



**COURT FILE NUMBER** 1403-18264  
**COURT** COURT OF QUEEN'S BENCH OF ALBERTA  
**JUDICIAL CENTRE** EDMONTON  
**PLAINTIFF** HSBC BANK CANADA  
**DEFENDANT** VISIONARY MOTORSPORTS LTD., 1211311 ALBERTA LTD., JASON DE CHAMPLAIN, NEIL VANDERKOOI AND WAYNE ROBERTSON

**DOCUMENT** **SECOND AND FINAL REPORT OF THE COURT APPOINTED RECEIVER OF VISIONARY MOTORSPORTS LTD.**

DATED FEBRUARY 28, 2017

PREPARED BY DELOITTE RESTRUCTURING INC.

**ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT**

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# Introduction and Background

## Introduction

1. Pursuant to an Order (the "**Receivership Order**") granted by the Court of Queen's Bench of Alberta (the "**Court**") on December 19, 2014 (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver (the "**Receiver**") of Visionary Motorsports Ltd. ("**Visionary**" or the "**Company**"). A copy of the Receivership Order and other information regarding these proceedings can be accessed on Deloitte's website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) under the Visionary Motorsports Ltd. link.
2. The Receivership Order was granted as a result of an application by HSBC Bank Canada ("**HSBC**"), who holds a registered general security agreement ("**GSA**") over all of the Company's present and after-acquired personal property (the "**HSBC Security**"). HSBC was owed approximately \$3,082,000 at the Date of Receivership.
3. The Receiver retained Ogilvie LLP ("**Ogilvie**" or the "**Receiver's Counsel**") as its independent legal counsel, who has been assisting the Receiver with various matters. The Receiver's Counsel has not provided security opinions in respect of the Company's secured creditors as there are no funds available for distribution through the receivership.

## Notice to Reader

4. In preparing this report, Deloitte has relied on unaudited financial information, the Visionary books and records and discussions with former management, interested parties and other Visionary stakeholders. The Receiver has not performed an independent review or audit of the information provided.
5. Capitalized terms used in this second report (the "**Second Report**") but not defined herein are as defined in the first report of the Receiver dated February 20, 2015 (the "**First Report**") or the Receivership Order, as applicable.

## Background

6. Visionary was a distributor of personal motor-vehicles, including motorcycles, side-by-sides, and all-terrain vehicles ("ATV's"), as well as Segways and scooters. The Company was a distributor for Hisun, Linhai, Pitster Pro, Segway, Kipor, Jianshe and Cleveland units and parts.
7. In addition to HSBC, the only other registered general security agreement against Visionary was in favour of GE Commercial Distribution Finance Canada ("**GE**"). The only other registered secured interests were in respect of various lease agreements on specific equipment. The Receiver understands that GE provided two types of financing related to Visionary:

- a. Dealer financing – whereby third party retail dealerships would purchase units from or through Visionary. GE would pay Visionary for the units pursuant to a floor plan finance agreement each dealer had with GE.
  - b. Inventory financing – Visionary also had a floor plan finance agreement where Visionary would purchase units for its own inventory from third parties, including Segway Inc. (“**Segway**”). GE would pay the dealer for the purchaser on the condition that, as each floor unit was sold, Visionary had to report the sale to GE and pay a predetermined amount to GE.
8. As provided for in the agreements, GE would provide periodic reconciliations between the amounts owing to Visionary by way of the dealer financing of third parties and the amounts borrowed by Visionary for the purchase of units. As Visionary sold each floor unit to a third party, Visionary would pay GE for the applicable portion of the balance owing.
  9. The Receiver understands that the Company was selling units and not advising GE of the sales and not paying GE the required proceeds from each sale. As at the Date of Receivership, GE was owed a total of approximately \$1.7 million.
  10. The First Report provided an update on the steps taken by the Receiver to take possession and control of the assets of the Company as well as details of the poor state of the electronic and hard copy books and records and the limited availability thereof, details on the assets and potential missing assets, details on the appraisal and sales process, details on the creditors and statutory claims, details on another bank account established by Visionary with the Toronto Dominion Bank (the “**TD Account**”), and details on receipts and disbursements and the Receiver’s fees and costs.
  11. In the First Report, the Receiver sought approval of the reported actions of the Receiver, advice and directions from the Court in respect of realization on the Segway Units, the GE Dealer Units and the Montreal Units and approval of the Sale Process in respect of certain of the Company assets and approval of the Midwest Offer for the Sale Assets (capitalized terms as defined in the First Report).
  12. The Receiver also prepared a confidential supplement to the First Report (the “**First Supplement Report**”) which provided additional sensitive and confidential information in regards to the appraisal of the assets completed by Century Services Inc. as well as GE’s potential buyback of the Segway Units, GE’s position regarding the Montreal Units and details of the offers on the Sale Assets.
  13. Pursuant to the First Report and the First Supplement Report, the Court granted an Order on February 24, 2015 (the “**Approval Order**”) declaring and ordering that, among other things:
    - a. The First Report was accepted;
    - b. The Sale Process was approved;
    - c. The sale of the Saskatchewan Units was approved;
    - d. The sale to Midwest Motorsports Canada Ltd. (“**Midwest**”) and the Midwest Transaction was approved and the Receiver was authorized to take steps to complete the Midwest Transaction;

- e. The Receiver was authorized to accept the return of \$5,300 from an employee who was given an all-terrain vehicle to cover her wage arrears owing at the Date of Receivership;
  - f. GE was directed to provide evidence to the Receiver that the GE Dealer Units and the Montreal Units were paid for by the Company and the Receiver was directed to release the units if paid for prior to the Receivership; and
  - g. The Segway Buyback Transaction was approved.
14. This report constitutes the second report of the Receiver (the "**Second Report**"). The Second Report is being filed in support of the Receiver's future application to this Honourable Court (the "**Discharge Application**") seeking the following:
- a. Approval of the reported actions of the Receiver in respect of administering these receivership proceedings;
  - b. Approval of the accounts of the Receiver and Ogilvie, inclusive of an accrual for the fees and disbursements in connection with the completion of these proceedings, including the costs of this application;
  - c. Approval of the Receiver's Final Statement of Receipts and Disbursements for the period from December 19, 2014 to January 30, 2017 (the "**Receiver's Final SRD**");
  - d. Approval of the payment of the Remaining Unpaid Disbursements (as defined later in this Second Report) from the Receiver's account;
  - e. Approval of the payment of the Remaining Funds on Hand to HSBC as a partial repayment of the HSBC Funding (as defined later in this Second Report);
  - f. Declaring that the Receiver has duly and properly discharged its duties, responsibilities and obligations;
  - g. Discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of any act done by the Receiver in these receivership proceedings and its conduct as Receiver pursuant to its appointment in accordance with the Receivership Order, or otherwise; and
  - h. Such further and other relief and directions as counsel may request and this Honourable Court may deem appropriate.

# Update on the Receiver's Activities

15. Since the First Report, the Receiver has undertaken the following activities:

- a. Corresponding with creditors and other parties in regards to the status of the receivership;
- b. Corresponding and reporting to the Secured Creditors and their counsel in regards to the status of the receivership and the information available;
- c. Corresponding with the Receiver's counsel in regards to ongoing receivership matters;
- d. Administering the Wage Earner Protection Program and corresponding with employees in regards to same;
- e. Issuing employee T4's and preparing the T4 summary;
- f. Corresponding with the landlord re ongoing matters;
- g. Reviewing disbursements and arranging for payment and administering the receivership trust account;
- h. Updating the statement of actual and estimated receipts and disbursements and preparing various fee and cost analysis reports;
- i. Arranging for the trust audits completed by CRA for GST and payroll source deductions;
- j. Paying out all statutory claims ranking in priority to the secured creditors;
- k. Realizing on the remaining assets, investigating the available books and records and coordinating affidavits as outlined in more detail later in the Second Report; and
- l. Other activities as detailed further in the Second Report.

# Books and Records

16. As outlined in the First Report, there was a substantial amount of missing books and records of the Company when the Receiver took possession of the Company's assets on the Date of Receivership. It also appeared that the electronic information on the remaining computers was deleted, certain computers were missing, the Synology network storage device had been removed and the data in the web-based system called NetSuite was deleted. In addition, the Company was using the TD Account to process most of the receipts and disbursements from the operations.
17. The Receiver attempted to recover the missing books and records, information and computers and storage device through discussions and correspondence with the former employees and the former principals of Visionary, Wayne Robertson, Neil Vanderkooi and Jason DeChamplain (the "**Former Principals**"), but has not been successful.
18. The Receiver wrote to the Secured Creditors in March 2015 and advised of potential further steps (and the associated potential costs) that could be taken to attempt to recover the missing information, missing assets, deleted NetSuite data and to further investigate the TD Account transactions. As requested by HSBC, the Receiver did proceed with obtaining TD Bank statements and supporting documents for the period from January 1, 2014 along with Kuehne & Nagel inventory reports detailing the inventory transactions for the Company for the period from June 1, 2014 to the Date of Receivership. The Receiver also obtained statutory declarations from Frank Barry and Joseph Carpenter in respect of dealings that each of them had with principals of Visionary. The Receiver advised the Secured Creditors of the further steps that were taken and advised that the obtained records would be provided on request for either Secured Creditor to review further as well. HSBC requested and was provided the additional material.
19. The limited books and records of the Company that are in the possession of the Receiver will either be returned to the Former Principals or destroyed upon the Receiver's discharge. The Secured Creditors declined to receive the balance of the books and records.

# Asset Realizations

## Accounts Receivable

20. As outlined in the First Report, the accounts receivable records were incomplete and not up to date and there were limited supporting documents available. The Receiver attempted to collect the accounts receivable without a lot of the supporting invoices available and many customers/dealers indicated that Visionary's records were incorrect and/or overstated, reflected sales of units or spare parts that did not take place and/or did not properly reflect warranty credits owing to the dealers.
21. The Receiver was also notified by a dealer that one of the Former Principals had offered a substantial discount if the dealer agreed to purchase a number of units immediately and requested that part of a remaining payment be made to him personally (the "**Discounted Receivable**"). The Receiver is not certain if other customers/dealers paid any funds personally to the Former Principals as opposed to the Company. In addition, it appears that the Company was providing significant discounts in order to move and realize on inventory, the proceeds of which were likely deposited into the TD Account.
22. The Receiver collected approximately \$2,100 in accounts receivable and does not expect any further collections and has no directions from the Secured Creditors to take any further steps.

## Unit Inventory and Spare Parts Inventory

23. Unit inventory consisted of assembled or unassembled adult and kids motorbikes, ATV's, Segways, scooters and side-by-side units and a spare parts inventory was maintained to service the unit inventory. The Receiver was unable to locate a current and accurate unit and spare parts inventory listing.
24. Pursuant to the Approval Order and the Sale Process, the Receiver completed the sale of the Midwest Assets and Saskatchewan Units and released its interest in the GE Dealer Units and Montreal Units after receiving proper supporting documentation. In accordance with the Approval Order, the Receiver also accepted the return of approximately \$5,300 from the former employee who was given an ATV (the "**Missing ATV**") by the Former Principals in lieu of outstanding wages.
25. The Segway Buyback Transaction approved in the Approval Order unfortunately could not be completed.
26. On March 9, 2015, Counsel for GE sent Segway a Repurchase Notice advising that GE was requiring Segway to buy back the units pursuant to the Vendor Agreement between the parties.
27. Segway took the position that it was not required to complete the buyback given the Receivership and the fact that the Segway units no longer had the two batteries per unit.
28. In respect of the batteries, only about two-thirds of the Segway Units had batteries when the Receiver took control of the Company's building. Further, those remaining batteries required that they be recharged regularly, and the recharge date had passed. Counsel for the Receiver inquired with counsel for GE if the batteries should be sold as part of the Midwest Transaction. GE was not aware that the batteries were



considered part of the Segway units by Segway and confirmed that the batteries were not needed for the buyback transaction. Whatever batteries were on site were therefore sold as part of the Midwest Transaction prior to the efforts to complete the Segway Buyback Transaction.

29. Counsel for GE continued to negotiate and make efforts to complete the Segway Buyback Transaction but ultimately was unsuccessful. At GE's request and as provided for in the Court Order, the Receiver provided a number of extensions to allow efforts to complete the Segway Buyback Transaction.
30. The Receiver did not have standing to directly try to compel Segway to buy back the units and any such efforts would likely not have been economical.
31. As a result, the Receiver accepted and closed on revised offers from Ride the Glide for approximately \$56,500 for the Segway Units and \$12,600 for the Segway Parts, for a total of \$69,100 inclusive of GST (the "**Revised Ride Offer**"). The Approval Order authorized the Receiver to accept the Ride Offer for \$75,000, or any comparable offer, if the Segway Buyback Transaction did not close.
32. It was the Receiver's view, and that of its counsel, that the Revised Ride Offer was capable of acceptance by Receiver without further order of the Court as the Revised Ride Offer was considered "comparable" to the original Ride Offer as it likely represented the best recovery for the estate at that point and also eliminated the ongoing rent and minimized the professional fees. HSBC provided its approval of the Revised Ride Offer and GE took no position.

#### Equipment and Furniture

33. As outlined in the First Report, Visionary leased several vehicles, two tractors and various computer and office equipment and TV's and also owned various shop and office equipment and furniture. The Receiver understands that the leased vehicles were returned to the lessor, however the Receiver was unable to locate the majority of the remaining leased equipment or any computers, desks, TV's, etc. that were allegedly offered to employees in lieu of outstanding wages at the Date of Receivership.
34. The Receiver did, however, locate the missing forklift (the "Missing Forklift") that the Former Principals claimed to be unaware as to its whereabouts and claimed that the employees had keys and access to the Missing Forklift and may have taken it. The Receiver was notified about the Missing Forklift from a third-party who was looking to purchase a used forklift being advertised for sale on Kijiji and was negotiating with one of the Former Principals. The third party was suspicious and linked one of the Former Principals back to Visionary and contacted the Receiver. Recognizing that one of the Former Principals was attempting to sell a forklift, and that there was the Missing Forklift, the Receiver, through Counsel, directed a bailiff to seize the Missing Forklift from a neighbouring property and has subsequently sold it.
35. The Receiver does not have any remaining assets of the Company in its possession that can be realized upon.

# Liabilities

## Secured Creditors

36. As previously outlined, HSBC and GE were owed approximately \$3.1 million and \$1.7 million, respectively, as at the Date of Receivership.
37. The Receiver's Counsel has not completed an independent review of the Secured Lender's security as there will not be funds available for distribution to the Secured Lenders.

## Statutory Claims

38. Canada Revenue Agency ("**CRA**") has deemed trust claims against Visionary for unremitted payroll source deductions and GST. CRA conducted a payroll and GST trust audit on the Company and confirmed that there were unremitted payroll source deductions owed as of the Date of Receivership of approximately \$12,243 (the "**Payroll Deemed Trust Claim**") which have been paid by the Receiver. In addition, CRA also assessed a pre-receivership GST balance of approximately \$36,000 that is owed to CRA from Visionary, but has filed an unsecured claim for this amount as against the Company. As a result, there is no GST deemed trust claim that has priority to HSBC or GE.
39. WCB has a priority claim that generally ranks in priority in a receivership to all security, with the exception of real property and CRA claims, for any outstanding WCB premiums payable. The Receiver has received correspondence from WCB advising that Visionary is indebted to WCB in the amount of approximately \$1,708 and this has been paid by the Receiver.
40. At the date of the Receivership Order, there were outstanding employee claims for wages, vacation pay and termination pay owing from Visionary. Pursuant to the WEPPA, Human Resources and Skills Development Canada ("**HRSDC**") has a priority claim over the current assets of the Company, that only ranks behind the Payroll Deemed Trust Claim, for any qualifying employee arrears of up to \$2,000 per employee (the "**WEPPA Trust Claim**"). The WEPPA Trust Claim has been filed by HRSDC for \$20,537 and this amount has been paid by the Receiver.
41. The Receiver is not aware of any other unpaid statutory claims.

## Other Trade Payables and Debts

42. The Company's accounts payable aging report as at September 30, 2014 indicated that Visionary owed approximately \$358,000 to its trade creditors and there will be no funds available for any unsecured creditors.

# Receiver's Fees and Costs

43. This has been a very challenging receivership due to the lack of available books and records to support and realize on the assets, the shut-down of the operations prior to the Date of Receivership, the general state of the Company and the actions of the Former Principals. In addition, the Receiver needed to complete its statutory duties pursuant to the Receivership Order and to determine the value of and to try to maximize the realizations on the assets for all interested parties. As a result, the Receiver has spent considerable time dealing with the various issues and meeting its related duties.
44. The Receiver's fees totaled approximately \$164,300 to April 30, 2015 and no further time has been or will be charged to the estate. The Receiver's legal fees totaled approximately \$22,600 to June 24, 2015. The Receiver and its counsel agreed to reduce their fees by 25% as a result of the poor recoveries in the receivership which resulted in discounted Receiver fees of approximately \$123,213 and discounted Receiver's legal fees of approximately \$18,843. A separate fee affidavit will be filed by the Receiver that will include copies of the invoices rendered by the Receiver and its counsel.
45. The Receivership Order allows the Receiver to borrow up to \$200,000, however no borrowings were obtained as the allocation of costs amongst HSBC and GE was not settled, the Receiver was not able to secure an administration agreement with CRA (as outlined in the First Report), and the Receiver would not be able to repay the Receiver borrowings required in full based on the net realizations in the receivership and the Receiver's Charge, the Payroll Deemed Trust Claim, and the WEPPA Trust Claim.
46. HSBC has agreed to fund the Receiver's fees and costs and has funded approximately \$153,000 into the estate (the "**HSBC Funding**").
47. In the Receiver's opinion, the services rendered in respect of these fees and costs have been duly rendered in response to the required and necessary duties of the Receiver hereunder, and are reasonable in the circumstances. These professional fees were reviewed by and are acceptable to HSBC.

# Statement of Receipts and Disbursements

48. The Receiver has prepared the Receiver's Final SRD, as included in **Appendix A**.
49. The estimated remaining unpaid disbursements included in the Receiver's Final SRD (the "**Remaining Unpaid Disbursements**") are as follows:
  - a. \$5,250 (excluding GST) for estimated remaining legal fees for Ogilvie to wrap up the administration (the "**Remaining Legal Fees**"); and
  - b. \$2,500 for any contingency payments (the "**Contingency Funds**").
50. There are no known remaining statutory claims for the Company and the Receiver has completed the filing of all of the post-receivership GST returns and may receive a small refund of less than \$2,000.
51. The Remaining Unpaid Disbursements, subject to the approval of this Honourable Court, will be paid out of the funds currently being held by the Receiver. The estimated remaining funds, after payment of the Remaining Unpaid Disbursements, are expected to total approximately \$5,922 (the "**Remaining Funds on Hand**"). The Receiver will then pay the Remaining Funds on Hand to HSBC as a partial payment of the HSBC Funding. Any additional funds remaining after the payment of actual professional fees, or from any remaining Contingency Funds, or from any post-receivership GST refund, will also be paid to HSBC up to the amount of the HSBC Funding.
52. The Receiver has completed all aspects concerning the administration of these receiverships and is not aware of being required for any further purpose herein and is therefore of the view that it should be discharged from its mandate.

# Approvals Sought

53. This Second Report is being filed in support of the Discharge Application seeking the following:

- a. Approval of the reported actions of the Receiver in respect of administering these receivership proceedings;
- b. Approval of the accounts of the Receiver and Ogilvie, inclusive of an accrual for the fees and disbursements in connection with the completion of these proceedings, including the costs of this application;
- c. Approval of the Receiver's Final SRD;
- d. Approval of the payment of the Remaining Unpaid Disbursements from the Receiver's account;
- e. Approval of the payment of the Remaining Funds on Hand to HSBC as a partial payment of the HSBC Funding;
- f. Declaring that the Receiver has duly and properly discharged its duties, responsibilities and obligations;
- g. Discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of any act done by the Receiver in these receivership proceedings and its conduct as Receiver pursuant to its appointment in accordance with the Receivership Order, or otherwise; and
- h. Such further and other relief and directions as counsel may request and this Honourable Court may deem appropriate.

**DELOITTE RESTRUCTURING INC.,**

In its capacity as Court appointed Receiver of  
Visionary Motorsports Ltd.  
and not in its personal capacity



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Jeff Keeble CPA, CA, LIT, CBV  
Senior Vice-President

# APPENDIX A

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**Visionary Motorsports Ltd. - in Receivership**  
**Final Statement of Receipts & Disbursements**  
**For the period December 19, 2014 to January 30, 2017**

	Total
<b>Actual Receipts</b>	
Funding of receivership by HSBC	\$ 152,794
Sale of assets	36,560
Sale of Segway units	53,810
Recovery of preferential payment	5,048
Accounts Receivable	2,118
Insurance refund	1,785
Miscellaneous other receipts	110
GST collected	4,777
	257,000
 <b>Actual Disbursements</b>	
Receiver's fees	123,213
Occupation rent	43,139
WEPPA super priority claim	20,537
Legal fees	18,843
Payroll source deduction deemed trust claim	12,243
Legal disbursements	1,058
GST paid by HSBC	7,276
GST paid by Receiver	6,571
Appraisal fees	2,000
WCB priority claim	1,708
Insurance	1,534
Utilities	1,438
Locksmith	917
Inventory shipping and record costs	867
Filing Fee paid to Official Receiver	70
Contract labour	563
Bailiff fees	516
Banking, mail redirection and payroll fees	836
	243,328
 <b>Excess of Actual Receipts over Actual Disbursements</b>	 <b>\$ 13,672</b>
 <b>Estimated Remaining Disbursements</b>	
Receiver's legal fees	5,250
Contingency funds	2,500
 <b>Total Estimated Remaining Disbursements</b>	 7,750
 <b>Excess of Receipts over Disbursements Before Repayments</b>	 5,922
Repayment of fees and costs to HSBC ( <b>Note 1</b> )	5,922
 <b>Excess of Receipts over Disbursements</b>	 \$ -

**Note 1:** HSBC has funded certain fees and costs of the Receiver and the Receiver's counsel for approximately \$152,800 and this repayment represents the net funds available in the receivership after the payment of the costs and priority claims detailed above.