



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

|                      |   |                                  |
|----------------------|---|----------------------------------|
| THE HONOURABLE MADAM | ) | MONDAY, THE 29 <sup>TH</sup> DAY |
|                      | ) |                                  |
| JUSTICE CONWAY       | ) | OF JUNE, 2015                    |

BETWEEN:

**TRISURA GUARANTEE INSURANCE COMPANY**

Applicant

- and -

**EBERSOLE EXCAVATING INC. AND D&S  
RAILWAY CONSTRUCTION INC.**

## Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 47 OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AND IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

## ORDER

**THIS MOTION**, made by Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively, the “**Debtors**”), for an order, among other things: (i) approving the Supplement to

the First Report of the Receiver dated June 18, 2015 (the “**First Report Supplement**”) and the actions of the Receiver set out therein; (ii) approving the fees and disbursements of the Receiver and its counsel, as described in the First Report Supplement; and (iii) authorizing and directing the Receiver to distribute funds held by the Receiver according to the “**Distribution Scheme**” (as defined in the Order of the Honourable Justice Wilton-Siegel dated March 6, 2015) (the “**Order Establishing the Distribution Hearing**”)), was heard on May 13, 2015 and this day at 330 University Avenue, Toronto, Ontario.

**ON READING**, amongst other materials presented by counsel, the First Report of the Receiver dated February 24, 2015 and the appendices thereto (including, without limitation, the affidavit of Stuart Detsky sworn November 24, 2014 and the exhibits thereto), the affidavit of Kyle Choe affirmed March 26, 2015 and the exhibits thereto, the affidavit of Michael B. McIntosh sworn April 1, 2015 and the exhibits thereto, the affidavit of Joel D. Farber sworn April 2, 2015 and the exhibits thereto, the affidavit of Stuart Detsky sworn April 6, 2015 and the exhibits thereto (including, without limitation, the affidavit of Michael B. McIntosh sworn November 25, 2014 and the exhibits thereto), the affidavit of Stuart Detsky sworn April 9, 2015 and the exhibits thereto, the affidavit of Sandra Ebersole sworn April 9, 2015 and the exhibits thereto, excerpts of the transcript of the cross-examination of Michael B. McIntosh conducted April 20, 2015, the factum of Canada Revenue Agency (“**CRA**”) dated April 24, 2015, the factum of Maynards Industries Ltd. (“**Maynards**”) dated April 24, 2015, the factum of Trisura Guarantee Insurance Company (“**Trisura**”) dated April 24, 2015, the affidavit of Katelin Z. Parker sworn April 29, 2015 and the exhibits thereto, the reply factum of CRA dated May 1, 2015, the reply factum of Trisura dated May 1, 2015 and the First Report Supplement (collectively, the “**Written Materials**”),

**AND ON HEARING** certain submissions of counsel for the Receiver, counsel for Maynards and counsel for Trisura, no one appearing for any other person on the service list, although duly served as appears from the affidavits of Eunice Baltkois sworn February 25, 2015 and June 18, 2015, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the Written Materials is hereby abridged and validated, thereby dispensing with any need for further service thereof.
2. **THIS COURT ORDERS** that the First Report Supplement be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period to and including May 31, 2015, in the amount of \$41,611.72, inclusive of applicable HST, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of legal counsel to the Receiver, Aird & Berlis LLP, for the period to and including May 31, 2015, in the amount of \$46,977.84, inclusive of applicable HST, be and are hereby approved.
5. **THIS COURT ORDERS** that the “**DLPC Funds**” constitute “**Property**” (as both terms are defined in the Order Establishing the Distribution Hearing).
6. **THIS COURT ORDERS** that the “**Remaining Funds**” (as defined in the Order Establishing the Distribution Hearing), other than the amount required to satisfy paragraph 7(a) of this Order, constitute Property. For greater certainty, the Remaining Funds constitute, and are limited to, the proceeds of the equipment sold by Maynards pursuant to paragraph 28 of the Order of the Honourable Justice Newbould dated November 26, 2014.

7. **THIS COURT ORDERS** that, with respect to the balance of the Distribution Scheme not already determined by the Order of the Honourable Justice Conway dated June 10, 2015 (the “**Interim Distribution Order**”), the Receiver be and is hereby authorized and directed to make distributions, without further Order of this Court, from the DLPC Funds and the Remaining Funds, as follows:

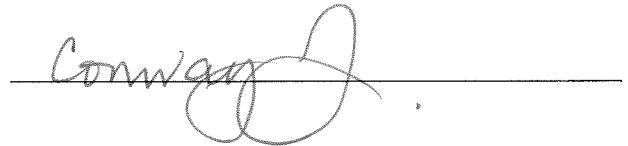
- (a) to Maynards, the first \$600,000 of the Remaining Funds;
- (b) to Trisura, after payment of all fees and disbursements of the Receiver and its counsel, and on account of all the Debtors’ secured indebtedness owing to Trisura, including, without limitation, for principal, interest and costs, as follows, but only up to the aggregate amount of the Debtors’ secured indebtedness owing to Trisura:
  - (i) first, the balance of the DLPC Funds not already distributed to CRA pursuant to the Interim Distribution Order; and
  - (ii) second, the balance of the Remaining Funds not already distributed to Maynards pursuant to paragraph 7(a) of this Order; and
- (c) to Maynards, any and all of the Remaining Funds, if any, that remain after the Receiver has distributed the amounts provided by paragraphs 7(a) and 7(b) of this Order.

8. **THIS COURT ORDERS** that, to the extent that the Debtors’ secured indebtedness owing to Trisura is not fully satisfied by the distributions in paragraph 7(b) of this Order, the Receiver be and is hereby authorized to make further distributions to Trisura from the balance of

the Property, if any, that is neither DLPC Funds nor Remaining Funds, but only up to the amount of the Debtors' secured indebtedness that remains owing to Trisura.

9. **THIS COURT ORDERS** that nothing in this Order shall impair, compromise, affect or otherwise prejudice Maynards' claims in respect of the matters raised or which may be raised in its action in the Ontario Superior Court of Justice bearing Court File No. CV-14-516690.

10. **THIS COURT ORDERS** that nothing in this Order shall impair, compromise, affect or otherwise prejudice any claims that Trisura may have against any of its indemnitors, including, without limitation, Darrell Ebersole and Sandra Ebersole.

A handwritten signature in cursive script, appearing to read "Conway", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 29 2015

Handwritten initials "MB" in a stylized cursive font.

TRISURA GUARANTEE INSURANCE COMPANY

- and -

EBERSOLE EXCAVATING INC., et al.

Applicant

Respondents

Court File No. CV-14-10766-00CL

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

**Proceedings commenced at Toronto**

**ORDER**

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*Lawyers for Grant Thornton Limited, in its capacities as the Court-  
appointed interim receiver and receiver of Ebersole Excavating Inc. and  
D&S Railway Construction Inc.*