

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B3, 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

**SUPPLEMENTARY MOTION RECORD OF THE APPLICANTS,
MEGA DIESEL HOLDINGS LTD. AND CHRIS ARON WOOD
(Returnable December 17, 2019)**

November 5, 2019

**BIRENBAUM, STEINBERG, LANDAU,
SAVIN & COLRAINE LLP**
Barristers and Solicitors
33 Bloor Street East, Suite 1000
Toronto, Ontario
M4W 3H1

Craig R. Colraine (31792P)
David Cassin (70846N)

Tel: (416) 961-4100
Fax: (416) 961-2531
Email: colraine@bslsc.com / cassin@bslsc.com

Lawyers for the Applicant,
Mega Diesel Holdings Ltd. and Chris Aron Wood

TO: AIRD & BERLIS LLP
181 Bay Street, Suite 1800
Toronto, Ontario
M5J 2T9

D. Robb English (19862F)

Tel: (416) 865-4747
Fax: (416) 863-1500
Email: renglish@airdberlis.com

Lawyers for Deloitte Restructuring Inc.,
in its capacity as Court-appointed Receiver of the Respondents

AND TO: THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
Toronto, Ontario
M5K 1K7

D.J. Miller (34393P)
Rachel Bengino (68348V)

Tel: (416) 304-0559
Fax: (416) 304-131
Email: djmiller@tgf.ca / rbengino@tgf.ca

Lawyers for Royal Bank of Canada

AND TO: DISTINCT INFRASTRUCTURE GROUP INC.
77 Belfield Road, Suite 100
Toronto, Ontario
M9W 1G6

Debtor

AND TO: iVAC SERVICES WEST INC.
77 Belfield Road, Suite 100
Toronto, Ontario
M9W 1G6

Debtor

AND TO: DISTINCT INFRASTRUCTURE GROUP WEST INC.
10180-101 Street, Suite 2300
Edmonton, Alberta
T5J 1V3

Debtor

AND TO: DISTINCTTECH INC.
77 Belfield Road, Suite 100
Toronto, Ontario
M9W 1G6

Debtor

AND TO: iVAC SERVICES INC.
77 Belfield Road, Suite 100
Toronto, Ontario
M9W 1G6

Debtor

AND TO: CROWN UTILITIES LTD.
242 Hargrave Street, Suite 1700
Winnipeg, Manitoba
R3C 0V1

Debtor

INDEX

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Respondents

I N D E X

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TAB 1

**ONTARIO
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Respondents

**AFFIDAVIT OF IVANA DITTA
(Sworn November 5, 2019)**

**I, IVANA DITTA, of the City of Vaughan, in the Province of Ontario, MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a legal assistant at the law firm of Birenbaum, Steinberg, Landau, Savin & Colraine LLP, solicitors for the Applicants, Mega Diesel Holdings Ltd. and Chris Aron Wood, and as such have knowledge of the matters to which I hereinafter depose. Where my evidence is based on information provided to me by others, I have so indicated, and I believe such information to be true.

-2-

2. I am advised by David Cassin, one of the lawyers for the Applicants, Mega Diesel Holdings Ltd. and Chris Aron Wood, that on September 9, 2019, he sent correspondence to D.J. Miller and Rachel Bengino of Thornton Grout Finnigan LLP, counsel for the Applicant, Royal Bank of Canada. Attached hereto as **Exhibit "A"** is a copy of Mr. Cassin's email enclosing his letter to Ms. Miller and Ms. Bengino, dated September 9, 2019.

3. I am advised by Mr. Cassin that he received no response to his correspondence of September 9, 2019 from Ms. Miller or Ms. Bengino.

4. On October 18, 2019, I sent correspondence from Mr. Cassin to Mr. Miller and Ms. Bengino, as well as to Mr. Chowdhury, counsel to Royal Bank of Canada in Calgary, Alberta, and Mr. Sanson, counsel to the Debtors in Alberta. Attached hereto as **Exhibit "B"** is a copy of my email enclosing Mr. Cassin's letter, dated October 18, 2019.

5. On October 18, 2019, Mr. Cassin received a response from Mr. Robb English advising that he acts as independent counsel for the Court-appointed Receiver and had previously sent a reply to Mr. Cassin's September 9, 2019 correspondence to clarify same. Attached hereto as **Exhibit "C"** is a copy of correspondence from Mr. English to Mr. Cassin enclosing his original September 18, 2019 correspondence.

6. Our offices never received a copy of Mr. English's September 18, 2019 correspondence until same was enclosed in his email of October 18, 2019.

7. On October 18, 2019, Mr. Cassin also received a response to his October 18, 2019 correspondence from Mr. Sanson advising that he no longer acted for the Debtors. Attached hereto as **Exhibit "D"** is a copy of correspondence from Mr. Sanson to Mr. Cassin, dated October 18, 2019.

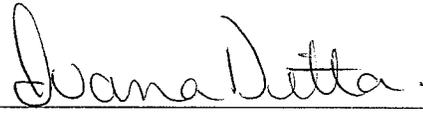
8. I swear this affidavit for the purposes of the within motion and for no other, or improper, purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on November 5, 2019.



Commissioner for Taking Affidavits

David A. Cassin
Barrister & Solicitor



IVANA DITTA

Tab A

Ivana Ditta

From: David Cassin
Sent: September 9, 2019 2:54 PM
To: djmiller@tgf.ca; rbengino@tgf.ca
Cc: Craig Colraine; Ivana Ditta
Subject: Receivership of Distinct Infrastructure Group Inc. et al. (Court File No. CV-19-00615270-00CL) | Consent to Lift Stay
Attachments: Letter to DJ. Miller and R. Bengino [09-Sep-2019].pdf
Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon, Ms. Miller and Ms. Bengino.

Please see attached, correspondence of today's date.

Sincerely,
David

David Cassin | Associate | D: (416) 642-8818 | E: cassin@bslsc.com

Birenbaum Steinberg Landau Savin & Colraine LLP
Suite 1000 - 33 Bloor Street East, Toronto, ON M4W 3H1 | T: (416) 961-4100 | F: (416) 961-2531 | W: www.bslsc.com

This e-mail and any attached files are privileged and strictly confidential and intended solely for the use of the persons to whom they are addressed. If you are not a named addressee you should not use, rely on, disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

This is Exhibit "A" referred to in the affidavit of Ivana Ditta sworn before me, this 5th day of November 2019.



A COMMISSIONER FOR TAKING AFFIDAVITS

David A. Cassin
Barrister & Solicitor



Suite 1000 - 33 Bloor Street East
Toronto, Canada M4W 3H1

Telephone: (416) 961-4100
Fax: (416) 961-2531

Craig Colrairie
Direct Dial: (416) 961-0042
Email: colrairie@bslsc.com

David Cassin
Direct Dial: (416) 642-8818
Email: cassin@bslsc.com

September 9, 2019

VIA EMAIL djmiller@tgf.ca / rbengino@tgf.ca

DJ Miller / Rachel Bengino
Thornton Grout Finnigan
100 Wellington Street West, Suite 3200
Toronto, Ontario
M5K 1K7

Dear Ms. Miller and Ms. Bengino:

**Re: Receivership of Distinct Infrastructure Group Inc. et al.
Court File No. CV-19-00615270-00CL**

We are counsel to Chris Aron Wood and Mega Diesel Holdings Ltd., creditors of Distinct Infrastructure Group Inc. (“DIG”). We write seeking your consent to lift the stay imposed by the March 11, 2019 Order of Justice Hailey (the “Receivership Order”) to allow an ongoing appeal to proceed before the Court of Queen’s Bench of Alberta.

As you are aware, prior to the appointment of the Receiver, our clients were attempting to enforce outstanding judgments against DIG (and its related wholly-owned subsidiaries) in Alberta, in the amount of approximately \$575,000.00.¹

In their attempt to enforce the outstanding judgments, an issue arose as to the priority over certain assets registered in the Alberta Personal Property Registry as between our clients and Royal Bank of Canada (the “Priority Dispute”).

Master Schlosser, of the Court of Queen’s Bench of Alberta, granted an Order in the Priority Dispute in favour of RBC and DIG, from which our clients have appealed (the “Schlosser Order”). However, as a result of the Receivership Order, our clients are estopped from pursuing their appeal of the Schlosser Order in Alberta.

¹ Order of Master Smart in the amount of \$422,398.81 plus interest and costs (Court of Queen’s Bench of Alberta Court File No. 1703-13921) and Order of Master Schlosser, in the amount of \$149,922 plus interest and costs (Court of Queen’s Bench of Alberta Court File No. 1703-21939).

- 2 -

We understand that our clients' Alberta counsel served your office on or about April 23, 2019 with a copy of the Notice of Appeal in the Priority Dispute, as well as the appeal materials filed with the Court of Queen's Bench of Alberta.

On review of the Receiver's publicly filed materials, there is a substantial risk that there will be no funds available from which our clients may seek to enforce their outstanding judgments.

Given that the Priority Dispute is currently a live issue before the Alberta courts, it is our view that the stay imposed in this matter is resulting in a material prejudice as against our clients and should properly be lifted in order to allow the appeal of the Schlosser Order to proceed.

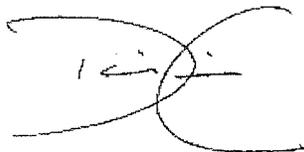
As such, we seek your written consent, pursuant to the Receivership Order, to lift the stay imposed in order to allow the Appeal of the Schlosser Order.

Should you fail to provide consent to lift the stay, we have instructions to bring a motion forthwith seeking to lift the stay, and will seek costs against the Receiver as a result.

We look forward to receiving your response by no later than Monday, September 16, 2019. Failing which, we will proceed to arrange for a motion on this issue.

Sincerely,

BIRENBAUM, STEINBERG, LANDAU, SAVIN & COLRAINE LLP

A handwritten signature in black ink, appearing to read "DC" or similar initials, with a large, stylized flourish extending from the end.

David Cassin
DC

cc Clients

Tab B

Ivana Ditta

From: Ivana Ditta
Sent: October 18, 2019 2:45 PM
To: 'djmiller@tgf.ca'; 'rbengino@tgf.ca'; 'achowdhury@fasken.com'; 'gsanson@bmlp.ca'
Cc: David Cassin; Craig Colraine
Subject: Receivership of Distinct Infrastructure Group Inc. et al. - (Court File No. CV-19-00615270-00CL)
Attachments: Letter to All Counsel 18-Oct-2019.pdf

Dear Counsel,

Please see the attached correspondence of today's date with respect to the above-noted matter.

Regards,

--
 Ivana Ditta
 Legal Assistant to Olivia Mann-Foster and David Cassin
 Birenbaum, Steinberg, Landau, Savin & Colraine LLP
 Suite 1000- 33 Bloor Street East
 Toronto, Ontario M4W 3H1
 Main Line: (416) 961-4100 (Ext. 246)
 Direct Line: (416) 642-8816
 Fax: (416) 961-2531
 E-mail: ivana@bslsc.com

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This is Exhibit "B" referred to in the affidavit of Ivana Ditta sworn before me, this 5th day of November 2019.


 A COMMISSIONER FOR TAKING AFFIDAVITS

David A. Cassin
 Barrister & Solicitor



Suite 1000 - 33 Bloor Street East
 Toronto, Canada M4W 3H1
 Telephone: (416) 961-4100
 Fax: (416) 961-2531

Craig Colraine
 Direct Dial: (416) 961-0042
 Email: colraine@bslsc.com

David Cassin
 Direct Dial: (416) 642-8818
 Email: cassin@bslsc.com

October 18, 2019

VIA EMAIL djmiller@tgf.ca / rbengino@tgf.ca

DJ Miller / Rachel Bengino
 Thornton Grout Finnigan LLP
 100 Wellington Street West, Suite 3200
 Toronto, Ontario
 M5K 1K7

VIA EMAIL achowdhury@fasken.com

Arif Chowdhury
 Fasken Martineau Du Moulin LLP
 350 7th Avenue, SW, Suite 3400
 Calgary, Alberta
 T2P 3N9

VIA EMAIL gsanson@bmlp.ca

Graham Sanson
 Bishop & McKenzie LLP
 10180-101 Street, Suite 2300
 Edmonton, Alberta
 T5J 1V3

Dear Counsel:

**Re: Receivership of Distinct Infrastructure Group Inc. et al.
 (Court File No. CV-19-00615270-00CL)**

We are counsel to Chris Aron Wood and Mega Diesel Holdings Ltd., creditors of Distinct Infrastructure Group Inc. (“DIG”). We write to canvass dates for a motion seeking to lift the stay imposed by the March 11, 2019 Order of Justice Hainey (the “Receivership Order”).

On September 9, 2019, we wrote to counsel for the Receiver, Deloitte Restructuring Inc., seeking the Receiver’s consent to lift the stay to allow our clients to pursue an ongoing appeal at the Court of Queen’s Bench of Alberta. We have received no response to our correspondence and as such have prepared motion materials for a motion to lift the stay.

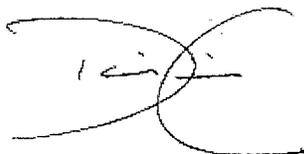
Please provide your availability for a short-motion to lift the stay in November and December 2019.

If we do not receive a response from you by October 25, 2019, we will choose a date unilaterally and serve our materials in accordance with the *Rules*.

We look forward to hearing from you at your earliest convenience.

Sincerely,

BIRENBAUM, STEINBERG, LANDAU, SAVIN & COLRAINE LLP

A handwritten signature in black ink, appearing to read "DC" or similar initials, enclosed within a large, stylized loop.

David Cassin

DC

cc Clients

Tab C

From: Robb English
To: "colraine@bslsc.com"; "cassin@bslsc.com"
Cc: Kyle Plunkett
Subject: Letter to Craig Colraine @ Birenbaum.PDF
Date: October 18, 2019 3:17:50 PM
Attachments: image001.png
Letter to Craig Colraine @ Birenbaum.pdf

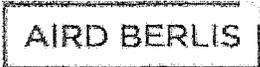
I was forwarded a copy of your letter to Thornton, Grout, Finnegan on the Distinct Infrastructure matter in which it was stated that you had not received a response to letter of Sept 9, 2019. We, as independent counsel for the receiver had replied on Sept 18, 2019, a copy of that reply being attached. I am wondering if for some reason you did not receive that reply, please advise.

Please review the attached and if there is a motion to be scheduled we would be happy to coordinate with you next week a date that is available to all affected parties. Thank you

D. Robb English

T 416.865.4748
 F 416.863.1515
 E renglish@airdberlis.com

Aird & Berlis LLP | Lawyers
 Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

This is Exhibit "C" referred to in the affidavit of Ivana Pitto sworn before me, this 5th day of November, 2019.

.....
 A COMMISSIONER FOR TAKING AFFIDAVITS

David A. Cassin
 Barrister & Solicitor

11

AIRD BERLIS

D. Robb English
Direct: 416.865.4747
E-mail: renglish@airdberlis.com

September 18, 2019

DELIVERED VIA EMAIL

Birenbaum Steinberg Landau Savin & Colrairie LLP
Barristers & Solicitors
Suite 1000-33 Bloor Street East
Toronto, ON M4W 3H1

Attention: David Cassin

Mr. Cassin:

**RE: Receivership of Distinct Infrastructure Group Inc., et al
Court File No. CV-19-00615270-00CL**

Please be advised that we act as independent counsel to Deloitte Restructuring Inc. in its capacity as Court appointed Receiver (in such capacity, the "Receiver") of Distinct Infrastructure Group Inc. et. al. (collectively, the "Debtors") pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") dated March 11, 2019 (the "Receivership Order")

We are in possession of your letter dated September 9, 2019 addressed to Thornton Grout Finnigan LLP who acted on behalf of Royal Bank of Canada ("RBC") on its application for the Receivership Order.

Your client's appeal addresses a priority issue between your clients, Chris Aron Wood and Mega Diesel Holdings Ltd., and RBC. We understand that the Debtors' collateral which was the subject of the priority dispute has been sold. We understand that pursuant to the Order of Master Schlosser dated March 11, 2019, the proceeds of sale of the Debtors' assets were distributed directly from Ritchie Bros. Auctioneers (Canada) Ltd. to RBC. The Receiver was not, at any time, in possession of such funds. The Receiver is, however, in possession of all of the Debtors' books and records, to the extent that same may be relevant to the dispute.

The Receiver has substantially realized upon all assets of the Debtors that were within its possession or control under the Receivership. The Receivership proceedings in the Ontario Court would appear to be the appropriate forum for resolving any disputes related to the Debtors, including any competing interest in the proceeds of any sale of its assets. Accordingly, the Receiver does not consent to lift the stay of proceedings to allow your client's appeal to proceed in another Province.

Any motion brought by your client in the Ontario Court must be on at least seven (7) days' notice to the Receiver and all affected parties. Should you wish to pursue such motion, please consult

the writer and counsel for RBC with respect to the scheduling of any attendance or motion. Thank you for your attention in this regard.

Yours truly,

Robb English
DRE/ph

37271861.2

Tab D

From: [Graham Sanson](#)
To: [David Cassin](#)
Cc: [Craig Colraine](#); djmiller@tgf.ca; rbengino@tgf.ca; achowdhury@fasken.com
Subject: RE: Receivership of Distinct Infrastructure Group Inc. et al. - (Court File No. CV-19-00615270-00CL)
Date: October 18, 2019 3:53:18 PM
Attachments: [imagec03c52.PNG](#)
[image60b511.PNG](#)
[Notice of Withdrawal of Lawyer of Record - 1703 13921.pdf](#)

Hi Dave,

Please be advised that Bishop & McKenzie LLP no longer acts for Distinct Infrastructure Group Inc or Mega Diesel Excavating Ltd (or any related entities) in relation to this matter. Attached for your reference is a Notice of Withdrawal of Lawyer of Record, filed May 9, 2019 in the Alberta action in which your clients have filed their appeal.

Sincerely,

Graham Sanson
Barrister & Solicitor

T 780 421 2484
E GSanson@bmlp.ca
W <http://www.bmlp.ca>
Suite 2300, 10180 - 101 Street
Edmonton, Alberta T5J 1V3

"D"
This is Exhibit..... referred to in the
affidavit of *Ivana Ditta*
sworn before me, this *5th*
day of *November* 20*19*.


A COMMISSIONER FOR TAKING AFFIDAVITS

David A. Cassin
Barrister & Solicitor



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From: Ivana Ditta <ivana@bslsc.com>
Sent: October-18-19 12:45 PM
To: djmiller@tgf.ca; rbengino@tgf.ca; achowdhury@fasken.com; Graham Sanson <GSanson@bmlp.ca>
Cc: David Cassin <cassin@bslsc.com>; Craig Colraine <colraine@bslsc.com>
Subject: Receivership of Distinct Infrastructure Group Inc. et al. - (Court File No. CV-19-00615270-00CL)

Dear Counsel,

Please see the attached correspondence of today's date with respect to the above-noted matter.

Regards,

--

Ivana Ditta

Legal Assistant to Olivia Mann-Foster and David Cassin

Birenbaum, Steinberg, Landau, Savin & Colrairie LLP

Suite 1000- 33 Bloor Street East

Toronto, Ontario M4W 3H1

Main Line: (416) 961-4100 (Ext. 246)

Direct Line: (416) 642-8816

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E-mail: ivana@bslsc.com

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Form 4
[Rule 2.29]



COURT FILE NUMBER 1703 13921

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS CHRIS ARON WOOD and MEGA DIESEL LTD.

DEFENDANTS MEGA DIESEL EXCAVATING LTD. and DISTINCT INFRASTRUCTURE GROUP INC.

DOCUMENT NOTICE OF WITHDRAWAL OF LAWYER OF RECORD

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Bishop & McKenzie LLP
Barristers and Solicitors
2300, 10180 - 101 Street
Edmonton, AB T5J 1V3
Attention: Graham W. Sanson
File: 105031-011
Phone: (780) 426-5550
Fax: (780) 426-1305

Counsel for the Defendants, Distinct Infrastructure Group Inc. and Mega Diesel Excavating Ltd., withdraws as lawyer of record for those parties.

The last known address for Distinct Infrastructure Group Inc., and iVac Services West Inc., the successor by amalgamation to Mega Diesel Excavating Ltd is as follows:

77 Belfield Road, Suite 100
Toronto, ON M9W 1G6

or to:

Deloitte Restructuring Inc.
in its capacity as Court-appointed receiver and manager
8 Adelaide Street West, Suite 200
Toronto, ON M5H 0A9

Legal Counsel for Distinct Infrastructure Group Inc. and Mega Diesel Excavating Ltd., Defendants:

Law firm name: Bishop & McKenzie LLP

Per: *Graham W. Sanson*

Graham W. Sanson

WARNING

This withdrawal of lawyer of record takes effect 10 days after the affidavit of service of this document on every party is filed. After that date, no delivery of a pleading or other document relating to the action is effective service on the former lawyer of record or at any address for service previously provided by the former lawyer of record.

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B3, as amended

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Respondents

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David Cassin (70846N)

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Fax: (416) 961-2531

Email: colraine@bslsc.com / cassin@bslsc.com

Lawyers for Mega Diesel Holdings Ltd.
and Chris Aron Wood

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B3, as amended

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Fax: (416) 961-2531
Email: colraine@bslsc.com / cassin@bslsc.com

**Lawyers for the Applicant,
Mega Diesel Holdings Ltd. and Chris Aron Wood**