



ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

THE HONOURABLE MR.)
JUSTICE NEWBOULD)

WEDNESDAY THE 21ST DAY
OF NOVEMBER, 2012

IN THE MATTER OF SECTION 25 OF THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*, S.O. 2002, CHAPTER 30, AS AMENDED

AND IN THE MATTER OF MONSTER REALTY CORPORATION O/A BREKLAND REALTY GROUP AND MATTHEW CAPPUCCHITTI O/A MATT CAPPUCCHITTI AND JASON LARAMEE

APPLICATION UNDER section 25 of the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30 as amended, and Rule 14.05(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

ORDER
(APPOINTMENT OF CLAIMS AND DISTRIBUTION OFFICER)

THIS APPLICATION made by the Applicant, the Director under the *Real Estate and Business Brokers Act, 2002* (Ontario) ("**REBBA**", which term includes REBBA and its Regulations),

- (a) an order for directions or an order relating to the disposition of assets, trust funds and lands that are affected by:
 - (i) a Director's Order ("**Freeze Order**") that was issued by the Director, on February 1, 2012, in relation to assets and trust funds of Monster Realty Corporation o/a Brekland Realty Group ("**Monster Realty**"), Matthew Cappuccitti, o/a Matt Cappuccitti ("**Cappuccitti**"), Jason Laramee ("**Laramee**") and the spouse of Laramee, Renata Schumaker ("**Schumaker**") pursuant to subsection 25(1) of REBBA;

(ii) a notice that was registered by the Director in the land registry office at 2800 Highpoint Drive, 2nd Floor in Milton, Ontario on February 3, 2012 advising that the Freeze Order may affect the property municipally known as 351 Lakeshore Road West in Oakville, Ontario pursuant to subsection 25(7) of REBBA; and

(iii) a notice that was registered by the Director in the land registry office at 15 Dominion Street, in Bracebridge, Ontario on February 3, 2012 advising that the Freeze Order may affect the property municipally known as 1183 Elgin House Road in Port Carling, Ontario, including part of the bed of Lake Joseph appurtenant thereto pursuant to subsection 25(7) of REBBA; and

(b) an order for directions with respect to notice and/or service of this application on persons who may be affected by this application,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Thomas Alan Wright sworn October 1, 2012, the Affidavit of Dipak Parmar sworn November 19, 2012, and on hearing the submissions of counsel for the Applicant, counsel for Home Trust and counsel for the Lloyds Syndicate and on reading the Consent of BDO Canada Limited to act as the Claims and Distribution Officer: ✓
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SERVICE

1. **THIS COURT ORDERS** that the Applicant has complied with the terms of the Order of the Honourable Mr. Justice C.L. Campbell dated October 9, 2012 (the “**Service Order**”) and that the time for service of the Notice of Application and the Application Record herein be and is hereby abridged such that this Application is properly returnable today, that service upon any other party be and it is hereby dispensed with and that the service of the Notice of Application and the Application Record is hereby validated in all respects.

APPOINTMENT OF THE CLAIMS AND DISTRIBUTION OFFICER

2. **THIS COURT ORDERS** that BDO Canada Limited be and it is hereby appointed as the Claims and Distribution Officer in this proceeding for the purpose of implementing, conducting and completing the claims and distribution process established hereby (the “**Claims Process**”).

POWERS OF THE CLAIMS AND DISTRIBUTION OFFICER

3. **THIS COURT ORDERS** that the Claims and Distribution Officer is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Claims and Distribution Officer considers it necessary or desirable:

(a) to take possession and control of all bank accounts and funds therein subject to the Freeze Order, including, without limitation, the bank accounts and funds therein located at the Bank of Montreal branch at 6780 Meadowvale Town Centre Circle, Mississauga, Ontario (the “**Bank**”) bearing account numbers 1033353, 1033820 and 1033345 and, for greater certainty, shall include any funds received into such bank accounts or by any person on behalf of Monster Realty following the Freeze Order or which has or will become payable to Monster Realty before or after the date of this Order (the “**Frozen Funds**”);

(b) to execute, assign, issue and endorse documents of whatever nature in respect of the Frozen Funds, whether in the Claims and Distribution Officer’s name or in the name and on behalf of Monster Realty, for any purpose pursuant to this Order; and

(c) to take any steps reasonably incidental to the exercise of these powers,

and in each such case where the Claims and Distribution Officer takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Monster Realty, Cappuccitti, Laramée and Schumaker, and without interference from any other Person. For greater certainty, the Freeze Order be and is hereby lifted for the limited purpose and to the limited extent necessary to give effect to this Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE CLAIMS AND DISTRIBUTION OFFICER

4. **THIS COURT ORDERS** that (i) Monster Realty, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instruction or behalf, (iii) Cappuccitti, (iv) Laramée, (v) Schumaker, (vi) the Bank, (vii) the Applicant and the Real Estate Council of Ontario (“**RECO**”); and (viii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith grant the Claims and Distribution Officer immediate access to the Frozen Funds at the request of the Claims and Distribution Officer.

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

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Claims and Distribution Officer for the purpose of allowing the Claims and Distribution Officer to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or

such other manner of retrieving and copying the information as the Claims and Distribution Officer in its discretion deems expedient, and shall not alter, erase or destroy any Record without the prior written consent of the Claims and Distribution Officer. Further, for the purposes of this paragraph, all Persons shall provide the Claims and Distribution Officer with all such assistance in gaining immediate access to the information in the Records as the Claims and Distribution Officer may in its discretion require including providing the Claims and Distribution Officer with instructions on the use of any computer or other system and providing the Claims and Distribution Officer with any and all access codes, account names and account numbers that may be required to gain access to the information.

CLAIMS AND DISTRIBUTION OFFICER'S ACCOUNTS

7. **THIS COURT ORDERS** that *subject to the passing of accounts, 25* any expenditure or liability which shall properly be made or incurred by the Claims and Distribution Officer, including the fees of the Claims and Distribution Officer and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Claims and Distribution Officer and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Frozen Funds in priority to all security interest, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Claims and Distribution Officer's Charge**").

8. **THIS COURT ORDERS** that the Claims and Distribution Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Claims and Distribution Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

9. **THIS COURT ORDERS** that prior to the passing of its accounts, the Claims and Distribution Officer shall be at liberty from time to time to apply reasonable amounts, out of the Frozen Funds, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Claims and Distribution Officer or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

10. **THIS COURT ORDERS** that the Claims and Distribution Officer be and it is hereby authorized and directed to retain legal counsel to assist it in fulfilling its duties hereunder.

THE CLAIMS PROCESS

11. **THIS COURT ORDERS** that the form and substance of the forms set out in Schedules “A”, “B”, “C” and “D” to this Order be and are hereby approved. Despite the foregoing, the Claims and Distribution Officer may, from time to time, make minor changes to such forms as it considers necessary or desirable.

12. **THIS COURT ORDERS** that, within five (5) business days of the date of this Order, the Claims and Distribution Officer shall post on its website, www.bdo.ca/monsterrealty, the Notice of Claims Process attached hereto as Schedule “A” (the “**Notice of Claims Process**”) and the documents attached hereto as Schedules “B” through “D” together with instructions for the completion of said documents.

13. **THIS COURT ORDERS** that, within (10) business days of this Order, the Claims and Distribution Officer shall cause to be published the Notice of Claims Process on two separate occasions in *The Globe and Mail* (National Edition).

14. **THIS COURT ORDERS** that, within fifteen (15) business days of this Order, the Claims and Distribution Officer shall send to each party that provided notice of a potential claim to or against the Frozen Funds to counsel to the Applicant the Notice of Claims Process, a copy of this Order, and a Proof of Claim form substantially in the form attached hereto as Schedule “B”.

15. **THIS COURT ORDERS** that the Claims and Distribution Officer shall send to each party which contacts the Claims and Distribution Officer seeking to prove a claim to or against the Frozen Funds with the Notice of Claims Process, a copy of this Order, and a Proof of Claim form substantially in the form attached hereto as Schedule “B”, provided that such party contacts the Claims and Distribution Officer prior to the Claims Bar Date.

16. **THIS COURT ORDERS** that compliance by the Claims and Distribution Officer with the provisions of paragraphs 12 to 15 (inclusive) shall constitute good and sufficient service upon

the claimants of notice of these proceedings, this Order, the Claims Bar Date, and the related deadlines and procedures set forth herein and no other form of service or notice need be made by the Claims and Distribution Officer to any Person and no other document or material need be provided to any Person in respect of the claims process established herein.

17. **THIS COURT ORDERS** that all Persons must prove any claims to or against the Frozen Funds by sending a duly completed Proof of Claim to the Claims and Distribution Officer on or before 5:00 p.m. (Eastern Standard Time) on February 8, 2013 (the “**Claims Bar Date**”), failing which their claims to or against the Frozen Funds shall be forever stayed, barred and extinguished and such Person shall not be entitled to any further notice in respect of the Claims Process or the within proceedings.

18. **THIS COURT ORDERS** that the Claims and Distribution Officer may disallow any claims submitted by claimants to or against the Frozen Funds by delivering a Notice of Revision or Disallowance substantially in the form of the draft Notice of Revision or Disallowance of Proof of Claim attached hereto as Schedule “C” to applicable claimant on or before 5:00 p.m. (Eastern Standard Time) on March 8, 2013, failing which such claimant’s Proof of Claim shall be accepted by the Proof of Claim as filed.

19. **THIS COURT ORDERS** that any claimant that wishes to appeal the disallowance of their claim may do so by delivering a Notice of Dispute of Revision or Disallowance substantially in the form of the draft Notice of Dispute of Revision or Disallowance attached hereto as Schedule “D” to the Claims and Distribution Officer on or before 5:00 p.m. (Eastern Standard Time) on the fourteenth (14th) day following the deemed receipt of the Notice of Revision or Disallowance of Proof of Claim, failing which the decision of the Claims and Distribution Officer set out in the Notice of Revision or Disallowance of Proof of Claim shall be final and binding.

20. **THIS COURT ORDERS** that the applicable claimant or the Claims and Distribution Officer may apply to this Court within ten (10) days after receipt by the Claims and Distribution Officer of the Notice of Dispute of Revision or Disallowance for a determination as to the proper amount or nature of the claim in question.

THE DISTRIBUTION PROCESS

21. **THIS COURT ORDERS** that the Claims and Distribution Officer is hereby directed to report to this Court once the Claims Process has been completed and shall seek the advice and direction of this Court with respect to the distribution of the Frozen Funds.

NOTICES AND COMMUNICATION

22. **THIS COURT ORDERS** that *subject to further order* ✓ W.J.

- (i) any document to be sent by the Claims and Distribution Officer pursuant to this Order may be sent by email, ordinary mail, registered mail, courier or fax transmission; and
- (ii) the intended recipient of any document sent by the Claims and Distribution Officer pursuant to this Order shall be deemed to have received such document: (i) two (2) business days after the document is sent if sent by ordinary mail or registered mail; (ii) one (1) business day after the document is sent if sent by courier; and (iii) the same day the document is sent if sent by email or fax transmission, unless the document is sent on a non-business day or after 4:30 p.m. (Eastern Standard Time), in which case it shall be deemed to have been received the next business day.

23. **THIS COURT ORDERS** that any notice or other communication (including, without limitation, deliver of Proofs of Claim) to be given under this Order by any Person to the Claims and Distribution Officer shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by ordinary mail, courier, delivery, facsimile transmission or electronic mail addressed to:

BDO Canada Limited
123 Front Street, Suite 1200
Toronto, Ontario M5J 2M2
Canada

Attention: Ken Pearl
Fax: (416) 865-0904

Email: kpearl@bdo.ca

Any such notice or other communication by such Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day.

24. **THIS COURT ORDERS** that if during any period during which notices or other communication are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, delivery, facsimile transmission or electronic mail in accordance with this Order.

25. **THIS COURT ORDERS** that the Claims and Distribution Officer shall use its reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order.

GENERAL

26. **THIS COURT ORDERS** that neither the Claims and Distribution Officer nor any legal counsel retained by it shall be liable for any cause, matter or thing arising out of or in any way connected with the performance of their duties hereunder save and except as may arise out of their gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the Applicant and RECO shall not be liable for any cause, matter or things arising out of or in any way connected ^{with} ~~with the Freeze Order~~ or the receipt and handling of the Frozen Funds pursuant to the Freeze Order, this Order or otherwise, save and except as may arise out of their gross negligence or wilful misconduct. HNT

28. **THIS COURT ORDERS** that the Claims and Distribution Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the Claims and Distribution Officer may apply at any time to this Court to seek any further relief in

respect of the Claims Process, and any other interested Person may apply to this Court to vary this Order or seek other relief in respect of the Claims Process on seven (7) business days notice to the Claims and Distribution Officer and to any other Person likely to be affected by the Order sought or on such other notice, if any, as the Court may order.

A handwritten signature in black ink, appearing to read "J. D. ...", is written over a horizontal line.

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

NOV 21 2012

NB

SCHEDULE "A"

**NOTICE TO CLAIMANTS
MONSTER REALTY CORPORATION O/A BREKLAND REALTY GROUP
(the "Company")**

PLEASE TAKE NOTICE that, pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") made on November 21, 2012 (the "**Claims and Distribution Officer Order**"), a Claims Process has been established with respect to any claims to or against funds subject to a freeze order issued by the Director under the *Real Estate and Business Brokers Act, 2002* on February 1, 2012 against the Company, Matthew Cappuccitti o/a Matt Cappuccitti, Jason Laramee and Renate Schumaker (the "**Freeze Order**"). Pursuant to the Claims and Distribution Officer Order, BDO Canada Limited has been appointed to administer the Claims Process.

Any Person asserting a claim against the Company or funds now or hereinafter subject to the Freeze Order must send a Proof of Claim to BDO Canada Limited, in its capacity as court-appointed Claims and Distribution Officer, at the address below on or before 5:00 p.m. Eastern Standard Time on February 8, 2013 (the "**Claims Bar Date**").

Any claims for which a Proof of Claim has not been received by the Claims Bar Date will be barred and extinguished forever.

If you have any questions regarding the Claims Process or your potential claim, please contact the Claims and Distribution Officer at the address provided below.

Persons who requires a copy of the Claims and Distribution Officer Order or a Proof of Claim form may obtain them from the Claims and Distribution Officer's website at www.bdo.ca/monsterrealty. If you are unable to access the website or have further inquiries, you may contact the Claims and Distribution Officer at:

BDO Canada Limited
123 Front Street, Suite 1200
Toronto, Ontario M5J 2M2
Canada

Attention: Ken Pearl
Tel: (416) 865-0210
Fax: (416) 865-0904
Email: kpearl@bdo.ca

Dated at Toronto, Ontario this _____ day of November, 2012

SCHEDULE "B"

**PROOF OF CLAIM
MONSTER REALTY CORPORATION O/A BREKLAND REALTY GROUP
(the "Company")**

A. – Particulars of Claimant

Full Legal Name of Claimant _____

Full Mailing Address of the Claimant:

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

Attention (Contact Person): _____

B. – Proof of Claim:

I, _____ name of Claimant or Representative of Claimant, of
_____ (City, Province or State) do hereby certify:

that I [*check one*]

am the creditor of the Company; OR

am _____ (*state position or title*) of
_____ (*name of claimant*)

- (a) that I have knowledge of all the circumstances connected with the claim referred to below;
- (b) The Companies were and still are indebted to the Claimant as follows;

(A) TOTAL CLAIM:

Canadian Dollars \$ _____ [*insert dollar value of Claim*]

C. – Nature of Claim:

(Check and complete appropriate category)

A. UNSECURED CLAIM OF \$ _____. That in respect of this debt, I do not hold any assets of the Company as security.

B. TRUST CLAIM OF \$ _____. That in respect of this debt, I claim a trust in respect of the assets of the Company, valued at \$ _____, particulars of which are attached.

C. SECURED CLAIM OF \$ _____. That in respect of this debt, I hold assets of the Company valued at \$ _____ as security, particulars of which are attached.

D. – Particulars of Claims:

Other than as already set out herein, the particulars of the undersigned's total claim are attached.

(Provide all particulars of the claims and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the claims, name of any guarantor which has guaranteed the claims, particulars of any trust claimed, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Company to the claimant and estimated value of such security, etc.)

E. – Filing of Claims:

This Proof of Claim must be received by the BDO Canada Limited by no later than 5:00 p.m. (Eastern Standard Time) on February 8, 2013 (the “Claims Bar Date”).

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

This Proof of Claim must be delivered by facsimile transmission, personal delivery, courier, electronic mail or prepaid mail at the following address:

BDO Canada Limited
123 Front Street, Suite 1200
Toronto, Ontario M5J 2M2
Canada

Attention: Ken Pearl
Fax: (416) 865-0904
Email: kpearl@bdo.ca

Dated at _____ this _____ day of _____, 201__.

Per: _____

Print Name:

SCHEDULE "C"

**NOTICE OF REVISION OR DISALLOWANCE
MONSTER REALTY CORPORATION O/A BREKLAND REALTY GROUP.
(the "Company")**

Name of Claimant: _____

Reference #: _____

Pursuant to the Claims and Distribution Officer Order of the Ontario Superior Court of Justice dated November 21, 2012, BDO Canada Limited, in its capacity as court-appointed Claims and Distribution Officer, hereby gives you notice that it has reviewed your Proof of Claim and has revised or rejected your claim as follows:

	Proof of Claim as Submitted (\$CDN)	Revised Claim as Accepted (\$CDN)	Secured (\$CDN)	Unsecured (\$CDN)	Trust (\$CDN)
Total Claim					

Reason for the 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 the Notice of Revision or Disallowance, you must, on the day which is the fourteen (14) day after the date of this Notice of Revision or Disallowance, deliver a Notice of Dispute by facsimile transmission, electronic mail, courier, personal delivery or prepaid mail to the address indicated herein. The form of Notice of Dispute is attached to this Notice.
2. If you do not deliver a Notice of Dispute, the value of your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Address for Service of Dispute Notices:

BDO Canada Limited
123 Front Street, Suite 1200
Toronto, Ontario M5J 2M2
Canada

Attention: Ken Pearl
Fax: (416) 865-0904
Email: kpearl@bdo.ca

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

Dated at _____ this _____ day of _____, 2013.

BDO CANADA LIMITED

In its capacity as Court-Appointed Claims and Distribution Officer

Per: _____

Encl.

SCHEDULE "D"

**NOTICE OF DISPUTE
MONSTER REALTY CORPORATION O/A BREKLAND REALTY GROUP.
(the "Company")**

Pursuant to the Claims and Distribution Officer Order of the Ontario Superior Court of Justice dated November 21, 2012, we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Reference Number _____ and dated _____ issued by BDO Canada Limited, in its capacity as court-appointed Claims and Distribution Officer in respect of our Claim.

Name of Claimant: _____

	Reviewed Claim as Accepted (\$CDN)	Reviewed Claim as Disputed (\$CDN)	Secured (\$CDN)	Unsecured (\$CDN)	Trust (\$CDN)
Total Claim					

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

Signature of Individual: _____

Date: _____

(Please print name): _____

Telephone Number: (____) _____

Facsimile Number: (____) _____

Email Address: _____

Full Mailing Address:

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY FACSIMILE TRANSMISSION, ELECTRONIC MAIL, COURIER, PERSONAL SERVICE OR PREPAID MAIL TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED ON THE DAY WHICH IS FOURTEEN (14) DAYS AFTER THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE.

Address for Service of Dispute Notices:

BDO Canada Limited
123 Front Street, Suite 1200
Toronto, Ontario M5J 2M2
Canada

Attention: Ken Pearl
Fax: (416) 865-0904
Email: kpearl@bdo.ca

IN THE MATTER OF SECTION 25 OF THE *REAL ESTATE AND BUSINESS BROKERS ACT*,
2002, S.O. 2002, CHAPTER 30, AS AMENDED

Court File No: CV12-9867-00CL

AND IN THE MATTER OF MONSTER REALTY CORPORATION O/A BREKLAND
REALTY GROUP, MATTHEW CAPPUCCHETTI O/A MATT CAPPUCCHETTI AND JASON
LARAMEE

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at TORONTO

ORDER

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

William J. Burden LSUC#: 15550F
Tel: 416.869.5963
Fax: 416.640.3019
E-mail: bburden@casselsbrock.com

Lawyers for the Applicant