



**Second Supplement to the First Report of  
KSV Kofman Inc.  
as Trustee in Bankruptcy of  
1033803 Ontario Inc. and  
1087507 Ontario Limited**

**August 18, 2020**

**and**

**Second Supplement to the Eighth Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
1033803 Ontario Inc. and  
1087507 Ontario Limited and  
Certain Related Other Property**

<b>Contents</b>		<b>Page</b>
1.0	Introduction .....	1
1.1	Purpose of this Report .....	2
1.2	Restrictions .....	2
2.0	Overview of the FC Investigation .....	2
3.0	Responding Materials .....	3
3.1	Reliability of Accounting Information .....	4

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Forma-Con Financial Statements .....	A
Statement of Claim .....	B
Globe and Mail article dated April 20, 2020 .....	C



ESTATE NO.:31-2598338

ESTATE NO.:31-2598460

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCIES OF 1033803 ONTARIO INC. AND  
1087507 ONTARIO LIMITED

SECOND SUPPLEMENT TO THE FIRST REPORT OF  
KSV KOFMAN INC.  
AS TRUSTEE IN BANKRUPTCY

COURT FILE NO: CV-18-608978-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR  
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF *THE  
BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS  
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, C. C.43, AS AMENDED

SECOND SUPPLEMENT TO THE EIGHTH REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

AUGUST 18, 2020

## 1.0 Introduction

1. This report (the "Second Supplemental Report") is a second supplement to the jointly titled First Report of the Trustee and the Eighth Report of the Receiver dated February 21, 2020 (the "Investigation Report") and the jointly titled Second Report of the Trustee and Ninth Report of the Receiver dated May 7, 2020.
2. Defined terms in this Second Supplemental Report have the meanings provided to them in the Investigation Report, unless otherwise defined herein.

3. On June 19, 2020 and July 27, 2020, John Aquino, a former director and officer of Forma Con, President of BCCL and an Individual Respondent, served his Responding Application Record and Supplementary Responding Application Record, respectively (jointly, the “Responding Materials”).
4. The Responding Materials include an expert report from Cohen Hamilton Steger & Co. Inc. (“CHS”) dated July 27, 2020 (the “CHS Report”). CHS was retained by Gardiner Roberts LLP, legal counsel to John Aquino. CHS’s mandate included performing procedures related to Forma Con to, *inter alia*, “review [Forma Con’s] accounting documentation and financial statements to identify the creditors on an annual basis from 2014 to 2017 and to quantify the total amounts owing to these creditors; and determine if the identified creditors were subsequently paid by [Forma Con].”
5. On August 18, 2020, E&Y served the Seventh Supplemental Report to the Monitor’s Investigation Report (the “Seventh Supplemental Report”) in response to the Responding Materials. The Seventh Supplemental Report illustrates that BCCL was in a precarious financial position for several years and that its financial statements had numerous and material misrepresentations.
6. As further discussed herein, BCCL’s financial position is of significance to Forma Con as BCCL was its largest customer, BCCL provided funding to Forma Con and Forma Con was a secured guarantor of BCCL’s credit facilities with its operating lender. The financial information provided in the Seventh Supplemental Report has not been reviewed by the Trustee as it has no capacity over BCCL. The Trustee has no reason to call into question the findings in the Seventh Supplemental Report.

### **1.1 Purpose of this Report**

1. The purpose of the Second Supplemental Report is to reply to the Responding Materials.

### **1.2 Restrictions**

1. This Report is subject to the restrictions and qualifications in the Investigation Report.
2. The Trustee has also relied upon the Seventh Supplemental Report in preparing this Second Supplemental Report.

## **2.0 Overview of the FC Investigation**

1. The FC Investigation identified transactions totalling approximately \$32.4 million between Forma Con and Suppliers of Interest, of which \$11.4 million are Impugned Transactions, as they fall within the Review Period.
2. Based on the Trustee’s review, a review of the Monitor’s Investigation Report and discussions with E&Y and Steve Aquino, the Trustee has concluded that none of the Supplier Respondents provided any goods or services to Forma Con.

3. The following pattern applies to substantially<sup>1</sup> all the Impugned Transactions:
  - a) the process was initiated by Solano when he sent an email to Caruso or Ana advising a Supplier of Interest to invoice Forma Con, the description of the work to appear on the invoice, the amount to be invoiced and the project to be invoiced;
  - b) each invoice was non-descript and the invoices remitted by the Supplier of Interest were without supporting documentation;
  - c) immediately thereafter, an invoice was created by Caruso or Ana and sent to Solano;
  - d) the invoice was paid immediately following receipt by Forma Con; and
  - e) the cheques were signed by either John Aquino or Solano.
4. The pattern detailed above is inconsistent with the manner that Forma Con paid its non-Suppliers of Interest. Additionally, Steve Aquino advised the Trustee that prior to learning of the Impugned Transactions, he was unaware that Solano was authorized to sign cheques on behalf of Forma Con.

### 3.0 Responding Materials

1. The Trustee's principal allegation is that John Aquino and the other Supplier Respondents misappropriated millions of dollars from Forma Con through the issuance of fraudulent invoices (the "Invoicing Scheme").
2. The Responding Materials provide no evidence that the Suppliers of Interest provided any goods or services to Forma Con, nor any justification as to why the transactions were completed outside Forma Con's typical accounting procedures.
3. The Responding Materials also fail to explain why Solano, John Aquino's cousin, was advising suppliers which project to invoice, the descriptions to be noted on the invoices and the amounts to be invoiced. The Responding Materials also fail to explain why Solano was signing cheques to suppliers when, according to Steve Aquino, it was not part of his job function as Head of IT.
4. The CHS Report appears to be addressing Section 96(1)(b)(ii)(A) of the BIA, i.e. the solvency branch of the test of the Transfers at Under Value ("TUV") test (as it relates to non-arm's length parties) to attempt to prove that the Impugned Transactions are not TUVs under the BIA. The CHS Report infers that if Forma Con paid all its creditors during the Review Period, then the Impugned Transactions are not TUVs.
5. In establishing that the Impugned Transactions are TUVs, the Trustee is relying on the Section 96(1)(b)(ii)(B), i.e. the portion of the non-arm's length test that deals with the intent of the debtor to defraud, defeat, or delay a creditor.
6. Although not relying on the solvency branch of the TUV test, the Trustee has the following observations concerning Forma Con's financial position, its financial information and the CHS Report.

---

<sup>1</sup> No email correspondence can be located for two of the Supplier Respondents, 2104664 Ontario Inc. and 2304288 Ontario Inc.

### 3.1 Reliability of Accounting Information

1. An "insolvent person" is defined in Section 2 of the BIA as:
  - i. a person who is not bankrupt and who resides, carries on a business or has property in Canada, whose liabilities to creditors payable as claims under this Act amount to one thousand dollars; and
    - a. who is, for any reason, unable to meet his obligations as they generally become due, or
    - b. who has ceased paying his current obligations in the ordinary course of business generally as they become due, or
    - c. the aggregate of whose property is not, at fair valuation, sufficient, or disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

Items (a) and (b) are known as the "cash flow" test and item (c) is known as the "balance sheet" test. The CHS Report focuses on the cash flow test.

2. The CHS Report concludes that, based on its review of Forma Con's accounting information, Forma Con "paid its liabilities on a timely basis, at least until December 31, 2017". In coming to this conclusion, the CHS Report examined whether Forma Con paid its outstanding payable liability as at December 31<sup>st</sup> within the following year. Forma Con's policy was to pay suppliers within 90 days of the date of invoice. Accordingly, paying all suppliers within twelve months does not illustrate that the liabilities were paid on time or that the company was meeting its obligations as they generally became due. CHS notes that it performed a review of Forma Con's liabilities for the period December 31, 2014 to December 31, 2017. The CHS Report does not explicitly conclude that Forma Con was solvent.
3. Attached as Appendix "A" is Forma Con's financial statements for its fiscal years 2014<sup>2</sup> to 2016. As reflected in the table below, Forma Con had a shareholders' deficit in each of its fiscal years ending December 31, 2014 to 2016.

(\$; unaudited)	2014	2015	2016
Shareholders' deficiency	(942,389)	(289,331)	(533,483)

The shareholders' deficit means that at book value, Forma Con's liabilities exceeded its assets. This is before considering any fair value adjustments, which is required to determine the solvency of Forma Con on a balance sheet basis.

<sup>2</sup> The Trustee is not in possession of the 2014 financial statements, but has attached the 2015 financial statements which include the 2014 results.

4. The Trustee has the following additional comments concerning Forma Con's financial statements:

- a. Forma Con's financial statements were prepared on a Notice to Reader<sup>3</sup> ("NTR") basis. NTR statements are compilations of financial information provided by management. The information undergoes no testing and the accountant preparing them offers no opinion or assurance. According to the Chartered Professional Accountant handbook:

*"a compilation engagement is one in which a public accountant receives information from a client and arranges it into the form of a financial statement. The public accountant is concerned that the assembly of information is arithmetically correct. Unlike an audit or a review engagement in which the public accountant does sufficient work to issue a communication that provides assurance regarding the financial statements, no expression of assurance is provided in a compilation engagement."*

- b. Forma Con's most material assets as at the end of fiscal 2016 were related party receivables and related party holdback receivables owing from the Group, which increased from approximately \$41 million at the end of fiscal 2014 to approximately \$91 million at the end of fiscal 2016<sup>4</sup>.

Based on a review of Forma Con's trial balances, the majority of its receivables were owing from BCCL. Forma Con provided contracting services to BCCL and was economically reliant on BCCL. If BCCL failed to pay Forma Con, or was unable to pay Forma Con, or if BCCL otherwise failed to provide liquidity to Forma Con, Forma Con would likely not have been able to continue to operate. The amounts owing to Forma Con from related parties at the fiscal 2014 to fiscal 2016 year-ends is summarized below.

(\$000; unaudited)	2014	2015	2016
Related party AR	35,422	63,386	87,206
Related party holdback AR	5,540	4,816	3,980
	<u>40,962</u>	<u>68,202</u>	<u>91,186</u>

- c. Forma Con's most significant liability was also owing to related parties, as summarized below. This obligation grew significantly between 2014 and 2016.

(\$000; unaudited)	2014	2015	2016
Due to related parties	8,984	96,402	119,371

Based on a review of Forma Con's trial balances, the majority of Forma Con's related party payables are due to BCCL. The increase in related party debt suggests that BCCL may have been making advances to Forma Con, or that BCCL was paying Forma Con's obligations on its behalf. It is unclear why this funding was recorded as a payable owing by Forma Con to BCCL, when these advances could have been applied to reduce BCCL's payable owing to Forma Con.

<sup>3</sup> NTRs do not appear to have been prepared after 2016.

<sup>4</sup> Based on Forma Con's financial statements for the years ending December 31, 2015 and 2016.

- d. BCCL was a borrower under a credit facility with National Bank of Canada (“NBC”). Forma Con was a guarantor of the NBC facility. At the end of fiscal 2014, 2015 and 2016, the borrowers’ indebtedness to NBC was \$48 million, \$55 million and \$56 million, respectively. Forma Con did not have the ability to satisfy this obligation in the event of a default by BCCL. This obligation is not addressed in the CHS Report.
5. As Forma Con’s ability to continue as a going-concern was directly connected to the viability of BCCL, the Trustee is of the view that the following factors are relevant when considering Forma Con’s financial situation:
- a. PricewaterhouseCoopers LLP (“PwC”) was previously the auditor of the Group. PwC resigned as auditor while performing the Group’s fiscal 2013 audit. As required, PwC wrote a letter dated June 20, 2014 to Deloitte LLP (“Deloitte”), the auditor which replaced PwC, noting that it resigned due to, *inter alia*, “suspected fraud in connection with confirmation evidence received by the audit team” and “difficulty in obtaining sufficient and appropriate audit evidence”.
  - b. PwC and Deloitte are the subject of litigation commenced by BCCL, through a litigation trustee, Roman Doroniuk, in respect of BCCL’s audit for the fiscal years ended December 30, 2009 to December 30, 2012 for PwC and December 31, 2013 to December 31, 2016 for Deloitte. A copy of the statement of claim is attached as Appendix “B”. The primary allegations in the litigation are as follows:
    - i. Deloitte and PwC were negligent and in breach of contract in the performance of the audits;
    - ii. the audited statements and the unqualified opinions contained material misrepresentations;
    - iii. the financial statements were materially misstated, and BCCL was not compliant with bank and bonding covenants;
    - iv. intercompany obligations were materially misstated; and
    - v. the fraud was committed by John Aquino and other employees from at least 2009.
  - c. CHS relies on evidence provided by John Aquino, including financial information that was his responsibility as BCCL’s President and, according to Steve Aquino, the directing mind of Forma Con<sup>5</sup>. The reliability of this information should be questioned as John Aquino is the person at the center of the Invoicing Scheme and the Impugned Transactions. There are numerous other reasons to question the reliability of the information provided by John Aquino, including his alleged participation in the issues giving rise to the auditor action referenced above, his alleged participation in the tendering process for the St. Michael’s Hospital project that ultimately was awarded to BCCL (see Appendix “C” for a copy of a Globe and Mail article dated April 20, 2020 regarding this matter) and the evidence sworn by Steve Aquino in these proceedings.

---

<sup>5</sup> As of the date of this Report, John Aquino’s title at Forma Con is unclear. It appears that he was either its Vice-President or its President. Regardless of his title, Steve Aquino has advised the Trustee that John Aquino was Forma Con’s directing mind.



- d. In 2016, NBC advised BCCL that it wanted to discontinue its lending arrangements with BCCL. BCCL then engaged in a lengthy process to identify a new lender, but was unable to find a conventional lender. In July 2017, BCCL entered into a credit facility with Bridging Finance Inc. (“Bridging”). Bridging is an alternative lender that charges interest and fees that are higher than those charged by conventional lenders. CHS does not address NBC’s decision to exit its relationship with the Group, the amount of time the Group took to refinance the NBC facility and the Group’s inability to refinance with a conventional lender, all of which suggest that the Group was experiencing financial challenges. As with the NBC facility, Forma Con is a guarantor of the Bridging facility.
  - e. John Aquino’s affidavit states that the Bridging facility was for \$80 million and the Group “required a substantially larger sum of funding, approximately in the range of \$120 million...”. Accordingly, notwithstanding that BCCL entered into a new \$80 million credit agreement with Bridging in July 2017, BCCL still required an additional \$40 million to address its liquidity requirements.
  - f. Forma Con was placed in receivership in November 2018. BCCL and several of its affiliates obtained CCAA protection in April 2019. Forma Con’s creditors, including Bridging, Canada Revenue Agency and other creditors will incur a shortfall on Forma Con’s indebtedness to them. On December 2, 2019, Forma Con filed an assignment in bankruptcy.
6. The Trustee has also identified several discrepancies between the financial information in the Forma Con financial statements and other records available to the Trustee and the financial information in the CHS Report. The Trustee has not addressed the discrepancies but reserves the right to address them at a future time, if necessary.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.,  
SOLELY IN ITS CAPACITY AS TRUSTEE AND  
RECEIVER AND MANAGER OF  
1033803 ONTARIO INC AND 1087507 ONTARIO LIMITED  
AND NOT IN ITS PERSONAL CAPACITY**

# Appendix “A”

Financial statements of

**1033803 Ontario Inc.**

December 31, 2015

Confidential  
ltemidire@bridgingfinance.ca

# 1033803 Ontario Inc.

December 31, 2015

## Table of contents

Notice to Reader .....	1
Statement of operations and deficit.....	2
Balance sheet .....	3

Confidential  
Itemidire@bridgingfinance.ca

## Notice to Reader

On the basis of information provided by management, we have compiled the balance sheet of 1033803 Ontario Inc. as at December 31, 2015 and the statement of operations and deficit for the year then ended.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these financial statements may not be appropriate for their purposes.

Deloitte LLP  
Chartered Professional Accountants  
Licensed Public Accountants  
March 29, 2017

# 1033803 Ontario Inc.

## Statement of operations and deficit year ended December 31, 2015

(Unaudited - see Notice to Reader)

	2015	2014
	\$	\$
<b>Contact revenue</b>	<b>115,109,129</b>	104,454,014
Contract costs	<b>112,320,580</b>	102,502,475
Gross profit	<b>2,788,549</b>	1,951,539
General and administrative expenses	<b>2,134,540</b>	1,459,819
Earnings before income taxes	<b>654,009</b>	491,720
Income tax expense	<b>951</b>	197,684
Net earnings	<b>653,058</b>	294,036
Deficit, beginning of year	<b>(942,499)</b>	(1,236,535)
<b>Deficit, end of year</b>	<b>(289,441)</b>	(942,499)

Confidential  
Itemidire@bridgingfinance.ca

# 1033803 Ontario Inc.

## Balance sheet

as at December 31, 2015

(Unaudited - see Notice to Reader)

	2015	2014
	\$	\$
<b>Assets</b>		
Current assets		
Accounts receivable	37,563,780	27,036,224
Accounts receivable - related parties	63,385,713	35,421,791
Holdbacks receivable	8,537,795	7,192,629
Holdbacks receivable - related parties	4,816,346	5,540,238
Prepaid expenses	85,000	85,000
	<b>114,388,634</b>	<b>75,275,882</b>
Property and equipment	4,729,163	4,140,078
Equity in joint venture	1,009,760	1,009,760
	<b>120,127,557</b>	<b>80,425,720</b>
<b>Liabilities</b>		
Current liabilities		
Bank indebtedness	13,979,197	62,101,219
Accounts payable and accrued liabilities	4,391,984	4,302,711
Holdbacks payable	81,703	95,204
Deferred contract revenue	1,782,266	2,105,166
	<b>20,235,150</b>	<b>68,604,300</b>
Due to related parties	96,402,128	8,984,199
Due to shareholder	3,779,610	3,779,610
	<b>120,416,888</b>	<b>81,368,109</b>
<b>Shareholders' deficiency</b>		
Share capital	110	110
Deficit	(289,441)	(942,499)
	<b>(289,331)</b>	<b>(942,389)</b>
	<b>120,127,557</b>	<b>80,425,720</b>

Financial statements of

**1033803 Ontario Inc.**

December 31, 2016

Confidential  
ltemidire@bridgingfinance.ca



# 1033803 Ontario Inc.

December 31, 2016

## Table of contents

Notice to Reader .....	1
Statement of operations and deficit.....	2
Balance sheet .....	3

Confidential  
Itemidire@bridgingfinance.ca

## Notice to Reader

On the basis of information provided by management, we have compiled the balance sheet of 1033803 Ontario Inc. as at December 31, 2016 and the statement of operations and deficit for the year then ended.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these financial statements may not be appropriate for their purposes.

Deloitte LLP  
Chartered Professional Accountants  
Licensed Public Accountants  
August 23, 2017

# 1033803 Ontario Inc.

## Statement of operations and deficit year ended December 31, 2016

(Unaudited - see Notice to Reader)

	2016	2015
	\$	\$
<b>Contract revenue</b>	<b>80,439,639</b>	115,109,129
Contract costs	<b>78,492,897</b>	112,320,580
Gross profit	<b>1,946,742</b>	2,788,549
General and administrative expenses	<b>2,151,657</b>	2,134,540
(Loss) earnings before income taxes	<b>(204,915)</b>	654,009
Income tax expense	<b>39,237</b>	951
Net (loss) earnings	<b>(244,152)</b>	653,058
Deficit, beginning of year	<b>(289,441)</b>	(942,499)
<b>Deficit, end of year</b>	<b>(533,593)</b>	(289,441)

Confidential  
Itemidire@bridgingfinance.ca

# 1033803 Ontario Inc.

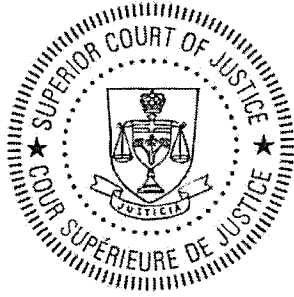
## Balance sheet

as at December 31, 2016

(Unaudited - see Notice to Reader)

	2016	2015
	\$	\$
<b>Assets</b>		
Current assets		
Accounts receivable	36,398,388	37,563,780
Accounts receivable - related parties	87,206,384	63,385,713
Holdbacks receivable	4,337,295	8,537,795
Holdbacks receivable - related parties	3,980,264	4,816,346
Prepaid expenses	85,000	85,000
Income taxes receivable	169,175	-
	<b>132,176,506</b>	<b>114,388,634</b>
Property and equipment	4,778,535	4,729,163
Investment in joint venture	1,009,760	1,009,760
	<b>137,964,801</b>	<b>120,127,557</b>
<b>Liabilities</b>		
Current liabilities		
Bank indebtedness	11,751,132	13,979,197
Accounts payable and accrued liabilities	2,771,969	4,391,984
Accounts payable - related parties	39,383	-
Holdbacks payable	45,700	81,703
Deferred contract revenue	778,418	1,782,266
	<b>15,386,602</b>	<b>20,235,150</b>
Due to related parties	119,332,072	96,402,128
Due to shareholder	3,779,610	3,779,610
	<b>138,498,284</b>	<b>120,416,888</b>
<b>Shareholders' deficiency</b>		
Share capital	110	110
Deficit	(533,593)	(289,441)
	<b>(533,483)</b>	<b>(289,331)</b>
	<b>137,964,801</b>	<b>120,127,557</b>

# Appendix “B”



Electronically issued : 20-Feb-2020  
Délivré par voie électronique : 20-Feb-2020  
Toronto

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**BONDFIELD CONSTRUCTION COMPANY LIMITED,  
THROUGH ITS LITIGATION TRUSTEE, ROMAN DORONIUK**

Plaintiff

- and -

**DELOITTE LLP and PRICEWATERHOUSECOOPERS LLP**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: February 20, 2020

Issued by \_\_\_\_\_  
Local registrar

Address of court office 330 University Avenue, 9th Floor  
Toronto ON M5G 1R7

**TO:** DELOITTE LLP  
Bay Adelaide East  
8 Adelaide Street West, Suite 200  
Toronto, Ontario  
M5H 0A9

**AND TO:** PRICEWATERHOUSECOOPERS LLP  
PwC Tower  
18 York Street, Suite 2600  
Toronto, Ontario  
M5J 0B2

### CLAIM

1. The Plaintiff claims against the Defendant, Deloitte LLP ("**Deloitte**"):
  - (a) A declaration that Deloitte was negligent and in breach of contract in accepting the audit office, continuing as an auditor and in the performance of its audits with respect to the annual financial statements for the fiscal years ended December 31, 2013 to December 31, 2016 of Bondfield Construction Company Limited ("**Bondfield Construction**") on a non-consolidated basis and on a combined basis with related companies (collectively, the "**Deloitte Audited Financial Statements**");
  - (b) A declaration that the Deloitte Audited Financial Statements and the unqualified opinions of Deloitte contained in Deloitte's Independent Auditor's Reports with respect thereto (the "**Deloitte Auditor's Reports**") contained material misrepresentations;
  - (c) Damages for breach of contract, negligence and/or in the further alternative negligent misrepresentation in the amount of \$500,000,000.00, plus further sums, the particulars of which will be provided prior to trial;
  - (d) Pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) Costs of this action on a substantial indemnity basis plus applicable Harmonized Sales Tax thereon; and
  - (f) Such further and other relief as this Honourable Court deems just.
2. The Plaintiff claims against the Defendant, PricewaterhouseCoopers LLP ("**PWC**"):
  - (a) A declaration that PWC was negligent and in breach of contract in the performance of its audits with respect to the annual financial statements



for the fiscal years ended December 30, 2009 to December 30, 2012 of Bondfield Construction on a non-consolidated basis and on a combined basis with related companies and that it was negligent and in breach of contract in the manner in which it terminated its position as auditor in 2014 for the 2013 financial statements (collectively, the “**PWC Audited Financial Statements**”);

- (b) A declaration that the PWC Audited Financial Statements and the unqualified opinions of PWC contained in PWC’s Independent Auditor’s Reports with respect thereto (the “**PWC Auditor’s Reports**”) contained material misrepresentations;
- (c) Damages for breach of contract, negligence and/or in the further alternative negligent misrepresentation in the amount of \$500,000,000.00, plus further sums, the particulars of which will be provided prior to trial;
- (d) Pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) Costs of this action on a substantial indemnity basis plus applicable Harmonized Sales Tax thereon; and
- (f) Such further and other relief as this Honourable Court deems just.

#### **THE PLAYERS**

3. Bondfield Construction is a duly incorporated Ontario corporation that, at all material times, carried on business as a general contractor working on projects in multiple sectors, including the health care, education, commercial and public infrastructure sectors. Bondfield Construction conducted its business directly and through a series of related companies listed in Appendix (collectively, the “**Bondfield Companies**”). Bondfield Construction and the Bondfield Companies are hereinafter collectively referred to as “**Bondfield**”.

4. On April 3, 2019, the Superior Court of Ontario issued an order granting Bondfield protection under the *Companies Creditors' Arrangement Act* (the "**CCAA**") and Ernst & Young Inc. was appointed Monitor. By Order of the Honourable Mr. Justice Hainey dated February 13, 2020, Roman Doroniuk was appointed Litigation Trustee of Bondfield Construction and was conferred with authority to commence this action.

5. PWC is a limited liability partnership organized under the laws of Ontario, carrying on business as a firm of accountants and auditors with its principal place of business in Toronto. PWC was the auditor for Bondfield for the fiscal years ended December 30, 2008 to 2012 and delivered unqualified audit opinions with respect to the annual financial statements of Bondfield for each year in the PWC Auditor's Reports.

6. Deloitte is a limited partnership organized under the laws of Ontario, carrying on business as a firm of accountants and auditors, with its principal place of business in Toronto. Deloitte was the auditor for Bondfield for the fiscal years ended December 31, 2013 to December 31, 2016 and delivered unqualified audit opinions with respect to the annual financial statements of Bondfield for each year in the Deloitte Auditor's Reports.

7. Zurich Insurance Company Ltd. ("**Zurich**") is a federally incorporated company that is licensed to carry on business as a surety bonding company in the Province of Ontario and elsewhere. At all material times, Zurich was the surety bonding company for Bondfield.

8. National Bank of Canada ("**National Bank**") is a federally incorporated bank. At material times, National Bank was a secured lender for Bondfield.

#### **OVERVIEW**

9. At all material times, the audit of Bondfield was and ought to have been approached by an auditor as a high-risk audit. Bondfield was a private company with a very small senior management financial team that was part of ownership, with no internal audit and very limited controls, expanding rapidly in a difficult business. The limited controls that were in place were subject to override by John Aquino, the de facto Chief Executive Officer for Bondfield at all material times.

10. The auditors knew that Bondfield's largest liabilities, contingent and otherwise, were being incurred to lenders and bonding companies who relied on the audited financial statements of Bondfield.

11. It turns out that John Aquino, together with certain other employees of Bondfield, were perpetrating massive frauds against Bondfield over a long period of time (from at least 2009 to 2018). After an insolvency filing in 2019, the amount that to date has been determined to have been improperly taken from Bondfield is over \$80 million. As would be foreseeable with dishonest management, John Aquino was driving the expansion of the business during the period in issue, in part, to cover up the defalcations.

12. The stealing was done, in part, by dishonest senior management and certain co-conspirators using one of the most common, and also one of the most easily detectable, fraud schemes. They created and/or used companies as purported "suppliers" and caused them to send fictitious invoices to Bondfield in respect of which no services or materials were supplied by the supposed "suppliers". Further, they caused Bondfield to pay the fictitious invoices with unusual haste (i.e. not in compliance with proper internal controls or standard payment practices). The fraudsters left a document trail that ought to have been reviewed and followed by any competent auditor.

13. As detailed herein, the fraud was not sophisticated nor was it difficult to discover if a competent independent audit had been done. Put shortly, it was "bad" fraud in the sense that it ought to have been suspected and then discovered by an auditor that knew the business and carried out the audit appointment in accordance with the standards of care placed upon the auditor in law, including the relevant Generally Accepted Auditing Standards ("GAAS"), Rules/Codes of Conduct and practice manuals of the Defendants.

14. In addition, since at least 2009, the financial statements of Bondfield were materially misstated in each year due to the existence of material errors which were readily detectable by the Defendants if they had audited Bondfield in accordance with GAAS, their own manuals and applicable Rules/Codes of Conduct.

15. The Defendants failed to identify and aggregate these errors that collectively exceeded each audit's materiality threshold and which were discoverable through the proper application of GAAS, their own manuals and applicable Rules/Codes of Conduct.

16. The detectable errors included:

- (a) Unsupported receivables and unbilled revenue, including inappropriate and premature recognition of profit on long term contracts;
- (b) Understated payables, including unrecorded invoices;
- (c) Negative payables, including backcharges to suppliers in respect of completed projects;
- (d) Cash account manipulations without proper supporting documentation or reconciliation;
- (e) Securities accounts which did not reconcile;
- (f) Recording of personal expenses as Bondfield expenses;
- (g) Improper recording of interest and finance costs;
- (h) Manipulation of the shareholder loan accounts without proper documentation; and
- (i) Intercompany obligations due to Bondfield Construction from related companies, which constituted one of the most significant assets on the balance sheet of Bondfield Construction, were misstated.

17. These detectable errors alone, without the discovery of fraud, ought to have caused any prudent auditor to decline to issue clean audit reports due to their collective materiality in any given year. In addition, a proper investigation of these errors ought to have caused a prudent auditor to be suspicious of the integrity of Bondfield management such that they ought to have applied a higher level of scepticism to the audits and

performed additional audit procedures to mitigate the risk. If the Defendants had done so, they ought to have also uncovered the frauds and other irregularities.

18. During the 2013 audit, PWC encountered issues that caused it to have suspicions as to the existence of fraud or intentional misstatement. PWC resigned as auditor (with outstanding accounts unpaid) because, inter alia:

- (a) PWC “suspected fraud in connection with confirmation evidence received by the audit team”;
- (b) PWC had “difficulty in obtaining sufficient and appropriate audit evidence”;
- (c) Bondfield management “declined to permit additional work, as recommended, leading to a scope limitation”; and
- (d) Bondfield management had made “litigation threats which compromised [PWC’s] independence”.

19. Bondfield Construction was and is a company incorporated under the Ontario *Business Corporations Act* (“**OBCA**”). Section 151(4) of the OBCA reads as follows:

**Replacing auditor**

(4) No person shall accept appointment or consent to be appointed as auditor of a corporation if the person is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor’s opinion, that auditor is to be replaced.

20. Further, section 302 of the CPA Rules of Professional Conduct applicable at the time placed similar obligations upon both PWC and Deloitte.

21. PWC had issued a clean audit report dated May 1, 2013 on the 2012 PWC Audited Financial Statements. The Auditor’s Report contained the following sentence: “The combined financial statements are prepared and are solely for the information and use of Zurich North America and National Bank of Canada for the purpose of monitoring their bonding and banking facilities.”

22. PWC did not go far enough by resigning. PWC was obliged, given the lack of answers to its legitimate queries, its inability to dispel its suspicion of fraud and management integrity in serious question, to withdraw or otherwise amend its clean audit reports on the 2012 PWC Audited Financial Statements and all prior years and to advise Zurich, National Bank and the directors, officers and owners of Bondfield who were uninvolved in the improper activity of the withdrawal and its reasons therefor.

23. Neither PWC nor Deloitte provided any information at the time of resignation of PWC to any of Zurich, National Bank or any directors, officers or owners of Bondfield who were uninvolved in the improper activity. Given the nature of their mandates, both Defendants ought to have informed those parties or otherwise required them to be informed of the issues giving rise to the resignation or at a bare minimum that they could no longer rely upon the representations made to them in previous audit reports.

24. PWC did advise Deloitte of reasons for its resignation set out above. Deloitte nevertheless took on the audit of Bondfield, in circumstances where no prudent auditor would have, without having conducted the due diligence required by GAAS, its own manuals and applicable Rules/Codes of Conduct.

25. Deloitte compounded this error by hastily delivering a clean audit report on the 2013 Deloitte Audited Financial Statements without having conducted a proper audit in accordance with GAAS, its own manuals and applicable Rules/Codes of Conduct.

26. The suspicion of fraud in a private company with a small group of managers in the circumstances described above ought to have led to Deloitte "probing to the bottom" and discovering the details of the frauds which would have meant that Deloitte either would not have accepted the audit appointment or, in the alternative, would not have issued the clean audit report that it did.

27. As became clear in 2019 after the insolvency filing, PWC breached its contracts, duties and applicable standards of care in each audit year from 2009 through 2013 and in resigning in the manner in which it did with respect to the 2013 audit year in mid-2014.

28. As became clear in 2019 after the insolvency filing, Deloitte breached its contracts, duties and applicable standards of care in the manner in which it accepted the audit for the 2013 fiscal year and in the manner it performed its audits in that year and each year thereafter up through and including the 2017 fiscal year.

29. The conduct of Deloitte is particularly egregious as just months before it accepted the audit in July of 2014, it had received the trial judgment of Gans, J. in *Livent v. Deloitte* which focused on, inter alia, the standards of care with respect to resignation of an auditor, the acceptance and continuance of the audit office when management integrity was in issue and numerous other issues. Deloitte was or ought to have been aware of the standards applicable when accepting an audit appointment after the resignation or termination by a prior auditor. Deloitte was or ought to have been made aware of these issues through dissemination of the *Livent* judgment whether through internal report or otherwise.

30. The secured liability of Bondfield to National Bank and the contingent secured liability of Bondfield to Zurich was disclosed in the notes to all of the financial statements audited by PWC and Deloitte.

31. If the dishonesty of senior management had been discovered and disclosed as it should have been if either PWC or Deloitte had performed in accordance with the applicable standards of care in the earlier years while Bondfield was a smaller enterprise, not only would the subsequent defalcations not have occurred, it was probable that Bondfield could have addressed the situation and survived. At all events, Bondfield could also have either avoided entirely the net liabilities that it now has, including the amount owed to Zurich and the current secured lender, or, in the alternative, depending on the year of discovery, the net liabilities would have been much smaller.

32. PWC and Deloitte are responsible in fact and law for the deterioration in the financial position of Bondfield that was both reasonably foreseeable and would not have occurred if the Defendants, or either of them, had performed properly.

33. PWC was or ought to have been aware of or had suspicions aroused as to the dishonesty of senior management of Bondfield such that different and additional

obligations were upon it as auditor. PWC either did or ought to have shared that information with Deloitte. Deloitte ought not to have accepted the appointment or proceeded with the audit based on the information it received or ought to have received. To the extent that Deloitte did not receive the information that a replacing auditor was required to receive, PWC breached applicable standards of care and thus its duty to Bondfield by not so informing Deloitte and Deloitte breached applicable standards by accepting and continuing in the office of auditor without proper information.

34. If the dishonesty of the CEO of Bondfield and his co-conspirators had been disclosed as at the summer of 2014, not only would the subsequent defalcations not have occurred, but additionally, Bondfield would have been able to avoid insolvency proceedings. In the alternative, Bondfield's net liabilities would have been much smaller than the actual net liabilities in 2019.

35. As detailed herein, both PWC and Deloitte breached the applicable standards of care in all relevant years, including and in particular by issuing unqualified audit reports with respect to the financial statements of Bondfield Construction and Bondfield for each year from 2009 onwards. The breaches included, but are not limited to, failing to discover errors and irregularities that ought to have been discovered and addressed through the application of GAAS, as well as failing to resign as auditors on a timely basis and disclosing the reasons therefor to the appropriate persons, or taking on the engagement, as the case may be.

#### **BACKGROUND**

36. Bondfield was a family owned and operated enterprise that was started by Ralph Aquino 45 years ago.

37. Zurich agreed to provide Bondfield with construction surety bonds, which were critical to the conduct and expansion of its business, in accordance with certain terms and conditions, including Bondfield's compliance with certain covenants (**the "Bond Covenants"**). Bondfield Construction was liable to Zurich in connection with any losses and expenses that might be incurred by Zurich on all of the bonds issued by Zurich on



behalf of all of the Bondfield Companies in accordance with various indemnity agreements that Bondfield executed in favour of Zurich as a condition of bonding.

38. Commencing in 2007, Bondfield bid on a series of public private partnership (“P3”) projects with the Province of Ontario and was the successful bidder on a number of them. This led to a very large expansion of the Bondfield enterprise.

39. Bondfield received secured bank financing from National Bank from 2008 to 2017. Bondfield was required to be in compliance with various loan covenants imposed by National Bank as a condition of that financing (the “**Bank Covenants**”).

40. In July of 2017, National Bank was replaced as Bondfield’s lender by Bridging Finance Inc. (“**Bridging**”). Bridging provided an \$80 million credit facility to Bondfield pursuant to a credit agreement dated as of July 24, 2017.

41. The term of the Bridging facility expired in July 2018, without repayment.

42. In April of 2018, Zurich engaged Ernst & Young LLP to undertake a detailed review of Bondfield’s financial situation; however, Ernst & Young LLP was not given any significant access to Bondfield Construction’s books and records until August of 2018. At around that time, Zurich began to provide additional financial support to Bondfield Construction, in part, in an effort to mitigate its potential exposure under the outstanding bonds that it had issued on behalf of Bondfield.

43. On April 3, 2019, the Superior Court of Ontario issued an order granting Bondfield protection under the *Companies Creditors’ Arrangement Act* (the “**CCAA**”) and Ernst & Young Inc. was appointed Monitor. At or around this time, Zurich retained Perini Management Services Inc. to assist with advancing Bondfield’s outstanding construction projects in order to mitigate Zurich’s potential bonded exposure.

#### **CONTRACT AND DUTY OF CARE – STANDARDS OF CARE**

44. PWC and Deloitte audited both the non-consolidated financial statements of Bondfield Construction and the combined or combined consolidated financial statements of Bondfield. These statements were required to be fairly stated in accordance with

Canadian Accounting Standards for Private Enterprises (“ASPE”) and each Defendant so noted in their respective auditor’s reports on the financial statements.

45. Both Defendants were subject to contractual obligations to Bondfield and also owed Bondfield a duty of care. Both Defendants were required by applicable standards and contractual obligations not to provide an audit report unless and until they had complied with applicable auditing standards and to withhold or revise any audit report based on the information that such a review generated or would have generated if carried out competently. Further, both Defendants owed an obligation to probe to the bottom if suspicions as to irregularities or management integrity were or ought to have been aroused by a competent review or otherwise in the course of the audit appointment.

46. Both PWC and Deloitte were required by applicable standards and contractual obligations to carry out their work in accordance with GAAS, the higher standards of care set forth in their own manuals and other internal sources of guidance, applicable Rules/Codes of Conduct and with the standards of care applicable as a matter of law as determined by a court.

47. Both Defendants were required by applicable standards and contractual obligations to resign as auditors on a timely basis, and disclose the reasons therefor to the appropriate level of authority uninvolved in the inappropriate conduct, once they knew, or ought to have known, of material inappropriate conduct by any members of management.

48. Both Defendants knew, or ought to have known, that the audit of Bondfield was a high-risk audit.

49. More particularly, the following factors, individually and taken together, significantly increased the risks associated with the audit:

- (a) The CEO was a domineering personality running a one-man show. John Aquino could override any existing controls at will;
- (b) The qualifications of the key accounting staff were suspect. Neither the CFO nor the controller had any accounting designations;

- (c) The qualifications of the key IT staff were suspect. At all material times, the IT manager had no relevant experience or expertise;
- (d) There were virtually no internal controls in place;
- (e) John Aquino had administrative status on the Jonas accounting software, contrary to applicable standards;
- (f) Bondfield operated in the construction industry;
- (g) There were many judgmental considerations involved in recognition of income under the percentage of completion method; and
- (h) There was no reasonable basis for the auditors to place reliance upon the representations of senior management.

50. Consequently, the foregoing factors either made Bondfield unauditable or, alternatively, required a much greater than normal use of substantive testing.

51. In addition, the Defendants were required to apply the highest degree of professional scepticism in their audits of the financial statements for Bondfield

52. The Defendants knew that Bondfield and its key creditors, Zurich and National Bank, would be relying upon Bondfield's financials statements and their reports with respect thereto.

53. The Defendants were familiar with Bondfield's Bank Covenants, which Bondfield was required to be in compliance with as a condition of its lending facilities.

54. The Defendants were also familiar with Zurich's Bond Covenants, which Bondfield was required to be in compliance with as a condition of its bonding facility. More particularly, the Defendants were aware that Zurich's Bond Covenants required: (a) Bondfield to maintain defined levels of working capital and tangible net worth sufficient to support Bondfield's bonded liabilities; and (b) the timely provision of Bondfield's financials statements and their reports with respect thereto as critical evidence of compliance by Bondfield with the Bond Covenants.

55. The Defendants knew or ought to have known that if the Audited Financial Statements revealed that Bondfield was not in compliance with either its Bank Covenants or its Bond Covenants then Bondfield may not be able to continue as a going concern.

56. The Defendants knew that Bondfield would be using the Bondfield's financials statements and their unqualified reports with respect thereto in, inter alia:

- (a) Maintaining and extending bank financing;
- (b) Maintaining and extending its bonding facility with Zurich; and
- (c) Bidding on and obtaining new contracts.

57. Consequently, the Defendants were obliged to:

- (a) identify and advise an uninvolved director or officer of Bondfield of any material concerns with the integrity of management or any limitations imposed by management on the scope of the audit;
- (b) conduct their audits in accordance with applicable standards as set in law and derived from GAAS and, without limitation, their own manuals and applicable Rules/Codes of Conduct;
- (c) probe suspicious circumstances to the bottom and refuse to provide any "clean" audit report unless and until such suspicions were dispelled;
- (d) identify and aggregate errors to determine if the statements are or were materially misstated;
- (e) identify irregularities discoverable by GAAS and do such follow-up as would be required to dispel the doubts cast on management's integrity created by the irregularities and not provide any "clean" audit report unless and until the issues were resolved in a way that allowed reliance on the existence of management integrity; and

- (f) issue audit reports that did not misrepresent the financial position of Bondfield.

#### **BREACHES OF THE DUTY OF CARE**

58. The Defendants' failed to conduct their audits and reviews in accordance with GAAS, their own manuals and applicable Rules/Codes of Conduct.

59. The Defendants failed to perform proper risk assessments with respect to Bondfield. If they had properly assessed the risks, they should have declined the audits or, alternatively, performed a much greater scope of audit work. The Defendants failed to properly plan and conduct the audits and also failed to do continual assessment of the audit risks, including with respect to the integrity of senior management.

60. The Defendants failed to properly plan or perform sufficient substantive testing and failed to critically analyze and follow up on the results of the testing they did do. The Defendants failed to "step back" and look at the overall picture of the enterprise and the financial statements in light of the work done and the explanations received.

61. If the Defendants had properly conducted their audits, it would have revealed that Bondfield's financials statements were materially misstated and, in fact, Bondfield was not in compliance with either its Bank Covenants or its Bond Covenants.

62. The audited financial statements of Bondfield for the fiscal years ended 2009 to 2016 were materially misstated and the unqualified audit opinions in the Auditors' Reports of PWC and Deloitte negligently misrepresented the true financial position of Bondfield due to, inter alia: (a) the presence of material unadjusted errors; and (b) fraud.

#### **THE FRAUDS DISCOVERED TO DATE**

63. From at least 2009, the CEO of Bondfield and certain other persons within Bondfield (collectively, the "**Bondfield Fraudsters**") conspired together and with others and orchestrated a series of fraudulent transactions involving Bondfield pursuant to which material amounts of cash, including trust funds under the *Construction Act*, R.S.O. 1990 c.C.30, as amended, were diverted to the Bondfield Fraudsters personally and their co-

conspirators by payment of fictitious invoices to certain third parties (the "**Fake Suppliers**"), some of which were controlled by the Bondfield Fraudsters (the "**Frauds**").

64. The Bondfield Fraudsters arranged for various individuals connected with the Fake Suppliers to submit fictitious invoices to Bondfield through a variety of corporate entities which the Bondfield Fraudsters then caused to be paid. No services, materials or other benefits were received by Bondfield in respect of the payments which were made on account of the fictitious invoices.

65. The Frauds, and other irregularities, were readily detectable by PWC and Deloitte conducting audits in accordance with GAAS, their own manuals and applicable Rules/Codes of Conduct.

66. The Frauds, and other irregularities, resulted in the financial statements of Bondfield being materially misstated from at least 2009.

67. The Defendants' failure to detect the Frauds, as well as other irregularities, and report them to the appropriate uninvolved level of authority constituted a breach of contract and a breach of applicable standards and hence the duty of care owed to Bondfield.

#### **THE ERRORS**

68. From at least 2009, the financial statements of Bondfield were materially misstated due to the existence of material errors that were readily detectable by PWC and Deloitte conducting audits in accordance with GAAS, their own manuals and applicable Rules/Codes of Conduct.

69. The Defendants' failure to detect the errors and report them to the appropriate level of authority and/or, their failure to require material detected errors to be corrected, constituted breaches of the duty of care that they owed to Bondfield and breaches of their contracts with Bondfield.

70. These errors resulted in the financial statements of Bondfield being materially misstated from at least 2009.

#### **NEGATIVE PAYABLES**

71. The payables in the financial statements for each year in question were materially misstated due to the inappropriate reduction of the accounts payable of some suppliers. These reductions had the effect of materially inflating income in each year.

72. These negative payables were readily identifiable. A properly conducted audit ought to have identified these items, sought confirmation from the supplier and probed any inconsistencies to the bottom.

73. The auditors missed red flags related to these negative payables. For example, a number of supplier payable accounts had a debit balance on the books even though the related project had been completed.

#### **UNSUPPORTABLE RECEIVABLES AND UNBILLED REVENUE**

74. The receivables and unbilled revenue in the audited financial statements for each year in question were materially misstated due to the inappropriate and premature booking of profits on jobs for which there was little to no support. This had the effect of materially inflating income in each year.

75. For large contracts utilizing the percentage of completion method of accounting, Bondfield management was aggressively recording profits on those contracts based primarily on representations by John Aquino without any credible backup.

76. Any properly conducted audit would have determined that the estimation of costs on a project-by-project basis was not supportable and, therefore, the recognition of income was not appropriate. The Defendants failed to do so.

77. The Defendants missed red flags related to the unsupported receivables and unbilled revenue. For example, a proper review of job costing on these contracts ought to have revealed that

- (a) these receivables and unbilled revenue should have been written down;
- and

- (b) the related contracts were less profitable than management had represented.

#### **CASH INFUSIONS BY JOHN AQUINO AT YEAR END**

78. The assets in the audited financial statements for each year in question were materially misstated due to the injection of cash by John Aquino around year end in order to ensure financial covenants would appear to be met.

79. In addition, some of the repayments of these advances were inappropriately recorded as project costs rather than a reduction to the shareholder loan account.

80. Any properly conducted audit would have determined that these cash infusions, as well as some of the repayments, were inappropriate. The Defendants failed to do so.

#### **PERSONAL EXPENSES OF JOHN AQUINO RECORDED AS PROJECT COSTS**

81. The audited financial statements for each year in question were materially misstated due to the improper recording of John Aquino's personal expenses as project costs.

82. Any properly conducted audit would have determined that the booking of these expenses was inappropriate. The Defendants failed to do so.

#### **UNDERSTATED PAYABLES**

83. The liabilities in the audited financial statements for each year in question were materially understated due to a significant number of unrecorded invoices from suppliers.

84. Bondfield management would sometimes cut cheques to pay invoices but not send them out to the payees. In addition, they would put invoices away in a drawer and not enter them into the payables system promptly.

85. Any properly conducted audit would have determined the existence of material unrecorded payables. Furthermore, a properly conducted bank reconciliation would have revealed the existence of issued but uncleared cheques. The Defendants failed to do



either in accordance with GAAS, their own manuals and applicable Rules/Codes of Conduct.

#### **INTERCOMPANY ACCOUNTS & RELATED PARTY TRANSACTIONS**

86. The profits in the audited financial statements for each year in question were materially overstated due to the manipulation of intercompany accounts.

87. Intercompany obligations due from related companies constituted one of the most significant assets on the non-consolidated balance sheet of Bondfield Construction. Consequently, any properly conducted audit would require the auditors to step back and assess the recoverability of these material receivables, but the Defendants failed to do so.

88. Any properly conducted audit would have eliminated the effect of these intercompany accounts in the combined consolidated statements, but the auditors failed to ensure these eliminations were properly booked.

89. In addition, the related party transactions required rigorous note disclosure, including material reclassifications, but the auditors failed to properly investigate and disclose these items.

#### **ACCESS TO COMPLETE ACCOUNTING RECORDS WAS RESTRICTED**

90. Bondfield management maintained two sets of accounts for each contract: the "subcontractor" accounts which project managers were aware of and the "Materials" accounts to which access was restricted.

91. The fictitious invoices delivered by the Fake Suppliers were mostly recorded in the "Materials" accounts.

92. The auditors, through the proper application of GAAS, their own manuals and applicable Rules/Codes of Conduct either knew or ought to have known:

- (a) of the existence of the "Materials" accounts; and

- (b) that Bondfield management was restricting access to the “Materials” accounts, thereby circumventing the internal controls for project expenses, and they should have inquired as to why.

93. The auditors performed substantive testing on items in the “Materials” accounts but failed to apply the necessary very high degree of scepticism and diligence the circumstances dictated. They should have conducted extensive additional substantive procedures thereon, and ought to have discovered both material errors and irregularities.

**2009**

94. Bondfield received the 2009 Audited Financial Statements with PWC Auditor’s Reports on or about April 24, 2010. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

95. In fact, the 2009 Audited Financial Statements were materially misstated and the unqualified opinion in the PWC Auditor’s Report negligently misstated the true financial position of Bondfield.

96. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**2010**

97. Bondfield received the 2010 Audited Financial Statements with PWC Auditor’s Reports on or about April 25, 2011. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

98. In fact, the 2010 Audited Financial Statements were materially misstated and the unqualified opinion in the PWC Auditor’s Report negligently misstated the true financial position of Bondfield.

99. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**2011**

100. Bondfield received the 2011 Audited Financial Statements with PWC Auditor's Reports on or about May 2, 2012. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

101. In fact, the 2011 Audited Financial Statements were materially misstated and the unqualified opinion in the PWC Auditor's Report negligently misstated the true financial position of Bondfield.

102. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**2012**

103. Bondfield received the 2012 Audited Financial Statements with PWC Auditor's Reports on or about May 7, 2013. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

104. In fact, the 2012 Audited Financial Statements were materially misstated and the unqualified opinion in the PWC Auditor's Report negligently misstated the true financial position of Bondfield.

105. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**2013**

106. PWC undertook the audit of the 2013 Financial Statements in accordance with its ongoing mandate as auditor.

107. During the course of the 2013 audit, PWC received confirmations from third party custodians that contradicted the information provided by Bondfield regarding the value of assets that they held for Bondfield by over \$3 million. In addition, PWC received inconsistent confirmations from at least one such custodian. These events caused PWC to suspect fraud.

108. The PWC audit team was sufficiently alarmed that it took the extraordinary step of involving PWC's Risk Management Group to oversee the resolution of its concerns.

109. In addition, PWC was being stonewalled by Bondfield management in its attempts to obtain sufficient and appropriate audit evidence in other areas, including:

- (a) General journal testing;
- (b) Manual journal testing;
- (c) Review of adjusting journal entries;
- (d) Subsequent disbursements and receipts testing;
- (e) Materials testing;
- (f) Restrictions on access to third parties; and
- (g) Personal expense review.

110. On or about June 16, 2014, PWC met with Bondfield management to set out the additional audit work that PWC viewed as necessary to address its serious concerns.

111. By letter dated June 17, 2014, Bondfield management advised PWC that:

- (a) they will “not allow any more field work to be done including any additional 2014 subsequent testing”; and
- (b) “PWC’s negligence has caused Bondfield Construction to be in breach of its legal obligations” to its bank and bonding company; and
- (c) Bondfield management demanded the issuance of clean audit reports by 10:00 a.m. on June 18, 2014.

112. Consequently, by letter dated June 19, 2014, PWC informed Bondfield that:

- (a) “For the reasons previously articulated, PWC is in no position to complete the audit. We have expressed our serious concerns to you and outlined a path forward which you are unwilling to take” and
- (b) PWC “hereby terminate the engagement”.

113. PWC was obliged to provide a letter to Deloitte as replacement auditor outlining the rationale for PWC’s resignation as required by applicable standards.

114. Given the nature of its mandate and the circumstances, PWC was obliged to advise or cause to be informed appropriate persons within or outside Bondfield, including National Bank and Zurich, as to the serious reasons for its withdrawal or provide them with a copy of the information or letter it provided to Deloitte. PWC failed to do so.

115. PWC advised Deloitte by letter dated June 20, 2014 that:

- (a) PWC “suspected fraud in connection with confirmation evidence received by the audit team”;
- (b) PWC had “difficulty in obtaining sufficient and appropriate audit evidence”;
- (c) Bondfield management “declined to permit additional work, as recommended, leading to a scope limitation”; and

- (d) Bondfield management had made “litigation threats which compromised [PWC’s] independence”.

116. By letter dated June 26, 2014, Deloitte wrote directly to PWC asking for clarification on the reasons outlined for PWC’s resignation.

117. Contrary to GAAS, its own manuals and applicable Rules/Codes of Conduct, PWC did not respond to Deloitte’s follow up questions about PWC’s concerns. In the alternative, if it did respond, PWC failed to provide Deloitte with sufficient particulars of its concerns.

118. Contrary to GAAS, its own manuals and applicable Rules/Codes of Conduct, Deloitte took on audits of Bondfield without obtaining responses from PWC and without making adequate prior investigation. In the alternative, if Deloitte did receive information from PWC, it failed to properly take it into account before taking on the Bondfield audits.

119. PWC was obliged to withdraw or otherwise amend its clean audit reports on the 2012 PWC Audited Financial Statements, as well as its prior audit reports, because, inter alia:

- (a) PWC had, or ought to have had, a suspicion of fraud by Bondfield management;
- (b) Bondfield management had imposed a scope limitation which made it impossible to dispel that suspicion of fraud or to obtain satisfactory answers to its other legitimate audit queries; and
- (c) PWC had no reasonable basis to rely upon the integrity of Bondfield management, which had also been in place during the course of previous audits.

120. In addition, PWC was obliged to advise or cause to be informed the third parties who it knew had relied upon and were continuing to rely upon their clean audit reports for 2012, and prior years, National Bank and Zurich, of the reasons for their resignation and

the implications that their resignation had on their 2012 and prior clean audit reports. PWC failed to do so.

121. PWC breached the duty of care that it owed to Bondfield by: (a) failing to advise or cause to be informed the Board of Directors, National Bank and Zurich of its resignation and the reasons therefor; (b) failing to complete the 2013 audit in accordance with GAAS, its own manuals and applicable Rules/Codes of Conduct, including the probing of suspicious circumstances they were faced with to the bottom; (c) in the alternative, failing to advise Deloitte of sufficient details as to the basis for its resignation; (d) failing to withdraw the 2012 PWC Audited Financial Statements as well as prior years audit reports; or (e) in the alternative, failing to advise the known users of the implications that PWC's resignation had on the reliability of those statements.

122. Deloitte replaced PWC on the 2013 audit.

123. Deloitte breached the duty of care that it owed to Bondfield by: (a) agreeing to take on the audit in circumstances where it ought not to have done so; (b) failing to complete the 2013 audit in accordance with GAAS, its own manuals and applicable Rules/Codes of Conduct and, more particularly, failing to probe suspicious circumstances it was faced with to the bottom, including the circumstances of PWC's resignation; (c) relying upon and incorporating the 2012 PWC Audited Financial Statements into the 2013 Deloitte Audited Financial Statements, without any appropriate basis for doing so; and (d) issuing an audit report that misrepresented the financial position of Bondfield.

124. Bondfield received the 2013 Audited Financial Statements with Deloitte Auditor's Reports on or about August 11, 2014. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

125. In fact, the 2013 Audited Financial Statements were materially misstated and the unqualified opinion in the Deloitte Auditor's Report negligently misstated the true financial position of Bondfield.

126. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**2014**

127. Bondfield received the 2014 Audited Financial Statements with Deloitte Auditor's Reports on or about April 23, 2015. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

128. In fact, the 2014 Audited Financial Statements were materially misstated and the unqualified opinion in the Deloitte Auditor's Report negligently misstated the true financial position of Bondfield.

129. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**2015**

130. Bondfield received the 2015 Audited Financial Statements with Deloitte Auditor's Reports on or about May 3, 2016. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

131. In fact, the 2015 Audited Financial Statements were materially misstated and the unqualified opinion in the Deloitte Auditor's Report negligently misstated the true financial position of Bondfield.

132. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.



## **2016**

133. Bondfield received the 2016 Audited Financial Statements with Deloitte Auditor's Reports on or about August 17, 2017. These included audited financial statements of Bondfield Construction on a combined basis with the Bondfield Companies, as well as audited non-consolidated financial statements for Bondfield Construction.

134. In fact, the 2016 Audited Financial Statements were materially misstated and the unqualified opinion in the Deloitte Auditor's Report negligently misstated the true financial position of Bondfield.

135. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

## **2017**

136. Bondfield received from Deloitte a draft of the 2017 non-consolidated Audited Financial Statements for Bondfield Construction on or about June 7, 2018. A draft unsigned Deloitte Auditor's Report was included therein.

137. Deloitte breached the duty of care it owed to Bondfield by: (a) failing to advise Zurich, National Bank and the directors, officers and owners of Bondfield who were uninvolved in the improper activity of their reasons for not completing the audit; and (b) failing to complete the 2017 audit in accordance GAAS, their own manuals and applicable Rules/Codes of Conduct, including the probing of suspicious circumstances that they were faced with to the bottom.

138. In fact, the 2016 Audited Financial Statements and draft 2017 Audited Financial Statements were materially misstated and the unqualified opinion in the Deloitte Auditor's Report negligently misstated the true financial position of Bondfield.

139. Consequently, Bondfield would not have been exposed to the net liabilities it currently faces had it been made aware of the true financial position of Bondfield and/or the dishonesty of the Bondfield Fraudsters who held key positions at Bondfield.

**DAMAGES**

140. Bondfield has suffered damages by reason of the breaches of contract, breaches of duty of care and/or the negligent representations made by PWC and Deloitte.

141. Bondfield proposes that this action be tried in Toronto.

**APPENDIX A**

Bondfield Construction Company Limited

1087507 Ontario Limited

1033803 Ontario Inc.

352021 Ontario Limited

834076 Ontario Inc.

1291546 Ontario Inc.

950504 Ontario Inc.

Bondfield Management Inc.

1291547 Ontario Inc.

2032686 Ontario Limited (operating as BMC Masonry)

Bondfield Construction Equipment Limited

B.B.M. Excavation Company Limited

Walsh Construction/Bondfield partnership

Forma-Con/Limen jointly controlled enterprise

2164980 Ontario Inc.

2205234 Ontario Inc.

2147928 Ontario Inc.

Yuill Cartage (1990) Limited

2338301 Ontario Inc.

2002960 Ontario Limited

1428508 Ontario Limited

February 20, 2020

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Peter F.C. Howard LS#: 22056F**  
phoward@stikeman.com  
Tel: +1 416 869 5613

**Patrick O'Kelly LS#: 24182P**  
pokelly@stikeman.com  
Tel: +1 416 869 5633

**Aaron Kreaden LS#: 60157U**  
akreaden@stikeman.com  
Tel: +1 416 869 5565  
Fax: +1 416 947 0866

Lawyers for the Plaintiff

BONDFIELD CONSTRUCTION COMPANY  
LIMITED, THROUGH ITS LITIGATION  
TRUSTEE, ROMAN DORONIUK  
Plaintiff

and

DELOITTE LLP, et al.  
Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Peter F.C. Howard** LS#: 22056F  
phoward@stikeman.com  
Tel: +1 416 869 5613

**Patrick O'Kelly** LS#: 24182P  
pokelly@stikeman.com  
Tel: +1 416 869 5633

**Aaron Kreaden** LS#: 60157U  
akreaden@stikeman.com  
Tel: +1 416 869 5565  
Fax: +1 416 947 0866

Lawyers for the Plaintiff

# Appendix “C”

# Ex-Bondfield CEO got tips on hospital bid, court filings allege

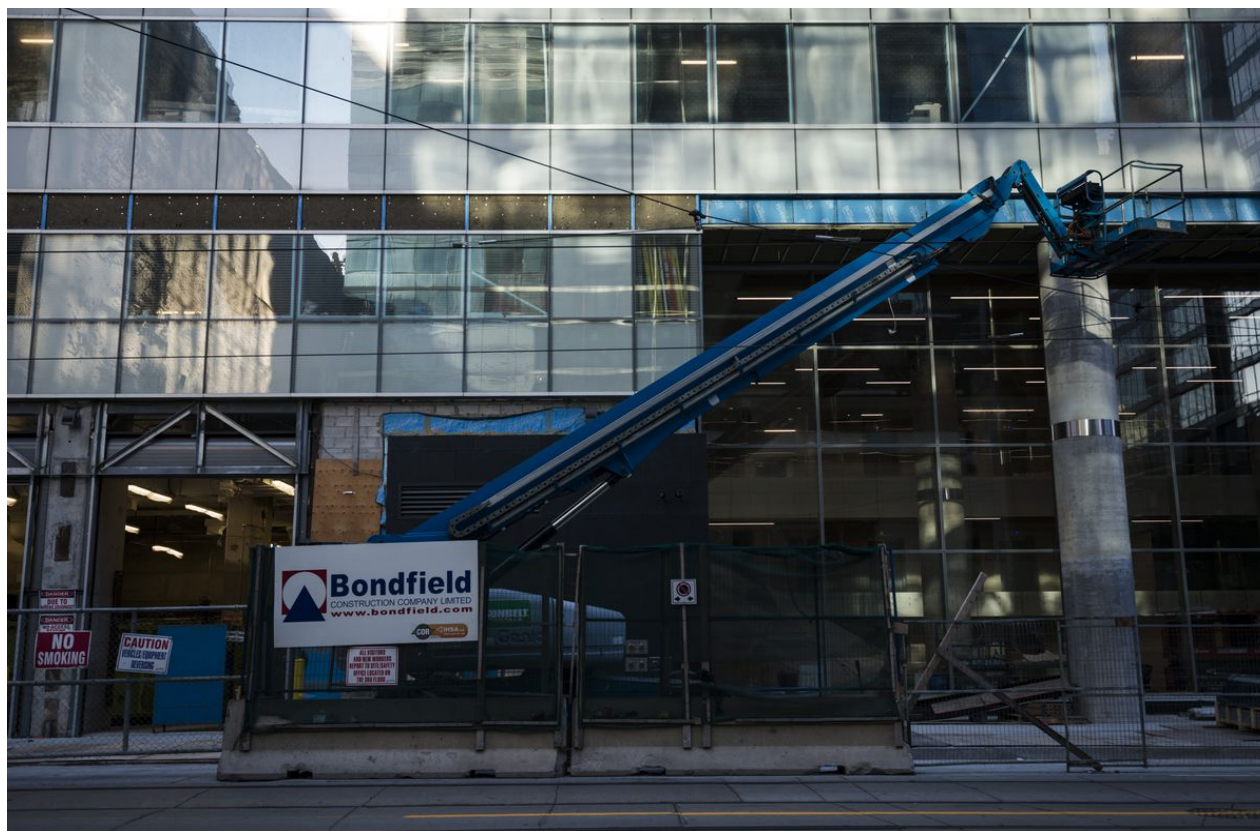
**GREG MCARTHUR** SECURITIES REGULATION REPORTER

**KAREN HOWLETT**

PUBLISHED APRIL 20, 2020

29 COMMENTS

SHARE



The 17-storey patient care tower at St. Michael's Hospital in Toronto is photographed in this file photo from Aug. 31, 2018.

CHRISTOPHER KATSAROV/THE GLOBE AND MAIL

The former chief executive officer of Bondfield Construction Company Ltd. received tips from an insider close to St. Michael's Hospital, through a secret e-mail account, in advance of the company winning a \$300-million contract to redevelop the downtown Toronto hospital, court records allege.

John Aquino, who headed up the company until he was fired in 2018, received the messages from a St. Michael's insider who had been given a "concealed" Bondfield.com e-mail account, investigators with Ernst & Young Inc. allege in the court filings. The court filings contain evidence that the sender of those messages was Vas Georgiou – who was the second-highest-ranking executive at St. Michael's at the time the e-mails were written.

Ernst & Young, which has been the court-appointed monitor for Bondfield since the construction company sought creditor protection in 2019 and has been probing the company's operations, says it discovered the e-mails a little more than a month ago. Ernst & Young says it has recovered four e-mail chains in total, including a chain from May, 2014, when someone writing from the account BCCLDevelopment@bondfield.com advised Mr. Aquino on a bidding strategy to win the St. Michael's contract. The author of those e-mails does not refer to himself by name.

But in other messages from and to that e-mail account, which were written in 2016 and 2018, respectively, the person behind the account is identified as "Vas."

Mr. Georgiou, the former chief administrative officer of St. Michael's, was fired from the hospital in 2015 after a Globe and Mail investigation showed he was involved in two business ventures with Mr. Aquino at the same time he was evaluating potential bidders on the construction project.

Both Mr. Georgiou and Bondfield sued The Globe following the publication of the articles, with the latter claiming \$125-million in damages and complaining that the articles falsely implied the contract was obtained through corruption and collusion. The BCCLDevelopment@bondfield.com e-mails were not disclosed by Bondfield in that litigation. The case has not proceeded since Bondfield was put under bankruptcy protection.



None of the allegations in the monitor's court filing have been proven in court.

Neither Mr. Aquino nor Mr. Georgiou responded to requests for comment sent to their lawyers. In response to questions for previous Globe articles, both men have denied any wrongdoing with the respect to the St. Michael's project.

The collapse of Bondfield has been felt far and wide across Ontario. It has left two hospitals without much-needed renovations at a time when health care systems are scrambling to prepare for an expected surge of COVID-19 infections.

The completion of the project at Cambridge Memorial Hospital in southwestern Ontario, which Bondfield was contracted to build in 2014, has been delayed by more than three years. St. Michael's is more than two years behind schedule – although the 128-year-old hospital announced last week that, with accelerated work by a replacement contractor, it has managed to open two floors of its still unfinished patient care tower. Both floors have been dedicated to COVID-19 critical care.

When Bondfield sought creditor protection in 2019, the company faced more than 200 lawsuits from unpaid subcontractors and vendors. Zurich Insurance Company Ltd., which issued surety bonds guaranteeing the completion of Bondfield's many stalled projects, has had to pay out more than \$200-million in claims, the largest surety loss in Canadian history.

The disclosure of the e-mail account is potentially damaging to several government agencies, including the procurement arm of the Ontario government, Infrastructure Ontario, which was responsible for awarding the St. Michael's project. After The Globe's reports in 2015, Infrastructure Ontario launched a \$1.8-million investigation into Mr. Georgiou's connections to Mr. Aquino, but concluded that the hospital "procurement was not compromised."

The May 2014 e-mails discovered by the monitor show that Mr. Aquino sought input from the person behind [BCCLDevelopment@bondfield.com](mailto:BCCLDevelopment@bondfield.com) about what he should include in the St. Michael's bid, the court documents show. In those exchanges, Mr. Aquino never refers to the person behind the e-mail account by name, but makes reference to the person being involved in the hospital's operations. In one e-mail, Mr.

Aquino asks: “who does your security cameras at the hospital now?” In another, he writes about the dollar amount a certain company wants to charge to “disconnect your existing nurse call system.”

The person behind [BCCLDevelopment@bondfield.com](mailto:BCCLDevelopment@bondfield.com) recommends that Mr. Aquino keep his “base bid as low as possible.” He also advises Mr. Aquino that once Bondfield is selected as the best candidate, they can fight “later in negotiations when we are No. 1.”

The e-mails were written about eight months before the hospital announced that Bondfield was the winning bidder.

The monitor also uncovered two other [BCCLDevelopment@bondfield.com](mailto:BCCLDevelopment@bondfield.com) e-mails – one from 2016 and one from 2018 – which show that, at that time, Mr. Georgiou was the user of that e-mail address. In the 2016 e-mail, the author suggests that he and Mr. Aquino “grab lunch or dinner” and signs off as “Vas.” In the 2018 e-mail, written by Mr. Aquino’s executive assistant, she addresses him: “Good afternoon Vas. Here are the details for the call this afternoon.”

Another e-mail recovered by the monitor shows that a Bondfield IT manager told Mr. Aquino in 2013 that he set up the BCCLDevelopment e-mail account so that its existence was hidden from an internal company list, “so no one can see him.”

The 2014 e-mails were discovered last month as Bondfield employees were packing up and moving out of their Vaughan, Ont. headquarters, which the company was forced to sell as part of its insolvency, the court filings show. The e-mails were found as paper copies, not digital.

Steven Aquino – John Aquino’s younger brother who replaced his brother as Bondfield’s CEO after his 2018 departure – said in an e-mailed statement that when the existence of the e-mails was brought to his attention, he immediately provided them to Ernst & Young.

When investigators went looking for the original, digital versions of the 2014 e-mails on Bondfield’s server, however, none were found, the court records show. Forensic analysts later concluded that they were likely wiped from Bondfield’s computer

system shortly after The Globe published the first article in a series of stories about Mr. Georgiou in 2015.

Zurich Insurance, which is still liable for the completion of many of Bondfield's stalled projects, enlisted forensic computer experts to examine an archiving device Bondfield uses to retain e-mails, including those that have been deleted by individual users, the court records state.

The analysts discovered that on Sept. 15, 2015, someone accessed the archiving device and searched for a number of key words, including: "Vas Georgiou," "vas.georgiou" and "BCCLDevelopment," the court records state. That was the same day The Globe published its first piece about Mr. Georgiou.

It appears that whoever accessed the archiving device deleted about 5,370 "potentially relevant messages" that included those search terms, the forensic experts concluded.

The monitor entered the e-mails as evidence in court when it sought, and obtained, a sweeping order from Justice Glenn Hainey. The order requires a number of people – including Bondfield employees, both current and past, as well as Mr. Georgiou – to preserve any records concerning the concealed e-mail account. The order also requires anyone with any information about the destruction of the e-mails to "advise the monitor immediately of those steps."

Alan Merskey, the lawyer for the monitor, said in an e-mailed statement that there is no evidence that Steven Aquino, or any other members of the "current executive management of Bondfield" were involved in the creation of the concealed e-mail account or the destruction of records. Mr. Merskey also confirmed in his e-mail that Steven Aquino assisted Ernst & Young.

Infrastructure Ontario, which oversaw the awarding of the St. Michael's contract, said it was unaware of the existence of the e-mails. In a statement, the agency's chief executive officer Ehren Cory, highlighted the conclusions of a 2016 report that Infrastructure Ontario commissioned in response to The Globe's reporting about the undisclosed commercial ties between Mr. Georgiou and Mr. Aquino.

The report, which cost about \$1.8-million in legal fees to produce, was prepared by a special committee of the agency's board of directors. The committee found that Mr. Georgiou and Mr. Aquino had conflicts of interest that ought to have been disclosed, but concluded that the bidding process was not compromised.

Mr. Cory said the committee found that, even if there had been leaks about the project, such information would not have been considered a "significant advantage given the emphasis in the evaluation on price (in which there was a significant difference between bids) and the public nature of the procurement information."

Speaking directly about the e-mails uncovered by the monitor, Mr. Cory said: "Even the most rigorous procurement standards could not protect against the type of behaviour alleged."

A spokesperson for Unity Health, a network of Toronto hospitals that includes St. Michael's, said it was unable to comment on the e-mails because they are the subject of a legal proceeding. "Our focus is moving on from this unfortunate situation and continuing to provide excellent care to all those in need," said Sabrina Divell, Unity's chief communications officer.

*Your time is valuable. Have the Top Business Headlines newsletter conveniently delivered to your inbox in the morning or evening. [Sign up today.](#)*