

**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

**FACTUM OF FCT INSURANCE COMPANY LTD.
(returnable April 30, 2026)**

April 21, 2026

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TO: SERVICE LIST

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PART I – OVERVIEW

1. FCT Insurance Company Ltd. (“**FCT**”) brings this cross-motion in response to the motion by KSV Restructuring Inc., in its capacity as receiver (the “**Receiver**”) of Equityline SPV Limited Partnership (“**Equityline LP**” or the “**Debtor**”), for approval of the Receiver’s mortgage adjudication protocol (the “**Receiver Protocol**”).
2. FCT supports an expedited mortgage adjudication process within this receivership. However, any such process cannot come at the expense of FCT’s substantive rights.
3. The Receiver Protocol seeks to unilaterally rewrite the terms of the Policies (as defined below). It dispenses with FCT’s right to control the defence of the mortgagors’ claims; absolves the Receiver, Equityline LP, Sergiy Shchavyelyev, and others from their acts and omissions; and requires FCT to waive its coverage rights.
4. The Receiver is wearing multiple hats in this proceeding. It is the Insured (as defined below) under the Policies, the title holder to the mortgages and the title custodian. In these various roles, the Receiver is a party to, and participant in, the mortgage litigation. As the Insured, the Receiver is a counter-party to the Policies.
5. The Receiver Protocol contemplates the Receiver acting as process administrator with decision-making authority including, for example, determining whether parties attend mediation. In this role, the Receiver, as the Insured, would be in direct and immutable conflict of interest. No judicial officer should administer a matter where it is a party in interest.
6. The Receiver advocates for a “fresh slate” in adjudicating the fraud claims, disregarding the advanced state of the pleadings for most impugned mortgages. Ignoring the current state of the

mortgage enforcement files and limitation periods may grant certain mortgagors, including those subject to default judgment, rights they would not otherwise have. Insurance is not available where insureds participate in and encourage challenges to the validity of their mortgages.

7. As detailed below, Equitable Bank holds the primary beneficial interest in the mortgages. Any recovery on the mortgages, whether by power of sale, litigation or payouts under the Policies, is primarily for the benefit of Equitable Bank.

8. Under the Policies, FCT and the other title insurers are the parties responsible for the conduct and carriage of the litigation in the event the validity of the mortgages are challenged. Accordingly, it is directly within the purview of the title insurers to determine how the litigation will be conducted.

9. FCT seeks an order approving its proposed form of mortgage adjudication protocol (the “**FCT Protocol**”), which establishes a summary litigation process on the Commercial List for adjudicating the mortgage invalidity claims, including fraud.

10. Contrary to the Receiver’s unfounded allegations, the FCT Protocol does not benefit FCT “at the expense of the Debtor’s other stakeholders”. FCT has a duty to defend title and undertake carriage of the related litigation. It is FCT that bears the cost of the steps under the FCT Protocol, not the Receiver or the estate. Accordingly, it is in FCT’s interest that the impugned mortgages are adjudicated expeditiously and cost-effectively. Any suggestion to the contrary is without merit.

11. The Receiver was appointed on August 8, 2024. Despite its awareness of the fraud claims upon or shortly after its appointment, the Receiver took no steps to resolve them for over 1.5 years.

FCT agrees that resolving the mortgagor claims urgently is preferable; however, it is not prepared to waive its rights under the Policies to achieve this.

12. The Receiver filed claims under the Policies, is the Insured, and seeks the benefit of the Policies. The Receiver must also bear the burdens thereunder.

13. There is simply no grounds in law or otherwise for dispensing with FCT's rights in order to adjudicate the fraud claims. The Receiver has not established that such extraordinary consequences are necessary for proper administration of the estate. This Court has no jurisdiction to rewrite the terms of the Policies and should dismiss the Receiver's motion.

PART II – THE FACTS

Background

14. Pursuant to the Custodial Agreement, dated August 5, 2021, among Equitable Bank, Equityline SPV Limited Partnership ("**Equityline LP**"), and Computershare Trust Company of Canada ("**Computershare**"), Equityline LP was the sole beneficial owner of all its issued mortgage loans and Computershare held legal title to the mortgage loans in its capacity as title custodian.

Affidavit of Brendan Smith, sworn May 31, 2024, Ex. "I", Application Record of Equitable Bank, dated June 5, 2024, pp 207 ("Smith Affidavit").

15. Pursuant to a Notice of Control, dated April 23, 2024 (the "**Notice of Control**"), executed by Equitable Bank and addressed to Equityline LP and Computershare, Equitable Bank assumed ownership and control of all of Equityline LP's issued mortgage loans.

Smith Affidavit, Ex. "L", pp 300.

16. The Notice of Control provides:

...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.

Smith Affidavit, Ex. "L", pp 300.

17. Section 3.4 of the Title Custodian Acknowledgement Agreement, dated August 5, 2021, among Equityline LP, Equitable Bank and Computershare provides as follows with respect to a notice of control:

Effective upon the Control Date, the Custodial Agreement shall be deemed to be terminated in respect of the Mortgage Loans. Effective upon the Control Date, the Custodian shall hold the Mortgage Loans, including the registered and legal title of the related Mortgages, as agent, nominee and bailee for and on behalf of the Bank, and Equityline shall thereafter cease to have any right, title or interest in or to the Mortgage Loans or any rights or benefits in or under the Custodial Agreement in respect of the Mortgage Loans.

Smith Affidavit, Ex. "I", pp 250.

18. Following the issuance of the Notice of Control, the Receiver was appointed over all the assets, undertakings and properties of Equityline LP pursuant to the Order of the Court, dated July 30, 2024 (the "**Appointment Order**").

Order of the Honourable Justice Steele, dated July 30, 2024, Receiver's Motion Record ("RMR"), Tab 2A.

19. Pursuant to paragraph 4 of the Appointment Order, all right, title and interest in the Property held by Computershare was transferred and assigned to the Receiver. Due to the delivery of the Notice of Control, the Receiver's interest in the mortgages is limited to that of title custodian and title holder. The beneficial interest in the mortgages is held by Equitable Bank and is ostensibly outside the purview of the Appointment Order.

20. On December 9, 2025, Sergiy Shchavyelyev, the principal of Equityline LP, was charged with criminal offences in relation to at least some of his mortgage procurement activities.

Supplement to the Fourth Report of the Receiver, dated March 30, 2026, App. “P”, RMR, Tab 3G (“First Supplemental Report”).

The Policies and Charges

21. In 2022, FCT issued seven lender title insurance policies (the “**Policies**”) to Computershare in respect of charges (the “**Charges**”) registered against seven residential properties in Ontario. The Policies are substantively identical in terms.

Affidavit of John Tracy, sworn April 7, 2026, para 6, Cross-Motion Record of FCT, dated April 7, 2026 (“CMR”), Tab 2 (“Tracy Affidavit”), pp. 30.

22. The Policies were issued to Computershare as the named insured (the “**Insured**”), as defined in Section 1(b) of the Policies.

Tracy Affidavit, para 7.

23. Five of the Charges are potentially subject to insurance claims. These Charges are registered against the following properties:

| Real Property Address | PIN | Mortgagor |
|--|-----------------|----------------------------|
| 22 Lord Roberts Drive, Scarborough, Ontario (“ Lord Roberts Property ”) | 06348-0288 (LT) | Lyle Auton & Sheila Wright |
| 99 Kalmar Avenue, Scarborough, ON | 06462-0161 (LT) | Barbara Burton |
| 7044 Leeming Street, Niagara Falls, ON (“ Leeming Property ”) | 64420-0051 (LT) | Cindy Hunter |
| 123 Southmoor Drive, Kitchener, ON | 22491-0180 (LT) | Barry & Lisa Hirschberger |
| 30 Cherrywood Avenue, Toronto, ON | 10469-0145 (LT) | Phyllis Hinds |

Tracy Affidavit, para 8.

24. Pursuant to Transfers of Charge, registered on November 18, 2024, four of the Charges were transferred from Computershare to the Receiver. The parcel register for the Lord Roberts Property shows that the charge remains in the name of Equityline SPV GP Inc. It is unclear what authority, if any, the Receiver has to deal with this Charge.

Tracy Affidavit, para 11.

Mortgagor Fraud Allegations

25. Prior to the appointment of the Receiver, Computershare commenced mortgage enforcement actions against each of the mortgagors under the Charges.

Tracy Affidavit, para 14.

26. Four (4) of the mortgagors under the Charges filed statements of defence, statements of defence and counterclaim, and/or statements of claim alleging the Charges are fraudulent, among other things. One (1) of the mortgagors asserted fraud directly to the Receiver but has not filed any pleadings alleging such fraud. The nature of the claims asserted by the latter mortgagor are unclear.

Tracy Affidavit, para 14.

27. The Receiver has been aware of the fraud allegations in respect of the “Impugned Mortgages” since its appointment in 2024, or shortly thereafter.

Fourth Report of the Receiver, dated January 5, 2026, para 2.1(3), RMR, Tab 2.

First Report of the Receiver, dated October 2, 2024, para 4, previously filed.

28. In November and December 2024, Aird & Berlis LLP, counsel to Equitable Bank and the Receiver, filed claims in respect of the Charges with FCT.

First Supplemental Report, para 2.1(3).

29. Pursuant to the Appointment Order, the fraud claims were stayed. Accordingly, FCT took no further steps in respect of these claims.

Tracy Affidavit, para 18.

30. FCT issued coverage letters in respect of certain of the fraud claims.¹

Second Supplement to the Fourth Report, dated April 10, 2026, App. “A” – “C”.

31. FCT retained Dentons Canada LLP (“**Dentons**”) to defend title on behalf of the Insured. Dentons’ role is to act as counsel in respect of FCT’s duty to defend. Dentons is not coverage counsel. Lenczner Slaght has been retained by FCT to act as coverage counsel in respect of these matters.

Supplementary Affidavit of John Tracy, sworn April 21, 2026, para 3 Supplemental Cross-Motion Record of FCT, dated April 21, 2026 (“SCMR”), Tab 1 (“Tracy Supplementary Affidavit”).

Mortgage Adjudication Protocol

32. FCT first learned of the Receiver’s intention to seek approval of a mortgage adjudication protocol when it was short served with the Receiver’s motion record on January 5, 2026. The Receiver did not consult with FCT regarding its proposed protocol before serving its materials.

Tracy Affidavit, para 17.

33. Upon receipt of the Receiver’s motion materials, Stewart Title (another title insurer) and FCT swiftly communicated to the Receiver’s counsel various concerns with respect to the Receiver’s proposed protocol and requested an adjournment of the Receiver’s motion to provide them with an opportunity to properly respond. The title insurers’ concerns included, among other

¹ As coverage letters are privileged, FCT is not at liberty to disclose to this Court whether additional coverage letters may have been issued.

things, that the protocol improperly contemplated the Receiver acting as adjudicator of the claims of fraud, and the evidentiary process was deficient as it did not provide for cross-examinations or affidavits of documents.

Affidavit of Mario Giovane, sworn January 9, 2026 (“Giovane Affidavit”), para 13, SCMR, Tab 3.

34. The Receiver’s original materials did not provide particulars of any of the “Impugned Mortgages”. As a result, it was impossible to ascertain whether any of the Impugned Mortgages were the subject of policies of insurance issued by FCT and the other title insurers.

Giovane Affidavit, para 8.

35. From the date of the Appointment Order to January 2026, a 1.5 year period, the Receiver took no steps to resolve the fraud claims, except in respect of the Jank Mortgage,² which is not an FCT-insured Charge.

Tracy Affidavit, para 19.

36. After the adjournment of the Receiver’s motion returnable on January 13, 2026, FCT attempted to arrive at a mutually agreeable mortgage adjudication protocol with the Receiver. To this end, it provided draft protocols for the Receiver’s review and comment. It also raised its concerns, based on the Notice of Control and Equitable Bank taking control of the mortgages to the exclusion of Equityline LP, that it was unclear whether the Receiver or Equitable Bank, or perhaps both parties, were the Insured.

Tracy Affidavit, paras 20 and 21.

Aide Memoire of FCT for Case Conference returnable February 2, 2026, SCMR, Tab 4.

² As defined in the Receiver’s Fourth Report, dated January 5, 2026.

37. Ultimately the Receiver agreed it is an Insured under the Policies. The Receiver takes the position that “its obligations as an insured cannot conflict with, or supersede, its obligations as a court officer, including the fiduciary duties the Receiver owes to all stakeholders of EquityLine SPV Limited Partnership”. The practical reality is that the Receiver has obligations under the Policies and any conflict of interest that may arise is for the Receiver to address.

Tracy Affidavit, para 12.

First Supplemental Report, App. “G”.

38. In response to FCT’s draft protocols, the Receiver provided revised proposed protocols, however the terms of these protocols remained materially inconsistent with the terms of the Policies and the Receiver’s obligations as an Insured. By letter dated March 19, 2026, Dentons wrote to counsel for the Receiver detailing its concerns with the revised protocol.

Tracy Affidavit, para 24, Ex. “I”.

39. The parties were unable to consensually agree to the terms of the Protocol and accordingly, the Receiver brought its motion seeking approval of the Receiver Protocol.

40. In response to comments received from counsel to one of the mortgagors, FCT made certain changes to the FCT Protocol. A revised FCT Protocol is attached hereto as **Schedule “C”**. Counsel to two of the mortgagors, and counsel to TitlePlus, advised Dentons that they support the revised FCT Protocol. The Receiver asserts at paragraph 5 of its factum that the terms of the Receiver Protocol are supported by the “Objecting Mortgagors”, but has provided no evidence for this assertion.

Tracy Supplementary Affidavit, paras 5-6.

FCT Protocol, Schedule “C” hereto.

41. FCT brings the within cross-motion seeking approval of the FCT Protocol. FCT seeks approval of the FCT Protocol as it is consistent with the terms of the Policies and provides an efficient summary process for the adjudication of the various claims of fraud. It promotes procedural efficiency by transferring the proceedings to the Commercial List, and using the existing pleadings already filed in those proceedings. Proceeding in this way will be less costly than that contemplated by the Receiver Protocol, which requires the parties to file fresh claims and responses dealing with the exact same matters for which pleadings have already been filed.

FCT Protocol.

42. For efficiency, FCT's draft order on this cross-motion provides for the issuance of the orders to continue and the amendment of pleadings on deemed consent.

43. The FCT Protocol also provides for fulsome documentary evidence and examinations, which are necessary to properly adjudicate claims of fraud. It contemplates mandatory mediation to explore settlement and a robust summary trial process that is responsive to the specific nature of the mortgagors' fraud claims and properly tests credibility.

FCT Protocol.

44. Unlike the Receiver Protocol, which disregards the express terms of the Policies and dispenses with the title insurers' contractual rights, the FCT Protocol is a streamlined adjudication process that preserves the rights of all parties. It is supported by two of the mortgagors, and TitlePlus.

Tracy Supplementary Affidavit, paras 5-6.

PART III – THE ISSUES

45. The questions for the Court on these motions are: (a) Does the Court have the jurisdiction to approve the Receiver Protocol? (b) Should the Court approve the FCT Protocol?

46. The Court does not have jurisdiction to approve the Receiver Protocol. Accordingly, the FCT Protocol should be adopted (or else the stays in the various actions should be lifted and the matters proceed).

PART IV – LAW & ARGUMENT

The Receiver Protocol Should Not Be Approved

(a) The Receiver Protocol rewrites the Policies and dispenses with FCT's defence rights

47. Pursuant to section 4 of the Policies, FCT has the right to carriage and control of any litigation in respect of its duty to defend title. The terms of the Policies do not contain any conditions on FCT's right to defend title and control litigation in respect of same. Rather, the Policies require the Receiver to secure this right to FCT, as set out in section 4(d):

In all cases where this policy permits or requires the Company to prosecute or provide for the defence of any action or proceeding, the Insured shall secure to the Company the right to so prosecute or provide defence in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Insured for this purpose.

Tracy Affidavit, Ex. "C", pp 84.

48. Typically, the insurer's duty to defend is a meaningful benefit to the Insured as the insurer undertakes the defence on the Insured's behalf and pays all related costs and expenses. Where the Receiver is the Insured, as here, this means that the estate does not bear the defence costs.

49. The Receiver Protocol seeks to unilaterally rewrite the clear language of the Policies and arbitrarily dispense with FCT's right to assume and control the defence of the mortgagors' claims.

In particular:

- (a) paragraph 36 states that unless the relevant title insurer delivers a "Waiver", the Receiver will have carriage and control of the litigation, "including final authority over all legal positions taken in connection therewith";
- (b) paragraph 37 provides that where a title insurer delivers a "Waiver", the Receiver may decline to permit the insurer to assume carriage and control "where the Receiver, in its sole discretion acting reasonably, determines that a conflict exists between the conduct of the Summary Trial and the fiduciary duties owed by the Receiver to the stakeholders of EquityLine"; and
- (c) paragraph 38 states that, at any time after a title insurer has assumed carriage and control of the litigation, that the Receiver "in its sole discretion" may "resume carriage and control" and "any such resumption of carriage and control by the Receiver shall not constitute a breach of any obligation owed to the relevant title insurer and shall not, in whole or in part, form the basis for any denial, limitation or reservation of coverage under any applicable title insurance policy."

Receiver Protocol, paras 36-38, Supplemental Fourth Report, App. "M", RMR, Tab 3M ("Receiver Protocol").

50. These terms of the Receiver Protocol are fundamentally inconsistent with the Policies.

51. Furthermore, as the Receiver is seeking the benefit of coverage under the Policies, and has adopted the Policies, it cannot unilaterally modify the terms of the Policies by choosing which provisions it complies with. Where a court-appointed receiver seeks to enforce, on the debtor's behalf, a contract that the debtor entered into with a third party prior to the receivership, the receiver steps into the shoes of the debtor and cannot unilaterally amend the terms of that contract. The receiver cannot have it both ways – it cannot secure the benefit of a contract on the debtor's behalf while at the same time avoiding its burdens.

Peace River Hydro Partners v. Petrowest Corp., [2022 SCC 41](#), at paras. [109-110](#) (“Peace River”).

52. Yet that is precisely what the Receiver Protocol attempts to do. While the Receiver purports to rely on its broad discretion under section [243\(1\)](#) of the *Bankruptcy and Insolvency Act* (the “BIA”) as justification, that reliance is misplaced. There is an enormous difference between a receiver seeking to disclaim, repudiate or assign a contract that the debtor entered into with a third party, and a receiver seeking to enforce a contract while at the same time unilaterally rewriting certain terms of that same contract which the receiver considers undesirable or inconvenient.

53. The former is what the Supreme Court of Canada's decision in *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41](#) (“*Peace River*”) contemplates in certain limited circumstances; the latter would be an unprecedented extension of a receiver's powers that *Peace River* firmly rejects:

[A] court-appointed receiver, by initiating legal proceedings on behalf of a debtor, “steps into the shoes” of the debtor as the original contracting party, much like an assignee or a trustee in bankruptcy does. While a court-appointed receiver may have the power to sue on the debtor's behalf, “the receiver acquires no cause of action in its own name” and therefore “must . . . sue in the debtor's name to recover accounts receivable” In short, a court-appointed receiver has no independent cause of action

to assert.... It would violate basic principles of contract law to permit a receiver to enforce a contract on the debtor's behalf while avoiding the debtor's burdens, including the obligation to arbitrate contractual disputes. (emphasis added)

Peace River, para. 109.

54. The Receiver cannot have it both ways – it cannot seek the benefit of coverage under the Policies, while at the same time take away FCT's substantive rights under the Policies. It is not the within the authority of the Receiver or the jurisdiction of this Court to rewrite the terms of the Policies when the Receiver is seeking to enforce them.

Peace River, paras 109-110; *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75, at para. 31. *SS&C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, 2024 ONCA 675, at para. 48.

(b) The Receiver Protocol absolves the Receiver and limits FCT's coverage rights

55. Paragraph 10 of the Receiver Protocol absolves the Receiver from any act or omission in carrying out its duties in the receivership proceedings, and requires the title insurers to waive any right to dispute coverage for reasons relating to the Receiver's acts or omissions. The Receiver Protocol provides:

No Title Insurance Claim may be denied by the relevant title insurer on the basis of any act or omission of the Receiver in carrying out its duties in these receivership proceedings, including, without limitation, the Receiver's administration of or compliance with this Protocol.

Receiver Protocol, para 10.

56. There is no possible way to read Section 243 of the BIA so broadly as to allow the Receiver to rewrite the Policies.

57. The Policies prescribe certain obligations on the part of the Insured, i.e. the Receiver. For example, section 4 of the Policies set out a duty of cooperation on the Insured. If the Insured fails to discharge that duty, section 4(d) of the Policies provides that FCT's "obligations to the Insured under the policy shall terminate...", as follows:

If the Company is prejudiced by the failure of the Insured to furnish the required co-operation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such co-operation.

Tracy Affidavit, Ex. "C", pp 84.

58. Section 5 of the Policies similarly provides, among other things:

Failure of the Insured Claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

Tracy Affidavit, Ex. "C", pp 84.

59. Again, as noted by the SCC in *Peace River*, "[i]t would violate basic principles of contract law to permit a receiver to enforce a contract on the debtor's behalf while avoiding the debtor's burdens, including the obligation to arbitrate contractual disputes."

[Peace River](#), para [109](#).

60. The Receiver cannot selectively choose which provisions of the Policies it will observe.

61. FCT does not consent to any purported unilateral amendment of the Policies and its rights under the Policies, and at law, to potentially deny coverage as a result of the actions or omissions of the Receiver, the Insured. To enforce the Policies, as the Receiver seeks, necessarily means being subject to the Policies in their entirety.

(c) The Receiver Protocol's "Waiver" requirement is improper

62. The Receiver Protocol includes the concept of a "Waiver" pursuant to which any title insurer that wishes to assume carriage and control of the litigation must waive "any right to deny, limit, restrict or otherwise dispute coverage under any applicable title insurance policy issued in respect of the Impugned Mortgage on the basis of, arising from, or in connection with the conduct, acts or omissions of EquityLine or its general partner, EquityLine GP Inc., Sergiy Shchavyelyev, or any of EquityLine's past or present, directors, officers or employees."

Receiver Protocol, para 39.

63. As set out above, FCT has the right under the Policies to carriage and control of the litigation in respect of the claims of fraud. The concept of the Waiver, whereby FCT is required to waive its rights under the Policies in order to exercise its rights under the Policies, is fundamentally incompatible with the clear terms of the Policies. Again, the Receiver cannot have it both ways – it cannot seek the benefit of coverage under the Policies, while at the same time unilaterally amending or eliminating the title insurers' substantive rights under the Policies.

Tracy Affidavit, para 27.

64. Further, given that Sergiy Schavyelyev was charged with criminal offences in relation to at least some of his mortgage procurement activities, it is inequitable for the Receiver to seek a waiver from the title insurers relating to conduct in which he engaged in personally or the company that he managed.

Fourth Supplemental Report, App. "P".

(d) The Receiver Protocol will result in unnecessary duplication and costs

65. The Receiver Protocol contemplates the initiation of claims via a “Notice of Claim” with the mortgagors filing a “response” and affidavits in order to substantiate their claim. The Receiver proposes this process notwithstanding that statements of claim, counterclaims, and defences have already been filed by Computershare and the mortgagors in respect of nearly all of the impugned mortgages.

Tracy Affidavit, para 14 & Ex. “E”.

66. The Receiver does not address how such “Notices” will operate in the face of potential limitations periods and procedural rules in respect of setting aside default judgments. The Receiver Protocol is silent on this point.

67. While the Receiver highlights the “single proceeding model” of its proposed claims process as a distinguishing feature, there is no necessity for the various actions to be procedurally consolidated. Each of the mortgagor’s claims will necessarily require its own pleadings, affidavits of documents, and examinations – a practical reality that is common to both the Receiver Protocol and the FCT Protocol.

68. Although the Receiver brands its proposed process as more efficient on account of its relative informality, it will in fact result in needless duplication and costs by requiring the parties to file claims and responses dealing with the exact same matters for which pleadings have already been filed. Further, separate steps would need to be taken to discontinue the existing claims if the Receiver’s Protocol is adopted, which is not addressed. The Receiver’s proposed claims process undermines, rather than promotes, efficiency and will create unnecessary costs for the parties as a result of the duplication it contemplates.

(e) The Receiver Protocol grants overbroad discretion and creates conflicts of interest

69. Pursuant to the Policies, the Receiver as an Insured has a duty to cooperate with FCT in defending title and conducting the litigation. Sections 4(d) and 5 of the Policies require the Receiver to, among other things, provide FCT with “all reasonable aid” in securing evidence. A failure to cooperate will terminate FCT’s obligations under the Policies.

Tracy Affidavit, Ex. “C”, pp 84.

70. The original terms of the Receiver Protocol, as contained in the Receiver’s motion record, provided the Receiver with the ability to determine, in its “sole discretion”, which “Interested Parties” are entitled to and will receive the evidence filed by the mortgagors. This is directly contrary to the Receiver’s duties of cooperation under the Policies.

71. It was not until after service of FCT’s cross-motion record that the Receiver conceded that it should not gatekeep the documentation provided to the insurers.

72. The Receiver continues to maintain that it should administer the litigation process and control steps in the process including whether the parties attend mediation. The Receiver Protocol provides that the Receiver may “in its sole discretion, direct that the Objecting Mortgagor and any other Interested Party that the Receiver considers necessary or appropriate participate in a mediation (a “**Mediation**”).”

Receiver Protocol, para 27.

73. The Insured should not administer the litigation. It is unclear why the Receiver should have any role beyond that of the Insured. Upon engagement of its duty to defend, FCT has carriage and control of the litigation, including funding the costs. The Receiver’s attempts to control the process will increase costs for the estate and put the Receiver in a direct conflict of interest.

(f) Coverage disputes should be separately adjudicated

74. Paragraphs 44 to 48 of the Receiver Protocol seek to impose a truncated process for potential coverage disputes, with any such disputes to “be determined primarily on the materials delivered to the Receiver” under the Receiver Protocol.

Receiver Protocol, para 44-48.

75. Coverage disputes are not properly the subject of any mortgage adjudication protocol and should be dealt with in the ordinary course. They are separate matters that do not impact the mortgagors or the determination of their fraud claims. The Receiver’s proposed process inexplicably attempts to limit the evidence that can be put before the Court.

76. For absolute clarity, the determination of coverage disputes, if any, does not in any way impact the mortgagors.

The FCT Protocol Should Be Approved

77. The FCT Protocol strikes an appropriate balance between establishing a summary litigation process and preserving all parties’ rights. The FCT Protocol is consistent with the Policies and the need for a robust process to assess credibility in fraud claims. The Receiver’s objections have no merit.

78. Contrary to the Receiver’s suggestion in paragraph 44(b)(ii) of its factum, the amendment of pleadings under the FCT Protocol would not cause delay by requiring the consent of all parties or leave of the Court – consent would be deemed. Furthermore, the amendments to pleadings is for the benefit of the Receiver and the Debtor’s stakeholders as it will allow the title insurers to plead equitable mortgages.

Factum of the Receiver, para. 44(b)(ii)

79. There is similarly no merit to the Receiver's suggestion that the FCT Protocol is disproportionate because it is not a single proceeding model like the Receiver Protocol. The FCT Protocol appropriately reflects the practical reality that while each of the fraud claims can be dealt with as part of a summary process, they will necessarily require their own pleadings, affidavits of documents, and examinations. The process contemplated by the Receiver Protocol will similarly require these procedural steps for each separate claim, notwithstanding that all of the claims will be part of the receivership process.

80. There is also no basis for the Receiver's argument in paragraph 44(b)(i) of its factum that the ordinary course documentary discovery contemplated by the FCT Protocol is "unnecessary", or the Receiver's suggestions that anything less than a robust summary trial procedure is appropriate.

81. The mortgagors' claims include fraud claims, which necessarily involve matters of credibility and are generally unsuited to adjudication without full discovery and a robust trial process.

***Bains v. Khatri*, [2019 ONSC 1401](#), at para. [23](#); *Cieszanski v. Jursz*, [2003 CanLII 18097 \(ON SC\)](#), at para. [34](#).**

82. The mortgagors' allegations of fraud must be pleaded with particularity, supported by fulsome documentary productions, tested on thorough examinations for discovery, and strictly proven through a fulsome hearing procedure that allows for expert reports, *viva voce* evidence, and other procedures to test credibility, knowledge, intent, and inconsistencies.

***Bank of Montreal v. Garasymovych*, [2023 ONSC 3630](#), at para. [33](#); *Re Gregoris*, 1982 CarswellOnt 235, at paras. 4-5.**

83. The Receiver's suggestions that a fulsome process is unnecessary and disproportionate fail to properly account for the nature of the mortgagors' claims.

84. The Receiver's references in its factum to *Roman Catholic Episcopal Corporation of St. John's (Re)*, [2023 NLSC 5](#), and a claims process established in the CCAA to determine the validity and quantum of tort claims against the estate are unhelpful. Here the issue is whether the mortgages held by the estate are valid or invalid due to fraud, incapacity or possibly other reasons.

Roman Catholic Episcopal Corporation of St. John's (Re), [2023 NLSC 5](#).

85. While the Receiver emphasizes pushing the claims forward "swiftly", the desire for expediency is not a valid basis for materially abbreviating the fulsome evidentiary process that fraud claims demand.

FCT Is Not in a Conflict

86. The Receiver asserts in its factum that FCT's rights to control the defence should be curtailed as a result of a reasonable apprehension of conflict arising from FCT's reservation of rights on coverage and its negotiation of the mortgage adjudication protocol. The Receiver has failed to establish that this is the case. There should be no conflict in the context of the duty to defend where the title insurer has assumed coverage of the defence.

87. Dentons was retained to act as counsel in respect of FCT's duty to defend. Dentons is not coverage counsel. Lenczner Slaght has been retained by FCT to act as coverage counsel in respect of these matters.

88. FCT had no choice but to negotiate the mortgage protocol in light of the steps unilaterally taken by the Receiver. The process is for the purpose of adjudicating the mortgages, which Dentons

has been retained to do. FCT has consistently taken the position that coverage disputes are separate matters. It is the Receiver that is seeking to conflate these two issues.

89. The Receiver relies on *Nazal v. Hiruy and Solomon*, [2026 ONSC 834](#) (“*Nazal*”) and *Hoang v. Vicentini*, [2015 ONCA 780](#) (“*Hoang*”) in support of its allegations that FCT is in a conflict. Yet as the Court of Appeal made clear in *Hoang*, as cited by *Nazal*: “Not every potential conflict between the interests of the insurer and its insured requires the insurer to yield the right to control the defence, a right it contracted for in the policy of insurance. To require the insurer to yield control, the insured must meet the reasonable apprehension of conflict of interest test.”

Hoang v. Vicentini, [2015 ONCA 780](#) at para. [16](#).

Nazal v. Hiruy and Solomon, [2026 ONSC 834](#), at para [68](#).

90. The mere fact that an insurer has reserved its rights on coverage does not automatically give rise to a reasonable apprehension of conflict or cause the insurer to lose its right to control the defence. Something more is required – namely, the insurer’s reservation of rights must arise because of coverage questions which depend on an aspect of the insured’s own conduct that is in issue in the underlying litigation.

Nazal, at para [68](#).

Loblaw Companies Limited v. Royal & Sun Alliance Insurance Company of Canada, [2024 ONCA 145](#), at paras. [245-247](#); *Brockton (Municipality) v. Frank Cowan Co. Ltd.*, [2002 CanLII 7392 \(ON CA\)](#), at paras. [42-43](#).

91. The Receiver bears the onus of proving a reasonable apprehension of conflict of interest. It has not adduced any evidence that shows a reasonable apprehension of a conflict on the part of FCT.

Nazal, at para [68](#).

Loblaw, para [245](#).

92. The Receiver has not provided any evidence that FCT took issue with an aspect of the Insured's conduct that is at issue in the mortgage validity litigation. FCT's objections to the Receiver Protocol have nothing to do with the Insured's conduct in respect of the mortgages.

Lord Roberts and Leeming Properties

93. With respect to the Charge for the Lord Roberts Property, the parcel register shows that the charge remains in the name of Equityline SPV GP Inc. It is unclear what authority, if any, the Receiver has to deal with this Charge. Until the Receiver cures this title issue, FCT's position is that any issues with the validity of this Charge are outside the scope of the receivership and should not be included in any mortgage adjudication protocol.

Tracy Affidavit, para 11.

94. With respect to the Charge for the Leeming Property, a default judgment in respect of the Charge was obtained on March 7, 2024. No steps to set aside the default judgment have been taken, nor any pleadings filed, by the mortgagor, who has apparently only asserted fraud directly to the Receiver. In the absence of any formal pleadings, or even written evidence of a claim of fraud, the duty to defend is not engaged in respect of the Leeming Property and FCT advised the Receiver of same.

Tracy Affidavit, para 14 and Exhibit E.

Supplemental Fourth Report, App. "C".

PART V – ORDER SOUGHT

95. FCT requests that the Receiver's motion be dismissed, and this Honourable Court grant the relief as set out in its Notice of Cross-Motion, dated April 7, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 21, 2026

A handwritten signature in cursive script that reads "Dentons Canada LLP".

DENTONS CANADA LLP

Lawyers for FCT Insurance Company Ltd.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41](#)
2. *Pacific National Investments Ltd. v. Victoria (City)*, [2004 SCC 75](#)
3. *SS&C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, [2024 ONCA 675](#)
4. *Bains v. Khatri*, [2019 ONSC 1401](#)
5. *Cieszanski v. Jursz*, [2003 CanLII 18097 \(ON SC\)](#)
6. *Bank of Montreal v. Garasymovych*, [2023 ONSC 3630](#)
7. *Re Gregoris*, 1982 CarswellOnt 235
8. *Roman Catholic Episcopal Corporation of St. John's (Re)*, [2023 NLSC 5](#)
9. *Nazal v. Hiruy and Solomon*, [2026 ONSC 834](#)
10. *Hoang v. Vicentini*, [2015 ONCA 780](#)
11. *Loblaw Companies Limited v. Royal & Sun Alliance Insurance Company of Canada*, [2024 ONCA 145](#)
12. *Brockton (Municipality) v. Frank Cowan Co. Ltd.*, [2002 CanLII 7392 \(ON CA\)](#)

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

April 21, 2026



SCHEDULE “B”
STATUTES AND REGULATIONS

[Bankruptcy and Insolvency Act, RSC 1985, c B-3 s243](#)

PART XI

Secured Creditors and Receivers

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

SCHEDULE "C"
FCT PROTOCOL (REVISED APRIL 20, 2026)

Revised Protocol - 20 April 2026

| # | Item | Process Point | Timeline |
|----|---|--|---|
| 1 | Document Disclosure – Policy Obligation | Insured Mortgagee/Receiver to provide all relevant documents to title insurers in accordance with the applicable title insurance policies. | ASAP |
| 2 | Transfer Orders | Insured Mortgagee/Receiver to obtain orders to transfer all litigation matters to the Commercial List | April 30, 2026 |
| 3. | Orders to Continue | Insured Mortgagee/Receiver to obtain orders to continue the litigation replacing Computershare with the Insured Mortgagee/ Receiver | April 30, 2026 |
| 4. | Amendment(s) to Pleadings | Insured Mortgagee/Receiver, Mortgagor and named parties in pleadings (the “ Parties ”) to amend pleadings on consent | Within 30 days of Court approval. |
| 5. | Exchange of Affidavits of Documents | Parties to exchange affidavits of documents (“ AOD ”). Usual production requirements pursuant to Rules 29 and 30 apply. | Within 30 days of amended pleadings, if any. |
| 6. | Mandatory Mediation | Parties to attend mediation with a designated mediator (the “ Mediator ”) who specializes in title fraud matters. | The Mediator will provide dates |
| 7. | Examinations for Discovery on AOD | Examinations to be completed. Examinations not to exceed 7-hour time limit under Rule 31.05.1. | Scheduled following an unsuccessful mediation |
| 8 | Summary Trial (Commercial List) | If mediation unsuccessful, matter to be heard by designated trier of fact in a summary trial. Parties to attend case conference with trier of fact to establish the protocol for the 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. | Scheduled by Commercial List. |
| 9 | Appeal | Parties may exercise appeal rights under the <i>Courts of Justice Act</i> and <i>Rules of Civil Procedure</i> | |

EQUITABLE BANK
Applicant

and

Court File No. CV-24-00721560-00CL
EQUITYLINE SPV LIMITED PARTNERSHIP
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

FACTUM OF FCT INSURANCE COMPANY LTD.

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