

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:

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

MOTION RECORD

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Inc. in Court File No. CV-18-00611789-
0000

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in Court File No. CV-18-00611789-0000

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in Court File No. CV-18-00611789-0000

AND DELOITTE RESTRUCTURING INC.
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AND THORNTON GROUT FINNIGAN LLP
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Rachel Bengino
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Lawyers for Deloitte Restructuring Inc.,
in its capacity as Receiver and trustee in bankruptcy
of DistinctTech Inc. and not in its personal or corporate capacity

ONTARIO
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Respondents

MOTION RECORD

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3	Exhibit 3 - DinstinctTech insurance policy with Continental Casualty Company
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- 6 Exhibit 6 - Bankruptcy and Insolvency Records Search for DistinctTech.
- 7 Exhibit 7 - Draft Statement of Defence and Crossclaim of Rogers Communications Canada Inc.
- 8 Exhibit 8 - Copy of signed Consent and draft Order as Schedule A

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- and -

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

Respondents

NOTICE OF MOTION

ROGERS COMMUNICATIONS CANADA INC. will make a motion to the Court on Tuesday, March 17, 2020 at 9:30 a.m. or as soon after that time as the Motion may be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent, unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4); or
- orally.

THE MOTION IS FOR:

- (a) An order pursuant to Section 69 of the *Bankruptcy and Insolvency Act* permitting the Applicant to continue an action and crossclaim against the Bankrupt, DistinctTech Inc., for the purpose of obtaining a Judgment and establishing liability in accordance with the draft order attached hereto;

- (b) The costs of this motion if opposed; and
- (c) Such further and other order as the lawyers may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) 1.03, 2.01, 3.02. 11 and 37 of the *Rules of Civil Procedure*;
- (b) Section 69 of the *Bankruptcy and Insolvency Act*;
- (c) Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) Affidavit of Suzana Perik;
- (b) Consent of the Lawyers for Deloitte Restructuring Inc., in its capacity as Receiver and trustee in bankruptcy of DistinctTech Inc. and not in its personal capacity or corporate capacity; and
- (c) such further and other materials as counsel may advise and this Honourable Court permit.

February 14, 2020.

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Lawyers for Rogers Communications
Inc. in Court File No. CV-18-00611789-
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Lawyers for the Defendant the City of Toronto
in Court File No. CV-18-00611789-0000

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ROYAL BANK OF CANADA
Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., et al
Respondents

ONTARIO
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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

NOTICE OF MOTION

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Lawyers for Rogers Communications Canada Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AFFIDAVIT OF SUZANA PERIK

I, **SUZANA PERIK**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a legal assistant with the firm Blaney McMurtry LLP ("**Blaney**"), the lawyers for the Rogers Communications Canada Inc. (the "**Moving Party**" or "**Rogers**"), which is a defendant in an action commenced in the Superior Court of Justice, Court File No. CV-18-00611789-0000 (the "**Action**") and as such have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.
3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.

4. The plaintiff in the Action, Norma Powell ("**Powell**"), commenced the Action claiming damages in the amount of \$1,000,000 for damages arising out of a personal injury. The original defendants were: DistinctTech Inc. ("**DistinctTech**") and the City of Toronto. The plaintiff brought a motion before Master Sugunasiri to amend the Statement of Claim to add the Moving Party as a defendant and the Statement of Claim was amended on June 6, 2019.

Attached hereto and marked as **Exhibit "1"** to my affidavit is a copy of the Amended Statement of Claim amended June 6, 2019.

5. DistinctTech and Rogers entered into a Master Construction Services Agreement dated as of May 1, 2017 (the "**Agreement**") wherein DistinctTech as a Supplier agreed to provide installations and related services to Rogers. The Agreement contains terms that DistinctTech is to provide a defence and indemnity against all claims arising out of injury or loss which may be or be alleged to be caused by or suffered as a result of or in connection with performance by DistinctTech. The Amended Statement of Claim alleges that the accident and damages resulted as a result of or in connection of the performance of DistinctTech.

Attached hereto and marked as **Exhibit "2"** to my affidavit is a copy of the relevant pages of the Master Construction Services Agreement.

6. DistinctTech obtained insurance with Continental Casualty Company ("**Continental**") (Policy number MPR 2992371) effective November 1, 2018 (the "**Policy**") and Rogers was an additional insured.

Attached hereto and marked as **Exhibit "3"** to my affidavit is a copy of the certificate of insurance provided to Rogers naming them as an additional insured.

7. Blaney has been in contact with Continental on a number of occasions and requested that they defend and indemnify Rogers. They refused to do so and refused to provide Blaney with the insurance policy.

Attached hereto and marked as **Exhibit "4"** to my affidavit are copies of the emails sent to the adjusters for Continental.

8. By order of the Superior Court of Justice (Commercial List) dated March 11, 2019, upon application by Royal Bank of Canada, Deloitte Restructuring Inc. was appointed as Receiver and Manager of all of the assets, undertakings and properties of DistinctTech (in such capacity, the "**Receiver**") and the within proceedings being the "**Receivership Proceedings**").

Attached hereto and marked as **Exhibit "5"** to my affidavit is the Order of Justice Hainey dated March 11, 2019.

9. On March 22, 2019, Deloitte Restructuring Inc. was appointed as Trustee in Bankruptcy of DistinctTech (in such capacity, the "**Trustee**") in Court File No. 31-2489723 (such proceedings, the "**Bankruptcy Proceedings**").

Attached hereto and marked as **Exhibit "6"** to my affidavit is the Bankruptcy and Insolvency Records Search for DistinctTech.

10. Rogers intends to defend the action and make a crossclaim against DistinctTech for the sole purpose of establishing in the Action any liability to them and thereafter enforcement of any such judgment against the Policy (but not DistinctTech itself). A crossclaim cannot be made as result of the stay of proceedings pursuant in each of the Receivership Proceedings and Bankruptcy Proceedings. Therefore, Rogers seeks to lift the stay of proceedings against DistinctTech so it can serve and file its Statement of Defence and Crossclaim, solely for the purposes of seeking recourse against the Policy, not as against DistinctTech.

Attached hereto and marked as **Exhibit "7"** to my affidavit is a copy of the draft Statement of Defence and Crossclaim of Rogers.

11. By letter dated November 21, 2019 sent to the lawyers for the Receiver, Blaney set out the background of reasons why Rogers was seeking to lift the stay against DistinctTech. We noted that the *Insurance Act* provides:

Right of claimant against insurer where execution against insured returned unsatisfied

132 (1) Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against the person in respect of the person's liability, and an execution against the person in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

12. Given that insurance proceeds may be available to DistinctTech it is the Moving Party's position that the following provision in the BIA is applicable:

Court may declare that stays, etc., cease

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

- (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
- (b) that it is equitable on other grounds to make such a declaration.

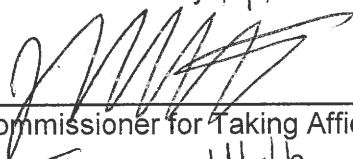
13. The Receiver and Trustee have consented to the order sought with the terms set out in the draft Order, on the following bases: (i) there will be no involvement required of the Trustee or the Receiver in the Action; (ii) the Receiver and Trustee will not incur any costs in connection with the Action or the Policy, including any payments or premiums or deductibles under the Policy; (iii) no costs will be sought against the Receiver or the Trustee in connection with the Action or this motion by the Moving Party; (iv) no steps will need to be taken by the Receiver or the Trustee in

connection with the Action or the Policy or this motion by the Moving Party; and (iii) any claim asserted as against DistinctTech by the Moving Party would be unsecured.

Attached hereto and marked as **Exhibit "8"** to my affidavit is a copy of the signed Consent and draft Order.

14. I make this affidavit in support of the motion for an order that the stay against DistinctTech be lifted to allow the crossclaim by Rogers to proceed within the terms consented to by the Receiver and Trustee.

SWORN before me at the City)
of Toronto, in the Province of)
Ontario on February 14, 2020.)
)



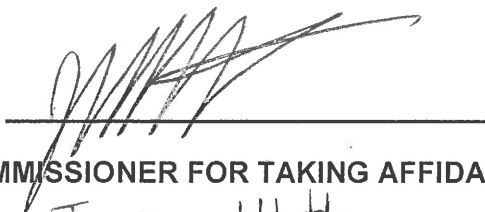
A Commissioner for Taking Affidavits
Jessica Wuthmann



SUZANA PERIK

THIS IS
EXHIBIT "1"
TO THE AFFIDAVIT OF
SUZANA PERIK

SWORN FEBRUARY 14, 2020

A handwritten signature in black ink, appearing to read 'J. Wuthmann', is written over a solid horizontal line.

COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

AMENDED THIS 2019 4-23-19
MODIFIÉ CE 2019 4-23-19 PURSUANT TO
CONFORMÉMENT A

RULE/LA RÈGLE 28.02 (

THE ORDER OF MASTER SUGONABIR I

L'ORDONNANCE DU
DATED / FAIT LE June 3-2019

Court File No. CV-18-00611789-0000

REGISTRAR
SUPERIOR COURT OF JUSTICE
BREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NORMA POWELL

Plaintiff

- and -

**1940885 ONTARIO LIMITED o/a DISTINCTTECH INC., and CITY OF TORONTO and
ROGERS COMMUNICATIONS CANADA INC.**

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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

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

If you are served in another province or territory in Canada or in the United States of America, the period of time for serving and filing your Statement of Defence is **FORTY DAYS**. If you are served outside Canada and the United States of America, the period is **SIXTY DAYS**.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid Office.

IF YOU PAY THE PLAINTIFF(S) CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff(s) claim and \$100.00 for costs and have the costs assessed by the court.

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

Date: Dec 31 2018

Issued by:

S. SLAUNWHITE
Registrar

Address of Court Office:

Ontario Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: 1940885 ONTARIO LIMITED
o/a DISTINCTTECH INC.
77 Belfield Road
Toronto, Ontario
M9W 1G6

Defendant

AND TO: CITY OF TORONTO
100 Queen Street West, 2nd Floor
Toronto, Ontario
M5H 2N2

Defendant

AND TO: ROGERS COMMUNICATIONS CANADA INC.
333 Bloor Street East, 10th Floor
Toronto, ON
M4W 1G9

CLAIM

Relief Sought

1. **The Plaintiff, Norma Powell, claims:**
 - (a) Damages in the amount of \$1,000,000.00;
 - (b) Pre-judgment interest on the said sums pursuant to s.128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (c) Post-judgment interest on the said sum pursuant to s.129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) Costs of this action on a substantial indemnity basis, together with any applicable Harmonized Sales Tax payable pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-14 as amended; and,
 - (e) Such further and other relief as to this Honourable Court may deem just.

The Parties

2. The Plaintiff, Norma Powell (hereinafter referred to as "Norma"), resides in the City of Toronto, in the Province of Ontario. At all material times, Norma was riding her motorized wheelchair and exercising reasonable care along Chalkfarm Drive near its intersection with Jane Street, in the City of Toronto, in the Province of Ontario.
3. The Defendant, City of Toronto (hereinafter referred to as "the Defendant City"), was at all material times the owner and/or occupier of the public sidewalks at Chalkfarm Drive and Jane Street, which includes the surrounding area, and as such had jurisdiction, care and control of the property and surrounding area and had charge over its management, supervision and maintenance.

4. The Defendant, 1940885 Ontario Corporation o/a Distincttech Inc. (hereinafter referred to as “the Defendant Distincttech”) is a construction company duly incorporated under the provincial laws of Ontario and was at all material times the construction tasked by the City to fix and maintain the public sidewalks at Chalkfarm Drive and Jane Street, which includes the surrounding area, and as such had jurisdiction, care and control of the property and surrounding area and had charge over its management, supervision and maintenance.

5. The Defendant, Rogers Communications Inc. (hereinafter referred to as “the Defendant Rogers”), is a corporation duly incorporated under the laws of Ontario and/or Canada with its head office located at 333 Bloor Street East, 10th Floor, in the City of Toronto, in the Province of Ontario. At all material times, the Defendant Rogers had a Cut Permit for the public sidewalks at Chalkfarm Drive and Jane Street, which includes the surrounding area, and as such had jurisdiction, care and control of the property and surrounding area and had charge over its management, supervision and maintenance.

The Incident

6. On or about November 28, 2017, Norma, using reasonable care on her part and wearing appropriate lap safety restraints, was riding her motorized wheelchair on Chalkfarm Drive near its intersection with Jane Street. Suddenly and without warning, the front wheel of the motorized wheelchair hit a piece of plywood covering a manhole. Subsequently, the wheel went into the manhole causing Norma to violently fall to the ground with her motorized wheelchair. As a result of this incident, Norma sustained severe personal injuries.

The Allegations of Negligence

7. Norma states, and the fact is, that the aforesaid injuries and all resulting damages were caused by the joint and several negligence of the Defendants, its agents, employees and/or servants, the particulars of which are as follows:
- (a) They failed to take reasonable care to ensure that persons using the sidewalk property and surrounding area were reasonably safe while doing so;
 - (b) They failed to maintain the sidewalk property and surrounding area in a sufficient state of repair;
 - (c) They created a situation of danger on the sidewalk property and surrounding area by failing to ensure that the sidewalk property and surrounding area was properly constructed and maintained;
 - (d) They failed to maintain the sidewalk property and surrounding area in a condition suitable for the needs of people using the sidewalk property and surrounding area;
 - (e) They had or should have had full knowledge of the sub-standard condition of the sidewalk property and surrounding area and had reasonable time to remedy same but failed to take proper and adequate steps to do so;
 - (f) They, with full knowledge of the condition of the sidewalk property and surrounding area, permitted and allowed the use of the said property and surrounding area;
 - (g) They failed to post a suitable notice warning of the dangerous condition of the sidewalk property and surrounding area;
 - (h) They failed to inspect or adequately inspect the said sidewalk property and surrounding area;
 - (i) They failed to have a system of inspection for the condition of the sidewalk property and surrounding area;
 - (j) In the alternative, if they had a system of inspection for the condition of the sidewalk property and surrounding area, they failed to use it;
 - (k) They created and/or left unrepaired manholes in the sidewalk when they knew, or should have known, that it created a dangerous and hazardous conditions for users of the sidewalk and failed to block or otherwise warn or sufficiently warn users of the hazardous and dangerous conditions;

- (l) They permitted the sidewalk property and surrounding area to be in a condition, such as would cause serious injuries to persons using said sidewalk property and surrounding area, thereby creating a situation of danger;
- (m) They failed to instruct or warn Norma of the dangers and conditions of said sidewalk property and surrounding area;
- (n) They failed to employ competent staff to handle maintenance operations;
- (o) They failed to ensure that the piece of wood they used to cover the manhole was adequate and/or secure, thereby creating a hazard;
- (p) They failed to ensure the safety of pedestrians in wheelchairs; and
- (q) They failed to do any testing to ensure that the makeshift cover they used was satisfactory.

Injuries

8. As a result of the aforementioned accident, Norma suffered serious and permanent injuries including, but not limited to: pain in her head, neck, back, spine, shoulders, hands and fingers, lumbar compression fractures, contusion left shoulder, painful arc syndrome and impingement, and a general straining of the muscles and ligaments throughout her body.

9. In addition, since the date of the incident, Norma has suffered and continues to suffer from a variety of ailments and injuries including, but not limited to: headaches, memory loss, dizziness, anxiety, depression, difficulty sleeping, insomnia, low energy, memory loss, irritability, and psychological trauma, which continue to the present and will continue into the future.

Damages

10. As a result of the above-noted injuries, Norma has required ongoing medical attention and rehabilitation and will continue to incur medical and rehabilitation expenses for healthcare. Norma claims damages for same and will provide particulars prior to trial including, but not limited to, any amount owing to O.H.I.P. as per statutory subrogation.
11. Norma has sustained and will continue to sustain pain and suffering, loss of enjoyment of life and loss of amenities. She is unable to participate in those recreational, social, household and athletic activities to the extent to which she participated in such activities prior to the incident. Norma claims damages for same, the particulars of which will be provided prior to trial.
12. As a result of the injuries Norma sustained in this incident, she has been unable to perform housekeeping, home maintenance and personal tasks to the same level and ability as she had been prior to the accident. She has also incurred and will continue to incur out-of-pocket expenses. Norma claims damages for same and will provide particulars prior to trial.
13. As a result of the injuries sustained in this accident, Norma has and will continue to suffer losses of income. In addition, Norma has and will continue to suffer a loss of competitive advantage and/or earning capacity, and will therefore be limited in choices relating to her future employment endeavors. Norma claims damages for same, the particulars of which will be provided prior to trial.

Statutory Authority

19. The Plaintiff pleads and relies on:

- (a) the *Negligence Act*, R.S.O., 1990, c.N.1 as amended;
- (b) the *Occupier's Liability Act*, R.S.O., 1990, c.O.2 as amended;
- (c) the *Insurance Act*, R.S.O. 1990, c.I.8, as amended;
- (d) the *Courts of Justice Act*, R.S.O. 1990, c.C.43. as amended;
- (e) the *Municipal Act*, 2001, S.O. 2001, c.25 as amended; and
- (f) the *City of Toronto Act*, 2006, S.O. 2006, c. 11 Sched. A, as amended.

DATE OF ISSUE:

**KRONIS, ROTSZTAIN,
MARGLES, CAPPEL**
Barristers and Solicitors
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Sherry Weiss
LSO No.: 280291
Tel: (416) 218-5767
Fax: (416) 225-6943

Lawyers for the Plaintiff

NORMA POWELL
PLAINTIFF

-and-

1940885 ONTARIO LIMITED o/a DISTINCTTECH INC. et al.
DEFENDANTS

COURT FILE NO.: CV-18-00611789-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at TORONTO
COURTHOUSE**

AMENDED STATEMENT OF CLAIM

**KRONIS, ROTSZTAIN, MARGLES,
CAPPEL LLP
Barristers & Solicitors
25 Sheppard Avenue West
Suite 700
Toronto, Ontario
M2N 6S6**

**Sherry Weiss
LSO No. 280291
Phone: (416) 225-8750
Fax: (416) 225-6943**

Lawyers for the Plaintiff

THIS IS

EXHIBIT "2"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020



COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

reasonable legal fees and disbursements) which may be suffered or incurred by Rogers or its Affiliates and their respective officers, directors, agents, representatives and employees arising out of or as a result of or relating in any manner whatsoever to:

- (1) any breach of a representation, warranty or covenant made by Supplier in Article 11 (Representations, Warranties and Covenants), Article 12 (Limitation of Liability and Indemnification), Article 14 (Confidentiality, Privacy and Security), Article 16 (Non-Solicitation) or Article 17 (Dispute Resolution) hereof;
- (2) any injury to Persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of or in connection with the performance by Supplier, its Supplier Representatives of all or any part of Supplier's obligations under this Agreement;
- (3) any failure by Supplier to withhold or pay income taxes, withholding taxes (including taxes levied under Part XIII of the Tax Act and related interest and penalties), Canada Pension Plan contributions, employment insurance premiums, workers compensation remittances, and/or any other deductions required by law from or in respect of any amounts paid to Supplier in respect of the Services;
- (4) any breach of this Agreement and acts or omissions of Supplier, its Supplier Representatives or anyone for whose acts Supplier may, in law or in equity, be liable;
- (5) all claims alleging that Services or Rogers' or its Affiliates' use thereof infringes the Intellectual Property Rights of any Person;
- (6) applicable construction lien legislation in force at the Site or the obligation of Rogers and owner of the property to pay any lien claim, or any portion thereof; and
- (7) any breach of any applicable federal, provincial, county or municipal law or any labour agreement.

Provided that:

- (1) Supplier is given prompt written notice of any such claim;
- (2) Supplier has the right to control and direct the defence of such claim;
- (3) Rogers fully cooperates with Supplier in such defence, at Supplier's expense; and
- (4) Rogers shall have the right to be represented in such defence at its expense with advisory counsel of its choice.

12.5 Damage to Rogers' Materials. Supplier shall be fully responsible for any loss, theft or destruction of or damage to materials supplied by Rogers from the time such materials

are supplied to Supplier and until they are installed or returned to Rogers. Supplier shall reimburse Rogers for the full amount of Rogers' invoiced cost of materials lost, stolen, or destroyed and the lesser of Rogers' repair or replacement costs of materials damaged which are supplied to Supplier, and Rogers may set off such amounts against any remuneration owing to Supplier.

- 12.6 Damage to Other Suppliers.** If Supplier has caused damage to the services of Other Suppliers at the Site, Supplier agrees, upon notice from Rogers, to settle with the Other Supplier by negotiation or arbitration. If the Other Supplier makes a claim against Rogers on account of damage alleged to have been so sustained, Rogers shall notify Supplier and may require Supplier to defend the action at Supplier's expense. Supplier shall satisfy a final order or judgment against Rogers and pay the costs, including legal fees and disbursements, incurred by Rogers arising from such action.

ARTICLE 13 INSURANCE AND BONDS

- 13.1 Supplier's Insurance.** Without restricting the generality of Article 12 (Limitation of Liability and Indemnification), Supplier shall provide, maintain, and pay for the insurance coverages specified in this Article 13. Supplier shall provide its insurer with the Insurance Checklist, attached hereto as Schedule 9, in order ensure the stipulated insurance coverage is obtained. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the Services until the date of the final Acceptance of the Services. Prior to commencement of the Services and upon the placement, renewal, amendment, or extension of all or any part of the insurance, Supplier shall promptly provide Rogers with confirmation of coverage in the form of a certified true copy of the policies certified by an authorised representative of the insurer together with copies of any amending endorsements. In the event that Supplier hires a subcontractor, Supplier shall cause such subcontractor to maintain insurance as stipulated above.

- (1) **General Liability Insurance.** General liability insurance shall be in the name of Supplier, with Rogers and the Project Manager (if not an employee of Rogers) named as additional insurers, with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, for itself and each of its Supplier Representatives, throughout the term of the Agreement. The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of Acceptance of the Services, on an ongoing basis for a period of six (6) years following Acceptance of the Services. Where Supplier maintains a single, blanket policy, the addition of Rogers and the Project Manager (if not an employee of Rogers) is limited to liability arising out of the Services and all operations necessary or incidental thereto. The policy shall be endorsed to provide Rogers with not less than thirty (30) Days' notice in writing in advance of any cancellation, and of change or amendment restricting coverage.

- (2) **Automobile Liability Insurance.** Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death and damage to property, covering all licensed vehicles owned or leased by Supplier, and endorsed to provide Rogers with not less than fifteen (15) Days' notice in writing in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, Supplier shall provide Rogers with confirmation of automobile insurance coverage for all automobiles registered in the name of Supplier.

- (3) **Aircraft and Watercraft Liability Insurance.** Where determined necessary by Supplier, acting reasonably, based on a Site by Site assessment, Aircraft and Watercraft Liability Insurance will be obtained in accordance with the provisions of this Section 13.1.3. Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Services, including use of additional premises, shall be subject to limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$2,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to Rogers. The insurance shall be in the name of the Supplier, with Rogers and the Project Manager (if not an employee of Rogers) named as additional insurers. The policies shall be endorsed to provide Rogers with not less than thirty (30) Days' notice in writing in advance of cancellation, change or amendment restricting coverage.

- (4) **Property and Boiler and Machinery Insurance.**
 - a) "All risks" property insurance shall be in the name of Supplier with Rogers and the Project Manager (if not an employee of Rogers) named as loss payees as their interest may appear, insuring not less than the full replacement value of products that are specified to be provided by Rogers for incorporation into the Services, with a deductible payable by Supplier. The insurance coverage shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement.

 - b) Boiler and machinery insurance shall be in the name of Supplier, with Rogers and the Project Manager (if not an employee of Rogers) named as loss payees as their interest may appear for not less than the replacement value of the boilers, pressure vessels and other insurable objects forming part of the Services. The insurance provided shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form".

 - c) The policies shall provide that, in the case of a loss or damage, payment shall be made to Rogers and Supplier as their respective interests may appear. Supplier shall act on behalf of Rogers for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, Supplier shall proceed to restore the Services. Loss or damage shall not affect the rights and obligations of

THIS IS

EXHIBIT "3"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020

A handwritten signature in black ink, appearing to read "JMA", is written over a horizontal line.

COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

CSIO

CERTIFICATE OF INSURANCE

DATE (YY/MM/DD)

18/01/29

BROKER

Platform Insurance Management Inc.
20 Toronto Street
Suite 440
Toronto ON M5C 2B8

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

BROKER'S CLIENT ID: DISTI-1

COMPANIES AFFORDING COVERAGE

COMPANY
A Continental Casualty Company

COMPANY
B

COMPANY
C

COMPANY
D

INSURED'S FULL NAME AND MAILING ADDRESS
Distinct Infrastructure Group Inc. and
Distincttech Inc.
77 Belfield Road
Toronto ON M9W 1G6

COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	CO LTR	POLICY NUMBER	POLICY EFFECTIVE DATE (YY/MM/DD)	POLICY EXPIRATION DATE (YY/MM/DD)	LIMITS OF LIABILITY (Canadian dollars unless indicated otherwise)	
COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE OR <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> PRODUCTS AND / OR COMPLETED OPERATIONS <input checked="" type="checkbox"/> EMPLOYER'S LIABILITY <input checked="" type="checkbox"/> CROSS LIABILITY <input type="checkbox"/> TENANT'S LEGAL LIABILITY <input type="checkbox"/> NON-OWNED <input type="checkbox"/> HIRED <input type="checkbox"/> POLLUTION LIABILITY EXTENSION	A	MPR2992317	17/11/01	18/11/01	EACH OCCURRENCE	\$ 2,000,000
					GENERAL AGGREGATE	\$ 5,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					PERSONAL INJURY	\$ 2,000,000
					TENANT'S LEGAL LIABILITY	\$
					MED EXP (Any one person)	\$
					NON-OWNED AUTO	\$ 2,000,000
					OPTIONAL POLLUTION LIABILITY EXTENSION	\$
					(Per Occurrence)	\$
					(Aggregate)	\$
AUTOMOBILE LIABILITY <input type="checkbox"/> DESCRIBED AUTOMOBILES <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> LEASED AUTOMOBILES <small>** ALL AUTOMOBILES LEASED IN EXCESS OF 30 DAYS WHERE THE INSURED IS REQUIRED TO PROVIDE INSURANCE</small>	A	CAE2992303	17/11/01	18/11/01	BODILY INJURY PROPERTY DAMAGE COMBINED	\$ 2,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE	\$
EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM <small>(Specify)</small>	A	MPR2992317	17/11/01	18/11/01	EACH OCCURRENCE	\$ 18,000,000
					AGGREGATE	\$ 18,000,000
OTHER LIABILITY (SPECIFY)						

DESCRIPTION OF OPERATIONS/LOCATIONS/AUTOMOBILES/SPECIAL ITEMS

Operations: Telecommunications Contractor including, directional drilling, hydro-excavation, placing of cables, fiber splicing, testing and scanning. \$2,000,000 PER OCCURRENCE AUTO LIABILITY LIMIT WITH AN UMBRELLA LIABILITY LIMIT OF \$18,000,000 PER OCCURRENCE WHICH SITS IN EXCESS OF THE AUTOMOBILE LIABILITY LIMIT.

ADDITIONAL INSURED
Rogers Communications Canada Inc.
333 Bloor Street East
Toronto ON M4W 1G9

CERTIFICATE HOLDER

Rogers Communications Canada Inc.
333 Bloor Street East
Toronto ON M4W 1G9 Canada

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <30> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

SIGNATURE OF AUTHORIZED REPRESENTATIVE



PRINT NAME INCLUDING POSITION HELD

Charles Quenneville, EVP

FAX NUMBER

EMAIL ADDRESS

cquenneville@platforminsurance.com

COMPANY

Platform Insurance Management Inc.

DATE

18/01/29

CSIO CERT (6/00)

THIS IS

EXHIBIT "4"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020



COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

Suzana Perik

From: Suzana Perik
Sent: Thursday, October 10, 2019 4:35 PM
To: 'dana.lewis@cna.com'
Cc: Reeva M. Finkel
Subject: Rogers Communications et al ats Norma Powell _ Your File No. 201823917 _ Your Insured: Distincttech Inc.
Attachments: 2019-10-10 Ltr to Dana Lewis, Adjuster at CNA

DOCID: 224116
SENTON: 2019-10-10 4:35:12 PM

Dear Ms. Lewis:

Please see attached letter from Reeva M. Finkel.

Best Regards,

 **Blaney
McMurtry** L.P. 2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

Suzana Perik
Legal Assistant to Reeva M. Finkel

sperik@blaney.com
☎ 416-593-1221 ext. 3320
🌐 Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

Reeva M. Finkel
D: 416-593-3959 F: 416-596-2041
rfinkel@blaney.com

October 10, 2019

BY EMAIL

Ms. Dana Lewis
CNA Canada
66 Wellington Street West
Suite 3700
Toronto ON
M5K 1J5

Dear Ms. Lewis:

Re: Rogers Communications Inc. et al ats Norma Powell
Your Insured: Distincttech Inc.
Date of Loss: November 28, 2017
Your File No. 201823917
Our Client: Rogers Communications Inc.

We have been advised by Jan Rutherford from ClaimsPro to refer our inquiries to your attention.

We act for Rogers Communications Inc. in the above action.

We enclose a letter received from the lawyer for the City of Toronto for your review and records.

We are still waiting to receive a response as to whether your insured's insurer will be defending and indemnifying our client. Would you kindly provide us with your response in the next seven days.

Yours very truly,

Blaney McMurtry LLP

Reeva M. Finkel
RMF/sp

Encl.



September 29, 2019

Our File No: #: 33610-932233 JER
"Without Prejudice"

Sent via Email Only (rfinkel@blaney.com)

Reeva M. Finkel,
Blaney McMurtry
Certified Specialist in Civil Litigation

RE: Claimant: Norma Powell
Type of Loss: Commercial General Liability
Date of Loss: November 28, 2017
Our Insured: Distincttech Inc.
Your Client: Rogers Communication

Dear Ms. Finkel,

We have been instructed to refer all inquiries to CNA, Dana Lewis, Senior Claims Adjuster, dana.lewis@cna.com, file 201823917.

We will abeyance our file pending any further instructions for our continued involvement in this matter.

I remain

Yours very truly,

Jan Rutherford, B.A., FCIP
Specialty Risk Division
Executive General Adjuster
jan.rutherford@scm.ca
(416)209-9703

JER/esr

Suzana Perik

From: Reeva M. Finkel
Sent: Monday, October 21, 2019 3:21 PM
To: 'dana.lewis@cna.com'
Cc: Suzana Perik; 'Jan Rutherford'
Subject: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Follow Up Flag: Follow up
Flag Status: Completed

We are the lawyers for Rogers Communication in the above action.

We wrote to you on October 10, 2019 after being informed by Jan Rutherford at Claims Pro that we should refer our inquiries to you.

We have been writing and speaking with Jan Rutherford since our initial letter dated June 11, 2019.

We have sent the Master Contract between your insured and Rogers to her. The contract provides for your insured to defend and indemnify our client. Our client is an additional insured.

To date despite numerous follow ups to our letters and emails CAN has not confirmed that it will defend and indemnify Rogers.

On **Friday October 19, 2019 the plaintiff's lawyer informed us that they are demanding a defence within 20 days.**

Should **we not hear from you by the end of the week** we will have no choice but to prepare and serve the defence and crossclaim.

While our client was likely to not claim its costs to date despite the long delay and failure to respond (we are prepared to seek those instructions), they will be seeking **their full solicitor and client costs should** it be necessary to proceed with a pleading.

Look forward to hearing from you.

Regards

Reeva

**Blaney
McMurtry** LLP 2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

Reeva M. Finkel
Certified Specialist in Civil Litigation

rfinkel@blaney.com
☎ 416-593-3959 | ☎ 416-596-2041
🌐 Blaney.com



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Suzana Perik

From: Reeva M. Finkel
Sent: Thursday, October 24, 2019 11:44 AM
To: 'dana.lewis@cna.com'
Cc: Suzana Perik; 'Jan Rutherford'
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Kindly see our email below and we are asking again for your response.

Reeva

Reeva M. Finkel
Certified Specialist in Civil Litigation
rfinkel@blaney.com
☎ 416-593-3959 | ☎ 416-596-2041

From: Reeva M. Finkel
Sent: Monday, October 21, 2019 3:21 PM
To: 'dana.lewis@cna.com' <dana.lewis@cna.com>
Cc: Suzana Perik <SPerik@blaney.com>; 'Jan Rutherford' <jan.rutherford@scm.ca>
Subject: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

We are the lawyers for Rogers Communication in the above action.

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Look forward to hearing from you.

Regards

Reeva

Reeva M. Finkel
Certified Specialist in Civil Litigation

rfinkel@blaney.com

☎ 416-593-3959 | ☎ 416-596-2041

🌐 Blaney.com



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Suzana Perik

From: Reeva M. Finkel
Sent: Thursday, October 24, 2019 4:24 PM
To: 'dana.lewis@cna.com'
Cc: Suzana Perik; 'Jan Rutherford'
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Thank you for our discussion today.

We confirm that Distincttech Inc. is a bankrupt as of March 22, 2019.

Even though the action is stayed against Distincttech Inc. until the plaintiff obtains an order to continue, we noted that our client Rogers was an additional insured and therefore should be entitled to defence and indemnity.

You advised that there was an SIR for Distincttech Inc. and you have referred this matter to coverage counsel as there are other claims. However we note that our client as an additional insured does not have an SIR and in any event is still entitled to a defence.

You indicated that you are referring this to your manager and you would get back to me mid next week.

Meanwhile we will write to the lawyer for the plaintiff and copy you outlining the concerns but we will need to deal with this matter and we note that at least four months have passed since Rogers was added to the claim (June 6, 2019).

Look forward to hearing from you.

Regards

Reeva

Reeva M. Finkel
Certified Specialist in Civil Litigation
rfinkel@blaney.com
☎ 416-593-3959 | ☎ 416-596-2041

From: Reeva M. Finkel
Sent: Thursday, October 24, 2019 11:44 AM
To: 'dana.lewis@cna.com' <dana.lewis@cna.com>
Cc: Suzana Perik <SPerik@blaney.com>; 'Jan Rutherford' <jan.rutherford@scm.ca>
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Kindly see our email below and we are asking again for your response.

Reeva

Reeva M. Finkel
Certified Specialist in Civil Litigation
rfinkel@blaney.com
☎ 416-593-3959 | ☎ 416-596-2041

From: Reeva M. Finkel
Sent: Monday, October 21, 2019 3:21 PM
To: 'dana.lewis@cna.com' <dana.lewis@cna.com>
Cc: Suzana Perik <SPerik@blaney.com>; 'Jan Rutherford' <jan.rutherford@scm.ca>
Subject: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

We are the lawyers for Rogers Communication in the above action.

We wrote to you on October 10, 2019 after being informed by Jan Rutherford at Claims Pro that we should refer our inquiries to you.

We have been writing and speaking with Jan Rutherford since our initial letter dated June 11, 2019.

We have sent the Master Contract between your insured and Rogers to her. The contract provides for your insured to defend and indemnify our client. Our client is an additional insured.

To date despite numerous follow ups to our letters and emails CAN has not confirmed that it will defend and indemnify Rogers.

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Should **we not hear from you by the end of the week** we will have no choice but to prepare and serve the defence and crossclaim.

While our client was likely to not claim its costs to date despite the long delay and failure to respond (we are prepared to seek those instructions), they will be seeking **their full solicitor and client costs should** it be necessary to proceed with a pleading.

Look forward to hearing from you.

Regards

Reeva

**Blaney
McMurtry** LLP 2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

Reeva M. Finkel
Certified Specialist in Civil Litigation

rfinkel@blaney.com

☎ 416-593-3959 | ☎ 416-596-2041

🌐 Blaney.com



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Suzana Perik

From: Lewis,Dana <Dana.Lewis@cna.com>
Sent: Thursday, October 31, 2019 2:56 PM
To: Reeva M. Finkel
Cc: Suzana Perik; 'Jan Rutherford'
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Good Afternoon Ms. Finkel

There is no change in our status here. I will leave it to you to proceed as you deem fit.

Regards

Dana Lewis
Senior Claims Adjuster

66 Wellington Street West, Suite 3700
Toronto, Ontario M5K 1J5
Office: (416) 915-6942
Fax: (416) 542-7310
Email: Dana.lewis@cna.com

From: Reeva M. Finkel [mailto:rfinkel@blaney.com]
Sent: Thursday, October 31, 2019 11:24 AM
To: Lewis,Dana
Cc: Suzana Perik; 'Jan Rutherford'
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Good morning Dana.

We would appreciate receipt of your response.

Regards

Reeva

Reeva M. Finkel
Certified Specialist in Civil Litigation
rfinkel@blaney.com
☎ 416-593-3959 | ☎ 416-596-2041

Suzana Perik

From: Reeva M. Finkel
Sent: Monday, November 4, 2019 11:08 AM
To: 'Lewis,Dana'
Cc: Suzana Perik; 'Jan Rutherford'
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Follow Up Flag: Follow up
Flag Status: Completed

We are following up again. Our client is an additional insured and is entitled to a copy of the insurance policy. Would you kindly send it to us by return email.

Also we look forward to receipt of your coverage position.

Regards

Reeva

Reeva M. Finkel
Certified Specialist in Civil Litigation
rfinkel@blaney.com
☎ 416-593-3959 | ☎ 416-596-2041

From: Lewis,Dana [mailto:Dana.Lewis@cna.com]
Sent: Thursday, October 31, 2019 2:56 PM
To: Reeva M. Finkel <rfinkel@blaney.com>
Cc: Suzana Perik <SPerik@blaney.com>; 'Jan Rutherford' <jan.rutherford@scm.ca>
Subject: RE: Rogers ats Norma Powell- your insured: Distincttech Inc.- your file 201823917

Good Afternoon Ms. Finkel

There is no change in our status here. I will leave it to you to proceed as you deem fit.

Regards

Dana Lewis
Senior Claims Adjuster



66 Wellington Street West, Suite 3700
Toronto, Ontario M5K 1J5
Office: (416) 915-6942
Fax: (416) 542-7310
Email: Dana.lewis@cna.com

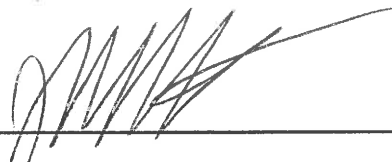
THIS IS

EXHIBIT "5"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020



COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE *HAINEX*)

MONDAY, THE ~~8TH~~ ^{11TH}
DAY OF MARCH, 2019

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

BETWEEN:



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
(appointing Receiver)

THIS APPLICATION made by Royal Bank of Canada (the "Applicant" or the "Bank") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte Restructuring Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Distinct Infrastructure Group Inc., Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. (collectively, the

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

ON READING the affidavit of Gary Ivany sworn February 28, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Receiver, no one else appearing or served, and on reading the consent of Deloitte Restructuring Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, arranging for provision of utilities,

the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (r) to make an assignment in bankruptcy on behalf of any or all of the Debtors; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, including but not limited to, Joe (Giuseppe) Lanni, Alex Agius and George Parselias, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. All such Persons shall preserve the Records in their original format and shall not alter, amend, erase or destroy any Records without the prior written consent of the Receiver.

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery, email, or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RETENTION OF LAWYERS

28. THIS COURT ORDERS that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include Thornton Grout Finnigan LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may arise.

GENERAL

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

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

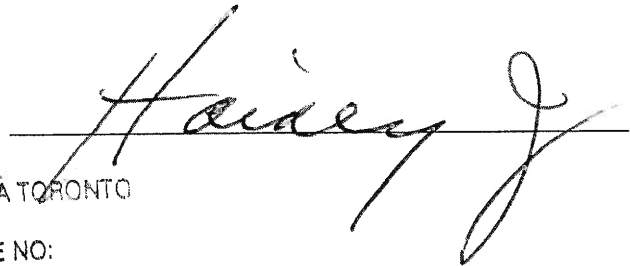
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.


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

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

A handwritten signature in cursive script, appearing to read "Hailey J.", is written over a horizontal line.

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

MAR 11 2019

PER / PAR: 

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Distinct Infrastructure Group Inc., Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. (together, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 11th day of March, 2019 (the "**Order**") made in an action having Court file number CV-19-00615270-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

Deloitte Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

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

ROYAL BANK OF CANADA

- and -

DISTINCT INFRASTRUCTURE GROUP INC. et al.

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ORDER
(appointing Receiver)**

Thornton Grout Finnigan LLP

TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
Fax: (416) 304-1313

D.J. Miller (LSO# 34393P)

Email: djmillier@tgf.ca / Tel: (416) 304-0559

Rachel Bengino (LSO# 68348V)

Email: rbengino@tgf.ca / Tel: (416) 304-1153

Lawyers for the Applicant, Royal Bank of Canada

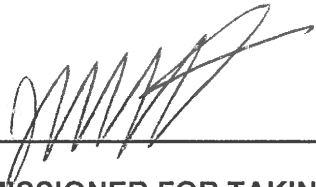
THIS IS

EXHIBIT "6"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020



COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann



Government
of Canada

Gouvernement
du Canada

**Bankruptcy and Insolvency Records Search (BIA) search results |
Résultats de la recherche dans le Registre des dossiers de faillite et d'insolvabilité (LFI)**

2019-10-24

Search Criteria | Critères de recherche :

Name | Nom = DISTINCTTECH INC., Name Type | Type de nom =
Business | Entreprise

Reference | Référence :

103850-0015/RFINKEL

A search of the Office of the Superintendent of Bankruptcy records has revealed the following information, for the period 1978 to 2019-10-22, based on the search criteria above-mentioned.

Une recherche dans les dossiers du Bureau du surintendant des faillites a permis de trouver l'information suivante, pour la période allant de 1978 à 2019-10-22, selon les critères de recherche susmentionnés.

BIA Estate Number Numéro du dossier en vertu de la LFI :	31-2489723
BIA Estate Name Nom du dossier en vertu de la LFI :	DistinctTech Inc.
Birth Date Date de naissance :	
Province :	Ontario Ontario
Address Adresse :	102-77 Belfield Rd., Etobicoke, Ontario, M9W1G6
Estate Type Type de dossier :	BANKRUPTCY FAILLITE
Date of Proceeding Date de la procédure :	2019-03-22
Total Liabilities* Total du passif* :	\$62,444,672
Total Assets* Total de l'actif* :	\$9,558,774
First Meeting of Creditors Première assemblée des créanciers :	2019-04-08 10:00:00
Discharge Status Statut de la libération :	
Effective Date Date d'entrée en vigueur :	
Court Number Numéro de cour :	31-2489723

* As declared by debtor | Tel que déclaré par le débiteur

Appointed Licensed Insolvency Trustee or Administrator | Syndic
autorisé en insolvabilité ou administrateur nommé :DELOITTE RESTRUCTURING INC/RESTRUCTURATION
DELOITTE INC

Responsible Person | Personne responsable :

SLEETH, JORDEN DAVID

Address | Adresse :

Suite 200, 8 Adelaide Street West, Toronto, Ontario, Canada,
M5H0A9

Telephone | Téléphone :

416-775-8858

Fax | Télécopieur :

416-601-6690

Licensed Insolvency Trustee or Administrator's Discharge Date |

Date de la libération du syndic autorisé en insolvabilité ou de
l'administrateur :

Canada



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
du système
d'insolvabilité

THIS IS

EXHIBIT "7"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020



COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

ONTARIO
SUPERIOR COURT OF JUSTICE

DRAFT

BETWEEN:

NORMA POWELL

Plaintiff

- and -

**1940885 ONTARIO LIMITED o/a DISTINCTTECH INC., and CITY OF TORONTO and
ROGERS COMMUNICATIONS CANADA INC.**

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM OF THE DEFENDANT,
ROGERS COMMUNICATIONS CANADA INC.**

1. The Defendant, Rogers Communications Canada Inc. ("**Rogers**"), admits none of the allegations contained in the Amended Statement of Claim.
2. Rogers expressly denies that it or its servants, agents, employees or contractors were negligent as alleged in the Amended Statement of Claim or at all and further states that at all material times it acted in a reasonable, prudent and proper manner without negligence.
3. Rogers denies that it owed the plaintiff a duty of care but states that if it owed such a duty of care, then that duty of care was complied with at all material times.
4. Rogers states that if the plaintiff sustained any damages or losses as alleged, which are not admitted but expressly denied, they were not caused by any fault or neglect on the part of Rogers.

5. Rogers denies that the plaintiff sustained the injuries and damages alleged in the Amended Statement of Claim or at all and puts her to the strict proof thereof.

6. Rogers states that if the plaintiff tripped and fell as alleged, which is not admitted but denied, Rogers denies that such slip and fall took place on any property which they have a responsibility to maintain or repair.

7. Rogers states that if the plaintiff suffered the loss or damage alleged or any loss or damage, which is denied, then the damages were unrelated to the incident described in the Amended Statement of Claim. Rogers further states that the damages claimed are excessive, remote and have not been mitigated.

8. Rogers pleads and relies upon the provisions of the *Municipal Act, 2001, S.O. 2001, C. M25*, the *Occupiers Liability Act, R.S.O. 1990, c-0-2* and the *Negligence Act, R.S.O. 1990, c-N-1*, as amended.

9. Rogers denies that it or its subcontractor did any work in the area of the man hole prior to the alleged incident referred to in the Amended Statement of Claim.

10. Rogers specifically denies that it had any responsibility to inspect or otherwise exercise any care or control over the area in question (the "premises").

11. In the alternative, Rogers states that if the plaintiff sustained any damage, which is not admitted but is expressly denied, then such damage was caused or contributed to by the negligence of: the co-Defendants, DistinctTech Inc. and the City of Toronto ("the co-Defendants"), or their combined negligence, and Rogers adopts and repeats the allegations made against the co-Defendants as contained in paragraphs 6, 7 (a) – (q), 8, 9, 10, 11, 12 and 13 of the Amended Statement of Claim but only as related to the co-Defendants.

12. If the plaintiff sustained the losses and damages as pleaded and alleged, which are not admitted but denied, then same were occasioned as a result of the negligence of the plaintiff, the particulars of which are as follows:

- (a) she failed to keep a proper lookout, or any lookout at all for her safety;
- (b) she was the author of her own misfortune;
- (c) she was distracted and inattentive;
- (d) she failed to observe her surroundings and her own safety when she had the last opportunity to do so;
- (e) she failed to wear eyewear or in the alternative, her eyewear was defective resulting in her inability to maintain a proper look out;
- (f) she was operating and riding her motorized wheelchair faster than she ought to have in the circumstances;
- (g) she was not paying attention to where she was directing her motorized wheelchair;
- (h) she traversed the area while her attention in doing so was distracted;
- (i) at the time, her faculties of observation, perception, judgment and self-control were impaired, and due to her physical and mental condition, she was incompetent to have attempted to traverse the premises with reasonable care and attention;
- (j) she failed to avoid the area when it was plainly visible to be seen by her with the exercise of reasonable care and attention;
- (k) she failed to make any inspection or observations of the area where she was riding her wheelchair;
- (l) she was distracted by the use of her cell phone, listening to music, participating in conversation, etc.;
- (m) she failed to observe her surroundings;

- (n) she failed to support or brace herself adequately, or at all;
- (o) she was riding her motorized wheelchair when her ability to do so was effected by fatigue and/or consumption of intoxicants, alcohol, drugs or medication;
- (p) she was riding and directing her motorized wheel chair in a hurried manner without due regard for her own safety; and
- (q) such further and other allegations or negligence that may be advanced during the course of the proceedings.

As to the Co-Defendants:

- (a) Rogers adopts and repeats the allegations made against the said co-defendants as contained in paragraphs 6, 7 (a) to (q), of the Amended Statement of Claim but only as related to the said co-defendants.

13. Rogers therefore asks that this action be dismissed as against it with costs on a substantial indemnity basis.

CROSSCLAIM AGAINST 1940885 ONTARIO LIMITED o/a DISTINCTTECH INC. and CITY OF TORONTO

14. Rogers claims as against DistinctTech and the City of Toronto

- (a) contribution and indemnity for any amount that Rogers is held liable to pay to the plaintiff;
- (b) its costs of defending the main action on a substantial indemnity basis;
- (c) its costs of this Crossclaim on a substantial indemnity basis; and
- (d) such further and other relief as this Honourable Court may deem just.

15. Rogers and the co-defendant 1940885 Ontario Limited o/a DistinctTech Inc. ("**DistinctTech**") entered into a Master Construction Services Agreement dated as of May 1, 2017 wherein DistinctTech, as a Supplier, agreed to provide installations and related services to Rogers ("**the Contract**").

16. The Contract [paragraph 1.1 on page 49 - Scope of Work – Drop Services] indicates that the scope of work DistinctTech as Supplier, activities include but are not limited to (i) installation: supply and replacement activities for drop wire, aerial and buried; and, (ii) drop repair, aerial and buried, including excavation where required.

DistinctTech as Supplier - Supplier's Indemnity

17. The Contract [paragraph 12.4 Supplier's Indemnity] provides that:

"the Supplier shall for itself and its Supplier Representatives indemnify, defend and hold Rogers and its Affiliates and their respective officers, directors, agents, representatives and employees harmless from and against all claims, losses, costs, damages, expenses and liabilities (including (including reasonable legal fees and disbursements) which may be suffered or incurred by Rogers or its Affiliates and their respective officers, directors, agents, representatives and employees arising out of or as a result of or relating in any manner whatsoever to:

- (2) any injury to Persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of or in connection with the performance by Supplier, its Supplier Representatives of all or any part of Supplier's obligations under this Agreement; "

18. The obligation to indemnify was unlimited and survived the termination or expiry of the Contract.

19. The Contract [paragraph 13.1 Supplier's Insurance] provides that:

"Without restricting the generality of Article 12 (Limitation of Liability and Indemnification), Supplier shall provide, maintain, and pay for the insurance coverages specified in this Article 13."

20. The Contract at Paragraph 13.1 (1) General Liability Insurance provides that:

"General liability insurance shall be in the name of Supplier, with Rogers as the Project Manager (if not an employee of Rogers), named as additional insured."

Rogers received a certificate naming it as an additional insured.

21. In the period following the Contract, DistinctTech as Supplier performed work of installation of a cable in an area alleged to be the area where the plaintiff sustained damages.

22. Rogers claims that the failure of DistinctTech, as Supplier in the Contract, to defend and indemnify them is a breach of the Contract.

23. If the Plaintiff sustained any loss, injury or damage arising from the allegations in the Amended Statement of Claim, which is not admitted but specifically denied, Rogers pleads that the losses, injuries or damage sustained by the Plaintiff were caused or contributed to by the fault, neglect, act, omission or breach of contract of DistinctTech, as Supplier in the Contract, and not by Rogers and claims indemnification in respect of any amounts which may be ordered against Rogers in favour of the Plaintiff.

24. Rogers pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, C.N.1 as amended, such that the co-Defendant shall be liable for any damages to which the plaintiff is found to be entitled.

25. The co-defendant City of Toronto was at all material times the owner and/or occupier of the public sidewalks at Chalkfarm Drive and Jane Street, which includes the surrounding area,

and as such had jurisdiction, care and control of the property and surrounding area and had charge over its management, supervision and maintenance.

26. Rogers pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, C.N.1 as amended, such that the co-Defendant shall be liable for any damages to which the plaintiff is found to be entitled.

December _____ 2019

BLANEY MCMURTRY LLP

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Toronto ON M5C 3G5

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Lawyers for the Defendant,
City of Toronto

AND TO: **1940885 ONTARIO LIMITED O/A DISTINCTTECH INC.**
77 Belfield Road
Toronto ON M9W 1G6

NORMA POWELL

Plaintiff

and

1940885 ONTARIO LIMITED o/a DISTINCTTECH INC. et al.

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE AND CROSSCLAIM OF THE
DEFENDANT ROGERS COMMUNICATIONS CANADA INC.**

BLANEY MCMURTRY LLP

Lawyers
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

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rfinkel@blaney.com

Lawyers for the Defendant,
Rogers Communications Canada Inc.

THIS IS

EXHIBIT "8"

TO THE AFFIDAVIT OF

SUZANA PERIK

SWORN FEBRUARY 14, 2020

A handwritten signature in black ink, appearing to read "J. Wuthmann", is written over a horizontal line.

COMMISSIONER FOR TAKING AFFIDAVITS

Jessica Wuthmann

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:

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

CONSENT


THE PARTIES hereto, by their lawyers, hereby consent to an Order in the form attached here as Schedule "A".

Date: February 11, 2020



Reeva M. Finkel
BLANEY McMURTRY LLP
Lawyers for Rogers Communications Canada Inc.

Date: February 4, 2020



Rachel Bengino
THORNTON GROUT FINNIGAN LLP
Lawyers for Deloitte Restructuring Inc. in its capacity as Receiver and trustee in bankruptcy of DistinctTech Inc. and not in its personal or corporate capacity

Schedule "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE

)
)
)

, THE
DAY OF , 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

LIFT STAY CONSENT ORDER

THIS MOTION, made by the Rogers Communications Canada Inc. (the "Moving Party"), a defendant in Court File No. CV-18-00611789-000 (the "Action") for an order lifting the stay of proceedings as against co-defendant DistinctTech Inc. ("Distinct"), for the purposes of a Crossclaim was heard this day at the courthouse at 330 University Avenue, Toronto.

ON READING the Moving Party's Motion record filed, and the Consent of the Lawyers for Deloitte Restructuring Inc., in its capacity as the Receiver (the "Receiver") of Distinct pursuant to the Receivership Order dated March 11, 2019 issued in the within proceedings (the "Receivership Proceedings") and in its capacity as Trustee in bankruptcy of Distinct (the "Trustee") in Court File No. 31-2489723 (such proceedings, the "Bankruptcy Proceedings");

AND UPON hearing the submissions of the lawyer for the Moving Party.

1. **THIS COURT ORDERS AND DECLARES** the stay of proceedings against Distinct in each of the Receivership Proceedings and Bankruptcy Proceedings is hereby lifted for the sole purpose of permitting the Moving Party to seek recourse under the insurance policy issued to Distinct by Continental Casualty Company (Policy number MPR 2992371) effective November 1, 2018 (the "**Policy**") in respect of the Moving Party's crossclaim against Distinct in Court File No. CV-18-00611789-000.

2. **THIS COURT FURTHER ORDERS** that the Moving Party is hereby granted leave to continue and prosecute its claim against Distinct for the purpose of establishing in the Action any liability to it and thereafter enforcement of any such judgment solely against the Policy. There will be no involvement required of the Trustee or the Receiver in the Action and the Receiver and Trustee will not incur any costs in connection with the Action or the Policy, including any payments or premiums or deductibles under the Policy.

3. **THIS COURT FURTHER ORDERS** that (i) no costs will be sought against the Receiver or the Trustee in connection with the Action or this motion by the Moving Party; (ii) no steps will need to be taken by the Receiver or the Trustee in connection with the Action or the Policy or this motion by the Moving Party; and (iii) any claim asserted as against Distinct by the Moving Party would be unsecured.

ROYAL BANK OF CANADA
Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., et al
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**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
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LIFT STAY CONSENT ORDER

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AFFIDAVIT OF SUZANA PERIK

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MOTION RECORD

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