

Court No. 32-1633386

PCAS Patient Care Automation Services Inc.

TRUSTEE'S SECOND REPORT

November 1, 2012

Court File No. 32-1633386

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

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985 c.
B-3, AS AMENDED**

PCAS PATIENT CARE AUTOMATION SERVICES INC.
of the City of Oakville, in the Province of Ontario

SECOND REPORT

SUBMITTED BY PRICEWATERHOUSECOOPERS INC.,

IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY

INTRODUCTION

1. On March 23, 2012, PCAS Patient Care Automation Service Inc. ("**PCAS**") and 2163279 Ontario Inc., doing business as Touchpoint ("**Touchpoint**" and collectively with PCAS the "**Companies**"), sought and were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and PricewaterhouseCoopers Inc. ("**PwC**") was appointed as monitor (the "**Monitor**") pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 23, 2012 (the "**Initial Order**"). The proceedings under the CCAA are referred to herein as the "**CCAA Proceedings**".
2. During the CCAA Proceedings, the Monitor's role was extended by order of the Court dated May 7, 2012, to assist the Companies to implement an expedited sale and investor solicitation process (the "**SISP**"), whereby prospective bidders could bid to purchase the Companies' property or make an investment in the Companies' business. The SISP was approved by the Court on May 14, 2012.
3. The SISP resulted in an asset purchase agreement dated June 1, 2012 (the "**APA**") between the Companies and DashRX LLC (the "**Purchaser**") for the sale of substantially all of the Companies' business and assets (the "**Transaction**"). The

Transaction was approved by order of the Court dated June 6, 2012 (the “**Approval Order**”) and closed on June 6, 2012. As part of the APA, the Purchaser agreed to fund the costs of PCAS through to the completion of the CCAA Proceedings up to a maximum of \$250,000. These funds were unsecured and were not set off against the purchase price paid by the Purchaser for the assets of the Companies.

4. Following closing of the Transaction, on June 7, 2012 (the “**Date of Bankruptcy**”), PCAS, Touchpoint and two related entities (the “**Related Entities**”) each filed an assignment in bankruptcy for the general benefit of its creditors, pursuant to the provisions of section 49 of the *Bankruptcy and Insolvency Act* (Canada) R.S.C 1985, c.B-3, as amended (the “**BIA**”) and PwC was appointed as trustee in bankruptcy of the Companies and each of the Related Entities (the “**Trustee**”), subject to affirmation by the creditors or substitution of another trustee by the creditors.
5. Pursuant to an order of the Court dated June 6, 2012 (the “**Ancillary Order**”), PwC was discharged as Monitor and the CCAA Proceedings were terminated effective as of June 8, 2012, the date the Monitor’s discharge certificate was filed with the Court.
6. The appointment of the Trustee was affirmed by the creditors at the first meetings of creditors held on June 26, 2012 for each of PCAS, Touchpoint and each of the Related Entities (the “**First Meeting of Creditors**”). At the First Meeting of Creditors one inspector was appointed (the “**Inspector**”) in the estate of PCAS in accordance with the provisions of the BIA.
7. The purpose of this, the Trustee’s second report (the “**Second Report**”), is to provide the Court with information relating to a motion by the Purchaser for, *inter alia*, an order (the “**Mistaken Payment Order**”):
 - (i) declaring that an inadvertent mistaken payment (the “**Mistaken Payment**”) by the Purchaser in the amount of \$115,144.08 has satisfied the claims of certain former employees of the Companies who were not offered or did not accept employment with the Purchaser (the “**Former Employees**”) on account of pre-CCAA filing vacation pay owed to such Former Employees in the amounts and to the extent identified in Exhibit L to the Farrell Affidavit and secured on the Companies’ current assets pursuant to section 81.3 of the BIA;
 - (ii) declaring that the Mistaken Payment has satisfied the Employees’ S.81.3 Claims (defined below) without the necessity of each Former Employee completing and

filing with the Trustee a proof of claim form, as required by section 124 of the BIA;

- (iii) authorizing and directing the Trustee to return to the Purchaser an amount equal to \$115,144.08 less the levy payable to the Office of the Superintendent of Bankruptcy (the “OSB”) in respect of the Mistaken Payment from funds held by the Trustee, which funds were intended for the sole purpose and use of satisfying the obligations for pre-CCAA filing vacation pay to the Former Employees that have been inadvertently satisfied by the Mistaken Payment; and/or
- (iv) in the alternative, and if necessary, rectifying, varying or amending the Approval Order and/or the Ancillary Order to authorize and direct the Trustee to return to the Purchaser an amount equal to \$115,144.08 in respect of the Mistaken Payment from funds held by the Trustee, which funds were intended for the sole purpose and use of satisfying the obligations for pre-CCAA filing vacation pay to the Former Employees that have been inadvertently satisfied by the Mistaken Payment;
- (v) relieving the Trustee from any and all liability for reimbursing the Purchaser in the amount of the Mistaken Payment including, without limitation, any liability under section 81.3(5) of the BIA in respect of any payment made by the Trustee pursuant to an order of this Honourable Court; and
- (vi) such further and other relief as counsel may advise and this Honourable Court may permit.

8. In preparing this Second Report, the Trustee has relied upon PCAS’ books and records, financial information prepared by PCAS and discussions with PCAS’ former management. The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information, other than where specifically indicated and, accordingly, the Trustee expresses no opinion or other form of assurance with respect to the information contained in this Second Report. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

EMPLOYEE OBLIGATIONS PURSUANT TO THE APA

9. Full particulars of the circumstances surrounding the Mistaken Payment by the Purchaser and the Purchaser's request for reimbursement from PCAS' estate is detailed in the affidavit of Kevin Farrell sworn October 24, 2012 (the "**Farrell Affidavit**") in support of the Purchaser's motion for the Mistaken Payment Order.
10. Pursuant to the APA, certain former employees of PCAS were defined as "transferred employees" and were offered and accepted employment with the Purchaser (the "**Transferred Employees**"), all other Former Employees were terminated as a result of the bankruptcy.
11. Pursuant to section 7.1(3) of the APA, no wages, termination pay, severance pay and other obligations in respect of the Former Employees were assumed by the Purchaser, except that the Purchaser became liable for the payment of all legal obligations relating to the employment on and after closing with respect to any Transferred Employees (other than accrued vacation and overtime pay accruing up to and including the closing date).
12. Pursuant to section 2.3(1)(a) of the APA, the Purchaser paid to the Companies approximately \$235,315 in respect of and to be used to pay statutory priority claims.
13. Pursuant to the Ancillary Order and in accordance with the provisions of the APA, the Court authorized and directed the Companies to distribute approximately \$235,315, in connection with employee wage claims pursuant to section 36(7) of the CCAA to Former Employees who continued to have any outstanding employee wage claims. These outstanding employee wage claims included both:
 - (i) the CCAA Period Employee Liability (defined below) estimated at \$118,491; and
 - (ii) the Employees' S. 81.3 Claims, estimated at \$116,824.
14. \$120,000 was paid by the Companies on June 7, 2012 to ADP, its payroll service provider. This payment satisfied in full the amount due or accruing due to the Former Employees on account of wages and vacation pay (the "**CCAA Period Employee Liability**") for the period commencing on the date of the Initial Order and ending on the date that the CCAA Proceedings were terminated (such period the "**CCAA Period**"), estimated at \$119,266.

15. Following the closing of the Transaction:
 - (i) all assets were transferred to the Purchaser except for certain excluded assets, which included prescription pharmaceutical drugs, all pharmacy customer files, certain tax credit entitlements, and all tax refunds in respect thereof; and
 - (ii) the only cash available to PCAS' estate was (a) cash held in its bank account of approximately \$117,600, being the balance of the estimated liability owed to the Former Employees pursuant to section 81.3 of the BIA for outstanding wages and vacation pay for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event and ending on the date of bankruptcy as recorded on the Company's payroll records, after deduction of the CCAA Period Employee Liability (the "**Employees' S. 81.3 Claims**"); and (b) funds of \$100,000 held by PwC in trust as a reserve to fund the costs of the bankruptcy proceedings of PCAS and its related entities.
16. Due to the fact that the Employees' S. 81.3 Claims would not crystallize until the Companies made an assignment in bankruptcy and the funds were intended to satisfy the Employees' S. 81.3 Claims, employees' claims were estimated in accordance with the provisions of section 81.3 of the BIA and sufficient funds were maintained in the PCAS bank account to provide for the Employees' S. 81.3 Claims when filed and accepted in the subsequent bankruptcy proceedings.
17. On or around June 22, 2012, the Trustee was advised by the Purchaser that, in addition to providing to the Companies approximately \$235,315 on account of the statutory priority claims (being an amount equal to the CCAA Period Employee Liability and the Employees' S. 81.3 Claims) as required by the Ancillary Order, the Purchaser had also inadvertently paid the Mistaken Payment to the Former Employees in the amount of \$115,114.08. The Mistaken Payment represented the balance of the Employees' S. 81.3 Claims. The Purchaser sought a reimbursement from PCAS's estate in the amount of the Mistaken Payment from the cash being held by the Trustee for the payment of the Employees' S. 81.3 Claims. A schedule showing the amounts paid to each Former Employee is attached to the Farrell Affidavit as Exhibit "L".
18. The Trustee has reviewed the schedule of payments made by the Purchaser and can confirm the amounts paid to the Former Employees are equal to the value of the Employees' S. 81.3 Claims as evidenced by PCAS's payroll records.

EMPLOYEES' S. 81.3 CLAIMS

19. Based on the information available to the Trustee and the Trustee's initial review and analysis of PCAS' payroll records, the maximum Employees' S. 81.3 Claims is \$115,114 and not \$117,600 as estimated by PCAS at the termination of the CCAA Proceedings, excluding the CCAA Period Employee Liability that has already been paid in full by the Companies.
20. As at the date of this Second Report, 42 of PCAS's former employees have filed proofs of claim with the Trustee pursuant to section 81.3 of the BIA, in the total amount of approximately \$317,000. The majority of this amount relates to termination pay or severance pay, which is not secured pursuant to section 81.3 of the BIA. As at the date of this report, the Trustee has completed its review and analysis of these proofs of claim, but has not yet issued any notices to the former employees with respect to the Trustee's determination of these claims.

WAGE EARNER PROTECTION PROGRAM

21. Pursuant to section 21 (1) of the *Wage Earner Protection Program Act* ("WEPPA"), the Trustee is required to, *inter alia*, identify each individual who is owed eligible wages (as defined in the WEPPA), determine the amount of eligible wages owed to each individual and inform the Minister of Labour, represented by Service Canada, of the amount of eligible wages owing to each individual. Section 21(1) of the WEPPA provides as follows:

Section 21 (1)

"For the purposes of this Act, a trustee or receiver, as the case may be, shall:

- (a) identify each individual who is owed eligible wages;*
- (b) determine the amount of eligible wages owed to each individual;*
- (c) inform each individual other than one who is in a class prescribed by regulation of the existence of the program established by section 4 and of the conditions under which payments may be made under this Act;*

(d) provide the Minister and each individual other than one who is in a class prescribed by regulation with the information prescribed by regulation in relation to the individual and with the amount of eligible wages owing to the individual; and

(e) inform the Minister of when the trustee is discharged or the receiver completed their duties, as the case may be.”

22. Pursuant to the WEPPA regulations, the information to be provided to Service Canada, includes, *inter alia*, a statement as to whether or not an individual has provided a proof of claim for wages owed under section 124 of the BIA.

Regulation 15

(d) a statement as to whether or not the individual submitted a proof of claim for wages owed under section 124 of the BIA;

23. In addition, when reporting to Service Canada in accordance with section 21(1)(b) of the WEPPA, the Trustee is required to advise Service Canada of the amounts paid, if any, to the Former Employees from the bankrupt's current assets with respect to the eligible wages.
24. Accordingly, until a determination is made by the Court regarding the Mistaken Payment, the Trustee is unable to comply with the provisions of WEPPA, as the outcome of the Purchaser's motion will have an impact on the information reported to Service Canada.
25. In addition, the outcome of the Purchaser's motion will have an impact on the review and analysis of the Employees' S. 81.3 Claims not yet proven, as:
- (i) if the Mistaken Payment Order is granted, the Employees' S. 81.3 Claims will have been paid by the Purchaser in the amount of the Mistaken Payment and the Former Employees will have no security pursuant to section 81.3 of the BIA; or
 - (ii) if the Mistaken Payment Order is not granted, the amount of the proven Employees' S. 81.3 Claims would be adjusted by the amount of the Mistaken

Payment made by the Purchaser; however, certain Former Employees had outstanding vacation pay owed for the six months prior to the CCAA Period greater than \$2,000 and would therefore still have an outstanding claim pursuant to section 81.3 of the BIA for the difference between \$2,000 and the amount actually owing to such Former Employee for the pre-CCAA Period vacation pay (the “**Additional Employee Claim**”). The Trustee estimates the Additional Employee Claim at approximately \$43,000. As a result of the Mistaken Payment, the Additional Employee Claim will be secured on the current assets of the Companies pursuant to section 81.3 of the BIA, but this security will effectively secure payment of an amount greater than the \$2,000 provided for in the BIA.

SUMMARY

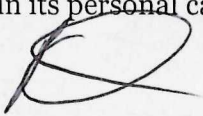
26. Based on the Trustee’s review and analysis of the payments made by the Purchaser, the Trustee believes it is equitable and fair to reimburse the Purchaser the amount of the Mistaken Payment, which was inadvertently made by the Purchaser to the Former Employees on behalf of the Companies, for the following reasons:
- (i) the payment of the Employees’ S. 81.3 Claims was provided for in the APA and, pursuant to the APA, the Trustee has the cash to satisfy the Employees’ S. 81.3 Claims;
 - (ii) based on the information available to the Trustee, the Mistaken Payment appears to be a genuine administrative error made by the Purchaser, which resulted in the inadvertent payment by the Purchaser of the Employees’ S. 81.3 Claims to the Former Employees in the amount of \$115,114.08;
 - (iii) if the Mistaken Payment Order is not granted, the Purchaser will effectively be required to pay a higher purchase price than provided for in the APA;
 - (iv) the WEPPA program is designed to take into account any payments made to the Former Employees from the bankrupt’s current assets with respect to eligible wages; and
 - (v) it appears fair and equitable to do so in the circumstances;

27. At a meeting with the Inspector held on October 31, 2012, the Inspector approved this Second Report of the Trustee.
28. As a result, the Trustee does not oppose the Purchaser's motion for the Mistaken Payment Order as detailed herein.

The Trustee respectfully submits to the Court this, its Second Report.

Dated this 1st day of November, 2012

PricewaterhouseCoopers Inc.,
in its capacity as Trustee in Bankruptcy of
PCAS Patient Care Automation Services Inc.
and not in its personal capacity



Paul Van Eyk
Senior Vice President