

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM )  
JUSTICE DIETRICH )  
TUESDAY, THE 2ND  
DAY OF DECEMBER, 2020

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., DISTINCT INFRASTRUCTURE GROUP WEST INC., DISTINCTTECH INC., IVAC SERVICES INC., IVAC SERVICES WEST INC., and CROWN UTILITIES LTD.

Respondents

ORDER

**THIS MOTION**, made by Deloitte Restructuring Inc., in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of each of Distinct Infrastructure Group Inc. ("**DIG**"), Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc. ("**IVAC**"), iVac Services West Inc. and Crown Utilities Ltd. (collectively, the "**Debtors**"), for an Order, *inter alia*, (i) approving the Fourth Report of the Receiver dated October 15, 2020 (the "**Fourth Report**"), (ii) approving the settlement agreement between the Receiver and LiUNA 183 as appears at Appendix C to the Fourth Report, and the payment of the

amounts now due in respect of such settlement (iii) approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“**A&B**”); and (iv) approving the Receiver’s interim Statement of Receipts and Disbursements from March 11, 2019 to October 2, 2020 (as appended to the Fourth Report), was heard this day by judicial teleconference due to the COVID-19 emergency via Zoom.

**ON READING** the Motion Record of the Receiver, including the Fourth Report and the appendices thereto, the affidavit of Jordan Sleeth sworn October 13, 2020 and the affidavit of Kyle Plunkett sworn October 7, 2020, and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Damian Lu sworn October 15, 2020, filed:

#### **SUFFICIENCY OF SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service and manner of service of the Notice of Motion and Motion Record of the Receiver, the Fourth Report of the Receiver dated October 15, 2020, on any Person are, respectively, hereby abridged and validated, and any further service thereof is hereby dispensed with so that this Motion was properly returnable October 20, 2020.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning attributed to those terms in the settlement agreement between the Receiver and the Union dated as of August 13, 2020 (the “**Settlement Agreement**”).
3. **THIS COURT FINDS** that all persons who failed to appear before the court today shall be and are hereby barred from objecting to the Settlement Agreement.

#### **APPROVAL OF SETTLEMENT AGREEMENT**

4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order and are authorized and directed to comply with their obligations thereunder.
5. **THIS COURT ORDERS** that, notwithstanding:
  - (a) the pendency of these proceedings;

- (b) any applications for a CCAA Order or bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of any of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- c) any assignment in bankruptcy made in respect of any of the Respondents,

the settlement approved pursuant to this Order shall be binding on any trustee in bankruptcy or Monitor that may be appointed in respect of any of the Respondents and shall not be void or voidable by creditors of any of the Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **DISTRIBUTION**

6. **THIS COURT ORDERS** that the Receiver shall distribute funds from the estate as set out in the Settlement Agreement to the Union. For greater clarity, the funds to be forthwith distributed are \$805,624.55, which are broken down as follows:

- (a) \$727,544.72 of the \$775,000 Secured Pension Claim being:
  - (i) \$576,098.55 from Distinct Ontario regarding the unpaid pension contributions from October 2018 to March 2019;
  - (ii) \$77,727.51 from Distinct Ontario regarding the unpaid pension contributions relating to the Grievance Settlement;
  - (iii) \$26,263.37 from Ivac Ontario regarding a portion of the \$121,173.94 of unpaid pension contributions from October 2018 to March 2019;
  - (iv) \$47,455.28 from Distinct Ontario regarding a portion of the \$121,173.94 of unpaid pension contributions for work done for Ivac from October 2018 to March 2019;
- (b) \$77,079.83 of the accepted Secured Wage/Compensation Claims being:
  - (i) \$70,427.74 from Distinct Ontario regarding amounts owed for the work done in October 2018 to March 2019; and,
  - (ii) \$6,652.09 from Distinct Ontario regarding a portion of the \$13,304.18 owed for the work done for Ivac Ontario in October 2018 to March 2019.

7. **THIS COURT ORDERS** that the Fourth Report, and the conduct and activities of the Receiver described therein be and are hereby approved provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **APPROVAL OF INTERIM RECEIPTS AND DISBURSEMENTS**

8. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period of March 11, 2019 through September 30, 2020, as set out in Appendix "B" to the Fourth Report, be and is hereby approved.

#### **APPROVAL OF FEES AND DISBURSEMENTS**

9. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements of \$546,359.93 plus HST of \$71,026.77, totalling \$617,386.70 as set out in Appendix "D" to the Fourth Report, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, A&B, being \$81,226.50 in fees and disbursements of \$1,158.91 plus HST of \$10,710.11, totalling \$93,095.52 as set out in Appendix "E" to the Fourth Report, are hereby approved.

11. **THIS COURT ORDERS** that the provisions of the Bankruptcy and Insolvency Act and the Rules of Civil Procedure (Ontario) establishing the period within which any appeal or motion for leave to appeal this Order must be commenced shall apply without suspension to this Order, notwithstanding any provision of the Emergency Management and Civil Protection Act and any regulations thereunder including Ontario Regulation 73/20.

  
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**ROYAL BANK OF CANADA**

Plaintiff

-and-

**DISTINCT INFRASTRUCTURE GROUP INC., et al.**

Respondents

Court File No. CV-19-00615270-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**ORDER**

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*Lawyers for the Receiver*

## Sleeth, Jorden

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**From:** Dietrich, Madam Justice Bernadette (SCJ) <Bernadette.Dietrich@scj-csj.ca>  
**Sent:** Wednesday, December 2, 2020 1:32 PM  
**To:** Damian Lu; Robb English; dyiokaris@kmlaw.ca; Sleeth, Jorden  
**Cc:** Anissimova, Alsou (MAG); Pera, Jonathan (JUD)  
**Subject:** [EXT] RE: ROYAL BANK OF CANADA vs DISTINCT INFRASTRUCTURE GROUP INC. et al (Court File No. CV-19-00615270-00CL)  
**Attachments:** Counsel Slip (Dec 2 2020 Motion)(42609073.pdf; 2020-12-02\_132734.pdf)

The Receiver's motion in the above-noted matter was heard via Zoom videoconference this afternoon.

The counsel listed on the attached counsel slip were in attendance.

### Endorsement

The Receiver (Deloitte) brings a motion for an order approving a settlement agreement between the Receiver and LiUNA 183 (the "Union") with respect to the claims and priority entitlements of former employees, as well as an order approving the Fourth Report of the Receiver, the Receiver's Statement of Receipts and Disbursements for the period March 11, 2020 to October 2, 2020, and the fees and disbursements of the Receiver and its counsel.

The motion is unopposed. The principal creditor is the Royal Bank of Canada ("RBC"). RBC confirmed that it will not object to the settlement made with the Union. It has approved the form of order sought. It is expected that RBC will suffer a shortfall in its recovery on its security. It is the only creditor with an economic interest in the settlement.

The settlement agreement between the Receiver and the Union was reached after extensive negotiation. The Union submits that it got a good result for the former employees of the debtors with respect to their claims and priority entitlements, as summarized in the Receiver's Fourth Report.

Having heard the submissions of counsel for the Receiver and counsel for the Union, and having reviewed the settlement agreement, the Fourth Report of the Receiver, its Statement of Receipts and Disbursements, and the affidavits in support of the fees and disbursements claimed by the Receiver, and its counsel, I am satisfied that the settlement agreement and the Receiver's Fourth Report should be approved. The Statement of Receipts and Disbursements appears to be in order as do the fees and disbursements charged by the Receiver and its counsel. They should also be approved.

Order to go in the form of draft attached hereto and signed by me. The Order is effective as of today's date and it does not need to be entered.



Dietrich J.  
Superior Court of Justice (Toronto)  
December 2, 2020