

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

AIDE MEMOIRE OF THE RECEIVER

April 13, 2025

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO# 61044N)
Tel: 416-865-3406
Email: kplunkett@airdberlis.com

Miranda Spence (LSO #60621M)
Tel: (416) 865-3414
Email: mspence@airdberlis.com

Adrienne Ho (LSO# 68439N)
Tel: 416-637-7980
Email: aho@airdberlis.com

Lawyers for the Receiver

Background:

1. KSV Restructuring Inc. (“**KSV**”), was appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of La Pue International Inc. (“**Respondent**”), including the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Real Property**”).
2. The Receiver has sold the Real Property with the approval of this Court. Pursuant to an unopposed order dated January 7, 2025, this Court:
 - (a) approved a holdback reserve in the amount of \$1.4 million on account of the estimated maximum holdback amount in respect of any construction lien claims (the “**Holdback Reserve**”);
 - (b) authorized the Receiver to distribute the sale proceeds from the Real Property to MarshallZehr Group Inc. (“**MarshallZehr**”), which held a first mortgage over the Real Property, net of the Holdback Reserve and the Receiver’s and its counsel’s fees and disbursements.
3. The Receiver issued its eighth report dated March 31, 2025 (the “**Eighth Report**”), setting out its determination that the Holdback Reserve is sufficient to pay the lien claimants’ Holdback Claims (i.e. the maximum amount they could be entitled to claim in priority to MarshallZehr) in full.
4. Prior to the case conference scheduled for April 4, 2025, Buttcon Limited (“**Buttcon**”) served an Aide Memoire setting out that its preliminary assessment of the holdback is approximately \$1,437,000 and recommending that certain matters be referred to an

Associate Justice for determination. Buttcon also raised concerns about distribution of the balance of the sale proceeds, net of the reserves, to MarshallZehr.

5. On April 4, 2025, the parties attended a case conference. Justice Steele adjourned the case conference to April 15, 2025, so that the Receiver could further consider Buttcon's position. In her Endorsement dated April 4, 2025, Her Honour indicated that "Buttcon wants to ensure that distributions are not made to MarshallZehr such that the holdback is insufficient" and the Court encouraged the Receiver to have discussions with Buttcon's counsel to address their concerns..
6. The Receiver has engaged in discussions with Buttcon's and certain other lien claimants' counsel. The Receiver has agreed that it will reserve a small amount of additional funds over and above the Holdback Reserve to minimize disputes, without prejudice to its position that the quantum of the Holdback Reserve remains as set out in the January 7 order, which was made on notice to all parties and was not opposed.
7. The Receiver has also considered Buttcon's proposal to have the issues relating to the liens adjudicated by an Associate Judge. In the Receiver's view, it is premature to do so.
8. The Receiver has already engaged in a review of the liens and is close to finalizing its assessment. The last remaining step in its analysis is to engage a cost consultant to assess the lien claims and assess the work performed at the Real Property. The Receiver is maintaining a professional fee reserve which is sufficient to fund these activities.
9. The Receiver therefore proposes the following process, which will provide the opportunity for the parties to resolve matters consensually, if possible:

- (a) After finalizing its review, the Receiver will issue notices to the lien claimants of the Receiver's conclusions as to the total quantum of the holdback (the "**Lien Notices**").
- (b) Each lien claimant shall have 14 days from the issuance of the Lien Notices to advise the Receiver if it accepts the Receiver's assessment, or objects to it, giving the factual and legal basis for such objection;
- (c) if a lien claimant delivers an objection, the lien claimant(s) and the Receiver can schedule a 9:30 appointment to determine the manner in which these issues will be resolved.
- (d) If the sole issue to be determined is the allocation of the holdback among the lien claimants, that issue may be referred to an Associate Judge.

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Tel: 416-865-3406
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Court File No. CV-23-00700695-00CL

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Proceedings commenced at TORONTO

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Tel: (416) 865-3414

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