

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

ZURICH INSURANCE COMPANY LTD.

Plaintiff

- and -

2442931 ONTARIO INC, BONDFIELD CONSTRUCTION COMPANY LIMITED,
JOHN AQUINO, VASOS GEORGIOU and
UNITY HEALTH TORONTO

Defendants

**REPORT OF ERNST & YOUNG INC., AS COURT-APPOINTED MONITOR OF
BONDFIELD CONSTRUCTION COMPANY LIMITED REGARDING PRODUCTION
MATTERS**

July 28, 2020

INTRODUCTION

- 1 On March 5, 2019, Bondfield Construction Company Limited (“**BCCL**”) and certain affiliates (the “**Applicants**”) filed an application (the “**CCAA Application**”) seeking an Initial Order pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”) to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs.
- 2 The principal operating entity among the Applicants is BCCL.
- 3 On March 6, 2019, the CCAA Application was adjourned.

- 4 On April 3, 2019, the Court granted an Initial Order (the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. as monitor (in such capacity, the “**Monitor**”) of BCCL, among others.
- 5 On April 16, 2020, a Statement of Claim was issued in the above noted proceedings against, among others BCCL (the “**Zurich Claim**”). The Monitor consented to lift the stay of proceedings granted in the Initial Order solely for the purpose of accepting services of the Zurich Claim and for the purpose of producing relevant documents. The stay of proceedings remains applicable to any further steps against BCCL in connection with the Zurich Claim.
- 6 The parties to the Zurich Claim have agreed to a discovery plan (the “**Discovery Plan**”), which provides for the exchange of documentary production no later than July 31, 2020.
- 7 The Monitor and the Monitor’s counsel have assisted BCCL in connection with the document production contemplated by the Discovery Plan.

PURPOSE

- 8 The purpose of this report is to provide information to the parties to the Zurich Claim and to the Court on the status of BCCL’s documentary production pursuant to the Discovery Plan and certain issues related to the production of documents by BCCL.

TERMS OF REFERENCE AND DISCLAIMER

- 9 Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this report concerning the Applicants and their business is based on the information obtained from BCCL and its representatives, and not independent factual determinations made by the Monitor.

DOCUMENTARY PRODUCTION BY BCCL

- 10 On July 9, 2020, the Monitor delivered a discovery process summary to the parties to the Zurich Claim (the “**Discovery Process Summary**”). In the Discovery Process Summary, the Monitor advised that, given BCCL’s insolvency, the Monitor is assisting BCCL with

the production of BCCL's documents responsive to the issues in the Zurich Claim. The Monitor engaged the services of Ernst & Young LLP, Forensic and Integrity Services and Discovery Services ("EY"), to assist with the collection and review of BCCL's information.

- 11 A copy of the Discovery Process Summary is attached hereto as Appendix "A".
- 12 To date, the Monitor has collected data from three of BCCL's servers and the following custodians listed in the Discovery Process Summary (as well as two additional custodians) and expects to be able to produce relevant documents on or prior to July 31, 2020 from this data based upon the search methodology described in the Discovery Process Summary:
 - (a) John Aquino
 - (b) Domenic DiPede
 - (c) Michael Solano
 - (d) Sha Ali-Shaik
 - (e) BCCL Development (additional custodian)
 - (f) Benny Weinstock (additional custodian)
- 13 The three servers from which this information was collected are:
 - (a) Document server: BCCLFS2B
 - (b) Document Server: BCCLFS3B
 - (c) Document Server: BCCLFS4B
- 14 As described in the Discovery Process Summary, EY has applied various search terms, de-duplication and email threading processes to seek to identify only relevant information. Relevant date ranges were also applied to individual custodian data. Additional search terms were used to identify and segregate potentially privileged documents. In aggregate,

following these processes, a total of approximately 107,000 potentially relevant documents remain and will be produced.

- 15 In addition to the above custodian data, the Monitor's counsel has reviewed 35 boxes of files from the BCCL offices or that BCCL had sent to storage. The Monitor's counsel and EY reviewed BCCL's index of records (both in storage and at BCCL's offices) and selected boxes for review based on a reference to "SMH" or "St. Michael's Hospital" appearing in the index. From those files, approximately 750 potentially relevant documents were identified and will be produced.

REMAINING INFORMATION TO BE REVIEWED

- 16 The Monitor, together with its counsel and EY, have diligently taken steps to collect relevant information from BCCL's records. However, the process has been time consuming for a number of reasons.

General Matters Arising From Bondfield Insolvency

- 17 BCCL and the Monitor face unique challenges in this litigation process as: (i) the Monitor has no independent knowledge of those matters discussed in the Zurich Claim that occurred prior to the Monitor's appointment; (ii) many BCCL employees with knowledge of the subject matter of the Zurich Claim are no longer employed by BCCL; (iii) BCCL's remaining resources are limited due to its current financial position and the intention to wind down operations; (iv) information technology issues have resulted in the failure and/or delay of attempts to extract information from BCCL's email archiver; and (v) proposed search terms for available information have not successfully limited the data set to a manageable volume at this time.
- 18 As noted above, the Monitor has not been able to complete the collection and review of data for 10 custodians listed in the Discovery Process Summary, as there have been delays extracting the data from BCCL's email archiver. Beginning in early July, EY noted that the export of emails from BCCL's email archiver for one custodian was taking several days to run and then resulted in errors. Upon investigation with Barracuda, the vendor of BCCL's email archiver, it was determined that BCCL's email archiver was using an

outdated version of Barracuda's firmware and that needed to be updated. The firmware was updated during the week of July 13th. Following that maintenance, the export of data from the email archiver again failed. EY was advised by BCCL's technical support that the archiver's search index needed to be reprocessed. Following that maintenance on or around July 20, 2020, the archiver has been able to export some files, although the process is still time consuming. The result of these delays is that data for the following custodians has not been collected or reviewed:

- (a) Steven Aquino
- (b) Manuela Mendoza
- (c) Ed Grisolia
- (d) Robert D'Errico
- (e) Mike Diodati
- (f) Ajith Lokuge
- (g) Petrit Mebelli
- (h) Roham Pourmatin
- (i) Abhay Vaid
- (j) Elvira Uidila

- 19 The Monitor is not able to provide an estimate of the time for delivery of this remaining custodian data as the timing will be determined by the speed at which information can be extracted from the archiver, which cannot be accurately predicted and may take a number of days for each custodian.

Deletion Event

- 20 As described in the Twelfth Report of the Monitor, dated April 12, 2020, BCCL's email archives were the subject of a targeted deletion of approximately 4,600 separate messages

in September 2015 (the “**Deletion Event**”). The Deletion Event focused upon email correspondence containing the terms ‘BCCLDevelopment’; ‘gp8.ca’; vas.georgiou’; and ‘Vas Georgiou’.

- 21 The Deletion Event may limit the Monitor’s ability to identify documents that could be relevant to this matter. The Monitor has not yet identified any alternative sources of the deleted information.
- 22 Pursuant to an Order of Justice Hailey granted on April 13, 2020, the Monitor was authorized to conduct an investigation of the Deletion Event, among other things.
- 23 The Monitor has concluded that there is no evidence at this time of deletions from BCCL’s email archives other than the Deletion Event.
- 24 As part of the Monitor’s investigation, the Monitor promptly sought to engage in discussions with parties who may have information regarding the Deletion Event, including current and former BCCL employees.
- 25 As a result of the Monitor’s investigations, the Monitor has recently learned that, at and prior to the time of the Deletion Event, BCCL employees used Blackberry devices for their email and other wireless services and that data from those devices was processed through BCCL’s Blackberry servers (the “**Blackberry Servers**”) that are still in the possession of BCCL’s information technology consultant.
- 26 EY has located two Blackberry Servers and is currently processing the data from those Blackberry Servers. However, the steps to process and review that information are extensive due to the format of the data on the servers and the requirement to manually search that data.
- 27 The Monitor does not have definitive information on the contents of the Blackberry Servers at this time. Specifically, while the Blackberry Servers do appear to contain text message data, EY has not yet identified any email correspondence stored on the Blackberry Servers.
- 28 The Monitor estimates that a preliminary review of the data on the Blackberry Servers may be completed by July 31st but cannot provide certainty on the timing to complete a full

review of this information at this time. The Monitor will provide a further update to the parties on the status of this review when material updates are available.

- 29 The Monitor's investigations related to the Deletion Event have not resulted in the identification of any additional sources of information beyond the Blackberry Servers.

Information from Counsel to Bondfield

- 30 Bondfield is in discussions with its counsel regarding the production of certain additional potentially relevant documents. While efforts are being undertaken to collect this information, such information may not be available before July 31st. The Monitor will provide a further update to the parties on the status of this information when material updates are available.

All of which is respectfully submitted this 28th day of July, 2020.

ERNST & YOUNG INC.

Solely in its role as Court-appointed Monitor

of the Bondfield Construction Company Limited, and not in its personal capacity

Per:

A handwritten signature in dark ink, appearing to read "Alex Morrison", with a stylized flourish at the end.

Alex Morrison, CPA, CA

Senior Vice President

Appendix “A”

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DISCOVERY PROCESS OF BONDFIELD CONSTRUCTION COMPANY LIMITED

Bondfield Construction Company Limited (**BCCL**), together with 352021 Ontario Limited, 950504 Ontario Inc, 2433485 Ontario Inc. and 2433486 Ontario Inc. (collectively the **Bondfield Group**) obtained an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **CCAA**) on April 3, 2019. The initial order, among other things, appointed Ernst & Young Inc. as the CCAA Monitor (the **Monitor**) and granted a stay of proceedings. The stay of proceedings has been extended by various order to January 22, 2021.

Given BCCL's insolvency, the Monitor is assisting BCCL with the production of BCCL documents responsive to the issues in this action. The Monitor has engaged the services of Ernst & Young LLP (**EY**), Forensic and Integrity Services and Discovery Services, with the collection and review of BCCL data.

The Monitor consented to lift the stay of proceedings solely for the purpose of accepting service of the Statement of Claim in these proceedings and for the purpose of producing relevant documents. The stay of proceedings remains applicable to any further steps against BCCL in connection with these proceedings.

A. Custodians

The following current and former BCCL employees and consultants have been identified as sources of potentially relevant data.

Employee	Position at BCCL
John Aquino (former)	Former President, 2014 – October 2018 Vice President, 2000 – 2014
Domenic DiPede (former)	Former Chief Financial Officer, April 2014 – July 2018 Controller, 2004 – 2014
Steve Aquino	Current President, BCCL – October 31, 2018 to date Vice President of BCCL – 2014 – October 2018
Michael Solano (former)	Various finance and IT roles, 1989 -2017
Ed Grisolia (former)	VP Design & Build
Sha Ali Shaik (former)	Estimator
Manuela Mendoza	Marketing/Proposal Manager
Robert D'Errico (former)	Design Manager
Mike Diodati (former)	Proposal Writer
Ajith Lokuge	VP Estimating and Procurement
Petrit Mebelli (former)	Senior Estimator
Roham Pourmatin (former)	Senior Project Manager
Abhay Vaid (former)	Project Manager
Elvira Uidila	Site Office Manager

B. Sources of Data Canvassed

EY is collecting email exports for the above custodians from the Bondfield Group email archiver from December 2012 to the present. EY has also obtained an email export of the BCCLDevelopments@bondfield.com email account from the Bondfield Group email archiver.

Based on input received from BCCL employees, EY will conduct a targeted review of the Bondfield Group server for documents relating to the SMH Project. Relevant documents will be collected.

BCCL has identified some boxes that may contain potentially relevant documents relating to the SMH Project. The indexes of the contents of these boxes will be reviewed to identify any potentially relevant documents. Any documents identified will be scanned, coded and loaded into Relativity for review and production (subject to potential claims of privilege).

C. Search Methodology

All data identified will be loaded into Relativity hosted by EY. EY will apply various strategies to cull the data, including the de-duplication of emails, the application of search terms and email threading. Relevant date ranges will be applied to individual custodian data based on the custodian's involvement in the matters at issue in the action.

Based on input from BCCL employees, EY will also apply various search terms to identify potentially privileged BCCL documents, and those documents will be withheld from review and production.

Additional reasonable and proportionate search methodologies will be considered as appropriate in the circumstances, including specifically BCCL's insolvency.

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Court File No. CV-20-639601-00CL

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Proceeding commenced at TORONTO

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