COURT FILE NUMBER	2001-05949
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ERNST & YOUNG INC., in its capacity as Court-appointed Receiver of the current and future assets, undertakings and properties of BOS Solutions Ltd., BOS Solutions Inc., BOS LeaseCo LLC, BOS Solutions Real Estate Inc., and BOS USHoldCo Inc.
PROCEEDING	IN THE MATTER OF THE RECEIVERSHIP OF BOS SOLUTIONS LTD., BOS SOLUTIONS INC., BOS LEASECO LLC, BOS SOLUTIONS REAL ESTATE INC., and BOS USHOLDCO INC.
DOCUMENT	**THIRD REPORT OF ERNST & YOUNG INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER** **September 28, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<u>**RECEIVER**</u> ERNST & YOUNG INC. 1000, 440 – 2nd Avenue S.W. Calgary, AB T2P 5E9 Peter Chisholm / Chris Keliher Telephone: (403) 206-5061 / (403) 206-5661 Email: peter.chisholm@ca.ey.com / christopher.keliher@ca.ey.com <u>**COUNSEL**</u> BLAKE, CASSELS & GRAYDON LLP 3500, 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Kelly J. Bourassa / Amanda G. Manasterski Telephone: (403) 260-9697 / (403) 260-9756 Email: kelly.bourassa@blakes.com / amanda.manasterski@blakes.com

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INTRODUCTION

1. Ernst & Young Inc. was appointed as receiver and manager (the "**Receiver**") of the property, assets and undertakings (the "**Property**") of BOS Solutions Ltd. ("**BOS Ltd.**"), BOS Solutions Inc. ("**BOS Inc.**"), BOS LeaseCo LLC ("**BOS LeaseCo**"), BOS Solutions Real Estate Inc. ("**BOS Real Estate**"), and BOS USHoldCo Inc. ("**BOS HoldCo**") (these companies are collectively referred to as the "**BOS Debtors**") pursuant to an Order (the "**Receivership Order**") of this Honourable Court dated May 4, 2020 (the "**Receivership Date**").

2. The Receivership Order authorized the Receiver, among other things, to carry on the business of the BOS Debtors, to sell, convey, transfer lease or assign the Property out of the normal course of business, subject to approval of this Honourable Court for any transactions exceeding $250,000 or aggregate multiple transactions exceeding $1,000,000, and to make such arrangements or agreements as deemed necessary by the Receiver.

3. On May 5, 2020, the Receiver obtained a temporary restraining order in the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the "**US Court**") in Case No. 20-32465 (DRJ), granting a stay of proceedings concerning the BOS Debtors and the Receiver, in its capacity as foreign representative of the BOS Debtors.

4. On May 19, 2020, the US Court also granted the Receiver's Expedited Petition for Recognition as a Foreign Main Proceeding and recognized the Receiver as the Foreign Representative.

5. The purpose of this third report (the "**Third Report**") of the Receiver is to provide this Honourable Court with the Receiver's update on:

   a) The activities of the Receiver since the Receivership Date, including a statement of receipts and disbursements for the period from the Receivership Date to September 22, 2020;

   b) The activities to be undertaken by the Receiver to complete the administration of the receivership proceedings;

   c) The Receiver's request for an Order authorizing and directing the Receiver to make distributions, subject to a holdback amount, from proceeds of sale of the Property to the Lending Syndicate (as defined below); and

   d) The Receiver's recommendations with respect to same.

TERMS OF REFERENCE

6. Capitalized terms not defined in this Third Report are as defined in the Receivership Order.

7. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

8. The BOS Debtors provide liquids-solids separation services in Canada and the United States. Such services are provided to the oilfield services industry and to other industrial undertakings, including supporting large-scale construction projects.

9. BOS Ltd. operates in Canada and owns the majority of the BOS Debtors' equipment. BOS Inc. operates in the United States and leases its specialized liquids-solids separation equipment from BOS Ltd.

10. As at the Receivership Date, the BOS Debtors conducted operations out of three offices in Canada (two in Alberta, one in Ontario) and five offices in the United States (two field offices in Texas, one field office in each of North Dakota and Pennsylvania, and a corporate office in Houston, Texas). The Debtors had approximately 20 employees in Canada (who were employed by BOS Ltd.) and approximately 181 employees in the United States (who were employed by BOS Inc.).

11. The BOS Debtors owed approximately USD$38.0 million and CAD$6.1 million to a syndicate of Canadian financial institutions (the "**Lending Syndicate**"), led by National Bank of Canada ("**NBC**") as administrative agent and a member of the Lending Syndicate.

12. In November 2019, prior to the appointment of the Receiver, the BOS Debtors underwent a broad sales process (the "**Initial Sales Process**") with Raymond James & Associates Inc. acting as the sale advisor. In March 2020, the BOS Debtors were negotiating a purchase and sale agreement (the "**Initial Draft PSA**") to sell the business of the BOS Debtors to a prospective purchaser arising from the Initial Sales Process. The proceeds to be paid pursuant to the Initial Draft PSA were expected to be sufficient to fully satisfy the indebtedness owing to the Lending Syndicate.

13. During Initial Draft PSA negotiations, the BOS Debtors' business was negatively affected by COVID-19 and the global oil price decline and, as a result, the prospective purchaser revised its

purchase price downwards. The revised purchase price was not acceptable to the BOS Debtors and the Initial Sales Process was effectively concluded in early April 2020.

14. Pursuant to an Order dated July 2, 2020 (the "**Sales Process Order**"), this Honourable Court approved the sales process and the retention of Ernst & Young Orenda Corporate Finance Inc. to act as the selling agent in the Sales Process. The Sales Process Order was recognized by the US Court pursuant to an Order dated July 6, 2020. The Sales Process had a final bid deadline of July 17, 2020 for binding offers.

15. The Receiver selected Stage 3 Separation, LLC ("**Stage 3**") as the successful bidder in accordance with the Sales Process and the Receiver entered into an asset purchase agreement (the "**Stage 3 APA**") to sell substantially all of the Property of the BOS Debtors to Stage 3. The Stage 3 APA is attached to the Second Report of the Receiver dated August 10, 2020 and was approved pursuant to an approval and vesting order of this Honourable Court dated August 19, 2020 (the "**Approval and Vesting Order**"). The Approval and Vesting Order was recognized pursuant to an Order of the US Court dated July 26, 2020.

16. For additional background on the BOS Debtors, please refer to the Receiver's website, www.ey.com/ca/bossolutions.

ACTIVITIES OF THE RECEIVER SINCE THE RECEIVERSHIP DATE

Closing Sale of Property to Stage 3

17. In accordance with the Stage 3 APA, the Receiver and Stage 3 performed counts of the BOS Debtors' equipment and inventory prior to the Closing Date (defined below). The Receiver and Stage 3 agreed that the value of the missing equipment and inventory did not exceed the threshold of 5% such that a purchase price adjustment was required.

18. An interim statement of adjustments was prepared by the Receiver in advance of the closing of the transaction and no purchase price adjustments were identified.

19. The sale of the Property to Stage 3 closed on August 31, 2020 ("**Closing Date**") in accordance with the Stage 3 APA. The Receiver received sales proceeds of approximately CAD$14.00 million (USD$10.44 million), representing:

    a) The base purchase price of USD$10.3 million;

b) Purchase price of USD$140,562 to buy-out BOS Inc.'s vehicle leases in the United States; and

c) Purchase price of USD$1,980 to buy-out BOS Ltd.'s vehicle leases with Element in Canada.

20. In accordance with the Stage 3 APA, the Receiver is holding US$1.0 million (the "**Stage 3 Hold Back**") as a hold back for 90 days post-closing for any losses incurred by Stage 3 associated with the assets and liabilities of the BOS Debtors excluded from the Stage 3 APA and any breach of the Receiver's covenants or its agreement to sell the Property free and clear of all encumbrances and claims.

21. Pursuant to the Stage 3 APA, the final statement of adjustments must be completed by Stage 3 and delivered to the Receiver within 60 days of the Closing Date.

22. Other than accounts receivable associated with revenue earned up to the Closing Date, the closing of the Stage 3 APA represents the disposition of all of the BOS Debtors' Property that the Receiver has determined would provide a positive recovery to the receivership estate.

Human Resource Matters

23. In conjunction with the closing of the Stage 3 APA, 65 of the BOS Debtors' employees accepted employment with Stage 3 and ceased to be employees of the BOS Debtors on the Closing Date. The Receiver terminated the employment of an additional 17 employees with the BOS Debtors. These employees were either not offered employment with Stage 3 or declined to accept employment with Stage 3.

24. The Receiver has retained ten employees for an interim period to assist with winding down the receivership and services to be provided by the Receiver under the TSA (defined below). These employees include:

a) finance employees and contractors assisting with the preparation of August 2020 billings, collection of outstanding accounts receivable, settlement of operating expenses incurred during the receivership proceedings and preparing tax returns;

b) human resource employees assisting with payroll, statutory filings required in connection with employee terminations and winding down the BOS Debtors' retirement savings programs in Canada and the United States; and

c) operational employees assisting with the delivery of equipment, completing active jobs and compiling supporting documents such as field tickets to submit August billings.

25. In accordance with the Stage 3 APA, the Receiver will be vacating all the BOS Debtors' office and storage locations in Canada and the United States within 60 days of the Closing Date.

Transitional Services Agreement

26. In accordance with the Stage 3 APA, the Receiver and Stage 3 negotiated and entered into a transitional services agreement (the "**TSA**") whereby each party will provide certain limited services for up to 60-days post-Closing Date. These services primarily relate to accounting and human resource services, access to the BOS Debtor's IT systems, and operational functions provided by certain employees not transferred to Stage 3 and retained by the Receiver on an interim basis.

27. The Receiver and Stage 3 have agreed that the direct costs associated with these services shall be tracked and reimbursed by the party benefiting from the services received from the other party. The Receiver shall charge Stage 3 with a service fee of 15% of total charges to account for the cost of the Receiver associated with administrating the TSA.

Review of Lending Syndicate's Security

28. The Receiver has received independent security reviews from its Canadian and US legal counsel indicating that the security granted by the BOS Debtors to the Lending Syndicate creates a valid and enforceable security interest in the Property of the BOS Debtors, as applicable, in favour of the Lending Syndicate, with the exception of the BOS Debtors' rolling stock in the United States and real property in Rio Vista, Texas.

29. The Receivership Order and Stage 3 APA allows the ongoing perfection of the Lending Syndicate's security against the US Leased Vehicles (defined below). Further details are provided at paragraphs 61 and 62 below.

30. The Receiver has confirmed that BOS Real Estate, the corporation that owns the real property of BOS, does not have any third-party creditors.

Statement of Receipts and Disbursements

31. The following is a summary of the receipts and disbursements of the BOS Debtors' since the Receivership Date to September 22, 2020 (the **"Reporting Period"**):

BOS Debtors		**Exhibit 1.0**
Statement of Receipts and Disbursements		
May 4, 2020 to September 22, 2020		
CAD $000's		
	Notes	
Opening cash balance	*A*	**1,374**
Receipts		
Operating receipts	*B*	21,436
Net sales proceeds - Stage 3 APA	*C*	13,793
Miscellaneous refunds		57
Total receipts		**35,286**
Disbursements		
Payroll and benefits	*D*	(6,334)
Chargebacks	*E*	(1,589)
Insurance	*F*	(1,453)
Other operating costs		(1,368)
Property leases		(1,025)
Receiver fees	*G*	(981)
Legal fees	*G*	(898)
Lien settlement	*H*	(748)
Capital leases		(592)
Trucking		(579)
Selling, general and administrative		(292)
Federal and state taxes		(291)
Materials		(160)
Repairs		(155)
GST		(126)
Interest and bank charges		(73)
Total disbursements		**(16,665)**
Ending cash balance (excluding Receiver's Borrowings)		**19,995**

32. Notes to the Receiver's statement of receipts and disbursements are as follows:

a) The Receiver has bank accounts denominated in Canadian and US dollars. For purposes of developing a consolidated statement of receipts and disbursements in Canadian dollars, the Receiver has applied a USD/CAD exchange rate of 1.33839 where applicable;

b) The Receiver continued to operate the business of the BOS Debtors until the Closing Date and has collected approximately $21.4 million, including accounts receivable, owed to the BOS Debtors as at the Receivership Date and revenue generated during these receivership proceedings. The BOS Debtors are owed approximately $9.0 million of remaining accounts receivable as at the date of this Third Report. The Receiver is continuing its efforts to collect these receivables;

c) The Receiver collected net sales proceeds of approximately $13.8 million from the sale of substantially all of the Property of the BOS Debtors pursuant to the Stage 3 APA;

d) The Receiver has disbursed salaries and employee benefits of approximately $6.3 million, including settlement of pre-Receivership Date salaries and wages in accordance with the Receivership Order;

e) The Receiver paid $1.6 million of expenses classified by the BOS Debtors as 'chargebacks' as these expenses are billed to, and fully recoverable from, customers;

f) The Receiver has disbursed approximately $1.5 million in relation to commercial, environmental, medical and property insurance premiums;

g) Receiver's fees and legal fees, including the fees associated with personnel in Canada and the United States and the Receiver's legal counsel in Canada and the United States; and

h) The Receiver entered into a settlement agreement (the "**Settlement Agreement**") with 5 Star Solids Control, LLC ("**5 Star**") in order to have certain liens registered by 5 Star against mineral properties owned by certain of the BOS Debtors' oil and gas customers discharged. 5 Star is a firm that provided heavy machinery and personnel services to the BOS Debtors.

   The Receiver and its US legal counsel reviewed the validity of the liens and the settlement amount of US$558,761 (CAD$748,000) represents the amounts due to 5 Star secured by liens deemed to be valid by the Receiver. The 5 Star liens prevented the Receiver from collecting receivables from those customers and the Settlement Agreement was approved by the Lending Syndicate.

33. The Receiver borrowed $2.5 million (the "**Receiver's Borrowings**") by way of a Receiver's Certificate to fund the Receivership operations. The Receiver was not required to use the Receiver's Borrowings and will be repaying the Receiver's Borrowings in full. The ending cash balance is net of the proceeds advanced under the Receiver's Borrowings.

ACTIVITIES REQUIRED TO COMPLETE THE RECEIVERSHIP

34. The Receiver is continuing to collect the approximately $8.2 million of accounts receivable owed to the BOS Debtors as at the date of this Third Report.

35. The Receiver, with the assistance of its legal counsel, is also focused on evaluating the below claims (the "**Possible Priority Claims**") that were submitted against the BOS Debtors where creditors are claiming a priority interest in the Property of the BOS Debtors ahead of the Lending Syndicate Indebtedness.

Rotating Solutions Inc. – Lien for Repairs of Centrifuge Rotating Assemblies

36. Rotating Solutions Inc. ("**RSI**") was a service provider that provided repair services on the BOS Debtors' rotating assemblies ("**Rotating Assemblies**"), a component within the centrifuge systems used by the BOS Debtors to provide solids control service to its customers. As at the Receivership Date, RSI was holding 38 Rotating Assemblies or other components (the "**RSI Held Components**") associated with centrifuges owned by the BOS Debtors. The Receiver understands that RSI had performed repairs on eleven of the RSI Held Components and that the charges were USD$214,850.26.

37. On August 25, 2020, RSI filed a proof of claim against BOS Inc. (the "**RSI Claim**") and claimed a total of USD$1,287,841.18, including debts owed at the Receivership Date of USD$1,019,975.66 and unpaid work during the receivership proceedings of $267,865.52. RSI claims that these debts are secured by the replacement value of the equipment it repaired and that such replacement value is USD$6.025 million.

38. RSI's legal counsel has subsequently sent correspondence to the Receiver alleging a first-priority lien in the BOS Debtors' equipment of USD$1,664,091 comprised of:

a) $441,357 for the repairs and materials on the RSI Held Components;

b) $335,744 for the storage costs for the RSI Held Components;

c) $40,506 for RSI's costs incurred in recovering the amounts allegedly owed to it; and

d) $846,484 for the repairs and materials for the Rotating Assemblies that had been returned to the BOS Debtors prior to the Receivership Date.

39. As the Rotating Assemblies were transported to RSI's facility in Louisiana, where the services were performed, RSI is claiming liens against the Rotating Assemblies repaired under Louisiana and Texas law.

40. The Receiver has retained counsel in Louisiana to review and assess the RSI Claim. Furthermore, the Receiver has reviewed the books and records of the BOS Debtors, reviewed e-mail correspondence between the BOS Debtors and RSI, and enquired of employees of the BOS Debtors who were involved in managing the Rotating Assembly repairs by RSI.

41. The Receiver is disputing the RSI Claim on the basis that, among other things:

a) RSI's lien is limited to the cost of labour it performed on RSI Held Components as at the Receivership Date that was authorized by the BOS Debtors. The Receiver has only been provided with evidence supporting RSI's invoices for its labour and materials used in the repair of eleven of the Rotating Assembly Units in its possession as at the Receivership Date, that were authorized by the BOS Debtors, and which totaled USD$214,850.26;

b) The Receiver did not authorize any further repairs to be performed by RSI during these receivership proceedings;

c) The BOS Debtors did not issue any purchase orders for repairs to be completed on Rotating Assemblies during the receivership proceedings. Furthermore, the BOS Debtors sent an e-mail to RSI on April 6, 2020 instructing RSI to cease performing all repairs on the Rotating Assemblies; and

d) The master services agreement between RSI and the BOS Debtors under which the repairs were performed did not require the BOS Debtors to reimburse RSI for any storage costs and RSI did not historically charge storage fees to the BOS Debtors.

42. The Receiver has been in communication with RSI regarding the RSI Claim. In the event that a settlement cannot be agreed upon to resolve the RSI Claim, the Receiver will seek direction from the US Court on the quantum and priority of the RSI Claim.

43. The Receiver does not agree with RSI's position that any valid claim it has is secured by the replacement value of the equipment it repaired. This position ignores the fact that RSI was only in possession of the RSI Held Components as at the Receivership Date and the information reviewed by the Receiver only supports that RSI provided authorized goods and services of USD$214,850.26 on eleven of those Rotating Assemblies.

44. The Receiver sold substantially all of the Property, including over 3,600 pieces of individual equipment and components, of the BOS Debtors to Stage 3 for USD$10.4 million. As the Stage 3 APA was a transaction entered into by the Receiver with an arms' length purchaser and was identified through a broad and transparent sales process approved by this Honourable Court, the Receiver is proposing to calculate a holdback for the RSI Claim (the "**RSI Holdback**") based upon the RSI Held Components' net book value as a percentage of total net book value of the equipment and spares acquired by Stage 3 multiplied by the Base Purchase Price. This methodology for allocating value to the RSI Held Components is consistent with the 'missing equipment' clause within the Stage 3 APA and would have been the adjustment under the Stage 3 APA had the RSI Held Components been determined to be missing on the Closing Date.

45. Based upon the foregoing, the Receiver proposes to establish the RSI Holdback in the amount of CAD$946,804 (USD$706,939). The calculation of the proposed RSI Holdback is detailed within Confidential Appendix '**A**' of this Third Report and has been provided by the Receiver to RSI

46. To require the Receiver to hold back more than the RSI Holdback on account of the RSI Claim, in the circumstances, would be grossly prejudicial to the other stakeholders of the BOS Debtors, including the Lending Syndicate.

47. The Receiver is of the view that the information used to calculate the RSI Holdback contains commercially sensitive information associated with the Property of the BOS Debtors sold to Stage 3. Therefore, the Receiver is seeking an Order of this Honourable Court (the "**Sealing Order**") sealing Confidential Appendix '**A**'.

Facilities Leased in Grand Prairie and Leduc

48. Mr. Neil Withers is the landlord (the "**Landlord**") of two properties leased by BOS Ltd. One of these properties is located in Grand Prairie, Alberta (the "**GP Property**") and the other is located in Leduc, Alberta (the "**Leduc Property**") (collectively the "**Leased Properties**").

49. On August 25, 2020, the Landlord contacted the Receiver to obtain an update on the sales process for the BOS Debtors' assets. The Landlord also inquired as to what would happen to the Leased Properties following any sale. The Receiver advised the Landlord that, subject to the completion of a sales transaction, it intended to vacate the Leased Properties.

50. On August 29, 2020, the Landlord attended the GP Property with the consent of the Receiver. The Landlord subsequently contacted the Receiver to advise of several potential concerns the Landlord had with the GP Property. The Landlord's concerns included the following:

a) alleged potential environmental contamination at the GP Property;

b) potential mold in the building due to an alleged pipe burst in January 2020; and

c) alleged missing assets.

51. The Landlord also advised the Receiver that he was concerned that there may be environmental contamination at the Leduc Property. The Landlord provided the Receiver with pictures of the Leased Properties in support of his concerns. The Landlord also requested that a Phase I environmental assessment ("**Phase I**") be completed at the Leased Properties.

52. The Landlord's concerns for each of the Lease Properties, and lack of evidence for such concerns, is detailed further below.

Alleged Environmental Contamination at the Leased Properties

53. Prior to August 2020, the Landlord had not raised any concerns with the Receiver about alleged environmental contamination at the Leased Properties. The photographs provided by the Landlord do not indicate that the alleged contamination at either of the Leased Properties, if any, is significant or if any alleged contamination was already present at the time that BOS Ltd. entered into the leases with the Landlord.

54. The Receiver requested that the Landlord provide additional information about the alleged environmental contamination at the Leased Properties. To date, the Landlord has not provided

any additional information in support of the alleged environmental contamination at the Leased Properties.

55. Nevertheless, the Receiver continues to correspond with the Landlord in an effort to address his concerns. The Receiver has requested that any Phase I that might be completed at either of the Leased Properties be deferred for a short period of time for the following reasons:

a) The Leased Properties will continue to be utilized until the termination of the receivership and the total extent of any contamination at the Leased Properties, if any, is likely better assessed once operations have ceased and all assets have been removed; and

b) The GP Property lease agreement (the "**GP Lease**") between BOS Ltd. and the Landlord states that a Phase I will be completed on the property "Post-Termination". The GP Lease also stipulates that a baseline Phase I was to be completed as of the effective date of the GP Lease to assess any increase in hazardous materials on site (the "**Baseline Phase I**") during the term of the GP Lease. The Receiver has been advised by the Landlord that a Baseline Phase I was not completed on the GP Property.

Alleged Pipe Burst and Mold at the GP Property

56. On August 25, 2020, the Landlord advised the Receiver about potential damage to the GP Property and mold from a pipe that burst in January 2020 and was apparently improperly fixed. This was the first time that the Landlord raised this concern to the Receiver since the Receivership Date.

57. The Receiver provided the Landlord a copy of the relevant insurance certificate at the Landlord's request. The Receiver also agreed to discuss this matter with its insurance broker to determine whether a claim could be filed to address any alleged mold or damage.

58. The Receiver discussed the potential insurance claim with its broker. Based on those discussions, the Receiver is of the understanding that it is not possible for the Receiver to file a claim under the existing insurance policies because of the delay between the date of the alleged loss and the date of the potential insurance claim and because the GP Property is an asset of the Landlord. The insurance broker, accordingly, recommended that any claim for alleged damage should be advanced by the Landlord. The Receiver has advised the Landlord of the broker's position and has encouraged the Landlord to address any potential insurance claim with its own insurer.

Alleged Missing Assets at the GP Property

59. After the Landlord visited the GP Property on August 29, 2020, the Landlord advised the Receiver that a fridge, a washer, and a commercial compressor which allegedly belonged to the Landlord had been removed from the GP Property (the "**Alleged Missing Assets**"). The Receiver is investigating this issue and requested that the Landlord provide details regarding the value of the Alleged Missing Assets. The Landlord has failed to provide an estimate for the value of the Alleged Missing Assets as at the date of this Third Report.

No Evidence to Support a Priority Claim

60. The Landlord has provided no evidence to support a claim, if any, in priority to the Lending Syndicate. In the event that it is determined that the Landlord has a priority claim, the Receiver expects to be able to satisfy any priority claim out of the net recoveries to be received from the collection of account receivable owed to the BOS Debtors as at the date of this Third Report, which are forecast to exceed $4.5 million. As such, the Receiver does not propose to holdback funds in respect of any potential claims of the Landlord related to the Leased Properties.

Vehicle Lease Buy-Out

61. The Stage 3 APA required that the Receiver buy-out the BOS Debtors' leased vehicles (the "**US Leased Vehicles**") in the United States and certain leased vehicles in Canada (the "**Canadian Leased Vehicles**") in order to transfer title to Stage 3. Transferring title of the US Leased Vehicles to BOS Inc. prior to transferring ownership to Stage 3 will permit the Lending Syndicate to perfect its security over the US Leased Vehicles in accordance with paragraph 9(b) of the Receivership Order.

62. The Receiver is in the process of buying out the leases associated with the US Leased Vehicles and the Canadian Leased Vehicles.

INTERIM DISTRIBUTION

63. As described above, the Receiver has obtained independent reviews from its Canadian and US legal counsel which indicate that the security granted by the BOS Debtors to the Lending Syndicate creates a valid and enforceable security interest over all present and after acquired assets and undertakings of the BOS Debtors, with the minor exceptions noted previously. As of the Receivership Date, the BOS Debtors owed the Lending Syndicate approximately $56.8

million (the "**Syndicate Indebtedness**"), excluding interest and professional fees accruing during the receivership proceedings.

64. The Receiver proposes to make an interim distribution (the "**Interim Distribution**") to the Lending Syndicate of $15.0 million. The Interim Distribution will provide a sufficient reserve to settle any claims that may be in priority to the security of the Lending Syndicate and, together with the net recoveries forecast to be received from the collection of outstanding accounts receivables due to the BOS Debtors, costs to complete the administration of the Receivership (collectively, the "**Holdback Amount**").

65. The Interim Distribution was calculated based upon current cash-on-hand less the Holdback Amount as identified in Exhibit 2.0:

BOS Debtors		**Exhibit 2.0**
Interim Distribution		
CAD $000's		
	Notes	
Cash balance as at September 22, 2020		**19,995**
Proposed Holdback Amount		
Stage 3 Holdback	*a*	(1,330)
RSI Holdback	*b*	(950)
North Dakota tax audit	*c*	(367)
Property taxes	*d*	(347)
Vehicle lease buy-outs	*e*	(470)
Administrative / operating cash reserve	*f*	(1,500)
Total proposed Holdback		**(3,463)**
Net funds available for Interim Distribution		**15,032**

66. The Receiver proposes and is seeking approval from this Honourable Court to reserve cash for the Holdback Amount as follows:

a) **Stage 3 holdback:** In accordance with the Stage 3 APA, the Receiver is required to hold USD$1.0 million for 90 days post-closing for any losses incurred by Stage 3 associated with the assets and liabilities of the BOS Debtors excluded from the Stage 3 Transaction and any breach of the Receiver's covenants or its agreement to sell the Property free and clear of all encumbrances and claims;

b) **RSI Holdback:** As described above, the Receiver intends to establish a holdback of $946,804 in respect of the RSI Claim. The RSI Holdback is based upon the value of the centrifuges associated with the Rotating Assemblies in the possession of RSI as at the Receivership Date. The Receiver is of the opinion that any aspect of the RSI Claim in priority to the security of the Lending Syndicate is materially lower than the RSI Holdback.

c) **North Dakota tax audit liability:** During the course of the receivership proceedings, the Receiver became aware that BOS Inc. was subject to an audit by the Office of State Tax Commissioner, State of North Dakota (the "**North Dakota Tax Commissioner**") prior to the Receivership Date. As a result of that audit, BOS Inc. received a notice of determination from the North Dakota Tax Commissioner, dated February 14, 2020, advising that BOS Inc. had failed to remit certain sales and use taxes and local option taxes between July 31, 2016 and June 30, 2019 (the "**North Dakota Tax Claim**").

   The total obligation assessed by the North Dakota Tax Commissioner, inclusive of penalties and interest, was USD$275,602.70 (the "**Assessed Value**"). The Receiver is assessing the validity and priority of the North Dakota Tax Claim with its legal counsel and is proposing to hold back a reserve for the Assessed Value, pending a determination as to validity and priority of such claim.

d) **2020 property taxes:** The Receiver is proposing to holdback a reserve of $347,000 (representing the total property taxes paid by the BOS Debtors in 2019) in respect of property taxes in Canada and the United States associated with certain leased real property, and equipment in Texas. Invoices for property taxes in the United States are expected to be received in October 2020. Property taxes on the owned real property sold to Stage 3 in Rio Vista, Texas for the year 2020 will be paid by Stage 3.

e) **Vehicle lease buy-outs:** Buy-out liabilities, registration and other fees and transfer taxes associated with buying out the leases associated with the US Leased Vehicles and Canadian Leased Vehicles in accordance with the Stage 3 APA.

f) **Administrative / operating cash reserve:** The Receiver is proposing to withhold a reserve of $1.5 million to cover administrative costs and provide a cash balance to settle operational expenses until the administration of the receivership is completed, which is expected to occur in November 2020.

67. The above Interim Distribution does not include the net recovery from collecting outstanding accounts receivable owed to the BOS Debtors of approximately $9.0 million as at the Receivership Date, which the Receiver estimates will provide additional net operating recoveries of at least $4.5 million.

68. The proceeds of the Stage 3 APA and collection of accounts receivable by the Receiver will not provide sufficient recovery to fully repay the Lending Syndicate Indebtedness.

69. The Receiver is further seeking the authority of this Honourable Court to make future distributions to satisfy the Syndicate Indebtedness, subject to holding necessary reserves to settle priority claims and complete the administration of the receivership, without further Court order.

70. In the event that this Court grants an order approving the Interim Distribution, the Receiver will make an application in the US Court for an order recognizing this Honourable Court's approval of the Interim Distribution, among other things.

RECOMMENDATIONS

71. The Receiver respectfully recommends that this Honourable Court grant the Receiver:

a) the authority to make the Interim Distribution and authorize the Receiver to make future distributions to satisfy the indebtedness to the Lending Syndicate, as set out herein;

b) the authority to maintain the reserves and holdbacks as set out and described above, including the RSI Holdback in the amount of $946,804.00 in respect of certain claims advanced by RSI; and

c) the Sealing Order.

All of which is respectfully submitted this 28th day of September, 2020.

ERNST & YOUNG INC.
in its capacity as Court-Appointed
Receiver of the BOS Debtors

Peter Chisholm, CPA, CA, CIRP, LIT
Senior Vice-President