

**ACN 090 481 020 PTY LTD  
(ADMINISTRATOR APPOINTED)  
ACN 090 481 020  
(Formerly "Aged Foot Care Pty Ltd)**

**REPORT BY ADMINISTRATOR**

I, James Patrick Downey of Cole Downey & Co, Chartered Accountants, Level 1, 22 William Street, Melbourne Vic 3000 was appointed Administrator of the above company on the 7 June 2006.

I hereby submit the following report and opinions as required by Section 439A of the Corporations Act 2001 ("the Act") and Regulation 5.3A.02 of the Corporations Regulations.

**1. BACKGROUND INFORMATION**

**Date of Incorporation:** 9 November 1999.

**Nature of Business:** Podiatry provider.

**1.1. Shareholders and Officers**

At the date of my appointment on 7 June 2006, the officers and shareholders of the company were recorded as follows:

<b><u>Directors</u></b>	<b><u>Date Appointed</u></b>
Ronald Clifford James	23 January 2004

<b><u>Secretary</u></b>	
Ronald Clifford James	12 April 2006

<b><u>Shareholders</u></b>	<b><u>No. of Shares Held</u></b>
Ronald Clifford James	1
James Investments P/L	501

**Registered Charges**

The Commonwealth Bank of Australia holds a registered Debenture Charge over all the assets of the company. The Charge was registered on 24 January 2003.

A first meeting of creditors was held on 15 June 2006. At that meeting, creditors were advised generally as to the affairs of the company and in particular, the company's asset/liability position.

**1.2. Books and records**

The company maintained a computerised accounting system. Unfortunately, due to the loss of certain staff, access to some of those records has been hindered.

Whilst the company had, and continues to have, sufficient systems in place to collect its trade debtors, my review of the accounting system has concluded that the accounts were

very poorly maintained. In my opinion, the company's books and records were not maintained to a standard required by section 286 of the Act.

## **2. RECENT HISTORY / ADMINISTRATOR'S APPOINTMENT**

The Director, Mr Ron James, had, until recent times, left the day-to-day running of the business to his son, Damien, who is a qualified podiatrist. On 1 March 2006, Mr Marcus Doille was appointed as a second director. He ceased to be a Director on 12 April 2006.

In the period of a few weeks prior to my involvement, Mr Ron James had become more closely interested in the affairs of the company when he became concerned about the way in which it was being managed. A serious dispute had developed between the Mr Ron James and Mr Doille which had led to the latter director resigning and leaving the company. Shortly thereafter, a number of key podiatry staff had also left, or had indicated that they would leave the company's employment – some to join Mr Doille in another similar venture. This effectively meant that the company could no longer properly service its clients and the business had come to a stand-still.

A related company, Alignafoot Pty was set up for the provision of specialised orthotic services. The affairs of that company are inter-twined with those of this company.

Following advice from the company's external accountants, the Director approached me in early June concerning the state of affairs in which the company had found itself.

It became clear to me that the company was hopelessly insolvent, and, indeed, a demand had been received from Mr Doille for the repayment of loans from him amounting to over \$125,000. I advised Mr James that he should immediately move to appoint an Administrator to protect the remaining assets of the company. I was also appointed as Administrator of Alignafoot Pty Ltd.

Neither I, nor any member of my firm, have had any prior involvement with either company, or their directors or shareholders.

## **3. CURRENT FINANCIAL POSITION OF THE COMPANY**

### **3.1. Summary of the Director's Statement about the company's business, property, affairs and financial circumstances**

Attached to this Report is a Statement about the company's business, property, affairs and financial circumstances as at the date of my appointment. **(Annexure 1)**.

I have engaged Dominions Auctioneers & Valuers to provide me with an inventory, and valuation of the company's plant & equipment. This task is complicated by the fact that the company not only operated from premises in Craine Street, South Melbourne, but also provided its services through five clinics across the Melbourne metropolitan area. Steps are being taken to relocate all equipment to a central location, and I anticipate having Dominions' report prior to the forthcoming meeting of creditors.

The company employed approximately 15 podiatrists, and a number of them still retain possession of some equipment belonging to the company. The company also leased a significant portion of its plant & equipment from four different finance companies.

I have been in contact with each finance company to ascertain their intentions in relation to the said equipment. All the company's known leases, including those relating to tenancies, have been disclaimed by me.

From my discussions with various parties, and from an examination of the company's records, the company's assets and liabilities appear to be as follows:-

## **ASSETS**

### **Real Property**

The company owns three strata titled offices at 1 Queens Road, Melbourne. I have engaged Melbourne Commercial Office Sales to provide a valuation, and advice as to how best market them for sale. The properties, as a whole, have been valued at between \$550,000 and \$685,000. The Commonwealth Bank is owed approximately \$460,000 and holds mortgage security over the properties. The company's gross equity may therefore be between \$90,000 and \$225,000.

### **Bank Account**

At the date of my appointment, the company's bank account had a credit balance of approximately \$30,000. The Commonwealth Bank exercised its right of combination and offset these funds in reduction of its overall indebtedness.

### **Debtors**

The company's trade debtors relate to treatments provided by its podiatrists. Some represent claims by patients through health funds. The amounts involved are numerous but, typically, are for relatively small amounts. Nevertheless, I am assured that nearly all of the money owing to the company is collectable, and at the date of my appointment, the total was estimated at between \$80,000 and \$90,000. An aged list of debtors as at the date of my appointment shows debtors totalling \$91,164.

The related company, Alignafoot Pty Ltd, was listed as owing the company \$800,000, however, while it owes the company some money, the amount is estimated to be a much lower figure.

### **Term Deposit**

A rental deposit of \$20,000 is likely to be applied against the company's outstanding commitments under its lease agreement for Craine Street, South Melbourne. There were a number of other smaller rental deposits for the clinics, and these are likely to be applied by landlords against rentals outstanding.

## **LIABILITIES**

### **Priority Claims**

Claims relating to employee entitlements ,at this stage, have been estimated at \$150,000. The company is currently in the process of providing me with an accurate calculation of this liability. The Director, in his Report as to Affairs, lists the amount owing at \$143,246 which includes superannuation.

### **Secured Creditor**

As indicated earlier, the Commonwealth Bank of Australia holds a fixed and floating charge debenture over the assets of the company. Shortly prior to my appointment, Mr Ron James paid out the company's overdraft from his own funds. At that time, the overdraft totalled approximately \$200,000. Once the Bank's debt is fully satisfied, Mr James will have the right of subrogation – that is, to stand in place of the Bank as a secured creditor for the amount paid by him in reduction of the Bank's debt.

## Party Secured Creditors

The company is party to a number of leases as follows:-

GE Money	Two motor vehicles
Alliance	Two leases for mailing equipment
Southern Leasing	Plant & Equipment
CBFC	Numerous leases for Plant & Equipment, office furniture, computer equipment, and a motor vehicle.

Details of values are still being obtained, and items of equipment located. I do however, anticipate a shortfall to the leasing companies, such amount being dependent upon the realisations achieved for the leased assets. I understand that Mr Ron James has guaranteed most of these leases.

## Unsecured Creditors

The Director in his Report as to Affairs listed 30 unsecured creditors. The company's major unsecured creditors appear to be:

Mr Ron James	\$374,050
Mr Marcus Doille	\$152,000
Australian Taxation Office	\$unknown, but estimated at \$175,000

Not included in this list is an amount not yet determined as owing to Mr Ron James for guarantees given by him various on leases of equipment and premises.

## 4. OFFENCES, VOIDABLE TRANSACTIONS AND INSOLVENT TRADING

### 4.1. Offences

At this stage, I have not become aware of any offence committed by any of the company's Officers, former or present, against the Act, or any other legislation. However, my investigations are continuing.

### 4.2. Voidable transactions recoverable by a liquidator

In the course of my investigations to date, I have endeavoured to ascertain whether there are any transactions that appear to be voidable in respect of which money, property or other benefits might be recoverable by a Liquidator under Part 5.7B of the Act. As yet, no such transactions have been identified. Further investigations will need to be undertaken by the Liquidator, if appointed.

### Insolvent trading

Section 588M of the Act provides that a director in office who fails to prevent a company from incurring a debt when the director is aware, or should have suspected that the company was insolvent, or would become insolvent as a result of incurring that debt, is liable for an amount equal to the loss or damage suffered.

A Liquidator, if one is appointed, will have the task of examining whether such circumstances existed and therefore whether he should take recovery action against any or all of the directors. On the face of available information, such action would seem to be likely, however, this will only be possible once the investigation into the books and records is completed.

## 5. **ESTIMATED RETURN FROM A WINDING UP**

The realisations of the company are likely to be divided between the company's secured creditors and its priority creditors. The company's assets are, for the purposes of the anticipated winding up, divided between "Fixed" and "Floating". Fixed assets are those which are not regularly bought and sold within a period of one year (eg plant and equipment). Floating assets are generally the company's cash, debtors and stock. The remuneration of the Administrator (and Liquidator, if appointed) will essentially be met from the floating assets, with the balance being available to meet employee claims.

The realisations from the company's fixed assets will be applied directly to the company's secured creditors. No funds are therefore anticipated to be available to meet unsecured creditors claims.

## 6. **INTERESTS OF CREDITORS/RECOMMENDATIONS**

At the meeting of creditors to be held on 4 July 2006, creditors will be asked to resolve one of the following three courses of action, as provided for under Section 439A of the Act:-

- a. That the company execute a Deed of Company Arrangement; or
- b. That the administration should end; or
- c. That the company be wound up.

In this Report, I am required to form an opinion and recommend as to which course of action would be in the best interests of the creditors. My comments on each of the alternatives are as follows:-

### a. **Entering into a Deed of Company Arrangement by the Company**

There has been no proposal put forward which would form the basis of a Deed of Company Arrangement. This option is therefore not under consideration.

### b. **The Termination of the Administration and Return of Control to the Directors**

The company is insolvent and is no longer trading. The company is therefore not in a position to resume normal trading. If control of the company were to be returned to the Director, there would be no formal administration in place to ensure the orderly realisation of the remaining assets and protection of creditors' interests. This option is therefore, in my opinion, not in the best interests of creditors.

### c. **The Company to be Wound Up**

In view of the position of the company as at the date of this Report, the option of winding up the company is the only course that I am prepared to recommend to creditors. Accordingly, for the purposes of this Report and for the reasons previously stated, I recommend that the company be wound up in the interests of the majority of creditors.

DATED this 26th day of June 2006.

J P DOWNEY  
**ADMINISTRATOR**

