

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

**RESPONDING MOTION RECORD OF CONCORD PROPERTIES  
DEVELOPMENTS CORP.**

**(Proposal Trustee Claim Process Motion, Returnable January 16, 2023)**

January 4, 2023

**BENNETT JONES LLP**

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Lawyers for Concord Properties Developments  
Corp.

TO: **THE SERVICE LIST**

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# **TAB 1**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

**AFFIDAVIT OF SARAH KARIM**

I, Sarah Karim, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a legal assistant with the law firm of Bennett Jones LLP, lawyers for the Proposal Sponsor, Concord Properties Developments Corp. As such, I have knowledge of the matters contained in this affidavit.
2. Attached to my affidavit as **Exhibit A** is correspondence between counsel to the parties dated December 2 to 14, 2022.
3. Attached to my affidavit as **Exhibit B** is the Aide Memoire of the Proposal Trustee dated December 20, 2022 for the case conference before Justice Kimmel held on December 21, 2022.
4. Attached to my affidavit as **Exhibit C** is the endorsement of Justice Kimmel from the case conference held on December 21, 2022.
5. Attached to my affidavit as **Exhibit D** is correspondence between counsel to the parties dated December 22 to 28, 2022.

6. Attached to my affidavit as **Exhibit E** is correspondence between Bennett Jones LLP and counsel to the Proposal Trustee dated December 29, 2022.

**SWORN** by videoconference at the City of Toronto, in the Province of Ontario, before me on January 3, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

**JASON M. BERALL**

\_\_\_\_\_  
SARAH KARIM

**TAB A**



This is Exhibit "A" referred to in the Affidavit of Sarah Karim sworn January 3, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

**JASON M. BERALL**

## Sarah Karim

---

**Subject:** FW: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

---

**From:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Sent:** Wednesday, December 14, 2022 6:19 PM  
**To:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>; Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

Matt,

We are not prepared to file a “brief” without knowing what issues it needs to address, what evidence needs to be filed and what the process will be.

By way of example, the process below seems to contemplate a potential valuation trial (which obviously implies some further evidence) but it is not clear what issues will be resolved before that trial is heard and what will be determined at trial.

In the circumstances, we should proceed to court and get clarity on process so everyone can know the rules. Let’s proceed as soon as possible.

---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Sent:** Wednesday, December 14, 2022 5:05 PM  
**To:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

Mark, thanks for your response. As you know, we cannot agree unilaterally to what evidence will be permitted following the process motion. That motion is required because of a fundamental disagreement between the stakeholders as to whether the appeal from KSV’s determination will be a true appeal, or an appeal de novo.

The most we can offer for KSV’s part is that if Ms. Athanasoulis submits a brief, it will be without prejudice to your ability to argue that she should be permitted to submit additional evidence in the future. I do not know whether the other stakeholders will make a similar concession.

Absent agreement on these issues I propose that we simply proceed with the motion and the Trustee will make the initial determination in the information and evidence available to it.

Yours very truly,

Matt

---

**From:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Sent:** December 14, 2022 3:18 PM  
**To:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>; Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

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We can provide a with prejudice brief by the end of next week. However, we require confirmation that we will have an opportunity to supplement the brief as necessary once the process is established. We are not prepared to submit a brief at this stage if others are going to take the position that the trustee will make its determination on the brief and that Ms. Athanasoulis will have no right to submit further evidence or argument.

---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Sent:** Wednesday, December 14, 2022 2:24 PM  
**To:** Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** Re: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

Thanks. Mark, can you do the same?

On Dec 14, 2022, at 11:08 AM, Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

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Assuming Ms. Athanasoulis does likewise, the LPs expect to get their brief to the trustee by the end of next week.

**Shaun Laubman** (he/him)  
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 Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

**Lax O'Sullivan Lissus Gottlieb LLP**  
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---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Sent:** December-12-22 5:49 PM  
**To:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

I agree that we should get in front of Justice Kimmel as soon as possible. When does everyone think they can get us "without prejudice" briefs, or are parties not willing to do so?

---

**From:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Sent:** December 12, 2022 12:53 PM  
**To:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

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We are writing further to the e-mail below. We appreciate that the Trustee has addressed some (but not all) of the concerns we have raised. It is also clear that there are outstanding disputes between the parties that will need to be resolved by the court, and we can hopefully use the time between now and the motion to narrow and clarify those disputes. In particular, and without limitation, the process below seems to contemplate a two stage process but it is not clear what issues will be addressed at what stage of the process.

In our view, the motion should be scheduled immediately so that we can get certainty on process and move this matter forward.

---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Sent:** Wednesday, December 7, 2022 5:19 PM  
**To:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

Without Prejudice

All,

Here is a revised process proposal based on feedback received.

### Steps Prior to Process Motion

1. LPs, Athanasoulis and Trustee to issue briefs “with prejudice” (whether based on their mediation briefs or otherwise as they see fit) as basis for Trustee’s determination. LPs and Athanasoulis may issue responding briefs at their discretion on an expedited schedule to be agreed between the parties. Please advise when you can deliver such briefs.

The Trustee would then bring a motion for directions before Justice Kimmel to determine the process. The Trustee will propose the following and the parties will have the opportunity to contest any portion of the Trustee’s recommendation. As per my previous email, please advise if you believe such a motion should be booked for more or less than two hours. We would like to book it as soon as possible.

### Process Motion Proposed Steps/Process

1. Trustee to issue Notice of Determination on Athanasoulis Claim (a draft may be provided in advance of the motion so that parties may take it into consideration on the motion). The Notice of Determination will not be shared with any party prior to issuance but a copy will be provided to counsel to the LPs and Concord when issued.
2. Notice of Determination to be based on full record to date in these proceedings, including the “with prejudice” briefs noted above, the materials filed and evidence given at the Phase One arbitration the decision of Mr. Horton, and any responses to direct information requests from the Trustee. It will address both the wrongful dismissal and profit share claims.
3. The Notice of Determination shall set out all of the grounds supporting the Trustee’s determination in sufficient detail to appropriately frame the issues for any appeal.
4. Notwithstanding the position of the LPs, the Trustee considers Mr. Horton’s decision to be binding in this proceeding, consistent with Justice Kimmel’s direction that it be the “factual predicate upon which the determination of [Ms Athanasoulis’] claim will proceed”. The LPs will have an opportunity to argue before Justice Kimmel that Mr. Horton’s decision is merely non-binding “inputs” to the extent it is germane to the process.
5. Athanasoulis to file any appeal pursuant to Section 135 of the BIA.
6. Athanasoulis appeal shall not be required at this time to adduce detailed evidence valuing and quantifying her profit share claim but may address any issues raised in Notice of Determination.
7. Justice Kimmel to decide appeal procedure (e.g., de novo vs true appeal) based on submissions from the parties.
8. LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
9. Athanasoulis entitled to full response to any materials filed by LPs in this regard.
10. The LPs shall not be entitled to raise issues relating to any counterclaim or set-off they may assert against Ms. Athanasoulis.
11. To the extent that the decision on appeal finds that a debt is owing and payable to Athanasoulis on her PSA, then a summary trial on the quantification of damages will be scheduled.

Yours very truly,

Matt

---

**From:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Sent:** December 7, 2022 11:59 AM  
**To:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com)  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

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We do not agree with either point advanced by the LPs, and believe that the second point was rejected by (or is at least inconsistent with) the decision of Justice Osborne relating to the CBRE claim. In any event, it is clear that there are matters that will require guidance from the court and I would suggest that we book a date as soon as possible so that we can all have certainty on the path forward.

---

**From:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>  
**Sent:** Wednesday, December 7, 2022 11:56 AM  
**To:** Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com)  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

Hi Matt,

With respect to the issues raised in Mark's November 21, 2022, letter:

1. Justice Kimmel held that the first phase of the arbitration resulted in inputs that the Proposal Trustee can take into account when it determines Ms. Athanasoulis' claim. The first phase of the arbitration is not binding on the Proposal Trustee.
2. The law regarding whether an appeal proceeds *de novo* is well established. Appeals should proceed as true appeals unless there has been an injustice that requires a hearing *de novo*. It is premature to draw a conclusion regarding whether a *de novo* appeal is necessary. Agreeing that any appeal should be *de novo* now, before any determination is made, is tantamount to conceding that the determination involves an injustice.

The evidence and arguments that the LPs intend to advance will be included in the briefs contemplated by the proposed procedure. We also confirm our position that the first phase of the arbitration does not bind the limited partners or address the issues that we raise in respect of Ms. Athanasoulis' claim.

Thanks,  
 Alex



Alexander Soutter | [ASoutter@tgf.ca](mailto:ASoutter@tgf.ca) | Direct Line +1 416-304-0595 | [www.tgf.ca](http://www.tgf.ca)

**From:** Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>  
**Sent:** Tuesday, December 6, 2022 2:37 PM  
**To:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com)  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

Alex – the letter referenced in our email is attached.

Thanks,

**Sarah Stothart**

(she/her)  
 Goodmans LLP

416.597.4200  
[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)  
[goodmans.ca](http://goodmans.ca)

---

**From:** Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Sent:** Tuesday, December 6, 2022 2:35 PM  
**To:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>; Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com)  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

We'll circulate a copy of our letter shortly.

---

**From:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>  
**Sent:** Tuesday, December 6, 2022 1:56 PM  
**To:** Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>; Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>  
**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

Good afternoon Matt,

We would like a copy of the letter referred to and highlighted below, please.

Alex

— Alexander Soutter | [ASoutter@tgf.ca](mailto:ASoutter@tgf.ca) | Direct Line +1 416-304-0595 | [www.tgf.ca](http://www.tgf.ca)

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---

**From:** Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>

**Sent:** Monday, December 5, 2022 6:33 PM

**To:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>

**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>

**Subject:** RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

Matt,

Thank you for your e-mail.

As a preliminary matter, we would like to understand when a determination will be made on Ms. Athanasoulis' employment claim. We have previously expressed our concerns about delays to valuing that claim, since other similar claims have already been allowed and paid. Ms. Athanasoulis' wrongful termination claim should not be delayed further.

With respect to the proposal for the resolution of the other aspects of her claim, we have the following questions.

First, we require the Trustee's confirmation that Phase One of the Arbitration remains binding on it and that the Trustee's determination will only address matters that were to be addressed in the second phase of the arbitration. We believe this should be stated explicitly in the proposed process.

Second, we would like to understand the Trustee's position on appeal procedure. Your e-mail does not address what procedure will be followed and what evidence will be used or allowed. This is obviously an important point, especially given the relatively short time contemplated to file material. It would be unfair if Ms. Athanasoulis was forced to file material within one week (as proposed) and then prevented from filing any additional material. We explained why we believe an appeal should proceed *de novo* in our letter. But even if the appeal does not proceed *de novo*, it is important to have clarity on the process at the outset.

Third, the Trustee seems to be proposing a phased process whereby some issues would be determined at an issue appeal and others would be reserved for a trial. It is not clear what issues are to be addressed in the first hearing, or what issues are likely to be deferred to a later date. You refer to "valuation" issues, but in our view everything is a valuation issue because liability has been established. Without presuming the result of the Trustee's determination, if, for example, the Trustee determined that Ms. Athanasoulis has no claim because there are no profits, then our response would involve (among other positions) both a "legal" argument regarding the appropriate test to assess damages as well as a factual "valuation" argument regarding the fact there are actual profits that were earned by YSL. We are not clear on how these issues can be divided between separate steps in the Trustee's proposed process.

Fourth, with respect to the LPs, we agree with the Trustee that the LPs have no standing to provide their "views" on Ms. Athanasoulis' claim (as referenced in Mr. Soutter's claim below). To the extent that the LPs have standing to raise issues, and seek to raise those issues, we suggest that a process be established for that as well. The first step in the process would be for the LPs to serve whatever material they intend to rely on in support of their motion. This has not yet occurred. Once it does, we can address an appropriate procedure for resolving the dispute with the LPs. We have previously explained why we do not believe that a procedure for addressing the LPs' allegations can or should be set until there is further clarity about those allegations.



To be clear, as it relates to the LPs, we object to the Trustee considering the LPs' allegations unless those allegations are substantiated by appropriate evidence. If the LPs were to make allegations similar to those made in their mediation brief or notice of motion without providing evidence, then those allegations should not be considered by the Trustee.

Thank you,

**Sarah Stothart**

(she/her)

Goodmans LLP

416.597.4200  
[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)

Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7  
[goodmans.ca](http://goodmans.ca)

---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>

**Sent:** Monday, December 5, 2022 10:27 AM

**To:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>

**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; [slaubman@lolg.ca](mailto:slaubman@lolg.ca); D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; [gruberd@bennettjones.com](mailto:gruberd@bennettjones.com); [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com); Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>

**Subject:** Re: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

Alex, to be clear the Trustee does not intend to refer to anything that was delivered on a "without prejudice" basis. The mediation materials referred to in paragraph two below would only be to the extent they were "re-filed" in accordance with Step One.

So we can start putting together a timeline, when do people think that they can deliver with prejudice briefs?

Matt

On Dec 5, 2022, at 9:44 AM, Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)> wrote:

External Email / Courriel externe

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Good morning,

We have the following comments regarding the process suggested below.

We can submit a brief to the Proposal Trustee regarding our views of Ms. Athanasoulis' claim within a reasonable amount of time. A one week turnaround for a responding brief might be unworkable if the holidays interfere, but we can respond as promptly as possible.

Nothing in this process should refer to or rely on what was served in connection with or said at the mediation. If the parties decide to recycle arguments or views into a new, with prejudice brief, that is different. It would not be appropriate for the Proposal

Trustee to base its decision on the without prejudice mediation or any part of it as is suggested in paragraph 2 of the proposed process.

The LPs do not agree that there are any restrictions on their right to challenge the Proposal Trustee's determination or make submissions on any issue raised on any other stakeholder's challenge of such decision. We do not consent to the limitations relating to such challenges identified in your email below. If any order is sought that restricts such rights we will oppose the relevant terms.

Alex

—

Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | Suite 3200, TD West Tower, 100 Wellington West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Version2020

**From:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

**Sent:** Friday, December 2, 2022 3:11 PM

**To:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

**Cc:** hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; mdunn@goodmans.ca; sstothart@goodmans.ca

**Subject:** Re: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031

Counsel, the Trustee wishes to address the process moving forward for determination of the Athanasoulis claim. The following is what we would propose.

#### Steps Prior to Process Motion

1. LPs, Athanasoulis and Trustee to issue mediation briefs "with prejudice" as basis for Trustee's determination. LPs and Athanasoulis may issue responding briefs at their discretion within approximately one week.

The Trustee would then bring a motion for directions before Justice Kimmel to determine the process, and propose the following:

#### Process Motion Proposed Steps/Process

1. Trustee to issue Notice of Determination on Athanasoulis Claim. The Notice of Determination will not be shared with any party prior to issuance

- but a copy will be provided to counsel to the LPs and Concord when issued.
2. Notice of Determination to be based on full record to date in these proceedings, the arbitration and the mediation plus any responses to direct information requests from the Trustee.
  3. The Notice of Determination shall set out all of the grounds supporting the Trustee's determination in sufficient detail to appropriately frame the issues for any appeal.
  4. Athanasoulis to file any appeal pursuant to Section 135 of the BIA.
  5. Athanasoulis appeal shall not be required to adduce detailed evidence valuing and quantifying her profit share claim but may address any issues raised in Notice of Determination.
  6. LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
  7. Athanasoulis entitled to full response to any materials filed by LPs in this regard.
  8. To the extent that the decision on appeal finds that a debt is owing and payable to Athanasoulis on her PSA, then a summary trial on quantification will be scheduled.

We are happy to consider any feedback before proceeding as indicated.

Yours very truly,

Matt

**Matthew Milne-Smith** (he, him)

T 416.863.5595

[mmilne-smith@dwpv.com](mailto:mmilne-smith@dwpv.com)

[Bio](#) | [vCard](#)

---

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DAVIES WARD PHILLIPS & VINEBERG LLP

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**TAB B**

This is Exhibit "B" referred to in the Affidavit of Sarah Karim sworn January 3, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

**JASON M. BERALL**

Court File No. BK-21-02734090-0031

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

**AIDE MEMOIRE OF THE PROPOSAL TRUSTEE,  
KSV RESTRUCTURING INC.**

**(Hearing before Justice Kimmel on December 21, 2022)**

December 20, 2022

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
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Lawyers for the Proposal Sponsor



1. The Proposal Trustee, KSV Restructuring Inc. (“**KSV**”), delivers this aide memoire in respect of an anticipated motion for directions concerning the process for the resolution of a claim by Maria Athanasoulis.
2. This dispute centres around a condominium development in downtown Toronto that was being developed by YSL Residences Inc. and YG Limited Partnership (together, “**YSL**”). Maria Athanasoulis submitted a proof of claim within this process. Ms. Athanasoulis made a claim for \$1 million (for what she characterizes as wrongful dismissal damages) and a claim for \$18 million (for what she characterizes as lost profits pursuant to an oral contract). Ms. Athanasoulis’s claim is the largest claim filed and has not been fully determined.
3. The Trustee agreed with Ms. Athanasoulis to arbitrate her claim. The arbitration was bifurcated between liability and damages. On March 28, 2022 the arbitrator Mr. Horton rendered a partial award in favour of Ms. Athanasoulis on the issue of liability.
4. Since that time the Trustee has been attempting to pursue the adjudication of the remaining issues relevant to Ms. Athanasoulis’ claim. Various stakeholders, including the Proposal Sponsor (Concord) and certain Limited Partners in YSL (the “**LPs**”), objected to further arbitration. On November 1, 2022, Your Honour rendered a decision finding, among other things, that the continuation of Phase 2 of the arbitration exceeded the Trustee’s authority under s. 135 of the *BIA* and directed the Trustee to develop an alternative method of resolving Ms. Athanasoulis’ Claim.

5. In the weeks since Your Honour's decision, the Trustee has consulted extensively with the Parties about the proper path forward. After considering input from all stakeholders, the Trustee has proposed the following:

- (a) The Proposal Trustee will distribute a draft Notice of Determination to the Service List in respect of the Athanasoulis Claim.
- (b) The Notice of Determination will be based on the record to date in these proceedings, including the materials filed and evidence given at the Phase 1 arbitration, the decision of Mr. Horton, and any responses to direct information requests from the Trustee. It rejects the profit share claim in full, and allows the wrongful dismissal claim in full.
- (c) The Trustee considers Mr. Horton's decision in Phase 1 of the arbitration to be binding in this proceeding, consistent with Justice Kimmel's direction in the Funding Decision that it be the "factual predicate upon which the determination of [Ms Athanasoulis'] claim will proceed".
- (d) Ms. Athanasoulis may file any appeal pursuant to s. 135 of the *BIA*.
- (e) Ms. Athanasoulis' appeal shall not be required to adduce detailed evidence valuing and quantifying her profit share claim, but may address any issues raised in the Notice of Determination.
- (f) The LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
- (g) Ms. Athanasoulis will be entitled to make a full response to any materials filed by the LPs in this regard.
- (h) The LPs shall not be entitled to raise issues relating to any counterclaim or set-off that they may assert against Ms. Athanasoulis.
- (i) To the extent that the decision on appeal finds that a debt is owing and payable to Ms. Athanasoulis on her profit share agreement, then a summary trial on the quantification of damages will be scheduled.

6. The foregoing proposal represents a compromise among the various competing views advanced by the LPs and Ms. Athanasoulis. However, neither side accepts the Trustee's proposal. The Trustee therefore intends to bring a motion for directions to seek

court authorization for the appropriate process. The Trustee was directed to attend this case conference in order to obtain a date for the motion.

7. To the Trustee's knowledge, all parties agree that a court order is appropriate to fix the process for resolution of the Athanasoulis Claim.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20th day of December, 2022.



---

**Davies Ward Phillips & Vineberg LLP**  
Counsel for the Proposal Trustee,  
KSV Restructuring Inc.

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-21-02734090-0031

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT  
TORONTO**

**AIDE MEMOIRE OF THE PROPOSAL  
TRUSTEE, KSV RESTRUCTURING INC.**

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Tel: 416.367.7623

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Tel: 416.863.0900

Fax: 416.863.0871

Lawyers for the Proposal Trustee,  
KSV Restructuring Inc.

**TAB C**

This is Exhibit "C" referred to in the Affidavit of Sarah Karim sworn January 3, 2023.



---

*Commissioner for Taking Affidavits (or as may be)*

**JASON M. BERALL**



## SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENTCOURT FILE NO.: BK-21-02734090-0031 DATE: 21 December 2022NO. ON LIST: 2TITLE OF PROCEEDING: YSL RESIDENCES INC., et alBEFORE JUSTICE: MADAM JUSTICE KIMMEL**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
MATTHEW MILNE-SMITH ( <i>counsel</i> )	KSV Restructuring Inc. ( <i>Trustee</i> )	Mmilne-smith@dwpv.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
HARRY FOGUL ( <i>counsel</i> )	YSL Limited Partnership, YG Limited Partner, YSL Residences Inc. ( <i>Debtor</i> )	hfogul@airdberlis.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
ALEXANDER SOUTTER ( <i>counsel</i> )	Limited Partners	asouter@tgf.ca
JESSE MIGHTON ( <i>counsel</i> )	Concord Pacific ( <i>Proposal Sponsor</i> )	mightonj@bennettjones.com
MARK DUNN ( <i>counsel</i> )	Maria Athanasoulis	mdunn@goodmans.ca
SHAUN LAUBMAN ( <i>counsel</i> )	Limited Partners, 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc.	slaubman@lolg.ca

---

**ENDORSEMENT OF JUSTICE KIMMEL:**

1. My November 1, 2022 endorsement in this matter contemplated that there would be a procedure put in place by the Proposal Trustee to finally determine the claim filed by Maria Athanasoulis. The parties with an economic interest in this determination, Ms. Athanasoulis and the Limited Partners, do not agree on the procedure, nor have they accepted the compromise procedure that the Proposal Trustee has suggested.
2. The Proposal Trustee thus seeks to schedule a motion for directions from the court in respect of the proposed procedure that it suggests, in the context of which the interested stakeholders will be given the opportunity to put forward their respective positions.
3. The parties agree that a half-day will be sufficient time for this motion and it has been scheduled to be heard on January 16, 2023.
4. The parties who are participating in this motion shall work out a timetable for the exchange of all materials to be relied upon for this motion. That schedule shall ensure that all materials have been served, filed and uploaded onto CaseLines by no later than noon on Friday January 13, 2023.

A handwritten signature in black ink that reads "Kimmel J." with a stylized, cursive script.

KIMMEL J.



**TAB D**

This is Exhibit "D" referred to in the Affidavit of Sarah Karim sworn January 3, 2023.



---

*Commissioner for Taking Affidavits (or as may be)*

**JASON M. BERALL**

## Sarah Karim

---

**Subject:** FW: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454] [BJ-WSLegal.FID5464265]

---

**From:** Stothart, Sarah <[sstothart@goodmans.ca](mailto:ssothart@goodmans.ca)>  
**Sent:** Wednesday, December 28, 2022 10:20 PM  
**To:** Milne-Smith, Matthew <[MMilne-Smith@dwvp.com](mailto:MMilne-Smith@dwvp.com)>; Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliaroland.com](mailto:daniel.rosenbluth@paliaroland.com); Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Schwill, Robin <[rschwill@dwvp.com](mailto:rschwill@dwvp.com)>; Li, Chenyang <[CLi@dwvp.com](mailto:CLi@dwvp.com)>  
**Subject:** RE: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

If the Trustee does not intend to deliver a factum, then the respondents probably don't need 10 days in between delivery of their motion records and facta. Could we instead suggest January 4<sup>th</sup> for the responding records, to give the parties an extra day after the holidays? Then we are fine with Shaun's suggested January 13<sup>th</sup> date for responding facta, but would also be open to January 11<sup>th</sup> or 12<sup>th</sup> to allow time for any reply factum from the Trustee.

---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwvp.com](mailto:MMilne-Smith@dwvp.com)>  
**Sent:** Tuesday, December 27, 2022 1:24 PM  
**To:** Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliaroland.com](mailto:daniel.rosenbluth@paliaroland.com); Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Dunn, Mark <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[ssothart@goodmans.ca](mailto:ssothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwvp.com](mailto:rschwill@dwvp.com)>; Li, Chenyang <[CLi@dwvp.com](mailto:CLi@dwvp.com)>  
**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun, I don't expect to do a factum. Whatever we need to say will be in the report. Perhaps we will do a reply. We hope to have the report to you this week.

On Dec 27, 2022, at 12:02 PM, Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

**External Email / Courriel externe**

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Thank you Matt and I hope your holiday break is going well.

We can make that work. Will the trustee also be delivering a factum and if so, can it do so by the 6<sup>th</sup>? For the other respondents, can we agree on Jan. 3<sup>rd</sup> for any responding records and Jan. 13<sup>th</sup> for any responding factums?

**Shaun Laubman** (he/him)  
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 Cell 416 315 4122  
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**Lax O'Sullivan Lissu Gottlieb LLP**



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**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Sent:** December-23-22 2:35 PM  
**To:** Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com); Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn (<[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>) <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** RE: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun, I disagree that there was any substantive difference.

What if we deliver the draft Notice of Determination by the 30<sup>th</sup> and the Report by the 4<sup>th</sup>? I don't have instructions but will seek them if this is acceptable. There won't be any surprises in either document. You all can prepare your materials concurrently.

---

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**Sent:** December 23, 2022 10:55 AM  
**To:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com); Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn (<[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>) <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
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The proposal set out in the NOM and case conference brief was not the same as what we had previously seen. As I said, I don't want to belabour the issue now but would like to know the timeline so we can build a schedule.

Thanks,

**Shaun Laubman** (he/him)  
 Direct 416 360 8481  
 Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

**Lax O'Sullivan Lisus Gottlieb LLP**  
 Suite 2750, 145 King St W  
 Toronto ON M5H 1J8 Canada

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[www.lolg.ca](http://www.lolg.ca)

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**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun, you have had our proposal for some time and it is repeated in our NoM. I am honestly not sure what you are unclear about with respect to our position.

On Dec 23, 2022, at 10:47 AM, Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

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Matt,

In fairness, I think we need to know the trustee's position in order to respond. While I don't particularly want to belabour the point right now, there have been a number of surprises throughout the process including over the past few months. We simply want to avoid being a position where we're hearing something for the first time from the trustee after we've responded to what we anticipate to be its position. Perhaps you can fix the date when we will get the trustee's material and clarify whether it will be a report, a factum or both and then we can build out the schedule from there? If the position will simply be what is set out in the notice of motion then we can likely prepare and deliver responding records but the balance of the schedule turns on when we will get the trustee's material.

Thanks,

**Shaun Laubman** (he/him)  
 Direct 416 360 8481  
 Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

**Lax O'Sullivan Lisus Gottlieb LLP**  
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**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun,

As I indicated at the case conference, the Trustee's report will not be delivered over the holidays but will await the new year. There will be nothing new or surprising in there and you can prepare your motion records regardless.

Matt

On Dec 23, 2022, at 9:28 AM, Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

**External Email / Courriel externe**

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Thanks Matt.

The LPs propose the following schedule to get to the motion on the 16<sup>th</sup>:

1. Trustee to file any record or report by December 28th
2. Responding records by January 3<sup>rd</sup>
3. Trustee factum (if any) by Jan. 6<sup>th</sup>
4. Responding factums by morning of Jan. 13<sup>th</sup>

**Shaun Laubman** (he/him)  
 Direct 416 360 8481  
 Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

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**Sent:** December-22-22 5:55 PM  
**To:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [Daniel.Rosenbluth@paliareroland.com](mailto:Daniel.Rosenbluth@paliareroland.com);  
Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>; Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>;  
Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>;  
Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber  
<[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn ([mdunn@goodmans.ca](mailto:mdunn@goodmans.ca))  
<[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>  
**Cc:** Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang  
<[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** TRUSTEE - Notice of Motion re Process

Counsel,

Please find attached the Trustee's Notice of Motion for Directions, as promised. This will be filed in due course.

Best wishes to all for the holiday season.

Matt

**Matthew Milne-Smith** (he, him)  
T 416.863.5595  
[mmilne-smith@dwpv.com](mailto:mmilne-smith@dwpv.com)  
[Bio](#) | [vCard](#)

---

## DAVIES

155 Wellington Street West  
Toronto, ON M5V 3J7  
[dwpv.com](http://dwpv.com)

DAVIES WARD PHILLIPS & VINEBERG LLP

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# **T A B L E**



This is Exhibit "E" referred to in the Affidavit of Sarah Karim sworn January 3, 2023.



---

*Commissioner for Taking Affidavits (or as may be)*

**JASON M. BERALL**

**Sarah Karim**

---

**From:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>  
**Sent:** Thursday, December 29, 2022 9:38 AM  
**To:** Jesse Mighton  
**Cc:** Schwill, Robin; Li, Chenyang; Jason Berall; David Gruber  
**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454] [BJ-WSLegal.FID5464265]

You can certainly argue that to Kimmel J. We aren't boxed into anything—the whole point of the motion is that nothing is done until Kimmel provides directions.

On Dec 29, 2022, at 7:23 AM, Jesse Mighton <MightonJ@bennettjones.com> wrote:

**External Email / Courriel externe**

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Good morning Matt,

Respectfully, I don't think your materials are clear on this point. For example, while the Aide Memoire did indicate the Proposal Trustee will distribute a draft NOD, the proposed process laid out in the Notice of Motion provides as a first step that the Proposal Trustee will "issue a Notice of Determination substantially in the form" of the draft to be attached to your report, then moves on to appeal considerations without dealing with issuing a non-draft NOD. It's actually less clear to me after your response below where in the process the Proposal Trustee proposes to issue a non-draft NOD.

From Concord's perspective, what is missing from the process proposed in the Notice of Motion are steps between the service of the draft NOD where (i) Maria and the LPs can submit any final evidence they intend to rely on upon appeal, based on the reasons for determination set out in the draft NOD, (ii) the Proposal Trustee can consider this additional evidence, and (iii) a final binding NOD is issued, thus kicking off the appeal phase. Having regard to the proposed process set out in paragraph 17 of your Notice of Motion, I envision these steps would be after step (a) (service of draft NOD), and before (b) (which I am interpreting to refer to the issuance of a final NOD, prior to appeal).

Without these steps, the Proposal Trustee may be boxing itself into a process that is more susceptible to an appeal de novo determination than what we are proposing. We are aligned on wanting the most streamlined process possible that results in an expeditious full and final resolution of Athanasoulis' claim, but in our view that process needs to avoid an appeal de novo.

**Jesse Mighton**, *Partner*, Bennett Jones LLP  
 T. 416 777 6255 | F. 416 863 1716

---

**From:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>  
**Sent:** Thursday, December 29, 2022 12:37 AM  
**To:** Jesse Mighton <MightonJ@bennettjones.com>  
**Cc:** Schwill, Robin <rschwill@dwpv.com>; Li, Chenyang <CLi@dwpv.com>; Jason Berall <BerallJ@bennettjones.com>; David Gruber <GruberD@bennettjones.com>  
**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454] [BJ-WSLegal.FID5464265]

Jesse,

As we have stated explicitly, both in our consultations in November and in our notice of motion, our intention is to deliver a \*draft\* notice of determination as part of our record, but to explicitly \*not\* render a notice until the process has been resolved.

The issue of “with prejudice” briefs has fallen away. The LPs and Maria have failed to agree on their use.

The issue of what constitutes a “full evidentiary record” is highly complex. For Maria to make out her full case she will need to lead expert valuation evidence. It seems highly wasteful for her (and responding parties) to devote resources to that when the claim is going to be denied on other grounds.

The parties have been given every opportunity to file briefs. Indeed, the LPs have done so. Maria is not willing to do so until she knows what the appeal will look like. Hence our impasse.

I frankly don't see the point of a call. There is nothing that each of Concord, the LPs, and Maria will agree to. That's why we have a motion. We are trying to streamline this as much as possible and limit our role. Kimmel can decide what should happen pre-determination, and what the appeal will look like. I think we should just deliver our report with the \*draft\* notice of determination and then let the stakeholders go to war over process, both pre- and post-determination.

Matt

On Dec 28, 2022, at 6:30 PM, Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)> wrote:

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Matt,

We have removed the other parties from this email. We had understood that the purpose of the January 16 motion, as set out in Justice Kimmel's December 21, 2022 endorsement, was to set the procedure for the determination of Maria's claim. Based on your notice of motion and recent correspondence, we understand the trustee's intention is now to determine the claim in advance of the process motion, and without the benefit of the 'with prejudice' briefs that the trustee had requested in its originally-proposed process, and to ask instead for Justice Kimmel's guidance regarding the appeal process only.

Concord is concerned that proceeding in this manner (i.e. without a full evidentiary record) will increase the risk of an appeal de novo, which will increase the costs of these proceedings and lead to further delay. To reduce that risk, Concord believes that the parties must be given the opportunity to file briefs containing any evidence intended to be relief on at appeal before the trustee issues its notice of determination. Doing so would be consistent with the claim determination process you had proposed in advance of the case conference (prior to the submission of your Aide Memoire, which pivoted the process to its current conception), and Concord would support that approach.

With respect to appeal process, Concord's position is that it is premature to decide that issue before knowing the basis upon which the trustee determines the claim. That said, following the process set out above should result in any appeal being a true appeal and not an appeal de novo.

Let's discuss on a call tomorrow morning, before you issue the notice of determination, to ensure we have alignment on the process. Let me know if 10am works for you.

Thanks

**Jesse Mighton**, *Partner*, Bennett Jones LLP  
T. 416 777 6255 | F. 416 863 1716

---

**From:** Milne-Smith, Matthew <[MMilne-Smith@dwvp.com](mailto:MMilne-Smith@dwvp.com)>  
**Sent:** Tuesday, December 27, 2022 1:24 PM  
**To:** Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliarerland.com](mailto:daniel.rosenbluth@paliarerland.com); Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn ([mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)) <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:ssothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwvp.com](mailto:rschwill@dwvp.com)>; Li, Chenyang <[CLi@dwvp.com](mailto:CLi@dwvp.com)>  
**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun, I don't expect to do a factum. Whatever we need to say will be in the report. Perhaps we will do a reply. We hope to have the report to you this week.

On Dec 27, 2022, at 12:02 PM, Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

**External Email / Courriel externe**

Thank you Matt and I hope your holiday break is going well.

We can make that work. Will the trustee also be delivering a factum and if so, can it do so by the 6<sup>th</sup>? For the other respondents, can we agree on Jan. 3<sup>rd</sup> for any responding records and Jan. 13<sup>th</sup> for any responding factums?

**Shaun Laubman** (he/him)  
Direct 416 360 8481  
Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

**Lax O'Sullivan Lissus Gottlieb LLP**  
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Shaun, I disagree that there was any substantive difference.

What if we deliver the draft Notice of Determination by the 30<sup>th</sup> and the Report by the 4<sup>th</sup>? I don't have instructions but will seek them if this is acceptable. There won't be any surprises in either document. You all can prepare your materials concurrently.

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 Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn ([mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)) <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
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Thanks,

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**Shaun Laubman** (he/him)

Direct 416 360 8481  
 Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

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**To:** Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com);  
 Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn ([mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)) <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>; Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun, you have had our proposal for some time and it is repeated in our NoM. I am honestly not sure what you are unclear about with respect to our position.

On Dec 23, 2022, at 10:47 AM, Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

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Matt,

In fairness, I think we need to know the trustee's position in order to respond. While I don't particularly want to belabour the point right now, there have been a number of surprises throughout the process including over the past few months. We simply want to avoid being a position where we're hearing something for the first time from the trustee after we've responded to what we anticipate to be its position. Perhaps you can fix the date when we will get the trustee's material and clarify whether it will be a report, a factum or both and then we can build out the schedule from there? If the position will simply be what is set out in the notice of motion then we can likely prepare and deliver

responding records but the balance of the schedule turns on when we will get the trustee's material.

Thanks,

**Shaun Laubman** (he/him)  
Direct 416 360 8481  
Cell 416 315 4122  
[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

**Lax O'Sullivan Lissus Gottlieb LLP**

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**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>  
**Sent:** December-23-22 10:35 AM  
**To:** Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>  
**Cc:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com); Crystal Li <[cli@lolg.ca](mailto:cli@lolg.ca)>; Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Jesse Mighton <[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)>; David Gruber <[GruberD@bennettjones.com](mailto:GruberD@bennettjones.com)>; Mark Dunn (<[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)> <[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)>); Stothart, Sarah <[sstothart@goodmans.ca](mailto:sstothart@goodmans.ca)>; Schwill, Robin <[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang <[CLi@dwpv.com](mailto:CLi@dwpv.com)>  
**Subject:** Re: TRUSTEE - Notice of Motion re Process [LOLG-DMS.FID106454]

Shaun,

As I indicated at the case conference, the Trustee's report will not be delivered over the holidays but will await the new year. There will be nothing new or surprising in there and you can prepare your motion records regardless.

Matt

On Dec 23, 2022, at 9:28 AM,  
Shaun Laubman  
<[slaubman@lolg.ca](mailto:slaubman@lolg.ca)> wrote:

External Email / Courriel externe

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Thanks Matt.

The LPs propose the following schedule to get to the motion on the 16<sup>th</sup>:

1. Trustee to file any record or report by December 28th
2. Responding records by January 3<sup>rd</sup>
3. Trustee factum (if any) by Jan. 6<sup>th</sup>
4. Responding factums by morning of Jan. 13<sup>th</sup>

**Shaun Laubman** (he/him)

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Cell 416 315 4122

[slaubman@lolg.ca](mailto:slaubman@lolg.ca)

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**From:** Milne-Smith, Matthew <[MMilne-Smith@dwpv.com](mailto:MMilne-Smith@dwpv.com)>

**Sent:** December-22-22 5:55 PM

**To:** [hfogul@airdberlis.com](mailto:hfogul@airdberlis.com);  
[Daniel.Rosenbluth@paliarerland.com](mailto:Daniel.Rosenbluth@paliarerland.com);  
 Shaun Laubman <[slaubman@lolg.ca](mailto:slaubman@lolg.ca)>;  
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**Cc:** Schwill, Robin

<[rschwill@dwpv.com](mailto:rschwill@dwpv.com)>; Li, Chenyang  
 <[CLi@dwpv.com](mailto:CLi@dwpv.com)>

**Subject:** TRUSTEE - Notice of Motion re Process



Counsel,

Please find attached the Trustee's Notice of Motion for Directions, as promised. This will be filed in due course.

Best wishes to all for the holiday season.

Matt

**Matthew Milne-Smith** (he, him)

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[mmilne-smith@dwpv.com](mailto:mmilne-smith@dwpv.com)

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IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-21-02734090-0031

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

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Lawyers for Concord Properties Developments Corp.

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.  
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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**RESPONDING MOTION RECORD OF CONCORD  
PROPERTIES DEVELOPMENTS CORP.  
(Proposal Trustee Claim Process Motion,  
Returnable January 16, 2023)**

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