

Court File No. 35-2481393
Estate File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

MOTION RECORD OF THE TRUSTEE

Returnable May 19, 2023

April 24, 2023

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INDEX

Tab	Document	Page No.
1	Notice of Motion, dated April 24, 2023	15
	Schedule "A" – Distribution and Discharge Order	24
2	Sixth and Final Report of the Trustee dated April 5, 2023	29
	Appendix "A" – Decision of the Court of Appeal dated July 13, 2022	41
	Appendix "B" – Minutes of Settlement	52
	Appendix "C" – Affidavit of Stephen Cherniak sworn April 20, 2023	58
	Appendix "D" – Affidavit of Jason DiFruscia sworn April 24, 2023	68

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Ministry of Revenue
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TO: **NestSys Networking Inc.**
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AND

TO: **Northfield Auto Services**
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AND

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TO: **Rebar Guys Installation Inc.**
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TO: **Ronald's Crane Operations Ltd.**
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AND

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TO: **Skycrane**
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TO: **Spectrum Communications Ltd**
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AND

TO: **Stubbe's Precast Inc**
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AND

TO: **Sunbelt Rentals Inc**
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TO: **The County Tool Shed**
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TO: **Torcan Lift Equipment**
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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

**NOTICE OF MOTION
(returnable May 19, 2023)**

BDO Canada Limited (“**BDO**”) in its capacity as Trustee (the “**Trustee**”) of Sirius Concrete Inc. (“**Sirius**”), will make a Motion to the Court as soon as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is on consent;
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

At the Court House, 80 Dundas Street, London, Ontario on May 19, 2023 at 10:00 a.m., or as soon after that time as the Motion can be heard by judicial teleconference via Zoom at London, Ontario, with video conference details to be provided prior to this date.

THE MOTION IS FOR:

1. An Order (Distribution and Discharge), substantially in the form attached hereto at Schedule "A", *inter alia*:
 - a. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today, and hereby dispensing with further service and confirmation hereof;
 - b. Approving the Trustee's Sixth and Final Report to the Court dated April 5, 2023 (the "**Final Report**") and the activities and conduct of the Trustee as detailed therein;
 - c. Approving the Ayerswood Settlement (as detailed in the Final Report and defined below);
 - d. Approving the Trustee's fees and disbursements, the Counsel Fees and the completion accrual (each as detailed in the Final Report), and payment of same;
 - e. Approving the Statement of Receipts and Disbursements as detailed in the Final Report;
 - f. Authorizing the Trustee to make the Proposed Distribution (as detailed in the First Report and defined below);
 - g. Discharging BDO as the Trustee on the filing of the Certificate of Completion as provided for in the Final Report, and releasing the Trustee from liability for its actions while acting in such capacity, save and except for the Trustee's gross negligence or willful misconduct; and,
2. Such further and other relief as counsel may request and this honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

Bankruptcy

1. The Bankrupt, Sirius, made a voluntary assignment in bankruptcy on March 4, 2019, and the Trustee was appointed as Trustee in Bankruptcy.

2. Prior to its assignment, Sirius operated as a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete, for numerous construction projects, including the following:
 - a. 18 Barrel Yards Blvd, Waterloo, Ontario (the “**Waterloo Property**” and the “**Waterloo Project**”);
 - b. 112 Benton St. Kitchener, Ontario (the “**Kitchener Property**” and the “**Kitchener Project**”);
 - c. 109 King Ave, Newcastle, Ontario (the “**Newcastle Property**” and the “**Newcastle Project**”);
 - d. 45 Yarmouth St., Guelph, Ontario (the “**Guelph Property**” and the “**Guelph Project**”);
 - e. 200 Steelwell Rd. Brampton, Ontario (the “**Brampton Project**”); and
 - f. 10 Wilson St. Guelph, Ontario (the “**Parking Lot Project**”).

(6 (a) to (f) collectively, the “**Construction Projects**”)
3. On January 30, 2019, Sirius issued an invoice in the amount of \$381,578.40 in relation to the Guelph Project (the “**Invoice**”) to Ayerswood Development Corporation (“**Ayerswood**”). On March 1, 2019 Ayerswood paid the Invoice in full (the “**March 2019 Payment**”).

Actions of the Trustee

4. The Trustee developed a Claims Administration Procedure for Sirius’ construction projects (the “**Claims Administration Procedure**”). On April 2, 2019, the Court issued an Order approving the Claims Administration Procedure (the “**Claims Procedure Order**”).
5. The Trustee has completed the review and allowance of all claims filed in the Claims Administration Procedure and entered into settlement agreements with all project owners of the Construction Projects.

6. On August 16, 2019, the Court issued an Order (the “**August 2019 Order**”) approving the lien claims and trust claims filed by lien claimants (the “**Lien Claimants**”) in the Claims Administration Procedure, approving certain settlements entered into by the Trustee, and providing direction with respect to Ayerswood.
7. On November 22, 2019, the Court issued an order approving settlements entered into by the Trustee and providing direction with respect to payment of the settlement amounts.
8. The only outstanding issue was the March 2019 Payment. Ayerswood took the position that the March 2019 Payment was made based on misrepresentations from Sirius and should be returned to Ayerswood. The trustee took the position that the March 2019 Payment was made in the normal course of business between Ayerswood and Sirius and was property of the Estate
9. On March 3, 2020, the Trustee brought a motion for directions with respect to the March 2019 Payment. Ayerswood took the position that the March 2019 Payment was held in trust for Ayerswood and was to be returned to Ayerswood.
10. On December 14, 2020, the Court released its decision with respect to the March 2019 Payment and determined that it formed part of the bankrupt estate (the “**December 14 Decision**”). Ayerswood appealed the December 14 Decision.
11. On June 14, 2022, the Ontario Court of Appeal heard Ayerswood’s appeal. The Court of Appeal released its decision on July 13, 2022 directing the matter to return to Bankruptcy Court for directions on the procedure to be followed for a determination of the issue of entitlement to the March 2019 Payment (the “**July 13 Decision**”).
12. The Trustee reviewed the July 13 Decision with the Lien Claimants and upon discussion regarding the available options, the Lien Claimants were supportive of an out of Court Settlement regarding the payment from Ayerswood.
13. The Trustee completed an in-depth review of the Guelph Project and provided its position to Ayerswood in September 2022. Ayerswood responded in November of 2022 to provide their position.

14. The Trustee and Ayerswood entered into settlement discussions and reached a settlement agreement on February 21, 2023 whereby the Trustee agreed to pay \$194,043.70 to Ayerswood on account of the payment made by Ayerswood to Sirius (the “**Minutes of Settlement**”).
15. The payment provided for in the Minutes of Settlement is calculated based on an equal split of the March 2019 Payment plus accrued interest the Lien Claimants support the Minutes of Settlement.
16. Following the payment required by the Minutes of Settlement the Guelph Project will be settled in full.
17. As of February 24, 2023, the Trustee has \$569,884.33 on hand in its trust account in relation to the Guelph Project.
18. In addition to the payment pursuant to the Minutes of Settlement, CLAC has submitted a priority claim ahead of the Lien Claimants for amounts owing to employees pursuant to the priority provided by section 81 of the *Construction Lien Act* (the “**CLAC Claim**”). The Trustee has accepted the CLAC Claim.

Approval of Trustee's Accounts

19. The Claims Procedure Order provides that the fees and expenses of the Trustee in connection with the Claims Administration Procedure shall form a first charge on the funds collected.
20. The Trustee has properly incurred fees and disbursements as detailed in the Final Report.
21. The fees incurred by the Trustee for services provided by its legal counsel, Harrison Pensa LLP are detailed in the Final Report.
22. The Trustee seeks the approval of the its fees, the Counsel Fees and the completion accrual (collectively the “**Professional Fees**”), and payment of same, as defined in the Final Report.

Proposed Distribution

23. The Trustee recommends that a reserve not exceeding the sum of \$6,000.00 (inclusive of HST), should be held for the final fees and expenses to complete the bankruptcy (the “**Completion Accrual**”).
24. The Trustee recommends the distribution as detailed in the Final Report, as follows:
- a. Professional Fees;
 - b. The Ayerswood settlement in amount of \$194,043.70;
 - c. The Lien Claim from CLAC in the amount of \$83,974.45¹; and,
 - d. The balance of the funds residing in the Trustee’s account, less the Completion Accrual, to the Lien Claimants on a pari-passu basis.
- (collectively, the “**Proposed Distribution**”)
25. The Trustee seeks approval of the Proposed Distribution.

Discharge

26. Following the completion of the Proposed Distribution (as defined in the Final Report) the Trustee will have completed the administration of the Claims Administration Procedure, and as such requests its discharge from the Claims Administration Procedure.
27. Any funds related to the Construction Projects after the Proposed Distribution will be paid in to the general pool available to creditors in the bankruptcy of Sirius.
28. Any trust claims and lien claims that were not paid in full from the Claims Administration Procedure will, to the extent that they are unpaid, be allowed as claims in the bankruptcy of Sirius.

¹ Subject to any *Wage Earners Protection Program Act* repayments.

29. The Trustee will complete the administration of the bankruptcy of Sirius and obtain its discharge from the Court in the normal course in accordance with the *BIA*.

30. Section 243 of the *BIA*.

31. Sections 100 and 137(2) of the *Courts of Justice Act*.

32. Rules 2, 3, 37, 38, and 60.10 of the *Rules of Civil Procedure*.

33. The grounds as detailed in the Final Report.

34. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Claims Procedure Order;
2. The Final Report of the Trustee and the Appendices thereto;
3. Such materials as counsel may advise and this Honourable Court may permit.

April 24, 2023

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BDO Canada Limited

To: Service List

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT LONDON

NOTICE OF MOTION

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BDO Canada Limited

SCHEDULE "A"

5. Approving the Trustee's Statement of Receipts and Disbursements, as defined and detailed in the Final Report (the "Statement of Receipts and Disbursements");
6. Authorizing and directing the distribution of the remaining proceeds available in the estate of Sirius after payment of the Trustee's fees and disbursements, the Counsel Fees and the holding back of completion accrual, as detailed in the Final Report (the 'Proposed Distribution'), as follows:
 - (a) Professional Fees;
 - (b) The Ayerswood settlement in amount of \$194,043.70;
 - (c) The Lien Claim from CLAC in the amount of \$83,974.45¹; and,
 - (d) The balance of the funds residing in the Trustee's account, less the Completion Accrual, to the Lien Claimants on a pari-passu basis.
7. Discharging BDO Canada Limited as Trustee of Sirius on the filing of the Certificate of Completion, as provided for in the Final Report; and
8. Releasing BDO Canada Limited from any and all liability, as set out in paragraph 7 of this Order,

was heard this day by way of judicial teleconference via Zoom at the Court House, 80 Dundas Street, London, Ontario.

ON READING the Trustee's Notice of Motion dated April 24, 2023, the Final Report, the affidavits of the Trustee and its counsel as to professional fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Trustee, no one else appearing although served as evidenced by the Affidavit of Lindsay Ferguson sworn April , 2023, filed;

1. THIS COURT ORDERS that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.

¹ Subject to any *Wage Earners Protection Program Act* repayments.

2. THIS COURT ORDERS that the activities of the Trustee, as set out in the Final Report, are hereby approved.

3. THIS COURT ORDERS that the Trustee's fees and disbursements, the Counsel Fees and the completion accrual, as set out in the Final Report and the Fee Affidavits, and payment thereof, be and are hereby approved.

4. THIS COURT ORDERS that the Statement of Receipts and Disbursements be and is hereby approved.

5. THIS COURT ORDERS that, after payment of the Trustee's fees and disbursements, the Counsel Fees and subject to the completion accrual, the Trustee be and is authorized and directed to make the Proposed Distribution, as described in the Final Report, as follows:

- (a) Professional Fees;
- (b) The Ayerswood settlement in amount of \$194,043.70;
- (c) The Lien Claim from CLAC in the amount of \$83,974.45²; and,
- (d) The balance of the funds residing in the Trustee's account, less the Completion Accrual, to the Lien Claimants on a pari-passu basis.

6. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 and 5 hereof and upon the Trustee filing the Certificate of Completion as provided for in the Final Report certifying that it has completed the other activities described in the Final Report, the Trustee shall be discharged as Trustee of Sirius, provided however that notwithstanding its discharge herein (a) the Trustee shall remain Trustee for the performance of such incidental duties as may be required to complete the administration of the claims procedure herein, and (b) the Trustee shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO Canada Limited in its capacity as Trustee.

7. THIS COURT ORDERS AND DECLARES that BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited. now has or may hereafter

² Subject to any *Wage Earners Protection Program Act* repayments.

have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as Trustee herein, save and except for any gross negligence or wilful misconduct on the Trustee's part. Without limiting the generality of the foregoing, BDO Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within claims procedure proceedings, save and except for any gross negligence or wilful misconduct on the Trustee's part.

Justice, Ontario Superior Court of Justice

Tab 2

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

SIXTH AND FINAL REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

April 5, 2023

	<u>Page</u>
1.0 Introduction and Purpose of Report	3
2.0 Claims Administration Procedure Update	5
3.0 Trustee's Account	7
4.0 Proposed Distribution	8
5.0 Discharge	9
6.0 Order Sought	10

Listing of Appendices

- Appendix A - July 13 Decision
- Appendix B - Minutes of Settlement
- Appendix C - Affidavit of Stephen Cherniak
- Appendix D - Affidavit of Rob Danter

1.1 Introduction

- 1.1.1** This follows BDO Canada Limited's ("BDO") first report of the Trustee, the Supplement to the First Report, the Second Report, the Third Report, the Supplement to the Third, the Fourth Report, the Supplement to the Fourth Report and the Fifth Report. All terms not otherwise defined shall be as defined in therein.
- 1.1.2** Sirius Concrete Inc. ("Sirius" or the "Company") was incorporated on June 13, 2016, in the province of Ontario and has been operating under the Sirius name since its inception. The Company operated out of leased premises located at 589 Colby Drive, Waterloo, Ontario.
- 1.1.3** Sirius was a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete.
- 1.1.4** As at the date of Bankruptcy Sirius was involved in the following projects (together the "Construction Projects"):
- (i) 18 Barrel Yards Blvd, Waterloo, Ontario ("Waterloo Project");
 - (ii) 112 Benton St. Kitchener, Ontario ("Kitchener Project");
 - (iii) 109 King Ave, Newcastle, Ontario ("Newcastle Project");
 - (iv) 45 Yarmouth St., Guelph, Ontario ("Guelph Project");
 - (v) 200 Steelwell Rd. Brampton, Ontario ("Brampton Project"); and,
 - (vi) 10 Wilson St. Guelph, Ontario (the "Parking Lot Project").
- 1.1.5** Sirius began experiencing financial difficulty in the fourth quarter of 2018 and into 2019. Sirius made a voluntary assignment in bankruptcy on March 4, 2019, and BDO Canada Limited was appointed as the trustee in Bankruptcy ("BDO" or the "Trustee")
- 1.1.6** The Trustee is not aware of any secured creditor or any party holding a General Security Agreement registered against Sirius.
- 1.1.7** As described in the First Report, the Trustee developed a Claims Administration Procedure for the Debtor's construction projects.
- 1.1.8** As described in the First Supplement, the Trustee detailed the payables and receivables, according to the records of Sirius, on each of the Company's projects.
- 1.1.9** On April 2, 2019, the Court issued an Order (the "April 2 Order") approving the Claims Administration Procedure.
- 1.1.10** As described in the Second Report the Trustee has completed the review and allowance of all claims and entered into settlement agreements with several of the project owners.
- 1.1.11** On August 16, 2019, the Court issued an Order (the "August 16 Order"), among other things, approving the Lien Claims and the Trust Claims, approving the settlements entered into by the Trustee and providing direction with respect to Ayerswood.

- 1.1.12 As described in the Third Report the Trustee has entered into agreements with all Project Owners with respect to the holdback and accounts receivable.
- 1.1.13 On November 22, 2019, the Court issued an Order (the “November 22 Order”), among other things, approving the settlements entered into by the Trustee and providing direction with respect to payment of the settlement amounts.
- 1.1.14 As described in the Fourth Report the Trustee outlined the background of the Guelph Project and the position of both the Trustee and Ayerswood with respect to the March Payment and sought direction from the Court.
- 1.1.15 As described in the Supplement to the Fourth Report the Trustee responded to the affidavit of John Camara and provided background on the pre-bankruptcy meetings between the Trustee and Sirius and the collection of the March Payment by Sirius.
- 1.1.16 On December 14th the Court released its decision (the “December 14 Endorsement”) with respect to the March Payment and determined that it formed part of the estate of Sirius for distribution to the creditors pursuant to the Claims Administration Procedure.
- 1.1.17 On December 24, 2020, Ayerswood appealed the December 14 Endorsement; however, the appeal was filed directly with the Appeal Court and not the Bankruptcy Court and therefore not filed by the required deadline. As a result, Ayerswood served a motion on January 22, 2021, to request an extension of the time to file the appeal. The Trustee consented to Ayerswood’s motion. Eight (8) months later, on October 1, 2021, Ayerswood received approval of the extension to file the appeal and filed the appeal with the Bankruptcy Court.
- 1.1.18 As described in the Fifth Report the Trustee provided an update on the timeline for the appeal and the costs incurred to date.

1.2 Purpose of Trustee’s Sixth Report

- 1.2.1 This constitutes the Trustee’s sixth report (the “Sixth Report”) to the Court in this matter and is filed to:
- (i) Provide an update on the activities of the Trustee since the Fifth Report;
 - (ii) Approving the settlement made by the Trustee with Ayerswood;
 - (iii) Obtain approval of the fees and disbursements of the Trustee and its counsel;
 - (iv) Obtain approval of the Proposed Distribution (as defined herein); and,
 - (v) Approve the discharge of the Trustee.

2.0

Claims Administration Procedure Update

2.1 Collections of Receivables and Holdbacks

2.1.1 All amounts are inclusive of HST unless otherwise noted.

2.1.2 Following its appointment, the Trustee reviewed the records of Sirius and updated the invoicing and receivables. The chart below details the outstanding invoice(s), receivables and holdbacks on each of the Construction Projects as at the date of bankruptcy.

Opening Receivable Summary						
	Waterloo	Kitchener	Newcastle	Brampton	Parking Lot	Guelph
Invoice 1	\$ 46,327.91	\$ 152,550.00	\$ 22,626.46	\$ 140,588.93	\$ 11,789.79	\$ 158,652.00
Invoice 2	14,238.00	62,037.00	-	(59,109.59)	-	-
Holdback	23,546.80	28,080.50	149,167.04	59,020.96	52,698.50	328,188.65
Total	\$ 84,112.71	\$ 242,667.50	\$ 171,793.50	\$ 140,500.30	\$ 64,488.29	\$ 486,840.65

Note- All amounts are inclusive of HST

2.1.3 Waterloo Project

- (i) As reported in the Second Report the Trustee reached an agreement on the Waterloo Project and has collected the proceeds of the settlement.

2.1.4 Kitchener Project

- (i) As reported in the Second Report the Trustee reached an agreement on the Kitchener Project and has collected the proceeds of the settlement.

2.1.5 Newcastle Project

- (i) As reported in the Third Report the Trustee reached an agreement on the Newcastle Project and has collected the proceeds of the settlement.

2.1.6 Brampton Project

- (i) As reported in the Third Report the Trustee reached an agreement on the Brampton Project and has collected the proceeds of the settlement.

2.1.7 Parking Lot Project

- (i) As reported in the Third Report the Trustee reached an agreement on the Parking Lot Project and has collected the proceeds of the settlement.

2.2 Guelph Project update

- 2.2.1 As was previously reported, On December 24, 2020, Ayerswood appealed the December 14 Endorsement; however, the appeal was filed directly with the Appeal Court and not the Bankruptcy Court and therefore not filed by the required deadline. As a result, Ayerswood served a motion on January 22, 2021, to request an extension of the time to file the appeal. The Trustee consented to Ayerswood's motion. Eight (8) months later, on October 1, 2021, Ayer wood received approval of the extension to file the appeal and filed the appeal with the Bankruptcy Court.

- 2.2.2 On June 14, 2022, the Court of Appeals for Ontario heard the case and released its decision on July 13, 2022 (the “**July 13 Decision**”). The July 13 Decision directed the matter to return to Bankruptcy Court for directions on the procedure to be followed for a determination of the issue of entitlement to the funds paid by Ayerswood to Sirius on March 1, 2019. The July 13 Decision is attached as **Appendix A**.
- 2.2.3 Following the July 13 Decision, the Trustee held a meeting with the Lien Claimants to discuss the available options and determine the next steps. The Lien Claimants were supportive of an out of Court settlement of the March Payment.
- 2.2.4 The Trustee completed an in-depth review of the Guelph project and the Quality Report and summarized its findings and position to Ayerswood in September of 2022.
- 2.2.5 Ayerswood reviewed the Trustee’s position and responded in November of 2022 with their position.
- 2.2.6 Once the position of each party was known, Ayerswood and the Trustee entered into settlement discussions. As a result of the discussions, the Trustee and Ayerswood reached an agreement on February 21, 2023 (the “**Minutes of Settlement**”). The Minutes of Settlement require the Trustee to pay \$194,043.70 to Ayerswood on account of the March Payment. The Minutes of Settlement are subject to Court approval and are attached as **Appendix B**.
- 2.2.7 The Minutes of Settlement are based on an equal split of the March Payment and the interest received on the funds.
- 2.2.8 The Lien Claimants support the settlement with Ayerswood.
- 2.2.9 Following the settlement of the March Payment the Guelph Project will be settled in full.
- 2.2.10 The Trustee has collected a total of \$692,414 on the Guelph Project of which 122,569.67 has been distributed based on previous Court orders. As of February 24, 2023, the Trustee has \$569,884.33 on hand in its trust account for the Guelph Project.

3.0

Trustee's Accounts

- 3.1 Pursuant to paragraph 24 of the April 2 Order, the fees and expenses of the Trustee in connection with the Claims Administration Order shall form a first charge on the funds collected.
- 3.2 The Trustee and its counsel have tracked their time by project and will allocate the fees and expenses to the applicable project.
- 3.3 The fees and disbursements of the Trustee for the period from October 14, 2021 through to February 28, 2023, including a completion accrual of \$3,500.00, are detailed in the affidavit of Stephen Cherniak, a copy of which is attached as **Appendix C**.
- 3.4 The Trustee has submitted one invoice as follows:
 - (i) The Guelph Project fees from October 14, 2021 through to February 28, 2023 encompass 54.8 hours at an average hourly rate of approximately \$350.00 for a total of \$19,180 prior to applicable taxes.
- 3.5 The Trustee is therefore requesting that the Court approve its total fees and disbursements in the amount of \$22,680.00 prior to of applicable taxes.
- 3.6 The Trustee has an additional \$44,402 in work in progress which is being allocated to the bankrupt estate which it is not seeking court approval of at this time.
- 3.7 The fees and disbursements of the Trustee's counsel for the period from October 12, 2021 to February 24, 2023 are detailed in the affidavit of Rob Danter, a copy of which is attached as **Appendix D**.
- 3.8 The Trustee's counsel has submitted one invoices as follows:
 - (i) The fees from October 12, 2021 to February 24, 2023 encompass 114.0 hours at an average hourly rate of approximately \$279.89 and disbursements of \$2,722.30 for a total of \$34,630.30 prior to applicable taxes ("**Counsel Fees**").
- 3.9 Legal counsel to the trustee is also seeking approval of a completion accrual in the amount of \$6,000 plus applicable taxes related to bringing this motion, obtaining the draft order and any remaining assistance required by the Trustee.
- 3.10 The Trustee is therefore requesting that the Court approve its counsel's fees and disbursements in relation the Claims Procedure Order and the Construction Projects in the amount of \$45,905.74 inclusive of applicable taxes.

4.1 Distribution Priority

4.1.1 The Proposed Priority was set-out in the Second Report.

4.2 CLAC Priority

4.2.1 Pursuant to Section 81 of the Construction Act, the lien of a worker has priority over the lien of any other person belonging to the same class to the extent of the amount of forty regular-time working days' wages.

4.2.2 CLAC submitted a lien claim in the amount of \$138,716.18. The Trustee reviewed the CLAC claim to determine the portion that related to the past 320 hours or work per employee, being equal to forty days of work. Based on the Trustee's review, \$83,974.45 of the CLAC claim will qualify for the S. 81 priority and the balance will be paid on a pari-passu basis with the other Lien Claimants.

4.3 Proposed Distribution

4.3.1 The receipts to date on each of the Construction Projects are noted above in section 2.1.

4.3.2 The fees and costs incurred on each project are noted above in section 3.0.

4.3.3 The Trustee, with the approval of this Court, proposes to make distributions, as funds are available, on each of the Construction Projects pursuant to the Proposed Priority.

4.3.4 The Trustee is seeking approval for the following distribution (the "Proposed Distribution"):

4.3.5 Guelph Project

- (i) The approved fees and expenses of the Trustee plus applicable taxes.
- (ii) The approved fees and expenses of counsel to the Trustee plus applicable taxes.
- (iii) The Ayerswood Settlement in the amount of \$194,043.70.
- (iv) The Lien Claim from CLAC in the amount of \$83,974.45¹.
- (v) Any remaining funds on pari-passu basis to the Lien Claimants.

¹ Subject to any WEPPA repayments

5.0 Discharge

- 5.1 Following the settlement described in section 3.0 and the completion of the Proposed Distribution's in section 4.0 the Trustee will have substantially completed the construction Claims Administration Procedure.
- 5.2 Any funds related to a Project after the Proposed Distribution will be paid into the general pool available to creditors in the bankruptcy of Sirius.
- 5.3 Any Trust Claim's and Lien Claim's that were not paid in full from the Claims Administration Procedure will, to the extent they are unpaid, be allowed as claims in the bankruptcy of Sirius.
- 5.4 The Trustee will complete the administration of the bankruptcy of Sirius and obtain its discharge from the Court in the ordinary course accordance with the BIA.
- 5.5 The Trustee is requesting its discharge from the Claims Administration Procedure subject to completing the Proposed Distribution's in section 4.0.

6.0 Order Sought

6.1.1 We submit this Sixth Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Approve the Sixth Report and the Trustee's actions described therein;
- (ii) Approve the settlements reached by the Trustee with Ayerswood;
- (iii) Approve the fees and disbursement of the Trustee and its counsel;
- (iv) Approve the Proposed Distribution; and,
- (v) Approve the discharge of the Trustee from the Claims Administration Process.

All of which is respectfully submitted this 5th day of April, 2023.

**BDO CANADA LIMITED.
SOLELY IN ITS CAPACITY AS
TRUSTEE OF THE ESTATE OF
SIRIUS CONCRETE INC.**



Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX "A"

COURT OF APPEAL FOR ONTARIO

CITATION: Sirius Concrete Inc. (Re), 2022 ONCA 524

DATE: 20220713

DOCKET: C70020

Benotto, Zarnett and Sossin JJ.A.

In the Matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in
the Province of Ontario

Scott Turton, for the appellant Ayerswood Development Corporation

Melinda Vine and Jason DiFruscia, for the respondent BDO Canada Limited, as
Trustee for the Estate of Sirius Concrete Inc.

Heard: June 14, 2022

On appeal from the order of Justice Jonathon C. George of the Superior Court of
Justice, dated December 14, 2020, with reasons at 2020 ONSC 7733.

REASONS FOR DECISION

Introduction

[1] The appellant, Ayerswood Development Corporation (“Ayerswood”), appeals the order of the bankruptcy judge, made on a motion for directions brought by the respondent, BDO Canada Limited, as trustee in bankruptcy of Sirius Concrete Inc. (“Sirius”). In particular, Ayerswood appeals from those parts of the order by which the bankruptcy judge directed that the amount of \$381,578.40 (the “funds”) that Ayerswood paid to Sirius on March 1, 2019, one business day before Sirius made an assignment into bankruptcy on March 4, 2019, forms part of the bankrupt estate of Sirius and is to be distributed to its creditors.

[2] The bankruptcy judge rejected Ayerswood’s position that it had a claim to a remedial or constructive trust over the funds, such that the funds were not property of Sirius that became available for distribution to creditors upon its bankruptcy, and that adjudicating this claim required a fuller evidentiary record. Ayerswood contended that payment of the funds had been induced by Sirius’s deceit and constituted an unjust enrichment, and Ayerswood provided evidence about the circumstances of the payment that the bankruptcy judge described as raising a “live question as to whether Ayerswood was manipulated and duped” into paying the funds. However, the bankruptcy judge held that even accepting that evidence as true, “none of ... [it] could possibly lead to the imposition of a trust.”

[3] In our view, the bankruptcy judge erred, and the appeal must be allowed. Below, we explain our reasons for coming to this conclusion.

Ayerswood’s Evidence

[4] On the motion before the bankruptcy judge, only Ayerswood’s representative, Mr. Camara, filed an affidavit. There was no cross-examination on it, nor was there any evidence that directly contradicted it. The affidavit was the only evidence about the precise circumstances of the payment of the funds in issue.

[5] Mr. Camara explained that Ayerswood was the general contractor on an apartment building project in Guelph, Ontario. Sirius, a concrete forming company,

was hired by Ayerswood in 2018 to provide the labour, equipment, and materials to construct the concrete structure of the three underground parking levels, the twelve above ground levels, the roof slab, and the penthouse of the project.

[6] Mr. Camara went on to describe how Sirius's performance was marked by delays and deficiencies. He stated that while Ayerswood had been paying Sirius's periodic invoices to incentivize Sirius to get its work done, Ayerswood decided to take a different tack with an invoice that Sirius rendered in January 2019 in the amount of the funds, namely \$381,578.40. It decided not to pay the invoice until Sirius demonstrated progress in rectifying the problems and getting the project back on track.

[7] Mr. Camara described the circumstances that led to the ultimate payment of the funds. A site meeting was planned for March 1, 2019, at which Sirius was to present a detailed plan that would address the problems with its deficiencies and delays, but Sirius failed to attend. A Sirius representative, Mr. Waite, then called Mr. Camara to apologize, and asked for the meeting to be delayed until March 5, 2019 because Sirius was discussing its plan to get back on track with its work at the project and needed a bit more time. Mr. Waite asked for a cheque for the January invoice, and when Mr. Camara expressed reluctance to pay without a satisfactory plan from Sirius, Mr. Waite assured Mr. Camara that his providing a cheque would ensure that Sirius would push things along to get its work done. Mr. Camara believed this representation and provided a cheque. However, Sirius

in fact had no intention of doing any further work. It completed a statement of affairs for its bankruptcy filing on the very same day as these representations were being made to Mr. Camara, March 1, 2019. Sirius made an assignment into bankruptcy on the next business day, March 4, 2019. In short, Ayerswood claims that it was “lied to”, and it was in reliance on those lies that the funds were paid over when they otherwise would not have been.

[8] As Mr. Camara stated in his affidavit:

So when Sirius wrote to me on 1 March 2019 – “Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues.” – Ayerswood was being lied to.

Exhibit E to this affidavit is a copy of the Statement of Affairs of Sirius. While it shows a date of 1 March 2019, the amount of information in that form was self-evidently not compiled only after 12:44 p.m. that day [the time of the above quoted email]. Sirius knew they would not be returning to site and deceived me.

I, and hence Ayerswood, was assured by Sirius that if the payment of their January invoice was given to them they would come to the meeting on 5 March 2019 with a concrete plan to solve the problems and would move their work ahead promptly. This was pure deception with the object of getting Ayerswood to release the cheque. I, and hence Ayerswood, believed these lies, and in the belief that Sirius would be not just continuing their work to completion, but promptly to completion, I relented on the decision to withhold the cheque and released to Sirius the cheque of 1 March 2019 for \$381,578.40.

If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited (“the Trustee”) and were going to assign Sirius into

bankruptcy and abandon their contract for the Building I never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been overpaid for the work they had done. Sirius was not owed \$381,578.40, or any part of that money, and it only received that cheque due to their deceit as I have outlined above.

Analysis

[9] The parties argued about both the process followed and also the correctness of the disposition made.

[10] As to process, the parties agree that, on a motion for directions in an insolvency matter, the supervising court may determine an issue of entitlement to assets or funds as between the insolvent estate and a third party by following a summary procedure modelled on that used on a motion for summary judgment, or may order a trial to determine the dispute where there is a genuine issue requiring one: *Ontario Securities Commission v. Money Gate Mortgage Investment Corporation*, 2020 ONCA 812, 153 O.R. (3d) 225, at paras. 10, 32-35 and 40. Although *Money Gate* dealt with a receivership, the same analysis can apply in a bankruptcy.

[11] It is unnecessary to consider the argument that the record was not appropriate for final factual determinations to be made because, in our view, that is not how the bankruptcy judge proceeded. He proceeded on the basis that taking

Ayerswood's evidence as true, as a matter of law no trust claim could possibly succeed.

[12] A motion for directions with a summary procedure would be appropriate to resolve the issue of entitlement to the funds as between the bankrupt estate and Ayerswood if it could have been determined, as a matter of law, that taking Ayerswood's allegations as true, Ayerswood could not possibly establish a proprietary entitlement to the funds.

[13] As to the correctness of the disposition, however, the bankruptcy judge did not cite any authority for his conclusion that Ayerswood's evidence, taken as true, could not possibly establish a trust, and in our respectful view it was incorrect.

[14] Property of the bankrupt divisible among creditors does not include property that the bankrupt holds in trust for any other person: *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), s. 67(1)(a). It is well established that unjust enrichment, arising from certain types of debtor misconduct prior to bankruptcy, may impress funds with a constructive trust in favour of a third party and that the successful assertion of a constructive trust means that the property subject to it does not form part of the property of the bankrupt that vests in the trustee under s. 71 of the *BIA*: *Credifinance Securities Limited v. DSLC Capital Corp.*, 2011 ONCA 160, 277 O.A.C. 377, at paras. 33-37.

[15] According to Lloyd W. Houlden, Geoffrey B. Morawetz and Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, loose-leaf (2022-Rel. 6), 4th ed. (Toronto: Thomson Reuters, 2009), at para. 5-17:

Constructive trusts may apply in bankruptcy. If, in a bankrupt estate, the requirements for a constructive trust are met, the beneficiary of the trust will receive payment out of a fund that would otherwise form part of the assets of the bankrupt estate: *Barnabe v. Touhey* (1995), 37 C.B.R. (3d) 73, 26 O.R. (3d) 477, 10 E.T.R. (2d) 68, 1995 CarswellOnt 167 (C.A.).

[16] Similarly, in *306440 Ontario Ltd. v. 782127 Ontario Ltd. (Alrange Container Services)*, 2014 ONCA 548, 384 D.L.R. (4th) 278, at para. 24, this court stated:

Because a constructive trust is a proprietary remedy, it carries with it certain benefits that do not attach to personal remedies. Those benefits include the removal of the property from the estate of the bankrupt, effectively trumping the priority scheme under the bankruptcy legislation: Peter D. Maddaugh and John D. McCamus, *The Law of Restitution*, loose-leaf edition (Toronto: Canada Law Book, 2013), at para. 5:200.

[17] We see no reason why, in law, the facts asserted by Ayerswood could not give rise to a constructive trust as a remedy for unjust enrichment.

[18] To establish unjust enrichment, a claimant must show an enrichment, a corresponding deprivation, and the absence of a juristic reason: *Moore v. Sweet*, 2018 SCC 52, [2018] 3 S.C.R. 303, at para. 37. The payment to Sirius by Ayerswood on March 1, 2019 would meet the requirements of a benefit and a corresponding deprivation. It is not clear that the existence of a contract would

constitute a juristic reason, given that on Ayerswood's evidence, the payment was procured by deceit and a breach of the duty of honest performance, and the amount paid was not owing.

[19] Where an unjust enrichment is established, a court may award a proprietary remedy in the form of a constructive trust where a personal remedy is inadequate and the plaintiff's contribution is linked to the property over which the trust is claimed: *Moore*, at paras. 90-91. Here, a court may view a personal remedy as inadequate given the bankruptcy, and the funds paid by Ayerswood on the eve of bankruptcy may be traceable into the funds in the trustee's hands.

[20] We do not accept the argument that policy reasons necessarily preclude the finding of a constructive trust since giving effect to one would allow money paid to the bankrupt to be clawed back by the payor instead of being shared rateably among all creditors. Parliament has answered this policy question by exempting property that the bankrupt holds in trust from property of the bankrupt that is divisible among creditors.

[21] Nor do we accept the argument that nothing in the evidence distinguishes the March 1, 2019 payment made by Ayerswood from any of the prior payments it made to Sirius. On Ayerswood's uncontradicted evidence, it decided to treat that payment differently and would not have turned the funds over but for being lied to.

[22] Since, accepting the evidence of Ayerswood as true, a trust was a legally viable potential remedy, the decision of the bankruptcy judge, rendered on the basis that it was not a viable potential remedy, cannot stand.

[23] We do not accept the respondent's submission that the bankruptcy judge was going beyond a determination of the legal possibility of a trust claim and was exercising his discretion not to impose a constructive trust in these circumstances. He did not say he was doing so, nor did he refer to the factors that inform the exercise of that discretion.

Disposition

[24] Ayerswood did not argue below that its claim to a constructive trust should be finally determined in its favour. Instead, it asked for a process to allow that determination, fairly recognizing that in that process, its evidence might be challenged by cross-examination, or contradicted by other evidence that it in turn would have the opportunity to respond to or challenge.

[25] We therefore allow the appeal, set aside the determination of the bankruptcy judge that the funds form part of the bankrupt estate of Sirius and are to be distributed to its creditors, and direct that the matter return to bankruptcy court for directions on the procedure to be followed for a determination of the issue of entitlement to the funds paid by Ayerswood to Sirius on March 1, 2019.

[26] Ayerswood is entitled to its costs of the appeal in the sum of \$12,000, inclusive of disbursements and applicable taxes.

M. L. Benotto J.A.

B. Burnett J.A.

L. Sossin J.A.

APPENDIX "B"

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended**

MINUTES OF SETTLEMENT

WHEREAS Sirius Concrete Inc. ("**Sirius**"), made a voluntary assignment in bankruptcy on March 4, 2019 and BDO Canada Limited ("**BDO**") was appointed as Trustee in Bankruptcy.

AND WHEREAS by order dated April 2, 2019 BDO was authorized to conduct a claims process in respect of six construction projects which Sirius was involved in (the "**Claims Procedure Order**").

AND WHEREAS Ayerswood Development Corporation ("**Ayerswood**") made a pre-bankruptcy payment to Sirius on March 1, 2019 in the amount of \$381,578.40 (the "**Ayerswood Payment**").

AND WHEREAS Ayerswood claimed repayment of the Ayerswood Payment from Sirius' bankrupt estate.

AND WHEREAS BDO, brought a motion dated March 10, 2020 for, *inter alia*, direction from the Court regarding the Ayerswood Payment and Ayerswood's claim for repayment of same, and approval of its Fourth Report to the Court dated March 3, 2020 (the "**Motion for Directions**").

AND WHEREAS BDO obtained an Order dated December 14, 2020 ordering that the Ayerswood Payment forms part of the estate of Sirius and that it be distributed to the creditors thereof pursuant to the Claims Procedure Order (the "**Order**").

AND WHEREAS Ayerswood appealed the Order and the Ontario Court of Appeal set aside the Order and directed that the matter be returned to Ontario Superior Court of Justice in

Bankruptcy and Insolvency for directions on the procedure to be followed for a determination of the issue of the Ayerswood Payment.

NOW THEREFORE, the undersigned agree to settle the Motion for Directions and all issues with respect to the Ayerswood Payment on the following terms:

1. Payment of the sum of \$194,043.70 (the “**Settlement Funds**”) by BDO to Ayerswood.
2. These Minutes of Settlement, and payment of the Settlement Funds is conditional upon BDO receiving Court Approval of same.
3. Ayerswood hereby directs BDO to pay the Settlement Funds to F. Scott Turton, Barrister-at-law, in trust.
4. The parties to these Minutes of Settlement agree that upon payment of the Settlement Funds:
 - a. Ayerswood does hereby forever discharge and release BDO with respect to any and all claims or possible claims that they have or may have against BDO relating to, in connection with, or arising in respect of, the Ayerswood Payment.
5. These minutes of Settlement may be signed by the parties in counterparts. The parties may also exchange copies of these Minutes, signed in counterpart, by sending PDF copies by email to legal counsel for the parties. All copies of these Minutes signed in counterpart and in PDF shall together be deemed to be one original copy of these Minutes.

DATED AT LONDON, ONTARIO this day of 2023

BDO CANADA LIMITED
by its solicitors **Harrison Pensa LLP**



Per: _____
I have authority to bind the Bank

AYERSWOOD DEVELOPMENT CORPORATION
by its solicitor **F. Scott Turton, Barrister-at-Law**

Per: Scott Turton (electronic signature)
I have authority to bind the Corporation

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO**

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AND WHEREAS Ayerswood claimed repayment of the Ayerswood Payment from Sirius' bankrupt estate.

AND WHEREAS BDO, brought a motion dated March 10, 2020 for, *inter alia*, direction from the Court regarding the Ayerswood Payment and Ayerswood's claim for repayment of same, and approval of its Fourth Report to the Court dated March 3, 2020 (the "**Motion for Directions**").

AND WHEREAS BDO obtained an Order dated December 14, 2020 ordering that the Ayerswood Payment forms part of the estate of Sirius and that it be distributed to the creditors thereof pursuant to the Claims Procedure Order (the "**Order**").

AND WHEREAS Ayerswood appealed the Order and the Ontario Court of Appeal set aside the Order and directed that the matter be returned to Ontario Superior Court of Justice in

Bankruptcy and Insolvency for directions on the procedure to be followed for a determination of the issue of the Ayerswood Payment.

NOW THEREFORE, the undersigned agree to settle the Motion for Directions and all issues with respect to the Ayerswood Payment on the following terms:

1. Payment of the sum of \$194,043.70 (the “**Settlement Funds**”) by BDO to Ayerswood.
2. These Minutes of Settlement, and payment of the Settlement Funds is conditional upon BDO receiving Court Approval of same.
3. Ayerswood hereby directs BDO to pay the Settlement Funds to F. Scott Turton, Barrister-at-law, in trust.
4. The parties to these Minutes of Settlement agree that upon payment of the Settlement Funds:
 - a. Ayerswood does hereby forever discharge and release BDO with respect to any and all claims or possible claims that they have or may have against BDO relating to, in connection with, or arising in respect of, the Ayerswood Payment.
5. These minutes of Settlement may be signed by the parties in counterparts. The parties may also exchange copies of these Minutes, signed in counterpart, by sending PDF copies by email to legal counsel for the parties. All copies of these Minutes signed in counterpart and in PDF shall together be deemed to be one original copy of these Minutes.

DATED AT LONDON, ONTARIO this day of , 2023.

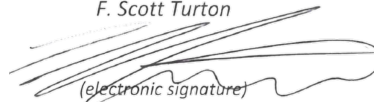
BDO CANADA LIMITED
by its solicitors **Harrison Pensa LLP**



Per: _____
I have authority to bind the Bank

AYERSWOOD DEVELOPMENT CORPORATION
by its solicitor **F. Scott Turton, Barrister-at-Law**

F. Scott Turton



(electronic signature)

Per: Scott Turton (electronic signature)
I have authority to bind the Corporation

APPENDIX "C"

**ONTARIO SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO
IN THE PROVINCE OF ONTARIO**

AFFIDAVIT OF ROBYN DUWYN

I, Robyn Duwyn, of the City of Kitchener, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Vice-President of BDO Canada Limited (“BDO”), the Trustee in Bankruptcy of Sirius Concrete Inc. (“Sirius” or the “Company”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated April 2, 2019 (the “Claims Procedure Order” or the “Order”) BDO Canada Limited, in its capacity as Trustee in Bankruptcy of Sirius (the “Trustee”) was authorized to conduct a claims Process in respect of six (6) construction projects (the “Projects”) which the Company was involved in to March 4, 2019.
3. The Trustee commenced its activities on March 4, 2019, prior to the issuance of the Claims Procedure Order. Since March 4, 2019, the Trustee has been engaged in carrying out the Claims Administration Procedure in respect of the Projects. The Claims Administration of five of the six projects is now complete the only remaining project being the Guelph Project.
 - (i) In the course of performing the duties pursuant to the Order and as set out above at paragraph 3, the Trustee’s staff expended 54.8 hours for the period of October 13, 2021 to February 23, 2023 for the Guelph Project.
4. Attached hereto and marked as Exhibit “A” to this my Affidavit are the accounts of the Trustee together with a summary sheet.

5. To the best of my knowledge, the rates charged by the Trustee throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
6. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
7. I verily believe that the fees and disbursements incurred by the Trustee are fair and reasonable in the circumstances.
8. This Affidavit is sworn in support of the motion for approval of the Trustee's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of
London in the Province of Ontario
on the 20th day of April, 2023



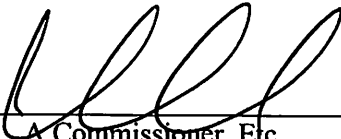
Commissioner for Taking Affidavits



ROBYN DUWYN, CPA, CA, CIRP
Licensed Insolvency Trustee

Stephen Neil Cherniak
a Commissioner, etc., Province
of Ontario, for BDO Canada Limited.
Expires July 12, 2024

Attached is Exhibit A
To the Affidavit of Robyn Duwyn
Sworn the 20th day of April 2023.



A Commissioner, Etc

Stephen Neil Cherniak
a Commissioner, etc., Province
of Ontario, for BDO Canada Limited.
Expires July 12, 2024

**Summary of Trustee's Accounts for the period
October 13, 2021 to February 23, 2023**

Project	Invoice Date	Hours Expended	Fees & Disbursements	HST	Invoice Total
Guelph	February 27, 2023	54.8	22,680.00	2,948.40	25,628.40



Tel: 519 660 6540
 Fax: 519 439 4351
 www.bdo.ca

BDO Canada Limited
 100-633 Colborne Street
 London ON N6B 2V3 Canada

INVOICE

Sirius Concrete

Date

February 27, 2023

Invoice No.

CINV02272023

Re: Guelph

FOR PROFESSIONAL SERVICES RENDERED for the period from October 13, 2021 to February 23, 2023 as per the details below.

Our Fee:	\$ 19,180.00
Time to Complete	3,500.00
Sub Total	<u>22,680.00</u>
HST - 13% (#R101518124)	2,948.40
Total Due	<u><u>\$25,628.40</u></u>

<i>Summary of Time Charges</i>	Hours	Rate	Amount
R. Duwyn, Sr. Manager	54.8	350.00	19,180.00
Total	<u>54.8</u>		<u>\$ 19,180.00</u>

Staff	Date	Comments	Hours
Duwyn, R	13-Oct-21	Review certificate respecting evidence and attachments.	0.4
Duwyn, R	13-Oct-21	Call with counsel in interim report.	0.2
Duwyn, R	14-Oct-21	File review. Draft report and fee approval for Guelph project.	2.1
Duwyn, R	15-Oct-21	Update to report.	1.0
Duwyn, R	18-Oct-21	Report edits. Discuss with counsel.	0.3
Duwyn, R	19-Oct-21	Fee affidavit.	0.3
Duwyn, R	22-Oct-21	Review notice of motion.	0.2
Duwyn, R	25-Oct-21	Review motion material. Post to website.	0.4
Duwyn, R	26-Oct-21	Emails with Ayerswood on holdback.	0.1
Duwyn, R	28-Oct-21	Call with creditor to discuss motion material. Review material. Update service list.	0.4
Duwyn, R	29-Oct-21	Update with Dave Forbes.	0.3
Duwyn, R	5-Nov-21	Review timelines on Ayerswood perfecting Appeal and send email to counsel on same.	0.3
Duwyn, R	8-Nov-21	Call with counsel on timeline for Ayerswood to perfect. Email to Ayerswood on same.	0.3
Duwyn, R	9-Nov-21	Question from counsel on service and updated address for creditor.	0.3
Duwyn, R	19-Nov-21	Update from counsel on status of Appeal filing.	0.2
Duwyn, R	24-Nov-21	Update from counsel on status of Appeal. Appeal court still does not have the documents.	0.3
Duwyn, R	6-Dec-21	Follow up with counsel on Appeal.	0.2
Duwyn, R	7-Dec-21	Emails with both counsel on status of Appeal.	0.2
Duwyn, R	16-Dec-21	Update on Appeal with counsel.	0.2
Duwyn, R	21-Dec-21	Obtain Appeal court case number	0.2
Duwyn, R	4-Jan-22	Confirm filing of Appeal with Appeal court, and BDO filing certificate of evidence.	0.3
Duwyn, R	12-Jan-22	Review of Ayerswood Appeal book and compendium. Send to BDO staff.	0.5
Duwyn, R	13-Jan-22	Follow up with counsel on Appeal Documents. Call with counsel on next steps.	0.4
Duwyn, R	18-Jan-22	Review factum of the applicant and discuss with counsel.	0.7
Duwyn, R	19-Jan-22	Complete review of factum and discuss with BDO staff. Review case on application of S. 34	0.9

Staff	Date	Comments	Hours
Duwyn, R	20-Jan-22	Review Ayerswood materials from November 2020 motion in prep for review of Trustee factum for Appeal.	0.9
Duwyn, R	24-Jan-22	Additional review of previous Ayerswood materials.	0.4
Duwyn, R	31-Jan-22	Update with counsel on status of Trustee response.	0.3
Duwyn, R	3-Feb-22	Follow up on response to Appeal.	0.2
Duwyn, R	8-Feb-22	First review of Appeal response.	1.0
Duwyn, R	10-Feb-22	Follow up with counsel on Sirius response.	0.2
Duwyn, R	10-Feb-22	Call with counsel on draft response for Sirius	0.3
Duwyn, R	11-Feb-22	Obtain Appeal court date. Email with counsel and BDO staff.	0.2
Duwyn, R	16-Feb-22	Review draft factum, comments to counsel. Send to BDO staff.	1.8
Duwyn, R	23-Feb-22	Review draft response Re: reducing the number of pages to the limit.	0.4
Duwyn, R	24-Feb-22	Review draft factum with cuts.	1.2
Duwyn, R	25-Feb-22	Emails with counsel on next steps Re: after Factum is done.	0.3
Duwyn, R	3-Mar-22	Update on response to Appeal.	0.3
Duwyn, R	7-Mar-22	Review and edits to draft Appeal response.	0.8
Duwyn, R	8-Mar-22	Review of final Factum and compendium	2.2
Duwyn, R	9-Mar-22	Final review and give approval to counsel. Post files to website.	1.2
Duwyn, R	10-Mar-22	Post documents to site.	0.8
Duwyn, R	11-Mar-22	Complete update of website for Appeal documents. Upload Ayerswood documents.	0.6
Duwyn, R	14-Mar-22	Service of Appeal documents.	0.3
Duwyn, R	16-Mar-22	Service of Appeal documents. Call with creditor: update on Appeal status.	0.5
Duwyn, R	4-Apr-22	Call with CRA RE: notice of Appeal received in the mail.	0.4
Duwyn, R	6-Apr-22	Call from creditor, review material and return call. Update website.	0.6
Duwyn, R	3-May-22	Call to and from creditor. Review Appeal documents.	0.6
Duwyn, R	4-May-22	Call with counsel on ability to attend in person.	0.2
Duwyn, R	26-May-22	Discuss Appeal prep with counsel. Obtain log in details and circulate to BDO.	0.3
Duwyn, R	31-May-22	Initial preparation for Appeal hearing.	1.0
Duwyn, R	1-Jun-22	Prepare for Appeal hearing by reading materials.	1.7

Staff	Date	Comments	Hours
Duwyn, R	6-Jun-22	Appeal hearing preparation.	1.6
Duwyn, R	7-Jun-22	Review material to preparation for Appeal.	1.0
Duwyn, R	8-Jun-22	Appeal hearing final preparation.	1.7
Duwyn, R	9-Jun-22	Final preparation for Appeal hearing.	0.8
Duwyn, R	13-Jun-22	Final preparation.	0.3
Duwyn, R	14-Jun-22	Attend in Toronto for Appeal hearing.	4.0
Duwyn, R	17-Jun-22	Update to creditor on Appeal hearing.	0.3
Duwyn, R	13-Jul-22	Review decision. Call with counsel.	0.5
Duwyn, R	14-Jul-22	Update on Appeal decision with S. Cherniak. Update call with M. Vine.	0.9
Duwyn, R	18-Jul-22	Call with BDO and HP Re: next steps. Call with D. Forbes	1.0
Duwyn, R	19-Jul-22	Calls with D. Forbes Re: March 1 activity by employees. Call with counsel.	0.6
Duwyn, R	3-Aug-22	Discuss update counsel had with CLAC. Update SRD.	0.5
Duwyn, R	5-Aug-22	Schedule call with lien claimants.	0.1
Duwyn, R	11-Aug-22	Prep for an update meeting with lien holders on next step. Prepare summary of Guelph and send to lien claim.	0.7
Duwyn, R	12-Aug-22	File review and determine initial settlement offer.	0.9
Duwyn, R	15-Aug-22	Discuss initial offer with counsel.	0.4
Duwyn, R	16-Aug-22	Discuss initial settlement with HP.	0.4
Duwyn, R	17-Aug-22	Emails with line holder on settlement negotiations.	0.2
Duwyn, R	19-Aug-22	Review responses form lien holders.	0.1
Duwyn, R	22-Aug-22	Call with counsel on timing of payment to CLAC.	0.2
Duwyn, R	24-Aug-22	Update on settlement negotiation.	0.2
Duwyn, R	26-Aug-22	First draft of settlement letter and survey report review to Ayerswood.	1.2
Duwyn, R	9-Sep-22	Call with counsel on settlement. Update to initial letter to Ayerswood	0.8
Duwyn, R	12-Sep-22	Call with counsel on initial settlement offer.	0.5
Duwyn, R	15-Sep-22	Review draft email to Ayerswood.	0.1
Duwyn, R	16-Sep-22	Discuss response with counsel. Send initial communication to Ayerswood.	0.4
Duwyn, R	27-Sep-22	Follow up on offer.	0.2
Duwyn, R	30-Sep-22	Update on offer.	0.3
Duwyn, R	25-Oct-22	F/u with Ayerswood.	0.2

Staff	Date	Comments	Hours
Duwyn, R	3-Nov-22	Update on file and counter offer from Ayerswood.	0.3
Duwyn, R	7-Nov-22	Update from Ayerswood.	0.2
Duwyn, R	9-Nov-22	Review response from Ayerswood and draft summary/response.	1.2
Duwyn, R	10-Nov-22	Call with counsel on settlement.	0.1
Duwyn, R	23-Nov-22	Discuss settlement negotiation update with counsel.	0.2
Duwyn, R	6-Dec-22	Settlement discussion.	0.1
Duwyn, R	13-Dec-22	Review account for interest and respond to counsel.	0.4
Duwyn, R	15-Dec-22	Discuss settlement with counsel. Discuss holdback adjustment.	0.4
Duwyn, R	5-Jan-23	F/u with Ayerswood.	0.2
Duwyn, R	13-Feb-23	Settle funds with Ayerswood, discuss next steps with counsel. Review Ascend.	0.3
Duwyn, R	14-Feb-23	Minutes of settlement.	0.4
Duwyn, R	21-Feb-23	Minutes of settlement.	0.2
Duwyn, R	23-Feb-23	Sixth report draft.	1.3

APPENDIX "D"

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

**AFFIDAVIT OF JASON DIFRUSCIA
(Sworn April 24, 2023)**

I, **JASON DIFRUSCIA**, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

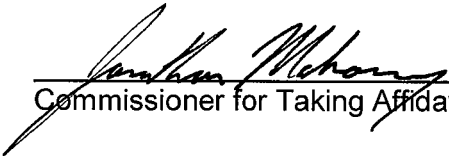
1. I am a solicitor qualified to practice law in the Province of Ontario and I am a lawyer with Harrison Pensa ^{LLP}, who acts as counsel for BDO Canada Limited, in its capacity as Trustee of the Bankrupt, Sirius Concrete Inc., in the within proceeding, and as such I have knowledge of the matters to which I hereinafter depose except for those matters based expressly upon information and belief.
2. Attached hereto and marked as **Exhibit "A"** is a summary of the time incurred by professionals at Harrison Pensa ^{LLP}, the hourly rate and fees associated with such and disbursements for the period of October 12, 2021 to February 24, 2023.
3. Attached hereto and marked as **Exhibit "B"** are particulars of time spent by professionals at Harrison Pensa ^{LLP} in connection with this matter for the period of October 12, 2021 to February 24, 2023 and an account statement detailing the services provided dated February 24, 2023.
4. The hourly billing rates set out in the Exhibits are comparable to the hourly rates charged by Harrison Pensa ^{LLP} for services rendered in relation to similar proceedings.
5. The fees and disbursements of Harrison Pensa ^{LLP} in this matter to February 24, 2023 are as follows:

- a. Total Billed Fees and Disbursements from October 12, 2021 to February 24, 2023 - \$39,125.74;
- b. Total - \$39,125.74.**

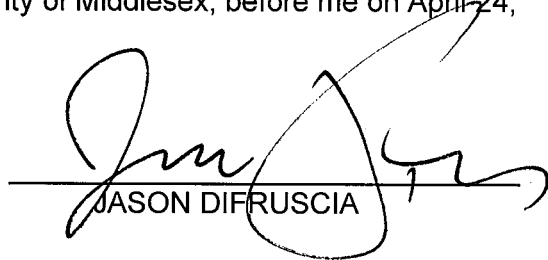
- 6. The weighted average hourly rate charged by professionals at Harrison Pensa^{LLP} is \$279.87.
- 7. I make this Affidavit in support of among other things, approval of fees and disbursements of the counsel for the Trustee.

Sworn before me: in person OR by video conference

by Jason DiFruscia at the City of London in the County of Middlesex, before me on April 24, 2023, in accordance with O. Reg. 431/20 Remotely.



Commissioner for Taking Affidavits



JASON DIFRUSCIA

Court File No. 35-2481393

Estate File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

**AFFIDAVIT OF JASON DIFRUSCIA
(Sworn April 24, 2023)**

EXHIBITS

TABS "A" TO "B" ARE THE
EXHIBITS TO THE AFFIDAVIT OF
JASON DIFRUSCIA
SWORN THIS 24TH DAY OF APRIL, 2023



A Commissioner for taking Affidavits

EXHIBIT A

(From October 12, 2021 to February 24, 2023)

	NAME	YEAR OF CALL	ACTUAL HOURS	HOURLY RATE	TOTAL
Partners	Timothy C. Hogan	1995	3.20	\$495.00	\$1,584.00
	Melinda Vine		57.80	\$350.00	\$20,230.00
Associates	Jason DiFruscia	2021	1.20	\$215.00	\$258.00
	Jason DiFruscia	2021	33.60	\$200.00	\$6,720.00
	Jason DiFruscia	2021	2.80	\$175.00	\$490.00
Students	Katie Warwick		0.30	\$145.00	\$43.50
	Jacob Williams		1.00	\$145.00	\$145.00
Clerks	Lindsay Ferguson		7.40	\$180.00	\$1,332.00
	Lindsay Ferguson		6.70	\$165.00	\$1,105.50
TOTAL FEES					\$31,908.00
HST ON FEES					\$4,148.04
TOTAL TAXABLE DISBURSEMENTS					\$2,672.30
TOTAL NON – TAXABLE DISBURSEMENTS					\$50.00
HST DISBURSEMENTS					\$347.40
TOTAL FEES, DISBURSEMENTS AND HST					\$39,125.74

EXHIBIT B

Harrison Pensa

LAWYERS

130 Dufferin Avenue, Suite 1101
P.O. Box 3237
London, ON N6A 4K3

Telephone: (519) 679 9660
Facsimile: (519) 667 3362

BDO Canada Limited
51 Breithaupt Street, Unit 300
Kitchener, ON
N2H 5G5

February 24, 2023
Invoice #: 233184
Account #: 233184-177459

File #: 177459/Melinda Vine
RE: Sirius Concrete Inc.

SUMMARY OF THIS INVOICE

Total Fees	\$ 31,908.00
Total Disbursements	\$ 2,722.30
Total Tax	\$ <u>4,495.44</u>
TOTAL	\$ 39,125.74
APPLIED FROM TRUST	\$ <u>0.00</u>
TOTAL THIS INVOICE	\$ 39,125.74
TOTAL PRIOR OUTSTANDING INVOICES	\$ <u>33,938.62</u>
TOTAL DUE AND OWING:	\$ <u>73,064.36</u>

PLEASE REMIT WITH PAYMENT TO HARRISON Pensa LLP

Harrison Pensa LLP is a registered payee with most Canadian banks.
Payment can be made online through your bank's website or mobile app.

GST / HST REGISTRATION NO: R867630543

Interest of 2.8% is charged based on the Courts of Justice Act at time of billing on all invoices over 30 days

TERMS: DUE UPON RECEIPT
Cheque, Mastercard and VISA also accepted.

Please make cheque payable to:
HARRISON Pensa LLP, 130 Dufferin Avenue, Suite 1101, P.O. Box 3237, London ON N6A 4K3

Harrison Pensa

LAWYERS

130 Dufferin Avenue, Suite 1101
P.O. Box 3237
London, ON N6A 4K3

Telephone: (519) 679 9660
Facsimile: (519) 667 3362

BDO Canada Limited
51 Breithaupt Street, Unit 300
Kitchener, ON
N2H 5G5

February 24, 2023
Invoice #: 233184
Account #: 233184-177459

File #: 177459/Melinda Vine
RE: Sirius Concrete Inc.

TO ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
12-Oct-21	To revise Respondents Certificate Respecting Evidence; to draft correspondence to service list re service; to draft correspondence to court of appeal re filing; to draft affidavit of service	.50	\$87.50	JDI
13-Oct-21	To serve Respondent's Certificate Respecting Evidence on all parties; to file with court of appeal	.20	\$35.00	JDI
13-Oct-21	To service and filing of appeal materials;	.20	\$70.00	MVI
13-Oct-21	To various correspondence with client;	.30	\$105.00	MVI
13-Oct-21	To conference client;	.20	\$70.00	MVI
13-Oct-21	To correspondence with Turton;	.20	\$70.00	MVI
13-Oct-21	To fee approval;	.20	\$70.00	MVI
14-Oct-21	To correspondence with Trustee; to review invoices;	.30	\$105.00	MVI
14-Oct-21	To conference client;	.20	\$70.00	MVI
14-Oct-21	To correspondence with client;	.20	\$70.00	MVI
15-Oct-21	To review report;	.50	\$175.00	MVI
15-Oct-21	To conference Duwyn;	.20	\$70.00	MVI
15-Oct-21	To conference client;	.20	\$70.00	MVI
15-Oct-21	To draft fee affidavit;	.20	\$33.00	LFE
19-Oct-21	To draft fee affidavit;	1.00	\$165.00	LFE
19-Oct-21	To review file report;	.20	\$70.00	MVI
19-Oct-21	To correspondence with client;	.20	\$70.00	MVI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
20-Oct-21	To review Fee Affidavit;	.30	\$105.00	MVI
20-Oct-21	To schedule motion;	.20	\$70.00	MVI
20-Oct-21	To draft Notice of Motion;	.30	\$49.50	LFE
22-Oct-21	To edit Notice of Motion;	.70	\$115.50	LFE
22-Oct-21	To correspondence with client;	.20	\$70.00	MVI
22-Oct-21	To Notice of Motion;	.50	\$175.00	MVI
22-Oct-21	To correspondence with client;	.20	\$70.00	MVI
25-Oct-21	To various correspondence re: motion;	.20	\$70.00	MVI
25-Oct-21	To motion record;	.50	\$175.00	MVI
25-Oct-21	To review service order;	.20	\$70.00	MVI
25-Oct-21	To various correspondence re: service;	.20	\$70.00	MVI
25-Oct-21	To draft Motion Record; To finalize fee affidavit; To finalize Fifth Report with fee affidavits; To edit Service List; To edit letter to service list; To e-mail correspondence with service list;	1.70	\$280.50	LFE
26-Oct-21	To e-mail correspondence with counsel; To update service list; To draft Affidavit of Service;	.80	\$132.00	LFE
26-Oct-21	To correspondence with Turton;	.20	\$70.00	MVI
26-Oct-21	To correspondence with counsel for St. Mary's Cement;	.20	\$70.00	MVI
26-Oct-21	To correspondence with Trustee;	.20	\$70.00	MVI
26-Oct-21	To email with Scott Turton re appeal file number	.10	\$17.50	JDI
28-Oct-21	To e-mail correspondence with BDO; To edit Service List;	.20	\$33.00	LFE
29-Oct-21	To update documents for filing; To e-mail correspondence with court;	.20	\$33.00	LFE
29-Oct-21	To emails with opposing counsel re appeal filing	.10	\$17.50	JDI
29-Oct-21	To correspondence with Trustee and Turton;	.20	\$70.00	MVI
29-Oct-21	To various correspondence with Turton;	.20	\$70.00	MVI
1-Nov-21	To e-mail correspondence from court;	.10	\$16.50	LFE
3-Nov-21	To e-mail correspondence with counsel;	.10	\$16.50	LFE
3-Nov-21	To correspondence with Kopach;	.20	\$70.00	MVI
8-Nov-21	To motion confirmation form;	.20	\$70.00	MVI
8-Nov-21	To conference client;	.20	\$70.00	MVI
8-Nov-21	To correspondence to Turton;	.20	\$70.00	MVI
8-Nov-21	To draft motion confirmation; To e-mail correspondence with service list; To e-mail correspondence with court;	.40	\$66.00	LFE

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
8-Nov-21	To research appeal process	.40	\$70.00	JDI
9-Nov-21	To correspondence re: returned service;	.20	\$70.00	MVI
9-Nov-21	To review timeline to file rules;	.20	\$70.00	MVI
10-Nov-21	To update file re Zoom particulars from Court;	.10	\$16.50	LFE
11-Nov-21	To e-mail correspondence with service list;	.10	\$16.50	LFE
11-Nov-21	To correspondence with Sirius;	.20	\$70.00	MVI
12-Nov-21	To draft Order;	.50	\$175.00	MVI
12-Nov-21	To attend at court;	1.00	\$350.00	MVI
12-Nov-21	To correspondence with client;	.20	\$70.00	MVI
12-Nov-21	To draft Order; To prepare motion materials for court;	.50	\$82.50	LFE
17-Nov-21	To review file re Order; To e-mail correspondence with Court; To update file re issued Order; To e-mail correspondence with service list; To draft letter to service list;	.30	\$49.50	LFE
17-Nov-21	To receipt of order and correspondence with client;	.20	\$70.00	MVI
23-Nov-21	To correspondence with client;	.20	\$70.00	MVI
23-Nov-21	To emails with court re update on filing with court of appeal	.20	\$35.00	JDI
24-Nov-21	To emails with court of appeal to confirm filing	.10	\$17.50	JDI
24-Nov-21	To follow on court filings;	.20	\$70.00	MVI
25-Nov-21	To various correspondence re: filing of documents;	.20	\$70.00	MVI
25-Nov-21	To emails with bankruptcy court and court of appeal re appeal	.20	\$35.00	JDI
26-Nov-21	To emails with court re filing of appeal materials	.10	\$17.50	JDI
6-Dec-21	To emails with bankruptcy court and court of appeal re appeal	.20	\$35.00	JDI
7-Dec-21	To emails with court re appeal	.10	\$17.50	JDI
7-Dec-21	To correspondence with o/c;	.20	\$70.00	MVI
13-Dec-21	To correspondence with Turton;	.20	\$70.00	MVI
13-Dec-21	To emails with opposing counsel re court contact	.10	\$17.50	JDI
21-Dec-21	To emails with court re filing documents	.10	\$17.50	JDI
21-Dec-21	To correspondence from Turton;	.20	\$70.00	MVI
22-Dec-21	To correspondence re: court of appeal;	.20	\$70.00	MVI
22-Dec-21	To emails with court of appeal	.10	\$17.50	JDI
23-Dec-21	To emails with court of appeal; to review rules re appeals	.30	\$52.50	JDI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
23-Dec-21	To correspondence with client;	.20	\$70.00	MVI
12-Jan-22	To correspondence with Kopach;	.20	\$70.00	MVI
12-Jan-22	To receipt and review of Appeal Book;	.50	\$175.00	MVI
12-Jan-22	To correspondence with client;	.20	\$70.00	MVI
12-Jan-22	To review appeal rules re time for filing; to emails with client re next steps; to emails with counsel re update	.30	\$60.00	JDI
13-Jan-22	To conference client;	.20	\$70.00	MVI
13-Jan-22	To correspondence with Myers;	.20	\$70.00	MVI
17-Jan-22	To correspondence from Court of Appeal;	.20	\$70.00	MVI
17-Jan-22	To update file re Notice of Intention to Dismiss;	.10	\$18.00	LFE
18-Jan-22	To receipt and review of Factum;	.80	\$280.00	MVI
18-Jan-22	To correspondence with client;	.30	\$105.00	MVI
19-Jan-22	To receipt of Certificate of Perfection;	.20	\$70.00	MVI
24-Jan-22	To review law and Trustee factum;	.80	\$280.00	MVI
24-Jan-22	To review law on evidence of Receiver;	.20	\$70.00	MVI
24-Jan-22	To research caselaw re receiver's report as evidence	.40	\$80.00	JDI
31-Jan-22	To review opposing factum; to draft appeal factum; to research case law re receiver's report as evidence	2.00	\$400.00	JDI
31-Jan-22	To call from creditor;	.20	\$70.00	MVI
1-Feb-22	To correspondence re: creditor claim;	.20	\$70.00	MVI
1-Feb-22	To conference client;	.20	\$70.00	MVI
1-Feb-22	To conference client;	.20	\$70.00	MVI
1-Feb-22	To research case law re receiver's report as evidence	.50	\$100.00	JDI
2-Feb-22	To draft appeal factum	1.00	\$200.00	JDI
3-Feb-22	To draft factum; to research caselaw re receiver's report	2.30	\$460.00	JDI
4-Feb-22	To research caselaw re powers of court on motion for directions; to draft factum	3.80	\$760.00	JDI
7-Feb-22	To draft factum	1.40	\$280.00	JDI
7-Feb-22	To responding materials;	1.00	\$350.00	MVI
8-Feb-22	To factum and responding materials;	1.00	\$350.00	MVI
10-Feb-22	To correspondence with client;	.20	\$70.00	MVI
10-Feb-22	To conference with client re: cost allocation;	.20	\$70.00	MVI
10-Feb-22	To revise factum	1.00	\$200.00	JDI
11-Feb-22	To revise factum	1.60	\$320.00	JDI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
11-Feb-22	To update file re Notice of Hearing; To e-mail correspondence with court; To update counsel slip;	.30	\$54.00	LFE
11-Feb-22	To correspondence with client;	.20	\$70.00	MVI
11-Feb-22	To correspondence with client;	.20	\$70.00	MVI
11-Feb-22	To correspondence with Turton;	.20	\$70.00	MVI
14-Feb-22	To factum;	1.50	\$525.00	MVI
14-Feb-22	To revise factum	1.20	\$240.00	JDI
15-Feb-22	To revise factum	1.80	\$360.00	JDI
15-Feb-22	To finalize factum;	.50	\$175.00	MVI
15-Feb-22	To correspondence with client;	.20	\$70.00	MVI
16-Feb-22	To conference client;	.30	\$105.00	MVI
17-Feb-22	To factum;	.50	\$175.00	MVI
22-Feb-22	Review/revise responding appeal factum	.50	\$247.50	TCH
22-Feb-22	To revise factum	1.60	\$320.00	JDI
23-Feb-22	To revise factum	1.10	\$220.00	JDI
23-Feb-22	Complete review of appeal factum	.50	\$247.50	TCH
23-Feb-22	To factum;	.20	\$70.00	MVI
23-Feb-22	To factum;	.50	\$175.00	MVI
24-Feb-22	To factum;	.50	\$175.00	MVI
24-Feb-22	To correspondence with client;	.20	\$70.00	MVI
24-Feb-22	To correspondence with client;	.20	\$70.00	MVI
24-Feb-22	To revise factum	.80	\$160.00	JDI
25-Feb-22	To draft compendium and book of authorities	2.70	\$540.00	JDI
28-Feb-22	To compendium and book of authorities;	1.00	\$350.00	MVI
7-Mar-22	To revise factum; to revise compendium; to revise book of authorities	1.50	\$300.00	JDI
8-Mar-22	To emails with client re compendium	.10	\$20.00	JDI
8-Mar-22	To Compendium; to correspondence with client;	.30	\$105.00	MVI
9-Mar-22	To correspondence from client; to filing of compendium;	.20	\$70.00	MVI
9-Mar-22	To service issues;	.20	\$70.00	MVI
9-Mar-22	To emails with client re service of documents	.30	\$60.00	JDI
9-Mar-22	To review and edit Book of Authorities and Compendium;	.10	\$18.00	LFE
10-Mar-22	To emails with client re documents; to upload documents to USB	.40	\$80.00	JDI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
10-Mar-22	Travel - Drove to BDO to drop off USB to Maxine on behalf of Jason.	.30	\$43.50	KWA
10-Mar-22	To various correspondence re: delivery of materials;	.20	\$70.00	MVI
10-Mar-22	To service letter;	.20	\$70.00	MVI
10-Mar-22	To various correspondence re: filing docs with court of appeal;	.20	\$70.00	MVI
11-Mar-22	To correspondence Turton;	.20	\$70.00	MVI
11-Mar-22	To emails with court re filing	.20	\$40.00	JDI
14-Mar-22	To serve appeal materials; To edit letter to service list; To e-mail correspondence with service list; To edit Factum and Book of Authorities;	.40	\$72.00	LFE
15-Mar-22	To hyperlink factum	1.00	\$200.00	JDI
15-Mar-22	To conference client;	.20	\$70.00	MVI
16-Mar-22	To bookmark factum; to prepare documents for filing	.50	\$100.00	JDI
16-Mar-22	To prepare Factum, Book of Authorities and Compendium for serving and filing; To upload materials to Sync.com; To e-mail correspondence with service list;	.70	\$126.00	LFE
17-Mar-22	To issue letter to service list; To draft Affidavit of Service;	1.50	\$270.00	LFE
17-Mar-22	To e-mail correspondence with counsel; To update file re Appeal date;	.30	\$54.00	LFE
17-Mar-22	To draft affidavit of service; to file documents with court of appeal	.30	\$60.00	JDI
17-Mar-22	To correspondence with Kopach;	.20	\$70.00	MVI
18-Mar-22	To update file re served materials;	.20	\$36.00	LFE
21-Mar-22	To update file re couriers;	.10	\$18.00	LFE
4-May-22	To e-mail correspondence from court;	.10	\$18.00	LFE
4-May-22	To emails with court of appeal re in person attendance	.20	\$40.00	JDI
4-May-22	To various correspondence re: hearing;	.30	\$105.00	MVI
16-May-22	To correspondence with contractor;	.20	\$70.00	MVI
16-May-22	To e-mail correspondence with Kingsley;	.10	\$18.00	LFE
25-May-22	To e-mail correspondence from court;	.10	\$18.00	LFE
25-May-22	To emails with Court of Appeal re filing documents	.20	\$40.00	JDI
25-May-22	To correspondence with Court of Appeal;	.20	\$70.00	MVI
25-May-22	To review filing of materials;	.20	\$70.00	MVI
26-May-22	To correspondence from court;	.20	\$70.00	MVI
26-May-22	To counsel slip;	.20	\$70.00	MVI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
26-May-22	To prepare for hearing;	.50	\$175.00	MVI
26-May-22	To draft counsel slip	.30	\$60.00	JDI
26-May-22	To e-mail correspondence with service list; To update file re Appeal hearing details;	.20	\$36.00	LFE
30-May-22	To revise counsel slip; to emails with opposing counsel re counsel slip	.30	\$60.00	JDI
30-May-22	To conference re:Bill of Sale;	.20	\$70.00	MVI
31-May-22	To emails with court of appeal to file counsel slip	.20	\$40.00	JDI
1-Jun-22	To e-mail correspondence with creditor;	.10	\$18.00	LFE
1-Jun-22	To correspondence with Savoie Cranes;	.20	\$70.00	MVI
9-Jun-22	To correspondence with court of appeal re procedure at hearing	.20	\$40.00	JDI
10-Jun-22	To revise bill of costs; to draft order; to review appeal documents and prepare for appeal	1.10	\$220.00	JDI
10-Jun-22	To prepare Factum for COA;	.20	\$36.00	LFE
10-Jun-22	To conference client; to review factums; to bill of costs; to prepare materials;	2.00	\$700.00	MVI
13-Jun-22	To prepare for hearing; to travel to Toronto;	2.50	\$875.00	MVI
13-Jun-22	To correspondence to service list re: position;	.20	\$70.00	MVI
13-Jun-22	To e-mail correspondence with counsel; To review COA practice directions; To serve Bill of Costs; To draft Affidavit of Service; To e-mail correspondence with service list;	.70	\$126.00	LFE
13-Jun-22	To prepare for appeal	2.70	\$540.00	JDI
14-Jun-22	To e-mail correspondence with service list; To prepare materials for Appeal; To attend hearing;	2.00	\$360.00	LFE
14-Jun-22	To travel to, prepare for and attend court of appeal hearing;	6.00	\$2,100.00	MVI
11-Jul-22	To various correspondence re: decision;	.20	\$70.00	MVI
13-Jul-22	To receipt and review of decision;	.50	\$175.00	MVI
13-Jul-22	To correspondence with client;	.20	\$70.00	MVI
13-Jul-22	To correspondence to service list;	.20	\$70.00	MVI
13-Jul-22	To conference client;	.20	\$70.00	MVI
13-Jul-22	To review and update file re Decision; To e-mail correspondence with service list;	.20	\$36.00	LFE
13-Jul-22	Review appeal decision, call with trustee	.40	\$198.00	TCH
14-Jul-22	To conference client; to review decision and strategy; to call to Kopach;	1.50	\$525.00	MVI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
17-Jul-22	Review Appeal Court reasons, review Appeal Book, review facts, review 4th Report and Supplemental Report, review motion record	1.00	\$495.00	TCH
18-Jul-22	Call with trustee	.80	\$396.00	TCH
18-Jul-22	To review and prepare for meeting;	.40	\$140.00	MVI
18-Jul-22	To attend conference re: litigation strategy;	.60	\$210.00	MVI
18-Jul-22	TO conference client;	.20	\$70.00	MVI
18-Jul-22	To correspondence with Kopach;	.20	\$70.00	MVI
18-Jul-22	To video call with client re appeal and next steps	.60	\$120.00	JDI
19-Jul-22	To telephone conference client; to correspondence from client;	.30	\$105.00	MVI
25-Jul-22	To call to Kopach;	.20	\$70.00	MVI
25-Jul-22	To conference Kopach;	.20	\$70.00	MVI
3-Aug-22	To conference client;	.20	\$70.00	MVI
3-Aug-22	To various correspondence with client;	.20	\$70.00	MVI
5-Aug-22	To correspondence with client;	.20	\$70.00	MVI
5-Aug-22	To correspondence to lien claimants;	.20	\$70.00	MVI
5-Aug-22	To correspondence with counsel;	.20	\$70.00	MVI
8-Aug-22	To various correspondence re: next steps meeting;	.30	\$105.00	MVI
11-Aug-22	To conference with creditors;	.60	\$210.00	MVI
12-Aug-22	To various correspondence with client;	.30	\$105.00	MVI
15-Aug-22	To correspondence with client;	.20	\$70.00	MVI
16-Aug-22	To review deficiency claim;	.30	\$105.00	MVI
16-Aug-22	To correspondence with client;	.20	\$70.00	MVI
17-Aug-22	To correspondence to lien holders;	.20	\$70.00	MVI
22-Aug-22	To correspondence with Kopach;	.20	\$70.00	MVI
22-Aug-22	To conference client;	.20	\$70.00	MVI
22-Aug-22	To follow with lien holders;	.20	\$70.00	MVI
22-Aug-22	To correspondence with Turton;	.20	\$70.00	MVI
22-Aug-22	To correspondence with Kopach;	.20	\$70.00	MVI
23-Aug-22	To prepare for and telephone conference Turton;	.30	\$105.00	MVI
23-Aug-22	To call from and to Arrow;	.20	\$70.00	MVI
24-Aug-22	To telephone conference client;	.20	\$70.00	MVI
26-Aug-22	To correspondence from Meyers;	.20	\$70.00	MVI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
7-Sep-22	To conference creditor;	.20	\$70.00	MVI
7-Sep-22	To correspondence with client;	.20	\$70.00	MVI
8-Sep-22	To review Trustee report analysis;	.30	\$105.00	MVI
9-Sep-22	To conference client;	.30	\$105.00	MVI
12-Sep-22	To correspondence with client;	.20	\$70.00	MVI
15-Sep-22	To correspondence with client;	.20	\$70.00	MVI
16-Sep-22	To correspondence with client;	.20	\$70.00	MVI
30-Sep-22	To follow with Turton;	.20	\$70.00	MVI
30-Sep-22	To conference client;	.10	\$35.00	MVI
12-Oct-22	To correspondence with Turton;	.20	\$70.00	MVI
21-Oct-22	To follow with Turton;	.20	\$70.00	MVI
25-Oct-22	To correspondence with Turton;	.20	\$70.00	MVI
26-Oct-22	To correspondence to Turton;	.20	\$70.00	MVI
1-Nov-22	Research	1.00	\$145.00	jaw
7-Nov-22	To follow with Turton;	.20	\$70.00	MVI
8-Nov-22	To correspondence with client;	.20	\$70.00	MVI
22-Nov-22	To correspondence with client;	.20	\$70.00	MVI
23-Nov-22	To conference Turton; to conference client;	.20	\$70.00	MVI
6-Dec-22	To various correspondence with Turton and client;	.30	\$105.00	MVI
12-Dec-22	To correspondence with client;	.20	\$70.00	MVI
13-Dec-22	To various correspondence re: settlement;	.30	\$105.00	MVI
15-Dec-22	To conference client;	.20	\$70.00	MVI
15-Dec-22	To various correspondence re: settlement;	.30	\$105.00	MVI
5-Jan-23	To correspondence with Turton;	.20	\$70.00	MVI
5-Jan-23	To correspondence with Turton;	.20	\$70.00	MVI
6-Feb-23	To correspondence with Turton;	.20	\$70.00	MVI
13-Feb-23	To various correspondence with client;	.30	\$105.00	MVI
13-Feb-23	To settlement documents;	.70	\$245.00	MVI
13-Feb-23	To correspondence with Turton;	.20	\$70.00	MVI
13-Feb-23	To draft minutes of settlement re Ayerswood	1.00	\$215.00	JDI
14-Feb-23	To correspondence with o/c;	.20	\$70.00	MVI
20-Feb-23	To revise minutes of settlement	.20	\$43.00	JDI
21-Feb-23	To correspondence with client;	.20	\$70.00	MVI

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
21-Feb-23	To correspondence with Turton;	.20	\$70.00	MVI
21-Feb-23	To Mins of Settlement;	.10	\$35.00	MVI
23-Feb-23	To conference client;	.20	\$70.00	MVI
24-Feb-23	To sixth report;	.70	\$245.00	MVI
24-Feb-23	To correspondence with client;	.20	\$70.00	MVI

Total Fees:	\$	31,908.00
Plus GST:		0.00
Plus HST:		4,148.04
Total Fees (INCL TAX)		<u>4,148.04</u>

\$ 36,056.04

FEE SUMMARY:

LAWYER	HOURS	RATE	AMOUNT
Timothy C. Hogan	3.20	\$495.00	\$1,584.00
Melinda Vine	57.80	\$350.00	\$20,230.00
Jason DiFruscia	1.20	\$215.00	\$258.00
Jason DiFruscia	33.60	\$200.00	\$6,720.00
Jason DiFruscia	2.80	\$175.00	\$490.00
Katie Warwick	.30	\$145.00	\$43.50
Lindsay Ferguson	7.40	\$180.00	\$1,332.00
Lindsay Ferguson	6.70	\$165.00	\$1,105.50
Jacob Williams	1.00	\$145.00	\$145.00

NON-TAXABLE DISBURSEMENTS

File Motion Record	\$50.00
Total Non-Taxable Disbursements:	<u>50.00</u>

TAXABLE DISBURSEMENTS

Courier	1,283.47
Photocopies/Printing	83.25
Postage	80.28
Westlaw	312.05
Hotel Accommodation, Miscellaneous	501.73
Travel Costs	411.52
Total Taxable Disbursements:	\$ 2,672.30
Plus GST:	0.00
Plus HST:	<u>347.40</u>

Total Disbursements (INCL TAX)

\$ 3,069.70

TOTAL DUE & OWING

\$ 39,125.74

THIS IS OUR ACCOUNT HEREIN

HARRISON PENZA LLP

Per: _____
Melinda Vine

E. & O.E.

**Harrison Pensa LLP is a registered payee with most Canadian banks.
Payment can be made online through your bank's website or mobile app.**

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IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT LONDON

**SIXTH AND FINAL REPORT OF THE
TRUSTEE**

HARRISON PENZA ^{LLP}
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Melinda Vine (LSO #53612R)

Tel : (519) 679-9660
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Email: mvine@harrisonpensa.com

Lawyers for the Trustee,
BDO Canada Limited

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT LONDON

MOTION RECORD OF THE TRUSTEE

HARRISON PENZA ^{LLP}
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130 Dufferin Avenue, Suite 1101
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