

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

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

and

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC. and
1981361 ONTARIO INC.**

Respondents

**MOTION RECORD
(Returnable May 16, 2025)**

May 9, 2025

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1

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Proposed Representative Counsel, Paliare
Roland

TO: SERVICE LIST

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1981361 ONTARIO INC.**

Respondents

NOTICE OF MOTION

Gordon Starkman, being an investor in mortgages brokered and administered by Sussman Mortgage Funding Inc. ("**SMFI**"), will make a Motion to a Judge presiding over the Commercial List, for an Order appointing an Investor Committee (as defined below) representing the interests of persons who invested funds with SMFI (the "**Investors**"), and Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") as representative counsel to the Investor Committee, on May 16, 2025 at 12:00 p.m., or as soon after that time as the Motion can be heard, at 330 University Ave., Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard by video conference.

THE MOTION IS FOR an Order substantially in the form appended hereto as Schedule A, among other things:

- (a) if necessary, abridging and validating the timing and method of service and filing of this Motion, and dispensing with further service;
- (b) directing B. Riley Farber Inc. in its capacity as court appointed receiver of the Respondents (the “**Receiver**”), in consultation with Representative Counsel (as defined below) and the Applicant, and subject to the final approval of this Court, to designate members of and form a committee of no more than five (5) volunteers to represent the interests of the Investors (the “**Investor Committee**”);
- (c) appointing Paliare Roland as counsel to the Investor Committee (in such capacity, the “**Representative Counsel**”);
- (d) permitting, but not directing, the Investor Committee and Representative Counsel to take the following preliminary steps and acts as necessary or desirable to represent the interests of the Investors in these proceedings (the “**Preliminary Mandate**”):
 - (i) consulting and collaborating with the Receiver in respect of its initial investigation and identification of Investors’ claims in respect of SMFI, and developing a cost-effective proposal for a process to liquidate those claims (the “**Investigation Mandate**”);

- (ii) taking such steps as may be necessary, in these proceedings or otherwise, to preserve and/or to avoid prejudice to Investors' claims which may arise from the passage of time, in circumstances where the Receiver is unable or unwilling to take such steps (the "**Urgent Proceedings Mandate**");
- (e) such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (f) SMFI is an Ontario corporation licenced as a mortgage brokerage and a mortgage administrator. SMFI is regulated by the Financial Services Regulatory Authority of Ontario ("**FSRA**"). Sanford Sussman is a director and officer of SMFI.
- (g) SMFI has 92 investors in 38 mortgages under administration. The face value of these investments is approximately \$101 million. A substantial portion of these mortgages (approximately \$73 million) are now in arrears.
- (h) FSRA has commenced these proceedings for the appointment of a receiver to take control of SMFI's business and the business of certain entities related to SMFI, in response to complaints from the Investors. A number of Investors have commenced separate proceedings against SMFI in respect of their investments.
- (i) Gordon Starkman is an Investor with SMFI. Mr. Starkman has made investments in SMFI mortgages in an aggregate in excess of \$200,000.

- (j) Mr. Starkman does not currently know the status of his investments, what became of the funds he advanced to Mr. Sussman and SMFI, or whether his funds were ever secured by any mortgages, as was represented by Mr. Sussman and SMFI.
- (k) The appointment of Representative Counsel would ensure Investors have early-stage representation in these receivership proceedings to help them understand what happened to their funds, to identify their potential claims, and to take any steps that may be necessary to preserve those potential claims in the coming weeks and months, while so much is still unknown in these proceedings.
- (l) Mr. Starkman is aware of a group of Investors that have collectively invested in excess of \$1.1 million with SMFI, and which supports Paliare Roland's appointment as Representative Counsel in these proceedings.
- (m) Paliare Roland is prepared to accept an appointment as Representative Counsel in these proceedings on a preliminary, "look-see" engagement. The fees payable to Paliare Roland, if any, would be determined by this Court based on the following guidelines:
 - (i) Representative Counsel shall not be entitled to payment for services rendered in furtherance of the Investigation Mandate where it is determined that it is not advantageous to Investors for Representative Counsel to be involved in the realization and liquidation of the Claims; and,

- (ii) Representative Counsel shall be entitled to payment for services rendered in respect of the Urgent Proceedings Mandate as determined by the court on a *quantum meruit* basis, and having regard to the availability of funds in the receivership estate.
- (n) Paliare Roland has considerable experience acting in significant cases involving classes of disappointed investors and stakeholders in the context of insolvency, winding-up and class proceedings. It has accepted rate-based fee-for-service engagements, contingent fee engagements, and hybrid engagements, and it would be prepared to consider all of those options in connection with a future determination by the Court that there is a substantive role for representative counsel in these proceedings. Paliare Roland does not have any conflicts that would prevent it from acting in this matter.
- (o) The balance of convenience favours the granting of the relief sought herein.

Other Grounds

- (p) Rules 1.04, 3.02 and 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (q) Such further and other grounds as the lawyers may advise.

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

- (a) The Affidavit of Gordon Starkman sworn May 9, 2025; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 9, 2025

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Email: evan.snyder@paliareroland.com

Proposed Representative Counsel, Paliare
Roland

TO: SERVICE LIST

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL
SERVICES REGULATORY AUTHORITY OF ONTARIO**
Applicant

-and- **SUSSMAN MORTGAGE FUNDING INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Proposed Representative Counsel, Paliare Roland

SCHEDULE “A”

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

THE HONOURABLE
JUSTICE DIETRICH

)
)
)

FRIDAY, THE 16th
DAY OF MAY, 2025

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

and

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC. and
1981361 ONTARIO INC.**

Respondents

ORDER

THIS MOTION, made by Gordon Starkman, for an Order appointing Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") as representative counsel to the Investor Committee (defined below) for the benefit of all investors who contracted with Sussman Mortgage Funding Inc. ("**SMFI**") for the brokerage and/or administration of mortgage investments (the "**Investors**") in these proceedings was heard this day, at 330 University Avenue, 9th Floor, Toronto, Ontario.

ON READING the Notice of Motion of Gordon Starkman dated May 9, 2025, the Affidavit of Gordon Starkman, affirmed May 9, 2025, the Notice of Motion of certain other investors in SFMI dated April 29, 2025, the Affidavit of Harley Zaretsky sworn April 29, 2025, and the Supplementary Affidavit of Harley Zaretsky sworn May 1, 2025, and on

hearing the submissions of Paliare Roland, Aird & Berlis LLP, counsel for B. Riley Farber Inc. in its capacity as court appointed receiver of the Respondents (the “**Receiver**”), and such other counsel as were present, no one else appearing although duly served, as appears from the Affidavit of Service of Beatrice Loschiavo affirmed May 9, 2025,

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DIRECTS** the Receiver, acting in consultation with Representative Counsel (defined below) and the Applicant, and subject to final approval of this court, to designate members of and form a committee of volunteers to represent the interests of persons who invested funds with SMFI (“**Investors**”), to number not more than five (5) persons (the “**Investor Committee**”).
3. **THIS COURT ORDERS** that the Investor Committee shall represent the Investors in these proceedings and any corollary proceedings in respect of all claims of the in respect of mortgage investments brokered and/or administrated by SFMI (“**Claims**”), provided that, pending further order of the court, the scope of this representation and the related conduct of the Investor Committee is limited to activities consistent with the Preliminary Mandate (defined below), and remains subject to review by this Court and may be amended at the request of Investor Committee, Representative Counsel, the Receiver or an Investor, upon further motion to this Court on notice to the Receiver, the Investor Committee, Representative Counsel and other interested persons.

4. **THIS COURT ORDERS** that, in carrying out the Preliminary Mandate, the Investor Committee may but shall have no obligation to consult with or seek instructions from individual Investors.
5. **THIS COURT ORDERS** that Paliare Roland be and is hereby appointed as counsel to the Investor Committee (in such capacity, the “**Representative Counsel**”),
6. **THIS COURT ORDERS** that the Investor Committee and Representative Counsel be and are hereby permitted, but not directed, to take and to perform, for and on behalf of the Investors, the following preliminary steps and acts as necessary or desirable to represent the interests of the Investors in these proceedings (the “**Preliminary Mandate**”):
 - a. Consulting and collaborating with the Receiver in respect of its initial investigation in respect of the Claims (the “**Investigation Mandate**”), including:
 - i. receiving and reviewing Information (as defined in paragraph 9, below) from the Receiver;
 - ii. the investigation and identification of valid and provable Claims;
 - iii. developing a process for the prosecution and liquidation of the Claims as part of these proceedings or in such corollary proceedings as may be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation; and,

- iv. communicating with and responding to inquiries from Investors;
- v. establishing rules for the operation of the Investor Committee, provided that it shall operate by majority vote, and that a member of Representative Counsel shall convene and act as the non-voting Chairperson of all meetings;

b. taking such steps as may be necessary, in these proceedings or otherwise, to preserve and/or to avoid prejudice to the Claims which may arise from the passage of time, in circumstances where the Receiver is unable or unwilling to take such steps (the “**Urgent Proceedings Mandate**”); and,

c. performing such other actions as approved by this Court,

provided, for the avoidance of doubt, that the Investor Committee and Representative Counsel are not, by the terms of this order, empowered to compromise any Claims.

7. **THIS COURT ORDERS** that the fees payable to Representative Counsel, if any, shall be determined by and subject to further order of the court, consistent with the following guidelines:

a. Representative Counsel shall not be entitled to payment for services rendered in furtherance of the Investigation Mandate where it is determined that it is not advantageous to Investors for Representative Counsel to be involved in the realization and liquidation of the Claims (for the avoidance

of doubt, responsibility for and the costs of any mailings, advertisements, or other material disbursements shall be assumed by the Receiver); and,

- b. Representative Counsel shall be entitled to payment for services rendered in respect of the Urgent Proceedings Mandate on a *quantum meruit* basis, and having regard to the availability of funds in the receivership estate.

8. **THIS COURT ORDERS** that the Receiver and Representative Counsel shall, within forty-five (45) days following the date of this Order, or within such further time as the Receiver and Representative Counsel may agree, on notice to the service list, move for advice and direction in respect of:

- a. the continuing or future mandate of the Investor Committee and Representative Counsel and the terms of their engagement, including, among other things, the manner of compensation of Representative Counsel; or
- b. terminating the appointment of the Investor Committee and/or Representative Counsel, if, in the opinion of the Court, as informed by the submissions of the Representative Counsel, the Receiver, and other interested persons, the continued involvement of the Investor Committee and/or Representative Counsel is not necessary or desirable to represent the interests of the Investors in these proceedings.

9. **THIS COURT ORDERS** that the Receiver shall forthwith provide to the Representative Counsel, subject to mutually satisfactory confidentiality

arrangements, or by further order of this Court, without charge, the following information, documents and data in its possession (the “**Information**”), to be used only for the purpose of the Preliminary Mandate:

- a. contact information of the Investors, including, where available, names, last known addresses and last known telephone numbers and e-mail addresses; and
- b. upon request of the Representative Counsel, such documents and data as may be reasonably relevant to issues affecting the Investors, subject to the agreement of the Receiver or further order of this Court.

10. **THIS COURT ORDERS** that, within 10 days of the making of this Order, the Receiver shall provide notice of this Order to each of the Investors through a communication in form and content satisfactory to Representative Counsel, or as may be further directed by this Court (the “**Notice**”), to be delivered in the following manner:

- a. publication on the website maintained by the Receiver in connection with these proceedings;
- b. by regular mail sent to the last known address of each Investor; and,
- c. where possible, by email sent to the last known email address of the Investor,

and such Notice shall be deemed to be effective on the later of the date of publication or the date the Notice was sent, as applicable.

11. **THIS COURT ORDERS** that an Investor who prefers not to take the benefit of representation by the Investor Committee may opt out of such representation by completing the Opt-Out Notice in the form of Schedule "A" to this Order (the "**Opt-Out Notice**"), and by delivering such Opt-Out Notice to the Receiver by email to the address indicated on the Opt-Out Notice, such that it is received by no later than 11:59 p.m. (Eastern Daylight Time) on a date to be set by further order of this Court upon determination of the final mandate given to the Investor Committee and Representative Counsel, and the compensation structure of the latter, and the Receiver shall provide a copy of all Opt-Out Notices that it receives to the Representative Counsel on behalf of the Investor Committee.
12. **THIS COURT ORDERS** that an Investor who delivers an Opt-Out Notice (a "**Opt-Out Investor**") shall not have the benefit of representation by the Investor Committee and Representative Counsel, and the Investor Committee and Representative Counsel shall have no obligation to report to, respond to inquiries from, or otherwise take any account of the interests of any Opt-Out Investor. For greater certainty, nothing in this order obliges any party to deal with any Opt-Out Investor or precludes the compromise of the claims of an Opt-Out Investor in the ordinary course, by operation of applicable law.
13. **THIS COURT ORDERS** that members of the Investor Committee and Representative Counsel shall not be liable for any act or omission in respect of their appointment or fulfillment of their duties in respect of the provisions of this Order, other than for gross negligence or wilful misconduct. No action or other proceedings shall be commenced against the Investors Committee or Representative Counsel except with prior leave

of this Court on at least 21 days' notice and upon further order in respect of security for costs in connection with any such action or proceeding, to be given by the plaintiff on a substantial indemnity basis.

14. **THIS COURT ORDERS** that:

- a. individual members of the Investor Committee are at liberty to resign their appointment, whereupon the Receiver shall use its best efforts to replace them on the Investor Committee; and,
- b. Representative Counsel may move before this Court to terminate their appointment, or for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, and notice of such motion shall be given to the Respondents, the Receiver, and other interested persons, provided that this Court retains its jurisdiction to dispense with such notice where appropriate.

15. **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 Investor Committee and Representative Counsel 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 Investor Committee and Representative Counsel, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to

Representative Counsel in any foreign proceeding, or to assist Representative Counsel and its agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order, and that this Order is enforceable without the need for entry and filing.

SCHEDULE "A"
OPT-OUT LETTER

TO: eklein@brileyfin.com

B. RILEY FARBER INC., as court appointed receiver of Sussman Mortgage Finance Inc.
Attention: Emily Klein
Senior Manager, Restructuring

RE: CLAIMS AGAINST SUSSMAN MORTGAGE FUNDING INC., et al.

My Name is: _____

My telephone number is: _____

My email address is: _____

I am an Investor as defined in the Representation Order of the Honourable Justice Dietrich dated May 16, 2025 (the "Order").

In accordance with paragraph ♦ of the Order, I am hereby notifying you that I prefer not to take the benefit of representation by the Investor Committee and Representative Counsel, as defined in the Order.

I acknowledge that, as a result of my having delivered this notice, the Investor Committee and Representative Counsel shall have no obligation to report to me, to respond to inquiries from me, or to take any account of my interests.

I also acknowledge that nothing in the Order: (a) obliges any party to deal with me or my claims by virtue of my having delivered this notice; or, (b) precludes the compromise of my claims in the ordinary course, by operation of applicable law.

Date:

Signature of Witness

Signature of Investor

Name:

Address:

Telephone Number:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL
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Applicant

-and- **SUSSMAN MORTGAGE FUNDING INC., et al.**
Respondents

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PROCEEDING COMMENCED AT
TORONTO

ORDER

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Proposed Representative Counsel, Paliare Roland

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AFFIDAVIT OF GORDON STARKMAN

I, Gordon Starkman, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am an investor in mortgages brokered and administered by Sussman Mortgage Funding Inc. ("**SMFI**"). As such, I have direct knowledge of the matters contained in this affidavit. Where I do not have direct knowledge, I have stated the source of my information, and I believe it to be true.
2. I have consulted with Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") following recent events involving SMFI, including the receivership proceedings brought against SMFI. In making this affidavit, I do not intend to waive any solicitor-client privilege which may attach to my communications with Paliare Roland.
3. I make this affidavit to express my concern regarding the relief being sought by certain stakeholders in these proceedings in relation to the appointment of an investor

committee and the appointment of representative counsel for the investors, both from a representative perspective and from a cost perspective, and in support of a cross-motion for an Order, among other things:

- (a) authorizing the establishment of a committee of volunteers to represent the interests of persons who invested funds with SMFI (“**Investors**”), to number not more than five (5) persons (the “**Investor Committee**”);
- (b) appointing Paliare Roland to act in these proceedings as representative counsel to the Investor Committee (in such capacity, “**Representative Counsel**”); and
- (c) authorizing the Investor Committee and Representative Counsel to pursue a preliminary mandate, which I understand as having the following two main components:
 - (i) consulting with the Receiver in aid of its investigation and identification of Investors’ claims in respect of their investments with SMFI, and developing a cost-effective proposal for a process for liquidating those claims (the “**Investigation Mandate**”); and,
 - (ii) taking steps where necessary to preserve Investors’ claims in the immediate short-term, such as where a claim is at risk of being time-barred or where coverage under an insurance policy is expiring (the “**Urgent Proceedings Mandate**”).

My personal background

4. I am 88 years old, and I live in Toronto, Ontario. My wife of 59 years passed away in February 2019.

5. I am currently retired. Prior to my retirement in or around 2016, I had a career as a dentist, in private practice.

6. I do not have any formal education or work experience in the areas of mortgage or real estate investment or personal finance.

My investments with SMFI

7. Some years prior to my retirement, my son-in-law introduced my late wife and me to Sandford Sussman and SMFI as an investment opportunity. My son-in-law was (and continues to be) an Investor with SMFI.

8. My late wife and I took Mr. Sussman to be an honest and trustworthy person, and on that basis we agreed to invest with SMFI.

9. During the initial years of our investment relationship with Mr. Sussman and SMFI, I was occupied by the day-to-day operation of my busy dental practice. Accordingly, my late wife, who was an artist, made all of our investment decisions with SMFI. She handled most or all of the communications with Mr. Sussman regarding our existing investments and new investment opportunities which Mr. Sussman presented to us from time to time.

10. Upon my retirement in or around 2016, my late wife continued to be the primary point of contact with Mr. Sussman and SMFI, up until her passing in February 2019, at which time I began to deal with Mr. Sussman and SMFI.

11. Over the course of my years-long investment relationship with Mr. Sussman and SMFI:

- (a) Mr. Sussman would approach me or my wife with specific opportunities and would recommend that we invest in specific mortgages brokered and administrated by SMFI.
- (b) On Mr. Sussman's recommendation, we would enter into investor agreements with SMFI. Under those agreements, we would advance funds to SMFI. We would then receive investor stubs showing monthly interest payments on the funds we had invested. When our investment reached its maturity date, Mr. Sussman would often encourage us to re-invest the principal in a new mortgage investment, and, on Mr. Sussman's advice, we would often do so.
- (c) From time to time, we made a number of investments in various mortgages bearing the identifiers such as A-18, B-73, B-83, K-19, M-35, T-14, T-18, and perhaps other mortgages bearing other identifiers of which I am not presently aware. I believe the aggregate amount of our investments was in excess of \$200,000, but I do not know the precise amount.

- (d) Currently, I do not know the total amount of my outstanding investments with SMFI, or whether my principal investment in respect of any particular mortgage has been repaid to me. While my wife and I did our best to keep accurate records of our investments over the years, I would need a detailed accounting to understand the current state of my mortgage investments.

12. I first became aware that something was amiss at SMFI in or around April 2025, when my son-in-law told me that he was concerned because his principal investment had not been repaid in respect of certain mortgages which had matured, and that title searches that he had obtained in respect of properties against which he had loaned money did not reveal a mortgage registration. At this point, I became very concerned about my investments with SMFI.

13. I had made my final investment with Mr. Sussman and SMFI relatively recently, in November or December 2024. Mr. Sussman came to my home, and he recommended that I make a short-term loan in the amount of \$10,000, which I agreed to make. My girlfriend was present for this meeting, and, on my recommendation and that of Mr. Sussman, my girlfriend also agreed to make a short-term loan in the amount of \$10,000. Ironically, and unbeknownst to me at the time, this was around the same time that my son-in-law was pressing Mr. Sussman for repayment of amounts that were due to him.

14. I now deeply regret having put my trust in Mr. Sussman, and having encouraged my girlfriend to do the same with her investment.

15. Currently, I do not know the status of my investments, what became of the funds I advanced to Mr. Sussman and SMFI, or whether my funds were ever secured by any mortgages, as was represented by Mr. Sussman and SMFI.

My understanding of the events surrounding these proceedings

16. From my conversations with Paliare Roland, I understand, among other things:

- (a) SMFI's business as a mortgage brokerage and administrator is regulated by the Financial Services Regulatory Authority of Ontario ("**FSRA**").
- (b) In response to complaints received from Investors in SMFI, FSRA has commenced these proceedings for the appointment of a receiver to take control of SMFI's business and the business of certain entities related to SMFI (the "**Receiver**").
- (c) Materials filed by FSRA in these proceedings indicate that SMFI has 92 investors in 38 mortgages under administration, that the face value of these investments is approximately \$101 million, and that a substantial portion (approximately \$73 million) of these mortgages are now in arrears.
- (d) A number of Investors have commenced separate lawsuits against SMFI in respect of their investments.
- (e) On April 29, 2025, a group of Investors delivered court materials in these proceedings seeking to appoint the law firm of Aird & Berlis LLP as representative counsel to the Investors. I understand that Aird & Berlis LLP

proposes to be paid out of the receivership estate, and that a term of their proposed appointment is that Aird & Berlis LLP would be entitled to a charge in the amount of \$100,000 on the assets of the SMFI entities under receivership as security for their accounts. I further understand that this group of Investors proposes to select the specific members who would sit on the Investor committee and instruct Aird & Berlis LLP in the discharge of its mandate.

The need for an Investor Committee and Representative Counsel

17. I believe Investors should have early-stage representation in these receivership proceedings, while so much is still unknown, to help them understand what happened to Investors' funds, to identify Investors' potential claims, and to take any steps that may be necessary to preserve those potential claims in the coming weeks and months. As a practical matter, I am concerned that, as the recovery process is being shaped, the Receiver hears from Investors as a group, and not just individually, so that individual Investors who may be more sophisticated and/or well-funded and who are separately represented are not advantaged.

18. I am also concerned, however, by the layering of professional fees that would result from the proposed appointment of Aird & Berlis LLP as representative counsel at this early stage of the proceedings. I do not believe it is in Investors' best interests that any representative counsel be paid from the assets of SMFI when there court has already appointed a receiver (which has its own lawyers) who is already funded out of the estate, and it is unclear at this stage what claims Investors may have, what funds may be

available to repay Investors, and what net benefit—if any—Investors may ultimately receive from the appointment of representative counsel.

19. Finally, I am concerned by the structure of the Investor committee proposed to be established in connection with the appointment of Aird & Berlis LLP as representative counsel. In my view, to ensure that such a committee is truly representative of all Investors' interests, the composition of the committee should not be determined any particular group of Investors. A neutral party, like the Receiver, should make that determination. I understand that various investors have organized themselves into groups and that some of those groups may want representation on the committee, and I have no objection to that, but I am concerned that, where reasonably possible, the committee should reflect the composition of the investor group, having regard to factors such as age and stage of life, investment size (big and small), and level of sophistication.

20. I have discussed these concerns with Paliare Roland, and I am advised that Paliare Roland has raised these concerns with the Receiver. A copy of Paliare Roland's letter to the Receiver, dated May 8, 2025, is attached hereto as **Exhibit "A"**.

21. I am further advised by Paliare Roland that their firm is prepared to accept an appointment as Representative Counsel in these proceedings on a preliminary, "look-see" basis. That is, if appointed on that basis, the fees payable to Paliare Roland, if any, would be determined by the Court consistent with the following guidelines:

- (a) Paliare Roland would not receive payment for services it renders in furtherance of the Investigation Mandate, where, following the delivery of the Receiver's initial report, the Court determines that it is not necessary or

advantageous to Investors for Representative Counsel to be involved in the realization and liquidation of Investors' claims; and

- (b) Paliare Roland would be entitled to payment in the event that it is called upon to provide services in respect of the Urgent Proceedings Mandate, but these fees would be as determined by the Court, having regard to the value of the services provided and on the basis of a reasonable fee-for-service rate to be determined by the Court, and having regard to the availability of funds in the receivership estate.

22. I understand from my conversations with Paliare Roland that their firm has considerable experience acting in significant cases involving classes of disappointed investors and stakeholders in the context of insolvency, winding-up and class proceedings, and that it has previously accepted rate-based fee-for-service engagements, contingent fee engagements, and hybrid engagements, and that Paliare Roland would be prepared to consider all of those options in connection with a future determination by the Court that there is a substantive role for Representative Counsel to play in these proceedings. Paliare Roland has provided me with an illustrative list of some of their representative engagements, which is attached hereto as **Exhibit "B"**. Finally, I am advised by Paliare Roland that it does not have any conflicts which would prevent it from acting in this matter.

23. I believe that Paliare Roland's appointment as Representative Counsel is in the best interests of Investors and will avoid undue layering of professional fees and erosion

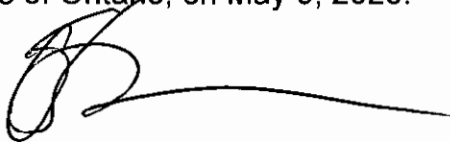
of value of the estate under receivership while steps are taken to investigate Investor claims.

24. I am currently aware of at least three other Investors who share my concerns and also support Paliare Roland's appointment as Representative Counsel in these proceedings. I am advised by Paliare Roland that this group of Investors, including myself, have collectively invested in excess of \$1.1 million with SMFI.

25. In the event this Court grants an Order appointing Paliare Roland as Representative Counsel, I would be willing to sit on the Investor Committee and participate in instructing Representative Counsel in that capacity. I understand that this committee role would involve a meaningful commitment of time and energy on my part.

26. I make this affidavit in support of a motion to establish an Investor Committee and appoint Paliare Roland as Representative Counsel, and for no other or improper purpose.

AFFIRMED by Gordon Starkman of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 9, 2025.



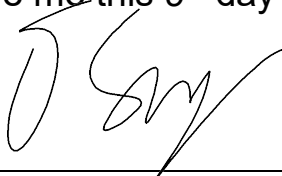
Commissioner for Taking Affidavits
(or as may be)

Evan Snyder



GORDON STARKMAN

This is **Exhibit "A"**
Referred to in the Affidavit of Gordon Starkman
Affirmed before me this 9th day of May, 2025

A handwritten signature in black ink, appearing to be 'J. Smy', is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Paliare Roland

Kenneth T. Rosenberg
Paliare Roland Rosenberg Rothstein LLP
155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

Ken.rosenberg@paliareroland.com
T. 416.646.4304 / F. 416.646.4301

File # 80003

May 8, 2025

VIA EMAIL

anackan@brileyfin.com

Allan Nackan
B. Riley Farber Inc.
150 York Street
Suite 1600
Toronto, Ontario M5H 3S5

Dear Mr. Nackan:

Re: In the matter of the receivership of Sussman Mortgage Funding Inc. (“Sussman”)

We are writing to advise that our firm has been consulted by a group of investors represented by Gordon Starkman (the “Starkman Group”), who, collectively, have invested in excess of \$1.1 million through Sussman. We have also spoken with other stakeholders.

The Starkman Group is concerned about the pending urgent motion sought by “certain investors” for an order appointing an investor committee comprised of Harley Zaretsky, Stephen Shefsky and Robert Green and others who they, in their discretion, wish to admit to the committee, and Aird & Berlis LLP as representative counsel. While the Starkman Group is not opposed to the creation of an investor committee, they are concerned by the opacity of the structure of the committee and how it will operate. They are also concerned by the layering of professional costs on the estate at this time, without a partial, let alone full analysis by the Receiver of (i) the underlying facts and the consequent interests and/or claims that investors may have, (ii) whether or how the involvement of another set of professionals paid out of the estate will add value to the recovery exercise, and, (iii) if there is a value-add, what options or alternatives exist for compensating those professionals (that is, for example, whether investor representative counsel can or should be compensated on a fee for service basis or on some form of contingency basis, and, in the former case, whether funding for professional fees should come from the estate, from individual investors, or from a third party litigation financier, etc.)

As you know, our firm has considerable experience over decades acting in, easily, 15 to 20 different significant matters for classes of disappointed and/or distressed investors and stakeholders in the context of insolvency proceedings and class-proceedings. This includes representative classes of hundreds and often thousands of such stakeholders in local, provincial, national and/or international

Paliare Roland

disputes.

It appears to us that the initial Receiver's investigatory work to be done is largely still pending. While a Receiver is doing this preliminary but foundational work, and in the absence of at least a developed litigation strategy that has been discussed with a Representative Investor Committee, and that takes account of the results of the preliminary but foundational work product of the Receiver, we would not, as a representative counsel, expect to be paid for our work on behalf of a class of disappointed investors and stakeholders (as opposed to, say, a sophisticated and self-funded institution).

Our firm would be prepared to undertake this Representative Counsel brief on a contingent fee basis until such an initial litigation strategy was mutually agreed upon, based on the Receiver's work product, as adopted by a Representative Investors Committee. In some insolvency cases, by analogy, a similar process has been adopted and has been referred from time-to-time as a litigation trust process. A loosely fitting example might be the *Hollinger* case. There are other examples. Thereafter, once at least a conceptual work plan is in place based on, for example, the investigatory work of the Receiver noted above and of course other inputs, on a mutually agreeable basis, Representative Counsel's fee payment plan can be determined. Options could include: fee for service; contingency; a mix of the two; and/or, in consultation with the Receiver and other stakeholders and subject to the advice and direction of the Court, out of the Estate.

The operative maxim is, at this early stage, stakeholders don't know what they don't know.

In light of the above, we are writing, at the request of the Starkman group to notify you that we would be prepared to act as legal counsel to a representative investor committee chaired by Mr. Starkman, having two mandates: first, a mandate to work with the Receiver to organize investors and identify investors' claims in respect of their investments and formulate a strategy for liquidating those claims (the '**Investigatory Mandate**'); and, second, a mandate to take proceedings, if and as needed on an emergency basis, to avoid immediate prejudice to the interests of investors, such as, for example, the commencement of an action to avoid the passage of a limitation period, or seeking injunctive relief to prevent the spoliation of evidence or the dissipation of assets in circumstances where the receiver was unable or unwilling to seek the relief (the "**Emergency Relief Mandate**").

Furthermore, we are prepared to assume both mandates on a contingent fee basis. That is, we will not be seeking payment in respect of the Investigatory Mandate, unless and to the extent that we are able to identify a meaningful role for independent counsel in any future litigation; and, the amount and manner of payment for our services in respect of the Emergency Relief Mandate would be in the

Paliare Roland

absolute discretion of the court on a quantum meruit basis and subject to the availability of funding.

If necessary, we would be authorized to bring a motion seeking relief in keeping with the above. However, the preference of the Starkman Group, for a variety of reasons, including reputational concerns and concerns about being harassed or targeted by fraudsters, is, at this early stage, to avoid public disclosure of their interests in this matter to the extent possible. Other stakeholders may have similar concerns.

Our preference, as a firm, and, we expect, possibly, many of the stakeholders, is to avoid the spectacle of a public carriage fight which may tarnish many, including the possibility of the appearance of the administration of justice. Accordingly, we are writing to request that you propose to the court, in advance of the hearing on May 16th, that the resolution of this issue be referred to the Honourable Wilton-Seigel or another independent referee, as was recently done in the *HBC* case, and, before that, in the *Bridging Finance* case.

Please let us know whether you are prepared to proceed in this manner at your earliest convenience, and no later than the close of business today, Thursday, May 8, 2025, so that we may proceed with knowledge of the Receiver's views. I will do my best to make myself available to discuss this matter further with you, today, as needed.

Thank you.

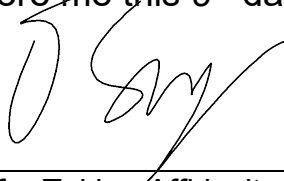
Yours very truly,
Paliare Roland Rosenberg Rothstein LLP



Kenneth T. Rosenberg
MS:mj

c. M. Starnino and E. Snyder (PRRR)
G. Starkman

This is **Exhibit "B"**
Referred to in the Affidavit of Gordon Starkman
Affirmed before me this 9th day of May, 2025

A handwritten signature in black ink, appearing to be 'J. Smy', is written over a horizontal line.

A Commissioner for Taking Affidavits (or as may be)

Memorandum

To: Gordon Starkman

Date: May 9, 2025

Re: Selected Representative Engagements of Paliare Roland Rosenberg Rothstein LLP

Pace Securities

Paliare Roland acted as the court-appointed representative counsel of investors in the *Pace Financial* and *First Hamilton Holdings* funds, in the context of the court-supervised liquidation of those funds, resulting in a 70% recovery for investors after payment of professional costs. As noted by the Court, “[t]he results achieved by Representative Counsel for the investors can only be described as excellent”: 2021 ONSC 6956 at [para. 39](#).

Lac Megantic

Paliare Roland acted as insolvency counsel to the shareholder class action plaintiff group in the *Lac Megantic* case, wherein Paliare Roland contributed to the creation of a settlement fund in excess of \$400 million.

Poseidon Concepts

Paliare Roland acted as insolvency counsel to the class action plaintiff group in the *Poseidon Concepts* case, wherein Paliare Roland contributed to the creation of a settlement fund in excess of approximately \$450 million, two-thirds of which went to class members.

Sino-Forest

Paliare Roland acted as insolvency counsel to the shareholder class action plaintiff group in the *Sino-Forest* case, wherein Paliare Roland contributed to a \$117 million settlement of the auditors’ negligence claim (at the time, the fourth largest recovery in respect of such a claim in North America), almost all of which went to class members.

Bank of Montreal

Paliare Roland acted as counsel to class representatives in a foreign exchange class action against *Bank of Montreal*, resulting in a settlement of \$100 million for class members, following a successful summary judgement motion on liability issues.

Shoppers Drug Mart

Paliare Roland acted as counsel to class representatives for franchisees in an action against *Shoppers Drug Mart*, in which the court found that Shoppers wrongfully retained professional

fees totaling in excess of \$1 billion, when a portion of these monies ought to have been paid to franchisees (the process for assessment of damages on behalf of individual franchisees is currently pending before the court).

Hollinger

Paliare Roland acted for the Honourable John D. Ground, Q.C., in his capacity as Litigation Trustee in the context of the Hollinger insolvency, resulting in a favourable settlement of an auditor's negligence claim.

Sears

Paliare Roland was part of a lead creditor group that established and managed a successful Litigation Trust, which recovered through litigation approximately \$70 million from Sears' shareholders and directors.

CCAA cases for Unions and/or Pensioners

Over the last two decades or more, Paliare Roland has regularly acted for various unions, and continues to do so, including the Steel Workers (USW), and the Airline Pilots Association (ALPA), in complex insolvencies and restructurings, where each file has involved representing different categories of unionized labour and pensioners, including: actives; retirees; deferred; disabled; and laid off workers. Cases where these client groups played a central role include the following CCAA files: Air Canada; Algoma 2; Algoma 3; Stelco 1; Stelco 2; Collins & Aikman; and, Hamilton Specialty Bar.

ES:ES

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL
SERVICES REGULATORY AUTHORITY OF ONTARIO**
Applicant

-and- **SUSSMAN MORTGAGE FUNDING INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

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Proposed Representative Counsel, Paliare Roland

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**
Applicant

-and- **SUSSMAN MORTGAGE FUNDING INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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Proposed Representative Counsel, Paliare Roland