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

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

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INTRODUCTION AND BACKGROUND

1. Grant Thornton Limited ("**GTL**") was appointed as interim receiver (the "**Interim Receiver**") of Ebersole Excavating Inc. ("**Ebersole**") and D&S Railway Construction Inc. ("**D&S**", and together with Ebersole, the "**Companies**"), pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 26, 2014 (the "**Interim Receivership Order**"). A copy of the Interim Receivership Order and the related endorsement of the Court is attached hereto as **Appendix "1"**.

2. The Interim Receivership Order, amongst other things, authorizes the Interim Receiver to take possession of the Property, as defined in the Interim Receivership Order, but does not authorize the Interim Receiver to sell the Property.

3. Background information pertaining to the Companies, including the events preceding the issuance of the Interim Receivership Order, is contained in the affidavit of Stuart Detsky sworn November 24, 2014 (the "**Detsky Affidavit**") in support of, amongst other things, the application of Trisura Guarantee Insurance Company (the "**Applicant**") to appoint the Interim Receiver. A copy of the Detsky Affidavit (without exhibits) is attached hereto as **Appendix "2"**.

PURPOSE OF THE FIRST REPORT

4. The purpose of this, the Interim Receiver's first report (the "**First Report**"), is to:

   a) provide the Court with details of the Interim Receiver's activities since its appointment; and

   b) provide information pertinent to the Applicant's request for an order:

      (i) approving the First Report and the conduct and activities of the Interim Receiver as described herein;

      (ii) approving the fees and disbursements of the Interim Receiver and its legal counsel as described herein;

      (iii) appointing GTL as receiver of the Property (the "**Receiver**") pursuant to section 243(1) of the Bankruptcy and Insolvency Act (the "**BIA**") and section 101 of the Courts of Justice Act; and

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

DISCLAIMER

5. In preparing this First Report, the Interim Receiver has relied upon certain unaudited financial information, the Companies' records and information from the Companies' financial advisors, Sandra Ebersole and her legal counsel. While the Interim Receiver has reviewed various documents provided by the Companies and the other parties noted above, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Interim Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

6. This First Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies and to assist the Court in making a determination of whether to approve the relief sought by the Applicant. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Interim Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

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

ACTIVITIES OF THE INTERIM RECEIVER

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

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

9. The Interim Receiver obtained copies of the Companies' insurance policies. The Interim Receiver has corresponded with the insurance broker and has confirmed that coverage is in place and that premiums have been paid as of the date of the Interim Receivership Order. The insurance broker has also advised that they will arrange for the Interim Receiver to be added as a loss payee or an additional insured on each policy.

10. The Interim Receiver engaged Ritchie Bros. Auctioneers ("**RB**") to appraise the Companies' assets located at the Premises (the "**Appraisal**"). RB attended at the Premises on November 27, 2014 to conduct the Appraisal.

11. The Interim Receiver froze D&S' bank account and arranged for the balance as at November 27, 2014 in the amount of $4,567 to be transferred to the Interim Receiver's trust account.

12. The Interim Receiver contacted creditors that leased assets to the Companies and obtained security documents supporting their claim on specific assets and the payments made by the Companies prior to the issuance of the Interim Receivership Order.

13. The Interim Receiver responded to unsecured creditors' inquiries regarding the status of the interim receivership.

14. The Interim Receiver took possession of approximately 60 bankers' boxes of records, a computer server and two computers.

15. Based on the Companies' records and from discussions with Sandra Ebersole, it appears that D&S may owe approximately $100,000 in source deductions and $70,000 in HST to Canada Revenue Agency ("**CRA**").

16. Pursuant to a CRA Notice of Assessment dated November 20, 2014, Ebersole owed $99,795 in HST to CRA. The Interim Receiver is co-ordinating with CRA to schedule a trust examination which will confirm the amounts due to CRA.

17. The Interim Receiver obtained an independent legal opinion on the Applicant's security documents, which opinion states that, subject to certain assumptions and qualifications that are common in opinions of this nature, the personal property security granted by Ebersole and D&S to the Applicant is valid and enforceable and creates valid security interests in the personal property of Ebersole and D&S to which the *Personal Property Security Act* (Ontario) (the "**PPSA**") applies.

18. The Interim Receiver's review of PPSA registrations against Ebersole revealed a registration by Curtis Gail Development Corporation ("**Curtis Gail**") dated December 13, 2013. The registration appears to be a chattel mortgage against a 1999 Western Star truck (the "**Curtis Gail Registration**").

19. The Interim Receiver contacted Broderick & Partners LLP ("**BP**") who are listed as the registering agent for the Curtis Gail Registration and requested details of the registration and the underlying indebtedness.

20. BP responded that the security held by Curtis Gail had been assigned to Jennifer Lam, who is represented by Dunnet. On December 1, 2014 the Interim Receiver sent an email to Dunnet requesting documents related to the assignment from Curtis Gail to Jennifer Lam and a copy of the loan agreement between Curtis Gail and Ebersole. Dunnet has not responded to the Interim Receiver's email.

21. Counsel to the Interim Receiver therefore sent a letter to BP on December 12, 2014 requesting a copy of the assignment agreement.

22. The Interim Receiver's review of PPSA registrations against Ebersole and D&S revealed registrations by Caterpillar Financial Services Limited ("**CAT**") against both Companies. CAT has confirmed to the Interim Receiver that the loans related to these registrations were paid in full on May 22, 2012. The PPSA registrations made by CAT against Ebersole and D&S are now discharged.

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	(438,444)
Unexplained amount	$ 277,319

50. After receiving the transfer of $438,444 from JMA on November 13, 2014 and collecting $132,568 from a customer on November 14, 2014, D&S transferred $601,830 to Sandra Ebersole's personal bank account on November 14, 2014 (the "**Funds Transferred to Sandra**"). Details of the D&S bank account activity is attached in **Appendix "6"**.

51. The Interim Receiver wrote to Sandra Ebersole's counsel demanding an explanation for this transfer, confirmation that the Funds Transferred to Sandra are still in Sandra's possession and demanding that these funds be returned to the Interim Receiver as they form part of the Property, as defined in the Interim Receivership Order.

52. Sandra Ebersole's counsel replied by letter dated December 9, 2014 (the "**December 9 Letter**") explaining that, among other things, the Funds Transferred to Sandra were distributed as follows:

a) $205,573 was paid to Darrell Ebersole;

b) $205,573 is held in trust for Sandra Ebersole; and

c) $190,669 is held in trust for CRA.

A copy of the December 9 Letter is attached hereto as **Appendix "7"**.

53. Counsel for Sandra Ebersole has subsequently agreed to pay the total amount held in its trust account in the amount of $396,242, representing the funds held

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

a) be invested in a 30-day guaranteed investment certificate (the "**GIC**"), which GIC shall be renewed every 30 days until further order of the Court;

b) not be subjected to the Interim Receiver's Charge, as defined in the Interim Receivership Order, or any comparable charge in the future that may replace the Interim Receiver's Charge; and

c) not be deemed to constitute Property, as defined in the Interim Receivership Order.

54. The Receiver agreed to these conditions and counsel for Sandra Ebersole has transferred the $396,242 to the Interim Receiver's trust account. The Interim Receiver is in the process of purchasing the GIC.

55. The Interim Receiver and/or its counsel has also sent letters to Bruce Jaeger (counsel to Darrell Ebersole and former counsel to the Companies), Robert Fowler (of R&R Mergers, a financial advisor to the Companies), John MacDonald (of JMA, an accountant/advisor to the Companies) and Casey Bruyns (a financial advisor to the Companies), asking for details of the Maynard's transaction and any funds/retainers handled by the respective firms. Copies of the letters sent by the Interim Receiver are attached hereto as **Appendix "8"**.

56. JMA/John MacDonald has retained WeirFoulds LLP as counsel, which has advised that John MacDonald has been away but will reply in due course. The Interim Receiver's counsel followed up with WeirFoulds LLP by email on December 12, 2014.

57. Casey Bruyns advised that he did not handle trust funds. The Interim Receiver's investigation into the configuration of the Companies' accounting systems revealed that the accounting software/database is hosted by Mr. Bruyns' firm. The Interim Receiver had demanded that access to and control of the systems be provided to it by Mr. Bruyns forthwith and Mr. Bruyns sent a memory stick via courier to the Interim Receiver's office with a copy of the Simply Accounting files for each of the two Companies.

58. Bruce Jaeger replied to the Interim Receiver's correspondence indicating that he has no trust funds or retainers on hand, but that he will verify with Darrell Ebersole if he is aware of the whereabouts of the balance of the Funds Transferred to Sandra.

59. Robert Fowler replied with certain information pertaining to the sale to Maynards and advised that on November 13, 2014, R&R Mergers was paid a 6% commission fee by wire transfer from JMA, which is approximately US$81,000.

60. The Interim Receiver continues to correspond with these parties and with counsel to Sandra Ebersole and counsel to Darrell Ebersole regarding the Companies' activities prior to the appointment of the Interim Receiver.

61. Based on the above, it appears that certain of the asset sales/transfers and payments may have been preferential or may have been transacted at undervalue. It may be necessary for the Companies to become bankrupt so that the time demands under the BIA are preserved and so that a Trustee in Bankruptcy may further investigate these transactions and possibly conduct examinations under s. 163 of the BIA or request that the Official Receiver conduct an examination under s. 161 of the BIA.

ONGOING ACTIVITIES OF THE INTERIM RECEIVER

62. There is significant work remaining to be completed by the Interim Receiver. If the proposed relief is granted as set out in the Applicant's notice of motion, the Interim Receiver's ongoing and future activities will include, but will not be limited to:

a) collecting accounts receivable;

b) reconciling the results of the Auction and the amount due to Maynards in respect of the buyers' premium;

c) holding the balance of the proceeds of the Auction until further order of the Court;

d) holding the GIC until further order of the Court;

e) determining the location of the funds purportedly transferred by Sandra Ebersole to Darrel Ebersole;

f) realizing upon the Unsold Assets;

g) locating and securing the balance of the Unreconciled Assets; and

h) continuing the investigation into the affairs of the Companies, including investigating any preferential transactions or transactions at undervalue.

PROFESSIONAL FEES

63. The Interim Receiver and its legal counsel have maintained detailed records of their professional time and costs since the Interim Receivership Order was granted.

64. Paragraph 18 of the Interim Receivership Order provides that the Interim Receiver and its counsel shall be paid their reasonable fees and disbursements. In addition, the Interim Receiver and its counsel were granted a first charge on all of the Companies' property as security for such fees and disbursements.

65. The total fees of the Interim Receiver from November 19, 2014 to December 12, 2014 amount to $57,611.79 together with HST in the amount of $7,489.53, totalling $65,101.32. Time spent by the Interim Receiver is more particularly described in the Affidavit of Jacob Wiebe, a Senior Vice-President of Grant Thornton Limited having carriage of this proceeding as the Interim Receiver, sworn December 15, 2014 in support hereof, a copy of which is attached hereto as **Appendix "9"**.

66. The total legal fees incurred by the Interim Receiver during the interim receivership for services provided to the Interim Receiver by its counsel, Aird & Berlis LLP ("**A&B**"), from November 19, 2014 to December 12, 2014 amount to $24,677.00, together with disbursements in the amount of $141.75 and HST in the amount of $3,226.44, totalling $28,045.19. The time spent by A&B is more particularly described in the Affidavit of Ian Aversa sworn December 15, 2014 in support hereof, a copy of which is attached hereto as **Appendix "10"**.

67. The Interim Receiver is of the view that the fees and disbursements of its counsel are fair and reasonable. The Interim Receiver respectfully requests the approval of its fees and disbursements and those of its counsel.

68. In connection with the appointment of GTL as Receiver as mentioned in paragraph 4(b)(iii) above, GTL is prepared to act as Receiver, if appointed by the

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

RELIEF REQUESTED

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

    a) approving the First Report and the conduct and activities of the Interim Receiver as described herein; and

    b) approving the fees and disbursements of the Interim Receiver and its legal counsel as described herein.

70. The Interim Receiver is also supportive of the balance of the relief requested by the Applicant in its notice of motion.

All of which is respectfully submitted,

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

Per:

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

APPENDIX 1

CU-14-10766-00CL

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

nov 26/14

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

Applicant — Respondents

Novem 26/14 No one appears to oppose the relief sought. I am satisfied that the relief sought is appropriate. Order to go. The order is w/o prejudice to any person's rights, including entitlement to all or any part of the proceeds arising from the sale of the equipment by way of auction as authorized by this order. [signature] J.	***ONTARIO*** **SUPERIOR COURT OF JUSTICE** **(COMMERCIAL LIST)** PROCEEDINGS COMMENCED AT TORONTO **APPLICATION RECORD** **(Appointment of Interim Receiver)** **BORDEN LADNER GERVAIS LLP** 40 King Street West Toronto, Ontario M5H 3Y4 **ROGER JAIPARGAS** Tel: (416) 367-6266 Fax: (416) 361-7067 Email: rjaipargas@blg.com LSUC# 43275C **ANDREW HODHOD** Tel: (416) 367-6290 Fax: (416) 361-2799 Email: ahodhod@blg.com LSUC#66314K Lawyers for the Applicant TOR01: 5763106: v1

TC

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 Darrell [illegible] and Sara [illegible] no one appearing for any other party although duly served as appears from the affidavit of service of Judeen Amos sworn November 24, 2014, the affidavits of service of Laurie Morrison sworn November 25, 2014 and on reading the consent of Grant Thornton Limited to act as the Interim Receiver,

SERVICE

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

APPOINTMENT

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

INTERIM RECEIVER'S POWERS

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

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

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to settle, extend or compromise any indebtedness owing to the Debtors;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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

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

(l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtors;

(n) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

(o) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE INTERIM RECEIVER

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

CONTINUATION OF SERVICES

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

INTERIM RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

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

INTERIM RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE INTERIM RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

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

LIFT OF THE STAY OF PROCEEDINGS

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

AUCTION OF CERTAIN EQUIPMENT

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

(a) Maynards shall be entitled to collect a buyer's premium of up to 18% plus HST (the "Buyer's Premium") of the selling price of each individual piece of Equipment that is included in the Auction, but Maynards shall only be entitled to receive an amount that is equal to 15% plus HST of the selling price of each individual piece of Equipment that is included in the Auction (the "Maynards Portion of the Buyer's Premium"), subject to a reconciliation between the Interim Receiver and Maynards, as provided for in this Order;

(b) all proceeds of sale of the Equipment derived from the Auction shall be deposited by Maynards into a joint bank account (the "Joint Account") between Maynards and the Interim Receiver, including the amounts derived from the Buyer's Premium (the "Total Proceeds of Sale");

(c) a reconciliation by Maynards and the Interim Receiver of the Buyer's Premium shall occur forthwith after the completion of the Auction and

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

(d) the Remaining Funds shall be held by the Interim Receiver, pending further Order of the Court; and

(e) in the event any of the Equipment remains unsold at the Auction to be conducted on December 4, 2014, such Equipment shall be dealt with by further Order of the Court.

GENERAL

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

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

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

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

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

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

NOV 25 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:

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

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

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(Appointment of Interim Receiver)

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Lawyers for the Applicant

APPENDIX 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	)))))))	**STUART DETSKY**

A Commissioner of Oaths, etc.
ROGER JAIPARGAS

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)

BORDEN LADNER GERVAIS LLP
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M5H 3Y4

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Lawyers for the Applicant

TOR01: 5762742: v7

APPENDIX 3

Appendix 3

Vehicles registered to "EBERSOLE, DARRELL, W operating as DARRELL EBERSOLE EXCAVATING"

	Year	Make	VIN / Serial No.
1	2007	FORD	1FTSE34LX7DA45305
2	2000	FORD	AFTSW31LXYEC49650
3	2000	FORD	1FTSW31L8YEC49825
4	2001	GMC	1GTHK291X1E207939
5	2007	KENW	1NKDXBTX17J988958
6	1991	RAGL	2R9A4P3G1M1011881
7	2007	KW	1XKDDB0X47J933309
8	2000	FORD	1FDXW47SXYEC07078
9	1999	WSTR	2WLPCCCJ6XK957119
10	2003	INTL	2HSCHAPR03C074166
11	2000	ALUT	2T9FL44W8XA133069
12	2001	THRU	2T9FA485911011206
13	2003	GMC	1GTHC24U03E348679
14	2009	CONT	5NHUCCV289N057953
15	1996	VOLV	4V5SCBJH0TR515726
16	1991	CBL	2C93SHBS3MT088676
17	2007	LOAD	2P9LB574571059594
18	1997	CHEV	1GCGK24R3VE133973
19	1993	FORD	1FDKE30H4PHB68717
20	2006	PETE	1XPFPBEXX6D878848
21	1989	FRUE	2H8P0452XKR007401
22	1986	FORD	1FDYW80U6GVA40739
23	2001	MACK	1M2AD62C11M011078
24	2002	JCTR	2J9B7V5CX2K001098
25	1994	DODG	1B7KF26C9RS590169
26	1988	TALB	40FW0483XJ1007725
27	2003	DODG	1D7KU28653J548761

Vehicles registered to "EBERSOLE, DARRELL, W"

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

APPENDIX 4

APPENDIX 4 – Listing of Unsold Assets

Category 1 - Assets included in the Maynards' auction

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

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

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

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

APPENDIX 5

Appendix 5 - Listing of Unreconciled Assets

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

	Year	Make	VIN / Serial No.
1	2005	CHEV	1GNDV03E25D150919
2	1997	CHEV	1GNDX03E2VD201197
3	1994	CLAS	1OWPAEL27RW019322
4	2013	ATLA	5HCKA2723DE026662
5	1992	CHEV	1GCGK24K4NE197958
6	1993	FORD	1FMDA11U4PZA16533
7	1990	DODG	1B6ME3681LS672809
8	1995	GMC	1GTGK24F3SE506639
9	1988	FORD	1FDKE30M2JHB45859
10	1975	KING	1728875
11	1990	CHEV	1GCDK14H0LZ135500
12	1979	INTL	D3117JGB24507
13	1976	BIRM	FYA283

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

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

APPENDIX 6

RBC Royal Bank®

November 27, 2014

Chequing

27 Nov 2014

CAD Chequing 01822-1011444

Printable Version

Show All Transactions for the last 30 days

Search

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

Select "Sort transactions" to set a date order preference.

Date	Description	Withdrawals	Deposits	Balance
26 Nov 2014	WWW PAYMENT - 2617 -BELL BUS. INT.	76.84		4,567.46
25 Nov 2014	CHEQUE - 360	511.44		4,644.30
25 Nov 2014	MISC PAYMENT -OXY VINYLS CANA		1,039.60	
24 Nov 2014	CHEQUE - 361	2,654.82		4,116.14
24 Nov 2014	CHEQUE - 337	1,533.78		
24 Nov 2014	INSURANCE -LLOYDS INS.	2,361.51		
24 Nov 2014	INSURANCE -ECONOMICAL GRP.	1,309.11		
24 Nov 2014	INSURANCE -ECONOMICAL GRP.	736.84		
24 Nov 2014	MISC PAYMENT -OXY VINYLS CANA		3,011.45	
24 Nov 2014	BR TO BR - 1562		2,978.91	
21 Nov 2014	CHEQUE - 359	423.32		6,721.84
20 Nov 2014	INSURANCE -ECONOMICAL GRP.	170.15		7,145.16
20 Nov 2014	BR TO BR - 1562		4,181.00	
19 Nov 2014	CHEQUE - 358	130.50		3,134.31
18 Nov 2014	OVERDRAFT INTEREST -@ RBP+05.00%P.A	0.05		3,264.81
17 Nov 2014	CHEQUE - 355	779.85		3,264.86
14 Nov 2014	STP FEE SELF SERVE - 7 @ $10.00	70.00		4,044.71
14 Nov 2014	CHEQUE - 356	600.00		
14 Nov 2014	DEBIT MEMO	1,010.00		
14 Nov 2014	BR TO BR - 4102		132,567.55	
14 Nov 2014	WWW PAYMENT - 9761 -WSIB-ON-SCHE1	1,936.40		
14 Nov 2014	WWW PAYMENT - 4099 -CDN NIAGARA PWR	337.60		
14 Nov 2014	BR TO BR - 4102	601,830.00		
13 Nov 2014	CHEQUE - 341	3,277.00		477,261.16
13 Nov 2014	BR TO BR - 3426		438,444.08	
12 Nov 2014	CHEQUE - 339	5,934.61		42,094.08
12 Nov 2014	CHEQUE - 352	713.78		
12 Nov 2014	MISC PAYMENT -OXY VINYLS CANA		8,763.38	
12 Nov 2014	BR TO BR - 4102		14,506.36	
10 Nov 2014	CHEQUE - 031	1,969.38		25,452.73
10 Nov 2014	CHEQUE - 348	779.85		
10 Nov 2014	CHEQUE - 345	710.71		
10 Nov 2014	CHEQUE - 349	694.22		
10 Nov 2014	CHEQUE - 347	511.44		
10 Nov 2014	CHEQUE - 342	430.77		
10 Nov 2014	CHEQUE - 343	375.90		
10 Nov 2014	CHEQUE - 346	374.49		

10 Nov 2014	CHEQUE - 350	110.00		
10 Nov 2014	INSURANCE -LLOYDS INS.	4,182.70		
10 Nov 2014	MISC PAYMENT -OXY VINYLS CANA		7,857.74	
10 Nov 2014	BILL PAYMENT -CN/OCS		6,931.42	
10 Nov 2014	WWW PAYMENT - 4915 -ENBRIDGE	56.04		
7 Nov 2014	CHEQUE - 344	570.53		20,859.07
7 Nov 2014	CHEQUE - 328	570.53		
7 Nov 2014	CHEQUE - 353	500.00		
7 Nov 2014	CHEQUE - 327	212.63		
7 Nov 2014	BR TO BR - 1562		5,747.05	
7 Nov 2014	WWW PAYMENT - 9875 -TELUS MOBILITY	333.16		
6 Nov 2014	CHEQUE - 321	1,648.95		17,298.87
6 Nov 2014	CHEQUE - 340	806.55		
6 Nov 2014	CHEQUE - 351	500.00		
4 Nov 2014	CHEQUE - 334	955.54		20,254.37
4 Nov 2014	CHEQUE - 131	889.92		
4 Nov 2014	CHEQUE - 331	565.25		
4 Nov 2014	CHEQUE - 333	187.19		
4 Nov 2014	CHEQUE - 322	170.63		
4 Nov 2014	CHEQUE - 330	114.76		
4 Nov 2014	CHEQUE - 336	60.00		
3 Nov 2014	ITEMS ON DEP. FEE	1.60		23,197.66
3 Nov 2014	ELECTRONIC ITEM FEE	13.20		
3 Nov 2014	SERVICE FEE	62.00		
3 Nov 2014	CHEQUE - 338	1,000.00		
3 Nov 2014	CHEQUE - 332	808.23		
3 Nov 2014	CHEQUE - 335	90.00		
~~3 Nov 2014~~	~~FUNDS TRANSFER~~ -JMA ACCOUNTING	~~1,525,520.00~~		25,173.69
31 Oct 2014	CHEQUE - 324	5,969.47		1,550,692.69
31 Oct 2014	CHEQUE - 329	1,139.36		
31 Oct 2014	CHEQUE - 326	775.92		
31 Oct 2014	FUNDS TRANSFER CR -TT MAYNARDS IND		1,525,500.00	
31 Oct 2014	WWW PAYMENT - 5732 -BELL CANADA	128.50		33,077.44
31 Oct 2014	WWW PAYMENT - 5896 -BELL BUS. INT.	78.73		
31 Oct 2014	WWW PAYMENT - 2413 -BELL CANADA	33.40		
31 Oct 2014	FUNDS TRANSFER FEE -TT MAYNARDS IND	15.00		
30 Oct 2014	CHEQUE - 323	2,728.43		33,333.07
29 Oct 2014	CHEQUE - 320	10,000.00		36,061.50
29 Oct 2014	DEBIT MEMO	5,661.30		
28 Oct 2014	CHEQUE - 306	2,825.00		51,722.80
28 Oct 2014	CHEQUE - 305	2,825.00		
28 Oct 2014	CHEQUE - 304	2,825.00		
28 Oct 2014	CHEQUE - 309	485.58		
28 Oct 2014	WWW PAYMENT - 6772 -WSIB-ON-SCHE1	2,499.39		
27 Oct 2014	STP FEE SELF SERVE	10.00		63,182.77
27 Oct 2014	CHEQUE - 318	5,300.00		
27 Oct 2014	CHEQUE - 319	1,350.00		
27 Oct 2014	CHEQUE - 311	1,117.05		

27 Oct 2014	CHEQUE - 308	811.40	
27 Oct 2014	CHEQUE - 316	668.21	
27 Oct 2014	CHEQUE - 315	653.70	
27 Oct 2014	CHEQUE - 310	570.53	
27 Oct 2014	CHEQUE - 325	500.00	
27 Oct 2014	CHEQUE - 312	284.40	
27 Oct 2014	BILL PAYMENT -CN/OCS		28,763.13
27 Oct 2014	BR TO BR - 1562		3,019.65

Top

APPENDIX 7

Dunnet Law
Professional Corporation

December 09, 2014

DELIVERED BY E-MAIL

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

RE: Sandra Ebersole

Dear Mr. Nemers:

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

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

648 Shenandoah Drive, Mississauga, Ontario L5H 1V9
Tel: (905) 990-1902 Fax: (905) 990-2072 E-Mail: david.dunnet@dunnetlaw.com

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

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

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

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

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

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

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

Yours truly,

DUNNET LAW PROFESSIONAL CORPORATION

David G. Dunnet

648 Shenandoah Drive, Mississauga, Ontario L5H 1V9
Tel: (905) 990-1902 Fax: (905) 990-2072 E-Mail: david.dunnet@dunnetlaw.com

APPENDIX 8

AIRD & BERLIS LLP
Barristers and Solicitors

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

November 27, 2014

VIA EMAIL: jbm@jmagroup.ca

JMA Group
1300 Cornwall Road
Oakville, ON L6J 7W5

Attention: John B. MacDonald

Dear Mr. MacDonald:

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

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

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

1. any and all unused retainer funds held in your general and/or trust accounts;

2. a full accounting of all transactions in your trust account from July 1, 2014 to the present date; and

3. details of your knowledge of any and all transactions between or amongst the Companies, Maynards Industries Ltd. and/or Bryan's Farm & Industrial Supply Ltd.

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

Yours very truly,

AIRD & BERLIS LLP

Per:

Ian Aversa
IA/jn

cc: Client

20637884.4

Grant Thornton

Via email: **bjaeger@fijlaw.com**

November 28, 2014

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

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

T (416) 366-0100
F (416) 360-4949
www.GrantThornton.ca

Attention: Bruce R. Jaeger

Dear Mr. Jaeger,

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

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

http://www.grantthornton.ca/ebersole

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

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

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

Yours very truly,

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

Per:

Daniel Sobel, CPA, CA, CIRP
Vice President

Grant Thornton

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

November 28, 2014

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

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

T (416) 366-0100
F (416) 360-4949
www.GrantThornton.ca

Attention: Robert Fowler

Dear Mr. Fowler,

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

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

http://www.grantthornton.ca/ebersole

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

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

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

Yours very truly,

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

Per:

Daniel Sobel, CPA, CA, CIRP
Vice President

Grant Thornton

Via email: casey@lbaccountants.ca

November 28, 2014

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

T (416) 366-0100
F (416) 360-4949
www.GrantThornton.ca

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

Attention: Casey Bruyns

Dear Mr. Bruyns,

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

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

http://www.grantthornton.ca/ebersole

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

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

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

Yours very truly,

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

Per:

Daniel Sobel, CPA, CA, CIRP
Vice President

APPENDIX 9

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

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

AFFIDAVIT OF JACOB WIEBE

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

1. I am Senior Vice-President of Grant Thornton Limited, ("**GTL**") which was appointed as interim receiver of the Respondents in these proceedings. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe such to be true.

2. Attached and marked as Exhibit "**A**" to this my affidavit is a true copy of the detailed billing setting out the fees and disbursements of GTL from November 19, 2014 to

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

3. Given the complexity of this insolvency matter, I believe the hourly rates and the total amount of fees are reasonable and comparable for insolvency services of this nature rendered by other firms in the City of Toronto.

4. The hours spent on this matter and disbursements incurred by GTL are outlined in detail in Exhibit "**A**" and I believe were reasonable and appropriate in the circumstances.

5. This affidavit is sworn in connection with the approval of the fees and disbursements of GTL and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 15th day of December, 2014	)))))	
Commissioner for Taking Affidavits, etc.	))	Jacob Wiebe

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

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

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.

Grant Thornton

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

BILLING

BN 12738 4717 RT0001
Client #194240

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

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

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

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

November 28, 2014 **Daniel Sobel**

- Finalize update email to Trisura, internal meeting, call with Trisura, letters to advisors finalized, review banking information, email correspondence with RB and Maynards on various issues, email to counsel to Sandra Ebersole re: mail, email correspondence from RBC, banking review, emails with RB, emails with Maynards re: mileage/hours listing and ownership documents for equipment, directions to and calls with Tert & Ross re: records, storage container. 2.40 hours

November 28, 2014 **Jake Wiebe**

- Review summary of Day 1 results; call with Trisura and counsel; Disc with D. Sobel re: continuing plan of action. 2.10 hours

November 28, 2014 **Leah Solis**

- Attend Ministry of Transportation to run RIN search; Prepare summary of owned vehicles. 0.50 hours

November 28, 2014 **Nicholas To**

- Preliminary BMO bank account review, discussion on same; Discussion re: events and key findings, review email on same; Discussions with J. Wiebe and D. Sobel on next steps; Coordinate with L. Solis to attend the Ministry of Transportation to conduct vehicle ownership searches, review letter to MTO on same, discussion of search results. 3.00 hours

November 28, 2014 **Rosa Wilford**

- Follow instructions, setup new bank account, bank letter, provide wire instructions, bank slip deposit, posting entries and general banking administration. 1.00 hours

December 1, 2014 **Anna Poon**

- Compose schedule re: Maynards lot listing per D. Sobel. 1.00 hours

December 1, 2014 **Daniel Sobel**

- Call with RB, review appraisal, instructions to staff re: appraisal analysis, Maynards asset listing, call with Robert Fowler, review emails re: insurance status, banking activity, PPSA registrants, draft email to counsel to S. Ebersole re: corporate mail, internal calls, website review. 1.20 hours

December 1, 2014 **Jake Wiebe**

- Discussion with D. Sobel re: results of appraisal and report to Trisura re: same. 0.60 hours

December 1, 2014 **Leah Solis**

- Perform PPSA search for N. To; Call MTO re: RIN history search; Update appraisal summary; Attempt to access computer files. 0.50 hours

December 1, 2014 **Nicholas To**

- Discussion with D. Sobel; Review PPSA, search for secured creditor contact information; Contact RBC re: Ally PPSA registration; Call/email with Curtis Gail Development re: PPSA registration, follow-up with D. Dunnet on same; Contact the McGregor Miller re insurance policies; Review MTO vehicle search results, update engagement team on same. 3.00 hours

December 1, 2014 **Rosa Wilford**

- Follow up correspondence with Bank and phone call with RBC. 0.10 hours

December 2, 2014 **Daniel Sobel**

- Review appraisal analysis, review email re: BMO account deposit, review emails and call re: November 13 and 14 transactions in RBC account, draft interim update email to Trisura, deal with Maynards re: joint account. 2.70 hours

December 2, 2014 **Jake Wiebe**

- Review appraisal and comparison to Maynard's sale listing; call with Trisura re: same; Disc with D. Sobel re: ongoing review of company records; review draft letters prepared by counsel; Review draft email to Trisura re: summary of appraisal and disposition of proceeds of sale to Maynards. 3.20 hours

December 2, 2014 **Leah Solis**

- Call MTO re: plate sticker expiry dates; Draft signification letter; Prepare AR summary; Update appraisal summary. 1.00 hours

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

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

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

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

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

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

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

Time Charges and Expenses:

J. Wiebe, Sr. Vice President	35.40	hours @	$	550.00	per hour	$ 19,470.00
D. Sobel, Vice President	35.50	hours @	$	390.00	per hour	$ 13,845.00
N. To, Manager	41.75	hours @	$	270.00	per hour	$ 11,272.50
J. Oros, Manager	1.50	hours @	$	270.00	per hour	$ 405.00
R. Wilford, Manager	20.80	hours @	$	225.00	per hour	4,680.00
A. Bongard, Associate	18.70	hours @	$	160.00	per hour	2,992.00
L. Solis, Analyst	8.50	hours @	$	145.00	per hour	1,232.50
A. Poon, Analyst	4.10	hours @	$	120.00	per hour	$ 492.00
	166.25					54,389.00
Technology and Administrative Fee (5%)						2,719.45
						57,108.45
Disbursements						
Vehicle licenses searches						304.43
Travel						198.91
						503.34
Subtotal of Time and Disbursements						57,611.79
HST						7,489.53
Total Invoice Due						**$ 65,101.32**

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

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

Applicant | Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF JACOB WIEBE

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

APPENDIX 10

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

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

Respondents

AFFIDAVIT OF IAN AVERSA
(sworn December 15, 2014)

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

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for Grant Thornton Limited ("**GTL**"), in its capacity as the Court-appointed interim receiver, without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc.

2. Aird & Berlis LLP has prepared a statement of account in connection with its mandate as counsel to GTL, detailing its services rendered and disbursements incurred, namely, an account dated December 15, 2014 in the amount of $28,045.19 in respect of the period from November 19, 2014 to December 12, 2014 (the "**Statement of Account**").

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

3. Attached hereto and marked as **Exhibit "B"** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.

4. This Affidavit is made in support of a motion to, *inter alia,* approve the attached account of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me at the City of Toronto, in the Province of Ontario this 15th day of December, 2014	))))))	
A commissioner, etc. A. Collins		**IAN AVERSA**

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 15th day of December, 2014

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.: 497877

PLEASE WRITE ACCOUNT NUMBERS ON THE BACK OF ALL CHEQUES

File No.: 25227/122930

December 15, 2014

Re: Ebersole Excavating Inc.

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

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

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

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

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

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

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

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

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

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

DISBURSEMENTS

Subject to HST

Photocopies	$0.25	
Photocopies - Local	$111.00	
Long Distance Charges	$3.40	
Binding and Tabs	$10.00	
Imaging/Scanning	$8.25	
Taxi	$8.85	
Total Disbursements		$141.75
HST at 13%		$18.43

AMOUNT NOW DUE **$28,045.19**

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

per.

Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

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

GST / HST Registration # 12184 6539 RT0001

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

20988089.1

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 15th day of December, 2014

Commissioner for taking Affidavits, etc

STATEMENT OF RESPONSIBLE INDIVIDUALS

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

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

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

TRISURA GUARANTEE INSURANCE COMPANY - and - **EBERSOLE EXCAVATING INC. et al.**

Applicant | Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

AFFIDAVIT OF IAN AVERSA

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

Steven L. Graff (LSUC #31871V)
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Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

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

20753516.1

APPENDIX 11

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

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

CONSENT
(Appointment of Receiver)

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

December 12th, 2014

GRANT THORNTON LIMITED

By:
Name: Jake Wiebe
Title: Senior Vice-President

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

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

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

Applicant | Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

CONSENT
(Appointment of Receiver)

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

ROGER JAIPARGAS
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Fax: (416) 361-7067
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LSUC# 43275C

ANDREW HODHOD
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LSUC#66314K

Lawyers for the Applicant