

Milbrooke Construction Limited - in liquidation

Request for additional fees: Information for creditors

23 May 2022

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1. Abbreviations and definitions

The following table shows the abbreviations and insolvency terms that may be used during this report:

Abbreviation or definition	Meaning
Administrator	Kevin Lucas of Lucas Johnson
Committee	A committee of three creditors; Moreton C Cullimore (Gravel) Limited Creoda Limited Byfield Services Limited
Company	Milbrooke Construction Limited - in Liquidation
Firm	PricewaterhouseCoopers LLP
HMRC	HM Revenue & Customs
IA86	Insolvency Act 1986
IR16	Insolvency (England and Wales) Rules 2016
Joint Liquidators / we	Ross David Connock and Zelf Hussain
Liquidation	Creditors' Voluntary Liquidation
Ongoing Costs Claim	Pre-appointment claim for costs against a customer
Preferential creditors	Generally, claims for unpaid wages earned in the four months before the insolvency up to £800, holiday pay and unpaid pension contributions in certain circumstances
Pythagoras	Pythagoras Capital Limited
Remuneration Report	Remuneration Report: Initial Information to Creditors including Fees Estimate dated 11 April 2018
Secured creditors	Creditors with security in respect of their debt, in accordance with Section 248 IA86
Unsecured creditors	Creditors who are neither Secured nor Preferential

This report has been prepared by Ross David Connock and Zelf Hussain as Joint Liquidators of the Company, solely to comply with the Joint Liquidators' statutory duty to report to creditors under IR16 on the progress of the Liquidation, and for no other purpose. It is not suitable to be relied upon by any other person, or for any other purpose, or in any other context.

This report has not been prepared in contemplation of it being used, and it is not suitable to be used, to inform any investment decision in relation to the debt of or any financial investment in the Company.

Any persons choosing to rely on this report for any purpose or in any context other than under IR16 do so at their own risk. To the fullest extent permitted by law, the Joint Liquidators do not assume any liability in respect of this report to any such person.

Please note you should read this report in conjunction with the Joint Liquidators' previous reports issued to the Company's creditors, which can be found at www.pwc.co.uk/milbrooke. Unless stated otherwise, all amounts in this report and appendices are stated net of VAT.

Ross David Connock and Zelf Hussain have been appointed as Joint Liquidators of the Company. Both are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales. The Joint Liquidators are bound by the Insolvency Code of Ethics which can be found at: <https://www.gov.uk/government/publications/insolvency-practitioner-code-of-ethics>

The Joint Liquidators may act as controllers of personal data as defined by UK data protection law depending upon the specific processing activities undertaken. PricewaterhouseCoopers LLP may act as a processor on the instructions of the Joint Liquidators. Personal data will be kept secure and processed only for matters relating to the Joint Liquidators' appointment. Further details are available in the privacy statement on the PwC.co.uk website or by contacting the Joint Liquidators.

2. Background

2.1 Purpose of this advice to creditors

We previously provided creditors with our Remuneration Report: Initial Information to Creditors including Fees Estimate dated 11 April 2018 and this document was prepared to seek the approval of the basis of our fees and agree the estimate of our fees that could be drawn based on the anticipated work required during the Liquidation. A copy of the Remuneration Report can be found on the case website at www.pwc.co.uk/milbrooke.

The basis of our remuneration was approved by the Committee as our fee approving body on a time costs basis. The fee estimate given in our Remuneration Report acts as a cap on the amount of fees we can take, without the agreement of the fee approving body, which in this case is the Committee. As explained in our subsequent progress reports, our time costs have exceeded this fee estimate and therefore the purpose of this document is to inform creditors of our intention to seek the Committee's approval to draw additional fees of £33,050. This represents a significant discount on our actual time costs incurred.

Later in this report, we will go into further detail around the circumstances that have caused us to exceed our initial fees estimate, and why incurring this time was in the best interest of creditors as a whole. We will set out the additional work carried out and the reasons why this work was necessary. All of the Company's assets have now been realised and we are in the process of declaring the second and final dividend to Unsecured creditors, therefore we do not expect any further request after this, to seek further fees.

2.2 Action required by you

The following table gives our current estimates on the likely return for the various classes of creditors.

Table 1 – Dividend prospects

Class of creditor	Forecast return	Timing
Secured creditor(s)	N/A	N/A
Preferential creditors	100p in the £	Paid
Unsecured creditors	1.62p in the £ 5.38p in the £ Total return of 7p in the £	Paid 23 January 2019 To be paid by 6 June 2022

This report is for your information only. The Committee has the responsibility of approving all fee requests made by the Joint Liquidators.

Creditors' rights

You can find information on Joint Liquidator's fees and your rights at:

<https://www.icaew.com/-/media/corporate/files/technical/insolvency/creditors-guides/2017/liquidations-creditor-fee-guide-6-april-2017.ashx?la=en>

2.3 How fees are calculated

As explained, the basis of our fees had already been agreed on a time costs basis. We believed a time costs basis was appropriate in this case because it ensures that creditors are only charged for work that is performed. In the next section, we include details of our additional fees request.

Following the realisation of the last asset of the Company, and having incurred greater than anticipated costs, we consider this final fee request to be appropriate based on the work we have carried out, the value of assets that have been realised and the final return to Unsecured creditors.

3. Our revised fees request

3.1 Summary

This section provides the following information:

- Summary of the time incurred to date with a comparison to the original fees estimate;
- Details of the further work we have undertaken that was not anticipated in our previous remuneration report;
- The hourly rates we charged for each part of that work;

When we prepared our initial fees estimate, which was of course based on what we knew at the time, we estimated that the Liquidation would last up to 2 years and there would be one dividend payment to Unsecured creditors.

However, the Company has remained in Liquidation for almost 5 years. When it became apparent that the liquidation would last longer than originally anticipated, the Liquidators considered it appropriate to pay an interim dividend to Unsecured creditors, and this was paid in January 2019. In our original fee estimate we had anticipated only incurring the costs of one first and final dividend.

The main reason we remained in office longer than expected was to recover value from the Ongoing Costs Claim, which took far longer than anticipated to conclude due to restrictions imposed as a result of Covid-19 and the reluctance on the part of the Ongoing Costs Claimant to reach a pre-trial settlement, despite being offered on several occasions. As a result we were required to prepare for and participate in a three day trial which eventually concluded in our favour. Creditors have been informed of the work we have done in respect of this claim in our periodic progress reports and we confirmed to creditors in our last report that the Court ordered the defendant to pay a further £101,094 before the end of 2021.

During our period in office, we also retained the Administrator's agents to recover the Company book debts. They advised us that the book debt recoveries were likely to be minimal until the two year defect period had expired which was typical for residential construction. However, when it became clear that the Ongoing Costs claim would take longer than anticipated and our agents advised us that further book debt recoveries were unlikely, we instructed Pythagorus on a percentage of recovery basis to attempt to recover the remaining ledger.

These delays have resulted in the liquidation process continuing for far longer than originally anticipated. Since we were appointed as Joint Liquidators, we have incurred collective time costs of £256,755 to 15 May 2022 (see the following table on the next page). This is £153,804 over the initial fees estimate we provided of £102,951 within our Remuneration Report 1 dated 11 April 2018.

As will be noted from Table 3, virtually all categories of work type within the Liquidation have exceeded our original estimate, this is down to the additional work needed in pursuing the Ongoing Costs Claim and the extended life span of the Liquidation.

However, we intend to cap our additional fees request at £33,050. The reason for this is that the assets of the Liquidation are limited and our intention is to ensure creditors receive 7p in the £, in line with the estimated maximum dividend we have previously reported to creditors.

The next two tables show a summary of our time costs incurred since we last reported to creditors and a comparison of our total time costs to our initial fees estimate.

Table 2 – Time costs

Aspect of assignment	Partner (Hrs)	Director (Hrs)	Senior Manager (Hrs)	Manager (Hrs)	Senior Associate (Hrs)	Associate (Hrs)	Total (Hrs)	Time cost £	Average hourly rate £
1 Accounting and treasury	-	-	0.05	0.65	3.15	3.75	7.60	2,767.00	364.08
2 Assets	-	0.75	-	10.45	5.80	0.05	17.05	8,514.00	499.35
3 Creditors	-	-	5.40	2.95	24.30	0.60	33.25	15,428.00	464.00
4 Creditors committee	-	-	1.00	9.85	12.20	-	23.05	10,985.00	476.57
5 Statutory and compliance	-	0.50	1.95	4.05	12.55	0.75	19.80	9,267.00	468.03
6 Strategy and planning	1.00	0.25	0.40	8.90	8.25	-	18.80	9,641.00	512.82
7 Tax and VAT	-	-	2.90	1.75	5.15	5.50	15.30	7,909.00	516.93
Total for the period	1.00	1.50	11.70	38.60	71.40	10.65	134.85	64,511.00	478.39
Brought forward at 28 August 2021							619.35	192,244.45	
Total							754.20	256,755.45	

Table 3 – Comparison of time costs compared to original fees estimate

Aspect of assignment	Total hours	Total time cost £	Average hourly rate £	Initial estimate £	Variance £
Accounting and treasury	57	14,135	248	6,002	(8,133.00)
Assets	75	29,192	389	8,915	(20,277.00)
Creditors	205	60,986	297	32,579	(28,407.00)
Creditors committee	90	33,269	369	20,135	(13,134.00)
Employees and pensions	1	428	428	440	12.00
Investigations	6	1,932	322	1,768	(164.00)
Statutory and compliance	124	41,969	338	17,718	(24,251.00)
Strategy and planning	92	38,176	416	5,740	(32,436.00)
Tax and VAT	104	36,668	353	9,654	(27,014.00)
Total for the case	754	256,755	340	102,951	(153,804.00)

3.2 Work we have undertaken

The following table provides details of the work we have done that was not expected at the time our initial fees estimate was produced. These tasks were required either to increase the asset realisations or as a result of remaining in office as Joint Liquidators.

Table 4 – Work we have and are undertaking

Category of work	General description	Work included	What, if any, financial benefit the work provided to creditors OR whether it was required by statute
Accounting and treasury	Management of funds	<ul style="list-style-type: none"> Regular bank reconciliations and maintenance of the funds held for the additional 3 years after we expected to remain in office 	<ul style="list-style-type: none"> To ensure the proper management of funds that will in due course be distributed to creditors
Assets	Debtors	<ul style="list-style-type: none"> Instructing Pythagorus on a percentage of realisations basis to continue the recovery of the book debt ledger resulting in £42k realisation into the liquidation 	<ul style="list-style-type: none"> To realise the maximum funds to be distributed to the creditors

	Litigation	<ul style="list-style-type: none"> Regular liaison with our solicitors regarding the progress of the Ongoing Costs Claim Reviewing settlement offers and performing cost benefit analysis to determine our strategy Obtaining a successful outcome from the final hearing resulting in a £101k realisation into the liquidation 	
Creditors	Unsecured claims	<ul style="list-style-type: none"> Preparing correspondence advising of intention to declare second and final dividend Calculating dividend rate and preparing dividend file Preparing correspondence to creditors announcing declaration of dividend Preparing and paying distribution at the maximum level of the original dividend estimates 	<ul style="list-style-type: none"> To ensure the correct distribution of funds
Creditors committee	Creditors' committee	<ul style="list-style-type: none"> Providing the Committee with regular updates, particularly with regards to the customer costs claim 	<ul style="list-style-type: none"> To inform creditors of matters in their interest
Statutory and compliance	Remuneration report	<ul style="list-style-type: none"> Preparing and circulating to creditors the additional fees request 	<ul style="list-style-type: none"> Statutory duties of the Joint Liquidators
	Case reviews	<ul style="list-style-type: none"> Conducting case reviews every six month for the additional 3 years in Liquidation 	
	Progress reports and extensions	<ul style="list-style-type: none"> Preparing and issuing 3 additional periodic progress reports to creditors and the Registrar 	
Strategy and planning	Strategy and planning	<ul style="list-style-type: none"> Regular reviews of potential recoveries compared with the costs of remaining in Liquidation 	<ul style="list-style-type: none"> To efficiently progress the case and plan for closure
Tax & VAT	Tax	<ul style="list-style-type: none"> Preparing and submitting tax returns for additional 3 years in Liquidation Seeking clearance from HMRC prior to payment of the Unsecured dividend 	<ul style="list-style-type: none"> Statutory duties of the Joint Liquidators
	VAT	<ul style="list-style-type: none"> Review of taxable treatment of assets realised Continued submission of VAT returns and VAT 426s to recover VAT receivable 	

Included in the above table are tasks that we must perform that may not directly benefit creditors financially. These typically relate to fulfilling obligations imposed by statute or regulatory bodies.

3.3 Our time charging policy and hourly rates

The time we charge to the Liquidation is by reference to the time properly given by our staff and us in attending to matters arising.

It is our policy to delegate tasks to appropriate members of staff considering their level of experience and any requisite specialist knowledge, supervised accordingly, so as to maximise the cost effectiveness of the work performed. Matters of particular complexity or significance requiring more exceptional responsibility are dealt with by senior staff or the Joint Liquidators personally.

Set out on the next page are the relevant maximum charge-out rates per hour worked for the grades of staff actually, or likely to be, involved on this assignment.

All staff who work on this assignment (including cashiers, support and secretarial staff) charge time directly to the assignment and are included within any analysis of time charged. Time is charged by reference to actual work carried out on the assignment in six minute units. The minimum time charged is three minutes (i.e. 0.05 units). There has been/will be no allocation of any general costs or overhead costs. These rates will apply to each part of our work.

Specialist departments with our Firm, such as Tax, VAT, Property and Pensions are also used where their expert advice and services are required. Such specialist rates do vary but the figures below provide an indication of the maximum rate per hour.

Table 5 – Charge-out rates

With effect to 30 June 2022 Grade	Maximum rate per hour (£)	Specialist maximum rate per hour (£)
Partner	875	1,680
Director	740	1,540
Senior Manager	625	1,130
Manager	525	860
Senior Associate	425	640
Associate	280	400
Support staff	130	145

In common with all professional firms, our hourly rates have increased from time to time over the period of the liquidation (for example to cover annual inflationary cost increases). Our annual progress reports have detailed the rate increases since our initial Remuneration Report 1.

4. Notes and assumptions

4.1 Fees estimate

We have assumed that this will be our final request for fees and that the liquidation will be brought to an end after the payment of a second and final distribution to unsecured creditors.

4.2 Associates

The Joint Liquidators have no business or personal relationships with parties responsible for approving remuneration or who provide services to the Joint Liquidators in respect of the appointment where the relationship could give rise to an actual or perceived conflict of interest.

All transactions are on a purely commercial basis and parties have been chosen based on their expertise in accordance with the needs of the Liquidation.