shares not belonging to the parties alleged thus voiding the deals between F and I and LDC Finance Limited and further making a significant material misrepresentation in the April 2007 prospectus

- The $5.5m F and I subscriptions transferred for worthless LDC Finance Limited shares not being legally able to be transferred because they were void irregular allotments pursuant to s37 of the Securities Act 1978 making for a significant material misrepresentation in the April 2007 prospectus.

- That Pricewaterhousecoopers had coerced F and I partners Messrs **SCHOLFIELD** and **HARDING** to pay $4m for 4,000,000 worthless LDC Finance Limited shares pursuant to a false inducement and a threat that was likely blackmail, making the deal an illegal contract.

- That all subscriptions from late 2004 onwards were voidable irregular allotments pursuant to s37A of the Securities Act 1978 and the worst misrepresentations in this regard were probably in the April 2007 prospectus.

- How come Perpetual Trust and Pricewaterhousecoopers reported that it was likely that the LDC Finance Limited stakeholders were going to get initally 100 cents in the dollar when they must have known that, if the truth were told and they acted appropriately, virtually zero was coming the LDC Finance Limited stakeholders

way unless litigation was taken against the LDC Finance Limited directors to repay all monies to the LDC Finance Limited stakeholders?

- How come the Pricewaterhousecoopers receivers had not reported the obvious offending to the authorities pursuant to section 28 of the Receiverships Act 1993 and otherwise pursuant to their obligations under the Crimes act 1961, or at law and taken action against the directors for compensation under the Securities Act 1978 and the Companies Act 1993?

856.86 If all of these significant material misreprentations were made known to all of the LDC Finance Limited stakeholders, it is a fact that their subscriptions would be deemed voidable irregular allotments and axiomatically every single stakeholder would be entitled to a full refund plus interest, and if the demand was made and not paid within the stipulated time, then the directors of LDC Finance Limited would be liable. The truth of the matter is that this is what the entire charade has been about. Protecting the people responsible for the losses from having to compensate the afflicted stakeholders and the plan was to make Messrs **SCHOLFIELD** and **HARDING** the fall guys. And by God it nearly worked.

856.87 At 34 of paragraph 856.67 of this report **Mr HOLLIS** is again misleading the writer as to the directors actions about operating a separate bank account where the directors had placed the "voidable deposits" when they became aware that the prospectus of Septemebr 2006 may be "potentially misleading".

What "BOMBER", "TYRANT" and the "DARK DEED PRINCES" should have done to bring the "BEAGLE BOYS" into line.

856.88 The writer submits that Perpetual Trust Limited panicked when it realised that LDC Finance Limited only had $3.6m in the bank in cash around the time that it placed it into receivership. They (Messrs **LANCASTER** and

STYANT) knew that the LDC Finance Limited had allotted funds in contravention of the requirement to hold them in a separate interest bearing trust account until they could be repaid to the affected stakeholders, because it simply could not operate without using those funds for "operational purposes". This was "fraudulent" activity because the subscriptions cannot be used in such a manner as they are destined to be applied directly against assets in line with the equity ratios contained in the Trust deed.

Its all tickity-boo

856.89 Clearly Messrs **LANCASTER** and **STYANT** knew that since they had effectively, (in the letter dated 13 August 2007), "underwritten" the directors undertakings that all was relatively "tickity-boo", (but whilst maintaining that $3.166m were voidable irregular allotments), they had to keep a very close eye on matters, especially as to the "cash" position, because they knew how impaired the LDC Finance Limited debt securities were (i.e very low or nil realisable value and income generation).

856.90 The writer submits that Mr **LANCASTER** probably requested a regular update of the financials from LDC Finance Limited as to money in the bank and as soon as there was enough to cover the $3.166m he struck. This would explain the three week wait between 13 August and 4 September 2007. The writer submits that it was likely that as at 31 July 2007 when Mr **LANCASTER** wrote the draft letter found at paragraph 856.2 of this report there was insufficient funds in the LDC Finance Limited accounts to cover the $3.166m of voidable regular allotments and Mr **LANCASTER** knew the writing was on the wall. Messrs **STYANT** and **LANCASTER** must have known that the directors of LDC Finance Limited had knowingly breached section 59 [Criminal liability for offering, distributing, or allotting in contravention of this Act]; (see paragraphs 327 and 678 of this report) in that the directors had allotted funds in breach of section 37A of the Securities Act 1978 when they should have kept them separate.

856.91 As at 13 August 2007 that position was likely getting better because more subscriptions were coming in such as the likes of Mr Rolly **FAWCETTS** $150K worth of deposits. As at 13 August 2007 Messrs **LANCASTER** and **STYANT** likely had a plan to write a less accurate and properly informative letter to the Registrar of Companies and in doing so lull the LDC Finance Limited directors into a belief that they would allow the matter to run on as they had done in the past.

856.92 But **"BOMBER" LANCASTERS** "strike" was far too late, and should have come in September 2006, if not sooner. The money that he grabbed was not the voidable allotments that had been taken between 15 February 2007 and 26 April 2007 as alleged by Mr **HOLLIS**, but other monies obtained pursuant to the misleading April 2007 prospectus. Money from the very last investing stakeholders, and that money still belongs to those very last stakeholders.

856.93 This is, in the writers opinion, a major problem for Mr **LANCASTER** because the monies used to repay the voidable allotments actually belonged to other stakeholders who invested their monies on the grossly misleading April 2007 prospectus.

856.94 Because Mr **LANCASTER** knew this to be true, he should have gone to the LDC Finance Limited directors for the repayments to the affected stakeholders because the LDC Finance Limited directors had allotted those voidable irregular subscriptions in contravention of the Securities Act 1978 to pay interest due to other stakeholders.

856.95 By probably May to June 2007 the LDC Finance Limited money "melt down" began to exponentially accelerate to the point of a fiscal viscera super nova that incinerated stakeholders funds in its red hot rapacious vortex that was in turn driven to this point by the need to place as much time between the registration of the April 2007 LDC Finance Limited prospectus and the admission by Perpetual Trust Limited to the existence of a bellicose "blackhole" in the midst of Nelsons retirees investments.

856.96 When instructing the Princes of Dark Deeds Pricewaterhousecoopers to strike placing LDC Finance Limited into receivership "**BOMBER**" and "**TYRANT**" then turned their now voracious appetites to sucking the life out of F and I. Messrs **SCHOLFIELD** and **HARDING** were ineffectual protection of their stakeholders funds due to succumbing to the previous but still live threats of Mr **NOONE** that if they did the right thing the wrong thing would happen to them, being a substantial prison term. As it turned out the "real" **NOONE** plan must have seemed to be going like "clock work" considering that Messrs **SCHOLFIELD** and **HARDING** must have soon realised that things could not have been worse for their stakeholders and that their reputations were gone and the only thing they had left was their freedom.

856.97 By the time that anyone cottoned on to what had actually gone on, the conspirators thought it would be too late, and even if someone could work half of what happened out, who was going to have the wherewithall and intestinal fortitude to make the allegations considering if they fell short of proof, they would suffer unspeakable consequences. Well those are the sort of threats that have come the writers way through other sources. Equally the writer has been informed by legal counsel for Perpetual Trust Limited, Mr Ben **RUSSELL**, partner of Lane Neave barrister and solicitors that he thought the writer was attempting to extort a settlement from Perpetual Trust Limited. His comment was that of somewhat inexperienced counsel considering what is at stake for his clients.

Robbing LDC Finance Limited stakeholders to save PERPETUAL Liability

856.98 Mr **LANCASTER** will know that it is not right for him to to simply feel that he can "dip" into the LDC Finance Limited stakeholders pot and "rob Peter to pay Paul" without accounting to the stakeholders how he could legally effect this. An analogy would be where a lawyers clerk stole money from a

clients monies in the law firms trust account, and then paid it back from other trust account deposits made by other persons.

856.99 If the money the law clerk paid back to the initial victim of the law clerks fraud from the deposits in the trust account made from the second victim could be clearly traced back to monies put into the trust account by the second victim, and used by the law cleark to repay the money defrauded from the first victim, then the monies would have to be returned by the initial victim of the fraud to the secondary victim of the fraud because the money was clearly not theirs. The reason for this is that the secondary victims money is still available to be returned, whereas the first victims money was defintely spent by the law clerk.

856.100 The problem for Perpetual Trust Limited and Mr **LANCASTER** is that it was known as at 15 February 2007 that the monies taken in after that date had to be kept aside and they did nothing meaningful to enforce this until they knew that they would be effectively acting like the law clerk in the anagolgy above.

856.101 Any recourse for the wrongful appropriation of the funds would lie against the law clerk and the lawyers firm in the analogy and the directors of LDC Finance in the subject case. In this case it is very clear that they had specific dates and thus specific deposits. The lie perpetrated by both Perpetual Trust Limited and Pricewaterhousecoopers about the directors immediately putting the money into a separate account was to cover not only the fact that the deposits were allotted, but equally to cover that the monies used to repay the voidable irregular allotments were not the monies concerned with that period of investments, but were likely the most recent deposits made by stakeholders (which they alleged were not voidable irregular allotments). By using this money they have defrauded those stakeholders of that money pure and simple in order to cover their liability for not acting against the LDC Finance Limited directors and they have further conspired to pervert the course of justice by not reporting the actions of the directors in the light of the content of the draft letter. By writing to the Registrar of Companies

saying that the directors had in fact acted appropriately Perpertual Trust Limited's executives Messrs **LANCASTER** and **STYANT** were acting disingenuously in order to cover up the offending, and they have continued to attempt to hide the offending in order to further conceal the discovery of their liability.

EVERY LDC DOLLAR A PRISONER TO SECTION 37 [VOIDABLE IRREGULAR ALLOTMENTS]

856.102 It is true that every single stakeholders subscriptions to LDC Finance Limited were voidable irregular allotments since 2004, (in that they were obtained on the back of a misleading prospectus), but the writers point is that if money can be traced by whatever means then those persons to which that money belongs arguably have a claim for special consideration as to ownership of those deposits. Equally this has a major impact on the first ranking securities because these stakeholders no longer have such preference over the other unsecured stakeholders because every stakeholders subscription is a voidable irregular allotment, but the ones that can be traced may have some form of preference to the ones where the money has already been frudulently used.

856.103 This raises a major problem for Perpetual Trust Limited and Pricewaterhousecoopers because they "promoted" the April 2007 prospectus knowing it to be, or likely to be, materially misleading in a significant way in that they had not reported the content of the **NOONE** report, nor had they reported the other aspects of material importance such as the $3.166m of voidable irregular allotments that had been allotted, (and no doubt used to pay interest to stakeholders) and the complete loss of the helilogging group and associated company debt securities, and the fact that the $5.5m of funds used by F and I to secure the purchase of 5.5 million of worthless LDC Finance Limited shares remained the property of F and I stakeholders. Remember the documents the trustees Messrs **GLASS** and **STYANT** signed and annexed to the September 2006 and April 2007 prospectus pursuant to Clause 13(3) of the Second Schedule to the Securities

Regulations 1983; (see pages 730 and 218 of the annexed dossier); (writers emphasis);

"Trustee Statement
As required by Clause 13(3) of the Second Schedule to the Securities Regulations 1983 ***we confirm that the offer*** *of debebture Stock and Unsecured Deposits ("the securities")* ***set out in this prospectus complies with any relevent provisions of the Trust Deed*** *dated 18 June 2004. These provisions are those which;*

a) ***Entitle LDC Finance Limited to constitute and issue*** *under the Trust Deed the securities offered in the prospectus*

b) ***impose restrictions on the right of LDC Finance Limited to offer the Securities****;*

and are described in the summary of the Trust Deed in the prospectus

The auditors have reported on the financial information set out in the prospectus and our statement does not refer to that information or to any other material in the prospectus which does not relate to the Trust Deed. Subject to the duties imposed by the fifth schedule of the securities regulations 1983, Perpetual Trust Limited relies on the information supplied to it by LDC Finance Limited pursuant to the Trust Deed and does not carry out an independent check of that information.

Perpetual Trust Limited does not guarantee the repayment of the Securities or the payment of interest thereon'

856.104 It is the writers submission that these statements are grossly misleading in the following ways. Firstly the offers in September 2006 and April 2007 (and the updated December 2006 extension of the September 2006 prospectus pursuant to section 37A(1A) of the Securities Act 1978) did not comply with the relevent prvisions of the Trust Deed in any way whatsoever, and were along with the "investment statements" contained therein grossly misleading of the true position. Secondly Perpetual Trust Limited did not rely on the information given to it by the LDC Finance Limited directors as they knew that the directors had been misleading them for several years, and they had obtained an independent report from Mr **NOONE** of Pricewaterhousecoopers which stated that there was basically no chance of survival whatsoever, so how could they continue to agree to issue a prosepectus containing completely misleading investment statements. Of importance the meaning of "investment statement" is contained in section 38C of the Securities Act 1978 and which provides;

"In this Act, the term ***investment statement means a written document that-***

(a) Contains or refers to one or more offers of securities to the public for subscriptions; and;

(b) States that it is an investment statement for the purposes of the Act"

856.105 Section 38D(a) and (b) of the Securities Act 1978 sets out the purpose of investment statements as providing;

*.....**Certain key information that is likely to assist a prudent but non expert person to decided whether or not to subscribe for securities; and***

Bring to the attention of such a person that fact that other important information about the securities is available to that person in other documents.

856.106 It is important in the writers opinion that section 38D(b) refers to bringing to the attention of stakeholders "other important information about the securities…..that is available to that person in other documents". Obviously the **NOONE** report of 8 March 2007 was such a document. Clearly Perpetual Trusts was aware that LDC Finance Limited was making numerous grossly misleading "investment statements" in all sorts of advertisments and was supplying the same inside prospectuses, with prospectuses and referring to such statements inside prospectuses. Importantly section 38(a)(i) of the Securities Act 1978 provides that the meaning of authorised advertisment includes;

"(a) ***In relation to an offer of securities to the public in respect of which an investment statement is required, an advertisment-***
(i) ***that is an investment statement that relates to the securities*** *and that complies with this Act and Regulations;*

856.107 As explained at paragraphs 373 to 375 and 546 to 551 of this report the wrtier believes that section 242[False statement by promoter] of the Crimes Act 1961 would apply to cover Messrs **STYANT, LANCASTER, NOONE**, and **HOLLIS** as well as all of the directors of LDC Finance Limited. All would have known that if they had been "honest" and explained the true position of LDC Finance Limited and the way it had conducted business since becoming an issuer the Securities Commission

would have been all over it 'shutting it down' (see section 38F [Suspension and prohibition of investment statement] of the Securities Act 1978) and needless to say all allotments would have been voidable irregular allotments repayable by the directors if the company could not front the money (which clearly it could not), and nobody inclusive of Messrs **SCHOLFIELD** and **HARDING** would have invested a cent in the company. That is exactly why the conspirators kept the matter secret even to this day because it was their plan by hook or by crook to defraud F and I in an attempt to hide their knowledge of the wrongdoing of the directors of LDC Finance Limited and equally to defeat any claim of civil and criminal liability.

856.108 Secondly the Trustee was not imposing restrictions on the issuer as alleged in the Trustees Statement recorded at paragraph 856.103 of this report but was aiding and abetting the fraud being perpetrated. The Trustees were not abiding by their duties as Trustee pursuant to the Trust Deed as reported at paragraphs 856.11 to 856. 15 of this report (schedule 5 of the Securities Regulations 1983). See also section 62[Liability of trustees and statutory supervisors] of the Securities Act 1978. The writer believes that both entities must therefore bear some significant culpablity and thus liability to the stakeholders, if there is insufficient compensation from the LDC Finance Limited directors; see paragraph 751(i) of this report as it relates to the rights of the stakeholders to sue the directors pursuant to sections 55[Interpretation of provisions relating to advertisments, propsectuses and registered prospectuses], 55A[Overview of civil liability] , 55B[What are civil liablity events] 55C[When the Court may make pecuniary penalty orders and declarations of civil liability] 55D [Purpose and effect of declarations of civil liability], 55G[Compensation orders] and 56[Which persons are liable for misstatements] to 57[Which Experts are liable for misstatements] of the Securities Act 1978. This civil action against the Trustee Company and Pricewaterhousecoopers will be through a tort rather than as a result of any provision in the Securities Act 1978. These matters will be addressed in the **HARNETT PRECIS**.

856.109 Perpetual Trust Limited should have acted to immediately stop LDC Finance Limited taking any further deposits until the directors could prove that the companies position was solid. Unfortunately for Perpetual Trust Limited they had this information from Mr **NOONE** of Pricewaterhousecoopers confirming as at 15 February 2007 what they knew to be likely true in mid 2006 when the directors needed to invent a $1.5m loan to F and I for F and I to buy 1,500,000 worthless LDC Finance Limited shares to keep LDC Finance Limited in its ratios required by the trust deed so Perpertual Trust Limited did not "take them out".

856.110 The writer submits that Perpetual Trust Limited must have known that things were desperate indeed at mid 2006 and were "doomed" to fail as at April 2007. This is clear in the correspondence from Pricewaterhousecoopers and in the draft letter from Perpetual Trust Limited that was to be sent to the Registrar of Companies pursuant to sections 11 and 12 of the Corporations (Investigation and Management) Act 1989.

856.111 What is clear is that if the $3.166m of voidable irregular alottments plus interest was put into a separate trust account it would have left only $540,000.00 in liquid funds when the interest payable monthly on say $21.588m in stakeholders deposits is $161,910.00 a month. As we know **no** interest was being received on most of the LDC Finance Limited book, inclusive of the F and I $5.5m as this interest was still being paid to F and I as apart of the two effectively bogus and voidable deals of mid 2006 and March 2007.

856.112 Therefore even without a run on the stakeholders funds LDC Finance Limited could not have survived in any event and it was obvious that the LDC Finance Limited directors were using stakeholders funds to pay interest due to stakeholders which would be misappropriation, fraud, theft or other act of dishonesty.

How to hide paying stakeholders interest from stakeholders subscriptions (or how to hide fraud on top of fraud)

856.113 With very little income being generated from debt securities the LDC Finance Limited directors needed to be inventive in the manner that they generated income. As the reader will be aware they "evidenced" the payment of interest be swapping loans between LDC Finance Limited and Halifax Finance Limited; (see paragrphs 379.20 and 532 to 540 of this report). The directors could have effected this fraud in numerous ways such as securing more stakeholders subscription funds to known non performers accounts (such a Halifax Finance Limited accounts) increasing those accounts indebtedness, for the purpose of those accounts paying this money back to LDC Finance Limited as "interest" payments or income to LDC Finance Limited, which in turn LDC Finance Limited could then "allege" to be paying this "income" onto LDC Finance stakeholders as interest payments. The writer is wholly confident this type of behaviour will have occurred. Equally it will be interesting to see how many funds were sought to be withdrawn just before the inception of receivership because the writer feels this reason was an excuse rather than a reality and that it was Messrs **LANCASTERS** and **STYANTS** real fear that LDC Finance Limited was likely so insolvent that there would be virtually nothing left unless they acted in early September 2007.

856.114 Perpetual Trust Limited should have, once aware of the likely guilt of the LDC Finance Limited directors of committing numerous serious misstatements or falsities, (in other words fraud) invoked the use of sections 49, and 53D of the Securities Act 1978 which material provide;

49 Trustees and statutory supervisors may apply to court for orders relating to securities
(1) Where at any time after due inquiry, a trustee or statutory supervisor of securities is of the opinion that---
(a) <u>the issuer and any guarantor of the securities are unlikely to be able to pay all money owing in respect of the securities when it becomes due; or</u>
(b) the provisions of any deed relating to the securities are no longer adequate to give proper protection to the security holders the trustee or statutory supervisor <u>may, in its absolute discretion</u>, apply to the court for an order or orders under this section.

(2) An application to the court under this section shall be served on such persons as the court may direct.
(3) On an application by a trustee or statutory supervisor under this section, the court may, after giving the issuer and such other persons as it thinks fit an opportunity of being heard, by order---
(a) amend the provisions of any deed relating to the securities:
(b) impose such restrictions on the activities of the issuer, including restrictions on advertising, as the court thinks necessary for the protection of the interests of the security holders:
(c) direct the issuer or the trustee or statutory supervisor to convene a meeting of the security holders for the purpose of having placed before them by the trustee or statutory supervisor such information relating to their interests, and such proposals for the protection of their interests, as the court or the trustee or statutory supervisor considers necessary or appropriate, and for the purpose of obtaining their opinions or directions in relation thereto; and the court may give such directions in relation to the conduct of the meeting as the court thinks fit:
(d) stay all civil actions or civil proceedings before any court by or against the issuer or any guarantor of the securities:
(e) restrain the payment of any money by the issuer or any guarantor of the securities to the security holders or any class of such holders:
(f) appoint a receiver or manager of such of the property as constitutes the security (if any) for the securities:
(g) give such other directions as the court considers necessary to protect the interests of the security holders, other holders of securities of the issuer, any guarantor of the securities, or the public.
In making any such order the court shall have regard to the interests of all creditors of the issuer.
(4) The court may at any time vary or rescind any order made under this section.

53D Inspection of accounting records

Every issuer shall make the accounting records required to be kept under section 53 and the documents in respect of the business dealt with in those accounting records referred to in section 53A available in written form in English at all reasonable times for inspection without charge by the directors of the issuer and by any trustee, statutory supervisor, or unit trustee and by other persons authorised or permitted to inspect the accounting records of the issuer or scheme.

856.115 The writer believes that given the seriousness of the misstatements and blatant falsities Perpetual Trust Limited had no choice but to seek Court orders to insure compliance of the directors and protection of the stakeholders funds. Equally this should have been done in or around September 2006, and probably truth be told in mid 2006, when Perpetual Trust Limited was aware that LDC Finance Limited directors needed to do a

deal involving using F and I's voidable irregular allotments to keep it allegedly operating within its debt/equity provisions. The warning bells should have gone off big time and the writer believes that the bells did and this is why Pricewaterhousecoopers came in to effectively find out the truth in December 2007.

856.116 The writer believes that Perpetual Trust Limited would have been attempting to bring LDC Finance Limited directors into line before even mid 2006, but were obtaining or receiving false information from the directors. The writer has heard that LDC Finance Limited director Mr John **JANNETTO** was particularly persuasive on Mr **GLASS**, when Mr **GLASS** was the Perpetual Trust Limited Trustee for LDC Finance Limited, and that this friendship or otherwise close association may have influenced Mr **GLASS** not to act as harshly as he should have done. In any event when the books are accessed, and compared to bank deposits and other source documents, they will inform as to the position of LDC Finance Limited, when the trustee should have done his job probably in mid 2005. When Perpetual Trust Limited finally did get access to the information they sought the writer believes that they were, as it is often said in such circumstances, "stuffed". That is to say that the books disclosed that the directors must have known of the position of the company well before the September 2006 prospectus which is proven from the content of this report.

856.117 The writer believes that both Perpetual Trust Limited and Pricewaterhousecoopers operated and reported to each other, whilst "looking at LDC Finance Limited's books", using language (in all communications), that was not overly "inculpatory" of the LDC Finance Limited directors in case a Court case and discovery eventuated.

856.118 However the use of this language is a major problem for them both when it is proved that such language was inappropriately "dismissive" of clearly criminal activity. The writer believes that there will be a significant amount of inculpatory material to find from various sources that was never intended to be discovered. Whilst they can seek to destroy the computer records they

cannot destroy the proof that certain communications took place at certain times which communications cannot be found. This will draw a negative inference as allowed in Wigmore. Further certain persons, when examined pursuant to the power of a liquidator, will inform of "who knew what when". Wigmore on Evidence (Chadborn Revision 179), para 285 at page 192 provides that; (writers emphasis);

> *"**The failure to bring before the Tribunal some circumstance, document, or witness, when either the party himself, or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party.** These inferences are always open to explanation by circumstances, which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted."*

856.119 As already stated the first act of Perpetual Trust Limited should have been to place LDC Finance Limited into receivership in order to assess when the directors would have likely become aware of a catastrophic level of irrecoverable insolvency, and how long they continued to trade thereafter and payout stakeholders monies as fraudulent dividends to themselves etc. By placing LDC Finance Limited into receivership at this time they could have saved the F and I stakeholders from being caught up in the scam, but as can be seen that was in fact what all of the conspirators wanted and had planned for. As a natural proposition, if this was not what was planned then why all of the "outrageous errors and actions" prior to and post the April 2007 prospectus and the receivership. After placing the company into receivership they should have moved to place the company into liquidation, formed a stakeholders committee to enable stakeholder participation to insure that the stakeholders had some input and that the entire process had transparency.

856.120 Additionally the powers of a liquidator are far greater than that of a receiver in relation to interviewing and recording such interview of persons of interest under oath, (section 265[Examination by liquidator] of the Companies Act 1993), and those persons not being able to refuse to answer a

question put to them for the fear of self incrimination, (section 267[Self-Incrimination] of the Companies Act 1993). The liquidator has considerable powers to obtain documents and information pursuant to section 261[Power to obtain documents and information] of the Companies Act 1993. Equally if any creditor, stakeholder, or liquidation committee, or class of interested persons wanted Court supervision of the liquidation, that could be sought pursuant to section 284[Court supervision of liquidation] of the Companies Act 1993 and which section would enable the Court to under the following subsections;

1(a) Give directions in relation to any matter arising in connection with the liquidation

1(b) Confirm, reverse, or modify an act or decision of the liquidator

1(c) Order an audit of the accounts of the liquidation

1(d) Order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with such information concerning the conduct of the liquidation as the auditor requests

1(e) In respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances

1(f) To the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount

1(g) Declare whether or not the liquidator was validly appointed or validly assumed custody or control of property

1(h) Make an order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

856.121 The Court may pursuant to subsection (2) of section 284 of the Companies Act 1993 exercise its jurisdiction covering all sections under the Companies Act 1993 on all matters occurring before or after the date of liquidation. Additionally the Court can pursuant to subsection (4) of section 284, upon an application by any person remove all protections of the liquidator in relation to orders obtained from the Court under subsection (1) of section 284 of the Companies Act 1993. The appointment of a liquidator was the appropriate way with which to handle the position, and it was not handled that way in furtherance of the conspiracy to defraud F and I stakeholders and LDC Finance Limited stakeholders.

856.122 It cannot be gainsaid not to act in a proper lawful manner makes one, without reasonable excuse supported by corroborating fact, guilty of defeating or perverting the course of justice s116 of the Crimes Act 1961 and being an accessory after the fact s71 of the Crimes Act 1961. You could also be caught by the s66 Parties to offences, and s310 Conspiring, provisions of the Crimes Act 1961 as against any offence in any other relevant statute.

Trustees role according to the legislation and the inevitable "GREED CREED CREEP"

856.123 Section 48[Persons who may act as trustees and statutory supervisors] of the Securities Act 1978 stipulates who can be trustees and to be frank a lot of Corporates have jumped on the bandwagon because it is a great "cash cow". The writer has spoken to a number of trustees and they sound very dodgy, and not too bright, but well rehearsed in speaking double Dutch drivel that most likely fools elderly investors about their alleged role "in the middle".

856.124 However when the writer has "spoken the lingo" to the respective trustees they all seemed to want the writer to "write to their lawyers" who would respond in the appropriate fashion. To the writer that sounded like a crim wanting to have a cop speak to "their brief" as they were not going to answer

any questions or make any statements when given a warning that what they say may be used against them.

856.125 In one case the writer through inquiry became aware that the Trustee was actually employed by the same group of companies that owned the finance company. What sort of "Chinese Wall" was that? Only in the commercial dark lands of Aotearoa would this sort of nonsense be allowed. As with all such policies that involve private participation in policing the inevitable "greed creed creep" comes into play with the policemen becoming far too chummy with the "prospective criminals" so to speak.

856.126 Reputations as to who is hard and who is soft (euphemisms for honest and far from honest) soon fill the market place and after a few years being "soft" is the only "sell" that works if you want to be a "successful" trustee. Perpetual Trust Limited certainly obtained and deserved that "handle". However this role is exactly opposite to that created by the Act.

856.127 The function of a Trustee is to provide a representative for stakeholders interests, and to provide the only real protection those interests are likely to have. In short Trustees must act to the best of their abilities to protect the monetary value of the core investment made in a debt (or other) security by insuring that regular declarations made by the directors of an issuer are reliable for that period.

856.128 In the case at hand Perpetual Trust Limited was receiving a declaration every month. Is it not really strange that Messrs **LANCASTER** and **STYANT** are not claiming that the April 2007 prospectus was a load of lies in their draft letter to the Registrar of Companies? This act by Messrs **LANCASTER** and **STYANT** is probably one of their most inculpatory acts yet, because the Court can compare the "draft" letter designed to scare the directors because the contents were true, with the "actual" letter which must be considered misleading in the places where it does not emphasize the extent and seriousness of the offending by the LDC Finance Limited directors.

856.129. Messrs **LANCASTER** and **STYANT** should also have sought that the Registrar of Companies seek to have the Commission suspend the prospectus of April 2007 in the public interest pursuant to section 44(1)(a) of the Securities Act 1978. However this would have been absolutely disastrous for Perpetual Trust Limited because pursuant to such an order being upheld all subscriptions that relate to that prospectus (but not those allotted before cancellation) must be repaid within one month, and if they cannot be repaid without reasonable excuse within that time period the directors become liable. See sections 44(6)(b) and 44(7) of the Securities Act 1978.

856.130 But of course, if the prospectus was misleading from day dot as was the case with the April 2007 prospectus, then all subscriptions should not have been allotted and are repayable pursuant to section 37A of the Securities Act 1978.

Absolute proof that Mr HOLLIS is probably the most dishonest accountant, above even Mr NOONE.

856.131 The reader, if having read the whole report up till this point will probably be asking the very same questions the writer will answer in the next few paragraphs. Those questions are;

Question One

How could Mr **HOLLIS** state in the receivers reports, and in his conversation with Mr Dermot **NOTTINGHAM**, that the LDC Finance directors had, when realising that the September 2006 prospectus was misleading, immediately pay into trust (separate bank account) all of the subscriptions received from that date forward when this was clearly a lie? (See pages paragraphs 332 to 339 of this report).

Question Two

How could Mr **HOLLIS** state in the receiver's reports, and in his conversation with Mr Dermot **NOTTINGHAM**, that the amount that was

deemed to be voidable allotments was initially $2.2m and then only $1.4m when he must have known that the real figure was not $3.166m but $21m? (See pages paragraphs 332 to 339 of this report.)

856.132 At page 150 of the annexed dossier is page 4 of the third receivers report dated 29 October 2008, which states regarding the final payout of voidable securities;

"Further some $1.4m has been repaid to investors who chose to void their securities with LDC".

856.133 Now at a quick glance at the letter of Mr **LANCASTER** dated 31 July 2007 clearly indicates that the position of Mr **HOLLIS** is a blatant lie. The writer submits that Mr **HOLLIS** and the other conspirators wanted to put off the evil day for the obvious reason that if they "let it slide" for over a year, then the LDC Finance Limited stakeholders may have a problem pursuant to section 37A(3) and 37(4)(a) and (b) and 37(5) of the Securities Act 1978 which provide; (writers emphasis);

(3) ***An allotment made in contravention of this section shall*** *(whether or no the issuer is being in liquidation)* ***be voidable at the instance of the subscriber by notice in writing to the issuer at any time within the subscribed period****; or*

(4) For the purpose of subsection 3 of this section , pescribed period means-

(a) ***A period of one year after the security or a certificate of the security has been sent to the subscriber;*** *or*

(b) ***A period of 6 months after the subscriber knows, or ought reasonably to know, that the allotment was made in contravention of the provisions of this section – whichever is the lesser***

(5) Without limiting any enactment or rule of law, ***an allotment made in contravention of this section shall be valid unless notice avoiding the allotment is given by the subscriber in accordance with subsection (3) of this section****.*

856.134 It is submitted that it is clear that Mr **HOLLIS** must have known that he should have reported the criminal actions of the LDC Finance Limited directors to the grantor Perpetual Trust Limited who should have in turn reported to the stakeholders that they have been materially misled and should apply to LDC Finance Limited within a very short period to void

their subscriptions so that they could apply to the Courts pursuant to sub section (6), and (7), of section 37 of the Securities Act 1978 which provide; (writers emphasis);

"(6) Where an allotment made in contravention of this section is avoided by the subscriber under subsection (3) of this section, ***the issuer shall forthwith upon receiving notice under that subsection, repay the subscriptions to the subscriber.***

(7) ***If such subscriptions are not so repaid within one month after the date of the receipt by the issuer of notice*** *under sub section (3) of this section,* ***the issuer and all directors thereof shall be jointly and severally liable to repay the subscriptions with interest at a rate*** *prescribed from time to time by regulations made under this Act from the date on which the notice was received;*
Provided that a director shall not be liable if he or she proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part."

856.135 It is submitted that Perpetual Trust Limited and Pricewaterhousecoopers knew that the directors would contest such a position on the grounds that all of the information was before Messrs **LANCASTER**, **STYANT**, **NOONE** and **HOLLIS** and they did nothing as at April 2007, other than to give the "green light" to the fraudulent deals with F and I defrauding F and I stakeholders, and the "green light" to the wholly misleading prospectus which led to the defrauding of the LDC Finance Limited stakeholders.

856.136 Therefore it is submitted that the actions of Perpetual Trust Limited and Pricewaterhousecoopers post the receivership have been a conspiracy to pervert the course of justice and to divert any claims of liability away from them for their part in the conspiracy to defraud and pervert the course of justice. As already stated the LDC Finance Limited stakeholders can still rely on section 301 of the Companies Act 1993 and sections reported in paragraph 856.108 of this report. But of course the conspirators thought who in gods name is going to spend nearly a year researching all of the above to prove what actually went on and to report on the course of action that will "see justice not only done but manifestly seen to be done"; Lord **HEWART Rex v Sussex Justices** [1924] 1 KB 259

856.137 Now if acting appropriately, even much later on around the time of the letters being written by Messrs **LANCASTER** and **STYANT**, Perpetual Trust Limited and Pricewaterhousecoopers could have informed the stakeholders of the position, and then possibly argued for relief under the other salient provisions of the Act, but it is submitted that the Court, once aware of the level of dishonesty, would not have granted relief, and additionally the Courts findings in this regard would have been fertile soil for a criminal investigation on the grounds already made out in this report.

Finally Mr HOLLIS comes clean with the CBH shares NOT and refigures the voidable irregular allotments

857 The writer has just obtained off the Internet the fourth receivers report dated 4 May 2009 and it is just as big a sham as the previous reports. Mr **HOLLIS**, now well aware that the writer has discovered the existence of the CBH Limited shares attempts to state that "Finance Receivables" also include the CBH Limited shares which of course as we know is impossible because finance receivables are loans and shares are equity investments as Mr **HOLLIS** well knows;(see paragraphs 730 to 834 of this report) but specifically stated in Mr **HOLLIS** saying to the writer at page 338 paragraph 792 of this report;

(3)DN	***Right so when you were saying the liabilities and assets of the companies you said umm you said LDC had x amount of loans and collectables receivables***
(4)MH	*Hmm*
(5)DN	*Right*
(6)MH	***Yep***
(7)DN	***Well shares are different to loans aren't they shares are different to receivables***
(9)MH	*ahhh*
(10)DN	***well how how are they different?***
(11)MH	***Ones an equity investment, ones a cash investment or a loan investment***

858. Clearly at (11) above Mr **HOLLIS** proclaims correctly that the equity investment is the purchase or ownership of a share and the cash or loan investment is a "finance receivable". Mr **HOLLIS** at page 6 of his fourth report (page 1820 of the annexed dossier) states the impossible in explaining that finance receivables also include shares in other companies; (writers emphasis);

"The Companys primary assets are finance receivables consisting of loans to borrowers. ***Finance receivables also include a shareholding in a property development company****."*

859. It is amazing that Mr **HOLLIS** feels that he can get away with this nonsense without explaining what occurred. Mr **HOLLIS** also notes on the same page of his latest report that the value of $3.5m of these remaining finance receivables have been down graded to around $2.2m.

"As at the date of this report ***we estimate the recoverable value of the remaining finance receivables and shareholding is around $2.2 million*** *($3.5 million per our last report)*"

860. This statement discloses Mr **HOLLIS** as lying again about him not being able to value the developments because he had previously done this as at the last report. It also proves that the writer was correct about the loss in value of the undeveloped land and the receivers liability for not at least offering the shares to the other shareholders. Of course none of that was done because the wrtier submits the shares were only transferred allegedly in June 2008 when Mr **HOLLIS** knew that the finance receivables were really bad and that F and I were going to seek recovery of their monies of $7.8m. Of course Mr **HOLLIS** can say he always had the CBH Limited shares 'included in his overall values" because the other finance receivables he had possibly counted on, had evaporated allowing him to allege that the CBH Limited share value had always been there. Unfortunately for Mr **HOLLIS** no one with any brains is going to believe him given his level of expertise.

861. If the CBH Limited shares were actually valued at $2m this would only leave $200k extra from actual finance receivables, from the alleged $3.5m in the third receivers report, but remember that Mr **HOLLIS** is still lying by omission as to the importance of the ownership of these shares transferring in June 2008 when 50% were supposed to transfer in June 2006 and it was stated in the April 2007 prospectus that 100% of the CBH Limited shares had transferred prior to the registration of the LDC Finance Limited prospectus in April 2007.

862. Because these transfers of the CBH Limited shares never occurred the LDC Finance Limited prospectus was materially misleading and the deals with F and I are voided

meaning that the F and I case against LDC Finance Limited is significantly strengthened for the return of the $7.8m.

863. The writer has no doubt that these "remaining finance receivables" will be further down graded to around the $500k to $700k mark and that Mr **HOLLIS** has protected himself in the following passage of his latest report; (writers emphasis)

"The shareholding investment is in a company that is developing a subsdivision known as "Appleby Hills" and "Apple (sic Appleby) Estates" near Richmond. We are working with the manager of the sub division to ascertain the ultimate financial return and timing of realising this investment, ***however both remain uncertain at this time****.* ***We cannot comment further on this at this time*** ***as matters relating to this investment are commercially sensitive, however the outcome of this investment will have a material affect on the outcome to unsecured investors****".*

864. What does Mr **HOLLIS** mean by "commercially sensitive"? How could the ownership of shares in a property development company be commercially sensitive when he has allegedly valued them in all four reports but not reported their existence?

865. More 'secretive' than commercially sensitive Mr **HOLLIS** but never you mind Mr **HOLLIS** the appointment of a liquidator will get to the bottom of why you have kept their existence secretive, other than the obvious reasons that you were conspiring to hide their existence in order to deceive the LDC Finance Limited and F and I stakeholders for the reasons made out in the body of this report.

866. Interestingly Mr **HOLLIS** reports in his fourth report that only $1.3m has been repaid as irregular voidable allotments. This just shows how unreliable his reports are because how can he say that $1.4m has been actually repaid as at October 2008 in his third report and that figure now only be $1.3m?. He really needs to be gotten rid of and quickly.

Negative or Neutral duty to disclose

867. A natural defence accountants or lawyers will raise to perverting the course of justice or conspiracy will be that they had a negative or neutral duty to disclose because they

came across the information when representing their client and therefore it is "legally privileged". This is a nonsense.

868. Pricewaterhousecoopers client is a company or legal person, and the people that own the company are shareholders or stakeholders or natural persons. The directors have duties to ultimately the shareholders and creditors of the legal person, which is the company. Pricewaterhousecoopers may say that they did their duty by reporting the activity to the directors, but in this case it was the directors that were acting unlawfully and the professionals involved were assisting the directors commit the offending against all and sundry stakeholders, and any other class of creditor. This type of offending is on a scale unheard of in New Zealand corporate annals and given the number of issuers that have collapsed whilst under the deed of trust governance of Perpetual Trust Limited, and if the behaviour is similar, then the use of the term "organized criminal corporate fraternity" would not be out of place.

869. In any event the duty was to the company, the company's compliance with the Companies Act 1993, and any other piece of legislation that covered the company's actions such as in this case the Securities Act 1978 and the Securities Regulations 1983, and ultimately legal persons exist for the benefit of natural persons. That is to say that companies or legal persons exist for their stakeholders or natural persons benefit as the net profits, after tax paid by the company, are distributed to the natural persons.

870. Additionally accountants, lawyers or other professionals who cross the line in such a way to be on one had deemed directors or on the other hand accomplices will be likely guilty of a breach of sections 377 [False Statements], 378 [Fraudulent use or destruction of property], 379 [Falsification of records], 380 [Carrying on business fraudulently] of the Companies Act 1993. These offences carry significant penalties upon conviction pursuant to section 374 of the Companies Act 1993 of fines up to $200,000.00 or a term of imprisonment not exceeding 5 years.

871. The provisos in the Crimes Act 1961 relating to conspiring to commit an offence, [310], attempting to commit offence or procure commission of offence [311], and being an accessory after the fact to a crime [312] can be "adjoined" to any other

offence under that Act or any other enactment such as the Companies Act 1993, or the Securities Act 1978.

872. This is to say that criminal offence sections under the Companies Act 1993 such as 377, 379 and 380 above can be the object of a conspiracy, or attempt, to commit that offence, or that offence once committed, can be subject to an attempt to suppress evidence of the commission of that offence, under section 310, 311, and 312 of the Crimes Act 1961, and upon conviction depending on the section of the Crimes Act 1961 relating to conspiring, attempting, or being an accessory after the crime, the maximum penalty is either half that of, or equal to, the penalty liable under the principle offence under the Companies Act 1993 or such other Act involved.

873. As an indication the maximum penalties would be between $100,000.00 to $200,000.00 by way of fine, and between two and a half and five years imprisonment for the above mentioned offences pursuant to section 374(4) of the Companies Act 1993.

The application of sections 377, 378, 379 and 380 of the Companies Act 1993 against the participants in the conspiracy

874. The sections of the Companies Act 1993 immediately above have serious implications for the conspirators or accomplices etc. and certain individual acts by the conspirators, independent of the conspiracy, could amount to breaches of those Companies Act 1993 provisos and result in charges being able to be brought by the Registrar of Companies as well as the same acts constituting serious breaches of the Crimes Act 1961.

377 [False Statement]

875. Firstly section 377 [False Statements] states that <u>any</u> person who knowingly makes a document required by, <u>or for the purposes of</u>, the Act, that is false and/or materially misleading, or such person knowingly omits to include such information in the

document for the purpose of making the content of the document misleading commits an offence, as does a director or employee of the company that who makes or furnishes, or authorises or permits that making, or furnishing of, a statement or report that relates to the affairs of the company that is false or misleading in a material particular to such other parties as a director, shareholder, trustee for debenture holders of the company, receiver, or manager of property of the company, liquidator etc.

876. Subsection (3) captures persons that have voted in favour of the making of the misleading statement at any "meeting" and who otherwise do not further participate.

877. What this means is that all of the directors and employees of LDC Finance Limited that made false statements of any kind whatsoever, and provided those statements to the receiver, or shareholders in LDC Finance Limited, which shareholders would have included, at important material times, Messrs **SCHOFIELD** and **HARDING,** commit a criminal offence. It would not necessarily matter that the receiver, or other person so given the false statement was a conspirator and knew the document was misleading or likely misleading. Any professional may very well be caught by sub section (3) relating to meetings.

878. Subsection (3)'s use of the word "meeting" is not defined under section 2 [Interpretation] of the Companies Act 1993 which means that any meeting, or meeting of the minds over a telephone conference, or in various agreements entered at various meetings, would likely suffice to enable a prosecution. In any event this sub section would be subservient to the criminal offence of conspiracy and basically serves the same purpose. The meaning of the word "document" is provided at section 2 of the Act in the following unrestrictive terms; (emphasis that of the writer)

*"**Document" means a document in <u>any</u> form**; and includes-*

a. *Any writing on any material*
b. *Information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and*
c. *A book, graph, or drawing; and*
d. *A photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment to be reproduced"*

879. Clearly all of the monthly reports to the Trustee completed by the LDC Finance Limited directors are caught, as would be the misleading internal documents used to create the final reports. Any makers of source documents that contained misleading information used in the final document would be caught by this proviso as well.

880. The prospectuses and all other such documents produced from the material contained in the prospectuses would be caught such as reports to stakeholders and shareholders etc. All meetings of directors dealing with distribution of any 'document' that they knew contained misleading material is caught by sub section 3.

881. Another key phrase in this section that applies to whether the receivers or any other persons at Pricewaterhousecoopers or Perpetual Trust Limited are caught by the section are the words *"for the purposes of this Act"* used in the section.

882. This phrase is much less restrictive than *"to a document required by this Act"* which may or may not restrict the misleading document to need to be applied to a specific section to create a breach. The writer believes the Court would interpret it to mean any document whatsoever made by a person in keeping with any purpose of the act as defined by the long title, or otherwise available by a simple understanding of what the authors of the Act intended by any section, or group of sections of the Act. The "purpose" of the Companies Act 1993 is provided in the long title and the writer believes that paragraph (c), (d) and (e) of the long title specifically apply to the wording found in section 377; (emphasis of the writers);

"An ***Act to reform the law relating to*** *companies, and, in particular –*

a. *To affirm the value of the company as a means of achieving economic and social benefits through the aggregation of capital for productive purposes, the spreading of economic risk, and the taking of business risks; and*
b. *To provide basic and adaptable requirements for the incorporation, organization, and operation of companies; and*
c. *To define the relationships between companies and their directors, shareholders and creditors; and*
d. *To* ***encourage efficient and responsible management of companies*** *by allowing directors a wide discretion in matters of business judgment* ***while at the same time providing protection for shareholders and creditors against the abuse of management power; and***

e. *To provide* ***straightforward and fair procedures for realising and distributing the assets of insolvent companies."***

883. The writer submits that paragraphs (d) and (e) of the long title to the Companies Act 1993 as they relate to the interpretation of section 377[False Statements] would catch "every person", inclusive of the likes of Mr **NOONE** from Pricewaterhousecoopers and any trustee or receiver who produced any misleading document that was used in an manner related "to the purpose of" the Companies Act 1993 as defined in the long title immediately above. It would also be likely that a Court would interpret such matters on a basis of what type of business the company undertook, and what other reporting regimes stipulated by other regulations or Acts came into play as a result.

884. The Court may even consider the type of relationship the company had with stakeholders and creditors and what false or misleading undertakings had been historically given. In the case at hand such documents would likely be receivers reports to stakeholders, and the any reports to any private or public regulatory bodies such as Perpetual Trust Limited and the Securities Commission etc, although this matter is covered under the section 260 [False Accounting] of the Crimes Act 1961.

378 [Fraudulent use of or destruction of property]

885. This section is of use in the matter at hand when the meaning of the word "property", as defined in section 2 [Interpretation] of the Act, is explained;

"Property means ***property of every kind whether tangible or intangible****, real or personal, corporeal or incorporeal,* ***and includes rights, interests, and claims of every kind in relation to property no matter how they arise****"*

886. As can be seen, the word "property" in the Companies Act 1993 is all encompassing, as it should be. The Crimes Act 1961 provides an equally non-restrictive meaning inclusive of the phrase "…any debt, and any thing in action, and any other right or interest".

887. Section 378 of the Companies Act 1993 applies as against directors, employees, and shareholders only. The writer does remind the reader as to persons that through their actions could be considered deemed directors pursuant to section 126 of the Companies Act 1993.

888. Section 378 of the Companies Act 1993 defines that such specified persons who take or apply property of the Company for his or her own use or benefit, or for the purpose of anyone but the company, or conceals or destroys the property of the company is guilty of a serious offence. Section 231[Fraudulently destroying document] of the Crimes Act 1961 also covers part of this Companies Act section and which Crimes Act section has a maximum penalty of 3 years imprisonment.

889. In simple terms, taking the meaning of the word "property" in the Companies Act 1993, the directors of LDC Finance Limited in not transferring the shares of CBH Limited to the effective ownership of SC Management Limited as promised in the April 2007 prospectus was concealing property of the company and transferring property out of the company for the directors benefit, but specifically on paper Mr **HARDIMAN'S** benefit. Equally not transferring CBH Limited shares to SC Management Limited pursuant to the agreements in June 2006 and March 2007 with F and I was a breach. Equally destroying, or omitting to produce documentation that disclosed certain transactions would be a breach.

890. The same could be said about the actions of directors taking monies from the LDC Finance Limited accounts of Heli-logging Group to pay themselves and their related companies when they were aware they had no permission to do so from Mr **FORD**, and indeed they knew both Heli-logging Group and LDC Finance Limited were hopelessly insolvent. Obtaining funds for Taranaki Timber and Treatments Limited, which was majority owned by GKW Limited (which was owned by the LDC Finance Limited directors) was again fraudulent use of LDC Finance Limited property, when the directors knew that the Heli-logging Group, (inclusive of Taranaki Timber and Treatments Limited), and LDC Finance Limited were hopelessly insolvent. Again this offending is also likely covered by serious fraud and theft provisions of the Crimes Act 1961.

891. Equally concealing or destroying documentation that would give rise to a claim of damages, compensation or such other valuable entitlement against the directors or any other party, would be caught as an offence under this section. The directors of LDC Finance Limited in concealing the property, being the true position of the company, from the stakeholders of LDC Finance Limited, inclusive of Messrs **SCHOFIELD** and **HARDING** clearly indicates that they attempted to hide that position, and the claim against the directors that would arise from that information coming to light. Again the writer believes it does not matter that anyone else was a conspirator. This claim of concealment as a conspiracy could also fall against the receivers.

379 [Falsification of Records]

892. This section is similar to section 378 immediately above, but does impart further aspects to conduct that could come under the heading of "false or misleading" as it relates to "records". In looking at this section we must first consider the meaning of the word "records" in section 2 of the Act which defines that it shall have the meaning as stated in section 189 [Company Records] of the Act which provides at various subsections; (writers emphasis);

(1) Subject to subsection (3) of this section and to section 88 and section 195 of this Act, ***a company must keep the following documents at its registered office****;*
(a) The constitution of the company
(b) ***Minutes of all meetings and resolutions of shareholders within the last 10 years***
(c) An interests register
(d) ***Minutes of all meetings and resolutions of directors and directors committees within the last 10 years****,*
(g) ***Copies of all written communications to shareholders*** *or all holders of the same class of shares during the last 10 years, including annual reports made under section 208 of this Act*
(h) ***Copies of all financial statements and group financial statements required to be completed by this Act or the Financial Reporting Act 1993*** *for the last 10 years*
(i) ***The accounting records required by section 194 of this Act for the current accounting period and for the last 10 completed accounting periods of the company****.*

Section 190 of the Companies Act 1993, as it applies to section 379

893. Section 190 of the Companies Act 1993 requires the directors at subsection (2)(a), (2)(b), to take all reasonable steps to insure that adequate measures have been taken to

protect the companies records from falsification, and if falsified, to detect such falsification.

894. Subsection (3) of section 190 of the Companies Act 1993 stipulates that if such reasonable steps to protect falsification of records are not undertaken then the directors are guilty of a criminal offence and subject to a maximum fine of $10,000.00.

895. This imposition of strict liability would surely have made the LDC Finance Limited directors keen to insure that the company records were safely kept and that the only persons capable of "falsifying" the company's records were persons with access to the records, and who could somehow falsify the company's records without the directors knowing these "alterations" had occurred. The writer submits that the 'falsification" of the LDC Finance Limited records by anyone other than the directors and senior management of LDC Finance Limited can be disregarded.

Section 189 [Company Records] and 194 [Accounting Records to be kept] of the Companies Act 1993 as it applies to section 379.

896. Equally section 189(1)(h) of the Companies Act 1993 stipulates that the company's financial records, as required by section 194 of the Companies Act should be stored in a similarly safe place for a period no less than 10 years. The records made pursuant to section 194 of the Companies Act 1993 are accounting records that will explain all accounting transactions correctly and will enable the financial position of the company to be assessed with reasonable accuracy, so the financial records of the company must comply with section 10 of the Financial Reporting Act 1993.

897. This means that the records of LDC Finance Limited since its incorporation in 2004, that should have been kept in a sufficiently safe place since the date of incorporation, should have been available to Perpetual Trust Limited and Pricewaterhousecoopers by the turning of a key or a combination lock. If these records "paint" a false position then the directors are all liable. Again if the directors fail in this duty they are liable, upon conviction to a maximum $10,000.00 fine. If the "false" position is painted on the records since 2004, then Pricewaterhousecoopers have a lot of explaining. Again

the adjoining of a conspiracy count may enable a prosecution of the receivers and anyone else involved.

Section 140 [Disclosure of Interest] of the Companies Act 1993 as it applies to section 379

898. Of significant interest to the writer, sub section 189(1) (c) of the Companies Act 1993 refers to an 'interests register' of the company being stored in such a safe place. The interests register of a company is dealt with at section 140 of the Companies Act 1993 and provides;

"140. Disclosure of interest – A director of a company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the register, and, if the company has more than one director, disclose to the board of the company –

a. if the monetary interest of the directors interest is able to be quantified, the nature and monetary value of that interest; or

b. if the monetary value of the directors interest cannot be quantified, the nature and extent of that interest."

899. The writer is unaware of any disclosure by directors of the LDC Finance Limited of their interests in Taranaki Timber and Treatments Limited which company directly obtained large advances from LDC Finance Limited, and LDC Finance Limited money indirectly, through Halifax Finance Limited, when they were acutely aware that both were irrecoverably insolvent pursuant to section 4 [Meaning of solvency test] of the Companies Act 1993.

900. It should be remembered that the writer believes Mr **MILLER** was in fact a director, pursuant to section 126 of the Companies Act 1993, of the companies in the Heli-logging Group which had been advanced millions and millions by LDC Finance Limited with no effective security, and had never paid any interest on those advances and that Mr **MILLER** was similarly a deemed director of Halifax Finance Limited when the directors of LDC Finance Limited were acutely aware that all legal persons concerned were irrecoverably insolvent pursuant to section 4 [Meaning of solvency test] of the Companies Act 1993.

901. Sub sections (b), (d), (e) and (g) of section 189 of the Companies Act 1993 also requires that the directors insure that all communications with shareholders, and all records, resolutions and minutes of shareholders and directors meetings, and all directors certificates made under the Companies Act 1993, (which would include certificates made pursuant to solvency issues found in sections 76 [Financial Assistance], 77 [Company must satisfy test], 78 [Special Financial Assistance], 80 [Financial Assistance not exceeding 5 per cent of shareholders funds]), will be safely stored for 10 years.

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902. Importantly this means that the entire history of what was said and done will be in Pricewaterhousecoopers hands and that therefore the actual position of LDC Finance Limited should accurately match those records. Again if the directors have failed to keep such records there is a liability, upon conviction, to a fine not exceeding $10,000.00. Clearly Mr **NOONE** wrote his report dated 8 March 2007 after looking at all of the evidence, but not reporting exactly how bad it was because otherwise F and I partners Messrs **SCHOLFIELD** and **HARDING** might not have committed the further $4m of F and I subscriptions. Of course Mr **NOONE** had likely insured the commitment in any event given his likely blackmail of both of the partners as reported at paragraphs 626 to 729 of this report.

903. Again section 379 of the Companies Act 1993 only relates to directors and employees of a company. Of interest to the writer is the use of the words in the section relating to any records "belonging to or relating to" the company capable of being "falsified, mutilated, altered, or destroyed.

904. It is the writers opinion that this term means that a director of company "**A**" can commit an offence relating to company **"A"** if he alters, or conspires, attempts to etc, to alter or falsify etc, a document recorded in company "**B"**, if that record in company "**B"**, relates to a matter in company **"A"**. This would have significant impact with

related companies is this case such as the Heli-logging Group, Halifax Finance Limited, GKW Limited, CBH Limited, and SC Management Limited. Clearly all of the swapping of loans to record false entries of "monies paid" between LDC Finance Limited and Halifax Finance Limited would be caught by this proviso if the writer is correct in his interpretation.

Section 380 [Carrying on Business Fraudulently]

905. This section is a real problem for all concerned in the alleged conspiracy. It states; (writers emphasis);

"(1) 380 Carrying on business fraudulently
(1) ***Every person*** ***who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose commits an offence*** *and is liable on conviction to the penalties set out in section 373(4) of this Act.*
(2) Every director of a company who,—
(a) By false pretences or other fraud induces a person to give credit to the company; or
(b) With intent to defraud creditors of the company,—
(i) Gives, transfers, or causes a charge to be given on, property of the company to any person; or
(ii) Causes property to be given or transferred to any person; or
(iii) Caused or was a party to execution being levied against property of the company—
commits an offence and is liable on conviction to the penalties set out in section 373(4) of this Act.
(3) Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4), who, with intent to defraud a creditor or creditors of the company, does any thing that causes material loss to any creditor.

906. Importantly this section concerns every person that knowingly is a party to continuing to trade a business with the intent to defraud creditors or any other person, or otherwise trades the company for any other fraudulent purpose.

907. Sections 377 to 380 of the Companies Act 1993 should be read in unison with the duties imposed on directors in sections 131 to 149 [directors duties] of the Companies Act 1993 which include, amongst others, the following headings;

131 [Duty of directors to act in good faith and in best interests of company]

133 [Powers to be exercised for a proper purpose]

134 [Directors to comply with Act and Constitution]

135 [Reckless Trading]

136 [Duty in relation to obligations]

137 [Directors duty of care]

138 [Use of information and advice]

139 [Meaning of "interested"]

140 [Disclosure of interest]

141 [Avoidance of transactions]

142 [Effect on third parties]

148 [Disclosure of share dealing by directors]

149 [Restrictions on share dealing by directors]

908. It is the writers opinion that the directors of LDC Finance Limited and Halifax Finance Limited and the Heli-logging Group of Companies, and anyone assisting insolvent trading is in breach of this section of the Companies Act 1993. This would mean that the LDC Finance Limited directors were in breach since probably 2000, and that the Pricewaterhousecoopers and Perpetual Trust Limited boys were assisting the breach since becoming aware of the insolvency in 2006 and then jointly coming up with the **NOONE** plan. Equally Mr **BROWNIE** and **ELLIS** are caught in breach as is possibly Mr **FORD**, but to a significantly lesser extent and Mr **FORD'S** behaviour is extensively mitigated by the fact that the creditors to the Heli-logging Group were legal persons whose directors were fully knowledgeable of the Groups level of insolvency and which directors were actively defrauding the Heli-logging Group.

909. Such actions by Mr **NOONE** **not** to advise Messrs **SCHOLFIELD** and **HARDING** as to the true financial position of LDC Finance Limited at mid 2006 and March 2007 were clearly an agreement between Mr **NOONE** and the directors of LDC Finance Limited to commit to a course of action that would see others defrauded as a result of Mr **NOONES** advice and willful blindness, or omission to act.

910. As was shown at paragraphs 856.2(5) of this report Mr **NOONE** was reporting to Messrs **LANCASTER** and **STYANT** of Perpetual Trust Limited as at 15 February

2007 informing them both of the following facts about LDC Finance Limited and its directors;

- LDC Finance Limited had been insolvent for some considerable time (obviously pre 2006);

- That the directors of LDC Finance Limited knew of this, or ought to have known

- That the directors of LDC Finance Limited were continuing to trade insolvently and that there was no way the company could survive as it was wholly un-saleable and it was only a matter of time before the company would crash.

- That the directors were applying voidable irregular allotments in breach of the Securities Act 1978

- That obviously all LDC Finance Limited stakeholders would have a claim as against the directors personally if it was proven that the prospectus of September 2006 was misleading (which it was) and when the company could not repay the resultant voidable irregular allotments allotted by the company since the company was irrecoverably insolvent.

911. It must be remembered that Mr **NOONE** knew that Messrs **SCHOLFIELD** and **HARDING** were current LDC Finance Limited shareholders owning 1.5 million shares, and were about to purchase another 4,000,000 shares and therefore he had a clear obligation to advise them of the true situation of LDC Finance Limited's insolvency, and that even their $4m monies injected into the firestorm would be instantly vaporized. The writer submits that Perpetual Trust Limited also had a duty to inform Messrs **SCHOLFIELD** and **HARDING** as to what was the true position.

"BOMBER and "TYRANT" want report before they will meet with writer and Mr Rolly FAWCETT and others. Truth is that they wanted to know what the writer had on them.

912. The writer contacted Mr **STYANT** (with Rolly **FAWCETTS** permission) pretending to be Mr **FAWCETT**. As already stated Mr **STYANT** attempted to blame all of the collapse on Messrs **SCHOLFIELD** and **HARDING** initially but was then "back peddling" faster than President Clinton did over the Monica **LEWINSKY** scandal. The writer must say that Mr **STYANT** came across as being "slippery" only making admissions when he was clearly cornered on certain matters. However to cut a long story short he was very worried about the amount of information that Mr **FAWCETT** seemed to have in his possession. At one point Mr **STYANT** stated that it appeared that Mr **FAWCETTS** knowledge, if made public, would detrimentally impact on LDC Finance Limited's case now before the Courts.

913. The writer (as Mr **FAWCETT)** stated that the truth would come out in a Court case anyway and that it was better that this occurred now so the stakeholders could change the course of the litigation to obtain compensation from the LDC Finance Limited directors and anyone else involved in the skullduggery inclusive of Pricewaterhousecoopers.

914. Mr **STYANT** alleged that he did not know about the **NOONE** report or what it contained and wanted to see it plus the statement by Mr **FORD** contained at page 222 to 233 of this report. Mr **STYANT** alleged that he knew nothing about most of the allegations to be made in this report and undertook to communicate to Mr **LANCASTER** what had been reported without informing anyone else.

915. However Mr **STYANT** did state that Perpetual Trust knew well before Pricewaterhousecoopers came in to do their high level report that the loss provisioning of LDC Finance Limited was millions of dollars out.

916. Mr **STYANT** stated that he did not know about the LDC Finance Limited directors owning 50% of Taranaki Timber and Treatments Limited. Mr **STYANT** attempted to explain away the CBH Limited share deal and when he got into difficulty because the writer knew all of the facts, he admitted that this could be a very big problem. Mr **STYANT** did admit that he knew that the directors had not put the $3.166m of voidable irregular allotments into a separate account as stated by Mr **HOLLIS**. Mr **STYANT** could not explain how Mr **HOLLIS** had only paid $1.4m back.

917. The writer supplied numerous documents to Mr **STYANT** via email inclusive of statement of Mr **FORD**, the **NOONE** report of 8 March 2007, and a significant amount of the other material in this report which made out the massive amounts of fraud, and theft, and the fact that LDC Finance Limited was likely insolvent when it became an issuer in 2004 and as LDC Investments Limited was broke since it was purchased in 1999. The writer probably sent 20 emails sent to Mr **STYANT** and, as the evidence started to mount against Pricewaterhousecoopers, Mr **STYANTS** attitude changed and he began not acting like an independent and honest Trustee would. Compare the following emails. The first email from Mr **STYANT** of 5 January 2009 said; (writers emphasis);

"Hi Rolly,

Thank you for the call today. I appreciate you taking the time to contact us and provide us with the information you have at hand.

Obviously you have been privy to a lot of information and gathered your thoughts on the happenings of LDC and F&I. This is what I intend to do. *I am going to digest the information we discussed today and in your email.* ***As part of this process it would be very helpful to get a copy of the Report produced by PwC on F&I for LDC****. As Trustee we can request this information from PwC/LDC but in light of our conversation I am hoping you are able to send me a copy. It would be appreciated.*

Once I have digested everything and completed some additional research I will contact you on Wednesday or Thursday to discuss the next step*. Please understand that as Trustee our role is solely for the collective investor of LDC, so we will take on board all information provided and keep an open mind."*

918. On the face on this email you would think that Mr **STYANT** was saying that he would investigate the matters, meet with the writer (as Mr **FAWCETT**) and reach conclusions based on the evidence supplied. As the evidence built up against Pricewaterhousecoopers Mr **STYANT** wanted a full copy of this report before he would meet with a group of worried LDC Finance Limited investors. Of course the writer wanted to get **STYANT** and **LANCASTER** in his office and examine them "on the spot" in front of numerous witnesses and record their answers.

919. It became very clear that Mr **STYANTS** agenda was to simply get hold of the report and then not keep the meeting. If you had nothing to hide you would attend a meeting to obtain the low down on what went on. Imagine a Police Officer being told about very serious criminal offending that could involve another organization it regularly did work with, and when good solid evidence was supplied of significant wrongdoing, it decided not to turn up to a meeting until it had all of the evidence turned over. Mr **STYANTS** final word to the writer (as Mr **FAWCETT**) came in an email on 19 January 2009; (writers emphasis)

Dear Rolly,

My previous message remains in place.

If Perpetual was to attend we do not know what we are discussing in full, *we do not know with whom will are discussing and who the author of this report is.* ***To not have the entire report prior to any meeting is to be unprepared.*** ***We are the Trustee of only LDC Investors in this matter and as yet we do not know who would be attending the proposed meeting.*** ***To not know who the author of the report is unacceptable to us****. We do not consider any of the above requests unreasonable or unusually.*

We are happy to convene a meeting of all Investors *under the conditions stipulated in the Trust Deed at any time and we look forward to so, if requested.*

920. The writer is no 'sucker' and realised what was afoot. Mr **STYANT** does not seem to understand that the evidence supplied by the writer was sufficient material to establish that if Mr **STYANT** was not involved in the conspiracy he would have dropped everything and gotten to a meeting. Mr **STYANT** has just hung himself. But what option did he have.

921. He could not come to a meeting not being aware of what material the author of the report had to "jump him with" and so he could not attend. In truth he did not want to attend before he knew what he would be facing. These are not the actions of someone with nothing to fear. Mr **STYANT** had been told by the writer (as Mr **FAWCETT**) that the author of the report had informed the writer (as Mr **FAWCETT**) on the law as Mr **STYANT** had been very impressed with Mr **FAWCETTS** knowledge. The writer believes that Mr **STYANT** was petrified about what he would be asked and

what exculpatory (but misleading) answers he would give that would be recorded and then used against him at a later date.

922. Mr **STYANT** saying that he would be happy to convene a meeting of stakeholders is a load of self serving bullshit, but again which bullshit will come back to haunt him. The Court will ultimately decide whether Mr **STYANT** being aware of the cogent material supplied should have attended such a meeting to obtain further evidence in support of the allegations prima facie made out by the material already supplied. The Court, if so satisfied that he should have done so, can safely draw a negative inference.

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NOT INCLUDED UNTIL RESPONSES RECEIVED (OR NOT) FROM ACCUSED PARTIES.

Parties supplied for comment; Pricewaterhousecoopers, Carren Miller, Perpetual Trust Limited, Lane Neave, Messrs MILLER, HARDIMAN, ELLIOT, JANNETTO, SCHOLFIELD, and HARDING, SHERWIN, CHAN & WALSHE.
Draft report also supplied to: Messrs Bruce HARNETT, Terry HAYDON, Rolly FAWCETT, John WHITTFIELD.