

23 June 2020

## Circular to creditors

Dear Sir/Madam

### **DECMIL CONSTRUCTION NZ LIMITED (in Liquidation) (Decmil NZ)**

We are sending this circular at the insistence of the Department of Corrections (**Corrections**).

At the information session yesterday, I made the statement that Buddle Findlay, the law firm acting for the Department of Corrections (**Corrections**), have also acted for the accounting firm BDO, which is the firm that alternate liquidators Iain Shephard and Andrew Bethell practice from. Mr Barker of Buddle Findlay (who represented Corrections at the session) has taken issue with that statement and says that Buddle Findlay does not and has never acted for BDO.

I obtained the statement that Buddle Findlay acts for BDO from Buddle Findlay's website in which it states:

*'Our clients include all the major participants in the insolvency marketplace: KordaMentha, McGrathNicol, PricewaterhouseCoopers, PPB Advisory, KPMG, **BDO**, Ernst & Young, Grant Thornton and Deloitte.'* (emphasis added)

My solicitors put this to Mr Barker this morning and he has sought to draw a distinction between that statement and the fact that when you are acting for an insolvency practitioner you act for that person in their personal name and not in the name of their organisation. Mr Barker has also sought to describe the statement on his website as 'well understood shorthand'. Mr Barker, on behalf of Corrections, required that I issue a correction. This is not a correction. It is, however, a waste of time and costs that Corrections has procured.

To be clear, I was expressing that Buddle Findlay have acted for Messrs Bethell and Shephard as insolvency practitioners. This makes the conflict of interest worse, stepping beyond a 'shorthand' connection to previously actually working with the practitioners chosen to replace me.

From the information I have, Mr Barker of Buddle Findlay recommended Messrs Bethell and Shephard to Corrections.

I have only introduced this information because of the constant criticism from Corrections as to a potential conflict in my being appointed by the shareholder. I raised this issue to say to creditors on the one hand you have me, appointed by the shareholder, and on the other Messrs Bethell and Shephard, recommended by Corrections on the recommendation of their solicitors, who have acted for those practitioners from time to time.

In order to be completely candid, I have attached copies of the emails which have been sent between my solicitors and Buddle Findlay.

I do not propose to engage in this discussion further. It will be for Messrs Bethell and Shephard to confirm their independence and disclose relevant relationships to the extent they are appointed.

**Contacts:**

Eve Switka	<a href="mailto:eswitka@aviorconsulting.com.au">eswitka@aviorconsulting.com.au</a>
Terrence Chong	<a href="mailto:tchong@aviorconsulting.com.au">tchong@aviorconsulting.com.au</a>
Lucy Lowe	<a href="mailto:llowe@aviorconsulting.com.au">llowe@aviorconsulting.com.au</a>
Kelly Meyn	<a href="mailto:kmeyn@aviorconsulting.com.au">kmeyn@aviorconsulting.com.au</a>

Phone: +61 8 6145 0700

Yours faithfully  
**For Decmil NZ**



**Dermott McVeigh**  
Liquidator

Encl

## Eve Switka

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**From:** Dan Hughes <Dan.Hughes@ah.co.nz>  
**Sent:** Tuesday, 23 June 2020 8:34 AM  
**To:** Kelly Meyn  
**Subject:** Fwd: Decmil Construction NZ Ltd (in liq) - correction of misleading statement [BUD-LIVE.FID906154]

Best regards


Dan Hughes  
Partner  
Anthony Harper

DDI +64 9 920 6472 MOB +64 21 773 958

Begin forwarded message:

**From:** Dan Hughes <[Dan.Hughes@ah.co.nz](mailto:Dan.Hughes@ah.co.nz)>  
**Date:** 23 June 2020 at 10:27:50 NZST  
**To:** 'Scott Barker' <[Scott.Barker@buddlefindlay.com](mailto:Scott.Barker@buddlefindlay.com)>  
**Cc:** Lynne Van <[Lynne.Van@ah.co.nz](mailto:Lynne.Van@ah.co.nz)>, Sebastian Bisley <[Sebastian.Bisley@buddlefindlay.com](mailto:Sebastian.Bisley@buddlefindlay.com)>, Oliver Gascoigne <[Oliver.Gascoigne@buddlefindlay.com](mailto:Oliver.Gascoigne@buddlefindlay.com)>, Morgan Evans <[Morgan.Evans@buddlefindlay.com](mailto:Morgan.Evans@buddlefindlay.com)>  
**Subject:** RE: Decmil Construction NZ Ltd (in liq) - correction of misleading statement [BUD-LIVE.FID906154]

Before your arbitrary deadline.

**Dan Hughes**  
Partner  
|DDI: +64 9 920 6472 |MOB: +64 21 773 958  




Level 6, Chorus House, 66 Wyndham Street, PO Box 2646, Auckland, 1140, Tel: +64 9 920 6400 Fax: +64 9 920 9599  
Level 9, Anthony Harper Tower, 62 Worcester Boulevard, PO Box 2646, Christchurch, 8140, Tel: +64 3 379 0920 Fax: +64 3 366 9277

[www.anthonharper.co.nz](http://www.anthonharper.co.nz)

**From:** Scott Barker <[Scott.Barker@buddlefindlay.com](mailto:Scott.Barker@buddlefindlay.com)>  
**Sent:** Tuesday, 23 June 2020 9:51 AM  
**To:** Dan Hughes <[Dan.Hughes@ah.co.nz](mailto:Dan.Hughes@ah.co.nz)>  
**Cc:** Lynne Van <[Lynne.Van@ah.co.nz](mailto:Lynne.Van@ah.co.nz)>; Sebastian Bisley <[Sebastian.Bisley@buddlefindlay.com](mailto:Sebastian.Bisley@buddlefindlay.com)>; Oliver Gascoigne <[Oliver.Gascoigne@buddlefindlay.com](mailto:Oliver.Gascoigne@buddlefindlay.com)>; Morgan Evans <[Morgan.Evans@buddlefindlay.com](mailto:Morgan.Evans@buddlefindlay.com)>

**Subject:** RE: Decmil Construction NZ Ltd (in liq) - correction of misleading statement [BUD-LIVE.FID906154]

By when?

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**SCOTT BARKER | PARTNER | BUDDLE FINDLAY**

Aon Centre, 1 Willis Street, PO Box 2694, Wellington 6140  
P +64 4 499 4242 | DDI +64 4 498 7349 | M +64 21 822 929  
[scott.barker@buddlefindlay.com](mailto:scott.barker@buddlefindlay.com) | [www.buddlefindlay.com](http://www.buddlefindlay.com)

## CLIENT CHOICE AWARDS

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**From:** Dan Hughes <[Dan.Hughes@ah.co.nz](mailto:Dan.Hughes@ah.co.nz)>  
**Sent:** 23 June 2020 09:49  
**To:** Scott Barker <[Scott.Barker@buddlefindlay.com](mailto:Scott.Barker@buddlefindlay.com)>  
**Cc:** Lynne Van <[Lynne.Van@ah.co.nz](mailto:Lynne.Van@ah.co.nz)>; Sebastian Bisley <[Sebastian.Bisley@buddlefindlay.com](mailto:Sebastian.Bisley@buddlefindlay.com)>; Oliver Gascoigne <[Oliver.Gascoigne@buddlefindlay.com](mailto:Oliver.Gascoigne@buddlefindlay.com)>; Morgan Evans <[Morgan.Evans@buddlefindlay.com](mailto:Morgan.Evans@buddlefindlay.com)>  
**Subject:** Re: Decmil Construction NZ Ltd (in liq) - correction of misleading statement [BUD-LIVE.FID906154]

Dear Scott,

Our client will release a statement and a copy of these emails (for completeness).

Best regards

Dan Hughes  
Partner  
Anthony Harper

DDI +64 9 920 6472 MOB +64 21 773 958

On 23/06/2020, at 09:19, Scott Barker <[Scott.Barker@buddlefindlay.com](mailto:Scott.Barker@buddlefindlay.com)> wrote:

Dan,

The answer is in my email. We do not act for the firm, we act for individual practitioners when appointed as liquidators, administrators or receivers. The reference to the firms on our website is a well understood shorthand. You will be well aware of this, as will your client. Your responses to my email are disingenuous.

Kindly let us know by return if your client will retract his statement. If not then the Department will issue its own statement to creditors.

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**SCOTT BARKER | PARTNER | BUDDLE FINDLAY**

## CLIENT CHOICE AWARDS

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Winners for the second year running

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**From:** Dan Hughes <[Dan.Hughes@ah.co.nz](mailto:Dan.Hughes@ah.co.nz)>

**Sent:** 23 June 2020 08:53

**To:** Scott Barker <[Scott.Barker@buddlefindlay.com](mailto:Scott.Barker@buddlefindlay.com)>

**Cc:** Lynne Van <[Lynne.Van@ah.co.nz](mailto:Lynne.Van@ah.co.nz)>; Sebastian Bisley <[Sebastian.Bisley@buddlefindlay.com](mailto:Sebastian.Bisley@buddlefindlay.com)>; Oliver Gascoigne <[Oliver.Gascoigne@buddlefindlay.com](mailto:Oliver.Gascoigne@buddlefindlay.com)>; Morgan Evans <[Morgan.Evans@buddlefindlay.com](mailto:Morgan.Evans@buddlefindlay.com)>

**Subject:** Re: Decmil Construction NZ Ltd (in liq) - correction of misleading statement [BUD-LIVE.FID906154]

Dear Scott,

I don't wish to labour the point but it needs to be accurate if my clients are to correct the statement made at the information session.

According to information on BDO's website, David Broadmore acted for Andrew (and others) in the Arrow insolvency.

Again, given your statement below, can you please explain so that I can take instructions.

Best regards

Dan Hughes  
Partner  
Anthony Harper

DDI +64 9 920 6472 MOB +64 21 773 958

On 23/06/2020, at 08:17, Dan Hughes <[Dan.Hughes@ah.co.nz](mailto:Dan.Hughes@ah.co.nz)> wrote:

Dear Scott,

Our client referred us to the restructuring and insolvency page from Buddle Findlay's website. I have just looked at it again and it states:

'Our clients include all the major participants in the insolvency marketplace: KordaMentha, McGrathNicol, PricewaterhouseCoopers, PPB Advisory, KPMG, BDO, Ernst & Young, Grant Thornton and Deloitte.'

I'll take instructions and revert but in the meantime perhaps you can provide context around that statement in order to assist in my obtaining instructions.

Best regards

Dan Hughes  
Partner  
Anthony Harper

DDI +64 9 920 6472 MOB +64 21 773 958

On 23/06/2020, at 08:02, Scott Barker  
<[Scott.Barker@buddlefindlay.com](mailto:Scott.Barker@buddlefindlay.com)> wrote:

Dear Mr Hughes, Ms Van

In the information session held by your client yesterday afternoon, he stated that he had visited Buddle Findlay's website and observed that we have previously acted for the liquidators proposed by the Department, Messrs Bethell and Shephard of BDO New Zealand. Your client alleged that, as a consequence, there is at least a perceived conflict of interest between the Department, Buddle Findlay and BDO and that the Department's attempts to have him replaced by Messrs Bethell and Shephard therefore warrant investigation by Decmil NZ's creditors.

Your client's comments are incorrect and misleading. Buddle Findlay does not act, and has not acted, for BDO New Zealand. As you and your client know, there is an important distinction between acting for a firm of accountants / insolvency practitioners and acting for liquidators of companies. If doing the latter gave rise to a conflict in the manner alleged, attempting to replace any liquidator would be virtually impossible. The suggestion is nonsensical.

The comments were clearly aimed at influencing other creditors in Decmil NZ's liquidation to vote to retain your client as liquidator, and against his replacement by Messrs Bethell and Shephard. They were, therefore, entirely self-interested and inappropriate. They should never have been made.

We invite your client to withdraw his comments and issue a correction to all creditors by no later than 12PM today, New Zealand time. If he does not, the Department will have issue its own correction to

creditors. The Department and Buddle Findlay reserve all of their rights.

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**MORGAN EVANS | SOLICITOR | BUDDLE FINDLAY**

Aon Centre, 1 Willis Street, PO Box 2694, Wellington 6140  
P +64 4 499 4242 | DDI +64 4 462 0929 | M +64 27 268 4725  
[morgan.evans@buddlefindlay.com](mailto:morgan.evans@buddlefindlay.com) | [www.buddlefindlay.com](http://www.buddlefindlay.com)

<image001.png>

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