

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY**

**BETWEEN:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

- and -

**PTL HOLDINGS LIMITED and  
PTL SERVICES (EQUIPMENT) LIMITED and  
CSL SERVICES (INDUSTRIAL) LIMITED AND  
9263357 CANADA INC.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED;**

**THIRD AND FINAL REPORT TO THE COURT**

**SUBMITTED BY BDO CANADA LIMITED  
IN ITS CAPACITY AS RECEIVER OF  
PTL HOLDINGS LIMITED, PTL SERVICES (EQUIPMENT) LIMITED,  
CSL SERVICES (INDUSTRIAL) LIMITED AND 9263357 CANADA INC.**

**SEPTEMBER 8, 2020**

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## **1.0 INTRODUCTION AND PURPOSE OF REPORT**

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### **1.0 Introduction**

- 1.0.1** Details regarding these receivership proceedings and the background of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited, and 9263357 Canada Inc. (are set out in the First Report to the Court of the Receiver dated July 26, 2018 (the “**First Report**”). Additional information regarding the outcome of the Sale Process and interim distributions are outlined in the Receiver’s Second Report dated October 18, 2018 (the “**Second Report**”). The First Report, the Second Report nor the filings related to the appointment of the Receiver have been attached hereto. Accordingly, readers are strongly encouraged to review the application filings, the First Report and the Second Report prior to reviewing this Third Report. Capitalized terms used but not otherwise defined herein shall have meanings ascribed to them in the First Report or the Second Report.
- 1.0.2** PTL Holdings Limited (“**Holdings**”), a Newfoundland & Labrador (“**NL**”) company, owned all of the issued and outstanding shares of PTL Services (Equipment) Limited (“**PTL**”), CSL Services (Industrial) Limited (“**CSL**”) and 9263357 Canada Inc. (“**926**”). Holdings was incorporated in 2014 and has five (5) primary shareholders who owned Holdings through various corporations and family trusts.
- 1.0.3** Holdings, PTL, CSL and 926 (collectively referred to herein as the “**PTL Group**” or the “**Company**”), operated as an integrated entity with shared management, directors, accounting, finance and human resources staff. Holdings’ head office was located in St. John’s, NL in combined offices with Talon Energy Services (“**Talon**”), an affiliated company.
- 1.0.4** PTL provided a wide range of services for the construction industry, oil and gas industry and the public sector, primarily operating from property at 21-23 Marine Drive, Southern Harbour, NL, which was owned by 926 (the “**Premises**”).
- 1.0.5** CSL provided contracted labour services on a short-term, project-by-project basis and had numerous union agreements with various trades.
- 1.0.6** 926 is a real estate holding company which owned the 21-23 Marine Drive Premises in Southern Harbour.

### **1.1 Appointment of Receiver**

- 1.1.1** CIBC provided the PTL Group with a Demand Loan of \$6.5 million and an Operating Facility of \$2.0 million (collectively the “**CIBC Loans**”). As security for the CIBC Loans, CIBC obtained, among other things, a GSA, a demand debenture, various guarantees and an inter-creditor agreement between the CIBC, the Parsons Vendors, the CSL Vendors and the PTL Group (the “**CIBC Security**”).
- 1.1.2** As outlined in the Second Report, the Receiver’s independent counsel, Patterson Law LLP (“**Patterson**”), reviewed the CIBC Security and provided its opinion that, subject to the normal assumptions and qualifications, the CIBC Security is valid and enforceable in accordance with its terms, with the exception that there was no security documentation granting security over quarry permits and subordinated quarry permits
- 1.1.3** Patterson advised that the Quarry Materials Act, SNL 1998 C. Q-1.1 is not assignable or renewable. This is consistent with the Receiver’s understanding and had no material effect on the Receiver’s realization activities.

- 1.1.4 A copy of the independent security review is attached as Appendix A to the Second Report.
- 1.1.5 In December 2017, Holdings and PTL were in default of their obligations set out in the CIBC Security. CIBC agreed to forbear from enforcing and entered into a forbearance agreement, with various extensions up to May 1, 2018 (the “**Forbearance Agreement**”).
- 1.1.6 As outlined in the First Report, pursuant to the terms of the Forbearance Agreement, the Company was to comply with, among other things, the Strategic Alternatives Process.
- 1.1.7 The PTL Group continued with the Strategic Alternatives Process into early May 2018. However, ultimately the Company was unable to complete a sale, find alternative financing, or find an equity injection.
- 1.1.8 Based on the information gathered from the Company, in consultation with BDO, namely the defaults under the CIBC Security and the Forebearance Agreement, the financial and cash flow position of the Company and the lack of readily available sources of investment or interest in acquiring the Company, CIBC believed an immediate stay of proceedings was necessary in the circumstances and took steps to enforce under the CIBC Security. Additional details are included in CIBC’s Application for a Court Appointed Receiver which is included in the First Report.
- 1.1.9 CIBC issued a formal demand for repayment of the CIBC Loans on or about April 20, 2018 and delivered a notice of intention to enforce Security pursuant to section 244 of the Bankruptcy and Insolvency Act (“**BIA**”).
- 1.1.10 Subsequently, CIBC brought an application for an order appointing a receiver over the assets, properties and undertakings of the PTL Group and BDO was appointed receiver (in such capacity, the “**Receiver**”), pursuant to an order (the “**Appointment Order**”) of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency (the “**Court**”), dated May 11, 2018 (the “**Appointment Date**”). A copy of the Appointment Order is attached hereto as **Appendix A**.
- 1.1.11 The Appointment Order empowered and authorized, but did not obligate the Receiver to, among other things, do the following:
- take possession and control of the Property (as defined in the Appointment Order) and any and all proceeds and receipts arising therefrom;
  - manage, operate and carry on the business or to cease operations;
  - market any or all of the Property on such terms and conditions of sale as the Receiver deems appropriate;
  - sell, convey, transfer, lease or assign the Property; and
  - report to, meet and discuss with affected Persons (as defined in the Appointment Order), as the Receiver deems appropriate, all matters relating to the Property and the receivership proceedings.
- 1.1.12 As outlined in the First Report, the Receiver carried out the Sale Process and sought and obtained approval from the Court to complete a sale transaction (the “**Sale Transaction**”) with Locke’s Electrical Limited (“**Locke’s**”) for certain of the assets of the PTL Group. As outlined in the Second Report, the Sale Transaction with Locke’s was completed on September 10, 2018. In addition, the Receiver outlined the priorities of certain secured creditors and Proposed Distributions to the Unions in respect of the Pension Charge pursuant to Section 81.6 of the BIA, the Union Dues Claim pursuant to Section 81.4 of the BIA and an interim distribution to CIBC. The

Court issued an Order dated December 4, 2018 approving, among other things, the Proposed Distributions (the “December 2018 Distribution Order”), a copy of which is attached hereto as Appendix B.

## 1.2 Purpose of this Report

1.2.1 This constitutes the Receiver’s third and final report to the Court (the “Third Report”) in this matter and it is filed to:

- report on the Receiver’s activities in these receivership proceedings since the Second Report; and
- request an Order, *inter alia*:
  - approving the Third Report and the activities of the Receiver set out herein;
  - approving an Interim Distribution and Final Distribution to CIBC as defined herein;
  - approving the Receiver’s interim statement of receipts and disbursements for the period May 11, 2018 to August 28, 2020 (the “Interim R&D”);
  - approving the fees and disbursements of the Receiver and its legal counsels, Cox & Palmer LLP (“C&P”) and Patterson Law LLP (“Patterson”), as outlined herein;
  - authorizing the termination of the PTL Group receivership proceedings and the discharge and release of the Receiver, such discharge and release to be effective upon the Receiver filing with the Court a Receiver’s Certificate of Discharge (as defined herein) evidencing that the Receiver has completed the Outstanding Matters (as defined herein); and,
  - such other relief as the Court deems appropriate.

## 1.3 Scope and Terms of Reference

1.3.1 The Third Report has been prepared for the use of this Court and the Company’s stakeholders as general information relating to the PTL Group and to assist the Court in making a determination of whether to approve the relief sought herein. Accordingly, the reader is cautioned that the Third Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of the Third Report different than the provisions of this paragraph.

1.3.2 In preparing this Third Report, the Receiver has relied upon the PTL Group’s records and available unaudited financial information. While the Receiver has reviewed certain of the PTL Group’s records, such work does not constitute an audit or verification of such information for accuracy, completeness, or compliance with Generally Accepted Accounting Principles or International Financial Reporting

Standards. Accordingly, the Receiver expresses no opinion or other form of assurances with respect to such information except as expressly stated herein.

- 1.3.3 Capitalized terms used but not defined in this Third Report shall have the meaning ascribed to them in the First Report, Second Report or Appointment Order.
- 1.3.4 This Third Report, and all court materials and orders issued and filed in these receivership proceedings are available on the Receiver's website at: <http://www.extranets.bdo.ca/PTLGroup> and will remain available on the website for a period of six (6) months following the Receiver's discharge.

**2.0 Wind-down of Operations**

- 2.0.1** As at the Appointment Date, PTL and CSL employed approximately 70 individuals and 10 individuals, respectively. In the 3 months prior to the Appointment Date, CSL had up to approximately 85 employees working on various contracts. As outlined in the First Report and Second Report, subsequent to its appointment, the Receiver, with the cooperation and support of the Company's key customers, suppliers, unions, and employees continued to operate the business, to the Receiver's best ability, pursuant to the contracts/agreements in place without disruption, while undertaking the Sale Process and completing the Sale Transaction. In order to complete these contracts, the Receiver continued the services of certain salary, hourly, and unionized workers on the same terms and conditions as established by the PTL Group.
- 2.0.2** As of the Closing Date, on September 10, 2018, there remained a limited number of contracts that were being completed or transitioned by the Receiver. As a result, further limited operations were overseen by the Receiver until all PTL Group contracts were completed, terminated, or assigned to third parties on or around October 26, 2018. No contracts were assigned to Locke's.
- 2.0.3** The Receiver continued to calculate, report and remit to the various Unions in the normal course for the PTL Group up to the completion of operations. As a result of ceasing the operations the Receiver advised each of the Unions that the operations have ceased and that there would be no future reporting/remittances.
- 2.0.4** As unionized employees services were no longer required, they were laid off in accordance with their respective union contract as the customer contracts were completed/transitioned.
- 2.0.5** The Receiver, on behalf of the PTL Group, terminated the salary employees as their services were no longer required. As noted above, the final PTL Group contract was completed on or around October 26, 2018 and the final two PTL Group employees were terminated.

**2.1 Unions - Priority Charges and Distribution**

- 2.1.1** Prior to and after the Appointment Date, the Company operated pursuant to arrangements with 8 Unions. The Receiver notified the Unions of its appointment and advised of the Receiver's intention to continue the operations for a limited period through the Sale Process. All wages outstanding to unionized employees as of May 11, 2018 were paid. The sole remaining claim for unionized employees related to the unpaid PTL and CSL Union Obligations.
- 2.1.2** As outlined in the Second Report, based on the PTL Group records, the Receiver prepared an analysis of the outstanding PTL and CSL Union Obligations relating to employee union deductions and associated employer contributions as at the Appointment Date. The Company's outstanding Union Obligations related primarily to the period February 1, 2018 to May 10, 2018 and totaled \$367,068 including \$169,832.52 for the Union Pension Charge and \$197,235.82 for the Union Dues Claim.



**2.1.3** The Union Obligations are based on an analysis of 66 PTL employees and 84 CSL employees. The Receiver spent significant time working to determine the Union Obligations including identifying outstanding reporting, responding to queries of the Unions and individual members and distributing the resulting calculations to the Unions to verify both prior to and after the service of the Receiver's Second Report. There were no objections raised either prior to or at the Distribution Motion, however, based on further review and reconciliation of the claims the Receiver notes the Union Dues Claim of the Carpenters was \$110.00 higher than the amount reported in the Second Report.

**2.1.4** Pursuant to the Distribution Order, the Receiver distributed the Union Pension Charge of \$169,832.52 and the Union Dues Distribution of \$14,100.88 and \$69,274.50, respectively for PTL and CSL. Relative to the Union Dues Claim, the Union Dues Distribution represented a prior ranking claim over current assets, and subject to a threshold limit within Section 81.4 of the BIA (i.e. to the extent of \$2,000 per individual employee) vis a vis pre-receivership wage amounts paid subsequent to the Appointment Date.

## **2.2 WEPPA - Union members**

**2.2.1** The Receiver filed WEPPA claims for the unionized PTL and CSL employees for the balance of their claims in excess of the priority amount pursuant to Section 81.4 of the BIA. The details of the claims were outlined in the Second Report and were filed with Employment and Social Development Canada ("ESDC"). At the time of preparing the second report the unsecured eligible WEPPA claims totaled \$33,549.90 and \$12,612.53, respectively for PTL and CSL, respectively.

**2.2.2** Subsequent to the Royal Assent of the 2018 Federal Budget, the maximum WEPPA claim amount increased to 7 weeks (i.e. from 4) of insurable earnings which increased the maximum individual claim to approximately \$6,960 in 2018 (retroactive to insolvency proceedings that commenced after February 27, 2018) compared to the prior maximum of \$3,976.92. Accordingly, there were additional recoveries paid directly from ESDC to certain qualifying Union members above the Receiver's calculated amounts.

**2.2.3** In order to qualify for WEPPA, proof of claim forms must be submitted for each employee's claim. To reduce administrative steps the Unions agreed to file a proof of claim on behalf of their members. This reduced the number of proof of claim forms to be prepared, submitted and reviewed for the unionized members from approximately 150 to 10.

## **2.3 WEPPA - Salary staff**

**2.3.1** As previously reported, the wage arrears owing as at the Appointment Date were paid subsequent to the appointment of the Receiver, and salary staff did not have a prescribed pension plan, but rather participated in a Company matching RRSP plan. Accordingly, there were no claims pursuant to Section 81.6 of the BIA for salary employees and limited potential claims pursuant to Section 81.4.

**2.3.2** The Distribution Order authorized the Receiver to distribute up to \$15,000 in Section 81.4 claims for salary staff. The Receiver completed its analysis on possible 81.4 claims related to unpaid wages for salary employees (i.e. for any unpaid amounts within the Section 81.4 BIA threshold). Based on the analysis prepared by the Receiver

the total unpaid priority claim pursuant to Section 81.4 totaled \$192.89 which amount was approved and processed by ESDC (the “**Section 81.4 Claim**”) and the unsecured portion for salary employees totals approximately \$10,000.00 (whether covered by WEPPA or not). The Receiver made a distribution of the \$192.89 Section 81.4 Claim to the Receiver General (the “**Section 81.4 Distribution**”), as illustrated in the Interim R&D.

- 2.3.3 As a result of their termination, certain salary employees became eligible for termination pay in respect of their services to the PTL Group.
- 2.3.4 Employee termination claims are unsecured and the Receiver filed on their behalf the necessary documentation with ESDC, and corresponded with those eligible employees to enable them to file WEPPA claims for termination pay in lieu of notice pursuant to WEPPA. Any amounts paid by ESDC to the employees for termination pay in lieu of notice represent an unsecured claim.
- 2.3.5 Overall, as a result of the increase WEPPA entitlement and based on the proof of claims filed by employees, ESDC made payments (on an unsecured basis) totaling approximately \$74,000 and \$12,000, respectively to the PTL and CSL unionized and salary employees combined.

## 2.4 Litigation - Employee Claim

- 2.4.1 As outlined in the Second Report, a former employee, Mr. Lloyd Parrott, who was terminated by the Receiver pursuant to the Appointment Order filed a claim in the amount of \$186,893, for unpaid wages, bonus, vacation, severance and other benefits (the “**Parrott Claim**”).
- 2.4.2 The Receiver communicated, through its independent legal counsel, that the claim would be addressed through the WEPPA process.
- 2.4.3 No further action, by either Mr. Parrott or the Receiver, has occurred, however, based on the Receiver’s cursory review of the Parrott Claim, the Receiver notes as follows:
  - a) The Parrott Claim includes bonuses of approximately \$78,000. There is no evidence of a bonus accrual in the PTL Group records;
  - b) The analysis provided by the PTL Group controller illustrates there is no outstanding vacation pay compared to the 3 weeks included in the Parrott Claim;
  - c) The Parrott Claim includes 6 months pay in lieu of notice of \$95,000. Pursuant to the employment legislation standards in NL, Mr. Parrott would be entitled to 3 weeks notice or approximately \$11,000;
  - d) Mr. Parrott may not be approved by ESDC for a WEPPA claim as he may be considered an ‘Excluded Manager’ pursuant to the Wage Earner Protection Program Regulations;
  - e) Mr. Parrott was paid in excess of \$2,000 by the Receiver for pre-receivership wages and accordingly, any additional claim of Mr. Parrott would rank as unsecured, whether covered by WEPPA or not.

## 2.5 Labour Relations Board Application

- 2.5.1 On or around November 20, 2018, the Receiver was served with documents (one for each of PTL, Holdings, CSL and 926) related to a Labour Relations Act matter (the “**Successorship Application**”) as between the Teamsters and Locke’s.
- 2.5.2 Counsel reviewed the Successorship Application and advised it is made pursuant to the Labour Relations Act by the Teamsters to have the Labour Relations Board (the “**LRB**”) find Locke’s to be the successor employer to the PTL Group in relation to its unionized employees (or at the very least - the Teamsters members). If the Teamsters claim is successful, then the Collective Agreement in effect between the PTL Group and the Teamsters (the “**CLRA Collective Agreement**”) would apply to Locke’s. In order to do so, the Union is tracing the operations of PTL through the Receiver and through the Receiver to Locke’s Electrical as purchaser of the operations of PTL as a going concern.
- 2.5.3 Based on a cursory review of the Successorship Application, the Teamsters acknowledge that the Receiver has, and is, compliant with the terms of the CLRA Collective Agreement.
- 2.5.4 Based on correspondence at that time with the LRB regarding the Successorship Application, the CEO advised that in circumstances where receivers are named in successorship applications they commonly file a cursory reply with an assertion that all obligations to unionized employees were met by the receiver. This ensures that the receiver is maintained as a party and is copied on all further submissions that may cause concern to the receiver or purport to assert a claim against the receiver. He also indicated that the LRB likes to have the position of all parties named in the Application before it.
- 2.5.5 The IBEW filed a similar application in response to the Teamsters’ Successorship Application.
- 2.5.6 The Receiver filed a brief cursory reply with an assertion that all obligations to unionized employees were met by the Receiver.
- 2.5.7 On or around December 4, 2019, the Teamsters made an application to the LRB seeking, among other things, all-encompassing production orders (the “**Production Orders**”) be issued against CIBC and BDO in respect of the records of BDO Canada Limited in its capacity as Receiver of PTL/CSL and BDO Canada LLP (“**BDO**”) in its capacity as financial advisor to the Bank. Neither the Receiver nor BDO believes it is an interested party in respect of the Teamsters Successorship Application and the claims of the Teamsters and other applicants, however, they are seeking Production Orders from the LRB.
- 2.5.8 Accordingly, on behalf of the Receiver and BDO, Cox & Palmer submitted a letter dated January 31, 2020 (the “**BDO Response**”) to the LRB outlining their position in this respect. In response, the Teamsters submitted comments (the “**Teamsters’ Comment**”), which again required the Receiver’s response and accordingly, the Receiver submitted one final letter to the LRB outlining its position (and the basis thereof) in respect of the Teamsters Successorship Application and the request for Production Orders. In summary the Receiver’s response stated that the proceeding to seek Production Orders against the Receiver and BDO should be stayed.

**2.5.9** For the reasons set out therein, BDO and the Receiver state that the Application before the LRB should be stayed and the Applicant must seek approval of the Court to continue. On March 19, 2020, the LRB issued a decision (the “**LRB Decision**”) which stays both the Production Order as well as the Teamsters Successorship Application as a whole pending approval by the Court, a copy of which is attached hereto as **Appendix C**.

**2.5.10** Further, the LRB was advised by way of letter dated February 26, 2020, that the Receiver, in the normal course, will be seeking an order of the Court to discharge the Receiver from its duties and will advise the Court of the existence of the Teamsters Successorship Application proceedings and that notice of the application will be provided to the LRB.

**2.5.11** The Receiver is of the view that the Receiver undertook a Court approved sale process, had no prior knowledge of who the successful party would be and/or the terms of such sale and accordingly, should not be subject to the Teamsters Successorship Application and/or Production Orders as it would result in needless costs incurred to the detriment of the estate and its creditors.

**2.6 Insurance**

**2.6.1** The Receiver, with the assistance of the Company’s insurance broker, maintained insurance coverage over the assets of the PTL Group during the operations adjusted as estate needs changed. The PTL Group insurance policies have since been terminated and the Receiver obtained a further 12 month long-tail commercial general liability policy for any claims that may have arisen and/or be filed for projects and/or garage work that was performed by the Company. The extended coverage expired December 6, 2019. The Receiver is not aware of any claims made.

**2.7 Accounts Receivable and Billings**

**2.7.1** The book value of PTL’s and CSL’s accounts receivable (“**AR**”) as at the Appointment Date totaled approximately \$1,659,000 and \$188,000, respectively. The Receiver has collected approximately \$1,494,000 of the opening PTL AR and the full balance of the opening CSL AR. A summary is outlined below:

<b>Summary of AR as at May 11, 2018</b>	<b>PTL</b>	<b>CSL</b>
Opening AR Rollforward	\$ 1,658,752	\$ 187,641
Less: Collections	(1,493,540)	(187,641)
Credit - NARL re: DCH Settlement	(105,204)	-
AP Set-off / Credits	(22,573)	-
Net Balance	<u>\$ 37,435</u>	<u>\$ -</u>

**2.7.2** Approximately \$37,000 of total PTL AR as at the appointment date remains unpaid. The Receiver had issued demand letters to these customers which the Receiver notes have either been unresponsive or uncooperative. With the exception of O’Callaghan’s (discussed further below), the Receiver transferred these accounts to a collection agent.

**2.7.3** PTL billed O’Callaghan’s approximately \$18,000 for storage of four trailers at the PTL Group Premises. However, O’Callaghan’s claims to have sold the units to an individual, Jamie Pretty, and therefore was no longer responsible for the ongoing

storage charges. Upon contacting Mr. Pretty, he advised that he attempted to contact the Company and in particular, Mr. Parrot for in excess of 1 year (i.e. prior to the receivership) to remove the trailers, however, he claims that he did not receive a response to his calls. In any event, he advises that he does not have sufficient funds to pay the storage charges and he advised the Receiver, that he would therefore abandon the trailers to the Receiver to sell and recoup all or a portion of the storage charges. The Receiver attempted to sell the units at auction and by contacting various liquidators; however, given their condition there was no interest in the trailers and the Receiver abandoned the units.

2.7.4 During the receivership period, net billings generated from ongoing PTL and CSL operations totaled approximately \$4,750,000 exclusive of HST, which with the exception of certain smaller accounts, the Receiver has collected.

2.7.5 Accounts Receivable that remain outstanding are generally from defunct or non-responsive customers and total approximately \$40,000 overall owing from 18 customers (including the O'Callaghan balance noted above). Accordingly, given the cost / benefit of pursuing the balance of claims and the steps taken by the Receiver (e.g. collections, demand letters, etc.), the Receiver is not taking any further steps in respect of these accounts.

## 2.8 Financed Equipment

2.8.1 As at the Appointment Date, the Company had capital lease arrangements for 7 pieces of equipment (the "**Financed Equipment**") which were financed via Paccar Financial Ltd./Paccar Financial Services Ltd. ("**Paccar**"), CNH Industrial Capital Canada ("**CNH**"), and CWB National Leasing Inc., formerly National Leasing Inc. ("**National**") and collectively with Paccar and CNH the "**Equipment Lessors**"). Pursuant to the terms of the Locke's APA, the Purchaser had agreed to assume the leases for the Financed Equipment. However, subsequently and in line with the Final Amended Locke's APA, Locke's advised that it had no interest in respect of the Financed Equipment, and accordingly, the Receiver arranged to return the equipment of CNH and National. The Receiver contacted Paccar on numerous occasions, however, Paccar did not respond. The Receiver understands that Paccar may have made arrangements to sell its Financed Equipment directly to Locke's. Accordingly, the Receiver has not taken any further steps.

2.8.2 Subsequent to the release of the CNH Financed Equipment, Madsen Construction Equipment ("**Madsen**"), the party that unlawfully removed equipment from the PTL Group Premises without the authorization of the Receiver as reported in the First Report, contacted the Receiver to advise that two blades (the "**Blades**") formed part of the CNH Financed Equipment, however, they were not released. In support of its claim, Madsen submitted an unsigned quotation (a copy of which is attached hereto as **Appendix D**). The Receiver replied to Madsen to advise as follows:

- a) the Receiver is no longer in possession of the PTL Group site or PTL Group equipment as a sale was completed pursuant to an Order of the Court;
- b) PTL filed an assignment in bankruptcy dated September 28, 2018;
- c) the CNH lease documentation, a copy of which is attached hereto as **Appendix E**, that was provided to the Receiver by CNH did not include

Blades. Further, upon release of the leased equipment (i.e. the Back hoes), CNH provided the Receiver a release from any and all future claims. A copy of the CNH Release is attached hereto as **Appendix F**; and,

- d) The Receiver provided formal notice to Madsen to file a property proof of claim, with the applicable documentation in support of the blades being part of the lease agreement.

There was no further response from Madsen.

## 2.9 Government Filings

2.9.1 The Receiver has calculated, reported and remitted statutory filings for the PTL Group in the normal course during the receivership, which include, but are not limited to filings required by the Canada Revenue Agency (source deductions and HST), Workplace NL for workers compensation and HAPSET. All such filings and Receiver remittances are up to date.

2.9.2 There will be certain additional HST filings through to the completion of final estate administration matters.

## 2.10 PTL Group Government Accounts - CRA Trust Exam

2.10.1 CRA has completed its trust exam and has filed proofs of claim in respect of PTL and CSL outstanding payroll source deductions and HST accounts. The following chart provides a summary of the CRA trust exam and proof of claims filed:

CRA Trust Exam and Prof of Claim Summary

	Filed as:		
	Payroll Exam		HST
	Secured	Unsecured	Unsecured
PTL	\$ 13,326.25	\$ 20,434.21	\$ 288,704.46
CSL	15,849.70	22,892.23	440,826.47
	<u>\$ 29,175.95</u>	<u>\$ 43,326.44</u>	<u>\$ 729,530.93</u>

2.10.2 As illustrated, CRA has filed secured claims (“**Property Claims**”) against PTL and CSL of approximately \$13,326 and \$15,850 respectively, relating to payroll source deductions. Additionally, CRA filed unsecured claims for HST (as a result of the PTL and CSL bankruptcies).

2.10.3 Based on our review, the Receiver is of the view that the CRA Property Claims are invalid and would instead rank as unsecured as they relate to: (i) an allocation by CRA of a remittance made by the Receiver (the “**Re-Allocation**”), and; (ii) amounts that were under-deducted by the Company as outlined below:

	Re-Allocation	Under-deducted	Total Property Claim
PTL	\$ 4,454.65	\$ 8,871.60	\$ 13,326.25
CSL	-	15,849.70	15,849.70
	<u>\$ 4,454.65</u>	<u>\$ 24,721.30</u>	<u>\$ 29,175.95</u>

### CRA PTL Property Claim

2.10.4 Based on discussions with CRA and our understanding, as illustrated above, the CRA PTL Property Claim of \$13,326.25 relates to:

- i) Under-deduction of payroll taxes - \$8,871.60:
  - a. Based on CRA's review, the Company did not deduct a sufficient amount of taxes from certain former PTL employees;
  - b. Since these amounts were not deducted from the employee(s) it is the Receiver's view that:
    - i. The amount does not constitute a deemed trust as the funds were not withheld from the employees; and
    - ii. Since the amounts were paid to employees, they would have been taxed in the hands of the employees.
  
- ii) Reallocation - \$4,454.65:
  - a. Subsequent to its appointment, the Receiver made a payment on account of pre-receivership payroll employee deductions for the payroll period ending May 10, 2018 and submitted a letter to CRA to confirm the payment includes solely the employee portion of taxes. A copy of the Receiver's letter to CRA is attached hereto as **Appendix G**.
  - b. The Company portion of taxes which rank as unsecured was approx. \$10,300. CRA has advised that they allocated the funds remitted first to the employer portion of the taxes resulting in an approximate \$4,454.65 secured claim balance.
  - c. This action taken by CRA occurred after the Receiver's appointment (which appointment provided for a Stay of Proceedings) and accordingly, it is the Receiver's view that CRA ought to have applied the funds submitted by the Receiver in accordance with the directions provided by the Receiver and not in a manner that benefits CRA over and above other estate creditors.

### CRA CSL Property Claim

2.10.5 The CRA CSL Property Claim relates to amounts that CRA deemed were under deducted:

- i) Under-deduction of payroll taxes - \$15,849.70:
  - a. Similar to PTL, since these amounts were not deducted from the employee(s) it is the Receiver's view that:
    - i. they do not constitute a deemed trust as they were not withheld from the employees;
    - ii. since the amounts were paid to employees, they would have been taxed in the hands of the employees.

**2.10.6** Based on the foregoing, the Receiver is of the view that the CRA PTL and CSL Priority Claims rank as unsecured and do not have priority in respect of the distributions proposed later herein. Notices of disallowance of the CRA Priority Claim to rank as unsecured have been filed. As outlined later herein, in an abundance of caution, the Receiver will retain a holdback (the “**CRA Priority Claim Holdback**”) and if CRA does not dispute the disallowance, the net balance of the CRA Priority Claim Holdback will be distributed to the Bank.

## **2.11 Liens**

### **PTL/CSL Lien on NARL**

**2.11.1** As outlined in the First Report, as a result of the DCH Lien and related dispute, NARL ceased payments for outstanding PTL and CSL invoicing. In order to protect the interests of the PTL Group estate, the Receiver filed a lien on June 29, 2018 against the NARL property (the “**Receiver’s NARL Lien**”) on behalf of PTL in the amount of \$1,766,613 and on behalf of CSL in the amount of \$34,890. With the resolution of the DCH Lien matter, and NARL subsequently paying the balance outstanding relating to the Receiver’s NARL Lien, the Receiver’s NARL Lien was discharged.

### **Fortis**

**2.11.2** Fortis Concrete Inc. (“**Fortis**”) filed a lien against the NARL property on May 25, 2018 in the amount of approximately \$44,576 (the “**Fortis Lien**”) and subsequently filed a statement of claim naming NARL as the defendant. In reviewing the Fortis Lien with legal counsel, the Receiver identified that one invoice totaling \$4,456 was issued within 30 days of filing the Fortis Lien which the Receiver has remitted to counsel for Fortis. The Receiver is of the view that Fortis does not have lien rights for the balance of its claim and therefore, in coordination with NARL legal counsel, has agreed a process to vacate the Fortis Lien and challenge the claim. NARL paid its final outstanding account to the Receiver and the Receiver paid \$49,993.00 into Court and applied to Court for the Fortis lien matter to be heard, which was initially set for April 2020, but was subsequently delayed until a future Court date is set. As outlined later herein this remains an Outstanding Matter, which once resolved the net balance will form part of the CIBC Final Distribution.

### **PTL Lien on Talon**

**2.11.3** As outlined in the Second Report, in order to protect the interests of the PTL Group in respect of outstanding balances owing from Talon, on August 30, 2018, the Receiver filed a lien in the amount of \$87,913.90 (which represented the unpaid 50% position of the July 2018 invoice) against the Nalcor Energy’s Soldier’s Pond property (the “**Receiver’s Talon Lien**”).

**2.11.4** Talon paid the balance and the Receiver has vacated the Receiver’s Talon Lien.

### **PTL Lien on Allerion**

**2.11.5** The Receiver completed the final PTL Group project for Allerion Oilfield Services (“**Allerion**”) on or around October 26, 2018 and issued final invoices which resulted in



a total outstanding balance of approximately \$160,000 owing from Allerion as at October 31, 2018. Allerion typically pays its account within 60 days. As a result, in order to protect the interests of the PTL Group estate, the Receiver filed a lien against the Newfoundland Transshipment Terminal property on behalf of PTL on November 20, 2018 (Mechanics Lien 19113) in the amount of \$160,651.21 (the “**Receiver’s Allerion Lien**”). Allerion, has since paid the full balance of the account and the Receiver vacated the Receiver’s Allerion Lien.

## **2.12 Bankruptcy of the PTL Group**

**2.12.1** As outlined in the Second Report, the Receiver assigned the PTL Group into bankruptcy on September 26, 2018 and the Office of the Superintendent of Bankruptcy issued certificates of appointment on September 28, 2018.

**2.12.2** The respective meetings of creditors were held on October 25, 2018. There were no estate inspectors appointed and the Trustee obtained its discharge in March 2020.

## **2.13 Transfer at Undervalue**

**2.13.1** Based on a review of the PTL Group records, the Receiver identified a possible transfer at undervalue (“**TUV**”) as between the PTL Group and Talon, both of which share senior management and ownership.

**2.13.2** PTL provided services to Talon as a sub-contractor on various projects. The work completed by PTL totaling in excess of \$3.0 million was billed to Talon and in turn, Talon billed to its customer (with an additional unknown mark-up).

**2.13.3** The senior management of the PTL Group wrote off a net amount of approximately \$3.1 million in outstanding AR and work-in-process owing from Talon (the “**Talon Write-off**”). As a result of the Talon Write-off, PTL re-filed corporate and HST tax returns which resulted in significant tax refunds (approximately \$785,000), a substantial portion of which was used by CRA to offset other tax obligations owing by PTL.

**2.13.4** The benefit of the Talon Write-off resulted in a significant improvement in Talon’s financial position to the detriment of the PTL Group (i.e. net of the tax benefit noted above).

**2.13.5** The Receiver provided the details of the Talon Write-off to the secured creditors (including CIBC, the Parsons Vendors, and CSL Vendors) who are owed in excess of eleven million dollars and therefore are the only parties with an economic interest therein. The Receiver is not aware of any further action relating to this matter. Given the anticipated time and costs that would be incurred to pursue the potential TUV, together with the uncertainty of collection if successful, the Receiver ultimately decided to take no further steps. However, the Receiver notes that if any stakeholder has an interest in pursuing this matter, an alternative course of action, which is likely to be more cost effective is a Section 38 proceeding pursuant to the BIA.

### **3.0 RECEIVER'S AND ITS COUNSEL'S ACCOUNTS**

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#### **3.0 Receiver's and Counsel's Accounts**

- 3.0.1** Pursuant to paragraph 20 of the Appointment Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and the fees and disbursements of its Counsel, constitute part of the "Administrative Charge". The fees and disbursements that the Receiver is seeking approval of are detailed in the affidavit of Angelo Consoli, a copy of which is attached as **Appendix H**. The fees and disbursements of the Receiver's counsel, Cox & Palmer and Patterson Law are outlined in **Appendix I**.
- 3.0.2** The Receiver's fees for the period July 3, 2018 to July 31, 2020 encompass 1,294.9 hours at an average hourly rate of approximately \$280.11 for a total of \$362,712.25 prior to disbursements of \$16,036.85 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve its total fees and disbursements for the period July 3, 2018 to July 31, 2020 inclusive of applicable taxes in the amount of \$435,561.47.
- 3.0.3** Cox & Palmer's fees invoiced from September 2018 to July 31, 2020 total \$66,429.50 prior to disbursements of \$588.15 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve Cox and Palmer's total fees and disbursements invoiced from September 2018 to July 31, 2020 inclusive of applicable taxes in the amount of \$77,044.31.
- 3.0.4** Patterson's fees invoiced November 2018 to June 28, 2019 total \$10,897.50 prior to disbursements of \$13,401.08 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve Patterson's total fees and disbursements invoiced from November 2018 to June 28, 2019 inclusive of applicable taxes in the amount of \$27,940.37.
- 3.0.5** The Receiver and Counsel will incur additional fees (the "Future Fees"), which are estimated to not exceed \$15,000 and \$40,000, plus HST, respectively, with respect to completing this Third Report, the related approval motion, and completing the receivership administration and Outstanding Matters, as defined herein. The Receiver is therefore requesting that this Honourable Court approve the Future Fees.

## **4.0 STATEMENT OF RECEIPTS & DISBURSEMENTS**

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- 4.0.1** Appendix J, attached, presents a summary of the Receiver's interim statement of Receipts and Disbursements for the period May 11, 2018 to August 28, 2020 (the "Receiver's Interim R&D"). As is illustrated, receipts total approximately \$11,564,000, primarily related to the Sale Transaction, collection of opening AR, ongoing sales, and HST refunds.
- 4.0.2** The Receiver has made disbursements of approximately \$6,138,000, primarily related to payroll and related remittances, operating costs and professional fees. In addition pursuant to the December 2018 Distribution Order, the Receiver made an interim distribution to the CIBC totaling \$3,250,000 and made final distributions to the PTL and CSL Unions totaling \$151,017.00 and \$102,658.00 respectively.
- 4.0.3** Accordingly, as at August 28, 2020 the Receiver has net funds in its accounts of approximately \$1,923,000, prior to unpaid estate costs and claims in the estate.

## 5.0 SECURED CREDITORS AND PROPOSED DISTRIBUTIONS

### 5.0 Secured Creditors

The following chart provides a summary of creditors that have a security interest registered against the PTL Group and their respective outstanding loan amounts as at the Appointment Date based on the Company's Books and Records:

Creditor	Debt	Security	Debtor
CIBC	\$5,700,000	GSA, Assignment of ECA's, Leasehold Charge	PTL Group
Parsons Vendors & CSL Vendors	11,500,000	GSA	PTL Group
Paccar	Unknown	PMSI	PTL
CNH	Unknown	PMSI	PTL
National Leasing	Unknown	PMSI	PTL

As previously reported, there will be a shortfall to CIBC and/or the Parsons Vendors and CSL Vendors and accordingly there will be no funds available for distribution to the unsecured creditors.

The following is a summary of the Receiver's review / actions in respect of the various secured lenders and Equipment Lessors:

- a) CIBC: The Receiver's independent legal counsel has reviewed the CIBC Security and provided its opinion that the security is valid and enforceable in accordance with its respective terms. As a result, all owned assets that are not specifically encumbered by another specific registrant are subject to the CIBC Security;
- b) Parsons Vendors and CSL Vendors: As noted herein, the Parsons Vendors, CSL Vendors and CIBC, among others, entered into inter-creditor agreements setting out the priority of their respective security interests which provides that the CIBC Security ranks in priority to the Parsons Vendors and CSL Vendors up to \$9.5 million. Since there will be no estate funds available for distribution to the Parsons Vendors and CSL Vendors, the Receiver did not have its Counsel review the respective security.
- c) Equipment Lessors:
  - i. Each of Paccar, CNH, and National Leasing have registered security interests for their respective Financed Equipment that was used in the PTL Group operations. Pursuant to the Final Amended Locke's APA, Locke's did not assume the Financed Equipment leases and the Receiver made arrangements to release the Financed Equipment to the Lessors.
  - ii. Deficiency claims from the Equipment Lessors will be treated as unsecured claims in the estate.

## 5.1 Salary Employee Claims

- 5.1.1 As outlined in the Receiver's Second Report, the Receiver sought approval to pay 81.4 claims to salary employees once finalized, providing that the total of such payment does not materially exceed \$15,000.
- 5.1.2 Based on the Receiver's review, the outstanding prior ranking claims in respect of salary employee Section 81.4 claims are negligible (under \$200.00) and were paid directly to ESDC, who funded these amounts.

## 5.2 Government Accounts

- 5.2.1 Based on the Receiver's review it is the Receiver's view that there are no prior ranking claims for employee source deductions relating to payroll tax, CPP and EI, HST or HAPSET.
- 5.2.2 The Receiver requested an audit of the Company's source deductions accounts which is now complete. As outlined in Section 2.10 herein, CRA filed a Property Claim in respect of (i) PTL and CSL amounts that should have been deducted from employees that were not withheld and (ii) an amount that resulted from CRA's Re-Allocation of a payment made by the Receiver on account of PTL pre-receivership employee source deductions. Accordingly, it is the Receiver's view that these amounts are not secured and therefore do not rank in priority to the Bank's security.
- 5.2.3 As a result of the bankruptcy of the PTL Group, CRA has filed unsecured claims in respect of the employer portion of source deductions and HST.

## 5.3 Proposed Interim and Final Distribution

- 5.3.1 With the exception of the charges under the Appointment Order, (and the Property Claim filed by CRA (which the Receiver believes is unsecured), the Receiver is not aware of any other claims that would rank in priority to CIBC. Further, it is estimated that the Bank will incur a shortfall in these proceedings.
- 5.3.2 Based on the funds on hand in the Receiver's accounts, net of a reserve to fund estimated costs to completion of the estate and a reserve for the CRA Property Claim, which is being held in an abundance of caution until the expiration of the 30 day appeal period for the notices of disallowance issued to CRA, the Receiver proposes to make an interim distribution of \$1,830,000 (the "**Proposed Interim Distribution**") to CIBC. If CRA does not object to the notice of disallowance, the net proceeds from the CRA Property Claim holdback, will be distributed to the Bank.
- 5.3.3 Furthermore, and subject to the approval of this Honourable Court, upon completion of the Outstanding Matters as defined herein, the Receiver proposes to make a final distribution to CIBC, limited to the maximum extent of the CIBC indebtedness plus costs and interest, for the net balance of funds in the Receiver's accounts after consideration of all costs associated with the completion of operations and all remaining administrative and Outstanding Matters, fees, etc., (the "**Proposed Final Distribution**").
- 5.3.4 If there are any recoveries in excess of the CIBC outstanding indebtedness, which is not anticipated, the Receiver will distribute the excess to the Parsons Vendors and CSL Vendors, subject to an independent review of their security by the Receiver's Counsel.

## **6.0 RECEIVER'S ACTIVITIES**

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### **6.0 Receiver's Activities since the Receiver's Second Report**

**6.0.1** The Receiver continues to administer the estate in good faith and with due diligence by completing the following activities (including but not limited to):

- The Receiver continued to respond to stakeholder (employees, unions, creditors, suppliers, customers, government agencies, etc.) and creditor inquiries in an open, transparent and timely fashion;
- The Receiver continued operations to the date of closing, and made arrangements to either complete contracts, or assign them to third parties, where possible, post closing;
- The Receiver continued to manage the payroll function, statutory remittances processes (source deduction, HST, workers compensation, HAPSET), Union reporting and remittance processes, procurement process with suppliers, supplier payments, and the estate's banking process;
- The Receiver continued to communicate extensively with customers, bill customers for work properly performed in a timely fashion, and collect on accounts receivable, following up and resolving disputes when required;
- The Receiver maintained appropriate insurance coverage over the estate assets in conjunction with the support of a qualified broker and obtained a 12 month long-tail liability coverage in the event any claims arose or were made relating to the PTL Group operations;
- The Receiver has attended court hearings with regards to the Court approval of the December 2018 Distribution Order, and multiple meetings with respect to legal proceedings associated with the various lien claims involving the estate; and
- The Receiver has calculated and reviewed possible priority claims in the estate.

## 7.0

## RECEIVER'S DISCHARGE

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- 7.0.1 The operations of the PTL Group and a sale of the assets have been completed, and as a result, the Receiver has essentially completed the administration of the PTL Group receivership, subject to completion of the further matters set out below.
- 7.0.2 The Receiver therefore respectfully requests that the receivership proceedings be terminated and the Receiver be discharged subject to the Receiver performing the following (collectively referred to as the “**Outstanding Matters**”):
- Resolution of the Fortis Lien matter;
  - Payment of all expenses incurred up to the completion of the final estate administration;
  - Payment of the invoices and Future Fees of the Receiver and Counsel, together with any final estate expenses;
  - Payment of the Proposed Interim Distribution and Final Distribution;
  - Filing HST returns up to the Receiver's discharge; and
  - Issuing the Receiver's final report and statement of receipts and disbursements pursuant to S. 246(3) of the BIA.
- 7.0.3 Upon completion of the above noted items, the Receiver will file a certificate with the Court confirming same (the “**Receiver's Discharge Certificate**”), whereupon the termination of the receivership proceedings and the discharge of the Receiver, and the accompanying release of the Receiver, would become effective.

## 8.0 RECOMMENDATIONS

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### 8.0 Recommendations:

8.0.1 The Receiver respectfully submits this Third Report to the Court in support of the Receiver's motion for an Order:

- approving the Third Report and the Receiver's activities as outlined herein;
- approving the Interim Distribution to CIBC in the amount of \$1,830,000;
- approving the Final Distribution of the net funds on hand after payment of the foregoing distributions and final estate costs, including the Future Fees;
- approving the fees and disbursements of the Receiver and its counsels, Cox & Palmer and Patterson Law, as outlined herein;
- approving the Receiver's Interim R&D; and
- authorizing the termination of the PTL Group receivership proceedings and the discharge and release of the Receiver effective upon the Receiver filing with the Court the Receiver's Discharge Certificate evidencing that the Receiver has completed the remaining Outstanding Matters.

All of which is respectfully submitted this 8<sup>th</sup> day of September, 2020.

**BDO CANADA LIMITED,**  
in its capacity as **COURT-APPOINTED RECEIVER OF**  
**PTL HOLDINGS LIMITED, PTL SERVICES (EQUIPMENT) LIMITED,**  
**CSL SERVICES (INDUSTRIAL) LIMITED AND 9263357 CANADA INC.**  
and without personal or corporate liability

Per:   
Angelo Consoli, CPA CA CIRP LIT  
*Vice President*