

28 APRIL 2017



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

REPORT TO CREDITORS

EXPERTS WITH IMPACT™

Pursuant to Section 508(1)(b)(ii) of the Corporations Act 2001 (“**the Act**”), a liquidator is required to prepare a report which complies with subsection (3) setting out an account of the progress of the liquidation.

This report sets out the Liquidators’ acts and dealings for the twelve (12) months ending 9 March 2017. The previous report to creditors was dated 13 May 2016.

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 a general 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 have been a number of issues advanced since the last report to creditors. These include:

- i. Reaching settlements with the Directors and Chubb under different legal actions.
- ii. Recovering final Bank Guarantees as a result of settlements reached predominately with Australand Holdings Ltd (“**Australand**”) and/or associated entities, and GEO (VIC) Pty Ltd (“**GEO**”).
- iii. Debtor recoveries of \$253,000.
- iv. Having the Trading Whilst Insolvent claim against Mr Trevor Crewe, Crewe Sharp Pty Ltd (In Liquidation), and CGU heard, and receiving judgement.
- v. Appealing the unfavourable judgement handed down with respect to the above.
- vi. Holding two (2) meetings with the Committee of Inspection.

The abovementioned and further issues are discussed in greater detail in the report below.

2. ASSETS AND LIABILITIES OF THE COMPANY

ASSETS

2.1. Accounts Receivable Balances

Since my previous report, an additional \$253,000 in outstanding accounts receivables was collected. Total net collections to date approximate \$2.75 million.

There are no further accounts receivable of the Company expected to be recovered.

LIABILITIES

2.2. Employee Entitlements

To date, the Liquidators have made two (2) distributions to priority creditors. Approximately \$1.67 million remains outstanding in respect of employee claims for payment in lieu of notice and redundancy.

It remains the case that the Liquidators anticipate that employee entitlements will be met in full.

The Liquidators anticipate that payment of this final tranche will occur following the conclusion of the insolvent trading claim.

2.3. Secured Creditor

The Company's secured creditor, ANZ Banking Corporation Limited ("**ANZ**") is owed approximately \$5.43 million.

Since my previous report, a further 15 outstanding bank guarantees with a total value of \$566,414 have been recovered, and returned to ANZ.

The benefit to unsecured creditors is that a returned bank guarantee reduces the potential quantum of claim that ANZ can make in the liquidation. This results in a reduction in the overall creditor pool.

2.4. Trade and Other Payables

The Liquidators have not undertaken any further substantive work with respect to quantifying the amounts payable by the Company to its creditors and will conduct this work at such time that a dividend becomes available (if at all).

On present information, it is the Liquidators' estimate that the Company has in excess of \$60 million in trade and other creditors. This includes estimated claims from project principals and claims from creditors who have repaid money to the Company in respect of unfair preference recoveries.

The final position will not be known until the Liquidators call for and adjudicate on Formal Proofs of Debt.

3. INVESTIGATIONS INTO THE COMPANY'S AFFAIRS

3.1. Unfair Preference Payments

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

Since my last report, the Liquidators have recovered \$300,000 from Chubb Insurance Company of Australia Limited ("**Chubb**") relating to the claim against Crewe Sharp.

3.2. 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. 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.

As you are aware, the Liquidators previously commenced insolvent trading proceedings in the Supreme Court of Victoria against a number of parties.

3.2.1. Directors

Final Settlements were reached at a Court ordered mediation with Messrs Robert and John Sill and Mr Trevor Crewe on 10 March 2016.

Settlement amounts totaling \$725,000 have been received from the above parties.

3.2.2. Joinder of CGU as a defendant in the trading whilst insolvent ("TWI") claim

During the course of litigation, a professional indemnity insurance policy held by Crewe Sharp was identified. The underwriter is CGU Insurance ("**CGU**").

It was considered that the CGU policy may respond to a successful TWI claim against Trevor Crewe and Crewe Sharp. CGU was successfully joined to the TWI proceeding by the Liquidators, after specific protracted legal proceedings which included CGU lodging appeals with the Full Bench of the Victorian Supreme Court, and ultimately the High Court.

Unlike with the Directors of the Company, no settlement was reached with CGU at the mediation held on 10 March 2016.

Accordingly, the TWI claim proceeded to trial whereby it was effectively a claim between the Company and CGU.

3.2.3. Trial

The trial for the insolvent trading proceeding was originally scheduled to commence in August 2015, however due to CGU resisting the joinder, that date was vacated and the trial delayed.

As a result of settlements achieved with some of the parties and admissions on issues regarding solvency by CGU, the trial's focus was narrowed to whether Crewe Sharp was a shadow director and whether the insurance policy responds to a claim of insolvent trading, rather than whether the Company traded whilst insolvent. The trial was subsequently heard on 2 and 3 May 2016.

3.2.4. Judgement and Appeal

Judgement was handed down in respect of the Liquidators' insolvent trading claim on 11 November 2016.

Whilst the Judge found that the Company's insurance policy does respond to the claim, unfortunately the Judge ordered that the liability of CGU be reduced to zero due to an alleged material non-disclosure by Trevor Crewe/Crewe Sharp when they obtained insurance coverage from CGU.

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 are significantly less than conducting a full trial on all issues. The "upside" of appealing potentially involves the recovery of \$5 million plus costs for the benefit of creditors. This effectively determines whether a substantive dividend will be paid to unsecured creditors or not.

The Court of Appeal has listed the appeal hearing date for Monday, 28 August 2017.

4. COMMITTEE OF INSPECTION

The Liquidators have held meetings with the Committee of Inspections on two (2) occasions since the previous report to creditors. This includes providing members with general updates as to the progress of the liquidation as well as discussing strategies in order to obtain the best outcome for creditors.

The Liquidators thank the Committee for their service to date.

5. STATEMENT OF RECEIPTS AND PAYMENTS

On 9 March 2017, the Liquidators held approximately \$5.2 million in a combination of interest bearing bank accounts and term deposits.

Please refer to Annexure A for a statement of receipts and payments showing the movement in cash for each year of the liquidation.

There has been \$1.1m in receipts in relation to the settlements outlined above since 9 March 2016.

6. 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 2017	Notes	Low Case \$'000s	High Case \$'000s
Cash on Hand at 9 March 2017		5,208	5,208
Expected Future Receipts			
Other Recoveries (e.g. voidable transactions)			
Insolvent Trading		0	5,300
Interest Income		25	25
Total Expected Future Receipts		25	5,325
Expected Future Liquidation Costs			
Liquidators' Professional Fees and Disbursements		(300)	(300)
Legal Costs		(750)	(100)
Total Expected Future Liquidation Costs		(1,050)	(400)
Available to Priority (Employee) Creditors		4,183	10,133
Priority Dividend		(1,670)	(1,670)
Surplus Available	1	2,513	8,463
Scenario 1 - ANZ has Priority			
Estimated Remaining Amount Owed to Secured Creditor at Date of Report		(5,434)	(5,434)
Estimated Return to Secured Creditor Under Circulating Security Interest	2	2,285	2,285
Estimated Shortfall to Secured Creditor Representing Unsecured Claim		(3,148)	(3,148)
Estimated Surplus Available to Unsecured Creditors		228	6,178
Total Estimated Unsecured Claims	3	(61,131)	(58,131)
Estimated Dividend to Unsecured Creditors (cents in \$)		0.373	10.627
Scenario 2 - ANZ does not have Priority			
Funds Available to Unsecured Creditors		2,513	8,463
Total Claims		(66,565)	(63,565)
Potential Dividend to Unsecured Creditors (cents in \$)		3.776	13.314

Notes to Estimated Outcome Statement

1. This amount represents the surplus that is expected to be available following the payment of all priority (employee) creditors.
2. 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.
3. 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.

Once the appealed legal action on foot is resolved, the Liquidators will make an application 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 with respect to the insolvent trading claim.

7. LIQUIDATORS' REMUNERATION

The Liquidators' have continued to report to the Committee of Inspection regarding fees as well as requesting approval of remuneration. Remuneration paid to the Liquidators between 10 March 2016 and 9 March 2017 equated to \$214,977.50 exclusive of GST.

8. 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;
- ii. Making a final distribution to employees. In this regard, sufficient funds should exist to pay out employee claims in full;
- 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 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)



Ross Blakeley
Liquidator

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ANNEXURE A – Statement of Receipts and Payments for the Period 10 March 2010 to 9 March 2017

Akron Roads Pty Ltd (In Liquidation) Statement of Receipts and Payments for Period 10 March 2010 to 9 March 2017								
	9 March 2010 to 9 March 2011	10 March 2011 to 9 March 2012	10 March 2012 to 9 March 2013	10 March 2013 to 9 March 2014	10 March 2014 to 9 March 2015	10 March 2015 to 9 March 2016	10 March 2016 to 9 March 2017	Total
	\$	\$	\$	\$	\$	\$	\$	\$
Receipts								
Accounts Receivable (Pre-Appointment)	1,611,989	593,852	121,000	192,629			253,000	2,772,470
Bank Guarantee Indemnity		102,674						102,674
Bank Guarantee Surplus		105,394						105,394
Buyers Premium Surplus	22,690							22,690
Costs Recovered from Legal Action		16,947					84,000	100,947
Funds Transferred from Administrators	700,982							700,982
GEERS	1,388,428	149,548						1,537,976
Government Training Incentive	20,000	1,100						21,100
GST Received	123,121	88,699	45,109	105,436	88,933	44,549	109,730	605,577
Interest in Land	817,741							817,741
Interest Income	19,453	120,077	141,843	117,809	164,320	107,742	106,573	777,817
Preference Recovery	146,635	1,820,000	1,382,494	3,141,500	449,000	59,883	300,000	7,299,512
Costs Recovered from Bank Guarantees		78,237						78,237
Reimbursement of GEERS fees	50,248							50,248
Sale of Plant and Equipment	3,685,630		12,375					3,698,005
Sale of Stock/Inventory on Hand	112,195							112,195
Sundry Refunds	4,596	11,273						15,869
Trading Whilst Insolvent Recovery							600,000	600,000
Transfer from Shelbay for Appointee Fees	5,250							5,250
Total Receipts	8,708,957	3,087,802	1,702,822	3,557,374	702,253	212,174	1,453,303	19,424,685
Payments								
Advertising	(15,363)	(1,510)	(442)					(17,315)
Appointees' Costs	(79,943)	(19,355)	(11,694)	(14,930)	(17,863)	(4,884)	(3,751)	(152,421)
Appointees' Fees	(1,535,386)	(463,470)	(273,968)	(332,644)	(371,060)	(230,642)	(236,475)	(3,443,644)
Auctioneer/Valuation Fees	(189,726)				(4,950)			(194,676)
Bank Charges	(833)	(482)	(649)	(359)	(405)	(379)	(324)	(3,432)
Bank Guarantee Surplus Payout		(105,394)						(105,394)
Consulting Costs	(158,572)	(33,460)	(46,726)		(10,450)	(1,650)		(250,858)
Creditors Meeting Costs	(10,808)		(466)					(11,274)
Dividends to Secured Creditors	(1,700,000)		(12,375)					(1,712,375)
Document and IT Data Management	(4,962)						(1,705)	(6,667)
Equipment Hire	(13,675)	(18,000)						(31,674)
First Dividend for Priority Creditors		(345,569)	(1,170)					(346,739)
GEERS Distributions	(1,251,449)	(150,868)						(1,402,317)
GST/PAYG Paid	(276,480)	(42,980)	(45,416)					(364,876)
Insurance	(80,586)	(1,877)						(82,463)
Land Tax - Martha Cove	(63,334)							(63,334)
Lease Payout	(19,287)							(19,287)
Legal Fees	(300,866)	(340,211)	(328,248)	(844,566)	(388,523)	(507,288)	(620,581)	(3,330,284)
Costs - Bank Guarantee and Debtors	(187,301)	(123,486)						(310,788)
Mileage Allowance	(9,134)							(9,134)
Non-recourse Loan					(2,750)			(2,750)
Payroll Tax	(5,939)							(5,939)
Post-Appointment Leave	(42,930)							(42,930)
Post-Appointment Superannuation	(35,463)							(35,463)
Printing	(9,190)		(1,973)		(2,581)	(2,501)		(16,245)
Rates & Fees - Martha Cove	(31,730)							(31,730)
Recharge Costs		(1,638)						(1,638)
Rectification Costs	(8,057)							(8,057)
Rent, Rates and Utilities	(19,553)							(19,553)
Second Dividend for Priority Creditors			(1,044,524)	755	58			(1,043,711)
Telephone and Fax	(21,274)							(21,274)
Trading expense - Bovis	(24,102)	(4,654)						(28,756)
Trading expenses - Brencorp	(453,216)							(453,216)
Transfer to Shelbay for Plant and Equipment	(159,905)							(159,905)
Unclaimed Dividend						(813)		(813)
Valid ROT	(172)							(172)
Wages and Salaries	(387,158)							(387,158)
Total Payments	(7,096,394)	(1,652,952)	(1,767,652)	(1,191,744)	(798,524)	(748,157)	(862,837)	(14,118,261)
Net Receipts / (Payments)	1,612,563	1,434,849	(64,831)	2,365,630	(96,271)	(535,983)	590,466	5,306,424