

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

B E T W E E N :

ZURICH INSURANCE COMPANY LTD.

Plaintiff

- and -

**2442931 ONTARIO INC., BONDFIELD CONSTRUCTION COMPANY
LIMITED, JOHN AQUINO, VASOS GEORGIOU and
UNITY HEALTH TORONTO**

Defendants

**STATEMENT OF DEFENCE, COUNTERCLAIM, AND CROSSCLAIM
OF THE DEFENDANT, UNITY HEALTH TORONTO**

1. The Defendant, Unity Health Toronto (formerly St. Michael's Hospital, as amalgamated with other entities) admits paragraphs 17 and 19 of the Statement of Claim.
2. The defendant, Unity Health Toronto, has no knowledge of the allegations contained in paragraphs 12, 13, 14, 15 and 16 of the Statement of Claim.
3. Except as hereinafter expressly admitted, Unity Health Toronto denies each and every other allegation contained in the Statement of Claim.

A. St. Michael's Hospital and the Redevelopment Project

4. The Defendant Unity Health Toronto operates St. Michael's Hospital in Toronto, Ontario (hereinafter, both in reference to Unity Health Toronto as a Defendant, and St. Michael's Hospital, "SMH"). SMH provides care to patients in downtown Toronto and the city's surrounding communities. It also provides medical education to future health care professionals in 27 academic disciplines.
5. This action arises from the SMH Redevelopment Project, a transformative project for patient care at SMH (the "**Project**")

6. The Project involves the design and construction of a 17-storey patient care tower at the corner of Queen and Victoria Streets in Toronto, Ontario (the “**Tower**”).

7. The Tower will connect the existing wings of SMH and create a unified and more efficient hospital campus. It will include state-of-the-art facilities for programs now significantly challenged by older, obsolete, and legacy spaces, which are no longer adequate to continue serving the hospital’s community.

8. The Project also contemplates the demolition and re-build of the Shuter Wing at the corner of Shuter and Bond Streets (the “**Shuter Wing**”). The new Shuter Wing will house an expanded Emergency Department to accommodate the growing downtown Toronto patient population, and will offer 24/7 access to medical diagnostic imaging. The Shuter Wing will also include a new space to provide support and shelter for under-housed patients after they are discharged from the Emergency Department.

9. The Project, once complete, will result in patients receiving better care, experiencing shorter wait times, and allow for more privacy and greater comfort during hospitalization.

B. The Procurement Process

10. The Project was structured as a Design-Build-Finance model. Like most public infrastructure projects, the Project utilized a competitive procurement process, pursuant to a directive issued under the *Broader Public Sector Accountability Act, 2010*, S.O. 2010, C. 25, to select a proponent to deliver the Project.

11. In December 2012, Ontario Infrastructure and Lands Corporation (“**IO**”), together with SMH (collectively, the “**Sponsors**”) issued a public Request for Qualifications to potential proponents.

12. Thereafter, the Defendant Vasos (also known as “**Vas**”) Georgiou began working at SMH as Executive Vice President and Chief Administrative Officer (“**CAO**”) in January 2013.

13. In May 2013, the Sponsors announced the short-listed bidders who had successfully pre-qualified to participate in the Request for Proposals (“**RFP**”) process.

14. One of the short-listed bidders was a consortium that ultimately incorporated the Defendant, 2442931 Ontario Inc. (“**Project Co**”), a special purpose entity incorporated for the purposes of carrying out the Project. Project Co is wholly owned by the Defendant Bondfield Construction Company Limited (“**Bondfield**”), a company owned by the Aquino family, including the Defendant John Aquino, the former President of both Bondfield and Project Co.

15. On August 2, 2013, the Sponsors issued a RFP to the three qualified bidders. The RFP set out the bid process and the proposed project agreement that the successful bidder would enter into with SMH to design, build and finance the Project.

16. The project budget was \$301 million, being the amount SMH had available to spend on the Project. The budget was disclosed to all three bidders to consider when preparing their respective proposals for the Project. The notice expressly stated that it would be challenging for the Sponsors to enter into a contract for the Project with a bidder who submitted a price in excess of the Project budget.

C. Project Co’s Bid Proposal and Zurich’s Undertaking to Issue the Bonds

17. The RFP required bidders to provide a surety’s consent by which a surety undertakes and agrees to issue a performance bond and a labour and materials payment bond to back the design and construction work needed for the Project. Project Co delivered a surety consent dated May 16, 2014 executed by the Plaintiff Zurich Insurance Company Ltd. (“**Zurich**”).

18. Zurich had a longstanding arrangement with Bondfield to provide surety bonds to guarantee performance by Bondfield on its construction projects and ensure payment of Bondfield’s subcontractors. Zurich is Bondfield’s primary surety.

19. By an Agreement of Indemnity, dated February 8, 2006 (the “**Indemnity Agreement**”), which contemplates Zurich establishing a surety bonding facility such that it would routinely provide surety bonds for Bondfield projects, Bondfield (along with eight other indemnitors) provided Zurich with a comprehensive indemnity for any losses Zurich may sustain in issuing bonds to back the performance of Bondfield and its related companies.

20. The Indemnity Agreement provides:

WHEREAS, the Contractor [Bondfield], in the performance of contracts and the fulfilment of obligations generally, whether in its own name solely or as co-adventurer with others, may desire or be required to give or procure certain surety bonds, undertakings or instruments of guarantee, and to renew, or continue to substitute from time to time the same or new bonds, undertakings or instruments of guarantee with the same or different penalties, and/or conditions, any one or more of which are hereinafter called Bonds; or the Contractor or Indemnitors may request the Surety [Zurich] to refrain from cancelling said Bonds; and

WHEREAS, at the request of the Contractor [Bondfield] and the Indemnitors and upon the express understanding that this Agreement of Indemnity be given, the Surety [Zurich] has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said Bonds on behalf of the Contractor.

21. The consent and undertaking given by Zurich to issue the Project bonds was provided prior to Project Co's submission of its bid, and prior to any evaluation by SMH of any of the bids. The consent and undertaking by Zurich to issue bonds was given pursuant to Zurich's Indemnity Agreement with Bondfield.

22. At no point prior to executing the surety's consent did Zurich seek any representation from SMH as to the fairness, integrity, or conduct of the procurement process, nor did SMH make any representations to Zurich in respect of the procurement process, or at all. Indeed, Zurich did not conduct any due diligence or monitoring in respect of the Project, either prior to or after issuing the Bonds.

23. Project Co submitted a proposal on May 21, 2014, the date on which the RFP closed. Project Co's bid for the Project was in the amount of approximately \$301 million consistent with the disclosed Project budget.

D. The Proposals are Evaluated by SMH and IO

24. In June 2014, the Sponsors formed three specialized evaluation review teams: Design, Technical, and Financial, each composed of two IO members and two SMH members. Mr. Georgiou was not a member of any evaluation team.

25. The assessment of bid materials by members of each of the evaluation review teams was first undertaken independently by each individual evaluator. After the individual review was done,

evaluators came together within their respective teams to determine the scores for each proposal to be recommended to the Evaluation Committee (the “EC”) on a consensus basis.

26. The evaluation review teams were accountable to the EC, which was composed of four members (two each from IO and SMH). Mr. Georgiou was a member of the EC. The EC and each of the evaluation review teams were also overseen by a fairness monitor, appointed by the Sponsors, to monitor the procurement process.

27. The role of the EC was to review the findings and recommendations of each evaluation team, and to conduct due diligence on whether the evaluations were conducted in accordance with the RFP. Following this review, the EC ranked proponents based on the final proposal scores submitted by the review teams, and endorsed the recommendation of the first ranked proponent for review and approval by the executives of the Sponsors.

28. The EC’s recommendation as to the first-ranked, or negotiations proponent, did not result in the award of the contract to that proponent, which required executive approval. The Project was awarded after executive approval of the Board of Directors of IO and SMH and the conclusion of commercial negotiations.

29. The ranking of Project Co’s proposal was ultimately ratified by the EC on a consensus basis and recommended to be the first ranked proponent. Following board approval and successful commercial negotiations, Project Co was awarded the contract. Project Co’s winning bid was announced on January 28, 2015.

30. As is generally the case with the winning bid, Project Co’s bid was for the lowest Project price. That price was consistent with the project budget as disclosed to all bidders, as well as independent reports prepared by professional quantitative surveyors to assess the cost of the Project. The bid was objectively reasonable, realistic and achievable.

E. The Project Contracts

31. Once the procurement process was completed, project contracts were executed which govern the Project and the rights and obligations of the parties thereto, including:

- (a) **Project Agreement:** SMH and Project Co entered into a Project Agreement for the design, build, and financing of the Project. The Project Agreement provided for a guaranteed fixed price of \$301,189,863, and was executed on January 27, 2015 (the “**Project Agreement**”).
- (b) **Construction Contract:** In order to deliver on the design and construction obligations in its proposal, Project Co entered into a Design and Construction Contract with Bondfield on January 27, 2015 (the “**Construction Contract**”). Bondfield was to be the construction contractor on the Project.
- (c) **Credit Agreement:** To finance the Project, Project Co entered into a Credit Agreement with a number of financial institutions (the “**Lenders**”), represented by the Bank of Montreal (“**BMO**”) as the Administrative Agent on behalf of the Lenders.

32. The Project Agreement provides no representations as to the fairness, integrity or conduct of the procurement process. To the contrary, the Project Agreement expressly provides that no one, including third parties, shall rely on or use the RFP or Project Co’s proposal to interpret or qualify any of Project Co’s obligations or liabilities in the Project Agreement:

1.1(d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close the ***Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement*** and rendered ***null and void***, and ***shall not be relied upon or used by*** Project Co, SMH or ***anyone else*** (including anyone pursuant to Schedule 27 — Dispute Resolution Procedure or any arbitral body or any court) ***in any way to interpret or qualify*** the scope of the Works, ***any obligations or liabilities of Project Co***, or anything else contained in this Project Agreement. [emphasis added]

33. Similarly, there are no representations in the Construction Contract relating to the fairness, integrity or conduct of the procurement process.

34. The Project Agreement and the Credit Agreement required that Project Co obtain from Bondfield a Performance Bond and a Labour and Material Payment Bond to ensure that in the event of Bondfield’s default, Project Co’s obligations to complete the Project would be met.

Project Co was required to maintain the Bonds in good standing until fulfilment of the Project Agreement.

35. Zurich, in accordance with its consent and undertaking to issue bonds, and in accordance with its Indemnity Agreement with Bondfield, issued two bonds:

- (a) A Performance Bond in the amount of \$156,325,362.60, (the “**Performance Bond Amount**”) which guarantees Bondfield’s performance under the Construction Contract (the “**Performance Bond**”). It provides, at section 9, that Obligees have a right to bring a claim under the Performance Bond; and
- (b) A Labour and Materials Payment Bond in the amount of \$142,113,966, under which any subcontractor of Bondfield who has supplied labour and materials to the Project and has not been paid pursuant to its agreement with Bondfield may claim for payment (the “**L&M Bond**”) (together with the Performance Bond, the “**Bonds**”).

36. Under the Performance Bond, Zurich (the “Surety”) guarantees the obligations of Bondfield (the “Principal”) in favour of Project Co (the “Obligee”). SMH and BMO are each named as an “Additional Named Obligee” pursuant to a Multiple Obligee Rider which is attached to and forms part of each of the Bonds, respectively.

37. The Multiple Obligee Rider for the Performance Bond provides:

The Bond is hereby amended to add St. Michael’s Hospital and Bank of Montreal in their respective capacities as assignees of the Design and Construction Contract, as Additional Named Obligees, which Additional Named Obligees (hereinafter may be referred to simply as “Obligee(s)”) or either of them, shall, subject to the terms of the Bond and this Multiple Obligee Rider, ***be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider, as though such Additional Named Obligees were named as an Obligee in the Bond.*** [emphasis added]

38. The Multiple Obligee Rider for the L&M Bond provides:

The L&M Bond shall and is hereby amended to add ST. MICHAEL’S HOSPITAL (hereinafter called the “Owner”) and BANK OF MONTREAL (hereinafter called

the “Lender”) as additional named Obligees, in their respective capacities as assignees of the Design and Construction Contract.

39. Collectively, the Multiple Obligee Rider and section 9 of the Performance Bond provide the Obligees with a direct cause of action under the Performance Bond, and the right to enforce Zurich’s obligations.

40. At no point prior to issuing the Performance Bond or L&M Bond did Zurich seek any representation from SMH as to the fairness, integrity or conduct of the procurement process, nor did SMH make any such representations to Zurich.

41. Construction of the Project commenced in January 2015.

F. The Globe & Mail Investigation and Publications in the Media

42. In September 2015, shortly after construction of the Project began, Mr. Georgiou informed SMH that *The Globe and Mail* (“**The Globe**”) had contacted him to enquire about a fraud that had taken place while Mr. Georgiou was employed at IO (although unrelated to his work at IO), involving York University.

43. On September 12, 2015, SMH placed Mr. Georgiou on paid leave and commenced an investigation into Mr. Georgiou’s past conduct at IO and his hiring as CAO of SMH. SMH subsequently terminated Mr. Georgiou’s employment with cause on November 12, 2015.

44. Over the course of the five month period from September 2015 to February 2016, The Globe published a series of articles arising from its investigation into Mr. Georgiou’s fraudulent scheme while employed at IO and his undeclared conflict of interest with Mr. Aquino during the procurement process for the Project. These articles reported the following facts and opinions:

- (a) **September 15/16, 2015:** SMH was reviewing Mr. Georgiou’s tenure at the hospital, as it had been unaware when it hired Mr. Georgiou that he had issued false invoices that were used in a kickback scheme at York University while he was employed by IO.
- (b) **September 24, 2015:** “A Toronto hospital executive was evaluating potential bidders for a \$300-million construction project during the same period he was

involved in a private real estate venture with the builder that eventually won the contract – casting doubt on the fairness of a process that will lead to the creation of Canada’s premier critical-care centre.” Mr. Georgiou is identified as that executive, and Mr. Aquino as the builder. Mr. Georgiou confirmed that he served as an advisor to companies controlled by Mr. Aquino prior to starting his role as CAO at SMH, and that he continued to do work for those companies while in that role.

- (c) **September 29, 2015:** Markham Stouffville Hospital was conducting its own investigation into its expansion and renovation project that was completed in 2014 given that Mr. Georgiou was involved in that project during his employment at IO.
- (d) **November 13, 2015:** SMH terminated Mr. Georgiou and it was reported that “St. Michael’s continues to review Mr. Georgiou’s role in the bidding process – one that numerous sources have told The Globe was fraught with irregularities.” The Project had a \$301 million budget-cap proposed by SMH to the bid proponents, and “Bondfield’s larger rivals, PCL and EllisDon, said it was not possible to perform the work for this price, and submitted bids at least \$100-million more than the cap, according to numerous sources.” This led to an impasse within the EC, and that “[a] senior Infrastructure Ontario official argued that Bondfield’s bid was not compliant, while Mr. Georgiou pushed for Bondfield, sources close to the process said.”
- (e) **February 10, 2016:** Mr. Georgiou maintained a stake in GP8 Sportwater along with Mr. Aquino during the SMH procurement process. Mr. Georgiou also provided services to commercial real estate companies headed and partly owned by Mr. Aquino.
- (f) **February 16, 2016:** Mr. Georgiou’s family business, which he controls, lent OTEC Research Limited (“OTEC”), which is partly owned by Mr. Aquino, \$102,639 in March 2013 (two months after Mr. Georgiou began his employment at SMH).

45. Contrary to the Statement of Claim, Zurich has known, since 2015, of the alleged unfairness in the procurement process for the Project. The series of publications in The Globe, of

which Zurich knew, described Mr. Georgiou's undeclared conflict of interest, the alleged irregularities in the bidding process, and the alleged variance in the price of the bids between the three proponents. The highly publicized investigative reporting suggested that Bondfield had won its bid as a result of its relationship and collusion with Mr. Georgiou.

46. In fact, in March 2018, the Ontario Superior Court of Justice, in proceedings which considered these articles, found that "the average Globe reader would almost inevitably conclude that Georgiou was a fraudster who undermined the fairness and integrity of the SMH procurement process. The reader would further conclude that Bondfield had won its bid as a result of its relationship and collusion with Georgiou."

G. IO Reports on its Internal Investigation into the Procurement Process

47. In September 2015, IO formed a Special Committee to investigate, among other things, the Project procurement and other IO projects in which Mr. Georgiou had been involved.

48. The Special Committee released its report and findings on June 23, 2016, which was posted to the IO website, where it remains today.

49. The Special Committee concluded, in part, that Mr. Georgiou had a "significant potential conflict of interest which required disclosure".

50. The report of the Special Committee concluded that had Mr. Georgiou disclosed these conflicts to the SMH Conflict Review Team, Mr. Georgiou would likely have been precluded from participating in the procurement process for the Project.

51. Despite the notorious and extensive public disclosure over the period of September 2015 through February 2016, and the release of the IO Special Committee's investigative report in June 2016, Zurich:

- (a) continued to issue Bonds guaranteeing Bondfield's performance on other Projects under its long-standing arrangement to provide Bondfield with surety bonds, and pursuant to the indemnity granted by Bondfield and other indemnitors in its favour;

- (b) never sought information from SMH relating to the procurement process for the Project;
- (c) did not conduct any of its own investigations or due diligence;
- (d) raised no concerns to SMH; and
- (e) took no steps to rescind or otherwise seek to discharge, vary, or void its obligations pursuant to the Bonds.

52. Further, and as described below, Zurich elected to perform its obligations pursuant to the Bonds knowing that the Obligees and others were relying on the Bonds.

53. In reliance on Zurich's conduct, which included Zurich raising no concerns and performing its obligations pursuant to the Bonds, SMH did not seek alternate bonds for the Project at a time when it could have done so. Had Zurich raised any spectre of being unwilling or relieved of its obligations to perform under the Bonds in the circumstances, SMH would have required Project Co to obtain a new surety pursuant to its obligations under the Project Agreement.

H. Bondfield Defaults and the Bondfield Receiver Calls on the Performance Bond

54. By 2018, Bondfield had become financially distressed. It had and continued to incur continuous defaults and face mounting delays on numerous construction projects across Ontario, including for major public-sector institutions.

55. The Project was one of many where Bondfield's performance was delayed. The problems encountered were not unique to the Project but were emblematic of the issues facing Bondfield across its projects in Ontario.

56. By the time Bondfield sought and was granted CCAA protection on April 3, 2019, Bondfield had over \$1 billion in contract value for outstanding construction projects in the public sector alone, including Cambridge Memorial Hospital, St. Joseph's Care Centre, Sunnybrook Health Services Centre, Hawkesbury & District General Hospital, Avondale Public School, Union Station, the Toronto Transit Commission, University of Waterloo, Centennial College Downsview

Aerospace Campus, University of Guelph Enhanced Clinical Learning addition, Trent University Bata Library, and SMH.

57. As Bondfield's principal surety, Zurich had bonded essentially all of the construction projects (including the P3 projects) in which Bondfield and its companies were engaged. The aggregate value of Zurich's bonds issued to Bondfield companies was in excess of \$1 billion.

58. As with Bondfield's other construction projects across Ontario, Project Co and Bondfield committed numerous, continuing defaults under the Project Agreement and the Construction Contract. The Project has been significantly delayed.

59. SMH appropriately and in good faith took steps to assist Project Co in mitigating the delays and the defaults so as to get the Project back on track.

60. In August 2018, Zurich became involved in the Project, including by reviewing claims and making payments to subcontractors and suppliers.

61. Despite SMH's reasonable and good faith efforts, Project Co and Bondfield were unable to address the Project defaults. Accordingly, SMH issued a Notice of Default under the Project Agreement on November 2, 2018.

62. On November 16, 2018, BMO, on behalf of the Lenders to the Project, made a call on the Performance Bond. Zurich did not accept the Lenders' call on the Bonds on the basis that the Lenders had not exercised their step-in rights. Rather than dispute the requirement to do so, the Lenders brought an application to the Court for the appointment of a receiver for Project Co.

63. Alvarez & Marsal Canada Inc. (the "**Receiver**") was appointed as a receiver of Project Co by Court Order dated December 21, 2018. The central purpose of the appointment was to allow the Receiver, on behalf of Project Co, to make a call on the Performance Bond. The appointed Receiver declared Bondfield in default and made a call on the Performance Bond that same day.

64. Because Bondfield had failed to perform on many of its construction projects, Zurich was being called on to pay under many of the bonds that it had routinely provided for years to back Bondfield company projects. Zurich's payments on the bonds given to back Bondfield company projects were reported as the largest surety loss in Canadian history.

65. In December 2018, following the call on the Performance Bond, Zurich took steps to perform its obligations pursuant to the Performance Bond, including by directing and paying for construction of the Project by way of the following steps:

- (a) expending funds under the Performance Bond to continue the performance of the Construction Contract to achieve the Tower Interim Completion milestone, including payment to Bondfield's subcontractors for work being performed;
- (b) attending weekly works meetings;
- (c) retaining Perini Management Services Inc. to manage the Project as Zurich's agent; and
- (d) retaining EllisDon Construction Services Inc. ("**EllisDon**") to provide services to the Project, including construction manager services.

66. Zurich also performed its obligations pursuant to the L&M Bond, including by responding to and paying the claims of Bondfield's subcontractors and entering into ratification agreements with various Bondfield trades to settle their past claims and secure go-forward performance of the Project works.

I. Zurich's Election and the Injunction Motion

67. On August 22, 2019, Zurich advised the Receiver that it elected Option 2.4(a) under the Performance Bond, namely, to pay the remaining balance of the Performance Bond Amount and cease its involvement with the Project. Option 2.4 of the Performance Bond requires that Zurich:

- 2.4 Pay the Obligor the lesser of (a) the remaining balance of the Bonded Amount or (b) the Obligor's reasonable estimate of the cost to complete the Bonded Obligations under the Construction Agreement in accordance with its terms and conditions, less the balance of the Construction Agreement price.

68. At the same time, Zurich threatened to abandon the Project without sufficient notice, unless SMH and the Lenders approved all payments already made by Zurich purportedly under the Performance Bond, in the absence of necessary substantiating information and documents.

69. In response, BMO, supported by SMH, brought a motion for injunctive relief to enjoin Zurich from abandoning the Project.

70. SMH and BMO's motion for injunctive relief was adjourned multiple times on terms. The adjournment terms endorsed by the Court on consent (on one occasion only unopposed by Zurich) included, that until the return date before the Court, ultimately extended to December 20, 2019, the *status quo* with respect to Zurich's involvement with the Project was to be maintained, including the obligation that Zurich continue to pay all subcontractors.

71. During the *status quo* period, SMH, in conjunction with the Lenders, developed a transition framework intended to allow Zurich to pay the remaining amounts owing under the Performance Bond and cease its involvement in the Project in a manner that did not lead to material interruption to the Project.

72. SMH later learned, that Zurich breached the endorsed terms of the adjournment. It stopped making any payments to subcontractors in or around October 2019.

J. The December 20, 2019 Order

73. Ultimately, on December 20, 2019, SMH sought and was granted an Order (the "**December 2019 Order**"), which, among other things:

- (a) permitted SMH to exercise its remedial rights under the Project Agreement to directly retain a project manager, payment certifier, and new and existing trades under new Trade Agreements (as defined in the Order) to carry out the works required to achieve the first milestone in the completion of the Project (referred to as "**Tower Interim Completion**"); and
- (b) declared that the Receiver's call on the Performance Bond was valid, that Zurich elected Option 2.4 under the Performance Bond, and that Zurich is bound by its election.

74. Despite vigorously opposing a declaration that the call on the Performance Bond is valid in other litigation in similar circumstances to those here, Zurich, represented by counsel, attended

in Court and expressly did not oppose this declaration and the granting of the December 2019 Order.

75. At no time has Zurich sought to appeal the December 2019 Order, and the time for doing so has expired.

K. Zurich Refused to Make Any Payment (Including an Interim Payment) Unless SMH Approved the Accounts

76. On February 4, 2020, despite the December 2019 Order declaring Zurich to be bound to its election under Option 2.4 of the Performance Bond, Zurich threatened that it would not make any payments under the Performance Bond until SMH approved all past Zurich payments as proper Performance Bond payments, and that it would no longer pay sub-contractors' invoices unless SMH pre-approved those payments as being properly allocable to the Performance Bond.

77. Zurich's position as asserted in February 2020 was reflective of its conduct in the six-months leading up to the December 20, 2019 Order:

- (a) In August 2019, Zurich confirmed its election of Option 2.4(a) under the Performance Bond but asserted that it would only pay out the full amount owing under the Performance Bond if SMH, BMO and the Receiver validated Zurich's expenses under the Performance Bond up to that date. Zurich gave SMH six days to agree to that proposal, failing which, Zurich would abandon the Project; and
- (b) In November 2019, Zurich asserted that it would cease its involvement on the Project due to SMH's inability to verify Zurich's expenses incurred under the Performance Bond. Zurich gave SMH two and a half weeks' notice of its intention to withdraw from the Project unless SMH complied with its ultimatum.

78. On two occasions Zurich stated it was prepared to make an interim payment, but again only on the basis of concessions from SMH.

79. Following the December 2019 Order, to put further undue pressure on SMH to pre-approve Zurich's unsubstantiated payments, Zurich falsely advised subcontractors that SMH was required

to approve Zurich's accounts before the subcontractors could be paid, and that SMH's failure to do so was the reason for Zurich's non-payment.

80. Zurich continued this conduct even after being warned that this misinformation was interfering with SMH's ability to exercise its remedial rights, in particular its ability to negotiate new agreements with subcontractors, as contemplated by the December 2019 Order.

81. There was no legal basis for Zurich's refusal to pay the remaining amount of the Performance Bond Amount unless SMH pre-approved the validity of Zurich's past payments. The payment of the Performance Bond Amount under Option 2.4 is not conditional on prior approval by SMH or any other Obligees of any expenses incurred to date. Even if SMH was required to approve Zurich's expenses, which SMH denies, Zurich refused to provide the documentation necessary to substantiate or otherwise validate those expenses.

82. Accordingly, on March 6, 2020, SMH and BMO jointly brought a motion to compel Zurich to comply with the December 2019 Order and abide by its election of Option 2.4 of the Performance Bond to pay out the balance of the Performance Bond, and to enforce Zurich's undertaking to pay subcontractors up until the date of the December 2019 Order. A return date was to be scheduled following the delivery of Zurich's responding motion materials, which the parties agreed were to be served by April 17, 2020.

83. Then, in March 2020, Zurich alleges that it discovered some evidence that supports the alleged unfairness in the procurement process about which Zurich knew since 2015. The evidence, which arises four and a half years after Zurich knew of the relationship between Mr. Georgiou and Mr. Aquino and its reported impact on the fairness of the procurement process, arose in the context of Zurich having to pay out hundreds of millions of dollars for surety bonds given to back many Bondfield projects across the country, and with Bondfield, its indemnifier, being under CCAA protection.

84. Zurich seized on this evidence, and in lieu of responding to the payment motion, commenced this action in an attempt to avoid its obligations under the Bonds.

L. Zurich is Liable to Pay the Undisputed Amount Under the Performance Bond and the Outstanding Trade Accounts

85. Zurich elected and is bound by Option 2.4(a) of the Performance Bond.

86. To date, Zurich has not made any payments in accordance with Option 2.4(a) of the Performance Bond. The validity of the call on the Performance Bond and Zurich's election were declared by the December 2019 Order, which Zurich did not oppose.

87. Zurich consented to, or did not oppose, the Court endorsements confirming that Zurich was required to maintain the *status quo* on the Project, including paying for Project work performed by subcontractors.

88. Outstanding trade accounts at issue are either for (1) work performed at the direction or request of Zurich, for which Zurich is responsible in accordance with agreements entered into by Zurich with trades pursuant to its obligations under the Performance Bond, or (2) the claims of trades for work performed under their respective subcontracts with Bondfield pursuant to Zurich's obligations under the L&M Bond, or (3) pursuant to ratification agreements Zurich entered into with Bondfield subcontractors.

89. Neither SMH nor any other Obligee has any obligation or liability in respect of these accounts.

M. No Liability to Zurich Arising from The Public Procurement Process for the Project

90. SMH denies that it owed any duty or obligation to Zurich in respect of the public procurement process for the Project.

91. In any event, the Sponsors acted fairly at all times. The public procurement process for the Project incorporated appropriate procurement standards and safeguards, including the retainer of a fairness monitor, in accordance with the responsibilities of a reasonable and prudent public-sector owner. The Sponsors acted in accordance with their duties in respect of the public procurement process. At all material times, SMH had in place and complied with adequate and appropriate measures to ensure that its employees, agents and representatives who were authorized

to administer the public procurement process for the Project were properly screened, trained, and supervised.

92. SMH denies that any act or omission on its part caused, contributed to, resulted in, or gave rise to any breaches of law or duty, actionable by Zurich, regarding the public procurement process for the Project, which breaches are denied.

93. SMH has no knowledge of the acts of collusion alleged in the Claim between Mr. Georgiou and Mr. Aquino during the procurement process. If there was any collusion between Mr. Georgiou and Mr. Aquino in respect of the public procurement process for the Project, SMH denies that it had knowledge of or the means to obtain knowledge of any such collusion. Mr. Georgiou's alleged wrongful actions were outside of his employment. SMH is not vicariously or otherwise liable for the alleged actions or omissions of Mr. Georgiou or any of the other defendants.

94. In any event, SMH denies that it had any positive obligation to Zurich, including under statute, common law, or contract, to disclose any knowledge of collusion between Mr. Georgiou and Mr. Aquino during the procurement process for the Project.

95. Further, SMH denies that any alleged conduct as between Mr. Georgiou and Mr. Aquino lead to Project Co winning the Procurement. Project Co bid to the disclosed Project budget, and its bid price was objectively reasonable, realistic and achievable as confirmed by two independent cost consultants. Bondfield was successful in winning numerous other procurements for public infrastructure projects in Ontario, in the absence of any similar allegations. The outcome of the procurement was fair despite Mr. Georgiou's actions as alleged by Zurich.

N. There Were No Representations to Zurich

96. SMH denies that it or any of its employees, agents or representatives made any express representations to Zurich as to the fairness of the procurement process for the Project, or at all. In the alternative, any representations by SMH to Zurich were accurate.

97. To the contrary, Section 1.1(d) of the Project Agreement provides that the RFP and Project Co's proposal are superseded entirely by the Project Agreement and are rendered null and void, and shall not be relied upon by anyone, including third parties such as Zurich, to interpret or qualify

any obligations or liabilities of Project Co, or anything else contained in the Project Agreement, including Project Co's obligations to obtain and maintain the Bonds in good standing until the fulfilment of the Project Agreement.

98. In addition, Zurich never made any inquiries to SMH or sought any representations from SMH relating to the fairness of the procurement process either prior to or after issuing the Bonds, nor did Zurich conduct any due diligence at any time in respect of the Project.

99. Further, SMH denies that it or any of its employees, agents or representatives made any implied representations to Zurich as to the fairness of the procurement process for the Project, or at all. Contrary to the Statement of Claim, there can be no implied representations by SMH to Zurich concerning the procurement process, including for the following reasons:

- (a) The legislation governing the procurement process relied on by Zurich to ground its allegation of an implied representation of fairness, the *Broader Public Sector Accountability Act*, 2010, S.O. 2010, c. 25 (the "*Act*"), expressly provides that no cause of action, including an action seeking declaratory relief or any form of compensation, arises against any organization subject to the *Act* (in this case, SMH) as a result of anything done or not done in accordance with the *Act* or the regulations or the directives or the guidelines issued under the *Act*, including the Broader Public Sector Procurement Directive, referred to at paragraph 30(a) of the Claim;
- (b) Zurich has no cause of action relating to SMH's alleged failure to abide by the policy statement, "Building a Better Tomorrow", referred to at paragraph 30(d) of the Claim;
- (c) Neither the Management Board of Cabinet Procurement Directive referred to at paragraph 30(b) of Zurich's Statement of Claim, nor the IO Procurement Policy referred to in paragraph 30(d) of the Claim, applies to SMH;
- (d) Section 1.1(d) of the Project Agreement provides that the request for proposals and Project Co's proposal are superseded entirely by the Project Agreement and are rendered null and void, and shall not be relied upon by anyone, including third parties such as Zurich, to interpret or qualify any obligations or liabilities of Project

Co, or anything else contained in the Project Agreement, including Project Co's obligations to obtain and maintain the Bonds in good standing until the fulfilment of the Project Agreement; and

- (e) The Performance Bond guarantees the performance of the Construction Contract between Bondfield and Project Co, which is not the contract that was the subject of the procurement process, and which contained no representations by Bondfield or Project Co regarding the fairness, integrity or conduct of the procurement process for the Project and no representations by SMH at all.

100. In the alternative, if SMH or any of its employees, agents or representatives made any representations about the fairness of the procurement process for the Project, which is denied, such representations were true in fact when made, were not representations of existing facts, or were made with a *bona fide* belief that the statements were true.

O. There is No Relationship Between Zurich and SMH that Would Permit Zurich to Rely on a “Representation” from SMH

101. In the alternative, if SMH made any representations to Zurich as to the fairness of the procurement process for the Project, which is denied, such representations were not made to Zurich intending that Zurich would rely on them in its determination to issue the Bonds.

102. Moreover, and in any event, Zurich, as a stranger to that process, was not entitled under statute, common law or contract to rely on any acts or omissions or any representations, implied or otherwise, made by SMH relating to the fairness of the procurement process, including because:

- (a) The *Act* provides that there is no cause of action against SMH as a result of anything done or not done in accordance with the *Act* or regulations, directives and guidelines issued thereunder;
- (b) The Project Agreement supersedes the procurement process; and
- (c) SMH is not party to the Construction Contract of which Zurich guaranteed performance, which Construction Contract was not procured through the

procurement process and which contains no representations as to the procurement process.

103. There was no special relationship between SMH and Zurich giving rise to a duty of care that would entitle Zurich to claim against SMH for any reliance by it on any representations by SMH as to the fairness of the procurement process. Neither the requirement of proximity nor of reasonable foreseeability is met (or even pleaded) by Zurich.

104. In any event, policy considerations, including the application of the *Act* and the spectre of indeterminate liability, would negate any such duty.

P. Zurich Did Not Rely on Any Representations as to the Fairness of the Procurement Process

105. In any event, and even if SMH made any representations to Zurich as to the fairness of the procurement process for the Project on which Zurich was entitled to rely, which is denied, any representation as to fairness was not material to Zurich's decision to issue the Bonds, and was not relied on by Zurich.

106. Rather, and contrary to the Statement of Claim, Zurich did not consider the fairness of the procurement process at all in its determination to issue the Bonds, or, in the alternative, Zurich did not consider the fairness of the procurement process to be material. This is evident including because:

- (a) Any losses sustained by Zurich arising from its obligations under the Bonds were the subject of a pre-existing indemnity. Bondfield and Zurich entered into the Indemnity Agreement, requiring Bondfield and others to indemnify Zurich from and against any and all liability for losses and/or expenses whatsoever kind in nature which Zurich may sustain and incur by reason of executing the Bonds;
- (b) Zurich provided a surety's consent as part of Project Co's bid proposal, by which it undertook to issue the Bonds for the Project prior to the procurement process being completed;

- (c) Zurich never sought any representations from SMH as to the fairness or propriety of the procurement process at any time prior to, or after, issuing the Bonds, despite having the means and opportunity to make those inquiries;
- (d) Zurich never conducted any due diligence in respect of the Project, either prior to or after issuing the Bonds;
- (e) With knowledge of an investigation and extensive media coverage impugning the fairness of the procurement process, Zurich made no enquiries of SMH as to the fairness of that process, did not itself conduct investigations, nor did Zurich take any steps to rescind or otherwise end its obligations under the Bonds;
- (f) Zurich instead continued to bond Bondfield projects; and
- (g) Zurich did not and could not reasonably rely upon any alleged misrepresentations, including for the reasons articulated above.

Q. SMH Did Not Owe Zurich a Duty or Obligation to Disclose Unfairness in the Procurement Process

107. In any event, even if SMH had known of any unfairness or potential unfairness during the procurement process, SMH had no positive duty or obligation to Zurich in common law, contract, statute, or otherwise to disclose any such knowledge to Zurich.

108. Zurich, as a stranger to the procurement process, is not entitled to assert liability for breaches of obligations relating to the procurement process when SMH owed it no such duties or obligations.

R. Any Reliance on Representations of Fairness Was Not to Zurich's Detriment

109. In any event, the alleged unfairness in the procurement process did not result in Project Co's bid price being unrealistically low thereby increasing Zurich's risk as alleged, or at all.

110. Project Co bid to the Project budget, which was disclosed to all proponents, and which was developed based on information provided by a qualified and independent cost consultant. Project

Co's bid price was confirmed to be realistic and achievable by two independent quantitative cost surveyors prior to the proposal being selected.

111. Further, Zurich satisfied itself prior to issuing the Bonds that the bid price was realistic and achievable and that Bondfield was capable of meeting its obligations under the Construction Contract.

112. In the alternative, Zurich chose not to satisfy itself that the bid price was realistic and achievable prior to issuing the Bonds because the bid price was not material to Zurich's decision to issue the Bonds.

113. In any event, Project Co did not fail because the bid price was too low; Bondfield, of which Project Co is only one of many wholly owned subsidiaries, failed across its entire portfolio of projects.

114. Bondfield successfully bid on a number of P3 Projects across Ontario in and around the time its bid was selected for the Project. As a result, Bondfield was unable to secure the necessary financing to meet its obligations across all of its projects, resulting in a series of defaults, including on the Project.

115. Project Co's bid price did not cause or contribute to any damages or loss alleged to have been suffered by Zurich, which damages and/or loss are denied. To the extent that Zurich has suffered any loss, which is denied, they were caused by Project Co and/or Bondfield's financial distress, and/or Zurich's own failure to monitor or conduct due diligence, for which SMH is not responsible at law.

S. Zurich is Not Entitled to the Declaratory Relief it Seeks

116. Zurich is not entitled to declaratory relief rescinding and voiding the Bonds *ab initio*, declaring the Bonds are of no force and effect, or voiding Zurich's obligations under the Bonds.

117. Contrary to the Statement of Claim, by 2015/2016 Zurich knew of the existence of alleged unfairness in the procurement process which is the basis on which it asserts its claim. It did not act on that knowledge to rescind or otherwise cancel, or even raise any concerns about, the Bonds.

118. Rather, for years while it knew the Obligees and others were relying on the Bonds, Zurich continued to perform under the Bonds. Having made this election, Zurich is not entitled now to rescind or void the Bonds.

119. As a result of Zurich's undue delay in asserting its right to rescind the Bonds, the Obligees cannot be restored to their original position. No alternate Bonds are now available. Further, innocent third parties, including those against whom there are no allegations of wrongdoing such as BMO (who together with the Lenders has advanced more than \$220 million to Project Co to finance the Project works) and Bondfield subcontractors, have since 2015/2016 acquired rights under the Bonds. Rescission of the Bonds, or otherwise allowing Zurich to avoid its obligations under the Bonds, would undermine these third parties' rights.

120. Zurich's remedy, if any, arising from any misrepresentations, which representations are denied by SMH, is contractual pursuant to its Indemnity Agreement with Bondfield and the additional indemnitors. The Indemnity Agreement provides Zurich with a right of recovery for any and all liability for losses and/or expenses whatsoever which Zurich may sustain and incur by reason of issuing the Bonds.

121. In the alternative, Zurich is precluded from avoiding its obligations under the Bonds owing to BMO and the subcontractors, because Zurich's obligations to those parties arise from independent legal rights distinct from Project Co and SMH's rights under the Bonds, and cannot be invalidated by any other parties' conduct.

T. Equitable and Statutory Defences to Rescission

122. In the alternative, in the event that rescission or other legal means to avoid its obligations under the Bonds would have otherwise been available to Zurich, Zurich is barred from them by equity and by statute.

123. Zurich raised no concerns about the Bonds when it learned from public reports in 2015-2016 that the fairness of the procurement process had allegedly been undermined. It made no inquiries to SMH on this issue, despite having the means and opportunity to do so. It did not itself conduct any investigations, monitoring or due diligence. Instead, it continued for years to perform under the Bonds. Zurich did not notify SMH of an intention, when it had a duty to do so, nor did

it take any steps that would otherwise have been required of it, to avoid its obligations under the Bonds. In so conducting itself, Zurich unequivocally elected to perform under the Bonds.

124. Further, Zurich represented or promised that it would continue to perform under the Bonds. These assurances were intended to affect the legal relationship and intended for SMH to act on, which it did by continuing to have the Project constructed relying on the validity of the Bonds.

125. SMH relied to its detriment on Zurich's course of conduct in 2015/2016 and its conduct of continuing to perform from 2015-2019. SMH has been prejudiced by relying on Zurich's conduct. But for Zurich's representation or promise, SMH would have required Project Co to obtain replacement bonds in 2015-2016 prior to Bondfield and Project Co's defaults. SMH is no longer able to obtain alternate bonds for the Project. Zurich is accordingly estopped from rescinding the Bonds.

126. Zurich knew that the Obligees and other third-party beneficiaries were relying and would continue to rely on the Bonds and gave them no notice of the concerns it now seeks to raise as a means of avoiding its obligations under the Bonds. Zurich intentionally waived any right it had to seek to rescind or otherwise avoid its obligations under the Bonds.

127. Zurich has purported to rescind the Bonds *ab initio* without returning any premiums, thereby affirming the continuing validity of the Bonds.

128. Zurich's acquiescence in not acting on its knowledge of the alleged unfairness of the procurement process in 2015-2016 resulted in the prejudice to SMH as set out above. It would be unfair and unjust to allow Zurich to avoid its obligations under the Bonds in these circumstances.

129. Zurich is estopped from, and the doctrines of election, acquiescence, and laches preclude it from, seeking the rescission of the Bonds, voiding the Bonds *ab initio*, invalidating the Bonds or the call on the Bonds, and invalidating its obligations under the Bonds. Further, Zurich waived any right to seek rescission or otherwise avoid its obligations under the Bonds in 2015-2016. It would be unjust and inequitable to permit Zurich to rescind the Bonds in the circumstances.

130. Zurich's claim is also statute barred by virtue of the applicable provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, as Zurich knew or ought reasonably to have known the

material facts underlying its cause of action to avoid its obligations under the Bonds more than two years prior to the issuance of the Statement of Claim.

131. Zurich's allegations that it learned something new in March 2020 are not tenable. At most it obtained some further evidence of the material facts that underlie its allegations of unfairness in the procurement process, about which it was aware more than two years before it commenced its claim.

U. The Call on the Performance Bond was Valid

132. SMH denies that Zurich has any right at contract law, common law or in equity to be relieved of liability under the Performance Bond arising from any purported prejudice from an alleged delay in the declaration of default or call on the Performance Bond by Project Co in December 21, 2018.

133. The allegations which form the basis for Zurich's claim of delay resulting in alleged prejudice were known to Zurich at the time the December 2019 Order was issued, which declared the call on the Bonds valid and affirmed Zurich's election under the Performance Bond. Zurich, represented in Court by counsel, did not oppose that Order. Zurich has not appealed the Order or otherwise sought to set it aside.

134. Zurich is precluded from advancing its Claim that the call is invalid as it is *res judicata* as per the doctrine of issue estoppel, amounts to a collateral attack on the December 2019 Order, and is otherwise an abuse of process.

135. In any event, Zurich has no right to assert alleged delay in declaring a default as a defence to its obligations under the Bonds. Section 3 of the Performance Bond provides that Zurich shall not be discharged or released from liability under the Bond as a result of the extension of time granted by the Obligees, or by an Obligee's forbearance from exercising any right or power under the Construction Contract.

136. Moreover, SMH appropriately and reasonably took steps to mitigate the effects of Project Co's defaults prior to issuing a Notice of Default under the Project Agreement on November 2, 2018.

137. Further, there was no delay in calling on the Bonds as alleged, or at all.

138. In the alternative, and in any event, the timing of the issuance of the Notice of Default and the call on the Bonds has not resulted in any prejudice to Zurich.

V. Zurich is Not Entitled to Damages and SMH Has Not and Will Not be Unjustly Enriched

139. SMH further denies that Zurich is entitled to damages as claimed, or at all. SMH denies that any actionable act or omission on its part caused or materially contributed to any damages or loss suffered by Zurich. Further, SMH denies that Zurich has suffered the damages alleged in the Statement of Claim, or at all, and puts Zurich to the strict proof thereof.

140. In the alternative, the damages asserted by Zurich are excessive, not recoverable at law, and Zurich has failed to mitigate those damages.

141. In the further alternative, if Zurich has suffered the damages alleged, which is denied, they were caused or contributed to by Zurich's negligent conduct by, among other things, failing to make appropriate enquiries in respect of the issuance of the Bonds, failing to conduct proper due diligence prior to issuing the Bonds, failing to monitor the Project after the issuance of the Bonds, and failing to properly manage the Project during its involvement.

142. SMH denies that it has been unjustly enriched as alleged, or at all. SMH further denies that Zurich has suffered a deprivation. If SMH was enriched and Zurich suffered a corresponding deprivation, which is denied, the enrichment was indirect, and there is juristic reason, including but not limited to the validity of the Bonds and Zurich's contractual right of recovery against Bondfield for losses sustained as a result of issuing the Bonds.

W. Zurich is Liable to Pay the Amounts Under the Performance Bond and the Outstanding Trade Accounts

143. Zurich must pay the full amount of the Performance Bond less amounts determined to have been properly paid pursuant to its obligations under the Performance Bond. It must also pay outstanding trade accounts.

144. The amounts payable by Zurich under the Performance Bond include an Undisputed Amount and a Disputed Amount:

- (a) The calculation of the **Undisputed Amount** owing under the Performance Bond is based on the remaining balance of the Performance Bond after deducting all amounts that Zurich asserts are proper payments that it made under the Performance Bond, whether they are in fact proper or not.
- (b) The **Disputed Amount** are those payments which Zurich asserts were proper payments under the Bonds that at first instance are to be credited to Zurich's benefit.

145. Both the quantum of certain payments purported to have been made by Zurich under the Performance Bond and the allocation of certain payments made by Zurich to the Performance Bond (as opposed to the L&M Bond or not allocable to either Bond) are disputed by SMH.

146. The Undisputed Amount, which calculation takes Zurich's case at its highest, ought to be paid forthwith.

147. The adjudication of which sums, if any, of the Disputed Amount were proper payments that were made by Zurich under the Performance Bond can be determined on a Reference which will adjudicate which amounts, if any, were improperly paid by Zurich, improperly allocated to the Performance Bond by Zurich, or cannot be credited to Zurich's benefit against either of the Bonds.

148. SMH asks that the action against it be dismissed in its entirety, with costs.

COUNTERCLAIM

149. SMH counterclaims against Zurich for:

- (a) an Order requiring Zurich to forthwith pay to SMH the Undisputed Amount due and owing under the Performance Bond to be used for construction of the Project, or in the alternative, to require that payment to be made to the Receiver to be held in trust and disbursed either on consent of BMO and SMH or by further Order of this Court;
- (b) an Order directing a Reference to determine the quantum of any remaining Disputed Amount that Zurich is required to pay under the Performance Bond;
- (c) in the event that the Receiver's December 21, 2018 call on the Performance Bond is found to be invalid and of no force and effect:
 - (i) a declaration that SMH or BMO be permitted to make a call under the Performance Bond and that the call will be deemed to have been made December 21, 2018, *nunc pro tunc*; or
 - (ii) a declaration that BMO's November 16, 2018 call on the Performance Bond was and remains a valid call on the Performance Bond.
- (d) an Order sealing certain confidential information related to cost estimates for the completion of the Project;
- (e) an Order that the counterclaim be tried together with the main action;
- (f) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) the costs of this counterclaim, plus all applicable taxes; and
- (h) Such further and other relief as this Honourable Court may deem just.

150. SMH repeats and relies upon the allegations in the Statement of Defence in support of the Counterclaim.

CROSSCLAIM

151. In the event that Zurich is successful in its claim to avoid its liability under the Bonds and/or is successful in its claim for damages as against SMH, SMH claims against the Defendants 2442931 Ontario Inc., Bondfield Construction Company Limited, John Aquino and Vasos Georgiou:

- (a) damages in the amount of the value of the Bonds;
- (b) contribution and indemnity for all damages, interest and costs payable to Zurich;
- (c) interest on any such amounts pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
- (d) costs of the main action and this Crossclaim, plus all applicable taxes; and
- (e) such further and other relief as counsel may advise and/or this Honourable Court may deem just.

152. For the purposes of this Crossclaim only, SMH adopts and relies upon the allegations in the Statement of Claim as against Defendants 2442931 Ontario Inc., Bondfield Construction Company Limited, John Aquino and Vasos Georgiou and repeats and relies upon the allegations contained in the Statement of Defence.

May 22, 2020

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UNITY HEALTH TORONTO
ET AL
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Court File No.: .: CV-20-639601-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE, COUNTERCLAIM AND
CROSSCLAIM OF THE DEFENDANT/PLAINTIFF BY
COUNTERCLAIM, UNITY HEALTH TORONTO**

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