

**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 December 20, 2016)**

December 8, 2016

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Excavating Inc. and D&S Railway Construction
Inc.*

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AND TO: D&S RAILWAY CONSTRUCTION INC.
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Attention: Darrell Ebersole

AND TO: DARRELL EBERSOLE
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AND TO: DARRELL EBERSOLE
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Fort Erie, Ontario L2A 1B8

AND TO: SANDRA EBERSOLE
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Proposal Trustee of Ebersole Excavating Inc.

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Lawyers for JMA Accounting Professional Corporation and John MacDonald

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AND TO: CURTIS GAIL DEVELOPMENT CORPORATION
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AND TO: BRODERICK & PARTNERS LLP
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Lawyers for Curtis Gail Development Corporation

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AND TO: DEPARTMENT OF JUSTICE
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**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY
THE MINISTER OF FINANCE**

Legal Services Branch
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Toronto, ON M5G 2C8

Attention: Kevin J. O'Hara

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TAB A

**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**

**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**

**NOTICE OF MOTION
(returnable December 20, 2016)**

Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”) of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively, the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on Tuesday, December 20, 2016 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order, including, amongst other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) approving the Final Report of the Receiver dated December 7, 2016 (the “**Final Report**”) and approving the actions of the Receiver described therein;
- (c) authorizing the Receiver to destroy the Debtors’ books and records upon the discharge of GTL, in its capacity as the trustee in bankruptcy of the Debtors;
- (d) authorizing the Receiver to assign its interest in the Missing Funds (as defined in the Final Report) to Trisura Guarantee Insurance Company (“**Trisura**”);
- (e) approving the Receiver’s Final Statement of Receipts and Disbursements (as appended to the Final Report);
- (f) effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, discharging GTL as Receiver and releasing GTL from any and all liability that GTL has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of GTL while acting in its capacity as Receiver;
- (g) approving the fees and disbursements of the Receiver and its counsel, including an accrual for fees and disbursements to be incurred to the completion of these proceedings; and
- (h) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) pursuant to an Order dated November 26, 2014 (the “**Interim Receivership Order**”), GTL was appointed as the Court-appointed interim receiver (in such capacity, the “**Interim Receiver**”) of the Debtors;
- (b) pursuant to the Interim Receivership Order, and subject to certain terms and conditions contained therein (the “**Auction Terms**”), the Interim Receiver was authorized to permit Maynards Industries Ltd. (“**Maynards**”) to conduct an auction of specific Property on December 4, 2014 (the “**Auction**”);
- (c) the Interim Receiver permitted Maynards to conduct the Auction;
- (d) pursuant to an Order dated December 23, 2014 (the “**Receivership Order**”), GTL was appointed as the Receiver of the Debtors;
- (e) pursuant to the Receivership Order, the Receiver remained authorized and permitted to assume and discharge the duties of the Interim Receiver relating to the Auction and the Auction Terms;
- (f) pursuant to the Auction Terms, the proceeds generated by the Auction were reconciled and Maynards was paid the Maynard’s Portion of the Buyer’s Premium, as defined in the Interim Receivership Order, leaving the remaining proceeds generated from the Auction to be distributed in accordance with a distribution scheme to be determined by this Court;
- (g) the Receivership Order authorized the Receiver to file assignments in bankruptcy on behalf of the Debtors and, on December 31, 2014, the Receiver assigned both the Debtors into bankruptcy, which assignments became effective on January 2, 2015, and GTL was appointed as the trustee in bankruptcy of each of the Debtors;
- (h) on January 16, 2015, the Court issued orders, among other things, approving the Interim Receiver’s Report dated December 15, 2014 and the actions of the Interim

Receiver described therein, approving the fees and disbursements of the Interim Receiver and its counsel, and authorizing the payment of certain funds to Canada Revenue Agency (“CRA”) in respect of HST collected on the sale of the auctioned assets;

- (i) on March 6, 2015, the Court issued orders, among other things, approving the First Report of the Receiver dated February 24, 2015 and the actions of the Receiver described therein, approving the fees and disbursements of the Interim Receiver/Receiver and its counsel, discharging the Interim Receiver, establishing the process through which a scheme of distribution of all funds held by the Receiver was to be determined (the “**Distribution Scheme**”), and authorizing and directing the Receiver to distribute all funds held by the Receiver according to the Distribution Scheme;
- (j) on June 10, 2015, the Court issued an order, among other things, authorizing and directing the Receiver to pay certain funds to CRA in full satisfaction of all CRA claims;
- (k) on June 29, 2015, the Court issued an order (the “**Most Recent Order**”), among other things, approving the Supplement to the First Report of the Receiver dated June 18, 2015 and the actions of the Receiver described therein, approving the fees and disbursements of the Receiver and its counsel, and authorizing and directing the Receiver to distribute all funds held by the Receiver to Trisura and Maynards in accordance with the distribution mechanism specified in the Most Recent Order (the “**Distribution**”);
- (l) the Receiver has filed with the Court its Final Report outlining, among others things: (i) the background to the Debtors’ business, operations and financial position; (ii) the actions of the Receiver since the commencement of these proceedings; (iii) the status of the Debtors’ books and records and the reasons for the Receiver’s proposed destruction of same; (iv) the efforts of the Receiver to locate the Missing Funds and the Receiver’s proposed assignment of same; (v) the

efforts of the Receiver to sell certain unsold assets and the Receiver's abandonment of same; (vi) the Receiver's efforts to locate certain missing equipment; (vii) the implementation of the Distribution; (viii) the professional fees and disbursements of the Receiver and its counsel; and (ix) the Receiver's proposed discharge;

- (m) the Receiver and its counsel, Aird & Berlis LLP, have accrued fees and expenses in their capacity as Receiver and counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Receivership Order;
- (n) the Receivership Order authorizes the Receiver to pass its accounts from time to time, and to include any necessary solicitor fees and disbursements in the passing of the accounts;
- (o) the other grounds set out in the Final Report;
- (p) the inherent and equitable jurisdiction of this Court;
- (q) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (r) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (s) rules 1.04, 2.03, 3.02, 30, 37 and 41.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (t) such further and other grounds as counsel may advise and this Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Final Report;
- (b) the affidavit of Jacob Wiebe sworn December 7, 2016;

- (c) the affidavit of Steven L. Graff sworn December 7, 2016; and
- (d) such further and other material as counsel may submit and this Court may permit.

Date: December 8, 2016

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

TO: ATTACHED SERVICE LIST

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

**NOTICE OF MOTION
(returnable December 20, 2016)**

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

TAB B

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

THE HONOURABLE) TUESDAY, THE 20TH DAY
)
JUSTICE) OF DECEMBER, 2016

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**

DISCHARGE ORDER

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

the Receiver dated December 7, 2016 (the “**Final Report**”) and the actions of the Receiver set out therein; (ii) authorizing the Receiver to destroy the Debtors’ books and records upon the discharge of GTL, in its capacity as the trustee in bankruptcy of the Debtors; (iii) authorizing the Receiver to assign its interest in the Missing Funds (as defined in the Final Report) to Trisura Guarantee Insurance Company (“**Trisura**”); (iv) approving the Receiver’s Final Statement of Receipts and Disbursements (as appended to the Final Report); (v) approving the fees and disbursements of the Receiver and its counsel, including an accrual for fees and disbursements to be incurred to the completion of these proceedings; (vi) discharging GTL as the Receiver of the assets, undertakings and properties of the Debtors effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule “A” (the “**Discharge Certificate**”); and (vii) releasing GTL from any and all liability, as set out in paragraph 10 of this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Final Report and the appendices thereto, the affidavit of Jacob Wiebe sworn December 7, 2016 (the “**Wiebe Affidavit**”) and the affidavit of Steven L. Graff sworn December 7, 2016 (the “**Graff Affidavit**”), and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Eunice Baltkois sworn December 8, 2016, 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 Final 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 Receiver be and is hereby authorized to destroy the Debtors' books and records upon the discharge of GTL, in its capacity as the trustee in bankruptcy of the Debtors.
4. **THIS COURT ORDERS** that the Missing Funds be and are hereby assigned to Trisura.
5. **THIS COURT ORDERS** that the Receiver's Final Statement of Receipts and Disbursements, as appended to the Final Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period to and including November 30, 2016, as set out in the Wiebe Affidavit, be and are hereby approved.
7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, for the period to and including December 6, 2016, as set out in the Graff Affidavit, be and are hereby approved.
8. **THIS COURT ORDERS** that the Fee Accrual (as defined in the Final Report) be and is hereby approved.
9. **THIS COURT ORDERS** that, upon the Receiver filing the Discharge Certificate, the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete

the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of GTL, in its capacity as Receiver.

10. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, GTL is hereby released and discharged from any and all liability that GTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of GTL while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, GTL is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

SCHEDULE “A”

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**

**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**

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 23, 2014, Grant Thornton Limited (“**GTL**”) was appointed as 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**”).

(B) Pursuant to an Order of the Court dated December 20, 2016 (the “**Discharge Order**”), GTL was discharged as Receiver of all of the assets, undertakings and properties of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain Receiver for the performance of such incidental duties as may be required to complete the administration of these receivership proceedings; and (b) the Receiver will continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of GTL, in its capacity as Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. This Certificate was filed by the Receiver with the Court on the ____ day of _____, 2016.

GRANT THORNTON LIMITED, in its capacity as the Court-appointed receiver of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc., and not in its personal capacity

Per: _____
 Name: Jake Wiebe
 Title: Senior Vice President

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

DISCHARGE ORDER

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

TAB C

Court File No. 2014CV-14-10766-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE [REDACTED])
)
 JUSTICE [REDACTED])
) DAY OF MONTH, 20[REDACTED]

THE HONOURABLE _____) _____ TUESDAY, THE 20TH DAY
_____) _____
JUSTICE _____) _____ OF DECEMBER, 2016

BETWEEN:

~~PLAINTIFF~~

~~Plaintiff~~

TRISURA GUARANTEE INSURANCE COMPANYApplicant

- and -

~~ΔΕΦΕΝΔΑΝΤ~~

~~Defendant~~

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

DISCHARGE ORDER

THIS MOTION, made by {PEXEI{EP{Σ NAME} Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the ~~undertaking, property and assets of [AEBTOP] (, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively, the “Debtor”~~ **Debtors**), for an order: 1. ~~among other things: (i) approving the activities of the Receiver as set out in the report of the Receiver dated [DATE] (the “Report”); 2. Final Report of the Receiver dated December 7, 2016 (the “Final Report”) and the actions of the Receiver set out therein; (ii) authorizing the Receiver to destroy the Debtors’ books and records upon the discharge of GTL, in its capacity as the trustee in bankruptcy of the Debtors; (iii) authorizing the Receiver to assign its interest in the Missing Funds (as defined in the Final Report) to Trisura Guarantee Insurance Company (“Trisura”); (iv) approving the Receiver’s Final Statement of Receipts and Disbursements (as appended to the Final Report); (v) approving the fees and disbursements of the Receiver and its counsel;~~

3. ~~approving the distribution of the remaining proceeds available in the estate of the Debtor;~~ ~~{and} 4. ~~including an accrual for fees and disbursements to be incurred to the completion of these proceedings; (vi) discharging {PEXEI{EP{Σ NAME} GTL as the Receiver of the undertaking, property and assets of the Debtor}; and 5. ~~assets, undertakings and properties of the Debtors effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule “A” (the “Discharge Certificate”); and (vii) releasing {PEXEI{EP{Σ NAME} GTL from any and all~~~~~~

liability, as set out in paragraph 511 of this Order¹, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Final Report and the appendices thereto, the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits"), affidavit of Jacob Wiebe sworn December 7, 2016 (the "**Wiebe Affidavit**") and the affidavit of Steven L. Graff sworn December 7, 2016 (the "**Graff Affidavit**"), and on hearing the submissions of counsel for the Receiver, no one else appearing for any other person on the service list, although properly served as evidenced by appears from the Affidavit affidavit of [NAME] Eunice Baltkois sworn [DATE], December 8, 2016, filed²;

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved. 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 fees and disbursements Final Report be and is hereby approved and the actions of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, described therein be and are hereby approved.

3. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³ be and is hereby authorized to destroy the Debtors' books and records upon the discharge of GTL, in its capacity as the trustee in bankruptcy of the Debtors.

¹ If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

² This model order assumes that the time for service does not need to be abridged.

³ This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

4. **THIS COURT ORDERS** that the Missing Funds be and are hereby assigned to Trisura.
5. **THIS COURT ORDERS** that the Receiver's Final Statement of Receipts and Disbursements, as appended to the Final Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period to and including November 30, 2016, as set out in the Wiebe Affidavit, be and are hereby approved.
7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, for the period to and including December 6, 2016, as set out in the Graff Affidavit, be and are hereby approved.
8. **THIS COURT ORDERS** that the Fee Accrual (as defined in the Final Report) be and is hereby approved.
9. ~~4.~~ **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 3 hereof ~~and, upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report]~~ the Discharge Certificate, the Receiver shall be discharged as Receiver of the ~~undertaking, property and assets,~~ undertakings and properties of the ~~Debtor~~ Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this ~~proceeding~~ these proceedings, including all approvals, protections and stays of proceedings in favour of ~~{PEXELSEPΣ-NAME}~~ GTL, in its capacity as Receiver.

10. 5. ~~[THIS COURT ORDERS AND DECLARES that {PEXEI₅EP₃Σ NAME}, upon the Receiver filing the Discharge Certificate, GTL is hereby released and discharged from any and all liability that {PEXEI₅EP₃Σ NAME}GTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of {PEXEI₅EP₃Σ NAME}GTL while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, {PEXEI₅EP₃Σ NAME}GTL is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.]~~⁴

⁴ The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.

SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

23496947.4

- 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

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court
of Justice (Commercial List) (the "Court") dated December 23, 2014, Grant Thornton Limited
("GTL") was appointed as 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").

(B) Pursuant to an Order of the Court dated December 20, 2016 (the “**Discharge Order**”), GTL was discharged as Receiver of all of the assets, undertakings and properties of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain Receiver for the performance of such incidental duties as may be required to complete the administration of these receivership proceedings; and (b) the Receiver will continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of GTL, in its capacity as Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. This Certificate was filed by the Receiver with the Court on the _____ day of _____, 2016.

GRANT THORNTON LIMITED, in its capacity as the Court-appointed receiver of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc., and not in its personal capacity

Per:

Name: Jake Wiebe

Title: Senior Vice President

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

DISCHARGE ORDER

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

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Description	#23496938v1<CM> - Discharge Order (Ebersole)
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Deletions	102
Moved from	0
Moved to	0
Style change	0

TAB D

**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**

**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**

FINAL REPORT OF THE RECEIVER

December 7, 2016



Grant Thornton Limited
200 King Street West
11th Floor
Toronto, Ontario
M5H 3T4

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- Appendix 3 Interim Receiver's Report to Court dated December 15, 2014 (without appendices)
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- Appendix 8 Order dated June 10, 2015
- Appendix 9 Supplement to the First Report of the Receiver dated June 18, 2015 (without appendices)
- Appendix 10 Order and Endorsement dated June 29, 2015
- Appendix 11 Receiver's Final Statement of Receipts and Disbursements dated December 7, 2016
- Appendix 12 Affidavit of Jacob Wiebe sworn December 7, 2016
- Appendix 13 Affidavit of Steven L. Graff sworn December 7, 2016

INTRODUCTION AND BACKGROUND

1. Grant Thornton Limited (“**GTL**”) was appointed as interim receiver (in such capacity, 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 are collectively attached hereto as **Appendix “1”**.
2. 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, among other things, the application of Trisura Guarantee Insurance Company (“**Trisura**” or the “**Applicant**”) to appoint the Interim Receiver. A copy of the Detsky Affidavit, without exhibits, is attached hereto as **Appendix “2”**.
3. The Interim Receiver issued a report to Court dated December 15, 2014 (the “**Interim Receiver’s Report**”) in relation to the Applicant’s Notice of Motion that was returnable on December 23, 2014, which, among other things, requested that GTL be appointed as receiver of the Companies. A copy of the Interim Receiver’s Report, without appendices, is attached hereto as **Appendix “3”**.
4. GTL was appointed as receiver (in such capacity, the “**Receiver**”) of the Companies pursuant to an Order of the Court dated December 23, 2014 (the “**Receivership Order**”). A copy of the Receivership Order and the related endorsement of the Court are collectively attached hereto as **Appendix “4”**.
5. The Receivership Order also authorized the Receiver to file assignments in bankruptcy on behalf of the Companies. On December 31, 2014, the Receiver assigned both the Companies into bankruptcy, which assignments became effective on January 2, 2015, and GTL was appointed as the trustee in bankruptcy of each of the Companies (in such capacity, the “**Trustee**”).

6. On January 16, 2015, the Court issued Orders (the “**January 16 Orders**”) approving, among other things, the Interim Receiver’s Report, the Interim Receiver’s activities as described therein, the fees and disbursements of the Interim Receiver and its counsel to the date of the Interim Receiver’s Report and authorizing the payment of certain funds to Canada Revenue Agency (“**CRA**”) in respect of HST collected on the sale of the Auctioned Assets (as defined in the Interim Receiver’s Report). Copies of the January 16 Orders are collectively attached hereto as **Appendix “5”**.
7. The Receiver issued its first report to Court dated February 24, 2015 (the “**First Report**”), in which the Receiver requested, among other things, that the Court issue an Order, among other things, discharging the Interim Receiver, approving the fees and disbursements of the Interim Receiver and the Receiver, establishing the process through which a scheme of distribution of all funds held by the Receiver was to be determined (the “**Distribution Scheme**”), and authorizing and directing the Receiver to distribute all funds held by the Receiver according to the Distribution Scheme. A copy of the First Report, without appendices, is attached hereto as **Appendix “6”**.
8. On March 6, 2015, the Court issued Orders (the “**March 6 Orders**”), among other things, discharging the Interim Receiver, approving the First Report and the activities described therein, approving the fees and disbursements of the Interim Receiver/Receiver and its counsel, establishing the Distribution Scheme and authorizing and directing the Receiver to distribute all funds held by the Receiver according to the Distribution Scheme. Copies of the March 6 Orders and the related endorsement of the Court are collectively attached hereto as **Appendix “7”**.
9. On June 10, 2015, the Court issued an Order (the “**June 10 Order**”) authorizing and directing the Receiver to pay \$130,000 from the DLPC Funds (as defined in the First Report) to CRA in full satisfaction of all CRA claims. A copy of the June 10 Order is attached hereto as **Appendix “8”**.

10. The Receiver issued a Supplement to the First Report dated June 18, 2015 (the **"Supplemental Report"**). A copy of the Supplemental Report, without appendices, is attached hereto as **Appendix "9"**.
11. On June 29, 2015, the Court issued an Order (the **"June 29 Order"**), among other things, approving the Supplemental Report and the activities described therein, approving the fees and disbursements of the Receiver and its counsel, and authorizing and directing the Receiver to distribute the balance of the DLPC Funds and the Remaining Funds (as defined in the First Report). A copy of the June 29 Order and related endorsement of the Court are collectively attached hereto as **Appendix "10"**.

PURPOSE OF THE FINAL REPORT

12. The purpose of this, the Receiver's second and final report to the Court (the **"Final Report"**), is to provide information pertinent to the Receiver's request for an Order, amongst other things:
 - a) approving the Final Report and the conduct and activities of the Receiver described herein;
 - b) authorizing the Receiver to destroy the Books and Records (as defined herein) in the manner described herein;
 - c) authorizing the Receiver to assign its interest in the Missing Funds (as defined herein) to the Applicant;
 - d) approving the Receiver's final statement of receipts and disbursements (the **"Final SRD"**);
 - e) approving the fees and disbursements of the Receiver and its legal counsel as described herein, including an accrual for fees and disbursements to be incurred to the completion of these proceedings; and
 - f) effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction

of the Receiver, discharging GTL as Receiver and releasing GTL from any and all liability that GTL has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of GTL while acting in its capacity as Receiver.

DISCLAIMER

13. This Final 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 Receiver. Accordingly, the reader is cautioned that this Final Report may not be appropriate for any other purpose. The 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 Final Report contrary to the provisions of this paragraph.
14. All currency references in this Final Report are to Canadian dollars unless otherwise noted.

ACTIVITIES OF THE RECEIVER

15. The Receiver's activities to June 18, 2015 were set out in the First Report and the Supplemental Report and were previously approved by the Court.

General

16. The Receiver has prepared and sent all statutory notices in accordance with section 246(2) of the *Bankruptcy and Insolvency Act*.
17. The Receiver allowed the Companies' general liability insurance to lapse, as the Receiver, in consultation with the Applicant, determined that the insurance was no longer necessary.
18. The Receiver periodically responded to inquiries from the Companies' creditors and other stakeholders.

Accounts Receivable

19. The Interim Receiver's Report stated that the Interim Receiver obtained a listing of D&S' accounts receivable from Sandra Ebersole, which identified accounts receivable totalling approximately \$140,000, and that the Interim Receiver sent letters to these D&S customers advising them to pay any amounts owing to the Interim Receiver.
20. The Receiver has completed its attempts to collect these accounts. Details of the amounts collected are provided in the Final SRD.

Missing Equipment

21. The Receiver has continued its efforts to locate the Missing Equipment (as defined in the Interim Receiver's Report).
22. Darrell Ebersole has advised that much of the Missing Equipment was sold long before the commencement of the receivership proceedings and should no longer have been listed on the Companies' financial statements. He also advised that two trailers were taken by former employees shortly before the commencement of the receivership proceedings. The Receiver has contacted the two former employees, who deny taking the trailers or having any knowledge of their location.
23. The Receiver has therefore not been able to locate any of the Missing Equipment.

Unsold Assets

24. The Interim Receiver identified certain Unsold Assets (as defined and described in the Interim Receiver's Report), including a 2012 Jeep Grand Cherokee that was used by Sandra Ebersole (the "**Jeep Cherokee**").
25. The Receiver has sold the Jeep Cherokee.
26. The Receiver was unable to find any parties willing to purchase the remaining Unsold Assets and, therefore, the Receiver has abandoned these assets.

Missing Funds

27. As discussed in the First Report, from funds received by D&S from the sale of D&S' equipment shortly before the application for and issuance of the Interim

Receivership Order, \$205,573 was paid to Darrell Ebersole (the “**Missing Funds**”). Darrel Ebersole has advised that he was undergoing medical treatment at the time of the sale of D&S’ equipment and therefore arranged for the Missing Funds to be transferred to two employees for safe keeping to be returned to Mr. Ebersole at a later date. These are the same two employees that Mr. Ebersole alleges took the two trailers included in the Missing Equipment.

28. Darrel Ebersole further advises that when he requested the two employees return the Missing Funds so that he could provide these funds to the Receiver, the two employees refused to return the funds.
29. The Receiver has spoken with the two employees, who deny receiving any funds from Mr. Ebersole.
30. At the Receiver’s request, Darrel Ebersole asked his bank, Royal Bank of Canada (“**RBC**”), to investigate and provide details of the debit transaction from Mr. Ebersole’s account. The details subsequently provided by RBC indicate that the Missing Funds were withdrawn from Darrel Ebersole’s bank account and credited to another account at RBC. While RBC is unwilling to provide details of the recipient account without an order of the Court, the description appearing next to the recipient account for the transaction reflects the names of the two employees.
31. The Receiver therefore wrote to the two employees requesting that they sign authorizations that would allow RBC to provide the Receiver with details of the account that received the Missing Funds. The two employees did not respond to the letters sent by the Receiver. The Receiver thereafter called each employee several times and was able to reach one employee who stated that he would seek legal advice prior to signing the authorization as requested.
32. The Receiver has been unable to obtain any further responses from the two employees.
33. The Applicant has asked that the Receiver cease its efforts to collect the Missing Funds and instead seek an Order of the Court authorizing the Receiver to assign its interest in the Missing Funds to the Applicant so the Applicant may seek to recover these funds directly.

34. The Receiver therefore requests that the Court issue an Order authorizing the Receiver to assign its interest in the Missing Funds to the Applicant.
35. The Receiver has completed the administration of the receivership. GTL is therefore seeking to be discharged from its capacity as Receiver.

RECEIPTS AND DISBURSEMENTS

36. The Receiver has prepared its Final SRD, a copy of which is attached as **Appendix "11"**.

Professional Fees

37. The Receiver and its legal counsel have maintained detailed records of their professional time and costs since the Receivership Order was granted.
38. Paragraph 19 of the Receivership Order provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements. In addition, the Receiver and its counsel were granted a first charge on all of the Companies' property as security for such fees and disbursements.
39. The fees of the Receiver and its counsel through May 31, 2015 were previously approved by the Court.
40. The total fees of the Receiver from June 1, 2015 to November 30, 2016 amount to \$21,846.44 together with HST in the amount of \$2,840.04 totalling \$24,686.47. Time spent by the Receiver is also described in the Affidavit of Jacob Wiebe, a Senior Vice-President of Grant Thornton Limited having carriage of this proceeding, sworn December 7, 2016 in support hereof, a copy of which is attached hereto as **Appendix "12"**.
41. The total legal fees incurred by the Receiver for services provided by its counsel, Aird & Berlis LLP ("**A&B**"), from June 1, 2015 to December 6, 2016 amount to \$23,694.81, together with HST in the amount of \$3,059.53, totalling \$26,754.34. The time spent by A&B is more particularly described in the Affidavit of Steven L. Graff sworn December 7, 2016 in support hereof, a copy of which is attached hereto as **Appendix "13"**.

42. Assuming there is no opposition to the relief being requested by the Receiver, the Receiver and A&B estimate that they will incur additional fees in the amounts of \$10,000 and \$10,000, respectively, plus disbursements and HST to complete these receivership proceedings (collectively, the “**Fee Accrual**”). The Fee Accrual is included in the Final SRD.
43. The Receiver is of the view that the fees and disbursements of its counsel are fair and reasonable. The Receiver respectfully requests the approval of the fees and disbursements of the Receiver and those of its counsel, inclusive of the Fee Accrual.

Distributions

44. In accordance with the June 10 Order, the Receiver paid \$130,000 to CRA.
45. In accordance with the June 29 Order, the Receiver paid \$600,000 to Maynards Industries Ltd.
46. The June 29 Order directed the Receiver to make payments to Trisura until such time as the Companies' indebtedness to Trisura is paid in full.
47. Trisura has provided the Receiver with documentation identifying debts owing to it by the Companies in the amount of \$1,397,496.65. The Receiver has made payments to Trisura in the amount of \$888,497.92, which is the full amount of funds available for distribution.
48. Trisura will therefore realize a loss of approximately \$508,998.73 based on costs incurred to date as a result of the Companies' failure to complete contracts with customers. Trisura has advised that it continues to incur losses as a result of the Companies' failure to complete the Niagara Project (as defined in the First Report).
49. The Receiver proposes to assign its interest in the Missing Funds to Trisura. Even if Trisura is successful in collecting the Missing Funds in full, it will still suffer a loss.
50. In accordance with the June 29 Order, the Receiver intends to pay any residual funds that are collected by the Receiver to Trisura until the Companies' secured indebtedness to Trisura is paid in full.

BOOKS AND RECORDS

51. During the course of the receivership, the Receiver has obtained certain books and records of the Companies (the “**Books and Records**”). The Companies have not operated for more two years and there is no need to retain any of the Books and Records.
52. The Receiver therefore proposes to destroy the Books and Records upon the discharge of GTL, in its capacity as the Trustee of the Companies.

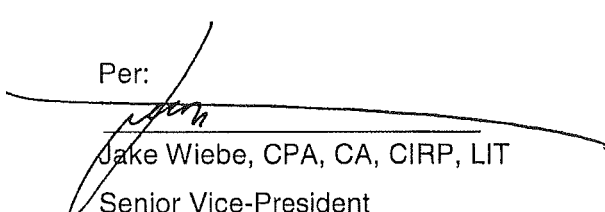
RELIEF REQUESTED

53. Based upon the foregoing, the Receiver respectfully requests that the Court issue an Order for the relief set out in paragraph 12 above.

All of which is respectfully submitted,

GRANT THORNTON LIMITED,
In its capacity as Court-appointed Receiver of
Ebersole Excavating Inc. and D&S Railway Construction Inc.

Per:



Jake Wiebe, CPA, CA, CIRP, LIT
Senior Vice-President

TAB 1



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

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

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

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**

**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 G. Berris and Sarah G. Berris* 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,

25

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.granthornton.ca/lebersole.

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 IIST (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.

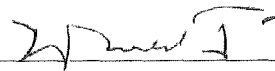
30. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

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.



NOV 23 2014



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

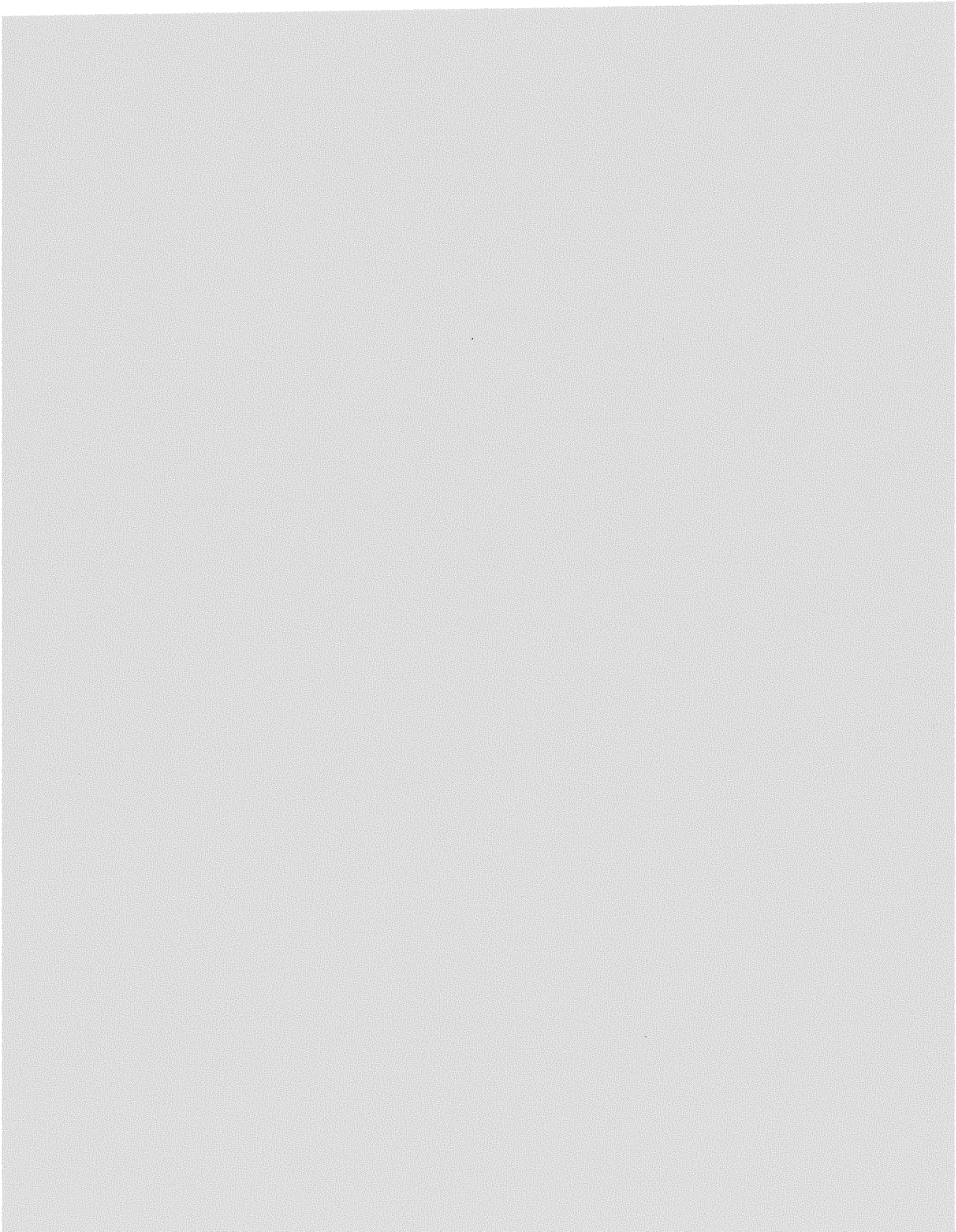
ORDER
(Appointment of Interim Receiver)

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

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LSUC#66314K

Lawyers for the Applicant



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. I am satisfied that the relief sought is appropriate. Order

to do

~~Borden Ladner Gervais LLP~~

The order is with prejudice to any person's rights, including, but not limited 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 J

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

APPLICATION RECORD
(Appointment of Interim Receiver)

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LSUC#66314K

Lawyers for the Applicant

TOR01: 5763106: vi

TAB 2

Court File No.

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

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**

**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.

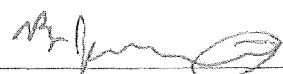
37. On November 12, 2014, BLG obtained Ontario Writ Locator searches on each of the Debtors, Darrell and Sandra. The Ontario Writ Locator searches disclosed that there is a writ of seizure and sale that has been filed in favour of Koppers Inc. as against D&S in the amount of \$32,449.99. Attached hereto 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.
Robert J. J. J. J.

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

TAB 3

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**

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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- Appendix 2 Affidavit of Stuart Detsky sworn November 24, 2014 (without exhibits)
- Appendix 3 Listing of 29 assets included in the Auction Assets are registered to
"Darrell Ebersole o/a Darrell Ebersole Excavating" or "Darrell Ebersole"
- Appendix 4 Listing of Unsold Assets
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- Appendix 6 Details of the D&S bank activity between October 30, 2014 and
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- Appendix 7 Letter from Sandra Ebersole's counsel dated December 9, 2014
- Appendix 8 Letters from Interim Receiver to Bruce Jaeger, Robert Fowler, John
MacDonald and Casey Bruyns
- Appendix 9 Affidavit of Jacob Wiebe sworn December 15, 2014
- Appendix 10 Affidavit of Ian Aversa sworn December 15, 2014
- Appendix 11 Grant Thornton Limited – Consent to act as Receiver

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.

The Equipment Auction

23. Paragraph 28 of the Interim Receivership Order authorized the Interim Receiver to permit Maynards Industries Ltd. ("**Maynards**") to conduct the Auction, as defined in the Interim Receivership Order, on December 4, 2014. The assets to be auctioned included those assets purportedly sold by D&S to Maynards on October 31, 2014 (the "**Auction Assets**").
24. The Interim Receiver permitted Maynards to conduct the Auction.
25. The Interim Receiver and Maynards opened a joint bank account (the "**Joint Account**") in accordance with the Interim Receivership Order into which the proceeds of the sale of the Auction Assets were to be deposited.
26. The Auction was held on December 4, 2014 and the Interim Receiver attended to record the sale price of each lot.
27. Maynards and the Interim Receiver continue to work together to reconcile the amounts deposited to the Joint Account with the results of the Auction in order to determine the buyers' premium that is payable to Maynards in accordance with the Interim Receivership Order and the HST that is collected. The balance of the Auction proceeds will be held by the Interim Receiver and Maynards in the Joint Account pending further order of the Court. The Interim Receiver expects that its reconciliation with Maynards will be completed by December 31, 2014.
28. The Interim Receiver conducted an ownership history search at the Ontario Ministry of Transportation ("**MOT**") to identify equipment and vehicles owned by the Companies. This search revealed that 27 assets included in the Auction Assets are registered to "Darrell Ebersole o/a Darrell Ebersole Excavating" and two additional assets included in the Auction are registered to "Darrell Ebersole".
29. The Interim Receiver continues to review the Companies' records to determine the true owner(s) of these assets. A listing of these 29 assets is attached hereto as **Appendix "3"**.

The Unsold Assets

30. The Interim Receiver has identified the following assets of the Companies at the Premises that were not sold at the Auction (collectively, the "**Unsold Assets**"):

- 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

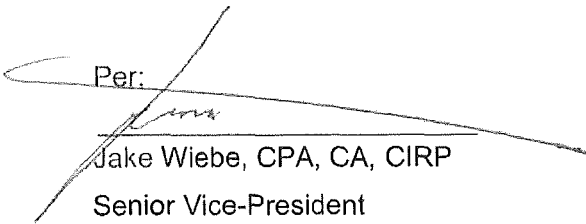
69. Based upon the foregoing, the Interim Receiver respectfully requests that this Court issue an order:

- 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

TAB 4

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

THE HONOURABLE

)

TUESDAY, THE 23rd DAY

)

JUSTICE

Patillo

)

OF DECEMBER, 2014

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**

**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 URL 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.

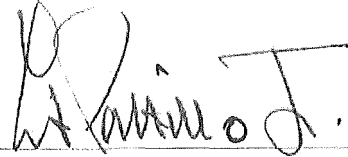
36. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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 BY COURT CLERK AT TORONTO
ON / MOUSÉE
LE / DANGÉREUSE (NO.)



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

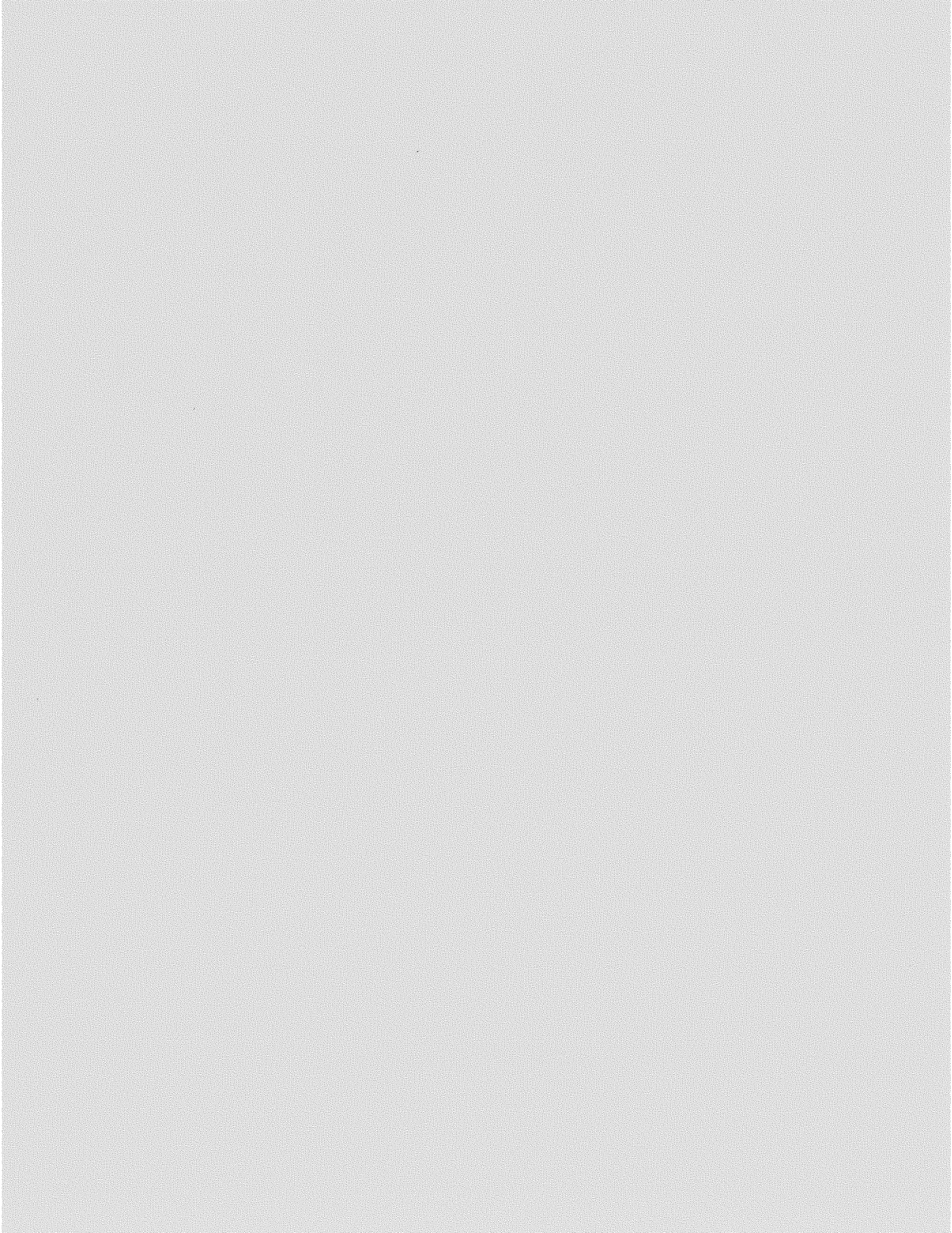
(Appointment of Receiver)

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Toronto, Ontario
M5H 3Y4

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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

Respondents

Dec 23, 2014

R. Jaipargas - for moving party

S. Graft - for interim Receiver

R. Hanna - for Mr. Ebersole

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

The votes 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 votes, a motion date will be set. Counsel for Mr. Ebersole of that 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

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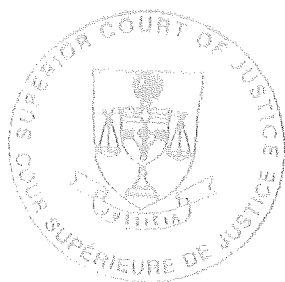
Email: ahodhod@blg.com

LSUC# 66314K

Lawyers for Trisura Guarantee Insurance Company

TOR01-5790341-v1

TAB 5



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

JUSTICE *Rhino*

)
)
)

FRIDAY, THE 16TH

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
JAN 16 2015

JAN 16 2015

NB

TRISURA GUARANTEE INSURANCE COMPANY
Applicant

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

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

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

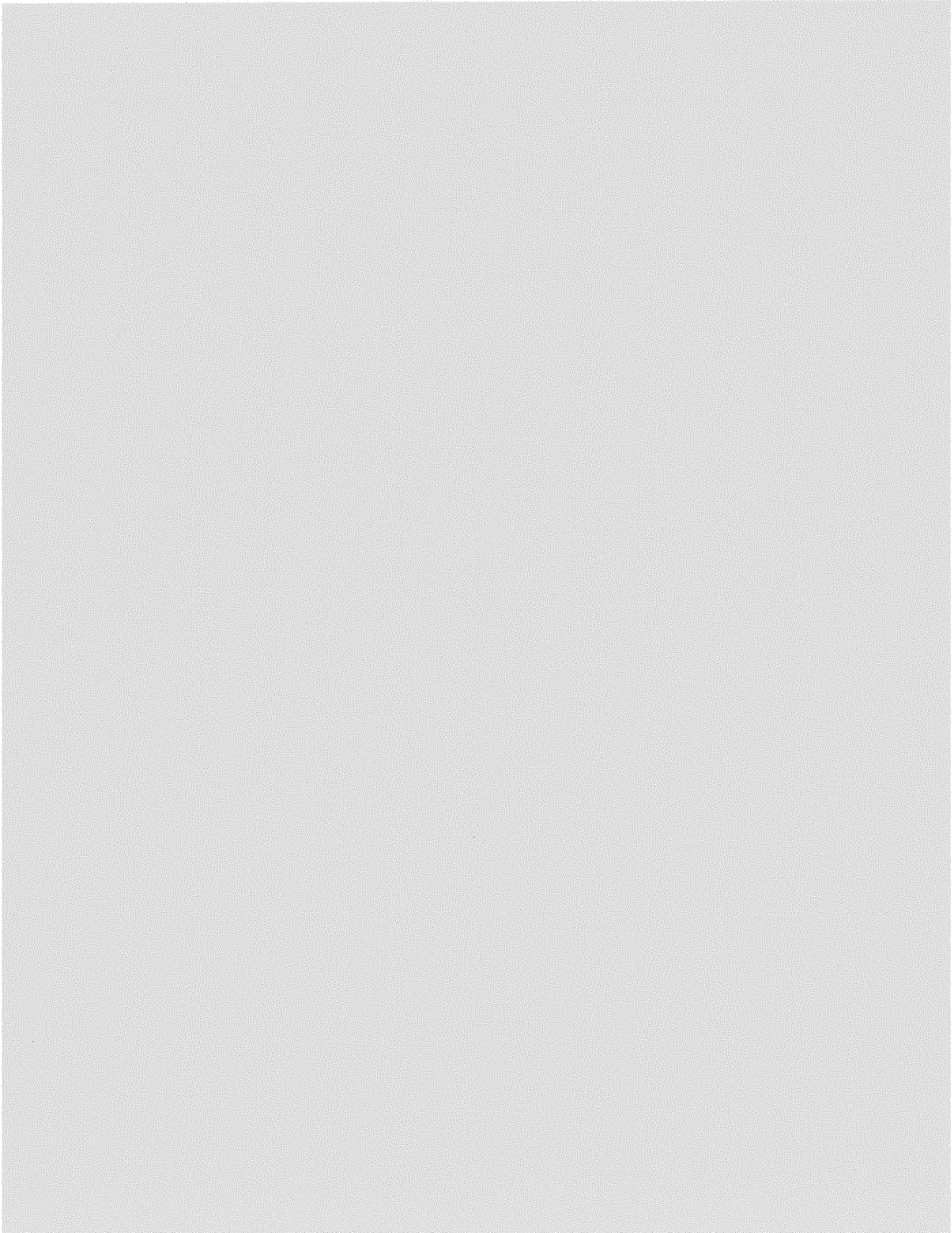
FOGLER, RUBINOFF LLP
Lawyers

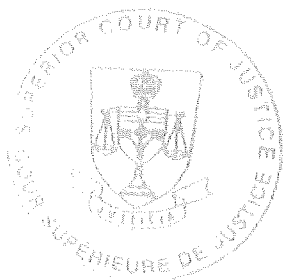
77 King Street West
Suite 3000, P.O. Box 95
Toronto Dominion Centre
Toronto, ON M5K 1G8

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.





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

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

THE HONOURABLE

)

FRIDAY, THE 16th DAY

JUSTICE *Pattillo*

)

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

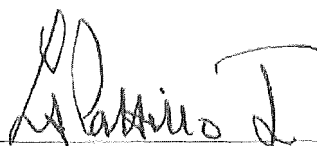
3. THIS COURT ORDERS that the fees and disbursements of the Interim Receiver, as described in the First Report and as set out in the Wiebe Affidavit, be and are hereby approved.

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 19 2015

JAN 19 2015

NB



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)

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Lawyers for Trisura Guarantee Insurance Company

TAB 6

**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**

**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**

FIRST REPORT OF THE RECEIVER

FEBRUARY 25, 2015



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

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- Appendix 2 Affidavit of Stuart Detsky sworn November 24, 2014
- Appendix 3 Interim Receiver's Report to Court dated December 15, 2014
- Appendix 4 Receivership Order and Endorsement dated December 23, 2014
- Appendix 5 Orders dated January 16, 2015
- Appendix 6 Assignment Agreement dated November 4, 2014
- Appendix 7 Letter from the Receiver's counsel to counsel to CGDC dated
January 20, 2015
- Appendix 8 Letter from counsel to CGDC to the Receiver's counsel
dated January 29, 2015
- Appendix 9 Enquiry Response Certificate with a file currency of February 23, 2015 in
respect of Ebersole Excavating Inc. and D&S Railway Construction Inc.
- Appendix 10 Affidavit of Jacob Wiebe sworn February 24, 2015
- Appendix 11 Affidavit of Jacob Wiebe sworn February 24, 2015
- Appendix 12 Affidavit of Steven L. Graff sworn February 23, 2015

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 are collectively attached hereto as **Appendix "1"**.
2. 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, among other things, the application of Trisura Guarantee Insurance Company (the "**Applicant**") to appoint the Interim Receiver. A copy of the Detsky Affidavit is attached hereto as **Appendix "2"**.
3. The Interim Receiver issued a report to Court dated December 15, 2014 (the "**Interim Receiver's Report**") in relation to the Applicant's Notice of Motion that was returnable on December 23, 2014, which, among other things, requested that GTL be appointed as receiver in respect of the Companies under section 243 of the *Bankruptcy and Insolvency Act* ("**BIA**") and section 101 of the *Courts of Justice Act*. A copy of the Interim Receiver's Report is attached hereto as **Appendix "3"**.
4. GTL was appointed as receiver (the "**Receiver**") of the Companies pursuant to an order of the Court dated December 23, 2014 (the "**Receivership Order**"). A copy of the Receivership Order and the related endorsement of the Court are collectively attached hereto as **Appendix "4"**.
5. The Receivership Order also authorized the Receiver to file assignments in bankruptcy on behalf of the Companies. On December 31, 2014, the Receiver assigned both the Companies into bankruptcy, which assignments became effective on January 2, 2015, and GTL was appointed as the Trustee in Bankruptcy in respect of the Companies (the "**Trustee**").

6. The Trustee held the first meeting of creditors for the Companies on January 22, 2015, at which meeting GTL's appointment as Trustee was deemed affirmed. The meetings were subsequently adjourned as there was no quorum.
7. On January 16, 2015, the Court issued orders (the "**January 16 Orders**") approving the Interim Receiver's Report, the Interim Receiver's activities as described therein, the fees and disbursements of the Interim Receiver and its counsel to the date of the Interim Receiver's Report and authorizing the payment of certain funds to Canada Revenue Agency ("**CRA**") in respect of HST collected on the sale of the Auctioned Assets (as defined in the Interim Receiver's Report). Copies of the January 16 Orders are collectively attached hereto as **Appendix "5"**.

PURPOSE OF THE FIRST REPORT

8. The purpose of this, the Receiver's first report to the Court (the "**First Report**"), is to provide information pertinent to the Receiver's request for an order, amongst other things:
 - a) approving the First Report and the conduct and activities of the Interim Receiver and the Receiver as described herein;
 - b) approving the fees and disbursements of the Interim Receiver, the Receiver and their legal counsel as described herein;
 - c) discharging GTL as Interim Receiver and releasing GTL from any and all liability that GTL has or may hereafter have by reason of, or in any way arising from, the acts or omissions of GTL while acting in its capacity as Interim Receiver; and
 - d) approving a timetable for submitting materials and conducting cross-examinations (if necessary) in advance of a future Court hearing (the "**Distribution Hearing**") to determine various parties' entitlement to funds held by the Receiver.

DISCLAIMER

9. 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 Receiver. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. Neither the Interim Receiver nor the Receiver will 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.

10. All currency references in this First Report are to Canadian dollars unless otherwise noted.

ACTIVITIES OF THE INTERIM RECEIVER

11. The Interim Receiver's activities to December 15, 2014 were set out in the Interim Receiver's Report and were previously approved by the Court.
12. Between December 16, 2014 and the appointment of the Receiver on December 23, 2014, the Interim Receiver:
 - a) continued to reconcile with Maynards Industries Ltd. ("**Maynards**") the results of the Auction (as defined in the Interim Receivership Order);
 - b) continued its investigation into the Missing Assets (defined and discussed below);
 - c) continued its efforts to realize upon the Unsold Assets (defined and discussed below);
 - d) corresponded with CRA regarding the trust examinations (discussed below);
 - e) reviewed information and corresponded with counsel regarding the payment to CGDC (defined and discussed below);
 - f) corresponded with customers of D&S regarding outstanding accounts receivable; and
 - g) continued its investigation into the disposition of funds from the Auction.

ACTIVITIES OF THE RECEIVER

General

13. On January 6, 2015, the Receiver sent the statutory Notice and Statement of Receiver pursuant to section 245(1) and (2) of the BIA to all known creditors of the Companies and the Office of the Superintendent of Bankruptcy.
14. The Receiver has and continues to work with CRA, which has completed its source deductions trust examinations for the Companies. CRA determined that D&S owes CRA \$101,859.76 for source deductions, of which \$94,583.64 represents a deemed trust.
15. CRA did not identify any source deductions outstanding from Ebersole.
16. CRA filed a proof of claim as an unsecured creditor for \$82,553.82 in the D&S bankruptcy proceedings in support of its claim for unpaid GST/HST.
17. CRA filed a proof of claim as an unsecured creditor for \$100,246.88 in the Ebersole bankruptcy proceedings in support of its claim for unpaid GST/HST.
18. The Receiver issued 2014 T4 Statements to all former employees of D&S and advised them of their rights under the *Wage Earner Protection Program Act* ("WEPPA").
19. The Receiver issued 2014 T4 Statements to all former employees of Ebersole. Ebersole's employees were terminated more than six months prior to the receivership date and are therefore not eligible for compensation under WEPPA.
20. The Receiver maintained and renewed D&S' insurance policy governing commercial general liability with a \$2 million limit. The Receiver allowed all other policies to lapse or be terminated by the insurers as the Receiver determined they were unnecessary since almost all the Companies' equipment had been sold.
21. The Receiver periodically responded to inquiries from the Companies' former employees and creditors.

CGDC

22. The Interim Receiver's review of the *Personal Property Security Act (Ontario)* (the "**PPSA**") registrations against Ebersole revealed a registration by Curtis Gail Development Corporation ("**CGDC**") dated December 13, 2013. The registration appears to have been a chattel mortgage against a 1999 Western Star truck (the "**CGDC PPSA Registration**").
23. The Interim Receiver contacted Broderick & Partners LLP ("**BP**"), which is listed as the registering agent for the CGDC PPSA Registration, and requested details of the registration and underlying indebtedness.
24. BP responded that the security held by CGDC had been assigned to Jennifer Lamb, who was represented by Dunnet Law Professional Corporation ("**DLPC**"). The Interim Receiver and the Receiver understand that Jennifer Lamb is Sandra Ebersole's daughter, and that DLPC also represents Sandra Ebersole in the present proceedings.
25. On December 1, 2014, the Interim Receiver wrote to DLPC requesting documents relating to the assignment from CGDC to Jennifer Lamb and a copy of the loan agreement between CGDC and Ebersole.
26. As no response had been received from DLPC by December 12, 2014, counsel for the Interim Receiver wrote to BP on that date, requesting confirmation of whether the security reflected by the CGDC PPSA Registration had been assigned, and if it had, requesting a copy of all documentation evidencing the assignment.
27. On December 17, 2014, BP provided a copy of the executed Assignment of Indebtedness and Security dated with effect November 4, 2014 (the "**Assignment Agreement**"). A copy of the Assignment Agreement is attached as **Appendix "6"**. As reflected in the Assignment Agreement, BP advised that the Assignment Agreement related to a mortgage of real property (the "**Real Property Mortgage**") and not to the CGDC PPSA Registration. According to the Assignment Agreement, the real property in question is municipally known as 2194 East Avenue, Fort Erie, Ontario (the "**Premises**"), which Premises was listed in the Assignment Agreement as the residence of both Jennifer Lamb and Darrell and Sandra Ebersole.

28. The Assignment Agreement further indicated that the principal amount of the debt was \$200,000 plus accrued interest and fees, that CGDC had requisitioned for Judgment in the Ontario Superior Court of Justice in the amount of \$214,835.31 plus costs but had not received same, and that \$206,000 was to be paid to counsel for CGDC and applied by CGDC as consideration with respect to the transaction contemplated by the Assignment Agreement.
29. The Receiver's counsel sent a letter to BP on January 20, 2015, a copy of which is attached as **Appendix "7"**. The letter requested confirmation, amongst other things: (i) that \$206,000 was received by BP in consideration for the assignment to Jennifer Lamb of all CGDC's interest in the Real Property Mortgage; (ii) whether such funds were received from Jennifer Lamb or another party, and, if so, to identify such other party; (iii) whether CGDC maintained an interest in either the Real Property Mortgage or the CGDC PPSA Registration; and (iv) that the CGDC PPSA Registration was not assigned to Jennifer Lamb.
30. BP sent a reply letter to the Receiver's counsel on January 29, 2015, a copy of which is attached as **Appendix "8"**. The letter advises, among other things, that: (i) DLPC represented Jennifer Lamb; (ii) the \$206,000 was received from JMA Accounting Professionals ("**JMA**"); (iii) JMA advised that its client, Jennifer Lamb, wished to take an assignment of Real Property Mortgage on the Premises and that such assignment was completed; (iv) CGDC has no further interest in the Premises and was further prepared to discharge the CGDC PPSA Registration.
31. The Receiver understands that the CGDC PPSA Registration against D&S has since been discharged. Copies of enquiry response certificates with a file currency of February 23, 2015 in respect of each of Ebersole and D&S are attached as **Appendix "9"**.
32. From the attached correspondence, it appears that the debt due to CGDC was paid in full by way of a transfer of \$206,000 from JMA on November 4, 2014. The source of these funds appears to be the proceeds that Maynards paid for the purchase of assets from D&S (discussed below). Counsel for Jennifer Lamb has subsequently advised the Receiver that there is no balance owing on the Real Property Mortgage and that Jennifer Lamb would consent to a discharge of the mortgage on the home.

Funds Transferred to Sandra Ebersole

33. The Interim Receiver's Report states that D&S transferred \$601,830 to Sandra Ebersole's personal bank account on November 14, 2014 (the "**Funds Transferred to Sandra**").
34. DLPC advised that the Funds Transferred to Sandra were distributed as follows:
 - a) \$205,573 was paid to Darrell Ebersole (the "**Unaccounted Funds**");
 - b) \$205,573 was transferred to DLPC's trust account and is being held in trust for Sandra Ebersole; and
 - c) \$190,669 was transferred to DLPC's trust account being held in trust for CRA.
35. The Interim Receiver's Report also states that DLPC agreed to transfer the \$396,242 remaining in DLPC's trust account (the "**DLPC Funds**") to the Interim Receiver on the condition that the DLPC 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.
36. On December 16, 2014, the Interim Receiver invested the DLPC Funds in a GIC.
37. The Receiver continues to hold the DLPC Funds in a GIC pending further order of the Court.
38. The Interim Receiver inquired with Darrell Ebersole's counsel on November 28, 2014 as to the disposition of the Unaccounted Funds. On December 3, 2014, counsel for Darrell Ebersole advised that it did not have any unused retainer in any of its relevant accounts.

39. On December 10, 2014, counsel for Darrell Ebersole confirmed to counsel for the Interim Receiver by telephone that the former was not aware of the whereabouts of the Unaccounted Funds. During that telephone call, and as confirmed by letter of that same date, counsel for Darrell Ebersole further agreed to: (i) inquire with its client if it were aware of the whereabouts of the Unaccounted Funds; and (ii) report back to the Interim Receiver as soon as possible. To date, no response has been received from counsel for Darrell Ebersole.

Accounts Receivable

D&S

40. The Interim Receiver's Report states that the Interim Receiver obtained a listing of D&S' accounts receivable from Sandra Ebersole, which identified accounts receivable totalling approximately \$140,000, and that the Interim Receiver sent letters to these D&S customers advising them to pay any amounts owing to the Interim Receiver.
41. The Receiver continues to correspond with D&S' customers to try and collect on these outstanding accounts. The Receiver has collected approximately \$22,000 as of the date of this First Report.

Ebersole

42. Sandra Ebersole initially advised the Interim Receiver that Ebersole did not have any accounts receivable but now acknowledges otherwise. According to the Companies' accounting records, Ebersole's accounts receivable totalled \$1,694,618 as at the date of the Interim Receiver's appointment.
43. Three of the accounts totalling \$1,622,596 appear to relate to a project for the Regional Municipality of Niagara ("**Niagara Region**"). The Receiver understands that the relevant contract was terminated by Niagara Region before the Interim Receivership Order was made. The Receiver further understands that the Niagara Region has called on the performance bond issued by the Applicant and that the Applicant is dealing directly with Niagara Region on this project. It is anticipated that any payments made on this project will be far less than the costs of completion.

44. One additional account in the amount of \$9,500 is due from D&S and is therefore not collectible.
45. The remaining seven accounts total \$62,522 and Sandra Ebersole has explained that these are all not collectible.

The Missing Equipment

46. The Interim Receiver's Report states that the Interim Receiver compared several listings of equipment obtained from the Companies' records and insurance policies against the listing of equipment sold through Maynard's and Bryan's Auction Service. The Receiver has since prepared a listing of equipment that appears to be owned by the Companies but which the Receiver has not been able to locate.
47. On January 9, 2015, the Receiver sent a letter to Sandra Ebersole's counsel with a copy of the listing of missing equipment requesting that Sandra Ebersole advise the Receiver of the location of each piece of equipment or details of how they were liquidated. Sandra Ebersole has since responded that she has no knowledge of the location of this missing equipment as she was not involved in the operational aspect of the Companies' operations.
48. On December 2, 2014, counsel for the Interim Receiver inquired with counsel for Darrell Ebersole as to the disposition of the missing equipment but has not yet received a response.

The Unsold Assets

49. The Interim Receiver identified assets of the Companies at the Premises that were not sold at the Auction (collectively, the "**Unsold Assets**"), which are as follows:
 - a) three lots that were included in the Auction Assets but that did not sell at the Auction (the "**Unsold Auction Assets**"); and
 - 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**”).

50. 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.
51. 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 secured the Shipping Container but has not taken possession of the Shipping Container or its contents pending resolution of the ownership of these assets.
52. The Receiver has not received any evidence from Sandra Ebersole or Darrell Ebersole proving that the Shipping Container or its contents are Darrell Ebersole's personal property.
53. 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.
54. Sandra Ebersole consented to the Interim Receiver taking possession of the Jeep Cherokee. The Jeep Cherokee remains at Manheim Auction, Inc. “**Manheim**”) in storage.
55. The Receiver intends to sell the Jeep Cherokee through Manheim. While the Jeep Cherokee is registered to Darrell Ebersole, all payments were made by the Companies and it is registered to Darrell Ebersole o/a Darrell Ebersole Excavating.

The Maynards Auction

56. The Interim Receivership Order authorized the Interim Receiver to permit Maynards to conduct the Auction, as defined in the Interim Receivership Order, on December 4, 2014. The assets to be auctioned included those assets purportedly sold by D&S to Maynards on October 31, 2014 (the “**Auction Assets**”).
57. The Interim Receiver's Report states that the Interim Receiver and Maynards

opened a joint bank account (the "**Joint Account**") into which the proceeds of the December 4, 2014 sale of Auction Assets were deposited.

58. Subsequent to the sale, the Interim Receiver and Maynards jointly reconciled the amounts deposited to the Joint Account with the results of the sale in order to determine the buyers' premium payable to Maynards in accordance with the Interim Receivership Order.
59. On January 16, 2015, the Receiver paid the buyer's premium in the amount of \$217,908.69 to Maynards in accordance with the Interim Receivership Order.
60. The January 16 Orders directed the Receiver to facilitate Maynards' payment of HST in the amount of \$172,054.18 to CRA from the Joint Account (the "**HST Payment**").
61. On January 23, 2015, the Receiver and Maynards arranged to pay the HST Payment from the Joint Account.
62. The Remaining Funds in the amount of \$1,474,241.88 are being held in the Joint Account pending further order of the Court.

PROPOSED DISTRIBUTION HEARING

63. Maynards and the Applicant each claim entitlement to some or all of the Remaining Funds and the DLPC Funds. The Receiver proposes that the Distribution Hearing be scheduled such that each of Maynards, the Applicant and any other interested party is able to make submissions to the Court in support of their respective positions with respect to the distribution of the Remaining Funds and the DLPC Funds.
64. The Receiver proposes the following schedule:
 - a) the Interim Receiver's Report, the First Report and any future supplements thereto 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 13, 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 March 20, 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 March 27, 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 2, 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 April 14, 2015 (the “**Responding Facta Deadline**”); and
 - g) the Distribution Hearing shall occur on April 29, 2015 or as soon after that date as the Distribution Hearing can be heard (the “**Distribution Hearing Date**”).
65. As of the date hereof, none of Maynards, the Applicant, Sandra Ebersole’s counsel or Darrell Ebersole’s counsel has indicated that it will be opposing the Receiver’s proposed schedule.

ONGOING ACTIVITIES AND PLANNED ACTIONS OF THE RECEIVER

66. There is further work remaining to be completed by the Receiver. If the proposed relief is granted as set out in the Receiver’s notice of motion, the Receiver’s ongoing and future activities will include, but will not be limited to:
- a) collecting accounts receivable;
 - b) holding the Remaining Funds and the DLPC Funds until further order of the Court;

- c) preparing and filing materials for, and participating in the Distribution Hearing, to the extent required;
- d) determining the location of the funds purportedly transferred by Sandra Ebersole to Darrel Ebersole;
- e) realizing upon the Unsold Assets; and
- f) continuing the investigation into the affairs of the Companies, including investigating any preferential transactions or transactions at undervalue and the Missing Assets.

PROFESSIONAL FEES

- 67. The Interim Receiver, the Receiver and their legal counsel have maintained detailed records of their professional time and costs since the Interim Receivership Order and Receivership Order were granted.
- 68. Paragraph 18 of the Interim Receivership Order and paragraph 19 of the Receivership Order provide, respectively, that the Receiver and its counsel shall be paid their reasonable fees and disbursements. In addition, the Interim Receiver and Receiver and their counsel were granted a first charge on all of the Companies' property as security for such fees and disbursements.
- 69. The fees of the Interim Receiver and its counsel through December 12, 2014 were approved by this Court on January 16, 2015.
- 70. The total fees of the Interim Receiver from December 12, 2014 to the date of the appointment of the Receiver on December 23, 2014 amount to \$13,585.95 together with HST in the amount of \$1,766.17, totalling \$15,352.12. 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 and Receiver, sworn February 24, 2015 in support hereof, a copy of which is attached hereto as **Appendix "10"**.
- 71. The total fees of the Receiver from December 23, 2014 to January 31, 2014 amount to \$27,887.25 together with HST in the amount of \$3,625.34, totalling \$31,512.59. Time spent by the Receiver is also described in the Affidavit of Jacob Wiebe, a Senior Vice-President of Grant Thornton Limited having carriage of this proceeding, sworn February 24, 2015 in support hereof, a copy of which is attached hereto as **Appendix "11"**.

72. The total legal fees incurred by the Interim Receiver and the Receiver for services provided by its counsel, Aird & Berlis LLP ("**A&B**"), from December 13, 2014 to January 31, 2015 amount to \$25,099.00, together with disbursements in the amount of \$438.10 and HST in the amount of \$3,315.66, totalling \$28,852.76. The time spent by A&B is more particularly described in the Affidavit of Steven L. Graff sworn February 23, 2015 in support hereof, a copy of which is attached hereto as **Appendix "12"**.
73. The Receiver is of the view that the fees and disbursements of its counsel are fair and reasonable. The Receiver respectfully requests the approval of the fees and disbursements of the Interim Receiver, the Receiver and those of its counsel.

RELIEF REQUESTED

74. Based upon the foregoing, the Receiver respectfully requests that the Court issue an order for the relief set out in paragraph 8 above.

All of which is respectfully submitted,

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

Per:



Daniel Sobel, CPA, CA, CIRP

Vice-President

TAB 7

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

THE HONOURABLE MR.

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FRIDAY, THE 6TH DAY

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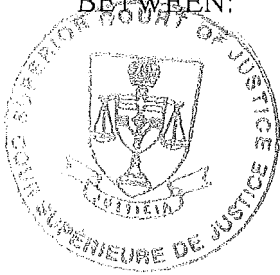
JUSTICE WILTON-SIEGEL

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OF MARCH, 2015

AW-f

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:

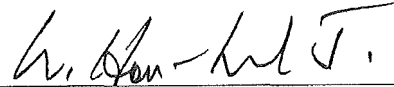
- (a) the First Report of the Interim Receiver dated December 15, 2014 (the “**Interim Receiver’s Report**”), the First Report (together with the Interim Receiver’s Report and any future supplements to the First Report, the “**Reports**”) and the affidavit of Stuart Detsky sworn November 24, 2014 and 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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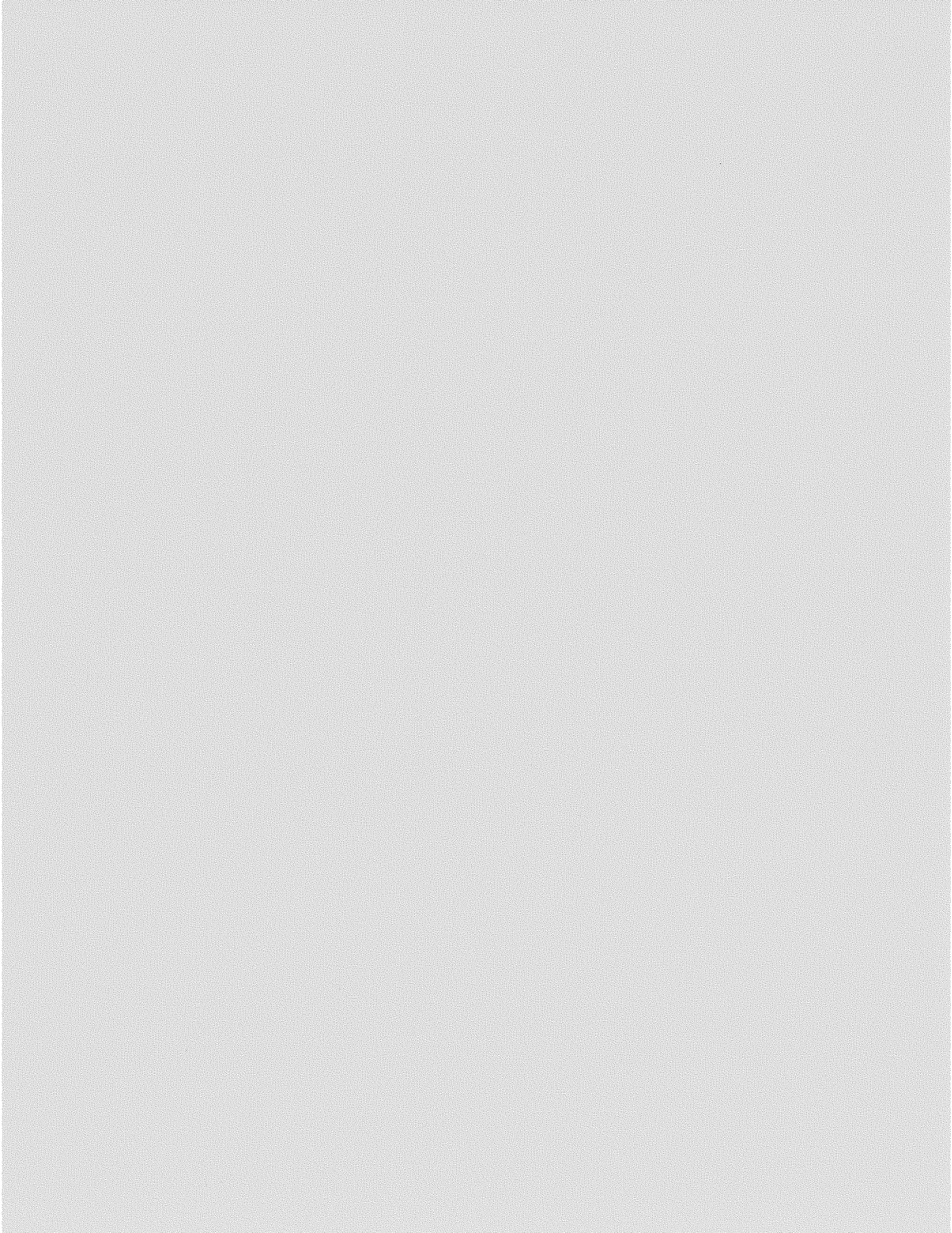
Jeremy Nemers (LSUC # 66410Q)

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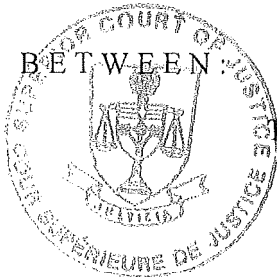
Lawyers for Grant Thornton Limited, in its capacities as the Court-appointed interim receiver and receiver of Ebersole Excavating Inc. and D&S Railway Construction Inc.



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

THE HONOURABLE MR.) FRIDAY, THE 6TH DAY
)
JUSTICE WILTON - SIEGEL) OF MARCH, 2015

Handwritten signature/initials



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

DISCHARGE 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) discharging GTL as Interim Receiver of the assets,

undertakings and properties of the Debtors; and (ii) releasing GTL from any and all liability as Interim Receiver, as set out in paragraph 3 of this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated February 24, 2015 and the appendices thereto, and on hearing the submissions of counsel for the Interim Receiver and 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 Interim Receiver shall be discharged as Interim Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge herein: (a) the Interim Receiver shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the interim receivership herein; and (b) the Interim Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of GTL in its capacity as the Interim Receiver.

3. **THIS COURT ORDERS AND DECLARES** that GTL is hereby released and discharged from any and all liability that GTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of GTL while acting in its capacity as the Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's

part. Without limiting the generality of the foregoing, GTL is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

M. J. J. J.

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

DISCHARGE ORDER

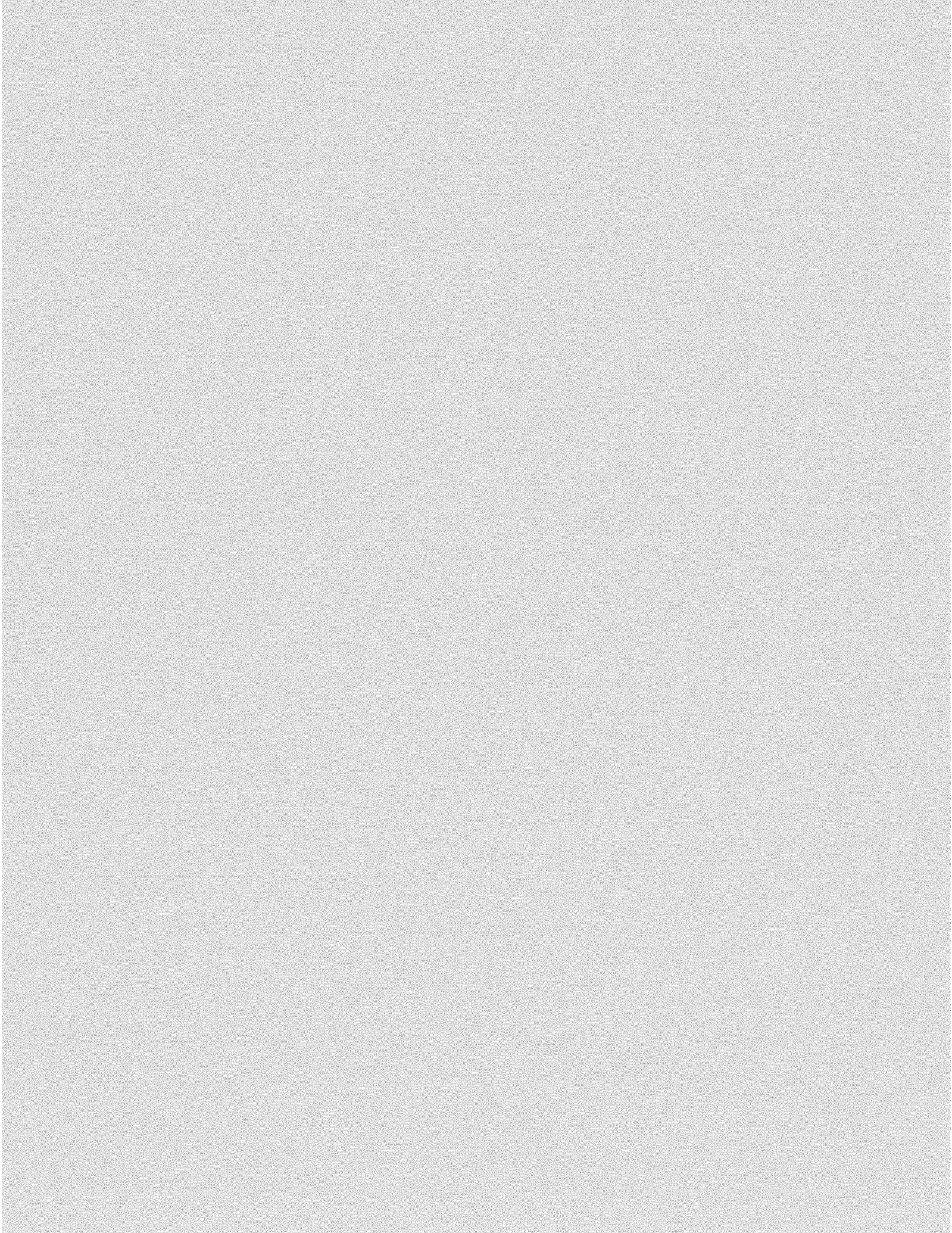
AIRD & BERLIS LLP
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Toronto, ON M5J 2T9

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Jeremy Nemers (LSUC # 66410Q)
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E-mail: jnemers@airdberlis.com

*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

mar 6/15

March 6/15

*I. Aversa for and J. Nemours for Renewer
J.D. Marshall for Trisura.*

*Counsel for the auctioneers (Maynards)
have advised Mr. Aversa that they are not
opposing the relief sought. Counsel for the
Ebersoles have also advised him that they
are not opposing the order. All other
parties have been served and no objections
have been received.*

- Order to go in the form attached
duplicating the Interim Renewer, and*
- (1) duplicating the Renewer's affidavit,*
 - (2) requesting the Renewer's fees including legal
fees and the Disbursement Hearing.*

A. Non-dut.

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
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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.*

TAB 8

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

THE HONOURABLE MADAM

)

WEDNESDAY THE 10th DAY

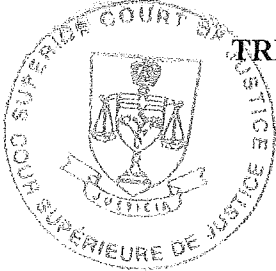
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JUSTICE CONWAY

)

OF JUNE 2015

BETWEEN:



TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

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

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

ORDER

THIS MOTION, made by Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. (“**Ebersole**”) and D&S Railway Construction Inc. (“**D&S**”, and together with Ebersole, the “**Debtors**”), for an order, *inter alia*,

authorizing and directing the Receiver to distribute funds held by the Receiver according to the “**Distribution Scheme**” (as defined in the Order of the Honourable Justice Wilton-Siegel dated March 6, 2015 (the “**Order Establishing the Distribution Hearing**”))), was heard, in part, on May 13, 2015 at 330 University Avenue, Toronto, Ontario.

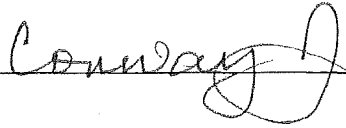
ON READING, amongst other materials presented by counsel, the First Report of the Receiver dated February 24, 2015 and the appendices thereto (including, without limitation, the affidavit of Stuart Detsky sworn November 24, 2014 and the exhibits thereto), the affidavit of Kyle Choe affirmed March 26,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

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

1. **THIS COURT ORDERS** that, as part of the Distribution Scheme, the Receiver be and is hereby authorized and directed to distribute \$130,000 to CRA from the “**DLPC Funds**” (as defined in the Order Establishing the Distribution Hearing) in full satisfaction of any claims by CRA of entitlement to the DLPC Funds and the Remaining Funds (as defined in the Order of Mr. Justice Newbould dated November 26, 2014).

2. **THIS COURT RESERVES** its decision with respect to the balance of the Distribution Scheme, pending, *inter alia*, the continuation of the Distribution Hearing.

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

 _____

JUN 13 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

AIRD & BERLIS LLP
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Jeremy Nemers (LSUC # 66410Q)

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

TAB 9

**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**

**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**

SUPPLEMENT TO THE FIRST REPORT OF THE RECEIVER

JUNE 18, 2015



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

INTRODUCTION AND BACKGROUND

1. Grant Thornton Limited ("**GTL**") was appointed as 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**"). GTL was appointed as receiver (the "**Receiver**") of the Companies pursuant to an order of the Court dated December 23, 2014 (the "**Receivership Order**").
2. This report (the "**Supplemental Report**") supplements the first report filed by the Receiver dated February 24, 2015 (the "**First Report**").
3. All capitalized terms not defined in this Supplemental Report have the meanings assigned to them in the First Report.

PURPOSE OF THE SUPPLEMENTAL REPORT

4. The purpose of this Supplemental Report is to:
 - a) provide the Court with a copy of a letter sent by the Applicant to the Receiver concerning the Applicant's claims against the Companies; and
 - b) provide information in support of the Receiver's request for an order approving the fees and disbursements of the Receiver and its legal counsel as described herein, and approval of the Supplemental Report.

LETTER FROM THE APPLICANT

5. At the hearing to consider entitlement to the Remaining Funds, the Court made enquiries of the Applicant's counsel concerning the amount and nature of the Applicant's claims against the Companies. This issue was also raised on a case conference call that took place after the above noted hearing was adjourned.

6. On June 16, 2015, the Applicant sent a letter to the Receiver. A copy of such letter is attached hereto as **Appendix "1"**, which the Receiver understands is intended to assist the Court with regard to the Applicant's claims against the Companies.

PROFESSIONAL FEES

7. The Receiver and its legal counsel have maintained detailed records of their professional time and costs since the Receivership Order was granted.
8. Paragraph 18 of the Interim Receivership Order and paragraph 19 of the Receivership Order provide, respectively, that the Receiver and its counsel shall be paid their reasonable fees and disbursements. In addition, the Interim Receiver and Receiver and their counsel were granted a first charge on all of the Companies' property as security for such fees and disbursements.
9. The fees of the Interim Receiver and its counsel through December 11, 2014 were approved by this Court on January 16, 2015. The details of the fees of the Interim Receiver/Receiver and its counsel from December 12, 2014 to January 31, 2015 are contained in the First Report and the appendices thereto. In the First Report, the Receiver requested that the Court approve the fees and disbursements to January 31, 2015.
10. The total fees of the Receiver from February 1, 2015 to May 31, 2015 amount to \$36,459.68 together with disbursements of \$364.85 and HST in the amount of \$4,787.19, totalling \$41,611.72. Time spent by the Receiver is also described in the Affidavit of Jacob Wiebe, a Senior Vice-President of Grant Thornton Limited having carriage of this proceeding, sworn June 17, 2015 in support hereof, a copy of which is attached hereto as Appendix "2".
11. The total legal fees incurred by the Interim Receiver and the Receiver for services provided by its counsel, Aird & Berlis LLP ("**A&B**"), from February 1, 2015 to May 31, 2015 amount to \$38,459.00 together with disbursements of \$3,130.75 and HST in the amount of \$5,388.09, totalling \$46,977.84. The time spent by A&B is more particularly described in the Affidavit of Steven L. Graff sworn June 18, 2015 in support hereof, a copy of which is attached hereto as **Appendix "3"**.

12. The Receiver is of the view that the fees and disbursements of its counsel are fair and reasonable. The Receiver respectfully requests the approval of the fees and disbursements of the Receiver and those of its counsel through May 31, 2015.

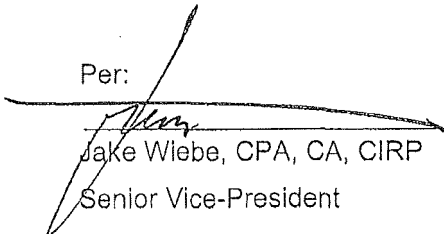
RELIEF REQUESTED

13. Based upon the foregoing, the Receiver respectfully requests that the Court issue an order approving the fees and disbursements of the Receiver and its counsel through May 31, 2015 and that the Court approve this Supplemental Report.

All of which is respectfully submitted,

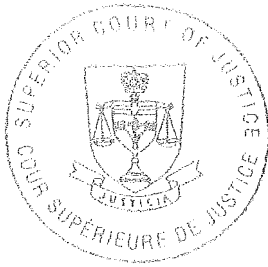
**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
EBERSOLE EXCAVATING INC. AND
D&S RAILWAY CONSTRUCTION INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Jake Wiebe, CPA, CA, CIRP
Senior Vice-President

TAB 10



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

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

THE HONOURABLE MADAM

)

MONDAY, THE 29TH DAY

)

JUSTICE CONWAY

)

OF JUNE, 2015

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

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

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

ORDER

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

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

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

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

1. **THIS COURT ORDERS** that the time for service and filing of the Written Materials is hereby abridged and validated, thereby dispensing with any need for further service thereof.

2. **THIS COURT ORDERS** that the First Report Supplement be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period to and including May 31, 2015, in the amount of \$41,611.72, inclusive of applicable HST, be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of legal counsel to the Receiver, Aird & Berlis LLP, for the period to and including May 31, 2015, in the amount of \$46,977.84, inclusive of applicable HST, be and are hereby approved.

5. **THIS COURT ORDERS** that the “**DLPC Funds**” constitute “**Property**” (as both terms are defined in the Order Establishing the Distribution Hearing).

6. **THIS COURT ORDERS** that the “**Remaining Funds**” (as defined in the Order Establishing the Distribution Hearing), other than the amount required to satisfy paragraph 7(a) of this Order, constitute Property. For greater certainty, the Remaining Funds constitute, and are limited to, the proceeds of the equipment sold by Maynards pursuant to paragraph 28 of the Order of the Honourable Justice Newbould dated November 26, 2014.

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

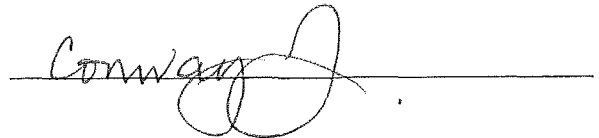
- (a) to Maynards, the first \$600,000 of the Remaining Funds;
- (b) to Trisura, after payment of all fees and disbursements of the Receiver and its counsel, and on account of all the Debtors’ secured indebtedness owing to Trisura, including, without limitation, for principal, interest and costs, as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

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

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

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

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

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

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

JUN 29 2015

Handwritten initials "MB" in a stylized cursive font.

TRISURA GUARANTEE INSURANCE COMPANY

- and -

EBERSOLE EXCAVATING INC., et al.

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
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Ian Aversa (LSUC # 55449N)

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Email: iaversa@airdberlis.com

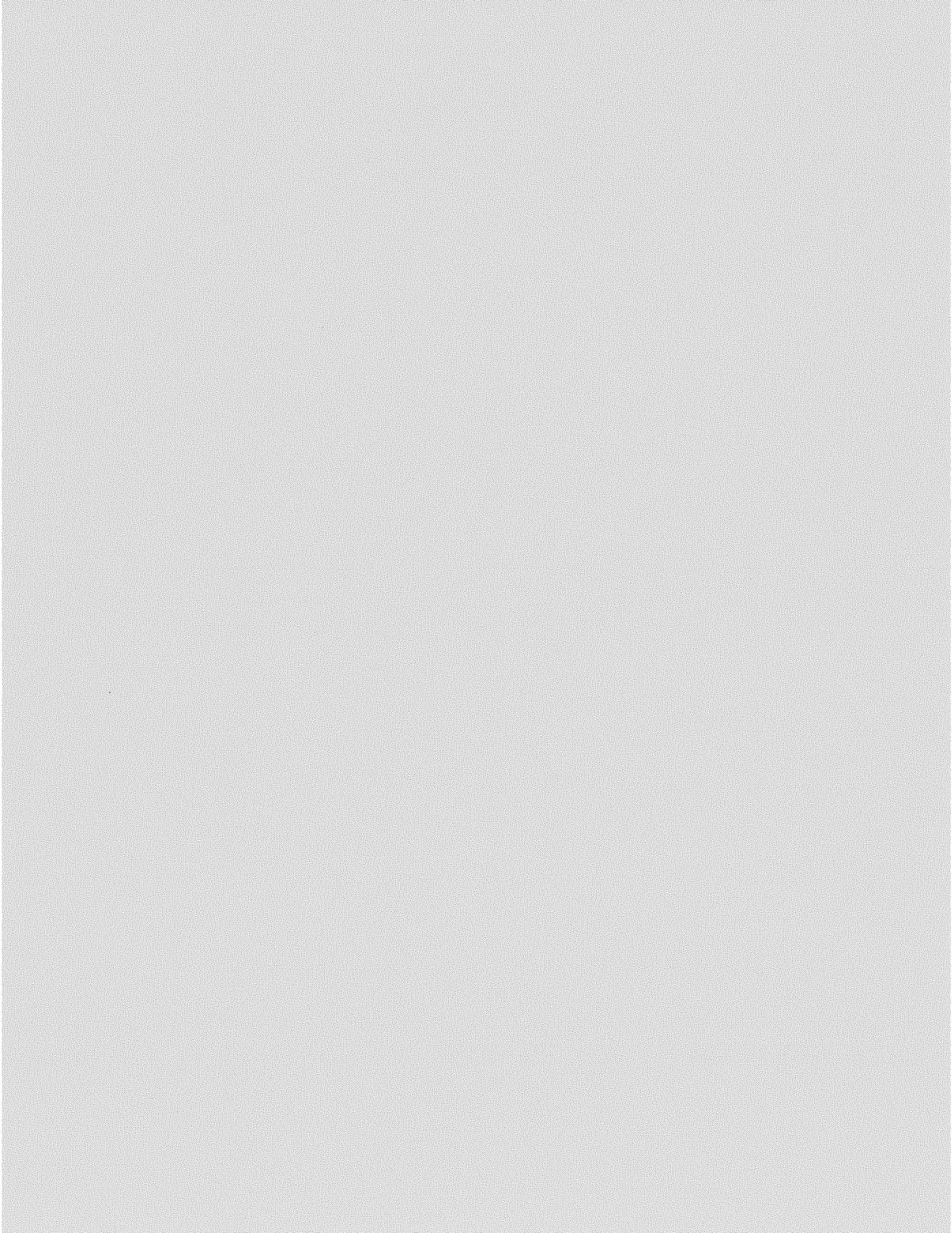
Jeremy Nemers (LSUC # 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: jnemers@airdberlis.com

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.



June 10/15

CV-14-10

On consent, OTG Re distribution
of funds to CRA, as signed by me.

Conway J.

June 29/15

The dispute between Jisra &
Maynards has resolved. OTG
on consent as signed by me.

Conway J.

Re:

(V)

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ing Inc. an

TAB 11

IN THE MATTER OF THE RECEIVERSHIP OF
EBERSOLE EXCAVATING INC. AND D&S RAILWAY CONSTRUCTION INC.
OF THE TOWN OF STEVENSVILLE, IN THE PROVINCE OF ONTARIO
RECEIVER'S FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS
AS AT DECEMBER 7, 2016

	Ebersole	D&S	Total
Receipts			
Cash in bank	\$ 7,498.52	\$ 4,567.46	\$ 12,065.98
Accounts receivable	-	80,950.03	80,950.03
Sale of assets	-	1,469,059.85	1,469,059.85
Sale of Jeep Cherokee	-	32,800.00	32,800.00
HST Collected	-	4,264.00	4,264.00
Interest	208.63	4,480.40	4,689.03
DPLC Funds	-	396,242.00	396,242.00
Transfer from Ebersole		113.84	
Total Receipts	\$ 7,707.15	\$ 1,992,477.58	\$ 2,000,070.89
Disbursements			
Filing fees paid to Official Receiver	\$ 70.00	\$ 70.00	\$ 140.00
Administrative disbursement	275.00	275.00	550.00
HST paid	139.07	1,475.76	1,614.83
Appraisal fees	-	5,500.00	5,500.00
Commission	-	525.73	525.73
Insurance	-	13,091.51	13,091.51
Bank charges	-	15.00	15.00
Storage/Moving	644.80	4,777.00	5,421.80
Computer services	-	800.00	800.00
Payroll services	129.39	-	129.39
Transfer to Trustee account	464.42	20,464.43	20,928.85
Legal Fees previously approved	-	88,618.30	88,618.30
HST on legal fees previously approved	-	11,497.64	11,497.64
Receiver Fees previously approved	-	135,246.44	135,246.44
HST on Receiver Fees previously approved	-	17,582.04	17,582.04
Legal Fees	3,327.30	23,694.81	27,022.11
HST on legal fees	432.55	3,059.53	3,492.08
Receiver Fees	1,867.95	21,846.44	23,714.39
HST on Receiver Fees	242.83	2,840.03	3,082.86
Final Fees		20,000.00	20,000.00
HST on Final Fees	-	2,600.00	2,600.00
Transfer to D&S	113.84		
Total Disbursements	\$ 7,707.15	\$ 373,979.66	\$ 381,572.97
Total Receipts Less Disbursements	\$ -	\$ 1,618,497.92	\$ 1,618,497.92
Payment of Deemed Trust Claim	-	130,000.00	130,000.00
Payment issued to Maynards	-	600,000.00	600,000.00
Payment issued to Trisura	-	888,497.92	888,497.92
	\$ -	\$ 1,618,497.92	\$ 1,618,497.92
Funds remaining for Distribution	\$ -	\$ -	\$ -

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

**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 (including HST) of GTL incurred in its role as Receiver of the Company from June 1, 2015 to November 30, 2016, in the total amount of \$24,686.47, including HST and such is summarized on Exhibit "B" to this my affidavit.
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 "B" 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.

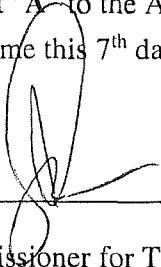
SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario, this)
7th day of December, 2016)
)
)

) Jacob Wiebe
)
)

Commissioner for Taking Affidavits, etc.

Jonathan David Kileger, 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 7th day of December, 2016.



Commissioner for Taking Affidavits, etc.

Jonathan David Krieger, a Commissioner, etc.,
Province of Ontario, for Grant Thornton Limited,
Trustee in Bankruptcy, Expires December 31, 2016.



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
Invoice#LSON-1526

For professional services rendered for the period ended from June 1, 2015 to June 30, 2015.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
June 4, 2015	<u>Rosa Wilford</u> Correspondences with bank, J. Wiebe, update joint account schedule and general banking administration.	0.50 hours
June 8, 2015	<u>Rosa Wilford</u> Reconcile May 2015 bank statements.	0.20 hours

June 9, 2015	<u>Valerie Naccarato</u>	
	General banking administration.	0.20 hours
June 11, 2015	<u>Daniel Sobel</u>	
	Call with BLG.	0.25 hours
June 11, 2015	<u>Rosa Wilford</u>	
	Review and respond to correspondences, provide DTB's, letter, posting entries, preparation of cheques and general banking administration.	1.50 hours
June 12, 2015	<u>Rosa Wilford</u>	
	Review banking, correspondences with D. Sobel, RBC, Letter and general banking administration.	0.50 hours
June 14, 2015	<u>Rosa Wilford</u>	
	Review correspondences, GIC, posting entries and general banking administration; Reconcile May 2015 bank statement.	0.60 hours
June 15, 2015	<u>Nicholas To</u>	
	Post order to website.	0.10 hours
June 15, 2015	<u>Daniel Sobel</u>	
	Review letter from Trisura; Emails with counsel re: same.	0.40 hours
June 16, 2015	<u>Jake Wiebe</u>	
	Review draft report.	0.30 hours
June 16, 2015	<u>Daniel Sobel</u>	
	Review letter from Trisura; Draft supplemental report to court.	1.40 hours
June 16, 2015	<u>Rosa Wilford</u>	
	Review bank reconciliations for May 2015 and initial the Report for the Summary of Estate Balances.	0.20 hours
June 17, 2015	<u>Jake Wiebe</u>	
	Complete report and appendices.	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.

June 17, 2015	<u>Daniel Sobel</u>	
	Finalize report.	0.20 hours
June 17, 2015	<u>Rosa Wilford</u>	
	Review bank reconciliations for May 2015 and initial the Report for the Summary of Estate Balances.	0.10 hours
June 18, 2015	<u>Nicholas To</u>	
	Post Supplement to the First Report of the Receiver to website, email D. Sobel on same; Review network files.	0.10 hours
June 18, 2015	<u>Virginia Moritz</u>	
	Prepare letters, spreadsheets and reconciliation of termination pay sent and send Service Canada and CRA copies of WEPP administration finalization advising for no - super priority owed; internal discussion with N. To on same.	1.20 hours
June 24, 2015	<u>Jake Wiebe</u>	
	Review email from Trisura counsel; Review draft order from counsel; Conference call with counsel and Trisura counsel.	0.60 hours
June 24, 2015	<u>Daniel Sobel</u>	
	Review draft order, prepare for and attend call with counsel re: settlement.	0.50 hours
June 26, 2015	<u>Jake Wiebe</u>	
	Review draft Ebersole order; Discussion with D. Sobel re: same.	0.30 hours
June 26, 2015	<u>Daniel Sobel</u>	
	Review draft orders, call with BLG and Trisura, review supporting schedules re: Trisura's claim.	0.20 hours
June 29, 2015	<u>Rosa Wilford</u>	
	Review banking and follow instructions, correspondences, transfer letters 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.

June 30, 2015

Rosa Wilford

- Review banking, correspondences with Bank for Joint and Trustee accounts, print screens, posting interest, transfers and entries, preparation of cheques, letters and general banking administration. 3.20 hours

Time Charges and Expenses

J. Wiebe, Sr. Vice President	1.60 hours @	\$ 550.00 per hour	\$ 880.00
D. Sobel, Vice President	2.95 hours @	\$ 390.00 per hour	\$ 1,150.50
N. To, Manager	0.20 hours @	\$ 270.00 per hour	\$ 54.00
R. Wilford, Manager	8.30 hours @	\$ 225.00 per hour	\$ 1,867.50
V. Naccarato, Analyst	0.20 hours @	\$ 120.00 per hour	\$ 24.00
V. Moritz, Analyst	1.20 hours @	\$ 80.00 per hour	\$ 96.00
	<u>14.45</u>		<u>\$ 4,072.00</u>
Technology and Administrative Fee (5%)			<u>\$ 203.60</u>
			<u>\$ 4,275.60</u>

Disbursements (Travel)

Courier	\$ 17.86
	<u>\$ 17.86</u>
Subtotal of Time and Disbursements	\$ 4,293.46
HST	\$ 558.15
Total Invoice Due	<u>\$ 4,851.61</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.



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
Invoice#LSO-1590

For professional services rendered for the period ended from July 1, 2015 to July 31, 2015.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
July 3, 2015	<u>Jake Wiebe</u> Call with Trisura re: cost claim; prepare distribution to Trisura.	0.80 hours

July 3, 2015	<u>Valerie Naccarato</u>	Preparation of cheques, RBC letter, wire transfer, correspondences, confirmation, posting entries and general banking administration.	0.60 hours
July 6, 2015	<u>Rosa Wilford</u>	Correspondences with bank, review print screens, letter, transfer and close joint bank account.	0.50 hours
July 7, 2015	<u>Nicholas To</u>	Review G/L and bank statements, update and reconcile R&D, discussions with R. Wilford and J. Wiebe on same, email draft to J. Wiebe.	2.00 hours
July 7, 2015	<u>Rosa Wilford</u>	Correspondences with Bank, Team, update schedules, bank reconciliation for Joint account and general banking administration.	1.00 hours
July 8, 2015	<u>Rosa Wilford</u>	Reconcile June 2015 bank statements.	0.30 hours
July 8, 2015	<u>Valerie Naccarato</u>	General banking administration.	0.10 hours
July 9, 2015	<u>Rosa Wilford</u>	Preparation of cheque and general banking administration.	0.20 hours
July 15, 2015	<u>Rosa Wilford</u>	Review bank reconciliations for June 2015 and initial the Report for the Summary of Estate Balances.	0.10 hours
July 17, 2015	<u>Jake Wiebe</u>	Prepare response to Trisura counsel with estimated final distribution.	0.20 hours
July 20, 2015	<u>Rosa Wilford</u>	Preparation of cheque and general banking administration.	0.20 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.

Time Charges and Expenses

J. Wiebe, Sr. Vice President	1.00 hours @	\$ 550.00 per hour	\$ 550.00
N. To, Manager	2.00 hours @	\$ 270.00 per hour	\$ 540.00
R. Wilford, Manager	2.30 hours @	\$ 225.00 per hour	\$ 517.50
V. Naccarato, Analyst	0.70 hours @	\$ 120.00 per hour	\$ 84.00
	6.00		\$ 1,691.50
Technology and Administrative Fee (5%)			\$ 84.58
			\$ 1,776.08
HST			\$ 230.89
Total Invoice Due			\$ 2,006.97

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.



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
Invoice#LSON-1701

For professional services rendered for the period ended from August 1, 2015 to September 30, 2015.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
August 6, 2015	<u>Nicolas To</u> Review invoice and issue cheque requisition to pay same.	0.10 hours
August 7, 2015	<u>Rosa Wilford</u> Preparation of cheque and general banking administration.	0.20 hours

August 10, 2015	<u>Valerie Naccarato</u>	
	General banking administration.	0.20 hours
August 11, 2015	<u>Rosa Wilford</u>	
	Review and reconcile August 2015 bank statements.	0.10 hours
August 15, 2015	<u>Rosa Wilford</u>	
	Review bank reconciliations for August 2015 and initial the Report for the Summary of Estate Balances.	0.20 hours
August 17, 2015	<u>Rosa Wilford</u>	
	Review account, correspondence with Bank, change of address notification and general banking administration.	0.10 hours
August 18, 2015	<u>Rosa Wilford</u>	
	Review bank reconciliations for July 2015, GIC schedule and initial the Report for the Summary of Estate Balances.	0.30 hours
August 19, 2015	<u>Rosa Wilford</u>	
	Preparation of cheque and general banking administration.	0.20 hours
September 1, 2015	<u>Jan Oros</u>	
	Prepare R&D as of June 30, 2015 and prepare 246(2) notice.	1.00 hours
September 8, 2015	<u>Jake Wiebe</u>	
	Finalize and sign 246(2) notices.	0.60 hours
September 8, 2015	<u>Valerie Naccarato</u>	
	General banking administration.	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.

Time Charges and Expenses

J. Wiebe, Sr. Vice President	0.60 hours @	\$ 550.00 per hour	\$ 330.00
N. To, Manager	0.10 hours @	\$ 270.00 per hour	\$ 27.00
J. Oros, Manager	1.00 hours @	\$ 270.00 per hour	\$ 270.00
R. Wilford, Manager	1.10 hours @	\$ 225.00 per hour	\$ 247.50
V. Naccarato, Analyst	0.30 hours @	\$ 120.00 per hour	\$ 36.00
	<u>3.10</u>		<u>\$ 910.50</u>
Technology and Administrative Fee (5%)			<u>\$ 45.53</u>
			<u>\$ 956.03</u>
Disbursements (Courier)			<u>\$ 34.35</u>
			<u>\$ 990.38</u>
HST			<u>\$ 128.75</u>
Total Invoice Due			<u><u>\$ 1,119.13</u></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.



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
Invoice#LSON-1812

For professional services rendered for the period ended from October 1, 2015 to November 30, 2015.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
October 13, 2015	<u>Valerie Naccarato</u> Prepared September 2015 bank reconciliation.	0.20 hours
October 16, 2015	<u>Rosa Wilford</u> Disbursements and general banking administration.	0.25 hours

October 20, 2015	<u>Rosa Wilford</u>	Review, approve September 2015 estate balances, and GIC term deposits.	0.30 hours
November 10, 2015	<u>Valerie Naccarato</u>	Prepared October 2015 bank reconciliation.	0.20 hours
November 13, 2015	<u>Jake Wiebe</u>	Review correspondence from counsel for principal; Email instruction to Receiver's counsel re: same.	0.40 hours
November 13, 2015	<u>Rosa Wilford</u>	Review, approve October 2015 estate balances.	0.20 hours
November 17, 2015	<u>Jake Wiebe</u>	Review counsel draft letter to employees re: funds held for Darrell Ebersole and provide comments.	0.40 hours
November 17, 2015	<u>Rosa Wilford</u>	Review and reconcile October 2015 term deposits.	0.25 hours
November 23, 2015	<u>Jake Wiebe</u>	Prepare SRD and email correspondence with counsel and Trisura counsel.	0.70 hours
November 24, 2015	<u>Jake Wiebe</u>	Respond to emails from Trisura counsel.	0.20 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.

Time Charges and Expenses

J. Wiebe, Sr. Vice President	1.70 hours @	\$ 550.00 per hour	\$ 935.00
R. Wilford, Manager	1.00 hours @	\$ 225.00 per hour	\$ 225.00
V. Naccarato, Analyst	0.40 hours @	\$ 120.00 per hour	\$ 48.00
	<u>3.10</u>		<u>\$ 1,208.00</u>
Technology and Administrative Fee (5%)			\$ 60.40
			<u>\$ 1,268.40</u>
HST			\$ 164.89
Total Invoice Due			<u><u>\$ 1,433.29</u></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.



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
Invoice#LSON-1982

For professional services rendered for the period ended from December 1, 2015 to February 29, 2016.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
December 7, 2015	<u>Jake Wiebe</u> Calls to employees re: letters from counsel; Call from Blaine re: same.	0.60 hours

December 16, 2015	<u>Rosa Wilford</u>	Follow instructions, disbursements and general banking administration.	0.25 hours
December 16, 2015	<u>Valerie Naccarato</u>	Prepared November bank reconciliation.	0.20 hours
December 23, 2015	<u>Rosa Wilford</u>	Review and reconcile November 2015 bank statements.	0.10 hours
January 7, 2016	<u>Valerie Naccarato</u>	Prepared bank reconciliation.	0.20 hours
January 11, 2016	<u>Rosa Wilford</u>	Review and reconcile November and December 2015 term deposits. Posting entries and general banking administration; Scan and save documents on server.	0.75 hours
January 22, 2016	<u>Rosa Wilford</u>	Review and reconcile December 2015 bank statements.	0.10 hours
January 26, 2016	<u>Jan Oros</u>	Update SRD and 246(2) as of December 31, 2015.	0.25 hours
February 1, 2016	<u>Valerie Naccarato</u>	Preparation of various cheques, post entries and general banking administration.	0.40 hours
February 10, 2016	<u>Jake Wiebe</u>	Review and prepare s. 246(2) notices for Ebersole and D&S.	1.10 hours
February 10, 2016	<u>Rosa Wilford</u>	Review accounts, setup accruals, re allocation of receipts & disbursements, meeting with team, cheque, receipts, posting entries and general banking administration.	1.50 hours
February 16, 2016	<u>Rosa Wilford</u>	Review and approve January 2016 estate balances.	0.20 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.

Time Charges and Expenses

J. Wiebe, Sr. Vice President	1.70 hours @	\$ 550.00 per hour	\$ 935.00
J. Oros, Manager	0.25 hours @	\$ 280.00 per hour	\$ 70.00
R. Wilford, Manager	2.55 hours @	\$ 235.00 per hour	\$ 599.25
	0.35 hours @	\$ 225.00 per hour	\$ 78.75
V. Naccarato, Analyst	0.80 hours @	\$ 120.00 per hour	\$ 96.00
	5.65		\$ 1,779.00
Technology and Administrative Fee (5%)			\$ 88.95
			\$ 1,867.95
HST			\$ 242.83
Total Invoice Due			\$ 2,110.78

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.



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
Invoice#LSON-2250

For professional services rendered for the period ended from March 1, 2016 to June 30, 2016.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
March 3, 2016	<u>Jake Wiebe</u>	
	• Review correspondence from counsel re: Darrell Ebersole.	0.20 hours
March 3, 2016	<u>Rosa Wilford</u>	
	• Follow instructions from team, disbursements, cheque and general banking administration.	0.25 hours

March 7, 2016	<u>Valerie Naccarato</u>	General banking administration.	0.10 hours
March 8, 2016	<u>Rosa Wilford</u>	Follow instructions from team, posting disbursements, cheque and general banking administration.	0.20 hours
March 11, 2016	<u>Rosa Wilford</u>	Review, approve February 2016 estate balances, and GIC term deposits.	0.40 hours
March 29, 2016	<u>Rosa Wilford</u>	Review accounts, correspondences with Bank, team, follow instructions, letter and general banking administration.	0.50 hours
March 30, 2016	<u>Rosa Wilford</u>	Email correspondence with Bank, purchase GIC term deposit, and general banking administration.	0.20 hours
March 31, 2016	<u>Rosa Wilford</u>	Review account, correspondences to and from Bank, update GIC schedule, posting entries, term deposits, reports, emails and general banking administration.	0.40 hours
April 4, 2016	<u>Rosa Wilford</u>	Scan and save documents on server.	0.10 hours
April 7, 2016	<u>Rosa Wilford</u>	Review GIC term deposits, update March 2016 schedule and general banking administration.	0.30 hours
April 8, 2016	<u>Rosa Wilford</u>	Review and approve Bank Reconciliation Report for March 2016.	0.30 hours
April 11, 2016	<u>Rosa Wilford</u>	Review estate and update details.	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.

April 18, 2016	<u>Rosa Wilford</u>	Review estate bank account in preparation of Directive 5R4.	0.10 hours
April 20, 2016	<u>Rosa Wilford</u>	Review account, entry and general banking administration.	0.10 hours
April 27, 2016	<u>Rosa Wilford</u>	Review bank account and respond to email from team, follow instructions, prepare disbursements, cheque and general banking administration.	0.30 hours
April 28, 2016	<u>Rosa Wilford</u>	Scan and save documents on server.	0.10 hours
April 29, 2016	<u>Jake Wiebe</u>	Call with counsel re: response from Darrell.	0.40 hours
May 2, 2016	<u>Jake Wiebe</u>	Call with counsel re: Darrell funds transferred to employees; review draft letter to employees and provide comments.	0.40 hours
May 4, 2016	<u>Rosa Wilford</u>	Review and reconcile April 2016 statement.	0.20 hours
May 12, 2016	<u>Jake Wiebe</u>	Conference call with Bank and counsel re: Darrell Ebersole missing \$200K and strategy for Receiver's discharge.	0.30 hours
May 13, 2016	<u>Rosa Wilford</u>	Review and approve April 2016 estate balances.	0.10 hours
May 18, 2016	<u>Rosa Wilford</u>	Review banking and prepare Directive 5R4 Draft for approval to efile and to submit Annual Banking Report.	0.10 hours
May 25, 2016	<u>Rosa Wilford</u>	Efile Annual Banking Report.	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.

June 7, 2016	<u>Jake Wiebe</u>	Calls to Wayne and Blaine re; letter from counsel dated May 11, 2016.	0.20 hours
June 10, 2016	<u>Jake Wiebe</u>	Follow-up call to Wayne Paquette.	0.10 hours
June 15, 2016	<u>Jake Wiebe</u>	Call to Wayne Paquette re: RBC consent; Email to counsel with summary of efforts to contact Wayne and Blaine.	0.20 hours
June 22, 2016	<u>Rosa Wilford</u>	Reviewed and followed email instructions, prepared disbursements, cheques and general banking administration.	0.40 hours
June 23, 2016	<u>Rosa Wilford</u>	Review, approve May 2016 estate balances, and GIC term deposits.	0.50 hours

Time Charges and Expenses

J. Wiebe, Sr. Vice President	1.80 hours @ \$ 550.00 per hour	\$ 990.00
R. Wilford, Manager	4.75 hours @ \$ 235.00 per hour	\$ 1,116.25
V. Naccarato, Analyst	0.20 hours @ \$ 120.00 per hour	\$ 24.00
	<u>6.75</u>	<u>\$ 2,130.25</u>
Technology and Administrative Fee (5%)		<u>\$ 106.51</u>
		\$ 2,236.76
Disbursements (storage)		<u>\$ 259.60</u>
		\$ 2,236.76
Sub Total of Time and Disbursements		\$ 2,496.36
HST		<u>\$ 324.53</u>
Total Invoice Due		<u><u>\$ 2,820.89</u></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.



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
Invoice#LSON-2536

For professional services rendered for the period ended from July 1, 2016 to September 30, 2016.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
July 14, 2016	<u>Rosa Wilford</u> Review and approve June 2016 estate balances, and GIC term deposits.	0.50 hours

July 22, 2016	<u>Rosa Wilford</u>	Review accounts, correspondences with team, and follow instructions. Disbursements, cheque and general banking administration.	0.30 hours
July 28, 2016	<u>Rosa Wilford</u>	Review accounts, correspondences with team, and follow instructions. Disbursements, cheque and general banking administration.	0.30 hours
August 2, 2016	<u>Jake Wiebe</u>	Review file and prepare email to Trisura summarizing attempts to reach Wayne and Blaine re: transfer from Darrell Ebersole's RBC bank account.	0.30 hours
August 4, 2016	<u>Rosa Wilford</u>	Review and reconcile July 2016 term deposits.	0.30 hours
August 8, 2016	<u>Rosa Wilford</u>	Correspondence with Bank, review print screens, posting entries, disbursements, and Reconciled July 2016 bank statement.	0.40 hours
August 9, 2016	<u>Rosa Wilford</u>	Review and approve July 2016 Estate Balances.	0.20 hours
August 15, 2016	<u>Rosa Wilford</u>	Review, approve August 2016 estate balances, and update GIC term deposits.	0.30 hours
September 22, 2016	<u>Jan Oros</u>	Update 246(2) notice and SRD for June 2016.	0.25 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	0.30	hours @	\$ 550.00	per hour	\$	165.00
J. Oros, Manager	0.25	hours @	\$ 280.00	per hour	\$	70.00
R. Wilford, Manager	2.30	hours @	\$ 235.00	per hour	\$	540.50
	2.85				\$	775.50
Technology and Administrative Fee (5%)					\$	38.78
					\$	814.28
HST					\$	105.86
Total Invoice Due					\$	920.13

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.



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
Invoice#LSON-2773

For professional services rendered for the period ended from October 1, 2016 to November 30, 2016.

<u>Date</u>	<u>Description</u>	<u>Hours</u>
October 7, 2016	<u>Rosa Wilford</u> September bank statements; reconcile multiple accounts.	0.40 hours
October 12, 2016	<u>Rosa Wilford</u> Review multiple banking reports and approve September 2016 estate balances and update GIC term deposits.	0.50 hours

October 14, 2016	<u>Jake Wiebe</u>	Review and sign 246(2) notices for Ebersole and D&S.	0.75 hours
October 21, 2016	<u>Rosa Wilford</u>	Follow instructions; Complete cheque requisition forms, prepare and issue cheque, respond to email and general banking administration.	0.50 hours
October 25, 2016	<u>Rosa Wilford</u>	General banking administration.	0.10 hours
October 31, 2016	<u>Rosa Wilford</u>	Review banking and update GIC term deposits.	0.20 hours
November 7, 2016	<u>Rosa Wilford</u>	Review email instructions from J. Wiebe re GIC's and payments to secured creditors. Draft letters to Bank for partial and full redemption of GIC's, prepare receipts and post entries, prepare and issue cheques, email correspondences to and from Bank and general banking administration.	1.50 hours
November 8, 2016	<u>Rosa Wilford</u>	General banking administration.	0.25 hours
November 10, 2016	<u>Rosa Wilford</u>	Review multiple estate bank accounts and reconcile October 2016 statements.	0.40 hours
November 11, 2016	<u>Rosa Wilford</u>	Review multiple banking reports and approve estate balances and update GIC term deposits.	0.40 hours
November 14, 2016	<u>Jake Wiebe</u>	Drafting final report.	3.40 hours
November 14, 2016	<u>Rosa Wilford</u>	Respond to phone call from Bank; requesting authentication on chq # 100022 payable to Trisura Guarantee Insurance, review account and advise.	0.25 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.

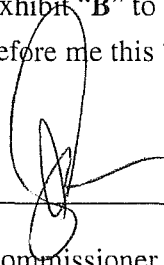
November 15, 2016	<u>Jake Wiebe</u>	
	Draft final report; Preparing final SRD.	5.90 hours
November 16, 2016	<u>Jake Wiebe</u>	
	Completed SRD.	1.80 hours
November 16, 2016	<u>Rosa Wilford</u>	
	Review instructions from J. Wiebe; email correspondences with Bank, provide account statements and banking GL.	0.50 hours

Time Charges and Expenses

J. Wiebe, Sr. Vice President	11.85 hours @	\$ 550.00 per hour	\$ 6,517.50
R. Wilford, Manager	5.00 hours @	\$ 235.00 per hour	\$ 1,175.00
	<u>16.85</u>		<u>\$ 7,692.50</u>
Technology and Administrative Fee (5%)			<u>\$ 384.63</u>
			\$ 8,077.13
Disbursements (storage and retrieval)			<u>\$ 262.40</u>
			\$ 8,339.53
HST			<u>\$ 1,084.14</u>
Total Invoice Due			<u><u>\$ 9,423.67</u></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.

Exhibit "B" to the Affidavit of Jacob Wiebe, sworn
before me this 7th day of December, 2016.

A handwritten signature in black ink, consisting of a large loop followed by a series of smaller, overlapping loops and a final horizontal stroke 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, 2016.**

Ebersole Excavating Inc. and D&S Railway Construction Inc.
Summary of Professional Fees of Grant Thornton Limited
 From June 1, 2015 to November 30, 2016

Date	Professional Fees	Disbursements	Subtotal	HST	Total
June 1-30, 2015	4,275.60	17.86	4,293.46	558.15	4,851.61
July 1-31, 2015	1,776.08	-	1,776.08	230.89	2,006.97
August 1, 2015 to September 30, 2015	956.03	34.35	990.38	128.75	1,119.13
October 1, 2015 to November 30, 2015	1,268.40	-	1,268.40	164.89	1,433.29
December 1, 2015 to February 29, 2016	1,867.95	-	1,867.95	242.83	2,110.78
March 1, 2016 to June 30, 2016	2,236.76	259.60	2,496.36	324.53	2,820.89
July 1, 2016 to September 30, 2016	814.28	-	814.28	105.86	920.13
October 1, 2016 to November 30, 2016	8,077.13	262.40	8,339.53	1,084.14	9,423.67
Total	21,272.23	574.21	21,846.44	2,840.04	24,686.47

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 13

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

B E T W E E N :

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

**AFFIDAVIT OF STEVEN L. GRAFF
(sworn December 7, 2016)**

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 capacity as the Court-appointed 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 July 17, 2015 in the amount of \$9,614.90 in respect of the period from June 1, 2015 to July 6, 2015;

- (b) an account dated February 24, 2016 in the amount of \$3,759.85 in respect of the period from July 17, 2015 to January 21, 2016;
- (c) an account dated April 25, 2016 in the amount of \$3,741.68 in respect of the period from February 23, 2016 to April 20, 2016;
- (d) an account dated July 27, 2016 in the amount of \$4,151.56 in respect of the period from April 26, 2016 to July 20, 2016;
- (e) an account dated November 30, 2016 in the amount of \$4,739.98 in respect of the period from August 3, 2016 to November 23, 2016; and
- (f) an account dated December 7, 2016 in the amount of \$746.37 in respect of the period from December 2, 2016 to December 6, 2016,

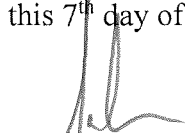
(collectively, the “**Statements of Account**”).

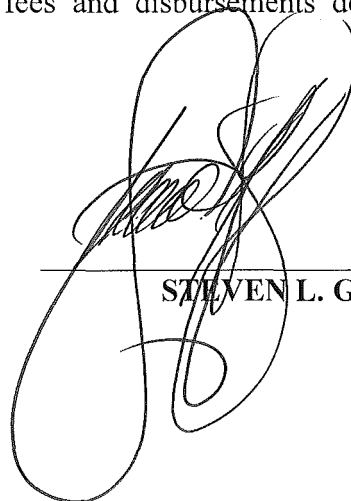
Attached hereto and marked as **Exhibit “A”** to this Affidavit are copies of the Statements of Account. The average hourly rate of Aird & Berlis LLP is \$393.30.

- 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 7th day of December, 2016)

A commissioner, etc.


 IAN AVEY


 STEVEN L. GRAFF

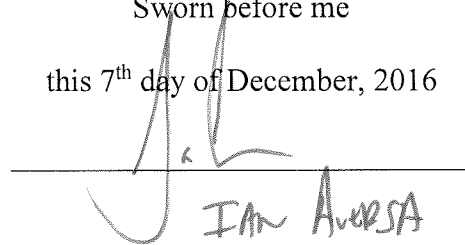
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF STEVEN L. GRAFF

Sworn before me

this 7th day of December, 2016

A handwritten signature in dark ink, appearing to read "Ian Aversa", 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 754, Toronto, ON M5J 2T9 Canada
T 416.863.1500 F 416.863.1515
www.airdberlis.com

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.: 512449

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

July 17, 2015

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 6, 2015

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/06/15	\$425.00	0.10	\$42.50	Emails regarding scheduling of court attendance
IEA	03/06/15	\$425.00	0.30	\$127.50	Emails regarding the scheduling of the hearing; Discussions with client regarding update and next steps
IEA	04/06/15	\$425.00	0.10	\$42.50	Emails to and from counsel regarding scheduling hearing
IEA	05/06/15	\$425.00	0.20	\$85.00	Telephone call with client and J. Nemers re update and next steps
JTN	05/06/15	\$285.00	0.10	\$28.50	Telephone call with client re update
IEA	08/06/15	\$425.00	0.50	\$212.50	Email regarding the scheduling of hearing; Telephone call with the court regarding same; Telephone call with R. Jaipargas regarding same
IEA	09/06/15	\$425.00	1.00	\$425.00	Telephone call and emails with the commercial list office regarding scheduling matters; Emails to and from counsel regarding same; Instruct J. Nemers regarding request form and email to Justice Conway regarding update; Telephone call with R. Jaipargas regarding the hearing

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	09/06/15	\$285.00	0.50	\$142.50	Engaged with reservation of court time for continuation of hearing; Prepare draft correspondence to the Honourable Justice Conway, advising of reservation of court time and enclosing draft Order re CRA settlement
IEA	10/06/15	\$425.00	0.40	\$170.00	Emails to and from Justice Conway regarding the hearing; Instruct J. Nemers regarding CRA order; Emails to and from the service list and client regarding same
IM	10/06/15	\$240.00	0.80	\$192.00	Attend commercial court to pick up judge's order on receivership
JTN	10/06/15	\$285.00	0.20	\$57.00	Instruct student re pick-up and entering of Order re CRA; Instruct P. Hoosain re circulation of same to service list
IEA	15/06/15	\$425.00	0.50	\$212.50	Emails to and from client, R. Jaipargas and J. Nemers regarding the hearing and next steps
IEA	16/06/15	\$425.00	0.50	\$212.50	Emails to and from client and R. Jaipargas; Engaged with reviewing the draft supplemental report and providing comments; Emails to and from clients regarding same
IEA	17/06/15	\$425.00	1.00	\$425.00	Engaged with preparing an affidavit of fees and preparing report for service and filing; Emails to and from clients and J. Nemers regarding same
IEA	18/06/15	\$425.00	1.20	\$510.00	Emails to and from clients and J. Nemers regarding the draft report, the motion materials and the fee affidavits; Engaged with compiling the record and serving it; Emails to and from clients and J. Nemers regarding the hearing and next steps
IEA	19/06/15	\$425.00	0.20	\$85.00	Discussion with J. Nemers regarding the hearing
IEA	22/06/15	\$425.00	0.20	\$85.00	Telephone call with R. Jaipargas regarding the hearing
PW	22/06/15	\$160.00	0.60	\$96.00	Filed Supplementary to First Report for June 29, 2015
SLG	23/06/15	\$725.00	0.10	\$72.50	Review resolution and possible settlement with Maynards

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	24/06/15	\$425.00	1.10	\$467.50	Telephone call and emails to and from R. Jaipargas and client regarding update and next steps; Instruct J. Nemers regarding preparation of a draft order; Engaged with reviewing and revising the draft order; Telephone call with R. Jaipargas regarding same
JTN	24/06/15	\$285.00	1.20	\$342.00	Prepare draft Order re settlement; Prepare draft email to Justice Conway advising of settlement; Discussions with I. Aversa re related tasks; Receipt and review of further settlement terms from R. Jaipargas
IEA	25/06/15	\$425.00	1.50	\$637.50	Telephone calls and emails to and from clients, Trisura's counsel, Maynard's counsel and J. Nemers regarding draft order and next steps; Instruct J. Nemers regarding preparation of draft order; Engaged with reviewing and revising draft order; Several emails and discussions regarding same
JTN	25/06/15	\$285.00	2.80	\$798.00	Engaged with further drafting of and revisions to draft Order; Telephone calls, emails and discussions with working group re same
IEA	26/06/15	\$425.00	1.50	\$637.50	Several emails and discussions with Maynard's counsel, Trisura counsel, client and J. Nemers regarding the form of order and next steps; Engaged with reviewing the revised form of order and providing comments; Instruct J. Nemers regarding changes to the order; Emails to and from Justice Conway regarding the order and the hearing; Instruct J. Nemers regarding correspondence to the service list
JTN	26/06/15	\$285.00	0.40	\$114.00	Receipt and review of emails from R. Jaipargas and B. McPherson consenting to draft Order with minor revision; Engaged with revision; Email draft Order to service list; Telephone call with I. Aversa re same
IEA	29/06/15	\$425.00	2.10	\$892.50	Attend court; Correspondence to the service list regarding the order and endorsement; Engaged with reviewing emails from client regarding support for distributions; Emails to and from client regarding same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	30/06/15	\$425.00	0.50	\$212.50	Emails to and from client and S. Graff regarding distribution and reviewing documentation regarding same
SLG	30/06/15	\$725.00	0.20	\$145.00	Discussion with I. Aversa re court attendance
IEA	02/07/15	\$425.00	0.80	\$340.00	Engaged with reviewing indemnity agreement and invoices from Trisura; Instruct J. Nemers regarding email to client; Engaged with reviewing and revising email; Update S. Graff regarding same
JTN	02/07/15	\$285.00	0.40	\$114.00	Receipt and review of supporting documentation re amounts owing to Trisura; Telephone call with I. Aversa re same; Prepare draft email to client re same
IEA	06/07/15	\$425.00	0.20	\$85.00	Emails to and from client and J. Nemers regarding distribution to Trisura and Maynards and next steps
TOTAL:			21.20	\$8,009.00	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	13.90	\$425.00	\$5,907.50
Jeremy T. Nemers (JTN)	5.60	\$285.00	\$1,596.00
Ian McLeod (IM)	0.80	\$240.00	\$192.00
Patrick Williams (PW)	0.60	\$160.00	\$96.00
Steven L. Graff (SLG)	0.30	\$725.00	\$217.50

OUR FEE	\$8,009.00
HST at 13%	\$1,041.17

DISBURSEMENTS

Subject to HST

Photocopies - Local	\$45.50
Imaging/Scanning	\$24.25
Photocopies	\$146.25
Deliveries/Parss	\$234.31
Binding and Tabs	\$31.75
Taxi	\$17.70

Total Disbursements
HST at 13%

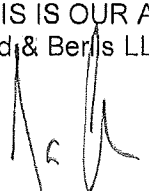
\$499.76
\$64.97

AMOUNT NOW DUE

\$9,614.90

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

per:


Steven L. Graff
E.&O.E.

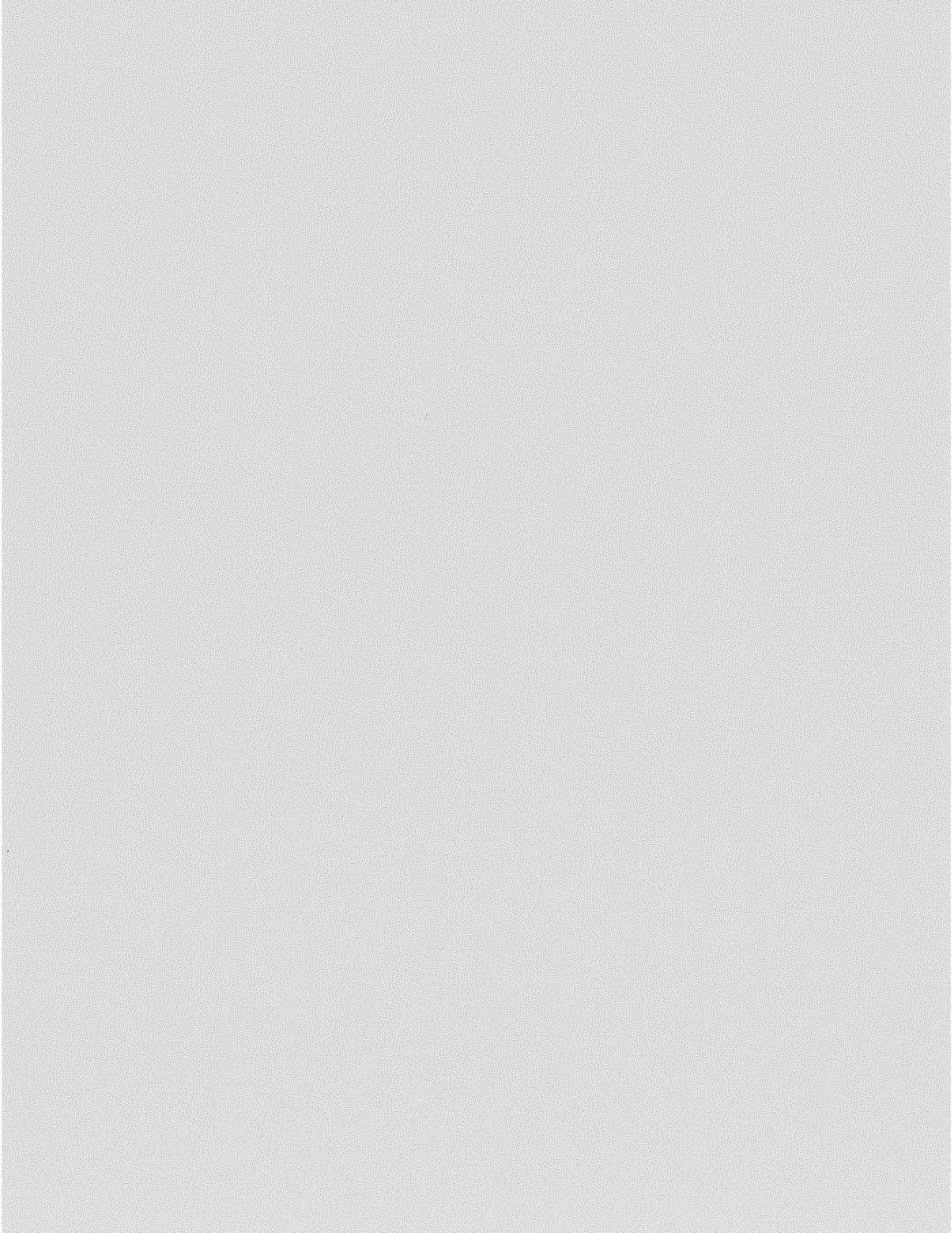
PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% 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.

23421040.1



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

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, ON M5H 3T4

Attention: Mr. Jake Wiebe

Account No.: 527563

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

February 24, 2016

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 21, 2016

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	17/07/15	\$425.00	0.20	\$85.00	Emails to and from client and S. Graff regarding update and next steps
IEA	28/07/15	\$425.00	2.00	\$850.00	Engaged with preparing motion materials regarding discharge
IEA	12/11/15	\$425.00	0.50	\$212.50	Engaged with reviewing correspondence from B. Jaeger; Emails to and from client and R. Jaipargas regarding same; Voicemail to B. Jaeger
JTN	12/11/15	\$285.00	0.30	\$85.50	Receipt and review of materials from B. Jaeger; Engaged with preliminary reconciliation of same with information in file
IEA	13/11/15	\$425.00	0.30	\$127.50	Emails to and from client and J. Nemers regarding correspondence from B. Jaeger and next steps regarding same; Instruct J. Nemers regarding preparation of letters to ex-employees
IEA	17/11/15	\$425.00	0.50	\$212.50	Engaged with reviewing the draft letter to ex-employees and providing comments; Emails to and from client and J. Nemers regarding same; Instruct J. Nemers regarding same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	17/11/15	\$285.00	1.40	\$399.00	Engaged with review of letter from B. Jaeger and drafting and finalization of letters to B. Murawski and W. Paquette; Email to J. Wiebe re same
IEA	18/11/15	\$425.00	0.20	\$85.00	Emails to and from client, R. Jaipargas and J. Nemers regarding letters to ex-employees
JTN	18/11/15	\$285.00	0.10	\$28.50	Arrange for issuance of letters to B. Murawski and W. Paquette
IEA	20/11/15	\$425.00	0.30	\$127.50	Telephone call with R. Jaipargas regarding update and next steps
IEA	23/11/15	\$425.00	0.60	\$255.00	Emails to and from client and J. Nemers regarding update and next steps; Engaged with reviewing SRD; Telephone call and emails to and from R. Jaipargas
IEA	24/11/15	\$425.00	0.80	\$340.00	Telephone call with client regarding update and next steps; Telephone call and emails to and from R. Jaipargas regarding same; Telephone call and emails with R. Jaipargas and client
IEA	30/11/15	\$425.00	0.20	\$85.00	Discussions with J. Nemers regarding next steps
IEA	03/12/15	\$425.00	0.20	\$85.00	Emails to and from client and J. Nemers regarding letters to ex-employees; Discussions with J. Nemers regarding same
JTN	03/12/15	\$285.00	0.10	\$28.50	Email to client re tracking results re Paquette and Murawski letters
IEA	07/12/15	\$425.00	0.10	\$42.50	Emails to and from client and J. Nemers
IEA	08/12/15	\$425.00	0.30	\$127.50	Email from client, R. Jaipargas and S. Detsky regarding ex-employees and next steps regarding same; Update J. Nemers regarding same
IEA	12/01/16	\$450.00	0.10	\$45.00	Emails to and from client and J. Nemers regarding update and next step
IEA	21/01/16	\$450.00	0.20	\$90.00	Emails to and from client and J. Nemers regarding update and next steps
TOTAL:			8.40	\$3,311.50	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	6.50	\$426.15	\$2,770.00
Jeremy T. Nemers (JTN)	1.90	\$285.00	\$541.50

OUR FEE	\$3,311.50
HST at 13%	\$430.50

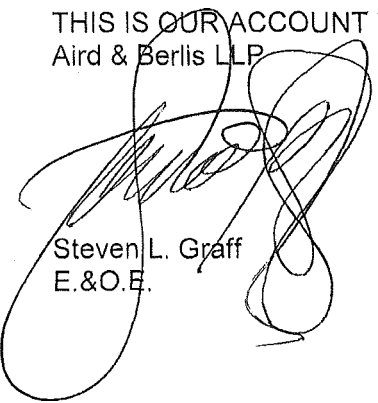
DISBURSEMENTS

Subject to HST

Photocopies - Local	\$5.00
Long Distance Charges	\$10.80
Total Disbursements	\$15.80
HST at 13%	\$2.05

AMOUNT NOW DUE	\$3,759.85
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THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP


Steven L. Graff
E.&O.E.

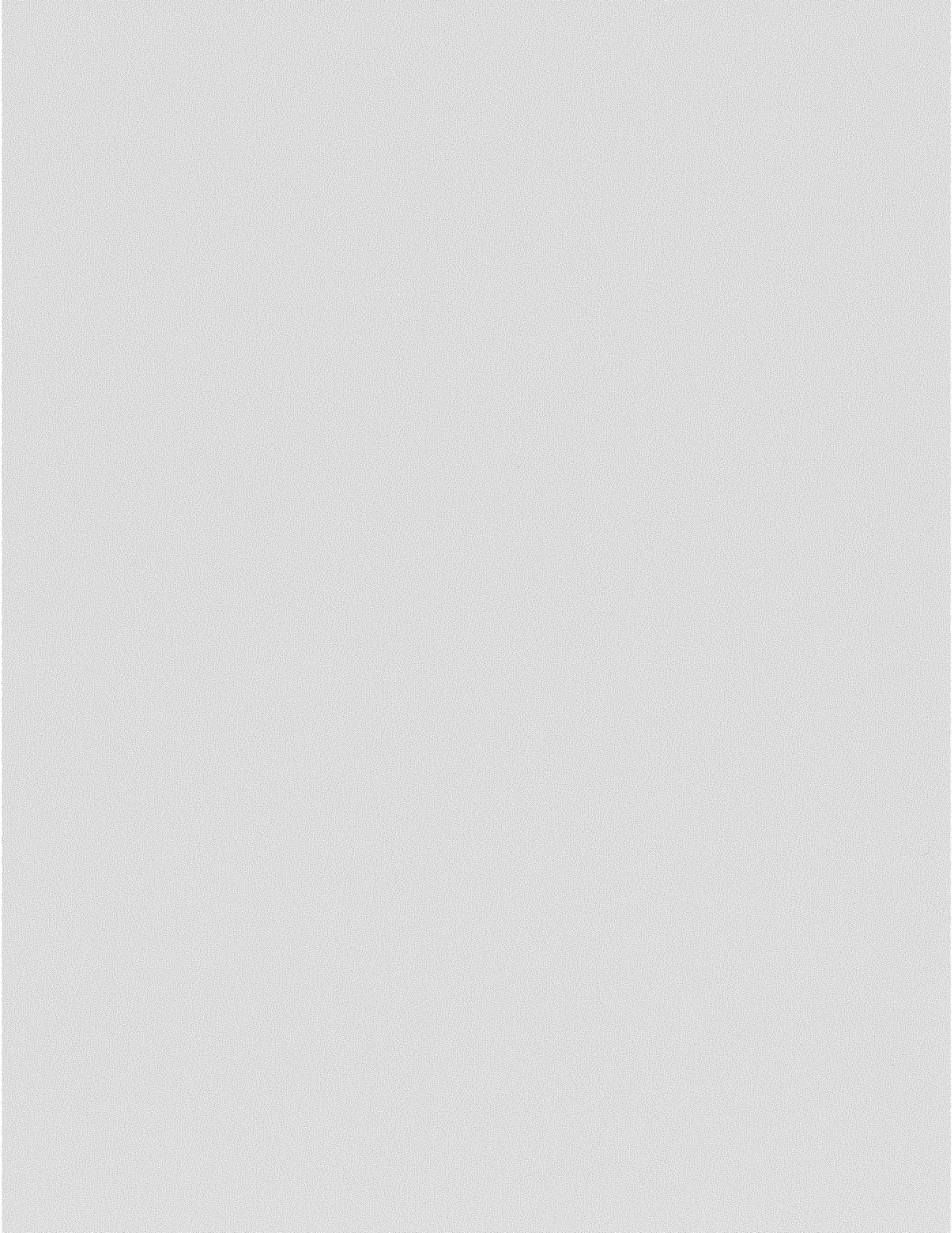
PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 0.8% 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.

25223562.1



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

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, ON M5H 3T4

Attention: Mr. Jake Wiebe

Account No.: 531862

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

April 25, 2016

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended April 20, 2016

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	23/02/16	\$450.00	0.40	\$180.00	Engaged with reviewing correspondence from D. Ebersole's counsel; Emails to and from client, R. Jaipargas and J. Nemers regarding same
IEA	24/02/16	\$450.00	0.30	\$135.00	Emails to and from R. Jaipargas, client and J. Nemers; Voicemails to and from R. Jaipargas
IEA	25/02/16	\$450.00	0.20	\$90.00	Emails to and from R. Jaipargas and J. Nemers
IEA	29/02/16	\$450.00	0.40	\$180.00	Telephone call and emails to and from R. Jaipargas, client and J. Nemers; Discussions and instructions to J. Nemers regarding letter to D. Ebersole's counsel
IEA	02/03/16	\$450.00	0.30	\$135.00	Engaged with reviewing draft letter to J. McNulty and provide comments; Emails to and from client and J. Nemers re same
JTN	02/03/16	\$305.00	1.20	\$366.00	Engaged with drafting of responding letter to J. McNulty; Email same to J. Wiebe
IEA	03/03/16	\$450.00	0.20	\$90.00	Emails to and from client and J. Nemers regarding draft letter to D. Ebersole's counsel; Discussions and instructions to J. Nemers regarding same; Emails to and from R. Jaipargas, client and J. Nemers regarding same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	03/03/16	\$305.00	0.60	\$183.00	Receipt and review of email from J. Wiebe re draft letter to J. McNulty; Engaged with drafting of additional topic to letter; Emails re same
IEA	04/03/16	\$450.00	0.40	\$180.00	Emails to and from R. Jaipargas, client and J. Nemers; Engaged with issuing letter to D. Ebersole's counsel
IEA	10/03/16	\$450.00	0.50	\$225.00	Telephone call and emails to and from R. Jaipargas, client and J. Nemers; Emails to and from D. Dunnett and counsel; Telephone call with D. Dunnett
IEA	04/04/16	\$450.00	0.20	\$90.00	Engaged with reviewing email and documents from R. Jaipargas and emails to and from R. Jaipargas, client and J. Nemers regarding same
IEA	06/04/16	\$450.00	0.10	\$45.00	Telephone call and emails to and from client
IEA	07/04/16	\$450.00	0.20	\$90.00	Emails to and from clients regarding update and next steps
IEA	12/04/16	\$450.00	0.30	\$135.00	Telephone call with client
IEA	13/04/16	\$450.00	0.40	\$180.00	Instructions to J. Nemers regarding preparation of a letter to D. Ebersole's counsel; Engaged with reviewing the letter and providing comments; Emails to and from client and J. Nemers regarding same
JTN	13/04/16	\$305.00	0.70	\$213.50	Discussion with I. Aversa re response from J. McNulty; Engaged with preparation of reply letter re same
IEA	14/04/16	\$450.00	1.10	\$495.00	Emails to and from client and J. Nemers regarding correspondence to Mr. Ebersole's counsel; Discussions and instructions from J. Nemers; Engaged with reviewing response from J. McNulty and preparing a further response; Emails to and from client and J. Nemers regarding same; Emails to and from J. McNulty regarding same
JTN	14/04/16	\$305.00	0.40	\$122.00	Engaged with finalization of letter to J. McNulty and subsequent related correspondence

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	15/04/16	\$450.00	0.30	\$135.00	Engaged with reviewing correspondence from D. Ebersole's counsel; Emails to and from D. Ebersole's counsel, client and J. Nemers regarding same; Emails to and from R. Jaipargas, client and J. Nemers regarding same

TOTAL: 8.20 \$3,269.50

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	5.30	\$450.00	\$2,385.00
Jeremy T. Nemers (JTN)	2.90	\$305.00	\$884.50

OUR FEE \$3,269.50
HST at 13% \$425.04

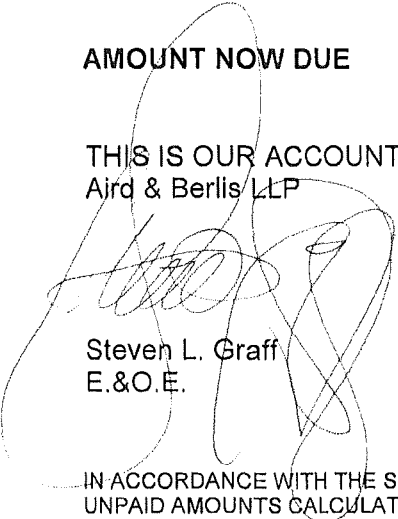
DISBURSEMENTS
Subject to HST

Photocopies - Local	\$14.00
Fax Charges	\$8.00
Long Distance Charges	\$2.72
Imaging/Scanning	\$10.00
Photocopies	\$7.00

Total Disbursements \$41.72
HST at 13% \$5.42

AMOUNT NOW DUE \$3,741.68

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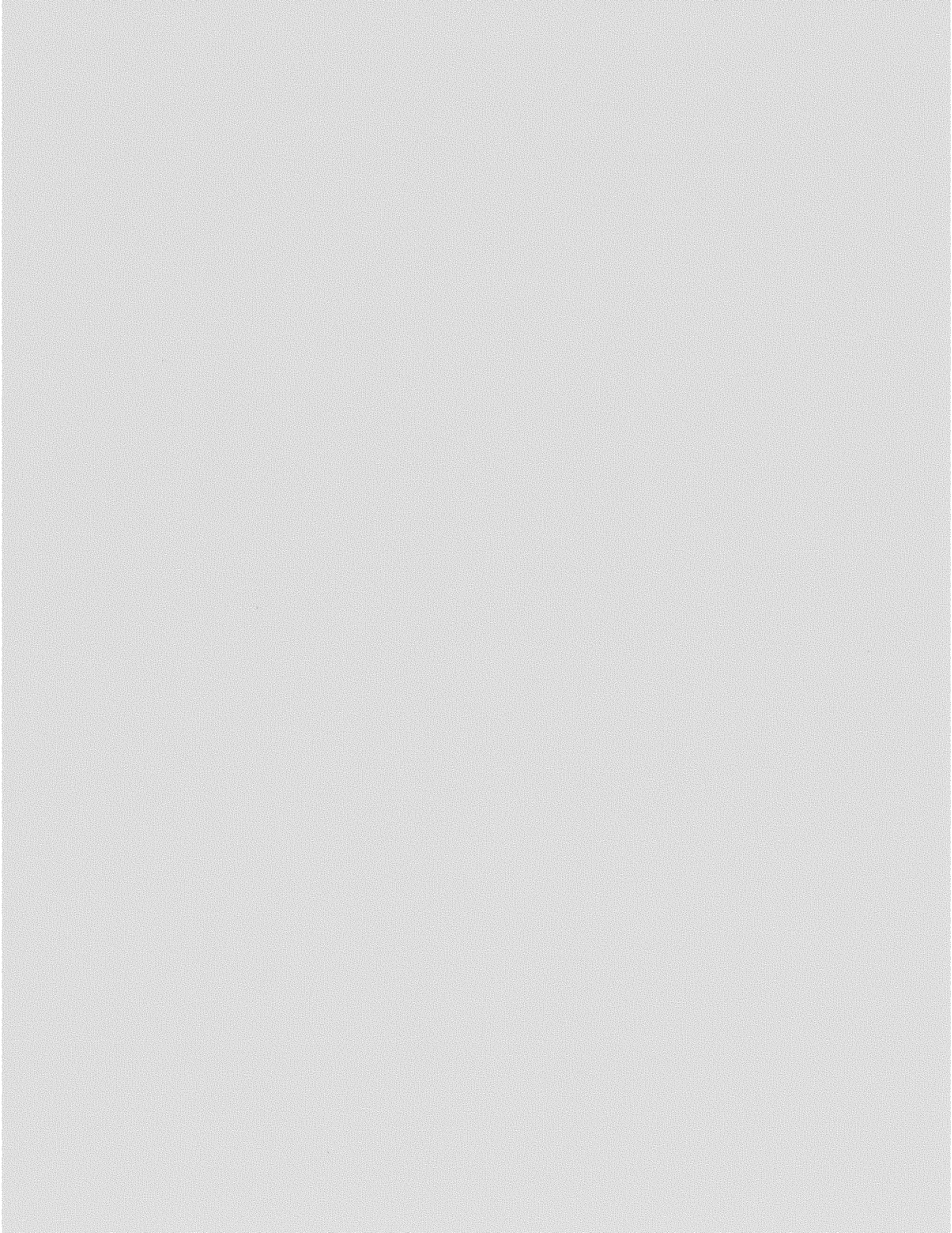

Steven L. Graff
E.&O.E.

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GST / HST Registration # 12184 6539 RT0001

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www.airdberlis.com

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, ON M5H 3T4

Attention: Mr. Jake Wiebe

Account No.: 540046

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

July 27, 2016

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 20, 2016

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	26/04/16	\$450.00	0.20	\$90.00	Engaged with reviewing correspondence from D. Ebersole's counsel; Emails to and from client, J. Nemers and R. Jaipargas regarding same
IEA	27/04/16	\$450.00	0.20	\$90.00	Emails to and from R. Jaipargas, client and J. Nemers
IEA	29/04/16	\$450.00	0.30	\$135.00	Telephone call with client; Discuss and instruct J. Nemers re same
IEA	02/05/16	\$450.00	0.40	\$180.00	Telephone call with client and J. Nemers; Discuss and instruct J. Nemers; Engaged with reviewing draft letter; Emails to and from clients and J. Nemers re same
JTN	02/05/16	\$305.00	1.60	\$488.00	Telephone call and emails with J. Wiebe re strategy re Paquette and Murawski; Prepare draft letter re same
IEA	03/05/16	\$450.00	0.40	\$180.00	Emails to and from client, J. Nemers and R. Jaipargas regarding letter to Mr. Murawski and Mr. Paquette; Discussions and instructions to J. Nemers regarding same; Engaged with reviewing revised letter and emails regarding same
JTN	03/05/16	\$305.00	0.60	\$183.00	Telephone call with R. Jaipargas re strategy re Murawski and Paquette; Engaged with revision to draft letter; Email to working

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					group and discussion with I. Aversa re same
IEA	04/05/16	\$450.00	0.20	\$90.00	Emails to and from client, J. Nemers and R. Jaipargas
IEA	05/05/16	\$450.00	0.20	\$90.00	Telephone call with R. Jaipargas; Emails to and from R. Jaipargas, client and J. Nemers
IEA	08/05/16	\$450.00	0.20	\$90.00	Emails to and from R. Jaipargas, client and J. Nemers
IEA	11/05/16	\$450.00	0.40	\$180.00	Emails to and from D. Ebersole's counsel, R. Jaipargas, client and J. Nemers; Engaged with reviewing SRD from client and email re same; Discussion and instructions to J. Nemers re same
JTN	11/05/16	\$305.00	0.10	\$30.50	Receipt and review of email chain re request from J. McNulty
IEA	12/05/16	\$450.00	0.90	\$405.00	Telephone call and emails to and from client, R. Jaipargas and J. Nemers; Discuss and instructions to J. Nemers re amendments to letter and preparation of a consent; Email reviewing the letter of consent and providing comments; Emails to and from client, R. Jaipargas and J. Nemers re same
JTN	12/05/16	\$305.00	1.20	\$366.00	Attend on conference call with J. Wiebe, R. Jaipargas, S. Detsky, V. Bandiera and I. Aversa; Engaged with revisions to draft letter re redacted account; Prepare draft consent re same; Emails re same; Email to J. McNulty
IEA	13/05/16	\$450.00	0.70	\$315.00	Emails to and from R. Jaipargas, client and J. Nemers; Discussions and instructions to J. Nemers regarding changes to the consent; Emails to and from D. Ebersole's counsel regarding the SRD; Telephone call with client regarding same; Telephone call with J. McNulty regarding same
AG	13/05/16	\$245.00	0.50	\$122.50	Revise consent and prepare follow-up letter to B. Murawski and W. Pacquette
JTN	13/05/16	\$305.00	0.40	\$122.00	Engaged with finalization and issuance of letter and consent re redacted transaction in consultation with A. Gebert

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	18/05/16	\$450.00	0.50	\$225.00	Engaged with brief review of D. Ebersole's statements of defence; Emails to and from client and J. Nemers regarding same
IEA	15/06/16	\$450.00	0.20	\$90.00	Emails to and from Applicant's counsel, client and J. Nemers regarding update and next steps
IEA	20/07/16	\$450.00	0.40	\$180.00	Emails to and from Appellants' counsel, client and J. Nemers re update and next steps; Voice mail messages to and from R. Jaipargas re same

TOTAL:		9.60	\$3,652.00
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Name	Hours	Rate	Value
Ian E. Aversa (IEA)	5.20	\$450.00	\$2,340.00
Jeremy T. Nemers (JTN)	3.90	\$305.00	\$1,189.50
Alyssa Gebert (AG)	0.50	\$245.00	\$122.50

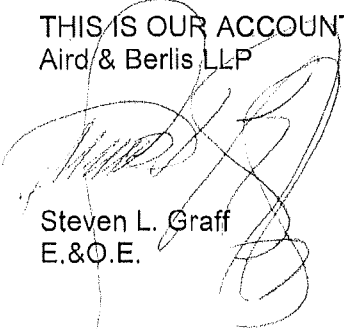
OUR FEE	\$3,652.00
HST at 13%	\$474.76

DISBURSEMENTS
Subject to HST

Postage	\$10.70
Photocopies - Local	\$11.25
Total Disbursements	\$21.95
HST at 13%	\$2.85

AMOUNT NOW DUE	\$4,151.56
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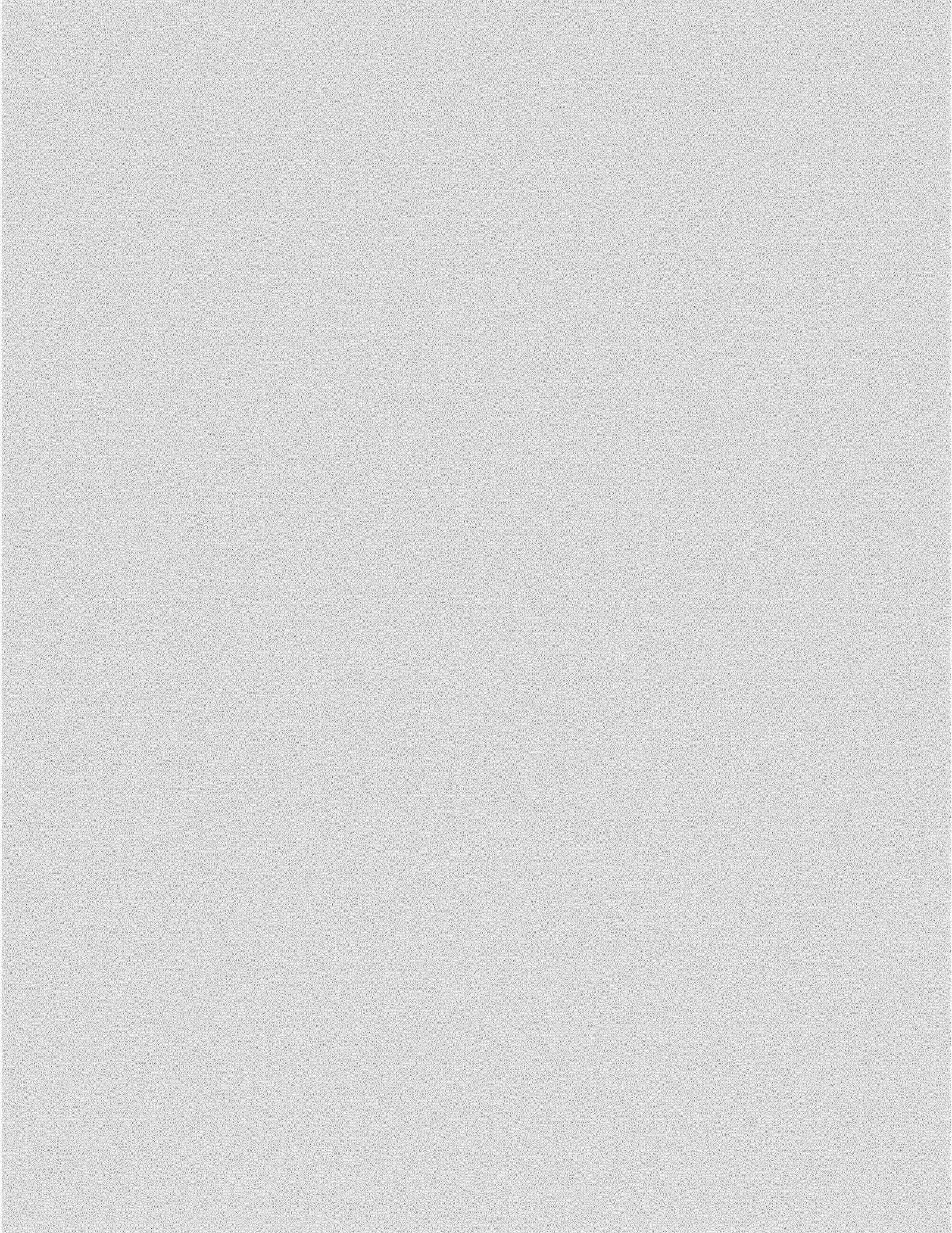
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Aird & Berlis LLP


Steven L. Graff
E.&O.E.

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GST / HST Registration # 12184 6539 RT0001

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IN ACCOUNT WITH:

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Barristers and Solicitors

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www.airdberlis.com

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, ON
Canada M5H 3T4

Attention: Mr. Jake Wiebe

Account No.: 551252

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

November 30, 2016

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended November 23, 2016

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	03/08/16	\$450.00	0.20	\$90.00	Emails to and from client and J. Nemers regarding update and next steps; Discussions with J. Nemers regarding same
IEA	04/08/16	\$450.00	0.20	\$90.00	Emails to and from client and J. Nemers regarding update and next steps; Discussions with J. Nemers regarding same
IEA	15/11/16	\$450.00	3.00	\$1,350.00	Emails to and from client regarding draft report and next steps regarding same; Engaged with reviewing the draft report and providing comments; Discussions and instructions to J. Nemers regarding same; Engaged with preparing motion materials; Discussions with J. Nemers regarding same
IEA	17/11/16	\$450.00	0.20	\$90.00	Engaged with booking court time; Discussions with J. Nemers
IEA	18/11/16	\$450.00	0.40	\$180.00	Emails to and from R. Jaipargas, client and J. Nemers regarding upcoming hearing; Telephone call

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					with court; Discussions and instructions to J. Nemers
IEA	21/11/16	\$450.00	1.00	\$450.00	Discussions and instructions to J. Nemers regarding hearing; Emails to and from court, client and J. Nemers; Engaged with preparing notice of motion and draft orders
JTN	21/11/16	\$305.00	0.10	\$30.50	Engaged with organizing court date for discharge motion
IEA	22/11/16	\$450.00	2.00	\$900.00	Engaged with further revisions to the draft report and further preparation regarding accompanying motion materials; Discussions and instructions to J. Nemers regarding same
JTN	22/11/16	\$305.00	0.30	\$91.50	Engaged with review of notice of motion and draft order
IEA	23/11/16	\$450.00	1.00	\$450.00	Emails to and from client and J. Nemers regarding draft report and draft motion materials; Discussions and instructions to J. Nemers regarding same
JTN	23/11/16	\$305.00	1.00	\$305.00	Engaged with review of and revisions to notice of motion, order and report
TOTAL:			9.40	\$4,027.00	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	8.00	\$450.00	\$3,600.00
Jeremy T. Nemers (JTN)	1.40	\$305.00	\$427.00

OUR FEE \$4,027.00
HST at 13% \$523.51

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application	\$160.00
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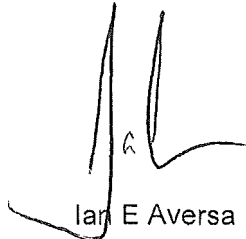
Subject to HST

Long Distance Charges	\$5.08
Photocopies - Local	\$21.00
Total Disbursements	\$26.08
HST at 13%	\$3.39

AMOUNT NOW DUE

\$4,739.98

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

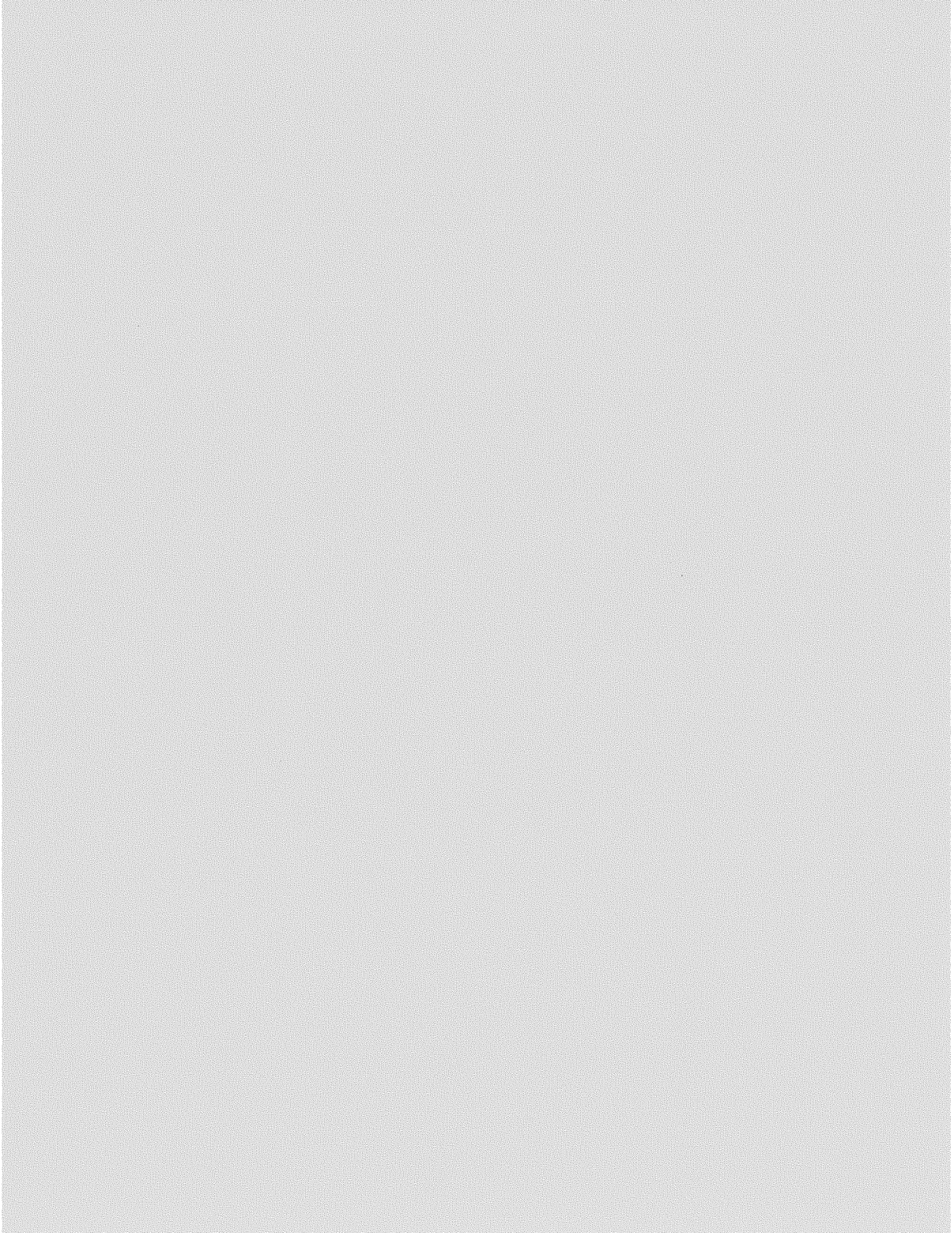
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GST / HST Registration # 12184 6539 RT0001

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27834438.1



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

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, ON
Canada M5H 3T4

Attention: Mr. Jake Wiebe

Account No.: 551709

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

December 7, 2016

Re: Ebersole Excavating Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended December 6, 2016

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	02/12/16	\$450.00	0.40	\$180.00	Emails to and from client and J. Nemers regarding draft report and motion materials; Discussions and instructions to J. Nemers regarding same
JTN	02/12/16	\$305.00	0.10	\$30.50	Email to R. Jaipargas
IEA	06/12/16	\$450.00	1.00	\$450.00	Telephone call with R. Jaipargas; Emails to and from Applicants' counsel, client and J. Nemers; Discussions with J. Nemers; Engaged with reviewing revised drafts of motion materials from Applicants' counsel; Emails and discussions regarding same
TOTAL:			1.50	\$660.50	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	1.40	\$450.00	\$630.00
Jeremy T. Nemers (JTN)	0.10	\$305.00	\$30.50

OUR FEE
HST at 13%

\$660.50
\$85.87

AMOUNT NOW DUE

\$746.37

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

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IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 0.8% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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REMIT TO:

Aird & Berlis LLP
Brookfield Place, Suite 1800
Box 754, 181 Bay Street
Toronto, Ontario M5J 2T9
T 416 863 1500
F 416 863 1515

Grant Thornton Limited
File No.: 25227-122930
Account No.: 551709
Date: December 7, 2016

REMITTANCE SLIP

Total Fees	\$660.50
Total HST	\$85.87
AMOUNT TO BE PAID	\$746.37

PLEASE REMIT WITH PAYMENT IN CANADIAN FUNDS

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.

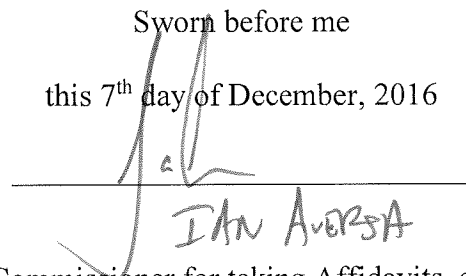
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF STEVEN L. GRAFF

Sworn before me

this 7th day of December, 2016

A handwritten signature in dark ink, appearing to read "IAN AVERSA", is written over a horizontal line. The signature is stylized with a large initial "I" and a prominent "A".

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	\$725.00	0.30	\$217.50
Ian Aversa	2008	\$425.00(2015)	20.10	\$8,542.50
		\$450.00 (2016)	20.20	\$9,090.00
Jeremy Nemers	2014	\$285.00 (2015)	7.50	\$2,137.50
		\$305.00 (2016)	8.30	\$2,531.50
Clerk/Student	Call to Bar	Avg. Hrly Rate	Total Time	Value
Patrick Williams	N/A	\$160.00	0.60	\$96.00
Ian McLeod	N/A	\$240.00	0.80	\$192.00
Alyssa Gebert	N/A	\$245.00	0.50	\$122.50

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

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)

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 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

MOTION RECORD
(returnable December 20, 2016)

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-
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