

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 4<sup>TH</sup>

JUSTICE HAINEY

)

DAY OF AUGUST, 2020

)

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

- and -

**SIMRANJIT DHILLON, MANDHIR DHILLON, SARBJIT DHILLON, MANDEEP  
DHILLON, 908593 ONTARIO LIMITED, operating as Eagle Travel Plaza, 1393382  
ONTARIO LIMITED, 2145744 ONTARIO LIMITED, 2145754 ONTARIO LIMITED,  
1552838 ONTARIO INC., 2189788 ONTARIO INC., 2123618 ONTARIO LIMITED,  
1849722 ONTARIO LIMITED, 2469244 ONTARIO LIMITED, 2364507 ONTARIO  
LIMITED, 1254044 ONTARIO LIMITED and 2612550 ONTARIO LIMITED**

Defendants

**ORDER**

**THIS MOTION**, made by BDO Canada Limited (“**BDO**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), of the assets, undertakings and properties of 908593 Ontario Limited, operating as Eagle Travel Plaza (“**Eagle Travel**”), 1393382 Ontario Limited, 2145744 Ontario Limited, 2145754 Ontario Limited, 2123618 Ontario Limited, 1849722 Ontario Limited, 2469244 Ontario Limited, 2364507 Ontario Limited, and 2612550 Ontario Limited (the “**Debtors**”), for an order (the “**Receiver’s Collection Plan Order**”) approving a procedure for the identification, quantification, and resolution of the Receiver’s Claims (defined below), was heard this day by judicial teleconference via Zoom at Toronto, Ontario.

**ON READING** the Eighth Report of the Receiver dated July 21, 2020 (the "Eighth Report") and on hearing the submissions of counsel for the Receiver and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the affidavit of service of Diana McMillen sworn July 29, 2020.

1. **THIS COURT ORDERS** that the Receiver shall be at liberty to serve and file forthwith an Amended Statement of Claim in the form attached hereto as Schedule "A".
2. **THIS COURT ORDERS** that Confidential Appendices "1" and "2" to the Eighth Report be and are hereby sealed.
3. **THIS COURT ORDERS** that this Ancillary Order and all of its provisions are effective from the date it is made without any need for entry and filing.

A handwritten signature in cursive script, appearing to read "Audrey J.", is written over a horizontal line.

**SCHEDULE "A"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

908593 ONTARIO LIMITED, operating as Eagle Travel  
Plaza by its Court appointed receiver, BDO CANADA LIMITED

Plaintiff

and

ATRADIUS CRÉDITO Y CAUCIÓN S.A. DE SEGUROS Y REASEGUROS

Defendant

**AMENDED 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 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.

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

Date: ~~February 20, 2020~~  
July , 2020

Issued by:

Local Registrar

Address of court office: 393 University Avenue  
Toronto, Ontario M5G 1E6

TO: **ATRADIUS CRÉDITO Y CAUCIÓN S.A. DE SEGUROS Y REASEGUROS**  
1 Robert Speck Parkway, Suite 1430  
Mississauga, Ontario L4Z 3M3

***Attention: Christopher Short, Chief Agent***

**CLAIM**

1. The plaintiff claims as against the defendant:
  - (a) damages in the amount of \$5,940,000.00, or such further or other amounts to be particularized before trial;
  - (b) a declaration that Eagle Travel (as defined below) is validly insured and that coverage is owed under a credit risk insurance policy issued by the defendant effective June 1, 2019 to May 31, 2020 bearing policy number 832986 in respect of the losses described herein (the "**Policy**");
    - (b.1) punitive and/or exemplary damages in the amount of \$1,000,000 on account of the defendants' failure to administer and adjust the claims made by the plaintiff under the Policy in good faith;
    - (b.2) damages in the amount of \$1,000,000 on account of the defendants' wilful and intentional breaches of the Policy;
  - (c) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act* R.S.O. 1990 c. C. 43, as amended;
  - (d) the costs of this proceeding, plus all applicable taxes; and
  - (e) such further and other relief as this Honourable Court may deem just.
2. 908593 Ontario Limited, operating as Eagle Travel Plaza ("Eagle Travel"), is a corporation that was incorporated pursuant to the laws of Ontario, with a head office in Tilbury, Ontario. Prior to its receivership and bankruptcy, Eagle Travel carried on business as a fuel and fleet service provider.

3. The plaintiff, BDO Canada Limited, was appointed as the Court-appointed receiver of Eagle Travel (in such capacity, the “**Receiver**”) by way of the Order of the Honourable Justice Hainey dated September 30, 2019 (“**Order**”).
4. The defendant, Atradius Crédito y Caución S.A. de Seguros y Reaseguros (“**Atradius**”), is an insurance company which carries on business in Ontario and internationally providing trade credit insurance and other coverage, and is duly registered in Ontario to provide insurance products to the public.

### **The Insurance Policy**

5. Eagle Travel purchased the Policy from Atradius, pursuant to which Atradius agreed to indemnify Eagle Travel in accordance with the terms and conditions of the Policy for losses sustained in the event that it did not receive full payment for insured receivables because of a Buyer’s Insolvency or a Protracted Default by a Buyer (as those terms are defined in the Policy).
6. For the purposes of the Policy, Insolvency includes, *inter alia*, any of the following situations or events:
  - (a) the institution of a judicial or administrative procedure pursuant to the law of the Buyer’s country, whereby the assets and affairs of the Buyer are made subject to control or supervision by the court or a person or body appointed by the court or by law, for the purpose of reorganization or liquidation of the Buyer or of the rescheduling, settlement or suspension of payment of its debts;
  - (b) a procedure as described in subparagraph (a) has been rejected or stopped by the court for lack of assets; or

- (c) the execution of a judgment fails to satisfy the amount owing in full.
7. For the purposes of the Policy, a Protracted Default is defined as the failure of a Buyer to pay the receivable within the applicable waiting period specified in the Policy.
- ~~7.~~ 8. The credit limit for Buyers can be set in one of three ways under the Policy. The insured can apply to Atradius for a credit limit which Atradius will review, and Atradius will respond with the credit limit it accepts and approves for the applicable Buyer. Alternatively, the insured can set a discretionary credit limit for each Buyer of no higher than \$50,000 either by undertaking a third party credit search of the Buyer, or based upon the applicable Buyer's positive payment history (Buyers subject to discretionary credit limits are referred to as "DCL Buyers"). Each claim made during the term of the Policy for the non-payment of amounts owing by a Buyer is subject to the credit limit set for the Buyer.
- ~~8.~~ 9. The Receiver pleads and relies upon all of the terms of the Policy.

#### **The Fleet Card Business**

- ~~9.~~ 10. As part of its business operations, Eagle Travel provided its customers (hereinafter "**Buyers**"), being truck transportation companies of varying fleet sizes, with credit cards ("**Fleet Cards**") that were issued to Buyers' truck drivers allowing for the purchase of fuel and other items on credit.
- ~~10.~~ 11. Buyers' truck drivers used the Fleet Cards to purchase fuel, convenience store items and to obtain cash advances at gas stations operated by companies affiliated with Eagle Travel. Eagle Travel accordingly invoiced its Buyers for the



fuel and other items purchased, as well as any cash advances received through the Fleet Cards.

### **Eagle Travel's Losses**

- ~~44.~~ 12. In order around June 1 to October 11, 2019, Eagle Travel suffered significant losses in relation to outstanding accounts receivables, specifically with respect to the non-payment for fuel and other items purchased by its Buyers. The failure by these Buyers to make the required payments are Protracted Defaults under the Policy for which a claim may be made. ~~Full particulars of Eagle Travel's losses are not known to the Receiver at this time, but will be provided prior to trial.~~
- ~~12.~~ Eagle Travel advised Atradius of its losses and is in the process of submitting numerous outstanding claims which are ongoing. This proceeding is being commenced at this time given the possibility of and uncertainty associated with any prescription periods under the Policy.
- ~~13.~~ Subsequent to its appointment on September 30, 2019, The Receiver has engaged in efforts to seek payment from Atradius of the amounts to which Eagle Travel is entitled under the Policy. In this regard, the Receiver has engaged in ongoing communications with Atradius and has provided Atradius with relevant documentation and information in support of the claims made.
- ~~14.~~ To date, Atradius has failed to reimburse the Receiver for the full amounts to which Eagle Travel is entitled under the Policy.
- ~~15.~~ The Receiver states that Atradius is in breach of the Policy. The Receiver pleads that coverage for Eagle Travel's losses are specifically provided for under the

~~Policy, and that the Receiver and Eagle Travel have undertaken all reasonable steps under the circumstances to mitigate damages and contain losses.~~

~~42- 13. Commencing in the fall of 2019, Atradius was put on notice of the appointment of the Receiver and was provided with a copy of the Order. Atradius was informed of the fact that claims would be made under the Policy. Commencing January 2020, the Receiver began submitting claims to Atradius. Such claims included a covering letter from counsel to the Receiver conditionally assigning the claims to Atradius Collections (as required under the Policy) on the condition that the claim is paid by Atradius. Each claim submitted also included copies of unpaid invoices and other supporting documentation including, when available, copies of Equifax credit search reports. As of June 21, 2020 a total of 178 claims have been submitted in respect of Protracted Default DCL Buyers which have an aggregate value of \$4,067 million. The Receiver has further submitted 3 claims for Buyers whose credit limit was specifically approved by Atradius. Such claims have an aggregate value of \$491,000.00.~~

~~43- 14. With the exception of 20 or so claims which were submitted, Atradius has taken no position in respect of the claims submitted by the Receiver, and has paid out on none. The Receiver understands that Atradius Collections has pursued the defaulting Buyers and has recovered more than \$88,000 in payments from defaulting Buyers. Despite having recovered these sums, Atradius has not paid out on any claims submitted and the Receiver is now being invoiced for "success fees" in respect of the amounts that have been recovered. The Receiver has written to Atradius requesting that the claims be honoured, and has not received any satisfactory responses.~~

15. The Receiver states that Atradius is in breach of the Policy. The Receiver pleads that coverage for Eagle Travel's losses are specifically provided for under the Policy, and that the Receiver and Eagle Travel have undertaken all reasonable steps under the circumstances to mitigate damages and contain losses.
16. The Receiver understands that Atradius takes the position that premiums payable subsequent to the appointment of the Receiver by the Order remain due and owing and for this reason, Atradius is refusing to pay any of the monies recovered from defaulting Buyers. Premiums under the Policy were payable in 12 installments, generally monthly during the one year term of the Policy, and were up to date as at the date of the Receiver's appointment. The Receiver denies that any further premiums are owing to Atradius, and puts Atradius to the strict proof thereof.
17. The Receiver has made Atradius aware of the fact that the operations of Eagle Travel were terminated on October 11, 2019. With this, Eagle Travel extended no further credit to any Buyer on any date thereafter. There was, therefore, no credit risk nor insurable interest for which a credit risk insurance policy was required after October 11, 2019. Atradius is accordingly claiming premiums in respect of risks which it knows do not and did not exist.
18. In the alternative, the Policy provides that the Policy is terminated effectively immediately upon the appointment of a Receiver for the insured. In the event that this Honourable Court determines that the Policy was terminated upon the appointment of the Receiver, which is not admitted, no further premiums would be payable after the date of the Order.

19. The Receiver further states that pursuant to the Order, any outstanding claims for premiums payable by Eagle Travel were stayed, subject to Atradius' rights to assert such claims as an unsecured creditor. Atradius has advised the Receiver that it is due approximately \$120,000 in outstanding premium payments under a Policy which provides for an aggregate of monthly payments that total as of May 31, 2020, \$181,170. Based upon the above claim made by Atradius for outstanding premiums, it follows that Eagle Travel made premium payments prior to the date of the Order of approximately \$60,000. The Receiver states that this amount would fully satisfy the amounts payable for premiums under the Policy up to and including the date of the Order. The Receiver, through its counsel, has requested from Atradius an accounting of premium amounts paid by Eagle Travel in 2019. Atradius has failed to provide same.
  
20. The Receiver further understands that Atradius may take the position that the aggregate claims amount payable under the Policy during the one year Policy term in respect of all DCL Buyers is \$100,000. The Receiver rejects that such an aggregate claims limit exists. The Receiver states that Atradius knew at the time that Eagle Travel sought credit risk insurance that Eagle Travel had in or around 1,000 Buyer accounts, and that Eagle Travel's operations involved extending credit to Buyers on a weekly billing cycle basis in the millions of dollars. Atradius knew that Eagle Travel required policy limits for DCL Buyers far in excess of \$100,000. The Receiver notes that the declaration pages of the Policy states that the Insurers Maximum Liability is \$5.94 million.
  
21. The fact is that neither the declaration pages of the Policy nor the detailed provisions of the Policy set an aggregate maximum claims limit payable in

respect of all DCL Buyers during the one year term of the Policy. The Receiver further pleads that it is inconsistent for an insurer to demand premiums of \$181,170, but to restrict claims being paid out in the aggregate in respect of the vast majority of the credit risk being extended by the insured to \$100,000.

22. The Receiver, through its counsel, has offered to work with Atradius directly to expedite the submission and handling of claims. This and other proposals to discuss matters in issue with Atradius have been rejected.
23. The Policy specifically names Eagle Travel's secured lender, CIBC, as the Loss Payee. The Policy specifically further provides that the Loss Payee may pursue claims under the Policy in the event that the insured becomes subject to insolvency proceedings. As the senior secured creditor of Eagle Travel, CIBC will receive the benefit of the claims that the Receiver is pursuing on behalf of Eagle Travel's estate. Notwithstanding, as noted above, Atradius has refused and/or has deliberately failed to adjust the claims submitted in good faith and is in breach of the Policy. The Receiver has suffered damages as a result of this conduct. The Receiver pleads that Atradius has acted in a high-handed manner and with reckless disregard for the rights of the Receiver (and Loss Payee) under the Policy. The receiver states that the duty owed by Atradius to its insured is one of good faith. The Receiver pleads that Atradius has breached this duty and should be held accountable for such conduct and seeks an order for the payment of aggravated and/or punitive damages on account of the defendant's bad faith.
24. As a consequence of the conduct of the defendant, the Receiver has been put to the expense of seeking approval from the Court for a claims process which, if approved, will provide for an expeditious process for the adjudication of claims

against defaulting buyers which have been the subject of claims being made under the Policy. To facilitate this process, the Receiver has had to withdraw its assignment to Atradius Collections of the claims made under the Policy. The Receiver has however reserved the right to resubmit claims under the Policy should it be successful in obtaining judgment as against defaulting buyers. The receiver states that the Policy provides that Atradius will contribute to the costs that an insured incurs in fulfilling its obligation to prevent or minimize loss or in collecting the amount owing. The Receiver states that the claims process is being undertaken for the purposes of collecting the amounts owing and that it has put Atradius on notice that it is seeking approval from the Court for the claims process. The receiver has specifically requested the approval of Atradius for the claims process so as to be eligible for Atradius contributing to the costs the Receiver incurs taking steps to collect amount owed. The decision by Atradius in respect of this request for approval is pending as of the date hereof.

46. 25. The Receiver pleads and relies upon the *Insurance Act* R.S.O. 1990 c. I.8, as amended.

47. 26. The Receiver proposes that the trial of this action be heard at Toronto.

Date: ~~February 20, 2020~~  
July, 2020

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Court-appointed receiver, BDO CANADA LIMITED

ATRADIUS CRÉDITO Y CAUCIÓN S.A. DE SEGUROS Y  
REASEGUROS

Plaintiff

Defendant

Court File No. CV-20-20636661-0000

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

**AMENDED STATEMENT OF CLAIM**

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CANADIAN IMPERIAL BANK OF COMMERCE  
Plaintiff

-and-

SIMRANJIT DHILLON et al.  
Defendants

Court File No. CV-19-00628293-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
**Proceedings commenced at Toronto**

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**ANCILLARY ORDER**

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