

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

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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.

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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

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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

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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

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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

-17-

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

-18-

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

-19-

- (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

-20-

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*


-25-

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.

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,

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 'P. J.', is written above 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



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 Rizopulos <lrizopulos@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



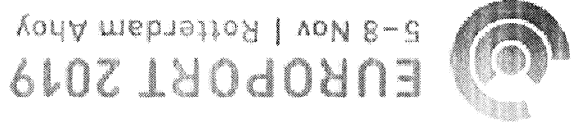
If you do not wish to receive future commercial electronic messages from Liquid Capital, please reply to this email and type "REMOVE" in the subject line

On Fri, Oct 25, 2019 at 12:37 PM Ed Pavey <epavey@versitecmarine.com> wrote:



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VISIT US AT BOOTH 1606 Dec. 4-6 VISIT BOOTH 3537



STERN TUBE SEAL EXPERTS



Email: epavey@versitecmarine.com

Cell: +1 (813) 573-5280

Office: +1 (561) 756-8044

Boca Raton, FL 33432

900 N. Federal Highway Suite 100

Versitec Marine USA

VP Sales & Service

Ed Pavey

Best Regards,

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.

Hi Jonathan,



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

Confidentiality Notice: This e-mail is intended only for the addressee named above. It contains information that is privileged, confidential, or otherwise protected from use and disclosure. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, or dissemination of this transmission, or taking of any action in reliance on its contents, or other use is strictly prohibited. If you have received this transmission in error, please reply to sender listed above immediately and permanently delete this message, including all attachments, from your inbox. Thank you for your cooperation.



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

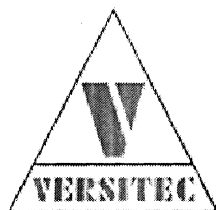
Versitec Marine

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
SEALS**
LEADING THE WAY

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.

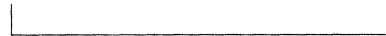
Tel: 416-727-4521

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.liquidcapitaladvancecorp.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



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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



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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.

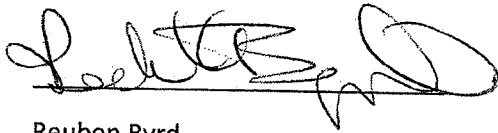
The parties agree to fully and finally resolve all matters between them as follows:

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.

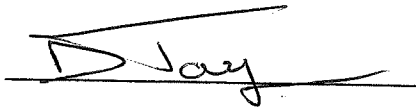
5. The parties shall execute a Mutual Release to follow. The payments under enumerated paragraphs 1 above is conditional upon the Plaintiff executing and returning an original copy of the Mutual Release to the Defendants' Counsel.

Dated this 22nd day of September, 2020.

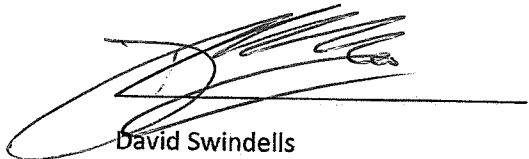
The Corporate Defendant per:



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.

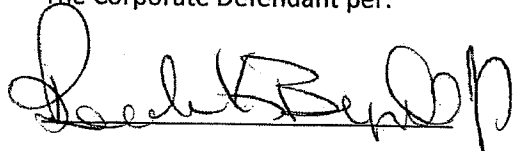
The parties agree to fully and finally resolve all matters between them as follows:

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.

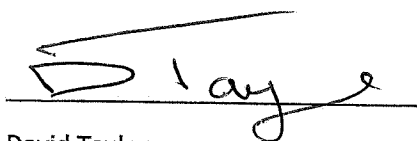
4. The Corporate Defendant will provide a mutually agreeable letter of reference.
5. The Individual Defendant shall provide full payment of the mediation fees directly to the mediator Lisa Feld.
6. The parties shall execute a Mutual Release to follow. The payments under enumerated paragraphs 1 to 3 above 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.

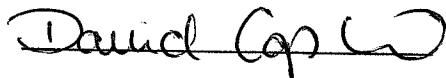
The Corporate Defendant per:



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.

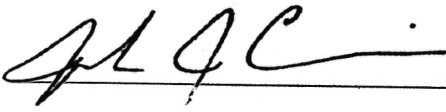
IN WITNESS WHEREOF, this Agreement is made and entered into as of the date this Agreement is executed by all Parties below.

[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~~30,000.00 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 to a total of \$70,000.00 USD.~~ the remainder of the Settlement Sum to a total of \$20,000.00 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

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

Formatted: Superscript

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: _____

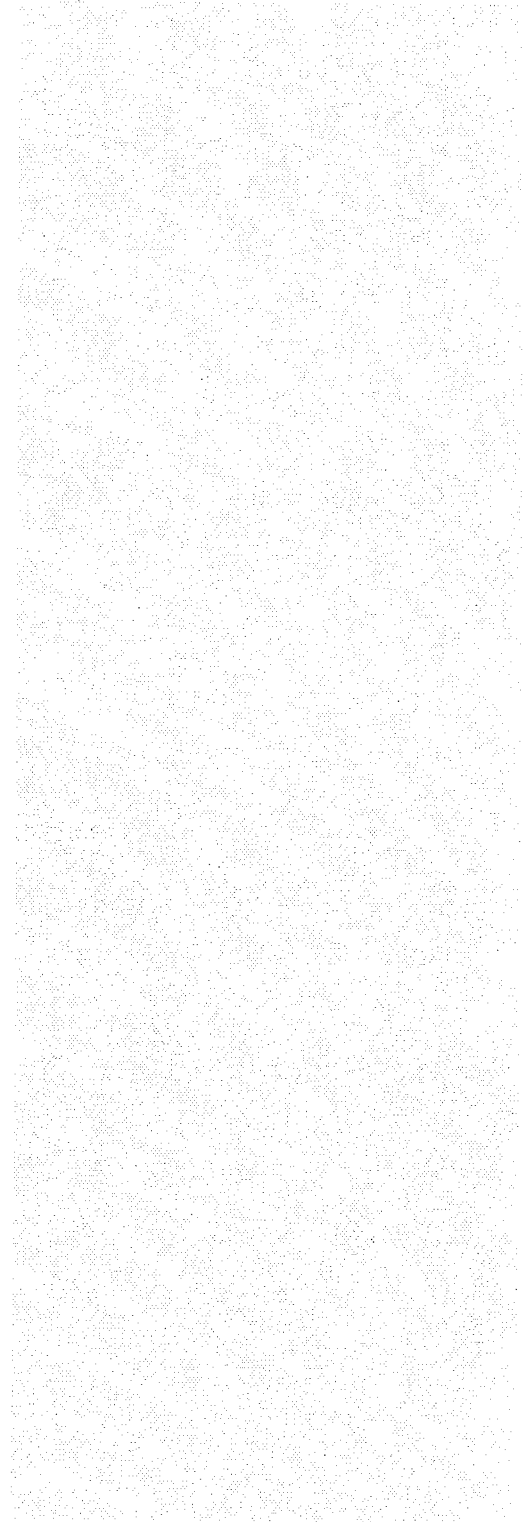
Morgan & Partners, Inc.

By: 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

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

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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



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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](#)

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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

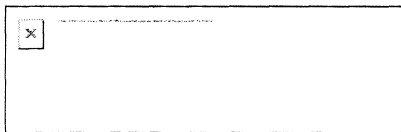
This is an external email.

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



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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

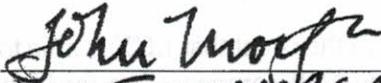
the Third Report of the Substitute Receiver dated June 15, 2021 filed in the Application.

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 A - Appointment Order dated February 12, 2021
- Appendix B - Preliminary Report dated February 9, 2021
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- Appendix D - Approval and Vesting Order dated May 4, 2021
- Appendix E - Administrative Order dated May 4, 2021
- Appendix F - Third Report dated June 16, 2021
- Appendix G - Administrative Order dated June 9, 2021
- Appendix H - Amended CRA Claim Letter for Source Deductions
- Appendix I - Versitec USA Banking Transactions
- Appendix J - Receiver's Statement of Receipts & Disbursements
- 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	524,440.00	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	- 817,562.00	B
Net amounts received by Global/Reuben subordinate to LCX	- 293,122.00	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	- 170,741.59	D
TOTAL Funds Withdrawn re: subordinate obligations	- 463,863.59	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)

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Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (September 1, 2020)