

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

**BETWEEN:**

**CANADIAN SOLAR SOLUTIONS INC.**

Applicant

**and**

**RA SOLAR LEASING INC.**

Respondent

**THIRD REPORT OF THE RECEIVER  
BDO CANADA LIMITED  
JANUARY 22, 2015**

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## EXECUTIVE SUMMARY

All capitalized terms in this section are defined below in this Third Report.

Heliene alleges, among other things, that the Receiver was responsible for administering the Heliene Projects and failed to do so or negligently did so or intentionally mismanaged the Heliene Projects. Heliene also alleges that the Receiver intentionally withheld information from Heliene and that the Receiver's actions (or lack of actions) prevented Heliene from taking over the administration of its projects, causing it lost revenues or damages. Heliene describes the Receiver's actions or inactions generally as an abuse of its fiduciary position and seeks leave of this Court to commence legal action against the Receiver.

Heliene's depiction or characterization of certain events or facts during the receivership administration is completely inaccurate. In summary, the Receiver reports that:

**Service:** Heliene was not a PPSA registrant of RA at the time the receivership application was commenced by Canadian Solar on October 2, 2012 and therefore was not served with Canadian Solar's application record at that time. Heliene made its PPSA registration against RA on October 29, 2012. The Receivership Order was granted on November 26, 2012. Canadian Solar was unaware and was not notified of Heliene's PPSA registration after the issuance of its application record, from the period of October 29 to November 26, 2012. As early as December 17, 2012, Heliene was notified, aware and had knowledge, of this receivership. All of the Motion Records of the Receiver in this receivership have been served on Heliene through its counsel.

**Records:** On or after its appointment on November 26, 2012, the Receiver took possession of the available books and records of RA, which were quite limited. The available records did not generally provide meaningful information on even some basic facts, such as the identity, status or source of the creditors, the projects, the collection of revenue or generation payments and the funds or deposits in RA's bank account. There was also a lack of co-operation from RA's management including its officer, director or principal, Steve Marshall, which initially hindered the Receiver's administration and required the Receiver to bring a motion to compel RA to deliver certain records to the Receiver. At that motion, the Court held in part that the "record reveals that RA Ltd. and Marshall are hindering the Receiver's efforts to obtain Records...".

**Heliene Projects:** The Receiver did not have responsibility to administer the Heliene Projects and did not in any way accept responsibility to do so or prevent Heliene from doing so. At no time did Heliene offer to share in the payment of receivership costs. Similarly, Heliene never instructed BDO to administer its projects. As to whether

Heliene thought or understood that the Receiver was administering the Heliene Projects on its behalf, this is doubtful in the circumstances. On the contrary, Heliene made it clear to the Receiver at the outset that Heliene was selling the Heliene Projects "as it sees fit".

**Reconciliation:** During the course of the receivership administration, various third parties deposited funds relating to the Heliene Projects, the Canadian Solar projects and other projects of RA into a lockbox/bank account under the care and control of the Receiver. As noted already, the poor state of RA's books and records and the initial lack of co-operation from RA's officer(s) and director(s) hindered the Receiver's administration. The Receiver found it necessary to retain expert help from Icarus, to review and reconcile the bank deposits on a project-by-project basis. This was a complicated reconciliation which required Icarus to compile information from the Receiver, RBC, Ontario Power Corporation and various utility companies. As such, the reconciliation took a considerable period of time to complete. Upon completion of the reconciliation, approximately \$21,000 relating to the Heliene Projects was identified, with approximately \$11,000 deposited in the lockbox/bank account of Canadian Solar and approximately \$10,000 deposited in the lockbox/bank account of the Receiver. The Receiver provided Heliene with several updates during the reconciliation process on its progress. Several other parties have also stepped forward to assert a claim against these funds including RBC and Hybrid Partners.

**Canadian Solar:** Based on information provided by Canadian Solar, it appears that the administration of several projects of RA comprising of the Heliene Projects was never transferred to RA before the receivership administration and the revenues generated by those projects may be in the possession of Pure and/or Forum. Again, because of the lack of books and records as well as the lack of co-operation from RA's officer(s) and director(s), it took a considerable period of time for the Receiver (or its consultant, Icarus) to confirm this fact. Canadian Solar has also asserted that RA and its principals were negligent in their management of all projects, including the handling of the lockbox, the comingling of funds and failing to collect and distribute revenue.

## INTRODUCTION AND PURPOSE

1. The purpose of this Report (the "**Third Report**") by the Receiver (as defined below) is to respond to the affidavit of Martin Pochtaruk sworn December 23, 2014 ("**Martin's Affidavit**"). Martin's Affidavit was filed with the Court in support of the motion by Heliene Finance Inc. ("**Heliene**") seeking, among other things, leave of this Court to commence an action against BDO Canada Limited ("**BDO**" or the "**Receiver**").
2. By Order of the Honourable Justice Newbould dated November 26, 2012 (the "**Receivership Order**"), BDO was appointed over some of the property of RA Solar Leasing Inc. ("**RA**"). Under section 2 of the Receivership Order, the Court appointed the Receiver over the projects funded in whole or in part by Canadian Solar Solutions Inc. ("**Canadian Solar**" or "**CSSI**") pursuant to the Master Purchase Agreement dated November 10, 2011 (defined as the "**Property**"). As acknowledged at paragraph 9 of Martin's Affidavit "...at the time of the Receivership Order the restricted mandate of BDO was clear—it did not cover the Heliene Projects". Copies of the Receivership Order and the related Endorsement of the Honourable Justice Newbould are attached as **Appendix I**.

### **Service**

3. At paragraph 7 of Martin's Affidavit, Mr. Pochtaruk asserts that "Heliene was not served by CSSI (or BDO) with materials for appointment of BDO as Receiver and was not aware of the Receivership proceedings until after BDO was appointed." Just to elaborate, the original application for the appointment of the Receiver was commenced on October 2, 2012 by Canadian Solar. RA opposed the application and the application was adjourned or rescheduled for hearing to November 20, 2012 pursuant to the Order

of the Honourable Justice Morawetz dated October 12, 2012 (the "**Adjournment Order**"), to allow for the filing and serving of any responding court materials, additional court materials and any examinations. Paragraph 4 of the Adjournment Order provides that "the Respondent shall not transfer, assign or cause any other type of transmission of interest with respect to any of the solar projects funded by the Applicant without the prior written consent of the Applicant or pursuant to a court order granted on notice to the Applicant".

4. The Application Record of CSSI dated October 2, 2012 included the most recent PPSA (defined below) search at the time against RA dated October 1, 2012 with a file currency of September 30, 2012. Heliene was not a PPSA registrant of RA at the time of the commencement of the receivership proceedings. Heliene subsequently made a registration against RA under the *Personal Property Security Act* (the "**PPSA**") on October 29, 2012, after the commencement of the receivership proceedings. The Receivership Order was granted on November 26, 2012. Copies of the October 1, 2012 and July 31, 2014-dated PPSA searches against RA are respectively attached as **Appendix II**.
5. The Heliene PPSA registration made on October 29, 2012 against RA includes inventory, equipment, accounts and other of RA under the collateral classification and describes the collateral under the general collateral description as limited to the projects funded by Heliene. Paragraph 4 of the Adjournment Order generally prohibits the selling, assigning or encumbering (i.e., granting of a security interest in or over) of the Canadian Solar-funded projects of RA without the prior written consent of Canadian Solar or pursuant to a court order on notice to Canadian Solar. While Heliene's PPSA registration against RA appears to be limited to the Heliene Projects, the registration also checks off the "inventory, equipment, accounts and other" of RA under the collateral

classification heading. Between October 29, 2012 (the date of Heliene's PPSA registration against RA) and November 26, 2012 (the date of the Receivership Order), RA did not provide Canadian Solar with notice of Heliene's PPSA registration as arguably contemplated by paragraph 4 of the Adjournment Order and Canadian Solar was unaware of the registration during this period. As for BDO and its obligations to serve court documents, BDO was appointed Receiver on November 26, 2012. A copy of the Adjournment Order is attached as **Appendix III** to this Third Report.

6. As early as December 17, 2012, the Receiver was in contact with Heliene and Heliene has known about this receivership.
7. At paragraph 13 of Martin's Affidavit, Mr. Pochtaruk confirms that on or about "January 9, 2013 my solicitor, Mr. Brian Morris, wrote to BDO to advise that CSSI has no interest in the Heliene Projects." Besides representing RA and Heliene, Mr. Morris is also the lawyer for Hybrid Partners Ltd. ("**Hybrid Partners**") in this receivership. Mr. Morris has been served by the Receiver with all motion records to date in these receivership proceedings.

### ***Records***

8. There were limited books and records of RA available to the Receiver at the start and during the receivership. From the few records that were initially made available to the Receiver, it became readily apparent to the Receiver that before the receivership, the administration of the projects, including the Canadian Solar and Heliene—funded projects, and the collection of revenue from these projects by RA was problematic, highly disorganized and not well documented. As discussed later, this pre-receivership state of affairs of RA has had serious consequences for certain creditors including Heliene and Canadian Solar. The failure of RA to correctly transfer many revenue or

generation payments from Heliene-funded projects and Canadian Solar-funded projects into RA's bank account is an obvious example of this problem that existed before the receivership.

9. The Receiver was never provided with accounting records of RA, such as a general ledger, trial balance, tax or HST returns, or accounts receivable or accounts payable listings. When the Receiver asked RA for these documents, the Receiver was advised that they did not exist. When the Receiver requested from RA a list of RA's creditors, it was told that the only unsecured creditors were the insurance company and possibly some homeowners owed rental payments.
10. Besides missing or limited accounting records and creditor lists, much of the paperwork for the administration of RA's projects and the collection of revenue or generation payments from the projects was absent or highly disorganized. During the receivership administration, it was identified that for various CSSI-funded projects, revenue or generation payments were being paid directly to the homeowners by the local distribution or utility companies instead of to RA because of RA's failure to complete the appropriate paperwork to redirect the deposits to RA's bank account. An authorization form would need to be completed for the local distribution or utility company to redirect the revenue from the homeowner to RA.
11. Another example of RA's failure to complete the appropriate paperwork was identified with respect to Pure Energies (defined below). During the receivership, various CSSI-funded projects were identified whereby revenue or generation payments from the local distribution or utility company had been paid to Pure Energies instead of RA because of RA's failure to complete the appropriate paperwork to redirect the funds or deposits to RA's bank account. As reported to the Court by the Receiver, at paragraph 26 of its



Second Report (defined below), the Receiver followed-up with Pure Energies requesting for reimbursement of all generation payments received by Pure Energies from CSSI-funded projects as well as an accounting of all such amounts. Pure Energies advised that it did not have an accounting of such funds nor did it provide any reimbursement.

12. In June, 2013, Icarus (defined below) identified several CSSI-funded projects of RA where the revenue deposits were going directly to the homeowner, instead of RA; or the revenue deposits were being mailed to RA's PO Box associated with its lockbox or bank account, but receipt of the payment could not be identified; or the revenue deposits were going to Pure Energies; or the account was listed in Pure Energies' name with the local distribution or utility company, and the payment was on hold by the local distribution company; or no revenue could be identified as being received at the time.
13. On its appointment, the Receiver collected a total of five boxes containing records from RA. They contained marketing materials and some project documentation. However, upon closer review by the Receiver, it became apparent that the majority of documents were missing. Some of these documents would be obtained by the Receiver only after it brought a motion compelling RA to produce them, as discussed below. Even with this production of certain documents by RA, however, there would be still several records and documents missing that the Receiver would never obtain during the receivership including the accounting records mentioned above, the appropriate paperwork redirecting funds into RA's bank account mentioned above; and many original project documents.
14. The Receiver also discovered on its appointment that RA had only partially completed a reconciliation of revenue payments collected or received from the projects; instead of

reconciling these revenues, revenue receipts or deposits up to the date of the Receivership Order (November 26, 2012), they only went to September, 2012.

15. It also became apparent to the Receiver after its appointment that the majority of homeowners whose projects or contracts were initially originated with or by Pure Energies were not even aware that their projects or contracts had been assigned or transferred to RA.

### ***Heliene Projects***

16. To date, the Receiver has provided the Court with two reports (excluding this Third Report). The First Report is dated January 9, 2013 (the "**First Report**") and the Second Report is dated April 17, 2013 (the "**Second Report**"). In each of these motions, the Court granted an Order. The first Order is dated January 18, 2013 and the second Order is dated April 25, 2013. Copies of the First Report and Second Report, without appendices, are respectively attached as **Appendix IV** and copies of the Orders dated January 18, 2013 and April 25, 2013 are respectively attached as **Appendix V**.
17. Under the January 18, 2013 Order or Sales Process Order, the Court approved, among other things, the actions and activities of the Receiver to date regarding the Heliene Projects and the sales process for the sale of the RA projects funded in whole or in part by Canadian Solar.
18. Under the April 25, 2013 Order or Approval and Vesting Order, the Court approved, among other things, the actions and activities of the Receiver to date regarding the Heliene Projects and the sale of the RA projects funded in whole or in part by Canadian Solar, identified or listed in Schedule "B" of the Order as 126 projects and 3 projects not completed, to Canadian Solar and vesting title of these projects to or in Canadian Solar

or its assignee. The projects listed in Schedule "B" did not include the Heliene Projects. The sale was completed or closed on June 4, 2013. While paragraph 15 of the Approval and Vesting Order required the closing date for the completion of the sale transaction to occur on or before 30 days from April 25, 2013 (i.e., May 25, 2013), paragraph 1 of the Order also authorized the Receiver to make minor amendments as the Receiver may deem necessary and to take such additional steps as may be necessary or desirable for the completion of the sale transaction and for the conveyance of the assets or projects; at the request of Canadian Solar, the Receiver agreed to close the transaction on June 4, 2013.

19. At paragraph 9 of the First Report, the Receiver identified, to date, 148 RA projects including 126 projects that were fully funded by CSSI as set out or listed in Appendix "VI" of the First Report and 18 projects that may have been funded by CSSI and/or another provider Heliene (the "**Heliene Projects**"). The Receiver also acknowledged the incomplete state of RA's books and records in the First Report. In fact, part of the relief sought by the Receiver in its January 18, 2013 motion included an order compelling Mr. Steve Marshall of RA to deliver certain records and property to the Receiver including a Valuation Model and a Solstice Database. The Honourable Justice Brown issued a decision on the matter on January 29, 2013, a copy of which is attached as **Appendix V**. In granting the relief, Brown J. partly held at paragraph 39 that the "record reveals that RA Ltd. and Marshall are hindering the Receiver's efforts to obtain Records under the Appointment Order..."
20. At paragraphs 21 to 23 of the First Report, the Receiver generally informed the Court as follows regarding Heliene: the Receiver had been contacted by Heliene, a company which apparently also funded various projects of RA and that Heliene took the position that these projects were not subject to the Receivership Order; Appendix VIII of the First

Report listed the 18 Heliene Projects; Heliene advised the Receiver that it intends to commence a sale process to dispose of its interest in the Heliene Projects; Canadian Solar disputed Heliene's claim and advised the Receiver that it partially funded and/or had security over the Heliene Projects and accordingly in its view the Heliene Projects are subject to the Receivership Order; the Receiver requested supporting documentation from Canadian Solar and would investigate the matter; in the event that the Receiver had an interest in the Heliene Projects, the Receiver requested that Heliene provide details as to the proposed marketing and sale process for same; the Receiver also requested that in the event the Heliene Projects were sold by Heliene, that the sale proceeds be held in trust with the Receiver's counsel pending the determination of whether the Heliene Projects were subject to the Receivership Order. A copy of the list of 18 Heliene Projects is attached as **Appendix VI** of this Third Report.

21. In January, 2013, the Receiver and Heliene exchanged correspondence regarding the Heliene Projects. In particular, two letters were sent by the Receiver to Heliene in January, 2013: the January 4, 2013 letter and the January 9, 2013 letter. A copy of the January 4, 2013 letter was attached as Appendix VIII of the First Report and a copy of the January 9, 2013 letter was attached as Appendix IX of the First Report. In the January 4, 2013 letter, the Receiver clearly points out as follows: "We refer to your e-mail dated December 18, 2012 stating you intend to sell the 18 Projects listed in the attached listing (the "**Heliene Projects**")....CSSI has advised the Receiver that it partially funded and/or has security over the Heliene Projects and, therefore, the Heliene Projects fall under the administration of the receivership. The Receiver is currently investigating CSSI's claim regarding the Heliene Projects...Accordingly, the Receiver advises that it does not release its interest, **if any**, in the Heliene Projects at this time. **The Receiver, however, does not wish to impede a sale process.** Accordingly, the

Receiver requests that you forward your suggested marketing and sale process for the Heliene Projects so that the Receiver can assess and ensure that the proposed process is commercially reasonable....." (our emphasis). In the January 9, 2013 letter, the Receiver generally adds the point: "If Heliene Inc. concludes a sale of the Heliene Projects, the Receiver requests that the sale proceeds be held in trust with the Receiver's counsel pending the determination of whether the Heliene Projects are subject to the receivership order..." Copies of the two letters, respectively dated January 4, 2013 and January 9, 2013, are attached as **Appendix VII** to this Third Report.

22. Heliene replied to these letters on January 11, 2013. In a letter of the same date to the Receiver and copied to Brian Morris, Morris and Morris LLP, and in Reference to "Your letters in reference to Ra Solar Leasing", Mr. Pochtaruk wrote as follows: "Heliene Inc. ("Heliene") has completely and totally funded twenty seven (27) projects (the "Heliene Projects"). None of the Heliene Projects have been funded by Canadian Solar Solutions Inc. ("CSSI") in full or in part. Accordingly, Heliene shall be selling these projects **as it sees fit**...As mentioned on the phone to Ms. Nicole Sagolili [of BDO], I remain available to collaborate in any possible manner on your dealing and possible sale of the CSSI projects for **which you have a mandate**" (our emphasis). A copy of the letter dated January 11, 2013 is attached as **Appendix VIII** to this Third Report.

23. On March 6, 2013, the Receiver wrote again to Heliene. In its letter of the same date, the Receiver indicated, among other things, that: "According to records obtained from Canadian Solar Solutions Inc. ("CSSI"), copies of which are attached, CSSI has partially-funded, and therefore holds security over, 4 Heliene Projects. The 4 Heliene Projects are [identified]...Accordingly, the 4 Heliene Projects fall under the administration of the receivership, and the Receiver advises that it does not release its interest in same. We understand that you have received an offer for a portfolio of projects, including the 4

Heliene Projects. We request that you provide the Receiver a copy of the offer so that the Receiver can assess whether the offer is commercially reasonable..." (our emphasis). A copy of the letter dated March 6, 2013 is attached as **Appendix IX** to this Third Report.

24. In its Second Report (dated April 17, 2013) to the Court, the Receiver generally updated the Court regarding the Heliene Projects as follows: "18. The Receiver encouraged CSSI to contact Heliene directly to examine the competing claims over the Heliene Projects. CSSI did so and, as a result of those examinations and discussions, CSSI and Heliene have agreed, in principle, that all but four specific projects were wholly funded by Heliene. CSSI provided documentation to both the Receiver and Heliene confirming it had provided funding for the remaining four projects (the "Additional Projects"). A listing of the Additional Projects is attached as Appendix "VII....19. Heliene had advised the Receiver that it is currently running a Sales Process to dispose of its interest in all of the remaining Heliene Projects. The Receiver has requested, and Heliene has agreed, to provide details of any bids received and being considered in relation to the Additional Projects to ensure that they are commercially reasonable...".
  
25. In all the emails and correspondence between Heliene and the Receiver referred to above and below, not once did Heliene clearly and unequivocally ask the Receiver to manage or administer the Heliene Projects on its behalf. Instead, Heliene was going to sell the Heliene Projects "as it sees fit" and wanted to know how the reconciliation was going, as discussed below. On the other hand, Canadian Solar, as a secured creditor over the Canadian Solar-funded projects of RA, has incurred substantial costs through this receivership administration including the professional costs of its counsel, the Receiver and the Receiver's counsel and the subsequent retainer of Icarus in the reconciliation process, as discussed below. Under Canadian Solar's indemnity of the

Receiver, it also potentially faces the costs of this motion and if Heliene is successful on this motion, the potential costs of any successful action or litigation brought by Heliene as a result of getting leave of the court.

***Reconciliation***

26. In late January 2013, the Receiver retained Icarus Power Generation Inc. ("**Icarus**") to provide various services including an accounting of funds received by RA from the Canadian Solar projects. Icarus had expertise or specialized knowledge in the field. One of the tasks in Icarus' mandate was to input post-receivership power generation and local distribution company ("**LDC**") revenue receipts into a spreadsheet format (the "**Reconciliation**"). Given the incomplete state of RA's books and records and the comingling of funds from the various projects, the accounting and Reconciliation of funds strictly from Canadian Solar projects proved challenging, time consuming and by necessity Icarus also had to determine which revenue receipts related to projects that were not Canadian Solar-funded projects.
27. Revenue receipts from most LDCs were deposited into RA's bank account through a lock-box system with Royal Bank of Canada ("**RBC**") where RBC would process the revenue receipts and periodically make lump sum payments into RA's bank account. Some LDCs made direct deposits into RA's bank account.
28. The statements for the revenue receipts, which usually, but not always, identified who the receipt was from, were either mailed as paper copies or compiled as pictures on CDs provided by RBC. The majority of the statements were provided on the CDs.
29. RBC provided the lock-box CDs on a monthly basis, and they were generally received a few weeks after the end of the related month. The Receiver had received the CDs from

December 2012 and onward, until the lock-box was transferred from the Receiver sometime after the sale to Canadian Solar had closed on June 4, 2013. However, upon giving the CDs to Icarus for their Reconciliation work, it was noted that a decryption CD was required to view the images. The decryption CD had to be requested from RBC, and the Receiver did not receive the decryption CD until on or about March 25, 2013. Subsequently, it was found that the decryption CD required a password which the Receiver subsequently had to request from RBC. Therefore, Icarus could not reconcile a significant number of deposits (as most statements were on the CDs rather than paper copies) until after that point.

30. In February and March of 2013, there were a series of email exchanges between the Receiver and Heliene including the following emails from the Receiver to Heliene: (a) on February 19, 2013: "Martin, We are in the process of reconciling the receipts received, including which relate to Canadian Solar funded projects and which relate to non-Canadian Solar funded projects. Once we have been able to prepare an accounting of the funds, we will provide you with the information as it relates to the Heliene projects"; (b) on February 20, 2013: "Martin, Yes, we intend to reconcile the receipts on a project by project basis"; and (c) on March 4, 2013 (in reply to an email from Heliene of March 1, 2013, asking how the account reconciliation was going and the status of the payments to date and that Heliene was trying to close with a buyer and the existing funds was something that needed to be addressed): "We are still working on it. The records we have for the LDC remittances do not appear to be complete so it will take time to track them down and reconcile them". Copies of these email exchanges are attached as **Appendix X** to this Third Report.
31. The first Reconciliation from Icarus was received by the Receiver on or about April 1, 2013. The Reconciliation broke out receipts received between CSSI-funded projects



and non-CSSI funded projects. It also identified \$4,616.42 in receipts related to Heliene projects (as reported in the Second Report of the Receiver to the Court). The Reconciliation only included the months of December 2012 to February 2013, as this was the information that was on-hand at the time. Not all deposits in the Reconciliation had been matched to specific projects.

32. In its Second Report (dated April 17, 2013) to the Court, the Receiver generally informed the Court regarding the steps being taken to reconcile the bank account to date as follows: "20...RA Solar operated only one bank account. Therefore, deposits of Generation Payments into the bank account from the local distribution companies relate to all of the projects in RA Solar's portfolio, including the projects funded by Heliene that are not subject to the Receivership Order...21. The Receiver has begun to review all deposits received since the date of the Receivership Order to determine the quantum of the funds which do not relate to the Projects subject to the Receivership Order...22. The Receiver instructed Icarus to identify the deposits received to date with respect to the Heliene Projects. Thus far, Icarus has determined that approximately \$4,600 of the deposits received to date relate to the Heliene Projects.....it is expected that the amount will be determined to be higher once Icarus completes a full review".
33. The Receiver received revised Reconciliations throughout April and May 2013. The last Reconciliation received in that period was dated May 23, 2013, and included the months of December 2012 to April 30, 2013. The Reconciliations at this point only identified between "CSSI-funded", "Other", and "Unknown" revenue receipts. The "Other" revenue was understood to be Heliene-funded project revenue. Sometime around December 2013, Pat Pavlik of Canadian Solar advised that the Reconciliation had identified revenue receipts relating to projects that were not related to either CSSI or Heliene-

funded projects, which were believed to be Solar Pure Energies Inc. or Pure Energies Inc. ("**Pure Energies**" or "**Pure**")-funded projects.

34. The sale of the Property or CSSI-funded projects to CSSI closed on June 4, 2013. From that time, Icarus generally stopped working for the Receiver and was engaged by Canadian Solar to transition the CSSI-funded projects from the Receiver to CSSI, as per CSSI's instruction. Also, Canadian Solar asked the Receiver to leave the banking arrangements in place during the transition period. After or during the transition period, Canadian Solar set up its own CSSI/RBC lock-box and bank account for deposits, funds or revenue receipts from the purchased CSSI-funded projects.
35. The last deposit into the Receiver's bank account relating to the RBC lock-box was received on July 10, 2013. CSSI began to receive the statements from the RBC lock-box on or about that time.
36. The Receiver did not begin to receive revenue receipts from Milton Hydro until on or about April 2013. Milton Hydro paid through direct deposit. Due to paperwork that was required to be completed, the Milton Hydro direct deposits were continued to be paid into the Receiver's bank account until June or July 2014. Statements received by the Receiver post-closing or after June 4, 2013 were provided to Icarus for Reconciliation purposes.
37. CSSI had requested a return of advances made to the Receiver. In determining how much was available to return, the Receiver requested an updated Reconciliation from Icarus, which the Receiver received on or about December 9, 2013.
38. On December 19, 2013, Pat Pavlik, of Canadian Solar, sent Martin, of Heliene, the most current Reconciliation in order to obtain Heliene's agreement with the amounts reported

in the Reconciliation. Martin responded, on the same date, in agreement as follows: "I do hereby agree with the information provided to me by Mr. Cobb (reading here in copy) in reference to the revenues received by the Heliene projects and being placed within the account originally owned by Ra and being administered by Canadian Solar/BDO" (our emphasis). The reference is to the bank account as "being administered by Canadian Solar/BDO". In any event, as noted above at paragraph 25 of this Third Report, Heliene never asked the Receiver to manage or administer the Heliene Projects on its behalf. Copies of this email exchange are attached as **Appendix XI** to this Third Report.

39. On January 13, 2014, the Receiver received an email from Icarus confirming , among other things, that it had been retained by Heliene to provide services to assist in having "future revenue re-directed to their account, understand the amount of money generated by the 36 [subsequently corrected to say 27] projects since day 1 (accounts receivable) and assemble all pertinent documentation." (our emphasis). A copy of this email is attached as **Appendix XII** to this Third Report.
  
40. On February 7, 2014, Brian Morris, as counsel for Hybrid Partners, an alleged secured creditor of RA, wrote to counsel for the Receiver, RBC and CSSI stating, among other things, that "It is my client's position that as it has a first security charge over the projects funded by Heliene and is, therefore, entitled to any and all revenues generated from Heliene projects". Hybrid Partners is one competing claimant against any revenues generated from the Heliene Projects; RBC is another competing claimant, as noted below. A copy of this letter dated February 7, 2014 is attached as **Appendix XIII** to this Third Report. To date and to the best of the Receiver's knowledge, Heliene, Hybrid Partners and RBC have not resolved their competing claims to the Heliene funds or revenues generated from the Heliene Projects.

41. On February 12, 2014, the Receiver requested an updated Reconciliation. Icarus provided a reconciliation that was last updated on December 20, 2013, and advised they would work on updating it. Icarus then provided a Reconciliation updated March 14, 2014. A copy of the Reconciliation updated March 14, 2014 is attached as **Appendix XIV** to this Third Report. Icarus completed the Reconciliation on or about March, 2014. Upon completion of the reconciliation, approximately \$21,000 was identified as relating to the Heliene Projects, of which approximately \$11,000 was deposited into the lockbox/bank account of Canadian Solar and approximately \$10,000 was deposited into the lockbox/bank account of the Receiver.
42. During March and April 2014, CSSI was dealing directly with the parties, including Heliene, who made a claim to the funds in order to reach a settlement. On March 11, 2014, counsel for CSSI replied to Mr. Morris' letter of February 7, 2014, indicating, among other things that CSSI is prepared to share on a confidential and without prejudice basis certain financial information related to this issue in the hope that the parties can reach a mutually agreeable solution to the present impasse and Pat Pavlik of CSSI would be in direct contact with Steve Marshall of Hybrid Partners and RA and would provide him with the relevant documentation and make himself available to Mr. Marshall for further discussion. A copy of the letter dated March 11, 2014 is attached as **Appendix XV** to this Third Report.
43. Discussions took place sometime during the period of March to May, 2014 between CSSI and Heliene including regarding what deposits in the RA/BDO bank account belonged to Heliene and what belonged to CSSI. Heliene was provided full access to the BDO and CSSI/RBC lock box and bank account information so that it could confirm, among other things, the amounts deposited in the RA/BDO bank account that originated from Heliene funded projects.

44. On or about March 14, 2014, Pat Pavlik of CSSI advised that there was approximately \$24,000 in unreconciled revenue identified in Icarus' Reconciliation. Pat Pavlik asked the Receiver for assistance in reconciling these amounts, and the Receiver provided some documentation which brought the unreconciled amount down to \$11,540.99.
45. On March 20, 2014, Gus Kokkoros of Icarus asked the Receiver if he could send the Reconciliation to Martin of Heliene, to which the Receiver advised he could. On March 27, 2014, by email from Martin to Nicole, Martin acknowledged, among other things, receipt of the Reconciliation. A copy of the email is attached as **Appendix XVI** to this Third Report.
46. In early June, 2014, the Receiver received two draft Revenue Settlement Agreements, proposing how the deposits should be distributed: one settlement agreement between Canadian Solar, Heliene and RA for the Heliene funds received by Canadian Solar and the second settlement agreement between the Receiver and Heliene for the Heliene funds received by the Receiver. The first settlement agreement may have been signed by the parties but not the second settlement agreement. The Receiver was not privy to the settlement discussions regarding the first settlement agreement but had understood that Canadian Solar and Heliene reached an agreement identifying 29 Heliene Projects as falling under the RA portfolio and that of these 29 Heliene Projects, they or Heliene determined that the Heliene deposits into the RA/BDO bank account and the CSSI/RBC bank account were only from 9 of the Heliene Projects. The Receiver also understands that Heliene and CSSI determined that the total of these deposits from the 9 Heliene Projects was approximately \$21,000, with approximately \$11,000 in the CSSI/RBC account and approximately \$10,000 in the RA/BDO account.

47. RBC's counsel was provided with draft copies of the Revenue Settlement Agreements in June or July, 2014. On July 4, 2014, Receiver's counsel received an email from RBC's counsel indicating, among other things, that RBC may have a claim against any of the funds or money from the Heliene Projects. A copy of this email is attached as **Appendix XVII** to this Third Report.
  
48. On July 24, 2014, Receiver's counsel received Brian Morris' letter on behalf of his client, Heliene, generally asking the Receiver to consent to Heliene's proposed action against BDO. In its letter dated August 13, 2014 to Mr. Morris, Receiver's counsel, on behalf of his client, among other things, refused to consent to Heliene commencing an action against BDO. Also, as to the specific number of Heliene Projects, page 2 of the letter indicates 18 Heliene Projects; page 3, 27 Heliene Projects; and page 7, 29 Heliene Projects. The letter specifically states that the "Receiver understands that Canadian Solar and Heliene reached an agreement identifying 29 Heliene Projects as falling under the RA Solar portfolio and that of these 29 Heliene Projects, the Heliene deposits into the RA/BDO bank account and the CS/RBC bank account were only from 9 of the Heliene Projects." BDO was not privy to these settlement discussions or negotiations between Canadian Solar and Heliene but had understood from them that they had identified 29 Heliene Projects. Copies of the letters dated July 24, 2014 and August 13, 2014 are respectively attached as **Appendix XVIII** to this Third Report.

***Canadian Solar***

49. On January 5, 2015, Receiver's counsel received as a courtesy a copy of the letter of the same date from Canadian Solar to Heliene, RA, Pure Energies and others, generally setting out Canadian Solar's position with respect to Heliene's intended action against

BDO ("**Canadian Solar's letter**"). A copy of Canadian Solar's letter is attached as **Appendix XIX** to this Third Report.

50. Some of the allegations in Canadian Solar's letter include the following: (a) RA and its principals were negligent in their management of all projects, including the handling of the lockbox, the comingling of funds, failing to collect and distribute revenue as required; (b) funds from some or all of the Heliene Projects were at one time being paid to Pure (and some may be still), and were not paid by Pure to RA; (c) a separate lockbox previously controlled by Pure is now controlled by Forum Equity Partners ("**Forum**") as a result of Pure's transfer of such control to Forum and that second lockbox also received funds from projects, including some Heliene Projects; (d) funds that belong to Heliene remain in that Forum-controlled lockbox; (e) Canadian Solar informed Heliene and Pure that funds that may belong to Heliene may be located in that second lockbox and to date, Heliene has done little or nothing to recover those funds and no funds have been released or paid out to Heliene from this lockbox account; (f) BDO has never strayed outside of the powers and responsibilities given to it under authority of the Receivership Order; (g) at no time has Canadian Solar had any control over or involvement with the Heliene Projects or any funds related to the Heliene Projects; (h) Heliene was notified by CSSI of the receivership motion when it was commenced against RA. Heliene could have, at any point, intervened or joined in the RA receivership. It chose not to, despite having notice of such action and despite knowing that its own assets were involved with the party entering the receivership; (i) Heliene has an obligation to mitigate its damages before claiming against BDO. Failure on the part of Heliene to pursue the revenue into accounts and with parties who are most likely to have it, is a failure to mitigate, in particular where Heliene has been expressly put on notice that some or all of their assets may be found elsewhere; (j) the action contemplated against BDO is more

properly brought against RA and its principals and/or Pure (and perhaps also its principals), as the party and parties that have failed to ensure that any funds that may belong to Heliene are tracked, accounted for and actually paid to Heliene; (k) at the least, it is incumbent upon Heliene to first claim against parties who are known to have, or are likely to have, some or all of the funds that Heliene alleges are missing, and/or are the most likely to have mishandled or misappropriated same; (l) CSSI is required to indemnify BDO in this potential action by Heliene and stands as an innocent party, victimized by the failure of Heliene to mitigate its alleged damages, and the failure of Pure, Heliene, RA and Forum to take appropriate action and/or to agree to a process for the identification and payment of funds that may belong to Heliene; and (m) Heliene has taken the strategy of targeting innocent parties with deep pockets.

***Conclusions and Recommendations***


51. The Receiver has no authority or mandate over the Heliene Projects. It never accepted responsibility to administer or manage the Heliene Projects and it was not asked to do so by Heliene. The Receiver sold the assets or property that is the subject matter of the Receivership Order, the Canadian Solar-funded projects, pursuant to the Sales Process Order and Approval and Vesting Order. In its accounting of funds of RA, the Receiver had the expert assistance of Icarus. Heliene and Canadian Solar were informed and involved in the Reconciliation.
  
52. The Receiver therefore recommends that Heliene not be permitted by the Court to commence its proposed action against BDO. The relief sought in the proposed action concerns issues that fall within this receivership (i.e., reporting on the completion of the Reconciliation or accounting of funds, the competing claims to Heliene's funds in the approximate amount of \$10,000 held in the possession of the Receiver, etc.) and should



be dealt with in this receivership; and also concerns issues that fall outside this receivership (i.e., revenues from the Heliene Projects), the recovery of which lies with RA, as owner of these projects or Heliene, as the alleged secured creditor over the Heliene Projects, and not with or against BDO.

All of which is respectfully submitted this 22<sup>nd</sup> day of January 2015.

**BDO CANADA LIMITED,**  
in its capacity as Receiver of specific assets of  
RA Solar Leasing Inc., and not in its personal  
capacity

Per:   
\_\_\_\_\_  
Eugene P. Migus, CPA, CA, CIRP  
Senior Vice President