

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

BETWEEN:

CERRUTI INVESTMENTS INC.

Applicant

- and -

2616766 ONTARIO LIMITED

Respondent

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

**FACTUM OF THE RECEIVER
(Approval and Vesting Order and Distribution and Ancillary Relief Order)
Returnable March 11, 2026**

March 8, 2025

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TABLE OF CONTENTS

PART I – INTRODUCTION	1
PART II – SUMMARY OF FACTS.....	4
A. Background to the Transaction	4
B. The Sale Process	5
C. The Transaction	6
D. Laminar Settlement and Distributions	7
E. Settlements with, and Distributions to, the Construction Lien Claimants	8
F. The Receiver’s Reports and Activities	9
G. Fees and Disbursements of the Receiver and its Counsel	9
PART III – ISSUES AND THE LAW	10
A. The AVO Should be Granted.....	10
<i>(i) The Transaction Should be Approved.....</i>	<i>10</i>
<i>(ii) The Assumed Leases Should Continue in Full Force and Effect.....</i>	<i>13</i>
<i>(iii) Sealing of the Confidential Appendix is Appropriate.....</i>	<i>15</i>
B. The Distribution Order Should be Granted.....	16
<i>(i) The Laminar Settlement is Appropriate.....</i>	<i>16</i>
<i>(ii) The Receiver Should Be Authorized to Enter into Settlements with the Construction Lien Claimants on the Basis that They Have Priority over the Junior Mortgages.....</i>	<i>17</i>
<i>(iii) The Distributions are Appropriate</i>	<i>20</i>
<i>(iv) The Receiver’s Reports and Activities Should be Approved.....</i>	<i>21</i>
<i>(v) Approval of the Accounts of the Receiver and its Counsel is Appropriate</i>	<i>22</i>
PART IV – RELIEF REQUESTED.....	25

ADDENDA

SCHEDULE “A” - LIST OF AUTHORITIES

SCHEDULE “B” - STATUTORY REFERENCES

PART I – INTRODUCTION

1. This factum is filed by KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of 2616766 Ontario Limited (the “**Debtor**”), a 53.4-acre industrial property located at 6500 Cantelon Drive in Windsor, Ontario (the “**Real Property**”).¹

2. On September 9, 2025, the Court approved a Sale Process for the Real Property. A robust and competitive Sale Process followed, with eight bidders submitting LOIs and the Receiver and its experienced broker, CBRE, working with the three Leading Bidders to identify the highest and best executable transaction. These efforts culminated in a proposed sale transaction (the “**Transaction**”) between the Receiver, Cerruti Investments Inc. (“**CII**”) and 6500 Cantelon Drive Inc. (the “**Designated Buyer**”).

3. CII is the third ranking mortgagee of the Real Property, owed at least \$17 million as verified by the Receiver. The Transaction is structured as a credit bid of the CII Mortgage that will also see up to \$20.5 million paid for the benefit of the first and second ranking mortgagee, Laminar, as well as up to \$9.5 million being available to Construction Lien Claimants to the extent they hold valid claims that rank in priority to the CII Mortgage (as defined below), as consented to by CII or determined by the Court.² In any event, \$6 million will be available to Construction Lien Claimants with valid and enforceable lien claims, even if the CII Mortgage is determined to rank in priority to the Construction Lien Claims. CII has also agreed to fund the establishment of an Administrative

¹ Capitalized terms used herein and not otherwise defined have the meaning given to them in the [Order \(Appointing Receiver\)](#) of this Court dated April 17, 2025 (the “**Receivership Order**”) or the Third Report of the Receiver dated March 5, 2026 (the “**Third Report**”) [[E987](#)].

² Third Report at 6.1.1 (Purchase Price) [[E1003](#)].

Reserve and satisfy certain other liabilities to the extent they cannot be satisfied from the Receiver's cash on hand.

4. The Receiver now brings this motion seeking two orders: (i) an Approval and Vesting Order (the "**AVO**") to approve the Transaction; and (ii) a Distribution and Ancillary Relief Order (the "**Distribution Order**") that will ensure funds are distributed to creditors with an economic interest in the Transaction as quickly as possible.

5. The proposed AVO, among other things:

(a) approves the Transaction contemplated by the Agreement of Purchase and Sale dated March 4, 2026, between the Receiver, CII and the Designated Buyer (the "**Sale Agreement**");

(b) upon delivery of the Receiver's certificate substantially in the form attached to the proposed AVO, transfers and vests all of the Debtor's right, title and interest in and to the Purchased Assets to the Designated Buyer, free and clear of all claims, other than specified permitted encumbrances;

(c) orders that the Assumed Leases (as defined in the Sale Agreement) shall continue in full force and effect; and

(d) seals the Confidential Appendix to the Third Report.

6. The proposed Distribution Order, among other things:

(a) approves the settlement of the claims held by Laminar in relation to its first and second ranking mortgages registered on title to the Real Property;

- (b) authorizes the Receiver to enter into settlements with the Construction Lien Claimants in full and final settlement of their claims in amounts agreed to by the Receiver, with CII's consent (or, failing such consent, an Order of the Court) (a "**Settled Construction Lien Claim Amount**"), on the basis that such Construction Lien Claims have priority over the Junior Mortgages (as defined below);
- (c) subject to the closing of the Transaction, authorizes the Receiver to make one or more distributions to: (i) Laminar up to its settled claim amounts, plus any additional *per diem* interest, and (ii) the Construction Lien Claimants, up to their corresponding Settled Construction Lien Claim Amount, if any (collectively, the "**Distributions**");
- (d) approves the Second Report of the Receiver dated October 15, 2025 (the "**Second Report**"), and the Third Report, including the Receiver's conduct and activities described therein; and
- (e) approves the fees and disbursements of the Receiver and those of its counsel for the periods set out in the Fee Affidavits (as defined below).

7. Collectively, the proposed relief sought will facilitate the completion of the Transaction and the prompt distribution of proceeds for the benefit of Laminar, CII and the Construction Lien Claimants in accordance with their priority entitlements.

8. For the reasons specified herein and in the Third Report, the Receiver respectfully requests that this Court grant the proposed AVO and Distribution Order.

PART II – SUMMARY OF FACTS

A. Background to the Transaction

9. The Debtor is a single purpose entity whose principal asset is the Real Property, a 53.4-acre industrial lot with 499,263 square feet of net rentable area, comprising four interior rentable suites, three of which are currently occupied by tenants.³

10. The Real Property is subject to six charges/mortgages registered on title:

- (a) two charges in favour of Laminar: (i) a mortgage registered on title on May 16, 2023, in the principal amount of \$13 million, and (ii) a mortgage registered on title on September 7, 2023, in the principal amount of \$4 million (collectively, the “**Laminar Mortgages**”);
- (b) a charge in favour of CII pursuant to a mortgage registered on title on March 16, 2021, in the principal amount of \$22 million (the “**CII Mortgage**”);⁴
- (c) a charge in favour of Fulger Transport Inc. in the principal amount of approximately \$6.6 million registered on title on June 5, 2024 (the “**Fulger Mortgage**”);
- (d) a charge in favour of Tatro Horizons Ltd. in the principal amount of \$450,000 registered on title on September 11, 2024 (the “**Tatro Mortgage**”); and
- (e) a charge in favour of Joe’s Cement Work (2019) Inc. (“**JCW**”) in the principal amount of approximately \$477,000 registered on title on March 27, 2025 (the

³ Third Report at 2.1.1 [[E993](#)].

⁴ The charge in favour of CII was subordinated to Laminar’s charges pursuant to a Postponement, Subordination and Standstill Agreement dated May 10, 2023, and a subordination and standstill agreement dated August 28, 2023.

“**JCW Mortgage**” and, with the Fulger Mortgage and the Tatro Mortgage, the “**Junior Mortgages**”).⁵

11. Ten construction liens are also registered on title to the Real Property. The Court granted a Construction Lien Claims Procedure Order pursuant to which nine parties submitted 10 proofs of claim totaling approximately \$10 million. Following the Receiver’s review, one claim was disallowed in full, leaving a current balance of unresolved Construction Lien Claims of approximately \$9.5 million.⁶

B. The Sale Process

12. On September 9, 2025, the Court granted the Sale Process Order, approving the Sale Process to be undertaken in respect of the Property. In accordance with the terms thereof, the Receiver retained CBRE as its broker in the Sale Process.⁷

13. CBRE launched the Sale Process on October 14, 2025, by distributing an investment summary (the “**Teaser**”) and a form of non-disclosure agreement (“**NDA**”) to its database of 1,925 prospective purchasers, amongst other marketing initiatives. 31 interested parties signed an NDA and were given access to a virtual data room. Eight parties ultimately submitted an LOI by the initial bid deadline of November 22, 2025.⁸

14. Following review of the LOIs, the Receiver invited the top three bidders (the “**Leading Bidders**”) to submit improved LOIs by December 10, 2025. Two of the Leading Bidders submitted

⁵ Third Report at 3.1.1 [E994].

⁶ Third Report at 3.2.1 and 3.2.3 [E995].

⁷ Third Report at 4.1.3 [E999].

⁸ Third Report at 4.1.5 and 4.2.1 [E999 and E1000].

revised LOIs on that date, while the third Leading Bidder, an entity related to certain shareholders of the Company (the “**Related Party Bidder**”), submitted its revised LOI on December 18, 2025, which the Receiver determined to consider (the “**Revised LOIs**”).⁹

15. The Receiver identified the Related Party Bidder’s Revised LOI as the leading bid. From late December 2025 through early February 2026, the Receiver negotiated with the Related Party Bidder to address outstanding issues and document a definitive agreement. On February 9, 2026, the Related Party Bidder advised the Receiver that its equity partner had withdrawn, and it could no longer proceed.¹⁰

16. Following the Related Party Bidder’s withdrawal, the Receiver resumed negotiations with CII, whose Revised LOI had been identified as the next best available bid and was being advanced by the Receiver as a backup bid. CII submitted a further revised LOI on February 13, 2026, and the parties finalized the Sale Agreement on March 4, 2026.¹¹

17. On February 13, 2026, Goodmans provided Ventra, a tenant with a right of last refusal to purchase the Real Property (the “**Ventra ROLR**”), with a copy of CII’s final LOI. On February 17, 2026, Ventra conditionally declined to exercise the Ventra ROLR.¹²

C. The Transaction

18. The proposed Transaction contemplates the Designated Buyer acquiring: (i) the Real Property; (ii) the Assumed Leases; (iii) the Assumed Contracts (as defined in the Sale Agreement);

⁹ Third Report at 4.2.2 [E1000].

¹⁰ Third Report at 4.2.4 [E1000].

¹¹ Third Report at 4.2.5 [E1000].

¹² Third Report at 4.3 [E1001]. Ventra has subsequently confirmed to Goodmans that it does not intend to exercise the Ventra ROLR.

(iv) the Debtor's interest in a security deposit held by the City of Windsor; (v) all security and fire detection and suppression equipment at the Real Property to the extent owned by the Debtor; and (vi) the books and records relating to the Real Property solely to the extent that they are in the possession of the Receiver (collectively, the "**Purchased Assets**").¹³

19. The Purchased Assets will be acquired pursuant to the proposed AVO on a "free and clear" and "as is, where is" basis in exchange for a credit bid of the Verified CII Mortgage Amount (being approximately \$17 million) and payment of up to: (i) \$20.5 million on account of the amounts owing to Laminar under the Laminar Mortgages and the Receiver's Borrowings; and (ii) \$9.5 million for the benefit to Construction Lien Claimants to the extent they hold valid and enforceable Construction Lien Claims under the *Construction Act* (Ontario) that rank in priority to the CII Mortgage. \$6 million will be available to the Construction Lien Claimants with valid and enforceable Construction Lien Claims even if the CII Mortgage is determined to rank in priority to the Construction Lien Claims.¹⁴

D. Laminar Settlement and Distributions

20. Laminar holds the first and second ranking mortgages on the Real Property and has also funded the Receiver's borrowings to date. The Receiver and Laminar engaged in good faith negotiations regarding the amounts claimed under the Laminar Mortgages and agreed to a settlement in the amounts of \$14,389,764 and \$4,719,819 (in each case calculated as at February

¹³ Third Report at 6.1.1 (Purchased Assets) [\[E1003\]](#).

¹⁴ Third Report at 6.1.1 (Purchase Price and Minimum Construction Lien Claim Amount) [\[E1003\]](#) and [\[E1005\]](#).

20, 2026) (the “**Laminar Settlement**”). The Laminar Settlement is for approximately \$2.5 million less than the amount asserted as owing by Laminar.¹⁵

21. In the event that the Court approves the proposed Transaction, the Receiver seeks authorization to make distributions to Laminar up to the full amount of the Receiver’s Borrowings and its settled claims, plus per *diem interest* and any legal expenses incurred from and after closing. Laminar’s support for the Transaction is conditional on Court approval of the Laminar Settlement and authorization of distributions to it pursuant to the proposed Distribution Order.¹⁶

E. Settlements with, and Distributions to, the Construction Lien Claimants

22. As discussed above, the Transaction contemplates the payment of \$9.5 million (*i.e.* the face value of the outstanding proofs of claim filed in respect of the Construction Lien Claims) to the Receiver to be used to satisfy the Proven Priority Construction Lien Claims (as defined in the Sale Agreement, but which includes such Construction Lien Claims being agreed or determined to hold priority over the CII Mortgage), with \$6 million being available to fund valid and enforceable Construction Lien Claims under the *Construction Act* (as determined by the Court or settled by the Receiver, with the prior written consent of CII), regardless of whether the CII Mortgage is determined by the Court to rank in priority to the Construction Lien Claims.¹⁷

23. The legal priorities between CII and the Construction Lien Claimants have not yet been agreed to or determined, with both parties asserting priority over the other. CII is pursuing

¹⁵ Third Report at 5.1.2 [E1001].

¹⁶ Third Report at 5.1.4 [E1002].

¹⁷ Third Report at 6.1.1 (Purchase Price and Minimum Construction Lien Claim Amount) [E1004 and E1005].

settlement negotiations with the Construction Lien Claimants, subject to the Receiver's consent to any settlement.¹⁸

F. The Receiver's Reports and Activities

24. The Receiver's activities since the First Report include: (i) developing and carrying out the Sale Process, including negotiating the Transaction; (ii) preparing the Second Report and Third Report; and (iii) arranging for maintenance, security and general upkeep of the Real Property, including addressing the Deficiencies.¹⁹ These activities have been necessary, are consistent with the Receiver's duties and powers granted pursuant to the Receivership Order, have been undertaken efficiently, and are in the interest of the Debtor's stakeholders.

G. Fees and Disbursements of the Receiver and its Counsel

25. The Fee Affidavits provide a comprehensive listing of the accounts sought to be passed, including each account and summaries identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked.²⁰

26. The fees of the Receiver and its counsel total \$262,162.00 and \$662,004.00 (exclusive of costs and taxes), respectively, for the period from on or about August 1, 2025, to February 28, 2026, and August 22, 2025, to February 28, 2026 (the "**Relevant Periods**"), respectively, and are further detailed and summarized in the Third Report and the Fee Affidavits appended thereto.²¹

¹⁸ Third Report at 5.0.2 and 5.3.1 [E1001 and E1002].

¹⁹ Third Report at 8.0.1 [E1009].

²⁰ KSV Fee Affidavit [E1159]; Goodmans Fee Affidavit [E1185].

²¹ Third Report at 9.0.1 [E1010]; KSV Fee Affidavit at 4 [E1160]; Goodmans Fee Affidavit at paras 4-5 [E1186].

27. The fees and disbursements charged by the Receiver and its counsel are consistent with professional market rates in Toronto and are reasonable and appropriate in the circumstances having regard to the scope of work undertaken and the results achieved.²²

PART III – ISSUES AND THE LAW

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

- (a) grant the AVO, among other things: (i) authorizing the Receiver to enter into the Transaction; (ii) ordering that the Assumed Leases shall remain in full force and effect, and (iii) sealing the Confidential Appendices; and
- (b) grant the Distribution Order, among other things: (i) approving the Laminar Settlement; (ii) authorizing the Receiver to enter into settlements with the Construction Lien Claimants, on the basis that they have priority over the Junior Mortgages; (iii) approving the Distributions; (iv) approving the Second Report and the Third Report and activities described therein; and (v) approving the fees and disbursements of the Receiver and Goodmans.

A. The AVO Should be Granted

(i) The Transaction Should be Approved

29. The principles for the Court to consider on a sale approval motion in a receivership are well established. The Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* considered the below factors relating to a sale of assets by a receiver: (i) whether the receiver has made a sufficient

²² KSV Fee Affidavit at para 4 [[E1160](#)]; Goodmans Fee Affidavit at paras 4-5 [[E1186](#)].

effort to get the best price and has not acted improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers are obtained; and (iv) whether there has been any unfairness in the working out of the process.²³ Absent a violation of the *Soundair* principles, the Court should place particular weight on the Court-appointed officer's business judgment and recommendation with respect to a proposed transaction.²⁴

30. The Receiver submits that the Transaction satisfies the *Soundair* principles for the following reasons:

- (a) **The Receiver made a sufficient effort to obtain the best price.** The market for the Real Property was publicly and extensively marketed by CBRE, a broker with deep experience in the Windsor market. 1,925 potential purchasers received the Teaser and the NDA, 31 parties executed an NDA and were given access to the virtual data room, and eight parties submitted bids. The Receiver sought improved bids from the three Leading Bidders.²⁵ After the Related Party Bidder withdrew, the Transaction represented the highest and best bid received in the Sale Process.²⁶
- (b) **The interests of all stakeholders have been considered.** Laminar, the first and second mortgagee, supports the Transaction. CII, both the purchaser and the fulcrum creditor, is likewise supportive.²⁷ The Transaction establishes a fund of \$9,500,000 to satisfy the valid priority lien claims of the Construction Lien

²³ *Royal Bank v. Soundair Corp.* (1991), [83 D.L.R. \(4th\) 76 \(Ont. C.A.\)](#) at para [16](#).

²⁴ *Re Eddie Bauer of Canada* (2009), [57 CBR \(5th\) 241](#) (Ont. S.C.J. [Commercial List]) at para [22](#); *Skyepharm PLC v. Hyal Pharmaceutical Corp.* (1999), [12 C.B.R. \(4th\) 87](#) (Ont. S.C.J. [Commercial List]) at paras [3](#) and [7](#).

²⁵ Third Report at 4.1.5 and 4.2.2 [[E999](#) and [E1000](#)].

²⁶ Third Report at 4.2.5 [[E1000](#)].

²⁷ Third Report at 6.2.1(d), [[E1006](#)].

Claimants, with \$6 million available regardless of their priority vis-à-vis the CII Mortgage.²⁸ The amount of the credit bid component of the Transaction (*i.e.* the Verified CII Mortgage Amount) was extensively reviewed by the Receiver and reported on to the Court and stakeholders, and the Receiver believes it reflects amounts advanced by CII for the benefit of the Debtor, together with interest thereon, and certain additional fees and reimbursable expenses, all calculated in accordance with the relevant loan documentation.²⁹ The tenants at the Real Property will continue in occupancy, with their leases assumed by the Designated Buyer, and Ventra was afforded the opportunity to exercise the Ventra ROLR.³⁰ The Receiver also attempted to complete a transaction with the Related Party Bidder that would have resulted in the most senior of the Junior Mortgages being assumed; ultimately that transaction could not be completed.³¹ The Transaction also contemplates the possibility of the Residual Amount being retained by the Receiver for the benefit of creditors ranking junior to the CII Mortgage, although the Receiver does not presently anticipate there will be a Residual Amount.³² This record establishes that the Receiver considered the interests of all stakeholders throughout the Sale Process as it worked to secure the best available outcome.

- (c) **The Sale Process was efficacious and fair.** The Sale Process was commercially reasonable and conducted by the Receiver and CBRE in accordance with the terms

²⁸ Third Report at 6.1.1 (Purchase Price and Minimum Construction Lien Claim Amount) [E1003 and E1005].

²⁹ Third Report at 5.2 and 6.2.1(c) [E1002 and E1006].

³⁰ Third Report at 6.1.1 (Purchased Assets) and 4.3.2 [E1005 and E1001].

³¹ Third Report at 4.2.4 [E1000].

³² Third Report at 6.1.1 (Residual Amount) [E1005].

of the Sale Process Order.³³ CBRE has extensive experience selling industrial properties in Windsor, is familiar with the Real Property from prior marketing efforts and thoroughly canvassed the market for potential purchasers.³⁴ All potential purchasers were treated fairly and equally, with those executing the NDA granted access to the virtual data room and provided the opportunity to submit an LOI.³⁵ Most significantly, the Transaction represents the highest and best executable transaction identified in the competitive Sale Process.³⁶

31. For these reasons, it is submitted that the *Soundair* principles have been satisfied and that it is appropriate for the Court to approve the proposed Transaction and grant the AVO.

(ii) The Assumed Leases Should Continue in Full Force and Effect

32. The proposed AVO provides that the Assumed Leases shall remain in full force and effect following the closing of the Transaction and restricts tenants at the Real Property from terminating their respective Assumed Leases by reason of, among other circumstances, pre-closing events that are not continuing, the Debtor's insolvency, the receivership proceedings, or the Transaction.³⁷ This Court has previously granted similar relief in other receivership proceedings and it is routinely granted in proceedings under the *Companies' Creditors Arrangement Act*.³⁸

³³ Third Report at 6.2.1(b) [E1006].

³⁴ Third Report at 6.2.1(a) [E1006].

³⁵ Third Report at 4.1.5 [E1000].

³⁶ Third Report at 6.2.1(b) and 6.2.1(c) [E1006].

³⁷ For clarity, no assignment related relief is being sought as each of the Assumed Leases are freely assignable to the Designated Buyer.

³⁸ See e.g., *Bank of Montreal v HOHS Drugs Limited and Huan Dang*, (June 11, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-24-00721374-00CL ([Approval and Vesting Order \(Manning Transaction\)](#)) at paras 11 – 12; *Farm Credit Canada v. Global Food and Ingredients Inc. and GFI Brands Inc.*, (November 12, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-24-00720526-00CL ([Approval and Vesting Order \(Lajord Property\)](#)) at para 11; *Re Claire's Stores Canda Corp.*, (September 16, 2025) Ont. S.C.J. [Commercial List] Court File No. CV-25-00748871-00CL ([Approval and Vesting Order](#)) at para 13.

33. The broad discretion contained in subsection 243(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) provides the statutory basis for this relief.³⁹ The Supreme Court of Canada has held that the “very expansive wording” of paragraph 243(1)(c) of the BIA has been interpreted as giving judges “the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise” in the context of a Court-ordered receivership.⁴⁰ This broad jurisdiction permits the Court “to do not only what ‘justice dictates’ but also what ‘practicality demands’, including granting relief that is “incidental and ancillary” to the exercise of a Receiver’s power to sell property.⁴¹

34. The relief sought is ancillary to, and necessary for, the completion of the Transaction. As a single-purpose real estate holding entity, the Debtor’s sole business is leasing the Real Property to tenants.⁴² Accordingly, the Assumed Leases are key Purchased Assets under the Transaction. Consistent with the purpose of section 243 of the BIA, the proposed relief facilitates the Transaction and enhances value by providing certainty to the Purchaser that the Assumed Leases cannot be terminated as a result of various pre-Closing matters, such as the Debtor’s insolvency. For these reasons, the Receiver respectfully submits that this Court should grant the requested relief ordering that the Assumed Leases remain in full force and effect.

35. The tenants have been served with the Receiver’s motion.⁴³ The Receiver is not aware of any objections from the tenants with respect to the Transaction, including the foregoing relief.

³⁹ R.S.C., 1985, c. B-3, s. 243(1).

⁴⁰ *Peace River Hydro Partners v Petrowest Corp*, [2022 SCC 41](#) at para [148](#), citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#) at para [20](#).

⁴¹ *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at paras [57](#) and [72](#); *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc.*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176](#) (Ont Ct J (GD)) at para [16](#).

⁴² Third Report at 2.1.1 [[E993](#)].

⁴³ Lawyer’s Certificate of Service dated March 5, 2026 [[E1290](#)].

(iii) *Sealing of the Confidential Appendix is Appropriate*

36. The Receiver is seeking to seal the Confidential Appendix, an offer summary containing information relating to the bids submitted by the Leading Bidders. In the event the proposed Transaction fails to close, disclosure of this information would harm the integrity of, and the Receiver's efforts to maximize value in, a subsequent competitive marketing process for the Real Property. The proposed sealing will facilitate the objective of maximizing value by ensuring that this information is maintained as confidential until the proposed Transaction closes.

37. This Court has discretion pursuant to section 137(2) of the *Courts of Justice Act* to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.⁴⁴ The Supreme Court of Canada held that three prerequisites must be established to obtain a sealing order: (i) court openness poses a serious risk to an important public interest; (ii) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (iii) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.⁴⁵ Courts have also acknowledged that there is a public interest in maximizing recoveries in an insolvency that goes beyond the individual case and that disclosure of information could undermine the integrity of a sale process.⁴⁶

⁴⁴ [R.S.C. 1990, c. C.43, s. 137\(2\)](#).

⁴⁵ *Sherman Estate v Donovan*, [2021 SCC 25](#) at para [38](#).

⁴⁶ *Danier Leather Inc, Re*, [2016 ONSC 1044](#) at para [84](#); *Elleway Acquisitions Ltd v 4358376 Canada Inc.*, [2013 ONSC 7009](#) at para [48](#).

38. The Receiver respectfully submits that the benefits of sealing the Confidential Appendix greatly outweigh any negative effects that result from temporarily limiting public access to the Confidential Appendix and, as such, the sealing relief sought is appropriate in the circumstances.

B. The Distribution Order Should be Granted

(i) The Laminar Settlement is Appropriate

39. As discussed above, subsection 243(1) of the BIA provides the Court with the broadest possible mandate to authorize the Receiver to take any action the Court considers advisable. Courts routinely authorize receivers and other Court-appointed officers to enter into settlement agreements in insolvency proceedings where the proposed settlement is fair and reasonable, provides benefits to other stakeholders, is consistent with the purpose and spirit of the BIA and is otherwise consistent with the *Soundair* principles.⁴⁷

40. The proposed Laminar Settlement is the product of good faith, arm's length negotiations, results in a reduction of approximately \$2.5 million from Laminar's asserted claim for the benefit of the receivership estate, and avoids the cost, risk and uncertainty of a Court determination of potential disputes. The Laminar Settlement has been consented to by CII in connection with the Transaction and eliminates the ongoing accrual of interest by facilitating a timely distribution to Laminar.⁴⁸

41. The Receiver submits that the Laminar Settlement is fair, reasonable and appropriate in the circumstances and should be approved.

⁴⁷ See e.g., *Ontario Securities Commission v. Bridging Finance Inc.*, [2025 ONSC 539](#) at paras [13-17](#).

⁴⁸ Third Report at 5.1.2 and 5.1.3 [[E1001](#) and [E1002](#)].

(ii) ***The Receiver Should Be Authorized to Enter into Settlements with the Construction Lien Claimants on the Basis that They Have Priority over the Junior Mortgages***

42. As discussed above, the Transaction contemplates payment of \$9.5 million to the Receiver for the benefit of the Construction Lien Claimants to the extent of their Proven Priority Construction Lien Claims. The Distribution Order will also authorize the Receiver, with CII's consent (or further order of the Court), to enter into settlement agreements with the Construction Lien Claimants and make distributions up to their Settled Construction Lien Claim Amount.

43. Paragraph 16 of the Construction Lien Claims Procedure Order authorizes the Receiver to settle the Construction Lien Claims, but requires Court approval or the prior written consent of the relevant mortgagee if such settlement is on the basis of the Construction Lien Claim holding priority over any mortgage registered on title to the Real Property.⁴⁹ The settlements of the Construction Lien Claims will be on the basis that they hold priority over the Junior Mortgages, and it is therefore necessary to address the priority of these claims.

44. Based on its review of the proofs of claim to date, the Receiver understands that each of the unresolved Construction Lien Claims was timely preserved and perfected in accordance with the requirements of the *Construction Act*.⁵⁰

45. Subsection 78(1) of the *Construction Act* establishes that construction liens generally take priority over mortgagees, subject only to the limited and specific exceptions expressly set out in section 78 of the *Construction Act*. None of the specified exceptions apply to the Junior Mortgages.

⁴⁹ [Construction Lien Claims Procedure Order](#) at para 16.

⁵⁰ Third Report at 7.1.5 [E1007].

46. In particular, subsection 78(6) of the *Construction Act* makes clear that advances under a registered subsequent mortgage (as each of the Junior Mortgages are) do not obtain priority over liens arising from an improvement if, at the time when the advance was made, there was a preserved or perfected lien against the improvement.⁵¹

Section 78(6) – General priority against subsequent mortgages

– Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner’s interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

47. All of the Junior Mortgages were registered at a time when there was a preserved or perfected Construction Lien Claim against the Real Property registered on title. In particular: (i) the Fulger Mortgage and Tatro Mortgage were registered subsequent to certain of the Construction Lien Claims, and prior to certain other Construction Lien Claims; and (ii) the JCW Mortgage was registered after all of the Construction Lien Claims.⁵²

48. In the absence of any applicable statutory exception under the *Construction Act*, the unresolved Construction Lien Claims rank in priority to the Junior Mortgages.

49. In addition to the foregoing, subsection 78(6) of the *Construction Act* provides that a mortgage can only have priority over construction liens to the extent of any *advance* made in

⁵¹ *Construction Act*, ss [78\(1\)](#); *Ontario Wealth Management Corporation v. Sica Masonry and General Contracting Ltd.*, [2014 ONCA 500](#) at para [19](#).

⁵² Third Report at 7.2.3 [\[E1007\]](#).

respect of the mortgage.⁵³ It is established law that there is no advance made in respect of a mortgage within the meaning of subsection 78(6), and thus no potential priority over lien claimants, where the mortgage is provided as a “collateral mortgage”, *i.e.* as security for a guarantee of a debt or prior indebtedness.⁵⁴

50. With a limited potential exception, each of the Junior Mortgages is a collateral mortgage that did not involve an advance to the Debtor:

- (a) the majority of the amounts asserted as owing under the Fulger Mortgage relate to amounts borrowed by entities other than the Debtor and which are asserted to have been guaranteed by the Debtor and secured by the Fulger Mortgage;
- (b) the entirety of the amount asserted as owing under the Tatro Mortgage relates to a guarantee by the Debtor of a loan given to certain of the Debtor’s shareholders; and
- (c) the entirety of the amount asserted as owing under the JCW Mortgage relates to prior indebtedness – in particular, to a promissory note given by the Debtor and a shareholder of the Debtor, as co-debtors, dated December 1, 2023, regarding work previously completed by JCW at the Real Property and in respect of which JCW obtained an order on March 18, 2025, authorizing it to register the JCW Mortgage.⁵⁵

⁵³ *Construction Act*, ss [78\(6\)](#).

⁵⁴ See e.g., *XDG Ltd. v. 1099606 Ontario Ltd.*, [2002 CanLII 22043](#) (Ont S.C.J.) at paras [94-96](#), aff’d [2004 CanLII 15997](#) (Ont S.C.J. (Div Ct)); *Jade-Kennedy Development Corporation (Re)*, [2016 ONSC 7125](#) at para [61](#); *Re Clarkson Road Developments GP Inc. et al.*, [2024 ONSC 4625](#) at paras [76 -77](#); *Dal Bianco v. Deem Management Services et al.*, [2020 ONSC 1500](#) at paras [31-37](#), aff’d [2021 ONCA 859](#).

⁵⁵ Third Report at 7.2.5 [[E1008](#)].

51. For the foregoing reasons, the Construction Lien Claims have priority over the Junior Mortgages, and it is appropriate to authorize the Receiver to settle the Construction Lien Claims on such basis.

(iii) ***The Distributions are Appropriate***

52. In the event that the proposed Transaction is approved by the Court, the Receiver seeks authorization to make the Distributions. Approval of the Distributions is being sought now to enable expeditious distributions following closing of the Transaction for the benefit of creditors, as well as to stop the ongoing accrual of interest and the incurrence of additional reimbursable legal fees under the Laminar Mortgages.⁵⁶

53. Courts commonly approve distributions as part of a sale approval motion in receivership proceedings.⁵⁷

54. It is reasonable and appropriate for the Court to exercise its discretion and approve the proposed Distributions at this juncture for the following reasons:

- (a) the Receiver's counsel provided the Receiver a customary opinion confirming the validity and enforceability of the Laminar Mortgages and other security granted by the Debtor to Laminar;⁵⁸

⁵⁶ Third Report at 7.1.3 [E1007].

⁵⁷ See e.g., *Dorr Capital Corporation v. Highview Building Corp Inc.*, (September 29, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00698632-00CL ([Endorsement of Justice Conway](#)) at para 4; *MCAP Financial Corporation v. Vandyk-Backyard Kings Mill Limited et al.*, (July 15, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-23-710267-00CL ([Endorsement of Justice Black](#)) at para 18.

⁵⁸ Third Report at 7.1.4 [E1007].

- (b) timely distributions to Laminar will eliminate the ongoing accrual of interest on amounts owing to Laminar, which is approximately \$167,000 per month, as well as the prospect of additional legal fees;⁵⁹
- (c) any delay in making timely Distributions to Laminar would result in prejudice to CII, as fulcrum creditor;⁶⁰
- (d) the ability to make timely Distributions to Construction Lien Claimants should facilitate efforts to settle the Construction Lien Claims and, in any event, is fair and reasonable in circumstances where Construction Lien Claimants have, in some cases, been waiting several years to be paid amounts owing to them; and
- (e) the proposed Distributions are consistent with relevant priorities.

55. Accordingly, the Receiver submits that it is appropriate for the Court to approve the proposed Distributions.

(iv) The Receiver's Reports and Activities Should be Approved

56. This Court has the inherent jurisdiction to approve the activities of a court-appointed receiver.⁶¹ There are good policy and practical reasons for this including that Court approval: (i) allows the court officer to move forward with the next steps in the proceedings; (ii) brings the court officer's activities before the Court; (iii) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified; (iv) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner; (v) provides protection

⁵⁹ Third Report at 7.1.3 [E1007].

⁶⁰ Third Report at 5.1.4 [E1002].

⁶¹ *Bank of America Canada v Willann Investments Ltd.*, [1996 CanLII 2782](#) (Ont C.A.).

for the court officer not otherwise provided by the applicable legislation; and (vi) protects creditors from the delay in distribution that would be caused by re-litigation of steps taken to date and potential indemnity claims by the court officer.⁶²

57. This Court has held that the above-noted observations apply to the activities of a court-appointed receiver because the activities of any court officer “can and should be considered by the Court as against the mandate, powers and authority of that officer.”⁶³

58. In this case, all the Receiver’s activities were necessary and undertaken in good faith pursuant to the Receiver’s duties and powers as set out in the Receivership Order, and in each case were in the best interests of the Debtor’s stakeholders generally. In addition, the Second Report and the Third Report were each served on the service list of these proceedings and posted on the Receiver’s website for review by the Debtor’s creditors and other stakeholders. No adverse comments have been received in respect of the Receiver’s conduct to date.⁶⁴

59. Accordingly, the Receiver respectfully submits that the Second Report, the Third Report and activities described therein ought to be approved.

(v) *Approval of the Accounts of the Receiver and its Counsel is Appropriate*

60. This Court’s jurisdiction to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: “the Receiver and its legal counsel shall pass their

⁶² *Target Canada Co (Re)*, [2015 ONSC 7574](#) at para [12](#); *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras [13–14](#) [*Laurentian*].

⁶³ *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para [66](#).

⁶⁴ For clarity, Vipen Chauser, a shareholder of the Debtor, did deliver an affidavit sworn October 23, 2025, responding to certain elements of the Receiver’s review of the amounts owing under the CII Mortgage.

accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”⁶⁵

61. The overarching test on a motion to pass accounts is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the Receiver and its counsel.⁶⁶ As stated by this Court in *Laurentian*, “[t]he Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”⁶⁷ Rather, as the Court of Appeal for Ontario stated in *Diemer*, “[t]he focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took.”⁶⁸

62. The Receivership Order provides that the Receiver and its counsel “shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of the Receivership Order, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts”.⁶⁹ The evidence is that the Receiver and its counsel charged standard hourly rates consistent with relevant market rates.⁷⁰ Although this does not oust the need for the Court to consider whether the fees claimed are fair and reasonable, courts have held that where standard rates have been charged under an order so directing, this is a relevant consideration supporting approval.⁷¹

⁶⁵ [Receivership Order](#) at para 20.

⁶⁶ *Laurentian* at para 9; *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at paras 13–15.

⁶⁷ *Laurentian* at para 9.

⁶⁸ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at para 45 [*Diemer*].

⁶⁹ [Receivership Order](#) at para 19.

⁷⁰ KSV Fee Affidavit at paras 5-6 [[E1160](#)]; Goodmans Fee Affidavit at para 7 [[E1187](#)].

⁷¹ *Diemer* at para 48; *Confectionately Yours Inc (Re)* (2002), 219 DLR (4th) 72 at paras 52–54 (Ont C.A.).

63. The following non-exhaustive factors assist courts in evaluating the quantum of a court-appointed officer's fees: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the court officer's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.⁷²

64. Applying these factors to the present case, the Receiver respectfully submits that its accounts, as well as those of its counsel, should be approved:

- (a) both the Receiver and its counsel have carried out extensive activities during the Relevant Periods, including devoting significant time to addressing the Deficiencies at the Real Property, conducting the Sale Process and negotiating the proposed Transaction, and reviewing and addressing various creditor claim matters, all with a view to maximizing recoveries for the benefit of creditors;⁷³
- (b) the Receiver and its counsel are experienced restructuring professionals who have been integral in these receivership proceedings to date and have at all times demonstrated diligence and thoroughness;

⁷² *Diemer* at para 33; *Laurentian* at para 10.

⁷³ Third Report at 8.0.1 [E1009].

- (c) both the Receiver and its counsel, to the best of their knowledge, charge rates that are comparable to the rates charged by similar firms in the Toronto market for the provision of similar services;⁷⁴ and
- (d) the Receiver and its counsel have sought to ensure that the work required to be performed was undertaken in the most efficient manner possible, including by utilizing consistent core personnel throughout the mandate and by having work performed by junior and/or lower cost professionals to the extent appropriate.⁷⁵

65. Accordingly, for the reasons set out above, consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

PART IV– RELIEF REQUESTED

66. For all of the foregoing reasons, the Receiver respectfully requests that this Court grant the proposed AVO and the proposed Distribution Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of March, 2026.



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⁷⁴ KSV Fee Affidavit at paras 5-6 [E1160]; Goodmans Fee Affidavit at para 7 [E1187].

⁷⁵ See KSV Fee Affidavit at Exhibit “B” [E1183]; Goodmans Fee Affidavit at Exhibit “C” [E1239].

SCHEDULE “A”

LIST OF AUTHORITIES

- 1) *Royal Bank v. Soundair Corp.* (1991), [83 D.L.R. \(4th\) 76 \(Ont. C.A.\)](#)
- 2) *Re Eddie Bauer of Canada* (2009), [57 CBR \(5th\) 241](#) (Ont. S.C.J. [Commercial List])
- 3) *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), [12 C.B.R. \(4th\) 87](#) (Ont. S.C.J. [Commercial List])
- 4) *Bank of Montreal v HOHS Drugs Limited and Huan Dang*, (June 11, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-24-00721374-00CL ([Approval and Vesting Order \(Manning Transaction\)](#))
- 5) *Farm Credit Canada v. Global Food and Ingredients Inc. and GFI Brands Inc.*, (November 12, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-24-00720526-00CL ([Approval and Vesting Order \(Lajord Property\)](#))
- 6) *Re Claire’s Stores Canda Corp.*, (September 16, 2025) Ont. S.C.J. [Commercial List] Court File No. CV-25-00748871-00CL ([Approval and Vesting Order](#))
- 7) *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#)
- 8) *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
- 9) *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc.*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176](#) (Ont Ct J (GD))
- 10) *Sherman Estate v Donovan*, [2021 SCC 25](#)
- 11) *Danier Leather Inc, Re*, [2016 ONSC 1044](#)
- 12) *Elleway Acquisitions Ltd v 4358376 Canada Inc.*, [2013 ONSC 7009](#)
- 13) *Ontario Securities Commission v. Bridging Finance Inc.*, [2025 ONSC 539](#)
- 14) *Ontario Wealth Management Corporation v. Sica Masonry and General Contracting Ltd.*, [2014 ONCA 500](#)
- 15) *XDG Ltd. v. 1099606 Ontario Ltd.*, [2002 CanLII 22043](#) (Ont S.C.J.)
- 16) *Jade-Kennedy Development Corporation (Re)*, [2016 ONSC 7125](#)
- 17) *Re Clarkson Road Developments GP Inc. et al.*, [2024 ONSC 4625](#)
- 18) *Dal Bianco v. Deem Management Services et al.*, [2020 ONSC 1500](#), aff’d [2021 ONCA 859](#)

- 19) *Dorr Capital Corporation v. Highview Building Corp Inc.*, (September 29, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00698632-00CL ([Endorsement of Justice Conway](#))
- 20) *MCAP Financial Corporation v. Vandyk-Backyard Kings Mill Limited et al.*, (July 15, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-23-710267-00CL ([Endorsement of Justice Black](#))
- 21) *Bank of America Canada v Willann Investments Ltd.*, [1996 CanLII 2782](#) (Ont C.A.)
- 22) *Target Canada Co (Re)*, [2015 ONSC 7574](#)
- 23) *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
- 24) *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
- 25) *Re Nortel Networks Corporation et al.*, [2017 ONSC 673](#)
- 26) *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
- 27) *Confectionately Yours Inc (Re)* ([2002](#)), [219 DLR \(4th\) 72](#)

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

Date: March 8, 2026



Signature

SCHEDULE “B”

STATUTORY REFERENCES

BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, c. B-3, as amended

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.

COURTS OF JUSTICE ACT, R.S.C. 1990, c. C.43, as amended

Injunctions and receivers

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.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

CONSTRUCTION ACT, R.S.O. 1990, c. C.30, as amended

Priority over mortgages, etc.

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner’s interest in the premises.

General priority against subsequent mortgages

78 (6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

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

CERRUTI INVESTMENTS INC.
Applicant

-and- **2616766 ONTARIO LIMITED**
Respondent

Court File No: CV-25-00738703-00CL

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

Proceeding Commenced at Toronto, Ontario

**FACTUM OF THE RECEIVER
(Approval and Vesting Order and
Distribution and Ancillary Relief
Order)**

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