

ONTARIO
SUPERIOR COURT OF JUSTICE

**ORLANDO IERACI, GIUSEPPE MELECA, FRANK TROIANO, CONCEZIO
BATTAGLINI, CARMELO COMMISSO, FRANCESCO GAGLIANO,
GIUSEPPE GAGLIANO, DAVID MEADOWS, GIUSEPPE COMMISSO, JOHN
KOLOVOS, BORDEN KENT, GABRIEL DIVITTORIO, 747304 ONTARIO
LIMITED, RITA BENNETT, MAGGIORINO TORRESAN, MARCO
BATTAGLINI, DAVE BATTAGLINI, LEO BATTAGLINI, VINCENZO
MINNELLA, DINO MINNELLA, FERRUCCIO AGOSTINO, TONY MINNELLA,
VITO MINNELLA, ROCCO MINNELLA, ANNA M. MINNELLA and JOHN
PETROSINO**

Applicants

- and -

**VINCENZO POLSINELLI, RODOLFO GRANATA, GARA HOLDINGS,
NAJEEB WAHAB, P.O.S.E. INVESTMENTS, 910911 ONTARIO INC., 910912
ONTARIO INC., 910913 ONTARIO INC. and TERRY HOPKINS**

Respondents

**FOURTH REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER OF P.O.S.E. INVESTMENTS**

FEBRUARY 21, 2014

Table of contents

I.	Introduction.....	1
II.	Purpose of Report.....	2
III.	Receiver's Activities to Date	2
IV.	Receiver's fees and disbursements.....	4
V.	Receiver's Interim Statement of Receipts and Disbursements	5
VI.	Conclusion and Recommendations	5

Appendices

Initial Order	"A"
Marketing Order	"B"
Approval and Vesting Order	"C"
Claims Procedure Order	"D"
Summary of Claims	"E"
Affidavit of Rob Biehler	"F"
Affidavit of Dom Glavota	"G"
Receiver's Interim Statement of Receipts and Disbursements	"H"

I. Introduction

1. By Order of the Honourable Justice Thompson dated April 2, 2012 (the “**Initial Order**”), Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) was appointed receiver and manager (the “**Receiver**”), without security, over all of the current and future assets, undertakings and properties of P.O.S.E. Investments. (“**POSE**” or the “**Company**”) pursuant to section 101 of the *Courts of Justice Act*. A copy of the Initial Order is attached hereto as **Appendix “A”**.
2. The Company operated as a partnership of individuals (“**Unitholders**”) and held real property through 910912 Ontario Inc. and 910913 Ontario Inc. and the partnership commenced in 1990.
3. The real properties held by 910912 Ontario Inc. and 910913 Ontario Inc., in trust for POSE, are located in the Municipality of Meaford (the “**Meaford Property**”) and in the Town of Georgina (the “**Georgina Property**”), previously defined in the First Report of the Receiver and Manager, dated May 31, 2012 (the “**First Report**”), and more particularly described in Schedule “A” and Schedule “B” of the Initial Order and collectively referred to as the “**Real Properties**”.
4. The Initial Order authorized the Receiver to, among other things, take possession of and exercise control over the Real Properties and any and all proceeds, receipts and disbursements arising out of or from the Real Properties. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Real Properties or any part thereof out of the ordinary course of business.
5. By Order of the Court dated June 28, 2012, the Receiver obtained approval for the plan to market and sell the Real Properties (the “**Marketing Order**”). A copy of the Marketing Order is attached as **Appendix “B”**.
6. Pursuant to the Order of the Honourable Mr. Justice Parayeski, dated January 22, 2013, the Receiver obtained an approval and vesting order vesting in the Purchaser the Receiver’s right, title and interest in and to the Georgina Property. The order was subsequently varied on January 25, 2013 (collectively “**Approval and Vesting Order**”). A copy of the Approval and Vesting Order is attached as **Appendix “C”**.
7. On January 25, 2013, the sale transaction for the Georgina Property was successfully closed.
8. The Court Orders, Receiver’s reports and Unitholder letters have been posted on the Receiver’s website www.deloitte.ca .

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9. Pursuant to the Order of the Honourable Mr. Justice Reid, dated May 28, 2013, the Receiver obtained an order that outlined the procedures that creditors, unitholders may prove a claim with the Receiver (“**Claims Procedure Order**”). A copy of the Claims Procedure Order is attached as **Appendix “D”**.
 10. Unless otherwise provided, all other capitalized terms not otherwise defined previous Reports and Orders.

II. Purpose of Report

11. The purpose of the Receiver’s Fourth Report to Court is to:
 - a) report on the administration and Receiver’s activities, including the execution of the Claims Procedure since our Third Report dated May 1, 2013;
 - b) obtain approval of the fees and disbursements of the Receiver and those of its counsel, Gowling Lafleur Henderson LLP;
 - c) obtain approval of the Receiver’s Interim Receipts and Disbursements for the period from April 15, 2013 to January 31, 2014; and
 - d) obtain approval of the conduct and activities of the Receiver since our Third Report dated May 1, 2013.

III. Receiver’s Activities to Date

Property taxes

12. On January 29, 2014, the Receiver paid \$7,878.00 to the Town of Meaford to pay the interim tax liability for the Meaford Property, which effectively covers the taxes until mid-2014.
13. The Receiver has paid a total \$115,315.53 in respect of property taxes on the Real Properties since its appointment.

Meaford Tenants

14. To date, the Receiver has collected \$15,412.33 in rent from the nine tenants and will collect approximately \$6,000 for the final 2013 taxes and 2014 interim taxes.

Meaford Property – Marketing Process

15. As previously reported, the Receiver reduced the listing price for the Meaford Property to \$975,000 from \$1,275,000 in January 2013. Due to the lack of a transaction for the property and based on advice by the real estate agent the Receiver has reduced the listing price to \$875,000 effective January 11, 2014 and the listing has been extended to July 11, 2014.
16. The Receiver received an offer from an interested party in August, 2013 to purchase all three parcels in Meaford, however, the value was significantly less than the listing price and in order to respond to the proposal the Receiver engaged Ron Hopper Real Estate Ltd. of Owen Sound, ON to appraise the property to provide the Receiver with support to negotiate with the interested party.
17. Ultimately, the Receiver and the interested party could not reach an agreement and the Receiver has continued to list the property through CBRE.
18. Since the initial listing in July, 2012 there have been approximately 20 inquiries about the property and there have been 4 parties attend on-site.
19. As previously reported, the Receiver continues to believe that marketing the property through a real estate agent is appropriate because the net carrying costs are modest at less than \$20,000 per year and due to the winter months which are very slow for this type of property. The Receiver has asked CBRE to advise prospective purchasers that all reasonable offers will be considered.

Claims Procedure

20. The Receiver completed the Claims Procedure as prescribed in the Claims Procedure Order, which included the following activities:
 - a) Sent by ordinary mail to each known Unitholder, government tax authorities, a Proof of Claim together with the Claims Procedure on June 27, 2013;
 - b) Advertising in The Globe and Mail (National Edition) on June 25, 2013 and The Auroran on June 26, 2013;
 - c) Posting the Claims Procedure and Proof of Claim package on the Deloitte website commencing June 28, 2013;
 - d) Attending to numerous inquiries from Unitholders;
 - e) Receiving and reviewing 97 claims forms and supporting documentation from Unitholders, including 18 parties with Cost Claims; and
 - f) Issuing 73 Notices of Revision or Disallowance to Unitholders.
21. There have been no parties who have disputed the Receiver's Notice of Revision or Disallowance.
22. Set out below is a summary of the claims:

Nature of Claim	#	\$
Creditor Claims	0	0
Cost Claims from Applicants	18	\$145,071.90
Admitted Unitholder Claims	92	\$2,486,040.41
	110	\$2,631,112.31

23. In addition to the claims reported above, the Receiver received 5 Unitholder claims for \$247,390.20 after the deadline of September 30, 2013 (“Late Claims”).
24. Based on the Company records, there are 51 Unitholders with potential claims of \$1,242,820.99 who have not filed a claim.
25. Attached as **Appendix “E”** is a detailed listing of the Unitholder Claims.
26. As set out in paragraph 8 of the Claims Procedure Order, the Receiver has been authorized to use reasonable discretion as to adequacy of compliance with respect to the manner in which Claims are completed. Based on the Receiver’s experience with the Unitholders in this proceeding, it is the Receiver’s view that the Claims Procedure was not well understood, which is evidenced by the Receiver’s completion of 73 Notices of Revision or Disallowance. Therefore, it is the Receiver’s opinion that allowing the late claims filed after the Claims Bar Date to be accepted is fair and equitable in light of the circumstances as there appears to be no material differences to the recoveries by all of the Unitholders that have admitted Claims.
27. As noted above, 51 Unitholders with potential Claims of approximately \$1.2 million did not file a Proof of Claim nor have they contacted the Receiver about the Claims Procedure. Therefore, it is the Receiver’s view that allowing the late claims filed after the Claims Bar Date to be accepted will not prejudice this group of stakeholders. In many cases, the Receiver received returned mail for this group of stakeholders as the last known address was no longer valid and as set out the in Claims Procedure the Receiver made public notice of the claims process and the bar date.
28. The Receiver’s plan is to pay \$72,535.95 to the Applicants with Cost Claims, representing a portion of those claims. As set out in paragraph 33 in the Initial Order, it is the Receiver’s opinion that Cost Claims rank ahead of Unitholder Claims; however they rank behind the Receiver’s Charge prescribed in paragraph 21 of the Initial Order.

IV. Receiver’s fees and disbursements

29. The Receiver seeks to have its fees and disbursements, including those of its legal counsel approved by this Honourable Court.

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30. As a result of the sale of the Georgina Property, the Receiver's fees and legal fees have been paid on an interim basis pursuant to paragraph 23 of the Initial Order.
 31. The total fees, disbursements and HST of the Receiver for services provided during the period April 15, 2013 to January 31, 2014 have been \$146,325.60 for fees and disbursements and \$19,022.33 in HST. All but \$3,424.78, including HST has been paid to date on an interim basis.
 32. Attached as **Appendix "F"** is an affidavit of Rob Biehler of Deloitte Restructuring Inc. as sworn on February 21, 2014 regarding the Receiver's fees and disbursements. Copies of the Receiver's accounts for the period of April 2, 2012 through to and including January 31, 2014 are appended as an Exhibit to that affidavit.
 33. Gowling Lafleur Henderson LLP ("Gowlings") has acted as Receiver's legal counsel on all matters related to the receivership proceedings to date. Gowlings has rendered accounts to the Receiver for the period in question in the amount of \$74,623.81, inclusive of fees, disbursements and HST. The activities of Gowlings as described in the accounts are summarized in the Affidavit of Dom Glavota sworn on February 18, 2014 and as attached as **Appendix "G"**. A copy of Gowlings' accounts is attached as an Exhibit to that affidavit.

V. Receiver's Interim Statement of Receipts and Disbursements

34. Attached as **Appendix "H"** is a copy of the Receiver's Interim Statement of Receipts and Disbursements for the period April 2, 2012 to January 31, 2014, showing an excess of receipts over disbursements of \$186,121.36.
35. As the Receiver remains in possession of the Meaford Property and marketing activities are continuing, it is in a position to distribute only a portion of the funds on hand.
36. It is the Receiver's intention to retain approximately \$110,000 to fund ongoing property maintenance and possession costs and interim professional fees.

VI. Conclusion and Recommendations

37. The Receiver submits to this Court that it has taken all reasonable actions in the circumstances and has represented itself in the best interests of all the stakeholders in the course of administering its duties as Receiver.

38. The Receiver respectfully requests that this Court grant an Order *inter alia*:

- a) approving of the interim distribution of \$72,535.95 to the parties with Cost Claims;
- b) approving of the Receiver's Interim Statement of Receipts and Disbursements for the period April 16, 2013 to January 31, 2014;
- c) approving the fees and disbursements of the Receiver and those of its counsel, Gowlings;
- d) approving of the conduct and activities of the Receiver since the Third Report dated May 1, 2013, including the execution of the Clams Procedure;

All of the foregoing is respectfully submitted to this Court as of this 21st day of February, 2014.

Deloitte Restructuring Inc.

In its capacity as Court-appointed Receiver
and Manager of P.O.S.E. Investments
and not in its personal capacity



Per:

Robert Biehler, CPA, CA, CIRP
Senior Vice-President

APPENDIX “A” – INITIAL ORDER

APPENDIX “B” – MARKETING ORDER

Appendix “C” – Approval and Vesting Order

Appendix “D” – Claims Procedure Order

APPENDIX “E” – SUMMARY OF CLAIMS

APPENDIX “F” – AFFIDAVIT OF ROB BIEHLER

APPENDIX “G” – AFFIDAVIT OF DOM GLAVOTA

**APPENDIX “H” – RECEIVER’S INTERIM STATEMENT OF
RECEIPTS AND DISBURSEMENTS**
