

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

THE HONOURABLE MR.

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FRIDAY, THE 6TH DAY

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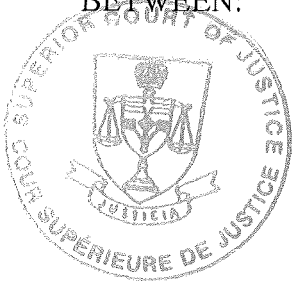
JUSTICE WILTON-SIEGEL

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OF MARCH, 2015

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BETWEEN:



TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

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

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

ORDER

THIS MOTION, made by Grant Thornton Limited (“GTL”), in its capacities as the Court-appointed interim receiver (in such capacity, the “**Interim Receiver**”) and receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively, the “**Debtors**”),

for an order, among other things: (i) approving the First Report of the Receiver dated February 24, 2015 (the “**First Report**”) and the actions of the Receiver set out therein; (ii) approving the fees and disbursements of the Interim Receiver, the Receiver and their counsel; (iii) establishing the process through which a scheme of distribution of all funds held by the Receiver will be determined (the “**Distribution Scheme**”); and (iv) authorizing and directing the Receiver to distribute all funds held by the Receiver according to the Distribution Scheme, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and the appendices thereto, the affidavits of Jake Wiebe sworn February 24, 2015, and the affidavit of Steven L. Graff sworn February 23, 2015, and on hearing the submissions of counsel for the Receiver, counsel for Trisura Guarantee Insurance Company and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of Eunice Baltkois sworn February 25, 2015, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Interim Receiver and the Receiver for the period to and including January 31, 2015, in the amount of \$46,864.71, inclusive of applicable HST, be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of legal counsel for the Interim Receiver and the Receiver, Aird & Berlis LLP, for the period to and including January 31, 2015, in the amount of \$28,852.76, inclusive of applicable HST, be and are hereby approved.

5. **THIS COURT ORDERS** that the Receiver be and is authorized and directed to distribute, according to a scheme of distribution to be determined by this Court at a hearing (the “**Distribution Hearing**”) and subject to the Receiver’s Charge and the Receiver’s Borrowings Charge, all funds held by the Receiver as of the date of the Distribution Hearing, including, without limitation:

- (a) the “**Remaining Funds**”, as defined in the Order of the Honourable Justice Newbould dated November 26, 2014 (the “**Interim Receivership Order**”); and
- (b) the funds transferred to the Receiver on December 12, 2014 from the trust account of Dunnet Law Professional Corporation, totalling \$396,227.00 plus all interest that has since accrued thereon (collectively the “**DLPC Funds**”).

6. **THIS COURT ORDERS** that the Court shall determine at the Distribution Hearing, amongst other things, whether all or part of the Remaining Funds and the DLPC Funds constitute “**Property**”, as defined in both the Interim Receivership Order and in the Order of the Honourable Justice Pattillo dated December 23, 2014. For greater certainty, and subject to further Order of this Court, only the Property is subject to the Receiver’s Charge and the Receiver’s Borrowings Charge.

7. **THIS COURT ORDERS** that the date of the Distribution Hearing be scheduled, such that:

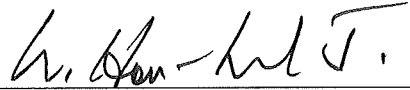
- (a) the First Report of the Interim Receiver dated December 15, 2014 (the “**Interim Receiver’s Report**”), the First Report (together with the Interim Receiver’s Report and any future supplements to the First Report, the “**Reports**”) and the affidavit of Stuart Detsky sworn November 24, 2014 and the exhibits thereto shall be received into evidence at the Distribution Hearing;
- (b) any interested party wishing to file affidavit evidence for use at the Distribution Hearing (the “**Affidavit Evidence**”) shall serve and file such Affidavit Evidence by no later than 4:00 p.m. (Toronto time) on March 27, 2015 (the “**Affidavit Evidence Deadline**”);
- (c) any interested party wishing to file reply affidavit evidence for use at the Distribution Hearing (the “**Reply Affidavit Evidence**”) shall serve and file such Reply Affidavit Evidence by no later than 4:00 p.m. (Toronto time) on April 7, 2015 (the “**Reply Affidavit Evidence Deadline**”);
- (d) any interested party wishing to cross-examine on the Affidavit Evidence or the Reply Affidavit Evidence shall have completed such cross-examination by no later than 4:00 p.m. (Toronto time) on April 17, 2015 (the “**Cross-Examination Deadline**”);
- (e) each of the Receiver and any interested party may serve and file a factum, if any, by no later than 4:00 p.m. (Toronto time) on April 24, 2015 (the “**Facta Deadline**”);

- (f) each of the Receiver and any interested party may serve and file a responding factum, if any, by no later than 4:00 p.m. (Toronto time) on May 1, 2015 (the **“Responding Facta Deadline”**); and
- (g) the Distribution Hearing shall occur on May 13, 2015 or as soon after that date as the Distribution Hearing can be heard (the **“Distribution Hearing Date”**).

8. **THIS COURT ORDERS AND DECLARES** that the DLPC Funds, as of the Distribution Hearing Date and without further Order of this Court, need no longer be invested in a 30-day guaranteed investment certificate.

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

MAR 6 2015



TRISURA GUARANTEE INSURANCE COMPANY

- and -

EBERSOLE EXCAVATING INC., et al.

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ORDER

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