

Liquidator's Fourth Six Monthly Statutory Report

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

Company Number: 5422686

**For the period:
15 October 2021 to 14 April 2022**

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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 fourth 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, 13 May 2021 and 12 November 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 has been 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 Retention Trust

As explained in my report to creditors dated 12 November 2021, the High Court of New Zealand appointed Mr Gareth Hoole and Mr Clive Bish of Ecovis KGA (**Ecovis**) as Receivers and Managers of the Retention Trust Fund. The Retention Trust Fund was transferred to Ecovis on 22 November 2021. Accordingly, all enquiries regarding retentions should be directed to Ecovis.

4.2 Claim against VAE

I advised creditors in my previous report dated 12 November 2021 that the Company may have a counterclaim against VAE NZ Limited (**VAE**) exceeding VAE's claim in the liquidation. The dispute is currently in a formal arbitration process, with the resolution likely some months away. If the arbitration is successful, the Company may be able to access performance bonds valued at \$360k previously granted by VAE.

4.3 Voidable transactions

My duty to get in assets of the Company includes identifying and pursuing recovery of voidable transactions.

Section 292 of the Act allows for certain transactions to be voided by a liquidator, in the interest of equal treatment of creditors. In broad terms, a transaction may be voided when:

- it occurs in the lead up to a liquidation (usually during the 6 months prior, when a company is presumed to be insolvent); and
- it means that select creditors receive more than they would in a liquidation.

The Company's scope of activities was such that my investigations identified numerous payments leading up to the liquidation that were possibly voidable. These payments totalled \$2.1m and were potentially voidable as unfair preferences in that the corresponding suppliers received more than they would have in the Company's liquidation.

Based on evidence comprising the payments' details and other evidence contained in the Company's books and records, I wrote to 19 creditors demanding repayment of the payments received. Most of the creditors responded with defences such that I viewed the likelihood of succeeding in my claims as being less certain. I therefore invited those suppliers to offer a settlement sum that would resolve matter. To date \$40k, in respect of preferential payments of \$142k, has been recovered. I am assessing the commercial merit of pursuing the remaining claims.

5 Receipts and payments

Attached at **Appendix A** is a statement of the receipts and payments for the six-month period ending 14 April 2022.

6 Report on Liquidator's remuneration

The Liquidator's remuneration paid for the period 15 October 2021 to 14 April 2022, charged at hourly rates, totalled \$367,601 (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

As outlined in sections 4.2 and 4.3, the remaining matters are the VAE arbitration and recovery of voidable transactions.

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 18 months.

9 Contact information

Enquiries regarding the liquidation should be directed to:

Name: Miriam Schmidt
Phone: +61 8 6145 0709
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Website: <https://www.aviorconsulting.com.au/creditors/decnil-construction-nz-limited-in-liquidation/>

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

Dated 12 May 2022

Yours faithfully
For the Company



Dermott McVeigh
Liquidator

Encl.

Appendix A

Decmil Construction NZ Limited (in Liquidation) Summary of Receipts and Payments 15 October 2021 – 14 April 2022

Receipts and Payments	Amount (\$)
<i>Cash at bank as at 15 October 2021</i>	4,186,008
<i>Less: Retention Trust Fund*</i>	(3,314,316)
Balance	871,692
Receipts	
IRD refunds	9,251
Other receipts	40,000
Interest received	3,370
Total receipts	52,621
Payments	
Liquidator's fees	367,601
Legal costs	68,801
Accounting and consulting costs	98,682
Bank charges	138
Total payments	535,223
Cash at bank as at 14 April 2022	389,090

* The Retention Trust Fund is not an asset of the Company and has therefore been deducted from the receipts and payments reconciliation. The Retention Trust Fund was transferred to the Receivers and Managers, Gareth Hoole and Clive Bish of Ecovis KGA Limited, on 22 November 2021.

Appendix B

Decmil Construction NZ Limited (in Liquidation) Liquidator's Remuneration Report 15 October 2021 – 14 April 2022

Position	Rate \$	Assets		Creditors		Retentions ¹		Investigation		Administration		Total	
		Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$
Partner	590	77.6	45,784	25.7	15,163	21.0	12,390	41.4	24,426	65.1	38,409	230.8	136,172
Senior Manager	475	37.9	18,003	15.9	7,553	15.3	7,268	34.3	16,293	118.7	56,383	222.1	105,498
Manager	400	5.0	2,000	99.1	39,640	11.0	4,400	2.1	840	53.3	21,320	170.5	68,200
Senior Analyst	275	-	-	43.0	11,825	-	-	104.2	28,655	60.9	16,748	208.1	57,228
Administration	180	-	-	-	-	-	-	-	-	2.8	504	2.8	504
Total		120.5	65,787	183.7	74,181	47.3	24,058	182.0	70,214	300.8	133,363	834.3	367,601

¹ Time and costs are in relation to preparation of information and handover to the Court appointed Receiver and Manager

Appendix B

Decmil Construction NZ Limited (in Liquidation) Liquidator's Remuneration Report 15 October 2021 – 14 April 2022

Title	Rate (NZD)	Experience
Partner / Appointee	590	The Partner/Appointee has more than 10 years of corporate insolvency and restructuring experience, is accredited as a registered liquidator by the Australian Securities and Investments Commission, is a member of the CAANZ or equivalent body, may be a member of the Australian Restructuring, Insolvency and Turnaround Association (ARITA), and brings specialist skills to the administration or insolvency task.
Senior Manager	475	Generally, more than 7 years' experience with at least 2 years as a Manager. University degree; member of the CAANZ or equivalent body, member of the ARITA; very strong knowledge of relevant insolvency legislation and issues.
Manager	400	4-7 years' experience with well-developed technical and commercial skills. University degree; member of CAANZ and, generally, the ARITA; strong knowledge of relevant insolvency legislation and issues.
Senior Analyst	275	Generally, 2-4 years' chartered accounting or insolvency management experience. University degree; completed or completing the CAANZ's program. Good knowledge of basic insolvency legislation and issues.
Analyst	220	Generally, 2-3 years' chartered accounting or insolvency management experience. University degree, CAANZ's program commenced.
Personal Assistant	180	Appropriate skills, including books and records management and accounts processing particular to the administration.

Notes:

- The hourly rates are exclusive of GST.
- The guide to staff experience is intended only as a general guide to the qualifications and experience of staff engaged in the liquidation. Staff may be engaged under a classification considered appropriate for their experience.
- Time is recorded and charged in six-minute increments.