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|---------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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                                                                  | FOURTH REPORT OF ERNST & YOUNG INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER<br><br>November 2, 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | <u>RECEIVER</u><br><br>ERNST & YOUNG INC.<br>1000, 440 – 2 <sup>nd</sup> Avenue S.W.<br>Calgary, AB T2P 5E9<br>Peter Chisholm / Chris Keliher<br>Telephone: (403) 206-5061 / (403) 206-5661<br>Email: peter.chisholm@ca.ey.com / christopher.keliher@ca.ey.com<br><br><u>COUNSEL</u><br><br>BLAKE, CASSELS & GRAYDON LLP<br>3500, 855 – 2 <sup>nd</sup> Street SW<br>Calgary, Alberta T2P 4J8<br>Attention: Kelly J. Bourassa / Amanda G. Manasterski<br>Telephone: (403) 260-9697 / (403) 260-9756<br>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 Solutions Real Estate Inc., and BOS USHoldCo Inc. (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 fourth report (the "Fourth Report") of the Receiver is to provide this Honourable Court with the Receiver's update on:
  - a) the buy-out of the BOS Debtors' US leased Vehicles (the "US Leased Vehicles") and the Receiver's decision to seek advice and directions from this Honourable Court with respect to:
    - i. authorizing the Receiver to pay the fees and disbursements of the Receiver and its legal counsel (the "Administrative Claims") first from the proceeds of sale of the US Leased Vehicles; or
    - ii. in the alternative, authorizing the Receiver to distribute proceeds of sale of the US Leased Vehicles to the Agent, for and on behalf of the Lending Syndicate, without the need to first perfect the Lending Syndicate's security interest therein,

to avoid duplicative costs and an extended timeframe associated with perfecting the

Lending Syndicate's interest in the US Leased Vehicles;

- b) the request for approval of the professional fees and costs of the Receiver and its legal counsel to date; and,
- c) the Receiver's recommendations with respect to same.

#### TERMS OF REFERENCE

- 6. Capitalized terms not defined in this Fourth 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, as administrative agent (the "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](http://www.ey.com/ca/bossolutions).

#### US LEASED VEHICLES – VEHICLE LEASE BUY-OUT

17. The US Leased Vehicles represent 184 vehicles leased from Union Leasing Inc. (“Union”). The total purchase price allocated to the US Leased Vehicles under the Stage 3 APA was USD\$1.29 million (the “US Leased Vehicle Consideration”).
18. The Lending Syndicate is required to register its security interest on title to rolling stock located in the United States to facilitate the perfection of its security interest in the US Leased Vehicles. Paragraph 9(b) of the Receivership Order authorized the Receiver to assist the Lending Syndicate with the perfection of its security interest in the US Leased Vehicles.

19. Under the terms of the Stage 3 APA, and to permit the Lending Syndicate to perfect its security interest in the US Leased Vehicles in accordance with paragraph 9(b) of the Receivership Order, the following steps are required to be undertaken by the Receiver to perfect the Lending Syndicate's security interest in the US Leased Vehicles and to transfer ownership to Stage 3:
- a) The Receiver is to buy-out the US Leased Vehicles leased by BOS Inc. from Union and transfer title into the name of BOS Inc.;
  - b) The Lending Syndicate, with the assistance of the Receiver, shall register its security interest in the US Leased Vehicles at the Department of Motor Vehicles in three (3) separate States (collectively, the "DMV"); and,
  - c) Upon the Lending Syndicate registering its security interest in the US Leased Vehicles, the Receiver will transfer title of the US Leased Vehicles from BOS Inc. to Stage 3.
20. Barring the perfection of the Lending Syndicate's security interest, proceeds generated from the sale of the US Leased Vehicles would be available for distribution to BOS Inc.'s unsecured creditors, including the Lending Syndicate's deficiency claim, in the order of their priority under applicable law. For context, the Receiver anticipates that the Lending Syndicate's deficiency claim will be approximately \$34 million, which compares to the total value of other potential unsecured claims against BOS Inc., which totals \$15.3 million (based on the unaudited books and records of the BOS Debtors as at the Receivership Date).
21. To transfer title to the US Leased Vehicles from Union to BOS Inc., Union has advised the Receiver that the Receiver will be required to pay certain fees and taxes (collectively the "Fees and Taxes") in addition to the costs to buy-out the leases. Based on the quantum of the US Leased Vehicle Consideration, and information obtained from Union, the Receiver estimates that the Fees and Taxes will collectively total approximately USD\$145,820:

|                                                                           |                    |
|---------------------------------------------------------------------------|--------------------|
| BOS Solutions et. al.<br>Estimate of Fees and Taxes<br>Presented in \$USD | Exhibit 1.0        |
| Fees and Taxes                                                            | <u>Total \$USD</u> |
| Transfer Tax                                                              | 73,815             |
| Registration Fees                                                         | 35,205             |
| Title Transfer Fees                                                       | 36,800             |
|                                                                           | <u>145,820</u>     |

22. Note that transfer taxes could be materially higher depending on the DMV's independent assessment of the fair market value of the US Leased Vehicles.
23. Additionally, the Receiver understands that it could take up to 10 weeks to transfer title due to processing delays at the DMV.
24. In the event the Receiver was able to transfer title of the US Leased Vehicles directly from Union to Stage 3, the Fees and Taxes, additional professional costs, and the delay associated with perfecting the Lending Syndicate's security interest in the US Leased Vehicles, would be avoided.
25. The fees and disbursements of the Receiver and the Receiver's legal counsel, to date, total approximately \$3.09 million or approximately USD\$2.41 million, plus applicable taxes (described in more detail below). Professional fees incurred to date are greater than the US Leased Vehicle Consideration which totals USD\$1.29 million.
26. The Receiver is of the view that the quantum of the Fees and Taxes, together with the delay described above, could be avoided by using the US Leased Vehicle Consideration first to satisfy Administrative Claims, incurred in connection with the receivership administration of the BOS Debtors, which are well in excess of the US Leased Vehicle Consideration.
27. In light of the authorization in para. 9(b) of the Receivership Order allowing the Lending Syndicate to continue to perfect its security interest in the US Leased Vehicles, the Receiver does not believe that unsecured creditors would be prejudiced by the issuance of an order allowing Administrative Claims to be paid first from the US Leased Vehicle Consideration.
28. The Lending Syndicate has advised the Receiver that it supports this application by the Receiver.

#### APPROVAL OF PROFESSIONAL FEES

29. Professional fees incurred to date are described in Exhibit 2.0, below. The Receiver's total fees and disbursements are \$1,445,370 (plus applicable taxes). The Receiver's legal counsel's fees in Canada total \$419,293 (plus applicable taxes) and the Receiver's legal counsel's fees in the United States total USD\$1,226,966.
30. Copies of the Receiver's invoices and the Receiver's legal counsel's invoices contain privileged information and are not attached but are available to this Honourable Court if requested.

31. The Receiver respectfully requests that this Honourable Court approve the Receiver's and the Receiver's legal counsel's fees and disbursements to date.

|                                                                                            |           |             |            |             |
|--------------------------------------------------------------------------------------------|-----------|-------------|------------|-------------|
| BOS Solutions et. al.                                                                      |           | Exhibit 2.0 |            |             |
| Schedule of Professional Fees                                                              |           |             |            |             |
| May 4, 2020 to October 23, 2020                                                            |           |             |            |             |
| Presented in \$CAD                                                                         |           |             |            |             |
| Receiver Fees:                                                                             |           | Sub-total   | Excise Tax | Total \$CAD |
| <hr/>                                                                                      |           |             |            |             |
| Ernst & Young Inc. (Canada)                                                                |           |             |            |             |
| Invoice - CA12C500005333                                                                   |           | 553,509     | 27,675     | 581,185     |
| Invoice - CA12C500005667                                                                   |           | 471,726     | 23,586     | 495,312     |
| a                                                                                          |           | 1,025,235   | 51,262     | 1,076,497   |
| <hr/>                                                                                      |           |             |            |             |
| Ernst & Young LLP (United States) <sup>1</sup>                                             |           |             |            |             |
| Invoice - US01U000448053                                                                   |           | 166,796     | -          | 166,796     |
| Invoice - US01U000432467                                                                   |           | 253,339     | -          | 253,339     |
| b                                                                                          |           | 420,135     | -          | 420,135     |
| <hr/>                                                                                      |           |             |            |             |
| Total Receiver Fees                                                                        | a + b = c | 1,445,370   | 51,262     | 1,496,632   |
| <hr/> <hr/>                                                                                |           |             |            |             |
| Legal Fees:                                                                                |           |             |            |             |
|                                                                                            |           | Sub-total   | Excise Tax | Total \$CAD |
| <hr/>                                                                                      |           |             |            |             |
| Blakes, Cassels & Graydon LLP (Canada)                                                     |           |             |            |             |
| Invoice - 2206853                                                                          |           | 123,381     | 6,167      | 129,548     |
| Invoice - 2206854                                                                          |           | 72,302      | 3,610      | 75,912      |
| Invoice - 2206855                                                                          |           | 109,798     | 5,486      | 115,284     |
| Invoice - 2206856                                                                          |           | 113,813     | 5,675      | 119,487     |
| d                                                                                          |           | 419,293     | 20,939     | 440,231     |
| <hr/>                                                                                      |           |             |            |             |
| Haynes and Boone, LLP (United States) <sup>1</sup>                                         |           |             |            |             |
| Invoice - 21433199                                                                         |           | 343,562     | -          | 343,562     |
| Invoice - 21437663                                                                         |           | 197,392     | -          | 197,392     |
| Invoice - 21442935                                                                         |           | 276,562     | -          | 276,562     |
| Invoice - 21446633                                                                         |           | 288,514     | -          | 288,514     |
| Invoice - 21450759                                                                         |           | 120,936     | -          | 120,936     |
| e                                                                                          |           | 1,226,966   | -          | 1,226,966   |
| <hr/>                                                                                      |           |             |            |             |
| Total Legal Fees                                                                           | d + e = f | 1,646,258   | 20,939     | 1,667,197   |
| <hr/> <hr/>                                                                                |           |             |            |             |
| Total Professional Fees                                                                    | c + f     | 3,091,629   | 72,200     | 3,163,829   |
| <hr/> <hr/>                                                                                |           |             |            |             |
| Note 1 - Invoice issued in USD. Converted to CAD per FX rate on 23 October 2020 (\$1.314). |           |             |            |             |

## RECOMMENDATIONS

32. The Receiver respectfully recommends that this Honourable Court:

- a) authorize the Receiver to pay Administrative Claims first from the US Leased Vehicle Consideration; and,
- b) approve the fees and disbursements of the Receiver and its counsel.

All of which is respectfully submitted this 2<sup>nd</sup> day of November, 2020.

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

A handwritten signature in black ink, appearing to read "Peter Chisholm".

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

A handwritten signature in blue ink, appearing to read "Christopher Keliher".

Christopher Keliher, JD, MBA, CIRP, LIT  
Vice-President