

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

B E T W E E N:

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.

Applicant

- and -

CBJ – FORT ERIE HILLS INC.

Respondent

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 RECEIVER

June 18, 2026

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PART I - NATURE OF THE MOTION

1. TDB Restructuring Limited (“**TDB**”), in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings, and properties of the CBJ – Fort Erie Hills Inc. (the “**Debtor**”) pursuant to an order of this Court issued on December 19, 2024 (the “**Appointment Order**”) seeks:
 - (a) an order (the “[Claim Procedure Order](#)”) that, *inter alia*, approves the process for identification and resolution of claims against the Respondent; and
 - (b) an order (the “[Ancillary Order](#)”) that, *inter alia*:
 - (i) approves the [Second Report](#) (as defined below) and the actions, conduct and activities of the Receiver described therein; and
 - (ii) approves the fees and disbursements of the Receiver and the Receiver’s legal counsel.
2. The Receiver is currently holding \$6,777,223 from the proceeds of the sale of the Debtor’s property. The Receiver has determined that there are no other secured or priority claims to these proceeds and, accordingly, a claims process is appropriate to identify and determine all claims against the Debtor to permit the Receiver to make a distribution from the remaining proceeds and wind up this receivership proceeding.
3. The Receiver’s activities and fees should be approved. They have been validly incurred in accordance with the Appointment Order and the Receiver’s efforts have resulted in the closing of a transaction that generated significant value for the estate for the benefit of the Debtor’s stakeholders. As of the date of this factum, none of the relief sought by the Receiver is opposed.

PART II - THE FACTS

Background

4. On December 19, 2024, pursuant to the Appointment Order, the Receiver was appointed as receiver and manager, without security, of all of the assets, undertakings, and properties of the Debtor, including but not limited to the Real Property.¹
5. The Debtor was the registered owner of the Real Property, which consisted of undeveloped vacant land that formerly operated as a golf course.
6. Pursuant to an Order of the Court issued on April 25, 2025 (the "[AVO](#)"), the Transaction was approved to sell the Real Property to a third-party purchaser.²

Closing of the Transaction

7. Following the granting of the AVO on April 25, 2025, the Receiver immediately took steps to close the Transaction. The Transaction closed on April 29, 2025.³
8. From the proceeds of the Transaction, the Receiver paid all outstanding property taxes to the Town of Fort Erie, commission to Lennard Realty Group, outstanding professional fees, repayment to Hillmount of the Receiver's borrowings and repaid Hillmount in full all

¹ All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Second Report of the Receiver dated June 11, 2026 (the "[Second Report](#)"); Second Report at [para 1, Tab 2](#) of the Motion Record of the Receiver dated June 12, 2026 (the "[Motion Record](#)").

² Second Report at [para 2](#), Tab 2 of the Motion Record.

³ Second Report at paras [9-10](#), Tab 2 of the Motion Record.

amounts owing by the Debtor to Hillmount pursuant to Hillmount's first-ranking mortgage.⁴

9. Following these distributions, the Receiver is currently holding \$6,777,223 in trust from the proceeds of the Transaction. The vast majority of these proceeds are held in a guaranteed investment certificate account bearing interest.⁵

Activities of the Receiver

10. In addition to closing the Transaction, since the issuance of the AVO the Receiver has also, among other things:
 - (a) corresponded with various stakeholders, including counsel for purported creditors and investors, regarding alleged claims against the estate, including requests for supporting documentation and clarification of the nature and validity of such claims;
 - (b) corresponded with certain shareholders, principals and related stakeholders regarding matters arising in the receivership proceedings, including correspondence with Chris Agagnier, a principal/shareholder of the Debtor, regarding potential claims involving other shareholders, correspondence with Timothy Dunn of Blaney McMurtry LLP, counsel to the Burrell Family Trust and the Salvatore Romeo Family Trust, regarding an alleged unsecured loan agreement and potential unsecured claims against the estate, and various direct

⁴ Second Report at [para 11](#), Tab 2 of the Motion Record.

⁵ Second Report at [para 12](#), Tab 2 of the Motion Record.

communications with Jeff Burrell, who was also a shareholder of the Debtor. These communications included matters relating to disputes among certain shareholders and/or stakeholders of the Debtor;

- (c) worked with its counsel, TGF and Foglers, to review and assess various secured and unsecured claims asserted against the estate, including reviewing supporting materials, title-related documentation, and correspondence received from stakeholders and their counsel;
- (d) completed all required administrative matters, including the filing of tax returns and administering the Receiver's banking and investment activities; and
- (e) developed the Claims Procedure Order with its counsel.⁶

Review of Subsequent Encumbrances

11. The First Report indicated that, following the closing of the Transaction, the Receiver would review the underlying security documentation in respect of the registrations on title to the Real Property subsequent to the Hillmount mortgage, being the \$5,000,000 notice (the "**Notice**") registered in favour of Mr. Dennis Blain and Lakefront Developments Inc. (collectively, "**Lakefront**") and the further \$49,000,000 charge (the "**Charge**") registered in favour of 1001045239 Ontario Inc. ("**100 Ontario**"), to assess the validity and enforceability of these charges.⁷

⁶ Second Report at [para 13](#), Tab 2 of the Motion Record.

⁷ Second Report at [para 14](#), Tab 2 of the Motion Record.

12. Since the closing of the Transaction, the Receiver has undertaken this review.⁸
13. The Receiver's review of these encumbrances was challenging given the change in representation of both Lakefront and 100 Ontario as well as the lack of information and responses received.⁹
14. However, based on the information available to the Receiver and the responses received, and the legal opinions provided by Foglers to the Receiver, the Receiver is of the view that the Notice and an associated writ and the Charge do not secure any debt or obligations, and they are not valid and enforceable claims against the proceeds of sale.¹⁰
15. There are no valid subsequent encumbrances or security interests that would rank ahead of unsecured creditors.¹¹

Claims Process

16. Accordingly, the Receiver has developed the Claims Procedure Order to establish a claims process that will identify and determine all claims against the Debtor, to permit the Receiver to make a distribution from the proceeds of the Transaction and wind up this receivership proceeding.¹²

⁸ Second Report at [para 15](#), Tab 2 of the Motion Record.

⁹ Second Report at [para 25](#), Tab 2 of the Motion Record.

¹⁰ Second Report at [para 26](#), Tab 2 of the Motion Record.

¹¹ Second Report at [para 26](#), Tab 2 of the Motion Record.

¹² Second Report at [para 27](#), Tab 2 of the Motion Record.

17. As mentioned above, the Receiver is holding \$6,777,223 from the proceeds of the Transaction. The Receiver is unaware of any claims that would have priority to unsecured creditors.¹³
18. Given the availability of funds after satisfying secured debt, priority claims and closing costs, the Receiver is seeking approval of the claims process set out in the proposed Claims Procedure Order (the “**Claims Process**”). The purpose of the Claims Process is to identify and determine all claims against the Debtor and to establish proven claims for the purposes of these receivership proceedings.¹⁴
19. The Claims Process requires each person asserting a claim against the Debtor to file a proof of claim, together with supporting documentation, on or before 5:00 p.m. (Toronto time) on August 24, 2026 (the “**Claims Bar Date**”).¹⁵
20. The principal features of the Claims Process are summarized as follows:
- (a) no later than five business days following the granting of the Claims Procedure Order, the Receiver will send a Claims Package to all known creditors of the Debtor and post the relevant materials on its website;
 - (b) each person asserting a claim against the Debtor will be required to file with the Receiver a Proof of Claim on or before the Claims Bar Date;

¹³ Second Report at [para 28](#), Tab 2 of the Motion Record.

¹⁴ Second Report at [para 29](#), Tab 2 of the Motion Record.

¹⁵ Second Report at [para 29](#), Tab 2 of the Motion Record.

- (c) any person who does not deliver a Proof of Claim by the Claims Bar Date, or such later date as may be fixed by further order of the Court or extended by the Receiver in accordance with the Claims Procedure Order, will be forever barred from making or enforcing that claim;
- (d) the Receiver may accept, revise or disallow all or any portion of a claim and may attempt a consensual resolution of any claim;
- (e) where the Receiver revises or disallows all or any portion of a claim, the Receiver will deliver to the claimant a Notice of Revision or Disallowance;
- (f) any claimant seeking to dispute a Notice of Revision or Disallowance will be required to deliver a Dispute Notice to the Receiver no later than fourteen calendar days after the claimant received the Notice of Revision or Disallowance; and
- (g) following receipt of a Dispute Notice, the Receiver may attempt to resolve the disputed claim consensually, failing which the Receiver will seek advice and directions from the Court with respect to an appropriate procedure for the determination of such claim.¹⁶

PART III - ISSUES

21. The issues to be determined on this motion are:
- (a) whether the Claims Procedure Order should be approved; and
 - (b) whether the Ancillary Order should be granted, specifically, whether:
 - (i) the Receiver's activities should be approved; and

¹⁶ Second Report at [para 30](#), Tab 2 of the Motion Record.

- (ii) whether the fees and disbursements should be approved.

PART IV - LAW & ARGUMENT

The Claims Procedure Order Should be Granted

22. The Receiver was appointed pursuant to [section 243](#) of the *Bankruptcy and Insolvency Act* (“BIA”)¹⁷ and [section 101](#) of the *Courts of Justice Act* (“CJA”),¹⁸ which allow the courts to make any order that it considers just or convenient to do so. Pursuant to [section 243\(1\)\(c\)](#) of the *BIA*, the Receiver may “take any other action that the court considers advisable.”¹⁹
23. This section has been interpreted to give supervising judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise.²⁰ The Canadian insolvency system supports flexibility to deal with a debtor’s assets while ensuring that third party interests are not inappropriately violated.²¹
24. The general purpose of a claims process is to identify and determine the universe of claims against the debtor company and “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner”.²²

¹⁷ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s 243](#).

¹⁸ *Courts of Justice Act*, RSO 1990, c C.43, [s 101](#).

¹⁹ *BIA*, s. 243(1)(c).

²⁰ *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras [57-58](#).

²¹ *Ibid* at para. [86](#).

²² *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para [40](#).

25. Courts have routinely approved claims processes in the context of receiverships under the BIA and the CJA.²³
26. The BIA and CJA are generally silent with respect to the approval of claims processes. As such, the approval of a claims process is a matter within the discretion of the Court, grounded in the Court's statutory and/or inherent jurisdiction to control its own process and make an order it sees fit in the circumstances.
27. Claims procedure orders should be both flexible and expeditious, in order to achieve the remedial objectives of the statutes under which the proceedings were commenced and to ensure that stakeholders are treated as fairly as the circumstances permit.²⁴ The order must be drafted carefully to ensure that it is fair and reasonable to all stakeholders, including those who may be directly impacted by the acceptance of other claims.²⁵
28. The proposed Claims Process is a fair, open and transparent method to enable the Receiver to call on claims from potential creditors so they can be identified and settled in an orderly manner. It establishes a clear and efficient process for providing notice to known and potential creditors, requires creditors to advance their claims within a defined time period, permits the Receiver to review and determine claims in an orderly manner, and provides a

²³ See for example: the [Claims Adjudication Process Order](#) of Chief Justice Morawetz dated January 26, 2024 in the Receivership Proceeding of *Bridging Finance Inc., et al*; [Creditor Claims Procedure Order](#) of Justice Hainey dated June 30, 2017 in the Receivership Proceeding of *Crystal Wealth Management System Limited et al*; the [Claims Procedure Order](#) of Justice Conway dated October 6, 2017 in the Receivership Proceeding of *Paramount Equity Financial Corporation et al*; and the [Claims Procedure Order](#) of Justice Osborne dated June 24, 2024 in the Receivership Proceeding of *Antibe Therapeutics Inc.*

²⁴ *Laurentian University of Sudbury*, 2021 ONSC 3885 at paras [30-31](#) [*Laurentian*].

²⁵ *Laurentian* at para [32](#).

fair mechanism for the resolution of disputed claims, including recourse to the Court where necessary.

29. There is sufficient flexibility for the Receiver to react to circumstances as they arise throughout the Claims Process.
30. Further, the proposed Claims Bar Date is scheduled for two months after the granting of the Claims Procedure Order. This provides sufficient opportunity for the Receiver to notify the Debtor's creditors and for parties to file a Proof of Claim with the Receiver.
31. The Claims Procedure Order is necessary to permit the Receiver to make a distribution from the proceeds of the Transaction and wind up this receivership proceeding. Absent a claims process, the Receiver is unable to efficiently and fairly distribute the remaining proceeds of the Transaction.

The Ancillary Order Should be Granted

Approval of the Receiver's Activities

32. The Receiver seeks approval of the Second Report and its activities, conduct, and decisions as set out therein. There are good policy and practical reasons to do so. It is common practice for court officers in insolvency proceedings, including receivers, to seek court approval of their reports and their activities as described therein. In *Target Canada*,²⁶ Morawetz RSJ (as he then was) accepted that the approval of a monitor's activities,

²⁶ *Re Target Canada Co*, 2015 ONSC 7574 at paras [12](#) and [22-23](#) [*Target Canada*]. See also *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras [13-14](#).

- (a) allows all stakeholders to move forward confidently with next steps in the proceeding;
 - (b) brings their activities before the court, “allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;”
 - (c) provides certainty and finality, as all parties have an opportunity to raise specific objections and concerns;
 - (d) enables the court to satisfy itself that the monitor’s activities have been conducted prudently and diligently;
 - (e) provides for protection for the monitor not otherwise offered by statute; and
 - (f) protects creditors from delay in distribution that would be caused by the re-litigation of steps taken to date and/or potential indemnity claims by the monitor.
33. The same principles apply in a receivership.²⁷
34. The activities of the Receiver described in the Second Report were undertaken in good faith and in furtherance of the Receiver’s mandate. The activities of the Receiver were necessary to monetize the Property and were undertaken pursuant to the Receiver’s duties and powers as set out in the Appointment Order. The Receiver’s activities should receive this Court’s approval.

²⁷ *Hanfeng Evergreen Inc (Re)*, 2017 ONSC 7161 at para [15](#).

The Fees and Disbursements Should be Approved

35. The Receiver seeks the approval of the following fees and disbursements of itself and of its insolvency counsel, Thornton Grout Finnigan LLP (“**TGF**”) and its real estate counsel, Foglers LLP (“**Foglers**”), as set out in the Second Report:

- (a) fees and disbursements of the Receiver from April 1, 2025 to May 31, 2026 (the “**Fee Approval Period**”), in the amount of \$181,360.50, plus Harmonized Sales Tax (“**HST**”) of \$23,576.87, for a total of \$204,937.37;²⁸
- (b) fees and disbursements of TGF from April 1, 2025 to May 31, 2026, in the amount of \$57,920.96, plus HST of \$7,529.75, for a total of \$65,450.71;²⁹ and
- (c) fees and disbursements of Foglers from April 1, 2025 to May 31, 2026, in the amount of \$31,417.01, plus HST of \$4,084.22, for a total of \$35,501.23.³⁰

36. In *Laurentian*, Morawetz CJ accepted that on a motion for fee approval the “overriding principle” is reasonableness. The Court should not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of the professional services rendered may not be instructive when viewed in isolation. The focus should be on what was accomplished, and not how much time it took.³¹

²⁸ Second Report at [para 33](#) and Fee Affidavit of Bryan Tannenbaum sworn on June 10, 2026 at Appendix “[M](#)” to the Second Report, Tab 2 of the Motion Record.

²⁹ Second Report at [para 34](#) and Fee Affidavit of Derek Harland sworn on June 11, 2026 at Appendix “[N](#)” to the Second Report, Tab 2 of the Motion Record.

³⁰ Second Report at [para 35](#) and Fee Affidavit of Joseph Fried affirmed on June 11, 2026 at Appendix “[O](#)” to the Second Report, Tab 2 of the Motion Record.

³¹ *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para [45](#).

37. The following factors provide guidance regarding evaluating the quantum of fees:³²
- (a) the receiver's knowledge, experience and skill;
 - (b) the diligence and thoroughness displayed;
 - (c) the responsibilities assumed;
 - (d) the results of the receiver's efforts; and
 - (e) the cost of comparable services when performed in a prudent and economical manner.
38. The fees were necessarily incurred in connection with the Receiver's duties under the Appointment Order. The fees incurred during the Fee Approval Period include fees in respect of, among other things:
- (a) preparing materials for the motion to approve, among other things, the AVO;
 - (b) preparing for and attending the motion to approve the AVO;
 - (c) closing the Transaction following the granting of the AVO;
 - (d) extensive review of subsequent encumbrances registered on title to the Real Property to determine whether there were valid and enforceable charges and/or liens against the Real Property;

³² *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at para [14](#).

- (e) preparing legal opinions with respect to the Notice and associated writ and the Charge;
- (f) correspondence with stakeholders, including counsel for the parties who registered the subsequent encumbrances;
- (g) completion of administrative matters within the receivership proceeding; and
- (h) developing the Claims Procedure Order and preparing materials in respect of this motion.³³

39. It is reasonable in the circumstances to approve the fees and disbursements of the Receiver and its counsel. The Receiver has successfully negotiated and closed the Transaction, which provided substantial recoveries for the Debtor's estate and its creditors. It has completed a review of possible priority claims and determined that there are no claims in priority to unsecured creditors. The Receiver is now ready to proceed with the Claims Process to determine the universe of claims that are entitled to a distribution from the proceeds of the Transaction.

40. The Receiver respectfully submits that the Receiver's fees and disbursements, as well as those of its counsel, during the Fee Approval Period are reasonable in the circumstances and should be approved.

³³ Second Report at [para 13](#), Tab 2 of the Motion Record.

PART V - RELIEF REQUESTED

41. For all the foregoing reasons, the Receiver requests that this Court grant an Order substantially in the form of the draft Claims Procedure Order located at [Tab 3](#) of the Motion Record and the draft Ancillary Order located at [Tab 4](#) of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of June, 2026.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [Bank of Nova Scotia v Diemer](#), 2014 ONCA 851.
2. [Canwest Global Communications Corp.](#), 2011 ONSC 2215.
3. [Claims Adjudication Process Order](#) of Chief Justice Morawetz dated January 26, 2024 in the Receivership Proceeding of *Bridging Finance Inc., et al.*
4. [Claims Procedure Order](#) of Justice Conway dated October 6, 2017 in the Receivership Proceeding of *Paramount Equity Financial Corporation et al.*
5. [Claims Procedure Order](#) of Justice Hainey dated June 30, 2017 in the Receivership Proceeding of *Crystal Wealth Management System Limited et al.*
6. [Claims Procedure Order](#) of Justice Osborne dated June 24, 2024 in the Receivership Proceeding of *Antibe Therapeutics Inc.*
7. [Hanfeng Evergreen Inc \(Re\)](#), 2017 ONSC 7161.
8. [Laurentian University of Sudbury](#), 2022 ONSC 2927.
9. [Laurentian University of Sudbury](#), 2021 ONSC 3885.
10. [Re Nortel Networks Corporation et al](#), 2017 ONSC 673.
11. [Re Target Canada Co](#), 2015 ONSC 7574.
12. [Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.](#), 2019 ONCA 508.

I certify that I am satisfied as to the authenticity of every authority.

Date June 18, 2026



Derek Harland

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, RSC 1985, c B-3.

Section 243

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2);
or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Courts of Justice Act, RSO 1990, c C.43.

Section 101

Injunctions and receiver

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

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HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC. - and

CBJ – FORT ERIE HILLS INC.

Applicant

Respondent

Court File No. CV-24-00730993-00CL

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

Proceedings commenced at Toronto, Ontario

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