

COURT FILE NUMBER B-150645  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF VICEROY HOMES LTD.**

**FOURTH REPORT OF THE PROPOSAL TRUSTEE**

**SEPTEMBER 25, 2015**

## INTRODUCTION

1. On June 9, 2015, Viceroy Homes Ltd. (“**Viceroy**”) and Viceroy Building Solutions Ltd. (“**VBS**”, and together with Viceroy, the “**Companies**”) each filed a Notice of Intention to File a Proposal (“**NOI**”) pursuant to Part III, Division I of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). FTI Consulting Canada Inc. (“**FTI**”) was appointed as the Trustee (the “**Proposal Trustee**”) under the NOIs.
2. The reports of the Proposal Trustee and other information in respect of these proceedings are posted on the Proposal Trustee’s website at <http://cfcanada.fticonsulting.com/viceroy/>.

## PURPOSE

3. The first report of the Proposal Trustee dated June 29, 2015 (the “**First Report**”), informed the Court on the following:
  - (a) The activities of the Companies since the filing of their NOIs;
  - (b) An analysis of the Companies’ actual cash receipts and disbursements to the date of the First Report, compared to the forecast filed on June 19, 2015;
  - (c) The Companies’ cash flow forecast for the period from June 29, 2015 to August 21, 2015;
  - (d) The rationale for the proposed Professional Charge (as defined in the First Report) over the Companies’ assets to secure the professional fees and disbursements in relation to these proceedings; and
  - (e) The Companies’ request for an extension of the current stay of proceedings under the NOI (the “**Stay**”) to August 21, 2015.
4. On July 6, 2015, this Honourable Court granted Orders extending the Stay to August 21, 2015.

5. The second report of the Proposal Trustee dated July 27, 2015 (the “**Second Report**”), informed the Court on the following:
  - (a) The activities of the Companies since the filing of the First Report;
  - (b) An analysis of the Companies’ actual cash receipts and disbursements for the period from June 9, 2015 to July 21, 2015, compared to the forecast filed on June 29, 2015 attached as Appendix B to the First Report; and
  - (c) The rationale for the implementation of a claims process for the determination of claims against the Companies (the “**Claims Process**”).
6. On July 30, 2015, this Honourable Court granted Orders (the “**Claims Process Orders**”) authorizing the Proposal Trustee to commence the Claims Process and granting an administrative charge over the assets of the Companies in favour of the Proposal Trustee, its legal counsel and the Companies’ legal counsel as security for payment of their respective fees and disbursements.
7. The third report of the Proposal Trustee dated August 12, 2015 (the “**Third Report**”), informed the Court on the following:
  - (a) The activities of the Companies since the filing of the Second Report;
  - (b) An update on the Claims Process commenced by the Proposal Trustee pursuant to the Claims Process Orders;
  - (c) A summary of the Companies’ actual cash receipts and disbursements for the period from June 9, 2015 to August 9, 2015;
  - (d) The Companies’ cash flow forecast for the period from August 10, 2015 to October 9, 2015; and
  - (e) The Companies’ request for an extension of the Stay to October 5, 2015.
8. On August 19, 2015, this Honourable Court granted Orders extending the Stay to October 5, 2015.

9. The purpose of this report, the fourth report of the Proposal Trustee (the “**Fourth Report**”), is to provide the Court with an update on the following:
- (a) The activities of the Companies since the filing of the Third Report;
  - (b) An update on the Claims Process commenced by the Proposal Trustee pursuant to the Claims Process Orders;
  - (c) A summary of the Companies’ actual cash receipts and disbursements for the period from June 9, 2015 to September 18 2015;
  - (d) The Companies’ cash flow forecast for the period from September 21, 2015 to November 19, 2015 (the “**Cash Flow Forecast**”); and
  - (e) The Companies’ request for an extension of the Stay from October 5, 2015 to November 19, 2015.

#### **TERMS OF REFERENCE**

10. In preparing this report, the Proposal Trustee has relied upon unaudited financial information, other information available to the Proposal Trustee and, where appropriate, the Companies’ books and records and discussions with various parties (collectively, the “**Information**”).
11. Except as described in this Fourth Report:
- (a) The Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- (b) The Proposal Trustee has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 12. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
- 13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

#### **UPDATE ON THE COMPANIES ACTIVITIES**

- 14. Subsequent to the issuance of the Third Report, the Company has continued to negotiate the terms of an Asset Purchase Agreement (the “**APA**”) as between Besco International Investment Co., Ltd. (the “**Proposed Purchaser**”) and the Companies.
- 15. The primary terms of the APA are summarized as follows:
  - (a) The Proposed Purchaser will acquire all of the assets and property of Viceroy and VBS for the purchase price of \$8,650,000;
  - (b) The Proposed Purchaser will be credited on closing for the amount of the mortgage held by Elle Mortgage Corporation (“**Elle**”) which was paid out by the Proposed Purchaser (as further discussed later in this section of the report);

- (c) The Proposed Purchaser will be credited on closing for the amount of advances made to the Companies, both prior to and subsequent to the date of the NOIs by Wiston Building Materials Co. (“**Wiston**”), a company related to the Proposed Purchaser, pursuant to a security agreement granted by the Companies to Wiston; and
  - (d) The balance of the purchase price will be paid in cash on closing of the APA.
16. Since a portion of the purchase price pursuant to the APA is to be satisfied through the use of a credit bid, the determination of the quantum of Wiston’s claim and the validity of Wiston’s security is fundamental to finalizing the APA.
  17. In addition, the initial draft APA included assets that were not owned by either Viceroy or VBS, but were owned by Viceroy Homes Inc. (“**VHI**”), a wholly owned subsidiary of Viceroy located in the United States. The Proposal Trustee raised this issue with the Companies’ legal counsel and as a result, the assets are now included in a separate agreement between the Proposed Purchaser and VHI.
  18. As indicated in the Third Report, the Companies and the Potential Purchaser continue to negotiate an interim occupancy agreement that would enable the Proposed Purchaser to commence operations from Viceroy’s premises prior to closing the APA.
  19. Concurrent with the on-going negotiations of these agreements, the Potential Purchaser has continued to perform confirmatory due diligence primarily focused on the existing customer contracts and the condition of the equipment.
  20. The Potential Purchaser, in conjunction with some of Viceroy’s former employees, has contacted of the majority of VBS’ customers to determine their willingness to work with the Potential Purchaser to complete their incomplete contracts.

21. The Potential Purchaser has financed maintenance work on the manufacturing equipment located in the Companies' Richmond facility and funded the use of former Viceroy employees to build some test home packages as part of their due diligence procedures.
22. As indicated in the Second Report, the Forbearance Agreement with Elle in respect of its mortgage against the Port Hope facility expired on September 15, 2015. On the expiration of the Forbearance Agreement the Potential Purchaser paid the amount outstanding under the mortgage, being approximately \$2.1 million. In exchange Elle provided an assignment of its indebtedness and mortgage to the Proposed Purchaser.

#### **UPDATE ON THE CLAIMS PROCESS**

23. As indicated in the Third Report, in accordance with the Claims Process Orders the Proposal Trustee placed a notice in the national edition of The Globe and Mail and the Vancouver Sun on Thursday, August 6, 2015, and in the Northumberland News on Wednesday, August 5, 2015.
24. On August 6, 2015, the Proposal Trustee also mailed to all known creditors of the Companies, the claims package which consisted of the following documents:
  - (a) The Instruction Letter;
  - (b) Copies of the Claims Process Orders for Viceroy and VBS;
  - (c) A copy of the Notice to Creditors; and
  - (d) A blank form Proof of Claim for Viceroy and for VBS,

(Collectively, the "**Claims Package**").

All capitalized terms used above and not otherwise defined in this report are defined in the Claims Process Orders.

25. In cases where Claims Packages which were returned to the Proposal Trustee due to inaccuracies in the Companies' records the Proposal Trustee searched online for the relevant creditor's current address and re-mailed the Claims Package.
26. As at the date of the Fourth Report, the Proposal Trustee has received 370 claims from creditors totaling \$38,763,489, of which there are secured claims relating to loans provided to the Companies, totaling approximately \$18.8 million.
27. The following table indicates the number and total value of secured and unsecured claims:

	<b>Number of Claims</b>	<b>Total Claimed Amount</b>
<b>Secured Claims</b>	<b>6</b>	<b>\$ 18,754,302</b>
<b>Unsecured Claims</b>	<b>364</b>	<b>\$ 20,009,187</b>

28. Pursuant to the Claims Process Orders, the Proposal Trustee performed an initial review of all of the claims and provided access to the proofs of claim to the Companies representatives for their review.
29. The Proposal Trustee has sought advice from its legal counsel regarding certain proofs of claim. In order to allow the Proposal Trustee sufficient time to consider those claims, including any additional information requested from the relevant creditors, the Proposal Trustee has agreed with those creditors to extend the Claims Disallowance Date, as permitted by the Claims Process Order.



30. As at the date of the Fourth Report, the Proposal Trustee had not received claims from 318 parties that were included on the initial creditor listing, in respect of claims totaling \$2,346,100. However the Proposal Trustee notes that the initial mailing list was generated from an accounts payable listing dated from February 2015, and therefore may not reflect the current indebtedness of the Companies as of the date of filing the NOIs.
31. The Proposal Trustee notes that a number of creditors which were included twice on the initial creditor listing only submitted one consolidated claim and that the initial creditor listing included a number of creditors that appeared to be owed nothing or paid subsequent to February 2015.
32. The following table indicates the number and total value of claims for each creditor class:

	Claims Filed		Claims Allowed		Claims Disallowed		Claims Pending Review	
	Number	Value	Number	Value	Number	Value	Number	Value
Customer	49	\$ 2,290,208	39	\$ 1,628,143	10	\$ 360,342	2	\$ 301,723
Employee	69	\$ 5,196,529	59	\$ 1,878,522	-	\$ -	10	\$ 3,318,007
Secured Lender	3	\$ 18,646,447	-	\$ -	-	\$ -	3	\$ 18,646,447
Trade Creditor	247	\$ 11,743,567	230	\$ 6,211,706	9	\$ 405,860	6	\$ 5,125,917
Property Tax	2	\$ 886,821	2	\$ 886,821	-	\$ -	-	\$ -

33. The majority of the customer claims relate to deposits made in respect of home packages that were never delivered. These claims also include amounts relating to deficiency repairs, amounts for materials purchased by customers to complete the construction of their project, and other similar costs.
34. Employee claims consist primarily of amounts for back wages, vacation pay, termination pay, and either common law severance or severance under the applicable provincial legislation.
35. The majority of the trade creditor claims are in respect to services or goods provided to the Companies and not paid for. The majority of these claims were supported by either statements of account or copies of outstanding invoices.

36. The majority of the property tax claims relate to arrears for the property tax on the Port Hope facility accrued over the past three years in the amount of \$856,500.

## SUMMARY OF RECEIPTS AND DISBURSEMENTS

37. The following table indicates the consolidated actual cash receipts and disbursements for the period from June 9, 2015 to September 18, 2015.

<b>Opening Cash (Canadian Dollar)</b>	-
<b>Cash Receipts</b>	
Interim Financing	1,290,250
<b>Total - Operating Receipts</b>	<b>1,290,250</b>
<b>Cash Disbursements</b>	
Rent	245,639
Insurance	61,232
G&A	132,946
Professional Fees	243,337
Other	549,687
<b>Total - Operating Disbursements</b>	<b>1,232,842</b>
<b>Net Change in Cash from Operations</b>	<b>57,408</b>
<b>Ending cash (Canadian Dollar)</b>	<b>57,408</b>

38. The Interim Financing has been provided by Wiston pursuant to a prior lending agreement which is included in the secured claims noted above and which is still subject to the Proposal Trustee's review.
39. The rent expense relates to the monthly lease payment for the Companies' facility in Richmond, British Columbia.

40. The insurance expense is for property and liability coverage for both the Richmond, British Columbia and Port Hope, Ontario locations. The amount represents six months' of premiums for the period expiring in January 2016.
41. The general and administrative (G&A) expense consists of a prepayment to the Companies' enterprise resource planning service provider for the period to October 2015. This expense also consists of utility costs for the Richmond and Port Hope facilities in addition to deposits required to continue service. Some of the utility costs for the Richmond facility are being paid for by a company incorporated by the Potential Buyer.
42. Professional fees consist of payments made to the Proposal Trustee and its legal counsel, as well as the Companies' legal counsel, for services performed relating to these proceedings.
43. As indicated in the Third Report, the other expense relates to the payment to Elle under the terms of the Forbearance Agreement and a payment to a supplier for dust collector equipment which would be necessary to re-start the Companies' facility in Richmond.

## **CASH FLOW FORECAST**

44. The Companies prepared a consolidated Cash Flow Forecast (attached as Appendix A) for the period from September 21, 2015 to November 19, 2015 (the "**Forecast Period**").
45. The Cash Flow Forecast indicates a further cash need of approximately \$400,000 for the period of extension of the Stay being sought. Wiston has agreed to provide the necessary funding to the Companies. The funding will be advanced, as noted above, pursuant to a prior lending agreement.

46. The expenses during the Forecast Period primarily relate to the rent for the Richmond facility and professional fees.

#### **PROFESSIONAL FEES AND EXPENSES**

47. The activities of the Proposal Trustee to date have largely been covered in its previous reports and include the following:

- (a) Compiling the mailing list for the initial and subsequent notices. As noted in prior reports, the Companies have not been able to retain any of its former accounting staff or have access to their electronic accounting records. Accordingly the Proposal Trustee incurred considerable time in researching mailing addresses and attempting to identify potential creditors;
- (b) Assisting the Companies in preparing their cash flow statements for the initial filing and maintaining the cash flow forecast throughout these proceedings;
- (c) Monitoring the Companies' cash management to support their restructuring initiatives;
- (d) Communicating with creditors and other parties affected by these proceedings, including customers with incomplete contracts as well as members of the media;
- (e) Reviewing multiple versions of the APA, providing comments to legal counsel for the Companies and discussions regarding various aspects of same;
- (f) Responding to enquiries from parties expressing interest in a potential acquisition of Viceroy's assets;

- (g) Providing advice to the Companies regarding technical issues associated with the NOI process;
  - (h) Carrying out the Claims Process in accordance with the Claims Process Orders;
  - (i) Responding to numerous creditor enquiries relating to the Claims Process;
  - (j) Reporting to this Honourable Court and undertaking the statutorily required obligations of a Proposal Trustee as set out in the BIA; and
  - (k) Such other duties as required or requested by the Company.
48. For the period from June 8, 2015 to September 13, 2015, the Proposal Trustee incurred 458.7 hours and billed fees and expenses approximating \$179,000, exclusive of GST.
49. A summary of the Proposal Trustee's invoices for the period from June 8, 2015 to September 13, 2015 are attached as Appendix B.
50. As at the date of this Fourth Report, the Companies have approved and paid \$131,340 of the Proposal Trustee's fees and disbursements. Accordingly, \$47,409 remains outstanding and is secured by the Administrative Charge granted by an Order of this Honourable Court dated July 30, 2015.
51. The Proposal Trustee's legal counsel has been supporting the activities of the Proposal Trustee and for the period from June 8, 2015 to August 31, 2015 have billed fees and expenses of approximately \$6,300, exclusive of GST and PST.
52. A summary of the invoices of the Proposal Trustee's legal counsel for the period from June 8, 2015 to August 31, 2015 is included in the attached Appendix B.

53. Copies of the invoices of the Proposal Trustee and the Proposal Trustee's legal counsel have not been attached to this report, however they will be made available to this Honourable Court upon its request.
54. The Proposal Trustee provides this update for the information of the Court and the Companies' stakeholders. The Proposal Trustee does not seek to have its interim accounts approved by this Honourable Court at this time.

#### **COMPANIES' REQUEST FOR AN EXTENSION OF THE STAY**

55. The Companies are seeking an extension of the Stay to November 19, 2015. Absent such extension, the Stay will expire on October 5, 2015. The Companies are seeking an extension for the following reasons:
- (a) To formulate a proposal to their creditors in conjunction with the proposed sale transaction contemplated by the APA;
  - (b) To allow the Proposal Trustee the time necessary to finalize its review of the claims filed pursuant to the Claims Process; and
  - (c) To allow the Proposal Trustee to complete assessing the implications of the proposed sale transaction for the Companies' creditors.
56. The Proposal Trustee supports the Companies' request for an extension of its Stay based on the following:
- (a) The Proposal Trustee has observed that the Companies are acting in good faith and with due diligence;
  - (b) The Potential Purchaser continues to provide the funding necessary to pay the post-filing obligations of the Companies as indicated in the Cash Flow Forecast;

- (c) Subject to review of the final APA, and confirmation of the quantum, validity and priority of the secured claims against the Companies, the proposed sale transaction would appear to provide a better financial recovery for the Companies' creditors than would be available in a bankruptcy, with the additional benefit of preserving employment for many of the currently laid-off employees of the Companies, and allowing for the completion of some customer contracts; and
- (d) On the assumption that the proposed sale transaction closes with the Potential Purchaser, the Proposal Trustee has no reason to believe that the Companies will not be able to make a viable proposal to their creditors.

All of which is respectfully submitted this 25<sup>rd</sup> day of September, 2015.

FTI Consulting Canada Inc.,  
in its capacity as Proposal Trustee under notices  
of intention to make a proposal filed by Viceroy  
Homes Limited and Viceroy Building Solutions  
Ltd.



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Name: Craig Munro  
Title: Managing Director,  
FTI Consulting Canada Inc.

# **APPENDIX A**



	Week Beginning									TOTAL	Notes
	Week 16 21-Sep	Week 17 28-Sep	Week 18 5-Oct	Week 19 12-Oct	Week 20 19-Oct	Week 21 26-Oct	Week 22 2-Nov	Week 23 9-Nov	Week 24 16-Nov		
Opening Cash (Canadian Dollar)	57,408	395,408	310,753	253,753	251,753	194,753	192,753	58,098	56,098	57,408	1
<b>Cash Receipts</b>											
Interim Financing	400,000	-	-	-	-	-	-	-	-	400,000	2
<b>Total - Operating Receipts</b>	<b>400,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>400,000</b>	
<b>Cash Disbursements</b>											
Rent	-	82,655	-	-	-	-	82,655	-	-	165,310	3
G&A	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	18,000	4
Professional Fees	60,000	-	55,000	-	55,000	-	50,000	-	50,000	270,000	5
Other	-	-	-	-	-	-	-	-	-	-	
<b>Total - Operating Disbursements</b>	<b>62,000</b>	<b>84,655</b>	<b>57,000</b>	<b>2,000</b>	<b>57,000</b>	<b>2,000</b>	<b>134,655</b>	<b>2,000</b>	<b>52,000</b>	<b>453,310</b>	
<b>Net Change in Cash from Operations</b>	<b>338,000</b>	<b>(84,655)</b>	<b>(57,000)</b>	<b>(2,000)</b>	<b>(57,000)</b>	<b>(2,000)</b>	<b>(134,655)</b>	<b>(2,000)</b>	<b>(52,000)</b>	<b>(53,310)</b>	
<b>Ending cash (Canadian Dollar)</b>	<b>395,408</b>	<b>310,753</b>	<b>253,753</b>	<b>251,753</b>	<b>194,753</b>	<b>192,753</b>	<b>58,098</b>	<b>56,098</b>	<b>4,098</b>	<b>4,098</b>	

**Notes:**

FTI Consulting Canada Inc. ("FTI") has prepared this Projected Cash Flow Statement solely for the purposes of determining the liquidity requirements of Viceroy Homes Ltd. and Viceroy Building Solutions Ltd. (together "Viceroy") for the 9 week period from September 21, 2015 to November 19, 2015.

The Projected Cash Flow Statement is based on the probable and hypothetical assumptions detailed in Notes 1 - 6.

Consequently, actual results will likely vary from performance projected and such variations may be material.

- 1 - Opening cash as at September 21, 2015.
- 2 - Wiston Building Materials Co. has agreed to fund an additional \$400,000 to Viceroy. However at the date of this report the funds had not been transferred to the Companies.
- 3 - Monthly rent for the Richmond facility and the Viceroy Building Solutions Ltd. office.
- 4 - G&A costs relate to a portion of the utility costs on the Port Hope and Richmond facilities. A new company set up by the Potential Purchaser is paying the remaining portion of utility costs
- 5 - Professional/legal fees include fee estimates provided by the Proposal Trustee.
- 6 - Note the lease for the Richmond facility expires on November 30, 2015. VHL has a deposit in trust of \$80,395 which will be refunded at the expiration of the lease. The new company set up by the Potential Purchaser is currently negotiating a new lease agreement.

# **APPENDIX B**

**Viceroy Homes Ltd. and Viceroy Building Solutions Ltd.**  
**Summary of Proposal Trustee's Invoices**

**Appendix B**

Invoice Number	Date	Period Covered	Hours	Fees	Expenses	Total	Status
29001491	Jun 23/15	Jun 8, 2015 to Jun 21, 2015	87.8	30,926.00	-	30,926.00	Paid
29001500	Jun 30/15	Jun 22/15 to Jun 30/15	58.0	21,547.00	3,642.23	25,189.23	Paid
29001525	Jul 15/15	Jul 1, 2015 to Jul 12, 2015	41.0	14,084.00	22.68	14,106.68	Paid
29001551	Jul 31/15	Jul 13, 2015 to Jul 31, 2015	66.5	27,348.50	-	27,348.50	Paid
29001588	Aug 13/15	Aug 1, 2015 to Aug 16, 2015	71.1	27,018.00	6,751.79	33,769.79	Paid
29001621	Aug 31/15	Aug 17, 2015 to Aug 31, 2015	66.2	22,232.00	140.90	22,372.90	Outstanding
29001644	Sep 13/15	Sep 1, 2105 to Sep 13, 2015	68.1	25,036.50	-	25,036.50	Outstanding
			<u>458.7</u>	<u>168,192.00</u>	<u>10,557.60</u>	<u>178,749.60</u>	

**Summary of Proposal Trustee's legal counsel's Invoices**

Invoice Number	Date	Period Covered	Fees	Expenses	Total	Status
942744	Sep 9/15	Jun 8, 2015 to Aug 31, 2015	6,225.00	47.88	6,272.88	Paid
			<u>6,225.00</u>	<u>47.88</u>	<u>6,272.88</u>	