

Court File No. CV-23-00701806-00CL

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

THE HONOURABLE)	WEDNESDAY, THE 29 th
)	
JUSTICE CONWAY)	DAY OF NOVEMBER, 2023
)	

BETWEEN:

TOBIAS IHDE

Applicant

- and -

DAMIVA INC.

Respondent

ANCILLARY ORDER

THIS MOTION, made by Zeifman Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, or all of the undertaking, property and assets of Damiva Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, (i) approving the fees and disbursements of the Receiver and its counsel, Aird & Berlis LLP (“**A&B**”); (ii) approving the sealing of certain confidential appendices of the Report (as defined below); (iii) approving the proposed distributions of the Receiver as set out in paragraph 5 of this Order; (iv) discharging Zeifman as Receiver of the undertaking, property and assets of the Debtor, subject to the conditions set out in paragraph 6 of this Order; and (v) releasing Zeifman from any and all liability, as set out in paragraph 7 of this Order, was heard this day via videoconference.

ON READING the Motion Record of the Receiver, the Report of the Receiver dated November 13, 2023 and the appendices thereto (the “**Report**”), the affidavits of the Receiver and

A&B as to fees, and on hearing the submissions of counsel to the Receiver, counsel to those parties listed on the counsel slip, and no one else appearing for any other interested person, although duly served as evidenced by the Affidavit of Service of Chistine Doyle as filed (the “**Affidavit of Service**”).

APPROVAL OF THE RECEIVER’S REPORT AND ACTIVITIES

1. **THIS COURT ORDERS** that the Report and the activities of the Receiver described therein are hereby approved provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS

2. **THIS COURT ORDERS** that the fees and disbursements of the Receiver with respect to the Debtor for the period to October 31, 2023 in the amount of CAD \$68,149.71 (including HST), are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver’s legal counsel, A&B, for the period to October 23, 2023, in the amount of CAD \$21,486.78 (including HST), and its estimated remaining fees and disbursements from October 24, 2023 to completion of the administration of the receivership, in the amount of CAD \$7500.00 (including HST), are hereby approved.

SEALING

4. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Report (as defined in the Report) be and are hereby sealed and shall not form part of the public record until the closing of the sale transaction contemplated by an Agreement of Purchase and Sale dated October 16, 2023 between the Receiver and 1000657239 Ontario Limited.

DISTRIBUTIONS

5. **THIS COURT ORDERS** that, subject to maintaining sufficient reserves to satisfy the priority claims described in the Report and to complete the administration of the receivership, the Receiver is authorised to pay:

- (a) the unpaid fees of the Receiver and A&B, as approved by this Court;
- (b) the amount of CAD \$60,000 and USD \$6,000 due under Receiver's Certificate (as defined in the Order of the Honourable Justice Koehnen dated June 30, 2023), to Tobias Ihde, plus accrued interest; and
- (c) remaining amounts to Tobias up to amounts owed to him as a secured creditor of the Debtor.

DISCHARGE OF RECEIVER

6. **THIS COURT ORDERS** that upon the Receiver filing a certificate substantially in the form attached as Schedule "A" hereto (the "**Receiver's Discharge Certificate**") certifying that it has completed the other activities described in the Report and all matters to be attended to in connection with the receivership have been provided for to the satisfaction of the Receiver, Zeifman shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided, however, that, notwithstanding its discharge herein, (a) Zeifman shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the Receivership, and (b) Zeifman shall continue to have the benefit of the provisions of all Orders made in the receivership proceedings, including all approvals, protections and stays of proceedings in favour of Zeifman in its capacity as Receiver.

7. **THIS COURT ORDERS AND DECLARES** that, effective upon filing of the Receiver's Discharge Certificate pursuant to paragraph 6 of this Order, Zeifman is hereby released and discharged from any and all liability that Zeifman now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Zeifman while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part.

Without limiting the generality of the foregoing, Zeifman is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

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

9. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

Schedule “A” – Form of Receiver’s Discharge Certificate

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TOBIAS IHDE

Applicant

- and -

DAMIVA INC.

Respondent

RECEIVER’S DISCHARGE CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the “**Court**”) dated June 30, 2023, Zeifman Partners Inc. (“**Zeifman**”) was appointed as the receiver (the “**Receiver**”), without security, of the undertaking, property and assets of Damiva Inc. (the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.

B. Pursuant to an Order of the Court dated November 29, 2023 (the “**Discharge Order**”), Zeifman was discharged as Receiver effective upon the filing by the Receiver with the Court of a certificate confirming that the Receiver has completed the activities described in the Report and all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES that the Receiver has completed all activities described in the Report and all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver.

ZEIFMAN PARTNERS INC., solely in its capacity as the Court-appointed Receiver of Damiva Inc., and not in its personal capacity or in any other capacity

By: _____
Name:
Title:

TOBIAS IHDE
Applicant

-and-

30
DAMIVA INC.
Respondent

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Proceedings commenced at Toronto

ANCILLARY ORDER

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