

Court File No. CV-22-00685736-00CL

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

**IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED**

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

**APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED**

**SECOND REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF PACE SAVINGS & CREDIT UNION LIMITED**

APRIL 21, 2023

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I. INTRODUCTION

1. On August 24, 2022, PACE Savings & Credit Union Limited (“PCU” or the “**Credit Union**”) was ordered to be wound up pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA**”) by an Order (the “**Liquidation Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and KPMG Inc. (“**KPMG**”) was appointed as liquidator (in such capacity, the “**Liquidator**”) of all the remaining assets, undertakings and properties of PCU. A copy of the Liquidation Order is attached hereto as **Appendix “A”**.
2. Prior to the Liquidator’s appointment, on March 18, 2019, PCU commenced an action bearing Court File No. CV-19-00616388-00CL against the former President and the former Chief Executive Officer of the Credit Union (Larry and Phillip Smith (the “**Smiths**”)), their associated corporations and affiliates, certain of the Credit Union’s former directors (the “**Former Directors**”), and a number of other parties (the “**Claim Against Smiths et al**”).
3. On February 28, 2022, PCU also commenced an action bearing Court File No. CV-22-00677550 against CUMIS General Insurance Company (“**CUMIS**”) in relation to a claim detailed in a proof of loss filed by the Credit Union dated October 16, 2019 under a fidelity insurance coverage bond issued by CUMIS (the “**CUMIS Fidelity Bond**”), in respect of losses incurred by PCU in connection with alleged misconduct by the Smiths (the “**CUMIS Fidelity Bond Claim**”).
4. The above claims of the Credit Union and all related counterclaims, crossclaims and third-party claims are referred to herein collectively as the “**Recovery Litigation**”.
5. The Liquidator issued its first report to the Court, including a confidential appendix, on January 27, 2023 (the “**First Report**”) in conjunction with a motion returnable on February 8, 2023, seeking:
 - a. Approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and the Former Directors (the “**Former Directors Settlement Agreement**”);

- b. Approval of a settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and CUMIS in respect of the CUMIS Fidelity Bond Claim (the "**CUMIS Settlement Agreement**"); and
- c. Certain ancillary relief thereto.

A copy of the First Report (without appendices) is attached hereto as **Appendix "B"**.

- 6. On February 8, 2023, the Court granted an Order (the "**First Settlement Approval Order**") approving the Former Directors Settlement Agreement and the CUMIS Settlement Agreement and certain ancillary relief thereto. A copy of the First Settlement Approval Order is attached hereto as **Appendix "C"**.

II. PURPOSE OF REPORT

- 7. The purpose of this report, which is the Liquidator's second report to the Court (the "**Second Report**"), is to provide information in respect of:
 - a. The status of the Recovery Litigation and related mediation;
 - b. Details of a further settlement that has been entered into by the Liquidator in relation to the Recovery Litigation; and
 - c. The Liquidator's motion returnable May 1, 2023, for an order substantially in the form attached to the Liquidator's Notice of Motion seeking approval of the further settlement and ancillary relief.

III. TERMS OF REFERENCE

- 8. In preparing this Second Report, the Liquidator has been provided with, and has relied upon, the books and records and other information of PCU, including unaudited financial information and information provided by former management, advisors, and the former administrator of the Credit Union (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in this Second Report, the Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the

Chartered Professional Accountants of Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

9. Future oriented financial information reported or relied on in this Second Report is based on assumptions regarding future events; actual results may vary from this forecast and such variations may be material.
10. Copies of the Liquidator's reports and all motion records and Orders in the liquidation proceedings are available on the Liquidator's website at home.kpmg/ca/pacecu.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

IV. STATUS OF RECOVERY LITIGATION AND MEDIATION

12. The First Report provided background on the Recovery Litigation including details of PCU's claims, being the Claim Against Smiths et al and the CUMIS Fidelity Bond Claim, as well as details of the various counterclaims, crossclaims and third-party claims advanced by other parties to the Recovery Litigation.
13. As discussed in the First Report, the main parties to the Recovery Litigation agreed to participate in a mediation session before Larry Banack on November 28 and 29 and December 1, 2022, in an effort to try and settle all claims. Those mediation efforts resulted in the Former Directors Settlement Agreement, which partially resolved the Claim Against Smiths et al, and the CUMIS Settlement Agreement, which fully resolved the CUMIS Fidelity Bond Claim.
14. Pursuant to the terms of the Former Directors Settlement Agreement, PCU and the Former Directors entered into a full and final mutual release and agreed to the dismissal of the claims against the Former Directors in exchange for a payment to the Credit Union from CUMIS under the directors and officers insurance policy (the "**D&O Policy**") which was maintained by PCU and provides coverage to every director or officer of the Credit Union in connection with any loss arising from a claim made against them for which they are not indemnified by PCU, up to a limit of \$15 million. The D&O Policy covers losses arising from "wrongful acts", a term which includes breach of duty, neglect, and error. The D&O

Policy has a diminishing limit given that the defence costs of the directors and officers are covered under the policy.

15. The CUMIS Settlement Agreement provided for the full and final mutual release of the CUMIS Fidelity Bond Claim and a dismissal of the action in relation to the CUMIS Fidelity Bond Claim in exchange for a payment to PCU from CUMIS under the CUMIS Fidelity Bond.
16. Subsequent to the Court approval of the Former Directors Settlement Agreement and the CUMIS Settlement Agreement on February 8, 2023, settlement discussions continued amongst the remaining parties to the Recovery Litigation through Larry Banack in an effort to reach a settlement of the remaining claims against the Smith and other parties. In early March, a settlement in principle was reached, and the remaining parties to the Recovery Litigation moved towards preparing and finalizing minutes of settlement. Accordingly, the Court was informed in mid-March that the hearing scheduled for March 20, 2023, in relation to the motions brought by the Smiths and other parties to dismiss or permanently stay PCU's claims against them (the "**Stay Motions**") as an abuse of process would no longer be required.

V. FINAL SETTLEMENT IN THE RECOVERY LITIGATION

Terms of the Final Settlement

17. PCU, by the Liquidator, the remaining parties to the Recovery Litigation, and the non-parties CUMIS and Goodmans LLP ("**Goodmans**") entered into a settlement agreement dated April 3, 2023 (the "**Final Settlement Agreement**"). A redacted version of the Final Settlement Agreement is attached hereto as **Appendix "D"**. CUMIS is a party to the Final Settlement Agreement as the insurer under the D&O Policy, and Goodmans is a party as the Credit Union's former counsel.

18. The Final Settlement Agreement contains the following key terms¹:
- a. In exchange for certain payments to PCU and other parties and the release of any interest in certain funds claimed by the Smiths and related parties, the parties to the Claim Against Smiths et al will enter into a full and final mutual release of the Claims;
 - b. The Credit Union and the Financial Services Regulatory Authority of Ontario, in its former capacity as PCU's Administrator, will enter into a full and final release with Goodmans;
 - c. Nothing in the Final Settlement Agreement or Mutual Release shall affect or derogate from any obligations to cooperate with the Liquidator in accordance with the terms of the Liquidation Order;
 - d. PCU will obtain orders dismissing the Recovery Action, including all associated counterclaims, crossclaims and/or third-party claims, and the 2340 Action², on a with-prejudice and without-costs basis;
 - e. PCU will consent to an order vacating the Order of the Honourable Justice Conway dated May 19, 2019, in the Claim Against Smiths et al made in connection with PCU's motion to extend the Preservation Order issued by the Honourable Justice Hailey on March 19, 2019;
 - f. The applicants and plaintiffs in proceedings bearing Court File Numbers CV-19-00616388-00CL, CV-21-00658241-00CL, CV-21-00658643-00CL, CV-21-00655599-00CL, CV-21-00656590-00CL, CV-21-00655627-00CL and CV-22-00679927-0000 shall obtain orders dismissing such proceedings without costs and deliver copies of such Orders to all other Parties and all such other Parties shall consent to such orders;
 - g. Philip Smith will obtain an order dismissing the Wrongful Dismissal Action³ on a with-prejudice, without-costs basis;

¹ Capitalized terms not defined herein have the meaning defined in the Final Settlement Agreement.

² Action commenced by PCU against Larry Smith, Phillip Smith, Joanna Whitfield and 2340938 Ontario Inc. bearing the Court File Number CV-18-00610186-000.

³ Action commenced by Phillip Smith bearing Court File Number CV-19-00628710-0000.

- h. The Liquidator will seek an order from the Court approving the terms of the Final Settlement Agreement (the “**Approval Order**”) and the other Parties will consent to the Approval Order;
- i. All of the settlement funds and the Mutual Release shall be held in escrow pending the receipt by all parties of the Mutual Release and the Approval Order;
- j. The Liquidator will disclose the existence and terms of the Final Settlement as required by law and as necessary to obtain the Approval Order. The Parties shall otherwise keep the existence and terms of the Final Settlement Agreement confidential, and shall not reveal its existence and terms except to their respective legal and financial advisors, or as otherwise required by law; and
- k. The Parties agree that they will not at any time publicly make any statement or comment relating to the matters addressed in the Final Settlement Agreement of a negative nature or which could reasonably be considered to have an adverse impact on their respective business or reputations.

Status of the Final Settlement

- 19. The majority of the parties have executed the Final Settlement Agreement and exchanged the releases under the Final Settlement Agreement which are being held in escrow. The Liquidator expects that the remaining parties will have executed the Final Settlement Agreement and provided their releases prior to the motion returnable on May 1, 2023.
- 20. The settlement funds payable to the Credit Union pursuant to the Final Settlement Agreement have been received and are being held in escrow by PCU’s counsel in the Recovery Litigation, Lax O’Sullivan Lisus Gottlieb LLP.

Court Approval of the Settlement Agreements

- 21. The Liquidator is seeking Court approval of the Final Settlement Agreement pursuant to its terms.

22. Attached hereto as **Confidential Appendix “A”** is a summary of relevant information pertaining to the Liquidator’s decision to enter into the Final Settlement Agreement.
23. In the view of the Liquidator, the terms of the Final Settlement Agreement are fair and reasonable, they provide substantial benefits to the Credit Union’s stakeholders, and they are consistent with the purpose and spirit of the winding up provisions of the CUCPA.
24. The quantum of the settlement funds and other information contained in Confidential Appendix “A” are not being publicly disclosed. The Liquidator respectfully requests an order sealing Confidential Appendix “A” until completion of the settlement contemplated by the Final Settlement Agreement. It contains commercially sensitive information, public disclosure of which would be materially prejudicial to the interests of PCU, and its stakeholders should the settlement contemplated by the Final Settlement Agreement not be completed for some reason. There is no alternative measure available to protect this information, and no party is materially prejudiced by the sealing of this information.
25. The Liquidator notes that the First Settlement Approval Order contains a sealing provision in respect of the confidential appendix attached to the First Report. The sealing of that confidential appendix and Confidential Appendix “A” to this report can be lifted upon completion of the settlement under the Final Settlement Agreement. The Liquidator proposes to file a certificate with the Court upon completion of that settlement.
26. Upon approval of the Final Settlement Agreement, the other court orders referenced in paragraph 18 above will also be sought, preferably in writing in order to minimize costs and multiple court attendances.

VII. LIQUIDATOR’S CONCLUSIONS AND RECOMMENDATIONS

27. The Liquidator submits this Second Report to the Court in support of the Liquidator’s Motion for the relief as set out in its Notice of Motion and recommends that the Court grant such relief.

All of which is respectfully submitted at Toronto, Ontario this 21st day of April, 2023.

**KPMG Inc.,
in its capacity as Liquidator of
Pace Savings & Credit Union Limited
and not in its personal capacity**



Per: _____

Anamika Gadia
Senior Vice President

TAB A

Court File No. CV-22-00685736-00CL

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

THE HONOURABLE)	WEDNESDAY, THE 24TH
)	
JUSTICE CONWAY)	DAY OF AUGUST, 2022

IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION 240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED

**ORDER
(WINDING UP & APPOINTING LIQUIDATOR)**

THIS APPLICATION made by the Applicant, PACE Savings & Credit Union Limited (the “**Applicant**” or “**Credit Union**”), by its administrator, Financial Services Regulatory Authority of Ontario (“**FSRA**”), for an Order pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, c. 36, Sched. 7, as amended (the “**CUCPA**”) winding up the Credit Union and appointing KPMG Inc. (“**KPMG**”) as liquidator (in such capacity, the “**Liquidator**”) without security, of all of the remaining assets, undertakings and properties of the Credit Union was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mehrdad Rastan sworn August 17, 2022 (the “**Rastan Affidavit**”) and the Exhibits thereto and on hearing the submissions of counsel for FSRA, KPMG, Larry Smith, 1428245 Ontario Ltd., 809755 Ontario Ltd. and Phillip Smith (collectively,

the “**Recovery Litigation Parties**”), Peter Budd, and Frank Klees and on reading the consent of KPMG to act as the Liquidator,

1. THIS COURT ORDERS that the capitalized terms which are not defined herein have the meaning given to them in the Rastan Affidavit.

SERVICE

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

WINDING UP

3. THIS COURT ORDERS that the Credit Union be wound up pursuant to section 240 of the CUCPA and in accordance with the terms of this Order.

APPOINTMENT

4. THIS COURT ORDERS that, pursuant to section 240 of the CUCPA, KPMG is hereby appointed Liquidator, without security, of all of the remaining assets, undertakings and properties of the Credit Union, including all proceeds thereof (the “**Property**”).

LIQUIDATOR’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the relocating of Property to safeguard it and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Credit Union so far as may be necessary for the beneficial winding up of the Credit Union, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Credit Union;
- (d) without limiting the generality of (c), to manage, operate, and carry on the Prepaid Card Business so far as may be necessary for the beneficial winding up or transition of the Prepaid Card Business, including, without limitation, the authority to deal with the Prepaid Cardholder Amounts, which include any amounts held in one or more commercial accounts, at The Toronto-Dominion Bank or elsewhere, in the name of 1961783 Ontario Limited (the “**Prepaid Card Entity**”);
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the

Liquidator's powers and duties, including without limitation those conferred by this Order;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Credit Union and to exercise all remedies of the Credit Union in collecting such monies, including, without limitation, to enforce any security held by the Credit Union;
- (g) to settle, extend or compromise any indebtedness owing to the Credit Union;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of the Credit Union, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Credit Union, the Property or the Liquidator, including, without limitation, the Recovery Litigation and Other Ongoing Litigation, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$750,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to carry out a claims process for the purpose of identifying and determining claims against the Credit Union and/or its current and former directors and officers, as this Court may direct by further order made on not less than two weeks' notice to the Recovery Litigation Parties and to such other Persons as the Liquidator deems appropriate or this Court may direct;
- (n) to bring a motion for the power to borrow monies it may consider necessary or desirable for the purpose of carrying out its mandate under this Order, if

necessary, on such terms and upon such security over the Property as the Court may determine on such motion, which motion shall be brought on not less than two weeks' notice to the Recovery Litigation Parties and to such other Persons as the Liquidator deems appropriate or this Court may direct;

- (o) to report to, meet with and discuss with such affected Persons (as defined below), including, without limitation, FSRA, as the Liquidator deems appropriate on all matters relating to the Property and the winding up, and to share information with such Persons, subject to such terms as to confidentiality as the Liquidator deems advisable;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Liquidator, in the name of the Credit Union;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Credit Union, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Credit Union;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Credit Union may have, including, without limitation, with respect to the Prepaid Card Entity, as the Liquidator deems necessary or desirable in connection with the Prepaid Card Business;

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) after the monetization or other disposition of the Property, to distribute the proceeds thereof only in accordance with this Order or any subsequent order of this court,

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

LIQUIDATION NOMINATION AGREEMENT

6. THIS COURT ORDERS that the terms of the Liquidation Nomination Agreement between FSRA and KPMG dated August 17, 2022, appended as Exhibit “K” to the Rastan Affidavit, are hereby approved, and the Liquidator is hereby authorized and directed to perform the obligations thereunder.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

7. THIS COURT ORDERS that (i) the Credit Union, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Liquidator of the existence of any Property in such Person’s possession or control, shall grant

immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Credit Union, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the

purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

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

NO PROCEEDINGS AGAINST THE CREDIT UNION OR THE PROPERTY

11. THIS COURT ORDERS, subject to paragraph 12 of this Order, that no Proceeding against or in respect of the Credit Union or the Property shall be commenced or continued (including but not limited to the actions commenced by Ying Jiang against All Trans Financial Services Credit Union Limited in the Court of Queen’s Bench for Saskatchewan in Regina under Court File Q.B.G. 2024/14 and in the Supreme Court of British Columbia in Vancouver under Court File No. S-147229) except with the written consent of the Liquidator or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Credit Union or the Property are hereby stayed and suspended pending further Order of this Court.

12. THIS COURT ORDERS that nothing in this Order shall:

- (a) affect or in any way restrain the continuation of any of the proceedings or claims asserted, or the enforcement of any orders made, in the Recovery Litigation (including, but not limited to, the motions brought by the Recovery Litigation Parties relating to settlement enforcement, stay of the Recovery Litigation, and preservation of claims, which motions are pending in the Recovery Litigation), and any order made in the Recovery Litigation shall be binding on the Liquidator; or
- (b) affect the Order of this Court dated December 22, 2020 in proceedings bearing court file number CV-20-00651509-00CL between the Applicant (as Applicant) and Arn Reisler, 1428245 Ontario Ltd, Larry Smith, Phillip Smith and Mary Benincasa (as Respondents).

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Credit Union, the Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Liquidator or the Credit Union to carry on any business which the Credit Union is not lawfully entitled to carry on, (ii) exempt the Liquidator or the Credit Union from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE LIQUIDATOR

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Credit Union, without written consent of the Liquidator or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Credit Union or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Credit Union are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Liquidator, and that the Liquidator shall be entitled to the continued use of the Credit Union's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator in accordance with normal payment practices of the Credit Union or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

LIQUIDATOR TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the

Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, may be deposited into existing accounts in the name of the Credit Union, or with respect to the Prepaid Card Business, in the existing accounts at The Toronto-Dominion Bank or elsewhere, or into one or more new accounts to be opened by the Liquidator, all of which shall be held by the Liquidator to be distributed in accordance with the terms of this Order or any further Order of this Court.

PIPEDA

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

LIMITATION ON THE LIQUIDATOR'S LIABILITY

18. THIS COURT ORDERS that the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by any applicable legislation.

LIQUIDATOR'S ACCOUNTS

19. THIS COURT ORDERS that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements incurred in relation to the winding up and liquidation of the Credit Union (including in connection with this application), in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator and counsel to the Liquidator shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to validly perfected security interests on the Property existing as of the date of this Order.

20. THIS COURT ORDERS that the Liquidator and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

22. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.home.kpmg/ca/pacecu.

23. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Credit Union’s creditors or other interested parties at

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

GENERAL

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

25. THIS COURT ORDERS that nothing in this Order shall prevent the Liquidator from acting as a trustee in bankruptcy of the Credit Union.

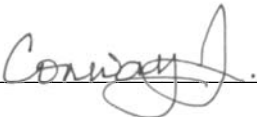
26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals,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

27. THIS COURT ORDERS that the Liquidator, or FSRA on behalf of the Credit Union, be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and

empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Liquidator from the Credit Union's estate with such priority and at such time as this Court may determine.

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



IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED
AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED
APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION 240 OF THE *CREDIT UNIONS AND CAISSES
POPULAIRES ACT, 2020*, S.O. 2020, C. 36, SCHED. 7, AS AMENDED

Court File No. CV-22-00685736-00CL

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

**Proceeding commenced at
Toronto**

**ORDER
(WINDING UP & APPOINTING LIQUIDATOR)**

FASKEN MARTINEAU DuMOULIN LLP

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Lawyers for the Administrator of the Applicant

TAB B

Court File No. CV-22-00685736-00CL

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

**IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED**

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

**APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED**

**FIRST REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF PACE SAVINGS & CREDIT UNION LIMITED**

JANUARY 27, 2023

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- Appendix B - Affidavit of Mehrdad Rastan sworn August 17, 2022
- Appendix C - PCU's Further Amended as Fresh-as-Amended Statement of Claim dated October 18, 2022
- Appendix D - Further Amended Statement of Defence, Counterclaim and Crossclaim of the Larry Parties dated October 26, 2022
- Appendix E - Statement of Defence, Counterclaim and Crossclaim of Phillip Smith dated July 8, 2021
- Appendix F - Phillip Smith's Statement of Claim dated October 7, 2019
- Appendix G - Statement of Defence, Counterclaim and Crossclaim of the Former Directors dated June 10, 2022
- Appendix H - Statement of Defence and Counterclaim of Brian Hogan dated March 25, 2021
- Appendix I - Amended Statement of Defence, Counterclaim and Crossclaim of the Klees Parties dated June 8, 2022
- Appendix J - PCU's Amended Statement of Claim dated August 5, 2022
- Appendix K - Statement of Defence of CUMIS dated October 12, 2022
- Appendix L - Redacted Former Directors Settlement Agreement dated December 1, 2022
- Appendix M - Redacted CUMIS Settlement Agreement dated December 1, 2022

I. INTRODUCTION

1. On August 24, 2022, PACE Savings & Credit Union Limited (“PCU” or the “**Credit Union**”) was ordered to be wound up pursuant to section 240 of the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA**”) by an Order (the “**Liquidation Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and KPMG Inc. (“**KPMG**”) was appointed as liquidator (in such capacity, the “**Liquidator**”) of all the remaining assets, undertakings and properties of PCU. A copy of the Liquidation Order is attached hereto as **Appendix “A”**.
2. Prior to the Liquidator’s appointment, on March 18, 2019, PCU commenced a claim in the Ontario Superior Court of Justice (Commercial List) bearing Court File No. CV-19-00616388-00CL against the former President and the former Chief Executive Officer (“**CEO**”) of the Credit Union (Larry and Phillip Smith), their associated corporations and affiliates, certain of the Credit Union’s former directors, and a number of other parties (the “**Claim Against Smiths et al**”).
3. On February 28, 2022, PCU also commenced an action bearing Court File No. CV-22-00677550 against CUMIS General Insurance Company (“**CUMIS**”) in relation to a claim detailed in a proof of loss filed by the Credit Union dated October 16, 2019 under a fidelity insurance coverage bond issued by CUMIS (the “**CUMIS Fidelity Bond**”), in respect of losses incurred by PCU in connection with various dishonest acts of the former President and CEO of the Credit Union (the “**CUMIS Fidelity Bond Claim**”).
4. The above claims of the Credit Union and all related counterclaims, crossclaims and third-party claims are referred to herein collectively as the “**Recovery Litigation**”.

II. PURPOSE OF REPORT

5. The purpose of this report, which is the Liquidator’s first report to the Court (the “**First Report**”) is to provide information to this Honourable Court in respect of:
 - a. Certain background on PCU;
 - b. The history of the Recovery Litigation and related mediation;

- c. Details of settlements that have been entered into by the Liquidator in relation to the Recovery Litigation; and
- d. The Liquidator's motion for orders substantially in the forms attached to the Liquidator's Notice of Motion seeking approval of the aforesaid settlements and ancillary relief.

III. TERMS OF REFERENCE

6. In preparing this First Report, the Liquidator has been provided with, and has relied upon, the books and records and other information of PCU, including unaudited financial information and information provided by former management, advisors, and the former administrator of the Credit Union (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in this First Report, the Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
7. Future oriented financial information reported or relied on in this First Report is based on assumptions regarding future events; actual results may vary from this forecast and such variations may be material.
8. Copies of the Liquidator's reports and all motion records and Orders in the liquidation proceedings are available on the Liquidator's website at <http://www.kpmg.com/ca/pacecu>.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

IV. BACKGROUND ON PCU

10. PCU was formerly an operating credit union headquartered in Vaughan, Ontario, which had approximately 34,000 members, 13 branches in the greater Toronto and surrounding area, and approximately \$900 million in assets on its balance sheet. The Credit Union is incorporated under the CUCPA and is regulated by the Financial Services Regulatory Authority of Ontario (“**FSRA**”).
11. Since September 28, 2018, and up until the Liquidator’s appointment, PCU was under administration by FSRA, formerly the Deposit Insurance Corporation of Ontario (“**DICO**”). The administration was initiated by DICO in response to, among other things, certain misconduct and regulatory breaches committed by the Credit Union's former President and CEO. The affidavit of Mehrdad Rastan, Executive Vice-President, Credit Union & Insurance Prudential of FSRA, sworn on August 17, 2022 (the “**Rastan Affidavit**”) in support of the motion brought by FSRA seeking the appointment of KPMG as Liquidator, sets out in further detail the background relating to the administration of the Credit Union. A copy of the Rastan Affidavit (without exhibits) is attached hereto as **Appendix “B”**.
12. As discussed in detail in the Rastan Affidavit, at the outset of the administration, it was DICO’s intent, in its capacity as administrator of the Credit Union (in such capacity, the “**Administrator**”¹), to resolve the governance issues which gave rise to the administration and return the Credit Union to a member-controlled governance in due course. For a number of reasons, including the onset of the COVID-19 pandemic, which are more particularly described in the Rastan Affidavit, the Administrator ultimately determined that the Credit Union’s financial position had deteriorated to such extent that it would not be possible to do so. Accordingly, the Administrator made the decision to pursue a purchase and assumption transaction for the Credit Union and a sale of PCU’s then wholly-owned subsidiary, Continental Currency Exchange (“**CCE**”), through separate but parallel competitive sale processes.

¹ FSRA succeeded DICO as administrator of PCU and accordingly, the defined term ‘Administrator’ also refers to FSRA in its capacity as administrator of the Credit Union.

13. On January 11, 2022, PCU, FSRA and DUCA Credit Union entered into a share purchase agreement in respect of the sale of all of the issued and outstanding share capital of CCE (the “**CCE Transaction**”). The CCE Transaction closed on March 31, 2022.
14. On April 20, 2022, PCU and FSRA entered into a purchase and assumption agreement (the “**Purchase and Assumption Agreement**”) with Alterna Savings and Credit Union Limited (“**Alterna**”). Pursuant to the Purchase and Assumption Agreement, Alterna acquired substantially all of the business and assets and assumed substantially all of the liabilities, member deposits and employees of the Credit Union except for certain excluded assets and liabilities (the “**Purchase and Assumption Transaction**”). The Purchase and Assumption Transaction closed on June 30, 2022. Alterna has agreed to provide certain transition services to PCU for a limited period of time. The services include various finance and accounting services and information technology services for the purposes of facilitating the Credit Union's dealing with its remaining assets and liabilities.
15. Following the completion of the Purchase and Assumption Transaction, PCU no longer had any active business operations (other than a small prepaid card business which is being wound down) and accordingly, for the reasons set out in the Rastan Affidavit, the Administrator sought the appointment of KPMG as Liquidator for purposes of dealing with the Credit Union’s remaining assets and liabilities and ultimately winding down the Credit Union.
16. The remaining assets and liabilities of the Credit Union include, among other things, proceeds from the CCE Transaction, the prepaid card business and related litigation, claims asserted in the Recovery Litigation, certain member deposits and accounts, certain loans, insurance claims or entitlements to proceeds of insurance, certain funds held in trust by the Credit Union for the benefit of former employees, and claims made in the winding-up proceedings of PACE Securities Corporation and its direct and indirect subsidiaries. Further details regarding PCU’s remaining assets and liabilities are provided in the Rastan Affidavit. In addition to the above, the investment, profit, and membership shareholdings of PCU’s approximately 34,000 members remain with the Credit Union.

V. RECOVERY LITIGATION

Background of the Recovery Litigation

Claim Against Smiths et al

17. Attached hereto as **Appendix “C”** is a copy of PCU’s Further Amended Fresh-as-Amended Statement of Claim dated October 18, 2022², commenced against Larry and Phillip Smith (the “**Smiths**”), their associated corporations and affiliates, certain of the Credit Union's former directors (the “**Former Directors**”) and a number of other parties who PCU alleges received improper benefits from the Credit Union. The Claim Against Smiths et al advances causes of action including breach of fiduciary duty, fraud, conspiracy, breach of contract and employment duties, breach of trust, knowing proceeds of breach of trust, conversion, unjust enrichment and negligence against the Smiths, the Former Directors, and the other parties.
18. Before issuing the claim, PCU sought and obtained an interim *Mareva* injunction against the Smiths. The Credit Union and the Smiths subsequently agreed to the terms of a permanent preservation order which was made on May 7, 2019, and remains in effect.
19. The defendants deny the allegations, and several have commenced counterclaims against PCU. The Smiths have commenced third-party claims against two of the Credit Union's former directors and Phillip Smith also brought a separate claim for wrongful dismissal against the Credit Union in September 2019. A copy of the Further Amended Statement of Defence, Counterclaim and Crossclaim of Larry Smith, 1428245 Ontario Ltd. and 809755 Ontario Limited (collectively, the “**Larry Parties**”) dated October 26, 2022³, is attached hereto as **Appendix “D”**. A copy of the Statement of Defence, Counterclaim and Crossclaim of Phillip Smith dated July 8, 2021, is attached hereto as **Appendix “E”**. A copy of Phillip Smith’s Statement of Claim dated October 7, 2019, is attached hereto as **Appendix “F”**. A copy of the Statement of Defence, Counterclaim and Crossclaim of the Former Directors dated June 10, 2022, is attached hereto as **Appendix “G”**. A copy of the Statement of Defence and Counterclaim of Brian Hogan dated March 25, 2021, is attached

² PCU’s Further Amended Fresh-as-Amended Statement of Claim dated October 18, 2022, has not yet been filed.

³ The Further Amended Statement of Defence, Counterclaim and Crossclaim of the Larry Parties dated October 26, 2022, has not yet been filed.

hereto as **Appendix “H”**. A copy of the Amended Statement of Defence, Counterclaim and Crossclaim of Frank Klees and Klees & Associated Ltd. (collectively, the “**Klees Parties**”) dated June 8, 2022, is attached hereto as **Appendix “I”**.

20. PCU has a directors and officers insurance policy (the “**D&O Policy**”) which provides coverage to every director or officer of the Credit Union in connection with any loss arising from a claim made against them for which they are not indemnified by PCU, up to a limit of \$15 million. It covers losses arising from “wrongful acts”, a term which includes breach of duty, neglect, and error. The D&O Policy also restricts coverage for claims brought by PCU, except where the claim is, *inter alia*, a derivative claim. The D&O Policy has a diminishing limit given that the defence costs of the directors and officers are covered under the policy.
21. Certain of the Credit Union’s former directors and officers (including the Smiths) sought coverage from CUMIS in respect of PCU’s claims against them for breach of duty and negligence. CUMIS denied defence coverage on the basis that the claim was brought by PCU itself. The directors and officers brought an application for coverage and in an endorsement dated May 18, 2021, the Court found that PACE’s claim was a derivative action, and that CUMIS is therefore obliged to defend the directors and officers. Although CUMIS has not formally conceded any obligation to indemnify under the D&O Policy, PCU has taken the position that CUMIS will be liable to the directors and officers for any damages award against them in favour of PCU in the Recovery Litigation, up to the remaining policy limit.

CUMIS Fidelity Bond Claim

22. The CUMIS Fidelity Bond provides fidelity insurance coverage with an effective date of January 1, 2018, and an expiry date of January 1, 2019. Pursuant to the terms of the CUMIS Fidelity Bond, CUMIS is liable to indemnify PCU for covered losses, which include losses resulting from dishonest or fraudulent acts of any director, employee, or contractor of the Credit Union to a maximum of \$10.025 million.
23. PCU had claimed the maximum amount available under the CUMIS Fidelity Bond pursuant to the CUMIS Fidelity Bond Claim. Prior to the settlement discussed further in this report, CUMIS had made a partial payment to PCU in the amount of approximately \$1

million. PCU commenced an action against CUMIS in relation to the unpaid portion of the CUMIS Fidelity Bond Claim. A copy of PCU's Amended Statement of Claim dated August 5, 2022, is attached hereto as **Appendix "J"**. A copy of CUMIS' Statement of Defence dated October 12, 2022, is attached hereto as **Appendix "K"**.

Status of the Recovery Litigation

24. The Recovery Litigation is currently pending before the Ontario Superior Court of Justice under three separate actions⁴. Pleadings have been exchanged between the parties, but documentary and oral discovery have not yet taken place.
25. The Smiths and the Former Directors brought motions to dismiss or permanently stay PCU's claims against them as an abuse of process on the basis of an alleged failure to immediately disclose settlement agreements that PACE entered into in 2020 and 2021 with other defendants in the Recovery Litigation (the "**Stay Motions**").
26. The Stay Motions were scheduled to be heard on December 19, 2022; however, as a result of scheduling issues, the Court vacated that date. The Stay Motions are now scheduled to be heard on March 20, 2023.

Efforts to Settle the Recovery Litigation and the Recent Mediation

27. The main parties to the Recovery Litigation agreed to participate in a mediation session before Larry Banack in an effort to try and settle all claims. The mediation took place on November 28 and 29 and December 1, 2022.
28. While a global settlement was not reached, the mediation did result in two settlements which are discussed further in this report. Larry Banack continues to have discussions with the non-settling parties regarding a potential global settlement.

VI. SETTLEMENTS IN THE RECOVERY LITIGATION

29. The mediation before Larry Banack resulted in a partial settlement of the Claim Against Smiths et al and a settlement of the CUMIS Fidelity Bond Claim as follows:

⁴ The main action bears Court File No. CV-19-00616388-00CL, the action against CUMIS bears Court File No. CV-22-00677550 and Phillip Smith's wrongful dismissal action bears Court File No. CV-19-00628710.

- a. A settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and the Former Directors (the “**Former Directors Settlement Agreement**”). A copy of the Former Director Settlement Agreement (redacted to remove the settlement amount) is attached hereto as **Appendix “L”**; and
- b. A settlement agreement dated December 1, 2022, between PCU, by the Liquidator, and CUMIS in respect of the CUMIS Fidelity Bond Claim (the “**CUMIS Settlement Agreement**”, and together with the Former Directors Settlement Agreement, the “**Settlement Agreements**”). A copy of the CUMIS Settlement Agreement (redacted to remove the settlement amount) is attached hereto as **Appendix “M”**.

The Former Directors Settlement Agreement

30. The Former Directors Settlement Agreement contains the following key terms⁵:
 - a. The Former Directors shall cause CUMIS to pay the Settlement Funds within 30 days following the effective date of the Former Directors Settlement Agreement;
 - b. On the effective date, the parties will enter into a full and final mutual release of the claims against the Former Directors which shall be held in escrow until PCU’s receipt of the Settlement Funds;
 - c. PCU will amend the Statement of Claim in the Recovery Litigation to remove the claims against the Former Directors and to clarify that any damages it is seeking from the Non-Settling Defendants do not include any amount apportionable to the fault or negligence of the Former Directors;
 - d. PCU will obtain orders dismissing the Recovery Litigation as against the Former Directors. The Former Directors will consent to dismissal of their counterclaim against PCU;
 - e. If requested by PCU, the Former Directors shall cooperate with counsel for PCU and/or the Liquidator in the prosecution of the Recovery Litigation against the Non-Settling Defendants, including by appearing and giving sworn evidence as witnesses at the trial of the Recovery Litigation as against the Non-Settling Defendants. PCU will pay the

⁵ Capitalized terms not defined herein have the meaning defined in the Former Directors Settlement Agreement.

- reasonable legal fees incurred by the Former Directors in connection with such cooperation;
- f. CUMIS will not rely on the inclusion of an obligation to provide evidence in paragraph 5 of the Former Directors Settlement Agreement to allege that it constitutes a basis for denial of coverage. Should PCU exercise any rights to obtain such evidence, CUMIS may allege that it constitutes a basis for denial of coverage and PCU will be free to allege it does not constitute such a breach;
 - g. The Liquidator will seek an order from the Court approving the terms of the Former Directors Settlement Agreement on notice to all of the parties to the Recovery Litigation and CUMIS. The Former Directors and CUMIS will consent to the order; and
 - h. PCU will disclose the existence and terms of the Former Directors Settlement Agreement to the Non-Settling Defendants as required by law and as necessary to obtain the Approval Order. The parties shall otherwise keep the existence and terms of the Former Directors Settlement Agreement confidential and shall not reveal its existence and terms except to their respective legal and financial advisors and insurers, or as otherwise required by law.

The CUMIS Settlement Agreement

31. The CUMIS Settlement Agreement contains the following key terms⁶:
- a. CUMIS shall pay the Settlement Funds from the CUMIS Fidelity Bond within 30 days following the effective date of the CUMIS Settlement Agreement;
 - b. On the effective date, the parties will enter into a full and final mutual release of the CUMIS Fidelity Bond Claim and any claims under the EPL Policy which shall be held in escrow until PCU's receipt of the Settlement Funds;
 - c. CUMIS agrees that it has waived or will waive any subrogation and/or recovery rights which arose or may otherwise arise under the terms of the CUMIS Fidelity Bond or the EPL Policy;

⁶ Capitalized terms not defined herein have the meaning defined in the CUMIS Settlement Agreement.

- d. PCU will obtain an order dismissing the action in relation to the Fidelity Bond Claim on a with-prejudice and without-costs basis; and
- e. PCU will seek an order from the Court approving the terms of the CUMIS Settlement Agreement. CUMIS will consent to the order.

Status of the Settlements

- 32. PCU's counsel in the Recovery Litigation, Lax O'Sullivan Lisus Gottlieb LLP, provided written notice of the Settlement Agreements, including a redacted copy of the Former Directors Settlement Agreement, to all defendants in the Recovery Litigation on December 1, 2022.
- 33. The Settlement Funds under the Settlement Agreements were paid by CUMIS to the Liquidator on December 22, 2022.
- 34. All releases under the Settlement Agreements have been exchanged.

Court Approval of the Settlement Agreements

- 35. The Liquidator is seeking Court approval of the Settlement Agreements pursuant to their terms.
- 36. Attached hereto as **Confidential Appendix "A"** is a summary of relevant information pertaining to the Liquidator's decision to enter into the Settlement Agreements.
- 37. In the view of the Liquidator, the terms of the Settlement Agreements are fair and reasonable, they provide substantial benefits to the Credit Union's stakeholders, and they are consistent with the purpose and spirit of the winding up provisions of the CUCPA.
- 38. The quantum of the Settlement Funds and other information contained in Confidential Appendix "A" are not being publicly disclosed. The Liquidator respectfully requests an order sealing Confidential Appendix "A" until further order of the Court to maintain its confidentiality during the pendency of the Claim Against Smiths et al. It contains commercially sensitive information, public disclosure of which would be materially prejudicial to the interests of PCU and its stakeholders, which have an interest in maximizing recoveries from those defendants who have not settled. There is no alternative

measure available to protect this information, and no party is materially prejudiced by the sealing of this information.

VII. LIQUIDATOR'S CONCLUSIONS AND RECOMMENDATIONS

39. The Liquidator submits this First Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion and recommends that the Court grant such relief.

All of which is respectfully submitted at Toronto, Ontario this 27th day of January 2023.

**KPMG Inc.,
in its capacity as Liquidator of
Pace Savings & Credit Union Limited
and not in its personal capacity**



Per: _____

Anamika Gadia
Senior Vice President

TAB C

Court File No. CV-22-00685736-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	WEDNESDAY, THE 8 TH DAY
)	
JUSTICE STEELE)	OF FEBRUARY, 2023

IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*,
S.O 2020, C.36, SCHED. 7, AS AMENDED

AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED
APPLICATION OF PACE SAVINGS & CREDIT UNION LIMITED UNDER SECTION
240 OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O. 2020, C. 36,
SCHED. 7, AS AMENDED

ORDER

THIS MOTION, made by KPMG INC. (“KPMG”), in its capacity as Court-Appointed Liquidator of Pace Savings & Credit Union Limited (the “**Liquidator**”), for an order approving certain settlement agreements and ancillary relief as described in the Notice of Motion, was heard this day via Zoom videoconference at Toronto, Ontario.

ON READING the First Report to the Court of the Liquidator dated January 27, 2023 and the appendices thereto (the “**First Report**”), and on hearing the submissions of counsel for the Liquidator and any other counsel listed on the counsel slip, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of A. Casella sworn January 27, 2023, filed:

SERVICE

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

APPROVAL OF SETTLEMENTS

2. **THIS COURT ORDERS** that the Former Directors Settlement Agreement (as defined in the First Report) is hereby approved.

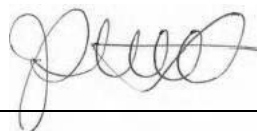
3. **THIS COURT ORDERS** that the CUMIS Settlement Agreement (as defined in the First Report) is hereby approved.

SEALING

4. **THIS COURT ORDERS** that Confidential Appendix "A" to the First Report shall be sealed and kept confidential subject to further order of this Court.

GENERAL

5. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.



IN THE MATTER OF THE *CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*, S.O 2020, C.36, SCHED. 7, AS AMENDED
AND IN THE MATTER OF PACE SAVINGS & CREDIT UNION LIMITED

Court File No. CV-22-00685736-00CL

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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**Lawyers for KPMG INC. in its capacity as
Court-Appointed Liquidator of Pace Savings &
Credit Union Limited**

TAB D

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made as of April 3, 2023, between PACE Savings & Credit Union Limited, by its Liquidator, KPMG Inc. (“**PACE**”) and Larry Smith, 1428245 Ontario Ltd., 809755 Ontario Ltd. (a.k.a. Elective Benefit Insurance Services), Phillip Smith, Malek Smith, 1916761 Ontario Ltd., 1724725 Ontario Ltd., Frank Klees, Klees & Associates Ltd., Ron Williamson, R. Williamson Consultants Limited, Ron Williamson Quarter Horses Inc., Brian Hogan, Joanna Whitfield (collectively, the “**Defendants**”), 2340938 Ontario Inc., CUMIS General Insurance Company (“**CUMIS**”) and Goodmans LLP (all individually, a “**Party**”, and collectively, the “**Parties**”).

WHEREAS PACE commenced an action bearing the Court File Number CV-19-00616388-00CL (the “**Recovery Action**”) on March 18, 2019, since amended, against the Defendants;

AND WHEREAS Ian Goodfellow, Wendy Mitchell, Neil Williamson, Pauline Wainwright, Deborah Baker, Brent Bailey, Jim Tindall, Peter Rebellati, Al Jones and George Pohl (together, the “**Settled Director Defendants**”) commenced an Application against CUMIS bearing the Court File Number CV-21-00658241-00CL on November 19, 2020;

AND WHEREAS Frank Klees and Klees and Associates Ltd. commenced an Application against CUMIS bearing the Court File Number CV-21-00658643-00CL on January 22, 2021;

AND WHEREAS Brian Hogan commenced an Application against CUMIS General Insurance Company bearing the Court File Number CV-21-00655627-00CL on January 26, 2021;

AND WHEREAS PACE commenced an Application for winding up and the appointment of a liquidator under Section 240 of the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, C.36, Sched. 7 as Amended bearing the Court File Number CV-22-00685736-00CL on August 18, 2022 (the “**Liquidation Application**”);

AND WHEREAS PACE commenced an action against CUMIS bearing the Court File Number CV-22-00677550-0000 on February 28, 2022;

AND WHEREAS Larry Smith, Phillip Smith, 1428245 Ontario Ltd., 809755 Ontario Ltd., Malek Smith, and/or 1916761 Ontario Ltd. hold certain banking accounts at PACE (the “**Smith Accounts**”);

AND WHEREAS the employment and consulting agreements between PACE and Larry Smith and Phillip Smith provided for the creation of severance trusts to be contributed to by PACE for the benefit of 1428245 Ontario Ltd. and Phillip Smith (the “**Severance Trusts**”);

AND WHEREAS Phillip Smith commenced an action bearing the Court File Number CV-19-00628710-0000 (the “**Wrongful Dismissal Action**”) on October 7, 2019;

AND WHEREAS PACE commenced an action against Larry Smith, Phillip Smith, Joanna Whitfield, and 2340938 Ontario Inc. bearing the Court File Number CV-18-00610186-000 (the “**2340 Action**”) on December 5, 2018;

AND WHEREAS CUMIS General Insurance Company (“**CUMIS**”) has issued a Directors’ & Officers’ Liability insurance policy, bearing the policy number 01501254, to PACE (the “**D&O Policy**”);

AND WHEREAS Larry Smith commenced an application bearing Court File No. CV-21-00655599-00CL (the “**Larry CUMIS Application**”) against CUMIS on January 26, 2021 for a declaration that, *inter alia*, CUMIS had a duty to defend Larry under the D&O Policy in the underlying litigation in the Recovery Action;

AND WHEREAS Phillip Smith commenced an application bearing Court File No. CV-21-00656590-00CL (the “**Phillip CUMIS Application**”) against CUMIS on February 8, 2021 for a declaration that, *inter alia*, CUMIS had a duty to defend Phillip under the D&O Policy in the Recovery Action;

AND WHEREAS the Honourable Justice Cavanagh issued a decision dated May 18, 2021 in the Larry and Phillip CUMIS Applications, determining that CUMIS had a duty to defend Larry and Phillip in the Recovery Action (the “**Cavanagh Decision**”);

AND WHEREAS CUMIS filed a Notice of Appeal in connection with the Cavanagh Decision bearing Court of Appeal for Ontario File No. C69567 on June 22, 2021 (the “**CUMIS Appeal**”);

AND WHEREAS Larry Smith and Phillip Smith commenced an action against CUMIS on April 19, 2022 bearing Court File Number CV-22-00679927-0000 in connection with claims made pursuant to the D&O Policy (the “**Smith CUMIS Action**” and, together with the 2340 Action, the Recovery Action, the Wrongful Dismissal Action, and all associated counterclaims, crossclaims and/or third party claims, the “**Litigation Claims**”);

AND WHEREAS CUMIS issued a fidelity insurance coverage policy, bearing the Policy Number 01501254, to PACE (the “**Fidelity Bond**” and, with the D&O Policy, the “**Insurance Policies**”);

AND WHEREAS CUMIS contributed funds from the Insurance Policies to the settlement of the Recovery Action and PACE has released claims against CUMIS relating to the Fidelity Bond;

AND WHEREAS CUMIS, Larry Smith and Phillip Smith have agreed to settle claims under the Larry CUMIS Application, the Phillip CUMIS Application, the Recovery Action, the Smith

CUMIS Action and the Insurance Policies, including any subrogated claims relating to the Insurance Policies, as part of this settlement;

AND WHEREAS PACE, until January 2022, was represented in its prosecution of the Litigation Claims by Goodmans LLP;

AND WHEREAS KPMG Inc. (in this capacity, the “**Liquidator**”) was appointed Liquidator of PACE by order of the Honourable Justice Conway dated August 24, 2022;

AND WHEREAS certain Defendants have brought motions to permanently stay or dismiss the Recovery Action, returnable March 20, 2023, on the alleged basis that PACE failed to disclose settlement agreements reached in that proceeding (“**Stay Motions**”);

AND WHEREAS PACE may have had certain claims against its former counsel Goodmans LLP arising from the Stay Motions (the “**Goodmans Claims**” and, collectively with the Litigation Claims, the “**Claims**”);

AND WHEREAS the Parties have engaged in arm’s-length, good faith negotiations to resolve the Claims;

AND WHEREAS the Parties have negotiated a settlement that will resolve the Claims;

AND WHEREAS PACE intends to seek an order from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) approving this Settlement Agreement;

NOW THEREFORE in consideration of the covenants set out below and the representations made in the Recitals above and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and subject to the provisions set out herein respecting Court approval of this Settlement Agreement, the Parties agree as follows:

1.

2.

3.

- 4.
- 5.
- 6.
7. All of the settlement funds referred to above in paragraphs 3, 4, 5, and 6 and the Mutual Release shall be held in escrow pending the receipt by all the Parties of the Mutual Release and the Approval Order, both as defined below.
8. On the effective date of this Settlement Agreement, the Parties and the Settled Director Defendants, except for Goodmans LLP, will enter into a full and final mutual release of the Claims (the “**Mutual Release**”), in the form attached hereto as Schedule “A”, or as counsel to the Parties, acting reasonably, shall otherwise agree. The Mutual Release shall be held in escrow until PACE’s receipt of the consideration described in paragraphs 1, 2 and 3 above, and Phillip Smith’s receipt of the consideration described in paragraph 5 above, including written confirmation from 1428245 Ontario Ltd. and Phillip Smith regarding the disclaimer of any interest in the Severance Trusts, and the Approval Order described below.
9. On the effective date of this Settlement Agreement, PACE and Goodmans LLP will enter into a full and final release of the Goodmans Claims, in a form as agreed to by counsel to PACE (by the Liquidator), and by Goodmans, acting reasonably. The Release shall be held in escrow until PACE’s receipt of the Goodmans Settlement Funds.
10. Nothing in this Settlement Agreement or Mutual Release shall affect or derogate from any obligations to cooperate with the Liquidator, in accordance with the liquidation order of the Honourable Justice Conway dated August 24, 2022, in the application bearing Court File No. CV-22-00685736-00CL.
11. PACE will obtain orders dismissing the Recovery Action and the 2340 Action, on a with-prejudice and without-costs basis. The order dismissing the Recovery Action shall include the dismissal of all associated counterclaims, crossclaims, and/or third-party claims. The Defendants shall consent to these dismissal orders.

12. PACE will consent to an order vacating the order of the Honourable Justice Conway dated May 7, 2019 made in connection with PACE's motion to extend the Preservation Order issued by the Honourable Justice Hainey on March 19, 2019.
13. The applicants and plaintiffs in proceedings bearing Court File Numbers CV-19-00616388-00CL, CV-21-00658241-00CL, CV-21-00658643-00CL, CV-21-00655599-00CL, CV-21-00656590-00CL, CV-21-00655627-00CL, CV-22-00679927-0000 or to any other proceedings instituted by any of the Parties in any way related to the matters addressed in such proceedings, with the exception of the Liquidation Application, shall obtain orders dismissing such proceedings without costs and deliver copies of such Orders to all other Parties and all such other Parties shall consent to such orders.
14. Phillip Smith will obtain an order dismissing the Wrongful Dismissal Action on a with-prejudice and without-costs basis.
15. The Liquidator will, at its expense, seek an order from the Court approving the terms of this Settlement Agreement (the "**Approval Order**"). The other Parties will consent to the Approval Order.
16. The Liquidator will disclose the existence and terms of this Settlement as required by law and as necessary to obtain the Approval Order. The Parties shall otherwise keep the existence and terms of this Settlement Agreement confidential, and shall not reveal its existence and terms except to their respective legal and financial advisors, or as otherwise required by law.
17. The Parties agree that they will not at any time publicly make any statement or comment (without limitation, directly to or likely to come to the attention of any media) relating to the matters addressed in this Settlement Agreement, of a negative nature or which could reasonably be considered to have an adverse impact on their respective business or reputations, provided that in no event will the foregoing limitation apply to compliance with subpoena or other legal process.
18. This Settlement Agreement and the documents referred to herein together constitute the entire agreement between the Parties with respect to the matter herein. The execution of this Settlement Agreement has not been induced by, nor do any of the Parties rely upon or regard as material, any representations, promises, agreements or statements whatsoever not incorporated herein and made a part hereof.
19. This Settlement Agreement shall be governed by, and will be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. The Parties hereby attorn to the jurisdiction of the Court in respect of any dispute arising from this Settlement Agreement.

20. No amendment, supplement, modification or waiver or termination of this Settlement Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the party to be bound thereby.
21. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement to be performed by such other Party.
22. Except as specified herein, each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with this Settlement Agreement and its implementation. However, nothing in this Settlement Agreement or the related Releases shall excuse the ongoing obligation of CUMIS for payment for defence costs through to final completion and implementation of these Agreements and the final disposition of the Court matters and reporting thereof as concerns each Defendant.
23. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of this Settlement Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed original counterpart of this Settlement Agreement.
24. The Settlement Agreement has been the subject of negotiations and discussions among the Parties. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Settlement Agreement shall have no force and effect.

IN WITNESS OF WHICH the Parties have executed this Settlement Agreement.

[signature pages follow]

**PACE Savings & Credit Union Limited, by
its liquidator, KPMG Inc.**

Anamika Gadia

ANAMIKA GADIA

Title: Senior Vice-President

I have the authority to bind the Corporation

CUMIS General Insurance Company

Name:

Title:

I have the authority to bind the Corporation

Larry Smith

1428245 Ontario Ltd.

Name:

Title:

I have the authority to bind the Corporation

**809755 Ontario Ltd. (a.k.a. Elective Benefit
Insurance Services)**

Name:

Title:

I have the authority to bind the Corporation

**PACE Savings & Credit Union Limited, by
its liquidator, KPMG Inc.**

ANAMIKA GADIA

Title: Senior Vice-President

I have the authority to bind the Corporation

CUMIS General Insurance Company



Name: Zack Fuerstenberg

Title: SVP & President of Credit Union and Specialty Markets

I have the authority to bind the Corporation

Larry Smith

1428245 Ontario Ltd.

Name:

Title:

I have the authority to bind the Corporation

**809755 Ontario Ltd. (a.k.a. Elective Benefit
Insurance Services)**

Name:

Title:

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**PACE Savings & Credit Union Limited, by
its liquidator, KPMG Inc.**

ANAMIKA GADIA

Title: Senior Vice-President

I have the authority to bind the Corporation

CUMIS General Insurance Company

Name:

Title:

I have the authority to bind the Corporation

Larry Smith



1428245 Ontario Ltd.



Name:

Title:

I have the authority to bind the Corporation

**809755 Ontario Ltd. (a.k.a. Elective Benefit
Insurance Services)**

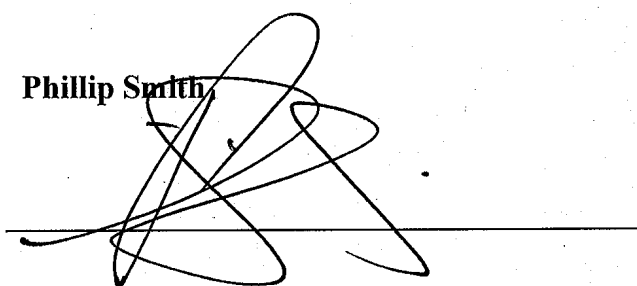


Name:

Title:

I have the authority to bind the Corporation

Phillip Smith

A large, stylized handwritten signature in black ink, appearing to be 'Phillip Smith', written over a horizontal line.

Malek Smith

1916761 Ontario Ltd.

Name:
Title:
I have the authority to bind the Corporation

1724725 Ontario Ltd.

Name:
Title:
I have the authority to bind the Corporation

Frank Klees

Klees & Associates Ltd.

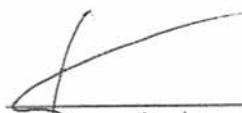
Name:
Title:
I have the authority to bind the Corporation

Phillip Smith

Malek Smith



1916761 Ontario Ltd.



Name: *Malek Smith*

Title: *President*

I have the authority to bind the Corporation

1724725 Ontario Ltd.

Name:

Title:

I have the authority to bind the Corporation

Frank Klees

Klees & Associates Ltd.

Name:

Title:

I have the authority to bind the Corporation

Phillip Smith

Malek Smith

1916761 Ontario Ltd.

Name:

Title:

I have the authority to bind the Corporation

1724725 Ontario Ltd.



Name: ALISON GOLANSKI

Title: OWNER

I have the authority to bind the Corporation

Frank Klees

Klees & Associates Ltd.

Name:

Title:

I have the authority to bind the Corporation

Phillip Smith

Malek Smith

1916761 Ontario Ltd.

Name:

Title:

I have the authority to bind the Corporation

1724725 Ontario Ltd.

Name:

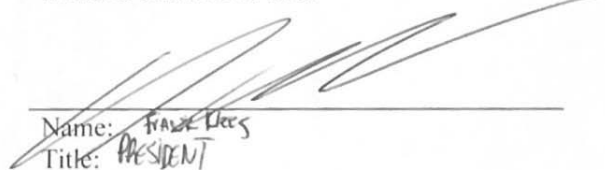
Title:

I have the authority to bind the Corporation

Frank Klees



Klees & Associates Ltd.



Name: **Frank Klees**


Title: **PRESIDENT**

I have the authority to bind the Corporation

Ron Williamson



R. Williamson Consultants Ltd.



Name:

Title:

I have the authority to bind the Corporation

Ron Williamson Quarter Horses Inc.



Name:

Title:

I have the authority to bind the Corporation

Brian Hogan

Joanna Whitfield

Ron Williamson

R. Williamson Consultants Ltd.

Name:
Title:
I have the authority to bind the Corporation

Ron Williamson Quarter Horses Inc.

Name:
Title:
I have the authority to bind the Corporation

Brian Hogan

Brian Hogan
Brian Hogan (Apr 9, 2023 13:56 EDT)

Joanna Whitfield

Ron Williamson

R. Williamson Consultants Ltd.

Name:

Title:

I have the authority to bind the Corporation

Ron Williamson Quarter Horses Inc.

Name:

Title:

I have the authority to bind the Corporation

Brian Hogan

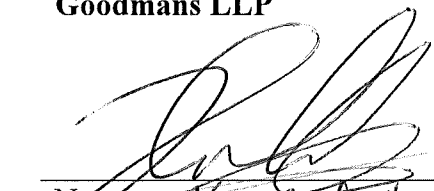
Joanna Whitfield

A handwritten signature in black ink, appearing to be 'JW', written over a horizontal line. The signature is stylized with loops and a long tail.

2340938 Ontario Inc.

Name:
Title:
I have the authority to bind the Corporation

Goodmans LLP



Name: *Ken Crofoot*
Title: *Partner and General Counsel*
I have the authority to bind the Partnership