

Estate File No.: 32-2338424  
Court File No.: 32-2338424

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CON-KER CONSTRUCTION CORPORATION**

**MOTION RECORD**  
(re extension of time to file a proposal)  
(returnable February 27, 2018)

February 22, 2018

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton** (LSUC #21592F)  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Lawyers for Con-Ker Construction  
Corporation**

**TO: THE ATTACHED SERVICE LIST**

**SERVICE LIST**  
(as of February 22, 2018)

<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10<sup>th</sup> Floor Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b> Tel: (416) 218-1129 Fax: (416) 218-1849 Email: harvey@chaitons.com</p> <p><b>Lawyers for Con-Ker Construction Corporation</b></p>	<p><b>CROWE SOBERMAN INC.</b> 2 St. Clair Avenue East, Suite 1100 Toronto, ON M4T 2T5</p> <p><b>Hans Rizarri</b> Tel: (416) 963-7175 Fax: (416) 964-6454 Email: hans.rizarri@crowesoberman.com</p> <p><b>Julia Reznichenko</b> Tel: (416) 963-7154 Email: julia.reznichenko@crowesoberman.com</p> <p><b>Graeme Hamilton</b> Tel: (416) 963-7140 Email: graeme.hamilton@crowesoberman.com</p> <p><b>Proposal Trustee</b></p>
<p><b>AIRD &amp; BERLIS LLP</b> 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p><b>Miranda Spence</b> Tel: (416) 865-3414 Fax: (416) 863-1515 Email: mspence@airdberlis.com</p> <p><b>Lawyers for the Proposal Trustee</b></p>	<p><b>THE REGIONAL MUNICIPALITY OF HALTON</b> Legal Services 1151 Bronte Road Oakville, ON L6M 3L1</p> <p><b>Hayley Watts</b> Tel: (905) 825-6000 ext 7123 Fax: (905) 825-8838 Email: Hayley.watts@halton.ca</p>
<p><b>DEPARTMENT OF JUSTICE</b> The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p><b>Diane Winters</b> Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca</p> <p><b>Lawyers for Canada Revenue Agency</b></p>	<p><b>MINISTRY OF FINANCE: LEGAL SERVICES BRANCH</b> 777 Bay Street, 11<sup>th</sup> Floor Toronto, ON M5G 2C8</p> <p><b>Kevin O'Hara</b> Tel: (416) 327-8463 Fax: (416) 325-1460 Email: kevin.ohara@ontario.ca</p>

<b>FRANK FUSILLO</b> Email: conker@bellnet.ca	<b>DINO MARCHIONI</b> Email: conker1@bellnet.ca
<b>KOSKIE MINSKY LLP</b> 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3  <b>Jeffrey Long</b> Tel: (416) 595-2125 Fax: (416) 204-2892 Email: jlong@kmlaw.ca  <b>Lawyers for the Regional Municipality of Peel</b>	<b>BORDEN LADNER GERVAIS LLP</b> Bay Adelaide Centre, East Tower, 22 Adelaide Street West Toronto, ON M5H 4E3  <b>James MacLellan</b> Tel: (416) 367-6592 Fax: (416) 367-6749 Email: JMACLELLAN@blg.com  <b>Lawyers for Echelon Insurance</b>
<b>TANDET NATIONALEASE LTD.</b> 1351 Speers Road Oakville, ON L6L 2X5	<b>STUART BUDD &amp; SONS LTD.</b> 2454 South Service Road West Oakville, ON L6L 5M9
<b>WEST YORK CHEVROLET OLDSMOBILE LEASING INC.</b> 1785 St. Clair Avenue West Toronto, ON M6N 1J6	<b>ROYAL BANK OF CANADA</b> 180 Wellington Street West Business Service Group Toronto, ON M5J 1J1
<b>JOHN DEERE FINANCIAL INC.</b> 3430 Superior Court Oakville, ON L6L 0C4	<b>JOHN DEERE CANADA ULC</b> 1001 Champlain Avenue, Suite 401 Burlington, ON L7L 5Z4
<b>FORD CREDIT CANADA LEASING A DIVISION OF CANADIAN ROAD LEASING COMPANY</b> PO Box 2400 Edmonton, AB T5J 5C7	<b>DAIMLER TRUCK FINANCIAL/ MERCEDES-BENZ FINANCIAL SERVICES CORPORATION</b> 2680 Matheson Blvd., Suite 500 Mississauga, ON L4W 0A5
<b>MERIDIAN ONECAP CREDIT CORP.</b> Suite 1500, 4710 Kingsway Burnaby, BC V5H 4M2	<b>CATERPILLAR FINANCIAL SERVICES LIMITED</b> 5575 North Service Road, Suite 600 Burlington, ON L7L 6M1
<b>CATERPILLAR FINANCIAL SERVICES LIMITED</b> 3457 Superior Court, Unit 2 Oakville, ON L6L 0C4	

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CON-KER CONSTRUCTION CORPORATION**

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**TAB      DOCUMENT**

1	Notice of Motion returnable February 27, 2018
2	Affidavit of Dino Marchioni sworn February 22, 2018
A	Certificate of Filing of the NOI
3	Draft Order

# **TAB 1**

Estate File No.: 32-2338424  
Court File No.: 32-2338424

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CON-KER CONSTRUCTION CORPORATION**

**NOTICE OF MOTION**  
(re extension of time to file a proposal)  
(returnable February 27, 2018)

**CON-KER CONSTRUCTION CORPORATION** (“**Con-Ker**” or the “**Company**”) will make a motion to a Judge of the Commercial List on February 27, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

- (a) an order abridging the time for service of this notice of motion and the Company’s motion record so that the motion is properly returnable on Tuesday February 27, 2018;
- (b) an order extending the time for filing a proposal to April 13, 2018; and
- (c) such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. Con-Ker is an Ontario corporation carrying on business in the construction industry from its registered office in Oakville, Ontario.
2. On January 29, 2018, Con-Ker filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”). Crowe Soberman Inc. was appointed as Con-Ker’s proposal trustee (the “**Proposal Trustee**”).
3. The Company is currently completing work on two large construction projects for municipalities (the “**Ongoing Projects**”). Echelon Insurance (“**Echelon**”) has issued bonds in connection with the Ongoing Projects.
4. Con-Ker has experienced significant cash flow problems as a result of owner delays in certain construction projects, which impacted the Company’s working capital and ability to pay its creditors .
5. Construction liens have been registered by subtrades in connection with the Ongoing Projects. Con-Ker is no longer receiving payments from the owners for work performed on the Ongoing Projects, and it has insufficient funds available to complete the remaining work. The Company also does not have the financial ability to pay or bond off the construction liens.
6. Echelon is in negotiations with another contractor about the possibility of it taking over the Ongoing Projects. It has been proposed that the contractor would assume all liabilities relating to the Ongoing Projects, and would be entitled to collect all outstanding receivables and the balance of the contract prices.

7. In addition to the Ongoing Projects, the Company has holdbacks and other receivables, equipment, and litigation in various stages. Con-Ker intends to continue its efforts to collect outstanding receivables that are not related to the Ongoing Projects, liquidate its owned equipment and the equity in its leased equipment, and continue to prosecute certain litigation claims, all in an effort to generate realizations that can serve as a fund to be distributed to the Company's creditors under a proposal.
8. The time period for the Company to file a proposal under the BIA expires on February 28, 2018.
9. The Company is requesting an extension of this time period, which will allow it to continue with its efforts to realize on its assets for the benefit of the Company's creditors.
10. The Company will have sufficient funds available to it to meet its current obligations up to April 13, 2018.
11. The requested extension will not unduly prejudice any of the Company's creditors.
12. The Company is acting in good faith and with due diligence in connection with its NOI proceeding.
13. The Company will likely be able to make a viable proposal if the extension is granted.
14. The Proposal Trustee supports the Company's requested extension.
15. The Affidavit of Dino Marchioni sworn February 22, 2018 (the "**Marchioni Affidavit**") and the exhibits thereto.
16. The First Report of the Proposal Trustee, to be filed (the "**First Report**").



17. Section 50.4(9) of the BIA.
18. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
19. The equitable and inherent jurisdiction of the Court.
20. Such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Marchioni Affidavit and the exhibits thereto;
2. The First Report; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

February 22, 2018

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

E-mail: harvey@chaitons.com

**Lawyer for Con-Ker Construction  
Corporation**

**TO: THE SERVICE LIST**

# **TAB 2**

Estate File No.: 32-2338424  
Court File No.: 32-2338424

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CON-KER CONSTRUCTION CORPORATION**

**AFFIDAVIT OF DINO MARCHIONI  
(sworn February 22, 2018)**

I, DINO MARCHIONI, of the Town of Oakville, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am Vice-President of Con-Ker Construction Corporation ("**Con-Ker**" or the "**Company**"), and as such, I have knowledge of the matters contained in this affidavit. The facts set out below are based on my personal knowledge, are determined from the face of the documents attached hereto as exhibits, and are from information and advice provided to me by others. Where I have relied upon such information and advice, I have identified the source of the information and advice and verily believe it to be true.

2. On January 29, 2018, Con-Ker filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. Crowe Soberman Inc. was appointed as Con-Ker's proposal trustee (the "**Proposal Trustee**"). A copy of the certificate of filing of the NOI is attached hereto and marked as **Exhibit "A"**.

3. This affidavit is sworn in a support of a motion by Con-Ker for an order extending the time for filing a proposal to April 13, 2018.

### **BUSINESS AND OPERATIONS**

4. Con-Ker is an Ontario corporation with a registered office in Oakville, Ontario. The officers and board of directors of Con-Ker are comprised of myself and Frank Fusillo. Frank and I each directly or indirectly own 50% of Con-Ker.

5. Con-Ker has carried on business in the construction industry since 1994, specializing in sewer, road, and watermain works for municipalities and others. The Company carries on business from a leased facility located at 860 Progress Court, Oakville, Ontario.

6. In addition to myself and Frank, as at January 29, 2018, the Company employed ten (10) unionized employees represented either by International Union of Operating Engineers, Local 793 or LiUNA Local 183, and two (2) non-unionized employees. During busy periods, Con-Ker often has up to forty (40) employees working on construction jobs. Con-Ker does not maintain or contribute to any pension plan for its employees.

7. The Company is currently completing work on a large project on the James Snow Parkway for the Regional Municipality of Halton, and another in Streetsville for the Regional Municipality of Peel (the “**Ongoing Projects**”). Echelon Insurance (“**Echelon**”) has issued bonds in connection with the Ongoing Projects.

## **FINANCIAL DIFFICULTIES**

8. During the past several years, Con-Ker has experienced significant cash flow problems as a result of owner delays in certain construction projects, which impacted the Company's working capital and ability to pay its creditors.

9. Because of the liquidity issues, the Company sold certain properties and mortgaged others to obtain additional financing to continue in business. Frank and I have also advanced approximately \$3.0 million each to the Company, and obtained security on May 10, 2017 with respect to these advances.

10. A number of construction liens have been registered by subtrades in connection with the Ongoing Projects, and other subtrades have indicated that they intend to register construction liens. As a result, Con-Ker is no longer receiving payments from the owners for work performed on the Ongoing Projects, and it has insufficient funds available to complete the remaining work. The Company also does not have the financial ability to pay or bond off the construction liens.

11. I understand from discussions with Echelon that it has received a number of claims under the bonds which it will need to respond to. I believe it is unlikely that Echelon will retain Con-Ker to complete the remaining work on the Ongoing Projects.

## **RESTRUCTURING PLAN**

12. I understand from discussions with Echelon that it has been in negotiations with another contractor about the possibility of it taking over the Ongoing Projects. It has been proposed that the contractor would assume all liabilities relating to the Ongoing Projects, and would be entitled to collect all outstanding receivables and the balance of the contract prices.



13. In the event that an arrangement can be finalized with the contractor, this would reduce the amount of claims that creditors have against Con-Ker.

14. In addition to the Ongoing Projects, the Company has holdbacks and other receivables, equipment, and litigation in various stages. Con-Ker intends to continue its efforts to collect outstanding receivables that are not related to the Ongoing Projects, liquidate its owned equipment and the equity in its leased equipment, and continue to prosecute certain litigation claims, all in an effort to generate realizations that can serve as a fund to be distributed to the Company's creditors under a proposal.

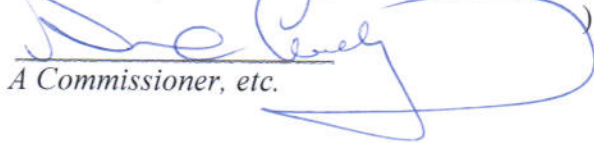
15. I have been informed by Sam Rappos of Chaitons LLP, Con-Ker's lawyers, that unless an extension is granted by the Court, the Company is required to file a proposal by no later than February 28, 2018, otherwise it will be deemed to be bankrupt. The Company is requesting an extension of this time period, which will provide additional time to Echelon and the contractor to complete discussions with respect to the Ongoing Projects, and for the Company to realize on its assets for the benefit of the Company's creditors.

16. I have confirmed with the Proposal Trustee that the Company will have sufficient funds available to it to meet its current obligations up to April 13, 2018. I believe that the requested extension will not unduly prejudice any of the Company's creditors, and that the Company is acting in good faith and with due diligence in connection with its NOI proceeding.

17. I have been informed by the Proposal Trustee that it will be filing a report with the Court that states its support of the Company's requested extension of the time period to file a proposal.

18. I swear this affidavit in support of Con-Ker's motion and for no other or improper purpose.

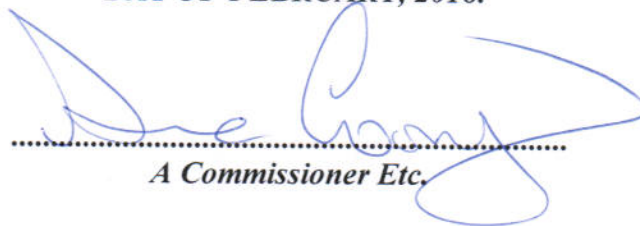
**SWORN BEFORE ME** in the Town of )  
Oakville, Province of Ontario, )  
this 22<sup>nd</sup> day of February, 2018. )

  
A Commissioner, etc.

  
**DINO MARCHIONI**

**Anne Patricia Corrigan, a Commissioner, etc.,  
Province of Ontario, for Mary Anne Kril Legal  
Services Professional Corporation.  
Expires June 26, 2020.**

*THIS IS EXHIBIT "A" TO THE  
AFFIDAVIT OF DINO MARCHIONI  
SWORN BEFORE ME THIS 22<sup>nd</sup>  
DAY OF FEBRUARY, 2018.*



.....  
*A Commissioner Etc.*

Anne Patricia Corrigan, a Commissioner, etc.,  
Province of Ontario, for Mary Anne Krill Legal  
Services Professional Corporation.  
Expires June 26, 2020.





Industry Canada

Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant  
des faillites Canada

District of        Ontario  
Division No.    07 - Hamilton  
Court No.       32-2338424  
Estate No.      32-2338424

In the Matter of the Notice of Intention to make a  
proposal of:

**CON-KER CONSTRUCTION CORPORATION**

Insolvent Person

**CROWE SOBERMAN INC.**

Licensed Insolvency Trustee

Date of the Notice of Intention:                      January 29, 2018

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: January 29, 2018, 15:09

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

# TAB 3

Estate File No.: 32-2338424  
Court File No.: 32-2338424

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE	)	TUESDAY, THE 27 <sup>th</sup> DAY
	)	
JUSTICE	)	OF FEBRUARY, 2018

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CON-KER CONSTRUCTION CORPORATION**

**ORDER**

**THIS MOTION**, made by Con-Ker Construction Corporation (“**Con-Ker**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Affidavit of Dino Marchioni sworn February 22, 2018 and the exhibits thereto, the First Report of Crowe Soberman Inc. in its capacity as proposal trustee (the “**Proposal Trustee**”) dated February 2●, 2018, and on hearing the submissions of counsel to Con-Ker, counsel to the Proposal Trustee, ●, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of Antoinette De Pinto sworn February 2●, 2018, filed,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record of Con-Ker is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION**

2. **THIS COURT ORDERS** that the time for Con-Ker to file a proposal is hereby extended in accordance with subsection 50.4(9) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, to and including April 13, 2018.

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CON-KER CONSTRUCTION CORPORATION**

Court File No. 32-2338424

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at TORONTO

**MOTION RECORD**  
**(re extension of time to file a**  
**proposal returnable February 27,**  
**2018)**

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario  
M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: 416-218-1129  
Fax: 416-218-1849  
E-mail: harvey@chaitons.com

**Lawyers for Con-Ker Construction Corporation**