

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

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

BETWEEN:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc.
and certain related entities and investment funds)

Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

**SECOND SUPPLEMENTARY MOTION RECORD
(CN Payment Direction)**

November 19, 2025

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Barristers and Solicitors
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Lawyers for the Receiver

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

**IN THE MATTER OF THE RECEIVERSHIP OF
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and certain related entities and investment funds)

Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

SERVICE LIST
(as at November 19, 2025)

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

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

BETWEEN:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc.
and certain related entities and investment funds)

Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

SECOND SUPPLEMENTARY MOTION RECORD

I N D E X

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TAB 1



**Second Supplement to the Third Report
to Court of KSV Restructuring Inc. as
Receiver of 2806401 Ontario Inc. o/a
Allied Track Services Inc.**

November 19, 2025

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COURT FILE NO.: CV-22-00687383-00CL

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

**IN THE MATTER OF THE RECEIVERSHIP OF 2806041 ONTARIO INC. O/A ALLIED
TRACK SERVICES INC., A CORPORATION INCORPORATED UNDER THE LAWS OF
ONTARIO**

**PRICEWATERHOUSECOOPERS INC. (SOLELY IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND MANAGER OF BRIDGING FINANCE INC. AND CERTAIN
RELATED ENTITIES AND INVESTMENT FUNDS)**

APPLICANT

- AND -

2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.

RESPONDENT

**SECOND SUPPLEMENT TO THE THIRD REPORT OF
KSV RESTRUCTURING INC. AS RECEIVER AND MANAGER OF
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.**

November 19, 2025

1.0 Introduction

1. This report (the “Second Supplemental Report”) supplements the Receiver’s Third Report to Court dated July 4, 2023 (the “Third Report”) and the Supplement to the Third Report dated March 11, 2024 (the “Supplemental Report”) and is intended to be read in conjunction with the Third Report and Supplemental Report
2. Unless otherwise stated, capitalized terms used in this Supplemental Report and not otherwise defined have the meanings given to them in the Third Report.

1.1 Purposes of this Second Supplemental Report

1. The purposes of this Second Supplemental Report are to provide:
 - a) the Receiver’s response to CN’s position on the Set-off Disputed Amount set out in the Supplementary Responding Motion Record of CN Railway dated October 8, 2024; and
 - b) an update on the Receiver’s Motion filed July 6, 2023 for an Order directing CN to pay the amount of \$2,501,722 pursuant to the Invoices (the “Invoiced Amount”).

1.2 Currency

1. Unless otherwise noted, all currency references in this Second Supplemental Report are to Canadian dollars.

1.3 Restrictions

1. This Second Supplemental Report is subject to the restrictions set out in Section 1.3 of the Third Report, which are incorporated herein by reference.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/2806401-ontario-inc>.

3.0 Set-off Disputed Amount

1. As set out in the Supplemental Report, on October 5, 2023, CN delivered the CN Responding Record. Pursuant to CN's internal factual investigation, CN's position is that only \$249,138 of the Invoiced Amount is validly owing to Allied and not eligible for set-off or compensation (the "Undisputed Amount"). CN has not paid to the Receiver the Undisputed Amount.
2. CN calculates the Undisputed Amount by subtracting from the Invoiced Amount the aggregate of \$2,252,584, calculated as follows:
 - a) \$453,014 (the "Fort Frances Disputed Amount"), based on CN's claim that Allied failed to satisfy certain project milestones set out in the Fort Frances Statement of Work dated June 2, 2022 (the "Fort Frances SOW");¹
 - b) \$298,829 (the "Ashcroft Performance Disputed Amount"), based on CN's claim that Allied failed to complete "Service #10" under the Ashcroft Statement of Work, dated January 1, 2021 (the "Ashcroft SOW");²
 - c) \$117,129 (the "Ashcroft Holdback Disputed Amount", and together with the Ashcroft Performance Disputed Amount, the "Ashcroft Disputed Amount"), being the 10% holdback amount prescribed by the Ashcroft SOW; and
 - d) \$1,383,612 (the "Set-off Disputed Amount"), which CN alleges should be extinguished by compensation pursuant to a claim by CN against Allied arising from alleged damage to a sewer pipe that CN claims was caused by Directional Mining and Drilling Ltd. ("DMD"), Allied's subcontractor (the "New Westminster Claim"), as part of work completed in accordance with the New Westminster Statement of Work dated January 1, 2021.

¹ The original Fort Frances SOW is attached to the Levesque Affidavit as Exhibit "B"; however, the scope of work under the Fort Frances SOW was materially revised by CN on or about June 9, 2022, reducing the length of track from approximately 35.95 miles to 15.39 miles.

² The Ashcroft SOW is attached to the Levesque Affidavit as Exhibit "A".

3. Counsel to the Receiver and CN agreed that the CN Responding Record would only address the Fort Frances Disputed Amount and the Ashcroft Disputed Amount, and that CN would provide supplementary motion materials addressing the Set-off Disputed Amount following the delivery by the Receiver of its position regarding the Fort Frances Disputed Amount and the Ashcroft Disputed Amount.
4. On October 8, 2024, CN delivered the Supplementary Responding Motion Record of CN Railway which includes the Affidavit of Guillaume Michaud sworn October 7, 2024 and Opinion Report attached thereto (the “Michaud Report”). The Michaud Report provides evidence regarding the law of compensation pursuant to the laws of the Province of Québec.
5. The Receiver reviewed the Michaud Report with its counsel and does not agree with the description of the law of compensation set out therein. The Receiver retained Patrice Deslauriers, a professor at the Université de Montréal to provide an opinion on the law of compensation pursuant to the laws of the Province of Québec, including in response to the law as set out in the Michaud Report.
6. The Affidavit of Professor Patrice Deslauriers sworn November 18, 2025 (the “Deslauriers Affidavit”) is provided as Appendix “A”. The Deslauriers Affidavit includes a copy of the Opinion Report by Professor Deslauriers.

4.0 DMD Claims

1. As set out in the Third Report, Allied maintained an insurance policy issued by certain Lloyd’s syndicates (the “Policy”) administered by independent insurance adjusters, IndemniPro Inc. (“IndemniPro”). IndemniPro advised the Receiver on March 30, 2023 that coverage is not available in respect of the New Westminster Claim because: (i) no legal action was commenced against Allied in respect of the Remediation Claim; and (ii) it is likely that the ultimate liability for the New Westminster Claim lies with DMD as the at-fault party.
2. On or about September 5, 2024, IndemniPro, on behalf of Allied, commenced civil claims against DMD in BC and Ontario in respect of the New Westminster Claim (the “DMD Claims”). Allied continues to dispute that it has any responsibility for the New Westminster Claim. The Receiver understands that the DMD Claims were commenced by IndemniPro on a precautionary basis to ensure that, if any liability for the New Westminster Claim is ultimately attributed to Allied, a platform will exist to pursue DMD as the at-fault party for the New Westminster Claim.
3. At this time, the DMD Claims are dormant pending the advancement of the Receiver’s Motion.

5.0 Conclusion

1. Following service of this Second Supplemental Report, the Receiver will continue to engage with counsel to CN to explore if a consensual resolution can be reached with respect to the Receiver's Motion. The Receiver anticipates that these negotiations will also involve counsel to DMD to ensure that a global resolution is reached. If no resolution can be reached, the Receiver will bring the Receiver's Motion before the Court for determination.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER AND MANAGER OF 2806401 ONTARIO INC.
O/A ALLIED TRACK SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Court File No.: CV-22-00687383-00CL

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

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

BETWEEN:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc.
and certain related entities and investment funds)

Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

**AFFIDAVIT OF PATRICE DESLAURIERS
(Sworn November 18, 2025)**

I, **PATRICE DESLAURIERS**, of the City of Montreal, in the Province of Quebec, **MAKE**

OATH AND SAY AS FOLLOWS:

1. I am a professor at the Université de Montréal, and, as such, have personal knowledge of the matters contained in this Affidavit.
2. I have been retained by counsel for KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver and manager, without security, of all of the assets, undertakings and properties of 2806401 Ontario Inc. o/a Allied Track Services Inc. (“**Allied**”, with KSV in such capacity being the “**Receiver**”) to provide my opinion on certain matters. My opinion is set out in my report dated November 18, 2025, which is attached as **Exhibit "A"** to my affidavit (the “**Report**”), along with my curriculum vitae and acknowledgement of expert's duty.

3. I acknowledge that it is my professional duty to assist the court and provide advice, on matters within my expertise, that is fair and impartial. I have prepared my Report in conformity with this professional duty.

SWORN BEFORE ME

☐ in person OR ☒ by video conference
by Patrice Deslauriers of the City of
Montreal, before me at the City of Toronto,
on November 18, 2025, in accordance with
O.Reg.431/20, Administering Oath or
Declaration Remotely



Commissioner for Taking Affidavits

Caitlin McIntyre, LSO #72306R

Patrice Deslauriers

PATRICE DESLAURIERS

This is **Exhibit "A"** referred to in the

Affidavit of Patrice Deslauriers

sworn before me by video conference
this 18th day of November, 2025



A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

November 17, 2025

Blake, Cassels & Graydon LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto (Ontario), M5L 1A9 Canada

Attention: Matthew Liben, Partner

**In the Matter of the Receivership of Allied Track Services inc. CV-22-00687373-00CL
Counter-Opinion to Michaud Report on the Interpretation of Québec Law about
Compensation**

I. BACKGROUND AND EXPERTISE

Your client, KSV Restructuring Inc. (**KSV**), in its capacity as Receiver of Allied Track Services Inc., has retained me to respond to the Michaud Report and to set forth my views with respect to the dispute relating to the doctrine of compensation pursuant to the laws of the Province of Québec and their application to the relevant facts as set out more fully below.

Called to the Quebec Bar in 1987, I hold a Bachelor of Laws (LLB) degree from Université de Montréal, and I graduated with a master's in D.E.A. private law from Université de Paris I (Panthéon-Sorbonne) as well as a Master of Laws (LLM) from Université de Montréal. Throughout my years as (tenured) professor at Université de Montréal, I have taught multiple undergraduate and graduate law courses such as *Obligations II* (Law of Obligations II), *Obligations III* (Law of Obligations III), *Assurances* (Insurance Law), *Responsabilité professionnelle* (Professional Liability), and *Droit comparé* (Comparative Law). Since 2003, I am the Associate Director of the Canadian Bar Review. Throughout this period, I have counselled many law firms on issues of civil liability, contract law, including matters of insolvency and bankruptcy.

II. ENGAGEMENT AND ACKNOWLEDGEMENT OF AN EXPERT'S DUTY

A) DOCUMENTATION PROVIDED

The opinion issued is based on my review of the following documentation:

- The Receiver's Motion Record dated July 6, 2023, containing
 - o the Notice of Motion,
 - o the Receiver's Third Report dated July 4, 2023,
 - o the Master Services Agreement (MSA) dated January 1, 2021,
 - o Summaries of Invoices,
 - o Demand Letter dated December 7, 2022,
 - o Correspondence between the Receiver and CN,
 - o Letter from IndemniPro dated March 30, 2023,
 - o Letter from CN's counsel dated May 9, 2023,
 - o Draft Order (CN Payment Direction);
- The CN's Responding Motion Record (Volume 1 of 2) dated October 5, 2023;
- The CN's Responding Motion Record (Volume 2 of 2) dated October 5, 2023;
- The CN's Supplemental Motion Record dated March 11, 2024;
- CN's Supplementary Responding Motion Record dated October 8, 2024 ,containing Me Guillaume Michaud's Report (the **Michaud Report**);

B) NATURE OF THE REQUESTED OPINION

You have retained me to respond to the Michaud Report and to provide an expert opinion on compensation pursuant to the laws of the Province of Québec, in connection with claims in the context of the bankruptcy and receivership proceedings before the Ontario Superior Court of Justice in Court File no. CV-22-00687383-00CL.

C) ACKNOWLEDGEMENT OF AN EXPERT'S DUTY

Although I am retained by KSV I understand and recognize that my professional duty is to provide impartial advice and honestly-held opinions and to express an independently formed expert opinion that we genuinely hold. Accordingly, attached herewith is a duly completed Acknowledgement of Expert's Duty (Form 53 under the *Court of Justice Act*).

III. FACTS

The present opinion is based on our understanding of the following facts.

On August 25, 2022 (**the Filing Date**), 2806401 Ontario Inc. o/a Allied Track Services Inc. (**Allied**) filed a Notice of Intention to Make a Proposal, following which KSV Restructuring Inc. (**KSV or Receiver**) was successively appointed as proposal trustee, interim receiver (on September 6, 2022), and receiver of Allied (from September 23, 2022).

By Notice of Motion dated July 6, 2023, KSV in its capacity as receiver and manager of Allied, sought an order directing Canadian National Railway Corporation (**CN**) to pay to the Receiver the amount of CDN\$2,501,722.15 (**the KSV claim**), without set-off or compensation.

The KSV claim reflects outstanding invoices owing from CN before the Filing Date and related to labor, materials and equipment provided by Allied to CN in the course of different projects:

Project	Amount Outstanding
Track MSA Support	\$816,874.05
Spence's Bridge	\$284,937.62
Ashcroft	\$897,792.24
Fort Francis	\$453,013.87
New Westminster	\$23,489.79
Fort Langley	\$5,815.37
BC South RSIP Crossing	\$19,799.21
Total	\$2,501,722.15

The above-listed services provided by Allied to CN are subject to terms and conditions included in a Master Service Agreement (MSA) dated January 1, 2021.

CN disputes owing \$868,971.97 of the **Allied Claim**; the remaining \$1,632,750.18 is unchallenged, although CN is of the view that \$1,383,611.91 thereof has been extinguished by compensation against the cost incurred by CN (**the CN claim**) to remediate damage caused in April 2021 by Directional Mining and Drilling Ltd. (DMD), one Allied's subcontractors, at the New Westminster project site. The balance of \$249,138.27 validly owing and not eligible for set-off or compensation, has apparently been directed by CN to be paid to KSV as Receiver for Allied.

Allied Claim	CN's Challenge
\$868,971.97	Amount challenged by CN
\$1,383,611.91	Eligible for set-off or compensation in CN's view
\$249,138.27	Payment already directed to KSV as Receiver
Total:	\$2,501,722.15

On November 9, 2022, Allied was deemed to have made an assignment in bankruptcy pursuant to ss. 50.4(8) of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) [**BIA**].

We express no opinion herein in relation to these facts. For the purposes of issuing the present opinion, we have further assumed the veracity and accuracy of these facts as reported in the documentation provided.

IV. OPINION

For the sake of clarity, our opinion will follow the structure of the Michaud Report.

A) APPLICABLE LAW

Preliminarily, a comment about Mtre Michaud’s statement that “[t]he principles of Canadian bijuralism do not permit the importation of common law rules into civil law” (Michaud Report, at p. 4). Although I agree in principle with this statement, it must be nuanced, because it is too categorical. While it is true that the Supreme Court of Canada has refused to apply common law rules in matters of subrogation¹ or of compensation², it is not always the case in a civil law context. Indeed many cases reveal the success of the applicability of common law rules into civil law matters as civil liability³ or obligations/contracts⁴.

I am generally in agreement with the applicable principles of Quebec civil law as stated in the Michaud Report, to wit, that the principles of compensation are codified in Articles 1672 *et seq.* of the *Civil Code of Quebec (CCQ)*, and as indirectly referenced in ss. 97(3) BIA. In the context of bankruptcy proceedings, ss. 121(1) BIA further provides that a creditor who wishes to effect compensation must be able to prove the bankrupt was subject to a debt by reason of an obligation incurred before the bankruptcy⁵.

B) COMPENSATION BY THE OPERATION OF LAW

Under the Québec civil law, compensation occurs by operation of law⁶ if and only if all the listed requirements are met.

In this respect, Article 1673 CCQ sets out the applicable conditions as follows:

¹ *D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)*, 2005 SCC 52, para. 55.

² *Id.*, para. 64.

³ *Cinar Corporation v. Robinson*, 2013 CSC 73, para. 96; *Montréal (Ville de) c. Wilson Davies*, 2013 QCCA 34, para.81.

⁴ Louis LEBEL et Pierre-Louis LE SAUNIER, « L’interaction du droit civil et de la common law à la Cour suprême du Canada », dans (2006) 47 *C. de D.* 179, 205

⁵ *D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)*, 2005 SCC 52.

⁶ Jean-Louis BAUDOUIN et Pierre-Gabriel JOBIN, *Les obligations*, 7e éd. by Pierre.-Gabriel. JOBIN et Nathalie VEZINA, Éditions Yvon Blais, 2013, para. 1058 [Jobin & Vézina].

“Compensation is effected by operation of law upon the coexistence of debts that are **certain, liquid and exigible** and both of whose subject is a sum of money or a certain quantity of **fungible property** identical in kind.

A party may apply for judicial liquidation of a debt in order to set it up for compensation.”
(My underlining)

It should be stressed that no legal compensation may occur if any one of the listed requirements is not met.

In the present case, the CN claim fails to meet the required degree of certainty, liquidity and exigibility.

1) The Requirement of Being Certain

Certainty *per se* concerns the legal validity of the debt. This requirement was formally added to the CCQ when it was enacted in 1994 and should not be confounded with the other two requirements. In particular, the Quebec Court of Appeal notes that certainty of a debt should not be viewed as a subcomponent of the liquidity requirement⁷.

As such, a debt in dispute will not be considered certain unless the means of defence are patently meritless or serve as a purely dilatory or frivolous device⁸. It is our view that the certainty requirement is not met in this case on the ground that the validity of the CN claim is seriously disputed by Allied with no acknowledgement of liability. Indeed, Allied “denies any legal responsibility for the damage claimed by CN” (Para. 10 of the Appendix “E” to the Motion record dated July 6, 2023)

Indeed, as of the Filing Date a parallel tort claim against DMD is pending for damage incurred in British Columbia. As the events underlying DMD’s tort liability occurred in British Columbia wherein the common law applies, I make no comment on this regard.

Furthermore, several questions are left unanswered with respect to the CN claim against Allied, such as the existence and extent of Allied’s liability for DMD’s alleged acts and omissions, the extent and amount of damage suffered as a consequence thereof, the need for expertise, all of which are being challenged by Allied.

⁷ *Abitibi-Consolidated inc. c. Doughan*, 2008 QCCA 79, para. 26.

⁸ *9181-1752 Québec inc. c. Groupe Arsenault inc.*, 2014 QCCA 1330, para. 3. See also Didier LLUELLES and Benoît MOORE, *Droit des obligations*, 3^e éd., Éditions Thémis, 2018, para. 2680 ; Vincent KARIM, *Les obligations* - Volume 2 (art. 1497 à 1707 C.c.Q.), 6e éd., Montréal, Wilson & Lafleur, 2024, para. 3929 [Karim].

So long as the CN claim is seriously disputed by Allied, there could be no compensation by the operation of Art. 1673 CCQ⁹.

2) The Requirement of Being Liquid

The liquidity requirement refers to certainty not as to the legal validity of a debt, but as to its (easily) ascertainable quantum where its subject is a sum of money¹⁰. However, if the debt is disputed, it cannot be recognized as liquid¹¹.

3) The Requirement of Being Exigible

The Michaud Report rightly stated that “[e]xigibility requires that the parties must be entitled to demand the performance of the obligations underlying the debt” (at p. 5). A debt that is exigible is one for which payment can be demanded in court and which is due immediately (e.g., upon receipt of an undisputed invoice) without being subject to payment terms or other arrangements¹².

That said, where the legal validity of a debt is seriously put into question, it follows that the debt is neither liquid nor exigible pending resolution of the underlying dispute¹³. This is indeed the case here.

The *Lauzier*¹⁴ case constitutes a similar illustration of the facts of the dispute in place.

In this decision, a contractor, Lauzier, sued the building owner, Dupuis, for the work and materials supplied.

Dupuis pleaded in defense to this action that because Lauzier had allegedly caused him damages, he could invoke compensation of both debts.

⁹ *Abitibi-Consolidated inc. c. Doughan*, 2008 QCCA 79, paras. 33–34; *9181-1752 Québec inc. c. Groupe Arsenault inc.*, 2014 QCCA 1330, para. 3

¹⁰ Jean-Louis BAUDOUIN et Pierre-Gabriel JOBIN, *Les obligations*, 7e éd. by Pierre-Gabriel JOBIN et Nathalie VEZINA, Éditions Yvon Blais, 2013, para. 1063, See also; Didier LLUELLES and Benoît MOORE, *Droit des obligations* – 3^e éd., Éditions Thémis, 2018, para. 2680; *Leclerc c. Ville de Québec*, 2018 QCCQ 3121 para. 59

¹¹ *Abitibi-Consolidated Inc. c. Doughan*, [2008] R.J.Q. 295, EYB 2008-128647, para. 27-29 (C.A.); *Commission des normes du travail c. Martineau*, 2009 QCCQ 2944, EYB 2009-157361, para. 13; *Delta Hôtels ltée et Syndicat des travailleuses et travailleurs du Delta Centre-ville (CSN)*, 2000 CanLIIj 46395 (QC SAT), SOQUIJ AZ-00141281; *Lauzier Electrique c. Place Dupuis*, (1977) C.S. 196, para. 197, 199, 202; *Syndicat des professionnels de la Commission des écoles catholiques de Montréal c. Moalli*, (C.A., 1991-05-23), SOQUIJ AZ-91011612, para. 65-67; Didier LLUELLES and Benoît MOORE, *Droit des obligations*, 3^e éd., Éditions Thémis, 2018, para. 2680-2681; Jean-Louis BAUDOUIN et Pierre-Gabriel JOBIN, *Les obligations*, 7e éd. by Pierre-Gabriel JOBIN et Nathalie VEZINA, Éditions Yvon Blais, 2013, para. 1063; Vincent KARIM, *Les obligations* - Volume 2 (art. 1497 à 1707 C.c.Q.), 6e éd., Montréal, Wilson & Lafleur, 2024, para. 3930.

¹² Jean-Louis BAUDOUIN et Pierre-Gabriel JOBIN, *Les obligations*, 7e éd. by Pierre-Gabriel JOBIN et Nathalie VEZINA, Éditions Yvon Blais, 2013, para. 1064.

¹³ *Syndicat des professionnels de la Commission des écoles catholiques de Montréal c. Moalli*, 1991 CanLII 2860 (QC CA), para. 67; *Bailey c. Chagnon*, [1996] R.D.J. 566 (C.S.). See also Vincent KARIM, *Les obligations* - Volume 2 (art. 1497 à 1707 C.c.Q.), 6e éd., Montréal, Wilson & Lafleur, 2024, paras. 3930 to 3936 and Didier LLUELLES and Benoît MOORE, *Droit des obligations*, 3^e éd., Éditions Thémis, 2018, para. 2680.

¹⁴ *Lauzier Electrique c. Place Dupuis* (1977) C.S. 196 aff’d by *Place Dupuis inc. c. Banque de Montréal* (C.A., 1979-09-28), SOQUIJ AZ-51214196.

According to the judge, the contractor's debt was certain and liquid since the work has been performed¹⁵. However, in the judge's opinion, the monetary amount claimed by the building owner Dupuis was obviously uncertain¹⁶: it was questionable as to whether the damage really existed (which would otherwise preclude the application of the certainty requirement)? And if so, what would be the amount of damages (which would otherwise preclude the application of the liquidity requirement). In view of these uncertainties, the judge considered that legal compensation was not applicable, and that Dupuis could not invoke it.

As stated by another decision: "One cannot oppose, through the compensation mechanism, a due and exigible claim against a litigious, possible and future debt¹⁷" (free translation¹⁸).

In any event, the burden rests on CN – as the party seeking to assert its right to legal compensation – to establish (Art. 2803 CCQ) by preponderance of evidence that all of the requirements for legal compensation are met¹⁹.

As mentioned by the Court of Appeal, « **it was up to the respondent** to demonstrate that his debt is certain, liquid and exigible in order to oppose it to an enforceable judgment²⁰ » (free translation²¹) (My underlining).

C) COMPENSATION WHEN THE CONDITIONS FOR LEGAL COMPENSATION ARE NOT MET AT THE TIME OF THE BANKRUPTCY

In Michaud's view (Michaud Report, at pp. 4-5), case law allows for judicial compensation to take place in an insolvency context where the debts are sufficiently "*connexe*" or closely related, even though the triple requirements of certainty, liquidity and exigibility are met only after the date of bankruptcy. This calls for the following remarks.

This opinion is partially drawn from the doctrine of equitable set-off in common law, as endorsed in the dissent opinion of Justice Rousseau-Houle in *Montreal Fast Print* (2003)²², referenced in Michaud Report (Michaud Report, footnotes 18, 21 and 22). However, this view has been

¹⁵ *Id.*, page 197 and 200.

¹⁶ *Id.*, page 202-203.

¹⁷ *Compagnie Montréal Trust c. 2969-9287 Québec inc.* [1995] R.D.I. 503 (S.C.).

¹⁸ The original text is the following « On ne peut opposer, par le jeu de la compensation, une créance due et exigible à l'encontre d'une dette litigieuse, possible et future. »

¹⁹ *Jean Charpentier inc. c. Banque nationale du Canada*, 1987 CanLII 449 (QC CA), para.10 and 14. See also *Abitibi-Consolidated inc. c. Doughan*, 2008 QCCA 79, paras. 31 and 33; *9071-9048 Québec inc. c. Garneau (Ville de)* 2006 QCCQ 7274, para. 49; *Leclerc c. Ville de Québec*, 2018 QCCQ 3121 paras. 60 and 62.

²⁰ *9181-1752 Québec inc. c. Groupe Arsenault inc.*, 2014 QCCA 1330, para. 4.. See also Didier LLUELLES and Benoît MOORE, *Droit des obligations*, 3^e éd., Éditions Thémis, 2018, para. 2680.

²¹ The original text is the following: "Cependant, **il appartenait à l'intimée de démontrer** que sa créance est certaine, liquide et exigible pour pouvoir l'opposer à un jugement exécutoire. » (My underline)

²² *Montreal Fast Print Ltd. (Syndic de)*, [2003] JQ no 7151, J.E. 2003-1229 (C.A.). This dissent opinion was cited in *Daltech Architectural Inc. (Syndic de)*, 2008 QCCA 2441, also referenced in Michaud Report.

criticized by commentators²³ and superseded by the decision in *Arrangement relatif à Métaux Kitco inc.* (2017), where the Court of Appeal of Quebec stated that “it is on the date of Determination [date of institution of proceedings in insolvency and of the stay of the creditors’ remedies] that temporal reciprocity is established.”²⁴ Moreover, as the Supreme Court of Canada affirmed in *DIMS* (2005), “the principles of Canadian bijuralism do not permit the importation of common law rules”²⁵ in applying Quebec civil law in matters regarding compensation. Especially in cases such as this one, where there is more than one debtor for a creditor’s claim at the Filing Date, the protection of other creditors and the need for legal certainty as to their shares in the distribution priority and allocation of a bankrupt’s property, strongly go against allowing compensation of competing obligations where the legal validity of a debt is in dispute at the Filing Date. Indeed, as emphasized in Article 1681 CCQ, “[c]ompensation may neither be effected nor be renounced to the prejudice of the acquired rights of a third person.”

So the failure of CN in this case to “ascertain” its claim against Allied to the exclusion of anyone else (notably DMD) before the Filing Date is fatal to its right to legal compensation pursuant to Quebec civil law principles. And following the prohibition to compensate between debts incurred before and after the insolvency proceedings as affirmed in *Arrangement relative à Métaux Kitco inc.*²⁶, CN could no longer “ascertain” its claim against Allied for the purposes of legal compensation after the Filing Date.

CONCLUSION

In short, for the reason that the CN claim is not demonstrably certain nor liquid or exigible within the meaning of Article 1673 C.c.Q., no compensation can be effected with the Allied claim pursuant to the Quebec civil law.

Yours truly,

Patrice Deslauriers

²³ Vincent KARIM, *Les obligations* - Volume 2 (art. 1497 à 1707 C.c.Q.), 6e éd., Montréal, Wilson & Lafleur, 2024, para.3944; Maurice TANCELIN and Daniel GARDNER, *Jurisprudence commentée sur les obligations*, 13^e éd., Montréal, Wilson & Lafleur, 2022, at p. 1113–1114; See also the reservations expressed in Jean-Louis BAUDOUIN et Pierre-Gabriel JOBIN, *Les obligations*, 7e éd. by Pierre-Gabriel. JOBIN et Nathalie VEZINA, Éditions Yvon Blais, 2013, para. 1076

²⁴ *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268, para. 82, (English translation provided by the Court of Appeal). Even if this principle is not absolute, the circumstances in which it may be departed from are rare. See *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53, para. 62..

²⁵ *D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)*, 2005 SCC 52, para 55.

²⁶ *Arrangement relatif à Métaux Kitco inc.*, 2017 QCCA 268.

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D.E.A. (Diplôme d'études approfondies) in Private Law	1989
Faculty of Law University of Paris I (Panthéon-Sorbonne)	
Member of the Quebec Bar	1987
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UNIVERSITY ACTIVITIES

Faculty of Law, University of Montreal	1990 –
Full professor since 2001 Associate professor (1995 - 2001) (Tenure obtained in 1995) Assistant professor (1990 - 1995) Courses: Torts, Civil Liability; Professional Responsibility, Obligations, Insurance Law, Advanced Civil Law, Private Judicial Law	
André Morel Professorship Award (Best professor awarded by the University of Montreal Law Students' Association)	1999, 2011, 2018
Quebec Bar School, course instructor (Courses: Civil Liability; Professional Responsibility, Remedies)	1996 – 2018
Visiting professor, University of Lyon 2 (Courses: Contracts, Civil Liability)	2025
Visiting professor, University of Paris II (Panthéon-Assas) (Courses: Contracts, Civil Liability) (annually between 2016 and 2024)	1999 – 2024

* Free translations (wherever applicable).

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Visiting professor, University of Rennes Courses: Contracts, Civil Liability	2019
Lecturer, University of Lyon 2 Civil Liability	2024
Lecturer, University of Windsor Contracts	2023
Lecturer, Laval University Civil Liability	2021and 2025
Member of a Comity on Sport Concussions, Institut National de la Santé publique	2018
Associate Director, Canadian Bar Review	June 2003 – to date
Member of the Comité d'Éthique de la Faculté des Arts et Sciences (Art and Science Faculty)	June 2008 – 2020
Lecturer in the Program <i>Maîtrise en administration de la santé</i> (Quéops-i)	2008 – 2009
Visiting professor, University of Paris XII (Paris-Val de Marne), (Course: Civil Liability)	1998-1999
Lecturer, Formation professionnelle du Barreau, <i>La réforme du Code civil. Cours VI (Obligations) et Cours VII (Torts)</i> (Sixteen courses of three hours)	1993 – 1994

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Counsel, to different Law Firms in Montreal (fields of practice: Commercial and Civil Litigation, Torts , Contracts)	1995 –
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« Développement récents en responsabilité civile », Université de Montréal-(Formation continue), Lecturer, March 2025 (Montréal) (Contracts and tort law)

« Le droit de la consommation et l'héritage de Claude Masse », Fondation Claude-Masse, Lecturer, February 2025 (Montréal) (Consumer Law)

« Développements récents en droit de la santé (2024), Barreau du Québec « Informer pour mieux soigner » Lecturer, November 2024 (Montréal) (tort law)

« Civil Law Seminar : Goof faith – Disgorgement of Profits », Institut national de la magistrature (National Judicial Institute) , Lecturer, June 2024 (Halifax).

« Développement récents en responsabilité civile », Université de Montréal-(Formation continue), Lecturer, May 2024 (Montréal) (Contracts and tort law)

« Formation sur certains développements en matière d'expertise », Chambre de gestion civile, Juges de la Cour supérieure du Québec, Lecturer, April 2024 (Montréal) (procedure)

« Ponce c. Société d'investissements Rhéaume ltée, 2023 CSC 25, premières observations » Chaire Jean-Louis Baudouin , Lecturer, January 2024 (Montréal) (Good Faith)

« Développements récents en droit de la santé (2023), Barreau du Québec « La prescription en matière médicale : bien plus que l'ordonnance » Lecturer, November 2023 (Montréal) (tort law)

« Exercice des recours judiciaires et abus de procédures : responsabilité de la partie, de l'avocat.e, ou des deux? », Barreau des Laurentides et de Lanaudière, Lecturer , April 2023, L'Estérel (private judicial law and tort law)

« Développement récents en responsabilité civile », Université de Montréal-(Formation continue), Lecturer, February and March 2023 (Montréal) (tort law)

« Développements récents en droit de la santé (2022), Barreau du Québec « La réparation intégrale : ni plus, ni moins »- Lecturer, November 2022 (Montréal) (tort law)

- « Civil Law Seminar : SLAPP, defamation, professional liability », Institut national de la magistrature (National Judicial Institute) , Lecturer, May 2022 (Calgary). (tort law, professional liability)
- « Développement récents en responsabilité civile », Université de Montréal-(Formation continue), Lecturer, April 2022 (Montréal) (tort law)
- « Les expertises en responsabilité médicale – Où en sommes-nous ? », Développements récents en droit de la santé (2021), Barreau du Québec, Lecturer, November 2021 (Montréal) (tort law)
- « De certains développements en responsabilité civile » Formation, Société de l'assurance-automobile du Québec (SAAQ), Lecturer, June 2021 (Québec) (Via zoom) (tort law)
- « Développement récents en responsabilité civile », Université de Montréal-(Formation continue), Lecturer, March 2021 (Montréal) (Via zoom) (tort law)
- « Perte de chance », Développements récents en droit de la santé (2020), Barreau du Québec, November 2020 (Montréal) (Via zoom) (tort law)
- « Civil Law Seminar: Frontiers of Liability », Institut national de la magistrature, Lecturer, May 2020 (Calgary). (Conference postponed due to covid) (tort law, professional liability)
- « L'impact de la pandémie sur la responsabilité civile », Barreau de Lanaudière, Lecturer, April 2021 (Joliette) (Conference via zoom) (tort law)
- « La diffamation, la vie privée et liberté d'expression à l'ère des réseaux sociaux, en conjonction notamment avec l'affaire Mike Ward », Barreau de Lanaudière, Lecturer, April 2020 (Joliette). (Conference postponed) (tort law)
- « Développements récents en matière de prescription extinctive », Barreau du Québec, Lecturer, February 2020 (Montréal) (tort law)
- « Développement récents en responsabilité civile », Université de Montréal-(Formation continue), Lecturer, February 2020 (Montréal) (tort law)
- « La responsabilité du fabricant », Webinaire, Édition Yvon Blais, Lecturer, December 2019 (tort law)
- « Troubles de voisinage », Webinaire, Édition Yvon Blais, Lecturer, November 2019 (tort law)
- « La limitation des ressources : circonstance atténuante ou aggravante en matière de responsabilité médico-hospitalière », Développements récents en droit de la santé, Barreau du Québec, Lecturer November 2019 (Montréal) (tort law, professional liability)
- « Diffamation », Webinaire, Édition Yvon Blais, Lecturer, October 2019 (tort law)
- « L'abus de procédure », Webinaire, Édition Yvon Blais, Lecturer, October 2019 (private judicial law)
- « La responsabilité pour autrui », Webinaire, Édition Yvon Blais, Lecturer, June 2019 (tort law)
- « Développements récents en matière de préjudice », Formation régionale Montréal (Juges Cour du

Québec), Lecturer, May 2019 (Montréal) (tort law)

« Les dommages punitifs », Webinaire, Édition Yvon Blais, Lecturer, May 2019 (tort law)

« Le préjudice corporel et des dommages moraux et punitifs en droit civil », Formation régionale Québec (Juges Cour du Québec), Lecturer, May 2019 (Québec) (tort law)

« L'évaluation du préjudice corporel », Webinaire, Édition Yvon Blais, Lecturer, April 2019 (tort law)

« Tendances récentes en responsabilité civile », Université de Montréal, Lecturer, March 2019 (Montreal) (tort law)

« La notion de préjudice et ses caractéristiques », Webinaire, Édition Yvon Blais, Lecturer, March 2019 (tort law)

« Capacité et faute », Webinaire, Édition Yvon Blais, Lecturer, February 2019 (tort law)

« Les régimes de responsabilité », Webinaire, Édition Yvon Blais, Lecturer, January 2019 (tort law)

« La responsabilité du fabricant et du vendeur : L'ABC après ABB », Colloque Yvon Blais, Lecturer, October 2018 (Montréal) (tort law)

« L'abus de procédure : responsabilité de l'avocat, de la partie ou les deux? », Chaire Jean-Louis Baudouin October 2018 (Montréal) (private judicial law, professional liability)

« L'évaluation du préjudice matériel » Formation régionale des juges de la Cour du Québec, Lecturer, May 2018 (Brossard) (tort law)

« La diffamation à l'ère des nouveaux médias : Pas et faux pas (in tandem with Yves Boisvert) », Barreau de Lanaudière (Formation continue), Lecturer, April 2018 (Terrebonne) (tort law)

« La déclaration initiale du risque *et les actes criminels* : où en sommes-nous ? » Colloque en droit des assurances, Editions Yvon Blais, Lecturer, October 2017 (Montréal), June 2018 (Québec) (insurance law)

« Revue jurisprudentielle en préjudice corporel – Décisions marquantes et tendances jurisprudentielles » Webinaire, Éditions Yvon Blais, Lecturer, February 2018 (Montréal) (tort law)

« L'encadrement de la réparation du préjudice au Québec » in *Vers une réforme de la responsabilité civile française : Regards croisés franco-québécois*, Lecturer, December 2017 (Lyon (France)) (tort law)

« De l'impact de la création d'un risque sur la responsabilité civile » Éditions Yvon Blais, Lecturer, October 2017 (Montréal), November 2017 (Québec) (tort law)

« Le préjudice », Formation régionale des juges de la Cour du Québec, Lecturer, May 2017 (Brossard) (tort law)

« Revue jurisprudentielle en préjudice corporel – Décisions marquantes et tendances jurisprudentielles » Webinaire, Éditions Yvon Blais, Lecturer, March 2017 (Montréal) (tort law)

« Tendances récentes en responsabilité civile », Université de Montréal-Barreau du Québec (Formation continue), Lecturer, February 2017 (Montréal) (tort law)

« Les grands classiques : Jean-Louis BAUDOUIN, « Le Code civil québécois : crise de croissance ou crise de vieillesse », (1966) 44 R. du B. can 391 » Chaire Jean-Louis Baudouin, Lecturer, November 2016 (Montréal) (tort law)

« Diffamation : la responsabilité personnelle et parentale à l'ère des nouvelles technologies » Éditions Yvon Blais, Lecturer, October 2016 (Montréal), November 2016 (Québec) (tort law)

« Les dommages punitifs sont-ils efficaces dans le contexte de recours pour préjudice corporel » Colloque « Réflexions sur la pratique du dommage corporel au Québec et en France », Éditions Yvon Blais, Lecturer, October 2016 (Montréal) (tort law)

« Développements récents en matière de pertes non pécuniaires et les dommages punitifs en droit civil » Colloque organisé par l'Institut national de la magistrature (Juges de nomination fédérale), Lecturer, May 2016 (Vancouver) (tort law)

« Revue jurisprudentielle en préjudice corporel – Décisions marquantes et tendances jurisprudentielles » Webinaire, Éditions Yvon Blais, Lecturer, December 2015 (Montréal) (tort law)

« Les apports du juge LeBel en matière de dommages punitifs », Lecturer, October 2015 (Montréal) (tort law)

« Tendances récentes en responsabilité civile », (Formation continue), Lecturer, October 2015 (Rouyn) (tort law)

« Le préjudice corporel » Les Éditions Yvon Blais, Lecturer, October - December 2015 (Montréal and Québec) (tort law)

« Tendances récentes en responsabilité médicale », Association du Barreau canadien, Lecturer April 2015 (Montréal) (tort law, professional liability)

« L'impact de l'arrêt Roberge sur la responsabilité notariale », Chaire du Notariat, Lecturer, March 2015 (Montréal) (tort law, professional liability)

« Tendances récentes en responsabilité civile », Université de Montréal-Barreau du Québec (Formation continue), Lecturer, February 2015 (Montréal) (tort law)

Court File No.: CV-22-00687383-00CL

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

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

BETWEEN:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc.
and certain related entities and investment funds)

Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

ACKNOWLEDGEMENT OF EXPERT'S DUTY

1. My name is Patrice Deslauriers. I live in the City of Montreal, in the Province of Quebec.
2. I have been engaged by or on behalf of KSV Restructuring Inc., in its capacity as Receiver of Allied Track Services Inc., to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.
5. I certify that I am satisfied as to the authenticity of every authority or other document or record to which I have referred in the expert report accompanying this form, other than:

- (a) documents and records provided to me by or on behalf of the party intending to call me as a witness and consisting of evidence or potential evidence in the court proceeding that I have analysed or interpreted in my report;
- (b) authorities and other documents and records to which I have referred in my report **only** in order to address how another expert witness in the same court proceeding has used them in their report; and
- (c) the following authorities, documents and records, for which I have doubts as to their authenticity as detailed within my report: **N/A**

[List authorities, documents and records.]

*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. If you are aware of evidence to the contrary, list the authority, document or record under 5.c. **and** provide further details in the accompanying report.*

Date: November 18, 2025

Patrice Deslauriers

Patrice Deslauriers

NOTE: This form must be attached to any expert report under subrules 53.03(1) or (2) and any opinion evidence provided by an expert witness on a motion or application.

Court File No.: CV-22-00687383-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

PRICEWATERHOUSECOOPERS INC. (solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Applicant

Respondent

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

Proceeding Commenced at Toronto

ACKNOWLEDGEMENT OF EXPERT'S DUTY

BLAKE, CASSELS & GRAYDON LLP

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Lawyers for the Receiver

Court File No.: CV-22-00687383-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

PRICEWATERHOUSECOOPERS INC. (solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds) - and - 2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Applicant

Respondent

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF PATRICE DESLAURIERS
(Sworn November 18, 2025)**

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Lawyers for the Receiver

Court File No.: CV-22-00687383-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

PRICEWATERHOUSECOOPERS INC. (solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

Respondent

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

Proceeding Commenced at Toronto

**SECOND SUPPLEMENT TO THE
THIRD REPORT OF THE RECEIVER**

BLAKE, CASSELS & GRAYDON LLP
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IN THE MATTER OF THE RECEIVERSHIP OF 2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

PRICEWATERHOUSECOOPERS INC. (solely in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

Respondent

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

Proceeding Commenced at Toronto

**SECOND SUPPLEMENTARY MOTION RECORD
(CN Payment Direction)**

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