

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN THE 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

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**MOTION RECORD**

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March 10, 2020

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# Tab 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN THE 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**

BDO Canada Limited in its capacity as Trustee (the “**Trustee**”) of Sirius Concrete Inc. (“**Sirius**”), of the City of Waterloo, in the Province of Ontario, will make a motion to the Court on Friday, March 20<sup>th</sup>, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard at the Court House, 80 Dundas Street, London, Ontario.

**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);

orally

**THE MOTION IS FOR:**

1. An Order directing the Trustee’s action with respect to the pre-bankruptcy payment received by Sirius from Ayerswood Development Corporation (“**Ayerswood**”) on March 1, 2019 and Ayerswood’s claim for repayment of same;
2. An Order approving the Fourth Report to Court dated March 3, 2020 and the activities of the Trustee (the “**Fourth Report**”); and,
3. Any such further relief as is just.

**THE GROUNDS FOR THE MOTION ARE:**

**Bankruptcy**

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

5. Ayerswood made a pre-bankruptcy payment to Sirius on March 1, 2019 in the amount of \$381,578.40 (the “**March Payment**”)

6. 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 “**Projects**”)

**Claims Administration Procedure and Trustee’s Activities**

7. The Trustee has previously reported to the Court by way of its First Report, Second Report and Third Report.

8. As set out in the First Report, the Trustee developed a Claims Administration Procedure (the “**Claims Administration Procedure**”) to determine the status of all claims as against Sirius

in relation to the Projects, and to determine all payables and receivables of Sirius in relation to same. The Claim Administration Procedure was approved in the Order of the Honourable Justice Mitchell dated April 2, 2019 (the “**April 2 Order**”).

9. Pursuant to the April 2 Order, and as outlined in the Third Report, the Trustee has collected numerous accounts receivable and entered into various settlements with the customers of Sirius.

10. The Claims Administration Procedure has been fully executed by the Trustee but for the claim by Ayerswood on the Guelph Project for the return of the March Payment.

11. As the return of the March Payment involves the administration of the estate of Sirius, the Trustee seeks the direction of the Court with respect to same. There are no facts in dispute.

**The applicable provisions of:**

12. The *Construction Act*, R.S.O. 1990, c. C.30, as amended;

13. Section 34, and any other relevant sections of The *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended;

14. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

15. 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 Order of the Honourable Justice Mitchell dated April 2, 2019;

2. The Fourth Report of the Trustee dated March 3, 2020; and

3. Such materials as counsel may advise and this Honourable Court may permit.

March 10, 2020

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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**

PROCEEDING COMMENCED AT LONDON

**NOTICE OF MOTION**

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TCH/177459



# 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

FOURTH REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED

March 3, 2020

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- Appendix G - November 22 Order
- Appendix H - 45 Yarmouth Summary of Values and Draws
- Appendix I - March Payment Advice
- Appendix J - Ayerswood Statement of Defence

**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 and the Supplement to the Third Report. All terms not otherwise defined shall be as defined in the First Report, the First Supplement, the Second Report, the Third Report and the Supplement to the Third Report.
- 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. The First Report is attached as **Appendix A**.
- 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. The First Supplement is attached as **Appendix B**.
- 1.1.9** On April 2, 2019, the Court issued an Order (the "April 2 Order") approving the Claims Administration Procedure. A copy of the April 2 Order is attached hereto as **Appendix C**.

- 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. The Second Report is attached as hereto as **Appendix D**.
- 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 Development Corporation (“**Ayerswood**”). A copy of the August 16 Order is attached hereto as **Appendix F**.
- 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. The Third Report is attached hereto as **Appendix E**.
- 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. A copy of the November 22 Order is attached hereto as **Appendix G**.

## **1.2 Purpose of Trustee’s Third Report**

- 1.2.1 This constitutes the Trustee’s fourth report (the “**Fourth Report**”) to the Court in this matter and is filed to:
- (i) Report on the activities of Sirius and Ayerswood prior to the bankruptcy of Sirius; and,
  - (ii) Obtain direction from the Court with respect to the pre-bankruptcy payment received by Sirius from Ayerswood on March 1, 2019.

## 2.0

## Pre-Bankruptcy Accounts Receivable Collections

### 2.1 Background

- 2.1.1 On or around March 14, 2018, Ayerswood engaged Sirius to perform the cast in place concrete work on a building located at the Guelph Project. The Guelph Project had a contract value of \$7,022,950.
- 2.1.2 Sirius began work in April 2018 and continued to work until March 1, 2019, being the last business day prior to the assignment into bankruptcy on March 4, 2019.
- 2.1.3 Sirius issued eleven (11) Invoices requesting payment for work complete as well as a holdback invoice on the Guelph Project as shown on the summary of values (“SOV”). The SOV outlines the date the progress invoice was requested, the details of any applicable taxes and holdback as well as the date and payment status. The SOV and progress invoices are included as **Appendix H**.
- 2.1.4 The SOV shows that Sirius would issue a monthly progress payment request to Ayerswood at or near the end of each month and Ayerswood would make a payment to Sirius, at the construction site, on the start of the second month. The progress payment request dates and payment dates are outlined in the chart below.

Invoice #	Request Date	Payment Date	Amount (with HST)
#1	April 25, 2018	June 1, 2018	\$151,926.46
#2	May 25, 2018	July 1, 2018	\$303,852.92
#3	June 25, 2018	August 1, 2018	\$151,926.46
#4	July 25, 2018	August 31, 2018	\$303,852.92
#5	August 25, 2018	October 1, 2018	\$384,880.37
#6	September 25, 2018	November 1, 2018	\$425,394.09
#7	October 25, 2018	December 1, 2018	\$425,394.09
#8	November 26, 2018	January 2, 2019	\$40,683.58
#9	December 29, 2018	February 4, 2019	\$225,556.53
#10	January 30, 2019	March 1, 2019	\$381,578.40
#11	February 28, 2019	NA	\$176,280.00
TOTAL			\$2,971,325.83

- 2.1.5 On January 30, 2019, Sirius issued Invoice #10 in the amount of \$381,578.40. Ayerswood issued a payment to Sirius in the amount of \$381,578.40 on March 1, 2019 with respect to

Invoice #10 as noted on the payment advice (the “March Payment”). The payment advice is included as Appendix I.

2.1.6 The March Payment was made 30 days after Invoice #10 was sent to Ayerswood and was picked up by Sirius from the construction site of the Guelph Project.

2.1.7 On February 28, 2019, Sirius issued an invoice to Ayerswood in the amount of \$155,000, and as reported previously, the Trustee and Ayerswood entered into a settlement whereby the amount of \$155,000 from Invoice #11 was setoff by Ayerswood for alleged deficiencies on the Guelph Project and Ayerswood made payment of \$310,835.60 on account of the holdback.

## 2.2 The Position of Ayerswood

2.2.1 The position of Ayerswood is outlined in the Statement of Defence and Counter Claim filed on November 18, 2019 and is summarized below. The Statement of Defence is attached as Appendix J.

- (i) The contract between Sirius and Ayerswood with respect to the Guelph Project had no schedule of value and no schedule of payments;
- (ii) Sirius rendered Invoice #10 to Ayerswood on the basis that certain work was complete;
- (iii) Ayerswood views the assessment of the work completed in Invoice #10 to be a misrepresentation by Sirius which Ayerswood relied on when making the March Payment; and,
- (iv) Ayerswood engaged a quantity surveyor to assess the value of the work completed by Sirius. The quantity surveyor concluded that Sirius had overcharged Ayerswood by \$702,551.61. After deducting all unpaid receivables, Ayerswood is claiming that overpayments totaling \$547,551.61 were made to Sirius.

## 2.3 The Position of the Trustee

2.3.1 It is the position of the Trustee that the March Payment is an asset of the estate to be distributed to the creditors of Sirius for the following reasons:

- (i) The March Payment occurred prior to the bankruptcy and was the collection of a receivable in the ordinary course;
- (ii) Invoice #8, #9 and #10 all included a schedule of values. Ayerswood made payment of all three invoices. The March Payment was in the ordinary course and pursuant to the normal business practice between Sirius and Ayerswood;
- (iii) Ayerswood had a period of 30 days from the issue of Invoice #10 until the March Payment to review the work and satisfy itself with respect to the work completed;
- (iv) Ayerswood incorrectly categorizes the overcharges based on “value of work completed”. The correct categorization of what has been assessed by the surveyor is ‘deficiency in work’ which form an unsecured claim in the bankrupt estate;
- (v) The March Payment was given by Ayerswood to Sirius at the Guelph Project construction site. This provided Ayerswood a first hand view of the work performed by Sirius prior to making the March Payment;



- (vi) A claim for deficiencies on the Guelph Project is a claim provable in the estate of Sirius and does not entitle Ayerswood to the return of a pre-bankruptcy payment; and,
- (vii) The position of Ayerswood is contrary to the spirit of the *Bankruptcy and Insolvency Act*. If Ayerswood is successful in its position any creditor following an assignment in Bankruptcy could claim it is unsatisfied with a pre-bankruptcy product/service and claw back a pre-bankruptcy payment.

### **3.0 Order Sought**

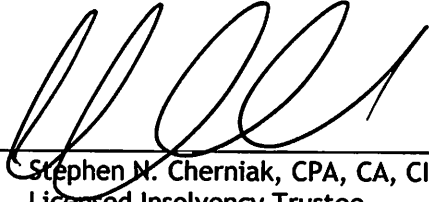
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3.1.1 We submit this Fourth Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Provide direction to the Trustee with respect to the \$381,578.40 payment received by Sirius on March 1, 2019.

All of which is respectfully submitted this 3<sup>rd</sup> day of March, 2020.

**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

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

FIRST REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED

March 11, 2019

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*Listing of Appendices*

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- Appendix A - Sample Claims Package
- Appendix B - Advertisement
- Appendix C - Sample Notice of Revision and Disallowance
- Appendix D - Sample Notice of Dispute

**1.1 Introduction**

- 1.1.1 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.
- 1.1.2 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.
- 1.1.3 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**”)
- 1.1.4 The Trustee is not aware of any creditor with a General Security Agreement registered against Sirius.
- 1.1.5 The first meeting of creditors will be held at the offices of the Trustee on March 20, 2019.
- 1.1.6 Following its appointment the Trustee took possession of the Sirius’ assets, which included vehicles, job trailers, office trailers, concrete buckets, forms, hand tools and accounts receivable. The Trustee has obtained insurance coverage on the assets in its possession.

**1.2 Purpose of Trustee’s First Report**

- 1.2.1 This constitutes the Trustee’s first report (the “**First Report**”) to the Court in this matter and is filed to obtain an order:

Approving the Service Protocol as defined and detailed in the First Report and deeming service in accordance with the Service Protocol as effective and valid;

Approving a claims process for construction lien and trust claims that have been or may be asserted by the sub-trades of Sirius against various properties upon which Sirius worked and accounts receiving due to Sirius (the “**Claims Administration Procedure**”); and,

Directing the customers of Sirius to make payment to the Trustee.

## Accounts Receivable

- 1.2.2 As at the date of bankruptcy the books and records of the Company indicated there were outstanding accounts receivable of \$632,710 and an additional \$758,064 in holdback receivables.
- 1.2.3 There are 124 creditors of Sirius and other interested parties who will require notice of the Claims Administration Procedure.
- 1.2.4 Most of Sirius's customers (the "Customers") have not paid their outstanding balance because there are unpaid Sirius suppliers and sub-trades (the "Claimants") who have completed work in relation to the specific contracts/jobs between Sirius and the Customers. The Customers are concerned they will be required to satisfy the unpaid invoices of the Claimants.
- 1.2.5 Consequently, this may result in payment to the Claimants directly by the Customers from proceeds due to Sirius but not necessarily on a pari passu basis and without notice to all potential claimants. Disputes could lead to prolonged and expensive litigation between each of the Trustee, the Customer and the Claimants.
- 1.2.6 The Trustee believes that a formal claims process is necessary to provide for equitable and cost efficient treatment of all claims. The total outstanding claims for each of Sirius's jobs/contracts has not yet been determined and the Trustee believes that the recommended Claims Administration Procedure discussed below will resolve these issues.



## 2.0

## Claims Administration Procedure

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- 2.1.1 The Construction Act (“CA”) provides for a process whereby a Claimant with a bona fide claim can register a lien on title to preserve its claim. The Claimant has a 45 day period from the last day that services were provided or supplies delivered to register its lien on title to the subject property. Upon expiry of the 45 day period the Claimant loses its ability to register on title and preserve its lien.
- 2.1.2 If a Claimant has lost its ability to file a lien under the CA, the CA provides for a trust claim in favour of creditors for unpaid services rendered or supplies delivered to a specific job/contract against the funds outstanding from the customer for that specific job/contract after payment of any perfected liens under the CA from the customers holdback. The funds due to Sirius from the Customers are imbued with that trust.
- 2.1.3 The CA does not provide a formal process for dealing with the distribution of funds to Claimants who hold a valid trust claim against Sirius and whose lien rights have expired.
- 2.1.4 It would be in the best interest of the estate for the Trustee to establish and implement a formal claims process in order to deal with the collection of receivables and hold backs from Customers and the related amounts due to the Claimants.
- 2.1.5 Accordingly, the Trustee proposes the following Claims Administration Procedure:
- (i) The Trustee will provide a claim package to the Claimants within 7 days of receiving the approval order which will include an Instruction Letter and Proof of Claim substantially in the form as at Appendix “A” to this Report.
  - (ii) The Trustee will publish a Notice to Lien Claimants in the local papers where the contract/job were situated substantially in the form as at Appendix “B” to this Report.
  - (iii) Proof of Claims must be filed with the Trustee not later than April 26, 2019 (“**Claims Bar Date**”). If a Proof of Claim is not filed by the Claims Bar Date the Claimant will be barred from asserting a lien claim or trust claim against the project, the trustee, the owner or Sirius.
  - (iv) The Trustee will review each Proof of Claim within 60 days of the Claims Bar Date and provide written notice of acceptance of the claim or provide a Notice of Revision or Disallowance, substantially in the form at Appendix “C” to this Report.
  - (v) A Claimant who disputes the Notice of Revision or Disallowance may deliver a Notice of Dispute, substantially in the form at Appendix “D” to this Report, to the Trustee within 20 days of receiving the Notice of Revision or Disallowance.
  - (vi) A Notice of Revision or Disallowance dispute will be resolved consensually between the parties or by way of motion to the Ontario Superior Court of Justice.
  - (vii) That all Customers who are indebted to Sirius for services (whether construction or any other services) provided by Sirius for the period prior to March 4, 2019 are hereby directed to make payment of any and all such debts to the Trustee. The amount payable to the Trustee will be the outstanding receivable balance plus the outstanding holdback balance less any proven claim by the Customer for set-off. In order to prove a valid set-off the Customer must file a Proof of Claim with the Trustee by the Claims Bar Date with sufficient supporting documentation to prove the set-off claim. Under no

circumstance will the set-off reduce the amount payable below the lesser of the hold back, as at March 4, 2019, and the amount owing to the Claimants on the contract/job;

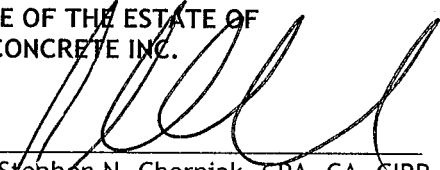
- (viii) That the Trustee will retain, in its bankruptcy estate trust account, the funds received from the Customers relating to the Sirius invoice(s) being paid by the Customers, which funds shall not be distributed by the Trustee to any party without further Order of this Court on notice to all Customers who have made payment to the Trustee; provided, however, that nothing in the Order nor the retention of funds referred to in this paragraph shall have the effect of giving rights to Customers which did not exist up to the filing of this First Report;
- (ix) That no Sirius supplier or sub-contractor with a valid Claim shall have any recourse against the Customers for having made such payment to the Trustee, and all Customers making such payment to the Trustee shall be deemed to have satisfied in full any and all obligations they may have had to Sirius;
- (x) Any excess funds collected from the Customers after the payment of all fees, expenses and claims of the Claimants on a particular job/contract will form part of the general pool of funds that are available to Sirius creditors that did not qualify to file a claim in the Claim Administration Procedure;
- (xi) Any Claimant whose claim is not fully paid through the Claims Administration Procedure will be eligible to file a claim for their shortfall in the general pool of creditors; and,
- (xii) Any Customer who incurs a loss on a Sirius job/contract that was ongoing as at March 4, 2019 is eligible to file a claim for the loss in the general pool of creditors.

3.1.1 We submit this First Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Approve the Claims Procedure Order authorizing and directing the Trustee to administer the Claims Administration Process.

All of which is respectfully submitted this 11<sup>th</sup> day of March, 2019.

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 B

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

SUPPLEMENT TO THE FIRST REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED

March 18, 2019

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- Appendix K - Huron Crossing sub-trades
- Appendix L - Hilton Hills sub-trade
- Appendix M - University Heights sub-trade
- Appendix N - Wilson St. sub-trade
- Appendix O - Elora Bridge sub-trade

## **1.0 INTRODUCTION AND PURPOSE**

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- 1.1** BDO Canada Limited was appointed as the trustee in Bankruptcy (“BDO” or the “Trustee”) of the property of Sirius Concrete Inc. (the “Company” or “Sirius”) and filed its first report to the Court (the “First Report”) dated March 11, 2018. All terms not otherwise defined shall be as defined in First Report.
- 1.2** This report is a supplement to the First Report (the “First Supplement”). The purpose of this First Supplement is to provide the information necessary to support the Trustee’s recommended Claims Administration Procedure. Specifically, this report encompasses the following:
- the benefits of the Claims Administration Procedure;
  - the details of the billings on each of Sirius’ ongoing projects; and,
  - a listing of all known sub-trades on each project and the amount owing to each.



## **2.0 CLAIMS ADMINISTRATION PROCEDURE BENEFITS**

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### **2.1.1 The benefits associated with the proposed Claims Administration Procedure include:**

- (i) As a result of its involvement with the Debtor's estate since its appointment and through a review of the Debtor's books and records which are in its possession, the Trustee has gained substantial knowledge related to amounts due to the Debtor from Customers and is in a position to negotiate with those Customers for the benefit of the Claimants;**
- (ii) Through discussions with Customers and the Debtor and from the books and records, the Trustee has gained substantial knowledge related to lien and trust claims and certain associated issues and is in a position to review lien claims to ensure the quantum and the registration of certain liens are proper;**
- (iii) The Trustee is in a position to distribute funds in an equitable manner and with consideration to the various priorities and classes of creditors;**
- (iv) The Trustee is knowledgeable in establishing and administering claims processes and can establish an efficient system for dealing with each claim and a methodology for liens to be released;**
- (v) This process centralizes the negotiation, review and resolution of lien and trust claims rather than the Trustee being appointed in the construction lien actions commenced relating to each project. This should streamline the process and reduce court attendances thereby reducing costs which is to the benefit of the creditors; and,**
- (vi) Any distribution by the Trustee from the Claims Administration Procedure will be pursuant to an Order from this Court.**
- (vii) The Trustee's fees and expenses will be allocated to each project on the basis of approximate time spent associated with the Claims Administration Procedure in relation to each Project and the Trustee will seek approval of any allocation.**

### 3.0 PROJECT SUMMARY AND SUB-TRADES

#### 3.1 Active Projects

3.1.1 The Company had five active projects at the time of the bankruptcy as follows:

Project Location	Engaging Party	Street Address	Appendix
Waterloo, ON	Stonerise Construction	18 Barrel Yards Blvd.	A, B
Kitchener, ON	Stonerise Construction	112 Benton St.	C, D
St. Catharines, ON	Skyrise Construction	111 Church St.	E, F
Newcastle, ON	Skyrise Construction	109 King Ave.	G, H
Guelph, ON	Ayerswood Development	45 Yarmouth Street	I, J

3.1.2 The chart below is based on the Company's internal records and details the amounts owing to Sirius on each of the active projects and the amounts owing by Sirius to the sub-trades on each project. The holdback receivable and the holdback payable do not include HST.

3.1.3 The Trustee has collected one receivable on the Guelph project as shown in the chart.

Project Location	Owing to Sirius		Funds on Deposit	Owing to Sub-trades	
	AR	Holdback on AR		AP	Holdback on AP
Waterloo	60,565.91	20,837.88	-	62,237.89	-
Kitchener	214,587.00	24,850.00	-	15,896.41	-
St. Catharines	214,702.42	106,388.86	-	420,294.11	81,945.04
Newcastle	20,405.48	132,006.22	-	227,253.52	-
Guelph	158,652.00	326,435.62	381,578.40	728,858.66	74,909.13

3.1.4 The complete details of the amounts owing on each project are included in Appendix A through Appendix J.

#### 3.2 Completed Projects

3.2.1 In addition to the five active projects noted above, the Company had six complete projects as detailed in the chart below

Project	Engaging Party	Appendix
Huron Crossing	Van-Del Construction	K
Hilton Hills	Skyrise Prefab	K
Hilton Hills	Synrg Group	L
University Heights	Skyrise Prefab	M

Wilson Street Parking	Newton Group	N
Elora Bridge	Ried & Deleye Construction	O

3.2.2 The chart below is based on the Company's internal records and details the amounts owing to Sirius on each of the completed projects and the amounts owing by Sirius to the sub-trades on each project. The holdback receivable and the holdback payable do not include HST.

Project Location	Owing to Sirius		Owing to Sub-trades		Comment
	AR	Holdback on AR	AP	Holdback on AP	
Huron Crossing	-	-	2,529.28	-	All funds collected
Hilton Hills	120,119.57	-	-	5,059.00	Holdback billed
Hilton Hills	546.91	-	-	-	Holdback billed
University Heights	-	-	9,994.90	-	All funds collected
Wilson St. Parking	11,789.79	46,635.84	2,532.33	1,249.50	Holdback to be billed in June
Elora Bridge	-	-	34,750.33	-	All funds collected

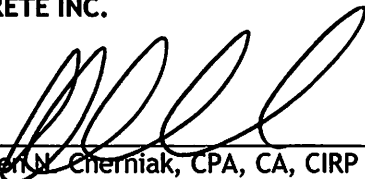
3.2.3 The complete details of the amounts owing on each project are attached in Appendix K through Appendix O.

**4.1** The Trustee recommends the following:

- i. Approval of the Claims Administration Procedure as requested in the First report and this Supplement to the First Report.

This Supplement to the First Report is respectfully submitted this 18<sup>th</sup> day of March, 2019.

**BDO CANADA LIMITED  
TRUSTEE OF  
SIRIUS CONCRETE INC.**



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

## APPENDIX C

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

THE HONOURABLE

JUSTICE *A.K. MITCHELL*

TUESDAY THE <sup>*2ND*</sup> DAY  
OF MARCH, 2019  
*APRIL*



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

**CLAIMS PROCEDURE ORDER**

**THIS MOTION**, made by **BDO CANADA LIMITED** in its capacity as Court-  
appointed Trustee (the "Trustee") of **Sirius Concrete Inc.** ("**Sirius**" or the  
"**Company**") for, *Can.* *an.* *inter alia*, an Order establishing a claims procedure was heard this  
day at 80 Dundas Street, London, Ontario.

**ON READING** the First Report and the First Supplement of the Trustee to the  
Court and on hearing the submissions for counsel for the Trustee, and such other  
counsel as were present.

**DEFINITIONS**

1. **THIS COURT ORDERS** that for the purposes of this Order the following terms shall have the following meanings:
  - a) "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in London, Ontario;
  - b) "**Claim**" means a Lien Claim or Trust Claim collectively or individually;
  - c) "**Claims Bar Date**" means 30 days after the date of this Order;

- d) "**Claims Package**" means the document package which shall include a copy of the Instruction Letter, a Proof of Claim and such other materials as the Trustee considers necessary or appropriate;
- e) "**Claims Administration Procedure**" means the procedure as may be amended from time to time, for determining of Lien Claims and Trust Claims for distribution purposes;
- f) "**Court**" means the *Ontario* Superior Court of Justice;
- g) "**Construction Projects**" means the following construction projects which the Company was involved in up to March 4, 2019:
- 18 Barrel Yards Blvd, Waterloo, Ontario
  - 112 Benton St. Kitchener, Ontario
  - 109 King Ave, Newcastle, Ontario
  - 45 Yarmouth St., Guelph, Ontario
  - 200 Steelwell Rd. Brampton, Ontario
  - 10 Wilson St. Guelph, Ontario
- h) "**Dispute Package**" means, with respect to any Lien Claim or Trust Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;
- i) "**Instruction Letter**" means the Instruction letter to Lien Claimants and Trust Claimants pertaining to proving the Lien Claims and Trust Claims for distribution purposes, substantially in the form attached hereto as Schedule "A";
- j) "**Lien Claim**" means any lien claims registered and lien actions commenced pursuant to the *Construction Act*, R.S.O. 1990. Chapter c.30 (the "**Act**") with respect to the Construction Projects which the Company was involved in up to March 4, 2019;
- k) "**Lien Claimant**" means any Person having preserved a lien pursuant to the Act with respect to any of the Construction Projects;
- l) "**Notice of Dispute**" means the notice that may be delivered by a Lien Claimant or Trust Claimant who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance, which notice shall be substantially in the Form attached hereto as Schedule "B";

- m) "**Notice of Revision or Disallowance**" means the notice that may be delivered to a Lien Claimant or Trust Claimant revising or rejecting such Lien Claimants' or Trust Claimants' claim as set out in the Proof of Claim in whole or in part which notice shall be substantially in the form attached hereto as Schedule "C";
- n) "**Notice to Lien Claimants and Trust Claimants**" means the notice substantially in the form attached hereto as Schedule "D";
- o) "**Person**" means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, employee or other association and any federal, provincial or municipal government or similar entity, howsoever designated or constituted;
- p) "**Proof of Claim**" means the form to be completed and filed by a Lien Claimant or Trust Claimant setting forth its purported Claim which shall be substantially in the form attached hereto as Schedule "E";
- q) "**Proven Lien Claim or Proven Trust Claim**" means the amount and status of the claim of a Lien Claimant or Trust Claimant as determined in accordance with the Claims Administration Procedure;
- r) "**Trust Claim**" means any claim for materials or services delivered to a Construction Project for which a lien has not been registered;
- s) "**Trust Claimant**" means any party who has not registered a Lien against a Construction Project but who may have a trust claim against a Construction Project under the Act by virtue of supplying materials or services to a Construction Project; and
- t) "**Trustee**" means BDO Canada Limited, in its capacity as Trustee of the Estate of Sirius Concrete Inc.

## **NOTICE OF CLAIMS**

2. **THIS COURT ORDERS** that the Trustee shall cause a Claims Package to be sent to each known Lien Claimant, Trust Claimant and/or counsel for each



Lien Claimant or Trust Claimant by regular prepaid mail or electronic mail within 7 business days of the date of this Order.

3. **THIS COURT ORDERS** that the Trustee shall cause the Notice to Lien Claimants and Trust Claimants to be placed in the local papers where the Construction Projects were situated within 15 days of the date of this Order.
4. **THIS COURT ORDERS** that the Trustee shall cause the Notice to Lien Claimants and Trust Claimants and the Claims Package to be posted on the Trustee's website as soon as reasonably practicable after the date of this Order.
5. **THIS COURT ORDERS** that the Trustee shall cause a copy of the Claims Package to be sent to any Person requesting such material as soon as practicable.

#### **PAYMENT FROM CUSTOMERS**

6. **THIS COURT ORDERS AND DECLARES** that all Sirius customers on the Construction Projects (the "**Customers**") who are indebted to Sirius for services (whether construction, or any other services) provided by Sirius for the period prior to March 4, 2019 are hereby directed to make payment of any and all such debts to the Trustee and, in that regard:
  - i. the Trustee be and is hereby directed to retain, in its bankruptcy estate trust account, the funds received by the Customers relating to the Sirius invoice(s) being paid by the Customers, which funds shall not be distributed by the Trustee to any party without further Order of this Court on notice to all Customers who have made payment to the Trustee; provided, however, that nothing in the Order nor the retention of funds referred to in this paragraph shall have the effect of giving rights to Customers or to Sirius which did not exist up to the making of this Order;

- ii. no Sirius supplier or sub-contractor with a valid Claim shall have any recourse against the Customers for having made such payment to the Trustee, and all Customers making such payment to the Trustee shall be deemed to have satisfied in full any and all obligations they may have had to Sirius to the extent of the amount of the payment made by the Customer; and
- iii. if a dispute arises between the Customer and the Trustee with respect of timing of the payment, either the Customer or the Trustee can seek direction from the Court.

**THIS COURT ORDERS** that in the event the Customer claims set-off or the amount claimed by the Trustee is not due, the Customer shall file a Proof of Claim setting out the reasons why the debt is not due or detailing the set-off claim including all supporting documents by the Claims Bar Date for consideration by the Trustee in accordance with this Order

7. **THIS COURT ORDERS** that no claim for set-off by a Customer shall act to reduce the amount of the holdback which may be available to satisfy claims of Lien Claimants pursuant to the Act; provided, however, that Customers shall retain the right to set off against any portion of holdback required to be retained pursuant to the Act over and above that which is necessary to satisfy claims of Lien Claimants provided, however, that nothing in this paragraph shall be construed to derogate from the provisions of section 30 of the *Act*.

#### **FILING OF PROOFS OF CLAIM**

8. **THIS COURT ORDERS** that Proofs of Claim shall be filed with the Trustee on or before the Claims Bar Date.
9. **THIS COURT ORDERS** that the time for filing a Proof of Claim may be extended with the Trustee's consent in writing or by further order of the Court.

10. **THIS COURT ORDERS** that each Lien Claimant and Trust Claimant shall file a separate Proof of Claim in respect of each Construction Project to which the Lien Claimant or Trust Claimant provided materials or services.
11. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who does not deliver a Proof of Claim in respect of a Lien Claim or Trust Claim on or before the Claims Bar Date shall be forever barred from asserting such a Lien Claim or Trust Claims against Sirius, the Trustee, the Construction Projects and the "owners" of such Construction Projects under the Act and such Lien Claim or Trust Claim shall be forever discharged and extinguished and any holder of such Lien Claim or Trust Claim shall not be entitled to receive any distribution from Sirius or the Trustee on behalf of Sirius or from the proceeds of the sale of the Sirius assets.
12. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who does not deliver a Proof of Claim in respect of a Lien Claim or Trust Claim on or before the Claims Bar Date shall not be entitled to any further notice of any Orders made or steps taken in these proceedings.

**FORM OF PROOFS OF CLAIM**

13. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance with the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Lien Claim or a Trust Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and execution of the Proof of Claim.



## DETERMINATION OF CLAIMS

14. **THIS COURT ORDERS** that the Trustee shall review each Proof of Claim received on or before the Claims Bar Date and shall, on or before 60 days from the Claims Bar Date, accept, revise or disallow the Claim. The Trustee is empowered and authorized to:
  - a. Investigate, review and verify the validity and quantum of any Lien Claims registered or delivered or given and lien actions commenced with respect to the Construction Projects;
  - b. Retain a consultant to review and assist in the review of any Claim;
  - c. do such acts as the Trustee in its sole discretion deem appropriate to facilitate the Claims Administration Procedure; and
  - d. receive payment of all monies owing and payable to the Debtor in respect of the Construction Projects, to the exclusion of all others, which funds are to be held in trust in separate accounts for each of the Construction Projects.
15. **THIS COURT ORDERS** that the Trustee may attempt to consensually resolve the amount of any Lien Claim or Trust Claim with the Lien Claimant or Trust Claimant prior to accepting, revising or disallowing such Claim.
16. **THIS COURT ORDERS** that if the Trustee accepts a Claim, the Trustee shall advise the Lien Claimant or Trust Claimant of such acceptance by ordinary mail or email to the address set out in the applicable Proof of Claim.
17. **THIS COURT ORDERS** that if the Trustee revises or disallows a Claim, the Trustee shall send a Notice of Revision or Disallowance to the Lien Claimant or Trust Claimant by ordinary mail or email to the address set out in the applicable Proof of Claim.
18. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who disputes the amount of its Claim as set forth in a Notice of Revision or Disallowance

shall deliver a Notice of Dispute to the Trustee by 5:00 p.m. (Eastern Standard Time) on the day which is twenty calendar days after the date of the Notice of Revision or Disallowance or such later date as the Trustee and the Lien Claimant or Trust Claimant may agree in writing.

19. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who fails to deliver a Notice of Dispute by the deadline set forth in paragraph 18 shall be deemed to accept the amount of its Claim as set out in the Notice of Revision or Disallowance and such Claim as set out in the Notice of Revision or Disallowance shall constitute a Proven Lien Claim or Proven Trust Claim.
20. **THIS COURT ORDERS** notwithstanding the foregoing but subject to paragraph 11, no acceptance, revision or disallowance of a Lien Claim by the Trustee, or action taken with respect to the investigation, review or verification of the validity and quantum of any Lien Claim shall affect the rights or obligations of any "owner"- under the Act or Customer of Sirius

#### **RESOLUTION OF CLAIMS**

21. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute the Trustee may:
  - i. Attempt to consensually resolve the amount or the Claim with the Lien Claimant or Trust Claimant; and/or
  - ii. Schedule a motion before a judge of the Court to resolve the Claim.

#### **TRUSTEE'S ROLE IN CLAIMS PROCESS**

22. **THIS COURT ORDERS** that the Trustee, in addition to its prescribed rights, duties, responsibilities and obligations under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, shall implement and oversee the Claims Administration Procedure provided for herein for the benefit of the Lien

Claimants and the Trust Claimants, and is hereby directed and empowered to take such actions and fulfill such other roles as are contemplated by this Order.

23. **THIS COURT ORDERS** that the Trustee may apply to the Court for directions regarding the carrying out of the Claims Administration Procedure.

#### **FEES AND EXPENSES**

24. **THIS COURT ORDERS** that the fees and expenses incurred by the Trustee in connection with the carrying out of this Order and the Claims Administration Procedure shall form a first charge on funds collected.

#### **NO DEFAULT PROCEEDINGS OR DEFENCES**

25. **THIS COURT ORDERS** that no default or enforcement proceedings shall be commenced against any defendant in any Lien Action unless authorized by further Order of this Court.
26. **THIS COURT ORDERS** that the requirement for BDO or any defendant in any Lien Action to file a statement of defence is hereby dispensed with subject to any further Order of this Court.

#### **GENERAL PROVISIONS**

27. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Lien Claimant or Trust Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by facsimile transmission, personal delivery, electronic communication or prepaid mail addressed to:

BDO CANADA LIMITED  
Trustee of the Estate of Sirius Concrete Inc.



Attention: Robyn Duwyn  
51 Breithaupt Street, Suite 300  
Kitchener, ON N2H 5G5  
Tel: 519-570-4000 Ext 5881  
Fax: 519-576-5227  
Email: [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca)

with a copy to:

HARRISON PENZA LLP  
Barristers & Solicitors

Attention: Melinda Vine  
450 Talbot St.  
Toronto ON M3C 3E9  
Tel: 519-661-6705  
Email: [mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)

Any such notice or other communication delivered by a Lien Claimant or Trust Claimant shall be deemed to be received upon actual receipt by the Trustee thereof during normal business hours on a Business Day or if delivered outside of normal business hours, on the next Business Day.

28. **THIS COURT ORDERS** that any notice or other communication to be given under this Order to a Lien Claimant or Trust Claimant shall be addressed to either: (i) the last recorded address appearing in the books and records of Sirius or in any claim for lien or Proof of Claim filed by the Lien Claimant or Trust Claimant; (ii) the Lien Claimant's or Trust Claimant's legal counsel; or (iii) electronically to the email address provided by the Lien Claimant, Trust Claimant or their respective counsels.
29. **THIS COURT ORDERS** that reference to the singular shall include the plural; references to the plural shall include the singular and to any gender shall include the other gender.

30. **THIS COURT ORDERS** that if any party takes issues with a decision of the Trustee in relation to this Order they make bring a motion to the Court to seek direction.



Justice, Ontario Superior Court of Justice





**SCHEDULE "A"**  
**INSTRUCTION LETTER FOR THE CLAIMS AGAINST SIRIUS CONCRETE INC.**  
(hereinafter referred to as "Sirius")

A. – Claims Process

By order of the Honourable • Justice • dated • the "**Claims Procedure Order**") the Ontario Superior Court of Justice approved a claims procedure for determining claims against Sirius (the "**Claims Procedure**").

This letter provides instructions for responding to or completing the Proof of Claim enclosed hereto. Defined terms which are not defined herein shall have the meaning ascribed thereto in the Claims Procedure Order. A copy of the Claims Procedure Order can be obtained from the Trustee's website at <http://extranets.bdo.ca/siriusconcreteInc>.

Please note that this letter is intended as a guide only and that in the event of any inconsistency between the terms of this letter and the terms of the Claims Procedure Order, the terms of the Claims Procedure Order will govern.

The Claims Procedure is intended for any Person asserting a Lien or Trust Claim against Sirius. If you have any questions regarding the Claims Procedure, please contact BDO Canada Limited, in its capacity the Trustee of the Estate of Sirius (the "**Trustee**") at the address provided below.

All enquiries with respect to the Claims Procedure should be addressed to:

The Trustee  
c.o. BDO CANADA LIMITED  
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn  
51 Breithaupt Street, Suite 300  
Kitchener, ON N2H 5G5  
Tel: 519-570-4000 Ext 5881  
Fax: 519-576-5227  
Email: [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca)

with a copy to:

HARRISON PENSA LLP  
Barristers & Solicitors

Attention: Melinda Vine  
450 Talbot St.  
Toronto ON M3C 3E9  
Tel: 519-661-6705

Email: [mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)

B. – For Creditors Submitting a Proof of Claim

If you supplied materials and/or services to Sirius in respect of a the construction project Sirius was involved in prior to March 4, 2019, would you please complete the Proof of Claim enclosed and attach it to your account showing full particulars of the materials and/or services supplied. After you have had the Proof of Claim sworn, would you please return it to the undersigned at the address above or via email to [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca). Please do not include your account with respect to other materials and or services that you may have rendered to Sirius on other projects, and for which you have not received payment.

The purpose of submitting a Proof of Claim is to determine whether or not you have a claim under the *Construction Act R.S.O, 1990. C. 30* ("CA") and, if you do, the extent of such claim. Please cooperate by returning your claim form promptly.

Proofs of Claim against Sirius must be received by 5:00p.m. (Eastern Standard Time) on \_\_\_\_\_, **2019** or such later date as the Trustee may consent to in writing.

Additional Proof of Claim forms can be found on the Trustee's website at [www.bdo.ca](http://www.bdo.ca) or obtained by contacting the Trustee at the address indicated above and providing particulars us to your name, address, facsimile number and email address. Once the Trustee has this information, you will receive, as soon as practicable, additional Proof of Claim forms.

**Failure to file your Proof of Claim so that it is received by the Trustee by the relevant Claims Bar Date will result in *your claim* being barred and you will be prevented from making or enforcing a Claim against Sirius. In addition. you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these proceedings.**

**SCHEDULE "B"**  
**NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM AGAINST SIRIUS**  
**CONCRETE INC.**  
 (hereinafter referred to as "Sirius")

NAME OF CLAIMANT: \_\_\_\_\_

NAME OF OWNER: \_\_\_\_\_

NAME OF CONSTRUCTION PROJECT: \_\_\_\_\_

Pursuant to the Order of the Honourable Justice \_\_\_\_\_, dated \_\_\_\_\_, 2019, we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance dated \_\_\_\_\_ issued by BDO Canada Limited in its capacity as Claims Administrator of Sirius in respect of our Claim.

**Lien Claim**

Construction Project	Lien Claim Accepted	Lien Claim Disputed
<b>Total Lien Claim</b>		

**Trust Claim**

Construction Project	Trust Claim Accepted	Trust Claim Disputed
<b>Total Lien Claim</b>		

*Reasons for Dispute* (attach additional sheet and copies of all supporting documents if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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Signature of Individual (I have authority to bind the Corporation)

Date: \_\_\_\_\_

Please Print name: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Facsimile Number: (\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Full Mailing Address: \_\_\_\_\_

---

**THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY FACSIMILE TRANSMISSION, PERSONAL DELIVERY, ELECTRONIC COMMUNICATION OR PREPAID MAIL TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED BY 5:00 P.M. (EASTERN STANDARD TIME) ON THE DAY WHICH IS TWENTY (20) CALENDAR DAYS AFTER THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE, OR SUCH LATER DATE AS THE TRUSTEE AND THE CREDITOR MAY AGREE IN WRITING OR THE COURT MAY ORDER.**

*Address for Service of Dispute Notices:*

BDO CANADA LIMITED  
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn  
51 Breithaupt Street, Suite 300  
Kitchener, ON N2H 5G5  
Tel: 519-570-4000 Ext 5881  
Fax: 519-576-5227  
Email: [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca)

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

**SCHEDULE "C"**  
**NOTICE OF REVISION OR DISALLOWANCE OF CLAIM AGAINST SIRIUS CONCRETE INC.**  
 (hereinafter referred to as "Sirius")

NAME OF CLAIMANT: \_\_\_\_\_

NAME OF OWNER: \_\_\_\_\_

NAME OF CONSTRUCTION PROJECT: \_\_\_\_\_

Pursuant to the Order of the Honourable Justice \_\_\_\_\_, dated \_\_\_\_\_, 2019, BDO Canada Limited in its capacity as Trustee of the Estate of Sirius and Claims Administrator of Sirius in respect of the Construction Projects, hereby gives you notice that it has reviewed your Proof of Claim and has revised your Claim as follows:

**Lien Claim**

Construction Project	Lien Claim Accepted	Lien Claim Disputed
Total Lien Claim		

**Trust Claim**

Construction Project	Trust Claim Accepted	Trust Claim Disputed
Total Lien Claim		

*Reasons for Revision or Disallowance:*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

1. If you intend to dispute a Notice of Revision or Disallowance you must, by 5:00 p.m. (Eastern Standard Time) on the day which is twenty (20) days after the date of this Notice or Revision or Disallowance, deliver a Notice of Dispute by personal service, mail or courier to the address indicated herein. The form of Notice of Dispute k attached to this Notice.
2. If you do not deliver a Notice of Dispute, the value or your Claim shall be deemed to be as set out in this Notice or Revision or Disallowance.

*Address for Service of Dispute Notices:*

BDO CANADA LIMITED  
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn  
51 Breithaupt Street, Suite 300  
Kitchener, ON N2H 5G5  
Tel: 519-570-4000 Ext 5881  
Fax: 519-576-5227  
Email: [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca)

**IF YOU FAIL TO RESPOND AS REQUIRED HEREIN WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2019.

**BDO CANADA LIMITED**

In its capacity as Trustee of the Estate of Sirius Concrete Inc.

Per: \_\_\_\_\_

Encl.

**SCHEDULE "D"**  
**NOTICE TO LIEN AND TRUST CLAIMANTS OF SIRIUS CONCRETE INC.**  
(hereinafter referred to as "Sirius")

**RE: NOTICE OF CLAIMS PROCEDURE FOR SIRIUS**

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Honourable • of the *Ontario Superior Court of Justice* dated \_\_\_\_\_, 2019 (the "**Claims Procedure Order**"). Any person who believes that it has a Claim against Sirius should send a Proof of Claim to BDO Canada Limited in its capacity as Trustee of the Estate of Sirius Concrete Inc (the "Trustee") to be received by 5:00 pm (Eastern Standard Time) on \_\_\_\_\_, 2019 or such other date as the Trustee and the Claimant agree to in writing (the "**Claims Bar Date**").

**CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.**

Claimants who require a Proof of Claim form should contact the Trustee (**Attention: Robyn Duwyn, tel: 519-570-4000x5881, fax: 519-576-5227, or Email: [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca)**) to obtain a Claims Package. Additional Proof of Claim forms can be found on the Trustee's website at [www.bdo.ca](http://www.bdo.ca).

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2019.



**SCHEDULE "E"**  
**PROOF OF CLAIM**  
**FOR THE CLAIMS AGAINST SIRIUS CONCRETE INC.**  
(hereinafter referred to as "Sirius")

Please read the enclosed Instruction Letter carefully prior to completing this Proof of Claim. Defined terms which are not defined herein shall have the meaning ascribed thereto in the Instruction Letter.

**A. PARTICULARS OF CLAIMANT**

1. Full legal name of the Lien or Trust Claimant \_\_\_\_\_ (the "Claimant") (*Full legal name should be the name of the Claimant against Sirius*).

2. Full Mailing address of the claimant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

**B. PROOF OF CLAIM**

**THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:**

1. That I \_\_\_\_\_ (state name, position and title) residing at the \_\_\_\_\_, in the \_\_\_\_\_, in the Province of \_\_\_\_\_, do solemnly declare and say:
2. That I am or am the authorized representative of a Lien Claimant or Trust Claimant against Sirius and have knowledge of all the circumstances connected with the debt hereinafter referred to.
3. That at the date of Bankruptcy of Sirius, by March 4, 2019, was, and still is indebted to the Claimant for materials and services supplied on the following contract or contracts in the amounts noted herein. (*specify the particular contract or contracts on which materials and services were supplied, the amounts owing and, in detail, the amount of material and services supplied to each Construction Project*).



**C. PARTICULARS OF CLAIM**

Other than as already set out herein, the particulars of the undersigned's total Lien or Trust Claim are attached hereto in relation to the project located at \_\_\_\_\_.

*(Provide all particulars of the claims and supporting documentation that you feel will assist in the determination of your Claim, including: identifying whether your claim is in respect to a Lien or Trust Claim, if a lien has been registered and provide a copy of the lien, amount of your claim, description of transaction(s) or agreement(s) giving rise to the claims; identify each project to which materials and services were provided, amount of invoices, particulars of all credits, discounts, etc.)*

**D. FILING OF CLAIM**

Proof of Claim **must be received** by 5:00pm. (Eastern Standard Time) on \_\_\_\_\_, 2019 or such later date as the Trustee may consent to in writing.

Failure to file your Proof of Claim as directed by the relevant Claims Bar Date will result in your claim being barred and you will be prohibited from making or enforcing a Claim against Sirius.

**This Proof of Claim must be delivered by facsimile transmission, personal delivery, electronic communication or prepaid mail addressed to:**

BDO Canada Limited  
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn  
51 Breithaupt Street, Suite 300  
Kitchener, ON N2H 5G5  
Tel: 519-570-4000 Ext 5881  
Fax: 519-576-5227  
Email: [rduwyn@bdo.ca](mailto:rduwyn@bdo.ca)

Any such notice or other communication delivered by Claimant shall be deemed to be received upon actual receipt by the Trustee thereof during normal business hours on a Business Day or, if delivered outside of normal business hours on the next Business Day.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Per \_\_\_\_\_ *[Signature of Claimant]*  
*Authorized Signing Officer*

Per \_\_\_\_\_ *[Signature of Claimant]*  
*Authorized Signing Officer*

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

PROCEEDING COMMENCED AT  
LONDON, ONTARIO

---

ORDER

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Harrison Pensa <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street, 1<sup>st</sup> Floor  
P.O. Box 3237  
London, Ontario N6A 4K3

Melinda Vine  
LSUC #53612R

Tel: (519) 679-9660  
Fax: (519) 667-3362

Solicitors for the Trustee,  
BDO Canada Limited

## APPENDIX D

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

SECOND REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED

August 1, 2019

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- Appendix A - Trustee's First Report
- Appendix B - Trustee' Supplement to the First Report
- Appendix C - April 2 Order
- Appendix D - Claims Register
- Appendix E - Order Vacating Waterloo Project Liens
- Appendix F - Payment from Ayerswood
- Appendix G - Guelph Project Report
- Appendix H - Affidavit of Robyn Duwyn
- Appendix I - Affidavit of Rob Danter

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## 1.1 Introduction

- 1.1.1 This follows BDO Canada Limited's ("BDO") first report of the Trustee and the Supplement to the First Report. All terms not otherwise defined shall be as defined in the First Report and the First Supplement.
- 1.1.1 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.
- 1.1.2 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.
- 1.1.3 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").
- 1.1.4 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")
- 1.1.5 The Trustee is not aware of any secured creditor or any party holding a General Security Agreement registered against Sirius.
- 1.1.6 As described in the First Report, the Trustee developed a Claims Administration Procedure for the Debtor's construction projects. The First Report is attached as **Appendix A**.
- 1.1.7 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. The First Supplement is attached as **Appendix B**.
- 1.1.8 On April 2, 2019, the Court issued an Order (the "April 2 Order") approving the Claims Administration Procedure. A copy of the April 2 Order is attached hereto as **Appendix C**.



## 1.2 Purpose of Trustee's Second Report

1.2.1 This constitutes the Trustee's second report (the "Second Report") to the Court in this matter and is filed to:

- (i) Provide an update on the claims submitted pursuant to the Claims Administration Procedure;
- (ii) Provide an update on the payments received by the Trustee pursuant to the Claims Administration Procedure;
- (iii) Approving the settlements made by the Trustee;
- (iv) Provide direction with respect to the payment of the holdback on the Guelph Project;
- (v) Obtain an Order paying out the Funds (as defined herein) from Court;
- (vi) Obtain approval of the fees and disbursements of the Trustee and its counsel; and,
- (vii) Obtain approval of the Proposed Distribution (as defined herein).

## 2.0

## Claims Administration Procedure Update

---

### 2.1 Claims Filed

- 2.1.1 Following the April 2 Order the Trustee sent notice of the Claims Administration Procedure to each known Lien Claimant, Trust Claimant and/or their counsel by regular mail on April 5, 2019. The Trustee also advertised the Claims Administration Procedure in the Waterloo Record and Oshawa This Week newspapers on April 4, 2019.
- 2.1.2 The First Report, First Supplement and April 2 Order were also placed on the Trustee's website on April 3, 2019.
- 2.1.3 The Claims Administration Procedure indicated that claims were to be filed within 30 days of the April 2 Order being, May 2, 2019.
- 2.1.4 As at May 2, 2019 the Trustee has received 37 claims as detailed in the chart below:

Project Location	# of Claims
Waterloo	5
Kitchener	4
Newcastle	7
Guelph	10
Brampton	0
Guelph Parking Lot	1
Not related to the Construction Projects	10

- 2.1.5 The Trustee sent Notice of Revision or Disallowance to all 10 creditors that filed claims for amounts that were not related to a Construction Project and disallowed the claims in full. The Trustee will allow the claims in the bankruptcy of Sirius.
- 2.1.6 None of the creditors that filed claims not related to a Construction Project filed a Notice of Dispute with the Trustee.
- 2.1.7 The Trustee, with the assistance of former employees of Sirius, reviewed the remaining 27 claims resulting in the following:
- (i) 21 of the claims were allowed as filed;
  - (ii) 2 claims were amended and subsequently accepted by the Trustee; and,
  - (iii) 4 claims were partially disallowed and the Trustee sent Notice of Revision or Disallowance to the claimant.

2.1.8 None of the creditors that received Notice of Revision or Disallowance filed a Notice of Dispute.

2.1.9 The chart below provides a summary of the Trust Claims and Lien Claims that have been filed and accepted to date. Attached as **Appendix D** is a detailed report of the claims filed and accepted on each of the six projects broken down between Lien Claim and Trust Claim for each claimant.

Claims Administration Procedure			
Project	Lien Claims	Trust Claims	Total Claims
Waterloo	35,047	48,408	83,455
Kitchener	15,714	30,296	46,009
Newcastle	208,817	80,285	289,102
Guelph	906,347	129,078	1,035,425
Brampton	-	-	-
Guelph Parking Lot	-	4,357	4,357

2.1.10 The deadline for filing a claim or Notice of Dispute has lapsed for all creditors.

## 2.2 Collections of Receivables and Holdbacks

2.2.1 All amounts are inclusive of HST unless otherwise noted.

2.2.2 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
<b>Total</b>	<b>\$ 84,112.71</b>	<b>\$ 242,667.50</b>	<b>\$ 171,793.50</b>	<b>\$ 140,500.30</b>	<b>\$ 64,488.29</b>	<b>\$ 486,840.65</b>

Note- All amounts are inclusive of HST

### 2.2.3 Waterloo Project

- (i) The Waterloo Project was in progress at the time of the bankruptcy of Sirius. The records of Sirius indicated that two invoices totaling \$60,565.91 and the holdback of \$23,546.80 were owing as at the date of bankruptcy.
- (ii) The Trustee issued a demand to the project owner for payment of the invoices and holdback.
- (iii) The project owner provided evidence that they would incur a loss of over \$1.8 million related to the cost of the replacement formwork contractor to complete the job. The project owner provided an executed copy of the new contract to support the claim. The Trustee allowed the set-off claim against the two invoices in the amount of \$60,565.91.
- (iv) The Trustee and the project owner entered into negotiations related to the amount owing pursuant to the holdback provision of the CLA. The Trustee and the project owner entered into an agreement, subject to court approval, for the payment of

\$35,046.50 as a final settlement of the amount owing. This settlement is approximately \$11,500 higher than the amount required under the CLA.

- (v) Stonerise Construction Inc. paid \$147,375.37 into Court to vacate the liens that were registered against the Waterloo Project. The Order vacating the liens against the Waterloo project is attached hereto as **Appendix E**. The Trustee hereby requests an order paying \$35,046.50 of the funds held in Court be paid to the Trustee with the balance of the funds returned to Stonerise Construction Inc.

#### 2.2.4 Kitchener Project

- (i) The Kitchener Project was in progress at the time of the bankruptcy of Sirius. The records of Sirius indicated that two invoices totaling \$214,587.00 and the holdback of \$28,080.50 were owing as at the date of bankruptcy.
- (ii) Sirius was engaged by the same company for the Waterloo Project and the Kitchener Project. As a result, Stonerise Construction Inc. set-off the loss from the Waterloo Project against the amount owing on the Kitchener Project pursuant to section 17 of the CLA. The Trustee allowed the set-off claim against the two invoices in the amount of \$214,587.00.
- (iii) The Trustee and the project owner entered into negotiations related to the amount owing pursuant to the holdback provision of the CLA. The Trustee and the project owner entered into an agreement, subject to court approval, for the payment of \$15,713.79 as a final settlement of the amount owing. The Settlement amount is equal to the registered liens on the Kitchener Project. The difference in the \$28,080.50 holdback and the amount of the settlement will be set-off against the losses on the Waterloo Project. The Trustee notes that holdback amounts can be set-off so long as the setoff does not reduce the holdback to an amount that is less than the registered liens.
- (iv) Upon payment of the \$15,713.79 by Stonerise Construction Inc. the Trustee will request an order discharging the liens registered against the Kitchener Project.

#### 2.2.5 Newcastle Project

- (i) According to Sirius the Newcastle Project was over 90% complete at the time of the bankruptcy. The records of the Company indicated that one invoice totaling \$22,626.46 (the "Invoice") and the holdback of \$149,167.04 were owing as the date of bankruptcy.
- (ii) The Trustee and the project owner have undertaken a full review of all current and past projects between Sirius and the project owner to determine if the Invoice was paid prior to the bankruptcy.
- (iii) The project owner has agreed that the holdback is due in full and will release the payment to the Trustee following the publication of the certificate of substantial performance. The project owner anticipates publication to take place during the summer of 2019.

#### 2.2.6 Brampton Project

- (i) The Brampton Project was completed prior to the bankruptcy of Sirius. The records of Sirius indicated that one invoice and one credit note totaling \$81,479.34 and the holdback of \$59,020.96 were owing as at the date of bankruptcy.
- (ii) The invoice for \$140,588.93 consisted of three items as follows:

- Progress billing of \$25,900 plus HST. The project owner provided backup that this amount was paid prior to the bankruptcy of Sirius.
  - Billing for a completed change order that was done by another vendor. The project owner directly paid the vendor that completed the work and Sirius issued a credit note for \$59,109.59 to offset this amount.
  - The final component of the invoice was a charge of \$60,000 plus HST related to the non-delivery of concrete forms. Sirius and the project owner had agreed that the project owner build concrete forms, to Sirius' specifications, in exchange for \$60,000, plus HST, in payment. As the forms were not delivered Sirius invoiced the project owner.
- (iii) After considering the above the Trustee is pursuing the collection of \$61,020.00 (\$60,000 less the 10% holdback plus HST) on account of the invoice and \$59,020.96 for the holdback.
- (iv) The project owner and the Trustee will continue to work towards a negotiated settlement.

#### 2.2.7 Parking Lot Project

- (i) The Guelph Parking Lot Project was completed prior to the bankruptcy of Sirius. The records of Sirius indicated that one invoice in the amount of \$11,789.79 and the holdback of \$52,698.50 were owing as at the date of bankruptcy.
- (ii) The Trustee has collected the \$11,789.78 receivable that was owing on the Guelph Parking Lot Project.
- (iii) The Trustee is continuing to pursue the collection of the holdback of \$52,689.50 and anticipates collecting the funds in August 2019 following the publication of the certificate of substantial performance.

### 2.3 Guelph Project update

- 2.3.1 As noted in the first report, at the date of bankruptcy the Trustee took possession of a cheque from the Ayerswood Development Corporation ("**Ayerswood**") payable to Sirius in the amount of \$381,578.40 ("**Pre-Bankruptcy Ayerswood Payment**"). The cheque was for the payment of invoice 19.001 in relation to the Guelph Project and the funds are being held in the Trustee's estate account. The Pre-Bankruptcy Ayerswood Payment is attached as **Appendix F**.
- 2.3.2 As at the date of Bankruptcy, the books and records of Sirius evidenced an outstanding receivable owing by Ayerswood in the amount of \$158,652.00 and a holdback owing in the amount of \$328,188.65.
- 2.3.3 Following the bankruptcy of Sirius, Ayerswood engaged a quantitative surveyor to review the work done by Sirius and estimate the percentage of completion for the Guelph Project. Ayerswood provided a copy of the report to the Trustee (the "**Report**").
- 2.3.4 The Report indicated that Sirius had overbilled the Guelph Project by \$170,704.71 and that the cost to remedy the deficiencies on the work completed was \$531,846.90. The Report is attached as **Appendix G**.
- 2.3.5 The Trustee, in consultation with former Sirius employees, reviewed the Report in detail. The Trustee disagreed with several aspect of the Report, including:

- (i) The Report was prepared without any comment or input from Sirius or the Trustee;
- (ii) The stated accuracy of the Report was +/- 15%;
- (iii) Several of the deficiencies were for items that were not included in the contract between Ayerswood and Sirius;
- (iv) The deficiencies included \$240,000 for a slab that was not completed or billed and therefore formed part of the calculation of the percentage of completion. Deficiencies should only cover the cost to remedy the incorrect or incomplete work done by Sirius and not the cost to complete the remainder of the project;
- (v) Sirius employees questioned the cost and quantity of several of the other deficiency claims; and,
- (vi) The Report added 10% for overhead and 10% for profit on top of the stated deficiency costs further increasing the deficiency claim above market value.

**2.3.6** Despite the issues identified above, it is the opinion of the Trustee that the Report provided sufficient evidence of overbilling and deficiencies to completely offset the invoice in the amount of \$158,652 owing by Ayerswood to Sirius. As a result, the Trustee is only seeking payment of the statutory holdback pursuant to the CLA.

**2.3.7** The Report stated that, based on the work completed, the holdback is \$310,835.60. Based on the Report the Trustee reduced its holdback claim to \$310,835.60 as opposed to the amount reflected in the records of Sirius. The Trustee has demanded that Ayerswood remit \$310,835.60 to satisfy its holdback requirement.

**2.3.8** Despite repeated requests Ayerswood has refused to remit to the Trustee the amount of \$310,835.60 to satisfy its holdback requirement.

**2.3.9** Ayerswood's position is that despite the fact that the Pre-Bankruptcy Ayerswood Payment referenced a January 2019 invoice the payment satisfied its holdback obligation under the CLA. In the alternative, Ayerswood has taken the position that the Trustee should return the Pre-Bankruptcy Ayerswood Payment at which time Ayerswood will pay the required holdback.

**2.3.10** The Trustee's position is that the payment of \$381,578.40 was for the January 2019 progress draw and was given by Ayerswood to Sirius prior to the bankruptcy and prior to the completion of the Guelph Project. As a result, the payment could not satisfy the holdback provision of the CLA. In addition, the Trustee noted that par. 7 of the April 2 Order states that set-off claims cannot be used to reduce the holdback. Customer set-off claims can be used against the outstanding invoice and any additional set-off would form a claim in the bankruptcy of Sirius.

**2.3.11** The Trustee is seeking direction from the Court with respect to the payment of the \$310,835.60 holdback owing from Ayerswood to Sirius.

## 3.0

## *Trustee's Account*

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- 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, has tracked its 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 March 4, 2019 through to July 19, 2019 are detailed in the affidavit of Robyn Duwyn, a copy of which is attached as **Appendix H**.
- 3.4 The Trustee has submitted seven invoices as follows:
- (i) The Waterloo Project fees from March 4 through to July 19, 2019 encompass 12.7 hours at an average hourly rate of approximately \$367.13 for a total of \$4,662.50 prior to applicable taxes.
  - (ii) The Kitchener Project fees from March 4 through to July 19, 2019 encompass 12.9 hours at an average hourly rate of approximately \$359.50 for a total of \$4,637.50 prior to applicable taxes.
  - (iii) The Newcastle Project fees from March 4 through to July 19, 2019 encompass 20.7 hours at an average hourly rate of approximately \$365.34 for a total of \$7,562.50 prior to applicable taxes.
  - (iv) The Guelph Project fees from March 4 through to July 19, 2019 encompass 24.2 hours at an average hourly rate of approximately \$370.87 for a total of \$8,975.00 prior to applicable taxes.
  - (v) The Brampton Project fees from March 4 through to July 19, 2019 encompass 6.2 hours at an average hourly rate of approximately \$342.74 for a total of \$2,125.00 prior to applicable taxes.
  - (vi) The Guelph Parking Lot Project fees from March 4 through to July 19, 2019 encompass 1.6 hours at an average hourly rate of approximately \$275.00 for a total of \$440.00 prior to applicable taxes.
  - (vii) The general claims process fees from March 4 through to July 19, 2019 encompass 57.8 hours at an average hourly rate of approximately \$369.12 and disbursements of \$56.55 for a total of \$21,391.55 prior to applicable taxes. The general claims process invoice includes time applicable to all projects and will be split among the other six projects on the basis of time spent. The proposed distribution is as follows:

Project	Fees	%	General Allocation	Total
Waterloo	\$ 4,662.50	16.4%	\$ 3,511.60	\$ 8,174.10
Kitchener	4,637.50	16.3%	3,492.77	8,130.27
Newcastle	7,562.50	26.6%	5,695.75	13,258.25
Guelph	8,975.00	31.6%	6,759.59	15,734.59
Brampton	2,125.00	7.5%	1,600.46	3,725.46
Parking Lot	440.00	1.5%	331.39	771.39
	\$28,402.50	100.0%	\$ 21,391.55	\$49,794.05

- 3.5 The Trustee is therefore requesting that the Court approve its total fees and disbursements in the amount of \$49,794.05 prior to of applicable taxes.
- 3.6 The Trustee has an additional \$32,000 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 March 4, 2019 through to July 22, 2019 are detailed in the affidavit of Rob Danter, a copy of which is attached as **Appendix I**.
- 3.8 The Trustee’s counsel has submitted one invoices as follows:
- (i) The fees from March 4, 2019 through to July 22, 2019 encompass 172 hours at an average hourly rate of approximately \$339.16 and disbursements of \$8,170.35 for a total of \$60,992.85 prior to applicable taxes (“**Counsel Fees**”).
  - (ii) Based on the Trustee’s allocations 39% of Counsel Fees, \$23,787.21 will be allocated to the bankrupt estate and is only seeking court approval of the remainder being \$37,205.58 prior to applicable taxes.
- 3.9 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 \$41,791.30 inclusive of applicable taxes.



#### 4.1 Distribution Priority

4.1.1 The Trustee proposes to distribute the proceeds from each of the Construction Projects to the Lien Claimants and Trust Claimants on each of the Construction Projects after deduction of the fees and costs associated with the applicable Construction Projects pursuant to the Claims Procedure Order.

4.1.2 The Trustee proposes to distribute the funds as follows (the “Proposed Priority”):

- (i) Firstly, to the approved fees and expenses of the Trustee pursuant to par. 24 of the April 2 Order;
- (ii) Secondly, to the accepted Lien Claim filed by CLAC with respect to the amounts owing to employees pursuant to the priority provided by par. 81 of the *Construction Lien Act*;
- (iii) Thirdly, pari-passu among the accepted non-employee Lien Claims;
- (iv) Fourthly, pari-passu among the accepted Trust Claims; and,
- (v) Finally, and subject to a reserve being held by the Trustee to complete and finalize the administration of the Claims Procedure order (the “Reserve”), any remaining funds will be paid into the general pool for the benefit of non-construction creditors and creditors who were not repaid in full from the Claims Procedure Order.

4.1.3 Any distributions to the employees under 4.1.2 (ii) or 4.1.2 (iv) will be subject to any required Wage Earner Protection Act (“WEPPA”) repayment if the individual employee received a payment from Service Canada under the WEPPA.

#### 4.2 Proposed Distribution

4.2.1 The receipts to date on each of the Construction Projects are noted above in section 2.2.

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

4.2.3 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.

4.2.4 The Trustee is seeking approval for the following distribution (the “Proposed Distribution”):

##### 4.2.5 Parking Lot Project

- (i) The fees and expenses of the Trustee in the amount of \$771.39 plus applicable taxes;
- (ii) The fees and expenses of counsel to the Trustee in the amount of \$693.73.
- (iii) The Lien Claim from CLAC in the amount of \$4,356.96<sup>1</sup>.

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<sup>1</sup> Subject to any WEPPA repayments

- (iv) Any remaining funds on hand, subject to the Reserve, and future receipts will be paid into the general pool.

#### 4.2.6 Waterloo Project

- (i) The fees and expenses of the Trustee in the amount of \$8,174.10 plus applicable taxes.
- (ii) The fees and expenses of counsel to the Trustee in the amount of \$6,776.88.
- (iii) The Lien Claim from CLAC up to the amount of \$24,129.16<sup>2</sup>.
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

#### 4.2.7 Kitchener Project

- (i) The fees and expenses of the Trustee in the amount of \$8,130.10 plus applicable taxes.
- (ii) The fees and expenses of counsel to the Trustee in the amount of \$6,758.49.
- (iii) The Lien Claim from CLAC up to the amount of \$10,950.61<sup>3</sup>.
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

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<sup>2</sup> Subject to any WEPPA repayments

<sup>3</sup> Subject to any WEPPA repayments

## 5.0 Order Sought

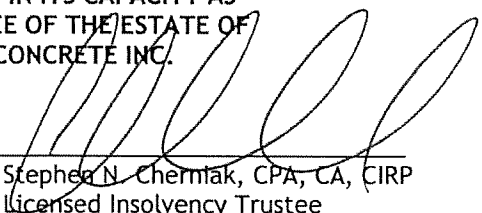
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5.1.1 We submit this Second Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Approve the Second Report and the Trustee's actions described therein;
- (ii) Approve the settlements reached by the Trustee with the Customers;
- (iii) Provide direction to the Trustee with respect to Ayerswood;
- (iv) Approve the fees and disbursement of the Trustee and its counsel; and,
- (v) Approve the Proposed Distribution.

All of which is respectfully submitted this 1 day of August, 2019.

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

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

## APPENDIX E

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE ) FRIDAY THE 16<sup>th</sup>  
JUSTICE *GEORGE* )  
DAY OF AUGUST, 2019

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

APPROVAL AND DISTRIBUTION ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as Trustee ("**BDO**" or the "**Trustee**") of Sirius Concrete Inc. (the "**Bankrupt**"), for an order:

1. If necessary, abridging the time for service, filing and confirmation of the notice of motion and the materials filed in support of the motion and validating the service thereof and dispensing with further service thereof such that this motion is properly returnable on August 16, 2019;
2. Approving the Trustee's First Report dated March 11, 2019 (the "**First Report**"), the Supplement to the First Report dated March 18, 2019 (the "**First Supplement**") and the Trustee's Second Report dated August 1, 2019 (the "**Second Report**"), filed, and the activities and conduct of the Trustee as detailed therein;
3. Approving the settlements reached by the Trustee with the customers of the Bankrupt as detailed in the Second Report (the "**Customer Settlements**");
4. Approving the fees and disbursements of the Trustee (the "**Trustee Fees**"), and its counsel, Harrison Pensa LLP ("**HP**") (the "**Counsel Fees**") for services rendered from the period of March 4, 2019 to July 22, 2019 as detailed in the Second Report and the fee affidavits of the Trustee and HP contained therein (the "**Fee Affidavits**").

5. That the Trustee maintain a sufficient reserve for final fees and final costs of administering the estate of the Bankrupt and administering the Claims Procedure Order (the “**Reserve**”) and authorizing the Trustee to disburse the funds obtained under the Claims Procedure Order pursuant to the Proposed Distribution as detailed and defined in the Second Report (the “**Proposed Distribution**”).

6. Directing the Accountant of the Superior Court of Justice to pay to the Trustee the amount of \$35,046.50 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

7. Directing the Accountant of the Superior Court of Justice to pay to Stonerise Construction Inc. the amount of \$112,328.87 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

8. That upon payment of the amounts referred to in paragraphs 6 and 7 above:

- (a) the lien of Gillies Lumber Inc., registered as Instrument Number WR1173899, and the certificate of action of Gillies Lumber Inc. registered as Instrument Number WR1183636;
- (b) the lien of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers’ Local 6 registered as Instrument Number WR1175085;
- (c) the lien of Cooper Equipment Rentals Limited registered as Instrument Number WR1175877 and the certificate of action of Cooper Equipment Rentals Limited registered as Instrument Number WR1183662; and,
- (d) the lien of Sirius Concrete Inc. registered on April 5, 2019, as Instrument Number WR1177274;

each of which was vacated from title to the premises against which they were registered pursuant to the Order of the Honourable Madam Justice Rady made on May 28, 2019 in London SCJ 1038-19; and,

- (e) the certificate of action of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers’ Local 6, Cooper Equipment Rentals Limited, and Sirius Concrete Inc. registered at Instrument Number WR1186532;

be discharged.

9. Requiring Stonerise Construction Inc. to pay to the Trustee the amount of \$15,713.79 as full settlement on the Kitchener Project as defined in the Second Report (the “**Kitchener Settlement**”).

10. That upon payment of the Kitchener Settlement, the Trustee be authorized to discharge from title to the property legally described as LOT 174 SUB.LOT 17 GERMAN COMPANY TRACT & PT. LOTS 16 TO 20 PLAN 398, BEING PTS. 3, 4, 5, 6, 7, 20 ON 58R-17696; SUBJECT TO AN EASEMENT IN GROSS AS IN WR520011; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 ON 58R-19137 AS IN WR1081722; CITY OF KITCHENER (the “**Kitchener Property**”) the following:

- (a) The Construction Lien and Certificate of Gilles Lumber Inc. registered as WR1173892 and WR1183635; and,
- (b) The Construction Lien and Certificate of Koopman, James registered as WR1175099 and WR1186757

(Collectively the “**Kitchener Property Lien Discharges**”)

was heard this day at 80 Dundas St., London, Ontario.

ON READING the First Report, the Second Report, 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 [NAME] sworn [DATE], filed;~~ **AND COUNSEL FOR AYERSWOOD DEVELOPMENT CORPORATION:**

- 1. THIS COURT ORDERS that the time for service, filing and confirmation of the notice of motion and the materials filed in support of the motion and validating the service thereof and dispensing with further service thereof such that this motion is properly returnable on August 16, 2019.
- 2. THIS COURT ORDERS that the First Report, the First Supplement and the Second Report, and the activities and the conduct of the Trustee as detailed therein are hereby approved.
- 3. THIS COURT ORDERS that the Customer Settlements are hereby approved.
- 4. THIS COURT ORDERS that the Trustee Fees and the Counsel Fees, as particularized in the Second Report and the Fee Affidavits, are hereby approved.

5. THIS COURT ORDERS that the Trustee maintain the Reserve and authorizes the Trustee to disburse the funds obtained under the Claims Procedure Order pursuant to the Proposed Distribution.

6. THIS COURT ORDERS that the Accountant of the Superior Court of Justice pay to the Trustee the amount of \$35,046.50 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

7. THIS COURT ORDERS that the Accountant of the Superior Court of Justice to pay to Stonerise Construction Inc. the amount of \$112,328.87 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

8. THIS COURT ORDERS that upon payment by the Accountant of the Superior Court of Justice of the sum of \$35,046.50 to the Trustee and the sum of \$112,328.87 to Stonerise Construction Inc.:

- (a) the claim for lien of Gillies Lumber Inc. registered as Instrument Number WR1173899 and the certificate of action of Gillies Lumber Inc. registered as Instrument Number WR1183636;
- (b) the claim for lien of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6 registered as Instrument Number WR1175085;
- (c) the claim for lien of Cooper Equipment Rentals Limited registered as Instrument Number WR1175877 and the certificate of action of Cooper Equipment Rentals Limited registered as Instrument Number WR1183662; and,
- (d) the claim for lien of Sirius Concrete Inc. registered as Instrument Number WR1177274;

each of which was vacated from title to the premises against which they were registered pursuant to the Order of the Honourable Madam Justice Rady made on May 28, 2019 in London SCJ 1038-19; and,



- (e) the certificate of action of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6, Cooper Equipment Rentals Limited, and Sirius Concrete Inc. registered at Instrument Number WR1186532;

be and hereby are discharged and the Trustee be and is authorized to register discharges of liens and certificates as applicable and as required with respect to the instruments described in this paragraph.

9. THIS COURT ORDERS that Stonerise Construction Inc. pay to the Trustee the Kitchener Settlement.

10. THIS COURT ORDERS that upon payment of the Kitchener Settlement, the Trustee be and is authorized to register the Kitchener Property Lien Discharges.



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Justice, Ontario Superior Court of Justice

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

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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at  
London, Ontario

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**APPROVAL AND DISTRIBUTION ORDER**

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**Harrison Pensa** LLP  
Barristers and Solicitors  
450 Talbot Street, P.O. Box 3237  
London, Ontario N6A 4K3

**Melinda Vine (LSO #53612R)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362

Solicitors for the Trustee,  
BDO Canada Limited

ONTARIO  
SUPERIOR COURT OF JUSTICE

Applicant: IN THE MATTER OF THE  
BANKRUPTCY OF SIRIUS  
CONCRETE, OF CIM OF Counsel:  
Respondent: WATERLOO IN PROVINCE Counsel:  
Respondent: OF ONTARIO Counsel:

S.C.J. Court File No.:  
35-2481393

Date Heard: AUGUST 16/19

Date of this Endorsement:

AUGUST 16/19

ENDORSEMENT

Vine for Trustee BDO  
Trenton for agerswood development

This is the Estate Trustee's motion that seeks  
the approval of the Trustee's first Report & Seal  
Report (of activities & conduct of Trustee as  
set out in its motion & draft ~~order~~ order). It  
also seeks direction re the 'Pre-Bankruptcy  
agerswood payment (as detailed in the Seal Report).

at the date of Bankruptcy Trustee took possession of  
a cheque for agerswood payable to Sirius  
in amount of \$381,578. at the date of  
Bankruptcy Sirius books indicated an 015  
receivable owing by agerswood in amount of \$158,652  
as a holdback owing in amount of \$328,188.65.  
The Trustee & agerswood advance offset position.

re pmt of ~~the~~ \$ 310,835.60 holdback  
only for eyeswood to Sims.

The Trustee takes the view that Mitchell's  
April 2nd 2019 Clean Proceeds Order governs  
as that a SIA date ought to be set  
to address the conflicting position. In  
particular it relies upon clause 21 which  
provides that:

- Upon receipt of a notice of dispute  
the Trustee may:

- i) attempt to casually resolve  
the amount of the claim to the  
lien claimant or Trustee;  
and/or
- ii) schedule a meeting before  
a judge of court to resolve  
the claim

Eyeswood takes the view that the presently  
dispute be addressed within the civil  
claim (Court file # CV-19-0000203-0000).  
That claim was commenced by the Trustee in  
relation to ~~the above issues~~<sup>2</sup>. what I will  
call the Dulph Pmt of which never eyeswood  
as a default, along with other underlying Skyline  
Equities + Banco Securities Inc.

I have reviewed the matter & consulted  
counsel since 1988 and as a result  
agree with the Estate Trustee (BDO).

For these reasons, I make this order:

- approval & discharge order  
to issue a trust set out  
in the draft provided. I have  
signed that order.
- Be 'Re-Burying eyeswood Payment' -  
to return to regular notice set  
on September 6/19 to set a  
date for a special appointment to  
address liability of eyeswood to  
pay holdback

If I need to address costs for this notice  
parties have until the end of the day on  
August 30<sup>th</sup> to file brief with ~~affidavit~~  
of ~~the~~ submissions.

  
CENCEJ.

## APPENDIX F

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

THIRD REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED

October 28, 2019

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- Appendix A - Trustee's First Report
- Appendix B - Trustee's Supplement to the First Report
- Appendix C - April 2, 2019 Order
- Appendix D - Trustee's Second Report
- Appendix E - August 16, 2019 Order
- Appendix F - Affidavit of Stephen N. Cherniak
- Appendix G - 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 and the Second Report. All terms not otherwise defined shall be as defined in the First Report, the First Supplement and the Second Report.
- 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. The First Report is attached as **Appendix A**.
- 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. The First Supplement is attached as **Appendix B**.
- 1.1.9 On April 2, 2019, the Court issued an Order (the "**April 2 Order**") approving the Claims Administration Procedure. A copy of the April 2 Order is attached hereto as **Appendix C**.
- 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. The Second Report is attached as hereto as **Appendix D**.

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. A copy of the August 16 Order is attached hereto as **Appendix E**.

## 1.2 Purpose of Trustee’s Third Report

1.2.1 This constitutes the Trustee’s third report (the “**Third Report**”) to the Court in this matter and is filed to:

- (i) Provide an update on the payments received by the Trustee pursuant to the Claims Administration Procedure;
- (ii) Approving the settlements made by the Trustee;
- (iii) Obtain payment Orders on the Newcastle Project and Parking Lot Project;
- (iv) Obtain approval of the fees and disbursements of the Trustee and its counsel;
- (v) Obtain approval of the Proposed Distribution (as defined herein); and,
- (vi) Obtain an Order discharging the Trustee from further obligations under the April 2 Order and releasing the Trustee from any liability while acting as Trustee under the April 2 Order.

## 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 previously reported the Newcastle Project was over 90% complete at the time of the bankruptcy. The records of the Company indicated that one invoice totaling \$22,626.46 (the "Invoice") and the holdback of \$149,167.04 were owing as at the date of bankruptcy.
- (ii) The project owner has provided evidence that the payment of the \$22,626.46 invoice was included in a payment made to Sirius on February 11, 2019. The Invoice has therefore been paid in full and the Trustee is no longer pursuing collection.
- (iii) The project owner had previously agreed that the holdback is due in full and would release the payment to the Trustee following the publication of the certificate of substantial performance. As at the date of this report the certificate of substantial performance has not been published.
- (iv) Following the payment of the holdback funds in the amount of \$149,167.04 the Newcastle Project will be settled in full.
- (v) The Trustee is seeking an Order requiring the customer, Skyrise Construction Inc., to pay the Trustee the holdback in the amount of \$149,167.04 pursuant to the terms of the April 2 Order.

#### 2.1.6 Brampton Project



- (i) As was previously reported the Trustee is pursuing the collection of \$61,020.00 (\$60,000 less the 10% holdback plus HST) on account of a receivable and \$50,183.30 for the holdback, after invoice adjustments noted in the Second Report.
- (ii) Sirius and the project owner had entered into an agreement where the project owner would provide concrete forms in exchange for payment. Following a review of the agreement and the work done to date by the project owner the Trustee will be taking delivery of the forms on account of payment of the receivable. The Trustee will sell the forms by way of public auction.
- (iii) As the forms were delivered following the completion of the project, and at substantially the same time as payment of the holdback, it was agreed that the form delivery was not subject to a holdback. The Trustee and the project owner agreed that the holdback would be adjusted to \$49,720.00. The project owner has paid the holdback in in the amount of \$49,720.
- (iv) With the delivery and sale of the forms and payment of the holdback complete the Brampton Project is settled in full.

#### **2.1.7 Parking Lot Project**

- (i) The Trustee has been in contact with the owner of the Guelph Parking Lot Project and been advised that the holdback of \$52,689.50 will be paid in the fall of 2019.
- (ii) Following the payment of the holdback funds in the amount of \$52,689.50 the Parking Lot Project will be settled in full.
- (iii) The Trustee is seeking an Order requiring the customer, Newton Group Ltd., to pay the Trustee the holdback in the amount of \$52,689.50.

### **2.2 Guelph Project update**

- 2.2.1** The endorsement to the August 16 Order stated that the Trustee and Ayerswood would set a special appointment date for a hearing to address the liability of Ayerswood to pay the holdback on the Guelph Project.
- 2.2.2** Following the August 16 Order Ayerswood voluntarily paid the holdback in the amount of \$310,835.60 to the Trustee. The Trustee in no longer pursuing the collection of any funds on the Guelph Project.

## 3.0

## Trustee's Account

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- 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, has tracked its 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 July 20, 2019 through to October 23, 2019 are detailed in the affidavit of Stephen N. Cherniak, a copy of which is attached as **Appendix F**.
- 3.4 The Trustee has submitted seven invoices as follows:
- (i) The Waterloo Project fees from July 20, 2019 through to October 23, 2019 encompass 0.6 hours at an average hourly rate of approximately \$375.00 for a total of \$225.00 prior to applicable taxes.
  - (ii) The Kitchener Project fees from July 20, 2019 through to October 23, 2019 encompass 1.1 hours at an average hourly rate of approximately \$375.00 for a total of \$412.50 prior to applicable taxes.
  - (iii) The Newcastle Project fees from July 20, 2019 through to October 23, 2019 encompass 1.8 hours at an average hourly rate of approximately \$375.00 for a total of \$675.00 prior to applicable taxes.
  - (iv) The Guelph Project fees from July 20, 2019 through to October 23, 2019 encompass 1.7 hours at an average hourly rate of approximately \$375.00 for a total of \$637.50 prior to applicable taxes.
  - (v) The Brampton Project fees from July 20, 2019 through to October 23, 2019 encompass 8.4 hours at an average hourly rate of approximately \$375.00 for a total of \$3,150.00 prior to applicable taxes.
  - (vi) The Guelph Parking Lot Project fees from July 20, 2019 through to October 23, 2019 encompass 1.2 hours at an average hourly rate of approximately \$375.00 for a total of \$450.00 prior to applicable taxes.
  - (vii) The general claims process fees from July 20, 2019 through to October 23, 2019 encompass 29.5 hours at an average hourly rate of approximately \$371.61 for a total of \$10,962.50 prior to applicable taxes. The general claims process invoice includes time applicable to all projects and will be split among the other six projects on the basis of time spent. The proposed distribution is as follows:

Project	Fees	%	General Allocation	Total
Waterloo	\$ 225.00	4.1%	\$ 444.43	\$ 669.43
Kitchener	412.50	7.4%	814.78	1,227.28
Newcastle	675.00	12.2%	1,333.28	2,008.28
Guelph	637.50	11.5%	1,259.21	1,896.71
Brampton	3,150.00	56.8%	6,221.96	9,371.96
Parking Lot	450.00	8.1%	888.85	1,338.85
	\$ 5,550.00	100.0%	\$ 10,962.50	\$ 16,512.50

- 3.5 The Trustee is therefore requesting that the Court approve its total fees and disbursements in the amount of \$16,512.50 prior to of applicable taxes.
- 3.6 The Trustee has an additional \$43,540 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 July 22, 2019 are detailed in the affidavit of Rob Danter, a copy of which is attached as **Appendix G**.
- 3.8 The Trustee’s counsel has submitted invoices as follows:
- (i) The fees from July 22, 2019 to October 22, 2019 encompass 75.3 hours at an average hourly rate of approximately \$229.67 and disbursements of \$387.33 for a total of \$19,929.56 inclusive of applicable taxes (“**Counsel Fees**”).
  - (ii) Based on the Trustee’s allocations 40% of Counsel Fees, \$7,971.82 will be allocated to the bankrupt estate and is only seeking court approval of the remainder being \$11,957.74 inclusive of applicable taxes.
- 3.9 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 \$11,957.74 inclusive of applicable taxes.

#### 4.1 Distribution Priority

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

#### 4.2 Proposed Distribution

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

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

4.2.3 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.

4.2.4 The Trustee is seeking approval for the following distribution (the “Proposed Distribution”):

##### 4.2.5 Newcastle Project

- (i) The approved fees and expenses of the Trustee plus applicable taxes;
- (ii) The approved fees and expenses of counsel to the Trustee.
- (iii) The Lien Claim from CLAC in the amount of \$12,512.02<sup>1</sup>.
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

##### 4.2.6 Brampton Project

- (i) The approved fees and expenses of the Trustee plus applicable taxes.
- (ii) The approved fees and expenses of counsel to the Trustee.
- (iii) Any remaining funds on hand, subject to the Reserve, and future receipts will be paid into the general pool.

##### 4.2.7 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.
- (iii) The Lien Claim from CLAC in the amount of \$138,716.18<sup>2</sup>.
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

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<sup>1</sup> Subject to any WEPPA repayments

<sup>2</sup> Subject to any WEPPA repayments



## 5.0 Discharge

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- 5.1 Following the receipt of all funds 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 pursuant to the April 2 Order.
- 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 under the April 2 Order. The Trustee will continue the administration of the estate of the Company in the ordinary course and pursuant to the *Bankruptcy and Insolvency Act* and not file any further reports to the Court.

## 6.0 Order Sought

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

- (i) Approve the Third Report and the Trustee's actions described therein;
- (ii) Approve the settlements reached by the Trustee with the Customers;
- (iii) Provide payment Orders on the Newcastle Project and Parking Lot Project;
- (iv) Approve the fees and disbursement of the Trustee and its counsel;
- (v) Approve the Proposed Distribution; and,
- (vi) Obtain an Order discharging the Trustee from further obligations under the April 2 Order and releasing the Trustee from any liability while acting as Trustee under the April 2 Order.

All of which is respectfully submitted this 28<sup>th</sup> day of October, 2019.

**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 G

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE  
JUSTICE

*Hocken*

)  
)  
)  
FRIDAY, THE 22<sup>ND</sup>  
DAY OF NOVEMBER, 2019



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

**APPROVAL AND DISTRIBUTION ORDER**

**THIS MOTION** made by BDO Canada Limited ("**BDO**"), in its capacity as Trustee of Sirius Concrete Inc., of the City of Waterloo (the "**Trustee**") for the relief as set out in the Notice of Motion, was heard this day at 80 Dundas St. London Ontario for:

- a. An Order that the time for service of this Motion Record is hereby dispensed with or abridged and this motion is property returnable today without further service or notice thereof;
- b. An Order that the Third Report dated October 28, 2019 (the "**Third Report**") and the Trustee's activities as outlined therein be approved;
- c. An Order that BDO's accounts for professional fees and disbursements as Trustee (the "**BDO Fees**") and the fees and disbursements of Harrison Pensa LLP, counsel to

the Trustee (collectively with the BDO Fees, the "**Professional Fees**") and the payment of same be approved;

- d. An Order that after payment of the Professional Fees herein approved, the Trustee be authorized to make the Proposed Distribution, with the exception of the Newcastle Project and the Guelph Project, as outlined and defined in the Third Report (the "**Distribution**");
- e. An Order that Newton Group Ltd. be required to pay to the Trustee the holdback in the amount of \$52,689.50 (the "**Newton Payment**");
- f. An Order that Skyrise Construction Inc. be required to pay to the Trustee the holdback in the amount of \$149,167.04 (the "**Skyrise Payment**");
- g. An Order that the settlements made between the Trustee and the customers of Sirius Concrete Inc., as detailed in the Third Report (the "**Settlements**"), be approved;

**ON READING** the Third Report of the Trustee, dated October 28, 2019 and the exhibits thereto (the "**Third Report**") and on hearing submissions of counsel for the Trustee and such other counsel as were present and on reading the affidavit of service of Lindsay Provost sworn October 29, 2019.

1. **THIS COURT ORDERS** that the time for service of this Motion Record is hereby dispensed with or abridged and this motion is property returnable today without further service or notice thereof.
2. **THIS COURT ORDERS** that the Third Report and the Trustee's activities as outlined therein are hereby approved.
3. **THIS COURT ORDERS** that Professional Fees and the payment of same are hereby

approved.

4. **THIS COURT ORDERS AND AUTHORIZES** that, after payment of the Professional Fees herein approved, the Trustee is authorized to make the Distribution.
5. **THIS COURT ORDERS** that Newton Group Ltd. is required to pay to the Trustee the Newton Payment.
6. **THIS COURT ORDERS** that Skyrise Construction Inc. is required to pay to the Trustee the Skyrise Payment.
7. **THIS COURT ORDERS** that the Settlements made between the Trustee and the customers of Sirius Concrete Inc. are hereby approved.

**ORDER ENTERED**  
NOV 22 2019  
3815



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Justice, *Ontario* Superior Court of Justice

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**

**PROCEEDING COMMENCED AT LONDON**

**ORDER**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Solicitors for BDO Canada Limited

MVI/177459



ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE  
JUSTICE

*HOLKIN*

) FRIDAY, THE 22<sup>ND</sup>  
)  
) DAY OF NOVEMBER, 2019

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

**ANCILLARY ORDER**  
**(LIEN DISCHARGE AND DISMISSAL)**

**THIS MOTION** made by BDO Canada Limited (“**BDO**”), in its capacity as Trustee of Sirius Concrete Inc., of the City of Waterloo (the “**Trustee**”) for the relief as set out in the Notice of Motion, was heard this day at 80 Dundas St. London Ontario.

**ON READING** the Third Report of the Trustee, dated October 28, 2019 and the exhibits thereto (the “**Third Report**”) and on hearing submissions of counsel for the Trustee and such other counsel as were present and on reading the affidavit of service of Lindsay Provost sworn October 29, 2019.

1. **THIS COURT ORDERS** that:

- a. The claim for lien and certificate of action of Doka Canada Ltd., registered on March 6, 2019 as Instrument No. WC562846 and on May 31, 2019 as Instrument No. WC569135, respectively, in the Land Registry Office for the



Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.

- b. The action commenced by Doka Canada Ltd. in Guelph as court file no. CV-19-207 be and is hereby dismissed without costs.
- c. A copy of this order be filed in Guelph court file no. CV-19-207.
- d. The claim for lien and certificate of action of Canada Building Materials Company A Division of St. Marys Cement Inc. (Canada), registered on March 20, 2019 as Instrument No. WC563677 and on March 27, 2019 as Instrument No. WC564107, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- e. The action commenced by Canada Building Materials Company A Division of St. Marys Cement Inc. (Canada) in Guelph as court file no. CV-19-113 be and is hereby dismissed without costs.
- f. A copy of this order be filed in Guelph court file no. CV-19-113.
- g. The claim for lien and certificate of action of James Koopman, registered on March 25, 2019 as Instrument No. WC563923 and on May 27, 2019 as Instrument No. WC568466, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- h. The action commenced by James Koopman in Guelph as court file no. CV-

19-197 be and is hereby dismissed without costs.

- i. A copy of this order be filed in Guelph court file no. CV-19-197.
- j. The claim for lien and certificate of action of BDO Canada Inc., as trustee for the estate of Sirius Concrete Inc., registered on March 26, 2019 as Instrument No. WC563942 and on May 30, 2019 as Instrument No. WC568809, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- k. The claim for lien and certificate of action of Cooper Equipment Rentals Limited, registered on March 29, 2019 as Instrument No. WC564263 and on May 13, 2019 as Instrument No. WC567485, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- l. The action commenced by Cooper Equipment Rentals Limited in Guelph as court file no. CV-19-178 be and is hereby dismissed without costs.
- m. A copy of this order be filed in Guelph court file no. CV-19-178.
- n. The claim for lien and certificate of action of AGF Rebar Inc. (Albrecht Division), registered on March 11, 2019 as Instrument No. WC563106 and on May 22, 2019 as Instrument No. WC568118, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.

- o. The action commenced by AGF Rebar Inc. (Albrecht Division) in Guelph as court file no. CV-19-188 be and is hereby dismissed without costs.
- p. A copy of this order be filed in Guelph court file no. CV-19-188.
- q. The claim for lien of Skycrane Limited, registered on March 15, 2019 as Instrument No. WC563355 in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- r. The claim for lien of Michel Roux, registered on March 15, 2019 as Instrument No. WC563384 in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.

**2. THIS COURT ORDERS that:**

- a. the claim for lien of Gillies Lumber Inc. registered as Instrument Number WR1173899 and the certificate of action of Gillies Lumber Inc. registered as Instrument Number WR1183636;
- b. the claim for lien of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6 registered as Instrument Number WR1175085;
- c. the claim for lien of Cooper Equipment Rentals Limited registered as Instrument Number WR1175877 and the certificate of action of Cooper Equipment Rentals Limited registered as Instrument Number WR1183662;  
and,

- d. the claim for lien of Sirius Concrete Inc. registered as Instrument Number WR1177274;

each of which was vacated from title to the premises against which they were registered pursuant to the Order of the Honourable Madam Justice Rady made on May 28, 2019 in London SCJ 1038-19; and,

- e. the certificate of action of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6, Cooper Equipment Rentals Limited, and Sirius Concrete Inc. registered at Instrument Number WR1186532;

be and hereby are discharged and the Trustee be and is authorized to register discharges of liens and certificates as applicable and as required with respect to the instruments described in this paragraph.

**3. THIS COURT ORDERS that:**

- a. The action commenced by Cooper Equipment Rentals Limited in Kitchener as court file no. CV-19-567 be and is hereby dismissed without costs.
- b. A copy of this order be filed in Kitchener court file no. CV-19-567.
- c. The action commenced by Gillies Lumber Inc. in London as court file no. 963/19 be and is hereby dismissed without costs.
- d. A copy of this order be filed in London court file no. 963/19.
- e. The action commenced by James Koopman as Agent for the Christian Labour

Association of Canada Construction Workers' Local 6 as court file no. CV-19-642 be and is hereby dismissed without costs.

- f. A copy of this order be filed in Kitchener court file no. CV-19-642.



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Justice, *Ontario* Superior Court of Justice

ORDER ENTERED  
NOV 22 2019  
3814

**Schedule "A"**

**DESCRIPTION OF LANDS**

**PIN:**            **71287-0107 (LT)**

**Description:** PT LOTS 90, 91, 92 & 93, PLAN 8, AS IN RO706835 EXCEPT PT 1, 61R11926; SUBJECT TO AN EASEMENT AS IN WC61819; SUBJECT TO AN EASEMENT AS IN ROS635166; CITY OF GUELPH

**Address:**        GUELPH

**PIN:**            **71287-0031 (LT)**

**Description:** PT LOTS 90 & 91, PLAN 8, PARTS 1 & 5, 61R4481; S/T & T/W ROS571224; GUELPH; SUBJECT TO AN EASEMENT AS IN WC538879

**Address:**        52 BAKER ST  
GUELPH

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**

PROCEEDING COMMENCED AT LONDON

**ORDER**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Solicitors for BDO Canada Limited

MVI/177459

## APPENDIX H



# Billing Summary

John Camara  
 Averswood Development Corporation  
 P.O. Box 3117,  
 London, Ontario, N6A 4J4  
 JJC@cpirentals.com  
 0

Job # 17-22-CIP  
 P.O./W.O. # 0  
 HST# 85077 7434 RT0001  
 Terms: Net 30 Days

CONTRACT SUMMARY	
Original Contract:	\$ 6,215,000.00
Approved Change Orders:	
COW1	\$ 7,200.00
<b>Contract Totals</b>	<b>\$ 6,222,200.00</b>
HST	\$808,886.00
<b>TOTALS</b>	<b>\$ 7,031,086.00</b>

PROGRESS BILLING		TTD		This Claim		H/B		Billing		HST		Invoiced	
Date	No.	Inv #											
25-Apr-18	1	18.046	\$149,386.88	\$149,386.88	\$14,938.69	\$14,938.69	\$134,448.20	\$17,478.27	\$17,478.27	\$17,478.27	\$17,478.27	\$151,926.46	\$151,926.46
25-May-18	2	18.054	\$448,160.65	\$298,773.77	\$29,877.38	\$29,877.38	\$268,896.39	\$34,956.53	\$34,956.53	\$34,956.53	\$34,956.53	\$303,852.92	\$303,852.92
25-Jun-18	3	18.065	\$597,547.54	\$149,386.88	\$14,938.69	\$14,938.69	\$134,448.20	\$17,478.27	\$17,478.27	\$17,478.27	\$17,478.27	\$151,926.46	\$151,926.46
25-Jul-18	4	18.078	\$896,321.30	\$298,773.77	\$29,877.38	\$29,877.38	\$268,896.39	\$34,956.53	\$34,956.53	\$34,956.53	\$34,956.53	\$303,852.92	\$303,852.92
25-Aug-18	5	18.085	\$1,274,768.08	\$378,446.77	\$37,844.68	\$37,844.68	\$340,602.10	\$44,278.27	\$44,278.27	\$44,278.27	\$44,278.27	\$384,880.37	\$384,880.37
25-Sep-18	6	18.093	\$1,693,051.35	\$418,283.28	\$41,828.33	\$41,828.33	\$376,454.95	\$48,939.14	\$48,939.14	\$48,939.14	\$48,939.14	\$425,394.09	\$425,394.09
25-Oct-18	7	18.103	\$2,111,334.63	\$400,003.52	\$40,000.35	\$40,000.35	\$36,003.17	\$4,680.41	\$4,680.41	\$4,680.41	\$4,680.41	\$40,683.58	\$40,683.58
26-Nov-18	8	18.115	\$2,151,338.15	\$221,786.17	\$22,178.62	\$22,178.62	\$199,607.55	\$25,948.98	\$25,948.98	\$25,948.98	\$25,948.98	\$225,556.53	\$225,556.53
29-Dec-18	9	18.127	\$2,373,124.32	\$375,200.00	\$37,520.00	\$37,520.00	\$337,680.00	\$43,898.40	\$43,898.40	\$43,898.40	\$43,898.40	\$381,578.40	\$381,578.40
30-Jan-19	10	19.001	\$2,748,324.32	\$156,000.00			\$156,000.00	\$20,280.00	\$20,280.00	\$20,280.00	\$20,280.00	\$176,280.00	\$176,280.00
28-Feb-19	11	19.014	\$2,904,324.32										
4-Mar-19	HB	19.802	\$2,904,324.32	\$290,432.43	\$29,043.24	\$29,043.24	\$261,389.19	\$33,980.59	\$33,980.59	\$33,980.59	\$33,980.59	\$296,369.78	\$296,369.78
										<b>\$ 303,875.67</b>	<b>\$ 2,890,881.07</b>	<b>\$ 375,814.54</b>	<b>\$ 3,266,695.61</b>

PAYMENT SUMMARY			
	Amt Paid	Amt Owing	Date Paid
	\$1,296,433.13		
	\$151,926.46	\$0.00	1-Jun-18
	\$303,852.92	\$0.00	1-Jul-18
	\$151,926.46	\$0.00	1-Aug-18
	\$303,852.92	\$0.00	31-Aug-18
	\$384,880.37	\$0.00	1-Oct-18
	\$425,394.09	\$0.00	1-Nov-18
	\$425,394.09	\$0.00	1-Dec-18
	\$40,683.58	\$0.00	2-Jan-19
	\$225,556.53	\$0.00	4-Feb-19
	\$381,578.40	\$0.00	1-Mar-19
		<b>\$176,280.00</b>	
		<b>\$296,369.78</b>	
		<b>\$471,649.78</b>	
	<b>\$2,795,045.83</b>		



Head Office

P.O. Box 25070  
 Kitchener, Ontario  
 519.808.4237

## INVOICE

**John Camara**  
 Ayerswood Development Corporation  
 P.O. Box 3117,  
 London, Ontario, N6A 4J4  
[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 1 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.046**  
**Date:** 25-Apr-17  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00
Progress billed to date	Concrete M3 150	Cost/Meter \$995.91
		\$149,386.88
Less: Progress billed to Previous Draw		\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$149,386.88
LESS 10% HOLDBACK:	<u>\$14,938.69</u>
THIS INVOICE BEFORE HST.:	\$134,448.20
PLUS - H.S.T. @ 13%	<u>\$17,478.27</u>

<b>INVOICE AMOUNT</b>	<b>\$151,926.46</b>
-----------------------	---------------------

**Please make cheque payable to: Sirius Concrete Inc.**

*Thank you for your business!*



Head Office

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 Kitchener, Ontario  
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## INVOICE

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 P.O. Box 3117,  
 London, Ontario, N6A 4J4  
[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 2      17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.054**  
**Date:** 25-May-17  
**Job #** 17-22-CIP  
**P.O.W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00

	Concrete M3	Cost/Meter	
Progress billed to date	450	\$995.91	\$448,160.65
Less: Progress billed to Previous Draw			\$149,386.88

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$298,773.77
LESS 10% HOLDBACK:	<u>\$29,877.38</u>
THIS INVOICE BEFORE HST.:	\$268,896.39
PLUS - H.S.T. @ 13%	<u>\$34,956.53</u>

<b>INVOICE AMOUNT</b>	<b>\$303,852.92</b>
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**Please make cheque payable to: Sirius Concrete Inc.**

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Head Office

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## INVOICE

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 Ayerswood Development Corporation  
 P.O. Box 3117,  
 London, Ontario, N6A 4J4  
[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 3      17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.065**  
**Date:** 25-Jun-18  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00

	Concrete M3	Cost/Meter	
Progress billed to date	600	\$995.91	\$597,547.54
Less: Progress billed to Previous Draw			\$448,160.65

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$149,386.88
LESS 10% HOLDBACK:	<u>\$14,938.69</u>
THIS INVOICE BEFORE HST.:	\$134,448.20
PLUS - H.S.T. @ 13%	<u>\$17,478.27</u>

<b>INVOICE AMOUNT</b>	<b>\$151,926.46</b>
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**Please make cheque payable to: Sirius Concrete Inc.**

*Thank you for your business!*



Head Office

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 Kitchener, Ontario  
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## INVOICE

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 Ayerswood Development Corporation  
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[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 4 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.078**  
**Date:** 25-Jul-18  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00

	Concrete M3	Cost/Meter	
Progress billed to date	900	\$995.91	\$896,321.30
Less: Progress billed to Previous Draw			\$597,547.54

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$298,773.77
LESS 10% HOLDBACK:	<u>\$29,877.38</u>
THIS INVOICE BEFORE HST.:	\$268,896.39
PLUS - H.S.T. @ 13%	<u>\$34,956.53</u>

<b>INVOICE AMOUNT</b>	<b>\$303,852.92</b>
-----------------------	---------------------

**Please make cheque payable to: Sirius Concrete Inc.**

*Thank you for your business!*



Head Office

P.O. Box 25070  
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## INVOICE

<b>John Camara</b> Ayerswood Development Corporation P.O. Box 3117, London, Ontario, N6A 4J4 <a href="mailto:JJC@cpirentals.com">JJC@cpirentals.com</a> <b>Draw # 5</b>	<b>17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building</b>	<b>Invoice # 18.085</b> <b>Date:</b> 25-Aug-18 <b>Job #</b> 17-22-CIP <b>P.O/W.O. #</b> <b>HST#</b> 85077 7434 RT0001 <b>Terms:</b> <i>Net 30 Days</i>
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Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00
Progress billed to date	Concrete M3 1280	Cost/Meter \$995.91
		\$1,274,768.08
Less: Progress billed to Previous Draw		\$896,321.30
<hr/>		
NET INVOICE BEFORE HOLDBACK AND H.S.T.:		\$378,446.77
LESS 10% HOLDBACK:		<u>\$37,844.68</u>
THIS INVOICE BEFORE HST.:		\$340,602.10
PLUS - H.S.T. @ 13%		<u>\$44,278.27</u>
<b>INVOICE AMOUNT</b>		<b><u>\$384,880.37</u></b>

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## INVOICE

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 Ayerswood Development Corporation  
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[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 6 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.093**  
**Date:** 25-Sep-18  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** *Net 30 Days*

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00
Progress billed to date	Concrete M3 1700	Cost/Meter \$995.91
		\$1,693,051.35
Less: Progress billed to Previous Draw		\$1,274,768.08
<hr/>		
NET INVOICE BEFORE HOLDBACK AND H.S.T.:		\$418,283.28
LESS 10% HOLDBACK:		<u>\$41,828.33</u>
THIS INVOICE BEFORE HST.:		\$376,454.95
PLUS - H.S.T. @ 13%		<u>\$48,939.14</u>
<b>INVOICE AMOUNT</b>		<b><u>\$425,394.09</u></b>

**Please make cheque payable to: Sirius Concrete Inc.**

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Head Office

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## INVOICE

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[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 7**      **17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.103**  
**Date:** 25-Oct-18  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00
Progress billed to date	Concrete M3 2120	Cost/Meter \$995.91
		\$2,111,334.63
Less: Progress billed to Previous Draw		\$1,693,051.35
<hr/>		
NET INVOICE BEFORE HOLDBACK AND H.S.T.:		\$418,283.28
LESS 10% HOLDBACK:		<u>\$41,828.33</u>
THIS INVOICE BEFORE HST.:		\$376,454.95
PLUS - H.S.T. @ 13%		<u>\$48,939.14</u>
<b>INVOICE AMOUNT</b>		<b>\$425,394.09</b>

**Please make cheque payable to: Sirius Concrete Inc.**

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Head Office

P.O. Box 25070  
 Kitchener, Ontario  
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## INVOICE

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[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 8 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.115**  
**Date:** 26-Nov-18  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Progress Billing Period From

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$234,334.63	\$340,665.37
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$0.00	0%	\$0.00	\$0.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$14,900.00	24%	\$0.00	\$14,900.00
<b>Original Total Contract</b>	<b>\$6,215,000.00</b>	<b>\$2,454,900.00</b>	<b>39%</b>	<b>\$2,099,334.63</b>	<b>\$355,565.37</b>
<b>Change Orders To Date:</b>					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$46,200.00	\$20,000.00	43%	\$12,000.00	\$8,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$0.00	\$18,483.38
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$0.00	\$17,986.46

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$400,035.21
LESS 10% HOLDBACK:	\$40,003.52
THIS INVOICE BEFORE HST.:	\$360,031.69
PLUS - H.S.T. @ 13%	\$46,804.12

**INVOICE AMOUNT \$406,835.81**

Please make cheque payable to: Sirius Concrete Inc.  
 2% interest per month on overdue balances until paid.

**Thank you for your business!**



Head Office

P.O. Box 25070  
Kitchener, Ontario  
866-218-6173

## INVOICE

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Ayerswood Development Corporation  
P.O. Box 3117,  
London, Ontario, N6A 4J4  
[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 9 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 18.127**  
**Date:** 29-Dec-18  
**Job #** 17-22-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Progress Billing Period From December 1, 2018 to December 31, 2018.

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$205,000.00	49%	\$0.00	\$205,000.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$20,100.00	32%	\$14,900.00	\$5,200.00
<b>Original Total Contract</b>	<b>\$6,215,000.00</b>	<b>\$2,665,100.00</b>	<b>43%</b>	<b>\$2,454,900.00</b>	<b>\$210,200.00</b>
<b>Change Orders To Date:</b>					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$22,000.00	45%	\$20,000.00	\$2,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$0.00	0%	\$0.00	\$0.00
5. C.O. 17-22.05 (Ayerswood P.O. #15668)	\$9,586.17	\$9,586.17	100%	\$0.00	\$9,586.17

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$221,786.17
LESS 10% HOLDBACK:	\$22,178.62
THIS INVOICE BEFORE HST.:	\$199,607.55
PLUS - H.S.T. @ 13%	\$25,948.98

**INVOICE AMOUNT \$225,556.53**

Please make cheque payable to: Sirius Concrete Inc.  
2% interest per month on overdue balances until paid.

**Thank you for your business!**



Head Office

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## INVOICE

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[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 10 17-22A-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 19.001**  
**Date:** 30-Jan-19  
**Job #** 17-22A-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Progress Billing Period From January 1, 2019 to January 31, 2019.

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$420,000.00	100%	\$205,000.00	\$215,000.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$130,000.00	38%	\$0.00	\$130,000.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$40,100.00	64%	\$20,100.00	\$20,000.00
<b>Original Total Contract</b>	<b>\$6,215,000.00</b>	<b>\$3,030,100.00</b>	<b>49%</b>	<b>\$2,665,100.00</b>	<b>\$365,000.00</b>
<b>Change Orders To Date:</b>					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$25,000.00	51%	\$22,000.00	\$3,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$7,200.00	100%	\$0.00	\$7,200.00
5. C.O. 17-22.05 (Ayerswood P.O. # 15668)	\$9,586.17	\$9,586.17	100%	\$9,586.17	\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$375,200.00
LESS 10% HOLDBACK:	\$37,520.00
THIS INVOICE BEFORE HST.:	\$337,680.00
PLUS - H.S.T. @ 13%	\$43,898.40

**INVOICE AMOUNT \$381,578.40**

Please make cheque payable to: Sirius Concrete Inc.  
2% interest per month on overdue balances until paid.

**Thank you for your business!**



Head Office

P.O. Box 25070  
Kitchener, Ontario  
866-218-6173

## INVOICE

**John Camara**  
Ayerswood Development Corporation  
P.O. Box 3117,  
London, Ontario, N6A 4J4  
[JJC@cpirentals.com](mailto:JJC@cpirentals.com)  
**Draw # 11 17-22A-CIP-Ayerswood-45 Yarmouth St. Apartment Building**

**Invoice # 19.014**  
**Date:** 28-Feb-19  
**Job #** 17-22A-CIP  
**P.O/W.O. #**  
**HST#** 85077 7434 RT0001  
**Terms:** **Net 30 Days**

Progress Billing Period From February 1, 2019 to February 28, 2019.

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$420,000.00	100%	\$420,000.00	\$0.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$280,000.00	82%	\$130,000.00	\$150,000.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$45,100.00	71%	\$40,100.00	\$5,000.00
<b>Original Total Contract</b>	<b>\$6,215,000.00</b>	<b>\$3,185,100.00</b>	<b>51%</b>	<b>\$3,030,100.00</b>	<b>\$155,000.00</b>
<b>Change Orders To Date:</b>					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$26,000.00	53%	\$25,000.00	\$1,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$7,200.00	100%	\$7,200.00	\$0.00
5. C.O. 17-22.05 (Ayerswood P.O. # 15668)	\$9,586.17	\$9,586.17	100%	\$9,586.17	\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$156,000.00
LESS 10% HOLDBACK:	\$15,600.00
THIS INVOICE BEFORE HST.:	\$140,400.00
PLUS - H.S.T. @ 13%	\$18,252.00

**INVOICE AMOUNT \$158,652.00**

Please make cheque payable to: Sirius Concrete Inc.  
2% interest per month on overdue balances until paid.

**Thank you for your business!**

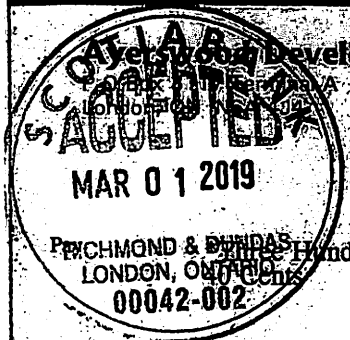
# APPENDIX I

SiriusCo Sirius Concrete  
 PO Box 25070  
 Kitchener, ON N2A 4A5

Ayers Development Corporation  
 Cheque Number ADSC-00024107  
 Cheque Date 03/01/2019

Date	Invoice	Reference	Invoice Amt	Retention	Discount	Payment	ITC
01/30/19	1510233	ONTARIO INC.	423,976.00	-37,520.00	0.00	381,578.40	43,898.40
Total Remittance			423,976.00	-37,520.00	.00	381,578.40	43,898.40

THIS CHECK IS VOID WITHOUT A BLUE BACKGROUND AND A WATERMARK - HOLD UP TO THE LIGHT TO VERIFY



SCOTIA BANK  
 420 RICHMOND STREET  
 London, ON N6A 4Y5

00024107

DATE 03-01-2019  
 M M DD YYYY

\$ 381,578.40

Three Hundred Eighty One Thousand Five Hundred Seventy Eight Dollars

PAYABLE IN CANADIAN FUNDS

To The Order Of  
 Sirius Concrete  
 PO Box 25070  
 Kitchener, ON N2A 4A5

Per [Signature]  
 Per [Signature]

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES A MICROPRINT BORDER & FLUORESCENT FIBERS

⑈00024107⑈ ⑆00042⑆002⑆ 02919⑆19⑆

CUSTOMER RECEIPT PAGE 01/01  
 MAR 01 2019  
 ID KHL6H  
 LONDON MAIN BRANCH  
 TR00042  
 OFFICER ID: 526  
 PIN \*N\*  
 Certified Cheque  
 00042 02919 19  
 \$381,578.40

Thank You  
 Have an excellent day

\*\*\*\*\*  
 \*\*\*\*\*  
 \*\*\*\*\*

## APPENDIX J

*B. Scott Turton*

*24 Bridgewater Drive  
Richmond Hill, Ontario L4E 3N4  
Telephone (905) 508-5821  
Fax (905) 508-0519*

*Barrister-at-Law*

18 November 2019

**TRANSMITTED BY TELEFAX (519) 667-3362**

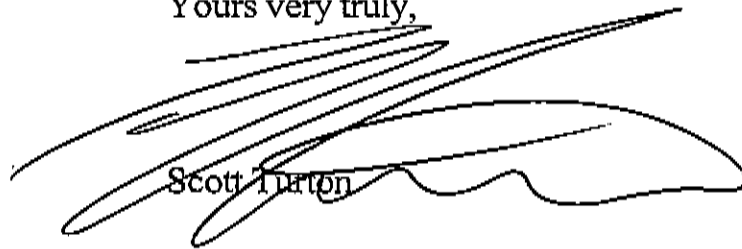
Harrison Pensa LLP  
Barristers & Solicitors  
450 Talbot Street,  
London ON N6A 4K3

Attn: Melinda Vine

Re: Ayerswood Development Corporation et al ats BDO Canada Limited et al  
Court File No. CV-19-00000203-0000

Enclosed please find the Statement of Defence of Ayerswood Development Corporation, 1510233 Ontario Inc., 1991333 Ontario Inc. and Banco Securities Inc. and Counterclaim of Ayerswood Development Corporation.

Yours very truly,



Scott Turton

ST/ws  
Encl.

Total Pages:



Court file no. CV-19-00000203-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF *The Construction Act*,  
R.S.O. 1990, Chapter C.30, as amended**

**BETWEEN:**

**BDO CANADA LIMITED,  
as Trustee for the Estate of SIRIUS CONCRETE INC.  
PLAINTIFF(S)**  
**and**

**AYERSWOOD DEVELOPMENT CORPORATION, 1510233  
ONTARIO INC., 1991333 ONTARIO INC., SKYLINE EQUITIES INC.,  
AND BANCO SECURITIES INC.  
DEFENDANT(S)**

**STATEMENT OF DEFENCE OF AYERSWOOD DEVELOPMENT  
CORPORATION, 1510233 ONTARIO INC., 1991333 ONTARIO INC.  
AND BANCO SECURITIES INC. and COUNTERCLAIM OF  
AYERSWOOD DEVELOPMENT CORPORATION**

1. These defendants admit the allegations contained in the following paragraphs of the statement of claim: paragraph 2 (first two lines), 3, that 1991333 is the registered owner of the 031 Lands, 5, that Skyline Equities Inc. is the registered owner of the 107 Lands, 7, 8, 10, 13, 29, and 30.
2. These defendants deny the balance of the paragraphs of the statement of claim and the remedies claimed in paragraph 1.

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3. The co-defendant Skyline Equities Inc. owns a cell of space in the residential multi-storey building that Ayerswood Development Corporation ("Ayerswood") is constructing at the subject lands (which will be referred to by their municipal address 45 Yarmouth Street, Guelph). This cell is to consist of 12 surface level parking spaces. This is the 107 Land. Skyline Equities Inc. did not contract with Sirius Concrete Inc. ("Sirius") for the provision of anything, nor request that company to perform anything. Skyline Equities Inc. did not pay Sirius nor have any obligation to pay Sirius. It is not an "owner" within the meaning of the *Construction Act* and has no liability for the claims made in this action.
  
4. The defendant Banco Securities Inc. holds four mortgages on the 031 Land only (not on the 107 Land). Its mortgages are all prior in time to the construction of the subject building (the latest in time was 2014). The plaintiff has no claim against this defendant.
  
5. The defendant 1510233 Ontario Inc. is an unnecessary defendant as it was amalgamated into 1991333 Ontario Inc., the

- 3 -

latter company being the registered owner of the 031 Land. 1991333 did not contract with Sirius, did not pay Sirius, and did not request Sirius to perform any services for it. 1991333 is a registered owner but not an "owner" as that term is defined in the *Construction Act* such that it has any financial liability to the plaintiff as claimed in this action.

6. Ayerswood contracted with Sirius. Ayerswood made the payments to Sirius. Ayerswood maintained holdbacks. Ayerswood owes nothing to Sirius (and hence the plaintiff Trustee) and owes nothing to the Trustee.
7. Ayerswood had a written contract with Sirius. The scope of work is described (quoting from the contract of 14 March 2018) as:

"To provide all labour, equipment and materials to carry out all work to build a 12 Storey concrete structure apartment building with a three storey concrete structure underground garage as per SBM Engineering Structural Engineer and structural drawings and Patrick Trotter Architectural drawing integrated with SBM Engineers..."
8. Sirius was a concrete forming company and the above work involves the concrete work for a three storey underground

- 4 -

garage and twelve storeys above ground. Sirius made its assignment in bankruptcy before its contract was completed.

9. The contract had no schedule of values and no schedule of progress payments. The payment provision in the contract set out a total price of \$7,022,950.00 and said that payment was "net 30 days after receipt of invoice between 1<sup>st</sup> and 8<sup>th</sup> of the month".
  
10. Sirius rendered invoices to Ayerswood based on a representation by Sirius to Ayerswood that a percentage of a level in the building had been completed by it. In particular Sirius rendered an invoice to Ayerswood on or about 31 January 2019 for \$423,976.00 on the representation that its work on the three underground garage levels and the first floor walls to the second floor slab were 100% complete and the value of its work was a further \$423,976.00. This representation was false however and in consequence of this misrepresentation Ayerswood issued payment to Sirius on or about 1 March 2019 in the amount of \$381,578.40 (being \$423,976.00 less the holdback).

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11. On 28 February 2019, at a time when it knew it was making an assignment in bankruptcy, Sirius rendered a further invoice representing that the work from the second floor walls to the third floor slab was 82% complete and the further value of its work was \$155,000.00. Due to the assignment in bankruptcy of Sirius on 4 March 2019, Ayerswood had not issued payment of this invoice. (The Trustee is no longer seeking payment of this invoice).
  
12. In June 2019 Ayerswood obtained the report of a quantity surveyor who was retained to determine the actual value of the work that Sirius had done. The quantity surveyor concluded that Sirius had overcharged by \$702,551.61. As the final invoice of \$155,000.00 was not paid, that amount is to be deducted from the amount of the overcharge. Given that Ayerswood paid the sum of \$310,835.60 to the Trustee on account of holdbacks, the amount that Ayerswood has overpaid is \$547,551.61.
  
13. Sirius was a company in financial problems. Those problems, according to the Trustee, were serious in the fourth quarter of 2018. Sirius was attempting to solve its cash flow problems by

- 6 -

knowingly inflating the value of the work it had done at this project and inducing Ayerswood through misrepresentation to overpay Sirius.

14. Ayerswood has paid, and overpaid, its holdback obligation to the Trustee. Ayerswood has overpaid to Sirius. There is nothing owed by Ayerswood to the plaintiff and this claim should be dismissed against it with costs.

AND BY WAY OF COUNTERCLAIM

BETWEEN

AYERSWOOD DEVELOPMENT CORPORATION

Plaintiff by Counterclaim

And

BDO CANADA LIMITED,  
as Trustee for the Estate of SIRIUS CONCRETE INC.

Defendant by Counterclaim

15. The plaintiff by counterclaim claims:
  - (a) Restitution of the sum of \$381,578.40;
  - (b) The imposition of a remedial trust over the sum of \$381,578.40 and a declaration that Ayerswood

- 7 -

Development Corporation is the beneficiary of that trust and entitled to receive delivery by those funds from the Trustee.

- (c) A recalculation of the amount of the holdback obligation of Ayerswood Development Corporation and restitution of the overpayment made to the Trustee;
- (d) Pre-judgment and post-judgment interest under the *Courts of Justice Act*;
- (e) Costs
- (f) Such other relief as is appropriate.

16. The Trustee is in possession of the amount of \$381,578.40 that was paid by Ayerswood to Sirius, and given by Sirius to the Trustee on or about 1 March 2019. Ayerswood has asserted its claim to the restitution of those monies and notified the Trustee to not distribute those funds and to hold them in trust.

17. Ayerswood pleads that as the payment of \$381,578.40 was induced by misrepresentation Ayerswood is entitled to restitution of these funds. Further the imposition of a resulting trust over those funds is an appropriate remedy to address the fact that Sirius was unjustly enriched by those funds, and that resulting

- 8 -

trust can extend to the funds in the hands of the Trustee. At that time the cheque of Ayerswood for \$381,578.40 was received by Sirius the Trustee was aware of the financial circumstances of Sirius and had prepared the documents for Sirius to make its assignment into bankruptcy as soon as the cheque of Ayerswood was received.

18. The amount of the holdback that Ayerswood paid to the Trustee in September 2019 was calculated on the basis of inclusion of 10% of the invoice of 31 January 2019. As Ayerswood claims restitution of the funds it paid in respect of that invoice, the amount of the holdback should be recalculated downwards and repayment made by the Trustee to Ayerswood of the excess amount that is paid.

Date: 18 November 2019

F. SCOTT TURTON  
Barrister-at-Law  
24 Bridgewater Drive  
Richmond Hill, Ontario L4E 3N4

LSUC: 17631C  
(905) 508-5821  
Fax: (905) 508-0519  
Email: [scott@scottturtonlaw.com](mailto:scott@scottturtonlaw.com)

Lawyer for the Defendants,  
Ayerswood Development Corporation,  
1510233 Ontario Inc., 1991233 Ontario  
Inc., and Banco Securities Inc.



- 9 -

TO:

HARRISON PENSA LLP  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 4K3

Melina Vine  
LSUC #53612R

Telephone: (519) 679-9660  
Fax: (519) 667-3362

Lawyers for the Plaintiff

BDO CANADA LIMITED, as Trustee for the Estate of Sirius Concrete Inc. and AYERSWOOD DEVELOPMENT CORPORATION et al

PLAINTIFF(S)

DEFENDANT(S)

Court file no. CV-19-00000203-0000

(Short title of proceeding)

**SUPERIOR COURT OF JUSTICE  
IN THE MATTER OF *The Construction*  
Act, R.S.O. 1990, Chapter C.30, as  
amended**  
Proceeding commenced at Guelph

**Statement Of Defence Of  
Ayerswood Development Corporation,  
1510233 Ontario Inc., 1991333  
Ontario Inc. and Banco Securities  
Inc.**

*Name, address, telephone and fax numbers of lawyer or party  
(Law Society registration number of lawyer):*

**F. SCOTT TURTON  
Barrister-at-Law  
24 Bridgewater Drive  
Richmond Hill, Ontario L4E 3N4**

**LSUC: 17631C  
(905) 508-5821  
Fax: (905) 508-0519**

**Lawyer for the Defendants, Ayerswood  
Development Corporation, 1510233  
Ontario Inc., 1991333 Ontario Inc. and  
Banco Securities Inc.**

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**

PROCEEDING COMMENCED AT LONDON

**FOURTH REPORT  
OF BDO CANADA LIMITED**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel : (519) 679-9660  
Fax: (519) 667-3362

Solicitors for the Trustee,  
BDO Canada Limited

TCH/177459

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**

PROCEEDING COMMENCED AT LONDON

**MOTION RECORD**

**HARRISON PENSA LLP**

Barristers & Solicitors  
450 Talbot Street  
London, Ontario  
N6A 5J6

**Melinda Vine (LSO #53612R)**

Tel : (519) 679-9660  
Fax: (519) 667-3362

Solicitors for BDO Canada Limited

TCH/177459