



## Participant Information Form

This form is to be used:

- in place of previous 'counsel slips', and
- for all hearings using the CaseLines document sharing platform. For these hearings, parties or their representatives are to complete the form and upload it into the CaseLines event folder/bundle.

Where possible, the moving party for the event should coordinate with other parties to complete one form for the hearing. In criminal matters, each party may prepare their own form.

This form must be saved using the court's document naming convention (e.g. Participant Information – All Parties – 01-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

### CASE AND EVENT INFORMATION

<b>Court File Number</b>	CV-22-00692309-00CL
<b>Court Location (e.g. <i>Hamilton</i>)</b>	Toronto
<b>Case Name</b>	Price Water House Coopers Inc. Et Al V. Skymark Finance Corporation Et Al
<b>Type of Hearing</b>	Motion on notice
<b>Date of Hearing</b>	06-MAR-2023

### PARTICIPANT INFORMATION

**For Plaintiff, Applicant, Moving Party, Crown:**

<b>Name of Person Appearing</b>  (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	<b>Name of Party</b>	<b>Phone Number<sup>1</sup></b>	<b>Email Address</b>
Adam Driedger	Pricewaterhousecoopers Inc.		adriedger@tgf.ca

<sup>1</sup> Please provide a phone number where you can be reached during the virtual/hybrid hearing, if necessary.

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

<b>Name of Person Appearing</b> (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Shaun Laubman	Skymark Finance Corporation Et Al		slaubman@lolg.ca
David Ionis	Skymark Finance Corporation Et Al		dionis@lolg.ca

**For Other:**

<b>Name of Person Appearing</b> (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	<b>Name of Party / Organization</b>	<b>Phone Number</b>	<b>Email Address</b>
Raj Sahni	7539088 Canada Inc. Et Al		sahnir@bennettjones.com
Nathan Shaheen	7539088 Canada Inc. And 1989474 Ontario Inc.		shaheenn@bennettjones.com
Dylan Chochla	Alvarez & Marsal		dchochla@fasken.com
Greg Karpel	Alvarez & Marsal		gkarpel@alvarezandmarsal.com

This is an application by PwC, in its capacity as court-appointed receiver and manager of Bridging Finance Inc., to appoint Alvarez & Marsal Canada Inc. (A&M) as receiver and manager of the assets, undertakings, and properties of each of Skymark Finance Corporation and Merk Investments Ltd. The application is brought under s. 243(1) of the

*Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*. Proper demand has been made, the statutory 10-day notice period has expired, and the respondents have failed to repay in full their respective obligations. The loans to the respondents are in default and past maturity. The applicant has a contractual right under the applicable loan and security documents to appoint a receiver over each of the respondents. Further, the respondents do not oppose this application or the terms of the proposed receivership order. No other party opposes the appointment either.

The fact that a secured creditor has a right under its security documentation to appoint a receiver is of central importance. In cases where the security documentation provides for the appointment of a receiver (as in the present case), the analysis is focused on a consideration of whether it is in the interests of all concerned to have the receiver appointed by the court. As noted by Morawetz J. (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

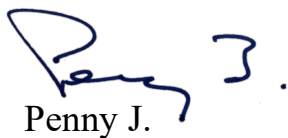
It is not necessary for a creditor whose security documentation provides for the appointment of a receiver to demonstrate that it will suffer irreparable harm if the appointment is not granted by the court.

I am satisfied that it is just and convenient to appoint the Receiver in the circumstances.

The respondents failed to repay their respective obligations to the lender upon demand. The books and records of Bridging and the financial reporting provided to Bridging indicate that Skymark is unable to satisfy its indebtedness to the lender and other creditors and is insolvent. The lender's security position is deteriorating as a result of the failure by Skymark to apply certain payments from consumer borrowers in reduction of the loans and through the failure to pay HST when due. In the circumstances, PwC has lost confidence in the respondents' management and does not support any continuation of the status quo, which may further erode the lender's security position and jeopardize recoveries for Bridging's investors and other stakeholders.

A&M has consented to act as Receiver, subject to obtaining a Receivership Order on terms that are satisfactory to A&M.

Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read 'Penny J.' with a stylized flourish at the end.

Penny J.