

**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

**MOTION RECORD OF DELOITTE RESTRUCTURING INC., IN ITS CAPACITY AS RECEIVER OF DISTINCT INFRASTRUCTURE GROUP INC.
(Returnable July 5, 2022)**

June 23, 2022

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TAB 1

Notice of Motion returnable July 5, 2022

**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

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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
(Returnable July 5, 2022)**

DELOITTE RESTRUCTURING INC. (“**Deloitte**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) of Distinct Infrastructure Group Inc. (the “**Company**”), Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. (collectively with the Company, “**DIG**”) will make a motion to a Judge presiding over the Commercial List on July 5, 2022, at 11:00 a.m. or as soon after that time as the motion may be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference details will be provided by the Court, and emailed to the Service List, in

advance of the motion. Please advise if you intend to join the hearing of the motion by email to Rachel Nicholson at rnicholson@tgf.ca.

PROPOSED METHOD OF HEARING: This Motion is to be heard by videoconference.

THIS MOTION IS FOR:

1. An Order:
 - (a) approving the Minutes of Settlement dated March 22, 2022 (the “**Settlement Agreement**”), as further described below, which settles the D&O Action (as defined below), along with several other related claims by third parties, along with the accompanying side letter dated March 22, 2020 (the “**Side Letter**”);
 - (b) approving the Minutes of Settlement dated March 22, 2022 (the “**Expenses Settlement Agreement**”) which settles the Expenses Claim (as defined below);
 - (c) sealing Confidential Appendices “1”, “2”, “3” and “4” which contain copies of the Settlement Agreement, a summary of the Settlement Agreement, the Side Letter, and Expenses Settlement Agreement, respectively;
 - (d) authorizing distributions to Royal Bank of Canada (the “**Bank**”); and
 - (e) approving the Third Special Report of the Receiver to the Court dated June 23, 2022 (the “**Third Special Report**”) and the activities described therein.

THE GROUNDS FOR THE MOTION are as follows:

Background

2. By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 11, 2019 (the “**Appointment Order**”), Deloitte was appointed upon application by the Bank as Receiver of the assets, undertakings and properties of DIG pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
3. After its appointment, the Receiver commenced an investigation related to financial irregularities in respect of DIG and previously brought a motion seeking an order of the Court requiring Joe Lanni and Alex Agius (together, the “**Former CEOs**”) to repay amounts incurred by them using DIG corporate credit cards for their own person benefit (the “**Expenses Claim**”);
4. The Receiver issued a Statement of Claim dated July 20, 2020 against various directors and officers of DIG (including the Former CEOs) (the “**D&O Action**”) alleging that the directors and officers either made or directed the inclusion of misstatements in DIG’s financial disclosures or failed to detect that DIG’s financial disclosures contained material misstatements;
5. By Order dated November 25, 2020 (the “**Mediation Order**”), the Court ordered that the D&O Action, along with other related actions arising out of the insolvency of DIG and alleged misrepresentations by former executives be mediated (the “**Mediation**”) and the Court appointed the Honourable Dennis O’Connor as mediator (the “**Mediator**”);

6. The Honourable J. Douglas Cunningham, Q.C. was appointed as Special Receiver (in such capacity, the “**Special Receiver**”) to pursue certain claims of DIG, including the D&O Action and the action as against DIG’s former auditors;
7. By Endorsement dated May 12, 2021, the Court directed that the Expenses Claim be mediated in the Mediation with the other claims set out in the Mediation Order;

Settlement Agreements

8. Following a lengthy and complex Mediation before the Mediator, multiple actions and legal proceedings that were commenced against DIG’s former directors and officers (including the Former CEOs) were settled, including both the Expenses Claim and D&O Action. This resulted in the Settlement Agreement, Side Letter, and Expenses Settlement Agreement (collectively, the “**Settlement Agreements**”);
9. The Receiver is seeking approval by the Court of the Settlement Agreements;
10. Pursuant to the Settlement Agreements, the terms of settlement in each of the Settlement Agreements are confidential and are not to be disclosed by any of the parties thereto. Accordingly, the Receiver is seeking an Order sealing Confidential Appendices “1”, “2”, “3” and “4” attached to the Third Special Report which contain copies of the Settlement Agreement, a summary of the Settlement Agreement, the Side Letter, and Expenses Settlement Agreement, respectively;

Distribution to the Bank

11. As of the date of the Appointment Order, the Bank advised it was owed in excess of \$53 million from DIG. The Receiver is seeking approval from the Court to distribute to the Bank the proceeds received by it pursuant to the Settlement Agreements, along with all future receipts received by the Receiver in these proceedings up to the value of the Bank's secured debt;

Approval of Third Special Report

12. The Receiver is also seeking approval of the Third Special Report and the activities and conduct described therein; and
13. Such other grounds as counsel may advise and this Honourable Court may deem just.

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

1. Third Special Report of the Receiver dated June 23, 2022; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

June 23, 2022

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

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

Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Receiver, Deloitte Restructuring Inc. and Special Receiver, Honourable J. Douglas Cunningham, Q.C.

TAB 2

Third Special Report of the Receiver dated June 23, 2022

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Respondents

**THIRD SPECIAL REPORT OF THE RECEIVER
(Settlement of Actions Against Former Executives)**

June 23, 2022

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Appendix “B” First Supplement to the Special Report of the Receiver dated July 3, 2022 (without appendices)
Appendix “C” Procedural Order dated August 13, 2020
Appendix “D” Statement of Claim dated July 20, 2020
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Appendix “F” Endorsement dated May 12, 2021

CONFIDENTIAL APPENDICES

Confidential Appendix “1” Summary of Settlement Agreement dated March 22, 2022
Confidential Appendix “2” Settlement Agreement dated March 22, 2022
Confidential Appendix “3” Side Letter dated March 22, 2022
Confidential Appendix “4” Expenses Settlement Agreement dated March 22, 2022

INTRODUCTION AND PURPOSE OF THIS THIRD SPECIAL REPORT

1. On March 11, 2019, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed by the Court as Receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Distinct Infrastructure Group Inc. (the “**Company**”) and its subsidiaries, DistinctTech Inc., Distinct Infrastructure Group West Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. (collectively with the Company, “**DIG**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The application for the appointment of the Receiver was brought by Royal Bank of Canada (the “**Bank**”) in respect of secured indebtedness owing by DIG to the Bank of approximately \$53 million as at that time.
2. This Third Special Report of the Receiver (the “**Third Special Report**”) is in support of the Receiver’s motion for Court approval of the settlement of multiple actions/legal proceedings commenced against certain of DIG’s former directors and officers after DIG’s insolvency as further described below. The Receiver is also seeking Court approval for the payment of the settlement proceeds as agreed by the parties. The settlement follows a lengthy and complex mediation before the Honourable Justice Dennis O’Connor. The mediation was conducted over five days in 2021 and resulted in the settlement agreements described below.
3. On March 18, 2019, the Receiver issued its first report to the Court (the “**First Report**”) to provide information with respect to the Receiver’s motion for Court approval of the sale transaction contemplated between the Receiver and Crown Pipeline Ltd. and related relief, in connection with the sale of the assets of Crown Utilities Ltd. (the “**Crown Transaction**”).

4. On March 22, 2019, pursuant to its authority set out in the Appointment Order, the Receiver filed an assignment in bankruptcy of DistinctTech Inc. and Deloitte was appointed as Trustee in Bankruptcy.
5. On April 26, 2019, the Receiver issued its second report to the Court (the “**Second Report**”) to provide information regarding the closing of the Crown Transaction and the Receiver’s activities. The Receiver also sought an expansion of its powers to include the powers of a licensed insolvency trustee acting in a bankruptcy proceeding. The purpose of the expansion of the Receiver’s powers was to further investigate financial irregularities that had been previously identified to and by the Receiver. The Court issued an Order expanding the Receiver’s investigative powers on May 3, 2019.
6. On November 28, 2019, the Receiver issued the Special Report of the Receiver (the “**First Special Report**”) to, among other things, provide the Court with an update on its investigations and to support a motion brought by the Receiver seeking an order of the Court requiring Joe Lanni and Alex Agius (together, the “**Former CEOs**”) to repay amounts incurred by them using DIG corporate credit cards for their personal benefit (the “**Expenses Claim**”). A copy of the First Special Report, without appendices, is attached hereto as **Appendix “A”**.
7. On February 14, 2020, the Former CEOs brought a motion seeking to convert the Receiver’s motion for the Expenses Claim into an action. On July 3, 2020, the Receiver issued the First Supplement to the First Special Report (the “**First Supplement**”) in response to that motion, a copy of which is attached hereto, without appendices, as **Appendix “B”**. That motion was resolved on consent and resulted in the Order of the Honourable Justice Conway dated

August 13, 2020 (the “**Procedural Order**”), a copy of which is attached as **Appendix “C”**.

The Procedural Order required the Former CEOs to provide the Receiver with a written list of specific documents they required to respond to the Expenses Claim, and for the Receiver to use “reasonable and proportionate” efforts to review and produce such documents.

8. By Statement of Claim dated July 20, 2020 (the “**Statement of Claim**”), the Receiver issued a claim against various directors and officers (including the Former CEOs) of DIG (the “**D&O Action**”). The D&O Action alleged that the directors and officers either made or directed the inclusion of misstatements in DIG’s financial disclosures (both in its public financial statements and in its borrowing base reports provided to the Bank pursuant to its credit facilities) or failed to detect that DIG’s financial disclosures contained material misstatements. The Receiver alleged that the Former CEOs were in negligent breach of the duties the directors and officers owed to DIG. Detailed particulars are included in the Statement of Claim, a copy of which is attached as **Appendix “D”**.
9. On October 15, 2020, the Receiver issued its Fourth Report to the Court to, among other things, provide an update on the status of the receivership proceedings and seek the Court’s approval of a settlement agreement between the Receiver and the Laborers’ International Union of North America, Local 183 (“**LiUNA**”), as described therein.
10. By Order dated November 25, 2020 (the “**Mediation Order**”), the Court ordered that the D&O Action, along with other related actions arising out of the insolvency of DIG and alleged misrepresentations by former executives (being the Seafort Action, RFMC Action and LiUNA Action, each as defined below) be mediated (the “**Mediation**”) and the Court

appointed the Honourable Dennis O'Connor as mediator (the "**Mediator**"). A copy of the Mediation Order is attached hereto as **Appendix "E"**.

11. On December 21, 2020, the Receiver issued the Second Supplement to the First Special Report of the Receiver (the "**Second Supplement**") to provide the Court with an update on the searches it conducted and documents produced pursuant to the Procedural Order, and to put those before the Court.
12. On March 17, 2021, the Receiver issued a Special Report of the Receiver in connection with the Receiver's motion to appoint the Honourable J. Douglas Cunningham, Q.C. as Special Receiver (in such capacity, the "**Special Receiver**") to pursue certain claims of DIG, including the D&O Action and the action as against DIG's former auditors, MNP LLP (the "**MNP Action**").
13. By Endorsement dated May 12, 2021 (the "**Mediation Endorsement**"), the Court directed that the Expenses Claim be mediated in the Mediation with the other claims set out in the Mediation Order. A copy of the Mediation Endorsement is attached as **Appendix "F"**.
14. The Appointment Order, Procedural Order, and all other orders and reports of the Receiver to the Court and information filed in connection with the receivership proceedings can be accessed on the Receiver's case website at www.insolvencies.deloitte.ca/en-ca/dig.
15. The purpose of this Third Special Report is to seek an Order of the Court:
 - a. approving the Minutes of Settlement dated March 22, 2022 (the "**Settlement Agreement**"), as further described below, which settles the D&O Action, along with

several other related claims by third parties, along with the accompanying side letter dated March 22, 2020 (the “**Side Letter**”);

- b. approving the Minutes of Settlement dated March 22, 2022 (the “**Expenses Settlement Agreement**”) which settles the Expenses Claim;
- c. sealing Confidential Appendices “1”, “2”, “3” and “4” which contain copies of the Settlement Agreement, a summary of the Settlement Agreement, the Side Letter, and Expenses Settlement Agreement, respectively;
- d. authorizing distributions to the Bank; and
- e. approving this Third Special Report and the activities described herein.

16. The Special Receiver advised the Receiver that it supports the Receiver’s motion.

TERMS OF REFERENCE

17. In preparing this Third Special Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, DIG’s books and records, discussions with management of DIG (“**Management**”), and information from third-party sources (collectively, the “**Information**”). Except as described in this Third Special Report:

- a. Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*

and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information;

- b. As noted in prior reports of the Receiver, the Company has issued press releases and guidance to the financial markets advising that its financial statements are misstated and should not be relied upon. DIG has made material write downs to its accounts receivable, work in progress, and inventory balances, and accordingly, Deloitte cautions that the financial information reported herein is subject to further verification and may require material revision; and
 - c. Deloitte has prepared this Third Special Report in its capacity as Receiver solely for the purposes noted herein. Parties using the Third Special Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
18. Unless otherwise stated, all dollar amounts contained in this Third Special Report are expressed in Canadian dollars.

SETTLEMENT AGREEMENT

19. Pursuant to the Mediation Order and Mediation Endorsement, along with other agreements to include actions in the Mediation, the following claims and actions were mediated by the Mediator over the course of several days in 2021:
- a. The D&O Action;
 - b. The Expenses Claim;

- c. The action by Seafort Capital Inc. (“**Seafort**”) against the Former CEOs plus Manny Bettencourt, the former chief financial officer, commenced with Court File Number CV-19-6277225 (the “**Seafort Action**”);
 - d. The action by Rogers Financial Management Corp. (“**RFMC**”) against the Former CEOs, along with additional former directors and officers, the Bank and AltaCorp Capital Inc. with Court File Number CV-00641158-00CL (the “**RFMC Action**”);
 - e. The action by the Bank against the Former CEOs with Court File Number CV-19-00632009-00CL (the “**RBC Postponement Action**”);
 - f. The action by the Bank, that has been issued but not served, against the Former CEOs plus various former directors and officers with Court File Number CV-21-00662188-00CL (the “**RBC D&O Action**”);
 - g. The action by the Universal Workers Union, LiUNA, and various individuals for whom LiUNA is the authorized agent and bargaining representative against the Former CEOs with Court File Number CV-20-00651251 (the “**LiUNA Action**”);
and
 - h. The action by Calidon Financial Services against the Former CEOs with Court File Number CV-19-00618962 (the “**Calidon Action**”).
20. The Settlement Agreement settles the D&O Action, Seafort Action, RFMC Action (except as against one defendant thereto who did not participate in the Mediation) and the RBC D&O Action. The Expenses Claim and RBC Postponement Action have been settled in the Expenses Settlement Agreement, described below, for which the Receiver is also seeking

approval by the Court. The remaining actions, being the Calidon Action and LiUNA Action were separately settled. The Settlement Agreement does not settle the MNP Action, which remains ongoing.

21. The Settlement Agreement also provides that the Receiver will hold the OSA Holdback (as defined in the Settlement Agreement) to distribute to the parties in accordance with the terms therein.
22. A summary of the terms of the Settlement Agreement, for only the Court's benefit, is attached hereto as **Confidential Appendix "1"** and a copy of the Settlement Agreement is attached hereto as **Confidential Appendix "2"**. Pursuant to the Settlement Agreement, the terms of settlement are confidential and are not to be disclosed by any of the parties thereto. Accordingly, the Receiver is seeking an Order sealing Confidential Appendices "1" and "2" pending further order of the Court, which each contain commercially sensitive information in respect of the Settlement Agreement.
23. Additionally, each of Seafort, RFMC, DIG (by its Special Receiver), and the Bank entered into the Side Letter which is intended to complement the Settlement Agreement in connection with any future possible recoveries. A copy of the Side Letter is attached hereto as **Confidential Appendix "3"**. Pursuant to the Side Letter, the terms of the Side Letter are confidential and are not to be disclosed by any of the parties thereto. Accordingly, the Receiver is seeking an Order sealing Confidential Appendix "3" pending further order of the Court, which contains commercially sensitive information in respect of the Side Letter.

EXPENSES SETTLEMENT AGREEMENT

24. The Receiver also seeks approval of the Expenses Settlement Agreement entered into between DIG, by its Special Receiver, the Bank, Joe Lanni, his spouse, Alexander Agius and his spouse. The Expenses Settlement Agreement settles the Expenses Claim and the RBC Postponement Action and provides for certain payments to be made by the Former CEOs to the Bank, among other terms. A copy of the Expenses Settlement Agreement is attached hereto as **Confidential Appendix “4”**. Pursuant to the Expenses Settlement Agreement, the terms of settlement are confidential and are not to be disclosed by any of the parties thereto. Accordingly, the Receiver is seeking an Order sealing Confidential Appendix “4” pending further order of the Court, which contains commercially sensitive information in respect of the Expenses Settlement Agreement.

DISTRIBUTION TO THE BANK

25. As of the date of the Appointment Order, the Bank advised it was owed in excess of \$53 million from DIG. As mentioned in the Second Report, the Receiver obtained a security opinion from Aird & Berlis LLP, its independent counsel, which opined that, subject to the usual and customary conclusions therein, the Bank’s security is valid and enforceable and the Bank has a first ranking charge over the assets of DIG. Receipts to date in the receivership proceeding, including pursuant to the Settlement Agreement, total approximately \$21.3 million, and are far below the value of the indebtedness owing by DIG to the Bank.

26. Pursuant to the Order of the Court dated May 3, 2019, the Receiver previously distributed the proceeds of the Crown Transaction (subject to certain reserves) to the Bank.

27. Accordingly, the Receiver is seeking approval from the Court to distribute to the Bank the proceeds received by it pursuant to the Settlement Agreement, along with all future receipts received by the Receiver in these proceedings up to the value of the Bank's secured debt.

RECOMMENDATION

28. In the Receiver's view, the Settlement Agreement, Side Letter and Expenses Settlement Agreement (collectively, the "**Settlement Agreements**") reflect a commercially reasonable resolution of a myriad of litigation claims against the Former CEOs, which were settled through complex and arduous negotiations in the Mediation.
29. The Receiver is further of the view that the Settlement Agreements reflect the best commercial resolution in the circumstances and is supported by the Special Receiver. The Bank was consulted throughout the mediation and is supportive of the Settlement Agreements. The Receiver recommends that the Court approve the Settlement Agreements.
30. Accordingly, the Receiver respectfully requests that the Court approve the Receiver's request for an Order (i) approving the Settlement Agreement and Side Letter, (ii) approving the Expenses Settlement Agreement, (iii) sealing Confidential Appendices "1", "2", "3", and "4", (iv) authorizing the requested distribution to the Bank, and (v) approving this Third Special Report and the activities and conduct of the Receiver as described herein.

All of which is respectfully submitted at Toronto, Ontario this 23rd day of June, 2022.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
receiver of Distinct Infrastructure Group Inc.
et. al., and without personal or corporate
liability.

A handwritten signature in blue ink that reads "Jordan Sleeth". The signature is written in a cursive style with a large, stylized initial "J".

Per: _____

Jordan Sleeth, LIT
Senior Vice President

APPENDIX “A”

Special Report of the Receiver dated November 28, 2019 (without appendices)

APPENDIX "A"

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

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

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

**SPECIAL REPORT OF THE RECEIVER
(Action Against Former Executives)**

November 28, 2019

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Appendix “A”	List of entities subject to receivership
Appendix “B”	Pre-Filing Report of the Receiver (without appendices)
Appendix “C”	Investigative Powers Order
Appendix “D”	Joe Lanni Termination Letter
Appendix “E”	Alex Agius Termination Letter
Appendix “F”	Joe Lanni Expenses Demand Email (DIG) with “ Lanni List of Expenses ”
Appendix “G”	Alex Agius Expenses List (DIG) (“ Agius List of Expenses ”)
Appendix “H”	Joe Lanni Expenses Demand Letter (Receiver)
Appendix “I”	Alex Agius Expenses Demand Letter (Receiver)
Appendix “J”	Letter from Lanni and Agius dated April 19, 2019
Appendix “K”	List of Categorized Expenses prepared by the Receiver
Appendix “L”	Proposed Statement of Claim against Lanni and Agius
Appendix “M”	Demand Letter sent to various DIG-related Individuals

INTRODUCTION AND PURPOSE OF THIS SPECIAL REPORT

1. On March 11, 2019, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed by the Court as Receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Distinct Infrastructure Group Inc. (the “**Company**”) and its subsidiaries set out in Appendix “**A**” (collectively with the Company, “**DIG**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The application for the appointment of the Receiver was brought by Royal Bank of Canada (the “**Bank**”) in respect of secured indebtedness owing by DIG of approximately CDN\$53 million plus US\$8,000 as at that time.
2. An overview of the business of DIG, its stakeholders and its financial position is contained in the Pre-Filing Report of Deloitte, attached as Appendix “**B**” without appendices.
3. On April 26, 2019, the Receiver issued its second report (the “**Second Report**”) to the Court to provide information about a number of items, and sought an expansion of the Receiver’s powers to include the powers of a licensed insolvency trustee acting in a bankruptcy proceeding. The purpose of the expansion of the Receiver’s powers was to further investigate financial irregularities that had been previously identified to and by the Receiver.
4. The Court issued an Order expanding the Receiver’s investigative powers on May 3, 2019 (the “**Investigative Powers Order**”). A copy of that Order is attached as Appendix “**C**”.
5. The Appointment Order, the Investigative Powers Order, the Second Report, and other orders, reports and information filed in connection with the receivership proceedings can be accessed on the Receiver’s case website at www.insolvencies.deloitte.ca/en-ca/dig.

6. The purpose of this special report (the “**Special Report**”) is to:
- a. provide the Court with an update on the investigations conducted by the Receiver since the issuance of the Investigative Powers Order;
 - b. seek a further order of the Court requiring certain former executives (namely Joe Lanni (“**Lanni**”) and Alex Agius (“**Agius**” and together with Lanni, the “**Former CEOs**”)) to repay amounts incurred by them using DIG corporate credit cards for their personal benefit; and
 - c. support a request by the Bank for an Order directing that a Statement of Claim to be issued by the Bank against the Former CEOs be issued on the Ontario Superior Court of Justice (Commercial List), and be case managed by Justice Hainey as the supervising judge overseeing this receivership proceeding;

all as set out below.

TERMS OF REFERENCE

7. In preparing this Special Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, DIG’s books and records, discussions with management of DIG (“**Management**”), and information from third-party sources (collectively, the “**Information**”). Except as described in this Special Report:
- a. Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian

Auditing Standards (“CAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information;

- b. As noted in prior reports of the Receiver, the Company has issued press releases and guidance to the financial markets advising that its financial statements are misstated and should not be relied upon. DIG has made material write downs to its accounts receivable, work in progress, and inventory balances, and accordingly, Deloitte cautions that the financial information reported herein is subject to further verification and may require material revision; and
- c. Deloitte has prepared this Special Report in its capacity as Receiver solely for the purposes noted herein. Parties using the Special Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

8. Unless otherwise stated, all dollar amounts contained in this Special Report are expressed in Canadian dollars.

BACKGROUND

9. In December, 2018, Deloitte Restructuring Inc. (“**Deloitte**”) was engaged by the Bank as its consultant to perform a business review of the Company. Pursuant to its engagement by the Bank, Deloitte undertook the following activities:

- a. A review of the Company’s business plan and financial forecast;

- b. An analysis of the value of the Bank's security position;
 - c. A review of the Company's borrowing base as provided to the Bank; and
 - d. Other items as directed by the Bank.
10. Deloitte began its work after the execution of its engagement letter and provided its report to the Bank on January 31, 2019.
 11. Shortly after Deloitte's engagement by the Bank as consultant, the Company appointed a new chief financial officer (the "**New CFO**"). The New CFO was appointed on January 14, 2019 to replace the Company's interim chief financial officer.
 12. Shortly after the New CFO's appointment, and as a result of financial irregularities that were discovered by him, a special committee (the "**Special Committee**") of the board of directors (the "**Board**") was formed to investigate the irregularities and determine the best course of action.
 13. Following internal deliberations, the Special Committee decided that the interim chief financial officer and the vice president of finance were to have their employment terminated. Those terminations occurred on February 11, 2019.
 14. The New CFO and the Special Committee continued their investigations into February, 2019. As part of the investigations, the Former CEOs' expense accounts were analyzed to consider whether expenses incurred by the Former CEOs and paid for by DIG were appropriate, incurred in the course of the Former CEOs' duties, and for the benefit of the Company.

15. Based on these investigations, the Company identified a substantial number of transactions that did not appear to be for the benefit of DIG, described in further detail below.
16. The Board subsequently determined that it was appropriate to terminate the employment of the Former CEOs. One reason given for the termination was “Misuse of company funds for personal gain”. Such termination occurred on February 18, 2019. A copy of the Lanni and Agius termination letters are attached as Appendices “**D**” and “**E**”.
17. On February 26, 2019, the Company demanded that the Former CEOs reimburse DIG for all expenses the Company deemed as personal. An email sent by the Company to Lanni demanding such repayment, which attached details as to the expense amounts incurred by Lanni deemed by the Company as personal (the “**Lanni List of Expenses**”), is attached as Appendix “**F**”. The Receiver understands that the same email was sent to Alex Agius with details of his expenses, a list of which is attached as Appendix “**G**” (the “**Agius List of Expenses**”).
18. To date, and to the knowledge of the Receiver, the Former CEOs have not repaid those amounts except as described herein, nor is the Receiver aware of any explanation for non-payment provided by the Former CEOs to DIG or the Special Committee, except as set out herein and as described in Appendix “**J**” below.
19. On April 2, 2019 following its appointment by the Court, the Receiver also demanded that the Former CEOs repay all expenses deemed by the Company as personal. Copies of the demand letters issued by the Receiver are attached as Appendix “**H**” and “**I**” (the “**Expense Reimbursement Demands**”).

20. The Former CEOs responded to the Receiver's letter by letter dated April 19, 2019, setting out their reasons for not having repaid the expenses deemed as personal. A copy of that letter is attached as Appendix "J".

21. The Former CEOs provided the following reasons for non-payment, each of which are accompanied by the Receiver's response to such explanations based on its review of available evidence and documentation:
 - (a) The Former CEOs claim that there was a promise from the Board to forego collection of personal amounts by way of a performance bonus. The Receiver has not been provided with a copy of or any evidence of such commitment, nor is that consistent with the Board's position as reflected in its letter and actions taken, including terminating the employment of the Former CEOs;

 - (b) The Former CEOs claim that all amounts incurred for personal items were repaid by January 2018. However, the Receiver has received no records indicating repayment except as described and accounted for herein, and in any event the majority of expenses for which the Receiver seeks repayment were incurred after January 2018;

 - (c) The Former CEOs claim that they have no way of knowing which expenses incurred on their credit cards were for personal items, and which were for the benefit of DIG. This explanation does not appear credible given that the Former CEOs were the individuals authorizing such payments and many of the expenses are plainly personal in nature (for example, a vacation for extended family members costing thousands of dollars);

- (d) The Former CEOs allege that they do not currently have the financial ability to make payments to reimburse the Company. They have advised the Receiver that they are both unemployed and have had to rely on loans from family and borrowings from various credit facilities in order to meet basic living expenses. The Receiver notes that this response goes to the issue of their *ability* to pay, rather than their *obligation* to repay these amounts.

22. Given that the Expense Reimbursement Demands by the Receiver remain unsatisfied, the Receiver seeks an Order directing the Former CEOs to repay certain amounts included in the Expense Reimbursement Demands. A list of categorised expenses prepared by the Receiver is attached as Appendix “K”. The Receiver seeks repayment only of the expenses in the categories described below.

RATIONALE FOR EXPENSE REIMBURSEMENT

23. The Receiver seeks repayment from the Former CEOs of the following four categories of expenses:
- a. Travel expenses (\$207,556 in total): including a family vacation for eight people to Hawaii for Agius’ family and extended family.
 - b. Leisure (\$33,724 in total): excessive leisure expenses that do not appear to have been for the benefit of DIG;
 - c. Personal Storage (\$17,511 in total): primarily the rental of lockers for the purpose of storing personal luxury automobiles; and

- d. Chop Restaurant (\$42,588 in total): expenses incurred by the Former CEOs who regularly attended a steakhouse near DIG's office for lunch. Only 50% of charges at this establishment are being sought by the Receiver.
24. The Expense Reimbursement Demands contain a number of items that the Company, prior to the appointment of the Receiver, determined were personal in nature. Following the Receiver's appointment and review of these items, the Receiver concurs in this assessment with respect to those items for which it seeks repayment. The Receiver has not subsequently been provided by the Former CEOs with any compelling or credible reasons why these personal amounts have not been repaid, despite demands being made by the Company and the Receiver.
25. The Receiver has reviewed the Former CEOs' expenses and the demand for repayment made by the Company. The Receiver is seeking repayment only of amounts for which it is clear and obvious to the Receiver that such expenses are personal in nature, and for which the Receiver does not believe that any credible basis could be provided for charging such expenses to DIG. The Receiver is not waiving the right to seek repayment of further amounts should further investigations indicate that it is appropriate to do so.
26. A summary for each of Lanni and Agius's expenses, together with the Receiver's rationale for pursuing reimbursement of same, is set out below. The details of the Former CEOs' expenses are based on information received from the Company, and the Receiver's review of the relevant books and records.

Joe Lanni Expenses

Nature of expense	Quantum	Reason for reimbursement
Leisure	\$25,781	<ul style="list-style-type: none"> • The largest component is the Beaver Valley Ski Club (\$13,730) • Other charges include hardware stores (\$2,083) and landscaping charges (\$2,773) • It is unlikely that such charges relate to corporate expenses or provided benefit to the Company
Meals – Chop Restaurant (25% allocation)	\$21,294	<ul style="list-style-type: none"> • The Receiver has been advised by numerous Company personnel that the Former CEOs regularly dined at the Chop Restaurant, a steakhouse in the vicinity of the DIG office, and that regular attendees included other Company personnel • The Board of Directors determined that the Co-CEOs incurred total expenses at the Chop Restaurant of \$85,178 on 200 receipts (approximately \$426/receipt) during the 304 day period from January 1 to October 31, 2018 • This amount is an allocation of 25% of the total costs incurred at this establishment, an allocation determined by the Board of Directors that represents its assessment of the amounts that were not incurred for legitimate business purposes
Travel – Family	\$13,310	<ul style="list-style-type: none"> • DIG staff confirmed this amount was for personal family travel • Of the total, \$11,401 relates to flight passes purchased by Lanni with the remainder being incurred with Cameron Air, a company that offers float plane services to Muskoka
Personal Storage	\$9,238	<ul style="list-style-type: none"> • Represents monthly storage costs for Lanni’s automobile(s) at an average cost of \$342/month (27 monthly payments) • The Receiver has been advised that such storage was not for corporate vehicles and was used by Lanni to store his personal vehicle
Total	\$69,623	

Alex Agius Expenses

Nature of expense	Quantum	Reason for reimbursement
Leisure	\$7,943	<ul style="list-style-type: none"> Significant charges have been incurred for ski trips, ski pants purchased at Sporting Life, expenses at various hardware stores, flowers for Agius' wife and a Valentine's Day meal for Agius and his wife
Meals – Chop Restaurant (25% allocation)	\$21,294	<ul style="list-style-type: none"> The Receiver has been advised by numerous Company personnel that the Former CEOs regularly dined at the Chop Restaurant, a steakhouse in the vicinity of the DIG office, and that regular attendees included other Company personnel The Board of Directors determined that the Co-CEOs incurred total expenses at the Chop Restaurant of \$85,178 on 200 receipts (approximately \$426/receipt) during the 304 day period from January 1 to October 31, 2018 This amount is an allocation of 25% of the total costs incurred at this establishment, an allocation determined by the Board of Directors that represents its assessment of the amounts that were not incurred for legitimate business purposes
Travel – Family	\$194,246	<ul style="list-style-type: none"> These costs are for personal travel This includes trips for Agius and both his immediate and extended family to Hawaii This also includes numerous trips to New York (including flights, accommodations and car services), which the Company has identified as being for appointments for Agius' wife
Storage	\$8,273	<ul style="list-style-type: none"> Monthly storage costs at an average cost of \$344/month (24 months) The Receiver understands from Company personnel that these charges were in connection with Agius' personal Maserati
Less reimbursements	(\$59,692)	<ul style="list-style-type: none"> The Company has advised that Agius has made certain reimbursements related to personal expenses directly to the relevant credit card company and that no such funds were received directly by the Company
Total	\$172,064	

27. Although the Former CEOs represent that they are reliant on loans from family, friends and credit card advances, the Receiver understands that each of the Former CEOs own properties within the Greater Toronto area and vacation properties north of the city. The Receiver also understands that the Former CEOs own (or have recently owned) luxury automobiles that could be monetized to assist them to repay the Expense Reimbursement Demands being sought by the Receiver. No current personal statement of affairs of Agius or Lanni is available to the Receiver in order for the Receiver to determine if there are other assets or means of repaying these amounts.
28. The Receiver is seeking an Order declaring that the amounts in question are personal expenses that were paid for with Company resources, and requiring repayment of \$69,623 from Lanni and \$172,064 from Agius.
29. Based on the Receiver's inquiries and the lack of supporting documentation, and consistent with the position taken by the Board and the Company, the expenses for which the Receiver seeks repayment do not appear to have been incurred for any legitimate business purposes.

THE BANK'S STATEMENT OF CLAIM AGAINST THE FORMER CEOS

30. During their employment and on or around August 3, 2018, the Former CEOs each advanced \$500,000 to DIG. In exchange, DIG issued a promissory note to each of the Former CEOs in the amount of \$500,000 (the "**Subordinated Promissory Notes**").
31. On September 12, 2018, the Former CEOs entered into postponement agreements with the Bank, specifically postponing and subordinating the repayment of the Subordinated Promissory Notes to the repayment of the Bank's debt (the "**Postponement Agreements**").

32. Investigations by the Receiver have revealed that the Subordinated Promissory Notes were indirectly repaid by way of a series of payments made between October 30, 2018 and November 19, 2018. These repayments were authorized by Lanni and Agius in their role as Former CEOs.
33. The Bank has advised the Receiver that it intends to issue a Statement of Claim against the Former CEOs on the basis that the Subordinated Promissory Notes were repaid in breach of the Postponement Agreements. The Bank seeks damages of \$519,765.28 against each of the Former CEOs. A copy of the proposed Statement of Claim is attached as Appendix “L”.
34. The Receiver expects there to be further litigation arising out of the receivership of DIG.
35. In particular, the Receiver intends to commence an action against Alex Agius, Joe Lanni, Garry Wetsch, Robert Normandeau, Douglas Horner, Michael Newman, William Nurnberger, George Parselias, Michael Mifsud, Royston Rachpaul, Manny Bettencourt, Jay Vieira and Iain Oglivie in connection with the misstatement of financial records and their negligence regarding same. A copy of the letter sent to Lanni in connection with this intended claim is attached for the Court’s information as Appendix “M”. The other named individuals received identical letters.
36. The insurers of DIG – Chubb Specialty Insurance and Berkley Canada – have also been put on notice of the Receiver’s intention to commence such an action.

THE APPROPRIATE FORUM FOR THE CLAIMS

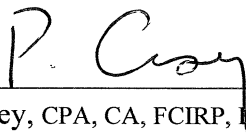
37. The Receiver believes that it is most efficient and cost effective, and therefore in the best interests of the Company's creditors, for all litigation arising out of the receivership of DIG to be brought before the same Court, to be managed by the same supervising Judge.
38. The Receiver is advised that the Statement of Claim is ready to be issued by the Bank. The Receiver supports the Bank's request for an Order directing that the Statement of Claim be issued on the Commercial List, to be case managed by Justice Hainey.

RECOMMENDATION

39. For the reasons set out above, the Receiver respectfully requests that the Court approve the Receiver's request for an Order requiring Lanni to pay \$69,623 and Agius to pay \$172,064, and directing that the Statement of Claim attached as Appendix "L" be issued on the Commercial List to be managed by Justice Hainey.

All of which is respectfully submitted at Toronto, Ontario this 28th day of November, 2019.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
receiver of Distinct Infrastructure Group Inc.
and its subsidiaries set out in Appendix "A"
hereto, and without personal or corporate
liability

Per: 
Paul Casey, CPA, CA, FCIRP, CIT
Senior Vice-President

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

SPECIAL REPORT OF THE RECEIVER
(Action Against Former Executives)

Thornton Grout Finnigan LLP

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Lawyers for the Receiver, Deloitte Restructuring Inc.

APPENDIX “B”

**First Supplement to the Special Report of the Receiver dated July 3, 2020 (without
appendices)**

APPENDIX "B"

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

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

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

**FIRST SUPPLEMENT TO THE SPECIAL REPORT OF THE RECEIVER
(Response to Motion to Convert to Action)**

July 3, 2020

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Lawyers for the Receiver,
Deloitte Restructuring Inc.

TABLE OF CONTENTS

INTRODUCTION AND PURPOSE OF THIS SPECIAL REPORT.....	2
TERMS OF REFERENCE	3
BACKGROUND	4
POWERS OF THE RECEIVER.....	4
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RECOMMENDATION	7

APPENDICES

Appendix “A”	Consulting Agreement between the Company and 2460485 Ontario Ltd.
Appendix “B”	Consulting Agreement between the Company and 2460481 Ontario Ltd.

INTRODUCTION AND PURPOSE OF THIS SPECIAL REPORT

1. On March 11, 2019, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed by the Court as Receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Distinct Infrastructure Group Inc. (the “**Company**”) and its subsidiaries pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The application for the appointment of the Receiver was brought by Royal Bank of Canada (the “**Bank**”) in respect of secured indebtedness owing by DIG of approximately CDN\$53 million plus US\$8,000 as at that time.
2. On November 28, 2019 the Receiver issued the Special Report of the Receiver (the “**Special Report**”), to (among other things) provide the Court with an update on its investigations and to support a motion brought by the Receiver seeking an order of the Court requiring Joe Lanni and Alex Agius (the “**Former CEOs**”) to repay amounts incurred by them using DIG corporate credit cards for their personal benefit.
3. Capitalized terms not defined in this report should be given the same meaning ascribed to them in the Special Report.
4. The Appointment Order, the Special Report and other orders, reports and information filed in connection with the receivership proceedings can be accessed on the Receiver’s case website at www.insolvencies.deloitte.ca/en-ca/dig.
5. Also on November 28, 2019, the Receiver brought a motion seeking an order of the Court requiring Joe Lanni and Alex Agius to repay amounts incurred by them using DIG corporate credit cards for their personal benefit (the “**Expenses Motion**”).
6. Joe Lanni and Alex Agius have subsequently brought a motion to have the Expenses Motion converted into an action.

7. The purpose of this supplement to the Special Report is to provide information that may be helpful to the Court and in response to the materials filed by Mr. Lanni and Mr. Agius in their motion record seeking to convert the Expenses Motion into an action.

TERMS OF REFERENCE

8. In preparing this Special Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, DIG's books and records, previous discussions with management of DIG ("**Management**"), and information from third-party sources (collectively, the "**Information**"). Except as described in this Special Report:
 - a. Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information;
 - b. As noted in prior reports of the Receiver, the Company has issued press releases and guidance to the financial markets advising that its financial statements are misstated and should not be relied upon. DIG has made material write downs to its accounts receivable, work in progress, and inventory balances, and accordingly, Deloitte cautions that the financial information reported herein is subject to further verification and may require material revision; and

- c. Deloitte has prepared this Special Report in its capacity as Receiver solely for the purposes noted herein. Parties using the Special Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

9. Unless otherwise stated, all dollar amounts contained in this Special Report are expressed in Canadian dollars.

BACKGROUND

10. A full description of the background of the insolvency of DIG, the appointment of the Receiver, the investigations which gave rise to the Expenses Motion and the factual basis for the Expenses Motion is contained in the Special Report. This supplementary report ought to be read in conjunction with the Special Report.

POWERS OF THE RECEIVER

11. The Former CEOs' motion record suggests that either the Receiver lacks the power to bring the Expenses Motion or that it is not appropriate for the Receiver to do so.
12. In the Investigative Powers Order dated May 3, 2019, Justice Hainey specifically empowered the Receiver to exercise the investigative and other rights and remedies of a trustee in bankruptcy.
13. The Receiver's motion is brought as a result of investigations conducted by the Receiver, and under the Receiver's power to bring such legal proceedings on behalf of the Company as it sees fit.

DOCUMENTATION IN THE POSSESSION OF THE RECEIVER

14. The Former CEOs' motion record alleges that the Receiver is in possession of unspecified documents and records which the Former CEOs claim may be exculpatory, and therefore the Former

CEOs require the full discovery rights provided by the trial process in order to advance their defence.

The Receiver does not believe this position to be reasonable for the following reasons.

7. First, after its appointment, the Receiver collected various documents and records from the Company. In total, it is storing 1,452 boxes of documents from the Company's offices.
8. To review the entirety of the Company's records would be prohibitively expensive, and out of proportion to the amounts sought in the Expenses Motion (\$69,623 and \$172,064 against Mr. Lanni and Mr. Agius respectively).
9. Second, the Former CEOs have failed to provide any specificity regarding the additional information or documents it requires, and have failed to either ask written questions of the Receiver or to make specific document requests in writing.
10. Counsel to the Receiver has repeatedly offered to counsel to the Former CEOs that, if the Former CEOs ask specific questions or make specific document requests, it will respond in accordance with its obligations as an officer of the court. To date, and despite the significant time they have had to do so, the Former CEOs have provided no written questions and have made no specific document requests.
11. Third, the Former CEOs' claim that certain documents are not in their possession lacks credibility. Documents relating to the Former CEOs shareholder loan accounts and payroll deductions would have been provided to the Former CEOs in their personal capacity, and there is no reason why the Former CEOs would not be able to access those records.
12. After their termination, the Former CEOs returned DIG's computer equipment which was in their possession. Every device had been wiped. It is not clear what the Former CEOs did with the documents they deleted from DIG's computer equipment. The Receiver sought an explanation from

the Former CEOs as to why the devices had been wiped by letter dated April 2, 2019.¹ To date, no explanation has been provided.

13. Fourth, the claims of the Former CEOs that the contents of the Company's records will assist their defence lack credibility. It was representatives and board members of the Company that first determined that the expenses claimed had no legitimate corporate purpose.
14. The Former CEOs do not dispute that the expenses the Receiver is claiming for were in fact incurred by the Former CEOs. The Former CEOs only claim that the expenses were for a legitimate corporate purpose, particularly, to entertain clients. However, they do not name a specific client or name any individuals employed by those clients who they entertained. They do not specify the manner in which such expenses advanced the interests of the Company. Such information is within the knowledge of the Former CEOs and not the Receiver.
15. In addition, each of the Former CEOs claims that amounts incurred for the storage of their personal vehicles were both "part of [their] compensation" and "applied against [their] Shareholder Loan Account."
16. It does not make sense for such amounts to be both an entitlement of the Former CEOs **and** to be applied against the Former CEOs shareholder loan accounts.
17. In any event, amounts for storage of personal vehicles were not included in the Former CEOs compensation. Attached as **Appendix A** is a copy of a consulting agreement between the Company and 2460485 Ontario, Ltd., a company through which Mr. Agius provided his services to the Company. Attached as **Appendix B** is a copy of a consulting agreement between the Company and 2460481 Ontario Ltd., a company through which Mr. Lanni provided his services to the Company.

¹ The letter to Mr. Lanni is Appendix H to the Special Report. The letter to Mr. Agius is Appendix I to the Special Report.

Each consulting agreement shows that the Former CEOs' compensation only includes out of pocket expenses incurred in relation to a company vehicle, and not their personal vehicles.

18. The consulting agreements do not entitle the Former CEOs to be reimbursed for any of the expenses for which the Receiver seeks repayment.

RECOMMENDATION

19. If there is a legitimate purpose for the corporate expenses – which the Former CEOs do not dispute they incurred – the Former CEOs have had the opportunity to put forward such an explanation.
20. Their failure to do so appears to be because many of the expenses defy explanation. There can be no proper corporate purpose for spending thousands of dollars of public company funds on a family holiday to Hawaii, ski clothing or flowers for family members.
21. For the reasons set out above, the Receiver respectfully requests that the Court allow the Expenses Motion to proceed as a motion, and that the Former CEOs' motion to convert the motion to an action be rejected. In the Receiver's view, such steps appear to be an attempt to require the Receiver to incur considerable expenses and/or become frustrated in its efforts to obtain reimbursement of these amounts from the Former CEOs, in the hope that the Receiver will simply abandon its efforts.

All of which is respectfully submitted at Toronto, Ontario this 3rd day of July, 2020.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
receiver of Distinct Infrastructure Group Inc.
and its subsidiaries set out in Appendix "A"
hereto, and without personal or corporate
liability



Per: For :
Paul Casey, CPA, CA, FCIRP, LIT
Senior Vice-President

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

**FIRST SUPPLEMENT TO THE SPECIAL REPORT OF
THE RECEIVER**

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Lawyers for the Receiver,
Deloitte Restructuring Inc

APPENDIX “C”

Procedural Order dated August 13, 2020

ON READING the motion record of the Moving Parties, including the affidavits of Agius, sworn February 13, 2020, and Lanni, sworn February 14, 2020, filed, the responding motion record of the Receiver, filed, the Special Report of the Receiver, dated November 28, 2019, filed, the First Supplement to the Special Report of the Receiver, dated July 3, 2020, filed, the factum of the Moving parties, dated July 29, 2020, filed, the responding factum of the Receiver, filed, the reply factum of the Moving Parties, filed, the cross-examination transcripts of Lanni and Agius, dated July 15, 2020, filed, and on hearing the submissions of counsel for the parties and with the benefit of this Court's assistance, and upon being advised that the parties consent to the following relief:

1. **THIS COURT ORDERS** that the Moving Parties' motion to convert the Receiver's Expenses Motion into an action has been settled as reflected by the terms of this Order, and the Expenses Motion will proceed in the manner set out in this Order. Nothing contained in this Order has the effect of restricting the motion judge from making any determination at the hearing of the Expenses Motion as to whether he or she wishes to have it converted to an action at that time, rather than proceeding with the motion.
2. **THIS COURT ORDERS** that the Expenses Motion is scheduled to be heard on November 19, 2020, pending court confirmation of the date, for a two-hour hearing before a judge of the Commercial List.
3. **THIS COURT ORDERS** that the parties shall comply with the following timetable for the Expenses Motion:
 - a) on Friday, August 14, 2020, the Moving Parties will provide the Receiver with a written list of specific documents (the "**List of Documents**") that they seek to be produced, which are not within their own possession or control;
 - b) the Receiver shall, upon receipt of the List of Documents, use reasonable and proportionate efforts to review the documentation in its power, possession, and control as Receiver, and deliver, as quickly as reasonably possible, the available documents on the List of Documents, or if a requested document is not found, the Receiver shall advise the Moving Parties;
 - c) the Receiver shall, as soon as reasonably possible, provide written responses to the balance of the questions identified in the Moving Parties' letter of July 15, 2020;

- d) the Moving Parties shall be entitled to ask the Receiver any further written questions that might arise from the written answers provided by the Receiver in (c) above, within seven (7) calendar days of receiving such responses from the Receiver;
 - e) the Moving Parties shall be entitled to issue a summons to witness to examine any relevant witness (the “**Witnesses**”) for the Motion, including, but not limited to, Mr. John Nashmi (“**Nashmi**”) and/or Ms. Christina Leighton (“**Leighton**”). The Receiver and its counsel shall be permitted to attend and ask questions at such examination. Transcripts shall be ordered and paid for by the party requesting any witness examinations, and copies of all transcripts arising from such examinations shall be provided and available to all parties;
 - f) the Receiver shall use its best efforts to provide the Moving Parties with the last known contact information of Nashmi and Leighton, including any last known email or home address;
 - g) the Moving Parties shall complete their examinations of the Witnesses by or before October 2, 2020;
 - h) the Moving Parties shall file any further affidavit evidence, if any, in support of their defence of the Expenses Motion by October 16, 2020, provided such further evidence relates to matters arising from the production of new documentation or the examination of further witnesses as set out above which could not have been addressed in the Moving Parties’ initial affidavits;
 - i) the Receiver shall complete any cross-examination on Lanni and Agius’ initial affidavits and the additional affidavits filed (if any) by October 30, 2020;
 - j) the Receiver shall file any factum by November 6, 2020; and
 - k) the Moving Parties shall serve any factum by November 13, 2020.
4. **THIS COURT ORDERS** that the above noted timetable may only be amended on consent of the parties or by further order of the court.

5. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



(Signature of Judge)

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
Applicant

-and-
Respondents

DISTINCT INFRASTRUCTURE GROUP INC., et al. No. CV-19-00615270-00CL

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDINGS COMMENCED AT
TORONTO

ORDER

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Lawyers for the defendants
Giuseppe Lanni, also known as Joe Lanni and
Alexander Agius, also known as Alex Agius

Fax number and Email for party served:
D.J. Miller / 416-304-1313 / djmiller@tgf.ca

APPENDIX “D”

Statement of Claim dated July 20, 2020



APPENDIX "D"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 20-Jul-2020
Délivré par voie électronique : 20-Jul-2020
Toronto

**DISTINCT INFRASTRUCTURE GROUP INC. by its
Receiver, DELOITTE RESTRUCTURING INC.**

Plaintiff

and

**GIUSEPPE LANNI also known as JOE LANNI, ALEXANDER AGIUS,
GEORGE M. NEWMAN also known as MICHAEL NEWMAN, GARRY
WETSCH, DOUGLAS HORNER, ROBERT NORMANDEAU, WILLIAM
NURNBERGER, GEORGE PARSELIAS, ROYSTON RACHPAUL, JAY
VIEIRA, EMMANUEL BETTENCOURT also known as MANNY
BETTENCOURT, and MICHAEL MIFSUD**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
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 does not have a lawyer, serve it on the plaintiff, 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 of Canada or in the United States of America, the period 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,

- 2 -

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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 July 20, 2020 Issued by _____
Local Registrar

Address of court office: 330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Giuseppe Lanni (aka Joe Lanni)
9 Warwood Road
Toronto, ON M9B 5B2

AND TO: Alexander Agius
2938 Coulson Court
Mississauga, ON L5M 5S8

AND TO: George M. Newman (aka Michael Newman)
460 Queens Quay West
Suite 1102E
Toronto, ON M5V 2Y4

AND TO: Garry Wetsch
#220 - 190 Boudreau Road
St. Albert, AB T8N 6B9

AND TO: Douglas Horner
52 - 53305 Range Road 273
Spruce Grove, AB T7X 3N3

AND TO: Robert Normandeau
95 Eaglewood Drive
Bedford, NS B4A 3B3

AND TO: William Nurnberger
77 Belfield Road
Suite 102
Toronto, ON M9W 1G6

- 3 -

AND TO: George Parselias
77 Belfield Road
Suite 102
Toronto, ON M9W 1G6

AND TO: Royston Rachpaul
77 Belfield Road
Suite 102
Toronto, ON M9W 1G6

AND TO: Jay Vieira
77 Belfield Road
Suite 102
Toronto, ON M9W 1G6

AND TO: Emmanuel Bettencourt (aka Manny Bettencourt)
305 Glebeholme Blvd.
Toronto, ON M4J 1T1

AND TO: Michael Mifsud
77 Belfield Road
Suite 102
Toronto, ON M9W 1G6

- 4 -

CLAIM

1. The Plaintiff, Distinct Infrastructure Group Inc. (“**DIG**”), claims as against the Defendants:
 - (a) damages for negligence and breach of duties in the principal amount of \$60,000,000.00;
 - (b) pre- and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (c) the costs of this action on a partial indemnity basis, plus Harmonized Sales Tax; and
 - (d) such further and other relief as this Honourable Court deems just.

The Parties

2. The Plaintiff, DIG, is a corporation registered in the Province of Alberta with its former principal place of business in Ontario. It is the parent company of a group of companies which provided design, engineering, construction and maintenance services to telecommunication firms, utilities and government bodies across Canada.
3. DIG and its subsidiaries are currently subject to a receivership Order of Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated March 11, 2019, whereby Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as receiver and manager of DIG and its various subsidiaries (the “**Receivership Order**”).

- 5 -

4. The defendant, Joe Lanni, was a director of DIG. He held the position of co-CEO and Senior Vice-President of Sales and Marketing prior to his termination for cause on February 18, 2019. He was also a director of Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd., each a subsidiary of DIG.
5. The defendant, Alex Agius, was a director of DIG. He held the position of co-CEO of DIG prior to his termination for cause on February 18, 2019. He was also a director of Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd., each a subsidiary of DIG.
6. The defendant, Michael Newman, was a director of DIG from October 2, 2015 until August 31, 2018. He was the chair of the Audit Committee and was a member of the Compensation Committee and the Corporate Governance Committee.
7. The defendant, Garry Wetsch, was a director of DIG from October 2, 2015 until DIG's receivership on March 11, 2019. He was a member of the Audit Committee, the Compensation Committee and the Corporate Governance Committee.
8. The defendant, Doug Horner, was a director of DIG from May 2, 2017 to DIG's receivership on March 11, 2019. He was a member of the Audit Committee and the chair of the Compensation Committee and the Corporate Governance Committee.
9. The defendant, Rob Normandeau, was a director of DIG from November 21, 2017 to DIG's receivership on March 11, 2019.

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10. Together, Messrs. Newman, Wetsch, Horner and Normandeau are referred to as the **“Outside Directors”**.
11. The defendant, William Nurnberger, was Vice-President of Corporate Development until early 2018, at which time he became the interim Chief Financial Officer until his suspension on January 31, 2019 and termination for cause on February 10, 2019.
12. The defendant, George Parselias, who represented himself to be a Chartered Professional Accountant, was the Vice-President of Finance until his termination for cause on February 10, 2019.
13. The defendant, Royston Rachpaul, who is a Chartered Professional Accountant – Certified General Accountant was the Controller.
14. The defendant, Jay Vieira, was Vice-President of Corporate and Legal Affairs and in-house counsel to DIG.
15. The defendant, Emmanuel Bettencourt was the CFO of DIG until his resignation effective December 31, 2017. He was also a director of Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services West Inc. and Crown Utilities Ltd., and an officer of iVac Services Inc., each a subsidiary of DIG.
16. The defendant, Michael Mifsud, was Vice-President of Operations.
17. Together, Messrs. Lanni, Agius, Nurnberger, Parselias, Rachpaul, Vieira, Bettencourt and Mifsud are referred to as the **“Inside Directors and Officers”**.

Facts

18. DIG was a publicly listed company on the TSX Venture Exchange through a reverse takeover. It specialized in providing design, engineering, construction and maintenance services to telecommunication firms, utilities and government bodies across Canada. This included underground construction, aerial construction, inventory management, and technical services including fibre to the building and home.
19. DIG operated primarily from Toronto, Ontario. It employed approximately 300 people across Canada, with the majority of its employees based in Ontario.
20. DIG was financed primarily by the Royal Bank of Canada (the “**Bank**”) pursuant to a credit facility agreement dated March 23, 2017 (as amended in writing by agreements dated November 21, 2017 and September 12, 2018) by which the Bank made available a non-revolving term loan in the aggregate principal amount of \$20 million and a revolving credit facility up to the aggregate principal amount of \$35 million (subject to DIG’s borrowing base).
21. The revolving credit facility was margined against DIG’s accounts receivable and work in progress. DIG was required to certify to the Bank the amounts of its accounts receivable and work in progress in monthly margin reports. Mr. Parselias signed the monthly margin reports on behalf of DIG.
22. DIG’s obligations to the Bank were secured, *inter alia*, pursuant to a general security agreement over all of the real and personal property of DIG and its subsidiaries.

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23. DIG was also financed by the issuance of shares from its treasury. In November 2017, Seafort Capital Inc. purchased 6,800,000 common shares of DIG for \$9,180,000 pursuant to a private placement.
24. DIG was also financed by the sale of debentures. On September 12, 2018, DIG announced the closing of a \$10 million private placement offering of unsecured convertible debenture units to Rogers Financial Management Limited, consisting of unsecured subordinated convertible debt and common share purchase warrants.
25. In June of 2018, DIG announced that it was restating its previously audited and publicly issued financial statements for its fiscal year 2016. DIG had included certain project scope and consumable amounts in the determination of revenue which were not recoverable, and had recorded certain amounts of work in progress (referred to as 'unbilled revenue' in DIG's financial statements) on completed projects as accounts receivable, when it ought to have been recorded as work in progress.
26. The restated accounts amended DIG's revenue, work in progress and accounts receivable. Revenue and work in progress decreased by \$4,471,174, and \$13,364,537 was reclassified from accounts receivable to work in progress.
27. In November 2018, the Bank became concerned with DIG's financial performance. The Bank and DIG agreed to appoint Deloitte as a consultant to review DIG's operations and assess its financial position.

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28. In January of 2019, DIG appointed John Nashmi as its new Chief Financial Officer. (“CFO”) to, among other things, assist Deloitte in its review of DIG’s operations and financial position. Mr. Nashmi replaced Mr. Nurnberger, who acknowledged in a letter to DIG in 2019 that he was unqualified for the role of interim CFO. Mr. Nurnberger had been interim CFO since Mr. Bettencourt’s departure from the role at the end of 2017.
29. Mr. Nashmi conducted investigations into DIG’s financial position, and discovered that there were current and historical misstatements in DIG’s annual audited and quarterly unaudited financial statements and in the financial disclosures to the Bank. In particular, and amongst other irregularities described in more detail below, Mr. Nashmi discovered that DIG’s accounts receivable and work in progress amounts were substantially overstated.
30. As a result of his investigations, Mr. Nashmi as CFO wrote down a total of \$56.8 million from DIG’s accounts receivable and work in progress.
31. On February 13, 2019, DIG announced that its audited financial statements for the year ending December 31, 2017, and its unaudited financial statements for the first three quarters of 2018, should no longer be relied upon. In response, the Ontario Securities Commission issued a Notice of Temporary Order and Hearing, which ceased all trading in shares of DIG as of February 15, 2019.
32. At a meeting of the board of directors on February 18, 2019, Mr. Nashmi presented his preliminary findings on the financial position of DIG. He reported that significant

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adjustments and write-downs to DIG's financial position would be necessary, including a write-down of approximately \$23 million to accounts receivable, and a write-down of between \$20 million and \$30 million to work in progress.

33. On the same day, February 18, 2019 the board of directors voted to dismiss Mr. Lanni and Mr. Agius as Co-CEOs for cause.
34. By court Order dated March 11, 2019, Deloitte was appointed as receiver of DIG on the application of the Bank.
35. At the time of the receivership, DIG owed its creditors approximately \$82.4 million, of which approximately \$52.7 million was owed to the Bank. Recoveries in the receivership will be less than \$10 million, and DIG's creditors (including the Bank) will suffer substantial losses.
36. But for the negligence of the defendants, the truth about DIG's financial position would have been known. DIG would have been liquidated at an earlier date and tens of millions of dollars of losses would have been avoided.

The Defendants' Misstatements are Discovered

37. In the course of their investigations, Deloitte and Mr. Nashmi discovered that, between 2015 and 2018, the defendants misstated DIG's true financial position (the "**Misstatements**") to various parties, including DIG's creditors, potential investors and the public.

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38. Mr. Nashmi and the members of a Special Committee of the Board came to a preliminary view that the September 30, 2018 interim financial statements:
- (i) overstated accounts receivable by approximately \$22.7 million (reducing them to approximately \$15 million from \$37.7 million reported);
 - (ii) overstated work in progress by approximately \$34 million (reducing it to approximately \$1.7 million from the \$35.7 million reported);
 - (iii) overstated inventory by approximately \$2.1 million (reducing it to approximately \$0.1 million from the \$2.2 million reported);
 - (iv) overstated prepaid expenses by approximately \$2.2 million (reducing it to approximately \$1.1 million from the \$3.3 million reported);
 - (v) overstated shareholders' equity by approximately \$63.4 million (reducing it to a deficit of approximately \$38 million from the \$25.4 million surplus reported).
39. The Receiver has determined that accounts receivable and work in progress were overstated by at least \$12,965,000 or 54% in 2015, \$21,221,000 or 48% in 2016 \$36,811,000 or 58% in 2017, and \$49,636,000 or 69% in 2018.
40. Since 2015, and with the approval of the defendants, DIG provided the Bank with monthly borrowing base reports, certified on behalf of DIG by Mr. Parselias in his role as Vice-President of Finance. These borrowing base reports were materially misleading.

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41. Since 2015, and with the approval of the defendants, DIG had also allowed its annual audited and unaudited quarterly accounts to be released to the public. The accounts were also provided directly to potential investors. These accounts were also materially misleading.
42. Some or all of the Inside Directors and Officers were directly involved in making the Misstatements. The individual Inside Directors and Officers either (i) made or directed the Misstatements, or (ii) were aware or ought to have been aware of the Misstatements and failed to take any steps to correct them or report the Misstatements to responsible corporate representatives who could take corrective action.
43. To the extent it is determined that individual Inside Directors and Officers were not actually aware of the Misstatements, they negligently failed to detect the Misstatements or to put in place qualified personnel and financial controls appropriate to prevent and/or detect the Misstatements.

Duties of the Inside Directors and Officers

44. The Inside Directors and Officers of DIG owed fiduciary duties and other duties of care to DIG, both under statute and at common law. These duties required the Inside Directors and Officers to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. These duties also required the Inside Directors and Officers to act honestly and in good faith, with undivided loyalty and to advance the best interests of DIG.

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45. The duties of the Inside Directors and Officers included the obligations:
- (a) to fully and accurately disclose DIG's true financial position;
 - (b) not to materially misstate the financial position of DIG to DIG's creditors, potential investors and the public;
 - (c) to detect, correct and prevent any material misstatements made about DIG's financial position;
 - (d) to put in place qualified personnel and financial controls appropriate to detect any material misstatements; and,
 - (e) to report to their superiors and the Board and its Committees on material misstatements that they knew or ought to have known were being made.

Duties of the Outside Directors

46. The Outside Directors of DIG owed fiduciary duties and other duties of care to DIG, both under statute and at common law. These duties required the Inside Directors and Officers to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. These duties also required the Outside Directors to act honestly and in good faith, with undivided loyalty and to advance the best interests of DIG.
47. In particular, the Outside Directors of DIG had duties:
- (a) to detect any material misstatements made by the Inside Directors and Officers of DIG (or others engaged on their behalf) as to the true financial position of DIG;

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- (b) to assess, with appropriate diligence, the veracity of the representations of the Inside Directors and Officers;
 - (c) to ensure that individuals with the appropriate qualifications and experience were hired to key positions at DIG including the chief executive officers, chief financial officer, vice president of finance and financial controllers;
 - (d) to put in place qualified personnel and financial controls appropriate to detect any material misstatements; and,
 - (e) to examine DIG's financial accounts and investigate the irregularities and inconsistencies in those accounts to satisfy themselves that the financial reporting was accurate.
48. The Outside Directors of DIG who were members of the Audit Committee were responsible to take reasonable steps to ensure that the financial statements were accurate and free of material misstatements, including:
- (a) by overseeing the process by which financial disclosure was made to and by DIG's auditors;
 - (b) by overseeing the process by which suitable and competent external auditors were retained;
 - (c) by reviewing and assessing the performance of DIG's external auditors; and
 - (d) by monitoring the process by which internal controls were put in place and assessing the reliability of such controls;

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- (e) by investigating irregularities and inconsistencies in DIG's financial accounts; and
- (f) by increasing the diligence with which it oversaw the preparation of the financial statements in response to the restatement of DIG's 2016 financial statements, which ought to have been a red flag to the Outside Directors.

49. The Outside Directors of DIG who were members of the Corporate Governance Committee were responsible to ensure that the roles of CEO and senior management were occupied by individuals with suitable qualifications, expertise and competence, and to manage the replacement of such individuals where they failed to meet those standards.

Breaches of the Duty of Care: Inside Directors and Officers

50. In breach of their duty to DIG, some or all of the Inside Directors and Officers misstated the true financial position of DIG to DIG's creditors, potential investors and the public in the following ways.

51. First, since at least 2015, some or all of the Inside Directors and Officers misstated DIG's work in progress in the following manner:

- (a) made adjustments to the work in progress general ledger account where there was no apparent commercial support for the adjustments and no explanation provided in the financial records for such adjustments. Some of the adjustments were reversed after month end; however, they had already had the effect of improving DIG's reported financial position at month end for reporting purposes.

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- (b) inflated work in progress for certain projects without any apparent commercial justification. Particularly, as part of the 2017 audit, the external auditors restated the 2016 work in progress (unbilled revenue) amount by decreasing revenue and unbilled revenue by \$4.5M to account for amounts deemed not to be recoverable. In addition, for many projects, the work in progress amounts are greater than the total amounts ever invoiced to the client for the respective project, resulting in an overstatement of work in progress balances.
- (c) made routine adjustments of up to 40% per purchase order without any commercial justification.

52. Second, since at least 2015, some or all of the Inside Directors and Officers misstated DIG's accounts receivable in the following manner:

- (a) individual invoice amounts were recorded multiple times in DIG's accounts, such that DIG had multiple outstanding invoices with identical invoice amounts without any apparent commercial justification, and the invoices were ultimately cancelled through credit memos; and
- (b) from time to time, work in progress amounts (which did not correspond to work actually in place) were invoiced and moved to accounts receivable. As there was no apparent underlying work, these invoices remained unpaid and would age until, when the invoice approached the point where it would no longer be eligible for margining into DIG's borrowing base, the invoice would be credited in DIG's financial system, and work in progress amounts would be recorded to replace the

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credited invoice. The fictitious invoices were never written off (or expensed) in the accounts of DIG presented to the Bank and other stakeholders.

53. These Misstatements had the effect of overstating DIG's reported accounts receivable and work in progress, thereby increasing DIG's borrowing base on the Bank's revolving credit facility.
54. Third, the value of DIG's prepaid expenses and inventory accounts were misstated, in a manner which overstated the balance sheet value of DIG's assets and understated DIG's expenses. These Misstatements had the effect of improving DIG's reported profit.
55. The Misstatements were made to inflate the value of DIG's assets in order to keep DIG in compliance with its banking covenants and increase DIG's borrowing base on its revolving line of credit with the Bank.
56. Full particulars of all the misstatements of DIG's accounts and financial position are not yet known to the plaintiff but will be provided prior to trial.
57. The Inside Directors and Officers negligently breached their duty of care to DIG in that they failed to accurately report DIG's true financial position when they knew or ought to have known that:
 - (a) DIG's financial disclosure was inaccurate, incomplete and misleading;
 - (b) the value of DIG's accounts receivable was overstated;
 - (c) the existence, value and recoverability of DIG's work in progress was misstated;

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- (d) the actual age of certain amounts of DIG's accounts receivable was misstated; and
- (e) the value of DIG's prepaid expenses and inventory accounts was overstated.

58. In addition, the Inside Directors and Officers breached their duty of care to DIG by:

- (a) failing to detect the misstatements, where they would have discovered the misstatements had they exercised the due diligence and skill expected of an individual in their position;
- (b) failing to put in place appropriate policies, procedures and processes to ensure accurate financial reporting;
- (c) failing to put in place adequate systems to allow the monitoring of the financial position of DIG and the detection of misstatements, and as a result failed to notice DIG's financial misstatements;
- (d) failing to allocate sufficient resources to monitoring DIG's officers, including those DIG officers responsible for the preparation of financial statements;
- (e) failing to report the Misstatements to senior officers or the board of directors when they ought to have known or ought to have discovered that such misstatements had occurred; and,
- (f) failing to discharge their duties with the competence and skill expected of a reasonably qualified individual in the position they occupied.

Breaches of the Duty of Care: Outside Directors

59. The Outside Directors negligently failed to exercise their oversight function. They failed to properly monitor the conduct of the Inside Directors and Officers, failed to investigate the irregularities and inconsistencies in DIG's financial accounts and failed to detect or correct the Misstatements. In particular, the Outside Directors were negligent in that they:
- (a) failed to discharge their duties with the competence and skill expected of reasonably qualified individuals in the position they occupied;
 - (b) failed to detect or remedy the Misstatements where they would have discovered and remedied the Misstatements had they exercised the due diligence and skill expected of an individual in their position;
 - (c) failed to identify or failed to properly investigate red flags that ought to have alerted them to the possibility of financial misstatements including but not limited to:
 - (i) disagreements between the external auditor and the Inside Directors and Officers including over the practice of inflating projects for no valid commercial purpose;
 - (ii) failing to investigate recurring working capital deficiencies and lack of profitability in circumstances where work in progress and accounts receivable were increasing dramatically;
 - (iii) failing to react when internal financial control deficiencies were brought to their attention;

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- (iv) appointing Mr. Nurnberger to the position of interim CFO when he had no qualifications or experience for the position and was incompetent;
 - (v) failing to insist that a qualified and competent CFO be appointed following Mr. Bettencourt's departure at the end of 2017;
 - (vi) failing to investigate or take disciplinary action when they knew or ought to have known that the Inside Officers and Directors were misrepresenting material facts including the qualification of an alleged independent expert on IFRS compliance retained to assist management;
 - (vii) failing to investigate recurring spikes in work in progress in the 4th quarter of each year and corresponding reversals of work in progress entries early in the first quarter of each year;
- (d) failed to ensure that adequate systems be put in place to allow them to monitor the financial position of DIG and detect misstatements, and as a result failed to notice the Misstatements;
 - (e) failed to ensure that competent individuals were employed in key roles, particularly roles related to finance;
 - (f) failed to appropriately review the work of individuals in key roles, particularly roles related to finance;
 - (g) failed to ensure that the reporting of DIG's financial position (both to the Bank and to the public) was accurate; and

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- (h) approved the annual audited and quarterly unaudited financial statements from 2015 to Q2 2018 that materially misstated DIG's financial position and results.
60. Members of the Audit Committee failed to exercise their oversight function, in that they failed to act in accordance with their responsibilities under the Audit Committee Charter. In particular, members of the Audit Committee were negligent in that they:
- (a) failed to reasonably oversee DIG's accounting and financial reporting processes;
 - (b) failed to reasonably review the integrity of DIG's financial statements;
 - (c) failed to reasonably oversee the work of DIG's independent auditor;
 - (d) failed to understand the reason, meaning and import of disagreements between the independent auditor and DIG management over the state of DIG's accounts;
 - (e) failed to ensure that DIG's internal controls were adequate to identify deficiencies or misstatements in DIG's financial statements; and
 - (f) recommended the approval of annual audited and quarterly unaudited financial statements from 2015 to Q2 2018 that materially misstated DIG's financial position and results.
61. Members of the Corporate Governance Committee failed to exercise their function, in that they failed to ensure that the roles of CEO and senior management were occupied by individuals with suitable qualifications, expertise and competence, and to manage the replacement of such individuals where they failed to meet those standards.

Consequences of the Breaches of Duty of Care

62. As a consequence of the Misstatements and negligence described herein, creditors of DIG extended additional credit to DIG that they would not have extended had they been aware of the true financial position of DIG. DIG took on debt that it could never repay and was doomed to fail.
63. In particular:
- (a) the Bank continued to make available credit facilities to DIG and continued to advance funds under those credit facilities in reliance on the misstated financial position reported in the borrowing base reports and DIG's audited annual and unaudited quarterly financial statements;
 - (b) members of the public purchased debentures in DIG in reliance on DIG's audited and unaudited financial statements; and
 - (c) members of the public purchased shares in DIG in reliance on DIG's audited and unaudited financial statements.
64. But for the Misstatements and negligence described herein, DIG's creditors would have been aware that DIG was a loss-making and insolvent business that was unable to repay any further amounts advanced. DIG's creditors would not have extended further credit to DIG.
65. If the defendants had discharged their duties to DIG, it would have been revealed that DIG's financial disclosure was misstated, DIG was in a substantially worse financial

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position than publicly reported and that DIG was not in compliance with its banking covenants.

66. But for the negligence of the defendants, DIG would have been liquidated at an earlier date.

67. Instead, as a result of the Misstatements and negligence described herein, DIG's operations continued, DIG continued to incur losses and DIG took on additional debt that it could never afford to repay. The defendants are liable for the increase in DIG's liquidation deficit caused by the additional debts.

Damages

68. DIG has suffered damages by reason of the negligence of the defendants described herein.

69. The measure of DIG's damages ought to be the increase in the liquidation deficit from the time when DIG would have been liquidated had the defendants properly discharged their duties, to the time when DIG was in fact liquidated. This amount is currently estimated to be \$56.5 million.

DIG proposes that this action be tried in Toronto, Ontario on the Commercial List and managed with the receivership proceeding of DIG in Court File No. CV-19-00615270-00CL.

- 24 -

July 20, 2020

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Lawyers for the Plaintiff, Distinct Infrastructure
Group Inc.

DISTINCT INFRASTRUCTURE GROUP INC.

and

GIUSEPPE LANNI also known as JOE LANNI et al.

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Toronto**

STATEMENT OF CLAIM

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Lawyers for the Plaintiff, Distinct Infrastructure Group Inc.

APPENDIX “E”

Mediation Order dated November 25, 2020

APPENDIX "E"

Court File No. CV-20-00641158-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE
JUSTICE HAINEY) 25th DAY OF NOVEMBER, 2020
)

ROGERS FINANCIAL MANAGEMENT CORP.

Plaintiff

and

GIUSEPPE LANNI also known as JOE LANNI, ALEXANDER AGIUS also known as ALEX AGIUS, GARRY WETSCH, ROBERT NORMANDEAU, DOUGLAS HORNER, MICHAEL NEWMAN, WILLIAM NURNBERGER, GEORGE PARSELIAS, MICHAEL MIFSUD, ROYSTON RACHPAUL, MANNY BETTENCOURT, JAY VIEIRA, IAIN OGILVIE, ROYAL BANK OF CANADA, and ALTACORP CAPITAL INC.

Defendants

ORDER

THIS MOTION made by the Plaintiff in the related action, Distinct Infrastructure Group Inc. by its Receiver, Deloitte Restructuring Inc. (the "**Receiver**") v. Giuseppi Lanni et. al., Court File No. CV-20-00644260-0000 (the "**Receiver Action**") was heard on Wednesday November 25, 2020 during an electronic hearing before the Ontario Superior Court of Justice (Commercial List) conducted through videoconference due to the COVID-19 crisis.

ON HEARING the submissions of counsel for the parties (with the exception of Iain Ogilvie who has not been served with the claim) and with the benefit of the Court's assistance, and upon being advised that the parties in attendance consent to the relief in paragraph 2 below:

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

2. **THIS COURT ORDERS** that this Action be case-managed by Justice Hainey or such Judge of the Commercial List as he may designate, together with:
 - (a) The Receiver Action;
 - (b) Seafort Capital Inc. v. Alex Agius et. al., Court File No.: CV-19-627225-0000 (the “**Seafort Action**”).

3. **THIS COURT ORDERS** that this Action, along with the Receiver Action, the Seafort Action and Massimo di Giovanni et. al. v. Alexander Agius and Giuseppe Lanni, Court File No.: CV-20-00651251-0000 (the “**Union Action**”, and together with the Receiver Action, the Rogers Action and the Seafort Action, the “**Litigation Claims**”), be mediated by the Honourable Dennis O’Connor Q.C. who is hereby appointed as an officer of the Court and shall act as a neutral third party (in such capacity, the “**Mediator**”) to mediate the Litigation Claims.

4. **THIS COURT ORDERS** that, in carrying out his mandate, the Mediator may, among other things:
 - (a) arrange procedural hearings and order a timetable for the exchange of mediation briefs;
 - (b) order parties to produce such documents or to provide such information as the Mediator, in his sole discretion, deems ought to be produced, provided that such

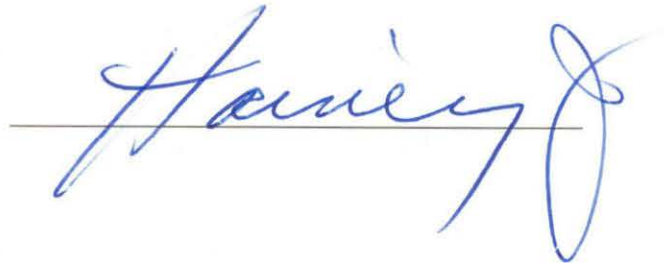
information or documents are relevant to the matters in issue between the parties and any production orders are proportional;

- (c) adopt such further processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement; and
- (d) apply to this Court for such advice and directions as, in his discretion, the Mediator deems necessary.

5. **THIS COURT ORDERS** that, subject to an agreement between the Parties, all reasonable fees and disbursements of the Mediator shall be paid on a monthly basis, forthwith upon the rendering of accounts to the Parties, as follows:

- (a) 50% to be split equally between the Plaintiffs in the Receiver Action, the Seafort Action and the Rogers Action; and
- (b) 50% to be split equally amongst each of the defendants and third parties in the Receiver Action, the Seafort Action and the Rogers Action.

6. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



ROGERS FINANCIAL MANAGEMENT CORP.

and

Plaintiff

GIUSEPPE LANNI a.k.a. JOE LANNI, et al.
Defendants

Court File No.: CV-20-00641158-00CL

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

Proceedings commenced at Toronto

ORDER

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Lawyers for Defendant, Royal Bank of Canada

APPENDIX ‘F’
Endorsement dated May 12, 2021

APPENDIX "F"

Maria Magni

From: Conway, Madam Justice Barbara (SCJ) <Barbara.Conway@scj-csj.ca>
Sent: Wednesday, May 12, 2021 10:34 AM
To: James Hardy; JUS-G-MAG-CSD-Toronto-SCJ Commercial List; Kim Ferreira; Dora Konomi
Subject: RE: Motion: Royal Bank of Canada v Distinct Infrastructure Group, et al - Court File No. CV-19-00615270-00CL

Importance: High

This motion resumed before me today by Zoom.

The Receiver's motion for recovery of personal expenses from Messrs. Lanni and Agius is one of several pieces of litigation involving Distinct.

There is a court-ordered mediation scheduled for three days in July.

I discussed with counsel today that in my view it makes far more sense for this issue to be mediated along with the other Distinct pieces of litigation, with the potential for a global resolution of all issues. This is particularly so given the amounts in issue on this motion. I see no prejudice to the Receiver in proceeding in this fashion.

I am therefore adjourning this motion to **August 18, 2021 at 10 a.m. for two hours (before me, confirmed by the CL office)** to permit the mediation to occur. **If this matter does not settle at the mediation, it will proceed before me on August 18, with no further adjournments.**



Superior Court of Justice (Toronto)

-----Original Appointment-----

From: Bobbie-Jo Brinkman <bbrinkman@tgf.ca>

Sent: March 26, 2021 8:29 AM

To: Bobbie-Jo Brinkman; James Hardy; JUS-G-MAG-CSD-Toronto-SCJ Commercial List; Kim Ferreira; Dora Konomi; Rose Avarino; Conway, Madam Justice Barbara (SCJ)

Cc: Linda Wynne; Sleeth, Jordan

Subject: Motion: Royal Bank of Canada v Distinct Infrastructure Group, et al - Court File No. CV-19-00615270-00CL

When: May 12, 2021 10:00 AM-12:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Zoom: <https://tgf-ca.zoom.us/j/84593587482?pwd=MDJ0WEtXeTNIQUZpQUxISWVvcXJjZz09>

Join Zoom Meeting

<https://tgf-ca.zoom.us/j/84593587482?pwd=MDJ0WEtXeTNIQUZpQUxISWVvcXJjZz09>

Meeting ID: 845 9358 7482

Passcode: 479705

Participant one tap mobile

+16473744685,,84593587482#,# Canada (Toronto)

Host one tap mobile

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Dial by your location

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- +1 206 337 9723 US (Seattle)
- +1 213 338 8477 US (Los Angeles)
- +1 267 831 0333 US (Philadelphia)
- +1 312 626 6799 US (Chicago)
- +1 646 518 9805 US (New York)
- +1 786 635 1003 US (Miami)

Meeting ID: 845 9358 7482

Find your local number: <https://tgf-ca.zoom.us/j/84593587482>



PLEASE NOTE:
TGF's office is undergoing renovations
and is not accepting personal deliveries.
Please forward all couriers to:
1 Yonge St. Suite 1801, Toronto, ON M5E 1W7

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CONFIDENTIAL APPENDIX “1”

Summary of Settlement Agreement dated March 22, 2022

CONFIDENTIAL APPENDIX “2”
Settlement Agreement dated March 22, 2022

CONFIDENTIAL APPENDIX “3”
Side Letter dated March 22, 2022

CONFIDENTIAL APPENDIX “4”

Expenses Settlement Agreement dated March 22, 2022

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.

Respondents

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

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

Proceedings commenced at Toronto

**THIRD SPECIAL REPORT OF THE RECEIVER
(Settlement of Actions Against Former Executives)**

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Lawyers for the Receiver, Deloitte Restructuring Inc. and
Special Receiver, Honourable J. Douglas Cunningham, Q.C.

TAB 3

Draft Settlements Approval and Distribution Order

Special Report”), and the conduct and activities of the Receiver set out therein, was heard this day via judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Motion Record of the Receiver, including the Third Special Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver and those other counsel listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Rachel Nicholson sworn June 23, 2022 filed:

SERVICE

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

APPROVAL OF SETTLEMENT AGREEMENTS

2. **THIS COURT ORDERS** that (i) the Minutes of Settlement dated March 22, 2022 (the “**Settlement Agreement**”) entered into by the Company by its Special Receiver Douglas J. Cunningham (the “**Special Receiver**”), along with the other parties thereto, (ii) the Minutes of Settlement dated March 22, 2022 (the “**Side Letter**”) entered into by the Company by the Special Receiver, along with the other parties thereto, and (iii) the Minutes of Settlement dated March 22, 2022 (the “**Expenses Settlement Agreement**” and together with the Settlement Agreement and Side Letter, the “**Settlement Agreements**”) entered into by the Company by the Special Receiver, along with the other parties thereto, are each hereby authorized and approved.

3. **THIS COURT ORDERS** that the Receiver is authorized and directed to disburse the OSA Holdback (as defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement.

SEALING OF CONFIDENTIAL APPENDICES

4. **THIS COURT ORDERS** that Confidential Appendices “1”, “2”, “3” and “4” attached to the Third Special Report, which contain (i) a summary of the Settlement Agreement, (ii) the Settlement Agreement, (iii) the Side Letter, and (iv) the Expenses Settlement Agreement,

respectively, are hereby sealed pending further order of the Court and shall not form part of the public record.

DISTRIBUTIONS TO ROYAL BANK OF CANADA

5. **THIS COURT ORDERS** that the Receiver is authorized and directed to distribute the proceeds received by the Receiver pursuant to the Settlement Agreements to the Bank in partial satisfaction of the Bank's secured claim against the Debtors.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to make future distributions of the proceeds of the Property to the Bank as the Receiver deems appropriate up to the amount of the Bank's secured claim against the Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications (including with respect to the ongoing bankruptcy proceedings of DistinctTech Inc.); and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the distributions set out in paragraphs 5 and 6 of this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors (including Deloitte Restructuring Inc. in its capacity as trustee in bankruptcy of DistinctTech Inc.) and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE THIRD SPECIAL REPORT

8. **THIS COURT ORDERS** that the Third Special Report and the conduct and activities of the Receiver and the Special Receiver described therein be and are hereby approved; provided,

however, that only the Receiver and the Special Receiver, in their personal capacities and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

9. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver 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 may be necessary or desirable to give effect to this Order or to assist the Receiver in carrying out the terms of this Order.

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

SETTLEMENTS APPROVAL AND DISTRIBUTION ORDER

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Lawyers for the Receiver, Deloitte Restructuring Inc. and Special Receiver, Honourable J. Douglas Cunningham, Q.C.

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

Applicant

- and -

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

Proceedings commenced at Toronto

**MOTION RECORD OF DELOITTE RESTRUCTURING
INC., IN ITS CAPACITY AS RECEIVER OF DISTINCT
INFRASTRUCTURE GROUP INC.
(Returnable July 5, 2022)**

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