

**District of:** Vancouver  
**Division No.** 04 - Vernon  
**Court No.** 11-1886644  
**Estate No.** 11-1886644

**TRUSTEE'S REPORT TO THE CREDITORS  
ON THE PRELIMINARY ADMINISTRATION  
IN THE MATTER OF THE BANKRUPTCY OF  
ARTHON CONTRACTORS INC.**

**July 11, 2014**



**ALVAREZ & MARSAL**

## **TABLE OF CONTENTS**

<b>1.0</b>	<b>BACKGROUND .....</b>	<b>- 3 -</b>
<b>2.0</b>	<b>PRELIMINARY EVALUATION OF ASSETS .....</b>	<b>- 3 -</b>
<b>3.0</b>	<b>CREDITORS AND SECURITY INTERESTS .....</b>	<b>- 4 -</b>
<b>4.0</b>	<b>BOOKS AND RECORDS .....</b>	<b>- 5 -</b>
<b>5.0</b>	<b>LEGAL MATTERS AND REVIEWABLE TRANSACTIONS .....</b>	<b>- 5 -</b>
<b>6.0</b>	<b>THIRD PARTY DEPOSITS AND GUARANTEES.....</b>	<b>- 6 -</b>

## **APPENDIX**

Appendix A – Certificate of Appointment

## 1.0 BACKGROUND

- 1.1 On June 27, 2014 (the “**Bankruptcy Filing Date**”) Arthon Contractors Inc. (“**Contractors**”) filed a voluntary assignment in bankruptcy and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed trustee (the “**Trustee**”), subject to affirmation by the creditors of Contractors at the first meeting of creditors to be held on July 14, 2014. A copy of the certificate of appointment is attached as Appendix “A”.
- 1.2 Contractors was previously subject to a stay of proceedings pursuant to an order pronounced by the Supreme Court of British Columbia on November 29, 2013 on the application of Arthon Industries Limited (“**Industries**”) and certain of its subsidiaries and affiliated companies including Contractors (collectively, the “**Arthon Group**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings brought by the Arthon Group under the CCAA will be referred to as the “**CCAA Proceedings**”. While the CCAA Proceedings remain ongoing, the stay of proceedings against Contractors expired on June 13, 2014.
- 1.3 Contractors was the construction arm of the Arthon Group and was engaged in road building, bulk materials handling, aggregate processing and mining activities. By October 2013, much of the Company’s operations had discontinued as the Company had encountered difficulties bidding for further work due to an inability to obtain bonding or access sufficient working capital to undertake new projects.
- 1.4 Much of the workforce used by the Arthon Group were employees of Contractors and have been transferred to other entities within the Arthon Group prior to the Bankruptcy Filing Date.
- 1.5 Contractors is privately held and duly incorporated under the *Business Corporations Act* (British Columbia).
- 1.6 Further background on Contractors’ business affairs, financial difficulties and CCAA Proceedings is disclosed in the Monitor’s reports which, along with other related materials, are available on the Trustee’s website at [www.alvarezandmarsal.com/arthon](http://www.alvarezandmarsal.com/arthon).

## 2.0 PRELIMINARY EVALUATION OF ASSETS

- 2.1 As at the Bankruptcy Filing Date, the assets of Contractors are limited to the following:
  - a) cash on hand of approximately \$31,000;
  - b) leased equipment with a net book value of approximately \$47,000 and an appraised value of \$35,000;

- c) accounts receivable of which management of Contractors has estimated that \$23,000 is collectible; and
- d) two project claim accounts receivable due from the Ministry of Transportation and Infrastructure (“**MOTI**”) totalling approximately \$2.7 million of which \$2.5 million relates to a project in Summerland, BC (the “**Summerland Project**”) and \$216,000 relates to a project in Revelstoke, BC (the “**Revelstoke Project**”). The amount due in respect of the Summerland Project is disputed and while MOTI acknowledges the liability relating to the Revelstoke Project, they are claiming a right of offset against a counter claim in respect of the Summerland Project. On June 18, 2014 Canada Revenue Agency (“**CRA**”) issued a requirement to pay to MOTI in respect of the amounts due by Contractors to the CRA. The disputed amounts due from MOTI are discussed in further detail in section 5.0.

### 3.0 CREDITORS AND SECURITY INTERESTS

- 3.1 As disclosed in the Statement of Affairs filed with the bankruptcy assignment documents of Contractors, there are 109 creditors with total claims of \$20.3 million and additional unknown claim amounts which are summarized as follows:

Arthon Contractors Inc. Summary of Creditors As at June 27, 2014 (000's)	
CRA deemed trust claim	\$ 1,800
Secured creditors:	
Roynat Inc.	32
Intact Insurance Company	400
Callidus Capital Corp. (Note 1)	1,700
Industries	3,100
	<u>5,232</u>
Unsecured creditors	<u>13,294</u>
<b>Total creditors</b>	<b><u>\$ 20,326</u></b>
Note 1 - Approximately \$52.0 million is owed to Callidus Capital Corp. in aggregate from the Arthon Group and the loans are secured by a GSA against all present and after acquired personal property of the Arthon Group including Contractors.	

- 3.2 CRA is owed approximately \$1.8 million for unremitted payroll source deductions which have accrued over the period April to November 2013. A portion of this amount may constitute a deemed trust with a statutory super priority.

- 3.3 Roynat Inc. is owed approximately \$32,000 and has registered security against Contractors' leased equipment, attachments and accessories.
- 3.4 Intact Insurance Company is owed approximately \$400,000 relating to payments made pursuant to a performance bond in respect of the Revelstoke Project and has a registered General Security Agreement ("GSA") against all present and after acquired personal property of Contractors.
- 3.5 Callidus Capital Corporation ("Callidus") is owed approximately \$1.7 million directly from Contractors and approximately \$52.0 million in aggregate from the Arthon Group which is secured by a GSA against all present and after acquired personal property of Contractors as well as other entities in the Arthon Group. HSBC Bank Canada ("HSBC") has provided a \$10 million letter of credit in favour of Callidus which will be drawn upon if certain assets of another Arthon Group company, Coalmont Energy Corp., are sold for anything less than \$10 million. Pending elimination of any remaining exposure under the Callidus refinancing, HSBC will hold a second position behind that of Callidus to the extent the letter of credit is called upon.
- 3.6 Industries is owed approximately \$3.1 million which is secured by, among other things, a GSA against all present and after acquired personal property of Contractors.
- 3.7 Given that CRA may have a statutory super priority for its deemed trust claim to all secured creditors, the Trustee expects that the realization from the assets of Contractors will be insufficient to satisfy the deemed trust claim owed to CRA. Accordingly, it is not expected that there will be any realizations available for secured or unsecured creditors.
- 3.8 Based on the Trustee's preliminary discussions with the Company and review of the Company's books and records, it appears that there are no amounts due for wages that are eligible for priority claims in accordance with the Wage Earner Protection Program Act.

#### **4.0 BOOKS AND RECORDS**

- 4.1 The Trustee has taken possession of the books and records of Contractors which are being held at the office of the Trustee.

#### **5.0 LEGAL MATTERS AND REVIEWABLE TRANSACTIONS**

##### Legal Matters

- 5.1 Contractors retained McLean & Armstrong LLP to provide legal advice with respect to its disputed final progress claim against MOTI relating to the Summerland Project. The Trustee has been advised that MOTI has made a counter claim against Contractors with respect to the same

project. As at the Bankruptcy Filing Date the amounts claimed by Contractors remained unpaid and the matter was no longer being pursued by Contractors due to inability to fund further legal costs.

- 5.2 The Trustee has not commenced any legal proceedings and is not aware of any proceedings commenced against the estate.

Reviewable Transactions


- 5.3 The Company has advised the Trustee that prior to the bankruptcy (in or around June, 2014) it transferred approximately \$531,000 of aggregates inventory to Industries in consideration of a reduction in the intercompany amounts due from Contractors to Industries. The Trustee has requested further information from management of the Arthon Group with respect to this transaction and has not yet completed a review of the transaction with respect to potential fraudulent preferences or transfers under value as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("TUVs").
- 5.4 The Trustee has not yet completed a review of the books and records of Contractors with respect to fraudulent preferences or TUVs.

**6.0 THIRD PARTY DEPOSITS AND GUARANTEES**

- 6.1 Industries has provided a guarantee to the Trustee with respect to its reasonable fees and disbursements subject to taxation of the Trustee's accounts and have provided a deposit to the Trustee of \$10,500 to support the guarantee.

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**Alvarez & Marsal Canada Inc.,  
in its capacity as Trustee in the Bankruptcy  
of Arthon Contractors Inc.**

  
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Per: Tom Powell  
Director



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of: British Columbia  
Division No.: 04 - Vernon  
Court No.: 11-1886644  
Estate No.: 11-1886644

In the Matter of the Bankruptcy of:

**Arthon Contractors Inc.**  
Debtor

**ALVAREZ & MARSAL CANADA INC.**  
Trustee

Ordinary Administration

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Date and time of bankruptcy:	June 30, 2014, 14:22	Security:	\$0.00
Date of trustee appointment:	June 30, 2014		
Meeting of creditors:	July 14, 2014, 11:00 Sandman Hotel and Suites, Westbank Room 2130 Harvey Avenue Kelowna, British Columbia Canada,		
Chair:	Trustee		

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CERTIFICATE OF APPOINTMENT - Section 49 of the Act; Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforementioned debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforementioned trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy;  
and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the  
aforementioned time and place or at any other time and place that may be later requested by the official  
receiver.

Date: June 30, 2014, 17:27

E-File/Dépôt Electronique

Official Receiver

300 Georgia Street W, Suite 2000, Vancouver, British Columbia, Canada, V6B6E1, (877)376-9902

**Canada**