

FEDERAL COURT OF AUSTRALIA

Mentha, in the matter of Arrium Limited (administrators appointed) [2016] FCA

487

File number: VID 383 of 2016

Judge: DAVIES J

Date of judgment: 10 May 2016

Catchwords: **BANKRUPTCY AND INSOLVENCY** – administration – extension of time for convening second creditors’ meeting – where complex group administration – extension granted – *Corporations Act 2001* (Cth) s 439A(6)

BANKRUPTCY AND INSOLVENCY – administration – debts and liabilities of administrators – where previous administrators had resigned – where transition agreement entered into – modification of operation of s 443A of the *Corporations Act 2001* (Cth) – *Corporations Act 2001* (Cth) s 447A

BANKRUPTCY AND INSOLVENCY – administration – requirements to notify and inform creditors – whether notification including by email and publication to websites appropriate – modification of operation of s 439A of the *Corporations Act 2001* (Cth) – *Corporations Act 2001* (Cth) s 447A

BANKRUPTCY AND INSOLVENCY – administration – remuneration of administrators – where complex group administration – where one committee of creditors established for all group companies – modification of operation of s 449E of the *Corporations Act 2001* (Cth) – *Corporations Act 2001* (Cth) s 447A

Legislation: *Corporations Act 2001* (Cth) ss 439A, 447A, 449E
Federal Court Rules 2011 (Cth) r 1.34
Federal Court (Corporations) Rules 2000 (Cth) rr 1.3, 2.4(2)

Cases cited: *Australasian Memory Pty Ltd v Brien* (2000) 200 CLR 270; [2000] HCA 30
Australian Workers’ Union v Billingham, in the matter of Arrium Limited (administrators appointed) [2016] FCA 384

Carson, in the matter of Hastie Group Limited [2012] FCA 626

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Parbery, in the matter of NewSat Limited (administrators appointed) (receivers and managers appointed) [2015] FCA 435

Re Daisytek Australia Pty Ltd (administrators appointed) (2003) 45 ACSR 446; [2003] FCA 575

Re Henry Walker Eltin Group Ltd (administrators appointed) (2000) 54 ACSR 383; [2005] FCA 994

Re Riviera Group Pty Ltd (administrators appointed) (receivers and managers appointed) (2009) 72 ACSR 352; [2009] NSWSC 585

Date of hearing:	3 May 2016
Registry:	Victoria
Division:	General Division
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Category:	Catchwords
Number of paragraphs:	36
Solicitor for the Plaintiffs:	L Zwier, Arnold Bloch Leibler

ORDERS

VID 383 of 2016

**IN THE MATTER OF ARRIUM LIMITED (ADMINISTRATORS APPOINTED)
(ACN 004 410 833) AND THE OTHER COMPANIES LISTED IN SCHEDULE ONE**

BETWEEN: **MARK FRANCIS XAVIER METHA, CASSANDRA ELYSIUM
MATHEWS, MARTIN MADDEN AND BRYAN WEBSTER IN
THEIR CAPACITIES AS JOINT AND SEVERAL
ADMINISTRATORS OF ARRIUM LIMITED
(ADMINISTRATORS APPOINTED) (ACN 004 410 833) AND
THE OTHER COMPANIES LISTED IN SCHEDULE ONE**
First Plaintiffs

**ARRIUM LIMITED (ADMINISTRATORS APPOINTED)
(ACN 004 410 833) AND THE OTHER COMPANIES LISTED
IN SCHEDULE ONE**
Second Plaintiffs

JUDGE: **DAVIES J**

DATE OF ORDER: **10 MAY 2016**

THE COURT ORDERS THAT:

1. Pursuant to s 447A(1) of the Act, Pt 5.3A of the *Corporations Act 2001* (Cth) (the Act) is to operate in relation to each of the Second Plaintiffs (the **Arrium Administration Group Companies**) as if:
 - (a) the debts and liabilities within the meaning of Subdiv A of Div 9 of Pt 5.3A of the Act incurred by Paul Billingham, Said Jahani, Michael McCann and Matthew Byrnes of Grant Thornton (the **First Administrators**) in their capacities as joint and several administrators of the Arrium Administration Group Companies during the period of their administration of the Arrium Administration Group Companies; and
 - (b) the remuneration of the First Administrators determined in accordance with s 449E of the Act; and
 - (c) any costs and expenses incurred by the First Administrators in relation to or in connection with seeking Court approval of their remuneration in accordance with s 449E of the Act;

are debts and liabilities of the First Plaintiffs (the **Administrators**) incurred by the Administrators as voluntary administrators of the Arrium Administration Group Companies within the meaning of s 443A of the Act.

2. Pursuant to s 439A(6) of the Act, the convening period defined in s 439A(5)(b) of the Act in respect of each of the Arrium Administration Group Companies be extended to midnight on 28 February 2017.
3. Pursuant to s 447A(1) of the Act, Pt 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies such that the meetings of the creditors of each of the Arrium Administration Group Companies required by s 439A of the Act may be held at any time during the period up to, or within five business days after, the end of the convening period as extended by Order 2 above, notwithstanding the provisions of s 439A(2) of the Act.
4. Pursuant to s 447A(1) of the Act, Pt 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies such that notice of the second meetings of creditors of the Arrium Administration Group Companies (the **Second Meetings**) required to be given pursuant to s 439A(3) of the Act (the **Notice**) will be validly given to creditors of the Arrium Administration Group Companies by:
 - (a) sending the Notice by email (**Email**) to the email address of each creditor at such email address as is recorded in the books and records of the Arrium Administration Group Companies;
 - (b) where an email address is not recorded in the books and records of the Arrium Administration Group Companies, sending by post the Notice (**Letter**) to the postal address of each creditor at such postal address as is recorded in the books and records of Arrium Administration Group Companies;
 - (c) causing the Notice to be published in The Australian newspaper at least five days before the date of the Second Meetings;
 - (d) publishing the Notice on the websites maintained by:
 - (i) the Administrators at www.kordamentha.com; and
 - (ii) the Administrators' lawyers at www.abl.com.au;(collectively, the **Websites**) at least five business days before the Second Meetings;

- (e) providing in the Email, Letter and the notices to be published in The Australian newspaper and on the Websites:
 - (i) notice of the date, time and location of the Second Meetings;
 - (ii) notice that the reports required to be given to creditors of the Arrium Administration Group Companies pursuant to s 439A(4) of the Act (the **439A Reports**) is available for download on the Websites; and
 - (iii) details of a telephone hotline number by which any creditor may contact the Administrators to request a paper or electronic copy of the 439A Reports.
- 5. Pursuant to s 447A(1) of the Act, Pt 5.3A of the Act is to operate in relation to the Arrium Administration Group Companies as though s 439A(4) of the Act provided that the 439A Reports to accompany the Notice may be validly given to creditors of the Arrium Administration Group Companies by:
 - (a) making the 439A Reports available for download by creditors of the Arrium Administration Group Companies from the Websites in accordance with paragraph 4(e)(ii) of Order 4; and
 - (b) providing the 439A Reports to creditors upon request in accordance with paragraph 4(e)(iii) of Order 4.
- 6. Pursuant to s 447A(1) of the Act, and subject to further order, Pt 5.3A of the Act is to operate in relation to the Arrium Administration Group Companies such that all future notices, reports and communications that the Administrators must or may give or send to creditors of the Arrium Administration Group Companies may be given and/or sent in accordance with the procedures described in Orders 4 and 5.
- 7. A notice sent to a creditor pursuant to Orders 4 and 5 is taken to be given on the business day after it is sent.
- 8. Pursuant to s 447A of the Act, Pt 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies:
 - (a) as if s 449E(1) of the Act is modified to read, in respect of each of the Arrium Administration Group Companies, as follows:

“(1) [Where company under administration] The First Administrators and the Second Administrators of the Arrium Administration Group Companies are entitled to receive such remuneration as is determined:

- (aa) *by agreement between the Second Administrators of the Arrium Administration Group Companies and the Arrium Committee of Creditors in relation to any and / or each of the Arrium Administration Group Companies; or*
 - (a) *by agreement between the administrator and the committee of creditors (if any);*
 - (b) *by resolution of the company's creditors; or*
 - (c) *if there is no such agreement or resolution – by the Court.”*
- (b) as if the following definitions are inserted in s 449E(1) of the Act, in respect of each of the Arrium Administration Group Companies:

“Arrium Administration Group Companies means each of the Second Plaintiffs to Federal Court of Australia Proceeding No. VID 383 of 2016; and Arrium Committee of Creditors means the committee of creditors appointed to Arrium Limited (Administrators Appointed) by resolution of creditors passed on 19 April 2016.

First Administrators means Paul Billingham, Said Jahani, Michael McCann and Matthew Byrnes of Grant Thornton.

Second Administrators means Mark Francis Xavier Mentha, Bryan Webster, Martin Madden and Cassandra Elysium Mathews of KordaMentha.”

9. The Plaintiffs and any creditor of the Arrium Administration Group Companies affected by any order made pursuant to these Orders shall have liberty to apply upon two business days' written notice to the parties.
10. Pursuant to r 1.34 of the *Federal Court Rules 2011* (Cth) (the **Rules**) and r 1.3 of the *Federal Court (Corporations) Rules 2000* (Cth) (**Corporations Rules**), compliance with the requirements of r 2.4(2) of the Corporations Rules be dispensed with and in lieu thereof the Plaintiffs upload each of the records of a search of the records maintained by ASIC in relation to each of the Arrium Administration Group Companies on the website maintained by the Administrators' solicitors at <http://www.abl.com.au/Arrium/CompanyInformation.htm>.
11. Pursuant to r 1.39 of the Rules and r 1.3(2) of the Corporations Rules, service of the Plaintiffs' Originating Process dated 2 May 2016 on the persons referred to in Section

E of the Originating Process in accordance with r 2.7(1) of the Corporations Rules be abridged as required.

12. The Plaintiffs' costs of this application be costs in the administration of the Arrium Administration Group Companies.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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Legislation: *Corporations Act 2001* (Cth) ss 439A, 447A, 449E
Federal Court Rules 2011 (Cth) r 1.34
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Cases cited: *Australasian Memory Pty Ltd v Brien* (2000) 200 CLR 270; [2000] HCA 30
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National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Category:	Catchwords
Number of paragraphs:	36
Solicitor for the Plaintiffs:	L Zwier, Arnold Bloch Leibler

REASONS FOR JUDGMENT

DAVIES J:

INTRODUCTION

- 1 The first plaintiffs (**“the administrators”**) are the administrators of Arrium Limited (administrators appointed) (**“Arrium”**) and 93 other companies in the Arrium Group (collectively the **“Arrium Administration Group”**). The administrators have applied for the following orders pursuant to ss 439A(6), 447A and 449E of the *Corporations Act 2001* (Cth) (**“the Act”**):

Transition Agreement

- 1 An order pursuant to section 447A(1) of the Act that Part 5.3A of the Act is to operate in relation to each of the Second Plaintiffs (the **Arrium Administration Group Companies**) as if:
- (a) the debts and liabilities within the meaning of Division 9 of Part 5.3A of the Act incurred by Paul Billingham, Said Jahani, Michael McCann and Matthew Brynes of Grant Thornton (the **First Administrators**) in their capacities as joint and several administrators of the Arrium Administration Group Companies during the period of their administration of the Arrium Administration Group Companies; and
 - (b) the remuneration of the First Administrators determined in accordance with section 449E of the Act; and
 - (c) any costs and expenses incurred by the First Administrators in relation to or in connection with seeking Court approval of their remuneration in accordance with section 449E of the Act;

are debts and liabilities of the First Plaintiffs (the **Administrators**) incurred by the Administrators as voluntary administrators of the Arrium Administration Group Companies within the meaning of section 443A of the Act.

Extension of convening periods

- 2 An order pursuant to section 439A(6) of the Act that the convening period defined in section 439A(5)(b) of the Act in respect of each of the Arrium Administration Group Companies be extended.
- 3 An order pursuant to s 447A(1) of the Act, that Part 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies such that the meetings of the creditors of each of the Arrium Administration Group Companies required by section 439A of the Act may be held at any time during the period up to, or within five business days after, the end of the convening period as extended by paragraph 2 above, notwithstanding the provisions of s 439A(2) of the Act.

Notification of the second meetings of creditors

- 4 An order pursuant to section 447A(1) of the Act, that Part 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies such that notice of the second meetings of creditors of the Arrium Administration Group Companies (the **Second Meetings**) required to be given pursuant to section 439A(3) of the Act (the **Notice**) will be validly given to creditors of the Arrium Administration Group Companies by:
- (a) sending the Notice by email (**Email**) to the email address of each creditor at such email address as is recorded in the books and records of the Arrium Administration Group Companies;
 - (b) where an email address is not recorded in the books and records of the Arrium Administration Group Companies, sending by post the Notice (**Letter**) to the postal address of each creditor at such postal address as is recorded in the books and records of Arrium Administration Group Companies;
 - (c) causing the Notice to be published in The Australian newspaper at least five days before the date of the Second Meetings;
 - (d) publishing the Notice on the websites maintained by:
 - (i) the Administrators at www.kordamentha.com; and
 - (ii) the Administrators' lawyers at www.abl.com.au;(collectively, the **Websites**) at least 5 business days before the Second Meetings;
 - (e) providing in the Email, Letter and the notices to be published in The Australian newspaper and on the Websites:
 - (i) notice of the date, time and location of the Second Meetings;
 - (ii) notice that the report required to be given to creditors of the Arrium Administration Group Companies pursuant to section 439A(4) of the Act (the **439A Reports**) is available for download on the Websites; and
 - (iii) details of a telephone hotline number by which any creditor may contact the Administrators to request a paper or electronic copy of the 439A Reports.

Report to creditors

- 5 An order pursuant to section 447A(1) of the Act, that Part 5.3A of the Act is to operate in relation to the Arrium Administration Group Companies as though section 439A(4) of the Act provided that the 439A Reports to accompany the Notice may be validly given to creditors of the Arrium Administration Group Companies by:
- (a) making the 439A Reports available for download by creditors of the Arrium Administration Group Companies from the Websites in accordance with paragraph 4(e)(ii) above; and
 - (b) providing the 439A Reports to creditors upon request in accordance with paragraph 4(e)(iii) above.
- 6 An order pursuant to section 447A(1) of the Act, and subject to further order,

that Part 5.3A of the Act is to operate in relation to the Arrium Administration Group Companies such that all future notices, reports and communications that the Administrators must or may give or send to creditors of the Arrium Administration Group Companies may be given and/or sent in accordance with the procedures described in paragraphs 4 and 5 above.

- 7 An order that a notice sent to a creditor pursuant to paragraphs 4 and 5 of this Originating Process is taken to be given on the business day after it is sent.

Determination of Remuneration

- 8 An order pursuant to section 447A of the Act, that Part 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies:

- (a) as if section 449E(1) of the Act was modified to read, in respect of each of the Arrium Administration Group Companies, as follows:

“(1) [Where company under administration] The First Administrators and the Second Administrators of the Arrium Administration Group Companies are entitled to receive such remuneration as is determined:

(aa) by agreement between the Second Administrators of the Arrium Administration Group Companies and the Arrium Committee of Creditors in relation to any and / or each of the Arrium Administration Group Companies; or

(a) by agreement between the administrator and the committee of creditors (if any); or

(b) by resolution of the company’s creditors; or

(c) if there is no such agreement or resolution – by the Court.”

- (b) as if the following definitions are inserted in section 449E(1) of the Act, in respect of each of the Arrium Administration Group Companies:

“Arrium Administration Group Companies means each of the Second Plaintiffs to Federal Court of Australia Proceeding No. VID [insert] of 2016; and

Arrium Committee of Creditors means the committee of creditors appointed to Arrium Limited (Administrators Appointed) by resolution of creditors passed on 19 April 2016.

First Administrators means Paul Billingham, Said Jahani, Michael McCann and Matthew Byrnes of Grant Thornton.

Second Administrators means Mark Francis Xavier Mentha, Bryan Webster, Martin Madden and Cassandra Elysium Mathews of KordaMentha.”

Other

- 9 An order that the Plaintiffs and any creditor of the Arrium Administration Group Companies affected by any order made pursuant to this Originating Process shall have liberty to apply upon two business days’ written notice to

the parties.

- 10 An order pursuant to rules 1.34 of the *Federal Court Rules 2011* (Cth) (**Rules**) and 1.3 of the *Federal Court (Corporations) Rules 2000* (Cth) (**Corporations Rules**) that compliance with the requirements of rule 2.4(2) of the Corporations Rules be dispensed with and in lieu thereof the Plaintiffs upload each of the records of a search of the records maintained by ASIC in relation to each of the Arrium Administration Group Companies on the website maintained by the Administrators' solicitors at <http://www.abl.com.au/Arrium/CompanyInformation.htm>.

2 The application is supported by an affidavit of Bryan Webster ("**Mr Webster**"), one of the administrators, and an affidavit of Justin Vaatstra ("**Mr Vaatstra**"), a partner in the firm of lawyers acting for the plaintiffs, and has been made on short notice to various interested stakeholders, including ASIC. The persons and entities given notice are set out in Schedule Two to these reasons for decision. There has been no objection to the orders sought, save that following discussions with ASIC and others about the length of the extension of the convening periods for the calling of the second creditors' meetings, the administrators have agreed to seek an extension of approximately nine months, in lieu of the proposed twelve months.

3 After hearing submissions from Mr Zwier for the plaintiffs, I was satisfied that I should make orders 2 and 3 extending the convening period for the second meeting of creditors from 6 May 2016 to 28 February 2017 and I should also make order 10 dispensing with the requirements of r 2.4(2) of the Corporations Rules in relation to the filing of the ASIC company searches of each of the second plaintiffs on the making of an application. I stated that I would provide my reasons for making those orders together with my reasons for decision in respect of the other orders sought.

4 For the reasons that follow I am satisfied that the orders sought should be made.

BACKGROUND

5 On 7 April 2016, Paul Billingham, Said Jahani, Michael McCann and Matthew Byrnes of the accounting firm Grant Thornton ("**the first administrators**") were appointed as the voluntary administrators to the Arrium Administration Group by resolutions of the directors of the relevant companies.

6 On 12 April 2016, the first administrators resigned as the administrators and pursuant to Court order, Mr Webster, together with Mark Mentha, Cassandra Mathews and Martin Madden, were immediately appointed the joint and several voluntary administrators of the

Arrium Administration Group: *Australian Workers' Union v Billingham, in the matter of Arrium Limited (administrators appointed)* [2016] FCA 384.

7 Mr Webster has deposed to the complexity and scope of the administration relevantly as follows.

Group structure

8 Arrium is a listed company on the ASX and the ultimate holding company of the Arrium Group. 93 of its subsidiaries have gone into administration, though it appears from the administrators' investigations to date that some 50 of the 94 companies in administration may be dormant. In addition to those 93 companies, the Arrium Group also comprises subsidiary entities collectively referred to as the Moly-Cop Entities. The Moly-Cop Entities are not subject to any insolvency or external administration and are trading profitably. They are considered to be the "jewel in the crown" of the Arrium Group. Many of the Moly-Cop Entities are foreign companies and are located in Canada, the United States, Mexico, Peru, Chile and Indonesia.

9 The Arrium Group carries on a very large and complex international mining and materials business with approximately 30,000 customers and 10,000 suppliers. The business is organised under three major divisions being:

- (a) mining and integrated steel manufacturing at Whyalla, South Australia ("**OneWhyalla**");
- (b) recycling, steel manufacturing, rod and bar mills (Laverton, Victoria; Newcastle, New South Wales; and Rooty Hill, New South Wales), steel wire mills, reinforcing and metals product distributions throughout Australia; and
- (c) mining consumables carried on by the Moly-Cop Entities ("**the Moly-Cop business**").

10 Various Arrium Administration Group companies are involved in each of these divisions and some of the companies are active in more than one division.

Employees

11 The Arrium Group carries on its businesses from approximately 160 sites in Australia and overseas, comprising iron ore mine sites, ports, large steel production facilities, metal distribution sites and recycling sites and employs approximately 8,662 people in total.

Approximately 6,000 employees (and an additional 3,000 contractors) are based in Australia and employed by one of nine entities in the Arrium Administration Group. A number of the employees employed by Arrium Administration Group companies appear to work across more than one business unit.

Debt

- 12 The Arrium Group has unsecured finance debt owed pursuant to three separate Syndicated Facility Agreements, six Bilateral Facility Agreements and two note agreements in respect of US private placement notes. The obligations of the borrowers and issuers of these facilities and note agreements are guaranteed by certain Arrium subsidiaries, including the Moly-Cop Entities.
- 13 Approximately US\$100 million secured finance debt has also been borrowed by four Arrium Administration Group companies from ANZ, Westpac, NAB and CBA and secured by the Moly-Cop Entities under a new facility entered into by those Arrium Administration Group companies and used to discharge a pre-appointment secured Arrium Group borrowing from GSO Capital Partners, LP ("**GSO Interim Facility**").
- 14 In addition to two group guarantees, seven Arrium Administration Group entities are parties to a deed of cross guarantee for SSX Holdings Pty Ltd (an Arrium Administration Group entity), entered into in 1999 and a further 26 Arrium Administration Group entities are parties to a deed of cross guarantee for Arrium, entered into in 2008.
- 15 The appointment of administrators to the Arrium Administration Group has triggered defaults under the unsecured finance facilities and the GSO Interim Facility and the administrators are currently negotiating various standstill and forbearance arrangements with the secured and unsecured lenders in order to preserve the status quo in relation to the Moly-Cop Entities.

Creditors

- 16 The administrators have thus far identified approximately 22,500 creditors of the Arrium Administration Group.
- 17 The unsecured finance debt owed by Arrium Administration Group entities is approximately \$2.8 billion, comprised of:
 - (a) \$2.189 billion under the three separate Syndicated Facility Agreements;
 - (b) \$309 million under the six Bilateral Facility Agreements; and

- (c) \$333.4 million under the two note agreements in respect of US private placement notes.

18 The Arrium Administration Group contingently owes employee entitlements of approximately \$620 million.

19 Other creditors of the Arrium Group comprise:

- (a) general creditors, with claims estimated to be in excess of \$500 million; and
- (b) contingent creditors with claims that may be brought against the Arrium Group, which may range anywhere between approximately \$650 million and \$1.2 billion.

20 In addition, the administrators have also received communications from shareholders of Arrium claiming to be subordinated creditors within the meaning of s 563A of the Act. The administrators have not yet investigated how many other shareholders may have like subordinated claims.

21 Mr Webster deposed that the administrators need to conduct further investigations to better and more fully understand the precise size and quantum of all creditors' claims, a task that he expects will take months to complete.

Administration

22 Since taking control of the Arrium Administration Group, the administrators have been managing, and investigating, the business, property and affairs of the Arrium Administration Group and supervising the operations of the Moly-Cop Entities. The administrators seek to preserve the status quo in order to consider all options to maximise the prospects of the Arrium Group's businesses continuing in existence or, if that is not possible, to maximise the return to all creditors and shareholders. To that end, the administrators have devised a three point plan:

- (a) first, conduct business as usual by continuing to trade and stabilising operations;
- (b) secondly, commence development of a considered strategy for the Arrium Administration Group in light of the administration; and
- (c) thirdly, attend to statutory reporting and investigations.

- 23 The administrators have commenced consideration of a strategy to restructure, recapitalise or sell the Arrium Administration Group businesses or some of them. Mr Webster deposed that while some businesses within the Arrium Group are profitable and stable like the Moly-Cop business, the OneWhyalla business appears to face financial, operational and strategic challenges. The township of Whyalla depends upon approximately 30% of its employment from a continuation of the Arrium Group's operations in Whyalla and OneWhyalla will need to be restructured to facilitate a sale or recapitalisation that results in an appropriate recovery for creditors as well as job security for employees. The administrators estimate that a period of four to six months is required to effect that restructuring. The administrators are also actively considering whether to seek to restructure, recapitalise or sell the Arrium Group as a whole or whether to effect a number of sales of the businesses within the Arrium Group. Having regard to the level of intra-group operational and financial integration within the Arrium Group and the Arrium Administration Group's dealings with the Moly-Cop Entities, the administrators expect an informed decision on the structure of a future restructure or recapitalisation or sales process to take a few months. If the administrators resolve to sell or realise the shares in the Moly-Cop Entities, it is expected that process will likely take up to 12 months to complete. Accordingly, the administrators anticipate they will be in a position to initiate a sale or recapitalisation process or processes in approximately three to four months.
- 24 Mr Webster has deposed to numerous other matters that need to be investigated before the administrators can properly report to creditors under s 439A(4)(a) of the Act. Those matters include assessing the basis upon which the directors resolved that certain of the Arrium Administration Group companies were insolvent and therefore appointed administrators on 7 April 2016 and whether there are any voidable transactions in respect of which money, property or other benefits may be recoverable under Pt 5.7B of the Act.

ORDER 1: TRANSITION AGREEMENT

- 25 To facilitate the orderly and efficient transition to the administrations from the first administrators, the administrators entered into an agreement with the first administrators ("**the Transition Agreement**") pursuant to which the administrators agreed to indemnify the first administrators for:

- (a) debts for which the first administrators are liable under Subdiv A of Div 9 of the Act or a remittance provision as defined by s 443BA(2) of the Act;

- (b) any other debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the first administrators in the performance or exercise, or purported performance or exercise, of any of their functions or powers;
- (c) the first administrators' remuneration that is fixed in accordance with s 449E of the Act.

26 The Transition Agreement also provides that the indemnities given by the administrators to the first administrators will be treated as an expense in the voluntary administrations of the Arrium Administration Group and a personal liability of the administrators in accordance with s 443A of the Act.

27 The Court has the undoubted power under s 447A of the Act to make an order of the kind sought, varying the operation of s 443A of the Act (see *Australasian Memory Pty Ltd v Brien* (2000) 200 CLR 270; [2000] HCA 30, [24]), and I am satisfied that the order sought should be made. The first administrators' debts, obligations and remuneration indemnified by the administrators under the Transition Agreement mirror s 443D of the Act and the effect of the order will be to treat the indemnities as if they were obligations incurred by the administrators within the meaning of s 443A of the Act. The indemnified liabilities under the Transition Agreement will then be afforded the same indemnity, priority and lien against the property of the Arrium Administration Group pursuant to ss 443D, 443E and 443F of the Act as if the first administrators had remained in office. The administrators entered into the Transition Agreement after their appointment became effective and in their capacity as the administrators of the Arrium Administration Group and the order is consistent with the objects of Pt 5.3A of the Act, and appropriate to secure the transition of the administration from the first administrators to the administrators with efficiency.

ORDERS 2 AND 3: EXTENSION OF CONVENING PERIODS

28 The first meetings of creditors of the Arrium Administration Group were held on 19 April 2016. Pursuant to the provisions of s 439A(5) of the Act, the second meetings of creditors required under s 439A of the Act were required to be convened by around 6 May 2016. The time frame is obviously too tight for an administration of this size, complexity and scope and a substantial extension of time in which to convene the meetings has been sought by the administrators pursuant to s 439A(6) of the Act.

- 29 The essential matter for the Court on such an application is to strike an appropriate balance between the legislator's expectation that the administration will be relatively swift, and the requirement that undue speed not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders: *Re Riviera Group Pty Ltd (administrators appointed) (receivers and managers appointed)* (2009) 72 ACSR 352; [2009] NSWSC 585, [15]; *Parbery, in the matter of NewSat Limited (administrators appointed) (receivers and managers appointed)* [2015] FCA 435, [59].
- 30 A substantial extension of time is justified to give the administrators the time needed to investigate the affairs of the companies to be able to report properly to creditors in accordance with s 439A(4)(a) of the Act ("s 439A reports") and give consideration to whether a deed or deeds of company arrangement or scheme of arrangement might be propounded as part of any restructure, recapitalisation or sale.
- 31 Initially a 12-month extension was sought but following discussions with ASIC, the extension now sought by the administrators is to 28 February 2017. In view of the size, scope and complexity of the administration, I do not consider that an extension of the convening period to that date is excessive and the administrators have informed the Court that if they are in a position to convene the meetings sooner, they will do so. The administrators accordingly have also sought a "Daisytek order" (*Re Daisytek Australia Pty Ltd (administrators appointed)* (2003) 45 ACSR 446; [2003] FCA 575 at [10]–[14]) allowing the administrators to hold the second meetings of creditors at any time during the extended convening period or within five business days after the end of the convening period. It is appropriate to make that order also.

ORDERS 4, 5, 6 AND 7: NOTIFICATION OF THE SECOND MEETINGS OF CREDITORS AND S 439A REPORTS TO CREDITORS

- 32 Given the numerous creditors and anticipated size of the s 439A reports, the cost of notification of the second creditors' meetings and provision of the s 439A reports is likely to be very costly. The administrators estimate that their s 439A reports are likely to be at least 250 pages in length and it will likely cost around \$500,000 (excluding GST) to print and post the reports to each of the 22,500 creditors identified to date. In those circumstances, the administrators seek orders pursuant to s 447A of the Act modifying the procedures for providing notices and reports to creditors, including provision of the s 439A reports and notification of the second meetings of creditors. The administrators also seek orders enabling

the administrators to make the s 439A reports available for download on the websites of the administrators and of the administrators' lawyers ("the websites"), in lieu of accompanying the notices of the second meetings of creditors.

- 33 It is proposed to give creditors notification of the second creditors' meetings and the availability of the s 439A reports for download on the websites by email (where email addresses are known), by post (where email addresses are not known), by publishing the notices of meetings on the websites and by having the notices published in The Australian newspaper at least five days before the date of the second creditors' meetings. In the notifications, the administrators will also provide details of a telephone hotline number by which any creditor may contact the administrators to request a paper or electronic copy of the s 439A reports. Given the expected size, numbers and expense of the required notifications and s 439A reports, the orders sought are sensible and justified: *Carson, in the matter of Hastie Group Limited* [2012] FCA 626, [20]–[22]; *In the matter of Creative Memories Australia Pty Ltd (administrators appointed)* [2013] NSWSC 732 at [8].

ORDER 8: DETERMINATION OF REMUNERATION

- 34 On 19 April 2016, the creditors voted in favour of a resolution establishing a committee of creditors in respect of Arrium only but also comprised of creditors with claims against one or more other Arrium Administration Group companies, and not just creditors of Arrium. In excess of 50% by value and in excess of 50% by number of all Arrium Group creditors (on a consolidated basis) are represented on the committee of creditors. The establishment of only one committee was done for reasons of expediency, having regard to the 94 companies in administration, as well as indications that 50 of those companies may be dormant. Having regard to the complexity of the Arrium Administration Group, the administrators state that it will be an extremely complicated, time-consuming and costly exercise for them precisely to allocate the time they and their staff spend in relation to each particular Arrium Administration Group entity and accordingly they propose to consult with and seek the agreement of the Arrium committee of creditors in respect of the allocation of their remuneration across the different companies comprising the Arrium Administration Group and the determination of their remuneration in respect not only of Arrium, but of all the Arrium Administration Group companies.

- 35 The Court has the power to make the orders sought pursuant to s 447A of the Act (*Re Henry Walker Eltin Group Ltd (administrators appointed)* (2000) 54 ACSR 383; [2005] FCA 994

and the cases cited at [5]) and it is appropriate that the order be made having regard to the complexity of the administration and numbers of companies involved.

ORDER 10: DISPENSING WITH RULE 2.4(2)

36 Rule 2.4(2) of the Corporations Rules requires a copy of the company searches in relation to each of the Arrium Administration Group companies to be filed with each application. Company searches in respect of each of the 94 Arrium Administration Group companies comprise some 1,215 pages and in each of the applications to date, the rule has been complied with. The administrators now seek in this application and future applications to be relieved of the requirement to file those company searches so as to save time and costs and, in lieu, the administrators have made the searches publicly available by uploading a full set of the company searches in respect of each of the 94 Arrium Administration Group companies to a dedicated page on the website of the administrators' lawyers. In the circumstances, there should be dispensation with r 2.4(2) of the Corporations Rules.

I certify that the preceding thirty-six (36) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Davies.

Associate:



Dated: 10 May 2016

SCHEDULE ONE

VID 383 of 2016

A.C.N. 006 769 035 Pty Limited (ACN 006 769 035)
Akkord Pty Limited (ACN 060 486 991)
ANI Construction (W.A.) Pty. Limited (ACN 008 670 871)
Arrium Finance Pty Limited (ACN 093 954 940)
Arrium Iron ore Holdings Pty Limited (ACN 152 752 844)
Arrium Limited (ACN 004 410 833)
Atlas Group Employees Superannuation Fund Pty. Limited. (ACN 060 568 998)
Atlas Group Staff Superannuation Fund Pty. Limited. (ACN 059 654 241)
Atlas Group Superannuation Plan Pty Limited (ACN 065 649 050)
Australian National Industries Pty Limited (ACN 000 066 071)
Australian Wire Industries Pty Limited (ACN 064 267 456)
Austube Mills Holdings Pty Limited (ACN 123 160 172)
Austube Mills Pty Limited (ACN 123 666 679)
AWI Holdings Pty Limited (ACN 004 157 475)
B.G.J. Holdings Proprietary Limited (ACN 004 859 536)
Bradken Consolidated Pty Limited (ACN 000 011 932)
Central Iron Pty Limited (ACN 143 503 397)
Cockatoo Dockyard Pty Limited (ACN 000 025 918)
Comsteel Pty. Limited (ACN 006 218 524)
Coober Pedy Resources Pty Limited (ACN 151 599 905)
Eagle & Globe Pty Limited (ACN 000 122 305)
Email Accumulation Superannuation Pty Limited (ACN 065 263 658)
Email Executive Superannuation Pty Limited (ACN 065 263 818)
Email Holdings Pty Limited (ACN 092 348 555)
Email Management Superannuation Pty Limited (ACN 065 263 710)
Email Metals Pty. Limited. (ACN 004 574 681)
Email Pty Limited (ACN 000 029 407)
Email Superannuation Pty Limited (ACN 065 263 603)
Emwest Holdings Pty. Limited. (ACN 001 992 123)
Emwest Properties Pty Limited (ACN 003 146 334)
GSF Management Pty Limited (ACN 064 116 874)

J. Murray-More (Holdings) Pty Limited (ACN 000 158 412)
John McGrath Pty Limited (ACN 000 004 937)
Kelvinator Australia Pty Limited (ACN 007 873 734)
Litesteel Products Pty Limited (ACN 109 854 677)
Litesteel Technologies Pty Limited (ACN 113 101 054)
Metals Properties Pty. Limited. (ACN 000 040 040)
Metalstores Pty Limited (ACN 000 267 112)
Metpol Pty Limited (ACN 000 927 373)
N.K.S. (Holdings) Proprietary Limited (ACN 004 321 313)
O Dee Gee Co. Pty. Limited. (ACN 004 208 191)
Onesteel Americas Holdings Pty Limited (ACN 147 067 016)
Onesteel Building Supplies Pty Limited (ACN 000 045 349)
Onesteel Coil Coaters Pty Limited (ACN 123 138 732)
OneSteel Manufacturing Pty Limited (ACN 004 651 325)
Onesteel MBS Pty Limited (ACN 096 273 979)
Onesteel NSW Pty Limited (ACN 003 312 892)
Onesteel Queensland Pty Limited (ACN 010 558 871)
Onesteel Recycling Holdings Pty Limited (ACN 059 240 952)
Onesteel Recycling Overseas Pty Limited (ACN 105 479 356)
Onesteel Recycling Pty Limited (ACN 002 707 262)
Onesteel Reinforcing Pty Limited (ACN 004 148 289)
Onesteel Stainless Australia Pty Limited (ACN 004 610 851)
Onesteel Stainless Pty Limited (ACN 006 362 652)
Onesteel Technologies Pty Limited (ACN 096 380 219)
Onesteel Trading Pty Limited (ACN 007 519 646)
Onesteel US Investments 1 Pty Limited (ACN 131 211 606)
Onesteel US Investments 2 Pty Limited (ACN 131 211 571)
Onesteel Wire Pty Limited (ACN 000 010 873)
Overseas Corporation (Australia) Pty Limited (ACN 004 242 086)
P & T Tube Mills Pty Limited (ACN 010 469 977)
Palmer Tube Mills Pty Limited (ACN 010 469 879)
Pipeline Supplies of Australia Pty Limited (ACN 008 573 475)
Reosteel Pty Limited (ACN 000 142 094)

Roentgen Ray Pty Limited (ACN 000 028 106)
Southern Iron Pty Limited (ACN 119 611 068)
SSG Investments Pty Limited (ACN 085 490 526)
SSG No.2 Pty Limited (ACN 087 840 720)
SSG No.3 Pty Limited (ACN 087 840 515)
SSGL Share Plan Nominees Pty Limited (ACN 085 943 540)
SSX Acquisitions Pty Limited (ACN 090 574 520)
SSX Employees Superannuation Fund Pty Limited (ACN 064 431 116)
SSX Holdings Pty Limited (ACN 087 813 116)
SSX International Pty Limited (ACN 084 990 947)
SSX Pty Limited (ACN 082 181 726)
SSX Retirement Fund Pty Limited (ACN 064 431 303)
SSX Services Pty Limited (ACN 083 090 831)
SSX Staff Superannuation Fund Pty Limited (ACN 064 431 072)
Tasco Superannuation Management Pty Limited (ACN 071 901 712)
The ANI Corporation Pty Limited (ACN 000 421 358)
The Australian Steel Company (Operations) Pty Limited (ACN 069 426 955)
Tube Estates Pty. Limited. (ACN 010 449 939)
Tube Street Pty Limited (ACN 004 785 157)
Tube Technology Pty. Limited. (ACN 010 469 986)
Tubemakers of Australia Pty Limited (ACN 000 005 498)
Tubemakers Somerton Pty Limited (ACN 004 595 546)
Western Consolidated Industries Pty Limited (ACN 001 185 913)
Whyalla Ports Pty Limited (ACN 153 225 364)
X.C.E. Pty Limited (ACN 004 081 903)
XEM (Aust) Pty Limited (ACN 004 158 025)
XLA Pty Limited (ACN 004 239 392)
XLL Pty Limited (ACN 006 301 266)
XMS Holdings Pty Limited (ACN 008 742 014)
Zinctek Pty limited (ACN 010 474 790)

SCHEDULE TWO

Australian Securities and Investments Commission

The Committee of Creditors of Arrium Limited

- Steve Cook, employee representative for Arrium non-union employees
- The Australian Workers' Union
- The Australian Council of Trade Unions
- BIS Industries
- Lucas Total Contract Solutions
- K&S Corporation Limited
- Morgan Lewis as agent for the US Noteholders
- Banco Bilbao Vizcaya Argentaria, SA
- Westpac
- National Australia Bank
- Commonwealth Bank of Australia
- Australia and New Zealand Bank
- The State Government of South Australia
- The Commonwealth of Australia

The Arrium Lenders, being the unsecured lenders to the Arrium Group (with the exception of Morgan Stanley and the US Noteholders), c/- King & Wood Mallesons

The Directors of the Arrium Administration Group, c/- Clayton Utz

The First Administrators of Grant Thornton, c/- Ashurst Australia

Morgan Stanley Bank c/- Quinn Emanuel Trial Lawyers

The US Noteholders c/- Morgan Lewis as agent for the US Noteholders