

Court File No. C70020

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
(APPELLANT)

and

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

Applicant
(RESPONDENT)

**APPEAL BOOK
AND
COMPENDIUM**

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COURT OF APPEAL FOR ONTARIO

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BETWEEN:

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(RESPONDENT)**APPEAL BOOK AND COMPENDIUM
Index**

Document	Page
Notice of Appeal dated 24 December 2020	04
Order of the Honourable J.C. George dated 14 December 2020	09
Reasons for decision of The Honourable Justice George dated 14 December 2020	12
Endorsement of Justice J.C. George dated 10 September 2020	18
Motion Record of the Trustee, dated March 10, 2020, including the Fourth Report of the Trustee dated March 3, 2020	19
Notice of Motion	34
Fourth Report of the Trustee, dated March 3, 2020	40
Appendix "A" Trustee's First Report	50
Appendix "B" Trustee's Supplement to the First Report	59
Appendix "C" April 2, 2019 Order of The Honourable Justice A.K. Mitchell	68
Appendix "D" Trustee's Second Report	91
Appendix "E" August 16, 2019 Order of The Honourable Justice George	107
Appendix "F" Trustee's Third Report	117
Appendix "G" November 22, 2019 Order of The Honourable Justice Hockin	130
Appendix "H" 45 Yarmouth Summary of Values and Draws	143
Appendix "I" March Payment Advice	156
Appendix "J" Ayerswood Statement of Defence	158
Supplement to the Fourth Report, dated October 16, 2020	171

COURT OF APPEAL FOR ONTARIO

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(RESPONDENT)**APPEAL BOOK AND COMPENDIUM****Index (Cont'd)**

Document	Page
Responding Motion Record of Ayerswood (returnable 18 November 2020)	179
Affidavit of John Camara	181
Exhibit A Contract between Sirius and Ayerswood dated 14 March 2018	188
Exhibit B Email from Sirius to John Camara dated 4 September 2018	191
Exhibit C Email exchange between John Camara and Sirius 11 & 12 Feb 2019	192
Exhibit D Email exchange between John Camara and Sirius 1 March 2019	196
Exhibit E Statement of Affairs of Sirius	199
Exhibit F Truest Quantity Surveyors Report	213
Notice of Application	252
Factum of the Respondent on the Motion Ayerswood Development Corporation 18 November 2020	259
Appellants Certificate Respecting Evidence	296
Respondent's Certificate Respecting Evidence	299
Order of Justice Benotto, 1 October 2021	302
Certificate of Completeness	305

Court file no. C70200

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
(APPELLANT)

and

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

Applicant
(RESPONDENT)

NOTICE OF APPEAL

AYERSWOOD DEVELOPMENT CORPORATION APPEALS to the Court of Appeal from the order of The Honourable Justice Jonathon C. George dated 14 December 2020 made at London, Ontario.

THE APPELLANT ASKS that the order be set aside and an order be granted providing directions for the trial of an issue, or proceeding by application, to determine the following issues:

- (a) A determination whether the sum of \$381,578.40 held by the Trustee, which was received by the Trustee in or about the first to the fourth days of March 2019 by way of a cheque issued by Ayerswood Development Corporation (“Ayerswood”), is held by the Trustee in trust in favour of Ayerswood and does not form “property” of the bankrupt Sirius Concrete Inc. pursuant to the *Bankruptcy and Insolvency Act*;
- (b) A determination that to the extent the amount received by the Trustee from Ayerswood for holdback under the *Construction Act* included holdback attributable to the said \$381,578.40 amount, such attributable amount should be repaid by the Trustee to Ayerswood;

THE GROUNDS OF APPEAL are as follows:

- (a) The learned Judge erred by proceeding to decide disputed substantive issues on a motion for directions brought by the Trustee under s. 34(1) of the *Bankruptcy and Insolvency Act*;
- (b) The learned Judge erred by basing his determination on facts not in evidence and generalised assumptions or conclusions unsupported or insufficiently supported by evidence;

- (c) The learned Judge erred in proceeding to determine disputed substantive issues in the absence of an adequate evidentiary record and without affording the opportunity to both Ayerswood and the Trustee to adduce such evidentiary record;
- (d) The learned judge erred in his public policy analysis and analysis of how the *Bankruptcy and Insolvency Act* regime” is supposed to work”.
- (e) The learned judge erred in holding that a trust has not and cannot be established by Ayerswood.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS: section 193(c) of the *Bankruptcy and Insolvency Act* as the appeal is from an order in which the property involved in the appeal exceeds in value ten thousand dollars. Leave to appeal is not required.

Dated this 24th day of December 2020.

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AYERSWOOD DEVELOPMENT CORPORATION
∞ RESPONDENT (APPELLANT)

and

BDO CANADA LIMITED et al
APPLICANT (RESPONDENT)
Court file no. C

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

In the Matter of the Bankruptcy of Sirius
Concrete Inc.

NOTICE OF APPEAL

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ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY



IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO

THE HONOURABLE)

JUSTICE J. C. GEORGE)

MONDAY, THE 14TH DAY

OF DECEMBER, 2020

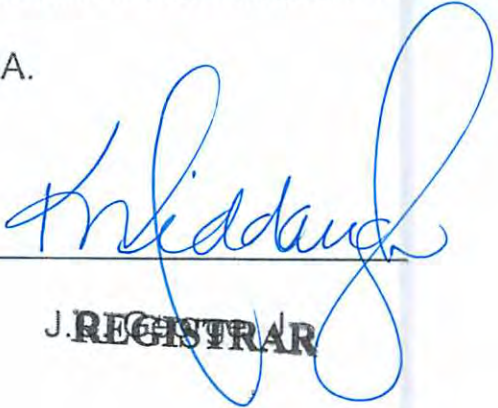
ORDER

THIS MOTION brought by the Trustee of the Estate of Sirius Concrete Inc. for directions was heard on 18 November 2020, by videoconference, at 80 Dundas Street, London, Ontario,

UPON READING the motion record of the Trustee, the responding record of Ayerswood Development Corporation, the Supplement to the 4th Report of the Trustee, and the factums and authorities of the Trustee and Ayerswood Development Corporation, and upon hearing the submissions of counsel on behalf of the Trustee and Ayerswood Development Corporation, and for written reasons for decision dated 14 December 2020,

1. **THIS COURT ORDERS** that the Fourth Report of the Trustee to the Court dated March 3, 2020 and the Supplement to the Fourth Report dated October 16, 2020, are approved.

2. THIS COURT ORDERS that the March Payment by Ayerswood Development Corporation in the amount of \$381,578.40 forms part of the estate of Sirius Concrete Inc. and that it is to be distributed to the creditors thereof pursuant to the Claims Administration Procedure and/or scheme of distribution in the BIA.



J. REGISTRAR

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
~~IN THE PROVINCE OF ONTARIO~~

Court File No. 35-2481393

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

Proceeding commenced in London

ORDER

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CITATION: Sirius Concrete Inc. (Bankruptcy), 2020 ONSC 7733
COURT FILE NO.: 35-2481393
DATE: 2020/12/14

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BEFORE: George J.

COUNSEL: Melinda Vine, for BDO Canada Limited

Scott Turton, for Ayerswood Development Corp.

HEARD: November 18, 2020

DATE: December 14, 2020

ENDORSEMENT

- [1] Three facts set the stage for the issues raised on this motion. First, On March 1, 2019 Ayerswood paid Sirius \$381,578.40 (“March Payment”) for services rendered and invoiced earlier that year in January. Second, on March 4, 2019 Sirius made a voluntary assignment in bankruptcy. Third, BDO Canada Ltd. (“BDO”) was appointed trustee.
- [2] Sirius specializes in what was described as “modern super-structures” providing, along with other services and products, insulated concrete forms, cast-in-place concrete, and pre-cast panelling. At the time of its assignment Sirius was involved in several projects including one for Ayerswood in Guelph (“Guelph Project”).
- [3] BDO has previously filed, and had approved, its First, Second, and Third reports. It now seeks an order approving the Fourth Report dated March 3, 2020, as well as court direction in respect of the March Payment. It has also prepared and submitted a supplement to its Fourth Report, dated October 16, 2020.
- [4] BDO takes the position that the March Payment constitutes a pre-bankruptcy collection of a receivable, and is not recoverable by Ayerswood. It argues that any alleged deficiencies in the work performed by Sirius, even if established, would only entitle Ayerswood to an unsecured claim in this bankruptcy proceeding.
- [5] Ayerswood’s argument is that it made the March payment – which, again, was for work described in a January 2019 invoice – only after being deceived by Sirius. The circumstances surrounding this alleged deception are set out in the affidavit of Ayerswood construction manager John Camara, sworn October 9, 2020. I have carefully reviewed this affidavit and reproduce these notable passages:

8. [Exhibit D] to this affidavit is my email exchange with Sirius on the first of March 2019. In my email of 10:51 a.m. on March first I write that I was at the job site in Guelph and was disappointed that no one from Sirius showed up. A meeting on site had been set up for that morning at which [point] Sirius was to present a detailed plan that would address the problems with their delays and deficiencies. While still on site I received a call from Tomas Waite, the project manager at Sirius, apologizing for their failure to come to the meeting and asking that the meeting be put back to the following Tuesday, March fifth. I was told that they were discussing their plan to get back on track with their work at the Building and needed a bit more time hence the need to delay the meeting until the following Tuesday. At that time Tomas asked me if I could help out by giving them the cheque for the January invoice (this is the \$381,578.40). I expressed my reluctance to do that until I received a satisfactory plan from them some confidence it would be adhered to. Tomas assured me that Sirius was committed to providing me with an effective plan and sticking to it so that their work would be back on track and get completed. He told me that if I provided the cheque now that would ensure that Sirius would push things along to get their work done. The assurance of Sirius committing to finishing up the work on an efficient schedule was of huge importance to me as the project was significantly behind schedule, so in reliance on these assurances from Sirius, and believing them, I relented and agreed to release the cheque that day. Sirius sent Tom Waite's girlfriend on that Friday, 1 March, to pick up the cheque and in good faith I gave it to her. I did not suspect any foul play.

9. What I did not know on March first was that Sirius had already been working with its licenced insolvency trustee prior to March first and the documents were prepared, and signed, on March first 2019, to put Sirius into bankruptcy. In short, when Sirius dealt with me on March first, and persuaded me to release the cheque to them, Sirius knew it was not going to be doing any further work on the building. So when Sirius wrote to me on March 1, 2019 – “Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues.” – Ayerswood was being lied to. Exhibit E to this affidavit is a copy of the Statement of Affairs of Sirius. While it shows a date of March 1, 2019 the amount of information in that form was self-evidently not compiled only after 12:44 p.m. that day [the time of the above quoted email]. Sirius knew they would not be returning to site and deceived me.

10. I, and hence Ayerswood, was assured by Sirius that if the payment of their January invoice was given to them they would come to the meeting on 5 March 2019 with a concrete plan to solve the problems and would move their work ahead promptly ...

11. If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited (“the Trustee”) and were going to assign Sirius into bankruptcy and abandon their contract for the building I never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been over-paid for the work they had done. Sirius was not owed

\$381,578.40, or any part of that money, and it only received that cheque due to their deceit as I have outlined above.

- [6] The affidavit goes on to discuss the assessment of Truest Quantity Surveyors, which was commissioned by Ayerswood to investigate and report on the value of the work completed by Sirius. The report speaks for itself and is attached as Exhibit F to Mr. Camara's affidavit. Mr. Camara deposes that "I accept as correct, and agree with, the conclusion of this report that Sirius was overpaid by \$702,551.61" concluding that "if the funds behind held by the trustee, namely the \$381,578.40, plus the 10% holdback attributable to that amount, are not returned to Ayerswood then Ayerswood would have paid for work that was not done and the creditors of Sirius will receive funds that were not earned by Sirius and were obtained through deceit".
- [7] What is described above should, according to Ayerswood, result in the imposition of a remedial constructive trust. The court can, it argues, grant this equitable remedy when funds have been obtained by misrepresentation or deceit, or in a situation of unjust enrichment. While BDO does not agree these funds are held in trust, it does agree that if the court so finds, then said funds are not Sirius property, not now a part of its estate, and as such never vested in it as trustee.
- [8] Ayerswood is not asking that I, today, declare a trust. It simply takes the position that the issue of whether one exists or not cannot be determined on the record before me. In other words, it can only be properly considered on a full evidentiary record, created in one of three ways:
- i) After a trial of an issue in the context of this bankruptcy proceeding;
 - ii) after a hearing on a fresh application that specifically seeks the imposition of a trust and return of March Payment; or
 - iii) in the construction lien matter that remains outstanding in Guelph, in which it filed a counterclaim seeking the return of the March Payment.
- [9] It takes the position that the first two options noted above are preferable and to that end attaches to its materials on this motion a not yet issued Notice of Application which sets out the relief it wants (i.e. the declaration of a trust, and return of the March Payment).
- [10] BDO takes the position that the March Payment is a pre-bankruptcy collection of a receivable, paid in the normal course, and not recoverable by Ayerswood. It argues that any alleged deficiencies in Sirius' work, and any damages that might flow therefrom (if established), amount only to an unsecured claim in this bankruptcy matter. As indicated, BDO agrees that if the March Payment is being held in trust for Ayerswood then said funds would not have vested with it, as trustee, on Sirius' assignment – and would therefore not be governed by s. 136 of the *Bankruptcy and Insolvency Act* ("BIA"). It submits, however, that there is no evidence to support that position.

- [11] While no evidence was filed in direct response to Mr. Camara's affidavit, counsel for BDO points to these factors in support of its position that any claim Sirius' work was deficient is doomed to fail, and that a trust does not exist:
- i) Before payment, Ayerswood had ample opportunity to satisfy itself as to the quality of the work Sirius had completed and invoiced in January. In other words, irrespective of what Mr. Camara deposes, if it had concerns about the work or issues with the invoice it would not have made the payment.
 - ii) By making the March Payment Ayerswood expressed its satisfaction with Sirius' work.
 - iii) Ayerswood paid this particular invoice as it had for Sirius' previous nine invoices, and in the same manner.
 - iv) Despite any alleged deficiencies – which would, if proven, in its effect lower the amount of the invoice – there can be no dispute that on the assignment of a person into bankruptcy all of their property vests in the trustee, unless it can be established that the funds are held in trust.
 - v) Mr. Camara's affidavit discloses no basis upon which a trust could be imposed.
 - vi) Ayerswood has pled no facts to support the notion that, as against Sirius, it is a secured creditor.
 - vii) At the time of the March Payment Ayerswood and Sirius had an existing contractual relationship with Sirius routinely providing a service(s) with Ayerswood promptly paying for said services. That is, this was not a one-off transaction immediately preceding a bankruptcy, but rather a payment, made in the normal course, and in the context of an habitual relationship.
 - viii) Ayerswood' counterclaim in the Guelph Matter is not properly before the court as it did not seek leave as required by the BIA.
 - ix) Lastly, and perhaps most importantly, to accede to Ayerswood's request would be to improperly elevate its status beyond other unsecured creditors. Such a result would carry serious implications for the BIA as it would invariably give rise to confusion about when certain claims could be commenced and would needlessly raise questions about the nature of the BIA's priority scheme.
- [12] All creditors – at least those who made their position known – support BDO's position that the funds in question form part of the bankrupt's estate and ought to be distributed to

the creditors pursuant to the Claims Administration Procedure and or the BIA's distribution scheme.

- [13] I accept that there is a live question as to whether Ayerswood was manipulated and duped into making the March Payment. Meaning, it might very well have a claim for damages against the principal of Sirius based on what it styles a fraudulent misrepresentation. This is not, however, an issue for BDO to concern itself with, as the bankruptcy scheme is to provide for the orderly distribution of a bankrupt's estate among its creditors (with proven claims), which is precisely what it is attempting to do in this case.
- [14] The reality is there is absolutely nothing to distinguish the character of the March Payment from those made in respect of the prior nine invoices issued by Sirius (and paid by Ayerswood). It is true that after this one payment bankruptcy followed, but this is immaterial to BDO's motion nor does it, standing alone, transform these funds into an amount held in trust pending "the contract getting back on track as promised", which Mr. Camara asserts.
- [15] More than anything else, I am concerned with the public policy issue raised by BDO. I truly believe that to find a trust exists in circumstances like these, would lead to chaos. It would, in its effect, open the door for every payment made pursuant to an invoice rendered (for work completed) prior to the date of bankruptcy to be impressed with a trust. A decision like that runs the risk of upending the purpose of the BIA and undermining its rationale. Were we talking about an anticipatory payment, made for work not yet completed, then this concern would not be as acute; but that is not the nature of this payment, even on Mr. Camara's account.
- [16] The fact is, Ayerswood has its remedy. It can file a proof of claim with BDO for the deficiencies it says exist and attempt to establish that Sirius breached its contractual obligations (by failing to complete the project as agreed). Ayerswood's allegations of work deficiencies will surely meet resistance but it can at least make that claim. In any case, as I understand it, if deficiencies can be proven and if it is entitled to damages then Ayerswood would simply share it proportionately with other unsecured creditors. That is how this is supposed to work.
- [17] Even if I am wrong and have overstated what options are available to Ayerswood, it remains that a trust has not and cannot be established. Ayerswood's counsel made much of the fact that, first, there was no summary judgment motion (or like proceeding) before the court and, second, that there was no evidence to contradict Mr. Camara's. Neither is of any consequence. On the face of it, and accepting all of it as true, none of what Mr. Camara deposes could possibly lead to the imposition of a trust. Which means, apart from any deficiencies in Sirius' work (which is irrelevant for our purposes), what we are talking about here is payment on an outstanding debt. Sirius completed work; invoiced for it; and, consistent with its typical practice and after the passage of a significant period of time, Ayerswood paid it. There is not much else to say about this other than: a debt was owed, which was paid, and any deficiency claim by Ayerswood would simply be

addressed as an unsecured claim in the bankruptcy. What Ayerswood is really asking me to do is elevate it above and give it priority to the remaining unsecured creditors of Sirius, including some which are unpaid subtrades of Sirius for whom the March Payment represents a source of recovery.

- [18] For these reasons, BDO's motion is granted. An order to issue approving the Fourth Report to the Court dated March 3, 2020 and Supplement to the Fourth Report dated October 16, 2020. Furthermore, I find that the March Payment forms part of the estate of Sirius and direct that it be distributed to the creditors thereof pursuant to the Claims Administration Procedure and/or scheme of distribution in the BIA.



Justice Jonathon C. George

Date: December 14, 2020

ONTARIO
SUPERIOR COURT OF JUSTICE

S.C.J. Court File No.: 35-2481393

Trustee: BDO Canada Ltd. Counsel: Melinda Vine

Creditor: Ayerswood Development Corp. Counsel: Scott Turton

Date: September 10, 2020

ENDORSEMENT

**IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

The Trustee's motion seeking directions from the court has been conditionally scheduled to proceed on November 18, 2020 at 10a.m. It's motion and factum have already been served and filed. At the request of Ayerswood's counsel, Mr. Turton, we are here today for a Case Conference. As I understand it, Mr. Turton has to this point been somewhat unclear as to what specific directions the Trustee will be seeking and what form the hearing would take (i.e. will it involve a question(s) of law only, or are affidavits and cross-examinations required). He also raises a jurisdictional question arguing that what should happen with the disputed funds should be addressed in the outstanding construction lien litigation in Guelph.

Apart from any jurisdictional question Ayerswood may raise at the Special Appointment, it appears as though the parties are now ready to proceed on November 18th. Counsel have also confirmed that the time allotted is sufficient. In light of that, this is my direction:

1. November 18th, 2020 special appointment is confirmed. The parties will be ready to proceed. 3 hours required.
2. Ayerswood to file responding material on or before October 9, 2020.
3. BDO to file a reply, if any, on or before October 23, 2020.



Justice J.C. George

Court File No. 35-2481393
Estate File No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN THE BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

MOTION RECORD

March 10, 2020

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Fax: 416-747-0999

Email: ftaglieri@scottforestproducts.com

AND

TO: **Scott Turton Law**
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Richmond Hill, ON L4E 3N4

Attention: Scott Turton
Tel: 905-508-5821
Fax: 905-508-0519
Email: scott@scottturtonlaw.com

Lawyers for Ayerswood Development Construction

AND

TO: **Synrg Group Construction Partners Inc.**
4103-51 Avenue
Cold Lake, AB T9M 2A6

Attention: Domenic Piccone
Tel: 416-688-1350
Fax: 905-417-0430
Email: dpiccone@synrg.ca

AND

TO: **Newton Group Ltd.**
41 Massey Road
Guelph, ON N1H 7M6

Attention: John Steinman
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AND

TO: **Sutherland law**
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Vaughan, ON L4K 4M3

Attention: Dan Fridmar
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Lawyers for Canada Building Materials Company, a division of St. Mary's Cement Inc.

AND

TO: **David G. Forbes**
11 Anthony Place
Kitchener, ON N2A 1J9

AND

TO: **4Refuel**
PO Box 57323 Stn A
Toronto, ON M5W 5M5

AND

TO: **Acco Group**
654 Fairway Rd S., Unit B
Kitchener, ON N2C 1X3

AND

TO: **Active Heavy Towing**
1764 Victoria St. N
Kitchener, ON N2B 3E5

AND

TO: **Advance Construction Equipment**
607 Colby Drive
Waterloo, ON N2V 1A1

AND

TO: **Alder Construction Group Ltd.**
1-617 Colby Drive
Waterloo, ON N2V 1Y9

AND

TO: **Andrew Scott**
27 Cedar St. N
Kitchener, ON N2M 2H3

AND

TO: **Becker Brothers**
915 Wilson Ave
Kitchener, ON N2C 1J1

AND

TO: **BMO Financial Group c/o
BankruptcyHighway.com
Mike Timko**
PO Box 57100
Etobicoke, ON M8Y 3Y2

AND

TO: **Bolts Plus**
7100 Torbram Rd
Mississauga, ON L4T 4B5

AND

TO: **C.J. Pink Ltd.**
875 Donnybrook Drive
Dorchester, ON N0L 1G5

AND

TO: **Centreline Sanitation**
108 Meg Drive, Unit #1
London, ON N6E 3T7

AND

TO: **Cotton Inc.**
2125 Fruitbelt Parkway
Niagara Falls, ON L2J 0A5

AND

TO: **CRA – Sudbury Tax Services Office**
PO Box 5548
3-451 Talbot St.
London, ON N6A 4R3

AND

TO: **CWB National Leasing Inc.**
Formerly National Leasing Group Inc.
Bankruptcy Designate
1525 Buffalo Pl
Winnipeg, MB R3T 1L9

AND

TO: **Desjardins Card Services**
PO Box 8601 STN Centre-Ville
FCDQ
Montreal, QC H3C 3V2

AND

TO: **Forbesdale Fabrication**
642960 Rd. 64
Ingersoll, ON N5C 3J6

AND

TO: **Form & Build Supply**
1175 Frances St
London, ON N5W 2L9

AND

TO: **Glenerran Holdings Inc.**
589 Colby Dr
Waterloo, ON N2V 1A1

AND

TO: **IBS Engineering Limited**
21 Fairview Blvd.
Guelph, ON N1G 1H3

AND

TO: **Information Network Systems**
75 Northland Road
Waterloo, ON N2V 1Y8

AND

TO: **JDI Cleaning Systems**
108-3380 South Service Road
Burlington, ON L7N 3J5

AND

TO: **Linde Canada Limited**
PO Box 15687, Station A
Toronto, ON M5W 1C1

AND

TO: **Michael Roux**
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Stevensville, ON L0S 1S0

AND

TO: **Ministry of Finance – ON PST, EHT & Other Taxes**
Mrs. Asta Alberry
Ministry of Revenue
33 King Street West 6th Floor
Oshawa, ON L1H 8H5

AND

TO: **MNP LLP**
3rd Floor
139 Northfield Drive West
Waterloo, ON N2L 5A6

AND

TO: **Modspace**
2300 North Park Drive
Stevensville, ON L0S 1S0

AND

TO: **National Rent-All Inc**
1-260 Shirley Ave
Kitchener, ON N2B 2E1

AND

TO: **NestSys Networking Inc.**
668 Trillium Drive Unit 4
Kitchener, ON N2R 1J3

AND

TO: **Northfield Auto Services**
661 Colby Drive
Waterloo, ON N2V 1C2

AND

TO: **Pro Steel Fabrication**
2500 Williams Parkway Unit #23
Brampton, ON L6S 5M9

AND

TO: **Progressive Contractors Association**
1024 Parsons Road SW
Edmonton, AB T6X 0J4

AND

TO: **Rebar Guys Installation Inc.**
90 Adam Street
Cambridge, ON N3C 2K6

AND

TO: **Rogers**
PO Box 9100
Don Mills, ON M3C 3P9

AND

TO: **Ronald's Crane Operations Ltd.**
47 Stephanie Ave
Brampton, ON L6Y 0R8

AND

TO: **SDA Contracting**
2075 Preston Road
Cavan-Monaghan, ON K9J 0G5

AND

TO: **Skycrane**
1664 York Rd
Niagara-On-The-Lake, ON L0S 1J0

AND

TO: **Spectrum Communications Ltd**
250 Lawrence Ave
Kitchener, ON N2M 1Y4

AND

TO: **Stubbe's Precast Inc**
30 Muir Line
Harley, ON N0E 1E0

AND

TO: **Sunbelt Rentals Inc**
PO Box 99257, Station Terminal
Vancouver, BC V6B 0N5

AND

TO: **The County Tool Shed**
104 Dundas St.
Thamesford, ON N0M 2M0

AND

TO: **Torcan Lift Equipment**
115 Rivalda Road
Toronto, ON M9M 2M6

AND

TO: **Williams Form Hardware and Rockbolt**
670 Industrial Road
London, ON N5V 1V1

AND

TO: **Williams Scotsman of Canada, Inc**
PO Box 4090 STN A
c/o 911630
Toronto, ON M5W 0E9

AND

TO: **Workplace Safety & Insurance Brd**
Station A
PO Box 4115
Toronto, ON M5W 2V3

AND

TO: **Workplace Safety and Insurance Board**
c/o Collection Services
200 Front St W
Toronto, ON M5V 3J1

AND

TO: **Wuis Brothers Construction**
3 Sandbourne Drive, PO Box 5
Pontpool, ON L0A 1K0

AND

TO: **Concept Development**
330 Trillium Drive, Unit E1
Kitchener, ON N2E 3J2

AND

TO: **Reid & Deleye Construction South**
59 Highway Crescent
Courtland, ON N0J 1E0

AND

TO: **Van-Del Contracting**
835 Sawmill Road
Bloomingdale, ON N0B 1K0

AND

TO: **Maple Reinders**
24-260 Holiday Drive
Cambridge, ON N3C 4E2

AND

TO: **Academy Construction Limited**
540 Conestoga Road
Waterloo, ON N2L 4E2

AND

TO: **Rockwater Pete Waters**
224 Line 7 North
Oro Station, ON L0L 2F0

INDEX

INDEX

Tab	Document	Page No.
1	Notice of Motion, dated March 10, 2020	1
2	Fourth Report of the Trustee, dated March 3, 2020	7
	Appendix "A" – Trustee's First Report	17
	Appendix "B" – Trustee's Supplement to the First Report	26
	Appendix "C" – April 2 Order	35
	Appendix "D" – Trustee's Second Report	58
	Appendix "E" – August 16 Order	74
	Appendix "F" – Trustee's Third Report	84
	Appendix "G" – November 22 Order	97
	Appendix "H" – 45 Yarmouth Summary of Values and Draws	110
	Appendix "I" – March Payment Advice	123
	Appendix "J" – Ayerswood Statement of Defence	125

Tab 1

Court File No. 35-2481393
Estate File No. 35-2481393

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

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

NOTICE OF MOTION

BDO Canada Limited in its capacity as Trustee (the “**Trustee**”) of Sirius Concrete Inc. (“**Sirius**”), of the City of Waterloo, in the Province of Ontario, will make a motion to the Court on Friday, March 20th, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard at the Court House, 80 Dundas Street, London, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

in writing under subrule 37.12.1(1) because it is on consent;

in writing as an opposed motion under subrule 37.12.1(4);

orally

THE MOTION IS FOR:

1. An Order directing the Trustee’s action with respect to the pre-bankruptcy payment received by Sirius from Ayerswood Development Corporation (“**Ayerswood**”) on March 1, 2019 and Ayerswood’s claim for repayment of same;
2. An Order approving the Fourth Report to Court dated March 3, 2020 and the activities of the Trustee (the “**Fourth Report**”); and,
3. Any such further relief as is just.

THE GROUNDS FOR THE MOTION ARE:**Bankruptcy**

4. The Bankrupt, Sirius, made a voluntary assignment in bankruptcy on March 4, 2019, and the Trustee was appointed as Trustee in Bankruptcy.

5. Ayerswood made a pre-bankruptcy payment to Sirius on March 1, 2019 in the amount of \$381,578.40 (the "**March Payment**")

6. Prior to its assignment, Sirius operated as a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete, for numerous construction projects, including the following:

- a. 18 Barrel Yards Blvd, Waterloo, Ontario (the "**Waterloo Property**" and the "**Waterloo Project**");
- b. 112 Benton St. Kitchener, Ontario (the "**Kitchener Property**" and the "**Kitchener Project**");
- c. 109 King Ave, Newcastle, Ontario (the "**Newcastle Property**" and the "**Newcastle Project**");
- d. 45 Yarmouth St., Guelph, Ontario (the "**Guelph Property**" and the "**Guelph Project**");
- e. 200 Steelwell Rd. Brampton, Ontario (the "**Brampton Project**"); and
- f. 10 Wilson St. Guelph, Ontario (the "**Parking Lot Project**").

(6 (a) to (f) collectively, the "**Projects**")

Claims Administration Procedure and Trustee's Activities

7. The Trustee has previously reported to the Court by way of its First Report, Second Report and Third Report.

8. As set out in the First Report, the Trustee developed a Claims Administration Procedure (the "**Claims Administration Procedure**") to determine the status of all claims as against Sirius

in relation to the Projects, and to determine all payables and receivables of Sirius in relation to same. The Claim Administration Procedure was approved in the Order of the Honourable Justice Mitchell dated April 2, 2019 (the “**April 2 Order**”).

9. Pursuant to the April 2 Order, and as outlined in the Third Report, the Trustee has collected numerous accounts receivable and entered into various settlements with the customers of Sirius.

10. The Claims Administration Procedure has been fully executed by the Trustee but for the claim by Ayerswood on the Guelph Project for the return of the March Payment.

11. As the return of the March Payment involves the administration of the estate of Sirius, the Trustee seeks the direction of the Court with respect to same. There are no facts in dispute.

The applicable provisions of:

12. The *Construction Act*, R.S.O. 1990, c. C.30, as amended;

13. Section 34, and any other relevant sections of The *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended;

14. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

15. 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 Order of the Honourable Justice Mitchell dated April 2, 2019;

2. The Fourth Report of the Trustee dated March 3, 2020; and

3. Such materials as counsel may advise and this Honourable Court may permit.

March 10, 2020

HARRISON PENSA LLP

Barristers & Solicitors
450 Talbot Street
London, ON N6A 5J6

Melinda Vine (LSO #53612R)

Tel: (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Trustee,
BDO Canada Limited

TO: Service List

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

NOTICE OF MOTION

HARRISON PENSA LLP
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Solicitors for BDO Canada Limited

TCH/177459

Tab 2

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

FOURTH REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

March 3, 2020

Table of Contents

	<u>Page</u>
1.0 Introduction and Purpose of Report.....	3
1.1 Introduction.....	3
1.2 Purpose of Trustee’s Third Report	4
2.0 Pre-Bankruptcy Accounts Receivable Collections.....	5
2.1 Background	5
2.2 The Position of Ayerswood.....	6
2.3 The Position of the Trustee	6
3.0 Order Sought	8

Listing of Appendices

- Appendix A - Trustee's First Report
- Appendix B - Trustee's Supplement to the First Report
- Appendix C - April 2 Order
- Appendix D - Trustee's Second Report
- Appendix E - August 16 Order
- Appendix F - Trustee's Third Report
- Appendix G - November 22 Order
- Appendix H - 45 Yarmouth Summary of Values and Draws
- Appendix I - March Payment Advice
- Appendix J - Ayerswood Statement of Defence

1.0

Introduction and Purpose of Report

1.1 Introduction

- 1.1.1 This follows BDO Canada Limited's ("BDO") first report of the Trustee, the Supplement to the First Report, the Second Report, the Third Report and the Supplement to the Third Report. All terms not otherwise defined shall be as defined in the First Report, the First Supplement, the Second Report, the Third Report and the Supplement to the Third Report.
- 1.1.2 Sirius Concrete Inc. ("Sirius" or the "Company") was incorporated on June 13, 2016 in the province of Ontario and has been operating under the Sirius name since its inception. The Company operated out of leased premises located at 589 Colby Drive, Waterloo, Ontario.
- 1.1.3 Sirius was a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete.
- 1.1.4 As at the date of Bankruptcy Sirius was involved in the following projects (together the "Construction Projects"):
- (i) 18 Barrel Yards Blvd, Waterloo, Ontario ("Waterloo Project");
 - (ii) 112 Benton St. Kitchener, Ontario ("Kitchener Project");
 - (iii) 109 King Ave, Newcastle, Ontario ("Newcastle Project");
 - (iv) 45 Yarmouth St., Guelph, Ontario ("Guelph Project");
 - (v) 200 Steelwell Rd. Brampton, Ontario ("Brampton Project"); and,
 - (vi) 10 Wilson St. Guelph, Ontario (the "Parking Lot Project").
- 1.1.5 Sirius began experiencing financial difficulty in the fourth quarter of 2018 and into 2019. Sirius made a voluntary assignment in bankruptcy on March 4, 2019 and BDO Canada Limited was appointed as the trustee in Bankruptcy ("BDO" or the "Trustee")
- 1.1.6 The Trustee is not aware of any secured creditor or any party holding a General Security Agreement registered against Sirius.
- 1.1.7 As described in the First Report, the Trustee developed a Claims Administration Procedure for the Debtor's construction projects. The First Report is attached as Appendix A.
- 1.1.8 As described in the First Supplement, the Trustee detailed the payables and receivables, according to the records of Sirius, on each of the Company's projects. The First Supplement is attached as Appendix B.
- 1.1.9 On April 2, 2019, the Court issued an Order (the "April 2 Order") approving the Claims Administration Procedure. A copy of the April 2 Order is attached hereto as Appendix C.

- 1.1.10 As described in the Second Report the Trustee has completed the review and allowance of all claims and entered into settlement agreements with several of the project owners. The Second Report is attached as hereto as **Appendix D**.
- 1.1.11 On August 16, 2019, the Court issued an Order (the “**August 16 Order**”), among other things, approving the Lien Claims and the Trust Claims, approving the settlements entered into by the Trustee and providing direction with respect to Ayerswood Development Corporation (“**Ayerswood**”). A copy of the August 16 Order is attached hereto as **Appendix F**.
- 1.1.12 As described in the Third Report the Trustee has entered into agreements with all Project Owners with respect to the holdback and accounts receivable. The Third Report is attached hereto as **Appendix E**.
- 1.1.13 On November 22, 2019, the Court issued an Order (the “**November 22 Order**”), among other things, approving the settlements entered into by the Trustee and providing direction with respect to payment of the settlement amounts. A copy of the November 22 Order is attached hereto as **Appendix G**.

1.2 Purpose of Trustee’s Third Report

- 1.2.1 This constitutes the Trustee’s fourth report (the “**Fourth Report**”) to the Court in this matter and is filed to:
- (i) Report on the activities of Sirius and Ayerswood prior to the bankruptcy of Sirius; and,
 - (ii) Obtain direction from the Court with respect to the pre-bankruptcy payment received by Sirius from Ayerswood on March 1, 2019.

2.0

Pre- Bankruptcy Accounts Receivable Collections

2.1 Background

- 2.1.1** On or around March 14, 2018, Ayerswood engaged Sirius to perform the cast in place concrete work on a building located at the Guelph Project. The Guelph Project had a contract value of \$7,022,950.
- 2.1.2** Sirius began work in April 2018 and continued to work until March 1, 2019, being the last business day prior to the assignment into bankruptcy on March 4, 2019.
- 2.1.3** Sirius issued eleven (11) Invoices requesting payment for work complete as well as a holdback invoice on the Guelph Project as shown on the summary of values ("**SOV**"). The SOV outlines the date the progress invoice was requested, the details of any applicable taxes and holdback as well as the date and payment status. The SOV and progress invoices are included as **Appendix H**.
- 2.1.4** The SOV shows that Sirius would issue a monthly progress payment request to Ayerswood at or near the end of each month and Ayerswood would make a payment to Sirius, at the construction site, on the start of the second month. The progress payment request dates and payment dates are outlined in the chart below.

Invoice #	Request Date	Payment Date	Amount (with HST)
#1	April 25, 2018	June 1, 2018	\$151,926.46
#2	May 25, 2018	July 1, 2018	\$303,852.92
#3	June 25, 2018	August 1, 2018	\$151,926.46
#4	July 25, 2018	August 31, 2018	\$303,852.92
#5	August 25, 2018	October 1, 2018	\$384,880.37
#6	September 25, 2018	November 1, 2018	\$425,394.09
#7	October 25, 2018	December 1, 2018	\$425,394.09
#8	November 26, 2018	January 2, 2019	\$40,683.58
#9	December 29, 2018	February 4, 2019	\$225,556.53
#10	January 30, 2019	March 1, 2019	\$381,578.40
#11	February 28, 2019	NA	\$176,280.00
TOTAL			\$2,971,325.83

- 2.1.5** On January 30, 2019, Sirius issued Invoice #10 in the amount of \$381,578.40. Ayerswood issued a payment to Sirius in the amount of \$381,578.40 on March 1, 2019 with respect to

Invoice #10 as noted on the payment advice (the “March Payment”). The payment advice is included as Appendix I.

- 2.1.6 The March Payment was made 30 days after Invoice #10 was sent to Ayerswood and was picked up by Sirius from the construction site of the Guelph Project.
- 2.1.7 On February 28, 2019, Sirius issued an invoice to Ayerswood in the amount of \$155,000, and as reported previously, the Trustee and Ayerswood entered into a settlement whereby the amount of \$155,000 from Invoice #11 was setoff by Ayerswood for alleged deficiencies on the Guelph Project and Ayerswood made payment of \$310,835.60 on account of the holdback.

2.2 The Position of Ayerswood

- 2.2.1 The position of Ayerswood is outlined in the Statement of Defence and Counter Claim filed on November 18, 2019 and is summarized below. The Statement of Defence is attached as Appendix J.
 - (i) The contract between Sirius and Ayerswood with respect to the Guelph Project had no schedule of value and no schedule of payments;
 - (ii) Sirius rendered Invoice #10 to Ayerswood on the basis that certain work was complete;
 - (iii) Ayerswood views the assessment of the work completed in Invoice #10 to be a misrepresentation by Sirius which Ayerswood relied on when making the March Payment; and,
 - (iv) Ayerswood engaged a quantity surveyor to assess the value of the work completed by Sirius. The quantity surveyor concluded that Sirius had overcharged Ayerswood by \$702,551.61. After deducting all unpaid receivables, Ayerswood is claiming that overpayments totaling \$547,551.61 were made to Sirius.

2.3 The Position of the Trustee

- 2.3.1 It is the position of the Trustee that the March Payment is an asset of the estate to be distributed to the creditors of Sirius for the following reasons:
 - (i) The March Payment occurred prior to the bankruptcy and was the collection of a receivable in the ordinary course;
 - (ii) Invoice #8, #9 and #10 all included a schedule of values. Ayerswood made payment of all three invoices. The March Payment was in the ordinary course and pursuant to the normal business practice between Sirius and Ayerswood;
 - (iii) Ayerswood had a period of 30 days from the issue of Invoice #10 until the March Payment to review the work and satisfy itself with respect to the work completed;
 - (iv) Ayerswood incorrectly categorizes the overcharges based on “value of work completed”. The correct categorization of what has been assessed by the surveyor is ‘deficiency in work’ which form an unsecured claim in the bankrupt estate;
 - (v) The March Payment was given by Ayerswood to Sirius at the Guelph Project construction site. This provided Ayerswood a first hand view of the work performed by Sirius prior to making the March Payment;

- (vi) A claim for deficiencies on the Guelph Project is a claim provable in the estate of Sirius and does not entitle Ayerswood to the return of a pre-bankruptcy payment; and,
- (vii) The position of Ayerswood is contrary to the spirit of the *Bankruptcy and Insolvency Act*. If Ayerswood is successful in its position any creditor following an assignment in Bankruptcy could claim it is unsatisfied with a pre-bankruptcy product/service and claw back a pre-bankruptcy payment.

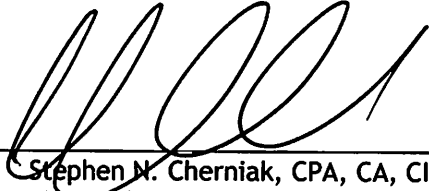
3.0 Order Sought

3.1.1 We submit this Fourth Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Provide direction to the Trustee with respect to the \$381,578.40 payment received by Sirius on March 1, 2019.

All of which is respectfully submitted this 3rd day of March, 2020.

**BDO CANADA LIMITED.
SOLELY IN ITS CAPACITY AS
TRUSTEE OF THE ESTATE OF
SIRIUS CONCRETE INC.**


Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX A

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

FIRST REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

March 11, 2019

Table of Contents

	<u>Page</u>
1.0 Introduction and Purpose of Report.....	3
1.1 Introduction.....	3
1.2 Purpose of Trustee's First Report.....	3
Directing the customers of Sirius to make payment to the Trustee Accounts Receivable	3
2.0 Claims Administration Procedure	5
3.0 Order Sought	7

Listing of Appendices

- Appendix A - Sample Claims Package
- Appendix B - Advertisement
- Appendix C - Sample Notice of Revision and Disallowance
- Appendix D - Sample Notice of Dispute

1.0

Introduction and Purpose of Report

1.1 Introduction

- 1.1.1 Sirius Concrete Inc. (“**Sirius**” or the “**Company**”) was incorporated on June 13, 2016 in the province of Ontario and has been operating under the Sirius name since its inception. The Company operated out of leased premises located at 589 Colby Drive, Waterloo, Ontario.
- 1.1.2 Sirius was a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete.
- 1.1.3 Sirius began experiencing financial difficulty in the fourth quarter of 2018 and into 2019. Sirius made a voluntary assignment in bankruptcy on March 4, 2019 and BDO Canada Limited was appointed as the trustee in Bankruptcy (“**BDO**” or the “**Trustee**”)
- 1.1.4 The Trustee is not aware of any creditor with a General Security Agreement registered against Sirius.
- 1.1.5 The first meeting of creditors will be held at the offices of the Trustee on March 20, 2019.
- 1.1.6 Following its appointment the Trustee took possession of the Sirius’ assets, which included vehicles, job trailers, office trailers, concrete buckets, forms, hand tools and accounts receivable. The Trustee has obtained insurance coverage on the assets in its possession.

1.2 Purpose of Trustee’s First Report

- 1.2.1 This constitutes the Trustee’s first report (the “**First Report**”) to the Court in this matter and is filed to obtain an order:

Approving the Service Protocol as defined and detailed in the First Report and deeming service in accordance with the Service Protocol as effective and valid;

Approving a claims process for construction lien and trust claims that have been or may be asserted by the sub-trades of Sirius against various properties upon which Sirius worked and accounts receiving due to Sirius (the “**Claims Administration Procedure**”); and,

Directing the customers of Sirius to make payment to the Trustee.

Accounts Receivable

- 1.2.2 As at the date of bankruptcy the books and records of the Company indicated there were outstanding accounts receivable of \$632,710 and an additional \$758,064 in holdback receivables.
- 1.2.3 There are 124 creditors of Sirius and other interested parties who will require notice of the Claims Administration Procedure.
- 1.2.4 Most of Sirius's customers (the "Customers") have not paid their outstanding balance because there are unpaid Sirius suppliers and sub-trades (the "Claimants") who have completed work in relation to the specific contracts/jobs between Sirius and the Customers. The Customers are concerned they will be required to satisfy the unpaid invoices of the Claimants.
- 1.2.5 Consequently, this may result in payment to the Claimants directly by the Customers from proceeds due to Sirius but not necessarily on a pari passu basis and without notice to all potential claimants. Disputes could lead to prolonged and expensive litigation between each of the Trustee, the Customer and the Claimants.
- 1.2.6 The Trustee believes that a formal claims process is necessary to provide for equitable and cost efficient treatment of all claims. The total outstanding claims for each of Sirius's jobs/contracts has not yet been determined and the Trustee believes that the recommended Claims Administration Procedure discussed below will resolve these issues.

2.0

Claims Administration Procedure

- 2.1.1 The Construction Act ("CA") provides for a process whereby a Claimant with a bona fide claim can register a lien on title to preserve its claim. The Claimant has a 45 day period from the last day that services were provided or supplies delivered to register its lien on title to the subject property. Upon expiry of the 45 day period the Claimant loses its ability to register on title and preserve its lien.
- 2.1.2 If a Claimant has lost its ability to file a lien under the CA, the CA provides for a trust claim in favour of creditors for unpaid services rendered or supplies delivered to a specific job/contract against the funds outstanding from the customer for that specific job/contract after payment of any perfected liens under the CA from the customers holdback. The funds due to Sirius from the Customers are imbued with that trust.
- 2.1.3 The CA does not provide a formal process for dealing with the distribution of funds to Claimants who hold a valid trust claim against Sirius and whose lien rights have expired.
- 2.1.4 It would be in the best interest of the estate for the Trustee to establish and implement a formal claims process in order to deal with the collection of receivables and hold backs from Customers and the related amounts due to the Claimants.
- 2.1.5 Accordingly, the Trustee proposes the following Claims Administration Procedure:
- (i) The Trustee will provide a claim package to the Claimants within 7 days of receiving the approval order which will include an Instruction Letter and Proof of Claim substantially in the form as at Appendix "A" to this Report.
 - (ii) The Trustee will publish a Notice to Lien Claimants in the local papers where the contract/job were situated substantially in the form as at Appendix "B" to this Report.
 - (iii) Proof of Claims must be filed with the Trustee not later than April 26, 2019 ("Claims Bar Date"). If a Proof of Claim is not filed by the Claims Bar Date the Claimant will be barred from asserting a lien claim or trust claim against the project, the trustee, the owner or Sirius.
 - (iv) The Trustee will review each Proof of Claim within 60 days of the Claims Bar Date and provide written notice of acceptance of the claim or provide a Notice of Revision or Disallowance, substantially in the form at Appendix "C" to this Report.
 - (v) A Claimant who disputes the Notice of Revision or Disallowance may deliver a Notice of Dispute, substantially in the form at Appendix "D" to this Report, to the Trustee within 20 days of receiving the Notice of Revision or Disallowance.
 - (vi) A Notice of Revision or Disallowance dispute will be resolved consensually between the parties or by way of motion to the Ontario Superior Court of Justice.
 - (vii) That all Customers who are indebted to Sirius for services (whether construction or any other services) provided by Sirius for the period prior to March 4, 2019 are hereby directed to make payment of any and all such debts to the Trustee. The amount payable to the Trustee will be the outstanding receivable balance plus the outstanding holdback balance less any proven claim by the Customer for set-off. In order to prove a valid set-off the Customer must file a Proof of Claim with the Trustee by the Claims Bar Date with sufficient supporting documentation to prove the set-off claim. Under no

circumstance will the set-off reduce the amount payable below the lesser of the hold back, as at March 4, 2019, and the amount owing to the Claimants on the contract/job;

- (viii) That the Trustee will retain, in its bankruptcy estate trust account, the funds received from the Customers relating to the Sirius invoice(s) being paid by the Customers, which funds shall not be distributed by the Trustee to any party without further Order of this Court on notice to all Customers who have made payment to the Trustee; provided, however, that nothing in the Order nor the retention of funds referred to in this paragraph shall have the effect of giving rights to Customers which did not exist up to the filing of this First Report;
- (ix) That no Sirius supplier or sub-contractor with a valid Claim shall have any recourse against the Customers for having made such payment to the Trustee, and all Customers making such payment to the Trustee shall be deemed to have satisfied in full any and all obligations they may have had to Sirius;
- (x) Any excess funds collected from the Customers after the payment of all fees, expenses and claims of the Claimants on a particular job/contract will form part of the general pool of funds that are available to Sirius creditors that did not qualify to file a claim in the Claim Administration Procedure;
- (xi) Any Claimant whose claim is not fully paid through the Claims Administration Procedure will be eligible to file a claim for their shortfall in the general pool of creditors; and,
- (xii) Any Customer who incurs a loss on a Sirius job/contract that was ongoing as at March 4, 2019 is eligible to file a claim for the loss in the general pool of creditors.

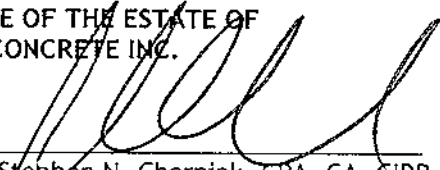
3.0**Order Sought**

3.1.1 We submit this First Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Approve the Claims Procedure Order authorizing and directing the Trustee to administer the Claims Administration Process.

All of which is respectfully submitted this 11th day of March, 2019.

BDO CANADA LIMITED.
SOLELY IN ITS CAPACITY AS
TRUSTEE OF THE ESTATE OF
SIRIUS CONCRETE INC.


Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX B

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

SUPPLEMENT TO THE FIRST REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

March 18, 2019

Table of Contents

1.0	INTRODUCTION AND PURPOSE.....	2
2.0	CLAIMS ADMINISTRATION PROCEDURE BENEFITS.....	3
3.0	PROJECT SUMMARY AND SUB-TRADES	4
3.1	Active Projects.....	4
3.2	Completed Projects	4
4.0	RECOMMENDATIONS.....	6

Listing of Appendices

- Appendix A - Waterloo project summary
- Appendix B - Waterloo project sub-trades
- Appendix C - Kitchener project summary
- Appendix D - Kitchener project sub-trades
- Appendix E - St. Catharine's project summary
- Appendix F - St. Catharine's project sub-trades
- Appendix G - Newcastle project summary
- Appendix H - Newcastle project sub-trades
- Appendix I - Guelph project summary
- Appendix J - Guelph project sub-trades
- Appendix K - Huron Crossing sub-trades
- Appendix L - Hilton Hills sub-trade
- Appendix M - University Heights sub-trade
- Appendix N - Wilson St. sub-trade
- Appendix O - Elora Bridge sub-trade

1.0 INTRODUCTION AND PURPOSE

- 1.1 BDO Canada Limited was appointed as the trustee in Bankruptcy (“BDO” or the “Trustee”) of the property of Sirius Concrete Inc. (the “Company” or “Sirius”) and filed its first report to the Court (the “First Report”) dated March 11, 2018. All terms not otherwise defined shall be as defined in First Report.
- 1.2 This report is a supplement to the First Report (the “First Supplement”). The purpose of this First Supplement is to provide the information necessary to support the Trustee’s recommended Claims Administration Procedure. Specifically, this report encompasses the following:
- the benefits of the Claims Administration Procedure;
 - the details of the billings on each of Sirius’ ongoing projects; and,
 - a listing of all known sub-trades on each project and the amount owing to each.

2.0 CLAIMS ADMINISTRATION PROCEDURE BENEFITS

2.1.1 The benefits associated with the proposed Claims Administration Procedure include:

- (i) As a result of its involvement with the Debtor's estate since its appointment and through a review of the Debtor's books and records which are in its possession, the Trustee has gained substantial knowledge related to amounts due to the Debtor from Customers and is in a position to negotiate with those Customers for the benefit of the Claimants;**
- (ii) Through discussions with Customers and the Debtor and from the books and records, the Trustee has gained substantial knowledge related to lien and trust claims and certain associated issues and is in a position to review lien claims to ensure the quantum and the registration of certain liens are proper;**
- (iii) The Trustee is in a position to distribute funds in an equitable manner and with consideration to the various priorities and classes of creditors;**
- (iv) The Trustee is knowledgeable in establishing and administering claims processes and can establish an efficient system for dealing with each claim and a methodology for liens to be released;**
- (v) This process centralizes the negotiation, review and resolution of lien and trust claims rather than the Trustee being appointed in the construction lien actions commenced relating to each project. This should streamline the process and reduce court attendances thereby reducing costs which is to the benefit of the creditors; and,**
- (vi) Any distribution by the Trustee from the Claims Administration Procedure will be pursuant to an Order from this Court.**
- (vii) The Trustee's fees and expenses will be allocated to each project on the basis of approximate time spent associated with the Claims Administration Procedure in relation to each Project and the Trustee will seek approval of any allocation.**

3.0 PROJECT SUMMARY AND SUB-TRADES

3.1 Active Projects

3.1.1 The Company had five active projects at the time of the bankruptcy as follows:

Project Location	Engaging Party	Street Address	Appendix
Waterloo, ON	Stonerise Construction	18 Barrel Yards Blvd.	A, B
Kitchener, ON	Stonerise Construction	112 Benton St.	C, D
St. Catharines, ON	Skyrise Construction	111 Church St.	E, F
Newcastle, ON	Skyrise Construction	109 King Ave.	G, H
Guelph, ON	Ayerswood Development	45 Yarmouth Street	I, J

3.1.2 The chart below is based on the Company's internal records and details the amounts owing to Sirius on each of the active projects and the amounts owing by Sirius to the sub-trades on each project. The holdback receivable and the holdback payable do not include HST.

3.1.3 The Trustee has collected one receivable on the Guelph project as shown in the chart.

Project Location	Owing to Sirius		Funds on Deposit	Owing to Sub-trades	
	AR	Holdback on AR		AP	Holdback on AP
Waterloo	60,565.91	20,837.88	-	62,237.89	-
Kitchener	214,587.00	24,850.00	-	15,896.41	-
St. Catharines	214,702.42	106,388.86	-	420,294.11	81,945.04
Newcastle	20,405.48	132,006.22	-	227,253.52	-
Guelph	158,652.00	326,435.62	381,578.40	728,858.66	74,909.13

3.1.4 The complete details of the amounts owing on each project are included in Appendix A through Appendix J.

3.2 Completed Projects

3.2.1 In addition to the five active projects noted above, the Company had six complete projects as detailed in the chart below

Project	Engaging Party	Appendix
Huron Crossing	Van-Del Construction	K
Hilton Hills	Skyrise Prefab	K
Hilton Hills	Synrg Group	L
University Heights	Skyrise Prefab	M

Wilson Street Parking	Newton Group	N
Elora Bridge	Ried & Deleye Construction	O

3.2.2 The chart below is based on the Company's internal records and details the amounts owing to Sirius on each of the completed projects and the amounts owing by Sirius to the sub-trades on each project. The holdback receivable and the holdback payable do not include HST.

Project Location	Owing to Sirius		Owing to Sub-trades		Comment
	AR	Holdback on AR	AP	Holdback on AP	
Huron Crossing	-	-	2,529.28	-	All funds collected
Hilton Hills	120,119.57	-	-	5,059.00	Holdback billed
Hilton Hills	546.91	-	-	-	Holdback billed
University Heights	-	-	9,994.90	-	All funds collected
Wilson St. Parking	11,789.79	46,635.84	2,532.33	1,249.50	Holdback to be billed in June
Elora Bridge	-	-	34,750.33	-	All funds collected

3.2.3 The complete details of the amounts owing on each project are attached in Appendix K through Appendix O.

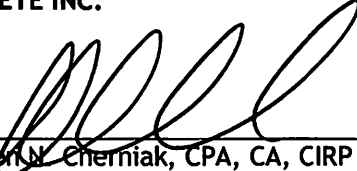
4.0 *RECOMMENDATIONS*

4.1 The Trustee recommends the following:

- i. Approval of the Claims Administration Procedure as requested in the First report and this Supplement to the First Report.

This Supplement to the First Report is respectfully submitted this 18th day of March, 2019.

**BDO CANADA LIMITED
TRUSTEE OF
SIRIUS CONCRETE INC.**

Per: 
Stephen W. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX C

Court File No. 35-2481393

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

THE HONOURABLE

JUSTICE

A.K. MITCHELL

TUESDAY THE ^{2ND} DAY

OF MARCH, 2019

APRIL



**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

CLAIMS PROCEDURE ORDER

THIS MOTION, made by **BDO CANADA LIMITED** in its capacity as Court-appointed Trustee (the "Trustee") of **Sirius Concrete Inc.** ("**Sirius**" or the "**Company**") for, *inter alia*, an Order establishing a claims procedure was heard this day at 80 Dundas Street, London, Ontario.

ON READING the First Report and the First Supplement of the Trustee to the Court and on hearing the submissions for counsel for the Trustee, and such other counsel as were present.

DEFINITIONS

1. **THIS COURT ORDERS** that for the purposes of this Order the following terms shall have the following meanings:
 - a) "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in London, Ontario;
 - b) "**Claim**" means a Lien Claim or Trust Claim collectively or individually;
 - c) "**Claims Bar Date**" means 30 days after the date of this Order;

- d) "**Claims Package**" means the document package which shall include a copy of the Instruction Letter, a Proof of Claim and such other materials as the Trustee considers necessary or appropriate;
- e) "**Claims Administration Procedure**" means the procedure as may be amended from time to time, for determining of Lien Claims and Trust Claims for distribution purposes;
- f) "**Court**" means the *Ontario* Superior Court of Justice;
- g) "**Construction Projects**" means the following construction projects which the Company was involved in up to March 4, 2019:
 - 18 Barrel Yards Blvd, Waterloo, Ontario
 - 112 Benton St. Kitchener, Ontario
 - 109 King Ave, Newcastle, Ontario
 - 45 Yarmouth St., Guelph, Ontario
 - 200 Steelwell Rd. Brampton, Ontario
 - 10 Wilson St. Guelph, Ontario
- h) "**Dispute Package**" means, with respect to any Lien Claim or Trust Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;
- i) "**Instruction Letter**" means the Instruction letter to Lien Claimants and Trust Claimants pertaining to proving the Lien Claims and Trust Claims for distribution purposes, substantially in the form attached hereto as Schedule "A";
- j) "**Lien Claim**" means any lien claims registered and lien actions commenced pursuant to the *Construction Act*, R.S.O. 1990. Chapter c.30 (the "**Act**") with respect to the Construction Projects which the Company was involved in up to March 4, 2019;
- k) "**Lien Claimant**" means any Person having preserved a lien pursuant to the Act with respect to any of the Construction Projects;
- l) "**Notice of Dispute**" means the notice that may be delivered by a Lien Claimant or Trust Claimant who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance, which notice shall be substantially in the Form attached hereto as Schedule "B";

- m) "**Notice of Revision or Disallowance**" means the notice that may be delivered to a Lien Claimant or Trust Claimant revising or rejecting such Lien Claimants' or Trust Claimants' claim as set out in the Proof of Claim in whole or in part which notice shall be substantially in the form attached hereto as Schedule "C";
- n) "**Notice to Lien Claimants and Trust Claimants**" means the notice substantially in the form attached hereto as Schedule "D";
- o) "**Person**" means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, employee or other association and any federal, provincial or municipal government or similar entity, howsoever designated or constituted;
- p) "**Proof of Claim**" means the form to be completed and filed by a Lien Claimant or Trust Claimant setting forth its purported Claim which shall be substantially in the form attached hereto as Schedule "E";
- q) "**Proven Lien Claim or Proven Trust Claim**" means the amount and status of the claim of a Lien Claimant or Trust Claimant as determined in accordance with the Claims Administration Procedure;
- r) "**Trust Claim**" means any claim for materials or services delivered to a Construction Project for which a lien has not been registered;
- s) "**Trust Claimant**" means any party who has not registered a Lien against a Construction Project but who may have a trust claim against a Construction Project under the Act by virtue of supplying materials or services to a Construction Project; and
- t) "**Trustee**" means BDO Canada Limited, in its capacity as Trustee of the Estate of Sirius Concrete Inc.

NOTICE OF CLAIMS

2. **THIS COURT ORDERS** that the Trustee shall cause a Claims Package to be sent to each known Lien Claimant, Trust Claimant and/or counsel for each

Lien Claimant or Trust Claimant by regular prepaid mail or electronic mail within 7 business days of the date of this Order.

3. **THIS COURT ORDERS** that the Trustee shall cause the Notice to Lien Claimants and Trust Claimants to be placed in the local papers where the Construction Projects were situated within 15 days of the date of this Order.
4. **THIS COURT ORDERS** that the Trustee shall cause the Notice to Lien Claimants and Trust Claimants and the Claims Package to be posted on the Trustee's website as soon as reasonably practicable after the date of this Order.
5. **THIS COURT ORDERS** that the Trustee shall cause a copy of the Claims Package to be sent to any Person requesting such material as soon as practicable.

PAYMENT FROM CUSTOMERS

6. **THIS COURT ORDERS AND DECLARES** that all Sirius customers on the Construction Projects (the "**Customers**") who are indebted to Sirius for services (whether construction, or any other services) provided by Sirius for the period prior to March 4, 2019 are hereby directed to make payment of any and all such debts to the Trustee and, in that regard:
 - i. the Trustee be and is hereby directed to retain, in its bankruptcy estate trust account, the funds received by the Customers relating to the Sirius invoice(s) being paid by the Customers, which funds shall not be distributed by the Trustee to any party without further Order of this Court on notice to all Customers who have made payment to the Trustee; provided, however, that nothing in the Order nor the retention of funds referred to in this paragraph shall have the effect of giving rights to Customers or to Sirius which did not exist up to the making of this Order;

- ii. no Sirius supplier or sub-contractor with a valid Claim shall have any recourse against the Customers for having made such payment to the Trustee, and all Customers making such payment to the Trustee shall be deemed to have satisfied in full any and all obligations they may have had to Sirius to the extent of the amount of the payment made by the Customer; and
- iii. if a dispute arises between the Customer and the Trustee with respect of timing of the payment, either the Customer or the Trustee can seek direction from the Court.

THIS COURT ORDERS that in the event the Customer claims set-off or the amount claimed by the Trustee is not due, the Customer shall file a Proof of Claim setting out the reasons why the debt is not due or detailing the set-off claim including all supporting documents by the Claims Bar Date for consideration by the Trustee in accordance with this Order

7. **THIS COURT ORDERS** that no claim for set-off by a Customer shall act to reduce the amount of the holdback which may be available to satisfy claims of Lien Claimants pursuant to the Act; provided, however, that Customers shall retain the right to set off against any portion of holdback required to be retained pursuant to the Act over and above that which is necessary to satisfy claims of Lien Claimants provided, however, that nothing in this paragraph shall be construed to derogate from the provisions of section 30 of the *Act*.

FILING OF PROOFS OF CLAIM

8. **THIS COURT ORDERS** that Proofs of Claim shall be filed with the Trustee on or before the Claims Bar Date.
9. **THIS COURT ORDERS** that the time for filing a Proof of Claim may be extended with the Trustee's consent in writing or by further order of the Court.

10. **THIS COURT ORDERS** that each Lien Claimant and Trust Claimant shall file a separate Proof of Claim in respect of each Construction Project to which the Lien Claimant or Trust Claimant provided materials or services.
11. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who does not deliver a Proof of Claim in respect of a Lien Claim or Trust Claim on or before the Claims Bar Date shall be forever barred from asserting such a Lien Claim or Trust Claims against Sirius, the Trustee, the Construction Projects and the "owners" of such Construction Projects under the Act and such Lien Claim or Trust Claim shall be forever discharged and extinguished and any holder of such Lien Claim or Trust Claim shall not be entitled to receive any distribution from Sirius or the Trustee on behalf of Sirius or from the proceeds of the sale of the Sirius assets.
12. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who does not deliver a Proof of Claim in respect of a Lien Claim or Trust Claim on or before the Claims Bar Date shall not be entitled to any further notice of any Orders made or steps taken in these proceedings.

FORM OF PROOFS OF CLAIM

13. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance with the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Lien Claim or a Trust Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and execution of the Proof of Claim.

DETERMINATION OF CLAIMS

14. **THIS COURT ORDERS** that the Trustee shall review each Proof of Claim received on or before the Claims Bar Date and shall, on or before 60 days from the Claims Bar Date, accept, revise or disallow the Claim. The Trustee is empowered and authorized to:
 - a. Investigate, review and verify the validity and quantum of any Lien Claims registered or delivered or given and lien actions commenced with respect to the Construction Projects;
 - b. Retain a consultant to review and assist in the review of any Claim;
 - c. do such acts as the Trustee in its sole discretion deem appropriate to facilitate the Claims Administration Procedure; and
 - d. receive payment of all monies owing and payable to the Debtor in respect of the Construction Projects, to the exclusion of all others, which funds are to be held in trust in separate accounts for each of the Construction Projects.

15. **THIS COURT ORDERS** that the Trustee may attempt to consensually resolve the amount of any Lien Claim or Trust Claim with the Lien Claimant or Trust Claimant prior to accepting, revising or disallowing such Claim.

16. **THIS COURT ORDERS** that if the Trustee accepts a Claim, the Trustee shall advise the Lien Claimant or Trust Claimant of such acceptance by ordinary mail or email to the address set out in the applicable Proof of Claim.

17. **THIS COURT ORDERS** that if the Trustee revises or disallows a Claim, the Trustee shall send a Notice of Revision or Disallowance to the Lien Claimant or Trust Claimant by ordinary mail or email to the address set out in the applicable Proof of Claim.

18. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who disputes the amount of its Claim as set forth in a Notice of Revision or Disallowance

shall deliver a Notice of Dispute to the Trustee by 5:00 p.m. (Eastern Standard Time) on the day which is twenty calendar days after the date of the Notice of Revision or Disallowance or such later date as the Trustee and the Lien Claimant or Trust Claimant may agree in writing.

19. **THIS COURT ORDERS** that any Lien Claimant or Trust Claimant who fails to deliver a Notice of Dispute by the deadline set forth in paragraph 18 shall be deemed to accept the amount of its Claim as set out in the Notice of Revision or Disallowance and such Claim as set out in the Notice of Revision or Disallowance shall constitute a Proven Lien Claim or Proven Trust Claim.
20. **THIS COURT ORDERS** notwithstanding the foregoing but subject to paragraph 11, no acceptance, revision or disallowance of a Lien Claim by the Trustee, or action taken with respect to the investigation, review or verification of the validity and quantum of any Lien Claim shall affect the rights or obligations of any "owner" under the Act or Customer of Sirius

RESOLUTION OF CLAIMS

21. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute the Trustee may:
 - i. Attempt to consensually resolve the amount or the Claim with the Lien Claimant or Trust Claimant; and/or
 - ii. Schedule a motion before a judge of the Court to resolve the Claim.

TRUSTEE'S ROLE IN CLAIMS PROCESS

22. **THIS COURT ORDERS** that the Trustee, in addition to its prescribed rights, duties, responsibilities and obligations under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, shall implement and oversee the Claims Administration Procedure provided for herein for the benefit of the Lien

Claimants and the Trust Claimants, and is hereby directed and empowered to take such actions and fulfill such other roles as are contemplated by this Order.

23. **THIS COURT ORDERS** that the Trustee may apply to the Court for directions regarding the carrying out of the Claims Administration Procedure.

FEES AND EXPENSES

24. **THIS COURT ORDERS** that the fees and expenses incurred by the Trustee in connection with the carrying out of this Order and the Claims Administration Procedure shall form a first charge on funds collected.

NO DEFAULT PROCEEDINGS OR DEFENCES

25. **THIS COURT ORDERS** that no default or enforcement proceedings shall be commenced against any defendant in any Lien Action unless authorized by further Order of this Court.
26. **THIS COURT ORDERS** that the requirement for BDO or any defendant in any Lien Action to file a statement of defence is hereby dispensed with subject to any further Order of this Court.

GENERAL PROVISIONS

27. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Lien Claimant or Trust Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by facsimile transmission, personal delivery, electronic communication or prepaid mail addressed to:

BDO CANADA LIMITED
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn
51 Breithaupt Street, Suite 300
Kitchener, ON N2H 5G5
Tel: 519-570-4000 Ext 5881
Fax: 519-576-5227
Email: rduwyn@bdo.ca

with a copy to:

HARRISON PENZA LLP
Barristers & Solicitors

Attention: Melinda Vine
450 Talbot St.
Toronto ON M3C 3E9
Tel: 519-661-6705
Email: mvine@harrisonpensa.com

Any such notice or other communication delivered by a Lien Claimant or Trust Claimant shall be deemed to be received upon actual receipt by the Trustee thereof during normal business hours on a Business Day or if delivered outside of normal business hours, on the next Business Day.

28. **THIS COURT ORDERS** that any notice or other communication to be given under this Order to a Lien Claimant or Trust Claimant shall be addressed to either: (i) the last recorded address appearing in the books and records of Sirius or in any claim for lien or Proof of Claim filed by the Lien Claimant or Trust Claimant; (ii) the Lien Claimant's or Trust Claimant's legal counsel; or (iii) electronically to the email address provided by the Lien Claimant, Trust Claimant or their respective counsels.
29. **THIS COURT ORDERS** that reference to the singular shall include the plural; references to the plural shall include the singular and to any gender shall include the other gender.

30. **THIS COURT ORDERS** that if any party takes issues with a decision of the Trustee in relation to this Order they make bring a motion to the Court to seek direction.



Justice, Ontario Superior Court of Justice



SCHEDULE "A"
INSTRUCTION LETTER FOR THE CLAIMS AGAINST SIRIUS CONCRETE INC.
(hereinafter referred to as "**Sirius**")

A. – Claims Process

By order of the Honourable • Justice • dated • the "**Claims Procedure Order**") the Ontario Superior Court of Justice approved a claims procedure for determining claims against Sirius (the "**Claims Procedure**").

This letter provides instructions for responding to or completing the Proof of Claim enclosed hereto. Defined terms which are not defined herein shall have the meaning ascribed thereto in the Claims Procedure Order. A copy of the Claims Procedure Order can be obtained from the Trustee's website at <http://extranets.bdo.ca/siriusconcreteInc>.

Please note that this letter is intended as a guide only and that in the event of any inconsistency between the terms of this letter and the terms of the Claims Procedure Order, the terms of the Claims Procedure Order will govern.

The Claims Procedure is intended for any Person asserting a Lien or Trust Claim against Sirius. If you have any questions regarding the Claims Procedure, please contact BDO Canada Limited, in its capacity the Trustee of the Estate of Sirius (the "**Trustee**") at the address provided below.

All enquiries with respect to the Claims Procedure should be addressed to:

The Trustee
c.o. BDO CANADA LIMITED
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn
51 Breithaupt Street, Suite 300
Kitchener, ON N2H 5G5
Tel: 519-570-4000 Ext 5881
Fax: 519-576-5227
Email: rduwyn@bdo.ca

with a copy to:

HARRISON PENSA LLP
Barristers & Solicitors

Attention: Melinda Vine
450 Talbot St.
Toronto ON M3C 3E9
Tel: 519-661-6705

Email: mvine@harrisonpensa.com

B. – For Creditors Submitting a Proof of Claim

If you supplied materials and/or services to Sirius in respect of a the construction project Sirius was involved in prior to March 4, 2019, would you please complete the Proof of Claim enclosed and attach it to your account showing full particulars of the materials and/or services supplied. After you have had the Proof of Claim sworn, would you please return it to the undersigned at the address above or via email to rduwyn@bdo.ca. Please do not include your account with respect to other materials and or services that you may have rendered to Sirius on other projects, and for which you have not received payment.

The purpose of submitting a Proof of Claim is to determine whether or not you have a claim under the *Construction Act R.S.O, 1990. C. 30 ("CA")* and, if you do, the extent of such claim. Please cooperate by returning your claim form promptly.

Proofs of Claim against Sirius must be received by 5:00p.m. (Eastern Standard Time) on _____, **2019** or such later date as the Trustee may consent to in writing.

Additional Proof of Claim forms can be found on the Trustee's website at www.bdo.ca or obtained by contacting the Trustee at the address indicated above and providing particulars us to your name, address, facsimile number and email address. Once the Trustee has this information, you will receive, as soon as practicable, additional Proof of Claim forms.

Failure to file your Proof of Claim so that it is received by the Trustee by the relevant Claims Bar Date will result in *your claim* being barred and you will be prevented from making or enforcing a Claim against Sirius. In addition. you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these proceedings.

SCHEDULE "B"
NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM AGAINST SIRIUS
CONCRETE INC.
 (hereinafter referred to as "Sirius")

NAME OF CLAIMANT: _____

NAME OF OWNER: _____

NAME OF CONSTRUCTION PROJECT: _____

Pursuant to the Order of the Honourable Justice _____, dated _____, 2019, we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance dated _____ issued by BDO Canada Limited in its capacity as Claims Administrator of Sirius in respect of our Claim.

Lien Claim

Construction Project	Lien Claim Accepted	Lien Claim Disputed
Total Lien Claim		

Trust Claim

Construction Project	Trust Claim Accepted	Trust Claim Disputed
Total Lien Claim		

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

Signature of Individual (I have authority to bind the Corporation)

Date: _____

Please Print name: _____

Telephone Number: (____) _____

Facsimile Number: (____) _____

Email Address: _____

Full Mailing Address: _____

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY FACSIMILE TRANSMISSION, PERSONAL DELIVERY, ELECTRONIC COMMUNICATION OR PREPAID MAIL TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED BY 5:00 P.M. (EASTERN STANDARD TIME) ON THE DAY WHICH IS TWENTY (20) CALENDAR DAYS AFTER THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE, OR SUCH LATER DATE AS THE TRUSTEE AND THE CREDITOR MAY AGREE IN WRITING OR THE COURT MAY ORDER.

Address for Service of Dispute Notices:

BDO CANADA LIMITED
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn
51 Breithaupt Street, Suite 300
Kitchener, ON N2H 5G5
Tel: 519-570-4000 Ext 5881
Fax: 519-576-5227
Email: rduwyn@bdo.ca

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

SCHEDULE "C"
NOTICE OF REVISION OR DISALLOWANCE OF CLAIM AGAINST SIRIUS CONCRETE INC.
 (hereinafter referred to as "Sirius")

NAME OF CLAIMANT: _____

NAME OF OWNER: _____

NAME OF CONSTRUCTION PROJECT: _____

Pursuant to the Order of the Honourable Justice _____, dated _____, 2019, BDO Canada Limited in its capacity as Trustee of the Estate of Sirius and Claims Administrator of Sirius in respect of the Construction Projects, hereby gives you notice that it has reviewed your Proof of Claim and has revised your Claim as follows:

Lien Claim

Construction Project	Lien Claim Accepted	Lien Claim Disputed
Total Lien Claim		

Trust Claim

Construction Project	Trust Claim Accepted	Trust Claim Disputed
Total Lien Claim		

Reasons for Revision or Disallowance:

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

1. If you intend to dispute a Notice of Revision or Disallowance you must, by 5:00 p.m. (Eastern Standard Time) on the day which is twenty (20) days after the date of this Notice or Revision or Disallowance, deliver a Notice of Dispute by personal service, mail or courier to the address indicated herein. The form of Notice of Dispute k attached to this Notice.
2. If you do not deliver a Notice of Dispute, the value or your Claim shall be deemed to be as set out in this Notice or Revision or Disallowance.

Address for Service of Dispute Notices:

BDO CANADA LIMITED
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn
51 Breithaupt Street, Suite 300
Kitchener, ON N2H 5G5
Tel: 519-570-4000 Ext 5881
Fax: 519-576-5227
Email: rduwyn@bdo.ca

IF YOU FAIL TO RESPOND AS REQUIRED HEREIN WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Dated at _____ this ____ day of _____, 2019.

BDO CANADA LIMITED

In its capacity as Trustee of the Estate of Sirius Concrete Inc.

Per: _____

Encl.

SCHEDULE "D"
NOTICE TO LIEN AND TRUST CLAIMANTS OF SIRIUS CONCRETE INC.
(hereinafter referred to as "Sirius")

RE: NOTICE OF CLAIMS PROCEDURE FOR SIRIUS

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Honourable • of the *Ontario Superior Court of Justice* dated _____, 2019 (the "**Claims Procedure Order**"). Any person who believes that it has a Claim against Sirius should send a Proof of Claim to BDO Canada Limited in its capacity as Trustee of the Estate of Sirius Concrete Inc (the "Trustee") to be received by 5:00 pm (Eastern Standard Time) on _____, 2019 or such other date as the Trustee and the Claimant agree to in writing (the "**Claims Bar Date**").

CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.

Claimants who require a Proof of Claim form should contact the Trustee (**Attention: Robyn Duwyn, tel: 519-570-4000x5881, fax: 519-576-5227, or Email: rduwyn@bdo.ca**) to obtain a Claims Package. Additional Proof of Claim forms can be found on the Trustee's website at www.bdo.ca.

Dated at _____ this _____ day of _____, 2019.

SCHEDULE "E"
PROOF OF CLAIM
FOR THE CLAIMS AGAINST SIRIUS CONCRETE INC.
 (hereinafter referred to as "Sirius")

Please read the enclosed **Instruction Letter** carefully prior to completing this **Proof of Claim**. Defined terms which are not defined herein shall have the meaning ascribed thereto in the Instruction Letter.

A. PARTICULARS OF CLAIMANT

1. Full legal name of the Lien or Trust Claimant _____ (the "Claimant") (*Full legal name should be the name of the Claimant against Sirius*).

2. Full Mailing address of the claimant:

3. Telephone Number: _____

Email address: _____

Attention (Contact Person): _____

B. PROOF OF CLAIM

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. That I _____ (state name, position and title) residing at the _____, in the _____, in the Province of _____, do solemnly declare and say:
2. That I am or am the authorized representative of a Lien Claimant or Trust Claimant against Sirius and have knowledge of all the circumstances connected with the debt hereinafter referred to.
3. That at the date of Bankruptcy of Sirius, by March 4, 2019, was, and still is indebted to the Claimant for materials and services supplied on the following contract or contracts in the amounts noted herein. (*specify the particular contract or contracts on which materials and services were supplied, the amounts owing and, in detail, the amount of material and services supplied to each Construction Project*).

C. PARTICULARS OF CLAIM

Other than as already set out herein, the particulars of the undersigned's total Lien or Trust Claim are attached hereto in relation to the project located at _____.

(Provide all particulars of the claims and supporting documentation that you feel will assist in the determination of your Claim, including: identifying whether your claim is in respect to a Lien or Trust Claim, if a lien has been registered and provide a copy of the lien, amount of your claim, description of transaction(s) or agreement(s) giving rise to the claims; identify each project to which materials and services were provided, amount of invoices, particulars of all credits, discounts, etc.)

D. FILING OF CLAIM

Proof of Claim **must be received** by 5:00pm. (Eastern Standard Time) on _____, 2019 or such later date as the Trustee may consent to in writing.

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

This Proof of Claim must be delivered by facsimile transmission, personal delivery, electronic communication or prepaid mail addressed to:

BDO Canada Limited
Trustee of the Estate of Sirius Concrete Inc.

Attention: Robyn Duwyn
51 Breithaupt Street, Suite 300
Kitchener, ON N2H 5G5
Tel: 519-570-4000 Ext 5881
Fax: 519-576-5227
Email: rduwyn@bdo.ca

Any such notice or other communication delivered by Claimant shall be deemed to be received upon actual receipt by the Trustee thereof during normal business hours on a Business Day or, if delivered outside of normal business hours on the next Business Day.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Dated at _____ this _____ day of _____, 2019.

Per _____ *[Signature of Claimant]*
Authorized Signing Officer

Per _____ *[Signature of Claimant]*
Authorized Signing Officer

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO

Court File No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON, ONTARIO

ORDER

Harrison Pensa ^{LLP}
Barristers and Solicitors
450 Talbot Street, 1st Floor
P.O. Box 3237
London, Ontario N6A 4K3

Melinda Vine
LSUC #53612R

Tel: (519) 679-9660
Fax: (519) 667-3362

Solicitors for the Trustee,
BDO Canada Limited

APPENDIX D

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

SECOND REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

August 1, 2019

Table of Contents

	<u>Page</u>
1.0 Introduction and Purpose of Report	3
1.1 Introduction.....	3
1.2 Purpose of Trustee’s Second Report	4
2.0 Claims Administration Procedure Update	5
2.1 Claims Filed.....	5
2.2 Collections of Receivables and Holdbacks.....	6
2.3 Guelph Project update.....	8
3.0 Trustee’s Account	10
4.0 Proposed Distribution	12
4.1 Distribution Priority	12
4.2 Proposed Distribution	12
5.0 Order Sought.....	14

Listing of Appendices

- Appendix A - Trustee's First Report
- Appendix B - Trustee' Supplement to the First Report
- Appendix C - April 2 Order
- Appendix D - Claims Register
- Appendix E - Order Vacating Waterloo Project Liens
- Appendix F - Payment from Ayerswood
- Appendix G - Guelph Project Report
- Appendix H - Affidavit of Robyn Duwyn
- Appendix I - Affidavit of Rob Danter

1.0

Introduction and Purpose of Report

1.1 Introduction

- 1.1.1 This follows BDO Canada Limited's ("BDO") first report of the Trustee and the Supplement to the First Report. All terms not otherwise defined shall be as defined in the First Report and the First Supplement.
- 1.1.1 Sirius Concrete Inc. ("Sirius" or the "Company") was incorporated on June 13, 2016 in the province of Ontario and has been operating under the Sirius name since its inception. The Company operated out of leased premises located at 589 Colby Drive, Waterloo, Ontario.
- 1.1.2 Sirius was a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete.
- 1.1.3 As at the date of Bankruptcy Sirius was involved in the following projects (together the "Construction Projects"):
- (i) 18 Barrel Yards Blvd, Waterloo, Ontario ("Waterloo Project");
 - (ii) 112 Benton St. Kitchener, Ontario ("Kitchener Project");
 - (iii) 109 King Ave, Newcastle, Ontario ("Newcastle Project");
 - (iv) 45 Yarmouth St., Guelph, Ontario ("Guelph Project");
 - (v) 200 Steelwell Rd. Brampton, Ontario ("Brampton Project"); and,
 - (vi) 10 Wilson St. Guelph, Ontario (the "Parking Lot Project").
- 1.1.4 Sirius began experiencing financial difficulty in the fourth quarter of 2018 and into 2019. Sirius made a voluntary assignment in bankruptcy on March 4, 2019 and BDO Canada Limited was appointed as the trustee in Bankruptcy ("BDO" or the "Trustee")
- 1.1.5 The Trustee is not aware of any secured creditor or any party holding a General Security Agreement registered against Sirius.
- 1.1.6 As described in the First Report, the Trustee developed a Claims Administration Procedure for the Debtor's construction projects. The First Report is attached as **Appendix A**.
- 1.1.7 As described in the First Supplement, the Trustee detailed the payables and receivables, according to the records of Sirius, on each of the Company's projects. The First Supplement is attached as **Appendix B**.
- 1.1.8 On April 2, 2019, the Court issued an Order (the "April 2 Order") approving the Claims Administration Procedure. A copy of the April 2 Order is attached hereto as **Appendix C**.

1.2 Purpose of Trustee's Second Report

1.2.1 This constitutes the Trustee's second report (the "Second Report") to the Court in this matter and is filed to:

- (i) Provide an update on the claims submitted pursuant to the Claims Administration Procedure;
- (ii) Provide an update on the payments received by the Trustee pursuant to the Claims Administration Procedure;
- (iii) Approving the settlements made by the Trustee;
- (iv) Provide direction with respect to the payment of the holdback on the Guelph Project;
- (v) Obtain an Order paying out the Funds (as defined herein) from Court;
- (vi) Obtain approval of the fees and disbursements of the Trustee and its counsel; and,
- (vii) Obtain approval of the Proposed Distribution (as defined herein).

2.0

Claims Administration Procedure Update

2.1 Claims Filed

- 2.1.1 Following the April 2 Order the Trustee sent notice of the Claims Administration Procedure to each known Lien Claimant, Trust Claimant and/or their counsel by regular mail on April 5, 2019. The Trustee also advertised the Claims Administration Procedure in the Waterloo Record and Oshawa This Week newspapers on April 4, 2019.
- 2.1.2 The First Report, First Supplement and April 2 Order were also placed on the Trustee's website on April 3, 2019.
- 2.1.3 The Claims Administration Procedure indicated that claims were to be filed within 30 days of the April 2 Order being, May 2, 2019.
- 2.1.4 As at May 2, 2019 the Trustee has received 37 claims as detailed in the chart below:

Project Location	# of Claims
Waterloo	5
Kitchener	4
Newcastle	7
Guelph	10
Brampton	0
Guelph Parking Lot	1
Not related to the Construction Projects	10

- 2.1.5 The Trustee sent Notice of Revision or Disallowance to all 10 creditors that filed claims for amounts that were not related to a Construction Project and disallowed the claims in full. The Trustee will allow the claims in the bankruptcy of Sirius.
- 2.1.6 None of the creditors that filed claims not related to a Construction Project filed a Notice of Dispute with the Trustee.
- 2.1.7 The Trustee, with the assistance of former employees of Sirius, reviewed the remaining 27 claims resulting in the following:
- (i) 21 of the claims were allowed as filed;
 - (ii) 2 claims were amended and subsequently accepted by the Trustee; and,
 - (iii) 4 claims were partially disallowed and the Trustee sent Notice of Revision or Disallowance to the claimant.

- 2.1.8 None of the creditors that received Notice of Revision or Disallowance filed a Notice of Dispute.
- 2.1.9 The chart below provides a summary of the Trust Claims and Lien Claims that have been filed and accepted to date. Attached as **Appendix D** is a detailed report of the claims filed and accepted on each of the six projects broken down between Lien Claim and Trust Claim for each claimant.

Claims Administration Procedure			
Project	Lien Claims	Trust Claims	Total Claims
Waterloo	35,047	48,408	83,455
Kitchener	15,714	30,296	46,009
Newcastle	208,817	80,285	289,102
Guelph	906,347	129,078	1,035,425
Brampton	-	-	-
Guelph Parking Lot	-	4,357	4,357

- 2.1.10 The deadline for filing a claim or Notice of Dispute has lapsed for all creditors.

2.2 Collections of Receivables and Holdbacks

- 2.2.1 All amounts are inclusive of HST unless otherwise noted.
- 2.2.2 Following its appointment, the Trustee reviewed the records of Sirius and updated the invoicing and receivables. The chart below details the outstanding invoice(s), receivables and holdbacks on each of the Construction Projects as at the date of bankruptcy.

Opening Receivable Summary						
	Waterloo	Kitchener	Newcastle	Brampton	Parking Lot	Guelph
Invoice 1	\$ 46,327.91	\$ 152,550.00	\$ 22,626.46	\$ 140,588.93	\$ 11,789.79	\$ 158,652.00
Invoice 2	14,238.00	62,037.00	-	(59,109.59)	-	-
Holdback	23,546.80	28,080.50	149,167.04	59,020.96	52,698.50	328,188.65
Total	\$ 84,112.71	\$ 242,667.50	\$ 171,793.50	\$ 140,500.30	\$ 64,488.29	\$ 486,840.65

Note- All amounts are inclusive of HST

2.2.3 Waterloo Project

- (i) The Waterloo Project was in progress at the time of the bankruptcy of Sirius. The records of Sirius indicated that two invoices totaling \$60,565.91 and the holdback of \$23,546.80 were owing as at the date of bankruptcy.
- (ii) The Trustee issued a demand to the project owner for payment of the invoices and holdback.
- (iii) The project owner provided evidence that they would incur a loss of over \$1.8 million related to the cost of the replacement formwork contractor to complete the job. The project owner provided an executed copy of the new contract to support the claim. The Trustee allowed the set-off claim against the two invoices in the amount of \$60,565.91.
- (iv) The Trustee and the project owner entered into negotiations related to the amount owing pursuant to the holdback provision of the CLA. The Trustee and the project owner entered into an agreement, subject to court approval, for the payment of

\$35,046.50 as a final settlement of the amount owing. This settlement is approximately \$11,500 higher than the amount required under the CLA.

- (v) Stonerise Construction Inc. paid \$147,375.37 into Court to vacate the liens that were registered against the Waterloo Project. The Order vacating the liens against the Waterloo project is attached hereto as **Appendix E**. The Trustee hereby requests an order paying \$35,046.50 of the funds held in Court be paid to the Trustee with the balance of the funds returned to Stonerise Construction Inc.

2.2.4 Kitchener Project

- (i) The Kitchener Project was in progress at the time of the bankruptcy of Sirius. The records of Sirius indicated that two invoices totaling \$214,587.00 and the holdback of \$28,080.50 were owing as at the date of bankruptcy.
- (ii) Sirius was engaged by the same company for the Waterloo Project and the Kitchener Project. As a result, Stonerise Construction Inc. set-off the loss from the Waterloo Project against the amount owing on the Kitchener Project pursuant to section 17 of the CLA. The Trustee allowed the set-off claim against the two invoices in the amount of \$214,587.00.
- (iii) The Trustee and the project owner entered into negotiations related to the amount owing pursuant to the holdback provision of the CLA. The Trustee and the project owner entered into an agreement, subject to court approval, for the payment of \$15,713.79 as a final settlement of the amount owing. The Settlement amount is equal to the registered liens on the Kitchener Project. The difference in the \$28,080.50 holdback and the amount of the settlement will be set-off against the losses on the Waterloo Project. The Trustee notes that holdback amounts can be set-off so long as the setoff does not reduce the holdback to an amount that is less than the registered liens.
- (iv) Upon payment of the \$15,713.79 by Stonerise Construction Inc. the Trustee will request an order discharging the liens registered against the Kitchener Project.

2.2.5 Newcastle Project

- (i) According to Sirius the Newcastle Project was over 90% complete at the time of the bankruptcy. The records of the Company indicated that one invoice totaling \$22,626.46 (the "Invoice") and the holdback of \$149,167.04 were owing as the date of bankruptcy.
- (ii) The Trustee and the project owner have undertaken a full review of all current and past projects between Sirius and the project owner to determine if the Invoice was paid prior to the bankruptcy.
- (iii) The project owner has agreed that the holdback is due in full and will release the payment to the Trustee following the publication of the certificate of substantial performance. The project owner anticipates publication to take place during the summer of 2019.

2.2.6 Brampton Project

- (i) The Brampton Project was completed prior to the bankruptcy of Sirius. The records of Sirius indicated that one invoice and one credit note totaling \$81,479.34 and the holdback of \$59,020.96 were owing as at the date of bankruptcy.
- (ii) The invoice for \$140,588.93 consisted of three items as follows:

- Progress billing of \$25,900 plus HST. The project owner provided backup that this amount was paid prior to the bankruptcy of Sirius.
 - Billing for a completed change order that was done by another vendor. The project owner directly paid the vendor that completed the work and Sirius issued a credit note for \$59,109.59 to offset this amount.
 - The final component of the invoice was a charge of \$60,000 plus HST related to the non-delivery of concrete forms. Sirius and the project owner had agreed that the project owner build concrete forms, to Sirius' specifications, in exchange for \$60,000, plus HST, in payment. As the forms were not delivered Sirius invoiced the project owner.
- (iii) After considering the above the Trustee is pursuing the collection of \$61,020.00 (\$60,000 less the 10% holdback plus HST) on account of the invoice and \$59,020.96 for the holdback.
- (iv) The project owner and the Trustee will continue to work towards a negotiated settlement.

2.2.7 Parking Lot Project

- (i) The Guelph Parking Lot Project was completed prior to the bankruptcy of Sirius. The records of Sirius indicated that one invoice in the amount of \$11,789.79 and the holdback of \$52,698.50 were owing as at the date of bankruptcy.
- (ii) The Trustee has collected the \$11,789.78 receivable that was owing on the Guelph Parking Lot Project.
- (iii) The Trustee is continuing to pursue the collection of the holdback of \$52,689.50 and anticipates collecting the funds in August 2019 following the publication of the certificate of substantial performance.

2.3 Guelph Project update

- 2.3.1 As noted in the first report, at the date of bankruptcy the Trustee took possession of a cheque from the Ayerswood Development Corporation (“**Ayerswood**”) payable to Sirius in the amount of \$381,578.40 (“**Pre-Bankruptcy Ayerswood Payment**”). The cheque was for the payment of invoice 19.001 in relation to the Guelph Project and the funds are being held in the Trustee’s estate account. The Pre-Bankruptcy Ayerswood Payment is attached as **Appendix F**.
- 2.3.2 As at the date of Bankruptcy, the books and records of Sirius evidenced an outstanding receivable owing by Ayerswood in the amount of \$158,652.00 and a holdback owing in the amount of \$328,188.65.
- 2.3.3 Following the bankruptcy of Sirius, Ayerswood engaged a quantitative surveyor to review the work done by Sirius and estimate the percentage of completion for the Guelph Project. Ayerswood provided a copy of the report to the Trustee (the “**Report**”).
- 2.3.4 The Report indicated that Sirius had overbilled the Guelph Project by \$170,704.71 and that the cost to remedy the deficiencies on the work completed was \$531,846.90. The Report is attached as **Appendix G**.
- 2.3.5 The Trustee, in consultation with former Sirius employees, reviewed the Report in detail. The Trustee disagreed with several aspect of the Report, including:

- (i) The Report was prepared without any comment or input from Sirius or the Trustee;
- (ii) The stated accuracy of the Report was +/- 15%;
- (iii) Several of the deficiencies were for items that were not included in the contract between Ayerswood and Sirius;
- (iv) The deficiencies included \$240,000 for a slab that was not completed or billed and therefore formed part of the calculation of the percentage of completion. Deficiencies should only cover the cost to remedy the incorrect or incomplete work done by Sirius and not the cost to complete the remainder of the project;
- (v) Sirius employees questioned the cost and quantity of several of the other deficiency claims; and,
- (vi) The Report added 10% for overhead and 10% for profit on top of the stated deficiency costs further increasing the deficiency claim above market value.

- 2.3.6 Despite the issues identified above, it is the opinion of the Trustee that the Report provided sufficient evidence of overbilling and deficiencies to completely offset the invoice in the amount of \$158,652 owing by Ayerswood to Sirius. As a result, the Trustee is only seeking payment of the statutory holdback pursuant to the CLA.
- 2.3.7 The Report stated that, based on the work completed, the holdback is \$310,835.60. Based on the Report the Trustee reduced its holdback claim to \$310,835.60 as opposed to the amount reflected in the records of Sirius. The Trustee has demanded that Ayerswood remit \$310,835.60 to satisfy its holdback requirement.
- 2.3.8 Despite repeated requests Ayerswood has refused to remit to the Trustee the amount of \$310,835.60 to satisfy its holdback requirement.
- 2.3.9 Ayerswood's position is that despite the fact that the Pre-Bankruptcy Ayerswood Payment referenced a January 2019 invoice the payment satisfied its holdback obligation under the CLA. In the alternative, Ayerswood has taken the position that the Trustee should return the Pre-Bankruptcy Ayerswood Payment at which time Ayerswood will pay the required holdback.
- 2.3.10 The Trustee's position is that the payment of \$381,578.40 was for the January 2019 progress draw and was given by Ayerswood to Sirius prior to the bankruptcy and prior to the completion of the Guelph Project. As a result, the payment could not satisfy the holdback provision of the CLA. In addition, the Trustee noted that par. 7 of the April 2 Order states that set-off claims cannot be used to reduce the holdback. Customer set-off claims can be used against the outstanding invoice and any additional set-off would form a claim in the bankruptcy of Sirius.
- 2.3.11 The Trustee is seeking direction from the Court with respect to the payment of the \$310,835.60 holdback owing from Ayerswood to Sirius.

3.0

Trustee's Account

- 3.1 Pursuant to paragraph 24 of the April 2 Order, the fees and expenses of the Trustee in connection with the Claims Administration Order shall form a first charge on the funds collected.
- 3.2 The Trustee, and its counsel, has tracked its time by project and will allocate the fees and expenses to the applicable project.
- 3.3 The fees and disbursements of the Trustee for the period from March 4, 2019 through to July 19, 2019 are detailed in the affidavit of Robyn Duwyn, a copy of which is attached as Appendix H.
- 3.4 The Trustee has submitted seven invoices as follows:
- (i) The Waterloo Project fees from March 4 through to July 19, 2019 encompass 12.7 hours at an average hourly rate of approximately \$367.13 for a total of \$4,662.50 prior to applicable taxes.
 - (ii) The Kitchener Project fees from March 4 through to July 19, 2019 encompass 12.9 hours at an average hourly rate of approximately \$359.50 for a total of \$4,637.50 prior to applicable taxes.
 - (iii) The Newcastle Project fees from March 4 through to July 19, 2019 encompass 20.7 hours at an average hourly rate of approximately \$365.34 for a total of \$7,562.50 prior to applicable taxes.
 - (iv) The Guelph Project fees from March 4 through to July 19, 2019 encompass 24.2 hours at an average hourly rate of approximately \$370.87 for a total of \$8,975.00 prior to applicable taxes.
 - (v) The Brampton Project fees from March 4 through to July 19, 2019 encompass 6.2 hours at an average hourly rate of approximately \$342.74 for a total of \$2,125.00 prior to applicable taxes.
 - (vi) The Guelph Parking Lot Project fees from March 4 through to July 19, 2019 encompass 1.6 hours at an average hourly rate of approximately \$275.00 for a total of \$440.00 prior to applicable taxes.
 - (vii) The general claims process fees from March 4 through to July 19, 2019 encompass 57.8 hours at an average hourly rate of approximately \$369.12 and disbursements of \$56.55 for a total of \$21,391.55 prior to applicable taxes. The general claims process invoice includes time applicable to all projects and will be split among the other six projects on the basis of time spent. The proposed distribution is as follows:

Project	Fees	%	General Allocation	Total
Waterloo	\$ 4,662.50	16.4%	\$ 3,511.60	\$ 8,174.10
Kitchener	4,637.50	16.3%	3,492.77	8,130.27
Newcastle	7,562.50	26.6%	5,695.75	13,258.25
Guelph	8,975.00	31.6%	6,759.59	15,734.59
Brampton	2,125.00	7.5%	1,600.46	3,725.46
Parking Lot	440.00	1.5%	331.39	771.39
	\$28,402.50	100.0%	\$ 21,391.55	\$49,794.05

- 3.5 The Trustee is therefore requesting that the Court approve its total fees and disbursements in the amount of \$49,794.05 prior to of applicable taxes.
- 3.6 The Trustee has an additional \$32,000 in work in progress which is being allocated to the bankrupt estate which it is not seeking court approval of at this time.
- 3.7 The fees and disbursements of the Trustee's counsel for the period from March 4, 2019 through to July 22, 2019 are detailed in the affidavit of Rob Danter, a copy of which is attached as **Appendix I**.
- 3.8 The Trustee's counsel has submitted one invoices as follows:
- (i) The fees from March 4, 2019 through to July 22, 2019 encompass 172 hours at an average hourly rate of approximately \$339.16 and disbursements of \$8,170.35 for a total of \$60,992.85 prior to applicable taxes ("**Counsel Fees**").
 - (ii) Based on the Trustee's allocations 39% of Counsel Fees, \$23,787.21 will be allocated to the bankrupt estate and is only seeking court approval of the remainder being \$37,205.58 prior to applicable taxes.
- 3.9 The Trustee is therefore requesting that the Court approve its counsel's fees and disbursements in relation the Claims Procedure Order and the Construction Projects in the amount of \$41,791.30 inclusive of applicable taxes.

4.0

Proposed Distribution

4.1 Distribution Priority

4.1.1 The Trustee proposes to distribute the proceeds from each of the Construction Projects to the Lien Claimants and Trust Claimants on each of the Construction Projects after deduction of the fees and costs associated with the applicable Construction Projects pursuant to the Claims Procedure Order.

4.1.2 The Trustee proposes to distribute the funds as follows (the “Proposed Priority”):

- (i) Firstly, to the approved fees and expenses of the Trustee pursuant to par. 24 of the April 2 Order;
- (ii) Secondly, to the accepted Lien Claim filed by CLAC with respect to the amounts owing to employees pursuant to the priority provided by par. 81 of the *Construction Lien Act*;
- (iii) Thirdly, pari-passu among the accepted non-employee Lien Claims;
- (iv) Fourthly, pari-passu among the accepted Trust Claims; and,
- (v) Finally, and subject to a reserve being held by the Trustee to complete and finalize the administration of the Claims Procedure order (the “Reserve”), any remaining funds will be paid into the general pool for the benefit of non-construction creditors and creditors who were not repaid in full from the Claims Procedure Order.

4.1.3 Any distributions to the employees under 4.1.2 (ii) or 4.1.2 (iv) will be subject to any required Wage Earner Protection Act (“WEPPA”) repayment if the individual employee received a payment from Service Canada under the WEPPA.

4.2 Proposed Distribution

4.2.1 The receipts to date on each of the Construction Projects are noted above in section 2.2.

4.2.2 The fees and costs incurred on each project are noted above in section 3.0.

4.2.3 The Trustee, with the approval of this Court, proposes to make distributions, as funds are available, on each of the Construction Projects pursuant to the Proposed Priority.

4.2.4 The Trustee is seeking approval for the following distribution (the “Proposed Distribution”):

4.2.5 Parking Lot Project

- (i) The fees and expenses of the Trustee in the amount of \$771.39 plus applicable taxes;
- (ii) The fees and expenses of counsel to the Trustee in the amount of \$693.73.
- (iii) The Lien Claim from CLAC in the amount of \$4,356.96¹.

¹ Subject to any WEPPA repayments

- (iv) Any remaining funds on hand, subject to the Reserve, and future receipts will be paid into the general pool.

4.2.6 Waterloo Project

- (i) The fees and expenses of the Trustee in the amount of \$8,174.10 plus applicable taxes.
- (ii) The fees and expenses of counsel to the Trustee in the amount of \$6,776.88.
- (iii) The Lien Claim from CLAC up to the amount of \$24,129.16².
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

4.2.7 Kitchener Project

- (i) The fees and expenses of the Trustee in the amount of \$8,130.10 plus applicable taxes.
- (ii) The fees and expenses of counsel to the Trustee in the amount of \$6,758.49.
- (iii) The Lien Claim from CLAC up to the amount of \$10,950.61³.
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

² Subject to any WEPPA repayments

³ Subject to any WEPPA repayments

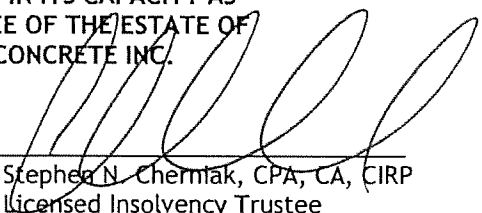
5.0 Order Sought

5.1.1 We submit this Second Report to the Court in support of our Motion respectfully requesting this Court to:

- (i) Approve the Second Report and the Trustee's actions described therein;
- (ii) Approve the settlements reached by the Trustee with the Customers;
- (iii) Provide direction to the Trustee with respect to Ayerswood;
- (iv) Approve the fees and disbursement of the Trustee and its counsel; and,
- (v) Approve the Proposed Distribution.

All of which is respectfully submitted this 1 day of August, 2019.

**BDO CANADA LIMITED.
SOLELY IN ITS CAPACITY AS
TRUSTEE OF THE ESTATE OF
SIRIUS CONCRETE INC.**


Per: Stephen N. Chermak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX E

The Court File No. 35-2481393

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

THE HONOURABLE)	FRIDAY THE 16 th
)	
JUSTICE <i>GEORGE</i>)	DAY OF AUGUST, 2019

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

APPROVAL AND DISBTRIBUTION ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as Trustee ("**BDO**" or the "**Trustee**") of Sirius Concrete Inc. (the "**Bankrupt**"), for an order:

1. If necessary, abridging the time for service, filing and confirmation of the notice of motion and the materials filed in support of the motion and validating the service thereof and dispensing with further service thereof such that this motion is properly returnable on August 16, 2019;
2. Approving the Trustee's First Report dated March 11, 2019 (the "**First Report**"), the Supplement to the First Report dated March 18, 2019 (the "**First Supplement**") and the Trustee's Second Report dated August 1, 2019 (the "**Second Report**"), filed, and the activities and conduct of the Trustee as detailed therein;
3. Approving the settlements reached by the Trustee with the customers of the Bankrupt as detailed in the Second Report (the "**Customer Settlements**");
4. Approving the fees and disbursements of the Trustee (the "**Trustee Fees**"), and its counsel, Harrison Pensa LLP ("**HP**") (the "**Counsel Fees**") for services rendered from the period of March 4, 2019 to July 22, 2019 as detailed in the Second Report and the fee affidavits of the Trustee and HP contained therein (the "**Fee Affidavits**").

5. That the Trustee maintain a sufficient reserve for final fees and final costs of administering the estate of the Bankrupt and administering the Claims Procedure Order (the “**Reserve**”) and authorizing the Trustee to disburse the funds obtained under the Claims Procedure Order pursuant to the Proposed Distribution as detailed and defined in the Second Report (the “**Proposed Distribution**”).

6. Directing the Accountant of the Superior Court of Justice to pay to the Trustee the amount of \$35,046.50 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

7. Directing the Accountant of the Superior Court of Justice to pay to Stonerise Construction Inc. the amount of \$112,328.87 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

8. That upon payment of the amounts referred to in paragraphs 6 and 7 above:

- (a) the lien of Gillies Lumber Inc., registered as Instrument Number WR1173899, and the certificate of action of Gillies Lumber Inc. registered as Instrument Number WR1183636;
- (b) the lien of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers’ Local 6 registered as Instrument Number WR1175085;
- (c) the lien of Cooper Equipment Rentals Limited registered as Instrument Number WR1175877 and the certificate of action of Cooper Equipment Rentals Limited registered as Instrument Number WR1183662; and,
- (d) the lien of Sirius Concrete Inc. registered on April 5, 2019, as Instrument Number WR1177274;

each of which was vacated from title to the premises against which they were registered pursuant to the Order of the Honourable Madam Justice Rady made on May 28, 2019 in London SCJ 1038-19; and,

- (e) the certificate of action of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers’ Local 6, Cooper Equipment Rentals Limited, and Sirius Concrete Inc. registered at Instrument Number WR1186532;

be discharged.

9. Requiring Stonerise Construction Inc. to pay to the Trustee the amount of \$15,713.79 as full settlement on the Kitchener Project as defined in the Second Report (the “**Kitchener Settlement**”).

10. That upon payment of the Kitchener Settlement, the Trustee be authorized to discharge from title to the property legally described as LOT 174 SUB.LOT 17 GERMAN COMPANY TRACT & PT. LOTS 16 TO 20 PLAN 398, BEING PTS. 3, 4, 5, 6, 7, 20 ON 58R-17696; SUBJECT TO AN EASEMENT IN GROSS AS IN WR520011; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 ON 58R-19137 AS IN WR1081722; CITY OF KITCHENER (the “**Kitchener Property**”) the following:

- (a) The Construction Lien and Certificate of Gilles Lumber Inc. registered as WR1173892 and WR1183635; and,
- (b) The Construction Lien and Certificate of Koopman, James registered as WR1175099 and WR1186757

(Collectively the “**Kitchener Property Lien Discharges**”)

was heard this day at 80 Dundas St., London, Ontario.

ON READING the First Report, the Second Report, the Fee Affidavits, and on hearing the submissions of counsel for the Trustee, ~~no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed,~~ **AND COUNSEL FOR AYERSWOOD DEVELOPMENT CORPORATION:**

1. THIS COURT ORDERS that the time for service, filing and confirmation of the notice of motion and the materials filed in support of the motion and validating the service thereof and dispensing with further service thereof such that this motion is properly returnable on August 16, 2019.
2. THIS COURT ORDERS that the First Report, the First Supplement and the Second Report, and the activities and the conduct of the Trustee as detailed therein are hereby approved.
3. THIS COURT ORDERS that the Customer Settlements are hereby approved.
4. THIS COURT ORDERS that the Trustee Fees and the Counsel Fees, as particularized in the Second Report and the Fee Affidavits, are hereby approved.

5. THIS COURT ORDERS that the Trustee maintain the Reserve and authorizes the Trustee to disburse the funds obtained under the Claims Procedure Order pursuant to the Proposed Distribution.

6. THIS COURT ORDERS that the Accountant of the Superior Court of Justice pay to the Trustee the amount of \$35,046.50 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

7. THIS COURT ORDERS that the Accountant of the Superior Court of Justice to pay to Stonerise Construction Inc. the amount of \$112,328.87 being held in Account No. 00002 010 88-03218 in London SCJ 1038-19.

8. THIS COURT ORDERS that upon payment by the Accountant of the Superior Court of Justice of the sum of \$35,046.50 to the Trustee and the sum of \$112,328.87 to Stonerise Construction Inc.:

- (a) the claim for lien of Gillies Lumber Inc. registered as Instrument Number WR1173899 and the certificate of action of Gillies Lumber Inc. registered as Instrument Number WR1183636;
- (b) the claim for lien of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6 registered as Instrument Number WR1175085;
- (c) the claim for lien of Cooper Equipment Rentals Limited registered as Instrument Number WR1175877 and the certificate of action of Cooper Equipment Rentals Limited registered as Instrument Number WR1183662; and,
- (d) the claim for lien of Sirius Concrete Inc. registered as Instrument Number WR1177274;

each of which was vacated from title to the premises against which they were registered pursuant to the Order of the Honourable Madam Justice Rady made on May 28, 2019 in London SCJ 1038-19; and,

- (e) the certificate of action of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6, Cooper Equipment Rentals Limited, and Sirius Concrete Inc. registered at Instrument Number WR1186532;

be and hereby are discharged and the Trustee be and is authorized to register discharges of liens and certificates as applicable and as required with respect to the instruments described in this paragraph.

9. THIS COURT ORDERS that Stonerise Construction Inc. pay to the Trustee the Kitchener Settlement.

10. THIS COURT ORDERS that upon payment of the Kitchener Settlement, the Trustee be and is authorized to register the Kitchener Property Lien Discharges.



Justice, Ontario Superior Court of Justice

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

Court File No. 35-2481393
Estate File No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
London, Ontario

APPROVAL AND DISTRIBUTION ORDER

Harrison Pensa ^{LLP}
Barristers and Solicitors
450 Talbot Street, P.O. Box 3237
London, Ontario N6A 4K3

Melinda Vine (LSO #53612R)
Tel: (519) 679-9660
Fax: (519) 667-3362

Solicitors for the Trustee,
BDO Canada Limited

ONTARIO
SUPERIOR COURT OF JUSTICE

Applicant: (IN THE MATTER OF THE
BANKRUPTCY OF SIRIUS
CONCRETE, OF CIM OF
Respondent: WATERLOO IN PROVINCE
Respondent: OF ONTARIO
Counsel:
Counsel:
Counsel:

S.C.J. Court File No.:

35-2481393

Date Heard: August 16/19

Date of this Endorsement:

August 16/19

ENDORSEMENT

Vine for Trustee BDO
Trenton for agerswood development

This is the Estate Trustee's motion that seeks the approval of the Trustee's first Report & Seal Report (of activities & credit of Trustee as set out in its motion & draft ~~part~~ order). It also seeks direction re the 'Pre-Bankruptcy agerswood payment (as detailed in the Seal Report).

at the date of Bankruptcy Trustee took possession of a cheque for agerswood payable to Sirius ~~for~~ in amount of \$381,578. at the date of the Bankruptcy Sirius books indicated an 015 receivable owing by agerswood in amount of \$158,652 and a holdback owing in amount of \$328,188.65. The Trustee & agerswood advance offset position.

re pmt of ~~the~~ \$ 310,835.60 holdback
only for eyeswood to Sims.

The Trustee takes the view that Mitchell's
April 2nd 2017 Clean Proceeds Order governs
as that a SIA date ought to be set
to address the conflicting position. In
particular it relies upon clause 21 which
provides that:

- Upon receipt of a notice of dispute
the Trustee may:

- i) attempt to casually resolve
the amount of the claim to the
lien claimant or Trustee;
and/or
- ii) schedule a meeting before
a judge of court to resolve
the claim

Eyeswood takes the view that the presently
dispute be addressed within the civil
claim (Court file # CV-19-0000203-0000).
That claim was commenced by the Trustee in
relation to ~~the above issues~~². what I will
call the Dulphe Pmt of which names eyeswood
as a Defendant along with other underly Skyline
Equities + Banco Securities Inc.

I have reviewed the matter & consulted
counsel's opinion and as a result
agree with the Estate Trustee (BDO).

For these reasons, I make this order:

- approval & discharge order
to issue on terms set out
in the draft provided. I have
signed that order.
- Be 'Re-Burying eyeswood Payment' -
to return to regular notice set
on September 6/19 to set a
date for a special meeting to
address liability of eyeswood to
pay holdback

If I need to address costs for this notice
parties have until the end of the day on
August 30th to file brief with ~~agmt~~
of ~~the~~ submissions.


CENCE S.

APPENDIX F

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

THIRD REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

October 28, 2019

Table of Contents

	<u>Page</u>
1.0 Introduction and Purpose of Report	3
1.1 Introduction.....	3
1.2 Purpose of Trustee’s Third Report.....	4
2.0 Claims Administration Procedure Update	5
2.1 Collections of Receivables and Holdbacks.....	5
2.2 Guelph Project update.....	6
3.0 Trustee’s Account	7
4.0 Proposed Distribution	9
4.1 Distribution Priority	9
4.2 Proposed Distribution	9
5.0 Discharge	10
6.0 Order Sought.....	11

Listing of Appendices

- Appendix A - Trustee's First Report
- Appendix B - Trustee's Supplement to the First Report
- Appendix C - April 2, 2019 Order
- Appendix D - Trustee's Second Report
- Appendix E - August 16, 2019 Order
- Appendix F - Affidavit of Stephen N. Cherniak
- Appendix G - Affidavit of Rob Danter

1.0

Introduction and Purpose of Report

1.1 Introduction

- 1.1.1 This follows BDO Canada Limited's ("BDO") first report of the Trustee, the Supplement to the First Report and the Second Report. All terms not otherwise defined shall be as defined in the First Report, the First Supplement and the Second Report.
- 1.1.2 Sirius Concrete Inc. ("Sirius" or the "Company") was incorporated on June 13, 2016 in the province of Ontario and has been operating under the Sirius name since its inception. The Company operated out of leased premises located at 589 Colby Drive, Waterloo, Ontario.
- 1.1.3 Sirius was a subcontracting firm that specialized in modern super-structures throughout Southwestern Ontario. Sirius provided insulated concrete forms, pre-cast paneling installation, structural block, and cast in place concrete.
- 1.1.4 As at the date of Bankruptcy Sirius was involved in the following projects (together the "Construction Projects"):
- (i) 18 Barrel Yards Blvd, Waterloo, Ontario ("Waterloo Project");
 - (ii) 112 Benton St. Kitchener, Ontario ("Kitchener Project");
 - (iii) 109 King Ave, Newcastle, Ontario ("Newcastle Project");
 - (iv) 45 Yarmouth St., Guelph, Ontario ("Guelph Project");
 - (v) 200 Steelwell Rd. Brampton, Ontario ("Brampton Project"); and,
 - (vi) 10 Wilson St. Guelph, Ontario (the "Parking Lot Project").
- 1.1.5 Sirius began experiencing financial difficulty in the fourth quarter of 2018 and into 2019. Sirius made a voluntary assignment in bankruptcy on March 4, 2019 and BDO Canada Limited was appointed as the trustee in Bankruptcy ("BDO" or the "Trustee")
- 1.1.6 The Trustee is not aware of any secured creditor or any party holding a General Security Agreement registered against Sirius.
- 1.1.7 As described in the First Report, the Trustee developed a Claims Administration Procedure for the Debtor's construction projects. The First Report is attached as **Appendix A**.
- 1.1.8 As described in the First Supplement, the Trustee detailed the payables and receivables, according to the records of Sirius, on each of the Company's projects. The First Supplement is attached as **Appendix B**.
- 1.1.9 On April 2, 2019, the Court issued an Order (the "April 2 Order") approving the Claims Administration Procedure. A copy of the April 2 Order is attached hereto as **Appendix C**.
- 1.1.10 As described in the Second Report the Trustee has completed the review and allowance of all claims and entered into settlement agreements with several of the project owners. The Second Report is attached as hereto as **Appendix D**.

1.1.11 On August 16, 2019, the Court issued an Order (the “**August 16 Order**”), among other things, approving the Lien Claims and the Trust Claims, approving the settlements entered into by the Trustee and providing direction with respect to Ayerswood. A copy of the August 16 Order is attached hereto as **Appendix E**.

1.2 Purpose of Trustee’s Third Report

1.2.1 This constitutes the Trustee’s third report (the “**Third Report**”) to the Court in this matter and is filed to:

- (i) Provide an update on the payments received by the Trustee pursuant to the Claims Administration Procedure;
- (ii) Approving the settlements made by the Trustee;
- (iii) Obtain payment Orders on the Newcastle Project and Parking Lot Project;
- (iv) Obtain approval of the fees and disbursements of the Trustee and its counsel;
- (v) Obtain approval of the Proposed Distribution (as defined herein); and,
- (vi) Obtain an Order discharging the Trustee from further obligations under the April 2 Order and releasing the Trustee from any liability while acting as Trustee under the April 2 Order.

2.0

Claims Administration Procedure Update

2.1 Collections of Receivables and Holdbacks

- 2.1.1 All amounts are inclusive of HST unless otherwise noted.
- 2.1.2 Following its appointment, the Trustee reviewed the records of Sirius and updated the invoicing and receivables. The chart below details the outstanding invoice(s), receivables and holdbacks on each of the Construction Projects as at the date of bankruptcy.

Opening Receivable Summary						
	Waterloo	Kitchener	Newcastle	Brampton	Parking Lot	Guelph
Invoice 1	\$ 46,327.91	\$ 152,550.00	\$ 22,626.46	\$ 140,588.93	\$ 11,789.79	\$ 158,652.00
Invoice 2	14,238.00	62,037.00	-	(59,109.59)	-	-
Holdback	23,546.80	28,080.50	149,167.04	59,020.96	52,698.50	328,188.65
Total	\$ 84,112.71	\$ 242,667.50	\$ 171,793.50	\$ 140,500.30	\$ 64,488.29	\$ 486,840.65

Note- All amounts are inclusive of HST

2.1.3 Waterloo Project

- (i) As reported in the Second Report the Trustee reached an agreement on the Waterloo Project and has collected the proceeds of the settlement.

2.1.4 Kitchener Project

- (i) As reported in the Second Report the Trustee reached an agreement on the Kitchener Project and has collected the proceeds of the settlement.

2.1.5 Newcastle Project

- (i) As previously reported the Newcastle Project was over 90% complete at the time of the bankruptcy. The records of the Company indicated that one invoice totaling \$22,626.46 (the "Invoice") and the holdback of \$149,167.04 were owing as at the date of bankruptcy.
- (ii) The project owner has provided evidence that the payment of the \$22,626.46 invoice was included in a payment made to Sirius on February 11, 2019. The Invoice has therefore been paid in full and the Trustee is no longer pursuing collection.
- (iii) The project owner had previously agreed that the holdback is due in full and would release the payment to the Trustee following the publication of the certificate of substantial performance. As at the date of this report the certificate of substantial performance has not been published.
- (iv) Following the payment of the holdback funds in the amount of \$149,167.04 the Newcastle Project will be settled in full.
- (v) The Trustee is seeking an Order requiring the customer, Skyrise Construction Inc., to pay the Trustee the holdback in the amount of \$149,167.04 pursuant to the terms of the April 2 Order.

2.1.6 Brampton Project

- (i) As was previously reported the Trustee is pursuing the collection of \$61,020.00 (\$60,000 less the 10% holdback plus HST) on account of a receivable and \$50,183.30 for the holdback, after invoice adjustments noted in the Second Report.
- (ii) Sirius and the project owner had entered into an agreement where the project owner would provide concrete forms in exchange for payment. Following a review of the agreement and the work done to date by the project owner the Trustee will be taking delivery of the forms on account of payment of the receivable. The Trustee will sell the forms by way of public auction.
- (iii) As the forms were delivered following the completion of the project, and at substantially the same time as payment of the holdback, it was agreed that the form delivery was not subject to a holdback. The Trustee and the project owner agreed that the holdback would be adjusted to \$49,720.00. The project owner has paid the holdback in in the amount of \$49,720.
- (iv) With the delivery and sale of the forms and payment of the holdback complete the Brampton Project is settled in full.

2.1.7 Parking Lot Project

- (i) The Trustee has been in contact with the owner of the Guelph Parking Lot Project and been advised that the holdback of \$52,689.50 will be paid in the fall of 2019.
- (ii) Following the payment of the holdback funds in the amount of \$52,689.50 the Parking Lot Project will be settled in full.
- (iii) The Trustee is seeking an Order requiring the customer, Newton Group Ltd., to pay the Trustee the holdback in the amount of \$52,689.50.

2.2 Guelph Project update

- 2.2.1 The endorsement to the August 16 Order stated that the Trustee and Ayerswood would set a special appointment date for a hearing to address the liability of Ayerswood to pay the holdback on the Guelph Project.
- 2.2.2 Following the August 16 Order Ayerswood voluntarily paid the holdback in the amount of \$310,835.60 to the Trustee. The Trustee in no longer pursuing the collection of any funds on the Guelph Project.

3.0

Trustee's Account

- 3.1 Pursuant to paragraph 24 of the April 2 Order, the fees and expenses of the Trustee in connection with the Claims Administration Order shall form a first charge on the funds collected.
- 3.2 The Trustee, and its counsel, has tracked its time by project and will allocate the fees and expenses to the applicable project.
- 3.3 The fees and disbursements of the Trustee for the period from July 20, 2019 through to October 23, 2019 are detailed in the affidavit of Stephen N. Cherniak, a copy of which is attached as **Appendix F**.
- 3.4 The Trustee has submitted seven invoices as follows:
- (i) The Waterloo Project fees from July 20, 2019 through to October 23, 2019 encompass 0.6 hours at an average hourly rate of approximately \$375.00 for a total of \$225.00 prior to applicable taxes.
 - (ii) The Kitchener Project fees from July 20, 2019 through to October 23, 2019 encompass 1.1 hours at an average hourly rate of approximately \$375.00 for a total of \$412.50 prior to applicable taxes.
 - (iii) The Newcastle Project fees from July 20, 2019 through to October 23, 2019 encompass 1.8 hours at an average hourly rate of approximately \$375.00 for a total of \$675.00 prior to applicable taxes.
 - (iv) The Guelph Project fees from July 20, 2019 through to October 23, 2019 encompass 1.7 hours at an average hourly rate of approximately \$375.00 for a total of \$637.50 prior to applicable taxes.
 - (v) The Brampton Project fees from July 20, 2019 through to October 23, 2019 encompass 8.4 hours at an average hourly rate of approximately \$375.00 for a total of \$3,150.00 prior to applicable taxes.
 - (vi) The Guelph Parking Lot Project fees from July 20, 2019 through to October 23, 2019 encompass 1.2 hours at an average hourly rate of approximately \$375.00 for a total of \$450.00 prior to applicable taxes.
 - (vii) The general claims process fees from July 20, 2019 through to October 23, 2019 encompass 29.5 hours at an average hourly rate of approximately \$371.61 for a total of \$10,962.50 prior to applicable taxes. The general claims process invoice includes time applicable to all projects and will be split among the other six projects on the basis of time spent. The proposed distribution is as follows:

Project	Fees	%	General Allocation	Total
Waterloo	\$ 225.00	4.1%	\$ 444.43	\$ 669.43
Kitchener	412.50	7.4%	814.78	1,227.28
Newcastle	675.00	12.2%	1,333.28	2,008.28
Guelph	637.50	11.5%	1,259.21	1,896.71
Brampton	3,150.00	56.8%	6,221.96	9,371.96
Parking Lot	450.00	8.1%	888.85	1,338.85
	\$ 5,550.00	100.0%	\$ 10,962.50	\$ 16,512.50

- 3.5 The Trustee is therefore requesting that the Court approve its total fees and disbursements in the amount of \$16,512.50 prior to of applicable taxes.
- 3.6 The Trustee has an additional \$43,540 in work in progress which is being allocated to the bankrupt estate which it is not seeking court approval of at this time.
- 3.7 The fees and disbursements of the Trustee's counsel for the period from July 22, 2019 are detailed in the affidavit of Rob Danter, a copy of which is attached as **Appendix G**.
- 3.8 The Trustee's counsel has submitted invoices as follows:
- (i) The fees from July 22, 2019 to October 22, 2019 encompass 75.3 hours at an average hourly rate of approximately \$229.67 and disbursements of \$387.33 for a total of \$19,929.56 inclusive of applicable taxes ("**Counsel Fees**").
 - (ii) Based on the Trustee's allocations 40% of Counsel Fees, \$7,971.82 will be allocated to the bankrupt estate and is only seeking court approval of the remainder being \$11,957.74 inclusive of applicable taxes.
- 3.9 The Trustee is therefore requesting that the Court approve its counsel's fees and disbursements in relation the Claims Procedure Order and the Construction Projects in the amount of \$11,957.74 inclusive of applicable taxes.

4.0

Proposed Distribution

4.1 Distribution Priority

4.1.1 The Proposed Priority was set-out in the Second Report.

4.2 Proposed Distribution

4.2.1 The receipts to date on each of the Construction Projects are noted above in section 2.1.

4.2.2 The fees and costs incurred on each project are noted above in section 3.0.

4.2.3 The Trustee, with the approval of this Court, proposes to make distributions, as funds are available, on each of the Construction Projects pursuant to the Proposed Priority.

4.2.4 The Trustee is seeking approval for the following distribution (the “Proposed Distribution”):

4.2.5 Newcastle Project

- (i) The approved fees and expenses of the Trustee plus applicable taxes;
- (ii) The approved fees and expenses of counsel to the Trustee.
- (iii) The Lien Claim from CLAC in the amount of \$12,512.02¹.
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

4.2.6 Brampton Project

- (i) The approved fees and expenses of the Trustee plus applicable taxes.
- (ii) The approved fees and expenses of counsel to the Trustee.
- (iii) Any remaining funds on hand, subject to the Reserve, and future receipts will be paid into the general pool.

4.2.7 Guelph Project

- (i) The approved fees and expenses of the Trustee plus applicable taxes.
- (ii) The approved fees and expenses of counsel to the Trustee.
- (iii) The Lien Claim from CLAC in the amount of \$138,716.18².
- (iv) Any remaining funds on pari-passu basis to the Lien Claimants.

¹ Subject to any WEPPA repayments

² Subject to any WEPPA repayments

5.0 Discharge

- 5.1 Following the receipt of all funds described in section 3.0 and the completion of the Proposed Distribution's in section 4.0 the Trustee will have substantially completed the construction Claims Administration Procedure pursuant to the April 2 Order.
- 5.2 Any funds related to a Project after the Proposed Distribution will be paid into the general pool available to creditors in the bankruptcy of Sirius.
- 5.3 Any Trust Claim's and Lien Claim's that were not paid in full from the Claims Administration Procedure will, to the extent they are unpaid, be allowed as claims in the bankruptcy of Sirius.
- 5.4 The Trustee will complete the administration of the bankruptcy of Sirius and obtain its discharge from the Court under the April 2 Order. The Trustee will continue the administration of the estate of the Company in the ordinary course and pursuant to the *Bankruptcy and Insolvency Act* and not file any further reports to the Court.

6.0 Order Sought

- 6.1.1 We submit this Third Report to the Court in support of our Motion respectfully requesting this Court to:
- (i) Approve the Third Report and the Trustee's actions described therein;
 - (ii) Approve the settlements reached by the Trustee with the Customers;
 - (iii) Provide payment Orders on the Newcastle Project and Parking Lot Project;
 - (iv) Approve the fees and disbursement of the Trustee and its counsel;
 - (v) Approve the Proposed Distribution; and,
 - (vi) Obtain an Order discharging the Trustee from further obligations under the April 2 Order and releasing the Trustee from any liability while acting as Trustee under the April 2 Order.

All of which is respectfully submitted this 28th day of October, 2019.

**BDO CANADA LIMITED.
SOLELY IN ITS CAPACITY AS
TRUSTEE OF THE ESTATE OF
SIRIUS CONCRETE INC.**



Per: _____
Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX G

Court File No. 35-2481393
Estate File No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE
JUSTICE

Hocken

) FRIDAY, THE 22ND
)
) DAY OF NOVEMBER, 2019



IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

APPROVAL AND DISTRIBUTION ORDER

THIS MOTION made by BDO Canada Limited ("**BDO**"), in its capacity as Trustee of Sirius Concrete Inc., of the City of Waterloo (the "**Trustee**") for the relief as set out in the Notice of Motion, was heard this day at 80 Dundas St. London Ontario for:

- a. An Order that the time for service of this Motion Record is hereby dispensed with or abridged and this motion is property returnable today without further service or notice thereof;
- b. An Order that the Third Report dated October 28, 2019 (the "**Third Report**") and the Trustee's activities as outlined therein be approved;
- c. An Order that BDO's accounts for professional fees and disbursements as Trustee (the "**BDO Fees**") and the fees and disbursements of Harrison Pensa LLP, counsel to

the Trustee (collectively with the BDO Fees, the "**Professional Fees**") and the payment of same be approved;

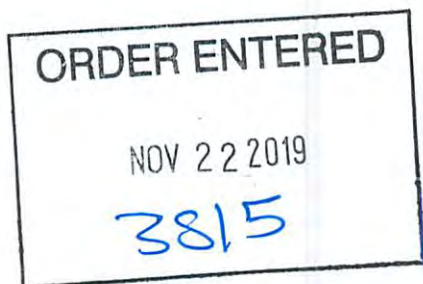
- d. An Order that after payment of the Professional Fees herein approved, the Trustee be authorized to make the Proposed Distribution, with the exception of the Newcastle Project and the Guelph Project, as outlined and defined in the Third Report (the "**Distribution**");
- e. An Order that Newton Group Ltd. be required to pay to the Trustee the holdback in the amount of \$52,689.50 (the "**Newton Payment**");
- f. An Order that Skyrise Construction Inc. be required to pay to the Trustee the holdback in the amount of \$149,167.04 (the "**Skyrise Payment**");
- g. An Order that the settlements made between the Trustee and the customers of Sirius Concrete Inc., as detailed in the Third Report (the "**Settlements**"), be approved;

ON READING the Third Report of the Trustee, dated October 28, 2019 and the exhibits thereto (the "**Third Report**") and on hearing submissions of counsel for the Trustee and such other counsel as were present and on reading the affidavit of service of Lindsay Provost sworn October 29, 2019.

1. **THIS COURT ORDERS** that the time for service of this Motion Record is hereby dispensed with or abridged and this motion is property returnable today without further service or notice thereof.
2. **THIS COURT ORDERS** that the Third Report and the Trustee's activities as outlined therein are hereby approved.
3. **THIS COURT ORDERS** that Professional Fees and the payment of same are hereby

approved.

4. **THIS COURT ORDERS AND AUTHORIZES** that, after payment of the Professional Fees herein approved, the Trustee is authorized to make the Distribution.
5. **THIS COURT ORDERS** that Newton Group Ltd. is required to pay to the Trustee the Newton Payment.
6. **THIS COURT ORDERS** that Skyrise Construction Inc. is required to pay to the Trustee the Skyrise Payment.
7. **THIS COURT ORDERS** that the Settlements made between the Trustee and the customers of Sirius Concrete Inc. are hereby approved.



Justice, *Ontario* Superior Court of Justice

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

ORDER

HARRISON PENZA LLP
Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 5J6

Melinda Vine (LSO #53612R)

Tel : (519) 679-9660

Fax: (519) 667-3362

Solicitors for BDO Canada Limited

MVI/177459

Court File No. 35-2481393
Estate File No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE
JUSTICE

HOLKIN

) FRIDAY, THE 22ND
)
) DAY OF NOVEMBER, 2019

IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, as amended

ANCILLARY ORDER
(LIEN DISCHARGE AND DISMISSAL)

THIS MOTION made by BDO Canada Limited (“**BDO**”), in its capacity as Trustee of Sirius Concrete Inc., of the City of Waterloo (the “**Trustee**”) for the relief as set out in the Notice of Motion, was heard this day at 80 Dundas St. London Ontario.

ON READING the Third Report of the Trustee, dated October 28, 2019 and the exhibits thereto (the “**Third Report**”) and on hearing submissions of counsel for the Trustee and such other counsel as were present and on reading the affidavit of service of Lindsay Provost sworn October 29, 2019.

1. **THIS COURT ORDERS** that:

- a. The claim for lien and certificate of action of Doka Canada Ltd., registered on March 6, 2019 as Instrument No. WC562846 and on May 31, 2019 as Instrument No. WC569135, respectively, in the Land Registry Office for the

Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.

- b. The action commenced by Doka Canada Ltd. in Guelph as court file no. CV-19-207 be and is hereby dismissed without costs.
- c. A copy of this order be filed in Guelph court file no. CV-19-207.
- d. The claim for lien and certificate of action of Canada Building Materials Company A Division of St. Marys Cement Inc. (Canada), registered on March 20, 2019 as Instrument No. WC563677 and on March 27, 2019 as Instrument No. WC564107, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- e. The action commenced by Canada Building Materials Company A Division of St. Marys Cement Inc. (Canada) in Guelph as court file no. CV-19-113 be and is hereby dismissed without costs.
- f. A copy of this order be filed in Guelph court file no. CV-19-113.
- g. The claim for lien and certificate of action of James Koopman, registered on March 25, 2019 as Instrument No. WC563923 and on May 27, 2019 as Instrument No. WC568466, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- h. The action commenced by James Koopman in Guelph as court file no. CV-

19-197 be and is hereby dismissed without costs.

- i. A copy of this order be filed in Guelph court file no. CV-19-197.
- j. The claim for lien and certificate of action of BDO Canada Inc., as trustee for the estate of Sirius Concrete Inc., registered on March 26, 2019 as Instrument No. WC563942 and on May 30, 2019 as Instrument No. WC568809, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- k. The claim for lien and certificate of action of Cooper Equipment Rentals Limited, registered on March 29, 2019 as Instrument No. WC564263 and on May 13, 2019 as Instrument No. WC567485, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- l. The action commenced by Cooper Equipment Rentals Limited in Guelph as court file no. CV-19-178 be and is hereby dismissed without costs.
- m. A copy of this order be filed in Guelph court file no. CV-19-178.
- n. The claim for lien and certificate of action of AGF Rebar Inc. (Albrecht Division), registered on March 11, 2019 as Instrument No. WC563106 and on May 22, 2019 as Instrument No. WC568118, respectively, in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.

- o. The action commenced by AGF Rebar Inc. (Albrecht Division) in Guelph as court file no. CV-19-188 be and is hereby dismissed without costs.
- p. A copy of this order be filed in Guelph court file no. CV-19-188.
- q. The claim for lien of Skycrane Limited, registered on March 15, 2019 as Instrument No. WC563355 in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.
- r. The claim for lien of Michel Roux, registered on March 15, 2019 as Instrument No. WC563384 in the Land Registry Office for the Land Titles Division of Wellington, against title to the lands and premises described in Schedule "A", be and is hereby discharged.

2. THIS COURT ORDERS that:

- a. the claim for lien of Gillies Lumber Inc. registered as Instrument Number WR1173899 and the certificate of action of Gillies Lumber Inc. registered as Instrument Number WR1183636;
 - b. the claim for lien of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6 registered as Instrument Number WR1175085;
 - c. the claim for lien of Cooper Equipment Rentals Limited registered as Instrument Number WR1175877 and the certificate of action of Cooper Equipment Rentals Limited registered as Instrument Number WR1183662;
- and,

- d. the claim for lien of Sirius Concrete Inc. registered as Instrument Number WR1177274;

each of which was vacated from title to the premises against which they were registered pursuant to the Order of the Honourable Madam Justice Rady made on May 28, 2019 in London SCJ 1038-19; and,

- e. the certificate of action of James Koopman as Agent for the Christian Labour Association of Canada Construction Workers' Local 6, Cooper Equipment Rentals Limited, and Sirius Concrete Inc. registered at Instrument Number WR1186532;

be and hereby are discharged and the Trustee be and is authorized to register discharges of liens and certificates as applicable and as required with respect to the instruments described in this paragraph.

3. THIS COURT ORDERS that:

- a. The action commenced by Cooper Equipment Rentals Limited in Kitchener as court file no. CV-19-567 be and is hereby dismissed without costs.
- b. A copy of this order be filed in Kitchener court file no. CV-19-567.
- c. The action commenced by Gillies Lumber Inc. in London as court file no. 963/19 be and is hereby dismissed without costs.
- d. A copy of this order be filed in London court file no. 963/19.
- e. The action commenced by James Koopman as Agent for the Christian Labour

Association of Canada Construction Workers' Local 6 as court file no. CV-19-642 be and is hereby dismissed without costs.

- f. A copy of this order be filed in Kitchener court file no. CV-19-642.



Justice, *Ontario* Superior Court of Justice

ORDER ENTERED
NOV 22 2019
3814

Schedule "A"**DESCRIPTION OF LANDS**

PIN: **71287-0107 (LT)**

Description: PT LOTS 90, 91, 92 & 93, PLAN 8, AS IN RO706835 EXCEPT PT 1, 61R11926; SUBJECT TO AN EASEMENT AS IN WC61819; SUBJECT TO AN EASEMENT AS IN ROS635166; CITY OF GUELPH

Address: GUELPH

PIN: **71287-0031 (LT)**

Description: PT LOTS 90 & 91, PLAN 8, PARTS 1 & 5, 61R4481; S/T & T/W ROS571224; GUELPH; SUBJECT TO AN EASEMENT AS IN WC538879

Address: 52 BAKER ST
GUELPH

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

ORDER

HARRISON PENZA LLP
Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 5J6

Melinda Vine (LSO #53612R)

Tel : (519) 679-9660
Fax: (519) 667-3362

Solicitors for BDO Canada Limited

MVI/177459

APPENDIX H

Billing Summary

John Camara
 Averswood Development Corporation
 P.O. Box 3117,
 London, Ontario, N6A 4J4
 JJC@cpirentals.com
 0

Job # 17-22-CIP
 P.O./W.O. # 0
 HST# 85077 7434 RT0001
 Terms: Net 30 Days

CONTRACT SUMMARY	
Original Contract:	\$ 6,215,000.00
Approved Change Orders:	
COW1	\$ 7,200.00
Contract Totals	\$ 6,222,200.00
HST	\$808,886.00
TOTALS	\$ 7,031,086.00

PROGRESS BILLING		TTD		This Claim		H/B		Billing		HST		Invoiced			
Date	No.	Inv #													
25-Apr-18	1	18.046	\$149,386.88	\$149,386.88	\$14,938.69	\$14,938.69	\$134,448.20	\$17,478.27	\$17,478.27	\$17,478.27	\$17,478.27	\$151,926.46	\$151,926.46		
25-May-18	2	18.054	\$448,160.65	\$298,773.77	\$29,877.38	\$29,877.38	\$268,896.39	\$34,956.53	\$34,956.53	\$34,956.53	\$34,956.53	\$303,852.92	\$303,852.92		
25-Jun-18	3	18.065	\$597,547.54	\$149,386.88	\$14,938.69	\$14,938.69	\$134,448.20	\$17,478.27	\$17,478.27	\$17,478.27	\$17,478.27	\$151,926.46	\$151,926.46		
25-Jul-18	4	18.078	\$896,321.30	\$298,773.77	\$29,877.38	\$29,877.38	\$268,896.39	\$34,956.53	\$34,956.53	\$34,956.53	\$34,956.53	\$303,852.92	\$303,852.92		
25-Aug-18	5	18.085	\$1,274,768.08	\$378,446.77	\$37,844.68	\$37,844.68	\$340,602.10	\$44,278.27	\$44,278.27	\$44,278.27	\$44,278.27	\$384,880.37	\$384,880.37		
25-Sep-18	6	18.093	\$1,693,051.35	\$418,283.28	\$41,828.33	\$41,828.33	\$376,454.95	\$48,939.14	\$48,939.14	\$48,939.14	\$48,939.14	\$425,394.09	\$425,394.09		
25-Oct-18	7	18.103	\$2,111,334.63	\$400,003.52	\$40,000.35	\$40,000.35	\$36,003.17	\$4,680.41	\$4,680.41	\$4,680.41	\$4,680.41	\$40,683.58	\$40,683.58		
26-Nov-18	8	18.115	\$2,151,338.15	\$221,786.17	\$22,178.62	\$22,178.62	\$199,607.55	\$25,948.98	\$25,948.98	\$25,948.98	\$25,948.98	\$225,556.53	\$225,556.53		
29-Dec-18	9	18.127	\$2,373,124.32	\$375,200.00	\$37,520.00	\$37,520.00	\$337,680.00	\$43,898.40	\$43,898.40	\$43,898.40	\$43,898.40	\$381,578.40	\$381,578.40		
30-Jan-19	10	19.001	\$2,748,324.32	\$156,000.00			\$156,000.00	\$20,280.00	\$20,280.00	\$20,280.00	\$20,280.00	\$176,280.00	\$176,280.00		
28-Feb-19	11	19.014	\$2,904,324.32	\$290,432.43	\$29,043.24	\$29,043.24	\$261,389.19	\$33,980.59	\$33,980.59	\$33,980.59	\$33,980.59	\$296,369.78	\$296,369.78		
4-Mar-19	HB	19.802	\$2,904,324.32	\$290,432.43	\$29,043.24	\$29,043.24	\$261,389.19	\$33,980.59	\$33,980.59	\$33,980.59	\$33,980.59	\$296,369.78	\$296,369.78		
												\$ 303,875.67	\$ 2,890,881.07	\$ 375,814.54	\$ 3,266,695.61

PAYMENT SUMMARY			
Amt Paid	Amt Owing	Date Paid	# days
\$1,296,433.13	\$0.00	1-Jun-18	37
\$151,926.46	\$0.00	1-Jul-18	37
\$303,852.92	\$0.00	1-Aug-18	37
\$151,926.46	\$0.00	31-Aug-18	37
\$303,852.92	\$0.00	1-Oct-18	37
\$384,880.37	\$0.00	1-Nov-18	37
\$425,394.09	\$0.00	1-Dec-18	37
\$425,394.09	\$0.00	2-Jan-19	37
\$40,683.58	\$0.00	4-Feb-19	37
\$225,556.53	\$0.00	1-Mar-19	30
\$381,578.40	\$176,280.00		292
\$1,296,433.13	\$296,369.78		288
\$2,795,045.83	\$471,649.78		



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara

Ayerswood Development Corporation
 P.O. Box 3117,
 London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 1 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 18.046

Date: 25-Apr-17
Job # 17-22-CIP
P.O/W.O. #
HST# 85077 7434 RT0001
Terms: **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00
Progress billed to date	Concrete M3 150	Cost/Meter \$995.91
		\$149,386.88
Less: Progress billed to Previous Draw		\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$149,386.88
LESS 10% HOLDBACK:	<u>\$14,938.69</u>
THIS INVOICE BEFORE HST.:	\$134,448.20
PLUS - H.S.T. @ 13%	<u>\$17,478.27</u>

INVOICE AMOUNT	\$151,926.46
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara Ayerswood Development Corporation P.O. Box 3117, London, Ontario, N6A 4J4 JJC@cpirentals.com Draw # 2 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building	Invoice # 18.054 Date: 25-May-17 Job # 17-22-CIP P.O/W.O. # HST# 85077 7434 RT0001 Terms: Net 30 Days
--	---

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00
Progress billed to date	Concrete M3 450	Cost/Meter \$995.91 \$448,160.65
Less: Progress billed to Previous Draw		\$149,386.88
<hr/>		
NET INVOICE BEFORE HOLDBACK AND H.S.T.:		\$298,773.77
LESS 10% HOLDBACK:		<u>\$29,877.38</u>
THIS INVOICE BEFORE HST.:		\$268,896.39
PLUS - H.S.T. @ 13%		<u>\$34,956.53</u>
INVOICE AMOUNT		<u>\$303,852.92</u>

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara

Ayerswood Development Corporation
 P.O. Box 3117,
 London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 3 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 18.065

Date: 25-Jun-18
Job # 17-22-CIP
P.O/W.O. #
HST# 85077 7434 RT0001
Terms: **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)		\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)		<u>\$49,290.00</u>
Total Contract Value		\$6,264,290.00

	Concrete M3	Cost/Meter	
Progress billed to date	600	\$995.91	\$597,547.54
Less: Progress billed to Previous Draw			\$448,160.65

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$149,386.88
LESS 10% HOLDBACK:	<u>\$14,938.69</u>
THIS INVOICE BEFORE HST.:	\$134,448.20
PLUS - H.S.T. @ 13%	<u>\$17,478.27</u>

INVOICE AMOUNT	\$151,926.46
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara

Ayerswood Development Corporation
 P.O. Box 3117,
 London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 4 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 18.078

Date: 25-Jul-18
Job # 17-22-CIP
P.O/W.O. #
HST# 85077 7434 RT0001
Terms: **Net 30 Days**

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)			\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)			<u>\$49,290.00</u>
Total Contract Value			\$6,264,290.00
Progress billed to date	Concrete M3	Cost/Meter	
	900	\$995.91	\$896,321.30
Less: Progress billed to Previous Draw			\$597,547.54

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$298,773.77
LESS 10% HOLDBACK:	<u>\$29,877.38</u>
THIS INVOICE BEFORE HST.:	\$268,896.39
PLUS - H.S.T. @ 13%	<u>\$34,956.53</u>

INVOICE AMOUNT	\$303,852.92
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara

Ayerswood Development Corporation
 P.O. Box 3117,
 London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 5 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 18.085**Date:** 25-Aug-18**Job #** 17-22-CIP**P.O.W.O. #****HST#** 85077 7434 RT0001**Terms:** *Net 30 Days*

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)			\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)			<u>\$49,290.00</u>
Total Contract Value			\$6,264,290.00
Progress billed to date	Concrete M3 1280	Cost/Meter \$995.91	\$1,274,768.08
Less: Progress billed to Previous Draw			\$896,321.30
NET INVOICE BEFORE HOLDBACK AND H.S.T.:			\$378,446.77
LESS 10% HOLDBACK:			<u>\$37,844.68</u>
THIS INVOICE BEFORE HST.:			\$340,602.10
PLUS - H.S.T. @ 13%			<u>\$44,278.27</u>
INVOICE AMOUNT			\$384,880.37

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara		Invoice # 18.093
Ayerswood Development Corporation		Date: 25-Sep-18
P.O. Box 3117,		Job # 17-22-CIP
London, Ontario, N6A 4J4		P.O.W.O. #
JJC@cpirentals.com		HST# 85077 7434 RT0001
Draw # 6	17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building	Terms: <i>Net 30 Days</i>

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)			\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)			<u>\$49,290.00</u>
Total Contract Value			\$6,264,290.00
Progress billed to date	Concrete M3 1700	Cost/Meter \$995.91	\$1,693,051.35
Less: Progress billed to Previous Draw			\$1,274,768.08
<hr/>			
NET INVOICE BEFORE HOLDBACK AND H.S.T.:			\$418,283.28
LESS 10% HOLDBACK:			<u>\$41,828.33</u>
THIS INVOICE BEFORE HST.:			\$376,454.95
PLUS - H.S.T. @ 13%			<u>\$48,939.14</u>
INVOICE AMOUNT			\$425,394.09

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
 Kitchener, Ontario
 519.808.4237

INVOICE

John Camara		Invoice # 18.103
Ayerswood Development Corporation		Date: 25-Oct-18
P.O. Box 3117,		Job # 17-22-CIP
London, Ontario, N6A 4J4		P.O.W.O. #
JJC@cpirentals.com		HST# 85077 7434 RT0001
Draw # 7	17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building	Terms: <i>Net 30 Days</i>

Original Contract Value (Ayerswood Subcontract # A18-45YAR-013)			\$6,215,000.00
Change Order 17-22.01 (Ayerswood P.O. # 15082)			<u>\$49,290.00</u>
Total Contract Value			\$6,264,290.00
Progress billed to date	Concrete M3 2120	Cost/Meter \$995.91	\$2,111,334.63
Less: Progress billed to Previous Draw			\$1,693,051.35
<hr/>			
NET INVOICE BEFORE HOLDBACK AND H.S.T.:			\$418,283.28
LESS 10% HOLDBACK:			<u>\$41,828.33</u>
THIS INVOICE BEFORE HST.:			\$376,454.95
PLUS - H.S.T. @ 13%			<u>\$48,939.14</u>
INVOICE AMOUNT			\$425,394.09

Please make cheque payable to: Sirius Concrete Inc.

Thank you for your business!



Head Office

P.O. Box 25070
Kitchener, Ontario
866-218-6173

INVOICE

John Camara

Ayerswood Development Corporation
P.O. Box 3117,
London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 8 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 18.115
Date: 26-Nov-18

Job # 17-22-CIP

P.O/W.O. #
HST# 85077 7434 RT0001

Terms: **Net 30 Days**

Progress Billing Period From

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$234,334.63	\$340,665.37
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$0.00	0%	\$0.00	\$0.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$14,900.00	24%	\$0.00	\$14,900.00
Original Total Contract	\$6,215,000.00	\$2,454,900.00	39%	\$2,099,334.63	\$355,565.37
Change Orders To Date:					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$46,200.00	\$20,000.00	43%	\$12,000.00	\$8,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$0.00	\$18,483.38
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$0.00	\$17,986.46

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$400,035.21
LESS 10% HOLDBACK:	<u>\$40,003.52</u>
THIS INVOICE BEFORE HST.:	\$360,031.69
PLUS - H.S.T. @ 13%	<u>\$46,804.12</u>

INVOICE AMOUNT	\$406,835.81
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.
2% interest per month on overdue balances until paid.

Thank you for your business!



Head Office

P.O. Box 25070
Kitchener, Ontario
866-218-6173

INVOICE

John Camara

Ayerswood Development Corporation
P.O. Box 3117,
London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 9 17-22-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 18.127
Date: 29-Dec-18

Job # 17-22-CIP

P.O/W.O. #
HST# 85077 7434 RT0001

Terms: **Net 30 Days**

Progress Billing Period From December 1, 2018 to December 31, 2018.

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$205,000.00	49%	\$0.00	\$205,000.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$20,100.00	32%	\$14,900.00	\$5,200.00
Original Total Contract	\$6,215,000.00	\$2,665,100.00	43%	\$2,454,900.00	\$210,200.00
Change Orders To Date:					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$22,000.00	45%	\$20,000.00	\$2,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$0.00	0%	\$0.00	\$0.00
5. C.O. 17-22.05 (Ayerswood P.O. #15668)	\$9,586.17	\$9,586.17	100%	\$0.00	\$9,586.17

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$221,786.17
LESS 10% HOLDBACK:	\$22,178.62
THIS INVOICE BEFORE HST.:	\$199,607.55
PLUS - H.S.T. @ 13%	\$25,948.98

INVOICE AMOUNT	\$225,556.53
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.
2% interest per month on overdue balances until paid.

Thank you for your business!



Head Office

P.O. Box 25070
Kitchener, Ontario
866-218-6173

INVOICE

John Camara

Ayerswood Development Corporation
P.O. Box 3117,
London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 10 17-22A-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 19.001
Date: 30-Jan-19

Job # 17-22A-CIP

P.O/W.O. #
HST# 85077 7434 RT0001

Terms: **Net 30 Days**

Progress Billing Period From January 1, 2019 to January 31, 2019.

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$420,000.00	100%	\$205,000.00	\$215,000.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$130,000.00	38%	\$0.00	\$130,000.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$40,100.00	64%	\$20,100.00	\$20,000.00
Original Total Contract	\$6,215,000.00	\$3,030,100.00	49%	\$2,665,100.00	\$365,000.00
Change Orders To Date:					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$25,000.00	51%	\$22,000.00	\$3,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$7,200.00	100%	\$0.00	\$7,200.00
5. C.O. 17-22.05 (Ayerswood P.O. # 15668)	\$9,586.17	\$9,586.17	100%	\$9,586.17	\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$375,200.00
LESS 10% HOLDBACK:	\$37,520.00
THIS INVOICE BEFORE HST.:	\$337,680.00
PLUS - H.S.T. @ 13%	\$43,898.40

INVOICE AMOUNT	\$381,578.40
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.
2% interest per month on overdue balances until paid.

Thank you for your business!



Head Office

P.O. Box 25070
Kitchener, Ontario
866-218-6173

INVOICE

John Camara

Ayerswood Development Corporation
P.O. Box 3117,
London, Ontario, N6A 4J4
JJC@cpirentals.com

Draw # 11 17-22A-CIP-Ayerswood-45 Yarmouth St. Apartment Building

Invoice # 19.014
Date: 28-Feb-19

Job # 17-22A-CIP

P.O/W.O. #
HST# 85077 7434 RT0001

Terms: **Net 30 Days**

Progress Billing Period From February 1, 2019 to February 28, 2019.

	<u>Total</u>	<u>Cost to Date</u>	<u>% Complete</u>	<u>Previous Draw</u>	<u>Current Draw</u>
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$420,000.00	100%	\$420,000.00	\$0.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$280,000.00	82%	\$130,000.00	\$150,000.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$45,100.00	71%	\$40,100.00	\$5,000.00
Original Total Contract	\$6,215,000.00	\$3,185,100.00	51%	\$3,030,100.00	\$155,000.00
Change Orders To Date:					
1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$26,000.00	53%	\$25,000.00	\$1,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$7,200.00	100%	\$7,200.00	\$0.00
5. C.O. 17-22.05 (Ayerswood P.O. # 15668)	\$9,586.17	\$9,586.17	100%	\$9,586.17	\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	\$156,000.00
LESS 10% HOLDBACK:	\$15,600.00
THIS INVOICE BEFORE HST.:	\$140,400.00
PLUS - H.S.T. @ 13%	\$18,252.00

INVOICE AMOUNT	\$158,652.00
-----------------------	---------------------

Please make cheque payable to: Sirius Concrete Inc.
2% interest per month on overdue balances until paid.

Thank you for your business!

APPENDIX I

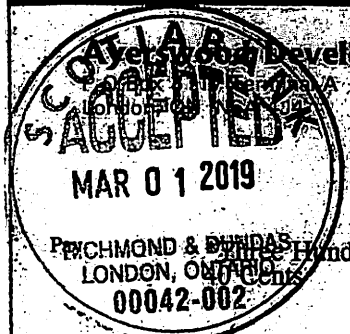
SiriusCo Sirius Concrete
 PO Box 25070
 Kitchener, ON N2A 4A5

156

Ayers Development Corporation
 Cheque Number ADSC-00024107
 Cheque Date 03/01/2019

Date	Invoice	Reference	Invoice Amt	Retention	Discount	Payment	ITC
01/30/19	1510233	ONTARIO INC.	423,976.00	-37,520.00	0.00	381,578.40	43,898.40
Total Remittance			423,976.00	-37,520.00	.00	381,578.40	43,898.40

THIS CHECK IS VOID WITHOUT A BLUE BACKGROUND AND A WATERMARK - HOLD UP TO THE LIGHT TO VERIFY



SCOTIA BANK
 420 RICHMOND STREET
 London, ON N6A 4Y5

00024107

DATE 03-01-2019
 M M DD YYYY

\$ 381,578.40

Three Hundred Eighty One Thousand Five Hundred Seventy Eight Dollars

PAYABLE IN CANADIAN FUNDS

To The Order Of
 Sirius Concrete
 PO Box 25070
 Kitchener, ON N2A 4A5

Per [Signature]
 Per [Signature]

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES A MICROPRINT BORDER & FLUORESCENT FIBERS

⑈00024107⑈ ⑆00042⑆002⑆ 02919⑆19⑆

CUSTOMER RECEIPT PAGE 01/01
 MAR 01 2019
 ID KHL6H
 LONDON MAIN BRANCH
 TR00042
 OFFICER ID: 526
 PIN *N*
 Certified Cheque
 00042 02919 19
 \$381,578.40

Thank You
 Have an excellent day

APPENDIX J

158

B. Scott Turton

*24 Bridgewater Drive
Richmond Hill, Ontario L4E 3N4
Telephone (905) 508-5821
Fax (905) 508-0519*

Barrister-at-Law

18 November 2019

TRANSMITTED BY TELEFAX (519) 667-3362

Harrison Pensa LLP
Barristers & Solicitors
450 Talbot Street,
London ON N6A 4K3

Attn: Melinda Vine

Re: Ayerswood Development Corporation et al ats BDO Canada Limited et al
Court File No. CV-19-00000203-0000

Enclosed please find the Statement of Defence of Ayerswood Development Corporation, 1510233 Ontario Inc., 1991333 Ontario Inc. and Banco Securities Inc. and Counterclaim of Ayerswood Development Corporation.

Yours very truly,


Scott Turton

ST/ws

Encl.

Total Pages:

Court file no. CV-19-00000203-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF *The Construction Act*,
R.S.O. 1990, Chapter C.30, as amended**

BETWEEN:

**BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.
PLAINTIFF(S)
and**

**AYERSWOOD DEVELOPMENT CORPORATION, 1510233
ONTARIO INC., 1991333 ONTARIO INC., SKYLINE EQUITIES INC.,
AND BANCO SECURITIES INC.
DEFENDANT(S)**

**STATEMENT OF DEFENCE OF AYERSWOOD DEVELOPMENT
CORPORATION, 1510233 ONTARIO INC., 1991333 ONTARIO INC.
AND BANCO SECURITIES INC. and COUNTERCLAIM OF
AYERSWOOD DEVELOPMENT CORPORATION**

1. These defendants admit the allegations contained in the following paragraphs of the statement of claim: paragraph 2 (first two lines), 3, that 1991333 is the registered owner of the 031 Lands, 5, that Skyline Equities Inc. is the registered owner of the 107 Lands, 7, 8, 10, 13, 29, and 30.
2. These defendants deny the balance of the paragraphs of the statement of claim and the remedies claimed in paragraph 1.

- 2 -

3. The co-defendant Skyline Equities Inc. owns a cell of space in the residential multi-storey building that Ayerswood Development Corporation ("Ayerswood") is constructing at the subject lands (which will be referred to by their municipal address 45 Yarmouth Street, Guelph). This cell is to consist of 12 surface level parking spaces. This is the 107 Land. Skyline Equities Inc. did not contract with Sirius Concrete Inc. ("Sirius") for the provision of anything, nor request that company to perform anything. Skyline Equities Inc. did not pay Sirius nor have any obligation to pay Sirius. It is not an "owner" within the meaning of the *Construction Act* and has no liability for the claims made in this action.

4. The defendant Banco Securities Inc. holds four mortgages on the 031 Land only (not on the 107 Land). Its mortgages are all prior in time to the construction of the subject building (the latest in time was 2014). The plaintiff has no claim against this defendant.

5. The defendant 1510233 Ontario Inc. is an unnecessary defendant as it was amalgamated into 1991333 Ontario Inc., the

- 3 -

latter company being the registered owner of the 031 Land. 1991333 did not contract with Sirius, did not pay Sirius, and did not request Sirius to perform any services for it. 1991333 is a registered owner but not an "owner" as that term is defined in the *Construction Act* such that it has any financial liability to the plaintiff as claimed in this action.

6. Ayerswood contracted with Sirius. Ayerswood made the payments to Sirius. Ayerswood maintained holdbacks. Ayerswood owes nothing to Sirius (and hence the plaintiff Trustee) and owes nothing to the Trustee.
7. Ayerswood had a written contract with Sirius. The scope of work is described (quoting from the contract of 14 March 2018) as:

"To provide all labour, equipment and materials to carry out all work to build a 12 Storey concrete structure apartment building with a three storey concrete structure underground garage as per SBM Engineering Structural Engineer and structural drawings and Patrick Trotter Architectural drawing integrated with SBM Engineers..."
8. Sirius was a concrete forming company and the above work involves the concrete work for a three storey underground

- 4 -

garage and twelve storeys above ground. Sirius made its assignment in bankruptcy before its contract was completed.

9. The contract had no schedule of values and no schedule of progress payments. The payment provision in the contract set out a total price of \$7,022,950.00 and said that payment was "net 30 days after receipt of invoice between 1st and 8th of the month".

10. Sirius rendered invoices to Ayerswood based on a representation by Sirius to Ayerswood that a percentage of a level in the building had been completed by it. In particular Sirius rendered an invoice to Ayerswood on or about 31 January 2019 for \$423,976.00 on the representation that its work on the three underground garage levels and the first floor walls to the second floor slab were 100% complete and the value of its work was a further \$423,976.00. This representation was false however and in consequence of this misrepresentation Ayerswood issued payment to Sirius on or about 1 March 2019 in the amount of \$381,578.40 (being \$423,976.00 less the holdback).

- 5 -

11. On 28 February 2019, at a time when it knew it was making an assignment in bankruptcy, Sirius rendered a further invoice representing that the work from the second floor walls to the third floor slab was 82% complete and the further value of its work was \$155,000.00. Due to the assignment in bankruptcy of Sirius on 4 March 2019, Ayerswood had not issued payment of this invoice. (The Trustee is no longer seeking payment of this invoice).

12. In June 2019 Ayerswood obtained the report of a quantity surveyor who was retained to determine the actual value of the work that Sirius had done. The quantity surveyor concluded that Sirius had overcharged by \$702,551.61. As the final invoice of \$155,000.00 was not paid, that amount is to be deducted from the amount of the overcharge. Given that Ayerswood paid the sum of \$310,835.60 to the Trustee on account of holdbacks, the amount that Ayerswood has overpaid is \$547,551.61.

13. Sirius was a company in financial problems. Those problems, according to the Trustee, were serious in the fourth quarter of 2018. Sirius was attempting to solve its cash flow problems by

- 6 -

knowingly inflating the value of the work it had done at this project and inducing Ayerswood through misrepresentation to overpay Sirius.

14. Ayerswood has paid, and overpaid, its holdback obligation to the Trustee. Ayerswood has overpaid to Sirius. There is nothing owed by Ayerswood to the plaintiff and this claim should be dismissed against it with costs.

AND BY WAY OF COUNTERCLAIM

BETWEEN

AYERSWOOD DEVELOPMENT CORPORATION

Plaintiff by Counterclaim

And

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

Defendant by Counterclaim

15. The plaintiff by counterclaim claims:
 - (a) Restitution of the sum of \$381,578.40;
 - (b) The imposition of a remedial trust over the sum of \$381,578.40 and a declaration that Ayerswood

- 7 -

Development Corporation is the beneficiary of that trust and entitled to receive delivery by those funds from the Trustee.

- (c) A recalculation of the amount of the holdback obligation of Ayerswood Development Corporation and restitution of the overpayment made to the Trustee;
- (d) Pre-judgment and post-judgment interest under the *Courts of Justice Act*;
- (e) Costs
- (f) Such other relief as is appropriate.

16. The Trustee is in possession of the amount of \$381,578.40 that was paid by Ayerswood to Sirius, and given by Sirius to the Trustee on or about 1 March 2019. Ayerswood has asserted its claim to the restitution of those monies and notified the Trustee to not distribute those funds and to hold them in trust.

17. Ayerswood pleads that as the payment of \$381,578.40 was induced by misrepresentation Ayerswood is entitled to restitution of these funds. Further the imposition of a resulting trust over those funds is an appropriate remedy to address the fact that Sirius was unjustly enriched by those funds, and that resulting

- 8 -

trust can extend to the funds in the hands of the Trustee. At that time the cheque of Ayerswood for \$381,578.40 was received by Sirius the Trustee was aware of the financial circumstances of Sirius and had prepared the documents for Sirius to make its assignment into bankruptcy as soon as the cheque of Ayerswood was received.

18. The amount of the holdback that Ayerswood paid to the Trustee in September 2019 was calculated on the basis of inclusion of 10% of the invoice of 31 January 2019. As Ayerswood claims restitution of the funds it paid in respect of that invoice, the amount of the holdback should be recalculated downwards and repayment made by the Trustee to Ayerswood of the excess amount that is paid.

Date: 18 November 2019

F. SCOTT TURTON
Barrister-at-Law
24 Bridgewater Drive
Richmond Hill, Ontario L4E 3N4

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(905) 508-5821
Fax: (905) 508-0519
Email: scott@scottturtonlaw.com

Lawyer for the Defendants,
Ayerswood Development Corporation,
1510233 Ontario Inc., 1991233 Ontario
Inc., and Banco Securities Inc.

TO:

HARRISON PENSA LLP
Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 4K3

Melina Vine
LSUC #53612R

Telephone: (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Plaintiff

BDO CANADA LIMITED, as Trustee for the Estate of Sirius Concrete Inc. and AYERSWOOD DEVELOPMENT CORPORATION et al

PLAINTIFF(S)

DEFENDANT(S)

Court file no. CV-19-00000203-0000

(Short title of proceeding)

**SUPERIOR COURT OF JUSTICE
IN THE MATTER OF *The Construction
Act*, R.S.O. 1990, Chapter C.30, as
amended**
Proceeding commenced at Guelph

**Statement Of Defence Of
Ayerswood Development Corporation,
1510233 Ontario Inc., 1991333
Ontario Inc. and Banco Securities
Inc.**

*Name, address, telephone and fax numbers of lawyer or party
(Law Society registration number of lawyer):*

**F. SCOTT TURTON
Barrister-at-Law
24 Bridgewater Drive
Richmond Hill, Ontario L4E 3N4**

**LSUC: 17631C
(905) 508-5821
Fax: (905) 508-0519**

**Lawyer for the Defendants, Ayerswood
Development Corporation, 1510233
Ontario Inc., 1991333 Ontario Inc. and
Banco Securities Inc.**

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

**FOURTH REPORT
OF BDO CANADA LIMITED**

HARRISON PENZA LLP
Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 5J6

Melinda Vine (LSO #53612R)

Tel : (519) 679-9660
Fax: (519) 667-3362

Solicitors for the Trustee,
BDO Canada Limited

TCH/177459

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

MOTION RECORD

HARRISON PENZA LLP
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Solicitors for BDO Canada Limited

TCH/177459

District of ONTARIO
Division No. 08 - Waterloo
Court File No. 35-2481393
Estate No. 35-2481393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

SIRIUS CONCRETE INC.
OF THE CITY OF WATERLOO,
IN THE PROVINCE OF ONTARIO

SUPPLEMENT TO THE FOURTH REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

October 16, 2020

Table of Contents

1.0	INTRODUCTION AND PURPOSE	1
2.0	Response to the Affidavit of John Camara	2
2.1	Meeting with BDO and Sirius	2
2.2	Collection of Accounts Receivable.....	2
2.3	Truest Quantity Surveyors.....	2
3.0	Order Sought.....	3

1.0 INTRODUCTION AND PURPOSE

- 1.1 BDO Canada Limited was appointed as the trustee in Bankruptcy (“BDO” or the “Trustee”) of the property of Sirius Concrete Inc. (the “Company” or “Sirius”). This follows BDO’s first report of the Trustee, the Supplement to the First Report, the Second Report and the Third Report, the Supplement to the Third Report and the Fourth Report. All terms not otherwise defined shall be as defined in the First Report, the First Supplement, the Second Report, the Third Report, the Third Supplement and the Fourth Report.
- 1.2 This report is a supplement to the Fourth Report (the “Fourth Supplement”). The purpose of this Fourth Supplement is to provide the information necessary for the Judge to make a determination with respect to the Trustee’s request for directions. Specifically, this report encompasses the following:
- A response to the affidavit of John Camara sworn October 9, 2020.

2.0 *Response to the Affidavit of John Camara*

2.1 Meeting with BDO and Sirius

- 2.1.1 BDO was first contacted by Sirius on February 26, 2019.
- 2.1.2 BDO had its first meeting with Sirius, at the Sirius head office, at 10:00 am on February 27, 2019.
- 2.1.3 BDO met with the owner of Sirius, Mr. David Forbes, and the Accounts Manager, Sarah Hazell, to discuss the current and past operations as well as the options available to the business.
- 2.1.4 BDO provided a bankruptcy application to Sirius on February 27, 2019. Sirius returned the completed application on the morning of March 1, 2019.

2.2 Collection of Accounts Receivable

- 2.2.1 At the first meeting between BDO and Sirius the current status of the various jobs along with the billing, receivables and holdbacks were discussed.
- 2.2.2 The accounts receivable listing provided by Sirius indicated that \$381,578.40 was due from Ayerswood related to work done from January 1st to 30th, 2019.
- 2.2.3 Sirius indicated that the payment was due on 30 day terms, Friday March 1st, 2019.
- 2.2.4 BDO asked if the work on the January invoice had been completed and Sirius stated the work has been done and they had completed an additional month of work in February, 2019. According to the records of Sirius the billing was equal to the percentage of completion of the project.
- 2.2.5 BDO saw no reason to prevent Sirius from collecting the pre-bankruptcy accounts receivable and turning the proceeds over to the Trustee for the benefit of the estate. As the payment was made by company cheque, as opposed to wire, electronic transfer or bank draft, the cheque was taken to the bank and certified.
- 2.2.6 A copy of the cheque for \$381,578.40 (the "March Payment") is attached hereto as **Appendix A**. The payment indicates that it is for invoice 19.001, dated January 30, 2019 and the cheque was written on March 1, 2019.
- 2.2.7 BDO had no reason not to accept the March Payment. Further, once appointed by the Office of the Superintendent of Bankruptcy it is the responsibility of the Trustee to maximize the realizations of the estate, including the collection of pre-bankruptcy accounts receivable.

2.3 Truest Quantity Surveyors

- 2.3.1 The Trustee was provided a copy of the Truest Quality Surveyors report (the "Quality Report").
- 2.3.2 Following a review of the report by BDO, and input from former Sirius employees, it was determined that the damages of Ayerswood exceeded the remaining February 2019 invoice of \$158,652 which had yet to be paid by Ayerswood. BDO consented to Ayerswood setting off the February invoice.
- 2.3.3 The Trustee does not agree that the damages of Ayerswood are \$702,551.61 as set out in the Quality Report or that they would exceed the already provided set off of \$158,652.
- 2.3.4 In the event the Trustee is unsuccessful we would request the \$381,578.40 remain in the possession of the Trustee until the value of the Ayerswood damages can properly be determined.

3.0 *Order Sought*

- 3.1 We submit this Fourth Supplement to the Court in support of our Motion respectfully requesting this Court to:
- i. Provide direction for the Trustee with respect to the \$381,578.40 payment received by Sirius on March 1, 2019.

This Supplement to the Fourth Report is respectfully submitted this 16th day of October, 2020.

**BDO CANADA LIMITED
TRUSTEE OF
SIRIUS CONCRETE INC.**



Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX A

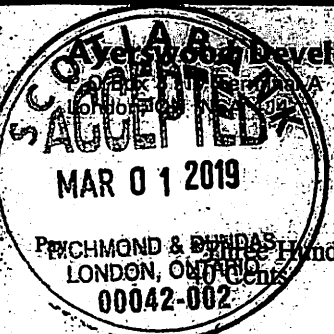
SiriusCo Sirius Concrete
 PO Box 25070
 Kitchener, ON N2A 4A5

177

Ayers Development Corporation
 Cheque Number ADSC-00024107
 Cheque Date 03/01/2019

Date	Invoice	Reference	Invoice Amt	Retention	Discount	Payment	ITC
01/30/19	1510233	ONTARIO INC.	423,976.00	-37,520.00	0.00	381,578.40	43,898.40
Total Remittance			423,976.00	-37,520.00	.00	381,578.40	43,898.40

THIS CHECK IS VOID WITHOUT A BLUE BACKGROUND AND A WATERMARK - HOLD UP TO THE LIGHT TO VERIFY



SCOTIA BANK
 420 RICHMOND STREET
 London, ON N6A 4Y5

00024107

DATE 03-01-2019
 M M DD YYYY

\$ 381,578.40

RICHMOND & SPADINA
 LONDON, ONTARIO
 00042-002

Hundred Eighty One Thousand Five Hundred Seventy Eight Dollars

PAYABLE IN CANADIAN FUNDS

To
 The
 Order
 Of

Sirius Concrete
 PO Box 25070
 Kitchener, ON N2A 4A5

Per [Signature]
 Per [Signature]

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES A MICROPRINT BORDER & FLUORESCENT FIBERS

⑈00024107⑈ ⑆000420002⑆ 02919⑈19⑈

CUSTOMER RECEIPT PAGE 01/01
 MAR 01 2019
 ID KHL6H
 LONDON MAIN BRANCH
 TR00042
 OFFICER ID: 526
 PIN *N*
 Certified Cheque
 00042 02919 19
 \$381,578.40

Thank You
 Have an excellent day

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

Court File No. 35-2481393

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT LONDON

**SUPPLEMENT TO THE FOURTH REPORT
OF BDO CANADA LIMITED**

HARRISON PENZA LLP

Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 5J6

Melinda Vine (LSO #53612R)

Tel : (519) 679-9660
Fax: (519) 667-3362

Solicitors for the Trustee,
BDO Canada Limited

TCH/177459

Court file no. 35-2481393

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

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

**RESPONDING MOTION RECORD
(Returnable 18 November 2020)**

**F. SCOTT TURTON
Barrister-at-Law
24 Bridgewater Drive
Richmond Hill, Ontario L4E 3N4**

LSUC: 17631C

**(905) 508-5821
Fax: (905) 508-0519
Email: scott@scottturtonlaw.com**

Lawyer for Responding Parties

Court file no. 35-2481393

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

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

RESPONDING MOTION RECORD

Index

Document	Page
01 Affidavit of John Camara affirmed 9 October 2020	01
02 Notice of Application (to be issued)	72

Court file no. 35-2481393

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

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

AFFIDAVIT OF JOHN CAMARA

I, John Camara, of the County of Middlesex, solemnly affirm as follows:

1. I am the construction manager of Ayerswood Developments Corp. ("Ayerswood"). Ayerswood acts as the general contractor for the construction of a twelve storey residential building municipally known as 45 Yarmouth Street, in Guelph, Ontario ("the Building").
 2. Exhibit A to this affidavit is a true copy of the contract between Sirius Concrete Inc. ("Sirius") and Ayerswood dated 14 March 2018. I negotiated this contract with the president of Sirius, David Forbes. The work to be done by Sirius may be generally described as providing the labour, equipment, and materials to construct the concrete structure of the three underground parking levels, the twelve above ground levels, and the roof slab and penthouse for the Building. A few concrete components, such as staircases, were constructed off site, but otherwise Sirius would erect on site the formwork and reinforcing steel, then pour the concrete in order to
-

- 2 -

form the poured reinforced concrete exterior walls, load bearing interior columns and partition walls, interior stairs, elevator shafts, balconies, floor slabs, ceiling slabs, and parking garage levels of the Building. Once the excavation was done, Sirius would be the significant trade on site as until their concrete work for each level was done other trades could not proceed with their work such as plumbing, mechanical, electrical, doors, windows, drywall, and interior finishes (this is not intended to be an exhaustive list of all the other trades and components required to complete a twelve story residential apartment building). This is why it was important that Sirius proceed with its work efficiently and not be the cause of delaying the completion of the Building.

3. At the time the contract with Sirius was signed, the start date for their work could not be determined as it was dependent upon prior work involving excavation, shoring, and underground services, having been done. One of the aspects of my negotiations with Sirius was the length of time it would take for them to do their work. What was agreed before Sirius started its work was six days per floor. (This refers to the above ground floors, not the parking levels). By August 2018 it was apparent that the work by Sirius was proceeding more slowly than expected. I wanted Sirius to provide a schedule that they would assure me would be kept. Exhibit B to this affidavit is an email from Sirius to me on 4 September 2018 and my response. Sirius was now saying it would take 10 days per floor and as can be seen from my response I reminded them of the six days per floor that had been agreed.
-

- 3 -

4. The 10 days per floor was not achieved. The autumn of 2018 and January 2019 saw Sirius falling farther behind their promises of when floors would be completed.
5. There was no provision in the contract for how much Sirius would be paid periodically, only a provision for payment in 30 days after invoice and a total price for the work. There was no schedule of values setting out how the total contract price was allocated (for example, so much for each floor completed). Sirius rendered monthly invoices from May to December 2018, which Ayerswood paid.
6. By February 2019 the three underground parking levels, most of the ground floor, and part of the second floor had been formed by Sirius. This was substantially behind the schedule originally discussed with Sirius, and substantially behind the 10 days per floor. Exhibit C to this affidavit is an email exchange between myself and Sirius on 11 and 12 February 2019. I am expressing my considerable concern about the delays. As before, I received assurances from Sirius that they would do something. In past I had thought that paying the invoices of Sirius, and not arguing about the amount charged in relation to the work done, would provide an incentive for them to get the work done at the Building and prioritize this project over others. As February 2019 progressed, and the work by Sirius did not progress, I considered that a different approach, namely withholding payment until progress was demonstrated, would be appropriate.

- 4 -

7. By the first of March 2019 Ayerswood had not paid the January 2019 invoice of Sirius. The amount of that after deduction of holdback, and with HST, was \$381,578.40.
8. Exhibit D to this affidavit is my email exchange with Sirius on the first of March 2019. In my email of 10:51 a.m. on March first I write that I was at the job site in Guelph and was disappointed that no one from Sirius showed up. A meeting on site had been set up for that morning at which Sirius was to present a detailed plan that would address the problems with their delays and deficiencies. While still on site I received a call from Tomas Waite, the project manager at Sirius, apologizing for their failure to come to the meeting and asking that the meeting be put back to the following Tuesday, March fifth. I was told that they were discussing their plan to get back on track with their work at the Building and needed a bit more time hence the need to delay the meeting until the following Tuesday. At that time Tomas asked me if I could help out by giving them the cheque for the January invoice (this is the \$381,578.40). I expressed my reluctance to do that until I received a satisfactory plan from them and some confidence it would be adhered to. Tomas assured me that Sirius was committed to providing me with an effective plan and sticking to it so that their work would be back on track and get completed. He told me that if I provided the cheque now that would ensure that Sirius would push things along to get their work done. The assurance of Sirius committing to finishing up the work on an efficient schedule was of huge importance to me as the project was significantly behind schedule, so in reliance on these assurances from Sirius, and

- 5 -

believing them, I relented and agreed to release the cheque that day. Sirius sent Tom Waite's girlfriend on that Friday, 1 March, to pick up the cheque and in good faith I gave it to her. I did not suspect any foul play.

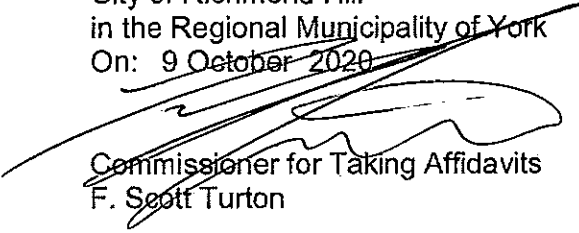
9. What I did not know on March first was that Sirius had already been working with its licenced insolvency trustee prior to March first and the documents were prepared, and signed on March first 2019, to put Sirius into bankruptcy. In short, when Sirius dealt with me on March first, and persuaded me to release the cheque to them, Sirius knew it was not going to be doing any further work on the Building. So when Sirius wrote to me on 1 March 2019 - "Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues." – Ayerswood was being lied to. Exhibit E to this affidavit is a copy of the Statement of Affairs of Sirius. While it shows a date of 1 March 2019, the amount of information in that form was self-evidently not compiled only after 12:44 p.m. that day [the time of the above quoted email]. Sirius knew they would not be returning to site and deceived me.
10. I, and hence Ayerswood, was assured by Sirius that if the payment of their January invoice was given to them they would come to the meeting on 5 March 2019 with a concrete plan to solve the problems and would move their work ahead promptly. This was pure deception with the object of getting Ayerswood to release the cheque. I, and hence Ayerswood, believed these lies, and in the belief that Sirius would be not just continuing their work to completion, but promptly to completion, I relented on the

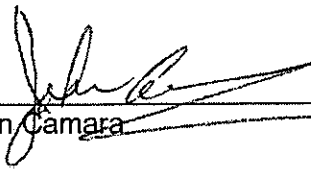
- 6 -

decision to withhold the cheque and released to Sirius the cheque of 1 March 2019 for \$381,578.40.

11. If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited ("the Trustee") and were going to assign Sirius into bankruptcy and abandon their contract for the Building I never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been overpaid for the work they had done. Sirius was not owed \$381,578.40, or any part of that money, and it only received that cheque due to their deceit as I have outlined above.
12. I do not have a copy of the cheque for \$381,578.40 to exhibit to this affidavit. The reason is that the cheque was certified on 1 March 2019, and it was not certified by Ayerswood. I believe it to be a quite reasonable conclusion that either Sirius or the Trustee had that cheque certified to prevent any possibility of Ayerswood stopping payment on it when Ayerswood discovered how it had been deceived. The first of March was a Friday, and the date and time of the bankruptcy of Sirius is Monday, 4 March 2019, at 7:57 a.m.
13. Ayerswood commissioned Truest Quantity Surveyors to report on the value of the work done by Sirius and exhibit F to this affidavit is a copy of their report. I accept as correct, and agree with, the conclusion of this report that Sirius was overpaid by \$702,551.61.

14. If the funds being held by the Trustee, namely the \$381,578.40, plus the 10% holdback attributable to that amount, are not returned to Ayerswood then Ayerswood will have paid for work that was not done and the creditors of Sirius will receive funds that were not earned by Sirius and were obtained through deceit.


Affirmed before me in accordance with)
Regulation 431/20 to the *Commissioners*)
for Taking Affidavits Act)
From the (*location of the deponent*))
City of London)
In the County of Middlesex)
To the (*location of the commissioner*))
City of Richmond Hill)
in the Regional Municipality of York)
On: 9 October 2020)
)
Commissioner for Taking Affidavits)
F. Scott Turton)



John Camara

AYERSWOOD DEVELOPMENT CORPORATION

SUBCONTRACT NO. A18-45YAR-013 DATE: Mar 14, 2017-2018

SUBCONTRACTOR: Sirius Concrete Inc. 

ADDRESS: P.O. Box 25070 Kitchener, Ontario N2A 4A5
589 Colby Drive, Waterloo, Ontario N2V 1A1

TELEPHONE: 519-808-4237

JOB SITE: 45 Yarmouth St Guelph, ON

TIMING: The work shall commence in accordance with contract requirements.

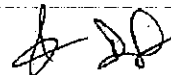
WORK: The Subcontractor shall complete performance of the following work, to the satisfaction and direction of the Contractor, in accordance with the approved plans and specifications, and in strict compliance with all applicable Federal, Provincial and Municipal legislation and all regulations and orders made or issued there under.

To provide all labour, equipment and materials to carry out all work to build a 12 storey Concrete structure apartment building with a Three (3) storey Concrete structure underground garage as per SBM Engineering Structural Engineer and structural drawings, and Patrick Trottier Architectural drawing integrated with SBM Engineers, most updated drawings and specifications, the Ontario building code and the City of Guelph Rules and Regulations and without limiting the generality of the foregoing, the Subcontractor shall perform the following:

- All structural and architectural work must be performed as per Strik, Baldinelli Moniz most updated drawings and specifications and using Patrick Trottier Architect drawings integrated with SBM Engineering drawings and specifications
- Land Development Solutions. Site drawings as guidance for the ground floor elevations and sleeves for services
- Soils Engineers Englobe to approve bearing soils before any footing are poured
- Supply all necessary forms of any type to form and pour all concrete footings, crane footings, one sided walls in garage perimeter walls, columns, walls, slabs in garages and building tower
- Supply, place and finish all necessary concrete as per specifications
- Supply and place all necessary reinforcing steel and wire mesh as per specifications
- Supply one (1) tower crane with operator, inclusive transportation from yard to job site and back, erection and dismantle, install tower crane base and associated anchors, hook up to Ayerswood power shed and transformer. Provide cab tire from crane to hydro power shed. Provide all maintenance needed, Inspection report for the crane and associated equipment.
- Provide hoisting for the elevator motors and roof top HVAC units plus mechanical equipment before crane is taken down. Equipment not to exceed tower crane capacity
- Supply all equipment and materials to fill in all of the slab crane openings on each and every floor when the crane is removed
- Provide your own safety representative and first aid person and conduct your own meetings and talks and comply with Ayerswood Development Corporation's Health and Safety Policy Program and Procedures. Joint safety meetings will take place as the project evolves and more trades are on site.
- Provide all safety rails and safety equipment in all work areas and safety fence one floor below working area
- Provide all shoring of slabs as needed and necessary for as long as it is needed.
- A good housekeeping must be maintained at all times on the entire area of forming work.
- Provide full time supervision for you work
- Your supervisor to provide full cooperation with Ayerswood on site supervisor or any other Ayerswood personal directly involved on the project about safety issues, schedules, coordinating deliveries and unclear details on drawings etc.
- All false work detail drawings for forming in every aspect must be provided to Ayerswood and stamped by a qualified professional engineer and be kept on site at all times before actual work begins
- Provide all layout work and elevations by a proper competent surveyor person
- Provide all labour to install any structural lintels, beam pockets, beam bolt connections, excluding masonry walls.
- Supply and place, trowel finishes on concrete garage slab on grade saw cut and spray cure as per standards
- Provide and place wire mesh for garage slab on grade
- Supply and install vapour barrier under the basement floors
- Supply and install all rebar
- Supply and install all specified concrete including winter heat
- Supply and install all tarps and heat, winter protection for pouring of walls and reinforced slabs
- Place a trowel finish on all reinforced slabs and including slab on grade
- Supply of concrete pumping if necessary

THIS IS EXHIBIT A TO THE AFFIDAVIT OF
JOHN CAMARA AFFIRMED BEFORE ME ON
9 OCTOBER 2020

A COMMISSIONER ETC. (SCOTT THURTON)



- Provide on-site coordination with excavator to ensure proper time for excavation and backfilling of footings.
- Supply and install all precast stairs for garage and building tower
- Supply a Kryton or Zypex or equivalent water proofing additive to the concrete mix for all the underground garage perimeter walls.
- Form and pour all structural walls and slabs including footing up to the roof including mechanical penthouse, elevator, machinery rooms and roof
- Form and pour all concrete parapet, curbs around the roof as per drawing specifications including top of stair tower, mechanical room and elevator room.
- Use elevator shop drawings provided to you to form proper elevator pit, shaft and room sizes
- Form and pour all balcony slabs as part of the main floor slab on every floor
- Provide all labour to install all cast-in inserts; door frames, vent sleeve, Pipe or electrical sleeves etc.
- All exterior concrete wall surface, interior garage walls and columns, stairwell walls, under balconies to be patched, (bag rub) and smooth face ground to receive paint, and all necessary equipment like swing stages etc. must be provided
- Provide a tie off lineyard at each balcony patio door opening cast in to wall or slab location discussed on site
- All exterior and interior poured concrete walls to be inline and plumb to avoid in and out step imperfections including concrete beams and keep elevator shafts square and plumb
- Clear out your own working area from materials, snow and debris etc.
- Provide your own crane swamper hook up man
- Provide your own traffic control

NOTE: The tower crane package must include the following in the total price of the contract

- One tower crane
- All parts and service including labour
- Erection and Dismantle
- Foundation anchors
- Foundation Engineering
- Structural Inspection
- Foundation Fabrication
- Insurance coverage
- Tower crane operator for the duration of the project
- Transportation to site and back to yard
- **NO CELL PHONE USE ON JOBSITE** unless you are the supervisor or superintendent
- Provide a breakdown cost for the garage and building tower for labour and materials
- Provide a job schedule.
- Provide a payment schedule on a per floor basis
- All work will be performed in accordance with the Ministry of Labour ; rules and Regulations

PRICE: The total price, including all applicable taxes, for the work shall be \$7,022,950.00; subject to the provisions of the construction Lien Act, payable net 30 days after receipt of invoice between 1st and 8th of the month.

INSURANCE

The Subcontractor shall supply a current certificate of liability insurance showing that coverage is carried for claims arising from its operations under this contract for bodily injury and property damage, including completed operations coverage, with limits of not less than Two Million Dollars (\$2,000,000.00) inclusive coverage.

**WORKER'S
COMPENSATIONS:**

The Subcontractor shall pay any amounts as and when they become preformed under this contract, and shall supply a valid W.C.B. Clearance Certificate as evidence. No payments will be made under this contract until the above documents have been supplied.

**TERMS &
CONDITIONS:**

The terms and conditions contained on the reverse side hereof which shall form part of the contract resulting from the Subcontractor's acceptance of this Subcontract. This contract shall not be effective until it has been signed by both the Subcontractor and the Contractor.

**AYERSWOOD DEVELOPMENT
CORPORATION**

Per: 
Duly Authorized Officer

SIRIUS CONCRETE INC.

Per: 
Duly Authorized Officer

P. O. BOX 3117, LONDON, ONTARIO N6A 4J4
Phone: (519) 433-8126 FAX: (519) 456-1628



TERMS AND CONDITIONS OF SUBCONTRACT

1. The following terms, (together with those on the reverse page) and all the plans, specifications and other documents referred to herein, shall constitute the contract between the parties which the parties hereto covenant and agree to observe and perform. The intention of the documents is to include all labour and materials reasonably necessary for the proper execution of the work. It is understood that the plans and specifications are and shall remain the property of the Contractor. The Subcontractor acknowledges that by the commencement of work and/or the supply of materials the Subcontractor shall be conclusively deemed to have accepted the contract in all respects.
2. The Subcontractor shall provide all labour and materials and all scaffolding, tools, apparatus and plant necessary for the execution of this work. The Subcontractor shall at all times be solely responsible for loss or damage to the same including, without limitation, for loss or damage to his work until completion and acceptance by the Contractor.
3. The Subcontractor shall be liable for and shall replace or pay for any loss or damage to work and/or materials of others, including the Contractor, caused by the Subcontractor or his employees.
4. The Subcontractor shall indemnify and save the Contractor harmless from any liability on account of infringement of any trade mark or patent rights.
5. No alteration shall be made in the work and/or materials shown or described by the plans and specifications except on a written order signed by a properly authorized officer or agent of the Contractor. It is mutually agreed that the Contractor shall be entitled to vary the extent of the work and/or materials, either by way of addition or deduction, and any and all such additions and deductions shall be valid and binding upon the Subcontractor and when so made the value of the work and/or materials thus added or deducted shall be computed and the contract price shall be varied accordingly and provided that in no event shall the Subcontractor be entitled to extra compensation from the Contractor without such a written order. Any charges shall in no way affect or void the parties' obligations under this contract.
6. Notwithstanding any omissions in plans, specifications or addenda thereto (if any), the parties agree that, for the contract price, the Subcontractor shall supply all materials and labour necessary for the proper execution of the work referable to the trade or trades which are the subject of this contract, all in a good and workmanlike manner.
7. If the Subcontractor in the course of his work finds any discrepancies or errors in the plans and specifications or in the instructions given for the performance of the work, he shall immediately inform the Contractor in writing. Any work done after such discovery will be done at the Subcontractor's risk, unless he receives the Contractor's written authorization.
8. The Subcontractor shall clear away all dirt and rubbish caused by his operations as often as requested by the Contractor, and shall leave the premises in a neat and clean condition.
9. The Subcontractor will indemnify and save harmless the Contractor against all claims for damages by third parties who are injured while on the job site at the request of or for the purpose of doing business with the Subcontractor.
10. The Contractor may order the immediate removal of any worker considered by the Contractor to be incompetent and of all materials considered by it to be unsatisfactory.
11. Work on all material called for shall be commenced forthwith in order that the Subcontractor may commence deliveries and start work at the building as soon as it is in condition to receive it. If in the judgment of the Contractor the Subcontractor is not making sufficient progress in the preparation of the materials herein called for and thereby causing or threatening to cause delay in the general progress of the work, the Contractor shall have the right to investigate the cause of said delay and expedite deliveries, and all expenses thus incurred by the Contractor shall be charged to and paid by the Subcontractor.
12. The Subcontractor shall at all times provide facilities for inspection by the contractor of the work done and of materials furnished or to be furnished hereunder by the Subcontractor. Such inspection may be made at the site of the work, or at shops or at any other place where materials required hereunder are in course of preparation, manufacture, treatment or storage. The Subcontractor shall within 24 hours after receiving written notice from the Contractor to that effect, proceed to remove from the grounds or buildings all materials condemned by the Contractor as being of less than first quality, whether worked or unworked, and to take down all portions of the work which the Contractor shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work in other lines damaged by such removal. The Contractor and its representatives shall have full and free access to the shops, factories or other places of business of the Subcontractor, and the subcontractors of this Subcontractor, in order that the Contractor may inform itself of the general condition and progress of the work herein contemplated.
13. The Subcontractor agrees to indemnify and save harmless the Contractor from and against all claims, suits, judgements and damages brought, recovered or exacted against the Contractor for or on account of any claim growing out of any damage to property or any injury or death sustained by any person or persons by reason of any act, omission, or negligence of the said Subcontractor, his agents, employees or subcontractors, as well as against any claims by employees of the Subcontractors of his subcontractors, or the dependants of any such employees under the provisions of the Workers' Compensation Act, and the Subcontractor will moreover procure and maintain adequate insurance or other security satisfactory to the Contractor to protect the Contractor and keep it indemnified from and against any and all such claims, suits, judgements or damages mentioned hereinabove. It is understood and agreed that if the Subcontractor being called upon to do so, is unable within 7 days to satisfy the Contractor that adequate insurance or other security satisfactory to the Contractor is in force in accordance with the foregoing covenant, then in that event the Contractor shall have the right to procure adequate insurance and to charge the premium to the Subcontractor in which event the Subcontractor agrees to furnish the contractor on demand an accurate statement of his payrolls in order to arrive at the premium to be charged.
14. The Subcontractor shall repair and make good any damages or fault in the building that may appear within one year after its completion as the result of imperfect or defective work done on material furnished by the Subcontractor. The Subcontractor shall indemnify the Contractor against loss or damage from any defects in material or workmanship furnished by the Subcontractor for such period as the Contractor is liable under all municipal, provincial, federal and common law.
15. The Subcontractor shall cooperate with the Contractor and all other subcontractors with whose work that of the Subcontractor may come in contact, in order to avoid any conflict and insure a first class workmanlike job in every respect.
16. Should a labour dispute involving the Subcontractor affect the progress of the project, or should the Subcontractor be adjudged a bankrupt, or if he should make a general assignment for the benefit of the creditors, or if the receiver should be appointed on account of his insolvency, or if he should at any time refuse or neglect to supply a sufficient number of skilled workers, or sufficient materials of the proper quality, or fail in any respect to execute the work with promptness or diligence, or fail in the performance of any agreements herein contained, the Contractor shall be at liberty to provide any such labour and materials and to deduct the cost thereof from any money then due or here after to become due to the Subcontractor under this contract and the Contractor shall also be at liberty to terminate the employment of the Subcontractor for the said work and cancel this contract and to enter upon the premises and take possession of and use without cost to the Contractor, for the purpose of completing the work comprehended under this contract, all materials, tools and appliances thereon, and to employ any other person or persons to finish the work and to provide the materials therefor; and in case of such cancellation of contract or discontinuance of employment, the Subcontractor shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished at which time if the unpaid balance of the amount to be paid under this contract shall exceed the expenses incurred by the contractor in finishing the work, such excess shall be paid by the Contractor to the Subcontractor; but if such expense shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor immediately upon demand.
17. The Subcontractor's work must pass inspection by the Contractor's job superintendent, by all municipal representatives, and by the relevant mortgage company inspectors, if any, and no payment shall be made unless such inspection is satisfactory in every way.
18. The Subcontractor waives and releases all claims, liens or rights of lien now existing or that may here after exist for work done or labour performed or material furnished under this contract upon the building project(s) and upon the land on which the same is/are situated and upon any money or monies due or to become due from any person or persons to the Contractor and agrees to furnish immediately upon demand a good and sufficient waiver of lien on said premises, lands and monies from every person or persons, corporation or corporations furnishing labour or material under the Subcontractor.
19. Advance payments may be made by the Contractor if, in its opinion, the same are proper to aid the Subcontractor in the performance of the contract. Notwithstanding anything herein contained, the Contractor shall be entitled to retain the statutory holdback provided for in the Construction Lien Act and the final payment to the Contractor shall not become due and payable until forty-six days after this contract is completed, upon the delivery of a waiver of lien by the Subcontractor and his suppliers (if any) and a letter of clearance of the Subcontractor from the Worker's Compensation Board.
20. In the case of any dispute between the Contractor and the Subcontractor regarding the quality and/or quantity of the work and/or materials supplied hereunder, the architect or structural engineer employed by the Contractor for the project shall be the person to arbitrate, and his decision shall be binding upon both parties.
21. The conditions of this contract shall be binding on the parties hereto, their executors, administrators, successors and assigns, and shall be interpreted with such grammatical and other changes as may be required in the circumstances.

[Handwritten signatures]

John J. Camara

From: John J. Camara
Sent: Tuesday, September 04, 2018 11:22 AM
To: 'Tomas Waite'
Subject: RE: 45 Yarmouth - Sirius Concrete Schedule

Thank you.

What ever happen to the 6 days per floor which is more in line with what we negotiated for?

This is a start but you guys are going to do a lot of tweaking to this schedule starting now.

There were 2 days lost on the pour #1 because of the ramp steel not being delivered and predicament of whether or not it was going to rain. These decisions will have to be tighten up and not be changed every day.

As of today I see a lot of deck ready for rebar and yet it will not be delivered until tomorrow why? The center core walls should have the reinforcing installed and ready to have the forms closed and pour tomorrow, we still don't know if the rebar for the south wall will be delivered tomorrow, the stair tower on the North West was scheduled to be moved today but because of the #1 deck pour change we can't get the contractor to move it for us until Thursday this week.

You can see that at this crucial time of the project thing need to be completed as planned.

Lets work together to come up with a better schedule than the present one.

From: Tomas Waite <twaite@siriusconcrete.ca>
Sent: Tuesday, September 04, 2018 9:08 AM
To: John J. Camara <JJC@cpirentals.com>
Cc: Jamie Parkes <jparkes@siriusconcrete.ca>; Tobin Tompkins <tompkins@siriusconcrete.ca>; Tim Minkarious <timminkarious@gmail.com>; Dave Forbes <dforbes@siriusconcrete.ca>
Subject: 45 Yarmouth - Sirius Concrete Schedule

Hi John,

Sorry for the delay on getting you this but please find attached our preliminary schedule for the 45 Yarmouth project. We are looking at about 10 days per floor on the typical levels. Please review and let me know if you have questions or concerns.

Regards,

Tomas Waite, C.Tech. – Project Manager
 PO Box 25070 Kitchener, ON N2A 4A5
 T: 1.866.218.6173 x 104 D: 1.226.243.2245
twaite@siriusconcrete.ca



THIS IS EXHIBIT B TO THE AFFIDAVIT OF
 JOHN CAMARA AFFIRMED BEFORE ME ON
 9 OCTOBER 2020.


 A COMMISSIONER ETC (SCOTT TURTON)

John J. Camara

From: John J. Camara
Sent: Tuesday, February 12, 2019 8:54 AM
To: 'Jamie Parkes'
Cc: 'Tobin Tompkins'; 'Tomas Waite'
Subject: RE: lost time

Thank you Jamie,
 Thank you for this update, mother nature does not always cooperate.
 What I do need from you is a plan as to how you can regain some of this lost time going forward.

From: Jamie Parkes <jparkes@siriusconcrete.ca>
Sent: Monday, February 11, 2019 8:42 AM
To: John J. Camara <JJC@cpirentals.com>
Cc: Tobin Tompkins <ttompkins@siriusconcrete.ca>; Tomas Waite <twaites@siriusconcrete.ca>; ryan@45yarmouth.ca
Subject: lost time

Good morning John;

In the last 2 weeks we have had some down time due to weather and crane issue's. On Jan 30, 2019 the crane was not operational due to severe cold weather. It was -23 degree Celsius with wind chill of -32 degree Celsius. On Jan 31, 2019 our crane was shut down again because of severe cold weather. It was -24 degree Celsius with a wind chill of -34 degree Celsius. On Feb 1, 2019 our crane's swing motor broke down at 11:30am and they were unable to fix it until Feb 2, 2019 so we lost most of our day due to crane breakdown. On Feb 6, 2019 Ryan Ludwig talked to Jamie Apperson about shutting down the whole sit because of the freezing rain storm we had. I was not on site that day and had a conversation with Ryan about the weather and he stated that it would be wise to shut down site because of safety for the workers and crane. On Feb 8, 2019 the crane was shut down for the day due to high winds. The winds were gusting over 80 km/h so we lost production that day as well. This email is for your records to show lost time. Thanks John

Jamie Parkes, – Site Supervisor
 PO Box 25070 Kitchener, ON N2A 4A5
 T: 1.226.868.9020
jparkes@siriusconcrete.ca



THIS IS EXHIBIT C TO THE AFFIDAVIT OF
 JOHN CAMARA AFFIRMED BEFORE ME ON
 9 OCTOBER 2020.


 A COMMISSIONER ETC (SCOTT TURTON)

John J. Camara

From: John J. Camara
Sent: Tuesday, February 12, 2019 1:42 PM
To: 'Dave Forbes'
Subject: RE: 45 Yarmouth Concrete Schedule, Feb 11, 2019

Thank you Dave for your quick reply.

At the end of the day all we want is for us not to loose site of the schedule going forward. Anything that can done to expedite the erection of the structure should be considered at all times. We are now sitting on the side lines waiting to start other trades and we cant do that unless the concrete structure moves up as per the schedule I put together going forward. The schedule going forward is based on our original conversation when we met at Skyrise's office for the first time, and I think it's a reasonable one.

Dave, I have a lot of respect and admiration for you , and I am not telling you how to run your business but I do have to look after Ayerswood" affairs. When you have a birds eye view on what goes on a daily basis you yourself would have done something about it already, and I would not have to spend time sending out these emails.

Thank you for your cooperation.

-----Original Message-----

From: Dave Forbes <dforbes@siriusconcrete.ca>
Sent: Tuesday, February 12, 2019 1:29 PM
To: John J. Camara <JJC@cpirentals.com>; Tobin Tompkins <tompkins@siriusconcrete.ca>; Tomas Waite <twait@siriusconcrete.ca>; Jamie Parkes <jparkes@siriusconcrete.ca>
Cc: Ryan Ludwig <Ryan@45Yarmouth.com>
Subject: RE: 45 Yarmouth Concrete Schedule, Feb 11, 2019

Good Afternoon John,

I will be looking into your concerns with my team immediately. On a high level, we have lost est. 8 weeks due to excavation, performance and weather. Our schedule shows a new finishing the week of July 29th. We will review to fine where we can gain ground. As for housekeeping, with the transition moving parking garage to tower, the site is a mess and we will clean it up as forming material is transferred. We that all of your concerns to heart and will be putting a plan together that I hope you will fine satisfactory. I sure I will be calling for your input.

Thank you,

David Forbes - GSC: Business Manager
 PO Box 25070 Kitchener, ON N2A 4A5
 dforbes@siriusconcrete.ca
 T: 1.519.808.4237

-----Original Message-----

From: John J. Camara <JJC@cpirentals.com>
Sent: Tuesday, February 12, 2019 12:28 PM
To: Dave Forbes <dforbes@siriusconcrete.ca>; Tobin Tompkins <tompkins@siriusconcrete.ca>; Tomas Waite <twait@siriusconcrete.ca>; Jamie Parkes <jparkes@siriusconcrete.ca>
Cc: Ryan Ludwig <Ryan@45Yarmouth.com>
Subject: FW: 45 Yarmouth Concrete Schedule, Feb 11, 2019

Good morning Gentlemen.

I have taken the time to prepare this concrete forming schedule so we can get a better handle on the progress going forward. As you know Ayerswood has commitments in place with many trades other than Sirius Concrete and in order to fulfill these commitment I would ask that you get together and figure out as to how you are going to keep this schedule going. I understand that the weather always plays a big part on a project such as this, and adjustments need to me made when it occurs.

It will be a month on the 14th of February since the first half of the second floor was poured and the walls are still not completed. It seems to me that you guys don't have the forms required or paired up to accomplish the outcome. Example, the forming crews are taking forms from grid line 9 West of the stairwell to fill in the wall on grid line 1 that has been sitting around since the slab was poured. There are other similar examples throughout the floor. The wall on grid line 6 has had the rebar up for some time and yet no forms are up, why? A set of forms should have been made to pour this wall along time ago. Some one needs to organize the forming sequence ie: the set of forms needed per floor to keep the schedule going.

One more thing, I want the site cleared of all debris, equipment scattered throughout the ground floor and especially outside on Yarmouth and Baker streets, including between the buildings on the South side. I am not happy with the house cleaning on this project. I hope you give this matter serious consideration and a solution to resolve it sooner than later.

I will be available to discuss the contents of this email at any time.

-----Original Message-----

From: copier@cpirentals.com <copier@cpirentals.com> On Behalf Of copier@
Sent: Tuesday, February 12, 2019 10:13 AM
To: John J. Camara <JJC@cpirentals.com>
Subject: 45 Yarmouth Concrete Schedule, Feb 11, 2019

Reply to: copier@cpirentals.com <copier@cpirentals.com> Device Name: MY27 Device Model: MX-2640N
Location: 920 Commissioners Rd E

File Format: PDF (Medium)
Resolution: 200dpi x 200dpi

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<http://www.adobe.com/>

FEB 18/2019 = HOLIDAY = FAMILY DAY

APRIL 19/2019 = " = EASTER, GOOD FRIDAY

CONCRETE SCHEDULE STARTING FEB 11/2019
8 DAYS PER FLOOR

January

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

↑ - 250 cold

May

S	M	T	W	T	F	S
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

↑ - FLOOR

February

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✓ = with no production 13 NO CRANE AN.

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30						

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31						

April

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28	29	30	31			

July

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August

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November

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December

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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

John J. Camara

From: Tomas Waite <twait@siriusconcrete.ca>
Sent: Friday, March 01, 2019 12:44 PM
To: John J. Camara; Dave Forbes; Tobin Tompkins
Cc: Ryan Ludwig
Subject: RE: 45 Yarmouth Jobsite

Hi John,

Tobin and myself will be available for Tuesday morning. As discussed yesterday Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues. If you wish to discuss further prior to our meeting on Tuesday please feel free to call Tobin or myself.

Regards,

Tomas Waite, C.Tech. – Project Manager
 PO Box 25070 Kitchener, ON N2A 4A5
 T: 1.519.854.3084
twait@siriusconcrete.ca



From: John J. Camara <JJC@cpirentals.com>
Sent: Friday, March 1, 2019 11:08 AM
To: Dave Forbes <dforbes@siriusconcrete.ca>; Tobin Tompkins <ttompkins@siriusconcrete.ca>; Tomas Waite <twait@siriusconcrete.ca>
Cc: Ryan Ludwig <Ryan@45Yarmouth.com>
Subject: 45 Yarmouth Jobsite
Importance: High

Good Morning

I was at the job site in Guelph this morning and was disappointed not to meet anyone of you on site. I understand that we have a business to run and I don't expect you to be at my beck and call but I do want and need to see an organized job site. I realize that the weather has been a challenge in recent weeks but the lack of organization has made it worse for your employees there. For sometime now we have advised you that the housekeeping needs attention. The lack of housekeeping is creating a hazardous work environment for your employees and other trades involved. We also need to address the unfinished areas throughout the building that need to be completed. I am requesting a meeting to take place , on site, Tuesday Mar 05, 2019 at 8:30am with a representative from Sirius Concrete who has the authority to make decisions and bring forth a plan to organize this project , get it back on track and keep it on track and organized going forward.

Regards

John Camara

THIS IS EXHIBIT D TO THE AFFIDAVIT OF
 JOHN CAMARA AFFIRMED BEFORE ME ON
 9 OCTOBER 2020.


 A COMMISSIONER ETC (SCOTT TURTON)

John J. Camara

From: John J. Camara
Sent: Friday, March 01, 2019 1:38 PM
To: 'Tomas Waite'; 'Tobin Tompkins'
Cc: Ryan Ludwig
Subject: RE: 45 Yarmouth Jobsite

Hi Tom,

As I told you before my mission in life is not to make your life miserable or to be harping at you guys every day, but I feel like no one is listening and there is not a lot of effort from upper management to get this project untangled. I think that as of now and not one or two weeks from now, one of you guys whether it's you or Tobin need to spend full days on site to get it turned around and on some type of schedule. The following is where I see some problems occurring.

If you were to contact me and we agree that you finish covering the ground floor, I will provide the heat that would be beneficial for you in accomplishing the following.

- A) It would help thaw the second floor slab and make it easier for you to clear the snow and ice and set your tables.
 - B) While the heat is on you would be able to complete the concrete work on the ground floor, at the lobby area, stairwell B, scrape and sweep the entire ground floor, remove all forming materials that are being used, strip out the underside of the second floor deck on the South West corner etc.
 - C) It will allow you to layout for the block work on the entire ground floor.
 - D) It will allow you to erect all the block walls on the ground floor.
 - E) After the block work is completed we can build our respective offices on the ground floor and remove the office trailers from the exterior to clear the way for the utilities to be installed early April.
- 1) The cleanup is our biggest problem on this site. Instead of complaining that there is no lay down room why not clean all the scattered unusable material and debris and be done with it once and for all.
 - 2) There is wood, reinforcing, shores, concrete, wire, etc. all mixed in and covered with ice, I even found a vibrator covered in ice. We need to get a handle on this ASAP, Ayerswood will not tolerate this type of housekeeping any longer.
 - 3) The same housekeeping practices will have to apply to the floor you are working on to avoid unnecessary accidents that may shut the job down.
 - 4) Building the tables take time just like anything else you have to set up, but it's a lot harder when you can't even move because of the clutter surrounding the work area.
 - 5) I provided you guys with a schedule going forward, but I haven't heard from you as to how you propose to honour it.
 - 6) We need immediate action in resolving these issues and stabilize the schedule going forward.

I hope you take this matter very serious and come up with a plan to solve it before our meeting Tuesday March 5, 2019.

Thank you for your attention regarding these concerns

John.

From: Tomas Waite <twaite@siriusconcrete.ca>
Sent: Friday, March 01, 2019 12:44 PM
To: John J. Camara <JJC@cpirentals.com>; Dave Forbes <dforbes@siriusconcrete.ca>; Tobin Tompkins <ttompkins@siriusconcrete.ca>
Cc: Ryan Ludwig <Ryan@45Yarmouth.com>
Subject: RE: 45 Yarmouth Jobsite

Hi John,

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Regards,

Tomas Waite, C.Tech. – Project Manager
PO Box 25070 Kitchener, ON N2A 4A5
T: 1.519.854:3084
twaite@siriusconcrete.ca



From: John J. Camara <JJC@cpirentals.com>
Sent: Friday, March 1, 2019 11:08 AM
To: Dave Forbes <dforbes@siriusconcrete.ca>; Tobin Tompkins <ttompkins@siriusconcrete.ca>; Tomas Waite <twaite@siriusconcrete.ca>
Cc: Ryan Ludwig <Ryan@45Yarmouth.com>
Subject: 45 Yarmouth Jobsite
Importance: High

Good Morning

I was at the job site in Guelph this morning and was disappointed not to meet anyone of you on site.

I understand that we have a business to run and I don't expect you to be at my beck and call but I do want and need to see an organized job site.

I realize that the weather has been a challenge in recent weeks but the lack of organization has made it worse for your employees there.

For sometime now we have advised you that the housekeeping needs attention. The lack of housekeeping is creating a hazardous work environment for your employees and other trades involved.

We also need to address the unfinished areas throughout the building that need to be completed.

I am requesting a meeting to take place , on site, Tuesday Mar 05, 2019 at 8:30am with a representative from Sirius Concrete who has the authority to make decisions and bring forth a plan to organize this project , get it back on track and keep it on track and organized going forward.

Regards

John Camara

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

Original Amended

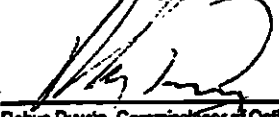
-- Form 78 --
 Statement of Affairs (Business Bankruptcy) made by an entity
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)
 In the matter of the bankruptcy of
 Sirius Concrete Inc.
 of the City of Waterloo, in the Municipality of Waterloo, in the Province of Ontario

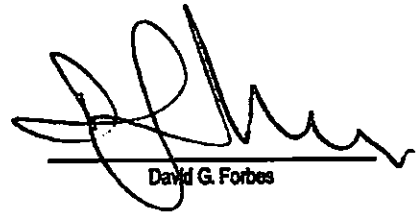
To the bankrupt:
 You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the bankruptcy, on the 1st day of March 2019. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.


LIABILITIES (as stated and estimated by the officer)	ASSETS (as stated and estimated by the officer)
1. Unsecured creditors as per list "A" 2,591,154.71	1. Inventory 0.00
Balance of secured claims as per list "B" 0.00	2. Trade fixtures, etc. 0.00
Total unsecured creditors 2,591,154.71	3. Accounts receivable and other receivables, as per list "E"
2. Secured creditors as per list "B" 2.00	Good 1,112,228.00
3. Preferred creditors as per list "C" 0.00	Doubtful 783,908.00
4. Contingent, trust claims or other liabilities as per list "D" estimated to be reclaimable for 0.00	Bad 0.00
Total liabilities 2,591,156.71	Estimated to produce 1,112,228.00
Surplus NIL	4. Bills of exchange, promissory note, etc., as per list "F" ... 0.00
	5. Deposits in financial institutions 0.00
	6. Cash 0.00
	7. Livestock 0.00
	8. Machinery, equipment and plant 0.00
	9. Real property or immovable as per list "G" 0.00
	10. Furniture 0.00
	11. RRSPs, RRIAs, life insurance, etc. 0.00
	12. Securities (shares, bonds, debentures, etc.) 0.00
	13. Interests under wills 0.00
	14. Vehicles 5.00
	15. Other property, as per list "H" 170,001.00
	If bankrupt is a corporation, add:
	Amount of subscribed capital 0.00
	Amount paid on capital 0.00
	Balance subscribed and unpaid 0.00
	Estimated to produce 0.00
	Total assets 1,282,234.00
	Deficiency 1,308,922.71

I, David G. Forbes, of the City of Kitchener in the Province of Ontario, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of my affairs on the 1st day of March 2019 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)
 before me at the City of Kitchener in the Province of Ontario, on this 1st day of March 2019.


 Robyn Durwin, Commissioner of Oaths
 For the Province of Ontario
 Expires March 7, 2019


 David G. Forbes

THIS IS EXHIBIT E TO THE AFFIDAVIT OF
 JOHN CAMARA AFFIRMED BEFORE ME ON
 9 OCTOBER 2020.

 A COMMISSIONER EFC (SCOTT TURTON)

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued

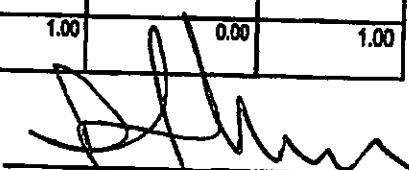
List "A"
 Unsecured Creditors

Sirtus Concrete Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	4Refuel	PO Box 57323 Stn A Toronto ON M5W 5M5	10,565.61	0.00	10,565.61
2	Acco Group	654 Fairway Rd S, Unit B Kitchener ON N2C 1X3	783.69	0.00	783.69
3	Active Heavy Towing	1764 Victoria St. N Kitchener ON N2B 3E5	316.40	0.00	316.40
4	Advance Construction Equipment	607 Colby Drive Waterloo ON N2V 1A1	2,549.27	0.00	2,549.27
5	AGF - REBAR INC.	80 Centennial Rd Kitchener ON N2B 3G1	370,189.10	0.00	370,189.10
6	Alder Construction Group Ltd	1-617 Colby Drive Waterloo ON N2V 1Y9	1.00	0.00	1.00
7	Alexander Carlos	102-25 Hugo Cres Kitchener ON N2M 3Z3	1.00	0.00	1.00
8	Alonso Villanueva	151-320 Westminster Ave London ON N6C 5H5	1.00	0.00	1.00
9	Andrew Paset	238 Hilltop Drive Ayr ON N0B 1E0	1.00	0.00	1.00
10	Andrew Scott	27 Cedar St. N Kitchener ON N2M 2H3	1.00	0.00	1.00
11	BATTLEFIELD EQUIPMENT-ONTARIO	880 South Service Road PO Box 9340 LCD1 Hamilton ON L8L 7X7	1,019.13	0.00	1,019.13
12	Becker Brothers	915 Wilson Ave Kitchener ON N2C 1J1	1,663.93	0.00	1,663.93
13	BMO Financial Group of BankruptcyHighway.com Attr: Mike Timko	PO Box 57100 Etobicoke ON M9Y 3Y2	590,000.00	0.00	590,000.00
14	Bofts Plus	7100 Torbram Rd Mississauga ON L4T 4B5	2,501.90	0.00	2,501.90
15	Bradley Johnson	27 Totton Ave Hamilton ON L8H 4K4	1.00	0.00	1.00
16	Brette Irvine	133 Donnererwerth Drive Kitchener ON N2E 4C8	1.00	0.00	1.00
17	Brian Nadesu	79 East Street Cambridge ON N1R 4P2	1.00	0.00	1.00
18	C.J. PINK LTD.	675 Donnybrook Drive Dorchester ON N0L 1G5	37,084.34	0.00	37,084.34
19	Cambridge Concrete Pumping	226 Bolda Ave Ayr ON N0B 1E0	20,936.65	0.00	20,936.65
20	Centrefine Sanitation	108 Mag Drive, Unit #1 London, ON N6E 3T7	1,460.30	0.00	1,460.30
21	Chad Alexander	583 Northampton Place Waterloo ON N2T 2M4	1.00	0.00	1.00
22	Chris Hoffarth	48 Adam Street Midway ON N0G 2J0	1.00	0.00	1.00
23	Christopher Taber	2075 Preston Road Cavan ON K9J 6X4	1.00	0.00	1.00
24	Christopher Doherty	2-308 Kwanis Peak Drive London ON N5W 4M9	1.00	0.00	1.00

01-Mar-2019

Date


 David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

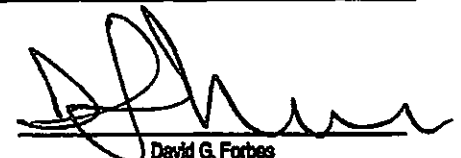
FORM 78 -- Continued

List "A"
 Unsecured Creditors
 Sirius Concrete Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
25	Christopher McIntyre	45-81 Eagen Street Kitchener ON N2M 5C7	1.00	0.00	1.00
26	CLAC	P.O. Box 219 89 South Service Rd Grimby ON L3M 4G3	137,930.98	0.00	137,930.98
27	Cody Reidt	333 Cornridge Place Waterloo ON N2T 2N2	1.00	0.00	1.00
28	Colin Harburn	132 Maxwell Cres London ON N5X 1Z2	1.00	0.00	1.00
29	Colin Swance	126 Poldin Drive Norwich ON N0J 1P0	1.00	0.00	1.00
30	Cooper Rentals	P.O.Box 4590 Station A Toronto ON M5W 7B1	24,061.01	0.00	24,061.01
31	COTTON INC	2125 FRUITBELT PARKWAY NIAGARA FALLS ON L2J 0A5	329,071.35	0.00	329,071.35
32	CRA - Sudbury Tax Services Office 850777434 RP0001	PO Box 5548 3 - 451 Talbot St. London ON N6A 4R3	303,994.00	0.00	303,994.00
33	CRA - Sudbury Tax Services Office 850777434 RT0001	PO Box 5548 3 - 451 Talbot St. London ON N6A 4R3	1.00	0.00	1.00
34	Craig Daly	38 Marlowood Drive Kitchener ON N2M 2H5	1.00	0.00	1.00
35	David Caughey	132 Bridge Street West Waterloo ON N2K 1K9	1.00	0.00	1.00
36	Daxit Chotara	126 Coopershawk St Kitchener ON N2K 4S8	1.00	0.00	1.00
37	Derek Hodgson	216 Laurel Springs Court Kitchener ON N2N 3N8	1.00	0.00	1.00
38	Derek Hoffarth	306 Prince Street Walkerton ON N0G 2V0	1.00	0.00	1.00
39	DESJARDINS CARD SERVICES	P.O. BOX 8601 STN CENTRE-VILLE FCDQ MONTREAL QC H3C 3V2	612.52	0.00	612.52
40	DOKA CANADA LTD.	12673 Coleraine Drive Bolton ON L7E 3B5	353,641.83	0.00	353,641.83
41	Dustin Hennebury	9-499 Albert Street Waterloo ON N2L 5A7	1.00	0.00	1.00
42	EFCO Canada Co.	PO Box 15239, Station A Toronto ON M5W 1C1	18,884.22	0.00	18,884.22
43	Elgin Meechan	A-372 Churchill Court Waterloo ON N2L 6B4	1.00	0.00	1.00
44	Forbesdale Fabrication	642960 Rd. 64 Ingersoll ON N5C 3J8	14,807.52	0.00	14,807.52
45	Form & Build Supply	1175 Frances St London ON N5W 2L9	10,593.73	0.00	10,593.73
46	Giles Bonds	133 London Street N Hamilton ON L8H 4B8	1.00	0.00	1.00

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued

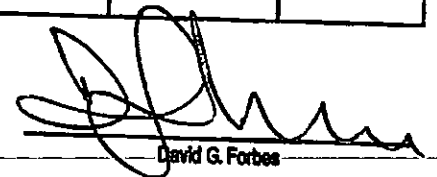
List "A"
 Unsecured Creditors

Situs Concrete Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
47	GILLIES LUMBER INC	777 Industrial Road Cambridge ON N3H 4W2	9,955.04	0.00	9,955.04
48	Glenarran Holdings Inc	589 Colby Dr Waterloo ON N2V 1A1	5,620.00	0.00	5,620.00
49	Harkirat Singh Sidhu	74 Starlight Ave Breslau ON N0B 1M0	1.00	0.00	1.00
50	Ian Glenn Bell	10 Bleams Road East New Hamburg ON N3A 1G4	1.00	0.00	1.00
51	IBS Engineering Limited	21 Fairview Blvd. Guelph ON N1G 1H3	408.80	0.00	408.80
52	Information Network Systems	75 Northland Road Waterloo ON N2V 1Y8	328.85	0.00	328.85
53	Jaclyn Serwotnyk	23 Monterey Road Kitchener ON N2B 1V2	1.00	0.00	1.00
54	Jacob Wall	2489 Pinegrove Road Delhi ON N4B 2E5	1.00	0.00	1.00
55	James Ayton	415 Belmont Ave W Kitchener ON N2M 1N1	1.00	0.00	1.00
56	James Spowart	39 Hillbrook Cres Kitchener ON N2N 1J4	1.00	0.00	1.00
57	Jamie Apperson	68 Krug Street Kitchener ON N2H 2X7	1.00	0.00	1.00
58	Jamie Gagne	476 Redfox Drive Waterloo ON N2K 2T1	1.00	0.00	1.00
59	Jamie Parkas	272B Northlake Drive Waterloo ON N2V 1A9	1.00	0.00	1.00
60	Jason Baker	99 Kay Crescent Fergus ON N1M 0G2	1.00	0.00	1.00
61	JDI Cleaning Systems	108-3380 South Service Road Burlington ON L7N 3J5	469.82	0.00	469.82
62	Jeremy Chambers	174 Cole Road Guelph ON N1G 4A2	1.00	0.00	1.00
63	Jery Welsh	22 Ashford Court Brampton ON L6V 2Z1	1.00	0.00	1.00
64	Jesse Griffin	8 Andrew Street Arthur ON NDG 1A0	1.00	0.00	1.00
65	John Pettie	39 Todd Street Cambridge ON N1R 1G6	1.00	0.00	1.00
66	Jonathon Lopez	428 Paterson Ave London ON N6W 5C7	1.00	0.00	1.00
67	Jordan Mandigo	98 Wilson Court St. Mary's ON M4X 0B8	1.00	0.00	1.00
68	Jory Bataman	618 Taylor Crescent Burlington ON L7L 7A5	1.00	0.00	1.00
69	Justin Lefebvre	1799 Notre Dame Drive St. Agatha ON N0B 2L0	1.00	0.00	1.00
70	Kandace St. Louis	49 Edna Street Kitchener ON N2H 2E2	1.00	0.00	1.00

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued

List "A"
 Unsecured Creditors
 Sirius Concrete Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
71	Kim Efsthaliou	932 Eden Oak Court Kitchener ON N2A 0H4	1.00	0.00	1.00
72	KIM EFSTATHIOU	932 EDEN OAK COURT KITCHENER ON N2A 0H4	15.58	0.00	15.58
73	Krystal Mcowen	201185 Kehl Street Kitchener ON N2M 5B9	1.00	0.00	1.00
74	Linde Canada Limited	P.O. Box 15687, Station A Toronto ON M5W 1C1	150.76	0.00	150.76
75	Lucas Alexander Forbes	642960 Road 64 Ingersoll ON N5C 3J6	1.00	0.00	1.00
76	Mark Machan	62 Ridgeway Crescent Kitchener ON N2E 3M2	1.00	0.00	1.00
77	Matthew Batus	68 Chalmers St. S. Cambridge ON N1R 6A5	1.00	0.00	1.00
78	Michel Roux	3966 Village Creek Drive Stavensville ON L0S 1S0	3,915.45	0.00	3,915.45
79	Ministry of Finance - ON PST, EHT & Other Taxes Attn: Mrs. Asia Albery	Ministry of Revenue 33 King Street West 8th Floor Oshawa ON L1H 8H5	1.00	0.00	1.00
80	MNP LLP	3rd Floor 139 Northfield Drive West Waterloo ON N2L 5A6	9,492.00	0.00	9,492.00
81	Modespace	2300 North Park Drive Brampton ON L6S 6C6	1,570.70	0.00	1,570.70
82	Nathan Aubert	1970 Centre Road Hamilton ON L8N 2Z7	1.00	0.00	1.00
83	Nathan Ayton	1B, 415 Belmont Ave W Kitchener ON N2M 1N1	1.00	0.00	1.00
84	National Rent-All Inc	1-280 Shirley Ave Kitchener ON N2B 2E1	4,428.44	0.00	4,428.44
85	NextSys Networking Inc.	668 Tritium Drive Unit 4 Kitchener ON N2R 1J3	2,879.01	0.00	2,879.01
86	Nicholas Waika	69 Muscovy Drive Elmira ON N3B 3M8	1.00	0.00	1.00
87	Northfield Auto Services	661 Colby Drive Waterloo ON N2V 1C2	6,325.72	0.00	6,325.72
88	OSLIM CONSTRUCTION LTD.	510 - 445 2ND W AVE VANCOUVER BC V5Y 0E8	25,090.00	0.00	25,090.00
89	Paul Hennigan	6 Brybeck Cres, Apt 105 Kitchener ON N2G 2B9	1.00	0.00	1.00
90	Paul McDougald	598A Royal Beech Drive Waterloo ON N2T 2K3	1.00	0.00	1.00
91	Pro Steel Fabrication	2500 Williams Parkway Unit #23 Brampton ON L6S 5M9	135.60	0.00	135.60
92	Progressive Contractors Association	1024 Parsons Road SW Edmonton AB T6X 0J4	1,999.26	0.00	1,999.26
93	Reber Guys Installation Inc.	90 Adam Street Cambridge ON N3C 2K8	1,249.50	0.00	1,249.50

01-Mar-2019

Date


 David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued

List "A"
 Unsecured Creditors

Strfus Concrete Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
94	Ricardo Desousa	170 Cedarwoods Cres Kitchener ON N2C 2J8	1.00	0.00	1.00
95	ROC Corp	250 Royal Oak Road Cambridge ON N3E 0A4	69,020.41	0.00	69,020.41
96	Rogers	PO Box 9100 Don Mills ON M3C 3P9	588.55	0.00	588.55
97	Ronald's Crane Operations Ltd.	47 Staphania Ave Brampton ON L6Y 0R8	4,418.30	0.00	4,418.30
98	Ryan Lam	236 Greyfox Drive Kitchener ON N2E 3M4	1.00	0.00	1.00
99	Sarah Hazel	124 Collega St. W. Waterford ON NDE 1Y0	1.00	0.00	1.00
100	Savoie Cranes & Services	83 Baintree Way Cambridge ON N1T 2J6	2,305.20	0.00	2,305.20
101	Scott Forest Products Ltd	55 Coats Rd Concord ON L4K 1M8	25,148.15	0.00	25,148.15
102	SDA Contracting	2075 Preston Road Cavan-Monaghan ON K9J 0G5	3,491.70	0.00	3,491.70
103	Skycrane	1664 York Rd Niagara-On-The-Lake ON LOS 1J0	19,888.00	0.00	19,888.00
104	Spectrum Communications Ltd	250 Lawrence Ave Kitchener ON N2M 1Y4	1,503.57	0.00	1,503.57
105	St. Marys Cement Inc	PO Box 4090 STN A C/O Lockbox 917330 Toronto ON M5W 0E9	67,314.11	0.00	67,314.11
106	Stephen Van Katwijk	448 Shelly Drive, Unit A Kitchener ON N2C 1N2	1.00	0.00	1.00
107	STEPHENSON'S RENTAL SERVICES	6695 COLUMBUS ROAD MISSISSAUGA ON L5T 2G9	13,602.97	0.00	13,602.97
108	Stubbe's Precast Inc	30 Muir Line Harley ON NDE 1E0	4,550.00	0.00	4,550.00
109	Sunbelt Rentals Inc.	PO Box 99257, Station Terminal Vancouver BC V6B 0N5	15,035.49	0.00	15,035.49
110	Taylor Tompkins	156 Ferris Drive Wellesley ON N2B 2T0	1.00	0.00	1.00
111	The Country Tool Shed	104 Dundas St Thamesford ON N0M 2M0	32,179.47	0.00	32,179.47
112	The Rental Hub	1987 Bessline Road W. Bowmanville ON L1C 3K3	3,541.45	0.00	3,541.45
113	Thomas S. Butt	44 Sloan Drive Zorra ON N0M 2M0	1.00	0.00	1.00
114	Timothy Minkarous	66 Zeller Drive Kitchener ON N2A 4A9	1.00	0.00	1.00
115	Tobin Tompkins	133 Michael Myers Road Baden ON N3A 0A5	1.00	0.00	1.00
116	Tomas Waite	23 Monterey Road Kitchener ON N2B 1V2	1.00	0.00	1.00
117	Torcan Lift Equipment	115 Rivalda Road Toronto ON M8M 2M6	389.85	0.00	389.85

01-Mar-2019

Date


 David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 -- Continued

List "A"
 Unsecured Creditors

Strius Concrete Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
118	Vilayvone Somsarith	126 Maplecrest Drive Braslau ON N0B 1M0	1.00	0.00	1.00
119	WILLIAMS FORM HARDWARE AND ROCKBOLT	670 INDUSTRIAL ROAD LONDON ON N6V 1V1	452.00	0.00	452.00
120	Williams Scotsman of Canada, Inc	PO Box 4090 STN A C/O 911630 Toronto ON M5W 0E9	1,570.70	0.00	1,570.70
121	Wiston Hernandez	4072 Rolling Valley Drive Mississauga ON L5L 2K3	1.00	0.00	1.00
122	Workplace Safety & Insurance Bnd	Stadon A P.O. Box 4115 Toronto ON M5W 2V3	11,508.28	0.00	11,508.28
123	Workplace Safety and Insurance Board Attrc c/o Collection Services	200 Front St W Toronto ON M5V 3J1	1.00	0.00	1.00
124	Wuis Brothers Construction	3 Sandbourne Drive, PO Box 5 Portypool ON L0A 1K0	7,901.54	0.00	7,901.54
Total:			2,591,154.71	0.00	2,591,154.71

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued

List "B"
 Secured Creditors

Situs Concrete Inc.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
1	BMO Financial Group c/o BankruptcyHighway.com Attr: Mike Timko	PO Box 57100 Etobicoke ON M9Y 3Y2	1.00	Motor Vehicles - Automobile - 2011 - Chevy - Silverado Motor Vehicles - Automobile - 2012 - Chevy - Silverado 2500 Motor Vehicles - Automobile - 2010 - Chevy - Silverado Motor Vehicles - Automobile - 2010 - Chevy - Silverado Motor Vehicles - Automobile - 2009 - Chevy - Express Van		1.00 0.00 0.00 0.00 0.00	 1.00 1.00 1.00	
2	CWB National Leasing Inc./ (formerly National Leasing Group Inc) Attr: Bankruptcy Designate	1525 Buffalo Pl Winnipeg MB R3T 1L9	1.00	Other - Server and Survey Equipment		1.00		
Total:			2.00			2.00	4.00	0.00

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued


List "C"
 Preferred Creditors for Wages, Rent, etc.

Strus Concrete Inc.

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued	Amount of claim	Amount payable in full	Difference ranking for dividend
Total:					0.00	0.00	0.00

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 -- Continued


List 'D'
 Contingent or Other Liabilities

Strius Concrete Inc.

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
Total:			0.00	0.00		

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

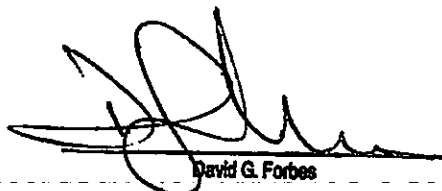
FORM 78 - Continued

List "E"
 Debts Due to the Bankrupt
 Sifus Concrete Inc.

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
1	AR	Colby Dr Waterloo ON	AR	1,112,228.00 783,908.00 0.00		01-Mar-2019	1,112,228.00	NA
Total				1,112,228.00 783,908.00 0.00			1,112,228.00	

01-Mar-2019

Date



David G. Forbes

District of: Ontario
Division No. 05 - London
Court No.
Estate No.

FORM 78 - Continued

List F

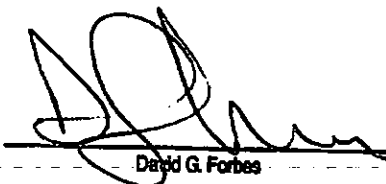
Bills of Exchange, Promissory Notes, Lien Notes, Chattel
Mortgages, etc., Available as Assets

Sirius Concrete Inc.

No.	Name of all promissory, acceptors, endorsers, mortgagors, and guarantors	Address	Occupation	Amount of bill or note, etc.	Date when due	Estimated to produce	Particulars of any property held as security for payment of bill or note, etc.
Total:				0.00		0.00	

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Continued

List "G"
 Real Property or Immovables Owned by Bankrupt
 Strlus Concrete Inc.

Description of property	Nature of bankrupt interest	In whose name does title stand	Total value	Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount)	Equity or surplus
Total:			0.00		0.00

01-Mar-2019

Date



David G. Forbes

District of: Ontario
 Division No. 05 - London
 Court No.
 Estate No.

FORM 78 - Concluded

List "H"
 Property


Strius Concrete Inc.

FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade			0.00	0.00
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions			0.00	0.00
(d) Cash on hand			0.00	0.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture			0.00	0.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles		Automobile - 2011 - Chevy - Silverado	0.00	1.00
		Automobile - 2012 - Chevy - Silverado 2500	0.00	1.00
		Automobile - 2010 - Chevy - Silverado	0.00	1.00
		Automobile - 2010 - Chevy - Silverado	0.00	1.00
		Automobile - 2009 - Chevy - Express Van	0.00	1.00
(l) Taxes			0.00	0.00
(m) Other		Equipment	115,000.00	115,000.00
		Server and Survey Equipment	1.00	1.00
		Inventory	55,000.00	55,000.00
Total				170,005.00

01-Mar-2019

Date



David G. Forbes



**Cost to Complete Report
For
Concrete Work**

**45 Yarmouth Street,
Guelph, Ontario**

DATE: 10th June 2019

Prepared For:

John Camera
Ayerswood Developments
London, ON

Prepared By:

TruEst Quantity Surveyors
1124 Gainsborough Road
Unit 1-A
Phone: 519-266-6762
Fax: 1-877-209-9067
Email: pritesh@truestqs.com

THIS IS EXHIBIT F TO THE AFFIDAVIT OF
JOHN CAMARA AFFIRMED BEFORE ME ON
9 OCTOBER 2020


A COMMISSIONER, ETC (SCOTT TURTON)

INDEX

1. Cover Letter	Page 3
2. Introduction.....	Page 4
1a) Scope of work	
1b) Project Description	
1c) Accuracy of report	
3. The basis of Report.....	Page 5-9
2a) Information	
2b) Documents Reviewed	
2c) Site Inspection	
2d) Recommendation	
4. Disclaimer.....	Page 9
5. Appendix -A	Page 10.11
Cost-to Complete Calculation	
6. Appendix -B	Page 12-13
Cost of Deficiency	
7. Appendix -C.....	Page 14-15
Invoice	
8. Appendix -D.....	Page 16-39
Site Photos	



Cost Planning | Cost Control | Reserve Fund Study | Budget Review | Loan Monitoring | Contractors Estimates

10th June 2019,

Ayerswood Developments.
London, Ontario

Attention: Mr. John Camera

RE: Cost to Complete report for Concrete Work at 45 Yarmouth Street in Guelph, Ontario – Sirius Concrete

Dear Mr. John Camera,

Please find enclosed our report for work completed and cost to Complete for concrete work by Sirius Concrete for the project mentioned above.

This report was prepared based on the documents we received from your office, personal interview and our site inspection.

This estimate of the cost to complete is meant to give you the amount of work completed by Sirius concrete. As per our interview and site meeting, we have understood that Sirius had left the site with the work in progress on the Second floor. The new contractor on site poured part of the second floor and full Ceiling. Our report is based on the scope provided on contract with Sirius Concrete Inc.

We recommend that the Owner and legal team carefully review this report, including all clarifications. This is to ensure that the entire scope of work is captured within the content of the report, especially when this report is prepared in the absence of a Quotation from the contractor.

We trust our work will assist in the process of finalizing the dispute and look forward to our continued involvement in this important project.

Best Regards,
TruEst Quantity Surveyor

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

Pritesh Shah PQS
President

Encl: (Report)

Cost to Complete Report
Concrete Work (By Sirius Concrete Inc.)



1. INTRODUCTION

1A) SCOPE OF WORK

TruEst is hired by Ayerswood Development Corp to provide a report on completion of concrete work done by Sirius Concrete Inc.

The purpose of this report is to Identify the quantity of actual work completed on site by the concrete contractor. The completion quantity is solely based on the drawings, Site visit, Interview with the project manager and Scope of work identified on the subcontract (# A18-45YAR-13 Dated 14th March 2018) provided by the Ayerswood Developments and Purchase order (# 15082 (extra cost), dated 03rd April 2018) issued by Ayerswood Developments Corp.

As per the information provided by the Project manager of Ayerswood Developments Corporation, TruEst understood that Sirius Concrete Inc. had left the site when the work on the second floor was under progress. A new contractor on site completed the Columns between Grid line 2 to 9 and A to C2. Other than the deficiency listed in Appendix B of this report all other work from the Second floor down to Lower level three, including foundation, is completed by Sirius Concrete Inc. For the calculation purpose columns between grid line, 2 to 9 and A to C2 is considered as a part of deficiency to allow us to create a cutoff point.

All work related to shoring was not the part of this subcontract hence excluded from the calculation.

The list of documents reviewed is mentioned under section 2B of this report.

1B) PROJECT DESCRIPTION

The project site is located at 45 Yarmouth Street in Guelph, Ontario. The project consists of new building construction of 12 floors above ground and Three floors below ground. The Typical residential units start from the 2nd floor and up and partial retail area on the Ground floor. All other levels below the ground floor and part of the ground floor is parking.

The Ayerwood Development Corporation had retained Sirius Concrete Inc to carry out Concrete work for this project.

1.C) ACCURACY OF REPORT

The accuracy of this report is $\pm 15\%$ based on the documentation provided as well as the visual nondestructive site inspection done by TruEst. During our site inspection, TruEst did not cut, open or took and sample for testing concrete to avoid any loss of warranty.

45 Yarmouth Street
10th June 2019

Cost to Complete Report
Concrete Work (By Sirius Concrete Inc.)

Mr. John Camera from Ayerswood Developments corporation was informed during a site meeting about this process.

2. BASIS OF REPORT

2A) INFORMATION

TruEst had received Architectural and Structural Drawings on 24th May 2019. Due to the nature of work, Architectural drawings are NOT reviewed. This report is based on reviewing and quantifying concrete work from structural drawings, and Site Inspection, Interview with the Project Manager of Ayerwood Development Corporation. The amount shown under contract value is the amount directly adopted from the subcontract and purchase orders for an extra cost.

2B) DOCUMENTS REVIEWED

This Report is based on a review of the following documents.

1. Structural Drawings: 16th revision – 29th March 2019
 - S1.0 General Notes
 - S1.1 General Notes
 - S1.2 Schedules
 - S2.0 Foundation Plan
 - S2.1 Foundation Plan
 - S2.2 Lower Level 2 Framing
 - S2.3 Lower Level 1 Framing
 - S2.4 Grind Level Framing
 - S2.5 Second Floor Framing
 - S2.6 Third Floor Framing
 - S2.7 Fourth Floor Framing
 - S2.8 Fifth Floor Framing
 - S2.9 6th, 8th, 10th and 12th Floor Framing
 - S2.10 7th, 9th and 11th Floor Framing
 - S2.11 Roof & Mech Penthouse framing
 - S2.12 Mechanical Penthouse roof framing
 - S3.0 Section
 - S3.1 Section
 - S4.0 Details
 - S4.1 Details
 - S4.2 Typical Details
2. Specifications: On Structural Drawings.
3. Shop Drawings:
 - Was not reviewed as it was not available at the time of review.
4. Agreements between Contractor and Developer
 - Subcontract agreement# A18-45YAR-03 dated 14th March 218
 - Purchase order # 15082 dated April 03rd, 2018
5. Quotation from Contractor:
 - None

45 Yarmouth Street
10th June 2019

Cost to Complete Report
Concrete Work (By Sirius Concrete Inc.)

6. Preliminary Project Schedule:
 - Not available for review.
7. Certification :
 - Not reviewed as it was not available at the time of review

2C) Site Inspection

Below is the brief highlight of the site inspection. The detail of remaining work is provided under Cost to Complete in Appendix A, Pictures of our site visits are attached in Appendix C

An initial site visit conducted by Mr. Pritesh Shah to interview Project Manager on 21st Of May 2019. Mr. John Camera was accompanied TruEst during the entire site visit. TruEst was informed the following

1. The scope of work completed by Sirius Concrete Inc.
2. Developers concern about the cost to complete of deficiency left unattended.

TruEst Started an inspection visit from the Second-floor level and ended at Lower level three. All photographs for work completed and the typical type of deficiency is documented in Appendix C.

45 Yarmouth Street
10th June 2019

Cost to Complete Report
Concrete Work (By Sirius Concrete Inc.)



2D) Recommendation

Summary of Work Completed

Description	Contract Value	Actual Value (Based on Quantity)	% complete	Cost Complete	Cost to complete	% to Complete	Remarks
Original Scope + Rebar CO	\$6,264,290.00	\$6,264,290.00	41.15%	\$2,577,755.34	\$3,686,534.67	58.85%	
Scope up to Second floor	\$3,200,000.00	\$3,107,364.01	82.88%	\$2,575,517.11	\$531,846.90	16.62%	Ceiling/3rd Floor Slab Incl.
C.O for work up to Second floor	\$49,060.36	\$49,060.36	100%	\$49,060.36	\$0.00	0.00%	
TOTAL Work Completed	\$6,313,350.36	\$6,313,350.36	41.61%	\$2,626,815.70	\$3,686,534.67	58.39%	



45 Yarmouth Street
10th June 2019

Cost to Complete Report
Concrete Work (By Sirius Concrete Inc.)

Summary of Amount overpaid

Description	Contract Value	Work Completed	Amount Paid	\$ Overpaid	Cost to complete	Remarks
Total Invoice Paid- C.O Included	\$6,313,350.36	\$2,626,815.70	\$2,793,324.77	\$166,509.07	-	After Hold Back and before taxes
Invoice Overpaid (HST Portion)	-	-	-	\$4,195.64	-	Invoice to PO#15098 & 15099
Invoice Over paid	-	-	-	\$170,704.71	-	
Cost of Deficiency		\$0.00	\$0.00	\$531,846.90	100%	Incl. Out satnding work- See Appendix B
Total Amount Overpaid				\$702,551.61		
Total Hold Back Retained				(\$310,835.60)		10% of Total amount under Previous Draw.
Outstanding Invoice to date				(\$155,000.00)		
Amount Overpaid				\$236,716.01		

Cost to Complete Report
Concrete Work (By Sirius Concrete Inc.)



After a review of drawings and Site inspection, Cost-to-complete is attached in Appendix A.

It is our view that the total value of work completed by Sirius Concrete Inc is CAD 2,626,815.70. This amount excludes all cost related to Deficiency, Outstanding work on the 2nd floor and all applicable taxes. Based on this calculation the general contractor was overbilled by \$170,704.71.00

The cost of Complete Deficiency and Outstanding work is CAD 531,846.90, excluding Hold Back and applicable taxes.

After the calculation shown above, we conclude that General contractor has overpaid and have to recover \$236,716.01 from Sirius Concrete Inc. excluding all taxes.

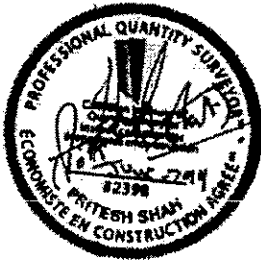
3. DISCLAIMER

TruEst Quantity Surveyors have performed visual inspections. The percentage of work done is related to the site inspection done by TruEst. This estimate is based on our experience, qualification and the best judgment of our professional consultant. TruEst recommends that the owner carefully review this report. It is also recommended that all work must be verified by the incoming concrete contractor and must be identified in their agreement.

This report is prepared with the best knowledge of TruEst Quantity Surveyors.

Best Regards!

Pritesh Shah, PQS



APPENDIX A

Cost to Complete Calculation For Concrete Work Only

CONCRETE	25MPA	30 MPA	32 MPA	35MPA	TOTAL M3 of Concrete	% completed	M3 Poured	% to Complete	Remarks
FLOOR/UOM	M3	M3	M3	M3	M3	%	M3	%	
FOUNDATION	774.00	60.00	213.53	17.00	1,064.53	99%	1053.68	1%	Drain Slope for Slab on Grade
LOWER LEVEL 3	0.00	163.00	0.00	275.18	438.18	84%	368.07	16%	Deficiency as per Appendix B
LOWER LEVEL 2	0.00	190.00	0.00	274.18	464.18	84%	389.91	16%	Deficiency as per Appendix B
LOWER LEVEL 1	0.00	210.00	0.00	276.27	486.27	84%	408.47	16%	Deficiency as per Appendix B
GROUND FLOOR	0.00	170.00	0.00	299.15	469.15	84%	394.09	16%	Deficiency as per Appendix B
2ND FLOOR	0.00	74.00	0.00	284.91	358.91	30.0%	107.67	70%	ceiling slab and 11 Columns not completed
3RD FLOOR	0.00	73.00	0.00	282.84	355.84	0%	0.00	100%	No work done
4TH FLOOR	0.00	66.92	0.00	269.01	335.93	0%	0.00	100%	No work done
5TH FLOOR	0.00	67.60	0.00	273.05	340.65	0%	0.00	100%	No work done
6TH FLOOR	0.00	70.36	0.00	235.04	305.40	0%	0.00	100%	No work done
7TH FLOOR	0.00	67.60	0.00	241.81	309.41	0%	0.00	100%	No work done
8TH FLOOR	0.00	70.36	0.00	235.04	305.40	0%	0.00	100%	No work done
9TH FLOOR	0.00	67.60	0.00	241.80	309.40	0%	0.00	100%	No work done
10TH FLOOR	0.00	70.36	0.00	235.04	305.40	0%	0.00	100%	No work done
11TH FLOOR	0.00	67.60	0.00	241.81	309.41	0%	0.00	100%	No work done
12TH FLOOR	0.00	78.51	0.00	11.71	90.22	0%	0.00	100%	No work done
ROOF	0.00	0.00	0.00	236.22	236.22	0%	0.00	100%	No work done
PENTHOUSE	0.00	91.50	0.00	38.78	130.28	0%	0.00	100%	No work done
TOTAL M3	774.00	1,658.41	213.53	3,968.84	6,614.78	41.15%	2721.88	58.85%	

APPENDIX B
Cost of Deficiency



Ayerswood Developments

45 Yarmouth Street Cost of Deficiency (Concrete Work Only)

Code	Description	Quantity	Unit	Rate	Total	Project Total
1.	Precast Stair					
	All voids between wall/landing with stair require filling.	36.00	Flights	250.00	9,000.00	
2	Walls					
2.1	Approximate of 15% of the wall and columns area (from Lower level 3 to Second floor) require grinding and parging	2,089.35	sq.meter	45.00	94,020.75	
2.2	There are three instance where walls gone off plumb. (one place more then 2 Inch.) need to fix	3.00	Each	2,500.00	7,500.00	
2.3	Hone Comb on walls (from lower level 3 to Lower level 1) need to be fix	200.00	Sq.meter	75.00	15,000.00	
2.4	All elevator Inserts (from Lower level 3 to Second Floor) need to be replaced as the elevations are not correct	6.00	floor	1,500.00	9,000.00	
2.5	Knee wall on ground floor near stair B not installed	1.00	sum	5,935.00	5,935.00	
2.6	Wall required to be patched after removal of shoring support (4 locations)	1.00	sum	6,000.00	6,000.00	
2.7	Second floor Columns between grid line A to C2 and 2 to 9 was not done	1.00	sum	13,500.00	13,500.00	
3.	Floors					
3.1	Part of Ground Floor slab is not leveled and higher by 40 to 50mm by other adjacent slab	200.00	sq.meter	75.00	15,000.00	
3.2	Fill in Crane cutout from Lower level 3 to Second Floor	45.00	Sq.meter	350.00	15,750.00	
3.3	Negative slope for floor drain on 6 locations	1.00	sum	7,500.00	7,500.00	
3.4	Third Floor Slab	1.00	sum	240,000.00	240,000.00	
4.	Miscellaneous					
4.1.	Cleaning and disposing off contractors thrash from site (claim by developer)	1.00	sum	5,000.00	5,000.00	
	TOTAL COST BEFORE SURCHARGE AND OVER HEAD AND PROFITS					443,205.75
4.2	10% Surcharge to complete above work	0.10	%	443,205.75	44,320.58	
4.3	10% Overhead and Profit	0.10	%	443,205.75	44,320.58	
	TOTAL ESTIMATED COST TO COMPLETE DEFICIENCY					531,846.90

APPENDIX C

Invoice



Head Office

P.O. Box 25070
Kitchener, Ontario
866-218-6173

INVOICE

John Camara
Ayerswood Development Corporation
P.O. Box 3117,
London, Ontario, N6A 4J4
JC@cpirentals.com
Draw # 11 17-22A-CIP-Ayerswood-46 Yarmouth St. Apartment Building

Invoice # 19,014
Date: 28-Feb-19
Job # 17-22A-CIP
P.O.W.O. #
HST# 85077 7434 RT0001
Terms: **Net 30 Days**

Progress Billing Period From February 1, 2019 to February 28, 2019.

	Total	Cost to Date	% Complete	Previous Draw	Current Draw
1. Footings to Lower Level 2 Suspended Slab	\$1,290,000.00	\$1,290,000.00	100%	\$1,290,000.00	\$0.00
2. Lower Level 2 Walls to Lower Level 1 Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
3. Lower Level 1 Walls to Ground Floor Slab	\$575,000.00	\$575,000.00	100%	\$575,000.00	\$0.00
4. 1st Floor Walls to 2nd Floor Slab	\$420,000.00	\$420,000.00	100%	\$420,000.00	\$0.00
5. 2nd Floor Walls to 3rd Floor Slab	\$340,000.00	\$280,000.00	82%	\$130,000.00	\$150,000.00
6. 3rd Floor Walls to 4th Floor Slab	\$340,000.00	\$0.00	0%	\$0.00	\$0.00
7. 4th Floor Walls to 5th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
8. 5th Floor Walls to 6th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
9. 6th Floor Walls to 7th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
10. 7th Floor Walls to 8th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
11. 8th Floor Walls to 9th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
12. 9th Floor Walls to 10th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
13. 10th Floor Walls to 11th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
14. 11th Floor Walls to 12th Floor Slab	\$275,000.00	\$0.00	0%	\$0.00	\$0.00
15. 12th Floor Walls to Roof Slab	\$295,000.00	\$0.00	0%	\$0.00	\$0.00
16. Mech. Penthouse Walls to Roof	\$90,000.00	\$0.00	0%	\$0.00	\$0.00
17. Slab Infill at Tower Crane	\$26,900.00	\$0.00	0%	\$0.00	\$0.00
18. Winter Conditions Allowance	\$63,100.00	\$45,100.00	71%	\$40,100.00	\$5,000.00

Original Total Contract \$6,215,000.00 \$3,185,100.00 51% \$3,030,100.00 \$155,000.00

Change Orders To Date:

1. C.O. 17-22.01 (Ayerswood P.O. # 15082)	\$49,290.00	\$26,000.00	53%	\$25,000.00	\$1,000.00
2. C.O. 17-22.02 (Ayerswood P.O. # 15098)	\$18,483.38	\$18,483.38	100%	\$18,483.38	\$0.00
3. C.O. 17-22.03 (Ayerswood P.O. # 15099)	\$17,986.46	\$17,986.46	100%	\$17,986.46	\$0.00
4. C.O. 17-22.04 (Ayerswood P.O. # 15666)	\$7,200.00	\$7,200.00	100%	\$7,200.00	\$0.00
5. C.O. 17-22.05 (Ayerswood P.O. # 15668)	\$9,586.17	\$9,586.17	100%	\$9,586.17	\$0.00

NET INVOICE BEFORE HOLDBACK AND H.S.T.:	<i>change orders</i>	\$156,000.00
LESS 10% HOLDBACK:	<i>1 - EXTRA REINFORCING</i>	\$15,600.00
THIS INVOICE BEFORE HST.:	<i>2 - EXTRA CONCRETE USED IN FOOTINGS</i>	
	<i>3 - EXTRA GRADE BEAM LINE #1</i>	\$140,400.00
	<i>4 - EXTRA GUARD RAIL POSTS</i>	
PLUS - H.S.T. @ 13%	<i>5 - EXTRA CONCRETE ONE SIDE WALL A.L.#10</i>	\$18,252.00

INVOICE AMOUNT \$158,652.00

Please make cheque payable to: Sirius Concrete Inc.
2% interest per month on overdue balances until paid.

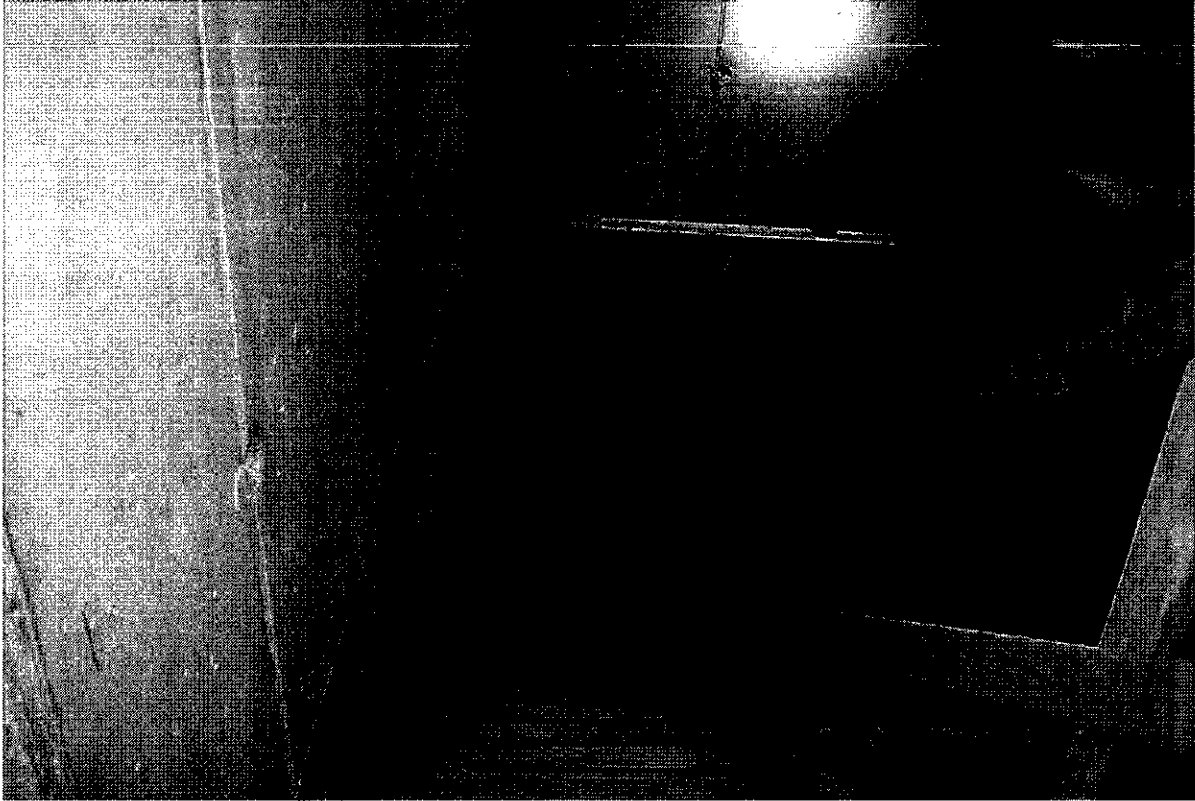
Thank you for your business!

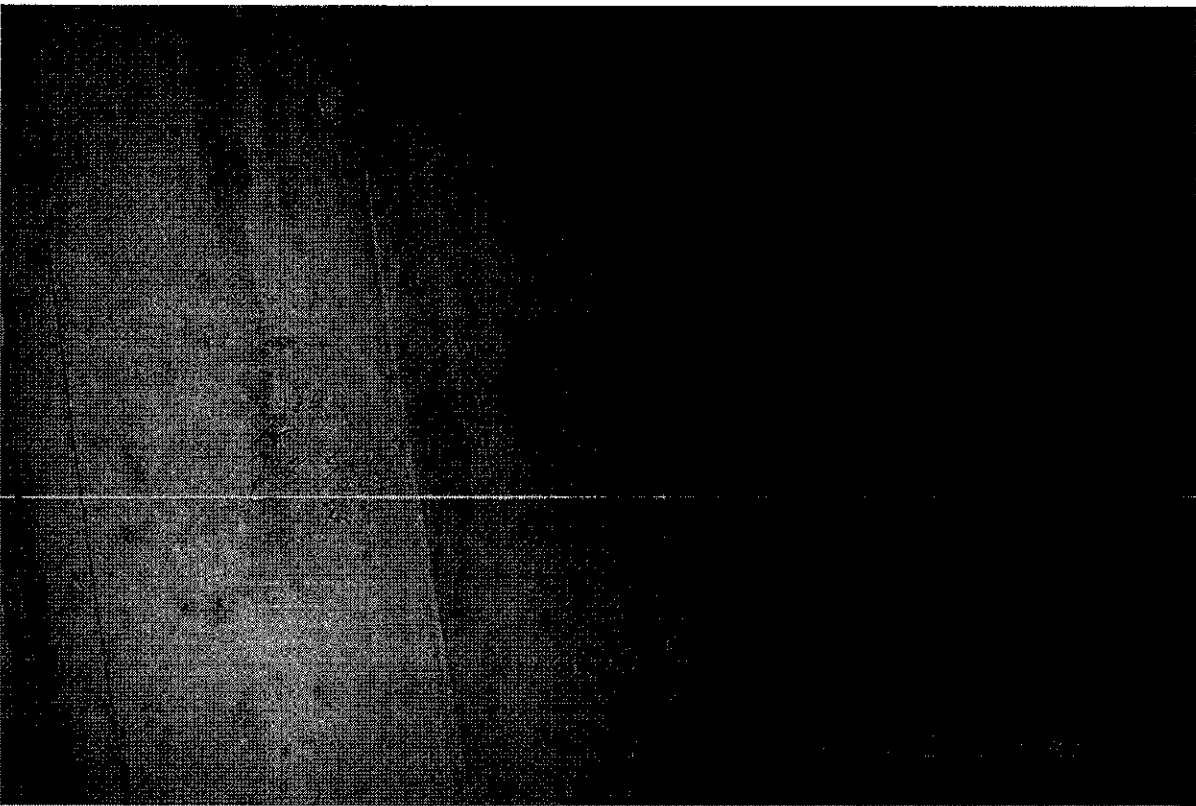
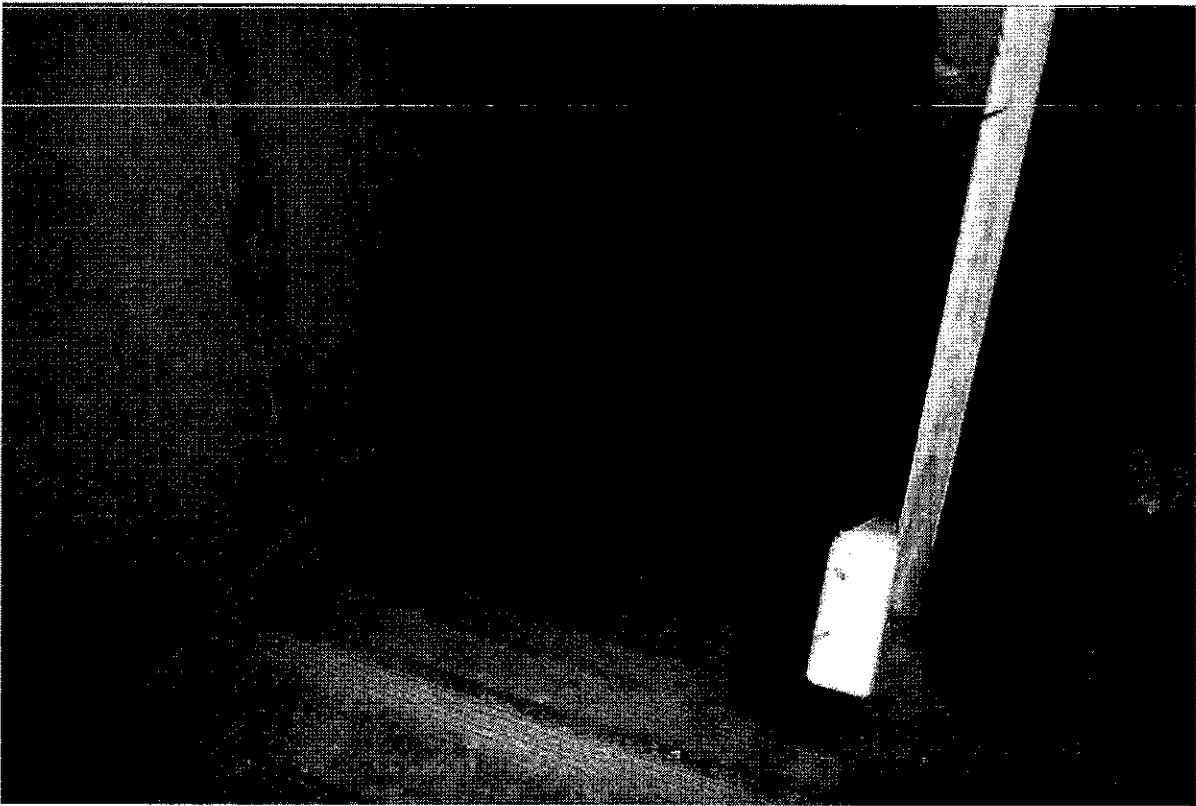
✓-included HST

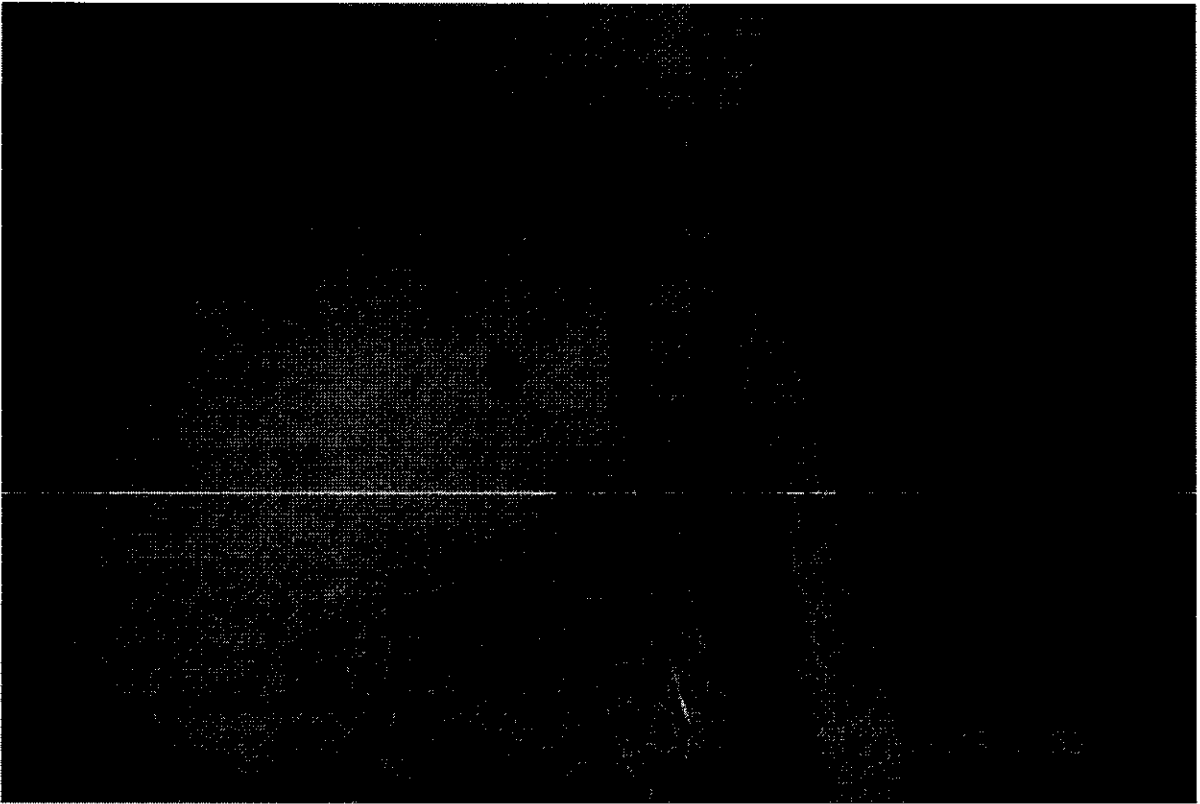
total (A) = \$3,108,356.01

APPENDIX D
Site Photographs

Stair:

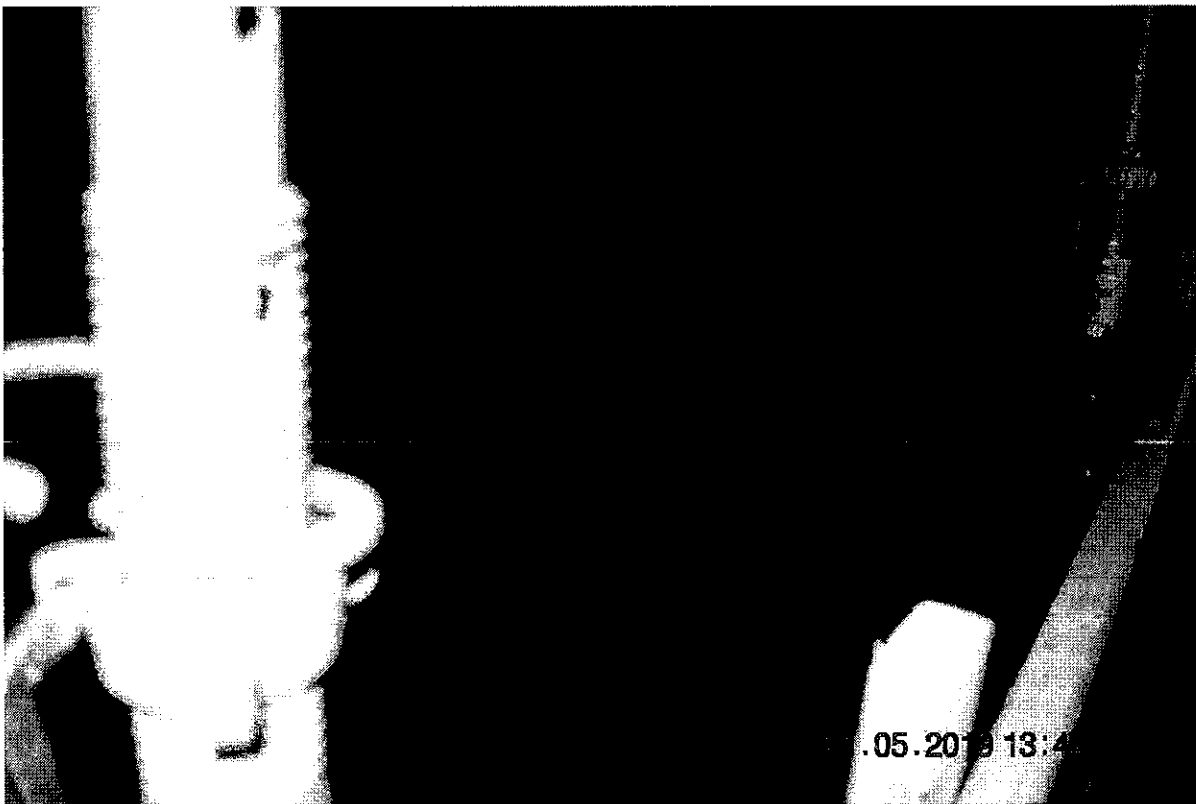


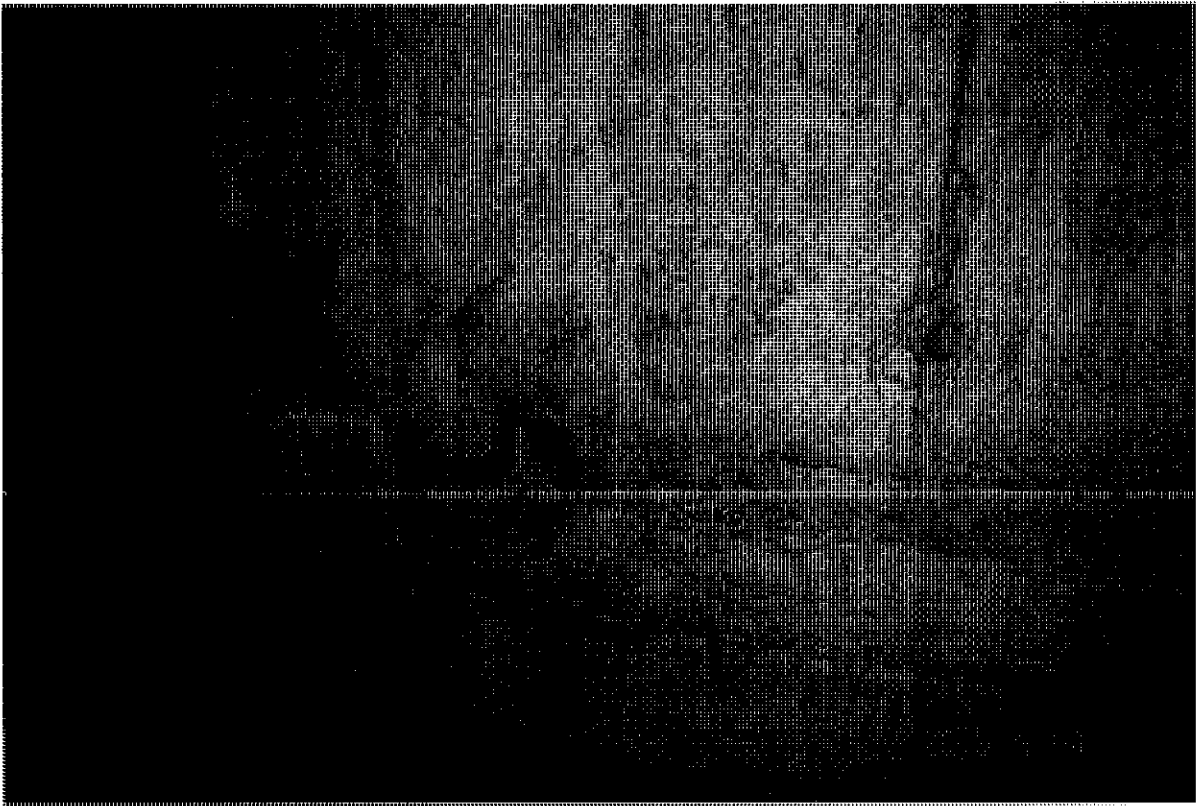
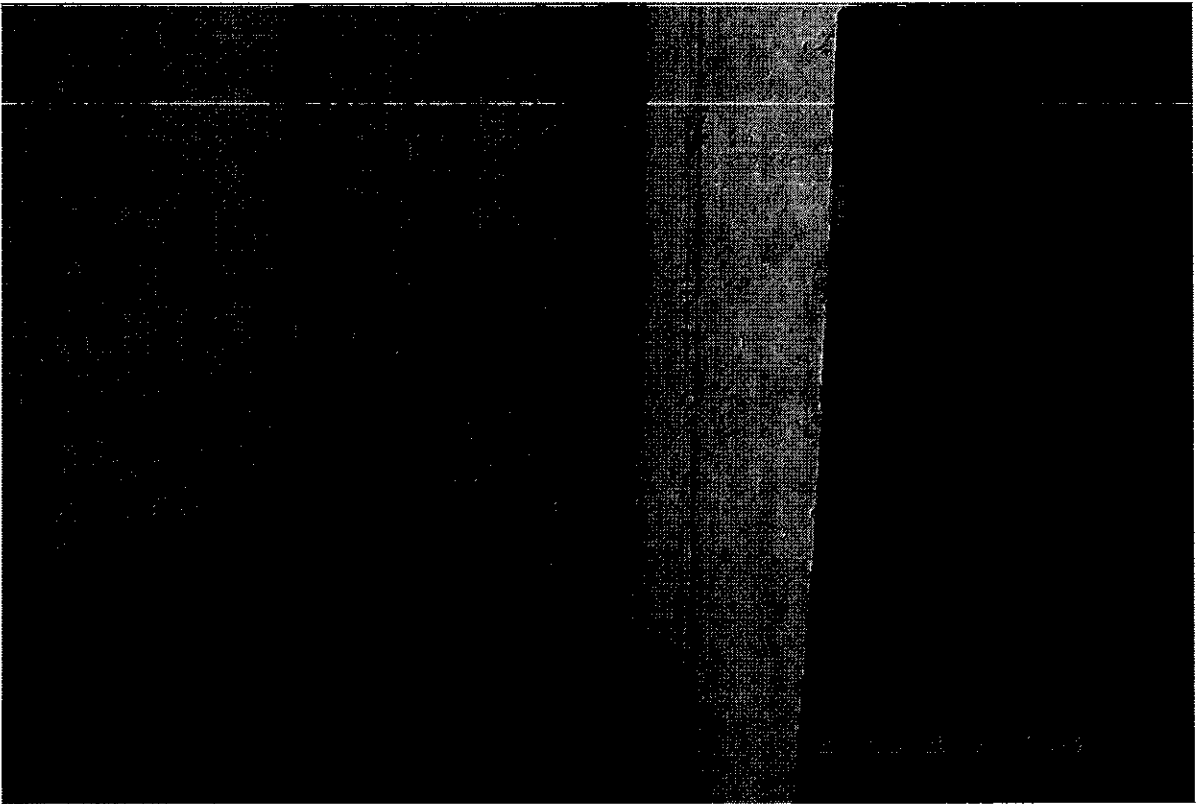


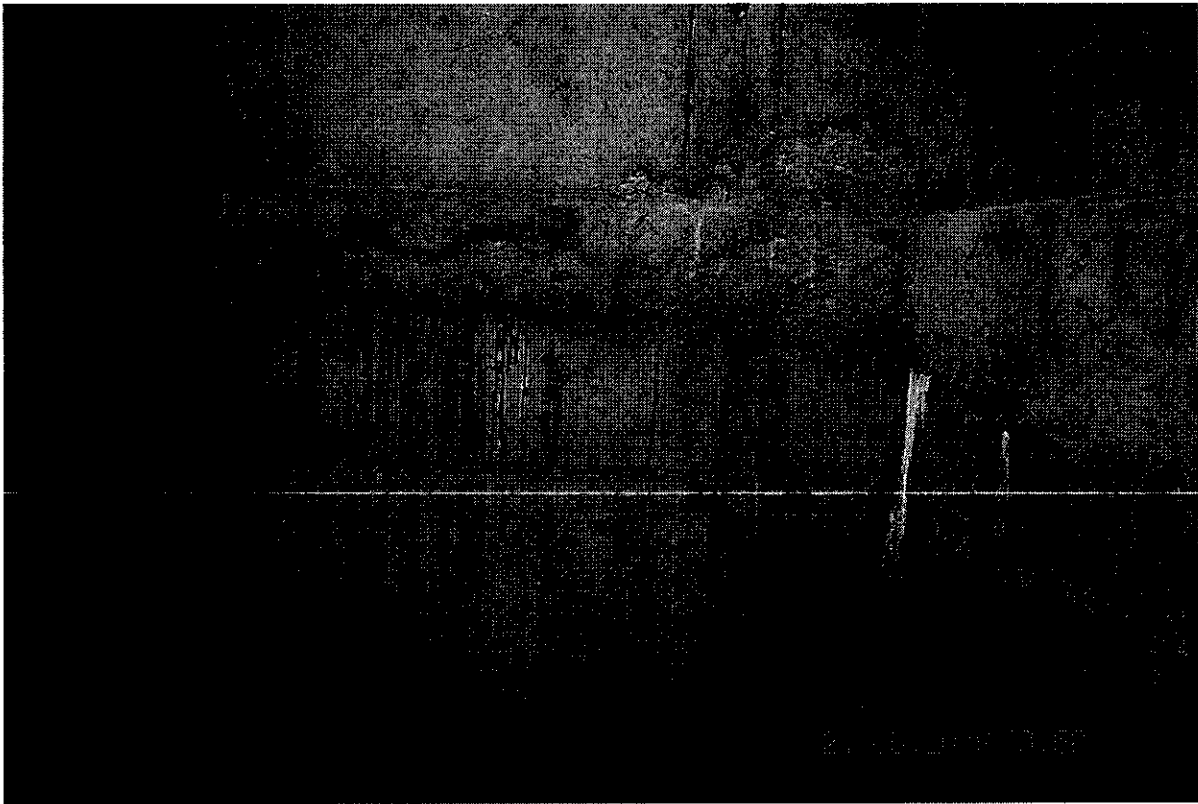
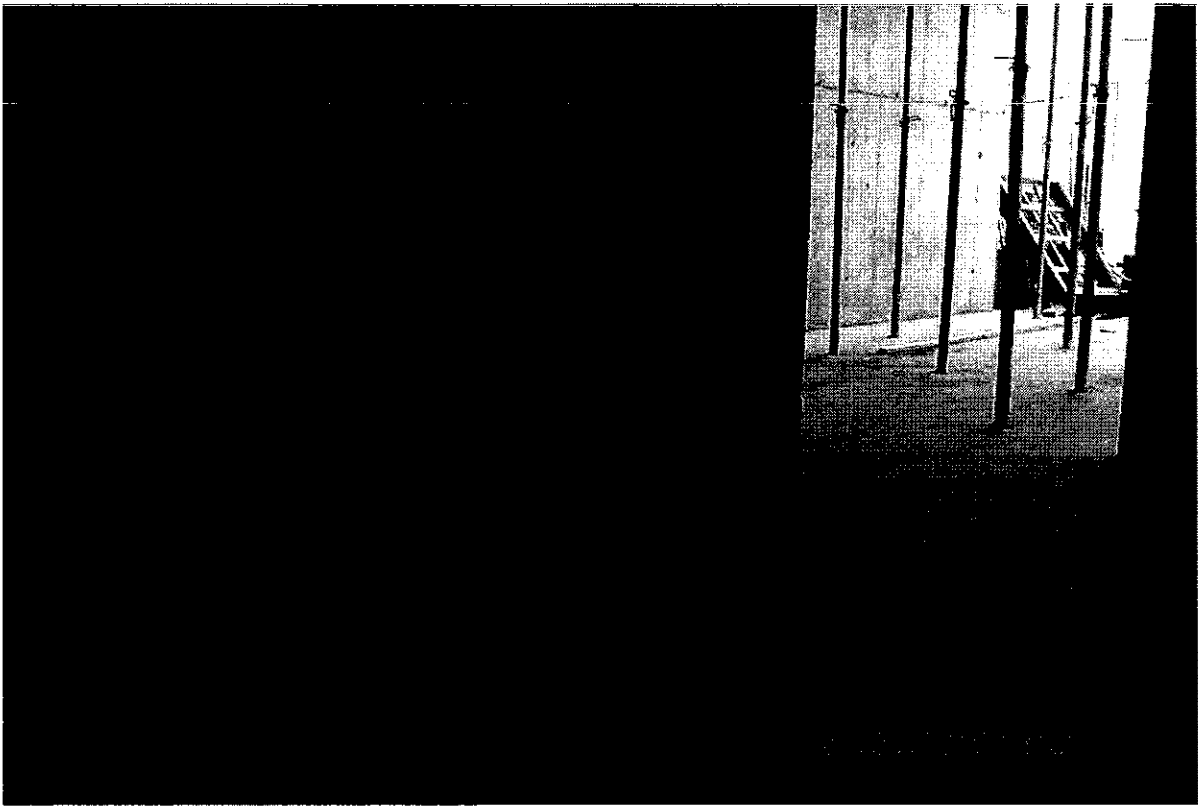


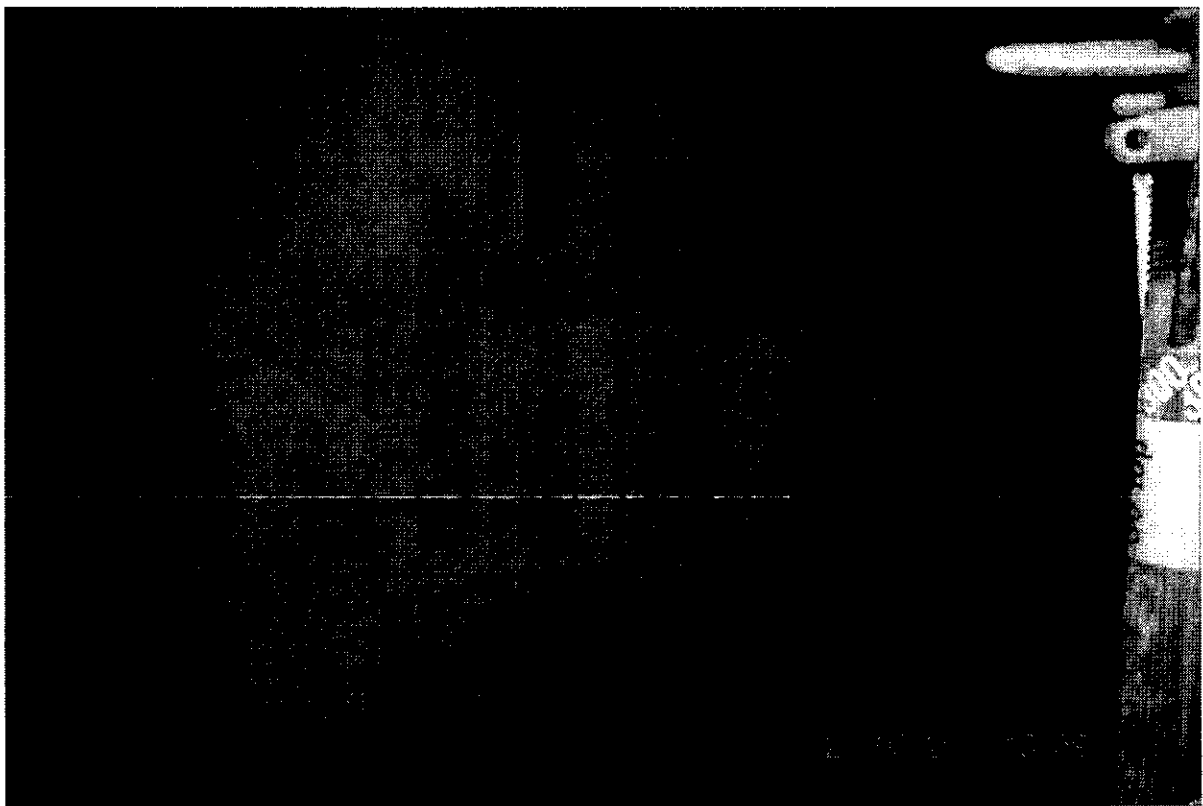
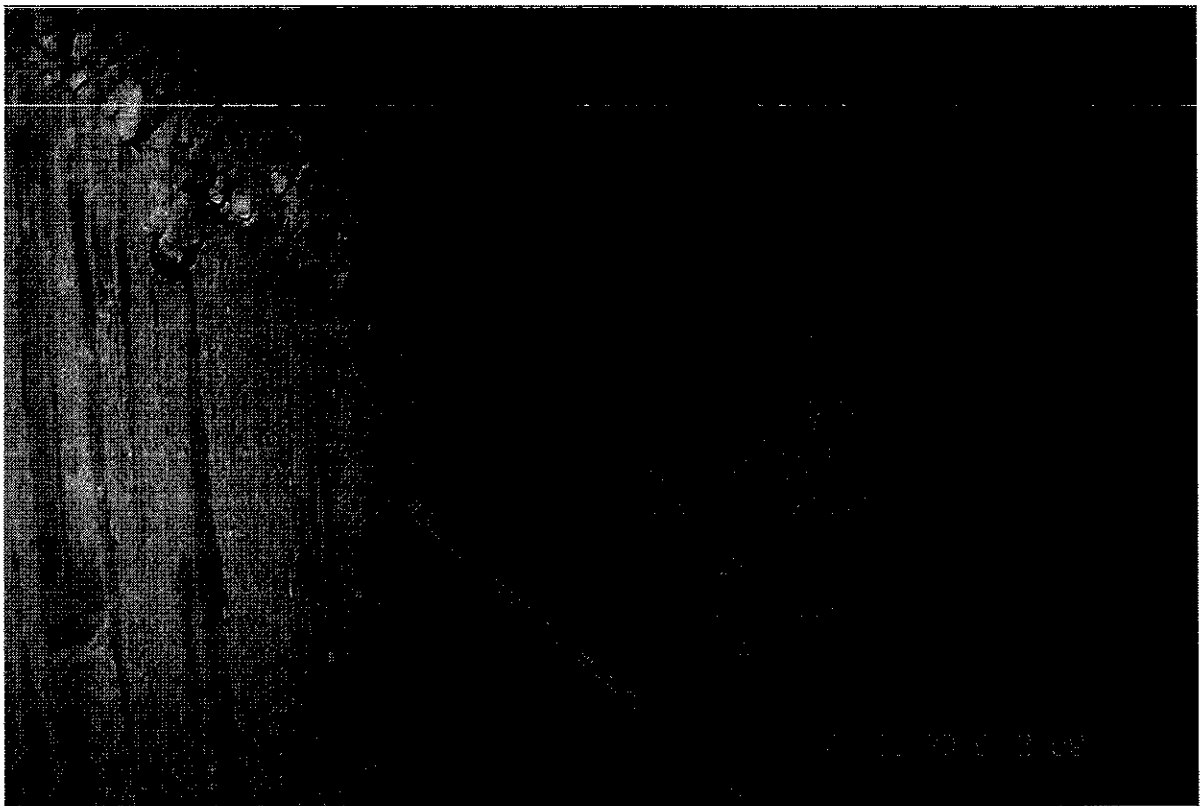


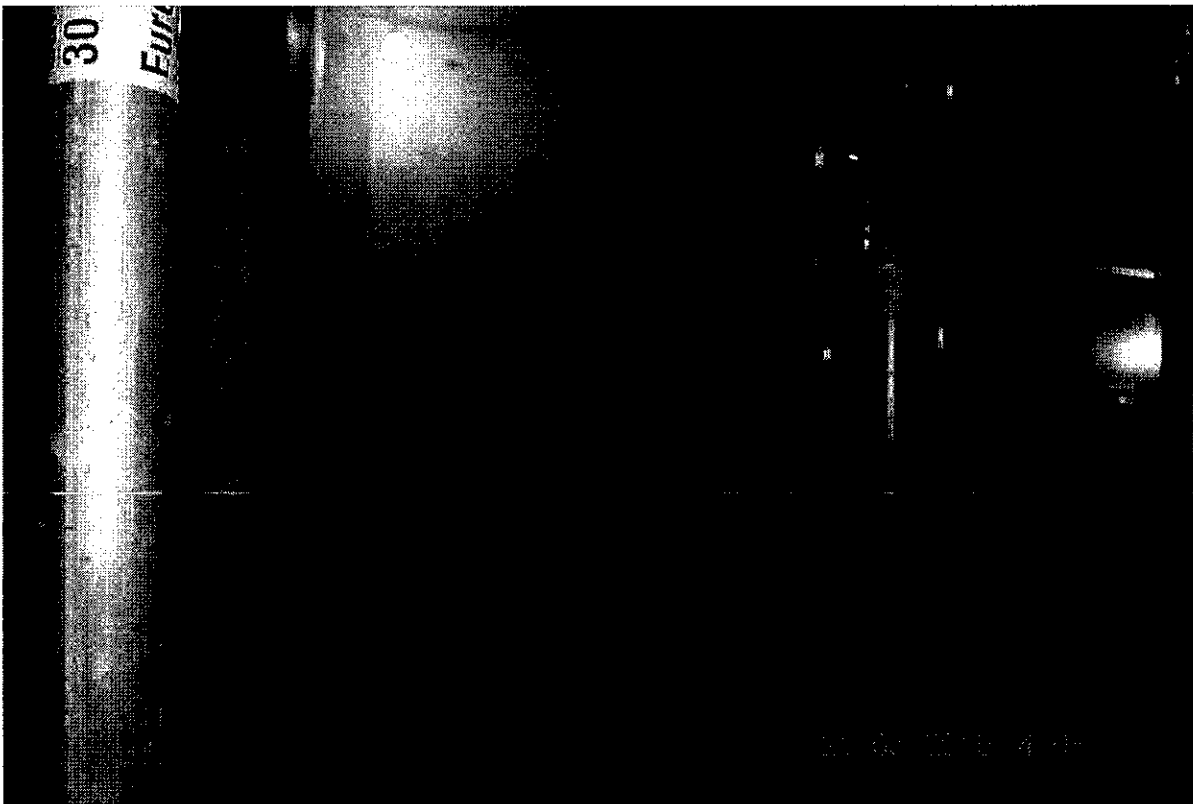
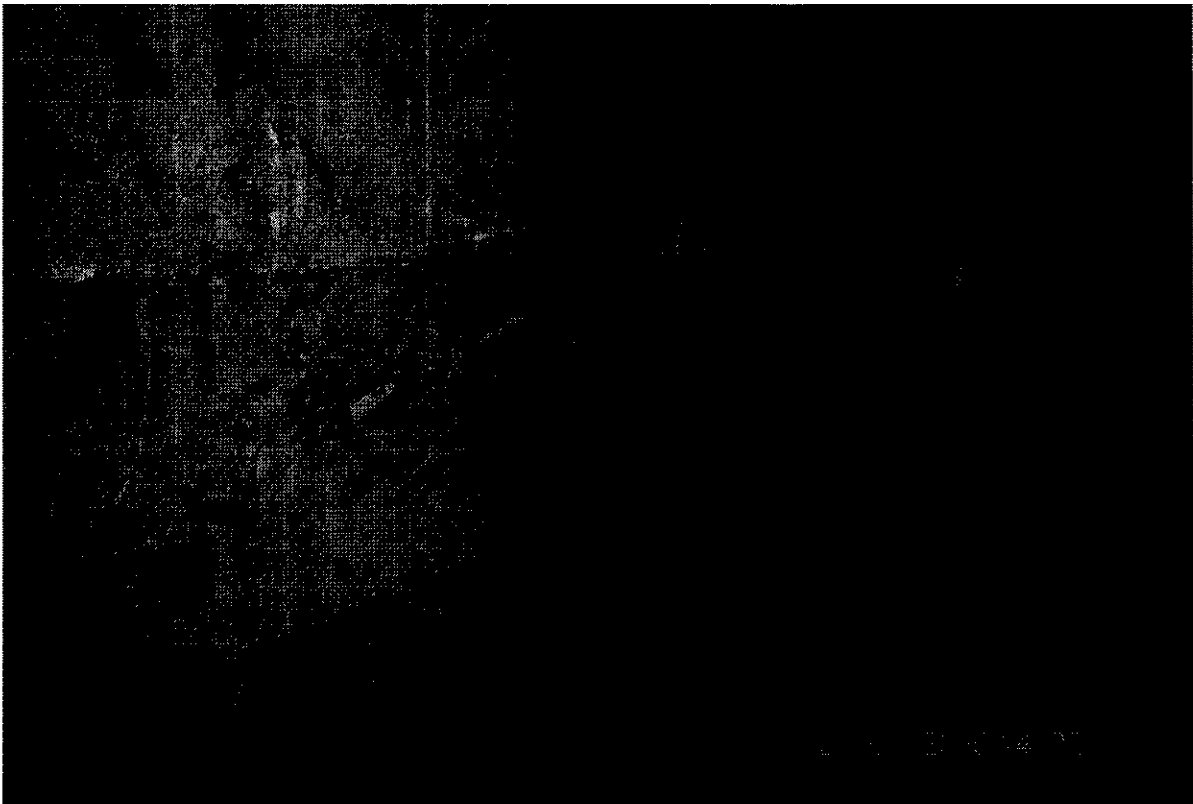
Walls

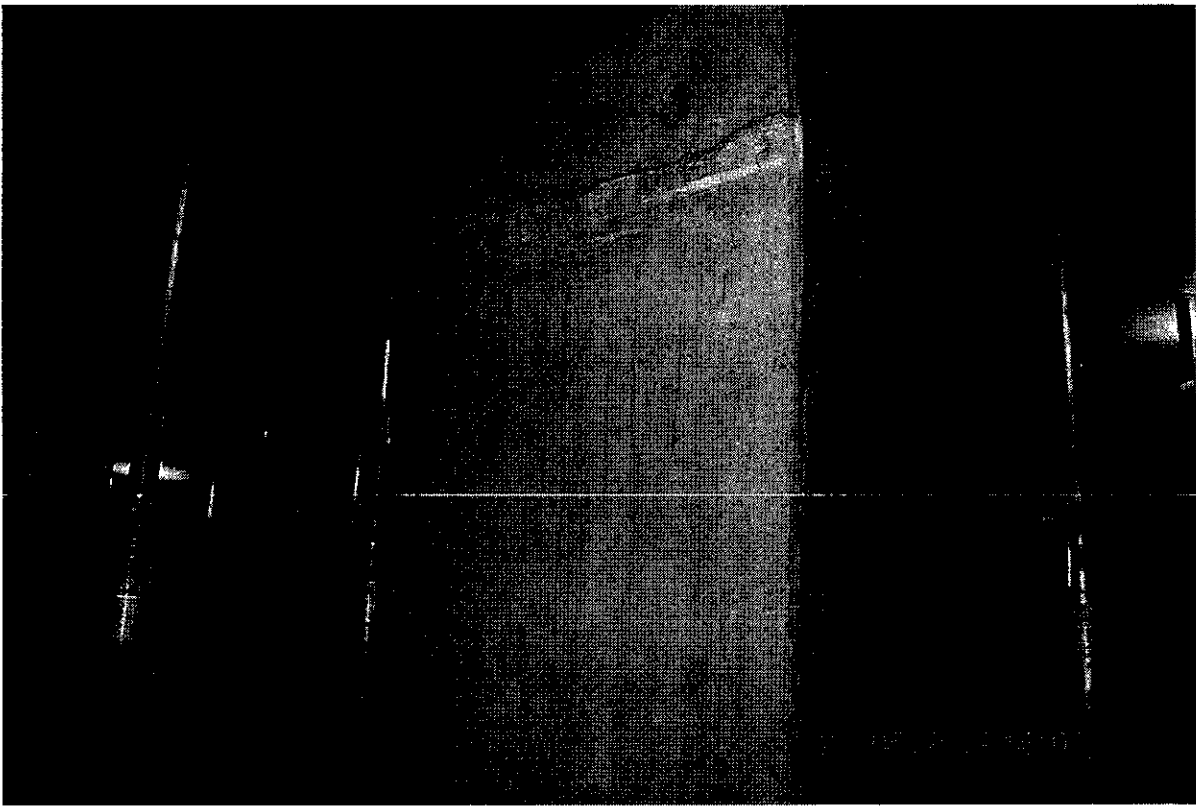
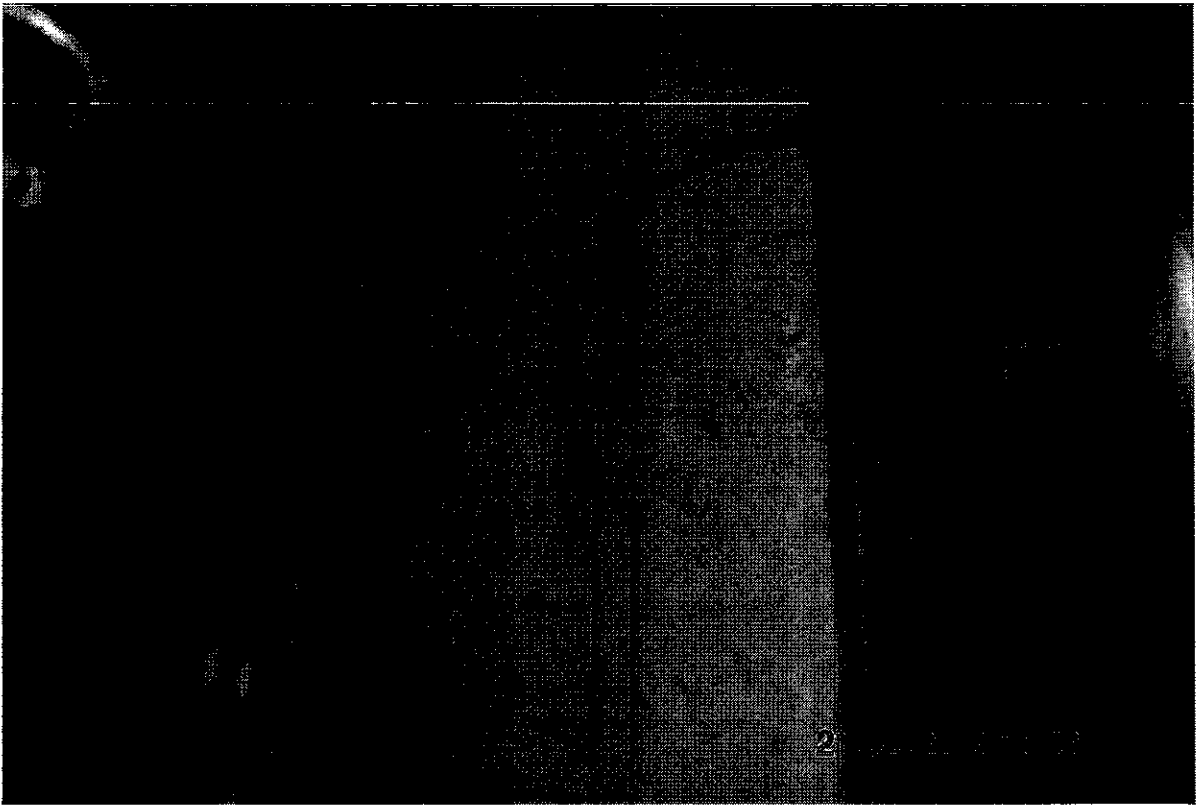


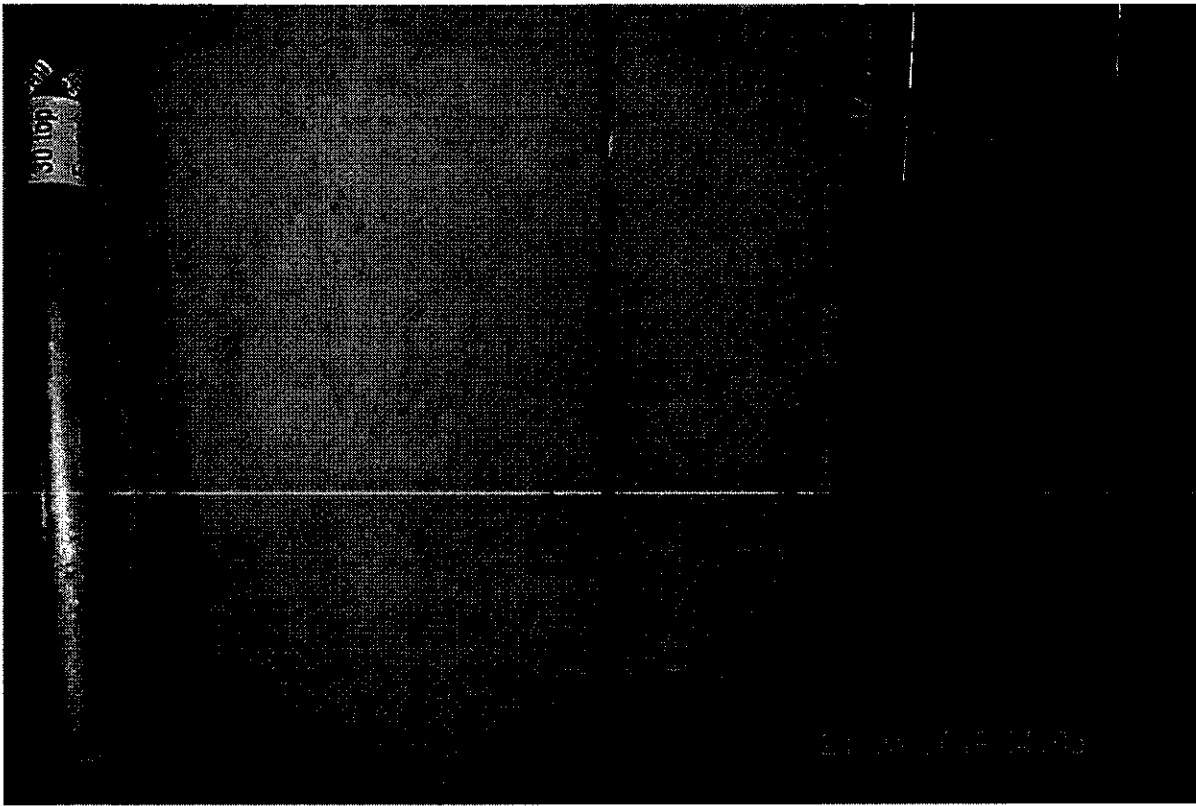
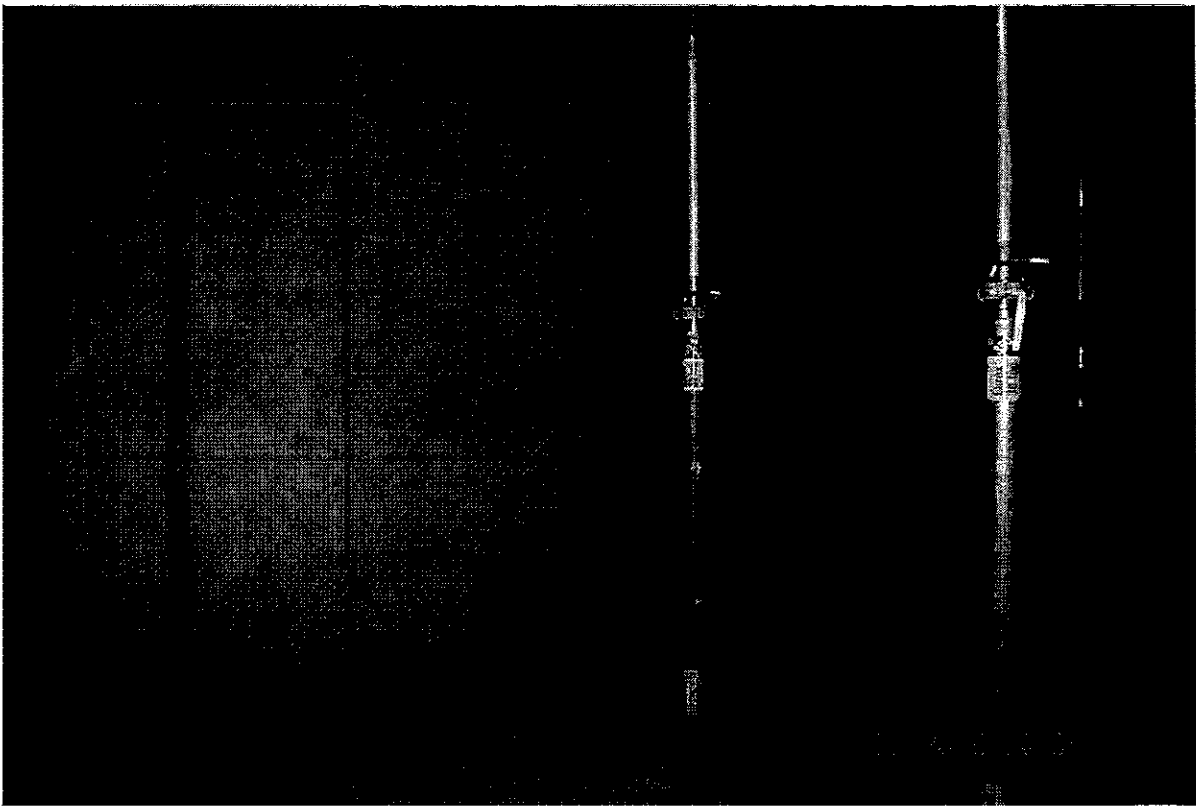


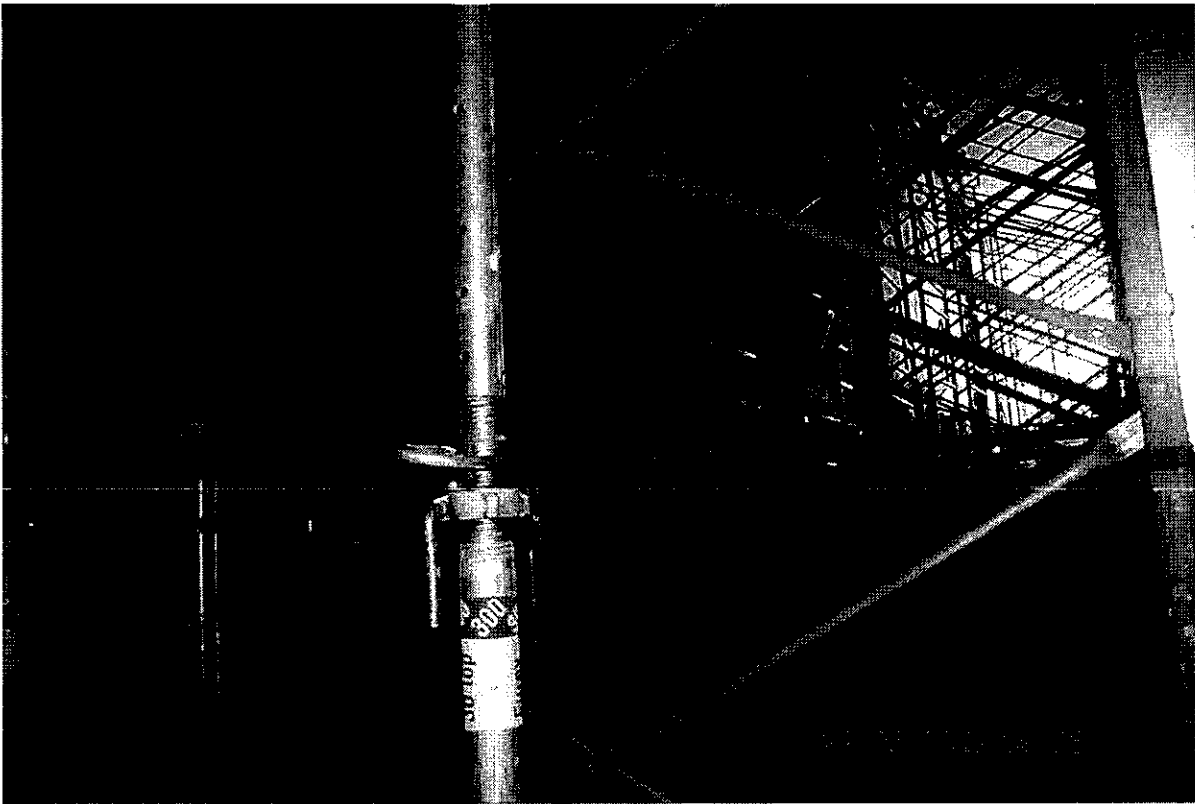


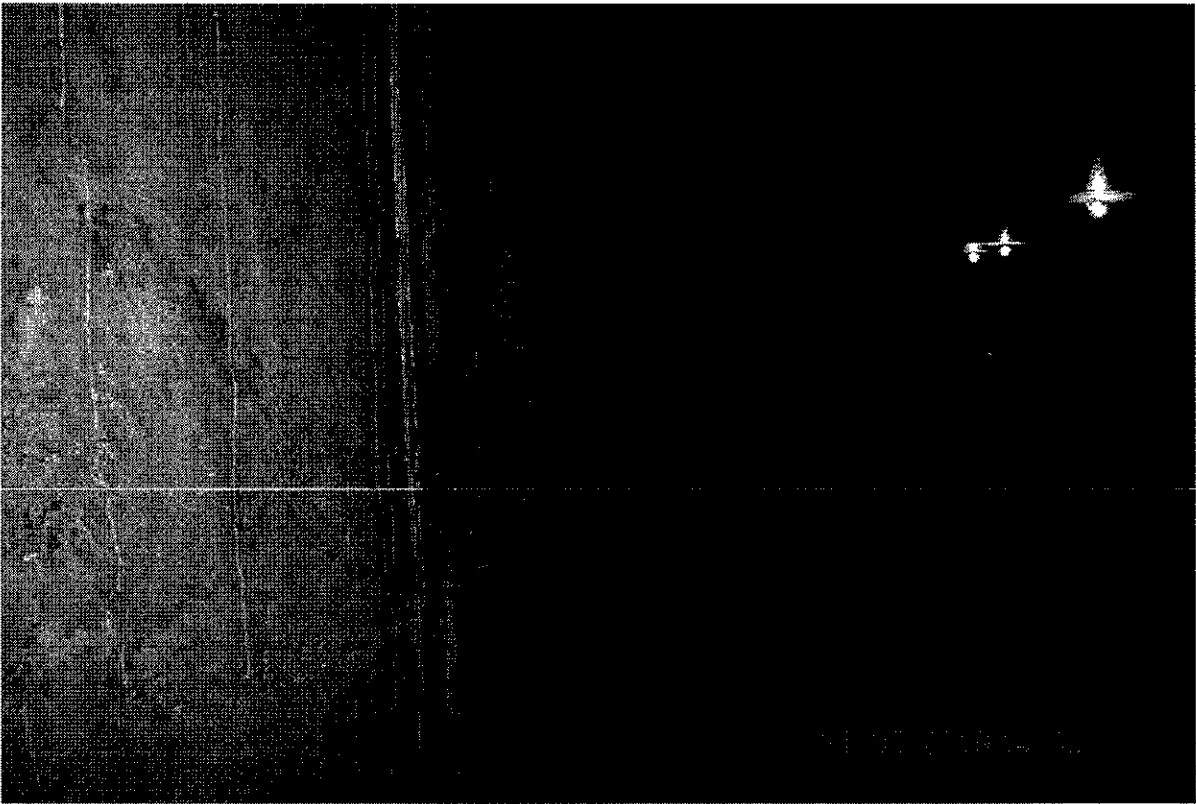
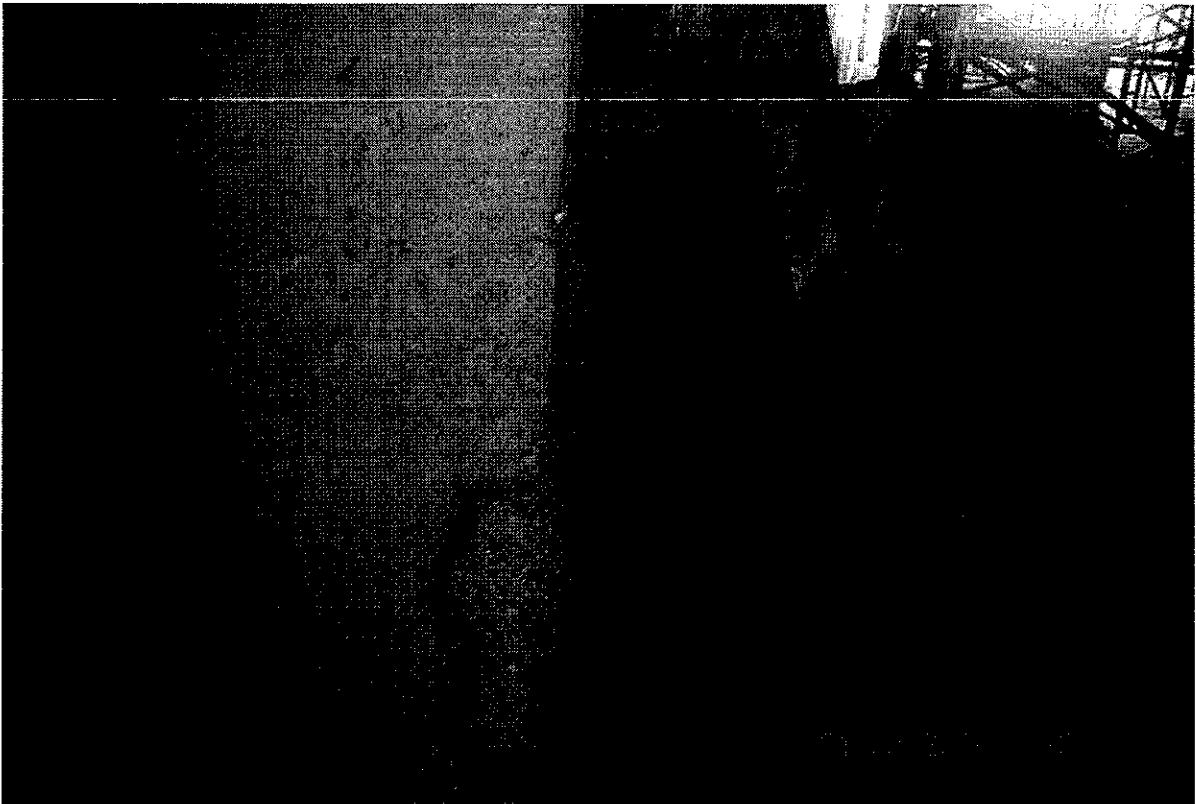


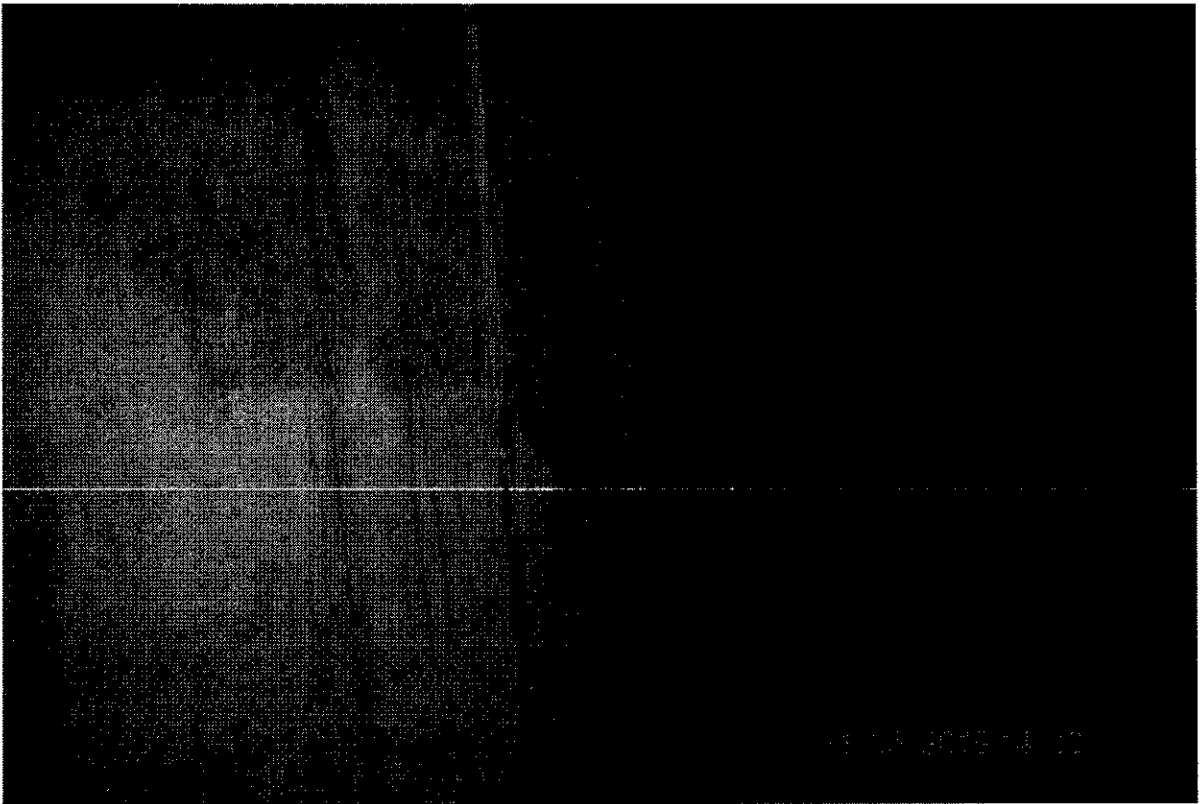
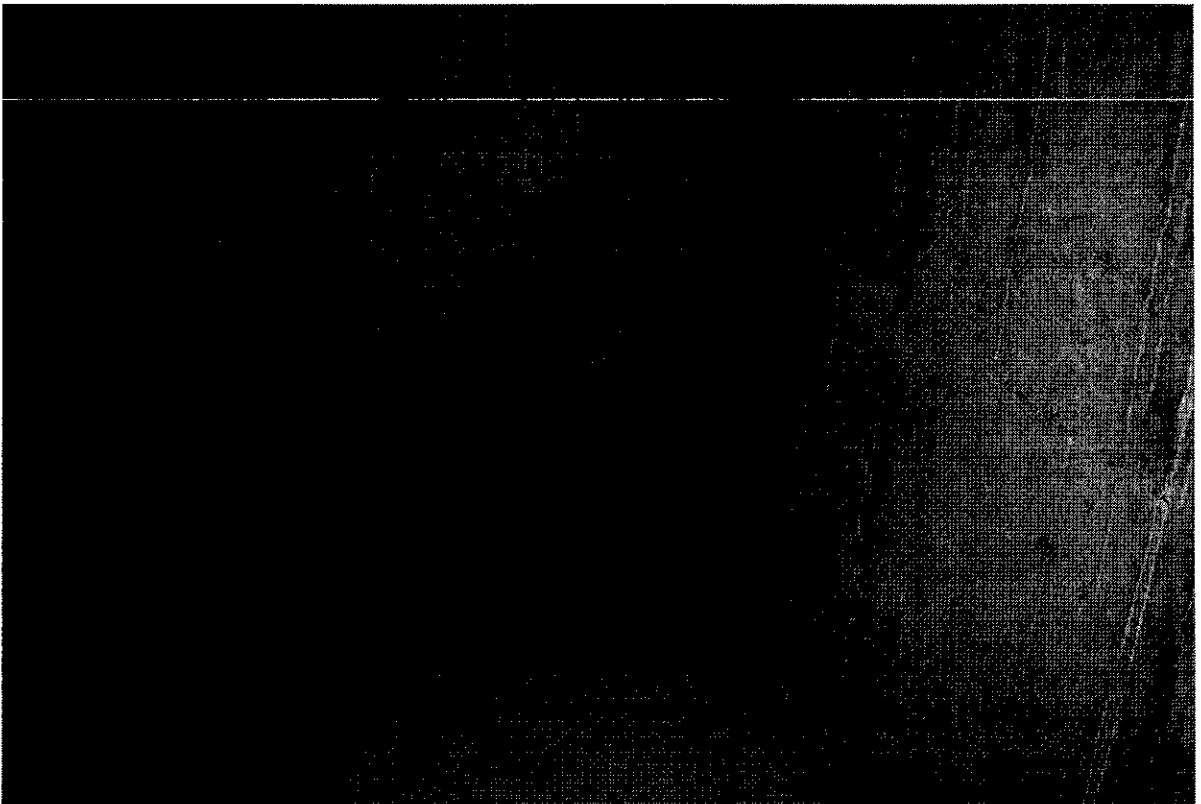


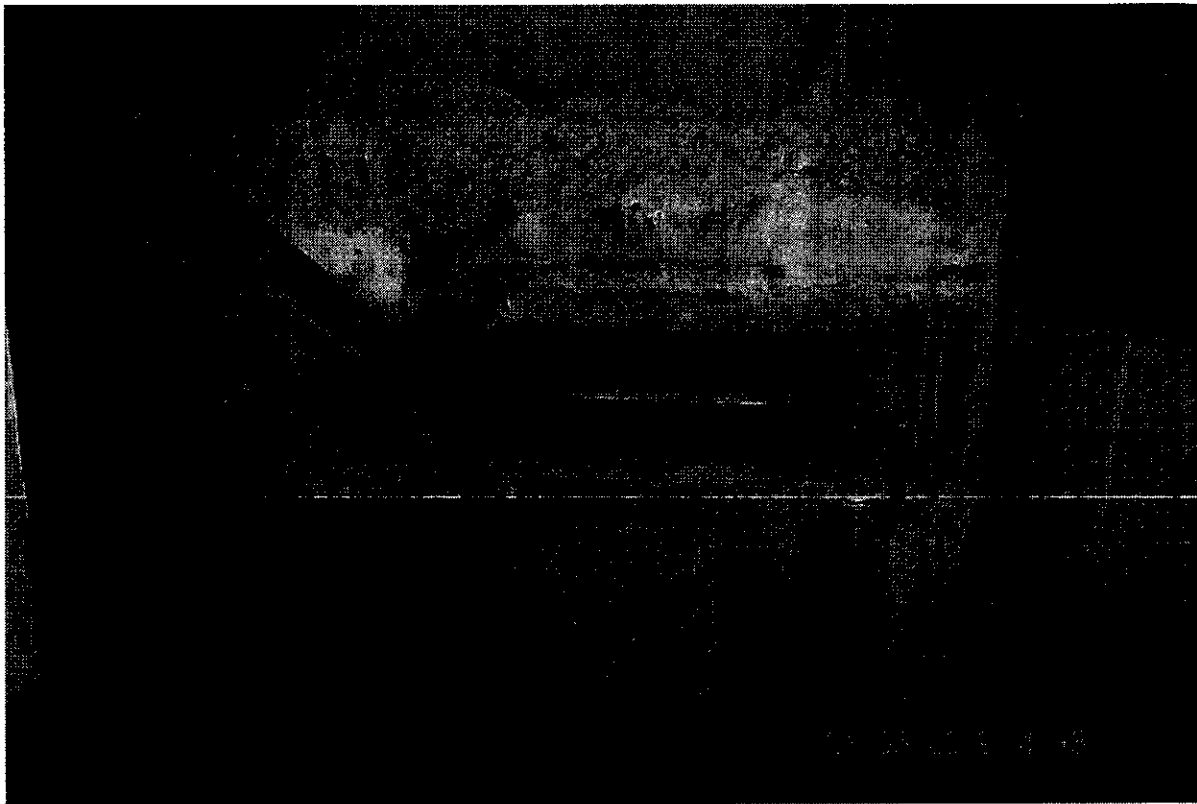


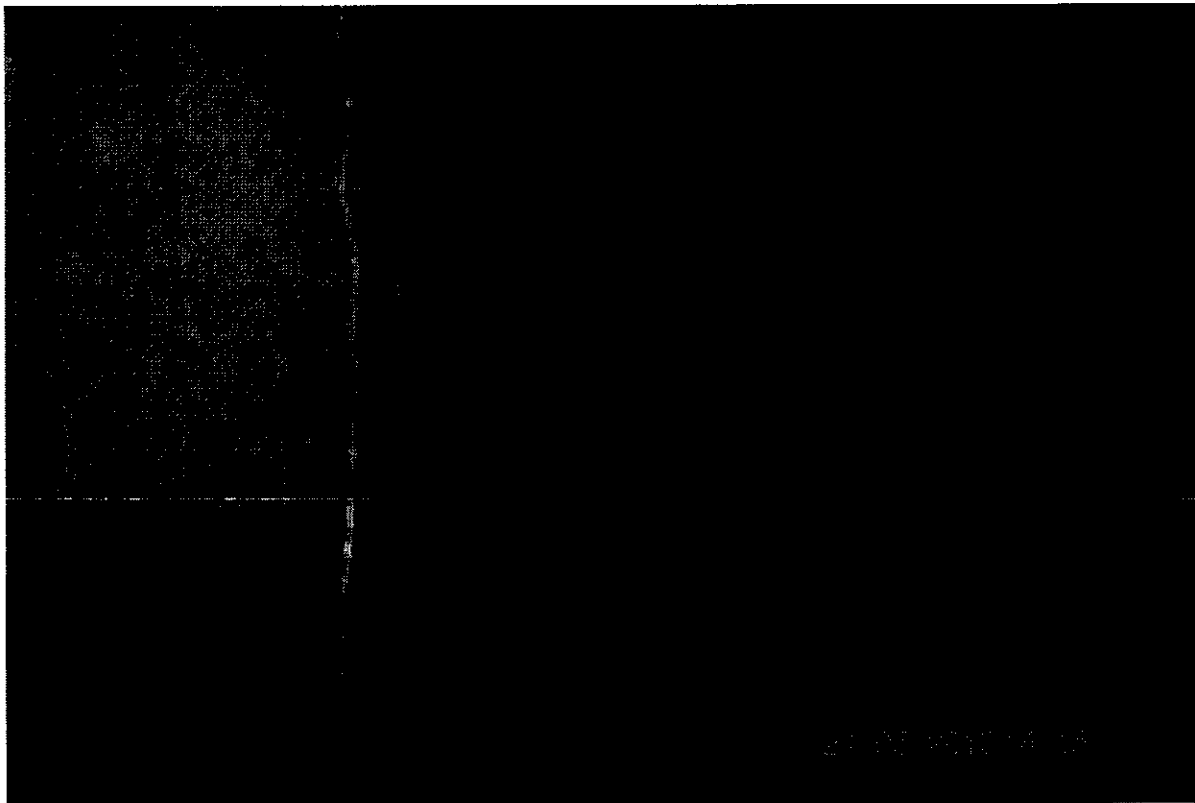
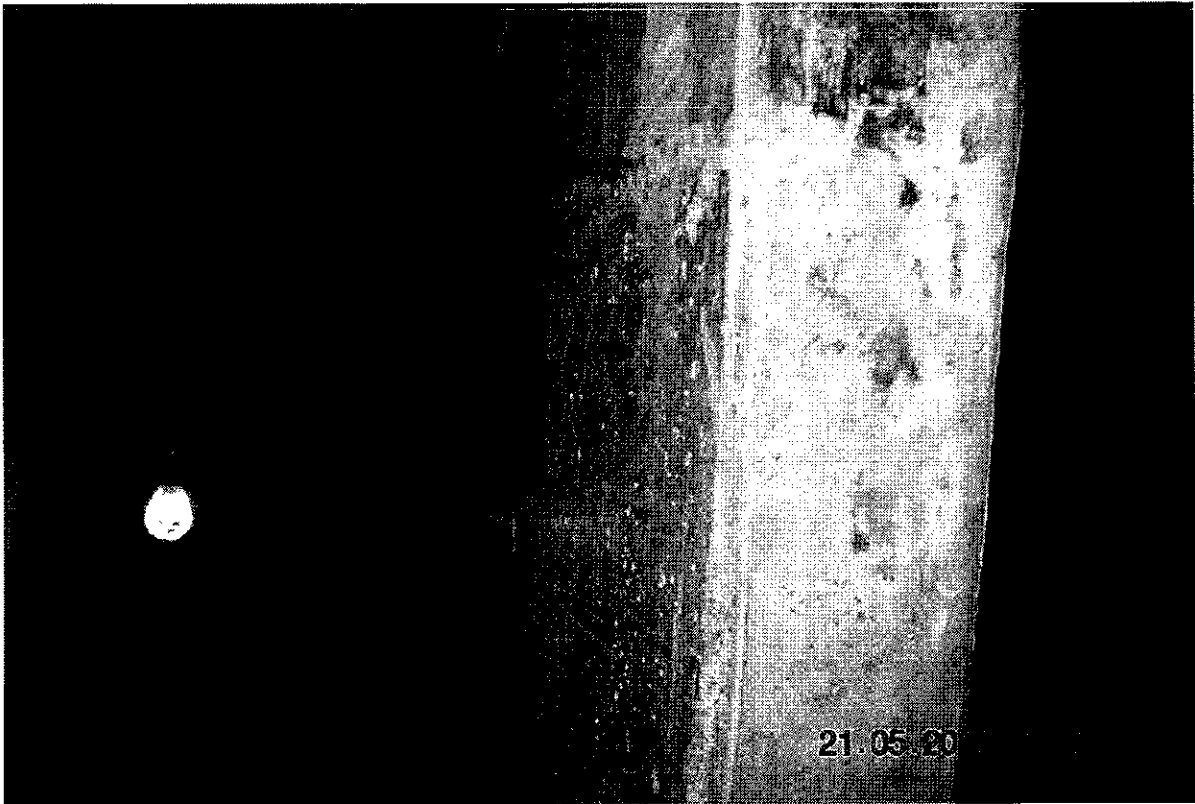


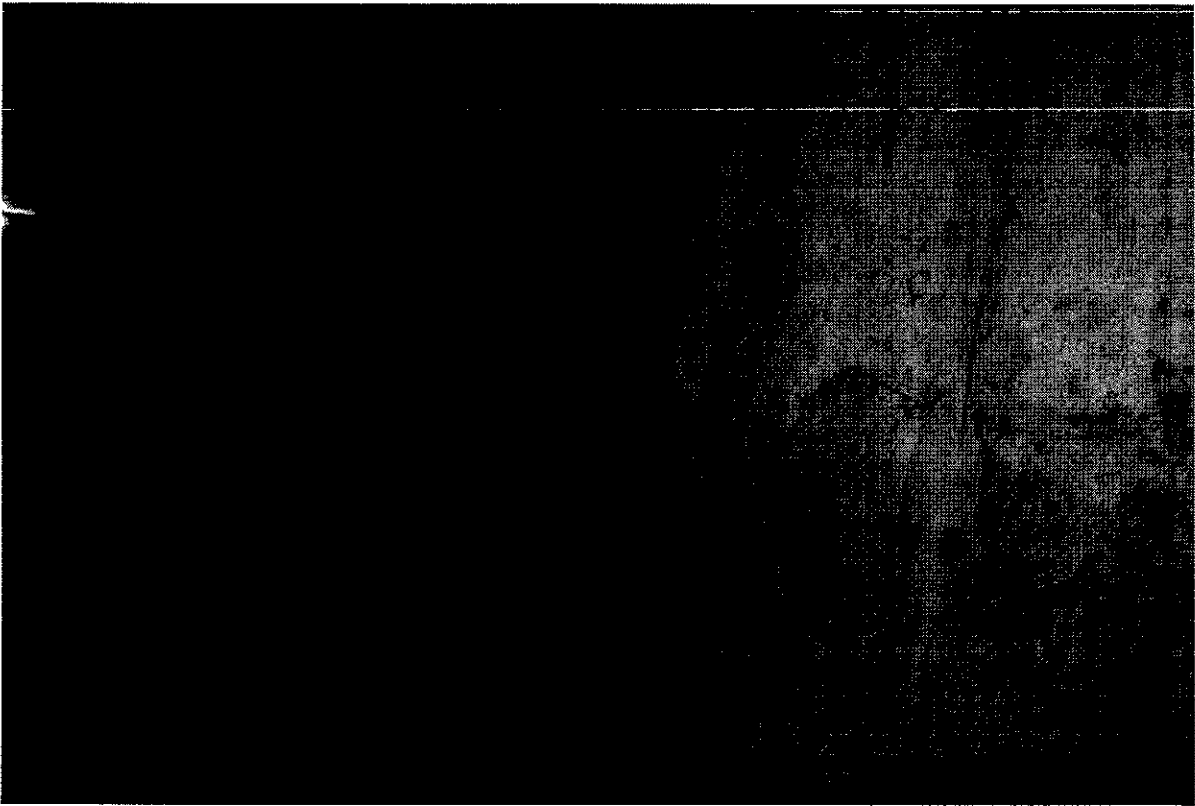




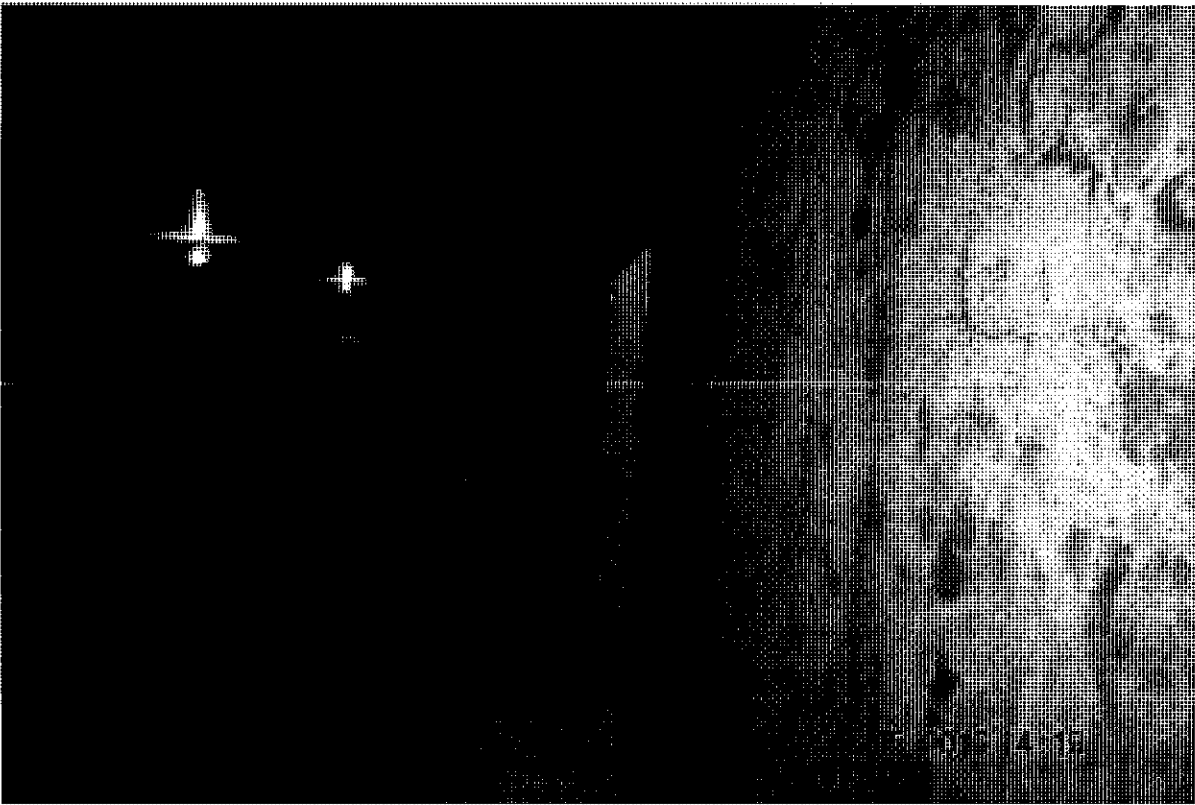


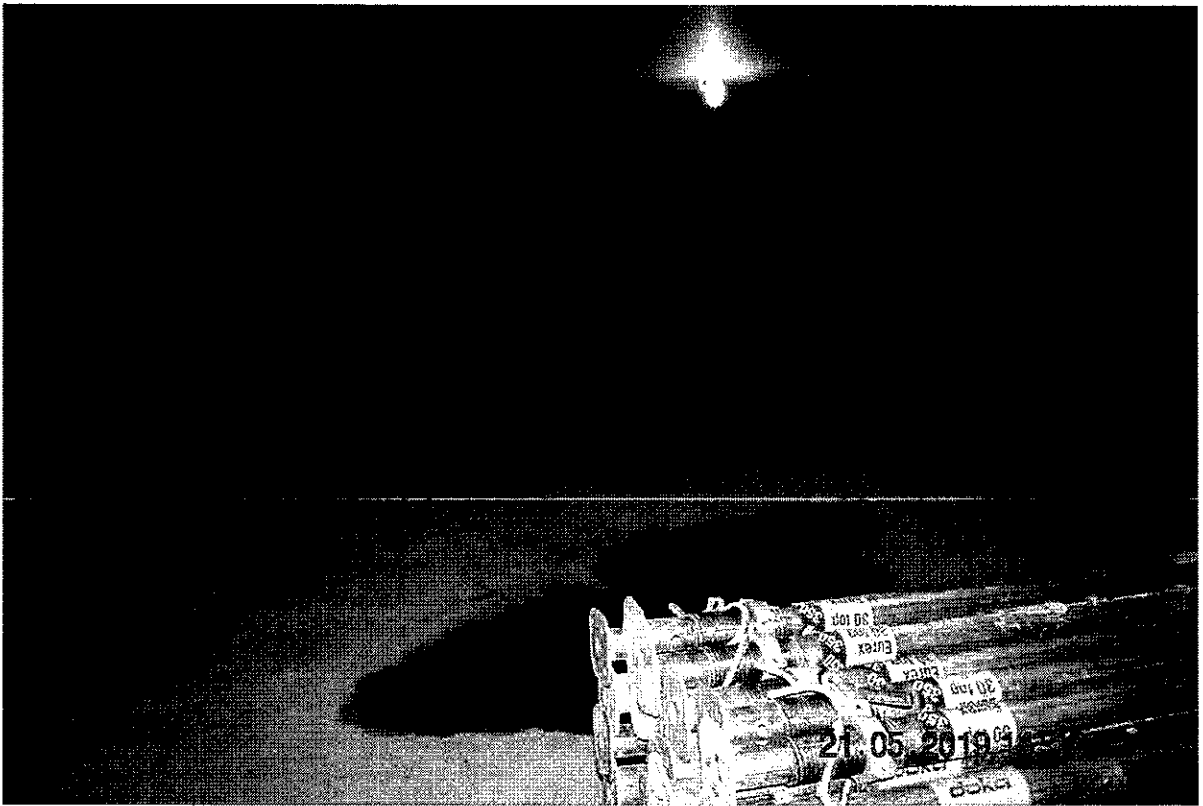


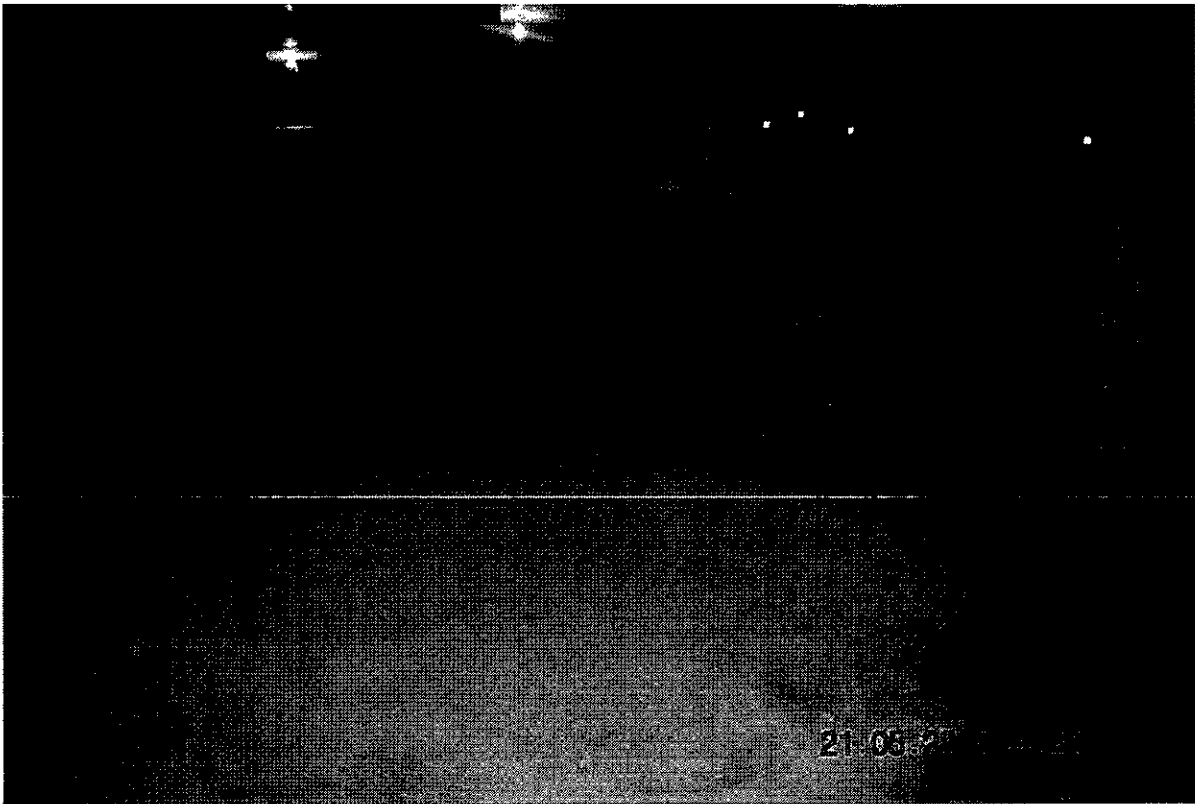
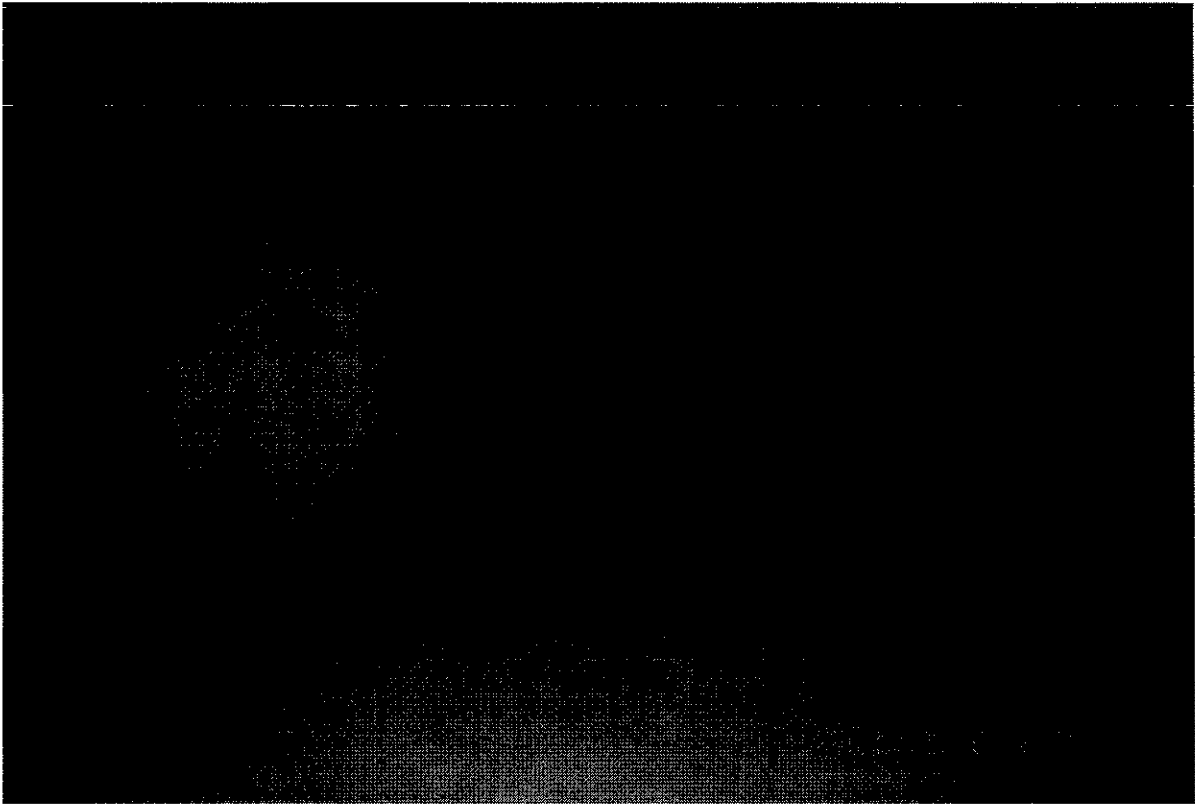


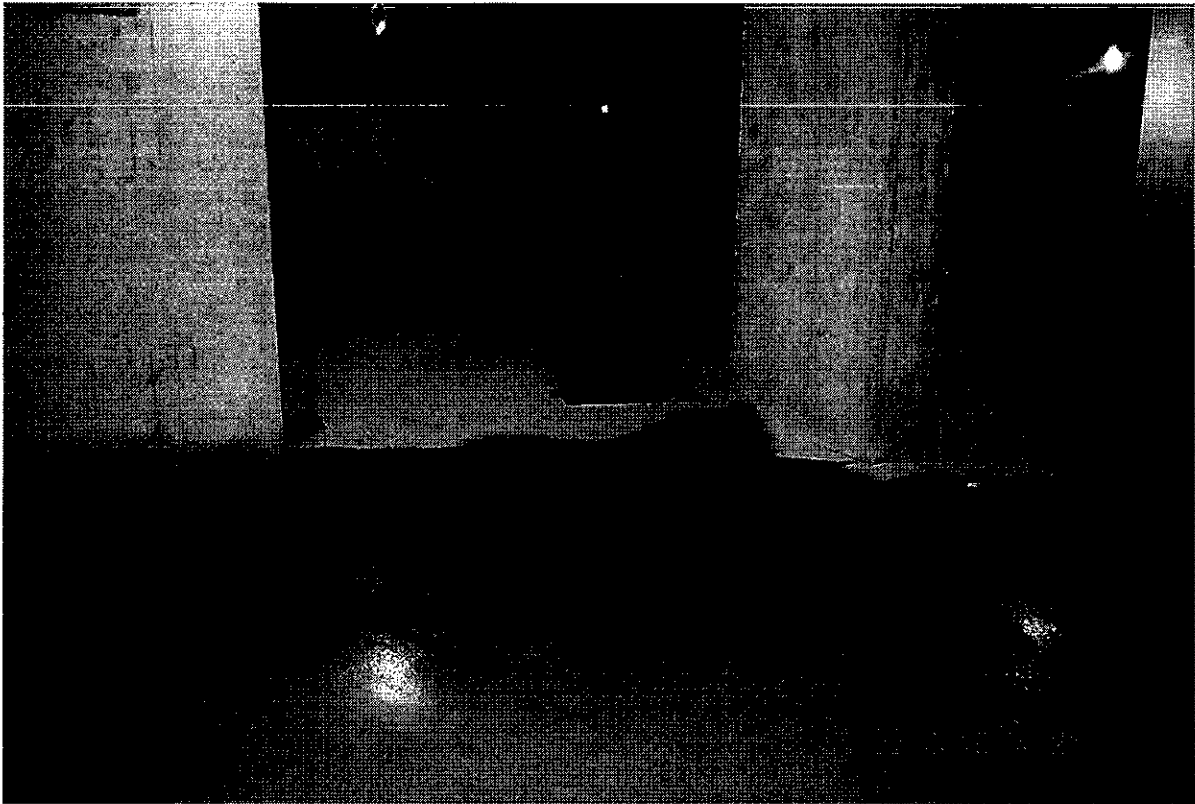


Shoring Support

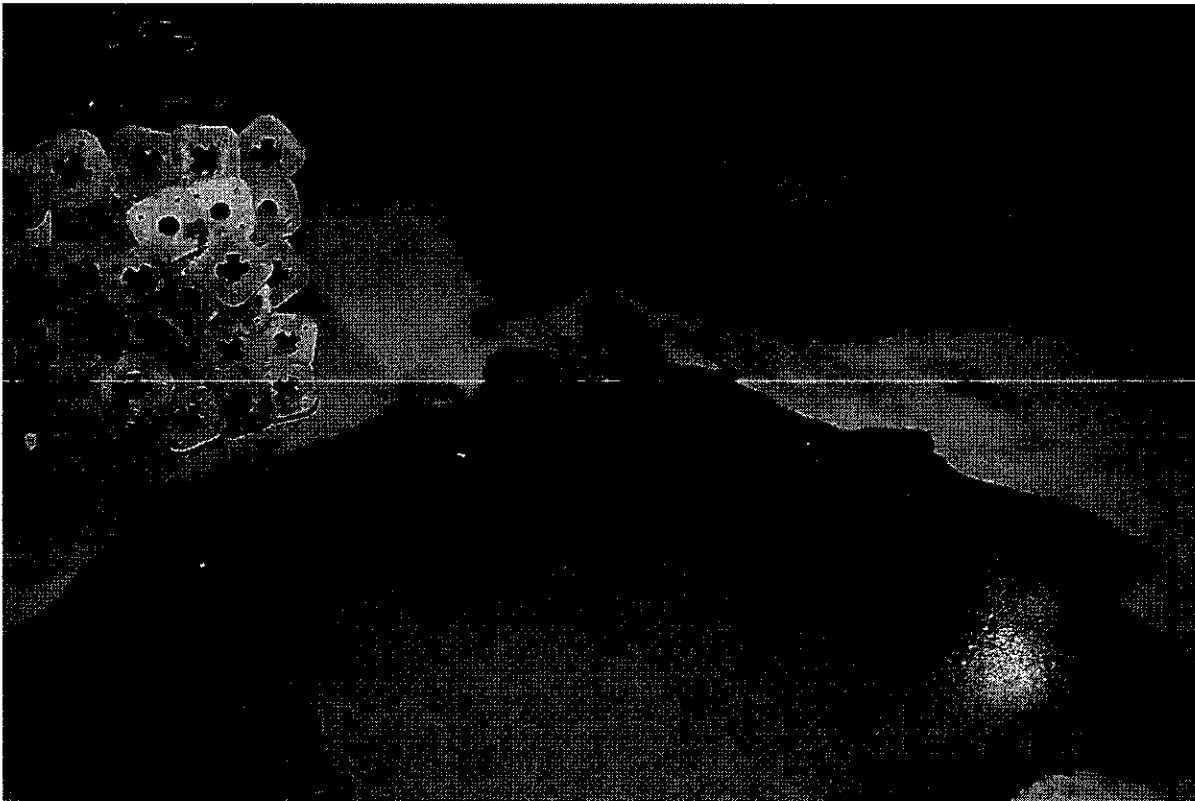


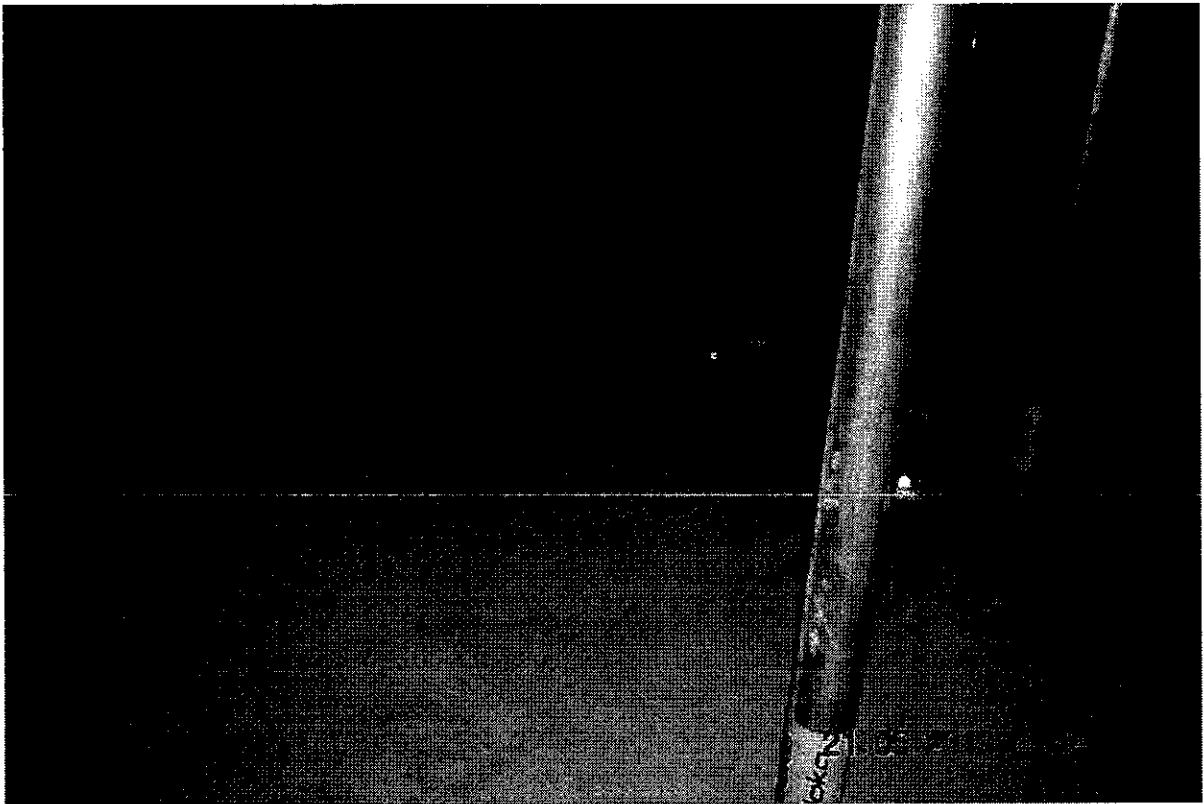
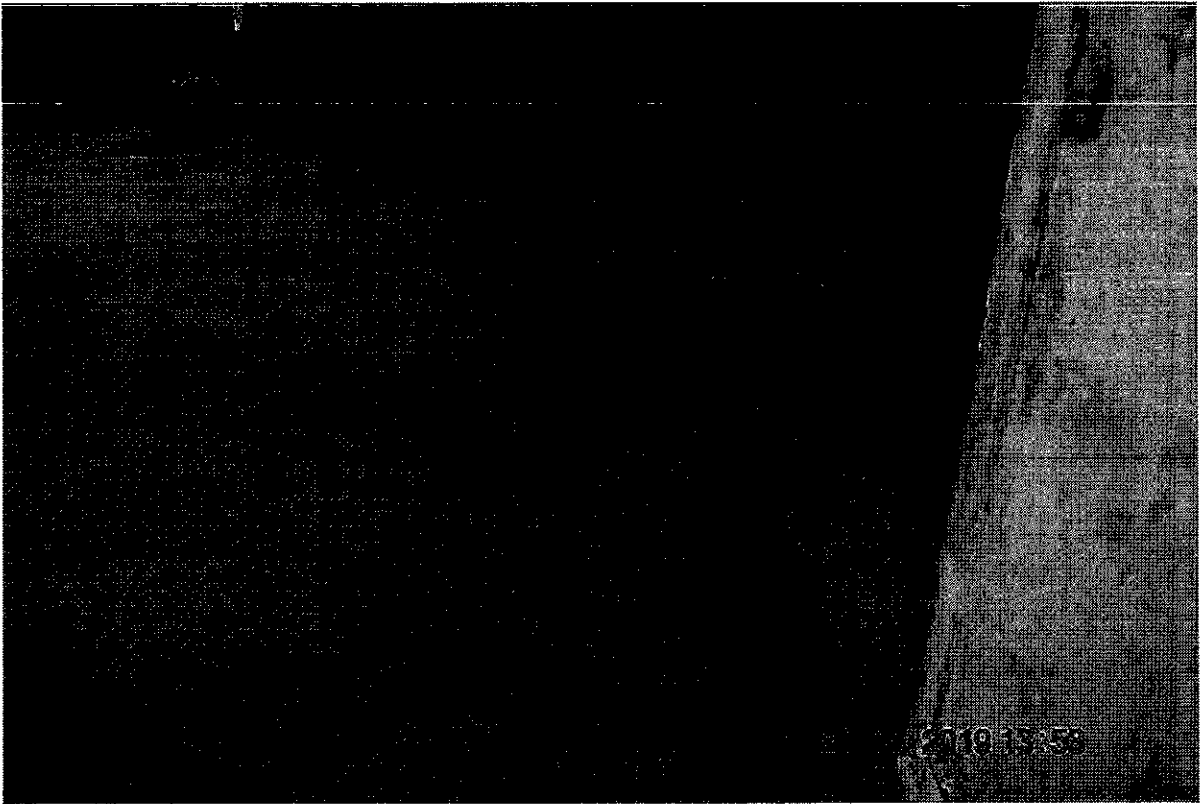


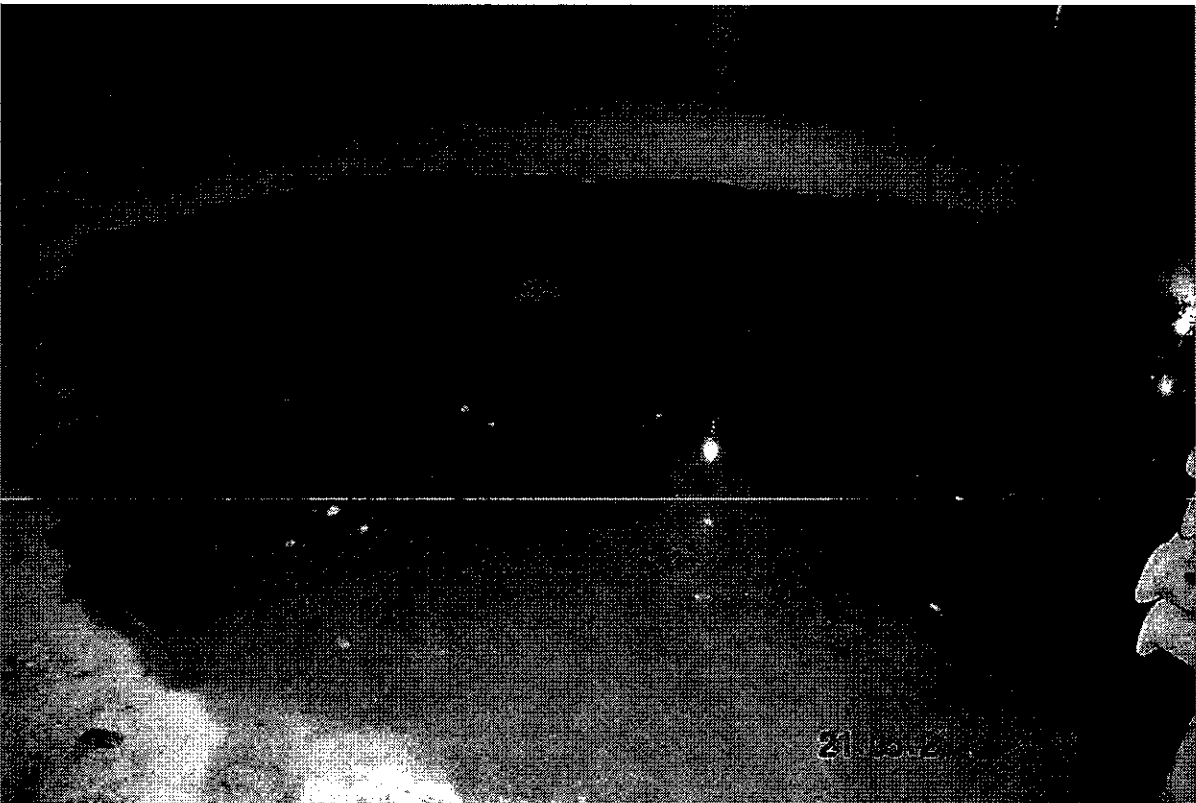
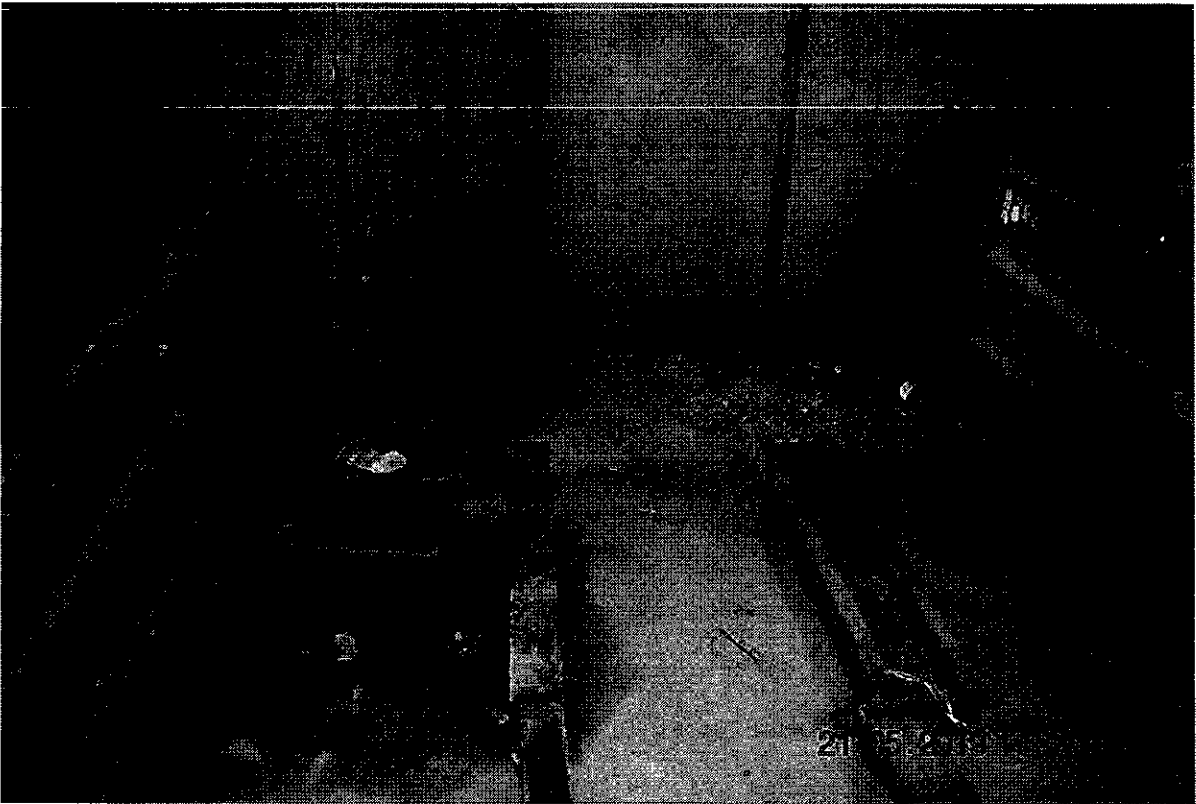


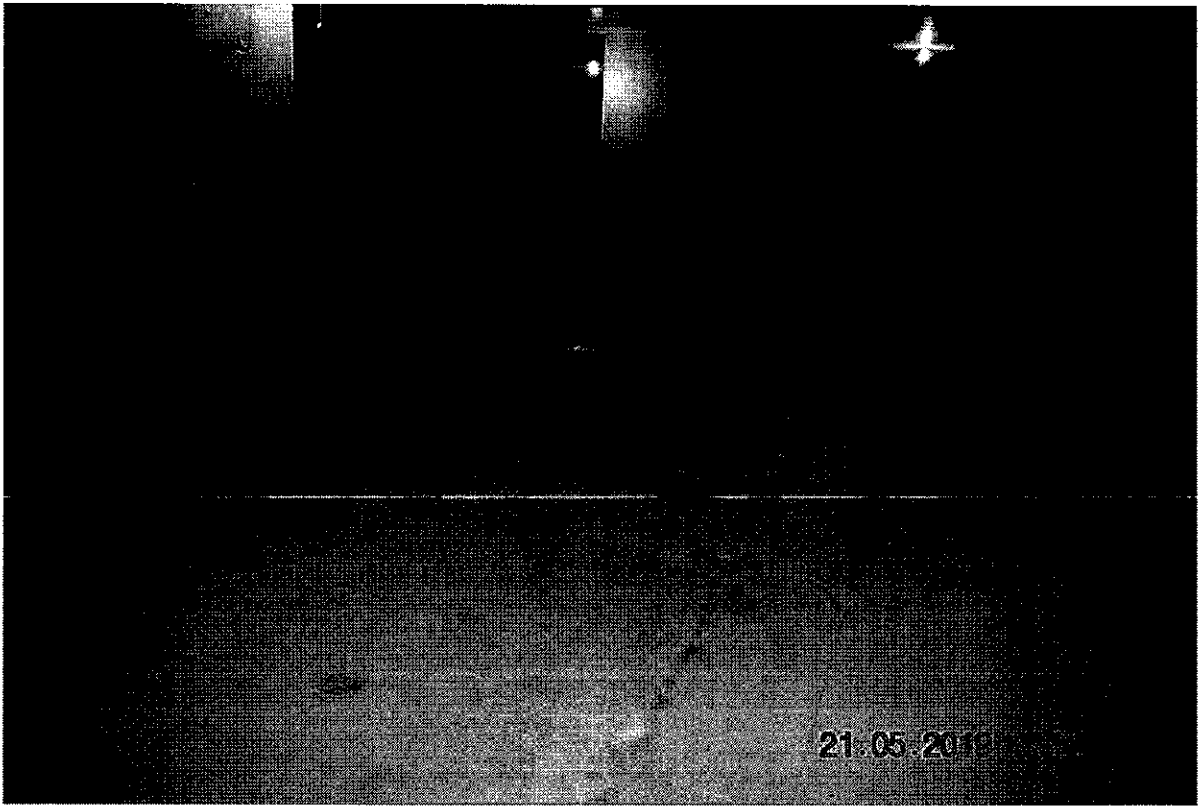
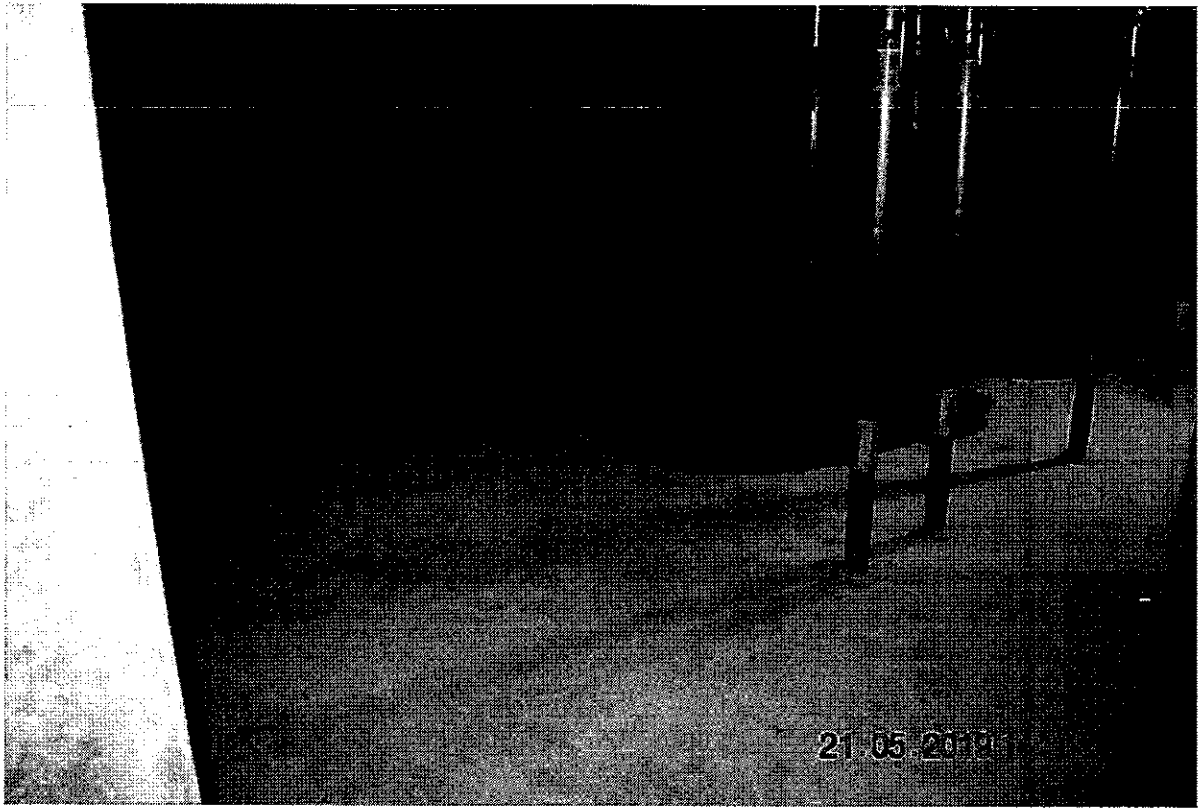


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Court file no. 35-2481393

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

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

APPLICANT(S)

(Court seal)

and

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

RESPONDENT(S)

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing in London on a date to be set by the presiding judge at the hearing for directions scheduled for 10 a.m. on 18 November 2020.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DateIssued by

Local registrar

Address of court office 80 Dundas Street
London, Ontario N6A 6A3

TO:

Harrison Pensa LLP
Barristers & Solicitors
450 Talbot Street,
London ON N6A 4K3

Attn: Melinda Vine

Lawyers for the Trustee
BDO Canada Limited

APPLICATION

1. The applicant makes application for:
 - (a) A determination that the sum \$381,578.40 held by the Trustee, which was received by the Trustee in or about the first to the fourth days of March 2019 by way of a cheque issued by Ayerswood Development Corp. ("Ayerswood"), is held by the Trustee in trust in favour of Ayerswood and does not form "property" of the bankrupt Sirius Concrete Inc. pursuant to the *Bankruptcy and Insolvency Act*;
 - (b) A determination that to the extent the amount received by the Trustee from Ayerswood for holdback under the Construction Act included holdback attributable to the said \$381,578.40 amount, such attributable amount should be repaid by the Trustee to Ayerswood;
 - (c) Leave under the *Bankruptcy and Insolvency Act*, if required, to bring this application;
 - (d) Costs and interest as appropriate.
2. The grounds for the application are:
 - (a) Ayerswood is the general contractor for the construction of a twelve storey residential building municipally known as 45 Yarmouth Street, in Guelph, Ontario ("the Building").
 - (b) Pursuant to a written contract between Sirius Concrete Inc. ("Sirius") and Ayerswood dated 14 March 2018 Sirius undertook to perform work that may be generally described as providing the labour, equipment, and materials to construct the concrete

structure of the three underground parking levels, the twelve above ground levels, and the roof slab and penthouse for the Building.

- (c) There was no provision in the contract for how much Sirius would be paid periodically, only a provision for payment in 30 days after invoice and a total price for the work. There was no schedule of values setting out how the total contract price was allocated (for example, so much for each floor completed). Sirius rendered monthly invoices from May to December 2018, which Ayerswood paid.
- (d) By February 2019 the three underground parking levels, most of the ground floor, and part of the second floor had been formed by Sirius. This was substantially behind the schedule represented by Sirius of 10 days per floor.
- (e) By the first of March 2019 Ayerswood had not paid the January 2019 invoice of Sirius. The amount of that after deduction of holdback, and with HST, was \$381,578.40. Ayerswood had determined to withhold that payment due to the delays and deficiencies in the work of Sirius.
- (f) Sirius agreed to meet with Ayerswood on 1 March 2019 in order to present Ayerswood with a plan to complete the work on the Building in a reliable and expeditious manner. Sirius failed to attend the meeting. Sirius contacted Ayerswood on 1 March 2019 and asked to delay the meeting until the following Tuesday, 5 March 2019. Sirius requested Ayerswood to release to it the cheque for the January invoice (\$381,578.40) and assured Ayerswood that Sirius was committed to providing Ayerswood with an effective plan and sticking to it so that their work would be back on track and get completed. Sirius represented to Ayerswood, in order to induce Ayerswood to release the cheque, that if Ayerswood provided the cheque now that would ensure that Sirius would push things along to get their work done. The

assurance of Sirius committing to finishing up the work on an efficient schedule was of huge importance to Ayerswood as the project was significantly behind schedule, so in reliance on these assurances from Sirius, and believing them, Ayerswood relented and agreed to release the cheque that day.

- (g) What Ayerswood did not know on March first was that Sirius had already been working with its licenced insolvency trustee prior to March first and the documents were prepared, and signed on March first 2019, to put Sirius into bankruptcy. When Sirius dealt with Ayerswood on March first, and persuaded it to release the cheque to them, Sirius knew it was not going to be doing any further work on the Building. So when Sirius wrote to Ayerswood on 1 March 2019 - "Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues." – Ayerswood was being lied to.
- (h) Ayerswood was assured by Sirius that if the payment of their January invoice was given to them they would come to the meeting on 5 March 2019 with a concrete plan to solve the problems and would move their work ahead promptly. This was pure deception with the object of getting Ayerswood to release the cheque. Ayerswood, believed these lies, and in the belief that Sirius would be not just continuing their work to completion, but promptly to completion, Ayerswood relented on the decision to withhold the cheque and released to Sirius the cheque of 1 March 2019 for \$381,578.40.
- (i) If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited ("the Trustee") and were going to assign Sirius into bankruptcy and abandon their contract for the Building Ayerswood never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that

payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been overpaid for the work they had done. Sirius was not owed \$381,578.40, or any part of that money, and it only received that cheque due to their deceit.

- (j) If the funds being held by the Trustee, namely the \$381,578.40, plus the 10% holdback attributable to that amount, are not returned to Ayerswood then Ayerswood will have paid for work that was not done and the creditors of Sirius will receive funds that were not earned by Sirius and were obtained through deceit.
- (k) A proprietary remedy or the imposition of a constructive trust is appropriate to redress a situation of unjust enrichment, or where funds have been obtained through conduct constituting commercial immorality or misconduct.

3. The following documentary evidence will be used at the hearing of the application:

Affidavit of John Camara

(Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service.)

(Date of issue)

(Name, address and telephone number of lawyer or applicant)

F. SCOTT TURTON
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24 Bridgewater Drive
Richmond Hill, Ontario L4E 3N4

LSUC: 17631C

(905) 508-5821
Fax: (905) 508-0519
Email: scott@scottturtonlaw.com

Lawyer for Ayerswood Development Corporation

Court file no. 35-2481393

SUPERIOR COURT OF JUSTICE
Proceeding commenced at London

RESPONDING MOTION RECORD
(Returnable 18 November 2020)

*Name, address, telephone and fax numbers of lawyer or party
(Law Society registration number of lawyer):*

F. SCOTT TURTON
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Lawyer for Ayerswood Development
Corporation

Court file no. 35-2481393

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

**IN THE MATTER OF THE BANKRUPTCY OF
SIRIUS CONCRETE INC. OF THE CITY OF
WATERLOO, IN THE PROVINCE OF ONTARIO**

**FACTUM OF THE RESPONDENT ON THE MOTION
AYERSWOOD DEVELOPMENT CORPORATION
18 NOVEMBER 2020**

Overview

1. The Trustee brings this motion seeking, in respect of Ayerswood Development Corporation (“Ayerswood”), directions with respect to the \$381,578.40 payment made by Ayerswood on 1 March 2019, which funds are held by the Trustee in the Estate account.
2. As will be outlined in this factum, Ayerswood, in affidavit evidence, outlines how it was deceived by Sirius Concrete Inc. (“Sirius”) into releasing to Sirius the cheque for \$381,578.40 on 1 March 2019. Sirius, as we now know from the Trustee’s supplement to the Fourth Report, had already been meeting with the Trustee in late February 2019 and “returned the completed application [for the assignment in bankruptcy] on the morning of

March 1, 2019". Sirius well knew that it had no intention to return to the jobsite and lied to Ayerswood in order to obtain the cheque, which cheque was then immediately certified by someone (the available inference being to prevent Ayerswood stopping payment when it found out it had been deceived). Paragraph 2.2.5 of the Supplement to the Fourth Report refers to the cheque being "taken to the bank and certified" but is not specific as to whether that was done by the Trustee or by Sirius. It is clear however that the cheque was given to the Trustee.

3. The imposition of a remedial constructive trust is a remedy that the Court can grant when funds have been obtained by misrepresentation or deceit, or in a situation of unjust enrichment. The imposition of such a remedial trust has the result that the funds are not property of the bankrupt, and hence not part of the estate of the bankrupt. Whether that remedy is the result will be for the Court to determine on an evidentiary record. A trial, or trial of an issue, is the appropriate venue to facilitate that. That is the direction that Ayerswood submits is appropriate.

Jurisdiction

4. Section 34(1) of the *Bankruptcy and Insolvency Act* (“BIA”) provides:

“A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as it appears proper in the circumstances.”

5. The jurisdiction of the court under section 34(1) is the giving of directions, not the determination of substantive issues:

“Moreover, it seems well settled in law that in an application under s. 16 of the *Act* a court must confine itself, in giving directions, to matters concerning administration of the estate and has no authority to resolve substantive matters in dispute between a trustee and a third party.”

Re Ward, 1987 CarswellNB 30, [1987] A.N.B. No. 1057, [1987] N.B.J. No. 1057, 214 A.P.R. 389, 66 C.B.R. (N.S.) 164, 7 A.C.W.S. (3d) 116, 84 N.B.R. (2d) 389

The Factual Background

6. The only affidavit evidence is that of John Camara on behalf of Ayerswood. The following paragraphs are quoted from his affidavit:

“1. I am the construction manager of Ayerswood Developments Corp. (“Ayerswood”). Ayerswood acts as the general contractor for the construction of a twelve storey residential building municipally known as 45 Yarmouth Street, in Guelph, Ontario (“the Building”).

2. Exhibit A to this affidavit is a true copy of the contract between Sirius Concrete Inc. (“Sirius”) and Ayerswood dated

14 March 2018. I negotiated this contract with the president of Sirius, David Forbes. The work to be done by Sirius may be generally described as providing the labour, equipment, and materials to construct the concrete structure of the three underground parking levels, the twelve above ground levels, and the roof slab and penthouse for the Building. ...

3. ... One of the aspects of my negotiations with Sirius was the length of time it would take for them to do their work. What was agreed before Sirius started its work was six days per floor. (This refers to the above ground floors, not the parking levels). By August 2018 it was apparent that the work by Sirius was proceeding more slowly than expected.

4. ... The autumn of 2018 and January 2019 saw Sirius falling farther behind their promises of when floors would be completed.

5. There was no provision in the contract for how much Sirius would be paid periodically, only a provision for payment in 30 days after invoice and a total price for the work. There was no schedule of values setting out how the total contract price was allocated (for example, so much for each floor completed). Sirius rendered monthly invoices from May to December 2018, which Ayerswood paid.

6. By February 2019 the three underground parking levels, most of the ground floor, and part of the second floor had been formed by Sirius. This was substantially behind the schedule originally discussed with Sirius...As before, I received assurances from Sirius that they would do something. In past I had thought that paying the invoices of Sirius, and not arguing about the amount charged in relation to the work done, would provide an incentive for them to get the work done at the Building and prioritize this project over others. As February 2019 progressed, and the work by Sirius did not progress, I considered that a different approach, namely withholding payment until progress was demonstrated, would be appropriate.

7. By the first of March 2019 Ayerswood had not paid the January 2019 invoice of Sirius. The amount of that after deduction of holdback, and with HST, was \$381,578.40.

8. Exhibit D to this affidavit is my email exchange with Sirius on the first of March 2019. In my email of 10:51 a.m. on March first I write that I was at the job site in Guelph and was disappointed that no one from Sirius showed up. A meeting on site had been set up for that morning at which Sirius was to present a detailed plan that would address the problems with their delays and deficiencies. While still on site I received a call from Tomas Waite, the project manager at Sirius, apologizing for their failure to come to the meeting and asking that the meeting be put back to the following Tuesday, March fifth. I was told that they were discussing their plan to get back on track with their work at the Building and needed a bit more time hence the need to delay the meeting until the following Tuesday. At that time Tomas asked me if I could help out by giving them the cheque for the January invoice (this is the \$381,578.40). I expressed my reluctance to do that until I received a satisfactory plan from them and some confidence it would be adhered to. Tomas assured me that Sirius was committed to providing me with an effective plan and sticking to it so that their work would be back on track and get completed. He told me that if I provided the cheque now that would ensure that Sirius would push things along to get their work done. The assurance of Sirius committing to finishing up the work on an efficient schedule was of huge importance to me as the project was significantly behind schedule, so in reliance on these assurances from Sirius, and believing them, I relented and agreed to release the cheque that day. Sirius sent Tom Waite's girlfriend on that Friday, 1 March, to pick up the cheque and in good faith I gave it to her. I did not suspect any foul play.

9. What I did not know on March first was that Sirius had already been working with its licenced insolvency trustee prior to March first and the documents were prepared, and signed on March first 2019, to put Sirius into bankruptcy. In short, when Sirius dealt with me on March first, and persuaded me to release the cheque to them, Sirius knew it was not going to be

doing any further work on the Building. So when Sirius wrote to me on 1 March 2019 - "Tobin and myself will be making more site appearances to get things on track. Please be patient with us as we work through the issues." – Ayerswood was being lied to. ...

10. I, and hence Ayerswood, was assured by Sirius that if the payment of their January invoice was given to them they would come to the meeting on 5 March 2019 with a concrete plan to solve the problems and would move their work ahead promptly. This was pure deception with the object of getting Ayerswood to release the cheque. I, and hence Ayerswood, believed these lies, and in the belief that Sirius would be not just continuing their work to completion, but promptly to completion, I relented on the decision to withhold the cheque and released to Sirius the cheque of 1 March 2019 for \$381,578.40.

11. If Sirius had told me the truth on March first 2019 that they had already been working with BDO Canada Limited ("the Trustee") and were going to assign Sirius into bankruptcy and abandon their contract for the Building I never would have released the \$381,578.40 cheque to them; Ayerswood would not have made that payment. The value of the work by Sirius, coupled with the deficiencies in it, and the delay of the completion of the Building that they caused, meant that they had been overpaid for the work they had done. Sirius was not owed \$381,578.40, or any part of that money, and it only received that cheque due to their deceit as I have outlined above.

12. I do not have a copy of the cheque for \$381,578.40 to exhibit to this affidavit. The reason is that the cheque was certified on 1 March 2019, and it was not certified by Ayerswood. I believe it to be a quite reasonable conclusion that either Sirius or the Trustee had that cheque certified to prevent any possibility of Ayerswood stopping payment on it when Ayerswood discovered how it had been deceived. The first of March was a Friday, and the date and time of the bankruptcy of Sirius is Monday, 4 March 2019, at 7:57 a.m.

13. Ayerswood commissioned Truest Quantity Surveyors to report on the value of the work done by Sirius and exhibit F to this affidavit is a copy of their report. I accept as correct, and agree with, the conclusion of this report that Sirius was overpaid by \$702,551.61.”

Affidavit of John Camara, Responding Motion Record

12. There is no affidavit evidence submitted by the Trustee, nor any admissible evidence refuting Mr. Camara’s evidence.

The Action in Guelph Commenced by the Trustee

13. On 26 March 2019 the Trustee registered a construction lien against the subject building at 45 Yarmouth Street in Guelph. The lien was for \$485,087.61. On 29 May 2019 the Trustee issued action CV-19-203 in which the Trustee sues Ayerswood, the registered owner of the Yarmouth property, and a subsequent encumbrancer. The Trustee claims payment from Ayerswood for breach of contract. Thus the Trustee has firmly placed the matter of financial obligations between Sirius and Ayerswood before the Court in Guelph in this action. The claim of the Trustee includes a claim against Ayerswood in unjust enrichment.

Statement of Claim in Action CV-19-203 (schedule C to this factum)

14. Ayerswood served a defence and counterclaim in the Trustee's action in Guelph. Ayerswood pleads [paragraph 13] that Sirius knowingly inflated the value of the work it had done at 45 Yarmouth and induced Ayerswood through misrepresentation to overpay Sirius. Ayerswood counterclaims for the restitution of the \$381,578.40 and the imposition of a remedial trust over those funds with a declaration that Ayerswood is the beneficiary of that trust and entitled to the delivery over of those funds from the Trustee. In addition to misrepresentation, Ayerswood pleads unjust enrichment. The Trustee has not defended the counterclaim. The claim for lien of the Trustee has been discharged, but the action in Guelph is otherwise extant.

Statement of Defence and Counterclaim of Ayerswood, Motion Record of the Trustee, appendix J, page 125

15. Part of the claim in the Guelph action was for Ayerswood to pay to the Trustee the holdback. Ayerswood paid the holdback of \$310,835.60 to the Trustee in September 2013. However, it counterclaims for a return of part of that money which is attributable to the \$381,578.40 which Ayerswood is counterclaiming for.

Statement of Defence and Counterclaim, *loc. cit.*

16. There has appeared in the factum of the Trustee a recent suggestion that there was a settlement between Ayerswood and the Trustee. There has been no settlement, nor is there any evidence to suggest such a thing.

The Imposition of a Trust is an Available Remedy

17. *Ellingsen (Trustee of) v. Hallmark Ford Sales Ltd.*, 2000 BCCA 458 (CanLII), <http://canlii.ca/t/1d6df> deals with the granting of a constructive trust over property in the context of a bankruptcy. The Court of Appeal concluded that the imposition of a remedial constructive trust was an available remedy and imposed it in respect of an asset, namely a truck. The factual situation was stated as follows:

“[1] Hallmark Ford Sales Ltd. agreed to sell a truck to Greg Allan Ellingsen and let him take the truck to his logging operations without paying for it. Hallmark transferred ownership to Ellingsen on the expectation that the deal would be financed by a bank. Ellingsen would cover the balance by a trade-in.

[2] Various delays occurred in the financing arrangements. Three months after taking the truck Ellingsen went into bankruptcy. The Trustee now has the truck (or its sale proceeds) and asserts that it is an asset forming part of the general estate of the bankrupt.”

The Court concluded that the elements of an unjust enrichment had been made out. Referring to the decision of the Supreme Court of Canada in *Peter v. Beblow*, the Court quoted the reasons of Justice McLachlin that there should not be a distinction between family and commercial cases regarding the rights and remedies for unjust enrichment. [see para. 33] The Court posed a second consideration relevant to the granting of the remedy of a constructive trust, which was whether “it is appropriate to use a constructive trust to alter the priorities amongst creditors in a bankruptcy?” [para. 31]. The Court concluded that it was appropriate:

“[36] On the second question, that dealing with the priority of creditors, I wish to refer to the Ontario Court of Appeal decision in *Barnabe v. Touhey* (1995), 1995 CanLII 1672 (ON CA), 26 O.R. (3d) 477, which reversed a ruling that a court may impose a constructive trust for the very purpose of securing priority for some claimants over other creditors. At 479 the Court said:

While a constructive trust, if appropriately established, could have the effect of the beneficiary of the trust receiving payment out of funds which would otherwise become part of the estate of a bankrupt divisible among his creditors, a constructive trust, otherwise unavailable, cannot be imposed for that purpose. This would amount to imposing what may be a fair result as between the constructive trustee and beneficiary, to the unfair detriment of all other creditors of the bankrupt.

[37] The Court of Appeal went on to determine that there was no unjust enrichment on the facts of the case so the above remarks are probably obiter dicta. Nevertheless, the case serves as a useful caution that in weighing the equities other creditors may have to be considered. In my judgment, for the reasons I have given, Hallmark does not stand on the same footing as the general creditors and as a result I do not think the remedy I would impose unfairly deprives other creditors of an asset to which they have any reasonable entitlement.”

18. The British Columbia Court of Appeal also considered the timing of the imposition of the constructive trust to be significant. The date of imposition was when “it became obvious that *Ellingsen* was stalling Hallmark for time without any real prospect of being able to put \$5,000.00 down on the truck”. Thus “the remedial constructive trust would have been in effect on the date of *Ellingsen’s* assignment in bankruptcy on 11 April 1997.” It followed that the truck was not property of the bankrupt and did not vest in the Trustee. [para. 40]

19. Procedurally, the issue in *Ellingsen* came before the Court by way of a motion by the Trustee that the truck was vested in the Trustee free of any claims by Hallmark.

20. In the B.C. Supreme Court decision in *Pemberton Music Festival Limited Partnership (Re)*, 2017 BCSC 2398 (CanLII), <http://canlii.ca/t/hphvs>, the issue was the imposition of a constructive trust in the context of a bankruptcy. The Pemberton Music Festival Limited Partnership had sold tickets for a music festival that failed to occur. Over \$3,000,000 in funds derived from the ticket sales. A ticket vendor contended that the funds were held in constructive trust for the ticket purchasers. The trustee maintained that there was no basis for the imposition of such a trust and that the funds were available for distribution to the general creditors. Procedurally, the matter came before the Court as an application by the ticket vendor. It appears the evidence was adduced by affidavits.
21. The Court first addressed the claim for a constructive trust on the basis of unjust enrichment and found that the element of no juristic reason was not satisfied. The situation was likened to that in the Ontario case of *Re Livent Inc.* The juristic reason was that the right was contractual in nature, namely the return of the purchase price of the ticket in the event the concert was cancelled [see para. 82 – 88]

22. The Court then considered a second basis for the imposition of a constructive trust in bankruptcy, namely debtor misconduct:

“Constructive trust for debtor misconduct

[92] In *Creditfinance Securities Ltd. (Re)*, 2011 ONCA 160, where the Ontario Court of Appeal upheld the imposition of a constructive trust to remedy the debtor's fraud, the Court emphasized that the test for proving the existence of a constructive trust in bankruptcy proceedings is high. A constructive trust will ordinarily be imposed on property in the hands of a wrongdoer to prevent him or her from being unjustly enriched by profiting from his or her wrongful conduct (at para. 33). While a constructive trust may be ordered in bankruptcy proceedings to remedy unjust enrichment, the prerequisite is that the bankrupt obtained the property through misconduct. The court must also find that it would be unjust to permit the bankrupt and creditors to benefit from the misconduct (at para. 37).

[93] Constructive trust is a discretionary remedy. The court, in exercising its discretion in bankruptcy proceedings, must consider the interests of other creditors besides those of the wrongdoer and his or her victim: *Creditfinance* at para. 44.

[94] Similarly, in *Transtrue Vehicle Safety Inc. v. Werenka*, 2015 ABQB 197, the court held:

27 The standard of proving a constructive trust in a bankruptcy proceeding is very high. It is available in extraordinary cases where finding otherwise would result in a commercial immorality by unjustly enriching the general body of creditors. It also requires that the bankrupt obtained the property through misconduct: *Ascent Ltd, Re* (2006), 2006 CanLII 528 (ON SC), 18 CBR (5th) 269 (Ont SCJ); *Credifinance Securities Ltd*, 2011 ONCA 160, 74 CBR (5th) 161 at para 26; *Re McKinnon*, 2006 NBQB 108.

28 In *Grant v Ste Marie (Estate of)*, 2005 ABQB 35 (Grant) Slatter J (as he then was) explains the premise for this high threshold (at para 17):

A constructive trust in a bankruptcy may give one claimant a priority over others. The importance of a trust is obviously that it gives the claimant a proprietary remedy, which is especially of importance when the defendant is insolvent: D.M. Paciocco, "The Remedial Constructive Trust: A Principled Basis for Priorities Over Creditors" (1989), 68 Can. Bar Rev. 315, at pg. 321. In many cases a plaintiff with a merely personal claim will recover nothing, whereas a plaintiff with a proprietary claim will be able to recover specific identifiable assets. As Paciocco states at pg. 322:

Concern has been expressed by a number of authors that this result is not always justified. It violates the basic policy that "insolvency should create equality in creditors", that "property . . . in liquidation should be applied in satisfaction of its liabilities *pari passu*". This policy has such appeal that it has been speculated that, had statutory regimes not been created to implement it, equity would have developed rules relating to the equal distribution of assets. It seems that the force of this policy focuses the burden of persuasion squarely on those who would give priority to remedial constructive trust beneficiaries. (Footnotes Omitted)

[95] A constructive trust may be imposed, with the consequent disruption of the scheme of distribution under the BIA, where it is necessary to remedy debtor misconduct and thereby avoid commercial immorality. In *Ascent Ltd. (Re)*, [2006] O.J. No. 89 (Ont. S.C. In Bankruptcy), the debtor had engaged in misconduct by disobeying a court order to set aside money and to hold that money in trust for the appellant. The Court held *Ascent* had been unjustly enriched by its misconduct. The Court considered the effect of the imposition of a remedial constructive trust on the general creditors of the estate, but concluded that it was "appropriate to do injustice to the BIA in order to do justice to commercial immorality" and to prevent an unjust enrichment (at para. 17)."

23. The Court held that there was no debtor misconduct as the evidence established bona fide efforts by Pemberton to proceed with the music festival [para. 100] and hence the remedy of constructive trust was not granted.
24. In the case at bar there is evidence upon which the Court could find debtor misconduct by reason of the deceit of Sirius. The evidence at this stage is uncontradicted that Ayerswood would not have given Sirius the \$381,000 cheque but for that deceit as Sirius was in serious breach of its contract. Further, the evidence of the quantity surveyor currently stands uncontradicted that the payment to Sirius in excess of the value of its work.

Is Leave Required?

25. In *Bedard v. Schell, Schell and Biggar Glass Ltd.*, 1987 CanLII 4817 (SK QB), <http://canlii.ca/t/g8d2j> a common law spouse made a claim to one half of the property of the bankrupt and asserted the existence of an express trust, a resulting trust or a constructive trust with herself as the beneficiary. The common

law spouse had brought an action for that relief and the trustee raised an issue that leave was required. The court held the action could proceed without leave on the claim for express or resulting trust, but the claim for constructive trust required leave:

“[7] In the instant case the only basis on which the plaintiff can avoid the requirement of leave is if she comes within s. 47(a) of the Bankruptcy Act. She cannot point to any legislation which would support her contention that there is a trust and therefore reliance must be placed on the common law. It very well might be otherwise were the action in respect to matrimonial property. However, such is not the case and I deliberately leave that situation to be considered on another day.

[8] At this stage of the proceedings the plaintiff is not required to actually prove the existence of the alleged trust. It is not for me to inquire into the merits of her claim. That should be left to the court which will ultimately decide the case.

[9] In my opinion an express trust or a resulting trust comes within the parameters of s. 47(a) of the Bankruptcy Act. Accordingly, no leave is required to continue the action in respect to those claims. However, the situation is different in respect to the allegation of a constructive trust...

[13] Section 47(a) of the Bankruptcy Act is concerned with property which at the time of the bankruptcy can be identified and segregated from the other property of the bankrupt. In the case of a constructive trust such identification and segregation cannot take place until the court imposes the trust taking into account the claims of creditors. To ensure protection to the creditors it is best that this be done only with leave of the court and subject to whatever conditions it may impose.”

26. In *Ellingsen* the Court imposed the constructive trust at a point in time prior to the bankruptcy. Thus if the Court imposed a

constructive trust over the Ayerswood funds at the time of the deprivation or debtor misconduct, which is 1 March 2019, then the trust arose prior to the bankruptcy, the funds were trust funds at the time of the bankruptcy, were not property of the bankrupt, and no leave is required. But this reasoning presupposes the result, and is perhaps hoisting oneself up by one's own bootstraps.

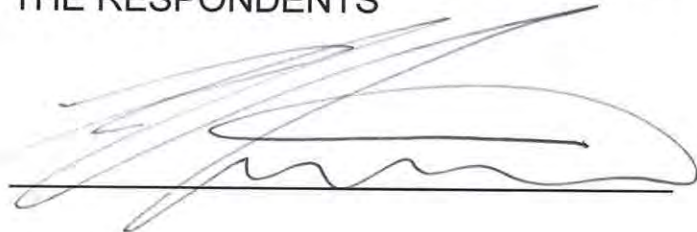
27. It is submitted that while an interesting legal debate as to whether leave is or is not required, the practical approach is to grant leave and have the real merits of the issue determined. The Trustee has already commenced litigation against Ayerswood and it is somewhat artificial to not grant leave to permit the full adjudication of issues raised in that lawsuit. And this is irrespective of whether the forum for determining those issues is the action in Guelph or a proceeding in the bankruptcy itself.

Conclusion

28. The responding record contains a draft application dealing with the issues relating to the payment of \$381,578.40 and the

recovery of part of the holdback paid to the trustee. It is submitted that proceeding on the basis of this as an application, or used as the statement of claim in a trial of an issue, is an expeditious route to determination of the merits. Leave should be granted to proceed in this fashion. The matter could conveniently proceed on the basis of affidavit evidence including cross-examinations.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED
F. SCOTT TURTON, COUNSEL FOR
THE RESPONDENTS

A handwritten signature in black ink, appearing to read 'F. Scott Turton', is written over a horizontal line. The signature is stylized with several long, sweeping strokes.

SCHEDULE A

Re Ward, 1987 CarswellNB 30, [1987] A.N.B. No. 1057, [1987] N.B.J. No. 1057, 214 A.P.R. 389, 66 C.B.R. (N.S.) 164, 7 A.C.W.S. (3d) 116, 84 N.B.R. (2d) 389

Ellingsen (Trustee of) v. Hallmark Ford Sales Ltd., 2000 BCCA 458 (CanLII)

Pemberton Music Festival Limited Partnership (Re), 2017 BCSC 2398 (CanLII)

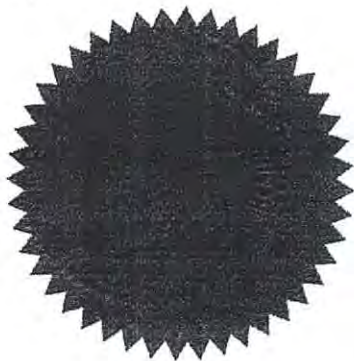
Bedard v. Schell, Schell and Biggar Glass Ltd., 1987 CanLII 4817 (SK QB)

SCHEDULE B

Section 34(1) of the *Bankruptcy and Insolvency Act* ("BIA"):

A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as it appears proper in the circumstances.

SCHEDULE C



Court File No.
 CV-19-0000203-0000

ONTARIO
 SUPERIOR COURT OF JUSTICE

IN THE MATTER OF *The Construction Act*,
 R.S.O. 1990, Chapter C.30, as amended

BETWEEN:
 (Court Seal)

BDO CANADA LIMITED, as Trustee for the Estate of SIRIUS CONCRETE INC.

Plaintiff

and

AYERSWOOD DEVELOPMENT CORPORATION, 1510233 ONTARIO INC., 1991333
 ONTARIO INC., SKYLINE EQUITIES INC., AND BANCO SECURITIES INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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 in 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.

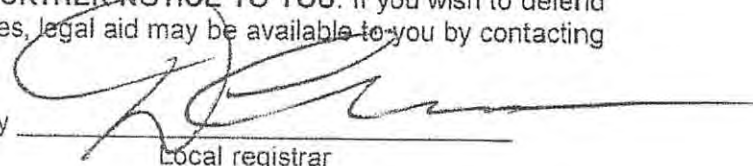
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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.

Date: May 29, 2019

Issued by



Local registrar

Address of court office:
74 Woolwich St.
Guelph ON N1H 3T9

TO: **SCOTT TURNTON**
Barrister at Law

24 Bridgewater Drive
Richmond Hill, ON L4E 3N4

Tel: 905-508-5821
Fax: 905-508-0519

Lawyers for the Defendant,
Ayerswood Construction Inc.

AND

TO: **1510233 ONTARIO INC.**
45 Yarmouth Street
Guelph, ON N1H 4G2

Defendant

AND

TO: **199133 ONTARIO INC.**
920 Commissioners Road E., 2nd Floor
London, ON N5Z 3J1

Defendant

AND

TO: **SKYLINE EQUITIES INC.**
5 Douglas Street, Suite #301
Guelph, ON N1H 2S8

Defendant

AND

TO: **BANCO SECURITIES INC.**
P.O. Box 3117
Terminal A
London, ON N6A 4J4

Defendant

CLAIM

1. The Plaintiff claims as against the Defendants:
 - a) A declaration that the Plaintiff has a valid claim against the lands and premises described in its Claim for Lien as described herein (the "Lands") for the sum of \$485,087.61;
 - b) A declaration that the Defendant, 1991333 Ontario Inc. ("**199 Inc**") is an owner of the 031 Lands (as defined below) within the meaning of the *Construction Lien Act*, R.S.O. 1990, Chapter C. 30, as amended (the "Act");
 - c) A declaration that the Defendant, Skyline Equities Inc. ("**Skyline**"), is an owner of the 107 Lands (as defined below) within the meaning of the Act (the 031 Lands and the 107 Lands, collectively, may be referred to herein as the Lands);
 - d) Payment of the sum of \$486,840.65 from the Defendant, Ayerswood Development Corporation ("**Ayerswood**"), pursuant to the Act;
 - e) Damages or payment in the amount of \$486,840.65 from the Defendant, Ayerswood, for breach of contract;
 - f) A declaration that, in default of payment of the above sum of \$485,087.61 in paragraph 1(a), plus costs and interest, the interests of 199 Inc. and Skyline in the Lands which are the subject matter of this action, be sold and the proceeds applied towards payment of the Plaintiff's claim as aforesaid, pursuant to the provisions of the Act;
 - g) A declaration that the Plaintiff holds a charge upon the holdbacks required to be maintained under the Act and on any additional amount owed or owing to Ayerswood by 199 Inc. and/or Skyline;
 - h) A declaration that the Plaintiff's Claim for Lien is a charge against any security that may be deposited with this Honourable Court to vacate the Plaintiff's Claim for Lien pursuant to the Act;

- i) Payment of the sum of \$485,087.61 plus costs and interest from the proceeds of any security deposited with this Honourable Court by the Defendants, or any of them, to vacate the Plaintiff's lien pursuant to the Act;
- j) Damages in the amount of \$486,840.65 on a *quantum meruit* basis or by virtue of the doctrine of Unjust Enrichment;
- k) Prejudgment and post-judgment interest in the sum of 24% per annum in accordance with the terms of the Subcontract and the Invoices (as defined below), or in the alternative, in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- a) A declaration that, by reason of its Claim for Lien, the Plaintiff has:
 - i) Full priority over any mortgage on any of the lands and premises described in the Plaintiff's Claim for Lien; or,
 - ii) Priority over any mortgage on any of the lands and premises described herein on which the Plaintiff has registered a claim for lien to the extent of any deficiency in the holdbacks required to be retained by the Defendant, Banco Securities Inc. ("**Banco**"), or by an owner (within the meaning of the Act) of the said lands and premises, or to the extent that at the time that the first lien arose on the said lands and premises; or,
 - iii) To the extent that any mortgage may be a prior mortgage under the Act on the any of the lands and premises described herein on which the Plaintiff has registered a claim for lien
 - a) Priority over any such mortgage to the extent that any portion advanced exceeded the actual value of the lands and premises described herein at the time when the first lien arose; and/or,
 - b) Priority over any such mortgage to the extent of any unadvanced portions thereof; and/or,

- c) Priority to the extent of any advance made at a time when there was a preserved or perfected lien against the lands and premises hereinafter described, or after the receipt of a written notice of lien; or,
- b) To the extent that any such mortgage on any of the lands and premises described herein on which the Plaintiff has registered a claim for lien may be a subsequent mortgage under the Act:
 - i) Full priority over the said mortgage; or,
 - ii) Priority over such mortgage to the extent of any deficiency in the holdbacks required to be retained by the Defendant Bank; and/or
 - iii) Priority over such mortgage to the extent of any unadvanced portions thereof, and/or to the extent of any advance made at a time when there was a preserved or perfected lien against the lands and premises hereinafter described, or after receipt of a written notice of lien;
- c) The costs of this action on a substantial indemnity basis;
- d) That all proper directions be given on all inquiries made and accounts taken; and,
- e) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, BDO Canada Limited, as Trustee for the Estate of Sirius Concrete Inc. (the "**Plaintiff**") is the Licensed Insolvency Trustee for the bankrupt estate of Sirius Concrete Inc. ("**Sirius**"), a corporation incorporated pursuant to the laws of the Province of Ontario and was at all material times carrying on business as a supplier and installer of cast-in-place forming and pouring of concrete and related work, to the lands and premises described in the Claim for Lien attached as Schedule "A" attached hereto (the "**Lands**").

3. Sirius is a bankrupt, having made an assignment in bankruptcy on March 4, 2019.
4. The Defendant, 199 Inc., was at all material times the owner of the 031 Lands and is an owner as defined in the provisions of the Act. The 031 Lands are municipally known as 45 Yarmouth Street, Guelph, ON, and legally described as:
 - a) PT LOTS 90 & 91, PLAN 8, PARTS 1 & 5, 61R4481; S/T & T/W ROS571224; GUELPH; SUBJECT TO AN EASEMENT AS IN WC538879 (PIN 71287-0031 LT) (the "031 Lands").
5. The registered owner of the 031 Lands is the Defendant, 1510233 Ontario Inc. ("**151 Inc.**"). 151 Inc. amalgamated with 2388855 Ontario Limited on September 26, 2018 to form 199 Inc. 199 Inc. is the proper owner of the 031 Lands. The Plaintiff states that any interest of 151 Inc. in the 031 Lands transferred to 199 Inc. upon its amalgamation to form 199 Inc.
6. The Defendant, Skyline, was at all material times the registered owner of the 107 Lands and is an owner as defined in the provisions of the Act. The 107 Lands are municipally known as 45 Yarmouth Street, Guelph, ON, and legally described as:
 - a) PT LOTS 90, 91, 92 & 93, PLAN 8, AS IN RO706835 EXCEPT PT 1, 61R11926; SUBJECT TO AN EASEMENT AS IN WC61819; SUBJECT TO AN EASEMENT AS IN ROS635166; CITY OF GUELPH (PIN 71287 - 0107 LT) (the "**107 Lands**").
7. The Defendant, Ayerswood, is a corporation incorporated pursuant to the laws of the Province of Ontario.

THE CONTRACT AND THE PROJECT

8. Pursuant to a Subcontract No. A18-45YAR-013 dated March 14, 2018 as between Ayerswood and Sirius (hereinafter, collectively, the "**Subcontract**"), Sirius contracted with Ayerswood for the cast-in-place forming and pouring of concrete, as well as to provide related work and services in order to improve the Lands as part of a renovation project on the Lands (the "**Project**").
9. The Plaintiff pleads and relied upon all express and implied terms of the Subcontract.
10. The initial price under the Subcontract was \$6,215,000.00, plus HST of \$807,950.
11. Pursuant to Change Orders No. 17-22.01, 17-22.02, 17-22.03, 17-22.04, 17-22.05, the Subcontract price was increased to \$6,317,546.01, plus HST of \$821,280.98, for a total contract price of \$7,138,826.99.
12. Between April 16, 2018 and March 1, 2019, Sirius delivered and supplied services and materials to the Project in accordance with the provisions of the Subcontract.
13. On March 4, 2019, Sirius made an assignment into bankruptcy. The Plaintiff is the Licensed Insolvency Trustee for the bankrupt estate of Sirius

THE PLAINTIFF'S CLAIM AS AGAINST AYERSWOOD

14. The Plaintiff states that Sirius fulfilled all terms of the Subcontract up to the date of bankruptcy, and that the services and materials thereunder were supplied without issue and to the satisfaction of Ayerswood.

15. As the Licensed Insolvency Trustee of Sirius, all rights to property of Sirius vests in the Plaintiff, including the right to collect any and all monies due and owing to Sirius.
16. Pursuant to the terms of the Subcontract, Sirius rendered the following invoices to Ayerswood, which were payable within 30 days, and on which interest accrued at the rate of 24% per annum thereafter:
 - a) Invoice No. 19.014, dated February 28, 2019, in the sum of \$140,400.00 plus HST of \$18,252.00, for a total of \$158,652.00, and on which the sum of \$158,652.00 was owing as at the date of bankruptcy;
 - b) Invoice No. 19.802, dated March 4, 2019 in relation to the holdbacks required to be held by Ayerswood, in the sum of \$290,432.43 plus HST of \$37,756.22, for a total of \$328,188.65, and on which the sum of \$328,188.65 was owing as at the date of bankruptcy;
 - c) For a total owing of \$486,840.65 as at the date of bankruptcy.
(collectively, the "**Invoices**").
17. A portion of the HST due and owing in relation to Invoice No. 19.802 and totalling the sum of \$1,753.04 was not included in the Plaintiff's claim for lien, which is limited to the sum of \$485,087.61.
18. The Plaintiff pleads and states that it is owed payment by Ayerswood of the outstanding sum of \$486,840.65, pursuant to the Invoices (the "**Indebtedness**").
19. In the alternative, the Plaintiff states that failure of Ayerswood to pay the Plaintiff pursuant to

the terms of the Subcontract and the Invoices is a breach thereof, and that Ayerswood is liable to the Plaintiff of the full amount of the Indebtedness as a result.

QUANTUM MERUIT AND UNJUST ENRICHMENT

20. The Plaintiff states that by reason of furnishing materials and services to the Lands, the Plaintiff has enhanced the value of the Lands, and Defendants, Ayerswood, 199 Inc. and/or 151 Inc., and Skyline have received the benefit of same thereby being unjustly enriched in the amount of \$486,840.65 plus costs and interest at the expense of and to the detriment of the Plaintiff.
21. The Plaintiff states that by furnishing materials and services to the Project at the request of or on behalf, or to the benefit of the Defendants, Ayerswood, 199 Inc. and/or 151 Inc., and Skyline, there was a clear intention that the Plaintiff be compensated for same, as indicated by the Subcontract and the Invoices. As the Plaintiff provided the aforementioned materials and services to the said Defendants, it should be compensated accordingly
22. The Plaintiff has demanded payment of the Indebtedness of \$486,840.65 from the Defendants, Ayerswood, 199 Inc. and/or 151 Inc., and Skyline, but to date they have failed or refused to pay same.
23. The Plaintiff pleads and relies upon the doctrine of Unjust Enrichment. In the alternative, the Plaintiff pleads and relies upon the doctrine of *quantum meruit*.

THE PLAINTIFF'S VALID CLAIM FOR LIEN

24. The Plaintiff states that the 031 Lands were at all material times owned by the Defendant, 199 Inc., and were lands to which the Plaintiff supplied materials and services at the request of or on behalf of 199 Inc., and with 199 Inc.'s consent and for its direct benefit. Accordingly, the Plaintiff states that 199 Inc. was at all material times an owner within the meaning of Section 1(1) of the Act.
25. The Plaintiff states that the 107 Lands were at all material times owned by the Defendant, Skyline, and were lands to which the Plaintiff supplied materials and services at the request of or on behalf of Skyline., and with Skyline's consent and/or for its direct benefit. Accordingly, the Plaintiff states that Skyline was at all material times an owner within the meaning of Section 1(1) of the Act.
26. By reason of the supply by the Plaintiff of services and materials to the Project, the Plaintiff became and is entitled to a lien upon the estate and interest of the Defendant, 199 Inc., in the 031 Lands for the sum of \$485,087.61 pursuant to the Subcontract and the Invoices, plus interest and the costs of this Action pursuant to the provisions of the Act.
27. By reason of the supply by the Plaintiff of services and materials to the Project, the Plaintiff became and is entitled to a lien upon the estate and interest of the Defendant, Skyline, in the 107 Lands for the sum of \$485,087.61 pursuant to the Subcontract and the Invoices, plus interest and the costs of this Action pursuant to the provisions of the Act.
28. As stated above, the Plaintiff's last day of supply of materials and services to the Lands was March 1, 2019.

29. On March 26, 2019, the Plaintiff caused to be registered in the Land Registry Office for the land title division of Wellington (No. 61) located in Guelph, Ontario, a Claim for Lien which was registered as Instrument WC563942.
30. The Lands described in the said Claim for Lien, attached at Schedule "A" hereto, are the Lands for which the Plaintiff supplied the aforementioned materials and services.
31. By supplying said materials and services to the Project, and pursuant to the Act, the Plaintiff has become entitled to a charge upon any holdbacks required to be held by 199 Inc. and/or Skyline, as the case may be, as owner of the Lands, and/or upon any other amounts owing by 199 Inc. and/or Skyline to Ayerswood.
32. In the event that the Plaintiff's claim is not paid after judgment by any of the Defendants, the Plaintiff claims entitlement to payment of its Claim for Lien including costs and interest from the proceeds of the sale of 199 Inc.'s and/or Skyline's estate and interest in the respective Lands, or in the alternative, from the proceeds of any security deposited with this Honourable Court to vacate the Plaintiff's Claim for Lien as against the Lands.

CLAIM AGAINST MORTGAGEE

33. 199 Inc. (named as 151 Inc.), as mortgagor, has granted the following mortgages over the Lands:
 - a) Charge/Mortgage in favour of Banco, receipted as instrument no. WC395612 on January 30, 2014 in the principal sum of \$30,000,000 (the "Mortgage")
34. The Plaintiff has no knowledge of the extent to which advances have been made pursuant to

the Mortgage, but claims priority over Banco, to the extent that any advances under the Mortgage exceeded the actual value of the Lands at the time the first lien arose in relation to the Lands, or to the extent that there is any deficiency in the holdbacks required to be retained pursuant to the provisions of the Act, or to the extent that any advances under the Mortgage were made after Banco had a notice of a Lien against the Lands, or that there was a lien registered against the Lands.

35. Banco is an owner of the Lands as defined by the Act, or other person in the construction lien pyramid that would be responsible for maintaining a statutory holdback that would be payable to the Plaintiff in this action, or is directly liable for payment to the Plaintiff for the Invoices.

The Plaintiff proposes that this Action be tried at the City of Guelph, in the County of Wellington, in the Province of Ontario.

May 29, 2019

HARRISON PENSA LLP
Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 4K3

Melinda Vine
LSUC # 53612R
Tel : (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Plaintiff

SCHEDULE "A"

LRO # 61 Construction Lien

Received as WC563942 on 2019 03 26 at 10:00

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 71287 - 0031 LT
Description PT LOTS 90 & 91, PLAN 8 , PARTS 1 & 5 , 61R4481 ; S/T & T/W ROS571224 ; GUELPH;
 SUBJECT TO AN EASEMENT AS IN WC538879
Address 52 BAKER ST
 GUELPH

PIN 71287 - 0107 LT
Description PT LOTS 90, 91, 92 & 93, PLAN 8 , AS IN RO706835 EXCEPT PT 1, 61R11926;
 SUBJECT TO AN EASEMENT AS IN WC61819; SUBJECT TO AN EASEMENT AS IN
 ROS635166; CITY OF GUELPH
Address GUELPH

Consideration

Consideration \$485,087.61

Claimant(s)

Name BDO CANADA LIMITED, AS TRUSTEE FOR THE ESTATE OF SIRIUS CONCRETE INC.
Address for Service c/o Malinda Vine, Harrison Pensa LLP
 450 Talbot Street, London, ON N6A 4K3

I am the lien claimant and the facts stated in the claim for lien are true.
 I, Robyn Duwyn, Vice President, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner 1510233 Ontario Inc., 1991333 Ontario Inc., Skyline Equities Inc. see statement 61 for address Name and address of person to whom lien claimant supplied services or materials Ayerswood Development Corporation, 1299 Oxford Street East, London, ON N5Y 4W5 Time within which services or materials were supplied from 2018/04/16 to 2019/03/01 Short description of services or materials that have been supplied Cast-in-Place Forming and Pouring of Concrete Contract price or subcontract price \$6,317,546.01 Amount claimed as owing in respect of services or materials that have been supplied \$485,087.61

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: ADDRESS FOR SERVICE FOR OWNER: 1) 1510233 Ontario Inc., 45 Yarmouth Street, Guelph, ON N1H 4G2 2) 1991333 Ontario Inc., 920 Commissioners Road East, 2nd Floor, London, ON N5Z 3J1 3) Skyline Equities Inc., 5 Douglas Street, Suite #301, Guelph, ON N1H 2S8

Signed By

Cheri Leanne DiPierdomenico 450 Talbot Street acting for Signed 2019 03 26
 London Applicant(s)
 N6A 4K3

Tel 519-679-9660

Fax 519-667-3362

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

Harrison Pensa 450 Talbot Street 2019 03 26
 London
 N6A 4K3

Tel 519-679-9660

Fax 519-667-3362

Fees/Taxes/Payment

Statutory Registration Fee \$64.40
Total Paid \$64.40

File Number

Claimant Client File Number: RDA-177459

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.
Plaintiff

- and -
AYERSWOOD DEVELOPMENT CORPORATION et al
Defendants

CV-19-0000203-0000

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF *The Construction Act*,
R.S.O. 1990, Chapter C.30, as amended
PROCEEDING COMMENCED AT GUELPH

STATEMENT OF CLAIM

HARRISON PENSA LLP
Barristers & Solicitors
450 Talbot Street
London, Ontario
N6A 4K3

Melinda Vine
LSUC # 53612R
Tel : (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Plaintiff

Court file no. C

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
(APPELLANT)

and

BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

Applicant
(RESPONDENT)

APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. Exhibits numbers: not applicable
2. The affidavit evidence of John Camara
3. The oral evidence of: not applicable

24 December 2020

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LSO: 17631C
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Lawyer for the Respondent/Appellant

TO:

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Lawyers for the Applicant/Respondent
BDO Canada Limited, as Trustee for the Estate of SIRIUS
CONCRETE INC.

AYERSWOOD DEVELOPMENT CORPORATION
RESPONDENT (APPELLANT)

298

and

BDO CANADA LIMITED et al
APPLICANT (RESPONDENT)

Court file no. C

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

In the Matter of the Bankruptcy of Sirius
Concrete Inc.

**APPELLANT'S CERTIFICATE
RESPECTING EVIDENCE**

*Name, address, telephone and fax numbers of lawyer or party
(Law Society registration number of lawyer):*

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(905) 508-5821
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Lawyer for Respondent/Appellant,
Ayerswood Development Corporation

Court File No.

COURT OF APPEAL FOR ONTARIO**IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONTRETE INC. OF THE CITY
OF WATERLLOO IN THE PROVINCE OF ONTARIO**

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
(APPELLANT)

and

BDO CANADA LIMITED, as Trustee for the Estate of SIRIUS CONCRETE INC.

Applicant
(RESPONDENT)**RESPONDENT'S CERTIFICATE RESPECTING EVIDENCE**

The respondents confirm the appellant's certificate except for the following:

ADDITIONS

1. Fourth Report of the Trustee, dated March 3, 2020, and appendices.
2. Supplement to the Fourth Report of the Trustee, dated October 16, 2020, and appendices.

DELETIONS

3. None.

October 12, 2021

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Trustee, BDO Canada Limited

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Lawyer for the Respondent/Appellant

In the matter of the Bankruptcy of Sirius Concrete Inc. of the City of Waterloo, in the Province of Ontario

AYERSWOOD DEVELOPMENT CORPORATION
RESPONDENT (APPELLANT)

and

BDO CANADA LIMITED, as Trustee for the Estate of
SIRIUS CONCRETE INC.
APPLICANT (RESPONDENT)

Court File No.

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

**RESPONDENT'S CERTIFICATE
RESPECTING EVIDENCE**

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Melinda Vine (LSO #53612R)

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Solicitors for BDO Canada Limited

Motion File No. M52211

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE BENOTTO) FRIDAY the 1st
) DAY OF
 IN CHAMBERS) OCTOBER, 2021.

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
 (APPELLANT)

and

BDO CANADA LIMITED,
 as Trustee for the Estate of SIRIUS CONCRETE INC.
 Applicant
 (RESPONDENT)

ORDER

THIS MOTION made by the Moving Party Ayerswood Development Corporation, in writing, for an order extending the time to file the Notice of Appeal herein with the Bankruptcy Office in London, Ontario, was read this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING THE MOTION RECORD and factum of Ayerswood Development Corporation and the consent of the parties to this order,

1. THIS COURT ORDERS that the time to file, at the office of the registrar of the Superior Court of Justice, in Bankruptcy, at London, Ontario, the Notice of Appeal, Appellant's Certificate, and affidavit of service of same, in respect of the appeal of Ayerswood Development Corporation from the order of the Honourable Justice J.C. George dated 14 December 2020, made at London, Ontario, is extended to seven days after the date of this order.

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

OCT 01 2021

PER / PAR: *En*



REGISTRAR
COURT OF APPEAL FOR ONTARIO

AYERSWOOD DEVELOPMENT CORPORATION
RESPONDENT (APPELLANT)

and

BDO CANADA LIMITED et al
APPLICANT (RESPONDENT)

304
(Short title of proceeding)

Court file no: M52211

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

ORDER

Name, address, telephone and fax numbers of lawyer or party

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Lawyer for the Respondent/Appellant

Court file no. C70020

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF SIRIUS CONCRETE INC.

BETWEEN:

AYERSWOOD DEVELOPMENT CORPORATION

Respondent
(APPELLANT)

and

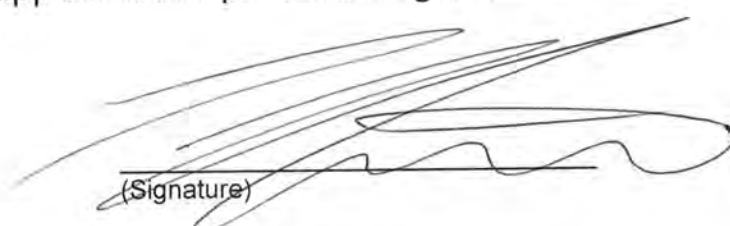
BDO CANADA LIMITED,
as Trustee for the Estate of SIRIUS CONCRETE INC.

Applicant
(RESPONDENT)

CERTIFICATE OF COMPLETENESS

I, F. SCOTT TURTON, lawyer for the appellant, certify that the Appeal Book and Compendium in this appeal is complete and legible.

Date: 12 January 2022



(Signature)

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Lawyer for the Appellant

AYERSWOOD DEVELOPMENT CORPORATION
RESPONDENT (APPELLANT)

306

and

BDO CANADA LIMITED et al
APPLICANT (RESPONDENT)
Court file no. C70020

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

In the Matter of the Bankruptcy of Sirius
Concrete Inc.

**APPEAL BOOK
AND COMPENDIUM**

*Name, address, telephone and fax numbers of lawyer or party
(Law Society registration number of lawyer):*

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