

District of: British Columbia
Division No. 02-Victoria
Court No. 11-2797315
Estate No. 11-2797315

**IN THE MATTER OF THE BANKRUPTCY OF
PIRATE INDUSTRIES 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 Industries Ltd. (the "**Company**" or "**PIL**") was incorporated on June 24, 2014. Originally, the Company operated as an excavating and landscaping business in various locations on Vancouver Island. However, it transitioned into a holding company once Pirate Excavating Ltd. ("**PEL**") took over operating activities on or around June 5, 2019 (its date of incorporation).
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 that PEL was in the process of completing. In or around December, 2021, PEL was unable to fulfill its latest deliverables across the four projects, due to its increased operating costs and depleted financial resources. As a result, PEL was incapable of securing the cashflows related to the projects, and was unable to forward any funds to PIL. In or around January, 2022, PIL ran out of cash, and with no further cash flows available, PIL 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 PIL'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. The Company leased and owned a variety of excavating and landscaping equipment (collectively the "**Equipment**"), which he has estimated to have a gross realizable value of about \$2.89MM. An equipment list was provided to the Trustee and was used as the basis of the assets listed in the Statement of Affairs (the "**SoA**").
10. The Trustee has identified approximately 30 pieces of Equipment that PIL leased from various lessors which are subject to purchase-money security interests ("**PMSI's**"). Pursuant to a search by the Trustee, these lessors appear to have duly registered their PMSI security in the *Personal Property Security Registry* ("**PPR**" and the "**PMSI Equipment**").
11. Additionally, the Trustee has identified approximately 23 pieces of Equipment owned by PIL that are subject to secured charges against all present and after-acquired property of PIL ("**AllPAAP**"). Based on the Trustee's review of the PPR, it appears the primary AllPAAP secured creditor is Royal Bank of Canada ("**RBC**") with Her Majesty the Queen in the Right of the Province of BC (The "**Province of B.C.**") being the secondary AllPAAP secured creditor. This is further discussed under the 'DEEMED TRUST CLAIMS & SECURED CREDITORS' section of this report.
12. There are also numerous other hand tools, and miscellaneous equipment, which are subject to the above noted AllPAAP security interests.
13. The estimated realizable values of the Equipment per the SoA are based on estimates provided by Mr. Brann. The Trustee has contacted several liquidators to assist in obtaining further independent estimates as to the realizable value of the Equipment and awaits further information in that regard.

Possession and Location of Equipment

14. As at the Date of Bankruptcy, Mr. Brann advised that the majority of the Equipment was located at two sites: the Royal Bay work site, and Sooke Yard storage space. The Trustee understands that, as of the date of this report, the Equipment is insured with coverage presently in good standing.
15. On January 20th, 2022, the Trustee was informed that three of PIL's excavators were removed from the Royal Bay work site. The Trustee contacted multiple parties, including local bailiffs and secured creditors, to determine the whereabouts of the missing excavators. As no leads materialized, the Trustee filed a police report with the relevant

RCMP detachment on January 21st, 2022. That same day, the RCMP informed the Trustee they had located the excavators, and had retrieved and moved them to a secure facility.

16. 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 security at the Royal Bay work site, the Trustee took conservatory measures to move the Equipment located in Royal Bay to more secure facilities. This effort has been undertaken with the assistance of the PMSI and AllPAAP secured creditors. In several instances the PMSI security holders have moved some of the equipment to separate secured facilities. The Trustee has been careful to advise these creditors that, in allowing these creditors to possess and store these items, the Trustee has not disclaimed its interest, if any, in the same.

Accounts Receivable

17. The SoA notes that PIL had approximately \$63,000 of accounts receivable ("A/R"). As at the time of writing the Trustee is unable to comment on the estimated realizable value of the A/R. A/R is subject to the AllPAAP security.

Real Property

18. The Company owns a parcel of bare land located in the Alberta hamlet of Red Willow. It was purchased by PIL in 2017 for \$6,500. The net realizable value of this real property is uncertain but is likely minimal. This is subject to the AllPAAP security.

DEEMED TRUST CLAIMS & SECURED CREDITORS

19. As noted above, two secured creditors hold AllPAAP security against the Company. RBC holds first charge and has filed a Proof of Claim in the amount of \$397,039.53. However, based on documents filed by RBC in support of their claim, the Trustee is uncertain if there is a limitation to RBC's security interest in PIL and will likely require independent legal advice in that regard.
20. The Province of B.C. holds second ranking AllPAAP charge. The Trustee understands that this charge relates to PST owing on the purchase of an airplane. The Province of B.C. has not yet filed a proof of claim.
21. 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.
22. As mentioned above, there are several PMSI security holders. Per the SoA these PMSI holders are owed approximately \$1,454,000. The Trustee has received proofs of claim from some of these secured creditors claiming they are fully secured. The Trustee has contacted several liquidators to assist in determining the estimated realizable value of the Equipment which is subject to the PMSI security. The Trustee will look to realize equity, if any, that may be available in the leased equipment for the benefit of the bankrupt estate. However, any equity available after payment of the PMSI secured claims is then subject to the interests of the AllPAAP security holders.

23. The SoA does not disclose, and the Trustee is not aware of, any deemed trust claims against PIL however CRA has not conducted a trust exam at this time so that is subject to change.
24. The Trustee has not obtained an independent legal opinion as to the validity and enforceability of the secured creditors security against the bankrupt estate. Given numerous registered security interests the Trustee believes it is prudent to obtain an independent legal opinion and will discuss same with the estate Inspectors.

PREFERRED CREDITORS

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

UNSECURED CREDITORS

26. As of February 3rd, 2022, the Trustee has received one unsecured claim totaling \$1,706,209.57.
27. Trisura Guarantee Insurance Company provided ("Trisura") provided bonds related to certain jobs undertaken by PEL. We understand that PIL is also a party to these bonds and therefore it appears Trisura is 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 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

28. The following is a table summarizing the estimated gross realizable values of PIL's assets:

ASSET	COST (SOA)	ESTIMATED GROSS REALIZABLE VALUE (SOA)
Cash	Nil	Nil
Equipment	\$3,600,000	\$2,890,000
A/R	63,000	21,000
Real Property	6,500	5,000
Total	\$3,669,500	\$2,916,000

29. Per the SoA, the Company has assets with an estimated gross-realizable value of approximately \$2.92MM 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

30. The Trustee has reviewed PIL'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

31. 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.

32. Ultimately, the Trustee's fees and costs are subject to taxation by the Court.

DATED AT Vancouver, BC, this 3rd day of February, 2022.

CROWE MACKAY & COMPANY LTD.

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

per:

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