

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

**IN THE MATTER OF THE RECEIVERSHIP OF EQUITYLINE SPV LIMITED
PARTNERSHIP**

B E T W E E N:

EQUITABLE BANK

Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

AIDE MEMOIRE OF FCT INSURANCE COMPANY LTD.

(Case Conference, February 2, 2026)

1. FCT Insurance Company Ltd. (“FCT”) submits this Aide Memoire in respect of the case conference scheduled in this matter for February 2, 2026.
2. There is a serious threshold issue that must be determined in this matter. The Receiver and Equitable Bank assert that Equityline is the “Insured” under the FCT title insurance policies. This is incorrect. As at the date of the Receiver’s appointment, Equitable Bank was, in fact, the “Insured”. The determination as to who is the “Insured” must be resolved prior to the approval of a mortgage adjudication protocol regarding the claims of fraud alleged by certain mortgagors.

Background

3. Prior to the Receiver's appointment, the registered mortgage holder on the Equityline mortgages was Computershare Trust Company of Canada ("**Computershare**" or the "**Custodian**"). They held legal title only. Equityline was the beneficial owner.
4. FCT issued certain policies of insurance in respect of the mortgages to Computershare for the benefit of Equityline. The insurance policies include a duty to defend and impose certain duties on the "Insured" to, among other things, cooperate and provide documents and evidence to the insurer who has carriage of the action.
5. Pursuant to the Notice of Control, dated April 23, 2024,¹ executed by Equitable Bank and addressed to Equityline and Computershare, Equitable Bank assumed ownership and control of the various Equityline mortgages. The Notice of Control provides as follows:

In addition to the Custodian's covenants and obligations under the Agreement following receipt of this Notice of Control, the Custodian shall forthwith follow all instructions and directions of the Bank in respect of the Mortgage Loans (as defined in the Custodian Agreement) to the exclusion of all other instructions and directions from any Person (including Equityline) as if the Bank was the sole beneficial owner of the Mortgage Loans. [emphasis added]

6. The Title Custodial Acknowledgement Agreement, dated August 5, 2021 (the "**Acknowledgement Agreement**"),² provides that a Notice of Control means "a notice from the Bank to the Custodian that the Bank has assumed ownership and control of the Mortgage Loans...". Sections 2.2 and 3.3 of the Acknowledgement Agreement confirm

¹ The Notice of Control is included as Exhibit "L" to the Equitable Bank Application Record.

² The Title Custodial Acknowledgement Agreement, dated August 5, 2021, is included as Exhibit "I" to the Equitable Bank Application Record.

that this is to the exclusion of Equityline. Section 3.4 expressly states that “Effective upon the Control Date...Equityline shall thereafter cease to have any right, title or interest in the Mortgage Loans...”.

7. As a result, the effect of the Notice of Control is that, (a) Equitable Bank became the “Insured” under the title insurance policies in place of Equityline as successor in interest, and (b) Equityline no longer has an interest in the mortgages, has no insurable interest and is no longer the “Insured”.
8. On July 30, 2024, the Receiver was appointed over the assets, undertakings and properties of Equityline. The Receivership Order imposes a stay of all proceedings against Equityline (which would include all the counterclaims in the existing mortgage enforcement actions). In addition, Rule 11 of the *Rules of Civil Procedure* also stays the claims until an order to continue is obtained in the name of the insured mortgagee.
9. Pursuant to paragraph 4 of the Receivership Order, all right, title and interest in the Property (as defined therein) held by Computershare pursuant to the custodial agreement, dated August 5, 2021, and the Acknowledgement Agreement, was transferred and assigned to the Receiver. The Receiver accordingly replaced Computershare, as assignee, of the mortgage interests on title and as title custodian.
10. As a result, the Receiver is now the legal title owner of the mortgages and title custodian, while it appears that Equitable Bank holds the beneficial interest to the mortgages.
11. Aird & Berlis LLP submitted claims to FCT on behalf of both Equitable Bank and the Receiver, jointly.

Threshold Issue and Mortgage Protocol

12. The Receivership Order does not affect the impact of the Notice of Control or the definition of “Insured” under the applicable title insurance policies. As at the date of the Receiver’s appointment, Equitable Bank was the “Insured” as defined under the policies. It is possible that the Receiver is now the “Insured” as it is now the registered mortgagee on title. However, there is only one Insured and the Receivership Order does not alter the state of facts that existed as at the date the order was granted.
13. The party that is the Insured has a duty to cooperate with the insurer under the policies.
14. Accordingly, before any mortgage adjudication protocol can be finalized or approved by this Honourable Court, there must be a determination as to who is the “Insured” under the title insurance policies.
15. In the event that the Insured is Equitable Bank, then a mortgage adjudication protocol within this proceeding is not necessary, as the Receiver is not appointed over any assets of Equitable Bank.

Mortgage Adjudication Protocol

16. Irrespective of the determination as to who is the Insured, pursuant to the insurance policies FCT has carriage over the mortgage related litigation. In the event that it is determined that the Receiver or Equityline is the Insured, then FCT is in favour of a summary process for the determination of the validity and enforceability of the various mortgages where

mortgagors have raised allegations of fraud. However, FCT, the party that has control over the conduct of the litigation, has a number of concerns with the protocol proposed by the Receiver, including the following:

- (a) the protocol ignores the insurer's duty to defend and the fact that the insurer, pursuant to the policy, has carriage of the litigation and the exclusive right to determine the conduct of the defences to the claims;
 - (b) as the registered mortgagee and title custodian, the Receiver is in an apparent conflict and cannot perform any adjudicative role with respect to the mortgages; and
 - (c) the protocol itself does not contemplate a comprehensive evidentiary record (including affidavits of documents to ensure that all relevant documents are produced) or cross-examinations.
17. FCT also has concerns with respect to privilege and issues that have or may arise as a result of Aird & Berlis LLP's joint representation of the Receiver and Equitable Bank.
18. A copy of the protocol proposed by FCT which contemplates a summary procedure for adjudication of the various fraud claims is attached hereto as **Appendix "A"**.

Timetable for Hearing of Threshold Issue

19. A hearing in respect of the Receiver's motion regarding the protocol is premature pending determination of the threshold issue as to who is the Insured.
20. FCT proposes the following timetable for determination of the threshold issue:

Step	Party	To be completed by
Service of Motion Record(s)	Receiver and/or Equitable Bank	February 9
Service of Responding Materials	FCT, title insurers, other interested parties	February 18
Service of Factum	Receiver and/or Equitable Bank	February 25
Service of Responding Factum	FCT, title insurers, other interested parties	March 4
Hearing Date	All Parties	Week of March 9 (subject to Court availability)

January 30, 2026

DENTONS CANADA LLP

The Toronto-Dominion Centre
77 King Street West, Suite 400
Toronto, ON M5K 0A1

Renée Brosseau (LSO # 47074B)

Tel: 416-863-4650

renee.brosseau@dentons.com

Kenneth Kraft (LSO # 31919P)

Tel: 416-863-4374

kenneth.kraft@dentons.com

Sara-Ann Wilson (LSO # 56016C)

Tel: 416-863-4402

sara.wilson@dentons.com

*Lawyers for Stewart Title Guaranty Company
and FCT Insurance Company Ltd.*

TO: SERVICE LIST

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SUPERIOR COURT OF JUSTICE
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EQUITABLE BANK

Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

**SERVICE LIST
(as at January 21, 2026)**

TO:	<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West Suite 3200, TD West Tower Toronto ON M5K 1K7</p> <p>Rebecca L. Kennedy (LSO# 61146S) Email: rkennedy@tgf.ca</p> <p>Derek Harland (LSO# 79504N) Email: dkharland@tgf.ca</p> <p>Denna Jalili (LSO# 84976N) Email: djalili@tgf.ca</p> <p>Tel: 416-304-1616 Fax: 416-304-1313</p> <p><i>Lawyers for the Court-appointed receiver of EquityLine SPV Limited Partnership, KSV Restructuring Inc.</i></p>
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AND TO:	<p>KSV RESTRUCTURING INC. 220 Bay St. Suite 1300, Toronto, ON M5J 2W4</p> <p>Noah Goldstein Tel: 416-844-4842 Email: ngoldstein@ksvadvisory.com</p> <p>Mitch Vininsky Tel: 416-932-6013 Email: mvininsky@ksvadvisory.com</p> <p>Tony Trifunovic Tel: 416-932-6013 Email: ttrifunovic@ksvadvisory.com</p> <p><i>Court-appointed receiver of EquityLine SPV Limited Partnership</i></p>
AND TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto ON M5J 2T9</p> <p>Robb English (LSO# 19862F) Tel: (416) 865-4748 Email: renglish@airdberlis.com</p> <p>Miranda Spence (LSO# 60621M) Tel: (416) 865-3414 Email: mspence@airdberlis.com</p> <p><i>Lawyers for the Receiver and the Applicant, Equitable Bank</i></p>
AND TO:	<p>FRIEDMANS LLP Barristers and Solicitors 150 Ferrand Drive, Suite 800 Toronto, ON M3C 3E5</p> <p>Judy Hamilton (LSO# 39475S) Tel: (416) 649-4462 Fax: (416) 497-3809 Email: jh@friedmans.ca</p> <p><i>Lawyers for the Respondent, EquityLine SPV Limited Partnership</i></p>

AND TO:	EQUITYLINE SPV LIMITED PARTNERSHIP 550 Highway 7 East, Suite 338 Richmond Hill, ON L4B 3Z4 Sergiy Shchavyelyev Tel: (416) 939-6376 Email: sergiy@equitylinemic.com <i>Respondent</i>
AND TO:	EQUITYLINE SPV GP INC. 550 Highway 7 East, Suite 338 Richmond Hill, ON L4B 3Z4 Sergiy Shchavyelyev Tel: (416) 939-6376 Email: sergiy@equitylinemic.com
AND TO:	EQUITYLINE SERVICES CORP. 550 Highway 7 East, Suite 338 Richmond Hill, ON L4B 3Z4 Sergiy Shchavyelyev Tel: (416) 939-6376 Email: sergiy@equitylinemic.com
AND TO:	EQUITYLINE MORTGAGE INVESTMENT CORPORATION 550 Highway 7 East, Suite 338 Richmond Hill, ON L4B 3Z4 Sergiy Shchavyelyev Tel: (416) 939-6376 Email: sergiy@equitylinemic.com

AND TO:	<p>EQUITYLINE FINANCIAL CORP. 550 Highway 7 East, Suite 338 Richmond Hill, ON L4B 3Z4</p> <p>Sergiy Shchavyelyev Tel: (416) 939-6376 Email: sergiy@equitylinemic.com</p>
AND TO:	<p>DLA PIPER (CANADA) LLP 6000-100 King Street West Toronto, ON M5X 1E2</p> <p>Bruce Darlington (LSO# 25310K) Tel: (416) 365-3529 Email: bruce.darlington@dlapiper.com</p> <p>Tudor Carsten (LSO# 47766V) Tel: (416) 365-3505 Email: tudor.carsten@dlapiper.com</p> <p>Cristina Fulop (LSO# 82224H) Tel: (416) 862-3389 Email: cristina.fulop@ca.dlapiper.com</p> <p><i>Lawyers for Computershare Trust Company of Canada</i></p>
AND TO:	<p>ALAW 2525 Old Bronte Road Oakville, ON L6M 4J2</p> <p>Tony Antoniou (LSO# 50680T) Tel: (416) 333-9795 Email: tony@alaw.ca</p> <p><i>Lawyer for TitlePLUS and LawPRO</i></p>
AND TO:	<p>GLENN COHEN LAW 141 Adelaide Street West, Suite 400 Toronto, ON M5H 3L5</p> <p>Glenn Cohen (LSO# 19469R) Tel: (647) 404-2791 Email: glenn@glenncohenlaw.ca</p> <p><i>Lawyer for Elle Mortgage Corporation</i></p>

AND TO:	TERRY WALMAN 202-1240 Bay Street Toronto, ON M5R 2A7 Tel: (416) 961-3809 Email: terry@terrywalmman.com <i>Lawyer for EquityLine Services Corp.</i>
AND TO:	BERKOW YOUNG LEV-FARRELL DAS LLP 141 Adelaide Street West, Suite 400 Toronto, ON M5H 3L5 Ranjan Das (LSO# 37065T) Tel: (416) 364-4900 Ext. 221 Email: rdas@byldlaw.com <i>Lawyers for Terry Walman</i>
AND TO:	ADAIR GOLDBLATT BIEBER LLP 3200- 401 Bay Street Toronto, ON M5H 2Y4 Geoffrey Adair, K.C. Tel: (416) 476-8195 Email: gadair@agblp.com <i>Lawyers for Margaret Ellen Jank</i>
AND TO:	OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA 151 Yonge Street, 4 th Floor Toronto, ON M5C 2W7 Email: osbservice-bsfservice@ised-isde.gc.ca
AND TO:	ATTORNEY GENERAL OF CANADA Department of Justice of Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND TO:	MINISTER OF FINANCE Legal Services Branch Revenue Collections Branch – Insolvency Unit 33 King Street West, 6th Floor Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca
AND TO:	CANADA REVENUE AGENCY 1 Front Street West Toronto, ON M5J 2X6 Pat Confalone Tel: (416) 954-6514 Email: pat.confalone@cra-arc.gc.ca
AND TO:	MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, Legal Services Branch Ministry of Public and Business Service Delivery and Procurement 77 Grenville St., 8th Floor Toronto, ON M5S 1B3 Debra Eveleigh (LSO# 55816D) Tel: (437) 881-9557 Email: debra.eveleigh@ontario.ca <i>Lawyer for the Director of Titles for the Province of Ontario</i>
AND TO:	THE ADVOCACY CENTRE FOR THE ELDERLY (ACE) 55 University Avenue, Suite 1500 Toronto, ON M5J 2H7 Bethanie Pascutto (LSO# 78098F) Email: bethanie.pascutto@ace.clcj.ca <i>Lawyers for Lyle Auton</i>

AND TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON, Canada M5K 0A1</p> <p>Renée Brosseau (LSO# 47074B) Tel: (416) 863 4650 Email: renee.brosseau@dentons.com</p> <p>Sara-Ann Wilson (LSO # 56016C) Tel: (416) 863-4402 Email: sara.wilson@dentons.com</p> <p>Oliver Flis (LSO # 87232S) Tel: (416) 863-4536 Email: oliver.flis@dentons.com</p> <p><i>Lawyer for Stewart Title Guaranty Company & FCT Insurance Company Ltd.</i></p>
AND TO:	<p>STEWART TITLE GUARANTY COMPANY Royal Bank Plaza – North Tower 200 Bay Street, Suite 1600 Toronto, ON M5J 2J2</p> <p>Mario Giovane Tel: (416) 855-3312 Email: mario.giovane@stewart.com</p>
AND TO:	<p>FCT INSURANCE COMPANY LTD. 2235 Sheridan Garden Drive Oakville, ON L6J 7Y5</p> <p>Rachelle Hepburn Tel: (905) 287-3024 Email: rhepburn@fct.ca</p>
AND TO:	<p>BURNS ASSOCIATES PROFESSIONAL CORPORATION 21 King St, W, Suite 305, Hamilton, ON, L8P 4W7</p> <p>A. Douglas Burns (LSO# 14111I) Tel: (905) 522-1381 Email: burns@adburnslaw.ca</p> <p><i>Lawyer for Barry William Hinschberger and Lisa Marie Hinschberger</i></p>

AND TO:	<p>BURNS ASSOCIATES PROFESSIONAL CORPORATION 21 King St, W, Suite 305, Hamilton, ON, L8P 4W7</p> <p>A. Douglas Burns (LSO# 14111I) Tel: (905) 522-1381 Email: burns@adburnslaw.ca</p> <p><i>Lawyer for Lynda Sharon Talmage</i></p>
AND TO:	<p>LOWES, SALMON, GADBOIS & CLARKE Dutton Professional Centre 500 Dutton Drive Waterloo ON N2L 4C6</p> <p>Steven D. Gadbois (LSO# 34090L) Tel: (519) 884-0800 ext. 225 Email: sgadbois@watlaw.ca</p> <p><i>Lawyer for Adrian Van Dijk</i></p>
AND TO:	<p>NELSON, WATSON PROFESSIONAL CORPORATION Barristers, Solicitors & Notaries 412 Laird Road, Suite 102 Guelph, Ontario N1G 3X7</p> <p>David Bernstein (LSO# 65419P) Tel: (519) 821-9610 Email: dbernstein@nelwat.com</p> <p><i>Lawyer for Barbara Burton, Gillian Frances Burton, and Deborah Anne Burton</i></p>
AND TO:	<p>NELSON, WATSON PROFESSIONAL CORPORATION Barristers, Solicitors & Notaries 412 Laird Road, Suite 102 Guelph, Ontario N1G 3X7</p> <p>David Bernstein (LSO# 65419P) Tel: (519) 821-9610 Email: dbernstein@nelwat.com</p> <p><i>Lawyer for the Estate of Cindy Hunter-Parkhill</i></p>

AND TO:	<p>ADAIR LITIGATION First Canadian Place 100 King St W, Suite 5700 Toronto, Ontario M5X 1C7</p> <p>Geoffrey Adair (LSO# 11419F) Tel: (416) 476-8195 Email: gadair@adairlitigation.com</p> <p><i>Lawyer for Phyllis Nola Hinds</i></p>
AND TO:	<p>2420315 ONTARIO INC. & NUSRAT BHUYAN 69 Fenwood Heights Scarborough, ON M1M 2W1</p> <p>Email: sharmin9110@gmail.com</p>
AND TO:	<p>THISAAN SIVANATHAN & RIO VIJENTHIRA 135 Ben Sinclair Avenue East Gwillimbury, ON L0G 1R0</p> <p>Email: thisaan.r@hotmail.com</p>
AND TO:	<p>KESTENBERG LITIGATION LLP 2300 Yonge St. Suite 1600 Toronto, Ontario M4P 1E4</p> <p>Michael Kestenberg (LSO# 16005H) Tel: 416-549-8077 Email: michael@kestenberglitigation.com</p> <p>Beverly Jusko (LSO# 31122C) Tel: 416-549-8077 Email: beverly@kestenberglitigation.com</p> <p><i>Counsel for Danielle Harrison</i></p>

AND TO:	<p>DEWART GLEASON LLP 366 Adelaide St. West Suite 102 Toronto ON M5V1R9</p> <p>Andrea Vitopoulos (LSO# 75745N) Tel: 416.583.5716 Email: avitopoulos@dgllp.ca</p> <p><i>Counsel for Stephen Price</i></p>
AND TO:	<p>GARDINER ROBERTS LLP 22 Adelaide St. W. Toronto, ON M5H 4E3</p> <p>Kevin Mooibroek (LSO# 83144Q) Tel: 416-865-8259 Email: kmooibroek@grllp.com</p> <p>James Cook (LSO# 48484M) Tel: 416-865-6628 Email: jcook@grllp.com</p> <p><i>Counsel for Simon Morris</i></p>
AND TO:	<p>SOLOMON ROSS FISCHOFF LAWYERS Madison Centre 4950 Yonge Street Suite 1008 North York, ON M2N 6K1</p> <p>Solomon Ross Fischhoff (LSO# 54571G) Tel: 647-348-1818 Email: ross@smartlitigation.ca</p> <p><i>Counsel for Extend Financial Ltd.</i></p>
AND TO:	<p>KEN WISE AND ASSOCIATES 290 Hounslow Ave North York, ON M2N 2B8</p> <p>Ken Wise (LSO# 20825R) Tel: 647-288-5531 Email: ken@kenwiseandassociates.ca</p> <p><i>Counsel for Aid Al-Musri</i></p>

EMAIL SERVICE LIST

rkennedy@tgf.ca; धारलंद@tgf.ca; djalili@tgf.ca; ngoldstein@ksvadvisory.com;
mvininsky@ksvadvisory.com; ttrifunovic@ksvadvisory.com; renglish@airdberlis.com;
mspence@airdberlis.com; jh@friedmans.ca; sergiy@equitylinemic.com;
sergiy@equitylinemic.com; sergiy@equitylinemic.com; sergiy@equitylinemic.com;
sergiy@equitylinemic.com; bruce.darlington@dlapiper.com; tudor.carsten@dlapiper.com;
cristina.fulop@ca.dlapiper.com; tony@alaw.ca; glenn@glenncohenlaw.ca;
terry@terrywalman.com; gadair@agbllp.com; osbservice-bsfservice@ised-isde.gc.ca; [AGC-
PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-
PGC.Toronto-Tax-Fiscal@justice.gc.ca); insolvency.unit@ontario.ca; [pat.confalone@cra-
arc.gc.ca](mailto:pat.confalone@cra-
arc.gc.ca); debra.eveleigh@ontario.ca; bethanie.pascutto@ace.clcj.ca;
renee.brosseau@dentons.com; sara.wilson@dentons.com; oliver.flis@dentons.com;
mario.giovane@stewart.com; rhepburn@fct.ca; rdas@byldlaw.com; burns@adburnslaw.ca;
burns@adburnslaw.ca; sgadbois@watlaw.ca; dbernstein@nelwat.com; dbernstein@nelwat.com;
gadair@adairlitigation.com; sharmin9110@gmail.com;
thisaan.r@hotmail.com; michael@kestenberglitigation.com; beverly@kestenberglitigation.com;
avitopoulos@dgllp.ca; kmooibroek@grllp.com; jcook@grllp.com; ross@smartlitigation.ca;
ken@kenwiseandassociates.ca;

Appendix “A”
Protocol Proposed by FCT

#	Item	Process Point	Timeline
1	Document Disclosure	Insured Mortgagee to provide all relevant documents to title insurers in accordance with the applicable title insurance policies	30 days from issuance of court order
2	Amendment to Pleadings and Orders to Continue	Receiver to consent to lift the stay upon the issuance of the court order to permit orders to continue to be issued where necessary and/or to amend pleadings on consent provided that limitation defenses are preserved.	Immediately upon the issuance of the court order
3	Exchange of Affidavits of Documents	Mortgagee, Mortgagor and named parties in pleadings to exchange affidavits of documents (AOD). Usual production requirements pursuant to <i>Rules</i> 29 and 3 apply.	60 days from completion of #1
4	Cross-Examinations	Cross-examinations to be completed. Cross-examinations not to exceed 7-hour time limit under <i>Rule</i> 31.05.1	At the election of the parties, cross-examinations can occur before or after mandatory mediation.
5	Mandatory Mediation	Parties to attend mediation with designated mediator who specialize in title fraud matters.	Mediator will provide dates.
6	Summary Trial (Commercial List)	If mediation unsuccessful, matter to be heard by designated trier of fact in summary trial.	<p>Scheduled by Commercial List.</p> <ul style="list-style-type: none"> Parties to attend case conference with trier of fact to establish protocol for hearing, including exchange of affidavits and expert reports as the case may be, and cross-examination on affidavits before trier of fact using summary trial procedures. The summary trial procedures will be approved by the trier of fact and include the use of affidavits as the evidence-in-chief with cross-examinations on the affidavits to test credibility, intent, knowledge, inconsistencies, etc.
7	Appeal	Parties may exercise appeal rights under Courts of Justice Act and Rules of Civil Procedure	

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Applicant

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EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

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AIDE MEMOIRE

DENTONS CANADA LLP

The Toronto-Dominion Centre
77 King Street West, Suite 400
Toronto, ON M5K 0A1

Renée Brosseau (LSO # 47074B)

Tel: 416-863-4650

renee.brosseau@dentons.com

Kenneth Kraft (LSO # 31919P)

Tel: 416-863-4374

kenneth.kraft@dentons.com

Sara-Ann Wilson (LSO # 56016C)

Tel: 416-863-4402

sara.wilson@dentons.com

*Lawyers for Stewart Title Guaranty Company and FCT
Insurance Company Ltd.*