

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

BETWEEN:

**THIRD EYE CAPITAL CORPORATION**

Applicant

- and -

**RESSOURCES DIANOR INC. / DIANOR RESOURCES INC.**

Respondent

**APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

**FACTUM OF THE APPLICANT**

**(Re: Receivership Application Returnable August 20, 2015)**

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**ONTARIO  
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**APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

**FACTUM OF THE APPLICANT**

**PART I - OVERVIEW**

1. Third Eye Capital Corporation. ("**Third Eye**") brings this application for the appointment of Richter Advisory Group Inc. ("**Richter**") as receiver (herein, the "**Receiver**") over the respondent Ressources Dianor Inc. / Dianor Resources Inc. (the "**Debtor**") under section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**")<sup>1</sup> and section 101 of the *Courts of Justice Act* (the "**CJA**")<sup>2</sup>. All capitalized terms used but not defined in this factum shall have the meanings given to them in the affidavit of Arif N. Bhalwani sworn August 19, 2015 (the "**Bhalwani Affidavit**")<sup>3</sup>.

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<sup>1</sup> R.S.C., 1985, c. B-3.

<sup>2</sup> R.S.O. 1990, c. c.43.

<sup>3</sup> Bhalwani Affidavit at para. 2.

2. In and around August 2010, Third Eye loaned approximately \$2 million to the Debtor (the “**Loan**”) under a term credit facility (the “**Credit Facility**”) established pursuant to a Credit Agreement (the “**Credit Agreement**”) dated August 28, 2010. Third Eye holds security over substantially all of the Debtor’s assets to secure the Debtor’s indebtedness.<sup>4</sup>

3. The Credit Facility has matured and all amounts outstanding thereunder – totalling \$5,454,897.92 as at August 18, 2015 (including principal and accrued interest) – are now due and payable in full. The Debtor has defaulted under the terms of the Credit Agreement by, among other things, failing to pay all outstanding amounts when due. Third Eye is contractually entitled to the appointment of the Receiver. On August 6, 2015, Third Eye delivered a demand letter to the Debtor to demand payment of all amounts outstanding under the Credit Agreement (the “**Demand Letter**”) and a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the “**244 Notice**”).<sup>5</sup>

4. So far as Third Eye is aware, the Debtor has been inactive for a number of years. It generates no revenues and has no ongoing operations, and therefore has no realistic prospect of repaying the Loan. As the Debtor’s major secured creditor, Third Eye has the primary economic interest in the Debtor. A court-appointed receiver with the ability to borrow funds from Third Eye to fund the receivership proceedings is required to take control of the Debtor to preserve the value of the Debtor’s assets for all of the Debtor’s stakeholders.<sup>6</sup>

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<sup>4</sup> Bhalwani Affidavit at paras. 4, 9, 15, and 23.

<sup>5</sup> Bhalwani Affidavit at paras. 5, 6, 7, 21, 31, 66, 72, 73, and 78.

<sup>6</sup> Bhalwani Affidavit at paras. 7, 12, 53, and 76.

5. It is “just and convenient” to appoint a Receiver to preserve the assets of the Debtor, prevent the dissipation of those assets through lack of care and maintenance for the benefit of all of the Debtor’s stakeholders.<sup>7</sup>

## PART II - THE FACTS

6. The facts of this application are more fully set out in the Bhalwani Affidavit.

### A. Overview of the Parties

#### i. Third Eye

7. Third Eye is a company existing under the laws of the Province of Ontario. As described in greater detail below, Third Eye is a major secured creditor of the Debtor and has security over all of the Debtor’s real and personal property.<sup>8</sup>

#### ii. The Debtor

8. The Debtor is a corporation existing under the laws of the province of Québec. It is a reporting issuer whose common shares were traded on the TSX Venture Exchange (TSX-V) under ticker symbol DOR. However, Dianor is currently in default of applicable securities laws, trading of its shares has been halted and its shares have been officially delisted from the TSX-V.<sup>9</sup>

9. The Debtor’s head office is located in Val-D’or, Québec.<sup>10</sup>

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<sup>7</sup> Bhalwani Affidavit at paras. 7, 77, 79, and 81.

<sup>8</sup> Bhalwani Affidavit at paras. 4, 7, 8, 9, and 23.

<sup>9</sup> Bhalwani Affidavit at para. 10.

<sup>10</sup> Bhalwani Affidavit at para. 11.

10. The Debtor is not active and has no operations. It was formerly an exploration company focused on exploring and developing diamond-bearing properties in Canada. As described in greater detail below, the Debtor's principal assets are a portfolio of diamond-bearing properties on the Superior Craton, a geological region underlying a large area of Ontario and Québec. The Debtor's property near Wawa, Ontario (the "Leadbetter Diamond Project") is the most advanced of the Debtor's various properties, is the Debtor's most valuable set of assets, and comprises the greater portion of the Debtor's property.<sup>11</sup>

11. The Debtor generates no independent revenues.<sup>12</sup>

**B. The Loan**

i. The Credit Agreement

12. Pursuant to the Credit Agreement, Third Eye established the Credit Facility in the maximum principal amount of \$10 million. As indicated, approximately \$6 million is currently due and outstanding under the Credit Facility (including principal, accrued interest, fees and expenses).<sup>13</sup>

ii. The Security Documents

13. Third Eye took security over all of the Debtor's real and personal property pursuant to the Debenture and the Deed of Hypothec. In addition to these documents, Third Eye, the Debtor and (in some cases) the Lenders entered into a number of ancillary security documents that varied or affected the business effect of the Debenture and the Deed of Hypothec. These documents are described in greater in the Bhalwani

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<sup>11</sup> Bhalwani Affidavit at paras. 7, 12, 53, and 69.

<sup>12</sup> Bhalwani Affidavit at paras. 7, 53, 76, and 80.

<sup>13</sup> Bhalwani Affidavit at paras. 5, 7, and 14.

Affidavit.<sup>14</sup> All of Third Eye's security over the Debtor's real and personal property have been perfected, including by making the necessary registrations (where applicable).

**C. Financial Status of the Debtor**

14. The Debtor has had no substantial operations since December 2012, no cash or other liquid assets since April 2012, and has never generated revenues from its operations.<sup>15</sup>

15. Pursuant to the Financial Statements, it appears that as at September 30, 2011, the Debtor's current liabilities (totalling \$8,715,838) exceeded its current assets (totalling \$76,220) by \$8,639,618. According to the Financial Statements, the Debtor realized a net loss of \$4,163,618 for the three months ended September 30, 2011.<sup>16</sup>

**D. The Debtor's Financial Difficulties and Defaults under the Credit Agreement**

16. The Debtor has attempted on numerous occasions to find financing in addition to the Credit Facility or to identify a partner to develop and commercially exploit the Leadbetter Diamond Project. At various times since 2012, the Debtor has met with Canadian and foreign entities about pursuing an equity investment, buyout, joint venture, secured loan, sale of assets (including iron ore deposits potentially located at the Leadbetter Diamond Project), or some combination of the foregoing.<sup>17</sup>

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<sup>14</sup> Bhalwani Affidavit at paras. 4, 9, and 23.

<sup>15</sup> Bhalwani Affidavit at para. 53.

17. Numerous Events of Default under the Credit Facility have occurred and are continuing, including (among other things):

(a) The Debtor failing to pay any amount of the Advances Outstanding when such amount becomes due and payable;

(b) The Debtor failing to pay any interest or Fees when they become due and payable, and such failure remains unremedied for a period of three Business Days;

(c) The Debtor breaching any covenants, negative covenants or financial covenants, subject to a cure period of five Business Days following Third Eye's written notice of such breach (if applicable);

(d) The Debtor failing to pay the principal of, or premium or interest on, any of the Debtor's Debt which is outstanding in an aggregate principal amount exceeding \$100,000 when such amount becomes due and payable, and such failure continues after the applicable grace period (if any) specified in the agreement or instrument relating to the Debt;

(e) The rendering of any judgment or order for the payment of money in excess of \$100,000 against the Debtor and either (i) enforcement proceedings have been commenced by a creditor upon the judgment or order and such proceedings are not stayed, or (ii) there is any period of 15 consecutive days during which a stay of enforcement of the judgment or order, by reason of a pending appeal or otherwise, is not in effect;

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<sup>16</sup> Bhalwani Affidavit at paras. 55 and 56.

<sup>17</sup> Bhalwani Affidavit at paras. 7, 69 and 80.

(f) The Debtor (i) becoming insolvent or generally not able to pay its debts as they become due, or (b) admitting in writing its inability to pay its debts generally; and

(g) The Debtor ceasing or suspending operations or business at the Leadbetter Diamond Project for 60 consecutive days or 180 days in the aggregate in any calendar year.<sup>18</sup>

The applicable cure periods have long since elapsed.<sup>19</sup>

18. Accordingly, the Credit Facility has matured and all amounts outstanding thereunder are now past due and payable in full.<sup>20</sup>

19. Third Eye has forbore from enforcing on its security to date because it was hopeful that a sale of the Debtor's assets outside of formal insolvency proceedings would generate proceeds sufficient to repay all amounts outstanding under the Credit Facility. No such transaction has been consummated and, as described below, Third Eye is no longer willing to delegate responsibility for marketing and selling the Debtor's assets to the Debtor.<sup>21</sup>

20. On August 6, 2015, Third Eye delivered a letter (the "**Demand Letter**") to the Debtor demanding repayment of all amounts outstanding, due and payable under the Credit Agreement. As at the date hereof, the Debtor has not made any payments to Third Eye on account of its obligations under the Credit Agreement.<sup>22</sup>

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<sup>18</sup> Bhalwani Affidavit at paras. 7, 12, 21, 30, 53, and 66.

<sup>19</sup> Bhalwani Affidavit at para. 67.

<sup>20</sup> Bhalwani Affidavit at paras. 5, 22, 68, and 76.

<sup>21</sup> Bhalwani Affidavit at para. 71.

<sup>22</sup> Bhalwani Affidavit at paras. 6 and 72.

21. Also on August 6, 2015, Third Eye gave the Debtor notice of its intention to enforce its security by delivering a Notice of Intention to Enforce pursuant to section 244 of the BIA.<sup>23</sup>

### PART III - ISSUES AND THE LAW

22. The issue on this application is whether this Court should appoint Richter as Receiver over the Debtor pursuant to section 243 of the BIA and section 101 of the CJA.<sup>24</sup>

iii. The Technical Requirements for the Appointment of a Receiver are Met

23. Third Eye is a secured creditor of the Debtor and is thus entitled to bring an application under section 243 of the BIA.<sup>25</sup>

24. The Debtor is in breach of its obligations under the Credit Agreement. As a result of these breaches, the Debtor has defaulted under the Credit Agreement. In accordance with the Credit Agreement, the occurrence of an Event of Default grants Third Eye the right to seek the appointment of a receiver.<sup>26</sup>

25. As required by subsection 243(1.1) of the BIA, the Demand Letter and 244 Notice were sent to the Debtor on August 6, 2015.<sup>27</sup>

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<sup>23</sup> Bhalwani Affidavit at paras. 6 and 73.

<sup>24</sup> BIA s. 243; CJA s. 101.

<sup>25</sup> BIA s. 243; Bhalwani Affidavit at paras. 7 and 9.

<sup>26</sup> Bhalwani Affidavit at paras. 5, 7, 31, 70, and 71.

<sup>27</sup> BIA ss. 243(1.1) and 244; Bhalwani Affidavit at paras. 6, 72, and 73.

26. In accordance with subsection 243(4) of the BIA, Richter is qualified to act as Receiver of the Debtor.<sup>28</sup>

*Locality of the Debtor*

27. Section 243(5) of the BIA requires that a receivership application be made to the court having jurisdiction in the “locality of the debtor”. Section 243(5) states:

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.<sup>29</sup>

28. The term “locality of the debtor” is defined in section 2(1) of the BIA as follows:

“locality of a debtor” means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;<sup>30</sup>

29. The Debtor has not carried on business during the year immediately preceding the commencement of this application, nor has it resided at any location during that

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<sup>28</sup> BIA s. 243(4).

<sup>29</sup> BIA s. 243(5).

<sup>30</sup> BIA s. 2(1).

time period. Therefore, this application constitutes a case not coming within paragraph (a) or (b) of the definition of the “locality of the debtor”, such that the “locality of the debtor” should be determined in accordance with paragraph (c) of the definition set out in section 2(1) of the BIA.<sup>31</sup>

30. The greater portion of the property of the Debtor is situated in Ontario. The Leadbetter Diamond Project, which is located near Wawa, Ontario, comprises the Debtor’s most valuable set of assets and comprises the greater portion of the Debtor’s property. Accordingly, the Debtor’s locality is Ontario, and this application is properly brought before this Court.<sup>32</sup>

iv. The Test for Appointing a Receiver Under the BIA and CJA

31. Section 101 of the CJA permits the appointment of a receiver where it is “just and convenient”.<sup>33</sup>

32. In addition, subsection 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court considers advisable over that property and over the insolvent person’s business, again where it is “just or convenient”.<sup>34</sup>

33. In determining whether it is “just or convenient” to appoint a receiver under either the BIA or CJA, Ontario courts apply the decision of Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Clair Creek*. In *Freure Village*, Blair J. set out that, in

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<sup>31</sup> BIA s 2(1); Bhalwani Affidavit at paras. 7, 12, and 53.

<sup>32</sup> Bhalwani Affidavit at para. 12.

<sup>33</sup> CJA s. 101.

deciding whether the appointment of a receiver was just or convenient, the court “must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto,” which includes the rights of the secured creditor under its security.<sup>35</sup>

34. Where the enumerated rights of the secured creditor under the credit agreement include the right to seek the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As stated by Morawetz J. (as he then was) in *Elleway*:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.<sup>36</sup>

35. Where a creditor is entitled under its agreement with the debtor to seek the appointment of a receiver, a court will consider in its discretion whether, on an examination of the surrounding circumstances, it is in the interests of all concerned to have the receiver appointed by the court.<sup>37</sup>

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<sup>34</sup> BIA s. 243(1).

<sup>35</sup> *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. S.C.J.) [*“Freure Village”*] at para. 10, Applicant’s Book of Authorities, Tab 1; *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 [*“Elleway”*] at para. 27, Applicant’s Book of Authorities, Tab 2.

<sup>36</sup> *Elleway* at para. 27, Applicant’s Book of Authorities, Tab 2; *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 [*“RMB”*] at para. 28 Applicant’s Book of Authorities, Tab 3.

<sup>37</sup> *Freure Village* at para. 12, Applicant’s Book of Authorities, Tab 1; *RMB* at para. 28, Applicant’s Book of Authorities, Tab 3.

36. Courts will also consider whether a court-appointed receiver (as opposed to a privately-appointed receiver) will allow the receiver to carry out its duties more efficiently. Other factors the court will consider when examining the surrounding circumstances include:

- (a) The potential costs of the receiver;
- (b) The relationship between the debtor and the creditors;
- (c) The likelihood of preserving and maximizing the return on the subject property;
- (d) The best way of facilitating the work and duties of the receiver;
- (e) The apprehended or actual waste of the debtor's assets;
- (f) The conduct of the parties; and
- (g) Whether irreparable harm might be caused if no order were made (although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed).<sup>38</sup>

v. It is Just and Convenient to Appoint a Receiver over the Debtor

37. In addition to Third Eye's contractual rights, the appointment of the Receiver over the Debtor is just and convenient as a result of, among other things:

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<sup>38</sup> *Freure Village* at para. 12, Applicant's Book of Authorities, Tab 1; *Elleway* at para. 28, Applicant's Book of Authorities, Tab 2; *Enterprise Cape Breton Corp. v. Crown Jewel Resort Ranch Inc.* 2014 NSSC 128 at para.26, Applicant's Book of Authorities, Tab 4.

- (a) The Debtor has been inactive for a number of years. It generates no revenues and has no ongoing operations, and therefore has no realistic prospect of repaying the Loan;
- (b) Certain of the Debtor's assets – particularly the mining rights relating to real property owned by the Debtor – may have economic value but are currently not being exploited;
- (c) The Debtor's past efforts to exploit its mineral rights and interests or to market and sell its assets were unsuccessful;
- (d) A court-appointed receiver is required to take control of the Debtor, prevent further erosion of the value of the Debtor's assets, and preserve the value of the Debtor's assets for all of the Debtor's stakeholders;
- (e) As the major secured creditor, Third Eye has the primary economic interest in the Debtor; and
- (f) Since March 25, 2013, Third Eye has been paying the fees and expenses necessary to maintain some of the Debtor's assets, including licenses and other rights, but is not willing to do so any further.<sup>39</sup>

38. According to the Financial Statements, the Debtor does not generate cash flows from its operations. It, therefore, relies on funding from third parties to allow it to meet its obligations as they become due. Third-party financing has been insufficient to allow the Debtor to commence commercial extraction operations at any of its properties, including the Leadbetter Diamond Project. Without additional third-party financing,

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<sup>39</sup> Bhalwani Affidavit at paras. 7, 12, 53, 76, and 80.

the Debtor will not be able to conduct further exploration activities or begin commercial operations.<sup>40</sup>

39. The Credit Agreement and the Security Documents provide that Third Eye is entitled to appoint a receiver in the event of default under the Credit Agreement. Such an appointment is necessary to realize on the Debtor's assets – most importantly on the Leadbetter Diamond Project – in a fair and reasonable manner that balances the interests of all of the Debtor's stakeholders in a transparent and court-supervised process.<sup>41</sup>

40. Third Eye is prepared to advance funds to the Receiver (if appointed) for purposes of funding the receivership to allow the Receiver to meet the Debtor's obligations as they come due, including the costs of maintaining the Debtor's assets, thereby preserving enterprise value pending the completion of a marketing process and the closing of a sale transaction.<sup>42</sup>

41. A Receiver is also needed to realize on the Debtor's assets in a fair and reasonable manner that balances the interests of all of the Debtor's stakeholders in a transparent and court-supervised process.<sup>43</sup>

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<sup>40</sup> Bhalwani Affidavit at paras. 7, 53, 69, 76, and 80.

<sup>41</sup> Bhalwani Affidavit at paras. 7, 31, and 78.

<sup>42</sup> Bhalwani Affidavit at paras. 7 and 81.

<sup>43</sup> Bhalwani Affidavit at para. 78.

**PART IV - ORDER REQUESTED**

42. Third Eye respectfully requests an Order substantially in the form of the draft Receivership Order attached at Tab 3 of the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of August, 2015.

STIKEMAN ELLIOTT

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**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. S.C.J.)
2. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2014 ONSC 6866
3. *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2013 ONSC 5205.
4. *Enterprise Cape Breton Corp. v. Crown Jewel Resort Ranch Inc.* 2014 NSSC 128

**SCHEDULE "B"**  
**RELEVANT STATUTES**

*Bankruptcy and Insolvency Act*  
R.S.C. 1983, c. B-3

**Definitions**

2. "locality of a debtor" means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

**Court may appoint receiver**

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

**Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

**Definition of “receiver”**

(2) Subject to subsections (3) and (4), in this Part, “receiver” means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control – of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt – under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of “receiver” – subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition “receiver” in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of "disbursements"**

(7) In subsection (6), "disbursements" does not include payments made in the operation of a business of the insolvent person or bankrupt.

**Advance Notice**

244. (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

*Courts of Justice Act*  
R.S.O. 1990, c. C-43

Injunctions and receivers

101.(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

THIRD EYE CAPITAL CORPORATION

and

RESSOURCES DIANOR INC. /  
DIANOR RESOURCES INC.

Court File No.

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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