

31 October 2012

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Senator David Bushby
 Senator for Tasmania
 Chair
 Senate Economics References Committee
 PO Box 6100
 Parliament House
 CANBERRA ACT 2600

By Email: economics.sen@aph.gov.au

Dear Senator

**Senate Economics References Committee Inquiry into the post-GFC banking sector –
 Submissions of Mark David Peter Englebert and Ian Charles Francis**

1. I refer to:
 - (a) the written submissions dated 8 October 2012 prepared by Ian Francis and me (**Primary Submissions**); and
 - (b) my appearance before the Committee on Wednesday, 10 October 2012.
2. Unless otherwise stated, capitalised terms in these submissions have the same meaning as in the Primary Submissions.

The nature of these submissions

3. These submissions seek to address and respond to the questions of the Committee that I took on notice at my appearance before the Committee on Wednesday, 10 October 2012.
4. I have prepared these submissions in my capacity as joint and several receiver and manager of the Companies.
5. I request that these submissions be kept private for the same reasons outlined in the Primary Submissions. I would be grateful for your assistance in accommodating this request.

Responses to questions on notice

Question 1 (Hansard ref, public session, page 4):

Senator Cameron: Did you get any legal advice on your position on these receiverships?
Mr Englebert: Yes.
Senator Cameron: Is the legal advice included in these documents?
Mr Englebert: No.
Senator Cameron: Is the legal advice available to the Committee?
Mr Englebert: It is subject to legal professional privilege.
Senator Cameron: I know it is subject to legal professional privilege, but is there any reason that you have given us all these documents but none of the legal advice that you have? Is there something in the legal advice that is a problem and therefore you cannot provide it to the committee?
Mr Englebert: There is nothing in there that would be a problem.
Senator Cameron: Can I ask that you provide the legal advice documents to the committee?
Mr Englebert: Could I take that on notice?

Response:

The documents included in the folder of documents accompanying the Primary Submissions do not by any means constitute the entirety of the documents held in relation to the receiverships of the Companies, but rather are limited to those documents which give context to the Primary Submissions.

There are voluminous additional documents relevant to the receiverships of the Companies, including but not limited to correspondence between our office and our legal advisors, that were not included in the folder accompanying the Primary Submissions and which would, in my view and by reason of their sheer volume, be impractical to provide to the Committee.

To the extent that it may assist the Committee, I confirm that I have reviewed the additional documents and do not consider there to be any issues with any of the matters referred to in the documentation on the basis that, amongst other grounds, the position on the receiverships set out in the documents is reflective of and consistent with the legal advice I received from time to time.

Question 2 (Hansard ref, in camera session, page 2):

Senator Cameron: What is your ROI for the company?
Mr Englebert: I am not an equity partner, so I am not familiar with that.
Senator Cameron: Can you take it on notice what the company's return on investment is. One of the issues that we have to deal with is that there are complaints continually that the banks are allowing receivers to make far too much money out of receivership. I do not think anyone has ever asked this question to my knowledge in the time I have been here: what is a legitimate return on investment from receivers who are setting about doing what is a legal operation but an extremely expensive one? So if you would provide that, and is there an industry group or association for receivers?

Response:

I am not aware of Taylor Woodings' return on investment. Taylor Woodings does not keep records of its levels of profit pursuant to the separate forms of external administration, including receiverships. I am also unable to speculate on what is a legitimate return on investment for receivers appointed to a particular asset.

Receivers and managers are entitled to claim remuneration for professional services that they render. That entitlement usually arises expressly pursuant to the terms of the security document under which a receiver and manager is appointed. It also arises at law. The level of remuneration for a particular receivership will depend entirely on the nature of the asset and the work required to be done in relation to that asset.

Question 3 (Hansard ref, in camera session, page 3):

Senator Williams: I would like to raise with you your involvement with a company called Gelrol Pty Ltd, a Hunter Valley based company owned by David Bone. Are you familiar with it?

Mr Englebert: No.

Senator Williams: Taylor Woodings was appointed by Bankwest on 14 September 2011. Time does not permit me to go through the history, but if you cannot answer now I am happy for you to take it on notice and come back to committee with answers, please. There were two properties, one at 210 Fotheringay Road, Clarence Town, and 102 Clarence Street, Wallalong. I understand an offer was put in for \$2.25 million plus GST for both properties in April 2012. The Clarence Street property was valued at \$8.695 million in April this year, yet your company accepted \$840,000 for it. Not only did it sell well under market value and well under the value of comparable blocks, I understand that a higher offer was not accepted. Did Taylor Woodings act in the best interests of the client by not accepting the higher offer or an offer considerably less than the valuation? I ask you to take that on notice.

Response:

I was not involved in the receivership of Gelrol Pty Ltd and, accordingly, I am not in a position to make any meaningful comment in relation to the Committee's query on this matter and have no personal or actual knowledge of the matter. Any enquiries in relation to this matter may be directed to Mr Quentin Olde, Partner in Charge, Taylor Woodings, Sydney.

All I can say, from my knowledge of Taylor Woodings' approach generally, is that it would be most unlikely that, when the factual position is fully considered and understood, Taylor Woodings would have done anything in this insolvency administration that was improper or incorrect. That is not how Taylor Woodings operates in my experience. But, as I have said, I have no personal knowledge or information about this particular insolvency administration.

Question 4 (Hansard ref, in camera session, page 3):

Senator Williams: Are you familiar with Saltwater Developments Pty Ltd and Robert Laut?
Are you familiar with that one from Taylor Woodings?

Mr Englebert: No.

Senator Williams: They had a subdivision at South West Rocks with a potential for 600 blocks of land. In July 2010, Bankwest valuers valued the blocks at \$8.4 million, but the bank was not happy with that so three months later another valuation was done by a different valuer and the land was valued at just \$4.67 million. Five blocks were sold for \$150,000 each and a house for \$650,000. I know that an Unhappy Banking representative Geoff Shannon made an offer for \$2 million to buy out the rest of the debt and retire the receivers. Unhappy Banking were waiting for Bankwest to respond to the request. On the 2nd of this month, Mr Laut was advised by Taylor Woodings that the asset had been sold. Was Taylor Woodings aware an offer had been made to Bankwest to clear the debt prior to it being sold to a third party? Would you take that on notice?..

Response:

As with the insolvency administration referred to in response to the previous question, I was not involved in the receivership of Saltwater Developments Pty Ltd and, accordingly, I am not in a position to make any meaningful comment in relation to the Committee's query on this matter and have no personal or actual knowledge of the matter. Any enquiries in relation to this matter may be directed to Mr Quentin Olde, Partner in Charge, Taylor Woodings, Sydney.

Again, however, from my knowledge of Taylor Woodings' approach generally, I can say that it would be most unlikely that, when the factual position is fully considered and understood, Taylor Woodings would have done anything in this insolvency administration that was improper or incorrect. That is not how Taylor Woodings operates in my experience. But, as I have said, I have no personal knowledge or information about this particular insolvency administration.

Question 5 (Hansard ref, in camera session, page 6):

Senator Eggleston: Lastly, on 12 March 2011 you entered into a conditional contract for sale of the land and assets associated with the Lighthouse Beach Resort. On 9 June 2012 Mr Butler was advised that Taylor Woodings had materially progressed with a conditional offer. I wonder if you would like to tell us why your correspondence did not make it clear that conditional contracts of sale had been entered into?

Mr Englebert: I will have to take that one on notice. I am not quite sure about the 9 June issue you raise.

Response:

I have reviewed the relevant correspondence and it appears that the email Senator Eggleston was referring to was dated 12 June 2012 (as opposed to 9 June 2012). On 12 June 2012, Mr Jeremy Nipps of Taylor Woodings, on behalf of myself, sent Mr Butler the following email:

'Sean

Thank you for your email.

As previously advised, we are materially progressed with a conditional offer. Should you (or any other party) wish to lodge a formal offer, it is open to you to do so, however any such offer will not be able to be acted on by the Receivers in light of the current contract remaining on foot.

Regards

Jeremy Nipps
for M D Englebert
Receiver and Manager'

I consider that the above email accurately explained to Mr Butler the status of the sale of the Lighthouse Beach Resort as at 12 June 2012. The email made clear that a contract was on foot and that the contract was conditional in nature.

Accordingly, any formal offer submitted by Mr Butler (or any other party) would not have been able to be accepted in light of the contractual obligations that were then in place. In the event that, for any reason, the contract no longer remained on foot, then any offer that was put would have been able to be acted on and accepted, rejected or further discussed.

Question 6 (Hansard ref, in camera session, page 6):

Senator Eggleston: Lastly, Mr Butler says you charged \$285,000 to administer the sale of the property. Is that the case? Is that your fee?

Mr Englebert: It is our total fees across all three entities. I do not have a split of that. I think he is talking about one of the companies. The total fee to date is about \$700,000.

Senator Eggleston: Perhaps you could take that on notice and provide us with the details.

Response:

The following is a summary of the fees properly incurred by myself and Mr Francis in respect of each receivership as at 30 September 2012 (excluding GST, disbursements and legal fees):

Entity (Receivers and Managers Appointed)	Fees
Lighthouse Beach Holdings Pty Ltd	\$183,639.00
Butler Constructions Pty Ltd	\$390,128.00
National Hotel Property Pty Ltd	\$156,286.00
TOTAL	\$730,053.00

Question 7 (Hansard ref, in camera session, page 7):

Chair: So that \$700,000 also includes hourly fees for looking over the shoulder of the general manager who was there.

Mr Englebert: Correct.

Senator Eggleston: What proportion of the cost would actually be involved there.

Mr Englebert: I wouldn't have a split. It would not be a big proportion of it.

Chair: Mr Butler alleges that you charged \$110,000 to run the business.

Mr Englebert: I think Mr Butler's –

Chair: You say that is not true, that it is not correct?

Mr Englebert: No.

Senator Cameron: What was the figure? Can you give us that figure?

Chair: Can you take that on notice?

Mr Englebert: Yes.

Chair: Would you have in your readily available records an ability to give us a rough indication of what was involved in terms of the costs of selling, the costs of managing and maybe even the costs that were additional because of the interference of Mr Butler?

Mr Englebert: As a very rough – I do not have that data in front of me.

Chair: No. Could you take it on notice?

Mr Englebert: Yes, I will take it on notice.

Response:

As noted in the response to Question 6 above, Mr Francis and I properly incurred fees in the conduct of the receiverships in the sum of \$730,053.00.

I am not able to say with any certainty what proportion of those fees and disbursements related to the costs of selling the Lighthouse Beach Resort and the National Hotel, the costs of managing the Lighthouse Beach Resort and the costs associated with Mr Butler. But, I have reviewed our files and consider that a rough estimate of our fees for each of the above tasks is as follows:

Task	Fees
Costs associated with selling the Lighthouse Beach Resort	\$122,000.00
Costs associated with managing the Lighthouse Beach Resort	\$211,000.00
Costs associated with selling the National Hotel Property	\$58,000.00
Costs associated with our dealings with Mr Butler (to the extent identifiable)	\$105,000.00
Other costs (I note that an unquantifiable amount of costs have been incurred as a result of our dealings with Mr Butler)	\$234,000.00
TOTAL	\$730,000.00

Contact details

If you have any queries, please do not hesitate to contact me on (08) 9321 8533.

Yours faithfully

Lighthouse Beach Holdings Pty Ltd ACN 104 899 461 (Receivers and Managers Appointed) in its own right and as trustee for The Lighthouse Beach Unit Trust

Butler Constructions Pty Ltd ACN 009 371 340 (Receivers and Managers Appointed) in its own right and as trustee for The Cargill Trust trading as the Lighthouse Beach Resort

National Hotel Property Pty Ltd ACN 120 460 620 (Receivers and Managers Appointed)



Mark David Peter Englebert
Joint and Several Receiver and Manager