

District of: British Columbia  
Division No. 02-Victoria  
Court No. 11-2797316  
Estate No. 11-2797316

**IN THE MATTER OF THE BANKRUPTCY OF  
PIRATE EXCAVATING LTD.  
OF THE CITY OF SHAWNIGAN LAKE, IN THE PROVINCE OF BRITISH COLUMBIA  
CROWE MACKAY & COMPANY LTD., TRUSTEE**

**TRUSTEE'S REPORT ON ITS PRELIMINARY ADMINISTRATION**

Trustee: Crowe MacKay & Company Ltd.  
Date of Bankruptcy: January 18, 2022

**OVERVIEW**

1. Pirate Excavating Ltd. (the "**Company**" or "**PEL**") was incorporated on June 5, 2019. The Company was created to take over the excavating and landscaping operations of its related company – Pirate Industries Ltd. ("**PIL**") – and conducted business in various locations on Vancouver Island. PIL continued operating as a holding company, effectively owning all the equipment used by PEL.
2. Mr. Joe Brann was the sole director of PIL and PEL (collectively, the "**Companies**") and managed their day-to-day operations.
3. Both Companies operated together: PIL lent its equipment to PEL to perform excavating and landscaping operations, while PEL provided PIL with cashflows to pay leases and other operating expenses.
4. Mr. Brann has advised that since March 2020, the Companies faced considerable challenges due to a number of factors. These included increased operating costs due to the rise of diesel prices and labor costs, and increased employee turnover due to the Covid-19 pandemic. The Companies also experienced supply shortages due to the general supply-chain issues experienced throughout the Covid-19 pandemic which affected the completion of jobs, collection of receivables and, ultimately, cash flow.
5. Mr. Brann has advised that the Companies' latest revenue streams came from four bonded projects (**Bonded Jobs**) that PEL was in the process of completing. In or around December, 2021, PEL was unable to fulfill its latest deliverables across the Bonded Jobs, due to its increased operating costs and depleted financial resources. As a result, PEL was incapable of securing the cashflows related to the Bonded Jobs, and its liabilities continued to grow in excess of its assets. In or around January, 2022, PEL ran out of cash, and with no further cash flows available, PEL was unable to meet its obligations as they generally became due and is therefore insolvent.
6. The Company filed an assignment into bankruptcy naming Crowe MacKay & Company Ltd. as its Licensed Insolvency Trustee on January 18, 2022 ("**CMCO**" or the "**Trustee**").

7. The following assets and liabilities were disclosed on PEL's Statement of Affairs (**SoA**)

## **ASSETS**

### Cash

8. The Trustee is advised that the Company had one operating bank account with Royal Bank of Canada ("**RBC**"). The account balance was in a deficit position on the date of bankruptcy. The Trustee has requested that the account be frozen.

### Equipment

9. As discussed above, the Company generally used equipment owned by PIL to carry out its ongoing operations.
10. There are three purchase money security interests (**PMSI's**) registered in the Personal Property Security Registry (**PPR**) for PEL. One PMSI registered by Bank of Montreal (**BMO**) over a 2022 Kenworth also lists PIL as a secured party with PEL as the base debtor. BMO has a priority charge against this asset with equity, if any, falling to PIL and / or RBC pursuant to its All Present and After-Acquired Property (**AIIPAAP**) PPR registration in PEL.
11. Arundel Capital Corp. ("**Arundel**") also holds PMSI security registered in PEL related to five Wacker Tamper / Compactor equipment pieces. Equity therein, if any, would first be subject to RBC's AIIPAAP security before being available to PEL's bankrupt estate.
12. Meridian OneCap Credit Corp. (Meridian) holds PMSI security related to some GPS equipment. PIL is listed as the base debtor with PEL also listed as a business debtor. Equity, if any, appears to belong to RBC pursuant to its AIIPAAP security. As PIL is registered as the base debtor any equity available after RBC's AIIPAAP would appear to belong to the PIL estate.
13. The Trustee further notes that all of the above PMSI charges relate to leases that commenced on or after April 2021. Given the recent nature of these leases, it seems unlikely that there will be any significant equity available therein.

### Possession and Location of Secured Assets

14. Under the BIA, prior to the first meeting of creditors, one of the Trustee's primary duties is to safeguard the assets. Given concerns as to the physical security of the Secured Assets, the Trustee took conservatory measures to move same to a more secure facility. The Trustee permitted several of the PMSI leaseholders to have a bailiff possess and store the related equipment in more secure facilities. The Trustee has advised these PMSI holders that, in allowing same to possess and store this equipment, the Trustee has not disclaimed its interest, if any, in the same.

### Miscellaneous Tools and Supplies

15. The SoA lists miscellaneous tools and supplies, belonging to PEL ("**Other Supplies**") with an estimated realizable value of \$10,000. Net realization therefrom, if any, is subject to

RBC's AllPAAP security in the first instance before being available to PEL's bankrupt estate.

#### Accounts Receivable

16. The SoA notes that PEL had approximately \$960,000 of accounts receivable ("**A/R**"). The Trustee understands that this A/R primarily relates to the Bonded Jobs. During the Trustee's initial discussions with the bonding company - Trisura Insurance Guarantee Company ("**Trisura**"), Trisura said that they would be advising the counter parties to Bonded Jobs to refrain from remitting any payments to PEL in relation to the A/R as a right of set-off against liabilities to several sub-contractors, as well as increased costs likely to be incurred to complete the Bonded Jobs.
17. Accordingly, the Trustee is unable to provide an estimate of potential recovery, if any, of A/R at this time.

#### Deposits and Prepaid Expenses

18. The Company had approximately \$7,500 in prepaid expenses ("**Prepays**") per the SoA. There is not estimated to be any recovery from the Prepays.

### LIABILITIES

#### DEEMED TRUST CLAIMS & SECURED CREDITORS

19. The Trustee is advised that all remittances for employee source deductions (**ESD**) are current. Outstanding ESD rank as a deemed trust claim with priority to claims of the secured creditors. Canada Revenue Agency has not conducted a trust examination as yet. Accordingly, this is subject to change.
20. Based on the Trustee's review of the PPR, RBC holds AllPAAP security in PEL which is largely subordinate to the registered PMSI holders discussed above.
21. RBC has filed a secured Proof of Claim in the amount of \$397,039.53.
22. The Trustee has been advised that RBC has appointed BDO as Receiver pursuant to its AllPAAP security. The Receivership appointment occurred recently on or about January 31, 2022. The Trustee has had initial discussions with BDO regarding realizing on the assets of PIL and PEL for the benefit of creditors however those discussions are very preliminary and, at the time of writing this report, no decisions have been taken.
23. The Company had approximately twenty-two employees prior to the date of bankruptcy. The Trustee was advised that all employees were terminated on January 14, 2022, concurrent with the final payroll and therefore there were no outstanding wages or vacation pay. The former employees may have some entitlement to compensation for length of service ("**Severance**").
24. Following bankruptcy, the Trustee was contacted by 2 former employees who indicated that they did not receive payment from the final payroll. Accordingly, there may be some outstanding wage claims.

25. Pursuant to the Wage Earner Protection Program Act ("WEPPA"), employees are protected for unpaid wages and vacation due within the 6-months immediately preceding the date of bankruptcy plus severance pay to a maximum of \$ 8,117.34 (2022 limit) per employee. Any amounts paid by Service Canada for wages and vacation pay ranks as a secured claim against the current assets pursuant to Section 81.3 of the BIA. Claims for Severance are unsecured.
26. The Receiver and the Trustee will cooperate to administer WEPPA claims.
27. The SoA does not disclose, and the Trustee is not aware of, any other creditors who may hold a deemed trust or secured claim against the estate.
28. The Trustee has not obtained an independent legal opinion as to the validity and enforceability of the secured creditors security against the bankrupt estate.

#### **PREFERRED CREDITORS**

29. The SoA does not disclose, and the Trustee is not aware of, any preferred claims pursuant to Section 136 of the BIA.

#### **UNSECURED CREDITORS**

30. As of February 3<sup>rd</sup>, 2022, the Trustee has received 20 unsecured claims totaling \$2,380,077.54.
31. Trisura provided bonds related to certain jobs undertaken by PEL. The Trustee understands that PIL is also a party to these bonds and therefore Trisura may be in a position to advance claims against both bankrupt estates. Trisura has filed a claim totaling \$1,706,209.57 against both PIL and PEL. As the jobs to which the bonds relate to are incomplete, Trisura's actual claim is uncertain – pending completion of the jobs – and has been admitted by the Trustee for voting purposes only at this time.

#### **ESTIMATE REALIZATION AND DISTRIBUTION**

32. Per the SoA, the Company has assets with an estimated gross-realizable value of approximately \$346,000 before payment of claims of secured creditors, costs of possession, protection and realization, as well as fees and disbursements of the Receiver and the Trustee. Therefore, given uncertainties related to the net-realizable value of the Assets and the claims of creditors, the Trustee is unable to provide an estimate of recovery to the general body of unsecured creditors at this time.

#### **PREFERENCES AND TRANSFER UNDER VALUE**

33. The Trustee has reviewed PEL's bank statements for the 12-months immediately preceding the date of bankruptcy, and did not identify any transactions that may be considered a fraudulent preference or a transfer at undervalue pursuant to Sections 95 and 96 of the BIA.

**TRUSTEE'S REMUNERATION**

34. The Trustee received a \$20,000 retainer from a third party before agreeing to be named as Trustee in order to protect the Trustee for its reasonable fees and costs in the event that recoveries in the estate are not sufficient. These funds were provided by a third party and do not come from funds that are otherwise available to the bankrupt estate.
35. Ultimately, the Trustee's fees and costs are subject to taxation by the Court.

DATED AT Vancouver, BC, this 3<sup>rd</sup> day of February, 2022

**CROWE MACKAY & COMPANY LTD.**

Licensed Insolvency Trustee of the bankrupt estate of  
Pirate Excavating Ltd. and not in its personal capacity

per:

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Mr. Jonathan McNair, CPA, CA, CIRP, LIT  
(Chartered Insolvency & Restructuring Professional)