

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

B E T W E E N:

PILLAR CAPITAL CORP.

Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, c. C-43, AS AMENDED

**NOTICE OF MOTION
(returnable June 25, 2021)**

MNP Ltd. (“MNP”), in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”), will make a motion via videoconference to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 25, 2021, at 12:30 p.m., or as soon after. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by emailing amanda.campbell@dentons.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto as **Schedule “B”**, for the following relief:

- (a) authorizing and approving a distribution to Pillar Capital Corp. (“**Pillar**”) from the sale proceeds (the “**Sale Proceeds**”) generated from the closing of the transaction (the “**Transaction**”) contemplated in the asset purchase agreement between the Receiver and Chelsea Property Holdings Inc. (the “**Chelsea APA**”) dated May 31, 2021, in an amount sufficient to repay to Pillar: (i) all remaining amounts owing by Turuss in respect of accrued interest and fees, and (ii) all remaining amounts owing by the Receiver pursuant to the Receiver’s borrowings, as set out in the Sixth Report of the Receiver dated June 1, 2021 (the “**Sixth Report**”);
 - (b) authorizing and approving a distribution by the Receiver to Kuo-Tong Hsieh (“**Hsieh**”) from the Sale Proceeds, in respect of all remaining amounts owing to Hsieh on account of accrued interest and fees (if any), as set out in the Sixth Report;
 - (c) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP (“**Dentons**”), as set out in the Sixth Report, the fee Affidavit of Jerry Henechowicz sworn May 20, 2021 (the “**Henechowicz Affidavit**”) and the fee Affidavit of Robert Kennedy sworn May 31, 2021 (the “**Kennedy Affidavit**”);
 - (d) approving the interim statement of receipts and disbursements dated May 19, 2021 (the “**R&D**”); and
 - (e) such further and other relief as counsel may request and this Honourable Court deems just.
2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to that term pursuant to the Sale Process (as defined herein).

THE GROUNDS FOR THE MOTION ARE:

Background

3. On June 1, 2021, the Receiver filed a motion record in support of an Order to, among other things:
- (a) authorize and approve the Transaction contemplated by Chelsea APA, and authorize the Receiver to take the necessary steps to close the Transaction;

- (b) authorize and approve the Pillar Distribution (as defined in the Sixth Report) and the Limited Hsieh Distribution (as defined in the Sixth Report), together with an authorization and approval to distribute such further funds to Hsieh on account of proper interest and fees, from the Sale Proceeds (collectively, the “**Distribution Approval**”);
 - (c) approve the fees and disbursements of the Receiver and Dentons as set out in the Sixth Report, the Henechowicz Affidavit and the Kennedy Affidavit (the “**Fee Approval**”); and
 - (d) approving the R&D (the “**R&D Approval**”).
4. On June 7, 2021, the Court issued an Order (“**Approval and Vesting Order**”) which, among other things:
- (a) authorized and approved the Transaction and authorized the Receiver to execute the Chelsea APA;
 - (b) vested in the Purchaser all of Turuss’ right, title, benefit and interest in and to the Purchased Assets described in the Chelsea APA, including the lands legally described in Schedule B1 to the Approval and Vesting Order, but excluding the lands legally described in Schedule B2 to the Approval and Vesting Order, shall vest absolutely in Chelsea Property Holdings Inc.;
 - (c) vested in Chelsea Developments Corp. all of Turuss’ right, title, benefit and interest in and to the lands legally described in Schedule B2 to the Approval and Vesting Order;
 - (d) authorized and directed the Receiver to make a principal only distribution to:
 - (i) Pillar for the following amounts:
 - A. \$2,124,275.86, representing the principal amount indicated in the Pillar Capital Payout statement dated May 21, 2021 (“**Pillar Payout Statement**”), on account of the demand credit facility; and

- B. \$599,959.94, representing the principal amount indicated in the Pillar Payout Statement on account of the Receiver's borrowings;
- (ii) Hsieh for the following amount:
 - A. \$550,000, representing the principal amount indicated in the Hsieh payout statement dated December 21, 2020 on account of the mortgage facility.
- 5. The Court adjourned the balance of the Receiver's motion, on seven (7) days prior notice in order to ensure the service list has a sufficient period of time to review the Sixth Report and related materials, to authorize and approve:
 - (a) the balance of the Distribution Approval (being the fees and interest amounts claimed by Pillar and Hsieh);
 - (b) the Fee Approval; and
 - (c) the R&D Approval.
- 6. Attached hereto as **Schedule "C"** is a copy of Justice Dunphy's endorsement dated July 7, 2021.

Other Grounds

- 7. Rules 1.04, 2.03, 3.02, 16.08 and 37 of the *Rules of Civil Procedure* (Ontario).
- 8. Section 243 of the *Bankruptcy and Insolvency Act* (Canada).
- 9. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- 10. The Sixth Report; and
- 11. Such further and other material as counsel may advise and this Court may permit.

DATE: June 17, 2021

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Robert Kennedy (LSO #474070)

Tel: (416) 637-6756

Fax: (416) 863-4592

robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)

Tel: 416-863-4760

daniel.loberto@dentons.com

Lawyers for the Receiver

TO: SERVICE LIST

SERVICE LIST
(as at April 13, 2021)

TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place Suite 1600, 100 King Street West Toronto, ON M5X 1G5</p> <p>Thomas Gertner Tel: (416) 369-4618 thomas.gertner@gowlingwlg.com</p> <p>Angelica Wilamowicz Tel: (416) 862-3618 angelica.wilamowicz@gowlingwlg.com</p> <p><i>Lawyers for the Applicant, Pillar Capital Corp.</i></p>
AND TO:	<p>TURUSS (CANADA) INDUSTRY CO., LTD. 60 Industrial Park Road / 60 Queen Street North Chesley, ON N0G 1L0</p> <p>Yang Jiang Tel: (905) 212-9929 jiangyang818@gmail.com</p> <p><i>Respondent</i></p>
AND TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto, ON M5K 0A1</p> <p>Robert Kennedy Tel: (416) 863-4511 robert.kennedy@dentons.com</p> <p>Daniel Loberto Tel: (416) 863-4760 daniel.loberto@dentons.com</p> <p><i>Lawyers for MNP Ltd., in its capacity as Court-appointed Receiver of Turuss (Canada) Industry Co., Ltd.</i></p>

AND TO:	<p>MNP LTD. 111 Richmond Street West Toronto, ON M5H 2G4</p> <p>Jerry Henechowicz Tel: (416) 515-3924 Jerry.Henechowicz@mnp.ca</p> <p>Michael Litwack michael.litwack@mnp.ca</p> <p><i>Court-appointed Receiver of Turuss (Canada) Industry Co., Ltd.</i></p>
AND TO:	<p>BRUCE POWER INC. Bruce Power Law Division, B10 06E, Room 6000E 177 Tie Road, R.R. #2 P.O. Box 1540, Building B 10 Tiverton, ON N0G 2T0</p> <p>Ford Thompson Tel: 1 (519) 386-2491 ford.thompson@brucepower.com</p>
AND TO:	<p>DEPARTMENT OF JUSTICE Ontario Regional Office Tax Law Services Division The Exchange Tower 130 King St. West, Suite 3400, Box 36 Toronto, ON M5X 1K6</p> <p>Diane Winters Tel: (416) 973-3172 diane.winters@justice.gc.ca</p>
AND TO:	<p>MINISTRY OF FINANCE Legal Services Branch 33 King Street West, 6th Floor P.O. Box 327, Stn. A Oshawa, ON L1H 8H5</p> <p>Insolvency.Unit@ontario.ca</p> <p>Leslie Crawford (Law Clerk) Leslie.Crawford@ontario.ca</p>

AND TO:	ASKIT LAW 675 Cochrane Drive, Suite 502N Markham, ON L3R 0B8 Yao Zhang Tel: (416) 900-1091, ext. 100 yzhang@askitlaw.com <i>Lawyers for Kuo-Tong-Hsieh, the Second Mortgagee</i>
AND TO:	YANG JIANG 9 Highview Crescent Richmond Hill, ON L4B 2T6 jiangyang818@gmail.com
AND TO:	DEVRY SMITH FRANK LLP 95 Barber Greene Road, Suite 100 Toronto, ON M3C 3E9 Oren Chaimovitch Tel: (416) 446-3342 Fax: (416) 449-7071 Oren.chaimovitch@devrylaw.ca <i>Lawyers to Emix Ltd., the Landlord of Turuss (Canada) Industry Co., Ltd. o/a Total Hardwood Flooring</i>
AND TO:	DALIAN NATURAL WOOD INDUSTRY CO., LTD. 2-3 Zhengang Rpad Baoshui District Dalian City, Liaoning Province China Tina Li naturalwood001@126.com

AND TO:	<p>HEARTLAND PAYMENT SYSTEMS, A GLOBAL PAYMENTS COMPANY</p> <p>Tiffany Cardakovic (Loss Investigator) Tel: 1 (866) 976-7219 tiffany.cardakovic@e-hps.com</p> <p>Kate Novitzky kate.novitzky@globalpay.com</p> <p>James Hodges james.hodges@e-hps.com</p>
AND TO :	<p>DICKINSON WRIGHT LLP 199 Bay Street, Suite 2200 Commerce Court West Toronto, ON M5L 1G4</p> <p>Harry Bhandal Tel: (416) 644-2871 Fax: (844) 670-6009 HBhandal@dickinsonwright.com</p> <p>David Preger DPreger@dickinson-wright.com</p> <p><i>Lawyers for Westmount Park Investments Inc.</i></p>

Email List

robert.kennedy@dentons.com; daniel.loberto@dentons.com; thomas.gertner@gowlingwlg.com;
angelica.wilamowicz@gowlingwlg.com; jiangyang818@gmail.com;
Jerry.Henechowicz@mnp.ca; michael.litwack@mnp.ca; ford.thompson@brucepower.com;
diane.winters@justice.gc.ca; Insolvency.Unit@ontario.ca; Leslie.Crawford@ontario.ca;
yzhang@askitlaw.com; Oren.chaimovitch@devrylaw.ca; naturalwood001@126.com;
tiffany.cardakovic@e-hps.com; kate.novitzky@globalpay.com; james.hodges@e-hps.com;
HBhandal@dickinsonwright.com; DPreger@dickinson-wright.com

Schedule “A” – Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://dentons.zoom.us/j/97986334783?pwd=MmM0Qit5bzBnc29ZakZ3eIN2VEN1dz09>

Meeting ID: 979 8633 4783

Passcode: 155918

Dial by your location

+1 613 209 3054 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

855 703 8985 Canada Toll-free

Schedule "B" - Draft Order

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

THE HONOURABLE

)

MONDAY, THE 25th

JUSTICE DUNPHY

)

DAY OF JUNE, 2021

)

BETWEEN:

PILLAR CAPITAL CORP.

Applicant

-and-

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE
ACT*, R.S.O. 1990, c. C-43, AS AMENDED

ORDER

THIS MOTION, made by MNP Ltd., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”), for an order:

- a) authorizing and approving a distribution to Pillar Capital Corp. (“**Pillar**”) from the sale proceeds (the “**Sale Proceeds**”) generated from the closing of the transaction contemplated in the asset purchase agreement between the Receiver and Chelsea Property Holdings Inc. dated May 31, 2021, in an amount sufficient to repay to Pillar: (i) all remaining amounts owing by Turuss in respect of accrued interest and fees, and (ii) all remaining amounts owing by the Receiver pursuant to the Receiver’s borrowings, as set out in the Sixth Report of the Receiver dated June 1, 2021 (the “**Sixth Report**”);

- b) authorizing and approving a distribution by the Receiver to Kuo-Tong Hsieh (“**Hsieh**”) from the Sale Proceeds, in respect of all remaining amounts owing to Hsieh on account of accrued interest and fees (if any), as set out in the Sixth Report;
- c) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP (“**Dentons**”), as set out in Sixth Report, the fee Affidavit of Jerry Henechowicz sworn May 20, 2021 (the “**Henechowicz Affidavit**”) and the fee Affidavit of Robert Kennedy sworn May 31, 2021 (the “**Kennedy Affidavit**”);
- d) approving the interim statement of receipts and disbursements dated May 19, 2021 (the “**R&D**”); and
- e) such further and other relief as counsel may request and this Honourable Court deems just.

was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Receiver dated June 1, 2021 (the “**Motion Record**”), the Affidavit of Jerry Henechowicz sworn May 20, 2021 and Affidavit of Robert Kennedy sworn May 31, 2021 (collectively, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Amanda Campbell sworn June ●, 2021, filed:

DISTRIBUTIONS

1. **THIS COURT ORDERS** that the Receiver is authorized and directed to make a further and final distribution to Pillar in an amount sufficient to repay to Pillar all remaining amounts owing by the Receiver to Pillar pursuant to the Receiver’s borrowings and all remaining amounts owing by Turuss to Pillar (including accrued interest, fee and expense amounts), as set out in the Sixth Report.

2. **THIS COURT ORDERS** that the Receiver is authorized and directed to make such further distributions to Hsieh on account of the interest, fee and other cost claims of Hsieh that the Receiver determines to be reasonable and proper, as set out in the Sixth Report.

RECEIVER'S ACTIVITIES

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Sixth Report and the Fee Affidavits, are hereby approved and the Receiver is hereby authorized to pay any unpaid fees and disbursements herein approved.

4. **THE COURT ORDERS** that the Receiver's R&D are hereby approved.

PILLAR CAPITAL CORP.
Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.
Respondent

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

PROCEEDING COMMENCED AT TORONTO

DISTRIBUTION ORDER

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario M5K 0A1

Robert Kennedy (LSO #474070)
Tel: (416) 367-6756
Fax: (416) 863-4592
robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)
Tel: (416) 863-4760
daniel.loberto@dentons.com

Lawyers for the Receiver

Schedule "C" - Endorsement of Justice Dunphy dated July 7, 2021

Loberto, Daniel

From: Dunphy, Mr. Justice Sean (SCJ) <Sean.Dunphy@scj-csj.ca>
Sent: Monday, June 7, 2021 4:09 PM
To: Loberto, Daniel; Kennedy, Robert; Jerry Henechowicz; thomas.gertner@gowlingwlg.com; DPreger@dickinson-wright.com; jiangyang818@gmail.com
Cc: Ng, Daisy (JUD); JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: RE: Pillar Capital Corp. v. Turuss (Canada) Industry Co., Ltd. (CV-20-00646729-00CL) - Revised Order

[WARNING: EXTERNAL SENDER]

Style of Cause:

Court File No.: CV-20-00646729-00CL ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) BETWEEN: PILLAR CAPITAL CORP. Applicant - and - TURUSS (CANADA) INDUSTRY CO ., LTD. Respondent APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43, AS AMENDED

Counsel:

DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Robert Kennedy (LSO #474070) Tel: (416) 367-6756 Fax: (416) 863-4592 robert.kennedy@dentons.com Daniel Loberto (LSO # 79632Q) Tel: (416) 863-4760 daniel.loberto@dentons.com Lawyers for the Receiver
GOWLING WLG (CANADA) LLP 1 First Canadian Place Suite 1600, 100 King Street West Toronto, ON M5X 1G5 Thomas Gertner Tel: (416) 369-4618 thomas.gertner@gowlingwlg.com Lawyers for the Applicant, Pillar Capital Corp.
TURUSS (CANADA) INDUSTRY CO ., LTD. 60 Industrial Park Road / 60 Queen Street North Chesley, ON NOG 1L0 Yang Jiang Tel: (905) 212-9929 jiangyang818@gmail.com Respondent
Thomas Gertner (Gowling WLG (Canada) LLP) for the Applicant

David Preger (Dickinson Wright LLP) for Westmount Park Investments Inc., Chelsea Property Holdings Inc., and Chelsea Developments Corp.

Endorsement: This motion record is dated June 1, 2021 and was served electronically upon the service list. The effective notice was thus three business days. It contains no hyperlinked index nor were bookmarks preserved in the pdf copy of the motion record when downloaded. This presents a problem because at 366 pages, the motion record contains a large number of documents and the task of finding and reviewing documents referenced in an affidavit is tedious and time consuming if one is relegated to searching for needles in haystacks.

There is good news and bad news in this proposed transaction. The good news is that the price obtained will be sufficient to retire the secured debt. The bad news is that the price obtained will be sufficient to retire the secured debt. This means that the checks and balances in other aspects of the process are, unfortunately, muted or absent. The receiver seeks approval of its own receipts and disbursements including its own and its counsel's professional fees. Where such fees have been scrutinized by secured creditors zealous to minimize the shortfall they will suffer, the lack of opposition by the secured creditor(s) provides the court with a good indicator as to the reasonableness of the fees and disbursements presented for approval. That factor is absent here.

The same holds true for the claims of both secured creditors for their own expenses. Subsequent creditors in the hierarchy may not have realized that they are the fulcrum creditors. While they would realize that seeing the motion record, the fact that this was short-served, lengthy and un-indexed gives me no confidence that other stakeholders have had a reasonable chance to review and reflect upon the breadth of the relief sought here.

Accordingly, I am going to adjourn those aspect of the motion before me to a date later in June that deal with approval of receipts and disbursements including professional fees of the Receiver or any secured creditors; approval of any

charges other than principal to be paid to secured creditors. The Receiver is directed to send to the Service List a copy of this endorsement, a notice of return of motion specifying the remaining items of relief being sought made returnable before me on a date to be arranged with the Commercial List office and a copy of today's motion record with a properly hyperlinked index to facilitate finding documents within. The return date shall be at least seven days after the date of electronic service.

I shall not be granting a blanket approval of all activities of the Receiver as sought so that particular item need not be considered adjourned. Such blanket approvals are in the nature of belts and suspenders and add nothing to the specific approvals being sought. I cannot be taken as approving matters that are neither material to the specific approvals sought nor about which no issue has been brought to my attention.

The foregoing being said, I *am* prepared to move ahead today with approval of the sale agreement and the related vesting order and the distributions of PRINCIPAL to the two secured creditors from closing proceeds. The size of the principal claim of both secured creditors has been known and disclosed to the service list from the beginning. The security opinion in favour of the first secured creditor at least has been disclosed since the beginning. There is no indication that any stakeholder has taken issue with the legitimacy or validity of either secured claim. It makes sense to stop as much of the interest clock as possible as soon as possible. I shall approve the payment of their principal claims out of the closing proceeds.

The junior stakeholders have neither seen nor had a chance to analyze the various fees and disbursements claimed in addition to the principal amount of the debt. That is not to cast aspersions upon the legitimacy of such claims but merely to observe that as judge I do not have the benefit of the views of the fulcrum creditor with a financial interest in the reasonableness of the claims I am being asked to approve. Allowing a fair opportunity for the service list to review the motion materials before the return date of the second half of today's motion will give them that opportunity and provide me with a sounder foundation for moving forward.

I am also satisfied that it is reasonable for me to approve the sale agreement and vesting order at this time. The sales process has been thorough and court approval at each material step along the way has been sought. I have a high degree of comfort that the transaction before me is commercially reasonable and has been the product of a professional and thorough process. Time is always of the essence in getting transactions such as this completed. Junior stakeholders have long been aware that this was coming and none have voiced objection for the process (or such objections as have been voiced have been dealt with in prior attendances).

I shall therefore approve the two principal distributions in addition to approving the sale agreement and its related vesting order. I have asked for some minor variations to be made to the form and have signed the draft submitted to me with those changes. The signed order is attached hereto. The balance of the relief sought is therefore adjourned to be brought back before me on at least one week's notice to be served upon the service list with the information noted above.

S.F. Dunphy J.

Justice Sean F. Dunphy
Superior Court of Justice
361 University Avenue
Toronto, ON
M5G 1T3

PILLAR CAPITAL CORP.
Applicant

- and -

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Respondent

**ONTARIO
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PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(returnable June 25, 2021)

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario M5K 0A1

Robert Kennedy (LSO #474070)
Tel: (416) 367-6756
Fax: (416) 863-4592
robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)
Tel: (416) 863-4760
daniel.loberto@dentons.com

Lawyers for the Receiver