

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) THURSDAY, THE 17<sup>TH</sup>  
 )  
MADAM JUSTICE STEELE ) DAY OF APRIL, 2025

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., TROLAN  
INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED (Collectively, the  
"**Applicants**")

APPLICANTS

**LIEN REGULARIZATION ORDER**

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference.

**ON READING** the Notice of Application, affidavit of Eugene Woodbridge sworn April 16, 2025 and the Exhibits thereto ("**Woodbridge Affidavit**"), the Pre-Filing Report of BDO Canada Limited, as the proposed monitor (if so appointed, the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Bank of Montreal, and such other parties as listed on the Participant Information Form, with no one appearing for any other person although duly served as appears from the affidavit of service of Samantha Currie sworn April 17, 2025, filed,

**Service**

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

**Defined Terms**

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions shall apply:

(a) **"Bond"** means a labour & material and/or a performance Bond provided by a Bonding Company in support of an EBCL Project;

(b) **"Bonded Off Lien"** means a lien:

(i) that attaches to the land and has been the subject of a registered claim for lien and a certificate of action in respect of that lien has been issued, or

(ii) that does not attach to the land, where a notice of lien has been given;

which lien has been vacated from title and/or as a charge upon the Holdback upon the posting of security, which security is subject to claims of all Persons having a lien pursuant to the Construction Act;

(c) **"Bonding Company"** means Aviva Insurance Company of Canada;

(d) **"EBCL Project"** means those construction projects set out in **Schedule "A"** for which the Applicants or any of them are a contracting party and which are the Continuing EBCL Projects as defined in the Woodbridge Affidavit;

(e) **"Filing Date"** means April 17, 2025;

(f) **"Holdback"** means Statutory Holdback or Notice Holdback;

- (g) **“Lien Bond”** means a bond or other security posted in respect of a Bonded Off Lien;
- (h) **"Lien Claims"** mean the claims of any person who supplied services and/or materials to preserve or perfect their liens, including by way of notice of lien, pursuant to the *Construction Act*;
- (i) **"Notice Holdback"** means any further amounts beyond the Statutory Holdback required to be, or in fact, withheld from one of the Applicants as a payee by a payor as a result of notice by any Person claiming a lien pursuant to the *Construction Act*;
- (j) **"Owner"** means a person or entity who is the legal owner of the premises comprising the site of an EBCL Project; and
- (k) **Statutory Holdback"** means the 10%, or the other applicable percentage required by the *Construction Act*, of the value of services or materials supplied under a contract or subcontract required to be withheld by a payor from one of the Applicants as a payee.

3. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms shall have the meaning given to them in the Initial Order granted by this Court on April 17, 2025 (as amended, the **“Initial Order”**).

***Stay of Lien Claims pursuant to the Construction Act***

4. **THIS COURT ORDERS** that no Person shall be permitted to preserve or perfect a Lien Claim under the *Construction Act* with respect to any EBCL Project and that any Lien Claim in respect of an EBCL Project be and hereby is stayed and any person seeking to enforce such a claim shall be required to seek the rights and remedies set out in this Order. However, for greater

certainty, the Applicants shall be entitled to preserve and perfect their Lien Claims, including the commencement and continuation of legal proceedings, under the Construction Act or otherwise in favour of the Applicants.

***EBCL Projects***

5. **THIS COURT ORDERS** that any Lien Claim that has been preserved or perfected by any Person, or for which notice of lien has been given by any Person, in respect of an EBCL Project (a "**Preserved Lien Claimant**"), which is not a Bonded Off Lien as of the date of this Order, be and is hereby vacated on terms that any Person having such a Lien Claim shall be deemed to have provided the Lien Notice referred to in paragraph 11 herein on the date of preservation or delivery of notice of such Lien Claim, and shall be entitled to the Lien Charge referred to in paragraph 12 herein, *provided that* the vacating of preserved liens pursuant to this paragraph shall not be deemed to cure any default triggered by the filing of a lien under any contract with any Owner.

6. **THIS COURT ORDERS** that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically vacate a Lien Claim referred to in paragraph 5 herein.

7. **THIS COURT ORDERS** that any Person having a Bonded Off Lien as of the date of this Order shall be deemed to have provided the Lien Notice referred to in paragraph 11 herein on the date of registration of such Lien Claim and shall also be entitled to the Lien Charge referred to in paragraph 12 herein.

8. **THIS COURT ORDERS** that any requirements for any Lien Claims to be perfected or set down for trial pursuant to the *Construction Act* are hereby deemed to have been complied with.

9. **THIS COURT ORDERS** that any trial dates that are currently set between the date of

this Order and the Stay Period (as defined in the Initial Order dated April 17, 2025 and as may be amended by further order) or such later date as may be subsequently ordered by this Court, with respect to any Lien Claim action by any Person in respect of an EBCL Project be and are hereby vacated.

10. **THIS COURT ORDERS** that any requests for information to the Applicants or other interested parties pursuant to the *Construction Act*, including any requests pursuant to section 39 of that Act whether outstanding or delivered after the date of this Order (the “**Information Requests**”), are hereby stayed pursuant to the terms of this Order. However, the Monitor, in consultation with the Applicants, or as directed by this Court, may provide any information in respect of an Information Request as the Monitor deems appropriate or as the Court directs.

***Treatment of Lien Claims***

11. **THIS COURT ORDERS** that unless deemed to have delivered a Lien Notice in accordance with this Order, any Person who wishes to assert a Lien Claim after the Filing Date in respect of an EBCL Project (the “**Asserting Lien Claimant**”), whether in respect of materials and/or services supplied before or after the Filing Date shall deliver by email a notice in the form attached as **Schedule "B"** hereto (the “**Lien Notice**”), to the following persons (collectively, the “**Lien Notice Parties**”): the Monitor c/o Clark Lonergan ([clonergan@bdo.ca](mailto:clonergan@bdo.ca)), with a copy to the Monitor’s counsel c/o Clifton Prophet and Heather Fisher ([clifton.prophet@gowlingwlq.com](mailto:clifton.prophet@gowlingwlq.com); [heather.fisher@gowlingwlq.com](mailto:heather.fisher@gowlingwlq.com)), and with a copy to the Applicants c/o Caitlin Fell ([cfell@reconllp.com](mailto:cfell@reconllp.com)), within the time frames prescribed by the *Construction Act* in order to preserve and perfect their Lien Claim for that EBCL Project. With respect to any EBCL Project for which a Bond has been issued, in addition to delivering the Lien Notice to the Lien Notice Parties, an Asserting Lien Claimant shall deliver by email a copy of the Lien Notice to counsel to the Bonding Company c/o Rich Yehia ([ryehia@blg.com](mailto:ryehia@blg.com)). For the purposes of this Order, any Preserved Lien Claimant shall be deemed to be an Asserting Lien Claimant that has delivered a

Lien Notice in accordance with this paragraph.

12. **THIS COURT ORDERS** that the Asserting Lien Claimant, upon delivering or being deemed to have delivered a Lien Notice in accordance with this Order, be and is hereby granted a charge (the “**Lien Charge**”) against the Applicants’ property in the applicable EBCL Project in respect of which the Lien Claim arises equivalent to, and only to the extent of, any security granted under the *Construction Act* for such Lien Claim. Without limiting the generality of and subject to the foregoing, a Lien Charge shall attach to the following: (i) any property of the applicable Applicant that, pursuant to the *Construction Act*, would be subject to a charge securing the underlying Lien Claim secured by such Lien Charge; (ii) property of any Owners of the real property pertaining to the EBCL Project in question that, pursuant to the *Construction Act*, would be subject to a charge securing the underlying Lien Claim secured by such Lien Charge (if any); (iii) any Holdback in the hands of a payor of the Applicant against which the Asserting Lien Claimant’s Lien Claim described in the Lien Notice would otherwise have a charge pursuant to the *Construction Act*; and (iv) any rights (if any) under an applicable Lien Bond, without prejudice to the right of the Bonding Company who has posted such Lien Bond to seek by court order the release of such Lien Bond and any other related relief, provided that the Bonding Company shall be subrogated to any rights related to such Lien Claim as set out above. For greater certainty, a Lien Charge shall not attach to any property of any Applicant or other Person, or attach to any rights in a Lien Bond, unless such property or Lien Bond would otherwise have been charged with or subject to the lien underlying such Lien Charge pursuant to the *Construction Act*.

13. **THIS COURT ORDERS** that each Applicant, with the assistance and oversight of the Monitor, shall deposit all funds received by such Applicant on account of an EBCL Project into one or more bank accounts, and shall keep written records respecting the funds, detailing the amounts that are received into and paid out of the funds, and any transfers made for the purposes of any EBCL Project and shall maintain such records on a project-by-project basis, such that all

funds received on account of an EBCL Project are traceable to such EBCL Project and the depositing of funds into one bank account in accordance with this paragraph shall not constitute a breach of trust.

14. **THIS COURT ORDERS** that any funds received by an Applicant on account of an EBCL Project may only be paid in satisfaction of, first, any amounts payable in respect of obligations secured under the Charges (as defined in the Initial Order), second any trust obligations in relation to such EBCL Project, and, after satisfaction of all trust obligations, fees, costs and expenses arising in connection with such EBCL Project or other project-specific financing advanced in respect of such EBCL Project, subject to further Order of this Court, and for greater certainty nothing herein shall affect the priorities set out in paragraph 53 of the Initial Order.

15. **THIS COURT ORDERS** that Lien Charges created by this Order shall not be rendered invalid or unenforceable, and the rights and remedies of the Asserting Lien Claimants entitled to the benefit of a Lien Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings; (b) any application(s) for order(s) issued pursuant to the CCAA or any order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the CCAA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Lien Charge, shall neither create nor be deemed to constitute a breach by any Applicant of any Agreement to which it is a party;
- (ii) the payments made by any Applicant, or any other Person or entity, pursuant to this Order, and the granting of the Lien Charge, does not and will not constitute

preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law; and

- (iii) the Lien Charge shall be enforceable in any bankruptcy proceedings of any Applicant with the same priority as set out in paragraph 21 herein as against the property secured by the Lien Charge, including any Holdback.

***Treatment of Holdback Funds***

16. **THIS COURT ORDERS** that any Person who is in possession of Holdback funds be and hereby is restrained from paying, setting-off, or encroaching upon such Holdback funds until the day after the last day upon which a claim for lien could have been registered/delivered for the relevant contract pursuant to the *Construction Act* but for the provisions of this Order, at which time or such other time as may be agreed to by the Monitor, such Person shall, subject only to any right of set-off claimed against Notice Holdback funds, pay the Holdback funds to the Monitor in trust, irrespective of whether any Lien Claims or Lien Notices have been made, delivered, preserved or perfected or written notice of any Lien Claim or Lien Notice has been received, provided that any exercise of set-off shall be subject to: (i) the consent of the Monitor and Applicants, who shall consult with the Person(s) who delivered Lien Notices for the applicable EBCL Project, (ii) or further order of the Court, on notice to the Monitor, Applicants, the applicable Bonding Company (only with respect to a EBCL Project for which there is a Bond), and the Person(s) who delivered Lien Notices on the applicable EBCL Project, and in the case of (i) or (ii), any of the foregoing parties shall be entitled to challenge such set-off, on motion to the Court (whether or not the Monitor consents to such set-off). Upon payment of the Holdback funds to the Monitor pursuant to this paragraph 16, the Person who was in possession of such Holdback funds shall be deemed to have been in the same position as if (i) no written notices of lien had been received, no Lien Claims had been made, asserted, delivered, preserved, or perfected, and (ii)

no Lien Notice had been received, and such Person shall have no further liability for such Holdback funds to any Person. For greater certainty, provided that Holdback funds have been paid to the Monitor. any Person who is in possession of Holdback funds, and who receives a written notice of lien, Lien Notice or other notice of a Lien Claim, shall not be required to retain Notice Holdback with regard to that written notice of lien, Lien Notice or other notice of a Lien Claim.

17. **THIS COURT ORDERS** that any general contractor, Owner, and/or payor of any level above the level of the Applicants in connection with an EBCL Project shall have no liability whatsoever, whether pursuant to the *Construction Act*, any other law, equity, or otherwise, save and except for any gross negligence or wilful misconduct on its part, to any Person (including any subcontractor of any level to the Applicants, any other supplier of any level to the Applicants, or creditor of the Applicants) in connection with amounts paid to the Monitor on or after the Filing Date pursuant to the terms of this Order in respect of an EBCL Project.

18. **THIS COURT ORDERS** that, for greater certainty, and subject to paragraph 4 of this Order or the terms of the Initial Order, nothing in this Order shall affect the rights of any Person under the *Construction Act* with respect to any rights pursuant to any Bond posted in favour of any such Person named in the applicable Bond, except any such claims against any of the Applicants shall require consent of the Monitor or leave of this Court to be commenced or continued.

19. **THIS COURT ORDERS** that with respect to a Bonded Off Lien, nothing in this Order affects any rights under or recourse of any Person under the *Construction Act* to any Lien Bond, or any other security posted with respect to such Bonded Off Lien (without prejudice to the right of any Bonding Company to seek the release of the Lien Bond or any other security posted with respect to any Bonded Off Lien and any other related relief), provided however that nothing in this Order restricts, limits or derogates from the stay of proceeding in favour of the Applicants set out

in paragraph 14 of the Initial Order.

20. **THIS COURT ORDERS** that the Monitor shall serve a copy of this Order on any Person known to the Monitor who is or may be in possession of a Holdback fund.

21. **THIS COURT ORDERS** that the Monitor may, at a time deemed by the Monitor to be appropriate after consulting with the Applicants, and shall, upon further order of this Court made on a motion brought on at least 7 days' notice to the Monitor and the Applicants, bring a motion on notice to the service list seeking the approval of a process for reviewing, determining or challenging the (i) validity or timeliness of a Lien Notice; (ii) validity or quantum of the amounts set out in the Lien Notice; (iii) validity or quantum of an Asserting Lien Claimants' entitlement to a Lien Charge under this Order; and (iv) the attachment or priority of a Lien Charge under this Order.

22. **THIS COURT ORDERS** that the Monitor may, if necessary and at a time deemed by the Monitor to be appropriate after consulting with the Applicants and the Bonding Companies, and shall, upon further order of this Court made on a motion brought on at least 7 days' notice to the Monitor, the Applicants and the Bonding Companies, bring a motion on notice to the Service List seeking the approval of a dispute resolution process among the Applicant and any general contractor, owner, and/or payor of any level above the level of the Applicants in connection with an EBCL Project.

***General***

23. **THIS COURT ORDERS** that in discharging its obligations under this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in these CCAA Proceedings; (ii) shall incur no liability or obligation as a result of carrying out matters or any act or omission in connection with this Order; (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all

without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such assistance as may be required to carry out matters in connection with this Order from the Applicants or any of their subsidiaries.

24. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in respect of the discharge of its powers and duties hereunder.

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## SCHEDULE "A" – Projects to which the Order applies

Job#	Project Owner	Customer	Job Name
21015	Halton Region	C&M McNally	South Georgetown Wastewater Servicing
23010	Town of Lincoln	Town of Lincoln	Lincoln Watermain
24019	County of Simcoe	Primrose	SimcoeCounty Rd 21
23007	Rose Corporation	Clarose Midhurst GP Inc.	Midhurst Heights
23002	Alectra	Aecon Utilities Inc	Elexicon - South Blair
23011	TTC	Bronte Construction	Sheppard Station
24017	Ottawa Public Works	Tomlinson Group	Confederation Heights
24010	537 Kingstson Rd East Holdings Inc	Sora Group Inc.	537 Kingston Road East
24016	County of Brant	L82 Construction Ltd.	Dundas Street East
24009	Corporation of Welland	Peters Construction Group	Dain City Watermain
24005	Metrolinx	Alliance Verdi	Metrolinx
24002	Metrolinx	Clearway	PAPE
24012	Niagara Region	Centennial Construction	Chippawa Parkway Foundation
24004	Waterloo Region	Steed & Evans	Foundry St Snyders Rd Reconstruction
25002	Lakefront Utility Service Inc.	Behan Construction Limited	Darcy Street Elevated Tank
25004	ENWIN	Amico Infrastructure Inc.	Enwin Feedermain Phase 2 Project
23012	Region of Peel	Region of Peel	Trenchless Crossing – Heart Lake, Elgin, Torbram
24001	City of Hamilton	City of Hamilton	Garner Road Trunk SS

**SCHEDULE "B"**

**FORM OF LIEN NOTICE TO MONITOR**

Name of Lien Claimant: .....

Address for Service: .....

Name of Owner: .....

Name of person to whom lien claimant supplied services or materials: .....

.....

Address:.....

Time within which services or materials were supplied:

from: ..... to .....  
(date supply commenced) (date of most recent supply)

Short description of services or materials that have been supplied:

.....  
Contract price or subcontract price: \$.....

Amount claimed as owing in respect of services or materials that been supplied:  
\$.....

(Use **A** where the lien attached to the premises; use **B** where the lien does not attached to the premises).

**A.** The lien claimant (if claimant is personal representative or assignee this must be stated) claims a lien against the interest of every person identified above as an owner of the premises described in Schedule A to this claim for lien.

**B.** The lien claimant (if claimant is personal representative or assignee this must be stated) claims a charge against the holdbacks required to be retained under either the *Construction Act*, RSO 1990, c. C.30 and any additional amount owed by a payor to the contactor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or materials that have been supplied by the lien claimant in relation to the premises at:

.....

(address or other identification of the location of the premises

Date:.....

Per:.....

(signature of claimant or agent)

I have authority to bind the corporation

**SCHEDULE A TO NOTICE TO MONITOR**

To the claim for lien of

.....

Description of premises:

(Where the lien attaches to the premises, provide a description of the premises for registration under the *Land Titles Act* or the *Registry Act*, as the case may be).

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1985, c.C-36 AS AMENDED

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EARTH BORING CO. LIMITED ET AL.

**ONTARIO  
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(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**LIEN REGULARIZATION ORDER**

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