



McGrathNicol

22 December 2021

**McGrathNicol  
Restructuring**

ABN 34 824 776 937

Level 19, 2 The Esplanade  
Perth WA 6000, Australia

GPO Box 9986  
Perth WA 6848, Australia

T +61 8 6363 7600

F +61 8 6363 7699

mcgrathnicol.com

**Helios Corporation Pty Ltd (Administrators Appointed) ACN 636 970 771 (Helios) IIOR and ATF the  
Michael Fotios Family Trust ABN 91 504 825 460 (MFFT) (Receivers Appointed)**

**Update to creditors**

I refer to:

- the appointment of Rob Brauer and I as Administrators of Helios on 19 August 2021;
- the appointment of Rob Brauer and I as Receivers (**Receivers**) of the assets of the MFFT by way of an order of the Federal Court of Australia (**Federal Court**) on 6 September 2021; and
- our previous circulars to creditors dated 15 September 2021, 1 December 2021 and 15 December 2021, the latter of which notified MFFT's creditors of the Receivers' application for directions (**Directions Application**) in the Federal Court of Australia (**Court**) in the matter WAD143/2020 and a mention in the Court listed for 21 December 2021 (**Initial Hearing**).

At the Initial Hearing, the Court made certain orders regarding the priorities of MFFT's creditors. The Court also listed the balance of the Directions Application for a final hearing on **Wednesday, 23 February 2022 (Final Hearing)** and made various programming orders to achieve this. As a result, any party wishing to participate in the Final Hearing must:

- by 10 January 2022, file a notice of appearance with the Court; and
- by 31 January 2021, file and serve their evidence and legal submissions.

Copies of the Court's orders are enclosed for your reference.

If you have any queries or require any further information regarding the Directions Application, including the material supporting the application filed by the Receivers, please contact this office on (08) 6363 7635 or by emailing [acleuet@mcgrathnicol.com](mailto:acleuet@mcgrathnicol.com).

Otherwise, I encourage creditors who may have an interest in the Directions Application to seek independent legal advice and, if appropriate, enter an appearance by the above deadline so that they may be heard at the Final Hearing and file any submissions or evidence they wish to rely on.

Yours faithfully

*Helios Corporation Pty Ltd (Administrators Appointed)*

Rob Kirman  
*Receiver*

Enclosure: Court Orders dated 21 December 2021

In association  
with



ADVISORY  
RESTRUCTURING



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD143/2020

**IAN CHARLES FRANCIS AND JOANNE EMILY DUNN AS JOINT AND SEVERAL TRUSTEES OF THE BANKRUPT ESTATE OF MICHAEL GEORGE FOTIOS**

Applicant

**HELIOS CORPORATION PTY LTD (ACN 636 970 771)**

Respondent

**ORDER**

**JUDGE:** JUSTICE COLVIN

**DATE OF ORDER:** 21 December 2021

**WHERE MADE:** Perth

**THE COURT ORDERS THAT:**

1. The Receivers will be justified if they treat the property of the Family Trust, and the rights of parties to access that property, on the basis that it is subject to the following entitlements in order from highest priority to lowest:
  - (a) The Experts are entitled to reasonable remuneration and reasonable costs and expenses properly incurred in the performance of their duties and the exercise of their powers as Experts as contemplated by order 10 of the orders made by this Honourable Court in this proceeding on 30 November 2020, with such remuneration, costs and expenses (including the remuneration approved in order 3 of the orders made by this Honourable Court in this proceeding on 15 April 2021 (**April Orders**) and the remuneration, costs and expenses as may be approved pursuant to order 4 below) to be paid out of the assets of the Trust and secured by a first-ranking lien in accordance with order 4 of the April Orders.
  - (b) The Receivers are entitled, subject to any necessary approvals, to have recourse to the assets of the Family Trust for their reasonable costs, expenses and remuneration in respect of the work undertaken:



- (i) as external administrators of the Respondent and to render the assets of the Family Trust available to meet the claims against the trust assets; and
  - (ii) in the course of their receivership,  
up to any amount ordered by the Court, including without limitation under order 4 of the orders made by this Honourable Court in this proceeding on 6 September 2021 and under order 5 of these orders.
- (c) The Applicants are entitled, subject to any necessary approvals, to their reasonable costs, expenses and remuneration in respect of the work undertaken in assisting the Receivers with their care, preservation and realisation of the property of the Family Trust, up to any amount ordered by the Court (including without limitation under order 6 of these orders), with such costs, expenses and remuneration to be paid out of the assets of the Family Trust and secured by a lien over the property of the Family Trust.
- (d) The Applicants, as joint and several trustees of the bankrupt estate of Michael George Fotios (**Bankrupt**), are entitled, in the following order of priority, to rights of:
- (i) reimbursement for personal expenditure (by the Bankrupt or by the Applicants) to satisfy liabilities owed by the Bankrupt in his capacity as trustee of the Family Trust; and
  - (ii) exoneration for unsatisfied liabilities of the Bankrupt properly incurred in his capacity as trustee,  
  
(subject to the priorities established under the applicable statutory scheme, including under the *Bankruptcy Act 1966* (Cth)), and each supported by an equitable lien or charge against the property of the Family Trust, and each subject to any obligations of the Bankrupt or Applicants which may decrease their entitlements.
- (e) The Respondent is entitled, in the following order of priority, to rights of:
- (i) reimbursement for expenditure to satisfy liabilities owed in its capacity as trustee of the Family Trust; and



- (ii) exoneration for unsatisfied liabilities of the Respondent properly incurred in its capacity as trustee,
  - (f) (subject to the priorities established under the applicable statutory scheme, including under the *Corporations Act 2001* (Cth)), each supported by an equitable lien or charge against the property of the Family Trust, and each subject to any obligations of the Respondent which may decrease its entitlements.
2. The Experts':
- (a) reasonable additional remuneration of \$198,814 plus GST and expenses of \$12,236 plus GST for the period between 10 April 2021 and 4 June 2021; and
  - (b) reasonable additional remuneration of \$1,000 plus GST and expenses of \$3,500 plus GST for the period between 5 June 2021 and the date of the hearing of this Application,
- be approved.

Date that entry is stamped: 21 December 2021

*Sia Lagos*

Registrar



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD143/2020

**IAN CHARLES FRANCIS AND JOANNE EMILY DUNN AS JOINT AND SEVERAL TRUSTEES OF THE BANKRUPT ESTATE OF MICHAEL GEORGE FOTIOS**

Applicant

**HELIOS CORPORATION PTY LTD (ACN 636 970 771)**

Respondent

**ORDER**

**JUDGE:** JUSTICE COLVIN

**DATE OF ORDER:** 21 December 2021

**WHERE MADE:** Perth

**THE COURT NOTES:**

1. In these orders:
  - (a) **'Application'** means the application for orders 2, 3 and 5 to 9 in the interim application filed by the Receivers on 9 December 2021;
  - (b) **'Family Trust'** has the meaning given to that term in the amended statement of claim filed 19 November 2020 in these proceedings; and
  - (c) **'Receivers'** means the receivers appointed under order 3 of the orders made on 6 September 2021 in these proceedings.

**THE COURT ORDERS THAT:**

2. By 10 January 2022, any party that wishes to be heard in relation to the Application must file a notice of acting in accordance with Form 4.
3. By 17 January 2022, the Receivers are to file and serve submissions in support of the Application.
4. By 31 January 2022, any party that has filed a notice of acting in the proceedings must file and serve their evidence and submissions in relation to the Application.



5. By 7 February 2022, the Receivers are to file any responsive evidence and submissions.
6. By 23 December 2021, the trust creditors who are known to the administrators of the respondent be notified of the hearing date for the application and these directions.
7. The Application be listed for a final hearing on 23 February 2022.

Date that entry is stamped: 21 December 2021

*Sia Lagos*  
Registrar