

Court/Estate File No.: BK-20-02675288-0031
Court File No. 31-2675288

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF
2505243 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

PROPOSAL TRUSTEE'S FACTUM

September 26, 2025

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PART I. OVERVIEW

1. This is a motion by KSV Restructuring Inc., in its capacity as the proposal trustee (the “**Proposal Trustee**”) of 250243 Ontario Limited (the “**Company**”), for approval of certain activities and for its discharge. The Proposal Trustee is not aware of any opposition to this motion.

2. More particularly, the Proposal Trustee seeks an Order:

- (a) approving the treatment of the remaining PGH Employee Litigation Funds (as defined in the Ninth Report to the Court dated August 13, 2025 (the “**Ninth Report**”));
- (b) approving the Final Distribution (as defined in the Ninth Report);
- (c) approving the Proposal Trustee’s receipts and disbursements;
- (d) approving the Ninth Report and the activities described therein;
- (e) approving the fees of the Proposal Trustee and its counsel;
- (f) discharging the Proposal Trustee upon completion of the filing of a discharge certificate with this Court; and
- (g) releasing the Proposal Trustee from liability save and except for any gross negligence or wilful misconduct.

PART II. FACTS

A. *Background*

3. The facts relevant to this motion are briefly summarized below and are more fully set out in the Ninth Report.

4. On September 24, 2020, the Company filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”).¹

5. When it filed the NOI, the Company was engaged in litigation in this Court (the “**PGH Litigation**”) against Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, “**PGH**”).²

6. On July 5, 2021, the Court issued a decision in the PGH Litigation (the “**Decision**”) which, among other things, ordered PFH to pay to the Proposal Trustee:

(a) “reliance damages” in the net amount of \$6,388,645.07, being \$7,124,524.92 less \$735,879.85 by way of set-off for damages owed to PGH (the “**PGH Litigation Funds**”); and

(b) \$2.063 million in employee compensation damages (the “**PGH Employee Litigation Funds**”), being an estimate of the amount of termination pay owing to the Company’s former employees (the “**Former Employees**”). The

¹ Ninth Report at ¶1.0(1).

² Ninth Report at ¶1.0(3).

PGH Employee Litigation Funds do not form part of the Company's estate and are not available for distribution to the Company's other creditors.³

7. PGH ultimately paid the amounts ordered pursuant to the Decision to the Proposal Trustee.⁴

8. On August 16, 2021, the requisite majority of the Company's creditors approved the Company's proposal (the "**Proposal**").⁵

9. The Proposal was approved by Order of this Court made August 30, 2021.⁶

10. After the Proposal was approved, the Proposal Trustee developed a claim process for the PGH Employee Litigation Funds (the "**Claims Process**").⁷

11. The Claims Process was approved by this Court on August 31, 2023.⁸

12. The Proposal Trustee conducted and completed the Claims Process, including by making payments to the Former Employees as particularized in the Ninth Report.⁹

B. PGH Employee Litigation Funds

13. After the payment of all the PGH Employee Litigation Funds to Former Employees, the Proposal Trustee continues to hold: (a) Unclaimed Payments (as defined below) and

³ Ninth Report at ¶1.0 (5).

⁴ Ninth Report at ¶1.0(10).

⁵ Ninth Report at ¶1.0(11).

⁶ Ninth Report at ¶1.0(11).

⁷ Ninth Report at ¶3.0(4).

⁸ Order dated August 31, 2023, p. 58 of the Proposal Trustee's Motion Record ("**PTMR**").

⁹ Ninth Report at ¶3.0.

(b) a surplus of \$55,124 (plus accrued interest). The Proposal Trustee seeks approval of its proposed treatment of these funds, each as detailed immediately below.

1. Some Former Employees did not claim their payment

14. 21 payments to Former Employees, totalling approximately \$83,000, have not cleared the Proposal Trustee's bank account (the "**Unclaimed Payments**").¹⁰

15. The Proposal Trustee recommends that it be authorized and directed to pay the Unclaimed Payments to Cavalluzzo LLP ("**Cavalluzzo**"), the representative counsel for the Former Employees, who will make reasonable best efforts to locate each Former Employee and pay their respective payment to them.¹¹

16. If Cavalluzzo is unable to locate the Former Employees who are owed Unclaimed Payments within one year after receiving the Unclaimed Payments, then the Proposal Trustee recommends that the remaining Unclaimed Payments are transferred by Cavalluzzo to the Office of the Superintendent of Bankruptcy.¹²

2. Surplus of the PGH Employee Litigation Funds

17. Following the completion of the Claims Process, there is a surplus balance of \$55,124 (plus accrued interest) from the PGH Employee Litigation Funds (the "**Surplus**").¹³

¹⁰ Ninth Report at ¶3.0(6)(m).

¹¹ Ninth Report at ¶3.0(6)(m).

¹² Ninth Report at ¶3.0(6)(m).

¹³ Ninth Report at ¶3.0(7).

18. Of this surplus balance, \$5,000 plus HST is proposed to be transferred to Cavalluzzo for its estimated future costs incurred to locate and communicate with certain Former Employees in respect of Unclaimed Payments.¹⁴

19. The remainder of the surplus balance (approximately \$49,474 plus accrued interest) must be returned to PGH in accordance with the Decision.¹⁵

C. *The Proposal Trustee's activities and fees*

20. As detailed below and in the Ninth Report, the Proposal Trustee has undertaken various activities to advance and conclude its mandate, with the advice and involvement of its counsel.

21. Accordingly, the Proposal Trustee seeks approval of its activities as described in the Ninth Report, including the receipts and disbursements, and approval of its fees and the fees of its counsel.

D. *The Proposal Trustee is now ready to make a final distribution to creditors*

22. The Proposal Trustee determined the claims for distribution to the Company's creditors, as detailed in Appendix "G" of the Ninth Report.

23. To date, the Proposal Trustee has distributed approximately \$5 million to creditors, representing a recovery of approximately 50% of admitted creditor claims.¹⁶

¹⁴ Ninth Report at ¶3.0(7).

¹⁵ Ninth Report at ¶3.0(7).

¹⁶ Ninth Report at ¶4.0(2).

24. The Proposal Trustee currently has approximately \$553,000 on hand. The Proposal Trustee recommends that it be authorized and directed to make a final distribution in the amount of \$510,000 (subject to minor adjustments to account for, among other things, accrued interest) (the “**Final Distribution**”), which represents the balance of funds on hand net of the Fee Accrual (as defined and explained below).¹⁷

PART III. ISSUES

25. The issues on this motion are whether this Court should:

- (a) approve the treatment of the Unclaimed Payments and Surplus;
- (b) approve the Final Distribution to creditors;
- (c) approve the activities of the Proposal Trustee as set out in the Ninth Report, including whether to approve the receipts and disbursements;
- (d) approve the fees of the Proposal Trustee and its counsel;
- (e) discharge the Proposal Trustee upon the filing of a discharge certificate with this Court; and
- (f) release the Proposal Trustee from any and all liability in any way arising from its capacity as Proposal Trustee save and except for any gross negligence or wilful misconduct.

¹⁷ Ninth Report at ¶¶4.0(3) and (4).

PART IV. LEGAL ARGUMENT

A. *The Court should approve the treatment of Unclaimed Payments, the Surplus, and the Final Distribution*

1. Unclaimed Payments

26. The Proposal Trustee has attempted to locate and pay these Former Employees without success.

27. The Proposal Trustee believes that Cavalluzzo, as court-appointed representative counsel to the Former Employees,¹⁸ is well-placed to identify and pay the Former Employees who are the rightful recipients of the 21 Unclaimed Payments. The modest compensation of Cavalluzzo (from the Surplus) for their future costs to locate and pay these Former Employees is fair and reasonable in the circumstances.¹⁹

2. Surplus

28. The remainder of the Surplus must be returned to PGH in accordance with the Decision.²⁰

3. Final Distribution

29. The Proposal Trustee is also prepared to make the Final Distribution, less an accrual of \$35,000, excluding disbursements and HST, which represents the Trustee's and its counsel's estimated costs of the Ninth Report, this motion, effecting the Final Distribution, and concluding the Proposal Trustee's mandate (the "**Fee Accrual**").²¹

¹⁸ Appendix "D" to the Ninth Report, p. 61, PTMR.

¹⁹ Ninth Report at ¶6(l)(m)

²⁰ Ninth Report at ¶7.

²¹ Ninth Report at ¶6.1(4).

30. If the Final Distribution is approved, the Company's creditors' recovery will rise to just under 55%, which exceeds the estimate of 44% when the Proposal was approved.²²

4. Summary

31. This Court has the jurisdiction to authorize the Proposal Trustee to make the transfer of Unclaimed Payments, Surplus, and Final Distribution pursuant to s. 243(1) of the BIA, which provides that a court appointed officer may "take any other action that the court considers advisable" if just or convenient to do so. Section 243(1)(c) has been interpreted broadly and found to grant courts jurisdiction to do what "justice dictates" and "practicality demands".²³ Section 243 applies to Proposal Trustees.²⁴

32. In this case, the Proposal Trustee's proposed treatment of the Unclaimed Payments, Surplus, and Final Distribution is fair, reasonable, and cost-effective. No party has raised any opposition to these recommendations.

B. The Court should approve the Ninth Report and the activities therein

33. The Proposal Trustee seeks approval of its activities as set out in the Ninth Report, including its receipts and disbursements described therein. The Proposal Trustee's activities include:

²² Ninth Report at ¶4.0(4).

²³ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, at ¶¶52 and 57.

²⁴ s.66(1) of the BIA.

- (a) conducting the Claims Process, including correspondence with counsel for PGH, the Former Employees, and the Proposal Trustee in respect of the Claims Process;
- (b) determining the claims of the Company's creditors;
- (c) reviewing claims against the Company;
- (d) making three interim distributions to the Company's creditors;
- (e) responding to inquiries from the Company's creditors regarding the interim distributions;
- (f) remitting the standard levy payable to the Office of the Superintendent of Bankruptcy;
- (g) corresponding with the Company in respect of the Proposal; and
- (h) maintaining the Proposal Trustee's website in respect of this matter.²⁵

34. The Court has the jurisdiction to approve the activities of a court-appointed officer. Where the officer has demonstrated that it has acted reasonably, prudently and not arbitrarily, a court may approve its activities, receipts, and disbursements, as set out in its report.²⁶

²⁵ Ninth Report at ¶5.0.

²⁶ *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855 at ¶54, citing *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Ont. Gen. Div.) at ¶¶3-5.

35. All activities of the Proposal Trustee described in the Report, and the Proposal Trustee's handling of receipts and disbursements, were reasonable and undertaken in good faith and in the interest of all stakeholders pursuant to the Proposal Trustee's duties and powers set out in this Court's orders.

C. *The Court should approve the fees and disbursements of the Proposal Trustee and its counsel*

36. The fees and disbursements of the Proposal Trustee, as set out in the Ninth Report, are fair and reasonable under the circumstances and at rates consistent with those of other Toronto accounting firms providing insolvency and restructuring services.²⁷

37. In evaluating the professional and legal fees of court appointed officers, the standard to be applied is whether the compensation sought is holistically "fair and reasonable", with an emphasis on the value provided and what is accomplished by the Proposal Trustee and its counsel.²⁸

38. The Proposal Trustee has reviewed the fees and disbursements of its counsel as set out in the Report and has confirmed that the services reflected therein have been duly authorized and duly rendered and are reasonable in the Trustee's opinion.²⁹

39. Based on the foregoing activities and the results achieved in this matter, the Proposal Trustee's fees, and those of its counsel, should be approved by this Court.

²⁷ Ninth Report at ¶¶6.1(6), 6.2(6).

²⁸ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at ¶44-45 and *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400, at ¶53.

²⁹ Ninth Report at ¶6.1(6)

D. The Court should discharge the Proposal Trustee and approve the release of the Proposal Trustee

40. As the Proposal Trustee's administration is substantially complete, it is seeking an order discharging it as Proposal Trustee and releasing it from liability, upon the filing by the Proposal Trustee of a discharge certificate confirming that it has: (1) paid the PGH Employee Litigation Funds as set out above, and (2) completed the Final Distribution, with the provision that the Proposal Trustee may perform such incidental duties as may be required by it as Proposal Trustee to complete its obligations pursuant to its appointment as Proposal Trustee.

41. This Court has statutory discretion to discharge a Court-appointed officer upon the completion of its mandate and to grant the release sought. When exercising such jurisdiction, this Court has held that a release in the form provided by the Proposal Trustee, with "standard carve outs" for gross negligence or wilful misconduct, "should issue", provided that there is no evidence of improper conduct or negligence on the part of the court appointed officer.³⁰

42. In this case, there has been no claim of any improper or negligent conduct on the part of the Proposal Trustee, which has administered its mandate in good faith. As such, the Court should grant the discharge sought by the Proposal Trustee, which contemplates that the discharge shall be effective upon the filing of the discharge certificate, as well as the customary form of release set out in the proposed form of Order.

³⁰ *Pinnacle v. Kraus*, 2012 ONSC 6376, at ¶47, *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127 at ¶47.

PART V. ORDER REQUESTED

43. An Order substantially in the form proposed in Tab 3 of the Proposal Trustee's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of September, 2025.



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Lawyers for the Proposal Trustee

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#).
2. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).
3. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#).
4. *Pinnacle v. Kraus*, [2012 ONSC 6376](#).
5. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#).

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 26, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)

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:

(c) take any other action that the court considers advisable.

Act to apply

66 (1) All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

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