

**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

**APPLICATION UNDER SUBSECTION 37 OF THE *MORTGAGE BROKERAGES,
LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, c. 29, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

SUPPLEMENTARY FACTUM OF THE PROPOSED REPRESENTATIVE INVESTORS

May 15, 2025

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO #31871V)

Tel: (416) 865-7726

Email: sgraff@airdberlis.com

Matilda Lici (LSO #79621D)

Tel: (416) 865-3428

Email: mlici@airdberlis.com

Proposed Representative Counsel

PART I – OVERVIEW

1. This supplementary factum is filed to supplement the factum dated May 1, 2025 (the “**First Factum**”), filed by on behalf of a group of investors (the “**Proposed Representative Investors**”), and adopts all facts, law, argument, and defined terms that are contained within it.¹ This supplementary factum will also address the Motion Record of Gordon Starkman dated May 9, 2025, specifically as it pertains to the appointment of Representative Counsel.

2. Gordon Starkman (“**Starkman**”) has brought a motion to, among other things, appoint Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”) as Representative Counsel to represent the Investors. It is submitted that when considering the entirety of the circumstances, it is more appropriate to appoint A&B as Representative Counsel than Paliare.

PART III – ISSUES

3. The sole issue on this Motion is whether it is appropriate for this Court to appoint A&B as Representative Counsel to represent the Investors pursuant to the terms of the Draft Order.

PART IV – LAW AND ARGUMENT

4. In his motion record, Starkman has raised the following issues regarding the appointment of representative counsel:

- (a) the cost of representative counsel in addition to the cost of a court-appointed receiver;²
- (b) the composition of the Representative Investor Committee;³

¹ Factum of the Proposed Representative Investors dated May 1, 2025 (the “**First Factum**”).

² Affidavit of Gordon Starkman dated May 9, 2025 (“**Starkman Affidavit**”) at para. 18, Motion Record of Gordon Starkman dated May 9, 2025 (“**Starkman MR**”), Tab 2.

³ Starkman Affidavit at para. 19, Starkman MR Tab 2.

- (c) the scope of the Representative Counsel's engagement;⁴ and
- (d) the benefit of Representative Counsel to the Investors.⁵

5. Each of these issues will be addressed below.

A. The Cost of Representative Counsel

6. Regardless of whether A&B or Paliare is appointed as Representative Counsel, legal fees will be incurred in addition to the fees incurred by the Receiver and its counsel. The material difference is that Paliare has not been involved with these proceedings, and, therefore, would inevitably incur significant costs to familiarize themselves with the facts, parties, and issues before being able to effectively serve the interests of the Investors. In contrast, A&B has been involved prior to the appointment of B. Riley Farber as receiver of the Respondents and has taken steps to facilitate the collective cause of the investors, including by issuing a bankruptcy application with respect to SMFI.⁶ A&B is already intimately familiar with these proceedings and, once appointed, could commence its mandate without delay, to the benefit of the Opt-In Investors.

7. Furthermore, upon finalizing the Receiver's report, the Investors and the Court will have a better sense of the assets available for realization. At that point, if it is determined that it is not economically feasible to support the mandate of a Representative Counsel, A&B can determine whether continuing on in the role as Representative Counsel makes economic sense.

B. The Composition of the Representative Investor Committee

8. As stated in the Starkman Affidavit, the Representative Investor Committee should be truly representative of all the Investor's interests and should reflect the composition of the investor group,

⁴ Starkman Affidavit at para. 21, Starkman MR Tab 2.

⁵ Starkman Affidavit at para. 18, Starkman MR Tab 2.

⁶ Affidavit of Matilda Lici sworn May 15, 2025 ("**Lici Affidavit**") at paras 4-6, Exhibit "A", Bankruptcy Application, Supplemental Motion Record of Certain Proposed Investors dated May 15, 2025, Tab 1.

having regard to factors such as age, investment size, and level of sophistication.⁷ Starkman has allegedly amassed a group of four investors, including himself, representing a collective \$1.1 million investment in SMFI (the “**Starkman Group**”).⁸

9. It is proposed that A&B, as representative counsel, will consult with the Receiver as to the composition and quantum of members of the investment committee.

C. The Scope of the Representative Counsel’s Engagement

10. A look-see engagement, as proposed by Starkman, is not appropriate in the circumstances.⁹ There have been allegations of serious impropriety requiring the Receiver to take significant steps to preserve assets to protect the Investors. The Investors require representative counsel with a broad mandate and ability to liaise with the Receiver and adequately protect their interests in a situation in which their assets are at serious risk. The Investors need legal representation to advance their interest, unless as outlined above, there are insufficient assets in the estate to support such a mandate.

11. As stated, if it is determined after the Receiver releases its first report that the Estate cannot bear the appointment of Representative Counsel, A&B will withdraw from such a role and will bring a motion to withdraw if necessary to do so.

D. The Benefit of Representative Counsel to Investors

12. As stated in the First Factum, Courts have considered the appointment of representative counsel to be beneficial in cases such as the one at bar.¹⁰ This proceeding is highly complex with a

⁷ Starkman Affidavit at para. 19, Starkman MR Tab 2, p. 29.

⁸ Starkman Affidavit at para. 24, Starkman MR Tab 2, p. 31. No particulars have been given regarding these investors or their investments.

⁹ Starkman Affidavit at para. 21, Starkman MR Tab 2.

¹⁰ First Factum at paras. 32-42.

large number of stakeholders involved. As such, the appointment of Representative Counsel is necessary and desirable in order to simplify the proceedings.

13. The appointment of Representative Counsel avoids the need for each Investor to retain their own counsel. Instead, all Investors would have a single source of information and point of contact to whom to direct all inquiries. An online Investor “portal” will also be used to facilitate rapid and convenient dissemination of information to all Investors. Lastly, Representative Counsel would be able to more effectively cooperate and work with the Receiver in order to advocate for and protect the collective interests of all Investors.

14. A&B, having already filed a bankruptcy application related to these proceedings, is intimately familiar with the facts, issues, and stakeholders. As such, A&B can immediately take action to move these proceedings forward for the benefit of the Investors. This is especially important given the significant risks facing the Investors due to the alleged serious impropriety at issue.

15. In any event, the appointment of A&B as Representative Counsel would remain conditional on the economic feasibility of the Estate supporting such an appointment, so that the Investors will not be unduly burdened by it.

PART V – RELIEF REQUESTED

16. For the reasons set out above and in the First Factum, the Proposed Representative Investors respectfully request the relief described in the Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of May, 2025.



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Court File No. CV-25-00741044-00CL

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Proceedings commenced at Toronto

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