



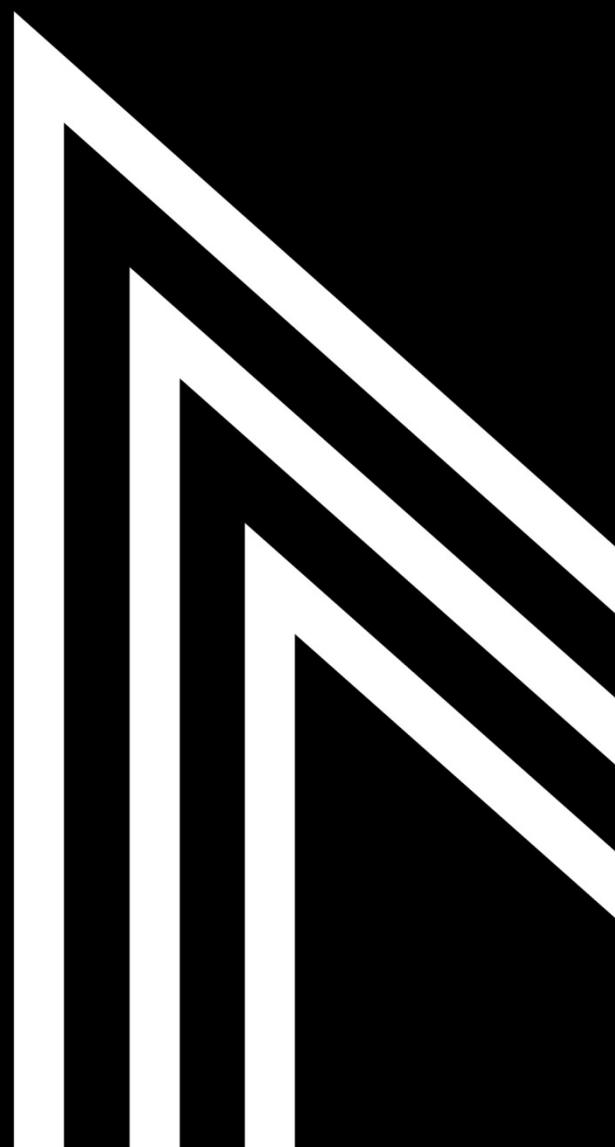
Massena Pty Ltd (In Liquidation) ACN 071 456 203

Report to Creditors

26 May 2021



McGrathNicol



Contents

1	Executive Summary.....	3
1.1	Creditors Meeting.....	3
1.2	DIRRI.....	3
2	Update on the liquidation.....	4
2.1	Unfair Preference Claims.....	4
2.2	Insolvent Trading Claim.....	4
3	Return to Creditors.....	6
4	Dividend to priority creditors.....	7
5	Liquidators' remuneration.....	7
6	Summary of receipts and payments.....	7
7	What happens next & where can you get more information?	7

Definitions and abbreviations

In this Report, unless otherwise provided, please refer to the following definitions and abbreviations:

Term	Definition
ACN	Australian Company Number
439A Report	The report dated 4 May 2016, prepared in accordance with Section 439A of the Act
Act	Corporations Act 2001
Administrators	Rob Kirman and Matthew Caddy of McGrathNicol as joint and several Voluntary Administrators of Massena on 5 April 2016
ARITA Code	ARITA Code of Professional Practice
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Bankruptcy Trustee	Helen Joyce (appointed on 19 June 2017 and retired on 5 March 2019), Kristen Beadle (appointed 5 March 2019 and retired on 8 February 2021) and John Shanahan (appointed 8 February 2021).
c/\$	Cents in the dollar
Company	Massena
Director	Berend Egberts as sole director of Massena
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities
ERV	Estimated realisable value
First Report	First report dated 10 August 2018
First Meeting	First Meeting of Creditors, held on 15 April 2016 pursuant to section 436E of the Act
GST	Goods and Service Tax
Liquidators	Rob Kirman and Matthew Caddy as Voluntary Liquidators of Massena on 11 May 2016
Liquidator	Rob Kirman as Voluntary Liquidator of Massena on 11 May 2016 (noting Matthew Caddy's retirement on 25 June 2019)
m	Million
Massena	Massena Pty Ltd (In Liquidation)
POD	Proof of Debt
Report	This report, dated 26 May 2021
Second Report	Second report dated 10 August 2019
WA	Western Australia

1 Executive Summary

I refer to:

- the appointment of Matthew Caddy and I as Voluntary Administrators of Massena on 5 April 2016 and our subsequent appointment as Liquidators on 11 May 2016;
- the Administrators' 439A Report to creditors dated 4 May 2016;
- the Liquidators' First Report dated 10 August 2017;
- the Liquidators' Second Report dated 10 August 2018; and
- the retirement of Matthew Caddy as liquidator of Massena on 25 June 2019.

In summary, the liquidation of Massena is substantially complete. All assets have been realised, I have completed my liquidator investigations and pursued all applicable recovery actions and I am preparing to pay a first and final dividend to priority creditors. Thereafter, I intend to finalise the liquidation as quickly as possible after paying the dividend to priority creditors.

The purpose of this report is to:

- provide creditors with an update on the liquidation;
- advise creditors of my intention to declare a first and final dividend to priority creditors; and
- convene a meeting of creditors of Massena to enable creditors to consider and approve resolutions necessary to finalise the liquidation.

1.1 Creditors Meeting

I have convened a creditors meeting for Thursday, 10 June 2021. The key meeting particulars are set out below:

Particulars of Creditors Meeting

Date:	Thursday, 10 June 2021
Time:	11:30AM (Western Standard Time)
Place of Meeting:	Via teleconference
Deadline for return of meeting documents:	4:00PM, 9 June 2021
Meeting enquiries:	Amber Andre – (08) 6363 7665

A 'Notice of Meeting of Creditors' is attached to this report, together with Form 535 'Formal Proof of Claim' and Form 532 'Appointment of Proxy'.

Creditors wishing to attend and participate in voting at the meeting are required to complete and return Form 535 and Form 532 to this office no later than 4.00pm (AWST) on 9 June 2021. Creditors who have already lodged a proof of debt do not need to complete a new proof but will be required to complete and return a Form 532.

Whilst the technical meeting location will be at the offices of McGrathNicol Perth, Level 19, 2 The Esplanade, Perth WA 6000, the meeting will be held via teleconference and/or webcast only and creditors will not be able to attend in person, given the recent government guidance regarding Covid-19 and social distancing measures. Creditors wishing to attend should contact this office on (08) 6363 7600 to obtain particulars (noting that a completed Form 535 and Form 532 will be required for creditors attending via telephone).

A person, or the proxy or attorney of a person who participates in the meeting by telephone, must pay any costs incurred by them in participating and is not entitled to be reimbursed for those costs from the assets of Massena.

1.2 DIRRI

In accordance with the Act and the ARITA Code, a DIRRI was enclosed in the Administrators' first communication to creditors dated 8 April 2016. The DIRRI was also tabled at the First Meeting on 15 April 2016. It was confirmed at this time that the Administrators did not consider any prior involvement gave rise to any potential conflict of interest issues.

As at the date of this Report, there has been no change to the information provided in the DIRRI. I therefore remain of the view that my prior involvement does not cause any potential conflicts of interest.



2 Update on the liquidation

As at the date of the Second Report, all assets of Massena had been realised and all trading matters had been finalised. The only outstanding matters that remained were finalising (i) unfair preference claims, and (ii) the insolvent trading claim against the Director.

In summary, both of these have now been finalised, and the Liquidator will shortly be in a position to pay a first and final dividend to priority employee creditors pursuant to section 566(1)(e) of the Act, in respect of wages and superannuation.

Further details regarding the above are set out in the following sections.

2.1 Unfair Preference Claims

In the Second Report, the Liquidators outlined:

- the successful negotiation of a settlement with the ATO in relation to a preference claim valued at \$387,000 (for \$350,000); and
- four other potential unfair preference claims totalling \$270,000 which were capable of being pursued.

Since the Second Report, the Liquidator has successfully negotiated and received payment of \$30,000 from one creditor. Recovery steps were taken in relation to the other creditors, however, as outlined in the notes that follow the table below, no further action will be taken in relation to these.

Preference claims		
Creditor	Total initial claim	Recovery
Australian Taxation office	387,000	350,000
Creditor 2	100,000	-
Creditor 3	60,162	-
Creditor 4	56,130	30,000
Creditor 5	54,288	-
Total	657,580	380,000

Creditor 2 & 3 - Demands were issued to Creditor 2 and 3 which were defended. No further action was taken against these creditors due to the existence of specific factual circumstances reducing the strength of the Liquidator's claim, making commencing action uncommercial.

Creditor 4 - A settlement was reached whereby \$30,000 (54%) of the claim was paid.

Creditor 5 - Upon further review of the documentation and background facts for Creditor 5, the Liquidator considered that a preferential payment was not made to this creditor, and therefore no recovery was available.

2.2 Insolvent Trading Claim

As set out in the Second Report, the Liquidators determined that Massena was insolvent from at least 1 March 2015, and the Director was or should have been aware of Massena's insolvency from this date. The Liquidators originally assessed the value of the insolvent trading claim against the Director to be \$0.81m, however upon further review, this claim was revised to \$0.98m (**IT Claim**).

The Director was sequestrated into bankruptcy on 19 June 2017 and the Bankruptcy Trustee confirmed that no dividend would be payable from the estate, that is, the Director had insufficient assets to respond to the IT Claim. However, the Director held a Professional Indemnity insurance policy with AIG Australia Pty Ltd (**AIG**) (**Policy**), which entitled the Director to an indemnity in respect of any IT Claim brought by a Liquidator.

The Liquidator filed an application to court for leave to commence proceedings against the Director (given the stay on proceedings as a result of the bankruptcy) with a view to seeking recovery of the IT Claim under the Policy. As the Bankruptcy Trustee was unfunded, they consented to AIG assuming conduct of defence against the proceedings on their behalf.

After provision of various documents from the Liquidator to AIG, AIG requested that a mediation take place with the Liquidator in order to reach a cost effective resolution. This was scheduled to occur on 25 February 2021.

Shortly before mediation, the Liquidator proposed a final settlement offer to AIG of \$700,000.

AIG rejected this offer, and made a counter offer of \$75,000. After extensive negotiation, a final settlement of \$220,000 was agreed, for the following reasons:

- AIG do not believe that the Policy should respond for the following reasons:
 - they claim that the Director did not make the appropriate disclosures required when commencing the Policy; and
 - the Director was automatically discharged from bankruptcy and AIG assert that the IT Claim cannot survive the discharge of bankruptcy.

Accordingly, any proceedings brought against AIG would be contested.

- Contested proceedings would involve resolution of a number of complex issues, including:
 - application for leave to commence proceedings against the Director (now discharged bankrupt);
 - the quantification of the Liquidator's insolvent trading claim;
 - the Liquidator's ability to access the Policy which includes:
 - the Director's proper disclosure (and alleged non-disclosure) of Massena's financial circumstances at the time of renewing the Policy; and
 - the Director's and the Bankruptcy Trustee's ability to call on the Policy.
 - the Liquidator's ability to commence the insolvent trading claim against the bankrupt estate.

The estimated costs to run such proceedings would be between \$500,000 to \$800,000. The net return after costs, assuming the full claim is accepted would only be \$200,000 to \$500,000.

- The settlement sum of \$220,000 is within the expected recovery range if proceedings were brought and a successful outcome was secured.
- The Liquidator is unfunded and exposed to the usual risks of litigation. Accordingly, proceedings would need to be conducted 'on spec' by both the Liquidator and legal representatives, as litigation funding is unlikely to be obtained (or be cost effective) for this type of claim.

The settlement sum of \$220,000 was received into the liquidation bank account on 29 April 2021.

3 Return to Creditors

The Liquidators are in a position to declare and pay a dividend to priority creditors of circa 12c/\$ in the dollar, as set out in the table below.

Estimated return to creditors		
\$'000	Notes	\$'000
Non-circulating assets		
Westpac Group - asset realisations		2,966
<i>Less: Appointees' fees and disbursements (paid)</i>		(305)
<i>Less: Costs of realisation</i>		(119)
<i>Less: Westpac Group debt</i>		(3,843)
Non-circulating assets available (after direct security) to priority creditors	1	nil
Circulating assets		
Stock		34
Insurance refund		25
Investigation funding from secured creditor		23
Licence Agreement		40
Other refunds		6
Liquidators' recoveries - Insolvent trading claim	2	220
Liquidators' recoveries - Unfair preferences	2	380
<i>Less: actual Appointees' fees and disbursements (paid)</i>		(332)
<i>Less: actual Appointees' fees (approved but unpaid)</i>		(100)
<i>Less: approval sought for Appointee fees</i>	3	(79)
<i>Less: actual costs of realisation</i>		(133)
Circulating assets available to priority creditors		85
Priority employee creditors		
Employee Entitlements	4	(672)
Deficiency to priority creditors		(587)
Unsecured creditors		
Westpac/St George (estimated deficiency from non-circulating assets)		(1,301)
Other unsecured creditors		(2,117)
Estimated total deficiency to creditors		(3,943)
Estimated dividend to unsecured creditors (c/\$)		nil

Notes:

1. Westpac held valid and enforceable first ranking security over all of Massena's non-circulating assets. Accordingly, the net proceeds from these assets were distributed to Westpac and are not available to priority or unsecured creditors.
2. Recoveries for unfair preference claims and the insolvent trading claim were detailed at section 2.1 and 2.2 above.
3. In the accompanying Remuneration Approval Report, I have sought approval for remuneration of \$78,955 for the period 15 May 2019 to finalisation of the appointment.
4. The total claims for priority creditors are subject to final adjudication.

4 Dividend to priority creditors

I am pleased to advise that I expect to be able to provide formal notice of my intention to declare a first and final dividend to priority creditors of Massena pursuant to section 556(1)(e) of the Act, in respect of wages and superannuation in the next 2 months. As outlined at section 3 above, I expect the rate of this dividend will be circa 12 cents in the dollar however this is subject to final adjudication of claims and there being no other unexpected developments.

I am unable to make this declaration now, as I am still considering the Australian Taxation Office (ATO) proof of debt for superannuation guarantee charge. I will write to the relevant creditors separately to inform them once this declaration has been made to advise them what actions, if any, they need to take.

5 Liquidators' remuneration

I enclose a detailed report on my remuneration, called a Remuneration Approval Report.

In accordance with the Remuneration Approval Report, I will request creditor approval for my remuneration at the meeting of creditors on 10 June 2021 for the period 15 May 2019 to finalisation of the liquidation, being (i) actual time incurred but not yet approved by creditors, and (ii) my future remuneration.

An information sheet on approving remuneration of an external administrator is provided for your information.

6 Summary of receipts and payments

A summary of Massena's receipts and payments for the period 11 May 2018 to 21 May 2021 is set out in the table below:

Receipts and payments for the period 11 May 2018 to 21 May 2021		\$
Opening balance		153,513
Receipts		
Bank fee charges (net of refund)		229
Department of Transport refund		6,139
GST Received		5,441
Settlement of insolvent trading claim		220,000
Unfair preference claim		30,000
Total receipts		261,809
Payments		
Liquidators' fees		(28,870)
Document storage		(2,435)
Legal fees		(128,873)
Total payments		(160,178)
Cash at bank as at 21 May 2021		255,143

7 What happens next & where can you get more information?

I will proceed with the liquidation, which will include:

- admitting proofs of debt in advance of the dividend to priority creditors;
- paying the dividend to priority creditors; and
- attending to finalisation and retirement.

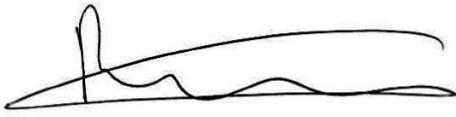
I expect to have completed this liquidation within 3 to 6 months.

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors; and
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Amber Andre on (08) 6363 7665.

Date: 26 May 2021

A handwritten signature in black ink, appearing to read 'Rob Kirman', written over a light grey horizontal line.

Rob Kirman
Liquidator

Enclosures:

1. Remuneration Approval Report
2. Form 529 - Notice of Meeting of Creditors
3. Form 532 - Appointment of Special Proxy
4. ARITA Information Sheet – Approving remuneration of an external administrator