



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00737791-00CL

DATE: July 7, 2026

NO. ON LIST: 6

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. JBT TRANSPORT INC et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	Lawyer for the Receiver, BDO Canada Ltd.	thogan@harrisonpensa.com
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ENDORSEMENT OF JUSTICE KIMMEL:

- [1] This is a motion brought by Trade-Mark Industrial Inc., Trade-Crete Ltd., and Comtrade Ltd. (collectively, the "Trade-Mark Group") for an order: lifting the stay of proceedings imposed by the Appointment Order, as it relates to the respondent debtors, Waydom Management Inc., Melair Management Inc. and JBT Transport Inc. (collectively, the "JBT Group") (the "Stay"); and authorizing Trade-Mark Industrial Inc., Trade-Crete Ltd. and Comtrade Ltd. (the "Trade-Mark Group") to continue their Lien bearing Court File No. CV-23-00001474-0000 commenced at Kitchener, Ontario (the "Lien Action") against the JBT Group.
- [2] On consent of the Receiver (BDO Canada Limited), the Trade-Mark Group previously obtained an Order of in September 2025, *inter alia*, lifting the Stay for the limited purpose of permitting the Trade-Mark Group to continue the perfection of its lien by either obtaining an order for the trial of the Lien Action or setting the Lien Action down for trial (the "Limited Lift-Stay Order"). Trade-Mark Group set its Lien Action down for trial, and now wants to proceed to the trial of the Lien Action, which is being defended by The Insurance Company of Price Edward Island ("ICPEI") that issued the Bond No. 30-1085-2023 and posted it with the Court in the Lien Action (the "Bond").
- [3] A trial scheduling court appearance in the Lien Action is presently scheduled for May 29, 2026 at 11 a.m. Other than setting the Lien Action down for trial, which has already occurred, the Trade-Mark Group cannot take any further or other steps in the Lien Action under the Limited Lift-Stay Order. The Trade-Mark Group, the Receiver and ICPEI all agree that the Stay should be lifted so that the Lien Action can be continued and finally disposed of.
- [4] Melair owns the property that is the subject of the Lien Action. The only creditor with security registered against that property, the applicant TD Bank, does not oppose the relief sought by this motion. The other JBT Group members, together with Melair, are signatories on the ICPEI Bond that is standing as security for the Lien Action. The JBT Group has not been actively participating in this receivership since their business has been wound down.
- [5] The Receiver provides the following explanation in its Third Report dated June 26, 2026 and summarized in its Aide Memoire filed in connection with this motion, for why does not oppose this motion, on the basis that any order granted in respect of the herein motion includes the following terms:
- (a) The Receiver shall have no obligations under the Indemnity and Security Agreement dated October 6, 2023 (the "Indemnity Agreement"), with respect to the Bond issued by ICPEI and posted with the Court in the Lien Action;
 - (b) the Receiver shall not be required to participate in or defend the Lien Action against the JBT Group, or to incur any costs in respect of the Indemnity Agreement, the Bond nor the Lien Action, nor be subject to discovery or production of documents, nor shall costs be awarded against the Receiver;
 - (c) ICPEI shall take carriage of the defence and counterclaim in the Lien Action, and shall participate in all steps in the Lien Action including any trial therein, and that the Trade-Mark Group and ICPEI shall advise the Receiver of any settlement agreements or ultimate final Order of Judgment in the Lien Action, and in the event that there be any net funds available to the JBT Group under the JBT Group's Counterclaim in the Lien Action, net of any sums found owing by the JBT Group under the Lien Action and ICPEI's costs in the Lien Action, such sums shall be paid to the Receiver; and,

(d) The Receiver will be released and discharged from any and all liability in relation to the Lien Action, the Indemnity Agreement and the Bond that BDO by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver's part.

[6] It is the Receiver's position that if the court grants an Order with the above-noted terms it will not cause prejudice to any stakeholder of the JBT Group or the Debtors, the Receiver, nor the Trade-Mark Group. Rather, it will allow the Lien Action to proceed outside of this receivership in respect of assets that are not under the control or administration of the Receiver, with the possibility that if there are any net recoveries for the Debtors that arise out of the Lien Action, they will, subject to the express conditions in the Order, be brought back into the receivership for the benefit of the JBT Group's stakeholders, in accordance with their respective priorities and claims.

[7] The circumstances remain largely unchanged from when the court granted the Limited Lift Stay Order, and the justification for that order set out in the court's endorsement of September 17, 2025 (at para. 4) continues to apply to the now expanded request for the Stay to be lifted to allow the Lien Action to proceed to trial, namely that:

[4] The applicant and the Receiver have agreed to the Receiver's proposed form of order. No other stakeholder has raised any objection or concern, after being served with the Receiver's Aide Memoire for today's appearance. The Receiver's Aide Memoire sets out the Receiver's position and the legal and factual basis for its proposed order to be granted, which I accept and adopt. Granting this order is an appropriate exercise of the court's discretion: *see Canwest Global Communications Corp.*, 2010 ONSC 3530, at para. 40 and *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.02.

[8] The court's general discretion and jurisdiction under s. 183 of the BIA can be exercised on similar grounds to grant the requested order on this motion. The court requested that some changes be made to the proposed form of order during the hearing. Those changes have been made in the final form of order submitted after the hearing and signed by me today.



Jessica Kimmel

Date: Jul 07, 2026