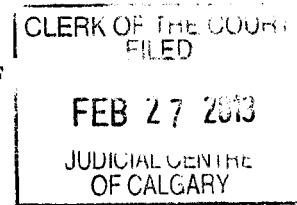


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COURT FILE NUMBER 1301-01078  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE  
RECEIVERSHIP OF  
KASCO CONSTRUCTION (ALTA.) LTD.

DOCUMENT **FIRST REPORT OF THE RECEIVER,  
HARDIE & KELLY INC.  
FEBRUARY 27, 2013**

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**FIRST REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
FEBRUARY 27, 2013**

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## **INTRODUCTION**

1. On January 29, 2013 (the "Receivership Date"), Pyx Financial Group Calgary Inc. ("Pyx") made application to the Court of Queen's Bench of Alberta (the "Court") for the appointment of a receiver and receiver and manager (the "Receiver") of the current and future assets, property and undertakings of Kasco Construction (ALTA.) Ltd. ("Kasco" or the "Company").
2. The Court granted an Order on January 29, 2013 (the "Receivership Order"), which was consented to by the Company, appointing Hardie & Kelly Inc. as the Receiver.
3. The purpose of this report (the "First Report") is to advise the Court of:
  - a. An overview of the business of Kasco;
  - b. An update as to the Receiver's initial activities; and
  - c. Background information regarding the arrangement between the interested parties with respect to the collection of outstanding accounts receivable and the Receiver's recommendation thereto.

## **TERMS OF REFERENCE**

4. In preparing this First Report, the Receiver has relied upon unaudited financial information, records of the Company and discussions with the Company's former management ("Management") and certain of its former employees. The Receiver has not performed an audit, review or other verification of such information.

## **BUSINESS OPERATIONS**

5. Kasco was a privately held construction company principally performing earth moving services on road construction projects in Alberta and British Columbia.
6. The head office (the "Premises") of Kasco was located in Calgary, Alberta.
7. Kasco had ceased operations prior to the Receivership Date. At that time, Kasco had a number of projects which had not yet been completed pending spring conditions. The Receiver understands that the respective customers have contacted the bonding company used by Kasco to discuss the completion of same. At this time, the Receiver is not able to advise what effect, if any, this will have on the collection of accounts receivable.

## INITIAL ACTIVITIES OF THE RECEIVER

### *Custody and Control*

8. The Receiver attended the Premises immediately after the granting of the Receivership Order and arrangements were made to change the locks.
9. Since Kasco had previously ceased operations and the Company's heavy construction equipment and fleet of vehicles were located at various off-site locations in and around the Calgary area, there was no reason for the Receiver to incur the ongoing expense of occupying the Premises for any extended period. Consequently, the Receiver arranged for a back-up of the Company's computer records to be made and for all the physical records to be removed to an off-site storage location allowing the Receiver to turn back vacant possession of the Premises to the landlord on February 12, 2013.

### *Employees*

10. Kasco had terminated their 45 remaining employees and ceased operations prior to the Receivership Date.
11. The Receiver temporarily engaged the Company's former Controller to update the accounting records to the extent possible, complete T4s and Records of Employment and to assist the Receiver with the review of payroll records pursuant to the requirements of the *Wage Earner Protection Program Act*.

### *Bank Accounts*

12. The Receiver identified two TD Canada Trust bank accounts held in the name of Kasco. Initial arrangements were made to freeze the accounts; however, there proved to be no residual funds available in the accounts.

### *Office Furniture*

13. Kasco had recently acquired some office furniture for approximately \$3,000 that the Receiver returned pursuant to a 30-day goods claim. The Company otherwise had a nominal amount of office furniture at the Premises. The Receiver offered four liquidation companies the opportunity to advance offers on the remaining furnishings.

14. Paragraph 3(1)(i) of the Receivership Order provides authorization for the Receiver to sell assets without approval of the Court provided each transaction does not exceed \$50,000 and that the aggregate for such transactions does not exceed \$150,000. The Receiver ultimately accepted an offer from one of the liquidation companies for \$2,000 for the office furniture. A small amount of parts inventory located on site was also disposed of for \$450.

*Vehicles and Equipment*

15. The Company's fleet of trucks and heavy construction equipment units were located at various locations in and around the Calgary area. Numerous pieces of equipment had also been seized by certain creditors claiming to hold Purchase Money Security Interests ("PMSI Creditors") and/or garage keeper's liens ("Lien Claims") in advance of the Receivership Date.
16. The Receiver initially arranged for the marshalling of vehicles and equipment that were abandoned at various locations to a storage lot rented by the Receiver. The Receiver also contacted various parties purporting to have seized units on behalf of certain PMSI Creditors and Lien Creditors to confirm same and to advise of the stay of proceedings in effect.
17. An independent third party appraisal of the units in the Receiver's possession and of those units that were seized on behalf of creditors has been commissioned by the Receiver to enable an assessment of the extent of the equity (the "Equity Analysis"), if any, that may be available in the respective units.
18. The Receiver wrote to the various PMSI Creditors and Lien Creditors requesting copies of the relevant security agreements to enable the Receiver's legal counsel to review the validity and enforceability of the respective claims against the equipment. Buy-out figures were also requested to facilitate the Equity Analysis. As of the date of this First Report, certain of these creditors have yet to provide the Receiver with the requested information and others continue to provide same on an ongoing basis.
19. The Receiver has been advised that the appraisal can be expected to be completed in the first week of March. At that time the Receiver will then be able to complete the Equity Analysis and determine which of the units may be of value to the estate and which may be released to the respective PMSI Creditors provided the necessary paperwork is submitted to the Receiver by the respective PMSI creditors on a timely basis.

20. The Receiver arranged for a temporary extension of Kasco's existing insurance coverage over the heavy equipment and rolling stock that which was scheduled to expire on February 23, 2013.

Accounts Receivable

21. As of the Receivership Date, the Company had approximately \$4.8 Million in accounts receivable recorded in its books and records.
22. Pyx, Dr. Calvin Greene and Canada Revenue Agency ("CRA") have all asserted claims over the accounts receivable.
23. Pyx had entered into a factoring facility with Kasco on February 28, 2012 (the "Factoring Agreement") to purchase the accounts receivable owing to Kasco at \$0.80 on the dollar (subject to price adjustments provided for in the Factoring Agreement). Kasco also provided Pyx with a general security agreement providing Pyx security over all the present and after acquired property of Kasco.
24. Dr. Greene had entered into a promissory note in the principal amount of \$1,000,000 on September 21, 2012. Kasco provided Dr. Greene with a general security agreement over all present and after acquired property of Kasco.
25. In addition, CRA has asserted a deemed trust claim in respect of outstanding employee source deductions. CRA has completed an audit of the payroll but as of the date of the First Report a formal claim has yet to be advanced.
26. Upon a review of the loan and security documents provided by Pyx, including the Factoring Agreement, and those loan and security documents provided by Dr. Greene, the Receiver is of the position that the superior position is that the accounts receivable have been purchased by Pyx under the Factoring Agreement, provided that the pre-conditions for such a sale of the accounts receivable have been met. The Receiver has determined that the Factoring Agreement will likely constitute a true sale of the accounts receivable, subject to the Court's direction on this point.

27. Pyx has requested that the accounts receivable be released to them pursuant to their security interest to enable Pyx to collect the outstanding accounts receivable directly. Pyx believes that given its pre-existing knowledge of Kasco's construction projects and respective accounts receivable gained as a result of their ongoing dealings with Management arising from the monitoring of its security pursuant to the Factoring Agreement, that it can more effectively and cost efficiently facilitate the collection of accounts than could the Receiver.
28. While not conceding the issue of priority, Dr. Greene and CRA concur with Pyx's collection proposal allowing the three parties and the Receiver to agree to the following process subject to approval of this Honourable Court:
  - a. Pyx will act as Agent for the Receiver (the "Agent") to attempt to collect the outstanding accounts receivable of Kasco;
  - b. The Agent shall have the same powers and protections as the Receiver with respect to the collection of the accounts receivable;
  - c. The Agent shall hold any accounts receivable recovered (the "Recovered Funds") in its solicitor's trust account pending further Order of the Court or agreement between the parties; and
  - d. That in the event the Court holds that a party other than Pyx has first priority to the Recovered Funds, the reasonable costs of Pyx shall rank and form part of the Receiver's Charge provided for in the Receivership Order.
29. Paragraph 3(d) of the Receivership Order provides that the Receiver is entitled to engage agents, accountants, counsel and such other persons from time to time, on whatever basis, to assist with the exercise of its powers and duties.
30. Given that Pyx, Dr. Greene and CRA are all in agreement with the above course of action, the Receiver is supportive of same.

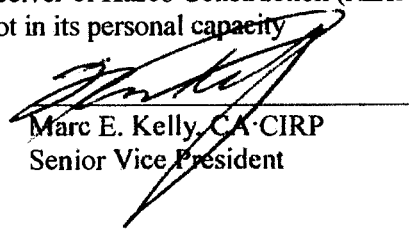
**RECOMMENDATION**

31. The Receiver is seeking approval of and recommends to this Honourable Court appointment of Pyx as the Agent to collect Kasco's accounts receivable.

All of which is respectfully submitted this 27<sup>th</sup> day of February 2013.

**Hardie & Kelly Inc.**, in its capacity  
as Receiver of Kasco Construction (ALTA.) Ltd.  
and not in its personal capacity

Per:



Marc E. Kelly, CA-CIRP  
Senior Vice President