

Estate No. 11-2674775  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
NATIONAL IMPORTERS CANADA LTD.**

ORDINARY ADMINISTRATION

**TRUSTEE'S PRELIMINARY REPORT TO CREDITORS**

**BACKGROUND**

National Importers Canada Ltd. (“**NICL**”, the “**Company**”) was incorporated in British Columbia on January 1, 2006 as a result of the amalgamation of two other corporate entities. The Company’s principal was David Dueck who passed away in the year prior to the Company’s bankruptcy, and Ryan Preddy was NICL’s Director at the time that the Company made an assignment in bankruptcy. Mr. Preddy resigned immediately afterward.

An organization chart provided by management indicates NICL is owned by National Importers Inc. (“**NII**”), an entity also controlled by Mr. Dueck.

NICL was in the business of importing and distributing food (dry goods) which included private label and represented brands. NICL’s inventory was typically sold to larger warehouse accounts and not sold directly to stores. NICL operated from leased offices and warehouses located in Ontario and Richmond, BC. We are advised that NICL lost the representation of certain key brands a number of years ago, and due to this factor and market pressure from both suppliers and customers, NICL had not been operating profitably for approximately eight (8) years.

Grantham Holdings Ltd. (“**Grantham**”) and DCD Design & Manufacturing Ltd. (“**DCD**”) are companies related to NICL by common control. We are advised that in or around 2018/2019, Grantham stopped advancing the funds required for ongoing working capital. In or around July 2019, NICL owed approximately 37,000USD to HSBC Bank Canada (“**HSBC**”), guaranteed NII’s indebtedness to HSBC of approximately \$11.5MM, and had granted security to HSBC. In July 2019 HSBC made formal demands on the various loans. We are advised that Grantham and DCD obtained financing and paid the secured indebtedness which was owing to HSBC.

NICL and Elco Fine Foods Ltd. (“Elco”) which is another related entity, executed a general security agreement (“GSA”) dated August 26, 2019 with Grantham, which granted security over the assets owned by NICL and Elco to Grantham as security for obligations owing to Grantham. NICL, Elco, and DCD also executed a GSA dated August 26, 2019 which granted security over the assets owned by NICL and Elco to DCD as security for obligations owing to DCD. The Statement of Affairs reports that Grantham is owed approximately \$4,338,000 on a secured basis and a further \$7,957,065 on an unsecured basis, and that DCD is owed approximately \$2,956,000 on a secured basis. Grantham and DCD are NICL’s largest creditors.

We are also advised that management offered the business for sale, but a purchaser could not be secured. Accordingly, NICL wound up its operations which included the sale of existing inventory to various customers over the past year. As the leases for NICL’s premises in British Columbia and Ontario expired on August 31, 2020, NICL sold its remaining inventory to Grantham on September 1, 2020 for proceeds of \$678,234, which we are advised represents the cost of the inventory plus 5%. The sale proceeds were adjusted against the outstanding debt owing to Grantham.

We reviewed the Company’s financial information which was reported as part of NICL’s corporate income tax return for the fiscal year ending December 31, 2019. The Company reported a net loss from operations of approximately \$1,900,000. We also reviewed (management prepared) financial information for the current fiscal year to September 20, 2020, which reported a net loss of approximately \$695,000 and a retained deficit of approximately \$8,788,000.

NICL had sixty-nine (69) employees who worked for the Company in Ontario, Quebec, and British Columbia. All of the employees had been laid off prior to the date of bankruptcy.

### **Assignment in Bankruptcy**

Ultimately NICL was unable to meet all of its obligations and made a voluntary assignment in bankruptcy pursuant to the provisions of the *Bankruptcy and Insolvency Act* (“BIA”) effective September 24, 2020. MNP Ltd. was appointed Licensed Insolvency Trustee (“Trustee”) of the Bankrupt Estate, subject to creditor affirmation at the First Meeting of Creditors.

### **Receivership Proceedings**

On October 1, 2020, DCD appointed MNP Ltd. as receiver over the assets, property, and undertakings of NICL (the “Receiver”) pursuant to the GSA executed between NICL, Elco, and DCD and registered in the Personal Property Registry of British Columbia on October 21, 2019 under base registration number 841640L.

## ASSETS

According to the Statement of Affairs filed in the bankruptcy, the assets of NACL include:

### Statement of Affairs

Cash	\$ 2,000
Accounts Receivable (trade)	92,650
Due from Related Party	1
Warehouse Equipment	15,000
Furniture and Office Equipment	10,000
GST Refund	212,190
Refund of Security Deposits	105,000
Refund from Custom Broker	50,000
Photocopier Equipment	<u>4,811</u>
Total Assets	<u>\$ 491,652</u>

### Cash on Deposit and Funds Held in Trust

The Company maintained two bank accounts with the Toronto-Dominion Bank (“TD”). Banking records indicate that at the date of bankruptcy, one account had no funds on hand, and the other account had a balance of \$8,687. As all of NACL’s assets are subject to the registered security interests of Grantham and DCD, the Trustee wrote to TD advising of the bankruptcy and requesting that the account be frozen to protect the funds on hand.

Prior to the bankruptcy, NACL provided the Trustee with funds totaling \$25,000 in respect of anticipated costs and fees to administer the bankruptcy proceedings. The Trustee deposited these funds into the bankruptcy trust account.

### Accounts Receivable

The Company’s Statement of Affairs reported total trade accounts receivable of \$154,475, of which \$92,650 is considered collectable.

The Company’s records also indicate a debt due by NII, but as this company also filed an assignment in bankruptcy on September 24, 2020, there is no anticipated realization from this debt due to NACL.

### Warehouse Equipment

The Company owns various warehouse equipment which is valued on the Statement of Affairs at \$15,000. These assets are currently stored at DCD’s premises in Richmond, B.C.

## **Furniture and Office Equipment**

The Company also owns furniture and office equipment which is valued on the Statement of Affairs at \$10,000.

## **GST Refund**

The Statement of Affairs reports an anticipated GST refund of \$212,190.

## **Other Refunds**

The Statement of Affairs reports an anticipated refund of security deposits totaling \$105,000 which pertain to the Company's premises in BC and Ontario. The Statement of Affairs also reports an expected refund of \$50,000 from a custom broker.

## **Photocopier Equipment**

The Statement of Affairs also reports photocopier equipment, which is subject to a financing agreement with RCAP Leasing Inc. ("RCAP"). It is not expected that the realizable value of this equipment will exceed the amount owing to RCAP.

## **PROVABLE CLAIMS**

It is the duty of the Trustee to examine and satisfy itself as to the validity and priority of all claims filed in the Estate. Claims filed with the Trustee to date are as follows:

	<b>Statement of Affairs</b>	<b>Filed</b>
Secured creditors	\$ 7,298,235	\$ 4,517,873
Preferred creditors	\$ Nil	\$ Nil
Unsecured creditors	<u>\$ 10,847,937</u>	<u>\$ 8,711,493</u>
Total	<u>\$ 18,146,172</u>	<u>\$ 13,229,366</u>

As at the date of this report, there have been no significant differences between the claims listed on the Statement of Affairs and the claims filed to date with the Trustee.

## **SECURED CREDITORS**

### ***Canada Revenue Agency ("CRA")***

CRA has a "deemed trust" claim or property claim equal to the amount of payroll deductions withheld from employees' compensation and not remitted to CRA. This claim comes in priority

to the claims of all other creditors. We do not anticipate that there is a debt owing to CRA in relation to payroll withholdings; however, the Trustee has not yet confirmed this with CRA.

### ***Claims of Wage Earners***

Pursuant to Section 81.3(1) of the BIA, claims of employees who are owed wages in the six-month period preceding the date of bankruptcy are secured, to the extent of \$2,000, over the Bankrupt's current assets (cash and accounts receivable).

The Company's records indicate that the employees were paid wages and vacation pay at the time of their termination but were owed severance/termination pay at the date of bankruptcy. These claims are not eligible for security under Section 81.3(1). The Trustee has filed documentation pursuant to the *Wage Earners Protection Program Act* in relation to the sixty-nine employees who are owed severance pay.

### ***DCD Design & Manufacturing Ltd. ("DCD")***

As reported, NICL, Elco, and DCD executed a GSA dated August 26, 2019 which granted security over NICL's assets to DCD, notice of which was registered in the Personal Property Registry on October 21, 2019. The Statement of Affairs reports that DCD is owed \$2,955,519.

The Trustee has obtained an independent legal opinion that the security held by DCD is valid and enforceable as against NICL and a Trustee.

### ***Grantham Holdings Ltd. ("Grantham")***

NICL, Elco, and Grantham also executed a GSA dated August 26, 2019, which granted security over NICL's assets to Grantham, notice of which was registered in the Personal Property Registry on October 21, 2019. The Statement of Affairs reports that Grantham is owed \$4,337,905.

The independent legal opinion obtained by the Trustee also reported that the security held by Grantham is valid and enforceable as against NICL and a Trustee.

### ***RCAP Leasing Inc. ("RCAP")***

As reported, the Company owns photocopier equipment which is subject to specific security registered by RCAP. The Statement of Affairs reports that RCAP is owed approximately \$4,800.

## **PREFERRED CREDITORS**

### ***Employees***

Employees are afforded priority for wages and compensation that are not paid by virtue of Section 81 of the BIA. Claims of employees that relate to the period more than six months preceding the date of bankruptcy are general, unsecured claims and will share ratably with the claims of other creditors. We do not anticipate any preferred claims from employees.

### ***Landlords***

As reported, NICL operated from leased warehouses located in Ontario and British Columbia, and the leases expired on August 31, 2020. The Company expects to receive a refund of the security deposits previously paid to the Landlords.

## **UNSECURED CREDITORS**

The Statement of Affairs reports total claims of unsecured creditors of approximately \$17,654,520, including the estimated unsecured deficiency claims of secured creditors. Ultimately the amounts owing to unsecured creditors will be based on proofs of claim filed and admitted by the Trustee.

## **SALE OF ASSETS**

The Receiver, on behalf of DCD, will take steps to realize upon the various assets that are subject to the registered security.

## **OTHER MATTERS**

### ***Books and Records***

The Trustee has in its possession various records which are also available to the Receiver during the administration of the receivership.

### ***Insurance***

The Trustee confirmed that insurance coverage was in place as part of an overall policy insuring Grantham, DCD, NII, NICL and others. The insurance policy is due to expiry on May 31, 2021.

### ***Legal Proceedings***

The Trustee has not commenced any legal proceedings, but as reported above, the Trustee obtained an independent legal review of the registered security held in favour of DCD and Grantham.

### ***Conservatory and Protective Measures***

At the date of bankruptcy, NICL's remaining personal property and records were in storage at DCD's premises. Accordingly, the Trustee did not change locks at the date of bankruptcy.

The Trustee notified TD of the bankruptcy to protect the funds on deposit.

### ***Preferences, and Transactions at Under Value***

The Trustee will review the Company's books and records preceding the date of bankruptcy in order to ascertain whether or not any preferential payments and/or reviewable transactions have occurred within the last three months or, where related parties are involved, within the last twelve months.

### **Directive 5R – 3<sup>rd</sup> Party Guarantee**

As all of NICL's assets are subject to registered security interests, Grantham has indemnified the Trustee for its professional fees and the various costs incurred in administering the bankruptcy proceedings.

### **ESTIMATED REALIZATION**

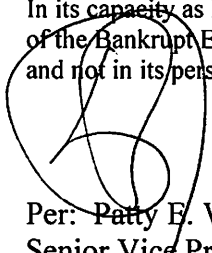
Given the estimated value of NICL's assets and the secured debt owing to Grantham and DCD, we do not anticipate that there will be any funds available for the claims of unsecured creditors.

This concludes the Trustee's Preliminary Report to Creditors.

DATED at the City of Vancouver, in the Province of British Columbia, this 14<sup>th</sup> day of October, 2020.

### **MNP Ltd.**

In its capacity as Licensed Insolvency Trustee  
of the Bankrupt Estate of National Importers Canada Ltd.  
and not in its personal or corporate capacity

Per:  Patty E. Wood CPA, CGA, CIRP  
Senior Vice President