



## STATUTORY REPORT TO CREDITORS

**GALLO FORMWORK PTY LTD (IN LIQUIDATION)**

**ACN: 653 867 737**

**ABN: 51 653 867 737**

**12 February 2025**

**PETER KREJCI  
LIQUIDATOR**

Phone: 02 8263 2333

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Sydney NSW 2000

## INTRODUCTION

I refer to my initial report to creditors dated 9 December 2024 in which my appointment as Liquidator of the Company was advised along with your rights as a creditor in the liquidation.

The purpose of this report is to provide creditors with information regarding the following:

- ▲ The estimated amount of asset and liabilities of the Company;
- ▲ An update on the progress of the Liquidation and further actions that may need to be undertaken;
- ▲ What happened to the business;
- ▲ The likelihood of creditors receiving a dividend before the affairs of the Company are fully wound up; and
- ▲ Possible recovery actions.

This report should be read in conjunction with the initial report. If you have any questions relating to the liquidation in general, or specific questions relating to your position, please do not hesitate to contact this office.

Creditors can find copies of all previous reports on this matter on our website.

- ▲ BRI Ferrier <https://briferrier.com.au/>

## COMPANY DETAILS

<b>Name</b>	Gallo Formwork Pty Ltd (In Liquidation)
<b>Incorporated</b>	21 September 2021
<b>ACN</b>	653 867 737
<b>Registered Office</b>	237 The Trongate, South Granville NSW 2142
<b>Trading Address</b>	237 The Trongate, South Granville NSW 2142

## LIQUIDATOR

<b>Name</b>	Peter Krejci
<b>Date Appointed</b>	12 November 2024

## ADMINISTRATION CONTACT

<b>Name</b>	Sushma Mandira
<b>Email</b>	smandira@brifnsw.com.au
<b>Phone</b>	02 8263 2322

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## GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CBA	Commonwealth Bank of Australia
Christian Gallo	The Director' Brother
CL	Court Liquidation
Company	Gallo Formwork Pty Ltd (In Liquidation)
DEWR	Department of Employment and Workplace Relations
DCoT	Deputy Commission of Taxation
Director	Mario Alberto Gallo Contreras
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
Department	Department of Employment and Workplace Relations
FEG	Fair Entitlements Guarantee
Firm	BRI Ferrier New South Wales
iCare	Workers Compensation Nominal Insurer
Initial Report	Initial Report to Creditors dated 9 December 2024
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations) 2016
NSW	New South Wales
O'Maras	O'Maras Valuers and Auctioneers
Petitioning Creditor	iCare
POD	Proof of Debt
PPSR	Personal Properties Securities Register
RBA	Running Balance Account
RBP	Relation Back Period
ROCAP	Report on Company Activities and Property
SGC	Superannuation Guarantee Charge

## EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of the Company pursuant to an Order of the Supreme Court of NSW. The Petitioning Creditor in this matter is iCare for a debt of \$63,550.74 relating to unpaid workers compensation premiums and litigation costs associated with the collection of same.

This report has been prepared in accordance with Rule 70-40 of the Insolvency Practice Rules to provide creditors with an update on the developments of this Liquidation. I provide hereunder a summary of my preliminary investigations into the affairs of the Company to date, the potential return for creditors and the conduct of the Liquidation over the past three (3) months.

As advised in my Initial Report to Creditors, the Company was incorporated on 21 September 2021 and operated a formwork scaffolding business from leased residential premises located at 237 The Trongate South Granville NSW 2142. Upon my appointment, the Company ceased trading whereupon the Director advised his interest to purchase the Company's name and Company vehicles for a value higher than the market value. I subsequently accepted the Director's offer after obtaining a valuation of the assets and determining the offer was commercial to accept.

I have realised cash at bank funds of circa \$25K and the Company has received sale proceeds of circa \$3K from the sale of a vehicle. The Company will receive a further \$5K for other vehicles sold and the sale of Company name over the course of the next two (2) months. The Company did not maintain books and records and had no written contracts with counterparties for whom it provided construction services/work. In respect to creditor claims against the Company, my enquiries indicate there are debts totalling \$187K, represented by one (1) priority creditor owed c.\$2K and five (5) unsecured creditors owed c.\$185K. Please refer to Section **Error! Reference source not found.** and Section **Error! Reference source not found.** of this Report where I provide further commentary regarding the assets and liabilities of the Company.

My investigations to date lead me to conclude that the director breached his duties owed to the Company under s180-s183 of the Act. Additionally, I have determined that the Company may have been insolvent since incorporation and accordingly there may be a potential insolvent trading claim valued at c. \$217K to be pursued against the Director. My findings however are preliminary and these claims will require further investigation and funding to pursue. The same applies to the uncommercial transactions and unreasonable director-related transactions I have identified that could be pursued for the benefit of creditors. Please refer to Section 13 of this Report where I have detailed my findings in this regard. The recovery prospects are unknown at this stage however I am aware that the Director may be the joint owner of a property located at 14 Alt Street Ashfield NSW 2131.

In the near term, I will lodge a report with ASIC pursuant to Section 533(1) of the Act. This report to ASIC is a legislative requirement in liquidations where potential offences and breaches of the Act by Directors and/or Officers of the Company have been identified and/or the estimated return to unsecured creditors is less than fifty (50) cents in the dollar.

My current estimates indicate that any return to Creditors is largely contingent on pursuing the above-mentioned claims by way of litigation against parties which will require funding from creditors. Accordingly, unless funding is received and significant recoveries are made from the above claims, there will not be a dividend to any class of creditors in this liquidation.

Should a creditor have any relevant information which may assist my investigations or potential asset recoveries or wish to fund my further investigations, they should contact my office by no later than 20 February 2024. Otherwise, absent any substantive new information, the Liquidation may continue for the next two (2) to three (3) months.

## 1. BASIS OF REPORT

This report has been prepared primarily from information received from the Company's Director both through verbal meetings and his completed ROCAP.

In order to complete this report and in conducting my investigations, I have also utilised information from:

- ▲ ASIC;
- ▲ Bank statements provided by CBA;
- ▲ Litigation documents provided by iCare; and
- ▲ Extracts from public information databases.

## 2. DISCLAIMER

An investigation of the Company's affairs has been conducted and this report and the statements made herein have been prepared based upon available books and records, information provided by the Director and from my own enquiries.

Whilst I have no reason to doubt the accuracy of the information provided or contained herein, I reserve the right to alter my opinions or conclusions should the underlying data prove to be inaccurate or materially change after the date of this report.

Neither I, nor any member or employee of BRI Ferrier accepts responsibility in any way whatsoever to any person in respect of any errors in this report arising from incorrect information provided to me, or necessary estimates and assessments made for the purposes of the report.

This report is not for general circulation, publication, reproduction, or any use other than to assist creditors in evaluating their position as creditors of the Company and must not be disclosed without the prior approval of the Liquidator.

Creditors should consider seeking their own independent legal advice as to their rights and options available to them.

Should any creditor have material information in relation to the Company's affairs which they consider may impact on my investigations or report, please forward details in writing as soon as possible.

## 3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS, AND INDEMNITIES

I confirm that my DIRRI as previously circularised has not been amended.

## 4. CORPORATE INFORMATION

The following is a summary of the Company's statutory and business details obtained from the ASIC database and the Personal Property Securities Register ("PPSR") database:

### 4.1 COMPANY DETAILS

<b>Company Name</b>	Gallo Formwork Pty Ltd (In Liquidation)
<b>Registered Address</b>	237 The Trongate South Granville NSW 2142
<b>Principal Place of Business</b>	237 The Trongate South Granville NSW 2142
<b>Incorporation Date</b>	21 September 2021
<b>ABN</b>	51 653 867 737
<b>ACN</b>	653 867 737

### 4.2 COMPANY OFFICE HOLDERS

<b>Name</b>	<b>Position</b>	<b>App Date</b>	<b>Cease Date</b>
Mario Alberto Gallo Contreras	Director and Secretary	21/09/2021	Current

### 4.3 SHAREHOLDINGS

<b>Name</b>	<b>Share Class</b>	<b>No. of Shares</b>	<b>Fully Paid Up</b>	<b>Status</b>
Mario Alberto Gallo Contreras	ORD	100	Yes	Current

### 4.4 RELATED PARTIES AND ASSOCIATES

A directorship search was undertaken in respect to the Company's Director and my investigations indicate that the Director only held one role at the date of my appointment and that was being the Director of the Company.

## 5. LEGAL PROCEEDINGS

Pursuant to Section 500(2) of the Act, my appointment as Liquidator automatically stays any current legal proceedings against the Company. Creditors cannot commence or continue proceedings against the Company without my written consent or without leave of the Court.

I am not aware that the Company is involved in any other legal proceedings.

## 6. COMPANY BACKGROUND AND EVENTS LEADING TO MY APPOINTMENT

The following information was obtained from enquiries with the Director and third parties.

- ▲ The Company was registered on 21 September 2021 and appears to have provided formwork scaffolding services in NSW.



- ▲ Mr Mario Alberto Gallo Contreras is the sole director, secretary and shareholder of the Company having been appointed director since the Company's incorporation.
- ▲ My investigations revealed that the Director's residential address and the Company's trading address are both located at 237 The Trongate South Granville NSW 2142. A NSW Title Search indicates neither the Director nor the Company own the property.
- ▲ iCare served the Company with a Statement of Claim on 23 January 2024 for unpaid Workers Compensation Insurance premiums which led to a Creditor's Statutory Demand being served on 11 July 2024 and thereafter an application to wind the Company up in insolvency. During a formal meeting with the Director, he claimed that the Company paid an April 2024 iCare invoice one (1) week prior to receiving notice of the winding up proceedings via email, however the winding up application was proceeded with.
- ▲ Subsequently, I was appointed Liquidator of the Company by Order of the Supreme Court of NSW on 12 November 2024.

## 7. REASONS FOR FAILURE

The Director submitted a ROCAP advising that the business failed due to the appointment of a Liquidator over the Company.

My investigations into the Company's affairs suggest the reason for the Company's failure to be the following:

- ▲ Poor financial control, including lack of records. The Director has advised that the Company never maintained formal books and records or used external accountants to keep a proper account of the Company's financial position. This has significantly impacted my investigations into the Company's affairs and has more than likely been a contributing factor to the Company's failure.
- ▲ Lack of strategic management regarding the operational and financial aspects of the business. My review of the Company's bank statements indicate the Company made significant payments of a personal nature whilst not meeting its tax and workers compensation obligations.
- ▲ Insufficient cash flow or high cash use. I have identified that whilst the Company appears to have generated sales, the director used Company funds to make payments of a personal nature and/or made several round-figured cash withdrawals rather than meet the Company's debts. Records available indicate these iCare debts have remained outstanding since incorporation date while the Company continued to trade without addressing same.

## 8. HISTORICAL FINANCIAL INFORMATION

As at the date of this Report, I have not received any financial information and/or source documentation in relation to the Company apart from its bank statements. Detailed below is my review of same.

- ▲ The Company held one account with CBA.

- The bank account was opened on 24 September 2021.
- The Director is the sole signatory on the bank account.
- My review of the Company bank statements identified receipts of \$2.4M, from which payments of \$2.2M were paid to subcontractors of the Company (number of subcontractors employed ranging from twelve (12) to fourteen (14)), expenses of a personal nature worth \$17K to the Director, round-figure cash withdrawals amounting to \$180K and rent payments made to '5 lowana ave' in the amount of \$48K out of the Company's bank account.
- The bank account was closed post my appointment.

## 9. CURRENT FINANCIAL POSITION

Below is my analysis of the current financial position of the Company, with regard to available financial records and my enquiries to date.

<b>Gallo Formwork Pty Ltd (In Liquidation)</b> <b>ACN 653 867 737</b> <b>Summary of Companies' Financial Position</b>			
	Report Reference	Director's ROCAP as at 12.11.24 (\$)	Liquidator's ERV (\$)
<b>Assets</b>			
Cash and Cash Equivalents	9.1.1	25,345	25,345
Motor Vehicles	9.1.2	11,000	8,000
<b>Total Assets</b>		<b>36,345</b>	<b>33,345</b>
<b>Liabilities</b>			
Petitioning Creditor	9.2.1	Nil	8,919
Secured Creditors	9.2.2	Nil	Nil
Priority Creditors	9.2.3	6,000	2,000
Unsecured Creditors	9.2.4	25,000	185,926
<b>Total Liabilities</b>		<b>31,000</b>	<b>196,845</b>
<b>Estimated Net Asset / (Deficiency)</b>		<b>5,345</b>	<b>(163,500)</b>

### 9.1 ASSETS

#### 9.1.1 CASH AND CASH EQUIVALENTS

Upon my appointment I made enquiries with all major banks in Australia seeking details of any accounts maintained by the Company. As a result of these enquiries, I have identified one (1) active bank account with CBA which held a balance of \$25K as at the date of my appointment and confirm

that these funds have been deposited into a bank account in the name of the Company which I control. This bank account has also been closed by me following the remittance of the funds.

Based on my enquiries to date, I am not aware of any other bank accounts held in the Company's name.

### 9.1.2 MOTOR VEHICLES

As advised in my initial report, the Company owned four (4) vehicles registered in its name. Below is a description of each vehicle and how they were dealt with:

- ▶ 2006 Volkswagen CADDY panel van TDI diesel, blue colour, odometer reading 335,197Kms, NSW registration AM57VA ("Caddy"). O'Mara's valued this vehicle at \$2,500 FMV and \$1,000 FLV. However, the Director had advised that the Caddy required new brakes and that the windows were not operating. I discussed these issues with O'Maras who subsequently advised the vehicle was uncommercial to collect. In this case, the Director advised he would like to keep the Caddy and accordingly it was included in the sale of the Canter (noted below) as it was deemed more commercial than disclaiming the vehicle. I have since lodged a Notice of Disposal with Revenue NSW and have nominated the Director as the new owner responsible for any pre-appointment or post-appointment fines associated with the vehicle.
- ▶ 2012 Volkswagen GOLF TSI silver colour, odometer reading 180,716Kms, NSW registration CJH95E ("Golf"). Upon my appointment, I became aware of a sale agreement dated 22 November 2023 between the Company and Mr. Camilo to purchase the Golf for \$4,000 payable over time. A desktop valuation by O'Maras was obtained which indicated the sale price to be higher than the market value. In my initial meeting with Mr. Camilo, he indicated there was an outstanding amount to pay of \$500. This amount was subsequently paid and I am satisfied that the consideration for the vehicle has been paid in full. I have since lodged a Notice of Disposal with Revenue NSW and have nominated Mr Camilo as the new owner responsible for any pre-appointment or post-appointment fines associated with the vehicle.
- ▶ 2006 MITSUBISHI/FUSO CANTER 4x2 GCM 10,000Kg, white colour tray back, odometer reading 208,330Kms, NSW registration XN67TH ("Canter"). O'Maras valued the Mitsubishi Canter at \$9,000 FLV, however upon taking into account gearbox issues cited by the Director and considering the costs associated with auctioning and repairing the vehicle, I deemed it more commercial to accept the \$8,000 offer made by the Director at the time. An invoice for \$8,000 with instalments terms was issued to Mr Camillo on 16 December 2024 and he has made payment of \$3.1K to date. More recently however, the director has advised that outstanding fines associated with the vehicle may mean that he cannot complete the purchase of the vehicle. I am currently seeking advice from O'Mara's on whether I should proceed with the collection of vehicle should the director not complete the sale. Should there be any material change in respect of this matter, I will write to creditors informing them of same.
- ▶ Mercedes CLS 63. The Director claims that Mr. Christian Gallo contributed \$25,000 of the \$35,000 purchase price of the CLS63. The CLS63 is currently located at Mercedes Benz Parramatta dealership as the engine has ceased and the current debt owing to Mercedes Benz Parramatta is \$10,000 to re-assemble the engine and release the vehicle. I am currently

liaising with Mercedes Benz Parramatta to confirm the above and O'Maras to determine the most commercial outcome in regard to this vehicle.

## 9.2 LIABILITIES

### 9.2.1 PETITIONING CREDITOR COSTS

The Petitioning Creditor's costs in respect to this matter were determined by the Court at a fixed amount of \$8,919.48. Pursuant to Section 556(1)(b) of the Act, these costs are afforded a statutory priority over all other unsecured claims and costs incurred in the Liquidation, once expenses incurred in "preserving, realising or getting in" property of the Company are discharged.

As at the date of this report, I confirm that these costs have been paid in full out of the sale proceeds obtained from the Company vehicles listed above.

### 9.2.2 SECURED CREDITORS

A search of the PPSR did not identify any security interests registered against the Company.

In any event, if you have leased property to the Company, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact this office as soon as possible.

### 9.2.3 PRIORITY CREDITORS

My investigations reveal, as at the date of my appointment, the Company employed one (1) employee, being the Director, I have issued correspondence to the Director of the Company advising him of his termination as a formal redundancy.

To the extent that there are amounts owed to former employees, they are eligible to apply to the Federal Government, which has established a safety net scheme known as the FEG, for payment of their outstanding entitlements. FEG is administered by the Attorney General's Department ("the Department") for eligible employees who have been terminated as a result of their employer's insolvency and are owed entitlements.

In order for an employee to be eligible to claim outstanding entitlements under FEG:

- The employee must be an Australian citizen or permanent resident (contact FEG for further details); and
- The end of their employment must be due to the insolvency of the employer; or have occurred less than six (6) months before the appointment of an insolvency practitioner; or occurred on or after the appointment of an insolvency practitioner.

Employees may submit claims in respect of the following entitlements, provided they are entitled to claim under their respective industrial instrument, contract of employment or by any other means:

- Up to thirteen (13) weeks unpaid wages for the period ending at the earlier of the date on which employment ended or the appointment of an insolvency practitioner;

- Unpaid annual leave and long service leave;
- Up to a maximum of five (5) weeks unpaid payment in lieu of notice;
- Up to a maximum of four (4) weeks redundancy entitlement for each completed year of service.

In calculating employee entitlements payable under the scheme, the maximum annual wage applies.

FEG will not cover:

- Outstanding superannuation entitlements;
- Entitlements such as rostered days off unless the relevant legislation, award, statutory agreement, or written contract of employment provides they are payable upon termination of employment; and
- Employee entitlements of the Directors and relatives of the Director as defined by the *Corporations Act 2001*.

To obtain further information, the Department may be contacted on 1300 135 040 or alternatively, please visit their website at: <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee>.

#### 9.2.4 UNSECURED CREDITORS

As previously noted, my investigations to date have identified five (5) unsecured creditors. I provide details into their claims as follows:

- iCare lodged a POD in the amount of \$63,550.74 relating to unpaid insurance premiums since August 2022. I note iCare's POD also includes litigation costs of \$10,588.68. I intend to liaise with iCare to confirm if the litigation costs stated in their proof of debt includes the petitioning costs of \$8.9K discussed above and if any amendments are required to be made to their POD.
- DCoT lodged a POD in the amount of \$46,420.90 relating to unpaid GST liabilities and Income Tax liabilities. Based on the outstanding lodgements detailed in the POD, I anticipate the ATO to be owed more than the current amount claimed should outstanding tax lodgements be lodged.
- Cristian Camilo Norena Giraldo (Mr Camilo), a subcontractor of the company, lodged a POD in the amount of \$2,200.00 relating to outstanding invoices for the period 04 November 2024 to 08 November 2024.
- Macro Building Supplies Pty Ltd lodged a POD in the amount of \$71,754.24 relating to unpaid construction material delivered to the Company in the month of August 2023 and June 2024.

The table below summarises the unsecured creditors recorded in the Director's ROCAP that have not formally submitted a POD.

Creditor Name	Amount (\$)	Nature of Debt
Christian Gallo	2,000.00	Unpaid invoices to Subcontractor

I encourage any creditors who have not already done so, to lodge their creditor claims with this office. In this regard, please complete the Formal Proof of Debt form, attached as “**Annexure A**”, and return the same together with documentary evidence to support your claim.

## 10. INVESTIGATIONS

As Liquidator, I am required to review certain transactions to determine whether or not claims for statutory recoveries may be made for the benefit of creditors. Attached as “**Annexure C**” is the ARITA creditor information sheet on Offences, Recoverable Transactions, Breaches of Director Duties and Insolvent Trading.

Whilst a potential claim may be identified having regard to the Company’s records, any net recovery ultimately depends upon:

- ▲ The costs involved in pursuing a claim; and
- ▲ The capacity of the defendant to meet such a claim.

### 10.1 INVESTIGATIONS UNDERTAKEN

During the course of these investigations, I have:

- ▲ Taken possession of bank statements of the Company from CBA and reviewed same in detail given the lack of source documentation maintained by the Company;
- ▲ Written to relevant authorities requesting information required for investigations;
- ▲ Carried out ASIC and other searches available to me in relation to the Company;
- ▲ Ascertained the history of the Company, the nature of its business and circumstances leading to its failure from the ROCAP provided by the Director and Company bank statements;
- ▲ Undertaken a review of the available bank statements to identify potential preferences, uncommercial transactions, and unfair loans (sections 588FA, 588FB, 588FD and 588FE of the Act).

### 10.2 BOOKS AND RECORDS

Section 286 of the Act requires a company is to keep written financial records that:

- ▲ correctly record and explain its transactions, financial position, and performance; and
- ▲ would enable true and fair financial statements to be prepared and audited.

The failure to maintain books and records in accordance with Section 286 of the Act may allow a Liquidator to presume the Company was insolvent throughout the period the books and records were not maintained (Section 588E of the Act).

Books and records required to sufficiently prepare financial statements that would correctly record and explain its transactions and financial position and performance and that would enable true and fair financial statements to be prepared and audited, at minimum, include the following:

- Financial statements including P & L's, balance sheets, depreciation schedule, tax returns;
- General Ledger;
- General Journal;
- Asset register;
- Computer Back up Discs;
- Cash records including bank statements cash receipts journal, bank deposit books, cash payments journal, cheque butts and petty cash books.

As discussed above, I was advised by the Director that the Company did not maintain formal Books and Records or use external accountants. Further, no written contracts were utilised as the Director maintained all records of the Company's operations via his personal mobile phone. As I have not been provided source documentation and the Company did not maintain any books and records since its incorporation, I am of the view that the Company has not satisfied the requirements set out in Section 286 of the Act. Accordingly, I am entitled to rely on the presumption that the Company has been trading whilst insolvent pursuant to Section 588E of the Act.

### 10.3 RISK OF LITIGATION ACTIONS GENERALLY

Part 5.7B of the Act gives Liquidators the right to commence certain legal proceedings to recover money, property, or other benefits for the benefit of the unsecured creditors of a company.

Creditors should note that recovery actions:

- have the potential to increase the pool of funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and
- must be funded out of the Company's existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

### 10.4 PROVING INSOLVENCY

Recovery actions under Part 5.7B of the Act, including unfair preferences, uncommercial transactions, and insolvent trading, require the Liquidators to demonstrate that the Company was insolvent at the time of the transaction. Proving insolvency may be a complex, lengthy and a costly exercise.

## 11. FINDINGS AND RECOVERY ACTIONS

### 11.1 INSOLVENT TRADING

Pursuant to Section 588G of the Act, a director may be personally liable for insolvent trading by a company where:

- ▲ A person is a director at the time a company incurs a debt;
- ▲ The company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- ▲ At the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- ▲ The director was aware such grounds for suspicion existed; and
- ▲ A reasonable person in a like position would have been so aware.

The Act provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

As the Director has failed to provide the Company's books and records, I have been unable to conduct a comprehensive investigation into the insolvency of the Company. However, as per section 588E(4) of the Act, failure to maintain books and records allows for a presumption of insolvency of the Company during the period of failure to maintain books and records. Since I do not hold sufficient documentation on file, I have the option to rely on the presumption that the Company was insolvent since the date of commencement of trade however note there to also be other indicators of insolvency that carry more leverage in my determination of the Company's insolvency.

At present, the insolvent trading claim against the Director appears to be at least \$185K (not taking into consideration the \$2K debt owed to the Director) representing the outstanding debts formally owed to creditors as at the date of appointment of the Company. The value of the insolvent trading claim may increase upon lodgement of outstanding tax/BAS returns with the ATO.

Detailed below are further reasons for my assessment.

## 11.2 INDICATORS OF INSOLVENCY

In addition, I have observed the following indicators of insolvency:

- ▲ The Company bank statements reveal a history of overdrawn funds, as evidenced by the interest charges applied by CBA on the deficit.
- ▲ The Company was subject to creditor demands from both iCare and the DCoT for outstanding debt.
- ▲ The Company's bank statements reveal several rounded payments which are not reconcilable to specific invoices.
- ▲ As previously stated, I am of the opinion that the Company is in breach of Section 286 of the Act and therefore entitled to rely on the presumption that the Company has been trading whilst insolvent.



### 11.3 Assessment of Insolvency

In light of the above, I am of the view that the Company may have been trading whilst insolvent from 21 September 2021.

### 11.4 Potential Quantum of Claim

Determining the value of an insolvent trading claim will generally involve a forensic review of the debts incurred after the date on which it can be maintained that the Company was insolvent and remains outstanding. For the purposes of this Report, I have prepared a preliminary assessment of the claim, assuming the Company was insolvent since incorporation.

My preliminary investigations indicate that an insolvent trading claim may be valued at circa \$185K, based on proofs of debts received to date, as detailed below.

Insolvent Trading Calculation	Total Amount (\$)
Christian Gallo	2,200
DCoT	46,420
iCare	63,550
Macro Building Supplies	71,754
<b>Total</b>	<b>185,925</b>

### 11.5 Recovery of Claim

When assessing any potential litigation for insolvent trading, a Liquidator must assess the director's financial position and his ability to meet any insolvent trading claim should it be successfully proven. I am not empowered at law to demand from the director a statement as to his personal financial position. I am aware of a property located at 14 Alt Street Ashfield NSW 2131 that lists, Mario Gallo, as a joint owner. I am unable to confirm however if this property is owned by the Director as title searches conducted under his personal name reveal no property ownership.

## 12. VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months before the relation-back day, which is the date the winding up application was filed against the Company, i.e., 11 October 2024.

These transactions usually relate to the period six (6) months prior to the date of my appointment; however, in certain circumstances, this period can be extended to four (4) years in relation to transactions with related entities and up to ten (10) years if the transactions were entered into with related parties with the intention to defraud.

### 12.1 UNFAIR PREFERENCES (588FA)

An unfair preference results when the Company and a Creditor are parties to a transaction(s) and the Creditor receives more than it would receive if the transaction(s) are set aside, and the Creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish:

- ▲ that the Company was insolvent at the time the payments were made; and
- ▲ that the recipient had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment.

The clawback provisions available to the Liquidator relate only to payments to unrelated parties made within six (6) months from the date of my appointment if the Company is insolvent at that time.

I note that pursuant to S588FE(2D) (4) of the Act clawback provisions available to the Liquidator extend to four (4) years from the RBP for transactions to related-party creditors.

I have been unable to investigate any potential related-party or preferential transactions.

### 12.2 UNCOMMERCIAL TRANSACTIONS (588FB)

A transaction is considered uncommercial if it is made at a time when the Company is insolvent, and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- ▲ The benefits or detriment to the Company of entering into the transaction; and
- ▲ The prospective benefits to other parties to the transaction.

I have identified personal expense payments made in the amount of \$17K and rent payments made to a property that is not owned by the Company or the registered address of the Company in the amount of \$48K to have been made in the detriment of the Company and identify these to be potentially uncommercial in nature.

### 12.3 UNFAIR LOANS (S588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interest and charges are extortionate, regard must be had to the following:

- ▲ Risk the lender is exposed to;
- ▲ Value of the security;
- ▲ Term;
- ▲ Repayment schedule; and
- ▲ Amount of loan.

Based on the limited financial information currently available to me, I have not identified unfair loans.

## 12.4 UNREASONABLE DIRECTOR RELATED TRANSACTIONS (S588FDA)

A transaction is an unreasonable Director-related transaction of the Company if:

- ▲ The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition, or issue by the Company.
- ▲ The transaction is to a director or close associate of the Director or for their benefit.
- ▲ A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.

I have identified the transactions reported under Section 12.2 to also constitute unreasonable director-related transactions having regard to premiums that were owed to iCare at the time.

## 12.5 CREDITOR-DEFEATING DISPOSITIONS (S588FDB)

A disposition of company's property is a creditor-defeating disposition if the consideration payable to the company for the disposition was less than the market value of the property and if the disposition has the effect of preventing the property from becoming available for the benefit of the company's creditors in the winding-up of the company.

Based on the limited financial information currently available to me, I have not identified any unfair loans.

## 13. SUMMARY OF POTENTIAL OFFENCES

In summary, I consider there are various potential contraventions of the Act as follows:

Breach	Commentary
s180—Failure to exercise due care and diligence (civil)	<ul style="list-style-type: none"><li>▲ Trading whilst insolvent</li><li>▲ Failure to pay iCare premiums since incorporation.</li><li>▲ Failure to pay statutory debts.</li><li>▲ Failure to make statutory lodgements with the DCoT</li><li>▲ Failure to address demands for payments issued by the DCoT and iCare.</li><li>▲ Electing to draw funds for personal expenditure whilst outstanding debts were owed to creditors of the Company.</li></ul>
s181(1)—Absence of good faith or proper purpose (civil)	<ul style="list-style-type: none"><li>▲ Electing to draw funds for personal expenditure whilst outstanding debts were owed to creditors of the Company.</li></ul>

Breach	Commentary
s182 - Use of Position	<ul style="list-style-type: none"> <li>Failure to address demands for payments issued by the DCoT and iCare.</li> <li>Electing to draw funds for personal expenditure whilst outstanding debts were owed to creditors of the Company.</li> </ul>
s286 (civil)/ —Failure to maintain adequate financial records	As I have not been provided with sufficient Company books and records, my preliminary view is that the Company has failed to maintain sufficient books and records to meet the requirements of Section 286 of the Act.
S588G(2) - Trading whilst insolvent (civil)	<p>As the Director has failed to maintain and/or provide the Company's books and records, as per section 588E(4) of the Act, failure to maintain books and records allows for a presumption that the Company was trading whilst insolvent from the date of its incorporation.</p> <p>The insolvency of the Company is further supported by the iCare debt having been outstanding since incorporation and the Company bank account being overdrawn since incorporation.</p>

## 14. RECEIPTS AND PAYMENTS

The receipts and payments up to date of this report are attached as “**Annexure B**”.

## 15. ESTIMATED RETURN TO CREDITORS

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- the size and complexity of the administration.
- the amount of voidable transactions recovered and the costs of these recoveries;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims; and
- the volume of enquiries by creditors and other stakeholders.

At this stage, there have been minimal recoveries in the Liquidation, and I have been unable to discharge my professional costs in full. Any return to creditors is therefore contingent on pursuing and recovering the abovementioned potential claims against the Director, which may require obtaining further evidence and conducting further investigations. Absent any funding, I may consider pursuing a commercial settlement of all potential claims identified against the Director and unless there are significant recoveries from these claims, there will not be any dividends available for any class of creditors in this Liquidation.

## 16. REMUNERATION OF LIQUIDATOR

On 9 December 2024, I asked creditors to approve my retrospective and prospective remuneration of \$40,000 (excl. GST) which comprised of work completed for the period 12 November 2024 to 8 December 2024 for \$17,260.00 (excl. GST) and future work for the period 9 December 2024 to conclusion of the Liquidation for \$22,740.00 (excl. GST). I advise creditors have approved both my retrospective and prospective remuneration.

I am now asking creditors to approve my future remuneration of \$20,000.00 (excl. GST).

Details of work completed for the period 12 November 2024 to 3 January 2025 are summarised as follows:

- ▲ Attendance at multiple meetings with the Director;
- ▲ Liaising with valuers in relation to the company vehicles and discussing options with the Director;
- ▲ Coordinating the sale of company vehicles;
- ▲ Reviewing Company bank statements in detail due to a lack of books and records;
- ▲ Investigations into potentially voidable transactions;
- ▲ Investigations in relation to the insolvent trading claims and Director's asset position.

Creditors are referred to the following items set out at the Remuneration Approval Report attached as **Annexure C**:

- ▲ The spreadsheet which sets out the calculation of remuneration by appointee, employee and position for the work undertaken by myself and my staff for the period 12 November 2024 to 3 January 2025;
- ▲ A summary sets out a general description of additional necessary work carried out for the period 4 January 2025 to conclusion of the Liquidation.

It is my intention to now seek approval from creditors of my remuneration in the sum of \$20,000.00 for the future work I intend to complete from 10 January 2025 to the conclusion of the Liquidation. Attached as **Annexure D** is a copy of the Proposals without Meeting forms. These forms need to be returned to my office by **close of business, 28 February 2025**.

## 17. MATTERS OUTSTANDING

The outstanding matters in the administration are:

- ▲ Recovering sale proceeds for the Canter;
- ▲ Liaising with Mercedes Parramatta regarding the Mercedes Benz;
- ▲ Correspondence with creditors;
- ▲ Obtaining access to the Company's ATO portal;

- ▲ Confirming total amounts owed to Creditors;
- ▲ Liaising with lawyers regarding recovery action, pending the total amount owed to the Creditor;
- ▲ Statutory lodgements and general administrative matters; and
- ▲ Finalise.

Subject to the timing of the finalisation of the above matters and any unforeseen circumstances, I currently estimate that the administration will be finalised within 4-6 months.

## 18. CONCLUSION

It would be appreciated if you would consider the matters detailed in this report and please write to this office setting out full particulars if you are:

- ▲ Aware of any errors in the information contained within this report including the non-disclosure of any divisible assets; and
- ▲ Have any information that you consider is relevant for creditors' decision making or relevant information that may help assist the liquidator's investigations into the affairs of the Company.

Creditors should however, maintain their records in relation to the affairs of the Company and advise this office of any change of address.

Additional general information regarding liquidations which may be of assistance, is available from the following websites:

- ▲ ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors) ; and
- ▲ ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets"), also attached as **Annexure D** to this report.

Should you require assistance in completing the relevant forms or have any queries, please contact the Administration Contact shown at page 1 of this report.

Any further reports will be issued as considered appropriate.

Yours faithfully,

**GALLO FORMWORK PTY LTD (IN LIQUIDATION)**

**PETER KREJCI**  
LIQUIDATOR