

COURT FILE NUMBER 130306092

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANT DOWLAND CONTRACTING LTD.,  
DOWLAND INDUSTRIAL WORKS LTD.,  
DOWLAND CONSTRUCTION, INC., AND  
6070 N.W.T. LIMITED



DOCUMENT **FIRST REPORT OF ALVAREZ & MARSAL CANADA INC.,  
IN ITS CAPACITY AS COURT APPOINTED RECEIVER  
OVER THE PROPERTY**

**JUNE 25, 2013**

ADDRESS FOR SERVICE AND  
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## INTRODUCTION

1. Effective May 21, 2013, pursuant an order of the Honourable Justice J.D. Rooke (the “Receivership Order”), Alvarez & Marsal Canada Inc. (“A&M”) was appointed as receiver and manager (the “Receiver”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”) of Dowland Contracting Ltd. (“DCL”), Dowland Industrial Works Ltd. (“DIW”), and 6070 N.W.T. Limited (“6070”) (collectively, the “Dowland Group” or the “Company”) pursuant to section 13(2) of the Judicature Act, R.S.A. 2002, c.J-2 and section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended., and 65(7) of the Personal Property Security Act, R.S.A. 2000, c. P-7 in the within action (the “Receivership Proceedings”).
2. The Order authorizes the Receiver, among other things, to manage, operate and carry on the business of the Dowland Group and to take possession and control of the property of the Dowland Group and any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.
3. The purpose of this first report of the Receiver (the “First Report”) is to advise this Court with respect to the Receiver’s:
  - a) application to amend paragraph 3(1)(i) of the Receivership Order;
  - b) application to include a provision in the Receivership Order that permits the Receiver to use its electronic signature on all of its reports; and
  - c) recommendations.
4. Capitalized words or terms not defined or ascribed a meaning in the First Report are as defined or ascribed a meaning in the Receivership Order.

5. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

6. In preparing this First Report, the Receiver has relied upon unaudited financial information and the Dowland Group's records. The Receiver has not performed an audit, review or other verification of such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants ("CICA") Handbook has not been performed. Future oriented financial information relied upon in this report is based on the Dowland Group's assumptions regarding future events and actual results achieved may vary from this information and the variations may be material.

## **BACKGROUND**

7. The Dowland Group's operational and financial management was centralized and undertaken from its office in Edmonton, Alberta with branch operational office locations across Northern, Central and Western Canada and Alaska, USA. The Dowland Group provided a full suite of construction services for commercial, industrial, institutional and design-build projects. The type of services that the Dowland Group provided includes design, construction, management, logistics, foundation installations, soil investigation and general contracting. The Company also provided support services for oil and gas exploration and infrastructure, such as ice-profiling, pressure testing, conductor hole drilling, pipefitting and welding, tank cleaning, inspection and repair, and explosives supply services.
8. Further background on the Dowland Group is contained in the materials filed relating to the Receivership Order, including the affidavit of Mr. Gary Ivany sworn April 29, 2013 and the statement of claim filed on April 29, 2013. These documents, including the Receivership Order, have been posted by the Receiver on its website at: [www.amcanadadocs.com/dowland](http://www.amcanadadocs.com/dowland).

## RECEIVERSHIP ORDER

### *Proposed Amendment*

9. Paragraph 3(1)(i) of the Receiver Order authorizes the Receiver without further Court Order to sell the property of Dowland provided it is within the financial parameters set out in that subsection.
10. The Receiver has negotiated the sale of certain smaller pieces of property within these financial parameters and is finalizing its negotiations of the sale of various assets that are located in remote areas in Western Canada. However, the property being contemplated is specifically encumbered by registrations by secured creditors, including the Royal Bank of Canada, certain surety's and by unregistered interests such as the Receiver's Administration Charge.
11. The sales that the Receiver is currently contemplating are as follows:
  - a) 2012 Dodge RAM 1500 ST Quad Cab 4x4 located in Thunderbay, Ontario for \$17,500; and
  - b) Various pieces of machinery and equipment located in Alakanuk, Alaska and Lloydminster, Alberta for a total purchase price of approximately \$180,000 and \$100,000 (plus GST), respectively.
12. The provisions in the Receivership Order do not indicate specifically that the Receiver can sell the property free and clear of any and all encumbrances. It also does not indicate that to the extent it sells encumbered assets, that the proceeds are to be held by the Receiver pending a determination of entitlement to the proceeds, and that the discharge of the encumbrance shall be without prejudice to the security interest claimed by any secured creditor. Royal Bank of Canada ("RBC") has expressed concern about discharging its encumbrance without this provision being clarified.

13. The proposed amendment to paragraph 3(l)(i) is as follows (underline text is the proposed amendment):

*(l) "to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:*

*(i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and the sale shall convey to the purchaser all right, title, and interest of the Debtor in the Property, sold, conveyed, transferred, leased or assigned, free and clear of all security, security interests, trusts, liens, charges, and encumbrances, contractual, statutory, judicial, or otherwise (individually and collectively referred to as "Security"); and the proceeds of any Property sold, conveyed, transferred, leased or assigned by the Receiver shall stand in the place of the Property sold, conveyed, transferred, leased or assigned and all Security and priorities that existed in such Property by reason of any Security, immediately prior to such sale shall apply to the proceeds notwithstanding the discharge of the Security or any interest therein in the Property Sold, conveyed, transferred, leased, or assigned, provided that nothing in this paragraph limits the scope and efficacy of paragraph 16 of the Receivership Order; further provided; however, that nothing herein shall permit the sale of any building materials or supplies located on any construction site except with the consent of an affected party or a Court Order."*

14. It is the desire of the Receiver that this provision be clarified so that the Receiver has an efficient means in selling assets on a timely basis so as to maximize realizations from the Property and to mitigate on-going holdings costs associated with the equipment, which is located in various remote parts of the Canada and

USA. Such sales would be within the financial parameters set out in that subsection and the Receiver requests the amendment to allow it to do so.

15. It is the Receiver's position that this amendment does not alter the rights of any party to the Property, but preserves those rights to the proceeds of sale, and as such it is fair and reasonable.

*Proposed Inclusion*

16. The Receiver respectfully requests this Court permit the use of the Receiver's electronic signatures to sign all of its reports to Court.
17. The Receiver's office is located in Calgary, Alberta. The Receiver is currently working on several engagements in its capacity as a court officer for this Court in both Edmonton and Calgary locations. As such, depending on the Receiver's schedule, the Receiver may not always be present in Edmonton to provide actual signatures for timely filing of its materials to this Court.
18. For ease of administration, the Receiver requests permission that the clerks of the court accept for filing all pdf copies and electronic signatures of the Receiver for its reports, which has been allowed by this Court on other recent insolvency proceedings, such as:
  - a) June 29, 2012 CCAA stay extension order granted by the honourable J.Thomas (Purdy Group of Companies); and
  - b) June 20, 2013 receivership order granted by the honourable J.Horner (Impact 2000 Inc.).

## **RECOMMENDATION**

19. The Receiver recommends the following to the Receivership Order:

- a) the proposed amendment to paragraph 3(1)(i); and
- b) the inclusion of permitting the Receiver to use its electronic signature on all of its report;

All of which is respectfully submitted this 25<sup>th</sup> day of June, 2013.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Receiver of Dowland  
Contracting Ltd., Dowland Industrial Works Ltd.,  
and 6070 N.W.T. Limited**



Tim Reid, CA•CIRP  
Senior Vice-President



Orest Konowalchuk, CA•CIRP  
Director