

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL, VERSITEC MARINE
HOLDINGS INC., VERSITEC MARINE USA INC., DAVID TAYLOR, REUBEN BYRD and
DAVID CARPENTER

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF
JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

MOTION RECORD OF RECEIVER

(Motion Returnable February 12, 2021)

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3. State of Delaware, Annual Franchise Tax Report;
4. Memorandum of Operations, dated March 31, 2020;
5. Management Consulting Agreement dated April 29, 2020;
6. Mold Inventory Listing, Procim Inc.
7. Letter to Customers, dated March 31, 2020;
8. Canada Revenue Agency online account statement, tax year balances;
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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL, VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC., DAVID TAYLOR, REUBEN BYRD and DAVID CARPENTER

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

NOTICE OF MOTION

MORGAN & PARTNERS INC. ("MPI"), in its capacity as Court-appointed Receiver (the "Receiver"), without security, over the assets and undertakings of 163556 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. (collectively, "Versitec"), will make a motion to a Judge presiding over the Commercial List on Friday, February 12, 2021 at 12 pm, by way of video conference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order:

- (a) abridging the time for service of this notice of motion and of the motion record, and dispensing with further service thereof such that this motion is properly returnable on February 12, 2021;
 - (b) substituting BDO Canada Limited (the "Substitute Receiver") as Receiver of Versitec and amending the Order of Gilmore J. dated March 9, 2020 to reflect the appointment of the Substitute Receiver;
 - (c) discharging MPI from the performance of further duties as Receiver of Versitec;
 - (d) approving the First Report of the Receiver dated February 5, 2021 (the "First Report"), and the limited conduct and activities of the Receiver as outlined therein;
 - (e) on the basis of the Report filed by the proposed Substitute Receiver, BDO, that the Substitute Receiver be authorized to proceed with the sales process set out therein; and
2. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION are as follows:

1. On the Application of the senior secured creditor of Versitec, Liquid Capital Exchange Corp. ("LCX"), on March 9, 2020 the Honourable Gilmore J. granted an Order (the "Appointment Order") appointing MPI as the Receiver of:
 - i) all of the assets, undertakings, and properties of Versitec Marine USA Inc.; and
 - ii) the assets of 1635536 Ontario Inc. o/a Versitec Marine & Industrial, as set out in Schedules "A1" and "A2" of the Appointment Order.
2. LCX operates as an asset-based lender and provides accounts receivable financing and factoring facilities to customers. At the time of the application, Versitec had been in default of its obligations to LCX and a forbearance agreement which had been entered into between Versitec and LCX had been defaulted upon and expired. LCX further expressed concern as to what it believed were serious breaches of the terms of the forbearance agreement and collection of factored accounts receivable by Versitec.

3. Since the date of its appointment,
 - a) the Receiver has with the assistance of management carried on the business of the aforesaid companies, one being an Ontario corporation, and the other, Versitec Marine USA being a corporation incorporated in the State of Delaware, USA.
 - b) the Receiver took steps to stabilize and take control of operations of Versitec. A management reporting and cash management protocol was agreed upon, under which all cash was to be directed to the Receiver's trust account. With the concurrence of management, all receivables for both the Canadian operations and U.S. operations would be paid directly to the Receiver's bank account, which was under the sole control of the Receiver. The Receiver inventoried and secured other assets of Versitec, including molds which were utilized for producing the rubber O-ring seals used for Versitec's business.
 - c) the Receiver reviewed and evaluated staffing and employment requirements for continued operations. The Receiver effected short-term lay-offs and maintained the employment of key operations employees and also the prior CFO, via a management consulting agreement.
 - d) the Receiver evaluated and streamlined relationships with logistics and materials suppliers, in furtherance of optimizing cash-flow for operations. The Receiver further evaluated and took remediation steps concerning the balance sheet for shareholder loans and employee advances, including expenditures and cash disbursements which had been identified as being unauthorized or non-business. The Receiver also took steps to eliminate non-income producing assets, as well as redundant payables.
 - e) the Receiver managed crisis issues and liaised between customers and management in maintaining the orderly flow of finished product to world-wide customers. The Receiver further monitored changing market conditions both internationally and locally, and assisted with market and deployment strategy. The Receiver facilitated the utilization of Canadian Government loan and wage subsidy assistance in respect of COVID-19.
 - f) the Receiver identified, distinguished, and accounted for Canadian receivables which were being deposited to Versitec's U.S. bank account. The Receiver instituted a

Canadian receivership account to control the flow of revenues and receivables through continuous 'sweeping', in order to prevent leakage of funds. The Receiver communicated with customers of Versitec in order to re-direct their receivable payments to the Receiver, and also set up controls in order to reconcile receivables.

g) the Receiver has paid and kept current post-appointment source deduction liabilities and HST obligations to CRA, as and when due from funds received by the Receiver.

h) such other activities as are more particularly set out in the Receiver's First Report.

4. Versitec's general secured creditors are:

a) LCX: owed \$650,380.16 as at October 19, 2020; and

b) BDC: owed \$45,000 as of March 9, 2020.

5. There may be in existence secured creditors which have valid security interests as against Versitec Marine USA Inc., but as no recognition order was obtained by the applicant in the United States, the stay of proceedings afforded by the Appointment Order only extended to Canadian creditors. Nonetheless, at the time of the Receiver's appointment it was apparent that based on time of registration, LCX has a senior ranking security interest in respect of Canadian assets and receivables.

6. At the time of the application, Versitec Canada was indebted to Canada Revenue Agency for unpaid employee source deductions approximating \$225,000.

7. During the past 40 days, cash-flow has decreased significantly due to the COVID-19 pandemic. The Receiver has worked with management to intensify follow-up and receivables collection efforts with world-wide customers, many of which are conserving cash or have delayed payment due to closures and restrictions of ports and dry-docks. The second wave of COVID-19 has also shuttered or temporarily closed many of the firms which Versitec does business with world-wide. In the circumstances, the Receiver has placed all U.S. staff and approximately one half of Canadian staff on short-term leave. From the Receiver's perspective, this situation may or may not be short-term in nature, and timing for resumption of ordinary operations remains uncertain.

8. LCX has requested that the assets and business of Versitec be put into a sales process with a view to generating recoveries for creditors. There has been mutual agreement between MPI, LCX and BDO Canada Inc. ("BDO" or the "Substitute Receiver") that in order to effect an expedited sales process for the property under receivership, that it would be advantageous for MPI to be substituted by BDO. Accordingly, there has been mutual consent to a substitution of MPI by BDO as Court-appointed receiver.

9. The Receiver seeks limited Court approval of its activities from the date of its appointment to date in accordance with the draft orders filed.

10. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The First Report of the Receiver dated February 5, 2021;
2. The Report of the Substitute Receiver, BDO;
3. Such further and other evidence and grounds as counsel may advise and this Honourable Court may permit.

February 9, 2021

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TO: **SERVICE LIST**

LIQUID CAPITAL EXCHANGE CORP. and 1635536 ONTARIO INC. o/a VERSITEC MARINE & INDUSTRIAL et al.
Applicant Respondent

Court File No. CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB B

Court File No. CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
DAVID TAYLOR, REUBEN BYRD and DAVID CARPENTER

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF
JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

**FIRST REPORT OF THE COURT-APPOINTED RECEIVER,
MORGAN & PARTNERS INC.**

February 5, 2021

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Court-Appointed Receiver for
1635536 Ontario Inc. o/a Versitec Marine &
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("Versitec")

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10. Factored Receivables analysis;
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12. Conneaut Creek Settlement Agreement;
13. Carpenter/Swindell Statements of Claim;
14. Receiver’s communications re: Pranab Dhar;

INTRODUCTION

1. This is the First Report to the Court of Morgan & Partners Inc. (“MPI”), the Court-Appointed Receiver (the “Receiver”) over the assets and undertakings of the Respondents, 1635536 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. (collectively, “Versitec”).

2. The purpose of this Report is to summarize and seek approval of limited activities of the Receiver from the date of its appointment through to present, and to provide background in respect of a substitution of the Receiver on consent.

RECEIVERSHIP ORDER

3. On March 9, 2020, an Order appointing MPI as Court-appointed Receiver over Versitec (the “Appointment Order”) was granted by the Honorable Madame Justice Gilmore (**Exhibit 1**).

4. The Application was brought by Versitec’s senior secured creditor, Liquid Capital Exchange Corp (“LCX”), which operates as an asset-based lender and provides, *inter alia*, accounts receivable financing and factoring facilities to customers. At the time of its commencement:

- a) demands and notices of intention to enforce security had been issued and delivered by LCX to Versitec;
- b) Versitec was in default of its obligations to LCX;
- c) Versitec had entered into a Forbearance Agreement with LCX, which agreement had expired without repayment to LCX in full as required;

d) LCX had expressed concern as to what it believed were serious breaches of the terms of the Forbearance Agreement and collection of factored accounts receivable by Versitec, which was in default of its obligations to LCX.

5. The Application was opposed by Versitec, who requested an adjournment of the hearing in order to file responding materials. On March 9, 2020, the Honourable Justice Gilmore granted the Appointment Order. The Endorsement of Gilmore J. indicates that on the evidence filed there was sufficient urgency to warrant the immediate granting of the Appointment Order, but provided that the issuance of the Appointment Order was without prejudice to the Respondents' ability to file responding materials and return to Court on ten days' notice to present argument seeking that the Appointment Order should be vacated.

6. The Respondents did not file any responding materials subsequent to the issuance of the Appointment Order and did not seek to vacate the Appointment Order.

7. The Appointment Order appointed MPI as Receiver, without security, over:

- (i) all of the assets, undertakings, and properties of Versitec Marine USA Inc.; and
- (ii) the assets of 1635536 Ontario Inc. o/a Versitec Marine & Industrial, as set out in Schedule "A1" and "A2" of the Appointment Order.

8. Since the date of its appointment, Receiver has, with the assistance of management carried on the business of both companies, one being an Ontario incorporated company and the other, Versitec Marine USA Inc., being a corporation incorporated in the State of Delaware, USA.

9. On March 9th 2020, MPI filed the required Form 87, Notice of Statement of the Receiver with the Office of the Superintendent in Bankruptcy, as required under sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (the “BIA”). Attached as **Exhibit 2** is a copy of the Receiver’s Notice. Attached as **Exhibit 3** is a State of Delaware Annual Franchise Tax Report filed with the State of Delaware for the calendar year 2019.

STABILIZATION AND CONTROL OF OPERATIONS

10. On March 13, 2020, the Receiver, along with LCX and Florian Meyer, the previous privately-appointed monitor under LCX’s forbearance agreement, met with management at the Port Colborne office to discuss stabilization and control of continuing operations under the Receivership.

11. Between March 13 and March 31, 2020, the management reporting and cash management protocol was agreed upon and a Memorandum of Operations dated March 31, 2020 was executed, a copy of which is attached as **Exhibit 4**.

12. Under the protocol, all cash was to be directed to the Receiver’s trust account, and, with the concurrence of management and the Receiver, receivables for both the Canadian operations and the US operations would be paid directly to the Receiver’s bank account held at Versa Bank, which had been opened and was under the sole control of the Receiver. The majority of these transactions were to be completed via wire transfer following consensus between the Receiver and Reuben Byrd, the current CEO of the

Versitec group of companies, who was retained by the Receiver under a management consulting agreement, a copy of which is attached as **Exhibit 5**.

13. The principal manufacturer of the rubber O-ring seals used for the business of Versitec, is a corporation known as Procim Inc. This company, located in Mississauga, Ontario, is also the repository for more than 50 or 60 molds of various sizes and circumferences, which are owned by Versitec.

14. On March 13, 2020, the Receiver visited Procim Inc.'s office premises in Mississauga, as well as an offsite location for the storage of molds not currently in active use. The Receiver verified the existence and ownership of the molds following review and receipt of a detailed listing from Procim Inc.

15. Most, if not all of the molds were of a size and weight that would require heavy machinery to remove them from the storage sites. The Receiver confirmed that both sites are locked and securitized by electronic means, thereby securing against any unauthorized physical access and removal.

16. A full inventory list of the molds held by Procim Inc. is attached as **Exhibit 6**.

PORT COLBORNE FACILITY/OPERATIONS

17. The Receiver reviewed and evaluated staffing and employment requirements for continued operations. The Receiver effected short-term lay-offs and maintained the employment of key operations employees who had been overseeing the operations of Versitec.

18. The Receiver maintained employment of a key employee who was responsible for all logistics concerning orders and accounts receivable. The receiver maintained a second key employee who was responsible for the purchasing and co-ordination of all required materials and supplies to complete each shipment for distribution to haul-out facilities world-wide, the timing of which is dependent upon the precise scheduling of dry docking of ships for the installation of Versitec's products and related servicing.

19. Throughout the course of the receivership, the Receiver has been in constant communications with these key employees, along with Mr. Byrd, either on a daily or weekly basis as required, in order to facilitate and continue the overall business operations of Versitec. The Receiver also utilized the assistance of Mr. Byrd and these employees in the collection of receivables, and in dealing with any operational issues within the organization. In respect of receivables, the Receiver evaluated aging and non-performing accounts, and devised and implemented a comprehensive collection strategy. The Receiver actively reduced set-offs of older receivables with set-off payables and integrated the review of aged receivables and aged payables for better oversight and to facilitate cash-flow projections. The Receiver further evaluated and streamlined relationships with logistics and materials suppliers, in furtherance of maintaining and optimizing cash-flow for operations.

20. The Receiver further evaluated and took remediation steps concerning the balance sheet for shareholder loans and employee advances. These steps included issuing T-4As for expenditures and cash disbursements which had been identified as either un-

authorized or non-business expenditures or disbursements. The Receiver also took steps to eliminate non-income producing assets, and redundant payables.

21. In respect of operations, the Receiver also managed crisis issues involving logistics providers from time to time, and addressed issues concerning maintenance of other key suppliers. The Receiver further liaised between customers and management in respect of day to day operations strategy and maintenance of an orderly flow of finished product to world-wide customers.

22. During COVID-19, the Receiver monitored and evaluated changing market conditions both internationally and locally and assisted management with market and deployment strategy. The Receiver facilitated the utilization of Canadian Government loan and wage subsidy assistance from inception to close of original programs.

BANKING PROCESS

23. Versitec's banking had primarily been conducted through the TD Canada Trust branch in Port Colborne, Ontario, and a Bank of America branch located in Boca, Florida.

24. At the time of the Receiver's appointment, the majority of expenditures and receipt of receivables of Versitec were being transacted through the Bank of America. The Receiver's initial review of Versitec's banking activity, indicated that there also appeared to have been uncontrolled personal or non-business-related expenses of certain management personnel which were being transacted prior to the Receiver's appointment.

25. The Receiver's review of Versitec's banking activities also indicated that regular monthly loan payments were also being made to two U.S. Merchant cash advancers, both of which were U.S. secured creditors that had funded Versitec's operations during the early part of 2020 when the business was experiencing cash-flow issues. The Receiver also observed monthly loan payments going to Bank of America, which had provided funding to assist the Versitec Group some two years prior to the Receiver's appointment.

26. The Receiver has not obtained opinions in respect of the relative priority of security interests held by creditors of the U.S. entity, as the Receiver is not appointed in the U.S.; however, it appears that based on time of registration, LCX has a senior ranking general security interest. It was also apparent at the time of the Receiver's appointment, that certain Canadian receivables were being deposited to the Versitec U.S. account. The Receiver since determined that management had been seeking at the time to prevent unauthorized withdrawals from the Versitec Canadian account and was therefore depositing to the U.S. account. The Receiver further took steps to distinguish, account for, and reconcile all Canadian and U.S. receivables.

27. The Receiver sought to determine a procedure within which to stabilize, maintain control, and prevent dissipation of funds of Versitec, without disruption of ordinary business activities and transactions and the incoming flow of receivables payments.

28. Accordingly, the Receiver set up an independent Canadian receivership account at Versa Bank for Canadian operations, and a further independent account at BB&T Bank in Florida for U.S. operations, also solely controlled by the Receiver. The flow of revenues and receivables ordinarily flowing to Versitec's Bank of America account would then be

'swept' in a consistent and continual manner in order to control and prevent leakage of funds.

29. The Receiver's bank accounts at Versa Bank in Saskatchewan and BB&T in Boca, Florida, were set up for this purpose. Any transfer of funds from Versa Bank to the BB&T bank account for U.S. operations would only be initiated once there was consensus between Mr. Byrd, as consultant for operations, and the Receiver, as to what funds were required to meet the needs and obligations of both the Canadian and U.S. operations on an ongoing basis.

30. At the outset of the receivership, the principal customers of Versitec, being mainly international overseas customers, were communicated with to re-direct their receivable payments directly to the Receiver's bank account at Versa Bank. A copy of that communication and the list of customers is attached as **Exhibit 7**.

31. The Receiver has on the whole, received re-directed payments and wire transfers from customers continuously during the course of the receivership. Notwithstanding, on a number of occasions certain wire transfer payments continued to be deposited to Versitec's Bank of America account. When this occurred, the Receiver and Mr. Byrd through continual monitoring, re-directed these payments to the Versa Bank account and/or the BB&T bank account accordingly. This process ensured there was no leakage of funds which the Receiver and/or management did not know or were not aware of.

32. An alert mechanism was also set up by the Receiver for the Bank of America account as a further monitoring safe-guard, in order to ensure that no overdrafts or

unauthorized expenditures occurred. The alert mechanism further enabled the Receiver to take corrective, remedial action if required.

33. The Receiver's trust account as referenced was reconciled monthly to the trust bank statement to ensure completeness and accuracy.

CANADA REVENUE AGENCY

34. As prior referenced, LCX made a successful application for the appointment of MPI as Court-appointed Receiver to *inter alia*, take control over the assets and undertaking of Versitec, and to prevent against the dissipation of proceeds, including those which were subject to LCX's security.

35. At the time of the application, a debt was owing by Versitec to Canada Revenue Agency on behalf of Her Majesty in Right of Canada ("CRA") for unpaid employee source deductions. Following its appointment, the Receiver obtained confirmation of the debt owing to CRA in excess of \$225,000, which appears to have been incurred from 2019 to early 2020. A copy of Versitec's on-line CRA account confirming same is attached as **Exhibit 8**.

36. During the course of the receivership, post-appointment source deductions liabilities incurred to CRA were paid by the Receiver as and when due from funds received by the Receiver.

GENERAL SECURED CREDITORS

37. Versitec's general secured creditors are:

a) LCX: owed \$650,380.16 as of October 19, 2020; and

b) BDC: owed \$45,000 as of March 9, 2020.

38. Pursuant to a priorities agreement between LCX and BDC, LCX's security in any equipment owned by Versitec is subordinate to that of BDC, but superior in respect of all other assets.

39. The Receiver has obtained an opinion from its legal counsel as to the validity and enforceability of LCX's security.

40. Early in the receivership, LCX requested that the Receiver release to LCX upon receipt, any Versitec accounts receivable which had been purchased by LCX but remitted to Versitec. Having regard to the Supreme Court of Canada decision in *First Vancouver Finance v. Canada (Minister of National Revenue, M.N.R.)*, [2002] 2 S.C.R. 72, (**Exhibit 9**) and in consultation with legal counsel, the Receiver agreed to release to LCX upon collection those factored accounts receivable which had demonstrably been purchased by LCX and constituted property of LCX rather than that of Versitec. To date the total sum of \$60,000 has been released LCX on this basis. Set out at **Exhibit 10**, is an analysis of factored receivables which the Receiver determined to be appropriate to release to LCX.

41. During the course of the receivership, BDC has not raised any issues in respect of its security to the Receiver.

OTHER SECURED CREDITORS

42. There may be in existence secured creditors which have valid security interests as against Versitec Marine USA Inc., but as no recognition order was obtained by the applicant in the United States, the stay of proceedings afforded by the Appointment Order only extended to Canadian creditors.

OUTSTANDING LITIGATION

43. During the course of the receivership, the Receiver became aware of two outstanding Court proceedings which had been brought against the Versitec Group of companies prior to the date of the Appointment Order. With the assistance of counsel, settlements were reached and Releases were received by the Receiver.

CONNEAUT CREEK SHIP REPAIR, INC.

44. An action claiming payment of outstanding indebtedness for past invoices which had been disputed was issued by Conneaut Creek Ship Repair, Inc., a contracted service provider to Versitec, in the New York District Court in the United States, where the stay of proceedings provided for in the Appointment Order did not apply (**Exhibit 11**).

45. Conneaut was considered an essential service provider pursuant to an ongoing service contract in respect of installation, service and support of Versitec's products in the U.S. A dispute over invoicing and past delivery of services had been ongoing, despite continuing services being provided.

46. Following protracted negotiations, the claim was settled through the Receiver for payment of a total sum of USD\$70,000, in full satisfaction of the claim against Versitec which exceeded USD\$116,000, plus associated costs.

47. The settlement payments were made in accordance with an agreed upon payment schedule between August and October 2020 by the Receiver. Copies of the Settlement agreement and the full and final releases are attached as **Exhibit 12**.

CARPENTER/SWINDELL LITIGATION

48. Two separate proceedings were initiated as a result of allegations of wrongful dismissal by former management employees of Versitec. Both actions were filed against Versitec and its principal, through statements of claim dated May 21, 2019, which predated the Appointment Order, copies of which are attached as **Exhibit 13**.

49. Counsel had been retained jointly on behalf of corporate and non-corporate defendants, and had filed statements of defence, and steps were being taken by the plaintiffs to lift the stay of proceedings against the corporation. Given the legal issues and in the interests of time and cost-efficiency, both of these actions were settled in respect of all defendants by way of Minutes of Settlement at a formal Mediation which occurred on September 22, 2020.

50. The settlements are subject to an agreed-upon payment schedule over a period of 5 months, which remains current. A payment for mediator fees which was to have been made by the co-defendant, David Taylor, remains outstanding from the co-defendant.

PRANAB DHAR

51. An individual named Pranab Dhar had been a commissioned agent through Versitec Marine Inc. On or about August 14, 2020, the Receiver received a communication from Mr. Dhar stating that he was owed funds.

52. Following the Receiver's review and investigation, it was determined that no written or verbal agency agreement was in existence with Mr. Dhar for commissioned services after 2019, and certainly not for 2020.

53. The Receiver communicated its position that since there was no valid contract or arrangement with Versitec at the time of the Receiver's appointment, no payments could be made by the Receiver to Mr. Dhar. As at the date of this Report, no litigation has commenced and no further communications have been received. Attached as **Exhibit 14** are the Receiver's communications concerning this matter.

REVIEW OF AMOUNTS OWED TO LCX

54. Due to a) the necessity to perform a review of accounts receivable in order to determine and identify those factored accounts receivable which could be released to LCX; and b) inquiries made by management and principals of LCX as to independent verification of the amounts owed to LCX, the Receiver has undertaken a thorough review and analysis of the factored accounts receivable and of the amounts outstanding and owed to LCX. The Receiver has reviewed documentation provided by LCX in support of its calculation that Versitec is indebted to LCX, as of October 19, 2020, in the amount of \$650,380.16. On the basis of its review, the Receiver is satisfied with LCX's calculation.

COMPLIANCE WITH CRA OBLIGATIONS

55. During the course of the receivership, all source deductions have been remitted to CRA by the Receiver.

56. Furthermore, all HST filings have been made by Versitec as required. Since most of the accounts receivable are in respect of foreign customers, the refund created has been used by CRA to offset the more current amounts owing for source deductions. Notwithstanding, unpaid pre-Appointment Order source deduction liabilities remain. To date, the CRA has not requested any audit of Versitec's HST or source deductions account.

CURRENT STATUS

57. During the past 40 days, cash flow has decreased significantly due to the COVID-19 pandemic. The Receiver has worked with management to intensify follow up and collection efforts with world-wide customers, many of which are conserving cash or have delayed payment due to closures and restrictions of ports and dry-docks. As a result, the Receiver and management have placed all U.S. staff and approximately half of Canadian staff on short term leave, in order to preserve cash-flow. This situation has been complicated further by the second wave of the COVID-19 pandemic globally, which has shuttered or temporarily closed many of the firms that the company does business with worldwide. From the Receiver's perspective, this situation may or may not be short term in nature, and timing for resumption of ordinary operations remains uncertain.

APPROVAL OF RECEIVERSHIP ACTIVITIES; SUBSTITUTION OF RECEIVER

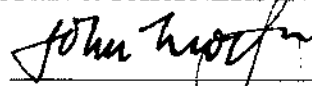
58. The Receiver requests Court approval of its activities as set out in the First Report from the date of its appointment on March 9, 2020 to date, except in relation to any payments made in relation to the litigation settlements described herein, or the litigation settlements themselves, for the reason that LCX has requested time to consider and evaluate its position on such.

59. There has been mutual agreement between MPI, LCX, and BDO Canada Inc. ("BDO"), that in order to effect an expedited sales process for the property under receivership, that it would be advantageous for MPI to be substituted by BDO. Accordingly, there has been mutual agreement that there be a substitution of MPI by BDO as Court-appointed Receiver.

ALL OF WHICH IS RESPECTFULLY REPORTED

Date: February 5 , 2021

MORGAN & PARTNERS INC.

Per: 

Name John H.R Morgan
Title: President


I/We have the authority to bind the corporation

EXHIBIT 1

Court File No.: CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 9TH
JUSTICE)
C.A. Gilmore) DAY OF MARCH, 2020

BETWEEN)
) LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
DAVID TAYLOR, REUBEN BYRD and DAVID CARPENTER

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

**ORDER
(Appointing Receiver)**

THIS MOTION made by the Applicant, Liquid Capital Exchange Corp. for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Morgan & Partners Inc. as receiver (in such capacities, the "Receiver") without security, over certain of the assets, undertakings and properties of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial shall hereinafter be referred

to as the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jonathan Brindley sworn March 4, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and on reading the consent of Morgan & Partners Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Morgan & Partners Inc. is hereby appointed Receiver, without security, of:

- (a) all of the assets, undertakings and properties of Versitec Marine USA Inc.;
and
- (b) the assets of 1635536 Ontario Inc. o/a Versitec Marine & Industrial set out at Schedule "A1" and "A2" hereto

acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (all collectively, the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- 3 -

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;

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- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

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- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver 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 the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) 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 advise the

- 6 -

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver 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 Debtors, 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 Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver 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 Receiver due to the privilege attaching to solicitor-client communication 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 Receiver for the purpose of allowing the Receiver 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. 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.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. 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

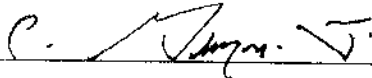
- 13 -

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.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

MAR 09 2020

PER / PAR: 

SCHEDULE "A1"**ASSETS**

- (i) All of Versitec Canada's present and future accounts receivable and inventory including, but not limited to, those particular accounts receivable corresponding to invoices issued by Versitec Canada and/or Versitec USA as set out at Schedule "A2";
- (ii) All contract rights, instruments, documents, chattel paper and general intangibles related to any of the foregoing, including all of Versitec Canada's rights as a seller of goods;
- (iii) All collateral held by Versitec Canada securing any of the foregoing;
- (iv) All cash and non cash proceeds of any of the foregoing, in whatever form, including without limitation any balances maintained in any reserve account with LCX and any returned or repossessed goods;
- (v) All books and records relating to the foregoing.

Versitec USA
 AR Summary - Mar In US \$
 AC# 4820U

DebtorName		Balance	Current	1-30	31-60	61-90	91-Up
ANGLO EASTERN SHIP MANAGEMENT LTD. (HONG KI		22,555.00	--	--	--	--	22,555.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amou	Balance		Invoice Days		Over Due Day
U19048	7/7/2019 8/28/2019 10022	5,095.00	5,095.00		242		212
U19051	7/28/2019 8/28/2019 10022	8,400.00	8,400.00		221		191
U19053	7/25/2019 8/28/2019 10022	9,060.00	9,060.00		224		194
Wallem Ship Management Ltd.		53,059.67	--	--	--	--	53,059.67
Invoice#	Invoice Da Funded Da Batch#	Invoice Amou	Balance		Invoice Days		Over Due Day
U19027	7/25/2019 8/28/2019 10022	23,079.94	23,079.94		224		194
U19042	5/28/2019 8/28/2019 10020	4,940.38	4,940.38		251		221
U19044	7/26/2019 8/28/2019 10022	15,106.35	15,106.35		223		193
U19045	6/2/2019 8/22/2019 10021	3,938.00	3,938.00		277		247
U19049	7/19/2019 8/28/2019 10022	5,995.00	5,995.00		230		200
Grand Total AR Ac 4820U		75,614.67	0	0	0	0	75,614.67

Versitec Canada
 AR Summary - Mar 4, 2020 In US \$
 AC# 4821

DebtorName		Balance	Current	1-30	31-60	61-90	91-Up
CRUISE MANAGEMENT INTERNATIONAL, INC.		13,945.00	--	--	--	--	13,945.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days			Over Due Days
	219078 4/10/2019 5/3/2019 10024	13,945.00	13,945.00	330			300
GREAT LAKES DREDGE & DOCK, LLC		48,921.79	--	--	--	--	48,921.79
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days			Over Due Days
	219213 8/26/2019 9/27/2019 10031	48,921.79	48,921.79	192			162
METEOR MANAGEMENT BULGARIA LTD		6,320.00	--	--	--	--	6,320.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days			Over Due Days
	219073 5/21/2019 6/28/2019 10028	6,320.00	6,320.00	289			259
Wallem Ship Management Ltd.		25,887.00	--	--	--	--	25,887.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days			Over Due Days
	219127 8/2/2019 8/28/2019 10029	19,532.00	19,532.00	216			186
	219214 9/16/2019 9/27/2019 10031	6,355.00	6,355.00	171			141
Grand Total AR Ac 4822		95,073.79	0	0	0	0	95,073.79

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Morgan & Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of March, 2020 (the "Order") made in an action having Court file number CV-20-00637427-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2020.

MORGAN & PARTNERS INC., solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

LIQUID CAPITAL EXCHANGE CORP.

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE &
INDUSTRIAL et al.

Applicant

Respondents

Court File No.: CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Appointing Receiver)**

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F-4C (May 1, 2016)

Court File Number: CV-20-00637427-00CL

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Liquid Capital Exchange Corp.

Applicant

AND

**1635536 Ontario Inc. o/a Versitec Marine & Industrial Versitec Marine Holdings
Inc., Versitec Marine USA Inc., David Taylor, Reuben Kary Byrd and David
Carpenter**

Respondents

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
Stewart Thom for the Applicants	416/777-5197	
F. Parameswaban	905/523-1333	

- 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): _____

Endorsement on Contested Adjournment Application

Heard: March 9, 2020

Judge: C. Gilmore, J.

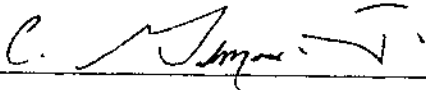
Overview and Positions of the Parties

1. The Respondents (other than David Carpenter who is no longer employed at Versitec and did not appear and was not represented by counsel) seek a two-week adjournment. They were served with the applicant's materials for appointment of Morgan & Partners Inc. as Receiver on March 5, 2020. The principal of Versitec is on vacation in Mexico and time is needed to adequately respond to the relief sought, which is opposed.
2. The respondent's arguments on this application may be summarized as follows:
 - a. The materials are voluminous and served on March 5, 2020. Counsel was only retained on March 6, 2020.
 - b. The Respondents intend to argue that that Versitec is not in default and that in fact the Applicant has improperly collected certain accounts receivable to which it was not entitled. Accounts receivable that are required to be submitted to the Applicant have been submitted as recently as March 2, 2020.
 - c. The amounts outstanding are modest being as low as \$286,000 USD and as high as \$400,000 USD. The amounts outstanding remain in dispute.
 - d. The principal of Versitec is on vacation and instructions must be obtained from him.
 - e. If the adjournment is not granted, a Receivership is too intrusive. An order directing the Respondents to inform their accounts receivable clients whose accounts are captured by the forbearance agreement or factoring agreement to direct payments to the Applicant should be sufficient in the interim.
3. The Applicant's arguments in favour of the granting a Receivership Order today are as follows:
 - a. There will be minimal effect of appointing a Receiver over Versitec USA while a recognition order is pending.
 - b. The Receivership Order in Canada will only cover intangibles such as accounts receivable and inventory. BDC has the first ranking security over equipment.
 - c. If the Respondents continue to re-direct receivables as the Applicant alleges, the accounts receivable will disappear, and the Applicant will have no security upon which to enforce.
 - d. Other lenders have issued Notices of Intention to Enforce Security. The situation is urgent as the Respondents' breaches continue.
 - e. Account debtors are located around the world and are experiencing confusion as to whether to pay the Applicant or Versitec as per conflicting directions.
 - f. The Respondents are in breach of the Forbearance Agreement dated April 25, 2019 which requires them to obtain refinancing by December 31, 2019. They have not obtained refinancing while admitting that there is at least \$286,000 USD outstanding.
 - g. The Forbearance Agreement provides a consent from the Respondents to the appointment of a Receiver upon the expiry of the Forbearance Period or an event of default. Both have occurred. As well, pursuant to the terms of the Forbearance Agreement, the Respondents are estopped from refusing to consent to the appointment of a Receiver following an event of default.

Ruling

4. I find that there is some urgency with respect to the possible disappearance of the Applicant's collateral and that given the strict terms of the Forbearance Agreement, the Applicant's order shall issue.
5. The Respondent's position, however, should not be completely discounted given their inability to respond and the short service of the materials. As such, the Order Appointing the Receiver shall be made without prejudice to the Respondents' ability to return to court on ten days-notice to argue why the Receivership Order should be vacated.

Judge's Signature:



March 9, 2020

EXHIBIT 2

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 87 -

Notice of Statement of the Receiver
 (Subsections 245(1) and 246(1) of the Act)

IN THE MATTER OF THE RECEIVERSHIP OF
 1635536 ONTARIO INC o/a VERSITEC MARINE & INDUSTRIAL, VERSITEC MARINE HOLDINGS INC,
 VERSITEC MARINE USA INC, DAVID TAYLOR, REUBEN KARY BYRD and DAVID CARPENTER
 OF THE TOWN OF PORT COLBORNE, IN THE COUNTY OF WELLAND, IN THE PROVINCE OF ONTARIO
 The receiver gives notice and declares that:

1. On the 9th day of March 2020, we, Morgan & Partners Inc, became the receiver in respect of the property of 1635536 ONTARIO INC o/a VERSITEC MARINE & INDUSTRIAL, that is described below:

Business Assets	Book Debts - Accounts Receivable	500000.00
-----------------	----------------------------------	-----------

2. We became a receiver by having taken possession or control of the property described above (or by virtue of being appointed by Liquid Capital Exchange Corp), pursuant to

3. The undersigned took possession or control of the property described above on the 9th day of March 2020.

4. The following information relates to the receivership:

(a) Address: 4 Stonebridge Drive, Unit 4, Port Colborne, ON, L3K 5V5

(b) Principal line of business: equipment manufacturer and service supplier to the marine stern tube seal market

(c) Location(s) of business:

(d) Amount owed to each creditor who holds a security on the property described above:

Liquid Capital Corp	\$500000.00
---------------------	-------------

(e) The list of other creditors and the amount owed to each creditor and the total amount due is as follows:

(f) The intended plan of action of the receiver during the receivership, to the extent that such a plan has been determined, is as follows: Collect accounts receivable per the Court Order

(g) Contact person for receiver:

, Tel: (705) 739-7003, Fax: (705) 739-7119.

Dated at the City of Barrie in the Province of Ontario, this 9th day of March 2020.

Morgan & Partners Inc - Licensed Insolvency Trustee



4 Cedar Pointe Drive, Unit J2

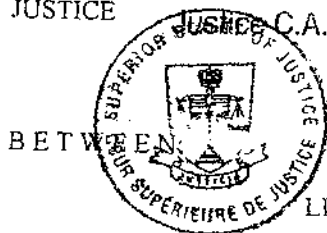
Barrie ON L4N 5R7

Phone: (705) 739-7003 Fax: (705) 739-7119

Court File No.: CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE)
C.A. Gilmore)
MONDAY, THE 9TH
DAY OF MARCH, 2020



LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
DAVID TAYLOR, REUBEN BYRD and DAVID CARPENTER

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

ORDER
(Appointing Receiver)

THIS MOTION made by the Applicant, Liquid Capital Exchange Corp. for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Morgan & Partners Inc. as receiver (in such capacities, the "Receiver") without security, over certain of the assets, undertakings and properties of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial shall hereinafter be referred

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to as the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jonathan Brindley sworn March 4, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and on reading the consent of Morgan & Partners Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Morgan & Partners Inc. is hereby appointed Receiver, without security, of:

- (a) all of the assets, undertakings and properties of Versitec Marine USA Inc.;
and
- (b) the assets of 1635536 Ontario Inc. o/a Versitec Marine & Industrial set out at Schedule "A1" and "A2" hereto

acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (all collectively, the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;

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- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

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- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver 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 the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) 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 advise the

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Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver 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 Debtors, 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 Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver 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 Receiver due to the privilege attaching to solicitor-client communication 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 Receiver for the purpose of allowing the Receiver 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. 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.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. 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

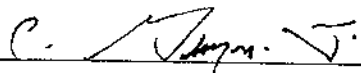
- 13 -

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.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

MAR 09 2020

PER / PAR: AS

SCHEDULE "A1"**ASSETS**

- (i) All of Versitec Canada's present and future accounts receivable and inventory including, but not limited to, those particular accounts receivable corresponding to invoices issued by Versitec Canada and/or Versitec USA as set out at Schedule "A2";
- (ii) All contract rights, instruments, documents, chattel paper and general intangibles related to any of the foregoing, including all of Versitec Canada's rights as a seller of goods;
- (iii) All collateral held by Versitec Canada securing any of the foregoing;
- (iv) All cash and non cash proceeds of any of the foregoing, in whatever form, including without limitation any balances maintained in any reserve account with LCX and any returned or repossessed goods;
- (v) All books and records relating to the foregoing.

Versitec USA
AR Summary - Mar In US \$
AC# 4820U

DebtorName	Balance	Current	1-30	31-60	61-90	91-Up
ANGLO EASTERN SHIP MANAGEMENT LTD. (HONG KI	22,555.00	--	--	--	--	22,555.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amou	Balance	Invoice Days	Over Due Days	
U19048	7/7/2019 8/28/2019 10022	5,095.00	5,095.00	242	212	
U19051	7/28/2019 8/28/2019 10022	8,400.00	8,400.00	221	191	
U19053	7/25/2019 8/28/2019 10022	9,060.00	9,060.00	224	194	
Wallem Ship Management Ltd.		53,059.67	--	--	--	53,059.67
Invoice#	Invoice Da Funded Da Batch#	Invoice Amou	Balance	Invoice Days	Over Due Days	
U19027	7/25/2019 8/28/2019 10022	23,079.94	23,079.94	224	194	
U19042	5/28/2019 8/8/2019 10020	4,940.38	4,940.38	251	221	
U19044	7/26/2019 8/28/2019 10022	15,106.35	15,106.35	223	193	
U19045	6/2/2019 8/22/2019 10021	3,938.00	3,938.00	277	247	
U19049	7/19/2019 8/28/2019 10022	5,995.00	5,995.00	230	200	
Grand Total AR	Ac 4820U	75,614.67	0	0	0	75,614.67

Versitec Canada
AR Summary - Mar 4, 2020 In US \$
AC# 4821

DebtorName	Balance	Current	1-30	31-60	61-90	91-Up
CRUISE MANAGEMENT INTERNATIONAL, INC.	13,945.00	--	--	--	--	13,945.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days	Over Due Days	
	219078 4/10/2019 5/3/2019 10024	13,945.00	13,945.00	330	300	
GREAT LAKES DREDGE & DOCK, LLC		48,921.79	--	--	--	48,921.79
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days	Over Due Days	
	219213 8/26/2019 9/27/2019 10031	48,921.79	48,921.79	192	162	
METEOR MANAGEMENT BULGARIA LTD		6,320.00	--	--	--	6,320.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days	Over Due Days	
	219073 5/21/2019 6/28/2019 10028	6,320.00	6,320.00	289	259	
Wallem Ship Management Ltd.		25,887.00	--	--	--	25,887.00
Invoice#	Invoice Da Funded Da Batch#	Invoice Amount	Balance	Invoice Days	Over Due Days	
	219127 8/2/2019 8/28/2019 10029	19,532.00	19,532.00	216	186	
	219214 9/16/2019 9/27/2019 10031	6,355.00	6,355.00	171	141	
Grand Total AR	Ac 4822	95,073.79	0	0	0	95,073.79

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Morgan & Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of March, 2020 (the "Order") made in an action having Court file number CV-20-00637427-00CL. has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2020.

MORGAN & PARTNERS INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE &
INDUSTRIAL et al.
Respondents

Court File No.: CV-20-00637427-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-E-4C (May 1, 2016)

EXHIBIT 3

State of Delaware Annual Franchise Tax Report

CORPORATION NAME VERSITEC MARINE USA INC.			TAX YR. 2019
FILE NUMBER 4927964	INCORPORATION DATE 2011/01/18	RENEWAL/REEDUCATION DATE	
PRINCIPAL PLACE OF BUSINESS 900 N FEDERAL HWY SUITE 100 BOCA RATON , FL 33432		PHONE NUMBER (561) 756-8044	
REGISTERED AGENT UNITED CORPORATE SERVICES, INC. 874 WALKER RD STE C DOVER DE 19904			AGENT NUMBER 9001653
BEGIN DATE 2011/01/18	AUTHORIZED STOCK END DATE	DESIGNATION/ STOCK CLASS COMMON	NO. OF SHARES 3,000 PAR VALUE/ SHARE .0000000000
OFFICER REUBEN K BYRD	NAME	STREET/CITY/STATE/ZIP 19480 SATURNIA LAKES DR BOCA RATON, FL 33498	TITLE CEO
DIRECTORS REUBEN K BYRD	NAME	STREET/CITY/STATE/ZIP 19480 SATURNIA LAKES DR BOCA RATON, FL 33498	
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p> <p>AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR) REUBEN K BYRD</p> <p>DATE 2020/02/20</p> <p>TITLE CEO</p> <p>19480 SATURNIA LAKES DR BOCA RATON, FL 33498 US</p>			

EXHIBIT 4

Memorandum of Operations

VERISTEC Group of companies

Sales & Receivables

Key individuals in charge

John Morgan, Lance Lockett and Reuben Byrd

Operational review

1. For product that is being prepared and not shipped the reports will capture this information in summary cross referencing it by Customer, by Purchase Order, by Product requirement
2. This amount is considered to be future sales but not fulfilled at the time of the report
3. For the sales that have been fulfilled but not shipped because the location for the drydock has not been finalized this change from 2 will be tracked and monitored to obtain an idea of future sales but also to understand committed and spent costs of production
4. The Accounts Receivable list will be updated weekly by having the receipted funds by customer received by MPI by Wednesday of every week to enable an up to date A/R report circulated for discussion and review by the key individuals assigned to this task listed above. Jane Morgan will be able to provide that list from the Trust accounting system on a total and specific customer basis to ensure proper allocation between the two companies. This cash receipt weekly summary will also be provided to Brian Gunning to allow timely update into the Versitec accounting system.
5. On Friday morning commencing Friday April 2, 2020 Lance and John will discuss these reports in 1, 2 and 3 above to determine any action to be done and also to discuss any discussions as to receipt of payment expectation from the customer that Lance has contacted during the week. Suggest that these comments be a part of the Accounts Receivable report
6. To the extent possible, Reuben will keep John and Lance updated as to current marketing and sales efforts in order that this information can be summarized and integrated into monthly reporting package to all and to the secured creditor. This will be distributed by John Morgan at the end of every month/four-week period
7. If at any time emergency telephone conference calls are necessary then Lance, John and Reuben will schedule as needed with a view to making the necessary action list to be followed up.

Cash Receipts

- Initially a letter on Versitec letter head will be sent by Reuben to all current and prospective customers to inform them of the wire transfer process.
- This letter will be drafted on March 31, 2020 for distribution to all of the customers of both companies
- Jane Morgan will provide the wire transfer instructions for the Versa bank account to be monitored and reviewed daily by both Jane and John.

- If there is a critical issue in this process that needs to be addressed, we will all assist in taking and making the necessary changes with Versa Bank and the Versitec customer with the assistance of Lance and Reuben

Disbursements, Expenses and Payables

Key individuals in charge

John Morgan, Jane Morgan Brian Gunning and Reuben Byrd

Operational Review

Trade Suppliers

- Final approval will be made by John Morgan in discussion and consultation with Reuben
- For all invoices that have been the subject of a purchase order before approval is obtained all bills of lading, purchase orders (individual or blanket) and proof of receipt must be forwarded by Brian Gunning or Reuben to Jane Morgan for review and comment
- This should be done at least five working days before payment is required in order for the necessary wire transfer is arranged to pay the invoices.
- At the very least Reuben or Brian's' initial should be attached to the invoice indicating it is a proper business expense.
- By having this information five business days before hand it will enable Morgan & Partners to arrange the transfer out of the Versa bank account and set up the necessary wire transfer back to Versitec. Weekly Jane Morgan will provide a summary of the wire transfers and the supporting documentation to Brian Gunning for inclusions in Versitec's accounting system.
- All wire transfers will be documented by both the wire transfer amount by day by month accompanied by the approved invoices as well as the individual invoices will be kept in supplier folders to ensure the ease of cross reference if required in the future. This will be done by MPI.
- It is understood that in the event there is not enough funds to accomplish the payments in total then the amount transferred will be adjusted accordingly.

Payroll

- There are two payrolls that must be paid on a timely basis.
- For the Canadian payroll Brian Gunning will prepare a summary by employee noting their gross pay and showing their applicable statutory deductions for each pay period and send this information to Jane Morgan at least three business days before it is to be paid.
- Jane Morgan will prepare the required amount to be transferred via wire transfer to Versitec for payment to the individual employees.
- Brian Gunning will provide to Jane Morgan on the 10th of every month the payroll source deductions including employee and employer source deductions with the appropriate CRA payment stub information. Jane Morgan will ensure that this payment will be paid out of the trust account by the 15th of every month.

- For the US payroll a summary of time and jobs will be submitted along with the request for payment 5 days before the payment is due,
- Employee US taxes will be the responsibility of the respective employee to be paid to the IRS. Confirmation that this payment has been paid will be required at the time it is required to be paid to the IRS.

Excise Tax Act Quarterly Remittances

- Brian Gunning will provide to Jane Morgan the quarterly HST remittance form showing it was filed with the CRA and if required the payment being requested to be paid in the timely manner set out above.

Financial Statement

- On a monthly basis not later than one week after month end Brian Gunning will provide to John Morgan a set of monthly financial statements on a YTD basis and monthly basis the financial results of both Versitec companies.

EXHIBIT 5

MORGAN & PARTNERS INC.

TRUSTEE IN BANKRUPTCY

INSOLVENCY & RESTRUCTURING

April 29, 2020

Reuben Kary Byrd
19480 Saturina Lakes Drive
Boca Raton, Florida 33498

Dear Mr. Byrd:

Re: Court Appointed Receivership of Versitec Marine USA and 1635536 Ontario Inc. o/a Versitec Marine & Industrial

Morgan & Partners Inc. (the "Receiver") has been appointed by the Ontario Superior Court of Justice pursuant to the Order of Justice C.A. Gilmore dated March 9, 2020 (the "Receivership Order"), as Court Appointed Receiver of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (the "Debtors").

The Receiver hereby engages Reuben Kary Byrd as a consultant (the "Consultant"), on a limited term engagement, in order to assist in the operation of the business of the Debtors at the direction of and on behalf of the Receiver.

The remuneration paid to the Consultant shall be a consultancy fee in the amount of USD\$13,000 per month, inclusive of HST, payable in bi-monthly instalments, which may be subject to amendment at the sole discretion of the Receiver. The Consultant shall submit a monthly invoice to the Receiver in respect of this arrangement. The Consultant shall be paid up to and including the date of termination of this engagement, and no compensation shall be payable for any period after the date of termination. The Consultant shall also be reimbursed from time to time for reasonable and necessary expenses incurred by the Consultant in connection with performing his services. All expenses shall be pre-approved by the Receiver.

The consultant will also be paid a monthly variable compensation bonus based on the following criteria:

1. For receivables collected during any monthly period in excess of \$100,000 (CDN, Euro or USD basis), an additional USD\$2000.
2. For receivables collected between \$100,001 to \$200,000 in any given month, an additional USD\$3 000.
3. For receivables collected over \$200,000 in any given month, an additional USD\$4,000.

The range and the compensation will be determined at the end of each monthly period. The variable compensation criteria above are not cumulative.

This engagement creates an independent contractor relationship, not an employment relationship. The Consultant acknowledges and agrees that the Receiver will not provide the Consultant with any employee benefits, including without limitation any social security, unemployment, medical, or pension payments. The Contractor shall be responsible for deducting any and all applicable federal and provincial taxes, deductions, premiums, and amounts owing

4 Cedar Pointe Drive, Unit J, Barrie, ON L4N 5R7
Tel: 705-739-7003 Fax: 705-739-7119

PKS

with respect to the compensation received pursuant to this agreement and remitting such amounts to those governmental authorities as prescribed by law. This engagement does not authorize the Consultant to act for the Receiver as its agent or to make commitments on behalf of the Receiver.

It is acknowledged and agreed that the Consultant shall not do or cause to be done, any of the following, without the specific prior written approval of the Receiver:

1. Issue any purchase order or otherwise commit the Receiver to purchase goods and services other than in the normal course of operations.
2. Issue or promise to issue any credits to customer accounts.
3. Make or promise to make any refunds of any kind.
4. Send out any communication to any party or parties for any purpose other than in the normal and ordinary course of running the business of the Debtors.
5. Employ or offer employment to any employees or agents, whether on a full, part-time, commission or piece-work basis.
6. Terminate any staff or agents of the business.
7. Pay out any cash other than strictly in the ordinary course of business, and without prior approval by the Receiver.
8. Remove or permit to be removed from the premises any books, records or vouchers of the business.
9. Remove or permit diversion of any accounts receivable of the business of the Debtors, or pay any monies to any party outside of the ordinary course of business, without the express approval of the Receiver.
10. Remove or permit to be removed from the premises any assets of the Debtors, whether owned or leased, other than in the normal course of business.
11. Issue any statements to the media, either directly or indirectly, orally or in writing.

It is acknowledged and agreed that the Consultant shall do the following:

1. Bring to the attention of the Receiver any matter or matters which would affect the Debtors and/or the Receiver in the course of its operations and duties.
2. Report and remit any and all necessary taxes to the proper authorities as and when due, and at the time required.
3. Ensure that current payroll is met and paid as and when due as approved by the Receiver. Ensure that all individuals employed are properly licensed as necessary to run the operations of the business.
4. Maintain a separate bank account for the operations of the business of the Debtors and reconcile it monthly.

(Handwritten initials: PVS)

5. Ensure that all assets of the Debtors are properly and sufficiently insured, and to notify the Receiver forthwith if at any time there is any lapsed or insufficient insurance coverage.
6. Ensure that any and all key suppliers are paid, with the prior approval of the Receiver or its designated agent(s).
7. To advise the Receiver and/or its designated agent(s) forthwith of any litigation commenced against the Debtors.
8. Provide the Receiver written confirmation that all liabilities and accounting records have been maintained on a monthly basis, or otherwise when requested by the Receiver.
9. To otherwise provide assistance and co-operation with the Receiver in the discharge of the Receiver's mandate under the Receivership Order.

This agreement may be terminated by the Receiver without cause and without liability by delivery of written notice to the Consultant. This agreement may be terminated by either party at any time by the one party delivering written notice of such termination to the other, which notice shall be effective as of the date and hour of its delivery; either personally or at the address above. For greater certainty, the within engagement is for a limited term of uncertain duration only for as long as is necessary to assist the Receiver in the discharge of its obligations under the Receivership Order.

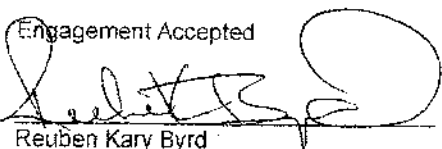
Date at Barrie, Ontario this 29th day of April, 2020.

MORGAN & PARTNERS INC., solely in its capacity as Court Appointed Receiver of Versitec Marine USA Inc. and 1835536 Ontario Inc. o/a Versitec Marine & Industrial (the "Debtors")

Per:



 John Morgan, CA, CA.CIRP, CFE, CBM
 President

Engagement Accepted


 Reuben Kary Byrd

Morgan & Partners Inc.
 4 Cedar Pointe Drive, Unit J, Barrie, ON L4N 5R7
 Tel: 705-739-7003 Fax: 705-739-7119



EXHIBIT 6

DATE 2/5/2019

TOTAL MOLD LISTING (COMPLETED AND NON COMPLETED MOLDS)

CX	SC1	SC2	IHC	MK1	MK2	NOTES	VGA
CX-125	SC1-125	SC2-125	IHC-155	MK1-155	MK2-125		VGA-300
CX-140	SC1-155	SC2-140	IHC-170	MK1-170	MK2-135	VG-135	VGA-330
CX-160	SC1-170	SC2-160	IHC-190	MK1-190	MK2-145		
CX-180	SC1-190		IHC-200	MK1-200	MK2-155		
CX-200	SC1-200	SC2-200	IHC-220	MK1-220	MK2-170	VG-170	
CX-220	SC1-220	SC2-220	IHC-240	MK1-240	MK2-190	VG-190	
CX-240	SC1-240	SC2-240	IHC-260	MK1-260	MK2-200	Based on 220 geo.	
CX-260	SC1-260	SC2-260	IHC-280	MK1-280	MK2-220	Installed on USNS vessel	
CX-280	SC1-280	SC2-280	IHC-300	MK1-300	MK2-240	VG-240	
CX-300	SC1-300	SC2-300	IHC-330	MK1-330	MK2-260	VG-260	
CX-330	SC1-330 1.015%	SC2-330	IHC-355	MK1-355	MK2-280	VG-280	
CX-355	SC1-355 1.025%	SC2-355	IHC-380	MK1-380	MK2-300	VG-300	
CX-380	SC1-380	SC2-380	IHC-400	MK1-400	MK2-330	VG-330	
CX-400	SC1-400	SC2-400	IHC-420	MK1-420	MK2-355	VG-355	
CX-420	SC1-420		IHC-450	MK1-450	MK2-380	VG-380	
CX-450	SC1-450	SC2-450	IHC-480	MK1-480	MK2-400	VG-400	
CX-480	SC1-480	SC2-480	IHC-500	MK1-500	MK2-420	MODIFY MOLD	
CX-500	SC1-500	SC2-500	IHC-530	MK1-530	MK2-450	VG-450	
CX-530	SC1-530	SC2-530	IHC-560	MK1-560	MK2-480	VG-480	
CX-560-2	SC1-560	SC2-560	IHC-600	MK1-600	MK2-500	VG-500	
CX-600	SC1-600	SC2-600	IHC-630	MK1-630	MK2-530	VG-530	
CX-630	SC1-630	SC2-630	IHC-670	MK1-670	MK2-560	VG-560	
CX-670	SC1-670	SC2-670	IHC-710	MK1-710	MK2-600	VG-600	
CX-710	SC1-710	SC2-710	IHC-750	MK1-750	MK2-630	VG-630	
CX-750	SC1-750	SC2-750	IHC-800	MK1-800	MK2-670	MODIFY MOLD	
CX-800	SC1-800	SC2-800	IHC-850	MK1-850	MK2-710	VG-710	
CX-850	SC1-850	SC2-850		MK1-900	MK2-750	VG-750	
CX-900	SC1-900	SC2-900			MK2-850		
CX-950	SC1-950	SC2-950					
CX-1000	SC1-1000	SC2-975			MK2-950		
CX-1060	SC1-1060	SC2-1000			MK2-1000		
CX-1060	SC1-1120	SC2-1060			MK2-1060		
CX-1120	SC1-1180	SC2-1120			MK2-1120		
CX-1180	SC1-1250	SC2-1180			MK2-1180		
		SC2-1250			MK2-1250		

MOLDS NOT MADE YET.		TOTALS	
13	15	13	11
20	19	22	25
			81
			110

NOTE:

YELLOW BLOCKED CELL INDICATES MOLD MUST BE MODIFIED. GEOMETRY SENT TO PAULO.

VGA STIPULATION INDICATES WE HAVE ARE OWN HOUSING.

CX-560-2 IS PREFERRED MOLD.(SAPPHIRE SEAS)

Garzprom Oval mold
 Garzprom Green mold
 Garzprom Chevron mold

EXHIBIT 7



Versitec Marine

3/31/2020

To: Our Valued customers

We live in very challenging times but collectively with each other's co-operation we will all get through the world wide challenges we now are all facing together. With this in mind I am making a request that you direct any future payments from services provided by the company to our new banking institution, namely Versa Bank. For your convenience the applicable wire transfer instructions are enclosed with this communication. We request that you direct this information to the responsible individual or department with in your organization that has wire transfer/payment responsibilities. This request supersedes any prior request that you may have received from us or any other organization and we wish to thank –you in advance for your co-operation in this matter.

If you have any further questions in regards to the contents of this letter please feel free to contact me directly.

Yours sincerely

Reuben Byrd

new banking info relayed to the following:

invoice generator has new banking instructions on all new orders

to agents responsible to relay to the corresponding customer

agent	customer
Pranab	Anglo Eastern Ship Management Wallen Shipmanagement Limited
Promar	AAT Shipinvest As ADMIRAL CORPORATION FRI Karmsund As Fri Langesund AS Green Management SP. Z O.O Hogli AS
Xenofon	Eastern Mediterranean Maritime Empire Bulkers Ltd Maran Dry Navarone S.A. Thenamaris Ships Management Inc. Transmed Shipping Company Ltd.
Wilson	Golden Lotos Oil Gas & Real Estate JSC Tan Cang Shipping JSC. Tanbinh Co. Ltd.
MMI	Finbeta spa Meteor Management Bulgaria Ltd. Thome Ship Management

EXHIBIT 8



Government
of Canada

Gouvernement
du Canada

Canada Revenue Agency

[Logout](#)

View and pay account balance

Payroll deduction account:

854061173RP0001

Business name:

1635536 ONTARIO INC.

To make a payment, go to [Make a payment](#).

The following account information is not a complete statement of account.

Tax year balances

Select link to view detail

Tax year	(\$) Amount paid	(\$) Amount unpaid	(\$) T4 return amount	(\$) Balance adjustment	(\$) Balance
2020	\$0.00	\$12,337.18 Cr	\$0.00	\$0.00	\$12,337.18 Cr
2019	\$66,120.45 Cr	\$147,353.38 Cr	\$0.00	\$0.00	\$213,473.83 Cr
2018	\$247,272.08 Cr	\$0.00	\$247,272.08 Dr	\$0.00	\$0.00
2017	\$186,849.81 Cr	\$0.00	\$186,849.81 Dr	\$0.00	\$0.00
2016	\$107,236.62 Cr	\$0.00	\$107,236.63 Dr	\$0.01 Cr	\$0.00
2015	\$106,614.14 Cr	\$0.00	\$106,614.14 Dr	\$0.00	\$0.00
2014	\$76,484.76 Cr	\$0.00	\$76,484.76 Dr	\$0.00	\$0.00
2013	\$79,261.90 Cr	\$0.00	\$78,817.65 Dr	\$444.25 Dr	\$0.00

Arrears account balances

Current total amount owing: \$195,996.58

Select link to view detail

Tax year	(\$) Amount owing	(\$) Uncharged interest	(\$) Law cost
2020	\$14,854.85 Dr	\$83.03 Dr	\$0.00
2019	\$180,052.41 Dr	\$1,006.29 Dr	
2018	\$0.00	\$0.00	
2017	\$0.00	\$0.00	
2016	\$0.00	\$0.00	
2015	\$0.00	\$0.00	
2014	\$0.00	\$0.00	
2013	\$0.00	\$0.00	
Total	\$194,907.26 Dr	\$1,089.32 Dr	\$0.00

Need assistance or want to make a payment?

If you need assistance, [request a call back](#).

For payment options, see [Make a payment](#).

Note: Electronic payments will be applied to your account in approximately 48 hours. It may take longer to process payments mailed or made at financial institutions.

Screen ID: B-RP-AB-01

Date modified:

2019-10-21

EXHIBIT 9

▲ First Vancouver Finance v. Canada (Minister of National Revenue - M.N.R.), [2002] 2 S.C.R. 720

Supreme Court Reports

Supreme Court of Canada

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and LeBel JJ.

Hearing and judgment: March 12, 2002.

Reasons delivered: May 23, 2002.

File No.: 28062.

[2002] 2 S.C.R. 720 | [2002] 2 R.C.S. 720 | [2002] S.C.J. No. 25 | [2002] A.C.S. no 25 | 2002 SCC 49

Her Majesty The Queen in Right of Canada, as represented by the Minister of National Revenue, appellant; v. First Vancouver Finance, respondent, and Great West Transport Ltd., respondent.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN (47 paras.)

Case Summary

Income tax — Administration and enforcement — Collection — Source deductions — Trust for moneys deducted — Employer failing to remit payroll deductions — Accounts receivable sold to third party — Whether property acquired by tax debtor after statutory deemed trust arises subject to trust — If so, whether sale of trust property to third party releases property from trust — Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), s. 227(4), (4.1).

The respondent, First Vancouver Finance, entered into a factoring agreement with Great West Transport whereby it would purchase Great West's accounts receivable at a discount. After purchase, the Great West invoices were forwarded to Great West's debtors, along with notification that the accounts had been sold and that subsequent payments should be made directly to First Vancouver. Among the accounts purchased were several owing by Canada Safeway Limited. As of the date of the factoring agreement, Great West owed money to the Minister of National Revenue because of unremitted payroll deductions. First [page721] Vancouver had made arrangements with the Minister to forward part of the purchase price of the accounts to be applied to Great West's arrears. The Minister served Canada Safeway with Enhanced Requirement to Pay Notices ("RTPs") as authorized by the Income Tax Act ("ITA"). In response, Canada Safeway made payments to the Minister relating to accounts which Great West had assigned to First Vancouver. First Vancouver brought an application to recover the amounts paid by Canada Safeway to the Minister pursuant to the RTPs. The Court of Queen's Bench granted the application in part, holding that First Vancouver was entitled to the moneys owing on accounts factored before the RTPs were issued. The Court of Appeal upheld that decision.

Held: The appeal should be dismissed.

The ITA requires employers to deduct and withhold amounts from their employees' wages ("source deductions") and remit these amounts to the Receiver General by a specified due date. Under s. 227(4), when source deductions are made, they are deemed to be held separate and apart from the property of the employer in trust for Her Majesty. If the source deductions are not remitted to the Receiver General by the due date, the deemed trust in s. 227(4.1) becomes operative and attaches to property of the employer to the extent of the amount of the

First Vancouver Finance v. Canada (Minister of National Revenue - M.N.R.), [2002] 2 S.C.R. 720

unremitted source deductions. The trust is deemed to have existed from the moment the source deductions were made. The s. 227(4.1) deemed trust is similar in principle to a floating charge over all the tax debtor's assets in favour of Her Majesty. As long as the tax debtor continues to be in default, the trust continues to float over the tax debtor's property. At any given point in time, whatever property then belonging to the tax debtor is subject to the deemed trust. As property comes into possession of the tax debtor, it is caught by the trust and becomes subject to Her Majesty's interest. Similarly, property which the tax debtor disposes of is thereby released from the deemed trust. The mutuality of treatment between incoming and outgoing property relating to the deemed trust is supported by both the plain language of the provisions as well as their purpose and intent. Her Majesty's interest in the tax debtor's property is protected because, while property which is sold to third party purchasers is released from the trust, at the same time, the proceeds of disposition of the alienated property are captured by the trust. Commercial certainty is promoted owing to the fact that third party purchasers are free to transact with tax [page722] debtors or suspected tax debtors without fearing that Her Majesty may subsequently assert an interest in the property so acquired.

Since the deemed trust created by ss. 227(4) and 227(4.1) encompasses property which comes into the hands of the tax debtor after the trust arises, when Great West came into possession of the Canada Safeway invoices, the deemed trust, which had already arisen as a consequence of Great West's default in remittances, successfully attached to those invoices. However, the deemed trust does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers. Once the Canada Safeway invoices had been factored to First Vancouver, the Minister was prevented from asserting its interest in these invoices.

Cases Cited

Approved: *Royal Bank v. Tuxedo Transport Ltd.* (2000), 79 B.C.L.R. (3d) 1, rev'g (1999), 6 C.B.R. (4th) 285; referred to: *Alberta (Treasury Branches) v. M.N.R.*, [1996] 1 S.C.R. 963; *Pembina on the Red Development Corp. v. Triman Industries Ltd.* (1991), 85 D.L.R. (4th) 29; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

Statutes and Regulations Cited

Excise Tax Act, R.S.C. 1985, c. E-15, s. 317(3) [am. 1993, c. 27, s. 133].
 Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 153(1), 224, 224(1.2), 227(4) [repl. 1998, c. 19, s. 226(1)], (4.1) [en. idem].

APPEAL from a judgment of the Saskatchewan Court of Appeal (2000), 199 Sask. R. 9, [2000] 8 W.W.R. 386, [2000] 3 C.T.C. 93, [2001] G.S.T.C. 55, [2000] S.J. No. 330 (QL), 2000 SKCA 58, affirming a decision of the Court of Queen's Bench (1999), 190 Sask. R. 286, [2000] 1 W.W.R. 713, [2000] 1 C.T.C. 99, [2001] G.S.T.C. 54, [1999] S.J. No. 738 (QL), 1999 SKQB 166. Appeal dismissed.

Edward R. Sojonky, Q.C., and Mark Kindrachuk, for the appellant. Joel A. Hesje and David M. A. Stack, for the respondent First Vancouver Finance.

Solicitor for the appellant: The Attorney General of Canada, Ottawa. Solicitors for the respondent First Vancouver Finance: McKercher McKercher & Whitmore, Saskatoon.

The judgment of the Court was delivered by

IACOBUCCI J.

Introduction

1 This appeal concerns the interpretation of the deemed trust provisions in ss. 227(4) and 227(4.1) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) ("ITA"). At the hearing of this appeal, the Court dismissed the appeal with reasons to follow. The dispute is over certain property which came into the hands of the tax debtor after a deemed trust under s. 227(4.1) arose. The property was subsequently sold to a third party, after which time the Minister of National Revenue ("Minister") asserted an interest in the property on the basis that it continued to be subject to the deemed trust even after its sale.

2 As a result, the two specific issues to be resolved on this appeal are, first, whether property which comes into the tax debtor's hands after the deemed trust arises is subject to the trust, and, second, if so, whether the sale of trust property to third parties serves to release this property from the ambit of the trust.

3 Section 153(1) of the ITA requires employers to deduct and withhold amounts from their employees' wages ("source deductions") and remit these amounts to the Receiver General by a specified due date. By virtue of s. 227(4), when source deductions are made, they are deemed to be held separate and apart from the property of the employer in trust for Her Majesty. If the source deductions are not remitted to the Receiver General by the due date, the deemed trust in s. 227(4.1) of the ITA becomes operative and attaches to property of the employer to the extent of the amount of the unremitted source deductions. As well, the trust is deemed to have existed from the moment the source deductions were made.

4 For the reasons set forth below, I find that the s. 227(4.1) deemed trust is similar in principle to [page724] a floating charge over all the tax debtor's assets in favour of Her Majesty. The trust arises the moment the tax debtor fails to remit source deductions by the specified due date, but is deemed to have been in existence from the moment the deductions were made. As long as the tax debtor continues to be in default, the trust continues to float over the tax debtor's property. Thus, at any given point in time, whatever property then belonging to the tax debtor is subject to the deemed trust.

5 Viewed in this way, it is clear that, as property comes into possession of the tax debtor, it is caught by the trust and becomes subject to Her Majesty's interest. Similarly, property which the tax debtor disposes of is thereby released from the deemed trust. This mutuality of treatment between incoming and outgoing property relating to the deemed trust is supported by both the plain language of the provisions as well as their purpose and intent. Most importantly, Her Majesty's interest in the tax debtor's property is protected because, while property which is sold to third party purchasers is released from the trust, at the same time, the proceeds of disposition of the alienated property are captured by the trust. Moreover, commercial certainty is promoted owing to the fact that third party purchasers are free to transact with tax debtors or suspected tax debtors without fearing that Her Majesty may subsequently assert an interest in the property so acquired.

6 Accordingly, I would dismiss the appeal on the basis that, although the property acquired by the tax debtor after the deemed trust arose became subject to the trust, when this property was sold to a third party, it was thereby released from the ambit of the deemed trust. As such, after the sale, Her Majesty could no longer assert an interest

in the property.

II. Facts

7 The respondent, First Vancouver Finance ("First Vancouver"), is engaged in the business of factoring accounts receivable. Great West Transport Ltd. ("Great West") is in the transportation business. On November 6, 1997, First Vancouver and Great West entered into a factoring agreement providing [page725] for the purchase by First Vancouver of Great West's accounts receivable at a discount. Pursuant to the agreement, First Vancouver became the owner of certain debts due to Great West.

8 Under the terms of the factoring agreement, First Vancouver purchased accounts through assignments entered into from time to time at Great West's option. First Vancouver did not purchase an individual account until it was submitted for approval, and it was not bound to purchase it up to that point. After purchase, the Great West invoices were forwarded to Great West's debtors, along with notification that the accounts had been sold and that subsequent payments should be made directly to First Vancouver. Among the accounts purchased were several owing by Canada Safeway Limited or its associated undertakings ("Canada Safeway").

9 As of the date of the factoring agreement, Great West owed money to the Minister because of unremitted payroll deductions and goods and services tax ("GST"). First Vancouver was aware from the time it began dealing with Great West in November of 1997 that Great West was in arrears in respect of its payroll deductions and GST accounts. First Vancouver had, as of November 10, 1997, made arrangements with the Minister to forward part of the purchase price of the accounts, in the form of semi-monthly payments of \$10,000, to the Minister which were to be applied to the arrears of Great West then outstanding. In addition, Great West remained directly responsible to the Minister for its ongoing payroll deductions and GST remittances as they became due. While First Vancouver regularly made payments pursuant to its arrangement with the Minister, Great West failed to meet its ongoing tax obligations.

10 In January and February of 1999, Great West made 10 individual assignments to First Vancouver, relating to accounts receivable payable by Canada Safeway and its associated undertakings. On February 10, 1999, the Minister served Canada Safeway with Enhanced Requirement to Pay Notices ("RTPs"), as authorized by s. 224(1.2) of the ITA and s. 317(3) of the Excise Tax Act, R.S.C. [page726] 1985, c. E-15, as amended. In response, Canada Safeway made payments totalling \$187,444.66 to the Minister relating to accounts which Great West had assigned to First Vancouver between January 4 and February 17, 1999. Two of the sets of Canada Safeway accounts, totalling \$31,086.43, were assigned to First Vancouver on February 11 and February 17, 1999, after the RTPs had been issued. However, the remainder of the accounts had already been assigned to First Vancouver before February 10, 1999 when the RTPs were issued. At no time prior to the payments from Canada Safeway to the Minister did First Vancouver receive any notice that the Minister was claiming an interest in any Great West accounts purchased by First Vancouver.

11 In response to the Minister's actions, First Vancouver brought an application in the Saskatchewan Court of Queen's Bench to recover the amounts paid by Canada Safeway to the Minister pursuant to the RTPs.

12 Wimmer J. of the Court of Queen's Bench held that the monies owing on accounts factored prior to February 10, 1999, the date upon which Canada Safeway was served with the RTPs, were not subject to garnishment or to the deemed trust provisions of the ITA, or to any claim pursuant to the Excise Tax Act, and therefore that First Vancouver was entitled to these amounts. However, he held that the RTPs had captured the two accounts assigned after the RTPs were issued ("post-RTP accounts").

13 On appeal, the Saskatchewan Court of Appeal dismissed the appeal of the Minister and the cross-appeal of First Vancouver on the issue of the post-RTP accounts.

III. Relevant Statutory Provisions

14 Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

227...

(4) [Trust for moneys deducted] Every person who deducts or withholds an amount under this Act is deemed, [page727] notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

(4.1) [Extension of trust] Notwithstanding any other provision of this Act, the Bankruptcy and Insolvency Act (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

- (a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and
- (b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

IV. Judgments Below

A. Saskatchewan Court of Queen's Bench, [2000] 1 W.W.R. 713

15 On the preliminary issue of the ownership of the factored accounts, Wimmer J. relied upon the definition of a factoring agreement from *Alberta (Treasury Branches) v. M.N.R.*, [1996] 1 S.C.R. 963, at paras. 30-31. In that case, Cory J. stated at para. 31 that, "A factoring of accounts receivable is based upon an absolute assignment of them. It is in effect a sale by [page728] a company of its accounts receivable at a discounted value to the factoring company for immediate consideration."

16 Wimmer J. observed that, according to *Alberta (Treasury Branches)*, an absolute and unconditional assignment of book debts is beyond the reach of the Minister under garnishment provisions. He held further that the assignments from Great West to First Vancouver were absolute and unconditional because, upon completion of the assignments, Great West had no residual rights in the property and could not redeem or recover the accounts and, in that circumstance, Canada Safeway had no liability to Great West after there was a completed transfer of accounts. Although the Minister argued that the assignments were not absolute because under the factoring agreement First Vancouver had recourse to Great West if a customer disputed or failed to pay an account, Wimmer J. noted that the definition of factoring approved by Cory J. contemplated that a factor may acquire an absolute interest in book debts with or without recourse (p. 718).

17 As a result, monies owing on accounts factored prior to February 10, 1999, the date upon which Canada

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Safeway was served with the RTPs, were not subject to garnishment under s. 224 of the ITA or s. 317 of the Excise Tax Act. However, the two accounts factored after February 10 were effectively intercepted by the RTPs.

18 With respect to the deemed trust under s. 227(4.1) of the ITA, Wimmer J. applied the reasoning of Burnyeat J. of the British Columbia Supreme Court in *Royal Bank v. Tuxedo Transport Ltd.* (1999), 6 C.B.R. (4th) 285. Since the Canada Safeway invoices came into existence after the Great West payroll deduction delinquencies arose and were assessed, the invoices were "after-acquired property" not subject to a s. 227(4.1) deemed trust in favour of Her Majesty. Wimmer J. acknowledged that Tuxedo Transport was under appeal. However, he stated that, since the judgment came from a court of comparable jurisdiction, and as he was not [page729] satisfied it was wrong, he was prepared to follow that decision.

19 As a result, Wimmer J. held that amounts owing on accounts factored prior to February 10, 1999, the date upon which the Minister served Canada Safeway with the RTPs, were not subject to garnishment or to a deemed trust pursuant to ss. 224 and 227 of the ITA, or to any claim pursuant to s. 317 of the Excise Tax Act. Consequently, a declaration was made confirming First Vancouver's entitlement to the funds already paid by Canada Safeway to the Minister, with the exception of the funds covered by the two Canada Safeway accounts factored after February 10, 1999, along with costs.

B. Saskatchewan Court of Appeal, [2000] 8 W.W.R. 386

20 In a very brief oral decision, the Saskatchewan Court of Appeal dismissed the Minister's appeal, and First Vancouver's cross-appeal, both with costs, finding that the trial judge had not erred in the interpretation of the relevant statutory provisions or in the application of those provisions to the facts of the case.

Issues

[para21 A. Is property acquired by an employer after a default in remitting payroll deductions ("after-acquired property") subject to the deemed trust in s. 227(4.1) of the ITA?

B. Does the deemed trust under s. 227(4.1) continue to attach to property which has been sold by the tax debtor to a third party purchaser for value?

VI. Analysis

A. General Scheme and Background of the Section 227(4.1) Deemed Trust

22 The collection of source deductions has been recognized as "at the heart" of income tax collection [page730] in Canada: see *Pembina on the Red Development Corp. v. Triman Industries Ltd.* (1991), 85 D.L.R. (4th) 29 (Man. C.A.), at p. 51, per Lyon J.A. (dissenting), quoted with approval by Gonthier J. (dissenting on another issue) in *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, at para. 36. Because of the importance of collecting source deductions, the legislation in question gives the Minister the vehicle of the deemed trust to recover employee tax deductions which employers fail to remit to the Minister.

23 It has also been noted that, in contrast to a tax debtor's bank which is familiar with the tax debtor's business and finances, the Minister does not have the same level of knowledge of the tax debtor or its creditors, and cannot structure its affairs with the tax debtor accordingly. Thus, as an "involuntary creditor", the Minister must rely on its ability to collect source deductions under the ITA: *Pembina on the Red Development*, supra, at pp. 33-34, per Scott C.J.M., approved by Cory J. in *Alberta (Treasury Branches)*, supra, at paras. 16-18. For the above reasons, under the terms of the ITA, the Minister has been given special priority over other creditors to collect unremitted taxes.

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24 This Court had occasion to interpret the deemed trust provisions in *Sparrow Electric*, supra. At that time, the relevant provisions were ss. 227(4) and 227(5) of the ITA which read as follows:

227....

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty.

(5) Notwithstanding any provision of the Bankruptcy Act, in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to any amount

[page731]

(a) deemed by subsection (4) to be held in trust for Her Majesty ...

shall be deemed to be separate from and form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate.

25 In *Sparrow Electric*, both Royal Bank and the Minister claimed an interest in the proceeds of inventory of the tax debtor. In characterizing the nature of the deemed trust provisions, Gonthier J. (dissenting, but not on this issue) stated at para. 34 that, even if collateral was subject to a fixed charge at the time of a triggering event such as bankruptcy or liquidation, the deemed trust operated to attach the Minister's interest to such collateral as long as it was not subject to the fixed charge at the time the source deductions were made:

Thus, s. 227(5) [now s. 227(4.1)] alternatively permits Her Majesty's interest to attach retroactively to the disputed collateral if the competing security interest has attached after the deductions giving rise to Her Majesty's claim in fact occurred. Conceptually, the s. 227(5) deemed trust allows Her Majesty's claim to go back in time and attach its outstanding s. 227(4) interest to the collateral before that collateral became subject to a fixed charge. [Emphasis in original.]

Royal Bank's interest was characterized as a fixed and specific charge over the inventory of the tax debtor. This had the effect of making the bank the legal owner of inventory as it came into possession of the tax debtor, subject to the debtor's equitable right of redemption. The majority of the Court concluded that, since the inventory was subject to the bank's security interest before the deductions giving rise to the deemed trust occurred, the bank's interest attached to the inventory in priority to Her Majesty's interest under the deemed trust.

26 However, in reaching this conclusion, the majority of the Court noted at para. 112 that Parliament [page732] was free to grant absolute priority to the deemed trust by adopting the appropriate language:

Finally, I wish to emphasize that it is open to Parliament to step in and assign absolute priority to the deemed trust. A clear illustration of how this might be done is afforded by s. 224(1.2) ITA, which vests certain moneys in the Crown "notwithstanding any security interest in those moneys" and provides that they "shall be paid to the Receiver General in priority to any such security interest". All that is needed to effect the desired result is clear language of that kind.

27 In response to *Sparrow Electric*, the deemed trust provisions were amended in 1998 (retroactively to 1994) to their current form. Most notably, the words "notwithstanding any security interest ... in the amount so deducted or withheld" were added to s. 227(4). As well, s. 227(4.1) (formerly s. 227(5)) expanded the scope of the deemed trust to include "property held by any secured creditor ... that but for a security interest ... would be property of the

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person". Section 227(4.1) was also amended to remove reference to the triggering events of liquidation, bankruptcy, etc., instead deeming property of the tax debtor and of secured creditors to be held in trust "at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act". Finally, s. 227(4.1) now explicitly deems the trust to operate "from the time the amount was deducted or withheld".

28 It is apparent from these changes that the intent of Parliament when drafting ss. 227(4) and 227(4.1) was to grant priority to the deemed trust in respect of property that is also subject to a security interest regardless of when the security interest arose in relation to the time the source deductions were made or when the deemed trust takes effect. This is clear from the use of the words "notwithstanding any security interest" in both ss. 227(4) and 227(4.1). In other words, Parliament has reacted to the [page733] interpretation of the deemed trust provisions in Sparrow Electric, and has amended the provisions to grant priority to the deemed trust in situations where the Minister and secured creditors of a tax debtor both claim an interest in the tax debtor's property.

29 As noted above, Parliament has also amended the deemed trust provisions in regard to the timing of the trust. Reference to events triggering operation of the deemed trust such as liquidation or bankruptcy have been removed. Section 227(4.1) now states that the deemed trust begins to operate "at any time [source deductions are] ... not paid to Her Majesty in the manner and at the time provided under this Act" (emphasis added). Thus, the deemed trust is now triggered at the moment a default in remitting source deductions occurs. Further, pursuant to s. 227(4.1)(a), the trust is deemed to be in effect "from the time the amount was deducted or withheld". Thus, while a default in remitting source deductions triggers the operation of the trust, the trust is deemed to have been in existence retroactively to the time the source deductions were made. It is evident from these changes that Parliament has made a concerted effort to broaden and strengthen the deemed trust in order to facilitate the collection efforts of the Minister.

30 In light of this overview of the context and operation of the s. 227(4.1) deemed trust, it remains to be determined, first, whether the trust captures property that the tax debtor acquires after the trust is deemed to come into existence, and, second, whether the sale by the tax debtor of trust property effectively releases such property from the purview of the deemed trust.

B. Does the Deemed Trust Attach to After-Acquired Property of the Tax Debtor?

31 As noted above, in coming to the conclusion that the deemed trust did not attach to after-acquired property of the tax debtor, the courts below relied on the B.C. Supreme Court decision in Tuxedo Transport, supra. That decision has since been overturned by the B.C. Court of Appeal: Royal Bank v. [page734] Tuxedo Transport Ltd. (2000), 79 B.C.L.R. (3d) 1. In that case, Donald J.A., speaking for the court, characterized the trust as follows, at para. 11:

Subsection 227(4) makes the trust operative at the time of the deductions. Subsection 227(4.1) acts to ensure that if deductions are still unpaid when assets come into the hands of the taxpayer, those assets will be deemed to be part of the trust. Beginning with the date the deductions are made the trust continues forward in time and attaches to any property of the debtor as it comes into existence.

The Court of Appeal based this conclusion on the plain meaning of the language used in the statute, and was bolstered by its view that, to hold otherwise, would lead to "unacceptable results" (at para. 15), such as the following:

Take the example of a company that makes a payroll deduction one day and receives a large payment the next. The company could carry on business using the unremitted deductions for its operating expenses and the deemed trust could not attach to the monies received shortly after the payday.

32 I am in essential agreement with the view taken by the B.C. Court of Appeal in Tuxedo Transport. In my view,

First Vancouver Finance v. Canada (Minister of National Revenue - M.N.R.), [2002] 2 S.C.R. 720

the plain language of the provisions leads to the inevitable conclusion that the deemed trust attaches to after-acquired property. Most notably, s. 227(4.1) refers expressly to the "proceeds" of property which is subject to the trust and directs that "the proceeds of such property shall be paid to the Receiver General in priority to all ... security interests [in the property]". In addition, the section states that where, at any time, the debtor is in default to the Minister, that "property of the person ... equal in value to the amount so deemed to be held in trust is deemed" to be held in trust for Her Majesty (emphasis added). This language implies that Parliament has contemplated a fluidity with respect to the assets of the debtor to which the trust attaches. In particular, reference to the "proceeds" of trust property is an explicit indication that property acquired through the disposition of trust property by the tax debtor after [page735] the trust arises is included within the ambit of the trust.

33 I find additional support for this view in the fact that s. 227(4.1) deems the trust to be in effect "at any time [source deductions are] not paid to Her Majesty in the manner and at the time provided under this Act" (emphasis added). Further, in the event of default, the trust extends back "from the time the amount was deducted or withheld by the person". These words indicate that the intent of the section is to allow the trust to operate in a continuous manner, attaching to any property which comes into the hands of the debtor as long as the debtor continues to be in default, and extending back in time to the moment of the initial deduction. The language Parliament has chosen belies the suggestion that the deemed trust only captures property of the tax debtor in existence at some particular moment in time.

34 I find no contradiction in coming to the conclusion that after-acquired property can be subject to the trust even though the trust reaches back in time to a point before the acquisition of the property by the tax debtor. This is because the property so acquired will presumably have been taken in exchange for property of equal value which the debtor has disposed of. Thus, the acquired property can simply be viewed as replacing the initial subject matter of the trust. Moreover, since the trust is a deemed statutory trust, it is not governed by common law requirements, and, in this regard, the ongoing acquisition of trust property does not present a conceptual difficulty. I emphasize that it is open to Parliament to characterize the trust in whatever way it chooses; it is not bound by restraints imposed by ordinary principles of trust law.

35 In addition to being supported by the clear wording of the provisions, this view accords with the purpose of the s. 227(4.1) deemed trust. In this respect, I agree with the B.C. Court of Appeal that Parliament could not have intended an employer who is in default one day and comes into a significant payment the next to thereby largely escape the operation of the deemed trust and continue to use the misappropriated funds in its business dealings. [page736] This would not accord with the Parliamentary intention to grant broad powers of collection to the Minister under the deemed trust.

36 As well, if the deemed trust were limited to property held by the employer at the time of the default, the Minister would have difficulty establishing that any particular part of the employer's property was subject to the deemed trust, and would be forced to engage in a significant degree of tracing. However, as noted by Gonthier J. in *Sparrow Electric*, at para. 37, one of the purposes of the deemed trust is to eliminate the need for tracing:

After considering the matter, it is my view that it is not accurate to describe the mechanism of s. 227(5) as a means of "tracing"; indeed, it would seem that this subsection is antithetical to tracing in the traditional sense, to the extent that it requires no link at all between the subject matter of the trust and the fund or asset which the subject matter is being traced into... [Emphasis added.]

37 This observation holds true despite the subsequent amendments to the deemed trust provisions. As with the previous enactment of the section, s. 227(4.1) refers to property "equal in value to the amount so deemed to be held in trust" (emphasis added), and states that this property is subject to the trust "whether or not the property has in fact been kept separate and apart". Indeed, if anything, by deeming the trust to be effective "at any time" the debtor is in default, the amendments serve to strengthen the conclusion that the Minister is not required to trace its interest to assets which belonged to the tax debtor at the time the source deductions were made. In this regard, the remarks of Gonthier J. in *Sparrow Electric*, at para. 31, are apposite:

First Vancouver Finance v. Canada (Minister of National Revenue - M.N.R.), [2002] 2 S.C.R. 720

The trust is not in truth a real one, as the subject matter of the trust cannot be identified from the date of creation of the trust... . However, s. 227(5) [now s. 227(4.1)] has the effect of revitalizing the trust whose subject matter has lost all identity. This identification of the subject matter of the trust therefore occurs ex post facto. In this respect, [page737] I agree with the conclusion of Twaddle J.A. in Roynat, supra, where he states the effect of s. 227(5) as follows, at p. 647: "Her Majesty has a statutory right of access to whatever assets the employer then has, out of which to realize the original trust debt due to Her". [Emphasis added.]

The reasoning adopted by the courts below would require substantial tracing, as the deemed trust would be restricted to include only property held by the tax debtor on the date the source deductions were made. With respect, this is not in accord with the language or purpose of the deemed trust.

38 In conclusion, based on the plain language of ss. 227(4) and 227(4.1) as supported by the purpose of the provisions and intentions of Parliament, the deemed trust created by these sections encompasses property which comes into the hands of the tax debtor after the trust arises. As a result, when Great West came into possession of the Canada Safeway invoices, the deemed trust, which had already arisen as a consequence of Great West's default in remittances, successfully attached to those invoices.

C. Does the Deemed Trust Continue to Operate on Property Which Has Been Sold by the Tax Debtor to Third Parties?

39 As a preliminary matter, I note that the Minister does not take issue with the chambers judge's holding, following Alberta (Treasury Branches), supra, that First Vancouver is not a secured creditor of Great West, but a third party purchaser of book debts. Thus, the question of the priority of secured creditors does not arise. The issue here is whether the alienation by Great West of the Canada Safeway invoices, which were subject to the deemed trust under ss. 227(4) and 227(4.1), served to release that property from the scope of the trust.

40 In my view, the scheme envisioned by Parliament in enacting ss. 227(4) and 227(4.1) is that the deemed trust is in principle similar to a floating charge over all the assets of the tax debtor in the amount of the default. As noted above, the trust [page738] has priority from the time the source deductions are made, and remains in existence as long as the default continues. However, the trust does not attach specifically to any particular assets of the tax debtor so as to prevent their sale. As such, the debtor is free to alienate its property in the ordinary course, in which case the trust property is replaced by the proceeds of sale of such property.

41 This interpretation finds support in both the words used in ss. 227(4) and 227 (4.1) and the purpose of the deemed trust. In my opinion, s. 227(4.1) explicitly restricts the trust to property owned by the tax debtor by stating that the property of the tax debtor held in trust for Her Majesty "is property beneficially owned by Her Majesty ... and the proceeds of such property shall be paid to the Receiver General" (emphasis added). This reference to the proceeds of trust property is an acknowledgment in the very words of the ITA that Parliament contemplated that a tax debtor is free to alienate its property and that, when it does so, the trust releases the disposed-of property and attaches to the proceeds of sale. In addition, as discussed above, the trust does not attach to any specific property. Instead, by s. 227(4.1), the trust attaches to "property of the [tax debtor] ... equal in value to the amount [of the tax debt]". This language indicates, first, that the subject matter of the trust is focussed solely on the tax debtor's property, and, second, that it is anticipated that the character of the tax debtor's property will change over time.

42 Indeed, it is the logical corollary to my conclusion on the first issue, namely that the deemed trust attaches to after-acquired property of the tax debtor, that the trust also releases property alienated by the tax debtor. In this way, when an asset is sold by the tax debtor, the deemed trust ceases to operate over that asset; however, the property received by the tax debtor in exchange becomes subject to the deemed trust. As such, the trust is neither depleted nor enhanced; it simply floats over the property belonging to the tax debtor at any given time, for as long as the default in remittances continues.

[page739]

43 Although it would be open to Parliament to extend the trust to property alienated by the tax debtor, such an interpretation is simply not supported by the language of the ITA. It is significant in this regard that purchasers for value are not included in ss. 227(4) and 227(4.1) whereas secured creditors are. In *Pembina on the Red Development*, supra, Twaddle J.A. took note of the "long-established principle of law that, in the absence of clear language to the contrary, a tax on one person cannot be collected out of property belonging to another" (p. 46). In *Sparrow Electric*, supra, at para. 39, Gonthier J. also referred to this principle, stating that:

[T]his provision does not permit Her Majesty to attach Her beneficial interest to property which, at the time of liquidation, assignment, receivership or bankruptcy, in law belongs to a party other than the tax debtor. Section 227(4) and (5) are manifestly directed towards the property of the tax debtor, and it would be contrary to well-established authority to stretch the interpretation of s. 227(5) [now s. 227(4.1)] to permit the expropriation of the property of third parties who are not specifically mentioned in the statute. [Emphasis added.]

Thus, in the absence of an express reference to third party purchasers, there is no basis upon which to allow the Minister's interest in the tax debtor's property to continue once such property has been sold to third parties.

44 Although it is not necessary to resort to policy arguments, in my view it is worthwhile noting that to allow s. 227(4.1) to override the rights of purchasers for value would result in an unprecedented level of uncertainty. In fact, in oral argument, counsel for the Minister conceded that such an interpretation would, in theory, allow the Minister to go so far as to assert an interest in assets sold by tax debtors to ordinary consumers. In my view, it is no exaggeration to say that adopting this interpretation of the deemed trust would have a general chilling effect on commercial transactions.

45 Furthermore, to allow the deemed trust to attach to property sold to third parties would be more likely to hinder, rather than help, the Minister's collection [page740] efforts. For example, in the case at bar, if First Vancouver had thought that it could not purchase Great West's assets free and clear of Her Majesty's claim, it would have been unlikely to have entered into the factoring agreement with Great West. As a result, Her Majesty would not have received the semi-monthly payments of \$10,000 from First Vancouver. More generally, the interpretation advocated by the Minister would likely frustrate the ability of a tax debtor to convert hard assets into cash in order to pay "the proceeds of such property ... to the Receiver General" as contemplated by s. 227(4.1), because prospective purchasers would fear that the Minister would assert an interest in these assets. The practical effect of this would be to freeze the tax debtor's assets and prevent it from carrying on business. In my view, this is clearly not a result intended by Parliament.

46 In summary, the deemed trust does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers. As such, once the Canada Safeway invoices had been factored to First Vancouver, the Minister was prevented from asserting its interest in these invoices.

VII. Conclusion

47 For the foregoing reasons, I would dismiss the appeal with costs.

EXHIBIT 10

1635336 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL
 VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.
 Factored Receivables

Versitec Canada
 A/C 4822 March 4, 2020 in CDN \$

<u>Customer Name</u>	<u>Inv #</u>	<u>Invoice Date</u>	<u>Fund Date</u>	<u>Amount</u>	<u>CRA Balance</u>	<u>CRA Trust Date</u>	<u>CRA</u>	<u>LX</u>	<u>Total</u>
AATSIPINVEST	219153	July 19, 2019	August 23, 2019	\$ 7,084.47	35,785.58	19-May		\$ 7,084.47	
ADMIRAL CORPORATION	219124	June 21, 2019	August 27, 2019	14,965.12	39,226.93	19-Aug		14,965.12	
Avrin International	219167	August 14, 2019	September 13, 2019	13,647.29	39,226.93	19-Aug		13,647.29	
Blue line Ship Mgmt	219138	September 16, 2019	September 27, 2019	13,053.44	39,226.93	19-Aug		13,053.44	
	219222	October 21, 2019	November 8, 2019	8,732.86	32,666.25	19-Oct	\$ 8,732.66		
	219223	November 8, 2019	November 8, 2019	9,109.92	32,666.25	19-Oct	9,109.92		
Bundesbesch GMB	219115	June 18, 2019	June 28, 2019	30,338.88	35,785.58	19-May		30,338.88	
Dalomar Shipping	219094	June 4, 2019	June 18, 2019	13,295.90	39,226.93	19-May		13,295.90	
Eastern Med	219132	June 15, 2019	September 13, 2019	7,558.07	39,226.93	19-May		7,558.07	
	219137	July 8, 2019	September 13, 2019	9,264.23	39,226.93	19-Aug		9,264.23	
	219216	October 10, 2019	November 8, 2019	11,630.59	32,666.25	19-Oct	11,630.59		
FRI Karmisund	219101	June 10, 2019	August 22, 2019	13,898.32	35,785.58	19-May		13,898.32	
Green Shipping AS	219126	June 25, 2019	August 22, 2019	5,439.40	39,226.93	19-May		5,439.40	
Higli AS	219160	August 16, 2019	September 13, 2019	4,852.29	39,226.93	19-Aug		4,852.29	
Premuda SPS	219178	July 28, 2019	August 28, 2019	10,313.26	39,226.93	19-Aug		10,313.26	
Ship Management Inc.	219162	July 30, 2019	August 28, 2019	10,811.62	39,226.93	19-Aug		10,811.62	
	219194	October 29, 2019	November 8, 2019	8,146.66	78,893.33	19-Nov	8,146.66		
	219204	October 1, 2019	November 8, 2019	11,113.34	78,933.26	19-Nov	11,113.34		
	219225	October 25, 2019	November 8, 2019	7,384.89	78,645.18	19-Nov	7,384.89		

Trans Med	219163	October 22, 2019	November 8, 2019	14,075.21	32,666.25	19-Oct	14,075.21
UAB Promar	219175	August 2, 2019	August 28 2019	3,111.77	39,226.93	19-Aug	3,111.77
Wilson Ship Management	219103	July 5, 2019	August 22 2019	10,009.27	39,226.93	19-Aug	10,009.27
				<u>\$ 237,836.80</u>			<u>\$ 70,193.27</u>
							<u>\$ 237,836.60</u>

Versitec USA

A/C 4820 March 4, 2020 in US \$

Anglo Eastern	U19048	July 7, 2019	August 28 2019	\$ 5,095.00	39,226.93	19-Aug	\$ 5,095.00
	U19051	July 28, 2019	August 28 2019	8,400.00	39,226.93	19-Aug	8,400.00
	U19053	July 25, 2019	August 28 2019	9,060.00	39,226.93	19-Aug	9,060.00
Walllem Ship Management	U19027	July 25, 2019	August 28 2019	23,079.94	39,226.93	19-Aug	23,079.94
	U19042	June 28 2019	August 8 2019	4,940.38	35,785.58	19-May	4,940.38
	U19044	July 26, 2019	August 28 2019	15,106.35	39,226.93	19-Aug	15,106.35
	U19045	June 2 2019	August 22 2019	3,938.00	39,226.93	19-Aug	3,938.00
	U19049	July 19, 2019	August 28 2019	5,995.00	39,226.93	19-Aug	5,995.00
				<u>\$ 75,614.67</u>			<u>\$ 75,614.67</u>

Versitec Canada

A/C 4820 March 4, 2020 in US \$

Cruise magmt	219078	March 10, 2019	May 3, 2019	\$ 13,945.00	32,344.33	19-Apr	\$ 13,945.00
Great Lakes Dredging	219213	August 26 2019	September 27, 2019	48,921.79	47,301.18	19-Sep	48,921.79
Meteor Magmt Bulgaria	219073	May 21, 2019	June 28, 2019	6,320.00	35,785.58	19-May	6,320.00
Walllem Ship Mgmt	219127	August 2 2019	August 28 2019	19,532.00	39,226.93	19-Aug	19,532.00
	219214	September 16, 2019	September 27, 2019	6,355.00	47,301.18	19-Sep	6,355.00
				<u>\$ 95,073.79</u>			<u>\$ 95,073.79</u>
Total				<u>\$ 70,193.27</u>	<u>\$ 338,331.79</u>		<u>\$ 408,525.06</u>

Notes.

1. Reviewed invoice dates and funding dates and determined if a CRA trust position existed at that time. If so the A/R would be subject to CRA priority
2. If invoice date and funding date did have a CRA trust balancing owing at the time then A/R belongs to LCX
3. T4trust balances were determined on a daily basis from information received from CRA's My Account data base and the Trust balance was determined at the latest available date after the invoice date but before the funding date

1635536.ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL
CRA ACCOUNT DETAILED ANALYSIS
A/C 854061173RP001

<u>YEAR</u>	<u>DATE</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Cumulative balance</u>	<u>Balance Month end Trust date</u>
2019	Jan-03	-	- 19,142.92	- 19,142.92	-	-	19,142.92
	Jan-04	-	6.54	- 19,136.38	-	-	19,136.38
	Jan-23	-	42,207.80	23,071.42	-	-	23,071.42
	Jan-24	-	- 21,671.49	1,399.93	-	-	1,399.93
		-	2.31	1,402.24	-	-	1,402.24
		-	3.46	1,405.70	-	-	1,405.70
		-	64.43	1,470.13	-	-	1,470.13
		-	0.60	1,470.73	-	-	1,470.73
	Feb-04	3,292.94	3,292.94	1,470.73	-	-	1,470.73
		279.29	3,572.23	1,470.73	-	-	1,470.73
		3,292.94	6,865.17	1,470.73	-	-	1,470.73
2020	Feb-05		6,865.17	208.50	1,679.23	-	1,679.23
			6,865.17	111.08	1,790.31	-	1,790.31
	Feb-27		6,865.17	- 28,029.71	- 26,239.40	-	- 26,239.40
	Feb-28		6,865.17	243.90	- 25,995.50	-	- 25,995.50
			6,865.17	28.07	- 25,967.43	-	- 25,967.43
			6,865.17	24,374.54	- 1,592.89	-	- 1,592.89
	Mar-18		6,865.17	9.44	- 1,602.33	-	- 1,602.33
	Mar-22		6,865.17	- 1,144.45	- 2,746.78	-	- 2,746.78
			6,865.17	- 196.24	- 2,943.02	-	- 2,943.02
			6,865.17	- 18,853.17	- 21,796.19	-	- 21,796.19
			6,865.17	- 166.00	- 21,962.19	-	- 21,962.19
		6,865.17	- 15,947.61	- 37,909.80	-	- 37,909.80	
		6,865.17	- 179.89	- 38,089.69	-	- 38,089.69	
		6,865.17	- 1,977.32	- 40,067.01	-	- 40,067.01	
		6,865.17	- 0.57	- 40,067.58	-	- 40,067.58	
		6,865.17	- 54.61	- 40,122.19	-	- 40,122.19	
		6,865.17	- 21.07	- 40,143.26	-	- 40,143.26	
		6,865.17	- 101.53	- 40,244.79	-	- 40,244.79	
		6,865.17	- 2,711.88	- 42,956.67	-	- 42,956.67	
		6,865.17	- 116.84	- 43,073.51	-	- 43,073.51	

19-Feb

Jan-19

Mar-25	6,865.17	-	1,640.74	-	44,714.25	-	-	-	-	37,849.08	19-Mar
Mar-27	6,865.17	-	242.31	-	44,956.56	-	-	-	-	38,091.39	
Apr-29	6,865.17	-	2,418.11	-	47,374.67	-	-	-	-	40,509.50	
	6,865.17	-	223.60	-	47,151.07	-	-	-	-	40,285.90	
	6,865.17	-	26.95	-	47,124.12	-	-	-	-	40,258.95	
	6,865.17	-	13,538.29	-	60,662.41	-	-	-	-	53,797.24	
	6,865.17	-	19.41	-	60,643.00	-	-	-	-	53,777.83	19-Mar
	6,865.17	-	329.55	-	60,313.45	-	-	-	-	53,448.28	
	6,865.17	-	1,861.40	-	58,452.05	-	-	-	-	51,586.88	
	6,865.17	-	128.50	-	58,323.55	-	-	-	-	51,458.38	
May-06	6,865.17	-	19,114.05	-	39,209.50	-	-	-	-	32,344.33	19-Apr
	6,865.17	-	65.00	-	39,144.50	-	-	-	-	32,279.33	
	7,168.22	303.05	-	-	39,144.50	-	-	-	-	31,976.28	
	7,168.22	-	3,530.54	-	35,613.96	-	-	-	-	28,445.74	
	7,168.22	-	51.88	-	35,562.08	-	-	-	-	28,393.86	
	7,168.22	-	10,994.82	-	46,556.90	-	-	-	-	39,388.68	
May-15	7,168.22	-	72.56	-	46,484.34	-	-	-	-	39,316.12	
May-28	7,168.22	-	3,530.54	-	42,953.80	-	-	-	-	35,785.58	19-May
Aug-09	7,168.22	-	4,000.00	-	46,953.80	-	-	-	-	39,785.58	
Aug-12	7,168.22	-	535.88	-	46,417.92	-	-	-	-	39,249.70	
	7,168.22	-	22.77	-	46,395.15	-	-	-	-	39,226.93	19-Aug
Sep-24	7,168.22	-	8,074.25	-	54,469.40	-	-	-	-	47,301.18	19-Sep
Oct-30	7,168.22	-	854.00	-	53,615.40	-	-	-	-	46,447.18	
	7,168.22	-	-	-	53,615.40	71,921.30	71,921.30	-	-	25,474.12	
	7,168.22	-	-	-	53,615.40	7,192.13	79,113.43	-	-	32,666.25	19-Oct
Nov-04	7,168.22	-	-	-	53,615.40	181.34	79,294.77	-	-	32,847.59	
	7,168.22	-	-	-	53,615.40	48.86	79,343.63	-	-	32,896.45	
Nov-15	7,168.22	-	-	-	53,615.40	146.24	79,489.87	-	-	33,042.69	
	7,168.22	-	-	-	53,615.40	12,957.40	66,532.47	-	-	20,085.29	
	7,168.22	-	-	-	53,615.40	238.84	66,771.31	-	-	20,324.13	
	7,168.22	-	-	-	53,615.40	48,848.53	115,619.84	-	-	69,172.66	
Nov-18	7,168.22	-	-	-	53,615.40	9,689.71	125,309.55	-	-	78,862.37	
	7,168.22	-	-	-	53,615.40	24.01	125,333.56	-	-	78,886.38	
	7,168.22	-	-	-	53,615.40	6.95	125,340.51	-	-	78,893.33	19-Nov
Dec-03	7,168.22	-	-	-	53,615.40	39.93	125,380.44	-	-	78,933.26	
Dec-04	7,168.22	-	-	-	53,615.40	288.08	125,092.36	-	-	78,645.18	
	7,168.22	-	-	-	53,615.40	9.27	125,101.63	-	-	78,654.45	
	7,168.22	-	-	-	53,615.40	91.68	125,193.31	-	-	78,746.13	

	7,168.22	-	53,615.40	27.28	125,220.59	-	78,773.41
	7,168.22	-	53,615.40	275.40	125,495.99	-	79,048.81
	7,168.22	-	53,615.40	784.16	124,711.83	-	78,264.65
Dec-05	7,168.22	-	53,615.40	0.77	124,711.06	-	78,263.88
	7,168.22	-	53,615.40	2.15	124,713.21	-	78,266.03
	7,168.22	-	53,615.40	22.97	124,736.18	-	78,289.00
Dec-23	7,168.22	-	53,615.40	3,038.40	121,697.78	-	75,250.60
Dec-24	7,168.22	-	53,615.40	25.79	121,723.57	-	75,276.39
	7,168.22	-	53,615.40	275.99	121,999.56	-	75,552.38
	7,168.22	-	53,615.40	11.57	122,011.13	-	75,563.95
	7,168.22	-	53,615.40	161.25	122,172.38	-	75,725.20
	7,168.22	-	53,615.40	-	122,172.38	-	75,725.20
Feb-01	7,168.22	-	53,615.40	64.56	122,236.94	-	75,789.76
	7,168.22	-	53,615.40	899.75	123,136.69	-	76,689.51
	7,168.22	-	53,615.40	7,970.73	115,165.96	-	68,718.78
	7,168.22	-	53,615.40	1.31	115,164.65	-	68,717.47
Feb-03	7,168.22	-	53,615.40	594.51	114,570.14	-	68,122.96
	7,168.22	-	53,615.40	0.19	114,569.95	-	68,122.77
Feb-04	7,168.22	-	53,615.40	0.77	114,570.72	-	68,123.54
Mar-04	7,168.22	-	53,615.40	69.42	114,640.14	-	68,192.96
	7,168.22	-	53,615.40	24,552.45	90,087.69	-	43,640.51
Mar-05	7,168.22	-	53,615.40	1,567.39	88,520.30	-	42,073.12
	7,168.22	-	53,615.40	556.56	89,076.86	-	42,629.68
	7,168.22	-	53,615.40	115.32	89,192.18	-	42,745.00
Mar-12	7,168.22	-	53,615.40	674.00	89,866.18	-	43,419.00
	7,168.22	-	53,615.40	51,536.00	141,402.18	-	94,955.00
	7,168.22	-	53,615.40	10,307.20	151,709.38	-	105,262.20
	7,168.22	-	53,615.40	34.00	151,743.38	-	105,296.20
Mar-13	7,168.22	-	53,615.40	-	151,743.38	12,337.18	117,633.38
	7,168.22	-	53,615.40	68.51	151,811.89	2,467.44	120,169.33
	7,168.22	-	53,615.40	-	151,811.89	16.23	120,185.56
Apr-27	7,168.22	-	53,615.40	212,973.30	364,785.19	4,930.72	328,228.14
Apr-28	7,168.22	-	53,615.40	976.61	365,761.80	80.58	329,285.33
	7,168.22	-	53,615.40	375.66	366,137.46	31.86	329,692.85

Notes

1. This analysis may differ day to day depending on the date of account inquiry and availability of detail in essence though the key area of concern was the time frame in middle to late 2019 since that is the period most of the factored receivables were advanced

EXHIBIT 11

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Conneaut Creek Ship Repair, Inc.,

Plaintiff(s)

v.

Versitec Marine Services, Inc.,
d/b/a Versitec Marine & Industrial,

Defendant(s)

Civil Action No. 1:20-CV-03435-RA

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Versitec Marine Services, Inc.,
d/b/a Versitec Marine & Industrial
4 Stonebridge Drive, Unit 4
Port Colborne, Ontario L3K 5V5
Canada

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Adam L. Schwartz
Homer Bonner Jacobs Ortiz, P.A.
1441 Brickell Avenue, Suite 1200
Miami, Florida 33131
USA
aschwartz@homerbonner.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 5/6/2020

/s/ P. NEPTUNE
Signature of Clerk or Deputy Clerk



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE SERVICES, INC.,
d/b/a VERSITEC MARINE & INDUSTRIAL,

Defendant.

CASE NO. 1:20-CV-03435-RA

AMENDED COMPLAINT

Plaintiff, Conneaut Creek Ship Repair, Inc. ("Conneaut Creek"), by and through its undersigned attorneys, Homer Bonner Jacobs Ortiz, P.A., and O'Rourke & Lawlor, and for its Amended Complaint against Defendant Versitec Marine Services, Inc., which does business as Versitec Marine & Industrial ("Versitec"), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Conneaut Creek seeks damages against Versitec for its failure to pay Conneaut Creek's invoices totaling \$116,448.34 in violation the July 30, 2019 Sales & Service Representation Agreement (the "Contract") entered into by Conneaut Creek and Versitec (collectively, the "Parties"). A true and correct copy of the Contract is attached hereto as Exhibit A.

THE PARTIES, JURISDICTION, AND VENUE

2. Conneaut Creek is an Ohio corporation with its principal place of business in Ashtabula, Ohio. Conneaut Creek is a full-service ship repair, fabrication, and industrial maintenance company.

3. Defendant Versitec is a Canadian company with its principal place of business in Port Colborne, Ontario. Versitec manufactures sealing systems and associated equipment under the brand names VersiGlyde, VersiSure, and Vanguard for the use in the sealing of stern tube and shafting systems for ships. Versitec's website advises that it maintains offices worldwide. Versitec does business as Versitec Marine and Industrial.

4. Upon information and belief, Versitec conducts business in the State of New York.

5. Federal subject-matter jurisdiction exists under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Conneaut Creek (a citizen of Ohio) and Versitec (a citizen or subject of Canada, a foreign state), and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

6. Versitec is subject to personal jurisdiction under N.Y. CLPR §§ 301 & 302 because, among other reasons, it has consented to the exclusive jurisdiction of this Court in paragraph 15 of the Contract, and upon information and belief Versitec conducts business in the State of New York, Versitec regularly solicits and transacts business and derives substantial revenue and goods used or consumed or services rendered in the State of New York, and should reasonably expect its actions to have consequences in the State of New York.

7. Venue is proper in this District under 28 U.S.C. § 1391 because neither Party resides in the State of New York and Conneaut Creek designates the Southern District of New York as the place of trial for this action.

GENERAL ALLEGATIONS

8. On or about July 30, 2019, Conneaut Creek and Versitec entered into the Contract. In the Contract, Versitec agreed to appoint Conneaut Creek as a semi-exclusive independent sales and service representative to promote the sale of Versitec's products and services throughout the Northern United States, with an emphasis on the Great Lakes Regions and Canada. Contract, ¶ 2. Conneaut Creek agreed that it would promote and extend sales of Versitec's products, sell Versitec's products, and provide installation and servicing of Versitec's products to customers. *Id.*, ¶¶ 2-4.

9. As set forth in the Contract, in consideration of the services to be rendered by Conneaut Creek for Versitec, Versitec agreed to pay Conneaut Creek compensation for its services. With respect to the sale of Versitec products, Versitec agreed to pay Conneaut Creek the equivalent of "15% of the net sales order as commission for their services," with "[p]ayment to [Conneaut Creek] to be effected NET 30 days from presentation of [Versitec] Final Invoice to Customer (generally at the time or shipping parts or order placement if terms are Pre-payment)." *Id.*, ¶ 4. With respect to Conneaut Creek's installation, repair, and servicing of Versitec products, Versitec agreed that "[p]ayment to [Conneaut Creek] is to be effected NET 30 days from receipt of [Conneaut Creek 's] Service Report, [Service Invoice and supporting receipts]." *Id.*, ¶ 5.

10. Conneaut Creek issued and provided Versitec with invoices for the sale and servicing of Versitec products.

11. On September 4, 2019, Conneaut Creek issued invoice number 2019-033 to Versitec. Versitec raised no issues regarding the invoice when it was rendered. However, Versitec failed to pay the \$5,448.00 balance on the invoice. A true and correct copy of the September 4, 2019 invoice is attached hereto as Exhibit B.

12. On September 16, 2019, Conneaut Creek issued invoice number 2019-039 to Versitec. Versitec raised no issues regarding the invoice when it was rendered. However, Versitec failed to pay the \$38,421.54 balance on the invoice. A true and correct copy of the September 16, 2019 invoice is attached hereto as Exhibit C.

13. On September 19, 2019, Conneaut Creek issued invoice number 2019-040 to Versitec. Versitec raised no issues regarding the invoice when it was rendered. However, Versitec failed to pay the \$5,448.00 balance on the invoice. A true and correct copy of the September 19, 2019 invoice is attached hereto as Exhibit D.

14. On September 25, 2019, Conneaut Creek issued invoice number 2019-042 to Versitec. Versitec raised no issues regarding the invoice when it was rendered. However, Versitec failed to pay the \$11,600.00 balance on the invoice. A true and correct copy of the September 25, 2019 invoice is attached hereto as Exhibit E.

15. On October 29, 2019, Conneaut Creek issued invoice number 2019-046 to Versitec. Versitec raised no issues regarding the invoice when it was rendered. However, Versitec failed to pay the \$13,400.00 balance on the invoice. A true and correct copy of the October 29, 2019 invoice is attached hereto as Exhibit F.

16. On October 29, 2019, Conneaut Creek issued invoice number 2019-055 to Versitec. Versitec raised no issues regarding the invoice when it was rendered. However,

Versitec failed to pay the \$42,130.80 balance on the invoice. A true and correct copy of the October 29, 2019 invoice is attached hereto as Exhibit G.

17. As of March 24, 2020, the total amount of unpaid invoices is \$116,448.34 (the "Outstanding Amounts").

18. Versitec has promised orally and in writing, to pay the Outstanding Amounts to Conneaut Creek. Versitec, however, has failed to honor its promises of payment and the Outstanding Amount remains unpaid.

19. Versitec did not object to the invoices as they were rendered.

20. All conditions precedent to the bringing of this lawsuit have occurred or been satisfied.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

21. Conneaut Creek realleges and incorporates paragraphs 1 through 19, inclusive, as if specifically and fully set forth herein.

22. On or about July 30, 2019, Conneaut Creek and Versitec entered into an enforceable agreement (i.e., the Contract), to pay Conneaut Creek for its services rendered to and on behalf of Versitec.

23. Conneaut Creek rendered services to Versitec pursuant to the terms of the Contract.

24. Versitec has materially breached the Contract by failing to pay Conneaut Creek for its services.

25. As of March 24, 2020, the Outstanding Amounts owned by Versitec to Conneaut Creek totals \$116,448.34.

26. As a direct result of Versitec's material breaches of the Contract, Conneaut Creek has suffered damages in the amount of \$116,448.34, plus interest, costs, expenses, and attorneys' fees.

WHEREFORE, Conneaut Creek demands judgment against Versitec for damages, costs, expenses, and interest, attorneys' fees, and such other and further relief as the Court deems just and proper.

AS AND FOR A SECOND CAUSE OF ACTION
(Account Stated)

27. Conneaut Creek realleges and incorporates paragraphs 1 through 19, inclusive, as if specifically and fully set forth herein.

28. Before the institution of this action, Versitec retained Conneaut Creek to provides services to Versitec, obliging Versitec to pay Conneaut Creek for its services, and Versitec agreed to pay the resulting Outstanding Amounts owed.

29. Conneaut Creek rendered invoices of the Outstanding Amounts to Versitec, and Versitec did not object to the invoices as they were rendered.

30. As of March 24, 2020, Versitec owes Conneaut Creek \$116,448.34 that is due with interest.

WHEREFORE, Conneaut Creek demands judgment against Versitec for damages, costs, expenses, and interest, attorneys' fees, and such other and further relief as the Court deems just and proper.

AND AS FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)

31. Conneaut Creek realleges and incorporates paragraphs 1 through 19, inclusive, as if specifically and fully set forth herein.

32. At all times material to this action, Versitec requested Conneaut Creek to provide its services to Versitec.

33. Conneaut Creek provided its services to Versitec.

34. Versitec voluntarily accepted and retained the benefit of the services provided to it by Conneaut Creek.

35. The value of the services provided by Conneaut Creek to Versitec total \$116,448.34.

36. Circumstances are such that it would be inequitable for Versitec to remain the benefit conferred to it without paying the value of same to Conneaut Creek.

WHEREFORE, Conneaut Creek demands judgment against Versitec for damages, costs, expenses, and interest, attorneys' fees, and such other and further relief as the Court deems just and proper.

Respectfully submitted:

**HOMER
BONNER**

1200 Four Seasons Tower
1441 Brickell Avenue
Miami Florida 33131
Phone: (305) 350-5116
Fax: (305) 372-2738

By: s/ Adam L. Schwartz
Adam L. Schwartz, Esq.
N.Y. Bar No. 4288783
Email: aschwartz@homerbonner.com

and

O'ROURKE & LAWLOR
John E. Lawlor, Esq.
129 Third Street

Mineola, New York
Phone: (516) 248-7700
Fax: (516) 742-7675
Email: jlawlor@johnelawlor.com

*Attorneys for Plaintiff Conneaut Creek Ship
Repair, Inc.*

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE SERVICES, INC.,
d/b/a VERSITEC MARINE & INDUSTRIAL,

Defendant.

CASE NO. 1:20-CV-03435-RA

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into between Conneaut Creek Ship Repair, Inc. ("Conneaut Creek"); 1635536 Ontario Inc., operating as Versitec Marine & Industrial ("Versitec"); Versitec Marine Services, Inc. ("Versitec Marine"); and Versitec's court-appointed receiver Morgan & Partners, Inc. (the "Receiver,") (collectively with Versitec and Versitec Marine the "Versitec Parties"). Conneaut Creek, Versitec, Versitec Marine, and the Receiver shall each be referred to as a "Party" and collectively be referred to as the "Parties."

RECITALS

WHEREAS, on May 1, 2020, Conneaut Creek filed a lawsuit against Versitec in the United States District Court for the Southern District of New York, Case No. 20-cv-03435-RA alleging breach of contract, account stated, and unjust enrichment, pursuant to which Conneaut Creek compensatory damages, and costs and expenses, including attorneys' fees (the "Action"). Conneaut Creek subsequently amended its complaint to include Versitec Marine.

WHEREAS, the Versitec Parties deny Conneaut Creek's allegations in their entirety;

WHEREAS, the Parties hereto agree that, in order to avoid the costs and disruption associated with litigation of the Action, it would be advantageous to settle their disputes, including the Action and any and all other claims asserted, or which could have been asserted, in the Action or in any other action(s), on the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **Recitals.** The Parties agree, acknowledge, warrant and represent that the above recitals are true and correct and are incorporated herein by this reference.

2. **Dismissal of Action With Prejudice.** Within seven (7) days of the receipt of the Settlement Sum in full, Conneaut Creek shall cause to be filed in the Action a Notice of Dismissal With Prejudice in the form attached hereto as Exhibit A (the "Notice of Dismissal With Prejudice").

3. **Settlement Payment.** The Versitec Parties shall pay or cause to be paid to Conneaut Creek the total sum of seventy thousand U.S. dollars and no cents (\$70,000.00 USD) (the "Settlement Sum") as set forth in the following schedule:

- On or before August 15, 2020, the Versitec Parties shall deliver to Conneaut Creek's counsel's trust account twenty thousand U.S. dollars and no cents (\$20,000.00 USD);
- On or before September 15, 2020, the Versitec Parties shall deliver to Conneaut Creek's counsel's trust account a minimum of twenty thousand U.S. dollars and no cents (\$20,000.00 USD); and
- On or before October 15, 2020, the Versitec Parties shall deliver to Conneaut Creek's counsel's trust account the remainder of the Settlement Sum.

Payments of the Settlement Sum shall be made payable to "Homer Bonner Jacobs Ortiz, P.A. Trust Account" and shall be delivered to Homer Bonner Jacobs Ortiz, P.A., 1200 Four Seasons Tower, 1441 Brickell Avenue, Miami, Florida 33131. Conneaut Creek represents, warrants, agrees, and acknowledges that the Settlement Sum and the Versitec Parties' other covenants contained herein are good, valuable, and adequate consideration for the release and the other covenants contained herein.

4. **Conneaut Creek's Waiver And Release Of The Versitec Parties.** Upon full payment of the Settlement Sum, Conneaut Creek, shall forever releases and discharges the Versitec Parties and each of their assigns, heirs, successors and predecessors in interest, employees and former employees, directors, officers, members, partners, associates, parent companies, subsidiary companies, affiliate and related companies, affiliates, agents, attorneys, insurers, and shareholders and investors in interest, of and from any and all actions of any nature, suits, claims, extra-contractual claims, claims for fraud, claims for bad faith, unfair claims handling practices, claims for subrogation, contracts, demands, fees, costs, expenses, losses, damages, liabilities or causes of action, whether in law or equity, known or unknown, accrued and unaccrued, based upon, or arising out of the Action, that were or could have been asserted in the Action or that may arise from, or relate to, the subject matter of the Action; providing that nothing herein shall be deemed to be a release of any obligations under this Agreement.

5. **The Versitec Parties' Waiver And Release Of Conneaut Creek.** The Versitec Parties, for themselves and their successors, assigns and affiliates, hereby forever release and

discharge Conneaut Creek and its assigns, heirs, successors and predecessors in interest, employees and former employees, directors, officers, members, partners, associates, parent companies, subsidiary companies, affiliate and related companies, affiliates, agents, attorneys, insurers, and shareholders and investors in interest, of and from any and all actions of any nature, suits, claims, extra-contractual claims, claims for fraud, claims for bad faith, contracts, demands, fees, costs, expenses, losses, damages, liabilities or causes of action, whether in law or equity, known or unknown, accrued and unaccrued, based upon, or arising out of the Action, that were or could have been asserted in Action or that may arise from, or relate to, the subject matter of the Action; provided that nothing herein shall be deemed release of any obligations under this Agreement.

6. **No Litigation.** Conneaut Creek warrants and represent that it has not filed, directly or indirectly, nor caused to be filed and will not file or cause to be filed, any other legal proceeding whatsoever in any state or federal court or in arbitration or any administrative proceeding with any local, state or federal agency having jurisdiction, raising any claims settled, resolved or released by this Agreement. Conneaut Creek covenants that neither it, nor any of its agents, successors, assigns, heirs, executors, personal representatives and trustees, will commence, prosecute, or cause to be commenced or prosecuted, against the Versitec Parties any action or other proceedings based upon any claims, demands, causes of action, obligations, damages, or liabilities which are being settled, resolved or released by this Agreement, nor will Conneaut Creek seek to challenge the validity of this Agreement, or any part thereof, in any way. Conneaut creek shall hold the Versitec Parties harmless from and against any and all claims for damages, judgments, court costs, attorneys' fees, or expenses asserted against the Versitec Parties as a result of or in connection with any proceeding brought contrary to this paragraph. Further, the Versitec Parties warrant and represent that none of them has filed, directly or indirectly, has caused to be filed and will file or cause to be filed, any legal proceeding whatsoever in any state or federal court or in arbitration or any administrative proceeding with any local, state or federal agency having jurisdiction, raising any claims settled, resolved or released by this Agreement. The Versitec Parties covenant that none of them, or any of their agents, successors, assigns, heirs, executors, personal representatives and trustees, will commence, prosecute, or cause to be commenced or prosecuted, against the Conneaut Creek its assigns, heirs, successors and predecessors in interest, employees and former employees, directors, officers, members, partners, associates, parent companies, subsidiary companies, affiliate and related companies, affiliates, agents, attorneys, insurers, and shareholders and investors in interest, any action or other proceedings based upon any claims, demands, causes of action, obligations, damages, or liabilities which are being settled, resolved or released by this Agreement, nor will any of the Versitec Parties seek to challenge the validity of this Agreement, or any part thereof, in any way. The Versitec Parties shall hold Conneaut Creek harmless from and against any and all claims for damages, judgments, court costs, attorneys' fees, or expenses asserted against Conneaut Creek as a result of or in connection with any proceeding brought contrary to this paragraph.

7. **Warranty Of No Assignment.** Assignment of this Agreement or any rights or obligations hereunder is prohibited without the prior written consent of the opposing Party/ies and any attempt by any Party to assign this Agreement without such consent shall be void *ab initio*.

8. **Entire Agreement.** This Agreement constitutes a single, fully-integrated contract expressing and representing the entire agreement and understanding of the Parties as of the date of execution hereof with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements, negotiations, discussions, understandings, representations, statements, and writings between the Parties relating thereto and with respect to the subject matter hereof. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the Parties hereto.

9. **Notices.** Any notices required by or given in connection with this Agreement shall be made in writing by both email and postage prepaid registered mail, certified mail or private carrier providing a return receipt to the addresses set forth below:

If to Conneaut Creek:

Adam Schwartz
Homer Bonner Jacobs Ortiz, P.A.
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, Florida 33131
aschwartz@homerbonner.com

If to Versitec:

Michael J. Valente
Scarfone Hawkins LLP
One James Street South, 14th Floor
Hamilton, ON L8P 4R5
Canada
mvalente@shlaw.ca

If to Versitec Marine:

Michael J. Valente
Scarfone Hawkins LLP
One James Street South, 14th Floor
Hamilton, ON L8P 4R5
Canada
mvalente@shlaw.ca

If to the Receiver:

John Morgan
Morgan & Partners Inc.
4 Cedar Pointe Drive, Unit J2
Barrie, ON L4N 5R7

Canada
johnmorgan.morgantrustees.com

10. **No Admissions, Collateral Estoppel, Or Prevailing Party Effect.** It is expressly understood, acknowledged and agreed by the Parties that nothing in this Agreement or any related act or document constitutes an admission, declaration, or other evidence of the rights or liabilities of the Parties or any person or entity, except with respect to the contractual duties and stipulations provided in this Agreement itself. Neither this Agreement nor any action or document taken to carry out this Agreement: (a) shall be construed as or deemed to be evidence or an acknowledgment of any presumption, inference, concession, or admission on any point of fact or law, or any liability, fault, omission, or other wrongful act whatsoever; (b) shall be offered or received as evidence in any litigation or proceeding whatsoever of any presumption, inference, concession, or admission of any liability, fault, omission, or other wrongful act whatsoever; or (c) shall be offered or received as evidence in any action or proceeding whatsoever other than such proceeding by the Parties hereto as may be necessary to enforce the provisions of this Agreement.
11. **Understanding Of Agreement.** The Parties represent and warrant that they (a) have carefully read this entire Agreement; (b) fully understand the terms, conditions, and significance of this Agreement; (c) have had sufficient time to consider this Settlement Agreement before executing it; (d) have had a full opportunity to review and consult with their respective attorneys regarding this Agreement and have done so; (e) have executed this Agreement voluntarily, knowingly, and with the advice of their respective attorneys; (f) that in signing this Agreement the Parties represent and acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party hereto; (g) have not relied upon any oral or written statement or omission made by any person other than those statements expressly set forth in this Agreement; and (h) that they believe there are no other facts or representation that would, if known, change the Parties' decision to enter into the Agreement.
12. **Construction.** Any controversy regarding the construction of this Agreement shall be decided neutrally, in light of its conciliatory purpose, not in favor of or against any Party, and without regard to the events of authorship or negotiation.
13. **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts and/or by facsimile, each of which when so executed and delivered shall be deemed an original copy that is binding and enforceable, but all such counterparts shall together constitute but one and the same instrument.
14. **Applicable Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to conflicts of laws provisions. The Parties agree that the district court for the Southern District of New York shall retain jurisdiction to resolve any disputes arising or relating to this Agreement and to enforce the terms of the Agreement. To be clear, for any disputes arising out of or relating to this Agreement, the Parties consent to the exclusive jurisdiction of a court of competent jurisdiction located in New

York County, New York, and that the exclusive venue for such a dispute is in New York County, New York.

15. **Taxes**. Any tax liability, if any, incurred by Conneaut Creek resulting from or in connection with this Agreement or the Settlement Sum shall be the sole responsibility of Conneaut Creek.

16. **Authority To Execute**. The signatories to this Agreement represent and warrant that they have the authority to bind the respective parties identified below to the terms of this Agreement.


IN WITNESS WHEREOF, this Agreement is made and entered into as of the date this Agreement is executed by all Parties below.

[signature page to follow]

Type text here

CONNEAUT CREEK:

Conneaut Creek Ship Repair, Inc.

By: 

Date: 08/14/2020

THE VERSITEC PARTIES:

1635536 Ontario Inc.

By: _____

Date: _____

Versitec Marine Services, Inc.

By: 

Date: 8/14/2020

Morgan & Partners, Inc.

By: _____

Date: _____

CONNEAUT CREEK:

Conneaut Creek Ship Repair, Inc.

By: _____

Date: _____

THE VERSITEC PARTIES:

1635536 Ontario Inc.

By: _____

Date: _____

Versitec Marine Services, Inc.

By: _____

Date: _____

Morgan & Partners, Inc.

By: *John Morgan*
President

Date: *Aug 4, 2010*

EXHIBIT A

Notice of Dismissal With Prejudice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE & INDUSTRIAL,

Defendant.

CASE NO. 1:20-CV-03435-RA

NOTICE OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Conneaut Creek Ship Repair, Inc., by and through its undersigned counsel, hereby dismisses the above-captioned action with prejudice.

Dated: October __, 2020.

By:

Adam L. Schwartz
Homer Bonner Jacobs Ortiz, P.A.
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, Florida 33131
(305) 350-5116
aschwartz@homerbonner.com
Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE SERVICES, INC.,
d/b/a VERSITEC MARINE & INDUSTRIAL,

Defendant.

CASE NO. 1:20-CV-03435-RA

NOTICE OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Conneaut Creek Ship Repair, Inc., by and through its undersigned counsel, hereby dismisses the above-captioned action with prejudice.

Dated: October 14, 2020.

By: s/ Adam L. Schwartz

Adam L. Schwartz
Homer Bonner Jacobs Ortiz, P.A.
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, Florida 33131
(305) 350-5116
aschwartz@homerbonner.com

-and-

O'ROURKE & LAWLOR
John E. Lawlor, Esq.
129 Third Street
Mineola, New York
Phone: (516) 248-7700
Fax: (516) 742-7675
Email: jlawlor@johnelawlor.com

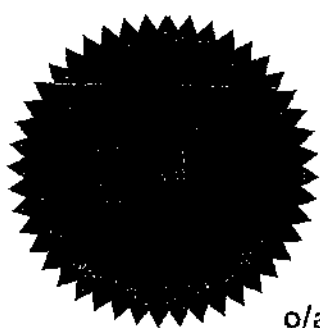
*Attorneys for Plaintiff Conneaut Creek Ship
Repair, Inc.*

EXHIBIT 13

CV-19-00058936-0000
Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:



DAVID CARPENTER

Plaintiff

- and -

1635536 ONTARIO INC.
o/a VERSITEC MARINE & INDUSTRIAL LIMITED
and DAVID TAYLOR

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence if Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is

forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$..... for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE: May 21, 2019

Issued by: 
Address of 59 Church Street
Court Office: St. Catharines, ON L2R 3C3

TO: 1635536 Ontario Inc. o/a Versitec Marine
4 Stonebridge Drive, Unit 4
Port Colborne, ON L3K 5V5

AND TO: David Taylor
518 King Street
Port Colborne, ON L3K 4H6

CLAIM

1. The Plaintiff claims the following against the Defendant Versitec Marine & Industrial Limited (hereinafter referred to as "Versitec"):
 - a) A declaration that his employment was wrongfully terminated on or about March 4, 2019
 - b) Damages for breach of contract/wrongful dismissal in the amount of \$125,000;
 - c) Reimbursement expenses and charges incurred by the Plaintiff on behalf of the Defendant Versitec in the amount of \$28,000;
 - d) In the alternative, damages for unjust enrichment in an amount to be determined by this Honourable Court;
 - e) Damages for unpaid wages including unpaid vacation pay in an amount to be determined;
 - f) Moral damages for bad faith conduct in the amount of \$50,000;
 - g) Special damages for expenses incurred while seeking alternative employment in an amount which will be provided prior to trial;
 - h) Aggravated and punitive damages in the amount of \$150,000;
 - i) Prejudgment interest on the amounts claimed in accordance with Sections 128 of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43, as amended;

- j) His costs of this action on a substantial indemnity basis, together with applicable HST at the prevailing rate on any Judgment and costs awarded on which tax has been paid or will be payable; and
- k) Such further and other relief as this Honourable Court deems just.

2. The Plaintiff claims against Defendant David Taylor:

- a) an interim and final order pursuant to sections 248 and 253 of the *Ontario Business Corporations Act R.S.O 1990 c B16* as amended providing as follows:
 - i. a declaration that the Defendant in his capacity as majority shareholder has oppressed, unfairly prejudiced, and has unfairly disregarded the rights, interests, and reasonable expectations of the Plaintiff and has breached his fiduciary duties to the Plaintiff with respect to Versitec Marine Industrial Limited;
 - ii. an interim order that the Defendants produce and deliver up to the Plaintiff all books and records for inspection in accordance with the provisions of the Ontario Business Corporations Act;
 - iii. damages in amount to be determined by this Honourable Court for the conduct described in paragraph 2 a)1 above;
 - iv. an order directing the Company or the shareholders of the Company to purchase the Plaintiff's shares fair market value without minority discount;
 - v. pre-and post-judgment interest in accordance with court of Justice Act;

- vi. the costs of this action on a substantial indemnity basis;
 - vii. such further and other relief as this honourable Court deems just.
3. With respect to the damages claimed at paragraph 2 above, the Plaintiff states that the Defendants are jointly and severally liable for the damages and costs claimed in respect of the Plaintiff's unpaid wages and punitive damages.

The Parties

- 4. The Plaintiff resides in the city of Niagara Falls in the Regional Municipality of Niagara and at all material times was an employee and shareholder of the Defendant Corporation.
- 5. The Defendant Versitec is a corporation incorporated pursuant to the laws of the province of Ontario with its head office in the city of Port Colborne carrying on business worldwide in the manufacture, sale, and service of marine products including specialized sealing rings for marine vessel driveshafts.
- 6. Versitec USA is a wholly-owned subsidiary of the Defendant Versitec incorporated in the State of Delaware, USA operating at and out of Boca Raton, Florida.
- 7. Versitec GB is a corporation incorporated in accordance with the laws of Grand Bahamas forming part of the Versitec group of companies.
- 8. The Defendant David Taylor resides in the city of Port Colborne and all material times was the president, majority shareholder and guiding mind of the Defendant Versitec Marine Industrial.

The Plaintiff's Employment with the Defendant Versitec

9. The Plaintiff states that he commenced his employment on or about April 1, 2004 with the Defendant Corporation's predecessor in law Versitec Marine taking up a position in sales, service and finances. The Plaintiff was appointed Corporate Secretary of the Corporation and remained so until the late fall of 2018.
10. The Plaintiff was employed by Veristec Marine & Industrial Limited pursuant to a contract of employment (the "Employment Contract") of indefinite duration. The Employment Contract in part oral and in part determined by the course of dealings between the parties.
11. By operation of law it was an implied term of the Employment Contract that:
 - a) Versitec would, in the absence of gross misconduct amounting to cause, provide the Plaintiff with a reasonable period of advance notice of any dismissal or monetary severance compensation in lieu thereof; and
 - b) Versitec would act in good faith and deal fairly with the Plaintiff so as to do nothing to impair his ability to maintain his employment for otherwise adversely affect his interests and/or rights.
12. Throughout the duration of the employment relationship the Plaintiff was employed by Versitec he reported directly to the CEO and to the Personal Defendant, who is the President of the company.
13. Throughout the period of his employment with the Defendant Versitec, the Plaintiff worked faithfully and diligently performing all of his assigned duties competently and efficiently.

14. The Plaintiff earned an hourly rate of \$35 per hour for a 40 hour work week and overtime pay as required. In point of fact, the Plaintiff regularly worked 9 hours per day and occasionally on weekends but was never paid for work in excess of his regular hours of work as required by sections 5(2) and 22 of the Ontario Employment Standards Act. The Plaintiff pleads and relies upon the provisions of *Employment Standards Act, 2000*. The Plaintiff states that monies are due and owing for all overtime worked but not paid.

The Plaintiff's Shareholding Interests

15. On or about January 21, 2005 the Defendant David Taylor caused to be incorporated the Corporate Defendant Versitec Industrial Marine Limited and the Plaintiff's employment was continued thereafter with the new company.

16. At all material times the reasonable expectation of the parties as required by law that the parties would deal with each other in good faith throughout their contractual relationship.

17. In an effort to raise capital the Defendant David Taylor offered a shareholding interest to the Plaintiff and 2 others to each acquire 10 percent of the outstanding common shares of the Company for an investment of \$30,000.

18. The Plaintiff entered into a Shareholders Agreement on or about May 27, 2005 receiving a Share Certificate evidencing his shareholding interest of 1000 common shares of the Defendant Versitec.

19. Throughout his employment and to the present time at no time has the Defendant Versitec ever held a shareholders meeting in accordance with the provisions of the *Ontario Corporations Act* with the exception of one meeting called by the minority shareholders in 2017 which the Defendant David Taylor chose not to attend requiring its cancellation.

20. At no time has the Plaintiff ever received financial statements or other information in accordance with the provisions of the *Ontario Business Corporations Act*.

The Plaintiff as Creditor

21. The Plaintiff states that as a result of chronic cash flow difficulties and exhausted credit facilities the Plaintiff from the outset of his employment was requested by the Defendant Taylor to permit the Company to utilize his personal credit card to pay for various expenditures of the Company such as the purchase of supplies, preauthorized debts, business travel related expenses.
22. The Plaintiff states that in 2016 following the cancellation of the facilities by the Defendants then primary institutional lender, the Plaintiff was again prevailed upon to permit the use of this credit card for company purposes. The Defendant David Taylor and CEO Reuben Byrd personally represented to the Plaintiff that his credit card would be paid off as soon as the Company had established the credit facilities. The Plaintiff states his credit card balance was not paid off as promised.
23. The Defendant Versitec generally made payments on the credit card account however the credit card balance continued to rise and was on the last day of the Plaintiff's employment in excess of \$27,000.
24. In the latter part of the Plaintiff's employment the Defendant David Taylor in addition to regularly scheduled dividend payments increasingly directed that funds be withdrawn and wired to him despite the deteriorating financial condition of the Defendant Versitec.

The Plaintiff's Termination

25. On or about March 4, 2019 the Plaintiff was summarily terminated by the Defendant CEO, then on vacation, verbally via a Skype video conference. The Plaintiff had no advance notice of his termination and was paid no pay in lieu of notice from and after the date of his termination. Since the Plaintiff's termination representatives of the Defendant have falsely advised third parties the Plaintiff left to seek other employment but purposely failed to advise major creditors including BDC that he was no longer associated with the Defendant Versitec.
26. The Plaintiff states that he was not provided with reasonable notice of termination. In failing to provide reasonable notice, Versitec breached the Employment Contract between the parties, thereby entitling the Plaintiff to wrongful dismissal damages.
27. The Plaintiff states and the fact is that his termination was effected in the utmost bad faith following the Plaintiff requesting receipts for certain travel business advances. The defendant Taylor had been previously advised by the Canada Revenue Agency documented expenses would be deemed to be income imputed to him for which reimbursement was sought by the Personal Defendant David Taylor. The Plaintiff states that his request of Taylor was wholly in accordance with generally accepted accounting principles and for the benefit of the Defendant Versitec.
28. The Plaintiff states that the Personal Defendant was at all material times, an officer and director of Versitec. The Plaintiff therefore pleads and relies on the provisions of the *Employment Standards Act, 2000* and the *Business Corporations Act* which provide that the Personal Defendant is personally liable for any wages including vacation pay owing to him that are not paid and satisfied by Versitec.

29. The Plaintiff states that he was entitled to vacation of up to a minimum of three weeks per year but was unable to utilize his vacation owing to work demands. The Company's books of account record \$10,700 in outstanding vacation pay owing to the Plaintiff.
30. The Plaintiff states that having regard to his age, his length of service, his position of responsibility and all other factors relevant at law he was entitled to at least 18 months advance notice of his termination.
31. The Plaintiff states the Defendant was aware that in the absence of the Plaintiff having achieved any accounting designation or other qualification his ability to secure suitable alternative employment within a reasonable commute would be severely impaired.
32. The Plaintiff further states that the Defendant Versitec since the date of the Plaintiff's termination:
- a) has not paid monies required under Section 57 of the *Ontario Employment Standards Act* in lieu of notice;
 - b) has not provided or offered the Plaintiff a letter of reference or a commitment to respond positively in response to prospective employer inquiries or any form about placement counselling service to assist the Plaintiff who has been off the job market for two decades;
 - c) has not paid vacation monies impressed with a statutory trust in favour of the Plaintiff pursuant to the provisions of the *Ontario Employment Standards Act*;

- d) has not made arrangements to pay off the Plaintiff's personal credit card balance for purchases made for the benefit of the Defendant Versitec which has been unjustly enriched as a result;
- e) has not paid the minimum monthly payment requirement on the Plaintiff's credit card;
- f) has not paid any monies in lieu of reasonable notice to which the Plaintiff is in law entitled;
- g) has not provided outplacement counselling services to the Plaintiff to assist him in the search for suitable alternative employment.

33. In addition, the Plaintiff states that the Defendants' conduct as referred to herein has caused him humiliation, loss of reputation, dignity, self-esteem and pride, all of which has and will continue to adversely affect his efforts to mitigate against his loss and his ability to earn a livelihood.

34. The Defendants' actions were so highhanded, vindictive, arbitrary and arrogant that they merit the sanction of this Honourable Court through an award of punitive, aggravated and/or exemplary damages.

Continuing Oppressive Conduct

35. The Plaintiff believes the Defendant David Taylor together with the CEO Reuben Byrd are now attempting to direct most of the receivables of the Defendant Versitec to its US banking accounts to support Versitec USA arrangements the expense of the Defendant Versitec and its shareholders.

36. The Defendant Veristec is failing to meet financial commitments to suppliers, employees, and contractors to the detriment of the Defendant Versitec and its

minority shareholders in a colourable attempt to place the assets of the companies beyond the reach of its Canadian creditors.

37. The Plaintiff requests a full accounting for all funds misappropriated by the Defendant David Taylor in breach of his fiduciary duty to the corporation and its shareholders.

38. The Plaintiff states that the conduct of the Defendants in carrying out the termination of his employment was harsh, oppressive, callous and with flagrant disregard for his contractual, statutory and other legal rights

39. The Plaintiff claims his costs of this action on a substantial indemnity scale.

40. The Plaintiff proposes this action to be tried in the City of St. Catharines in the Regional Municipality of Niagara.

DATED: May 21, 2019

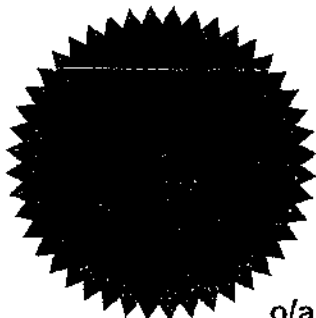
CHOWN, CAIRNS LLP
Barristers and Solicitors
80 King Street, 9th Floor,
P.O. Box 760
St. Catharines, ON L2R 6Y8

Tel: (905) 688-4500
Fax: (905) 688-0015
Barry W. Adams, LSO #17320T
Solicitors for the Plaintiff

CV-19-00058937-0000
Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:



DAVID SWINDELLS

Plaintiff

- and -

1635536 ONTARIO INC.
o/a VERSITEC MARINE & INDUSTRIAL LIMITED
and DAVID TAYLOR

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence if Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is

forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$..... for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

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Address of 59 Church Street
Court Office: St. Catharines, ON L2R 3C3

TO: 1635536 Ontario Inc. o/a Versitec Marine
4 Stonebridge Drive, Unit 4
Port Colborne, ON L3K 5V5

AND TO: David Taylor
518 King Street
Port Colborne, ON L3K 4H6

CLAIM

1. The Plaintiff claims the following against the Defendant Versitec Marine & Industrial Limited (hereinafter referred to as "Versitec"):
 - a) A declaration that his employment was wrongfully terminated on or about February 22, 2019;
 - b) Damages for wrongful dismissal in the amount of \$50,000;
 - c) Damages for monies due and owing for unpaid wages and vacation pay in the approximate amount of \$85,000;
 - d) Damages for expenses incurred by the Plaintiff on the promise of reimbursement by the Defendant in the amount of \$13,380;
 - e) Special damages for expenses incurred while seeking alternative employment in an amount which will be provided prior to trial;
 - f) Damages for bad faith conduct in the amount of \$50,000;
 - g) Aggravated and punitive damages in the amount of \$50,000;
 - h) Prejudgment interest on the amounts claimed in accordance with Sections 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
 - i) His costs of this action on a substantial indemnity basis, together with HST at the prevailing rate on any Judgment and costs awarded on which tax has been paid or will be payable; and
 - j) Such further and other relief as this Honourable Court deems just.

The Parties

2. The Plaintiff resides in the city of Port Colborne in the Regional Municipality of Niagara and at all material times was an employee of the Defendant Corporation.
3. The Defendant Versitec is a corporation incorporated pursuant to the laws of the province of Ontario with its head office in the city of Port Colborne carrying on business worldwide in the manufacture, sale and service of marine products including specialized sealing rings for marine vessel driveshafts.
4. Versitec USA is a wholly-owned subsidiary of the Defendant Versitec incorporated in the State of Delaware, USA operating at and out of Boca Raton, Florida.
5. The Defendant David Taylor resides in the city of Port Colborne and all material times was the president, majority shareholder and guiding mind of the Defendant Versitec Marine Industrial.

The Plaintiff's Employment with the Defendant Versitec

6. From May 2016, continuing for months following, discussions took place between the Plaintiff and the Defendant Taylor, a business acquaintance, culminating in an offer of employment. Specifically, the Plaintiff was induced to take up the position of Chief Operating Officer of Versitec Marine Canada on the strength of the personal representations by the Defendant David Taylor to him that he would be engaged on the following terms:
 - a) Salary: \$97,000 CAD/year;
 - b) Profit Sharing Scheme, percentage & income based upon net operating profit;
 - c) Hours: 8am to 5pm. 5 days per week and all additional hours required to fulfill the roles and responsibilities of Chief Operating Officer;

- d) Housing: A furnished Corporate Apartment for his sole use and located in Port Colborne, provided for the term of his employment in Canada;
- e) Utilities: Apartment Utilities to be paid for the duration of his employment in Canada;
- f) Company Cell Phone for business & personal use;
- g) Corporate Amex Card for Business Travel Expenses

7. The responsibilities of the Plaintiff were to include the following tasks:

- a) Create and Manage our export sales growth program 2017 and onwards;
- b) Implementation of Business Management Systems including a new fully integrated CRM System that the Versitec business requires to increase its ability to grow profitably in the Export and home-based markets;
- c) Responsibility for business compliance, legal, financial, technical etc.
- d) Become the primary company Executive interface in respect to all business matters;
- e) To create and manage the implementation and approval of a business wide ISO 9001 Business Quality Management System to support daily operations and to allow Versitec to obtain Marine Class Certificates essential for global business growth;
- f) To implement daily operating systems and procedures to support all administrative and financial activities;
- g) To act on behalf of the Versitec President and owner with regard to all matters including Banking, Financial Expenditure, Profit and growth forecasts and all associated processes;
- h) Engagement with all "high level" management decisions relating to Employees in Canada and overseas staff and Sales Agents, Financial management, Business Development;
- i) All employee hiring and associated personnel management systems to support the growth of the business;
- j) Management of R&D and materials programmes related to new product development;

- k) Creation and implementation of employee skills training programmes;
- l) Creation and implementation of enhanced supply chain management based upon our Canadian material and manufacturing base;
- m) Management of company wide profitability and Export Growth;
- n) Management of the company technical department and all associated services.

8. The parties further agreed that the Plaintiff:

- a) was to become eligible for medical and life insurance after the passage of six months;
- b) was to receive five weeks vacation entitlement per annum;
- c) would be eligible to receive paid travel to the UK to attend to his parents, now in declining health; and
- d) would receive a 10% shareholding interest in the company Versitec USA as well as 10% shareholding interest in the company yet to be formed which would operate as Versitec Asia-Pacific.

9. By operation of law it was an implied term of the Employment Contract that:

- a) Versitec would, in the absence of gross misconduct amounting to cause, provide the Plaintiff with a reasonable period of advance notice of any dismissal or monetary severance compensation in lieu thereof; and
- b) Versitec would act in good faith and deal fairly with the Plaintiff so as to do nothing to impair his ability to maintain his employment or otherwise adversely affect his interests and/or rights.

10. The Plaintiff took up his position and diligently performed all duties required of him.
11. Shortly after taking up his position the Defendant David Taylor indicated the company was not in a position to pay his full salary as promised but any shortfall would be later received.
12. The Plaintiff has only received approximately 70% of the promised salary during the course of his employment.
13. In addition, the Plaintiff was prevailed upon not to take vacation and has accrued \$15,110 in accrued and outstanding vacation pay entitlement.

The Plaintiff's Termination

14. The Plaintiff states that from the commencement of his employment the Defendant Taylor thwarted all efforts by the Plaintiff to introduce sound business systems and practices, and to maintain financial records in accordance with generally accepted accounting principles.
15. The Plaintiff states that the Defendant Taylor frequently withdrew monies from the company disguised as expenses and acted in an undisciplined, impulsive, improvident manner exhibiting a mercurial temperament dismissive of all legal and financial advice and threatening to dismiss any employee who Taylor perceived to be countermanding his instructions.
16. In 2017 the Plaintiff and the Defendant Taylor met with company counsel relative to Taylor's plan to install the Plaintiff as CEO and signing officer of the company in early 2018 with the Plaintiff to assume many of the duties of the chief financial officer Taylor had decided to dismiss. At that time, Taylor represented to the Plaintiff that the shareholding interest referred to in paragraph 8 d) would be implemented but failed to materialize.

17. On or about February 22, 2019 the Plaintiff was summarily terminated by the Defendant CEO then on vacation verbally via a Skype video conference. The Plaintiff had no advance notice of his termination and was paid the sum of \$5,850 without explanation but no further payments of any kind from and after the date of his termination.
18. The Plaintiff states that he was not provided with reasonable notice of termination. In failing to provide reasonable notice, Versitec breached the Employment Contract between the parties, thereby entitling the Plaintiff to wrongful dismissal damages.
19. The Plaintiff states that Taylor was at all material times, an officer and director of Versitec. The Plaintiff therefore pleads and relies on the provisions of the *Employment Standards Act, 2000* and the *Business Corporations Act* which provide that the Personal Defendant is personally liable for any wages owing to him that are not paid and satisfied by Versitec.
20. The Plaintiff states that he was entitled to vacation of up to a minimum of five weeks per year but was unable to utilize his vacation owing to work demands. The Company's books of account record \$15,110 in outstanding vacation pay owing to the Plaintiff.
21. The Plaintiff states that having regard to his age, his length of service, his position of responsibility and all other factors relevant at law he was entitled to at least 6 months advance notice of his termination.
22. The Plaintiff states that from and after the termination of his employment:
- a) The Defendant failed to pay accrued unpaid vacation in the amount of \$15,110;
 - b) The Defendant failed to pay for medical expenses in the amount of \$1,840;

- c) The Defendant failed to make promised payments on account of accommodation and utilities in the amount of \$5,625;
 - d) The Defendant failed to pay receipted business expenses in the matter of \$2,915; and
 - e) The Defendant failed to reimburse for unauthorized deductions from salary in the amount of \$3,000.
23. The Plaintiff has made reasonable efforts to mitigate his claimed damages but without success to date.
24. The Plaintiff states that the conduct of the Defendants in carrying out the termination of his employment was harsh, oppressive, callous and with flagrant disregard for his contractual, statutory and other legal rights
25. The Defendants' actions were so highhanded, vindictive, arbitrary and arrogant that they merit the sanction of this Honourable Court through an award of punitive, aggravated and/or exemplary damages.
26. The Plaintiff claims his costs of this action on a substantial indemnity scale.
27. The Plaintiff proposes this action to be tried in the City of St. Catharines in the Regional Municipality of Niagara.

DATED: May 21, 2019

CHOWN, CAIRNS LLP
Barristers and Solicitors
80 King Street, 9th Floor,
P.O. Box 760
St. Catharines, ON L2R 6Y8

Tel: (905) 688-4500
Fax: (905) 688-0015
Barry W. Adams, LSO #17320T
Solicitors for the Plaintiff

EXHIBIT 14

John Morgan

From: pkdhar@gmail.com
Sent: August-14-20 10:21 AM
To: John Morgan
Subject: Re: Versitec Contract

Hi John,

Yes it was extended and is in force even now. I was told that same terms will continue. It was verbal - David Taylor & David Swindells & even Reuben, when we visited (David Swindells was also there) Genco NY on 18-March-2020, after Reuben came on board Versitec Management.

Even today messages are being copied to me on Genco vessels by the managers & Versitec. Versitec will not get any business from Genco (Wallem and Anglo-Eastern) if I was not the agent in between, which is clear from Genco's message to Reuben, forwarded to you earlier today.

You'll see Versitec paid my commissions till October 2019 but then due to involvement of Liquid Capital and conflicting instructions from LC and Versitec, Genco asked both Wallem and Versitec to stop further payments to Versitec/LC.

Till June 23, 2020 Reuben was promising payment to me but then he kept quite.

Best regards
 Pranab Dhar
 T: +1(347)741-0298

Sent from my iPhone

On Aug 14, 2020, at 9:51 AM, John Morgan <JohnMorgan@morgantrustees.com> wrote:

Good day Mr. Dhar
 Was this contract ever renewed or extended in writing by both parties? If so may I have that confirmation please.

John Morgan, CPA, CA, CIRP, LIT, CFE, CBM
President

MORGAN & PARTNERS INC.
 4 Cedar Pointe Drive, Unit J-2, Barrie, ON L4N 5R7
 Direct Line: (705) 739-7003 ext 23
 Fax: (705) 739-7119

www.morgantrustees.com

From: pkdhar@gmail.com <pkdhar@gmail.com>
Sent: August-14-20 5:39 AM
To: John Morgan <JohnMorgan@morgantrustees.com>
Subject: Fwd: Versitec Contract

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> Sent from my iPhone

TAB C

LIQUID CAPITAL EXCHANGE CORP.
Applicant

-and- 1635536 ONTARIO INC. o/a VERSITEC MARINE et al. Court File No. CV-20-00637427-00CL
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD OF THE RECEIVER
(MOTION RETURNABLE FEBRUARY 12, 2021)**

LAISHLEY REED LLP
Barristers & Solicitors
3 Church Street, Suite 505
Toronto, ON M5E 1M2

Calvin J. Ho LSO#: 40875B
Tel: 416.981.9430
Fax: 416.981.0060
Email: cho@laishleyreed.com

Lawyers for the Receiver,
Morgan & Partners Inc.