Court File No. CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MIDMARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE *SECURITIES ACT* (ONTARIO), R.S.O. 1990, c. S. 5, AS AMENDED

FACTUM OF BENNETT JONES LLP, IN ITS CAPACITY AS COURT-APPOINTED REPRESENTATIVE COUNSEL
(Unitholder Priority Motion Returnable November 16-17, 2022)

October 21, 2022

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FACTUM OF REPRESENTATIVE COUNSEL

PART I: OVERVIEW

1. Through no fault of their own, investors in the funds offered and managed by Bridging Finance Inc. ("Bridging")[1] are left to wait for the results of the liquidation of the Bridging Funds to recoup what is expected by the Receiver to be substantially less than the amounts they have invested and the claims that they have against such funds. It is uncontroverted that the quantum of the known or expected claims against the Bridging Funds (including those of investors) will exceed the assets available for distribution – i.e., the Bridging Funds are insolvent. While the Bridging Funds are insolvent, certain Unitholders with Potential Statutory Rescission claims and/or who submitted Unfulfilled Redemption Requests prior to the appointment of the Receiver (which have not been conclusively established but which are assumed to be valid for the purposes of this motion), seek to elevate their recovery of such claims over General Unitholder Claims and thereby seek to obtain a *full* recovery in respect of such claims to the further detriment of the general body of Unitholders.

2. The purpose of the motion before this Court is to determine whether holders of Potential Statutory Rescission Claims and/or Potential Redemption Claims are legally entitled to be paid in priority to other Unitholders with claims against the exact same funds.

3. In addition to the fact that there is *no legal* basis for any such priority, no one can seriously suggest that granting Unitholders with Potential Statutory Rescission Claims and/or Potential Redemption Claims a priority recovery over General Unitholder Claims would be an equitable

[1] Capitalized terms not defined herein have the same meaning as in the Agreed Statement of Facts, Motion Record of the Receiver [Motion Record], Schedule A, p. 44.

result of the impact of the mismanagement (among other things) of the Bridging Funds.

4. There are a number of distinct reasons why the claim to priority asserted by holders of Potential Priority Claims must fail (any one of which is fatal to the asserted priority claim) and the relief sought by the Receiver should be granted.

5. *First*, the rights and priorities among Unitholders are governed by the constating documents of each Bridging Fund (all of which are governed by Ontario law) and the governing legislation (most importantly, with respect to those Bridging Funds so organized, the Ontario *Limited Partnerships Act*).[2] Not only do these documents and legislation not provide any basis for a priority of the type asserted, they expressly state that the Unitholders have no such priority or preference, and have equal rights, including sharing rateably in recoveries from the liquidation of the Bridging Funds. Every Unitholder (both those asserting Potential Priority Claims and those that do not) freely accepted (and relied on, as the case may be) those terms when they decided to invest in the Bridging Funds. There is no legal or equitable reason to subvert the results of that bargain.

6. *Second*, it is admitted for the purpose of this motion that the Bridging Funds are insolvent. In insolvency, the *pari passu* rule is paramount and provides that creditors of the same class must share *pro rata* in distributions. The Unitholders' claims are in respect of the same Units in the same Bridging Funds; the *pari passu* rule governs. The *pari passu* rule has been a bedrock principle of Canadian law for well over 100 years and there is nothing in this motion which displaces its application to the facts in this case.

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[2] *Limited Partnerships Act*, RSO 1990, c L 16 [*Limited Partnerships Act*].

7. *Third*, there is no applicable exception to the application of the constating documents, the governing legislation and the fundamental *pari passu* tenet of insolvency law. There is no overriding statutory priority or trust, nor is there any basis on which to state that certain Unitholders have different rights or entitlements to assets (based on their province of residency or otherwise).

8. *Fourth*, the applicable case law demonstrates that in similar situations, investors must share *pro rata*, and a legal priority cannot be based on arbitrary issues of timing, such as whether a Unitholder purchased 180 days before receivership versus 181 days before receivership (the former potentially having a statutory rescission right and the latter not) or whether a Unitholder submitted a redemption notice at some point prior to receivership.

9. The fact is, in this unfortunate scenario, there is no equitable or legal basis for any outcome other than the Unitholders sharing rateably in the recovery from the liquidation of the applicable Bridging Funds. In the circumstances, that is the only fair result.

PART II: FACTS

10. Unless otherwise defined herein, each capitalized term has the meaning given to it in the Agreed Statement of Facts.[3]

11. Pursuant to an order of the Court dated October 14, 2021, Bennett Jones LLP was appointed as Representative Counsel for Unitholders in the Bridging Funds, with the exception of the Unitholders who chose to opt-out of representation in accordance with the Representative Counsel Appointment Order.[4]

[3] Agreed Statement of Facts, Motion Record, Schedule A, p. 44.
[4] Agreed Statement of Facts, at paras 12-13, Motion Record, Schedule A, p. 48.

12. On this motion, Bennett Jones LLP in its capacity as Representative Counsel asserts that the Potential Priority Claims do not have priority over General Unitholder Claims, and all Unitholders should rank *pari passu* with respect to the distribution of proceeds of the Bridging Funds, in accordance with any distribution methodology to be approved by the Court.

13. It is important to note that for the purposes of this motion, it is being assumed that the Potential Statutory Rescission Claims and the Potential Redemption Claims are valid claims. Therefore, what is not in dispute for the purposes of this motion is the validity or strength of any of the Unitholders' claims.

14. Representative Counsel relies on the Agreed Statement of Facts.[5] Select facts therein are outlined below.

15. The Bridging Funds are organized either as unincorporated investment trusts pursuant to Ontario law, or as limited partnerships established pursuant to the *Limited Partnerships Act* (Ontario).[6] Investors participated through the purchase of Units – either limited partnership units or trust units – depending on the particular Bridging Fund. There are approximately 25,900 Unitholders across the various Bridging Funds.[7]

16. Depending on the structure of the Bridging Fund being invested into, Unitholders would either subscribe and be subject to a limited partnership agreement or a trust agreement in respect of the applicable Bridging Fund.[8] Each Unitholder freely accepted, and relied upon, the terms of

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[5] Note that the inclusion of any facts within the Agreed Statement of Facts is not an admission by any party that such facts are relevant to the determination of the Unitholder Priority Motion: Agreed Statement of Facts, at para 6, Motion Record, Schedule A, pp. 45-46.
[6] *Limited Partnerships Act*, *supra* note 2; Agreed Statement of Facts, at para 7, Motion Record, Schedule A, p. 46.
[7] Agreed Statement of Facts, at para 8, Motion Record, Schedule A, p. 47.
[8] Agreed Statement of Facts, at para 23, Motion Record, Schedule A, p. 51.

those agreements when they invested.

17. Between January 1 and June 30, 2022, the Receiver recovered cash of $138.4 million from assets of the Bridging Funds. Estimated realizations from the remaining assets, excluding litigation claims, are between $153 million to $313 million for total projected realizations of between $701 million to $861 million, including approximately $548 million of cash on hand, and before costs.[9]

18. The Receiver currently estimates the approximate amount of Potential Statutory Rescission Claims to be $202.4 million.[10] The Receiver currently estimates the approximate amount of Potential Redemption Claims to be $218.8 million.[11] The Receiver has not yet assessed the quantum of General Unitholder Claims for damages arising from the operation of the Bridging Funds and/or potential misrepresentations made in any applicable materials.[12] In addition, the Claims and Unitholdings Identification Procedure, which is not yet complete, will determine the significance of other claims against the Bridging Funds.[13]

19. It is expected, and assumed for the purposes of this Unitholder Priority Motion, "that the proceeds of the assets of the Bridging Funds will be less than the aggregate of Potential Statutory Rescission Claims, Potential Redemption Claims, General Unitholder Claims and any additional claims determined in accordance with the Claims and Unitholdings Identification Procedure or otherwise."[14] This is the definition of "balance sheet" insolvency.

20. Total projected realizations for the Bridging Funds are estimated to be in the range of

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[9] Agreed Statement of Facts, at para 69, Motion Record, Schedule A, p. 67.
[10] Agreed Statement of Facts, at para 65, Motion Record, Schedule A, p. 65.
[11] Agreed Statement of Facts, at para 68, Motion Record, Schedule A, p. 66.
[12] Agreed Statement of Facts, at para 67, Motion Record, Schedule A, p. 66.
[13] Agreed Statement of Facts, at para 70, Motion Record, Schedule A, p. 67.
[14] Agreed Statement of Facts, at para 70, Motion Record, Schedule A, p. 67.

approximately $701 million to $880 million, which represents – in the context of rateable sharing among Unitholders – a recovery range in the aggregate for all Bridging Funds of 34% to 41% of the March 31, 2021 NAV.[15]

21. "If it is determined that Potential Statutory Rescission Claims and/or Potential Redemption Claims have priority over General Unitholder Claims, the impact on recoveries for Unitholders with General Unitholder Claims will be significant."[16] In particular, if a priority is found for Potential Statutory Rescission Claims and Potential Redemption Claims, Unitholders without such claims would have a recovery range in the aggregate for all Bridging Funds of 17% to 26%.[17]

22. The below chart sets out the potential impact on estimated recoveries if Potential Priority Claims are paid out in priority:

	LOW		HIGH	
	$	%	$	%
Recovery Estimate per June 30 Reporting	**701.0**	**34%**	**861.0**	**41%**
Potential Statutory Rescission Claims	(202.4)		(202.4)	
Net Recovery Estimate	**498.6**	**26%**	**658.6**	**35%**
Potential Redemption Claims	(218.8)		(218.8)	
Net Recovery Estimate	**482.2**	**26%**	**642.2**	**34%**
Total Potential Stat. Resc. & Redemption Claims	(421.3)		(421.3)	
Net Recovery Estimate	**279.7**	**17%**	**439.7**	**26%**

PART III: ISSUES

23. The sole issue on this motion is whether the holders of Potential Priority Claims (being

[15] Agreed Statement of Facts, at para 73, Motion Record, Schedule A, p. 68.
[16] Agreed Statement of Facts, at para 71, Motion Record, Schedule A, p. 67.
[17] Agreed Statement of Facts, at paras 72-74, Motion Record, Schedule A, pp. 68-69.

valid Potential Statutory Rescission Claims and Potential Redemption Claims) are entitled to any priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds.

PART IV: LAW AND ANALYSIS

A. The rights of Unitholders are governed by the Limited Partnership Agreements and Trust Agreements

24. As set out in the Factum of the Receiver on this motion (which Representative Counsel adopts and relies upon), the constating documents of each Bridging Fund, along with the governing legislation, indicates that all Unitholders of a Bridging Fund must share equally and rateably in any distribution from that Bridging Fund.

25. In purchasing their Units, each of the Unitholders (of a limited partnership fund) became a limited partner in that fund. Their relationship vis-à-vis each other in that capacity can only be determined by the Limited Partnership Agreement[18] governing that limited partnership and the Ontario *Limited Partnerships Act.*[19]

26. In purchasing a unit of a Bridging trust fund, the Unitholders became party to, and are governed by, the applicable Trust Agreement.[20] Their relationship vis-à-vis each other in that capacity can only be determined by that Trust Agreement and Ontario law.

27. As set out in more detail in the Factum of the Receiver, the Limited Partnership Agreements and the Trust Agreements, along with the governing legislation, expressly and clearly provide that no Unitholder has any preference or priority over another Unitholder, and that Unitholders have

[18] As defined in the Factum of the Receiver at para 42.
[19] *Limited Partnerships Act*, *supra* note 2.
[20] As defined in the Factum of the Receiver at para 45.

equal rights and will share *pro rata*.[21] These rights attach to each Unit through the governing agreements and legislation.

28. The constating documents and governing legislation should be, in and of themselves, determinative of the issue before this Court. Representative Counsel relies upon and adopts the submissions of the Receiver and the Factum of the Receiver on this issue.

B. The Bridging Funds are insolvent and therefore the *pari passu* rule applies

29. Pursuant to the Agreed Statement of Facts, it is assumed "that the proceeds of the assets of the Bridging Funds will be less than the aggregate of Potential Statutory Rescission Claims, Potential Redemption Claims, General Unitholder Claims and any additional claims determined in accordance with the Claims and Unitholdings Identifications Procedure or otherwise."[22] The Bridging Funds are insolvent.

30. The definition of "insolvent person" in subsection 2(1) of the *Bankruptcy and Insolvency Act* provides, in relevant part, that an "insolvent person" is a person:

(a) who is for any reason unable to meet his obligations as they generally become due;

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or

[21] Along with the applicable agreements, as discussed in more detail in the Factum of the Receiver, see *Limited Partnerships Act*, *supra* note 2 at ss 14 & 24 and *Byers v CanEnerco Ltd*, [2002] OJ No 2344 (CA), Book of Authorities of Bennett Jones LLP, in its Capacity as Court-Appointed Representative Counsel at Tab 1 [BOA].
[22] Agreed Statement of Facts, at para 70, Motion Record, Schedule A, p. 67.

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[23]

31. The above longstanding definition of insolvency has also been adopted in other statutes where insolvency is not defined, including in the *Companies' Creditors Arrangement Act*[24] and in *Assignments and Preferences Act* litigation.[25] As such, the fact that no proceedings in respect of the Bridging Funds under the *Bankruptcy and Insolvency Act* are currently extant does not change the fact that they are insolvent, the legal consequences resulting therefrom for the purposes of this motion, or the application of the *pari passu* rule.[26]

32. Paragraph (c) of the definition in the *Bankruptcy and Insolvency Act* above is commonly known as the "balance sheet" solvency test and is "roughly referred to as an assets compared with obligations test."[27] It compares the fair value of a debtor's assets with all of its obligations, due and accruing; this includes contingent and unliquidated claims.[28]

33. The parties have all agreed that the assets of the Bridging Funds will be less than the claims against them; the Bridging Funds are insolvent.[29]

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[23] *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s 2 [*BIA*].
[24] RSC 1985, c C-36 [*CCAA*]; *Stelco Inc, Re*, [2004] OJ No 1257 (Sup Ct) at paras 21-22, BOA at Tab 2 [*Stelco (2004)*].
[25] RSO 1990, c A 33 [*Assignments and Preferences Act*]; *XDG Ltd v 1099606 Ontario Ltd*, [2002] OJ No 5307 (Sup Ct) at paras 74-77, BOA at Tab 3.
[26] *BIA*, *supra* note 23.
[27] *Stelco (2004)*, *supra* note 24 at para 41, BOA at Tab 2.
[28] *Ibid* at para 56, BOA at Tab 2.
[29] Agreed Statement of Facts, at para 70, Motion Record, Schedule A, p. 67.

34. The *pari passu* principle is a fundamental tenet of insolvency law; it applies in all insolvency scenarios – and regardless of whether formal "insolvency proceedings" have been initiated. As stated by the Ontario Court of Appeal in *Nortel*:

> **This [*pari passu*] principle, to the effect that "the assets of the insolvent debtor are to be distributed amongst classes of creditors rateably and equally, as those assets are found at the date of insolvency" is said to be one of the "governing principles of insolvency law" in Canada**: *Canada (Attorney General) v. Confederation Life Insurance Co.*, [2001] O.T.C. 486 (Ont. S.C.J. [Commercial List]), at para. 20, per Blair J.2 In fact, the *pari passu* principle has been said to be the foremost principle in the law of insolvency not just in Canada but around the world: Rizwaan J. Mokal "Priority as Pathology: The *Pari Passu Myth*" (2001) 60:3 Cambridge L.J. 581, at p. 581. According to an article in the Cambridge Law Journal, "[c]ommentators claim to have found [the *pari passu*] principle entrenched in jurisdictions far removed ... in geography and time": Mokal, at pp. 581-582.
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> **The *pari passu* principle is rooted in the need to treat all creditors fairly** and to ensure an orderly distribution of assets.[30]

35. This fundamental principle of insolvency law applies in this Receivership where the Bridging Funds are insolvent and the ultimate outcome will be a distribution of its remaining assets to creditors. "The duty of a receiver to maximize the assets for the benefit of all interested stakeholders is no different from the duty of a trustee in bankruptcy to maximize the assets for the benefit of all creditors."[31] Therefore, the principle of equality amongst classes of creditors and the priority scheme ought to be followed whether a distribution of an estate occurs under the

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[30] *Nortel Networks Corp, Re*, 2015 ONCA 681 at paras 23-24, BOA at Tab 4. See also *Nortel Networks Corp, Re*, 2014 ONSC 4777 at para 12, BOA at Tab 5: "It is a fundamental tenet of insolvency law that all debts shall be paid *pari passu* and all unsecured creditors receive equal treatment." See also *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2020 SCC 25 at paras 12-13 & 102, BOA at Tab 6.

[31] *8527594 Canada Inc v Liquibrands Inc*, 2015 ONSC 5912 at para 18, BOA at Tab 7, applying principles from bankruptcy cases to a receivership case. The interest stops rule, a corollary of the *pari passu* rule has also been applied in a receivership: see *National Bank of Canada v Twin Butte Energy Ltd*, 2017 ABQB 608 at para 32, BOA at Tab 8.

Bankruptcy and Insolvency Act,[32] the *Companies' Creditors Arrangement Act*[33] or a receivership.[34] The rights of creditors must be determined as of the date of receivership.[35]

36. Even outside of "insolvency proceedings", the *pari passu* principle is reflected in provincial creditor protection legislation – in Ontario, the *Fraudulent Conveyances Act* voids conveyances with the intent to defeat, hinder, delay or defraud creditors,[36] and the *Assignments and Preferences Act* voids conveyances made by a person when insolvent or unable to pay the person's debts in full or when on the eve of insolvency, with the intent to defeat, hinder, delay or prejudice creditors, or with the intent to give a creditor an unjust preference.[37] These statutes ensure that a debtor cannot make payments to prefer one creditor over another; rather, such a transaction would be void so that all creditors can share rateably.

37. The application of the *pari passu* principle results in the conclusion that the assets of the Bridging Funds must be distributed rateably and equally amongst its classes of creditors, i.e., the Unitholders; regardless of whether a Unitholder purchased within the statutory rescission window and/or regardless of whether a Unitholder filed a redemption notice before redemptions were frozen. The *pari passu* principle dictates that these Unitholders must share *pro rata* in respect of

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[32] *BIA*, *supra* note 23.
[33] *CCAA*, *supra* note 24.
[34] See *Accel Energy Canada Limited (Re)*, 2020 ABQB 652 at para 39, BOA at Tab 9. See also the comments of Lauwers J.A. (dissenting judgment) in *Romspen Investment Corp v Courtice Auto Wreckers Ltd*, 2017 ONCA 301 at paras 66-69, BOA at Tab 10: "…the root principle is that creditors in the same class, including employees, are to be treated equally in relation to the distribution of the remaining assets of the estate. This is also known as the *pari passu* principle…the date on which the respective rights of creditors are to be determined is the effective date of the bankruptcy, or the date of the appointment of the receiver, or the making of a *CCAA* order. As an incident of the *pari passu* principle, after the effective date no creditor is to be permitted to advance its position over that of similarly situated creditors."
[35] *Ibid.*
[36] RSO 1990, c F 29, s 2.
[37] *Assignments and Preferences Act*, *supra* note 25 at s 4.

their claims. This makes sense as the Unitholders all agreed to the same rights and obligations vis-à-vis the applicable Bridging Fund when they purchased their Units.

38. Even when looking at the commonality of interest test for classes of creditors for voting purposes (which does not alter the application of the *pari passu* rule), "[t]he interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company"; "creditors should be classified in accordance with their contract rights, that is, according to their respective interests in the debtor company."[38]

39. The Unitholders all hold the same Units of each Bridging Fund, with the (expressly stated) same rights and obligations. The Units of each Bridging Fund were purchased pursuant to the same Offering Memoranda, and in purchasing their Units, the Unitholders freely agreed to have their rights not only against the Limited Partnership (or the Trust as the case may be) but as among Unit or Trust Certificate holders, *inter se*, determined by the same Limited Partnership Agreement or Trust Agreement (depending on the applicable Bridging Fund). Their legal interests are the same and they must share in the proceeds in accordance with the *pari passu* principle.

C. There are no exceptions to the *pari passu* principle that apply

40. In order for the holders of Potential Priority Claims to succeed, they bear the onus of proving a legal basis for a priority; a priority that can somehow override the express language in the applicable Limited Partnership Agreement or Trust Agreement, the governing statutory regime, and the requisite application of the *pari passu* principle. No such basis exists in law, or in equity.[39]

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[38] *Stelco Inc, Re*, [2005] OJ No 4883 (CA) at paras 21-23 & 34, BOA at Tab 11.

[39] See also *Canada (Attorney General) v Confederation Trust Co*, [2003] OJ No 2754 (Sup Ct) at para 31, BOA at Tab 12, in the winding-up context: "Absent a stipulation as to the manner of allocation of payments on a debt – by agreement, course of conduct, or statute – the general rule in debtor-creditor relationships is the same as the general

41. Two potential exceptions to equal and rateable distribution are: (1) a priority conferred by statute[40] (such as a secured claim); or (2) a situation in which the assets are not the property of the applicable Bridging Fund, i.e., a trust. Neither exception applies here in a way that could ever provide the Potential Priority Claims with priority over the General Unitholder Claims.

1. There is no statutory priority

42. The Potential Statutory Rescission Claims, assuming the claims are validly proven, have a right of rescission under subsection 130.1(1) of the Ontario *Securities Act*, and the equivalent statutory provision in other jurisdictions or by contract as the case may be.[41] Subsection 130.1(1) of the Ontario *Securities Act* provides:

> 130.1 (1) Where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, the following rights:
>
> 1. The purchaser has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution is made.
>
> 2. If the purchaser purchased the security from a person or company referred to in paragraph 1, **the purchaser may elect to exercise a right of rescission against the person or company**. If the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the person or company.[42]

43. Pursuant to the above (and equivalent provisions in other provinces), the legislation provides a right of rescission. In other words, it provides a cause of action. None of the securities statutes give *any* priority to such a cause of action, if proven, (which would have been easy to do

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rule in insolvency situations[…]". The Court also highlighted the interests of fairness, equality and predictability amongst creditors: para 33.

[40] See e.g. s 136 of the *BIA*, *supra* note 23**.**

[41] Appendix Q to the Agreed Statement of Facts, Motion Record, Schedule A, p. 1541.

[42] *Securities Act*, RSO 1990, c S 5, s 130.1(1) [*Securities Act* (Ontario)].

so had the Legislature so intended) let alone include the clear express language that would be required to create such a novel statutory priority.[43]

44. Importantly, the holders of Potential Statutory Rescission Claims are not arguing (and, in fact, cannot argue in order to meet their strategic objective) that *all* rescission claimants would have a priority. A right of rescission is not restricted to causes of action available under the provincial *Securities Acts.* Rather, rescission is, in addition to a statutory remedy if the above statutory criteria are met, both a common law and an equitable remedy. As such, all Unitholders may assert claims for common law and/or equitable rescission, outside of and in addition to any statutory right of rescission.[44]

45. While there is overlap between the common law right of rescission and equitable rescission, the right of equitable rescission is wide in scope and rescission can be granted even where the contract is not susceptible of attack at common law; whenever a court considers, on equitable grounds, that a contract should not be allowed to stand, it has the power to order rescission at equity.[45]

46. Therefore, as the validity of Potential Priority Claims is admitted for the purposes of this motion (but will need to be determined on an individual basis for each Unitholder asserting such claim if the Court determines that priority over General Unitholder Claims exists), the holders of

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[43] Where a statute intends to create a priority, it must state so: see e.g. *CIBC Mortgage Corp v Belle River (Town)*, [1993] 44 ACWS (3d) 603 (Ont Ct J) (Gen Div) at para 9, BOA at Tab 13. See also *Campeau Corp v Provincial Bank of Canada*, [1975] 7 OR (2d) 73 (SC) (Bank), BOA at Tab 14: "If the statute intended to give priority to unpaid claims of wage-earners over secured creditors, I think it would have done so in clear and specific terms…A statutory charge or lien against property must be created in clear and precise terms". See also *Hamilton (City) v Equitable Trust Co*, 2013 ONCA 143 at paras 29, 30 & 34, BOA at Tab 15.

[44] To this effect, see, for example, section 130.1(7) of the *Securities Act* (Ontario), *supra* note 42: "The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law."

[45] *846-6718 Canada Inc v 1779042 Interior Ltd*, 2018 ONSC 1563 at para 330, citing from Fridman, BOA at Tab 16.

Potential Statutory Rescission Claims must satisfy this Court that a *statutory* right of rescission creates a priority in circumstances that a common law or equitable right of rescission does not. As there is nothing in the statutes to provide for such a priority, it is difficult to understand on what basis the Potential Statutory Rescission Claims could have a priority over all other Unitholders (that may also have a right of rescission under common law and/or equity).

47. With respect to the holders of Potential Redemption Claims, their claim is not based on a statute and there is similarly no applicable statute that could provide such claims with a statutory priority.

2. The residency of a Unitholder cannot create a statutory priority

48. The residency of a Unitholder, and a potential cause of action under a different provincial statute, does not and cannot change the application of the *pari passu* principle.

49. While Bridging may have been responsible to the laws of every jurisdiction in which it operated, and its Unitholders may therefore have claims within those operating jurisdictions (the validity of which is not at issue on this motion), the rights of Unitholders between each other can only be governed by the documents and law applicable to the Units that they hold.

50. Each Unitholder signed up and agreed to be a part of, and subject to the rules and regulations of, an Ontario limited partnership or Ontario investment trust, depending on the applicable Bridging Fund. The residency of a Unitholder cannot provide new substantive rights and priorities that override the rights of Unitholders of the *same* Bridging Fund that simply reside in a different province. Practically speaking, it would be an illogical (and entirely unjust) result if a Unitholder in Ontario could be subordinated to another Unitholder that purchased into the same

Ontario fund (where all documentation indicates they will be treated equally and on par) due to an unknown statutory provision in another province (assuming one even exists).

51. In a class action case, it was recognized that non-resident shareholders were subject to Ontario law, and could advance Ontario causes of action, on the basis that the shareholders contracted with the company for Ontario law.[46] In addition, pursuant to basic conflicts of law principles, the law of the jurisdiction of incorporation is the proper law of the bargain among shareholders and between them, and that law determines the rights as between shareholders.[47]

52. The same general concepts must apply here. In purchasing their Units, the Unitholders agreed to be bound by the rules and regulations applicable to Ontario limited partnerships and/or Ontario investment trusts. The fact that some of them reside in a different province cannot change their entitlements vis-à-vis the other Unitholders.

3. The proceeds of the Bridging Funds belong to the Bridging Funds and are available for distribution to creditors

53. Situations in which methods other than a *pro rata* distribution have been considered are generally those in which a determination is made as to whether certain funds should form part of a trust.[48] Therefore, the other manner in which a priority could potentially be found is if the holders of Potential Priority Claims are able to demonstrate that they have an entitlement to funds held by a Bridging Fund such that they are not actually the property of that Bridging Fund – the classic example being a trust scenario.

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[46] *Allen v Aspen Group Resources Corp*, [2009] OJ No 5213 (Sup Ct) at paras 100-104, BOA at Tab 17.
[47] Janet Walker, *Canadian Conflict of Laws*, 6th ed, (Toronto: LexisNexis Canada, 2005) at §30.1 and §31.4(j), BOA at Tab 18.
[48] See *Boughner v Greyhawk Equity Partners Limited Partnership (Millenium)*, 2012 ONSC 3185 (aff'd 2013 ONCA 26) at para 25, BOA at Tab 19 [*Boughner v Greyhawk*]; *Graphicshoppe Ltd, Re*, [2005] OJ No 5184 (CA) at para 126, BOA at Tab 20.

54. In this case, the holders of Potential Priority Claims would need to demonstrate that any alleged trust claim is not also held by all other Unitholders but is somehow unique to the Potential Statutory Rescission Claims and/or Potential Redemption Claims. However, there can be no trust applicable to only select groups of the similarly situated Unitholders that have all bargained for and relied upon as a matter of contract, and received, the same rights and entitlements.

55. It is anticipated that the holders of Potential Priority Claims may try to argue the imposition of a constructive trust. To the extent any constructive trust is justified, it applies to *all* Unitholders, not just the Potential Priority Claims, and there is no equitable or legal basis to suggest otherwise.

56. In *Soulos v Korkontzilas*, the Supreme Court of Canada articulated the four conditions that must be satisfied for the imposition of a constructive trust:

> (1) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
>
> (2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
>
> (3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties and;
>
> (4) There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.[49]

57. The notion that a constructive trust may be found for some Unitholders and not others is not supported by legal or equitable principles; the above factors would be applicable to *all* Unitholders. The case law in which investors have established such a trust are illustrative of this

[49] [1997] 2 SCR 217 at para 45, BOA at Tab 21 [*Soulos*].

point. For example, in *British Columbia (Securities Commission) v Bossteam E-Commerce Inc*, the British Columbia Securities Commission brought a receivership application in respect of the respondents that committed fraud and illegally distributed securities; the funds in the bank accounts were determined to be funds received from investors and distribution to investors was sought for same.[50]

58. Miller Thomson had acted as counsel for the respondents and was a creditor in respect of its legal fees. It objected to the receivership order which it asserted gave priority to investor claims. The Court found the four elements of a constructive trust as set out in *Soulos* were applicable to the investors: the respondents "were under a legal and equitable obligation to use investment funds for the purpose for which the investors intended. They misrepresented the purpose for which they were going to use the funds and defrauded the investors in the process. On that basis, the respondents have been unjustly enriched to the detriment of the investors."[51]

59. Second, there was a link between what left the investors' hands and what went into the respondents' accounts. Third – for the legitimate reason – "[i]t is important to hold the respondents to a high level of trust and prevent them from retaining the monetary benefits which in good conscience they should not be permitted to retain."[52]

60. The fourth factor was also met:

> There will be priority granted to the investors over that of the creditors, in particular, Miller Thomson. However, **it was the fraud on the investors that caused the monies to be collected by the respondents and then required the Commission to investigate and to determine whether fraud existed**. The

[50] 2017 BCSC 787, BOA at Tab 22.
[51] *Ibid* at para 35, BOA at Tab 22.
[52] *Ibid* at para 37, BOA at Tab 22.

> respondents retained Miller Thomson…The hearing before the Commission was only necessary because Bossteam defrauded the investors…[53]

61. To analogize to the circumstances of the Bridging Funds, the misrepresentations to all Unitholders caused the funds to be collected, and the mismanagement caused many of those funds to be lost. There is no distinction between the misrepresentations and mismanagement to the Unitholders with General Unitholder Claims versus those with Potential Statutory Rescission Claims or Potential Redemption Claims, let alone a distinction material and significant enough to result in a constructive trust for some Unitholders and not others.

62. Similarly, in *Easy Loan Corp v Wiseman*, an Alberta decision, a constructive trust was imposed over funds in a bank account for the benefit of defrauded investors.[54] The elements for a constructive trust were found for all investors that had funds in the relevant account.

63. Importantly, the fourth factor for the imposition of a constructive trust is that "[t]here must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case".[55] The circumstances of this case are Unitholders that all hold the same Units of a Bridging Fund, with the same rights and entitlements. Imposing a constructive trust for some Unitholders to the material detriment of others would be entirely unjust.

64. The holders of Potential Priority Claims do not have an express trust claim, nor can they demonstrate a constructive trust that is different from one that all Unitholders may have.

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[53] *Ibid* at para 38, BOA at Tab 22.
[54] 2017 ABCA 58 (aff'g 2016 AQB 77), BOA at Tab 23 [*Easy Loan*].
[55] *Soulos*, *supra* note 49 at para 45, BOA at Tab 21.

D. The applicable case law and both legal and equitable principles support the relief sought by the Receiver

65. The relief asked for by the holders of Potential Priority Claims on this motion would be entirely novel and without precedent. In other cases dealing with distributions to investors after a failed investment vehicle, investors share in the available proceeds *pro rata*. The overarching principle is that investors with similar expectations should be treated equally and share proportionately in a common fund.

66. In *Boughner v Greyhawk Equity Partners Limited Partnership (Millenium)*, investors were misled into believing that the Greyhawk Fund was a large and highly profitable investment vehicle.[56] Investors' deposits were put into a number of trading accounts that were used to buy and sell securities. Investors were allocated units on the basis of their investments, and they received monthly reports suggesting their value was increasing. However, the unit values were ultimately fictional.[57]

67. The Greyhawk Fund collapsed in January 2011 and a Receiver was appointed in February 2011. The question considered by the Court was how the losses should be borne by the investors, with the Receiver suggesting three potential methods of distribution. Importantly, all proposed distribution methods were based on a *pro rata* theory (with the Court primarily choosing between a *pro rata ex post facto* distribution or a *pro rata on the basis of tracing* distribution). There was not an issue of priority as between the investors, nor was there any suggestion that some investors would have priority over others.[58]

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[56] *Boughner v Greyhawk*, *supra* note 48, BOA at Tab 19.
[57] *Ibid* at para 9, BOA at Tab 19.
[58] *Ibid* at para 25, BOA at Tab 19.

68. A guiding theory considered by the Court was "that the principles of 'logic, justice and convenience' govern in circumstances such as these…'the court should therefore seek to apply the method which is the more just, convenient and equitable in the circumstances'."[59] The same principle should apply when considering any potential priority between the Unitholders in this case.

69. In the *Olympus Group* proceedings, the appointment of a receiver followed an investigation that began when the company announced a deferral of redemptions in a number of funds.[60] It was later found that investor funds had significantly dissipated, but the company had reported artificially high NAVs to camouflage this dissipation until it was no longer able to meet redemptions. The Plan of Arrangement that was ultimately approved by the Court provided that distributions would be made to investors on a *pro rata* basis without regard to the fact that accepted redemption requests remained unfulfilled.[61]

70. Mere issues of timing – whether it be the purchase of a unit for the Potential Statutory Rescission Claims or the submission of a redemption notice for the Potential Redemption Claims – cannot justify a priority.

71. The limitation period in which a claim for statutory rescission can be made is generally 180 days after the date of the transaction.[62] Therefore, in order to accept a priority for the Potential Statutory Rescission Claims, the Court must accept that a Unitholder in Ontario that purchased

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[59] *Ibid* at para 91, BOA at Tab 19.
[60] The Original Respondents were Norshield Asset Management (Canada) Ltd., Norshield Investment Partners Holdings Ltd., Olympus United Funds Holdings Corporation, Olympus United Funds Corporation, Olympus United Bank and Trust SCC and Olympus United Group Inc.
[61] *Olympus United Funds Corporation et al*, Plan of Compromise and Arrangement, [CV-11-9368-00CL], ss 5.5 & 5.6, BOA at Tab 24.
[62] Appendix Q to the Agreed Statement of Facts, Motion Record, Schedule A, p. 1541. The exception being Nova Scotia which is 120 days.

180 days before the date of Receivership would achieve a full recovery of their investment, but someone who purchased 181 days before the date of Receivership would receive a recovery in the range of 17% to 26%.[63]

72. Such an arbitrary distinction based on one day (in circumstances where there is no legal basis for a priority) cannot be justified.[64] Rather, investors with similar intentions and expectations must be treated equally and with equal priority in a common fund. The intentions of the Unitholders are demonstrated primarily through the constating documents of the Bridging Funds which, as set out in further detail in the Factum of the Receiver, solely support the relief sought by the Receiver on this Motion. The Unitholders had similar expectations, joined in the same investment, and must be treated proportionately and with equal priority.[65]

E. Conclusion

73. The agreements governing the Unitholders and the Bridging Funds, the applicable statutes, and the *pari passu* principle, all demonstrate that there is no priority intended or existing for select groups of Unitholders. There is simply no legal or equitable basis on which the holders of Potential Priority Claims have the ability to obtain full recoveries, while the similarly-situated Unitholders with General Unitholder Claims, that suffered the same wrongs, will obtain – at best – a 26% recovery.

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[63] The Tolling Order has tolled these claims as of the date of receivership: see Agreed Statement of Facts, at para 64, Motion Record, Schedule A, p. 65.
[64] See e.g. *Canwest Global Communications Corp, Re*, 2010 ONSC 1746 at para 35, BOA at Tab 25: "Additionally, based on CEP's submissions, someone who worked a day after the Initial Order would be entitled to full and immediate payment of termination and severance obligations ahead of all others whereas someone who was terminated the day before the Initial Order would not. This cannot be the scheme contemplated by the statutory amendments."
[65] See *Easy Loan*, *supra* note 54 at paras 59-60, BOA at Tab 23.

74. Creating a novel priority scheme in this case would not only go against all established legal principles, it would create an inequitable and unjust result.

PART V: ORDER REQUESTED

75. Representative Counsel requests that the Priority Motion Order be granted in the form attached to the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF OCTOBER, 2022

Bennett Jones LLP

Bennett Jones LLP

SCHEDULE "A"

LIST OF AUTHORITIES

Cases Cited

1. *846-6718 Canada Inc v 1779042 Interior Ltd*, 2018 ONSC 1563.
2. *8527594 Canada Inc v Liquibrands Inc*, 2015 ONSC 5912.
3. *Accel Energy Canada Limited (Re)*, 2020 ABQB 652.
4. *Allen v Aspen Group Resources Corp*, [2009] OJ No 5213 (Sup Ct).
5. *Boughner v Greyhawk Equity Partners Limited Partnership (Millenium)*, 2012 ONSC 3185.
6. *British Columbia (Securities Commission) v Bossteam E-Commerce Inc*, 2017 BCSC 787.
7. *Byers v CanEnerco Ltd*, [2002] OJ No 2344 (CA).
8. *Campeau Corp v Provincial Bank of Canada*, [1975] 7 OR (2d) 73 (SC) (Bank).
9. *Canada (Attorney General) v Confederation Trust Co*, [2003] OJ No 2754 (Sup Ct).
10. *Canwest Global Communications Corp, Re*, 2010 ONSC 1746.
11. *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2020 SCC 25.
12. *CIBC Mortgage Corp v Belle River (Town)*, [1993] 44 ACWS (3d) 603 (Ont Ct J) (Gen Div).
13. *Easy Loan Corp v Wiseman*, 2017 ABCA 58
14. *Graphicshoppe Ltd, Re*, [2005] OJ No 5184 (CA).
15. *Hamilton (City) v Equitable Trust Co*, 2013 ONCA 143.
16. Janet Walker, *Canadian Conflict of Laws*, 6th ed, (Toronto: LexisNexis Canada, 2005).
17. *National Bank of Canada v Twin Butte Energy Ltd*, 2017 ABQB 608.
18. *Nortel Networks Corp, Re*, 2014 ONSC 4777.
19. *Nortel Networks Corp, Re*, 2015 ONCA 681.
20. *Olympus United Funds Corporation et al*, Plan of Compromise and Arrangement, [CV-11-9368-00CL]
21. *Romspen Investment Corp v Courtice Auto Wreckers Ltd*, 2017 ONCA 301.
22. *Soulos v Korkontzilas*, [1997] 2 SCR 217.
23. *Stelco Inc, Re*, [2004] OJ No 1257 (Sup Ct).

24. *Stelco Inc, Re*, [2005] OJ No 4883 (CA).

25. *XDG Ltd v 1099606 Ontario Ltd*, [2002] OJ No 5307 (Sup Ct).

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

***Assignments and Preferences Act*, RSO 1990, c A 33**

Nullity of gifts, transfers, etc., made with intent to defeat or prejudice creditors

4 (1) Subject to section 5, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person when insolvent or unable to pay the person's debts in full or when the person knows that he, she or it is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice creditors, or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

Unjust preferences

(2) Subject to section 5, every such gift, conveyance, assignment or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his, her or its debts in full, or knowing himself, herself or itself to be on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over other creditors or over any one or more of them is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

When there is presumption of intention if transaction has effect of unjust preference

(3) Subject to section 5, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, in and with respect to any action or proceeding that, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be presumed, in the absence of evidence to the contrary, to have been made with the intent mentioned in subsection (2), and to be an unjust preference within the meaning of this Act whether it be made voluntarily or under pressure.

Idem

(4) Subject to section 5, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of the creditors, be presumed, in the absence of evidence to the contrary, to have been made with the intent mentioned in subsection (2), and to be an unjust preference within the meaning of this Act whether it be made voluntarily or under pressure.

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable).

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

(c) the levy payable under section 147;

(d) the amount of any wages, salaries, commissions, compensation or disbursements referred to in sections 81.3 and 81.4 that was not paid;

(d.01) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.3 and 81.4 and the amount actually received by the secured creditor;

(d.02) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.5 and 81.6 and the amount actually received by the secured creditor;

(d.1) claims in respect of debts or liabilities referred to in paragraph 178(1)(b) or (c), if provable by virtue of subsection 121(4), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;

(e) municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt, but not exceeding the value of the interest or, in the Province of Quebec, the value of the right of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;

(f) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;

(g) the fees and costs referred to in subsection 70(2) but only to the extent of the realization from the property exigible thereunder;

(h) in the case of a bankrupt who became bankrupt before the prescribed date, all indebtedness of the bankrupt under any Act respecting workers' compensation, under any Act respecting unemployment insurance or under any provision of the Income Tax Act creating an obligation to pay to Her Majesty amounts that have been deducted or withheld, rateably;

(i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and

(j) in the case of a bankrupt who became bankrupt before the prescribed date, claims of the Crown not mentioned in paragraphs (a) to (i), in right of Canada or any province, rateably notwithstanding any statutory preference to the contrary.

Payment as funds available

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsection (1) shall be made as soon as funds are available for the purpose.

Balance of claim

(3) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due him.

***Fraudulent Conveyances Act*, RSO 1990, c F 29**

Where conveyances void as against creditors

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

***Limited Partnerships Act*, RSO 1990, c L 16**

Limited partners' rights as between themselves

14 (1) Subject to subsection (2), limited partners, in relation to one another, share in the limited partnership assets,

(a) for the return of contributions; and

(b) for profits or other compensation by way of income on account of their contributions,

in proportion to the respective amounts of money and other property actually contributed by the limited partners to the limited partnership.

Priority agreement

(2) Where there are several limited partners, the partners may agree that one or more of the limited partners is to have priority over other limited partners,

(a) as to the return of contributions;

(b) as to profits or other compensation by way of income; or

(c) as to any other matter,

but the terms of this agreement shall be set out in the partnership agreement.

Idem

(3) Where the partnership agreement does not contain an agreement referred to in subsection (2), the shares of the limited partners in the partnership assets shall be determined in accordance with subsection (1).

Settling accounts on dissolution

24 In settling accounts after the dissolution of a limited partnership, the liabilities of the limited partnership to creditors, except to limited partners on account of their contributions and to general partners, shall be paid first, and then, unless the partnership agreement or a subsequent agreement provides otherwise, shall be paid in the following order:

1. To limited partners in respect of their share of the profits and other compensation by way of income on account of their contributions.

2. To limited partners in respect of their contributions.

3. To general partners other than for capital and profits.

4. To general partners in respect of profits.

5. To general partners in respect of capital.

***Securities Act*, RSO 1990, c S 5**

Liability for misrepresentation in offering memorandum

130.1 (1) Where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, the following rights:

1. The purchaser has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution is made.

2. If the purchaser purchased the security from a person or company referred to in paragraph 1, the purchaser may elect to exercise a right of rescission against the person or company. If the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the person or company.

No derogation of rights

130.1 (7) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF *THE SECURITIES ACT* (Ontario), R.S.O. 1990, c.S.5, AS AMENDED

ONTARIO SECURITIES COMMISSION - and - **BRIDGING FINANCE INC., et al.**

Applicant Respondents

Court File No.: CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto, Ontario

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