

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  
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

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

March 11, 2024

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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

**SERVICE LIST**

(as at March 11, 2024)

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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

**SUPPLEMENTARY MOTION RECORD**

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**TAB 1**



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

March 11, 2024

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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

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

March 11, 2024

## 1.0 Introduction

1. This report (the “Supplemental Report”) supplements the Receiver’s Third Report to Court dated July 4, 2023 (the “Third Report”) and is intended to be read in conjunction with the Third 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. Where used in this Supplemental Report, “Court Officer” means KSV in its capacity as Proposal Trustee, Interim Receiver, Receiver or Trustee, as applicable.

## 1.1 Purpose of this Report

1. The purpose of this Report is to provide the Receiver’s response to CN’s position as set out in its responding motion record dated October 5, 2023 (the “CN Responding Record”) and filed in response to the Receiver’s motion seeking 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 Report are to Canadian dollars.

### 1.3 Restrictions

1. This 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.>

## 2.0 Fort Frances and Ashcroft Project Costs

### 2.1 CN Position Regarding Invoiced Amount

1. On October 5, 2023, CN delivered the CN Responding Record, which includes three affidavits: the Affidavit of Marco Levesque, sworn September 28, 2023 (the "Levesque Affidavit"), the Affidavit of Ryan Wiebe, sworn September 28, 2023 (the "Wiebe Affidavit"), and the Affidavit of Darcy Nazar, sworn September 28, 2023 (the "Nazar Affidavit", together with the Levesque Affidavit and the Wiebe Affidavit, the "CN Affidavits").
2. The CN Affidavits advise that pursuant to CN's internal 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").
3. CN calculates the Undisputed Amount by subtracting from the \$2,501,722 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");<sup>1</sup>
  - 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");<sup>2</sup>
  - 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

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<sup>1</sup> 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.

<sup>2</sup> The Ashcroft SOW is attached to the Levesque Affidavit as Exhibit "A".

- d) \$1,383,612 (the “Set-off Disputed Amount”), which CN alleges should be extinguished by compensation pursuant 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., 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.
4. 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.
5. Accordingly, this Supplemental Report only deals with the Fort Frances Disputed Amount and the Ashcroft Disputed Amount. The Receiver will prepare and file a second supplemental report following receipt of CN’s materials regarding the Set-off Disputed Amount.
6. As noted above, CN’s basis for the Fort Frances Disputed Amount and the Ashcroft Disputed Amount is its allegation that Allied did not sufficiently complete the Fort Frances and Ashcroft projects, and that accordingly the applicable contracts do not require CN to pay anything to Allied. These alleged incomplete project milestones are set out in the CN Responding Record and summarized by the Receiver as follows:
- a) **Fort Frances Project - 50% Milestone:** CN alleges that the 50% milestone payment condition contained in the Fort Frances SOW was not satisfied due to Allied failing to complete more than 50% of the Fort Frances Project and CN accordingly refusing to execute the associated progress report (which CN views as a necessary condition for payment). CN asserts that the Fort Frances Project had two services (Service #1 and Service #2). Of the 12 sub-tasks contained in Service #1, CN alleges that Allied completed 60% of two sub-tasks, 10% of one sub-task, and 0% of the remaining nine sub-tasks. CN subsequently hired a different contractor, Oakpark Powerline Services Ltd. (“Oakpark”), to finish the Fort Frances Project at a cost of \$478,780. CN therefore asserts that the amount of \$453,014, which is the entire amount invoiced by Allied for its work on the Fort Frances Project, should be subtracted from the Invoiced Amount.

If CN’s position is correct, Allied would receive no payment for its work on the Fort Frances Project.

- b) **Ashcroft Project – Incomplete Service #10:** CN asserts that Service #10 of the Ashcroft SOW was not complete based on, among other things, deficiencies that were not remediated by Allied which were discovered during “walk-around” reporting completed by CN representative Mr. Wiebe and his direct report, Nick Witkowskyi. The Receiver understands based on the CN Affidavits that CN subsequently hired Oakpark to complete Service #10 at a cost of \$467,259. CN therefore asserts that the amount of \$298,829.34, being the amount invoiced by Allied to CN for Service #10 of the Ashcroft SOW, should be subtracted from the Invoiced Amount.

- c) **Ashcroft Project – 10% Holdback:** CN asserts that the Ashcroft SOW contains a 10% holdback clause requiring all services for the Ashcroft Project to be completed in full to the satisfaction of CN, and that because CN believes Service #10 was not completed, CN should be allowed to retain the 10% Holdback, which it calculates to be \$117,129.

## 2.2 Receiver’s Review of Fort Frances Project

1. Allied’s operations were significantly curtailed after it filed a notice of intention to make a proposal in late August, 2022. As discussed in Section 2.0 of the Second Report to Court dated March 21, 2023 (the “Second Report”), KSV, in its capacity as interim receiver, terminated all of Allied’s employees in September 2022, except for employees who were retained to finish certain projects for another of Allied’s customers, Canadian Pacific Railway (“CP”, together with CN, the two largest customers of Allied). These employees were subsequently terminated in November 2022. A copy of the Second Report (without appendices) is provided as Appendix “A”.
2. The Receiver’s review and analysis of the CN Responding Record has largely been limited to consultation with Jamey Craig, the former Chief Operating Officer - Track at Allied, who has made himself available to the Receiver on a contract basis. The Receiver has also accessed certain of Allied’s books and records related to the projects discussed in this Supplemental Report.

### Scope of Work and Contract Price

3. The original Fort Frances SOW (attached as Exhibit B to the Levesque Affidavit) provided for services in two tranches. As set out in Paragraph 5 of the Fort Frances SOW, the scope of work and costs were as follows:

Location Name	Location Mileage	Cost
7200V HV Underground Service	0.00 to 16.10	\$801,795
7200V HV Underground Service	16.10 to 35.95	\$1,093,356

4. On June 9, 2022, Mr. Nazar of CN contacted Allied to advise that CN was revising the scope of work to include only line-item number one, above (mileage 0.00 to 16.10). A copy of Mr. Nazar’s email and Allied’s response is attached hereto as Appendix “B”.
5. As a result of the reduction in scope of the Fort Frances SOW, the pre-tax contract value of the Fort Frances Project was reduced from \$1,895,150 to \$801,795. Including HST, the aggregate Fort Frances SOW cost for the Fort Frances Project was set at \$906,028 (the “Gross Fort Frances SOW Cost”).



### Termination of the Fort Frances SOW

6. Shortly after Allied filed an NOI on August 25, 2022, KSV, in its capacity as Proposal Trustee, contacted CN to discuss completing outstanding projects, including the Fort Frances Project. Following a call between the Proposal Trustee and CN on August 29, 2022, KSV sent CN an email proposing terms to continue the work on outstanding service contracts, including the Fort Frances Project, a copy of which is provided as Appendix “C”.
7. CN did not respond in writing to the Proposal Trustee’s offer, but advised verbally that it would not require Allied to perform any further services. KSV, in its capacity as interim receiver, confirmed this position and confirmed that Allied would not do any more work for CN in a letter dated September 14, 2022. A copy of the interim receiver’s letter is provided as Appendix “D”.
8. As discussed in Section 2.0 of the Second Report, the Receiver was able to negotiate with CP to substantially complete certain outstanding service contracts, including by Allied retaining the necessary personnel to finish particular CP projects. Such projects were completed to CP’s satisfaction and CP paid the balances it owed to Allied in full.
9. The Receiver was optimistic that similar arrangements could be made with CN given Allied’s successful work on other CN projects. Mr. Craig has confirmed to the Receiver that, in addition to the Fort Frances Project, Allied had been engaged by CN on several other projects over the last five years with little history of complaints.
10. In contrast to the approach taken by CP, CN is attempting to use its decision to not allow Allied to continue its projects as the reason for not paying for the substantial amount of work that Allied had completed, as further contemplated below.

### Allied Project Completion

11. The Receiver has been provided by Mr. Craig with Progress Report #1 dated July 6, 2022 (the “First Fort Frances Progress Report”), Progress Report #2 dated July 20, 2022 (the “Second Fort Frances Progress Report”), Progress Report #3 dated August 3, 2022 (the “Third Fort Frances Progress Report”), and Progress Report #4 dated August 18, 2022 (the “Fourth Fort Frances Progress Report”, and collectively the “Fort Frances Progress Reports”). Copies of the Fort Frances Progress Reports are provided as Appendix “E”.
12. The Fourth Fort Frances Progress Report identifies that greater than 50% of the Fort Frances Project was complete as of August 18, 2022, and includes a “50% Billing Request”. The cover email from Steve Patrick of Allied to Aaron Rodier and Darcy Nazar at CN, attaching the Fourth Fort Frances Progress Report and requesting a 50% milestone completion assessment, is provided as Appendix “F”.

13. Based on its discussions and correspondence with Mr. Craig and its review of the available books and records of the Company (including the Fort Frances Progress Reports), the Receiver understands that:
- a) Allied plowed 13.85 miles of the total 16 miles in connection with Service #1 as set out in the Fort Frances SOW, representing 86.56% of the total mileage of the Fort Frances Project;
  - b) Allied installed generator bases in connection with Service #1 of the Fort Frances SOW, but was not provided by CN with the corresponding generators to be installed to complete that component of the Fort Frances Project;
  - c) The conduit/power installation set out in Progress Report #4 of the Fort Frances SOW was the highest-value item under the Fort Frances SOW. Mr. Craig has confirmed to the Receiver that the conduit/power installation work was comprised of laying high-voltage cable, plowing, and “dig-downs”, with Progress Report #4 showing that such items were 80% complete, 75% complete, and 0% complete, respectively. When taking the average completion percentage of the foregoing three items, it appears to the Receiver that the conduit/power installation was approximately 52% complete;
  - d) The three pictures contained in Exhibit “C” of the Nazar Affidavit show three locations where the cable connection was correctly completed above ground, contrary to Mr. Nazar’s statement at paragraph 16 of the Nazar Affidavit that such cabling was completed incorrectly. Such cabling was overseen by former Allied employee Cuddy Warren; and
  - e) Beyond the work reflected in the Fort Frances Progress Reports, a significant amount of additional work had been completed in connection with the Fort Frances Project, including groundwork, grounding rod installation and resistance testing, 4x4 installation, and high-voltage cable and conduit installation, with several other items being unavailable to be installed due to CN’s failure to supply such items to Allied.
14. In addition to the work-specific points discussed above, the Receiver notes that the \$453,014 invoice issued to CN on account of the Fort Frances Project work done by Allied through August 18, 2022 represents 50% of the \$906,028 Gross Fort Frances SOW Cost. Accordingly, Allied has been consistent with CN in its position that at least 50% of the contract work has been done since August 18, 2022 when the invoice was delivered.

15. The Receiver has considered the value of the work done by Allied on the Fort Frances Project, as invoiced (\$453,014, which is inclusive of HST), the amount invoiced by Oakpark to complete the remainder of the Fort Frances Project (\$478,780<sup>3</sup>), and the total Gross Fort Frances SOW Cost (\$906,028). Accounting for duplicative costs incurred by Oakpark to prepare for the project, it appears to the Receiver that the work completed by Allied was at least 50% of the total work to be done on the Fort Frances Project.
16. Finally, it is clear to the Receiver that CN obtained substantial value from the work done by Allied on the Fort Frances Project. If Allied is not paid for the work completed by it, CN will obtain a material windfall, having paid \$478,780 to Oakpark for a project that it agreed in the Fort Frances SOW was worth at least \$906,028, being the amount of the project after CN completed a request for proposals process.<sup>4</sup> This material windfall to CN would come at the explicit prejudice of Allied's creditors, the interests of which the Receiver is seeking to protect.

### **2.3 Receiver's Review of Service #10 and 10% Holdback in Ashcroft Project**

#### Scope of Work, Contract Price, and Holdback

1. The Ashcroft SOW (attached as Exhibit A to the Levesque Affidavit) provides for the replacing and upgrading of existing Signals and Communications Infrastructure between Mile 47.79 to Mile 59.11 on the Ashcroft project property. A description of the work in the Ashcroft SOW and associated costs is provided in Schedule A of this Supplemental Report.
2. The Ashcroft SOW additionally stipulates that CN reserves the right to hold back up to ten percent (10%) of any partial billing invoiced by Allied prior to the final completion of the services contemplated in the Ashcroft SOW, until such services are completed in full to the satisfaction of CN (the "Holdback Clause").
3. The Receiver understands that the Holdback Clause is intended to contractually provide for the requirements in the British Columbia *Builders Lien Act* (the "BLA"), which requires the party primarily liable on a construction contract (ie: CN) to hold back 10% of the amount of any payment to a contractor until: (a) the applicable contract has been certified as complete; and (b) the holdback period prescribed by the BLA (55 days after the contract has been completed) has expired without any claims for lien being filed. The Levesque Affidavit states at paragraph 18 that the purpose for the Holdback Clause is to ensure that CN has funds to pay another contractor to finish a project if the original contractor does not do so.

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<sup>3</sup> The Oakpark costs for the Fort Frances Project are discussed in paragraph 19 of the Nazar Affidavit and summarized in Exhibit D thereto. The Receiver understands that Exhibit D is a summary of invoices paid by CN, and therefore assumes that they are inclusive of HST.

<sup>4</sup> The Receiver is not aware of the details of other bids received by CN in respect of the Fort Frances Project, if any, nor of the pricing in any such other bids. The Receiver has requested that CN provide to the Receiver other bids received in respect of the Fort Frances Project. This request was made in writing on March 6, 2024, and the Receiver is awaiting a response. The Receiver will update the Court in a subsequent Report to the extent any relevant information is provided by CN.

4. While the BLA does not include explicit restrictions on liening railways (as does, for example, the Ontario *Construction Act*), the Receiver understands that principles of constitutional paramountcy limit the ability of a provincial legislature to create statutory lien rights over property that the federal government has jurisdiction over, such as railways. Accordingly, in addition to the cushion that the Holdback Clause gives CN in the event that it has to re-source services, the Holdback Clause would also appear to give CN some comfort in respect of any claims for payment that may be made against CN by Allied's sub-trades, who cannot lien the railway property.
5. The Receiver is not aware of any claims having been made against CN by any of Allied's sub-trades in connection with the Ashcroft Project, be those lien claims or otherwise. The Weibe Affidavit states at paragraph 24 that the work on the Ashcroft Project was not complete as of the date of that affidavit (September 28, 2023), and the Receiver has requested that CN provide an update on the completion of the project.

#### Termination of Ashcroft SOW

6. As it did with respect to the Fort Frances Project, shortly after the filing of the NOI by Allied, the Proposal Trustee contacted CN to discuss completing the Ashcroft Project. The proposed terms of work completion attached to the email in Appendix "C" would have included the Ashcroft Project, if CN had been willing to work with the Court Officer.
7. Notwithstanding the efforts by the Court Officer and Allied to complete the Ashcroft Project in spite of the Allied insolvency, CN declined to even discuss potential terms for such completion, and now seeks to rely on the degree of incompleteness of the Ashcroft Project to justify withholding payment for work done by Allied.

#### Allied Project Completion

8. The Receiver understands the following about the Ashcroft Project based on its discussions and correspondence with Mr. Craig, and its review of the available books and records of the Company:
  - a) CN and Allied revised the Ashcroft Project contract price from \$1,297,795 to \$1,229,850 (which is inclusive of GST) pursuant to the revised "Fieldglass" Statement of Work for the time period of June 1, 2021 to December 31, 2021 ("Revised Ashcroft SOW"). A copy of the Revised Ashcroft SOW is attached hereto as Appendix "G".
  - b) Allied completed \$203,747 in extra work requested by CN ("Extra Ashcroft Work"). The Extra Ashcroft Work included grading, disposal and generator work that was completed above and beyond the services provided for in Schedule A herein. The total contract value (based on the Revised Ashcroft SOW and Extra Ashcroft Work) is \$1,433,597.

- c) Allied completed all of the work associated with Service #10 of the Ashcroft Project, subject to potential deficiencies which may have been addressed by Oakpark. Additionally, certain work on the Ashcroft Project was unable to be completed due to Allied waiting for further direction and supply of materials from CN.
- d) CN paid Allied the aggregate amount of \$535,806 between January 20, 2021 and July 20, 2022 for the Ashcroft Project, including \$298,820 in connection with Service #10. CN continues to owe Allied \$332,023 for its work completed on Service #10, and \$407,169 for the total work completed on the Ashcroft Project, as specified below.
- e) The full 10% holdback (\$122,985, which is inclusive of GST) amount remains outstanding and is included in d) above.
9. The Receiver has considered the revised Ashcroft Project contract price (\$1,229,850), the amount of the Extra Ashcroft Work (\$203,747) owed to Allied, the total amount paid by CN to Allied (\$535,806), and the Receiver has deducted the cost of the work completed by Oakpark in connection with Service #10 (\$490,622<sup>5</sup>). Based on the books and records of the Company, the Receiver believes that there remains owing \$407,169 based on the Ashcroft invoices that have not yet been paid:

	Amount (\$)
Revised Ashcroft SOW contract value with GST (\$1,171,285.93 x 1.05 = \$1,229,850.23):	1,229,850.23
Extra Ashcroft Work (\$194,044.46 x 1.05 = \$203,746.68)	203,746.68
Total amount paid by CN to Allied:	(535,806.38)
Total amount paid by CN to Oakpark to complete project and remediate deficiencies:	(490,621.95)
<b>Residual Amount</b>	<b>407,168.58</b>

10. In addition, while the Receiver has not been able to find any documentation to refute CN's position that certain services may not have been completed "to the satisfaction of CN", the Receiver believes that it is nevertheless just and reasonable for Allied to be paid the 10% holdback amount for the services that it has completed in full, subject potentially to adjustment for any remediation that was required. CN's position, however, is that Allied should be paid nothing for the work that was done.
11. The Receiver is unaware of any claims having been made against the Ashcroft Project (whether lien claims or otherwise). As such, it would be unfair and inequitable for CN to be allowed to retain the holdback amount when the very risk that the holdback amount is intended to protect against (i.e., lien or other claims) has not materialized, and assuming the Ashcroft Project has been completed, will not materialize.

<sup>5</sup> The Oakpark costs for the Ashcroft Project are discussed in paragraph 23 of the Wiebe Affidavit and summarized in the Oakpark Statement of Work contained in Exhibit H thereto. The Receiver understands that the fee amount of \$467,259 in the Oakpark Statement of Work does not include applicable taxes, being 5% GST. The Receiver has added GST to the total referenced in paragraph 7 above.

### 3.0 Conclusion

1. The Receiver respectfully updates the Court on the foregoing developments and intends to file a second supplemental report following receipt of CN's materials regarding the Set-off Disputed Amount.

\* \* \*

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”**



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

**March 21, 2023**



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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 2806401 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 REPORT OF KSV RESTRUCTURING INC. AS RECEIVER AND MANAGER OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC

MARCH 21, 2023

## 1.0 Introduction

1. On August 25, 2022 (the “Filing Date”), 2806401 Ontario Inc. o/a Allied Track Services Inc. (“Allied” or the “Company”) filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”). KSV Restructuring Inc. (“KSV”) was appointed as the proposal trustee (the “Proposal Trustee”).
2. On September 6, 2022, the Ontario Superior Court of Justice (Commercial List) (the “Court”) made an Order (the “Interim Receivership Order”) appointing KSV as the interim receiver (the “Interim Receiver”), without security, of all of the assets, undertakings and properties of Allied (collectively, the “Property”) pursuant to an application brought by the Proposal Trustee under section 47.1 of the BIA. Allied’s principal secured creditor, Bridging Finance Inc. (“Bridging”), and its sole shareholder, Bridging Income Fund LP (“Bridging Income”), supported the application.
3. On September 23, 2022, the Court made an order (the “Receivership Order”) appointing KSV as the receiver and manager (the “Receiver”) of the Property pursuant to an application brought by PricewaterhouseCoopers Inc., in its capacity as Court-appointed Receiver of Bridging (the “Bridging Receiver”). A copy of the Receivership Order is available on the Receiver’s case website [here](#).

4. As a result of the Receivership Order, the appointment of the Interim Receiver was terminated. The Court previously approved the fees and activities of the Interim Receiver.
5. The Company's deadline to file a proposal in the NOI Proceedings was November 8, 2022; however, as no viable proposal was possible, that deadline was allowed to pass. The Company was deemed to have made an assignment in bankruptcy on November 9, 2022. KSV was appointed the Licensed Insolvency Trustee (the "Trustee") of Allied's bankrupt estate, which was affirmed at the first meeting of creditors. The deemed bankruptcy did not impact the Company's receivership proceeding, including work performed for CP (as defined below).
6. On October 28, 2022, the Court made an order (the "Auction Services Approval Order"), which, among other things: a) approved an Auction Services Agreement dated October 17, 2022, as amended (the "ASA"); b) authorized the Receiver to sell the Danella Units and the LMS Units (each as defined below); and c) approved the activities of the Receiver between September 23, 2022 and October 19, 2022. The Auction Services Approval Order was amended and restated on November 22, 2022, with retroactive effect to October 28, 2022, as discussed further below. A copy of the Auction Services Approval Order (as amended and restated) is available [here](#).
7. Corporate Assets Inc. (the "Auctioneer") conducted the auction in accordance with the ASA and the Auction Services Approval Order, resulting in substantially all of Allied's equipment being sold, and generating net proceeds of approximately \$9.6 million. The Receiver has also recovered a significant portion of the accounts receivable owing to Allied and continues to work to collect the remaining amounts.

## 1.1 Purposes of this Report

1. The purposes of this report (the "Report") are to:
  - a) provide background information about the Company and these proceedings;
  - b) summarize the results of the auction (the "Auction"), whereby the Auctioneer sold all of the Company's owned equipment, machinery, vehicles and tools (the "Owned Equipment") and certain leased equipment, machinery and vehicles (the "Leased Equipment" and together with the Owned Equipment, the "Equipment") pursuant to the ASA;
  - c) update the Court on the status of certain leased equipment that was not sold at the Auction, previously discussed in the Receiver's first report to Court dated October 20, 2022 (the "[First Report](#)"), the Receiver's supplement to the First Report (the "[First Supplemental Report](#)") and the Receiver's supplement to the First Report and First Supplemental Report (the "[Second Supplemental Report](#)");
  - d) summarize the Receiver's views regarding the equipment leased from LMS Rail Services Limited ("LMS") and Danella Rental Systems Ltd. ("Danella"), and the distribution of the proceeds of sale thereof;

- e) summarize the results of a payroll examination (the “Payroll Examination”) conducted by Canada Revenue Agency (“CRA”) and its deemed trust claim pursuant to section 67(3) of the *Income Tax Act* (the “ITA”);
- f) provide an update on the Receiver’s receipts and disbursements since the commencement of the interim receivership proceedings;
- g) summarize the Receiver’s correspondence with Koskie Minsky LLP (“Koskie Minsky”), counsel to the Labourers International Union of North America, Ontario Provincial District Counsel (“LIUNA”), being the union that represents certain of the Company’s former employees (the “Unionized Employees”);
- h) summarize claims submitted by LIUNA on behalf of its members and from non-unionized employees, including super-priority claims pursuant to sections 81.4 and 81.6 of the BIA;
- i) summarize the Receiver’s correspondence with former employees regarding the Wage Earner Protection Program (“WEPP”);
- j) discuss the claim of Employment and Social Development Canada (“ESDC”) resulting from its subrogation of amounts paid to certain former employees under the WEPP;
- k) summarize the Receiver’s recommended distribution to CRA, certain former employees, ESDC, Bridging and the LMS Secured Creditors (defined below);
- l) summarize the Receiver’s correspondence with A Action Towing And Recovery Inc. (“A Action”), a towing company, with respect to a Mark 4 Track Machine (VIN 7114114) that was owned by Allied (the “Mark 4”);
- m) summarize the Receiver’s activities from October 20, 2022 to the date of this Report;
- n) summarize the Receiver’s fees and those of its counsel, Blake, Cassels & Graydon LLP (“Blakes”), from the date of the Receivership Order to February 28, 2023; and
- o) recommend that this Court issue Orders:
  - approving distributions to CRA, former employees, ESDC, Bridging and the LMS Secured Creditors, net of certain reserves and holdbacks, as set out in Section 7.0 of this Report;
  - declaring that Danella and LMS do not have a secured claim to the proceeds of sale of equipment leased by them to Allied;
  - declaring that A Action does not have a valid lien claim under the *Repair and Storage Liens Act* (the “RSLA”);

- approving the Receiver's activities for the period October 20, 2022 to the date of this Report; and
- approving the fees and disbursements of the Receiver and Blakes for the period September 23, 2022 to February 28, 2023.

## 1.2 Currency

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

## 1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information prepared by the Company's representatives, the books and records of the Company and discussions with representatives of the Company and with its sole shareholder, Bridging Income. The Receiver has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Receiver accepts no responsibility for any reliance placed by any third party on the Company's financial information presented herein.

## 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>.

## 2.0 Background

1. The Company was a railroad maintenance service provider, offering track maintenance and repair, construction, bridging, civil engineering, flagging, signalling and related services.
2. The Company leased its head office in Grimsby, Ontario (the "Grimsby Property"), a facility and nearby lot in North Bay, Ontario (the "North Bay Property") and operated in Ontario, Alberta, Manitoba and British Columbia.
3. The Company was incorporated on January 8, 2021 by Bridging for the purposes of acting as a stalking horse bidder in the proposal proceedings of a company formerly known as Allied Track Services Inc. ("Old Allied"). Bridging was Old Allied's largest secured creditor.

4. After a sale process in the Old Allied proposal proceedings, the Company's stalking horse bid was determined to be the superior bid, and the Company bought substantially all tangible assets, intellectual property and undertakings of Old Allied in a Court-approved transaction that closed on April 30, 2021 (the "Old Allied Asset Purchase"). This transaction permitted the Company to continue the operations of Old Allied as a going concern and to continue to provide services to its customers, uninterrupted.
5. Also on April 30, 2021, in proceedings unrelated to the Old Allied proposal proceedings, the Court appointed the Bridging Receiver as receiver of Bridging and certain related entities and investment funds pursuant to section 129 of the *Securities Act* (Ontario), upon application by the Ontario Securities Commission. Bridging is presently the Company's largest secured creditor, owed a principal amount of \$15 million<sup>1</sup>, with interest and costs continuing to accrue, and a related party (Bridging Income) is its sole shareholder.
6. Despite the successful implementation of the Old Allied Asset Purchase in Old Allied's proposal proceeding, the Company continued to generate losses, resulting in the NOI proceeding on August 25, 2022.
7. As a result of personnel departures and stakeholder uncertainty triggered by the NOI proceeding, the Proposal Trustee brought an application under section 47.1 of the BIA seeking the appointment of KSV as Interim Receiver. This was done in order to bring stability to the Company's operations and wind-down, and to facilitate the Company completing certain contracts (the "Service Contracts"). As a result of this application, the Interim Receivership Order was granted on September 6, 2022.
8. As the Interim Receivership Order was intended to be temporary and for other reasons set out in the Proposal Trustee's Second Report to Court dated September 16, 2022 (the "[Second Trustee Report](#)"), Bridging brought an application to appoint KSV as Receiver, which was granted on September 23, 2022.
9. The Company employed approximately 120 individuals as of the Filing Date, including members of LIUNA. The Interim Receiver terminated approximately 60 employees following issuance of the Interim Receivership Order as the Company discontinued all of its projects other than certain Service Contracts for Canadian Pacific Railway ("CP"), one of Allied's largest customers. Several employees also resigned during the receivership proceedings.
10. In November 2022, the Receiver and CP agreed to terminate the Service Contracts as CP transitioned to one of the Company's competitors. The Receiver terminated the employment of the remaining employees performing work pursuant to the Service Contracts. The Receiver understands that substantially all of the Company's former employees involved with the CP project were retained by the competitor.

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<sup>1</sup> This amount had been identified as \$60 million in the First Report and in other materials filed in this proceeding. Upon review of the closing book and other documents associated with Bridging's acquisition of Allied, the structure of the transaction was clarified such that the acquisition was funded, in part, by the issuance of a \$15 million secured promissory note to Bridging pursuant to a Demand Grid Promissory Note dated April 30, 2021 and a General Security Agreement dated April 30, 2021. The Bridging Receiver agrees that this is the outstanding balance.

11. As at the date of this Report, all employees have been terminated. The Company's former Chief Operating Officer continues to assist with the collection of accounts receivable on a contract basis.
12. The Receiver has vacated all leased real property formerly used by Allied and terminated the leases for these facilities.
13. Additional information about the Company is provided in the Second Trustee Report.

### 3.0 Sale of Equipment

#### 3.1 The Leased Equipment

1. The ASA provided for the Auctioneer to sell certain Leased Equipment where either: a) the applicable lessor's interest was not properly perfected; or b) the net minimum guarantee offered by the Auctioneer (the "NMG") exceeded the balance owing to the applicable lessor in cases where the lessor's interest was properly perfected.
2. A summary of the Receiver's assessment of the lessors' status is summarized below:

<b>Lessor (Secured Party)</b>	<b>Collateral</b>	<b>Registered against Old Allied</b>	<b>Registered against the Company</b>	<b>Lessor Rights in Collateral</b>
Calmont Leasing Ltd. ("Calmont")	1 2017 GMC Sierra 1 2017 Ford F-150 (the "Calmont Units")	No	No	Yes
Caterpillar Financial Services Limited ("Caterpillar")	1 Caterpillar 420-07XE backhoe loader (the "Caterpillar Unit")	N/A	Yes	Yes
Danella	1 2013 Ford F750 2 Volvo VHD64B200s (the "Danella Units")	No	No	No
Falcon Equipment Ltd. (Valiant Financial Services Inc.) ("Valiant")	3 Freightliner 114SDs (the "Valiant Units")	Yes	No	Yes
Meridian OneCap Credit Corp. ("Meridian")	1 Landoll 454B-53 Trailer (the "Meridian Unit")	Yes	Yes	Yes
Quip Finance (Vault Credit Corporation) ("Vault")	1 2018 Vermeer Navigator Drill (the "Vault Unit")	N/A	Yes	Yes
Wheaton Chevrolet Buick Cadillac GMC Ltd. ("Wheaton")	1 2021 GMC Sierra (the "Wheaton Unit")	Yes	Yes	Yes
Queenston Chevrolet Buick GMC (Setay Motors Inc.) ("Setay")	17 Chevrolet Trucks (the "Setay Units")	Yes	No	As discussed below
LMS	44 Ford F-250s and F-350s (the "LMS Units")	No	No	As discussed below



3. As referenced above, the Receiver concluded that Calmont, Caterpillar, Valiant, Meridian, Vault and Wheaton had priority over their respective collateral. As noted in the First Supplemental Report, the Receiver contacted these lessors to inquire about a buyout amount in order to determine if there was equity in the equipment.
4. The outcome of the Receiver's correspondence with the lessors is summarized below:
  - a) **Calmont:** The Auctioneer was not prepared to increase the NMG by an amount exceeding the buyout amount. As a result, the Calmont Units were returned to Calmont;
  - b) **Caterpillar:** The Auctioneer's increase in NMG exceeded the buyout amount. As a result, the Receiver bought out the Caterpillar Unit and included it in the Auction;
  - c) **Valiant:** The Auctioneer was not prepared to increase the NMG by an amount exceeding the buyout amount. As a result, the Valiant Units were returned to Valiant;
  - d) **Meridian:** The Auctioneer's increase in NMG exceeded the buyout amount. As a result, the Receiver bought out the Meridian Unit and included it in the Auction;
  - e) **Vault:** The Auctioneer's increase in NMG exceeded the buyout amount. As a result, the Receiver bought out the Vault Unit and included it in the Auction; and
  - f) **Wheaton:** Blakes advised Wheaton that the Receiver would return the Wheaton Unit to Wheaton following the Court hearing on October 28, 2022 (the "October 28 Hearing") as the Receiver had not yet determined whether the Company's creditors would object to the return of the Wheaton Unit. Despite correspondence from Blakes expressly objecting to Wheaton taking possession of the vehicle prior to the October 28 Hearing, Wheaton seized the vehicle on October 21, 2022. Blakes sent a letter to Wheaton on October 24, 2022 advising, among other things, that if any objections were raised, the Receiver would take all steps to recover the Wheaton Unit. The Receiver is not aware of any creditor objecting to the seizure of the Wheaton Unit and, accordingly, the Receiver has not corresponded with Wheaton on this matter further.
5. As summarized in the First Report, the Receiver's position was that Setay had priority over 14 units (the "VIN Registered Setay Units") but did not have priority over three units (the "Unregistered Setay Units"). Pursuant to the Auction Services Approval Order, the Court authorized the Receiver to return the VIN Registered Setay Units and pay all rent owing in respect of same from the Filing Date to the date that the VIN Registered Setay Units were returned. Since the Auction Services Approval Order, all of the VIN Registered Setay Units have been returned and the applicable rent has been paid. The Unregistered Setay Units were sold at the Auction.
6. The Court authorized the Receiver to sell the Danella Units and directed the Receiver to segregate the net proceeds from the sale of the Danella Units, with such net proceeds not to be distributed by the Receiver except with further Order of the Court, on notice to Danella. The Danella Units were sold at the Auction and the net proceeds were segregated, as referenced in Section 3.2 below. The distribution of these net proceeds is discussed below.

7. Similar to the treatment of the Danella Units, the Court authorized the Receiver to sell the LMS Units and directed the Receiver to segregate the net proceeds until further Order of the Court, on notice to LMS. The LMS Units were sold at the Auction, and the net proceeds were segregated. The distribution of these net proceeds is discussed below.

### 3.2 The ASA & The Auction

1. As the ASA was dated prior to the Auction Services Approval Order, the Receiver and the Auctioneer agreed to amendments (the “ASA Amendments”) to include the Unregistered Setay Units, the segregation of the proceeds of the Danella Units and LMS Units and certain other changes. A copy of the ASA Amendments is provided in Appendix “A”.
2. A summary of the key terms of the amended ASA is provided below:
  - a) NMG<sup>2</sup>: \$5,710,000;
  - b) Expenses<sup>3</sup>: The Auctioneer was entitled to retain the first \$250,000 above the NMG to cover its costs.
  - c) Buyer’s Premium: 18%.
  - d) Profit Sharing: All proceeds in excess of the NMG and Expenses (other than the buyer’s premium) were allocated 100% to the Receiver.
  - e) LMS Units and Danella Units: The proceeds from the sale of the LMS Units and Danella Units (other than the buyer’s premium) were paid to the Receiver. The Auctioneer did not provide an NMG in respect of these units.
3. The Auctioneer conducted an extensive social media campaign targeting industries dealing with heavy equipment, railway equipment and services, construction, auctions and specific companies such as CP, Canadian National Railway Corporation (“CN”) and Southern Railway.
4. The Auctioneer developed a brochure with a complete listing of the Equipment, including descriptions, photos and videos which was available on the Auctioneer’s website leading up to and during the Auction.
5. In addition to the above, the Auctioneer targeted buyers by product type and geographic region. As a result of its extensive marketing campaign, the Auctioneer negotiated and completed transactions for certain Equipment at amounts that exceeded what it estimated would have been offered at the Auction.
6. The Auction was conducted on November 16 and 17, 2022 by live webcast online auction, which is industry standard. The bidding process was highly competitive resulting in 262 registered bidders and 67 purchasers.

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<sup>2</sup> This amount was redacted in the First Report for the reasons set out therein.

<sup>3</sup> This amount was redacted in the First Report for the reasons set out therein.

- Following the Auction, the Auctioneer arranged for the purchasers to remove their respective Equipment and paid the net sale proceeds to the Receiver in accordance with the ASA, as amended.

### 3.3 Auction Results

- The Auction results are summarized as follows (the below amounts do not include the Auctioneer's Buyer's Premium, which the Auctioneer retained in accordance with the ASA):

	Owned Equipment <sup>4</sup>	LMS Units and Danella Units
Owned	8,009,821	-
LMS Units	-	1,625,811
Danella Units	-	200,510
Proceeds, before Auctioneer expenses	8,009,821	1,826,321
Less: Auctioneer expenses	(250,000)	-
<b>Sale Proceeds from the Auctioneer</b>	<b>7,759,821</b>	<b>1,826,321</b>

- The Auctioneer paid the Receiver the sale proceeds reflected above which total \$9,586,142. The sale proceeds are before receivership expenses associated with selling the Equipment, as described in Section 5.0 below.

### 4.0 Collection of Accounts Receivable

- The Receiver and the Company's accounting personnel reviewed the Company's books and records and issued invoices for substantially all work-in-progress and completed projects that had not been invoiced before the Filing Date.
- As at the date of this Report, the Receiver has collected approximately \$2.7 million of receivables (excluding sales taxes<sup>5</sup>), which includes approximately \$1.9 million from CP, representing the full balance owing from CP as at the Filing Date.
- The Receiver's collection efforts included, among other things, issuing demand letters and filing construction liens. All construction liens have since been discharged, either as a result of receiving payment in full of the outstanding amounts, or in connection with settlement agreements between the Receiver and account debtors.

<sup>4</sup> Includes the Unregistered Setay Units.

<sup>5</sup> The Company is required to file monthly sales tax returns. The Receiver has filed all outstanding pre-filing sales tax returns and the post-filing sales tax returns. For the purposes of the sales tax returns, HST collected was reported in the period that the work was performed, regardless of the applicable invoice date. For clarity, HST collected after the Filing Date that related to work performed prior to the Filing Date is included in the pre-filing sales tax returns.

## 4.1 CN Receivable

1. The amounts collected, as referenced above, represent the majority of the balance owing to the Company other than an amount due from CN, one of the Company's largest customers.
2. As at the Filing Date, CN owed the Company approximately \$2.5 million in accounts receivable and work-in-progress. Of this amount, CN has advised that, pending resolution with Allied's insurer, it is setting off approximately \$1.4 million for damages it suffered in January 2021 from a contractor engaged by the Company related to a drilling mishap.
3. The Receiver and CN have been discussing the balance due and the insurance claim. The Receiver and Allied's insurer are also discussing the insurance claim in an effort to resolve this matter consensually. Progress with the insurer on this resolution has been slow; however, as of March 13, 2023, the Receiver understands that the insurer has received a legal opinion regarding its obligation to respond to Allied's claim, and has reported the legal opinion to the applicable underwriters. The Receiver is not aware of the conclusions in the legal opinion, but will continue to pursue this claim. A copy of the email chain between the Receiver and the adjuster assigned to this claim is attached hereto as Appendix "B". The Receiver may seek further relief from this Court if the insurer does not deal with the claim on a timely basis.

## 4.2 Outstanding Claims Against Customers

1. The Receiver entered into settlement arrangements with two customers (the "Customers") relating to track and bridge rehabilitation projects completed by Allied before the Filing Date. The Customers, which together owe Allied approximately \$345,000, refused to pay the Receiver unless and until they received confirmation that none of the Company's sub-contractors (collectively owed approximately \$125,000 as of the Filing Date) would register liens against the Customers' respective property.
2. The settlement agreements provide that the Customers pay the balance owing to Allied in full, to be held in trust by the Receiver, and such payments are to be released from trust upon the delivery by the Receiver to the Customers of statutory declarations signed by each sub-contractor attesting to the last day that services or supplies were provided. These dates are expected to confirm that the time has passed for the sub-contractors to register a construction lien against the Customers' property.
3. To incentivise the sub-contractors to provide the statutory declarations, the Receiver was required to pay the sub-contractors the full amount of their outstanding invoices to Allied (from the amounts held in trust that were paid by the Customers), which in the aggregate is approximately \$220,000 less than the amounts owing to Allied by the Customers. The Receiver is willing to pay these amounts to sub-contractors, notwithstanding that the subcontractors' claims are unsecured, as these settlements result in full recovery to Allied of amounts owing by the Customers, including a surplus amount after all subcontractors are paid. The alternative to a settlement would likely have been litigation between the Receiver and each of the Customers. Given the potential costs associated with litigation, there would be significant uncertainty

regarding recoveries. The settlements provide the Receiver with certainty as to the collectability of the receivables assuming that the statutory declarations are obtained.

4. Accordingly, the Receiver views the settlements with the Customers as being net-beneficial to the Allied estate, the most efficient resolution to the claims against the Customers from a costs and time perspective and the best possible resolution in the circumstances.
5. The Customers have each funded the full outstanding balances to the Receiver, in trust. The Receiver has contacted all sub-contractors to seek the required statutory declarations and to pay the sub-contractors' invoices upon receipt of statutory declarations from all subcontractors on each project. As of the date of this Report, the Receiver has not yet received statutory declarations from all sub-contractors; however, no sub-contractor has refused the proposal.

## 5.0 Statement of Receipts and Disbursements

1. A summary of the Receiver's receipts and disbursements ("R&D") as of March 7, 2023 is provided below:

<b>Condensed Statement of Receipts and Disbursements</b>		(\$000s)
<b><u>Receipts</u></b>		
Auction proceeds		9,586
Collection of receivables		2,725
Revenue pursuant to the CP Service Contracts		2,665
HST collected on revenue		346
Other		71
		<b>15,393</b>
<b><u>Disbursements</u></b>		
Payroll and benefits <sup>6</sup>		2,122
Operating costs		722
Receiver/Interim Receiver's fees and disbursements		489
Buyout of leased assets		286
Legal fees and disbursements		293
Sales tax paid on disbursements		280
Insurance		275
Professional cost for the NOI proceeding <sup>7</sup>		192
Equipment lease payments		170
Real property rent		124
Sales tax remitted to CRA		120
Other		65
		<b>5,137</b>
		<b>10,256</b>

<sup>6</sup> Includes retention bonuses paid to all employees for work from the commencement of the interim receivership proceedings to the date of the employees' termination. This amount was approximately 25% of the gross payroll during this period.

<sup>7</sup> Includes the fees and disbursements of the proposal trustee and its counsel, Blakes.

2. As at the date of this Report, the cash balance in the Receiver's account is approximately \$10.3 million, before accruals for costs to complete the administration of this proceeding, the collection of outstanding receivables and HST refunds (approximately \$65,000).
3. A copy of the R&D is provided in Appendix "C".
4. The Receiver has also prepared an allocation of the R&D disbursements to reflect the fees and costs associated with insuring, transporting, storing, maintaining and selling the Equipment (the "Selling Costs"). This allocation, including an explanation of the methodology, is provided in Appendix "D".

## 6.0 Secured Creditors and Lessors

1. Bridging is the Company's principal secured creditor. As of the Filing Date, the principal balance owing to Bridging was \$15 million, with interest continuing to accrue. Blakes provided the Receiver with an opinion that, subject to the standard assumptions and qualifications contained therein, Bridging's security is valid and enforceable<sup>8</sup>.
2. The PPSA search results against the Company in British Columbia, Alberta, Manitoba and Ontario, as well as an Ontario search against 2806401 Ontario Inc. o/a Allied Track Services, requisitioned by Blakes, current to March 8, 2023, are attached as Appendix "E". The Lessors, other than LMS (and its secured creditors, as discussed below) and Valiant have discharged any registrations against their respective Leased Equipment and/or the Company. As discussed above, all Valiant units have been returned to Valiant. The LMS registration is discussed below.

## 6.1 CRA Claims

1. Following the date of the First Report, CRA conducted an examination of the Company's payroll records. Based on information provided by the Receiver and correspondence with the Receiver, CRA concluded its examination and filed a claim for unremitted source deductions. CRA's claim includes a deemed trust portion of \$673,594 (the "CRA Payroll Claim") pursuant to section 67(3) of the ITA which amount relates to unpaid employee source deductions (income tax, Canada Pension Plan, Employment Insurance) prior to the Filing Date. The Receiver has paid all source deductions in the normal course since the Filing Date. As there is a deemed trust over the unremitted source deductions, the CRA Payroll Claim takes priority over Bridging's interest. Accordingly, the Receiver is proposing to pay this in full.
2. In addition to the above, CRA also filed an unsecured claim against the Company for unremitted sales tax. As noted below in Section 7.0, no recoveries are expected for unsecured creditors.

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<sup>8</sup> A copy of this opinion can be provided to the Court on request.

## 6.2 Employee and WEPPA Claims

1. The Receiver assisted terminated employees to prepare claims based on their statutory entitlements under the relevant Provincial *Employment Standards Acts* (“ESA”) and apply for the WEPP. The Receiver also corresponded with Koskie Minsky regarding a claim it filed on behalf of all LIUNA unionized employees that were terminated since the start of the interim receivership proceedings (the “LIUNA Claim”). The LIUNA Claim is consistent with the Receiver’s calculations. For greater certainty, all employees were paid their full wages, vacation pay, benefits, pension and union dues for work completed on or after the Filing Date until the date of their termination.
2. The BIA provides for the following relevant employee claims in a receivership proceeding:
  - a) **Section 81.4:** A claim of up to \$2,000 secured against the Company’s current assets (which includes the Company’s receivables) for unpaid wages prior to the Filing Date; and
  - b) **Section 81.6:** A claim (with no limit) secured against all of the Company’s assets for unpaid employee pension plan obligations prior to the Filing Date.
3. Based on the termination of all employees, in aggregate, the Receiver determined that the former employees have a section 81.4 claim of \$94,407 and a section 81.6 claim of \$111,540 (collectively, the “Priority Employment Claims”). Pursuant to the BIA, these claims rank above every other claim against the Company’s assets, except for claims under section 81.1 and 81.2 of the BIA. Accordingly, these claims take priority over Bridging’s secured claim.
4. All or substantially all of the Company’s former employees have applied for WEPP and ESDC has paid these individuals. As a result, ESDC is subrogated to the former employees for \$52,106 (the “WEPP Secured Claim”) of the Priority Employment Claims. The remainder of the Priority Employment Claims, being \$153,841, are claims by certain former employees (the “Employee Secured Claims”). As referenced below, the Receiver is proposing to pay these amounts in full.

## 6.3 Lessors: Danella and LMS

### 6.3.1 Danella

1. The background on Danella’s leases is set out in Section 4.1(c) of the First Report and is summarized below.

#### 6.3.1.1 Danella Lease Documentation

1. Danella leased the Danella Units to Allied pursuant to an equipment rental agreement dated April 1, 2020 with Old Allied, which was assigned by Old Allied to Allied pursuant to the Old Allied Asset Purchase (the “Danella Lease”).



2. The Danella Lease provides for monthly lease payments to be made by Old Allied (now Allied) to Danella for 36 months. Schedule “B” of the Danella Lease provides that “This lease purchase agreement shall be for the terms listed above, commencing on April 1, 2020, and shall terminate on the date such Equipment is paid in full, or returned to Danella. At the end of each lease term, Lessor shall transfer ownership to Lessee, for \$1.00 per item, if all lease payments are paid in full”. A copy of the Danella Lease is attached hereto as Appendix “F”.
3. The Receiver concluded that the Danella Lease is a “financing lease” based on the term (36 months) and \$1 purchase option.
4. As a financing lease, as opposed to a “true lease”, the Danella Lease is a lease that secures payment or performance of an obligation. The Ontario *Personal Property Security Act* (“OPPSA”) applies to “every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,... an assignment, lease or consignment that secures payment or performance of an obligation.”<sup>9</sup> The Danella Lease accordingly creates a security interest to which the PPSA applies.
5. Even if the Danella Lease is a true lease, which the Receiver does not concede, the OPPSA applies to “a lease of goods under a lease for a term of more than one year even though the lease may not secure payment or performance of an obligation.”<sup>10</sup> A “security interest” under the OPPSA includes “the interest of a lessor of goods under a lease for a term of more than one year”,<sup>11</sup> and accordingly Danella’s interest under the Danella Lease is a security interest, even if it is a true lease.

### 6.3.1.2 Danella PPSA Registrations

1. As of October 11, 2022, Danella had not registered against the Company or “Allied Track Services” in Ontario, and has not done so as of the date of this Report.<sup>12</sup> The OPPSA provides that “until perfected, a security interest in collateral is subordinate to the interest of a person who has a perfected security interest in the same collateral.”<sup>13</sup>
2. Accordingly, as a lessor under a lease of a term of more than one year, Danella’s deemed security interest is unperfected, and therefore subordinate to the interests of Allied’s registered secured creditors.

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<sup>9</sup> OPPSA, s. 2(a)(ii)

<sup>10</sup> OPPSA, s. 2(c)

<sup>11</sup> OPPSA, s. 1(1)

<sup>12</sup> As discussed in the First Report, the Receiver has been advised by Allied that the Danella Units were received by Old Allied in Ontario, and were located in Ontario at all material times.

<sup>13</sup> OPPSA, s. 20(1)(a)(i)



### **6.3.1.3 Sale of Danella Units**

1. The Receiver's counsel notified Danella of its unperfected status by letter dated October 12, 2022. Danella was served with the Receiver's motion record seeking the Auction Services Approval Order, together with the First Supplemental Report and the Second Supplemental Report. Danella's counsel attended the hearing of the motion for the Auction Services Approval Order.
2. On October 28, 2022, Madam Justice Conway granted the Auction Services Approval Order, which explicitly: a) authorized the Receiver to sell the Danella Units; b) vested title to the Danella Units in a purchaser thereof; c) ordered that any claims of Danella in or to the Danella Units would attach to the proceeds of sale; and d) directed the Receiver to segregate the net proceeds of sale of the Danella Units, and make no distribution of such proceeds without further order of the Court, sought on notice to Danella.
3. As summarized in Section 3.3, above, the sale proceeds from the Auctioneer resulting from the Danella Units were \$200,510. The Selling Costs allocated to the Danella Units are \$23,726 resulting in net proceeds of \$176,784 (the "Danella Proceeds").

### **6.3.1.4 Proposed Treatment of Danella Proceeds**

1. For the reasons set out above, the Receiver has concluded that Danella's interest in the Danella Units (and therefore the Danella Proceeds) is a security interest, and that the security interest is unperfected and subordinate to the interests of Bridging.
2. Based on that conclusion, the Receiver is recommending that the Court make a declaration that Danella does not have a priority secured interest in the Danella Proceeds, and order that the Danella Proceeds be distributed to the secured creditors of Allied in accordance with their priorities, discussed below in Section 7.0.
3. On March 12, 2023, the Receiver advised Danella's counsel of its intention to seek an order distributing the Danella Proceeds to the secured creditors of Allied in accordance with their priorities. Danella responded that it does not intend to oppose this distribution.

### **6.3.2 LMS**

1. The background on LMS's leases is set out in Section 4.1(i) of the First Report and Section 2.9 of the First Supplemental Report, and is summarized below.

### 6.3.2.1 LMS Lease Documentation

1. As of October 28, 2022 (the date of the Auction Services Approval Order), LMS leased 46<sup>14</sup> Ford trucks to Allied (the “LMS Units”), pursuant to either:
  - a) an “equipment lease agreement” dated August 1, 2016 between LMS and Old Allied (the “2016 LMS Lease”) that was assigned to the Company by Old Allied in connection with the closing of the Old Allied Asset Purchase (with LMS’s consent, set out in an “agreement” dated March 17, 2021 among LMS and Old Allied (the “LMS Consent Agreement”); or
  - b) an equipment master lease dated March 22, 2021 between Allied and LMS, which appears to have been entered into prior to the closing of the Old Allied Asset Purchase on April 30, 2021 (the “2021 LMS Lease”). The March 22 Master Lease includes an “entire agreement” provision and appears to be intended to be the governing document between Allied and LMS, superseding the 2016 LMS Lease.

Copies of the 2016 LMS Lease, LMS Consent Agreement and 2021 LMS Lease are attached as Appendices “G”, “H” and “I”, respectively.

2. LMS provided the Receiver with 22 documents marked as “Schedule ‘B’ – Equipment Lease Agreement”, dated between May 27, 2019 and May 27, 2022 documenting the leases of particular LMS Units (collectively, the “Schedule Bs”). Neither the 2016 LMS Lease nor the 2021 LMS Lease refer to a “Schedule B”. LMS has not provided the “Schedule A”, which is referenced in the 2021 LMS Lease. The Schedule Bs are attached hereto, collectively, as Appendix “J”.
3. The Schedule Bs include 21 of the 46 LMS Units that were in Allied’s possession as of the date of the Auction Approval Order. One of the Schedule Bs relates to a unit that was returned by Allied to LMS prior to filing the NOI (Ford F-350 Crewcab, VIN 1FT8W3B68KEG81843).
4. The documentation in respect of the LMS Units is unclear, including because:
  - a) the 2021 LMS Lease was executed before Allied purchased the assets of Old Allied pursuant to the Old Allied Asset Purchase, but it is executed in the name of “Allied Track Services Corp.” (not “Allied Track Services Inc.”, the correct legal name of Old Allied), by an employee of Old Allied who subsequently became an employee of Allied;
  - b) the amended and restated asset purchase agreement between Old Allied and Allied consummated the Old Allied Asset Purchase does not explicitly list any LMS leases as “Material Contracts”, and it is not clear whether Allied designated any LMS lease as an “Assigned Contract”;

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<sup>14</sup> Two of the LMS Units (defined as the “Short Term LMS Units”) were returned to LMS pursuant to the terms of the Auction Services Approval Order, leaving 44 LMS Units to be sold by the Auctioneer.

- c) the April 7, 2021 approval and vesting order of Madam Justice Dietrich, which approves the Old Allied Asset Purchase, does not explicitly list any LMS leases as an “Assigned Contract” in Schedule B; and
  - d) the LMS Consent Agreement explicitly consents to the assignment of the 2016 LMS Lease by Old Allied to Allied.
5. Regardless of whether the 2021 LMS Lease between Allied and LMS governs the LMS Units, or whether the 2016 LMS Lease between Old Allied and LMS was assigned by Old Allied to Allied on April 30, 2021 and governs the LMS Units, the Receiver’s conclusion with respect to LMS’s entitlement to the LMS Units is the same: the LMS Units were leased to Allied pursuant to a lease of a term of more than one year. Whether the LMS Units were leased pursuant to a “true lease” or a “financing lease”, LMS’s interest in the LMS Units is a security interest.

#### **6.3.2.2 LMS PPSA Registrations**

- 1. As of October 10, 2022, the date of the PPSA searches attached to the First Report, LMS had not registered a PPSA financing statement against the Company, nor had it registered a financing statement against Old Allied. As discussed in the First Supplemental Report, LMS registered against “2806401 Ontario Inc. o/a Allied Track Services Corp.” on October 19, 2022, and amended that registration to change the secured party name and add the VINs for the LMS Units, on October 21, 2022.
- 2. While the registration of the PPSA financing statements by LMS on October 19, 2022 caused LMS’s deemed security interest in the LMS Units to be perfected on that date, the registration was made much later than the Bridging PPSA registration, and LMS did not make its registration in time to give it a purchase money security interest priority. Accordingly, LMS’s interest in the LMS Units is subordinate to Bridging’s interest in the LMS Units.

#### **6.3.2.3 LMS Secured Creditors**

- 1. As discussed in the First Report and the First Supplemental Report, as of October 26, 2022, 15 of the 46 LMS Units were subject to PPSA registrations by LMS’s secured creditors HSBC Bank Canada (“HSBC”) (8 LMS Units), Meridian (4 LMS Units) and Caisse Populaire (3 LMS Units). HSBC Bank Canada, Meridian and Caisse Populaire are referred to herein collectively as the “LMS Secured Creditors”.

2. The registrations by the LMS Secured Creditors were made against LMS, not against Allied, and each registration specifies the vehicle identification number, or “VIN”, of the applicable LMS Unit. The search results against VINs, together with a summary of the VIN registrations by the LMS Secured Creditors prepared by Blakes, each as of March 12, 2023, is attached hereto as Appendix “K”.<sup>15</sup>
3. The Receiver contacted the LMS Secured Creditors, and with LMS’s consent, obtained confirmation from each LMS Secured Creditor that they continue to have an interest in certain LMS Units, together with payout statements for each affected LMS Unit. The Receiver confirmed that HSBC continues to have an interest in eight LMS Units, Meridian continues to have an interest in four LMS Units, and Caisse Populaire continues to have an interest in three LMS Units.
4. As LMS’s interest in these vehicles is a security interest, and not an ownership interest, Bridging’s prior-perfected security interest in the LMS Units has priority over LMS’s deemed security interest by virtue of the PPSA. However, the VIN registrations against the LMS Units in the charts above also create a security interest in those LMS Units in favour of the LMS Secured Creditors.
5. This gives rise to what is referred to in the case law as a “double debtor” problem: Bridging has a secured claim against the LMS Units to secure the indebtedness of Allied owing to Bridging, and the LMS Secured Creditors have a security interest against the LMS Units to secure the indebtedness of LMS to the LMS Secured Creditors. The question becomes who, as between Bridging and the LMS Secured Creditors, has priority to the proceeds of sale of the specified LMS Units.<sup>16</sup>
6. This “double debtor” problem is rare, however it has been considered by the British Columbia Court of Appeal in the *Perimeter Transportation Ltd. (Re)* decision (“*Perimeter*”).<sup>17</sup>

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<sup>15</sup> The Receiver notes that since the issuance of the First Report (when the VIN registrations by LMS Secured Creditors were first reported), three of the LMS Units with HSBC registrations against the VIN have had registrations made against the same VIN by Caisse (against LMS), each on January 24, 2023, and one of the LMS Units with a Meridian registration against the VIN had a registration made against the same VIN by Business Development Bank of Canada (against 917260 Ontario Inc.) on January 12, 2023. These registrations were made after the Auction, and the Receiver understands them to be registrations made in respect of security interests against the vehicles following their sale at the Auction. In any event, these four new registrations are made subsequently to the applicable HSBC and Meridian registrations, and do not have priority to HSBC and Meridian. Accordingly, these new registrations do not affect the Receiver’s recommendations regarding the distribution of the proceeds of sale of the applicable LMS Units.

<sup>16</sup> The analysis here does not take into account the relative priority of super-priority claims like those of the CRA and those under section 81.4 and 81.6 of the BIA. This is because there are sufficient proceeds of sale of assets other than the LMS Units to fund these super-priority claims. Accordingly, regardless of who, as between Bridging and the LMS Secured Creditors, has priority to the proceeds of the LMS Units, all super-priority claims will be paid in full.

<sup>17</sup> [2010] B.C.J. No. 2224 (BC CA).

7. In *Perimeter*, the BC Court of Appeal upheld a chambers decision which found that the party analogous to the LMS Secured Creditors had priority to that of the party analogous to Bridging.<sup>18</sup> Applying the rationale in the *Perimeter* case to the present Allied facts, the LMS Secured Creditors have priority over Bridging to the LMS Units in respect of which they are VIN registered. This conclusion will be elaborated upon in the Receiver's factum filed in connection with the motion for authority to make distributions to the LMS Secured Creditors.

#### 6.3.2.4 Receiver's Authorization to Sell LMS Units

1. The Interim Receiver notified LMS of its unperfected security interest by letter dated September 9, 2022, and LMS and each of the LMS Secured Creditors were served with the Receiver's motion record seeking the Auction Services Approval Order, together with the First Supplemental Report and the Second Supplemental Report. LMS's counsel did not attend the hearing of the motion for the Auction Services Approval Order but, as set out in paragraph 2.9(18) of First Supplemental Report, advised the Receiver's counsel that it did not intend to oppose the relief sought.
2. The Auction Services Approval Order explicitly: a) authorized the Receiver to sell the LMS Units<sup>19</sup>; b) vested title to the LMS Units in a purchaser thereof; c) ordered that any claims of LMS in or to the LMS Units would attach to the proceeds of sale; and d) directed the Receiver to segregate the net proceeds of sale of the LMS Units, and make no distribution of such proceeds without further order of the Court, sought on notice to LMS.
3. As summarized in Section 3.3, above, the sale proceeds from the Auctioneer resulting from the LMS Units were \$1,625,811. The Selling Costs allocated to the LMS Units are \$192,379 resulting in net proceeds of \$1,433,432 (the "LMS Proceeds").

#### 6.3.2.5 Proposed Treatment of LMS Proceeds

1. The Receiver has concluded that LMS does not have a priority interest in the LMS Units as a result of failing to perfect its deemed security interest until October 19, 2022. The Receiver has also concluded that the LMS Secured Creditors have a valid and perfected interest in the LMS Units against which they have registered, which interest has priority over Bridging.
2. Accordingly, the Receiver is proposing that the LMS Proceeds in respect of LMS Units that the LMS Secured Creditors have VIN registrations against be paid to the applicable LMS Secured Creditor, up to the amount owing by LMS to the LMS Secured Creditor that is secured by the applicable LMS Unit, with the balance (if any) being distributed to Allied's secured creditors in accordance with their respective priorities.

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<sup>18</sup> The British Columbia Court upheld the lower court decision based on different reasons, but the result was the same.

<sup>19</sup> The Auction Services Approval Order authorized the Receiver to return to LMS two of the LMS Units, defined in the First Supplemental Report as the "Short Term LMS Units", on the grounds that they were subject to leases of a term of less than one year and therefore LMS's interest in them was not a security interest. See Section 2.9(9)-2.9(11) for a discussion of these Short Term LMS Units.

3. The Receiver is further proposing that the LMS Proceeds in respect of LMS Units that the LMS Secured Creditors do not have VIN registrations against, be paid to Allied's secured creditors in accordance with their respective priorities.
4. The Receiver notes that it is unconventional for a receiver to make distribution of estate funds to a party or parties that are not creditors of the estate. However, the "double debtor" issue present in this case is itself unconventional, and in the Receiver's view justifies the distribution. The alternative would be for the Receiver to distribute the amounts to which it has determined the LMS Secured Creditors have priority directly to LMS; however, under the circumstances the Receiver does not believe that this is appropriate.
5. The following summarizes the proposed recoveries to the LMS Secured Creditors based on the information that they provided to the Receiver, including their payout statements, loan and security agreements, and the net sale proceeds from the Auction<sup>20</sup>:

a) HSBC Bank Canada

Vehicle	VIN	Amount Secured in Favour of HSBC	Sale Proceeds, net of costs	Payment to HSBC	Shortfall
2019 Ford F-350	1FT8W3B68LED73329	67,294.32	57,749.51	57,749.51	9,544.81
2019 Ford SRW Crewcab	1FT7W2B62KED88977	20,788.81	49,087.09	20,788.81	-
2018 Ford F-350 Crewcab	1FT7W3BT5JEC00723	21,497.97	65,256.95	21,497.97	-
2019 Ford F-350	1FT8W3B65KEG81847	38,635.54	57,749.51	38,635.54	-
2019 Ford F-350 SRW	1FT8W3B63KEG81846	38,635.59	35,266.88	35,266.88	3,368.71
2018 Ford F-350	1FT8W3B61JEC30039	37,030.73	57,749.51	37,030.73	-
2022 Ford F-350 Superduty	1FT8W3B61NED08891	76,637.62	66,125.40	66,125.40	10,512.22
2022 Ford F-350 Superduty	1FT8W3B63NED08892	75,836.60	70,533.76	70,533.76	5,302.84
<b>Total</b>		<b>376,357.18</b>	<b>459,518.61</b>	<b>347,628.60</b>	<b>28,728.58</b>

b) Meridian

Vehicle	VIN	Amount Secured in Favour of Meridian	Sale Proceeds, net of costs	Payment to Meridian	Shortfall
2019 Ford F-350	1FT8W3B62KEG81840	30,903.61	45,690.03	30,903.61	-
2020 Ford F-250 SRW	1FT7W2B60LEE14025	113,336.83	57,308.68	113,336.83	-
2020 Ford F-250 SRW	1FT7W2B64LEE14027		61,717.04		
2020 Ford F-350 SRW	1FT8W3B69LED81634		35,266.88		
<b>Total</b>		<b>144,240.44</b>	<b>199,982.63</b>	<b>144,240.44</b>	<b>-</b>

c) Caisse Populaire

Vehicle	VIN	Amount Secured in Favour of Caisse Populaire	Sale Proceeds, net of costs	Payment to Caisse Populaire	Shortfall
2019 Ford F-250	1FT7W2B62KEE30371	166,577.21	35,266.88	70,533.76	96,043.45
2019 Ford F-350	1FT8W3B68KEE30370		35,266.88		
2018 Ford F-250	1FT7X2B64JEB76822	83,288.61	52,552.06	52,552.06	30,736.55
<b>Total</b>		<b>249,865.82</b>	<b>123,085.81</b>	<b>123,085.81</b>	<b>126,780.01</b>

<sup>20</sup> The sale proceeds on each vehicle are net of the Selling Costs allocated to each respective unit. Details regarding the allocation, including the methodology, are included in Appendix "C".



6. The Receiver has provided counsel to the Bridging Receiver with the foregoing analysis regarding proposed distributions to the LMS Secured Creditors; Bridging does not object to the distributions.
7. The Receiver advised LMS's counsel on March 12, 2023 of its intention to seek an order distributing the LMS Proceeds to the LMS Secured Creditors and the secured creditors of Allied in accordance with their priorities. As of the date of this Report, LMS has not responded.

#### **6.4 A Action**

1. As discussed in the First Report, the Interim Receiver and subsequently the Receiver arranged for Allied's equipment to be returned to the North Bay Property for the purposes of consolidating it for one or more auctions. One such piece of equipment was the Mark 4.
2. The Mark 4 was picked up by A Action on or about September 1, 2022 (prior to the interim receivership, but subsequent to the commencement of the NOI proceedings), at Allied's request, to be towed from Welland to North Bay.
3. The Receiver understands that A Action was in the process of towing the Mark 4 to the North Bay Property when it learned of the NOI proceeding, whereupon it held the Mark 4, and issued a "owner/lien holder notification" to Allied on September 14, 2022, claiming a possessory lien against the Mark 4 under the RSLA in the aggregate amount of approximately \$116,000. This lien claim included pre-filing invoices totaling approximately \$77,000 in respect of the Mark 4 and other Allied equipment which were incurred between March 25, 2022 and August 24, 2022. Copies of A Action's "owner/line holder notification" and supporting invoices are attached hereto, collectively, as Appendix "L".
4. A Action asserted that it had a valid possessory lien claim, and refused to release the Mark 4 unless paid the full \$116,000 claimed.
5. The Receiver disputed the validity and the quantum of A Action's possessory lien on the Mark 4, but subsequently agreed with A Action that if A Action delivered the Mark 4 to the North Bay Property, the Receiver would pay for the transport costs for that delivery, without prejudice to A Action's rights, if any, as a possessory lien claimant pursuant to the RSLA.
6. A Action delivered the Mark 4 to the North Bay Property on September 17, 2022. Upon receipt, the Receiver paid A Action (a) \$12,750.92, on account of A Action's costs associated with delivering the Mark 4 to North Bay at the Receiver's request, and (b) \$8,208.19, on account of storage and other charges incurred in relation to the Mark 4 between August 25, 2022 and September 30, 2022, being charges for services rendered at Allied's request in respect of the Mark 4 after Allied commenced its insolvency proceedings.
7. On February 28, 2023, in contemplation of seeking the Court's authority to make distributions of proceeds of Allied's Equipment (including the Mark 4), the Receiver notified A Action that it had reviewed A Action's lien claim, and determined that no additional amounts were owing on account of A Action's lien claim. A copy of the Receiver's February 28, 2023 letter is attached as Appendix "M".

8. The Receiver's assessment of A Action's outstanding claims are set out in its February 28, 2023 letter and the attachments. In summary, the Receiver's view is that:
  - a. Non-Mark 4 Services: No lien claim arises against one piece of equipment for services performed on other pieces of equipment owned by the same debtor. Accordingly, there is no valid lien claim for any of costs of services performed on equipment other than the Mark 4.
  - b. Pre-Filing Services: Prior to September 1, the Mark 4 was in the possession of Allied. There is no valid lien claim against the Mark 4 for services provided in respect of the Mark 4 that were done prior to A Action releasing possession of the Mark 4 to Allied prior to September 1.
  - c. Post-Filing Services: Notwithstanding that claims for services provided in respect of the Mark 4 prior to September 1 are not lienable, the Receiver accepts that claims for eligible services provided after the filing of the NOI are post-filing claims that Allied is required to pay. The Receiver has paid A Action \$8,208.19 on account of services requested by Allied after filing the NOI (as well as \$12,750.92 in consideration for A Action towing the Mark 4 to North Bay). The balance of A Action's claim for services provided after August 25, 2022 is on account of charges incurred in connection with A Action improperly diverting the Mark 4 and storing it without Allied or the Receiver's request or authorization, in breach of the stay of proceedings triggered by the filing of the NOI. These claims are not eligible for a lien under the RSLA.
9. Counsel to A Action responded to the Receiver's February 28, 2023 letter on March 2, 2023, objecting to the Receiver's analysis and conclusions. A copy of A Action's counsel's March 2, 2023 letter is attached as Appendix "N".
10. The Receiver responded to A Action's counsel's letter on March 6, 2023, and responded to a request for follow-up information about Allied's proposal on March 10, 2023. The Receiver advised A Action's counsel on March 14, 2023 that it would be proceeding with the relief sought in this Report on April 3, 2023. As of the date of this Report, no further correspondence on this matter has been exchanged. In the Receiver's view the objections set out in A Action's March 2, 2023 letter are fully addressed by the February 28, 2023 letter and its attachments.
11. The Receiver is accordingly recommending that no further amounts be paid to A Action on account of the Mark 4, and seeking a declaration that A Action does not have a valid possessory lien claim under the RSLA.

## 7.0 Proposed Distributions

1. As noted above, the Receiver has approximately \$10.26 million in its receivership estate account.



2. There are several outstanding matters to be completed by the Receiver before it will be in a position to seek its discharge, including (a) pursuing Allied's claim against CN and related insurance issues, which could require complicated litigation; (b) obtaining the statutory declarations referred to in Section 4.2; and (c) dealing with any objections by LMS or other creditors to the distributions proposed in this Report. On this basis, the Receiver is proposing to maintain a reserve for professional costs and disbursements in the amount of \$750,000 (the "Cost Reserve").
3. The Receiver is also proposing a contingency reserve of \$100,000 to address any unexpected payments that are required to be made between the date of this Report and the Receiver's discharge (the "Contingency Reserve").
4. After accounting for the Cost Reserve and the Contingency Reserve, the Receiver is holding \$9,406,000 that is available for distribution, as set out below.

(\$)	
Cash	10,256,000
Less: Cost Reserve	(750,000)
Less: Contingency Reserve	(100,000)
	<b>9,406,000</b>

5. Assuming that the Court grants the Receiver's request for a declaration that A Action does not have a possessory lien claim, and a declaration that neither Danella nor LMS have a secured claim against the Danella Proceeds and LMS Proceeds, respectively, the Receiver proposes that the following distributions (collectively, the "Distributions") be approved by the Court, subject to minor modifications to account for accruals of interest and expenses as agreed by the Receiver:

(\$)	
CRA Payroll Claim	673,594
Employee Secured Claims	153,841
WEPP Secured Claim	52,106
HSBC	347,629
Meridian	144,240
Caisse	123,086
Bridging (interim distribution)	7,911,504
	<b>9,406,000</b>

6. Upon the payment of these foregoing distributions and interim distributions, Bridging will have a remaining claim in the approximate amount of \$7.1 million<sup>21</sup>, in respect of which interest will continue to accrue. This amount exceeds the best-case recoveries on account of the CN claim and the whole amount of the Cost Reserve. Accordingly, it is the Receiver's expectation that no future distributions will be available for any creditors, including unsecured creditors, other than Bridging.

<sup>21</sup> Represents the remaining principal balance, prior to any interest, costs or fees incurred to the date of this Report.

## 7.1 Recommendation

1. The Receiver recommends that it be authorized and directed to make the Distributions for the following reasons:
  - a) the CRA Payroll Claim relates to unpaid employee source deductions and is a deemed trust pursuant to the ITA, which amount is not included in the Property;
  - b) the Employee Secured Claims represent pension and wages amounts withheld from employees and are super-priority claims secured against the Company's current assets (in the case of the Section 81.4 claims) and against all of the Company's assets (in the case of the Section 81.6 claims) which rank above all other claims against the Property pursuant to the BIA. With respect to the 81.4 claims, the Receiver has collected approximately \$2.7 million of accounts receivable, a current asset, during these proceedings. As a result, the current assets are sufficient to pay the Section 81.4 claims in full;
  - c) Blakes has provided the Receiver with an opinion that, subject to the standard assumptions and qualifications contained therein, the security granted by Allied to Bridging, is valid and enforceable;
  - d) although each of the LMS Secured creditors made registration against LMS, each registration specified the VIN of the applicable LMS Unit. Based on the case law to be referenced in the Receiver's factum, the Receiver's view is that the LMS Secured Creditors have priority over Bridging to the LMS Units in respect of which they are VIN registered; and
  - e) the Receiver is not aware of any other secured creditors or any other claims that rank, or may rank, in priority to Bridging's security or the claims of the LMS Secured Creditors.

## 8.0 Overview of the Receiver's Activities

1. The Auction Services Approval Order approved the activities of the Receiver occurring between its appointment on September 23, 2022 and October 19, 2022. The Receiver's activities from October 20, 2022 to the date of this Report included, among other things, the following:
  - corresponding with the Bridging Receiver and its legal counsel regarding all aspects of the Company's restructuring and providing updates regarding same;
  - dealing with CP regarding the Service Contracts and all accounting matters associated with the balances due to Allied;
  - reviewing a weekly pre-funding schedule prepared by the Company's employees which was provided to CP to pre-pay for services provided under the Service Contracts;
  - reviewing a weekly reconciliation of actual hours worked by the Company's employees to the CP pre-funding schedule;

- performing a final reconciliation of amounts owing by CP to Allied for post-filing work under the Service Contracts and corresponding with CP regarding same;
- corresponding with CP regarding the transition of work to the Company's competitor;
- arranging to pay for post-filing goods and services, including payroll, employee benefits, insurance, rent and utilities;
- corresponding with vendors regarding ongoing supply of goods or services;
- arranging, with the Company, to move certain equipment to the North Bay Property;
- corresponding extensively with the Auctioneer and the Company regarding the consolidation of equipment;
- corresponding extensively with the Auctioneer with respect to amendments to the ASA and the sale process generally;
- corresponding with the Auctioneer regarding the removal of the Equipment from Allied's leased premises, including at the North Bay Property and Grimsby Property, and corresponding with all respective landlords regarding same;
- reviewing weekly update reports provided by the Auctioneer regarding sales and Equipment removal;
- disclaiming all of the Company's real property leases and corresponding with Blakes regarding same;
- coordinating the exit from the Company's head office and dealing with an external technology firm regarding the removal of the Company's server;
- closing the utility and other accounts associated with the Company's real property leases;
- corresponding with the Company regarding the collection of outstanding receivables and corresponding with the Company's customers regarding same;
- preparing the First Supplemental Report and Second Supplemental Report and corresponding with Blakes regarding same;
- reviewing the motion materials and draft Orders ahead of the October 28, 2022 hearing;
- attending at the virtual Court hearing on October 28, 2022;
- dealing with employee matters;
- dealing with the Company's insurance agent and arranging for continued insurance coverage;

- arranging for records of employment to be issued to terminated employees;
- dealing with Blakes regarding the matters summarized in this Report, including with respect to the Leases;
- preparing information for terminated employees in respect of WEPP and requesting information from the Company in respect of same;
- dealing with Koskie Minsky regarding former unionized employees' claims;
- corresponding with Blakes regarding correspondence from Koskie Minsky and provisions of the ESA impacting former employees' claims;
- reviewing the claim and detailed calculations submitted by Koskie Minsky on behalf of former unionized employees;
- assisting former employees to prepare proofs of claim and apply for WEPP;
- attending numerous calls with former employees regarding their employment claims and WEPP;
- corresponding with CRA regarding the Payroll Examination;
- dealing with the Company regarding CRA's information requests under the Payroll Examination and compiling a response to CRA;
- reviewing the CRA Payroll Claim and attending several calls with CRA regarding same;
- submitting the Company's monthly post-filing payroll summaries to CRA;
- corresponding with CRA regarding the Company's sales tax returns;
- corresponding with the Company regarding the pre-filing sales tax returns;
- filing the Company's monthly sales tax returns;
- corresponding with the Company regarding preparing the T4 forms for 2022 and 2023;
- corresponding with an employee regarding performing work as a contractor and preparing a term and task letter in that regard;
- corresponding with the Company and Blakes regarding the outstanding receivables;
- corresponding with the Company's former customers, including CN, regarding the outstanding receivable balances;
- entering into settlement agreements with certain former employees;

- corresponding with several of the Company's creditors;
- corresponding with the LMS Secured Creditors;
- reviewing payout statements and financing agreements provided by the LMS Secured Creditors;
- reviewing correspondence between Blakes and A Action's counsel and corresponding with Blakes regarding same;
- preparing this Report and corresponding with Blakes regarding same; and
- reviewing the motion materials prepared regarding the requested relief summarized in this Report.

## 9.0 Professional Fees

1. The fees of the Receiver and Blakes from the date of the appointment of the Receiver on September 23, 2022 to February 28, 2023 total \$372,832 and \$172,820, respectively, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver and Blakes are attached as Appendices "O" and "P", respectively.
2. The activities of the Receiver are detailed in the Receiver's invoices, in this Report and in the First Report.
3. The average hourly rate for the Receiver and Blakes for the referenced billing period was \$448.50 and \$772.55, respectively.
4. The Receiver is of the view that Blakes' hourly rates are consistent with the rates charged by other law firms practising in the area of restructuring and insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.

## 10.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommend that this Court make an order granting the relief set out in Section 1.1 (1)(o) of this Report.

\* \* \*

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 “B”**

**Jamey Craig**

---

**From:** Darcy Nazar <Darcy.Nazar@cn.ca>  
**Sent:** Thursday, June 9, 2022 10:39 AM  
**To:** Steve Patrick; Joe Persia  
**Cc:** Blair Hurrell; Daniel Krause; Scott Gibson; Jason Woods; Aniruddha Sawant; Tom McIntosh  
**Subject:** Re: Fort Frances Power - SOW Revision

That is correct.

---

**From:** Steve Patrick <steve.patrick@alliedtrack.ca>  
**Sent:** Thursday, June 9, 2022 09:36  
**To:** Darcy Nazar <Darcy.Nazar@cn.ca>; Joe Persia <joe.persia@alliedtrack.ca>  
**Cc:** Blair Hurrell <Blair.Hurrell@cn.ca>; Daniel Krause <Daniel.Krause@cn.ca>; Scott Gibson <Scott.Gibson@cn.ca>; Jason Woods <Jason.Woods@cn.ca>; Aniruddha Sawant <Aniruddha.Sawant@cn.ca>; Tom McIntosh <tom.mcintosh@alliedtrack.ca>  
**Subject:** RE: Fort Frances Power - SOW Revision

**CAUTION: This email originated from outside CN: DO NOT click links or open attachments unless you recognize the sender AND KNOW the content is safe.**

**AVERTISSEMENT : ce courriel provient d'une source externe au CN : NE CLIQUEZ SUR AUCUN lien ou pièce jointe à moins de reconnaître l'expéditeur et d'**

Thanks Darcy,

That's unfortunate but we'll accommodate. I know the SOW will be officially modified but I assume you're looking at stopping everything west of the intermediate at MP 15.39 (currently shown as MP 15.10)?

Steve

---

**From:** Darcy Nazar <Darcy.Nazar@cn.ca>  
**Sent:** June 9, 2022 8:27 AM  
**To:** Steve Patrick <steve.patrick@alliedtrack.ca>; Joe Persia <joe.persia@alliedtrack.ca>  
**Cc:** Blair Hurrell <Blair.Hurrell@cn.ca>; Daniel Krause <Daniel.Krause@cn.ca>; Scott Gibson <Scott.Gibson@cn.ca>; Jason Woods <Jason.Woods@cn.ca>; Aniruddha Sawant <Aniruddha.Sawant@cn.ca>  
**Subject:** Fort Frances Power - SOW Revision

Morning Steve,

As per our discussion yesterday during the hi rail trip, we will be revising the scope of work to only line item 1 at this time. This will require conduit and secondary material for only the first 15 miles.

I will send an SOW revision tomorrow through fieldglass.

If you have any questions, please let me know.

Regards,

## **APPENDIX “C”**



---

**From:** Noah Goldstein <[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)>

**Sent:** Monday, August 29, 2022 1:25 PM

**To:** Graham Page (CA) <[graham.page@pwc.com](mailto:graham.page@pwc.com)>; marco.piccirilli@cn.ca; guillaume.desbois@cn.ca; blair.hurrell@cn.ca; Tyler Ray (CA) <[tyler.ray@pwc.com](mailto:tyler.ray@pwc.com)>; marco.levesque@cn.ca; pasqualina.mancini@cn.ca; Mitch Vininsky <[mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)>; Jordan Wong <[Jwong@ksvadvisory.com](mailto:Jwong@ksvadvisory.com)>; andy.jones@alliedtrack.ca

**Cc:** 'chris.burr@blakes.com' <[chris.burr@blakes.com](mailto:chris.burr@blakes.com)>

**Subject:** RE: Allied

CN team,

Thank you for the call. This email is to confirm that on August 25th, 2806401 Ontario Inc., operating as Allied Track Services ("Allied"), commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act*. KSV Restructuring Inc. has been appointed as the Licensed Insolvency Trustee under the NOI (the "Trustee").

Further to our call, we are attaching a template close-out agreement. This resembles the close out agreement we are working on with some of your competitors.

We look forward to hearing back from you ASAP, but please reach out if you have questions or wish to discuss before then.

For reference, the KSV people on the email represent the Trustee team, the PWC people represent the sole shareholder/lender and Chris is with Blakes, the Trustee's legal counsel.

Thanks,

Noah

-----Original Appointment-----

**From:** Graham Page (CA) <[graham.page@pwc.com](mailto:graham.page@pwc.com)>

Sent: August 29, 2022 12:47 PM

48

To: Graham Page (CA); Noah Goldstein; [marco.piccirilli@cn.ca](mailto:marco.piccirilli@cn.ca); [guillaume.desbois@cn.ca](mailto:guillaume.desbois@cn.ca); [blair.hurrell@cn.ca](mailto:blair.hurrell@cn.ca); Tyler Ray (CA); [marco.levesque@cn.ca](mailto:marco.levesque@cn.ca); [pasqualina.mancini@cn.ca](mailto:pasqualina.mancini@cn.ca); Mitch Vininsky; Jordan Wong; [andy.jones@alliedtrack.ca](mailto:andy.jones@alliedtrack.ca)

Subject: RE: Allied

When: August 29, 2022 1:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where:

<p><b>When</b></p> <p>Monday Aug 29, 2022 · 1pm – 1:30pm (Eastern Time - Toronto)</p> <p><b>Guests</b></p> <p>Graham Page (CA) - organizer  ngoldstein@ksvadvisory.com  marco.piccirilli@cn.ca  guillaume.desbois@cn.ca  blair.hurrell@cn.ca  Tyler Ray (CA)  marco.levesque@cn.ca  pasqualina.mancini@cn.ca  mvininsky@ksvadvisory.com  jwong@ksvadvisory.com  andy.jones@alliedtrack.ca</p> <p><a href="#">View all guest info</a></p> <p><b>Reply</b> for ngoldstein@ksvadvisory.com</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 5px;">Maybe</td> <td style="padding: 5px;">No</td> <td style="padding: 5px;">Yes</td> </tr> <tr> <td colspan="3" style="text-align: center; padding: 5px;"><a href="#">More options</a></td> </tr> </table>	Maybe	No	Yes	<a href="#">More options</a>			<p><a href="#">Join Microsoft Teams</a>  <a href="https://teams.microsoft.com/l/meetup-join...">teams.microsoft.com/l/meetup-join...</a></p> <p><b>Join by phone</b>  (CA) +1 647-476-2802  access code: 135020663</p> <p><a href="#">Joining instructions</a>  <b>Joining notes</b>  <a href="#">Conference Room Info</a></p>
Maybe	No	Yes					
<a href="#">More options</a>							

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## **APPENDIX “D”**



**Jordan Wong**  
**ksv advisory inc.**  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9  
T +1 416 932 6025  
F +1 416 932 6266  
jwong@ksvadvisory.com

ksvadvisory.com

September 14, 2022

CN  
935 De La Gauchetiere St W, 12<sup>th</sup> Floor  
Montreal, QC H3B 2M9  
Attention: Guillaume Desbois

**Re: Proposal and Interim Receivership of 2806401 Ontario Inc. o/a Allied Track Services Inc. ("Allied")**

**Re: Service contracts between Canadian National Railway Company ("CN" or "you") and Allied (the "Service Contracts")**

Dear Mr. Desbois:

As you are aware, on August 25, 2022, Allied filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*. KSV Restructuring Inc. ("**KSV**") was appointed as proposal trustee of Allied (in such capacity, the "**Proposal Trustee**"). On September 6, 2022, the Ontario Superior Court of Justice (Commercial List) made an order appointing KSV as interim receiver of Allied (in such capacity, the "**Interim Receiver**").

We had previously contacted you in our capacity as Proposal Trustee to discuss Allied's continuation of the work to be performed under the Service Contracts and certain amendments to its terms. You advised the Proposal Trustee and Allied that under the circumstances of Allied's insolvency, you would not require that Allied continue any activities related to Service Contracts. Accordingly, this letter is to confirm that Allied is no longer performing any work under the Service Contracts.

The Interim Receiver is in the process of calculating outstanding amounts owing by CN to Allied under the Service Contracts for the work that was completed. We will provide you with invoices for such outstanding amounts in the near future, in respect of which amounts the Interim Receiver reserves all rights.

The Interim Receiver will also coordinate the retrieval of Allied equipment located on CN job sites. Please provide us with the contact information for the appropriate party at CN to assist with this.



Should you have any questions regarding the foregoing, please contact a representative of the Proposal Trustee's office.



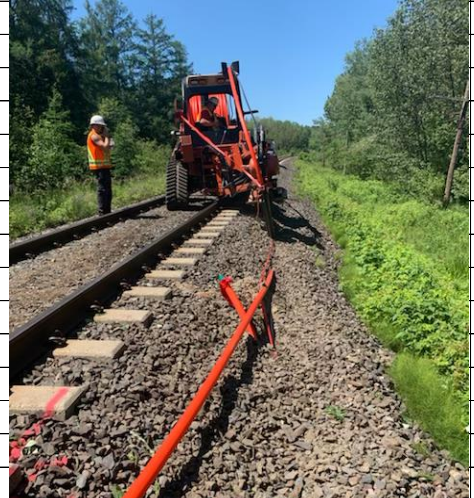

Yours very truly,

**KSV RESTRUCTURING INC.**  
**IN ITS CAPACITY AS PROPOSAL TRUSTEE AND INTERIM RECEIVER OF**  
**2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.,**  
**AND NOT IN ITS PERSONAL CAPACITY**

**Per: Jordan Wong**

## **APPENDIX “E”**

	ATS Project 22-542: CN Fort Frances 7200V Power Upgrade					Progress Report 1		Date: July 6, 2022												
Location	Seacan	Seacan Wiring	Base Pad	Ground Grid	Xfmr Stand & Conduit	Pole	LV Equipment	LV Cabling	Xfmr Install	Lay HV Cable	Plow	Dig-Downs	Splicing	CONEUT Grounds	Dielectric Testing	Terminations	Service Connection	Load Test	Test Docs	
MP 0.75																				
MP 0.75 to MP 2.90										100%										
MP 2.90																				
MP 2.90 to MP 5.60										70%										
MP 5.60																				
MP 5.60 to MP 7.50																				
MP 7.50																				
MP 7.50 to MP 9.42																				
MP 9.42																				
MP 9.42 to MP 10.65																				
MP 10.65			100%		100%	100%														
MP 10.65 to MP 10.78																				
MP 10.78																				
MP 10.78 to MP 13.07																				
MP 13.07																				
MP 13.07 to MP 15.39																				
MP 15.39																				
Percent Complete			10%		10%	10%				30%										
<b>Billing Request: 0%</b>																				
Work Completed:																				
1) Inventory of supplied material																				
2) Began transformer pad clearing																				
3) Called away to assist with Anita derailment repairs (3 days - separate project billing)																				
4) Spooled out power cable (plow-con did not arrive)																				
Work Planned for Next Shift:																				
1) Begin plowing in conduit and cable																				
2) Continue pad clearing and site preparations																				

	ATS Project 22-542: CN Fort Frances 7200V Power Upgrade					Progress Report 2		Date: July 20, 2022												
Location	Seacan	Seacan Wiring	Base Pad	Ground Grid	Xfmr Stand & Conduit	Pole	LV Equipment	LV Cabling	Xfmr Install	Lay HV Cable	Plow	Dig-Downs	Splicing	CONEUT Grounds	Dielectric Testing	Terminations	Service Connection	Load Test	Test Docs	
MP 0.75																				
MP 0.75 to MP 2.90										100%	100%									
MP 2.90			100%	100%	100%	100%														
MP 2.90 to MP 5.60										70%	70%									
MP 5.60																				
MP 5.60 to MP 7.50																				
MP 7.50																				
MP 7.50 to MP 9.42																				
MP 9.42																				
MP 9.42 to MP 10.65																				
MP 10.65			100%		100%	100%														
MP 10.65 to MP 10.78																				
MP 10.78			100%		100%	100%														
MP 10.78 to MP 13.07																				
MP 13.07																				
MP 13.07 to MP 15.39																				
MP 15.39																				
Percent Complete			25%	10%	35%	35%				30%	30%									
<b>Billing Request: 0%</b>																				
Work Completed: 1) Continued transformer pad clearing and preparation 2) Received 48,000 ft of fibre conduit 2) Began plowing in fibre conduit and 7200V cable																				
Work Planned for Next Shift: 1) Continue plowing in conduit and cable 2) Continue transformer pad clearing and preparation 3) Receive final shipment of plow-con																				



<b>ALLIED TRACK SERVICES</b>		ATS Project 22-542: CN Fort Frances 7200V Power Upgrade				Progress Report 3		Date: August 3, 2022												
Location	Seacan	Seacan Wiring	Base Pad	Ground Grid	Xfmr Stand & Conduit	Pole	LV Equipment	LV Cabling	Xfmr Install	Lay HV Cable	Plow	Dig-Downs	Splicing	CONEUT Grounds	Dielectric Testing	Terminations	Service Connection	Load Test	Test Docs	
MP 0.75			50%																	
MP 0.75 to MP 2.90										100%	100%									
MP 2.90			100%	100%	100%	100%														
MP 2.90 to MP 5.60										70%	70%									
MP 5.60			100%	100%	100%	100%														
MP 5.60 to MP 7.50																				
MP 7.50			100%	100%	100%	100%														
MP 7.50 to MP 9.42																				
MP 9.42			100%	100%	100%	100%														
MP 9.42 to MP 10.65																				
MP 10.65			100%		100%	100%														
MP 10.65 to MP 10.78																				
MP 10.78			100%		100%	100%														
MP 10.78 to MP 13.07																				
MP 13.07																				
MP 13.07 to MP 15.39																				
MP 15.39																				
Percent Complete			75%	40%	67%	67%				30%	30%									
<b>Billing Request: 0%</b>																				

Work Completed:

- 1) Received additional 36,000 ft of conduit
- 2) Continued transformer pad clearing and preparation
- 3) Revised seacan location/layout



Work Planned for Next Shift:

- 1) Continue plowing in conduit and cable
- 2) Complete transformer pad clearing and preparation
- 3) Remediate areas where plowing has disturbed the ballast
- 4) Begin dig-downs and install mechanical protection



ATS Project 22-542: CN Fort Frances 7200V Power Upgrade

Progress Report 4

Date: August 18, 2022

Location	Seacan	Seacan Wiring	Base Pad	Ground Grid	Reactors	Xfmr Base & Conduit	Pole	LV Equipment	LV Cabling	Xfmr Install	Lay HV Cable	Plow	Dig-Downs	Splicing	CONEUT Grounds	Dielectric Testing	Terminations	Service Connection	Load Test	Test Docs
MP 0.75	*	*	50%																	
MP 0.75 to MP 2.90											100%	100%								
MP 2.90			100%	100%	*	100%	100%													
MP 2.90 to MP 5.60											100%	100%								
MP 5.60			100%	100%		100%	100%													
MP 5.60 to MP 7.50											100%	100%								
MP 7.50			100%	100%		100%	100%													
MP 7.50 to MP 9.42											100%	100%								
MP 9.42			100%	100%	*	100%	100%													
MP 9.42 to MP 10.65																				
MP 10.65			100%			100%	100%													
MP 10.65 to MP 10.78											100%									
MP 10.78			100%			100%	100%													
MP 10.78 to MP 13.07											100%									
MP 13.07																				
MP 13.07 to MP 16.10											100%	100%								
MP 15.39																				
Percent Complete			75%	40%		75%	75%				80%	75%								
<b>Billing Request: 50%</b>			* Applies at these locations only																	

Work Completed:  
 1) Plowing cable & conduit  
 2) Continued transformer pad clearing and preparation  
 3) Pulled up ballast over furrows in high slope areas

Work Planned for Next Shift:  
 1) Complete plowing in conduit and cable  
 2) Complete transformer pad clearing and preparation  
 3) Continue transformer pad ground grids and bases



Issued by: Steve Patrick, Mgr S&C, ATS      Approved by:

## **APPENDIX “F”**

**Jamey Craig**

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**From:** Steve Patrick <steve.patrick@alliedtrack.ca>  
**Sent:** Monday, August 22, 2022 12:16 PM  
**To:** Aaron Rodier; Darcy.Nazar@cn.ca  
**Cc:** Tom McIntosh; Joe Persia  
**Subject:** ATS 22-542 - CN Fort Frances 7200V Power - Progress Report 4  
**Attachments:** ATS 22-542 - CN Fort Frances - Progress Report 4.xlsx

Aaron, Darcy,

Please find attached Progress Report #4 from which we are requesting a 50% milestone completion assessment. We've purchased or ordered the majority of the material with the conduit being the largest portion received to date. We expect to be finished the cable, conduit, pads and transformer installations this shift leaving only the low voltage disconnects, panels and reactors (TBD) to be installed at the drop locations, as well as some dig-downs and mechanical protection as clean-up work. The following shift will be focused on the power service and switchgear area while beginning 7200V work.

Please feel free to contact me should you have any questions.

Steve Patrick, P.Eng.  
Manager Signals & Communications  
Allied Track Services  
C: +1.289.455.3805  
[steve.patrick@alliedtrack.ca](mailto:steve.patrick@alliedtrack.ca)



## **APPENDIX “G”**



**20210601 BNF Ashcroft Siding CTC, Ashcroft Sub, BC, Canada**

S Statement Of Work

Status Statement of Work ID Period Buyer  
 Approved CNRTQ00003756 (Rev. 2) 2021-06-01 to 2021-12-31 Canadian National Railway

Characteristics

Summary

Items	Committed Amount (CAD)
Events	0.00
Fees	1,171,285.93
Total	1,171,285.93

Characteristics

From  to

25 Items Found

Status	Type	Line Item ID	Revision	Name
Paid	Fee Payment	CNRTU00757751	0	4. Mile 53.03 – MP 53.03 Approach – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00757756	0	5. Mile 54.21 – MP 54.21 Intermediate – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00757763	0	5. Mile 54.21 – MP 54.21 Intermediate – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00757765	0	6. Mile 55.37 – MP 55.37 Intermediate – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00757780	0	7. Mile 56.55 – MP 56.55 Approach – Install new IXS CTC Location
Paid	Fee Payment	CNRTU00757808	0	8. Mile 57.03 – MP 57.03 Coho Remote – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00757822	0	9. Mile 57.47 – MP 57.47 Coho Main – Install New IXS CTC Interface Location
Paid	Fee Payment	CNRTU00757833	0	Mile 49.36 main service to Mile 59.11 – Plow 7200v power cable
Paid	Fee Payment	CNRTU00764394	0	2. Mile 51.18 – MP 51.18 Ashcroft West – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00764411	0	4. Mile 53.03 – MP 53.03 Approach – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00764413	0	6. Mile 55.37 – MP 55.37 Intermediate – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00764420	0	7. Mile 56.55 – MP 56.55 Approach – Install new IXS CTC Location
Paid	Fee Payment	CNRTU00764425	0	8. Mile 57.03 – MP 57.03 Coho Remote – Install New IXS CTC Location
Paid	Fee Payment	CNRTU00764437	0	9. Mile 57.47 – MP 57.47 Coho Main – Install New IXS CTC Interface Location
Paid	Fee Payment	CNRTU00764440	0	Mile 49.36 main service to Mile 59.11 – Plow 7200v power cable
-	Fee Definition	-	0	6. Mile 55.37 – MP 55.37 Intermediate – Install New IXS CTC Location
-	Fee Definition	-	0	9. Mile 57.47 – MP 57.47 Coho Main – Install New IXS CTC Interface Location
-	Fee Definition	-	0	4. Mile 53.03 – MP 53.03 Approach – Install New IXS CTC Location
-	Fee Definition	-	0	8. Mile 57.03 – MP 57.03 Coho Remote – Install New IXS CTC Location
-	Fee Definition	-	0	2. Mile 51.18 – MP 51.18 Ashcroft West – Install New IXS CTC Location

-	Fee Definition	-	0 7. Mile 56.55 – MP 56.55 Approach – Install new IXS CTC Location	
-	Fee Definition	-	0 1. Mile 47.99 – Ashcroft East – Move Signals	61
-	Fee Definition	-	0 5. Mile 54.21 – MP 54.21 Intermediate – Install New IXS CTC Location	
-	Fee Definition	-	0 Mile 49.36 main service to Mile 59.11 – Plow 7200v power cable	
-	Fee Definition	-	0 3. Mile 51.6 - ICS CTC Location to a Two track AWD XP\$ with gates	

[Download List Data](#)

**TAB A**



Schedule A  
Summary of Ashcroft Project Services

Service	Description of the Work	Lump Sum Price
1	Mile 47.99 – Ashcroft East – Move Signals <ul style="list-style-type: none"> <li>● Install/Move Switch, signals, and cabling for new #20 panel</li> </ul>	\$88,871
2	Mile 51.18 – MP 51.18 Ashcroft West – Install New IXS CTC Location <ul style="list-style-type: none"> <li>● Install 8 x 10 controlling bungalow</li> <li>● Install US&amp;S M23B switch machines and cabling</li> <li>● Install signals and cabling</li> <li>● Install RECO melter, propane tank and ducting/covers</li> <li>● Install fiber and 22pr comms cable to nearest JU-5</li> </ul>	\$120,477
3	Mile 51.6 – MP 51.6 Remote – Install New IXS CTC Location <ul style="list-style-type: none"> <li>● Install 6 x 6 IXS controlling bungalow, signals, and cabling</li> </ul>	\$37,638.53
4	Mile 53.03 – MP 53.03 Approach –Install New IXS CTC Location <ul style="list-style-type: none"> <li>● Install 6 x 6 IXS controlling bungalow, signals, and cabling</li> </ul>	\$34,718.05
5	Mile 54.21 – MP 54.21 Intermediate –Install New IXS CTC Location <ul style="list-style-type: none"> <li>● Install 6 x 6 IXS controlling bungalow, signals, and cabling</li> </ul>	\$34,718.05
6	Mile 55.37 – MP 55.37 Intermediate – Install New IXS CTC Location <ul style="list-style-type: none"> <li>● Install 6 x 6 IXS controlling bungalow, signals, and cabling</li> </ul>	\$34,718.05
7	Mile 56.55 – MP 56.55 Approach – Install new IXS CTC Location <ul style="list-style-type: none"> <li>● Install 6 x 6 IXS controlling bungalow, signals, and cabling</li> </ul>	\$34,718.05
8	Mile 57.03 – MP 57.03 Coho Remote – Install New IXS CTC Location <ul style="list-style-type: none"> <li>● Install 8 x 10 controlling bungalow</li> <li>● Install US&amp;S M23B switch machines and cabling</li> <li>● Install signals and cabling</li> <li>● Install RECO melter, propane tank and ducting/covers</li> <li>● Install fiber and 22pr comms cable to nearest JU-5</li> </ul>	\$147,038.47
9	Mile 57.47 – MP 57.47 Coho Main – Install New IXS CTC Interface Location <ul style="list-style-type: none"> <li>● Install 8 x 10 controlling bungalow</li> <li>● Install US&amp;S M23B switch machines and cabling</li> <li>● Install signals and cabling</li> <li>● Install RECO melter, propane tank and ducting/covers</li> <li>● Install fiber and 22pr comms cable to nearest JU-5</li> </ul>	\$132,473.31
10	Mile 49.36 main service to Mile 59.11 –Plow 7200v power cable <ul style="list-style-type: none"> <li>● Plow 7200v cable</li> <li>● Tie into all location listed above; Mile 51.18, 51.63, 53.03, 54.2, 55.37, 56.55, 57.03, 57.47,57.73, 59.11</li> <li>● Install all related JU5 pedestals and cable marker posts</li> <li>● Install transformer foundations and main service pad with generator</li> <li>● Install all bridge troughing total length equaling 248 ft</li> <li>● Install tunnel hangers or troughing in 2 tunnels length 2300 ft</li> </ul>	\$632,424.52
	<b>Total (inclusive of GST)</b>	<b>\$1,362,647.25</b>
	<b>Revised Ashcroft SOW Total (inclusive of GST)</b>	<b>\$1,229,850.23</b>

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

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

Proceeding Commenced at Toronto

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

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Chris Burr**, LSO #55172H  
Tel: 416-863-3261  
Email: chris.burr@blakes.com

Lawyers for the Receiver