

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

THE HONOURABLE

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THURSDAY, THE 22ND

)

JUSTICE STEELE

)

DAY OF FEBRUARY, 2024

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

**ORDER  
(Settlement Approval and Ancillary Relief)**

**THIS MOTION**, made 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 of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) (“**230**”) and Merk Investments Ltd. (“**Merk**”, and together with 230, the “**Companies**”), for an order, among other things, authorizing and approving:

- a) the settlement agreement dated as of January 24, 2024 between 7539088 Canada Inc. and 1989474 Ontario Inc. (together, the “**Orr Plaintiffs**”) and the 230 Receiver on behalf of the Companies (the “**Orr Settlement Agreement**”);
- b) the assignment agreement dated as of February 15, 2024 between PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the “**Bridging Receiver**”) and the 230 Receiver on behalf of 230 (the “**Bridging Assignment Agreement**”); and
- c) the settlement agreement dated as of February 14, 2024 between FIJ Law LLP and Quinn Ryan Hanna (together, the “**FIJ Parties**”), and the 230 Receiver on behalf of 230 (the “**FIJ Settlement Agreement**”, and collectively with the Orr Settlement Agreement and the Bridging Assignment Agreement, the “**Settlement Agreements**”),

was heard this day by video conference at the courthouse, 330 University Avenue, Toronto Ontario.

**ON READING** the Motion Record of the 230 Receiver dated February 15, 2024, the third report of the 230 Receiver dated February 15, 2024 (the “**Third Report**”), together with the confidential appendices to the Third Report (the “**Confidential Appendices**”), and on hearing the submissions of counsel for the 230 Receiver and counsel for the other parties listed on the participation information form, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Connie Deng sworn February 15, 2024, filed:

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized terms used but not defined herein have the meanings given to them in the Third Report.

## **APPROVAL OF SETTLEMENT AGREEMENTS**

3. **THIS COURT ORDERS** that:
  - (a) the Orr Settlement Agreement is hereby authorized and approved, and the 230 Receiver and the Orr Plaintiffs are authorized and directed to take all steps necessary to give effect to the terms of the Orr Settlement Agreement. The Orr Plaintiffs are specifically authorized and directed as follows:
    - (i) the Orr Plaintiffs' claim for any damages, compensation, or other amounts against the non-settling defendants with claims for contribution and indemnity against one or both of the Companies in Court File No. CV-22-00686234-00CL, CV-23-00702641-00CL, or any related proceeding shall be limited to the percentage of fault, or share of the liability, if any, that is found at trial, or another merits determination, to be severally attributable to such non-settling defendants; and
    - (ii) the Orr Plaintiffs shall promptly amend the statement of claim in Court File No. CV-22-00686234-00CL and CV-23-00702641-00CL to address the limitation in paragraph 3(a)(i);

- (b) the Bridging Assignment Agreement is hereby authorized and approved, and the 230 Receiver and the Bridging Receiver are authorized and directed to take all steps necessary to give effect to the terms of the Bridging Assignment Agreement; and
- (c) the FIJ Settlement Agreement is hereby authorized and approved, and the 230 Receiver and the FIJ Parties are authorized and directed to take all steps necessary to give effect to the terms of the FIJ Settlement Agreement.

4. **THIS COURT ORDERS** that no claim by the non-settling defendant, Paul Millar, against 230 for indemnity pursuant to section 136(1) of the OBCA or 230's articles and by-laws (if any such claim exists) shall be barred, released or precluded by this Order or as a result of the Orr Settlement Agreement and Orr Release.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Companies and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Companies,

the approval of the Settlement Agreements pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial

legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **SEALING**

6. **THIS COURT ORDERS** that the Confidential Appendices shall be sealed, kept confidential and shall not form part of the public record, but shall be placed separate and apart from all other contents of the Court file in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order subject to further order of this Court.

### **REPORT AND ACTIVITIES OF THE 230 RECEIVER**

7. **THIS COURT ORDERS** that the Third Report, the Confidential Appendices, and the conduct and activities of the 230 Receiver as described therein, be and are hereby approved, provided, however, that only the 230 Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

8. **THIS COURT ORDERS** that the 230 Receiver's statement of receipts and disbursements for the period March 6, 2023 to February 5, 2024, as set out in Section 12.0 of the Third Report, be and is hereby approved.

### **FEES AND DISBURSEMENTS**

9. **THIS COURT ORDERS** that the fees and disbursements of the 230 Receiver for the period from September 1, 2023 to January 31, 2024 in the total amount of \$259,979.69 (inclusive of fees, disbursements and HST), as set out in the Third Report and the Karpel Affidavit attached as Appendix "F" thereto, be and are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the 230 Receiver's legal counsel, Fasken Martineau DuMoulin LLP, for the period from September 1, 2023 to January 31, 2024 in the total amount of \$354,088.92 (inclusive of fees, disbursements and HST), as set out in the Chochla Affidavit, attached as Appendix "G" to the Third Report, be and are hereby approved.

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**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**

**ORDER**  
**(Settlement Approval and Ancillary Relief)**

**FASKEN MARTINEAU DuMOULIN LLP**

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