

Liquidator's Third Six Monthly Statutory Report

**Decmil Construction NZ Limited
(in Liquidation)**

Company Number: 5422686

**For the period:
15 April 2021 to 14 October 2021**

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1 Introduction

As you would be aware, I, Dermott Joseph McVeigh of Avior Consulting, was appointed as Liquidator of Decmil Construction NZ Limited (in Liquidation) (**the Company**) on 15 April 2020 at 3:40pm by the sole shareholder pursuant to section 241(2)(a) of the Companies Act 1993 (**Act**).

I set out below my third six monthly statutory report of the Company as required by section 255(2)(d) of the Act.

This report should be read in conjunction with my previous reports dated 12 November 2020 and 13 May 2021, and other correspondence sent to creditors since my appointment as Liquidator, which are available on my firm's website.

2 Restrictions

This report has been prepared in accordance with and for the purpose of section 255 of the Act. It is prepared for the sole purpose of reporting on the state of affairs of the Company and the conduct of the liquidation.

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than the above without my written permission. The report is prepared based on the information available to me in the liquidation. I express no opinion on the reliability, accuracy or completeness of the information provided to me and upon which I have relied.

I, my employees, agents and advisors do not assume any responsibility or liability for any losses occasioned to any party for any reason including as a result of the circulation, publication, reproduction or use of this report.

I reserve the right (but will be under no obligation) to review this report and, if considered necessary, to revise the report in light of any further information coming into existence after the date of this report.

Certain values included in tables in this report have been rounded and therefore may not add up exactly. Unless otherwise stated, all amounts are in New Zealand dollars.

3 Background

The Company was established in 2014 to provide civil engineering contracting and consulting services, and it had success in completing a number of large construction contracts for customers including the Ministry of Education and the New Zealand Defence Force.

The Company was placed into liquidation following termination of a contract held with the New Zealand Department of Corrections (**DoC**), which resulted in significant losses being incurred by the Company. The directors and shareholder concluded that the Company could not continue trading and proceeded to have the Company wound up. I was appointed on 15 April 2020.

4 Conduct of the liquidation during the reporting period

4.1 Receiver and Manager application

The High Court of New Zealand (**Court**) heard my application to be appointed Receiver and Manager of the retention trust fund (**Fund**) on 31 March 2021. The Court handed down its decision on 1 November 2021, appointing Mr Gareth Hoole and Mr Clive Bish of Ecovis KGA (**Ecovis**) as Receivers and Managers of the Fund. Ecovis will conduct the distribution of the Fund to admitted claims of retention creditors.

I am in communication with Ecovis and look forward to assisting them as they commence their appointment.

4.2 GST receivable

In my report of 13 May 2021, I advised creditors that I was in discussions with the Inland Revenue Department (**IRD**) regarding \$867k of pre-appointment GST refunds that I believed were payable to the Company. IRD's view was that payment claims issued by the Company to DoC were considered invoices for GST purposes and that the Company had a GST obligation as a result. My view was that payment claims were not invoices, and that an obligation did not arise until payment schedules, corresponding to the payment claims, were issued by DoC. I have continued to pursue this matter since my last report and can now advise that my efforts to recover the pre-appointment GST asset have been successful. IRD released the full GST amount of \$867k to the Company in August 2021.

4.3 Income tax refund

I have completed and lodged the income tax return for the year ended 30 June 2020, resulting in a refund of \$40k, which was received in September 2021.

4.4 Retention Trust

As explained in my Circular to Creditors dated 16 December 2020, my Court application for directions as to the status of the funds held at the commencement of the liquidation was resolved with the establishment of the Fund in the amount of \$3.31m. These monies are held in my solicitor's trust account. As discussed in section 4.1 of this report, Messrs Hoole and Bish were appointed Receivers and Managers of the Fund. Consequently, the Fund will shortly be transferred to them to be administered.

4.5 DoC settlement

You would be aware from my previous correspondence that the Company had an unresolved dispute with the DoC in relation to a \$198m rapid deployment prison accommodation contract. The contract was terminated, resulting in significant losses being incurred by the Company, which in turn led to its insolvency.

I can now advise that the dispute with the DoC has been resolved; however, the terms of the agreement reached between the parties are confidential and I am unable to offer any further details to creditors in relation to this matter, other than that there will not be any payments to the Company as a result.

5 Receipts and payments

Attached at **Appendix A** is a statement of the receipts and payments for the six-month period ending 14 October 2021.

6 Report on Liquidator's remuneration

The Liquidator's remuneration paid for the period 15 April 2021 to 14 October 2021, charged at hourly rates and including disbursements, totalled \$266,752 (GST not applicable). I am satisfied that the remuneration incurred was in respect of necessary work, properly performed, in the conduct of the liquidation.

A detailed breakdown of the remuneration for the six-month period is enclosed at **Appendix B**.

7 Remaining matters

I continue to investigate the affairs of the Company in the period prior to my appointment, to determine if there may be any further avenues of recovery available to the Company, including potential claims available to me as Liquidator that may benefit creditors.

One of the remaining matters is a dispute between the Company and VAE NZ Limited (**VAE**), a subcontractor on the Company's contract with DoC. My investigations indicate that the Company has a counterclaim against VAE, which may exceed VAE's claim in the liquidation. The outcome of the dispute may permit the Company to access performance bonds valued at \$360k previously granted by VAE. The matter is scheduled to be arbitrated early in 2022.

8 Estimated date of completion and dividend

I cannot yet advise whether a dividend will be paid.

Pending unforeseen issues arising, I expect the liquidation to conclude within the next 12 to 24 months.

9 Contact information

Enquiries regarding the liquidation should be directed to:

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This report and all preceding and subsequent reports will be made available on the above website.

Dated 12 November 2021

Yours faithfully
For the Company



Dermott McVeigh
Liquidator

Encl.

Appendix A
**Decmil Construction NZ Limited (in Liquidation)
Summary of Receipts and Payments
15 April 2021 – 14 October 2021**

Receipts and Payments	Amount (\$)
<i>Cash at bank as at 15 April 2021</i>	3,486,667
<i>Less: Retention Trust Fund*</i>	(3,314,316)
Balance	172,351
Receipts	
IRD refunds	1,098,017
Other receipts	73,551
Interest received	5,779
Total receipts	1,177,348
Payments	
Liquidator's fees	266,752
Legal costs	146,874
Accounting and consulting costs	63,793
Disbursements	330
Bank charges	259
Total payments	478,008
Cash at bank as at 14 October 2021	871,692
Disbursements	Amount (\$)
Sundry	330
Total	330

*The Retention Trust Fund is not an asset of the Company and has therefore been deducted from the receipts and payments reconciliation.



Appendix B

Decmil Construction NZ Limited (in Liquidation) Liquidator's Remuneration Report 15 April 2021 – 14 October 2021

Position	Rate \$	Assets		Creditors		Retentions *		Investigation		Administration		Total	
		Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$
Partner	590	103.3	60,947	6.9	4,071	29.8	17,582	2.9	1,711	16.0	9,440	158.9	93,751
Senior Manager	475	70.3	33,393	26.8	12,730	68.3	32,443	4.3	2,043	27.4	13,015	197.1	93,623
Manager	400	6.2	2,480	14.0	5,600	26.4	10,560	13.6	5,440	20.0	8,000	80.2	32,080
Senior Analyst	275	25.4	6,985	19.5	5,364	51.4	14,135	-	-	41.1	11,303	137.4	37,786
Analyst	220	12.8	2,816	-	-	6.6	1,452	2.4	528	15.3	3,366	37.1	8,162
Administration	180	-	-	0.1	18	-	-	-	-	7.4	1,332	7.5	1,350
Total		218.0	106,621	67.3	27,783	182.5	76,172	23.2	9,722	127.2	46,456	618.2	266,752

* Time and costs are in relation to work performed on retention creditor claims prior to the Court application to appoint a Receiver and Manager of the Fund. These costs were incurred in the previous reporting period, however, they were not paid until the current reporting period.