

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

**PENN-TEK TRUSS & FLOOR SYSTEMS INC., 1006459 ALBERTA LTD., ARNOLD
AND DOROTHY PENNER**

Defendants

NOTICE OF MOTION

TAKE NOTICE that an application will be made on behalf of Deloitte & Touche Inc. (the "Receiver") in its capacity as the Court appointed Interim Receiver of the undertakings, property, and assets of Penn-Tek Truss & Floor Systems Inc. ("Penn-Tek") before the presiding Master in Chambers, in Chambers at the Court House in the City of Calgary in the Province of Alberta on Thursday, the 10th day of July, 2008, at 11:00 in the forenoon or so soon thereafter as counsel may be heard for an Order:

1. Declaring service of this Notice of Motion good and sufficient;
2. Abridging the time for service of the notice of this application if necessary;
3. Approval of the Receiver's conduct to date;
4. Approving the sale of certain Assets, (as defined in the Receiver's Report dated July 3, 2008), of Penn-Tek by the Receiver to Steve Bacovsky Holdings Ltd. (the "Bacovsky Sale") on such terms as this Honourable Court shall deem fit;
5. Authorizing and directing the Receiver to execute all such documents and to carry out such actions as may be required to complete the Bacovsky Sale;
6. Approval of payment of CRA's deemed trust claim in the amount of \$227,646, following the completion of the Bacovsky Sale;

7. Approval of the payment of an Interim Distribution to Alberta Treasury Branches in the amount of \$100,000.00, following the Bacovsky Sale; and
8. Such further and other relief as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that the grounds upon which this application will be made include the following:

- (a) The sale of the Assets of Penn-Tek described above is fair and commercially reasonable and in the best interests of Penn-Tek's creditors and its stakeholders for the following reasons:
 - (i) the Receiver prepared three (3) marketing publications as follows:
 - (A) a Notice of Sale of Assets was sent to all known Truss Manufacturers in western Canada, on June 2, 2008;
 - (B) a quarter page advertisement was placed in the Calgary Herald and the Edmonton Journal on June 9, 2008;
 - (C) a web based advertisement was placed on the Receiver's website;
 - (ii) as a result of the marketing program, thirty seven (37) interested parties contacted the Receiver to obtain an Information Memorandum with a Bid Form, Terms and Conditions of Sale and inventory listings, subsequently five (5) parties expressed sufficient interest to be sent confidentiality agreements. Thirteen (13) parties visited the premises to view the Assets.
 - (iii) the Receiver received ten (10) bids to purchase the Assets in whole or in part. The Purchaser submitted a written offer which was the highest of all of the bids received in the marketing process.
- (b) The Receiver is of the view that the sale contemplated represents a fair and commercially reasonable recovery for the Assets of Penn-Tek and will be to the benefit of the estate and its stakeholders.

AND FURTHER TAKE NOTICE that in support of this application, the Receiver will rely upon the *Judicature Act*, R.S.A. 2000, c. J-2, as amended; the Receiver's Report and Receiver's Confidential Supplemental Report dated July 3, 2008, filed; and such further and other materials as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that if you do not appear in person or through legal counsel on the date and at the place set forth above or any adjournment thereof relief may be granted by this Honourable Court that is adverse to your interests.

Dated at the City of Calgary, in the Province of Alberta this 7th day of July, 2008.

BURNET, DUCKWORTH & PALMER LLP

Per: 

Doug Nishimura
Solicitors for Deloitte & Touche Inc.

TO: The Clerk of the Court

AND TO:

Action No. 0801-05811

2008

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Burnet, Duckworth & Palmer LLP
Barristers and Solicitors
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Attention: Doug Nishimura
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File No.: 55417-21

