

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.**

**Third 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")***

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

**October 4, 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 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 On September 21, 2018, the Court granted an order that the confidential addendum to the Second Report of the Proposal Trustee remain sealed (the "Sealing Order").
- 1.8 In addition, on September 21, 2018, the Court granted an order extending the stay of proceedings from September 21, 2018 up to and including October 5, 2018.
- 1.9 The Proposal Trustee advises that this report (the "Third 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 Third 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 Third 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 Third 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 Third Report. Any use which any party makes of the Third Report, or any reliance or decisions to be made on the Third Report, is the sole responsibility of such party.
- 2.4 All dollar amounts identified in the Third Report are expressed in or converted to Canadian dollars.
- 2.5 The Third Report utilizes defined terms contained within the First and Second Report.
- 2.6 The purpose of the Third Report is to provide this Court with the following:
  - (i) A summary of the Company's activities since the date of the Second Report;
  - (ii) An update with respect to the Sales Process;
  - (iii) An overview of the Company's search for an alternative financing arrangement;
  - (iv) A review of the Second Report Cash Flow Projection for the period of September 8 to September 28, 2018; and
  - (v) The Company's request for an extension order (the "Third Extension Order").

### **3. COMPANY'S ACTIVITIES**

- 3.1 Since the date of the Second 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 Company;
  - (ii) working with the Proposal Trustee and its legal counsel to evaluate potential restructuring alternatives; and
  - (iii) working with the Proposal Trustee to monitor actual cash flow and reporting on variances to the Second Report Cash Flow Projection.

### **4. THE SALES PROCESS**

- 4.1 In a sealed addendum to the Second Report dated September 19, 2018 (the "Addendum"), the Proposal Trustee outlined further information to the Court relating to the interest received pursuant to the Sales Process.
- 4.2 Pursuant to the Company's request to have information regarding the Sales Process sealed, the Proposal Trustee has provided the Court with an addendum to the Third Report (the "Third Report Addendum") outlining further information relating to the interest received pursuant to the Sales Process.

### **5. ALTERNATIVE FINANCING**

- 5.1 On September 28, 2018, the Proposal Trustee was advised by Management that it had initiated a search for alternative financing in the event that the Sales Process was not successful.
- 5.2 On October 2, 2018, the Proposal Trustee was provided with a draft term sheet (the "Draft Term Sheet") from Next Edge Commercial Finance ("Next Edge"). The Draft Term Sheet

outlined a potential financing arrangement whereby funds would be provided in order to support the purchase of the assets held by the Company secured by Business Development Bank of Canada ("BDC").

- 5.3 On October 3, 2018, the Proposal Trustee held discussions with representatives from BDC informing them of the Draft Term Sheet received, and that Management was working with the Proposal Trustee to make changes to the Draft Term Sheet which would make it more attractive to creditors.
- 5.4 Also on October 3, 2018, the Proposal Trustee held discussions with Management and a representative of Next Edge in order to discuss proposed amendments to the Draft Term Sheet.
- 5.5 On October 4, 2018, the Proposal Trustee held a follow up discussion with Management and representatives of Next Edge. At that time the Proposal Trustee was advised that Next Edge was considering the merits of the proposed alternative financing arrangement and that an update would be provided within the next 24 hours.
- 5.6 Also on October 4, 2018, the Proposal Trustee provided an update to representatives of both the Bank of Nova Scotia and BDC in regards to the proposed alternative financing arrangement.
- 5.6 As at the date of the Third Report, the Proposal Trustee has not been provided with an updated Draft Term Sheet from Next Edge. If additional information becomes available subsequent to the release of the Third Report, the Proposal Trustee will advise the Court forthwith.

## **6. ACTUAL CASH FLOW**

- 6.1 The Company previously filed with the Court the Second Report Cash Flow Projection pursuant to Section 50.4(2)(a)(b)(c) of the BIA for the eight-week period September 8 to November 2, 2018.
- 6.2 The Proposal Trustee has prepared a reconciliation of the actual cash flow for the three-week period September 8 to September 28, 2018 as compared to the Second Report Cash Flow Projection (the "Cash Flow Reconciliation"), which is contained within Appendix A to the Third Report.
- 6.3 The Proposal Trustee offers the following commentary with respect to material variances contained within the Cash Flow Reconciliation. These variances related to professional fees as follows:
  - (i) The favorable variance relating to the professional fees of the Proposal Trustee are timing in nature. The Proposal Trustee invoiced the Company for approximately \$33 thousand on Friday, September 28, 2018; and
  - (ii) The unfavorable variance relating to the fees of the legal counsel of the Company are timing in nature.

## **7. STAY EXTENSION APPLICATION**

- 7.1 The Proposal Trustee has been advised by the Company that they intend to seek the Third Extension Order from the Court on October 5, 2018.
- 7.2 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.

7.3 However, given the interest level received in the Sales Process and the lack of an updated Draft Term Sheet from Next Edge, the Proposal Trustee does not have sufficient information to take a position on the Company's request for the Third Extension Order.

#### **8. CONCLUSION**

8.1 The Third Report has been prepared to provide this Court with information regarding the activities of the Company since the Second Report, an update regarding the Sales Process, the Company's search for alternative financing, a review of the Second Report Cash Flow Projection, and the Company's request for a Third Extension Order.

All of which is respectfully submitted this 4<sup>th</sup> day of October, 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:



**Neil Jones, CPA, CA, CIRP, LIT**  
Vice President

**APPENDIX A – CASH FLOW RECONCILIATION**

Burry Shipyard Inc.												
Variance analysis - Second Report Cash Flow Projection												
For the period September 8 to September 28, 2018												
Week ending (Friday)	9/14/2018			9/21/2018			9/28/2018			Projected	Actual	Variance
	Projected	Actual	Variance	Projected	Actual	Variance	Projected	Actual	Variance			
<b>Opening cash balance</b>	232,318	232,318	-	226,494	226,611	117	166,222	168,362	2,139	232,318	232,318	-
<b>Cash inflow</b>												
Collection of existing trade accounts	-	-	-	-	-	-	-	1,656	1,656	-	1,656	1,656
Cash sales	-	-	-	-	-	-	-	2,352	2,352	-	2,352	2,352
<b>Total inflows A</b>	-	-	-	-	-	-	-	4,008	4,008	-	4,008	4,008
<b>Cash outflows</b>												
Operating costs												
Compensation and related expenses	686	787	(100)	1,356	1,303	53	686	552	135	2,728	2,641	87
General operating expenses	300	83	218	2,213	165	2,048	300	1,823	(1,523)	2,813	2,070	743
	986	869	117	3,568	1,468	2,100	986	2,374	(1,388)	5,541	4,711	830
<b>Professional Fees</b>												
Deloitte Restructuring Inc.	-	-	-	29,207	29,207	0	26,000	-	26,000	55,207	29,207	26,000
Patterson Law	-	-	-	2,450	-	2,450	-	-	-	2,450	-	2,450
Boyne Clarke	4,838	4,838	-	-	-	-	-	10,000	(10,000)	4,838	14,838	(10,000)
Cox & Palmer	-	-	-	25,046	26,022	(976)	-	-	-	25,046	26,022	(976)
Byron D. Smith CA	-	-	-	-	1,553	-	-	-	-	-	1,553	(1,553)
Stewart McKelvey	-	-	-	-	-	-	-	-	-	-	-	-
	4,838	4,838	-	56,703	56,781	(78)	26,000	10,000	16,000	87,541	71,620	15,922
<b>Total outflows B</b>	5,825	5,707	117	60,271	58,249	2,022	26,986	12,374	14,612	93,082	76,331	16,752
<b>Weekly cash flow (A-B)</b>	(5,825)	(5,707)	117	(60,271)	(58,249)	2,022	(26,986)	(8,367)	18,620	(93,082)	(72,323)	20,759
<b>Projected ending cash balance</b>	226,494	226,611	117	166,222	168,362	2,139	139,236	159,995	20,759	139,236	159,995	20,759