

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

and

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

Respondents

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

MOTION RECORD OF MORGAN & PARTNERS INC.

August 31, 2022

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*Lawyer for the Original Receiver,
Morgan & Partners Inc. and John
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THE COURTS OF JUSTICE ACT, R.S.O. 1990, C.C-43, AS AMENDED

NOTICE OF MOTION

Morgan & Partners Inc. (“MPI”), in its capacity as Original Receiver (in such capacity, the “Receiver”), without security, over all of the assets, undertakings and properties 1635536 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. (collectively the “Versitec Group”), will make a motion to a Judge presiding at the Commercial List on a date to be fixed by the Court .

PROPOSED METHOD OF HEARING:

- In writing under subrule 37.12.1(1) because it is made without notice;
- In writing as an opposed motion under sub rule 37.12.1 (4);
- In person;

□ By telephone conference;

■ By video conference.

at the following location: 300 University Ave, Toronto

THE MOTION IS FOR:

1. An Order granting leave to withdraw the Response Affidavit of John Morgan sworn 10 January 2022, the Form 35 Acknowledgment of Expert's Duty of John Morgan and certain supplementary information correcting the 10 January 2022 Affidavit as contained in 8 April, 2022 correspondence from Paliare Roland LLP, counsel for Reuben Byrd to Torkin Manes LLP counsel for Liquid Capital Exchange Corp.
2. An Order for an extension of time to vary the 12 February 2021 Order of the Honourable Mr. Justice Koehnen discharging Morgan & Partners Inc. as Original Receiver of the assets and undertaking of 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc., and Versitec Marine Usa Inc., for the limited purpose of permitting Morgan & Partners Inc. to file a Second Report, and if such extension of time is granted;
3. An Order varying the 12 February 2021 Order of the Honourable Mr. Justice Koehnen discharging Morgan & Partners Inc. as Original Receiver of the assets and undertaking of 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc. and Versitec Marine USA Inc., for the limited purpose of permitting Morgan &

Partners Inc. to file a Second Report;

4. An Order granting leave to substitute an unsworn Receiver's Second Report of Morgan & Partners Inc.;
5. Should such orders for leave be granted, an Order striking the 25 April 2022 Reply Affidavit of Jonathan Brindley;
6. In the alternative, should such orders for leave be granted, an Order striking the allegations in the 25 April 2022 Reply Affidavit of Jonathan Brindley as against John Morgan and Morgan & Partners Inc.;
7. An Order for directions whether John Morgan and MPI may release operational documents and financial information acquired in the administration of the Original Receivership to a substitute expert witness to be engaged on behalf of Reuben Byrd for the purpose of such expert preparing a report and giving evidence in response to the summary judgment motion of Liquid Capital Exchange Corp. as against Reuben Byrd;
8. An Order for costs as against any interested party opposing the relief sought; and
9. Such further orders and directions as may be just.

THE GROUNDS FOR THIS MOTION ARE:

1. This Motion arises from the Receivership of the Respondents 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc. and Versitec Marine USA Inc. (collectively the “**Versitec Respondents**”) on the application of Liquid Capital Exchange Corp. (“**LCX**”).
2. John Morgan (“**Morgan**”) is the principal and president of Morgan & Partners Inc. (“**MPI**”) the initial receiver in this Application (the “**Initial Receiver**”) and was responsible for the administration by MPI of the Initial Receivership of the Versitec Group.
3. The Versitec Group, an international seller and distributor of marine propeller shaft seals, obtained factoring financing of the Versitec Group’s customer receivables from LCX. The obligations of the Versitec Group to LCX were guaranteed by the principals of the Versitec Group, including Reuben Byrd.
4. LCX primarily relied for the purposes of conducting its commercial relationship with the Versitec Group on two contracts, one being a Purchase and Sales Agreement made 21 June 2017 (the “**Factoring Agreement**”) and the other being a Forbearance Agreement executed 25 April 2019 (the “**Forbearance Agreement**”).
5. As described more fully in the Factoring Agreement and the Forbearance Agreement, LCX deducted and retained for its own benefit a discount fee on account of each

receivable invoiced to customers of the Versitec Group and had contractual liberty to deduct a reserve which only was repaid to the Versitec Group when the underlying invoice was fully paid.

6. MPI was appointed the Initial Receiver of the Versitec Group by the order of Justice C. A. Gilmore pronounced 9 March, 2020. This Order included a provision that no proceedings be commenced against the Receiver without the Receiver's consent or with the leave of the Court.
7. Issues have subsequently arisen whether LCX fully disclosed material facts in its application for the appointment of a receiver and whether LCX was at the time of the initial appointment and subsequently, a creditor or debtor of the Versitec Group.
8. No evidence has been presented by LCX that in the course of administering the Factoring Agreement and the Forbearance Agreement:
 - a. LCX received payment of receivables directly from Versitec Group customers, without factoring such payments or otherwise accounting to the Versitec Group for such payments (the "**Unfactored Receivables**");
 - b. for some payments from Versitec Group customers which were factored, LCX charged penalties on certain receivables which were paid within time;
 - c. LCX charged excessive penalties on aged receivables; and
 - d. in charging reserves to the account of Versitec Group, LCX made adjustments for conversion or fraud by the Versitec Group or its customers alleged by LCX without

substantiation (which penalties and adjustments are hereinafter referred to as “**Adjusted Reserves**”).

9. Issues arose between LCX and MPI as to its conduct of the Receivership, particularly:
 - a) whether the business of the Versitec Group was to be conducted as a going concern, or was to be sold under supervision of the Court; and
 - b) whether LCX’s administration of Unfactored Receivables and Adjusted Reserves resulted in LCX being a creditor or debtor of the Versitec Group.

10. It was decided in the interests of all parties that a substitute receiver be appointed. MPI prepared a limited First Report in support of its motion for a substitute receiver. Morgan never agreed to certify or to provide an opinion on behalf of MPI as to the accuracy of the amount claimed by LCX as against the Versitec Group. The differences between LCX and the Receiver as to the calculation of the state of accounts as between LCX and the Versitec Group were overtaken by events.

11. In its First Report, MPI did not comment on the Unfactored Receivables or Adjusted Reserves. Because this First Report was for the limited purpose of supporting MPI’s motion for the appointment of a Substitute Receiver, and LCX was not seeking judgment against the individual Respondents on their guarantees. The First Report did not address the differences between LCX and MPI as to the calculation of the state of accounts as between LCX and Versitec Group.

12. BDO Canada Limited was appointed substitute receiver by the 12th February, 2022 Orders of Justice Koehnen. One of these orders reserved the approval of certain steps taken by MPI in the payment of expenses and settlement of litigation. MPI therefore has a continuing status as a Receiver.

13. After the sale of the Versitec Group business as approved by this Court, there was a continuing debt alleged by LCX as against the Versitec Group.

14. LCX by Notice of Motion dated 18 November 2021 moved for, among other relief, summary judgement as against Byrd on the personal guarantee he had given to LCX in respect of the Versitec Group's obligations to LCX. This motion is being opposed by Byrd.

15. Morgan first became aware of the existence of LCX's summary judgment motion through being contacted by Byrd about 27 November 2021. Byrd requested, and Morgan agreed, to provide response expert affidavit evidence in support of Byrd's position that at the time of the receivership, LCX was in fact indebted to the Versitec Group and therefore he was not obligated on his guarantee to LCX.

16. Morgan then prepared an analysis of the accounts as between LCX and the Versitec Group and prepared a report of 8 January, 2022, which is an Exhibit to his Affidavit of 10 January, 2022. This Affidavit and Morgan's Acknowledgement of Expert's Duty has been served and filed.

17. At the time Morgan prepared the 10 January, 2022 Affidavit and its Supplementary Information, Morgan had not requested or obtained legal advice as to his standing as principal of the Receiver to give expert affidavit evidence on behalf of Byrd as a Respondent in this Application adverse in interest to the Applicant LCX.
18. Morgan was not aware of the full nature and amount of LCX's indebtedness to the Versitec Group until he performed his analysis in December 2021. Morgan apprehend that as of 4 March, 2020, at the inception of the Receivership motion, LCX was in fact indebted to the Versitec Group in the amount of \$228,941.55.
19. Morgan and MPI have a continuing professional responsibility to report to the Court material non-disclosure by participants in the receivership process and to report to the Court relevant financial transactions which are noncompliant with generally accepted accounting standards.
20. On Morgan's subsequent review of the 8 January 2022 Report, Mr. Morgan detected errors in the calculation of certain accounts as between LCX and the Versitec Group. Morgan has provided analyses of recalculated amounts to Byrd's counsel Paliare Roland. Paliare Roland communicated these corrections to LCX's council on 8 April, 2022.
21. The principal of LCX, Jonathan Brindley, then swore an affidavit of 25 April, 2022 which contains numerous allegations against Morgan and MPI in their administration of the Initial Receivership.

22. LCX has not sought or obtained leave to commence any proceedings against Morgan or MPI.
23. Since being served with the 25 April, 2022 Brindley Affidavit, MPI and Morgan have obtained independent legal advice. Morgan and MPI claims solicitor-client privilege over such advice.
24. Morgan and MPI now take the position that as the principal of a court-appointed receiver, and MPI as court-appointed receiver, both lack standing to adduce expert affidavit evidence on behalf of a Respondent to this Application who is adverse in interest to the Applicant. In the circumstances, MPI and Mr. Morgan made an error in judgment in agreeing to give expert affidavit evidence on behalf of Byrd.
25. Byrd does not intend to rely on MPI's 8 January 2022 Report or Morgan's 10 January 2022 Affidavit.
26. Byrd is not taking any position whether Morgan's 10 January 2022 Affidavit and the Supplementary Information should be withdrawn.
27. MPI has not been paid for Morgan's work in preparing the 8 January 2022 report and 10 January 2022 Affidavit. MPI withdraws its 12 January 2022 invoice. Morgan and MPI undertake not to seek payment from Byrd or his company. Morgan and MPI reserve the

right to seek payment for their analysis in preparing the proposed Supplementary Report.

28. Leave may be given to withdraw evidence given under mistake of law.
29. The 25 April, 2022 affidavit of Jonathan Brindley, and particularly its allegations as against Morgan and MPI, is vexatious and an abuse of process in that it has been delivered before leave has been sought and obtained to commence proceedings against Morgan and MPI.
30. It is in the interests of justice that the relief sought be granted.
31. Rules 3.02, 25.11, 37, 38.12 and 59.06(2) of the *Rules of Civil Procedure*.
32. Sections 246(2) 249 and 250 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
33. Rule 3 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368.
34. 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. 30 August 2022 Affidavit of John Morgan; and
2. Such further evidence as the Receiver may adduce and this Honourable Court receive.

DATE: August 31, 2022

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*Lawyers for the Applicant,
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Court-Appointed Receiver

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Proposed Purchaser

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Original Court-Appointed Receiver of the Versitec Group

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

LIQUID CAPITAL EXCHANGE CORP.
Applicant

and

163556 ONTARIO INC., et al
Respondents

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ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceeding commenced at Toronto

NOTICE OF MOTION

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Lawyer for the Original Receiver
Morgan & Partners Inc.

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COURTS OF JUSTICE ACT, R.S.O. 1990, C.C-43, AS AMENDED

Affidavit of JOHN HOWARD DEANE MORGAN

I, JOHN HOWARD DEANE MORGAN, of the Town of Gravenhurst in the District of
Muskoka MAKE OATH AND SAY:

Introduction

1. I am the principal and president of Morgan & Partners Inc. (“**MPI**”), the initial receiver in this Application (the “**Initial Receiver**”). I was responsible for the administration by MPI of the initial Receivership of the Respondents 1635536 Ontario Inc. o/a Versitec Marine & Industrial, Versitec Marine Holdings Inc. and Versitec Marine USA Inc. (the “**Versitec Group**”).

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2. I have personal knowledge of the facts to which I depose in this affidavit from my work with MPI. Where I do not have personal knowledge, I indicate the source of my information and I believe all such facts as related herein to be true.

3. I am swearing this affidavit in connection with a motion for leave to withdraw my affidavit sworn 10 January 2022 and my Form 35 Acknowledgment of Expert's Duty that have been delivered on behalf of Reuben Byrd ("**Byrd**") in response to a a motion for summary judgement brought by LCX against Reuben Byrd in respect of his guarantee to LCX of the Versitec Group's indebtedness and for other relief.

4. In this affidavit I refer to certain affidavit evidence given in this Application by Jonathan Brindley ("**Brindley**") on behalf of the Applicant Liquid Capital Exchange Corp. ("**LCX**"). In referring to such affidavit evidence by Brindley, I do not affirm or adopt the completeness or accuracy of the contents of such affidavits, except as I specifically refer to in this Affidavit. I refer to the affidavit evidence of Brindley for the purposes of giving evidence in support of this motion and to assist the court in the administration of the Receivership.

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Nondisclosure in Receivership Application

5. I have read the 4 March, 2020 Brindley Affidavit delivered in support of LCX's Application for the appointment of MPI as Receiver of the Versitec Group. From my reading of that Affidavit and information which Brindley provided me in the course of the Receivership administration, I verily believe that LCX primarily relied for the purpose of conducting its commercial relationship with the Versitec Group on two contracts, one being a Purchase and Sale Agreement made 21 June, 2017 (the "**Factoring Agreement**") and the other being a Forbearance Agreement executed 25 April, 2019 (the "**Forbearance Agreement**") each between LCX and the Versitec Group. A copy of the Factoring Agreement is attached as Exhibit "D" to the 4 March, 2020 Brindley Affidavit. A copy of the Forbearance Agreement is attached as Exhibit "Q" to the 4 March, 2020 Brindley Affidavit. A true copy of the 4 March 2020 Brindley Affidavit is attached as Exhibit "A" to this Affidavit.

9. As described more fully in the Factoring Agreement and the Forbearance Agreement, LCX deducted and retained for its own benefit a discount fee on account of each receivable invoiced to customers of the Versitec Group and LCX had contractual liberty to deduct a reserve which only was repatriated by LCX to the ownership of the Versitec Group when the underlying invoice was fully paid.

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10. The 4 March, 2022 Brindley Affidavit does not contain any evidence that in the course of administering the Factoring Agreement and the Forbearance Agreement:

- a) LCX received payment of receivables directly from Versitec Group customers, without factoring such payments or otherwise accounting to the Versitec Group for such payments (the “**Unfactored Receivables**”);
- b) for some payments from Versitec Group customers which were factored, LCX charged penalties on certain receivables which were paid within time;
- c) LCX charged excessive penalties on aged receivables;
- d) in charging reserves to the account of Versitec Group, LCX made adjustments for alleged conversion or fraud by the Versitec Group or its customers; and
- e) LCX alleged such conversion and fraud without substantiation (which penalties and adjustments are hereinafter referred to as “**Adjusted Reserves**”).

11. The methodology and detailed analysis of the accounts as between LCX and the Versitec Group which I have performed are described in the proposed Second Report for which MPI seeks leave to file as described and shown as Exhibit “F” to this Affidavit.

12. I was not aware of the full nature and amount of LCX’s indebtedness to the Versitec Group until I performed in December 2021 the analysis which forms the basis of my 10 January, 2022 Affidavit and as is stated in the Exhibit “N” Second Report for which MPI

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seeks leave to file.

13. As a result of the analysis of accounts as between LCX and the Versitec Group which I have conducted, MPI and I have grounds to apprehend and verily believe that as of 4 March, 2020, LCX was in fact indebted to the Versitec Group in the amount of \$ 228,941.55.

14. The 4 March 2020 Brindley Affidavit does not disclose that as of the date of that Affidavit and LCX's application for the appointment of a receiver of the Versitec Group, that LCX was in fact indebted to the Versitec Group in the amount of \$ 228,941.55 or in fact that LCX was indebted to the Versitec Group in any amount.

15. I have held a Chartered Accountancy designation since 1980, and I obtained my designation as a Chartered Insolvency and Restructuring Professional and bankruptcy trustee license in 1995. In 2001, I received a designation as a Certified Fraud Examiner and a designation in Certified Business Management.

16. From my understanding of the applicable rules of professional conduct of my professional regulators, I verily believe that I have a continuing professional responsibility to report to the Court material nondisclosure by participants in the receivership process and

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to report to the Court relevant financial transactions which are noncompliant with respect to generally accepted accounting standards.

17. The rules of professional conduct on which I rely are:

a) Section 13.2.4 of the Canadian Association of Insolvency and Restructuring Professionals Standards of Professional Practice which provides: “the Members should advise the Debtor that any information given by the Debtor to the Member may be disclosed to the court and the creditors.”; and

b) Rule 5 of the Canadian Association of Insolvency and Restructuring Professionals Rules of Professional Conduct which provides: “Members shall not sign or associate with any letter, report, statement, representation or financial statement which they know, or should know, is false or misleading.”

Administration of Receivership

18. A true copy of the 9 March, 2020 Order appointing MPI as Receiver of the Versitec Group is attached as Exhibit “B” to this Affidavit. This order provides at paragraph 8: “THIS COURT ORDERS no proceeding or enforcement process in any court or tribunal premises, (a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court”.

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19. As more fully set out in the First Report of the Receiver, a true copy of which is attached as Exhibit "C" to this Affidavit, MPI began the administration of the Receivership by identifying and securing the assets of the Versitec Group, directing all receivables into trust accounts maintained by MPI in the United States and Canada and continuing the business operations of the Versitec Group as a going concern. Based on MPI's inventorying of assets and information I received from Versitec Group management, during the first months of the Receivership I had reasonable grounds to believe that with rationalization of operations and appropriate cash flow management, any obligations of the Versitec Group to LCX and other creditors could be satisfied through continuing Versitec's business of the international sale and distribution of marine propellor shaft seals and administration of the Versitec Group's receivables and that a sale of the Versitec Group businesses would not be necessary.

20. In these circumstances, my efforts were concentrated on the preservation of assets and the conduct of the Versitec Group's business as a going concern rather than on a forensic audit and analysis of Unfactored Receivables and Adjusted Reserves.

21. At the request of LCX, I did conduct a review of the amount of Factored Receivables owing from the Versitec Group to LCX during the forbearance period under the Forbearance Agreement. I compared the amount of Factored Receivables in the financial records of both LCX and the Versitec Group and concluded that such amounts matched or

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were reconcilable. I did not at the time conduct an audit or analysis of the Unfactored Receivables and Adjusted Reserves. My comparison of the gross amount of Factored Receivables was the basis of the comment at paragraph 54 of MPI's First Report that as of October 19, 2020, the Receiver was satisfied with LCX's calculation.

22. Early in the Receivership, LCX requested that MPI release to LCX upon receipt, any Versitec accounts receivables which had been purchased by LCX but remitted to Versitec.

23. Because MPI needed to account to LCX for those amounts of Versitec's Receivables that were subject of a reserve to be taken by LCX, I needed to review LCX's calculation of its reserve for each transaction for the purpose of the Receiver remitting recognized reserves to LCX. During the administration of the initial Receivership, of the \$650,380.16 asserted by LCX to be owing from the Versitec Group, the Receiver only approved the release to LCX of \$60,000.

24. As a result of my review of LCX reserves claimed for particular transactions, beginning in September 2020 I began to have reservations whether LCX's calculation of such reserves was consistent with the Factoring Agreement or the Forbearance Agreement or was justified on the basis of available information. I am advised by Calvin Ho of Lashley Reed, the Receiver's counsel and verily believe, that in September 2020 he initiated inquiries

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to Stewart Thom of Torkin Manes LLP, LCX's counsel concerning the amounts of Unfactored Receivables received by LCX and the factual bases on which Adjusted Reserves were calculated by LCX. Despite my repeated inquiries of LCX, I only received a substantive response to my initial inquiries on December 4, 2020.

25. Despite pressure asserted on me by Jonathan Brindley and Stewart Thom, counsel for LCX, I never agreed to certify or to provide an opinion on behalf of MPI as to the accuracy of the amount claimed by LCX as against the Versitec Group.

26. As more fully discussed in paragraph 57 of MPI's First Report, from the beginning of January, 2021 the Versitec Group's cash flow began to decrease significantly due to operating restrictions on customers from the COVID -19 pandemic. This raised the issue whether the Versitec Group could continue in business as a going concern or whether the sale of that business would then be appropriate. I was pressured by Jonathan Brindley, and verily believe, that LCX's position and objective was that the business of the Versitec Group be sold.

27. Because of the allegations made by LCX against me and MPI concerning the administration of the Receivership and because of the differences between LCX and the Receiver whether a sale of the Versitec Group business was desirable, I considered it to be

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in the best interest of all parties that a substitute receiver be appointed. The differences between LCX and the Receiver as to the calculation of the state of accounts as between LCX and the Versitec Group were overtaken by these events.

28. MPI, by its solicitors made a motion to the Commercial List for the substitution of the Receiver. I prepared on behalf of MPI a First Report of the Receiver. Paragraph 2 of this Report states: “The purpose of this Report is to summarize and seek approval of limited activities of the Receiver from the date of its appointment through to present, and to provide background in respect of a substitution of the Receiver on consent.” Because this First Report was for the limited purpose of supporting MPI’s motion for the appointment of a Substitute Receiver, and LCX was not at the time seeking judgment against the individual Respondents on their guarantees, the First Report did not address the differences between LCX and MPI as to the calculation of the state of accounts as between LCX and the Versitec Group. In particular, the First Report did not address the differences between LCX and MPI on the issues of the Unfactored Receivables and the Adjusted Reserves.

29. A true copy of 12 February, 2021 Order in this Application of Justice Koehnen (Appointing Substitute Receiver) is attached as Exhibit “ D” to this Affidavit. This Order substituted BDO Canada Limited as Substitute Receiver of the Versitec Group for MPI.

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30. A true copy of the 12th February, 2021 Order in this Application of Justice Koehnen [Substitution of Receiver and Approval of Sale Process] is attached as Exhibit “E” to this Affidavit. This order discharged MPI as Receiver and provides at paragraph 2: “THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report are hereby approved, except for the Receiver’s activities in relation to the litigation settlements described in the First Report and any payments made by the Debtors or authorized by the Receiver during the period of the Receiver’s appointment or in relation to the litigation settlements.” I therefore verily believe that MPI has a continuing obligation to report to the Court concerning the matters reserved by the operation of paragraph 2 of that Order.

31. MPI respectfully seeks leave to submit to and file with the Court an unsworn Second Receiver’s Report in the form attached as Exhibit “N” to this Affidavit.

Subsequent Events

32. From my review of the proceedings in this Application, LCX by Notice of Motion dated 18 November 2021 moved for, among other relief, summary judgement as against Byrd on the personal guarantee he had given to LCX in respect of the Versitec Group’s obligations to LCX under the Forebearance Agreement. A true copy of the Notice of Motion is attached as Exhibit “G” to this Affidavit.

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33. I first became aware of the existence of LCX's summary judgment motion through being contacted by Byrd about 27 November 2021. Byrd requested, and I agreed, to provide response expert affidavit evidence in support of Byrd's position that at the time of the receivership, LCX was in fact indebted to the Versitec Group and that therefore he was not obligated on his guarantee to LCX.

34. I therefore prepared a report dated 8 January, 2022 analysing the state of accounts as between LCX and the Versitec Group. I signed a Rule 53 Acknowledgement of Expert's Duty and swore an affidavit deposing as to the circumstances of the MPI's First Report and my 8 January 2022 report on 10 January, 2022. A true copy of my 10 January, 2022 Affidavit is attached as Exhibit "H". I am advised by Jerry Larry of Paliare, Roland, Counsel of record for Byrd, and verily believe, that Paliare Roland has served and filed my 10 January, 2022 Affidavit and Acknowledgement of Expert's Duty in this Application.

35. On my subsequent review of my 8 January, 2022 Report, I detected errors in calculation of certain accounts as between LCX and the Versitec Group. I provided analyses of recalculated amounts to Paliare. Roland. I am advised by Danielle Glatt of Paliare Roland, and verily believe that she wrote counsel for LCX on 8 April, 2022, enclosing my revised analysis and a correction to my 10 January 2022 Affidavit.. A true copy of Ms. Glatt's 8 April, 2022 letter with my enclosures is attached is Exhibit "I". I refer to Exhibit "I" below

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as the “**Supplementary Information**”.

36. Apart from the communications, external correspondence and court record to which I refer to in paragraphs 33 to 35 inclusive of this affidavit, and the external correspondence between ROUTE Transport & Trade Law and Paliare Roland attached as Exhibits ‘L’ and ‘M’ to this Affidavit, MPI and I claim common interest privilege and litigation privilege over all other communications between myself, Byrd and Paliare Roland.

37. At the time I was retained on behalf of Byrd and at the time I prepared my 10 January, 2022 Affidavit and its Supplementary Information, I had not obtained or requested legal advice as to my standing as principal of the Receiver to give expert affidavit evidence on behalf of Byrd as a Respondent in this Application adverse in interest to the Applicant LCX.

Allegations against Initial Receiver

38. During the course of communications between myself and Jonathan Brindley from June, 2020, Jonathan Brindley made various allegations against me and MPI concerning the administration of the Receivership as more fully described in the 25 April, 2022 Brindley Affidavit, a true copy of which is attached as Exhibit “J” to this Affidavit. MPI and I do not

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admit, accept or affirm such allegations. LCX has not at any time to the date of this Affidavit sought leave to commence legal proceedings against myself or MPI. MPI and I have full answer and defence to each and every one of the allegations made against myself and MPI in the 25 April, 2022 Brindley Affidavit.

39. I respectfully seek leave to withdraw my 10 January, 2022 Affidavit and my Form 53 Acknowledgement of Expert's Duty and the Supplementary Information and to substitute the filing of MPI's proposed Second Receiver's Report and an order that consequently the 25 April, 2022 Brindley Affidavit be stricken. Should the 25 April, 2022 Brindley Affidavit not be stricken, MPI and I reserve the right to seek leave to adduce evidence in full answer and defence to the allegations as against me and MPI in the 25 April, 2022 Brindley Affidavit.

40. Since I was served with the 25 April, 2022 Brindley Affidavit, MPI and I have obtained independent legal advice. I claim solicitor-client privilege over such advice. I now take the position that I as the principal of a court-appointed receiver and MPI as court-appointed receiver both lack standing to adduce expert affidavit evidence on behalf of a Respondent to this Application who is adverse in interest to the Applicant. In the circumstances, MPI and I made an error in judgment in agreeing to give expert affidavit evidence on behalf of Byrd.

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41. MPI billed Global Marine Engineering, a company which I understand from Byrd and of which I verily believe Byrd is the principal, for MPI's work in preparing the 8th January, 2022 Report and my 10 January, 2022 Affidavit. A true copy of that Invoice is attached is Exhibit "K". That invoice for \$ 21,600.00 has not been paid. In the circumstance of myself and MPI seeking leave to withdraw my 10 January, 2022 Affidavit, MPI and I also withdraw the 11 January, 2022 Invoice and undertake not to seek payment of such invoice from Byrd or Global Marine Engineering. MPI and I reserve the right to seek payment for our work and financial analysis to prepare MPI's proposed Second Report in the administration of the Receivership or as costs in this Application.

42. I am advised by William M Sharpe, the solicitor for myself and MPI and verily believe that:

- a) he sent a position letter on my behalf and on behalf of MPI to Paliare Roland, on 11 August, 2022, a true copy of which is attached as Exhibit "L"; and
- b) he received a response from Paliare, Roland on 15 August, 2022, a true copy of which is attached as Exhibit "M".

43. As a result of that correspondence, MPI and I respectfully seek directions from the Court whether MPI and I can make available documents and information obtained by ourselves in the administration of the Receivership to the substitute expert which Paliare,

Roland proposes to engage on behalf of Byrd.

37. I make this affidavit in connection with a motion for leave to withdraw my affidavit sworn 10 January 2022 and my Form 35 Acknowledgment and the Supplementary Information, for leave to substitute an unsworn Receiver's Second Report, and, if such leave is granted, to strike the 25 April, 2022 Brindley Affidavit, for further orders and directions in the administration of the Receivership and for no improper purpose.

Sworn (select one): in person OR by video conference

by John Howard Deane Morgan
at the Town of Gravenhurst

in the District of Muskoka
before me at the City of Toronto
on 31 August, 2022 in accordance
with O. Reg. 431/20,
Administering Declaration Remotely



JOHN HOWARD DEANE MORGAN

.....
Commissioner for Taking Affidavits

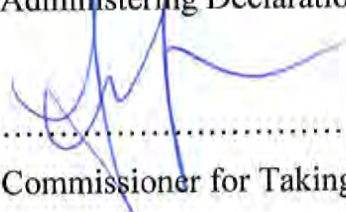
Roland proposes to engage on behalf of Byrd.

37. I make this affidavit in connection with a motion for leave to withdraw my affidavit sworn 10 January 2022 and my Form 35 Acknowledgment and the Supplementary Information, for leave to substitute an unsworn Receiver's Second Report, and, if such leave is granted, to strike the 25 April, 2022 Brindley Affidavit, for further orders and directions in the administration of the Receivership and for no improper purpose.

Sworn (select one): in person OR by video conference
by John Howard Deane Morgan
at the Town of Gravenhurst

in the District of Muskoka
before me at the City of Toronto
on 31 August, 2022 in accordance
with O. Reg. 431/20,
Administering Declaration Remotely


JOHN HOWARD DEANE MORGAN



.....

Commissioner for Taking Affidavits

The following document is Exhibit "A"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

AFFIDAVIT OF JONATHAN BRINDLEY

I, Jonathan Brindley, of the City of Mississauga in the Province of Ontario am a principal of the applicant, Liquid Capital Exchange Corp. ("LCX") and as such have knowledge of the matters herein deposed except as where I have otherwise indicated and in which case I have identified the source of my knowledge and belief.

Parties

1. LCX is an Ontario corporation which provides various financial services to its customers, including accounts receivable factoring, asset based lending, working capital advances, purchase order and equipment financing and leasing services.

Attached hereto as Exhibit "A" is a true copy of the corporation profile report for LCX

2. 1635536 Ontario Inc. o/a Versitec Marine & Industrial (“**Versitec Canada**”) is an Ontario corporation with a head office and manufacturing plant located in Port Colborne, Ontario. Versitec Canada operates as an equipment manufacturer and service supplier to the marine stern tube seal market. Versitec Canada supplies and installs seals for a variety of ship owners and shipyards across the globe with key customers in the US, Greece, Germany, Hong Kong and Singapore.

Attached hereto as Exhibit “B” is a true copy of the corporation profile report for Versitec Canada

3. Versitec Marine USA Inc. (“**Versitec USA**”) is a corporation incorporated pursuant to the laws of Delaware. Versitec USA lists as its address on its corporation profile report the address of 874 Walker Road, Suite C, Delaware, USA, although the Versitec website lists as its contact address a post office box located on Military Road, Niagara Falls, USA.

Attached hereto as Exhibit “C” is a true copy of the corporation profile report for Versitec USA

4. David Taylor is a resident of Ontario and was the founder of Versitec Canada and Versitec USA. Mr. Taylor is listed on the current corporate profile report of Versitec as being a director and the president of Versitec Canada.

5. David Carpenter is a resident of Ontario and is listed as an officer of Versitec Canada on its corporation profile report. LCX has been advised by Versitec Canada that Mr. Carpenter is no longer employed by Versitec Canada or Versitec USA.

6. Reuben Byrd is a resident of Florida and is, to my understanding, the current Chief Executive Officer of both Versitec Canada and Versitec USA.

7. Versitec Marine Holdings Inc. (“**Holdings**”) is an Bahamian company which, to my understanding, is a holding company which owns or owned shares of Versitec USA.

Agreements

8. On June 21, 2017, Versitec Canada, Versitec USA (collectively, the “**Debtors**”) and LCX executed a Purchase and Sale Agreement (the “**Agreement**”) setting out terms pursuant to which LCX agreed to purchase, or factor, accounts receivable of the Debtors.

9. Terms of the Agreement included:

1. **Purchase and Sale of Accounts.** Pursuant to the terms of this Agreement, Seller agrees to sell, transfer, convey, assign and deliver to Factor, and Factor agrees to purchase and receive from Seller, all of Seller's right, title and interest in and to certain Accounts arising from the sale of Goods or the rendering of services by Seller in the ordinary course of Seller's business...

5. **Notice of Assignment.** Upon Seller's execution of this Agreement, Factor shall be entitled to notify each customer (hereinafter referred to as “Account Debtor”) of the sale and/or assignment of the Accounts in a manner and method as Factor, in its sole discretion, may elect ...

Seller agrees, if so requested by Factor, to use its best efforts to assist Factor in procuring the Account Debtor's acknowledgment and acceptance of such notice of assignment and redirection of payment if requested to do so by Factor. Factor's inability, for whatever reason, to receive Account Debtor's acknowledgment and acceptance may result in the rejection of the Accounts submitted for purchase or revocation of a conditional approval to purchase Accounts without any obligation or liability on the part of Factor.

6. **Security.** In addition to those Accounts Factor purchases, in order to secure the payment of all indebtedness and obligations of Seller to Factor, Seller hereby grants to Factor a security interest in and lien upon all of Seller's presently and after-acquired Personal Property including, without limitation, any and all Reserves and all payments (if any) due or to become due to Seller from the Reserves as well as all monies on deposit, holdbacks and credits, and all Proceeds of the foregoing (collectively, the “Collateral”). Without limiting the foregoing and as a further inducement for Factor to enter into this Agreement with Seller, Seller shall execute and deliver a separate general security agreement concurrently with the execution and delivery of this Agreement by Seller, to secure inter alia, the performance and observance of the provisions under this Agreement on Seller's part to be observed or performed, on terms and conditions and as more fully provided in such separate general security agreement.

8. **Recourse To Seller.** In the event that:

(a) an Account purchased by Factor is not paid in full by the Account Debtor for any reason (or for no reason), on or before the date when due in accordance with its terms...

(d) Factor in its sole and absolute discretion determines that any Account is or has become uncollectible, then, Factor may require the Seller to promptly repurchase such Account from Factor...

10. **Payments Received by Seller.** Should Seller receive payment of all or any portion of an Account sold pursuant to this Agreement, Seller shall immediately notify Factor of the receipt of the payment, hold said payment in trust for Factor separate and apart from Seller's own property and funds, and shall deliver said payment to Factor without delay in the identical form in which received. Should Seller receive a cheque or other instrument of payment representing payment of amounts due to both Factor and Seller, Seller shall surrender said cheque or payment instrument to Factor. Should Seller receive a cheque or other instrument of payment representing payment of amounts due Factor and fail to surrender to Factor, or deposit in a bank account designated by Factor, said cheque or payment instrument within two (2) business days, Seller shall be deemed to have committed a material default in this Agreement. In addition to all other damages to which Factor shall be entitled, Factor shall be entitled, in the event Seller violates its obligations under this paragraph, to charge Seller a misdirected payment fee equal to ten (10%) percent of the amount of the payment instrument or One Thousand Dollars (\$1,000.00), whichever is greater, to compensate Factor for the additional administrative expenses that are likely to be incurred as a result of a breach. In the event any merchandise, the sale of which gave rise to an Account purchased by Factor, is returned to or repossessed by Seller, such merchandise shall be held by Seller in trust for Factor, separate and apart from Seller's own property and subject to Factor's sole direction and control.

11. **Default.** The term "Event of Default" as used in this Agreement shall mean the occurrence of any of the following events:

(a) The failure of Seller to punctually and properly observe, keep or perform any covenant, agreement or condition herein required to be observed, kept or performed; or required under any other agreement or contract that may be executed between Seller and Factor...

(c) The failure of Seller to, within two (2) business days, deliver to Factor or deposit into a bank account designated by Factor, a remittance received by Seller in payment of a purchased Account.

(d) The failure of Seller to pay any indebtedness owed by Seller to Factor whether or not said indebtedness arises hereunder or under some other agreement or contract by and between Seller and Factor...

(f) Seller becomes insolvent, is unable to pay its debts as they mature or makes an assignment for the benefit of creditors...

(l) Factor has reasonable grounds to deem itself insecure...

Attached hereto as Exhibit "D" is a true copy of the Purchase and Sale Agreement and executed blanket notifications of assignment of accounts

Security and Guarantees

10. As security for performance of the Debtors' obligations under the Agreement, LCX was granted the following additional security:

- (a) A general security agreement ("GSA") over all present and after acquired assets of Versitec Canada dated June 21, 2017 and registered pursuant to the *Personal Property Security Act* as Registration No. 20170616 1601 1793 7011;

Attached hereto as Exhibit "E" is a true copy of the Versitec Canada GSA

- (b) A general security agreement over all present and after acquired assets of Versitec USA dated June 21, 2017 and registered pursuant to the UCC as Financing Statement 20174120736;

Attached hereto as Exhibit "F" is a true copy of Versitec USA GSA

11. As additional security for performance of the Debtors' obligations under the Agreements, the following persons (each, a "**Guarantor**") have granted guarantees (each, a "**Guarantee**") of the indebtedness of the Debtors:

- (a) An unlimited personal guarantee granted by David Taylor in respect of the Debtors' indebtedness to LCX, dated June 21, 2017 (the "**Taylor Guarantee**"), supported by a demand collateral third mortgage in the amount of \$300,000 (the "**Taylor Mortgage**") granted over the property having the municipal address of 518 King Street, Port Colbourne, Ontario (the "**Taylor Property**") and registered on title to the Taylor Property on May 3, 2019 as Instrument No. SN587591;

Attached hereto as Exhibit "G" is a true copy of the Taylor Guarantee

Attached hereto as Exhibit "H" is a true copy of the PIN for the Taylor Property

Attached hereto as Exhibit "I" is a true copy of the Taylor Mortgage

- (b) An unlimited personal guarantee granted by Reuben Byrd in respect of the Debtors' indebtedness to LCX, dated April 26, 2019 (the "**Byrd Guarantee**"), supported by a demand collateral mortgage in the amount of \$300,000 (the "**Byrd Mortgage**") granted over the property having the municipal address of 19480 Saturnia Lakes Drive, Boca Raton, Florida, USA;

Attached hereto as Exhibit "J" is a true copy of the Byrd Guarantee

Attached hereto as Exhibit "K" is a true copy of Byrd Mortgage

- (c) An unlimited personal guarantee granted by David Carpenter (the "**Carpenter Guarantee**") in respect of the Debtors' indebtedness to LCX, dated June 21, 2017;

Attached hereto as Exhibit "L" is a true copy of the Carpenter Guarantee

- (d) An unlimited guarantee granted by Holdings in respect of the Debtors' indebtedness to LCX, dated June 21, 2017 (the "**Holdings Guarantee**");

Attached hereto as Exhibit "M" is a true copy of the Holdings Guarantee

- (e) An unlimited guarantee granted by Versitec USA in respect of Versitec Canada's indebtedness to LCX, dated June 21, 2017 (the "**Versitec USA Guarantee**");

Attached hereto as Exhibit "N" is a true copy of the Versitec USA Guarantee

- (f) An unlimited guarantee granted by Versitec Canada in respect of Versitec USA's indebtedness to LCX, dated June 21, 2017 (the "**Versitec Canada Guarantee**");

Attached hereto as Exhibit "O" is a true copy of the Versitec Canada Guarantee

History

12. Since June 2017, Liquid Capital has factored the accounts receivable of the Debtors on more than 50 separate occasions, with factoring volume in excess of CDN\$1,600,000 and US\$1,300,000.

13. Between approximately June 2017 and July 2018, LCX was satisfied with its business relationship and dealings with the Debtors. During this period, the key interfaces at the Debtors for LCX were David Carpenter (controller) and David Swindells (Chief Executive Officer). It appeared to LCX that David Taylor, the president of the Debtors, was less involved in the day-to-day management of the business and spent much of his time overseas.

14. In or around June 2018, Reuben Byrd joined both Versitec Canada and Versitec USA in the stated role of new CEO, to oversee all global operations of the Debtors.

Default and Demands 2018

15. In or around July 2018 through to October 2018, collections on LCX-factored accounts receivable slowed down dramatically, becoming a serious concern for LCX. An unacceptable level of accounts sold to LCX had aged significantly beyond their due date. Because of this situation, in July 2018 LCX suspended any further factoring of the Debtors' accounts receivable.

16. Subsequently, in November 2018, LCX became aware that the Debtors had breached the terms of their Agreement with LCX. In particular, and without limitation:

- (a) LCX learned that certain accounts receivable factored by LCX had been paid to the Debtors and not remitted to LCX as required; and
- (b) LCX learned that the Debtors had recently missed payroll for their employees and, as such, the Debtors appeared to be unable to service their debts generally as they became due and insolvent.

17. On November 16, 2018, LCX made demand upon the Debtors and Guarantors for payment of all amounts outstanding and owed to it on account of moneys advanced to the Debtors. Together with notice of default and demand for repayment, LCX delivered Notice of Intention to Enforce Security (“NITES”) pursuant to s.244 of the *Bankruptcy and Insolvency Act*.

Attached hereto as Exhibit “P” is a true copy of the November 16, 2018 Demands and NITES

Forbearance Agreement

18. In March 2019, Representatives of LCX met with Taylor and Byrd to discuss the outstanding debt to LCX as well as potential terms of forbearance that would:

- (a) facilitate repayment in full of LCX;
- (b) require the Debtors to obtain replacement financing; and
- (c) allow for the continued factoring of the Debtors’ accounts receivable by LCX during the forbearance period, while the Debtors sought replacement financing.

19. LCX was advised at that time that David Carpenter and David Swindells had been diverting accounts receivable from the company, which circumstance had resulted in the various defaults under the LCX Agreements. Byrd and Taylor advised that Carpenter and Swindells had since been terminated, and that they were confident that the Debtors could repay LCX over time if the necessary accounts receivable financing could be provided by LCX during the

repayment/forbearance period and while the Debtors sought out alternative financing to replace LCX. LCX has since learned that Carpenter and Swindells deny these allegations and have sued the Debtors for wrongful dismissal.

20. Terms were reached and a forbearance agreement dated April 25, 2019 was executed (the “**Forbearance Agreement**”) by each of Versitec Canada, Versitec, USA, Versitec Holdings, Byrd, Taylor and LCX (Carpenter, also a Guarantor, was no longer involved with the business). In broad strokes, the Forbearance Agreement provided that all amounts owing to LCX would be repaid to LCX by December 31, 2019 and that the Debtors would seek new financing. During the period from April 26, 2019 to December 31, 2019, LCX would continue to purchase receivables of the Debtors on certain terms as set out therein.

Attached hereto as Exhibit “Q” is a true copy of the Forbearance Agreement

21. Additional terms of the Forbearance Agreement include:

- 1(E): The Debtors’ acknowledgment of their defaults under the Agreement, including failure to remit factored accounts receivable received by the Debtors and breach of trust;
- 3
 - (a) The Debtors’ acknowledgment that each of the documents and agreements comprising the LDX security is valid and enforceable in accordance with its terms;
 - (c) The Debtors’ acknowledgment that the Guarantees given by each of Byrd, Taylor and Versitec Holdings, with respect to the indebtedness of the Debtors are valid and enforceable in accordance with their terms;
 - (j) The Debtors’ and the Guarantors’ confirmation that the demands and NITES sent to them remain in full force and effect throughout the Forbearance Period and that LCX has not, and will not be deemed to have waived, varied, altered or in any other manner whatsoever withdrawn same, and that LCX may continue to rely on the Demands and NITES and in the event of default hereunder, shall be entitled to act on them without the need to issue any further or fresh Demand and/or NITES;
- 3(k) The Debtors and Guarantors acknowledgment and confirmation that their respective liability for the indebtedness to LCX is valid and enforceable and that neither the Debtors nor the Guarantors have any valid defence, claim, cause of action, counterclaim or rights of setoff or right of reduction or any other claim (in

law or in equity) of any kind or nature whatsoever against LCX, its officers, directors or employees;

8. Upon the earlier of (i) the expiry of the Forbearance Period without repayment in whole to LCX; or (ii) the occurrence of an Event of Default of which LCX has given the Borrowers and the Guarantors notice, LCX may immediately terminate all credit facilities, terminate its forbearance hereunder and the Forbearance Period, and take steps to enforce, without further notice or delay, all of its rights and remedies against each of the Borrowers and each Guarantor for such indebtedness, including taking steps to realize on the security and guarantees, which rights and remedies may, at the sole option of LCX include an application to Court for the appointment of a receiver or receiver-manager and each of the Borrowers and the Guarantors consent to such appointment of a receiver and agree that they do not, and will not, oppose such appointment and that LCX can rely upon the consent to appointment of a Receiver contained herein and that such consent shall be ongoing until such time as all Indebtedness is fully repaid. Each of the Borrowers and the Guarantors shall be estopped from disputing their respective consent to the appointment of a receiver following an event of default and termination of the forbearance term and this agreement.

Engagement of Consultant

22. The Forbearance Agreement also provided for the engagement of Newhouse Partners Inc. (the “**Consultant**”) as consultant on the terms of conditions set out in an engagement letter dated March 29, 2019 (the “**Engagement Letter**”).

23. Pursuant to the Engagement letter, the Debtors and Guarantors (excepting Mr. Carpenter) agreed to the retainer of the Consultant as consultant to Liquid Capital for the purpose of conducting a review and advising with respect to all aspects of the Debtors’ financial affairs and operations, LCX’s security over invoices from the Debtors and all matters related thereto and in connection therewith.

Attached hereto as Exhibit “R” is a true copy of the Consultant Engagement Letter

24. The Debtors and the Guarantors (excepting Mr. Carpenter) agreed and acknowledged, by the Engagement letter:

- (a) that they would fully cooperate with the Consultant and give the Consultant complete access at all times to the Debtors' books of account, records and other documents of all kinds and to all of the Debtors' premises and properties; and
- (b) that the principals and management of the Debtors and Guarantors would make themselves available to assist and furnish any information required, including directing the Debtors' accountants to assist the Consultant where necessary.

Breach of Agreements

25. From May 2019 to October 2019, LCX factored approximately CDN \$1,000,000 and US\$500,000 of the Debtors' accounts receivable. During this period, LCX was satisfied with the collection of factored accounts receivable and the Consultant made regular visits with the Debtors to monitor the Debtors' operations.

26. Beginning in or around October of 2019, LCX again began to encounter serious difficulties in its dealings with the Debtors, which difficulties have persisted since that time. In particular, without limitation:

- (a) In October 2019, Byrd refused to grant the Consultant any further access to books and records of the Debtors;
- (b) In November and December 2019, the timely collection of accounts receivable decreased dramatically, in a manner consistent with that encountered in the period prior to the issuance of the November 16, 2018 demands and NITES;
- (c) On November 21, 2019, the first mortgagee on the Taylor Property issued notice of default and demand under its first charge on the Taylor Property;

Attached hereto as Exhibit "S" is a true copy of the first mortgagee demand

- (d) On December 11, 2019, the second mortgagee on the Taylor Property issued notice of default and demand under its second charge on the Taylor Property;

Attached hereto as Exhibit "T" is a true copy of the second mortgagee demand

- (e) No replacement financing was obtained by the Debtors, as required by the Forbearance Agreement, and LCX was not repaid in full all amounts owing to it on December 31, 2019;
- (f) On January 4, 2020, LCX learned, through communications with one of the Debtors' customers, that on November 14, 2019, the Debtors' had delivered correspondence to customers instructing them to pay receivables, including LCX-factored accounts, to a Bank of America account held by Versitec USA, instead of to LCX;

Attached hereto as Exhibit "U" is a true copy of the correspondence delivered to customers by the Debtors on November 14, 2019

- (g) On January 8, 2020, LCX uncovered another instance of Versitec USA misdirecting payments received from Wallem Ship Management Ltd. ("**Wallem**") totalling US\$57,718, prompting LCX to send a factoring breach notice via email to Byrd and Taylor;

Attached hereto as Exhibit "V" is a true copy of correspondence between LCX and Wallem

Attached hereto as Exhibit "W" is a true copy of the notice of factoring breach delivered to the Debtors on January 9, 2020

January, 2020 Demands and NITES

27. On January 16, 2020, LCX delivered further demand for repayment of all outstanding amounts owed to LCX, together with NITES, to the Debtors and all Guarantors.

Attached hereto as Exhibit "X", collectively, are true copies of the January 16, 2020 demands and NITES delivered by LCX

28. Throughout January 2020, LCX attempted to work with the Debtors on resolving these issues. However, despite numerous promises to pay, no funds were received by LCX on account of the outstanding obligations of the Debtors.

Further Breaches

29. The severity of the situation was underscored when, in this context, LCX had a February 27, 2020 exchange of correspondence with Eastern Mediterranean Maritime Limited ("**Eastern Med**"), located in Greece.

30. Eastern Med contacted LCX for advice to resolve confusion about whether €45,000 payable on outstanding factored invoices was to be paid to LCX or to Versitec Canada, as they had received conflicting directions from LCX and the Debtors. Further discussions with Eastern Med revealed that the Debtors had additionally been misrepresenting to LCX what was owed by Eastern Med.

31. When LCX instructed Eastern Med to pay approximately €30,000 (the factored o/s portion) to LCX and the remaining balance to Versitec USA in order to clear overdue factored balances, Florida legal counsel for the Debtors, Kevin Jackson, immediately sent Eastern Med a letter demanding that these funds be paid in full to the Debtors and suggesting that "Versitec Marine" would indemnify for any amounts which Eastern Med may be found liable to LCX.

The letter is signed "Versitec Marine", and not in the correct legal name of any known company. LCX understands from Eastern Med that the funds were transferred as directed by Mr. Jackson. Despite the guarantee offered in Mr. Jackson's letter, these funds have not been paid to LCX.

Attached hereto as Exhibit "Y" is a true copy of correspondence between LCX and Eastern Med

Attached hereto as Exhibit "Z" is a true copy of the correspondence sent by Mr. Jackson to Eastern Med

Current Indebtedness

32. The current balances owed to LCX by the Debtors, as at February 28, 2020, non-inclusive of legal costs to date, is as follows:

AC #	Currency	AR Balance	Net Funds Employed (NFE)	Accrued Fees	Total Balance owing	Per Diem	
1635536 Ontario Inc. o/a Versitec Marine	4822 CDN	237,836.80	249,478.59	35,013.29	284,491.88	237.84	
1635536 Ontario Inc. o/a Versitec Marine	4821 US	95,073.79	78,058.56	15,570.59	93,629.15	95.07	
Versitec Marine USA Inc.	4820U US	75,614.67	93,494.50	12,220.79	105,715.29	75.61	
			Net Funds	Acc Fees	Total Bal Due	Per Diem	
			Total CDN	249,478.59	35,013.29	284,491.88	237.84
			Total US	171,553.06	27,791.38	199,344.44	170.69

33. Attached hereto additionally is a list of all outstanding factored invoices.

Attached hereto as Exhibit "AA" is a true copy of a current list of outstanding factored invoices for Versitec USA and Versitec Canada

Secured Creditors

A. Versitec Canada

34. According to a current *Personal Property Security Act* (“PPSA”) registry search, the following are the senior ranking general secured creditors of Versitec Canada, listed by date of registration:

- (a) BUSINESS DEVELOPMENT BANK OF CANADA (“BDC”) by Registration No. 20140611 1625 2611 6669;
- (b) LIQUID CAPITAL EXCHANGE CORP. by Registration No. 20170616 1601 1793 7011;
- (c) PREMIUM CAPITAL GROUP, INC. by Registration No. 20180629 1744 6083 3900;
- (d) MERCHANT ADVANCE CAPITAL by Registration No. 20181114 0950 6083 7346

Attached hereto and marked as Exhibit “BB” is a true copy of the PPSA registry search results for Versitec Canada

35. Pursuant to a Postponement and Priorities Agreement entered into between LCX, BDC and Versitec Canada, it was agreed that the LCX’s security interest in the assets of Versitec Canada shall have priority over the security interest of BDC in respect of the following:

- (a) All of Versitec Canada’s present and future accounts receivable and inventory;
- (b) All contract rights, instruments, documents, chattel paper and general intangibles related to any of the foregoing, including all of Versitec Canada’s rights as a seller of goods;
- (c) All collateral held by Versitec Canada securing any of the foregoing;

- (d) All cash and non cash proceeds of any of the foregoing, in whatever form, including without limitation any balances maintained in any reserve account with LCX and any returned or repossessed goods;
- (e) All books and records relating to the foregoing.
(collectively, the “Versitec Canada Assets”)

Attached hereto and marked as Exhibit “CC” is a true copy of the Postponement and Priorities Agreement

B. Versitec USA

36. According to a UCC and Federal Tax Liens search conducted in respect of Versitec USA, the following are the senior ranking general secured creditors of Versitec USA, listed by date of registration:

- (a) LIQUID CAPITAL EXCHANGE CORP by Financing Statement 20174120736;
- (b) BANK OF AMERICA, N.A., by Financing Statement 20188822906.
- (c) FIRST CORPORATE SOLUTIONS, AS REPRESENTATIVE, by Financing Statement 20201438326.

Attached hereto and marked as Exhibit “DD” is a true copy of UCC and Federal Tax Liens search results in respect of Versitec USA

Request for the appointment of a Receiver

37. LCX requests the appointment of a Receiver in respect of Versitec USA and the Versitec Canada Assets as a result of the repeated and numerous breaches of the terms of their agreements with LCX, which breaches include, but are not limited to:

- (a) Failure to remit funds received in payment of factored accounts as required under the terms of the Agreement;

- (b) Failure to assist LCX in obtaining the redirection of payments on LCX factored accounts to LCX upon LCX's request for same;
- (c) Failure to provide the Consultant with full access to the books and records of the Debtors as required under the terms of the Engagement Letter, Agreement and Forbearance Agreement;
- (d) Failure to repay LCX in full by December 31, 2019, as required under the terms of the Forbearance Agreement;
- (e) Failure to repay LCX upon demand for payment being made; and
- (f) Breach of trust.

38. As a result of the numerous defaults of the terms of their agreements with LCX, the appointment of a receiver is warranted as :

- (a) Each of the Agreement, Versitec Canada GSA, Versitec USA GSA, and Forbearance Agreement provide that a receiver may be appointed in the event of default under any of these agreements, which default has occurred;
- (b) The Debtors and Guarantors have, by the Forbearance Agreement, consented to the appointment of a Receiver on default under the terms of same, which default has occurred;
- (c) Versitec believes that it is likely that further account debtors of the Debtors have been similarly instructed by the Debtors to deposit payments into US accounts controlled by Mr. Byrd in an attempt to frustrate the ability of LCX to recover such funds; and
- (d) There is good reason to believe that the security of LCX and its ability to recover accounts receivable of the Debtors is at risk if immediate action is not taken.

39. Morgan & Partners Inc. has consented to act as receiver.

Judgment on Guarantees

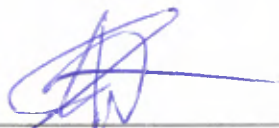
40. LCX further requests that judgment be granted as against each of the Guarantors in respect of the Guarantees granted by them, as set out herein.

Possession of Taylor Residence

41. LCX seeks to enforce the Taylor Mortgage and requests, should this be necessary, an order granting it possession of the Taylor Property for the purpose of listing and selling same or, alternatively, that the Receiver be appointed over the Taylor Property for this purpose.

42. I make this Affidavit for the purpose of this Application and the relief therein sought.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on March 4, 2020



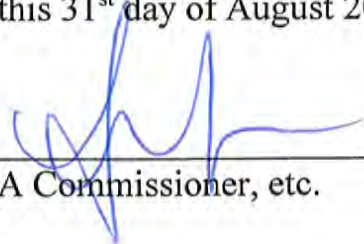
Commissioner for Taking Affidavits
(or as may be)

STEWART THOM

}


JONATHAN BRINDLEY

The following document is Exhibit "**B**"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022

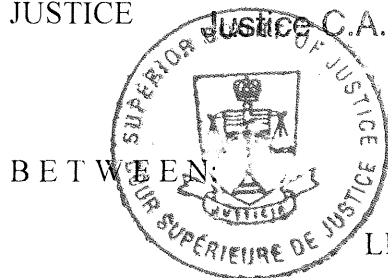


A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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



BETWEEN:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

**ORDER
(Appointing Receiver)**

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

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

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

SERVICE

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

APPOINTMENT

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

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

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

RECEIVER'S POWERS

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

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

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

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

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

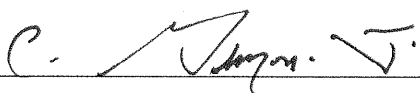
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

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

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

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

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



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

MAR 09 2020

PER / PAR: 

SCHEDULE "A1"**ASSETS**

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

SCHEDULE "A2"

All accounts receivable of 1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL, VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC. including, but not limited to, the following:

Versitec Canada
AR Summary - Mar 4, 2020 In CDN \$
AC# 4822

DebtorName	Balance	Current	1-30	31-60	61-90	91-Up
AAT SHIPINVEST AS	7,084.47	--	--	--	--	7,084.47
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219155	7/19/2019	8/22/2019	10044	7,084.47	7,084.47	230
ADMIRAL CORPORATION	14,965.12	--	--	--	--	14,965.12
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219124	6/21/2019	8/22/2019	10044	14,965.12	14,965.12	258
Avin International Ltd.	13,647.29	--	--	--	--	13,647.29
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219167	8/14/2019	9/13/2019	10048	13,647.29	13,647.29	204
Blue Line Ship Management SA	30,896.22	--	--	--	--	30,896.22
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219138	9/16/2019	9/27/2019	10051	13,053.44	13,053.44	171
219222	10/21/2019	11/8/2019	10053	8,732.86	8,732.86	136
219223	11/1/2019	11/8/2019	10053	9,109.92	9,109.92	125
Bundesbeschaffung GMBH	30,338.88	--	--	--	--	30,338.88
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219115	6/18/2019	6/28/2019	10040	30,338.88	30,338.88	261
Dalomar Shipping S.A.	13,295.90	--	--	--	--	13,295.90
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219094	6/4/2019	6/28/2019	10040	13,295.90	13,295.90	275
Eastern Mediterranean Maritime Ltd.	28,452.89	--	--	--	--	28,452.89
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219132	6/15/2019	9/13/2019	10048	7,558.07	7,558.07	264
219137	7/8/2019	9/13/2019	10048	9,264.23	9,264.23	241
219216	10/24/2019	11/8/2019	10053	11,630.59	11,630.59	133
FRI KARMSUND AS	13,898.32	--	--	--	--	13,898.32
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219101	6/10/2019	8/22/2019	10044	13,898.32	13,898.32	269
GREEN SHIPPING AS	5,439.40	--	--	--	--	5,439.40
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219126	6/25/2019	8/22/2019	10044	5,439.40	5,439.40	254
HIGLI AS	4,852.29	--	--	--	--	4,852.29
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219160	8/16/2019	9/13/2019	10048	4,852.29	4,852.29	202
Premuda S.p.a.	10,313.26	--	--	--	--	10,313.26
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219178	7/28/2019	8/28/2019	10045	10,313.26	10,313.26	221
Thenamari (Ship Management) Inc.	37,456.51	--	--	--	--	37,456.51
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219162	7/30/2019	8/28/2019	10045	10,811.62	10,811.62	219
219194	10/29/2019	11/8/2019	10053	8,146.66	8,146.66	128
219204	10/1/2019	11/8/2019	10053	11,113.34	11,113.34	156
219225	10/25/2019	11/8/2019	10053	7,384.89	7,384.89	132
Transmed Shipping Co. Ltd.	14,075.21	--	--	--	--	14,075.21
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219163	10/22/2019	11/8/2019	10053	14,075.21	14,075.21	135
UAB Promar	3,111.77	--	--	--	--	3,111.77
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219175	8/2/2019	8/28/2019	10045	3,111.77	3,111.77	216
WILSON SHIP MANAGEMENT AS	10,009.27	--	--	--	--	10,009.27
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Invoice Days
219103	7/5/2019	8/22/2019	10044	10,009.27	10,009.27	244
Grand Total AR Ac 4822	237,836.80	0	0	0	0	237,836.80

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Versitec USA

AR Summary - Mar In US \$

AC# 4820U

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

Versitec Canada

AR Summary - Mar 4, 2020 In US \$

AC# 4821

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

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

- 2 -

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

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

LIQUID CAPITAL EXCHANGE CORP.

-and-

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

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Appointing Receiver)**

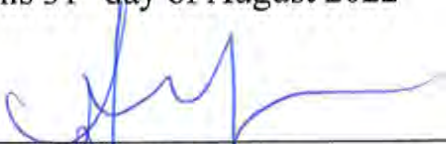
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Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-E 4C (May 1, 2016)

The following document is Exhibit "C"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP

Applicant

-and-

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

Respondents

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

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

February 5, 2021

MORGAN & PARTNERS INC.
4 Cedar Pointe Drive, Unit J-2
Barrie, ON L4N 5R7

Tel: 705-739-7003
Fax: 705-739-7119

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

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INDEX OF EXHIBITS

1. Receivership Order dated March 9, 2020;
2. Form 87, Notice of Statement of the Receiver, s. 245(1), 246(1), BIA;
3. State of Delaware, Annual Franchise Tax Report;
4. Memorandum of Operations, dated March 31, 2020;
5. Management Consulting Agreement dated April 29, 2020;
6. Mold Inventory Listing, Procim Inc.
7. Letter to Customers, dated March 31, 2020;
8. Canada Revenue Agency online account statement, tax year balances;
9. First Vancouver v Canada (Minister of National Revenue – M.N.R.), [2002] 2 S.C.R. 720
10. Factored Receivables analysis;
11. Conneaut Creek Ship Repair, Inc. action – Amended Complaint;
12. Conneaut Creek Settlement Agreement;
13. Carpenter/Swindell Statements of Claim;
14. Receiver’s communications re: Pranab Dhar;

INTRODUCTION

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

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

RECEIVERSHIP ORDER

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

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

a) demands and notices of intention to enforce security had been issued and delivered by LCX to Versitec;

b) Versitec was in default of its obligations to LCX;

c) Versitec had entered into a Forbearance Agreement with LCX, which agreement had expired without repayment to LCX in full as required;

- d) LCX had expressed concern as to what it believed were serious breaches of the terms of the Forbearance Agreement and collection of factored accounts receivable by Versitec, which was in default of its obligations to LCX.
5. The Application was opposed by Versitec, who requested an adjournment of the hearing in order to file responding materials. On March 9, 2020, the Honourable Justice Gilmore granted the Appointment Order. The Endorsement of Gilmore J. indicates that on the evidence filed there was sufficient urgency to warrant the immediate granting of the Appointment Order, but provided that the issuance of the Appointment Order was without prejudice to the Respondents' ability to file responding materials and return to Court on ten days' notice to present argument seeking that the Appointment Order should be vacated.
6. The Respondents did not file any responding materials subsequent to the issuance of the Appointment Order and did not seek to vacate the Appointment Order.
7. The Appointment Order appointed MPI as Receiver, without security, over:
- (i) all of the assets, undertakings, and properties of Versitec Marine USA Inc.; and
 - (ii) the assets of 1635536 Ontario Inc. o/a Versitec Marine & Industrial, as set out in Schedule "A1" and "A2" of the Appointment Order.
8. Since the date of its appointment, Receiver has, with the assistance of management carried on the business of both companies, one being an Ontario incorporated company and the other, Versitec Marine USA Inc., being a corporation incorporated in the State of Delaware, USA.

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

STABILIZATION AND CONTROL OF OPERATIONS

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

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

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

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

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

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

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

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

PORT COLBORNE FACILITY/OPERATIONS

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

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

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

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

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

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

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

BANKING PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

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

CANADA REVENUE AGENCY

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

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

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

GENERAL SECURED CREDITORS

37. Versitec's general secured creditors are:

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

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

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

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

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

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

OTHER SECURED CREDITORS

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

OUTSTANDING LITIGATION

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

CONNEAUT CREEK SHIP REPAIR, INC.

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

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

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

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

CARPENTER/SWINDELL LITIGATION

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

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

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

PRANAB DHAR

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

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

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

REVIEW OF AMOUNTS OWED TO LCX

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

COMPLIANCE WITH CRA OBLIGATIONS

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

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

CURRENT STATUS

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

APPROVAL OF RECEIVERSHIP ACTIVITIES; SUBSTITUTION OF RECEIVER

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

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

ALL OF WHICH IS RESPECTFULLY REPORTED

Date: February 5 , 2021

MORGAN & PARTNERS INC.

Per: 

Name John H. R. Morgan

Title: President


I/We have the authority to bind the corporation

EXHIBIT 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN)
) LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

**ORDER
(Appointing Receiver)**

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

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

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

SERVICE

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

APPOINTMENT

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

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

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

RECEIVER'S POWERS

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

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

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- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
 - (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
 - (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

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

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

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SERVICE AND NOTICE

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

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

GENERAL

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

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

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

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

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

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

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

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

MAR 09 2020

PER / PAR:

SCHEDULE "A1"**ASSETS**

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

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

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

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

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

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

LIQUID CAPITAL EXCHANGE CORP.

-and-

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

Applicant

Respondents

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

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

**ORDER
(Appointing Receiver)**

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

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

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (May 1, 2016)

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

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Liquid Capital Exchange Corp.

Applicant

AND

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

Respondents

Case Management Yes No by Judge:

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

- Order Direction for Registrar (**No formal order need be taken out**)
- Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)
- Adjourned to: _____
- Time Table approved (as follows): _____

Endorsement on Contested Adjournment Application

Heard: March 9, 2020
Judge: C. Gilmore, J.

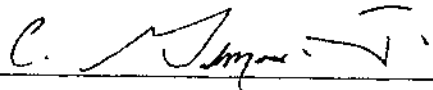
Overview and Positions of the Parties

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

Ruling

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

Judge's Signature:



March 9, 2020

EXHIBIT 2

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

- FORM 87 -

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

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

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

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

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

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

4. The following information relates to the receivership:

- (a) Address: 4 Stonebridge Drive, Unit 4, Port Colborne, ON, L3K 5V5
- (b) Principal line of business: equipment manufacturer and service supplier to the marine stern tube seal market
- (c) Location(s) of business:

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

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

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

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

(g) Contact person for receiver:
 , Tel: (705) 739-7003, Fax: (705) 739-7119.

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

Morgan & Partners Inc - Licensed Insolvency Trustee




4 Cedar Pointe Drive, Unit J2
Barrie ON L4N 5R7
Phone: (705) 739-7003 Fax: (705) 739-7119

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN)
)
LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

**ORDER
(Appointing Receiver)**

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

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

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

SERVICE

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

APPOINTMENT

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

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

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

RECEIVER'S POWERS

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

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

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

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

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

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

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

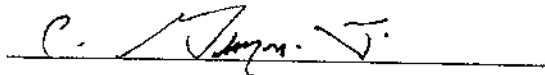
- 13 -

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

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

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

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



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

MAR 09 2020

PER / PAR: AS

SCHEDULE "A1"**ASSETS**

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

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

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

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

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

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Morgan & Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of March, 2020 (the "Order") made in an action having Court file number CV-20-00637427-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

- 2 -

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

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

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

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

Lawyers for the Applicant, Liquid Capital Exchange Corp.

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

EXHIBIT 3

State of Delaware

Annual Franchise Tax Report

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

EXHIBIT 4

Memorandum of Operations

VERISTEC Group of companies

Sales & Receivables**Key individuals in charge**

John Morgan, Lance Lockett and Reuben Byrd

Operational review

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

Cash Receipts

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

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

Disbursements, Expenses and Payables

Key individuals in charge

John Morgan, Jane Morgan Brian Gunning and Reuben Byrd

Operational Review

Trade Suppliers

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

Payroll

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

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

Excise Tax Act Quarterly Remittances

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

Financial Statement

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

EXHIBIT 5

MORGAN & PARTNERS INC.

TRUSTEE IN BANKRUPTCY

INSOLVENCY & RESTRUCTURING

April 29, 2020

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

Dear Mr. Byrd:

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

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

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

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

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

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

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

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

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

RKS

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

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

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

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

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

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

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

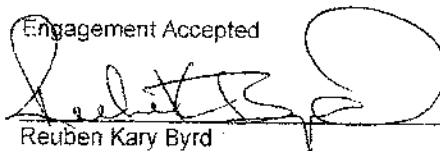
Date at Barrie, Ontario this 29th day of April, 2020.

MORGAN & PARTNERS INC., solely in its capacity as Court Appointed Receiver of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial (the "Debtors")

Per:



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

Engagement Accepted


 Reuben Kary Byrd

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



EXHIBIT 6

TOTAL MOLD LISTING (COMPLETED AND NON COMPLETED MOLDS)

DATE 2/5/2019

CX	SC1	SC2	IHC	MK1	MK2	NOTES	VGA
CX-125	SC1-125	SC2-125	IHC-155	MK1-155	MK2-125		VGA-300
CX-140	SC1-155	SC2-140	IHC-170	MK1-170	MK2-135	VG-135	VGA-330
CX-150	SC1-170	SC2-160	IHC-190	MK1-190	MK2-145		
CX-180	SC1-190		IHC-200	MK1-200	MK2-155		
CX-200	SC1-200	SC2-200	IHC-220	MK1-220	MK2-170	VG-170	
CX-220	SC1-220	SC2-220	IHC-240	MK1-240	MK2-190	VG-190	
CX-240	SC1-240	SC2-240	IHC-260	MK1-260	MK2-200	Based on 220 geo.	
CX-260	SC1-260	SC2-260	IHC-280	MK1-280	MK2-220	Installed on USNS vessel	
CX-280	SC1-280	SC2-280	IHC-300	MK1-300	MK2-240	VG-240	
CX-300	SC1-300	SC2-300	IHC-330	MK1-330	MK2-260	VG-260	
CX-330	SC1-330 1.015%	SC2-330	IHC-355	MK1-355	MK2-280	VG-280	
CX-355	SC1-355 1.025%	SC2-355	IHC-380	MK1-380	MK2-300	VG-300	
CX-380	SC1-380	SC2-380	IHC-400	MK1-400	MK2-330	VG-330	
CX-400	SC1-400	SC2-400	IHC-420	MK1-420	MK2-355	VG-355	
CX-420	SC1-420		IHC-450	MK1-450	MK2-380	VG-380	
CX-450	SC1-450	SC2-450	IHC-480	MK1-480	MK2-400	VG-400	
CX-480	SC1-480	SC2-480	IHC-500	MK1-500	MK2-420	MODIFY MOLD	
CX-500	SC1-500	SC2-500	IHC-530	MK1-530	MK2-450	VG-450	
CX-530	SC1-530	SC2-530	IHC-560	MK1-560	MK2-480	VG-480	
CX-560-1	SC1-560	SC2-560	IHC-600	MK1-600	MK2-500	VG-500	
CX-560-2 SAP SEAS	SC1-600	SC2-600	IHC-630	MK1-630	MK2-530	VG-530	
CX-600	SC1-630	SC2-630	IHC-670	MK1-670	MK2-560	VG-560	
CX-630	SC1-670	SC2-670	IHC-710	MK1-710	MK2-600	VG-600	
CX-670	SC1-710	SC2-710	IHC-750	MK1-750	MK2-630	VG-630	
CX-710	SC1-750	SC2-750	IHC-800	MK1-800	MK2-670	MODIFY MOLD	
CX-750	SC1-800	SC2-800	IHC-850	MK1-850	MK2-710	VG-710	
CX-800	SC1-850	SC2-850		MK1-900	MK2-750	VG-750	
CX-850	SC1-900	SC2-900			MK2-800		
CX-900	SC1-950	SC2-950			MK2-850		
CX-950	SC1-1000	SC2-975					
CX-1000	SC1-1060	SC2-1000			MK2-950		
CX-1050	SC1-1120	SC2-1060			MK2-1000		
CX-1120	SC1-1180	SC2-1120			MK2-1060		
CX-1180	SC1-1250	SC2-1180			MK2-1120		
		SC2-1250			MK2-1180		
					MK2-1250		

Garzprom Oval mold
 Garzprom Green mold
 Garzprom Chevron mold

	TOTALS						
MOLDS NOT MADE YET.	13	15	13	10	19	11	81
MOLDS MADE.	20	19	22	16	8	25	110
						2 MOLDS REQUIRE MODIFICATION	

NOTE:
 YELLOW BLOCKED CELL INDICATES MOLD MUST BE MODIFIED. GEOMETRY SENT TO PAULO.
 [REDACTED]
 VGA STIPULATION INDICATES WE HAVE ARE OWN HOUSING.
 CX-560-2 IS PREFERRED MOLD.(SAPHIRE SEAS)

EXHIBIT 7



Versitec Marine

3/31/2020

To: Our Valued customers

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

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

Yours sincerely

Reuben Byrd

new banking info relayed to the following:

invoice generator has new banking instructions on all new orders

to agents responsible to relay to the corresponding customer

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

EXHIBIT 8



Government
of Canada

Gouvernement
du Canada

Canada Revenue Agency

[Logout](#)

View and pay account balance

Payroll deduction account:

854061173RP0001

Business name:

1635536 ONTARIO INC.

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

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

Tax year balances

Select link to view detail

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

Arrears account balances

Current total amount owing: \$195,996.58

Select link to view detail

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

Need assistance or want to make a payment?

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

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

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

Screen ID: B-RP-AB-01

Date modified:

2019-10-21

EXHIBIT 9

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

Supreme Court Reports

Supreme Court of Canada

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

Hearing and judgment: March 12, 2002.

Reasons delivered: May 23, 2002.

File No.: 28062.

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

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

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

Case Summary

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

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

Held: The appeal should be dismissed.

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

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

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

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

Cases Cited

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

Statutes and Regulations Cited

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

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

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

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

The judgment of the Court was delivered by

IACOBUCCI J.

Introduction

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

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

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

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

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

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

in the property.

II. Facts

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

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

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

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

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

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

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

III. Relevant Statutory Provisions

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

227...

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

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

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

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

IV. Judgments Below

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

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

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

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

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

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

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

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

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

Issues

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

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

VI. Analysis

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

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

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

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

227....

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

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

[page731]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[page739]

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

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

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

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

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

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

VII. Conclusion

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

EXHIBIT 10

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL
VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.
Factored Receivables

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

<u>Customer Name</u>	<u>Inv #</u>	<u>Invoice Date</u>	<u>Fund Date</u>	<u>Amount</u>	<u>CRA Balance</u>	<u>CRA trust Trust Date</u>	<u>CRA</u>	<u>LCX</u>	<u>Total</u>
AATSIPINVEST	219153	July 19 2019	August 23 2019	\$ 7,084.47	-	35,785.58	19-May	\$ 7,084.47	
ADMIRAL CORPORTION	219124	June 21 2019	August 27 2019	14,965.12	-	39,226.93	19-Aug	14,965.12	
Avrin International	219167	August 14,2019	September 13 2019	13,647.29	-	39,226.93	19-Aug	13,647.29	
Blue line Ship Mgmt	219138	September 16,2019	September 27 2019	13,053.44	-	39,226.93	19-Aug	13,053.44	
	219222	October 21 2019	November 8,2019	8,732.86		32,666.25	19-Oct	\$ 8,732.66	
	219223	November 8,2019	November 8,2019	9,109.92		32,666.25	19-Oct	9,109.92	
Bundeasbesch GMB	219115	June 18,2019	June 28 2019	30,338.88	-	35,785.58	19-May	30,338.88	
Dalomar Shipping	219094	June 4,2019	June 18,2019	13,295.90	-	39,226.93	19-May	13,295.90	
Eastern Med	219132	June15,2019	September 13,2019	7,558.07	-	39,226.93	19-May	7,558.07	
	219137	July 8 2019	September 13,2019	9,264.23	-	39,226.93	19-Aug	9,264.23	
	219216	October 10,2019	November 8,2019	11,630.59		32,666.25	19-Oct	11,630.59	
FRI Karmisund	219101	June 10,2019	August 22,2019	13,898.32	-	35,785.58	19-May	13,898.32	
Green Shipping AS	219126	June 25,2019	August 22,2019	5,439.40	-	39,226.93	19-May	5,439.40	
Higli AS	219160	August 16,2019	September 13,2019	4,852.29	-	39,226.93	19-Aug	4,852.29	
Premuda SPS	219178	July 28 2019	August 28 2019	10,313.26	-	39,226.93	19-Aug	10,313.26	
Ship Management Inc.	219162	July 30,2019	August 28 2019	10,811.62	-	39,226.93	19-Aug	10,811.62	
	219194	October 29,2019	November 8,2019	8,146.66		78,893.33	19-Nov	8,146.66	
	219204	October 1,2019	November 8,2019	11,113.34		78,933.26	19-Nov	11,113.34	
	219225	October 25,2019	November 8,2019	7,384.89		78,645.18	19-Nov	7,384.89	

Trans Med	219163	October 22,2019	November 8,2019	14,075.21	32,666.25	19-Oct	14,075.21		
UAB Promar	219175	August 2,2019	August 28 2019	3,111.77	-	39,226.93	19-Aug	3,111.77	
Wilson Ship Management	219103	July 5,2019	August 22 2019	10,009.27	-	39,226.93	19-Aug	10,009.27	
				<u>\$ 237,836.80</u>				<u>\$ 70,193.27</u>	<u>\$ 167,643.33</u>
Versitec USA									
A/C 4820 March 4,2020 in US \$									
Anglo Eastern	U19048	July 7,2019	August 28 2019	\$ 5,095.00	-	39,226.93	19-Aug	\$ 5,095.00	
	U19051	July 28,2019	August 28 2019	8,400.00	-	39,226.93	19-Aug	8,400.00	
	U19053	July 25,2019	August 28 2019	9,060.00	-	39,226.93	19-Aug	9,060.00	
Wallem Ship Management	U19027	July 25,2019	August 28 2019	23,079.94	-	39,226.93	19-Aug	23,079.94	
	U19042	June 28 2019	August 8 2019	4,940.38	-	35,785.58	19-May	4,940.38	
	U19044	July 26,2019	August 28 2019	15,106.35	-	39,226.93	19-Aug	15,106.35	
	U19045	June 2 2019	August 22 2019	3,938.00	-	39,226.93	19-Aug	3,938.00	
	U19049	July 19,2019	August 28 2019	5,995.00	-	39,226.93	19-Aug	5,995.00	
				<u>\$ 75,614.67</u>				<u>\$ -</u>	<u>\$ 75,614.67</u>
Versitec Canada									
A/C 4820 March 4,2020 in US \$									
Cruise magmt	219078	March 10,2019	May 3,2019	\$ 13,945.00	-	32,344.33	19-Apr	\$ 13,945.00	
Great Lakes Dredging	219213	August 26 2019	September 27,2019	48,921.79	-	47,301.18	19-Sep	48,921.79	
Meteor Magmt Bulgaria	219073	May 21,2019	June 28,2019	6,320.00	-	35,785.58	19-May	6,320.00	
Wallem Ship Mgmt	219127	August 2 2019	August 28 2019	19,532.00	-	39,226.93	19-Aug	19,532.00	
	219214	September 16,2019	September 27,2019	6,355.00	-	47,301.18	19-Sep	6,355.00	
				<u>\$ 95,073.79</u>				<u>\$ -</u>	<u>\$ 95,073.79</u>
Total								<u>\$ 70,193.27</u>	<u>\$ 338,331.79</u>
									<u>\$ 408,525.06</u>

Notes.

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

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

<u>YEAR</u>	<u>DATE</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Cumulative balance</u>	<u>Balance Month end Trust date</u>
2019	Jan-03		- 19,142.92	- 19,142.92	-	- 19,142.92	
	Jan-04		- 6.54	- 19,136.38	-	- 19,136.38	
			- 42,207.80	23,071.42	-	- 23,071.42	
	Jan-23		- 21,671.49	1,399.93	-	- 1,399.93	
	Jan-24		- 2.31	1,402.24	-	- 1,402.24	
			- 3.46	1,405.70	-	- 1,405.70	
			- 64.43	1,470.13	-	- 1,470.13	
			- 0.60	1,470.73	-	- 1,470.73	
	Feb-04	3,292.94	3,292.94	1,470.73	-	- 4,763.67	Jan-19
		279.29	3,572.23	1,470.73	-	- 5,042.96	
		3,292.94	6,865.17	1,470.73	-	- 8,335.90	
	Feb-05		6,865.17	208.50	1,679.23	- 8,544.40	
			6,865.17	111.08	1,790.31	- 8,655.48	
	Feb-27		6,865.17	- 28,029.71	- 26,239.40	- 19,374.23	
	Feb-28		6,865.17	243.90	- 25,995.50	- 19,130.33	
			6,865.17	28.07	- 25,967.43	- 19,102.26	
			6,865.17	24,374.54	- 1,592.89	- 5,272.28	19-Feb
	Mar-18		6,865.17	- 9.44	- 1,602.33	- 5,262.84	
	Mar-22		6,865.17	- 1,144.45	- 2,746.78	- 4,118.39	
			6,865.17	- 196.24	- 2,943.02	- 3,922.15	
			6,865.17	- 18,853.17	- 21,796.19	- 14,931.02	
			6,865.17	- 166.00	- 21,962.19	- 15,097.02	
			6,865.17	- 15,947.61	- 37,909.80	- 31,044.63	
			6,865.17	- 179.89	- 38,089.69	- 31,224.52	
			6,865.17	- 1,977.32	- 40,067.01	- 33,201.84	
			6,865.17	- 0.57	- 40,067.58	- 33,202.41	
			6,865.17	- 54.61	- 40,122.19	- 33,257.02	
			6,865.17	- 21.07	- 40,143.26	- 33,278.09	
			6,865.17	- 101.53	- 40,244.79	- 33,379.62	
			6,865.17	- 2,711.88	- 42,956.67	- 36,091.50	
			6,865.17	- 116.84	- 43,073.51	- 36,208.34	

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

		7,168.22	- 53,615.40	27.28	125,220.59	-	78,773.41	
		7,168.22	- 53,615.40	275.40	125,495.99	-	79,048.81	
		7,168.22	- 53,615.40	784.16	124,711.83	-	78,264.65	
	Dec-05	7,168.22	- 53,615.40	0.77	124,711.06	-	78,263.88	
		7,168.22	- 53,615.40	2.15	124,713.21	-	78,266.03	
		7,168.22	- 53,615.40	22.97	124,736.18	-	78,289.00	
	Dec-23	7,168.22	- 53,615.40	3,038.40	121,697.78	-	75,250.60	
	Dec-24	7,168.22	- 53,615.40	25.79	121,723.57	-	75,276.39	
		7,168.22	- 53,615.40	275.99	121,999.56	-	75,552.38	
		7,168.22	- 53,615.40	11.57	122,011.13	-	75,563.95	
		7,168.22	- 53,615.40	161.25	122,172.38	-	75,725.20	19-Dec
2020		7,168.22	- 53,615.40		122,172.38	-	75,725.20	
	Feb-01	7,168.22	- 53,615.40	64.56	122,236.94	-	75,789.76	
		7,168.22	- 53,615.40	899.75	123,136.69	-	76,689.51	
		7,168.22	- 53,615.40	7,970.73	115,165.96	-	68,718.78	
		7,168.22	- 53,615.40	1.31	115,164.65	-	68,717.47	
	Feb-03	7,168.22	- 53,615.40	594.51	114,570.14	-	68,122.96	
		7,168.22	- 53,615.40	0.19	114,569.95	-	68,122.77	
	Feb-04	7,168.22	- 53,615.40	0.77	114,570.72	-	68,123.54	20-Feb
	Mar-04	7,168.22	- 53,615.40	69.42	114,640.14	-	68,192.96	
		7,168.22	- 53,615.40	24,552.45	90,087.69	-	43,640.51	
		7,168.22	- 53,615.40	1,567.39	88,520.30	-	42,073.12	
	Mar-05	7,168.22	- 53,615.40	556.56	89,076.86	-	42,629.68	
		7,168.22	- 53,615.40	115.32	89,192.18	-	42,745.00	
	Mar-12	7,168.22	- 53,615.40	674.00	89,866.18	-	43,419.00	
		7,168.22	- 53,615.40	51,536.00	141,402.18	-	94,955.00	
		7,168.22	- 53,615.40	10,307.20	151,709.38	-	105,262.20	
		7,168.22	- 53,615.40	34.00	151,743.38	-	105,296.20	
	Mar-13	7,168.22	- 53,615.40		151,743.38	12,337.18	12,337.18	117,633.38
		7,168.22	- 53,615.40	68.51	151,811.89	2,467.44	14,804.62	120,169.33
		7,168.22	- 53,615.40		151,811.89	16.23	14,820.85	120,185.56
	Apr-27	7,168.22	- 53,615.40	212,973.30	364,785.19	4,930.72	9,890.13	328,228.14
	Apr-28	7,168.22	- 53,615.40	976.61	365,761.80	80.58	9,970.71	329,285.33
		7,168.22	- 53,615.40	375.66	366,137.46	31.86	10,002.57	329,692.85
								20-Apr

Notes

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

EXHIBIT 11

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Conneaut Creek Ship Repair, Inc.,

Plaintiff(s)

v.

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

Defendant(s)

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

SUMMONS IN A CIVIL ACTION

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

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date: 5/6/2020

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



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

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

Defendant.

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

AMENDED COMPLAINT

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

NATURE OF THE ACTION

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

THE PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. Conneaut Creek provided its services to Versitec.

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

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

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

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

Respectfully submitted:

**HOMER
BONNER**

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

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

and

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

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

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

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

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

Defendant.

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

SETTLEMENT AGREEMENT AND RELEASE

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Conneaut Creek:

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

If to Versitec:

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

If to Versitec Marine:

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

If to the Receiver:

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

Canada
johnmorgan.morgantrustees.com

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

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

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

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

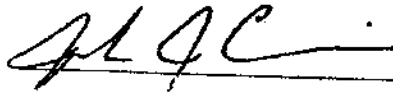
IN WITNESS WHEREOF, this Agreement is made and entered into as of the date this Agreement is executed by all Parties below.

[signature page to follow]

Type text here

CONNEAUT CREEK:

Conneaut Creek Ship Repair, Inc.

By: 

Date: 08/14/2020

THE VERSITEC PARTIES:

1635536 Ontario Inc.

By: _____

Date: _____

Versitec Marine Services, Inc.

By: 

Date: 8/14/2020

Morgan & Partners, Inc.

By: _____

Date: _____

CONNEAUT CREEK:

Conneaut Creek Ship Repair, Inc.

By: _____

Date: _____

THE VERSITEC PARTIES:

1635536 Ontario Inc.

By: _____

Date: _____

Versitec Marine Services, Inc.

By: _____

Date: _____

Morgan & Partners, Inc.

By: John Morgan
President

Date: Aug 4, 2010

EXHIBIT A

Notice of Dismissal With Prejudice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE & INDUSTRIAL,

Defendant.

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

NOTICE OF DISMISSAL WITH PREJUDICE

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

Dated: October __, 2020.

By:

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

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

Defendant.

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

NOTICE OF DISMISSAL WITH PREJUDICE

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

Dated: October 14, 2020.

By: s/ Adam L. Schwartz

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

-and-

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

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

EXHIBIT 13

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID CARPENTER

Plaintiff

- and -

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

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

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

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

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

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

DATE: May 21, 2019

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

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

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

CLAIM

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

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

2. The Plaintiff claims against Defendant David Taylor:

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

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

The Parties

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

The Plaintiff's Employment with the Defendant Versitec

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

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

The Plaintiff's Shareholding Interests

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

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

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

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

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

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

The Plaintiff as Creditor

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

The Plaintiff's Termination

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

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

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

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

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

Continuing Oppressive Conduct

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

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

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

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

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

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

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

DATED: May 21, 2019

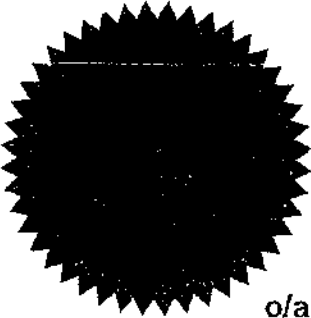
CHOWN, CAIRNS LLP
Barristers and Solicitors
80 King Street, 9th Floor,
P.O. Box 760
St. Catharines, ON L2R 6Y8

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



DAVID SWINDELLS

Plaintiff

- and -

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

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

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

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

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

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

DATE: May 21, 2019

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

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

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

CLAIM

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

The Parties

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

The Plaintiff's Employment with the Defendant Versitec

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

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

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

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

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

8. The parties further agreed that the Plaintiff:

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

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

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

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

The Plaintiff's Termination

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

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

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

DATED: May 21, 2019

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

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

EXHIBIT 14

John Morgan

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

Hi John,

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

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

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

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

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

Sent from my iPhone

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

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

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

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

www.morgantrustees.com

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

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> Sent from my iPhone

TAB C

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

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

COMMERCIAL LIST

Proceeding commenced at Toronto

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


LAISHLEY REED LLP

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

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

Lawyers for the Receiver,
Morgan & Partners Inc.

The following document is Exhibit "D"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	FRIDAY THE 12 TH
)	
JUSTICE KOEHNEN)	DAY OF FEBRUARY, 2021

B E T W E E N:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

**ORDER
(Appointing Substitute Receiver)**

THIS MOTION made by Morgan & Partners Inc. (“**MPI**”), Court appointed receiver (the “**Receiver**”) of certain assets and undertakings of 1635536 Ontario Inc. O/A Versitec Marine & Industrial and Versitec Marine USA Inc. (Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial shall hereinafter collectively be referred to as the “**Debtors**”) for an Order, *inter alia*, discharging MPI from its active duties as receiver, and substituting and appointing BDO Canada Limited (“**BDO**” or the “**Substitute Receiver**”) as substitute receiver, without security, over the assets, undertakings and properties of the Debtors acquired for or used in relation to a business carried on by the Debtors.

ON READING the First Report of MPI dated February 9, 2021 (the “**First Report**”) and the Preliminary Report of the Substitute Receiver dated February 9, 2021 (the “**Preliminary Report**”), BDO, and on hearing counsel for the MPI, the proposed Substitute Receiver and the Applicant creditor and on hearing the submissions of the lawyer(s) for the parties,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Substitute Receiver, without security, of all of the assets, undertakings and properties of Versitec Marine USA Inc. and 1635536 Ontario Inc. o/a Versitec Marine & Industrial acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (all collectively, the "**Property**").

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- 3 -

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Substitute Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Substitute Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Substitute Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Substitute Receiver in its discretion may deem appropriate;
 - (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
 - (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Substitute Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Substitute Receiver deems advisable;
 - (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
 - (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Substitute Receiver, in the name of the Debtors;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Substitute Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE SUBSTITUTE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Substitute Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Substitute Receiver upon the Substitute Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Substitute Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's

possession or control, and shall provide to the Substitute Receiver or permit the Substitute Receiver to make, retain and take away copies thereof and grant to the Substitute Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Substitute Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Substitute Receiver for the purpose of allowing the Substitute Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Substitute Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Substitute Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Substitute Receiver with all such assistance in gaining immediate access to the information in the Records as the Substitute Receiver may in its discretion require including providing the Substitute Receiver with instructions on the use of any computer or other system and providing the Substitute Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE SUBSTITUTE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE SUBSTITUTE RECEIVER

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

CONTINUATION OF SERVICES

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

SUBSTITUTE RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Substitute Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Substitute Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Substitute Receiver may specifically agree in writing

to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Substitute Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Substitute Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Substitute Receiver shall not, as a result of this Order or anything done in

pursuance of the Substitute Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE SUBSTITUTE RECEIVER'S LIABILITY

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

RECEIVER'S AND SUBSTITUTE RECEIVER'S ACCOUNTS

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

19. THIS COURT ORDERS that notwithstanding the foregoing, in respect of any Property of the Debtors not listed in Schedules A1 and A2 to this Order (herein, the "**Equipment**"), the Receiver's and Substitute Receiver's Charge shall only form a first charge in respect of the Equipment to the extent that such fees and expenses of the Receiver and Substitute Receiver have been incurred specifically in relation to the preservation, maintenance or sale of the Equipment.

20. THIS COURT ORDERS that the Receiver, the Substitute Receiver and their legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and

the Substitute Receiver and their legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

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

FUNDING OF THE RECEIVERSHIP

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

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

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

25. THIS COURT ORDERS that the monies from time to time borrowed by the Substitute Receiver pursuant to this Order or any further order of this Court and any and all Substitute

Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Substitute Receiver's Certificates.

SERVICE AND NOTICE

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

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

GENERAL

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

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

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Substitute Receiver and its agents in carrying out the terms of

this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Substitute Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Substitute Receiver and its agents in carrying out the terms of this Order.

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

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

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

34. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.



SCHEDULE "A1"**ASSETS**

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

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Versitec USA									
AR Summary - Mar In US \$									
AC# 4820U									
DebtorName		Balance	Current	1-30	31-60	61-90	91-Up		
ANGLO EASTERN SHIP MANAGEMENT LTD. (HONG K		22,555.00	--	--	--	--			22,555.00
Invoice#	Invoice Da	Funded Da	Batch#	Invoice Amou	Balance	Invoice Days		Over Due Day:	
U19048	7/7/2019	8/28/2019	10022	5,095.00	5,095.00	242		212	
U19051	7/28/2019	8/28/2019	10022	8,400.00	8,400.00	221		191	
U19053	7/25/2019	8/28/2019	10022	9,060.00	9,060.00	224		194	
Wallem Ship Management Ltd.		53,059.67	--	--	--	--			53,059.67
Invoice#	Invoice Da	Funded Da	Batch#	Invoice Amou	Balance	Invoice Days		Over Due Day:	
U19027	7/25/2019	8/28/2019	10022	23,079.94	23,079.94	224		194	
U19042	6/28/2019	8/8/2019	10020	4,940.38	4,940.38	251		221	
U19044	7/26/2019	8/28/2019	10022	15,106.35	15,106.35	223		193	
U19045	6/2/2019	8/22/2019	10021	3,938.00	3,938.00	277		247	
U19049	7/19/2019	8/28/2019	10022	5,995.00	5,995.00	230		200	
Grand Total AR		Ac 4820U		75,614.67	0	0	0	0	75,614.67
Versitec Canada									
AR Summary - Mar 4, 2020 In US \$									
AC# 4821									
DebtorName		Balance	Current	1-30	31-60	61-90	91-Up		
CRUISE MANAGEMENT INTERNATIONAL, INC.		13,945.00	--	--	--	--			13,945.00
Invoice#	Invoice Da	Funded Da	Batch#	Invoice Amount	Balance	Invoice Days		Over Due Days	
219078	4/10/2019	5/3/2019	10024	13,945.00	13,945.00	330		300	
GREAT LAKES DREDGE & DOCK, LLC		48,921.79	--	--	--	--			48,921.79
Invoice#	Invoice Da	Funded Da	Batch#	Invoice Amount	Balance	Invoice Days		Over Due Days	
219213	8/26/2019	9/27/2019	10031	48,921.79	48,921.79	192		162	
METEOR MANAGEMENT BULGARIA LTD		6,320.00	--	--	--	--			6,320.00
Invoice#	Invoice Da	Funded Da	Batch#	Invoice Amount	Balance	Invoice Days		Over Due Days	
219073	5/21/2019	6/28/2019	10028	6,320.00	6,320.00	289		259	
Wallem Ship Management Ltd.		25,887.00	--	--	--	--			25,887.00
Invoice#	Invoice Da	Funded Da	Batch#	Invoice Amount	Balance	Invoice Days		Over Due Days	
219127	8/2/2019	8/28/2019	10029	19,532.00	19,532.00	216		186	
219214	9/16/2019	9/27/2019	10031	6,355.00	6,355.00	171		141	
Grand Total AR		Ac 4822		95,073.79	0	0	0	0	95,073.79

SCHEDULE "B"**SUBSTITUTE RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the ____ day of _____, 2020.

BDO CANADA LIMITED, solely in its capacity
as Substitute Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Appointing Substitute Receiver)**

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

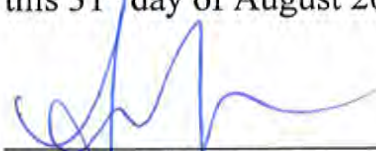
Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-E 4C (May 1, 2016)

https://laishleyreedllp-my.sharepoint.com/personal/cho_laishleyreed_com/Documents/Documents/Draft Order Appointing Substitute Receiver.revisedCJH.BL.docx

The following document is Exhibit "E"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	FRIDAY, THE 12TH
)	
MR. JUSTICE KOEHNEN)	DAY OF FEBRUARY, 2021

B E T W E E N:

(Court Seal)

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

ORDER
[Substitution of Receiver and Approval of Sale Process]

THIS MOTION, made by Morgan & Partners Inc. (“MPI” or the “Receiver”), Court appointed receiver of certain assets and undertakings of 1635536 Ontario Inc. O/A Versitec Marine & Industrial and Versitec Marine USA Inc. (collectively, the “Debtors”), for substitution of the Receiver and approval of a sales and marketing process in respect of the assets of the Debtor,

together with related relief, was heard this day by a Judge of the Commercial List via zoom videoconference.

ON READING the First Report of the Receiver dated [February 5, 2021](#) (the “First Report”) and the Preliminary Report of the Substitute Receiver dated February 9, 2021 (the “Preliminary Report”), BDO Canada Limited (the “Substitute Receiver”), and on hearing counsel for the Receiver, the proposed Substitute Receiver and the Applicant creditor, and on hearing the submissions of the lawyer(s) for the parties,

1. THIS COURT ORDERS that that the time for service and filing of the moving party’s motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof

2. THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report, are hereby approved, save and except for the Receiver’s activities in relation to the litigation settlements described in the First Report and any payments made by the Debtors or authorized by the Receiver during the period of the Receiver’s appointment or in relation to the litigation settlements.

3. THIS COURT ORDERS that the Receiver is hereby immediately discharged from any and all active duties as Receiver of the undertakings, property and assets of the Debtor, provided however that notwithstanding such discharge, the Receiver is required to prepare an interim statement of receipts and disbursements for the Court, in respect of its portion of the administration of the within receivership through February 12, 2021 (the “Receiver’s Interim R&D”), to be delivered to the Substitute Receiver as soon as practicable, who shall file the same with the Court as part of its future reporting to the Court; and, such discharge shall not relieve the Receiver of its

obligation to cooperate with the Substitute Receiver, including but not limited to (a) transferring all Property of the Debtors to the Substitute Receiver (including but not limited to all tangible and intangible assets, real property, undertakings, books and records, and accounts, as well as functional control of the same); and (b) providing such additional details or support in respect of the Receiver's Interim R&D as required or requested by the Substitute Receiver; and (c) providing such further assistance to the Substitute Receiver as the Substitute Receiver may reasonably request, provided that in so acting, any out-of-pocket costs incurred by the Receiver shall be a cost of the receivership estate.

4. THIS COURT ORDERS that the Substitute Receiver is hereby appointed in substitution of the Receiver and the Order of Gilmore J. dated March 9, 2020 (the "Receiver Appointment Order") is hereby amended and replaced with the Order attached hereto as Schedule "A" (the "Substitute Receiver Appointment Order") to reflect such substitution provided that, and for greater certainty, unless the Substitute Receiver expressly exercises its authority to do so, the Substitute Receiver shall not be obligated to take control of nor operate the business of the Debtors and will proceed to conduct the SISP (as defined in the Preliminary Report and as approved hereby).

5. THIS COURT ORDERS AND DIRECTS, for clarity, that the priorities of approved fees and expenses of the Receiver and Substitute Receiver under the Receiver's Charge, shall be as follows:

- (a) The approved expenses and disbursements of the Receiver shall rank first in priority under the Receiver's Charge;

-4-

- (b) The approved expenses and disbursements of the Substitute Receiver shall rank second in priority under the Receiver's Charge; and
- (c) The approved fees of the Receiver and Substitute Receiver shall rank equally and on a *parri passu* basis under the Receiver's Charge, subordinate to the expenses and disbursements of the Receiver and Substitute Receiver as set out above.

6. THIS COURT ORDERS AND DIRECTS that the Substitute Receiver is hereby authorized to conduct the SISP (as defined in the Preliminary Report) and to market and sell the assets of the Debtors in accordance with same, subject to the Court's approval of the terms of any such sale.

7. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.



(Signature of judge, officer or registrar)

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Schedule "A"

LIQUID CAPITAL EXCHANGE CORP.

Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

TORKIN MANES LLP

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

Stewart Thom (55695C)

sthom@torkinmanes.com

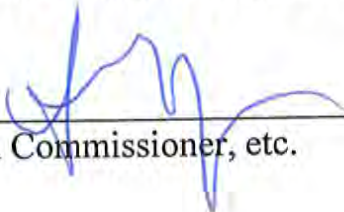
Tel: 416-777-5197

Fax: 1-877-689-3872

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-E 4C (May 1, 2016)

The following document is Exhibit "F"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

**Versitec Summary
amended January 13, 2022**

	<u>A/R factored net</u>	<u>Reserve (B)</u>	<u>Total</u>	<u>deduct (Note 1) Fees to Oct 10,2020</u>	<u>Revised as of March 4, 2020</u>
1635536 Ontario Inc A/C 4822 Cdn\$	\$ 73,179.98	\$ -159,892.24	\$ -86,712.26	\$ -66,102.00	\$ -152,814.26
1635536 Ontario Inc A/c 4821 US \$	86,603.78	-35,283.01	51,320.77	-37,342.49	13,978.28
VMI USA A/C 4820U	62,129.35	-155,472.90	-93,343.55	-29,536.56	-122,880.11
Total US amounts	148,733.13	-190,755.91	\$ -42,022.78	-66,879.05	-108,901.83
converted to CDN\$ 1.25 CDN	185,916.41	-238,444.89	-52,528.47	-83,598.81	-136,127.29
total in CDN \$ as at 04-Mar-20	<u>\$ 259,096.39</u>	<u>\$ -398,337.13</u>	<u>\$ -139,240.74</u>	<u>\$ -149,700.81</u>	<u>\$ -288,941.55</u>

Notes

- 1 Fees accrued from March 4, 2020 to October 10, 2020 have been removed to come down to balance owed by LCX to Versitec as of the order date of March 4, 2020 as shown in LCX material

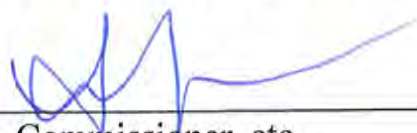
Summary of Analysis

	Cdn Corp Cdn\$	Cdn Corp Us \$	VMI USA US\$	total
A/R factored by LCX and put in Court order	\$ 237,854	\$ 95,073	\$ 75,614	\$ 408,541
Non factored A/R receipts paid to LCX never disclosed to Court	-221,167	-31,745		-252,912
Escrow holdback taken as allowance for doubtful accounts never disclosed to court as at October 10, 2020	<u>-104,674</u> <u>-87,987</u>	<u>-22,464</u> <u>40,864</u>	<u>-28,273</u> <u>47,341</u>	<u>-155,411</u> <u>218</u>
additional A/R not included in LCX amount or Court documents		13,994		13,994
Earned Reserve transfer	<u>92,000</u>		-92,000	
Net A/R in US \$ converted to CDN	115,000	<u>54,858</u> <u>68,573</u>	<u>-44,659</u> <u>-55,824</u>	<u>14,212</u> <u>127,749</u>
Adjusted A/R factored	<u>\$ 27,013</u>	<u>109,437</u>	<u>\$ -8,483</u>	<u>\$ 127,967</u>

Proof

Per summary per above	\$ -139,240.74 127,966.73
difference	<u>\$ -11,274.01</u>
Additional A/R not included in LCX factored A/r	<u>\$ 13,994</u>
difference	<u>\$ -25,268</u>

The following document is Exhibit "G"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

NOTICE OF MOTION
(Judgment and Discharge of Receiver)

The Applicant, Liquid Capital Exchange Corp. (“LCX”), will make a Motion to a Judge presiding over the Commercial List on Wednesday, November 24, 2021, at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard (*choose appropriate option*)

By video conference.

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at the following location

<https://us02web.zoom.us/j/85443526936>

THE MOTION IS FOR

- (a) validating service of the within motion record, dispensing with further service thereof and declaring this motion properly returnable November 24, 2021;
- (b) approving the Fourth Report of the Receiver dated November 18, 2021, and the activities and conduct of the Receiver as set out therein (the “**Fourth Report**”), together with the Receiver’s statement of Receipts and Disbursements (“**R&D**”);
- (c) authorizing the Receiver to make the Final Distribution, as more particularly set out in the Fourth Report;
- (d) authorizing the Receiver to complete the Remaining Activities, as defined in the Fourth Report;
- (e) authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy and authorizing BDO Canada Ltd. to act as trustee in bankruptcy in respect of the bankruptcy estate of Versitec Canada;
- (f) authorizing the Receiver to assign to LCX any claim, right, title and interest of the Debtors or the Receiver (if any), against any person, in respect of or connected with the transfer of funds out of the BOA Account and BB&T Account to Global and/or the Creditor Payees (each as defined in the Fourth Report), on the condition that

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LCX account back to the Versitec or any trustee or administrator of the Versitec's estate in respect of any recoveries received in excess of the shortfall on its security;

- (g) approving the fees and disbursements of the Receiver and its counsel as set out in the Fee Affidavits appended to the Fourth Report, together with such additional fees and expenses of the receiver and its counsel required to complete the remaining activities, provided that such fees do not exceed the Fee Accrual, as defined in the Fourth Report;
- (h) discharging the Receiver upon the Receiver filing a certificate with the Court confirming that the Receiver has completed the Remaining Activities;
- (i) granting judgment in favour of LCX against each of the Respondents, on a joint and several basis, in the amount of \$776,616.03 together with interest accruing thereon at the rates set out in the agreements between the parties or alternatively as prescribed under the *Courts of Justice Act*;
- (j) the costs of this proceeding;
- (k) Rules, 37, 27.09, 14.05(3) and 21 of the *Rules of Civil Procedure*;
- (l) such further and other Relief as to this Honourable Court may seem just.

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THE GROUNDS FOR THE MOTION ARE**Note re Relief Sought**

- (a) The relief sought on this motion is brought forward by LCX on behalf of both LCX and/or the Receiver in an effort to consolidate the record on this Motion;
- (b) The relief in respect of the conclusion of the receivership sought herein (e.g., assignment of claims, distributions and discharge) is contemplated by each of the Applicant and Receiver as that which is required to complete the administration of the estate and to terminate the Receivership, obtain the discharge of the Receiver;
- (c) The judgment sought against the Respondents is contemplated by the Applicant as that required to conclude this proceeding as it pertains to any relief necessary to be sought against the Respondents by LCX herein;

Parties

- (a) LCX is an asset-based lender who extended financing in the form of accounts receivable factoring facilities to the corporate respondents 1635536 Ontario Inc. O/A Versitec Marine & Industrial (“**Versitec Canada**”) and Versitec Marine USA Inc. (“**Versitec USA**”, and together with Versitec Canada, “**Versitec**”);
- (b) Versitec Canada and Versitec USA are related companies who formerly operated as a manufacturer and service supplier to the marine stern tube seal market;

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- (c) The Respondents David Taylor (“**Taylor**”), Reuben Kary Byrd (“Byrd”) and David Carpenter (“**Carpenter**”) were each former or current directors and officers of Versitec and guarantors of the corporate indebtedness of Versitec;

LCX Factoring Agreement and Security

- (d) LCX is the senior ranking secured creditor of Versitec whose indebtedness arising from uncollected/unpaid accounts receivable factored by LCX and accrued fees and costs owed to LCX by the terms of its agreements with Versitec in association with same;
- (e) Agreements between LCX and Versitec include the following:
- (i) A Purchase and Sale Agreement (the “Factoring Agreement”) dated June 21, 2017, setting out the terms of the account receivable factoring facilities extended by LCX to Versitec and the obligations of the parties in respect of same;
 - (ii) As security for performance of Versitec’s obligations under the Factoring Agreement, LCX was granted the following additional security:
 - (A) A general security agreement (“**GSA**”) dated June 21, 2017, pursuant to which LCX was grant-ed a security interest in all present and after acquired assets of Versitec Canada, registered pursuant to the Personal Property Security Act as Registration No. 20170616 1601 1793 7011; and

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- (B) A GSA dated June 21, 2017, pursuant to which LCX was granted a general security interest in all present and after acquired assets of all present and after acquired assets of Versitec USA, registered pursuant to the UCC as Financing Statement 20174120736;

Guarantees of the Versitec Indebtedness

- (f) Each of the Respondent parties has granted in favour of LCX an unlimited guarantee of the combined corporate indebtedness of Versitec Canada and Versitec USA;
- (g) In the case of Byrd and Taylor, the cross corporate guarantees of the indebtedness of Versitec are additionally supported by collateral mortgages on residential properties located in Port Colborne and Boca Raton, Florida, respectively;

Initiation of this Application

- (h) As a result of various defaults under the terms of the Factoring Agreement as well as concerns about the financial performance of Versitec and its ability to service its debts and fund ongoing operations, LCX issued demand for payment and Notice of Intention to Enforce Security upon Versitec and the guarantors on November 16, 2018;

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- (i) Versitec, the guarantors and LCX and the guarantors entered into a Forbearance Agreement dated April 25, 2019 the terms of which required that LCX be fully repaid on or before December 31, 2019;
- (j) Versitec breach the terms of the Forbearance Agreement and failed to repay LCX on or before the expiry of same, resulting in the commencement of these proceedings;

Brief Procedural Overview of this Proceeding

- (k) Pursuant to the Order of the Honourable Justice Gilmore dated March 9, 2020 Morgan & Partners Inc. was appointed as receiver (the “**Prior Receiver**”) of Versitec;
- (l) By way of an order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 12, 2021 (the “**Appointment Order**”), BDO Canada Limited was appointed as the substitute receiver (the “**Receiver**”), without security, of all the Property (as defined in the Appointment Order) of Versitec and authorized the Receiver to conduct a sale and investment solicitation process in respect of the assets of Versitec;
- (m) On May 4, 2021 the Court issued an Approval and Vesting Order (the “**AVO**”) authorizing the Receiver to enter into an Asset Purchase Agreement and vesting in and to the Purchaser all of Versitec’s right, title and interest in the Purchased Assets (as defined in the APA) on closing of the subject transaction;

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- (n) The sale was completed on May 31, 2021. On June 22, 2021, the Court issued an Order (the “**June 22nd Order**”) authorizing an interim distribution to LCX from the proceeds of sale realized upon the sale of Versitec’s assets;

Distributions to Date

- (o) The Receiver has paid creditor claims to date as follows:
- (i) A \$145,674.97 deemed trust claim asserted by CRA; and
 - (ii) The Receiver distributed the sum of USD\$81,000 to LCX on June 23, 2021 in accordance with the June 22nd Order;

HST

- (p) CRA has also reassessed Versitec Canada’s H.S.T. account and levied an assessment to reverse the input tax credits previously claimed in respect of the unpaid accounts payable as at March 9, 2020. The amount of this priority claim is \$18,559.80 (the “**HST Claim**”). This amount remains unpaid;
- (q) LCX requests that the Receiver be authorized to cause Versitec Canada to make an assignment into bankruptcy and to act as the bankruptcy trustee for Versitec Canada, which request the Receiver supports for the reasons that:
- (i) Versitec Canada is insolvent is insolvent and has failed to – and continues to fail to - meet its obligations as they come due:

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- (ii) LCX would otherwise be entitled to make an application for a bankruptcy order;
- (iii) the Courts have held that using a bankruptcy to reverse the HST deemed trust is a valid basis for the same;
- (iv) Versitec Canada has no operations, employees or assets; and
- (v) a bankruptcy will not otherwise prejudice any other creditor of Versitec Canada; and, moreover, a trustee in bankruptcy has certain investigatory powers that may be beneficial to all creditors.

Final Distribution

- (r) The June 22nd Order authorized the Receiver to make further distributions to LCX provided that amount distributed to LCX does not exceed the balance of the indebtedness owed to LCX by Versitec;
- (s) The amount of \$776,616.03 remains outstanding and owed to LCX by Versitec as of November 11, 2021 (the “**Remaining LCX Indebtedness**”)
- (t) As per the Receiver’s Interim Statement of Receipts and Disbursements for the period February 12, 2021, to November 10, 2021, at this time the Receiver has a total of \$61,641 CAD equivalent (\$1,057 CAD and \$50,090 USD) in its estate trust accounts.

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- (u) LCX will accordingly suffer a significant shortfall on the indebtedness owed to it by Versitec of more than \$700,000;

Outstanding Claims

- (v) In the Fourth Report, the Receiver has identified a number of potential claims against creditor, some of whom appear to be related parties or parties under the direction and/or control of Byrd, have received payment of creditor claims or transfers of funds to the prejudice of LCX having regard to the relative priorities and insolvency of Versitec. Such claims include:
 - (i) A total of \$1,127,020.91 USD was received from Versitec customers into the BOA Account during the receivership proceedings;
 - (ii) Numerous transactions took place in both Versitec's Bank of America ("**BOA**") Account and the BB&T Account with Global Marine Engineering Inc. ("**Global**"), a company believed to be owned and operated Mr. Byrd, Versitec's former chief executive office. Global appears to be indebted to the Estate in the amount of \$293,122 US;
 - (iii) Further payments of \$170,741.59 made to three creditors of Versitec USA (the "**Creditor Payees**") which may have been made to the prejudice of LCX;

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- (w) The Receiver is not funded to pursue collection of the aforementioned amounts or any other claims against person who may have received funds out of priority or to which they were not entitled to payment (“**Outstanding Claims**”);
- (x) Given the shortfall suffered by LCX, LCX appears to be the only party with an economic interest in potentially pursuing any Outstanding Claims;
- (y) the Receiver proposes to assign and transfer to LCX, any claim, right, title and interest of Versitec and/or the Receiver (if any), against any person, in respect of any Outstanding Claims on the condition that LCX account back to the Versitec or any trustee or administrator of the estate of Versitec Canada or Versitec USA in respect of any recoveries which exceed the shortfall on its security;

Receiver request for approval of fees and conduct

- (z) The Receiver and LCX state that the conduct and activities of the Receiver as set out in the Fourth Report, together with the fees and disbursements of the Receiver and its counsel described in the Fee Affidavits appended thereto (“**Final Fees**”), are reasonable;
- (aa) The Receiver requests that the Fourth Report, conduct and activities of the Receiver set out therein be approved and the receiver be authorized to pay the Final Fees (including the Fee Accrual);

LCX request for judgment against the Respondent parties

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- (bb) LCX requests that judgment be granted in its favour in the amount of the Remaining LCX Indebtedness against each of the responding parties, on a joint and several basis on account of their guarantees of the indebtedness of Versitec to LCX;
- (cc) In this regard, LCX states that:
- (i) To date, none of the Respondents have filed materials in opposition to any of the relief sought by any of LCX, the Prior Receiver or the Substitute Receiver;
 - (ii) Both JMI and BDO addressed in Reports filed with and approved by the Court:
 - (A) That the Respondents' out-of-court objections to LCX's calculation of the indebtedness to LCX was considered by them and investigated;
 - (B) That they had each conducted a review of the relevant documentation and undertaken efforts to independently verify the correct amount owing to LCX;
 - (C) That they had each concluded that LCX's calculations as to the Versitec indebtedness were correct,
 - (iii) None of the Respondents opposed or appealed any of the Orders approving the Prior Receiver or Substituted Receiver's reporting to the Court as to their verification of the Versitec indebtedness, where such efforts were

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specifically undertaken for the purpose of addressing the concerns raised by the Respondents as to the correctness of same;

- (iv) None of the Respondents objected to or opposed the Substitute Receiver's request for authorization to distribute funds to LCX in an amount not to exceed the said Versitec indebtedness to LCX;
- (dd) LCX states that it is entitled to judgments against the Respondents, jointly and severally, in the amount of \$776,616.03 (the "**Judgments**");
- (ee) There is no genuine issue for trial in respect of the Judgments;
- (ff) The question of the balance of indebtedness owed to LCX by Versitec is a matter which has been addressed by this Honourable Court previously in this proceeding and which formed the basis of this Court's authorization to make distribution of funds to LCX pursuant to the June 22, 2021 Order. The June 22 Order was not appealed or opposed by Respondent parties. LCX states that the doctrines of issue estoppel, abuse of process, collateral attack and *res judicata* each apply in the circumstances;
- (gg) Furthermore, by their acknowledgements, covenants and agreements pursuant to Forbearance Agreement, each of the Respondents (but for Carpenter, who was not a signatory to same,) have acknowledged in writing their liability to LCX on the Guarantees in accordance with the terms of same, which acknowledgement LCX relied upon in granting Versitec and the guarantors of the Versitec indebtedness to LCX forbearance from enforcement and in making subsequent advances pursuant

-14-

to the Factoring Agreement. LCX states that the Respondents are estopped from now disputing such liability;

- (d) Such further and other grounds as the lawyers may advise.

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

- (a) The Affidavit of Jonathan Brindley;
- (b) The Fourth Report and the appendices thereto; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 18, 2021

TORKIN MANES LLP
Barristers & Solicitors
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Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicant,
Liquid Capital Exchange Corp.

TO: THE SERVICE LIST

RCP-E 37A (September 1, 2020)

LIQUID CAPITAL EXCHANGE CORP.

Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

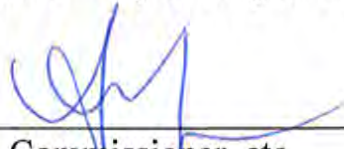
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Tel: 416-777-5197

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (September 1, 2020)

The following document is Exhibit "H"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

and

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

Respondents

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

AFFIDAVIT OF JOHN HOWARD DEANE MORGAN

I, John Howard Deane Morgan, of the City of Barrie , in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the principal of Morgan & Partners Inc. ("**MPI**"), the former receiver in these proceedings (the "**Receiver**"). I have held a Chartered Accounting designation since 1980, and I obtained my designation as a Chartered Insolvency and Restructuring Professional and trustee license in 1995. In 2001 I received designations as a Certified Fraud Examiner and in Certified Business Management. I have been qualified as an expert witness in a number of forensic accounting and insolvency related matters. A comprehensive list of those cases is contained in **Exhibit "A"** to this affidavit. In each of those cases my evidence was found to be credible and was accepted by the court.

2. I am swearing this affidavit in connection with a motion brought by Liquid Capital Exchange Corp. ("**LCX**"), for judgment against Reuben Byrd ("**Mr. Byrd**") in respect of his guarantee of the Respondents' debt to LCX. I have personal knowledge of the facts to which I depose in this affidavit by virtue of my position with MPI. Where I do not have personal knowledge, I indicate the source of my information and I believe all such facts as related herein to be true.

3. In particular, I am swearing this affidavit because LCX's motion record was brought to my attention by Mr. Byrd and it appears to me that LCX, and perhaps BDO Dunwoody, the current Receiver, are misinterpreting a statement made by MPI in its first report to this court dated February 5, 2021 (the "**First Report**"), and relying on the statement for a purpose other than that for which it was intended. For ease of reference, a copy of the First Report is marked as **Exhibit "B"** to this affidavit.

4. Specifically, LCX refers to paragraph 54 of the First Report as support for the proposition that the Respondents are indebted to LCX *on a net basis*.

5. I wish to be clear that based on the information that I personally reviewed on behalf of MPI, it appears to me that the Respondents are NOT, on a net basis, indebted to LCX. To the contrary, on a net basis it appears to me that at the effective time of my review, LCX was indebted to the Respondents in the approximate amount of \$41,667.46, before considering the payment made to it in the course of these proceeding in the amount of \$81,000, and assuming that it was entitled to other fees charged and allowed by MPI in the amount of \$149,701. If these were also reversed on

equitable grounds because Versitec was not indebted to LCX at the outset of these proceedings, then aggregate amount owing by LCX would be in the range of \$280,000.

6. There were two parts to the analysis conducted by MPI during its tenure as Receiver in respect of the Respondents' dealings with LCX. They were as follows.

- (a) First, MPI verified the amount of the Respondents' outstanding receivables factored by LCX (the "**Factored Receivables Analysis**"). The passage from the MPI Report cited above speaks to the findings of that analysis, which confirmed the amount of the receivables factored by LCX which remained outstanding.
- (b) Second, MPI calculated the amount owing to the Respondents by LCX on account of:
 - (i) the amount of the reserves withheld by LCX from the purchase price of the factored receivables (the "**Reserves**"); and
 - (ii) the amount of the Respondents' receivables which were not factored by LCX, but for which LCX nonetheless received payment from the Respondents' customers as a result of the course of dealings between the parties¹ (the "**Unfactored Receivable Payments**"), based upon the records available to the Respondents (the "**Reserve and Unfactored Receivables Analysis**").

¹ The invoices issued by the Respondents directed their customers to make payment to LCX's account in anticipation that LCX would factor the receivable. When the Respondents subsequently submitted the list of receivables to LCX, however, LCX would sometimes refuse to factor certain receivables. Nonetheless, in light of the payment terms stipulated on the invoice, the customer would make payment to LCX's account.

7. The Reserve and Unfactored Receivables Analysis showed that LCX was indebted to each of the Respondents in respect of both the Reserve and the Unfactored Receivable Payments, and, moreover, that on a net basis (i.e., when the cross-obligations of LCX and the Respondents were set off against each other), LCX was indebted to the Respondents.

8. I first presented these results to LCX's representative, Jonathan Brindley ("**Mr. Brindley**"), on or about September 22, 2020. LCX disputed the Reserve and Unfactored Receivables Analysis, and I asked LCX (Mr. Brindley) to provide me with LCX's source documentation in respect of the Reserves and the Unfactored Receivable Payments, together with the analysis relied upon by LCX in support of its position. LCX never provided me with this information.

9. The fundamental point of disagreement relates to the application of various penalties (or "chargebacks") applied by LCX to the Versitec accounts. I backed-out many of these chargebacks because they were not substantiated by my review.

- (a) In some cases LCX failed to provide any justification for the penalty.
- (b) In cases where LCX did tie the penalty to non-payment of a particular receivable, I found, on review of the payment history, that LCX had, in fact, received the funds in a timely way. The most that can be said is that in some cases factored receivables were paid into Versitec's account as opposed to LCX's account, but in all instances the funds were transferred by Versitec to LCX within a matter of days. The transfer did not always occur within the two day timeframe contemplated by the APS, but LCX did

not provide me with evidence of any loss associated with these payments and I was unable to independently identify such a loss. Moreover, LCX did not provide me with information from which I might infer that the charges contemplated by the APS constitute a genuine pre-estimate of damages and not a penalty.

- (c) Finally, LCX charged a penalty for alleged “fraud and conversion”. LCX did not provide and I was unable to independently identify any basis for a claim of fraud or conversion by Versitec.

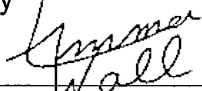
10. In or about February 2021, in light of a series of disagreements between MPI and LCX, MPI brought a motion seeking its substitution, and in connection with that motion it filed the First Report. The First Report expressly states that its purpose was “to summarize and seek approval of limited activities of the Receiver...on consent” (underlining added). Paragraph 54 of the First Report is specific to “the factored accounts receivable which could be released to LCX”, and “the amounts owed to LCX”. Having regard to the purpose of the First Report, it is necessarily silent as to the amount owed by LCX to the Respondents. That is, MPI did not report on the Reserve and Unfactored Receivables Analysis because it remained a point of disagreement between MPI and LCX, and because I did not perceive the issue to be material to the relief being sought at that time. Judgment was not being granted against the Respondents.

11. In light of the relief that is now being sought, I have been asked to review and revisit the Reserve and Unfactored Receivables Analysis, and to provide my findings to

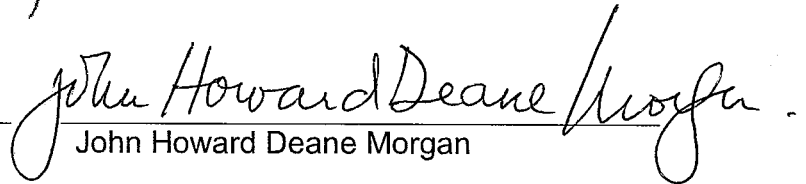
the court. I confirm that apart from payment for my time at my usual hourly rate, I have no pecuniary interest in the outcome of the pending motion.

12. I have reviewed my earlier analysis and no further information has been provided by LCX. My report detailing my methodology and findings is marked as **Exhibit "C"** to this affidavit. In summary, although I picked up some mistakes made in my earlier analysis, I remain of the view that at the time of my review, LCX was indebted to the Respondents.

AFFIRMED remotely by John Howard Deane Morgan at the City of Barrie, in the Province of Ontario, before me on this 10th day of January, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



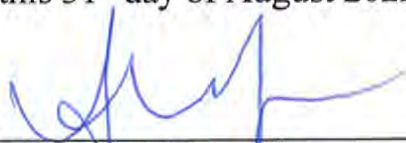
Commissioner for Taking Affidavits



John Howard Deane Morgan

Emma Janine Wall, a **Commissioner etc.**,
Province of Ontario, while a **Student-At-Law**.
Expires July 14, 2023.

The following document is Exhibit "I"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

A Commissioner, etc.

**PALIARE
ROLAND**
BARRISTERS

Chris G. Paliare
Ken Rosenberg
Linda R. Rothstein
Richard P. Stephenson
Donald K. Eady
Gordon D. Capern
Lily I. Harmer
Andrew Lokan
John Monger
Odette Soriano
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Jessica Latimer
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Denise Cooney
Paul J. Davis
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S. Jessica Roher
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File 99506

April 8, 2022

VIA EMAIL
sthom@torkinmanes.com

Stewart Thom
Torkin Manes LLP
Barristers & Solicitors
151 Yonge St. Suite 1500
Toronto, ON M5C 2W7

Dear Mr. Thom:

Re: Byrd ats. Liquid Capital Exchange Corp.

I write further to Jeffrey Larry's email of April 5, 2022. Please find enclosed revised copies of Appendix "E" and Appendix "G" to the expert report of John Morgan dated January 8, 2022, reflecting corrections that were necessary after the identification of an input error in Appendix "G".

Mr. Morgan has also advised us that as a result of the above noted corrections to Appendix "E" and "G", paragraph 5 of his affidavit must be corrected as follows:

"To the contrary, on a net basis it appears to me that at the effective time of my review, LCX was indebted to the Respondents in the approximate amount of \$139,240.74, before considering the payment made to it in the course of these proceedings in the amount of USD \$81,000, and assuming that it was entitled to other fees charged and allowed by MPI in the amount of \$149,701. If these were also reversed on equitable grounds because Versitec was not indebted to LCX at the outset of these proceedings, then the aggregate amount owing by LCX would be in the range of \$390,191.74"

He also advised that point 5 of his report located at page 97 of Mr. Byrd's motion record must be corrected as follows:

"As summarized in Appendix E, MPI's analysis indicates that as of October 10, 2020, LCX was indebted to Versitec in the aggregate amount of \$139,240.74."

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Danielle Glatt
DG:DG

Encls.

c: Jeff Larry

APPENDIX E
REVISED SUMMARY

	<u>MPI Summary</u>		
	<u>A/R factored</u>	<u>Revised</u>	
	<u>net</u>	<u>Reserve (B)</u>	<u>Total</u>
1635536 Ontario Inc A/C 4822 Cdn\$	\$ 73,179.98	-\$ 159,892.24	-\$ 86,712.26
1635536 Ontario Inc A/c 4821 US \$	86,603.78	- 35,283.01	51,320.77
VMI USA A/C 4820U	62,129.35	- 155,472.90	- 93,343.55
Total US amounts	148,733.13	- 190,755.91	-\$ 42,022.78
converted to CDN\$ 1.25 CDN	185,916.41	- 238,444.89	- 52,528.48
total in CDN \$ as at 10-Oct-20	\$ 259,096.39	-\$ 398,337.13	-\$ 139,240.74
Add BDO amount paid to LCX	\$81,000*1.25		- 101,250.00
Total owing by LCX to Versitec			<u>-\$ 240,490.74</u>

Conclusion.

- 1 Could not identify any misdirected or converted funds in any of the various LCX accounts
- 2 Could not identify any malfeasance or breach of contract as against LCX

- 3 As a result the guaranty appears to be without justification primarily as a result of the non factored receipts being kept by LCX and not paid to Versitec during the forbearance period
- 4 The net amount owing above includes the fees charged by LCX which were not challenged by MPI but were paid as a result of the adjustment to the Chargebacks as follows.

		<u>CDN\$</u>	
		converted @\$1.25/CDN\$	
a/c4822	CDN\$	\$ 66,102	\$ 66,102
a/c 4821	US\$	37,342	46,678
A/c 4820U	US\$	29,537	36,921
			<u>\$ 149,701</u>

- 5 If payment of factored Receivables were paid to Versitec by the customer first then the funds were on average forwarded by Versitec to LCX within two weeks

Reasonable test of Reserve (B) in total

Receipts Received from non factored A/R not remitted back to Versitec

a/c 4822		-\$ 221,167	
less claw back a/c 4822		\$ 20,000	
A/c 4821		- 31,745	-\$ 232,912

Claw back of funds from funding by LCX to Versitec	A/c 4820U	\$ 85,000	
	A/c 4822	20,000	- 105,000

	<u>- \$ 337,912</u>
as per above	<u>- \$ 398,337</u>
Difference	<u><u>\$ 60,425</u></u>
Payment made by MPI to LCX	\$ 60,000
differenc e	425
	<u><u>\$ 60,425</u></u>

APPENDIX G
REVISED ANALYSIS OF 1635536 ONTRAIO INC
US\$ ACCOUNT 4821


1635536 OntarioInc.O/A Versitec Matine & Industrial
 Analysis of Accountwith Liquid Capital
 LC Account 4821

	<u>A/R</u>	<u>Reserve (A)</u>	<u>Reserve (B)</u>	<u>Total</u>
Opening balances	\$ 95,073.79	-\$ 22,464.20	-\$ 37,926.75	\$ 34,682.84
Adjustments per LCX				
chargeback			6,020.00	6,020.00
Fees to October 10, 2019			37,342.49	37,342.49
	<u>\$ 95,073.79</u>	<u>-\$ 22,464.20</u>	<u>\$ 5,435.74</u>	<u>\$ 78,045.33</u>
Corrections per MPI				
1 Adjust for Escrow holdback (allowance for Doutful accounts not paid)	-\$ 22,464.20	\$ 22,464.20		\$ -
2 Add back A/R not on Original LCX list re Cruise management	13,994.19			\$ 13,994.19
3 Blue line receipt not part of factored invoices			- 9,825.25	-\$ 9,825.25
4 Cape Fear invoices paid to LCx by client not factored			- 21,920.50	-\$ 21,920.50
5 Penalty for charge backs not warranted			- 2,953.00	-\$ 2,953.00
6 Charge back on BNA Marine paid by internal transfer as shown on Factored Accounts Recivable summary			- 6,020.00	-\$ 6,020.00
Final	<u><u>\$ 86,603.78</u></u>	<u><u>\$ -</u></u>	<u><u>-\$ 35,283.01</u></u>	<u><u>\$ 51,320.77</u></u>

Notes

- 1 the executive summary prepared by LCx deducts the funds received directly from Versitecs clients to LCX from the non factored invoices. these funds were never paid to Versitec during the Forebearance period. the deduction was necessary in order for LCX to reconcile to the factored A/R which was reported to the Court. The funds received and maintained in LCX investment account was never disclosed to the Court and only increased the Earned Reserve accountowing to Versitec by LCX
- 2 Total Receipts as per MPI and LCX reconciles well as the total invoices factored.

The following document is Exhibit "J"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

REPLY MOTION RECORD

(Returnable April 27, 2022)

April 25, 2022

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

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicant,
Liquid Capital Exchange Corp.

TO: **THE SERVICE LIST**

SERVICE LIST
(as at April 18, 2022)

TO: TORKIN MANES LLP
Barristers & Solicitors
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*Lawyers for the Applicant,
Liquid Capital Exchange Corp.*

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AND TO: BDO CANADA LIMITED
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Fax: 905.570.0249
Direct: 289.678.0243
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Court-Appointed Receiver

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Representative of Ra-Tech CAD Services Inc.

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Lawyers for the Proposed Purchaser

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Email: smitty2729@gmail.com

Proposed Purchaser

AND TO: CANADA REVENUE AGENCY
c/o Department of Justice
Ontario Regional Office
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Fax: 705-739-7119

Email: JohnMorgan@morgantrustees.com

Original Court-Appointed Receiver of Versitec

AND TO: **LAISHLEY REED LLP**
Barristers & Solicitors
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Toronto, ON MSE 1M2

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*Lawyers for Morgan & Partners Inc.,
Original Court-Appointed Receiver of Versitec*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
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COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

TABLE OF CONTENTS

Item	Description	Page No.
1	Reply Affidavit of Jonathan Brindley sworn April 25, 2022	
A	Exhibit "A" - Judgments issued against the Respondents by Order of the Honorable Justice Penny dated November 24, 2021	
B	Exhibit "B" - Communications between LCX and Versitec respecting regularly-held meetings and requests for information	
C	Exhibit "C" - Swindells Settlement	
D	Exhibit "D"- Carpenter Settlement	
E	Exhibit "E" - Connaught Settlement	
F	Exhibit "F" - February 11, 2021 email from Mr. Thom to counsel for MPI	

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Item	Description	Page No.
G	Exhibit "G" - Communications respecting the negotiation and execution of the LCX/MPI Agreement	
H	Exhibit "H" - Executed LCX/MPI Agreement	
I	Exhibit "I" - Fourth Report of Substitute Receiver dated November 18 2021	
J	Exhibit "J" - Exhibit I to Fourth Report	

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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Applicant

-and-

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VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
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R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

AFFIDAVIT

I, Jonathan Brindley, of the City of Mississauga, in the Regional Municipality of Peel,

MAKE OATH AND SAY:

1. I am the principal of Liquid Capital Exchange Corp., the Applicant in this proceeding, and, as such, have knowledge of the matters contained in this Affidavit.
2. Capitalized terms herein have the same meaning as contained in my prior Affidavit of November 18, 2021, filed in support of a motion for judgment against Mr. Byrd, together with the other Respondents in this Application.

-2-

Material Context re Byrd Objections to Judgment on his Personal Guarantee of the Indebtedness of Versitec to LCX

3. As discussed in my prior Affidavit, on April 25, 2019 LCX, Versitec and the guarantors of the Versitec indebtedness to LCX entered into a Forbearance Agreement (the “**Forbearance Agreement**”) pursuant to which LCX agreed to forbear from enforcement of its security and upon the personal guarantees of the Versitec indebtedness to LCX in order to allow Versitec a period of time to obtain replacement financing in an amount sufficient to fully repay all amounts owed to LCX. The principal reason for requiring that Versitec obtain replacement financing and execute the Forbearance Agreement was that LCX had become aware of several instances where Versitec had collected accounts receivable purchased by LCX from customers without having remitted the funds received by Versitec to LCX, as well as communications between Versitec and its customers seeking to redirect payments from customers who had previously been directed to remit payments directly to LCX, back to Versitec.

4. At the time of these incidents, and throughout the material timeframe, Versitec was principally under the direction and control of Mr. Byrd. Mr. Taylor, the founder of Versitec, was effectively an absentee director throughout the material timeframe leading up to the Forbearance Agreement and this Application, at that time residing overseas in Southeast Asia, to my understanding based upon the information provided to me by Versitec.

5. During the negotiation of the Forbearance Agreement, Versitec requested that LCX agree to extend Versitec accounts receivable financing up to \$600,000 to fund the cashflow necessary for the company’s operations over the Forbearance Period, which ended on December 31, 2019 at

-3-

which time it was required pursuant to the terms of the Forbearance Agreement that LCX be repaid in full any and all amounts outstanding and owed to it.

6. LCX agreed to extend factoring financing in the requested amount on the condition that additional security be provided in the form of collateral mortgages be registered against title to the residential properties of Mr. Byrd and Mr. Taylor, in the amount of \$300,000 each (in Mr., Byrd's case, \$300,000 USD). Mr. Byrd and Mr. Taylor agreed to grant the said mortgages as additional security for Versitec's indebtedness to LCX and in support of their guarantees of same and LCX agreed, on that basis, to make the requested financing available.

7. The indebtedness which is the subject matter of this Application and motion seeking judgment relates almost entirely to advances made by LCX to Versitec over the course of the forbearance period, during which time Versitec accessed and obtained advances from LCX in an amount approaching the maximum availability, but appears to have made no efforts towards obtaining replacement financing prior to the expiry of the forbearance period in December of 2019.

8. At the hearing of LCX's motion seeking the Appointment of the Receiver on March 9, 2020, counsel for Versitec did not dispute Versitec's indebtedness to LCX, but took the position that it was believed by Versitec that the correct calculation of the indebtedness was between \$285,000 and \$400,000 USD, which position is recorded in the Endorsement of Justice Gilmore issued on that date¹. Despite being afforded the opportunity to do so, Versitec declined to file any

¹ Justice Gilmore's Order and Endorsement of March 9, 2020 are attached to my prior affidavit as Exhibit P

-4-

Responding materials in support of its position in this regard or seek to vacate the Receiver's appointment.

9. Similarly, neither Versitec nor any guarantors but Mr. Byrd contested or opposed LCX's calculation of the indebtedness of Versitec on or in advance of (or since) LCX's motion seeking judgment against the Respondents on account of the Versitec indebtedness and/or their guarantees of same. Judgments have been issued against all parties to this proceeding, but for Mr. Byrd, in an amount corresponding to LCX's calculation of the indebtedness as of the date upon which judgment was sought against them. LCX's calculation of the indebtedness and the supporting documentation were reviewed and confirmed by the Substitute Receiver, BDO Canada Limited, as indicated the Substitute Receiver's Third Report to Court dated June 16, 2021 (the "**Third Report**"). Review of the amounts owed to LCX was performed by the Substitute Receiver in connection with its recommendation the Substitute Receiver be authorized to release funds to LCX in an amount up to but not exceeding the debt owed by Versitec to LCX, defined in the Report as the "Indebtedness" and stated in the Third Report as being equal to \$764,695.04 as at May 27, 2021².

Attached hereto and marked as Exhibit "A" are true copies of the judgments issued against the Respondents by Order of the Honorable Justice Penny dated November 24, 2021

² The Third Report is attached to my prior affidavit as Exhibit S

-5-

10. As referenced previously, the Third Report was approved by the Order of the Honourable Justice Gilmore dated June 22, 2021 and distribution to LCX of any funds available up to the amount of the indebtedness was approved by the Court³.

11. Mr. Byrd, acting principal of Versitec, did not oppose or object to judgment being issued against the corporation, oppose or object to the correctness of the calculation of the LCX indebtedness or conclusions set out in the Third Report, nor did he oppose or object to the release of funds in the Receivership to LCX on account of the said indebtedness. Mr. Byrd, the sole objecting party to this proceeding, has raised his objection only in his personal capacity and only as it relates to enforcement upon his personal guarantees of the indebtedness owed by Versitec to LCX. For clarity, Mr. Byrd has not disputed the validity or enforceability of his guarantee on its stated terms, but only on the basis of the assertion now made by him that no funds are owed by Versitec to LCX.

12. Throughout the course of the two-year long receivership of Versitec, which saw the sale of all known assets and undertakings of Versitec and distribution of any available proceeds from same to LCX, Mr. Byrd did not, either on his own behalf or on behalf of the company, take the position that Versitec was not indebted to LCX. This position was first articulated by Mr. Byrd at the hearing date on November 24, 2021, the date upon which LCX sought judgment against him personally on account of his guarantee.

13. LCX very much doubts that Mr. Byrd has any genuine belief that his is not liable to LCX, or that the indebtedness owed by Versitec has been grossly miscalculated. Rather, LCX is of the

³ Justice Gilmore's Order and Endorsement of June 22, 2021 in this regard are attached to my prior affidavit as Exhibit U

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view that Mr. Byrd's opposition is intended to frustrate and delay LCX in its enforcement against him, only. By the time this motion for judgment is heard, LCX will have already sought recourse to the collateral security granted in favour of LCX over Mr. Taylor's residence and will likely have recovered against all known assets of the companies and other guarantors.

Byrd Allegations re Collection of Non-Factored Receivables / LCX' Refusal to Provide Information

14. At paragraph 2 of Mr. Byrd's Affidavit he states "I have, on numerous occasions, asked LCX to provide an accounting of the amounts withheld by it from the purchase price of the respondents receivables factored by LCX, as well as payments received by LCX from the Respondents' customers in respect of receivables factored by LCX. LCX has never provided me with that accounting...".

15. Mr. Byrd's comments as set out above are untrue. Throughout the forbearance period, LCX and Versitec held regular meetings to review the balances owing to LCX, collections and current factored AR. These meeting were held generally every 2-3 weeks. Myself and Pia Bannister (account manager) were the regular attendees with Florian Meyers (consultant) attending occasionally on the part of LCX. Mr. Byrd attended all or nearly all of these meetings, with Brian Gunning (Versitec's accountant), Lance Lockett and Ed Pavey also sometimes attending together with him on behalf of Versitec. Requests for information from LCX in relation to the operation of Versitec's factoring facility, amounts collected, and reserve funds, were regularly made by Versitec and when such requests were made the requested information was, to the best of my knowledge and recollection, promptly provided. I provide here a sample of such

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communications, which is not intended to be complete record of all such communications exchanged.

Attached hereto and marked as Exhibit “B” are true copies of communications between LCX and Versitec respecting the above referenced meeting and requests for information

16. Similarly, while it is true that LCX from time to time received payment from customers of Versitec on account of accounts receivable which had not been factored by LCX during the forbearance period, in each case Mr. Byrd was notified of this fact and in each case Mr. Byrd authorized LCX to apply the corresponding funds either to increase cash reserves held by LCX or as a reduction of the indebtedness owed by Versitec to LCX on account of unrelated invoices. However, at no point did Mr. Byrd ever indicate to LCX that LCX’s collection of such “non-factored receivables” had harmed or was compromising Versitec’s ordinary business operations. Since the appointment of MPI as Receiver March 2020, LCX has not received any payments on account of either factored or non-factored receivables directly from Versitec customers.

John Morgan Report/Conclusions

17. LCX stands by its calculation of the indebtedness owed to it by Versitec and states that all funds shown as having been advanced to Versitec on LCX accounting records were in fact advanced, no funds were collected or received which are not accounted for in such records and no charges or fees not authorized by the agreements between the parties were charged to Versitec.

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18. LCX struggles to understand Mr. Morgan's Report and how he could possibly have believe the conclusions stated therein are accurate. Particularly so when regard is had to Mr. Morgan's history in this proceeding, his previous agreement with LCX's calculations and his reporting to the court respecting same, as well as his consent to an order being issued authorizing the release of funds to LCX in an amount up to the LCX-calculated indebtedness. It is difficult to reconcile Mr. Morgan's denial of any indebtedness owed by Versitec to LCX with MPI's own reporting to this Court and with the position taken by MPI in relation to, and implications of, the Orders sought and obtained to date in this proceeding.

19. Mr. Morgan's history in this matter is problematic and requires consideration in the context of the current stage of this proceeding. LCX has previously communicated to MPI its concerns respecting what it believes to have been significant improprieties on the part of Mr. Morgan/MPI in relation the administration of the receivership of Versitec and resulting prejudice to LCX. LCX's concerns in this regard ultimately led to a motion being brought by MPI, at LCX's request, seeking to substitute MPI as Receiver of Versitec and appoint BDO Canada Limited in replacement (the "**Substitution Motion**"). In addition to the initial concerns raised by LCX and which led to the Substitution Motion, further concerns have come to light following the appointment of the Substitute Receiver.

20. LCX has specifically advised Mr. Morgan/MPI that it believes them to be liable for damages to LCX in the event of any shortfall in recovery of the indebtedness owing to LCX. LCX's allegations of liability arise from series of events whereby through the actions, omissions, gross negligence, and/or willful misconduct on the part of Mr. Morgan/MPI during the course of

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their administration of the receivership which are believed by LCX have reduced recovery by LCX from the assets of Versitec in an amount which exceeds \$500,000, at minimum.

21. LCX has advised Mr. Morgan that it intends to pursue its claims against Mr. Morgan/MPI should any shortfall remain after collection from the guarantors and realization upon the related security have been pursued. Mr. Morgan, as such, has a personal interest in the outcome of this proceeding and his evidence against the existence of any obligations owed to LCX by Versitec is self-serving evidence of the highest order. Given realizations to this point, it is a near certainty that a shortfall on the indebtedness will result and that LCX will be required to pursue Mr. Morgan/MPI to recover same. It is within this context that MPI has now, in contradiction of its own prior statements and conduct while acting as Court officer, generated a new report which seeks to refute the existence of the very debt for which LCX intends to hold MPI/Mr. Morgan accountable.

Early issues with MPI/Morgan

22. In or around August 2020, I was contacted by David Taylor, who advised me that in discussions he had with Mr. Morgan concerning the Versitec receivership, that Mr. Morgan had expressed a concern that it appeared to him that Versitec may not be indebted to LCX at all, or that LCX may in fact owe money to Versitec.

23. I communicated the above to LCX's counsel, Torkin Manes, and asked that they follow up with Mr. Morgan's then-counsel, Laishley Reid LLP, in order to determine what had actually taken place. Mr. Morgan had to that date never made any inquiry of LCX respecting LCX's accounting and/or calculation of the amounts claimed by LCX as owing to it, and had never sought

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clarification on any matters relating to same which were of concern. Furthermore, and as discussed previously, Versitec itself had already acknowledged to the Court at the initial hearing date on March 9, 2020, that it was indeed indebted to LCX in the amount of *at least* \$200,000 USD. Versitec had never, not at that point or at any point afterwards, taken the position that it was not indebted to LCX.

24. Mr. Morgan's then-counsel, Calvin Ho of Laishley Reid LLP, undertook to follow up with his client. Much to our surprise, it was subsequently confirmed that Mr. Morgan had indeed formed the opinions reported by Mr. Taylor and had as well been communicating his conclusions in this regard to Versitec personnel, including the guarantors of the indebtedness owed to LCX.

25. The circumstances were baffling to LCX. Not only was it unclear as to how Mr. Morgan could ever have drawn these conclusions, but it was also unclear as to why he would have even undertaken such an analysis at this stage of the proceeding. As of that time, the debtor itself had acknowledged a secured debt owed to LCX, no sale process had been initiated and MPI had not taken any known steps towards establishing a plan to monetize the assets of Versitec or be in a position to make any distribution to the creditors of Versitec on account of any pre-receivership liabilities.

Reconciliation of amount owed to LCX with MPI

26. Neither myself, nor LCX's counsel could understand this turn of events, either in terms of what had precipitated them, in terms of how Mr. Morgan could possibly have drawn his conclusions or in terms of what could possibly have motivated Mr. Morgan to broadcast his

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conclusions to parties with a direct interest in the outcome of these proceedings without addressing any concerns or confusion first with LCX, and attempting to reconcile the discrepancy.

27. It was immediately proposed by LCX's counsel that Mr. Morgan and myself connect with each other to review LCX's accounting and try to reconcile any misunderstandings or points of confusion that may have caused these. It was my immediate assumption, given the scope of disagreement in numbers, that Mr. Morgan's calculations were likely premised on a fundamental misunderstanding of the operation of the factoring facility.

28. Mr. Morgan provided his analysis of the amounts owed to counsel for LCX on September 15, 2020. In response, I prepared and provided to Mr. Morgan detail as to how LCX had arrived at its numbers on October 19, 2020. Over the period from September 15, 2020 to December 4, 2020, Mr. Morgan and I had a number of meetings/calls for the purpose of reviewing the relevant information/accounting, resolving any discrepancies or confusions and reconciling LCX's calculation of the Versitec indebtedness.

29. On December 4, 2020, I had a final telephone call with Mr. Morgan during which I addressed with him the few questions which remained to be resolved regarding these issues. At the end of that call, Mr. Morgan confirmed with me orally that he was in agreement with LCX's calculation of the indebtedness owed to it by Versitec (for the purposes of that conversation, Mr. Morgan and I were working from accounting documents and records with a currency date of October 19, 2020, which had been sent by me to Mr. Morgan previously) .

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30. Following my phone call with Mr. Morgan, 11:54 AM, I left a voice mail message with legal counsel for LCX to advise of the outcome of my discussions with Mr. Morgan. The transcribed voice mail message left by me at that time is as follows:

Hi Stewart, Jonathan, here. Hope you are doing well... Friday. Just to let you know that I did speak with John this morning and I think we are finally got to end of job on this reconciliation. He has seen the light and agrees with our numbers. Shock of shocks. Anyway, apparently he was supposed to have contacted Calvin and I said "are you going to... I want to put this in writing". So, apparently Calvin is supposed to be reaching out to you. I'll send you a quick e-mail as well. I just want to make sure that we document this properly because I have a sneaking suspicion that this is going to come back to haunt us, all this nonsense that's happened.

Okay, just wanted to chat with you as well about where we are at Versitec and all this kind of stuff. So, when you get a moment maybe today or set up something for Monday.

Thanks.

31. My voice mail was followed up with an email which I sent to Mr. Thom at 2:01 PM, December 4, 2020, whereby I again confirmed that I had spoken with Mr. Morgan that morning, that the issues with respect to the calculation of the LCX indebtedness had been resolved and that Mr. Morgan had confirmed with me that he was now in agreement with LCX's calculation of the indebtedness as being \$650,380.15 as at October 19, 2020.

Early concerns respecting payments made to creditors out of priority

32. At around the same time, in addition to frustration with MPI relating to its conduct and miscalculations as set out above, LCX came to additionally have concerns with respect to dealings

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with the assets and property of Versitec which MPI had participated in or permitted and which LCX believed to be inappropriate.

33. In September of 2020, at or around the same time that the efforts were underway to correct Mr. Morgan's misunderstanding as to the amounts owed to LCX by Versitec, LCX become aware of further circumstances of concern:

- (a) Mr. Morgan appears to have approved settlement of litigation having Court File File No CV-19-00058937-0000 (the "**Swindells Claim**") being a Statement of Claim issued by David Swindells against Versitec seeking damages for, inter alia, wrongful dismissal. Notwithstanding that Mr. Swindells' claim was a claim for unsecured damages relating to the termination of his employment during the year prior to the Receivership of Versitec, which action was stayed as a result of the Appointment Order issued on March 9, 2020, Mr. Morgan nonetheless approved the settlement of the Swindells Claim in the amount of \$6,000 plus HST, and the release of funds to Mr. Swindells on account of same. Mr. Bryd, a co-defendant to the action, was not required to contribute any funds in connection with the settlement;

Attached hereto and marked as Exhibit "C" is a true copy of the Swindell's Settlement Documentation;

- (b) Mr. Morgan appears to have approved settlement of litigation having Court File File No CV-19-00058936-0000 (the "**Carpenter Claim**") being a Statement of Claim issued by David Carpenter against Versitec seeking damages for, inter alia,

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wrongful dismissal. Notwithstanding that Mr. Carpenter's claim was a claim for unsecured damages relating to the termination of his employment during the year prior to the Receivership of Versitec, which action was stayed as a result of the Appointment Order issued on March 9, 2020, Mr. Morgan nonetheless approved the settlement of the Carpenter Claim by Versitec of funds in the amount of \$37,000, and authorized the release of funds to Mr. Carpenter on account of same. Not only was Mr. Carpenter an unsecured creditor of Versitec with no post-Appointment Order liabilities owed to him and no continuing employment relationship with Versitec, but Mr. Carpenter is also a Respondent in the within Application and guarantor of the indebtedness of Versitec. LCX has, subsequent to the release of funds to Mr. Carpenter, obtained judgment against Mr. Carpenter. Mr. Bryd, a co-defendant to the action, was not required to contribute any funds in connection with the settlement;

Attached hereto and marked as Exhibit "D" is a true copy of the Carpenter Settlement

- (c) Mr. Morgan entered into a Settlement Agreement and Release with Conneaut Creek Ship Repair Inc. ("CCSR") in resolution of a lawsuit filed against Versitec in the Southern District of New York and agreed to the settlement of claims relating to, to the understanding of LCX based upon information provided by MPI's legal counsel, unpaid invoices for services provided to Versitec. Pursuant to the settlement with CCSR, funds equal to the settlement amount of \$70,000 USD have been paid to CCSR, an unsecured creditor of Versitec. Versitec had no known

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assets of value in the jurisdiction in which the lawsuit was issued, and there does not appear to have been any risk of harm to the interests of creditors of Versitec generally which the settlement had been intended to avoid. Counsel for LCX inquired as to whether CCSR was a critical supplier or whether there was any business justification for the settlement of the CCSR claim and payment of the settlement amount to CCSR but was advised by counsel for MPI that since the date of settlement, Versitec had done no further business of any kind with CCSR.

Attached hereto and marked as Exhibit “E” is a true copy of the Conneaut Settlement Documentation

34. As a further overarching concern with MPI, the Receivership seemed to be going nowhere. MPI had not filed any Reports with the Court to that date, had not sought any approval of its activities in connection with the administration of the Receivership and had taken no steps towards the initiation of any sale process respecting the assets of the company. LCX’s counsel had repeatedly brought up with MPI or its counsel the need to commence a sale process intended to monetize the assets of Versitec and expressed concern about the proceeding dragging on for a such a lengthy period of time without any such steps having been taken. When I inquired of Mr. Morgan directly on this issue in or around the summer of 2020, Mr. Morgan advised me that court dates could only be obtained for emergency matters, due to the COVID-19 pandemic, which my counsel advises was not the case, as Court proceedings and motions by way of video conference were being regularly used by this time and that no special urgency was required. Mr. Morgan seemed reluctant to initiate a sale process for the company for reasons not understood by me and

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there were concerns at LCX that there was no strategy or plan for the conclusion of the Receivership or realization upon the assets of Versitec at all.

Substitution of MPI and LCX/MPI Agreement

35. As a result of growing concerns about the administration of the Versitec Receiver and lack of confidence in MPI, LCX communicated to MPI through counsel that it wished to substitute BDO Canada Limited in as Receiver for the balance of the administration of the receivership of Versitec. LCX also communicated to MPI its belief that MPI was liable to Versitec for actions undertaken or permitted by MPI which resulted in dissipation of the secured collateral and prejudice to LCX.

36. A hearing date was booked for February 12, 2021 for the hearing of a motion to be brought by MPI seeking an order substituting BDO as Receiver of Versitec. In advance of the Substitution Motion, additional discussions took place between LCX, MPI and their respective counsel concerning how these parties intended to account for the issue of fees incurred by MPI in connection with the receivership and issues relating to the approval of any such fees or of MPI's conduct. Each of these issues were problematic for LCX, who advised MPI of its intention to seek damages from MPI/Mr. Morgan in the event that it were to suffer a shortfall on its recovery.

37. In particular, LCX requested that MPI agree that it would not seek approval or collection of any further fees in connection with the Versitec Receivership beyond those which it had already collected and paid itself (approximately \$27,000). These discussions contemplated that any appropriate WIP of MPI could be applied as a set off against any shortfall on recovery suffered by LCX attributable to culpable actions or omissions on the part of MPI/Mr. Morgan. LCX further

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requested that MPI seek only limited approval of its conduct and that LCX's right to seek recourse against Mr. Morgan / MPI be preserved.

38. MPI agreed to the foregoing arrangements with respect to fees and approval of its conduct and LCX agreed that it would not pursue proceedings against Mr. Morgan until realization upon the assets of Versitec, collateral security and guarantees had been attempted.

39. As a result of the foregoing arrangements, a potentially embarrassing exploration as to the full reasons for MPI's substitution in the materials filed on the Substitution Motion was unnecessary. It was hoped by LCX, in fact, that the need for such dispute as between LCX and MPI could be avoided entirely. Despite lingering frustration with MPI's conduct, at the time of the Substitution Motion LCX and MPI were working cooperatively with the common intention of deferring these issues to allow the focus to remain on monetizing the assets of Versitec and seeking recovery on the guarantees and security granted therefor.

40. As a result of, *inter alia*, the foregoing circumstances and discussions with respect to the substitution of BDO as receiver in replacement of MPI, the following represent the overarching considerations as to the approach to the substitution of the Receiver, the related motion and handling of the potential liabilities of MPI to LCX:

- (a) Mr. Morgan agreed that it was appropriate that he acknowledge in his First (and only) Report to the Court on the Substitution Motion that he had reviewed the accounting records of LCX with respect to the factoring facility and satisfied himself that LCX's calculation of the indebtedness of Versitec to LCX was accurate. LCX suggested to MPI that it would appropriate for this to be included in

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MPI's Report as (i) the review had indeed been performed by Mr. Morgan and this was the conclusion that he had indicated to LCX he had reached at the end of it (ii) he had previously communicated different information to persons with a direct interest in these proceedings and (iii) it was assumed that in the absence of any clarification guarantors would likely raise Mr. Morgan's earlier comments in defence of any claims on their guarantees. It is for these reasons that LCX understands Mr. Morgan to have included in his First Report to Court dated February 5, 2021, the following comments:

54. Due to a) the necessity to perform a review of accounts receivable in order to determine and identify those factored accounts receivable which could be released to LCX; and b) inquiries made by management and principals of LCX as to independent verification of the amounts owed to LCX, the Receiver has undertaken a thorough review and analysis of the factored accounts receivable and of the amounts outstanding and owed to LCX. The Receiver has reviewed documentation provided by LCX in support of its calculation that Versitec is indebted to LCX, as of October 19, 2020, in the amount of \$650,380.16. On the basis of its review, the Receiver is satisfied with LCX's calculation⁴.

- (b) MPI agreed that it would not seek approval of its fees in excess of the approximate amount of \$27,000 which funds MPI had already transferred to itself, and that MPI would waive and not seek approval of the balance of its accrued WIP, which amounts would be available to be applied as a set off of against any liability of MPI to LCX should LCX suffer a shortfall;

⁴ The First Report of the Receiver MPI dated February 5, 2021 is attached to my prior Affidavit as Exhibit Q

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- (c) LCX and MPI would agree to toll limitations on any claim by LCX against MPI in order to allow LCX to make reasonable efforts to recover the indebtedness through realization upon of assets of Versitec and enforcement of the guarantees and collateral security.

41. The mutual understanding between the parties was agreed upon between counsel for LCX and MPI, together with its counsel. On the understanding that a more formalized agreement would be drawn up, this mutual understanding was as set out in an email exchange between Mr. Morgan, counsel for MPI and counsel for LCX sent on February 11, 2021, the day before the Substitution Motion, which reads as follows:

The Receiver, Morgan and Partners Inc. (“MPI”) and the senior secured creditor, Liquid Capital Exchange Corp. (“LCX”) have agreed as follows and consent to the below:

- Notwithstanding the approval of any conduct or activities of the Receiver, it is understood, consented to and agreed that such approval is not intended to, nor understood to, and will not preclude LCX from taking any action or requesting any relief in connection with any objection LCX may have as to the appropriateness of:
 - Any of the Receiver’s activities not specifically set out in the First Report;
 - Any payments made by the Debtors, authorized by the Receiver or made by the Receiver in connection with, or during the period of, MPI’s appointment as Receiver of the Debtors, regardless of whether these were incurred in relation to approved activities or activities which have not been approved by the Court;
 - Any fees or expenses claimed by MPI as being recoverable by MPI pursuant to the Receiver’s Charge regardless of whether these were incurred in connection with approved activities or in connection with activities which have not been approved by the Court;
- If any (a) fees or expenses incurred by MPI or (b) payments as above, are determined by agreement between LCX and MPI, or by a determination of the Court, to be without legal justification or otherwise inappropriate (“Impugned Amounts”):
 - the fees and expenses of MPI otherwise recoverable pursuant to the Receiver’s Charge shall be reduced in an amount corresponding to the Impugned Amounts; and
 - in the event the forgoing does not rectify any loss that LCX suffered as a result of the activities leading to the Impugned Amount, LCX may seek any other legal recourse against MPI as appropriate to recover any corresponding loss to LCX in the maximum amount of

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the determined or agreed upon Impugned Amounts, less any reduction to approved fees of MPI applied to offset same.

- None of the foregoing shall be interpreted as an admission of liability of the part of MPI or an admission that any fees or payments as above were made inappropriately or without legal justification. MPI reserves it's rights to defend such allegations on the merits, but shall not assert any defence of res judicata, abuse of process or collateral attack in such case.

Attached hereto and marked as Exhibit "F" is a true copy of and email exchange between Mr. Morgan, counsel for MPI and counsel for LCX dated February 11, 2021

42. Counsel for LCX and counsel for MPI subsequently prepared an additional agreement respecting terms agreed to between them in relation to the foregoing matters. The agreement between MPI ad LCX was executed by both MPI and LCX on June 15, 2021 the "**LCX/MPI Agreement**").

43. The LCX/MPI Agreement executed by Mr. Morgan on behalf of MPI includes the following:

- (b) 163556 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. (together, "Versitec"), Respondents in the Application, are indebted to LCX in the amount of \$764,695.04 as of May 27, 2021, together with such interest fees and other charges or amounts payable as may accrue from May 27, 2021 onward and are payable by Versitec pursuant to the terms of the agreements between LCX and Versitec (the "Indebtedness");

...

- (g) LCX is the senior ranking general secured creditor of Versitec subject only to:
 - (i) Statutorily conferred priorities/rights;
 - (ii) Such amounts as are owed to MPI and secured by a charge in favour of the Receiver as set out by the terms of the Appointment Order and/or the Substitution Order as security for the fees and disbursements of MPI incurred while acting in its capacity as Receiver of Versitec or in relation to the Application (the "Receiver's Charge");

...

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- (j) LCX has advised MPI that it is of the view that MPI is liable to LCX for damages in relation to, without limitation, acts or omissions of MPI as Receiver of Versitec, including, without limitation, payments improperly made or authorized by MPI, which negatively impacted or reduced the quantum of funds available for distribution to LCX following realization upon the assets of Versitec (all such claimed liabilities being, the “Claims”);
- (k) MPI agrees and undertakes that, at the request of LCX, MPI will provide reasonable cooperation of an administrative nature to LCX as reasonably required for the prosecution of the Guarantor Proceedings or and claims for damages which LCX may hereafter commence or continue against Versitec or as an assignee of any claims of Versitec;

...

- 2.(j) MPI consents and agrees to the distribution any and all remaining funds available for distribution to LCX as determined by the Substitute Receiver and as set out in the Third Report of the Substitute Receiver dated June 15, 2021 filed in the Application.

Attached hereto and marked as Exhibit “G” are true copies of communications respecting the negotiation and execution of the LCX/MPI Agreement

Attached hereto as Exhibit “H” is a true copy of the fully executed LCX/MPI Agreement

44. On January 24, 2022, following delivery of Mr. Morgan’s expert report in this matter wherein Mr. disputes any indebtedness owed by Versitec to LCX, counsel for LCX communicated with counsel for MPI seeking written confirmation as to Mr. Morgan’s belief as to whether the LCX/MPI Agreement was effective and binding upon the parties thereto. Counsel for MPI advised counsel for LCX that Mr. Morgan is of the view that the LCX/MPI Agreement is not effective or binding.

Post Substitution Concerns re MPI

45. Immediately following the appointment of BDO as Substitute Receiver, BDO made the determination that it could not operate the business of Versitec and that a sale process was required

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to be immediately implemented for the reason that the company was without insurance and replacement insurance could not be obtained. Put otherwise, Versitec's insurance had been permitted to lapse. From March 2020 to the Substitution Motion on February 12, 2021, Versitec has been operated by MPI without insurance of any kind. Mr. Morgan had authorized the transfer of funds applied in payment of insurance premiums owed by an unrelated company which LCX understands to be owned and controlled by Mr. Byrd. Such payments served no business purpose of Versitec at all.

46. BDO also immediately reported to LCX that Mr. Morgan had never had control over Versitec's US-domiciled Bank of America account, contrary to his representations otherwise. MPI had obtained access these accounts, but Mr. Byrd retained control and appears to have been largely unchecked in his ability to transfer sums out of those accounts for questionable purposes. Mr. Morgan relinquished his access fully to Mr. Byrd on the eve of BDO's appointment as Substitute Receiver. My understanding is that BDO contacted Mr. Morgan to facilitate transfer of his authority in respect of these accounts, following its appointment, and that Mr. Morgan advised at that time that he was no longer had authority and that this request would need to be made of Mr. Byrd.

47. Mr. Byrd refused to cooperate with the Substitute Receiver in this regard, and proceedings were required to be brought in the US to obtain a Court Order recognizing the Canadian Receivership Order before any information relating to these accounts was able to be obtained. Mr. Byrd filed an opposition to the Substitute Receiver's request for a recognition order but did not file any materials in support of the opposition, resulting in its dismissal.

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48. The Substitute Receiver addressed its findings following a review of the Versitec USA Bank accounts at section 2.5 in the Fourth Report to Court of the Substitute Receiver, dated November 18, 2021, as follows:

2.5 Review of Versitec USA Bank Transactions

- 2.5.1** The Receiver has reviewed the bank statements of the BOA Account and the BB&T Account for the period March 9, 2020 to April 30, 2021.
- 2.5.2** The BB&T Account appears to have been opened on or about April 3, 2020 and used until February 19, 2021. The Prior Receiver has stated that the BB&T Account was “solely controlled by the (Prior) Receiver.”
- 2.5.3** The BOA Account was in use prior to March 9, 2020 and appeared to be used until April 30, 2021.
- 2.5.4** Global Marine Engineering Inc. (“**Global**”) is a company believed to be owned and operated Mr. Byrd, Versitec’s former chief executive officer.
- 2.5.5** Mr. Byrd had entered into a management consulting agreement with the Prior Receiver in his personal capacity but issued invoices for his services through Global.
- 2.5.6** The Receiver has prepared a detailed analysis of the banking activity between Versitec USA and Global during the period of these receivership proceedings. A summary of this analysis is attached hereto as **Appendix “I”**. The Receiver has found that:
- A total of \$1,127,020.91 USD was received from Versitec customers into the BOA Account during the receivership proceedings;
 - Numerous transactions took place in both the BOA Account and the BB&T Account with Global. Transfers of funds were being made to and from Global on a regular basis; and
 - In summary, Global appears to be indebted to the Estate in the amount of \$293,122 USD.
 - Further payments of \$170,741.59 were made to three creditors of Versitec USA (the “**Creditor Payees**”) which may have been made to the prejudice of LCX.
- 2.5.7** The Receiver is not funded to pursue collection of the aforementioned amounts. Moreover, given the shortfall suffered by LCX, LCX appears to be the only party with an economic interest in potentially pursuing claims in respect of the transfer of funds out of the BOA Account and BB&T Account.
- 2.5.8** Accordingly, the Receiver proposes to assign and transfer to LCX, any claim, right, title and interest of the Debtors or the Receiver (if any), against any person, in respect of or

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connected with the transfer of funds out of the BOA Account and BB&T Account to Global and/or the Creditor Payees (as all claims being the “**Outstanding Claims**”), on the condition that LCX account back to the Debtors or any trustee or administrator of the Debtors’ estate in respect of any recoveries receiver in excess of the shortfall on its security.

Attached hereto and marked as Exhibit “I” is a true copy of the Fourth Report of the Substitute Receiver of Versitec dated November 18, 2021, without Exhibits

49. In total, the Substitute Receiver has identified \$463,863.59 in payments to subordinate creditors made with Versitec funds held in its Bank of America accounts, which payments Mr. Morgan/MPI either permitted, facilitated or negligently failed to prevent.

Attached hereto and marked as Exhibit “J” is a true copy of Appendix I to the Substitute Receiver’s Fourth Report dated November 18, 2021

50. LCX believes it to be the case that MPI/Mr. Morgan may be held liable for prejudice to LCX resulting from the above transfers, in addition to those previously referenced herein, along with other concerns respecting Mr. Morgan’s conduct which need not be addressed in detail at this time.

51. The forgoing information represents some of the more easily documented examples of the believed liabilities of Mr. Morgan to LCX, but is not intended to be exhaustive. For clarity, these details are not included herein with any intent on the part of LCX to prove any liabilities on the part of Mr. Morgan/MPI to LCX at this time, as such issues are not relevant directly to the liability of Mr. Byrd. Rather, the purpose for the inclusion of this information and supporting documentation is to establish the context within which Mr. Morgan/MPI’s report must be considered, including the fact that *MPI/Mr. Morgan were very much aware at the time of the preparation of the expert report filed on behalf of Mr. Byrd’s opposition that LCX intends to claim and will be claiming*

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substantial damages against MPI/Mr. Morgan in the event of a shortfall to LCX on recovery, which shortfall now seems all but inevitable. While for the purposes of this motion it is not material whether any liabilities can be or are likely to be proven against Mr. Morgan/MPI, but it is very material that LCX has taken the position that significant liabilities exist, has communicated this position to MPI/Mr. Morgan and that LCX's position in this regard was known to Mr. Morgan prior to the preparation of his expert report in support of Mr. Byrd, disputing Versitec's liability to LCX.

52. Mr. Morgan/MPI have a direct financial interest in the outcome of this proceeding and in any judicial determination as to the liabilities (or lack thereof) of Versitec to LCX. I am of the view that Mr. Morgan's Report is motivated by self interest, is biased and is tainted to such an extent that it should be afforded little weight from this Court. I struggle to understand how Mr. Morgan could have believed himself an appropriate person to be providing this evidence to this Court at all. Particularly so given his previous confirmation of the LCX indebtedness while acting as a court officer and his consent to the distribution of funds to LCX on account of such indebtedness.

53. I make this affidavit for the purpose of LCX's motion for judgment against Reuben Byrd and for no other purpose.

-26-

SWORN by Jonathan Brindley of the City of Burlington, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on April 25, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

STEWART THOM

JONATHAN BRINDLEY

RCP-E 4D (February 1, 2021)

LIQUID CAPITAL EXCHANGE CORP.

Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT

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

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (September 1, 2020)

This is Exhibit “A” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 24 TH
)	
JUSTICE PENNY)	DAY OF NOVEMBER, 2021

B E T W E E N:



LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

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

Respondents

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

JUDGMENT

THIS MOTION, made by the Applicant, Liquid Capital Exchange Corp. (“**LCX**”), for judgment against the Respondent parties, was heard this day by video conference.

ON READING the Motion Record of the Moving Party, the Affidavit of Jonathan Brindley sworn November 18, 2021, The Fourth Report of the Receiver BDO Canada Limited, in its capacity as receiver of the assets and property of 1635536 Ontario Inc. O/A Versitec Marine & Industrial and Versitec Marine Holdings Inc. and Versitec Marine USA Inc. (the “**Receiver**”), dated November 18, 2021, and on hearing the submissions of counsel for LCX and the Receiver,

-2-

1. THIS COURT ORDERS AND ADJUDGES that that the Respondents 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc., Versitec Marine USA Inc., David Taylor, and David Carpenter are jointly and severally liable to pay, and are hereby ordered to pay to LCX, the sum of \$776,616.03 (the “**Judgment Amount**”).

2. THIS COURT ORDERS AND ADJUDGES that that the Respondents 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc., Versitec Marine USA Inc., David Taylor, and David Carpenter are jointly and severally liable to pay, and are hereby ordered to pay to LCX, prejudgment interest on the judgment amount from November 11, 2021, to November 23, 2021, in the amount of \$9,319.39.

THIS JUDGMENT BEARS INTEREST on the Judgment Amount at the rate of 36.5% per cent per annum commencing on November 24, 2021.

A handwritten signature in blue ink, appearing to read 'R. J.', is written over a horizontal line. Below the line, the text '(Signature of Court Officer)' is printed in a smaller font.

RCP-E 59B (September 1, 2020)

LIQUID CAPITAL EXCHANGE CORP.

Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

JUDGMENT

TORKIN MANES LLP

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

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (September 1, 2020)

This is Exhibit “B” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM



POWERED BY  LINNET NETWORK

Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Versitec account review call June 27 - follow up items

1 message

Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Thu, Jun 27, 2019 at 11:53 AM

To: Reuben Byrd <rbyrd@versitecmarine.com>, Florian Meyer <fmeyer@newhousepartners.com>, epavey@versitecmarine.com

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>

Hi All

Thanks for the Versitec account review call this morning (June 27), here is the list of follow up items:

- 1) Complete Eastern Med invoicing + shipment reconciliation - Florian (due date June 27)
- 2) Ship out standing Eastern Med products (re Mar invoicing) ASAP - Ed + Reuben (due date July 5)
- 3) Resend + complete outstanding factoring notifications - Pia / Reuben (due date June 27)
- 4) Schedule weekly Versitec collections call Reuben + LCX , every Tuesday at 9pm EST , first call July 2- Pia (due date June 27)
- 5) Resolve + correct Versitec billing errors - Reuben + Florian (ongoing)
- 6) Collections call / drop by for Cruise Management by Reuben - Reuben (due date July 5)
- 7) Versitec fund - complete latest funding - Pia (due date June 28)
- 8) Provide Versitec AR Consolidated summary (excel) to Reuben + Versitec - Pia (due date June 27)

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



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Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Versitec Versitec AR + collections snap shot as at Oct 8 2019

1 message

Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Thu, Oct 10, 2019 at 8:00 AM

To: Reuben Byrd <rbyrd@versitecmarine.com>, Lance Lockett <llockett@versitecmarine.com>, Ed Pavey <epavey@versitecmarine.com>

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>, Liliana Rizopoulos <lrizopoulos@liquidcapitalcorp.com>, Florian Meyer <fmeyer@newhousepartners.com>

Hi Reuben

Attached is the updated Versitec AR + collections snap shot as at Oct 8 2019.
We can review further during our account review call

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133


Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



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 **Versitec Account Summary 8-10-2019.xlsx**
55K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Re: Next Week's Meeting - Request for Day Change

1 message

Reuben Byrd <rbyrd@versitecmarine.com>

Fri, Oct 25, 2019 at 2:16 PM

To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Cc: Ed Pavey <epavey@versitecmarine.com>, Pia Banister <pia.banister@myliquidcapital.com>, Lance Lockett <llockett@versitecmarine.com>, Brian Gunning <briangunning1@gmail.com>

Brian and Pia are working on it we are going thru all the reports to make sure it is correct

Reuben Byrd
CEO Global Operations
Versitec Marine USA

Phone: (716) 695-0142
North America Toll Free: (888) 357-3257 Ext. 244
Mobile: (561) 526-6432
E-mail: rbyrd@versitecmarine.com

STERN TUBE SEAL EXPERTS

----- Original message -----

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Date: 10/25/19 2:11 PM (GMT-05:00)

To: Reuben Byrd <rbyrd@versitecmarine.com>

Cc: Ed Pavey <epavey@versitecmarine.com>, Pia Banister <pia.banister@myliquidcapital.com>, Lance Lockett <llockett@versitecmarine.com>, Brian Gunning <briangunning1@gmail.com>

Subject: Re: Next Week's Meeting - Request for Day Change

Hi Reuben
OK moved to 2pm..

What is the status on transfer Ango Eastern funds? Will that be sent today. Would like to have this reflected in the accounts before our call on Wed.

Thanks

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521
Toll Free: 1-800-778-0133
Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com
www.liquidcapitaladvancecorp.com



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On Fri, Oct 25, 2019 at 1:50 PM Reuben Byrd <rbyrd@versitecmarine.com> wrote:
Johnathan 11 wont work it needs to be much earlier or after 2pm

Reuben Byrd
CEO Global Operations
Versitec Marine USA

Phone: (716) 695-0142
North America Toll Free: (888) 357-3257 Ext. 244
Mobile: (561) 526-6432
E-mail: rbyrd@versitecmarine.com

STERN TUBE SEAL EXPERTS

----- Original message -----

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>
Date: 10/25/19 1:48 PM (GMT-05:00)
To: Ed Pavey <epavey@versitecmarine.com>
Cc: Reuben Byrd <rbyrd@versitecmarine.com>, Pia Banister <pia.banister@myliquidcapital.com>, Lance Lockett <llockett@versitecmarine.com>, Brian Gunning <briangunning1@gmail.com>
Subject: Re: Next Week's Meeting - Request for Day Change

Hi Ed
Next Wed Oct 30 at 11am EST works... I will move meeting invite.

Regards
Jonathan Brindley CPA CA
Liquid Capital Advance Corp.
Tel: 416-727-4521
Toll Free: 1-800-778-0133
Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com
www.liquidcapitaladvancecorp.com



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On Fri, Oct 25, 2019 at 12:37 PM Ed Pavey <epavey@versitecmarine.com> wrote:

Hi Jonathan,

Just received word from Reuben that his travel plans have changed recently, and he requests we move next week's meeting forward to Wednesday morning vice Thursday as currently scheduled. Please advise availability.

Best Regards,

Ed Pavey

VP Sales & Service

Versitec Marine USA

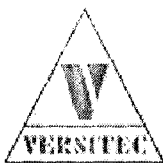
900 N. Federal Highway Suite 100

Boca Raton, FL 33432

Office: +1 (561) 756-8044

Cell: +1 (813) 573-5280

Email: epavey@versitecmarine.com



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STERN TUBE SEAL EXPERTS



EUROPORT 2019
5-8 Nov | Rotterdam Ahoy



INTERNATIONAL
WORK BOAT
SHOW

VISIT US AT BOOTH 1606 Dec. 4-6 VISIT BOOTH 3537

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THINK BEFORE PRINT



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Re: Updated AR for Tomorrow's Call

1 message

Pia Banister <pia.banister@myliquidcapital.com>

Wed, Oct 30, 2019 at 10:18 AM

To: Ed Pavey <epavey@versitecmarine.com>

Cc: Reuben Byrd <rbyrd@versitecmarine.com>, Jonathan Brindley <jbrindley@liquidcapitalcorp.com>, Lance Lockett <llockett@versitecmarine.com>

Hi everyone,

Attached is the updated AR statement to review during this afternoon's call.

Please note there are still 2 unapplied payments on account 4821 (see client collections). I need to know how to apply these asap.

Thanks
Pia

Pia Banister CPA, CMA
Liquid Capital Advance Corp.
Mobile: (416) 892-2414
Email: pbanister@liquidcapitalcorp.com
Website: www.liquidcapitaladvancecorp.com

On Oct 29, 2019, at 2:25 PM, Ed Pavey <epavey@versitecmarine.com> wrote:

Good afternoon Pia,

Do you have an updated AR listing for tomorrow's call? We have one that Lance keeps up with and want to bounce it against yours..

Best Regards,

Ed Pavey
VP Sales & Service
Versitec Marine USA
900 N. Federal Highway Suite 100
Boca Raton, FL 33432
Office: +1 (561) 756-8044
Cell: +1 (813) 573-5280
Email: epavey@versitecmarine.com
<image001.jpg>

STERN TUBE SEAL EXPERTS

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Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Re: Versitec Financial statements - Oct 2019

1 message

Brian Gunning <briangunning1@gmail.com>

Tue, Nov 5, 2019 at 3:27 PM

To: Pia Banister <pia.banister@myliquidcapital.com>

Cc: Reuben Byrd <rbyrd@versitecmarine.com>, Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

thanks Pia. This information is a help.

Brian

On Tue, Nov 5, 2019 at 3:24 PM Pia Banister <pia.banister@myliquidcapital.com> wrote:

Hi Brian,

Attached is the current AR statement from our system.

We have chargeback the following - which means they are no longer in our system but should be reflected in your AR and are still collectible:

219053 - Finbeta SPA
 219040 - Wallem
 219062 - Chesters
 219065 - Chasters
 219066 - Chesters
 219104 - Cruise Mgmt
 219092 - Interscan Management
 219077 - Meteor Management
 219055 - Premuda
 219056 - Premuda

On our AR report - we know that we are showing as outstanding, some invoices that have been paid, they are:

U19002 - Anglo Eastern
 U19016 - Anglo Eastern
 U19028 - Anglo Eastern
 U19038 - Anglo Eastern
 219016 - Anglo Eastern

We will be using some of the current cash reserves to clear these from our balance.

Please let me know if you have any questions.

Thanks
 Pia

Pia Banister CPA, CMA
Liquid Capital Advance Corp.
 Mobile: (416) 892-2414
 Email: pbanister@liquidcapitalcorp.com
 Website: www.liquidcapitaladvancecorp.com

On Nov 5, 2019, at 2:26 PM, Jonathan Brindley <jbrindley@liquidcapitalcorp.com> wrote:

Hi Brian

Thanks for the Versitec YTD financials. Could you please send us the AR summary and detail reports in excel .which will make it easier to reconcile with our records.

Pia...please send Brian the latest AR reports in excel format from Cadence for all Versitec accounts.
 Regards
 Jonathan Brindley

----- Forwarded message -----

From: **Brian Gunning** <briangunning1@gmail.com>
 Date: Tue, Nov 5, 2019, 1:59 PM
 Subject: Re: Versitec Financial statements - Oct 2019
 To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>, Reuben Byrd <rbyrd@versitecmarine.com>

Jonathan,

Here are the financials as requested. These are to September 30 for the Balance Sheet and Income Statement. Still waiting for a few cut off items for October. A/R and A/P are for today.

Could you send me your A/R list so I can compare? Not sure if I have all collections made at your end.

regards

Brian

On Mon, Nov 4, 2019 at 9:28 AM Jonathan Brindley <jbrindley@liquidcapitalcorp.com> wrote:

Hi Brian

What is the status on the latest Versitec Financial statements?

Can you please provide the latest YTD financials for:

- a) 1635536 Ontario Inc. O/A Versitec Marine & Industrial
- b) Versitec Marine USA

We also need the latest detailed AR + AP lists for both entities.

Please send this information by EOD tomorrow (Nov 5) so we can review and reconcile the AR at both Liquid Capital and Versitec.

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



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<VMI USA AP 11.5.2019.pdf><VMI USA A 11.5.2019.pdf><VMI Canada BS 9.30.2019.pdf><VMI Canada AR 11.5.2019.pdf><VMI USA BS 9.30.2019.pdf><VMI Canada AP 11.5.2019.pdf><VMI Canada PL 9.30.2019.pdf><VMI USA PL 9.30.2019.pdf>



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Versitec AC 4822 - Client collection CDN \$29,538

1 message

Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Thu, Nov 7, 2019 at 3:50 PM

To: Reuben Byrd <rbyrd@versitecmarine.com>, Pia Banister <pbanister@liquidcapitalcorp.com>

Cc: Brian Gunning <briangunning1@gmail.com>

Hi Reuben

As discussed and agreed we will post the client collections amount of CDN \$29,538.97 received on Oct 11 to cash reserves in AC 4822.

We understand you are still trying to locate the remittance advice on this customer receipt to see if we can match the collection to a specific factored invoice.

On our next scheduled account review call on Monday Nov 11 we will determine if the remittance has been found and if not then we will apply this cash to invoices still on the books which are now uncollectable eg BBG.

Versitec CDN - Ac 4822

Invoices which are uncollectable:

	Inv #	Inv \$
BBG	219086	29,895.28
BBG	219115	30,338.88
BBG	219116	28,875.05
Total Chargeback required		<u>89,109.21</u>

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



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Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Re: Versitec call today - need to push back to 2pm EST

1 message

Reuben Byrd <rbyrd@versitecmarine.com>

Mon, Nov 11, 2019 at 10:03 AM

To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>, Lance Lockett <llockett@versitecmarine.com>, Ed Pavey <epavey@versitecmarine.com>

That's fine.

But we need to Add Brian and why is Florian on this call? I told you I want nothing to do with him if you want me on the call he better not be on it.

He is a waste of time and money and I refuse to pay for him

Reuben Byrd
CEO Global Operations
Versitec Marine USA

Phone: (716) 695-0142
North America Toll Free: (888) 357-3257 Ext. 244
Mobile: (561) 526-6432
E-mail: rbyrd@versitecmarine.com

STERN TUBE SEAL EXPERTS

----- Original message -----

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Date: 11/11/19 5:35 AM (GMT-08:00)

To: Reuben Byrd <rbyrd@versitecmarine.com>

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>, Lance Lockett <llockett@versitecmarine.com>, Ed Pavey <epavey@versitecmarine.com>

Subject: Versitec call today - need to push back to 2pm EST

Hi Reuben

For the Versitec call today (rescheduled from last week) I need to push back from 11 am to 2pm EST.

Revised meeting invite to follow.

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Updated AR Statement

1 message

Pia Banister <pia.banister@myliquidcapital.com> Wed, Dec 18, 2019 at 10:32 AM
To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>, Reuben Byrd <rbyrd@versitecmarine.com>
Cc: Lance Lockett <llockett@versitecmarine.com>, Ed Pavey <epavey@versitecmarine.com>, "Brian Gunning (briangunning1@gmail.com)" <briangunning1@gmail.com>

Hi everyone,

Attached is the updated AR statement for review during today's call.

Thanks
Pia

Pia Banister CPA, CMA
Liquid Capital Advance Corp.
Mobile: (416) 892-2414
Email: pbanister@liquidcapitalcorp.com
Website: www.liquidcapitaladvancecorp.com

 **Versitec AR Dec17-19.xlsx**
21K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

RE: Versitec updated AR Jan 7 2020 for 10 am call today

1 message

Reuben Byrd <rbyrd@versitecmarine.com>
 To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Tue, Jan 7, 2020 at 9:48 AM

However we need to limit it to 30 min as I have a 1215 meeting

Reuben Byrd

CEO Global Operations

Versitec Marine

Phone: (716) 695-0142 Ext. 244

North America Toll-Free: (888) 357-3257 Ext. 244

Mobile: (561) 526-6432

E-Mail: rbyrd@versitecmarine.com



**VANGUARD
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STERN TUBE SEAL EXPERTS

From: Jonathan Brindley [mailto:jbrindley@liquidcapitalcorp.com]
Sent: Tuesday, January 7, 2020 9:20 AM
To: Reuben Byrd
Cc: Ed Pavey; Lance Lockett; Brian Gunning; Pia Banister
Subject: Re: Versitec updated AR Jan 7 2020 for 10 am call today

Hi Reuben

Ok...when are you available to talk?

Regards

Jonathan

On Tue, Jan 7, 2020, 9:02 AM Reuben Byrd, <rbyrd@versitecmarine.com> wrote:

I can't do 10AM i have a doctor's appointment

Reuben Byrd

CEO Global Operations

Versitec Marine USA

Phone: (716) 695-0142

North America Toll Free: (888) 357-3257 Ext. 244

Mobile: (561) 526-6432

E-mail: rbyrd@versitecmarine.com

STERN TUBE SEAL EXPERTS

----- Original message -----

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Date: 1/7/20 8:50 AM (GMT-05:00)

To: Reuben Byrd <rbyrd@versitecmarine.com>, Ed Pavey <epavey@versitecmarine.com>, Lance Lockett <llockett@versitecmarine.com>, Brian Gunning <briangunning1@gmail.com>

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>

Subject: Versitec updated AR Jan 7 2020 for 10 am call today

Hi Reuben, Ed, Lance & Brian

Happy New Year ! Trust you all had a good Christmas

Attached is the updated Versitec AR for 10 am call today.

Note: Very little activity or changes since we last spoke in Dec . We've only rec'd 1 pymt (the Four Smile - MMI Europe) and we haven't accumulated enough cash to charge anything further back.

We need a more concrete action plan to get Liquid Capital fully repaid for these old AR balances.

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



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Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Versitec Reporting - Latest YTD

1 message

Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Fri, Jan 17, 2020 at 11:36 AM

To: Reuben Byrd <rbyrd@versitecmarine.com>, Brian Gunning <briangunning1@gmail.com>

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>

Hi Reuben + Brian

Further to Versitec account review call this morning please provide the following updated financial reporting for both Versitec Canada + Versitec USA:

- 1) Latest YTD Financials Dec 2019 - P&L + Balance sheet
- 2) Latest AR summary + detail - in excel
- 3) Latest AP summary + detail - in excel

Reuben ... I have sent separate meeting invite for follow up call on Jan 21 after your Genco meetings in New York.

Pia... please send updated Versitec AR details with LCX reflecting the pending collection notes for Transmed etc.

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcap.taladvancercorp.com



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Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Re: Versitec updated AR

1 message

Pia Banister <pia.banister@myliquidcapital.com>

Tue, Jan 21, 2020 at 11:21 AM

To: Reuben Byrd <rbyrd@versitecmarine.com>

Cc: Brian Gunning <briangunning1@gmail.com>, Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Hi Reuben and Brian,

Attached is the updated AR statement for the 3 accounts with the notes from the last review call.

Thanks

Pia

Pia Banister CPA, CMA

Liquid Capital Advance Corp.

Mobile: (416) 892-2414

Email: pbanister@liquidcapitalcorp.com

Website: www.liquidcapitaladvancecorp.com

On Jan 21, 2020, at 10:24 AM, Jonathan Brindley <jbrindley@liquidcapitalcorp.com> wrote:

Hi Pia

Please send Reuben + Brian Gunning the updated Versitec AR. I don't believe we have received any payments since Dec

Regards

Jonathan Brindley CPA CA

Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133


Fax: 289-201-0178

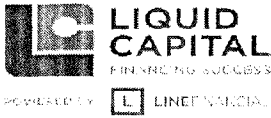
Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



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 **Versitec AR Jan21-20.xlsx**
20K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Versitec Collection Summary

1 message

Pia Banister <pia.banister@myliquidcapital.com>

Wed, Jan 29, 2020 at 12:17 PM

To: Reuben Byrd <rbyrd@versitecmarine.com>, "Brian Gunning (briangunning1@gmail.com)" <briangunning1@gmail.com>

Cc: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Hi Reuben and Brian,

Attached is a collection summary for the 3 accounts.

I have highlighted in red any comments that explain where funds were allocated if they came in without any remittance or before remittance was received. Please note the Avin payment was rec'd however at the time we were directed to apply to Eastern Med invoice 219035, which is why the Avin invoice remains on the AR list.

Please let me know if you need any clarification.

Thanks

Pia

Pia Banister CPA, CMA

Liquid Capital Advance Corp.

Mobile: (416) 892-2414

Email: pbanister@liquidcapitalcorp.com

Website: www.liquidcapitaladvancecorp.com

 **Versitec Payment Summary Jan29-20.xlsx**
28K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Updated AR statement

1 message

Pia Banister <pia.banister@myliquidcapital.com> Thu, Feb 13, 2020 at 10:59 AM
To: Reuben Byrd <rbyrd@versitecmarine.com>, Lance Lockett <llockett@versitecmarine.com>, Jonathan Brindley <jbrindley@liquidcapitalcorp.com>
Cc: "Brian Gunning (briangunning1@gmail.com)" <briangunning1@gmail.com>

Hi everyone,

Attached is the AR statement as of today.

Thanks
pia

Pia Banister CPA, CMA
Liquid Capital Advance Corp.
Mobile: (416) 892-2414
Email: pbanister@liquidcapitalcorp.com
Website: www.liquidcapitaladvancecorp.com

 **Versitec AR Feb13-20.xlsx**
20K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Avin pymt rec'd

1 message

Pia Banister <pia.banister@myliquidcapital.com>

Thu, Feb 13, 2020 at 11:29 AM

To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>, "Brian Gunning (briangunning1@gmail.com)" <briangunning1@gmail.com>

Cc: Reuben Byrd <rbyrd@versitecmarine.com>

Hi Brian

Attached is the screen shot showing the Avin pymt on Oct1 - batch #159

I was mistaken - the pymt came in with the Sia RIX payment but the Avin funds were allocated to pay Eastern Med 219035 with the balance going to reserves. I've attached the document showing the application.

Thanks

Pia

Pia Banister CPA, CMA










































Liquid Capital Advance Corp.


Mobile: (416) 892-2414

Email: pbanister@liquidcapitalcorp.com

Website: www.liquidcapitaladvancecorp.com

2 attachments

                                         **Screen Shot 2020-02-13 at 11.25.37 AM.png**
57K

 **Chargeback #18 1635536 Ontario Inc. (#4822) CDN Oct4-19.xlsx**
26K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Versitic + Liquid Capital - follow up items Feb 13 2020

1 message

Jonathan Brindley <jbrindley@liquidcapitalcorp.com>

Thu, Feb 13, 2020 at 12:30 PM

To: Reuben Byrd <rbyrd@versitecmarine.com>, Brian Gunning <briangunning1@gmail.com>

Cc: Pia Banister <pbanister@liquidcapitalcorp.com>, Liliana Rizopulos <lrizopulos@liquidcapitalcorp.com>

Hi Reuben + Brian

Further to our account review call this morning please provide the following items:

- 1) Latest detailed AR for Versitec CDN + Versitec USA (in excel format ie QB download)
- 2) Copy of revised GREAT LAKES DREDGE & DOCK, LLC inv for US\$35,000
- 3) Copy of Blue Ship remittance for Euros 9,257
- 4) Latest Financial statements YTD Jan 2020 for Versitec CDN + Versitec USA
 - P&L
 - Balance Sheet
 - AR summary
 - AP summary

We will be responding to Brian's email dated Jan 29...requesting more information on select charges on the client activity statements

Attached is the revised AR list Feb 13...highlighting the ships which Versitec plans to arrest.

Next Versitic + Liquid Capital review call - Feb 20 at 11am EST

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133


Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com



If you do not wish to receive future commercial electronic messages from Liquid Capital, please reply to this email and type "REMOVE" in the subject line

 **Versitic AR Feb13-20 with JB edits + ship arrests.xlsx**
 22K



Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

RE: Versitec + Eastern Med AR = Euros 29,754 as at Feb 25,2020

1 message

Reuben Byrd <rbyrd@versitecmarine.com> Wed, Feb 26, 2020 at 10:25 AM
 To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>
 Cc: Brian Gunning <briangunning1@gmail.com>, Pia Banister <pbanister@liquidcapitalcorp.com>

Johnathan those payments were made to Liquid capital not us and you used the money to pay some other invoice we have discuss and confirmed this for several months

Reuben Byrd
 CEO Global Operations
 Versitec Marine USA

Phone: (716) 695-0142
 North America Toll Free: (888) 357-3257 Ext. 244
 Mobile: (561) 526-6432
 E-mail: rbyrd@versitecmarine.com

STERN TUBE SEAL EXPERTS

----- Original message -----

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>
 Date: 2/26/20 10:22 AM (GMT-05:00)
 To: Reuben Byrd <rbyrd@versitecmarine.com>
 Cc: Brian Gunning <briangunning1@gmail.com>, Pia Banister <pbanister@liquidcapitalcorp.com>
 Subject: Versitec + Eastern Med AR = Euros 29,754 as at Feb 25,2020

Hi Reuben

We currently have 4 unpaid Eastern Med invoices in our system totaling Euros 29,754. This includes three invoices (219033, 219132, 219137) which were already paid to Versitec but not remitted to Liquid Capital. We need to get all these 4 invoices cleared from this next Eastern Med payment

Please confirm what your records are showing as owing and how much Eastern Med is planning to pay. We understand that there are additional invoices / shipments to Eastern Med.

Once we have this information then we can confirm with Eastern Med how much needs to be paid directly to Liquid Capital.

Eastern Mediterranean Maritime Ltd.							42,142.87 --	11,630.59		
Invoice#	Invoice Date	Funded Date	Batch#	Invoice Amount	Balance	Euro Amount	Ship Name			
219033	2019-08-14	2019-09-13	10048	13,689.98	13,689.98	9,668.75	MV Sea Guardian			
219132	2019-06-15	2019-09-13	10048	7,558.07	7,558.07	5,338.00	MV Sirina			
219137	2019-07-08	2019-09-13	10048	9,264.23	9,264.23	6,543.00	MV Pretty Lady			
219216	2019-10-24	2019-11-08	10053	11,630.59	11,630.59	8,205.00	MT Hydra			
							29,754.75			

Jonathan Brindley CPA CA
 Liquid Capital Advance Corp.
 Tel: 416-727-4521
 Toll Free: 1-800-778-0133
 Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com
 www.liquidcapitaladvancecorp.com





Jonathan Brindley <jonathan.brindley@myliquidcapital.com>

Re: Avin pymt rec'd

1 message

Brian Gunning <briangunning1@gmail.com>

Fri, Feb 14, 2020 at 10:26 AM

To: Pia Banister <pia.banister@myliquidcapital.com>

Cc: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>, Reuben Byrd <rbyrd@versitecmarine.com>

Pia,

Thanks for the information. I still have 2 questions.

1. Batch 159 shows collection of \$22,004.96 on the Client Activity Statement on October 1, 2019, but the screenshot shows Client Collections of 13,943.20. Is there another payment included in the \$22,004.96?

2. There is no invoice or customer reference on the screenshot. Am I to assume the 13,943.20 is the Avin payment of 9638.60?

Brian

On Thu, Feb 13, 2020 at 11:29 AM Pia Banister <pia.banister@myliquidcapital.com> wrote:

Hi Brian

Attached is the screen shot showing the Avin pymt on Oct1 - batch #159

I was mistaken - the pymt came in with the Sia RIX payment but the Avin funds were allocated to pay Eastern Med 219035 with the balance going to reserves. I've attached the document showing the application.

Thanks

Pia

Pia Banister CPA, CMA

Liquid Capital Advance Corp.

Mobile: (416) 892-2414

Email: pbanister@liquidcapitalcorp.com

Website: www.liquidcapitaladvancecorp.com

This is Exhibit “C” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

Minutes of Settlement

Between:

David Swindells

(the "Plaintiff")

- and -

1635536 Ontario Inc.

(the "Corporate Defendant")

- and -

David Taylor

(the "Individual Defendant")

WHEREAS the Plaintiff had been employed with the Corporate Defendant but as terminated from his employment resulting in action CV-19-00058937-0000 being filed in the Superior Court of Justice (the "Action").

AND WHEREAS the parties are desirous of resolving all matters raised in the Action.

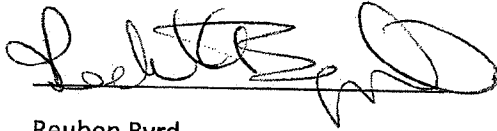
The parties agree to fully and finally resolve all matters between them as follows:

1. The Corporate Defendant shall provide payment to the Plaintiff of \$6,000 plus HST directly to the Plaintiff's counsel Chown Cairns LLP in instalments on account of \$1,356. The instalment plan is as follows:
 - a. on October 30, 2020;
 - b. on November 30, 2020;
 - c. on December 31, 2020;
 - d. on January 29, 2021; and
 - e. on February 26, 2020.
2. The Corporate Defendant will provide a mutually agreeable letter of reference.
3. The Individual Defendant shall provide full payment of the mediation fees directly to the mediator Lisa Feld.
4. The Parties on consent shall each file a Notice of Discontinuance With Prejudice following the final disbursement of the proceeds of settlement.

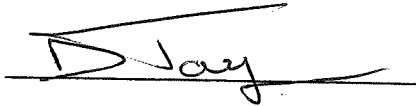
5. The parties shall execute a Mutual Release to follow. The payments under enumerated paragraphs 1 above is conditional upon the Plaintiff executing and returning an original copy of the Mutual Release to the Defendants' Counsel.

Dated this 22nd day of September, 2020.

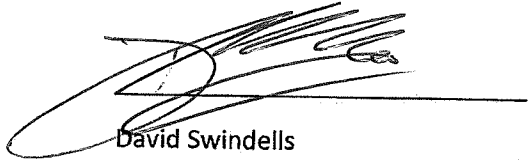
The Corporate Defendant per:



Reuben Byrd



David Taylor



David Swindells

This is Exhibit “D” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

Minutes of Settlement

Between:

David Carpenter

(the "Plaintiff")

- and -

1635536 Ontario Inc.

(the "Corporate Defendant")

- and -

David Taylor

(the "Individual Defendant")

WHEREAS the Plaintiff had been employed with the Corporate Defendant was terminated from his employment resulting in action CV-19-00058936-0000 being filed in the Superior Court of Justice (the "Action").

AND WHEREAS the parties are desirous of resolving all matters raised in the Action.

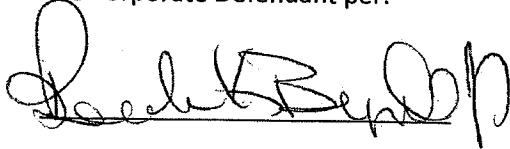
The parties agree to fully and finally resolve all matters between them as follows:

1. The Corporate Defendant shall provide payment to the Plaintiff of \$37,000 in instalments on account of his credit card debt under his CIBC Aventura World Elite Mastercard, Account No. 5411 4202 1122 5653. The instalment plan is as follows:
 - a. \$2,500 on September 30, 2020;
 - b. \$6,000 on October 30, 2020;
 - c. \$7,500 on November 30, 2020;
 - d. \$7,500 on December 31, 2020;
 - e. \$7,500 on January 29, 2021; and
 - f. \$6,000 on February 26, 2021.
2. The Corporate Defendant will pay to the Plaintiff \$5,000 in general damages in equal installments of \$1,000 commencing on October 30, 2020 and ending on February 26, 2021 (i.e., the times set out in enumerated subparagraphs 1(b) to (f) above.
3. The Corporate Defendant shall provide payment directly to the Plaintiff's counsel Chown Cairns LLP \$7,500 plus HST on account of legal fees in equal installments of \$1,695.00. commencing on October 30, 2020 and ending on February 26, 2021 (i.e., the times set out in enumerated subparagraphs 1(b) to (f) above.

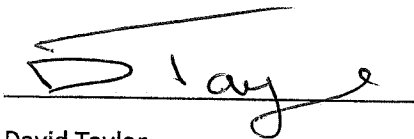
4. The Corporate Defendant will provide a mutually agreeable letter of reference.
5. The Individual Defendant shall provide full payment of the mediation fees directly to the mediator Lisa Feld.
6. The parties shall execute a Mutual Release to follow. The payments under enumerated paragraphs 1 to 3 above are conditional upon the Plaintiff executing and returning an original copy of the Mutual Release to the Defendants' Counsel.
7. It is understood nothing in said Release shall impair any of Carpenter's rights as a shareholder.
8. The Individual Defendant shall make his best efforts to withdraw the FOI request and shall not take fresh steps to pursue the NRP Incident report 59229.
9. The Parties on consent shall each file a Notice of Discontinuance With Prejudice following the final disbursement of the proceeds of settlement.

Dated this 22nd day of September, 2020.

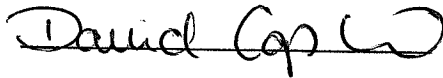
The Corporate Defendant per:



Reuben Byrd



David Taylor



David Carpenter

This is Exhibit “E” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

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

Defendant.

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

SETTLEMENT AGREEMENT AND RELEASE

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Conneaut Creek:

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

If to Versitec:

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

If to Versitec Marine:

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

If to the Receiver:

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

Canada
johnmorgan.morgantrustees.com

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

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

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

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

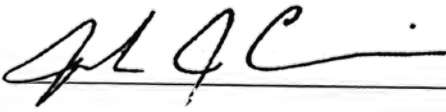
IN WITNESS WHEREOF, this Agreement is made and entered into as of the date this Agreement is executed by all Parties below.

[signature page to follow]

Type text here

CONNEAUT CREEK:

Conneaut Creek Ship Repair, Inc.

By: 

Date: 08/14/2020

THE VERSITEC PARTIES:

1635536 Ontario Inc.

By: _____

Date: _____

Versitec Marine Services, Inc.

By: 

Date: 8/14/2020

Morgan & Partners, Inc.

By: _____

Date: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

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

Defendant.

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

SETTLEMENT AGREEMENT AND RELEASE

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

RECITALS

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

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

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

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

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

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

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

- On or before August 15, 2020, the Versitec Parties shall deliver to Conneaut Creek’s counsel’s trust account twenty thousand U.S. dollars and no cents (\$20,000.00 USD);
- On or before September 15, 2020, the Versitec Parties shall deliver to Conneaut Creek’s counsel’s trust account ~~thirty~~ a minimum of twenty thousand U.S. dollars and no cents (\$20,000.00 USD); and
- On or before October 15, 2020, the Versitec Parties shall deliver to Conneaut Creek’s counsel’s trust account ~~the remainder of the Settlement Sum of fifty thousand U.S. dollars and no cents (\$50,000.00 USD)~~

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

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

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

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

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

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

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

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

If to Conneaut Creek:

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

If to Versitec:

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

Formatted: Superscript

If to Versitec Marine:

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

If to the Receiver:

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

Canada
johnmorgan.morgantrustees.com

10. No Admissions, Collateral Estoppel, Or Prevailing Party Effect. It is expressly understood, acknowledged and agreed by the Parties that nothing in this Agreement or any related act or document constitutes an admission, declaration, or other evidence of the rights or liabilities of the Parties or any person or entity, except with respect to the contractual duties and stipulations provided in this Agreement itself. Neither this Agreement nor any action or document taken to carry out this Agreement: (a) shall be construed as or deemed to be evidence or an acknowledgment of any presumption, inference, concession, or admission on any point of fact or law, or any liability, fault, omission, or other wrongful act whatsoever; (b) shall be offered or received as evidence in any litigation or proceeding whatsoever of any presumption, inference, concession, or admission of any liability, fault, omission, or other wrongful act whatsoever; or (c) shall be offered or received as evidence in any action or proceeding whatsoever other than such proceeding by the Parties hereto as may be necessary to enforce the provisions of this Agreement.

11. Understanding Of Agreement. The Parties represent and warrant that they (a) have carefully read this entire Agreement; (b) fully understand the terms, conditions, and significance of this Agreement; (c) have had sufficient time to consider this Settlement Agreement before executing it; (d) have had a full opportunity to review and consult with their respective attorneys regarding this Agreement and have done so; (e) have executed this Agreement voluntarily, knowingly, and with the advice of their respective attorneys; (f) that in signing this Agreement the Parties represent and acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party hereto; (g) have not relied upon any oral or written statement or omission made by any person other than those statements expressly set forth in this Agreement; and (h) that they believe there are no other facts or representation that would, if known, change the Parties' decision to enter into the Agreement.

12. Construction. Any controversy regarding the construction of this Agreement shall be decided neutrally, in light of its conciliatory purpose, not in favor of or against any Party, and without regard to the events of authorship or negotiation.

13. Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts and/or by facsimile, each of which when so executed and delivered shall be deemed an original copy that is binding and enforceable, but all such counterparts shall together constitute but one and the same instrument.

14. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to conflicts of laws provisions. The Parties agree that the district court for the Southern District of New York shall retain jurisdiction to resolve any disputes arising or relating to this Agreement and to enforce the terms of the Agreement. To be clear, for any disputes arising out of or relating to this Agreement, the Parties consent to the exclusive jurisdiction of a court of competent jurisdiction located in New

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

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

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

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

[signature page to follow]

CONNEAUT CREEK:

Conneaut Creek Ship Repair, Inc.

By: _____

Date: _____

THE VERSITEC PARTIES:

1635536 Ontario Inc.

By: _____

Date: _____

Versitec Marine Services, Inc.

By: _____

Date: _____

Morgan & Partners, Inc.

By: _____

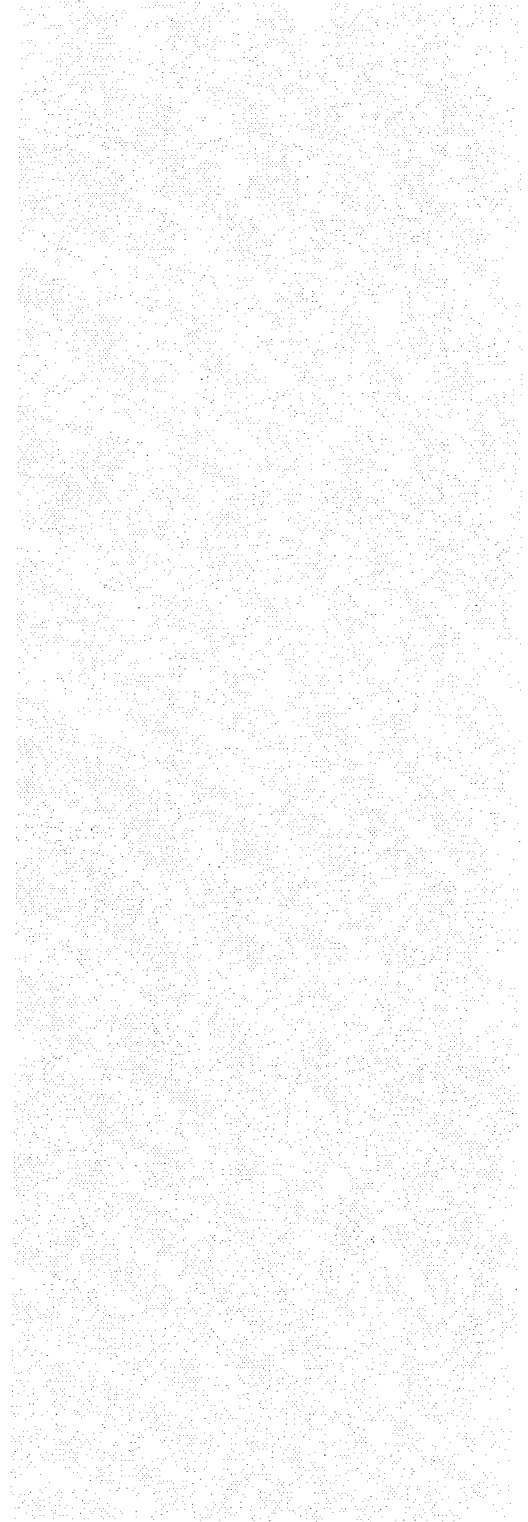
Date: _____

*John Morgan
President*

Aug 4, 2010

EXHIBIT A

Notice of Dismissal With Prejudice



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE & INDUSTRIAL,

Defendant.

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

NOTICE OF DISMISSAL WITH PREJUDICE

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

Dated: October __, 2020.

By:

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

EXHIBIT A

Notice of Dismissal With Prejudice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONNEAUT CREEK SHIP REPAIR, INC.,

Plaintiff,

vs.

VERSITEC MARINE & INDUSTRIAL,

Defendant.

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

NOTICE OF DISMISSAL WITH PREJUDICE

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

Dated: October __, 2020.

By:

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

This is Exhibit “F” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

Josset-Patricia Johnson

From: Calvin Ho <cho@laishleyreed.com>
Sent: February 11, 2021 8:55 PM
To: Stewart Thom
Cc: John Morgan
Subject: RE: Versitec Receivership arrangements with receiver re approval of activities

This is an external email.

The revised version is acceptable to John Morgan.

Calvin J. Ho
Laishley|Reed LLP
 3 Church Street, Suite 505
 Toronto, ON M5E 1M2
 Tel: 416.981.9430
 Fax: 416.981.0060
www.laishleyreed.com

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From: Stewart Thom <sthom@torkinmanes.com>
Sent: February 11, 2021 8:17 PM
To: Calvin Ho <cho@laishleyreed.com>
Subject: Re: Versitec Receivership arrangements with receiver re approval of activities

REVISED LANGUAGE BELOW

The Receiver, Morgan and Partners Inc. ("MPI") and the senior secured creditor, Liquid Capital Exchange Corp. ("LCX") have agreed as follows and consent to the below:

- Notwithstanding the approval of any conduct or activities of the Receiver, it is understood, consented to and agreed that such approval is not intended to, nor understood to, and will not preclude LCX from taking any action or requesting any relief in connection with any objection LCX may have as to the appropriateness of:
 - Any of the Receiver's activities not specifically set out in the First Report;
 - Any payments made by the Debtors, authorized by the Receiver or made by the Receiver in connection with, or during the period of, MPI's appointment as Receiver of the Debtors, regardless of whether

these were incurred in relation to approved activities or activities which have not been approved by the Court;

- Any fees or expenses claimed by MPI as being recoverable by MPI pursuant to the Receiver's Charge regardless of whether these were incurred in connection with approved activities or in connection with activities which have not been approved by the Court;
- If any (a) fees or expenses incurred by MPI or (b) payments as above, are determined by agreement between LCX and MPI, or by a determination of the Court, to be without legal justification or otherwise inappropriate ("Impugned Amounts"):
 - the fees and expenses of MPI otherwise recoverable pursuant to the Receiver's Charge shall be reduced in an amount corresponding to the Impugned Amounts; and
 - in the event the forgoing does not rectify any loss that LCX suffered as a result of the activities leading to the Impugned Amount, LCX may seek any other legal recourse against MPI as appropriate to recover any corresponding loss to LCX in the maximum amount of the determined or agreed upon Impugned Amounts, less any reduction to approved fees of MPI applied to offset same.
 - None of the foregoing shall be interpreted as an admission of liability of the part of MPI or an admission that any fees or payments as above were made inappropriately or without legal justification. MPI reserves its rights to defend such allegations on the merits, but shall not assert any defence of res judicata, abuse of process or collateral attack in such case.

Sent from my iPhone

On Feb 11, 2021, at 4:30 PM, Stewart Thom <sthom@torkinmanes.com> wrote:

Calvin,

Additionally, please respond and confirm the receiver's consent and agreement to the below.

The Receiver, Morgan and Partners Inc. ("MPI") and the senior secured creditor, Liquid Capital Exchange Corp. ("LCX") have agreed as follows and consent to the below:

- Notwithstanding the approval of any conduct or activities of the Receiver, it is understood, consented to and agreed that such approval is not intended to, nor understood to, and will not preclude LCX from taking any action or requesting any relief in connection with any objection LCX may have as to the appropriateness of:
 - Any of the Receiver's activities not specifically set out in the First Report;
 - Any payments made by the Debtors, authorized by the Receiver or made by the Receiver in connection with, or during the period of, MPI's appointment as Receiver of the Debtors, regardless of whether these were incurred in relation to approved activities or activities which have not been approved by the Court;
 - Any fees or expenses claimed by MPI as being recoverable by MPI pursuant to the Receiver's Charge regardless of whether these were incurred in connection with approved activities or in connection with activities which have not been approved by the Court;

- If any (a) fees or expenses incurred by MPI or (b) payments as above, are determined by agreement between LCX and MPI, or by a determination of the Court, to be without legal justification or otherwise inappropriate (“Impugned Amounts”):
 - the fees and expenses of MPI otherwise recoverable pursuant to the Receiver’s Charge shall be reduced in an amount corresponding to the Impugned Amounts; and
 - in the event the forgoing does not rectify any loss that LCX suffered as a result of the activities leading to the Impugned Amount, LCX may seek any other legal recourse against MPI as appropriate to recover any corresponding loss to LCX.

Stewart Thom

Tel: 416-777-5197

Fax: 1-877-689-3872

sthom@torkinmanes.com[VCard](#)**Torkin Manes LLP**

Barristers & Solicitors

Ranked the #1 Ontario Regional Law Firm by Canadian Lawyer

151 Yonge Street, Suite 1500

Toronto ON M5C 2W7

torkinmanes.com

An international member of Ally Law

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This is Exhibit “G” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

Stewart Thom

From: Calvin Ho <cho@laishleyreed.com>
Sent: June 15, 2021 2:51 PM
To: Stewart Thom
Subject: RE: Fee Agreement
Attachments: MPI Fee Agreement June 15 2021.revised4.docx

This is an external email.

Stewart,

Sorry, please use this one. I miss-spelled Florian in para 2(m). You can complete the LCX indebtedness amount for para. 1(b) - (I highlighted what I thought was the number) as we talked about.

Thanks,

Calvin J. Ho
 Laishley|Reed LLP
 3 Church Street, Suite 505
 Toronto, ON M5E 1M2
 Tel: 416.981.9430
 Fax: 416.981.0060
www.laishleyreed.com



Please do not print this e-mail unless you really need to - think green!

This communication, including any attachments, is strictly privileged and confidential, may be subject to copyright, and is intended to be read only by the parties to whom it is addressed. If you have received this communication in error, please advise the sender by response email and destroy all copies of this communication immediately following. Any unauthorized use or disclosure of this email, including any attachments, is prohibited.

From: Calvin Ho
Sent: June 15, 2021 2:41 PM
To: 'Stewart Thom' <sthom@torkinmanes.com>
Subject: RE: Fee Agreement

Ok, I have John's agreement now to the Fee Agreement, as we have amended.

I also filled out the numbers from John's end. If you look at para. 2(m), it was \$27,500 plus HST and also \$5,000 which was paid to Florian Meyer. As you may recall, Florian was LCX's agent before John's appointment, and his invoice to John after just one or two visits to Versitec was over \$14k, which was considered excessive, of which John paid him \$5k.

For para. 1(b), I included the LCX indebtedness amount as at October 19, 2020 which was what was in John's report - I completed the next date blank going forward as October 20, 2020 unless you say otherwise.

If you can complete from your end, then we can aim to have this signed by tomorrow morning (John is at a doctor's appt this afternoon). I am around this aft if you want to discuss.

Thanks,

Calvin J. Ho
Laishley | Reed LLP
 3 Church Street, Suite 505
 Toronto, ON M5E 1M2
 Tel: 416.981.9430
 Fax: 416.981.0060
www.laishleyreed.com



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From: Stewart Thom <sthom@torkinmanes.com>
Sent: June 15, 2021 11:44 AM
To: Calvin Ho <cho@laishleyreed.com>
Subject: Re: Fee Agreement

Totally fine with that

Sent from my iPhone

On Jun 15, 2021, at 11:40 AM, Calvin Ho <cho@laishleyreed.com> wrote:

This is an external email.

(k) MPI agrees and undertakes that, at the request of LCX, MPI will provide reasonable cooperation of an administrative nature to LCX as reasonably required for the prosecution of the Guarantor Proceedings or and claims for damages which LCX may hereafter commence or continue against Versitec or as an assignee of any claims of Versitec;

From: Stewart Thom <sthom@torkinmanes.com>
Sent: June 15, 2021 11:36 AM
To: Calvin Ho <cho@laishleyreed.com>
Subject: Re: Fee Agreement

My phone isn't picking it up in the doc. Can you cut and paste the new language into an email?

Sent from my iPhone

On Jun 15, 2021, at 11:21 AM, Calvin Ho <cho@laishleyreed.com> wrote:

This is an external email.

This is what I am prepared to recommend to John, as discussed.

Calvin J. Ho
Laishley|Reed LLP
3 Church Street, Suite 505
Toronto, ON M5E 1M2
Tel: 416.981.9430
Fax: 416.981.0060
www.laishleyreed.com



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From: Stewart Thom <sthom@torkinmanes.com>
Sent: June 15, 2021 11:14 AM
To: Calvin Ho <cho@laishleyreed.com>
Subject: Fee Agreement

Stewart Thom
Tel: 416-777-5197
Fax: 1-877-689-3872
sthom@torkinmanes.com
[VCard](#)

Torkin Manes LLP
Barristers & Solicitors

Ranked the #1 Ontario Regional Law Firm by Canadian Lawyer

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7
torkinmanes.com

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<MMPI Fee Agreement June 15 2021.revised2.docx>

Stewart Thom

From: Calvin Ho <cho@laishleyreed.com>
Sent: June 16, 2021 9:54 AM
To: Stewart Thom
Subject: Versitec - Agreement re: Fees
Attachments: versitec agreement respecting fees_2021_06_16_09_28_53_457.pdf

This is an external email.

Stewart,

Attached is the signed execution copy of the Agreement Respecting Fees.

Please send me a signed copy from LCX, thanks.

Calvin J. Ho
Laishley|Reed LLP
3 Church Street, Suite 505
Toronto, ON M5E 1M2
Tel: 416.981.9430
Fax: 416.981.0060
www.laishleyreed.com



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Stewart Thom

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>
Sent: June 16, 2021 10:24 AM
To: Stewart Thom
Cc: Liliana Rizopulos; Robert Thompson-So
Subject: Re: FW: Versitec - Agreement re: Fees
Attachments: MPI + LCX Fees Settlement Agreeent 15-6-2021 Signed JB+JM_000221.pdf

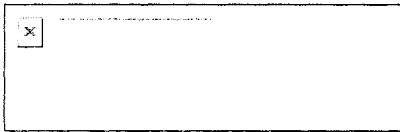
This is an external email.

Hi Stewart
Fully executed John Morgan + LCX fees agreement

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.
 Tel: 416-727-4521
 Toll Free: 1-800-778-0133
 Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com
www.liquidcapitaladvancecorp.com



If you do not wish to receive future commercial electronic messages from Liquid Capital, please reply to this email and type "REMOVE" in the subject line

On Wed, Jun 16, 2021 at 10:03 AM Stewart Thom <sthom@torkinmanes.com> wrote:

Please see attached executed copy from John Morgan? Are we good to go on countersigning?

Stewart Thom

Tel: 416-777-5197
 Fax: 1-877-689-3872

Torkin Manes LLP

Barristers & Solicitors

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From: Calvin Ho <cho@laihshleyreed.com>
Sent: June 16, 2021 9:54 AM

This is Exhibit “H” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

AGREEMENT RESPECTING FEES

BETWEEN

LIQUID CAPITAL EXCHANGE CORP.

and

MORGAN & PARTNERS INC.

1. **RECITALS:**

Whereas:

- (a) Liquid Capital Exchange Corp. ("LCX") is the Applicant creditor in Court File No. CV-20-00637427-00CL (the "Application");
- (b) 163556 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. (together, "Versitec"), Respondents in the Application, are indebted to LCX in the amount of \$764,695.04 as of May 27, 2021, together with such interest fees and other charges or amounts payable as may accrue from May 27, 2021 onward and are payable by Versitec pursuant to the terms of the agreements between LCX and Versitec (the "Indebtedness");
- (c) Pursuant to the March 9, 2020 Order of Justice Gilmore issued in the Application (the "Appointment Order"), Morgan & Partners Inc. ("MPI" or the "Receiver") was appointed as Receiver of such assets and undertakings of Versitec as are set out more particularly in the Appointment Order;
- (d) On February 12, 2021, Justice Koehnen issued an Order in the Application appointing BDO Canada Limited as Substitute Receiver (the "Substitute Receiver") over the assets and undertakings of Versitec (the "Substitution Order");
- (e) Pursuant to an Order issued on May 4, 2021, the Court approved of and authorized the sale of certain assets of Versitec pursuant to the terms of an Asset Purchase Agreement entered into between the Substitute Receiver and the purchaser of the assets of Versitec, Crug Ltd. (the "Transaction");
- (f) Other than the proceeds available as a result of the Transaction, it is not anticipated that any further realizations from the assets of Versitec will be achieved, or will result in additional funds being available for distribution to creditors of Versitec;
- (g) LCX is the senior ranking general secured creditor of Versitec subject only to:

- (i) Statutorily conferred priorities/rights;
 - (ii) Such amounts as are owed to MPI and secured by a charge in favour of the Receiver as set out by the terms of the Appointment Order and/or the Substitution Order as security for the fees and disbursements of MPI incurred while acting in its capacity as Receiver of Versitec or in relation to the Application (the "Receiver's Charge");
- (h) Realizations upon the assets of Versitec will not result in funds being available for distribution to LCX in an amount sufficient to fully repay the Indebtedness owed to LCX by Versitec (the remaining balance of the Indebtedness after deduction of the amounts received from such distribution being, the "Shortfall Amount") ;
- (i) LCX holds certain security and guarantees (collectively, the "Guarantees") of the Indebtedness of Versitec to LCX. LCX intends to commence or continue legal proceedings to enforce the terms of the Guarantees and related security (the "Guarantor Proceedings") and recover additional funds on account of the Indebtedness;
- (j) LCX has advised MPI that it is of the view that MPI is liable to LCX for damages in relation to, without limitation, acts or omissions of MPI as Receiver of Versitec, including, without limitation, payments improperly made or authorized by MPI, which negatively impacted or reduced the quantum of funds available for distribution to LCX following realization upon the assets of Versitec (all such claimed liabilities being, the "Claims");
- (k) MPI agrees and undertakes that, at the request of LCX, MPI will provide reasonable cooperation of an administrative nature to LCX as reasonably required for the prosecution of the Guarantor Proceedings or and claims for damages which LCX may hereafter commence or continue against Versitec or as an assignee of any claims of Versitec
- (l) MPI denies that it is liable to LCX for damages as Receiver of Versitec, and makes no admission of liability in respect of the Claims;
- (m) To date MPI has received the sum of \$27,500 + HST \$3,575 (+ distribution of \$5,000 payable to Florian Meyer) in connection with fees and disbursements incurred while acting as Receiver of Versitec (the "Transferred Fees"). MPI further asserts a claim for additional outstanding fees and disbursements in the total amount of \$80,700.61, inclusive of HST (the "Unpaid Fees");
- (n) In addition to the Unpaid Fees, fees and disbursements of counsel to the Receiver are claimed in the amount of \$13,000 + HST \$1,690 ("Counsel Fees");
- (o) Having regard to the Claims of LCX, the Receiver and LCX have reached terms of agreement as to the treatment of Unpaid Fees, Transferred Fees and Counsel Fees.


2. **NOW THEREFORE THE UNDERSIGNED PARTIES AGREE AS FOLLOWS:**

- (a) The Receiver/MPI hereby waives and releases any and all rights, priorities, benefits or entitlements conferred upon the Receiver by Receiver's Charge in relation to all Unpaid Fees and furthermore subordinates and postpones any and all security interest conferred to the Receiver by the Receiver's Charge to the security interest of LCX;
- (b) The Receiver will not, in the Application or any other legal proceeding, seek approval of, or request payment of, any Unpaid Fees;
- (c) The Receiver shall be entitled to request that the Court approve fees of the Receiver in an amount equal to the Transferred Fees only;
- (d) The Receiver shall be entitled to request Court approval of Counsel Fees in the amount equal to, but not exceeding, the amount herein stated for same;
- (e) LCX shall make best efforts to recover the Shortfall Amount through the Guarantor Proceedings;
- (f) In the event that LCX is able to recover the Shortfall Amount in full, LCX shall pay to MPI compensation for Unpaid Fees in the sum of \$50,000 in consideration for the concessions made by MPI pursuant to this Agreement;
- (g) LCX shall have no obligation to pay to MPI any amounts for Unpaid Fees or any other fees and/or expenses incurred by MPI or its counsel except in the circumstances provided for at 2(f) herein;
- (h) LCX shall not commence any proceeding against MPI for recovery of damages alleged to have been suffered by LCX as a result of or in relation to any Claims, or any other matter in relation to the Application, unless and until:
 - (i) the Guarantor Proceedings have each been concluded by final judgment or settlement; and
 - (ii) LCX believes, on reasonable grounds, that it will be unable to fully recover the Shortfall Amount from the guarantors and/or through realization upon any related guarantor security,
- (i) The parties hereto consent and agree to the suspension of the time period within which a legal proceeding must be commenced by LCX against MPI as provided for under the *Limitations Act, 2002* in respect of any Claims until such time as the conditions set out at 2(h), herein have been satisfied at which time LCX shall notify MPI in writing of such occurrence and the limitation period shall resume running as of the date of such occurrence;
- (j) MPI consents and agrees to the distribution any and all remaining funds available for distribution to LCX as determined by the Substitute Receiver and as set out in

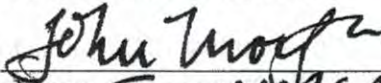
the Third Report of the Substitute Receiver dated June 15, 2021 filed in the Application.

THE UNDERSIGNED PARTIES CONSENT AND AGREE to the terms set out herein this 15th day of June, 2021.

LIQUID CAPITAL EXCHANGE CORP

Per: 
Name: S. BRINDLEY
Title: PRINCIPAL
I have the authority to bind LCX

MORGAN & PARTNERS INC.

Per: 
Name: JOHN MORGAN
Title: PRESIDENT
I have the authority to bind MPI

This is Exhibit “I” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

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

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

- and -

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

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c. B-3, AS AMENDED; AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43 AS AMENDED

FOURTH REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED
IN ITS CAPACITY AS SUBSTITUTE RECEIVER OF
1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL
and
VERSITEC MARINE USA INC.

NOVEMBER 18, 2021

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- Appendix B - Preliminary Report dated February 9, 2021
- Appendix C - Second Report dated April 23, 2021
- Appendix D - Approval and Vesting Order dated May 4, 2021
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- Appendix H - Amended CRA Claim Letter for Source Deductions
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- Appendix K - Fee Affidavit of Peter Crawley dated November 18, 2021
- Appendix L - Fee Affidavit of Sarah White dated November 16, 2021

1.0 INTRODUCTION AND PURPOSE OF REPORT

1.1 Introduction

- 1.1.1 By way of an order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated February 12, 2021 (the "Appointment Order"), BDO Canada Limited was appointed as the substitute receiver (the "Receiver"), without security, of all the Property (as defined in the Appointment Order) of 1635536 Ontario Inc. o/a Versitec Marine & Industrial ("Versitec Canada") and Versitec Marine USA Inc. ("Versitec USA", and collectively "Versitec"). Attached as Appendix "A" is copy of the Appointment Order.
- 1.1.2 Prior to the issuance of the Appointment Order, Versitec had been the subject of a Court-appointed receivership pursuant to the Order of the Honourable Justice Gilmore dated March 9, 2020 wherein Morgan & Partners Inc. had acted as receiver (the "Prior Receiver") until being substituted pursuant to the Appointment Order (the "Substitution").
- 1.1.3 These receivership proceedings were initiated by Versitec's senior secured creditor, Liquid Capital Exchange Corp. ("LCX").
- 1.1.4 The Prior Receiver issued one report in these proceedings dated February 5, 2021 (the "Prior Receiver's Report") to summarize and seek approval of limited activities of the Prior Receiver and provide background in respect of the substitution of the Prior Receiver. A copy of the Prior Receiver's Report is attached to the Receiver's Second Report as Appendix "B".
- 1.1.5 The Receiver issued its first report dated February 9, 2021 (the "Preliminary Report") in these proceedings in support of the motion to approve the Receiver's proposed sale and investment solicitation process (the "SISP"). A copy of the Preliminary Report (without appendices) is attached hereto as Appendix "B". The Appointment Order also authorized the Receiver to conduct the SISP.
- 1.1.6 The Receiver issued its second report dated April 23, 2021 (the "Second Report") in support of the motion to approve the asset purchase agreement (the "Crug APA") between the Receiver and Crug Ltd. ("Crug") that resulted from the SISP. A copy of the Second Report (without appendices) is attached hereto as Appendix "C".
- 1.1.7 On May 4, 2021 the Court issued an Approval and Vesting Order (the "AVO") authorizing the Receiver to enter into the Crug APA and vesting in and to Crug all of Versitec's right, title and interest in the Purchased Assets (as defined in the Crug APA) on closing of the subject transaction. A copy of the AVO is attached hereto as Appendix "D".
- 1.1.8 Additionally, on May 4, 2021 the Court issued an administrative approval order approving the Receiver's Second Report, the activities as described therein, and sealing the two confidential appendices to the Second Report until completion of the transaction contemplated in the Crug APA. A copy of the Administrative Order is attached hereto as Appendix "E".

- 1.1.9 The Receiver issued its third report dated June 16, 2021 (the "Third Report") in support of the motion to, *inter alia*, approve the payment of an interim distribution to LCX. A copy of the Third Report (without appendices) is attached hereto as Appendix "F".
- 1.1.10 On June 22, 2021 the Court issued an Order (the "June 22nd Order") for Administrative Relief approving the Third Report, the activities as described therein, the professional fees of the Receiver and its legal counsel to May 31, 2021 and an interim distribution to LCX. A copy of the June 22nd Order is attached hereto as Appendix "G".
- 1.2 Purpose of this Report
- 1.2.1 This report is the Receiver's fourth report to the Court (the "Fourth Report") and is filed in respect of a motion for an order:
- Approving this Fourth Report and the actions of the Receiver described herein;
 - Approving the professional fees of the Receiver and its legal counsel, Loopstra Nixon LLP ("Loopstra") as detailed in the affidavits of Peter K. Crawley and Sarah White, respectively;
 - Authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy, naming BDO Canada Limited as trustee in bankruptcy;
 - Approving the discharge of the Receiver from these proceedings, subject to completion of the Final Activities (as defined herein); and
 - such other relief as this Honourable Court deems appropriate.
- 1.2.2 In preparing this Fourth Report, the Receiver has relied upon the Debtors' books and records, unaudited and draft financial information available, certain financial information obtained from third parties, and discussions with various individuals (collectively, the "Information"). The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.
- 1.2.3 This Fourth Report has been prepared for the use of this Court in respect of the above-noted relief. This Fourth Report should not be relied upon for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of the circulation, publication, reproduction or use of this Fourth Report contrary to the provisions of this paragraph.
- 1.2.4 All references to dollars are in Canadian currency unless otherwise noted.
- 1.2.5 In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the receivership proceedings are available on the Receiver's case website at www.extranets.bdo.ca/versitecmarine.

2.0 RECEIVER'S ACTIVITIES

2.1 Introduction

- 2.1.1 This Section is intended to provide the Court with a summary of the Receiver's activities since the issuance of the June 22nd Order.

2.2 Distribution to Canada Revenue Agency

- 2.2.1 As reported in the Third Report, Canada Revenue Agency ("CRA") had indicated to the Receiver that its claim for unremitted source deductions (the "CRA Deemed Trust Amount") was \$65,428.90. CRA issued an amended claim letter on July 22, 2021 to the Receiver wherein the CRA Deemed Trust Amount was revised to \$145,674.97 (the "Revised CRA Deemed Trust Amount"). The reason for the increase was that the 2019 and 2020 pre-receivership T4 assessments appear to not have been factored into the initial figure provided by CRA. The Receiver has reviewed CRA's calculation in detail and has found no reason to dispute the Revised CRA Deemed Trust Amount. In accordance with the June 22nd Order, the Receiver has paid the Revised CRA Deemed Trust Amount to CRA. A copy of the revised claim letter is attached hereto as Appendix "H".

- 2.2.2 CRA has also reassessed Versitec Canada's H.S.T. account and levied an assessment to reverse the input tax credits previously claimed in respect of the unpaid accounts payable as at March 9, 2020. The amount of this priority claim is \$18,559.80 (the "HST Claim"). This amount remains unpaid.

- 2.2.3 LCX has advised that it intends to request an order authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy. LCX advised that the purpose of this relief is two-fold: (i) to reverse the statutory deemed trust for H.S.T. in the context of a significant shortfall on recoveries suffered by LCX; and, (ii) to allow the trustee to access the provisions of the BIA empowering it to review prior transactions.

- 2.2.4 In considering this request, the Receiver notes that:

(a) Versitec Canada is insolvent and has failed to - and continues to fail to - meet its obligations as they come due:

(b) LCX would otherwise be entitled to make an application for a bankruptcy order;

(c) the Courts have held that using a bankruptcy to reverse the HST deemed trust is a valid basis for the same;

(d) Versitec Canada has no operations, employees, or assets; and

(e) a bankruptcy will not otherwise prejudice any other creditor of 234; and, moreover, a trustee in bankruptcy has certain investigatory powers that may be beneficial to all creditors.

- 2.2.5 For the reasons above, the Receiver supports LCX's request for an order authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy; and, if such order is granted, shall appoint a trustee satisfactory to LCX (which for greater certainty, may include BDO Canada Limited), once such trustee confirms to the Receiver that it accepts the appointment.
- 2.2.6 In the event that Versitec Canada makes an assignment in bankruptcy, the HST Claim will be unsecured and will not be paid in priority to LCX.
- 2.3 Distribution to LCX
- 2.3.1 The Receiver distributed the sum of USD\$81,000 to LCX on June 23, 2021 in accordance with the June 22nd Order.
- 2.4 Obtaining U.S. Bank Statements
- 2.4.1 As reported by the Prior Receiver in the Prior Receiver's Report, Versitec USA maintained bank accounts at Bank of America (the "BOA Account") and BB&T (the "BB&T Account") branches in Boca Raton, Florida. The Prior Receiver advised this Court that customer payments continued to be received into the BOA Account after March 9, 2020 and these funds were being swept into the BB&T Account to prevent subordinate creditors from obtaining payments in priority to LCX.
- 2.4.2 The Receiver became aware that certain customer payments continued to be made to the BOA Account on or around the time that the Receiver was appointed. The Receiver put both Bank of America and BB&T on notice of its appointment and requested that the accounts be frozen in an effort to obtain the funds. The Receiver, directly and through counsel, requested statements from the US banks. Bank of America and BB&T did not comply with the Receiver's requests to freeze the account, nor to provide statements.
- 2.4.3 The Receiver, with the assistance of the U.S. Court, obtained copies of bank statements from Bank of America and BB&T for the period of these receivership proceedings. The assistance of the U.S. Court was required as Bank of America and BB&T would not recognize the Receiver's status in the United States.
- 2.4.4 The Receiver brought an application (the "U.S. Application") for an *ex parte* order pursuant to 28 U.S.C. §1782 to conduct discovery for use in a foreign proceeding in the United States District Court - Southern District of Florida on August 16, 2021. The purpose of this was to obtain subpoenas to compel Bank of America and BB&T to release bank statements to the Receiver.
- 2.4.5 The subpoenas were issued by the U.S. Court on September 18, 2021 but were effectively delayed because of an objection filed by Reuben Byrd ("Mr. Byrd") - a respondent in these proceedings and the former CEO of Versitec and former contractor with the Prior Receiver.
- 2.4.6 Mr. Byrd's objection was vague and was dismissed when Mr. Byrd failed, in response to a request from the presiding judge, to file materials to substantiate his objection.

2.4.7 Bank of America and BB&T then complied with the subpoenas and produced the requested bank statements.

2.5 Review of Versitec USA Bank Transactions

2.5.1 The Receiver has reviewed the bank statements of the BOA Account and the BB&T Account for the period March 9, 2020 to April 30, 2021.

2.5.2 The BB&T Account appears to have been opened on or about April 3, 2020 and used until February 19, 2021. The Prior Receiver has stated that the BB&T Account was "solely controlled by the (Prior) Receiver."¹

2.5.3 The BOA Account was in use prior to March 9, 2020 and appeared to be used until April 30, 2021.

2.5.4 Global Marine Engineering Inc. ("Global") is a company believed to be owned and operated Mr. Byrd, Versitec's former chief executive officer.

2.5.5 Mr. Byrd had entered into a management consulting agreement with the Prior Receiver in his personal capacity but issued invoices for his services through Global.

2.5.6 The Receiver has prepared a detailed analysis of the banking activity between Versitec USA and Global during the period of these receivership proceedings. A summary of this analysis is attached hereto as Appendix "I". The Receiver has found that:

- A total of \$1,127,020.91 USD was received from Versitec customers into the BOA Account during the receivership proceedings;
- Numerous transactions took place in both the BOA Account and the BB&T Account with Global. Transfers of funds were being made to and from Global on a regular basis; and
- In summary, Global appears to be indebted to the Estate in the amount of \$293,122 USD.
- Further payments of \$170,741.59 were made to three creditors of Versitec USA (the "Creditor Payees") which may have been made to the prejudice of LCX.

2.5.7 The Receiver is not funded to pursue collection of the aforementioned amounts. Moreover, given the shortfall suffered by LCX, LCX appears to be the only party with an economic interest in potentially pursuing claims in respect of the transfer of funds out of the BOA Account and BB&T Account.

2.5.8 Accordingly, the Receiver proposes to assign and transfer to LCX, any claim, right, title and interest of the Debtors or the Receiver (if any), against any person, in respect of or connected with the transfer of funds out of the BOA Account and BB&T Account to Global and/or the Creditor Payees (as all claims being the "Outstanding Claims"), on the condition that LCX account back to the Debtors or any trustee or

¹ Paragraph 28 of the Prior Receiver's Report dated February 5, 2021

administrator of the Debtors' estate in respect of any recoveries receiver in excess of the shortfall on its security.

2.6 Receipts & Disbursements

- 2.6.1 Attached hereto as Appendix "J" is the Receiver's Interim Statement of Receipts and Disbursements for the period February 12, 2021 to November 10, 2021. At this time, the Receiver has a total of \$59,967 CAD equivalent (\$1,057 CAD and \$48,905 USD) in its estate trust accounts.

3.0 PROPOSED FINAL DISTRIBUTION

3.1 Introduction

3.1.1 The Receiver has provided information on the creditors of Versitec in its Third Report.

3.1.2 At this time, the only secured creditors with entitlement to the remaining funds in these receivership proceedings are the Receiver and its legal counsel, and LCX.

3.1.3 Canada Revenue Agency remains a priority creditor in respect of the H.S.T. Claim.

3.2 LCX

3.2.1 The amount owing to LCX and subject to security granted by Versitec in favour of LCX (the "LCX Indebtedness") as at June 16, 2021, as per the Third Report, was \$764,695.04.

3.2.2 LCX has received three (3) distributions in these proceedings thus far:

- \$50,000 CAD from the Prior Receiver on June 25, 2020
- \$10,000 CAD from the Prior Receiver on August 4, 2020; and
- \$81,000 USD from the Receiver on June 23, 2021.

A summary of the outstanding current balances is as follows:

AC #	Currency	Net Funds Employed	Penalty for funds misdirected	Accrued Fees	Enforcement Costs (1)	Total Balance owing
4822	CDN	255,319.88	24,471.00	135,110.14	89,179.93	\$504,080.95
			-			
4821	US	28,224.77	2,953.00	32,390.38		63,568.15
			-			
4820U	US	79,405.50	14,449.00	58,875.03		152,729.53
Memo: FX rate US to CDN \$		1.26	FX rate Nov 11	Total Stated in CDN		\$776,616.03

3.3 Proposed Final Distribution

- 3.3.1 After providing for the unpaid professional fees of the Receiver and its legal counsel to discharge, subject to Court approval, and causing Versitec Canada to make an assignment in bankruptcy (assuming the Receiver is so authorized), the Receiver will distribute remaining proceeds in its trust accounts to LCX as the June 22nd Order authorized the Receiver to make such further distributions to LCX.²

² In the event that the bankruptcy of Versitec Canada is not authorized, the Receiver shall pay the HST Claim in priority to the final distribution to LCX or hold funds on account of such claim pending further order of the Court.

4.0 PROFESSIONAL FEES

- 4.1 Professional Fees of the Receiver and its legal counsel
- 4.1.1 As set out in the affidavit of Peter Crawley of BDO sworn November 18, 2021 and attached hereto as Appendix "K", professional fees of the Receiver incurred from June 1, 2021 to November 15, 2021 amount to 94.1 total hours, fees of \$37,982.50 (at an average hourly rate of \$403.64) (before H.S.T.), with a fee accrual not to exceed \$5,000, excluding taxes and disbursements, to complete the remaining activities in its administration (the "Receiver Accrual").
- 4.1.2 As set out in the affidavit of Sarah White of Loopstra sworn November 16, 2021 and attached hereto as Appendix "L", professional fees of the Receiver's counsel incurred from June 1, 2021 to October 12, 2021 amount to 44.9 total hours, fees of \$19,672.50 (at an average hourly rate of \$438.14) and disbursements of \$1,716.44 (before H.S.T.), with a free accrual not to exceed \$5,000, excluding taxes and disbursements, to assist the Receiver in with the remaining activities in its administration (the "Loopstra Accrual"; and, together with the Receiver Accrual, the "Fee Accrual").
- 4.1.3 The Receiver has reviewed the accounts of Loopstra and believes them to be appropriate and reasonable in the circumstances.
- 4.1.4 Accordingly, the Receiver respectfully requests that this Court approve the fees and disbursements of the BDO and Loopstra.

5.0 DISCHARGE OF THE RECEIVER

5.1.1 The Receiver requests at this time that the Court approve the termination of these Receivership Proceedings and the discharge of the Receiver, subject to the Receiver completing the final remaining tasks related to the administration of this Receivership (the "Final Activities") and filing the Receiver's Discharge Certificate with this Honourable Court in accordance with the proposed Discharge Order.

5.1.2 The Final Activities that remain for the Receiver to complete are:

- Recovery of any HST refunds in respect of the Receiver's activities;
- Attending to the payment of Court approved professional fees of the Receiver and its legal counsel;
- Subject to Court approval, causing Versitec Canada to make an assignment in bankruptcy;
- Subject to Court approval, completing the assignment of the Outstanding Claims to LCX;
- Payment of remaining residual funds to LCX;
- Completing any statutory and administrative duties and filings required of the Receiver; and
- Completing steps necessary to terminate these Receivership Proceedings and the discharge of the Receiver and matters ancillary thereto.

6.0 CONCLUSION

- 6.1.1 For the reasons set out above, the Receiver respectfully requests that the Court issue an order:
- a) approving this Fourth Report and the actions of the Receiver described herein;
 - b) approving the professional fees and disbursements of the Receiver and its legal counsel;
 - c) authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy;
 - d) upon completion of Final Activities and filing of the Receiver's Discharge Certificate, discharging the Receiver as Court-appointed receiver of Versitec and releasing the Receiver from any and all liability; and
 - e) such other relief as this Court deems appropriate.

All of which is respectfully submitted this 18th day of November, 2021.

BDO CANADA LIMITED, solely in its capacity as Court-appointed Receiver of 1635536 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. and not in its corporate or personal capacity.



Per: _____
Peter Crawley, MBA, CPA, CA, CIRP, LIT
Vice President

This is Exhibit “J” referred to in the Affidavit of Jonathan Brindley sworn by Jonathan Brindley of the City of Mississauga, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

S. Thom

Commissioner for Taking Affidavits (or as may be)

STEWART THOM

Appendix "H"

In the Matter of the Receivership of Versitec Marine USA Inc.
 Bank of America & BB&T Transactions with Global Marine, R.Byrd & Others
 For the Period March 9, 2020 to April 30, 2021

+Amounts advanced by Global to Versitec	\$ 340,440.00	
+Amounts due Global re: Reuben fees (12 mos)	184,000.00	
subtotal	<u>524,440.00</u>	A
-direct payments to Global by VMI USA	- 775,177.00	
-direct payments to Reuben by VMI USA	- 37,600.00	
-direct payments to Reuben by MPI	- 4,785.00	
subtotal	<u>- 817,562.00</u>	B
Net amounts received by Global/Reuben subordinate to LCX	<u>- 293,122.00</u>	C = A-B
Other debts allowed to be paid in priority to LCX		
Kapitus Note 1	-\$ 26,933.00	
Bluevine Note 2	-\$ 78,750.33	
BOA Note 3	-\$ 65,058.26	
TOTAL	<u>- 170,741.59</u>	D
TOTAL Funds Withdrawn re: subordinate obligations	<u>- 463,863.59</u>	C + D

Notes:

- 1) Kapitus (Strategic) advanced \$72,130.00 on Feb 28, 2020
- 2) Bluevine advanced \$99,985 on Feb 27, 2020. Transfers were made to Reuben Byrd and Global Marine on Feb 28, 2020 in the amounts of \$20,000 and \$24,000 respectively.
- 3) It is believed that the BOA loan was taken by Versitec Marine USA Inc. to fund R.Byrd's

LIQUID CAPITAL EXCHANGE CORP.

Applicant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

REPLY MOTION RECORD

(Returnable April 27, 2022)

TORKIN MANES LLP

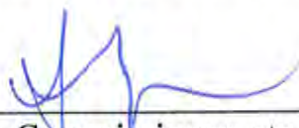
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (September 1, 2020)

The following document is Exhibit "K"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a horizontal line and a flourish.

A Commissioner, etc.

MORGAN & PARTNERS INC.
 4 CEDAR POINTE DRIVE, UNIT J-2
 BARRIE, ON L4N 5R7

Tel: (705) 739-7003

Fax: (705) 739-7119

INVOICE


Reuben Byrd
 c/o Global Marine Engineering

January 11, 2022

<i>Invoice Number</i>	<i>Invoice Date</i>	<i>Date Due</i>
MPI-22-01	January 11, 2022	Payable Upon Receipt

<i>Description</i>	<i>Amount</i>
Professional services in regards to preparation of report re personal guaranty judgement from Our fee HST @13% (non taxable supply to a foreign entity)	<u>\$21,600.00</u>
Total HST # 858473937	

The following document is Exhibit "L"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.



TRANSPORT & TRADE LAW

WILLIAM M. SHARPE
 wmsnarpe@routelaw.ca
 OF THE ONTARIO AND BRITISH COLUMBIA BARS
 ANUMEET TOOR ASSOCIATE
 anutoor@routelaw.ca

STE. 305, 40 WYNFORD DR. TORONTO ON M3C 1J5 CANADA 416 - 482-5321 FACSIMILE 416-322-2083

August 11, 2022

Danielle Glatt
 Palier Roland Rosenberg Rothstein LLP
 155 Wellington St. West - 35th Floor
 Toronto ON M5V 3H1

By email danielle.glatt@paliereroland.com

Dear Ms. Glatt:

**Re Morgan & Partners Inc. atd Liquid Capital Exchange Corp.
 Commercial List CV- 20- 00637427 -OOCL**

I act for John Morgan and Morgan & Partners Inc. (“MPI”) in this Application and particularly in respect of the allegations made against my clients in the 25 April, 2022 Affidavit of Jonathan Brindley in reply to the 24th November, 2021 Motion on behalf of Liquid Capital Exchange Corp. (“LCX”) for summary judgement as against your client Reuben Byrd (“Byrd”). I understand MPI was engaged by Reuben Byrd or your firm to provide an expert report as to the state of accounts between LCX and the Versitec Respondents as part of Byrd’s response to LCX’s summary judgement motion. John Morgan prepared such report dated 8 January, 2022 as part of his 10 January 2022 Affidavit filed in the motion.

As a result of our legal advice, for which solicitor-client privilege is claimed, John Morgan and MPI now take the position that as former Receiver of the Versitec Respondents and as the principal of that Receiver, our clients lack standing to provide expert opinion evidence on behalf of Byrd, who is adverse at interest to LCX in this Motion and Application.

As a consequence, we request and require that John Morgan withdraw his 8 January, 2022 report, his 10 January 2022 affidavit and his 10 January, 2022 Acknowledgment of Expert’s Duty as evidence in this Motion. For the avoidance of misunderstanding, this request for withdrawal extends to the revised paragraph 5 of his 10 January, 2022 affidavit and the revised Appendices “E” and “G” referred by you in your 8 April, 2022 letter to counsel for LCX

Morgan & Partners have billed for their services in preparing John Morgan’s 10 January, 2022 affidavit. The bill has not been paid. In the context of this request, Morgan & Partners

withdraw their bill to Global Marine Engineering and will not be pursuing payment. John Morgan and MPI reserve their rights to apply for payment for the analysis performed by them preparatory to the 8 January, 2022 report as fees in the administration of the Receivership.

John Morgan and MPI conceive it to be their duty under applicable rules of professional conduct to alert the court to material nondisclosure by LCX in its original application for the appointment of a receiver. LCX did not disclose it was indebted to Versitec at the inception of the receivership application, which debt Mr. Morgan calculates to be \$ 288,941.55.

John Morgan and MPI will deliver a motion in this Application:

- a) seeking leave to vary the 12 February 2021 Order of Justice Koehnen;
- b) seeking leave to withdraw the evidence and documents referred to above;
- c) seeking leave to file an unsworn supplementary Receiver's Report with substantially the same factual content as John Morgan's 8 January 2022 Report in this Motion; and
- d) for such further orders and directions as may be advised.

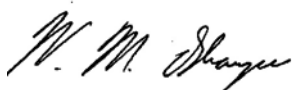
Should the Court grant leave to withdraw the evidence and documents referred to above, John Morgan and MPI will seek an order that Jonathan Brindley's 25th April, 2022 Reply Affidavit be stricken.

Should the Court refuse to grant leave to withdraw the evidence and documents referred to above, John Morgan and MPI will rely upon the initial receivership Order pronounced that no proceedings be commenced as against them without leave and, if such leave is given, to adduce evidence in full answer and defence.

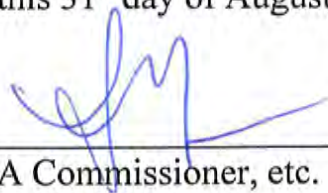
Should you be instructed to adduce substitute expert evidence as to the state of accounts between LCX and Versitec, for the sake of good order John Morgan and MPI will seek direction from the court whether they may release financial and operational information which they obtained from LCX and the Versitec Respondents as part of the Receivers file to your proposed substitute expert. Please let me know if Mr. Byrd wishes to hire a substitute.

I look forward to your substantive response.

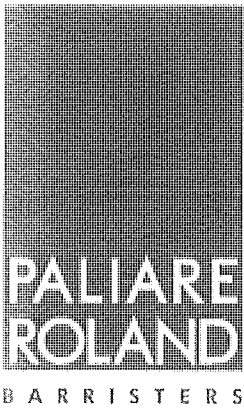
Yours truly,



The following document is Exhibit "M"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022



A Commissioner, etc.



Danielle Glatt
 T 416.646.7440 Asst 416.646.7415
 F 416.646.4301
 E danielle.glatt@paliareroland.com
www.paliareroland.com

August 15, 2022

File 99504

VIA EMAIL
wmsharpe@routelaw.ca

William M. Sharpe
 Route Transport & Trade Law
 305-40 Wymford Dr.
 Toronto, ON M3C 1J5

Dear Mr. Sharpe

Re: Reuben Byrd et al. ats LCX

We write further to your letter of August 11, 2022 (enclosed). We have copied LCX's counsel and the substitute receiver, BDO's counsel on our response as they have an interest in the motions proposed by your clients.

As you know, there is a motion scheduled for September 16, 2022 to determine the threshold issue of whether issues related to the quantification of amounts owing by Versitec to LCX are res judicata.

If the court finds that these issues can proceed to a hearing on their merits, Reuben Byrd intends to submit an independent expert report. Mr. Byrd does not intend to rely on Mr. Morgan's affidavit and report dated January 8, 2022.

Accordingly, Mr. Byrd will not take a position on any motion to have Mr. Morgan's evidence withdrawn or struck from the record, nor will he take a position in respect of Mr. Morgan seeking leave to file an unsworn supplementary Receiver's Report with substantially the same factual content as Mr. Morgan's January 8, 2022 report.

If your clients intend to move to have Mr. Morgan/MPI's First Report dated February 5, 2021 withdrawn based on what you describe in your letter as "material nondisclosure", please advise and Mr. Byrd will consider his position.

In respect of your clients' proposed motion "seeking leave to vary the 12 February 2021 Order of Justice Koehnen". It is unclear what your client intends to vary. The 12 February 2021 Order does not make any determinations or findings in respect of the quantum of indebtedness between LCX and Versitec. As such, our client's position is that any motion to vary the 12 February 2021 Order (or any other order) is unnecessary and, at the very least, premature at this time.

Further, if your client intends to proceed with a motion to "seek an order that Jonathan Brindley's 25th April, 2022 Reply Affidavit be stricken," Mr. Byrd will need to consider his position on this issue. It is unclear on what basis your clients

Chris G. Paliare
 Ken Rosenberg
 Linda R. Rothstein
 Richard P. Stephenson
 Donald K. Eady
 Gordon D. Capern
 Lily I. Harmer
 Andrew Lokan
 John Monger
 Odette Soriano
 Andrew C. Lewis
 Megan E. Shortreed
 Massimo Starnino
 Karen Jones
 Jeffrey Larry
 Kristian Borg-Olivier
 Emily Lawrence
 Tina H. Lie
 Jean-Claude Killey
 Jodi Martin
 Michael Fenrick
 Ren Bucholz
 Jessica Latimer
 Lindsay Scott
 Alysha Shore
 Denise Cooney
 Mariam Moktar
 Paul J. Davis
 Danielle Glatt
 Joseph Berger
 S. Jessica Roher
 Daniel Rosenbluth
 Glynnis Hawe
 Hailey Bruckner
 Charlotté Calon
 Mannu Chowdhury
 Kate Shao
 Kartiga Thavaraj
 Catherine Fan
 Shawna Leclair
 Claire McNevin
 Douglas Montgomery
 Shyama Talukdar
 Chloe Hendrie
 Jesse Wright
 Lauren Rainsford
 Evan Snyder
 William Webb

COUNSEL
 Ian J. Roland
 Nick Coleman
 Stephen Goudge, Q.C.

HONORARY COUNSEL
 Ian G. Scott, Q.C., O.C.
 (1934 -2006)


PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
 155 WELLINGTON STREET WEST 35TH FLOOR TORONTO ONTARIO M5V 3H1 T 416.646.4300

challenge the inclusion of this affidavit in the record. It is also unclear how such an order would further your clients' motion to vary the 12 February 2021 Order.

Nevertheless, if your client intends to proceed with that motion or any other motion, please advise us and all other interested parties. We expect there will not be sufficient time on September 16, 2022 to address your client's issues and we do not believe that there is any reason for those issues to be determined in advance of the scheduled motion.

We look forward to your response.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Danielle Glatt
DG:DG

Encl.

c: Jeff Larry
Stewart Thom
Graham Phoenix

ROUTE

TRANSPORT & TRADE LAW

WILLIAM M. SHARPE
 wsharpe@routelaw.ca
 OF THE ONTARIO AND BRITISH COLUMBIA BARS
 ANUMEET TOOR ASSOCIATE
 anutoor@routelaw.ca

STE. 305, 40 WYNFORD DR. TORONTO ON M3C 1J5 CANADA 416 - 482-5321 FACSIMILE 416-322-2083

August 11, 2022

Danielle Glatt
 Palier Roland Rosenberg Rothstein LLP
 155 Wellington St. West - 35th Floor
 Toronto ON M5V 3H1

By email danielle.glatt@paliereroland.com

Dear Ms. Glatt:

**Re Morgan & Partners Inc. atd Liquid Capital Exchange Corp.
 Commercial List CV- 20- 00637427 -OOCL**

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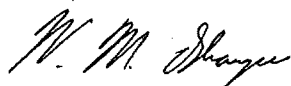
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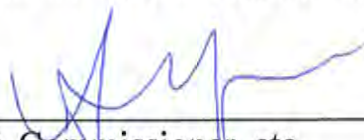
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I look forward to your substantive response.

Yours truly,



The following document is Exhibit "N"
referred to in the affidavit of
John Morgan sworn before me,
this 31st day of August 2022

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

LIQUID CAPITAL EXCHANGE CORP

Applicant

-and-

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

Respondents

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

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

August 30, 2022

MORGAN & PARTNERS INC.

4 – 820 Muskoka Road South,

Gravenhurst, ON P1P 1K

Tel: 705-739-7003

Fax: 705-739-7119

Original Court-Appointed Receiver for

1635536 Ontario Inc. o/a Versitec Marine &
Industrial and Versitec Marine USA Inc.
("Versitec")

TABLE OF CONTENTS

INTRODUCTION.....	1
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SUMMARY JUDGEMENT AGAINST GUARANTORS	5
SUMMARY OF FINDINGS	5
CALCULATION OF MARCH 9, 2020 BALANCES	6
CONCLUSION	7

INDEX OF APPENDICES

- A. Receivership Order Dated March 9, 2020;
- B. Factoring Agreement June 2017
- C. Forbearance Agreement 2019
- D. First Report
- E. Order Appointing Substitute Receiver 12 February, 2021
- F. Order Discharging Original Receiver 12 February, 2021
- G. Procedures undertaken by MPI in reconciliation of gross funding and rationalization of chargebacks
- H. Adjustment of balances to March 9, 2020

INTRODUCTION

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

2. The purpose of this as is to provide information to the Court on events that have happened subsequent to MPI’s substitution dated February 12, 2021 in particular as it relates to the Agreement of Purchase and Sale of the Factored Receivables as amended by the Forbearance agreement which preceded the initial appointment of MPI on March 9, 2020.

APPOINTMENT ORDER

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

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

a) demands and notices of intention to enforce security had been issued and delivered by LCX to Versitec;

b) Versitec was in default of its obligations to LCX;

c) Versitec had entered into a Forbearance Agreement with LCX, which agreement had expired without repayment to LCX in full as required;

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

5. The Application was opposed by Versitec, who requested an adjournment of the hearing in order to file responding materials. None was filed and no argument was presented by Versitec that the Appointment Order should be vacated. On March 9, 2020, the Honourable Justice Gilmore granted the Appointment Order

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

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

7. Since the date of its appointment to the date of MPI's substitution, namely February 12, 2021, MPI did, with the assistance of management carry on the business of both companies, one being an Ontario incorporated company and the other, Versitec Marine USA Inc., being a corporation incorporated in the State of Delaware, USA.

8. As of September 2020, MPI became concerned after it had initially reviewed the Accounts Receivable that were owed to LCX by Versitec that the reserves as contemplated in the Agreement of Purchase and Sale ("Factoring Agreement") as set out in paragraph 3 of that agreement disclosed a different picture of the indebtedness as between Versitec and LCX. A copy of the Factoring Agreement is attached as **Appendix**

B. The original Factoring Agreement was amended by the Forbearance agreement, a copy of which is attached as **Appendix C**

9. The issue as to indebtedness was communicated in mid September 2020 by the Interim Receiver's solicitor, Calvin Ho of Laishley Reed to LCX legal counsel for LCX Mr. Stewart Thom of Torkin Manes LLP.

10. The material from LCX during the time frame from September to December 2020 even though requested a number of times by both MPI and its legal counsel, was not received in total until December 4, 2020.

11. It was not until December 4, 2020 that all the material was sent to MPI by LCX which was not substantially reviewed as to its veracity until December 2021. This was the result of further COVID-19 crisis significantly impacting the cash flow of Versitec Group operations which was of primary importance at the time .

12. At the time the current Receivership order did empower MPI to do an exhaustive audit of the Reserve calculation as set out in the Factoring Agreement and the Forbearance Agreement.

APPOINTMENT OF SUBSTITUTE RECEIVER

13. As a result of continuing disagreement between the Receiver and LCX as to the state of accounts as between LCX and Versitec, and whether the business of Versitec

should continue to be operated or sold, the Receiver decided it was in the interest of all parties to consent to the appointment of a substitute Receiver.

14. The Receiver therefore prepared and submitted its First Report in support of its motion for the appointment of BDO Canada Limited as Substitute Receiver. The First Report is attached as **Appendix D**.

15. Paragraph 2 of the First Report states: “The purpose of this Report is to summarize and seek approval of limited activities of the Receiver from the date of its appointment through to present, and to provide background in respect of a substitution of the Receiver on consent.” Because this First Report was for the limited purpose of supporting MPI’s motion for the appointment of a Substitute Receiver, and LCX was not at the time seeking judgment against the individual Respondents on their guarantees, the First Report did not address the differences between LCX and MPI as to the calculation of the state of accounts as between LCX and the Versitec Group. In particular, the First Report did not address the differences between LCX and MPI on the issues of the Unfactored Receivables and the Adjusted Reserves.

16. By orders pronounced 12 February, 2021 Justice Koehnen appointed BDO Canada Limited as Substitute Receiver and discharged MPI as Original Receiver, reserving the Court’s approval as to various heads of expense of the Original Receiver. These Orders are attached as **Appendices E and F**.

SUMMARY JUDGEMENT AGAINST GUARANTORS

17. On or around November 27, 2021 I was contacted by Mr. Rueben concerning LCX's attempt to pursue a summary judgement on his guarantee provided to LCX as part of the Forbearance Agreement described earlier .

18. I did provide to Mr. Byrd and his legal counsel an expert report. As much of the material in that original report was derived from financial data and documents received as part of the administration of MPI while acting as the Court appointed Receiver. I am now providing an analysis of the restated accounts as between LCX and Versitec to the Court in the form of a Second Court Report . I am of the opinion that I have an ongoing professional and ethical responsibility under the Rules of Professional Conduct of the Canadian Insolvency and Restructuring Professional Association. to do so.

19. **Appendix G** is a report that outlines the procedures undertaken by MPI, the reconciliation of Gross funding amounts as between the entities, LCX and Versitec and a rationalization of the chargebacks as provided in the Factoring Agreement in paragraph 10 .

SUMMARY OF FINDINGS

20. MPI found that LCX owed Versitec a net amount of \$139,240.74 as of October 10, 2020.

21. MPI also confirmed that at approximately \$86,000 of unfactored Accounts Receivables were retained by LCX during the forbearance period
22. MPI found that any reserve earned by Versitec and kept by LCX in their single investment account in the approximate amount of \$398,337 was never used for future funding of to Versitec as allowed by the Factoring Agreement and that this amount from LCX's records was never segregated as trust funds owing under the Factoring Agreement to Versitec.
23. MPI found that there were additional invoices that were not paid by Versitec to LCX and MPI adjusted those in favour of LCX in its analysis
24. MPI did not adjust for any interest since the calculation by LCX for this amount was never provided.
25. MPI after reconciling all the Receipts received by LCX both directly from Versitec and directly to LCX by the customers of Versitec could not find any misappropriations of cash .

CALCULATION OF MARCH 9, 2020 BALANCES

26. The original analysis submitted by LCX to MPI was dated as of October 10, 2020.
27. **Appendix H** shows the adjustment of balances to March 9, 2020 by taking the accrued fees contained in the LCX material by account and adding back from the analysis that MPI had completed and then deducting the payments that MPI had made to

LCX during its tenure as the Court appointed Receivership. This resulted in a change of amount owing by LCX to Versitec from \$139,000 to \$ 228,941.55

CONCLUSION

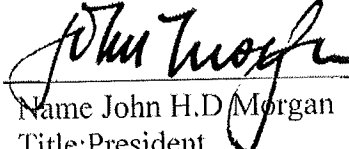
28. MPI provides this additional material for the Courts consideration to enable the Court to consider all accounts and circumstances relevant to the administration of this estate.

ALL OF WHICH IS RESPECTFULLY REPORTED

Date: August 30 , 2022

MORGAN & PARTNERS INC.

Per:


Name John H.D Morgan
Title:President

I/We have the authority to bind the corporation

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Report on the Versitec Group of Companies

Purpose

Morgan & Partners Inc. ("MPI") under its professional code of conduct and professional ethics requirements from its governing association, namely the Canadian Association of Insolvency and Restructuring Professionals ("CAIRP") has undertaken a review of the the accounts of 1635536 Ontario Inc o/a Versitec Marine & Industrial ("**Versitec Canada**"), and Versitec Marine USA Inc. ("**Versitec USA**", and collectively with Versitec Canada, "**Versitec**") and, on the basis of that review, to calculate the net liability of Versitec to Liquid Capital Exchange Corp ("**LCX**") in connection with ongoing litigation that is currently before the Courts. This document will summarize the findings of MPI during its administration of the court Appointed Receivership which at the time was a secondary concern to the ongoing cash flow issues permeated by the global COVID-19 pandemic..

Summary Conclusion

As a result of its review and subject to the accuracy of any assumptions expressed or implied herein, MPI has determined that as of the date of MPI's review Versitec was not indebted to LCX. To the contrary, LCX was indebted to Versitec.

Assumptions

For the purpose of its review, MPI assumed the authenticity of all documents considered by it, and that there are no other documents, facts or information impacting its review.

Where necessary, USD amounts were converted to CAD amounts at a rate of 1.25, which was the prevailing rate at the time that MPI conducted its analysis.

MPI's accounting is current to October 10, 2020, which is the date when, as court appointed receiver of Versitec, MPI prepared its accounting initially .It has been adjusted to reflect as best can be determined the balance as at the date of the Court appointment order of March 9, 2020.

For the purpose of its analysis MPI assumed recoverability of and allowed aggregate interest, fees and expenses accrued to LCX as of October 10, 2021, in the amount of \$139,701. As at Match 9, 2020 the amount owing to Versitec by LCX was \$228,941. Conversely, MPI disallowed penalties on the assumption that they are not recoverable, whether as a matter of law or in equity, on the principle of relief from forfeiture, or on other equitable grounds.

Procedures followed by MPI

1. MPI gathered documents at Versitec in Port Colborne Ontario.
 - MPI recovered, from Versitec's records, all funding sheets approved and payments made in respect of receivables to either LCX or Versitec.

- From this information and the accounting records, a detailed summary by each account showing the disposition of each factored invoice was prepared and reviewed.
- Where necessary, MPI consulted Versitec's management (Mr. Brian Gunning former acting CFO Controller of Versitec) and obtained additional detail with respect to the information found in foregoing records.
- MPI reviewed all files for factored invoices to ensure the invoice was supported by the appropriate documentation within the file (i.e., purchase orders, customer orders, expected delivery time, invoice creation, any specific design requirements, etc.)
- MPI reviewed a copy of the Agreement of Purchase and Sale of Factored Accounts Receivable dated June 21, 2017, attached as **Appendix A** (the "APS"), and, subsequently, a Forbearance Agreement made April 25, 2019 attached as **Appendix B** (the "Forbearance Agreement"), which together governed the factoring relationship between Versitec and LCX.
- MPI reviewed and verified Versitec's analysis of each of its accounts during the forbearance agreement time frame against source documentation (funding sheets, wire transfers and banking receipts).

2. MPI gathered information from LCX.

- In respect of each of the three Versitec accounts, MPI received the following information from LCX:
 - An executive summary of the account positions
 - A Charge Back summary
 - A detail of client activity
 - A summary of penalties for misdirected funds
 - A summary of each outstanding A/R factored in the denomination of funding

3. MPI reconciled Versitec's records with LCX's Information.

Total Invoices / Total Receipts

- Compared the total of factored Accounts Receivable ("A/R") to the same amount in the MPI summary sheet.
- Identified any differences and concluded if the differences were reasonable.
- Compared all the receipts received both from factored invoices, non factored invoices and fund claw backs.
- Reviewed escrow hold back calculation in total as between the two sources of information to identify if the calculations were in accordance with the APS and the Forbearance Agreement.
- Completed a summary for each account.

4. MPI analyzed the Charge Backs applied by LCX to Versitec's accounts.

- From the LCX summaries and client activity MPI compared the Charge Back analysis by receivable factored to see if the invoice was paid or not.
 - If not paid, then MPI identified the receivable as an outstanding factored A/R or if it was not on the A/R list MPI referred back to the funding sheet summary to see if the receivable was funded or not.
 - If paid, MPI noted the amount and the date paid as shown on the MPI analysis by factored A/R.
 - For non factored A/R receipts, MPI compared to LCX summaries to ensure that the receipt was received and how it was handled in the Executive Summary.
 - MPI noted any differences from Versitec payment to LCX and direct payment to LCX by client of both Factored and Non-Factored Invoice Receipts.
 - MPI noted and summarized discrepancies in Charge Back analysis.
 - MPI analyzed any penalty for misdirected payments as per s. 10 of the APS and noted any discrepancies and considered if a reconciling item or not depending if properly received.
5. Based on the foregoing, MPI recalculated the Reserve accounts by account.
- For each account starting with MPI's analysis, MPI added back the unsubstantiated Charge Backs and the accrued fees.
 - Then, based on the escrow holdback (allowance for Doubtful accounts), MPI adjusted the factored A/R.
 - MPI analyzed the transfer of paid receipts of factored invoices to Reserve account.
 - MPI added back any A/R factored and identified in the Charge Back analysis before adjusting for any changes identified in the Charge Back analysis based on receipts being recognized in both LCX analysis and MPI analysis
 - MPI adjusted for any transfer of Reserves as per LCX reconciliation
 - MPI computed revised factored A/R net of escrow holdback along with Reserve for each account.
 - MPI summarized all of the accounts by net factored A/R and Reserve.
6. Review and Consultation with LCX.
- Following its initial review, while still acting under court-appointment as Receiver of Versitec, MPI provided its analysis to LCX and invited LCX to comment on the analysis. LCX rejected the results of MPI's analysis and advised MPI that it would be providing additional information to inform the analysis.
 - LCX did eventually provided additional information to MPI, which required follow-up requests by MPI. The e-mail attached as **Appendix C** documents one such request. MPI has been unable to locate any additional information in the court record that would cause it to revise its analysis.
 -

Discussion and Analysis

The factoring of Versitec's receivables by LCX is governed by the APS and the Forbearance Agreement.

The purchase price of a receivable is stated, at paragraph 3 of the APS, to be the amount of the receivable collected.

The APS contemplates advances of the purchase price equal to a percentage of the face amount of the receivable, subject to a discount in the nature of a financing charge (the "**Advance**"). In addition, the APS provides for a discretionary reserve on account of, for example, potential warranty breaches or other potential non-payments (the "**Reserve**").

The APS contemplates that the Reserve will generally be released to Versitec at its request or at the time of the subsequent Advance.

For the purposes of its analysis, MPI refers to the difference between an Advance in respect of a receivable and the amount actually collected in respect of the receivable from Versitec's customer, after any discount, as the Reserve.

MPI's observation based on its review of Versitec's and LCX's records is that the discount or financing charge was taken at the time of the Advance and collected when the factored receivable was paid by Versitec's customer.

The APS does not stipulate either the proportion of the Advance or the amount of the discount/financing charge. MPI's review of the parties' dealings indicates that the Advance was 80% (i.e., there was a 20% holdback). The Forbearance Agreement established a financing charge of 3% of the face value of the factored receivable, plus 0.1% per day on any receivable not paid within 30 days of the date of purchase. As a result, during the forbearance period LCX initially funded 77% of the face value of the factored accounts receivable.

Paragraph 10 of the APS stipulates that where payment of a factored receivable is received by Versitec, it has 2 days to remit payment to LCX, following which LCX may charge a fee equal to the greater of 10% of the amount of the factored receivable and \$1,000. The APS stipulates that this fee is intended to be compensation for the additional administrative expense that is likely to be incurred.

MPI prepared a series of flowcharts illustrating the flow of funds observed by it through its review of the records made available by Versitec and LCX. These are attached as **Appendix D**. They reflect that all the funds were paid out and received in one Investment Bank Account of LCX. This was confirmed in a November 6, 2021, conference call as between Messrs. Brindley and Morgan and Ms. Pia Bannister an accountant with LCX.

On Versitec's side, the factoring arrangement involved three bank accounts: a Canadian dollar account in the name of Versitec Canada; a U.S. dollar account in the name of Versitec Canada; and, a U.S. dollar account in the name of Versitec USA.

Summary of Accounts Receivable and Reserve

Attached as **Appendix E** is a summary of MPI's analysis by account for each of the three Versitec factoring accounts. The detail of these reconciliations by account can be found in **Appendices F, G and H**. These show the opening position of the accounts, LCX's proposed

adjustments taken from their Executive Summaries (for completeness and ease of reference, LCX's reconciliations are attached as Appendices **F-1**, **G-1** and **H-1**), and MPI's corrections to the LCX adjustments based on MPI's review of the justification for the LCX adjustments (or lack thereof). Each of these appendices contains MPI's analysis and supporting documentation and an explanation of the change based on the information available.

Based on its review and by way of summary, MPI notes as follows.

1. The gross factored invoices and the gross receipts that existed between the LCX and MPI were reconciled or agreed in total, indicating that LCX's and MPI's data sets were similar or reconcilable at an aggregate level. This gave MPI confidence in the foundation for its analysis. In particular
 - a. There appears to be consistency and no material disagreement with respect to the universe of factored receivables.
 - b. The non factored receivables received by LCX and not returned to Versitec total \$221,167 which includes an additional reserve taken by LCX of \$20,000.
2. To facilitate its analysis, MPI has divided the Reserve into two parts: Reserve A, which pertains to receivables for which LCX has acknowledged its obligation to Versitec (i.e., MPI understands there to be agreement with respect to Reserve A); and Reserve B, which relates to receivables for which LCX has applied an adjustment.
3. The principle area of disagreement between MPI and LCX relates to the application of various Charge Backs by LCX.
 - a. In the aggregate, MPI reviewed and allowed fees and interest to LCX totalling \$149,701.
 - b. In those instances where LCX failed or refused to relate the Charge Back to a particular receivable transaction or other default, MPI was left without any justification for the Charge Back, and it was reversed.
 - c. In instances where LCX did relate the Charge Back to a particular receivable that it alleged was unpaid and MPI was able to ascertain that the receivable was in fact paid to LCX within the timeframe contemplated by the APS or within a few days thereof, MPI reversed those Charge Backs as well.
 - d. Finally, LCX applied a general Charge Back for alleged fraud and conversion. MPI was unable to identify an instance of fraud or conversion, and so that Charge Back was reversed.
4. Another point of disagreement relates to LCX's effective transfer of a Reserve (B) of USD \$92,000 attributable to Versitec USA to Versitec Canada. The basis for the consolidation of accounts in this way was not disclosed to MPI, and so, as a matter of formal correctness, MPI reversed that transaction. However, for the purposes of the

pending motion the reversal of the transaction appears to be irrelevant to the issue of the liability of any guarantors, because, as indicated below, funds would be due by LCX to Versitec regardless of the treatment of this transaction.

5. As summarized in Appendix E, MPI 's analysis indicates that as of October 10, 2020, LCX was indebted to Versitec in the aggregate amount of \$139,441 as of October 10, 2020. Adjusting for the identifiable accrued fees during the Adjustment period back to March 9, 2020 the balance owing by LCX to Versitec is \$228,942.

APPENDIX A



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") dated as of June 21, 2017 is executed by and between Liquid Capital Exchange Corp., a corporation organized under the laws of the Province of Ontario, having a business address at 5734 Yonge Street, Suite 400, Toronto, ON M2M 4E7 (hereinafter referred to as "**Factor**") and 1635536 Ontario Inc., a corporation organized under the laws of the Province of Ontario, having a business address at 4 Stonebridge Drive, Unit 4, Port Colborne, Ontario L3K 5V4 and Versitec Marine USA Inc., corporation organized under the laws of the State of Delaware, having a business address at 1623 Military Road, #283, Niagara Falls, NY 14304 (each a "**Seller**"). All capitalized terms in this Agreement, unless otherwise defined herein or required by the context, shall have the meanings given those terms (whether or not capitalized) in and as defined under the *Personal Property Security Act* ("PPSA") of the Province of Ontario as in effect from time to time. Seller and Factor agree to the following terms and conditions:

1. **Purchase and Sale of Accounts.** Pursuant to the terms of this Agreement, Seller agrees to sell, transfer, convey, assign and deliver to Factor, and Factor agrees to purchase and receive from Seller, all of Seller's right, title and interest in and to certain Accounts arising from the sale of Goods or the rendering of services by Seller in the ordinary course of Seller's business.

2. **Sale Procedure.** Upon Seller's submission of any Account to Factor for purchase, Seller shall execute a Schedule of Accounts in a form provided by and acceptable to Factor for each such Account or group of Accounts that Seller offers for sale to sell to Factor. The Schedule of Accounts must, among other things, identify and describe the Accounts being offered for purchase and the total face amount of such Accounts. Each Account offered for sale to Factor shall be evidenced by an identical duplicate written invoice or other such equivalent document(s) as Factor may require, together with supporting documentation, including, but not limited to, the purchase order or contract referencing the sale of goods and/or services and any modification(s) or amendment(s) thereto and any such other documentation that Factor may request. Factor may accept or reject any Account offered for sale in its sole discretion. Upon submission of any Account to Factor for purchase, Sellers shall not seek or authorize any modification to the terms of the Account.

3. **Purchase Price and Payment.** Factor, in its sole discretion, may advance a percentage (%) (hereinafter referred to as "**Advance**") of the face amount of the Accounts purchased, less the applicable discount fee. The purchase price of any Accounts shall be the amount actually received in payment of such Accounts, but for purposes of any Advance, the purchase price shall be equal to the face amount of the Accounts less any selling, payment or

other discounts offered. In addition, Factor, in its sole discretion, may elect to maintain a reserve from each Advance (hereinafter referred to as "**Reserve**"). As a general rule, Reserves on paid invoices are released upon the request of the Seller or when the Factor's next purchase of Accounts from Seller is funded. Factor, however, may increase or decrease the amount of such Reserve at any time and from time to time if it deems it necessary in order to protect its interests. The Reserve is designed to protect Factor against losses or potential losses that Factor may reasonably anticipate might arise in the future due to, among other things, contingencies, disputes, potential breach of warranties, or other potential non-payments, reductions or losses from the purchase of the Accounts. Payments received will be credited to specific invoices when credit is given by Factor's bank, not to exceed three (3) banking days. The applicable discount fee is calculated based on the discount rate set forth in the Discount Rate Schedule (attached as a schedule hereto and incorporated herein by reference). Factor may condition future purchases on Seller's agreeing to modification(s) of the Discount Rate Schedule. **IT IS THE INTENTION OF THE PARTIES HERETO THAT AS TO ALL ACCOUNTS THAT FACTOR ELECTS TO PURCHASE, SUCH TRANSACTION SHALL CONSTITUTE AN ABSOLUTE ASSIGNMENT OR TRUE SALE OF SUCH ACCOUNTS AND NOT AN ASSIGNMENT INTENDED AS SECURITY AND AS SUCH, SELLER SHALL HAVE NO LEGAL OR EQUITABLE INTEREST IN THE ACCOUNTS SOLD.**

4. **Maximum Amount** It is further understood and agreed that the maximum face amount of purchased accounts sold to Factor and outstanding at any time (the "**Maximum Amount**") shall not exceed the amount set forth on the Discount Rate Schedule (attached as a schedule hereto and incorporated herein by reference), in which event, Factor shall have no obligation to purchase additional Accounts. Factor may however, in its sole and exclusive discretion, increase or decrease the Maximum Amount from time to time.

5. **Notice of Assignment.** Upon Seller's execution of this Agreement, Factor shall be entitled to notify each customer (hereinafter referred to as "**Account Debtor**") of the sale and/or assignment of the Accounts in a manner and method as Factor, in its sole discretion, may elect, which may include Seller's written acknowledgement. Seller agrees that, if so requested by Factor, each document evidencing Accounts (*i.e.*, invoice) shall bear the following language, conspicuously placed, which language may be modified or amended at Factor's request:

This invoice has been assigned, sold and is payable only to Liquid Capital Exchange Corp. 5576 Yonge Street, P.O. Box 10065, Yonge and Finch, North York, ON M2N 0B6. In the event of any dispute as to quantity, quality or otherwise, notification must be given to Liquid Capital Exchange Corp., in writing, within five (5) days of receipt of goods or rendition of services.

Seller agrees, if so requested by Factor, to use its best efforts to assist Factor in procuring the Account Debtor's acknowledgment and acceptance of such notice of assignment and redirection of payment if requested to do so by Factor. Factor's inability, for whatever reason, to receive Account Debtor's acknowledgment and acceptance may result in the rejection of the Accounts submitted for purchase or revocation of a conditional approval to purchase Accounts without any obligation or liability on the part of Factor.

6. **Security.** In addition to those Accounts Factor purchases, in order to secure the payment of all indebtedness and obligations of Seller to Factor, Seller hereby grants to Factor a security interest in and lien upon all of Seller's presently and after-acquired Personal Property including, without limitation, any and all Reserves and all payments (if any) due or to become due to Seller from the Reserves as well as all monies on deposit, holdbacks and credits, and all Proceeds of the foregoing (collectively, the "Collateral"). Without limiting the foregoing and as a further inducement for Factor to enter into this Agreement with Seller, Seller shall execute and deliver a separate general security agreement concurrently with the execution and delivery of this Agreement by Seller, to secure *inter alia*, the performance and observance of the provisions under this Agreement on Seller's part to be observed or performed, on terms and conditions and as more fully provided in such separate general security agreement.

7. **Seller's Representations.** As an inducement for Factor to purchase Accounts from Seller, Seller, and each of its principals as identified on Factor's list of authorized signatories, hereby makes the following representations, warranties and covenants to Factor. The following representations, warranties and covenants shall be, as may be applicable, deemed made upon the execution of this Agreement. In each instance in which Seller submits an Account to Factor for purchase and for long as there are any obligations outstanding under this Agreement from Seller to Factor.

(a) Seller is duly organized and existing under the laws of the Province of Ontario or the laws of the State of Delaware, is duly qualified, and as may be required, properly licensed, is in good standing in such jurisdiction and every other jurisdiction in which it is doing business, the execution, delivery and performance of this Agreement are within its corporate powers and have been duly authorized and are not in contravention of any law or the powers of its charter, bylaws, articles of incorporation, operating agreement, partnership agreement, or other incorporation papers, or of any indenture, agreement or undertaking to which Seller is a party or by which it is bound. Seller's true and correct legal name is as set forth on the signature line below and Seller will notify Factor in writing no less than 30 days prior to any change of name, dba, place of business, jurisdiction of incorporation or corporate status or organizational identification number.

(b) If Seller is operating under a trade or assumed name, said name has been filed with the proper authorities and each name has been provided, in writing, to Factor.

(c) Seller has and will maintain good, clear and undisputed exclusive title to the Accounts offered for sale to Factor hereunder, and such sale will vest absolute ownership to such Accounts in Factor, free and clear of any lien, encumbrances, claims or security interest of any kind or nature including but not limited to Federal and/or Provincial tax liens.

(d) Each Account sold and assigned to Factor shall be an Account based upon a *bona fide* sale and the delivery and acceptance of Goods or performance of services by Seller to an Account Debtor and shall be an unconditional, valid and enforceable obligation of the Account Debtor, with no claim, offset, allowance, discount, deduction, dispute, contingency or counterclaim, which could reduce the amount of such Account, affect the validity thereof, or

hinder Factor's ability to collect or receive payment of the full face amount of said Account.

(e) All information furnished by Seller to Factor, including, but not limited to, past histories of the payment of Account Debtors, and any and all information given to Factor in connection with the Accounts, is true, complete and accurate, and contains no material omissions, misstatements or misrepresentations.

(f) Seller is the sole and absolute owner of the Collateral and any other property in which Factor is given a security interest: has good right and authority to grant a security interest to Factor in such Collateral or other property: there is no presently outstanding lien, security interest or encumbrance in or on the Collateral or proceeds and there is no financing statement covering the Collateral or proceeds on file in any public office except as may show on the exhibit 7(f) attached hereto. There are no judgments outstanding against Seller and there are no actions, charges, suits, proceedings or investigations pending or threatened against Seller or any of its property and none of Seller's inventory has been produced or imported in violation of any applicable law or treaty.

(g) All financial records (including, but not limited to, balance sheets, income statements, federal income tax returns, and Accounts aging, listing or reports) which may have been or may hereafter be furnished to Factor by Seller shall fairly and accurately represent the financial conditions and operating results of Seller as of the dates or for the periods stated thereon. Such financial records shall be accurate and correct in all material respects and complete insofar as necessary to give Factor a true and accurate knowledge of the subject matter.

(h) Seller shall reflect on its books the absolute sale of the Purchased Accounts to Factor. Seller shall furnish Factor, upon request, such information and statements as Factor may request from time to time regarding Seller's business affairs, financial condition and results of its operations. Without limiting the generality of the foregoing, Seller shall provide Factor, on or prior to the thirtieth (30th) day of each month, unaudited financial statements with respect to the prior month and, within ninety (90) days after the end of each of Seller's fiscal years, annual financial statements and such certificates relating to the foregoing as Factor may request including, without limitation, a monthly certificate from the president and chief financial officer of Seller stating whether any Events of Default have occurred and stating in detail the nature of the Events of Default. Seller will furnish to Factor upon request a current listing of all open and unpaid accounts payable and Accounts, and such other items of information that Factor may deem necessary or appropriate from time to time.

(i) If Seller should change the location of the principal office or the offices where the books and records of Seller are kept, Seller shall notify Factor immediately in writing of such change.

(j) The Accounts are due and payable on the selling terms noted on the face of each invoice, none of the Accounts represents a pack, bill and hold sale, or a consignment, guaranteed sale, cash on delivery sale or sale to an affiliate of Seller or to any entity to whom Seller has a financial or performance obligation of any kind.

(k) Seller assigns and transfers to Factor, effective upon an Event of Default hereunder, a nonexclusive right and license to use any trade names, marks, and styles used or owned by Seller together with any goodwill associated therewith, to the extent necessary to enable Factor to realize on the assets of Seller in which Factor has been granted a security interest. Such right and license is granted free of charge with no monetary payment requirement to Seller or any third party.

(l) Each Account Debtor's business is solvent to the best of Seller's knowledge.

(m) Seller has paid and will pay all taxes and governmental charges imposed with respect to sale of Goods and furnish to Factor upon request satisfactory proof of payment and compliance with all federal, state and local tax requirements.

(n) Seller will promptly notify Factor of (i) the filing of any lawsuit against Seller involving amounts greater than Ten Thousand Dollars (\$10,000), and (ii) any attachment or any other legal process levied against Seller.

(o) In no event shall the funds paid to Seller hereunder be used directly or indirectly for personal, family, household or agricultural purposes.

(p) Any invoice or written communication that is issued by Seller to Factor by facsimile or e-mail transmission is a duplicate of the original.

(q) Any electronic communication of data, whether by e-mail, tape, disk, or otherwise, Seller remits or causes to be remitted to Factor shall be authentic and genuine.

(r) Seller's principal(s) acknowledge that the duty to accurately complete each Schedule of Accounts is critical to this Agreement and as such all obligations with respect thereto are non-delegable. Each of Seller's principal(s) acknowledge that he/she shall remain fully responsible for the accuracy of each Schedule of Accounts delivered to Factor regardless of who is delegated the responsibility to prepare and/or complete such Schedule of Accounts.

(s) Seller agrees to execute any and all forms (e.g., Form RC59) that Factor may require in order to enable Factor to obtain and receive tax information issued by Revenue Canada or the Department of the Treasury, Internal Revenue Service, as applicable, or receive refund payments.

8. **Recourse To Seller.** In the event that:

(a) an Account purchased by Factor is not paid in full by the Account Debtor for any reason (or for no reason), on or before the date when due in accordance with its terms.

(b) an Account Debtor objects to the quality of property sold or services performed by Seller, or rejects, revokes acceptance or fails or refuses to accept or receive any property or services represented by any Account purchased by Factor,

(c) an Account Debtor suspends business, requests a general extension of time within which to pay debts or makes an assignment for the benefit of creditors, or if a voluntary assignment, petition or filing in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or other applicable law is filed by or with respect to an Account Debtor or a receiver or receiver and manager or other agent or official having similar functions is appointed either privately or by a court by or on behalf of a creditors of an Account Debtor, or if any proceedings are commenced under the *Companies Creditors Arrangement Act* (Canada) or other applicable law, or if an event occurs amounting to a general business failure of an Account Debtor, or

(d) Factor in its sole and absolute discretion determines that any Account is or has become uncollectible, then, Factor may require the Seller to promptly repurchase such Account from Factor by either (i) making payment to Factor of the amount represented by Factor to be owing on such Account or (ii) by providing Factor with another Account acceptable to Factor in its sole discretion with a face value equal to or exceeding the face value of the unpaid Account (the "**Replacement Account**") in substitution therefor or (iii) by Factor charging Seller's Reserve. The method of repayment or replacement shall be determined by Factor in its sole discretion. The provisions of this Section are cumulative to and may be exercised concurrently with any other rights, powers or remedies of Factor.

9. **Power of Attorney.** In order to carry out the intention of the parties hereto, Seller hereby irrevocably appoints Factor, or any person designated by Factor, as its agent and attorney-in-fact, which agency shall be deemed to be coupled with an interest and which appointment shall be irrevocable until all obligations Seller owes Factor are fully satisfied. Factor's express authority under this appointment shall include the rights to (i) sign and endorse on behalf of Seller all cheques, drafts and other forms of payment received by Factor, waiving any notice of presentment and dishonor, whether or not said cheques represent payment on purchased Accounts, (ii) receive, open and dispose of Seller's mail received at Factor's address, (iii) change the Seller's address in order to re-route the delivery of all mail to Factor, (iv) strike out Seller's address on any billing or statement sent to an Account Debtor and substitute Factor's address, (v) in Seller's name demand, sue for, collect and give releases for any and all monies due on or to become due on purchased Accounts, (vi) compromise, prosecute, or defend any and all things necessary and proper to carry out this Agreement, specifically including, but not limited to, executing any documents necessary to perfect or continue the perfection of the security interest granted herein, and (vii) complete and issue any blank notices of assignment of Accounts lodged by Seller with Factor.

10. **Payments Received by Seller.** Should Seller receive payment of all or any portion of an Account sold pursuant to this Agreement, Seller shall immediately notify Factor of the receipt of the payment, hold said payment in trust for Factor separate and apart from Seller's own property and funds, and shall deliver said payment to Factor without delay in the identical form in which received. Should Seller receive a cheque or other instrument of payment representing payment of amounts due to both Factor and Seller, Seller shall surrender said cheque or payment instrument to Factor. Should Seller receive a cheque or other instrument of payment representing payment of amounts due Factor and fail to surrender to Factor, or deposit

in a bank account designated by Factor, said cheque or payment instrument within two (2) business days, Seller shall be deemed to have committed a material default in this Agreement. In addition to all other damages to which Factor shall be entitled, Factor shall be entitled, in the event Seller violates its obligations under this paragraph, to charge Seller a misdirected payment fee equal to ten (10%) percent of the amount of the payment instrument or One Thousand Dollars (\$1,000.00), whichever is greater, to compensate Factor for the additional administrative expenses that are likely to be incurred as a result of a breach. In the event any merchandise, the sale of which gave rise to an Account purchased by Factor, is returned to or repossessed by Seller, such merchandise shall be held by Seller in trust for Factor, separate and apart from Seller's own property and subject to Factor's sole direction and control.

11. **Default.** The term "Event of Default" as used in this Agreement shall mean the occurrence of any of the following events:

(a) The failure of Seller to punctually and properly observe, keep or perform any covenant, agreement or condition herein required to be observed, kept or performed; or required under any other agreement or contract that may be executed between Seller and Factor.

(b) A representation or warranty made by Seller in this Agreement shall prove to be untrue or incorrect or any financial statement or other statement purporting to represent the financial condition of Seller proves to be false or incorrect.

(c) The failure of Seller to, within two (2) business days, deliver to Factor or deposit into a bank account designated by Factor, a remittance received by Seller in payment of a purchased Account.

(d) The failure of Seller to pay any indebtedness owed by Seller to Factor whether or not said indebtedness arises hereunder or under some other agreement or contract by and between Seller and Factor.

(e) The appointment of a receiver or trustee for Seller or the suspension or cessation of Seller's business or operations.

(f) Seller becomes insolvent, is unable to pay its debts as they mature or makes an assignment for the benefit of creditors.

(g) Seller is adjudicated a debtor in bankruptcy or requests, either by way of petition or answer, that Seller be adjudicated a bankrupt or that Seller be allowed or granted any composition, reassignment, extension, reorganization or other relief under any bankruptcy law or any other law for the relief of debtors now or hereafter existing.

(h) An involuntary petition in bankruptcy is filed by or against Seller or any guarantor.

(i) A levy(s) or notice(s) of attachment, execution(s), tax lien(s) or assessment(s) or similar process is issued against Seller or the Collateral.

(j) The dissolution of Seller.

(k) The death or incompetency of any guarantor of Seller's obligation.

(l) Factor has reasonable grounds to deem itself insecure.

(m) If there is a change in the ownership of Seller or Seller sells, leases transfers or otherwise disposes of all or substantially all of Seller's assets or consolidates with or merges into any other entity.

12. **Remedies Upon Default.** Factor shall have the rights and remedies provided in this Agreement and (without limiting the other rights and remedies exercisable by Factor either prior or subsequent to an Event of Default) as available to a Secured Party under the PPSA in effect in any applicable jurisdiction in accordance with general law. Upon the occurrence of an Event of Default, Factor may resort to any one or more of the following remedies. The exercise or election of any particular remedy shall not prevent the concurrent or subsequent exercise or election of any other available remedy:

(a) Declare any indebtedness secured hereby immediately due and payable.

(b) Exercise its rights as a Secured Party and enforce the security interest granted hereunder pursuant to applicable law, including, but not limited to, Factor's right to establish contact with and instruct any and all of Seller's customers to remit payment(s) due or to become due on Accounts directly to Factor at Factor's address, whether or not said payments relate to Accounts purchased by Factor hereunder. Furthermore, Factor shall have the right to establish contact with and instruct any other party from whom Seller may be entitled to receive monies now due or to become due in the future to remit said monies to Factor at Factor's address. In the event Factor deems it necessary to seek equitable relief, including, but not limited to, injunctive or receivership remedies, Seller waives any requirement that Factor post or otherwise obtain or procure any bond. Seller also waives any right to legal fees or costs in the event any equitable relief awarded is subsequently, vacated, dissolved or reversed for whatever reason(s).

(c) Immediately terminate this Agreement as to future transactions, without affecting the rights and obligations of the parties occurring with respect to prior transactions.

(d) Enter the premises of Seller and take possession of the Collateral and of records pertaining to the Accounts and the Collateral.

(e) Grant extensions, compromise claims and settle Accounts for less than face value, all without prior notice to or authority of Seller, except as granted herein.

(f) Exercise all other rights conferred by law or equity or under this Agreement and exercise any remedy existing at law or in equity for the collection of any indebtedness secured hereby and for the enforcement of the covenants and agreements contained in this Agreement. Factor shall be entitled to any form of equitable relief that may be appropriate without having to establish any inadequate remedy at law or other grounds other than to establish that its Collateral is subject to being improperly used, moved, dissipated or withheld from Factor. Factor shall be entitled to freeze, debit and/or effect a set-off against any fund or account Seller may maintain with any bank. In the event Factor deems it necessary to seek equitable relief, including, but not limited to, injunctive or receivership remedies, as a result of an Event of Default, Seller waives any requirement that Factor post or otherwise obtain or procure any bond. Alternatively, in the event Factor, in its sole and exclusive discretion, desires to procure and post a bond, Factor may procure and file with the court a bond in an amount up to and not greater than Ten Thousand Dollars (\$10,000.00) notwithstanding any common or statutory law requirement to the contrary. Upon Factor's posting of such bond it shall be entitled to all benefits as if such bond was posted in compliance with applicable law. Seller also waives any right it may be entitled to, including an award of legal fees or costs, in the event any equitable relief sought by and awarded to Factor is thereafter, for whatever reason(s), vacated, dissolved or reversed. All post-judgment interest shall bear interest at either the contract rate, 18% per annum or such higher rate as may be allowed by law.

13. **Financial Statements.** Seller agrees to keep proper books of record which books shall at all times be open to inspection by Factor. In addition, Seller shall furnish Factor upon request any prior or current income statement, balance sheet, tax return and report, along with any other supplementary financial information requested. Factor shall have the right, at all times during normal business hours, without prior written notice, to examine and make extracts from all books and records of Seller.

14. **Reimbursable Expenses.** In the course of investigating, approving, purchasing and collecting Accounts purchased under this Agreement, Factor may incur routine and/or extraordinary expenses, including, but not limited to long distance telephone, postage, wire transfers, overnight mail delivery, courier delivery, cheque certification, PPSA search and filing fees, other lien search fees, facsimile transmissions, auditing and legal fees, all of which shall be reimbursed to Factor by Seller upon demand or deducted from the proceeds payable on a purchased Account or from the Reserve.

15. **Account Debtor Claims.** Seller shall notify Factor of the assertion of any claim, including any defences, dispute or offset by an Account Debtor with respect to an Account purchased by and assigned to Factor or the merchandise or service relating thereto within three (3) days after receiving such information. Seller may settle all such claims with Factor's approval and at Seller's expense. Factor may, in its sole discretion, opt to settle any Account Debtor claim directly with the Account Debtor involved, at the Seller's expense, upon such terms as Factor may deem advisable at which time Seller shall cease any communications with the respective Account Debtor. In the event Factor exercises its right to settle and compromise Account Debtor claims, Seller hereby specifically agrees to the terms, conditions and provisions of any and all settlements, compromises and other agreements, oral or written, entered into by Factor and

Factor shall be deemed authorized to execute all releases, settlements or compromise agreements, and receive, for and in Seller's name, all money and property that Factor may receive in settlement, release or compromise of Account Debtor claims. The foregoing is discretionary upon the part of Factor and Seller shall have no right to demand or require Factor's exercise of the aforesaid rights. Factor's failure to agree shall not otherwise adversely affect any right(s) of Factor or Seller's waiver(s) herein. In the event of any claim against an Account by the Account Debtor or a breach by Seller of any representation hereunder as to an Account purchased by and assigned to Factor, Seller shall pay the unpaid balance of said Account in accordance with the provision of paragraph 7 above.

16. Lawyer's Fees. Seller agrees to pay all reasonable lawyer's fees, court costs and expenses incurred by Factor or its counsel in the event that Factor retains counsel for the purpose of enforcing any rights arising out of the relationship between Seller and Factor or under this Agreement. Seller also acknowledges that Factor may charge and/or setoff against Seller's Reserve all such fees and costs as they are incurred. Notwithstanding the existence of any law, statute, rule, or procedure in any jurisdiction which may provide Seller with a right to lawyer's fees or costs, Seller hereby waives any and all rights to hereafter seek lawyer's fees or costs there under and Seller agrees that Factor exclusively shall be entitled to indemnification and recovery of any and all lawyer's fees or costs in respect to any litigation based hereon, arising out of, or related hereto, whether under, or in connection with, this and/or any agreement executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

17. Notice. Except for routine day to day business communications, any notice or communication required hereunder shall be in writing and given by personal delivery or delivery service or sent by regular, registered or certified mail, postage prepaid to the addressee at the address shown above or at the most current address that the party has from time to time designated in writing.

18. Term. This Agreement shall be effective from the date hereof and shall continue in full force and effect for as long as a balance is owed to Factor from Seller and Factor, whether under this Agreement or otherwise, and for so long as Factor has an outstanding PPSA registration against Seller. Factor or Seller shall be entitled to terminate this Agreement at any time by giving thirty (30) days prior written notice. In addition, Factor shall have the right for any reason or no reason to terminate this Agreement at any time without prior written or oral notice upon the occurrence of an Event of Default. Upon the effective date of termination, all of Seller's obligations, whether incurred under this Agreement or any amendment or supplement thereto or otherwise, shall become immediately due and payable without notice or demand. Notwithstanding any termination, until all of Seller's obligations of every nature whatsoever shall have been fully paid and satisfied, Factor shall retain Factor's security interest in and title to all existing and future Accounts and other Collateral held by Factor hereunder. Until final termination following the notice thereof, Seller shall continue to offer all Accounts to Factor and Factor shall be under no obligation to make any further Advances or purchase any Account. Any termination of this Agreement shall not serve to release any security interest granted herein until all Accounts purchased hereunder and all indebtedness of Seller to Factor has been paid in full

nor shall such termination affect any of the obligations incurred by the parties hereto.

19. **Indemnification.** Seller shall indemnify, defend and save Factor harmless from and against any and all liability, claims, suits, demands, damages, judgments, costs, interest and expenses (including, but not limited to attorney's fees and costs) to which Factor may be subject including any loss arising out of the assertion of any Claim that is made by a party-in-interest in a bankruptcy proceeding that any payment received by Factor from or for the account of an Account Debtor is avoidable under the *Bankruptcy and Insolvency Act* (Canada) or any other debtor relief statute or suffer by reason of any liability or claim arising or resulting from Seller's acts or omission to do any act. This paragraph 19 shall survive termination of this Agreement.

20. **Binding on Future Parties.** The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, estate trustees, personal representatives, successors and assigns. Seller may not assign this Agreement or any of Seller's rights hereunder to any person without Factor's prior written consent and this Agreement shall be deemed to be one of financial accommodation and not assumable by any debtor, trustee or debtor-in-possession in any bankruptcy proceeding without Factor's express written consent and may be suspended in the event a petition in bankruptcy is filed by or against Seller.

21. **No Waiver.** No failure or delay by Factor in exercising any of Factor's powers or rights hereunder, or under any present or future supplement hereto or under any other agreement between Factor and Seller shall operate as a waiver thereof; nor shall any single or partial exercise of any such power or right preclude other or further exercise thereof or the exercise of any other right or power. Factor's rights, remedies and benefits hereunder are cumulative and not exclusive of any rights, remedies or benefits which Factor may have. No waiver by Factor of any provision hereunder shall be deemed to extend to any other provision hereunder.

22. **Severability.** Each and every provision, condition, covenant and representation contained in this Agreement is and shall be construed to be a separate and independent covenant and agreement. In the event any term or provision of this Agreement shall to any extent be declared illegal, contrary to law, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and this Agreement shall continue in full force and effect as though such term or provision had not been incorporated herein.

23. **Miscellaneous.**

(a) This Agreement is deemed made and shall be governed, interpreted and construed in accordance with the laws of the Province of Ontario.

(b) If two or more individuals, corporations, limited liability companies, partnerships or other business entities or associations (or any combination of two or more thereof) are named above and execute this Agreement as Seller, the liability of each such individual, corporation, partnership, limited liability company or other business entity or association under this Agreement shall be joint and several and the release or discharge by Factor of one shall not

release or discharge the others. In like manner, if Seller named in this Agreement is a partnership or other business entity or association, the members of which are by virtue of statutory or general law subject to personal liability, the liability of each such member shall be joint and several and the release or discharge by Factor of one shall not release or discharge the others. This Agreement shall be interpreted to reflect multiple parties being named and executing this Agreement as Seller. By way of example, the term "Account" includes an account receivable for any party or parties named and executing this Agreement as Seller.

(c) Factor's books and records shall be admissible in evidence without objection as conclusive evidence of the status of the obligations between Factor and Seller. Each statement, report, or accounting rendered or issued by Factor to Seller shall be deemed conclusively accurate and binding on Seller unless within thirty (30) days after the date of issuance Seller notifies Factor to the contrary by registered or certified mail, setting forth with specificity each reason why Seller believes such statement, report, or accounting or any portion thereof is inaccurate, what Seller believes to be correct amount(s) therefor, and supplies detailed, written support for Seller's objection(s). Seller's failure to receive any monthly statement shall not relieve it of the responsibility to request such statement and Seller's failure to do so shall nonetheless bind Seller to whatever Factor's records would have reported.

(d) Any legal proceeding with respect to any controversy arising under, out of, or relating to this Agreement, any amendment or supplement thereto or to any transactions in connection therewith whether asserted by way of claim, counterclaim, cross claim or otherwise shall be brought and litigated only in the Province of Ontario, in the City of Toronto or in any county in which Factor has a business location, the selection of which shall be in the exclusive discretion of Factor. Seller hereby waives and agrees not to assert, by way of motion, as a defence or otherwise, that any such proceeding, is brought in any inconvenient forum or that the venue thereof is improper.

(e) Seller expressly authorizes Factor to access the systems of and/or communicate with any shipping or trucking company in order to obtain or verify tracking, shipment or delivery status of any merchandise regarding an Account.

(f) Seller acknowledges that there is no, and it will not seek or attempt to establish any, fiduciary relationship between Factor and Seller, and Seller waives any right to assert, now or in the future, the existence or creation of any fiduciary or joint venture relationship between Factor and Seller in any action or proceeding (whether by way of claim, counterclaim, cross claim or otherwise) for damages.

(g) This Agreement (including any addenda executed contemporaneously herewith) is a complete and final agreement, reflects Seller's and Factor's mutual understanding, supersedes any prior agreement or understanding between the parties, and may not be modified or amended orally. But for the promises and representations expressly contained in this Agreement, no other promise or representation of any kind has been made to induce either party to execute this Agreement. Furthermore, Seller and Factor acknowledge that if any such promise or representation has been made, neither has relied, nor shall either be entitled to rely, upon any

such promise or representation in deciding to enter into this Agreement.

(h) In the event Seller's principals, officers or directors form a new entity, whether corporate, partnership, limited liability company or otherwise, similar to that of Seller during the term of this Agreement or merge into any other entity (regardless of whether Seller is the surviving entity), such entity shall be deemed to have expressly assumed the obligations due Factor by Seller under this Agreement. Upon the formation of any such entity, Factor shall be deemed to have been granted an irrevocable power of attorney with authority to execute, on behalf of the newly formed successor business, a PPSA or Uniform Commercial Code financing statement or amendment and have it filed with the appropriate PPSA or Uniform Commercial Code filing office. Factor shall be held-harmless and be relieved of any liability by Seller or such new entity as a result of Factor's filing any PPSA or Uniform Commercial Code financing statement or the resulting perfection of a lien or security interest in any of the successor entity's assets. In addition, Factor shall have the right to notify the successor entity's account debtors of Factor's security interests and lien rights, its right to collect all Accounts, and to notify any new lender who has perfected a security interest or lien in such successor entity's assets.

(i) Seller acknowledges that Factor may obtain financing from a bank or other financial institution or financing sources and in connection herewith: (a) consents to Factor's granting such financial institution or financing source a security interest in all of its rights under Agreement, the documents executed in connection therewith and all collateral thereunder; and (b) agrees that such financial institution or financing source shall be a beneficiary of all its representations, warranties and covenants in this Agreement and may exercise any power of attorney given by Seller to Factor under this Agreement or otherwise.

(j) **Seller and Factor hereby irrevocably waive any right either may have to a trial by jury in respect of any litigation directly or indirectly at any time arising out of, under or in connection with this Agreement or any transaction contemplated hereby or associated herewith. Seller irrevocably waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any such litigation any special, exemplary, punitive or consequential damages, or damages other than, or in addition to, actual damages. Seller certifies that no party hereto nor any representative or agent or counsel for any party hereto has represented, expressly or otherwise, or implied that such party would not, in the event of litigation, seek to enforce the foregoing waivers. Seller acknowledges that Factor has been induced to enter into this Agreement and the transactions contemplated hereby, in part, as a result of the mutual waivers and certifications contained in this paragraph.**

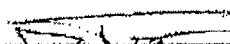
24. **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope of meaning of the paragraphs hereof.

25. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Signatures may be affixed manually or digitally and delivery of an executed counterpart of the signature pages to this Agreement by facsimile or by electronic means shall be

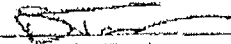
effective as delivery of a manually executed counterpart of this Agreement, and any party delivering such an executed counterpart of this Agreement or facsimile or electronic means to any other party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

SELLER

1635536 ONTARIO INC.

By: 
Name: David Taylor
Title: President

VERSITEC MARINE USA INC.

By: 
Name: David Taylor
Title: President

Executed June 21, 2017

APPENDIX B

FORBEARANCE AGREEMENT

THIS AGREEMENT is made as of the 25th day of April, 2019

AMONG:

**1635536 ONTARIO INC., o/a VERSITEC MARINE &
INDUSTRIAL**

a corporation incorporated pursuant to the Laws of
the Province of Ontario

(a borrower hereinafter individually called "**Versitec Canada**")
OF THE FIRST PART;

-and-

VERSITEC MARINE USA INC.

a corporation incorporated pursuant to the Laws of
the State of Delaware

(a guarantor hereinafter individually called "**Versitec USA**" and
collectively with Versitec Canada as the "**Borrowers**")
OF THE SECOND PART;

- and -

**REUBEN KARY BYRD, of
Boca Raton, Florida**

(a guarantor hereinafter individually referred to as ("**BYRD** ")
and collectively a "**Guarantor**")

OF THE THIRD PART;

- and -

**DAVID TAYLOR, of
Port Colborne, Ontario**

(a guarantor hereinafter individually referred to as ("**TAYLOR**")
and collectively a "**Guarantor**")

OF THE FOURTH PART;

-and-

VERSITEC MARINE HOLDINGS INC.

a corporation incorporated pursuant to the Laws of
the Province of Ontario

(a guarantor hereinafter individually called "**Holdings**" and
collectively as a "**Guarantor**")

OF THE FIFTH PART;

- 2 -

-and -

LIQUID CAPITAL EXCHANGE CORP.
 5734 Yonge Street, Suite 400
 Toronto, ON M2M 4E7

(hereinafter called "Liquid Capital")

OF THE SIXTH PART

1. **INDEBTEDNESS OF THE BORROWER**

WHEREAS the Borrowers carry on business as an equipment manufacturer and service supplier.

AND WHEREAS the Borrower is party to various documents and agreements which establish credit facility arrangements between Liquid Capital, as lender, and each of Versitec Canada and Versitec USA, as borrowers, pursuant to: (i) a financing facility agreement dated June 21, 2017 providing for a \$500,000 Canadian & US Dollars loan, (the "Facility Agreement"); and (ii) a purchase and sale agreement dated June 21, 2017 providing for the purchase by Liquid Capital and the sale by the Borrowers of certain accounts receivable of the Borrowers (the "Purchase Agreement", and together with the Facility Agreement, the "Borrower Documents").

AND WHEREAS particulars of the aggregate Borrower Indebtedness to Liquid Capital as of April 25, 2019 are as follows:

A. **FACILITY INDEBTEDNESS – CANADIAN DOLLARS**

PRINCIPAL AMOUNT OWING	CAD\$49,557.96
INTEREST ACCRUED TO AND INCLUDING April 25, 2019	16,013.58
TOTAL INDEBTEDNESS (the "CAD Indebtedness")	\$65,571.54

* per diem interest is CAD\$45.72 and continues to accrue

B. **FACILITY INDEBTEDNESS – UNITED STATES DOLLARS**

PRINCIPAL AMOUNT OWING	USD\$0
INTEREST ACCRUED TO AND INCLUDING April 2, 2019	0
TOTAL INDEBTEDNESS (the "USD Indebtedness", and together with the CAD Indebtedness, the "Indebtedness")	\$0

* per diem interest is USD\$0 and continues to accrue

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C. SECURITY GRANTED BY BORROWER

AND WHEREAS as security for the Indebtedness, and for any other monies advanced, or as may be advanced in the future by Liquid Capital to the Borrowers, and for all other present and future indebtedness, fees, expenses and other liabilities, direct or indirect, absolute or contingent, due from time to time by Liquid Capital to the Borrowers (collectively, the "Obligations"), the Borrowers granted to Liquid Capital security over its assets and undertaking consisting of a General Security Agreement dated June 21, 2017 (the "Security").

D. GUARANTEES IN SUPPORT OF THE INDEBTEDNESS

AND WHEREAS the Obligations were guaranteed by each of Byrd, Taylor and Versitec Marine Holdings pursuant to separate written continuing guarantee and postponement of claim agreements, each dated June 21, 2017 (collectively, the "Guarantees").

E. DEFAULT

AND WHEREAS each of the Borrowers and Guarantors acknowledges and agrees that various defaults have occurred under the Borrower Documents, which include, without limitation, the collection of funds and payments from various companies under invoices that had been factored and assigned to Liquid Capital. The failure to remit the foregoing funds constitutes a breach of trust by the Borrowers under the Borrower Documents. The other defaults under the Borrower Documents are more particularly set for in the letter of demand dated November 16, 2018 and issued by Liquid Capital to the Borrowers and the Guarantors.

F. FORBEARANCE

AND WHEREAS each of the Borrowers and the Guarantors have requested Liquid Capital not effect realization on the Security or upon their respective guarantees, and that Liquid Capital allow the Borrowers a Forbearance Period, as hereinafter set out, within which the Borrowers will obtain refinancing in an amount sufficient to fully repay the Indebtedness on or before the end of the Forbearance Period.

AND WHEREAS this Agreement reflects the terms upon which Liquid Capital is agreeable to not immediately take steps to exercise on the Security and the Guarantees and to forbear (having made demand and issuance of Notice of Intention to Enforce Security ("NITES")), which forbearance shall only be effective provided all terms contained in this Agreement are fully complied with.

AND WHEREAS the Borrowers and each Guarantor acknowledges and confirms that Liquid Capital issued a demand for repayment to each of them and also issued NITES to each of them, and all of them each hereby request that Liquid Capital forbear in accordance with the terms contained herein, and to not enforce on such demand and NITES, the security granted by the Borrowers, or on the Guarantees, all as hereinafter more particularly set out.

AND WHEREAS Liquid Capital has agreed, in reliance upon the representation, warranties and covenants of the Borrowers and each Guarantor contained in this Agreement, and

subject to the terms and conditions contained herein being fully performed, to permit the parties hereto a Forbearance Period. The Borrowers and the Guarantors each agree to the Forbearance Terms and Forbearance Period as set out in this Forbearance Agreement ("Agreement") and each of them acknowledge the terms and Forbearance Period are reasonable.

2. REQUEST FOR FORBEARANCE FROM ENFORCING SECURITY

Each of the Borrowers and the Guarantors, have requested Liquid Capital refrain from effecting on the respective security pledged to Liquid Capital and on the Guarantees given for the Indebtedness until the earlier of (1) December 31, 2019; (2) an Event of Default (as herein after defined) terminating the Forbearance Agreement ("**Forbearance Period**").

3. ACKNOWLEDGMENTS

The Borrowers and each Guarantor jointly and severally, irrevocably and unconditionally acknowledge, represent, warrant and confirm that Liquid Capital is acting herein strictly in reliance upon the representations, warranties and covenants of each of the Borrowers and the Guarantors that:

- (a) each of the documents and agreements comprising the Security is valid and enforceable in accordance with its terms;
- (b) the Forbearance Period is reasonable and accepted by them as such;
- (c) the guarantees given by each of Byrd, Taylor and Versitec Marine Holdings, with respect to the Indebtedness, are valid and enforceable in accordance with its terms;
- (d) there has been a change in ownership of the Borrowers as follows:
 - (i) David Carpenter is no longer an employee with the Borrowers;
 - (ii) Reuben Byrd is a new investor and the CEO of the Borrowers;
 - (iii) Reuben Byrd has agreed to sign a personal guarantee of the obligations of the Borrower to Liquid Capital and Liquid Capital has agreed to enter into this Forbearance Agreement and continue factoring services, as outlined herein, in reliance on such guarantee;
- (e) except as provided in this Agreement or applicable law, Liquid Capital, having delivered demand and NITBS as herein set out, is in a position to take steps to enforce on the Security, and on the Guarantees, and pursue all remedies with respect to the obligations of each of the Borrowers and each Guarantor, as it may deem appropriate;
- (f) except as provided in this Agreement, Liquid Capital (either by itself or through its officers, employees or agents or advisors) has made no promises or statement (express or implied, verbal or otherwise), nor has it taken any action or omitted to take any action that would constitute a waiver of its rights to enforce on the

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Security and the Guarantees given in support of the Indebtedness, and pursue its remedies in respect of the obligations of the Borrowers and the Guarantors, including, but not limited to, the Security and the Guarantees;

- (g) The Borrowers will operate solely at their respective leased premises and carry on business in the normal course at all times, and all inventory, accounts receivable, equipment and other assets (including intangibles) used or owned by each of the Borrowers shall at all times continue to be owned by it for its own account and each of the Borrowers will daily and promptly deposit all receivables, and any other income sources, solely in its respective corporate bank account;
- (h) in the event of a default in one or more terms of this Forbearance Agreement, and an Event of Default notice being given (which default has not been specifically waived in writing by Liquid Capital), and a resultant termination of the Forbearance Period, the Borrowers and the Guarantors each acknowledge that the agreement by Liquid Capital to forbear shall automatically, and without further notice thereafter, terminate and be of no further force or effect, it being expressly agreed that the effect of termination will be to permit Liquid Capital to exercise its rights and remedies immediately, including, without limitation, the appointment of a Receiver-Manager ("**R**eciever") or a trustee in bankruptcy of the assets and undertaking of the Borrowers and to enforce on the Security and the Guarantees;
- (i) The Borrowers hereby expressly acknowledge and confirm their liability for the Indebtedness to Liquid Capital and the Guarantors confirm their Guarantees and that they are valid and enforceable in accordance with the terms of their respective Guarantees.
- (j) The Borrowers and the Guarantors confirm that the demand and NITES sent to them remain in full force and effect throughout the Forbearance Period and that Liquid Capital has not, and will not be deemed to have waived, varied, altered or in any other manner whatsoever withdrawn same. Each of the Borrowers and the Guarantors further acknowledge, consent, and confirm that Liquid Capital may continue to rely on the Demand and NITES and in the event of default hereunder, Liquid Capital shall be entitled to act on them without the need to issue any further or fresh Demand and/or NITES;
- (k) The Borrowers and the Guarantors each acknowledge and confirm that their respective liability for the Indebtedness are valid and enforceable in accordance with the respective loan term agreements and for guarantee agreements and that neither the Borrowers nor the Guarantors have any valid defence, claim, cause of action, counterclaim or rights of setoff or right of reduction or any other claim (in law or in equity) of any kind or nature whatsoever against Liquid Capital, its officers, directors or employees and confirm that Liquid Capital may, and is relying upon such acknowledgment as part of the consideration for entering into this Forbearance Agreement;
- (l) all statements contained in the recitals to this Forbearance Agreement are true and accurate in every respect and are incorporated herein;

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- (m) each of the Demands and NITES issued to the Borrowers and the Guarantors has been validly and effectively given to them and will remain in effect at all times until all Indebtedness and obligations are fully satisfied;
- (n) Liquid Capital has not waived, and shall not be deemed to have waived, any defaults by the Borrowers, and Liquid Capital is immediately entitled, subject only to the terms of this Forbearance Agreement, to take enforcement steps as it determines to do so;
- (o) the entering into of this Forbearance Agreement by Liquid Capital does not constitute a withdrawal or revocation of the Demands or NITES or a waiver of existing or future defaults, or events of default under this Forbearance Agreement or a waiver of the obligation to pay the entirety of the Indebtedness by or before the end of the Forbearance term;
- (p) this Forbearance Agreement has been duly authorized and duly executed and delivered by a duly authorized officer of each of the Borrowers and the Guarantors, that is not an individual, and constitutes a legal, valid and binding obligation of such Borrower and Guarantor, enforceable in accordance with the terms herein set out, and each Guarantor that is an individual has the legal capacity to enter into this Forbearance Agreement;
- (q) this Forbearance Agreement has been fairly and freely negotiated between commercial parties and their respective legal counsel and each party is entering into this Forbearance Agreement voluntarily and without duress, bad faith, unreasonable or oppressive conduct, undue influence or other unfair advantage of any kind by or on behalf of any party hereto;
- (r) as of the date of this Forbearance Agreement being executed, Liquid Capital has acted in a commercially reasonable manner and each of the Borrowers and the Guarantors confirm same and are estopped from disputing same; and
- (s) the facts as set out in the recitals to this Agreement are true and correct, and are incorporated herein and form an integral part of this Agreement and are given knowing they are being relied upon by Liquid Capital as part of the consideration to enter into this Forbearance Agreement.

4. **CONTINUATION OF FACTORING SERVICES UP TO \$600,000**

The purchase and sale of certain accounts receivable (the "Factoring Services") under the Terms of the Purchase Agreement, shall continue to be provided during the Forbearance Period, subject to the following, which shall amend the terms of the Purchase Agreement, as necessary to give effect the following:

- (a) each of the Borrowers shall be required to factor with Liquid Capital all of their respective accounts receivable which are acceptable to Liquid Capital;

- 7 -

- (b) all factored receivables shall be on a full notification basis to the applicable customers and with full recourse to the Borrowers and Guarantors, notwithstanding the factoring of such receivables to Liquid Capital;
- (c) A minimum of \$[600,000] of new accounts receivable of the Borrowers that are acceptable to Liquid Capital shall be factored immediately and the initial advance amount, together with any reserve payable on collection, shall be applied against the Indebtedness and all other amounts owing to Liquid Capital hereunder or under the Borrower's Documents, subject to the following deductions, which the Borrowers and the Guarantors agree shall be deducted from the initial advance:
 - (i) legal and other fees incurred by Liquid Capital, which shall include without limitation, legal fees and the fees of the Consultant (which is hereinafter defined); and
 - (ii) all amounts currently owing on account of the Indebtedness.
- (d) Effective immediately, the Borrower shall pay a 3% discount fee of the face value of the accounts receivable invoices purchased by Liquid Capital plus 0.1% per day on any amount that is not paid under such invoices after 30 days from the date of purchase.
- (e) The Borrowers shall comply with all of Liquid Capital's notification conditions and processes from time to time, which shall include, without limitation, the following:
 - (i) sign any required custom factor notification letters;
 - (ii) have a Liquid Capital assignment notification clearly printed on all invoices;
 - (iii) Liquid Capital is hereby authorized to contact and collect from the Borrower's customers any amounts owing under invoices that have been factored by Liquid Capital and to direct all payments owing by such customers to Liquid Capital or as it may otherwise direct; and;
- (f) accounts receivable eligible to be factored by Liquid Capital shall be limited to those accounts receivable that are credit insured by a Liquid Capital insurer or by the Borrowers under an Export Development Canada ("EDC") insurance policy, that is acceptable to Liquid Capital in its sole discretion. The Borrowers and Guarantors acknowledge and agree that all of the Borrowers' rights and benefits under their existing and any future EDC credit policies have been assigned pursuant to the Security. The Borrowers covenant and agree that they will sign such other documents and do such other things as may be requested by Liquid Capital in respect of the assignment of the assignment of the EDC insurance policies and the rights and benefits that arise therefrom.

5. COVENANTS

Each of the Borrowers and Guarantors covenants, acknowledges and agrees with Liquid Capital that:

- (a) Performance of all conditions and terms of this Agreement is an integral inducement for Liquid Capital to agree to enter into this Forbearance Agreement and that Liquid Capital is relying upon strict performance of all of the terms hereof and the accuracy and truthfulness of the representations and warranties provided herein as an inducement to enter into this Forbearance Agreement;
- (b) The Borrowers shall engage Newhouse Partners Inc. (the "**Consultant**") on the terms and conditions more particularly set forth in the engagement letter dated **[March 29, 2019]**. The Borrowers acknowledge and agree that any costs associated with the engagement of the Consultant will be for the account of the Borrowers alone and Liquid Capital shall have no obligation in respect of same.
- (c) The Borrowers acknowledge and agree that notwithstanding any provisions of the Purchase Agreement to the contrary, Liquid Capital may directly contact any of the Borrowers' account debtors whose accounts have been purchased by Liquid Capital pursuant to the Purchase Agreement in connection with collecting upon such accounts.
- (d) The Borrowers acknowledge and agree that Liquid Capital may continue to provide the Borrowers with factoring services pursuant to the terms of the Purchase Agreement, and subject to section 4 above, during the Forbearance Period in its sole and absolute discretion and Liquid Capital may hold back from any advance amount pursuant such continued factoring arrangements any additional reserves Liquid Capital deems necessary in connection therewith.
- (e) The Borrowers will forthwith provide to Liquid Capital:
 - (i) Payment to Liquid Capital of an extension and administrative fee of \$10,000 ("Fee") to partially reimburse Liquid Capital with respect to the time expended by it with respect to dealing with default issues and negotiating this Agreement. The Fee becomes fully earned, due and payable upon execution by all parties of this Forbearance Agreement. The Fee will be paid by the Borrowers to Liquid Capital on execution of this agreement, without further notice. The Borrowers will ensure there are sufficient funds in its account to pay the Fee;
 - (ii) The Borrowers acknowledge failure to obtain alternate funding sufficient to repay Liquid Capital in full by **December 31, 2019** will be an event of default enabling Liquid Capital to immediately terminate the Forbearance Period and forthwith take all steps it deems necessary to protect its loan and security therefore;

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- (iii) The Borrowers will not declare any dividends, nor repay any shareholders' loan, inter-corporate indebtedness or make any other payment to any corporation or person who does not deal at arm's length (as such term is defined in the *Income Tax Act* (Canada)) with it and no salaries, bonuses or other form of compensation, direct or indirect, will be paid out except as was paid to employees, officers and directors and with payment being consistent with past payment amounts;
- (iv) Each of the Borrowers covenants and warrants that all lease payments for the premises it carries on business from are and will be kept current. Each of the Borrowers covenant to immediately notify Liquid Capital of any non-payment of rent when due, or any other covenant breach by such Borrower of its lease;
- (v) The Borrowers will reimburse Liquid Capital for all expenses, including all legal fees and disbursements, that Liquid Capital has incurred or will incur arising out of its dealings with it, both to date and with respect to, and including the Forbearance Agreement, all matters related to payout, and in any protection, preservation and/or enforcement of the Security or the Guarantees, including the preparation of this Agreement, and covenants and agrees to fully reimburse Liquid Capital for all such expenses and legal fees and disbursements;
- (vi) The Borrowers will provide to Liquid Capital, in accordance with its loan agreement and credit facility terms, all reports, including, but not limited to, weekly reporting as required by Liquid Capital, including, but not limited to, weekly updated cash flow reports and bank statements for all accounts of the Borrowers, and in addition thereto, monthly reporting, including internally prepared financial reports, bank statements with copies of all cancelled cheques, and a statutory declaration signed by a director of the Borrowers, setting out all government priorities (including HST, withholding taxes, CPP and employment insurance), paid and payable, and that all wages to date of declaration are paid and that there are no unpaid monies due for government taxes, liens, deemed trust, super priorities and the Borrowers acknowledge failure to keep same current will be an event of default;
- (vii) prior to any contemplated sale or other disposition of any assets, including but not limited to, the premises lease, or equipment, out of the ordinary course of business, the Borrowers will provide Liquid Capital with full particulars of the contemplated transaction and will not carry out such transaction without the prior written consent of Liquid Capital having been first obtained; and
- (viii) Taylor agrees to provide a collateral charge against his property located at 518 King Street, Port Colborne, Ontario; and

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- (ix) Byrd agrees to provide a collateral charge against his property located at 19480 Saturnia Lakes Drive, Boca Raton, Florida or such local properties as Liquid Capital may agreed upon. To the extent required by law, Byrd covenants and agrees to obtain his spouse's consent to such charge and obtain independent legal advice for his spouse;
- (f) In order to ensure the smooth running and continued operations, the Borrowers agrees to use comfort letters and irrevocable directions as required to ensure key suppliers are paid. As at April 2, 2019 there is approximately \$450,000 of the Borrowers' accounts payable which need to be paid; and
- (g) While the Forbearance Agreement is in place, the Borrowers agree not to obtain or such any borrowings or loans from third parties, including without limitation, Merchant cash loan. In addition, the Borrowers agree, upon the request of Liquid Capital, to repay all outstanding loan obligations to Premium Capital Group Inc. and Merchant Advance Capital and to obtain the discharge of any security relating to these loans, which shall include the registration of financing statements under the *Personal Property Security Act* (Ontario) discharging such loans.

6. GUARANTOR ACKNOWLEDGEMENT

Each of the Guarantors confirms to Liquid Capital that each is cognisant of the current financial circumstances of the Borrowers for which it has guaranteed payment pursuant to its guarantee.

7. DELIVERY OF DOCUMENTS

The Borrowers and Guarantors shall deliver or cause to be delivered, the following documents, all in a form required by Liquid Capital on or before May 10, 2019:

- (a) Byrd shall deliver an unlimited guarantee using Liquid Capital's standard form guarantee;
- (b) the collateral charges referenced above shall be delivered;
- (c) the consulting agreement with the Consultant; and
- (d) this Forbearance Agreement.

8. CONSENT TO APPOINTMENT OF RECEIVER-MANAGER ("RECEIVER")

Receiver Application

Upon the earlier of (i) the expiry of the Forbearance Period without repayment in whole to Liquid Capital; or (ii) the occurrence of an Event of Default of which Liquid Capital has given the Borrowers and the Guarantors notice, Liquid Capital may immediately terminate all credit facilities, terminate its forbearance hereunder and the Forbearance Period, and take steps to enforce, without further notice or delay, all of its rights and remedies against each of the Borrowers and each Guarantor for such indebtedness, including taking steps to realize on the

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security and guarantees, which rights and remedies may, at the sole option of Liquid Capital include an application to Court for the appointment of a receiver or receiver-manager and each of the Borrowers and the Guarantors consent to such appointment of a receiver and agree that they do not, and will not, oppose such appointment and that Liquid Capital can rely upon the consent to appointment of a Receiver contained herein and that such consent shall be ongoing until such time as all Indebtedness is fully repaid. Each of the Borrowers and the Guarantors shall be estopped from disputing their respective consent to the appointment of a receiver following an event of default and termination of the forbearance term and this agreement.

9. EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") under this Agreement:

- (a) Liquid Capital shall not be repaid in full on or before [December 31], 2019;
- (b) failure to make any other payments to Liquid Capital on their due date;
- (c) failure to provide any reports, certificates, information or materials required to be provided to Liquid Capital pursuant to any Liquid Capital facility agreement, the security granted to Liquid Capital or this Agreement;
- (d) if any representation or warranty provided to Liquid Capital (herein or otherwise) by the parties hereto was incorrect when made or becomes incorrect;
- (e) failure to execute and deliver to Liquid Capital this Forbearance Agreement no later than May 10 2019 ;
- (f) failure to materially perform or comply with any of the covenants, terms, obligations or conditions contained in this Agreement, or in any other agreement or undertaking made between the parties hereto and Liquid Capital;
- (g) if the Security ceases to constitute a valid and perfected security interest against all assets of the Borrowers granted to Liquid Capital, ranking first in priority, or for any other reason Liquid Capital reasonably considers that its security, or any part thereof, is at risk;
- (h) the Borrowers or the Guarantors, or any of them, take any steps to challenge the validity or enforceability of Liquid Capital's security, the Indebtedness (which shall include without limitation, all indebtedness owing under any continued factoring services provided by Liquid Capital as set out herein, any security granted to Liquid Capital as security for the Indebtedness, the Guarantees, or this Agreement, or any parts thereof;
- (i) if, in Liquid Capital's commercially reasonable opinion, a material adverse change occurs in the business, affairs or condition of the Borrowers, financial or otherwise, arising for any reason whatsoever;

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- (j) default by the Borrowers under this Forbearance Agreement and for which default Liquid Capital declares an Event of Default and terminates this Agreement and the Forbearance Period;
- (k) if at any time during the forbearance term any of the Borrowers or the Guarantors consents to or makes a general assignment for the benefit of creditors or takes advantage of any insolvency, restructuring, reorganization, other creditor protection legislation, or takes any corporate steps in furtherance of the foregoing, or is declared a bankrupt, or if a liquidator, trustee in bankruptcy, custodian, interim receiver, receiver or receiver manager or other party with similar powers is appointed over the Borrowers or any step in furtherance of any of the foregoing is taken for the Borrowers; and
- (l) the expiry or early termination of this Forbearance Agreement without repayment of all indebtedness owing by the Borrowers to Liquid Capital.

10. **TOLLING ARRANGEMENTS**

- (a) as of the date hereof, and continuing until the termination of the Forbearance Period and thereafter, until the termination of the tolling arrangements hereof in the manner provided for herein, Liquid Capital, each of the Borrowers and the Guarantors hereby agree to toll and suspend the running of the applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Indebtedness, the security and the guarantees, and any entitlements arising from the indebtedness or the Security and any other related matters, and each of the parties confirms that this agreement is intended to be an agreement to suspend or extend the basic limitation period provided by Section 4 of the *Limitations Act*, 2002 (Ontario) as well as the ultimate limitation period provided by Section 15 of the *Limitations Act*, 2002 (Ontario) in accordance with the provisions of Section 22 (2) of the *Limitations Act*, 2002 (Ontario) and as a business agreement in accordance with the provisions of Section 22 (5) of the *Limitations Act*, 2002 (Ontario), and any contractual time limitation on the commencement of proceedings, any claims or defences based upon such applicable statute of limitations, contractual limitations, or any time related doctrine including waiver, estoppel or laches; and
- (b) the tolling provisions of this Forbearance Agreement will terminate upon either party providing the other with 60 clear days written notice of an intention to terminate the tolling provisions hereof, and upon the expiry of such 60 days' notice, and any time provided for under the statutes of limitations, laches, or any other doctrine related to the passage of time in relation to the indebtedness, the Security or any entitlements arising from the indebtedness of the Borrowers or the Security and guarantees, and any other related matters, will recommence running as of the effective date of such notice, and, for greater certainty, the time during which the limitation period is suspended pursuant to the tolling provisions of this Forbearance Agreement shall not be included in the computation of any limitation period.

11. ENFORCEMENT

Upon the occurrence of either an Event of Default or the non-payment of the Obligations of the Borrowers ("Termination Event"), Liquid Capital may forthwith take steps to terminate the Forbearance Period and enforce all security and pursue any or all remedies that it may have against either of the Borrowers and the Guarantors, including, without limitation, the appointment of a Receiver, or a Receiver and Manager over the Borrowers as Liquid Capital shall determine in its sole discretion.

12. CREDIT ENQUIRIES

If Liquid Capital is asked to respond to any credit enquiry concerning the Borrowers made by any other bank, financial institution or any other lending party, Liquid Capital may refuse to respond to such enquiry, unless each of the Borrowers and the Guarantors each consent in writing to Liquid Capital responding, and the Borrowers and the Guarantors, hereby release and discharge Liquid Capital in respect of any loss that the Borrowers and/or the Guarantors may suffer as a result of such refusal to respond, or arising from Liquid Capital responding following receipt of written confirmation by each of the Borrowers and the Guarantors to do so.

13. NO CLAIMS AGAINST LIQUID CAPITAL

- (a) Each of the Borrowers and the Guarantors, jointly and severally confirm that they do not dispute their liability to pay the indebtedness of the Borrowers or the amount they have guaranteed, on any basis whatsoever, and each of the Borrowers and the Guarantors have no cause of action, claim, set-off, counterclaim or damages, direct or indirect, contingent or otherwise, on any basis whatsoever (in law or in equity) against Liquid Capital as of the date of this Agreement.
- (b) The Borrowers and each of the Guarantors acknowledge that all security and guarantees for the indebtedness of the Borrowers granted to Liquid Capital, or any of it, has not been discharged, varied, waived, released, forgiven, amended, or altered in any manner whatsoever, and continues to be binding upon and is enforceable against it in accordance with its terms. The guarantors acknowledges that the guarantees granted by them to Liquid Capital as security for the Obligations of the Borrowers are in full force and effect and enforceable against them in accordance with the terms thereof.
- (c) Each of the Borrowers and the Guarantors (collectively the "Releasors") hereby releases, remises, acquits and forever discharges Liquid Capital, its officers, directors, employees, consultants and advisors (the "Released Parties") from any and all actions, causes of action, judgments, executions, suits, debts, claims, liabilities, obligations, setoffs, recouplements, counterclaims, defeuces, damages and expenses of any and every character, known or unknown, suspected or unsuspected, direct and/or indirect, at law or in equity of whatsoever kind or nature, whether heretofore or hereafter arising, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and after the date hereof, and in any way directly or indirectly arising out of or in any manner connected with the Forbearance Agreement, the loan facility

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documents, the security granted to Liquid Capital (and any enforcement relating thereto) (the "**Released Matters**"). Each Releasor acknowledges that the agreements in this section are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters and constitute a complete waiver of any right of setoff or recoupment, counterclaim or any other defence or cause of action of any nature whatsoever with respect to the Released Parties or which might limit or restrict the effectiveness or scope of its agreements in this section. Each Releasor represents and warrants that it has no knowledge of any claim by it against the Released Parties or any facts, or acts or omissions of the Released Parties which is not released hereby. Each Releasor represents that it has not purported to transfer, assign, pledge or otherwise convey any of its rights, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full and complete release of all Released Matters. The Releasors have granted this release freely and voluntarily and without duress.

- (d) Each of the Borrowers acknowledges and agrees with Liquid Capital that with respect to this Agreement, nothing contained herein, or any agreement with Liquid Capital referred to herein, shall have the effect of changing the nature of any part of the Obligations which are characterized as demand facilities from a demand facility, subject to the terms of this Agreement. This Agreement will not discharge or constitute novation of any debt, obligation, covenant or obligation contained in any agreement with Liquid Capital or any security, and same shall remain in full force and effect, save to the extent it is specifically amended by the provisions of this Agreement.

14. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All representations and warranties made in this Forbearance Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Forbearance Agreement and such other document and shall not affect the continuation of all such representations and warranties and the right of Liquid Capital to rely upon them.

15. **NOTICE**

Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party pursuant to this Agreement shall be conclusively deemed to have been received by such party on the next business day following the sending of the notice by prepaid private courier or on the next business day if sent by facsimile to such party at his, her or its facsimile number and address noted on the first page of this Agreement. Any party may change his, her or its address for service by notice given in the foregoing manner. In the case of The Borrowers and the Guarantors, the address for service as of the date of this Agreement is:

1635536 Ontario Inc.
4 Stonebridge Drive, Unit 4
Port Colborne, Ontario L3K 5V4
Attention: David Taylor

Versitec Marine USA Inc.

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1623 Military Road, #283
Niagara Falls, New York, USA 14304
Attention: David Taylor

David Taylor
4 Stonebridge Drive, Unit 4, Port Colborne,
Ontario, L4K 5V5 Email:
dtaylor@versitecmarine.com

Reuben Kary Byrd 19480 Saturnia Lakes
Drive, Boca Raton, Florida 33498
Email: rbyrd@versitecmarine.com

Liquid Capital Exchange Corp.
5734 Yonge Street, Suite 400
Toronto, ON M2M 4E7
Attention: Jonathan Brindley
Email: jbrindley@liquidcapitalcorp.com

- with a copy to -
Torkin Manes LLP
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7
Attention: Jeffrey Alpert
Email: jalpert@torkinmanes.com

16. TIME OF THE ESSENCE

Each of the parties hereto acknowledges that time is of the essence of this Agreement. A waiver by Liquid Capital of any default, event of default, breach or non-compliance under this Agreement is not effective unless in writing and executed by Liquid Capital confirming such waiver by Liquid Capital.

17. FURTHER ASSURANCES

Each party agrees to promptly do, make, execute and deliver all such further acts, documents and instruments as Liquid Capital may reasonably require to allow Liquid Capital to enforce any of its rights under this Agreement and to give effect to the intention of this Agreement.

18. LAWS OF ONTARIO

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada (without regard to any rules or principles relating to conflicts of law) applicable therein. The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the Courts of the Province of Ontario and the Provincial and federal laws of Canada applicable thereto. Notwithstanding the provisions herein, each of the Borrowers and the Guarantors acknowledge

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and agree that Liquid Capital shall be at liberty to take enforcement proceedings, including appointment of a Receiver, in the [Province of Ontario or the State of New York] should Liquid Capital so determine to do so.

19. GENERAL

If any provision of this Agreement shall be deemed by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executors and successors.

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except by written consent executed by all parties. No provision of this Agreement shall be deemed waived by any course of conduct unless such waiver is in writing and signed by all parties, specifically stating that it is intended to modify this Agreement. In the event of a contradiction between the terms and conditions of this Agreement, and the terms and conditions of the security, the terms and conditions of this Agreement shall prevail.

20. LEGAL ADVICE

Each of the Borrowers and the Guarantors acknowledge they have reviewed this Agreement in its entirety with their legal counsel prior to executing same, and execute this Agreement with full capacity to do so, freely and voluntarily, with full knowledge and understanding of the contents and obligations contained herein and acknowledge Liquid Capital has advised them to seek legal advice before executing this Agreement.

21. COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Agreement may be executed as an original hereof or by facsimile transmission, with an original to be exchanged between the parties hereto forthwith thereafter.

22. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective permitted successors and assigns.

23. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and may not be amended or modified except by written consent executed by all parties. No provision of this Agreement shall be deemed waived by any course of conduct unless such waiver is in writing and executed by all parties, specifically stating that it is intended to modify this Agreement. In the event of a contradiction between the terms and conditions of this Agreement and terms of any credit facility with the Borrowers, the terms hereof to the extent applicable, shall prevail.

IN WITNESS WHEREOF AND FOR VALUABLE CONSIDERATION, this Agreement has been executed, sealed and delivered by the parties hereto.

1635536 ONTARIO INC.

Per: [Signature]
Name: DAVE Taylor
Title: President
I have the authority to bind the corporation

VERSITEC MARINE USA INC.

Per: [Signature]
Name: DAVE TAYLOR
Title: President
I have the authority to bind the corporation

VERSITEC MARINE HOLDING INC.

Per: _____
Name: DAVE TAYLOR
Title: President
I have the authority to bind the corporation

[Signature]
Witness

[Signature]
DAVID TAYLOR

Witness

REUBEN BYRD

LIQUID CAPITAL EXCHANGE CORP.

Per: _____
Name:
Title:
I have the authority to bind the corporation

APPENDIX C

John Morgan

From: John Morgan
Sent: October 27, 2020 11:45 AM
To: jonathan.brindley@myliquidcapital.com
Cc: Calvin Ho; Stewart Thom
Subject: A/R and cash reserve reconciliation

Good day Jonathan

As a further response to your request a discussion on Versitec the material that I prepared on the subject (A/R and escrow cash balances) along with all the back up source documents was sent by Calvin to Stewart on the 22nd of September 2020 which resulted in a zoom meeting between myself, yourself and Pia on September 28, 2020. You had stated that you had received all the material and that a review and reconciliation would be forthcoming within the week from LCX. It is now a month since we last discussed this and I have not received any comments on that material . Can you advise when I might receive it and if so might I suggest that we defer the discussion until after I have had a chance to review LCX's points on the matter. Can you please advise.

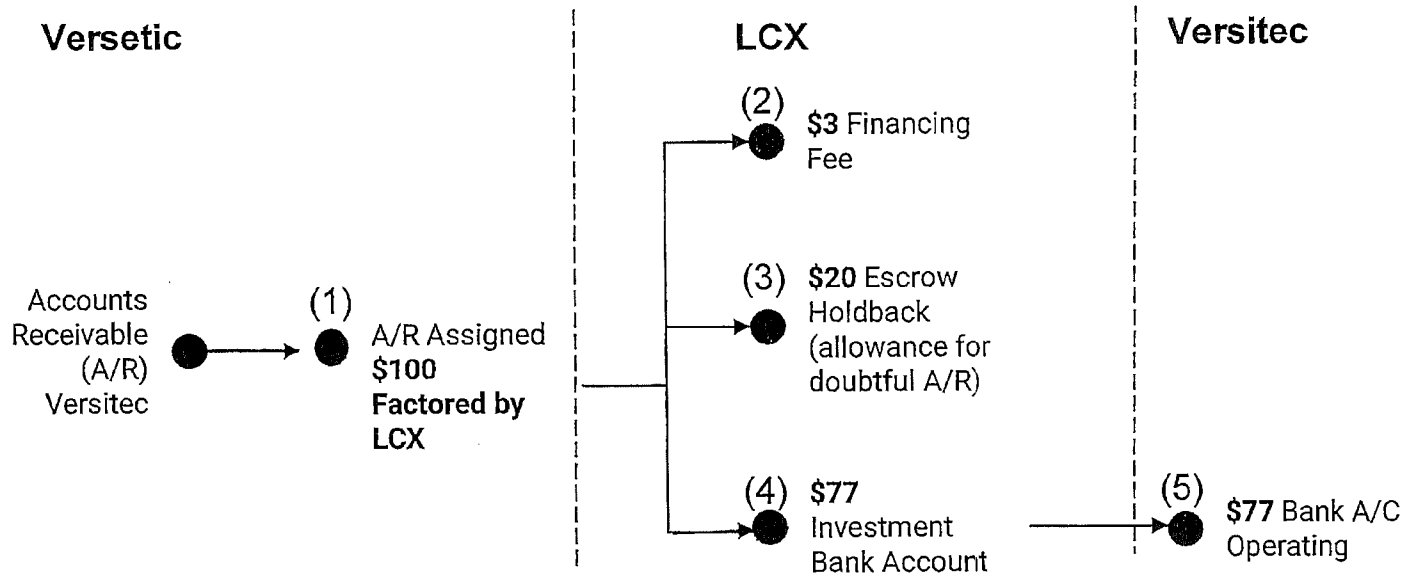
John Morgan, CPA, CA, CIRP, LIT, CFE, CBM
President

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

www.morgantrustees.com

APPENDIX D

Funding Under The Factoring Agreement

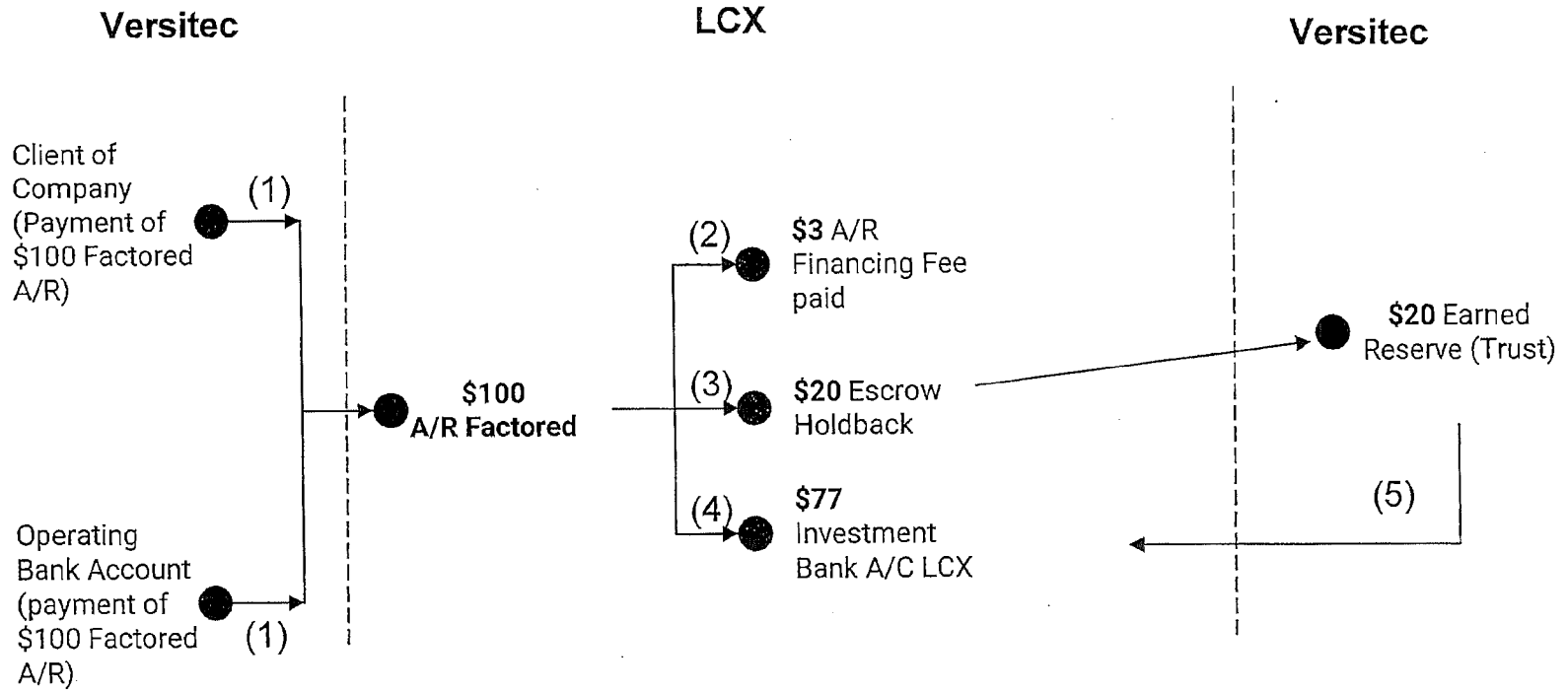


I
Funding Under The Factoring Agreement

Notes:

- (1) Assignment of \$100 Face Value
- (2) - (4) Funding of \$100 less \$3 for financing & \$20 for Escrow Holdback
- (5) Funding of net \$77/\$100 face value of A/R

II
Payment of 100% Accounts Receivable



II

Payment of 100% Accounts Receivable

Notes:

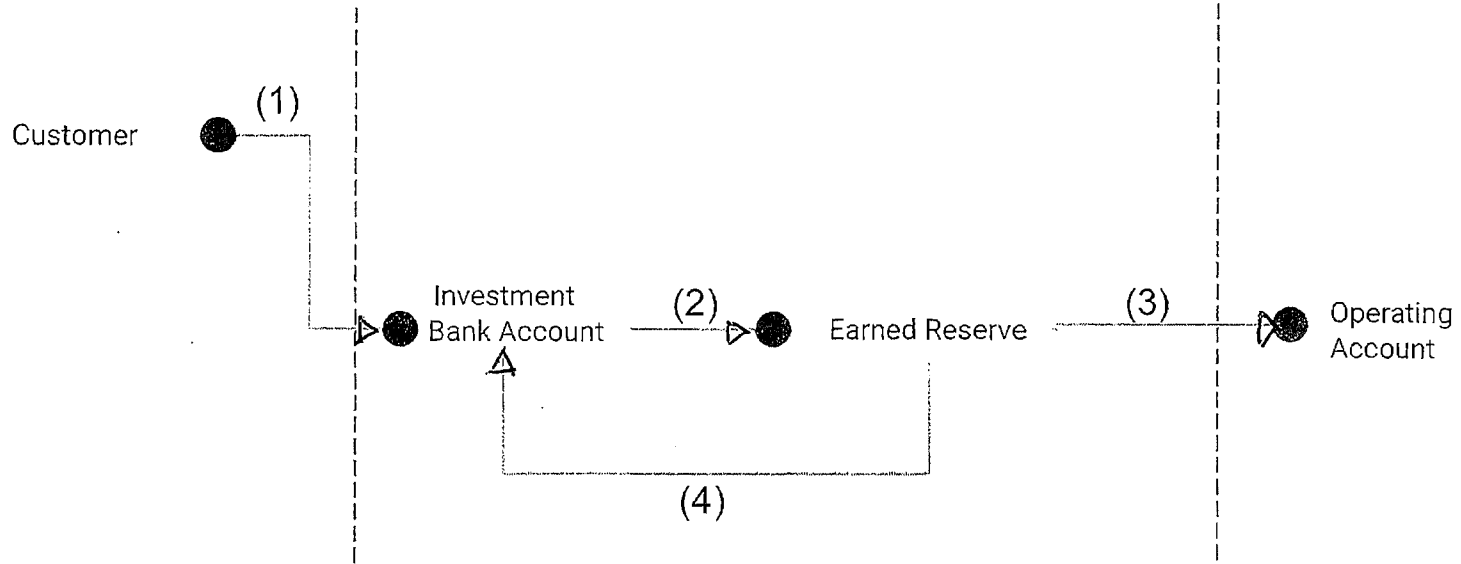
- (1) Received \$100 face value of assigned A/R
- (2) - (4) Records paid recovery of financing fee & establishes trust account for Versitec
- (4) LCX recovers initial payment of \$77
- (5) Earned Reserve held in Investment Bank a/c of LCX on behalf of Versitec

III
Receipts Paid to LCX not on Factored A/R

Versitec

LCX

Versitec



III
Receipts Paid to LCX not on Factored A/R

Notes:

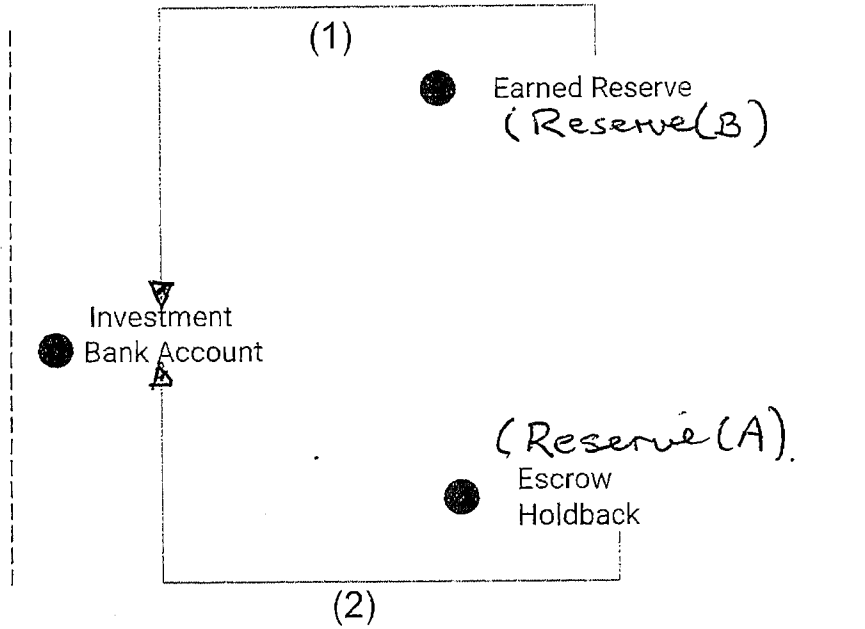
- (1) Customer directed by LCX to send funds directly per assignment agreement to LCX. Customer sends funds that are non factored in error.
- (2) - (4) Funds not returned to Versitec ^{but} kept by LCX in Investment Account

IV
Chargeback

Versitec

LCX

Versitec



IV
Chargeback

Notes:

(1) - (2) Chargeback at discretion of LCX via Chargeback (CB) notation per agreement

APPENDIX E
SUMMARY

Versitec Summary
amended January 13, 2022

	<u>A/R factored</u> <u>net</u>	<u>Reserve (B)</u>	<u>Total</u>	<u>deduct</u> <u>(Note 1)</u> <u>Fees to Oct 10,2020</u>	<u>add</u> <u>(Note2)</u> <u>payment to LCX</u> <u>from MPI</u>	<u>Revised as of</u> <u>March 4, 2020</u>
1635536 Ontario Inc A/C 4822 Cdn\$	\$ 73,179.98	-\$ 159,892.24	-\$ 86,712.26	-\$ 66,102.00	60,000.00	-\$ 92,814.26
1635536 Ontario Inc A/c 4821 US \$	86,603.78	- 35,283.01	51,320.77	- 37,342.49		\$ 13,978.28
VMI USA A/C 4820U	62,129.35	- 155,472.90	- 93,343.55	- 29,536.56		-\$ 122,880.11
Total US amounts	148,733.13	- 190,755.91	-\$ 42,022.78	- 66,879.05		-\$ 108,901.83
converted to CDN\$ 1.25 CDN	185,916.41	- 238,444.89	- 52,528.48	- 83,598.81		-\$ 136,127.29
total in CDN \$ as at 04-Mar-20	<u>\$ 259,096.39</u>	<u>-\$ 398,337.13</u>	<u>-\$ 139,240.74</u>	<u>-\$ 149,700.81</u>	<u>\$ 60,000.00</u>	<u>-\$ 228,941.55</u>

Notes

1 Fees accrued from March 4, 2020 to October 10, 2020 have been removed to come down to balance owed by LCX to Versitec as of the order date of March 4, 2020 as shown in LCX material

2 Both MPI and LCX in there analysis included the payment made by MPI post March 9, 2020

	<u>MPI Summary</u>		
	<u>A/R factored</u>	<u>Revised</u>	
	<u>net</u>	<u>Reserve (B)</u>	<u>Total</u>
1635536 Ontario Inc A/C 4822 Cdn\$	\$ 73,179.98	-\$ 159,892.24	-\$ 86,712.26
1635536 Ontario Inc A/c 4821 US \$	86,603.78	- 35,283.01	51,320.77
VMI USA A/C 4820U	62,129.35	- 155,472.90	- 93,343.55
Total US amounts	148,733.13	- 190,755.91	-\$ 42,022.78
converted to CDN\$ 1.25 CDN	185,916.41	- 238,444.89	- 52,528.48
total in CDN \$ as at 10-Oct-20	\$ 259,096.39	-\$ 398,337.13	-\$ 139,240.74
Add BDO amount paid to LCX	\$81,000*1.25		- 101,250.00
Total owing by LCX to Versitec			-\$ 240,490.74

Conclusion.

- 1 Could not identify any misdirected or converted funds in any of the various LCX accounts
- 2 Could not identify any malfeasance or breach of contract as against LCX

- 3 As a result the guaranty appears to be without justification primarily as a result of the non factored receipts being kept by LCX and not paid to Versitec during the forbearance period
- 4 The net amount owing above includes the fees charged by LCX which were not challenged by MPI but were paid as a result of the adjustment to the Chargebacks as follows.

		<u>CDN\$</u>	
		converted @\$1.25/CDN\$	
a/c4822	CDN\$	\$ 66,102	\$ 66,102
a/c 4821	US\$	37,342	46,678
A/c 4820U	US\$	29,537	36,921
			\$ 149,701

- 5 If payment of factored Receivables were paid to Versitec by the customer first then the funds were on average forwarded by Versitec to LCX within two weeks

Reasonable test of Reserve (B) in total

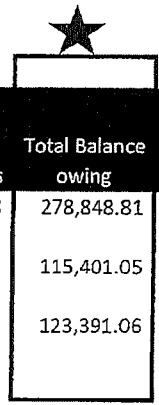
Receipts Received from non factored A/R not remitted back to Versitec

a/c 4822		-\$ 221,167	
less claw back a/c 4822		\$ 20,000	
A/c 4821		- 31,745	-\$ 232,912

Claw back of funds from funding by LCX to Versitec	A/c 4820U	\$ 85,000	
	A/c 4822	20,000	- 105,000

	<u>- \$ 337,912</u>
as per above	<u>- \$ 398,337</u>
Difference	<u><u>\$ 60,425</u></u>
Payment made by MPI to LCX	\$ 60,000
differenc e	425
	<u><u>\$ 60,425</u></u>

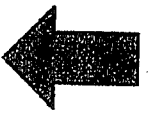
Versitec Payout
As at Oct 19 2020



AC #	Currency	AR Balance	Escrow Reserves (Memo only)	Net Funds Employed (NFE)	Accrued Fees	Total Balance owing	Per Diem	Per month	
1635536 Ontario Inc. o/a Versitec Marine	4822 CDN	177,854.80	32,421.41	212,746.33	66,102.48	278,848.81	177.85	5,335.64	A
1635536 Ontario Inc. o/a Versitec Marine	4821 US	95,073.79	18,001.51	78,058.56	37,342.49	115,401.05	95.07	2,852.21	B
Versitec Marine USA Inc.	4820U US	75,614.67	14,679.02	93,854.50	29,536.56	123,391.06	75.61	2,268.44	B
	CDN	Torkins Legals				49,162.00			

	Escrow Reserves	Net Funds	Accrued Fees	Total Bal Due*	Per Diem	Per Month
A Total CDN	32,421.41	212,746.33	66,102.48	328,010.81	177.85	5,335.64
B Total US	32,680.53	171,913.06	66,879.05	238,792.11	170.69	5,120.65

Memo only:	Convert to CDN	Convert to US
Ac 4822 in CDN	328,010.81	234,527.73
AC 4821+4820U in CDN	322,369.35	238,792.11
Total Payout in CDN / US \$	650,380.16	473,319.84



Total Bal due * = includes Torkin Legals

Memo Total Per diem in CDN 408.28

Note: Any escrow reserves ie 20% held when invoices were originally factored has now been fully utilised with additional costs, chargebacks, penalties and accrued fees

APPENDIX F
ANALYSIS OF 1635536 ONTARIO INC
CDN\$ ACCOUNT 4822

1635536 Ontario Inc. O/A Versitec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC account 4822

MPI SUMMARY

	<u>A/R</u> <u>Factored</u>	<u>Earned</u> <u>Reserve (A)</u>	<u>Earned</u> <u>Reserve (B)</u>	<u>Total</u>
Opening	\$ 237,854.00	-\$ 104,674.02	-\$ 320,991.52	-\$ 187,811.54
Less Receiver payment	-\$ 60,000.00			-\$ 60,000.00
Adjusted A/R	<u>\$ 177,854.00</u>	<u>-\$ 104,674.02</u>	<u>-\$ 320,991.52</u>	<u>-\$ 247,811.54</u>
LCX adjustments				
Chargebacks (net)			212,391	212,391
Accrued Fees to October 10,2020			<u>66,102</u>	<u>66,102</u>
	\$ 177,854.00	-\$ 104,674.02	-\$ 42,497.67	\$ 30,682.31
<u>Corrections by MPI</u>				
1 apply Escrow holdback to A/R (allowance for doubtful accounts)	-\$ 104,674.02	\$ 104,674.02		
2 Charge backs not supported per analysis because all were paid by Versitec			- 212,391.37	- 212,391.37
3 Chargebacks not tied back to invoice			-\$ 20,003.20	-\$ 20,003.20

paid as per analysis of chargebacks

4 Penalty as a result of fraud and conversion which not warranted per MPI reconciliation		- 24,470.81	- 24,470.81
	<u>\$ 73,179.98</u>	<u>\$ -</u>	<u>-\$ 274,892.24</u>
5 Add back Earned reserve from VMI USA of \$92,000 US\$ @ 1.25 Cdn transferred by LCX		115,000.00	115,000.00
	<u>\$ 73,179.98</u>	<u>\$ -</u>	<u>-\$ 159,892.24</u>
			<u>-\$ 86,712.26</u>

Notes

- 1 The opening Accounts receivable were adjusted to what was reported to the Court prior to the first payment by the first Receiver
- 2 The Charge back by LCX were found to be all paid either directly by Versitec and by funds sent to LCX from factored receivables which source documents were provided to LCX initially.
- 3 The reserve analysis between Earned Reserve (A) and Earned reserve (B) was based on the Purchase and sale agreement as amended by the forbearance agreement. The Reserve in LCX statement could not be followed hence the analysis was based on detail Receipts and factored invoices. Since the difference between the LCX amount in total and RB's analysis had differences that were reconcilable the analysis resorted to the more detailed method with a mathematical check based on the agreement for reasonableness basis
- 4 The negative Earned Reserve (B) represents funds that were collected and deposited on behalf of Versitec but never paid by LCX but retained.

in LCX investment account.

5 The earned reserve plus the Earned Reserve (A) plus Earned Reserve (B) is greater than the original Reserve taken .This was the result of non factored invoices being received by LCX and not paid to Versitec during the forbearance agreement.As a result these advances are still owed to Versitec by LCX. When LCX provided there Executive summary they deducted the non factored receipts in order to reconcile to the outstanding factored A/R. The non factored receipts were not picked up in LCX's Escrow reserve calculation because it only focuses on factored receivables .This overage was thus included in the Investment bank account of LCX because it was not segregated in a separate trust bank account in favour of Versitec. segregated in a separate bank account. This was confirmed with LCX management.

Conclusion

Based on the forgoing it would appear that all funds were accounted for and there would not seem to be misdirected or conversion of funds during the Forebearance agreement time frame

1635536 Ontario Inc. O/A Veritec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC account 4822

MPI CHARGEBACK SUMMARY

Per LCX	Amount	Amount	difference	Date	Reasons
CD 7 Chargeback opening old AR	57,148.00	\$ 66,000.00	\$ -8,850.92	April 26, 2019	charge back on fund 33
CB 11 Chargeback Eastern Med invoices	121,190.54	141,663.79	- 20,473.25	per below	since no invoices provided by LCX
CB 16 Chargeback Fishers / Wallen	16,700.33	16,700.33	-	per below	since no invoices provided by LCX
CB 24 Chargeback Bremer	29,895.28	29,895.28	-	per below	since no invoices provided by LCX
CB 27 Chargeback Transmed Invoices	9,320.67	34,358.55	- 25,037.88	per below	since no invoices provided by LCX
CB30 Chargeback Bundesbeschaffung GMBH	17,504.01	-	17,504.01	per below	since no invoices provided by LCX
CB 32 Chargeback Eastern Med invoices	15,820.57	15,820.57	-	per below	since no invoices provided by LCX
Other misc chargebacks	13,965.01	86,258.82	- 72,293.81		no specifics provided by LCX
Gross amount of Chargebacks	281,545.79	\$ 390,697.34	\$ -109,151.55		
Less offset for OA payments	-69,154.42				
Net Chargeback per CBs	212,391.37	321,542.92	\$ -109,151.55		

Conclusion

From the overall analysis, the Chargeback system non supportable and that Veritec directly and indirectly have paid that amount plus more by \$109,151.55.

Analysis

1	Companies and Opening A/R Eastern Med Payments Date paid	amount	Fishers Wallen Date paid	amount	Bremer Date paid	amount	Transmed Date paid	amount	Bundesbeschaffung GMBH Date paid	amount	Eastern Med Payments Date paid	amount	Opening e/R Date paid	amount	Total
	July 15, 2019	\$ 20,472.52	September 13, 2019	\$ 7,939.91	22-Nov-19	\$ 29,895.28	Nov 19, 2019	\$ 20,033.13		\$ -	October 3, 2019	15,820.57	26-Apr-19	65,000.00	
	July 19, 2019	20,859.23	September 13, 2019	8,760.42		-	Nov 7, 2019	14,325.42		-					
	Nov 27, 2019	14,076.73		-		-		-		-					
	September 30, 2019	22,055.93		-		-		-		-					
	October 19, 2019	13,453.10		-		-		-		-					
	October 19, 2019	11,424.55		-		-		-		-					
	Dec 6, 2019	19,602.15		-		-		-		-					
	Dec 6, 2019	12,445.68		-		-		-		-					
	December 6, 2019	7,273.90		-		-		-		-					
		<u>\$ 141,663.79</u>		<u>\$ 16,700.33</u>		<u>\$ 29,895.28</u>		<u>\$ 34,358.55</u>		<u>\$ -</u>		<u>\$ 15,820.57</u>		<u>\$ 66,000.00</u>	<u>\$ 304,438.52</u>
	amount of charge back CB11	<u>121,190.54</u>	Amount of CB16	<u>16,700.33</u>	Amount of CB24	<u>29,895.28</u>	Amount of CB24	<u>9,320.97</u>	Amount of CB24	<u>34,358.55</u>	Amount of CB32	<u>15,820.57</u>	amount of CB7	<u>57,149.08</u>	<u>284,435.32</u>
	Over payment	<u>\$ 20,473.25</u>		<u>\$ -</u>		<u>\$ -</u>		<u>\$ 25,037.58</u>		<u>\$ 34,358.55</u>		<u>\$ -</u>		<u>\$ 8,850.92</u>	<u>\$ 20,003.20</u>

Conclusion

The company charge backs have either all been paid or over paid by either reduction in original funding or payment by Veritec

\$ 20,003.20

Analysis of D/A (Other Advances from non Factored Invoices) paid directly to LCX

Non factored Invoices payments received

Date	amount	Inv#
June 4, 2019	\$ 15,364.27	219042
July 17, 2019	31,766.54	219064
Nov 27, 2019	8,859.77	219144
Dec 4, 2019	11,371.35	219181
Dec 11, 2019	4,206.91	219,164, 219,165
Feb 28, 2020	13,689.98	remitted by Bank of america for
	86,258.82	\$10,440.01 US with no invoice reference

per above
-69,154.42
17,104.40

Conclusion

Not able to quantify definitively

1635536 Ontario Inc. O/A Versitec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC account 4822

**MPI NON FACTORED INVOICE RECEIPTS
 AND CLAWBACK**

	\$ 20,000.00	Nov 7, 2019	extra reserve taken by LCx on fund 43 Nov 7, 2019
	16,364.27	June 4, 2019	remitted non factored invoice 219042
	31,766.54	July 17, 2019	remitted non factored invoice 219064
	314.93	July 24, 2019	sundry unidentified adjustment by LC
	68,334.65	August 8, 2019	LC transfer from VMI USA escrow, LC Batch 153
	24,253.98	October 15, 2019	NGM Energy, 219108, 219110, 219143, non factored, paid directly to LC
	22,004.96	October 1, 2019	appears on LC stmt., batch # 159
	8,859.77	November 27, 2019	remitted non factored invoice 219144
	11,371.35	December 4, 2019	remitted non factored invoice 219181
	4,206.91	December 11, 2019	remitted non factored invoices 219164, 219165
	13,689.98	February 28, 2020	remitted \$10,440.01 US from BOA, invoice unidentified
	<u>221,167.34</u>		
Net non factored Receipts received by LCX from O/A customer payments directly	<u><u>\$ 221,167.34</u></u>		
Factored unpaid a/r from LCX documentation	237,854.00		
Payment by Receiver	- 60,000.00		
	<u>177,854.00</u>		
Net over payment	-\$ 43,313.34		
Reserve opening after chargebacks and fees were adjusted per LCX	-\$ 42,497.67		

difference

-\$ 815.67

1635536 Ontario Inc. O/A Versitec Marine & Industrial
 1635536 Ontario Inc. Analysis of Account with Liquid Capital
 Analysis of Account w LC account 4822
 LC account 4822

TOTAL INVOICE AND RECEIPTS

<u>Invoices Factored</u>			<u>Receipts</u>		
<u>Per LCX</u>	<u>Per MPI</u>	<u>difference</u>	<u>Per LCX</u>	<u>Per MPI</u>	<u>difference</u>
<u>\$ 1,022,491.51</u>	<u>1,147,003.68</u>	<u>-\$ 124,512.17</u>	<u>\$ 689,173.53</u>	<u>\$ 871,853.11</u>	<u>-\$ 182,679.58</u>
A/R factored		1,147,003.00			
Deduct opening A/R purchased at start of forbearance agreement		<u>-124,512.17</u>			
		1,022,490.83			
Difference immaterial		- 0.68		per above	\$ 871,853.11
Invoices factored per LCX executive summary		<u>\$ 1,022,491.51</u>		less MPI recivers funds	- 60,000.00
					811,853.11
				deduct	
				opening a/R	- 54,721.06
				payment on o/s A/r	- 66,000.00
				Receipts per LCX	<u>\$ 691,132.05</u>
				less small difference	- 1,958.52
				Receipts per LCX Exec summary	<u>\$ 689,173.53</u>

1635536 Ontario Inc. O/A Versitec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC account 4822

	<u>RESERVE</u>	
	<u>Reserve (A)</u>	<u>Reserve (B)</u>
Original Escrow holdback		
20% X A/R factored		
20% X \$1022,491.51	\$ 204,498.20	
Add reserve from fund	<u>20,000.00</u>	
07-Nov-19	224,498.20	
add opening Reserve		
On A/R	<u>38,402.22</u>	
Total per analysis MPI	<u>\$ 262,900.42</u>	
20% of Receipts		
20% X \$691,132	-\$ 138,226.40	<u>138,226.40</u>
Unfactored receipts received		86,258.82
by LCX per charge back analysis		
Adjust opening Reserve paid		- 38,402.22
August 8, 2019 Transfer fromVMI (USA) in Batch 153		68,334.65
October 15,2019 NGM Energy Invoices		
21910,219110,219143 non factored funds		24,253.98
received by LCX		
October 1,2019 LCX batch #159 unknown		<u>22,004.96</u>
no invoice		162,450.19
		162,450.19
Claw back from Fund dated Nov 7, 2019	- 20,000.00	<u>20,000.00</u>
total of adjustments		<u>182,450.19</u>
July 24, 2019 misc adjustment by LCX		314.93
USA escrow account	<u>\$ 104,674.02</u>	<u>\$ 320,991.52</u>

Per detailed analysis	-\$ 322,255.88
diff not significant to try to reconcile	-\$ 1,264.36

1635536 Ontario Inc. O/A Versitec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC account 4822

MPI FACTORED INVOICE SUMMARY

FUNDING BY LIQUID CAPITAL																
Date Funded	Date of Invoice	Batch #	Invoice #	Customer Name	EURO			USD			Escrow Holdback	Net Advance by invoice	Net Advance by batch	Payment to LC		
					Gross Invoice	Amount	Funded	Customer Total	Batch Total	Amount				Date		
2018			carry forward			124,512.17					38,402.12	86,110.05	86,110.05	54,721.06	January 23, 2019	
														66,000.00	April 26, 2019, withholding from Fund 33	
2019																
26-Apr	20-Mar	33	219026	Eastern Mediterranean Maritime Ltd.		21,876.27					4,375.25	17,501.02		ok	20,472.52	July 19, 2019 (1 of 2, \$41331.75)
	20-Mar		219029	Eastern Mediterranean Maritime Ltd.		20,472.52					4,094.50	16,378.02				
	20-Mar		219030	Eastern Mediterranean Maritime Ltd.		20,966.57					4,193.31	16,773.26				
	26-Feb		219031	Eastern Mediterranean Maritime Ltd.		10,299.77					2,059.95	8,239.82				
	30-Mar		219034	Eastern Mediterranean Maritime Ltd.		20,966.57					4,193.31	16,773.26				
	20-Mar		219036	Eastern Mediterranean Maritime Ltd.		20,472.52					4,094.50	16,378.02	ok	20,859.23	July 19, 2019 (2 of 2, \$41331.75)	
	20-Mar		219039	Eastern Mediterranean Maritime Ltd.		15,820.57					3,164.11	12,656.46	ok	15,820.57	October 3, 2019 (1 of 2, \$29538.97)	
	20-Mar		219041	Eastern Mediterranean Maritime Ltd.		15,819.69					3,163.94	12,655.75				
	20-Mar		219043	Eastern Mediterranean Maritime Ltd.		15,819.69					3,163.94	12,655.75				
	20-Mar		219044	Eastern Mediterranean Maritime Ltd.		15,819.69	178,333.86				3,163.94	12,655.75				
	21-Mar		219045	Louis Dreyfus Amateurs S.A.S.		28,555.77					5,711.15	22,844.62	ok	28,555.77	July 3, 2019	
	17-Jan		219010	Louis Dreyfus Amateurs S.A.S.		3,449.06	32,004.83				689.81	2,759.25				
	25-Mar		219055	Premuda S.p.a.		16,882.94					3,376.59	13,506.35				
	25-Mar		219056	Premuda S.p.a.		20,194.32	37,077.26				4,038.86	16,155.46				
	19-Feb		219014	Cruise Management International		10,038.66	10,038.66				2,007.73	8,030.93				
	10-Apr		218203	Jungbunzlauer Canada		24,279.75					4,855.95	19,423.80	ok	24,279.75	July 19, 2019 \$36,096.74, paid direct - LC Batch 146	
	10-Apr		219046	Jungbunzlauer Canada		11,816.99	36,096.74				2,363.40	9,453.59	ok	11,816.99	July 19, 2019 \$36,096.74, paid direct - LC Batch 146	
	29-Mar		219058	Spring Marine Management S.A.		25,380.08	25,380.08				5,076.02	20,304.06	ok	25,380.08	June 21, 2019	
	04-Mar		219042	Titan Maritime		16,364.27	16,364.27				3,272.85	13,091.42				
	02-Apr		219040	Wallem Ship Management		7,939.91	7,939.91				1,587.98	6,351.93		274,588.49	September 13, 2019 - paid from additional holdback on Fund 40	
						343,235.61	343,235.61	ok			<u>68,647.12</u>					
03-May	13-Mar	34	219053	Flnbeta spa		8,760.42					1,752.08	7,008.34		ok	8,760.42	September 13, 2019 - paid from additional holdback on Fund 40
	13-Mar		219075	Hammonia Reederei GmbH		46,825.17					9,365.03	37,460.14	ok	46,990.19	August 14, 2019	
	08-Apr		219074	Hammonia Reederei GmbH		46,825.17					9,365.03	37,460.14	ok	46,825.17	May 10, 2019	
	26-Feb		219080	Anglo Eastern Ship Management		32,796.82					6,559.36	26,237.46		108,166.06		
						135,207.58	135,207.58	ok			<u>27,041.52</u>					
28-May	17-May	35A	219086	Bremer Bereederungs-gesellschaft mbH & Co. K.G.		29,895.28					5,979.06	23,916.22	ok	29,895.28	November 22, 2019	paid by LC from escrow, batch 162
	19-May		219092	Interscan Shipmanagement GmbH & Co. KG		5,061.53					1,012.31	4,049.22				
	14-May		219095	JR Schifffahrts GmbH & Co. KG		7,235.75					1,447.15	5,788.60		6,530.80	September 6, 2019	
	07-May		219077	Meteor Management Bulgaria Ltd.		14,909.55					2,981.91	11,927.64		45,681.69		
						57,102.11	57,102.11	ok			<u>11,420.42</u>					

28-Jun	18-Jun 36A	219115 Bundesbeschaffung GMBH	30,063.58		6,012.72	24,050.86					
	13-Jun	219116 Bundesbeschaffung GMBH	29,150.35	59,213.93	5,830.07	23,320.28					
	10-May	219094 Dalomar Shipping S.A.	13,295.90		2,659.18	10,636.72					
	19-Mar	219068 Spring Marine Management S.A.	7,813.42		1,562.68	6,250.74	64,258.60	7,507.49	July 24, 2019		
			80,323.25	80,323.25 ok		<u>16,064.65</u>					
02-Aug	20-Jun-19 37A	219072 Rigel Shipping Canada Inc.	1,784.44		356.89	1,427.55	ok	1,782.88	August 16, 2019		Paid directly to LC, LC Batch #152
	20-Jun-19	219085 Rigel Shipping Canada Inc.	1,945.41		389.08	1,556.33	ok	1,946.97	August 16, 2019		Paid directly to LC, LC Batch #152
	10-Jun-19	219091 Rigel Shipping Canada Inc.	525.71	4,255.56	105.14	420.57	ok	525.71	August 16, 2019		Paid directly to LC, LC Batch #152
	05-Jun-19	219102 Transmed Shipping Company Ltd.	29,354.41		5,870.88	23,483.53	ok	20,033.13	November 19, 2019		Paid directly to LC, LC Batch #170
	27-Jun-19	219129 Transmed Shipping Company Ltd.	13,994.45	43,348.86	2,798.89	11,195.56		14,325.42	November 7, 2019		
			47,604.42	47,604.42 ok		<u>9,520.88</u>					
22-Aug	10-Jun-19 38A	219101 Fri Kamsund	13,898.32		2,779.66	11,118.66					
	05-Jul-19	219103 Wilson Ship Management AS	10,009.27		2,001.85	8,007.42					
	21-Jun-19	219124 Admiral Corporation	14,965.12		2,993.02	11,972.10					
	25-Jun-19	219126 Green Shipping AS	5,439.40		1,087.88	4,351.52					
	12-Jul-19	219131 Dynacom Tankers Management Ltd.	11,628.63		2,325.73	9,302.90		11,838.45	November 5, 2019		
	04-Jul-19	219152 MMI Europe Ltd.	10,091.17		2,018.23	8,072.94		7,618.51	December 16, 2019		
	18-Jul-19	219155 Ast Shipinvest AS	7,084.47		1,416.89	5,667.58		58,493.10			
			73,116.38	73,116.38 ok		<u>14,623.28</u>					
27-Aug	07-Aug-19 39A	219139 Blue Line Ship Management SA	13,035.13		2,607.03	10,428.10					paid from BOA and included in VMI Canada USD schedule
	30-Jul-19	219162 Thenamaris Ship Management Inc.	10,811.62		2,162.32	8,649.30					
	08-Aug-19	219166 Rigel Shipping Canada Inc.	4,547.34		909.47	3,637.87		3,194.48	December 9, 2019		Paid directly to LC, LC Batch #178
	12-Aug-19	219171 SIA RIX Shipmanagement	7,967.33		1,593.47	6,373.86		7,916.30	September 20, 2019		- wire from TO Euro a/c 5,572.90 euro
	01-Aug-19	219175 UAB Promar	3,111.77		622.35	2,489.42					
	28-Jul-19	219178 Premuda SPA	10,313.26		2,062.65	8,250.61		39,829.16			
			49,786.45	49,786.45 ok		<u>9,957.29</u>					
13-Sep	14-Aug-19 40	219167 Avin International	13,647.29		2,729.46	10,917.83		13,943.20	September 19, 2019		- paid directly to LC 9,638.60 EUR
	14-Aug-19	219033 Eastern Mediterranean Maritime Ltd.	13,890.98		2,778.20	11,112.78	ok	14,076.73	November 27, 2019		(2 of 2, \$29538.97)
	06-Aug-19	219035 Eastern Mediterranean Maritime Ltd.	22,307.79		4,461.56	17,846.23		22,055.93	September 30, 2019		- wire from TD Euro a/c 15,755.20 euro
	15-Jun-19	219132 Eastern Mediterranean Maritime Ltd.	7,558.07		1,511.61	6,046.46					
	08-Jul-19	219137 Eastern Mediterranean Maritime Ltd.	9,284.23	53,041.07	1,856.85	7,427.38					
	16-Aug-19	219160 Hogil AS	4,852.99		970.60	3,882.39		57,233.08			
			71,541.35	71,319.66 diff		<u>14,308.27</u>					
20-Sep	09-Sep-19 41	219168 Eastern Mediterranean Maritime Ltd.	13,507.84		2,701.57	10,806.27		13,453.10	October 19, 2019		paid by customer to LC
	01-Sep-19	219200 Eastern Mediterranean Maritime Ltd.	13,131.77		2,626.35	10,505.42		21,311.69	October 19, 2019		paid by customer to LC
			26,639.61	26,639.61 ok		<u>5,327.92</u>					
26-Sep	09-Sep-19 42A	219138 Blue Line Ship Management S.A.	13,053.44		2,610.69	10,442.75					
	05-Sep-19	219189 Eastern Mediterranean Maritime Ltd.	4,739.35		947.87	3,791.48	?	4,873.45	October 19, 2019		paid by customer to LC

1635536 Ontario Inc. O/A Veritec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC account 4822

FUNDING BY LIQUID CAPITAL							Actual	Additional	Actual Net	Payment to LC Date					
Date Funded	Date of Invoice	Batch #	Invoice #	Customer Name	EURO Gross Amount Invoiced	CDN Franded Customer Batch Total	Escrow Holdback	Net Advance by Invoice	Net Advance by batch	AN Purchased	Holdback	Initial Fees	Expenses	Fund	
2018				carry forward	124,512.17		36,402.12	85,110.05	85,110.05						54,721.06 January 23, 2019 65,000.00 April 26, 2019, withholding from Fund 33
2019				Legal Fees									1,483.69		
26-Apr	20-Mar	33	219026	Eastern Mediterranean Maritime Ltd.	21,876.27		4,375.25	17,501.02		21,876.27	4,375.25	656.29			20,472.52 July 19, 2019 (1 of 2, \$41331.75)
	20-Mar		219029	Eastern Mediterranean Maritime Ltd.	20,472.52		4,094.50	16,378.01		20,472.52	4,094.50	614.18			
	20-Mar		219030	Eastern Mediterranean Maritime Ltd.	20,066.57		4,193.31	16,773.26		20,066.57	4,193.31	629.00			
	26-Feb		219031	Eastern Mediterranean Maritime Ltd.	10,299.77		2,059.96	8,239.82		10,299.77	2,059.96	308.89			
	30-Mar		219034	Eastern Mediterranean Maritime Ltd.	20,066.57		4,193.31	16,773.26		20,066.57	4,193.31	629.00			
	20-Mar		219035	Eastern Mediterranean Maritime Ltd.	20,472.52		4,094.50	16,378.01		20,472.52	4,094.50	614.18			20,859.23 July 19, 2019 (2 of 2, \$41331.75) overpayment of \$377.71 directed to reserves
	20-Mar		219039	Eastern Mediterranean Maritime Ltd.	15,820.57		3,164.11	12,656.46		15,820.57	3,164.11	474.62			15,820.57 October 3, 2019 (1 of 2, \$29538.97) CB batch 169
	20-Mar		219041	Eastern Mediterranean Maritime Ltd.	15,819.69		3,163.94	12,655.75		15,819.69	3,163.94	474.59			
	20-Mar		219043	Eastern Mediterranean Maritime Ltd.	15,819.69		3,163.94	12,655.75		15,819.69	3,163.94	474.59			
	20-Mar		219044	Eastern Mediterranean Maritime Ltd.	15,819.69	178,333.86	3,163.94	12,655.75		15,819.69	3,163.94	474.59			
	21-Mar		219045	Louis Dreyfus Amateurs S.A.S.	28,555.77		5,711.15	22,844.62		28,555.77	5,711.15	856.67			28,555.77 July 3, 2019 2019-07-03
	17-Jan		219010	Louis Dreyfus Amateurs S.A.S.	3,449.06	32,004.83	689.81	2,759.25		3,449.06	689.81	103.47			Chargeback
	25-Mar		219055	Premuda S.p.a.	16,882.94		3,376.59	13,506.35		16,882.94	3,376.59	506.43			Chargeback batch 154
	25-Mar		219056	Premuda S.p.a.	20,194.32		4,038.86	16,155.46		20,194.32	4,038.86	605.83			Chargeback batch 154
	19-Feb		219014	Cruise Management International	10,038.66	10,038.66	2,007.73	8,030.93		10,038.66	2,007.73	301.16			Chargeback batch 154
	10-Apr		218203	Jungbunzlauer Canada	24,279.75		4,855.59	19,424.16		24,279.75	4,855.59	728.39			24,279.75 July 19, 2019 \$36,096.74, paid direct - LC Batch 146
	19-Apr		219046	Jungbunzlauer Canada	11,816.99		2,363.40	9,453.59		11,816.99	2,363.40	356.51			11,816.99 July 19, 2019 \$36,096.74, paid direct - LC Batch 146
	29-Mar		219058	Spring Marine Management S.A.	25,380.08	25,380.08	5,076.02	20,304.06		25,380.08	5,076.02	761.40	150.00		25,380.08 June 21, 2019
	04-Mar		219042	Titan Maritime	16,364.27		3,272.85	13,091.42		16,364.27	3,272.85	490.93	15,000.00	163/fees clawback	16,355.27 Forwarded by Veritec
	02-Apr		219040	Waltem Ship Management	7,939.91	7,939.91	1,587.98	6,351.93	274,588.43	7,939.91	1,587.98	238.20	66,000.00		7,939.91 September 13, 2019 - paid from additional holdback on Fund 4 Chargeback batch 157
					343,235.61	343,235.61	68,647.17	10,287.07		343,235.61	68,647.17	10,287.07	41,150.00	183,141.22	
03-May	13-Mar	34	219053	Ribbets spa	8,760.42		1,752.08	7,008.34		8,760.42	1,752.08	262.81			8,760.42 September 13, 2019 - paid from additional holdback on Fund 4 Chargeback batch 157
	13-Mar		219079	Hemmonia Reederei GmbH	46,825.17		9,365.03	37,460.14		46,825.17	9,365.03	1,404.76			16,816.17 May 10, 2019
	08-Apr		219074	Hemmonia Reederei GmbH	46,825.17		9,365.03	37,460.14		46,825.17	9,365.03	1,404.76			46,825.17 May 10, 2019
	26-Feb		219064	Anglo Eastern Ship Management	32,796.82		6,559.36	26,237.46	106,104.06	32,796.82	6,559.36	983.00	30.00		31,757.54 7/10/2019 Forwarded by Veritec
					135,207.58		27,041.52	4,656.23		135,207.58	27,041.52	4,656.23	30.00	104,079.24	
28-May	17-May	35A	219085	Bremer Seereederei-Gesellschaft mbH & Co. K.G.	29,895.28		5,979.06	23,916.22		29,895.28	5,979.06	896.86			29,895.28 November 22, 2019
	18-May		219092	Intercan Shipmanagement GmbH & Co. KG	5,061.53		1,012.31	4,049.22		5,061.53	1,012.31	151.85			Chargeback batch 154
	14-May		219095	JR Schiffahrts GmbH & Co. KG	7,235.75		1,447.15	5,788.60		7,235.75	1,447.15	217.07			6,530.80 September 6, 2019
	07-May		219077	Meteor Management Bulgaria Ltd.	14,935.55		2,987.91	11,947.64	45,683.69	14,935.55	2,987.91	447.25	30.00		Chargeback batch 154
					57,102.11		11,420.42	1,713.06		57,102.11	11,420.42	1,713.06	30.00	43,936.62	
28-Jun	18-Jun	36A	219115	Bundesbeschaffung GmbH	30,063.58		6,012.72	24,050.86		30,063.58	6,012.72	901.91			
	13-Jun		219116	Bundesbeschaffung GmbH	29,150.35	59,213.93	5,830.07	23,320.28		29,150.35	5,830.07	874.51			
	10-May		219094	Dalemar Shipping S.A.	13,295.90		2,659.18	10,636.72		13,295.90	2,659.18	398.88			Batch 192
	19-Mar		219068	Spring Marine Management S.A.	7,813.42		1,562.68	6,250.74	64,258.00	7,813.42	1,562.68	234.40	30.00		7,507.49 July 24, 2019
					80,323.25		16,054.65	2,409.70		80,323.25	16,054.65	2,409.70	30.00	61,818.90	
02-Aug	20-Jun-19	37A	219072	Rigel Shipping Canada Inc.	1,784.44		356.89	1,427.55		1,784.44	356.89	53.53			1,782.88 August 16, 2019
	20-Jun-19		219085	Rigel Shipping Canada Inc.	1,945.41		389.08	1,556.33		1,945.41	389.08	58.76			Paid directly to LC, LC Batch #152
	10-Jun-19		219091	Rigel Shipping Canada Inc.	105.14	4,255.56	420.57	634.57		105.14	420.57	15.77			525.71 August 16, 2019
	05-Jun-19		219102	Transmed Shipping Company Ltd.	29,354.41		5,870.85	23,483.53		29,354.41	5,870.85	880.63			Paid directly to LC, LC Batch #152
	27-Jun-19		219129	Transmed Shipping Company Ltd.	13,994.45	43,248.86	2,798.89	11,195.56	38,083.54	13,994.45	2,798.89	419.83	30.00		20,033.13 November 18, 2019
					47,604.42		9,570.88	1,428.13		47,604.42	9,570.88	1,428.13	30.00	36,625.40	14,235.42 November 7, 2019 CB batch 169
22-Aug	10-Jun-19	38A	219101	Frl Kamsund	12,898.32		2,779.66	10,118.66		12,898.32	2,779.66	416.95			
	05-Jul-19		219103	Wilson Ship Management AS	10,009.27		2,001.85	8,007.42		10,009.27	2,001.85	300.78			2020-06-29
	21-Jun-19		219124	Admiral Corporation	14,965.12		2,993.02	11,972.10		14,965.12	2,993.02	448.99			Batch 190
	25-Jun-19		219126	Green Shipping AG	5,439.40		1,087.88	4,351.52		5,439.40	1,087.88	163.18			
	12-Jul-19		219131	Dynacom Tankers Management Ltd.	11,628.63		2,325.73	9,302.90		11,628.63	2,325.73	348.95			11,836.45 November 5, 2019 Chargeback batch 169

04-Jul-19	219152 MMI Europe Ltd.	10,091.17	2,018.23	8,072.96	30,893.17	2,018.23	804.74	1,078.51	December 16, 2019	Batch 186	
18-Jul-19	219155 Ast Shipinvest AS	7,084.47	1,416.89	5,667.58	7,084.47	1,416.89	212.53	30.00	June 29, 2020	Batch 170	
		73,116.38	14,613.28		73,116.38	14,623.28	2,193.49	30.00		56,169.61	
27-Aug	07-Aug-19 39A	219139 Blue Line Ship Management SA	13,035.13	2,607.03	10,428.10	13,035.13	2,607.03	391.05			
30-Jul-19	219162 Thenamaris Ship Management Inc.	10,811.62	2,162.32	8,649.30	10,811.62	2,162.32	324.35				
08-Aug-19	219166 Rigal Shipping Canada Inc.	4,547.34	909.47	3,637.87	4,547.34	909.47	136.42				
12-Aug-19	219171 SIA RIX Shipmanagement	1,593.47	318.69	1,274.78	1,593.47	318.69	239.02				
01-Aug-19	219175 UAS Promar	3,111.77	622.35	2,489.42	3,111.77	622.35	93.35				
28-Jul-19	219176 Premuda SPA	10,313.26	2,062.65	8,250.61	10,313.26	2,062.65	209.40	30.00			
		49,786.45	9,957.29	39,829.16	49,786.45	9,957.29	1,491.59	30.00		38,305.57	
13-Sep	14-Aug-19 49	219167 Arvo International	13,647.22	2,729.46	10,917.76	13,647.22	2,729.46	409.42			
14-Aug-19	219133 Eastern Mediterranean Maritime Ltd.	13,890.98	2,778.20	11,112.78	13,890.98	2,778.20	410.70				
06-Aug-19	219035 Eastern Mediterranean Maritime Ltd.	22,807.79	4,461.56	17,846.23	22,807.79	4,461.56	659.29				
15-Jun-19	219132 Eastern Mediterranean Maritime Ltd.	7,558.07	1,511.81	6,046.26	7,558.07	1,511.81	226.74				
04-Jul-19	219137 Eastern Mediterranean Maritime Ltd.	9,284.23	1,855.85	7,428.38	9,284.23	1,855.85	277.93	12,013.69			
16-Aug-19	219160 Hogli AS	4,852.99	970.60	3,882.39	4,852.99	970.60	145.57	30.00			
		71,541.35	14,308.27	57,233.08	71,541.35	14,167.93	2,139.59	12,048.69		47,872.44	
20-Sep	09-Sep-19 41	219168 Eastern Mediterranean Maritime Ltd.	13,507.84	2,701.57	10,806.27	13,507.84	2,701.57	392.49	13,453.10	October 19, 2019	CB batch 169
01-Sep-19	219200 Eastern Mediterranean Maritime Ltd.	13,131.77	2,626.85	10,504.92	13,596.70	2,626.35	406.70	30.00	11,424.55	October 19, 2019	CB batch 169
		26,639.61	5,327.92	21,311.60	26,639.61	5,327.92	799.19	30.00		20,482.50	
26-Sep	09-Sep-19 42A	219138 Blue Line Ship Management S.A.	13,053.44	2,610.69	10,442.75	13,053.44	2,610.69	391.40			
05-Sep-19	219189 Eastern Mediterranean Maritime Ltd.	4,730.35	947.87	3,782.48	4,730.35	947.87	142.16				
26-Sep-19	219099 Eastern Mediterranean Maritime Ltd.	19,528.19	3,905.64	15,622.55	19,528.19	3,905.64	545.85	36.00	4,873.45	October 15, 2019	batch 190
		37,320.98	7,464.20	29,856.78	37,320.98	7,464.20	1,119.63	10.00	19,602.15	December 6, 2019	CB batch 169
07-Nov	21-Oct-19 43	219031A Eastern Mediterranean Maritime Ltd.	10,638.05	2,127.61	8,510.44	10,638.05	2,127.61	319.14			
16-Oct-19	219151 Eastern Mediterranean Maritime Ltd.	12,009.15	2,501.83	9,507.32	12,509.15	2,501.83	375.47				
24-Oct-19	219216 Eastern Mediterranean Maritime Ltd.	11,630.59	2,326.12	9,304.47	11,630.59	2,326.12	348.92				
30-Sep-19	219217 Eastern Mediterranean Maritime Ltd.	7,273.90	1,454.78	5,819.12	7,273.90	1,454.78	218.22				
01-Oct-19	219204 Thenamaris Ship Management Inc.	11,115.44	2,221.67	8,893.77	11,115.44	2,221.67	333.40				
25-Oct-19	219225 Thenamaris Ship Management Inc.	7,384.09	1,476.82	5,907.27	7,384.09	1,476.82	221.55				
19-Oct-19	219190 Thenamaris Ship Management Inc.	8,145.86	1,629.38	6,516.48	8,145.86	1,629.38	244.40				
21-Oct-19	219222 Blue Line Ship Management S.A.	6,732.66	1,384.29	5,348.37	6,732.66	1,384.29	261.99				
01-Nov-19	219223 Blue Line Ship Management S.A.	9,109.92	1,821.98	7,287.94	9,109.92	1,821.98	273.30	20,000.00			
22-Oct-19	219163 Transmed Shipping Co. Ltd.	14,075.21	2,815.04	11,260.17	14,075.21	2,815.04	422.26	30.00			
	Additional holdback	20,000.00		20,000.00	20,000.00						
		100,613.77	40,122.75	60,491.02	100,613.77	40,122.75	20,030.00	57,443.27			
		1,147,003.68	262,900.42	884,103.26	1,032,270.61	264,454.12	30,666.12	134,947.38		673,631.68	
					5,919,791.80						

paid from BOA and included in VMI Canada USD schedule

13,943.20 September 19, 2019 - paid directly to LC 9,636.50 EUR Batch 150
 14,076.72 November 27, 2019 (2 of 2, \$2953.97) batch 188
 22,055.91 September 30, 2019 - wire from TD Euro a/c 5,572.20 euro CB with DA from Sla Pix & reserves batch 160

13,453.10 October 19, 2019 CB batch 169
 11,424.55 October 19, 2019 CB batch 169

4,873.45 October 15, 2019 batch 190
 19,602.15 December 6, 2019 CB batch 169
 Paid directly to LC, LC Batch #179, 181, 182

12,445.68 December 6, 2019 Batch 181
 Paid directly to LC, LC Batch #179, 181, 182

7,273.30 December 6, 2019 Paid directly to LC, LC Batch #179, 181, 182

reserve adv clawback

27-Nov-19 Forebearance Fees
 21-Jun-19 Florian Meyer Fees
 1-Aug-19 Florian Meyer Fees
 13-Sep-19 Florian Meyer Fees
 7-Oct-19 Florian Meyer Fees
 6-Oct-19 Eastern Med 219035 symt (recurred as already charge)
 25-Nov-19 Financial business Development Corp.
 15-Dec-15 Rigel CB batch 134 - inv converted to Euros on funding
 13-Jan-20 Batch 10056 - additional fees
 13-Jan-20 Batch 10057 - Penalty fee

16,364.27 June 4, 2019 remitted non factored invoice 21904 reflected above &
 31,756.54 July 17, 2015 remitted non factored invoice 21906 reflected above &
 114.93 July 24, 2019 sundry unidentified adjustment by LC
 68,334.65 August 4, 2019 LC transfer from VMI USA escrow, LC Batch 153 used 1
 24,259.04 October 15, 2019 NGM Energy, 219108, 219110, 219143, non factored, 1
 22,004.95 October 1, 2019 appears on LC stmt., batch # 159 Used to pay Sla Pix
 8,859.77 November 27, 2019 remitted non factored invoice 219144 (cc'd and from
 11,371.35 December 4, 2019 remitted non factored invoice 219181 batch 177 - all
 December 6, 2019 remitted non factored invoice 219127 included in payr
 4,106.81 December 11, 2019 remitted non factored invoices 219164, 219165
 13,683.98 February 28, 2020 remitted \$10,440.01 US from BOA, invoice unidentified
 50,000.00 June 25, 2020 payment on account by MPI
 10,000.00 August 4, 2020 payment on account by MPI

APPENDIX F - 1
ANALYSIS OF 1635536 ONTARIO INC
LCX RECONCILIATION

**Versitec(1635536 Ont Inc) - CDN Factoring
Executive Summary
AC 4822**

Reconcile AR @ 30-9-2020

Total AR purchased		1,022,270.70	
Factor Collections	511,010.88		50%
Receiver Receipt	59,982.00		
O/A	118,180.65		
Net collections		-689,173.53	
Less Chargeback		-212,391.37	21%
Add Opening AR		57,149.19	AR from old Factoring agreement not collected, inc in Forbearance Apr 2019
Total AR Factored		<u>177,854.99</u>	Then all charged back

Reconcile Funds Employed (NFE)

Client Fundings	676,739.68	
Res Rel / Transfer in	103,000.00	
Third party legals	7,688.26	
Monitoring Fees (FM)	31,851.92	
	<u>819,279.86</u>	
Less Collections	-711,840.19	100,994
Transfer in	-120,750.00	Shortfall if invoices paid in full
Add fees	173,489.31	
Add Adj	3,010.00	
Add Opening NFE	49,557.96	
Total Net Funds Employed	<u>212,746.94</u>	
Add Accrued fees (to 19-10-2020)	66,102.48	
Total payout including accrued Fees	<u>278,849.42</u>	

Key points

- 1) Only \$511K or 50% of factored AR actually collected !
- 2) Large amount of chargebacks ie \$212K or 21% of factored AR
- 3) Remaining AR totalling \$177K is on average 12 to 15 months old
Hence a large amount of accrued fees due to late / non payment \$ 66,102
- 4) All Escrow reserves ie 20% held on factored AR is full used by chargebacks, additional fees etc
- 5) There was over \$176K of misdirected factored invoice payments , which exceeded the \$118K of non factored collections

BottomLine: Net Funds Employed + accrued fees \$278K > Total remaining factored AR \$178K by \$100K !

1) Fees omitted from John Morgan analysis (and many not reflected in Veritec records)
 Add initial fees on funding (per SOA) 46,750
 Add additional fees for late payment 46,000
 Add Fees on chargebacks 24,471
 Add Penalty for Fraud / Conversion 10,000
 Add Add Feebackance Fee

2) Mismatching fees per Forbearance Agreement
 2) Wire fees @ 50¢ per wire sent 510
 4) Third party legal (paid) - Excludes 545K of legal re Receivables 7,688
 5) Chargebacks for factored invoices collected by Veritec but not remitted to LCK 212,391
 6) Acquired fees included in Payroll (as at 19-10-2020) 66,102
 7) Transfers out from 4822 to 4820U 83,000
 8) Transfers in 4822 from 4820U -120,750

Total Value of reconciled items 454,283

MEMO QUICK REC ON A/R:

4822	CAD	4822	237,857	177,855	60,002	Note 1
4821	USD	4821	95,074	95,074	0	
4820U	USD	4820U	75,615	75,615	0	
Blended total (with no FX conversions)			408,545	348,544	60,002	

Note 1 : Reflects two receipts from Receiver (J Morgan) 550K on 26-6-2020 + 410K 8-8-2020

Key drivers for Variance

Total Variance for AC 4822 between LCK vs John Morgan - 363,248.57

Estimated Total owing per John Morgan 84,399.15 (Note -ve meaning J Morgan is claiming LCK owes Veritec money)

Total Payout Per LCK (including accrued fees to 19-10-2020) 278,849.42 (Note +ve meaning Veritec owes LCK money)

High Level Reconciliation of Funds Owning per John Morgan vs Liquid Capital

1655536 Ontario Inc. o/a Veritec Marine & Industrial AC 4822 CDN \$ 9.2.2020

Company	L/C Account No	Currency	A/R per/court earned	Net Owning	Order reserve	Per Liquid Capital
1655536 Ontario Inc. o/a Veritec Marine & Industrial	4822	CAD	\$ 237,856.73	\$ 84,399.15	\$ 177,854.99	278,849.42
1655536 Ontario Inc. o/a Veritec Marine & Industrial	4821	USD	95,073.79	57,932.29	95,073.81	115,401.11
Veritec Marine USA Inc.	4820U	USD	75,614.67	64,242.76	75,614.70	123,911.12
Blended total (with no FX conversions)			\$ 408,545.19	\$ 90,709.62	\$ 348,543.50	\$ 517,641.65
Per John Morgan v3			\$ 499,754.81	\$ 90,709.62	\$ 384,660.12	\$ 132,981.53
Total Payout per LCK						49,162.00

Outstanding A/R 30-9-2020
 Net Funds employed (NFE)
 Add Accrued Fees
 Per Liquid Capital

Per John Morgan
 Net Owning
 A/R per/court earned
 Order reserve

PER JOHN MORGAN
 ANY DISCREPANCY BETWEEN THE
 L/C ACCOUNTS AND THE
 PER LIQUID CAPITAL
 SHOULD BE CORRECTED IN THE
 NEXT L/C EDIT / CORRECTION

Verisité(1635536 Ont Inc) - CDN Factoring
 Summary of Penalty for Misdirection of funds - Per Clause 10 of factoring agreement

Chargeback #	Date	Invoice #	Debtor	Reason	Amount	Penalty for Misdirected Customer
CB7	2019-05-10	218091	Avin International Ltd.	Debtor non payment	Old Factoring 21,176.99	
CB7	2019-05-10	217289	Ocean Choice International	Debtor non payment	Old Factoring 19,522.72	
CB7	2019-05-10	218016	Schiffahrtsgesellschaft mbH & Co.	Debtor non payment	Old Factoring 3,904.50	
CB7	2019-05-10	218004	Urrichtorum Marine & Spares	Debtor non payment	Old Factoring 17,544.87	
						17.31
CB12	2019-08-22	219104	Cruise Management	Allocate OA pymt	5,000.00	
CB12	2019-08-22	219092	Interscan Shipmanagement	Allocate OA pymt	5,061.53	
CB12	2019-08-22	219077	Meteor Management	Allocate OA pymt	14,909.55	
CB12	2019-08-22	219055	Premuda S.p.a.	Allocate OA pymt	16,882.94	
CB12	2019-08-22	219056	Premuda S.p.a.	Allocate OA pymt	20,194.32	
CB16	2019-09-13	219051	Wallsend Ship Management	Debtor non payment	16,700.33	16,700.33
CB18	2019-10-04	219035	Eastern Mediterranean	Allocate OA-10022019	13,647.20	
CB23	2019-11-18	219129	Transmed Shipping Co. Ltd	Allocate OA pymt	13,994.46	
CB23	2019-11-18	219131	Dynacom Tanker Management Ltd.	Allocate OA pymt	11,628.63	
CB23	2019-11-18	219200	Eastern Mediterranean	Allocate OA pymt	13,556.70	
CB23	2019-11-18	219168	Eastern Mediterranean	Allocate OA pymt	13,082.91	
CB23	2019-11-18	219189	Eastern Mediterranean	Allocate OA pymt	4,739.35	
CB27	2019-12-04	219086	Premet-Bereederungsgesellschaft	Debtor non payment	29,895.28	29,895.28
CB27	2019-12-04	219102	Transmed Shipping	Allocate OA-1119201922	29,354.10	
CB29	2019-12-13	219217	Eastern Mediterranean	Allocate OA-1212201921	7,273.90	
CB29	2019-12-13	219031A	Eastern Mediterranean	Allocate OA-1212201921	10,638.05	
CB29	2019-12-13	219151	Eastern Mediterranean	Allocate OA-1212201921	12,509.15	
CB29	2019-12-13	219099	Eastern Mediterranean	Allocate OA-1212201921	19,528.19	
CB30	2019-12-13	219116	Bundesbeschaffung GMBH	debtor non payment	28,875.05	
CB32	2019-12-16	219039	Eastern Mediterranean	Previously paid on Oct3	15,820.57	
CB33	2019-12-17	219166	Rigel Shipping	converted to Euros in error	1,361.86	
CB34	2020-01-03	219152	MMI Europe	Apply OA-1218201917	10,091.17	
					501,950.29	

Total Misdirected fund CDN 171,612.92

NOTE: Per Factoring agreement dated June 21 2017, Clause 10 "Payments Received by Seller"
 LCX can charge penalty for conversion / fraud ie customer receipts received and misdirected but not remitted to LCX
 Penalty is the greater of \$1000 or 10% of value of funds received and not remitted

Per CAS 24,470.82
 Var - 0

Accounts Receivable				Disbursements and Charges				Balances							
Date	Batch	Type	Bought Invoices	Collected Invo	Discounts	Chargebacks	Funding	Receipts	Fees	Adj.	Acc. Receiv	Funding	Availability: Reserve	%	61,570.20
2019-10-04	4822-0160	Chgback				CB19 8,270.18					389,482.68	201,654.20	67,828.48	25.12%	
2019-10-07	4822-0050	Purchase					4,943.78	Flores Fees RR # 6	22,956.33	Eastern Med 210015 prev charged back	389,482.68	206,597.06	92,884.72	23.85%	
2019-10-08	4822-0101bot	Receipt Cust		29,538.97				29,538.97	OA Collection		389,482.68	273,842.63	115,840.05	29.74%	
2019-10-11	4822-0182bot	Receipt Cust		24,759.38				24,759.38	OA Collection		359,943.71	244,103.88	115,840.05	32.18%	
2019-10-21	4822-0163bot	Receipt Cust				CB 21 Non factored Invoices	57,443.22			3,018.44	359,943.71	219,344.28	115,840.05	34.56%	
2019-10-31	4822-0184	Chgback									460,358.29	279,835.94	100,722.35	39.24%	
2019-11-08	4822-0051	Purchase	100,614.58			Fund # 43 (32X health)					490,007.26	279,835.94	210,281.32	42.90%	
2019-11-08	4822-0166	Chgback				CB 22 Non factored Invoices					448,371.74	238,110.42	210,281.32	46.89%	
2019-11-12	4822-0187bot	Receipt Cust		41,725.62				41,725.62	OA Collection		433,079.14	223,717.82	210,281.32	48.45%	
2019-11-14	4822-0168bot	Receipt Cust		14,392.60		CB 23	883.93		289.99		433,095.21	223,987.81	209,107.40	48.28%	
2019-11-18	4822-0189	Chgback									433,095.21	203,954.88	209,107.40	60.82%	
2019-11-19	4822-0178bot	Receipt Cust		20,033.13				20,033.13	OA Collection		404,282.32	195,094.92	209,107.40	51.73%	
2019-11-20	4822-0171bot	Receipt Cust		8,859.78							404,282.32	278,094.52	126,107.40	31.20%	
2019-11-22	4822-0052	Purchase					83,000.00	Transfer 17 to 49200		436.47	574,307.04	278,531.39	95,775.85	25.58%	
2019-11-22	4822-0172	Chgback				CB24 Recover 210095					383,166.80	278,531.39	104,635.41	27.31%	
2019-11-22	4822-0173	Chgback				CB 29 Non factored invoices					383,166.80	288,170.15	97,996.65	25.58%	
2019-11-25	4822-0053	Purchase					6,608.76	Flores Fees RR # 6		278.86	373,845.83	285,449.01	88,396.82	23.65%	
2019-12-04	4822-0175	Chgback				CB27 Transmed 219102 (Oct19 OA collection)					362,474.48	274,077.66	88,396.82	24.38%	
2019-12-06	4822-0177bot	Receipt Cust		11,371.35				11,371.35	OA Collection		349,439.35	261,170.42	88,268.93	25.26%	
2019-12-06	4822-0170bot	Receipt Cust		13,035.13	35.34	Blue Line 219139		12,999.78		82.55	346,253.87	258,039.15	86,244.72	25.49%	
2019-12-11	4822-0178bot	Receipt Cust		3,186.48		Ripe 219165		3,186.48		24.21	294,638.77	206,394.05	68,244.72	29.45%	
2019-12-12	4822-0179bot	Receipt Cust		61,615.10				51,615.10	OA Collection		296,304.58	206,506.04	88,798.64	30.31%	
2019-12-13	4822-0181bot	Receipt Cust		1,855.81		CB29 Eastern Med OA collection				111.99	278,800.57	206,907.40	71,893.17	25.78%	
2019-12-13	4822-0182	Chgback				CB30		17,504.01		401.36	262,000.00	207,225.39	55,794.61	21.28%	
2019-12-16	4822-0183	Chgback				CB32 Eastern Med 219239		15,820.57		317.99	252,828.81	197,072.20	55,754.01	22.05%	
2019-12-16	4822-0185bot	Receipt Cust		10,153.19				10,153.19	OA Collection (Private)		251,464.65	197,083.50	64,381.45	21.63%	
2019-12-18	4822-0184	Chgback				CB33 conversion over Rpt		1,381.86		11.30	251,526.97	197,189.46	64,337.51	21.60%	
2020-01-03	4822-0186	Chgback				CB34		-82.02		105.96	251,526.97	197,890.18	53,636.79	21.32%	
2020-01-08	4822-0054	Purchase					700.72	Legals Tolmas RR#7			251,526.97	200,300.18	51,136.79	20.33%	
2020-01-13	4822-0055	Purchase								2,500.00	251,526.97	200,300.18	51,136.79	20.33%	
2020-01-13	4822-0056	Purchase									251,526.97	236,745.38	14,781.59	5.88%	
2020-01-14	4822-0057	Purchase									251,526.97	261,216.20	-9,689.23	-3.85%	
2020-03-02	4822-0188bot	Receipt Cust		13,689.98	9.00	Eastern 219233		13,690.98		1,943.98	237,839.99	249,479.20	-11,642.21	-4.90%	
2020-06-03	4822-0058	Purchase					6,212.60	Legals Tolmas RR#8			237,839.99	255,891.60	-17,054.81	-7.51%	
2020-08-26	4822-0189bot	Receipt Cust		49,991.00				49,991.00			187,845.99	205,700.80	-17,854.81	-9.51%	
2020-09-29	4822-0180bot	Receipt Cust		13,280.52				13,280.52			187,845.99	218,981.22	-31,135.33	-16.57%	
2020-08-05	4822-0101bot	Receipt Cust		9,991.00				9,991.00			177,854.99	208,990.52	-31,135.33	-17.51%	
2020-08-05	4822-0192	Chgback									177,854.99	212,746.94	-34,891.95	-19.82%	
Totals			1,603,130.24	1,183,348.13	2,355.50	241,927.12	1,283,196.28	1,342,818.44	217,853.15	54,425.05	3,010.00				
Current Totals			1,022,270.70	889,173.53	2,130.50	820,238,937	819,279.86	832,506.19	173,489.31	3,010.00					

Reconcile AR @ 23-9-2020	Total AR purchased	Faster Collections	Recover Receipt	O/A	Net collections	Total AR purchased	Less Chargeback	Add Opening AR	Closing AR per CAS	Var
1,022,270.70	0.00	511,010.86	59,902.00	116,180.65	-899,173.53	1,022,270.70	-212,391.37	177,854.99	177,854.99	0.00

Quick Rec on Client fundings - NFE	Total AR purchased	Less reserves @ 20%	Less initial fee @ 3%	Less Wire Fees \$30 x 5 Fundings	Add opening NFE
619,279.86	1,022,270.70	-204,454.14	-46,268.20	-150.00	49,557.96

Client Fundings	Client Fundings	Res Release	Monitoring Fees (FM)	Client Fundings	Transfer out	Nonres Fee (FM)
819,279.86	832,506.19	510.00	31,851.92	876,738.88	619,279.86	613,279.86

Reconcile Funds Employee (NFE)	Res Fee	Transfer Out	Third party legal	Nonres Fee (FM)	Less Collections	Transfer In	Add Fee	Add Adj
576,738.88	20,000.00	80,000.00	7,688.26	31,851.92	-711,840.19	-120,750.00	173,489.31	3,010.00

Fees on collections	Fees on chargeback	Franchise Fee	Conversion Penalty	Check
46,750.66	45,999.93	10,000.00	24,470.82	173,489.31

From AC #2002	Add Opening NFE
212,746.94	49,557.96

			Accounts Receivable				Disbursements and Charges				Balances				
Date	Batch	Type	Bought Invoices	Collected Invo	Discounts	Chargebacks	Funding	Receipts	Fees	Adj.	Acc. Receiv.	Funding	Availability: Reserve	%	61,570.20
			<u>Summary of Key Chargebacks</u>				Closing NFE per CAS 212,746.94								
			CB 7 Chargeback opening old AR 57,149.08				Var 0.00								
			CB 11 Chargeback Eastern Med Invoices 121,190.54												
			CB 16 Chargeback Fibrets / Wallen 18,700.33												
			CB 24 Chargeback Bremor 29,895.28												
			CB 27 Chargeback Timamed Invores 8,320.97												
			CB30 Chargeback Bundesbeschaffung GMBH 17,604.01												
			CB 32 Chargeback Eastern Med Invoices 15,820.57												
			Other misc chargebacks 13,985.01												
			<u>Grand total of Chargebacks</u> 281,945.79												
			Less offset for OA payments 69,154.42												
			<u>Net Chargeback P/L</u> 212,791.37												
0.00															

Versitec(1635536 Ont Inc) - CDN Factoring
 AR Detail - Sept 30 2020
 AC 4822 0.001 Per Diem rate

NOTE these invoices are now 12 to 15 months old !!!

DebtorName	Balance	Current	1-30	31-60	61-90	91-Up	Estimated - Accrued fees	Per Diem Fees
Blue Line Ship Management SA	16,602.10	--	--	--	--	16,602.10		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219222 10/21/2019 11/8/2019 10053 8,732.86	7,492.18 365	335				2,925.51	8.73	
219223 11/1/2019 11/8/2019 10053 9,109.92	9,109.92 354	324				2,951.61	9.11	
Bundesbeschaffung GMBH	30,338.88	--	--	--	--	30,338.88		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219115 6/18/2019 6/28/2019 10040 30,338.88	30,338.88 490	460				13,955.88	30.34	
Dalomar Shipping S.A.	3,304.90	--	--	--	--	3,304.90		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219094 6/4/2019 6/28/2019 10040 13,295.90	3,304.90 504	474				6,302.26	13.30	
Eastern Mediterranean Maritime Ltd.	28,452.89	--	--	--	--	28,452.89		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219132 6/15/2019 9/13/2015 10048 7,558.07	7,558.07 493	463				3,499.39	7.56	
219137 7/8/2019 9/13/2015 10048 9,264.23	9,264.23 470	440				4,076.26	9.26	
219216 10/24/2019 11/8/2019 10053 11,630.59	11,630.59 362	332				3,861.36	11.63	
FRI KARMSUND AS	13,898.32	--	--	--	--	13,898.32		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219101 6/10/2019 8/22/2019 10044 13,898.32	13,898.32 498	468				6,504.41	13.90	
GREEN SHIPPING AS	5,439.40	--	--	--	--	5,439.40		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219126 6/25/2019 8/22/2019 10044 5,439.40	5,439.40 483	453				2,464.05	5.44	
HIGLI AS	4,852.29	--	--	--	--	4,852.29		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219160 8/16/2019 9/13/2019 10048 4,852.29	4,852.29 431	401				1,945.77	4.85	
Premuda S.p.a.	10,313.26	--	--	--	--	10,313.26		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219178 7/28/2019 8/28/2019 10045 10,313.26	10,313.26 450	420				4,331.57	10.31	
Thenamari (Ship Management) Inc.	37,456.51	--	--	--	--	37,456.51		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219162 7/30/2019 8/28/2019 10045 10,811.62	10,811.62 448	418				4,519.26	10.81	
219194 10/29/2019 11/8/2019 10053 8,146.66	8,146.66 357	327				2,663.96	8.15	
219204 10/1/2019 11/8/2019 10053 11,113.34	11,113.34 385	355				3,845.24	11.11	
219225 10/25/2019 11/8/2019 10053 7,384.89	7,384.89 361	331				2,444.40	7.38	
Transmed Shipping Co. Ltd.	14,075.21	--	--	--	--	14,075.21		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219163 10/22/2019 11/8/2019 10053 14,075.21	14,075.21 364	334				4,701.12	14.08	
UAB Promar	3,111.77	--	--	--	--	3,111.77		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219175 8/2/2019 8/28/2019 10045 3,111.77	3,111.77 445	415				1,291.38	3.11	
WILSON SHIP MANAGEMENT AS	10,009.27	--	--	--	--	10,009.27		
Invoice# Invoice Date Funded Dt: Batch# Invoice Amount	Balance Invoice Days	Over Due Days Age						
219103 7/5/2019 8/22/2019 10044 10,009.27	10,009.27 473	443				4,434.11	10.01	
TOTAL	177,854.80	0	0	0	0	177,854.80		

Sanity Check on 4822.CDN AR Recovery

	Per CAS	Check	Reserves Reconciliation
Total AR Factored + unpaid	A	177,854.80	
Less Escrow reserve		32,421.41	
Net Advance balance		145,433.39	
Add -ve cash reserves		67,312.94	
Net Funds Employed		212,746.33	
Add Accrued fees (to 23-10-2020)		66,102.48	
Total due inc accrued fees	B	278,848.81	
		LCX Payout amount	
Shortfall if invoices paid in full	A-B	-100,994.01	

Conclusion: Given that Invoices are so old, there is insufficient funds to repay funds advanced + accrued fees, even when invoices are paid in full
 LC Rec for J Morgan Apr 2019-Sept 2020 AC 4822

Versitec(1635536 Ont Inc) - CDN Factoring
 Summary of Penalty for Misdirection of funds - Per Clause 10 of factoring agreement

Chargeback #	Date	Invoice #	Debtor	Reason	Amount	Penalty for Misdirected Customer Receipts
CB7	2019-05-10	218091	Avin International Ltd.	Debtor non payment	21,176.99	1,176.99
CB7	2019-05-10	217289	Ocean Choice International	Debtor non payment	19,522.72	1,952.72
CB7	2019-05-10	218016	Schiffahrtsgesellschaft mbH & Co.	Debtor non payment	3,904.50	3,904.50
CB7	2019-05-10	218004	Unistorm Maine & Spares	Debtor non payment	12,544.87	1,254.49
CB9	2019-07-23	219000	Louis Dreyfus Armateurs	Paid direct to client	3,449.06	0.00
CB11	2019-07-23	219026	Eastern Mediterranean	Debtor non payment	21,876.27	2,187.63
CB11	2019-07-23	219030	Eastern Mediterranean	Debtor non payment	20,666.57	2,066.66
CB11	2019-07-23	219031	Eastern Mediterranean	Debtor non payment	10,299.77	1,030.00
CB11	2019-07-23	219034	Eastern Mediterranean	Debtor non payment	20,966.57	2,096.66
CB11	2019-07-23	219041	Eastern Mediterranean	Debtor non payment	16,819.69	1,681.97
CB11	2019-07-23	219043	Eastern Mediterranean	Debtor non payment	16,819.69	1,681.97
CB11	2019-07-23	219044	Eastern Mediterranean	Debtor non payment	16,819.69	1,681.97
CB12	2019-08-22	219104	Cruise Management	Allocate OA pymt	10,038.66	0.00
CB12	2019-08-22	219092	Interscan Shipmanagement	Allocate OA pymt	5,051.53	0.00
CB12	2019-08-22	219077	Meteor Management	Allocate OA pymt	14,909.55	0.00
CB12	2019-08-22	219055	Premuda S.p.a.	Allocate OA pymt	16,882.94	0.00
CB12	2019-08-22	219056	Premuda S.p.a.	Allocate OA pymt	20,194.32	0.00
CB16	2019-09-13	219053	Finbeta SPA	Debtor non payment	8,760.42	876.04
CB16	2019-09-13	219010	Wallen Ship Management	Debtor non payment	7,930.91	793.10
CB18	2019-10-04	219035	Eastern Mediterranean	Allocate OA-10022019	13,647.20	0.00
CB23	2019-11-18	219129	Transmed Shipping Co. Ltd	Allocate OA pymt	13,994.46	0.00
CB23	2019-11-18	219131	Dynacom Tanker Management Ltd.	Allocate OA pymt	11,628.53	0.00
CB23	2019-11-18	219200	Eastern Mediterranean	Allocate OA pymt	13,556.70	0.00
CB23	2019-11-18	219168	Eastern Mediterranean	Allocate OA pymt	13,082.91	0.00
CB23	2019-11-18	219189	Eastern Mediterranean	Allocate OA pymt	4,739.35	0.00
CB24	2019-11-22	219086	Bramm-Bareidnngsgesellschaft	Debtor non payment	29,895.28	2,989.53
CB27	2019-12-04	219102	Transmed Shipping	Allocate OA-1119201922	29,354.10	0.00
CB29	2019-12-13	219217	Eastern Mediterranean	Allocate OA-1212201921	7,273.90	0.00
CB29	2019-12-13	219031A	Eastern Mediterranean	Allocate OA-1212201921	10,638.05	0.00
CB29	2019-12-13	219151	Eastern Mediterranean	Allocate OA-1212201921	12,509.15	0.00
CB29	2019-12-13	219099	Eastern Mediterranean	Allocate OA-1212201921	19,528.19	0.00
CB30	2019-12-13	219116	Bundesbeschaffung GMBH	debtor non payment	28,875.05	2,887.51
CB32	2019-12-16	219039	Eastern Mediterranean	Previously paid on Oct3	15,820.57	0.00
CB33	2019-12-17	219166	Rigel Shipping	converted to Euros in error	1,361.86	0.00
CB34	2020-01-03	219152	MMI Europe	Apply OA-1218201917	10,091.17	0.00
					501,950.29	24,470.82

Total Misdirected fund CDN 171,612.92

NOTE: Per Factoring agreement dated June 21 2017, Clause 10 "Payments Received by Seller"
 LCX can charge penalty for conversion / fraud ie customer receipts received and misdirected but not remitted to LCX
 Penalty is the greater of \$1000 or 10% of value of funds received and not remitted

Per CAS 24,470.82
 Var 0

APPENDIX G
ANALYSIS OF 1635536 ONTARIO INC
US\$ ACCOUNT 4821

1635536 OntarioInc.O/A Versitec Matine & Industrial
 Analysis of Accountwith Liquid Capital
 LC Account 4821

	<u>A/R</u>	<u>Reserve (A)</u>	<u>Reserve (B)</u>	<u>Total</u>
Opening balances	\$ 95,073.79	-\$ 22,464.20	-\$ 37,926.75	\$ 34,682.84
Adjustments per LCX				
chargeback			6,020.00	6,020.00
Fees to October 10, 2019			37,342.49	37,342.49
	<u>\$ 95,073.79</u>	<u>-\$ 22,464.20</u>	<u>\$ 5,435.74</u>	<u>\$ 78,045.33</u>
Corrections per MPI				
1 Adjust for Escrow holdback (allowance for Doutful accounts not paid)	-\$ 22,464.20	\$ 22,464.20		\$ -
2 Add back A/R not on Original LCX list re Cruise management	13,994.19			\$ 13,994.19
3 Blue line receipt not part of factored invoices			- 9,825.25	-\$ 9,825.25
4 Cape Fear invoices paid to LCx by client not factored			- 21,920.50	-\$ 21,920.50
5 Penalty for charge backs not warranted			- 2,953.00	-\$ 2,953.00
6 Charge back on BNA Marine paid by internal transfer as shown on Factored Accounts Recivable summary			- 6,020.00	-\$ 6,020.00
Final	<u><u>\$ 86,603.78</u></u>	<u><u>\$ -</u></u>	<u><u>-\$ 35,283.01</u></u>	<u><u>\$ 51,320.77</u></u>

Notes

- 1 the executive summary prepared by LCx deducts the funds received directly from Versitecs clients to LCX from the non factored invoices. these funds were never paid to Versitec during the Forebearance period. the deduction was necessary in order for LCX to reconcile to the factored A/R which was reported to the Court. The funds received and maintained in LCX investment account was never disclosed to the Court and only increased the Earned Reserve accountowing to Versitec by LCX
- 2 Total Receipts as per MPI and LCX reconcileas well as the total invoices factored.

1635536 OntarioInc.O/A Versitec Matine & Industrial
 Analysis of Account with Liquid Capital
 LC Account 4821(US \$)

MPI SUMMARY OF FACTORED RECEIPTS AND RECEIPTS

<u>Invoices</u>			<u>Receipts</u>		
<u>Per LCX</u>	<u>Per MPI</u>	<u>Diff</u>	<u>Per LCx</u>	<u>Per Analysis</u>	<u>Diff</u>
\$ 129,232.18	\$ 143,226.37	-\$ 13,994.19	\$ 50,058.95	\$ 62,650.75	-\$ 12,591.80
Cruise Management Inv 219015 ot on LCX A/R		<u>\$ 13,994.19</u>	factored A/R receipts payment made in error re Blue Line non factored receipts paid direct by client	\$ 30,905.00 9,825.25 <u>21,920.50</u> 62,650.75	
			less receipts per LCX Diff	<u>50,058.95</u> <u>12,591.80</u>	

Note

In LCX's executive summary they deducted the funds received from non factored invoices. As a result in order to reconcile to the receipts that supported the A/R factored it was deducted but it was actually received by LCX but never effected their Reserve in total. This amount of money was never paid to Versitec during the forbearance period by LCX. Hence it increased the earned reserve owing to Versitec by LCX

The extra factored invoice which was stated to be a duplicate by LCX may have been misunderstood as distinct from the Adventura Partners Ltd invoice 219078 dated April 10, 2019 in the amount of \$13,945.00 and formed part of fund 34 B with funding date from LCX of May 3, 2019. The Cruise Management Invoice 219015 of \$13,994.19 was funded on 35B dated May 28, 2019 and had an invoice date of May 9, 2019. The duplication of invoice no's may have been an error but they were separate invoice undertakings when MPI reviewed the separate invoice files. The duplicate invoice number 219015 may have been for Adventura Partners in the amount of \$6880.00 which also formed part of Fund 34 B. Again this was a separate invoice with a separate purchase order when reviewed by MPI. (See MPI detail analysis)

1635536 OntarioInc.O/A Versitec Marine & Industrial
 Analysis of Account with Liquid Capital
 LC Account 4821

RESERVE

	<u>Reserve (A)</u>	<u>Reserve (B)</u>
20% of factored invoices 20% X \$143,226	\$ 28,645.20	
Earned reserve 20% of receipts paid 20 % X \$30,095	- 6,181.00	<u>6,181.00</u>
Non Factored receipts these funds were received by LCX directly from the customer on non factored invoices and never paid to Versitec		
Cape Fear		5,865.50
		16,055.00
Blue Line		<u>9,825.25</u>
		<u>31,745.75</u>
	<u>\$ 22,464.20</u>	<u>\$ 37,926.75</u>

Proof

Cash receipts not factored rec'd by LCX	\$ 31,745.75
Less non factored receipts extra picked up by analysis	- 9,825.25
difference in Cash receipts per LCX Executive summary	<u>\$ 21,920.50</u>

1635536 OntarioInc.O/A Versitec Marine & Industrial
Analysis of Accountwith Liquid Capital
LC Account 4821

MPI CHARGEBACKS

<u>Charge back</u>	<u>Invoice</u>	<u>Per LCX Name</u>	<u>amount</u>	<u>Date Paid</u>	<u>Per analysis direct by client</u>
CB31	210205	BNA Marine	\$ 6,020.00	13/12/2109	\$ - no source document per LCX
Pending	219127	Wallem	\$ 19,532.00		On A/R can not be a charge back if considered an A/R

APPENDIX G - 1
ANALYSIS OF 1635536 ONTARIO INC
LCX RECONCILIATION OF ACCOUNT 4821

Versitec(1635536 Ont Inc) - US Factoring
Executive Summary
AC 4821

Reconcile AR @ 30-9-2020

Total AR purchased	129,232.16	
Total Collections	50,058.95	39% of actual factored AR collected
Less O/A	<u>-21,920.60</u>	
Net collections	-28,138.35	
Less Chargeback	-6,020.00	5%
Total AR Factored	<u>95,073.81</u>	

Reconcile Funds Employed (NFE)

Client Fundings	99,358.78	
Res Rel/Transfer	10,745.56	
Third party legals	<u>2,846.16</u>	
	112,950.50	
Less Collections	-50,017.45	20,327.30
Add fees	8,885.57	Shortfall if invoices paid in full
Add Adj	<u>6,240.00</u>	
Total Net Funds Employed	<u>78,058.62</u>	

Add Accrued fees (to 19-10-2020) 37,342.49

Total payout including accrued Fees: 115,401.11

Key points

- 1) Only \$50K or 39% of factored AR actually collected !
- 2) Some chargebacks ie \$6K or 5% of factored AR
- 3) Remaining AR totalling \$95K is on average 15 months old
Hence a large amount of accrued fees due to late / non payment \$ 37,342
- 4) All Escrow reserves ie 20% held on factored AR is full used by chargebacks, additional fees etc
- 5) There was \$26K of misdirected factored invoice payments , which exceeded the \$21K of non factored collections

BottomLine: Net Funds Employed + accrued fees \$115K > Total remaining factored AR \$95K by \$20K !

Versitec(1635536 Ont Inc) - US Factoring
AR Detail - Sept 30 2020
AC 4821

0.001 Per Diem rate

NOTE these invoices are now over 15 months old !!!

DebtorName	Balance	Current	1-30	31-60	61-90	91-Up	Estimated - Accrued fees	Per Diem Fees
CRUISE MANAGEMENT INTERNATIONAL, INC.	13,945.00	--	--	--	--	13,945.00		
Invoice# Invoice Date Funded D# Batch# Invoice Amount	Balance	Invoice Days	Over Due Days	Age				
219078 4/10/2019 5/3/2019 10024 13,945.00	13,945.00	559	529		7,376.91		13.95	
GREAT LAKES DREDGE & DOCK, LLC	48,921.79	--	--	--		48,921.79		
Invoice# Invoice Date Funded D# Batch# Invoice Amount	Balance	Invoice Days	Over Due Days	Age				
219213 8/26/2019 9/27/2019 10031 48,921.79	48,921.79	421	391		19,128.42		48.92	
METEOR MANAGEMENT BULGARIA LTD	6,320.00	--	--	--		6,320.00		
Invoice# Invoice Date Funded D# Batch# Invoice Amount	Balance	Invoice Days	Over Due Days	Age				
219073 5/21/2019 6/28/2019 10028 6,320.00	6,320.00	518	488		3,084.16		6.32	
Wallem Ship Management Ltd.	25,887.00	--	--	--		25,887.00		
Invoice# Invoice Date Funded D# Batch# Invoice Amount	Balance	Invoice Days	Over Due Days	Age				
219127 8/2/2019 8/28/2019 10029 19,532.00	19,532.00	445	415		8,105.78		19.53	
219214 9/16/2019 9/27/2019 10031 6,355.00	6,355.00	400	370		2,351.35		6.36	
Total	95,073.79	0	0	0	0	95,073.79		

Sanity Check on 4821 US\$ AR Recovery

	Per CAS	Check	Reserves Reconciliation
Total AR Factored + unpaid	A 95,073.79	95,073.84	0
Less Escrow reserve	- 18,001.51		
Net Advance balance	77,072.28		
Add -ve cash reserves	986.28		
Net Funds Employed	78,058.56	78,058.60	0
Add Accrued fees (to 19-10-2020)	37,342.49		
Total due inc accrued fees	B 115,401.05		
Shortfall if invoices paid in full	A-B -20,327.26		

LCX Payout amount

Conclusion: Given that invoices are so old, there is insufficient funds to repay funds advanced + accrued fees, even when invoices are paid in full

CLIENT ACTIVITY STATEMENT (CAS)

From: April 1, 2019 To: September 30, 2020
 Client: 1635535 Ontario Inc dba Versitec Marine - Factoring
 Number: 4821
 Type: LCEC US

Discount: Rates per Forebearance agreement - April 2019
 Reserve: Rates per Forebearance agreement - April 2019

Date	Batch	Type	Accounts Receivable				Disbursements and Charges				Balances				
			Bought Invoice	Collected Invt	Discounts	Chargebacks	Funding	Receipts	Fees	Adj.	Acc. Receiv.	Funding	Availability: Reserve	%	-2,754.16
		Opening Balances	426,007.96	301,732.11	147.00	124,275.82	352,870.38	373,125.69		40,038.63	-19,783.34	0.03	-0.02	0.05	168.87%
2019-04-18	4821-0025	Purchase					2,000.00	Legal fee retainer		30.00		2,029.98	-2,029.95	-6,766,500.00%	
2019-05-03	4821-0025	Purchase	26,025.00	Fund# 34B			20,009.26		760.76	30.00	26,025.03	22,850.00	3,175.03	12.20%	
2019-05-21	4821-0027	Purchase					846.16	Legal fee balance		30.00	26,025.03	23,726.16	2,298.87	8.83%	
2019-05-23	4821-0027	Recpt Cust		5,200.00	23.50				5,176.50		20,825.03	18,549.66	2,275.37	10.95%	
2019-05-29	4821-0028	Purchase					5,865.60	Fund 35B (CMI) processed as RR (see note)		30.00	20,825.03	29,325.22	-8,500.19	-40.82%	
2019-06-20	4821-0028	Recpt Cust		5,865.60					5,865.60		14,959.43	23,459.82	-8,500.19	-56.82%	
2019-06-21	4821-0029	Chgback									20,825.03	23,459.82	-2,634.59	-12.65%	
2019-06-28	4821-0029	Purchase	6,320.00	Fund# 36B			4,836.40		189.60	30.00	27,145.03	28,515.62	-1,370.59	-5.05%	
2019-07-04	4821-0030	Recpt Cust		16,055.00					16,055.00		11,090.03	12,460.62	-1,370.59	-12.36%	
2019-07-08	4821-0031	Chgback									27,145.03	12,460.62	14,584.41	54.10%	
2019-08-28	4821-0030	Purchase	22,785.36	Fund# 39B			17,514.72		683.56	30.00	49,930.39	30,688.90	19,241.49	38.54%	
2019-09-11	4821-0031	Purchase							T16 to 4820U (cover CB15)	6,000.00	49,930.39	36,688.90	13,241.49	26.52%	
2019-09-20	4821-0032	Purchase	12,805.00	Fund# 41B			9,829.86		384.16	30.00	62,735.39	46,932.92	15,802.47	25.19%	
2019-09-27	4821-0033	Purchase	61,296.80	Fund# 42B			47,168.54		1,838.90	30.00	124,032.19	95,970.36	28,061.83	22.62%	
2019-10-10	4821-0133bol	Recpt Cust		6,880.00	6.00	(CMI 219015)			6,874.00	90.13	117,152.19	89,186.49	27,965.70	23.87%	
2019-12-06	4821-0135bol	Recpt Cust		12,805.00	6.00	(Anglo 219183)			12,799.00	61.46	104,347.19	76,448.95	27,898.24	26.74%	
2019-12-12	4821-0138bol	Recpt Cust		3,253.35	6.00	(Rigel 219164 & 165)			3,247.35	25.06	101,093.84	73,226.66	27,867.18	27.57%	
2019-12-13	4821-0137	Chgback				6,020.00				28.90	95,073.84	73,255.56	21,818.28	22.95%	
2020-01-13	4821-0034	Purchase							Fee adj	1,849.84	95,073.84	75,105.40	19,968.44	21.00%	
2020-01-14	4821-0035	Purchase							Penalty adj	2,953.20	95,073.84	78,058.60	17,015.24	17.90%	
Totals			555,240.12	351,791.06	188.50	108,375.22	465,820.88	423,143.14	48,924.20	-13,543.34					
Current Totals			129,232.16	50,058.95	41.50	-15,900.60	112,950.60	50,017.45	8,885.57	6,240.00					

Reconcile AR @ 23-9-2020		21,920.60	OA Collections	10,745.56	Res Rel Duplicate Inv	240.00	Wire fees
Total AR purchased	129,232.16	28,138.35	Factored Ar Collections	99,358.78	Client Fundings		
Total Collections	50,058.95						
Less O/A	-21,920.60						
Net collections	-28,138.35						
Less Chargeback	-6,020.00						
	<u>95,073.81</u>						
Closing AR per CAS	95,073.84						
Var	0						

NOTES:
 May20-10
 Fund 35B CMI funded invoice at \$13K, invoice revised down to \$7K (based on prepayment rec'd of \$6,880)
 Also processed as a reserve release because invoice was previously funded on 34B under Adventure Partners \$6,880
 Result is Versitec was overfunded by \$10,745.55

Versitec(1635536 Ont Inc) - US Factoring
 Summary of Penalty for Misdirection of funds - Per Clause 10 of factoring agreement

Chargeback #	Date	Invoice #	Debtor	Reason	Amount
6B31	2019-12-13	219205	BNV Marine Services LLC	Paid direct to debtor	6,020.00
					6,020.00
CB Pending		219127	Wallem	Paid direct to debtor	19,532.00
Total Misdirected fund US					25,552.00

Penalty for
 Misdirected
 Customer
 Receipts



1953

2953

NOTE: Per Factoring agreement dated June 21 2017, Clause 10 "Payments Received by Seller"
 LCX can charge penalty for conversion / fraud ie customer receipts received and misdirected but not remitted to LCX
 Penalty is the greater of \$1000 or 10% of value of funds received and not remitted

APPENDIX H
VMI USA
US\$ ACCOUNT 4820U

Versitec Marine USA Inc.
 Analysis of Account with Liquid Capital
 LC account 4820U

MPI SUMMARY

	<u>A/R</u>	<u>Reserve (A)</u>	<u>Reserve (B)</u>	<u>Total Balance</u>
		-		
Opening balance	\$ 75,614.67	-\$ 28,273.35	-\$ 139,857.43	-\$ 92,516.11
Add LCX adjustments				
Chargebacks in total			114,593.45	114,593.45
Accrued fees to October 10, 2020			29,536.56	29,536.56
	<u>\$ 75,614.67</u>	<u>-\$ 28,273.35</u>	<u>\$ 4,272.58</u>	<u>\$ 51,613.90</u>
Corrections per MPI				
1 (Reserve (A) Allowance for Doubtful Accounts accounts (Escrow Holdback)	- 28,273.35	28,273.35		\$ -
2 Additional A/R not included in LCX amounts as per Chargeback analysis	\$ 14,788.03		-\$ 14,788.03	\$ -
3 Paid to LCX by Versitrec but put as charge back by LCX as per charge back analysis			-\$ 64,186.65	-\$ 64,186.65
4 Payment received by Versitec not paid to LCX			\$ 13,205.00	\$ 13,205.00
5 Invoice never factored by LCX			-\$ 1,975.80	-\$ 1,975.80
6 Penalty by LCX for alleged misdirected funds			-\$ 14,449.13	

not found in MPI analysis (included in fees by LCX)

	<u>\$ 62,129.35</u>	<u>\$ -</u>	<u>-\$ 63,472.90</u>	<u>-\$ 1,343.55</u>
7 Reserve (B) transferred back from Canadian a/c 4822			- 92,000.00	- 92,000.00
	<u><u>\$ 62,129.35</u></u>	<u><u>\$ -</u></u>	<u><u>-\$ 155,472.90</u></u>	<u><u>-\$ 93,343.55</u></u>

Notes

1 Opening Reserve is calculated by the following:

Reserve (A)	\$ 168,130.78
Reserve (B)	- 139,857.43
	<u><u>\$ 28,273.35</u></u>

Proof

\$ 172,674.10	Gross 20% held back on funding
- 4,543.32	contra amounts agianst Escrow holdback
- 139,857.43	Reserve(B)
<u><u>\$ 28,273.35</u></u>	Reserve (A)

2 All LCX adjustments including fees and charge backs are as of October 10, 2020 as per LCX reconciliation

Versitec USA
 Analysis of Account with Liquid Capital
 LC account 4820U

MPI FACTORED INVOICES AND RECEIPTS

Invoices funded		difference	Receipts		difference
Per MPI	Per LCX		Per MPI	Per LCX	
<u>\$ 438,370.51</u>	<u>\$ 438,370.54</u>	<u>-\$ 0.03</u>	<u>\$ 265,424.29</u>	<u>\$ 248,162.39</u>	<u>17,261.90</u>

Could not indentify difference between LCX and MPI summaries

Versitec Marine USA Inc.

Analysis of Account with Liquid Capital

LC account 4820U Chargeback Reconciliation

RESERVE

	Reserve (A)	Reserve(B)
Escrow hold back 20% of Invoices factored (20%X \$438,371)	\$ 87,674.20	
Add Reserve per reduction Fund 35C	85,000.00	
	<u>172674.2</u>	
Less contra a/r	- 4,543.32	
	<u>168,130.88</u>	
Earned amount based on receipts paid as per calculation	-\$ 139,857.43	\$ 139,857.43
Reserves total	<u><u>\$ 28,273.45</u></u>	<u><u>\$ 139,857.43</u></u>

Versitec Marine USA Inc.

Analysis of Account with Liquid Capital

LC account 4820U Chargeback Reconciliation

MPI CHARGEBACK

CB #	Invoice	Amount	A/R add	<u>Paid LCX amount</u>	<u>Paid Versitec/not LCX Date</u>	<u>never factored</u>	<u>Contra Escrow Holdback</u>	<u>Total</u>
CB13	U19033A	\$ 8,758.00		\$ 7,882.00	04-Sep			
CB13	U19033A	1,975.80				1,975.80		
CB15	219062	10,498.80					10,498.80	
CB15	219065	8,802.60					8,802.60	
CB15	219066	3,415.20					3,415.20	
CB20	U19050	4,745.00	4,745.00					
CB25	U19002	17,440.65		17,440.65	30-Aug			
CB25	U19028	9,780.00				9,780.00		
CB25	U19016	3,655.86	3,655.86					
CB25	U19038	3,425.00				3,425.00		
CB25	219016	38,864.00		38,864.00	23-Aug			
CB28	U19018	6,387.17	6,387.17					
Total		<u>117,748.08</u>	<u>\$ 14,788.03</u>	<u>\$ 64,186.65</u>	<u>\$ 13,205.00</u>	<u>\$ 1,975.80</u>	<u>\$ 22,716.60</u>	<u>\$ 116,872.08</u>
Diff on U19033A								876.00
			<u>\$ 14,788.03</u>	<u>\$ 64,186.65</u>	<u>\$ 13,205.00</u>	<u>\$ 1,975.80</u>	<u>\$ 22,716.60</u>	<u>\$ 117,748.08</u>
non factored per LCX		- 3,154.13						- 3,154.13
		<u>\$ 114,593.95</u>	<u>\$ 14,788.03</u>	<u>\$ 64,186.65</u>	<u>\$ 13,205.00</u>	<u>\$ 1,975.80</u>	<u>\$ 22,716.60</u>	<u>\$ 114,593.95</u>

Note

No mention on LCX of \$85,000 chargeback which reduced the funding on 35C

- 3 All MPI adjustments made as per analysis of all funding and made by LCX during forbearance agreement time frame and no adjustments for interest has been made to November 27,2021 Court date before Justice Penny.
- 4 The Chargeback schedule did not include the \$85,000 chargeback which was deducted from fund 35C this represented the Escrow holdback in total as per LCX reconciliatio. It was calculated as follows:

	<u>Reserve(escrow holdback)</u>	<u>Rounded</u>
Total funding of invoices (20% X \$438,370)	\$ 87,674	\$ 85,000

Then it was transferred to a Canadian company as the earned Reserve which included the 3% payment of the A/R fully paid as follows:

	<u>Reserve plus 3%</u>	<u>rounded</u>
total Reserve as above	\$ 87,674	\$ 85,000
3% of paid invoices (3%X \$248,162)	7,445	7,445
Total	<u>\$ 95,119</u>	<u>\$ 92,445</u>
Reserve transferred		<u><u>\$92,000</u></u>

Conclusion

There is no A/R owed because it was covered by the Reserve (A) (Allowance for Doubtful Accounts) and the Reserve (B) is Versitecs funds held in trust and payable to LCX as per the agreement Have agreed to both LCX records and Versitec .

The Earned reserve may be understated by the payment to LCX of the 3% financing charge that was netted off the top as part of the funding to Versitec but

received in cash payments either from Versitec or the clients directly.
In Versitec USA case this could be \$7,962 to \$7,445 depending on the cash receipts received as follows

	<u>Cash receipts</u>	<u>3% received by LCX from 100% payment of A/R</u>
Per RB	\$ 265,424	\$ 7,962.72
Per LCX	\$ 248,162	\$ 7,444.86

Versitec USA
 Analysis of Account with Liquid Capital
 LC account 4820U

MPI ANALYSIS OF INTER FUND TRANSFER

Clawback on advances from LCX	\$ 85,000.00	Additional holdback on fund 35 c May 29, 2019
Add 3% of fees earned on receipted and paid factored invoices	7,444.86	
Total	<u>92,444.86</u>	
Can company Cdn4 account		
Less transferred per LCX reconciliation to pay other factored A/R in Can company	- 92,000.00	
difference	<u>\$ 444.86</u>	

APPENDIX H - 1
VMI USA
US\$ ACCOUNT 4820U

**Versitec Marine USA INC - Factoring
Executive Summary
AC 4820U**

Reconcile AR @ 30-9-2020

Total AR purchased		438,370.54	
Total Collections	248,162.39		
Less O/A	<u>0.00</u>		
Net collections		-248,162.39	57%
Less Chargeback		-114,593.45	26%

Total AR Factored 75,614.70

Reconcile Funds Employed (NFE)

Client Fundings	248,835.30
Res Rel/Transfer	92,000.00
Third party legals	<u>2,804.00</u>
	343,639.30
Less Collections	-305,025.19
Add fees	57,470.45
Add Adj	-2,230.00
Total Net Funds Employed	<u>93,854.56</u>

Add Accrued fees (to 19-10-2020) 29,536.56

Total payout including accrued Fees 123,391.12

47,776.42
Shortfall if invoices paid in full

Key points

- 1) Only \$248K or 57% of factored AR actually collected !
- 2) Large amount of chargebacks ie \$114K or 26% of factored AR
- 3) Remaining AR totalling \$75K is on average 15 months old
Hence a large amount of accrued fees due to late / non payment \$ 29,537
- 4) All Escrow reserves ie 20% held on factored AR is full used by chargebacks, additional fees etc
- 5) There was over \$122K of misdirected factored invoice payments , which far exceeded the \$3K of non factored collections

BottomLine: Net Funds Employed + accrued fees \$123K > Total remaining factored AR \$75K by nearly \$48K !

Versitec Marine USA INC - Factoring
AR Detail - Sept 30 2020
AC 4820U

0.001 Per Diem rate

NOTE these invoices are now over 15 months old !!!

DebtorName	Balance	Current	1-30	31-60	61-90	91-Up	Estimated - Accrued fees	Per Diem Fees
ANGLO EASTERN SHIP MANAGEMENT LTD. (HONG K	22,555.00	--	--	--	--	22,555.00		
Invoice# Invoice Date Funded Da Batch# Invoice Amo Balance Invoice Days Over Due Days Age								
U19048 7/7/2019 8/28/2019 10022 5,095.00 5,095.00 471						441	2,246.90	5.10
U19051 7/28/2019 8/28/2019 10022 8,400.00 8,400.00 450						420	3,528.00	8.40
U19053 7/25/2019 8/28/2019 10022 9,060.00 9,060.00 453						423	3,832.38	9.06
Wallem Ship Management Ltd.	53,059.67	--	--	--	--	53,059.67		
Invoice# Invoice Date Funded Da Batch# Invoice Amo Balance Invoice Days Over Due Days Age								
U19027 7/25/2019 8/28/2019 10022 23,079.94 23,079.94 453						423	9,762.81	23.08
U19042 6/28/2019 8/8/2019 10020 4,940.38 4,940.38 480						450	2,223.17	4.94
U19044 7/26/2019 8/28/2019 10022 15,106.35 15,106.35 452						422	6,374.88	15.11
U19045 6/2/2019 8/22/2019 10021 3,938.00 3,938.00 506						476	1,874.49	3.94
U19049 7/19/2019 8/28/2019 10022 5,995.00 5,995.00 459						429	2,571.86	6.00
Total	75,614.67	0	0	0	0	75,614.67		

Sanity Check on 4820U AR Recovery

Total AR Factored + unpaid	A	75,614.67
Less Escrow reserve		-14,679.02
Net Advance balance		60,935.65
Add -ve cash reserves		32,918.85
Net Funds Employed		93,854.50
Add Accrued fees (to 19-10-2020)		29,536.56
Total due inc accrued fees	B:	123,391.06

Per CAS Check
75,614.73 0

Reserves Reconciliation

Escrow Reserves	14,679.02
Cash Reserves -ve	(32,918.85)
	-18,239.83
Total reserves per CAS	-18,239.93
Var	0

← LCX Payout amount

Shortfall if invoices paid in full A-B -47,776.39

Conclusion: Given that invoices are so old, therer is insufficient funds to repay funds advanced + accrued fees , even when invoices are paid in full

CLIENT ACTIVITY STATEMENT

From: April 1, 2019 To: September 30, 2020

Client: Versitec Marine USA INC - Factoring

Number: 4820U

Type: LCEC US

Fund 33B
Reserves heldback for US Legals 3,500.00
Wire Fees \$30x2 60.00
3,560.00

Discounts Rates per Forebearance agreement - April 2019

Reserves Rates per Forebearance agreement - April 2019

Date	Batch	Type	Accounts Receivable				Disbursements and Charges				Balances			
			Bought Invoice	Collected Invo	Discounts	Chargebacks	Funding	Receipts	Fees	Adj.	Acc. Receiv.	Funding	Availability: Reserve	%
2019-04-30	Opening	Balances	339,552.24	323,044.46	54.00	16,507.75	294,033.66	341,419.83	26,817.73	20,568.34	0.03	0.10	-0.07	-233.33%
2019-05-24	4820-0017	Purchase	97,884.00				71,810.68		2,936.52		97,884.03	78,307.30	19,576.73	20.00%
2019-05-29	4820-0018	Purchase		13,834.00	423.50			13,210.50			84,250.03	65,095.80	19,154.23	22.73%
2019-06-28	4820-0019	Purchase	143,240.86					15,581.04	608.22	30.00	227,490.89	94,689.50	132,801.39	58.38%
2019-07-23	4820-0020	Purchase	20,274.08					92,000.00			247,764.97	110,808.76	136,956.21	55.24%
2019-08-08	4820-0021	Purchase	83,963.44					64,621.84	2,518.80	30.00	331,728.41	270,079.50	61,648.91	18.58%
2019-08-22	4820-0022	Purchase	21,526.86					16,545.58	845.82	30.00	353,255.27	287,301.00	65,954.27	18.67%
2019-08-23	4820-0028	Chgback				10,733.80			40.01		342,521.47	287,341.01	55,180.46	16.11%
2019-08-26	4820-0129bot	Recpt Cust		39,037.65				39,037.65	1,177.28		303,483.82	249,480.54	54,003.28	17.79%
2019-08-28	4820-0023	Purchase	71,481.30				55,010.60		2,144.44	30.00	374,965.12	306,665.58	68,299.54	18.21%
2019-09-03	4820-0130bot	Recpt Cust		76,656.44	3,031.00			73,625.44	357.59		298,308.68	233,397.83	64,910.85	21.76%
2019-09-04	4820-0131bot	Recpt Cust		7,882.20	6.00			7,876.20	30.74		290,426.48	225,552.37	64,874.11	22.34%
2019-09-11	4820-0024	Purchase						24,813.00			290,426.48	219,552.37	70,874.11	24.40%
2019-09-11	4820-0033	Chgback				22,716.60			238.53		267,709.88	219,790.90	47,918.98	17.90%
2019-09-13	4820-0134bot	Recpt Cust		24,813.00				24,813.00	242.55		242,896.88	195,220.46	47,676.42	19.63%
2019-09-16	4820-0025	Purchase					2,144.00	Legals US		30.00	242,896.88	197,394.46	45,502.42	18.73%
2019-09-16	4820-0035	Chgback				-2,144.00					245,040.88	197,394.46	47,646.42	19.44%
2019-09-23	4820-0136bot	Recpt Cust		10,433.11				10,433.11	60.41		234,607.77	187,021.76	47,586.01	20.28%
2019-10-11	4820-0137bot	Recpt Cust		22,479.94	6.00			22,473.94	78.68		212,127.83	164,625.50	47,502.33	22.39%
2019-10-28	4820-0138bot	Recpt Cust		40,666.05	2,006.00			38,660.05	500.19		171,461.78	126,466.64	44,995.14	26.24%
2019-10-30	4820-0139	Chgback				-1,011.03					172,472.81	126,466.64	46,006.17	26.67%
2019-10-30	4820-0140	Chgback				4,745.00			16.13		167,727.81	126,482.77	41,245.04	24.59%
2019-11-22	4820-0142	Recpt Cust						62,341.30			167,727.81	64,141.47	103,586.34	61.76%
2019-11-22	4820-0142	Chgback				73,165.91		1,070.73			94,561.90	65,212.20	29,349.70	31.04%
2019-12-09	4820-0144	Chgback				8,387.17		105.39			88,174.73	65,317.59	22,857.14	25.92%
2019-12-17	4820-0146bot	Recpt Cust		12,560.00	6.00			12,554.00	128.11		75,814.73	52,891.70	22,923.03	30.05%
2020-01-13	4820-0026	Purchase						Fee adj	25,823.82		75,814.73	78,715.52	-3,100.79	-4.10%
2020-01-14	4820-0027	Purchase						Penalty adj	14,449.14	See Penalty tab	75,814.73	93,154.66	-17,549.93	-23.21%
2020-02-27	4820-0028	Purchase					330.00	Legals US			75,814.73	93,494.66	-17,879.93	-23.65%
2020-09-11	4820-0029	Purchase					330.00	Legals US		30.00	75,814.73	93,854.66	-18,239.93	-24.12%
Totals			777,922.78	571,206.85	5,532.50	131,101.20	637,672.96	646,444.82	84,288.18	18,338.34				
Current Totals			438,370.54	248,162.39	5,478.50	114,593.45	343,639.30	305,025.19	67,470.45	-2,230.00				

Reconcile AR @ 23-9-2020

Total AR purchased	438,370.54
Total Collections	248,162.39
Less O/A	0.00
Net collections	-248,162.39
Less Chargeback	-114,593.45
	<u>75,814.70</u>

Quick Rec on Client fundings - NFE

Total AR purchased	438,370.54
Less reserves @ 20%	-87,674.11
Less initial fee @ 3%	-13,151.14
Less Wire Fees \$30 x 5 Fundings	-150.00
Clawback Fund 35C	(85,000.00)

2,804.00 US Legals	
0.00 Res Release	
248,835.30 Client Fundings	
92,000.00 Transfer Out	
343,639.30	
Client Fundings	248,835.30
Res Rel/Transfer	92,000.00
Third party legals	2,804.00
Less Collections	-305,025.19
Add fees	57,470.45
Add Adj	-2,230.00
	<u>93,854.56</u>

Net Adjustments	2,500.00
Wire fees	270.00
Check	0.00
Initial Fees	13,151.14
Fees on collections	2,575.56
Fee Adj	40,272.96
Fees on chargeback	1,470.79
Check	0.00
	<u>57,470.45</u>

Calc at 3%

0.02

Versitec Marine USA INC

Chargeback #	Date	Invoice # Debtor	Reason	Amount
CB13	2019-08-23	U19033A Wallem Ship Management	Duplicate invoice factored	8,758.00
CB13	2019-08-23	U19033A Wallem Ship Management	Invoice revised - copy attached	1,975.80
CB15	2019-09-11	219062 Chesters Technoservices PTE	Debtor non payment	10,498.80
CB15	2019-09-11	219065 Chesters Technoservices PTE	Debtor non payment	8,802.60
CB15	2019-09-11	219066 Chesters Technoservices PTE	Debtor non payment	3,415.20
CB20	2019-10-30	U19050 Tan Binh Co. Ltd.	Paid direct to Versitec	4,745.00
CB25	2019-11-22	U19002 Anglo Eastern Ship Management	Paid direct to Versitec	17,440.65
CB25	2019-11-22	U19028 Anglo Eastern Ship Management	Paid direct to Versitec	9,780.00
CB25	2019-11-22	U19016 Anglo Eastern Ship Management	Paid direct to Versitec	3,655.86
CB25	2019-11-22	U19038 Anglo Eastern Ship Management	Paid direct to Versitec	3,425.00
CB25	2019-11-22	219016 Anglo Eastern Ship Management	Paid direct to Versitec	38,864.40
CB28	2019-12-06	U19018 Americas Marine Management	Paid direct to debtor	6,387.17
Total Chargeback for factored invoices				117,748.48
CB17	Less Chargeback for O/A for Non factored AR collected			(2,144.00)
	Total Chargeback - CREDIT for non factored invoices			(1,011.03)
GRAND TOTAL for Chargebacks				<u>114,593.45</u>
Total net chargebacks per CAS				114,593.45
Var				0.00

Handwritten annotations: A bracket groups the amounts from CB15 to CB28, with an arrow pointing to 22,716.60. Another bracket groups the amounts from CB25 to CB28, with an arrow pointing to 79,553.08. A note at the bottom right states: "NOTE amount collected on NON Factored invoices is (1,011.03) relatively small compared to funds collected by Versitec (3,155.03) ie misappropriated funds".

Versitec Marine USA INC

Summary of Penalty for Misdirection of funds - Per Clause 10 of factoring agreement

Chargeback #	Date	Invoice #	Debtor	Reason	Amount	Penalty for Misdirected Customer Receipts
CB13	2019-08-23	U19033A	Wallem Ship Management	Duplicate invoice factored	8,758.00	
CB13	2019-08-23	U19033A	Wallem Ship Management	Invoice revised - copy attached	1,975.80	
CB15	2019-09-11	219062	Chesters Technoservices PTE	Debtor non payment	10,498.80	
CB15	2019-09-11	219065	Chesters Technoservices PTE	Debtor non payment	8,802.60	
CB15	2019-09-11	219066	Chesters Technoservices PTE	Debtor non payment	3,415.20	
CB20	2019-10-16	U19050	Wallem Ship Management	Paid direct to vendor		1,000
CB20	2019-11-22	U19032	Wallem Ship Management	Paid direct to vendor		1,744
CB20	2019-11-22	U19032	Wallem Ship Management	Paid direct to vendor		1,000
CB20	2019-11-22	U19016	Wallem Ship Management	Paid direct to vendor		1,000
CB20	2019-11-22	U19038	Wallem Ship Management	Paid direct to vendor		1,000
CB20	2019-11-22	U19016	Wallem Ship Management	Paid direct to vendor		1,000
CB20	2019-11-22	U19016	Wallem Ship Management	Paid direct to vendor		3,886
CB20	2019-12-04	U19038	Wallem Ship Management	Paid direct to vendor		1,000
					117,748.48	
CB Pending		U19027	Wallem	Paid direct to debtor	23,079.94	2,308
CB Pending		U19044	Wallem	Paid direct to debtor	15,106.35	1,511
						38,186.29
						84,298.08
						122,484.37
						141,419.13

NOTE: Per Factoring agreement dated June 21 2017, Clause 10 "Payments Received by Seller"
 LCX can charge penalty for conversion / fraud ie customer receipts received and misdirected but not remitted to LCX
 Penalty is the greater of \$1000 or 10% of value of funds received and not remitted

APPENDIX H

Versitec Summary
amended January 13, 2022

	<u>A/R factored net</u>	<u>Reserve (B)</u>	<u>Total</u>	<u>deduct [Note 1] Fees to Oct 10,2020</u>	<u>add [Note2] payment to LCX from MPI</u>	<u>Revised as of March 4, 2020</u>
1635536 Ontario Inc A/C 4822 Cdn\$	\$ 73,179.98	-\$ 159,892.24	-\$ 86,712.26	-\$ 66,102.00	60,000.00	-\$ 92,814.26
1635536 Ontario Inc A/c 4821 US \$	86,603.78	- 35,283.01	51,320.77	- 37,342.49		\$ 13,978.28
VMI USA A/C 4820U	62,129.35	- 155,472.90	- 93,343.55	- 29,536.56		-\$ 122,880.11
Total US amounts	148,733.13	- 190,755.91	-\$ 42,022.78	- 66,879.05		-\$ 108,901.83
converted to CDN\$ 1.25 CDN	185,916.41	- 238,444.89	- 52,528.48	- 83,598.81		-\$ 136,127.29
total in CDN \$ as at 04-Mar-20	<u>\$ 259,096.39</u>	<u>-\$ 398,337.13</u>	<u>-\$ 139,240.74</u>	<u>-\$ 149,700.81</u>	<u>\$ 60,000.00</u>	<u>-\$ 228,941.55</u>

Notes

- 1 Fees accrued from March 4, 2020 to October 10, 2020 have been removed to come down to balance owed by LCX to Versitec as of the order date of March 4, 2020 as shown in LCX material
- 2 Both MPI and LCX in there analysis included the payment made by MPI post March 9, 2020

LIQUID CAPITAL EXCHANGE CORP.

Applicant

v. 1635536 ONTARIO INC. and others

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(Proceeding Commenced at Toronto)

AFFIDAVIT of
JOHN HOWARD DEANE MORGAN
(Sworn August 31st 2022)

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40 Wynford Drive Suite 305
Toronto, ON M3C 1J5

William M Sharpe
Tel: 416-482-5321
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Lawyer for the Interested Parties
John Morgan and Morgan & Partners Inc.
Originally Appointed Receiver

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

LIQUID CAPITAL EXCHANGE CORP.

Applicant

and

163556 ONTARIO INC., et al

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

MOTION RECORD

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