

Court File No. BK-23-00459641-0031  
Estate No.: 31-459641

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF  
INTEGRO BUILDING SYSTEMS INC.,  
IN THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

**BOOK OF AUTHORITIES OF THE TRUSTEE**

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Building Systems Inc.*

**TO: SERVICE LIST**

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# TAB 1

1998 CarswellBC 146  
British Columbia Supreme Court

G.A. Ross Hearing Instruments Inc., Re

1998 CarswellBC 146, [1998] B.C.J. No. 154, 2 C.B.R. (4th) 49, 77 A.C.W.S. (3d) 20

## In The Matter of The Bankruptcy of G.A. Ross Hearing Instruments Inc.

District Registrar Wellburn

Heard: April 16, 1997

Heard: November 19, 1997

Judgment: January 27, 1998

Docket: Vancouver 147403-VA93

Counsel: *Colin Rogers* and *Cyril McKinnon*, Appearing for The Trustee, KPMG Inc.

*Robert McFadden*, Appearing for the Official Receiver.

*Jan Solecki*, Appearing for Jotolusa Trade & Management (Opposing Creditor).

Subject: Insolvency

### Related Abridgment Classifications

Bankruptcy and insolvency

XIV Administration of estate

XIV.2 Trustees

XIV.2.d Remuneration of trustee

### Headnote

Bankruptcy --- Administration of estate — Trustees — Remuneration of trustee — In excess of statutory percentage  
Trustee in bankruptcy sought approval of remuneration claimed at \$133,006.40 where total receipts in estate were \$336,053.41  
— Remuneration in excess of statutory percentage set out in s. 39 of [Bankruptcy and Insolvency Act](#) permissible on application to registrar in appropriate circumstances — Bankruptcy was complicated and trustee dealt with large number of issues reasonably and efficiently and was able to resolve number of potentially contentious issues without great deal of litigation — Work performed was time-consuming because of number of assets, creditors, and issues which had to be resolved, and because of poor record-keeping and obstructive behaviour of principal of bankrupt — Hourly rate charged by trustee of \$260 reasonable in circumstances — Statutory amount set out in s. 39 of Act not adequate to compensate trustee — Trustee's fees allowed at \$125,000 — [Bankruptcy and Insolvency Act](#), R.S.C. 1985, c. B-3, s. 39.

### Table of Authorities

#### Cases considered by *District Registrar Wellburn*:

*Bank of Montreal v. Nican Trading Co.* (1990), 43 B.C.L.R. (2d) 315, 78 C.B.R. (N.S.) 85 (B.C. C.A.) — referred to

*Hess, Re* (1977), 23 C.B.R. (N.S.) 215 (Ont. S.C.) — applied

*West Toronto Stereo Centre Ltd., Re* (1975), 19 C.B.R. (N.S.) 306 (Ont. Bkcty.) — applied

#### Statutes considered:

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

Generally — considered

s. 39 — considered

*Personal Property Security Act*, S.B.C. 1989, c. 36

Generally — considered

APPLICATION for approval of trustee in bankruptcy's fees.

***District Registrar Wellburn:***

1 The trustee in bankruptcy seeks approval of its statement of receipts and disbursements and its remuneration claimed at \$133,006.40 plus G.S.T. Total receipts in the estate are \$336,053.41.

2 KPMG Inc. acted as trustee with respect to the proposal filed by the debtor and then with respect to the bankruptcy which occurred as a result of the failure of the proposal. KPMG Inc. also collected accounts receivable, acting as the agent for the secured creditor. A statement of receipts and disbursements encompassing both the proposal and the bankruptcy was submitted.

3 Two creditors opposed the application, but prior to the hearing one of those creditors withdrew its opposition. Mr. Solecki of Jotolusa Trade and Management Inc., the remaining objecting creditor, raised a number of concerns related to how his company's claim as a landlord of the bankrupt was treated.

4 Mr. Rogers reviewed the claim of Jotolusa Trade and Management Inc., the procedures followed, and the relevant provisions of the *Bankruptcy and Insolvency Act*. I am satisfied that the trustee acted appropriately with respect to the claim.

5 Mr. Solecki also raised general concerns about the amount of the trustee's fees including the hourly rates charged and the time spent.

6 The debtor sold hearing aids and related equipment. It became involved in a dispute with its major supplier, Starkey Labs Canada Ltd. ("Starkey"). Starkey had issued garnishing orders and approximately \$45,000.00 owing to the debtor was paid into court.

7 The debtor filed a notice of intention to make a proposal on May 18, 1993. A cash-flow statement was prepared. After an application which was contested by Starkey, the court granted a forty-five day extension for the debtor to file a proposal.

8 The trustee had concerns about signing the cash-flow statement as required by the *Bankruptcy and Insolvency Act* due to the assumption in the statement concerning projected levels of sales of the business. The principal of the debtor company threatened to sue the trustee if the trustee caused the company to become bankrupt by not signing the cash-flow statement. The trustee discussed this issue with Mr. Henfrey of the Office of the Superintendent of Bankruptcy and eventually signed the cash-flow statement making full disclosure of the assumptions on which the statement had been prepared.

9 On application of the trustee, the court ordered that the funds garnished by Starkey be paid to the trustee for the reorganization of the debtor company.

10 The debtor had an account receivable from the Department of Veteran Affairs. The Department of Veteran Affairs performed an audit and counter-claimed in excess of the \$80,000.00 owed. In July of 1993 that Department advised that the debtor was no longer authorized to provide hearing aids for its members.

11 The Department of Veteran Affairs, Medical Services Association and Blue Cross raised an issue as to whether the debtor was meeting the licensing requirements to provide hearing aids in British Columbia. The Department of Veteran Affairs and Blue Cross refused to pay amounts it owed to the debtor company.

12 The trustee became concerned that the debtor would not be able to make a viable proposal and that the creditors would be prejudiced by the stay during the time given to the debtor to make a proposal. As a result, on July 26, 1993, the trustee filed a report concerning a material adverse change in circumstances.

13 After a concern was raised as to the validity of the proof of claim filed by Starkey, the trustee received a legal opinion that Starkey's claim was valid.

14 At the first meeting of creditors held September 8, 1993, the proposal made by the debtor was not approved due to a negative vote by Starkey. As a result of the unsuccessful proposal, the debtor became bankrupt.

15 After the bankruptcy, the trustee dealt with six leased locations of the debtor around British Columbia, and dealt with the six different landlords involved. Some of the landlords had claims for unpaid rent that were considered and dealt with by the trustee.

16 The trustee took inventory in all six locations and obtained legal opinions as to whether each piece of the leased equipment was validly registered under the *Personal Property Security Act*.

17 The principal of the debtor was uncooperative, moved some of the equipment to Kelowna, and seized the customer list. The trustee was able to regain possession of these items.

18 The trustee sold the equipment and the customer list for \$200,000.00 after a tender process. After negotiations, the purchaser of the equipment took over some of the leases.

19 The principal of the debtor alleged that certain furniture and office equipment belonged to him personally rather than to the company. The trustee disallowed his claim and this decision was upheld on an appeal brought by the principal of the bankrupt company.

20 The principal of the debtor had set up a separate company in competition with the debtor company. The inter-relationship between the two companies was the subject of an audit by Revenue Canada. Revenue Canada claimed source deductions of \$26,000 against the debtor company.

21 As a result, the trustee had to determine which employees worked for the bankrupt company and which for the principal's new company. This was difficult due to poor record keeping. The trustee retained employees in the various locations for one or two days to go through the records, prepare records of employment for the various employees, and to deal with purchasers of hearing aids.

22 The trustee was able to convince Revenue Canada to abandon its claim against the debtor company.

23 The trustee dealt with the collection of the accounts receivable. The trustee also dealt with an airplane that had crashed and was claimed as an asset by a third party.

24 Section 39 of the *Bankruptcy and Insolvency Act* sets 7- 1/2% of the gross receipts of the estate after payment of the secured creditors as the appropriate remuneration for a trustee. That amount may be varied by a vote of the creditors or on application to the registrar.

25 The principles for varying the statutory amount are set out in the case of *Hess, Re (1977)*, 23 C.B.R. (N.S.) 215 (Ont. S.C.) at page 219. Henry J. states:

(4) Clearly, these items should prima facie be disallowed if they comprise any of the following:

- (a) services not authorised by law;
- (b) irresponsible decisions producing no positive result;
- (c) conduct contrary to the instructions of the creditors or inspectors, or the court;
- (d) patent attempts to take advantage of the estate by performing unproductive or unnecessary services not authorized by the inspectors;
- (e) overcharging for routine services;
- (f) charging for services not clearly performed;
- (g) charging at an excessive rate for professional services;

(h) errors of judgment, not based on the consent of the inspectors;

(i) any matter not required by law to be done that adversely affects the interests of the creditors and not approved by the creditors or the inspectors.

For obvious reasons this list is not exhaustive.

(5) In more positive terms, as I see it, in relation to the overall objectives of the act, the trustee, should, in the absence of compelling reasons to the contrary, be permitted to charge as fees:

(a) for the time he has spent in the administration of the estate, at the going or reasonable rate of remuneration; this first and foremost should be the basis of his claim;

for obtaining a positive result, in getting in or saving assets for distribution to the creditors; this might be termed successful performance.

26 As set out in *West Toronto Stereo Centre Ltd., Re* (1975), 19 C.B.R. (N.S.) 306 (Ont. Bkcty.) at 208:

In fixing the trustee's remuneration, the Court should have regard to such matters as the work done by the trustee; the responsibility imposed on the trustee; the time spent in doing the work; the reasonableness of the time expended; the necessity of doing the work, and the results obtained.

27 This was a complicated bankruptcy arising out of a failed proposal. The trustee dealt with a large number of issues reasonably and efficiently and was able to resolve a number of potentially contentious issues, without a great deal of litigation. The work performed was time-consuming due to the number of assets, creditors, and issues which had to be resolved, and due to the poor record keeping and the behavior of the principal of the bankrupt.

28 In my view, the statutory amount set out in s. 39 of the *Bankruptcy and Insolvency Act* is not adequate to compensate the trustee.

29 The trustee has charged fees on an hourly rate basis. Mr. Rogers' hourly rate is \$260.00 per hour. He has been a licensed trustee for six years and a chartered accountant for thirty years. The manager who spent the most time on the file, Mr. Gandossi, has been a chartered accountant since 1984 or 1985. His time was charged at a rate of \$180.00 to \$190.00 per hour. The time of technicians who are trained to keep track of the cash and trust monies and to collect the receivables was charged at \$77.00 per hour. Mr. Solecki was of the view that these rates are too high and ought to be reduced.

30 These rates may appear high to a member of the public, even when compared to other professions, when one considers that a firm of chartered accountants may bill the time of the accountants and the time of all levels of support staff based on the decision of *Bank of Montreal v. Nican Trading Co.* (1990), 78 C.B.R. (N.S.) 85 (B.C. C.A.). However, in my experience the rates charged by the trustee are comparable to those of other large accounting firms. Given the complexity of this insolvency, it was not unreasonable for this firm of accountants to act as the trustee and to charge their time at their usual rates.

31 I had a number of concerns about the accounting procedures used to segregate the amount collected for the secured creditor, the fees payable in that regard, and the transfer of the balance of the funds to the bankrupt estate.

32 The original statement of receipts and disbursements merely recited the balance payable to the estate after the secured creditor and agency fees had been paid. As a result of my concerns as to whether this was satisfactory, and because of errors that appeared in the original statement of receipts and disbursements, an amended statement of receipts and disbursements was filed.

33 Directive number 10, issued by the Superintendent of Bankruptcy on December 17<sup>th</sup>, 1997, will now provide a standard approach as to how the trustee is to report monies collected and fees charged when the trustee acts in a double capacity.

34 Confusing and incorrect explanations as to the agency accounting and of some of the items appearing on the statement of receipts and disbursements has caused the trustee to spend considerable time trying to resolve these matters and has caused me to be suspicious of the claim for trustee's remuneration with respect to the entire estate. However, it appears to me that the work done by the trustee was performed reasonably and the time charges justified, with the exception of the procedure for the preparation and approval of the statement of receipts and disbursements.

35 Therefore, in my view, a reasonable amount to be allowed for the trustee's fees is \$125,000.00 plus G.S.T.

*Order accordingly.*



# TAB 2

**Most Negative Treatment:** Recently added (treatment not yet designated)

**Most Recent Recently added (treatment not yet designated):** [Re Pasichnyk](#) | 2023 ONSC 7120, 2023 CarswellOnt 19747 | (Ont. S.C.J., Dec 18, 2023)

1977 CarswellOnt 68  
Ontario Supreme Court, In Bankruptcy

Hess, Re

1977 CarswellOnt 68, [1977] 1 A.C.W.S. 226, [1977] O.J. No. 1642, 23 C.B.R. (N.S.) 215

## Re Hess

Henry J.

Judgment: February 9, 1977

Docket: No. 1640/74

Counsel: *M. D. O'Reilly*, for trustee.

Subject: Corporate and Commercial; Insolvency; Estates and Trusts

### Related Abridgment Classifications

Bankruptcy and insolvency

[XIV Administration of estate](#)

[XIV.2 Trustees](#)

[XIV.2.d Remuneration of trustee](#)

### Headnote

Bankruptcy --- Administration of estate — Trustees — Remuneration of trustee — General

The [Bankruptcy Act, R.S.C. 1970, c. B-3, s. 21](#).

On a taxation of the trustee's fees the objects of the court should be (1) to allow the trustee fair compensation for his services; (2) to prevent unjustifiable payments for fees to the detriment of the estate and the creditors; and (3) to encourage, rather than discourage, efficient, conscientious administration of the bankrupt estate for the benefit of the creditors. With this in mind, the court should take into account the views of the creditors or the inspectors if they are expressed.

The following items should be disallowed: (a) services not authorized by law; (b) irresponsible decisions producing no positive results; (c) conduct contrary to the instructions of the creditors or inspectors, or the court; (d) performing unproductive or unnecessary services not authorized by the inspectors; (e) over-charging for routine services; (f) charging for services not clearly performed; (g) charging at an excessive rate for professional services; (h) errors in judgment, not based on the consent of the inspectors; (i) any matter not required by law to be done that adversely affects the interests of the creditors and not approved by the creditors or the inspectors.

In the absence of compelling reasons to the contrary, a trustee should be permitted to charge as fees (a) for the time he has spent in the administration of the estate at the going or a reasonable rate of remuneration; (b) for obtaining a positive result, in getting in or saving assets for distribution to creditors. But the court must be alert to detect instances where a trustee has abandoned his professional ethics and has sought to victimize the creditors by improper charges to the estate. A trustee is expected to exercise judgment and common sense in making claims for fees; he cannot expect the court to accept overly generous charges that exhaust the estate and leave little for creditors. He must exercise restraint. The court must therefore exercise some judgment as to the overall costs and gains to the estate of the trustee's administration and may decide that, as a matter of judgment, a fee otherwise justifiable should be reduced, but this discretion must be exercised with care, especially if the fee is approved by the creditors or the inspectors, and it must be exercised judicially.

It is in the interests of the integrity of the overall administration of the [Bankruptcy Act](#) that property wrongfully in the hands of other persons, or claims by the trustee wrongly resisted, should be recovered, even if the return to the estate turns out to be minimal. Whether such remedies should be pursued is a matter of judgment.

A trustee is entitled to be heard before a decision is made adverse to his claim for remuneration.

Appeal from the judgment of Ferron, Registrar, ante p. 77. Appeal allowed.

**Henry J. :**

1 This is an appeal by the trustee from the decision of the registrar, dated 9th December 1976 [ante p. 77], reducing the remuneration of the trustee claimed in his final statement of receipts and disbursements. The appeal was unopposed. A number of grounds were set out in the notice of appeal, to which I need not refer in detail. As these grounds persuade me that I should dispose of the matter on the basis of principles to which I intend to refer, I shall proceed immediately to a discussion of those principles.

2 The taxation of a trustee's fee for services rendered in the administration of the bankrupt estate, in the absence of a tariff and rules, presents the greatest difficulty to the court. This difficulty is faced in the first instance by the registrar, to whom the application is made, in circumstances when the trustee wishes to have his fee established at an amount greater than the statutory formula prescribed by [s. 21\(2\) of the Bankruptcy Act, R.S.C. 1970, c. B-3](#). In those circumstances when the court has determined that the matter is one which calls for a departure from that formula, the court then proceeds on the basis of the ordinary principles of taxation: see *Re Hoskinson (1976)*, 22 C.B.R. (N.S.) 127 (Ont.) .

3 In approaching this matter generally, it must be borne in mind that the trustee is a licensed and appointed official who derives his appointment and status from the [Bankruptcy Act](#). His powers and duties are prescribed by the statute, and he must exercise and fulfil them as the statute requires. His general duty is to get in and administer the estate for the benefit of the creditors. Many of the duties he performs under statutory authority alone. In matters of judgment, where the interests of the estate and creditors may be adversely affected, he is required to obtain the permission of the inspectors, as for example in the matters set out in s. 14 of the Act, which is not exhaustive.

4 The inspectors of the estate are also statutory officials appointed under s. 94 of the Act. They represent the interests of the creditors. They must be and must act independently of the trustee in the sense that they are not in a conflict of interest with the affairs of the estate, especially as to the matters set out in [s. 94](#). They are required to supervise the trustee's administration of the estate generally and in matters specified in s. 14 of the Act and elsewhere. The inspectors are themselves subject to control and direction by the creditors by virtue of [s. 94\(9\)](#). The fundamental concept is that the creditors are the final supervising authority in the administration of the estate, the inspectors represent their interest, the trustee's conduct is supervised by both; the overall administration of the estate is subject to the supervision of the superintendent by [s. 5](#); in cases of dispute or doubt the court is resorted to for adjudication or direction for the purpose of the proper application of the law.

5 There will obviously be cases where the trustee in administering the estate under the statute is required to weigh the cost of pursuing assets, attacking fraudulent conveyances and preferences and other dealings contrary to the interests of the creditors, against the benefits to be obtained. The trustee must of course consult the inspectors and obtain their direction. But it is clearly in the interests of the integrity of the overall administration of the Act that property wrongfully in the hands of other persons, or claims by the trustee wrongly resisted, should be recovered, even if the return to the estate turns out to be minimal. Whether such remedies should be pursued is obviously a matter of judgment.

6 The remuneration of the trustee is governed by [s. 21](#). It is primarily to be determined by the creditors. Otherwise, the formula in [s. 21\(2\)](#) is applied. Under [s. 21\(5\)](#) it is provided:

(5) On application by the trustee, a creditor or the debtor and upon notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration.

7 The court is in these circumstances therefore required to determine the trustee's fee. Application is in the first instance made by the trustee to the registrar. It may be an adversary proceeding, but in most cases it is not, as the creditors or inspectors will have approved the fee claimed, and the sanction of the court is sought on that basis. As laid down in *Re Hoskinson*, supra, the ordinary principles of taxation apply.

8 Here there is no tariff and there are no statutory rules to govern the court in the exercise of this function. The matter is therefore largely one for the discretion of the court which must be exercised on proper principles. By what principles should the court be guided in the matter?

9 With some temerity I set out the following principles, with the caution that they are neither exhaustive nor of universal application. They appear to me however to be governing or at least important principles subject to the circumstances of any particular case.

10 (1) Whether there is opposition or not, the trustee is entitled to be heard before a decision is made adverse to his claim. Whether or not he is heard orally, he is entitled to know what case he has to meet and be given an opportunity to explain any matters that the court does not accept. Where there is no adversary, the court must fulfil the role of communicating to the trustee the points that are causing concern.

11 (2) The court should direct its mind to the object of the taxation. In a bankruptcy matter, these objects, as I see it, are:

12 (a) To allow the trustee a fair compensation for his services;

13 (b) To prevent unjustifiable payments for fees to the detriment of the estate and the creditors;

14 (c) To encourage, rather than to discourage, efficient, conscientious administration of the bankrupt estate for the benefit of the creditors and, so far as the public is concerned, in the interests of the proper carrying-out of the principles and objectives of the [Bankruptcy Act](#). In this respect, it should be borne in mind that the labourer is worthy of his hire. The creditors and the public are entitled to the best services from professional trustees and must expect to pay for them.

15 (3) With this in mind, the court should take into account the views of the creditors or the inspectors if they are expressed. Considerable weight should be given to their approval or disapproval. It must be borne in mind that the inspectors are the persons representing the creditors who are in a strong position to judge, from their day-to-day supervision, whether the work done and the results achieved merit the compensation claimed; moreover, the inspectors are frequently creditors whose interests are directly affected by the fee charged by the trustee; in any event, it is not to be assumed that their approval is given lightly.

16 (4) Clearly, these items should prima facie be disallowed if they comprise any of the following:

17 (a) Services not authorized by law;

18 (b) Irresponsible decisions producing no positive results;

19 (c) Conduct contrary to the instructions of the creditors or inspectors, or the court;

20 (d) Patent attempts to take advantage of the estate by performing unproductive or unnecessary services not authorized by the inspectors;

21 (e) Over-charging for routine services;

22 (f) Charging for services not clearly performed;

23 (g) Charging at an excessive rate for professional services;

24 (h) Errors of judgment, not based on the consent of the inspectors;

25 (i) Any matter not required by law to be done that adversely affects the interests of the creditors and not approved by the creditors or the inspectors.

26 For obvious reasons, this list is not exhaustive.

27 (5) In more positive terms, as I see it, in relation to the overall objectives of the Act, the trustee should, in the absence of compelling reasons to the contrary, be permitted to charge as fees:

28 (a) For the time he has spent in the administration of the estate, at the going or a reasonable rate of remuneration; this first and foremost should be the basis of his claim;

29 (b) For obtaining a positive result, in getting in or saving assets for distribution to creditors; this might be termed successful performance.

30 It goes without saying that the court must be alert to detect instances where a trustee has abandoned his professional ethics and has sought to victimize the creditors by improper charges to the estate. Entirely apart from this, a trustee, who is licensed under the statute, is expected to exercise judgment and common sense in making claims for fees. Patently he cannot expect the court to accept overly generous charges that exhaust the estate and leave little for creditors. He must exercise restraint. The court must therefore exercise some judgment as to the overall costs and gains to the estate of the trustee's administration and may decide that, as a matter of judgment, a fee otherwise justifiable should be reduced in the interests of the creditors and the integrity of the Act; but this discretion must be exercised with care, especially if the fee is approved by the creditors or the inspectors, and it must be exercised judicially.

31 In exercising its discretion on the basis of costs and benefits the court must have regard to sometimes conflicting principles which must be weighed. On the one hand, the direct objective of the trustee's statutory function is to maximize the cash assets of the bankrupt for rateable distribution among the creditors; expense of administration should therefore be minimized. A bankruptcy is generally a losing proposition to start with, so far as the creditors are concerned, and the integrity of the statutory scheme requires that the administration of bankrupt estates should be seen to be for the benefit of the creditors and not, as it sometimes appears to the public, for the benefit of trustees and solicitors.

32 On the other hand, the due administration of the Bankruptcy Act also requires that the assets of the debtor be gathered in and realized by the trustee, even at the expense of investigation and litigation. Not only is this the entitlement of the creditors, but the public interest in the integrity of the legislative scheme requires that abuses be penalized and made unprofitable. There is therefore a wider obligation on the trustee to seek out and recover assets that have been concealed or put beyond the reach of the creditors by improper preferences, conveyances or settlements or by invalid security, not only for the benefit of the general creditors but, equally important, as a deterrent to abuse and frustration of the legislative scheme. Pursuit of this objective may be costly and at times productive of little tangible gain. In this context the importance of the trustee's obtaining instructions from the creditors or the inspectors is obvious.

33 It should not be overlooked that s. 21(5) contemplates notice of the hearing to be given to others if the court sees fit. If the trustee's fee is not approved by the inspectors or the creditors, in my opinion the court should give them notice of the hearing so that they may attend and speak to the matter.

34 In my opinion the registrar correctly decided that this is not a case for the application of the 7 1/2 per cent formula. He therefore proceeded to tax the trustee's account. I have reviewed with care the written reasons of the registrar for his decision to reduce the fees claimed by the trustee in this matter. I recognize the difficulty with which the registrar was faced. For one thing, he was not provided with any evidence as to the amount of time and the rate charged by the trustee for the work done. Here a review of the trustee's statement indicates that he carried out his administration in a thorough and conscientious manner. It is true that he has only done what his office requires but, in my opinion, he did it thoroughly and had in mind the need to minimize expense to the estate. A conscientious approach to the administration of the estate is what creditors and the public demand, and it should be encouraged.

35 On this appeal I have had the benefit of evidence that was not before the learned registrar. If he had had this material and the further explanations of the trustee, he might well have taken a different view of the claim, as I do. It was important that the trustee set out the time spent in the various categories referred to in *Re Hoskinson*, supra, and this should have been before the registrar in first instance.

36 The trustee sets out in his report that his fee was originally calculated at \$21,417.75, which he prudently reduced to \$16,166.20. This was done in the context of total receipts gathered in by the trustee of \$61,378.79. The preferred creditors have received a 100 per cent dividend (less the superintendent's levy), and a small dividend has been paid to the unsecured creditors. The fee claimed in its reduced form amounts to something of the order of 25 per cent of the assets gathered in and was approved without reservation by the inspectors of the estate. The learned registrar found that the amount claimed for the trustee's fee was too high and in the result reduced it to \$9,500, which is about 15 <sup>1</sup>/<sub>2</sub> per cent of the receipts.

37 In the absence of contrary evidence, the explanations given by the trustee that are before me appear to be satisfactory. One course open to me is to refer the matter back to the registrar to complete the hearing, but in the present case I do not intend to do so. The trustee has submitted his explanations and argument to me, and I see no purpose in requiring him to duplicate it in a further hearing before the registrar. I will therefore dispose of the appeal finally. In future cases such additional evidence and explanations should be submitted to the registrar in the first instance. Appeals to the judge should not be proliferated by reason of an incomplete hearing before the registrar.

38 In the present case the trustee has accounted for his time, His fee on this basis amounts to \$16,116.20, which represents a voluntary reduction on his part. This fee is approved without reservation by the inspectors, and this also imports their satisfaction with his administration generally. No one objects. I find no instance of services performed or charges made without justification. The creditors and the public are well served. Having regard to the principles I have set out, I therefore allow the trustee his fee as rendered.

39 The appeal is therefore allowed. If costs are asked, the matter may be spoken to.

# TAB 3

District of: Ontario  
Division No.: 09 - Mississauga  
Court File No.: 32-2383689  
Estate No.: 32-2383689

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) FRIDAY, THE 27TH DAY  
)  
JUSTICE PATRICK ) OF JULY, 2018

**IN THE MATTER OF THE BANKRUPTCY OF  
BLUTIP POWER TECHNOLOGIES INC.  
OF THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Richter Advisory Group Inc. ("**Richter**"), in its capacity as the trustee in bankruptcy (in such capacity, the "**Trustee**") of Blutip Power Technologies Inc. (the "**Bankrupt**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by a bill of sale and IP assignment and assumption agreement (the "**Sale Agreement**") between the Trustee, as vendor, and Blutip Technologies Corp. (the "**Purchaser**"), as purchaser, dated July 23, 2018 and appended to the First Report of the Trustee dated July 24, 2018 (the "**First Report**"), and vesting in the Purchaser all the right, title and interest of the Bankrupt and the Trustee, if any, in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.



**ON READING** the First Report and appendices thereto, and on hearing the submissions of counsel for the Trustee and such other counsel as were present, no one appearing for any other person named on the service list, although properly served as appears from the affidavit of Susy Moniz sworn July 24, 2018, filed,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Trustee is hereby authorized and approved, with such minor amendments as the Trustee and Purchaser may agree to in writing. The Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance, assignment and transfer of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that, as soon as is practicable after Closing (as defined in the Sale Agreement), the Trustee is authorized and directed to change the Bankrupt's corporate name from "BLUTIP POWER TECHNOLOGIES INC." to "663447 N.B. INC." by filing the appropriate forms with the applicable corporate registry.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of the right, title and interest of the Bankrupt and the Trustee, if any, in and to the Purchased Assets described in the Sale Agreement shall be sold, assigned and transferred to the Purchaser and vest absolutely in the Purchaser, free and clear of and from any

and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (New Brunswick) or any other personal property registry system, and, for greater certainty, this Court orders that all of the Claims affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee’s Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Bankrupt's records pertaining to the Bankrupt's past and current employees, including personal information of such employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Bankrupt.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Bankrupt and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Bankrupt,

the sale, assignment, transfer and vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on the Trustee and on any other trustee in bankruptcy that may be appointed in respect of the Bankrupt and shall not be void or voidable by creditors of the Bankrupt, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

  
\_\_\_\_\_

**SCHEDULE "A"**

District of: Ontario  
Division No.: 09 - Mississauga  
Court File No.: 32-2383689  
Estate No.: 32-2383689

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY OF  
BLUTIP POWER TECHNOLOGIES INC.  
OF THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

**TRUSTEE'S CERTIFICATE**

**RECITALS**

(A) On May 30, 2018, Blutip Power Technologies Inc. (the "**Bankrupt**") made an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) and Richter Advisory Group Inc. ("**Richter**") was appointed as the trustee in bankruptcy of the Bankrupt (in such capacity, the "**Trustee**").

(B) The Trustee's appointment was affirmed at the first meeting of creditors held on June 18, 2018.

(C) Pursuant to an Order of the Court dated July 27, 2018, the Court approved the bill of sale and IP assignment and assumption agreement made as of July 23, 2018 (the "**Sale Agreement**") between the Trustee and Blutip Technologies Corp. (the "**Purchaser**"), and provided for the vesting in the Purchaser of the right, title and interest of the Bankrupt and the Trustee, if any, in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a

certificate confirming: (i) the satisfaction by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Trustee and the Purchaser; and (iii) that the transaction contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Trustee.

(D) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE TRUSTEE CERTIFIES** the following:

1. the Purchaser has satisfied the purchase price for the Purchased Assets payable on closing of the Transaction pursuant to the Sale Agreement;
2. the conditions to closing as set out in the Sale Agreement, as amended, have been satisfied or waived by the Trustee and the Purchaser;
3. the Transaction has been completed to the satisfaction of the Trustee; and
4. this Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as the trustee in bankruptcy of Blutip Power Technologies Inc., and not in its personal capacity

Per:

\_\_\_\_\_  
Name: Adam Sherman

Title: Senior Vice President

**IN THE MATTER OF THE BANKRUPTCY OF  
BLUTIP POWER TECHNOLOGIES INC.  
OF THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

District of: Ontario  
Division No.: 09 - Mississauga  
Court File No.: 32-2383689  
Estate No.: 32-2383689

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**Proceedings commenced at Toronto**

**APPROVAL AND VESTING ORDER**

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

**Ian Aversa (LSUC # 55449N)**  
Tel: (416) 865-3082  
Fax: (416) 863-1515  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Jeremy Nemers (LSUC # 66410Q)**  
Tel: (416) 865-7724  
Fax: (416) 863-1515  
Email: [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

*Lawyers for Richter Advisory Group Inc., in its capacity as the trustee  
in bankruptcy of Blutip Power Technologies Inc.*

# TAB 4



BANKRUPTCY ESTATE 25-2004629  
and  
COURT FILE NO.

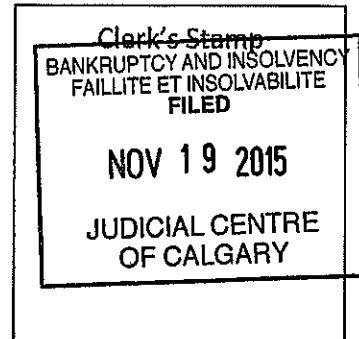
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
(IN BANKRUPTCY AND INSOLVENCY)

JUDICIAL CENTRE CALGARY

BANKRUPTCY MATTER **IN THE MATTER OF THE BANKRUPTCY OF  
HC PIPER MANUFACTURING INC.**

DOCUMENT APPROVAL AND VESTING ORDER  
(Sale by Trustee)

ADDRESS FOR SERVICE **Fasken Martineau DuMoulin LLP**  
AND CONTACT Barristers & Solicitors  
INFORMATION OF 3400 First Canadian Centre  
PARTY FILING THIS 350 – 7<sup>th</sup> Avenue S.W.  
DOCUMENT Calgary, AB T2P 3N9  
  
**Attention: Travis Lysak**  
Telephone: (403) 261-5501  
Facsimile: (403) 261-5351  
Email: tlysak@fasken.com  
File No. 285937.00006



**DATE ON WHICH ORDER WAS PRONOUNCED: November 19, 2015**

**LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, AB**

**NAME OF JUSTICE WHO MADE THIS ORDER: Justice A. D. MacLeod**

UPON THE APPLICATION by Alvarez & Marsal Canada Inc. in its capacity as the Trustee in Bankruptcy (the "Trustee") of HC Piper Manufacturing Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an Offer (the "Offer") made by Hilco Acquisitions Canada ULC (the "Purchaser") dated November 9, 2015 and appended to the First Report of the Trustee dated November 13, 2015 (the "Report"), and vesting in the Purchaser (or its nominee) the Debtor's right, title and

interest in and to the assets described in the Offer (the "**Purchased Assets**"); **AND UPON HAVING READ** the Bankruptcy Assignment dated June 11, 2015 (the "**Assignment**"), the Report and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Trustee and counsel to other interested parties.

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

**APPROVAL OF TRUSTEE'S ACTIONS**

2. The actions of the Trustee to date as reported on the First Report are hereby ratified and approved.

**APPROVAL OF TRANSACTIONS**

3. The Transaction is hereby approved, and the acceptance and execution of the Offer by the Trustee is hereby authorized and approved, with such minor amendments as the Trustee may deem necessary. The Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee).

**VESTING OF PROPERTY**

4. Upon the delivery of a Trustee's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "Trustee's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act (Alberta)* or any other personal property registry system.
5. For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (to be held in a trust account by the Trustee) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
7. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
8. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
9. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
10. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Trustee or the Debtor.
11. The Trustee is to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).
12. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and section 20(e) of the *Alberta Personal Information Protection Act*, the Trustee is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees listed in the Sale Agreement. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
13. Notwithstanding:

The pendency of these proceedings;

Any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

Any assignment in bankruptcy made in respect of the Debtor

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. The Trustee, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

#### MISCELLANEOUS MATTERS

15. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.
16. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
17. Service of this Order on any party not attending this application is hereby dispensed with.

“A. D. MacLeod”  
J.C. C.Q.B.A.

# **SCHEDULE "A"**

To the Approval and Vesting Order

## Schedule "A"

## Form of Trustee's Certificate

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

PLAINTIFF

DEFENDANT

DOCUMENT

TRUSTEE'S CERTIFICATE

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

## RECITALS

- A. Pursuant to an Order of the Honourable Justice **[Name]** of the Court of Queen's Bench of Alberta, Judicial District of \_\_\_\_\_ (the "Court") dated **[Date of Order]**, **[Name of Trustee]** was appointed as the Trustee (the "Trustee") of the undertaking, property and assets of **[Debtor]** (the "Debtor").
- B. Pursuant to an Order of the Court dated **[Date]**, the Court approved the agreement of purchase and sale made as of **[Date of Agreement]** (the "Sale Agreement") between the Trustee and **[Name of Purchaser]** (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section \* of the Sale Agreement have been satisfied or waived by the Trustee and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Trustee.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE TRUSTEE CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid and the Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section \* of the Sale Agreement have been satisfied or waived by the Trustee and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Trustee.
4. This Certificate was delivered by the Trustee at **[Time]** on **[Date]**.

**[Name of Trustee], in its capacity as Trustee of the undertaking, property and assets of [Debtor], and not in its personal capacity.**

**Per;** \_\_\_\_\_

**Name:**

**Title:**

# **SCHEDULE "B"**

To the Approval and Vesting Order



**HC Piper Asset Listing**

Item #	Qty.	Description
1		Assorted inventory and stainless steel contents on pallet racking & floor consisting of: large valves, flanges, elbows, Etc. <i>excluding any</i>
2		Omega 7.5 hp vertical air compressor
3		Lincoln model Idealero DC-800 electric powered welder c/w Lincoln wire feeder on cart
4		Lincoln model Ranger 250 GXT portable diesel powered welder c/w leads & steel safety frame
5		Raymond electric powered reach truck c/w battery charger
6		Stainless steel fittings, Sturdy trays etc on pallet racking
7		(5) Sturdy aluminum trays
8		Stainless steel elbows
9		(5) Miller assorted electric powered welders on pallets
10		Five gallon pails of stainless steel hardware
11		JLG model G10-55A boom type forklift
12		International model 4800 tandem axle flat deck truck p/w DT-486E diesel powered engine
13		Shop press, ladders, tripod vice & assorted tooling
14		Case model 440 Series 3 skid steer loader
15		Toyota model 35 forklift, gas powered, cushion tires, short mast, 10,000 lbs capacity
16		Skyjack model S3111-3219 electric powered scissor lifts
17		Steel storage rack c/w assorted lifting chains, nylon slings, shackles & beam clamps, Etc.
18		Electric powered welding positioner c/w foot controller mounted on cart

*RSV*  
*Meq or ETA contract re Pallet inventory or materials.*

**HC Pipe Asset Listing**

Item #	Qty.	Description
19		Miller model XMT 304 electric powered welder
20		Miller model PipeWorx electric powered welder c/w Miller twin feed wire feeder, digital read-out & mounted on cart
21		Contents of welding area, steel table, c/a set, Miller welder c/w twin head wire feeder etc.
22		Custom built fixed head welding positioner c/w adjustable height setting
23		2012 Redrock model MV6050-PT rail mounted manipulator, 19.68' travel up, 18.4' travel E/W, 3/60/575 volts, Lincoln model AC/DC 1000 SD Power Wave power supply, controls
24		Redrock rail mounted electric powered tank turning rolls c/w idler
25		Lincoln model tig electric powered welder c/w Lincoln model LF-72 wire feeder, DRO, mounted on cart
26		Miller model Syncrowave 250 electric powered welder
27		Fixed head model PT 750 electric powered welding positioner, 2/1 F.L. Amps, 3/60/230/460 volts, s/n 070402102
28		Lincoln model Invertek 350 Pro welder
29		Assorted steel saw horses
30		Stainless steel scrap
31		Assorted old MILLER welder, small tools, drill press,
32		(2) Electric powered tank turning rolls c/w idler
33		Pair of tank turning idlers
34		(2) Miller model Gold Star 302 electric powered welder, DRO, stand & leads
35		Plasma cutting system
36		(3) Gulico rod storage ovens

**HC Piper Asset Listing**

Item #	Qty.	Description
37		Lincoln model Inverteck V350-Pro electric powered welder c/w Lincoln model LF-72 wire feeder, DRO mounted on cart
38		Miller model Maxtron 450 electric powered welder c/w wire feeder, DRO mounted on cart
39		Ridgid model 635 threader, floor type drill press, light stand, bench grinder
40		Miller model XMT 350 electric powered welder c/w Miller model 75 Series wire feeder c/w cart
41		Pallet racking c/w assorted electrical inventory
42		Lincoln model Precision Tig 275 electric powered welder, DRO, on castors
43		(2) Miller mig welders
44		Lincoln model Precision Tig 275 electric powered welder, DRO, on castors
45		(4) Assorted electric powered welders
46		2008 FabMaster model IW-135S,SD hydraulic powered Ironworker, 135 ton capacity, 15 hp, 3/60/440 volts, foot controller, 6"x8"x11/16 angle shearing capacity, s/n 362702
47		Skyjack model SJ11-3210 electric powered scissor lifts
48		Contents of tool storage room consisting of: rod storage oven, welding wire, lock-up storage cages, tool chests, pallet racking, electric powered hand tools, magnetic portable drill, Miller welder, 5,000 lbs capacity pallet jack, etc.
50		Miller model XMT 350 electric powered welder c/w Miller model 22A wire feeder, DRO mounted on cart
51		Miller model XMT 350 electric powered welder c/w Miller model 22A wire feeder, DRO mounted on cart
53		2013 Omega portable air compressor

**RC Piper Asset Listing**

Item #	Qty.	Description
54		Miller model PipeWorx 400 electric powered welder c/w Miller twin feed wire feeder, digital read-out & mounted on cart
55		Custom built fixed head welding positioner c/w adjustable height setting
56		Lincoln model Power Tig 255 electric powered welder on castors
57		Miller model PipeWorx 400 electric powered welder c/w Miller twin feed wire feeder, digital read-out & mounted on cart
58		Custom built fixed head welding positioner c/w adjustable height setting
59		Miller model XMT 350 Series electric powered welder c/w Miller model 22A wire feeder, DRO mounted on cart
60		Miller model XMT 350 Series electric powered welder c/w Miller model 22A wire feeder, DRO mounted on cart
61		(3) Pipe stands
62		Miller model XMT 304 Series electric powered welder c/w Miller model 22A wire feeder, DRO mounted on cart
63		Miller model XMT 304 Series electric powered welder c/w Miller model 22A wire feeder, DRO mounted on cart
64		Welding positioner
65		Hyd-Mech model S-20 Series II metal cutting bandsaw
67		Lincoln model Vantage 300 welder
68		Air Compressor & dryer ? - excludes Outside Yard
69		20' long container c/w contents
70		Outdoor scrap in Yard Area
71		Stands & Jacks
72		15' container
73		I beam

*compressor + related equipment sent on fixtures.*

**HC Piper Asset Listing**

Item #	Qty.	Description
74		Big Tex tandem axle flatdeck trailer
75		40' long blue shipping container
76	(2)	Kone 5 ton capacity 50' span double girder overhead crane ways
77		Patriot forklift
78	(2)	Sea containers
79		20' long sea container
80		Groove model MZ90C boom type manlift
81		Building ofw Hyd-Mech model S23 metal cutting bandsaw & chop saw
82		40' long shipping container ofw stainless steel piping
83		Dodge model Ram 2500 pick-up (Note not working)
84		Nuclear Measuring Gun <sup>Archives</sup> (needs permit)
85		All Office furnishings etc.

*excludes server & related in server room & Intellectual Property.*

*RV*  
*[Signature]*

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
(COMMERCIAL LIST)**

THE HONOURABLE )  
JUSTICE *HAINES* )  
)

WEDNESDAY, THE 22<sup>ND</sup>

DAY OF MAY, 2019



**IN THE MATTER OF THE BANKRUPTCY OF  
SOUND CITY MUSIC ENTERTAINMENT INC.,  
A COMPANY INCORPORATED PURSUANT TO THE LAWS OF ONTARIO,  
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by A. Farber & Partners Inc., in its capacity as licensed insolvency trustee (the “**Trustee**”) of Sound City Music Entertainment Inc. (the “**Company**”) for: (i) an order approving the form of Litigation Settlement Agreement attached as Appendix “B” (the “**LSA**”) to the First Report of the Trustee dated May 17, 2019 (the “**First Report**”) and authorizing the Trustee to execute the LSA; (ii) an order approving the settlement (the “**Settlement**”) contemplated by the LSA upon such execution of the LSA by the Trustee and Universal Music Canada Inc. (“**Universal**”), Sony Music Entertainment Canada Inc. (“**Sony**”), Warner Music Canada Co. (“**Warner**”) (collectively, the “**Supplying Labels**”, and each a “**Supplying Label**”); (iii) an Order vesting in each Supplying Label all of the Company’s and the Trustee’s right, title and interest in and to its respective Labels’ Supplied Inventory (as such term is defined in the LSA), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and on hearing the submissions of counsel for the Trustee, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shallon Garrafa sworn May 21, 2019, filed,

1. **THIS COURT ORDERS AND DECLARES** that the LSA is hereby approved, and the execution of the LSA by the Trustee, and the settlement contemplated thereunder, is hereby

authorized and approved, with such minor amendments as the Trustee may deem necessary. The Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Settlement and for the conveyance of Labels' Supplied Inventory to each respective Supplying Label.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the each Supplying Label substantially in the form attached as Schedule A hereto (the "**Trustee's Certificate**"), all of the Company's right, title and interest in and to the Labels' Supplied Inventory shall vest absolutely in each respective Supplying Label, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (ii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Labels' Supplied Inventory are hereby expunged and discharged as against the Labels' Supplied Inventory.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Claim Reduction Value (as such term is defined in the LSA) shall stand in the place and stead of the Labels' Supplied Inventory, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the Claim Reduction Value with the same priority as they had with respect to the Labels' Supplied Inventory immediately prior to the Trustee's return of the Labels' Supplied Inventory to each respective Supplying Label, as if the Labels' Supplied Inventory had not been returned and remained in the possession or control of the person having that possession or control immediately prior to the Settlement.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.



5. **THIS COURT ORDERS** that, notwithstanding the pendency of these proceedings, the vesting of the Labels' Supplied Inventory in each respective Supplying Label pursuant to this Order shall be binding on the Trustee, shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

A handwritten signature in blue ink, appearing to read "Hamley J", is written over a horizontal line. The signature is fluid and cursive.

**IN THE MATTER OF THE BANKRUPTCY OF  
SOUND CITY MUSIC ENTERTAINMENT INC.,  
A COMPANY INCORPORATED PURSUANT TO THE LAWS OF ONTARIO,  
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO**

**RECITALS**

A. On January 24, 2019, Sound City Music Entertainment Inc. (the “**Company**”) filed a voluntary assignment in bankruptcy under section 49 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and A. Farber & Partners Inc. (“**Farber**”) was named as licensed insolvency trustee (in such capacity, the “**Trustee**”) of the Company’s bankruptcy estate (the “**Estate**”).

B. Pursuant to an Approval and Vesting Order of the Court dated May 22, 2019 (the “**Order**”), the Court approved the form and execution of the Litigation Settlement Agreement (the “**LSA**”) between the Trustee and Universal Music Canada Inc. (“**Universal**”), Sony Music Entertainment Canada Inc. (“**Sony**”), Warner Music Canada Co. (“**Warner**”) (collectively, the “**Supplying Labels**”, and each a “**Supplying Label**”) provided for the vesting in each Supplying Label all of the Company’s and the Trustee’s right, title and interest in and to each Supplying Labels’ respective Labels’ Supplied Inventory, which vesting is to be effective with respect to the Labels’ Supplied Inventory upon the delivery by the Trustee to each of the Labels of a certificate confirming (i) a reduction in the Total Label Claims by the Claims Reduction Value (as provided for in section 1.1 of the LSA) and (ii) that the Estate has reimbursed the Supplying Labels for their legal fees in the maximum amount of \$40,000, collectively (as provided for in section 1.2 of the LSA) and (iii) the Settlement (as defined in the Order) has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the LSA and the Order.

THE TRUSTEE CERTIFIES the following:

1. The Trustee has returned all of the Labels’ Supplied Inventory to each respective Supplying Label, and in exchange, the Total Label Claims have been reduced by the Claim

Reduction Value, such that the aggregate net claims of the Supplying Labels after reduction is \$5,363,864, collectively, subject to adjustment as provided in section 2 of the LSA.

2. The Estate has reimbursed the Supplying Labels for their legal fees in connection with matters related to the bankruptcy and administration of the Estate, up to a maximum of \$40,000, collectively.

3. The Settlement has been completed to the satisfaction of the Trustee.

4. This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**A. Farber & Partners Inc., solely in its capacity as licensed insolvency trustee of the estate of Sound City Music Entertainment Inc., and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Claims to be deleted and expunged from title to Real Property**

**NIL**

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

**NIL**

IN THE MATTER OF THE BANKRUPTCY OF SOUND CITY MUSIC  
ENTERTAINMENT INC., A COMPANY INCORPORATED PURSUANT TO THE  
LAWS OF ONTARIO, WITH A HEAD OFFICE IN THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

Court File No.: 31-2467216

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

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Lawyers for the Licensed Insolvency Trustee,  
A. Farber & Partners Inc.

# TAB 6

1975 CarswellOnt 73  
Ontario Supreme Court, In Bankruptcy

West Toronto Stereo Centre Ltd., Re

1975 CarswellOnt 73, 19 C.B.R. (N.S.) 306

## Re West Toronto Stereo Center Limited

Houlden J.

Judgment: January 23, 1975

Counsel: *J. Berman*, for the trustee in bankruptcy.

*K. F. Braid*, for superintendent of bankruptcy.

Subject: Corporate and Commercial; Insolvency; Estates and Trusts

### Related Abridgment Classifications

Bankruptcy and insolvency

XIV Administration of estate

XIV.2 Trustees

XIV.2.d Remuneration of trustee

### Headnote

Bankruptcy --- Administration of estate — Trustees — Remuneration of trustee — In excess of statutory percentage  
Trustee's remuneration — Matters to be considered — The [Bankruptcy Act, R.S.C. 1970, c. B-3, s. 21\(1\), \(2\)](#).

"In fixing the trustee's remuneration, the Court should have regard to such matters as the work done by the trustee; the responsibility imposed on the trustee; the time spent in doing the work; the reasonableness of the time expended; the necessity of doing the work, and the results obtained." Although the list should not be exhaustive of the matters to be considered, they are the more important items to be taken into account.

The procedure outlined in [s. 21\(1\) of the Bankruptcy Act](#) is rarely followed, as it is difficult for a trustee to explain his remuneration to a meeting of creditors.

In a case where the Registrar would find that it was proper to increase the trustee's fee to an amount in excess of 7 <sup>1</sup>/<sub>2</sub> per cent permitted by [s. 21\(2\)](#), he should not rely on certain percentages of the receipts and disbursements.

### **Houlden J. (orally):**

1 This is an appeal by the trustee from the taxation of the trustee's final state ment of receipts and disbursements by the Registrar in bankruptcy on 30th October 1974. The disbursements of the trustee in the amount of \$5,552.21 are not in dispute. The only disputed item is the amount claimed for fees by the trustee. In the final statement, the trustee claimed a fee of \$20,000; the Registrar reduced the fee to the sum of \$6,100.

2 In his judgment, the learned Registrar has set out the facts and I need not repeat them. As no evidence was taken before the Registrar, the trustee's representative, who was in charge of the estate, has given evidence before me today regarding the nature of the work that was done by the trustee's staff. From listening to this evidence and after considering the material that has been put before me, I have no hesitation in finding that the estate was a difficult one to administer. But in spite of its complexity, I believe the trustee devoted more time to the administration of the estate than was warranted. I do not wish to imply by these remarks that there was anything improper in what the trustee did, but viewed with the wisdom of hindsight I believe too much time was devoted to the estate by the trustee. To mention one item: a very detailed investigation of the affairs of the bankrupt company was conducted by the trustee. I believe the trustee might well have discussed this matter with the inspectors during the



progress of the investigation and obtained their instructions to making a less comprehensive investigation than was ultimately carried out by the trustee.

3 Section 21(1) of the Bankruptcy Act, R.S.C. 1970, c. B-3, permits creditors by ordinary resolution at a properly called meeting of creditors to vote the trustee such remuneration as they deem proper. No attempt was made by the trustee to obtain such a resolution. As I pointed out to counsel for the Superintendent during argument, the procedure outlined in s. 21(1) is rarely followed as it is difficult for a trustee to explain his remuneration to a meeting of creditors.

4 By s. 21(2) of the Bankruptcy Act, the trustee can claim as remuneration a sum not exceeding 7 1/2 per cent of the amount remaining out of the realization of the property of the bankrupt after claims of secured creditors have been paid or satisfied. Section 21(5) permits the court on application by the trustee to make an order increasing or reducing the remuneration.

5 The learned Registrar found that this was a proper case to increase the trustee's fee to an amount in excess of the 7 1/2 per cent permitted by s. 21(2). I agree with this finding. Unfortunately in arriving at the amount of the increase, he purported to rely on certain percentages of the receipts and disbursements. In my opinion this was improper; such a procedure is not authorized or contemplated by the Bankruptcy Act.

6 In fixing the trustee's remuneration, the Court should have regard to such matters as the work done by the trustee; the responsibility imposed on the trustee; the time spent in doing the work; the reasonableness of the time expended; the necessity of doing the work, and the results obtained. I do not intend that the list which I have given should be exhaustive of the matters to be considered, but in my judgment they are the more important items to be taken into account.

7 In this case, after considering the various matters that I have mentioned, and giving the question careful consideration, I believe a fee of \$13,500 would be proper. The appeal will therefore be allowed and the trustee's fee varied to this amount. Counsel for the Superintendent of bankruptcy is not asking for costs. I will fix the costs of the solicitor for the trustee of this application.

IN THE MATTER OF THE BANKRUPTCY OF INTEGRO BUILDING SYSTEMS INC., IN THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO

Court File No.: BK-23-00459641-0031  
Estate No.: 31-459641

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**BOOK OF AUTHORITIES OF THE TRUSTEE**

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