

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

BETWEEN:

1599285 ONTARIO LIMITED., RICK BERWICK, 2702749 ONTARIO INC., PETER ADAMO, CROCETTA ADAMO, ANJAY LIMITED, A-ONE AUTO INVESTMENTS INC., CINZIA SORRENTI, ELCRM HOLDINGS INC., SERGIO MOLELLA, DONALD IERFINO, PIERINA PIZZARDI, PIZZARDI INVESTMENTS, AMOND MANAGEMENT INC., SALISI INVESTMENTS INC., LORENZO ANTONINI, CARMEN ANTONINI, TINA BETTI, ANTHONY BONDI GIUSEPPA BONDI, C.P.M.C MARQUEZ HOLDINGS INC., FREDY ROSSI, 2438747 ONTARIO LIMITED, 2205633 ONTARIO LIMITED, 1620375 ONTARIO LIMITED, 1288601 ONTARIO LIMITED, AMSTEL MANUFACTURING (1993) INC., BRUCE MCKINLAY, SALISI INVESTMENTS LTD., M ANTONINI HOLDINGS INC., GABRIELE PIZZARDI, IMPERIO SA HOLDINGS INC., RONALD CHEMIJ, MARY CHEMIJ, TERRY CHEMIJ, LUBA CHEMIJ, and TAXMART INC.

Applicants

-and-

1000195736 ONTARIO LTD., 1000193772 ONTARIO LTD., and MORGIS CORPORATION

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**FACTUM OF THE COURT APPOINTED RECEIVER, TDB
RESTRUCTURING LIMITED**

May 11, 2026

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**ONTARIO
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1599285 ONTARIO LIMITED., RICK BERWICK, 2702749 ONTARIO INC., PETER ADAMO, CROCETTA ADAMO, ANJAY LIMITED, A-ONE AUTO INVESTMENTS INC., CINZIA SORRENTI, ELCRM HOLDINGS INC., SERGIO MOLELLA, DONALD IERFINO, PIERINA PIZZARDI, PIZZARDI INVESTMENTS, AMOND MANAGEMENT INC., SALISI INVESTMENTS INC., LORENZO ANTONINI, CARMEN ANTONINI, TINA BETTI, ANTHONY BONDI GIUSEPPA BONDI, C.P.M.C MARQUEZ HOLDINGS INC., FREDY ROSSI, 2438747 ONTARIO LIMITED, 2205633 ONTARIO LIMITED, 1620375 ONTARIO LIMITED, 1288601 ONTARIO LIMITED, AMSTEL MANUFACTURING (1993) INC., BRUCE MCKINLAY, SALISI INVESTMENTS LTD., M ANTONINI HOLDINGS INC., GABRIELE PIZZARDI, IMPERIO SA HOLDINGS INC., RONALD CHEMIJ, MARY CHEMIJ, TERRY CHEMIJ, LUBA CHEMIJ, and TAXMART INC.

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**FACTUM OF THE COURT APPOINTED RECEIVER, TDB
RESTRUCTURING LIMITED**

PART I - INTRODUCTION

1. On July 5, 2024, pursuant to the Order of the Honourable Justice Cavanagh, TDB Restructuring Limited (“TDB”) was appointed Receiver, (in such capacity, the “Receiver”), without security over all of the assets and undertakings of 1000195736 Ontario Ltd., 1000193772 Ontario Ltd., and Morgis Corporation (collectively the “Debtors”) including, without limitation,

the following adjoining parcels of land along Eglinton Avenue West and Avenue Road in Toronto (collectively, the “**Real Property**”):

- (a) 368, 378 Eglinton Avenue West, Toronto bearing PIN: 21169-0181 (“**PIN 0181**”);
- (b) 366 Eglinton Avenue West, Toronto bearing PIN: 21169-0182 (“**PIN 0182**”);
- (c) 356 Eglinton Avenue West, Toronto bearing PIN: 21169-0183 (“**PIN 0183**”); and
- (d) 350 Eglinton Avenue West, Toronto bearing PIN: 21169-0184 (“**PIN 0184**”).

2. The Receiver now brings this motion for the following relief:

- (a) an Order, if necessary, abridging the time for service of the Notice of Motion and Motion Record herein and dispensing with service thereof;
- (b) an Order approving the First Report of the Receiver dated August 12, 2025 (the “**First Report**”), the Second Report of the Receiver dated May 6, 2026 (the “**Second Report**”) and the activities and conduct of the Receiver as described therein;
- (c) an Order approving the Receiver’s fees and disbursements, and the fees and disbursements of the Receiver’s counsel, Robins Appleby LLP (“**RA**”), as well as the estimated costs to complete the receivership administration as described in the Second Report and in the Affidavits of Arif Dhanani sworn May 4, 2026, and Dominique Michaud, sworn August 11, 2025 and May 5, 2026 (collectively, the “**Fee Affidavits**”);
- (d) an Order approving the Receipts and Disbursements (“**R&D**”) of the Receiver for the period from July 5, 2024 to April 30, 2026;
- (e) an Order authorizing and directing the Receiver to make a distribution of any funds remaining in its possession to lawyers for the Applicants, RAR Litigation Lawyers (“**RAR**”), in trust, after payment of all professional fees and costs related to the receivership administration has been made;
- (f) an Order discharging the Receiver upon the filing of a certificate (the “**Discharge Certificate**”) with the Court confirming that its remaining duties (as set out in the Second Report, the “**Remaining Duties**”) have been completed, and authorizing the Receiver to complete certain administrative matters following the discharge of the Receiver (the “**Discharge Order**”);
- (g) an Order directing that TDB, in its capacity as former Receiver, once discharged,

- (i) be authorized to pay to RAR, in trust, any funds received by the Receiver following the Discharge Order, provided that the amounts paid do not exceed the Debtors' indebtedness to the Applicants; or
 - (ii) be permitted to apply to this Court for further direction if the Receiver is of the view that the direction of the Court is required; and
- (h) such further and other relief as this Honourable Court may deem just.

PART II - SUMMARY OF FACTS

Background of Legal Proceedings

3. On July 5, 2024, by Order of the Honourable Justice Cavanagh (the "**Appointment Order**"), TDB was appointed as Receiver over the Debtors, pursuant to section 243 of the Bankruptcy and Insolvency Act ("**BIA**") and section 101 of the Courts of Justice Act ("**CJA**").¹

4. On August 12, 2025, the Receiver served its Motion Record (the "**First MR**"), including its First Report (the "**First Report**") seeking, among other relief, two Approval and Vesting Orders (the "**AVOs**") with respect to the sale of the Real Property.² However, following discussions among the parties, Justice Cavanagh issued an endorsement on August 27, 2025 (the "**Cavanagh Endorsement**") granting an adjournment to September 24, 2025, on consent, to allow the Debtors time to complete a proposed refinancing transaction (the "**Kell Refinancing**") and seek the discharge of the Receiver.³

5. On September 24, 2025, the matter was again adjourned, on consent, by endorsement of Justice J. Dietrich (the "**Dietrich Endorsement**"), to provide the Debtors with an opportunity to

¹ Order of Justice Cavanagh dated July 5, 2024 (the "**Appointment Order**"); Second Report of the Receiver dated May 6, 2026 (the "**Second Report**") at para 1.

² Second Report at para 2.

³ Second Report at para 3.

make certain milestone payments and complete the Kell Refinancing by December 5, 2025.⁴

6. However, the Debtors subsequently failed to make the required payments or complete the Kell Refinancing, and as such, upon the Receiver's request, on November 20, 2025, the Court granted the AVOs and a sealing order with respect to certain confidential materials in the First Report. The balance of the relief sought in the First MR was adjourned.⁵

The Second Report of the Receiver and Activities Therein

7. As described in the Second Report, the Receiver has acted reasonably, prudently and not arbitrarily, in carrying out its activities including, *inter alia*, the following:

- (a) maintaining the Receiver's website in accordance with the Court's e-service protocol;
- (b) completing the transactions contemplated by the AVOs;
- (c) participating in and monitoring discussions with respect to the Kell Refinancing;
- (d) corresponding with tenants to collect monthly rent payments; and
- (e) preparing for and attending multiple hearings before this Court.⁶

Proposed Final Distribution

8. As detailed in the Second Report, the Receiver proposes to, as part of its Remaining Duties

⁴ Second Report at para 4.

⁵ Second Report at para 5.

⁶ Second Report at paras 13 and 14.

(as defined herein):

- (a) pay all remaining unpaid professional fees and disbursements of the Receiver and its counsel relating to the receivership administration;
- (b) distribute any remaining funds to RAR, in trust, after filing the Discharge Certificate with the Court.⁷

Approval of Fees and Disbursements

9. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements at their standard rates and charges unless otherwise ordered by the Court, secured by the Receiver's Charge.⁸

10. As set out in the Fee Affidavits, the Receiver and its counsel are seeking approval of their fees and disbursements for their services:

- (a) in the instance of the Receiver, for the period of February 8, 2024 to April 30, 2026;
- (b) in the instance of the Receiver's independent counsel, RA, for the periods of September 27, 2024 to July 31, 2025 and August 1, 2025 to April 30, 2026.⁹

11. The Receiver also seeks approval of anticipated costs incurred by the Receiver and its counsel to be incurred, to complete the administration of the Receivership. The Receiver submits that these are fair and reasonable and such relief should be granted by this Court.

⁷ Second Report at para 19.

⁸ Appointment Order at para 17.

⁹ Second Report at paras 23 and 23.

Approval of R&D

12. As further set out in the Second Report, the Receiver seeks approval of its R&D for the period from July 5, 2024, to April 30, 2026.¹⁰

Discharge of Receiver

13. Upon the closing of the Transaction, the Receiver's duties and responsibilities under the Appointment Order will have been materially completed, and its remaining duties ("**Remaining Duties**") are to:

- (a) prepare and file the Final Statement of Receiver pursuant to s. 246(3) of the BIA after distribution of remaining funds in its trust accounts;
- (b) make the remaining distributions as set out above and in the Second Report; and
- (c) attend to any other administrative matters as necessary.¹¹

14. The Receiver's administration is substantially complete, and it is appropriate that the Receiver be discharged upon filing of the Discharge Certificate, with authority to complete any incidental administrative matters following discharge.¹²

PART III - ISSUES AND THE LAW

15. The Receiver's motion raises the following legal issues:

- (a) whether the Court should approve the First Report and the activities of the Receiver

¹⁰ Second Report at para 20.

¹¹ Second Report at para 11.

¹² Second Report at para 12.

described therein;

- (b) whether the Court should approve the Second Report and the activities of the Receiver described therein;
- (c) whether the Court should approve the fees and disbursements of the Receiver and its counsel, RA; and
- (d) whether the Court should discharge and release the Receiver and its counsel.

A. The Court Should Approve the First Report and the Second Report and the Receiver's Activities as Set Out Therein

16. The Receiver seeks approval of both the First Report and Second Report and its activities and conduct as set out therein.

17. It is common practice for court officers in insolvency proceedings, including receivers, to seek court approval of their reports and the activities described therein, and this Court has emphasized that such court approval allows court officers to bring their activities before the court and address concerns of stakeholders while simultaneously presenting the court with an opportunity to satisfy itself that the court officer's activities have been conducted prudently and diligently.¹³

18. The Court's inherent jurisdiction allows it to approve the activities of a receiver, when considered within the receiver's mandate, powers and authority.¹⁴ Courts consider the following factors:

¹³ *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) (Commercial List) at para 45 (“**Churchill Lands**”)

¹⁴ *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 (Ont. Gen. Div.) at para 3, aff'd [1996 CanLII 2782](#) (Ont. C.A.).

- (a) the receiver's activities were necessary and undertaken in good faith;
- (b) the receiver's activities were consistent with its duties and powers granted in prior orders;
- (c) the receiver's activities were reasonable and for the benefit of stakeholders generally; and
- (d) the proposed form of order incorporates the standard qualification that only the receiver, in its personal capacity, and only with respect to its personal liability, shall be entitled to rely upon or utilize such approval.¹⁵

19. In the circumstances at hand, all of the above factors are satisfied. The Receiver's activities as described in the First Report and Second Report were necessary to liquidate the Debtors' primary asset, the Real Property. These were carried out pursuant to the Receiver's duties and powers as set out in the Appointment Order and the AVOs, and in good faith. No interested party has disputed that the Receiver has acted in good faith and for the benefit of all stakeholders, at any time during the course of these Receivership proceedings. Finally, the proposed Discharge Order incorporates the standard qualification providing that the Receiver shall only be entitled to rely on Court approval in its personal capacity and in respect of its personal liability.

20. As such, the Receiver submits that the Court should approve the First Report and Second Report and the Receiver's activities and conduct as described therein.

B. The Court Should Approve the Fees and Disbursements of the Receiver and its Counsel

21. The Receiver is seeking approval of the professional fees incurred by it and its legal counsel as described in the Fee Affidavits attached to the Second Report, including the estimated fees of

¹⁵ *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) (Commercial List) at para 66 (“Triple-I Capital”)

the Receiver and its independent legal counsel to complete the administration of the Receivership proceedings.

22. The Appointment Order, at paragraph 17, states that the Receiver and its counsel “shall be paid their reasonable fees and disbursements, in each case, at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “Receiver’s Charge”) on the Property, as security for such fees and disbursements...”.

23. In determining whether compensation sought by a Receiver and its counsel is “fair and reasonable”, courts have emphasized the value provided and what was ultimately accomplished.¹⁶

24. The Receiver submits that the professional fees incurred by it and its counsel, and the receipts and disbursements set out in the Second Report, are authorized by the Appointment Order, and are fair and reasonable in light of the mandate, and what they were able to accomplish, including attending court on multiple occasions, closing the sale of the Real Property, and making the appropriate distributions following the sale.

C. The Court Should Approve the Discharge of the Receiver

25. Once the Receiver has completed its Remaining Duties, it will have completed its mandate.

26. The Receiver thus respectfully submits that this receivership proceeding should be terminated, and the Receiver should be discharged and released following the filing of the Discharge Certificate with the Court. The release is a standard term in the Commercial List model

¹⁶ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at paras 44-45.

discharge order. Justice Pattillo held in *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, “in the absence of any evidence of improper or negligent conduct, the release should issue. A receiver is entitled to close its file once and for all”.¹⁷

27. There is no evidence of any improper and negligent conduct here, and this will also avoid the costs of having to return to court to discharge the Receiver at a later date.

28. For the foregoing reasons, the Receiver recommends that, after the completion of all the Remaining Duties and matters required to wind up the receivership, the Receiver file the Discharge Certificate and upon such filing, the Receiver shall be discharged, and the receivership administration will terminate.

PART IV - ORDER REQUESTED

29. The Receiver respectfully requests that this Court grant it the relief it seeks as set out in its Notice of Motion, attached as Tab 1 of the Receiver’s Motion Record dated May 6, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: May 11, 2026



Dominique Michaud

Date: May 11, 2026



Anisha Samat

¹⁷ *Pinnacle Capital Resources Ltd. v Kraus Inc.*, [2012 ONSC 6376](#) (Commercial List) at para 47.

CERTIFICATE RE AUTHORITIES

I, Anisha Samat, counsel for the Plaintiff, certify:

All authorities are genuine, as required by the Rule 4.06(2.1) of the *Rules of Civil Procedure*.

Date: May 11, 2026



Anisha Samat

SCHEDULE 'A'
LIST OF AUTHORITIES

1. *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 (Ont. Gen. Div.), aff'd [1996 CanLII 2782](#) (Ont. C.A.)
2. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
3. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) (Commercial List)
4. *Pinnacle Capital Resources Ltd. v Kraus Inc.*, [2012 ONSC 6376](#)
5. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) (Commercial List)

SCHEDULE 'B'
TEXT OF STATUTES, REGULATIONS & BY-LAWS

NIL

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PROCEEDING COMMENCED AT TORONTO

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