

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

VID 386 of 2011

**IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (LIQUIDATORS APPOINTED)
ACN 063 263 650**

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS APPOINTED)
ACN 063 263 650**

**IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE
ENTITY OF EACH OF THE MANAGED INVESTMENT SCHEMES LISTED IN
SCHEDULE 1 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2
First Plaintiff**

**CRAIG DAVID CROSBIE
Second Plaintiff**

**IAN MENZIES CARSON
Third Plaintiff**

OUTLINE OF WGG's SUBMISSIONS

Section 511 of the Corporations Act

1. A direction pursuant to s 511 of the Corporations Act (“**the Act**”) requires that the Court be satisfied that the determination of the question or the exercise of power will be **just and beneficial**. On the current affidavit material provided by the Liquidators it is not clear whether it would be just **between all the creditors**, including investors in all managed investment schemes for which Willmott Forests Limited is the responsible entity (“**Willmott Schemes**”).
2. Further, the protection afforded to a liquidator by directions pursuant to s 511 of the Act, in much the same way as an application pursuant to s 479(3) of the Act, is conditional upon the liquidator making full and fair disclosure of all relevant facts and circumstances before the Court at the time the order is made: see *Handberg v MIG Property Services Pty Ltd* (2010) 79 ACSR 373 per Warren CJ at [7]-[8].

3. In *Handberg* Her Honour, at [23] said:

“In deciding whether to provide the plaintiffs with the direction sought, I must have regard to the liquidation process as a whole, not to the interests of any one particular party.”

4. In *Re Southern Cross Airlines Holdings Limited (in liq)* (2000) 1 Qd R 84 at 93, Fitzgerald P notes that:

“It is ordinarily inappropriate for a direction to be given which will adversely affect identifiable legal rights or interests of other persons or entitle the liquidator to do so with impunity.”

5. In *ASIC v Rowena* (2003) 45 ACSR 424 at [79] Pullin J said in respect of a s. 479(3) application:

“The function of a liquidator’s application for directions is to give him advice as to his proper course of action in the liquidation. It is not to determine the rights and liabilities arising from the company’s transactions before the liquidation. The court must confine itself, in giving directions, to matters concerning the administration of the company, and it has no authority to resolve substantive matters in dispute between a trustee and a third party: Re G B Nathan & Co, above, at NSWLR 679-80; ACSR 678; Re Magic Aust Pty Ltd (in liq) (1992) 7 ACSR 742 at 745; the cases cited by Goldberg J in Re Ansett Australia Ltd (2001) 39 ACSR 355 at [59]; Conlon v Registrar at [343]-[348]; and see also Bastion v Gideon Investments Pty Ltd (in liq) (2000) 35 ACSR 466; 18 ACLC 854.”

6. We submit that the Court should not give the directions sought by the liquidators as they have the effect of resolving substantive matters in dispute.

Treating schemes separately

7. The second affidavit of Mark Bland, at paragraphs 22 to 25, refers to the failure of the liquidators to consider the differences between the various schemes. Notably, the liquidators make no use of the Poyry Report in their affidavit material, despite that Report setting out in detail the level of viability of each of the Willmott schemes. Instead, the liquidators make generalisations about the schemes, of which there are 8 registered and 22 unregistered, and bold assertions regarding their ability to disclaim leases held by growers.
8. *Parbery v ACT Superannuation Management Pty Ltd* (2010) 79 ACSR 425 concerned an administrator of a responsible entity of 12 managed investment schemes that sought to be able to recover its fees and expenses by taking more

fees from the solvent schemes to compensate for the inability to take fees from the “impaired schemes”. *Parbery* highlights the problems involved in treating separate schemes as one large scheme. Where there are a number of different schemes the liquidator owes fiduciary duties equally to the members of all schemes and has a duty to treat each trust separately and to act in the best interest of each trust.

9. Craig David Crosbie’s affidavit dated 11 May 2011 indicates, at paragraphs 26 and 27, the number of different registered and unregistered schemes and that they have different structures, however, never properly addresses those differences or considers the schemes according to their different circumstances.
10. These schemes were commenced at different times, are on different land throughout Australia, have different species of plantation, have different constitutions and deeds, have different scheme documentation, create different rights, have different scheme property and some utilise leasehold property, whilst others are on freehold.
11. At paragraphs [31] and [33] of *Parbery*, Palmer J said:

“[31] The question in this case is not whether, as a matter of principle, the court can or should authorise the administrators to have recourse to the scheme assets of an Unimpaired Scheme to recoup a shortfall after the corporate assets have been exhausted. There would have been no difficulty in such a question if all were involved in a single scheme. The difficulty arises because there are many schemes, some with an ability to pay a shortfall in remuneration and expenses and some with no ability – yet all schemes are controlled by the administrators who owe fiduciary duties equally to the members of all schemes.

...

[33] On the other hand, beneficiaries of a group of trusts are, in law, entitled to insist that the common trustee, or common administrators or liquidators of a common trustee, treat each trust separately and act in the best interests of each trust. The general equitable right of fiduciary loyalty in such a situation is clearly and expressly recognised in s 601FC(1)(c) of the CA, which provides that a responsible entity must act in the best interests of the members and, if there is a conflict between the members’ interests and its own interests, it must give priority to the members’ interests.”

Amendments pursuant to s 601GC(1)(b)

12. Enabling the responsible entity to “provide an unfettered right to terminate the Project Documents” and “any **rights** arising from or in connection with the Project Documents” (emphasis added), must adversely affect Growers’ rights. In respect of the 1995-1999 Project, Growers have a right to maintain their interest in the scheme where they have paid their application monies.
13. Addition of a power to terminate Growers’ rights adversely affects Growers rights because termination will substitute Growers’ rights for an undefined hope that the value of half grown timber (if any) may somehow be realised by them. Asserting that the liquidators will come before the Court before exercising any termination rights is no justification for providing such rights, adverse to Growers, in the first place.
14. The process of comparison and assessment used to determine whether the amendment would have an adverse effect is flawed. The essence of the comparison and assessment is stated in paragraph 62 of Mr Crosbie’s affidavit as follows:

“The Growers’ rights following the proposed amendments are different from their current rights. However, as the liquidators intend to disclaim the Grower leases and Forestry Management Agreements as onerous, currently the Growers’ only right would be a claim as unsecured creditors.”
15. The assertion in paragraphs 60 and 62 that the Growers’ leases are onerous or unprofitable and may be disclaimed by the liquidator is incorrect. Further, it pre-empts the very order they seek pursuant to s 511 of the Act.
16. The conclusions of the comparison and assessment in paragraphs 60 to 62 of Mr Crosbie’s affidavit are premised on ascribing a value to the Growers’ rights and determining whether they will be worse off, rather than considering whether the changes affect, in any way, the rights of Growers under their respective Constitutions and investment deeds. The liquidator may say that the Grower’s rights to the their interest in the scheme, to their lot and to harvest their lot are worthless, however, they are nevertheless rights.

17. Davies J in *Re Timbercorp Securities (in liq)* (2010) 77 ACSR 291 at [7] sets out the approach taken by Barrett J in *ING Funds Management Ltd v ANZ Nominees Ltd* [2009] NSWSC 243 as follows:

“His Honour concluded that the question is not a general question whether members will be “worse off” if the change is made, nor a general question of prejudice or disadvantage:

It is a specific question that goes wholly and exclusively to the much narrower matter of members’ rights. Their interests are... another thing altogether. So is the value of their rights.

Barrett J had earlier observed that a distinction is drawn in the Act between “rights” and “interests” and expressed his view that the task of the responsible entity seeking to amend a Constitution in reliance on s 601GC(1)(b):

is first to ascertain the rights of members created by the constitution, as they exist immediately before the modification.

I generally agree with the views of Barrett J about the approach to s 601GC(1)(b).”

18. Davies J goes on at paragraph [15]:

“The next matter for consideration is whether the evidence supports a finding that the liquidators considered whether the amendment would “adversely affect” members’ rights. In ING Management Fund, Barrett J in obiter observed as follows:

The task of a responsible entity under s 601GC(1)(b), then, is to assess members’ rights as they exist before the modification and, if the rights afterwards are different from the rights beforehand, to decide whether the difference in the rights will be, from a member’s perspective, unfavourable. To put this another way, the responsible entity must decide whether the change will remove, curtail or impair existing rights in a way that is disadvantageous to the persons whose holdings of units cause them to possess and enjoy the rights. No particular degree of affection is contemplated by the legislation. Any adverse affectation at all, however slight, is sufficient to deny the responsible entity the modification power.

The exercise of power under s 601GC(1)(b) is not constrained merely because a proposed amendment affects a change in members’ rights but the criterion will not adversely affect members’ rights requires the responsible entity to be satisfied of a negative.”

19. It is to be noted that Davies J in *Re Timbercorp Securities (in liq)*, in finding at [13] that the considerations of the liquidators that led to the decision to insert a power to terminate the licence agreements concerned the necessity to wind up

the scheme, referred in a footnote to a speech by Barrett J “Insolvency of Registered Managed Investment Schemes” (delivered at the Banking and Financial Services Law Association, Queenstown, New Zealand, July 2008) and quoted from Barrett J’s speech as follows:

“The only really feasible outcome in the situation of the independently impecunious responsible entity seems to be for the company in liquidation to remain the responsible entity. That raises the issue already noticed. A liquidator’s duty is to wind up the affairs of the company. To the extent that the affairs include the holding of property on trust, with ongoing duties, the liquidators first task, it seems to me, will be to find a way to bring the managed investment scheme to an end, either by the Orchard Aginvest means (if it is truly viable) or by resort to s 601NC.”

20. The “Orchard Aginvest means” is the winding up of a scheme on the just and equitable ground. However, it is important to note that in Barrett J’s speech, where he considered issues arising when a responsible entity is insolvent, he makes the following qualification in his concluding remarks:

“The case I have not considered is that where the responsible entity has separate and independent activities that cause it to become insolvent, even though the scheme or trust remains on a financially healthy footing. That is not really a case of insolvency central to the collective investment and a simple replacement of the responsible entity under the statutory provisions should be feasible.”

21. In assessing whether the proposed changes adversely affect the Growers interests, the liquidators have not considered the viability of the respective schemes, in a situation where some schemes are clearly more viable than others.
22. The liquidators provide insufficient evidence to support a reasonable belief on their part that the change to the constitutions would not adversely affect members’ rights. This is principally because the liquidators have not separately considered the circumstances of each scheme, including the viability of each scheme as set out in the Poyry Report.
23. As Davies J said in *Re Timbercorp Securities (in liq)* at [17]:

“An inquiry into the “reasonableness” of the state of mind is an objective inquiry and requires consideration of whether there were facts sufficient to induce that state of mind which, in turn, requires consideration of the matters that were taken into consideration.”

Disclaimer

24. In the alternative to amending the Constitutions and Investment Deeds of the schemes, the liquidators seek directions that they would be justified in disclaiming the “Project Documents” of the schemes as onerous pursuant to s 568(1).
25. The Project Documents include leases, in which the Growers are lessees and Willmott is lessor.

Leases not onerous

26. By way of example, the lease agreement for the 1995 – 1999 project scheme is not onerous on Willmott as lessor: see paragraphs 80 to 84 of the second affidavit of Mark Bland dated 20 June 2011. Nor are the lease agreements unprofitable: see *Old Style Confections Pty Ltd v Microbyte Investments Pty Ltd (in liq)* [1995] 2 VR 457 (Hayne J, as His Honour then was) at 465-467.

Effect of disclaimer

27. If the liquidators are proposing to disclaim their reversionary rights as lessor or the land, then s 139 of the *Property Law Act 1958* (Vic) and the similar provisions in other States would apply and the title would escheat to the Crown: see *National Australia Bank v New South Wales* (2009) 182 FCR 52.
28. Whether the liquidators disclaim Willmott’s reversionary rights or the land itself, a Grower’s rights as lessees survive.
29. If the liquidators are intending on disclaiming the lease contract, the Growers’ estate interest survives. A lease is not a mere contract but creates rights *in rem*, that is, an estate or interest in the land.
30. The liquidators have not suggested that they ask the Court to direct that they would be justified in disclaiming the lease contracts and further ordering that the lessee’s rights in the estate also be extinguished.
31. It is not surprising the liquidators have not sought such orders. It is unclear what power the Court would have to extinguish the Growers’ *in rem* rights. Further s 568D provides:

“A disclaimer is taken to have terminated, as from the day on which it is taken because of subsection 568C(3) to take effect, the company’s rights, interests, liabilities and property in or in respect of the disclaimer property, but does not affect any other person’s rights or liabilities except so far as necessary in order to release the company and its property from liability.”

32. In *Sims and Anor (as liqs of Enron Australia Pty Ltd) v TXU Electricity Ltd* (2005) 53 ACSR 295, Spigelman CJ says at [23] – [24] (emphasis added):

“[23] Austin J accepted the force of s 568D(1) in the following passage (at Simms (as liq of Enron Australia Finance Pty Ltd (in liq)) v TXU Electricity Ltd (2003) 204 ALR 658 ; 48 ACSR 266 at [57]–[60]):

[57] There is, however, a provision which provides a context for s 568(1B) and an indication that the section was not intended to authorise the variation of contractual rights and obligations in the manner contended for by the plaintiffs. Under s 568D(1) a disclaimer terminates the company’s rights and liabilities in respect of the disclaimed contract, while not affecting the counterparty’s rights and liabilities except so far as necessary to release the company from liability. I agree with the defendants that under s 568D(1), in its application to an unperformed contract:

- disclaimer deprives the company of its right to future performance of the contract by the counterparty: see Hindcastle Ltd v Barbara Attenborough Ltd [1997] AC 70 at 87 per Lord Nicholls; Sandtara Pty Ltd v Abigroup Ltd (1996) 42 NSWLR 491 at 500–501 per Cole JA; and*

- the counterparty’s existing, vested contractual rights and benefits are, generally speaking, unaffected by the disclaimer: Capital Prime Properties Plc v Worthgate Ltd (in liq) [2000] 1 BCLC 647 at 654 per Neuberger J; Re Tulloch Ltd (in liq) (1977) 3 ACLR 808 at 813 per Needham J; Rothwells Ltd (in liq) v Spedley Securities Ltd (in liq) (1990) 20 NSWLR 417 at 422 per Hodgson J.*

...

[24] I generally agree with his Honour’s reasoning.”

33. And at [26]:

“It would, in my opinion, be anomalous if an order could be made by the court, in the context of an application for leave to disclaim, which could have an effect on the other party to the contract of a character broader than the effect which the statute itself provides the actual act of disclaimer may have upon the other party. The parliament has

expressly considered the extent to which third parties are to be affected by the exercise of the statutory right of disclaimer. The power to make orders under s 568(1B)(b) should be read down to be subject to a similar restriction. Any effect on another person's rights or liabilities should go no further than what is necessary to release the company or its property from liability. The broad language of s 568(1B)(b) should be read down accordingly."

34. It would be unusual if vested contractual rights survived, but vested property rights did not survive. It is perhaps not surprising that we have not been able to find an example of a liquidator or trustee in bankruptcy, as landlord, disclaiming a lease.
35. In *Re Bastable; Ex parte The Trustee* [1901] 2 KB 518 a trustee in bankruptcy sought to disclaim a contract for the purchase of land from the bankrupt, who had a 99 year lease, which would have the effect of taking away the purchaser's equitable interest in the land. Romer LJ says at p 525:

"It is in substance contended on behalf of the trustee that if a vendor of real estate, by contract entered into with a purchaser, becomes bankrupt, the trustee in the bankruptcy of the vendor, without disclaiming the land or the interest in the land which was the subject of the contract, can, by disclaiming the contract alone, put himself in the position of owner of the estate freed altogether from the purchaser's interest in the estate, leaving the purchaser only the remedy of proving in the bankruptcy for any loss he may have suffered by having his contract destroyed. That would indeed be a serious contention if it could be maintained..."

....

It cannot, I think, be that such a result was ever intended by the Act. And indeed, when s. 55 is examined, it has, in my view, no such operation or effect. The fallacy of the argument for the appellant lies, I think, in ignoring the nature of the interest of the purchaser of real estate after a contract for its sale has been made between him and the owner of the estate. The purchaser has, then, something more than a pecuniary interest under his contract. He has an equitable interest in the land itself."

36. *Re Bastable* was applied in *Dekala Pty Ltd (in liq) v Perth Land & Leisure Ltd* (1987) 17 NSWLR 664 per Young J at 666.
37. When the land is disclaimed, title escheats to the Crown subject to mortgages and charges: see *Re Middle Harbour Investments Ltd (No. 2)* [1977] 2 NSWLR 652 per Bowen CJ in Eq at 644; *National Australia Bank v Victoria* [2010] FCA

1230, per Bennett J at [15]. There can be no relevant difference in this respect between a charge and a lease.

38. The liquidators can only disclaim Willmott's property, not the Growers property. In *National Australia Bank v Victoria* [2010] FCA 1230, per Bennett J says at [13]:

“As a matter of logic, a trustee in bankruptcy can only disclaim a bankrupt's interest in mortgaged properties. Such a disclaimer would not extend to the interests of a mortgagee. As applied to the present case, the vesting of the Properties occurred subject to the Bank's mortgages.”

39. The same arguments apply to the Forestry Rights Agreements which exist in a number of the Willmott schemes: see *Australian Softwood Forests Pty Ltd v Attorney General (NSW)* (1980-1981) 148 CLR 121 at 132 per Mason J.

Land as scheme property

40. Willmott holds the freehold title to the Bombala land, not under a head lease from a third party landholder like many other plantation schemes. It allocated hectares of that freehold to the investors. Where investors contributions have been used to acquire that land, which is used for the purpose of the scheme, it is arguable that the land is scheme property.

41. Scheme property is defined in s 9 of the *Corporations Act* as follows:

“...of a registered scheme means:

- (a) contributions of money or money's worth to the scheme; and*
- (b) money that forms part of the scheme property under provisions of this Act or the ASIC Act; and*
- (c) money borrowed or raised by the responsible entity for the purposes of the scheme; and*
- (d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraphs (a), (b) or (c); and*
- (e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).”*

42. The reasoning of Nicholson J in *Syncap Management (Rural) Australia Ltd v Lyford* (2004) 51 ACSR 223 and Judd J in *Pyrenees Vineyard Management Ltd*

v Frajman (2008) 69 ACSR 95 suggests that assets such as the land upon which a scheme operates may in certain circumstances be scheme property. The operation of s 601FS of the *Corporations Act* would require the transfer of such land, as scheme property, to a new responsible entity.

43. In *Syncap Management*, a landowning company had granted a lease to the responsible entity (FPA), which in turn granted sub-leases over part of that land to investors in the scheme. The land owning company borrowed a sum of money from an external lender and granted a charge to it. The responsible entity also provided a guarantee to the lender. The lender sought to appoint receivers and managers to a newly appointed responsible entity, Syncap, pursuant to the guarantee. In determining that Syncap was liable under the guarantee novated to Syncap pursuant to s 601FS, Nicholson J said at [55] – [56]:

“[55] There is a preliminary question of fact concerning the basis upon which FPA acted when it entered into the FPA charge. Mr Lloyd’s affidavit evidence is that the further funding obtained by the landowner from NAB was required to develop the orchard, construct a packing and storage shed and to meet the costs associated with setting up the scheme, that is to provide working capital. He further stated that the funds were in fact applied for those purposes. This evidence is not contradicted. I agree with the defendants’ submissions that there is a notable absence of evidence from Mr O’Brien and that an inference should be drawn from that to the effect that his evidence would not have assisted the plaintiff’s case. I therefore find that the FPA charge was entered into by FPA for the benefit of the farmers in the scheme and that FPA did so in good faith. In any event, the plaintiff does not put in issue the question of good faith.”

[56] It follows that I cannot accept the plaintiff’s submission that the FPA charge was not entered into in performance by FPA of its duties as the responsible entity. The fact that the security was described in the notice of appointment as having been entered into solely as security for the loan obtained from the second defendant by the landowner does not affect that conclusion. The reason is that the evident purpose of the loan being obtained by the landowner was that he sought thereby to serve the interests of the scheme.”

44. In *Pyrenees Vineyard Management Ltd* Judd J said at [37]:

“In my opinion the vineyard allotments, improvements and the pipeline constitute scheme property. It does not matter that the land is legally owned by Glensborough or that the pipeline reverts to Glensborough upon termination of the leases. If the land and pipeline are scheme property, held on trust for the growers by the plaintiff, any distinction

between the plaintiff and Glensborough falls away when considering the winding up of the scheme by the trustee.”

45. In the current circumstances, Willmott itself was the “owner” of the land, having purchased it for the purpose of the scheme. Absent any other explanation, it would seem likely that Willmott purchased the land with contributions from investors in the scheme: see affidavits of Paul Challis dated 20 June 2011 and Ian Bond dated 21 June 2011.
46. On the other hand, given the nature of the tax deductibility afforded in respect of schemes of this nature, it may be that only the long-term leasehold interests in the land and the *profit-à-prendre* would be scheme property. Compare *Capelli v Shepard* (2010) 77 ACSR 35 at 149]-[150]:

“We agree with His Honour that the scheme property does include present rights to an interest in the standing trees so far as those rights and interests were acquired by the application of contributions.

We return now to the terms of the declaration. It will be apparent to reconsider that the relevant part of the scheme property is not the trees themselves; it is the rights of the parties to the scheme with respect to those trees.”

The Timbercorp approach

47. Robson J’s protocol in *Re Timbercorp Securities Ltd (in liq)* (2009) 74 ACSR 626, whereby liquidators sell scheme assets on the basis that Growers are able to receive value for the extinguishment of their rights from the “fund” created by the sale (“**the Timbercorp protocol**”) has been shown, in the recent decision of *BOSI Security Services Limited v Australia New Zealand Banking Group Limited & Ors* [2011] VSC 255, to restrict Growers to the value, if any, of rights *in rem*. Growers’ contractual rights, e.g. to application of water rights, are lost. Davies J interpretation of the Timbercorp protocol means that Growers should be slow to accede to orders based on that protocol. The orders proposed by the liquidators in the present case follow the Timbercorp protocol.
48. The liquidators are seeking directions in circumstances where they have not identified what the respective rights, proprietary or other, are of the Growers in respect of each scheme. At paragraph [77] of *Re Timbercorp Securities Ltd (in liq)* (2009) 74 ACSR 626 Robson said:

“As the evidence in this case indicates, there is uncertainty at this stage as to precisely what property rights of the growers are to be transferred or surrendered as part of the consideration for the payment of the purchase price of approximately \$128 million. Until those rights are identified it is not possible according to law to fairly assess the value of the rights being surrendered on behalf of growers.”

49. In Timbercorp this remained the case until after extinguishment of the Growers rights. Similarly with Timbercorp, the Growers in the Willmott schemes may only find out when it is all too late.

Conclusion

50. The objective of the liquidators’ proposal, as set out in Mr Crosbie’s affidavit, is to sell all scheme and non-scheme assets in order to satisfy Willmott’s creditors and meet the cost of the liquidation.
51. Although the creditors of the “trustee” Willmott have limited rights with respect to the trust assets, in the event of the trustee’s insolvency the creditors will be subrogated to the beneficial interest enjoyed by the trustee to be indemnified against liabilities from trust assets: see *Octavo Investments Pty Ltd v Knight* (1979) 144 CLR 360 at 367.
52. It would appear that the Bombala land is one of, if not the most valuable assets available to the liquidators. Further, the Bombala land is unencumbered – it is not even covered by the banks’ charge. This obviously assists in the viability of the schemes on the Bombala land. It would undoubtedly be attractive to bundle all the schemes together in the winding up so that asset rich schemes can be liquidated, so as to make sufficient funds available to fund the liquidation and meet claims through the indemnification from trust assets: see *Parbery v ACT Superannuation Management Pty Ltd* (2010) 79 ACSR 425.
53. However, scheme property should not be liquidated for the purpose of the winding up at the expense of Growers who wish to continue their scheme and where their scheme is viable. At the very least, if the liquidators seek a direction that they are justified in creating the means by which to wind up all the schemes, the liquidators must do so in a way that acknowledges the different levels of viability, scheme property and scheme documents of the various

schemes so the Court can adequately assess whether it is just and beneficial for each of the schemes.

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