

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

National Bank of Canada

Plaintiff(s)

AND

Nimbus Environmental et al

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
(see attached)		

- Order     Direction for Registrar (No formal order need be taken out)  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

Adjourned to: \_\_\_\_\_

Time Table approved (as follows):

The order shall go as per the draft filed and signed as attached.

The order is made w/o prejudice to the following:

i) BNS's right to dispute the vehicle allocation issue with respect to the vehicle liens; and

ii) the right of TLHD, a secured creditor of Canada with a perfected GSA, to

18 Jan 22

Date

M. J. [Signature]

Judge's Signature

Additional Pages two

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

**Judges Endorsment Continued**

invoke the doctrine of marshalling in  
the event the Applicant is fully repaid  
if there are surplus proceeds available  
for distribution to creditors.

Motion will be heard March 10/22 @ noon.  
McCart

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

THE HONOURABLE MR. )

TUESDAY, THE 18<sup>TH</sup>

)

JUSTICE MCEWEN )

DAY OF JANUARY, 2022

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**ORDER**

**THIS MOTION**, made by BDO Canada Limited, in its capacity as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of each of the Respondents for an order: (i) authorizing distributions to National Bank of Canada (“**NBC**”) and certain other parties as described in the Third Report of the Receiver dated January 12, 2022 (the “**Third Report**”); (ii) approving the activities of the Receiver; (iii) approving the fees of the Receiver and its counsel; and (iv) approving the Statement of Receipts and Disbursements, was heard this day by way of judicial videoconference due to the COVID-19 pandemic.

**ON READING** the Third Report, the Fee Affidavit of Matthew Marchand sworn January 7, 2022 (the “**Marchand Affidavit**”), the Fee Affidavit of Leanne Williams sworn January 12, 2022 (the “**Williams Affidavit**”), and the Fee Affidavit of Jason Spettner sworn January 11, 2021 (the “**Spetter Affidavit**”) and on hearing submissions from counsel to the Receiver and counsel to those other parties listed on the counsel slip for today’s hearing, no one else appearing for any other interested person although duly served as evidenced by the Affidavit of Service of Adam Driedger sworn January 17, 2022, filed:

**SERVICE**

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

**DEFINED TERMS**

2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined in the Third Report.

**NBC DISTRIBUTION**

3. **THIS COURT ORDERS** that the Receiver is authorized and directed to distribute \$12,090,000.00 to NBC in partial satisfaction of the NBC Secured Indebtedness (the “**NBC Interim Distribution**”) which shall be applied as a permanent reduction of the NBC Secured Indebtedness.

4. **THIS COURT ORDERS** that, to the extent that the NBC Interim Distribution is made from the proceeds of sale of the Stalking Horse Transaction, it shall be made in accordance with the Purchase Price Allocation.

5. **THIS COURT ORDERS** that the Receiver is authorized and directed to make future distributions to NBC from the proceeds of the Property (as defined in the Receivership Order) as the Receiver deems appropriate up to the amount of the NBC Secured Indebtedness.

## VEHICLE LESSOR DISTRIBUTION

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to make distributions in the amounts and to the parties listed in the attached **Schedule "A"** in full and final satisfaction of any and all amounts owing by the Respondents or the Receiver in respect of the vehicles noted therein.

7. **THIS COURT ORDERS** that the Receiver shall establish a reserve in the amount of \$60,706.55 (the "**Distribution Reserve**") representing the proceeds of sale received in respect of the vehicles listed in the attached **Schedule "B"** (the "**Reserved Vehicles**").

8. **THIS COURT ORDERS** that the Receiver is authorized and directed to make future distributions from the Distribution Reserve in respect of the Reserved Vehicles as the Receiver deems appropriate.

9. **THIS COURT ORDERS** that, notwithstanding paragraph 6, in addition to the Distribution Reserve, the Receiver shall establish a reserve in the amount of \$85,000.00 (the "**BNS Reserve**") in favour of The Bank of Nova Scotia ("**BNS**"). The BNS Reserve shall be maintained until the Receiver and BNS agree to the amount that is to be allocated from the proceeds of sale to BNS or until further order of the Court.

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

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

the distributions set out herein shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Respondents and shall not be void or voidable by creditors of the Respondents, 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.

#### **APPROVAL OF ACTIVITIES & FEES OF THE RECEIVER**

11. **THIS COURT ORDERS** that the Third Report and the activities, decisions, and conduct of the Receiver as set out therein are hereby authorized and approved.

12. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver for the period between November 1, 2021 to December 31, 2021, in the amount of \$187,237.50, plus disbursements of \$29,989.25 and Harmonized Sales Tax (“HST”) of \$24,616.92, for a total of \$241,843.67, as further set out in the Third Report and the Marchand Affidavit, are hereby approved.

13. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Receiver, for the period between November 1, 2021 to December 31, 2021, in the amount of \$131,177.32, plus HST of \$16,990.72, for a total of \$148,168.04, as further set out in the Third Report and the Williams Affidavit, are hereby approved.

14. **THIS COURT ORDERS** that the professional fees and disbursements of Lipman, Zener Waxman LLP, independent counsel to the Receiver, for the period between September 29, 2021 to October 31, 2021, in the amount of \$2,439.85, plus HST of \$317.18, for a total of \$2,757.03, as further set out in the Third Report and the Spetter Affidavit, are hereby approved.

#### **APPROVAL OF STATEMENT OF RECEIPTS AND DISBURSEMENTS**

15. **THIS COURT ORDERS** that the Receiver’s Statement of Receipts and Disbursements for the period August 23, 2021 to December 31, 2021 is hereby approved.

#### **GENERAL**

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

17. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



A handwritten signature in black ink, appearing to read 'McInt', is written above a horizontal line.

**SCHEDULE "A"**

<b>Lessor</b>	<b>VIN</b>	<b>Debt owing</b>	<b>Purchase Price Allocation</b>	<b>Distribution</b>
Tricor Lease & Finance	1FTFW1EF5HKD03691	17,030.92	5,077.59	5,077.59
Tricor Lease & Finance	1GCWGAFHXH1344173	15,477.03	5,374.65	5,374.65
Tricor Lease & Finance	1GCWGAFH4H1343634	12,304.25	5,210.92	5,210.92
Tricor Lease & Finance	1GCWGAFH2H1343891	12,535.85	6,267.05	6,267.05
Tricor Lease & Finance	1FTEW1EF2FFA43140	16,490.80	5,196.33	5,196.33
Tricor Lease & Finance	1GCWGAFH4H1141697	13,737.18	6,779.71	6,779.71
Tricor Lease & Finance	1GTW7AFF1G1242291	11,457.98	5,497.85	5,497.85
Tricor Lease & Finance	1FTEW1EF2HFB55620	18,567.03	8,419.82	8,419.82
Tricor Lease & Finance	1GTW7AFF8G1253921	11,287.42	4,491.57	4,491.57
Scotiabank	5XYZUDLB4DG105088	11,879.46	2,321.77	2,321.77
Scotiabank	2GNFLGE37F6101914	16,896.67	1,854.91	1,854.91
Scotiabank	1C4BJWEG4JL825117	18,313.08	12,424.67	12,424.67
Scotiabank	1GCWGBFF9G1234610	6,533.92	3,702.92	3,433.82
Scotiabank	1GCWGBFFXG1195798	5,923.74	3,702.92	3,443.66
Scotiabank	1GTW7AFF3G1191960	2,150.33	4,152.77	516.36
Scotiabank	1GTW7AFF6G1168964	2,150.33	4,237.47	516.36
Scotiabank	1GTW7GBA4E1184803	7,697.00	3,064.22	3,064.22
Scotiabank	2C4RDGBG4KR669704	17,207.45	5,414.37	5,414.37
Scotiabank	2C4RDGBG3KR762245	19,465.75	6,140.20	6,140.20
		<b>237,106.19</b>	<b>99,331.71</b>	<b>91,445.83</b>



**SCHEDULE "B"**

<b>Lessor</b>	<b>VIN</b>	<b>Debt owing</b>	<b>Purchase Price Allocation</b>	<b>Reserve</b>
Ford Credit Canada	1FTEW1EFXFKD51454	11,181.14	2,733.12	2,733.12
Scotiabank	1GKS2HKJ5GR396511	-	13,155.77	13,155.77
Scotiabank	1GCWGFFF4F1241180	-	3,047.61	3,047.61
RBC	1C4RJFBG8JC262477	17,404.89	13,047.57	13,047.57
RBC	2C4RDGBG5JR349967	12,126.31	4,696.23	4,696.23
RBC	2C4RDGBG7JR349968	12,113.46	3,693.20	3,693.20
RBC	2C4RDGBG9JR349969	12,113.46	5,972.01	5,972.01
RBC	2C4RDGBG8HR876962	7,057.40	2,916.30	2,916.30
RBC	3C4NJDBB1LT124729	33,528.17	11,444.74	11,444.74
		<b>105,524.83</b>	<b>60,706.55</b>	<b>60,706.55</b>

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

Applicant

Respondents

Court File No. CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**DISTRIBUTION ORDER**

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7

**Leanne M. Williams (LSO# 41877E)**  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

**Adam Driedger (LSO #77296F)**  
Email: [adriedger@tgf.ca](mailto:adriedger@tgf.ca)  
Tel.: (416) 304-1152

Lawyers for the Receiver

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

THE HONOURABLE MR. ) TUESDAY, THE 18<sup>TH</sup>  
)  
JUSTICE MCEWEN ) DAY OF JANUARY, 2022

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**PARTICIPANT SLIP  
January 18, 2021**

<b>Name</b>	<b>Party</b>	<b>Contact Details</b>
Leanne Williams, Adam Driedger	Counsel for the Receiver	<b>Thornton Grout Finnigan LLP</b> Email: <a href="mailto:lwilliams@tgf.ca">lwilliams@tgf.ca</a> / <a href="mailto:adriedger@tgf.ca">adriedger@tgf.ca</a>
Dominique Michaud	Counsel for the Receiver	<b>Robins Appleby LLP</b> Email: <a href="mailto:dmichaud@robapp.com">dmichaud@robapp.com</a>
Josie Parisi, Matthew Marchand	The Receiver	<b>BDO Canada Limited</b> Email: <a href="mailto:JParisi@bdo.ca">JParisi@bdo.ca</a> ; <a href="mailto:mmarchand@bdo.ca">mmarchand@bdo.ca</a>

Harvey Chaiton	Counsel for the Stalking Horse Purchaser and JLHD	<b>Chaitons LLP</b> Email: <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a>
Ron Aisenberg	Counsel for The Bank of Nova Scotia	<b>KRMC LLP</b> Email: <a href="mailto:RAisenberg@krmc-law.com">RAisenberg@krmc-law.com</a>

### PARTICIPANT EMAIL LIST

lwilliams@tgf.ca; adriedger@tgf.ca; dmichaud@robapp.com; harvey@chaitons.com;  
RAisenberg@krmc-law.com; JParisi@bdo.ca; mmarchand@bdo.ca