



CIMC Rolling Stock Australia Pty Ltd (In Liquidation)

ACN 083 334 696

(RSA)

Update to Creditors

We refer to our appointment as Liquidators of RSA on 3 May 2018 and our Statutory Report to Creditors dated 2 August 2018 (**Statutory Report**) regarding the winding up of RSA. Set out below is a further update in respect of the winding up.

Pre-appointment debtors

- Realisations from RSA's pre-appointment debtors as at 2 August 2018 totalled \$28,904. No further debtor recoveries have been made since that time.
- A number of pre-appointment debtors that were recorded in RSA's books and records dispute that amounts are owed by them to RSA, claiming RSA has not complied with pre-appointment rolling stock manufacturing and sale agreements between RSA and the debtor.
- Based on the issues raised by those debtors, including material set-off claims, we do not consider any further amounts would be recoverable from them and we do not consider it would be in creditors' interests to invest further time or funds to pursue those debtors.

Real Property

- RSA's commercial property in Williamstown, Victoria remains listed for sale with a marketing agent. We have worked with that agent to advance a number of inquiries and offers, however, no offer capable of acceptance have been received from any party to date.
- We have worked with our legal advisors to amend the contract for the property to enable offers to be made subject to finance, as interested parties had advised us this was required by them.

Work-in-progress

- The Liquidators have received a demand from legal representatives of the Chinese Consortium of Companies (**CCC**) for the payment of USD 1.6m in respect of 20 ballast wagons that had been manufactured for RSA, but not yet paid for by RSA.
- The Liquidators do not have funds to pay the outstanding monies claimed by CCC to secure release and delivery of the wagons to Australia. There are also significant commercial risks associated with importing and then attempting to realise the wagons as there is no current customer to whom they could be immediately sold. Accordingly, the Liquidators have determined that it would not be in the interest of RSA's creditors to take any further steps regarding the undelivered wagons.

Plant and equipment

- The Liquidators reached an agreement for the sale of various plant and equipment that was stored at a third-party site in Victoria. Proceeds (after storage costs) of \$3,940 were received.
- Separately, a prototype railway freight wagon stored at third party premises in South Australia was offered for sale on an "as is where is" basis. No interest was received for the asset and the Liquidators determined it was not in the best interests of RSA's creditors to incur additional costs in respect of the asset, as the asset had been assessed to have only scrap or limited value. Accordingly, I formally disclaimed that asset on 29 November 2018.



Investigations

- We have continued our investigations into the records and affairs of RSA. Based on these investigations, we have formed the view that RSA was insolvent from at least 31 December 2016, which was approximately 16 months prior to our appointment, and perhaps from an earlier date.
- We have requested additional information from third parties to allow us to finalise our investigations into potential insolvent trading and/or potential breaches of director's duties.
- We have not yet finalised our view whether there may be a claim against any directors of RSA for insolvent trading, nor have we formed a view as to whether there is any prospective recovery from any insolvent trading claims that could be made against any directors of RSA.

Unfair preference claim - Australian Taxation Office (ATO)

- Based on our investigations, payments totalling \$590,746.35 were made to the ATO within the six month period prior to the Liquidators' appointment. These payments were made after dealings between RSA and ATO, including a repayment plan for RSA to pay outstanding debts to the ATO.
- The Liquidators have formed the view that the ATO knew, or ought to have suspected, that RSA was insolvent at the time the payments were received by the ATO.
- We have lodged a claim with the ATO for the repayment of the monies that we consider were unfair preferential payments. We are continuing to liaise with the ATO in respect of the claim.

Unfair preference claim - Freightliner Australia Pty Ltd (Freightliner)

- We have progressed our investigations regarding the Asset Transfer and Settlement Deed (**Settlement Deed**) executed by RSA and Freightliner on 22 December 2017, which resulted from arbitration proceedings that took place between the parties during early parts of 2016.
- The Settlement Deed resulted in RSA transferring the ownership of assets with a net book value of \$2.8m and payments totalling \$493,894 to Freightliner in the six month period prior to the Liquidators' appointment.
- The Liquidators consider that the transfer of assets and payment of monies to Freightliner represent an unfair preference to Freightliner, as Freightliner knew, or ought to have suspected, that RSA was insolvent at the time of the transactions, or would become insolvent as a result of the transactions.
- We are currently preparing correspondence to Freightliner to require that it repay the funds and return the assets.

Recoveries from investigations

- The Liquidators have invested substantial time investigating the affairs of RSA and understanding the various transactions between RSA and the parties above, in addition to analysing RSA's financial record keeping and accounting policies, to determine the actual extent of RSA's financial position over the accounting periods prior to the Liquidators' appointment.
- If recoveries are made in respect of the preferential payment claims outlined above, or material recoveries from any insolvent trading claims against directors of RSA, those recoveries will likely materially increase the expected return to RSA's unsecured creditors.
- However, the timing and amounts that may be recovered from these claims are uncertain, and given the quantum of the preferential payment claims, those parties may dispute the claims. The Liquidators will therefore continue to monitor whether it remains in the interests of RSA's creditors to incur additional costs in pursuing these preferential payment claims.



Approved Liquidators' remuneration

Liquidators' remuneration for actual and forecast costs of the liquidation to 2 November 2018, was approved by resolutions of the creditors on 23 August 2018. The Liquidators' remuneration comprised:

- retrospective remuneration of \$163,278 (GST exclusive) for the period 3 May 2018 to 20 July 2018; and
- prospective remuneration for the period 21 July 2018 to 2 November 2018 in the amount of \$70,000 (GST exclusive).

The remuneration for the period 3 May 2018 to 20 July 2018 was subsequently paid in accordance with the approval provided by creditors.

In our Statutory Report, we advised that the Liquidators intended to draw the approved prospective remuneration, up to the approved limit of \$70,000, following:

- the completion of further asset realisations; and
- completion of further substantive investigations into potential insolvent trading and preferential payments.

In continuing our investigations, our costs exceeded the \$70,000 approved limit from 5 October 2018, however we have continued to invest significant time to sufficiently complete our investigations, particularly in respect of the preferential payment investigations.

In accordance with the approval provided by creditors, we now intend to draw the approved remuneration of \$70,000. Any additional remuneration for this period will be subject to further creditor approval.

Future remuneration

In our Statutory Report we estimated that the further remuneration to complete the liquidation (in addition to that approved by creditors already) was estimated to be \$66,722 (excluding GST). This estimate may change, depending on the level of dispute raised by the various parties referred to above, which may have a significant effect on this estimate. For example, it may change:

- if legal action is required to recover either voidable transaction from the ATO or Freightliner, and/or insolvent trading claims from directors of RSA; and
- the work necessary to adjudicate on certain creditor claims for voting and/or dividend purposes.

We propose to delay seeking any further remuneration approval until it is clearer to us what level of compliance or dispute the parties will raise to the above mentioned claims so that we can provide a more precise estimate of the likely total cost of the liquidation.

Proofs of debt

Subsequent to our Statutory Report, we have received additional Proofs of Debt from creditors. To date, Proofs of Debt lodged by potential creditors of RSA total approximately \$11.1m.

Mr Bradley Usher, a director of RSA responsible for day to day management of RSA's business, disputes the validity of number of these claims lodged by creditors. A number of those claims are for material amounts.

It is therefore likely that prior to a dividend being declared for unsecured creditors, the costs to review and adjudicate on Proofs of Debt may exceed our previous estimate.

Further update

We propose to issue a further report to creditors before the end of February 2019, by which time we anticipate we will be able to provide a further substantive update regarding the claims referred to above.



Queries

If you have any queries, please contact Patrick Cashman on (07) 3333 9828. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors/cimc-rolling-stock-australia-pty-ltd/.

Dated: 6 November 2018

Anthony Connelly
Liquidator