

COURT FILE NUMBER Q.B.G. 40 of 2019

COURT COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE YORKTON

PLAINTIFF THE TORONTO-DOMINION BANK

DEFENDANTS EMW INDUSTRIAL LTD., EMW INDUSTRIAL INC., E&S MORRISON FAMILY HOLDINGS LTD., EMW HOLDINGS LTD., PEPPER MAINTENANCE (CANADA) 2005 LTD., and EMW REAL ESTATE CO. LTD.

DOCUMENT **THIRD REPORT OF THE COURT APPOINTED RECEIVER OF EMW INDUSTRIAL LTD., EMW INDUSTRIAL INC., E&S MORRISON FAMILY HOLDINGS LTD., PEPPER MAINTENANCE (CANADA) 2005 LTD., EMW HOLDINGS LTD., AND EMW REAL ESTATE CO. LTD.**

PREPARED BY DELOITTE RESTRUCTURING INC.

DATED JANUARY 28, 2020

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Counsel

McDougall Gauley LLP
1500 – 1881 Scarth Street
Regina, SK S4P 4K9

Attention: Michael W. Milani, Q.C.

Telephone/Facsimile: 306-565-5117/306-359-0785
File No.: 549268.6

Receiver

Deloitte Restructuring Inc.
700, 850 – 2nd Street SW
Calgary, AB T2P 0R8

Attention: Robert J. Taylor

Telephone/Facsimile: 403-267-0501 / 403-718-3681

Email: bobtaylor@deloitte.ca

TABLE OF CONTENTS

INTRODUCTION.....	1
Purpose.....	1
Terms of Reference	2
Currency	2
RECEIVER'S ACTIVITIES	2
ASSET REALIZATIONS.....	3
Accounts Receivable	3
Auction Sales Process	4
Life Insurance Policy	4
CREDITORS CLAIMS.....	4
Secured Creditors.....	4
Unsecured Creditors	5
FEES AND DISBURSEMENTS OF THE RECEIVER	6
FEES AND DISBURSEMENTS OF LEGAL COUNSEL	6
STATEMENT OF RECEIPTS AND DISBURSEMENTS	6
CONCLUSIONS AND RECOMMENDATIONS.....	6

APPENDICES

Appendix "A" – Statement of receipts and disbursements for the period April 11, 2019 to January 28, 2020

INTRODUCTION

- 1) On April 11, 2019 (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed by Order of the Court of Queen's Bench for Saskatchewan in Bankruptcy and Insolvency (the "**Receivership Order**") as the receiver (the "**Receiver**"), without security, of all the personal property of EMW Industrial Ltd. ("**EMW**"), EMW Industrial Inc. ("**EII**"), E&S Morrison Family Holdings Ltd. ("**E&S**"), Pepper Maintenance Canada (2005) Inc. ("**PMC**"), EMW Holdings Ltd. ("**Holdings**"), and EMW Real Estate Co. Ltd. ("**Real Estate Co.**") (collectively the "**Debtors**" or the "**Companies**") acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the "**Property**"), including, but not limited to, all goods, inventory, equipment, accounts receivable, and other intangibles, and all proceeds of any of the Property.
- 2) The Receivership Order was granted as a result of an application by The Toronto-Dominion Bank ("**TD Bank**"), which holds registered security over all of the Companies' present and after-acquired personal property (the "**TD Bank Security**").
- 3) The Receiver issued its first report to Court (the "**First Report**") on May 17, 2019 in connection with seeking an Order of the Court approving the Farm Management Agreement and the Inter-Creditor Priority Agreement (as defined in the First Report), and the sale of existing grain inventory with respect to the operations of E&S Morrison Family Holdings Ltd. On May 21, 2019, the Receiver issued the Supplement to the First Report of the Receiver (the "**Supplement to the First Report**") in connection with seeking an Order of the Court approving the offer for 10 specific vehicles, equipment and its associated inventory and the vesting of title to the assets to the purchasers. The relief requested was granted by the Court pursuant to two Orders pronounced on May 22, 2019 (the "**May 22 Orders**").
- 4) The Receiver issued its second report to Court (the "**Second Report**") on July 26, 2019 in connection with seeking the Court's advice and direction in respect of the operations of Canwest, and advice and direction in respect of the Summit Assets, and obtaining the Court's approval of the Century Proposal for the sale of assets. The Court granted an order regarding these matters on August 2, 2019 (the "**August 2 Order**")
- 5) All Court orders, together with related Court documents, the previous Receiver's Reports and this third report (the "**Third Report**") have been posted on the Receiver's website (the "**Receiver's Website**") at www.insolvencies.deloitte.ca/en-ca/EMW.
- 6) Unless otherwise provided, all other capitalized terms not defined in this Third Report are as defined in the Receivership Order, the First Report, and the Second Report.

Purpose

- 7) The purpose of this Third Report is to:
 - a) Provide the Court with an update of the Receiver's activities since the date of the Second Report;

- b) Respectfully recommend that this Honourable Court:
- i. Approve the activities, fees, and disbursements of the Receiver as described in this Third Report, including, without limitation, the steps taken by the Receiver pursuant to the Receivership Order, and the fees of the Receiver's legal counsel;
 - ii. Approve the Receiver's combined statement of receipts and disbursements;
 - iii. Approve the interim distribution of funds to TD Bank as the senior secured creditor of EMW; and
 - iv. Provide such further and other relief that the Court considers just and warranted in the circumstances.

Terms of Reference

- 8) In developing this Third Report, the Receiver has relied upon unaudited financial information prepared by the Debtors' management, the Debtors' books and records and discussions with its management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the information.

Currency

- 9) All dollar amounts in this Third Report are in Canadian dollars, unless otherwise indicated.

RECEIVER'S ACTIVITIES

- 10) The Receiver has undertaken the following activities since the date of the Second Report:
- a) Corresponded with various creditors, employees and other interested parties with respect to the receivership proceedings;
 - b) Corresponded with Century Services Inc. ("**Century**") and contractors regarding the collection, consolidation and sale of assets by auction;
 - c) Corresponded with HSBC Bank Canada ("**HSBC**") with respect to inclusion of its financed assets in the auction;
 - d) Administered the Wage Earner Protection Program and corresponded with former employees with respect to same.

- e) Responded to queries from Canada Revenue Agency (the "**CRA**") regarding EMW's Goods and Services Tax ("**GST**") and payroll accounts, and reconciling CRA's deemed trust claim;
- f) Addressed post-receivership GST matters;
- g) Prepared of Records of Employment and T4 tax forms for former employees;
- h) Continued with collection efforts in respect of outstanding accounts receivable ("**AR**");
- i) Corresponded with Great West Life with respect to the Companies' pension plan and its priority claim, discussed later in this Third Report;
- j) Corresponded with McDougall Gauley LLP ("**McDougall**"), the Receiver's legal counsel, from time to time on various legal matters relating to the receivership;
- k) Corresponded with Dentons Canada LLP, the Receiver's Alberta legal counsel, in respect of a creditor dispute where McDougall was unable to act;
- l) Drafted, reviewed and finalized this Third Report; and
- m) Addressed additional matters as they arose from time to time.

ASSET REALIZATIONS

Accounts Receivable

- 11) As at the Date of Receivership, the Receiver was provided with a copy of the Companies' AR sub-ledger, which reflected EMW was owed approximately \$4.6 million from numerous customers.
- 12) As at the date of this Third Report, the Receiver has collected approximately \$1.4 million (31%) of EMW's outstanding AR.
- 13) The remaining approximately \$3.2 million of outstanding AR comprise:
 - a) \$52,000 owed from related entities. The Receiver is of the view that these amounts are uncollectible due to the related entities' inability to pay;
 - b) \$320,000 appears to be subject to rights of setoff. Based on the Receiver's review, the Receiver believes that these amounts are uncollectible and no further collection actions will be undertaken;

- c) \$1.7 million remains subject to disputes and lien claims. The Receiver continues its assessment of each AR to determine if the disputes and liens are valid; and
 - d) The Receiver continues to follow up on \$1.3 million of AR as it believes some may be collectible as the Receiver has not yet received any response to its demands for payment.
- 14) Based on the foregoing, the Receiver, with input from its legal counsel, will assess what further commercially appropriate collection efforts should be considered, including commencing legal action to collect outstanding amounts.

Auction Sales Process

- 15) Pursuant to the August 2 Order, the Receiver engaged Century Services ("**Century**") to sell the EMW assets pursuant to Century's sale proposal.
- 16) Century consolidated assets from numerous locations throughout Western Canada and Ontario to three locations, EMW's Yard in Saltcoats, Saskatchewan, Century Services auction yard in Fort Saskatchewan, Alberta, and Century Services auction yard in Mississauga, Ontario where Century held onsite and online auctions. The auction ran from September 20, 2019 to September 24, 2019 and achieved gross sales proceeds of approximately \$2.6 million inclusive of the buyer's premiums.
- 17) The commission and costs of the auction totalled approximately \$361,000 resulting in net proceeds from the auction totalling approximately \$2.2 million.
- 18) Included in the auction were 242 lots subject to secured financing agreements with HSBC Bank Canada ("**HSBC**"). The Receiver and HSBC mutually agreed to include the HSBC Assets in the auction subject to the same auction fees, costs, and commissions as noted in the Century Proposal. The sale of the HSBC Assets was accounted for separately and the Receiver has provided net proceeds of \$167,000 to HSBC accordingly.

Life Insurance Policy

- 19) As discussed in the Second Report, EMW maintained keyman life insurance on Ewen Morrison in the amount of \$6.0 million (the "**Sun Life Policy**") through Sun Life Assurance Company of Canada. The Receiver has arranged to maintain the Sun Life Policy, in the short term, and has been added as a loss payee on the policy. The Receiver and its legal counsel are continuing to review available realization options, including the sale of the Sun Life Policy.

CREDITORS CLAIMS

Secured Creditors

- 20) McDougall previously conducted an independent review of the validity and enforceability of each creditor's security on the Companies' assets and, subject to normal assumptions and qualifications, determined the majority of the registrations were properly registered and valid.

- 21) With the exception of the TD Bank and FCC claims, the Receiver has resolved all other secured creditor claims by either releasing the assets to the respective secured creditor or where there was equity in the asset (the value exceeded the amount owed to the secured creditor), the Receiver purchased the asset and included it in the auction process.
- 22) In addition to the TD Bank and FCC claims, several creditors have statutory priority claims with all but two (2) resolved by the Receiver. These claims include:
- a) CRA has completed its trust audits and filed its priority claim (the "**CRA Priority Claim**") in relation to the outstanding payroll source deductions owing by EMW. Subsequently, CRA has advised the Receiver that additional adjustments are being made to the payroll and GST accounts which may take up to 60 days to complete. The Receiver will review and assess the CRA Priority Claim upon receipt of an amended CRA Priority Claim.
 - b) The Receiver has also reviewed and processed the priority claims in respect of the *Wage Earner Protection Program Act (Canada)* ("**WEPPA**") and has paid approximately \$384,000 to Service Canada as a priority claim ranking ahead of the TD security.
 - c) London Life Insurance Company ("**London Life**") submitted a proof of claim for \$133,982, including a priority claim of \$120,922 for unpaid pension contributions that had been deducted from employees' wages but not remitted to London Life. The Receiver reviewed the claim and issued a partial disallowance, allowing a priority claim for \$60,929. The amount disallowed related to non-EMW employees (employed by E&S and subject to a separate claim) and where the pension contributions had not been deducted from the employee's wages as these wages were never paid. London Life has not yet responded to the partial disallowance.
- 23) As noted in the First Report and the Second Report, TD Bank is the principal secured creditor of EMW and was owed approximately \$6.5 million at the Date of Receivership. TD Bank has valid and enforceable security (as reported in McDougall's Security Opinion). Based on the Security Opinion, the Receiver is seeking approval from the Court to approve the distribution of funds realized by the Receiver to TD Bank, as they relate to the TD Bank Security, and as they become available up to the amount of the TD Bank Indebtedness. Distributions will be subject to the Receiver maintaining sufficient funds to satisfy the costs of the Receivership Proceedings, including among other things, payment of the Receiver's fees and disbursements, McDougall's fees and disbursements, and outstanding Priority Claims (once properly proven and admitted by the Receiver).

Unsecured Creditors

- 24) The amounts owed to TD Bank exceeds the funds realized in the receivership and consequently there will be no distributions to unsecured creditors.

FEES AND DISBURSEMENTS OF THE RECEIVER

- 25) The Receiver's professional fees are calculated based on hours spent at rates established by each professional based on their qualifications and experience.
- 26) The Receiver's fees and disbursements in relation to the administration of the Receivership up to and including January 16, 2020 total approximately \$547,875 (excluding GST).
- 27) In the Receiver's opinion, the services rendered in respect of these fees and disbursements have been duly rendered in response to required and necessary duties of the Receiver hereunder, and are reasonable in the circumstances. Detailed time records supporting the invoice are available in the office of the Receiver.

FEES AND DISBURSEMENTS OF LEGAL COUNSEL

- 28) The Receiver's legal counsel's cumulative fees and disbursements on this matter total approximately \$131,000 (excluding GST) to January 16, 2020. The accounts of the Receiver's legal counsel are calculated based on hours spent at rates established by each professional based on their qualifications and experience. The Receiver is of the opinion that legal counsel's fees are reasonable and appropriate in the circumstances.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 29) The Receiver has prepared a Statement of Receipts and Disbursements (the "**SRD**") for the period April 11, 2019 to January 28, 2020 for the Companies. The SRD is attached as Appendix "**A**".
- 30) As at the date of this Third Report, the Receiver has realized sufficient funds from the collection of accounts receivable and sale of certain Equipment and Inventory such that it has not had to draw on the Court authorized Borrowing Facility to fund the receivership proceedings.

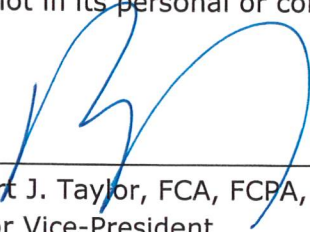
CONCLUSIONS AND RECOMMENDATIONS

- 31) Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief detailed in Paragraph 7 b) of this Third Report and such further and other relief, as this Honourable Court deems appropriate in the circumstances.

All of which is respectfully submitted at Calgary, Alberta this 28th day of January 2020.

DELOITTE RESTRUCTURING INC.

Solely in its capacity as
Court appointed Receiver of
The Property (as defined herein)
And not in its personal or corporate capacity



Robert J. Taylor, FCA, FCPA, CIRP, LIT, CFE
Senior Vice-President

APPENDIX A

**IN THE MATTER OF THE RECEIVERSHIP OF EMW INDUSTRIAL LTD., EMW INDUSTRIAL INC., E&S MORRISON FAMILY HOLDINGS LTD., PEPPER
MAINTENANCE (CANADA) 2005 LTD., EMW HOLDINGS LTD., AND EMW REAL ESTATE CO. LTD.
COMBINED INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD APRIL 11, 2019 TO JANUARY 28, 2020**

	EMW Industrial Ltd.	EMW Industrial Inc.	E&S Morrison Family Holdings Ltd.	Pepper Maintenance (Canada) 2005 Ltd.	EMW Holdings Ltd.	EMW Real Estate Co. Ltd.	Total
Receipts							
Proceeds of sale of assets	2,973,015.63						2,973,015.63
Accounts receivable collections	1,495,787.36	8,669.59	37,688.55				1,542,145.50
Income Tax Refund	751,908.37						751,908.37
Grain sales			134,800.38				134,800.38
Cash on hand	13,945.71	56,759.06					70,704.77
Miscellaneous receipts	73,004.74					110.00	73,114.74
GST collected	35,064.83						35,064.83
Interest	17,887.48	413.49	1,035.51			0.87	19,337.35
GST Refund	10,493.90						10,493.90
PST collected	2,473.98						2,473.98
Transfer of funds from related Estates	(350.00)	70.00	70.00	70.00	70.00	70.00	-
Total receipts	5,373,232.00	65,912.14	173,594.44	70.00	70.00	180.87	5,613,059.45

Disbursements							
Receiver's fees	569,599.98						569,599.98
WEPP	383,709.03						383,709.03
Payroll and source deductions	175,240.85						175,240.85
Payment to HSBC	166,515.43						166,515.43
Insurance	141,854.83						141,854.83
Legal fees	184,637.84						184,637.84
Asset security	69,437.70						69,437.70
GST/HST paid	50,424.86						50,424.86
Utilities	143,663.26						143,663.26
Equipment leases	163,265.88						163,265.88
Operating expenses	22,456.60						22,456.60
PST paid	22,444.03						22,444.03
Advance to Trustee	16,385.25						16,385.25
Appraisal fee	10,000.00						10,000.00
Auctioneer expense	5,040.00						5,040.00
Occupancy rent	4,278.15						4,278.15
Change of locks	765.00						765.00
Storage fees	301.65						301.65
Funds transfer to bankruptcy	1,384.80						1,384.80
Official Receiver filing fees	70.00	70.00	70.00	70.00	70.00	70.00	420.00
Total disbursements	2,131,475.14	108.63	70.00	70.00	70.00	70.00	2,131,863.77

Funds on hand at January 28, 2020	3,241,756.86	65,803.51	173,524.44	-	-	110.87	3,481,195.68
--	---------------------	------------------	-------------------	----------	----------	---------------	---------------------