

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

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

**MOTION RECORD
(returnable March 6, 2015)**

Part 2 of 2

February 25, 2015

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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.*

SERVICE LIST
(Current as of February 23, 2015)

TO: EBERSOLE EXCAVATING INC.

2194 East Avenue
Stevensville, Ontario L0S 1S0

Attention: Darrell Ebersole

Email: ebersole@bellnet.ca

Email: darrell.ebersole@ebersoles.com

Email: darrell.ebersole@ebersoleexcavating.com

AND TO: D&S RAILWAY CONSTRUCTION INC.

2194 East Avenue
Stevensville, Ontario L0S 1S0

Attention: Darrell Ebersole

AND TO: DARRELL EBERSOLE

2194 East Avenue
Stevensville, Ontario L0S 1S0

AND TO: DARRELL EBERSOLE

631 Lakeshore Road
Fort Erie, Ontario L2A 1B8

AND TO: SANDRA EBERSOLE

2194 East Avenue
Stevensville, Ontario L0S 1S0

AND TO: GRANT THORNTON LIMITED

19th Floor, Royal Bank Plaza South Tower
200 Bay Street, Box 55
Toronto, Ontario M5J 2P9

Attention: Jake Wiebe

Tel.: (416) 360-3069

Fax: (416) 360-4948

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Attention: Daniel Sobel

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Interim Receiver and Receiver

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Email: jnemers@airdberlis.com

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AND TO: **BORDEN LADNER GERVAIS LLP**
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Lawyers for Trisura Guarantee Insurance Company

AND TO: FOGLER, RUBINOFF LLP
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Lawyers for Maynards Industrial Ltd.

AND TO: BDO CANADA LIMITED
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Suite 1040
Mississauga, Ontario L5B 1M2

Attention: Peter Naumis
Tel.: (905) 615-6207
Fax: (905) 615-1333
Email: pnaumis@bdo.ca

Proposal Trustee of Ebersole Excavating Inc.

AND TO: JMA ACCOUNTING PROFESSIONAL CORPORATION
1300 Cornwall Road, Suite 201
Oakville, Ontario L6J 7W5

Attention: John MacDonald
Tel.: (905) 338-8343 Ext. 221
Fax: (905) 338-8042
Email: jbm@jmagroup.ca

AND TO: WEIRFOULDS LLP
4100 – 66 Wellington St. W.
P.O. Box 35, Toronto-Dominion Centre
Toronto, Ontario M5K 1B7

Attention: David Brown / Hilary Book
Tel.: (416) 947-5046 / (416) 947-5057
Fax: (416) 365-1876 / (416) 365-1876
Email: dbrown@weirfoulds.com / hbook@weirfoulds.com

Lawyers for JMA Accounting Professional Corporation and John MacDonald

AND TO: FLUXGOLD IZSAK JAEGER LLP
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Fax.: (905) 763-3772
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Lawyers for Darrell Ebersole

AND TO: DUNNET LAW PROFESSIONAL CORPORATION
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Lawyers for Sandra Ebersole

AND TO: DH PROFESSIONAL CORPORATION
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Mississauga, ON L4Z 1V9

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Niagara Falls, ON L2H 1K2

AND TO: BRODERICK & PARTNERS LLP
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Niagara Fall, ON L2E 6V6

Attention: Marc A. DiGirolamo
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Fax: (905) 356-6904
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Lawyers for Curtis Gail Development Corporation

AND TO: ALLY CREDIT CANADA LIMITED
P.O. Box 5000, Station D
Etobicoke, ON M9A 5E3

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- 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**

FIRST REPORT OF THE INTERIM RECEIVER

DECEMBER 15, 2014



Grant Thornton Limited
Royal Bank Plaza, South Tower
200 Bay Street, 19th Floor
Toronto, Ontario
M5J 2P9

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INTRODUCTION AND BACKGROUND

1. Grant Thornton Limited ("**GTL**") was appointed as interim receiver (the "**Interim Receiver**") of Ebersole Excavating Inc. ("**Ebersole**") and D&S Railway Construction Inc. ("**D&S**", and together with Ebersole, the "**Companies**"), pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 26, 2014 (the "**Interim Receivership Order**"). A copy of the Interim Receivership Order and the related endorsement of the Court is attached hereto as **Appendix "1"**.
2. The Interim Receivership Order, amongst other things, authorizes the Interim Receiver to take possession of the Property, as defined in the Interim Receivership Order, but does not authorize the Interim Receiver to sell the Property.
3. Background information pertaining to the Companies, including the events preceding the issuance of the Interim Receivership Order, is contained in the affidavit of Stuart Detsky sworn November 24, 2014 (the "**Detsky Affidavit**") in support of, amongst other things, the application of Trisura Guarantee Insurance Company (the "**Applicant**") to appoint the Interim Receiver. A copy of the Detsky Affidavit (without exhibits) is attached hereto as **Appendix "2"**.

PURPOSE OF THE FIRST REPORT

4. The purpose of this, the Interim Receiver's first report (the "**First Report**"), is to:
 - a) provide the Court with details of the Interim Receiver's activities since its appointment; and
 - b) provide information pertinent to the Applicant's request for an order:
 - (i) approving the First Report and the conduct and activities of the Interim Receiver as described herein;
 - (ii) approving the fees and disbursements of the Interim Receiver and its legal counsel as described herein;
 - (iii) appointing GTL as receiver of the Property (the "**Receiver**")

pursuant to section 243(1) of the Bankruptcy and Insolvency Act (the "**BIA**") and section 101 of the Courts of Justice Act; and

- (iv) authorizing the Receiver to file assignments in bankruptcy on behalf of each of the Companies and authorizing the Receiver to transfer up to \$15,000 from the receivership trust account to each bankruptcy estate to fund its administration.

DISCLAIMER

- 5. In preparing this First Report, the Interim Receiver has relied upon certain unaudited financial information, the Companies' records and information from the Companies' financial advisors, Sandra Ebersole and her legal counsel. While the Interim Receiver has reviewed various documents provided by the Companies and the other parties noted above, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Interim Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
- 6. This First Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies and to assist the Court in making a determination of whether to approve the relief sought by the Applicant. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Interim Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.
- 7. All currency references in this First Report are to Canadian dollars unless otherwise noted.

ACTIVITIES OF THE INTERIM RECEIVER

- 8. On November 27, 2014, the Interim Receiver attended at the Companies' premises at 2194 East Avenue, Stevensville, Ontario (the "**Premises**") in order to, amongst other things, take an inventory of the Companies' assets, take

possession of the Companies' books and records and meet with Sandra Ebersole and her legal counsel, David Dunnet of Dunnet Professional Law Corporation ("**Dunnet**"). Darrell Ebersole was not present at the Premises on November 27, 2014.

9. The Interim Receiver obtained copies of the Companies' insurance policies. The Interim Receiver has corresponded with the insurance broker and has confirmed that coverage is in place and that premiums have been paid as of the date of the Interim Receivership Order. The insurance broker has also advised that they will arrange for the Interim Receiver to be added as a loss payee or an additional insured on each policy.
10. The Interim Receiver engaged Ritchie Bros. Auctioneers ("**RB**") to appraise the Companies' assets located at the Premises (the "**Appraisal**"). RB attended at the Premises on November 27, 2014 to conduct the Appraisal.
11. The Interim Receiver froze D&S' bank account and arranged for the balance as at November 27, 2014 in the amount of \$4,567 to be transferred to the Interim Receiver's trust account.
12. The Interim Receiver contacted creditors that leased assets to the Companies and obtained security documents supporting their claim on specific assets and the payments made by the Companies prior to the issuance of the Interim Receivership Order.
13. The Interim Receiver responded to unsecured creditors' inquiries regarding the status of the interim receivership.
14. The Interim Receiver took possession of approximately 60 bankers' boxes of records, a computer server and two computers.
15. Based on the Companies' records and from discussions with Sandra Ebersole, it appears that D&S may owe approximately \$100,000 in source deductions and \$70,000 in HST to Canada Revenue Agency ("**CRA**").
16. Pursuant to a CRA Notice of Assessment dated November 20, 2014, Ebersole owed \$99,795 in HST to CRA. The Interim Receiver is co-ordinating with CRA to schedule a trust examination which will confirm the amounts due to CRA.

17. The Interim Receiver obtained an independent legal opinion on the Applicant's security documents, which opinion states that, subject to certain assumptions and qualifications that are common in opinions of this nature, the personal property security granted by Ebersole and D&S to the Applicant is valid and enforceable and creates valid security interests in the personal property of Ebersole and D&S to which the *Personal Property Security Act* (Ontario) (the "**PPSA**") applies.
18. The Interim Receiver's review of PPSA registrations against Ebersole revealed a registration by Curtis Gail Development Corporation ("**Curtis Gail**") dated December 13, 2013. The registration appears to be a chattel mortgage against a 1999 Western Star truck (the "**Curtis Gail Registration**").
19. The Interim Receiver contacted Broderick & Partners LLP ("**BP**") who are listed as the registering agent for the Curtis Gail Registration and requested details of the registration and the underlying indebtedness.
20. BP responded that the security held by Curtis Gail had been assigned to Jennifer Lam, who is represented by Dunnet. On December 1, 2014 the Interim Receiver sent an email to Dunnet requesting documents related to the assignment from Curtis Gail to Jennifer Lam and a copy of the loan agreement between Curtis Gail and Ebersole. Dunnet has not responded to the Interim Receiver's email.
21. Counsel to the Interim Receiver therefore sent a letter to BP on December 12, 2014 requesting a copy of the assignment agreement.
22. The Interim Receiver's review of PPSA registrations against Ebersole and D&S revealed registrations by Caterpillar Financial Services Limited ("**CAT**") against both Companies. CAT has confirmed to the Interim Receiver that the loans related to these registrations were paid in full on May 22, 2012. The PPSA registrations made by CAT against Ebersole and D&S are now discharged.

- a) three lots that were included in the Auction Assets but that did not sell at the Auction;
- b) 62 assets that were not included in the Auction Assets including the following:
 - (i) a 2012 Jeep Grand Cherokee registered to "Darrell Ebersole o/a Darrell Ebersole Excavating" (the "**Jeep Cherokee**"); and
 - (ii) a shipping container containing tools and other small assets (collectively, the "**Shipping Container**").

A complete listing of the Unsold Assets is attached hereto as **Appendix "4"**.

- 31. Sandra Ebersole advised the Interim Receiver that the Shipping Container and its contents were excluded from the Auction because they are Darrell Ebersole's personal assets. The Interim Receiver inspected the contents of the Shipping Container and the contents appear to be tools and equipment related to the Companies' operations. The Interim Receiver has taken possession of these assets as it has not received any evidence from Sandra Ebersole or Darrell Ebersole demonstrating that these assets are Darrell Ebersole's property and not the Companies' property.
- 32. The Interim Receiver requested that Maynards remove the Unsold Assets, excluding the Jeep Cherokee, from the Premises for storage pending further order of the Court. Maynards has advised that the likely cost to move these assets is greater than the likely proceeds of their sale.
- 33. The Interim Receiver therefore intends to leave the Unsold Assets excluding the Jeep Cherokee at the Premises while the Interim Receiver markets these assets for sale, as permitted by the Interim Receivership Order.
- 34. The Interim Receiver has arranged for the Jeep Cherokee to be moved to Manheim Auction, Inc. for storage. A PPSA search on Ebersole revealed a registration in favour of Ally Credit Canada Limited ("**Ally**") against the Jeep Cherokee. Ally has since advised that its loan against this vehicle was repaid in full on November 14, 2014. The Interim Receiver understands that Sandra Ebersole previously used the Jeep Cherokee as her personal vehicle.

The Unreconciled Assets

35. In reviewing MOT records and insurance policies contained in the Companies' books and records the Interim Receiver has located 23 assets of interest that the Interim Receiver has been unable to locate (collectively, the "**Unreconciled Assets**") all in addition to the assets described in paragraph 28, comprising:

- a) 13 assets registered at the MOT to "Darrell Ebersole o/a Darrell Ebersole Excavating";
- b) three vehicles registered to Darrell Ebersole;
- c) one vehicle registered to Sandra Ebersole;
- d) six pieces of construction equipment.

A list of the Unreconciled Assets is attached hereto as **Appendix "5"**.

36. Counsel for the Interim Receiver sent letters to Sandra Ebersole's counsel and Darrell Ebersole's counsel requesting information on the location of the vehicles mentioned in paragraph 35(a) above. Counsel for Sandra Ebersole has advised that these vehicles are located on the Premises and form part of the Auction Assets, however the Interim Receiver has confirmed that these assets are neither at the Premises nor are they included in the Auction Assets.

37. The Interim Receiver is in the process of reviewing the Companies' records in an attempt to determine the ownership status of the Unreconciled Assets.

Accounts Receivable

38. On November 27, 2014 the Interim Receiver obtained a listing of D&S' accounts receivable from Sandra Ebersole. The listing identified accounts receivable totalling approximately \$140,000. Sandra advised that there were no receivables owing to Ebersole.

39. The Interim Receiver has sent letters to D&S' customers advising of the Interim Receivership Order and advising the customers to pay all amounts owing to D&S to the Interim Receiver.

The Bryan's Sale

40. Sandra Ebersole has advised the Interim Receiver that in or about March or April of 2014, the Companies sold certain assets through Bryan's Auction Services ("**Bryan's**"). The Interim Receiver has obtained an unsigned copy of the Bryan's sale agreement and the auction results detailing that 26 assets were sold for proceeds of \$439,760 (the "**Bryan's Sale**").
41. From this information and a review of Ebersole's bank accounts, the Interim Receiver has learned that the Bryan's Sale resulted in proceeds of \$399,360 being deposited to Ebersole's bank account and \$40,400 being paid to a secured creditor having a security registration over the assets sold at the Bryan's Sale.

The Maynards' Sale

42. As set out in the Detsky Affidavit, D&S purportedly sold substantially all of its assets to Maynards in October 2014. Based on D&S' bank statements, the balance in the D&S bank account was \$33,077 on October 31, 2014 immediately prior to D&S receiving \$1,525,500, which appears to represent payment from Maynards in respect of the Auction Assets (the "**Maynards Sale Proceeds**").
43. On November 3, 2014, D&S transferred \$1,525,520 to JMA Accounting ("**JMA**"), one of the Companies' financial advisors leaving a balance of \$25,173 in the D&S bank account.
44. Between the deposit of the Maynards Sale Proceeds on October 31, 2014 and the transfer to JMA on November 3, 2014 three cheques totalling \$7,885 cleared the D&S bank account.
45. On November 13, 2014, JMA transferred \$438,444 to the D&S bank account.
46. Despite a request from the Interim Receiver, JMA has yet to account for its disposition of the balance of the Maynards Sale Proceeds in the amount of \$1,087,076.
47. Based on information obtained from counsel to Bank of Montreal ("**BMO**") the Interim Receiver understands that JMA paid approximately \$728,737 to BMO who appears to have held a registered security interest in the Auction Assets.

48. R&R Mergers, who appears to have assisted D&S with the sale to Maynards, advises that it received approximately US\$81,000 on account of professional fees/commissions related to the sale of the Auction Assets to Maynards.
49. The Interim Receiver has not been able to determine how JMA disbursed the remaining \$277,319, calculated as follows:

D&S transfer to JMA	\$ 1,525,500
Distribution to BMO	(728,737)
Distribution to R&R Mergers	(81,000)
JMA transfer to D&S	<u>(438,444)</u>
Unexplained amount	<u>\$ 277,319</u>

50. After receiving the transfer of \$438,444 from JMA on November 13, 2014 and collecting \$132,568 from a customer on November 14, 2014, D&S transferred \$601,830 to Sandra Ebersole's personal bank account on November 14, 2014 (the "**Funds Transferred to Sandra**"). Details of the D&S bank account activity is attached in **Appendix "6"**.
51. The Interim Receiver wrote to Sandra Ebersole's counsel demanding an explanation for this transfer, confirmation that the Funds Transferred to Sandra are still in Sandra's possession and demanding that these funds be returned to the Interim Receiver as they form part of the Property, as defined in the Interim Receivership Order.
52. Sandra Ebersole's counsel replied by letter dated December 9, 2014 (the "**December 9 Letter**") explaining that, among other things, the Funds Transferred to Sandra were distributed as follows:
- a) \$205,573 was paid to Darrell Ebersole;
 - b) \$205,573 is held in trust for Sandra Ebersole; and
 - c) \$190,669 is held in trust for CRA.
- A copy of the December 9 Letter is attached hereto as **Appendix "7"**.
53. Counsel for Sandra Ebersole has subsequently agreed to pay the total amount held in its trust account in the amount of \$396,242, representing the funds held

for Sandra Ebersole and CRA, to the Interim Receiver, provided that such funds, until further order of the Court, shall:

- a) be invested in a 30-day guaranteed investment certificate (the "**GIC**"), which GIC shall be renewed every 30 days until further order of the Court;
- b) not be subjected to the Interim Receiver's Charge, as defined in the Interim Receivership Order, or any comparable charge in the future that may replace the Interim Receiver's Charge; and
- c) not be deemed to constitute Property, as defined in the Interim Receivership Order.

- 54. The Receiver agreed to these conditions and counsel for Sandra Ebersole has transferred the \$396,242 to the Interim Receiver's trust account. The Interim Receiver is in the process of purchasing the GIC.
- 55. The Interim Receiver and/or its counsel has also sent letters to Bruce Jaeger (counsel to Darrell Ebersole and former counsel to the Companies), Robert Fowler (of R&R Mergers, a financial advisor to the Companies), John MacDonald (of JMA, an accountant/advisor to the Companies) and Casey Bruyns (a financial advisor to the Companies), asking for details of the Maynard's transaction and any funds/retainers handled by the respective firms. Copies of the letters sent by the Interim Receiver are attached hereto as **Appendix "8"**.
- 56. JMA/John MacDonald has retained WeirFoulds LLP as counsel, which has advised that John MacDonald has been away but will reply in due course. The Interim Receiver's counsel followed up with WeirFoulds LLP by email on December 12, 2014.
- 57. Casey Bruyns advised that he did not handle trust funds. The Interim Receiver's investigation into the configuration of the Companies' accounting systems revealed that the accounting software/database is hosted by Mr. Bruyns' firm. The Interim Receiver had demanded that access to and control of the systems be provided to it by Mr. Bruyns forthwith and Mr. Bruyns sent a memory stick via courier to the Interim Receiver's office with a copy of the Simply Accounting files for each of the two Companies.

58. Bruce Jaeger replied to the Interim Receiver's correspondence indicating that he has no trust funds or retainers on hand, but that he will verify with Darrell Ebersole if he is aware of the whereabouts of the balance of the Funds Transferred to Sandra.
59. Robert Fowler replied with certain information pertaining to the sale to Maynards and advised that on November 13, 2014, R&R Mergers was paid a 6% commission fee by wire transfer from JMA, which is approximately US\$81,000.
60. The Interim Receiver continues to correspond with these parties and with counsel to Sandra Ebersole and counsel to Darrell Ebersole regarding the Companies' activities prior to the appointment of the Interim Receiver.
61. Based on the above, it appears that certain of the asset sales/transfers and payments may have been preferential or may have been transacted at undervalue. It may be necessary for the Companies to become bankrupt so that the time demands under the BIA are preserved and so that a Trustee in Bankruptcy may further investigate these transactions and possibly conduct examinations under s. 163 of the BIA or request that the Official Receiver conduct an examination under s. 161 of the BIA.

ONGOING ACTIVITIES OF THE INTERIM RECEIVER

62. There is significant work remaining to be completed by the Interim Receiver. If the proposed relief is granted as set out in the Applicant's notice of motion, the Interim Receiver's ongoing and future activities will include, but will not be limited to:
 - a) collecting accounts receivable;
 - b) reconciling the results of the Auction and the amount due to Maynards in respect of the buyers' premium;
 - c) holding the balance of the proceeds of the Auction until further order of the Court;
 - d) holding the GIC until further order of the Court;
 - e) determining the location of the funds purportedly transferred by Sandra Ebersole to Darrel Ebersole;

- f) realizing upon the Unsold Assets;
- g) locating and securing the balance of the Unreconciled Assets; and
- h) continuing the investigation into the affairs of the Companies, including investigating any preferential transactions or transactions at undervalue.

PROFESSIONAL FEES

- 63. The Interim Receiver and its legal counsel have maintained detailed records of their professional time and costs since the Interim Receivership Order was granted.
- 64. Paragraph 18 of the Interim Receivership Order provides that the Interim Receiver and its counsel shall be paid their reasonable fees and disbursements. In addition, the Interim Receiver and its counsel were granted a first charge on all of the Companies' property as security for such fees and disbursements.
- 65. The total fees of the Interim Receiver from November 19, 2014 to December 12, 2014 amount to \$57,611.79 together with HST in the amount of \$7,489.53, totalling \$65,101.32. Time spent by the Interim Receiver is more particularly described in the Affidavit of Jacob Wiebe, a Senior Vice-President of Grant Thornton Limited having carriage of this proceeding as the Interim Receiver, sworn December 15, 2014 in support hereof, a copy of which is attached hereto as **Appendix "9"**.
- 66. The total legal fees incurred by the Interim Receiver during the interim receivership for services provided to the Interim Receiver by its counsel, Aird & Berlis LLP ("**A&B**"), from November 19, 2014 to December 12, 2014 amount to \$24,677.00, together with disbursements in the amount of \$141.75 and HST in the amount of \$3,226.44, totalling \$28,045.19. The time spent by A&B is more particularly described in the Affidavit of Ian Aversa sworn December 15, 2014 in support hereof, a copy of which is attached hereto as **Appendix "10"**.
- 67. The Interim Receiver is of the view that the fees and disbursements of its counsel are fair and reasonable. The Interim Receiver respectfully requests the approval of its fees and disbursements and those of its counsel.
- 68. In connection with the appointment of GTL as Receiver as mentioned in paragraph 4(b)(iii) above, GTL is prepared to act as Receiver, if appointed by the

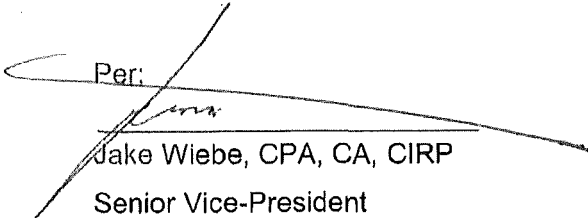
Court. A copy of the consent of GTL to act as Receiver is attached hereto as **Appendix "11"**.

RELIEF REQUESTED

69. Based upon the foregoing, the Interim Receiver respectfully requests that this Court issue an order:
- a) approving the First Report and the conduct and activities of the Interim Receiver as described herein; and
 - b) approving the fees and disbursements of the Interim Receiver and its legal counsel as described herein.
70. The Interim Receiver is also supportive of the balance of the relief requested by the Applicant in its notice of motion.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
INTERIM RECEIVER OF EBERSOLE EXCAVATING INC. AND
D&S RAILWAY CONSTRUCTION INC.,
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per: 

Jake Wiebe, CPA, CA, CIRP

Senior Vice-President

APPENDIX 1

CU-14-10766-000L

Court File No.

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

TRISURA GUARANTEE INSURANCE COMPANY

- and -

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

Applicant

Respondents

November 26/14

No one appears to oppose the relief sought. (as stated that the relief sought is appropriate. Order

to do,

~~ORDER~~

The order is to be made to any person's rights, including entitlement to all or any part of the proceeds arising from the sale of the equipment by way of auction as authorized by this order.

Done T,

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

APPLICATION RECORD
(Appointment of Interim Receiver)

BORDEN LADNER GERVAIS LLP
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Toronto, Ontario
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LSUC#66314K

Lawyers for the Applicant

TOR01: 5763106: v1

TC

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

THE HONOURABLE	)	WEDNESDAY, THE 26 DAY
	)	
MR. JUSTICE NEWBOULD	)	OF NOVEMBER, 2014

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**

**ORDER
(Appointment of Interim Receiver)**

THIS APPLICATION made by the Trisura Guarantee Insurance Company for an Order pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Grant Thornton Limited as interim receiver (in such capacities, the "Interim Receiver") without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D & S Railway Construction Inc. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stuart Detsky sworn November 24, 2014 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, Grant Thornton Limited and Maynards Industries Ltd., *and for Daniel A. Smith and Sarah A. Smith* no one appearing for any other party although duly served as appears from the affidavit of service of Judeen Amos sworn November 24, 2014, the affidavits of service of Laurie Morrison sworn November 25, 2014 and on reading the consent of Grant Thornton Limited to act as the Interim Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 47 of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property"), until December 26, 2014.

INTERIM RECEIVER'S POWERS

3. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtors;
- (n) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (o) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all

such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Interim Receiver shall provide each of the relevant landlords with notice of the Interim Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Interim Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Interim Receiver, or by further Order of this Court upon application by the Interim Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and

suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date

of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "Post Interim Receivership Accounts") and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Interim Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Interim Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim Receiver's Charge") on the Property, as security for such fees and disbursements,

both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

21. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$75,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Interim Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Interim Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.grantthornton.ca/ebersole.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next

business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

LIFT OF THE STAY OF PROCEEDINGS

27. THIS COURT ORDERS that the stay of proceedings provided for in section 69.1 of the BIA in respect of the Proposal filed by Ebersole Excavating Inc. be and is hereby lifted so that the Applicant can commence the within Application for the appointment of the Interim Receiver over the Property of the Debtors.

AUCTION OF CERTAIN EQUIPMENT

28. THIS COURT ORDERS that the Interim Receiver is authorized to permit Maynards Industries Ltd. ("Maynards") to conduct an auction on December 4, 2014 (the "Auction") of the specific equipment listed at Schedule A to the Purchase and Sale Agreement between Maynards and D&S Railway Construction Inc. (the "Equipment"), subject to the following terms and conditions:

- (a) Maynards shall be entitled to collect a buyer's premium of up to 18% plus HST (the "Buyer's Premium") of the selling price of each individual piece of Equipment that is included in the Auction, but Maynards shall only be entitled to receive an amount that is equal to 15% plus HST of the selling price of each individual piece of Equipment that is included in the Auction (the "Maynards Portion of the Buyer's Premium"), subject to a reconciliation between the Interim Receiver and Maynards, as provided for in this Order;
- (b) all proceeds of sale of the Equipment derived from the Auction shall be deposited by Maynards into a joint bank account (the "Joint Account") between Maynards and the Interim Receiver, including the amounts derived from the Buyer's Premium (the "Total Proceeds of Sale");
- (c) a reconciliation by Maynards and the Interim Receiver of the Buyer's Premium shall occur forthwith after the completion of the Auction and

Maynards shall be paid the Maynard's Portion of the Buyer's Premium thereon from the Total Proceeds of Sale held in the Joint Account, with the balance of the Total Proceeds of Sale (the "Remaining Funds") being paid to the Interim Receiver forthwith;

- (d) the Remaining Funds shall be held by the Interim Receiver, pending further Order of the Court; and
- (e) in the event any of the Equipment remains unsold at the Auction to be conducted on December 4, 2014, such Equipment shall be dealt with by further Order of the Court.

GENERAL

29. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

[Handwritten signature]

NOV 25 2014

[Handwritten initials]

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the interim receiver (the "Interim Receiver") of the assets, undertakings and properties Ebersole Excavating Inc. and D & S Railway Construction Inc. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number -CL-_____, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

Grant Thornton Limited, solely in its capacity as
Interim Receiver of Ebersole Excavating Inc.
and D & S Railway Construction Inc., and not in
its personal capacity

Per:

Name:

Title:

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

TRISURA GUARANTEE INSURANCE COMPANY - and - EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Appointment of Interim Receiver)

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ANDREW HODHOD
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Lawyers for the Applicant

APPENDIX 2

Court File No.

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

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**

**AFFIDAVIT OF STUART DETSKY
(Sworn November 24, 2014)**

**I, STUART DETSKY, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:**

1. I am Assistant Vice President, Surety and Warranty Claims at Trisura Guarantee Insurance Company ("**Trisura**") and as such I have personal knowledge of the matters deposed hereto, save and except where stated to be based on information and belief, in which case I do verily believe the same to be true.
2. This affidavit has been prepared in support of an application by Trisura for the appointment of an interim receiver over all of the assets, properties and undertaking of Ebersole Excavating Inc. ("**Ebersole Excavating**") and D&S Railway Construction Inc. ("**D&S**") ("**Ebersole Excavating**" and "**D&S**" shall hereinafter be referred to as the

"Debtors"), including all proceeds thereof, (the "Property") to protect and preserve the Property.

Background

3. Ebersole Excavating is an Ontario corporation that was incorporated on February 9, 1996. Darrell W. Ebersole ("Darrell") is the President and a Director. Sandra L. Ebersole ("Sandra") is also a Director. Attached hereto and marked as Exhibit "A" is a copy of a Corporation Profile Report for Ebersole Excavating dated November 12, 2014 from the Ministry of Government Services (Ontario).
4. D&S is an Ontario corporation that was incorporated on April 2, 2003. Darrell is the President and a Director. Sandra is also a Director. Attached hereto and marked as Exhibit "B" is a copy of a Corporation Profile Report for D&S dated November 12, 2014 from the Ministry of Government Services (Ontario).
5. Ebersole Excavating is in the business of site preparation services including, excavating, grading, sewer and water systems and septic systems across southwestern Ontario.
6. D&S is in the business of railway construction and repair across southwestern Ontario.
7. Both Ebersole Excavating and D&S have a registered office located at 2194 East Avenue, Stevensville, Ontario (the "Premises"). I understand that the Premises are used both for the purposes of the business of the Debtors and as the residence for Sandra. I further understand that Darrell previously resided at the Premises, but has since moved. I do not know where Darrell currently resides.

Dealings between Trisura and the Debtors

8. Trisura established a surety bonding facility for each of the Debtors to issue various Performance Bonds and Labour and Material Payment Bonds (collectively referred to as the "Bonds"). As security for payment and performance of the obligations owed by the Debtors to Trisura under the surety bonding facility, each of the Debtors, Darrell and Sandra executed an Indemnity Agreement dated March 4, 2008 in favour of Trisura (the "Indemnity Agreement"). A copy of the Indemnity Agreement is attached hereto and marked as Exhibit "C".

9. In general, a Performance Bond ("**Performance Bond**") guarantees to the owner of a project (called the "**Obligee**" in the Performance Bond) that the contractor (called the "**Principal**" in the Performance Bond) will perform the contract. The Performance Bond further provides that if the Principal defaults in the performance of the contract, the surety will arrange for completion so long as the Obligee has performed its obligations under the contract and complied with the terms and conditions of the Performance Bond. A copy of the Performance Bond issued on the Trisura Bonded Projects (as defined below) is attached hereto and marked as Exhibit "**D**".
10. In general, a Labour and Material Payment Bond ("**L&M Bond**") guarantees to the Obligee that the suppliers of materials and subcontractors to the Principal on the bonded projects will be paid their outstanding accounts in accordance with the terms and conditions of the L&M Bond. Copies of the L&M Bonds issued on the Trisura Bonded Projects (as defined below) are collectively attached hereto and marked as Exhibit "**E**".
11. Attached hereto and marked as Exhibit "**F**" is a complete list of the issued bonds that pertain to the Debtors (collectively, the "**Trisura Bonded Projects**").

Claims on the Bonds

12. Over the last few months, Trisura began to receive notices from subcontractors and suppliers on the Trisura Bonded Projects under the L&M Bond. As at the date of this Affidavit, Trisura has received ten (10) L&M Bond claims in the approximate amount of \$516,554.09, as a result of the Debtors' alleged failure to pay its subcontractors and suppliers on the Trisura Bonded Projects. Trisura has received notification from certain Obligees of potential claims under the L&M Bonds and it expects to receive further claims under the L&M Bonds as subcontractors and suppliers learn of the insolvency proceedings commenced by Ebersole Excavating, as more particularly described below.
13. On or about July 28, 2014, Trisura received a claim on the Performance Bond from the Regional Municipality of Niagara ("**Niagara Region**") in respect of a project referred to as the Humberston Landfill Site (the "**Humberston Project**"). As at the date of this Affidavit, Trisura continues to work with Niagara Region in connection with the claim made on the Performance Bond.

Commencement of Insolvency Proceedings by Ebersole Excavating

14. On June 19, 2014, Ebersole Excavating filed a Notice of Intention to Make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act* ("BIA") and BDO Canada Limited ("BDO") agreed to act as the proposal trustee (the "**Proposal Trustee**"). Attached hereto and marked as Exhibit "G" is a copy of the NOI.
15. Ebersole Excavating filed a proposal with the Official Receiver on July 18, 2014. The proposal (the "**Proposal**") was subsequently approved by the creditors and approved by the Court. Attached hereto and marked as Exhibit "H" is a copy of the Statement of Affairs filed by Ebersole Excavating in its proposal proceedings. Attached hereto and marked as Exhibit "I" is a copy of the Proposal filed by Ebersole Excavating. Attached hereto and marked as Exhibit "J" is a copy of the Report of the Trustee on the Proposal. Attached hereto and marked as Exhibit "K" is a copy of the Order of Registrar Wiebe dated October 21, 2014 approving the Proposal.
16. The Proposal of Ebersole Excavating provides as follows under the heading "Secured Creditors, Lien Claimants and Trust Creditors":

The claim of Secured Creditors shall, subject to the provisions of the Act, be paid in accordance with the arrangements between the Company and the holder of such claims which were in effect on the Date of Filing or such other terms as may be mutually agreed between them following the Date of Filing.

Accordingly, the Proposal carves out secured creditors from the proposed compromise set out therein.

Default of the Debtors under the Surety Bonding Facility

17. The Debtors have committed various events of default under the Indemnity Agreement. Accordingly, by letter dated June 30, 2014, Trisura demanded payment from D&S, Darrell and Sandra (the "**Trisura Demand Letter**"). The Trisura Demand Letter provided that Trisura had received several notices of claim for payment from claimants with respect to the Trisura Bonded Projects and that it was expecting to receive a claim from Niagara Region pursuant to the Performance Bond issued in respect of that project.

Since the delivery of the Trisura Demand Letter on June 30, 2014, a claim has been filed by Niagara Region, as noted above. Attached hereto and marked as Exhibit "L" is a copy of the Trisura Demand Letter.

18. In the Trisura Demand Letter, Trisura advised certain of the Indemnitors (as defined in the Indemnity Agreement) that as at the date thereof, Trisura had incurred Indemnity Losses (as defined in the Indemnity Agreement) in the amount of approximately \$403,000. Since the Trisura Demand Letter was issued, Trisura has in fact and will incur further losses in connection with the Trisura Bonded Projects.
19. On November 19, 2014, Borden Ladner Gervais LLP ("**BLG**"), the lawyers for Trisura, delivered letters to each of the Debtors, Darrell and Sandra advising of the occurrence of various events of default under the Indemnity Agreement, demanding payment in respect of the Indemnity Losses (as defined in the Indemnity Agreement) and advising the Debtors, Darrell and Sandra of Trisura's intention to enforce its security, pursuant to the Indemnity Agreement. BLG, on behalf of Trisura, also delivered to the Debtors, Darrell and Sandra a Notice of Intention to Enforce Security (the "**NITES**") in respect of the Indemnity Losses (as defined in the Indemnity Agreement) incurred under the Indemnity Agreement as part of its correspondence on November 19, 2014 (the "**BLG Demand Letters**"). Copies of the BLG Demand Letters and the NITES sent to each of the Debtors, Darrell and Sandra are attached hereto and marked as Exhibit "**M**".

Recent Events of Concern to Trisura

20. Over the last few months, the Debtors, Darrell and Sandra were represented by John MacDonald ("**MacDonald**") of JMA Accounting Professional Corporation ("**JMA Accounting**"). Representatives of Trisura have had various discussions with MacDonald from time to time, with respect to the Proposal filed by Ebersole Excavating and the status of the various Trisura Bonded Projects.
21. At some point in the summer of 2014, Trisura was advised by MacDonald that Ebersole Excavating and/or D&S were considering a possible sale of certain assets. However, at no time was Trisura ever advised by representatives of Ebersole Excavating, D&S or by

MacDonald, that Ebersole Excavating and/or D&S had in fact concluded a transaction for the sale of certain assets to a third party.

22. In the afternoon of November 12, 2014, Trisura learned that certain of the assets of Ebersole Excavating and/or D&S were sold to Maynards Industrial Limited ("Maynards").
23. The information that assets belonging to Ebersole Excavating and/or D&S had been sold to Maynards came as a complete surprise to Trisura, who had previously made registrations as against each of the Debtors, Darrell and Sandra pursuant to the provisions of the *Personal Property Security Act* (Ontario) ("PPSA"). Attached hereto and marked as Exhibit "N" are copies of Enquiry Response Certificates with a file currency of November 17, 2014 in respect of each of Ebersole Excavating, D&S, Darrell and Sandra.
24. In light of the information learned by Trisura in the afternoon of November 12, 2014, Trisura instructed BLG to deliver a letter to each of Maynards and JMA Accounting setting out the position of Trisura in connection with the transaction which Trisura understood had occurred between Ebersole Excavating and/or D&S and Maynards and requesting information and documents from each of Maynards and/or JMA Accounting with respect to the transaction. Attached hereto and marked as Exhibit "O" is a copy of the BLG letter delivered to each of Maynards and JMA Accounting on November 14, 2014 (the "Maynards Letter").
25. On November 14, 2014, BLG also delivered an email to Peter Naumis at BDO requesting information about recent events and the proposal proceedings of Ebersole Excavating. The November 14, 2014 email to BDO also attached a copy of the Maynards Letter. Attached hereto and marked as Exhibit "P" is a copy of the BLG email to BDO dated November 14, 2014.
26. I am advised by Roger Jaipargas, a partner at BLG, and do verily believe, that shortly after delivery of the Maynards Letter, he received a call from Mike McIntosh at Maynards with regard to the Maynards Letter. Attached hereto and marked as Exhibit "Q" is a copy of a transcribed voicemail message from Mr. McIntosh of November 14, 2014.

27. I am further advised by Mr. Jaipargas and do verily believe that in the afternoon of November 14, 2014, he spoke with Mr. McIntosh at Maynards and requested that Maynards provide the information set out in the Maynards Letter on an expedited basis. Attached hereto and marked as Exhibit "R" is a copy of an email delivered by Mr. McIntosh to BLG in the afternoon of November 14, 2014, attaching a copy of the Purchase and Sale Agreement between D&S and Maynards, as well as particulars with regard to the transfer of funds.
28. A review of the Purchase and Sale Agreement between D&S and Maynards discloses that the purchase price for the assets, which includes various pieces of equipment, is \$1,350,000 and that the purchase price was paid to D&S.
29. I am advised by Mr. Jaipargas and do verily believe that he has confirmed with Tony Van Klink, a partner with Miller Thomson LLP, the lawyers for Bank of Montreal ("BMO"), that the obligations of Ebersole Excavating and D&S to BMO have been repaid.
30. On November 19, 2014, BLG received from Joel Farber at Fogler, Rubinoff LLP ("Fogler"), the lawyers for Maynards, a letter dated October 29, 2014 from Mr. Van Klink to the Debtors, with a payout statement in respect of the obligations owing to BMO (the "Miller Thomson Letter"). According to the payout statement attached to the Miller Thomson Letter, the amount owing to BMO as at October 31, 2014 was \$728,737.27. Attached hereto and marked as Exhibit "S" is a copy of the Miller Thomson Letter.
31. The Purchase and Sale Agreement notes that the vendor is D&S. However, the financial statements for each of Ebersole Excavating and D&S disclose that both Ebersole Excavating and D&S own equipment. Interestingly enough, the Maynards brochure (as discussed below), advertising the sale of the equipment Maynards purported to purchase from D&S, has pictures of pieces of equipment that are clearly labelled as "Ebersole". The Statement of Affairs that was sworn by Darrell on behalf of Ebersole Excavating on July 18, 2014, list assets for Ebersole Excavating, including equipment in the amount of \$453,940. In fact, some of the equipment included in the Maynards brochure would not be equipment that would typically be used by D&S in its operations. Attached hereto and

marked as Exhibit "T" are copies of Financial Statements for each of the Debtors for the last few years.

Request for the Appointment of an Interim Receiver and Urgency

32. Trisura has learned that Maynards intends to hold a public auction on December 4, 2014 to sell the equipment that Maynards purported to purchase from D&S. In connection therewith, representatives from Trisura were able to obtain a copy of the brochure advertising the public auction scheduled for December 4, 2014, a copy of which is attached hereto and marked as Exhibit "U".
33. Trisura is very concerned about the pending sale of the equipment by Maynards. BLG has put Maynards on notice of Trisura's interest in the equipment. Depending on the outcome of discussions with Maynards with regard to the transaction involving D&S and Maynards, further relief may be sought from the Court on an expedited basis.
34. Trisura does not have full particulars on the use of the funds derived from the Maynards transaction, which I understand closed on or about October 31, 2014. On November 19, 2014, I had a call with Darrell, at which time he indicated that he believes that approximately \$75,000 was paid to Caterpillar Financial Services Limited and approximately \$200,000 was paid to JMA Accounting, subsequent to the closing of the Maynards transaction.
35. In response to the BLG email of November 14, 2014, Mr. Naumis of BDO confirmed in an email to BLG on November 17, 2014, that Ebersole Excavating ceased operating prior to the filing of the NOI, the company had employees up until May, 2014 and that the last payroll was June 6, 2014. Attached hereto and marked as Exhibit "V" is a copy of the BDO email of November 17, 2014.
36. Under the terms of the Proposal filed by Ebersole Excavating, the "Backer" (as defined in the Proposal) is D&S. Trisura is concerned that the surplus proceeds from the Maynards sale will be used by Ebersole Excavating and D&S to fund a proposal for a company that is no longer operating, simply to absolve the Directors of certain liabilities. This is confirmed in the BDO email of November 17, 2014.

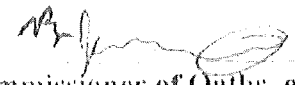
37. On November 12, 2014, BLG obtained Ontario Writ Locator searches on each of the Debtors, Darrell and Sandra. The Ontario Writ Locator searches disclosed that there is a writ of seizure and sale that has been filed in favour of Koppers Inc. as against D&S in the amount of \$32,449.99. Attached hereto and marked as Exhibit "W" are copies of the Ontario Writ Locator searches for each of the Debtors, Darrell and Sandra.
38. On or about November 10, 2014, a representative of Trisura attended at the location of the Humberston Project and noticed that a trailer (which Trisura understands contained documents and information with respect to the Debtors' business operations) was removed from the site. As part of the exercise of responding to various claims under the surety bonding facility, Trisura requires such documentation in order to evaluate the claims that have been filed by various parties.
39. As a consequence of the troubling developments that Trisura has learned of in the last few days, the inability of Trisura to get information and documents from the Debtors and/or JMA Accounting, as its advisor, Trisura has lost confidence in the management of the Debtors.
40. In order to prevent the imminent erosion of Trisura's security and to ensure that there is some ability to safeguard the assets of the Debtors and gather information and report back to the stakeholders and the Court, it is necessary that an interim receiver be appointed over the Property of the Debtors.
41. Trisura is of the view that Grant Thornton Limited ("GTL") would be well-suited to act as interim receiver of the Debtors. In connection therewith, GTL has agreed to accept the appointment, if so appointed by the Court. Attached hereto and marked as Exhibit "X" is a copy of the Consent signed by GTL.
42. At this time, Trisura is seeking the appointment of an interim receiver over the Debtors, but is not seeking the appointment of an interim receiver over the assets, property and undertaking of Darrell or Sandra. Trisura reserves the right to seek such further relief from the Court in that regard if same becomes necessary or appropriate under the circumstances.

43. On November 19, 2014, a representative from Trisura was copied on an email sent to Mr. McIntosh, who is with Maynards, from the email address "ebersole@bellnet.ca" advising that any correspondence concerning this matter should be sent directly to "our lawyer" Bruce Jaeger and that Trisura should not "contact us directly". I presume that this email was from either Darrell or Sandra, but the email does not specify. At this time, neither Trisura nor BLG has been contacted by Mr. Jaeger, who I understand is with the law firm Fluxgold Izsak Jaeger LLP. Accordingly, Trisura and BLG cannot confirm at this time as to whether Mr. Jaeger is in fact acting in connection with this matter. However, I understand that BLG intends to serve a copy of the Application Record for the appointment of the Interim Receiver on Mr. Jaeger. Attached hereto and marked as Exhibit "Y" is a copy of the email dated November 19, 2014, as referenced above.
44. I swear this Affidavit in support of an application for the appointment of an Interim Receiver over the Property of the Debtors and for no other or improper purpose.

SWORN BEFORE ME at the
City of Toronto, in the Province
of Ontario, this 24th day of
November, 2014

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STUART DETSKY


A Commissioner of Oaths, etc.

ROGER TAIT

Court File No.

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

TRISURA GUARANTEE INSURANCE COMPANY - and - EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

AFFIDAVIT OF STUART DETSKY
(sworn November 24, 2014)

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Lawyers for the Applicant

TOR01: 5762742: v7

APPENDIX 3

Appendix 3

**Vehicles registered to "EBERSON, DARRELL, W
operating as DARRELL EBERSON EXCAVATING"**

Year	Make	VIN / Serial No.
1 2007	FORD	1FTSE34LX7DA46306
2 2000	FORD	AFTSW31LYEC49850
3 2000	FORD	1FTSW31L8YEC49825
4 2001	GMC	1GTHK291X1E207939
5 2007	KENW	1NKDXBTX17J988958
6 1991	RAGL	2R9A4P3G1M1011881
7 2007	KW	1XKDB0X47J933309
8 2000	FORD	1FDXW47SXYEC07078
9 1999	WSTR	2WLPCCCJ6XK957119
10 2003	INTL	2HSCAPR03C074186
11 2000	ALUT	2T9FL44W8XA133069
12 2001	THRU	2T9FA485911011206
13 2003	GMC	1GTHC24U03E348879
14 2009	CONT	5NHUCCV289N057953
15 1996	VOLV	4V5SCBJH0TR515726
16 1991	CBL	2C93SHBS3MT088676
17 2007	LOAD	2P9LB574571059594
18 1997	CHEV	1GCGK24R3VE133973
19 1993	FORD	1FDKE30H4PHB68717
20 2006	PETE	1XPFPBEX6D878848
21 1989	FRUE	2H8P0452XKR007401
22 1986	FORD	1FDYW80U6GVA40739
23 2001	MACK	1M2AD62C11M011078
24 2002	JCTR	2J9B7V6CX2K001098
25 1994	DODG	1B7KF26C9RS580189
26 1988	TALB	40FW0483XJ1007725
27 2003	DODG	1D7KU28653J548761

Vehicles registered to "EBERSON, DARRELL, W"

Year	Make	VIN / Serial No.
1 2007	GMC	1GTHK24U97E122813
2 2007	GMC	1GTHK24U907E176579

APPENDIX 4

APPENDIX 4 – Listing of Unsold Assets

Category 1 - Assets included in the Maynards' auction

1. FORKS FOR LOADER (QUANTITY OF 3)
2. LIFTING FIXTURE
3. RAILWAY CROSSING TRAFFIC SIGNAL

Category 2 – Ebersole and D&S assets that were not included in the Maynards' auction

1. RAILTECH ONE-SHOT CRUCIB WELDING KIT RAILROAD EQUIPMENT
2. RAILTECH ONE-SHOT CRUCIB WELDING KIT RAILROAD EQUIPMENT - OTHER
C/W: 6 boxes
3. RAILTECH INTERNATIONAL QPCJ 1 IN. WELD KIT RAILROAD EQUIPMENT –
OTHER C/W: 12 boxes
4. RAILTECH INTERNATIONAL QPCJ 1 IN. WELD KIT RAILROAD EQUIPMENT -
OTHER
5. QUANTITY OF RUBBER RAILROAD TRACKS
6. SHOP AIR COMPRESSOR
7. PORTABLE WELING CART C/W: hose and torch
8. QUANTITY OF TRAFFIC CONTROL SUPPLIES C/W: cones, signs
9. POWERTECH 1 IN. PUMP
10. FUEL TANK C/W: electric pump
11. QUANTITY OF 2 PRECAST TANKS C/W: 78 in. x 32 in. x 32 in.
12. QUANTITY OF 5 VARIOUS TANKS
13. 2003 HEMMER TECHNOLOGIES 2200 LITRE FUEL TANK
14. 2010 LE 75 LITRE SLIP IN TANK C/W: electric pump, to fit pickup truck
15. WACKER BS500 JUMPING JACK
16. QUANTITY OF EQUIPMENT TIRES
17. QUANTITY OF EQUIPMENT TIRES
18. CATERPILLAR Q/C 92 IN. LOADER BACKHOE BUCKET C/W: to fit Cat 930H
19. 69 N. ALUMINUM TOOL BOX C/W: to fit pickup truck
20. DENTA DRILL PRESS DRILL PRESS C/W: electric
21. TRIMBLE 1242 SPECTRA PRECISION SINGLE SLOPE LASER LEVEL
22. QUANTITY OF STEEL REBARS
23. QUANTITY OF 2 19.5L-24 TIRES C/W: R4 UC/Rubber: 50%
24. QUANTITY OF 3 23.5R25 TIRES
25. QUANTITY OF 2 6 FT CUTTING EDGES
26. QUANTITY OF APPROX 18 10.5 FT WOOD BEAMS C/W: 10 in. x 7 in.
27. QUANTITY OF APPROX 7 20 FT WOOD BEAMS C/W: 10 in. x 7 in.
28. 4FT X 8 FT STEEL BIN C/W: lifting eyes
29. TC9-900016 AUTOMOBILE LIFT HOIST S/N: 03C-900159
30. KARCHER HOT WATER PRESSURE WASHER
31. MASTER CRAFT 8 IN. BENCH GRINDER C/W: stand
32. MIKITA 14 IN. ELECTRIC CHOP SAW C/W: electric

33. GALVANIZED STEEL CULVERT PIPE
34. GALVANIZED STEEL CULVERT PIPE
35. QUANTITY OF MISCELLANEOUS PVC PIPES
36. QUANTITY OF 6 IN. BIG-O PIPES
37. QUANTITY OF PVC PIPE FITTINGS
38. QUANTITY OF PRECAST SUPPLIES
39. QUANTITY OF 11 CONCRETE LOCK BLOCKS
40. QUANTITY OF FILTER CLOTH ROLLS
41. QUANTITY OF 12 FT PLASTIC MESH C/W: approx 20 rolls
42. QUANTITY OF SNOW FENCES
43. QUANTITY OF LOCKERS
44. 4FT X 8 FT STEEL BIN C/W: lifting eyes
45. 6 FT ROLLING STEP LADDER
46. QUANTITY OF TRUCK AND EQUIPMENT SUPPLIES C/W: filters and belts
47. QUANTITY OF LIFTING SUPPLIES
48. 4FT X 8 FT STEEL WELDING TABLE C/W: vice
49. QUANTITY OF GREASE GUNS
50. LAWSON PRODUCTS QUANTITY OF O RINGS
51. 2009 LUBE TABLE C/W: hose, reel
52. 2009 LUBE TABLE C/W: hose, reel and vice
53. LINCOLN SP200 50 AMP WELDER
54. MILLER SPECTRUM 500 PLASMA CUTTER
55. 8 FT X 26 FT S/A PORTABLE FIELD OFFICE TRAILER
56. HYDRAULIC EXCAVATOR GRAPPLE
57. 12 FT LUGGAGE BIN
58. 26 FT ROLLOFF SHIPPING CONTAINER WITH TOOLS
59. TRACTOIN MAST 8 FT STEEL SALT SPREADER
60. MATWELD 031000 RAILROAD WELDER
61. BOLT BINS (QUANTITY OF 4)
62. 2012 JEEP CHEROKEE

APPENDIX 5

Appendix 5 - Listing of Unreconciled Assets

Unreconciled Vehicles Registered to "EBERSOLE, DARRELL, W operating as DARRELL EBERSOLE EXCAVATING"

Year	Make	VIN / Serial No.
1 2005	CHEV	1GNDV03E25D150919
2 1997	CHEV	1GNDX03E2VD201197
3 1994	CLAS	1OWPAEL27RW019322
4 2013	ATLA	5HCKA2723DE026662
5 1992	CHEV	1GCGK24K4NE197958
6 1993	FORD	1FMDA11U4PZA16533
7 1990	DODG	1B6ME3681LS672809
8 1995	GMC	1GTGK24F3SE506639
9 1988	FORD	1FDKE30M2JHB45869
10 1975	KING	1728875
11 1990	CHEV	1GCDK14H0LZ135500
12 1979	INTL	D3117JGB24507
13 1976	BIRM	FYA283

Unreconciled Assets Currently and/or Previously Insured by the Companies or Darrell Ebersole operating as Darrell Ebersole Excavating

Year	Make	Description	VIN / Serial No.
<u>A. Motor Vehicles - Registered to EBERSOLE, DARRELL, W</u>			
1 2008	CHEVROLET TRUCK/VAN	AVALANCHE 1500 LS 4WD	3GNFK12368G182416
2 2008	PONTIAC	G6 GT V6 2DR	1G2ZH17N184174773
3 2001	GMC	SIERRA PKUP 1500 2WD	2GTEC19V411301992
<u>B. Motor Vehicles - Registered to EBERSOLE, SANDRA, L</u>			
1 2004	4STAR 2 HORSE TRLR	TRAILER	4FKPG212440023907
<u>C. Construction Equipment</u>			
1 2005	CAT	330CL HYDRAULIC EXCAVATOR	CAT0330CLDKY0325
2	TOPCON	BASE & ROVER	
3	SPIKEFAST	SF300 SINGLE METER TIE PLUGGER	
4	TOPCON	3D DOZER SYSTEM	
5	FAIRMONT	SPIKE DRIVER	PV810-RSY-31-C11
6	FAIRMONT	SPIKE DRIVER	246826-RSY-31-C11

APPENDIX 6



RBC Royal Bank®

November 27, 2014

Chequing

27 Nov 2014

CAD Chequing 01822-1011444

[Printable Version](#) Show for

Search

Click on a link under Description below to view an image of the item.

Select ["Sort Transactions"](#) to set a date order preference.

Date ▼	Description	Withdrawals	Deposits	Balance
28 Nov 2014	WWW PAYMENT - 2817	76.84		4,567.46
	-BELL BUS, INT.			
25 Nov 2014	CHEQUE - 380	511.44		4,044.30
25 Nov 2014	MISC PAYMENT		1,039.60	
	-OXY VINYL CANA			
24 Nov 2014	CHEQUE - 381	2,654.82		4,116.14
24 Nov 2014	CHEQUE - 337	1,533.78		
24 Nov 2014	INSURANCE	2,361.61		
	-LLOYDS INS.			
24 Nov 2014	INSURANCE	1,309.11		
	-ECONOMICAL GRP.			
24 Nov 2014	INSURANCE	736.84		
	-ECONOMICAL GRP.			
24 Nov 2014	MISC PAYMENT		3,011.45	
	-OXY VINYL CANA			
24 Nov 2014	BR TO BR - 1562		2,978.91	
21 Nov 2014	CHEQUE - 389	423.32		6,721.84
20 Nov 2014	INSURANCE	170.15		7,145.16
	-ECONOMICAL GRP.			
20 Nov 2014	BR TO BR - 1562		4,181.00	
19 Nov 2014	CHEQUE - 359	130.50		3,134.31
18 Nov 2014	OVERDRAFT INTEREST	0.05		3,264.61
	- @ RBP +05.00% P.A.			
17 Nov 2014	CHEQUE - 355	779.85		3,284.86
14 Nov 2014	STP FEE SELF SERVE	70.00		4,044.71
	- 7 @ \$10.00			
14 Nov 2014	CHEQUE - 356	600.00		
14 Nov 2014	DEBIT MEMO	1,010.00		
14 Nov 2014	BR TO BR - 4102		132,567.55	
14 Nov 2014	WWW PAYMENT - 0701	1,836.40		
	-WSIB-ON-SCH E1			
14 Nov 2014	WWW PAYMENT - 4009	337.60		
	-CDN NIAGARA PWR			
14 Nov 2014	BR TO BR - 4102	801,830.00		
13 Nov 2014	CHEQUE - 341	3,277.00		477,281.16
13 Nov 2014	BR TO BR - 3426		438,444.08	
12 Nov 2014	CHEQUE - 339	5,934.61		42,094.08
12 Nov 2014	CHEQUE - 352	713.78		
12 Nov 2014	MISC PAYMENT		8,783.38	
	-OXY VINYL CANA			
12 Nov 2014	BR TO BR - 4102		14,506.36	
10 Nov 2014	CHEQUE - 031	1,969.38		25,452.73
10 Nov 2014	CHEQUE - 340	779.86		
10 Nov 2014	CHEQUE - 345	710.71		
10 Nov 2014	CHEQUE - 349	694.22		
10 Nov 2014	CHEQUE - 347	511.44		
10 Nov 2014	CHEQUE - 342	430.77		
10 Nov 2014	CHEQUE - 343	375.90		
10 Nov 2014	CHEQUE - 346	374.49		

Account Details - RBC Online Banking

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Page 2 of 3

10 Nov 2014	CHEQUE - 350	110.00	
10 Nov 2014	INSURANCE	4,182.70	
	-LLOYDS INS.		
10 Nov 2014	MISC PAYMENT		7,857.74
	-OXY VINYL CANA		
10 Nov 2014	BILL PAYMENT		6,931.42
	-CN/OGS		
10 Nov 2014	WWW PAYMENT - 4915	56.04	
	-ENBRIDGE		
7 Nov 2014	CHEQUE - 344	570.53	20,859.07
7 Nov 2014	CHEQUE - 328	570.53	
7 Nov 2014	CHEQUE - 353	500.00	
7 Nov 2014	CHEQUE - 327	212.63	
7 Nov 2014	BR TO BR - 1562		5,747.05
7 Nov 2014	WWW PAYMENT - 9876	333.16	
	-TELUS MOBILITY		
6 Nov 2014	CHEQUE - 321	1,048.95	17,288.87
6 Nov 2014	CHEQUE - 340	806.55	
6 Nov 2014	CHEQUE - 351	500.00	
4 Nov 2014	CHEQUE - 334	955.54	20,254.37
4 Nov 2014	CHEQUE - 131	889.92	
4 Nov 2014	CHEQUE - 331	565.25	
4 Nov 2014	CHEQUE - 333	187.19	
4 Nov 2014	CHEQUE - 322	170.63	
4 Nov 2014	CHEQUE - 330	114.76	
4 Nov 2014	CHEQUE - 336	60.00	
3 Nov 2014	ITEMS ON DEP. FEE	1.60	23,197.66
3 Nov 2014	ELECTRONIC ITEM FEE	13.20	
3 Nov 2014	SERVICE FEE	62.00	
3 Nov 2014	CHEQUE - 338	1,000.00	
3 Nov 2014	CHEQUE - 332	608.23	
3 Nov 2014	CHEQUE - 335	90.00	
3 Nov 2014	FUNDS TRANSFER	1,525,520.00	
	-JMA ACCOUNTING		
31 Oct 2014	CHEQUE - 324	5,989.47	1,550,592.69
31 Oct 2014	CHEQUE - 329	1,139.36	
31 Oct 2014	CHEQUE - 326	775.92	
31 Oct 2014	FUNDS TRANSFER CR		1,525,500.00
	-TT MAYNARDS IND		
31 Oct 2014	WWW PAYMENT - 5732	128.50	
	-BELL CANADA		
31 Oct 2014	WWW PAYMENT - 5896	78.73	
	-BELL BUS. INT.		
31 Oct 2014	WWW PAYMENT - 2413	33.40	
	-BELL CANADA		
31 Oct 2014	FUNDS TRANSFER FEE	15.00	
	-TT MAYNARDS IND		
30 Oct 2014	CHEQUE - 323	2,728.43	33,333.07
29 Oct 2014	CHEQUE - 320	10,000.00	36,061.50
29 Oct 2014	DEBIT MEMO	5,661.30	
28 Oct 2014	CHEQUE - 309	2,825.00	51,722.80
28 Oct 2014	CHEQUE - 305	2,825.00	
28 Oct 2014	CHEQUE - 304	2,825.00	
28 Oct 2014	CHEQUE - 303	485.58	
28 Oct 2014	WWW PAYMENT - 6772	2,499.39	
	-WS/B-ON-SCHE1		
27 Oct 2014	STP FEE SELF SERVE	10.00	63,182.77
27 Oct 2014	CHEQUE - 318	5,300.00	
27 Oct 2014	CHEQUE - 319	1,350.00	
27 Oct 2014	CHEQUE - 311	1,117.05	

25,173.69

33,077.44

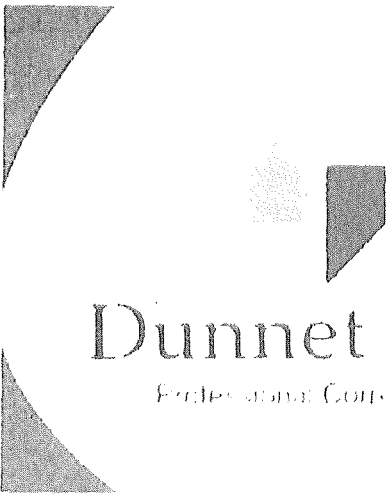
27 Oct 2014	<u>CHEQUE - 308</u>	811.40	
27 Oct 2014	<u>CHEQUE - 316</u>	888.21	
27 Oct 2014	<u>CHEQUE - 316</u>	653.70	
27 Oct 2014	<u>CHEQUE - 310</u>	870.63	
27 Oct 2014	<u>CHEQUE - 326</u>	500.00	
27 Oct 2014	<u>CHEQUE - 312</u>	284.40	
27 Oct 2014	BILL PAYMENT		28,763.13
	-CN/OCB		
27 Oct 2014	BR TO BR - 1662		3,019.65


Top

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APPENDIX 7



Dunnet Law

Professional Corporation

December 09, 2014

DELIVERED BY E-MAIL

Jeremy Nemers
Aird & Berlis LLP
Barristers and Solicitors
181 Bay Street, Suite 1800
Box 754
Toronto, ON
M5J 2T9

RE: Sandra Ebersole

Dear Mr. Nemers:

Further to your letter of December 8th, 2014 the funds held in my trust account are in the amount of \$396,242.00. \$205,573.00 was transferred to my client and \$205,573.00 was transferred to Darrell Ebersole. \$190,669.00 was withdrawn and designated for CRA trust claims. These funds will not be forwarded to you today. There is no urgency or legal basis to continue to make demands when the funds are held in trust and I have given my undertaking to hold them in trust subject to the consent of all interested parties or an order of the court determining the entitlement to the funds. This matter is a costly exercise to pursue limited funds which are held in trust which your client, the Receiver, may not be entitled to and whose costs will be subject to assessment on the basis of unnecessary litigation. Your interpretation that what funds I have in my trust account are assets and property of Ebersole Excavating Inc. and D&S Railway Construction Inc. has yet to be determined by the court.

The Receiver's client Trisura may or may not have a valid security interest against Ebersole Excavating Inc. and D&S Railway Construction Inc. With the consent of Maynards Industries Limited the Receiver obtained an order to take possession of the company assets which clearly known to all parties was in issue concerning the

equipment on site. The urgency was to freeze the auction proceeds until a determination of the ranking of security. I am not aware or have been provided with a copy of any agreement between Trisura and Maynards other than what is set out in the order of Justice Newbould.

The proceeds of sale paid by Maynards to D&S after the closing were distributed to those parties claiming the funds one of which is my client as a shareholder. The Receiver is apparently claiming that those funds are assets of Ebersole and D&S which would be subject to security held by Trisura. At the same time, Trisura is claiming through its other legal counsel that any funds or assets in the possession of my client are secured being subject to the Indemnity Agreement. Trisura has issued a Notice of Intention to Enforce Security against Sandra Ebersole. That security has not been challenged or agreed to as to whether it is valid and whether the Indemnity Agreement is valid against my client.

Maynards has issued a claim claiming the funds paid to the companies and then distributed by the companies are owed to it given that Trisura issued a claim to the equipment and the funds. By agreement with Maynards' counsel, funds held in my trust account will remain subject to an agreement of all parties or an order of the court that the funds are not to be comingled but held separate and distinct from any assets of the companies.

If it is your client's intent to continue to litigate over funds held in trust then any such motion will require notice, materials, perhaps cross-examination to ascertain the entitlement to the funds. The concern is that the Receiver has an entitlement under the order for its fees and those of its legal counsel from any assets that it seizes. That would appear to be a priority over limited funds which are claimed not only against the companies but against my client personally in competing actions one of which is by the Receiver's client. It would appear that the mandate of the Receiver is to put a hold on whatever assets remain has been accomplished. There is no necessity for proceedings and that in the New Year when the parties are in a position to narrow the issues and resolve matters things can move forward.

On a related matter there are motor vehicles registered in the name of Darrell which are being driven by Sandra as her personal vehicle and Darrell as his personal vehicle and Sandra's daughter who has paid for the vehicle which is now being subject to the Receivership order. The insurance broker has advised that it received a court order and cannot permit the individuals to insure their own vehicles. Please have the Receiver so advise the broker that the order does not apply to the personal vehicles which were included on the overall policy which covered personal vehicles and company vehicles.

Thank you for dealing with the matter of the insurance on the personal vehicles.

With respect to the funds in my trust account they should not be subject to the fee claimed in the Interim Receiving Order. If there is consent of all the parties who are making a claim to the funds then they can be either paid into court or by agreement not be subject to the fee claim in the Interim Receiving Order.

Yours truly,

DUNNET LAW PROFESSIONAL CORPORATION

A handwritten signature in dark ink, appearing to read "David G. Dunnet", is written over the printed name.

David G. Dunnet

APPENDIX 8

AIRD & BERLIS LLP

Barristers and Solicitors

Ian Aversa
Direct: 416.865.3082
Email: iaversa@airdberlis.com

November 27, 2014

VIA EMAIL: jbm@imagroup.ca

JMA Group
1300 Cornwall Road
Oakville, ON L6J 7W5

Attention: John B. MacDonald

Dear Mr. MacDonald:

**Re: Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively,
the "Companies")**

We are the lawyers for Grant Thornton Limited ("GTL"), in its capacity as the interim receiver of the Companies (in such capacity, the "**Interim Receiver**"). GTL was appointed as Interim Receiver pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) issued on November 26, 2014 (the "**Appointment Order**"). Pursuant to the Appointment Order, the Interim Receiver is empowered and authorized to, among other things, take possession and exercise control over the Companies' assets, undertakings and properties (collectively, the "**Property**"), and to receive, preserve and protect the Property, or any part or parts thereof. A copy of the Appointment Order is available on the Interim Receiver's website at www.grantthornton.ca/ebersole.

In connection with the Interim Receiver's mandate, you are asked to provide, forthwith, the following to the Interim Receiver, as they relate to one or more of the Companies, as the case may be:

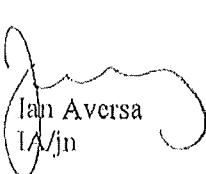
1. any and all unused retainer funds held in your general and/or trust accounts;
2. a full accounting of all transactions in your trust account from July 1, 2014 to the present date; and
3. details of your knowledge of any and all transactions between or amongst the Companies, Maynards Industries Ltd. and/or Bryan's Farm & Industrial Supply Ltd.

Page 2

Should you have any questions, please do not hesitate to contact the undersigned.

Yours very truly,

AIRD & BERLIS LLP

Per:  
Ian Aversa
IA/jn

cc: Client

20637884.4



Grant Thornton

Via email: bjaeager@fijlaw.com

November 28, 2014

Fluxgold Izsak Jaeger LLP
Barristers & Solicitors
50 West Pearce Street, Suite 10
Richmond Hill, ON L4B 1C5

Attention: Bruce R. Jaeger

Dear Mr. Jaeger,

RE: Ebersole Excavating Inc. and D&S Railway Construction Inc. – In Receivership

Grant Thornton Limited was appointed as interim-receiver (the "Receiver") of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively referred to as, the "Companies") pursuant to an order issued by the Ontario Superior Court of Justice dated November 26, 2014 (the "Order"). A copy of the Order is available on our website:

<http://www.grantthornton.ca/ebersole>

Please forthwith provide the following to the Receiver with respect to the Companies:

1. Balance of unused retainer, if any, held in your general and/or trust account.
2. Full accounting of all transactions in your trust account from January 1, 2014 to present.

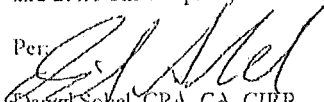
Should you have any questions, please do not hesitate to contact the undersigned at (416) 369-7033.

Yours very truly,

GRANT THORNTON LIMITED

In its capacity as Court Appointed Interim-Receiver of
Ebersole Excavating Inc. and D&S Railway Construction Inc.
and in no other capacity

Per:


Daniel Sobel, CPA, CA, CFP
Vice President

Grant Thornton Limited
19th Floor, Royal Bank Plaza
South Tower
200 Bay Street, Box 55
Toronto, ON
M5J 2P9
T (416) 366-0100
F (416) 360-4949
www.GrantThornton.ca



Grant Thornton

Via facsimile 314-878-1418 and email Robert@rtmetgers.com

November 28, 2014

R&R Mergers and Acquisitions
11 The Pines Court, Suite D
St. Louis, MO 63141
USA

Grant Thornton Limited
19th Floor, Royal Bank Plaza
South Tower
200 Bay Street, Box 56
Toronto, ON
M5J 2P9
T (416) 366-0100
F (416) 360-4949
www.GrantThornton.ca

Attention: Robert Fowler

Dear Mr. Fowler,

RE: Ebersole Excavating Inc. and D&S Railway Construction Inc. - In Receivership

Grant Thornton Limited was appointed as interim-receiver (the "Receiver") over Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively referred to as, the "Companies") pursuant to an order issued by the Ontario Superior Court of Justice dated November 26, 2014 (the "Order"). A copy of the Order is available on our website:

<http://www.grantthornton.ca/ebersole>

Please forthwith provide the following to the Receiver with respect to the Companies:

1. Balance of unused retainer, if any, held in your general and/or trust account.
2. Full accounting of all trust funds from July 1, 2014 to present, including transaction involving Maynards Industries Ltd. ("Maynards").
3. Details of all transactions involving Maynards.
4. Details and copies of any fixed asset listings or continuity schedules for both Companies in hard copy and/or excel format.

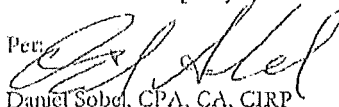
Should you have any questions, please do not hesitate to contact the undersigned at (416) 369-7033.

Yours very truly,

GRANT THORNTON LIMITED

In its capacity as Court Appointed Interim-Receiver of
Ebersole Excavating Inc. and D&S Railway Construction Inc.
and in no other capacity

Per:


Daniel Sobel, CPA, CA, CFP
Vice President



Grant Thornton

Via email: casey@lbaccountants.ca

November 28, 2014

LB Accountants LLP
43 Church St.
St. Catharines, ON L2R 7E1

Attention: Casey Bruyns

Dear Mr. Bruyns,

RE: Ebersole Excavating Inc. and D&S Railway Construction Inc. – In Receivership

Grant Thornton Limited was appointed as interim-receiver (the "Receiver") of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively referred to as, the "Companies") pursuant to an order issued by the Ontario Superior Court of Justice dated November 26, 2014 (the "Order"). A copy of the Order is available on our website:

<http://www.grantthornton.ca/ebersole>

Please forthwith provide the following to the Receiver with respect to the Companies:

1. Balance of unused retainer, if any, held in your general and/or trust account.
2. Full accounting of all transactions in your trust account from January 1, 2014 to present.
3. Details of your knowledge of any and all transactions between the Companies and Maynards Industries Ltd.
4. Details and copies of any fixed asset listings or continuity schedules for both Companies in hard copy and/or excel format.

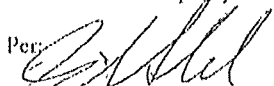
Should you have any questions, please do not hesitate to contact the undersigned at (416) 369-7033.

Yours very truly,

GRANT THORNTON LIMITED

In its capacity as Court Appointed Interim-Receiver of
Ebersole Excavating Inc. and D&S Railway Construction Inc.
and in no other capacity

Per:


Daniel Sobel, CPA, CA, CIRP
Vice President

Grant Thornton Limited
19th Floor, Royal Bank Plaza
South Tower
200 Bay Street, Box 55
Toronto, ON
M5J 2P9
T (416) 366-0100
F (416) 360-4949
www.GrantThornton.ca

APPENDIX 9

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

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

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**

AFFIDAVIT OF JACOB WIEBE

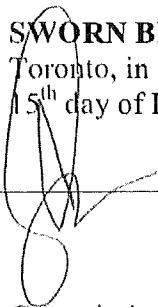
I, **JACOB WIEBE**, of the Town of Uxbridge, in the Province of Ontario, **MAKE OATH AND SAY** that:

1. I am Senior Vice-President of Grant Thornton Limited, ("**GTL**") which was appointed as interim receiver of the Respondents in these proceedings. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe such to be true.
2. Attached and marked as Exhibit "**A**" to this my affidavit is a true copy of the detailed billing setting out the fees and disbursements of GTL from November 19, 2014 to

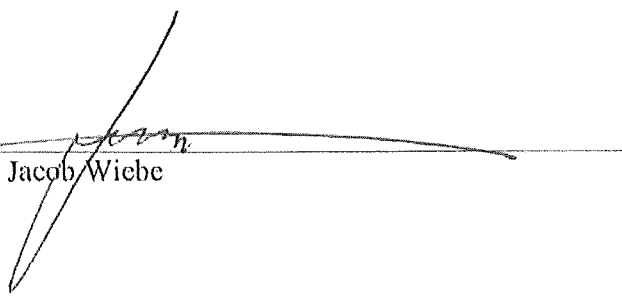
December 12, 2014, in the amount of \$57,611.79, together with HST in the amount of \$7,489.53, totalling \$65,101.32.

3. Given the complexity of this insolvency matter, I believe the hourly rates and the total amount of fees are reasonable and comparable for insolvency services of this nature rendered by other firms in the City of Toronto.
4. The hours spent on this matter and disbursements incurred by GTL are outlined in detail in Exhibit "A" and I believe were reasonable and appropriate in the circumstances.
5. This affidavit is sworn in connection with the approval of the fees and disbursements of GTL and for no improper purpose.

SWORN BEFORE ME at the City of)
 Toronto, in the Province of Ontario, this)
 15th day of December, 2014)
)
)

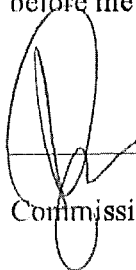


Commissioner for Taking Affidavits, etc.


 Jacob Wiebe

*Jonathan David Kregor, a Commissioner, etc.,
 Province of Ontario, for Grant Thornton Limited,
 Trustee in Bankruptcy, Expires December 31, 2018.*

Exhibit "A" to the Affidavit of Jacob Wiebe, sworn
before me this 15th day of December, 2014.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a cursive 'K' and a horizontal line extending to the right.

Commissioner for Taking Affidavits, etc.

*Jonathan David Krieger, a Commissioner, etc.,
Province of Ontario, for Grant Thornton Limited,
Trustee in Bankruptcy. Expires December 31, 2018.*



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

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

**IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

B E T W E E N:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

BILLING

**BN 12738 4717 RT0001
Client #194240**

For professional services rendered for the period ended from November 19, 2014 to December 12, 2014.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
November 19, 2014	<u>Daniel Sobel</u>	
	• Call with BLG, review documents provided by BLG.	0.50 hours

November 20, 2014	<u>Daniel Sobel</u>	Review documents provided by BLG, review draft order and affidavit, internal meeting, meeting with Trisura on various issues and planning, call with counsel re: draft order, draft engagement letter.	4.50 hours
November 20, 2014	<u>Jake Wiebe</u>	Meeting with Trisura to review background on file; Call with counsel to review draft order and affidavit; Call with Trisura counsel and proposed Receiver counsel to discuss draft order, affidavit and course of action.	5.80 hours
November 21, 2014	<u>Daniel Sobel</u>	Calls with counsel, review draft materials, review information provided by Trisura, call with Tert & Ross, call to appraiser.	1.00 hours
November 21, 2014	<u>Jake Wiebe</u>	Conference calls with Trisura counsel; Review engagement letter and send to Trisura.	1.40 hours
November 24, 2014	<u>Jake Wiebe</u>	Final review of affidavit and draft IR order.	0.50 hours
November 25, 2014	<u>Daniel Sobel</u>	Calls with counsel, review draft orders, endorsement, emails between counsel and Maynard's counsel, internal meetings.	1.50 hours
November 25, 2014	<u>Jake Wiebe</u>	Calls with counsel re: agreement with Maynard to proceed with auction and drafting amendment to IR order; Call with Trisura re: engagement planning.	1.20 hours
November 26, 2014	<u>Daniel Sobel</u>	Review court order, plan for attendance the following day, website administration, review letters to advisors to companies, review email correspondence between counsel re: order and endorsement.	1.00 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

- November 26, 2014 **Jake Wiebe**
- Conference call with Trisura counsel; call with counsel and Maynards' counsel to draft amendment to draft order; review Ritchie Bros. appraisal engagement letter; Attend Court for IR appointment motion. 2.90 hours
- November 26, 2014 **Nicholas To**
- Calls with D. Sobel re: engagement planning; Draft letter to bank re: RBC bank account; Post documents to website; Review motion record; Draft letter to RBC to freeze bank accounts and request information; Draft letters the Companies' advisors; Review interim receivership order. 3.00 hours
- November 27, 2014 **Daniel Sobel**
- Attend at East Avenue property, review state and quantity of equipment, review records and computer system, meeting with Sandra Ebersole and counsel, internal calls, draft update email to Trisura and counsel, call with BLG, call with A&B, review letters to various advisors to D&S and Ebersole, discussions with RB re: appraisal and site work, instructions to contractors re: records. 6.00 hours
- November 27, 2014 **Jake Wiebe**
- Call with Trisura counsel; Calls with D. Sobel re: matters onsite at Ebersole and D&S; Review letters to Ebersole financial advisors. 1.60 hours
- November 27, 2014 **Nicholas To**
- Attend on site with D. Sobel; Take photos of equipment and premises; Meeting with Ritchie Bros; Discussion with employees re: equipment; Meeting with Sandra and her counsel; Review books and records. 5.00 hours
- November 27, 2014 **Rosa Wilford**
- Follow instructions from N. To & D. Sobel, correspondences, phone calls and fax sent to Bank Collections CCS Department, requesting to freeze account and forward funds. Follow up phone calls with Bank Collections CCS Department and Bank. 2.00 hours
- November 28, 2014 **Anna Poon**
- Deposit in bank. 0.10 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

November 28, 2014	<u>Daniel Sobel</u>	Finalize update email to Trisura, internal meeting, call with Trisura, letters to advisors finalized, review banking information, email correspondence with RB and Maynards on various issues, email to counsel to Sandra Ebersole re: mail, email correspondence from RBC, banking review, emails with RB, emails with Maynards re: mileage/hours listing and ownership documents for equipment, directions to and calls with Tert & Ross re: records, storage container.	2.40 hours
November 28, 2014	<u>Jake Wiebe</u>	Review summary of Day 1 results; call with Trisura and counsel; Disc with D. Sobel re: continuing plan of action.	2.10 hours
November 28, 2014	<u>Leah Solis</u>	Attend Ministry of Transportation to run RIN search; Prepare summary of owned vehicles.	0.50 hours
November 28, 2014	<u>Nicholas To</u>	Preliminary BMO bank account review, discussion on same; Discussion re: events and key findings, review email on same; Discussions with J. Wiebe and D. Sobel on next steps; Coordinate with L. Solis to attend the Ministry of Transportation to conduct vehicle ownership searches, review letter to MTO on same, discussion of search results.	3.00 hours
November 28, 2014	<u>Rosa Wilford</u>	Follow instructions, setup new bank account, bank letter, provide wire instructions, bank slip deposit, posting entries and general banking administration.	1.00 hours
December 1, 2014	<u>Anna Poon</u>	Compose schedule re: Maynards lot listing per D. Sobel.	1.00 hours
December 1, 2014	<u>Daniel Sobel</u>	Call with RB, review appraisal, instructions to staff re: appraisal analysis, Maynards asset listing, call with Robert Fowler, review emails re: insurance status, banking activity, PPSA registrants, draft email to counsel to S. Ebersole re: corporate mail, internal calls, website review.	1.20 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 1, 2014	<u>Jake Wiebe</u>	• Discussion with D. Sobel re: results of appraisal and report to Trisura re: same.	0.60 hours
December 1, 2014	<u>Leah Solis</u>	• Perform PPSA search for N. To; Call MTO re: RIN history search; Update appraisal summary; Attempt to access computer files.	0.50 hours
December 1, 2014	<u>Nicholas To</u>	• Discussion with D. Sobel; Review PPSA, search for secured creditor contact information; Contact RBC re: Ally PPSA registration; Call/email with Curtis Gail Development re: PPSA registration, follow-up with D. Dunnet on same; Contact the McGregor Miller re insurance policies; Review MTO vehicle search results, update engagement team on same.	3.00 hours
December 1, 2014	<u>Rosa Wilford</u>	• Follow up correspondence with Bank and phone call with RBC.	0.10 hours
December 2, 2014	<u>Daniel Sobel</u>	• Review appraisal analysis, review email re: BMO account deposit, review emails and call re: November 13 and 14 transactions in RBC account, draft interim update email to Trisura, deal with Maynards re: joint account.	2.70 hours
December 2, 2014	<u>Jake Wiebe</u>	• Review appraisal and comparison to Maynard's sale listing; call with Trisura re: same; Disc with D. Sobel re: ongoing review of company records; review draft letters prepared by counsel; Review draft email to Trisura re: summary of appraisal and disposition of proceeds of sale to Maynards.	3.20 hours
December 2, 2014	<u>Leah Solis</u>	• Call MTO re: plate sticker expiry dates; Draft signification letter; Prepare AR summary; Update appraisal summary.	1.00 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 2, 2014	<u>Nicholas To</u>	Review discrepancies in Maynard's listing against RB asset appraisal; Review MTO RIN search results against Maynard's lot listings; Review PPSA and cross reference with asset listing; Calls/emails with RBC re: Ally PPSA registrations on 2012 Jeep Grand Cherokee and GMC Sierra; Review emails re: banking and legal issues; Email D. Dunnet re: outstanding balance due to Jennifer Lam as assignee of Curtis Gail debt; Draft AR signification letter and coordinate with L. Solis to prepare and issue same to customers; Cross reference VINs and active plate stickers.	5.00 hours
December 2, 2014	<u>Rosa Wilford</u>	Correspondences with Bank CCSR Team and D. Sobel, to provide copies and backup of transactions for the account for D&S Railway for review by D. Sobel, for confirmation on expecting incoming direct deposit from RBC, D&S Railway account put on freeze, phone calls, bank slip deposits, posting entries, respond to email from N. To; Preparation of cheque and invoice. Respond to phone calls from RBC. Follow instructions from D. Sobel and J. Wiebe, phone calls with Maynards and Bank, Bank letter, and set up joint bank account.	3.20 hours
December 3, 2014	<u>Daniel Sobel</u>	Review asset listings, internal meetings/calls, review insurance documentation, review letters to/from counsel, Jaeger, Fowler, Dunnet, correspondence with Manheim re: 2012 Jeep, instructions to staff re: auction.	1.40 hours
December 3, 2014	<u>Jake Wiebe</u>	Review draft Notice of Motion and draft order.	0.60 hours
December 3, 2014	<u>Leah Solis</u>	Finalize and mail AR letters; Prepare and update equipment listing; Call Skycomp Solutions re: IT; Call Caterpillar re: two units.	1.00 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 3, 2014	<u>Nicholas To</u> Review PPSA and lease agreement for CAT equipment, emails/discussions on same; Emails/discussions re: accessing computer server; Meeting with D. Sobel, A. Bongard re: Maynard's asset listing and auction, attending at same; Edit AR signification letters, discussions on same, coordinate insurance of same; Review equipment listing and summary/analysis of same; Review various emails; Follow up with letter sent to LB Accounting.	3.00 hours
December 3, 2014	<u>Rosa Wilford</u> Follow up phone call with Bank, provide new bank account, wire instructions, correspondences to and from Maynards and general banking administration.	1.00 hours
December 4, 2014	<u>Anna Poon</u> Populate summary schedule with sale price amounts per A. Bongard's auction records.	0.50 hours
December 4, 2014	<u>Aaron Bongard</u> Attended Ebersole premises for Maynards auction of equipment; Discussion with M. Minnema; Internal discussions; Reconciliation of bid amounts.	5.30 hours
December 4, 2014	<u>Daniel Sobel</u> Calls with counsel re: communication with David Dunnet, correspondence with Manheim, correspondence with staff re: auction results, review insurance, review asset listing analysis, draft update email to Trisura, internal discussions, review letter from counsel to Dunnet.	2.50 hours
December 4, 2014	<u>Jake Wiebe</u> Review correspondence from counsel; Review draft update to Trisura.	1.10 hours
December 4, 2014	<u>Leah Solis</u> Fax Interim Receivership Order to Skycomp Solutions.	0.10 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 4, 2014	<u>Nicholas To</u>	Review equipment listing, discussions on same, coordinate with L. Solis to run VIN ownership history search; Follow up with RBC re: Ally lien on 2011 GMC Sierra; Review various emails and respond/follow up accordingly; Discussion/email with IT technician re: computers, data contained therein, search for accounting data, remote network connection, update group on same.	2.25 hours
December 4, 2014	<u>Rosa Wilford</u>	Follow instructions from Maynards, correspondences with RBC and Maynards, review print screens for expecting incoming wire from Mid Transport.	0.50 hours
December 5, 2014	<u>Aaron Bongard</u>	Reconciliation of bid listing and update to summary worksheet; Draft email to JMA.	2.10 hours
December 5, 2014	<u>Daniel Sobel</u>	Prepare for and attend call with Trisura and BLG, internal calls re: update email to Trisura, review reports provided by Maynards, correspondence with Manheim, review and respond to emails from Maynards.	1.50 hours
December 5, 2014	<u>Jake Wiebe</u>	Finalize update for Trisura; Conference call with Trisura and counsel.	2.20 hours
December 5, 2014	<u>Leah Solis</u>	Prepare authorization letter to MTO; Call Caterpillar re: lien release and payout details; Perform registered owner search.	0.30 hours
December 5, 2014	<u>Nicholas To</u>	Review draft report, discussion with D. Sobel on same; Review auction results, meeting with A. Bongard on, add results draft report; Review various emails; Conference call; Coordinate with L. Solis on VIN search at MTO.	3.00 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 5, 2014	<u>Rosa Wilford</u>	Follow up correspondences with Maynards and Bank; Review print screens for expecting incoming wires throughout the day and report results to Maynards. Respond to phone calls from Port Perry Salvage, SJS Equity Group for assistance on sending wire, conference calls with Bank and general banking administration.	4.50 hours
December 8, 2014	<u>Daniel Sobel</u>	Review asset listings, instructions to staff re: asset reconciliation and Maynards reconciliation of funds deposited to joint account, review letter to D. Dunnet re: trust account.	0.50 hours
December 8, 2014	<u>Leah Solis</u>	Attend MTO to perform vehicle ownership searches; Update asset listing with registration information.	2.00 hours
December 8, 2014	<u>Nicholas To</u>	Attempt to contact C. Bruyns at LB Accountants, left message with receptionist; Email team re: 2011 GMC Sierra subject to Ally PPSA, vehicle VIN ownership history search; Review auction results, compare to listing of assets and RB appraisal, discussion with A. Bongard on same; Review MTO vehicle ownership history search results, email findings to engagement team.	1.50 hours
December 8, 2014	<u>Rosa Wilford</u>	Correspondences to and from Bank, review print screens, respond to phone calls from Bank, approve conversion of US Funds to CDN funds and request to deposit into joint bank account and phone call with Maynards.	2.00 hours
December 9, 2014	<u>Anna Poon</u>	Redact values on Schedule B to the Appraisal before sending schedule to Maynards.	0.50 hours
December 9, 2014	<u>Aaron Bongard</u>	Update to summary listing of assets sold; Draft appendix list of remaining item not sold; Correspondence with M. Minnema.	3.90 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 9, 2014	<u>Daniel Sobel</u>	Draft report to Court, internal discussion re: same, instructions to staff re: unreconciled assets, review insurance information, review correspondence with BDO and Bruyns.	2.50 hours
December 9, 2014	<u>Jake Wiebe</u>	Review email correspondence re: letters to Ebersole advisors; Review letters drafted by counsel; Discussion with D. Sobel to plan IR report to court.	0.60 hours
December 9, 2014	<u>Leah Solis</u>	Update asset listing; Search records; AR follow up; Prepare authorization letter to MTO.	2.00 hours
December 9, 2014	<u>Nicholas To</u>	Call with D. Sobel, A. Bongard re: listing of remaining assets; Left voice mail message for C. Bruyns at LB Accountants, review letter received, follow up via email re accounting system, update D. Sobel on same; Review loan documents from RBC re: Ally loan on 2011 GMC Sierra, bank statements for payments, emails with D. Sobel on same; Issue letter to BDO re: trust funds and asset listing; Review updated asset reconciliation, discussion with L. Solis on same; Discussion with D. Sobel re: outstanding times, report to court and required scheduled for same; Calls/emails with customers re: AR letters, review supporting document including payment confirmation and match to bank records, update AR tracker, update D. Sobel.	4.00 hours
December 9, 2014	<u>Rosa Wilford</u>	Correspondences with RBC, review print screens for incoming wires, direct deposits and EFTs.	0.50 hours
December 10, 2014	<u>Anna Poon</u>	Populate summary schedule of equipment with bid numbers, tax amount and premium.	1.50 hours
December 10, 2014	<u>Aaron Bongard</u>	Cross reference of sale listing summary to Maynards invoice report; Internal discussion with N. To and D. Sobel; Draft email of remaining assets unsold.	4.20 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 10, 2014	<u>Daniel Sobel</u>	Draft report to court, internal discussion re: same, instructions to staff re: unreconciled assets, draft email to Maynard's re: unsold assets.	4.80 hours
December 10, 2014	<u>Jake Wiebe</u>	Call with Trisura and counsel; Review report to court.	3.80 hours
December 10, 2014	<u>Leah Solis</u>	Attend MTO to run vehicle ownership searches; A/R follow ups; Update tracker.	0.80 hours
December 10, 2014	<u>Nicholas To</u>	Review insurance policies, summarize coverage, correspondence with broker to clarify, discussion with D. Sobel and J. Wiebe on same; Review draft report and prepare unreconciled assets section.	4.00 hours
December 10, 2014	<u>Rosa Wilford</u>	Correspondences with Bank, N. To, D. Sobel, Maynards, review print screens for both bank accounts joint and trustee, for incoming wires, provide updated receipt, respond to phone calls from RBC, A. Bongard, Relam, Maynards, update receipt /disbursement schedule, and general banking administration.	2.50 hours
December 11, 2014	<u>Anna Poon</u>	Calculate premium totals for sold equipment per A. Bongard.	0.50 hours
December 11, 2014	<u>Jake Wiebe</u>	Review report to court; call with counsel to review report.	4.70 hours
December 11, 2014	<u>Nicholas To</u>	Review and amend draft report, prepare tables and appendices, discussions on same; Incorporate changes from counsel.	5.00 hours
December 11, 2014	<u>Rosa Wilford</u>	Correspondences throughout the day with Bank and M. Minnema, update receipt schedules and general banking administration.	1.50 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 12, 2014	<u>Aaron Bongard</u>	• Cross reference invoices of individual sales to invoice report; Update of summary listings.	3.20 hours
December 12, 2014	<u>Daniel Sobel</u>	• Review report to Court, internal discussion re: same, call with BLG, call with counsel.	1.50 hours
December 12, 2014	<u>Jake Wiebe</u>	• Call with BLG re: comments on draft report; Review and update draft report.	3.10 hours
December 12, 2014	<u>Leah Solis</u>	• Attend MTO to run vehicle ownership searches; Access Simply Accounting for AR ledger.	0.30 hours
December 12, 2014	<u>Rosa Wilford</u>	• Correspondences with Bank, Maynards, N. To; Review print screens for incoming wires, direct deposits, update receipt and disbursement schedule and general bank administration.	2.00 hours
December 12, 2014	<u>Jan Oros</u>	• Pull AR information from Simply Accounting; Review USB drive for asset listing.	1.50 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

Time Charges and Expenses:

J. Wiebe, Sr. Vice President	35.40 hours @	\$ 550.00 per hour	\$ 19,470.00
D. Sobel, Vice President	35.50 hours @	\$ 390.00 per hour	\$ 13,845.00
N. To, Manager	41.75 hours @	\$ 270.00 per hour	\$ 11,272.50
J. Oros, Manager	1.50 hours @	\$ 270.00 per hour	\$ 405.00
R. Wilford, Manager	20.80 hours @	\$ 225.00 per hour	4,680.00
A. Bongard, Associate	18.70 hours @	\$ 160.00 per hour	2,992.00
L. Solis, Analyst	8.50 hours @	\$ 145.00 per hour	1,232.50
A. Poon, Analyst	4.10 hours @	\$ 120.00 per hour	\$ 492.00
	<u>166.25</u>		<u>54,389.00</u>
Technology and Administrative Fee (5%)			<u>2,719.45</u>
			57,108.45

Disbursements

Vehicle licenses searches	304.43
Travel	<u>198.91</u>
	503.34

Subtotal of Time and Disbursements	57,611.79
HST	<u>7,489.53</u>
Total Invoice Due	<u>\$ 65,101.32</u>

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

TRISURA GUARANTEE INSURANCE COMPANY

-AND-

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AFFIDAVIT OF JACOB WIEBE

GRANT THORNTON LIMITED
Royal Bank Plaza
South Tower, 19th Floor
Toronto, ON, M5J 2P9

APPENDIX 10

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

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

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

**AFFIDAVIT OF IAN AVERSA
(sworn December 15, 2014)**

I, IAN AVERSA, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for Grant Thornton Limited ("GTL"), in its capacity as the Court-appointed interim receiver, without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc.
2. Aird & Berlis LLP has prepared a statement of account in connection with its mandate as counsel to GTL, detailing its services rendered and disbursements incurred, namely, an account dated December 15, 2014 in the amount of \$28,045.19 in respect of the period from November 19, 2014 to December 12, 2014 (the "**Statement of Account**").

Attached hereto and marked as **Exhibit "A"** to this Affidavit is a copy of the Statement of Account. The average hourly rate of Aird & Berlis LLP is \$396.10.

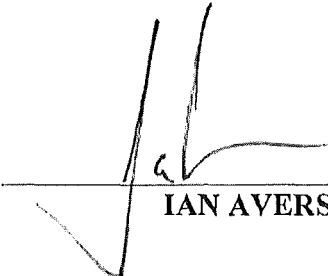
3. Attached hereto and marked as **Exhibit "B"** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.
4. This Affidavit is made in support of a motion to, *inter alia*, approve the attached account of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me at the City of)
 Toronto, in the Province of Ontario)
 this 15th day of December, 2014)



 A commissioner, etc.

A. Collins



IAN AVERSA

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 15th day of December, 2014

A handwritten signature in black ink, appearing to be "A. C.", is written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place, 181 Bay Street
Suite 1800, Box 764, Toronto, ON M5J 2T9 Canada
T 416.863.1500 F 416.863.1515
www.airdberlis.com

494

Grant Thornton Limited
Royal Bank Plaza
19th Floor, South Tower
200 Bay Street, Box 55
Toronto, ON
Canada M5J 2P9

Attention: Mr. Jake Wiebe

Account No.: 497877

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

December 15, 2014

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended December 12, 2014

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	19/11/14	\$695.00	0.30	\$208.50	Telephone call with J. Wiebe re net matter and background
IEA	20/11/14	\$395.00	2.30	\$908.50	Telephone call with client and S. Graff regarding background and next steps; Engaged with reviewing the draft affidavit and the draft order and providing comments; Emails to and from clients and S. Graff regarding same; Telephone call with S. Graff and clients regarding same
SLG	20/11/14	\$695.00	1.00	\$695.00	Telephone call with D. Sobel, I. Aversa and J. Wiebe; review facts; review affidavit (draft); consider order and approach
IEA	21/11/14	\$395.00	2.10	\$829.50	Telephone calls and emails to and from clients and R. Jaipargas regarding the application materials and next steps; Engaged with reviewing various documents regarding same; Discussions with S. Graff regarding next steps
SLG	21/11/14	\$695.00	0.70	\$486.50	Telephone call with I. Aversa and R. Jaipargas re various issues and results of order sought

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	21/11/14	\$280.00	0.60	\$168.00	Receipt and review of draft affidavit of S. Detsky
IEA	23/11/14	\$395.00	1.20	\$474.00	Engaged with reviewing documents from R. Jaipargas; Emails to and from R. Jaipargas and clients regarding same
IEA	24/11/14	\$395.00	2.90	\$1,145.50	Emails to and from R. Jaipargas and clients regarding the court materials and the hearing; Telephone call with R. Jaipargas regarding same; Discussions with S. Graff regarding same; Instruct S. Morris regarding preparation of security review; Engaged with reviewing the application record, the factum and the brief of authorities and emails to and from S. Graff and J. Nemers regarding same; Telephone call with R. Jaipargas and S. Graff; Emails regarding Maynards
SLG	24/11/14	\$695.00	0.30	\$208.50	Telephone call with R. Jaipargas and I. Aversa
SRM	24/11/14	\$310.00	0.10	\$31.00	Discussion with I. Aversa; Brief review of material and searches
IEA	25/11/14	\$395.00	3.80	\$1,501.00	Engaged with reviewing correspondence from Maynards' counsel; Telephone call with R. Jaipargas and S. Graff regarding same; Several telephone calls and emails to and from client; R. Jaipargas and S. Graff regarding the hearing; Discussions and emails with S. Morris regarding security review; Engaged with reviewing Maynards' motion record and emails regarding same
ALB	25/11/14	\$550.00	0.30	\$165.00	Reviewed Indemnity agreement and provided comments relating to provisions involving granting of security
SLG	25/11/14	\$695.00	2.00	\$1,390.00	Several telephone calls with R. Jaipargas and D. Sobel; J. Wiebe and I. Aversa and Foglers re settling structure and order; comment on same
SRM	25/11/14	\$310.00	2.40	\$744.00	Review Indemnity Agreement and searches and report on same
JTN	25/11/14	\$280.00	0.80	\$224.00	Telephone call with R. Jaipargas and J. Farber re tomorrow's motion

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	26/11/14	\$395.00	3.10	\$1,224.50	Several telephone calls and emails to and from Applicant's counsel, client and counsel for Maynards regarding the draft order and next steps; Attend court; Discussions with S. Graff regarding same; Emails to and from S. Graff and S. Morris regarding the security review
SLG	26/11/14	\$695.00	0.80	\$556.00	Review security opinion; discussion with I. Aversa
SLG	26/11/14	\$695.00	0.50	\$347.50	Consider Issues with J. Farber and J. Cohen; amended order
SRM	26/11/14	\$310.00	1.00	\$310.00	Prepare draft Opinion
JTN	26/11/14	\$280.00	1.30	\$364.00	Attend at motion with I. Aversa
IEA	27/11/14	\$395.00	2.50	\$987.50	Telephone calls and emails to and from R. Jaipargas and clients regarding update and next steps; Engaged with reviewing and revising the opinion and emails regarding the same; Meeting and discussion with A. Blderman regarding same; Discussions with J. Nemers regarding same; Telephone call with client regarding letter to accountant; Emails to and from clients regarding same; Instruct J. Nemers regarding preparation of letter; Engaged with reviewing and revising letter and emails to and from client regarding same; Telephone call with R. Jaipargas regarding update
ALB	27/11/14	\$550.00	0.70	\$385.00	Discussion with I. Aversa regarding opinion issues; Reviewed draft legal opinion and provided written comments
SLG	27/11/14	\$695.00	0.10	\$69.50	Telephone call with R. Jaipargas re costs and status
SRM	27/11/14	\$310.00	0.10	\$31.00	Further revise Opinion
JTN	27/11/14	\$280.00	1.00	\$280.00	Receipt and review of draft letter from client to J. MacDonald; Revise same and adapt to originate from I. Aversa; Email to client for approval; Email final letter to J. MacDonald
IEA	28/11/14	\$395.00	1.10	\$434.50	Emails to and from R. Jaipargas, J. Nemers and client regarding opinion, service list and next steps; Engaged with reviewing and revising the opinion and issuing the opinion;

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Telephone call with R. Jalpargas regarding update and next steps; Discussions with S. Graff regarding same
SRM	28/11/14	\$310.00	0.10	\$31.00	Discussion with I. Aversa regarding PPSA registrations against Ebersole and D&S
JTN	28/11/14	\$280.00	0.80	\$224.00	Review and revise security opinion letter
IEA	29/11/14	\$395.00	0.30	\$118.50	Emails to and from Applicant's counsel, client and S. Graff
IEA	30/11/14	\$395.00	0.20	\$79.00	Emails to and from Applicant's counsel, client and S. Graff
IEA	01/12/14	\$395.00	0.60	\$237.00	Telephone call and emails to and from Applicant's counsel and client regarding update and next steps
IEA	02/12/14	\$395.00	1.60	\$632.00	Telephone calls and emails to and from client, S. Graff and J. Nemers regarding update and next steps; Instruct J. Nemers regarding letters re equipment and RBC funds; Engaged with reviewing the letter and providing comments; Emails to and from clients regarding same; Emails to and from clients regarding Jeep; Instruct J. Nemers regarding preparation of letter; Engaged with reviewing and revising letter; Engaged with issuing letters to Sandra and Darrell's counsel (x3 letters)
SLG	02/12/14	\$695.00	0.30	\$208.50	Review update and issues and letters with Ebersole counsel
JTN	02/12/14	\$280.00	3.00	\$840.00	Prepare and revise three letters to opposing counsel re separate concerns re preservation of property and email same to opposing counsel; Telephone calls and emails with D. Sobel and I. Aversa re same; Telephone call with I. Aversa and D. Brown re J. MacDonald
IEA	03/12/14	\$395.00	1.70	\$671.50	Emails to and from client and J. Nemers regarding correspondence with counsel to the Ebersoles; Telephone call with counsel for Sandra; Telephone call with client regarding same; Engaged with reviewing correspondence from client; Emails to and from R. Jalpargas and client regarding update and next steps; Emails regarding the

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					hearing; Engaged with reviewing the notice of motion and draft order and providing comments; Emails to and from client and R. Jalpargas regarding same
SLG	03/12/14	\$695.00	0.20	\$139.00	Review emails on status on next steps
JTN	03/12/14	\$280.00	0.20	\$56.00	Email chain to client and opposing counsel re residual issues from letters sent yesterday
IEA	04/12/14	\$395.00	0.50	\$197.50	Emails to and from client and J. Nemers regarding discussions and correspondence with Sandra and Darrell's counsel
JTN	04/12/14	\$280.00	1.40	\$392.00	Email chain and telephone calls with D. Sobel and D. Dunnet re letters sent to latter on December 2; Draft and send subsequent letter to D. Dunnet
IEA	05/12/14	\$395.00	0.50	\$197.50	Emails to and from client and J. Nemers regarding update and next steps
JTN	05/12/14	\$280.00	0.60	\$168.00	Email chain and telephone calls with client and opposing counsel re delivery of vehicle and proceeds in trust account
IEA	07/12/14	\$395.00	0.30	\$118.50	Emails to and from client and J. Nemers
JTN	07/12/14	\$280.00	0.30	\$84.00	Receipt and review of draft letter from D. Sobel re transfer of ownership of vehicles purchased at auction; Revise same and email to D. Sobel
IEA	08/12/14	\$395.00	0.70	\$276.50	Emails to and from client and J. Nemers regarding correspondence to D. Dunnet; Emails to and from R. Jalpargas re update and next steps
JTN	08/12/14	\$280.00	0.60	\$168.00	Prepare and send follow-up letter to D. Dunnet re trust account issue; Emails to client re same
IEA	09/12/14	\$395.00	2.10	\$829.50	Telephone calls and emails to and from Applicant's counsel and client regarding security opinion and next steps; Emails to and from clients and J. Nemers regarding correspondence with D. Dunnet and B. Jaeger

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PAGE 8 OF ACCOUNT NO. 497877

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	09/12/14	\$695.00	0.40	\$278.00	Meeting with I. Aversa to discuss Trisura position and distribution motion and timing and issues over same
JTN	09/12/14	\$280.00	0.80	\$224.00	Prepare draft letter to D. Dunnet and B. Jaeger re occupational rent and protection of property not sold at auction; Telephone call with R. Hooke to discuss rent scenario; Telephone calls with I. Aversa re approach and suggested revisions to letter
IEA	10/12/14	\$395.00	2.40	\$948.00	Telephone calls and emails to and from Applicant's counsel and clients regarding update and next steps; Telephone call with clients and J. Nemers regarding missing funds; Instruct J. Nemers regarding letters to D. Dunnet and B. Jaeger; Emails to and from clients regarding same; Telephone call with D. Dunnet; Telephone call with B. Jaeger
SLG	10/12/14	\$695.00	0.20	\$139.00	Review email
JTN	10/12/14	\$280.00	2.60	\$728.00	Telephone call with working group re \$600,000 transfer to S. Ebersole and strategy in recovering same; Telephone call with client and discussion with I. Aversa re same; Telephone call with D. Dunnet re potential agreement to transfer funds in his trust account to Interim Receiver on certain conditions; Draft, revise and email letter to D. Dunnet re same; Telephone call with B. Jaeger re balance of missing funds transferred to S. Ebersole; Draft and email letter to B. Jaeger re same; Attend to related matters as requested
IEA	11/12/14	\$395.00	1.40	\$553.00	Emails to and from client and J. Nemers regarding the draft report; Engaged with reviewing the report and providing comments; Telephone call with client regarding same; Telephone call with R. Jalpargas regarding same
SLG	11/12/14	\$695.00	0.20	\$139.00	Consider direction of matter
JTN	11/12/14	\$280.00	1.70	\$476.00	Review and revise draft report and telephone call with client re same; Telephone call with D. Dunnet re request to receive copy of assignment of security given to J. Lam

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	12/12/14	\$395.00	2.30	\$908.50	Telephone calls and emails to and from client regarding the draft report, the motion materials and next steps; Telephone call with R. Jaipargas regarding same; Instruct J. Nemers regarding correspondence to Curtis Gale's counsel; Engaged with revising letter; Emails to and from client and J. Nemers regarding next steps; Engaged with reviewing revised motion materials and providing comments; Telephone call with client regarding same; Telephone call with R. Jaipargas regarding same; Emails regarding the consent
SLG	12/12/14	\$695.00	0.20	\$139.00	Review further exchange of emails
JTN	12/12/14	\$280.00	1.10	\$308.00	Draft letter to M. DiGirolamo re Curtis Gale Development Corporation; Follow-up email to D. Brown re J. MacDonald; Review proposed changes to draft Notice of Motion and draft Order; Review and revise consent to act as Receiver; Attend to other related tasks as requested
TOTAL:			62.30	\$24,677.00	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	7.20	\$695.00	\$5,004.00
Ian E. Aversa (IEA)	33.60	\$395.00	\$13,272.00
Jeremy T. Nemers (JTN)	16.80	\$280.00	\$4,704.00
Shannon R. Morris (SRM)	3.70	\$310.00	\$1,147.00
Andrew L. Biderman (ALB)	1.00	\$550.00	\$550.00

OUR FEE	\$24,677.00
HST at 13%	\$3,208.01

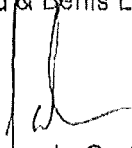
DISBURSEMENTS**Subject to HST**

Photocopies	\$0.25
Photocopies - Local	\$111.00
Long Distance Charges	\$3.40
Binding and Tabs	\$10.00
Imaging/Scanning	\$8.25
Taxi	\$8.85

Total Disbursements	\$141.75
HST at 13%	\$18.43

AMOUNT NOW DUE**\$28,045.19**

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

per: 
Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.3% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

20988089.1

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 15th day of December, 2014



Commissioner for taking Affidavits, etc

STATEMENT OF RESPONSIBLE INDIVIDUALS

Aird & Berlis LLP's professional fees herein are made with respect to the following individuals

Lawyer	Call to Bar	Hrly Rate	Total Time	Value
Steven L. Graff	1991	\$695.00	7.20	\$5,004.00
Ian Aversa	2008	\$395.00	33.60	\$13,272.00
Andrew Biderman	2000	\$550.00	1.00	\$550.00
Jeremy Nemers	2014	\$280.00	16.80	\$4,704.00
Clerk/Student	Call to Bar	Avg Hrly Rate	Total Time	Value
Shannon Morris	N/A	\$310.00	3.70	\$1,147.00

**Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.*

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

AFFIDAVIT OF IAN AVERSA

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC #31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

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

APPENDIX 11

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

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

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

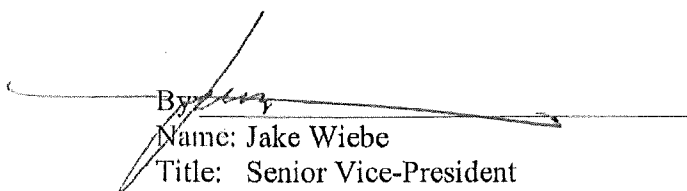
**EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.**

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**

**CONSENT
(Appointment of Receiver)**

Grant Thornton Limited hereby consents to act as the court-appointed receiver of the assets, properties and undertaking of Ebersole Excavating Inc. and D&S Railway Construction Inc. in accordance with an order substantially in the form requested by the Applicant.

December 2nd, 2014**GRANT THORNTON LIMITED**By 

Name: Jake Wiebe

Title: Senior Vice-President

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

**TRISURA GUARANTEE INSURANCE COMPANY - and - EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.**

Applicant

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

**CONSENT
(Appointment of Receiver)**

BORDEN LADNER GERVAIS LLP
40 King Street West
Toronto, Ontario
M5H 3Y4

ROGER JAIPARGAS
Tel: (416) 367-6266
Fax: (416) 361-7067
Email: rjaipargas@blg.com
LSUC# 43275C

ANDREW HODHOD
Tel: (416) 367-6290
Fax: (416) 361-2799
Email: ahodhod@blg.com
LSUC#66314K

Lawyers for the Applicant

TAB 4

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

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

THE HONOURABLE

)

TUESDAY, THE 23rd DAY

)

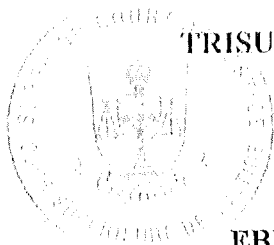
JUSTICE

Patillo

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OF DECEMBER, 2014

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**

**ORDER
(Appointment of Receiver)**

THIS MOTION made by the Trisura Guarantee Insurance Company ("Trisura") for an Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), appointing Grant Thornton Limited ("GTL") as receiver (in such capacities, 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") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stuart Detsky, sworn November 24, 2014 and the exhibits thereto, the first report of GTL dated December 15, 2014 (the "First Report"), prepared in GTL's capacity as interim receiver of the Debtors (in such capacity, the "Interim Receiver"), the Affidavit of Jacob Wiebe, sworn December 15, 2014 (the "Wiebe Affidavit"), the Affidavit of Ian Aversa, sworn December 15, 2014 (the "Aversa Affidavit") and on hearing the submissions of counsel for Trisura, counsel for the Interim Receiver, counsel for Darrell Ebersole, no one else appearing for any other party although duly served as appears from the affidavit of service of Andrew Hodhod, sworn December 16, 2014, the affidavit of service of Andrew Hodhod, sworn December 17, 2014 and on reading the consent of GTL to act as the Receiver,

SERVICE

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.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, GTL is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of

the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

8. THIS COURT ORDERS that the title of proceedings in the within proceedings is amended to read as follows:

B E T W E E N:

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

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all

such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise,

in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URI. www.grantthornton.ca/ebersole.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as

last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

APPROVAL OF INTERIM RECEIVER'S REPORT AND ACTIVITIES

28. THIS COURT ORDERS that the First Report and the activities of the Interim Receiver as described therein, be and are hereby approved.

APPROVAL OF FEES

29. THIS COURT ORDERS that the fees and disbursements of the Interim Receiver, as described in the First Report and as set out in the Wiebe Affidavit, be and are hereby approved.

30. THIS COURT ORDERS that the fees and disbursements of the Interim Receiver's legal counsel, Aird & Berlis LLP, as described in the First Report and as set out in the Aversa Affidavit, be and are hereby approved.

BANKRUPTCY OF THE DEBTORS

31. THIS COURT ORDERS that the Receiver is authorized and directed to file assignments into bankruptcy for each of the Debtors.

32. THIS COURT ORDERS that Grant Thornton Limited is authorized to act as trustee in bankruptcy (in such capacity, the "Trustee") in respect of each of the Debtors.

33. THIS COURT ORDERS that the Receiver is authorized and directed to transfer up to \$15,000 to the Trustee for each of the bankruptcies of the Debtors, for a total amount of up to \$30,000 from funds held in the receivership estate in order to fund the bankruptcies of the Debtors.

AUCTION OF CERTAIN EQUIPMENT

34. THIS COURT ORDERS that the Receiver is authorized and permitted to assume and discharge the duties of the Interim Receiver, as set out in paragraph 28 of the Order of Mr.

Justice Newbould dated November 26, 2014 (the "Interim Receivership Order"), including holding the Remaining Funds (as defined in the Interim Receivership Order), pending further Order of the Court.

GENERAL

35. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

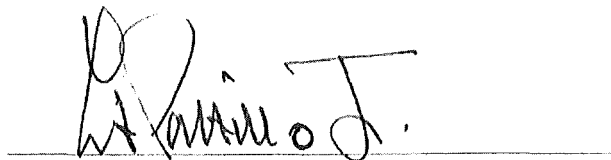
36. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

37. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

38. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

39. THIS COURT ORDERS that the Applicant shall have its costs of this Motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

40. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT THE COURT OF TORONTO
ON / 2004 DEC
LE / DAVIS LE / 2004 DEC



DEC 23 2014

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the receiver (the "Receiver") of the assets, undertakings and properties Ebersole Excavating Inc. and D & S Railway Construction Inc. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number CV-14-10766-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

Grant Thornton Limited, solely in its capacity as
Receiver of Ebersole Excavating Inc. and D & S
Railway Construction Inc., and not in its
personal capacity

Per: _____

Name:

Title:

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

TRISURA GUARANTEE INSURANCE COMPANY - and - EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.

Applicant

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(Appointment of Receiver)**

BORDEN LADNER GERVAIS LLP
40 King Street West
Toronto, Ontario
M5H 3Y4

ROGER JAIPARGAS
Tel: (416) 367-6266
Fax: (416) 361-7067
Email: rjaipargas@blg.com
LSUC# 43275C

ANDREW HODHOD
Tel: (416) 367-6290
Fax: (416) 361-2799
Email: ahodhod@blg.com
LSUC#66314K

Lawyers for Trisura Guarantee Insurance Company

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

TRISURA GUARANTEE INSURANCE COMPANY

- and -

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

Applicant

Dec 22/14
Respondents

Dec 23, 2014

R. Jaipargas - for moving party

S. Graft - for interim Receiver

R. Hanna - for Mr. Ebersole

On consent, order to issue appointing the interim Receiver a full Receiver. I am satisfied that it is just and convenient and appropriate in the circumstances.

The issues concerning approval of the interim Receiver's first report and the fees is adjourned on consent to 9:30 a.m. on January 16, 2015. In the absence of a resolution of those issues, a motion date will be set. Counsel for Mr. Ebersole of his position by January 12, 2015.

I am satisfied that the Receiver should be given the authorization to file arguments into Bankruptcy of the Debtors along with the ancillary relief requested. Given the interim Receiver's information as to what has been happening at the Debtors, the powers under the BIA are required as soon as possible.

Order signed by me.

[Signature]

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(Appointment of Receiver)

BORDEN LADNER GERVAIS LLP
40 King Street West
Toronto, Ontario
M5H 3Y4

ROGER JAIPARGAS
Tel: (416) 367-6266
Fax: (416) 361-7067
Email: rjaipargas@blg.com
LSUC# 43275C

ANDREW HODHOD
Tel: (416) 367-6290
Fax: (416) 361-2799
Email: ahodhod@blg.com
LSUC#66314K

Lawyers for Trisura Guarantee Insurance Company

TOR01-5790341-v1

TAB 5



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

THE HONOURABLE

)

FRIDAY, THE 16th DAY

JUSTICE

Pacheco

)

)

OF JANUARY, 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

(Approval of Report and Fees)

THIS MOTION made by the Trisura Guarantee Insurance Company ("Trisura") for an Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), appointing Grant Thornton Limited ("GTL") as receiver (in such capacities, 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") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stuart Detsky, sworn November 24, 2014 and the exhibits thereto, the first report of GTL dated December 15, 2014 (the "First Report"), prepared in GTL's capacity as interim receiver of the Debtors (in such capacity, the "Interim Receiver"), the Affidavit of Jacob Wiebe, sworn December 15, 2014 (the "Wiebe Affidavit"), the Affidavit of Ian Aversa, sworn December 15, 2014 (the "Aversa Affidavit") and on hearing the submissions of counsel for Trisura and counsel for the Receiver, no one else appearing for any other party although duly served as appears from the affidavit of service of Andrew Hodhod, sworn January 9, 2014,

SERVICE

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.

APPROVAL OF INTERIM RECEIVER'S REPORT AND ACTIVITIES

2. THIS COURT ORDERS that the First Report and the activities of the Interim Receiver as described therein, be and are hereby approved.

APPROVAL OF FEES

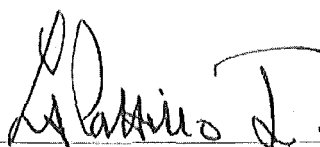
3. THIS COURT ORDERS that the fees and disbursements of the Interim Receiver, as described in the First Report and as set out in the Wiebe Affidavit, be and are hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of the Interim Receiver's legal counsel, Aird & Berlis LLP, as described in the First Report and as set out in the Aversa Affidavit, be and are hereby approved.

FILED
CLERK OF COURT
JAN 13 2015

JAN 13 2015

NB



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

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

TRISURA GUARANTEE INSURANCE COMPANY - and - EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.

Applicant

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Approval of Report and Fees)

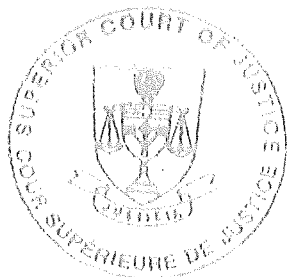
BORDEN LADNER GERVAIS LLP
40 King Street West
Toronto, Ontario
M5H 3Y4

ROGER JAIPARGAS
Tel: (416) 367-6266
Fax: (416) 361-7067
Email: rjaipargas@blg.com
LSUC# 43275C

ANDREW HODHOD
Tel: (416) 367-6290
Fax: (416) 361-2799
Email: ahodhod@blg.com
LSUC#66314K

Lawyers for Trisura Guarantee Insurance Company

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



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

THE HONOURABLE

)

FRIDAY, THE 16TH

JUSTICE

PHILLO

)

DAY OF JANUARY, 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

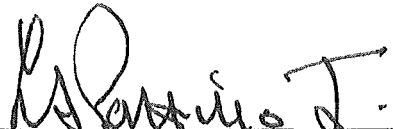
AND IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ORDER

THIS MOTION, made by Maynards Industries Ltd., on notice, for an Order, *inter alia*, authorizing and directing the payment of the Harmonized Sales Tax ("**HST**") payable on account of the sale of various equipment authorized in these proceedings pursuant to the Orders made herein to date was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, including the Affidavit of Michael B. McIntosh, sworn January 14, 2015, filed, and on hearing submissions of counsel:

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 AUTHORIZES, DIRECTS AND FURTHER ORDERS** that Maynards Industries Ltd. shall pay the sum of \$172,054.18 CDN from the proceeds of the auction conducted by Maynards on December 4, 2014 to Canada Revenue Agency in satisfaction of the outstanding HST liability, which funds are presently held in the account controlled jointly by Maynards Industries Ltd. and the Receiver, Grant Thornton Limited, and that the Receiver shall take any and all steps required in order to facilitate Maynards' payment of said funds in accordance herewith.


(Signature of Judge)

CLERK OF THE COURT
OFFICE OF THE CLERK
1275 WEST 10TH AVENUE, SUITE 100
EDMONTON, ALBERTA T6H 1H5

JAN 16 2015

NB

TRISURA GUARANTEE INSURANCE COMPANY

-and-

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

Applicant

Respondents

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

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

FOGLER, RUBINOFF LLP

Lawyers

77 King Street West

Suite 3000, P.O. Box 95

Toronto Dominion Centre

Toronto, ON M5K 1G8

Joel D. Farber (LSUC# 36690T)

Joshua R. Freeman (LSUC# 55823J)

Greg Azeff (LSUC #45324C)

Tel: 416.864.9700

Fax: 416.941.8852

Lawyers for Maynards Industries Ltd.

TAB 6

ASSIGNMENT OF INDEBTEDNESS AND SECURITY

This Assignment (the "Assignment") is effective November 04, 2014.

- BETWEEN:** **Jennifer Lamb** (the "Assignee"), an individual residing at 2194 East Avenue, Fort Erie, L0S 1S0, in the Province of Ontario;
- AND:** **Curtis Gail Development Corporation** (the "Assignor"), a corporation incorporated under the Laws of the Province of Ontario located at 4490 Montrose Road, Niagara Falls, L2H 1K2;
- AND:** **Darrell Wayne Ebersole and Sandra Lynn Ebersole** (the "Debtors") individuals residing at 2194 East Avenue, Fort Erie, L0S 1S0, in the Province of Ontario;

RECITALS

- A. The Debtors are indebted to the Assignor (collectively, the "Debtor - Assignor Indebtedness") in accordance with the terms of a Promissory Note dated December 18th, 2013 and Charge/Mortgage registered as SN394048 on December 19, 2013 over property municipally described as 2194 East Avenue, Fort Erie, Ontario (collectively, the "Assigned Security").
- B. The principal amount of the debt is defined in the Promissory Note and Charge/Mortgage at \$200,000.00 CAD together with all accrued interest and fees.
- C. The Assignor has requisitioned for Judgment in Court File No. 9729/14 in the Superior Court of Justice at Welland with respect to the Debtor - Assignor Indebtedness and Assigned Security in the amount of \$214,835.31 plus costs, however has not received same.
- D. The Parties have agreed to execute this Assignment to assign all of the Assignors right, title and interest in the Debtor - Assignor Indebtedness and Assigned Security.

NOW THEREFORE for value received and intending to be legally bound each of the undersigned covenants and agrees as follows:

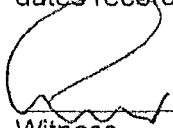
- 1. The amount of \$206,000.00 CAD is to be paid to the lawyer for the Assignor to be applied by the Assignor in consideration of the Assignment Consideration as hereinafter defined.
- 2. In consideration of the \$206,000.00 CAD and other good and valuable

consideration now paid by the Assignees to the Assignors (the "Assignment Consideration") the Assignor sells, assigns and grants in favour of the Assignee who accepts and assumes without recourse all of the present and future rights, title, benefits, interests, entitlement and claims (collectively the "Assigned Rights") including without limitation all money's due or hereinafter become due in respect of the Debtor - Assignor Indebtedness and Assigned Security.

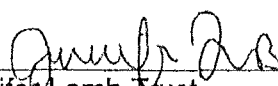
3. The Assignment is being made by the Assignor on an "as is where is" basis. Except as expressly stated herein the Assignor makes no representation, condition, warranty or covenant, express or implied or by statute as to any cause, matter or thing whatsoever with respect to any of the Assigned Rights including without limitation the value of or enforceability or prior ranking of any of the assigned security and the action commenced to enforce and the Requisitioned Judgment.
4. The Debtor and the Assignee acknowledge and warrant that they will forego any rights they had, have or may have to bring an action of any kind against the Assignor whether known at this time or not which relate to the mortgage enforcement, assignment of same and anything related thereto.
5. The Debtor represents and warrants to the Assignee as follows:
 - a. Recitals hereto are true and valid;
 - b. As of the date of Judgment the Debtor remains indebted to the Assignor;
 - c. As of the date hereof the Assigned Security is in full force and effect;
 - d. The Assignor represents and warrants to the Assignee as follows:
 - i) As of the date of Judgment the Debtor is indebted to the Assignor in the amount of \$214,835.31.
 - ii) The Assignor has not executed a Release of Discharge of, or previously signed security.
6. The Debtor acknowledges notice of and consents to the Assignment by the Assignor in favour of the Assignee all right, title and interest of the Assignor in the Assigned Security under the terms of this Assignment.
7. The Debtor agrees not to do any act which will result in a contravention of the terms of this Assignment by the Assignor.
8. The Assignor agrees to execute an Acknowledgment and Direction to give effect to the Assignment and registration of the Charge/Mortgage in the name of the Assignee and to execute all other documentation that may be required to give full force and effect to the Assignment.
9. If any provision of this Assignment shall be deemed by any court of competent jurisdiction to be invalid or void the remaining provisions shall remain in full force and effect.

10. This Agreement is governed by and shall be interpreted in light of the laws of the Province of Ontario, Canada. The Debtors hereby consent to the exclusive jurisdiction of the courts of the Province of Ontario.
11. This Agreement shall bind and benefit the Parties and their respective predecessors, successors, members, partners, assigns, parents, subsidiaries and affiliates.
12. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original, and all taken together shall constitute but one and the same Assignment Agreement. The Parties agree that their respective signatures may be delivered by fax or via e-mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates recorded by their signature.

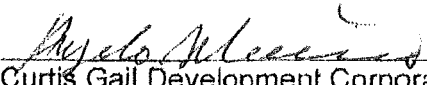


 Witness



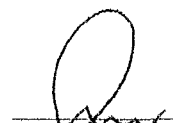
 Jennifer Lamb Trust

Date: November 23, 2014

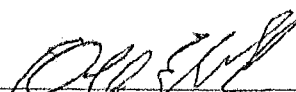


 Curtis Gail Development Corporation
 (I have authority to bind the Corporation)

Date: Nov 14 - 2014



 Witness



 Darrell Wayne Ebersole

Date: Nov 21 14



 Witness



 Sandra Lynn Ebersole

Date: Nov 21 14

TAB 7

Ian Aversa
Direct: 416.865.3082
Email: iaversa@airdberlis.com

January 20, 2015

VIA EMAIL: marcd@broderickpartners.com

Broderick & Partners LLP
4625 Ontario Avenue
P.O. Box 897
Niagara Falls, ON L2E 6V6

Attention: Marc DiGirolamo

Dear Mr. DiGirolamo:

Re: Ebersole Excavating Inc. ("Ebersole") and D&S Railway Construction Inc. ("D&S", and together with Ebersole, the "Companies")

We are in receipt of your letter dated December 17, 2014 (the "**December 17 Letter**") and the accompanying copy of the executed Assignment of Indebtedness and Security effective November 4, 2014 (the "**Assignment Agreement**", and together with the December 17 Letter, the "**December 17 Materials**") amongst Curtis Gale Development Corporation, Jennifer Lamb, Darrell Ebersole ("**Darrell**") and Sandra Ebersole ("**Sandra**").

Since we last wrote to you, the mandate of Grant Thornton Limited ("**GTL**") in connection with this matter has expanded. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) issued on December 23, 2014 (the "**Receivership Order**"), a copy of which is available on GTL's website at www.grantthornton.ca/ebersole, GTL was appointed as the Court-appointed receiver of the Companies (in such capacity, the "**Receiver**").

Having reviewed the December 17 Materials, the Receiver requests that you confirm, and clarify if necessary, each of the following points:

- i. please confirm who acted as legal counsel to the various parties in respect of: (a) the initial loan transaction of December 2013 that created the "**Debtor – Assignor Indebtedness**" and the "**Assigned Security**", as those terms are defined in the Assignment Agreement; and (b) the Assignment Agreement itself;
- ii. please confirm why the Assignment Agreement recites Darrell and Sandra as being indebted to your client, Curtis Gale Development Corporation, pursuant to the Debtor – Assignor Indebtedness, when Darrell and Ebersole appear to have factually been indebted to your client pursuant to the Debtor – Assignor Indebtedness;
- iii. please confirm that the \$206,000.00 referenced in the Assignment Agreement (the "**Amount**") was paid to you in trust for your client as consideration for the assignment to Jennifer Lamb of all your client's right, title and interest in, amongst other things, a Charge/Mortgage for the principal amount of \$200,000.00, which Charge/Mortgage was registered on title on December 19, 2013 as Instrument No. SN394048 against the real property municipally known as 2194 East Avenue, Fort

Page 2

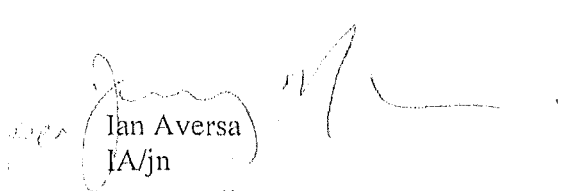
Erie, Ontario LOS 1S0 and legally described in PTN 64244-0134 (LT) (the "**East Avenue Charge**");

- iv. please clarify whether Jennifer Lamb paid the Amount to you or whether someone other than Jennifer Lamb paid the amount to you;
- v. if someone other than Jennifer Lamb paid the Amount to you, please identify: (a) the payor; (b) the person(s) instructing you to accept payment from the payor (the "**Instructing Person(s)**"); and (c) the capacity in which the Instructing Person(s) gave such instructions;
- vi. please confirm the extent of your client's remaining interest in the East Avenue Charge, if any;
- vii. as the December 17 Materials indicate that the registration made by your client against Ebersole pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA Registration**") was not assigned pursuant to the Assignment Agreement, and as you further indicated in the December 17 Letter that your client is agreeable to the discharge of the PPSA Registration, please confirm the nature of your client's past interest in the PPSA Registration and when and under what circumstances your client's interest in the PPSA Registration ceased; and
- viii. please confirm why the PPSA Registration is limited only to one specific piece of equipment, when we understand that Ebersole granted a general security agreement to your client in respect of all Ebersole's property.

Your continued cooperation with the Receiver is appreciated.

Yours very truly,

AIRD & BERLIS LLP



Ian Aversa
IA/jn

cc: Client
21441131.1

TAB 8

BARRISTERS AND SOLICITORS



Broderick & Partners LLP
Effective legal service in Niagara since 1951.

4625 ONTARIO AVE.

P.O. BOX 897

NIAGARA FALLS, ON

CANADA L2E 6V6

TEL (905) 356-2621

FAX (905) 356-6904

broderickpartners.com

J.J. BRODERICK

Q.C., L.S.M.
Law Society Certified
Civil Litigation Specialist

W.A. AMADIO**J.B. HOPKINS****G.A. KIRKHAM****I.M. GILBERTI**

Fluent in Italian & French

R. B. BURNS**M. DIGIROLAMO****Z. SASKIN**

Fluent in Bosnian, Croatian
& Serbian

VIA E-MAIL (iaversa@airdberlis.com)

January 29, 2015

Aird & Berlis LLP
Barristers & Solicitors
181 Bay Street, Suite 1800
Box 754, Brookfield Place
Toronto, ON M5J 2T9

Attention: Ian Aversa

Dear Mr. Aversa:

Re: Curtis Gail Development Corporation and Ebersole Excavating Inc.
Assignment of Indebtedness and Security to Jennifer Lamb

We are in receipt of your correspondence of January 20, 2015 with respect to the above-noted matter.

Our responses to your queries are below (numerically corresponding to your letter):

- i. (a) I provided legal counsel to Curtis Gail Development Corporation ("Curtis Gail") with respect to the initial loan transaction. Gerald F. Ruch provided legal advice to both Darrell Ebersole ("Darrell"), Sandra Ebersole ("Sandra") and Ebersole Excavating Inc. in connection with the loan transaction.
- (b) With respect to the assignment agreement, I provided legal counsel to Curtis Gail. Counsel to Jennifer Lamb ("Lamb") was David G. Dunnet. To the best of my knowledge, Mr. Dunnet also provided counsel to Darrell and Sandra.
- ii. Sandra was contained in the recitals on the assignment agreement as she was a party to the charge to Curtis Gail, as joint tenant of the residential property located at 2194 East Avenue, Fort Erie (the "Property").

-2-

- iii. We confirm that \$206,000.00 was received by wire transfer to our firm's trust account on November 4, 2014 as full consideration for the assignment of the charge to Lamb of the charge registered against the Property by Curtis Gail.
- iv. The above-noted wire transfer was not received directly from Lamb.
- v. (a) The wire transfer was received from JMA Accounting Professionals.
(b) John McDonald of JMA Accounting advised us that he had a client, namely Jennifer Lamb, who wished to take an assignment of the mortgage in exchange for \$206,000.00.
(c) Mr. McDonald advised us that further instructions were to come from Mr. Dunnet, the solicitor on the file.
- vi. Curtis Gail holds no remaining interest in the Property, as whatever interest it had was assigned to Ms. Lamb pursuant to the assignment agreement provided.
- vii. Our client's interest in the *Personal Property Act* registration is set out in File No. 692708355 (the "Personal Property"). The assignment agreement was silent on the Personal Property and so on receipt of your request we wrote to Mr. Dunnet to ask if he had any objection to discharging same. As he did not, we were prepared to release same.
- viii. The PPSA registration was limited to a registration against only one piece of equipment, being a 1999 Western Star, as we had been provided with an appraisal which listed that truck as valued at a low of \$285,000.00 and high of \$305,000.00.

Please do not hesitate to contact the undersigned if you have any questions or require anything further.

Yours very truly,

BRODERICK & PARTNERS LLP



MARC A. DIGIROLAMO

MAD/lf

TAB 9

542

RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153621.05

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(4910)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.

FILE CURRENCY : 23FEB 2015

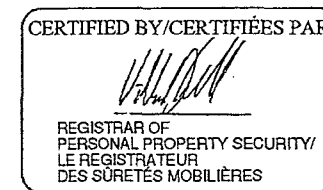
ENQUIRY NUMBER 20150224153621.05 CONTAINS 16 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP
ATTN: ANITA PURUSHOTHAM
HOLD FOR PICKUP
TORONTO M5J2T9

CONTINUED...

2



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
 (4911)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
 696052467

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
 001 1 20140512 1147 1590 2177 P PSSA 5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
 03 NAME BUSINESS NAME EBERSOLE EXCAVATING INC.

04 ADDRESS 2194 EAST AVE. STEVENSVILLE
 ONTARIO CORPORATION NO: 001162627
 ON LOS 150

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
 06 NAME BUSINESS NAME
 07 ADDRESS

ONTARIO CORPORATION NO:

08 SECURED PARTY SANDRA EBERSOLE AND DARREL EBERSOLE, ON JOINT ACCOUNT
 09 LIEN CLAIMANT ADDRESS 2194 EAST AVE., STEVENSVILLE
 ON LOS 150

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR EXPIRATION DATE
 X X X X X 2538317 X

11 MOTOR YEAR MAKE MODEL YEAR
 12 VEHICLE

13 GENERAL GENERAL SECURITY AGREEMENT DATED APRIL 25, 2008
 14 COLLATERAL
 15 DESCRIPTION

16 REGISTERING GERALD RUCH AM OFFICE
 17 AGENT ADDRESS 43 JARVIS STREET P.O. BOX 8 FORT ERIE ON L2A 5M6

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***
 CONTINUED... 3

CERTIFIED BY/CERTIFIERS PAR
 REGISTREUR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTREUR
 DES SURETES MOBILIERES
 (c) 15 09/2013



CONTINUED... 4

(cj11fs 09/2013)



Ontario

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RUN NUMBER : 055
RUN DATE  : 2015/02/24
ID       : 20150224153621.05

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PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(4913)

TYPE OF SEARCH	BUSINESS DEBTOR
SEARCH CONDUCTED ON	EBERSOLE EXCAVATING INC.
FILE CURRENCY	23FEB 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
694675368

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01

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17

TRISURA GUARANTEE INSURANCE COMPANY

ADDRESS 333 BAY STREET SUITE 1610, BOX 22 TORONTO

ON M5H2R2

*** FOR FURTHER INFORMATION CONTACT THE SECURED PARTY. ***

CONTINUED...

1

CERTIFIED BY/CERTIFIÉES PAR

REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crj11s 09/2013)



546

RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153621.05

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(4914)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
FILE CURRENCY : 23FEB 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED
FILING NO. OF PAGES SCHEDULE NUMBER UNDER
001 001 20141117 1559 1862 5180
RECORD FILE NUMBER 694675368
PAGE AMENDED NO SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL
X A AMENDMENT YEARS
FIRST GIVEN NAME INITIAL SURNAME CORRECT PERIOD

BUSINESS NAME EBERSOLE EXCAVATING INC.

OTHER CHANGE
REASON TO REMOVE REFERENCE TO THE GENERAL COLLATERAL DESCRIPTION LISTED ON
DESCRIPTION LINES 13-15 OF REGISTRATION NO. 20140326 1003 1462 0932

DEBTOR/ DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
TRANSFERRED BUSINESS NAME

04/07 ADDRESS

29 ASSIGNOR
SECURED PARTY/LIEN CLAIMANT/ASSIGNEE

08 ADDRESS
09 COLLATERAL CLASSIFICATION

GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE DATE OF NO FIXED
MOTOR VEHICLE MAKE MODEL YEAR MAKE MODEL V.I.N. AMOUNT MATURITY OR MATURITY DATE

10 YEAR MAKE

V.I.N.

MODEL

YEAR MAKE

11 MOTOR

12 VEHICLE

13 GENERAL

14 COLLATERAL

15 DESCRIPTION

16 REGISTERING AGENT OR

17 SECURED PARTY/ ADDRESS

BORDEN LADNER GERVAYS LLP (R. JAIPARGAS / C. ARANTES)
40 KING STREET WEST, SUITE 4400
TORONTO

ON M5H 3Y4

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

5

CERTIFIED BY/CERTIFIÉES PAR
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTREUR
DES SURETÉS MOBILIÈRES
(c) 2013 03/2013



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 6
 (4915)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

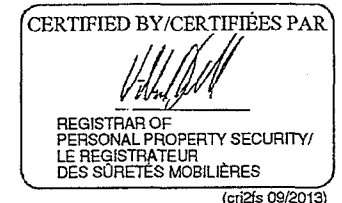
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL MOTOR VEHICLE REGISTRATION REGISTERED
	PAGES	SCHEDULE NUMBER UNDER
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	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED
22		X
	CHANGE REQUIRED	RENEWAL CORRECT
	A AMENDMENT	YEARS PERIOD
23	REFERENCE	FIRST GIVEN NAME INITIAL SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME EBERSOLE EXCAVATING INC.
25	OTHER CHANGE	
26	REASON/	TO ADD ADDITIONAL DEBTOR NAMES TO REGISTRATION NO. 20140326 1003
27	DESCRIPTION	1462 0932
28		
02/	DATE OF BIRTH	FIRST GIVEN NAME INITIAL SURNAME
05	DEBTOR/	
03/	TRANSFEROR	BUSINESS NAME MAYNARDS INDUSTRIES LTD./INDUSTRIES MAYNARDS LTEE
06		
04/07	ADDRESS	1837 MAIN STREET VANCOUVER ONTARIO CORPORATION NO. BC V5T 3B8
29	ASSIGNOR	
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE	
09	ADDRESS	
	COLLATERAL CLASSIFICATION	
	CONSUMER	MOTOR VEHICLE
	GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED	DATE OF NO FIXED AMOUNT MATURITY OR MATURITY DATE
10		
	YEAR MAKE	MODEL V.I.N.
11	MOTOR	
12	VEHICLE	
13	GENERAL	
14	COLLATERAL	
15	DESCRIPTION	
16	REGISTERING AGENT OR	BORDEN LADNER GERVAIS LLP (R. JAIPARGAS)
17	SECURED PARTY/ ADDRESS	40 KING STREET WEST, SUITE 4400 TORONTO ON M5H 3Y4
	LIEN CLAIMANT	

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

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548

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 7
 (4916)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23 FEB 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED	RENEWAL	CORRECT
FILING	NO. OF	PAGES	SCHEDULE	NUMBER	UNDER	YEARS	PERIOD
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21	FILE NUMBER	694675368					
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED				
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME		
24	DEBTOR / TRANSFEROR	BUSINESS NAME					
25	OTHER CHANGE						
26	REASON /						
27	DESCRIPTION						
28							
02 /	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME			
05	DEBTOR /	BUSINESS NAME					
03 /	TRANSFEREE						
06	ADDRESS	1837 MAIN STREET					
04 / 07							
29	ASSIGNOR						
08	SECURED PARTY / LIEN CLAIMANT / ASSIGNEE						
09	ADDRESS						
09	COLLATERAL CLASSIFICATION						
10	CONSUMER						
11	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED					
12	YEAR	MAKE	MODEL				
13	MOTOR						
14	VEHICLE						
15	GENERAL						
16	COLLATERAL						
17	DESCRIPTION						
16	REGISTERING AGENT OR						
17	SECURED PARTY /	ADDRESS					
17	LIEN CLAIMANT						

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

8

REGISTRAR OF
 PERSONAL PROPERTY SECURITY /
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(c) 21s 09/2013

Ontario

549

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 8
 (4917)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

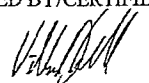
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL MOTOR VEHICLE PAGES SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
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22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME		
25	OTHER CHANGE			
26	REASON/			
27	DESCRIPTION			
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05	DEBTOR/			
03/	TRANSFEREE	BUSINESS NAME	INDUSTRIES MAYNARDS LTEE	
06				
04/07	ADDRESS	1837 MAIN STREET	VANCOUVER	ONTARIO CORPORATION NO. BC V5T 3B8
29	ASSIGNOR			
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
09	ADDRESS			
10	COLLATERAL CLASSIFICATION			
11	CONSUMER	MOTOR VEHICLE	DATE OF	NO FIXED
12	CODE	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR MATURITY DATE
13	YEAR	MAKE	MODEL	V.I.N.
14	GENERAL			
15	COLLATERAL			
16	DESCRIPTION			
17	REGISTERING AGENT OR			
18	SECURED PARTY/	ADDRESS		
19	LIEN CLAIMANT			

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

9

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 REGISTRAR OF
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 DES SÛRETÉS MOBILIÈRES
 (crj2s 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 9
 (4918)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

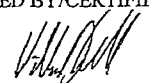
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
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21	RECORD REFERENCE	FILE NUMBER	694675368		
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR / TRANSFEROR	BUSINESS NAME			
25	OTHER CHANGE				
26	REASON /				
27	DESCRIPTION				
28					
02 /	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR /				
03 /	TRANSFEREE	BUSINESS NAME	INDUSTRIES MAYNARDS LTEE/MAYNARDS INDUSTRIES LTD.		
06					
04 / 07	ADDRESS	1837 MAIN STREET	VANCOUVER	ONTARIO CORPORATION NO. BC V5T 3B8	
29	ASSIGNOR				
08	SECURED PARTY / LIEN CLAIMANT / ASSIGNEE				
09	ADDRESS				
10	COLLATERAL CLASSIFICATION				
	CONSUMER		MOTOR VEHICLE	DATE OF	NO. FIXED
	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR	MATURITY DATE
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12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR				
17	SECURED PARTY /	ADDRESS			
	LIEN CLAIMANT				

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

10

CERTIFIED BY / CERTIFIÉES PAR

 REGISTRAR OF
 PERSONAL PROPERTY SECURITY /
 LE REGISTREUR
 DES SÛRETÉS MOBILIÈRES
 (crj2fs 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 10
 (4919)

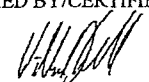
TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL MOTOR VEHICLE PAGES SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	004	20141224 0924 1862 8203	
21	RECORD REFERENCED	FILE NUMBER	694675368	
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS
		X	H PART TRANSF	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	EBERSOLE EXCAVATING INC.	
25	OTHER CHANGE			
26	REASON/			
27	DESCRIPTION			
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05	DEBTOR/			
03/	TRANSFEREE	BUSINESS NAME	MAYNARDS INDUSTRIES LTD./INDUSTRIES MAYNARDS LTEE	
06				
04/07	ADDRESS	1837 MAIN STREET	VANCOUVER	ONTARIO CORPORATION NO. BC VST 3B8
29	ASSIGNOR			
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
09	ADDRESS			
	COLLATERAL CLASSIFICATION			
	CONSUMER	MOTOR VEHICLE	DATE OF	NO FIXED
10	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR MATURITY DATE
11	MOTOR	YEAR	MAKE	MODEL
12	VEHICLE	V.I.N.		
13	GENERAL			
14	COLLATERAL			
15	DESCRIPTION			
16	REGISTERING AGENT OR	BORDEN LADNER GERVAIS LLP (R. JAIPARGAS / C. ARANTES)		
17	SECURED PARTY/	ADDRESS	40 KING STREET WEST, SUITE 4400	TORONTO
	LIEN CLAIMANT	ON M5H 3Y4		

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 11

CERTIFIED BY/CERTIFIÉES PAR

 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES
 (crj2fs 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 11
 (4920)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

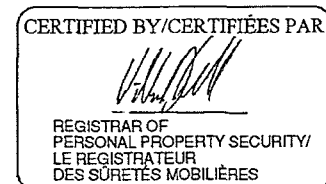
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
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21	RECORD REFERENCED	FILE NUMBER	694675368		
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24	DEBTOR/ TRANSFEROR	BUSINESS NAME			
25	OTHER CHANGE				
26	REASON/ DESCRIPTION				
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/ TRANSFEREE	BUSINESS NAME	MAYNARDS INDUSTRIES LTD.		
06				ONTARIO CORPORATION NO.	
04/07	ADDRESS				
29	ASSIGNOR				
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
09	ADDRESS				
10	COLLATERAL CLASSIFICATION				
	CONSUMER		MOTOR VEHICLE	DATE OF	NO FIXED
	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR	MATURITY DATE
11	YEAR	MAKE	MODEL	V.I.N.	
12	MOTOR VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR				
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS			

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

12



553

RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153621.05

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 12
(4921)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
FILE CURRENCY : 23 FEB 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAPTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED
FILING NO. OF PAGES SCHEDULE NUMBER UNDER
003 004 20141224 0924 1862 8203

RECORD FILE NUMBER 694675368
PAGE AMENDED NO-SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL CORRECT
RENEWAL YEARS PERIOD

REFERENCE DEBTOR/ FIRST-GIVEN NAME INITIAL SURNAME
TRANSFERO

BUSINESS NAME

OTHER CHANGE
REASON/
DESCRIPTION

DATE OF BIRTH FIRST-GIVEN NAME INITIAL SURNAME

DEBTOR/
TRANSFEREE BUSINESS NAME INDUSTRIES MAYNARDS LTÉE

04/07 ADDRESS

ONTARIO CORPORATION NO.

29 ASSIGNOR

08 SECURED PARTY/ LIEN CLAIMANT/ ASSIGNEE

09 COLLATERAL CLASSIFICATION ADDRESS

10 CONSUMER INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED AMOUNT DATE OF NO. FIXED
MORTGAGE DATE OF MATURITY DATE

11 MOTOR YEAR MAKE MODEL Y-I-N

12 VEHICLE

13 GENERAL

14 COLLATERAL

15 DESCRIPTION

16 REGISTERING AGENT OR

17 SECURED PARTY/ ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

13

CERTIFIED BY/CERTIFIÉS PAR
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTREUR
DES SÛRETÉS MOBILIÈRES
16/11/2015

(01/25 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 13
 (4922)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23 FEB 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CATION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER
 004 004 20141224 0924 1862 8203

21 RECORD FILE NUMBER 694675368

22 PAGE AMENDED NO SPECIFIC PAGE AMENDED

CHANGE REQUIRED

RENEWAL YEARS

CORRECT PERIOD

23 REFERENCE

BUSINESS NAME

FIRST GIVEN NAME

INITIAL

SURNAME

24 DEBTOR/ TRANSFEROR

25 OTHER CHANGE

26 REASON/ DESCRIPTION

27 DATE OF BIRTH

28 DEBTOR/ TRANSFEROR

04/07

29 ASSIGNED

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE

09 COLLATERAL CLASSIFICATION

10 CONSUMER

11 MOTOR

12 YEAR MAKE

13 MODEL

14 V.I.N.

15 REGISTERING AGENT OR

16 SECURED PARTY/

17 LIEN CLAIMANT

FIRST GIVEN NAME INITIAL SURNAME
 INDUSTRIES MAYNARDS LTD.
 INDUSTRIES MAYNARDS LTD.

ONTARIO CORPORATION NO.

MOTOR VEHICLE NO. FIXED
 DATE OF AMOUNT MATURITY OR MATURITY DATE

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

14

CERTIFIED BY/CERTIFIÉS PAR
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(c)24s 09/2013



555

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 14
 (4923)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN *** THIS REGISTRATION HAS BEEN DISCHARGED **

00 FILE NUMBER
 692708355

CAUTION PILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	1		20131219 1134 1793 1126	P PPSA	2

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
02				

03 BUSINESS NAME EBERSOLE EXCAVATING INC.

04 ADDRESS 2194 EAST AVENUE STEVENSVILLE ONTARIO CORPORATION NO. 1162627 ON L0S1S0

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05	23NOV1957	DARRELL	W	EBERSOLE

06 BUSINESS NAME

07 ADDRESS 2194 EAST AVENUE STEVENSVILLE ONTARIO CORPORATION NO. 1162627 ON L0S1S0

08 SECURED PARTY / CURTIS GAIL DEVELOPMENT CORPORATION

09 LIEN CLAIMANT ADDRESS 4490 MONTROSE ROAD NIAGARA FALLS ON L2H1K2

COLLATERAL CLASSIFICATION				MOTOR VEHICLE	AMOUNT	DATE OF	NO FIXED
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED	MATURITY OR	MATURITY DATE
	X				X	200000	18DEC2015

MOTOR VEHICLE	YEAR MAKE	MODEL	V.I.N.
11	1999 WESTERN STAR	4964S	2WLPGCCJ6XK957119

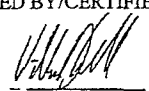
13 GENERAL CHATTEL MORTGAGE
 14 COLLATERAL
 15 DESCRIPTION

16 REGISTERING BRODERICK & PARTNERS LLP (MAD)
 AGENT

17 ADDRESS 4625 ONTARIO AVENUE, P.O. 897 NIAGARA FALLS ON L2E6V6

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 15

CERTIFIED BY/CERTIFIÉES PAR

 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES
 (crj1fs 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153621.05

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 15
 (4924)

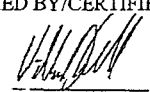
TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
 FILE CURRENCY : 23FEB 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	1		20150107 1059 1590 7291	
21	RECORD REFERENCED	FILE NUMBER	692708355		
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
			C DISCHARGE		
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR / TRANSFEROR	BUSINESS NAME	EBERSOLE EXCAVATING INC.		
25	OTHER CHANGE				
26	REASON / DESCRIPTION				
02 /	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR / TRANSFEROR	BUSINESS NAME			
06					ONTARIO CORPORATION NO.
04/07	ADDRESS				
29	ASSIGNOR				
08	SECURED PARTY / LIEN CLAIMANT / ASSIGNEE				
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER	MOTOR VEHICLE	DATE OF	NO. FIXED	
10	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR	MATURITY DATE
	YEAR	MAKE	MODEL	V.I.N.	
11	MOTOR				
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR	FOGLER, RUBINOFF LLP (P. OLIVERIA)			
17	SECURED PARTY / LIEN CLAIMANT	ADDRESS	77 KING ST WEST, SUITE 3000, TD CENTRE TORONTO ON M5K 1G8		

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 16

CERTIFIED BY / CERTIFIÉES PAR

 REGISTRAR OF
 PERSONAL PROPERTY SECURITY /
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES
 (crj2fs 09/2013)



RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153621.05

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

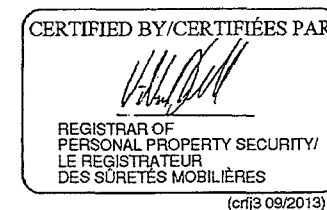
REPORT : PSSR060
PAGE : 16
(4925)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : EBERSOLE EXCAVATING INC.
FILE CURRENCY : 23FEB 2015

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
696052467	20140512 1147 1590 2177			
694675368	20140326 1003 1462 0932	20141117 1559 1862 5180	20141222 1408 1862 7980	20141224 0924 1862 8203
692708355	20131219 1134 1793 1126	20150107 1059 1590 7291		

7 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



559

RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153615.71

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(4897)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.

FILE CURRENCY : 23FEB 2015

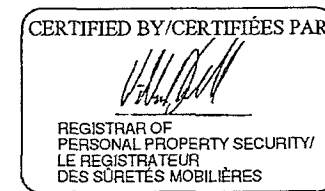
ENQUIRY NUMBER 20150224153615.71 CONTAINS 13 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP
ATTN: ANITA PURUSHOTHAM
HOLD FOR PICKUP
TORONTO M5J2T9

CONTINUED...

2



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 2
 (4898)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
 694675377

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	01	002		20140326 1003 1462 0933	P PPSA	10

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
02				

03 BUSINESS NAME : D & S RAILWAY CONSTRUCTION INC.

04 ADDRESS : 2194 EAST AVENUE STEVENSVILLE ON L0S1S0

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05				

06 BUSINESS NAME :

07 ADDRESS :

08 SECURED PARTY / TRISURA GUARANTEE INSURANCE COMPANY

09 LIEN CLAIMANT ADDRESS : 333 BAY STREET SUITE 1610, BOX 22 TORONTO ON M5H2R2

COLLATERAL CLASSIFICATION		MOTOR VEHICLE	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
CONSUMER					
GOODS					
INVENTORY					
EQUIPMENT					
ACCOUNTS					
OTHER					
INCLUDED					

MOTOR VEHICLE	YEAR MAKE	MODEL	V.I.N.
11			

12

GENERAL DESCRIPTION	INVENTORY EQUIPMENT ACCOUNTS
13	
14	
15	

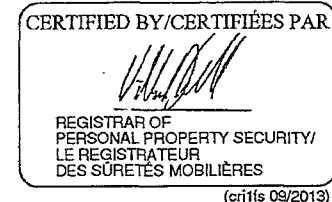
16 REGISTERING AGENT : TRISURA GUARANTEE INSURANCE COMPANY

17 ADDRESS : 333 BAY STREET SUITE 1610, BOX 22 TORONTO ON M5H2R2

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

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561

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 3
 (4899)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
 694675377

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	02	002		20140326 1003 1462 0933	P PPSA	10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

COLLATERAL CLASSIFICATION				MOTOR VEHICLE	AMOUNT	DATE OF	NO FIXED
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED	MATURITY OF MATURITY DATE
10							

11 YEAR MAKE MODEL VIN

12 MOTOR VEHICLE

13 GENERAL OTHER
 14 COLLATERAL MOTOR VEHICLES INCLUDED
 15 DESCRIPTION

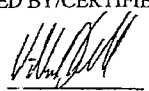
16 REGISTERING TRISURA GUARANTEE INSURANCE COMPANY
 AGENT

17 ADDRESS 333 BAY STREET SUITE 1610, BOX 22 TORONTO ON M5H2R2

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR

 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTREUR
 DES SÛRETÉS MOBILIÈRES
 (crj1fs 09/2013)



562

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 4
 (4900)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

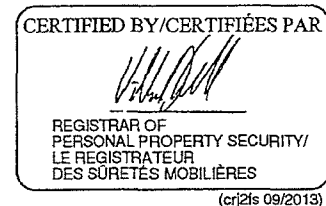
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION	PAGE	TOTAL MOTOR VEHICLES	REGISTRATION	REGISTERED
ELLING	NO. OF	PAGES	SCHEDULE	NUMBER
				UNDER
01	001	001	20141117 1559 1862 5181	
21	RECORD	FILE NUMBER	694675377	
	REFERENCED			
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL
		X	A AMENDMENT	YEARS
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/	BUSINESS NAME	D & S RAILWAY CONSTRUCTION INC.	
	TRANSFEROR			
25	OTHER CHANGE			
26	REASON/	TO REMOVE REFERENCE TO THE GENERAL COLLATERAL DESCRIPTION LISTED ON		
27	DESCRIPTION	LINES 13-15 OF REGISTRATION NO. 20140326 1003 1462 0933		
28				
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05	DEBTOR/			
03/	TRANSFERED	BUSINESS NAME		
06				
04/07	ADDRESS			
29	ASSIGNOR			
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
09	ADDRESS			
	COLLATERAL CLASSIFICATION			
	CONSUMER	MOTOR VEHICLE	DATE OF	NO. FIXED
10	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR MATURITY DATE
11	MOTOR	YEAR MAKE	MODEL	V.I.N.
12	VEHICLE			
13	GENERAL			
14	COLLATERAL			
15	DESCRIPTION			
16	REGISTERING AGENT OR	BORDEN LADNER GERVAIS LLP (R. JAIPARGAS / C. ARANTES)		
17	SECURED PARTY/	ADDRESS	40 KING STREET WEST, SUITE 4400	TORONTO ON M5H 3Y4
	LIEN CLAIMANT			

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

5



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 5
 (4901)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER
 001 004 20141222 1408 1862 7981

RECORD FILE NUMBER 694675377
 PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED
 X A AMENDMENT RENEWAL
 CORRECT PERIOD

REFERENCE DEBTOR / BUSINESS NAME D & S RAILWAY CONSTRUCTION INC.
 TRANSFEROR

OTHER CHANGE TO ADD ADDITIONAL DEBTOR NAMES TO REGISTRATION NO. 20140326 1003
 REASON/ DESCRIPTION 1462 0933

DEBTOR/ DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
 TRANSFEREE BUSINESS NAME MAYNARDS INDUSTRIES LTD./ INDUSTRIES MAYNARDS LTEE
 ADDRESS 1837 MAIN STREET VANCOUVER ONTARIO CORPORATION NO.
 04/07 BC V5T 3B8

ASSIGNOR
 SECURED PARTY/LEEN CLAIMANT/ASSIGNEE
 COLLATERAL CLASSIFICATION ADDRESS

CONSUMER MOTOR VEHICLE DATE OF NO. FIXED
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCURRED AMOUNT MATURITY OR MATURITY DATE

YEAR MAKE MODEL Y.I.N.
 11 MOTOR
 12 VEHICLE
 13 GENERAL
 14 COLLATERAL
 15 DESCRIPTION
 16 REGISTERING AGENT OF BORDEN LADNER GERVAIS LLP (R. JALPARGAS) TORONTO ON M5H 3Y4
 17 SECURED PARTY/ ADDRESS 40 KING STREET WEST, SUITE 4400
 LEEN CLAIMANT

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 6

CERTIFIED BY/CERTIFIÉS PAR
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES
 (c/24s 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 6
 (4902)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

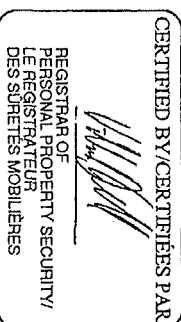
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

SECTION	FILE NUMBER	PAGE	NO. OF PAGES	TOTAL MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	RENEWAL YEARS	CORRECT PERIOD
01 RECORD	694675377	004	004	20141222	1408	1862	7981	
21 RECORD								
22 REFERENCE	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED					
23 REFERENCE								
24 DEBTOR/ TRANSFEROR	BUSINESS NAME	FIRST-GIVEN NAME	INITIAL	SURNAME				
25 OTHER CHANGE								
26 REASON/ DESCRIPTION								
27								
28								
02/ DEBTOR/ TRANSFEROR	DATE OF BIRTH	FIRST-GIVEN NAME	INITIAL	SURNAME				
03/	BUSINESS NAME							
06	ADDRESS							
04/07	1837 MAIN STREET							
29 ASSIGNOR								
08 SECURED PARTY/ LIEN CLAIMANT/ ASSIGNEE								
09	ADDRESS							
10 COLLATERAL CLASSIFICATION								
	CONSIDER							
	GOODS							
	INVENTORY EQUIPMENT ACCOUNTS OTHER							
	INCLUDED							
	AMOUNT							
	DATE OF							
	NO. FIXED							
	MATURITY OR							
	MATURITY DATE							
11 MOTOR	YEAR	MAKE	MODEL	V.I.N.				
12 VEHICLE								
13 GENERAL								
14 COLLATERAL								
15 DESCRIPTION								
16 REGISTERING AGENT OR								
17 SECURED PARTY/ LIEN CLAIMANT	ADDRESS							

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

7



565

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 7
 (4903)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

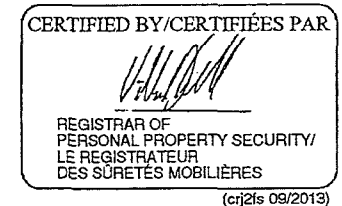
FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	003	004		20141222 1408 1862 7981	
21	RECORD FILE NUMBER	694675377			
	REFERENCE				
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME			
25	OTHER CHANGE				
26	REASON/				
27	DESCRIPTION				
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/				
03/	TRANSFEREE	BUSINESS NAME	INDUSTRIES MAYNARDS LTEE		
06					
04/07	ADDRESS	1837 MAIN STREET	VANCOUVER	ONTARIO CORPORATION NO. BC	V5T 3B8
29	ASSIGNOR				
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
09	ADDRESS				
	COLLATERAL CLASSIFICATION				
	CONSUMER		MOTOR VEHICLE	DATE OF	NO. FIXED
10	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR	MATURITY DATE
11	MOTOR	YEAR MAKE	MODEL	V. I. N.	
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR				
17	SECURED PARTY/	ADDRESS			
	LIEN CLAIMANT				

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

8



566

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 8
 (4904)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

POINT TO FINANCING CHANGE STATEMENT / CHANGE STATEMENT

01	CAUTION	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED
01	FILE	NO. OF	PAGES	SCHEDULE	NUMBER	UNDER
01	FILE	004	004	20141222	1408	1862 7981
21	RECORD	FILE NUMBER	694675377			
22	REFERENCE	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL	CORRECT
23	REFERENCE				YEARS	PERIOD
24	DEBTOR / TRANSFEROR	BUSINESS NAME	FIRST GIVEN NAME	INITIAL	SURNAME	
25	OTHER CHANGE					
26	PERSON /					
27	DESCRIPTION					
02	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME		
03	DEBTOR / TRANSFEROR	BUSINESS NAME	INDUSTRIES MAYNARDS LTEE/MAYNARDS INDUSTRIES LTD.			
04	ADDRESS	1837 MAIN STREET	VANCOUVER			
05	ADDRESS					
06	ADDRESS					
07	ADDRESS					
08	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE				
09	COLLATERAL CLASSIFICATION	ADDRESS				
10	CONSUMER	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED			
11	MOTOR	YEAR	MAKE	MODEL	V.I.N.	
12	VEHICLE					
13	GENERAL					
14	COLLATERAL					
15	DESCRIPTION					
16	REGISTERING AGENT OR	ADDRESS				
17	SECURED PARTY/LIEN CLAIMANT					

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

CERTIFIED BY/CERTIFIÉS PAR
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTREUR DES SÛRETÉS MOBILIÈRES

(c)2015 09/2013



67

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 9
 (4905)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION	PAGE	POTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED
FILING	NO	OF	SCHEDULE	NUMBER	UNDER
001	001	004	20141724	0924	1862 8204
21	RECORD	FILE NUMBER	694675377		
22	REFERENCE	PAGE-AMENDED	NO-SPECIFIC PAGE-AMENDED	CHANGE REQUIRED	RENEWAL
			X	H PART TRANSF	PERIOD
23	REFERENCE	BUSINESS NAME	FIRST-GIVEN-NAME	INITIAL	SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	D & S RAILWAY CONSTRUCTION INC.		
25	OTHER CHANGE				
26	REASON/ DESCRIPTION				
27					
28					
02/	DATE-OF-BIRTH	FIRST-GIVEN-NAME	INITIAL	SURNAME	
05/	DEBTOR/ TRANSFEREE	BUSINESS NAME	MAYNARDS INDUSTRIES LTD./INDUSTRIES MAYNARDS LTÉE		
03/					
06/		ADDRESS	1837 MAIN STREET VANCOUVER		
04/07					ONTARIO CORPORATION NO. BC VST 388
29	ASSIGNOR				
08	SECURED PARTY/LEEN CLAIMANT/ASSIGNEE	ADDRESS			
09					
	COLLATERAL CLASSIFICATION	ADDRESS			
	CONSUMER	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT	DATE OF
10					NO-FIXED
	YEAR	MAKE	MODEL	V-I-N	
11	MOTOR				
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR	ADDRESS	BORDEN LADNER GERVAS LLP (R. JALPAGAS / C. ARANTES)		
17	SECURED PARTY/	ADDRESS	40 KING STREET WEST, SUITE 4400 TORONTO		
	LEEN CLAIMANT				ON MSH 3Y4

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 10

REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(e/2s 09/2013)



RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 10
 (4906)

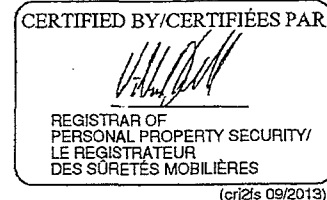
TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	002	004	20141224 0924 1862 8204	
21	FILE NUMBER	694675377		
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME		
25	OTHER CHANGE			
26	REASON/			
27	DESCRIPTION			
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05	DEBTOR/			
03/	TRANSFEREE	BUSINESS NAME	MAYNARDS INDUSTRIES LTD.	
06				ONTARIO CORPORATION NO.
04/07	ADDRESS			
29	ASSIGNOR			
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
09	ADDRESS			
10	COLLATERAL CLASSIFICATION			
	CONSUMER	MOTOR VEHICLE	DATE OF	NO FIXED
	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OF MATURITY DATE
11	MOTOR	YEAR MAKE	MODEL	V.I.N.
12	VEHICLE			
13	GENERAL			
14	COLLATERAL			
15	DESCRIPTION			
16	REGISTERING AGENT OR			
17	SECURED PARTY/	ADDRESS		
	LIEN CLAIMANT			

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 11



RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153615.71

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 11
(4907)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
FILE CURRENCY : 23FEB 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CATION PAGE TOTAL MOTOR/VEHICLE REGISTRATION REGISTERED
FILING NO. OF PAGES SCHEDULE NUMBER UNDER
003 004 20141224 0924 1862 8204

RECORD FILE NUMBER 694675377
PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL CORRECT
RENEWAL PERIOD

REFERENCE DEBTOR/ TRANSFEROR BUSINESS NAME FIRST GIVEN NAME INITIAL SURNAME
OTHER CHANGE REASON/ DESCRIPTION

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
DEBTOR/ TRANSFEROR BUSINESS NAME INDUSTRIES MAYNARDS LTEE
ADDRESS ONTARIO CORPORATION NO.
04/07

ASSIGNOR SECURED PARTY/ALLEN CLAIMANT/ASSIGNEE
ADDRESS
COLLATERAL CLASSIFICATION

CONSUMER INVENTORY HOURLY ACCOUNTS OTHER INCLUDED AMOUNT MATURITY OR NO FIXED
DATE OF MATURITY DATE

YEAR MAKE MODEL V.I.N.
MOTOR VEHICLE
GENERAL COMPTONAL
DESCRIPTION
REGISTERING AGENT OR
SECURED PARTY/ ALLEN CLAIMANT
ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***
CONTINUED...

CERTIFIED BY/CERTIFIÉS PAR
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SURETÉS MOBILIÈRES
(c)24 09/2013



570

RUN NUMBER : 055
 RUN DATE : 2015/02/24
 ID : 20150224153615.71

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 12
 (4908)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
 FILE CURRENCY : 23FEB 2015

FORM 20 FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CARTON	PAGE	TOTAL	MOTOR VEHICLE	REGISTRATION	REGISTERED
FILING	NO. OF	PAGES	SCHEDULE	NUMBER	UNDER
01	004	004	20141224 0924 1862 8204		
21	RECORD	FILE NUMBER	694675377		
22	REFERENCE	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL
23	DEBTOR /	BUSINESS NAME	FIRST GIVEN NAME	INITIAL	SURNAME
24	TRANSFEE				
25	OTHER CHANGE				
26	REASON /				
27	DESCRIPTION				
28					
02 /	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR /	BUSINESS NAME	INDUSTRIES MAYNARDS LTFE/MAYNARDS INDUSTRIES LTD.		
03 /	TRANSFEE				
06		ADDRESS			
04 / 07					
29	ASSIGNOR				
08	SECURED PARTY / LIEN CLAIMANT / ASSIGNEE	ADDRESS			
09	COLLATERAL CLASSIFICATION				
10	CONSUMER	GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED	MOTOR VEHICLE	AMOUNT	DATE OF MATURITY OR NO. FIXED
11	MOTOR	YEAR	MAKE	MODEL	V.I.N.
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OF	ADDRESS			
17	SECURED PARTY /				
	LIEN CLAIMANT				

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY, ***

CONTINUED...

13

CERTIFIED BY/CERTIFIÉS PAR
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTREUR
 DES SÛRETÉS MOBILIÈRES
 (c) 2015 09/2015

Ontario

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

571
RUN NUMBER : 055
RUN DATE : 2015/02/24
ID : 20150224153615.71

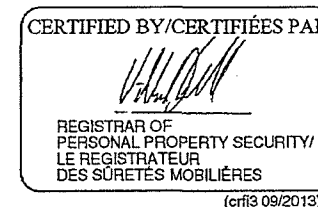
REPORT : PSSR060
PAGE : 13
(4909)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : D & S RAILWAY CONSTRUCTION INC.
FILE CURRENCY : 23FEB 2015

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
694675377	20140326 1003 1462 0933	20141117 1559 1862 5181	20141222 1408 1862 7981	20141224 0924 1862 8204

4 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj3 09/2013)



TAB 10

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

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

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**

AFFIDAVIT OF JACOB WIEBE

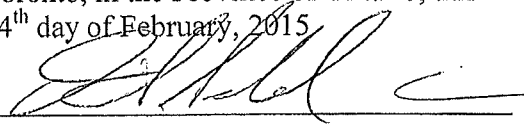
I, JACOB WIEBE, of the Town of Uxbridge, in the Province of Ontario, MAKE OATH AND SAY that:

1. I am Senior Vice-President of Grant Thornton Limited, ("GTL") which was appointed as interim receiver of the Respondents in these proceedings. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe such to be true.
2. Attached and marked as Exhibit "A" to this my affidavit is a true copy of the detailed billing setting out the fees and disbursements of GTL from December 13, 2014 to

December 22, 2014, in the amount of \$13,585.95, together with HST in the amount of \$1,766.17, totalling \$15,352.12.

3. Given the complexity of this insolvency matter, I believe the hourly rates and the total amount of fees are reasonable and comparable for insolvency services of this nature rendered by other firms in the City of Toronto.
4. The hours spent on this matter and disbursements incurred by GTL are outlined in detail in Exhibit "A" and I believe were reasonable and appropriate in the circumstances.
5. This affidavit is sworn in connection with the approval of the fees and disbursements of GTL and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, this
24th day of February, 2015


Daniel Adam Sobel, a Commissioner, etc.,
Province of Ontario, for Grant Thornton Limited,
Trustee in Bankruptcy. Expires July 19, 2017.

Commissioner for Taking Affidavits, etc.

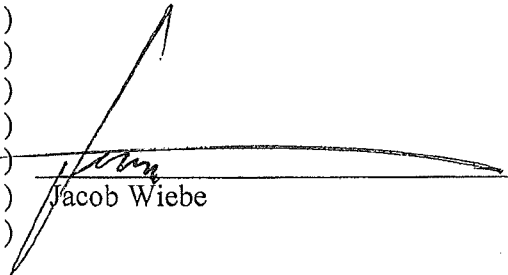
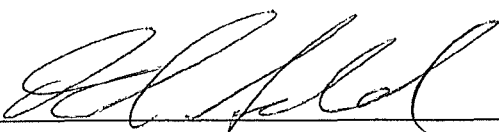

Jacob Wiebe

Exhibit "A" to the Affidavit of Jacob Wiebe, sworn
before me this 24th day of February, 2015.



Commissioner for Taking Affidavits, etc.

Daniel Adam Sobel, a Commissioner, etc.,
Province of Ontario, for Grant Thornton Limited,
Trustee in Bankruptcy. Expires July 19, 2017.



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

BILLING

BN 12738 4717 RT0001
Client #194240

For professional services rendered for the period ended from December 13, 2014 to December 22, 2014.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
December 15, 2014	<u>Daniel Sobel</u> Review and finalize report to court, call with Maynards.	1.50 hours
December 15, 2014	<u>Jake Wiebe</u> Finalize report to court.	2.00 hours

December 15, 2014	<u>Leah Solis</u>	Respond to accounts receivable call and email; Update accounts receivable tracker.	0.20 hours
December 15, 2014	<u>Nicholas To</u>	Review vehicle RIN and VIN search results, discussion with D. Sobel on same; Respond to Tate & Lyle re: wire instructions to remit payment on outstanding AR; Review files for AR supporting documents; Email copies of invoices to Oxy Vinyls Canada Inc. to support AR signification letter; Cross reference bank records for deposit from Washington Mills, email request for payment to be reissued; Review Simply Accounting AR records.	2.25 hours
December 15, 2014	<u>Rosa Wilford</u>	Correspondences with RBC, M. Minnema, N. To, D. Sobel, J. Wiebe, review print screens for both bank accounts for incoming wires, direct deposits and EFT's, First Data. Update receipt and disbursement schedule; Bank slip deposits, posting entries, preparation of cheque, phone call with RBC, provide afternoon updates and general banking administration.	3.00 hours
December 16, 2014	<u>Daniel Sobel</u>	Emails re: insurance, review insurance documents, review emails from Maynards re: reconciliation, emails from staff re: assets, website administration.	0.80 hours
December 16, 2014	<u>Jake Wiebe</u>	Review email and asset listing provided by BDO.	0.20 hours
December 16, 2014	<u>Leah Solis</u>	Print invoices from Simply Accounting.	0.10 hours
December 16, 2014	<u>Nicholas To</u>	Review records re: Humberston Landfill Project; Review Ebersole AR supporting documents.	3.00 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 16, 2014	<u>Rosa Wilford</u>	Correspondences and phone calls with RBC; Review joint bank account print screens for expecting incoming wires, update receipt and disbursement schedule, respond to phones call from M. Minnema , further phone correspondence and conference calls with RBC wire team, R. Fernandes, American Timber to assist in tracing US funds sent on December 8, 2014; RBC letter, purchase a 1 Year Cashable GIC (Fully Cashable after 30 days), posting entries and general banking administration.	4.00 hours
December 17, 2014	<u>Anna Poon</u>	Review equipment listing documents and prepare summary schedules per N. To.	4.10 hours
December 17, 2014	<u>Daniel Sobel</u>	Review letter from counsel to Curtis Gail, review letter from counsel to JMA, email to BLG, email to Trisura re: records, insurance policies and accounts receivable, internal discussion re: insurance, internal discussion re: letters and potential action items.	2.20 hours
December 17, 2014	<u>Jake Wiebe</u>	Review correspondence from counsel on responses from JMA and Dunnet; Review insurance policies.	0.40 hours
December 17, 2014	<u>Nicholas To</u>	Emails with insurance broker re: confirmation and status of adding the Receiver as loss payee and additional insured on insurance policies, request copy of the binders of insurance, review insurance certificates/declarations, request confirmation of job site coverage; Discussion with D. Sobel, J. Wiebe on insurance, email documents on same; Discussion on Ebersole AR and next steps; Respond to customer re: AR; Coordinate with A. Poon to summarize assets listings from physical files and BDO listing; Coordinate with ITCG re: extracting data forms from desktop computer; Review emails.	3.00 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 17, 2014	<u>Rosa Wilford</u>	Correspondences with RBC, Maynards; Review print screens for incoming wires for both bank accounts; Update receipt and disbursement schedule; Phone calls with RBC and American Timber assisting with tracking of US wire sent from Citizen bank to Chase; Phone calls with ATS and RBC and general banking administration.	2.50 hours
December 18, 2014	<u>Anna Poon</u>	Review equipment listing documents and prepare summary schedules per N. To.	4.40 hours
December 18, 2014	<u>Daniel Sobel</u>	Call with BLG and A&B re: PPSA registrant, internal call, prepare update memorandum to Trisura, review letters from JMA and Broderick, review further documents received re: Curtis Gail Developments.	1.40 hours
December 18, 2014	<u>Jake Wiebe</u>	Call with counsel and Trisura counsel to discuss RB request for appraisal and Curtis Gail security; Review and send summary to Trisura in advance of weekly update call.	1.10 hours
December 18, 2014	<u>Nicholas To</u>	Emails with insurance broker, discussion with D. Sobel and J. Wiebe on same.	0.75 hours
December 18, 2014	<u>Rosa Wilford</u>	Correspondences with RBC, and Maynards expressing urgent request re: USD Cheque not converted to CDN funds and review print screens for incoming wires and respond to phone calls from RBC.	1.00 hours
December 19, 2014	<u>Aaron Bongard</u>	Reconciliation of payments to RBC joint bank account.	2.30 hours
December 19, 2014	<u>Daniel Sobel</u>	Prepare for and attend call with secured creditor, internal discussion, review correspondence re: Curtis Gail, correspondence with Maynards.	1.50 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

December 19, 2014	<u>Jake Wiebe</u>	• Prepare and attend call with Trisura and counsel.	0.70 hours
December 19, 2014	<u>Jan Oros</u>	• Print accounts receivable outstanding invoices for signification notices.	0.60 hours
December 19, 2014	<u>Nicholas To</u>	• Discussion with D. Sobel re: books and records; Call with CRA re: coordinating trust exam, books and records required for same.	0.25 hours
December 19, 2014	<u>Rosa Wilford</u>	• Follow-up correspondence with RBC on our request to adjust deposit posted incorrectly; Review and provide Maynards with requested copies of print screens.	0.50 hours
December 22, 2014	<u>Aaron Bongard</u>	• Reconciliation of payments received from auction; Correspondence with Maynards.	3.20 hours
December 22, 2014	<u>Daniel Sobel</u>	• Emails re: requested adjournment of motion, call with counsel, review calculation from Maynards re: buyers premium, internal discussion re: same, call with BLG, review letter from Foglers, call with BLG.	0.50 hours
December 22, 2014	<u>Nicholas To</u>	• Call CRA re: scheduling of trust exam; Review insurance policy documents from broker, call to discuss outstanding requests, follow-up via email to confirm outstanding, update D. Sobel on same.	0.75 hours
December 22, 2014	<u>Rosa Wilford</u>	• Correspondences with RBC, Maynards, N. To; Review banking for expecting adjustment from RBC USD to CAD; Update receipt and disbursement joint bank account schedule and general banking administration.	0.70 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

Time Charges and Expenses:

J. Wiebe, Sr. Vice President	4.40 hours @	\$ 550.00 per hour	\$ 2,420.00
D. Sobel, Vice President	7.90 hours @	\$ 390.00 per hour	\$ 3,081.00
N. To, Manager	10.00 hours @	\$ 270.00 per hour	\$ 2,700.00
J. Oros, Manager	0.60 hours @	\$ 270.00 per hour	\$ 162.00
R. Wilford, Manager	11.70 hours @	\$ 225.00 per hour	\$ 2,632.50
A. Bongard, Associate	5.50 hours @	\$ 160.00 per hour	\$ 880.00
L. Solis, Analyst	0.30 hours @	\$ 145.00 per hour	\$ 43.50
A. Poon, Analyst	8.50 hours @	\$ 120.00 per hour	\$ 1,020.00
	48.90		\$ 12,939.00
Technology and Administrative Fee (5%)			\$ 646.95
			\$ 13,585.95
HST			\$ 1,766.17
Total Invoice Due			\$ 15,352.12

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

TRISURA GUARANTEE INSURANCE COMPANY

-AND-

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AFFIDAVIT OF JACOB WIEBE

GRANT THORNTON LIMITED
Royal Bank Plaza
South Tower, 19th Floor
Toronto, ON, M5J 2P9

TAB 11

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

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

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**

AFFIDAVIT OF JACOB WIEBE

I, JACOB WIEBE, of the Town of Uxbridge, in the Province of Ontario, MAKE OATH AND SAY that:

1. I am Senior Vice-President of Grant Thornton Limited, ("**GTL**") which was appointed as receiver of the Respondents in these proceedings. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe such to be true.
2. Attached and marked as Exhibit "**A**" to this my affidavit is a true copy of the detailed billing setting out the fees and disbursements of GTL from December 23, 2014 to

Exhibit "A" to the Affidavit of Jacob Wiebe, sworn
before me this 24th day of February, 2015.

A handwritten signature in black ink, appearing to read 'D. Sobel', is written over a horizontal line.

Commissioner for Taking Affidavits, etc.

**Daniel Adam Sobel, a Commissioner, etc.,
Province of Ontario, for Grant Thornton Limited
Trustee in Bankruptcy, Expires July 19, 2015**



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

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

IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

BILLING

BN 12738 4717 RT0001
Client #194240

For professional services rendered for the period ended from December 23, 2014 to January 31, 2015.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
December 23, 2014	<u>Daniel Sobel</u>	
	• Prepare for and attend at court, discussions with counsel, internal call.	2.20 hours
December 23, 2014	<u>Jan Oros</u>	
	• Print accounts receivable invoices for signification letters.	0.50 hours

December 24, 2014	<u>Daniel Sobel</u>	Review emails from Maynards, review internal emails, call with BLG, reply email to Maynards re: buyers premium reconciliation.	0.50 hours
December 29, 2014	<u>Daniel Sobel</u>	Email correspondence re: reconciliation with Maynards, required court approvals, HST, emails with counsel.	0.40 hours
December 30, 2014	<u>Aaron Bongard</u>	Draft statement of affairs and creditors listing; internal correspondence.	2.20 hours
December 30, 2014	<u>Leah Solis</u>	Generate payroll journal reports from Simply Accounting files; Cross reference asset listing for N. To.	1.00 hours
December 30, 2014	<u>Nicholas To</u>	Coordinate with L. Solis to locate payroll journals and ADP payroll registers in preparation for CRA trust exam, cross-reference asset listings; Review emails from insurance broker.	1.00 hours
December 31, 2014	<u>Aaron Bongard</u>	Revisions to statement of affairs and creditors listing.	1.70 hours
December 31, 2014	<u>Daniel Sobel</u>	Deal with bankruptcy filings, internal calls, draft and send update email to Trisura.	1.00 hours
December 31, 2014	<u>Leah Solis</u>	Scan and save payroll information for N. To; Cross-reference asset listings for N. To.	0.50 hours
December 31, 2014	<u>Valerie Naccarato</u>	Review mail; Prepare deposit slip; Posting of entries and general banking administration.	0.40 hours

Accounts are due when rendered. All accounts outstanding over 30 days will be charged interest at a rate of 1 ½% per month (18% per annum) until paid.

January 2, 2015	<u>Aaron Bongard</u>	Draft notice of receiver under S.245(1) and 246(1); internal correspondence.	2.60 hours
January 2, 2015	<u>Daniel Sobel</u>	Emails from counsel to Trisura.	0.20 hours
January 5, 2015	<u>Aaron Bongard</u>	Draft notices 245/246; Discussion with N. To; Reconciliation of exchange rates from auction; Correspondence with Maynards and review reconciliation.	4.20 hours
January 5, 2015	<u>Anna Poon</u>	Deposit in bank.	0.10 hours
January 5, 2015	<u>Jake Wiebe</u>	Conference call with counsel to discuss strategy for court motions.	0.60 hours
January 5, 2015	<u>Nicholas To</u>	Review and submit invoice for payment; Review and amend draft 245(1)/246(1) Notices for Ebersole and D&S, emails and discussion with A. Bongard to finalize same; Emails with D. Sobel and A. Bongard on items outstanding; Call with CRA to schedule trust exam.	2.00 hours
January 5, 2015	<u>Rosa Wilford</u>	Follow email instructions from D. Sobel, preparation of cheques, correspondences with RBC, N. To, M. Minnema, review print screens, update receipt schedule and respond to email from Maynards-M. Minnema, bank slip deposits, posting entries and general banking administration.	2.00 hours
January 6, 2015	<u>Aaron Bongard</u>	Revisions to notices 245/246; internal discussions; reconciliation of payments from auction; correspondence with Maynards.	3.50 hours
January 6, 2015	<u>Daniel Sobel</u>	Internal discussion re: Maynards reconciliation, receiver's notice.	0.50 hours

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January 6, 2015	<u>Jake Wiebe</u>	Review 245 notices.	0.30 hours
January 6, 2015	<u>Leah Solis</u>	Fax 245/246 notice to OR Hamilton.	0.10 hours
January 6, 2015	<u>Rania Erian</u>	Create D&S estate in Ascend; Enter creditors listing; Separate the combined estate into two separate estates and enter creditors into Ebersole.	0.50 hours
January 6, 2015	<u>Rosa Wilford</u>	Review, follow and respond to email and phone call instructions from A. Bongard and D. Sobel, correspondences and phone calls with RBC, provide print screens, US rate and general banking administration.	0.80 hours
January 7, 2015	<u>Aaron Bongard</u>	Correspondence with Maynards; Revision to buyer's premium and HST calculation from auction; internal discussions.	1.80 hours
January 7, 2015	<u>Daniel Sobel</u>	Meeting with staff re: follow up items, review Maynards reconciliation, review email from BLG, call with A&B re: HST, emails from Trisura, internal emails re: payroll records, CRA trust examination, Maynards reconciliation.	2.80 hours
January 7, 2015	<u>Jake Wiebe</u>	Call with Trisura counsel; Review BP calculation and send summary to Trisura.	0.50 hours
January 7, 2015	<u>Leah Solis</u>	Check deposit book re: accounts receivable.	0.10 hours

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January 7, 2015

Nicholas To

- Call with CRA re: trust exam, request D&S be added to review; Respond to voice mail from CRA re request for RC59 to add GTL as Receiver; Discussions with A. Bongard re: preparation of outstanding HST returns; Review banking, update AR reconciliation; Emails with OxyVinyls Canada re: review documents received and cross-reference against the Company's records, request proof of payment, payment instructions; Review available payroll files, coordinate search for required documents; Emails/discussions with V. Moritz re: AR review and follow-up, preparation of T4s; Meetings with J. Wiebe, D. Sobel, A. Bongard re: file update and outstanding issues; Email at Zuber & Company LLP to inquire on letter re: Ebersole at Rogers; Review and summarize current status of insurance policies.

4.50 hours

January 7, 2015

Rosa Wilford

- Correspondences with RBC, review print screens for estate and joint account, preparation of cheque, review banking with A. Bongard and general banking administration.

1.50 hours

January 8, 2015

Daniel Sobel

- Internal discussion, draft email to Maynards, review letters to S. and D. Ebersole, internal emails re: accounts receivable.

0.80 hours

January 8, 2015

Nicholas To

- Call with insurance broker re: insurance policies and cancellation notices issued to date; Email Trisura re: insurance policies, discussions; Draft letter with listing of unreconciled assets and Ebersole accounts receivable; Call with Zuber & Company LLP re: settlement of Ebersole at Rogers action, update D. Sobel and J. Wiebe on same; Emails with V. Moritz re: obtaining 2014 ADP payroll data required for CRA trust exam; Search for accounts receivable invoices from data files extracted from the Company's computers, cross-reference to AR listing; Update comments in accounts receivable tracker, write-off uncollectible amounts; Review Dufferin accounts receivable due to D&S, update J. Wiebe, D. Sobel on same.

4.00 hours

January 8, 2015

Rosa Wilford

- Correspondences with RBC to provide both print screens and bank statements for the accounts. Correspondence with A. Bongard and D. Sobel, update schedule, review print screens and general banking administration.

1.00 hours

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January 8, 2015	<u>Virginia Moritz</u>	Accounts receivable matters; Organize invoices to folders; discuss collection follow up with N. To.	0.80 hours
January 9, 2015	<u>Daniel Sobel</u>	Review letters, draft response to Maynards, review Maynards correspondence, correspondence with counsel, internal correspondence and meetings.	1.50 hours
January 9, 2015	<u>Nicholas To</u>	Calls and email with Washington Mills re: accounts receivable replacement cheque; Email with Tate & Lyle re: accounts receivable; Update accounts receivable tracker; Email with insurance broker, review registered letter from Economical, update insurance tracker, email D. Sobel and J. Wiebe on same; Finalize and send letters to D. Dunnet and B. Jaeger and re: Ebersole accounts receivable and missing assets; Call Dufferin Construction Co. re: accounts receivable, follow-up via email on same.	2.50 hours
January 9, 2015	<u>Rosa Wilford</u>	Correspondence with RBC to review print screens for returned items and respond to L. Solis.	0.40 hours
January 12, 2015	<u>Jake Wiebe</u>	Call with counsel re: draft NOM.	0.40 hours
January 12, 2015	<u>Rosa Wilford</u>	Correspondences with RBC, L. Solis, review print screens for returned item, posting entries and general banking administration.	0.50 hours
January 13, 2015	<u>Jake Wiebe</u>	Call with Trisura counsel re: Maynard HST and USD conversion issues; Review draft NOM; Call with counsel to review draft NOM and responses from Dunnet and Jaeger.	0.70 hours
January 14, 2015	<u>Aaron Bongard</u>	Internal discussions; reconciliation of HST amount to be paid to Maynards; research of Excise Tax Act.	2.60 hours

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January 15, 2015	<u>Aaron Bongard</u>	Correspondence with Maynards; reconciliation of premiums payment to Maynards.	2.10 hours
January 15, 2015	<u>Jake Wiebe</u>	Review Maynards NOM and draft order; Review BP amount payable to Maynard in order to respond to their payment demand; Prepare agenda for weekly call with Trisura.	0.80 hours
January 15, 2015	<u>Virginia Moritz</u>	Accounts receivable matters; Employee matters.	6.00 hours
January 16, 2015	<u>Anna Poon</u>	Deposit in bank.	0.10 hours
January 16, 2015	<u>Jake Wiebe</u>	Prepare for and attend conference call with Trisura and counsel to discuss open issues.	1.30 hours
January 16, 2015	<u>Rosa Wilford</u>	Bank slip deposit, posting entries, follow instructions from A. Bongard, RBC letter, phone calls with J. Wiebe, RBC and correspondences with J. Wiebe, Maynards-M. McIntosh for approval and signing wire request and general banking administration.	1.60 hours
January 16, 2015	<u>Virginia Moritz</u>	D & S Collection calls; Restore Simply Accounting data; prepare reports; Test data validity to reports supplied by the controller; prepare spreadsheet for CRA trust exam and T4s.	7.50 hours
January 19, 2015	<u>Aaron Bongard</u>	Preparation of HST returns for D&S and Ebersole; Correspondence with N. To.	2.70 hours

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January 19, 2015	<u>Nicholas To</u>	Emails/call with V. Moritz re: status on T4 preparation, including ADP and simply accounting reports required to prepare same; Follow up with A. Bongard re: preparation of HST returns; Email with D. Sobel re: payroll and WEPPA requirements; Review insurance cancellation notices, call with broker to discuss same and renewal options, emails with J. Wiebe on same.	1.50 hours
January 19, 2015	<u>Rosa Wilford</u>	Review, follow and respond to email instructions from J. Wiebe, correspondence with RBC, review print screens, preparation of cheques (Joint and Trusteed accounts) and general banking administration.	1.70 hours
January 20, 2015	<u>Anna Poon</u>	Deposit in bank.	0.10 hours
January 20, 2015	<u>Jake Wiebe</u>	Call with counsel re: call with counsel to Curtis Gail and proposed response to same and Dunnet.	0.70 hours
January 20, 2015	<u>Nicholas To</u>	Calls/emails with insurance broker re: D&S liability policy, including renewal costs and conditions, update J. Wiebe on same; Call with CRA re: rescheduling of trust exam; Calls with A. Bongard re: file administration; Email re: banking.	1.00 hours
January 20, 2015	<u>Rosa Wilford</u>	Bank slip deposit, posting entries and general banking administration; Review bank reconciliations for December 2014 and initial the Report for the Summary of Estate Balances.	0.40 hours
January 21, 2015	<u>Daniel Sobel</u>	Review and comment on reports.	0.80 hours
January 21, 2015	<u>Nicholas To</u>	Email with insurance broker re: confirm payment and cancellation terms for policy renewal; Email with V. Moritz re: AR collection; Follow-up with Dufferin Construction Co. re AR.	1.50 hours

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January 21, 2015	<u>Rosa Wilford</u>	Review joint bank account, correspondences with J. Wiebe, D. Sobel and M. McIntosh, phone calls to and from M. McIntosh, follow instructions from both J. Wiebe and M. McIntosh, correspondence with Maynards-A. Stewardson to provide HST business number, courier cheque to M. McIntosh for signing and return same day, review and respond to email instructions from Maynards-G. Visser; Preparation of cheques from trust account and general banking administration.	2.50 hours
January 21, 2015	<u>Valerie Naccarato</u>	General banking administration.	0.10 hours
January 22, 2015	<u>Daniel Sobel</u>	Internal discussion.	0.20 hours
January 22, 2015	<u>Jake Wiebe</u>	Prepare update to Trisura on First Meeting of Creditors and discussion with D. Dunnet and Sandra.	0.90 hours
January 22, 2015	<u>Nicholas To</u>	Call/email with insurance broker; Coordinate with R. Wilford re: cheque requisition for insurance premium; Review general ledger and allocation of funds, discussions on same.	1.50 hours
January 22, 2015	<u>Rosa Wilford</u>	Review banking, follow and respond to email and phone call instructions from N. To, preparation of cheques, RBC letters, name change on accounts, setup new bank account, void and re-issue payments, ascend update and general banking administration; Review, follow and respond to email instructions from J. Wiebe for the joint account, correspondences with Maynards-M. McIntosh, wire transfer letter, and general banking administration.	4.50 hours
January 22, 2015	<u>Virginia Moritz</u>	Discussion with N. To re: AR matters and status of third party set-off for a debtor.	0.20 hours

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January 23, 2015	<u>Anna Poon</u>	Deposit in bank; Convert BMO and RBC bank statements into excel schedules per A. Bongard.	2.10 hours
January 23, 2015	<u>Jake Wiebe</u>	Review auction summary schedule and send to Trisura.	0.70 hours
January 23, 2015	<u>Rosa Wilford</u>	Preparation of cheques from trust account for D&S Railway and Ebersole, correspondences with J. Wiebe for approval of payments, preparation of cheques and general banking administration; Correspondence with RBC and Maynards-G. Visser, Joint account wire transfer, provide wire confirmation and receipt of voided cheque.	2.00 hours
January 23, 2015	<u>Virginia Moritz</u>	Matters re: payroll reports; Create T4 schedule check to bank statements, request ADP reports; Set up T4 for entry when ADP amounts are sent.	7.50 hours
January 26, 2015	<u>Anna Poon</u>	Convert BMO and RBC bank statements into excel schedules per A. Bongard; Deposit in bank.	2.60 hours
January 26, 2015	<u>Nicholas To</u>	Calls/emails with V. Moritz re: ADP reports required for trust exam; Call with A. Bongard re: outstanding HST returns, follow up on remaining assets on site with liquidators.	0.40 hours
January 26, 2015	<u>Rosa Wilford</u>	Bank slip deposit, posting entries, RBC letter, wire transfer, correspondence with J. Wiebe for approval, provide reports by email, follow instructions from N. To, re allocation of receipts, correspondence with RBC, follow instructions from V. Moritz, provide confirmation of wire, posting and general banking administration.	2.00 hours

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January 27, 2015	<u>Nicholas To</u>	Review general ledger and HST working papers for period ended December 31, 2014; Review filing requirements, call with K. Ng. at CRA; Call with CRA; Call/emails with insurance broker re: admin fee due on policy renewal and coordinate payment for same, copies of policy documents.	1.25 hours
January 27, 2015	<u>Rosa Wilford</u>	Follow email instructions from N. To, preparation of cheque and general banking administration.	0.20 hours
January 28, 2015	<u>Virginia Moritz</u>	Prepare T4s and T4 summaries balancing to ADP records and Simply Accounting records; Prepare documentation to provide to CRA trust examiner.	4.00 hours
January 29, 2015	<u>Nicholas To</u>	Preparation for and meeting with J. Walsh re: trust exam; Call with Kyle at CRA re: HST claim and review same; Review policy documents received follow-up on missing documents.	2.00 hours
January 29, 2015	<u>Virginia Moritz</u>	CRA Trust examination: meet with N. To to review payroll documents required for trust exam; attend CRA payroll trust examination and answer questions.	1.50 hours
January 30, 2015	<u>Nicholas To</u>	Email with L. Schwarz at Economical Insurance re: policy documents.	0.10 hours
January 30, 2015	<u>Virginia Moritz</u>	E-file WEPP information forms and create PDFs and mailing for employees.	4.00 hours

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Time Charges and Expenses:

J. Wiebe, Sr. Vice President	6.90	hours @	\$ 550.00	per hour	\$ 3,795.00
D. Sobel, Vice President	10.90	hours @	\$ 390.00	per hour	\$ 4,251.00
N. To, Manager	23.25	hours @	\$ 270.00	per hour	\$ 6,277.50
J. Oros, Manager	0.50	hours @	\$ 270.00	per hour	\$ 135.00
R. Wilford, Manager	21.10	hours @	\$ 225.00	per hour	\$ 4,747.50
A. Bongard, Associate	23.40	hours @	\$ 160.00	per hour	\$ 3,744.00
L. Solis, Analyst	1.70	hours @	\$ 145.00	per hour	\$ 246.50
R. Erian, Analyst	0.50	hours @	\$ 120.00	per hour	\$ 60.00
V. Naccarato, Analyst	0.50	hours @	\$ 120.00	per hour	\$ 60.00
A. Poon, Analyst	5.00	hours @	\$ 120.00	per hour	\$ 600.00
V. Moritz, Analyst	31.50	hours @	\$ 80.00	per hour	\$ 2,520.00
	125.25				\$ 26,436.50
Technology and Administrative Fee (5%)					\$ 1,321.83
					\$ 27,758.33
Disbursements					
Courier					\$ 128.92
Subtotal Time and Disbursements					\$ 27,887.25
HST					\$ 3,625.34
Total Invoice Due					\$ 31,512.59

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TRISURA GUARANTEE INSURANCE COMPANY**-AND-****EBERSOLE EXCAVATING INC. AND
D&S RAILWAY CONSTRUCTION INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AFFIDAVIT OF JACOB WIEBE

GRANT THORNTON LIMITEDRoyal Bank Plaza
South Tower, 19th Floor
Toronto, ON, M5J 2P9

TAB 12

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

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

**AFFIDAVIT OF STEVEN L. GRAFF
(sworn February 23, 2015)**

I, **STEVEN L. GRAFF**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for Grant Thornton Limited ("GTL"), in its capacities as the Court-appointed interim receiver and receiver of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc.
2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to GTL, detailing its services rendered and disbursements incurred, namely:
 - (a) an account dated January 27, 2015 in the amount of \$28,276.46 in respect of the period from December 13, 2014 to January 27, 2015; and

(b) an account dated February 23, 2015 in the amount of \$576.30 in respect of the period from January 29, 2015 to January 31, 2015,

(collectively, the "**Statements of Account**").

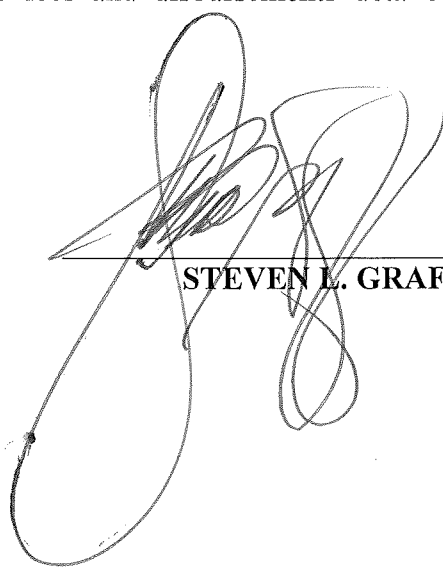
Attached hereto and marked as **Exhibit "A"** to this Affidavit are copies of the Statements of Account. The average hourly rate of Aird & Berlis LLP is \$405.48.

3. Attached hereto and marked as **Exhibit "B"** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.
4. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me at the City of)
 Toronto, in the Province of Ontario)
 this 23rd day of February, 2015)

A commissioner, etc.)


 SERONY NEMERS


 STEVEN L. GRAFF

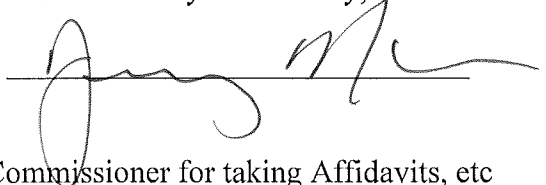
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF STEVEN L. GRAFF

Sworn before me

this 23rd day of February, 2015

A handwritten signature in black ink, appearing to read "Jeremy Nemors", is written over a horizontal line.

Commissioner for taking Affidavits, etc

Jeremy Nemors

IN ACCOUNT WITH:

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place, 181 Bay Street
Suite 1800, Box 754, Toronto, ON M5J 2T9 Canada
T 416.863.1500 F 416.863.1515
www.airdberlis.com

601

Grant Thornton Limited
Royal Bank Plaza
19th Floor, South Tower
200 Bay Street, Box 55
Toronto, ON
Canada M5J 2P9

Attention: Mr. Jake Wiebe

Account No.: 500024

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

January 27, 2015

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 27, 2015

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	14/12/14	\$395.00	0.30	\$118.50	Emails to and from R. Jaipargas and client and review same
IEA	15/12/14	\$395.00	1.10	\$434.50	Engaged with preparing affidavit of fees and emails regarding same; Emails to and from clients and R. Jaipargas regarding the motion materials and next steps; Engaged with reviewing the motion materials; Discussions with S. Graff regarding same
IEA	16/12/14	\$395.00	0.50	\$197.50	Emails to and from D. Brown and client regarding requested information; Telephone calls and emails to and from D. Dunnett regarding the motion; Emails to clients regarding same
IEA	17/12/14	\$395.00	1.50	\$592.50	Engaged with reviewing correspondence from Curtis Gale's counsel and emails to and from clients and R. Jaipargas regarding same; Engaged with reviewing correspondence from JMA's counsel and emails regarding the same; Telephone call with R. Jaipargas regarding update and next steps; Telephone call with Foglers regarding appraisal and emails to clients regarding same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	17/12/14	\$695.00	0.20	\$139.00	Review emails re J. McDonald productions
IEA	18/12/14	\$395.00	2.10	\$829.50	Telephone calls and emails to and from clients and R. Jaipargas regarding update and next steps; Telephone call with Maynards' counsel regarding update and next steps; Emails regarding next steps; Telephone call with R. Jaipargas regarding documents; Instruct J. Nemers regarding review of same; Emails to and from clients regarding update on the proceedings
IEA	19/12/14	\$395.00	0.50	\$197.50	Emails to and from clients and R. Jaipargas regarding title search; Discussions with J. Nemers regarding next steps
IEA	22/12/14	\$395.00	1.20	\$474.00	Emails to and from Applicants' counsel, client, S. Graff and J. Nemers regarding the motion materials and the hearing; Engaged with reviewing correspondence from G. Azeff and emails regarding same; Discussions regarding the hearing; Telephone call with D. Dunnet regarding same; Telephone call with J. Nemers regarding same
SLG	22/12/14	\$695.00	1.00	\$695.00	Telephone call with R. Jaipargas; telephone call with G. Azeff; review exchange of letters and emails with B. Jaeger; telephone call with D. Sobel
SLG	22/12/14	\$695.00	0.80	\$556.00	Review records in preparation for motion
IEA	23/12/14	\$395.00	0.50	\$197.50	Engaged with reviewing the order and endorsement and emails regarding same; Telephone call with J. Nemers regarding same
SLG	23/12/14	\$695.00	3.60	\$2,502.00	Prepare for attendance at Court; attend at Court on motion to approve fees and activities and convert to receivership
JTN	24/12/14	\$280.00	0.10	\$28.00	Telephone call with D. Sobel re next steps in light of receipt of email from H. Book re John MacDonald
IEA	26/12/14	\$395.00	0.10	\$39.50	Email from client regarding HST
IEA	29/12/14	\$395.00	0.50	\$197.50	Emails to and from client and J. Nemers regarding HST

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	29/12/14	\$280.00	0.40	\$112.00	Review previous Orders to ascertain need to seek court approval re payment of HST re auction; Email analysis of same to I. Aversa and S. Graff
IEA	31/12/14	\$395.00	0.30	\$118.50	Emails to and from J. Nemers regarding correspondence with H. Book
JTN	31/12/14	\$280.00	0.30	\$84.00	Review reporting by-law on withdrawals from trust account and apply to response received from H. Book re payment to Broderick and Partners LLP
IEA	02/01/15	\$425.00	0.20	\$85.00	Emails to and from S. Graff and R. Jaipargas
SLG	02/01/15	\$725.00	0.30	\$217.50	Telephone call with R. Jaipargas re status and issues
IEA	05/01/15	\$425.00	1.50	\$637.50	Telephone call and emails to and from Applicants' counsel, client and S. Graff regarding update and next steps; Telephone call and emails to and from G. Azeff regarding HST payout; Emails to and from H. Book and clients regarding trust funds; Engaged with reviewing the draft order and emails to and from R. Jaipargas and client regarding same
SLG	05/01/15	\$725.00	0.50	\$362.50	Participate in conference call on status and consideration of motion for advice and separate motion by Foglers to get funds paid
JTN	05/01/15	\$285.00	0.30	\$85.50	Draft response to email received from H. Book re funds paid to Broderick & Partners; Email same to I. Aversa for review
IEA	06/01/15	\$425.00	1.00	\$425.00	Meeting with J. Nemers to discuss preparation of motion materials and next steps
JTN	06/01/15	\$285.00	0.40	\$114.00	Discussion with I. Aversa re strategy moving forward and determine desired approach to next motion
IEA	07/01/15	\$425.00	1.30	\$552.50	Telephone call and emails to and from R. Jaipargas regarding the hearing and next steps; Telephone call and emails to and from clients regarding same; Emails to and from the service list regarding the draft

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					order; Discussions with J. Nemers regarding preparation of motion materials
IEA	08/01/15	\$425.00	0.30	\$127.50	Emails to and from client and J. Nemers regarding payment to Maynards
JTN	08/01/15	\$285.00	2.70	\$769.50	Draft notice of motion; Email chain with client re dispute with Maynards re reconciliation
IEA	09/01/15	\$425.00	1.60	\$680.00	Emails to and from client and J. Nemers regarding payment to Maynards; Instruct J. Nemers regarding preparation of a letter; Engaged with reviewing and revising letter and emails regarding same; Engaged with issuing letter; Telephone call with J. Freeman; Telephone call with clients; Engaged with reviewing and revising the draft motion materials and emails to and from clients and J. Nemers regarding same
AB	09/01/15	\$240.00	0.20	\$48.00	Research authority for proposition that court order is always expressed in Canadian dollars
JTN	09/01/15	\$285.00	4.00	\$1,140.00	Prepare draft Order; Revise notice of motion; Email chain with client re dispute with Maynards re reconciliation; Draft, revise and finalize letter to Maynards addressing multiple issues raised by latter
IEA	12/01/15	\$425.00	1.10	\$467.50	Telephone call with R. Jaipargas regarding the hearing; Telephone calls and emails to and from counsel for Maynards regarding next steps; Telephone call with client regarding same; Emails to and from S. Graff and H. Book regarding funds
SLG	12/01/15	\$725.00	0.20	\$145.00	Email to H. Book re response
JTN	12/01/15	\$285.00	0.80	\$228.00	Telephone call with I. Aversa and counsel for Maynards re outstanding issues re reconciliation; Discussion re same with I. Aversa; Follow-up telephone call with client
IEA	13/01/15	\$425.00	2.00	\$850.00	Engaged with reviewing correspondence from B. Jaeger and emails regarding the same; Telephone call with client and J. Nemers regarding update and next steps; Emails to and from client, R. Jaipargas and J. Nemers regarding hearing; Telephone

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					call with R. Jaipargas regarding the hearing and next steps
JTN	13/01/15	\$285.00	1.60	\$456.00	Telephone call with J. Wiebe and I. Aversa re outstanding issues re Maynards and contents of draft motion materials re distribution hearing; Revise court materials re latter
IEA	14/01/15	\$425.00	2.50	\$1,062.50	Emails to and from J. Nemers regarding the motion materials; Engaged with reviewing Maynards' motion record; Emails to and from client and J. Nemers regarding same; Telephone call with R. Jaipargas regarding same; Engaged with reviewing and revising the motion materials and emails to and from J. Nemers regarding same; Telephone call with R. Jaipargas regarding correspondence from D. Dunnett and emails to and from client regarding same
JTN	14/01/15	\$285.00	0.90	\$256.50	Revise draft court materials
IEA	15/01/15	\$425.00	1.60	\$680.00	Emails to and from client and the service list regarding the hearing; Emails to and from counsel to Maynards regarding same; Emails to and from client regarding next steps; Engaged with reviewing correspondence from Foglers; Emails to and from client and J. Nemers regarding same; Instruct J. Nemers regarding preparation of response; Telephone call with R. Jaipargas regarding hearing; Emails to and from client regarding same; Instruct J. Nemers regarding hearing; Emails to and from WeirFoulds regarding Curtis Gale; Engaged with reviewing response re same; Emails to and from R. Jaipargas and D. Dunnett regarding hearing
JTN	15/01/15	\$285.00	0.70	\$199.50	Receipt and review of letter from counsel for Maynards re reconciliation issues; Draft and send reply letter re same
IEA	16/01/15	\$425.00	1.20	\$510.00	Emails to and from J. Nemers and R. Jaipargas regarding the hearing; Meeting with J. Nemers regarding same; Emails to and from clients and J. Nemers regarding the buyers premium; Emails to and from D.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Dunnett and client regarding first meeting of creditors; Telephone call with D. Dunnett regarding same; Telephone call with R. Jaipargas; Emails regarding the motion materials; Telephone call with M. DiGirolamo
JTN	16/01/15	\$285.00	2.50	\$712.50	Attend at hearing
IEA	19/01/15	\$425.00	1.20	\$510.00	Telephone call and emails to and from R. Jaipargas; Emails to and from client and R. Jaipargas; Telephone call with M. DiGirolamo; Engaged with reviewing documents regarding Curtis Gale proceeds; Meeting with J. Nemers regarding same
JTN	19/01/15	\$285.00	0.80	\$228.00	Meeting with I. Aversa to discuss possible theories re money paid to C. Gale
IEA	20/01/15	\$425.00	2.10	\$892.50	Telephone calls with M. DiGirolamo and J. Nemers regarding Curtis Gale; Instruct J. Nemers regarding letter; Emails to and from M. DiGirolamo regarding same; Emails to and from B. Jaeger and client regarding first meeting of creditors; Telephone call with client and J. Nemers regarding Curtis Gale; Engaged with reviewing and revising letter to Broderick and Partners
JTN	20/01/15	\$285.00	4.10	\$1,168.50	Attend on conference call with I. Aversa and M. DiGirolamo re purported assignment of indebtedness and security from C. Gale to J. Lamb; Telephone call to discuss same and strategy moving forward with I. Aversa and J. Wiebe; Draft, revise and email follow-up letter to M. DiGirolamo re outstanding issues for clarification; Attend to related tasks as necessary
IEA	21/01/15	\$425.00	1.50	\$637.50	Telephone call with Curtis Gale's counsel; Telephone call with R. Jaipargas regarding update and next steps; Emails to and from B. Jaeger and client regarding the meeting of creditors
IEA	22/01/15	\$425.00	2.50	\$1,062.50	Emails to and from clients and counsel for Maynards regarding payout to CRA; Engaged with reviewing and revising the motion materials; Emails to and from

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					clients regarding same; Telephone call with clients regarding first meeting of creditors and update on the receivership proceedings; Engaged with further revisions to the motion materials and emails to and from clients regarding same; Emails to and from clients and J. Nemers regarding update on the receivership proceedings; Emails to and from interested parties regarding the motion materials; Engaged with reviewing the trustee's reports
IEA	23/01/15	\$425.00	0.50	\$212.50	Emails to and from client and Maynards regarding HST payment; Discuss and emails with J. Nemers regarding security registrations
JTN	23/01/15	\$285.00	0.40	\$114.00	Discussion with I. Aversa and A. Purushotham re updated PPSA searches re Ebersole and D&S
AP	23/01/15	\$170.00	0.50	\$85.00	Conducted PPSA verbal searches against Ebersole Excavating Inc. and D&S Railway Construction Inc., attended to electronic filing, reviewed, summarised and reported same
IEA	26/01/15	\$425.00	0.60	\$255.00	Telephone call with J. Freeman regarding the motion materials; Telephone call with D. Dunnet regarding same; Telephone call with B. Jaeger regarding same; Discussions with J. Nemers regarding same
AP	26/01/15	\$170.00	0.20	\$34.00	Attended to electronic filings of certified PPSA searches against Ebersole Excavating Inc. and D&S Railway Construction Inc., reviewed and reported same
IEA	27/01/15	\$425.00	1.70	\$722.50	Emails to and from clients and J. Nemers regarding the motion materials and next steps; Telephone call with J. Freeman and J. Nemers regarding the motion materials; Telephone call with R. Jaipargas regarding motion materials and next steps
JTN	27/01/15	\$285.00	1.20	\$342.00	Review updated certified PPSA registrations; Review same re Maynards with S. Morris and I. Aversa; Email copies

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
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of certified PPSA registrations to client;
Telephone call with I. Aversa and J.
Freeman re draft notice of motion and draft
Order

TOTAL:	61.70	\$24,589.00
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Name	Hours	Rate	Value
Ian E. Aversa (IEA)	33.00	\$417.18	\$13,767.00
Steven L. Graff (SLG)	6.60	\$699.55	\$4,617.00
Jeremy T. Nemers (JTN)	21.20	\$284.81	\$6,038.00
Aarondeep Bains (AB)	0.20	\$240.00	\$48.00
Anita Purushotham (AP)	0.70	\$170.00	\$119.00

OUR FEE	\$24,589.00
HST at 13%	\$3,196.57

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Search Under P.P.S.A.	\$32.00
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Subject to HST

Photocopies - Local	\$274.50
Imaging/Scanning	\$8.50
Photocopies	\$61.75
Binding and Tabs	\$34.50
Taxi	\$8.85
Service Provider Fee	\$18.00

Total Disbursements	\$406.10
HST at 13%	\$52.79

AMOUNT NOW DUE	\$28,276.46
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THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.3% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place, 181 Bay Street
Suite 1800, Box 754, Toronto, ON M5J 2T9 Canada
T 416.863.1500 F 416.863.1515
www.airdberlis.com

609

Grant Thornton Limited
Royal Bank Plaza
19th Floor, South Tower
200 Bay Street, Box 55
Toronto, ON
Canada M5J 2P9

Attention: Mr. Jake Wiebe

Account No.: 501854

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

February 23, 2015

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 30, 2015

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	29/01/15	\$425.00	0.60	\$255.00	Engaged with reviewing correspondence from Broderick and emails to and from client regarding same; Telephone call from R. Jaipargas regarding update and next steps; Emails to and from D. Dunnet
IEA	30/01/15	\$425.00	0.60	\$255.00	Emails from Maynards regarding CRA payment; Email from Foglers regarding draft motion materials; Engaged with reviewing same; Emails to and from client regarding update and next steps
TOTAL:			1.20	\$510.00	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	1.20	\$425.00	\$510.00

OUR FEE
HST at 13%

\$510.00
\$66.30

AMOUNT NOW DUE

\$576.30

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.3% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

21851626.1

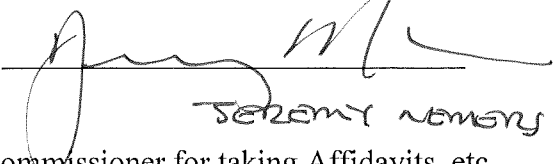
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF STEVEN L. GRAFF

Sworn before me

this 23rd day of February, 2015


TERENCE NEMERY
Commissioner for taking Affidavits, etc

STATEMENT OF RESPONSIBLE INDIVIDUALS

Aird & Berlis LLP's professional fees herein are made with respect to the following individuals

Lawyer	Call to Bar	Avg. Hrly Rate	Total Time	Value
Steven L. Graff	1991	2014 - \$695.00 2015 - \$725.00	6.60	\$4,617.00
Ian Aversa	2008	2014 - \$395.00 2015 - \$425.00	33.20	\$14,277.00
Jeremy Nemers	2014	2014 - \$280.00 2015 - \$285.00	21.20	\$6,038.00
Clerk/Student	Call to Bar	Avg. Hrly Rate	Total Time	Value
A. Puruhotham	N/A	\$170.00	0.70	\$119.00
A. Bains	N/A	\$240.00	0.20	\$48.00

**Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.*

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

AFFIDAVIT OF STEVEN L. GRAFF

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

Steven L. Graff (LSUC #31871V)

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Ian Aversa (LSUC # 55449N)

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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.

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

FIRST REPORT OF THE RECEIVER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

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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

**MOTION RECORD
(returnable March 6, 2015)
Part 2 of 2**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

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