



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-25-00746939-00CL DATE: 15 July 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: NATIONAL BANK OF CANADA v. AXIOM REAL-TIME METRICS INC.

BEFORE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

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**ENDORSEMENT OF JUSTICE CAVANAGH:**

1. KSV Restructuring Inc. ("KSV"), in its capacity as Court-appointed receiver and manager (the "Receiver") of the undertaking, property and assets of Axiom Real-Time Metrics Inc. (the "Company")

brought a motion originally returnable on Friday July 11, 2025, that was adjourned by Justice Kimmel to today.

2. The Receiver's ongoing recommendation is that the Court approve the Sitero Transaction (defined below).

### **The Sale Approval Motion**

3. On July 7, 2025, KSV, in its capacity as proposed receiver, delivered a motion record and factum for a motion returnable July 11, 2025 seeking approval of a sale transaction (the "Sitero Transaction") pursuant to an asset purchase agreement dated July 6, 2025 (the "Sitero APA") among the Receiver, Sitero Canada Inc. ("Sitero"), and Sitero LLC, as guarantor of certain payment obligations under the Sitero APA (the "Sale Approval Motion").
4. The Sitero Transaction resulted from a sale process (the "Sale Process") conducted by SSG Capital Advisors, LLC ("SSG"), an investment bank engaged by the Company. KSV, acting as advisor to National Bank of Canada ("NBC"), consulted with SSG throughout the Sale Process.
5. A summary of the Sitero APA and the Sitero Transaction is set out in the Proposed Receiver's Report dated July 7, 2025 (the "Proposed Receiver's Report").
6. At 10:10 p.m. on July 10, 2025, Loopstra Nixon LLP ("Loopstra"), counsel to Andrew Schachter ("Schachter"), the Company's founder, served a term sheet offering to purchase the Assets (the "Alternative Transaction").
7. Prior to the Sale Approval Motion on July 11, 2025, the Proposed Receiver filed the Supplemental Report, which included a cash flow forecast for the period from June 30 to August 17, 2025 (the "Cash Flow Forecast"). The forecast projected a negative cash flow of approximately \$2.15 million over that period if the Company continued to operate in receivership and the Sitero Transaction was not approved.
8. Also prior to the Sale Approval Motion on July 11, 2025, Schachter filed an affidavit, among other things: (a) advising of his opposition to the Sitero Transaction; (b) stating that he was excluded from participating in the Sale Process; and (c) requesting an adjournment to allow the Court the opportunity to consider the Alternative Transaction.
9. As set out in her Endorsement (the "Endorsement"), Justice Kimmel adjourned the Sale Approval Motion to 10:00 a.m. on July 15, 2025, on the following terms:
  - a. Schachter was given 24 hours to submit updated detailed terms of the Alternative Transaction and related financing commitments, including interim funding if closing is to occur after the week of July 14, 2025;
  - b. the Receiver was directed to consult with SSG regarding Schachter's involvement or lack thereof in the Sale Process and provide any relevant comments on the fairness of the process;
  - c. Sitero was to consider extending the irrevocability of its offer to July 15, 2025, and, if willing to proceed, work with the Receiver and the Company to finalize any remaining closing matters; and
  - d. the Receiver was to file a further supplementary report (i.e., the First Report) by 5:30 p.m. EDT on July 14, 2025.

### **The 1001 Ontario Transaction**

10. On July 13, 2025, Loopstra submitted a new offer package (the "Offer Package")<sup>2</sup> on behalf of 1001294310 Ontario Inc. ("1001 Ontario"), for the purchase of substantially all the Assets (the "1001

Ontario Transaction"), pursuant to an asset purchase agreement dated July 13, 2025 (the "1001 Ontario APA"), with 1001 Ontario, as purchaser, and Agenus Inc. ("Agenus"), as guarantor.

11. On Sunday July 14, 2025, at approximately 10:40 a.m. EDT, Schachter filed a further affidavit.

### **Receiver's Concerns Regarding the 1001 Ontario Transaction**

12. In its First Report, the Receiver expresses its concerns regarding the 1001 Ontario Transaction. These concerns include that the closing risk resulting from an August 15, 2025 closing renders the 1001 Ontario Transaction inferior to the Sitero Transaction. The Receiver notes, among other things:

- a. no evidence has been provided that 1001 Ontario has cash available to fund the purchase price due on closing (\$1.5 million), which amount is not guaranteed by Agenus;
- b. no evidence has been provided of 1001 Ontario's ability to pre-fund the full amount of the cash required to operate the business to August 15, 2025. The Receiver asked 1001 Ontario for two deposits: i) one for \$500,000 to fund the Company's estimated operating costs to closing; and ii) 15% of the cash component of the purchase price payable on closing;
- c. the Receiver is concerned about the value of the Agenus guarantee (both in respect of the operational funding commitment and the Earn-Out Payments commitment);
- d. the Receiver is also concerned about the Company's ability to continue to operate in receivership to August 15, 2025 for reasons given in the first report including 1001 Ontario's ability or willingness to fund losses beyond those in the Cash Flow Forecast. The Receiver reports that absent funding for operations, the Receiver would be required to terminate all Company employees.

13. In his affidavit sworn July 14, 2025, Mr. Schachter states that on Saturday, July 13, 2025, his counsel circulated a partially executed copy of the Alternative APA and a joint letter of support executed by 1001 Ontario. The joint letter of support indicates that the 10% deposit for the purchase price and the initial \$500,000 for operating costs will be wired to Loopstra in trust by early the following day.

14. At the hearing, counsel for Mr. Schachter advised the Court that her firm had not received money into its trust account for the \$500,000 amount to fund operations on a short term basis or the 10% deposit.

15. In the absence of these payments to the Loopstra trust account, there is no assurance that 1001 Ontario is able to fund the operations of the Company until closing or to complete the 1001 Ontario Transaction. This is fatal to any consideration of the merit of the Alternative Transaction in comparison with the Sitero Transaction.

### **Conclusion and Disposition**

16. I am satisfied that the Sitero Transaction should be approved. I accept the recommendation of the Receiver in this respect for the reasons given at section 8 of its Report as a Proposed Receiver and section 6 of its First Report.

17. These reasons include that Schachter was aware of the Sale Process, did not contract SSG to advise of his interest in acquiring the business or the Assets prior to submitting the 1001 Ontario offer, which was submitted after the motion materials in support of a motion for an order approving the Sitero Transaction were served. I accept that approving the Sitero Transaction preserves the integrity of the Sale Process.

18. I am satisfied that the requested sealing order should be made in respect of Confidential Appendix "1". In this respect, I accept the submissions of the Receiver that the requirements in *Sherman Estate* are satisfied. I am satisfied that the salutary effects of sealing the information in Confidential Appendix "1" from the public record outweigh the deleterious effects of doing so under the circumstances. I find that

no party that will be prejudiced if the information in Confidential Appendix "1" is sealed or any public interest that will be served if such details are disclosed in full.

19. With respect to costs, if there is a request for costs, written submissions may be made in accordance with a timetable to be agreed upon by counsel and approved by me (with reasonable page limits).
20. Orders to issue in forms of Orders signed by me today.