

# Deloitte



**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** FIRST REPORT OF THE COURT APPOINTED RECEIVER OF  
VISIONARY MOTORSPORTS LTD.  
DATED FEBRUARY 20, 2015  
PREPARED BY DELOITTE RESTRUCTURING INC.

**ADDRESS FOR SERVICE AND  
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FIAT:  
LET THIS FIRST REPORT OF THE COURT APPOINTED RECEIVER  
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## APPENDICES

- Appendix A – Letter dated February 9, 2015 from Receiver's Counsel to GE's Counsel
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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 Companies' present and after-acquired personal property (the "**HSBC Security**").
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.

## Notice to Reader

4. In preparing this report, Deloitte has relied on unaudited financial information, the Visionary 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.

## Background

5. 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.
6. This report constitutes the first report of the Receiver (the "**First Report**"). The First Report is being filed in support of the Receiver's application to this Honourable Court on February 24, 2015 (the "**February 24 Application**") seeking the following:
  - a. Approval of the reported actions of the Receiver to date in respect of administering these receivership proceedings;
  - b. Advice and directions from this Honourable Court in respect of realization on the Segway Units (defined later herein) and if the proposed buyback by GE Commercial Distribution Finance

Canada ("GE") is not successful, then the Receiver is seeking approval of the Ride Offer (defined later herein);

- c. Advice and directions from this Honourable Court regarding the GE Dealer Units and Montreal Units (defined later herein);
- d. Approval of the sales process in respect of certain of the Company assets and approval of the Midwest Motorsports Canada Ltd. ("**Midwest**") offer for the Sale Assets (defined later herein); and
- e. Such further and other relief and directions as counsel may request and this Honourable Court may deem appropriate.

### **Powers of the Receiver**

7. The Receiver's powers are detailed in Paragraph 3 of the Receivership Order. They include the power to take and maintain possession and control of the assets of the Company; the power to manage, operate and carry on the business of the Company; and the power to market and sell Visionary's assets (subject to Court approval if one sale exceeds \$50,000 or if in the aggregate the sales exceed \$300,000).

### **Possession and Control**

8. The Company primarily operated from two industrial condominiums with office and adjacent warehouse space located at Suite 100 & Suite 101, 17612 – 103 Ave., Edmonton and Suite 101, 17608 – 103 Ave., Edmonton (the "**Edmonton Offices**"). In addition, a fenced-in yard behind the warehouses appears to have been used to store equipment that was under repair or for units that were no longer in running condition (the "**Edmonton Yard**").
9. In addition, the Receiver was informed that certain of the Company's inventory (the "**K&N Inventory**") was located at a Kuehne & Nagel warehouse in Edmonton (the "**K&N Warehouse**").
10. The Company was not operating at the Date of Receivership and the Receiver determined that it was not feasible or economic to carry on the business of the Company.
11. The Receiver took the following steps to take possession of, maintain control of, preserve and/or protect the Company's assets:
  - a. Attended at the Edmonton Offices and Edmonton Yard and retained a locksmith to change the locks and completed a high-level inventory of the assets and books and records on site;
  - b. Attended at the K&N Warehouse to complete an inventory and subsequently arranged to have the K&N Inventory relocated to the Edmonton Offices to reduce the ongoing cost of rent;
  - c. Contacted key employees and enquired about the whereabouts of any of the Company's property;

- d. Arranged to have the Company's mail forwarded to the Receiver's office; and
  - e. Arranged to maintain the insurance coverage over the Company's assets.
12. The Receiver has met with the former principals of Visionary, Wayne Robertson, Neil Vanderkooi and Jason DeChamplain (the "**Former Principals**") in person and over the phone several times in order to obtain information on the Company and its assets and what transpired prior to the receivership.

### **Books and Records**

13. When the Receiver attended at the Edmonton Offices at the Date of Receivership there appeared to be a substantial amount of missing documentation. It also appeared that the electronic information on the remaining computers was deleted and the Synology network storage device had also been removed. As a result, the Receiver was unable to locate the following information:
- a. Current listings of assets such as inventory, accounts receivable, and equipment or any related invoices, leases or other supporting documentation;
  - b. Financial statements;
  - c. Current payroll and GST information for priority payables analysis. It was later learned that a former employee took the payroll information to her personal residence and this information has now been returned to the Receiver;
  - d. Insurance information; and
  - e. Current accounts payable and other liability information.
14. The Receiver understands that Visionary used a web-based software tool called "NetSuite" as its accounting system and to interact with its dealers for sales, orders, warranty claims, etc. The Receiver was notified by one of the Former Principals that they would provide their personal access code to the NetSuite system to the Receiver in order that financial and other information could be obtained. In addition, one of the Former Principals indicated that they had taken a full backup of the NetSuite system in mid-December 2014 and it would be made available to the Receiver. One of the Former Principals provided his login ID and password on January 4, 2015 and, after several requests, finally provided the NetSuite back up data to the Receiver on January 8, 2015. A significant portion of the NetSuite back up information is out of date and is not useful for the Receiver and there were no current asset listings or financial statements.
15. Immediately upon understanding the nature of the NetSuite system, the Receiver notified NetSuite of the receivership and requested that access to the system be immediately suspended to all employees, dealers, etc. and to limit access to the Receiver.
16. During the process of obtaining access, the Receiver became aware that the entire NetSuite system data for Visionary was deleted on January 1, 2015 and restoring the system would cost approximately

\$10,000. The Receiver questions the benefit of restoring the system as the quality and completeness of the information is unknown, however it is proving difficult to collect receivable balances without the supporting invoices that may be within NetSuite.

17. The Receiver also noted when it toured the Edmonton Offices and Edmonton Yard that certain computers, office furniture and equipment and a TV appeared to be missing (the Receiver was later notified by a former employee that a forklift was also missing). The premises were not well organized and it appeared that certain spare parts inventory and small tools were also missing from the Edmonton Offices.
18. Given that the payroll records were removed from the Edmonton Offices, the Receiver was unable to contact any former employees until early January 2015 and as a result, the Receiver had to attempt to compile various information on the assets and liabilities of the Company on its own, which was onerous and time consuming.

# Assets

## Accounts Receivable

19. At the start of the receivership, the Receiver obtained a copy of the Company's accounts receivable sub-ledger as at September 30, 2014 from HSBC which indicated that Visionary was owed approximately \$596,000. The Receiver sent demand letters on December 24, 2014 to each of the parties listed on the sub-ledger but could not provide any amounts or supporting invoices as this information was not current or available.
20. In early January 2015, one of the Former Principals provided the Receiver with a copy of an accounts receivable sub-ledger as at November 29, 2014 which indicated that Visionary was owed approximately \$107,300, or \$45,300 on a net basis after credit balances. We understand that the credit balances relate to outstanding warranty claims owing to customers by the Company. The Receiver sent demand letters to the new parties listed on the November 29, 2014 report (that were not previously notified of the receivership) and indicated that all outstanding balances should be paid to the Receiver.
21. The Receiver has spoken with many of the customers/dealers who have been sent the demand accounts receivable letters and, in most situations, the dealers have indicated that Visionary's records are incorrect and/or overstated, reflect sales of units or spare parts that did not take place and/or do not properly reflect warranty credits owing to the dealers.
22. The Receiver has contracted a former employee of Visionary to pursue the collection of any outstanding receivable balances, but collections are not expected to be significant. The former employee has also indicated that the November 29, 2014 accounts receivable listing provided to the Receiver appeared to be missing several larger accounts.
23. To date, the Receiver has collected less than \$2,000 in accounts receivable.

## Unit Inventory

24. Unit inventory consists of assembled or unassembled adult and kids motorbikes, ATV's, Segways, scooters and side-by-side units.
25. The Company's inventory declarations provided to HSBC as at September 30, 2014 detailed a unit inventory balance of approximately \$4.5 million. However, when the Receiver took possession of the Edmonton Offices only 46 units were located therein, including 38 Segway units (the "Segway

**Units**") which GE is claiming to hold a security interest in (this is discussed in more detail later in this report). In addition, there were only 15 units in storage at the K&N Warehouse and GE has provided evidence that the Company had been paid for two of these units by GE prior to the Receivership on behalf of a dealer, Argo Sales & Services Ltd., pursuant to a floor financing arrangement it has with GE (the "**Argo Units**"), and these Argo Units will be released to the dealer pursuant to their property claim. GE has also provided evidence that an additional two units may be owned by other dealers pursuant to floor financing arrangements with GE and is requesting the release of these units to the respective dealers however, GE has not provided evidence of their payment to Visionary to allow the release of these two units (the "**GE Dealer Units**").

26. The Receiver requests that the Court provide a deadline for GE to provide documentation showing evidence of payment for the GE Dealer Units prior to the Receivership of Visionary, failing which the Receiver shall realize on the GE Dealer Units as part of the assets of Visionary.
27. Former employees have indicated that there were deliveries of units to customers / dealers in late November 2014 and up to the Date of Receivership. The Receiver has reviewed the documentation provided by Kuehne & Nagel supporting the shipment of 160 units from the K&N Warehouse to the customers / dealers during the period from December 3 to December 16, 2014 and has confirmed the receipt of most of the payment for these units.
28. Of the 160 units, the Kuehne & Nagel records indicate that 51 were picked up directly by Visionary from the K&N Warehouse (instead of using a Kuehne & Nagel shipping company, which we understand was normal practice). The Former Principals have indicated that they do not recall where the 51 units were shipped and have not provided any information on these units. However, the Receiver has been able to confirm that 37 of the 51 units were delivered to Barry's Ultra Motorsports Park on December 10, 2014 and funds were received into Visionary's TD Account (defined below) for this purchase, albeit at a discounted amount. To date, the Receiver has been unable to locate the remaining 14 units.
29. The Receiver was made aware by one of the Former Principals that seven scooters were being 'held' with Legacy Motors in Saskatchewan (the "**Saskatchewan Units**") at the Date of Receivership. Legacy Motors has offered \$200 per scooter (\$1,400 total) for these seven units, which incorporated their costs for storing the units for Visionary. The Receiver understands that the retail value of the Saskatchewan Units is approximately \$1,200 per unit, and the forced sale value is in the range of \$250 to \$450 per unit. The Receiver has agreed at a sale price of \$250 per unit for the Saskatchewan Units and expects to close this sale in due course.
30. The Receiver was also made aware of 19 units (composed of 13 units plus 6 attachments) that it understands were shipped from Visionary to a dealer in Nova Scotia in early December 2014 (the "**Montreal Units**"). The dealer is claiming to have cancelled the order however these units are now being stored in a warehouse in Montreal and GE may claim an ownership in these units. Recognizing



that the Montreal Units appear on the dealer's GE account, the Receiver has requested GE to advise if GE paid the Company for the Montreal Units prior to the Receivership and to provide documentation in respect of any such payment. A copy of a letter sent by Receiver's Counsel in that regard on February 9, 2015 is attached hereto as Appendix A. GE has not provided a response to date. The Receiver requests that the Court provide a deadline for GE to provide the requested information, failing which the Receiver shall realize on the Montreal Units as part of the assets of Visionary.

31. Excluding the Segway Units and the Argo Units, which are still being held at the Edmonton Offices, there are a further 20 motorized units that appear to be new which form part of the Company's property (the "**Unit Inventory**").

### **Spare Parts Inventory**

32. The Edmonton Offices have a substantial amount of spare parts inventory (the "**Parts Inventory**") and the Receiver understands that there are over 9,000 different part numbers.
33. Visionary's inventory declarations provided to HSBC as at September 30, 2014 detailed spare parts inventory of approximately \$830,000. However, when the Receiver took possession of the Edmonton Offices there appeared to be substantially less spare parts inventory on hand. The Receiver has been unable to obtain an accurate and up to date inventory listing that properly costs out each item, but the value appears to be substantially less than that as at September 30, 2014. In addition, many of the spare parts are not neatly organized and location codes do not appear to be accurate. A full inventory count would not be cost effective and it would also be cost prohibitive to move the spare parts to another location and there is not enough room to consolidate them in one of the Edmonton warehouses.
34. The Receiver retained a former Visionary employee to help obtain inventory listings by brand and to help identify parties that may be interested in purchasing the Parts Inventory. The Former Principals have also provided names of additional parties that may be interested in purchasing the Parts Inventory however, to date, this information has been limited.

### **Equipment and Furniture**

35. Visionary was leasing several vehicles, two tractors and various computer and office equipment and TV's. The Receiver understands that the leased vehicles have been returned to the lessor, however the Receiver was unable to locate the majority of the remaining leased equipment.
36. The Receiver does not expect that there is any significant equity in any of the leased equipment and has not taken any further steps to locate the assets.
37. The Receiver understands that the Company owns a forklift (the "**Forklift**") with an expected auction value of \$3,000. Based on discussions with former staff, there is a second forklift that is missing from

the Edmonton Offices. The Receiver has not had any success in finding the whereabouts of the missing forklift.

38. A former employee has indicated to the Receiver that when employees were terminated on December 8, 2014 they were offered computer equipment, desks, etc. in lieu of outstanding wages that could not be paid. One employee received a new ATV in lieu of unpaid wages (the "**Employee ATV**"). The Receiver demanded the return of the Employee ATV as a preferential transaction. The employee in question advised that it had been sold through an arm's length sale advertised on Kijiji and has agreed to return the proceeds of \$5,300 to the Receiver. The Employee also provided a bill of sale in respect of the sale. The Receiver's Counsel has advised the employee that return of the proceeds in lieu of return of the Employee ATV is satisfactory.
39. The Edmonton Offices also contained office furniture and equipment that was not leased (the "**Office Furniture**"), however it is expected that the ultimate realizable value of the Office Furniture is minimal.
40. The Edmonton Offices also contain warehouse shelving, various lifts and hoists, as well as the Forklift (the "**Warehouse Equipment**").

### **Segway Units**

41. As previously noted, the Segway Units form part of the Company's property and GE has asserted a Purchase Money Security Interest ("**PMSI**") in the Segway Units. There are also Segway batteries and parts (the "**Segway Parts**") being held at the Edmonton Offices, however GE has not asserted a PMSI in the Segway Parts.
42. On January 15, 2015, counsel for GE wrote the Receiver and requested that the Segway Units be released to GE, and a copy of the letter is attached as Appendix B. In that letter, GE also asked the Receiver to provide an opinion on the validity and priority of its security to the Segway Units.
43. The value of the assets of the Company that the Receiver has been able to locate is much lower than anticipated. Based on the appraised value of those assets and the projected Canada Revenue Agency ("**CRA**") deemed trust claims for payroll source deductions and GST, Wage Earner's Protection Program Act ("**WEPPA**") claims and the current and projected amount of the Receiver's Charge (as defined in paragraph 17 of the Receivership Order), it appears unlikely at this time that there will be sufficient proceeds to fully pay all of those charges. As each of those charges is in priority to a PMSI claim advanced by a secured creditor, counsel for the Receiver advised GE's counsel that a determination of the validity and priority of GE's PMSI claim was premature.
44. As part of the request to release the Segway Units, GE advised that it could possibly increase realization on the Segway Units by either using a buyback program with the manufacturer or using its contacts in the dealer networks.

45. In further discussions, GE advised that a buy back of the Segway Units by the manufacturer would be voluntary by the manufacturer and would need to be done directly between GE and the manufacturer.
46. The Receiver contacted Segway Inc. directly to gauge their interest in buying back the Segway Units and the Segway Parts from the Receiver however, to date, there has been no response.
47. The Receiver has contacted various other parties who may be interested in the Segway Units and Segway Parts and received an offer from a company called Ride the Glide, based in Victoria, BC (the "**Ride Offer**"), the details of which are outlined in the Receiver's Confidential Supplement to the First Report dated February 20, 2015 (the "**Confidential Supplement to the First Report**"). Two additional offers were received for the Segway Units and Segway Parts however, both were lower than the Ride Offer.
48. The Receiver asked GE to provide a binding offer or proposal in connection with the proposed buyback for the Segway Units that is capable of being placed before the Court for acceptance or approval. On February 18, 2015, GE provided the Receiver with an unfiled copy of an Affidavit of Melanie Fortin (the "**Fortin Affidavit**").
49. At paragraph 21, the Fortin Affidavit advises that GE "can make arrangements with the Manufacturer for a repurchase" ... for \$198,958.91, subject to certain deductions.
50. The Receiver notes that this is not a binding offer to purchase and that there is no guarantee as to the ultimate purchase price.
51. Further, the Fortin Affidavit suggests that GE should receive the proceeds subject only to the Court's ability to make an Order that "any amount from the repurchase directed by the Court" be provided to the Receiver at a later time.
52. The Receiver is of the view that the GE buyback appears to have the potential for the greatest realization on the Segway Units as the potential realization is for substantially more than the Receiver has been able to solicit from third parties, including the Ride Offer, as set out in the Confidential Supplement to the First Report.
53. GE also advised that the Segway Units would need to be delivered at the Company's cost to the manufacturer for inspection for use and damage, which would result in adjustments to the purchase price.
54. Given that GE did not provide anything concrete in respect of the buyback offer that was capable of being placed before the Court until February 18, 2015, the Receiver did not release the Segway Units to GE as requested.
55. The Receivership Order also requires Court approval for any sale over \$50,000.

56. GE's application also seeks an Order on cost allocation. It is the Receiver's view that allocation arguments are premature when there is presently no certainty that the assets of Visionary will be sufficient to satisfy the charges in priority to GE.
57. The Receiver is presently seeking the advice and direction of the Court in respect of realization on the Segway Units.
58. The Receiver recommends proceeding with a buyback of the Segway Units facilitated by GE if the Court is prepared to grant and GE is prepared to accept an Order that directs and requires GE to use its best commercial efforts to:
- a. complete a buyback of the Segway Units from the manufacturer forthwith;
  - b. to maximize value in that transaction; and
  - c. forthwith provide all proceeds of the transaction to the Receiver to stand in lieu of the Segway Units as part of the Company's property.
59. If an acceptable Order cannot be reached, the Receiver is seeking approval of this Honourable Court to accept the Ride Offer.

# Appraisal and Sales Process

60. Paragraph 3(l) of the Receivership Order empowers and authorizes the Receiver to sell, convey, transfer, lease or assign the Property (as that term is defined in the Receivership Order) or any part or parts thereof out of the ordinary course of business with the approval of the Court being required for any transactions exceeding \$50,000 or where the aggregate consideration for all transactions exceeds \$300,000.
61. The Receiver contacted Century Services Inc. ("**Century**") to initially review the assets, to provide options for sale and to conduct an appraisal of the Parts Inventory, Office Furniture, Unit Inventory, Segway Units, Segway Parts, and the Warehouse Equipment. Century provided an appraisal of the assets of the Company as at February 2, 2015 (the "**Century Appraisal**"), the details of which can be found in the Confidential Supplement to the First Report.
62. Following the date of the Receivership Order, the Receiver determined that it was not feasible or economic to carry on the business of the Companies and it initiated a sale process (the "**Sale Process**") whereby it solicited "en bloc" or individual offers and proposals from various parties, including auction companies, former customers and competitors across Canada and the US, several of whom have attended at the Edmonton Offices to physically inspect the assets.
63. The specific assets included in the Sale Process (the "**Sale Assets**") include the Parts Inventory, the Office Furniture, the Unit Inventory and the Warehouse Equipment. The Sale Assets do not include the Segway Units or the Segway Parts, as discussed in more detail later in this report, but auction proposals and cash offers were also received on these assets.
64. The Receiver received auction proposals from Gary Hanna Auctions Ltd. ("**Gary Hanna**"), GD Liquidators Ltd. ("**GD**") and Rainbow Auctions (collectively, the "**Auction Proposals**"). The Receiver also requested auction proposals from Century and Maynards Industries Ltd. however both indicated that an auction would be difficult, costly and likely have limited success and both ultimately decided against submitting any such proposal.
65. The Receiver received cash offers for the Sale Assets from Gary Hanna, GD and Midwest Canada ("**Midwest**"), a dealership based in Three Hills, Alberta (collectively, the "**Cash Offers**").
66. None of the Auction Proposals included a net minimum guarantee, as there is concern about the limited number of parties that may be interested in the Sale Assets, especially considering the extensive volume of the Parts Inventory and the fact that the Parts Inventory are generally for a

limited number of brands. Accordingly, the Receiver determined that an auction was not the best approach for selling the Sale Assets.

67. The Receiver analyzed the Cash Offers submitted by Gary Hanna, GD and Midwest, and discussed the offers with the petitioning secured creditor, HSBC, and GE, the only other creditor who claims to hold a security interest in certain assets of the Company.
68. At the February 24 Application, the Receiver is seeking Court approval of the Sale Process and the offer from Midwest, as detailed further in the Confidential Supplement to the First Report.

# Liabilities

## Secured Creditors

69. The Receiver understands that only HSBC and GE had general security agreements in place with the Company (the "**Secured Creditors**"), other than the various lease agreements on specific equipment.
70. HSBC has a GSA against the Company and was owed approximately \$3,082,000 at the Date of Receivership.
71. The Receiver understands that GE provided two types of financing related to Visionary:
- a. Dealer floor plan financing – whereby the dealer purchases units from Visionary and GE, in turn, pays Visionary. The dealer then has a floor plan finance agreement with GE in order to pay GE over time for the purchase.
  - b. Segway floor plan financing – whereby Visionary would purchase units from Segway and GE would pay Segway for the purchase. As Visionary sold each Segway unit to a third party, Visionary would pay GE for the applicable portion of the balance owing.
72. The Receiver understands that the Company was out of trust with GE at the Date of Receivership and that GE was owed a total of approximately \$1.7 million under the two facilities.
73. The Receiver's Counsel has not completed an independent review of HSBC's security as it is not yet known if any funds will be available to HSBC.

## Statutory Claims

74. CRA has deemed trust claims against Visionary for unremitted payroll source deductions and GST. CRA has not yet conducted a payroll and GST trust audit on the Company, however the Receiver has estimated that there are unremitted payroll source deductions owed as of the Date of Receivership of approximately \$30,000 (the "**Payroll Deemed Trust Claim**"). In addition, CRA has estimated that a pre-receivership GST balance of approximately \$36,000 is owed to CRA from Visionary (the "**GST Deemed Trust Claim**"). The Receiver understands that GST returns were not filed by the Company since the quarter ended March 31, 2013 and CRA has simply assessed the amounts owing since that time. The Receiver does not currently have the information available to file the outstanding GST returns and CRA will not be able to complete a GST trust audit until this information is available.
75. 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 will have a priority claim over the current assets of the Company for any qualifying employee arrears of up to \$2,000 per employee (the "**WEPPA Trust Claim**"). The WEPPA Trust Claim is currently estimated to total approximately \$22,500 and ranks only behind the Payroll Deemed Trust Claim.

### **Other Trade Payables and Debts**

76. The Company's accounts payable aging report as at September 30, 2014 indicated that Visionary owed approximately \$358,000 to its trade creditors.
77. The Receiver also understands that the Company borrowed approximately \$80,000 on or around July 11, 2014 by way of a promissory note in order to pay the outstanding rent arrears owing for the K&N Warehouse so inventory units could be shipped. It is not clear from discussions with the Former Principals and a review of the limited books and records of the Company what these funds were actually used for.



# Other Issues

## Toronto Dominion Bank Account

78. The Receiver understands that the Company had a Toronto Dominion (“**TD**”) bank account (the “**TD Account**”) since 2006, in addition to the HSBC bank accounts.
79. The Receiver has requested and received the TD Account statements from TD for the period from January 1, 2014 to December 24, 2014 and noted the following:
  - a. There was an opening overdraft balance of approximately \$9,000 as at January 1, 2014 and a similar closing overdraft balance as at December 22, 2014;
  - b. The Receiver has requested details of certain of the larger value transactions over the past several months and TD has provided most of the supporting documentation requested. However, certain of the supporting documentation is not clear as to who was paid and the Receiver is seeking further information; and
  - c. In several instances, it appears that when funds were received into this account they were almost immediately paid out by cheque or wire. The Receiver is seeking further details of these transactions.
80. The Receiver is continuing to review payment details received from dealers in an attempt to determine if the funds were paid into either the TD Account or HSBC account. The Receiver is not certain if there were additional bank accounts used by the Company.

# Statement of Receipts and Disbursements

81. The Receiver has prepared a Statement of Receipts and Disbursements for the period of December 19, 2014 to February 17, 2015 for Visionary, as shown in Appendix C.
82. The Receiver has incurred other fees and costs that have not been paid as there are no funds available, as is discussed in more detail later in the Report.

# Receiver's fees and costs

83. 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 and the general state of the Company. 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 and the Receiver's fees and costs to date are as follows:

## Receiver's Costs and Fees Incurred

Rent - Edmonton Offices	
December 19 to 31, 2014	\$ 5,367
January 2015	12,797
February 2015	12,797
	<hr/>
	30,961
Locksmith	942
Insurance (to Feb 28, 2015)	1,244
Ceridian fees re employee ROE's and T4's	250
Contract costs for former employees	500
Inventory shipping costs	746
	<hr/>
Total Costs Incurred	34,643
Receiver's fees to February 13, 2015	107,000
Receiver's legal fees to February 13, 2015	9,200
	<hr/>
Total Costs and Fees Incurred	<u>\$ 150,843</u>

## Receiver's Costs and Fees to be Incurred

NetSuite (est. cost to backup accounting system)	10,000
Contract costs for former employees	1,000
Receiver's fees from Feb 14, 2015 to completion	unknown
Receiver's legal fees from Feb 14, 2015 to completion	unknown
	<hr/>
	<u>\$ 11,000</u>

84. The Receivership Order allows the Receiver to borrow up to \$200,000 however no borrowings have been obtained to date as the allocation of costs amongst HSBC and GE is not settled and it is unlikely that the Receiver can repay the Receiver borrowings required in full based on the offers received to

date on the assets during the Sale Process, the Receiver's Charge, the Payroll Deemed Trust Claim, the GST Deemed Trust Claim and the WEPPA Trust Claim.

85. As a result of the expected shortfall, the Receiver will not be releasing any assets that form part of the Company's property or paying any priority claims unless the Receiver's Charge is satisfied. If there is any excess in the estate, the Receiver will consider issues of the allocation of costs among the Company's assets. The Receiver has requested an administration agreement with CRA to see if the CRA will subrogate any of its priority claims to the Receiver's Charge, but CRA requires a trust audit to be performed first and has initially indicated that an administration agreement is unlikely with the small amount of the deemed trust claims.

# Approvals Sought

86. This Report is being filed in support of the February 24 Application seeking the following:
- a. Approval of the reported actions of the Receiver to date in respect of administering these receivership proceedings;
  - b. Advice and directions from this Honourable Court in respect of realization on the Segway Units and if the proposed buyback by GE is not successful, then the Receiver is seeking approval of the Ride Offer;
  - c. Advice and directions from this Honourable Court regarding the GE Dealer Units and the Montreal Units;
  - d. Approval of the Sale Process in respect of certain of the Company assets and approval of the Midwest offer for the Sale Assets; and
  - e. 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, CA, CIRP, CBV  
Senior Vice President

# Appendix A –

# OGILVIE LLP

BARRISTERS AND SOLICITORS

OUR FILE: 3089.56

YOUR FILE:

REPLY TO:

STEPHANIE A. WANKE

DIRECT LINE: (780) 429-6237

DIRECT FAX: (780) 429-4453

EMAIL: swanke@ogilvielaw.com

CANADIAN WESTERN BANK PLACE  
SUITE 1400  
10303 JASPER AVENUE  
EDMONTON AB T5J 3N6  
FACSIMILE (780) 429-4453  
TELEPHONE (780) 421-1818

February 9, 2015

Sent Via Email To: [jhockin@parlee.com](mailto:jhockin@parlee.com)

[bmaruyama@parlee.com](mailto:bmaruyama@parlee.com)

Parlee McLaws LLP  
Barristers and Solicitors  
1500 Manulife Place  
10180- 101 Street  
Edmonton, AB T5J 4K1

Attention: Jerry Hockin, Q.C.  
Bryan Maruyama

Dear Sirs:

**RE: Visionary Motorsports Ltd., ("Visionary") in Receivership.**

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We are advised by the Receiver that there are thirteen (13) units related to Visionary that are presently located in a Montreal warehouse.

The details of these units are attached as Schedule "A" hereto (the "Montreal Units").

We understand that the Montreal Units are likely units that Visionary purchased as a wholesale dealer for Yard & Toy, a retail dealer located in Annapolis Royal in Nova Scotia.

Yard & Toy has advised the Receiver that they previously ordered the Montreal Units from Visionary but cancelled that order in the fall of 2014. We understand that Yard & Toy may have the costs for the Montreal Units showing on its G.E. floor plan finance account.

Kindly advise if it is G.E.'s position that the Montreal Units have been paid for by G.E. on behalf of Yard & Toy, akin to the Argo Units previously discussed with you. If this is G.E.'s position, please provide evidence of payment for the Montreal Units.

We would appreciate your earliest attention to this matter.

Yours truly,

OGILVIE LLP

  
Per:

STEPHANIE A. WANKE  
SAW/sg

cc: Deloitte Restructuring Inc.  
Attention: Jeff Keeble and Stefan DuChene

## SCHEDULE "A"

### **Six (6) Bighorn 28 ATV Green s/n:**

LL8AHS4W3D0A00013

LL8AHS4W3D0A00163

LL8AHS4W5D0C00164

LL8AHS4W6D0E00356

LL8AHS4W8D0E00357

LL8AHS4WXD0A00011

(There are separate attachments for each of the six (6) Bighorn units, with the following serial numbers):

V03A16X

V03A17X

V04A16X

V04A17X

VNB11

VNB13

### **Three (3) 400SE ATV 2013 Linhai Orange s/n:**

LL8AFS4W1DEO00190

LL8AFS4W3DOE00191

LL8AFS4W5DOE00189



**One (1) 400SE AVT 2013 Linhai Red s/n:**

LL8AFS4WXDOE00186

**One (1) RX500EPS Blue s/n:**

LWGSDTZ58EB001938

**Two (2) 400SE ATV 2013 Linhai Blue s/n:**

LL8AFS4W4DOE00183

LL8AFS4W9DOE00180

# Appendix B –



January 15, 2015

*Via Email*

Deloitte Restructuring Inc.  
Suite 700 850-2nd Street SW  
Calgary Alberta  
T2P 0R8

**Attention: Jeff Keeble**

Dear Sir:

**Re: Visionary Motorsports Ltd. in Receivership**

Further to our telephone conversation of January 14, 2015, your letter to the writer of January 9, 2015, and the previous emails in December 2014 and January 2015 between Melanie Fortin of our client, GE Commercial Distribution Finance Canada (“GE”), and Derek Church of your firm as the Court appointed receiver (“Receiver”) of Visionary Motorsports Ltd. (“Visionary”), we wish to respond to your inquiries, and confirm the request of GE for the release of financed inventory found by the Receiver to be in the possession Visionary.

**Agreements between GE and Visionary**

Under an Agreement for Wholesale Financing dated March 14, 2014 (the “**Agreement for Wholesale Financing**”), GE provided financing for Visionary as a dealer to acquire inventory for sale to members of the general public. Under a Vendor Agreement dated November 15, 2007 (the “**Vendor Agreement**”), Visionary as a distributor agreed with GE to obtain inventory from manufacturers, and to sell the inventory to dealers who had obtained financing from GE to acquire that specific inventory. Please find enclosed copies of these agreements.

**Security of GE against Visionary**

As general and continuing security to GE for the payment, performance and satisfaction of each and every obligation, indebtedness and liability of Visionary whatsoever and howsoever incurred, Visionary granted to GE under the Agreement for Wholesale Financing a security interest in all of its presently owned and after acquired personal property of whatsoever nature and kind and wheresoever situated and all proceeds thereof and therefrom, renewals thereof, accessions thereto and substitutions therefore.

GE registered its security interest against Visionary at the Alberta Personal Property Registry on March 14, 2014 as registration number 14031409088. Please find attached a search from the

Alberta Personal Property Registry against Visionary that shows GE's registration (the "PPR Search").

GE sent a notice of purchase money security interest dated March 14, 2014 to all secured creditors of Visionary registered at the Alberta Personal Property Registry at the time of sending (the "GE PMSI Notice"). Please find attached copies of the GE PMSI Notice, and confirmations from Fedex for the deliveries of the GE PMSI Notice to HSBC Bank Canada, 1211311 Alberta Ltd. and Rockford Capital Inc., being the only secured parties that would need to be sent the GE PMSI Notice on the basis of having broad enough collateral descriptions in their registrations that would encompass inventory, as can be seen from a review of the PPR Search (the "Confirmations of Delivery of the GE PMSI Notice").

GE holds an irrevocable letter of credit ("ILOC") in the amount of \$50,000.00 provided through Visionary for any amounts owed by Visionary to GE under the Vendor Agreement. Please find enclosed a copy of the ILOC.

#### **Floor Check at the Premises of Visionary**

Through arrangements with the Receiver, GE conducted a floor check on December 30, 2014 of the inventory at the premises of Visionary in Edmonton, Alberta. A copy of the report on the floor check was provided by GE to the Receiver under an email of December 31, 2014 (the "Floor Check Report"). For ease of reference, a further copy of the Floor Check Report is enclosed.

As a result of the floor check, GE found and identified certain unsold units of inventory subject to the Agreement for Wholesale Financing (these units are listed under the heading of "no exception" in the Floor Check Report). GE also discovered that several certain units subject to the Agreement for Wholesale Financing were missing, which are considered to be "sold out of trust" by GE (these units are listed under the heading of "sold and unpaid" in the Floor Check Report).

Please find enclosed copies of transaction statements from GE to Visionary for the units that were discovered in the premises of Visionary – the concerned units have been highlighted on the statements (the "Transaction Statements"). Please also find enclosed copies of invoices from the manufacturer of these units, which show that they were financed by GE – again the concerned units have been highlighted (the "Manufacturer Invoices").

#### **Request for Release of Financed Inventory under Agreement for Wholesale Financing**

In the email of December 31, 2014, GE requested the Receiver to release the found unsold units of inventory into the possession of GE. In an email of January 2, 2015 in response, the Receiver requested that GE provided a "proof of claim" (a blank form of proof of claim used in bankruptcy proceedings as provided by the Receiver to GE). Given your letter of January 9, 2015, we are responding on behalf of GE by way of this letter. We further note that the Receivership Order granted on January 19, 2014 by the Alberta Courts does not institute a claims process by the Receiver, and that a court appointed receiver in Alberta does not otherwise have

the power to disallow secured claims as would a trustee in bankruptcy. Nonetheless, we understand your desire to have the security of GE “vetted” before acknowledging the priority of the GE security.

In our view, the provision herewith of copies of the Agreement for Wholesale Financing, the GE PMSI Notice, Confirmations of Deliveries of the GE PMSI Notice, the Floor Check Report, the Transaction Statements, and the Manufacturers Invoices, should be sufficient proof to the Receiver of the secured position of GE against the inventory at the premises of Visionary identified to be subject to the Agreement for Wholesale Financing.

As discussed on January 14, 2015, I confirm that GE and yourselves will work towards developing a protocol for the release of the subject inventory to GE for the purpose of maximizing net sale proceeds, whether through GE’s “buy back” arrangements or through its dealer network, preserving all parties’ rights.

**Floor Checks at Dealer Customers of Visionary**

GE is in the process of conducting floor checks at the dealer customers of Visionary to confirm that the inventory subject to the Vendor Agreement has been delivered to them. GE has advised the Receiver of these pending floor checks. If that inventory was not delivered to the dealer customers, then GE would have a claim against Visionary under the Vendor Agreement for the undelivered inventory. Please find enclosed a list of the inventory subject to confirmation of delivery to dealer customers under the Vendor Agreement, a copy of which was previously provided by GE to the Receiver in the email of December 31, 2014 (the “**List of Inventory to Dealer Customers of Visionary**”).

**Request for Release of Inventory to Dealer Customers of Visionary**

From the floor check at the premises of Visionary, GE found and identified one unit of inventory subject to the Vendor Agreement: model no. PDX200B4A / serial no. LCXPFML19EX000559 – see line number 222 on the List of Inventory to the Dealer Customers of Visionary.

GE has been advised by the Receiver that it has located further inventory of Visionary stored at a third party warehouse. Out of this inventory, GE has identified 3 units that would be subject to the Vendor Agreement: model no. PDX200B4A / serial no. LCXPFML16EX000566; model no. PDX200R4A / serial no. LCXPFML12EX000564; and model no. PMXSWT5ND / serial no. A2BDR373AFJ015727 – see line numbers 389, 390 & 394 on the List of Inventory to the Dealer Customers of Visionary.

GE has been advised that the Receiver is now withholding delivery of certain units on the List of Inventory to Dealers to the dealer customers of Visionary. Apparently, these certain units were in the process of being transported to the dealer customers and now are being held. An account manager of GE had been in discussions with Stefan Duchene of the Receiver. We look forward to discussing this situation with you further, once GE has determined, as best it can, whether payment for these units has been made, whether to Visionary (in cash or by crediting Visionary's account with GE), or directly to the manufacturer / supplier of these units.

Yours truly,



**PARLEE MCLAWS LLP**

JEREMY H. HOCKIN, Q.C.

dm

*Enclosures*

cc: GE Commercial Distribution Finance Canada

# Appendix C –

**Visionary Motorsports Ltd. - in Receivership**  
**Statement of Receipts & Disbursements**  
**For the period December 19, 2014 to February 17, 2015**

**Cash Receipts**

Accounts receivable		\$ 1,474
Miscellaneous refunds		90
<b>Total cash receipts</b>		<u>1,564</u>

**Cash Disbursements**

<i>Operations</i>		
Contract labour	63	
Filing Fee Paid to the Official Receiver	70	
<b>Total cash disbursement</b>	<u>133</u>	

**Excess of Cash Receipts over Cash Disbursements** **1,431**

**Remaining cash on hand** \$ 1,431

**Represented by**

Cash in general account	1,431
	<u><u>\$ 1,431</u></u>