

13 APRIL 2018



AKRON ROADS PTY LTD (IN LIQUIDATION) ACN 004 769 895 (“THE COMPANY”)

REPORT TO CREDITORS

EXPERTS WITH IMPACT™

In accordance with Section 1603 (Section 508(1)(b)(ii) [Repealed]) of the *Corporations Act 2001 (Cth)* (“**the Act**”), the Liquidators’ have prepared a report for creditors that sets out the Liquidators’ acts and dealings relating to the liquidation for the twelve (12) months ending 9 March 2018. The previous report to creditors was dated 28 April 2017.

This report is not for general circulation or publication and it is provided specifically for the benefit of creditors of the Company. It is not to be quoted from or reproduced or used for any other purpose without the express consent of the Liquidators.

1. INTRODUCTION AND SUMMARY OF KEY ACTIONS

This report has been prepared to provide creditors of the Company with an update as to the progress of the Liquidation.

Certain information, considered commercially sensitive or subject to ongoing legal actions or negotiations by the Liquidators, has been omitted from this report.

Where possible, information no longer considered commercially sensitive has been released in order to provide creditors with an insight into the work performed by the Liquidators and the outcome of such work.

It is reiterated that the contents of this report are strictly for creditor’s information only and are not intended to be conclusive with respect to all issues addressed by the Liquidators.

There has been one major development since the previous report to creditors, with the judgement from the appeal against Mr Trevor Crewe, Crewe Sharp Pty Ltd (In Liquidation), and CGU in the Supreme Court of Victoria, given on 18 December 2017.

The abovementioned issue is discussed in greater detail in the report below.

2. INVESTIGATIONS INTO THE COMPANY’S AFFAIRS

2.1. Unfair Preference Payments

All unfair preference claims have been resolved. Recoveries in this regard have totaled approximately \$7.1 million.

2.2. Insolvent Trading Claims

An insolvent trading claim is a claim against the directors of a company for allowing a company to incur debt when it is insolvent.

Section 588 of the Act allows for a liquidator to pursue an insolvent trading claim against:

- Company directors; and
- Persons considered under the Act to be “shadow directors”.

The quantum of the claim is calculated with reference to the debts incurred from the date that the directors of the Company should have suspected that the company was insolvent and would not be able to satisfy debts being incurred.

Supreme Court Trial

As you are aware, the Liquidators previously commenced insolvent trading proceedings in the Supreme Court of Victoria against Messrs Robert and John Sill, Mr Trevor Crewe, Crewe Sharp Pty Ltd (In Liquidation) (“**Crewe Sharp**”) and CGU Insurance. Settlement was reached between Messrs Robert and John Sill and Mr Trevor Crewe on 10 March 2016. However, no settlement was able to be reached between the Liquidators and CGU Insurance which underwrote a professional indemnity insurance policy held by Crewe Sharp.

Accordingly, the TWI claim proceeded to a trial between the Company and CGU where the focus narrowed to whether Crewe Sharp was a shadow director of the Company and whether the insurance policy responded to a claim of insolvent trading, as it was already acknowledged that the Company traded whilst insolvent.

Judgement from the Supreme Court of Victoria was handed down on 11 November 2016, whereby the Judge found that the Company’s insurance policy did respond to the claim, however due to an alleged material non-disclosure by Trevor Crewe/Crewe Sharp when they obtained insurance coverage from CGU, the liability was reduced to zero.

Court of Appeal – Supreme Court and Leave to Appeal in the High Court of Australia

Having consulted with their legal advisors on the merits of appealing the decision, the Liquidators considered it appropriate to do so. The Liquidators considered that the “incremental” costs of appealing were significantly less than conducting a full trial on all issues. The “upside” of appealing potentially involved the recovery of \$5 million plus costs for the benefit of creditors.

The Liquidators’ application for appeal was heard on 28 August 2017.

The Court of Appeal of the Supreme Court of Victoria handed down judgement on the Liquidators’ appeal on 18 December 2017. Unfortunately, the judgement was not in favour of the Liquidators’, however the legal points on which the Liquidators lost the case were narrowed down to one issue. With the benefit of legal advice, and again noting the comparatively small cost given it relates to a discreet point, it was determined that grounds existed for appealing to the High Court of Australia.

Accordingly, an application was submitted on 16 January 2018 for leave to appeal the trading whilst insolvent claim against CGU in the High Court by the Liquidators’ lawyers, King & Wood Mallesons. We are presently awaiting a decision as to whether leave will be granted.

3. STATEMENT OF RECEIPTS AND PAYMENTS

On 9 March 2018, the Liquidators held approximately \$5.23 million in a combination of interest bearing bank accounts and term deposits.

Please refer to Annexure A for a statement of receipts and payments in the liquidation.

4. DIVIDEND

Set out below is an updated schedule showing on high and low cases; potential future recoveries, estimated realisation costs, known creditor claims and the resultant potential dividend.

Estimated Outcome Statement at 9 March 2018	Notes	Low Case \$'000s	High Case \$'000s
Cash on Hand at 9 March 2018		5,226	5,226
Expected Future Receipts			
Other Recoveries (e.g. voidable transactions)			
Insolvent Trading		0	5,300
Interest Income		79	79
Total Expected Future Receipts		<u>79</u>	<u>5,379</u>
Expected Future Liquidation Costs			
Liquidators' Professional Fees and Disbursements		(250)	(200)
Legal Costs	1	(850)	(150)
Total Expected Future Liquidation Costs		<u>(1,100)</u>	<u>(350)</u>
Available to Priority (Employee) Creditors		<u>4,205</u>	<u>10,255</u>
Priority Dividend		(1,670)	(1,670)
Surplus Available	2	<u>2,535</u>	<u>8,585</u>
Scenario 1 - ANZ has Priority			
Estimated Remaining Amount Owed to Secured Creditor at Date of Report		(6,000)	(6,000)
Estimated Return to Secured Creditor Under Circulating Security Interest	3	2,285	2,285
Estimated Shortfall to Secured Creditor Representing Unsecured Claim		(3,715)	(3,715)
Estimated Surplus Available to Unsecured Creditors		249	6,299
Total Estimated Unsecured Claims	4	<u>(67,208)</u>	<u>(67,208)</u>
Estimated Dividend to Unsecured Creditors (cents in \$)		<u>0.37</u>	<u>9.37</u>
Scenario 2 - ANZ does not have Priority			
Funds Available to Unsecured Creditors		2,535	8,585
Total Claims		<u>(73,208)</u>	<u>(73,208)</u>
Potential Dividend to Unsecured Creditors (cents in \$)		<u>3.46</u>	<u>11.73</u>

Notes to Estimated Outcome Statement

1. Includes provision for adverse costs orders.
2. This amount represents the surplus that is expected to be available following the payment of all priority (employee) creditors.
3. The Liquidators have calculated the estimated return to the secured creditor from circulating assets (debtors, stock, etc.). As priority creditors have been paid out in full, with the benefit of funds generated from circulating assets, the ANZ may be entitled to a subrogated claim ahead of unsecured creditors in respect of funds generated from recoveries from uncommercial transactions.
4. The difference in total claims is due to unfair preference recipients being able to claim for the amount repaid to the Company. The differences are also represented by the fluctuating shortfall to the ANZ under the different realisation scenarios (low, and high). We have also allowed for potential claims of project principals for such things as liquidated damages and costs incurred to rectify defects.

As with previous annual reports, the estimated outcome statement is provided under the following two scenarios:

1. Where ANZ has a priority over uncharged recoveries (ahead of unsecured creditors); and
2. Where ANZ does not have a priority over uncharged recoveries.

The Liquidators have instructed King & Wood Mallesons to apply to the Supreme Court for directions with respect to the distribution of funds.

The ultimate outcome for creditors is contingent on resolving the priority issue as well as the outcome of the appeal in the High Court with respect to the insolvent trading claim.

5. LIQUIDATORS' REMUNERATION

The Liquidators' have continued to report to the Committee of Inspection regarding fees as well as requesting approval for remuneration. Remuneration paid to the Liquidators between 10 March 2017 and 9 March 2018 equated to \$23,570.69 exclusive of GST.

6. SUMMARY AND WAY FORWARD

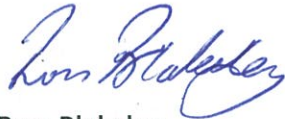
The major issues that remain to be dealt with by the Liquidators include:

- i. Concluding the insolvent trading claim and specifically the appeal to the High Court;
- ii. Making a final distribution to employees. In this regard, sufficient funds should exist to pay out employee claims in full irrespective of the outcome of the trading whilst insolvent claim;
- iii. Determining whether the ANZ has a priority over uncharged recoveries ahead of unsecured creditors; and
- iv. Making a distribution to secured and unsecured creditors, if funds exist.

The Liquidators anticipate that the liquidation should be concluded within the next six (6) to twelve (12) months.

Should you have any queries in relation to this report please contact Mr Geoff Davis of this office.

Yours faithfully
Akron Roads Pty Ltd
(In Liquidation)

A handwritten signature in blue ink, appearing to read "Ross Blakeley".

Ross Blakeley
Liquidator

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ANNEXURE A – Statement of Receipts and Payments for the Period 10 March 2010 to 9 March 2018

Akron Roads Pty Ltd (In Liquidation)	
Statement of Receipts and Payments for Period 10 March 2010 to 9 March 2018	
	Total
	\$
Receipts	
Accounts Receivable (Pre-Appointment)	2,772,470
Bank Guarantee Indemnity	102,674
Bank Guarantee Surplus	105,394
Buyers Premium Surplus	22,690
Costs Recovered from Legal Action	100,947
Funds Transferred from Administrators	700,982
GEERS	1,537,976
Government Training Incentive	21,100
GST Received	612,247
Interest in Land	817,741
Interest Income	896,084
Preference Recovery	7,299,512
Costs Recovered from Bank Guarantees	78,237
Reimbursement of GEERS fees	50,248
Sale of Plant and Equipment	3,698,005
Sale of Stock/Inventory on Hand	112,195
Sundry Refunds	15,869
Trading Whilst Insolvent Recovery	600,000
Transfer from Shelbay for Appointee Fees	5,250
Total Receipts	19,549,622
Payments	
Advertising	(17,315)
Appointees' Costs	(153,306)
Appointees' Fees	(3,467,215)
Auctioneer/Valuation Fees	(194,676)
Bank Charges	(3,742)
Bank Guarantee Surplus Payout	(105,394)
Consulting Costs	(250,858)
Creditors Meeting Costs	(11,274)
Dividends to Secured Creditors	(1,712,375)
Document and IT Data Management	(6,667)
Equipment Hire	(31,674)
First Dividend for Priority Creditors	(346,739)
GEERS Distributions	(1,402,317)
GST/PAYG Paid	(364,876)
Insurance	(82,463)
Land Tax - Martha Cove	(63,334)
Lease Payout	(19,287)
Legal Fees	(3,509,166)
Costs - Bank Guarantee and Debtors	(310,788)
Mileage Allowance	(9,134)
Non-recourse Loan	(2,750)
Payroll Tax	(5,939)
Post-Appointment Leave	(42,930)
Post-Appointment Superannuation	(35,463)
Printing	(18,339)
Rates & Fees - Martha Cove	(31,730)
Recharge Costs	(1,638)
Rectification Costs	(8,057)
Rent, Rates and Utilities	(19,553)
Second Dividend for Priority Creditors	(1,043,711)
Telephone and Fax	(21,274)
Trading expense - Bovis	(28,756)
Trading expenses - Brencorp	(453,216)
Transfer to Shelbay for Plant and Equipment	(159,905)
Unclaimed Dividend	(813)
Valid ROT	(172)
Wages and Salaries	(387,158)
Total Payments	(14,324,003)
Cash at Bank (Net Receipts and Payments)	5,225,619