

Court File No. 09-8354-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicants

- and -

1694479 ONTARIO INC. and 1694487 ONTARIO LIMITED

Respondents

**FIRST REPORT OF BDO CANADA LIMITED, AS CLAIMS AND DISTRIBUTION
OFFICER OF 1694479 ONTARIO INC. and 1694487 ONTARIO LIMITED**

APRIL 13, 2011

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1. INTRODUCTION AND BACKGROUND

1.1 Introduction

1.1.0 Pursuant to the Order of the Honourable Mr. Justice Campbell dated November 9, 2010 (the “**Appointment and Claims Process Order**”), BDO Canada Limited (“**BDO**”) was appointed Claims and Distribution Officer (the “**CDO**”) in respect of funds (the “**Funds**”) held on deposit in two accounts at the Royal Bank of Canada (“**RBC**”). The two accounts were held in the names 1694479 Ontario Inc. and 1694487 Ontario Limited. The application for the appointment of the CDO was made by the Ontario Securities Commission (the “**OSC**”) pursuant to section 129 of the Securities Act, R.S.O. 1990, c.S.5, as amended (the “*Securities Act*”). The OSC brought the application for the appointment of the CDO after the OSC discovered that the Funds may have originated from investors who invested in Hillcorp International Services (“**Hillcorp**”) and Suncorp Holdings (“**Suncorp**”) (Hillcorp and Suncorp together referred to herein as, the “**Companies**”). A copy of the Appointment and Claims Process Order is attached hereto as **Appendix A**.

1.2 Background

1.2.0 In the spring of 2009, the OSC discovered that Steven John Hill, Daryl Renneberg, and Danny De Melo (together, the “**Individuals**”) were associated with the Companies and were soliciting members of the public to invest in Hillcorp and, more recently, Suncorp. A variety of investment programs were offered to the public. The programs were often described as relating to transactions in the petroleum industry. The Individuals represented to investors that the investment programs would provide fixed and guaranteed returns of up to 7% per month or, alternatively, 50% every three to six months, depending on the sums initially invested.

1.2.1 Funds received from investors (the “**Investors**”) were initially deposited into investment programs with Hillcorp. In mid-2009, Hillcorp Investors were informed that its business was being transferred into the name of Suncorp. Therefore any subsequent investments were made with Suncorp and Investor funds were deposited into the Suncorp bank account.

- 1.2.2 Claims totaling approximately \$2.4 million have been received to date. Based on the OSC's investigation, the CDO has been advised that the total amount invested with the Companies may substantially exceed the total amount claimed by Investors.
- 1.2.3 The OSC issued Directions on September 8, 2009 directing RBC to freeze the bank accounts of 1694479 Ontario Inc. and 1694487 Ontario Limited in which were deposited funds in the amount of CDN\$85,187.35 and CDN\$321,010.86, respectively.
- 1.2.4 The CDO has since seized the funds on deposit with RBC and subject to the Directions in the aggregate amount of CDN\$406,198.21.
- 1.2.5 Pursuant to the Appointment and Claims Process Order, the Court established a claims procedure (the "**Claims Process**") which, among other things, established mechanisms for the Companies' Investors and creditors to file claims and the CDO to allow or disallow any claims filed. The Appointment and Claims Process Order also established a claims bar date of January 28, 2011 (the "**Claims Bar Date**").

1.3 Purpose

- 1.3.0 The purpose of this First Report of the CDO is to:
- (i.) seek approval of the proposed distribution of the funds in the possession of the CDO;
 - (ii.) seek approval of the CDO's actions as set out in this First Report;
 - (iii.) seek approval of the CDO's outstanding fees and the outstanding fees of its counsel in this matter; and
 - (iv.) establish the process for the CDO to obtain its discharge.

2. CLAIMS AND DISTRIBUTION OFFICER'S ACTIVITIES

2.1 Claims Process

- 2.1.0 In accordance with the Appointment and Claims Process Order, the CDO mailed the Court-approved "Claims Package" on November 26, 2010 to the list of those Ontario Investors, which list was compiled based on the banking records provided by the OSC. A copy of the CDO's Affidavit of Mailing is included herein as **Appendix B**.

- 2.1.1 The “Claims Package” included a letter to Investors, a Proof of Claim form and related instructions describing the Claims Process.
- 2.1.2 The CDO caused to be published a “Notice to Creditors” on November 18, 2010 and December 9, 2010 in the National Edition of the Globe & Mail. Copies of the published ads are included herein as **Appendix C**.
- 2.1.3 The CDO posted the “Notice to Creditors”, together with all of the documents relating to the Claims Process including a chart easily identifying the Claims Bar Date and other key dates of the Claims Process, on its website www.bdo.ca/hillcorp. A screen printout of the CDO’s website page is included herein as **Appendix D**.
- 2.1.4 All Investors and creditors were required to submit a properly completed Proof of Claim form, including satisfactory evidence in support of their claim, by the Claims Bar Date. Any Investor or creditor that did not deliver a completed Proof of Claim to the CDO had its claim forever extinguished and was forever barred from making or enforcing any claim against the Companies.
- 2.1.5 The CDO received thirty-four completed Proofs of Claim from the Investors. Seventeen of the Proofs of Claim submitted to the CDO needed to be resolved because the Investor: (i) claimed interest or returns on the investment; (ii) failed to submit their claim on a net basis and additional payments were discovered in the CDO’s review of banking records; or (iii) claimed a priority over other claimants. Furthermore, one Proof of Claim was received by the CDO after the Claims Bar Date (the “**Late Claim**”).
- 2.1.6 The Late Claim was received by the CDO on March 28, 2011, one month past the Extended Claims Bar Date (as defined herein). The claimants, Manuel and Gloria De Melo, claimed that their original Claims Package was mailed in late December 2010, however, there is no record that the CDO ever received their claim. The total amount of the Late Claim is \$200,000.
- 2.1.7 As it appears that the late filing was inadvertent, the CDO, subject to the approval of the Court, has accepted the Late Claim.

2.1.8 The CDO sent out Notices of Revision or Disallowance to the aforementioned seventeen Investors. The CDO's Affidavit of Mailing is included hereto as **Appendix E**.

2.1.9 All Investor claims would be allowed on a net investment basis, effectively the net cash loss incurred by an Investor. In addition to the completed Proof of Claim forms, claimants were required to provide documentation supporting their principal investment amount, as well as documentation supporting any payments received from the Companies in respect of their investment dealings.

2.1.10 All Investors' claims were also treated similarly with regard to interest on the initial investment as there was no evidence before the CDO to substantiate that any interest was actually earned on the amount invested by the Investors. Accordingly, all Investor claims were limited to the initial investment value less any payments received and any amounts for interest and/or returns were disallowed.

2.1.11 The CDO received three Notices of Dispute from the seventeen aforementioned Investors that had their respective claims revised or a portion of their claims disallowed. After review, one of the Disputes was accepted by the CDO. The remaining two Notices of Dispute were rejected and the claim amount was reduced by the additional payments received by the Investor which the Investor did not include in their Proof of Claim.

2.1.12 As discussed above, the CDO reviewed the documentation supporting each claim and exerted best efforts based on records provided to ensure that the claim represented the specific Investor's net investment. The CDO relied on information gathered by the OSC, namely bank statements and copies of cancelled cheques, in determining whether the claimed amount included all payments received.

2.2 Extended Claims Bar Date

2.2.0 The CDO was advised by a number of Investors that they had been contacted by certain individuals formerly associated with the Companies and advised not to file claims in the Claims Process because doing so would preclude them from recovering amounts to which they might be entitled from other sources.

2.2.1 The CDO identified the Investors that had not yet filed a claim as at January 31, 2011 and notified them by mail to encourage them to file a claim. The Claims Bar Date was subsequently extended to February 25, 2011 (the “**Extended Claims Bar Date**”) to provide ample time for those affected Investors to file a Proof of Claim with the CDO. The CDO’s Additional Mailing to Investors is included hereto as **Appendix F**. An additional nine claims were filed prior to the Extended Claims Bar Date.

3. FINAL DISTRIBUTION AND DISCHARGE OF THE CLAIMS AND DISTRIBUTION OFFICER

3.1.0 Attached as **Appendix G** is the CDO’s Receipts and Disbursements Schedule. This schedule shows that the CDO holds Funds in the amount of CDN\$406,615.60 in its Canadian dollar bank account. The CDO proposes to distribute CDN\$356,119.47 to the Investors. The CDO further proposes to hold back CDN\$20,000.00 as a reserve (the “**CDO’s Reserve**”) to cover its future professional fees and costs that will be incurred to bring this motion before the court, to make the proposed final distribution (as discussed below) and to complete any further matters incidental to the completion of the CDO’s mandate.

3.1.1 Attached as **Appendix H** to this First Report is a summary of all of the Investor and creditor claims as they have been allowed by the CDO and the amounts at which these claims have been allowed. All claims have been finally determined and there are no outstanding disputes.

3.1.2 Also attached as **Appendix I** is the distribution proposed by the CDO based on the claims as admitted and assuming the professional fees and expenses are as projected. The distribution proposed by the CDO to the Investor and creditors will represent a distribution of approximately 16.62 cents on the dollar of the claims as filed and admitted by the CDO.

3.1.3 The CDO seeks the following relief:

- (i.) approval to proceed with the final distribution as set out herein; and
- (ii.) a discharge from its obligations as CDO, the same to take effect following a distribution of the Funds as set out above and payment of the outstanding

professional fees, the same to be effective upon the filing of a certificate with the Court in the form attached to the Draft Order contained in the Motion Record of the CDO.

4. FEES AND DISBURSEMENTS

- 4.1.0 Pursuant to the Appointment and Claims Process Order, the CDO has provided services and incurred disbursements since its appointment which are more particularly described in the affidavit and detailed invoices attached hereto as part of **Appendix J**.
- 4.1.1 The detailed time descriptions contained in the CDO's invoices provide a fair and accurate description of the services provided and the amounts charged by BDO. Included with the invoices is a summary of the time charges of partners and staff whose services are reflected in the invoices, including the total fees and hours billed.
- 4.1.2 The CDO has also incurred legal fees since its appointment as per the summary of such costs attached hereto as **Appendix K** and the invoices attached thereto.
- 4.1.3 Additional time will be required to complete the CDO's mandate and these additional costs will be provided for from the CDO's Reserve.
- 4.1.4 The CDO respectfully requests that the Court approve its final accounts for the period from November 9, 2010 to March 31, 2011 in the amount of \$19,398.53, plus HST of \$2,521.81 for a total of \$21,920.34. The CDO also requests that the Court approve the accounts of its legal counsel in the amount of \$1,362, plus HST of \$177.06, for a total of \$1,539.06, for services performed to the dates indicated on the invoices.

5. SUMMARY AND RECOMMENDATIONS

- 5.1.0 The CDO recommends and respectfully requests that the Court make an Order:
 - (i) approving the CDO's conduct and activities as described herein;
 - (ii) approving the CDO's proposed distribution and the CDO's acceptance of the Late Claim as outlined in this First Report;

(iii) approving the professional fees and disbursements of the CDO and its counsel as set out in herein; and

(iv) approving the CDO's proposed procedure to obtain its discharge.

All of which is respectfully submitted this 13th day of April, 2011.

BDO CANADA LIMITED
Claims and Distribution Officer
Per:

A handwritten signature in black ink, appearing to read 'B. Davidson', with a long, sweeping horizontal stroke extending to the right.

Blair F. Davidson, CA•CIRP, CBV, CMC
President