

District of: Newfoundland and Labrador

Division No: 01 – Newfoundland and Labrador

Court No: 22164

Estate No: 51-2397788

Supreme Court of Newfoundland and Labrador

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF:**

BURRY'S SHIPYARD INC.

**Second Report of the Licensed Insolvency Trustee
pursuant to sections 50.4(7)(b)(ii) and 50.4(9) of the
*Bankruptcy and Insolvency Act ("BIA")***

**SECOND REPORT OF PROPOSAL TRUSTEE
DELOITTE RESTRUCTURING INC.**

September 19, 2018

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1. INTRODUCTION AND BACKGROUND

- 1.1 Burry's Shipyard Inc. ("Burry" or the "Company") was incorporated in Newfoundland and Labrador on December 20, 2011. The shares of Burry are equally owned by Glenn and Sonia Burry, who are married to each other.
- 1.2 Burry operates a shipyard located in Clarenville, Newfoundland and Labrador specializing in machining, fabrication, maintenance and the refit of vessels under 650 tonnes. Key customers of Burry include the Government of Newfoundland and Labrador, the Government of Canada, Canadian Coast Guard, Norcon Marine Services Limited and commercial fishing vessels.
- 1.3 Burry also operates two distinctive divisions: Eastern Foundry and Manta Ray Boats Inc. ("Manta Ray"). Eastern Foundry manufactures zinc and aluminum sacrificial anodes for marine and offshore applications. Manta Ray Boats Inc. manufactures and sells fiberglass boats for pleasure and commercial markets.
- 1.4 On July 10, 2018, Burry filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the BIA (the "NOI Filing"). Deloitte Restructuring Inc. ("Deloitte") was appointed as the Licensed Insolvency Trustee (the "Proposal Trustee") under the NOI Filing.
- 1.5 On August 2, 2018, the Supreme Court of Newfoundland and Labrador (the "Court") granted an order providing an administrative charge covering the professional fees of the Proposal Trustee, counsel to the Proposal Trustee and Burry's legal counsel (the "Administrative Order").
- 1.6 In addition, on August 2, 2018, the Court granted an order extending the stay of proceedings from August 9, 2018 up to and including September 21, 2018 (the "First Extension Order").
- 1.7 The Proposal Trustee advises that this report (the "Second Report") should be read in conjunction with the affidavit of Glenn Burry and the Affidavit of Tim Hill, Q.C., which have been filed in support of the Company's Application.

2. TERMS OF REFERENCE

- 2.1 In preparing this Second Report, the Proposal Trustee has relied upon financial information of the Company, discussions with the Company's management ("Management") and BoyneClarke LLP, the Company's legal counsel.
- 2.2 The financial information of the Company has not been audited, reviewed or otherwise verified by the Proposal Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that the Second Report may not disclose all significant matters about the Company. Additionally, none of our procedures were intended to disclose defalcations or other irregularities. Were we to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to our attention. Accordingly, the Proposal Trustee does not express an opinion or provide any other form of assurance on the financial or other information presented herein. The Proposal Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of the Second Report.
- 2.3 The Proposal Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of the Second Report. Any use which any party makes of the Second Report, or any reliance or decisions to be made on the Second Report, is the sole responsibility of such party.

- 2.4 All dollar amounts identified in the Second Report are expressed in or converted to Canadian dollars.
- 2.5 The Second Report utilizes defined terms contained within the First Report.
- 2.6 The purpose of the Second Report is to inform this Court of the following:
 - (i) Summarize the Company's activities since the date of the First Report
 - (ii) Update the Court with respect to the Sales Process
 - (iii) Update the Court with respect to the Milton Transfer
 - (iv) Inform the Court of discussions related to insurance proceeds received by the Company (the "Insurance Proceeds")
 - (v) Update the Court with respect to the legal proceedings against Bond Sea
 - (vi) Provide a review of the First Report Cash Flow Projection for the period of July 14 to September 7, 2018
 - (vii) The Company's statement of projected cash flow for the period of September 8 to December 28, 2018 (the "Second Report Cash Flow Projection")
 - (viii) The Company's request for an extension order (the "Second Extension Order")

3. COMPANY'S ACTIVITIES

- 3.1 Since the date of the First Report, the Company's activities have included, but were not limited to:
 - (i) actively taking part in ongoing discussions with the Proposal Trustee and its legal counsel regarding various administrative issues with respect to the estate;
 - (ii) scheduling and facilitating several site visits with parties participating in the Sales Process;
 - (iii) working with the Proposal Trustee to satisfy information requests from the Lenders and parties participating in the Sales Process; and
 - (iv) working with the Proposal Trustee to monitor actual cash flow and reporting on variances to the First Report Cash Flow Projection.

4. THE SALES PROCESS

- 4.1 In its First Report dated July 30, 2018, the Proposal Trustee informed the Court that, pursuant to forbearance agreements executed between the Company and the Lenders, the Company had initiated a Sales Process designed to explore potential sale and investment opportunities.
- 4.2 Subsequent to the First Report, the Company received one additional signed non-disclosure agreement.
- 4.3 The Proposal Trustee has provided regular written correspondence to the Lenders regarding the Sales Process.
- 4.4 The Proposal Trustee has provided the Court with an addendum to the Second Report (the Addendum"), outlining further information relating to the interest received pursuant to the Sales Process.
- 4.5 The Proposal Trustee supports the Company's request to have the Addendum sealed in order to protect competitive information contained therein.

5. MILTON TRANSFER

- 5.1 In its First Report dated July 30, 2018, the Proposal Trustee informed the Court of the Milton Transfer. At that time, the Proposal Trustee advised the Court it would provide an update when further information became available.
- 5.2 On August 10, 2018, the Proposal Trustee held a conference call with the principal of Milton and its financial advisor (the "Milton Call"). The purpose of the Milton Call was to obtain further information surrounding the original May 2017 transaction (previously defined as the Milton Purchase).
- 5.3 During the Milton Call, the Proposal Trustee was advised by Milton that no formal appraisal had been completed on the real property and that the property was located in a settlement that did not have a tax assessment. In addition, the Proposal Trustee was advised that the Milton Purchase was fully financed via a vendor take-back note with an interest rate of two percent.
- 5.4 In addition to the Milton Call, the Proposal Trustee has further discussed the Milton Purchase with Burry, legal counsel to Burry and its own legal counsel. The facts outlined in 6.3 above were confirmed by Burry.
- 5.5 At the time of the Milton Transfer, Burry was approximately two months in arrears to Milton.
- 5.6 The Proposal Trustee has been advised by its legal counsel that Milton had a valid registered security interest in the assets involved in the Milton Transfer.
- 5.7 The Proposal Trustee is of the opinion that due to the rural location of the assets, the potential environmental concerns attached to the real property and the associated liquidation costs, it is unlikely that the net realizable proceeds from the assets would exceed the amounts owing to Milton and, as such, no equity would be available to the other creditors of Burry.

6. INSURANCE PROCEEDS

- 6.1 In its First Report dated July 30, 2018, the Proposal Trustee informed the Court of an anticipated insurance proceeds inflow of \$275 thousand (the "Property Claim Proceeds").
- 6.2 Subsequent to the granting of the First Extension Order, the Property Claim Proceeds were paid to Norcon and transferred in full to Burry as the affected party and additional insured. The claim was made on behalf of Burry, as the claim related to Burry property and only Burry had an insurable interest in that property.
- 6.3 In addition to the Property Claim Proceeds, Burry filed a claim under its general liability policy (the "Liability Policy Claim") in February, 2018. Subsequent to filing the Liability Policy Claim, the underwriters sent adjusters to visit Clarendville and assess the damage.
- 6.4 Burry was previously advised by the underwriters that no payment would be made relating to the Liability Policy Claim until such time that all claims had been received, including that of the GNL relating to damage sustained to the *MV Galatea* while at Burry. As at the date of this report, Burry has not been advised by the underwriters that GNL has filed a claim.
- 6.5 At this juncture, the Proposal Trustee is unsure of the final magnitude, if any, that will be received by Burry relating to the Liability Policy Claim. The Proposal Trustee will update this Court in respect of this matter as further information becomes available.

7. BOND SEA

- 7.1 In its First Report dated July 30, 2018, the Proposal Trustee informed the Court of a significant refit contract Burry had completed for Bond Sea for which full payment had not been received and resulted in a write-off of \$1.3 million. The Court was also advised that Burry had started legal action against Bond Sea.
- 7.2 Subsequent to the granting of the First Extension Order, the Proposal Trustee has held several conference calls with Management of Burry and McInnes Cooper, Burry's solicitor of record on the Bond Sea matter, regarding strategy against Bond Sea.
- 7.3 Based on the above, Burry has provided McInnes Cooper with a retainer to further pursue the matter against Bond Sea.
- 7.4 At this juncture, the Proposal Trustee is unsure of the likelihood of the success of the legal proceedings or the final magnitude, if any, of any proceeds. The Proposal Trustee will provide further updates to the Court as they become available.

8. ACTUAL CASH FLOW

- 8.1 The Company previously filed with the Court the First Report Cash Flow Projection pursuant to Section 50.4(2)(a)(b)(c) of the BIA for the 13-week period July 14 to October 12, 2018.
- 8.2 The Proposal Trustee has prepared a reconciliation of the actual cash flow for the 8-week period July 14 to September 7, 2018 as compared to the First Report Cash Flow Projection (the "Cash Flow Reconciliation"), which is contained within Appendix A to the Second Report.
- 8.3 The Proposal Trustee offers the following commentary with respect to material variances contained within the Cash Flow Reconciliation:
- (i) The \$25 thousand favorable variance associated with insurance proceeds relates to a deductible which was not deducted by the insurance provider;
 - (ii) Material variances relating to professional fees incurred by the Company are as follows:
 - (a) the \$43 thousand favorable variance associated with the fees of Deloitte are timing-related and have been integrated into the Second Report Cash Flow Projection discussed herein;
 - (b) the \$16 thousand favorable variance associated with the fees of Cox & Palmer are timing-related and have been integrated into the Second Report Cash Flow Projection discussed herein;
 - (c) the \$9 thousand unfavorable variance associated with the fees of Byron D. Smith relate to the preparation of the Company's external reviewed financial statements at the request of BDC;
 - (d) the \$9 thousand unfavorable variance associated with the fees of BDC represent the payment of the study fee associated with the investigation of potential interim financing and an amended forbearance fee; and
 - (e) the \$13 thousand unfavorable variance associated with the fees of McInnes Cooper relates to the Bond Sea Arbitration discussed herein.

9. CASH FLOW STATEMENTS

- 9.1 In conjunction with the Second Report and pursuant to Section 50.4(2)(a)(b)(c) of the BIA, the Company filed the Second Report Cash Flow Projection, along with the statutory declarations with the Court. A copy of the Second Report Cash Flow Projection is enclosed as Appendix B.
- 9.2 The Second Report Cash Flow Projection has been prepared by Management for the purpose described in the notes to the Second Report Cash Flow Projection, using the probable and hypothetical assumptions set out in the notes to the Second Report Cash Flow Projection.
- 9.3 The Proposal Trustee's review of the Second Report Cash Flow Projection consisted of inquiries, analytical procedures and discussions on the information provided by Management of the Company. Since these hypothetical assumptions are not being supported, the Proposal Trustee's involvement with respect to them was limited to evaluating whether they were consistent with the purpose of the Second Report Cash Flow Projection. The Proposal Trustee has also reviewed the supporting documentation provided by Management of the Company for the probable assumptions and the preparation and presentation of the Second Report Cash Flow Projection.
- 9.4 Based on our review and the foregoing reserves and limitations, nothing has come to the attention of the Proposal Trustee that causes us to believe that, in all material respects:
- (i) the hypothetical assumptions are not consistent with the purpose of the Second Report Cash Flow Projection;
 - (ii) as at the date of this Second Report, the probable assumptions developed by the Company are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the Second Report Cash Flow Projection, given the hypothetical assumptions; or
 - (iii) the Second Report Cash Flow Projection does not reflect the probable and hypothetical assumptions.
- 9.5 Since the Second Report Cash Flow Projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposal Trustee does not express an opinion to whether the projections in the Second Report Cash Flow Projection will be achieved.
- 9.6 The Second Report Cash Flow Projection has been prepared solely for the purpose described in the notes to the Second Report Cash Flow Projection, and readers are cautioned that the Second Report Cash Flow Projection may not be appropriate for other purposes.
- 9.7 The Proposal Trustee has reviewed the Second Report Cash Flow Projection and offers the following commentary:
- (i) due to the substantive shutdown of shipyard operations, collections are projected to be minimal during the eight week period contemplated by the Second Report Cash Flow Projection;
 - (ii) compensation and related expenses consist of compensation and statutory remittances of one employee retained by the Company to provide security and maintenance services during the period contemplated by the Second Report Cash Flow Projection;

- (iii) general operating expenses consist of utilities, communication and insurance related costs based on historical levels, taking into consideration the reduced activity at the shipyard; and
- (iv) professional fees consist of estimates received from professionals involved in the restructuring process. These professionals include the Proposal Trustee, legal counsel of the Proposal Trustee, the Company's legal counsel and legal counsel to the Lenders.

10. STAY EXTENSION APPLICATION

- 10.1 As discussed above, the ability of the Company to file a viable proposal is dependent on being provided the necessary time to complete the Sales Process.
- 10.2 Based on the activities discussed herein, the Proposal Trustee is of the opinion that the Company has acted and is acting in good faith and with due diligence in connection with the preparation of a restructuring plan and a proposal to creditors.
- 10.3 The Proposal Trustee believes that a 14 day extension will enhance the prospects of the Company filing a viable proposal to its creditors. As described herein, the Company is executing the Sales Process and requires some further time to complete.
- 10.4 The Proposal Trustee is of the opinion that no creditor would be materially prejudiced by the extension as requested by the Company.
- 10.5 In the absence of an extension, the Company will not be in a position to file a proposal before September 21, 2018 and as such will be deemed bankrupt. The Proposal Trustee is of the opinion that more time is required to allow the Company to complete the Sales Process which is likely to yield a greater realizations than that of a forced liquidation that will occur if the Company is deemed bankrupt.
- 10.6 Based on the foregoing, the Proposal Trustee supports the Company's application for the Second Extension Order.

11. CONCLUSION

- 11.1 The Second Report has been prepared to provide this Court with information regarding the activities of the Company since the First Report, an update regarding the Sales Process, an update regarding the Milton Transfer, inform the Court of discussion related to the Insurance Proceeds received by the Company, an update regarding the Bond Sea proceedings, a review of the First Report Cash Flow Projection, a summary of the Second Report Cash Flow Projection and its outcomes, and the Company's Application for a Second Extension Order pursuant to s. 50.4 (7) of the BIA.

Second Report of Deloitte Restructuring Inc.
Estate No.: 51-2397788
September 19, 2018

All of which is respectfully submitted this 19th day of September, 2018.

DELOITTE RESTRUCTURING INC.

Acting in its capacity as

Licensed Insolvency Trustee under the Notice of Intention to Make a Proposal of
Burry's Shipyard Inc.

and not in its personal capacity

Per:

A handwritten signature in black ink, appearing to read 'J. Foran', is written over the signature line.

James Foran, CPA, CA, CIRP, LIT
Vice President

APPENDIX A – CASH FLOW RECONCILIATION

Burru Shipyard Inc. (the "Company")
Variance analysis - First Report Cash Flow Projection
For the period July 14 to September 7, 2018

Week ending (Friday)	Projected	Actual	Variance
Opening cash balance	9,751	8,892	(859)
Cash inflow			
Collection of existing trade accounts	20,690	16,254	(4,436)
Collection of new sales	25,925	28,194	2,269
Insurance proceeds	275,000	300,000	25,000
Total inflows A	321,615	344,448	22,833
Cash outflows			
Operating costs			
Compensation and related expenses	7,168	6,574	595
General operating expenses	25,257	22,334	2,923
	32,425	28,908	3,518
Professional Fees			
Deloitte Restructuring Inc.	81,290	37,670	43,621
Patterson Law	3,000	-	3,000
Boyne Clarke	27,020	20,233	6,787
Cox & Palmer	16,000	-	16,000
Byron D. Smith CA	-	8,625	(8,625)
BDC	-	9,000	(9,000)
McInnes Cooper	-	12,500	(12,500)
Stewart McKelvey	3,000	4,087	(1,087)
	130,310	92,114	38,196
Total outflows B	162,736	121,022	41,714
Weekly cash flow (A-B)	158,879	223,426	64,547
Projected ending cash balance	168,630	232,318	63,688

APPENDIX B – SECOND EXTENSION CASH FLOW PROJECTION

District of Newfoundland and Labrador
Division No. 01 – Newfoundland and Labrador
Court No. 22164
Estate No. 51-2397788

The management of Burry's Shipyard Incorporated (the "Insolvent Person") has developed the assumptions and prepared the attached statement of projected cash flow of the Insolvent Person, as of the 19th day of September 2018, consisting of weekly cash flows for the period September 8th to November 2nd, 2018.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in Note A, and the probable assumptions are suitably supported and consistent with the plans of the Insolvent Person and provide a reasonable basis for the projection. All such assumptions are disclosed in Note B.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note A, using a set of hypothetical and probable assumptions set out in Note B. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Clarenville, Newfoundland and Labrador this 19th day of September, 2018.

Burry's Shipyard Incorporated

Per:



Glenn Burry
President

District of Newfoundland and Labrador
Division 01 – Newfoundland and Labrador
Court No. 22164
Estate No. 51-2397788

Note A:

The statement of projected cash flow is being filed pursuant to *Bankruptcy and Insolvency Act s. 50.4(2)* in association with the Notice of Intention to Make a Proposal by Burry's Shipyard Incorporated (the "Insolvent Person") using the hypothetical assumptions set out in Note B.

Note B:

The following assumptions were used by management in the preparation of the statement of projected cash flow of the Insolvent Person:

Opening cash

- The opening cash position pertains to the consolidated cash position of the Insolvent Person as at September 7, 2018.

Operating Inflows

- Collection of existing trade accounts receivable is based on management's expectation of collection amounts and timing of collecting trade accounts receivable as at September 7, 2018. Management does not expect any new receivables to be generated during the period contemplated in the projection

Operating Outflows

- Compensation and related costs is based on current head count levels and management's expectations during the period covered by the cash flow projections and includes all statutory remittances.
- General operating costs are based on historical amounts adjusted for reduced operating activities.
- Professional fees are based on estimates provided by the various professional service firms involved in the mandate.

Deloitte.

District of Newfoundland and Labrador
Division No. 01 – Newfoundland and Labrador
Court No. 22164
Estate No. 51-2397788

The attached statement of projected cash flow of Burry's Shipyard Incorporated (the "Insolvent Person"), consisting of weekly projections through the week beginning September 8, 2018 to the week beginning November 2, 2018, has been prepared by the management of the Insolvent Person for the purpose described in Note A, using the probable and hypothetical assumptions set out in Note B.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied to us by the management and employees of the Insolvent Person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note A, and readers are cautioned that it may not be appropriate for other purposes.

Dated at Halifax, NS this 19th day of September, 2018.

DELOITTE RESTRUCTURING INC.

Acting in its capacity as
Trustee under the Notice of Intention to Make a Proposal of Burry's Shipyard Incorporated
and not in its personal capacity

Per:

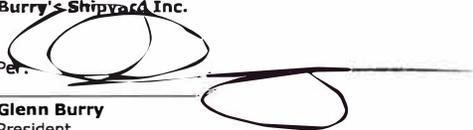


James Foran, CPA, CA, CIRP, LIT
Vice President

Burry Shipyard Inc. (the "Company")
Statement of projected cash flows
For the period September 8 to November 2, 2018

Week ending (Friday)	1	2	3	4	5	6	7	8	Total
	9/14/2018	9/21/2018	9/28/2018	10/5/2018	10/12/2018	10/19/2018	10/26/2018	11/2/2018	
Opening cash balance	232,318	226,494	166,222	139,236	100,648	86,394	82,876	81,939	232,318
Cash inflow									
Collection of existing trade accounts	-	-	-	1,656	1,683	-	-	-	3,339
Total inflows A	-	-	-	1,656	1,683	-	-	-	3,339
Cash outflows									
Operating costs									
Compensation and related expenses	686	1,356	686	1,779	686	1,356	686	1,779	9,016
General operating expenses	300	2,213	300	13,465	250	2,163	250	250	19,190
	986	3,568	986	15,244	936	3,518	936	2,029	28,206
Professional Fees									
Deloitte Restructuring Inc.	-	29,207	26,000	-	15,000	-	-	15,000	85,207
Patterson Law	-	2,450	-	5,000	-	-	-	2,500	9,950
Boyne Clarke	4,838	-	-	5,000	-	-	-	5,000	14,838
Cox & Palmer	-	25,046	-	-	-	-	-	-	25,046
Stewart McKelvey	-	-	-	15,000	-	-	-	-	15,000
McInnes Cooper (Bond Sea Arbitration)	-	-	-	-	-	-	-	-	-
	4,838	56,703	26,000	25,000	15,000	-	-	22,500	150,041
Total outflows B	5,825	60,271	26,986	40,244	15,936	3,518	936	24,529	178,247
Weekly cash flow (A-8)	(5,825)	(60,271)	(26,986)	(38,588)	(14,254)	(3,518)	(936)	(24,529)	(174,908)
Projected ending cash balance	226,494	166,222	139,236	100,648	86,394	82,876	81,939	57,410	57,410

Burry's Shipyard Inc.

Per: 

Glenn Burry
 President

DELOITTE RESTRUCTURING INC.

Acting in its capacity as
 Licensed Insolvency Trustee under the Notice of Intention to Make a Proposal of Burry's Shipyard
 Inc. and not in its personal capacity

Per: 

James Foran, CPA, CA, CIRP, LIT
 Vice President