



COURT NO. B131552
ESTATE NO. 11-1820752
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY**

IN THE MATTER OF THE BANKRUPTCY OF

0409725 B.C. LTD.

FORMERLY DOING BUSINESS AS ODENZA HOMES LTD.

**SECOND REPORT OF G. POWROZNIK GROUP INC.
OF G-FORCE GROUP
AS CLAIMS ADMINISTRATOR OF THE
TRUST CLAIM SETTLEMENT PROGRAM**

JUNE 6, 2014



Background and Purpose of this Report

1. 0409725 B.C. Ltd. formerly doing business as Odenza Homes (“**Odenza**”) made an assignment in bankruptcy (the “**Bankruptcy**”) pursuant to section 49 of the *Bankruptcy and Insolvency Act* (“**BIA**”) on December 16, 2013 and ceased its operations. Odenza operated a home building and renovation business in Vancouver, B.C. and in most cases was the general contractor under contracts with project owners (“**Owners**” and individually an “**Owner**”).
2. On December 16, 2013, G. Powroznik Group Inc. of G-Force Group was appointed as Trustee in Bankruptcy (the “**Trustee**”) for the estate of Odenza. The Trustee's appointment was later ratified by the creditors at the first meeting of creditors on January 8, 2014 (the “**First Meeting of Creditors**”).
3. In its report to this Honourable Court dated December 18, 2013 (the “**Trustee's First Report**”), the Trustee provided its rationale for the authorization of the Trust Claim Settlement Program (“**TCSP**”), in order to attempt to minimize asset dissipation and costs while maximizing recoveries for the creditors of Odenza. A significant number of Odenza's creditors are also trust claimants and, or alternatively, lien claimants under the *Builders Lien Act* (“**BLA**”). A significant amount of the assets in the possession of Odenza were (or upon receipt would be) impressed with a trust under the BLA, and would therefore not be part of the bankrupt estate; and accordingly, these trust claims and trust assets could not be dealt with under the BIA process. Similarly, holdback funds otherwise due to Odenza from Owners would be subject to lien claims and would not be dealt with under the BIA process. On December 19, 2013, the Court made an Order authorizing the TCSP (the “**December 19 Order**”) and appointing G. Powroznik Group Inc. as Claims Administrator (“**Claims Administrator**”) of the TCSP.
4. The role of the Claims Administrator in administering the TCSP is complementary to the role of the Trustee since the former deals exclusively with trust assets under the BLA, and corresponding trust and liens claims which the Trustee has no power to deal with. To the extent that the TCSP is successful, the recovery of the unsecured creditors in the bankruptcy will be enhanced because the TCSP is designed to: first, enhance the preservation of receivables and holdbacks from construction contracts; and second, avoid construction litigation and related costs that would erode or completely eliminate the recoverable assets in respect of the bankrupt estate (the “**Bankrupt Estate**”). Further, since most of the creditors who have trust and lien claims will be facing a shortfall in collecting these claims, they may also have unsecured claims in the Bankrupt Estate for the balance of their claim. Accordingly, their overall recovery could be also be enhanced by an efficient and effectively run TSCP.
5. One of the foundations of this integrated solution for the creditors of Odenza is to integrate the administration, asset recovery and claims adjudication processes to minimize the costs of construction insolvencies, which can be substantial due to the highly technical nature of the BLA with respect to the assets and claims it relates to. The integrated solution also avoids multiple construction litigation proceedings for individual projects that would be required in the absence of an integrated solution. This includes an

integration of the roles of the Trustee and Claims Administrator as well as with the legal counsel for these two roles. The Trustee's counsel is Borden Ladner Gervais LLP ("**BLG**") which has previously been involved with a similar integrated solution for a construction company insolvency and which has substantial construction litigation expertise. BLG made the original application to the Court on behalf of the Trustee to obtain the December 19 Order. The Claims Administrator continues to utilize BLG as its counsel which involves primarily matters related to Odenza's construction contracts, potential trust receivables and holdbacks, trust and lien claims and other matters related to the BLA. The Claims Administrator has also retained independent legal counsel, Gehlen Dabbs LLP ("**GD Law**") to deal with any matters where an independent opinion from the Trustee is required, including whether any funds held or received by Odenza are trust funds or Bankrupt Estate funds.

6. In February 2014, the Court made an order (the "**February 18 Order**") authorizing several amendments to the December 19 Order (together the "**TCSP Order**"), most of which changes were administrative in nature with the goal of improving and streamlining the administration of the TCSP. The Claims Administrator has continued to adjudicate on the claims of trust and lien claimants and has done a significant amount of work to review many of Odenza's projects and to open dialogue with several Owners about what is owed on their project. A brief update on those efforts will be provided in this report.
7. At the time of Bankruptcy, the Trustee seized the cash in Odenza's two operating bank accounts at HSBC Bank Canada ("**HSBC**") totalling \$527,506.22 (the "**Initial Cash Balance**"). The Trustee and Claims Administrator identified two significant legal issues surrounding the Initial Cash Balance: first, who is entitled to those funds; and second, how should those funds be distributed. The Claims Administrator has retained GD Law to advise on these legal issues. Our conclusions and recommendations regarding the significant legal issues are based upon their advice. The Initial Cash Balance has been held in trust in the Consolidated Trust Account established in the December 19 Order pending analysis of the Odenza's bank accounts, banking arrangements, business arrangements with its Owners and creditors and related matters.
8. The purpose of this Report is to:
 - a) Provide an update on the status of the administration of the TCSP by the Claims Administrator to date;
 - b) Provide a summary of the composition of the Initial Cash Balance and outline for this Honourable Court the significant legal issues that must be determined which are:
 - i. Who are the potential claimants to the Initial Cash Balance and who are the potential claimants to the funds to be paid by Owners on account of home construction or renovation contracts with Odenza ("**Odenza's Construction Contracts**") after the Bankruptcy ("**Potential Trust Funds**") and holdbacks under the BLA (the "**Holdbacks**" and individually a "**Holdback**")?

- ii. What are the potential methods of distributions of the Initial Cash Balance and how should this tie into the distribution of funds received by the Claims Administrator after the date of Bankruptcy?

(collectively, the “**Legal Issues**”)

- c) Seek the direction of, and a declaration from, this Honourable Court on the Legal Issues.
9. This report should be read in conjunction with the Trustee’s First Report and the Claims Administrator’s First Report dated February 16, 2014 (the “**First Report**”) as there is a significant amount of background information presented in those documents on Odenza, BLA issues and the intended outcomes of the TCSP generally for the benefit of the trust and lien claimants.

Progress on Receipt & Adjudication of Claims and Recovery of Potential Trust Funds and Holdbacks

10. To date, the Claims Administrator has received trust and lien claims from 102 individual suppliers in accordance with the TCSP (the “**Trust and Lien Claims**”). The total Trust and Lien Claims across all projects to date exceeds \$2,965,000 and it is expected that a few more claims may be received in June 2014. The claims are spread across more than 30 individual projects, each of which is its own "improvement" under the BLA (the “**Projects**” and individually a “**Project**”). Overall, the 102 claimants have made approximately 533 individual Trust and Lien Claims for the Claims Administrator to adjudicate across all the Projects. There are a few additional claims that have been submitted to the Claims Administrator that are missing information and/or that are not in the proper form, and are therefore not considered proper claims at this time. The Claims Administrator is in the process of corresponding with those claimants to obtain more information and/or to correct the claims so that they can be properly adjudicated pursuant to the TCSP.
11. The Claims Administrator has also received one Proof of Lien Claim from a Third Party Lien Claimant as defined in the February 18 Order. Third Party Lien Claimants are persons who do not have direct contractual relations with Odenza and thus would not have a trust claim against Odenza but may have a lien claim against Holdback funds (“**Holdback Only Claimants**”).
12. Since the February 18 Order, and due to some of the amendments to the TCSP authorized by that Order, the administration of the TCSP has become more streamlined and many of the problems that existed in February have subsided. An important improvement is that the Claims Administrator now has much more time to adjudicate claims within the allowed 90 day period (formerly 40 days) and issue Notices of Disallowance (or Amended Notices of Disallowance as the case may be) to claimants. Also, the Claims Administrator has been receiving significant information and support from Odenza’s former principal, the Inspectors of the Bankrupt Estate, and, more recently, two former project managers, which has provided it with a significant amount of information on

historical claims to facilitate the adjudication of claims and the determination of the balances due from Owners. However, obtaining this information has taken far longer than we have anticipated for reasons set out in this report.

13. As at June 6, 2014, the Claims Administrator has completed the adjudication of 94 creditors' claims (92% of total) representing 512 individual claims (96% of total). A small number of those claims (less than 1%) have been temporarily disallowed in order to give the Claims Administrator more time to obtain appropriate information to validate or deny the claims. Upon such time that the claims can be verified, an Amended Notice of Disallowance will be sent to these few creditors to either allow the claims, partially disallow the claims, or confirm the disallowance of the claims in full. The Claims Administrator expects to have adjudicated all of the claims submitted to date and issue any required Notices of Disallowance and Amended Notices of Disallowances (as needed) by the end of June 2014.
14. As at the date of this Report, in addition to the Initial Cash Balance which is being held in trust, the Claims Administrator has collected \$177,000 from three Owners. We have abandoned one Project where there is no further amount to collect although there are trust claims filed. We have also settled with another Owner where there will be no amount collected but all lien and trust claims on the Project have been paid by the Owner. In addition, the Claims Administrator has completed its review of 14 other projects with balances due by the Owners of \$307,000 in receivables (which may become Potential Trust Funds) and \$685,000 in Holdbacks and has submitted the estimated final statements of account to the Owners for comment where applicable and, in several cases, collection. Another 11 projects are under various states of review having a book value in Odenza's records for receivables and holdbacks of \$459,000 and \$367,000 respectively. Overall, Odenza had trust and lien receivables and Holdbacks due from Owners of approximately \$1.8 million once the claims submitted since the bankruptcy were processed. However, this amount is being reduced by Owners' offsets for reasonable deficiencies, credits for uncompleted work, adjustments for cost overruns potentially not collectible under the terms of the contracts, and possibly other valid credits that will arise in the process of adjudicating the claims and settling the accounts with the Owners. The Trustee's Report to the Creditors on its Preliminary Administration on January 7, 2014 provided a very preliminary estimate of expected net recoverable trust receivables and Holdbacks of approximately \$903,000, excluding the Initial Cash Balance. The Claims Administrator hopes that the actual amount recovered will be higher as it processes more claims than originally recorded in Odenza's books, many of which should be recoverable from the Owners.
15. The process of collecting funds from Owners could take a period of several months or longer due to the following factors:
 - The process of updating job Project costs has been difficult and time consuming due to the incomplete state of Odenza's records and the lack of access to former Odenza staff familiar with the individual projects;
 - The Owners require time to review the revised Project accounting and statements of balances due and compare to information that they have;

- Owners have been collecting information on any deficiencies that may exist on the work done to the date of Bankruptcy and offsets to the contract price with Odenza for work that is not completed. Where possible we have tried to arrange for the deficiencies to be corrected by the claimants at no cost and obtain reliable estimates of the work that was not completed;
- Several of the Owners' Projects were not completed at the time of the Bankruptcy and all of the relevant adjustments to claims and costs may not be known until the projects can be completed;
- Some of the Project costs have changed considerably due to the high number of unrecorded claims in Odenza's books at the date of Bankruptcy and Owners will want to review these claims;
- Many Owners did not set aside the 10% Holdback required by the BLA on payments to Odenza prior to the Bankruptcy which may complicate the finalization of the amounts due on some of the contracts because, in almost all Projects, the unpaid liens exceed the current balance due (if any) from the Owner, thereby requiring an additional payment of some or all of the amount of the Holdback that was not previously held back;
- Owners have expressed a preference to wait for a sufficient amount of time to pass to minimize the uncertainty of unfiled claims that could subsequently affect the amounts due from them;
- Some of the creditors who filed liens against title, have not yet filed a claim in the TCSP or their TCSP claim is different from the amount filed against the title which will require additional steps for the Claims Administrator to take to ensure all claims have been properly filed in the TCSP; and
- Several Owners have retained counsel to advise them on their position with Odenza which has produced some unforeseen complications.

In short, there are a number of issues that need to be considered by the Owners and Claims Administrator before payment of the balances due and Holdbacks on several of the contracts can be finalized and the liens removed.

16. The Claims Administrator has updated the project accounting and reviewed Trust and Lien Claims on a total of 25 Odenza contracts and continues to work on updating the accounting for 5 other contracts. Of those 25 contracts, 21 Owners have been contacted and provided with an updated project accounting which includes an updated balance due to Odenza for work done on the contract prior to the Bankruptcy. Many of those Owners have been somewhat surprised to learn that they owe more than the balances initially provided from Odenza's records because there were many claims submitted through the TCSP that were not in the initial statements provided from Odenza's records. It is taking time for the Owners to digest the new information, compile deficiency lists and costs to complete unfinished projects, review the updated accounting provided by the Claims Administrator and then obtain answers to their questions and reach agreement on the final balance due to Odenza. This will still take some time to complete because some Owners have not yet retained contractors to finish their Projects.

Initial Cash Balance – Background and Composition

17. Jack of All Trades (“JOAT”) was a brand name for the home renovation arm of Odenza. JOAT was not a separate legal entity but was run like a separate branch. However, for the sake of segregating record keeping, JOAT had its own accounting system and also had its own operating bank account. For JOAT home renovation projects, cash relating to the JOAT projects' revenue and expenses would typically flow through the JOAT bank account although in a few cases deposits would be made to the Odenza bank account then transferred to the JOAT account. In their respective accounting systems, Odenza and JOAT each had intercompany general ledger accounts to record any activity between Odenza and JOAT (e.g. for costs paid by Odenza to be recovered from JOAT).
18. For its home construction Projects, Odenza would typically bill the Owner based on a contractually-defined payment schedule that listed certain significant "milestones" of the Project. The amounts billed to the client would generally include a contractually-defined management fee which was generally a lump sum amount that would be allocated over the course of the Project. Reproduced below is an excerpt of standard wording from an Odenza contract for the payment schedule. The contracts also included language to allow for changes to the scope of work and generally included an initial estimate for the work to be done. Although this language varied slightly in some cases from contract to contract, based on the Claims Administrator's review of several contracts, the language is reasonably consistent:

“TERMS OF PAYMENT & SCHEDULE

The Purchaser(s) agree to pay to the Builder (Odenza) the above price [plus changes and extras] per the payment schedule below with interest at a rate of xx% per month on any part of the price which is not paid when due as follows, and includes the pro-rata project management fee. In the event that charges from trades are submitted outside the payment schedule below, the Purchaser(s) agree to submit payment within 30 days of receiving invoice.

- a. Signing of this Agreement*
- b. Submission of plans to City Hall*
- c. City permit pickup*
- d. Demo, foundation and backfill completed*
- e. At lock up (roof, rough exterior doors and windows on)*
- f. Drywall completed*
- g. Appliances installed*
- h. Occupancy*
- i. 55 day postdated cheque for lien (10%) and deficiency holdback*
- j. Final bill, to include all credits or trade charges.”*

19. For home renovation Projects, the contract was between Odenza and the Owner because JOAT was a brand name only and was not a separate legal entity and could not enter into contracts. Generally, the renovation contracts defined an agreed management fee for the Project that Odenza would bill over the course of the contract. Also, the estimated costs

of the Project (including the management fee) were generally included as a schedule to the agreement and would be billed on certain Project milestones much like the construction contracts. The contracts also included language to allow for changes to the scope of work and generally included an initial budget for the work to be done. Odenza was also entitled to recover "Reimbursable Expenses" which meant all of its "reasonable and necessary" expenses incurred in performing the contract. Below is an excerpt of the standard wording from the "Payment Schedule" section of an Odenza home renovation contract:

"The owner will pay the Builder in accordance with the schedule set out in the following table:

<u>Milestone</u>	<u>Estimated Amount Due</u>
<i>Signing of agreement (10%)</i>	<i>\$xx</i>
<i>Commencement of work (40%)</i>	<i>\$xx</i>
<i>Substantial completion of work (40%)</i>	<i>\$xx</i>
<i>Final payment (Due after Inspection) (10%)</i>	<i>\$xx</i>
<i>TOTAL</i>	<u><i>\$xx</i></u>

20. For the purposes of this report and the analysis that follows, the Claims Administrator has reviewed the banking records of Odenza and JOAT for the one-month period leading to the Bankruptcy, November 15, 2013 to December 16, 2013 (the "Review Period"). This review and analysis has helped us determine the:
- a) Purpose and source and the amounts that Odenza deposited into these two bank accounts;
 - b) Amounts, purposes and payees of the payments made from these accounts by Odenza during the Review Period; and
 - c) Composition of the remaining Initial Cash Balance at December 16, 2013.
21. In the Review Period preceding the Bankruptcy, JOAT and Odenza received payments from customers which were deposited to the respective bank accounts of JOAT and Odenza. From those accounts JOAT and Odenza Homes paid their creditors in the normal course of business, until the time of Bankruptcy when all payments to creditors ceased. There does not appear to be any particular "pattern" of supplier payments in the Review Period except that Odenza appeared to pay those supplier accounts that were the furthest in arrears or whose services were critically required to keep a Project on schedule. The only exceptions to this during the Review Period were that retainers were provided to Odenza's counsel (November 27, 2013 for \$10,000) and to G. Powroznik Group Inc. (December 11, 2013 for \$30,000) to assist it in dealing with its insolvency

situation and for filing an assignment in Bankruptcy respectively. As of the date of bankruptcy there was \$92,756.03 in cash in the JOAT account and \$434,750.19 in cash in the Odenza Homes account for an aggregate amount in the accounts of \$527,506.22.

22. As previously reported by the Trustee in its January 7, 2014 preliminary report to creditors (the "**Preliminary Report**"), on December 13, 2013, Odenza had instructed HSBC to open several new "sub-accounts" under its two main operating accounts (JOAT and Odenza) for many of its active construction or renovation projects to act as a trust account for those projects. Based on the Trustee's review, Odenza had performed a calculation of how funds on hand at December 13 would relate to each specific job on a subjective basis. It then instructed HSBC to transfer all the remaining funds on hand to the various bank sub-accounts for specific jobs based on the calculation. Based on a review of the bank statements, those transfers were executed by HSBC on the same afternoon (December 16, 2013) as the filing of the Bankruptcy. This was likely a good-faith attempt to segregate funds to the various projects; however, the exercise was highly subjective in nature. In any event, whether or not funds were transferred by HSBC on December 16 to various sub-accounts, all of those funds make up the Initial Cash Balance and are now in the possession of the Claims Administrator.
23. The following tables summarize cash activity during the Review Period, in each of the Odenza and JOAT bank accounts and then on a combined basis:

ODENZA

Opening cash balance, November 15, 2013	\$229,163.71
Number of cash deposits made in Review Period	17
Number of individual Owners/Projects represented by these cash deposits	17
Total cash deposits in Review Period	\$1,283,111.57 - note 1
Total disbursements in Review Period	(\$1,076,838.19) - note 1
Net change in cash balance during Review Period	\$206,273.38
Ending cash balance, December 16, 2013	\$435,437.09
Highest cash balance during Review Period	\$488,438.97
Lowest cash balance during Review Period	\$34,638.33

JOAT

Opening cash balance, November 15, 2013	\$848.12
Number of cash deposits made in Review Period	5
Number of individual Owners/Projects represented by these cash deposits	4 - note 2
Total cash deposits in Review Period	\$125,845.84 - note 1
Total disbursements in Review Period	(\$34,624.83)
Net change in cash balance during Review Period	\$91,221.01
Ending cash balance, December 16, 2013	\$92,069.13
Highest cash balance during Review Period	\$92,069.13
Lowest cash balance during Review Period	\$67.68

ALL ACTIVITY

Opening cash balance, November 15, 2013	\$230,011.83
Number of cash deposits in Review Period	22
Number of individual Owners/Projects represented by these cash deposits	21 - note 2
Total cash deposits in Review Period	\$1,333,027.88 - note 3
Total disbursements during Review Period	(\$1,035,533.49) - note 3
Net change in cash balance in Review Period	\$297,494.39
Ending cash balance, December 16, 2013	\$527,506.22
Highest cash balance during Review Period	\$527,506.22
Lowest cash balance during Review Period	\$51,024.06

Note 1 - These totals include a sum of \$75,929.53 that related to an Owner payment for a project under JOAT's management that was deposited temporarily into the Odenza operating account on December 5, 2013 and subsequently transferred to the JOAT operating account on December 11, 2013 since JOAT had the internal responsibility for this Project. Therefore, the amount shows up in Odenza's cash receipts and

cash disbursements on December 11 for a net impact of nil, and also shows up in JOAT's cash receipts on December 11 for a net receipt of \$75,929.53.

Note 2 - One of the cash deposits made into the JOAT account was an intercompany payment for reimbursement of expenses from Odenza. The net overall impact on the company's cash was nil.

Note 3 - The Owner payment of \$75,929.53 and transfer between Odenza's bank accounts, explained in Note 1, is only reflected once in these totals as it was a JOAT receipt and had no net impact on the Odenza bank account where it was first deposited and then transferred to the JOAT account on December 11, 2013.

24. The Claims Administrator and the Trustee have performed a review of Odenza's bank statements over several additional months prior to the Review Period and the general pattern of activity of the bank accounts is not different than what was observed for the Review Period. The Claims Administrator has noted regular, normal business activities where Owners paid amounts to Odenza based on contractual billings and Odenza made payments to its sub-trades, employees and suppliers for its office and general overhead expenses, etc. The cash balance in the earlier months varies significantly much like it does in the Review Period. Although it could be argued the Review Period itself (November 15 to December 16, 2013) is somewhat arbitrary in nature, the Claims Administrator had to choose some reasonable starting point and period of time to focus on to determine the source of the cash on hand at the date of Bankruptcy and to determine how cash was handled in the last few weeks prior to Bankruptcy. During the Review Period, it is noted the cash balance was what could be referred to as "recycled" at least once in each of the Odenza and JOAT bank accounts. In other words, the cash balance in each bank account fluctuated considerably during the Review Period, dipping down in the case of the Odenza account to a low five figure balance, and then rising as high as a mid-six figure balance by the time of the Bankruptcy. In the JOAT account, the bank balance drops to almost nil at one point, then increases to a high five figure balance by the time of the Bankruptcy.
25. The Claims Administrator has reviewed supporting documents relating to each of the 22 cash payments deposited into the Odenza and JOAT accounts during the Review Period. The cash deposits are summarized in the following table:

Number of cash deposits	Total of cash deposits	Nature/explanation of cash deposits
One (1)	\$26,175.98	This deposit into the JOAT account was an "intercompany" payment from the Odenza account for a recovery of expenses (the net effect on the overall cash of Odenza was nil)
Three (3)	\$22,500.00	These appear to be true "deposits", i.e. the deposits were made by clients before work on the Project commenced and those projects appear as though they did not commence prior to the Bankruptcy (the "Unearned Deposits"). The last of the Unearned Deposits was made on December 9, 2013

Two (2)	\$134,503.56	These are final contractual payments from Owners presumably made after the expiration of the 55 day holdback period
Five (5)	\$37,191.83	These relate to invoices billed to clients for reimbursable expenses incurred by Odenza on their Projects
Eleven (11)	\$1,112,656.51	These cash deposits are contractual progress draws, in some cases including change orders, invoiced to the client under various Odenza contracts for home construction or home renovation and are notated by the following payment "milestones" from the contracts: <ul style="list-style-type: none"> o Move-in Draw (3); o Drywall Draw (1); o Lock-Up Draw (2); o Appliance Draw (2); o Substantial completion of work - 40% (2); and o "3rd Draw" based on contract progress (1). This home renovation contract was slightly different in that it listed a total project price and noted phases for the work but did not state milestones for payment and stated that amounts would be billed monthly during the performance of the work

26. Based upon its review of the payments, the Claims Administrator has seen no evidence that any of Odenza's invoices were issued to clients on other than a normal basis in accordance with the contractual terms with the Owners. All of the cash payments received were on account of the issued invoices by Odenza based on contractually agreed-upon project milestones between the Owner and Odenza, except for the three Unearned Deposits totalling \$22,500. The Claims Administrator has not seen any evidence that the deposits were to be held in trust for any purpose but rather they were deposited into Odenza's bank accounts for its use for making payments to creditors, sub-trades and suppliers in the normal course of business. After December 9, the date of the deposit of the final Unearned Deposit, a significant number of other payments were made. Therefore, payments made after December 9 by Odenza would arguably have been made first from the Unearned Deposits before they were made from other funds that were impressed with a statutory trust under the BLA, which were the character of all of the other funds on hand.

Overpayments

27. At the date of Bankruptcy, Odenza's records showed that several of the Owners had paid amounts in excess of costs recorded against their individual Projects. The Preliminary Report of the Trustee that was reviewed at the creditors' meeting on January 8, 2014 still reflected that position. However, since that time most of the creditors have submitted their proof of trust and lien claim forms to the Claims Administrator and for the first

time, invoices for the work done on many of the Projects in the weeks leading up the Bankruptcy were received by Odenza.

28. The Claims Administrator has performed a significant amount of work to encourage creditors to file their claims, in reviewing the Trust and Lien Claims and Proof of Lien Claims and in updating the accounting records and project costs for a majority of Odenza's contracts. Through this work, Odenza's accounts with its Owners now more accurately reflect the position at the date of Bankruptcy than they did in earlier reports. For example, based upon previous information provided from Odenza's records, several Owners thought that they had significantly overpaid Odenza on their contract. Now, after posting the claims of the creditors for work and supplies provided to the individual Projects up to the date of Bankruptcy, most of the Owners who thought they had overpaid, in fact owe amounts to Odenza.
29. Based upon the 25 accounts reviewed to date, the Claims Administrator estimates that only three Owners may have significantly overpaid on account of their contract when comparing their total payments to the total updated job costs for their individual Projects. Only two of these Owners made payments to Odenza during the Review Period. Odenza's records currently also show that four other Owners may have marginally overpaid their accounts depending on the validity of specific claims on their Projects. The balances due from or to Owners may also be further adjusted by further claims being received by the Claims Administrator as well as any Owners' proven claims for deficiencies or work not done under the contract at the date of Bankruptcy. However, even if there was an overpayment by an Owner, we are not aware of any contractual term that characterizes any payments made to be trust funds to be held by Odenza in trust for an Owner.
30. Also, some of the Owners did not retain the statutory holdback under the BLA for payments already made to Odenza. The resulting additional payments that Owners may be required to make to discharge their obligation for the statutory holdback may further affect their overall cost of their Project and put them in a position to make an unsecured claim in the Bankruptcy.
31. The Claims Administrator understands that one or more of the Owners who made a payment during the last few weeks immediately prior to the Bankruptcy may assert a claim to some of the Initial Cash Balance. Initially, the Claims Administrator and the Trustee were contacted by counsel for two of the Owners who thought that they had overpaid, based on a significant payment their client had made in the Review Period. They requested access to Odenza's banking records to conduct their own review. We asked both counsel to defer any action to allow us to obtain independent legal advice on the entitlement to the Initial Cash Balance. However, since that time one of these Owners appears to be in a marginally overpaid position depending upon the validity of specific claims against its Project. We have not heard anything further from their counsel. Counsel for only one of the Owners who has asserted that his client significantly overpaid has reviewed Odenza's banking records to determine if that Owner has any claim in respect of the Initial Cash Balance.

Legal Issues

32. The first of the significant Legal Issues the Claims Administrator was required to determine was:

Who are possible claimants to:

- a) the Initial Cash Balance;
- b) the Potential Trust Funds paid after the Bankruptcy; and
- c) the Holdbacks paid after the Bankruptcy?

33. After seeking advice from GD Law, our conclusions were that:

- a) The Initial Cash Balance remaining at the date of bankruptcy comprised funds paid by Owners on account of improvements and was subject to a statutory trust created by section 10(1) the BLA. Accordingly, as trust funds they are excluded from the property of the bankrupt, Odenza, by operation of section 67(1) of the BIA. The claimants to the Initial Cash Balance are the creditors who directly supplied materials, labour and/or services to an improvement (i.e. a construction or renovation project of Odenza) regardless of the Project (the “**Trust and Lien Claimants**”).
- b) The Potential Trust Funds received after the date of bankruptcy by the Claims Administrator from Owners or contractors are subject to a statutory trust created by section 10(1) the BLA. Accordingly, as trust funds they are excluded from the property of the bankrupt, Odenza, by operation of section 67(1) of the BIA. The claimants to the Potential Trust Funds are the Trust and Lien Claimants who directly supplied materials, labour and/or services in respect of the specific Project for which the payment was made. Should all Trust and Lien Claimants in respect of the Project be paid in full, any remaining funds would be payable to the Bankrupt Estate.
- c) The Holdback received after the date of bankruptcy by the Claims Administrator from Owners or contractors or obtained from the Court after payment by Owners or contractors under section 23 of the BLA in respect of a specific Project are subject to the provisions of BLA. The claimants to the Holdback for a Project are:
 - i. The Trust and Lien Claimants and the Holdback Only Claimants in respect of the Project; and
 - ii. Odenza, to the extent that it remains unpaid in respect of a specific Project. Should Odenza receive funds from the Holdback, those funds would become Potential Trust Funds in respect of the Project, to be dealt with as noted in (b) above.

34. The second of the significant Legal Issues the Claims Administrator was required to determine was:

What are the possible methods of distribution of the Initial Cash Balance, the Potential Trust Funds and Holdbacks?

35. After seeking advice from GD Law, our conclusions were:

- a) Given that there has been a co-mingling of all receipts of trust receivables and holdbacks deposited into Odenza's two bank accounts, it is impossible to determine which Projects the Initial Cash Balance relate to and in which proportion. Accordingly, in respect of the Initial Cash Balance, given the amount by which the total trust claims substantially exceed the aggregate of the Initial Cash Balance, the Initial Cash Balance should be distributed on a pro rata basis to creditors with Trust and Lien Claims accepted by the Claims Administrator under the TCSP, except in the case of payments to subcontractors of Odenza. In those cases, payments by the Claims Administrator may be subject to holdback under section 4 of the BLA for the benefit of the suppliers to the subcontractor and, if so, will be dealt with in accordance with the BLA (the "**Subcontractor Holdback**").
- b) In respect of the Potential Trust Funds, the distribution should be on a pro-rata basis to creditors with Trust and Lien Claims in relation to the specific Project in respect of which the Potential Trust Funds were received, subject to the same qualification in respect of a Subcontractor Holdback noted in (a) above. Any surplus on the Project would be paid over to the Trustee for the general body of creditors who will include all creditors who do not have a Trust and Lien Claim including any Owner who has a claim against Odenza under its contract, and creditors who have a shortfall in collecting a Trust and Lien Claim on other Projects.
- c) In respect of the Holdbacks, the distribution should be on a pro-rata basis to those creditors with Trust and Lien Claims and to the Holdback Only Claimants (and, subject to the BLA priority provisions, to Odenza to the extent that it has a lien claim) in relation to the specific Project in respect of which the Holdback was received in accordance with the provisions in the BLA. Any payment to Odenza on any particular Project would become Potential Trust Funds in respect of the Project and would be dealt with as provided in (b) above.

36. For the purposes of dealing with the costs associated with the distribution of the funds, the Claims Administrator proposes to allocate the costs to the approved Trust and Lien Claims which were entitled to share in actual receipts from the Potential Trust Funds and Holdbacks on each Project. In order to facilitate this, any allocation of the Initial Cash Balance approved by the Court to the creditors with Trust and Lien Claims will be allocated to each Project in the ratio of the Trust and Lien Claims on each Project to the total Trust and Lien Claims. For example, if Project 1 had a total of \$75,000 in Trust and Lien Claims and the total Trust and Lien Claims on all of Odenza's Construction

Contracts and Projects is \$3 million, then Project 1 will receive $\$75,000/3,000,000 = 2.5\%$ of \$527,506.22 or \$13,187.66. The allocated amount of the Initial Cash Balance to each Project would be added to any other receipts from the Potential Trust Funds and Holdbacks on that Project (ie. under paragraphs 35 (b) and (c)), to form the gross receipts available for the creditors with Trust and Lien Claims on that Project (the “**Specific Project Receipts**”).

37. The costs of administration in accordance with the priorities in the TCSP Order would be deducted resulting in a net balance to be distributed pro rata to the creditors with Trust and Lien Claims on all Projects up to a maximum of 100 cents on the dollar. Any surplus on any particular Project would be paid over to the Trustee for the general body of creditors which will include all creditors who do not have a Trust and Lien Claim including any Owner who has a claim against Odenza under its contract, and creditors who have a shortfall in collecting a Trust and Lien Claim on other Projects.
38. The costs of administration of the TCSP would include:
- a) General costs for the benefit of all Trust and Lien Claims; and
 - b) Where applicable, specific costs that relate to a specific Project
(together the “**Specific Project Costs**”); and
 - c) Any specific costs that relate to a specific Trust and Lien Claim or Claims
(together “**Specific Attributable Costs**”).

The Specific Project Costs would be deducted from the Specific Project Receipts for that Project and the resulting net project receipts (the “**Net Project Receipts**”) would be distributed to the Trust and Lien Claims for that Project on a pro rata basis, unless there are Specific Attributable Costs, in which case the distribution to the affected Trust and Lien Claims would be further reduced as appropriate.

39. The exception to the proposed method of distribution above would be if there are Holdback Only Claimants on particular Projects. In this case, the Claims Administrator would need to prepare two separate distributions for each Project, one involving non-Holdback trust funds and the other involving Holdback funds. However, it should be noted that since the Initial Cash Balance and the Potential Trust Funds are only available for distribution to those claimants with direct trust claims under section 10(1) of the BIA, the Holdback Only Claimants would not be entitled to any of those funds. The Holdback Only Claimants would also bear their pro rata share of the costs of administration on an equitable basis. Note that as of the date of this Report there is only one Holdback Only Claimant with claims on eight individual Projects and in each case it duplicates a claim made by a subcontractor on those same Projects.
40. The following table illustrates the recommended method of distribution of the Initial Cash Balance, the Potential Trust Funds and the Holdbacks in the context of the overall TCSP on each of the Projects using the approach recommended above, assuming there are no Holdback Only Claimants, and the table would be adjusted as required to produce

the result described in paragraph 39 if there are any Holdback Only Claimants entitled to a distribution:

Item	Project 1 \$	Project 2 \$	Project 3, etc. \$
Potential Trust Funds and Holdbacks actually collected by Claims Administrator (post-Bankruptcy) on each Project	A	D	G
Add: Initial Cash Balance allocated to each Project on a pro rata basis based upon the ratio of Trust and Lien Claims for each Project to the Total Trust and Lien Claims on <u>all</u> Projects	<u>B</u>	<u>E</u>	<u>H</u>
Total cash available for each Project (Specific Project Receipts)	A+B	D+E	G+H
Less:			
Administrative and professional costs:			
- General (allocated pro rata)	(C)	(F)	(I)
- Specific (activities relating to a specific Project, if applicable)			
Net Project Receipts available to distribute pro rata to Trust and Lien Claims on each Project (subject to any Specific Attributable Costs)	<u>A+B-C</u>	<u>D+E-F</u>	<u>G+H-I</u>

41. To the extent that creditors do not receive full payment of their Trust and Lien Claims, they will rank as an unsecured creditor in the Bankrupt Estate.
42. Based upon the advice from its independent counsel, the Claims Administrator will be making application to the Court at which time the Court will be requested to confirm the manner in which the Claims Administrator should deal with the Initial Cash Balance and the Potential Trust Funds and Holdbacks received by the Claims Administrator after the date of Bankruptcy, in the context of its mandate and paragraphs 6 and 39 of the TCSP Order, and in particular will request the Court to order, direct and declare, *inter alia*, that:

- a) The Initial Cash Balance, the Potential Trust Funds and the Holdbacks are trust funds to which neither the Owners, in respect of the Initial Cash Balance, nor the Bankrupt Estate have a priority claim;
- b) The Initial Cash Balance, subject to the charges provided for in the TCSP Order and section 4(1) of the BLA, be distributed to all creditors with Trust and Lien Claims on a pro rata basis;
- c) The Potential Trust Funds, subject to the charges provided for in the TCSP Order and section 4(1) of the BLA, be distributed to the creditors with Trust and Lien Claims in respect of the specific Project on which the Potential Trust Funds have been received, on a pro rata basis;
- d) The Holdbacks, subject to the charges provided for in the TCSP Order and the provisions of the BLA, be distributed to the creditors with Trust and Lien Claims, the Holdback Only Claimants and Odenza in respect of the specific Project on which the Holdback has been received, in accordance with the priority provisions of the BLA; and
- e) The proposed manner for allocation of costs among the Projects be approved, subject to the final passing of accounts as provided by the TCSP Order.

This application will be made on notice to all interested parties and is intended to provide full transparency to all Owners and all Odenza's trust, lien and unsecured creditors who are also subject to a bankruptcy administration in which the Trustee is performing an instrumental and complementary role with the Claims Administrator to maximize preservation of Odenza's assets and ultimate distribution to its creditors.

Activities to Preserve Assets and Maximize Net Recovery for Creditors

- 43. The Claims Administrator's role of determining and adjudicating the Trust and Lien Claims and Proof of Lien Claim in respect of Odenza and determining the payouts of actual Potential Trust Funds and Holdbacks collected is designed to work on a complementary basis with the role of the Trustee. This is critical because the Trustee has specific powers to protect and recover the assets of the bankrupt, Odenza, which the Claims Administrator does not have (e.g. launch a collection action on behalf of the Bankrupt Estate, perform section 163 examinations under the BIA of parties who have information relating to the assets of the bankrupt). In the absence of the Claims Administrator role, the Trustee normally would not take an action to protect and recover surplus from Trust Assets where it would be too difficult to determine whether any net benefit would accrue to the Bankrupt Estate. Accordingly, the Claims Administrator role is designed to be complementary to the Trustee's role so that the recovery of Trust Assets and surplus is improved using the mandates of the Trustee and Claims Administrator in a coordinated way (the "**Overall Recovery Plan**").
- 44. The Overall Recovery Plan was designed to maximize the benefits for all stakeholders including:

- a) The creditors regardless of whether they had trust, lien, unsecured or secured claims (e.g. secured by statute) or some combination thereof;
 - b) Any of Odenza's former management and project managers who wanted to complete their projects for the Owners in a seamless way to minimize disruption or loss for anyone involved including themselves;
 - c) Other former Odenza staff who could add value to the Overall Recovery Plan, e.g. accounting staff;
 - d) Owners who wanted to minimize their incremental costs, avoid duplicate charges and delay in the completion of their projects, and eliminate any liens against their properties; and
 - e) Odenza's sub-trades who were prepared to be involved with completion phase of the Owner's projects.
45. The key activities of the Claims Administrator and the Trustee under the Overall Recovery Plan that have been undertaken on a co-ordinated basis to pursue the objectives and mandate of the Claims Administrator to preserve Odenza's assets and maximize the recoveries for payment of Trust and Lien Claims included:
- a) Preserving the Potential Trust Funds and Holdbacks which includes the Initial Cash Balance and the receivables and Holdbacks relating to Odenza's Construction Contracts with the Owners. This included:
 - i. Obtaining custody of all of Odenza's relevant accounting and business records;
 - ii. Obtaining access and co-operation from former accounting staff, Odenza's Construction Contract design and project managers (the "**Project Managers**") and senior management;
 - iii. Obtaining co-operation of the Owners and information on any reasonable deficiencies or costs to complete the Projects; and
 - iv. Obtaining timely submission of claims and supporting documentation from Odenza's creditors, many of whom have multiple trust and lien claims across the Projects;
 - b) Maximizing recovery from the Potential Trust Funds and Holdbacks (the "**Trust Assets**"). This included:
 - i. Updating the project schedules and balances due by Owners from information from several sources, including from each of those referred to in sub-paragraph (a) above;

- ii. Providing suitable legal agreements tailored for each Owner as required to finalize all matters with Odenza and to incorporate the terms of the TCSP Order;
 - iii. Extensive consultation with BLG on numerous technical and procedural issues relating to BLA matters affecting the Owners and Trust and Lien Claims and procedural matters of the TCSP, collection and dispute matters with various Owners and their counsel on unforeseen issues to protect the TCSP and Overall Recovery Plan; and
 - iv. Obtaining independent legal advice from GD Law on the determination of the status of the Initial Cash Balance and on the relative legal entitlements to the Initial Cash Balance, the Potential Trust Funds and the Holdbacks;
- c) Providing an efficient process to obtain and adjudicate the Trust and Lien Claims which will also allow them to be accepted as unsecured claims in the Bankrupt Estate to the extent they are not paid from the Initial Cash Balance and the Trust Assets. This included:
- i. Providing a complete claims package to all creditors and managing a communications process to assist creditors in filing proper claims;
 - ii. Persistent follow-up through a variety of avenues, including sending Notices to Prove Claim as defined in the First Report by registered mail, and repeated reminders by email and/or telephone to encourage creditors who did not initially respond to our notices and requests to file their claims; and
 - iii. Managing a flexible adjudication process to compensate for difficulties and delays in obtaining sufficient information on a timely basis to properly evaluate many of the claims, which are described below;
- d) Minimizing administration, overhead and legal costs and time delay. This included:
- i. Helping Owners and their counsel and many creditors obtain an understanding of the benefits to Owners of the TCSP;
 - ii. Constantly looking for opportunities to implement the Overall Recovery Plan in a way to achieve its objectives, including extensive consultation and involvement of our counsel and the three remaining inspectors on the Bankrupt Estate (“Inspectors”); and
 - iii. Pointing out the advantages of the TCSP Order and Overall Recovery Plan to creditors and Owners to minimize delays and their requirement to incur legal costs compared to the normal piecemeal liquidation process involved with construction company insolvencies;

- e) Recommending to the Court an equitable allocation of the costs and distribution of the Initial Cash Balance and Trust Assets to the Trust and Lien Claims and the Holdback Only Claimants as recommended in this Report.

These activities should also ensure that the potential surplus from the Trust Assets, net of costs, on any individual project flows seamlessly to the Bankrupt Estate for the benefit of the non-trust and lien creditors.

- 46. In our view the Overall Recovery Plan will result in recoveries for the Trust and Lien Claimants on a number of Projects and areas over and above what we believe would have happened if there was not an integrated TSCP Order with a complementary bankruptcy process for the Odenza Bankruptcy. These result from the integrated Overall Recovery Plan designed to preserve Odenza's assets from piecemeal disintegration and the costs of piecemeal legal proceedings for each project thereby ensuring a fair and proper application of the legal rights of each stakeholder in an orderly way under the supervision of the Court.
- 47. However, the benefits of the Overall Recovery Plan have not been as great as they could have been due to the following obstacles:
 - a) There were a number of allegations made regarding the actions of (and potential benefits received by) the principal of Odenza and his brother (the "**Principal**") relating to the Bankruptcy (the "**Reviewable Actions**") that created suspicion and mistrust and that made it difficult for specific key former employees and a few creditors to fully support the Overall Recovery Plan and fully co-operate with the Claims Administrator and Trustee. Subsequent investigation by the Trustee of the Reviewable Actions to date which have been reviewed with the Inspectors, has not found any basis that the alleged Reviewable Actions have resulted in any loss to the creditors of Odenza or unwarranted benefits to the Principal. The allegations and suspicions and the persistence of the few creditors who raised them have resulted in substantial efforts by the Trustee and the Inspectors to address these allegations repeatedly which has increased the professional costs unnecessarily;
 - b) The Overall Recovery Plan included establishing a co-operative process with Newco, owned by the Principal, to offer to complete unfinished projects in a seamless, timely and low cost manner with the Owners to minimize unnecessary charge backs and costs and maximize the synergy with the former managers and other resources of Odenza thereby creating benefits for both the Owners and Odenza's creditors (the "**Transition Benefits**"). This co-operative process was available to anyone else who was interested in finishing the Owners' uncompleted Projects. Unfortunately to our knowledge, the problems that occurred in subparagraph (a) above did not allow for many Transition Benefits to be achieved;
 - c) The nature of the construction business requires full and timely access to Odenza's former Project Managers to confirm details of creditor claims and activities on each Owner's Projects for ease of billings. Unfortunately the Claims

Administrator and Trustee have not had full and timely access to all Project Managers and this has complicated the process to confirm this information as other (less efficient) sources have been required to be consulted, and unexpected delays have resulted in receiving the information; and

- d) An important element of the Overall Recovery Plan was for representatives of the creditors as inspectors in the Bankruptcy to be involved in assisting the Trustee and consulting with the Claims Administrator. Unfortunately, conflicts involving two of the original inspectors and the effect of the problem that is described in sub-paragraph (a) above resulted in significant unnecessary costs to protect the Overall Recovery Plan, delays in processing claims and collecting accounts from Owners, and impaired some of Odenza's Potential Trust Funds and Holdbacks.
48. The Trustee originally had five Inspectors appointed at the First Meeting of Creditors in the Bankruptcy. One was replaced immediately due to a conflict. Subsequently two others resigned at the request of the remaining three Inspectors and the Trustee due to conflicts. Now there are three remaining Inspectors who are very actively assisting the Trustee and the Claims Administrator in implementing the Overall Recovery Plan and are directly involved in several crucial aspects including:
- a) Reviewing Reviewable Actions and ensuring that all affected assets, if any, are being pursued on a reasonable basis for the benefit of the trust and lien creditors and/or the other creditors in the Bankrupt Estate;
 - b) Assisting in obtaining information to help in the adjudication of claims of sub-trades and confirming the pre-Bankruptcy activity for the Owners' projects;
 - c) Approving key actions and activities of the Trustee as provided under the BIA which includes approving joint settlement agreements by the Trustee and Claims Administrator with Owners on each Project;
 - d) Dealing directly with creditors and former employees who may still be unsettled with the unwarranted suspicions described in paragraph 47(a);
 - e) Encouraging voluntary removal of all liens on the title of each Project by the Trust and Lien Claimants upon the receipt of final payment from the Owner by the Claims Administrator in order to minimize professional costs; and
 - f) Otherwise assisting the Trustee and the Claims Administrator in identifying opportunities for them and other creditors to minimize any further unnecessary costs or delays in recovering assets.

As expected from the outset, the activities of the Inspectors should have a direct positive influence on the outcome for Odenza's creditors. The Claims Administrator and Trustee are very appreciative of the support from them.

Estimated Net Recoveries for Trust and Lien Claimants

49. In our experience, predicting the ultimate recoveries from the assets of an insolvent construction company with any accuracy until the results are much further along is very difficult because of the myriad of complexities brought about by the BLA and piecemeal and unpredictable practices among the stakeholders in the normal construction litigation process.
50. It is important to recognize that each of the construction projects really has its own realization "picture" under the BLA with a sum of Potential Trust Funds and Holdbacks available to pay the group of Trust and Lien Claimants who worked on each Project. There are still many aspects of many of the Projects for the Claims Administrator to review and there are several variables to work through, including:
- a) Confirming and collecting the amount of receivables due from Owners;
 - b) Confirming and collecting the statutory holdbacks due by Owners;
 - c) Confirming the accuracy of many of the trust and lien claims received;
 - d) Disallowing improper claims and handling any appeal of the disallowance(s);
 - e) Confirming the reasonable set-off and Project completion claims by Owners and challenging any unreasonable set-off claims;
 - f) Clarifying differences in legal positions taken by some Owners or their counsel to Odenza's position and either negotiating settlements or pursuing litigation as appropriate to recover Odenza's assets for its creditors;
 - g) Removing all liens from each Project title upon individual settlements with Owners; and
 - h) Dealing with any further unanticipated complications.

Although we know what the final result is on a handful of Projects, there are still over 25 Projects where the realization picture for trust and lien claimants will not be known until some or all of the variables above are addressed and completed.

51. Due to the high number of unknown variables it is very difficult to project realizations for the Trust and Lien Claimants. The TSCP provides an incentive for creditors to cooperate in filing accurate claims, remove liens when Owners settle their accounts with Odenza and to act reasonably in completing deficiencies that may be holding up collecting from an Owner. Similarly, the TSCP provides an incentive for Owners to reach a reasonable settlement of their account with the Claims Administrator to minimize their costs and have all of the liens discharged from the title to their Project.
52. The Trustee reviewed its Preliminary Report in detail at the First Meeting of Creditors in the Bankruptcy, and explained how creditors and owners who had an opportunity to assist

in finishing existing Projects could work within the Overall Recovery Plan that had been established to increase the recoveries to Trust and Lien Claimants and complete the Projects efficiently at lower relative costs to the Owners. The recommendations included:

- a) Filing claims with the Trustee and Claims Administrator on an efficient and accurate basis;
- b) Working with those who can demonstrate that they can complete an unfinished project at the best possible cost to mitigate unnecessary additional costs and ultimate claims in the Bankruptcy; and
- c) Minimizing unnecessary costs of the Trustee, Claims Administrator, legal counsel and other advisors by focusing on the business and administrative decisions required to get remaining jobs done on a timely and satisfactory quality basis.

53. The Preliminary Report stated that: “The (Overall) Recovery Plan can make a significant difference in the recovery for creditors. It doesn’t mean that we can recover money that has already been lost. However, it does mean we can do a lot to avoid unnecessary additional erosion of asset value which usually happens with insolvent construction companies and their creditors' interests. Please understand how you can help avoid further erosion of Odenza's assets.” Unfortunately, the obstacles referred to in paragraph 47 of this Report served to undermine the Claims Administrator activities to increase some of the potential recoveries for creditors beyond what could reasonably be expected under the traditional piecemeal construction litigation process that would have occurred.
54. The Preliminary Report provided a very preliminary estimate of the potential recovery for the Trust and Lien Claimants from the Potential Trust Funds and the Holdbacks, on a global basis, in the range of 30-37 cents on the dollar and for each project in the range from no recovery to 80 cents on the dollar. Although some of the individual variables affecting those estimates have changed, these estimates appear to be still reasonable, although they could change due to the large number of variables that could affect them. The exception is that should the Court confirm that the Initial Cash Balance is available to all Trust and Lien Claimants on a pro rata basis, then there will be at least some recovery on every project.
55. The Claims Administrator is currently charging all its costs to a general account and not yet allocating any costs specifically to any one asset or receivable since most of its activities are dealing with establishing the TCSP and administering it, which benefits all Trust and Lien Claimants. These activities were set out in the First Report. In addition, the Trustee has substantial fees and disbursements that are recoverable from the TCSP process but that recovery will depend upon the relative value of the Trust Assets received by the Claims Administrator compared to the surplus that is received by the Trustee for the benefit of persons who are not Trust and Lien Claimants. All of our detailed activities and time spent as Claims Administrator and for the costs of the Trustee to be recovered from the TCSP together with our counsels’ respective fees will be provided to the Court for approval in due course.

All of which is respectfully submitted this 6th day of June, 2014.

G. Powroznik Group Inc. of G-Force Group
In its capacity as Claims Administrator
for the Trust Claim Settlement Program



Per: Mr. Gary Powroznik
Managing Director