

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	FIFTH REPORT OF ERNST & YOUNG INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER December 22, 2020
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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. 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.
3. 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.
4. The purpose of this fifth report (the **"Fifth Report"**) of the Receiver is to provide this Honourable Court with the Receiver's update on:
 - a) the activities of the Receiver since the third report, dated September 28, 2020 (the **"Third Report"**) and to provide a statement of receipts and disbursements (the **"Statement of R&D"**) for the period from the Receivership Date through to December 17, 2020 (the **"Reporting Period"**).
 - b) the activities to be undertaken by the Receiver to complete the administration of the Receivership Proceedings;
 - c) a request for the discharge of the Receiver of the BOS Debtors, following the Receiver's completion of the administration of the estate; and
 - d) the Receiver's recommendation with respect to same.

TERMS OF REFERENCE

5. Capitalized terms not defined in this Fifth Report are as defined in the Receivership Order.
6. In preparing the Fifth Report, the Receiver has relied upon unaudited financial information and Company records. The Receiver has not performed an audit, review or other verification of

such information that would wholly or partially comply with Canadian Auditing Standards (“CASs”) pursuant to the Chartered Professional Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of such information.

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. operated in Canada and owned the majority of the BOS Debtors’ equipment. BOS Inc. operated in the United States and leased 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 BOS 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.

ACTIVITIES OF THE RECEIVER SINCE THE THIRD REPORT

Transfer of the BOS Debtors’ Assets to Stage 3

17. In accordance with the Stage 3 APA and the Transition Services Agreement (“**TSA**”), the Receiver has continued to facilitate the transfer of the BOS Debtors’ assets to Stage 3 post-closing, including buying out and facilitating the transfer of certain leased vehicles located in Canada and the United States. With the exception of certain residual assets and IT licenses, materially all of assets required to be transferred to Stage 3 have been transferred.

Human Resources

18. The Receiver retained ten employees post-closing for the purpose of assisting with the wind-down of the receivership and to assist with services rendered pursuant to the Stage 3 APA and TSA. As of November 13, 2020, all employment relationships were terminated.

19. The Receiver subsequently entered into short-term contracts with two former employees to assist the Receiver with the wind-down of the receivership. One contractor is a human resources specialist assisting with upcoming US and Canadian 2020 employee tax filings and other residual human resource matters including winding down benefit and retirement plans. The second contractor is a financial specialist and has been retained to assist the Receiver with various financial matters, including compiling information to address outstanding excise tax returns and the settlement of all receivership operating expenses.
20. Following the termination of all employment relationships, the Receiver has taken steps to wind down the BOS Debtors' benefits and workers' compensation plans. In addition, the Receiver has taken steps to close the BOS Debtors' RRSP and 401K plans, which included coordinating the transfer of remaining plan assets, which were previously held for the benefit of the BOS Debtors' former employees, into the care and control of those former employees.

Vendor Disclaimers

21. To wind down operations, the Receiver issued notices to terminate services with numerous vendors and landlords previously engaged to provide services to the BOS Debtors. At the date of this report, all services and lease agreements have been terminated, with the exception of certain IT related services required by the Receiver. It is anticipated that these services will terminate by December 31, 2020.

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

22. As more fully described in the Third Report, Rotating Solutions Inc. (“RSI”) was a service provider that provided repair services to the BOS Debtors' rotating assemblies. During the receivership administration, RSI filed a proof of claim against BOS Inc. and subsequently alleged a priority lien on the BOS Debtors' equipment valued at USD \$1,664,091 (the “RSI Claim”). The Receiver disputed the RSI Claim but maintained a monetary holdback in a receivership trust account equivalent to the value of the RSI Claim in the event the parties could not mutually resolve the dispute.
23. As of the date of this Report, the parties have reached an agreement to fully resolve all outstanding issues between the parties, which agreement includes a payment by the Receiver to RSI totalling USD \$446,129.49 as well as a full and final release between and for the benefit of both parties.

Facilities Leased in Grand Prairie and Leduc

24. As more fully described in the Third Report, Mr. Neil Withers is the landlord (the “**Landlord**”) of two properties formerly leased by BOS Ltd., one located in Grand Prairie, Alberta and the other in Leduc, Alberta (collectively the “**Leased Properties**”). During the receivership administration, the Landlord contacted the Receiver to advise of several concerns relating to the Leased Properties, including issues associated with missing assets, a pipe burst leading to mold, and environmental contamination.
25. Following the Third Report, the Receiver engaged with the Landlord to resolve outstanding issues in connection with the Leased Properties. The Receiver and the Landlord subsequently reached an agreement whereby the Receiver reimbursed the Landlord for the value of missing assets, totalling \$13,123.70, in exchange for the full and final settlement of all of the Landlord’s claims.

Statement of Receipts & Disbursements (“SRD”)

26. The following is the SRD during the Reporting Period:

BOS Debtors		Exhibit 1.0
Statement of Receipts and Disbursements		
May 4, 2020 to December 17, 2020		
CAD \$, <i>unaudited</i>		
	Notes	
Opening operating cash balance	A	1,374
Receipts		
Operating receipts	B	28,297
Sale proceeds		13,793
Receiver Borrowings	C	2,500
Miscellaneous refunds		248
Total receipts		44,838
Disbursements		
Interim Distributions to Syndicate	D	(17,667)
Payroll and related	E	(6,928)
Receiver Borrowing Repayment	C	(2,516)
Legal fees	F	(1,878)
Receiver fees	F	(1,821)
Chargebacks	G	(1,727)
Insurance	H	(1,638)
Other operating costs		(1,578)
Property leases		(1,255)
Capital leases		(890)
Lien settlement	I	(775)
Trucking		(610)
Selling, general and administrative		(372)
Federal and state taxes		(349)
IT Services		(225)
Materials		(225)
Repairs		(185)
Impact of FX changes	J	(187)
Property taxes		(174)
Interest and bank charges		(93)
GST	K	(53)
Total disbursements		(41,144)
Ending operating cash balance		5,067

27. Notes to the SRD are as follows:

- a) the Receiver has bank accounts denominated in Canadian and US dollars. For the purpose of developing a consolidated statement of receipts and disbursements in Canadian dollars, the Receiver has applied a USD/CAD exchange rate of 1.2753, as reported by the Bank of Canada as at December 16, 2020, where applicable;

- b) the Receiver has receipts totalling approximately \$44.8 million, primarily made up of \$13.7 million in sale proceeds and \$28.3 million in operating receipts;
 - c) the Receiver borrowed \$2.5 million by way of a Receiver's Certificate to fund receivership operations. On October 2, 2020, the borrowings were repaid with interest;
 - d) the Receiver has made distributions of \$17.6 million to the Lending Syndicate. An additional interim distribution of \$3.75 million has been approved for payment to the Lending Syndicate but has not yet been processed;
 - e) the Receiver has disbursed salaries and employee benefits of approximately \$6.9 million including settlement of pre-Receivership salaries, wages, and vacation pay, in accordance with the Receivership Order;
 - f) 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;
 - g) the Receiver paid \$1.7 million of expenses classified by the BOS Debtors as 'chargebacks' as these expenses are billed to, and fully recoverable from customers;
 - h) the Receiver has disbursed approximately \$1.6 million in relation to commercial, environmental, medical and property insurance premiums;
 - i) as further described in the Third Report, the Receiver reached a settlement to resolve liens filed by 5 Star Solids Control, LLC ("5 Star"), resulting in a payment to 5 Star totalling US\$ 558,761. The Receiver also reached a settlement with DWM Consulting LLC to settle US\$ 20,137 of liens deemed to be valid by the Receiver;
 - j) Impacts of functional currency changes are driven by fluctuating exchange rates. The changes arise through converting previous transactions performed in \$USD at current exchange rates, and do not necessarily represent actual gains or losses to the estate; and
 - k) Following the Third Report, the CRA issued a GST credit refund to the Receiver resulting in a net total GST payment equal to \$53K.
28. As at the date of this Report, the Receiver is in the process of distributing an additional CAD\$3.75 million to the Syndicate, bringing total distributions to approximately \$21.4 million. The Receiver expects to continue collecting outstanding accounts receivable owed to the BOS

Debtors in 2021 and will issue a final distribution to the Syndicate prior to filing the Receiver's Completion Certificate (as defined below).

APPROVAL OF PROFESSIONAL FEES

29. Professional fees and costs incurred following the Fourth Report are described in Exhibit 2.0, below, and are as follows:
 - a) Receiver's incremental fees and costs total \$362,660 (plus applicable taxes);
 - b) Receiver's Canadian legal counsel's incremental fees and costs total \$66,758 (plus applicable taxes); and
 - c) Receiver's US legal counsel's incremental fees and costs total CAD \$217,288.
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 and the Receiver's legal counsel estimate that the professional fees necessary to complete the administration of the receivership will not exceed \$50,000 for the Receiver, \$25,000 for Canadian legal counsel, and CAD \$50,000 for US legal counsel. These estimated fees are included in Exhibit 2.0, below.
32. The Receiver respectfully requests that this Honourable Court approve the Receiver's and the Receiver's legal counsels' fees and disbursements, including the estimate to conclude the receivership administration, described in Exhibit 2.0, below.

BOS Debtors		Exhibit 2.0		
Schedule of Professional Fees				
October 24, 2020 to December 16, 2020				
Presented in \$CAD				
Receiver Fees:		Sub-total	Excise Tax	Total \$CAD
Ernst & Young Inc. (Canada)				
Invoice - CA12C500005944		267,660	13,383	281,043
Invoice - CA12C500006093		95,000	4,750	99,750
Estimate to conclude receivership		50,000	2,500	52,500
Total Receiver Fees	a	412,660	20,633	433,293
Legal Fees:				
Blakes, Cassels & Graydon LLP (Canada)		Sub-total	Excise Tax	Total \$CAD
Invoice - 2213145		35,305	1,762	37,067
Invoice - 2219780		31,453	1,568	33,020
Estimate to conclude receivership		25,000	1,250	26,250
	b	91,758	4,579	96,337
Haynes and Boone, LLP (United States) ¹				
Invoice - 21456003		162,290	-	162,290
Invoice - 21459192		54,997	-	54,997
Estimate to conclude receivership		50,000	-	50,000
	c	267,288	-	267,288
Total Legal Fees	b + c = d	359,046	4,579	363,625
Total Professional Fees	a + d	771,706	25,212	796,918
Note 1 - Invoices issued in USD. Converted to CAD per FX rate on 16 December 2020				

ACTIVITIES REQUIRED TO COMPLETE THE RECEIVERSHIP

33. The Receiver has substantially completed the administration of the receivership of the BOS Debtors with the exception of the following remaining activities:
- a) Collecting outstanding accounts receivable, project holdbacks, and project deposits, (together, the “**Outstanding Collections**”) and settling disputes with respect to same. As of the date of this Report, the value of the Outstanding Collections is \$1,503,354;
 - b) Coordinating payment to all vendors that provided services during the course of the receivership proceedings and settling disputes with respect to same. As of the date of this Report, the value of the outstanding payables was \$108,460;
 - c) Resolving liens filed by United Rentals, Inc. against the BOS Debtors in the amount of USD

\$170,601.69, as well resolving a disputed invoice forwarded by United Rentals, Inc. for payment by the Receiver in the amount of USD \$80,890.56;

- d) Addressing certain residual tax matters with various US and Canadian taxing authorities;
- e) Finalizing certain residual matters under the Stage 3 APA and TSA, including agreeing on a Final Statement of Adjustments;
- f) Finalizing the termination of the BOS Debtors' benefits, pension (RRSP and 401K), and workers' compensation plans;
- g) Terminating all banking facilities utilized by the Receiver in connection with the receivership proceedings; and
- h) Completing a final distribution to the Lending Syndicate.

(collectively, the "**Remaining Activities**").

DISCHARGE OF THE RECEIVER

- 34. Upon completion of the Remaining Activities, the Receiver will have completed its administration of the BOS Debtors' receivership. The Receiver is therefore of the view that it should be discharged from its mandate with the Receiver's discharge being effective upon the Receiver filing a certificate with this Court in the form contemplated by the proposed form of Order attached as Schedule "A" to the Receiver's application (the "**Receiver's Completion Certificate**").
- 35. Accordingly, the Receiver respectfully requests that this Honourable Court approve an Order: (a) discharging the Receiver from any and all obligations as Receiver of the BOS Debtors under the Receivership Order, conditional upon the completion of the Remaining Activities and the filing of the Receiver's Completion Certificate, and (b) authorizing the Receiver to seek recognition of the discharge order from the US Court in connection with the Chapter 15 Proceedings of the BOS Debtors.
- 36. Should this Honourable Court grant the proposed Order, the Receiver will seek an Order from the US Court recognizing the discharge of the Receiver of the BOS Debtors and, upon filing the Receiver's Completion Certificate, closing the Chapter 15 Proceedings.

RECOMMENDATIONS

37. The Receiver respectfully recommends that this Honourable Court:

- a) Approve the activities of the Receiver during, and the statement of receipts and disbursements for, the Reporting Period;
- b) Approve the fees and disbursements of the Receiver and its counsel as described in this Fifth Report;
- c) Approve the conditional discharge of the Receiver; and
- d) Authorize the Receiver to seek to have its discharge recognized in the Chapter 15 Proceedings of the BOS Debtors.

All of which is respectfully submitted this 22nd day of December, 2020.

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



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



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