

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

INTEL CENTERS INC. and ITALO SABATO
and SILVANO ZACCHIGNA and MARIA ALICIA MAJLUF

Applicants

- and -

IOTICITI NETWORKS INC. and RONALD FRANK
and DARREN FRANK and LOU GALLUCCI

Respondents

FACTUM OF THE RECEIVER
(Motion Returnable October 21, 2025)

SPETTER ZEITZ KLAIMAN PC
Barristers & Solicitors
100 Sheppard Avenue East, Suite 850
Toronto, Ontario M2N 6N5

IAN KLAIMAN
LSO No. 58955G
Tel: 416-789-0652
Fax: 416-789-9015
Email: iklaiman@szklaw.ca

Lawyers for the Receiver, Russo Corp.

TO: THIS HONOURABLE COURT

AND TO: THE SERVICE LIST

SERVICE LIST

TO:	SPETTER ZEITZ KLAIMAN PC Barristers and Solicitors 100 Sheppard Avenue East, Suite 850 Toronto ON M2N 6N5 Lawyers for the Applicants Ian Klaiman iklaiman@szklaw.ca Tel: 416.789.0652 Fax: 416.789.9015
AND TO:	SYMON ZUCKER PROFESSIONAL CORPORATION 375 University Avenue, Suite 701 Toronto ON M5G 2J5 Lawyers for the Respondents: Ioticiti Networks Inc., Ronald Frank, and Darren Frank Symon Zucker (15832C) sz@bondlaw.net Tel: 416-863-9955 Fax: 855.696.5441
AND TO:	SOLOMON ROTHBART SLODOVNIK TOURGIS LLP 375 University Avenue, Suite 701 Toronto ON M5G 2J5 Lawyers for the Respondents: Ioticiti Networks Inc., Ronald Frank, and Darren Frank Nancy Tourgis ntourgis@srtlegal.com Tel: 416.947.1093 ext. 342 Fax: 416.947.0079
AND TO:	HAMMOND FLESIAS 3800 Steeles Avenue West, Suite 300 Vaughan ON L4L 4G9 Lawyers for the Respondent: Lou Gallucci Alex Flesias aflesias@hammondflesias.com Tel: 905.850.8550 ext. 410 Fax: 905.850.9998
AND TO:	THIS HONORABLE COURT

THE THIRD-PARTY STAKEHOLDERS

TO:	ADAIR GOLDBLATT BIEBER LLP 401 Bay Street Suite 3200 Toronto ON M5H 2Y4 Simon Bieber (56219Q) sbieber@agblp.com Tel: 416.351.2781 Jocelyn Howell (73229O) jhowell@agblp.com Tel: 416.360.3442 Tel: 416.499.9940 Fax: 647.689.2059
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NAME OF STAKEHOLDERS

	DOUGLAS RAYMORE ALLEN doug@nilisea.com Investor/Shareholder
	ALAN SERRECHIA alan@impactnorth.com Investor/Shareholder
	REMIGIO (RAYMOND) D'ANTONIO ray.dantonio@gmail.com Investor/Shareholder
	SALVATORE (SAM) GUIDO samg@evergreenfinancial.ca Investor/Shareholder
	SILVIO DE LUCA sdeluca@spectrumrealtyservices.com Investor/Shareholder
	PERRY KOTSOPOULOS afcanholdings@gmail.com Investor/Shareholder
	MARCO SANCHEZ LARIOS 2991marcosan@gmail.com Investor/Shareholder
	CLAUDIO VENDITTI cvenditti@gmail.com Investor/Shareholder
	FERRINO (FRED) VALLOZZI fred@impactnorth.com Investor/Shareholder

MICHELE (MIKE) FRONTE

mike@fronte.ca

Investor/Shareholder

PART I – OVERVIEW

1. Pursuant to the terms of the Order of the Honourable Justice Wilton-Siegel dated April 4, 2024 (the "**Appointment Order**"), Russo Corp. ("**Russo**") was appointed as investigatory and possessory receiver (in such capacity the "**Receiver**") over the assets, undertakings and properties of Iotociti Networks Inc. (the "**Company**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended ("**CJA**").¹

2. The Appointment Order gave the Receiver, among other things, the power to settle, extend or compromise any indebtedness owing to the Company, and to settle or compromise any proceedings with respect to the Company.² The Receiver, on behalf of the Company, entered into a Settlement Agreement with RadioMobile, Inc. ("**RadioMobile**"), James Moore, and Kathleen Moore (the "**Settlement Agreement**"). On the Receiver's motion heard on July 24, 2025, the Honourable Justice J. Dietrich approved the Settlement Agreement (the "**July 2025 Order**").

3. In accordance with the terms of the court-approved Settlement Agreement, the Receiver seeks orders:

- a) regarding the action in the Ontario Superior Court of Justice in Newmarket (the "**Newmarket Court**") bearing Court File No. CV-20-00002909-0000, commenced by the Company (then known as Metro Connect International, Inc.) against RadioMobile, James Moore, and Kathleen Moore (the "**Ontario Litigation**"),
 - i. the immediate dismissal of the Ontario Litigation, with prejudice and without costs; or
 - ii. leave for the Receiver to forthwith file a Notice of Discontinuance, with prejudice and without costs, with the Newmarket Court to discontinue the Ontario Litigation without further notice to the Plaintiff and Defendants to the Ontario Litigation; and
- b) vesting of all the Receiver's right, title, and interest, if any, in the shares of RadioMobile currently held by the Company (the "**Shares**") to James Moore and Kathleen Moore.

¹ Fourth Report of the Receiver dated October 10, 2025 (the "**Fourth Report**"), Appendix "A".

² Fourth Report, Appendix "A".

4. The Receiver also seeks the following further orders:
- a) approval of the Fourth Report of the Receiver dated October 10, 2025 (the “**Third Report**”), and the actions, activities, and conduct of the Receiver described therein;
 - b) approval of the Receiver’s Interim Statement of Receipts and Disbursements as of October 10, 2025 (the “**Interim SRD**”);
 - c) approval of the fees and disbursements of Spetter Zeitz Klaiman PC (“**SZK**”), in its capacity as counsel for the Receiver in Canada, and of Snell & Wilmer (“**S&W**”), in its capacity as counsel for the Receiver in the United States of America (“**USA**”); and
 - d) payment of the Applicants’ costs of the Receivership Application, incurred up to and including entry and service of the Appointment Order, to the Applicants or as the Applicants otherwise direct.
5. For the reasons herein and in the Fourth Report, the Receiver recommends and requests that this Honourable Court grant the relief as set out in the Receiver’s Notice of Motion and Draft Order.

PART II – FACTS

The Settlement Agreement

6. The Receiver discovered on January 19, 2025, that RadioMobile commenced an action against the Company in May 2020 in the San Diego Superior Court in California, bearing case number 37-2020-00026032-CU-COCTL, and the Company answered and filed a Cross-Complaint against RadioMobile (the “**California Litigation**”).³
7. In addition, RadioMobile, James Moore, and Kathleen Moore are Defendants in the Ontario Litigation, an action brought by the Company (at that time called Metro Connect International, Inc.) against them in the Newmarket Court.⁴

³ Fourth Report, Appendix “D”, pages 6-7.

⁴ Fourth Report, para 17, Appendix “G”.

8. The Receiver entered into the Settlement Agreement on behalf of the Company with RadioMobile, James Moore, and Kathleen Moore. Pursuant to the terms of the Settlement Agreement:⁵

- a. RadioMobile shall remit to the Receiver an aggregate of \$1,600,000.00 USD (the “**Settlement Amount**”) through the following payments:
 - (a) \$600,000.00 USD by July 3, 2025;
 - (b) \$500,000.00 USD by August 15, 2025; and
 - (c) \$500,000.00 USD by October 15, 2025;
- b. within ten (10) business days after the Effective Date (defined below), the Receiver shall convey all of the Receiver’s right, title and interest, if any, in the Shares to James Moore and Kathleen Moore; and
- c. within (10) business days after the Effective Date (defined below), the Receiver shall dismiss the Company’s claims asserted in the Ontario Litigation, with prejudice.

9. The Effective Date is the date on which the Ontario Superior Court of Justice approves the Settlement Agreement *and* the Receiver receives the Settlement Amount (the “**Effective Date**”). The Receiver anticipates the final payment of the Settlement Amount to be made on October 15, 2025, which would make that date the Effective Date. Therefore, the Receiver’s obligations listed at paragraphs 8(b)-(c) above must be completed on or before October 29, 2025.⁶

The July 2025 Order

10. The Receiver brought a motion on July 24, 2025, seeking *inter alia* the approval of its activities and conduct as set out in the Receiver’s Third Report and for the approval of its entering into the Settlement Agreement. Pursuant to the July 2025 Order, the Honourable Justice J. Dietrich granted these orders, including approval of the Settlement Agreement.⁷

5 Fourth Report, Appendix “F”, page 2.

6 Fourth Report, paras 18-19.

7 Fourth Report, para 13, Appendix “E”.

The Receiver's Actions and Activities

11. In addition to those actions and activities set out in the Receiver's First Report, the Receiver's Second Report, and the Receiver's Third Report,⁸ the Receiver's actions and activities undertaken since its Third Report, as set out in the Fourth Report, were as follows:⁹

- a. it monitored the payments of the Settlement Amount;
- b. it collected the first payment of \$600,000.00 USD and the Second Payment of \$500,000.00 USD of the Settlement Amount;
- c. it worked with S&W to dismiss the California Litigation (as defined in the Settlement Agreement), as required under the terms of the Settlement Agreement;
- d. it prepared the Interim SRD;
- e. it worked with SZK to prepare material for this motion;
- f. it updated its case website for this Receivership, which it maintains and populates; and
- g. for the purposes of this motion, it worked with SZK to retrieve and obtain certain court materials pertaining to the Ontario Litigation, to proceed with its dismissal, as follows:
 - i. it retrieved the Statement of Claim issued with the Newmarket Court in the Ontario Litigation (the "SOC"), which lists Fasken Martineau DuMoulin LLP ("Fasken") as counsel of record for the Company;
 - ii. it retrieved an Affidavit of Service, regarding service of the SOC, which indicates that Kyle M. Lambert of McMillan LLP was counsel of record for the Defendants in the Ontario Litigation;
 - iii. it contacted counsel at Fasken, who confirmed that Fasken is no longer counsel for the Company in the Ontario Litigation; and

- iv. it contacted Mr. Lambert at McMillan LLP, via email, advising of the Settlement Agreement – it then received a response email from Sean Mann-O’ Halloran of Sheppard Mullin, who confirmed that his firm is counsel of record for the Defendants in the Ontario Litigation, and that they are prepared to facilitate the dismissal of the Ontario Litigation as needed.

The Funds in the Receiver’s Trust

12. As of the date of the Fourth Report, the Receiver holds \$1,527,205.67 in trust. The last payment of the Settlement Amount under the terms of the Settlement Agreement, which is expected to be made on October 15, 2025, would result in net receipts of approximately \$2,211,668.37, which is marked as an accrual in the Receiver’s Interim SRD.¹⁰

The Receiver’s Interim Statement of Receipts and Disbursements

13. The Receiver’s Interim SRD includes (a) an accounting of the receipts and disbursements of the Receivership, (b) an accounting of the proceeds received under the Settlement Agreement, and (c) the Receiver’s final estimated accruals to complete the Receivership (the “Estimated Fee Accruals”). The Interim SRD includes the Receiver’s fees, outside consulting fees, and legal fees. The net balance factoring in all accruals is \$1,604,837.18.¹¹

The Receiver’s Fees

14. The Receiver’s fees are detailed in the Affidavit of Joanne Russo sworn October 7, 2025. The fees have been incurred over the period of May 3, 2023, to October 7, 2025, constituting a period of about two years, five months, and four days, and encompassing 494.10 hours at an average hourly rate of about \$575.00 for a total of \$283,647.50 plus applicable taxes, totaling \$320,519.42.¹²

8 Fourth Report, para 11, Appendices “B”-“D”.

9 Fourth Report, paras 16-17.

10 Fourth Report, paras 22-23, Appendix “I”.

11 Fourth Report, para 24, Appendix “J”.

12 Fourth Report, para 26, Appendix “K”.

15. The Receiver began working with the Applicants as early as May 2023 because the Applicants were becoming increasingly concerned about the Company's operations – specifically, its lack of progress in completing various business objectives and milestones. Thus, the fees include extensive preparation for the Receivership Application.¹³ The totality of the Receiver's fees were thereby incurred over time, which the Receiver has broken down into four segments:¹⁴

- 1) May 2023 to the date of the Appointment Order in April 2024, when the Receiver worked on a daily basis in investigating and gathering evidence relevant to the Receivership Application, for which the fees amounted to \$82,547.50 (\$575.00/h for 143.30 hours);
- 2) April 2024 to June 2025, covering the overall administration of the entire estate, which activities are covered in the earlier Receiver's Reports, for which the fees amounted to \$185,258.75 (\$575.00/h for 323.25 hours);
- 3) July 2025 to August 2025, consisting of the discovery of the California Litigation, extensive investigations into the circumstances of same, and activities exploring the possibility to recover from the settlement of the California Litigation, for which the fees amounted to \$13,828.75 (\$575.00/h for 24.05 hours); and
- 4) August 2025 to October 2025, consisting of finalizing the Settlement Agreement, submission of the Settlement Agreement to court for approval, gathering information to complete the Fourth Report, and preparation of the Fourth Report, for which the fees amounted to \$2,012.50 (\$575.00/h for 3.50 hours).

The Receiver's Disbursements

16. The Receiver's disbursements consist of outside consulting services provided by the Applicant, Intel Centre Inc. ("**Intel**"), detailed in the Affidavit of Italo Sabato sworn October 7, 2025, which amount to \$214,700.00.¹⁵

13 Fourth Report, paras 27-29.

14 Fourth Report, para 30, Appendix "K".

15 Fourth Report, paras 31, 43, Exhibit "L".

17. Intel assisted the Receiver in various respects as detailed in the Fourth Report, including:
- a. compiling the documents to support the application to appoint the Receiver, and substantially assisting the Receiver's investigation in the lead-up to the Appointment Order;¹⁶
 - b. undertaking a sustained and highly detailed investigative effort; becoming a central point of organization for evidence collection, stakeholder outreach, and management of complex regulatory and legal correspondence; and investing hundreds of hours to identify, recover, and catalogue material evidence to assist the Receiver in establishing a verified factual foundation for the Receiver's Reports and for its motions before the court;¹⁷
 - c. for the initial activities (focused on reconstructing the facts surrounding the Company, its affiliates, and related individuals): reaching out to government agencies, landlords, legal counsel, and former corporate officers to obtain records, site documentation, and testimony; assembling an extensive evidentiary base; producing structured briefing materials used by the Receiver in dealings with ISED Spectrum Management, the City of Vaughan, and other key parties; and, physical recovery efforts at 900 Allstate Parkway;¹⁸
 - d. in May to June 2024, during the Receivership, Intel's role broadened to include regulatory liaison functions and coordination of correspondence between the Receiver, counsel, and external law firms; compiling and verifying data on corporate shareholdings, affiliate entities, and U.S. spectrum licences; documenting misrepresentations made to regulators; and ensuring all relevant findings were integrated into the Receiver's Second Report;¹⁹
- by mid-2024, Intel's investigative focus expanded further to investor and shareholder matters; responding to numerous inquiries arising from successor or parallel ventures associated with former personnel of the Company; and preparing comprehensive chronologies, comparative ownership charts, and summary briefs outlining the emergence of successor entities – its work proving critical in defining the relationships among these

16 Fourth Report, para 32.

17 Fourth Report, para 33.

18 Fourth Report, para 34.

19 Fourth Report, para 35.

entities and in supporting correspondence with opposing counsel, including preparing detailed demand letters addressing incomplete disclosures and data obfuscation;²⁰

- e. from late 2024 to mid-2025, Intel's responsibilities extended across borders (as new information emerged linking the Company to U.S. entities) to coordinating witness interviews, tracing ownership structures within U.S. corporate filings, and preparing analytical reports for the Receiver's use in foreign proceedings; facilitating discussions between the Receiver and counsel in the U.S.; and supporting settlement negotiations, including its meticulous preparation of exhibits and evidence summaries for the factual basis to successfully negotiate the Settlement Agreement;²¹ and
- f. following the Settlement Agreement, assisting the Receiver in documenting compliance with regulatory undertakings; tracking settlement receipts; integrating the findings into the Receiver's ongoing reports; and ensuring that all investigative records, interview transcripts, and regulatory correspondence were cross-referenced to the master file, providing a transparent and verifiable account of every stage of the receivership investigation.²²

18. In summary, the progress achieved in uncovering, substantiating, and resolving the issues surrounding the Company was made possible in large part through Intel's comprehensive support in, *inter alia*, investigate and liaison activity, including evidence recovery, stakeholder interviews, document analysis, regulatory engagement, and legal coordination. This advanced the Receiver's understanding of the complex network of the corporate and individual conduct at issue, and directly supported the formulation of regulatory submissions, witness affidavits, and settlement strategies.²³

19. The Receiver submits that without the assistance of Intel, the Receiver would have spent countless additional hours and resources sorting through data files and might not have discovered the California Litigation that led to the Settlement Agreement.²⁴

20 Fourth Report, para 36.

21 Fourth Report, para 38.

22 Fourth Report, para 39.

23 Fourth Report, paras 40-42.

24 Fourth Report, para 34.

20. Intel's fees have been significantly reduced following discussions with the Receiver to reflect 500 hours billed at a rate of \$380.00 per hour, totaling fees of \$190,000.00 and total accounts of \$214,700.00 when including disbursements and applicable taxes.²⁵

SZK's Fees and Disbursements

21. The Applicants have incurred the fees and disbursements of SZK, in its capacity as counsel for the Applicants to bring the Receivership Application, in the amount of \$81,578.40, detailed in the Affidavit of Jakob Bogacki sworn on October 10, 2025.²⁶

22. SZK's fees, as counsel for the Applicants, encompass 134.7 hours at an hourly rate of \$500.00 for a lawyer called to the bar in 2010, \$630.00 for a lawyer called to the bar in 1975, \$400.00 for a lawyer called to the bar in 2000, and \$450.00 for a lawyer called to the bar in 2014. The fees amounted to \$70,601.00, plus HST and disbursements, for a total of \$81,578.40 inclusive of disbursements and applicable taxes.²⁷

23. SZK, in its capacity as counsel for the Receiver in Canada on a limited scope basis, incurred fees and disbursements in the amount of \$56,681.93, which are detailed in the Affidavit of Jakob Bogacki sworn on October 10, 2025.²⁸

24. SZK's fees, as counsel for the Receiver, encompass 90.4 hours at an hourly rate of \$400.00/hour for a lawyer called to the bar in 2022, \$550/hour for a lawyer called to the bar in 2010, and \$700.00/hour for a lawyer called to the bar in 1975. The fees amounted to \$50,011.00, plus HST and disbursements, for a total of \$56,681.93 inclusive of disbursements and applicable taxes.²⁹

25 Fourth Report, para 43.

26 Fourth Report, para 47, Appendix "M".

27 Fourth Report, para 48, Appendix "M".

S&W's Fees and Disbursements

25. S&W, in its capacity as counsel for the Receiver in the U.S., incurred fees and disbursements in the amount of \$19,127.24 for the period from May 29, 2025, to September 18, 2025, as detailed in the Affidavit of Joanne Russo affirmed on October 7, 2025.³⁰

Estimated Fee Accruals

26. The Receiver's estimated fees and disbursement accruals to complete its mandate are set out in its Interim SRD.³¹ These estimated accruals include the Receiver's estimated fees, SZK's estimated fees, and the estimated administrative disbursements of the Receiver.³²

The Proposed Distribution

27. It is proposed that the following be paid from the funds held in trust by the Receiver:
- a. The Receiver, for its fees and disbursements;
 - b. The Applicants, or otherwise as the Applicants direct, for the fees and disbursements incurred by SZK in its capacity as counsel for the Applicants;
 - c. SZK, for its approved fees and disbursements in its capacity as Receiver's counsel in Canada; and
 - d. S&W, for its approved fees and disbursements in its capacity as Receiver's counsel in the U.S.

PART III – ISSUES

28. The issues to be determined on this motion, and addressed in this factum, are:
- a. Should the Receiver's activities as set out in the Forth Report be approved?

28 Fourth Report, para 49, Appendix "M".

29 Fourth Report, para 50, Appendix "M".

30 Fourth Report, para 52, Appendix "N".

31 Fourth Report, para 54.

- b. Should the Court dismiss the Ontario Litigation and approve the vesting of the Shares?
- c. Should the Court approve the fees and disbursements of the Receiver and its counsel?
- d. Should the Court approve the Applicants' costs of the Receivership Application?

PART IV – LAW AND SUBMISSIONS

(a) The Court's Procedural Powers

29. The Court may, by order, extend or abridge any time prescribed by the *Rules* on such terms as are just. Further, the Court may dispense with compliance with the *Rules* at any time where and as necessary in the interest of justice. Finally, the Court may dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.³³

(b) The Court Should Approve the Receiver's Activities

30. This Court has the jurisdiction to approve the Receiver's activities. The "court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver" and "it would be unusual and illogical [if] the receiver could come to court prior to approval but not post approval."³⁴

31. The Receiver submits that its activities as set out in the Fourth Report were conducted in a manner consistent with the powers granted to it by the Appointment Order, and each of the activities was necessary to ensure that the receivership proceedings were orderly, effective, and fair to all stakeholders as possible.

32. The Receiver therefore respectfully submits that its activities as set out in the Fourth Report should be approved by this Court.

³² Fourth Report, para 54.

(c) The Court Should Dismiss the Ontario Litigation and Grant the Vesting of the Shares

33. The Receiver submits that the Court should: (a) dismiss the Ontario Litigation, with prejudice and without costs, or authorize the Receiver to forthwith file a Notice of Discontinuance with the Newmarket Court to discontinue the Ontario Litigation, with prejudice and without costs; and (b) grant the order sought for the Receivers' right, title, and interest, if any, in the Shares to be vested in James Moore and Kathleen Moore.

34. The Ontario Court of Appeal has made clear that the court is not to reject "the recommendation of the Receiver in any but the most exceptional circumstances", otherwise:³⁵

it would materially diminish and weaken the role and function of the Receiver both in the perception of the Receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of light weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court appointed receivers.

35. Absent clear evidence that the Receiver's conduct was improvident, the Court is to grant deference to the Receiver's recommendations. Only in such exceptional circumstances will the Court intervene and proceed contrary to the recommendations of its officer.³⁶ Specifically, it is necessary and appropriate for courts to defer to the decision of the Receiver who negotiated the settlement where that settlement raises complex issues or where the Receiver is simply in a better position to evaluate the merits of the settlement.³⁷

36. Further, in Ontario, the Court has power to grant a vesting order pursuant to s. 100 of the CJA, which states that: "A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed."³⁸

33 *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, [rr 2.03, 3.02, 16.04 and 16.08](#).

34 *Bank of America Canada v. Willann Investments Ltd.*, (1993) 20 CBR (3d) 223 (ONSC) at paras 3-4.

35 *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137, 4 O.R. (3d) 1, [p 10](#).

36 *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137, 4 O.R. (3d) 1, [pp 10 and 22](#).

37 *Maple Bank GmbH (Re)*, 2016 ONSC 7218 at [para 9](#); *Nortel Networks Corporation (Re)*, 2010 ONSC 1096 at [paras 34-35](#); *Crown Trust Co. et al. v. Rosenberg et al.*, 1986 CanLII 2760, 60 OR (2d) 87, [p. 35](#).

38 *Courts of Justice Act*, R.S.O. 1990, c. C.43, [s 100](#).

37. Therefore, at bar, the Receiver not only recommends the relief sought, but it is *obligated* to dismiss the Ontario Litigation and to convey the Shares to the Moores under the terms of the Settlement Agreement.³⁹ Notably, those terms have been approved by this Court in the July 2025 Order.⁴⁰ As such, this Court has granted deference to the Receiver to enter into the Settlement Agreement, and these orders are in furtherance of completing the Receiver’s end of that bargain.

38. There are no exceptional circumstances at bar that would warrant a rejection of the Receiver’s recommendation and request for the orders sought.

(d) The Court Should Approve the Fees and Disbursements of the Receiver and its Counsel

39. The Receiver respectfully submits that the fees and disbursements of the Receiver and its counsel, SZK and S&W, as detailed in the Fourth Report, should be approved.

40. Pursuant to paragraph 16 of the Appointment Order, the Receiver and its counsel *shall* be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.⁴¹ Section 243(6) of the BIA further provides that the Court may make any order respecting the payment of fees and disbursements of the Receiver that it considers proper.⁴²

41. The general standard of review of the Court in reviewing the accounts of an insolvency professional is whether the amount claimed for remuneration and disbursements incurred in carrying out the receivership are “fair and reasonable”, which should be assessed in a holistic manner, rather than a line-by-line review of dockets, hours, explanations or disbursements.⁴³

42. The factors relevant to determine professional fees in an insolvency context include the following, which constitute a useful guideline but are not exhaustive:⁴⁴

39 Fourth Report, paras 18, 20-21.

40 Fourth Report, para 13, Appendix “E”.

41 Fourth Report, Appendix “A”, para 16.

42 *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, [s 243\(6\)](#).

43 *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365, [para. 19](#), affirmed [2014 ONCA 851](#).

44 *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at [para 33](#).

- a) the nature, extent and value of the assets;
- b) the complications and difficulties encountered;
- c) the degree of assistance provided by the debtor;
- d) the time spent;
- e) the receiver's knowledge, experience and skill;
- f) the diligence and thoroughness displayed;
- g) the responsibilities assumed;
- h) the results of the receiver's efforts; and
- i) cost of comparable services when performed in a prudent and economical manner.

43. In considering the factors in respect of counsel's fees and disbursements, the above-noted factors should be considered, but the value provided should pre-dominate over the mathematical calculation of the hours multiplied by hourly rate equation. Hence, the factors have to be considered in light of the overall value contributed by the Receiver's counsel, and the "focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took."⁴⁵

44. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the respective party's standard rates and charges, and are fair, reasonable, and justified in the circumstances. In particular, the Court should consider the degree of thoroughness in the Receiver's investigation of the Company, the complications and difficulties encountered including cross-border proceedings that had to be addressed, the time spent, and the result of its efforts in achieving a significant settlement with RadioMobile, detailed in the Fourth Report and its earlier reports.

45. Further, the Receiver submits that this Court should consider the instrumental role that the Receiver's counsel had in negotiating and facilitating the Settlement Agreement, through which the Receiver was able to collect \$1.6 million USD for the benefit of the stakeholders of the Company.

46. Finally, the fees and disbursements sought accurately reflect the work done by the Receiver and its counsel in connection with the Receivership.

⁴⁵ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at [para 45](#).

(e) The Court Should Approve the Applicants' Costs for the Receivership Application

47. Pursuant to paragraph 25 of the Appointment Order, the Applicants *shall* have their costs of the application, up to and including entry and service of the Appointment Order, be paid by the Company on a substantial indemnity basis with such priority and at such time as the Court may determine.⁴⁶

48. SZK represented the Applicants in bringing the Receivership Application, and the extensive services performed in that regard are detailed in the Fourth Report, specifically the Affidavit of Jakob Bogacki sworn October 10, 2025.⁴⁷ SZK's fees are fair and reasonable, and justified in the circumstances. SZK charged its fees at their standard rates and charges.

49. The Receiver respectfully submits that the Applicants should be entitled to their full costs for the Receivership Application. The Receiver's investigative mandate and power to engage counsel and enter into settlements on behalf of the Company therefrom has led to the Settlement Agreement, which has yielded a significant amount of funds for the receivership estate for the benefit of the Company's stakeholders. Without the efforts to obtain the Appointment Order, the Settlement Agreement may not have occurred and the recovery therefrom may not have been achieved.

PART V – RELIEF REQUESTED

50. For the reasons above, the Receiver respectfully requests that this Court grant Orders:

- (a) approving the Fourth Report and the actions, activities, and conduct of the Receiver described therein;
- (b) for payment of the Applicants' costs of the Receivership Application, incurred up to and including entry and service of the Appointment Order, to the Applicants or as the Applicants otherwise direct;

⁴⁶ Fourth Report, Appendix "A", para 25.

⁴⁷ Fourth Report, paras 47-48, Appendix "M".

- (c) approving the Receiver's Interim SRD, including the estimated fee accruals to complete its mandate as set out on the Interim SRD;
- (d) approving the fees and disbursements of SZK, in its capacity as counsel for the Receiver in Canada;
- (e) approving the fees and disbursements of S&W, in its capacity as counsel for the Receiver in the United States of America;
- (f) regarding the Ontario Litigation: (i) the immediate dismissal of the Ontario Litigation, with prejudice and without costs; or (ii) leave for the Receiver to forthwith file a Notice of Discontinuance, with prejudice and without costs, with the Newmarket Court to discontinue the Ontario Litigation without further notice to the Plaintiff and Defendants to the Ontario Litigation; and
- (g) vesting all the Receiver's right, title, and interest, if any, in the Shares to James Moore and Kathleen Moore.

Dated: October 10, 2025

ALL OF WHICH IS RESPECTFULLY SUBMITTED



SPETTER ZEITZ KLAIMAN PC
Jakob Bogacki
Lawyers for the Receiver, Russo Corp.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Bank of America Canada v. Willann Investments Ltd.*, (1993) 20 CBR (3d) 223 (ONSC)
2. *Bank of Nova Scotia v. Diemer*, [2014 ONSC 365](#)
3. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
4. *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760, 60 OR \(2d\) 87](#)
5. *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#)
6. *Nortel Networks Corporation (Re)*, [2010 ONSC 1096](#)
7. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727, 4 OR \(3d\) 1](#)

**SCHEDULE “B”
STATUTORY PROVISIONS**

Courts of Justice Act, R.S.O. 1990, c. C.43: Section 100

Vesting orders

A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3:

- **243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
 - **(a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
 - **(b)** exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
 - **(c)** take any other action that the court considers advisable.
- **Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

 - **(a)** the insolvent person consents to an earlier enforcement under subsection 244(2); or
 - **(b)** the court considers it appropriate to appoint a receiver before then.
- **Definition of receiver**

(2) Subject to subsections (3) and (4), in this Part, *receiver* means a person who

 - **(a)** is appointed under subsection (1); or
 - **(b)** is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

- (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.
- **Definition of *receiver* — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).
 - **Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).
 - **Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.
 - **Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.
 - **Meaning of *disbursements***

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Court May Dispense with Compliance

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

Extension or Abridgment

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 (1).

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Substituted Service or Dispensing with Service

Where Order May be Made

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Validating Service

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

- (a) the document came to the notice of the person to be served; or
- (b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

Bank of America Canada v. Willann Investments Ltd.

Ontario Judgments

Ontario Court of Justice - General Division

Farley J.

June 28, 1993.

Action No. B22/91

[1993] O.J. No. 1647 | 20 C.B.R. (3d) 223 | 17 C.P.C. (3d) 296 | 41 A.C.W.S. (3d) 662

Between Bank of America Canada, Plaintiff, and Willann Investments Limited and Cranberry Village, Collingwood Inc., Defendants

(6 pp.)

Harry Underwood, for the Receiver, Coopers & Lybrand Limited. Stephen Schwartz, for Prenor Trust Company of Canada. Frank Bennett and John Spencer, for the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario.

Farley J.

1 This was a motion for an order approving the Receiver's activities and fees (including the fees of its counsel) as set out in the Receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid morning today with no advance notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J's original order establishing the receivership to allow for after-the- fact approval of the Receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the Receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

2 I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993); see pp. 16-8. I again note that Mr. Bennett in his own text: F. Bennett, Receiverships (1985: Carswell, Toronto) said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the Receiver that I have jurisdiction. It seems to me that the nature of a

specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

3 It does not seem to me that approval of the activities of the Receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this Court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however such approval (if given) would be to the extent that the reports accurately summarized the material activities of the Receiver. As to inherent jurisdiction, see *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. et al* (1972), 25 D.L.R. (3d) 386 (Ont CA) at pp. 389-90.

4 I pause to note that it would be unusual and illogical that the Receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

5 It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

6 I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

7 Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust which will ultimately bear the cost was supportive of the receiver. While "expensive", I found the fees in line with the complications and protraction of this receivership.

8 Costs were asked for in this instance. Mr. Bennett submitted that a costs award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position should not subject that creditor to a costs sanction. However I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project. Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time. Costs are awarded against the Crown payable forthwith to the Receiver in the amount of \$1500 and Prenor Trust \$500.

FARLEY J.

INTEL CENTERS INC. et al.
Applicants

-and-

IOTICITI NETWORKS INC. et al.
Respondents

Court File No.: CV-24-00712995-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE RECEIVER,
RUSSO CORP.**

SPETTER ZEITZ KLAIMAN PC
Barristers & Solicitors
100 Sheppard Avenue East, Suite 850
Toronto, Ontario M2N 6N5

IAN KLAIMAN
LSO No. 58955G
Tel: 416-789-0652
Fax: 416-789-9015
Email: iklaiman@szklaw.ca

Lawyers for the Receiver, Russo Corp.