COURT FILE NUMBER	2301-06740	Clerk's Stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	HSBC BANK CANADA	
RESPONDENTS	HIGHWOOD EQUIPMENT TECHNOLOGIES INC., BRENT H. KOHLS, COLIN REYNOLD KNAPP, KEVIN JOHN KERR, and ROBERT WAWRZYOWSKI	
DOCUMENT	**THIRD REPORT OF THE RECEIVER** **October 6, 2023**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<u>**RECEIVER**</u> ERNST & YOUNG INC. Calgary City Centre 2200, 215 - 2nd Street SW Calgary, Alberta T2P 1M4 Peter Chisholm/Josh Heagy Telephone (403) 206-5061/(403) 206-5070 Email: peter.chisholm@parthenon.ey.com joshua.heagy@parthenon.ey.com <u>**COUNSEL**</u> Burnet, Duckworth & Palmer LLP 2400, 525 – 8th Avenue SW Calgary, Alberta T2P 1G1 David LeGeyt/Ryan Algar Telephone (403) 260-0210/(403) 260-0126 Email: dlegeyt@bdplaw.com ralgar@bdplaw.com File No. 46030-22	

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INTRODUCTION

1. Ernst & Young Inc. ("**EYI**") was appointed Receiver and Manager (the "**Receiver**") of the property, assets and undertakings (the "**Property**") of Highwood Equipment Technologies Inc. ("**HETI**" or the "**Company**") pursuant to an Order of this Honorable Court (the "**Receivership Order**") dated June 2, 2023 (the "**Receivership Date**").

2. The Receivership Order authorized the Receiver to, among other things, carry on the business of HETI, sell, convey, transfer, lease, or assign the Property out of the normal course of business, subject to approval by this Honorable Court for any transactions exceeding $50,000, or the aggregate of multiple transactions exceeding $250,000, and make such arrangements or agreements as deemed necessary by the Receiver.

3. The purpose of this third report of the Receiver (the "**Third Report**") is to provide this Honorable Court with the Receiver's comments with respect to:

   a) The Receiver's activities for the period between the Second Report of the Receiver (the "**Second Report**") dated July 31, 2023 and September 30, 2023 (the "**Reporting Period**") and to provide a statement of receipts and disbursements for the period from June 2, 2023 to September 30, 2023 (the "**Receivership Period**");

   b) The distributions proposed by the Receiver to

      i. His Majesty the King in Right of Canada, as represented by the Minister of National Revenue ("**CRA**");

      ii. His Majesty the King in Right of Canada, as represented by the Minister of Employment and Social Development ("**Service Canada**");

      iii. Highwood Machine Tools, LLC ("**HMT**"); and

      iv. HSBC Bank Canada ("**HSBC**");

   c) A description of the remaining efforts to be undertaken by the Receiver to complete the administration of the Receivership;

   d) The request for discharge of the Receiver following the Receiver's completion of the administration of the estate; and

   e) The Receiver's recommendations in respect of the foregoing.

TERMS OF REFERENCE AND DISCLAIMER

4. In preparing this Third Report, the Receiver has relied upon unaudited financial information, HETI records, and discussions with management of the HETI. The Receiver has not performed an audit, review, or other verification of such information.

5. Capitated terms not defined in this Third Report are as defined in the Receivership Order or the prior Reports of the Receiver.

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

BACKGROUND

7. HETI is a corporation incorporated pursuant to the laws of the Province of Alberta which operated out of Calgary, Alberta and High River, Alberta in the business of oilfield service and specializing in the design, engineering, and fabrication of custom-built rigs and other equipment.

8. HETI's business was negatively impacted by the COVID-19 Pandemic and ensuing economic conditions including labour shortages, delays in component supply, and increased input costs.

9. The Company was contracted to manufacture and deliver three custom drilling rigs to a customer in the Middle East, Alshawamikh Oil Services SAOC ("**AOS**"). However, this project was significantly delayed, resulting in increased borrowing requirements and the Company eventually defaulted on its credit facilities.

10. As at the Receivership Date, the aggregate of all indebtedness owed by HETI to HSBC Bank Canada ("**HSBC**"), the primary secured creditor of HETI, totaled approximately $6.7 million.

11. HSBC applied to this Honourable Court for an order appointing EYI (the "**Receiver**") as Receiver, to exercise the powers and duties pursuant to section 243(1) of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3 (the "***BIA***") section 13(2) of the *Judicature Act*, RSA 2000 c. J-2 and 65(7) of the *Personal Property Security Act,* RSA 2000 c P-7 with respect to the Property.

12. Additional background on HETI is available on the Receiver's website www.ey.com/ca/highwood.

ACTIVITIES OF THE RECEIVER

13. Since the Second Report, the Receiver has taken various steps to realize on the Property. Specifically, the Receiver has, among other things:

a) Completed the sale of H-86 and related assets (the "**Assets**"), pursuant to the Settlement Agreement approved by this Honourable Court on August 8, 2023 and collected sales proceeds of US$3.5 million. On or about August 25, 2023, the Receiver delivered the Assets subject to the Settlement Agreement to AOS;

b) Engaged legal counsel in the United States, Akerman LLP ("**Akerman**") to perform searches (including uniform commercial code and tax) to identify possible filed secured claims against the property of HETI located in the United States. No filings were identified.

Akerman also reviewed the validity and priority of two alleged statutory secured claims, namely those advanced by:

i. Highwood Machine Tools LLC ("**HMT**"), a sister company to HETI but not a guarantor of the debt owed by HETI to HSBC. HMT alleged a statutory secured possessory lien (the "**HMT Lien Claim**"); and

ii. TTS Midstream ("**TTS**"), a US-based major supplier to HETI who delivered certain equipment to the HMT yard in Waco, Texas in relation to H-86. TTS asserted a purchase money security interest claim (the "**TTS Claim**") in the amount of USD$150,000.

Further details on the assessment of the HMT Lien Claim and the TTS Claim are discussed below.

Highwood Global, LP ("**Highwood Global**"), another sister company to HETI also initially asserted a priority claim. However, Akerman advised that the claim was not valid and Highwood Global subsequent advised the Receiver that the priority claim would not be asserted any further;

c) Pursuant to a July 14, 2023 Order of this Honourable Court, Century Services Inc. completed an auction of HETI's Canadian Equipment located at its leased facility in High River, Alberta. The total proceeds collected by the Receiver from the auction were $406,000 which exceeded the agreed-upon net minimum guarantee by $229,000;

d) Received proceeds from Teck upon the transfer of related assets subject to the Teck Proposal, approved by this Honourable Court on July 14, 2023;

e) Collected additional accounts receivable balances from various customers;

f) Made arrangements for the preservation of physical records of HETI; and

g) Vacated the HETI Facilities and cancelled the related insurance for assets sold by the Receiver.

Statement of Receipts and Disbursements

14. The following is a summary of the receipts and disbursements that have occurred since the Receivership Period.

Highwood Equipment Technologies Inc.
Statement of Receipts and Disbursements
June 2, 2023 to September 30, 2023
$CAD, *unaudited*

Table 1.0

	Notes		
Opening cash balance		-	**A**
Receipts			
Proceeds from sale of H-86	*a*	4,677,009	
Proceeds from asset sale	*b*	549,127	
Accounts receivable	*c*	324,399	
Receiver's certificate	*d*	50,000	
GST collected	*e*	7,168	
Other receipts	*f*	3,240	
Total receipts		**5,610,942**	**B**
Disbursements			
Receiver's fees	*g*	(251,707)	
Receiver's counsel fees	*h*	(113,628)	
Facility rent	*i*	(96,940)	
Insurance	*j*	(71,372)	
Salaries and wages	*k*	(26,452)	
GST paid	*e*	(18,203)	
Operating expenses	*l*	(16,619)	
Total disbursements		**(594,921)**	**C**
Cash on hand (A + B + C)		**5,016,021**	

15. Notes to the Receiver’s Statement of Receipts and Disbursements are as follows:

a) Proceeds from the Settlement Agreement between the Receiver and AOS for the sale of H-86 as approved by this Honourable Court on August 8, 2023 were USD$3.5 million translated to Canadian Dollars at a foreign exchange rate of 1.34;

b) Sales proceeds of $549,000 were collected in relation to the Teck Proposal and Century Auction Agreement, which were approved by this Honourable Court on July 14, 2023;

c) Subsequent to issuing the accounts receivable collections notices, the Receiver has collected $324,000 of approximately $800,000 of accounts receivable (book value) per HETI's financial records. The remaining accounts receivable have been deemed uncollectible due to financial offsets, intercompany receivables, and discharges of accounts receivable upon review of supporting documentation from respective customers;

d) On June 15, 2023, $50,000 of a Receiver's certificate was received into the trust account from HSBC to fund insurance, rent, and salaries and wages;

e) GST of $7,000 was collected and $18,000 was paid during the Receivership Period. The Receiver anticipates a GST refund upon final GST filings;

f) An insurance policy refund of $3,240 was collected;

g) Fees of $252,000 were incurred by the Receiver up to September 30, 2023 and paid through the receivership of HETI;

h) The Receiver engaged legal counsel in Canada, the United States, and Oman to assist with the negotiation of the Settlement Agreement, assessment of liens in the United States, and other ad hoc matters. Fees of $114,000 have been incurred to September 30, 2023;

i) Facility rent of $47,000 was incurred for rent related to the Calgary and High River, Alberta premises, and facility rent of USD$37,5000 (CAD$50,000) was paid to HMT for rent to remove H-86 from the HMT yard in Waco, Texas;

j) Insurance premiums of USD$30,000 (CAD$40,000) were paid related to an insurance policy for H-86 located in Waco, Texas which was not previously insured by HETI. The Receiver solicited insurance proposals from multiple underwriters and only one underwriter offered to insure H-86. Monthly premiums of $7,974 were paid related to the assets located in Canada under HETI's existing insurance policy;

k) The Receiver retained HETI's controller and bookkeeper to assist with administrative support, including the collection of receivables and preparation of employee tax documents; and

l) Other operating expenses related to imaging computers and the server, utilities, and bank charges were incurred.

PROPOSED PRIORITY DISTRIBUTIONS

16. The Receiver is seeking approval from this Honourable Court to make distributions to the following creditors whose claims rank in priority to HSBC Bank Canada (the "**Priority Distributions**"):

Crown Claims

a) To His Majesty the King in Right of Canada, as represented by the Minister of National Revenue, for amounts including:

i. The employee portion of source deductions deducted but unremitted, income tax withholdings, plus employee premiums for Employment Insurance and Canada Pension Plan Contributions, which amounts form a deemed trust claim (the "**Deemed Trust Claim**") pursuant to s. 227 of the *Income Tax Act* in the amount of approximately $41,000. The unremitted source deductions arose from the final payroll run before the Receivership Date which remained unremitted. The CRA conducted a trust examination during the Receivership and has confirmed the deemed trust claim; and

ii. approximately $12,000 in net unremitted goods and services tax owed by HETI as at the Receivership Date (the "**GST Claim**"). The CRA performed a trust examination during the Receivership and confirmed this amount;

b) To His Majesty the King in Right of Canada, as represented by the Minister of Employment and Social Development ("**Service Canada**") in the approximate $12,000 owing for the super-priority claim of $2,000 per employee under sec. 81.4 of the *BIA* (the "**WEPP Claim**"). During the receivership administration, the Receiver facilitated the Wage Earners Protection Program ("**WEPP**"), resulting in payment of approximately $71,000 to 18 former employees of HETI. The $12,000 super-priority is the subrogation claim payable to Service Canada pursuant to s. 81.4 of the *BIA*;

United States Liens

c) To Highwood Machine Tools, LLC for the US$334,000 HMT Lien Claim. The Receiver's US counsel advises that HMT likely has a valid "constitutional lien" under Article XVI, Section 37 of the state constitution of Texas, which provides a priority lien similar to Canadian liens in favour of mechanics, artisans, or material suppliers. This constitutional lien ranks in priority to HSBC**.**

PROPOSED HSBC DISTRIBUTION

17. HSBC is the primary secured creditor of HETI and was owed $6.7 million as at the Receivership Date.

18. The Receiver's Canadian legal counsel performed an independent review of the security granted by HETI to HSBC. The security opinion indicated that, subject to the customary assumptions and qualifications, the security granted by HETI to HSBC constitutes valid and enforceable security over the property of HETI. Based upon searches conducted at the Alberta Personal Property Registry, it appears that HSBC holds a first charge security interest against HETI.

19. The Receiver is seeking to distribute the sales proceeds, net of a reserve required to complete the administration of the receivership, to HSBC (the "**Interim Distribution**") in the amount of $4.2 million. After receipt of the Interim Distribution and the distribution of any further residual funds in the estate of HETI to HSBC (the "**Final Distribution**"), HSBC is estimated to suffer a shortfall on the secured indebtedness and no funds will be available for distribution to other creditors of HETI.

20. The Receiver will provide a final statement of receipts and disbursements including the remaining costs to complete the administration of the receivership and the distributions to HSBC as part of the final report of the Receiver (the "**Final Report**"), to be prepared and filed in accordance section 246(3) of the *BIA*, when the Receiver completes the administration of the receivership and files a certificate of discharge with this Honourable Court. The Final Report will be posted on the Receiver's website and will be available to all creditors of HETI who request a copy.

FORECASTED DISTRIBUTION ANALYSIS

21. Table 2.0 shows the current estate cash balance, forecasted receipts and disbursements, and proposed distributions.

Highwood Equipment Technologies Inc.		Table 2.0	
Forecasted Distribution			
As at September 30, 2023			
$CAD, *unaudited*			
	Notes		
Current cash balance		**5,016,021**	**A**
Forecasted receipts			
GST refund	*a*	11,035	
Total receipts		**11,035**	**B**
Forecasted disbursements			
Receiver's counsel work-in-progress and cost to complete	*b*	(112,700)	
Receiver's certificate	*c*	(50,000)	
Receiver's work-in-progress and cost to complete	*d*	(50,000)	
Total disbursements		**(212,700)**	**C**
Cash available for distribution (A + B + C)		**4,814,356**	**D**
Proposed priority distributions			
Deemed Trust Claim		(41,114)	
GST Claim		(12,315)	
WEPP Claim		(11,992)	
HMT Lien Claim		(445,265)	
Total priority distributions		**(510,686)**	**E**
Cash available for distribution to HSBC (D + E)		4,303,670	
Administration reserve	*e*	(100,000)	
Proposed Interim Distribution to HSBC		**4,203,670**	

22. Notes to the Receiver's Forecasted Distribution schedule are as follows:

a) A GST refund of $11,000 is expected based on the GST paid and received by the Receiver;

b) Professional fees incurred but not billed by the Receiver's legal counsel in Canada, the US, and Oman is approximately $86,000 and the cost to complete is estimated at $ $27,000;

c) On June 15, 2023, $50,000 of a Receiver's certificate was received into the trust account from HSBC to fund insurance, rent, and salaries and wages;

d) Professional fees incurred by the Receiver but not billed is approximately $26,000 and the cost to complete the administration is estimated at $24,000; and

e) The Receiver will retain a $100,000 administrative reserve before the Final Distribution to complete the administration of the HETI estate.

APPROVAL OF PROFESSIONAL FEES

23. Professional fees and costs incurred since the Receivership Date are as follows:

a) Receiver's fees and costs throughout total $251,707 (excluding GST);

b) Receiver's Canadian legal counsel's fees and costs total $72,559 (excluding GST); and

c) Receiver's US legal counsel's fees and costs total USD$30,693.

24. Professional fees and costs incurred and billed by the Receiver's legal counsel to date are $113,628 (plus applicable taxes). The Receiver expects approximately $86,000 of additional work-in-progress as at the date of this report to be invoiced and paid.

25. The Receiver's fees and costs incurred and billed to date are $531,707 and approximately $26,000 of work-in-progress as at the date of this report is expected to be invoiced and paid.

26. Copies of the Receiver's invoice contain confidential information and are not attached but are available to this Honourable Court if requested.

27. The Receiver and the Receiver's legal counsel estimate that additional professional fees necessary to complete the administration of the receivership will be approximately $24,000 for the Receiver and $27,000 for the Receiver's legal counsel.

28. The Receiver respectfully requests that this Honourable Court approve the Receiver's and the Receiver's legal counsel's fees and disbursements, including the estimate to conclude the receivership administration.

CONDITIONAL DISCHARGE OF THE RECEIVER

29. The following tasks must be resolved in order to complete the administration of the HETI receivership proceedings:

a) Settling the unpaid administrative costs and professional fees of the Receiver and the Receiver's legal counsel;

b) Issuing distributions for the Deemed Trust Claims and the Section 81.4 Claim;

c) Issuing a distribution for the HMT Lien Claim;

d) Issuing the Interim Distribution and Final Distribution to HSBC;

e) Complete certain final administrative tasks, including filing GST returns, and winding down the HETI receivership;

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

30. Upon completion of the Remaining Activities, the Receiver will have completed its administration of HETI's 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**").

31. The Receiver proposes to destroy HETI's books and records 30 days following the Order discharging the Receiver unless one of the remaining Defendants in these proceedings takes possession of the books and records from the Receiver prior the expiry of such 30-day period.

32. Accordingly, the Receiver respectfully requests that this Honourable Court approve an Order discharging the Receiver from any and all obligations as Receiver of HETI under the Receivership Order, conditional upon the completion of the Remaining Activities and the filing of the Receiver's Completion Certificate.

RECEIVER'S RECOMMENDATIONS

33. The Receiver respectfully recommends that this Honorable Court approve:

a) The Receiver's activities as set forth in the Third Report and in its prior Reports;

b) The Priority Distributions:

c) The Interim Distribution;

d) The Receiver's authority to make the Final Distribution at a future date.

e) The fees and disbursements of the Receiver and its counsel as described in this Third Report; and

f) The conditional discharge of the Receiver.

Dated at Calgary, this 6th day of October, 2023.

ERNST & YOUNG INC.
in its capacity as the Receiver of
Highwood Equipment Technologies Inc.
and not in its personal or Corporate capacity

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

Josh Heagy, CPA
Director