



Walton Construction Pty Ltd (In Liquidation) (Receivers & Managers Appointed) ACN: 606 900 218

Joint and Several Liquidators' Annual Report to Creditors

27 November 2015

Michael Gerard McCann
Joint and Several Liquidator

Graham Robert Killer
Joint and Several Liquidator

Andrew Stewart Reed Hewitt
Joint and Several Liquidator

Contents

Section	Page
1. Overview	3
2. Conduct of Liquidation	5
3. Outstanding Acts and Dealings	11
4. Summary Receipts and Payments	13
5. Liquidators' Remuneration	15
6. Estimated Completion Date	17

Section 1 Overview

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Liquidators' Remuneration

06. Estimated Completion Date

Overview

Overview

- Pursuant to an Order of the Federal Court of Australia made on 29 July 2014 Messrs Andrew Stewart Reed Hewitt, Graham Killer, and I were appointed Joint and Several Liquidators of Walton Construction Pty Ltd (In Liquidation) (Receivers and Managers Appointed) ('the Company').
- The purpose of this report is to provide creditors with an account of the Liquidators' acts, dealings and the conduct of the Winding Up since our previous report to Creditors dated 6 February 2015.

Section 2 Conduct of Liquidation

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Liquidators' Remuneration

06. Estimated Completion Date

Conduct of Liquidation

Recoveries

Debtors (Retentions)

- To date, we have recovered a total of c.\$132k in retention monies from the following parties:
 - Deakin University have remitted retention monies of c.\$12k;
 - Geelong Grammar have remitted retention of \$56k;
 - Bankstown City Council have remitted retention monies of c\$64k;

National Australia Bank (“NAB”) Deposits

- In addition to the funds payable to the Company from debtors, we also anticipate receiving a refund of deposit monies from NAB following finalisation of its Bank Guarantee (“BG”) liability.
- Messrs Salvatore Algeri and Glen Kanevsky of Deloitte Touche Tohmatsu (Deloitte) were appointed Receivers and Managers ('the Receivers and Managers') by NAB on 26 February 2014 to certain assets including BG's provided to the Company and WCQ.
- We have been liaising with the Receivers and Managers to monitor NAB's surplus security position.
- NAB has claimed a right of set off over all term deposit accounts held by the Company and WCQ to secure its exposure for BG's provided on behalf of the Company and WCQ.
- The Receivers and Managers are currently determining the collectability of the BG's. At this point the Receivers and Managers estimate a surplus in excess of \$1M may be available to the Walton Group from NAB on completion of this process.

Competing Claims

- Assetinsure (“AI”) have a second ranking circulating security interest over the Company and may potentially have a claim to certain surplus funds available from NAB and debtor realisations.
- We have now received formal legal advice that suggests the extent of AI's security may be limited to the value of security bonds issued either on or following the date on which it registered its security.
- In summary, the liability of Walton to Assetinsure that flows in relation to performance bonds issued by Assetinsure prior to the date of the GSA (20 May 2013) may be limited to the sum of \$51,242.00.
- Other than third party funding sources (QBCC and ASIC) our funding position is subject to the extent of Assetinsure's claim as a secured creditor and the quantum of debtor realisations in each of WC and WCQ.

Conduct of Liquidation

Subcontractor Bank Guarantees

- At the time of our appointment, there were a total of 89 BG's with a combined value of c.\$1.63m which were provided to us by the Previous Liquidators. To date, we have attended to the following:
 - Liaising with various subcontractors regarding the return of their BG;
 - Reviewing documents held on the projects in an attempt to determine whether the BG's should be released; and
 - Liaising with project Principals requesting confirmation of any outstanding defect claims against the Company in relation to projects;
 - Facilitating the release of BG's.
- In order to release the BG's, the Liquidators are required to assess whether the Defects Liability Period (DLP) for the relevant projects has expired and that no defect claims by the Principals made during the DLP are outstanding. Unfortunately, the process of releasing BG's has been protracted in some cases by the lack of active co-operation from project Principals.

Physical Books and Records

- The former Liquidators held 1,739 boxes of the Company's books and records (c.1,474 boxes in PKF's Melbourne storage facility and 265 boxes in Brisbane PKF's storage facility).
- The Liquidators entered into an Assetless Administration Funding Agreement with the Australian Security and Investment Commission ("ASIC") on 17 July 2015 to support further investigations and to assist with the cost of recovering and storing the Company's books and records.
- ASIC have indicated that it may not be willing to fund the storage of all company records beyond 12 months (the period required to inspect the records to determine relevance to our investigations). We are continuing to liaise with ASIC in this respect.
- The Liquidators have reached an agreement to pay the previous liquidators, PKF Lawler, \$15,000 (excluding GST) in full and final settlement of their claim for the Companies' storage costs from 1 August 2014 to 8th September 2015. This amount was contemplated under the ASIC Assetless Administration Funding Agreement.
- The books and records located in the PKF's Melbourne storage facility have now been relocated to the Liquidators' storage facility
- We may consider applying for the early destruction of certain records at a future point in time.

Conduct of Liquidation

Electronic Books and Records

- We have obtained access to the electronic data from the below data sources:
 - The "Stopleveline data" (14 drives of Company data in total imaged by Stopleveline at the request of PKF Lawler);
 - The Company's servers in possession of Jirsch Sutherland ("Jirsch") (12 servers in total including the Jobpac server); and
 - Electronic data produced on summons. This contains documents produced on summons from Craig Walton, David Scott and Melissa Chalker.
 - Electronic data obtained by an investigative journalist from the Australian Broadcasting Corporation ("ABC").
- ASIC agreed to fund the costs of imaging and indexing the Stopleveline drives which has now been completed.

Jobpac

- As you are aware, the Companies' ERP system "Jobpac" is stored on an IBM AS400 server located at the Sydney offices of the Liquidators of Tantallon Constructions Pty Ltd (In Liquidation). The AS400 system is very dated and now considered obsolete.
- Our consultants (Saxon's Group) were unsuccessful in repairing the AS400 server and accordingly we had been unable to access the Companies' Jobpac data.
- With the financial assistance of ASIC we have been successful in restoring a back up tape of the Company's Jobpac data. Access to this Jobpac data was obtained on 11 November 2015.

Conduct of Liquidation

Public Examination

- The Court ordered that the Summonses issued on 23 May 2014 to Craig Walton, Mellissa Chalker, Norman Metz, Anthony Barnett, Phillip Spry, Patrick McCurry and David Scott (“the original examinees”) be set down for examinations to commence on 30 November 2015 for a period of 3 days (2 further days have been allocated in February 2016).
- We have adjourned the summons addressed to Mr Scott to a date to be fixed no later than 2 June 2016. Further, we have now reached agreement for a representative of the National Australia Bank (NAB) to be examined alongside the original examinees this year .
- The examinations will be held at the Federal Court of Australia in Melbourne and the scheduled timetable of examinees is as follows:

	Session 1	Session 2
Date	9:30am	11:30am
Monday, 30 November 2015	Melissa Chalker	Craig Walton
Tuesday, 1 December 2015	Anthony Barnett	Patrick McCurry
Wednesday, 2 December 2015	Geoff Green (NAB)	Philip Spry and Norman Metz

- The cost associated with conducting a Public Examination presents a practical limitation on the scope of the examinees and examinations. As creditors may be aware, the Liquidators entered into a funding and indemnity deed with the Queensland Building and Construction Commission ("QBCC") on 16 March 2015. The funding deed entered into with the QBCC contemplates primarily examining the original examinees and for counsel to attend the public examination for a period of 5 days.
- Notwithstanding the above, we have issued further summonses to additional examinees. The additional examinees have been selected (following consultation with the Queensland Committee of Inspection) ("Qld Committee") on the basis that we have reason to believe (due to their position or relationship with the Company) that these individuals would possess information which would be critical to our investigations into the affairs of the Company, its directors and officers.

Public Examination (cont.)

- The additional examinees are Julian Krizner, Tim Hulse, Rodney Kol, Timothy Christie, James Clancy, Marek Petrovs, Michael O’Neil, Daniel Casey and Glenn Crisp.
- These additional examinees were required to produce documents to the Court on 27 October 2015. We have reviewed the information produced on summons by these examinees. Following the conclusion of the public examination next week, we will be in a better position to determine the nature and scope of our examination of these individuals at the public examinations.
- Subject to funding, we have the capability to expand the public examinations to include additional parties at a later date should we need to extend the examination scope. This could, if warranted, include issuing notices to produce documents and/or the formal examination of NAB, PKF and/ or the QBCC.

Conduct of Liquidation

Public Examination – Investigations

- The purpose of the public examination is to identify the possible recovery actions that may be affected as a consequence of evidence gathered from the public examination proceedings. These may include (but are not limited to):
 - uncommercial transactions (including reviewing the terms of the intercompany loans and whether the sale of business assets in 2012 were on commercial terms)
 - preference payments
 - shadow director activity (including the role of the Mawson Group)
 - negligence claims (including possible claims against the auditors, accountants and advisory board members of the company)
 - insolvent trading
 - director misfeasance
 - fraudulent transactions/ representations (including possible misrepresentation to principals regarding subcontractor payments)
 - voidable securities (reviewing the circumstances of securities granted to Asset Insure and National Australia Bank)

Outcome for Creditors

- As previously stated, Assetinsure (“AI”) has a second ranking circulating security interest over the Company and may potentially have a claim to any surplus funds available from NAB and debtor realisations.
- In addition, we are aware of priority claims of employees and the Federal Government Fair Entitlements Guarantee ("FEG") in the sum of c.\$1.3m which would be paid ahead of AI and the general body of ordinary unsecured creditors.
- As a consequence of the above, a distribution to ordinary unsecured creditors is likely to be contingent on the extent of AI's claim to circulating security realisations and the quantum of antecedent transaction recoveries. In this respect, our investigations are continuing and we expect to be in a better position to comment on the likelihood on a distribution to ordinary unsecured creditors following completion of the PE in April 2015.

Section 3 Outstanding Acts and Dealings

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Liquidators' Remuneration

06. Estimated Completion Date

Outstanding Acts and Dealings

Outstanding Acts and Dealings

- Before we are in a position to finalise this matter, the following tasks will be attended to:
 - Hold the PE and attend to any further matters resulting from the PE;
 - Conduct further investigations;
 - Lodge a supplementary report with ASIC pursuant to s533(2) of the Act;
 - Continue to attend to requests for release of bank guarantees from subcontractors;
 - Continue to liaise with Deloitte in order to monitor NAB's security position and the progress of the receivership;
 - Determine the extent of AI's claim to circulating asset realisations (including the NAB surplus);
 - Finalise the recovery of the debtors previously mentioned;
 - Determine and consider receipt of any claims against third parties arising from our investigations;
 - Call and hold further meetings of the Committee of Inspection; and
 - Attend to any further queries raised by creditors, employees and other key stakeholders regarding the liquidation.

Section 4 Summary Receipts and Payments

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Liquidators' Remuneration

06. Estimated Completion Date

Summary of Receipts and Payments

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- A summary of the Liquidators' receipts and payments since our appointment on 29 July 2014 to 16 November 2015 is summarised in the table below:

	(\$) (Incl GST)
Receipts	
Debtor Recoveries	134,436
FEG Advance	152,681
Other Income	28
Total Receipts	287,145
Payments	
Appointee Fees	(44,010)
Bank Charges	(74)
FEG Employee Distributions	(127,623)
Legal Fees	(2,045)
PAYG Withholding Tax	(25,058)
Total Payments	(198,810)
Reconciled Cash at Bank	88,335

Section 5 Liquidators' Remuneration

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Liquidators' Remuneration

06. Estimated Completion Date

Liquidators' Remuneration

Liquidators' past remuneration

- The following table summarises our professional time costs incurred since July 2014 to 18 October 2015 in respect of the liquidation of the Company. These professional time cost have been approved by the Committee of Inspection for the Company.

	Administration Amount (\$) (Excl. GST)	Assets Amount (\$) (Excl. GST)	Creditors Amount (\$) (Excl. GST)	Employees Amount (\$) (Excl. GST)	Investigation Amount (\$) (Excl. GST)	Statutory Amount (\$) (Excl. GST)	Total (\$) (Excl. GST)
Walton Construction Pty Ltd ("WC")							
Past Remuneration Approved - 29 July 2014 to 18 October 2015*	77,645	82,309	72,755	32,711	78,521	10,864	354,802
	77,645	82,309	72,755	32,711	78,521	10,864	354,802
Public Examination (WCQ and WC) (QBCC funded)							
Past Remuneration Approved - 16 March 2015 to 18 October 2015*	-	-	-	-	109,420	-	109,420
	-	-	-	-	109,420	-	109,420
Total remuneration incurred to 18 October 2015							464,222
Remuneration recoverable from external sources other than QBCC (WC only)							
Fair Entitlements Guarantee							6,629
Assetinsure							2,648
ASIC - Imaging and records inspection							24,550
ASIC - Investigations and Reporting							22,751
Total remuneration recoverable from other external sources							56,578

*The funding deed entered into by the QBCC on 16 March 2015 contemplated retrospective funding of the liquidators time from 29 July 2014 until the date of the Deed. Fees totalling \$30,752 were incurred on the WC and WCQ matters collectively and form part of the \$78,521 in investigations time for WC. These fees have been previously approved by creditors.

Liquidators' remuneration

- To date, remuneration of \$345,802 has been approved by committee members at the Committee of Inspection meetings held on 16 March 2015, 5 June 2015 and 23 November 2015.
- A total of \$133,867 (excl. GST) has been paid in this liquidation from realisations to date.

Funding agreement with QBCC

- As you are aware, the Liquidators entered a funding and indemnity deed with the Queensland Building and Construction Commission ("QBCC"). The purpose of this agreement was to fund and indemnify the Company and the Liquidators to conduct the PE in respect of the Liquidators' costs, remuneration and legal fees.
- As at 18 October 2015, our professional time-costs incurred progressing the public examination since 29 July 2014 totalled \$109,420 for Walton Construction (Qld) Pty Ltd and Walton Construction Pty Ltd.
- At the Committee of Inspection meeting held on 13 November 2015, the committee members agreed that the future fees incurred by the Liquidator in conducting the public examination be capped at \$75,000 (excluding GST and disbursements).

Section 6 Estimated Completion Date

01. Overview

02. Conduct of Liquidation

03. Outstanding Acts and Dealings

04. Summary Receipts and Payments

05. Liquidators' Remuneration

06. Estimated Completion Date

Estimated Completion Date

Estimated Completion Date

- We anticipate that the liquidation may be finalised by December 2017. However, this is contingent on the outcome of the PE and any recovery actions commenced against the Director or others.

Should you have any queries with respect to this report, please contact Ms Caitlin Wilkinson of my office on (07) 3222 0209 or caitlin.wilkinson@au.gt.com.

A handwritten signature in black ink, appearing to read 'M McCann', written in a cursive style.

Michael McCann
Joint and Several Liquidator