Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

MARSHALLZEHR GROUP INC.

Applicant

\- and -

LA PUE INTERNATIONAL INC.

Respondent

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

FACTUM OF THE RECEIVER
(Returnable July 24, 2026)

July 21, 2026

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TO: **SERVICE LIST**

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PART I - NATURE OF THE MOTION

1. This factum is filed by AlixPartners Restructuring, Inc. (formerly KSV Restructuring Inc.) ("**AlixPartners**"), in its capacity as Court-appointed receiver (the "**Receiver**") of the assets, undertakings and property of La Pue International Inc. (the "**Company**" or the "**Debtor**") acquired for, or used in relation to, a business carried on by the Company (collectively, the "**Property**").[1]

2. The subject of these proceedings, and the Company's principal asset, was the real property municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the "**Real Property**"), on which the Company intended to develop a condominium project known as the "Stanley District" (the "**Project**").[2]

3. Prior to these receivership proceedings, the Company had entered into pre-construction agreements of purchase and sale (the "**Unit APSs**") with purchasers of proposed condominium units in the Project (the "**Homebuyers**") and had collected approximately $42.7 million in deposits from Homebuyers (the "**Deposits**").[3]

4. Pursuant to an approval and vesting order dated January 7, 2025 (the "**AVO**"), the Court approved an amended transaction (the "**Amended Transaction**") for the sale of the Real Property and certain related assets to 1000835091 Ontario Inc. (the "**Asset Purchaser**"). The Amended Transaction closed on March 19, 2025.[4] Pursuant to the Amended Transaction, the Asset Purchaser has now assumed certain of the Unit APSs.

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[1] Tenth Report of AlixPartners Restructuring, Inc. dated July 17, 2026 (the "**Tenth Report**") at section 1.0, para 1, Tab 2 of the Motion Record of the Receiver dated July 17, 2026 (the "**Motion Record**"). Capitalized terms used herein and not otherwise defined have the meaning given to them in the Tenth Report.
[2] Tenth Report at section 1.0, para 2.
[3] Tenth Report at section 2.1, paras 4-5.
[4] Tenth Report at section 2.3, paras 5-8.

5. Following the closing of the Amended Transaction, the Receiver, the Asset Purchaser, Miller Thomson LLP, in its capacity as replacement escrow agent and administrator of the Deposits (the "**Replacement Escrow Agent**"), Tarion Warranty Corporation ("**Tarion**"), The Sovereign General Insurance Company ("**Sovereign**") and other stakeholders developed four deposit return protocols (collectively, the "**Deposit Return Protocols**") to address the orderly return of Deposits to Homebuyers who requested termination of their Unit APSs, along with the return of Deposits associated with Unit APSs that were not assumed by the Asset Purchaser.[5]

6. The Receiver now seeks three orders:

(a) an order (the "**DRP Approval Order**"), among other things:

(i) approving the Deposit Return Protocols, including approval *nunc pro tunc* of the First DRP, Second DRP and Third DRP and all steps previously taken to implement them;

(ii) approving the Fourth DRP in respect of the remaining Unit APSs that were not assigned to and assumed by the Asset Purchaser;

(iii) authorizing and directing the Receiver, the Replacement Escrow Agent, Tarion, Sovereign, the Asset Purchaser and the other persons identified in the Deposit Return Protocols to complete the remaining steps contemplated by the Deposit Return Protocols;

(iv) terminating the Remaining APSs, subject to the payments required to be made to the applicable Homebuyers under the Fourth DRP;

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[5] Tenth Report at sections 2.4 and 3.0.

(v) confirming that the DRP Approval Order does not affect, amend, release, terminate or disclaim the Assumed APSs; and

(vi) sealing the Confidential Appendix to the Tenth Report (the "**Confidential Appendix**");

(b) an order (the "**Lien Holdback Order**"), among other things:

(i) fixing the statutory holdback under the *Construction Act*, R.S.O. 1990, c. C.30 (the "**Construction Act**") at $901,295, inclusive of HST (the "**Holdback Settlement Amount**");

(ii) authorizing and directing the Receiver to pay the Holdback Settlement Amount from the Holdback Reserve (as defined below) to the Accountant of the Ontario Superior Court of Justice (the "**Accountant**") to the credit of the Lien Proceedings (as defined below);

(iii) dismissing, without costs, the claims of Sovereign and MarshallZehr Group Inc. ("**MarshallZehr**") for priority to the statutory holdback and the claims of the Lien Claimants against Sovereign and MarshallZehr in the Lien Proceedings; and

(iv) relieving the Receiver and the Company from further participation in the Lien Proceedings, subject to further order of the Court; and

(c) an order (the "**Discharge Order**"), among other things:

(i) approving the Fifth Report, Sixth Report, Seventh Report, Eighth Report, Ninth Report and Tenth Report, and the actions, conduct and activities of the Receiver described therein;

(ii) approving the Receiver's interim statement of receipts and disbursements;

(iii) approving the fees and disbursements of the Receiver, Aird & Berlis LLP ("**A&B**") and Chaitons LLP ("**Chaitons**"), and a fee accrual of $200,000, inclusive of disbursements and applicable taxes (the "**Fee Accrual**");

(iv) authorizing and directing the Receiver to make final distributions from the funds remaining in the receivership estate (collectively, the "**Distributions**");

(v) providing that the Distributions are final and irreversible and made free and clear of claims, and authorizing applicable deductions and withholdings;

(vi) protecting and releasing the Receiver from potential personal liability under the specified federal and provincial tax legislation identified in the Discharge Order (collectively, the "**Statutes**") arising from the Distributions;

(vii) discharging AlixPartners as Receiver upon the filing of a discharge certificate (the "**Discharge Certificate**"), including in respect of the real property municipally known as 6092 Allendale Avenue, Niagara Falls, Ontario ("**6092 Allendale**");

(viii) releasing the Receiver from liability arising from acts or omissions while acting as Receiver, except for liability arising from gross negligence or wilful misconduct; and

(ix) terminating and releasing the Receiver's Charge and the Receiver's Borrowings Charge upon the filing of the Discharge Certificate.[6]

7. The proposed orders are the culmination of an extensive receivership administration. They will permit the remaining Deposits to be returned, preserve the Assumed APSs, resolve the disputed quantum and priority of the statutory holdback relative to MarshallZehr's secured claim, facilitate the final distribution of the receivership estate, and permit the Receiver to complete its mandate efficiently and obtain its discharge.[7] For the reasons set out below, the Receiver respectfully submits that the proposed DRP Approval Order, Lien Holdback Order and Discharge Order should be granted.

PART II - SUMMARY OF FACTS

A. The Receivership Proceedings and Sale Transaction

8. On October 19, 2023, the Court granted the Receivership Order appointing the Receiver over the Property. MarshallZehr, the Company's principal secured creditor, was the applicant in these proceedings.[8] On December 20, 2023, the Court approved a sale process for the Real Property and certain related assets.[9]

9. On April 4, 2024, the Receiver and Lakeshore Luxe Design & Build Group entered into an asset purchase agreement contemplating, among other things, the sale of the Real Property and the assumption of 359 Unit APSs. On June 11, 2024, Lakeshore assigned its right, title and interest in that agreement to the Asset Purchaser.[10]

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[6] Tenth Report at section 1.1, paras 1(f)-(h), sections 5.2, 7.0 and 8.0; draft DRP Approval Order (Tab 4), Lien Holdback Order (Tab 3) and Discharge Order (Tab 5).
[7] Tenth Report at section 8.0, para 1.
[8] Tenth Report at section 1.0, paras 1 and 3.
[9] Tenth Report at section 2.3, para 1.
[10] Tenth Report at section 2.3, paras 2-3.

10. The Court approved the original transaction on June 21, 2024, but the Asset Purchaser did not complete it. The parties later reinstated and amended the agreement of purchase and sale.[11]

11. On January 7, 2025, the Court granted the AVO approving the Amended Transaction. The Company appealed the AVO, but on February 19, 2025, the Court of Appeal granted the Receiver's motion for directions and dismissed the Company's cross-motion, thereby ending the appeal.[12] The Amended Transaction closed on March 19, 2025.[13]

B. <u>The Deposit Return Protocols and Unit APSs</u>

12. Following closing, Sullivan Mahoney LLP, Sovereign, the Replacement Escrow Agent, Tarion, the Receiver and the Asset Purchaser arranged for the administration of the Deposits to be transitioned from Sullivan Mahoney LLP to the Replacement Escrow Agent.[14] Sovereign authorized the transfer of approximately $36.96 million, exclusive of interest, representing the aggregate Deposits then held in respect of active Unit APSs, to the Replacement Escrow Agent.[15]

13. The Receiver and the relevant stakeholders developed four Deposit Return Protocols to govern the return of Deposits to Homebuyers who requested the termination of their Unit APSs, or whose Unit APSs are not being assumed by the Asset Purchaser. The First DRP was implemented beginning in October 2025, the Second DRP was implemented beginning in June 2026, and the Third DRP was implemented beginning in July 2026. The Fourth DRP addresses the remaining Unit APSs that are not being assumed by the Asset Purchaser.[16]

[11] Tenth Report at section 2.3, paras 4-5.
[12] Tenth Report at section 2.3, paras 6-7.
[13] Tenth Report at section 2.3, para 8.
[14] Tenth Report at section 2.4, para 3.
[15] Tenth Report at section 2.4, para 4.
[16] Tenth Report at section 3.0.

14. The First DRP, Second DRP and Third DRP establish orderly procedures for returning Deposits to affected Homebuyers. Under the Fourth DRP, affected Homebuyers must provide reasonable information and documentation to facilitate the return of their Deposits. The releases under the Fourth DRP are set out in the DRP Approval Order and are not conditional upon a separate acknowledgement and release, although the Replacement Escrow Agent may require reasonable administrative confirmation.[17]

15. The Receiver seeks approval *nunc pro tunc* of the First DRP, Second DRP and Third DRP and the implementation steps already taken under those protocols. It also seeks approval of the Fourth DRP and authority for the Replacement Escrow Agent and the other participating parties to complete all remaining required steps.[18]

16. The Fourth DRP addresses the remaining Unit APSs that were not assigned to and assumed by the Asset Purchaser. As of the date of the Tenth Report, there were six Remaining APSs and a total of 362 Unit APSs had been assigned to and assumed by the Asset Purchaser. The proposed DRP Approval Order terminates those Remaining APSs, subject to the payments required under the Fourth DRP, while expressly preserving the Assumed APSs.[19]

17. The Receiver recommends approval of the Deposit Return Protocols because they provide an orderly mechanism to return Deposits to affected Homebuyers, complete the protocols already implemented, address the Remaining APSs and preserve the Assumed APSs.[20]

C. The Confidential Appendix

[17] Tenth Report at sections 3.2-3.6 and Appendices "M" to "P".
[18] Tenth Report at section 1.1, para 1(f), and section 3.0.
[19] Tenth Report at section 1.1, para 1(f)(ii), (v) and (vi), section 3.5, para 5, and section 3.6.
[20] Tenth Report at section 8.0, para 1(a)-(c).

18. Redacted versions of the Deposit Return Protocols will be filed publicly. The redactions are limited to the unit numbers appearing in the purchaser schedules.[21] The unredacted purchaser schedules, which disclose the unit numbers omitted from the public versions, are contained in the Confidential Appendix.[22]

19. The Receiver is of the view that disclosure of the Confidential Appendix would create a serious risk to the privacy interests of Homebuyers, that no reasonable alternative would adequately protect those interests while preserving access to the non-confidential information, and that the salutary effects of the sealing order outweigh its deleterious effects.[23]

20. The proposed sealing order is narrowly tailored. Each Deposit Return Protocol will remain publicly available, while only the unit numbers in the purchaser schedules will be withheld.[24]

D. The Lien Holdback Settlement

21. A $1.4 million holdback reserve (the "**Holdback Reserve**") was established in connection with the Amended Transaction and the Receiver's interim distribution to MarshallZehr.[25]

22. Following closing, the Receiver continued the Court-approved process for addressing construction lien claims and the Holdback Reserve. Certain Lien Claimants objected to the Receiver's holdback assessment and methodology.[26]

23. The disputed issues included whether the statutory holdback had been properly calculated, whether the applicable cost consultant's report properly assessed the value of services and

[21] Tenth Report at section 4.0, para 2.
[22] Tenth Report at section 4.0, para 3.
[23] Tenth Report at section 4.0, para 4.
[24] Tenth Report at section 4.0, para 5.
[25] Tenth Report at section 2.6, para 4, and section 5.1, para 1.
[26] Tenth Report at section 5.1, paras 2-4.

materials supplied, whether certain claims, invoices or change orders were improperly excluded or discounted, and whether the holdback and priority issues should be determined by the Court.[27]

24. Following case conferences and settlement discussions, the Lien Claimants agreed to the quantum of the statutory holdback, but not on their respective entitlements to that amount.[28]

25. The proposed Lien Holdback Order fixes the statutory holdback at $901,295, inclusive of HST, and authorizes the Receiver to pay that amount from the Holdback Reserve to the Accountant to the credit of the continuing proceedings among the Lien Claimants (the "**Lien Proceedings**").[29]

26. The proposed Lien Holdback Order also dismisses, without costs, the claims of Sovereign and MarshallZehr for priority to the statutory holdback and the claims of the Lien Claimants against Sovereign and MarshallZehr in the Lien Proceedings.[30]

27. Upon payment of the Holdback Settlement Amount to the Accountant, the Receiver and the Company will have no further obligation to hold, reserve or pay any additional amount in respect of the Holdback Settlement Amount and, subject to further order of the Court, will not be required to participate in or defend the Lien Proceedings.[31]

28. The Receiver supports approval of the Lien Holdback Order because it resolves the disputed quantum and priority of the statutory holdback relative to MarshallZehr's secured claim, provides certainty to stakeholders, permits the Lien Proceedings to determine the Lien Claimants' respective entitlements, and facilitates final distributions and the Receiver's discharge.[32]

E. Fees, Final Distributions and Discharge

[27] Tenth Report at section 5.1, para 4.
[28] Tenth Report at section 5.1, para 5, and section 5.2, para 1.
[29] Tenth Report at section 5.2, para 2(a)-(b).
[30] Tenth Report at section 5.2, para 2(c)-(d).
[31] Tenth Report at section 5.2, para 2(e)-(f).
[32] Tenth Report at section 5.3, para 1.

29. As of the date of the Tenth Report, the Receiver was holding approximately $1,803,543, before accrued fees and costs.[33]

30. The Receiver seeks approval of fees of $284,212.25, excluding disbursements and HST, incurred from the commencement of the receivership proceedings to June 30, 2026. It also seeks approval of A&B's fees of $434,532.50, excluding disbursements and HST, incurred from June 13, 2023 to July 10, 2026, and Chaitons' fees of $186,602.50, excluding disbursements and HST, incurred from November 24, 2023 to March 31, 2026.[34]

31. The Receiver also seeks approval of the Fee Accrual to permit the Receiver and A&B to complete the remaining administration without passing further accounts, provided that their fees and disbursements do not exceed the Fee Accrual.[35]

32. The proposed Discharge Order authorizes and directs the Receiver, subject to such reserves as it considers necessary or appropriate to complete the administration (the "**Reserves**"), to distribute the remaining net sale proceeds from the Amended Transaction in the following order:

(a) first, payment of the approved fees and disbursements of the Receiver, A&B and Chaitons, including the Fee Accrual;

(b) second, payment of the Holdback Settlement Amount to the Accountant to the credit of the Lien Proceedings; and

(c) third, one or more distributions to MarshallZehr up to the amount of its outstanding secured claim.[36]

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[33] Tenth Report at section 7.1, para 1 and Appendix "R".
[34] Tenth Report at section 7.2, paras 1-2.
[35] Tenth Report at section 7.2, para 5.
[36] Tenth Report at section 7.3, para 2.

33. MarshallZehr continues to hold secured claims against the Company in excess of approximately $3.6 million. Those secured obligations are not expected to be satisfied in full and no funds are available for distribution to unsecured creditors.[37]

34. The Receiver seeks its discharge upon completion of its remaining duties and the filing of the Discharge Certificate. Those duties include completing the Deposit Return Protocols, paying the Holdback Settlement Amount to the Accountant, paying approved professional fees, maintaining appropriate reserves, making final distributions and completing incidental administrative matters.[38]

35. The discharge will extend to 6092 Allendale. Although the Receiver remains appointed over that property, the Receiver did not possess, control, administer, market or realize upon it, and is unaware of any remaining receivership purpose for its continued appointment.[39]

PART III - ISSUES

36. The issues to be determined on this motion are whether this Court should:

(a) approve the Deposit Return Protocols and the related termination of the Remaining APSs;

(b) seal the Confidential Appendix;

(c) approve the settlement concerning the quantum and priority of the statutory holdback and grant the Lien Holdback Order;

(d) approve the Receiver's reports, activities, interim statement of receipts and disbursements, and professional fees, including the Fee Accrual;

[37] Tenth Report at section 7.3, para 3.
[38] Tenth Report at section 7.5, paras 1-2.
[39] Tenth Report at section 2.2, paras 5-7, and section 7.5, para 3.

(e) authorize the final Distributions and related implementing provisions;

(f) protect and release the Receiver from potential personal liability under the Statutes arising from the Distributions; and

(g) discharge and release the Receiver upon the filing of the Discharge Certificate.

PART IV - STATEMENT OF LAW & AUTHORITIES

A. The Deposit Return Protocols and Related APS Relief Should be Approved

37. Protocols to return deposits paid by counterparties to terminated pre-sale purchase agreements are common in real estate insolvencies and are frequently approved by the Court. Such approval allows individual purchasers to obtain their deposits in a "fair and sensible fashion".[40]

38. The Deposit Return Protocols have been designed by the affected stakeholders to facilitate the orderly return of Deposits to Homebuyers. Their terms are consistent with protocols previously used in comparable real estate insolvency proceedings, and Court approval will ensure that affected Homebuyers receive their Deposits as quickly as reasonably possible.

39. Approval *nunc pro tunc* of the First DRP, Second DRP and Third DRP and the implementation steps already taken under them is appropriate. Those measures were undertaken to advance the receivership, return Deposits to affected Homebuyers and avoid unnecessary delay. The proposed DRP Approval Order preserves the Assumed APSs and authorizes only those remaining steps necessary to complete the Deposit Return Protocols.

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[40] *1473124 Ontario Limited v. LDI Lakeside Developments Inc.* (December 19, 2023), Toronto, CV-23-00694059-00CL (Discharge and Ancillary Relief Order) (ONSC) at para 4; *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.* (April 7, 2021), Toronto, CV-20-00637297-00CL (Deposit Return Procedure Order) (ONSC); *BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.* (February 18, 2021), Toronto, CV-20-00637301-00CL (Deposit Return Procedure Order) (ONSC); *Hazelton Development Corporation (Re)* (February 10, 2023), Toronto, CV-22-00679931-00CL (Endorsement) (ONSC) at p.3.

40. The Court may direct a receiver to disclaim pre-sale homebuyer agreements in real property receiverships. This authority derives from the receiver's duty to maximize recovery of assets under its jurisdiction, which permits it to affirm or disclaim contracts.[41]

41. The criteria to be considered in determining whether to authorize such disclaimers are: (i) the respective legal priorities of the competing interests; (ii) whether the disclaimer would enhance the value of the assets and, if so, whether a failure to disclaim would amount to a preference in favour of a particular party; and (iii) whether, if a preference would arise, the party seeking to avoid the disclaimer has established that the equities support such a preference.[42]

42. In this case, termination of the Remaining APSs is appropriate because the six Remaining APSs were not assigned to the Asset Purchaser and their termination permits the corresponding Deposits, together with interest under the *Condominium Act, 1998*, S.O. 1998, c. 19, to be returned under the Fourth DRP, completes the treatment of Unit APSs that were not assumed by the Asset Purchaser and does not affect the Assumed APSs. The termination is therefore necessary to complete the Receiver's administration of the Homebuyer-related issues and is in the interests of affected stakeholders.

B. <u>The Sealing Order Should be Granted</u>

43. This Court has discretion pursuant to subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**CJA**") to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.[43]

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[41] *Kingsett Mortgage Corp. v. Vandyk-Uptowns Limited*, 2024 ONSC 6205 at paras 24-25; *Kingsett Mortgage Corp. and Dorr Capital Corp. v. Stateview Homes (Minu Towns) Inc.* (September 14, 2023), Toronto, CV-23-00698576-00CL (Endorsement) (ONSC); *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527 at paras 131-132; *Peoples Trust Company v. Censorio Group (Hastings & Carleton) Holdings Ltd.*, 2020 BCSC 1013 at para 25.
[42] *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527 at para 44; *Kingsett Mortgage Corp. v. Vandyk-Uptowns Limited*, 2024 ONSC 6205 at paras 24-32.
[43] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2).

44. The Supreme Court of Canada has held that three prerequisites must be established to obtain a sealing order: (i) court openness poses a serious risk to an important public interest; (ii) the sealing order is necessary to prevent the serious risk because reasonable alternative measures will not prevent that risk; and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.[44]

45. Each requirement is satisfied here. Disclosure of the unredacted purchaser schedules would create a serious risk to the privacy interests of Homebuyers. The proposed sealing is necessary because the only information withheld from the public versions is the affected unit numbers, and no less restrictive alternative would adequately protect the corresponding privacy interests.

46. The sealing order is proportionate and narrowly tailored. The Deposit Return Protocols and redacted purchaser schedules will remain publicly accessible. The information sought to be sealed is unnecessary to understand the requested relief or its legal and factual basis. The salutary effects of protecting Homebuyers' privacy therefore outweigh the limited effect on court openness.

C. <u>The Lien Holdback Order Should be Granted</u>

47. Subsection 243(1) of the BIA provides supervising judges with the broadest possible authority in insolvency proceedings to enable them to react to the unique circumstances of each case and to do what "justice dictates" and "practicality demands". By implication, the broad powers conferred under subsection 243(1) extend beyond those expressly granted to include all powers that are necessary for the accomplishment of the purpose of a receivership, namely, to

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[44] *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38.

enhance and facilitate the preservation and realization of assets for the benefit of creditors, or that are essential to the receivership.[45]

48. Courts routinely authorize receivers and other Court-appointed officers to enter into settlement agreements in insolvency proceedings where the proposed settlement is fair and reasonable, provides benefits to other stakeholders, and is consistent with the purpose and spirit of the relevant legislation.[46]

49. The proposed settlement is fair and reasonable. It resolves the disputed quantum of the statutory holdback and its priority relative to MarshallZehr's secured claim, provides certainty as to the amount available for the Lien Claimants and avoids the costs and risks of continued litigation involving the receivership estate.

50. The settlement does not determine the Lien Claimants' respective entitlements to the Holdback Settlement Amount. Those issues remain to be determined in the Lien Proceedings, and the proposed Lien Holdback Order expressly preserves the parties' rights, remedies and defences except to the extent specifically compromised or dismissed.

51. The payment of the Holdback Settlement Amount to the Accountant permits the Receiver and the Company to complete their involvement while preserving the full amount of the agreed statutory holdback for determination and allocation among the Lien Claimants. The Lien Holdback Order is supported by MarshallZehr and the Lien Claimants, and will facilitate the final distributions and discharge of the Receiver. In the circumstances, the Lien Holdback Order is a

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[45] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para 148; *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 72-73 and 76-77; *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269 at paras 50-51.
[46] *Ontario Securities Commission v. Bridging Finance Inc.*, 2025 ONSC 539 at paras 13-17.

practical and efficient exercise of the Court's broad receivership jurisdiction and should be granted.

D. The Reports, Activities and Interim Statement of Receipts and Disbursements Should be Approved

52. This Court has the inherent jurisdiction to approve the activities of a Court-appointed receiver.[47]

53. There are good policy and practical reasons for this, including that Court approval: (i) allows the court officer to move forward with the next steps in the proceedings; (ii) brings the court officer's activities before the Court; (iii) allows an opportunity for the concerns of stakeholders to be addressed and any problems to be rectified; (iv) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner; (v) provides protection for the court officer not otherwise provided by the applicable legislation; and (vi) protects creditors from the delay in distribution that would be caused by re-litigation of steps taken to date and potential indemnity claims by the Court officer.[48]

54. This Court has held that the above-noted observations apply to the activities of a Court-appointed receiver because the activities of any Court officer "can and should be considered by the Court as against the mandate, powers and authority of that officer."[49] In this case, the activities described in the Fifth Report through the Tenth Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers under the Receivership Order and were in the best interests of the Company's stakeholders generally.

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[47] *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA); *Confectionately Yours Inc. (Re)*, 2002 CanLII 45059 (ON CA) at para 36.
[48] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 12 and 23; *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras 13-14.
[49] *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para 66.

55. The proposed Discharge Order appropriately limits the effect of the requested approval so that only the Receiver, in its personal capacity and only with respect to its own personal liability, may rely upon it. Accordingly, the reports, activities and conduct of the Receiver, together with the interim statement of receipts and disbursements, should be approved.

E. The Fees and Disbursements of the Receiver and its Counsel Should be Approved

56. This Court's jurisdiction to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which provides that the Receiver and its counsel shall be paid reasonable fees and disbursements at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and directs the Receiver and its counsel to pass their accounts from time to time.[50]

57. The test for approval of accounts in insolvency proceedings is well-established. Fees must be reasonable in light of the overall value contributed by the Receiver and its counsel.[51]

58. As stated by this Court in *Laurentian University of Sudbury*, "[t]he Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation." Rather, as the Court of Appeal for Ontario stated in *Bank of Nova Scotia v. Diemer*, "[t]he focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took."[52]

59. The following non-exhaustive factors assist courts in evaluating the quantum of a Court-appointed officer's fees: (i) the nature, extent and value of the assets being handled; (ii) the

[50] Receivership Order at paras 17-18.
[51] *Laurentian University of Sudbury*, 2022 ONSC 2927 at para 9; *Re Nortel Networks Corporation et al.*, 2017 ONSC 673 at paras 13-15.
[52] *Laurentian University of Sudbury*, 2022 ONSC 2927 at para 9; *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 45.

complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Court officer's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.[53]

60. Applying these factors, the accounts of the Receiver, A&B and Chaitons should be approved. The professionals worked to complete the Amended Transaction, administer the Deposit Return Protocols, address the Holdback Reserve and lien disputes, respond to the Company's appeal, manage the remaining receivership administration and prepare this motion.

61. Their work was undertaken diligently and thoroughly over a receivership spanning almost three years and involving a failed initial transaction, a reinstated and amended sale transaction, appellate proceedings, hundreds of Unit APSs, substantial Homebuyer Deposits, multiple surety and escrow stakeholders, construction lien proceedings and final distribution and discharge issues.

62. The Receiver considers the legal fees and hourly rates to be consistent with the rates charged by other law firms practising in the area of insolvency in the Toronto market and considers the fees reasonable and appropriate in the circumstances.[54]

63. The Fee Accrual should also be approved. It will permit the Receiver and A&B to complete the remaining administrative steps without the cost of a further fee approval motion, subject to the express limitation that their fees and disbursements not exceed the Fee Accrual.

F. <u>The Final Distributions Should be Approved</u>

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[53] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33; *Laurentian University of Sudbury*, 2022 ONSC 2927 at para 10.
[54] Tenth Report at section 7.2, para 6.

64. Distributions, including interim distributions, are frequently authorized in insolvency proceedings under the BIA. The power to authorize a Court-appointed receiver to make distributions is "implicit in the BIA", "practically necessary for the accomplishment of the objectives of the legislation", and frequently incorporated in receivership orders, as it is here.[55]

65. When determining whether to authorize a distribution to a senior-ranking secured creditor, Courts have considered, *inter alia*: (i) the validity and enforceability of such creditor's security; (ii) whether the debtor or estate will have sufficient liquidity subsequent to the distribution; (iii) the economy to be achieved by the proposed distribution; and (iv) whether any objecting creditor has an economic interest in the assets that gave rise to the proceeds to be distributed.[56]

66. The application of the foregoing considerations makes clear that the proposed final distributions are appropriate:

(a) A&B provided the Receiver with an opinion that, subject to standard assumptions and qualifications, MarshallZehr has valid security interests or a charge, as applicable, against the Property sold pursuant to the Amended Transaction;

(b) the proposed distribution sequence first satisfies the approved professional fees and the Fee Accrual, ensuring that the administration can be completed;

(c) the Holdback Settlement Amount will then be paid to the Accountant, preserving the agreed statutory holdback for determination and allocation among the Lien Claimants;

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[55] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 243(1)(c); *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127 at para 43; *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229 at para 44; *Forjay Management Ltd. v. 625536 B.C. Ltd.*, 2019 BCCA 368 at paras 26 and 31.
[56] *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at paras 70-75; *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229 at para 45; *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127 at paras 43-44.

(d) the Receiver may maintain any reserves it considers necessary or appropriate to complete the administration;

(e) only after those amounts are addressed will the Receiver distribute remaining funds to MarshallZehr;

(f) MarshallZehr's secured claim materially exceeds the funds expected to remain available;

(g) no funds are available for unsecured creditors; and

(h) as of the date of the Tenth Report, the Receiver was not aware of any opposition to the requested relief.[57]

67. Authorizing the Receiver to make one or more final distributions to MarshallZehr, up to the amount of its secured claim and subject to the Receiver maintaining appropriate reserves, without returning to Court will avoid a duplicative motion and the associated professional costs. The proposed Discharge Order also contains customary provisions to facilitate and protect the implementation of the Distributions, including provisions relating to the free-and-clear and final nature of the Distributions, applicable withholding obligations and protections, and tax-liability protections and releases in favour of the Receiver.[58]

G. The Receiver Should be Shielded from Liability Under the Statutes

68. As noted above, subsection 243(1) of the BIA provides supervising judges with the broadest possible authority in insolvency proceedings to enable them to react to the unique

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[57] Fourth Report of the Receiver dated December 11, 2024 at section 4.0, para 3, Appendix "E"; Tenth Report at section 7.3, paras 1-3, and section 8.0, para 2.

[58] *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229 at paras 43-47; draft Discharge Order at paras 5-9.

circumstances of each case and to do what "justice dictates" and "practicality demands". By implication, the broad powers conferred under subsection 243(1) extend beyond those expressly granted to include all powers that are practically necessary for the accomplishment of the purpose of a receivership, namely, to enhance and facilitate the preservation and realization of assets for the benefit of creditors, or that are essential to the receivership.[59]

69. As recently made clear in *One Bloor West Toronto Group (The One) Inc. (Re)* ("***The One***"), the "broad discretion" conferred under section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") vests this Court with jurisdiction to "shield its officers from statutory liability that they might otherwise face", including protection that "extends beyond the general shield of liability of its court officers".[60]

70. Before *The One*, in *Comerica Bank v. Dragonwave Inc.* ("***Dragonwave***") and *Re: 1000156489 Ontario Inc.* ("***489***"), this Court declined to relieve a Court-appointed receiver and a monitor, respectively, from liability that could arise under the Statutes in connection with Court-approved distributions. In neither case did the Court conclude that it lacked jurisdiction to grant such relief. In *Dragonwave*, the Court declined the relief without prejudice and required comprehensive factums; in *489*, the Court declined the relief on the record before it and permitted the issue to be revisited on notice to the taxation authorities.[61] Those concerns are addressed here. The Receiver has provided comprehensive submissions on the source and scope of this Court's jurisdiction; the requested protection is narrowly limited to potential personal liability arising from

[59] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para 148; *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 72-73 and 76-77; *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269 at paras 50-51.
[60] *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 53 and 61; *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.
[61] *Comerica Bank v. Dragonwave Inc.*, 2017 ONSC 6104 at paras 9-12; *Re: 1000156489 Ontario Inc.*, 2026 ONSC 610 at paras 7-10 and 13-16.

the Court-authorized Distributions; the proposed Discharge Order does not affect any obligation or claim of the Debtor under the Statutes; the Receiver may establish and maintain such Reserves as it considers necessary or advisable; and the Ontario Ministry of Finance – Insolvency Unit and Department of Justice counsel for the Canada Revenue Agency are included on the service list.[62]

71. In *The One*, the Court held that statutory personal-liability provisions can impede a Court officer from paying a secured creditor even where that creditor ranks ahead of the relevant tax authority. The Court also observed that, although certain of the Statutes exempt a trustee in bankruptcy from their clearance certificate requirements, that exemption does not appear in every Statute or every potentially applicable provision and therefore does not eliminate the uncertainty facing a Court-appointed receiver. It also rejected case-by-case clearance certificates as a workable answer in an insolvency administration.[63]

72. This Court's jurisdiction to protect its own officers is well-established. As the Court of Appeal for Ontario has affirmed, a receiver "is not a legitimate target" for dissatisfied creditors. Providing a limited liability shield allows for the proper and orderly conduct of the insolvency proceeding and avoids unnecessary and unjustified proceedings.[64]

73. The foregoing considerations apply equally in receivership proceedings. The Receiver relies on subsection 243(1) of the BIA, including the powers arising by necessary implication from this Court's role in supervising and protecting its own officer, as the jurisdictional basis for the requested protection. Consistent with the principles recognized under section 11 of the CCAA in

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[62] Tenth Report at section 7.3, para 1; draft Discharge Order at paras 4 and 8-9; Service List (Tab 7).
[63] *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 35-41; *Corporations Tax Act*, R.S.O. 1990, c. C.40, ss. 107(1)-(3); *Employment Insurance Act*, S.C. 1996, c. 23, ss. 86(3)-(4) and (7); *Excise Tax Act*, R.S.C. 1985, c. E-15, ss. 81(1)-(2) and 270(1)-(4); *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), ss. 159(2)-(3); *Retail Sales Tax Act*, R.S.O. 1990, c. R.31, ss. 22(1), (5)-(6); *Taxation Act, 2007*, S.O. 2007, c. 11, Sch. A, s. 117(1).
[64] *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 43-44; *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779 at paras 48-50.

The One, the Receiver submits that subsection 243(1) of the BIA authorizes this Court to shield the Receiver from potential personal liability under the Statutes arising from making the Distributions authorized by this Court.[65]

74. General releases in favour of court officers: (i) ensure the proper and orderly conduct of a receivership and the execution of a receiver's duties; (ii) avoid unnecessary and unjustified proceedings; (iii) shield the receiver from claims incidental to the performance of its court-authorized duties; and (iv) provide finality.[66] The same rationale supports this Court's jurisdiction to grant specific releases in respect of the Statutes. The Receiver submits that it would be anomalous to interpret subsection 243(1) of the BIA as conferring jurisdiction to grant general releases in favour of court officers and to authorize distributions, while prohibiting specific releases of claims arising from the performance of the essential duty of distributing the proceeds of a debtor's assets in accordance with a court order.[67]

75. In addition to being satisfied as to its jurisdiction to shield the Receiver from liability under the Statutes in connection with the Distributions, this Court must be satisfied that it is appropriate in the circumstances to do so.[68] The Receiver submits that the requested protection is appropriate because: (i) it does not extinguish or vary any obligation of the Debtor under the Statutes; (ii) the Receiver may establish and maintain Reserves for any tax claim that benefits from an applicable priority; (iii) it protects the Receiver only from potential personal liability for making Distributions specifically authorized by this Court; (iv) it does not make declarations regarding whether the

[65] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras 24 and 47; *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269 at paras 46-51; *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 43-44, 53 and 61.
[66] *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779 at paras 48-50; *Pinnacle v. Kraus*, 2012 ONSC 6376 at para 47; *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at para 44.
[67] *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 43-44, 51, 53-54 and 61.
[68] *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 29-30 and 50-52.

Receiver is a "representative" or "legal representative" of the Debtor or is making "distributions" or "distributing" within the respective meanings of those terms in the Statutes; and (v) it is consistent with section 142 of the CJA, which provides that a person is not liable for any act done in good faith in accordance with an order or process of an Ontario court.[69]

H. The Receiver Should be Discharged and Released

76. A Court-appointed receiver is an officer and instrument of the Court. It is common for a Court-appointed receiver to be discharged once it has completed the substance of its mandate.[70]

77. This Court has inherent jurisdiction to discharge a Court-appointed receiver upon completion of its mandate. The release of a receiver is a standard term of the Commercial List Model Discharge Order, and releases ought to be issued in the absence of improper or negligent conduct on the part of the receiver.[71]

78. The purpose of such a release is to ensure the proper and orderly conduct of the receivership, avoid unnecessary and unjustified proceedings, shield the receiver from claims incidental to the performance of its Court-authorized duties and provide finality.[72] Subject to completion of the remaining administrative activities identified in the Tenth Report, the Receiver will have completed its mandate. The proposed discharge mechanism permits the Receiver to complete those activities before filing the Discharge Certificate.

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[69] Tenth Report at section 7.3, para 1; draft Discharge Order at paras 4 and 8-9; *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 51, 53-57 and 60-61; *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 142.
[70] *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, 2009 CanLII 55113 (ON SC) at para 8.
[71] *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 58 at paras 27-30; *Pinnacle v. Kraus*, 2012 ONSC 6376 at para 47; Commercial List Model Discharge Order at para 5.
[72] *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779 at paras 48-50; *Pinnacle v. Kraus*, 2012 ONSC 6376 at para 47; *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 58 at paras 26-28.

79. The inclusion of 6092 Allendale in the discharge is also appropriate. The Receiver did not take possession or control of, administer, market or realize upon 6092 Allendale, and the Receiver is unaware of any remaining purpose to be served by continuing its appointment over that property.

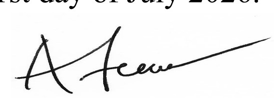
80. The requested release contains the customary carve-out for liability arising from gross negligence or wilful misconduct. There is no evidence of improper or negligent conduct by the Receiver. To the contrary, the Receiver's activities have been disclosed in detail through its reports and were undertaken to advance and complete the administration.

81. The proposed Discharge Order also preserves the Receiver's authority to perform incidental duties and the benefit of the approvals, protections and stay provisions previously granted by the Court. The discharge and release are therefore appropriate and should be granted.

PART V - RELIEF REQUESTED

82. The Receiver respectfully requests that this Court grant the Orders substantially in the forms contained in the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of July 2026.



Alex Bernicchia-Freeman

July 21, 2026

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Lawyers for the Receiver

SCHEDULE “A”

LIST OF AUTHORITIES

Cases

1. *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461
2. *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA)
3. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
4. *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269
5. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
6. *Comerica Bank v. Dragonwave Inc.*, 2017 ONSC 6104
7. *Confectionately Yours Inc. (Re)*, 2002 CanLII 45059 (ON CA)
8. *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, 2009 CanLII 55113 (ON SC)
9. *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229
10. *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527
11. *Forjay Management Ltd. v. 625536 B.C. Ltd.*, 2019 BCCA 368
12. *Kingsett Mortgage Corp. v. Vandyk-Uptowns Limited*, 2024 ONSC 6205
13. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127
14. *Laurentian University of Sudbury*, 2022 ONSC 2927
15. *Ontario Securities Commission v. Bridging Finance Inc.*, 2025 ONSC 539
16. *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854
17. *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41
18. *Peoples Trust Company v. Censorio Group (Hastings & Carleton) Holdings Ltd.*, 2020 BCSC 1013
19. *Pinnacle v. Kraus*, 2012 ONSC 6376
20. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779
21. *Re: 1000156489 Ontario Inc.*, 2026 ONSC 610
22. *Re Nortel Networks Corporation et al.*, 2017 ONSC 673
23. *Sherman Estate v. Donovan*, 2021 SCC 25
24. *Target Canada Co. (Re)*, 2015 ONSC 7574
25. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508

26. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400

27. *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 58

Orders and Endorsements

1. *1473124 Ontario Limited v. LDI Lakeside Developments Inc.* (December 19, 2023), Toronto, CV-23-00694059-00CL (Discharge and Ancillary Relief Order) (ONSC)

2. *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.* (April 7, 2021), Toronto, CV-20-00637297-00CL (Deposit Return Procedure Order) (ONSC)

3. *BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.* (February 18, 2021), Toronto, CV-20-00637301-00CL (Deposit Return Procedure Order) (ONSC)

4. Commercial List Model Discharge Order (Revised May 11, 2010)

5. *Hazelton Development Corporation (Re)* (February 10, 2023), Toronto, CV-22-00679931-00CL (Endorsement) (ONSC)

6. *Kingsett Mortgage Corp. and Dorr Capital Corp. v. Stateview Homes (Minu Towns) Inc.* (September 14, 2023), Toronto, CV-23-00698576-00CL (Endorsement) (ONSC)

PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED certify that they are satisfied as to the authenticity of every authority cited in this factum.

July 21, 2026

DATE

Alex Bernicchia-Freeman

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3**

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.

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.

***Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36**

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Protection for acting under court order

142 A person is not liable for any act done in good faith in accordance with an order or process of a court in Ontario.

***Corporations Tax Act*, R.S.O. 1990, c. C.40**

Payment of tax by receivers

107 (1) Every person required under subsection 75 (7) to deliver a return for a corporation for a taxation year shall, immediately on receipt of a notice of assessment or reassessment in respect of the taxation year, pay all taxes, interest, penalties and other amounts payable under this Act by or in respect of the corporation to the extent that the person has or had in the person's possession or control property belonging to the corporation or its estate, at any time since the taxation year, and the person shall thereupon be deemed to have made the payment on behalf of the corporation.

Certificate of tax paid

(2) Every assignee, liquidator, receiver, receiver-manager, and other agent, other than a trustee in bankruptcy, before distributing any property of the corporation under their control, shall obtain a certificate from the Minister certifying that all taxes, interest, penalties and other amounts payable by the corporation under this Act have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under section 103.

Personal liability of receivers

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein shall be personally liable to Her Majesty in right of Ontario for an amount equal to the taxes, interest, penalties and other amounts payable under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act.

***Employment Insurance Act*, S.C. 1996, c. 23**

Certificate before distribution

86 (3) Before distributing any property over which a responsible representative has control in that capacity, the responsible representative shall obtain a certificate from the Minister certifying the payment, or acceptance by the Minister of security for payment, of all amounts

> **(a)** for which an employer is liable under this Act up to and including the date of distribution; and
>
> **(b)** for the payment of which the responsible representative is or can reasonably be expected to become liable in that capacity.

Personal liability

(4) If the responsible representative distributes to one or more persons property over which the responsible representative has control in that capacity, without obtaining the certificate, the responsible representative is personally liable for the payment of the amounts to the extent of the value of the property distributed and the Minister may assess the responsible representative for the amounts in the same manner and with the same effect as an assessment made under section 85.

Definition of *responsible representative*

(7) For the purposes of this section, *responsible representative* means a person, other than a trustee in bankruptcy, who is an assignee, liquidator, receiver, receiver-manager, administrator, executor, liquidator of the succession or any other like person administering, winding up, controlling or otherwise dealing with a property, business or estate of another person.

***Excise Tax Act*, R.S.C. 1985, c. E-15**

Certificate before distribution

81 (1) Every executor, liquidator of a succession, administrator, assignee, liquidator or other like person, other than a trustee in bankruptcy, shall, before distributing any assets under his control in that capacity, obtain a certificate from the Minister certifying that no tax, penalty, interest or other sum under this Act, other than Part I, chargeable against or payable by that person in that capacity or chargeable against or payable in respect of those assets, remains unpaid or that security for the payment thereof has, in accordance with section 80.1, been accepted by the Minister.

Personal liability

(2) Any person who distributes assets without a certificate as required by subsection (1) is personally liable to pay to Her Majesty an amount equal to the lesser of

> **(a)** the value of the assets so distributed, and
>
> **(b)** the amount of any tax, penalty, interest or other sum that remains unpaid and for the payment of which security has not been furnished to the Minister.

Definitions

270 (1) In this section,

receiver means a person who is a receiver within the meaning assigned by subsection 266(1); (séquestre)

representative means

> **(a)** a person, other than a trustee in bankruptcy or a receiver, who is administering, winding up, controlling or otherwise dealing with any property, business, commercial activity or estate of a registrant, and
>
> **(b)** a trustee of a trust that is a registrant. (représentant)

Certificates for receivers

(2) Every receiver shall, before distributing to any person any property or money under the control of the receiver in the receiver’s capacity as receiver, obtain a certificate from the Minister certifying that all amounts that are, or can reasonably be expected to become, payable or remittable under this Part by the receiver in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period, have been paid or that security for the payment or remittance of the amounts has, in accordance with this Part, been accepted by the Minister.

Certificates for representatives

(3) Every representative of a registrant shall, before distributing to any person any property or money under the control of the representative in the representative’s capacity as the representative, obtain a certificate from the Minister certifying that

(a) all amounts that are payable or remittable by the registrant under this Part in respect of the reporting period during which the distribution is made, or any previous reporting period, and

(b) all amounts that are, or can reasonably be expected to become, payable or remittable under this Part by the representative in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period,

have been paid or that security for the payment or remittance of the amounts has, in accordance with this Part, been accepted by the Minister.

Liability for failure to obtain certificate

(4) Any

(a) receiver who distributes property or money without obtaining a certificate as required by subsection (2) in respect of the amounts referred to in that subsection, or

(b) representative who distributes property or money without obtaining a certificate as required by subsection (3) in respect of the amounts referred to in that subsection

is personally liable for the payment or remittance of those amounts to the extent of the value of the property or money so distributed.

***Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)**

Certificate before distribution

159 (2) Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

Personal liability

(3) If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

> **(a)** the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;
>
> **(b)** the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and
>
> **(c)** the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

***Retail Sales Tax Act*, R.S.O. 1990, c. R.31**

Trust for money collected

22 (1) Any amount collected or collectable as or on account of tax under this Act by a vendor shall be deemed, despite any security interest in the amount so collected or collectable, to be held in trust for the Crown in right of Ontario and separate and apart from the vendor's property and from property held by any secured creditor that but for the security interest would be the vendor's property and shall be paid over by the vendor in the manner and at the time provided under this Act and the regulations.

Minister's certificate

(5) Every person who, as assignee, liquidator, administrator, receiver, receiver-manager, secured or unsecured creditor or agent of the creditor, trustee or other like person, other than a trustee appointed under the Bankruptcy and Insolvency Act (Canada), takes control or possession of the property of any vendor shall, before distributing such property or the proceeds from the realization thereof under that person's control, obtain from the Minister a certificate that the amount deemed by subsection (1) to be held in trust, including any interest and penalties payable by the vendor, has been paid or that security acceptable to the Minister has been given.

No distribution without Minister's certificate

(6) Any person described in subsection (5) who distributes any property described in that subsection or the proceeds of the realization thereof without having obtained the certificate required by that subsection is personally liable to the Crown in right of Ontario for an amount equal to the amount deemed by subsection (1) to be held in trust, including any interest and penalties payable by the vendor.

***Taxation Act, 2007*, S.O. 2007, c. 11, Sch. A**

Returns, payments and interest

117 (1) Subsections 70 (2) and 104 (2), paragraph 104 (23) (d), sections 158 and 159, subsections 160.1 (1), (3) and (4), 161 (1), (2), (2.2), (4), (4.01), (4.1), (5), (6), (6.1), (6.2), (7) and (11) and sections 161.2 and 161.3 of the Federal Act apply for the purposes of this Act.

MARSHALLZEHR GROUP INC. and **LA PUE INTERNATIONAL INC.**
Applicant Respondent

Court File No. CV-23-00700695-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE RECEIVER
(Returnable July 24, 2026)

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