



**EDDIE
SENATORE**

EDDIE SENATORE
Advisory

PO Box 3481
MANUKA ACT 2603

+61 2 6100 3435
hello@eddiesenatore.com
eddiesenatore.com

20 September 2021

To the creditor as addressed

Dear Creditor

Xanthea Pty Ltd (In Liquidation) ACN 159 994 297 (the “Company”)

As you are aware, I was appointed Liquidator of the Company on 12 May 2020.

Please find enclosed:

1. Creditor Update;
2. Summary Receipts and Payments;
3. Notice of Meeting of Creditors - 6 October 2021;
4. Form 535 - Formal Proof of Debt or Claim; and
5. Form 532 - Appointment of Proxy Form

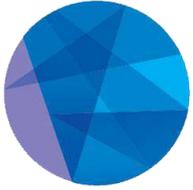
Formal proofs of debt (Form 535) and, if applicable, appointment of proxy form should be submitted no later than close of business **Monday, 4 October 2021**. Please note you are not required to resubmit a formal proof of debt if previously provided.

Please contact my office should you require further information.

Yours faithfully

Ezio Senatore
Liquidator

Appointment date: 12 May 2020
Contact name: Ezio (Eddie) Senatore
Contact number: (02) 6100 3435
Email: hello@eddiesenatore.com



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Xanthea Pty Ltd (In Liquidation) **ACN 159 994 297**

(the “Company”)

Creditor Update

20 September 2021

EXIT OPTIMISATION | TURNAROUND | PERFORMANCE IMPROVEMENT | DIGITAL



1.0 Update

The purpose of this update is to obtain creditor approval to the terms of a settlement set out in the deed of release relating to proceedings SC 67 of 2017 the ACT Supreme Court.

2.0 Receipts and Payments

A summary of my receipts and payments is attached as **Annexure “A”**.

3.0 Settlement Offer

In my Statutory Report to Creditors dated 10 August 2020, I reported the business of the Company was sold to Legal on London in the amount of \$100,000 plus contingent fees on existing legal matters at the time of the sale together with contingent fees on new matters referred to Legal on London by the former director of the Company.

On 28 August 2018, Mr Barnes in his personal capacity and as the director of Jornad Pty Ltd (“Jornad”) as trustee for the Jornad Trust (“Barnes Matter”) entered into a costs agreement with the Company for professional legal services rendered for two sets of proceedings in the ACT Supreme Court; proceedings SC 67 of 2017 and SC 168 of 2017 (“Jornad I” and “Jornad II” respectively). These proceedings were part of the legal matters that were subject to the sale agreement between the Company and Legal on London.

As at the date of my appointment, an amount of \$444,328 had been rendered by the Company to Mr Barnes and Jornad. Of this amount, \$440,653 remained unpaid (“Barnes Legal Costs”).

On 5 August 2020, judgment was delivered in favour of Mr Barnes and Jornad in the amount of \$256,812.93 in Jornad I against Sapme Pty Ltd and Mr Dawn (the “Dawn Parties”) with the question of costs to be heard separately (“Jornad I Judgment”).

As the Jornad I Judgment required the Dawn Parties to pay monies to Mr Barnes and Jornad, my solicitors wrote to the solicitors for the Dawn Parties placing them on notice of the Company’s claim over the “fruits of the litigation” noting the Barnes Legal Costs.

Subsequent to the Company being placed into liquidation and following the Jornad I Judgment, Mr Barnes and Jornad retained new legal representation, Bradley Allen Love Lawyers (“BAL Lawyers”) to advise them. My solicitors also wrote to BAL Lawyers as the new solicitors for Mr Barnes and Jornad placing them on notice of the Company’s claim over the “fruits of the litigation” noting the Barnes Legal Costs.

The Dawn Parties appealed the Jornad I Judgment in the ACT Supreme Court of Appeal, proceedings ACTCA 43 of 2020 (the “Appeal”).

Subsequent to my solicitors’ initial notification of the Company’s claim to the “fruits of the litigation”, several pieces of correspondence were exchanged between my solicitors, BAL Lawyers, and the solicitors for the Dawn Parties. The effect of these correspondence were:



- the reasonable costs and disbursements in respect of the Jornad I Judgment was likely to be in the range of no more than \$75,000 to \$150,000 based on the length of the hearing in those proceedings for five (5) days and the work undertaken to prepare the matter for hearing;
- the Company would encounter difficulty in recovering costs without a formal assessment of costs and disbursements;
- the form of the Company's costs agreement with Barnes and Jornad would have required the costs of the Company to be assessed pursuant to Part 3.2 of the Legal Profession Act 2006 (ACT) as it was not in the correct format or executed and this concern was raised by BAL Lawyers;
- the state of the file referable to the Barnes Matter provided by Legal on London raised concerns about record-keeping and completeness of the file to enable a formal costs assessment to take place; and
- the Jornad I Judgment was being appealed and that may have the result, if the appeal was successful, that Mr Barnes and Jornad were not entitled to any legal costs and would instead need to pay the legal costs for the other side.

It is noted that the Costs Agreement for the Barnes Matter included the right of the Company to register a security interest over the real property of either Mr Barnes or Jornad however despite searches, I have been unable to locate any real property held by Mr Barnes or Jornad. Their solicitor has also confirmed that there is no real property owned by Mr Barnes or Jornad.

Further discussions took place between my solicitors and the solicitors for Mr Barnes, Jornad, and Dawn Parties on a "without prejudice" basis to seek to resolve the Appeal and Barnes Legal Costs and to avoid the Appeal proceeding to a hearing.

These discussions took place on the basis that any "in principle" agreement achieved would need to be subject to creditor or Court approval pursuant to sections 477(2A), regulation 5.4.02 of the Corporations Regulations 2001 (Cth) and 477(2B) of the Act.

The Dawn Parties have offered to pay Mr Barnes and Jornad the sum of \$310,000 to resolve the Appeal, with that sum to be apportioned evenly between Barnes and Jornad on the one hand and the Company on the other hand, payable on or before 31 August 2021.

A payment of \$155,000 to the Company in respect of the Barnes Legal Costs reflects a 35% return to creditors of the Company subject to the costs of liquidation. In my opinion, it is in the interests of creditors to resolve to accept this compromise of the Barnes Legal Costs for the following reasons:

- Any Appeal hearing would carry risk for the Barnes Legal Costs and the Company's claim to that sum as the Dawn Parties may succeed in their Appeal which would mean that the "fruits of litigation", being a sum payable to Jornad and Mr Barnes pursuant to the Jornad I Judgment, would no longer be payable;



- In order to recover the Barnes Legal Costs, the Company would need to arrange a formal costs assessment (the costs of which may be in the vicinity of \$33,000 to \$44,000) and once assessed, the Company would then need to enforce that costs assessment against Mr Barnes and Jornad;
- The Company may encounter issues uncovered during the costs assessment process, including that there are missing materials (to substantiate amounts claimed) or that excessive amounts have been claimed (that are reduced on assessment), any of which may reduce the amount of the Barnes Legal Costs; and
- Both Jornad and Mr Barnes have no real property available to meet any sum ordered in favour of the Company and the financial particulars of Mr Barnes and Jornad (a trustee entity which holds any assets subject to the terms of a trust deed) is unknown.

I advise I have entered a deed of release on behalf of the Company on 16 August 2021 subject to the terms of the settlement being approved by the creditors of the Company or the Court. The key terms of the deed are as follows:

- The sum of \$155,000 is to be paid by the Dawn Parties to the Company in respect of the Barnes Legal Costs on or before 31 August 2021;
- Similarly, the sum of \$155,000 is to be paid by the Dawn Parties to Mr Barnes and Jornad in respect of the Barnes Legal Costs on or before 31 August 2021;
- Upon payment, the Company releases Barnes and Jornad from the Barnes Legal Costs (there are also associated releases between the Dawn Parties, Mr Barnes and Jornad); and
- If creditor or Court approval is not obtained by me within three months of the date of the deed, being on or before 16 November 2021, then the Company will be required to return the settlement sum of \$155,000.00 and the Appeal proceeding will remain “live” to be argued between the parties to that litigation.

For the reasons noted above, I now seek creditors to approve the terms of the settlement.

Pursuant to Section 477(2A) of the Act and Corporations Regulations 5.4.02, there is a requirement for a liquidator to seek a resolution from the creditors or approval from the court or a committee of inspection to compromise a debt to the Company if the amount claimed is more than the prescribed amount of \$100,000.

As such, I will be seeking creditors approve and pass the following resolution at the forthcoming meeting of creditors:

“Pursuant to section 477(2A) of the Corporations Act 2001 and Corporations Regulation 5.4.02 of the Corporations Act 2001, the liquidator settle the unpaid “Barnes Legal Costs” due to the Company in the sum of \$440,653 for \$155,000.”



4.0 Meeting of Creditors

A notice of meeting is attached in **Annexure “B”**.

A meeting of creditors will be held on Wednesday, 6 October 2021 at 10:00AM AEDT. As a result of Government restrictions and ASIC meeting requirements due to COVID-19, this meeting will be held at the offices of Eddie Senatore Advisory, Unit 2/16 Bougainville Street, Griffith ACT 2603, however creditors will only be able to attend this meeting via video conference.

To participate in the decision meeting, you may need to:

- Submit a proof of debt for the purpose of voting and in order to substantiate your claim. Creditors whose proofs of debt have been submitted are not required to re-lodge a proof for the Meeting of Creditors unless their claim has changed. A copy of the Form 535 Formal Proof of Debt is attached in **Annexure “C”** of this report.
- Appoint a person – a “proxy” or person authorised under a power of attorney – to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting, or if the creditor is a company. A copy of the Form 532 Appointment of Proxy is attached in **Annexure “D”** of this report.

You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

To facilitate the conduct of the meeting a completed proof of debt (voting) form and, if applicable, proxy forms must be returned to my office by email to hello@eddiesenatore.com by **Monday, 4 October 2021**.

Information for Creditors

Creditor information sheets can be accessed on ASIC’s website at www.asic.gov.au/insolvencyinfosheets. Creditors requiring further information regarding the liquidation can contact me.

Dated this 20th September 2021.

Yours faithfully

Ezio Senatore
Liquidator

Annexure “A”

XANTHEA PTY LTD
(In Liquidation)
Liquidator's Summary of Receipts and Payments
To 20 September 2021

RECEIPTS

Total (AUD)

Cash on Hand	7,000.00
Work in Progress Recovered	37,235.09
GST Payable	3,723.50
	<hr/>
	47,958.59
	<hr/>

PAYMENTS

Postage	84.55
Search Fees	367.16
GST Receivable	45.17
GST Clearing Account	3,679.00
	<hr/>
	4,175.88
Balances in Hand	43,782.71
	<hr/>
	47,958.59
	<hr/>



Eddie Senatore
Liquidator

Annexure “B”

NOTICE OF MEETING OF CREDITORS OF COMPANY

Xanthea Pty Ltd (In Liquidation) ACN 159 994 297 (the “Company”)

Notice is given that a meeting of the creditors of the Company will be held as follows:

Date: Wednesday, 6 October 2021
Time: 10:00AM AEDT
Address: Eddie Senatore Advisory, Unit 2/16 Bougainville Street, Griffith ACT 2603.
Due to the current COVID-19 lockdown restrictions in the ACT, creditors are required to attend this meeting via video conference only. Please see below further details in relation to attending the meeting via video conference.

Agenda

The purpose of the meeting is:

- To receive and consider an update report from the Liquidator;
- To consider and, if thought fit, approve the compromise of debts owing to the Company; and
- To discuss any other relevant business which may arise.

Attending and voting at the meeting

Creditors are invited to attend the meeting, however they are not entitled to participate and vote at a meeting unless:

- **Proof of debt for voting purposes:** They have lodged with the Liquidator particulars of the debt or claim and the claim has been admitted, wholly or in part, for voting purposes by the Liquidator. If a proof of debt for voting purposes has already been lodged, they do not need to do so again. Refer to Note 1 for further guidance on entitlement to vote.
- **Proxies or attendance:** They are either present in person or by electronic facilities (if being made available) or validly represented by proxy, attorney or an authorised person under s250D of the Corporations Act. If a corporate creditor or representative, a proxy form, power of attorney or evidence of appointment of a company representative pursuant to Section 250D of the Corporations Act 2001 (the “Act”) must be validly completed and provided to the Liquidator at or before the meeting.

To enable sufficient time to review, proofs of debt and proxies (or document authorising the representation) should be submitted to Ezio (Eddie) Senatore on hello@eddiesenatore.com or PO Box 3481, Manuka ACT 2603 by no later than 5:00PM AEDT on Monday, 4 October 2021. If you choose to return these documents by post, please allow sufficient time for the documents to be received prior to the due date.

Virtual meeting

The meeting of creditors will be held via Zoom. The meeting can be accessed through the following link:

<https://us02web.zoom.us/j/4480000100>

Meeting ID: 448 000 0100

One tap mobile

+61280156011,,4480000100# Australia

+61370182005,,4480000100# Australia

Dial by your location:

+61 2 8015 6011 Australia

+61 3 7018 2005 Australia

+61 7 3185 3730 Australia

+61 8 6119 3900 Australia

+61 8 7150 1149 Australia

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

Find your local number: <https://us02web.zoom.us/u/kze5DjjR5>

Any queries should be directed to hello@eddiesenatore.com or (02) 6100 3435.

Dated 20 September 2021



.....
Signature of Ezio Senatore
Liquidator

Eddie Senatore Advisory
PO Box 3481
MANUKA ACT 2603

Note 1: Entitlement to vote and completing proofs

IPR (Corp) 75-85 Entitlement to vote at meetings of creditors

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
 - (i) those particulars; or
 - (ii) if required—a formal proof of the debt or claim.
- (4) A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established;
unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
 - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
 - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
 - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force.

IPR (Corp) 75-110 Voting on resolutions

- (7) For the purposes of determining whether a resolution is passed at a meeting of creditors of a company, the value of a creditor of the company who:
 - (a) is a related creditor (within the meaning of subsection 75-41(4) of the Insolvency Practice Schedule (Corporations)), for the purposes of the vote, in relation to the company; and
 - (b) has been assigned a debt; and
 - (c) is present at the meeting personally, by telephone, by proxy or attorney; and
 - (d) is voting on the resolution;is to be worked out by taking the value of the assigned debt to be equal to the value of the consideration that the related creditor gave for the assignment of the debt.

Annexure “C”

FORM 535

*Subregulation 5.6.49(2)
Corporations Act 2001*

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the liquidator of Xanthea Pty Ltd (In Liquidation) ACN 159 994 297 (the "Company")

1. This is to state that the company was on 12 May 2020, and still is, justly and truly indebted to:

_____ full name, ABN

and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for _____ dollars and _____ cents

Particulars of the debt are:

Date	Consideration	Amount	Remarks
	<i>(state how the debt arose)</i>		<i>(include details of voucher substantiating payment)</i>

\$

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following:

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount	Due Date

\$

3. Signed by (select option):

I am the creditor personally.

I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: _____

Dated: _____

Name: _____

Occupation: _____

Address: _____

RECEIVE REPORTS BY EMAIL	Yes	No
Do you wish to receive all future reports and correspondence from our office via email?	<input type="checkbox"/>	<input type="checkbox"/>
Email:.....		

Annexure “D”

APPOINTMENT OF PROXY

**Xanthea Pty Ltd (In Liquidation) ACN 159 994 297
(the "Company")**

*I/*We _____(name of signatory) of _____(creditor name)
a creditor of the Company appoint _____(name of proxy)
of _____(address of proxy)
or in his or her absence _____(details of alternate proxy)

as *my/*our *general/*special proxy to vote at the meeting of creditors to be held on Wednesday, 6 October 2021 at 10:00AM AEDT via video conference, or at any adjournment of that meeting.

If a special proxy, specify how you wish your proxy to vote for each of the resolutions.

Resolution

	For	Against	Abstain
1. "Pursuant to section 477(2A) of the Corporations Act 2001 and Corporations Regulation 5.4.02 of the Corporations Act 2001, the liquidator settle the unpaid "Barnes Legal Costs" due to the Company in the sum of \$440,653 for \$155,000."			

*I/*We authorise *my/*our proxy to vote as a general proxy on resolutions other than those specified above.

Signature: _____

Dated: _____