



McDonald  
Vague

business recovery partners

# Earmax New Zealand Limited (In Liquidation)

## Liquidators' First Report

McDonald Vague Limited

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Auckland Central

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### 1 INTRODUCTION AND APPOINTMENT

Earmax New Zealand Limited ("the company") was placed into liquidation by a special resolution of the shareholders pursuant to Section 241(2)(a) of the Companies Act 1993 ("the Act") on 28 October 2016. Peri Micaela Finnigan and Boris van Delden, Insolvency Practitioners of Auckland, were appointed as joint and several liquidators of the company.

### 2 RESTRICTIONS

In preparing this report and its appendices we have relied upon information provided to us. We have not independently verified or audited that information. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever to any party as a result of the circulation, publication, reproduction or use of this report.

We reserve the right (but are under no obligation) to review and, if we consider necessary, revise this report in respect of any information existing at the date of this report which becomes known to us after that date.

### 3 ATTACHMENTS

The following documents are attached to this report:

- Appendix 1: Statement of Affairs setting out the company's estimated financial position
- Appendix 2: Schedule of company creditors' names and addresses
- Appendix 3: Notice of Liquidators' decision to dispense with meeting of creditors
- Appendix 4: Notice to creditors to prove debts or claims
- Appendix 5: Creditors claim form

### 4 COMPANY STRUCTURE AND BACKGROUND

Date of incorporation:	5 November 2003
Company number:	1422956
Date ceased trading:	28 October 2016

Nature of business:	Hearing aid manufacture
Trading address:	128 Khyber Pass Road, Grafton, Auckland
Share capital:	250,000 Shares
Shareholders:	Nicholas Alfred Hoy } The Lennox Family Trust } 249,999 Shares Jointly
Director:	Nicholas Alfred Hoy 1 Share
Related companies:	AXYX Limited (In Liquidation)

The company produced and supplied hearing aids. Its failure has been attributed to the changes in industry technology, competition, and the loss of the business of its two major clients. One major client ceased trading because of the ill-health of the director. The other, the related company, Applied Hearing (1987) Limited, was placed into liquidation as the company could no longer service customers without the supply from Earmax. Applied Hearing (1987) Limited is now known as AXYX Limited (In Liquidation).

## 5 STATEMENT OF AFFAIRS

A Statement of Affairs showing the company's estimated financial position as at the date of our appointment is provided at Appendix 1.

The liquidators are endeavouring to sell the assets of the company, including the inventory. To avoid prejudicing that process we are withholding information on the estimated realisable values of assets and stock.

## 6 ASSETS AND PROPOSALS FOR CONDUCTING THE LIQUIDATION

We will realise all available assets. If any creditor is interested or knows of any other party who may be interested in purchasing any of the assets, please advise us urgently.

We will complete a thorough review of the company's books, records and affairs to:

- ensure that all assets have been properly accounted for,
- determine if there are any other avenues of recovery for creditors,
- determine if the company's officers have properly carried out their duties, and take appropriate steps where necessary.

If there are funds available for distribution to creditors we will verify creditors' claims and make a distribution. We will then complete the liquidation and request that the Registrar of Companies remove the company from the register.

## 7 LIABILITIES AND CREDITOR CLAIMS

### 7.1 *Secured Creditors*

As at the date of liquidation one secured party had a registered security interest against the company on the Personal Property Securities Register.

Siemens Hearing Instruments PTY Limited has security registered over the goods supplied to the company. That security is now assigned to Sivantos Pty Limited of Australia. The liquidators have received confirmation of the security and the secured party has uplifted the goods covered by the security.

The debt owed prior to the stock being uplifted was \$144,492. It is expected there will be a shortfall to Sivantos after taking into account the value of the goods recovered.

#### *Personal Property Securities Act / Reservation of Title*

Should any other creditor believe that they are entitled to any goods, or proceeds from realisation of goods, due to holding a Purchase Money Security Interest, they should contact us immediately.

If any creditor believes that they have a Reservation of Title over goods and they have not perfected their interest, they should also contact us immediately.

### 7.2 *Preferential Creditors*

We estimate that there is approximately \$6,864 owing to former employee for wages and holiday pay.

The Inland Revenue Department has advised that there is no current debt.

### 7.3 *Unsecured Creditors*

From our review of the company's accounting records and other information we estimate that the amount due to unsecured creditors is approximately \$278,119 however this amount will be reduced by value of the stock items returned to the secured creditor as set out in 7.1 above. A schedule of known creditors and their addresses is provided at Appendix 2, as required by Section 255(2)(c) of the Act.

A notice to creditors to prove debts or claims is included at Appendix 4. Also enclosed is a creditor's claim form for completion and return to this office by Friday, 9 December 2016.

Creditors that have not made a claim by the date on the notice may be excluded from any distribution made. If you believe that you are a secured creditor, please contact us and the appropriate form will be sent to you.

## **8 CREDITORS' MEETING / LIQUIDATION COMMITTEE**

A notice of the Liquidators' decision to dispense with the meeting of creditors is provided at Appendix 3.

Pursuant to Section 314 of the Companies Act 1993, creditors are advised that at any time in the course of the liquidation the Liquidator shall, at the request in writing of any creditor or shareholder, call a meeting for the purpose of appointing a liquidation committee.

## **9 FURTHER INFORMATION**

If you are aware of any information that would assist the Liquidators, please set the details out in writing, attach any supporting evidence and send it to us. Please note that the Liquidators are more able to act on written information.

If any creditor wishes to receive the six monthly reports by email as and when they are published, please ensure that an email address is provided on the attached creditor claim form. This report and all subsequent reports will be available on the Liquidators' website at [www.mvp.co.nz](http://www.mvp.co.nz)

## **10 ESTIMATED DATE OF COMPLETION**

It is currently too early to estimate a date of completion for the liquidation.

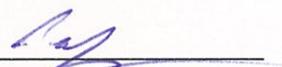
## **11 CONTACT DETAILS**

Enquiries should be directed to Colin Sanderson on DDI (07) 838 0908 or by email to [CSanderson@mvp.co.nz](mailto:CSanderson@mvp.co.nz).

The Liquidators can be contacted at:

McDonald Vague Limited  
Level 10, 52 Swanson Street  
Auckland 1010

P O Box 6092  
Wellesley Street  
Auckland 1141

  
PERI M FINNIGAN  
LIQUIDATOR

DATED this 3<sup>rd</sup> day of November 2016

PMF/CRS/gck/150  
Earmax/205 First Report

## Earmax New Zealand Limited (In Liquidation) Statement of Affairs

Statement of Affairs for the above named company as at 28 October 2016 (being the date of liquidation) showing assets at estimated realisable values and liabilities expected to rank.

<b>ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS</b>	<i>Book Value</i>	<i>Estimated to Realise</i>
Accounts receivable - Trade	13,932	Unknown
Related party receivables	40,000	Unknown
Inventory (See Note 3 below and section 7.1 in the Report)	125,000	Unknown
Plant & Equipment	477	Unknown
Furniture & fittings	1,991	Unknown
<b>Total</b>	<b>\$181,400</b>	<b>\$ -</b>
 <b><i>Less preferential creditor</i></b>		
Employee		6,864
<b>Total</b>		<b>\$6,864</b>
<b><i>Estimated deficiency as regards preferential creditor</i></b>		<b>(\$6,864)</b>
 <b>LESS UNSECURED CREDITORS</b>		
Estimated deficiency as regards preferential creditors		6,864
Trade creditors (See section 7.1 in the report re Sivantos)		171,119
Related party advances (See note 4 below)		107,000
<b><i>Estimated (deficiency) as regards unsecured creditors</i></b>		<b>(\$284,983)</b>

**Notes:**

1. There is no unpaid capital liable to be called up.
2. The above estimates are subject to the costs of the liquidation.
3. Inventory supplied by Sivantos Pty Ltd is subject to Purchase Money Security Interest ("PMSI") or Reservation of Title claims.
4. Based on information provided by the company accountants. This is yet to be confirmed

**Disclaimer of Liability:**

The information contained in the Statement of Affairs has been supplied by the company. We have not verified the information supplied. The Statement of Affairs has been prepared for the purpose of the liquidation and we do not accept any responsibility on any grounds whatsoever, including liability in negligence, to any party.

## Earmax New Zealand Limited (In Liquidation) Schedule of Creditors' Names and Addresses

Pursuant to Section 255(2)(c) of the Companies Act 1993

Creditor Names	Address 1	Address 2	Address 3
Accident Compensation Corporation	P O Box 3248	WELLINGTON 6140	
ANZ Bank New Zealand Limited	P O Box 788	AUCKLAND	
Express Couriers Limited	PO Box 38817	Wellington Mail Centre	LOWER HUTT 5045
Farac Gutierrez Limited	P O Box 9633	Newmarket	AUCKLAND 1149
Inland Revenue Department	P O Box 39 010	Wellington Mail Centre	LOWER HUTT 5045
John Norman Barratt-Boyes	232 Great South Road	Remuera	AUCKLAND
Mei Yu	62 Haseler Crescent	Howick	AUCKLAND
New Zealand Post	PO Box 3840	WELLINGTON 6140	
Nicholas Alfred Hoy	4 Waipani Road	Te Atatu Peninsula	AUCKLAND 0610
Problem Gambling Foundation	<a href="mailto:bquin@pgf.nz">bquin@pgf.nz</a>		
Siemens Hearing Instrument PTY Ltd	<a href="mailto:sagar.gundecha@sivantos.com">sagar.gundecha@sivantos.com</a>		
Spark NZ Trading Limited	P O Box 1473	CHRISTCHURCH 8140	
Vodafone New Zealand Limited	Private Bag 208 060	Highbrook	AUCKLAND

## Notice of Liquidators' Decision to Dispense with Meeting of Creditors

After having regard to the assets and liabilities of Earmax New Zealand Limited (In Liquidation) and the likely result of the liquidation, it is proposed to dispense with a meeting of creditors pursuant to Section 245 of the Companies Act 1993.

We do not, however, wish to preclude creditors from expressing their views. Please contact Colin Sanderson of this office on DDI (07) 838 0908 if you have any specific enquiries.

You are advised that should you desire a creditor's meeting, notice in writing is required within 10 working days of receiving this notice.

At the time of giving notice you must also state the reason you require a meeting so that an agenda can be prepared and advertised and creditors can be given the opportunity to vote on any issue by voting letter.

  
PERI M FINNIGAN  
LIQUIDATOR

DATED this 3<sup>rd</sup> day of November 2016

## Appendix 4

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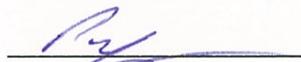
IN THE MATTER of                    The Companies Act 1993

and

IN THE MATTER of                    Earmax New Zealand Limited (In Liquidation)

### **Notice to Creditors to Prove Debts or Claims**

Notice is hereby given that the undersigned, the liquidator of Earmax New Zealand Limited (In Liquidation) ("the company"), does hereby fix Friday, the 9<sup>th</sup> day of December 2016, as the day on or before which the company's creditors are to make their claims, and to establish any priority their claims may have under Section 312 of the Companies Act 1993. Creditors not having made a claim by this date may be excluded from any distribution made.

  
PERI M FINNIGAN  
LIQUIDATOR

DATED this 3<sup>rd</sup> day of November 2016

#### **ADDRESS OF LIQUIDATOR**

McDonald Vague Limited  
Level 10, 52 Swanson Street  
Auckland 1010

PO Box 6092  
Wellesley Street  
AUCKLAND 1141

Telephone: (09) 303 0506  
Facsimile: (09) 303 0508  
Website: [www.mvp.co.nz](http://www.mvp.co.nz)

**DATE OF LIQUIDATION:** 28 October 2016



The Insolvency & Business Recovery Specialists

McDONALD VAGUE LIMITED

PO Box 6092, Wellesley St, Auckland 1141, New Zealand.  
Telephone 0-9-303 0506, Facsimile 0-9-303 0508

# Unsecured Creditor's Claim

(Also for use by Preferential Creditors)

SECTION 304(1) COMPANIES ACT 1993  
(For help see [www.mvp.co.nz](http://www.mvp.co.nz) or email [claims@mvp.co.nz](mailto:claims@mvp.co.nz))


NAME AND POSTAL ADDRESS OF CREDITOR IN FULL

Telephone Numbers: ( )  
( )

E-Mail

My Reference is:  
(if applicable)

\* Any personal information collected is for the purpose of administering the liquidation in accordance with the Companies Act 1993.

The information will be used and retained by the liquidators and McDonald Vague and will be released to other parties only with your authorisation or in compliance with the Privacy Act 1993.

Under Section 304(1) of the Companies Act 1993 any claim by an unsecured creditor against a company in liquidation must be in this prescribed form and must –  
(a) Contain full particulars of the claim; and  
(b) Identify any documents that evidence or substantiate the claim.

You may have access to and request correction of any personal information.

(\*Not applicable, if creditor is not an individual within the meaning of the Privacy Act 1993.)

NAME OF COMPANY IN LIQUIDATION:

(IN LIQUIDATION)

(If claim is made on behalf of creditor, specify relationship to creditor and authority)

claim that the company was at the date it was put into liquidation indebted to the abovenamed creditor for the sum of (Amount in words):

STATUS OF CLAIM:

- I am an unsecured creditor for**  
(Also applicable to secured creditors who hereby surrender their security)
- I am a preferential creditor for**  
(Refer details on reverse)
- My total claim is for**  
(State currency if other than \$NZ)
- I have claimed retention/reservation of title rights pursuant to rights held by me  
Note: If you are a secured creditor contact this office and a Secured Creditors Claim Form will be sent to you. (Refer details on reverse)

\$
\$
NZ \$

Tick if Applicable

Full particulars of the claim are set out, and any supporting documents that substantiate the claim, are identified on the reverse of this form.

(The liquidator may require the production of a document under Section 304(2) of the Companies Act 1993. You are **not required to attach any supporting documents** at this stage, but you may attach them now, if you think it would expedite the processing of the claim.)

SIGNED:

Date: / /

## WARNING —

It is an offence under Section 304(6) of the Companies Act 1993 to –  
**Make or authorise the making of, a claim that is false or misleading in a material particular knowing it to be false or misleading; or**  
**Omit, or authorise the omission from a claim of any matter knowing that the omission makes the claim false or misleading in a material particular.**

Received  
(Date Stamp)

RESERVED FOR OFFICE USE:

Claim admitted/rejected for voting purposes: (Delete one)

Signed: \_\_\_\_\_

Date: / /

Preferential Claim for:

Ordinary Claim for:

CLAIM REJECTED FOR PAYMENT:

\$ \_\_\_\_\_

\$ \_\_\_\_\_

or  
CLAIM ADMITTED FOR PAYMENT:

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Signed Liquidator: \_\_\_\_\_

Date: / /

**Note:** If the decision to admit or reject a claim is amended, regulation 8 of the Companies Act 1993 Liquidation Regulations 1994 requires that it be recorded in writing.



The Insolvency & Business Recovery Specialists



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McDONALD VAGUE LIMITED

PO Box 6092, Wellesley St, Auckland 1141, New Zealand.  
Telephone 0-9-303 0506, Facsimile 0-9-303 0508

# Particulars of Claim

If the creditor owes money to the company, please give full details.

Date	Details of Claim and Identification of Documents that Evidence or Substantiate the Claim	Amount \$

**CLAIMS AGAINST INVENTORY (Romalpa Claims)(Consignment Goods) (Retention of Title) etc.**

Please provide details of the basis of the retention of title claim filed by you and/or details of entry on the Personal Property Securities Register.

**PREFERENTIAL CLAIMANTS ONLY**

**Guideline**

The Seventh Schedule of the Companies Act 1993 sets out those claims which are regarded as preferential and shows their extent and order of priority. For example, wages and salary of any employee in respect of services rendered to the company during the four months preceding the commencement of liquidation are preferential AND the total sum to which priority is to be given in the case of any one employee for wages, holiday pay, deductions, redundancy and child support must not exceed \$20,340 or such greater amount as is prescribed at the commencement of the liquidation.

1. Why do you believe you are a preferential creditor?  
(eg. employee, GST, etc) \_\_\_\_\_
2. Details of your claim: \_\_\_\_\_  
\_\_\_\_\_

If applicable please record here your GST Registration number: \_\_\_\_\_

and total GST included in your tax invoice: \$ \_\_\_\_\_