

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *SECURITIES ACT* R.S.O. 1990, C. S-5, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF FUNDS OBTAINED BY THE ONTARIO
SECURITIES COMMISSION IN THE ENFORCEMENT OF A SANCTIONS ORDER MADE AGAINST
YORK RIO RESOURCES INC., BRILLIANTE BRASILCAN RESOURCES CORP., VICTOR YORK,
ROBERT RUSIC, GEORGE SCHWARTZ, PETER ROBINSON, ADAM SHERMAN, RYAN DEMCHUK,
MATTHEW OLIVER, GORDON VALDE, AND SCOTT BASSINGDALE

**FIRST REPORT OF A. FARBER AND PARTNERS INC.
DATED SEPTEMBER 20, 2019**

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(SEPTEMBER 20, 2019)**

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SEPTEMBER 20, 2019**

I. INTRODUCTION

1. On March 6, 2019, the Honourable Justice Hainey granted an Order (“**Receivership Order**”) appointing A. Farber & Partners Inc. as Receiver (“**Farber**” or “**Receiver**”), without security, of all proceeds (the “**Proceeds**”) obtained by the Ontario Securities Commission (the “**Commission**”) in the enforcement of a sanctions order (“**Sanctions Order**”). The Commission issued the Sanctions Order on March 31, 2014 in relation to the parties listed at **Schedule “A”** (“**Respondents to the Commission Proceedings**”) to this report. A copy of the Receivership Order is attached as **Appendix “A”** to this report (“**First Report**”).
2. The Receivership Order sets out steps for a claims process (“**Claims Process**”) for investors (“**Investors**”) that is described in detail below at paragraph 11 of this First Report. The Claims Process provides for a claims bar date of May 31, 2019 (“**Claims Bar Date**”).
3. This First Report should be read in conjunction with an Application Record dated March 1, 2019 and a Supplementary Application Record dated March 4, 2019. Copies of the Application Record and Supplementary Application Record are attached at **Appendices “B”** and “**C**”, respectively.

II. DISCLAIMER

4. In preparing this First Report, Farber has relied upon all records compiled by the Commission and any other available information relating to Investors provided by: the Commission; Commission Staff; and Commission counsel. Farber has not independently verified the information provided. Farber has prepared this First Report solely for use of the Court and of the other stakeholders in these proceedings. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production, or use of this First Report. Any use, reliance upon, or decision made by any party based on this First Report, other than the Court, is the sole responsibility of the other party.

III. PURPOSE

5. The purpose of this First Report is to report to:
- (a) provide the Court details of the Receiver's activities in relation to the administration of the Claims Process from the date of the Receiver's appointment to the date of this First Report;
 - (b) request approval for *pro rata* distribution of all Proceeds to Investors who have confirmed or proven claims under the Claims Process, including certain Investors who filed claims after the Claims Bar Date;
 - (c) request approval of the activities of the Receiver and this First Report; and
 - (d) discharge the Receiver.

IV. BACKGROUND

6. Between May 10, 2004 and October 21, 2008, the Respondents to the Commission Proceeding raised approximately \$18 million¹ from Investors through unlawful and fraudulent sales of the securities of York Rio Resources Inc. ("**York Rio**") and Brilliante Brasilcan Resources Corp. ("**Brilliante**") (York Rio and Brilliante collectively referred to as the "**Companies**"). The funds were obtained in both Canadian and US Dollars.
7. Proceedings brought by Commission Staff ("**Commission Staff**") against the Respondents to the Commission Proceeding led to the granting of several interim and final orders, directions, certificates, and decisions by the Courts, the Commission, and the British Columbia Securities Commission including:

¹ A review of the Investor information by the Receiver, including banking records, suggests that the total investments in both US dollars and Canadian dollars were approximately \$20,390,386.58 (on conversion of US dollar investment to Canadian dollar at the rate of CAD\$1.3/US\$).

- a. October 21, 2008 – an interim order that trading in the Companies’ securities cease (the “**Temporary Cease Trade Order**”);
- b. October 21, 2008 – freeze directions issued by the Commission to financial institutions holding sale proceeds of the Companies’ securities (the “**Commission Freeze Directions**”);
- c. July 7, 2009 – a Certificate of Direction (“**Certificate of Direction**”) issued by the Commission and registered on title to the property municipally known as 206 Deerglen Terrace, Aurora, Ontario, which was purchased with funds relating to Robert Runic’s (“**Runic**”) involvement in the sales of Companies’ securities;
- d. March 2009 to May 2009 - freeze orders issued by the British Columbia Securities Commission (“**BCSC Freeze Orders**”) relating to proceeds of sale of the Companies’ securities held by banks, law firms, and accounting firms in British Columbia;
- e. November 5, 2010 and June 6, 2011 – orders approved by the Commission approving settlement agreements with Peter Robinson and Adam Sherman (the “**Settlements**”), in which they admitted to trading in York Rio and Brillante securities contrary to the *Securities Act*, R.S.O. 1990, c. S.5;
- f. March 25, 2013 – a decision by a panel of the Commission on the merits finding that the scheme to trade in the Companies’ securities was contrary to the *Act* and fraudulent (the “**Merits Decision**”); and
- g. March 31, 2014 – a decision of the Panel imposing sanctions and costs, including disgorgement of funds relating to the scheme (“**Sanctions Decision**”) and the Sanctions Order (“**Sanctions Order**”).

Copies of the Temporary Cease Trade Order, Ontario Freeze Directions, Certificate of Direction, BCSC Freeze Orders, Settlements, Merits Decision, Sanctions Decision, and Sanctions Order are attached as Exhibits “A” to “G-2”, respectively, to the Affidavit of Wayne Vanderlaan sworn February 28, 2019 found at Tab 2 of the Application Record.

8. The Commission has recovered \$5,603,089.13 (inclusive of accruing interest) in partial satisfaction of disgorgement amounts ordered in the Sanctions Order, including \$371,341.39 recently recovered in British Columbia proceedings relating to claims by a former accountant for Runic, one of the individual Respondents to the Commission Proceedings. The Court appointed Farber as Receiver over the Proceeds for administration of individual Investor claims and distribution of all Proceeds to Investors *pro rata* on the same, or equal, basis.
9. Commission Staff have compiled a list of Investors in the Companies (the “**Investor List**”) based on evidence obtained by Staff during its investigation. The list is based upon sources that include: bank

records; subscription agreements; cheques; and corporate records obtained from the Companies. The Investor List contains, for most Investors, contact information and the amount of each Investor's individual investments in the Companies' securities. As of the date of the Receiver's appointment, the total investments indicated on the Investor List were \$18,710,752.96 Canadian invested by 962 Investors, and \$1,292,025.86 US Dollars invested by 37 Investors. Approximately 80% of the Investors reside in Alberta and British Columbia. The total investment in Canadian Dollars was \$20,390,386.58 based on a conversion rate of \$1.30 US Dollar per \$1 Canadian Dollar (an estimated average of the USD to Canadian Dollar conversion rate during the relevant time) by 999 Investors. For some Investors, the Investor List contained either the contact information or the investment amount but not both. As of the date of the Receivership Order, the Receiver had identified approximately 130 Investors on the Investor List with missing addresses / contact information.

10. Both before and after the Receivership Order, the Receiver undertook extensive work to reconcile and validate investor names, claim amounts, and contact particulars to ensure a strong take-up rate from Investors.

V. THE RECEIVERSHIP ORDER

11. The Receivership Order directs the Receiver to administer a Claims Process that may be summarized as follows:
 - a. Publish a copy of the Receivership Order on the Receiver's website;
 - b. Publish a public notice to Investors regarding the Claims Process in national and regional Canadian newspapers ("**Public Notice**");
 - c. Mail a Notice of Claim to each Investor for whom an address was available, stating the amount of investment made by that Investor according to available records;
 - d. If an Investor did not dispute the amount of a claim as stated in the Notice of Claim, a Confirmation of Claim ("**Confirmation of Claim**") was to be filed with the Receiver before the Claims Bar Date (May 31, 2019) and these claims would be accepted by the Receiver;
 - e. Investors who disputed the amount stated in the Notice of Claim, whose claim amount was not known, or who did not receive the Notice of Claim could file a Proof of Claim with the Receiver along with supporting evidence ("**Proof of Claim**");
 - f. Investors were required to submit their Confirmation of Claim or Proof of Claim ("**Claim**") before the Claims Bar Date of 5:00 PM Pacific time on May 31, 2019 but the Receiver, at its discretion, could extend the Claims Bar Date generally or in individual cases. Any Claim, Confirmation of Claim, or Proof of Claim submitted after the Claims Bar Date and not

extended at the Receiver's discretion could be barred, extinguished, released, discharged forever, and the Investor making the late claim would not be permitted to participate in the distribution.

- g. The Receiver was required to review the Proof of Claim forms filed before the Claims Bar Date and had the authority to accept, revise, or disallow (in whole or in part) the amount, or any other aspect of, the Claim asserted in the Proof of Claim.
- h. The Receiver could also request additional information with respect to a Claim or request that an Investor file a revised Proof of Claim;
- i. The Receiver could disallow a claim by sending a Notice of Revision or Disallowance ("**Notice of Revision or Disallowance**") to the Investor. The Receiver was also authorized to resolve consensually the amount of, or any other aspect of, an Investor claim before accepting, revising, or disallowing a claim.
- j. An Investor could dispute a Notice of Revision or Disallowance by filing a Notice of Dispute with the Receiver within the timeline prescribed in the Receivership Order.
- k. The Receivership Order also prescribed a mechanism for resolution of disputed claims.

VI. THE CLAIMS PROCESS

Investor Package

- 12. To facilitate an efficient Claims Process, the Receiver assembled Investor Packages (the "**Investor Package**"). Investor Packages were comprised of: a cover letter detailing information in relation to the Claims Process; a list of required steps to be followed by an Investor to file Confirmation and/or Proof of Claim forms; and contact information of the Receiver. Copies of Notice of Claim, Confirmation of Claim, and Proof of Claim forms, in the form approved by the Court, are included in the sample Investor Package attached at **Appendix "D"**.
- 13. A dedicated email address was created to facilitate communications with Investors who had questions or comments on the Claims Process.

Case Website

- 14. Within five business days of appointment, the Receiver created a case website (the "**Case Website**") consistent with Commercial List Practice Directions. The Case Website includes: information regarding appointment of the Receiver; steps involved in the Claims Process; a copy of the Investor Package; and copies of documents filed with or issued by the Court in this proceeding.

15. The Case Website also provides contact information for the Receiver, including the Receiver's email address, telephone number, and fax number. The Case Website is designed to enable Investors who did not receive an Investor Package to easily contact the Receiver to assert a Claim. The Receiver has continuously updated and maintained the Case Website. A copy of a screenshot from the Receiver's Case Website is attached at **Appendix "E"**.

Notices of Claim

16. On March 15, 2019, the Receiver mailed out Investor Packages to Investors for whom contact information was available. The Notice of Claim included in the Investor Package stated known investment amounts for each known individual Investor based on the Investor List. In individual letters, the Receiver informed Investors of the May 31, 2019 Claims Bar Date and asked Investors to either confirm or dispute an investment amount in a Claim.
17. In circumstances where investor identity was known but not the investment amount, the Receiver mailed out Investor Packages without an amount mentioned in the Notice of Claim. Investors with unknown investment amounts were given the opportunity to file a Proof of Claim, insert an investment amount, and provide appropriate back up documentation to support a Claim.
18. The Receiver received hundreds of responses from Investors to the first set of mailings of Investor Packages and activation of the Case Website. Investors contacted the Receiver by telephone, email, and fax with inquiries about the Claims Process and several hundred filed Confirmation of Claim or Proof of Claim forms. The Receiver ensured that all Investors were provided with timely responses to their calls, emails, and faxes to enable Investors to file Claims before the Claims Bar Date.

Locating Investors/Public Notice

19. Given that the Proceeds were obtained from Investors between 11 and 15 years ago, the Receiver lacked current address information from some Investors. Working in conjunction with counsel at Gowling WLG, the Receiver conducted various searches to locate current address information for some Investors. The Receiver also arranged for publication of a notice regarding the Claims Process in national and regional Canadian newspapers, including in Western Canada, where a large percentage of Investors resided.
20. On March 29, 2019, the Receiver published the Public Notice in the form approved by the Court in the Receivership Order in the: *Globe & Mail*; *Calgary Herald*; and *Vancouver Sun*. Publication of the Public Notice resulted in dozens of additional Investor inquiries to the Receiver about the Claims Process and the necessary steps to file Claims. Copies of the Public Notices published in the *Globe & Mail*, *Calgary Herald*, and *Vancouver Sun* are attached at **Appendices "F", "G", and "H"**, respectively.

Unknown / Missing Addresses

21. About 190 Investor Packages mailed by the Receiver on March 15, 2019 were returned. In addition, the Receiver lacked any contact information from the Investor List for about 130 Investors.
22. The Receiver, in collaboration with legal counsel, carried out extensive searches to locate contact information for about 320 Investors. The efforts included corporate searches for corporate Investors. For individual Investors, location efforts included Canada 411 searches; telephone calls to last known telephone numbers; and generic web-based searches.
23. After conducting this comprehensive search for addresses, the Receiver mailed a second set of Investor Packages on April 10, 2019 to provide Investors with sufficient time to file their Claims with the Receiver by the Claims Bar Date
24. The Receiver received returned Investor Packages intermittently during the course of the Claims Process. Each time an Investor Package was returned, the same search process, described above, was conducted to locate individual Investors and, when contact information was obtained, Investor Packages were re-mailed to enable Investors to file Claims.
25. Given that the Receiver's contact information (email addresses, phone number and fax number) was in the Public Notice and available on the Case Website, the Receiver received calls and emails from Investors containing their current contact information. Upon receipt of communications from Investors, the Receiver provided Investor Packages forthwith to enable Investors to file Claims. The Receiver regularly updated the Investor List during administration of the Claims Process based on additional communications with Investors.

Confirmations of Claims

26. The majority of Claims received from Investors were Confirmations of Claim. The Receiver accepted 454 Investors Claims without any revision or dispute. The Confirmations of Claim filed with, and accepted by, the Receiver amount to Canadian \$10,321,727.58 (Canadian Dollar Ten Million Three Hundred Twenty-One Thousand Seven Hundred Twenty-Seven and Fifty-Eight Cents) and US \$826,066.61 (US Dollars Eight Hundred Twenty-Six Thousand Sixty-Six and Sixty-One Cents). The claims received in US dollars will be converted to Canadian Dollars at the Bank of Canada noon spot rate as at the date of the Receivership Order i.e., CDN\$ 1.342 / US\$. The total value of Confirmations of Claim using the conversion rate is Canadian \$11,430,308.97 (Canadian Dollars Eleven Million Four Hundred Thirty Thousand Three Hundred Eight and Ninety-Seven Cents).

Proofs of Claim

27. Twenty-five (25) Investors filed Proof of Claim forms with the Receiver. The circumstances in which Proof of Claim forms were received included the following:
- i. an Investor disagreed with the amount stated in the Notice of Claim;
 - ii. claim amounts were unknown to the Receiver; and
 - iii. Investors did not receive an Investor Package from the Receiver but learned of the Claims Process, for example, from the Public Notice.
28. The Receiver reviewed all Proofs of Claim filed by Investors to ensure the evidence provided in support of the amount was sufficient to admit their claims.
29. When first filed with the Receiver, some Proof of Claim forms lacked sufficient detail to support the amount claimed. In such cases, the Receiver endeavoured to resolve consensually the amount by engaging in a dialogue with the Investor and requesting further information to support of the Investor's Claim. The Receiver accepted Proofs of Claims in circumstances where the Investor provided sufficient additional proof. In cases where an Investor could not provide additional supporting evidence, the Receiver asked the Investor to file a revised Proof of Claim. Ultimately, all Proofs of Claim were consensually resolved and the Receiver was not required to issue any Notices of Revision or Disallowance.
30. The Proofs of Claim reviewed and accepted by the Receiver total Canadian \$767,450.85 (Canadian Dollar Seven Hundred Sixty-Seven Thousand Four Hundred and Fifty and Eighty-Five Cents) and US \$10,000 (US Dollars Ten Thousand). As indicated above, the Proofs of Claim received in US dollars have been converted to Canadian Dollars at Bank of Canada noon spot rate as at the date of the Receivership Order i.e., CDN\$ 1.342 / US\$. The total Proofs of Claim add up to Canadian \$780,870.85 (Canadian Dollars Seven Hundred Eighty Thousand Eight Hundred Seventy and Eighty-Five Cents) at the prescribed conversion rate.
31. A summary of the Confirmation and Proof of Claim forms received and accepted is provided immediately below:

Description	Claims (CAD)	Claims (USD)	Total Claims	CAD Amount	USD Amount	USD Amount Converted to CAD @1.342 CDN\$/ US\$	Total (CAD + USD Converted to CAD)
Confirmations of Claim	435	19	454	10,321,727.58	826,066.61	1,108,581.39	11,430,308.97
Proofs of Claim Reviewed + Accepted	24	1	25	767,450.85	10,000.00	13,420.00	780,870.85
Total:	459	20	479	11,089,178.43	836,066.61	1,122,001.39	\$12,211,179.82

Claims Received after the Claims Bar Date

32. Investors claiming to have invested in the Companies were required to submit Confirmation of Claim / Proof of Claim before the Claims Bar Date. Failure to file a timely Claim could result in the Claim being barred, and the Investor disintitled to participate in distribution of Proceeds. The Receiver nonetheless had the discretion under the Receivership Order to admit individual late claims.
33. The Receiver received 8 Confirmation of Claim forms after the Claims Bar Date ("**Late Claims**"). The Late Claims total Canadian \$67,533.15 (Canadian Dollars Sixty-Seven Thousand Five Hundred and Thirty-Three and Fifteen Cents) and US\$5,000 (US Dollars Five Thousand). The total amount claimed under the Late Claims after conversion at the US dollar rate based on the Bank of Canada noon spot rate as at the date of the Receivership Order is Canadian \$74,243.15 (Canadian Dollars Seventy-Four Thousand Two Hundred and Forty-Three and Fifteen Cents). The details of the Late Claims are summarized in the table below:

	Investor Name	Date Received	CAD Amount	USD Amount	USD Amount Converted to CAD @1.342 CDN\$/ US\$	Total (CAD + USD Converted to CAD)
1	CR	5-Jun-19	5,000.00	-	-	5,000.00
2	CB & JB	6-Jun-19	13,666.30	-	-	13,666.30
3	SS	10-Jun-19	5,000.00	-	-	5,000.00
4	SA	13-Jun-19	5,000.00	-	-	5,000.00
5	EJ & ST	14-Jun-19	5,000.00	-	-	5,000.00
6	JC	24-Jul-19	25,200.00	-	-	25,200.00
7	VR & UR	6-Aug-19	8,666.85	-	-	8,666.85
8	JD	16-Aug-19	-	5,000.00	6,710.00	6,710.00
Total:			67,533.15	5,000.00	6,710.00	\$74,243.15

34. The Late Claims were all filed as Confirmations of Claim consistent with amounts on the Investor List. The Late Claims have only a marginal impact on amounts paid to other Investors: 0.6% of total Claims. The Receiver asks the Court approve the Late Claims for distribution purposes. While the Receivership Order provides a discretion to the Receiver to extend the Claims Bar Date in individual cases, the Receiver nonetheless brings the Late Claims to the Court's attention out of abundance of caution.
35. Attached to this Report as **Confidential Appendix "1"** is a table listing the names of individual Investors and the amount of each allowed claim which is based on the amount invested (the "**List of Claims**"). This information is private and confidential. Publication of the information is potentially prejudicial to the named Investors, who have an expectation that their private financial information will not form part of the public record. The Receiver and the Commission are also concerned that publically identifying Investors could lead to Investors being targeted in future fraud schemes. Accordingly, the Receiver seeks an order sealing the List of Claims.

VII. RESULT AND RECOMMENDATIONS

36. The total amount of all Claims received before and after the Claims Bar Date is Canadian \$12,285,422.97 (Canadian Dollar Twelve Million Two Hundred Eighty-Five Thousand Four Hundred and Twenty-Two and Ninety-Seven Cents). A table summarizing the Claims received before and after the Claims Bar Date and Late Claims is below:

Description	Amount in CAD\$
Claims received before the Claims Bar Date	\$12,211,179.82
Claims received after the Claims Bar Date	\$74,243.15
Total Claims including Late Claims	\$12,285,422.97

37. The Receiver submits that it has complied with the terms of the Receivership Order. The Receiver, assisted by legal counsel, has been diligent in making all possible efforts to contact as many Investors as possible. Extensive searches were conducted to obtain contact information, or updated contact information, for Investors for whom no contact information was initially available. The Receiver also facilitated open communication with a substantial number of Investors by providing various modes of communication through which Investors could correspond with the Receiver throughout the Claims Process. The Receiver promptly addressed any Investor questions to enable Investors to submit their Claims within the prescribed timelines.
38. The Receiver's efforts have resulted in submission of claims amounting to approximately Canadian \$12.2 million ("**take-up**"). The Receiver believes this to be a successful outcome given the initially incomplete Investor records. The total Claims filed with the Receiver represent approximately 60% of

total investments apparently made by Investors based on the Investor List. This is a significant take-up rate given that more than a decade has elapsed since investments were made between 2004 and 2008.

39. Further, most of the Claims filed with the Receiver were Confirmations of Claim. The number of Proofs of Claim filed was, in relative terms, low and all disputes were consensually resolved to enable an efficient and effective administration of the Claims Process.

VIII. DISTRIBUTION

Pro Rata Distribution

40. Upon obtaining the Court's approval, the Receiver intends to make a *pro rata* distribution of Proceeds to Investors over a one-month period. The Proceeds received by the Commission have been transferred to the Receiver and are being held by the Receiver in a separate interest-bearing trust account ("**Receivership Account**") with Royal Bank of Canada. Effective September 3, 2019, the Proceeds total Canadian \$5,603,089.13 (Canadian Dollars Five Million Six Hundred Three Thousand and Eighty-Nine and Thirteen Cents). Based on the Proceeds held (\$5,603,089.13) and claims admitted, the Receiver estimates that each Investor will receive 45.88 cents on the dollar based on their original investments. The difference between a distribution based on all timely filed Claims and Late Claims is marginal: 45.88 versus 45.61 cents on the dollar. The fees of the Receiver and legal counsel are being paid independently by the Commission and not from the Proceeds. Accordingly, the entire Proceeds will be distributed to Investors.
41. If distribution of Proceeds is made to all Investors, including Investors who filed Late Claims, there is no material prejudice to Investors.
42. Given that the Proceeds are continuously accruing interest in the Receivership Account, the actual distribution of proceeds to Investors may increase slightly from the estimated amount based on additional interest that may accrue between the date of this Report and the date on which the distribution is made. Accordingly, the Receiver requests the Court's approval to make a *pro rata* distribution based on the amount of Proceeds, including interest, as on the distribution date.
43. If the Proceeds accrue further interest from the period beginning with the first date of actual distribution to the date when cheques are issued and cashed by Investors (hereafter defined as "**Residual Interest**") the amount will be *de minimis* and not warrant the time and cost to effect a second distribution. Accordingly, the Receiver recommends that any Residual Interest be refunded to the Commission.

IX. RECEIVER DISCHARGE

44. Following issuance of a Claims Approval and Distribution Order, all of the Receiver's administration duties will be completed including:

- a. distribution of the Proceeds on a *pro-rata* basis (estimated at around 45 cents on the dollar) to Investors whose Claims have been admitted;
- b. dividend cheques cleared; and
- c. Residual Interest, if any, remitted to the Commission.

45. Once these distribution duties are completed, the Receiver will provide a Discharge Certificate to the Court to facilitate the Receiver's discharge and release from any and all liabilities in this receivership. A copy of the proposed form of Discharge Certificate is attached.

X. REQUESTED ORDER

46. The Receiver requests that this Honourable Court grant an Order that includes:

- (a) Approval of the Receiver's actions to date;
- (b) Approval of the *pro rata* distribution of the Proceeds to all Investors, including Investors who submitted Late Claims;
- (c) Approval of this Report; and
- (d) Discharge of the Receiver.

All of which is respectfully submitted, this 20th day of September, 2019.

A. FARBER & PARTNERS INC.

The Court appointed Receiver of the Proceeds of a Sanctions Order against York Rio, Brillante, and other pursuant to the Order of the Honourable Justice Hainey dated March 6, 2019


Per: Paul Denton
CA (NZ), CIRP, LIT