

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

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF
THE BANKRUPTCY OF

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

THIRD REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED

October 28, 2019

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1.1 Introduction

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

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

1.2 Purpose of Trustee’s Third Report

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

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

2.0

Claims Administration Procedure Update

2.1 Collections of Receivables and Holdbacks

2.1.1 All amounts are inclusive of HST unless otherwise noted.

2.1.2 Following its appointment, the Trustee reviewed the records of Sirius and updated the invoicing and receivables. The chart below details the outstanding invoice(s), receivables and holdbacks on each of the Construction Projects as at the date of bankruptcy.

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

Note- All amounts are inclusive of HST

2.1.3 Waterloo Project

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

2.1.4 Kitchener Project

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

2.1.5 Newcastle Project

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

2.1.6 Brampton Project

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

2.1.7 Parking Lot Project

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

2.2 Guelph Project update

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

3.0

Trustee's Account

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

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

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

4.1 Distribution Priority

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

4.2 Proposed Distribution

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

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

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

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

4.2.5 Newcastle Project

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

4.2.6 Brampton Project

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

4.2.7 Guelph Project

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

¹ Subject to any WEPPA repayments

² Subject to any WEPPA repayments

5.0 Discharge

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

6.0 Order Sought

6.1.1 We submit this Third Report to the Court in support of our Motion respectfully requesting this Court to:

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

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

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



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