

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**PRICEWATERHOUSECOOPERS INC.**

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and  
certain related entities and investment funds)

Applicant

- and -

**2305145 ONTARIO INC. and MERK INVESTMENTS LTD.**

Respondents

**FACTUM OF THE 230 RECEIVER  
(Interim Distribution, VTBN Assignment, and Ancillary Relief)**

December 17, 2024

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## PART I - OVERVIEW<sup>1</sup>

1. This factum is filed by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the court-appointed receiver and manager (in such capacity, the “**230 Receiver**”) without security, of all of the assets, undertakings, and properties (the “**Property**”) of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) (“**230 Ontario**”) and Merk Investments Ltd. (together with 230, the “**Companies**”), in support of the motion seeking an order, among other things (the “**Interim Distribution and VTBN Assignment Approval Order**”):

- (a) authorizing and approving an assignment, assumption and consent agreement dated as of December 10, 2024 (the “**VTBN Assignment Agreement**”) between, among others, the 230 Receiver for and on behalf of 230 Ontario, as assignor, and PricewaterhouseCoopers Inc. in its capacity as the court-appointed receiver and manager (in such capacity, the “**Bridging Receiver**”) of Bridging Finance Inc. and certain related entities and investment funds (collectively, “**Bridging**”), as assignee, and approving the assignment of the Assigned Agreements and the Reserve Funds and the reduction of the 230 Indebtedness (as defined below) as contemplated therein;
- (b) authorizing and directing the 230 Receiver to make the Interim Distribution (as defined below) to the Bridging Receiver, or as the Bridging Receiver may otherwise direct the 230 Receiver in writing, and approving the Holdback (as defined below);

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings given to them in the fifth report of the 230 Receiver dated December 10, 2024 (the “**Fifth Report**”), Motion Record of the 230 Receiver dated December 10, 2024 (“**MR**”), Tab 2.

- (c) approving the Fifth Report and the conduct and activities of the 230 Receiver described therein;
- (d) approving the 230 Receiver's statement of receipts and disbursements for the period from March 6, 2023 to November 30, 2024, as set out in the Fifth Report;
- (e) approving the fees and disbursements of the 230 Receiver and its counsel as set out in the Karpel Affidavit and the Stephenson Affidavit attached as Appendices "C" and "D" to the Fifth Report, respectively;
- (f) abridging and validating the time for service of the Notice of Motion and the Motion Record, and dispensing with further service thereof; and
- (g) such further and other relief as this Court may deem just.

2. The 230 Receiver respectfully submits that the Interim Distribution and VTBN Assignment should be approved by this Court on the following grounds:

- (a) The 230 Receiver sold the Consumer Portfolio in a court-approved sale transaction earlier in these Proceedings. The Vendor Take-Back Note or VTBN (as defined below) issued in connection with that sale requires the Purchaser of the Consumer Portfolio to remit monthly payments to the 230 Receiver until late-2027;
- (b) Bridging is the senior secured lender of 230 Ontario and is owed more than \$64 million. Given the size and nature of Bridging's claim against 230 Ontario, the economic interest in the VTBN ultimately resides with the Bridging Receiver;

- (c) Considering the length of the VTBN term and certain recent legislative changes, the VTBN Assignment (which calls for the assignment of the 230 Receiver's interest in the VTBN to the Bridging Receiver) is necessary to: (i) mitigate potential duplication of efforts and costs as between the 230 Receiver and the Bridging Receiver in administering the remaining term of the VTBN and collecting the remaining payments owing thereunder, and (ii) permit the 230 Receiver to seek its discharge in the ordinary course, subject to its completion of the remaining work in these Proceedings;
- (d) The VTBN Assignment is expected to achieve costs savings which will ultimately benefit the stakeholders of 230 Ontario and those of Bridging;
- (e) All relevant parties - the 230 Receiver, the Bridging Receiver, the Purchaser, and the Pledgor (as defined in the VTBN Assignment Agreement) - agree and consent to the VTBN Assignment and support the relief sought in this motion;
- (f) The proposed Interim Distribution (which calls for a cash distribution to the Bridging Receiver of up to \$6.9 million) is reasonable and appropriate and accurately reflects the nature and priority of Bridging's secured claim against 230 Ontario;
- (g) The 230 Receiver's legal counsel, Fasken, has issued an opinion confirming the validity, enforceability, and perfection of Bridging's security interest in respect of 230 Ontario;

- (h) There are no third-party registrations against 230 Ontario under the Ontario *Personal Property Security Act* (“**OPPSA**”), and the 230 Receiver is not aware of any claims that might rank in priority to the claim of the Bridging Receiver (except for certain, limited Priority Claims which will be addressed by the Holdback); and
- (i) The Holdback amount is appropriate and sufficient to address any claims that rank in priority to 230 Ontario’s secured obligations to Bridging and certain other amounts expected to be incurred to complete the administration of these Proceedings or required to be held in reserve to address potential post-filing claims.

3. The 230 Receiver also seeks certain customary relief on this motion, including: the approval of the statement of receipts and disbursements, approval of the Fifth Report and the activities described therein, and approval of its professional fees and disbursements and those of its legal counsel, Fasken. The 230 Receiver submits that this relief is reasonable and appropriate in the circumstances and ought to be granted.

4. As of the date hereof, the 230 Receiver is not aware of any opposition to this motion.

## **PART II - SUMMARY OF FACTS**

5. The relevant facts are set forth in detail in the Fifth Report at Tab 2 of the Motion Record and are only briefly summarized herein.

***Background***

6. Pursuant to an order dated March 6, 2023 (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), A&M was appointed as the 230 Receiver.

**Fifth Report, s. 1.2, MR, Tab 2.**

7. Before these Proceedings, the primary business of 230 Ontario was providing financing and leasing to consumer borrowers for home renovations, water systems, HVAC systems, and smart home improvements. The portfolio of these loans and leases made to consumer borrowers made up the Consumer Portfolio, 230 Ontario’s primary asset.

8. On September 26, 2023, this Court issued the Approval and Vesting Order, among other things, authorizing and approving an asset purchase agreement dated as of August 23, 2023 between 5051802 Ontario Inc. (the “**Purchaser**”) as purchaser, and the 230 Receiver for and on behalf of 230 Ontario, as vendor (the “**Purchase Agreement**”) and the sale of the Consumer Portfolio and certain related assets to the Purchaser as contemplated therein. The Sale Transaction contemplated in the Purchase Agreement closed on September 29, 2023.

**Fifth Report, s. 1.6, MR, Tab 2.**

9. Pursuant to the terms of the Purchase Agreement, the Purchaser acquired the Consumer Portfolio in exchange for an interest-free promissory note (the “**Vendor Take-Back Note**” or “**VTBN**”) with payment terms over a forty-eight (48) month term ending on September 29, 2027.

**The Purchase Agreement and the form of VTBN attached as Schedule “G” thereto were filed as part of the Brief of Confidential Appendices to the Second Report of the 230 Receiver dated September 15, 2023 (the “Confidential Brief”). The unredacted versions of these documents (which disclose pricing information) remain under seal because, in the event of a default under the VTBN following the**

assignment, the Bridging Receiver may need to seize and re-market the purchased assets. The 230 Receiver will file a courtesy copy of the Confidential Brief directly with Justice Steele, for reference on this motion.

10. Also pursuant to the terms of the Purchase Agreement, the 230 Receiver and the Purchaser executed the GSA and certain other agreements in connection with the Purchase Agreement and VTBN (collectively, the “**Assigned Agreements**”), and the 230 Receiver opened a segregated, interest-bearing trust account (the “**Reserve Bank Account**”) for the purpose of the Reserve (as defined in the Purchase Agreement), all of which the 230 Receiver seeks to assign to the Bridging Receiver on this motion. The Reserve Bank Account balance as at November 30, 2024 was \$293,233.22 (the “**Reserve Funds**”).

***Proposed VTBN Assignment***

11. Since the Sale Transaction closed, the Purchaser has administered the Consumer Portfolio and made monthly payments to the 230 Receiver pursuant to the VTBN. However, largely due to legislative changes in the consumer financing space, time spent by both the 230 Receiver and the Bridging Receiver in administering the VTBN, collecting payments, and negotiating potential changes to the agreement with the Purchaser has increased substantially, resulting in an increase in costs incurred by each of them in the administration of their respective estates.

**Fifth Report, s. 4.4, MR, Tab 2.**

12. To reduce costs and mitigate potential duplication of efforts and given that: (a) the economic interest in the VTBN ultimately resides with the Bridging Receiver; and (b) a significant length of time remains on the term of the VTBN, the 230 Receiver and the Bridging Receiver have agreed that assigning the 230 Receiver’s interest in the Purchase Agreement, the VTBN, and other

Assigned Agreements (collectively, the “**VTBN Assignment**”) to the Bridging Receiver is prudent and makes good economic sense.

13. In addition to the assignment of the Assigned Agreements, the VTBN Assignment Agreement also contemplates: (a) the assignment to the Bridging Receiver of the Reserve Funds which are presently held by the 230 Receiver pursuant to the Purchase Agreement; (b) the release of certain claims relating to the Assigned Agreements by the Purchaser and the Bridging Receiver as against 230 Ontario, the 230 Receiver, and A&M, as applicable; and (c) the indemnification of the 230 Receiver and A&M by the Bridging Receiver in respect of certain liabilities relating to, among other things, the Bridging Receiver’s ownership and interest in the Assigned Agreements after the Effective Time (as defined in the VTBN Assignment Agreement).

**Fifth Report, s. 4.6, MR, Tab 2.**

14. The proposed releases and indemnity do not involve the release of any third parties and include only customary releases which affect the parties to the agreement, all of whom are sophisticated parties represented by legal counsel.

15. The 230 Receiver, the Bridging Receiver, the Purchaser, and the Pledgor (as defined in the VTBN Assignment Agreement) all agree and consent to the VTBN Assignment and have executed the VTBN Assignment Agreement.

**Fifth Report, s. 4.9, MR, Tab 2.**

16. If the VTBN Assignment is approved, the remaining amounts payable under the VTBN shall be applied in reduction of the 230 Indebtedness on a “dollar-for-dollar” basis.

***Approval of the Interim Distribution***

17. The balance of the 230 Receiver's bank accounts as at November 30, 2024 is approximately \$8.4 million (exclusive of the Reserve Funds).

**Fifth Report, s. 5.8, MR, Tab 2.**

18. Subject to this Court's approval, the 230 Receiver seeks to:

(a) distribute an amount in cash of up to \$6.9 million to the Bridging Receiver, or as the Bridging Receiver may otherwise direct the 230 Receiver in writing, and make such further distributions to the Bridging Receiver that the 230 Receiver determines to be appropriate without further order of this Court, *provided that* the aggregate distributions to the Bridging Receiver do not exceed the 230 Indebtedness and that the 230 Receiver retains such amounts that are required to address any claims that rank in priority to 230 Ontario's secured obligations to Bridging (collectively, the "**Interim Distribution**"); and

(b) hold back estate funds of approximately \$1.5 million (which amount is exclusive of the funds held in the Reserve Bank Account, which will be assigned to the Bridging Receiver if the VTBN Assignment is approved) (the "**Holdback**"), which Holdback shall be subject to the 230 Receiver's authority to make further distributions which it determines to be appropriate in accordance with (a) above.

19. The aggregate amount of the Interim Distribution will be applied in reduction of the 230 Indebtedness on a "dollar-for-dollar" basis.

20. The purpose of the Holdback is to retain sufficient amounts expected to be incurred to complete the administration of these Proceedings, including two priority claims (collectively, the “**Priority Claims**”):

- (a) The 230 Receiver received a letter from Canada Revenue Agency (“**CRA**”) dated May 16, 2023 indicating that 230 Ontario owes CRA approximately \$206,000 in respect of unremitted harmonized sales tax, \$195,191.20 of which CRA asserts is a deemed trust claim (the “**Deemed Trust Claim**”). The 230 Receiver therefore intends to hold back \$195,191.20 of the funds it is holding; and
- (b) The Appointment Order provides a charge (the “**230 Receiver’s Charge**”) for the fees and disbursements of the 230 Receiver and its legal counsel in respect of these Proceedings.

**Fifth Report, ss. 5.4, 5.5, MR, Tab 2.**

21. Other than the Priority Claims, the 230 Receiver is not aware of any other claims ranking in priority to those of the Bridging Receiver. As part of the Holdback, the 230 Receiver has included a reserve of \$340,000 as security for potential cost awards in the UK Action, a mortgage enforcement proceeding commenced on behalf of 230 Ontario in the United Kingdom.

**Fifth Report, s. 5.7, MR, Tab 2.**

### ***The 230 Indebtedness and Security***

22. As of October 31, 2024, the outstanding indebtedness of 230 Ontario to Bridging totals \$64,656,514.98, including interest accrued as of such date, but excluding fees and expenses (the “**230 Indebtedness**”).

**Fifth Report, s. 5.1, MR, Tab 2.**

23. As security for the payment of the 230 Indebtedness, among other things, 230 Ontario executed and delivered security agreements to Bridging, pursuant to which, it granted Bridging a security interest over all of its present and after-acquired personal property and any proceeds thereof.

24. As previously reported, the 230 Receiver has obtained an Ontario law opinion from its legal counsel that, subject to customary assumptions and qualifications, the security held by Bridging is valid and enforceable. As of December 8, 2024, Bridging was also the sole registrant under the OPPSA in respect of 230 Ontario, and there were no competing third-party registrations.

**Fifth Report, s. 5.3, MR, Tab 2.**

25. The 230 Receiver is not aware of any claim that ranks in priority to the claim of the Bridging Receiver except for the limited Priority Claims, which will be addressed by the proposed Holdback.

***Approval of the Fifth Report and the 230 Receiver's Activities***

26. The activities of the 230 Receiver up until March 28, 2024, the date of the Fourth Report, have already been approved by this Court.

27. On this motion, the 230 Receiver is seeking the approval of its Fifth Report and the 230 Receiver's conduct and activities described therein, which include, among other things:

- (a) attending the Court hearing held on April 5, 2024 before Justice Steele, regarding the motion seeking the Second Settlement Approval Order;

- (b) continuing to carry out the 230 Receiver's duties and responsibilities in accordance with the Appointment Order, including controlling the receipts and disbursements;
- (c) engaging with the Purchaser and the Pledgor with respect to matters related to the Consumer Portfolio and performance under the VTBN;
- (d) engaging with the 230 Receiver's legal counsel on various receivership matters, including, without limitation, the UK Property Loan;
- (e) communicating with the Applicant to provide status updates in respect of the Proceedings, including the matters discussed herein;
- (f) attending at the Companies' premises to review and retrieve various accounting and historical records;
- (g) communicating with the Companies' former external accountants to make arrangements in respect of tax matters;
- (h) preparing and filing HST returns and communicating with CRA in respect of an HST audit;
- (i) monitoring the MVCI/Golden Miles Receivership Proceedings and the bankruptcy of MVCI and Golden Miles, and liaising with the Mahal Receiver in respect of status updates on the MVCI/Golden Miles Receivership Proceedings;
- (j) evaluating potential claims to be asserted by the Companies' estate;

- (k) preparing and negotiating the VTBN Assignment Agreement with the assistance of legal counsel;
- (l) drafting this Fifth Report and the motion materials in respect the Interim Distribution and VTBN Assignment Approval Motion;
- (m) coordinating the development of and posting of relevant documents to the Case Website;
- (n) responding to stakeholder and other enquiries; and
- (o) addressing all other matters pertaining to the administration of the Proceedings.

**Fifth Report, s. 8.1, MR, Tab 2.**

***Approval of the 230 Receiver and Counsel's Fees and Disbursements***

28. Pursuant to the Settlement Approval and Ancillary Relief Order, this Court has already approved the 230 Receiver's and its counsel's fees for the period ending January 31, 2024. On this motion, the 230 Receiver is seeking the approval of the 230 Receiver's and its counsel's fees and disbursements for the period from February 1, 2024 to November 30, 2024 (the "**Period**").

29. In connection with the exercise of its mandate in these Proceedings, the 230 Receiver incurred fees of \$283,430.50, disbursements of \$830.62, and HST thereon of \$36,953.97, for a total of \$321,215.09 during the Period.

**Fifth Report, s. 9.2, MR, Tab 2.**

30. In connection with advice sought by the 230 Receiver and assistance provided in respect of these Proceedings, Fasken incurred fees of \$266,433.50, disbursements of \$2,255.15, and HST thereon of \$34,813.23, for a total of \$303,501.88, during the Period.

**Fifth Report, s. 9.3, MR, Tab 2.**

31. It is the 230 Receiver's view that the fees and disbursements of the 230 Receiver and its counsel described in the Karpel Affidavit (Fifth Report, Appendix C) and the Stephenson Affidavit (Fifth Report, Appendix D), respectively, are reasonable and appropriate in the circumstances having regard to the scope of activity undertaken in these Proceedings during the Period.

**PART III - ISSUES**

32. This motion raises the following questions:

- (a) Should this Court approve of the VTBN Assignment as contemplated in the VTBN Assignment Agreement?
- (b) Should this Court authorize and approve the Interim Distribution and Holdback?
- (c) Should this Court approve the 230 Receiver's Fifth Report, and the 230 Receiver's activities and statement of receipts and disbursements described therein?
- (d) Should this Court approve the 230 Receiver's and its counsel's fees and disbursements?

33. The 230 Receiver respectfully submits that this Court should grant the foregoing relief for the reasons that follow.

#### **PART IV - LAW & ARGUMENT**

##### ***The VTBN Assignment Should be Approved***

34. The 230 Receiver has entered into the VTBN Assignment Agreement with the Bridging Receiver, the effectiveness of which is conditional upon this Court's approval. The VTBN Assignment reflects Bridging's position as the senior secured lender of 230 Ontario.

35. The VTBN Assignment is a desirable outcome and ought to be pursued by the 230 Receiver because of its positive impact on the estate, namely:

- (a) the VTBN Assignment Agreement provides, among other things, that the 230 Receiver will assign, and the Bridging Receiver will assume, 230 Ontario's right, title, interest, in the Assigned Agreements, as well as its covenants, obligations and liabilities under the Assigned Agreements, and the amounts payable under the VTBN Assignment shall be applied in reduction of the 230 Indebtedness;
- (b) in essence, rather than have both the 230 Receiver and the Bridging Receiver administer the VTBN, collect payments, and negotiate potential changes to the agreement with the Purchaser, the parties have agreed that assigning the 230 Receiver's interest in the VTBN to the Bridging Receiver will reduce costs and mitigate potential duplication of efforts in administering the remaining term of the VTBN, which will ultimately benefit the stakeholders of 230 Ontario and those of Bridging; and
- (c) because all amount payable under the VTBN shall be applied in reduction of the 230 Indebtedness, the VTBN Assignment is analogous to the Interim Distribution

to the Bridging Receiver and therefore ought to be granted on the same grounds as the Interim Distribution as set forth below.

36. The 230 Receiver is of the view that the VTBN Assignment represents a practical and efficient way of collecting the remaining proceeds of the Sale Transaction without duplication of efforts and costs among the 230 Receiver and the Bridging Receiver.

***The Interim Distribution Should be Approved***

37. As noted above, the 230 Receiver seeks an order authorizing and approving the Interim Distribution which consists of two parts:

- (a) an initial distribution to the Bridging Receiver of up to \$6.9 million from the funds currently held by the 230 Receiver; and
- (b) such further distributions to the Bridging Receiver that the 230 Receiver determines to be appropriate, *provided that* the aggregate distributions to the Bridging Receiver do not exceed the 230 Indebtedness and that the 230 Receiver retains such amounts that are required to address any claims that rank in priority to 230 Ontario's secured obligations to Bridging.

38. Orders authorizing a receiver to make an interim distribution to stakeholders are commonly granted in insolvency proceedings. The Court's discretion to make such orders is squarely within its jurisdiction to do what "justice dictates" and "practicality demands" pursuant to section 243(1)(c) of *Bankruptcy and Insolvency Act* (Canada) ("BIA").

See *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#), paras. 52-53; *Re AbitibiBowater Inc.*, [2009 QCCS 6461](#), para. 71 [*"AbitibiBowater"*]; see also, for example, the [Interim Distribution and Fee Approval Order of Justice Steele](#) dated April 5, 2024 in the

receivership of Mahal Venture Capital Inc., et al. and the [Ancillary Relief Order of Justice Steele](#) dated July 19, 2022 in the receivership of 2244039 Ontario Inc., et al.; BIA, [s. 243\(1\)\(c\)](#).

39. When asked to approve an interim distribution, the Court must consider “the advantages, disadvantages and potential prejudice of [the] interim distribution to all the stakeholders of the debtor entity”. The Court must also consider the validity and enforceability of the relevant security, interest savings, and liquidity of the debtor following the distribution.

*Re SemCanada Crude Company (Companies' Creditors Arrangement Act)*, [2009 ABQB 90](#), [para. 27](#) [*“SemCanada”*]; *AbitibiBowater*, *supra*, [paras. 63, 68, 70, 75](#). While such *AbitibiBowater* factors were analyzed in the context of a *Companies' Creditors Arrangement Act* (“CCAA”) proceeding, they can be similarly applied in receivership proceedings: see, for example, *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#), [para. 8](#).

40. The factors contemplated in *AbitibiBowater* and *SemCanada* are satisfied in the present case:

- (a) 230 Ontario is indebted to Bridging on a secured basis in an amount exceeding \$64 million;
- (b) the Interim Distribution will not repay the 230 Indebtedness in full;
- (c) the 230 Receiver’s legal counsel, Fasken, has issued an opinion confirming the validity, enforceability, and perfection of Bridging’s security interest in respect of 230 Ontario;
- (d) there are no third-party registrations against 230 Ontario under the OPPSA;
- (e) the 230 Receiver is not aware of any claim that ranks in priority to the claim of the Bridging Receiver except for the limited Priority Claims which will be addressed by the proposed Holdback (as defined and discussed below);

- (f) the 230 Receiver is satisfied that the proposed Holdback is sufficient to pay the Priority Claims and the costs of administering the estate; and
- (g) the 230 Receiver is not aware of any person who will be prejudiced by the relief sought on this motion.

41. Since the initial Proposed Distribution of up to \$6.9 million will only pay a small portion of the 230 Indebtedness, the 230 Receiver is seeking authorization to make additional Interim Distributions to the Bridging Receiver without further order of this Court, *provided that* the aggregate distributions to the Bridging Receiver do not exceed the 230 Indebtedness and that the 230 Receiver retains such amounts that are required to address any claims that rank in priority to Bridging's secured claim against 230 Ontario.

42. The 230 Receiver is of the view that this relief is reasonable and appropriate in the circumstances and will maximize the efficiency of these Proceedings. Specifically, this provision will permit the 230 Receiver to make additional distributions without the additional expense or delay of further interim distribution motions. Any discretionary Interim Distribution is expected to be modest in value compared to the quantum of the 230 Indebtedness, which is not expected to be repaid in full. This Court has made similar orders in the CCAA proceedings of BioSteel Sports Nutrition Inc., and the receivership proceedings of Victoria Avenue North Holdings Inc. and Buchh Holding Inc., et al.

See, for example, the [Distribution, Stay Extension, and Expansion of Powers Order of Justice Steele](#) dated December 14, 2023 in the CCAA proceedings of BioSteel Sports Nutrition Inc., et al.; the [Discharge, Distribution and Ancillary Matters Order of Justice Osborne](#) dated May 30, 2023 in the receivership proceedings of Victoria Avenue North Holdings Inc. et al.; the [Ancillary Order \(Distribution and Ancillary Relief\) of Justice Osborne](#) dated September 17, 2024 in the receivership proceedings of Buchh Holding Inc., Britman Specialty Products Inc., Rotalec International Inc. and Rotalec Canada Inc.

43. All discretionary Interim Distributions made will be reported to this Court in the ordinary course before the 230 Receiver's discharge.

44. The proposed Order also contains a provision which protects the 230 Receiver from certain, potential liabilities under the relevant tax legislation in connection with the making of "distributions". This provision gives the 230 Receiver an additional level of protection in making the Interim Distribution without first obtaining a tax clearance certificate. The language of the subject provision is substantially the same as that in other distribution orders made by this Court in the CCAA proceedings of BioSteel Sports Nutrition Inc. and 14428552 Canada Inc., and the receivership proceedings of Pulse RX Inc. et al.

See, for example, [Distribution and Termination Order of Justice Osborne](#), dated November 30, 2022, in the CCAA proceedings of 14428552 Canada Inc.; the [Distribution, Stay Extension, and Expansion of Powers Order of Justice Steele](#) dated December 14, 2023 in the CCAA proceedings of BioSteel Sports Nutrition Inc., et al; the [Distribution and Discharge Order by Justice Steele](#) dated February 6, 2023 in the receivership proceedings of Pulse RX Inc., Family Pharmacy Clinic Inc. and the Pulse Share Trust.

45. The relevant tax authorities have been served with this motion and have not objected to the relief sought.

***The Receipts and Disbursements and Activities of the Receiver as described in the Third Report Should be Approved***

46. Where a court-appointed receiver meets the objective test of demonstrating that it has acted reasonably, prudently, and not arbitrarily, this Court has the inherent jurisdiction to approve the receiver's activities as set out in its reports.

*Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (O.C.J. Gen. Div.) at paras. 2-5, Book of Authorities, Tab 1, aff'd [1996 CanLII 2782](#) (ON CA); *Lang Michener v. American Bullion Minerals Ltd.*, [2005 BCSC 684](#) at [para. 21](#).

47. In *Target Canada*, this Court identified several good policy and practical reasons for monitors in *Companies' Creditors Arrangement Act* ("CCAA") proceedings to routinely seek court approval of their reports and activities, and for courts to grant such approval. These include: (a) allowing the monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the monitor's activities have been conducted in a prudent and diligent manner; (d) providing protection for the monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the monitor.

*Target Canada Co., (Re)*, [2015 ONSC 7574](#) at [paras. 2, 22-23](#); *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) at [para. 65](#).

48. This Court has determined that these policy and practical reasons apply equally to receivership proceedings and motions seeking approval of a receiver's report and activities.

*Hangfen Evergreen Inc., (Re)*, [2017 ONSC 7161](#) at [para. 15](#).

49. All of the 230 Receiver's receipts, disbursements, and activities, as set out in the Fifth Report, were reasonable, necessary, and undertaken in good faith and in accordance with the 230 Receiver's powers and duties as set out in the Appointment Order, and were undertaken in the best interests of the Companies' stakeholders. Accordingly, the Fifth Report and the activities of the 230 Receiver described therein should be approved.

### ***The Fees of the Receiver and its Counsel Should be Approved***

50. Pursuant to the Appointment Order, the 230 Receiver and its legal counsel are entitled to be paid their reasonable fees and disbursements, and are required to pass their accounts from time to time.

51. In *Confectionately Yours Inc. (Re)*, the Court summarized the requirements for the substance or content of the accounts:

- (a) the accounts must disclose in detail the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged, and the total charges for each of the categories of services rendered;
- (b) the accounts should be in a form that can be easily understood by those affected by the receivership so that such person can determine the amount of time spent by the receiver's employees (and others the receiver may have hired) with respect to the various discrete aspects of the receivership; and
- (c) the receiver's accounts and solicitor's accounts should be verified by affidavit.

*Confectionately Yours Inc. (Re)*, [2002 CanLII 45059](#) (ON CA) at [paras. 37-38](#) ("*Confectionately Yours Inc. (Re)*").

52. The accounts of the 230 Receiver and its counsel, Fasken, meet each of these requirements.

53. The general standard of review for the accounts of a court-appointed receiver is "whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable."

[\*Confectionately Yours Inc. \(Re\)\*, supra, at para. 42.](#)

54. The Court is to consider all of the relevant factors in a holistic manner and need not examine "dockets, hours, the explanations or disbursements, line by line." The focus on such a

review should be the fair and reasonable assessment of what was accomplished, not the time it took.

*Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at [para. 45](#) (“*Diemer*”); *Canadian Imperial Bank of Commerce v. 1340182 Ontario Ltd.*, [2024 ONSC 3658](#) at [para. 21](#).

55. The Ontario Court of Appeal has endorsed a non-exhaustive list of factors to be considered in determining whether a receiver’s fees are fair and reasonable, including: (a) the nature, extent and value of the assets handled; (b) the complications and difficulties encountered; (c) the degree of assistance provided by the company, its officers, or its employees; (d) the time spent; (e) the receiver’s knowledge, experience, and skill; (f) the diligence and thoroughness displayed by the receiver; (g) the responsibilities assumed; (h) results of the receiver’s efforts; and (i) the cost of comparable services.

*Federal Business Development Bank v Belyea and Fowler*, [1983 CanLII 4086](#) (NB CA) at para. 9; *Diemer*, *supra*, at [para. 33](#); *Confectionately Yours Inc. (Re)*, *supra* at [paras. 45-46](#).

56. A&M is a specialized licensed insolvency trustee, and has staffed this matter with insolvency specialists at various levels of seniority. Likewise, Fasken is a sophisticated full-service law firm, which has staffed this matter with subject matter experts, including insolvency experts, at various levels of seniority. A&M’s and Fasken’s hourly rates are consistent with the rates charged by comparable firms practicing in the area of insolvency in the Toronto market and the Receiver is of the view that A&M’s and Fasken’s fees and disbursements are reasonable and appropriate in the circumstances.

**Fifth Report, s. 8.6, MR, Tab 2.**

57. Accordingly, the 230 Receiver respectfully requests approval of its fees and the fees of its legal counsel, Fasken, during the applicable Period, which are set forth in the Karpel Affidavit and the Stephenson Affidavit, respectively.

See Karpel Affidavit, Appendix “C” to the Fifth Report, MR, Tab 2; Stephenson Affidavit, Appendix “D” to the Fifth Report, MR, Tab 2.

## **PART V - ORDER REQUESTED**

58. For the reasons set out above, the 230 Receiver respectfully requests that this Court:

- (a) approve the VTBN Assignment Agreement;
- (b) authorize and direct the 230 Receiver to make the Interim Distribution;
- (c) approve the Holdback;
- (d) approve the 230 Receiver’s statement of receipts and disbursements;
- (e) approve the Fifth Report and the 230 Receiver’s conduct and activities described therein;
- (f) approve the fees and disbursements of the 230 Receiver and its counsel; and
- (g) abridge and validate the time for service of the Notice of Motion and the Motion Record, and dispense with further service thereof.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17th day of December, 2024.

Per: *Fasken Martineau DuMoulin LLP*

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Fasken Martineau DuMoulin LLP

**FASKEN MARTINEAU DuMOULIN LLP**

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Lawyers for the 230 Receiver,  
Alvarez & Marsal Canada Inc.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
2. *Re AbitibiBowater Inc.*, [2009 QCCS 6461](#)
3. [Interim Distribution and Fee Approval Order of Justice Steele](#) dated April 5, 2024 in the receivership of Mahal Venture Capital Inc.
4. [Ancillary Relief Order of Justice Steele](#) dated July 19, 2022 in the receivership of 2244039 Ontario Inc., et al.
5. *Re SemCanada Crude Company (Companies' Creditors Arrangement Act)*, [2009 ABQB 90](#)
6. *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#)
7. [Distribution, Stay Extension, and Expansion of Powers Order of Justice Steele](#) dated December 14, 2023 in the CCAA proceedings of BioSteel Sports Nutrition Inc., et al.
8. [Discharge, Distribution and Ancillary Matters Order of Justice Osborne](#) dated May 30, 2023 in the receivership proceedings of Victoria Avenue North Holdings Inc. et al.
9. [Ancillary Order \(Distribution and Ancillary Relief\) of Justice Osborne](#) dated September 17, 2024 in the receivership proceedings of Buchh Holding Inc., Britman Specialty Products Inc., Rotalec International Inc. and Rotalec Canada Inc.

10. [Distribution and Termination Order of Justice Osborne](#), dated November 30, 2022, in the CCAA proceedings of 14428552 Canada Inc.
11. [Distribution and Discharge Order by Justice Steele](#) dated February 6, 2023 in the receivership proceedings of Pulse RX Inc., Family Pharmacy Clinic Inc. and the Pulse Share Trust.
12. *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (O.C.J. Gen. Div.), aff'd [1996 CanLII 2782](#) (ON CA).
13. *Lang Michener v. American Bullion Minerals Ltd.*, [2005 BCSC 684](#)
14. *Target Canada Co., (Re)*, [2015 ONSC 7574](#)
15. *Triple-I Capital Partners Ltd. v. 12411300 Canada Inc.*, [2023 ONSC 3400](#)
16. *Hangfen Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
17. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059](#) (ON CA)
18. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
19. *Canadian Imperial Bank of Commerce v. 1340182 Ontario Ltd.*, [2024 ONSC 3658](#)
20. *Federal Business Development Bank v Belyea and Fowler*, [1983 CanLII 4086](#) (NB CA)

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

Date    December 17, 2024

A handwritten signature in black ink, appearing to be 'MS' followed by a flourish, positioned above a horizontal line.

*Signature*

**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.

**PRICEWATERHOUSECOOPERS INC.** (solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

-and-

**2305145 ONTARIO INC. et al.**

Respondents

Court File No. CV-22-00692309-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**Proceeding commenced at Toronto**

**FACTUM OF THE 230 RECEIVER**  
**(Interim Distribution, VTBN Assignment, and Ancillary Relief)**

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