

11 May 2020

**Circular to creditors**

Dear Sir/Madam

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

As you are aware, I was appointed Liquidator of Decmil NZ on 15 April 2020.

A story appeared in NBR on 6 May 2020 regarding efforts to replace me as liquidator of Decmil NZ. The story appeared because I received a request that a creditors meeting be called and that a resolution be tabled for my replacement by Iain Shephard and Andrew Bethell of the firm BDO. Damien Grant, through Tempest Litigation Funders, initiated the action following his discussions with the New Zealand Department of Corrections (**Corrections**).

A number of issues were raised in the NBR article and in video that was circulated by Mr Grant that I consider require clarification. I am writing to you to provide clarity on the conduct of the liquidation, my position as liquidator and how I expect to progress asset recovery actions in the near term.

You may be aware that Avior Consulting is an Australian firm. We have offices in Perth and Sydney and regularly conduct assignments throughout Australia and the Asia Pacific region.

I am an Australian Registered Liquidator with more than 20 years of corporate restructuring and turnaround experience, with a track record of administering larger SME's and ASX-listed companies. The accreditation of Registered Liquidator means that I have satisfied strict standards as to my technical insolvency knowledge, ethics and commercial acumen. I am a former partner of Deloitte and Ferrier Hodgson. Those firms conducted corporate insolvency appointments in New Zealand and I was exposed to them during my tenure.

It is also true that I am not currently in New Zealand and that, on the face of it, the lockdown restrictions may limit my ability to enter. This can be remedied by applying for a travel exemption, which enables me to travel and avoid quarantine periods. Based on all the information currently available to me, I do not believe that travel to New Zealand is necessary as all the books and records are available to me in Australia.

It is important that you understand, however, that **achieving a return in this liquidation is not about being 'local'**. Any statement to the contrary indicates a lack of understanding or knowledge of the issues.

Decmil NZ ceased operating its business prior to my appointment and all of its contracts have been terminated. It does not have any live construction sites and there are no plant and equipment assets in New Zealand. The only physical assets comprise computer equipment which I have secured. The economic assets to be vigorously pursued are legal claims and debts. And local presence is not a prerequisite of recovering them. What is important is a commercial understanding of the issues and quickly directing resources toward outcomes with the best commercial return. My staff and I are accustomed to this

approach and I've also assembled a strong Auckland-based legal team to assist. There is no need to visit any sites, because all contracts have been terminated. In the unlikely event that 'on the ground' assistance is needed, I have engaged a respected New Zealand insolvency practitioner to act as my agent.

I am focusing on the assets offering the best prospect of an outcome to creditors. As you may have seen from other sources, including my press release of 23 April 2020 (copy enclosed), I am focussing on the claims against Corrections. As my investigation progresses, I become more convinced that Corrections is a joint author in the failure of the prison accommodation contract. This contrasts significantly with the version of events Corrections has disseminated. Creditors should rightly wish to understand how it is that Corrections and Mr Grant have spoken about replacing me at a time when I am exerting pressure on Corrections to hold them financially accountable for their role in Decmil NZ's failure.

An advantage of Avior's Australian base is that it affords a much stronger position in performing public examinations compared to New Zealand law. I have identified a strategy that may allow me to apply UK and Australian law concepts for public examinations to Decmil NZ. This strategy potentially enables me to publicly examine all relevant parties, including Corrections. I have used examinations many times in the past, and they have proven effective in terms of uncovering damning evidence.

Part of Mr Grant's knowledge of Decmil NZ appears to stem from the purported claim of Stanley Construction (Auckland) Limited (**Stanley**), of which Mr Grant is liquidator. Mr Grant asserts that Decmil NZ owes Stanley approximately \$1m. Mr Grant's comment overlooks the fact that Decmil NZ's books and records indicate faulty workmanship by Stanley, with the result being that Decmil NZ's claim against Stanley is approximately \$1.3m. Stanley is clearly not a creditor of Decmil NZ.

I am also investigating the conduct of the directors and Decmil NZ's parent, Decmil Group Limited. The conduct of a parent company and its directors is always under review when a subsidiary fails. Decmil NZ is no different. Irrespective, Decmil Group has the knowledge of the claim against Corrections and also the ability to possibly fund the claim on terms better than third party liquidation funding. This prospect is actively being discussed.

As a liquidator and insolvency specialist, I have conducted numerous investigations in the past, for financial institutions, the Crown Prosecutor, as well as the Australian Securities and Investments Commission. As with any other liquidation, I intend to investigate Decmil NZ's failure and hold parties, including its directors, accountable based on my findings. I have pursued directors for wrongdoing in the past and will do so in this instance if the evidence warrants it.

I am dealing with Mr Grant's request for a creditors meeting. That process has begun with my request that Mr Grant demonstrate that his claim against Decmil NZ is valid.

I hope the above assists you with your understanding of the liquidation currently. I look forward to providing a more comprehensive update of the winding up in the near future. In the meantime, please feel free to contact my office with any queries.

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Yours faithfully  
**For Decmil NZ**



**Dermott McVeigh**  
Liquidator

Encl

## PRESS RELEASE

23 April 2020

### LIQUIDATOR OF DECMIL CONSTRUCTION NZ LIMITED EXPRESSES CONCERNS REGARDING CONDUCT OF DEPARTMENT OF CORRECTIONS

Following the appointment of Dermott McVeigh as liquidator of Decmil Construction NZ Limited (**the Company**) on 15 April 2020, we commenced an urgent review of the Company's position and amounts owed to it from the New Zealand Government's Department of Corrections (**DoC**). That review is ongoing.

The Company was contracted by the DoC to design and build prison accommodation units in five different locations in New Zealand (**the Contract**). Following a dispute in relation to the Contract, the DoC terminated the Contract on 25 February 2020 and have not paid approximately \$12.5m of outstanding claims.

Mr McVeigh said "Termination of the Contract and non payment of the outstanding invoices caused the Company to become insolvent and led to my appointment on 15 April 2020".

We have now been notified by lawyers acting for the DoC that as a result of the Company's insolvency, it has demanded payments of circa \$12m in relation to performance guarantees that were originally provided in support of the Contract.

Our preliminary investigation indicates that there is a strong claim against the DoC for amounts that remain owed in relation to the Contract and its termination. Further, we believe that the DoC does not have a contractual right to demand payment of the performance guarantees and doing so will prejudice all creditors of the Company. We need to resist the payment of the performance bonds because any amounts paid to the DoC under the bonds will reduce the amount available to pay ordinary unsecured creditors who have provided services to the Company in good faith.

Mr McVeigh said "I am very concerned by the actions of the Department of Corrections to attempt to improve its position at the expense of ordinary unsecured creditors and I have therefore instructed my solicitors to apply to the High Court of New Zealand for an interim injunction to prevent the performance bonds from being paid".

Prior to Mr McVeigh's appointment, the DoC was in negotiations with the Company to commence an arbitration process to resolve the dispute relating to the Contract.

Mr McVeigh said "I am considering the negotiations that took place prior to my appointment, however my preliminary view is that the DoC's actions to demand payment of the performance bonds may mean that the dispute cannot be resolved through arbitration and that court proceedings may be necessary".

Mr McVeigh continued "whilst my investigations are at an early stage, I have serious concerns in relation to the conduct of the Department of Corrections and it is likely that I will need to conduct a court examination of various individuals to better understand the circumstances surrounding termination of the Contract".

ENDS

#### **CONTACT INFORMATION**

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