

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

H.M POLYTHENE PRODUCTS LIMITED

Respondent

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## **MOTION RECORD OF THE RECEIVER**

**Returnable June 15, 2023**

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June 12, 2023

**HARRISON PENSA LLP**

Barristers & Solicitors

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London, ON N6A 5R2

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Solicitors for the Receiver,  
msi Spergel inc.

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**SERVICE LIST**

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Receiver

AND

TO: **CANADA REVENUE AGENCY**  
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AND

TO: **HER MAJESTY THE QUEEN IN RIGHT  
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TO: **MARYUM REHMAN**  
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## INDEX

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# Tab 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

H.M POLYTHENE PRODUCTS LIMITED

Respondent

**NOTICE OF MOTION  
(returnable June 15, 2023)**

msi Spergel inc. ("**Spergel**") in its capacity as Court-appointed receiver (the "**Receiver**") appointed pursuant to the Order of the Honourable Justice Steele dated May 26, 2023 (the "**Appointment Order**") of the Property, as defined in the Appointment Order, of H.M Polythene Limited (the "**Debtor**"), will make a Motion to a Judge presiding over the Commercial List.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is on consent;
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

On June 15, 2023 at 10:30 a.m., or as soon after that time as the Motion can be heard by judicial teleconference via Zoom at Toronto, Ontario.

## THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto at Schedule “A”, *inter alia*:
  - a. An Approval and Vesting Order approving the sale by Auction (the “**Auction**”) contemplated by an Auction Agreement between Platinum Asset Services Inc. (the “**Auctioneer**”) and the Receiver to be executed (the “**Auction Agreement**”) for the sale of certain of the Property of the Debtor (the “**Auction Assets**”), and upon delivery of a receipt for payment in full by the Auctioneer to each of the purchasers at the Auction, *inter alia*, vesting all of the right, title and interest in and to such Auction Assets sold at the Auction absolutely in each purchaser free and clear of and from any security, charge or other restriction;
2. An Ancillary Order, substantially in the form attached hereto at Schedule “B”, *inter alia*:
  - a. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and dispensing with further service and confirmation thereof;
  - b. Approving the First Report of the Receiver dated June 12, 2023 (the “**First Report**”), and the activities and conduct of the Receiver set out therein; and,
  - c. Sealing the Confidential Appendix to the First Report (the “**Confidential Appendix**”) until the completion of the Auction, or until a further order of this Court;
3. The costs of this motion on a substantial indemnity basis, if opposed; and,
4. Such further and other relief as counsel may request and this honourable court may permit.

## THE GROUNDS FOR THE MOTION ARE:

### The Debtor and the Appointment of the Receiver

1. The Debtor is incorporated pursuant to the laws of the Province of Ontario, with its registered office located in Mississauga, Ontario. The Debtor operated from a leased premises located at 7650 Kimbel Street, Unit 18 & 19, Mississauga, Ontario (the “**Leased Premises**”).



2. The Applicant, Royal Bank of Canada (the “**Bank**”), provided certain credit facilities to the Debtor.
3. The Bank is a secured creditor of the Debtor, and the Debtor is indebted to the Bank.
4. On April 12, 2023, the Bank applied for and obtained the Appointment Order, appointing Spergel as court-appointed receiver of the Property (as defined in the Appointment Order) of the Debtor.
5. The Appointment Order was obtained on consent of the Debtor and was held in escrow by Counsel for the Bank on certain terms, including the requirement of the Debtor to make a \$50,000 payment to the Bank by June 2, 2023.
6. The Debtor failed to make the \$50,000 payment to the Bank and Counsel for the Bank released the Appointment Order from escrow on June 2, 2023.

#### The Leased Premises

7. On June 2, 2023, the Receiver received correspondence from counsel for Desjardins Financial Security Life Assurance Company (the “**Landlord**”), the landlord of the Leased Premises, providing copies of the leases (collectively, the “**Lease**”) in relation to the Debtor’s occupation of the Leased Premises, advising the following:
  - a. The term of the Lease expired on April 30, 2023;
  - b. While the Debtor has no further legal right to access or use of the Leased Premises, the Landlord has permitted the Debtor to continue its access to the Leased Premises up to June 19, 2023 (the “**Move Out Date**”);
  - c. The Leased Premises have been leased to a third party, and the Landlord requires vacant possession not later than the Move Out Date, in accordance with its contractual obligations; and,
  - d. The Receiver must remove any of the Debtor’s property and vacate, prior to the Move Out Date.
8. The assets of the Debtor are mainly comprised of three (3) Blow Film Extrusion Lines and two (2) Polybag Sheeting Lines. These assets are bolted to the ground and require heavy machinery removers to remove them from the Leased Premises.

9. Following negotiations between the Receiver's Counsel and the Landlord's Counsel, the Landlord, in principle, agreed to extend the Move Out Date to June 30, 2023, on the following terms (to be formalized in an occupancy agreement acceptable to the Landlord and the Receiver):
  - a. The Landlord will provide the Receiver with unfettered occupancy of the Leased Premises for the purpose of holding an onsite auction until June 30, 2023;
  - b. The Receiver will pay per diem rent from the date of occupation to June 30, 2023 at the most recent rent payable by the Debtor;
  - c. The Receiver will leave the Leased Premises in a broom swept condition as it relates to the assets of the Debtor; and,
  - d. The Landlord will be provided access to the Leased Premises to commence demolition of the office and mezzanine at the Leased Premises.

#### The Auction Agreement

10. Following its appointment, the Receiver sought and obtained an appraisal of the assets of the Debtor (the "**Platinum Appraisal**") which was conducted by Platinum Asset Services Inc. (the "**Auctioneer**"). The Platinum Appraisal is included in the Confidential Appendix.
11. The Platinum Appraisal indicates that the appraised values of the assets of the Debtor are in excess of the individual transaction limit and aggregate transaction limits set out in paragraph 3(k) of the Appointment Order.
12. The Receiver is working with the Auctioneer to finalize the terms of an auction agreement (the "**Auction Agreement**") for an auction scheduled to take place on June 15, 2023 (the "**Auction**") as the Auctioneer has advised that it will require two (2) weeks for removal of assets by the purchasers from the Leased Premises. The net proceeds of sale from the Auction would be held by the Receiver pending further Order of this Court. In the event that any of the assets are not sold, the Auction Agreement provides that such assets would either be moved out of the Leased Premises or disposed of by the Auctioneer.
13. The Receiver's decision to proceed by way of Auction was based on the following factors:

- a. The Receiver is satisfied that a public auction is the most commercially reasonable method of disposing of the assets of the Debtor, given the circumstances that would result if the Receiver were to conduct its own sale process and that the Leased Premises is only available to the Receiver until June 30, 2023;
  - b. The cost to remove the assets from the Leased Premises and store them pending a sale would be prohibitive; and,
  - c. The Auction is supported by the Bank.
14. It is the Receiver's position that the Sales Process was thorough, impartial and a fair sales process that fully exposed the Property and tested the market. The Auction Agreement represents a commercially reasonable transaction which will maximize the recovery from the sale of Property, and is in the best interests of all stakeholders.

#### Sealing Order

15. Until such time as the Auction is complete, or until further order of this Court, the Receiver is of the view that the Confidential Appendix should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have, if any assets remain unsold subsequent to the auction.

#### Approval of Actions

16. The Receiver states that its actions, as outlined in the First Report, should be approved by this Honourable Court.
17. Section 243 of the *BIA*.
18. Sections 100 and 137(2) of the *Courts of Justice Act*.
19. Rules 2, 3, 37, 38, and 60.10 of the *Rules of Civil Procedure*.
20. The grounds as detailed in the First Report.
21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Appointment Order;
2. The First Report of the Receiver and the Appendices thereto; and,
3. Such materials as counsel may advise and this Honourable Court may permit.

June 12, 2022

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Solicitors for the Receiver,  
msi Spergel inc.

To: Service List

ROYAL BANK OF CANADA

v.

H.M POLYTHENE PRODUCTS LIMITED

Applicant

Respondent

Court File No. CV-23-00697106-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**NOTICE OF MOTION**

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**HARRISON PENZA** <sup>LLP</sup>  
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Lawyers for the Receiver,  
msi Spergel inc.

# Tab 2

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

**B E T W E E N:**

**ROYAL BANK OF CANADA**

**Applicant**

**and**

**H.M POLYTHENE PRODUCTS LIMITED**

**Respondent**

**FIRST REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
H.M POLYTHENE PRODUCTS LIMITED**

**JUNE 12, 2023**

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### **APPENDICES**

1. Receivership Order dated May 26, 2023
2. Email from RBC’s Counsel containing terms of the escrow arrangement
3. Email from the Landlord’s counsel (without attachments)
4. The Auction Agreement

### **CONFIDENTIAL APPENDICES**

1. The Platinum Appraisal



## **I. APPOINTMENT AND BACKGROUND**

1. This report (this “**First Report**”) is filed by msi Spergel inc. (“**Spergel**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of H.M Polythene Products Limited (“**HM**” or the “**Company**”).
2. HM is a Canadian owned, private corporation incorporated pursuant to the laws of the Province of Ontario. The Company was in the business of manufacturing and supplying plastic bags. The Company operated from a leased premises located at 7650 Kimbel Street, Unit 18 & 19, Mississauga, Ontario (the “**Leased Premises**”).
3. Spergel was appointed as the Receiver of all the assets, undertakings and properties of the Company (collectively, the “**Property**”) by Order of the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made May 26, 2023 (the “**Receivership Order**”). The Receivership Order was made upon the application of the Company’s general secured creditor, Royal Bank of Canada (“**RBC**” or the “**Bank**”). Attached as **Appendix “1”** to this First Report is a copy of the Receivership Order.
4. The Receivership Order was obtained on consent of the Company and was held in escrow by Devry Smith Frank LLP (“**RBC’s Counsel**”) based on the following terms:
  - a) HM would make a \$50,000 payment by June 2, 2023 at noon, by bank draft or certified cheque to RBC’s Counsel;

- b) HM would, by June 23, 2023 at noon, provide RBC's Counsel with a signed commitment letter from a known lender, acceptable to RBC, which confirms that the lender will advance funds to HM, in excess of the amount owing to RBC, such that RBC will be paid in full by July 25, 2023 at noon;
- c) HM would pay RBC the balance owing to it, inclusive of costs and interest by July 25, 2023 at noon (the "**Payout Date**");
- d) The Company and the guarantors shall indemnify RBC for any and all fees (including, but not limited to, legal fees), bank account charges, obligations under this arrangement, service charges, account overdrafts, and chargebacks for any cheques, drafts and other payment items dishonoured or otherwise returned to the Bank with respect to the administration and closing of the Company's credit facilities and accounts arising after the Payout Date (all such fees, overdrafts, services charges and chargebacks being hereinafter referred to, collectively as the "**Chargebacks**") and promises to pay to the Bank the amount of any Chargebacks incurred as soon as possible after the Bank notifies the Company of the same;
- e) The Company and the guarantors agree that they shall pay, on a joint and several basis, all outstanding Chargebacks in full, on demand, including but not limited to:
  - i. any Chargebacks; and

- ii. any other amounts, if any, owing by the Company and the guarantors to the Bank following the Payout Date, including without limitation, any Priority Payables (as defined below).
- f) Upon receipt by the Bank of payment in full, instructions shall be given by the Bank immediately to cancel all credit facilities;
- g) HM shall provide written proof that its *Harmonized Sales Tax* (“**HST**”) liability and payroll source deductions liability are paid to nil as of July 25, 2023 (collectively, the “**Priority Payables**”) by providing a printout of the relevant webpages from the CRA website (the “**Priority Payables Condition**”);
- h) Upon receipt by the Bank of payment in full and upon satisfaction of the Priority Payables Condition, then (and only then):
  - i. the Bank will release, discharge and terminate all security interests, guarantees, assignments and any rights relating to the security interests, guarantees; and
  - ii. the Bank will agree to, at the Company’s and the guarantors expense, register discharges of all the security granted to the Bank by HM under the *Personal Property Security Act (Ontario)*.
- i) In the event that HM defaults on any of the above noted terms, RBC may immediately enforce the Receivership Order without further notice.

Attached as **Appendix “2”** to this First Report is a copy of the email received from RBC’s counsel providing the above terms.

5. On June 2, 2023, the Company was unable to make the \$50,000 payment to RBC and RBC released the Receivership Order from escrow on the same day.
6. The Receiver retained Harrison Pensa LLP (the “**Receiver’s Counsel**”) as its independent legal counsel.

## **II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER**

7. The purpose of this First Report is to advise the Court as to the steps taken by the Receiver to date in these proceedings and to seek Orders from the Court, including
  - a) approving this First Report and the actions and activities of the Receiver described herein;
  - b) approving the agreement to auction between Platinum Asset Services Inc. (the “**Auctioneer**”), as auctioneer, and the Receiver (the “**Auction Agreement**”), and authorizing the Auctioneer to conduct a public auction as referenced in, and in accordance with the terms of, the Auction Agreement (the “**Auction**”);
  - c) vesting in each purchaser at such Auction the Company’s right, title and interest in and to the Property purchased by such respective purchaser at the Auction, free and clear of claims and encumbrances; and

- d) sealing the Confidential Appendix “1” to this First Report until the completion of the Auction or further Order of the Court;

Disclaimer

8. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for any other purpose than intended.
9. In preparing this First Report, the Receiver has relied upon certain information found on site and/or provided to it by the management of the Company including, without limitation, past financial performance, and other financial information. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other forms of assurance with respect to such information. Future oriented financial information relied upon in this First Report is based on assumptions regarding future events, actual results achieved may vary from this information and these variations may be material.
10. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

**III. RECEIVER’S ACTIVITIES**

11. As indicated previously in this First Report that the Receivership Order was released from escrow by RBC’s Counsel on June 2, 2023 (the “**Release Date**”).

On the Release Date a copy of the Receivership Order was provided to the Company's counsel. In addition, the Receiver prepared its statutory Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and mailed same to all creditors known to the Receiver.

12. Immediately on or after the Release Date, the Receiver directly or through the Receiver's Counsel attended to the following:
  - a) secured possession of the Leased Premises;
  - b) arranged for insurance on the Leased Premises and other assets;
  - c) communicating with the landlord of the Leased Premises which is discussed in greater detail in this First Report;
  - d) arranged for regular site (at least three (3) times per week) inspections by a property manager engaged by the Receiver; and
  - e) obtained an appraisal of the assets located at the Leased Premises.

#### **IV. THE LEASED PREMISES**

13. On the Release Date, the Receiver took possession of the Leased Premises and posted a notice on the door with respect to its appointment.
14. On June 6, 2023, the Receiver received an email from counsel for Desjardins Financial Security Life Assurance Company (the "**Landlord**"), the landlord of the Leased Premises, providing copies of the leases (collectively, the "**Lease**") in

relation to HM's occupation of the Leased Premises and advising, amongst other things, that:

- a) the term of the Lease expired on April 30, 2023;
- b) while HM has no further legal right to access or use the Leased Premises thereafter, but in order to assist HM with the moving out arrangements, the Landlord permitted the Company to continue its access up to June 19, 2023 (the "**Move Out Date**");
- c) the Leased Premises have been leased to a third party, and the Landlord will require vacant possession not later than the Move Out Date, in accordance with its contractual obligations; and
- d) the Receiver must remove any of the Company's property and vacate, prior to the Move Out Date

Attached as **Appendix "3"** to this First Report is a copy of the email (without attachments) received from counsel of the Landlord.

15. Prior to the correspondence from the Landlord the Receiver was unaware of the expiration of the Lease and the requirement to remove assets of the Company by the Move Out Date. The assets of HM mainly, among others, comprised of three (3) Blow Film Extrusion Lines and two (2) Polybag Sheeting Lines. These assets are bolted to the ground and require heavy machinery removers to remove them from the Leased Premises. The Receiver is of the view that it will be cost prohibitive to remove these assets from the Leased Premises, store them in a trailer and then

attempt to auction them. Accordingly, the Receiver and the Receiver's Counsel engaged in discussions and negotiations with the Landlord's Counsel and the Landlord's property manager regarding extension of the Move Out Date so an auction of the assets of HM can be conducted from the Leased Premises.

16. As a result of the discussions and negotiations, the Landlord, in principle, agreed to extend the Move Out Date to June 30, 2023, on the following terms (to be formalized in an occupancy agreement acceptable to the Landlord and the Receiver):
  - a) The Landlord to provide the Receiver with unfettered occupancy of the Leased Premises for the purpose of holding an onsite auction until June 30, 2023;
  - b) The Receiver will pay per diem rent from the date of occupation to June 30, 2023 at the most recent payable by the Company;
  - c) The Receiver will leave the Leased Premises in a broom swept condition as it relates to the assets of the Company; and
  - d) The Landlord will be provided access to the Leased Premises to commence demolition of the office and mezzanine.
  
17. As at the date of this First Report, the Receiver has provided a draft occupation agreement to the Landlord and is awaiting comments regarding same.



## V. THE AUCTION AGREEMENT

18. The Receiver sought and obtained an appraisal for the assets of the Company. The appraisal was conducted by Platinum Asset Services (the “**Platinum Appraisal**”). Attached as **Confidential Appendix “1”** to this First Report is a copy of the Platinum Appraisal.
19. Pursuant to paragraph 3(k) of the Receivership Order, the Receiver is empowered and authorized to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$25,000 (the “**Individual Limit**”), provided that the aggregate consideration for all such transactions does not exceed \$100,000 (the “**Aggregate Limit**”); and with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out above.
20. The Platinum Appraisal indicates that the appraised values of the assets of the Company are in excess of the Individual Limit (for certain assets) and the Aggregate Limit. Accordingly, the Receiver requires approval of this Court for the Auction.
21. As at the date of this First Report, the terms of the Auction Agreement have yet to be finalized and executed by the parties. The Receiver anticipates an agreement comparable to the Auction Agreement, a copy of which is attached as **Appendix**

“4” hereto, will be entered between the Auctioneer and the Receiver. The Auction Agreement remains subject to the approval of this Court.

22. It is the Receiver’s position that the rates and commissions provided in the Auction Agreement are fair and reasonable. Further, the Receiver believes that a public auction is the most commercially reasonable method for disposing of the assets, given, amongst other things, the disadvantageous economies of scale that would result if the Receiver were to conduct its own sale process for the assets and that the Leased Premises is only available to the Receiver until June 30, 2023.
23. The Auction is scheduled to take place on June 15, 2023 as the Auctioneer has advised that it will require two (2) weeks for removal of assets by the purchasers from the Leased Premises. The net proceeds of sale from the Auction would be held by the Receiver pending further Order of this Court. In the event any of the assets are not sold, the Auction Agreement provides that such assets would either be moved out of the Leased Premises or disposed of by the Auctioneer.
24. The Bank has advised that it is supportive of the Receiver engaging the Auctioneer and conducting the Auction from the Leased Premises.

**VI. RECOMMENDATIONS**

25. The Receiver respectfully requests that this Honourable Court grant the relief sought in this First Report.

All of which is respectfully submitted.

Dated at Toronto, this 12<sup>th</sup>, day of June 2023

**msi Spergel inc.,**  
solely in its capacity as Court-appointed  
Receiver of H.M Polythene Products Limited  
and not in any corporate or personal capacities

Per:



---

Mukul Manchanda, CPA, CIRP, LIT

# APPENDIX 1

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

THE HONOURABLE Mme. ) FRIDAY, THE 26th  
 )  
JUSTICE STEELE ) DAY OF MAY, 2023  
 )

**ROYAL BANK OF CANADA**

Applicant

- and -

**H.M POLYTHENE PRODUCTS LIMITED**

Respondent

**ORDER**  
**(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel Inc. as receiver [and manager] (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of H.M Polythene Products Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Foster sworn April 11, 2023 and the Exhibits thereto and on being advised of the consent of the parties,

## SERVICE

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

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

## RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

without the approval of this Court in respect of any transaction not exceeding \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and

with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the



foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to

whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and

is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'https://www.spergelcorporate.ca/engagements'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. 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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by



the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the assets, undertakings and properties H.M Polythene Products Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

# APPENDIX 2

## Mukul Manchanda

---

**From:** James Satin <James.Satin@devrylaw.ca>  
**Sent:** June 2, 2023 2:09 PM  
**To:** Mukul Manchanda  
**Cc:** Melinda Vine (mvine@harrisonpensa.com)  
**Subject:** RE: HM Polythene

Here are the terms on which we settled. See #2 and #11:

1. Polythene will consent to the Receivership. You will attend on-line tomorrow (as will I) to confirm this to the Judge. The Order will be signed tomorrow, and I will hold it in escrow pending any default on the terms below;
2. Polythene will make a \$50,000 payment **by June 2, 2023 at noon**, by bank draft or certified cheque, payable to Devry Smith Frank LLP, in trust. That is to be delivered to me;
3. This term has been deleted.
4. Polythene will, **by June 23, 2023 at noon**, provide me with a signed commitment letter from a known lender, acceptable to RBC, which confirms that the lender will advance funds to Polythene, in excess of the amount owing to RBC, such that RBC will be paid in full **by July 25, 2023 at noon**;
5. Polythene will pay RBC the balance owing to it, inclusive of costs and interest **by July 25, 2023 at noon**;
6. Each of the defendants shall indemnify RBC for any and all fees (including, but not limited to, legal fees), bank account charges, obligations under this letter, service charges, account overdrafts, and chargebacks for any cheques, drafts and other payment items dishonoured or otherwise returned to the Bank with respect to the administration and closing of the Debtors' credit facilities and accounts arising after the Payout Date (all such fees, overdrafts, service charges and chargebacks being hereinafter referred to, collectively, as "**Chargebacks**") and promises to pay to the Bank the amount of any Chargebacks incurred as soon as possible after the Bank notifies any of the Debtors of the same.
7. Each of the Debtors agrees that it shall pay, on a joint and several basis, all outstanding Chargebacks in full, on demand, including but not limited to:

any Chargebacks; and

any other amounts, if any, owing by the Debtors to the Bank following the Payout Date, including, without limitation, any Priority Payables (as defined below).

8. Upon receipt by the Bank of payment in full, instructions shall be given by the Bank immediately to cancel all the credit facilities;
9. Polythene shall provide written proof that HST and payroll deductions are paid to \$0.00 as of July 25, 2023 by providing a printout of the relevant webpages from the CRA website ("the Priority Payables Condition");
10. Upon receipt by the Bank of payment in full and upon satisfaction of the Priority Payables Condition, then (and only then):

The Bank releases, discharges, and terminates all security interests, guarantees, assignments and any rights relating to the security interests, guarantees; and

- (b) The Bank agrees to, at the defendants' cost, register discharges of all the Security granted to it by Polythene under the *Personal Property Security Act* (Ontario)

11. In the event that Polythene defaults on any of the above noted terms, RBC may immediately enforce the Receivership Order without further notice;

Regards,

**James Satin**

Partner

Phone/Fax: 416-446-5820

100-95 Barber Greene Road, Toronto, Ontario, M3C 3E9

E-mail: [james.satin@devrylaw.ca](mailto:james.satin@devrylaw.ca)

[Vcard](#) | [LinkedIn](#) | [Bio](#)

**Devry Smith Frank LLP**

Lawyers & Mediators

[Toronto](#) | [Barrie](#) | [Whitby](#)

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---

**From:** Mukul Manchanda <[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)>

**Sent:** Friday, June 2, 2023 2:05 PM

**To:** James Satin <[James.Satin@devrylaw.ca](mailto:James.Satin@devrylaw.ca)>

**Cc:** Melinda Vine ([mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)) <[mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)>

**Subject:** RE: HM Polythene

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Thanks James,

Where is the arrangement documented that upon default of payment the Order will be taken out of escrow?

**Mukul Manchanda, CPA, CIRP, LIT | Managing Partner**

**Corporate Restructuring & Insolvency**

msi Spergel inc. | Licensed Insolvency Trustees

200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1

T: 416-498-4314 | F: 416-498-4314

[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca) | [www.spergelcorporate.ca](http://www.spergelcorporate.ca)

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**From:** James Satin <[James.Satin@devrylaw.ca](mailto:James.Satin@devrylaw.ca)>  
**Sent:** Friday, June 2, 2023 2:03 PM  
**To:** Mukul Manchanda <[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)>  
**Cc:** Melinda Vine ([mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)) <[mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)>  
**Subject:** RE: HM Polythene

Attached.

Regards,

**James Satin**

Partner  
Phone/Fax: 416-446-5820  
100-95 Barber Greene Road, Toronto, Ontario, M3C 3E9  
E-mail: [james.satin@devrylaw.ca](mailto:james.satin@devrylaw.ca)  
[Vcard](#) | [LinkedIn](#) | [Bio](#)

**Devry Smith Frank LLP**  
Lawyers & Mediators  
[Toronto](#) | [Barrie](#) | [Whitby](#)

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**From:** Mukul Manchanda <[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)>  
**Sent:** Friday, June 2, 2023 2:01 PM  
**To:** James Satin <[James.Satin@devrylaw.ca](mailto:James.Satin@devrylaw.ca)>  
**Cc:** Melinda Vine ([mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)) <[mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)>  
**Subject:** RE: HM Polythene

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---

Hi James,

Was there an endorsement issued by Justice Steele? Can you send us a copy?

**Mukul Manchanda, CPA, CIRP, LIT | Managing Partner**  
**Corporate Restructuring & Insolvency**  
msi Spergel inc. | Licensed Insolvency Trustees  
200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1  
T: 416-498-4314 | F: 416-498-4314  
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**From:** James Satin <[James.Satin@devrylaw.ca](mailto:James.Satin@devrylaw.ca)>  
**Sent:** Friday, June 2, 2023 1:58 PM  
**To:** Shahzad Siddiqui <[shahzad@broadwaterllp.ca](mailto:shahzad@broadwaterllp.ca)>  
**Cc:** Mukul Manchanda <[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)>; Melinda Vine ([mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)) <[mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)>  
**Subject:** HM Polythene

Hi Shahzad,

Your client failed to make the first payment required under the terms of settlement. As such, the receiver (copied) here and his counsel (also copied here) will be in touch to arrange next steps.

Regards,

**James Satin**

Partner  
Phone/Fax: 416-446-5820  
100-95 Barber Greene Road, Toronto, Ontario, M3C 3E9  
E-mail: [james.satin@devrylaw.ca](mailto:james.satin@devrylaw.ca)  
[Vcard](#) | [LinkedIn](#) | [Bio](#)

**Devry Smith Frank LLP**  
Lawyers & Mediators  
[Toronto](#) | [Barrie](#) | [Whitby](#)

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# APPENDIX 3

## Mukul Manchanda

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**From:** Susan Downey  
**Sent:** June 6, 2023 2:38 PM  
**To:** Melinda Vine  
**Cc:** Mukul Manchanda; Nazhat Sarabi  
**Subject:** FW: Receivership of H.M. Polythene Products Limited and Lease of units at 7650 Kimbel St, Mississauga  
**Attachments:** HM Polythene Receivership letter - June 2 2023(53278487.1).docx; HM Polythene - Lease Surrender Agreement - Feb 27 2023 - fully signed(53278473.1).pdf; 7650 Kimbel # 19 - HM Polythene Lease Relocation July 27 2017(53280172.1).pdf; 7720 Kimbel #17 - H.M. Polythene Products Limited - LA (Dec. 11 2013) (002)(53280145.1).pdf; HM Polythene 7650 Kimbel # 18-19 Nov 11 2020 fully executed(53280132.1).pdf  
**Importance:** High

### Susan Downey | Estate Administrator Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees  
200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1  
T: 416-644-1669 | F: 416-644-1669  
[sdowney@spergel.ca](mailto:sdowney@spergel.ca) | [www.spergelcorporate.ca](http://www.spergelcorporate.ca)

**Insolvency • Restructuring • Consulting**



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**From:** Faruk Gafic <[fgafic@airdberlis.com](mailto:fgafic@airdberlis.com)>  
**Sent:** Tuesday, June 6, 2023 12:11 PM  
**To:** Susan Downey <[sdowney@spergel.ca](mailto:sdowney@spergel.ca)>  
**Cc:** Emiliano Omeri <[emiliano.omeri@desjardins.com](mailto:emiliano.omeri@desjardins.com)>; [dcourt@ahern.ca](mailto:dcourt@ahern.ca); Eugenia Yaromina <[eyaromina@ahern.ca](mailto:eyaromina@ahern.ca)>; 'Philippe G. Leduc' <[pledud@ahern.ca](mailto:pledud@ahern.ca)>; [pgeier@ahern.ca](mailto:pgeier@ahern.ca)  
**Subject:** Receivership of H.M. Polythene Products Limited and Lease of units at 7650 Kimbel St, Mississauga  
**Importance:** High

Ms. Downey, we are the solicitors for Desjardins Financial Security Life Assurance Company (the “**Landlord**”) and are writing to you with respect to the premises leased by H.M. Polythene Products Limited (the “**Tenant**”) at 7650 Kimbel Street, Mississauga, Ontario (the “**Premises**”).

The Landlord’s property manager found a copy of the notice of msi Spergel Inc. appointment as Receiver, posted on the door of the Premises (picture attached). The Landlord or its property manager have not received any such notices to the addresses for notice set out in the Lease. Please confirm that msi Spergel Inc. was indeed appointed Receiver as set out in the notice. Kindly make sure that all notices relating to this matter going forward are sent to the Landlord’s property manager at the address below, as well as our address (set out in my signature line), as well as by e-mail to the recipients copied on this e-mail.

c/o Ahern Real Estate Corporation Inc.  
7676 Kimbel Street, Unit 1  
Mississauga, ON L5S 1J8  
Attention: Property Manager

We attach copies of the lease for your reference. As set out in the Lease, the term actually **expired on April 30, 2023**. While the Tenant has no further legal right to access or use the Premises thereafter, but in order to assist the Tenant with the moving out arrangements, the Landlord permitted the Tenant to continue its access up to June 19, 2023. The Premises have been leased to a third party, and the Landlord will require vacant possession prior to such date, in accordance with its contractual obligations. Please ensure that the Receiver will remove any of the Tenant's property and vacate, prior to such date.

Kind regards,

**Faruk Gafic**

T 416.865.4629  
F 416.863.1515  
E [fgafic@airdberlis.com](mailto:fgafic@airdberlis.com)

**Aird & Berlis LLP** | Lawyers  
Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Canada M5J 2T9 | [airdberlis.com](http://airdberlis.com)



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# APPENDIX 4

## AUCTION SERVICES AGREEMENT

**THIS AGREEMENT** made as of this \_\_\_\_<sup>th</sup> day of June 2023

### **BETWEEN:**

msi Spergel inc. (“**Spergel**”), solely in its capacity as Court Appointed Receiver of H.M Polythene Products Limited, and not in any other capacity (“**H.M**”)

(hereinafter called the “**Receiver**”)

### **OF THE FIRST PART**

-and-

**PLATINUM ASSET SERVICES INC.**

(hereinafter called the “**Auctioneer**” acting in its capacity as the Receiver’s agent and exclusive auctioneer)

### **OF THE SECOND PART**

#### **RECITALS:**

- A.** On or about May 26, 2023, the Royal Bank of Canada obtained an Order of the Honorable Justice Steele appointing Spergel as court appointed receiver of all of the assets, undertakings and properties of H.M (the “**Appointment Order**”). The Appointment Order was held in escrow pursuant to the terms of an endorsement of Honorable Justice Steel. The Appointment Order ultimately became effective on June 2, 2023.
- B.** The Receiver has elected to engage the Auctioneer to assist with the sale of the Machinery and Equipment (collectively referred to as the “**Assets**”) located at Units 18 and 19 of the 7650 Kimbel St. Mississauga, ON (the “**Premises**”). The list of Assets is attached hereto as **Schedule “A”**.
- C.** The Receiver and the Auctioneer have agreed to enter into this Auction Services Agreement (the “**Agreement**”) respecting the sale of the Assets by the Auctioneer (the “**Sale**”) upon the terms and conditions hereinafter set forth.

**NOW THEREFORE WITNESSETH THAT** for good and valuable consideration (the receipt and sufficiency thereof being hereby acknowledged), the Receiver and the Auctioneer hereby agree together as follows:

1. The Auctioneer shall:

- (a) at its own expense prepare, arrange and lot the Assets by number and location in the sequence in which the Auctioneer will auction same.
- (b) at its own expense and as determined solely by the Auctioneer, advertise and otherwise promote the Sale of the Assets by all appropriate means and in accordance with applicable law in order to give adequate exposure of the Assets to potential purchasers, which procedures may include the following:
  - i. website advertising;
  - ii. newspapers;
  - iii. sale brochures; and
  - iv. any other reasonable advertising methods as determined by the Auctioneer;
- (c) arrange for the sale of the Assets in a competent and commercially reasonable manner and otherwise in accordance with the terms and conditions of this Agreement and shall have:
  - i. full access to the Premises and the Assets for the period commencing from the date the date this agreement is executed to the expiry of the Liquidation Period. For the purpose of this Agreement, the **Liquidation Period** means the period commencing on the date on which this Agreement is executed by both parties and ending June 30, 2023; and
  - ii. rent-free access to the Premises and Assets during the Liquidation Period.

The Auctioneer hereby acknowledges that it has conducted a pre-occupancy inspection of the Assets, reviewed the Assets and confirmed and verified the quantity and condition of the Assets. The Auctioneer acknowledges it must vacate and leave the Premise in a broom swept condition.

- (d) Upon the expiration of the Liquidation Period, leave the Premises vacant and in a broom-swept, workman-like condition. Removal and disposal of all debris, books, records and garbage (“**Disposal**”) shall be at the expense of the Receiver and shall be billed by the Auctioneer to the Receiver. Garbage disposal is estimated to cost \$5,000. In the event that all of the extrusion lines do not sell, disposal costs will increase by \$5,000 to \$10,000. In the event, that disposal costs will exceed the estimate, the Auctioneer will obtain approval from the Receiver before incurring additional expenses above the estimate.
- (e) The Auctioneer agrees to act in a prudent manner while at the Premises and the Premises shall be maintained by the Auctioneer in the same state of repair as existed as at the commencement of the Liquidation Period, reasonable wear and tear excepted and shall repair any damage caused by the Auctioneer, its invitees or anyone for whom it is in law responsible at its sole expense forthwith but in any event, before the expiry of the Liquidation Period. Without limiting the foregoing, the Auctioneer undertakes to shear off any protruding bolts remaining after removal of equipment and to repair any damage caused to the Premises due to the removal of any Assets and to properly cap all gas and electrical connections, if any;
- (f) perform the following Sale setup activities as applicable at its own expense in connection with the Sale, including:
  - i. gathering all specifications, photographs and the like for the sale brochure (if there is to be one); and
  - ii. providing all support staff and accounting personnel required to conduct the Sale; it being understood that the Receiver is not and will not in any event

be an employer of any such personnel or liable to pay any amounts to or with respect to such personnel, the Receiver does not assume any responsibilities whatsoever with respect to the continuation of the employment of any of the existing employees of H.M, and, in particular, the Receiver does not warrant or guarantee that the employment of any H.M employees can be continued for all or any part of the Liquidation Period).

- (g) the Auctioneer shall maintain public liability insurance with a recognized Canadian insurance company in the amount of no less than \$5 million coverage at the Premises for the duration of this Agreement;
- (h) at its own expense, prepare a comprehensive statement of all Assets sold in the Sale, reflecting the sale prices of such Assets and containing an accounting of the proceeds of the Sale (the “**Proceeds**”) received and held in trust for the Receiver and a final reconciliation, and shall deliver to the Receiver the Proceeds in cleared and readily available funds\_(net of commission, buyers’ premium, sale expenses and disposal cost) and a comprehensive statement and accounting within 15 business days of the expiry of the Liquidation Period;
- (i) collect and remit to the proper governmental authorities, within the prescribed statutory time periods, all applicable taxes eligible in connection with the Sale of the Assets, and will provide the Receiver with a letter confirming the remittance of applicable government taxes (“**Applicable Taxes**”) forthwith after the conclusion of the Sale and distribution of the Proceeds as set out herein;
- (j) obtain any vendor’s or other permits, approvals or authorizations necessary for the Auctioneer to perform its obligations hereunder;
- (k) acknowledge, and the Auctioneer does hereby agree, that the Assets are provided to the Auctioneer, for the Sale, on an “as is, where is” basis. The Auctioneer confirms that, unless specifically stated in this Agreement, no representation, warranty, covenant or condition, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise



is being given by the Receiver in this Agreement or in any instrument furnished in connection with this Agreement as to title, encumbrances, description, fitness for purpose, merchantability, quantity, condition, quality, value, suitability, durability, compliance or non-compliance with environmental rules, regulations or legislative provisions, or marketability thereof or in respect of any other matter or thing whatsoever. The Auctioneer confirms that the Auctioneer and the purchasers of the Assets shall be deemed to have relied entirely on their own inspection and investigation in proceeding with the transactions contemplated hereunder, or in purchasing the Assets;

2. The Receiver agrees:

- (a) that the Auctioneer, can use the name “H.M Polythene Products Limited” and related logos for the duration of the Liquidation Period provided that the approval of the Receiver must be obtained prior to such materials being used if they contain a reference to the Receiver;
- (b) that the Auctioneer shall be entitled to add additional assets to the Sale at the Premises in order to enhance the overall success of the Sale provided that the Auctioneer shall be responsible for insuring such assets, and provided further, in disposing of such additional assets, the Auctioneer shall not act, nor shall it represent to any third party that it is acting, as agent of the Receiver, and provided it shall be the Auctioneer’s responsibility, at its own expense, to convey whatever interest it has in such additional assets to any purchaser thereof;
- (c) the Receiver acknowledges and agrees that the Auctioneer is not in care, management, possession or control of the Premises for the purposes of any environmental legislation; the Auctioneer shall in no way be held liable for any and all hazardous, toxic and/or waste materials located within or on the Premises, nor shall the Auctioneer be deemed to take ownership or be liable for the storage, removal and/or disposal of any hazardous, toxic and/or waste materials, save and except to the extent that any discharge or spill of any such

materials is caused by the Auctioneer or any persons for whom it is responsible;  
and

- (d) the Auctioneer shall not be responsible for any claims that former H.M employees may have against the Receiver or H.M under the *Wage Earner Protection Program Act* should the Auctioneer temporarily hire such employees to assist with the Sale.
3. The Auctioneer shall retain a 20% (twenty percent) commission on all sales, net of taxes and buyers premium, plus sale expenses of \$15,000 (fifteen thousand dollars) to be deducted from the Proceeds.
  4. The following provisions shall govern the payment of the Proceeds under this Agreement:
    - (a) Payment for the Assets sold by the Auctioneer on behalf of the Receiver pursuant to the provisions of this Agreement shall be in cash, or by wire transfer, bank draft, credit card, debit card or certified cheque. The Auctioneer shall be responsible for the collection of the proceeds of sale of the Assets, inclusive of sales taxes and the buyers' premium.
    - (b) The Auctioneer may establish reserve prices for any or all of the Assets and may either bid itself or through a designate on any of the Assets. Should the high bid remain with the Auctioneer or its designate, the amount of such bid shall not be included in the calculation of the Proceeds from the Assets.
    - (c) If the Auctioneer fails to comply with any of the material provisions of this Agreement, the Receiver shall be entitled at its option to terminate this Agreement, but only if the Receiver provides the Auctioneer with five (5) business days written notice to remedy such failure.
  5. The Receiver and Auctioneer agree that the Auction and private or public sales permitted by this Agreement shall be conducted in accordance with this Agreement, including, without limitation:

- (a) that the Auctioneer shall have no authority to, and agrees that it shall not enter into, incur, make, change, enlarge, or modify any contract, liability, agreement, obligation, representation, guarantee, warranty or commitment on behalf of the Receiver unless expressly requested to do so in writing by a duly authorized representative of the Receiver;
  - (b) that the parties hereto shall agree on the content of any public announcement concerning this Agreement or the Auction or any private sales; and
  - (c) that the Receiver is not and will not in any event be an employer of any personnel employed by or on the behalf of the Auctioneer or liable to pay any amounts to or with respect to any such personnel.
- 6. The Receiver will ensure that the Assets are insured for no less than \$250,000. In the event that some of the Assets are damaged or destroyed prior to the sale of such Assets, insurance proceeds attributable to such damaged Assets shall be deemed to be the proceeds of the sale of such Assets for the purposes of this Agreement. The Receiver and the Auctioneer agree not to settle any insurance claim without the prior written consent of the other, such consent not to be unreasonably withheld. If substantially all of the Assets are damaged or destroyed, then the Receiver shall have the option to terminate this Agreement, retain the insurance proceeds, and reimburse the Auctioneer its commission and all the reasonable and necessary expenses actually incurred by the Auctioneer pursuant to the provisions of this Agreement.
- 7. The obligations of the Receiver and the Auctioneer hereunder are subject to the satisfaction of the following conditions on or before the dates indicated:
  - (a) there being no order by any court of competent jurisdiction in effect restraining the holding of any auction, private sale or sale to the public.
- 8. In the event that the condition set forth in paragraph 7 above shall not have been satisfied, both the Receiver and the Auctioneer shall be released from their respective obligations under this Agreement and reimburse the Auctioneer for all the reasonable and necessary expenses actually incurred by the Auctioneer pursuant to the provisions of this Agreement.

9. Other:

(a) Any notice, demand, acceptance, request, election or waiver required or permitted to be given hereunder (the “**Notice**”) shall be in writing and shall be deemed to be sufficiently given if personally delivered to an officer of the Receiver or the Auctioneer or served by telecopy or if mailed by registered mail, postage prepaid, addressed to the party to whom the same is given as follows:

i. in the case of the Receiver:

msi Spergel inc.  
505 Consumers Road, Suite 200  
Toronto, On, M2J 4V8  
Attention: Mr. Mukul Manchanda, Partner  
Tel: (416) 498-4314  
Fax: (416) 416-494-7199  
E-mail: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

ii. in the case of the Auctioneer:

Platinum Asset Services Inc.  
80 Midwest Road, Unit 1  
Scarborough, Ontario  
M1P 4R2  
  
Attention: Adam Moskowitz, President  
Tel: (416) 366-2326 x 100  
Fax: (416) 366-2325  
E-mail: [amoskowitz@platinumassets.com](mailto:amoskowitz@platinumassets.com)

Any Notice personally delivered or telecopied shall be deemed to be given on the day which is immediately after the date on which it was so personally delivered or telecopied. Any Notice served by registered mail shall be deemed to have been given on the third business day following the day on which it was mailed. During the existence of any interruption or threatened interruption in the Canadian postal services, any Notice shall be personally delivered or forwarded by telecopy.

(b) This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be

deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement may be made and evidenced by facsimile transmission.

- (c) The Auctioneer shall not be entitled to assign its rights and obligations hereunder without the written consent of the Receiver, which may not be unreasonably withheld.
- (d) This Agreement shall ensure to the benefit of, and be binding upon, the parties thereto and their respective successors and permitted assigns.
- (e) This Agreement shall constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no agreements, or understandings between the parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, modification, waiver or termination of such agreement shall be binding, unless executed in writing by the party to be bound thereby, provided that the time provided for doing any matter or thing contemplated herein may be abridged or extended by written agreement, in letter form or otherwise, executed by duly authorized signatories for the parties.
- (f) The validity and interpretation of this Agreement, and of each provision and part thereof, shall be governed by the laws of the Province of Ontario and the parties hereto hereby irrevocably attorn to the jurisdiction of the courts of that province with respect to all matters arising out of this Agreement.
- (g) The Auctioneer and the Receiver shall keep confidential this Agreement and all information and documents which may have been or may hereafter be exchanged between them or their representatives or may have been retained by the Auctioneer or the Receiver, except for such information and documents as are available to the public, required to be disclosed by

applicable law or court order, or as required to be disclosed by the Receiver under Applicable Law.

**MSI SPERGEL INC. solely in its capacity as  
Court Appointed Receiver of H.M. Polythene Products  
Limited.**

**Per:** \_\_\_\_\_

Name: Mukul Manchanda

Title: Partner

(I have authority to bind the Corporation)

**PLATINUM ASSET SERVICES INC.**

**Per:** \_\_\_\_\_

Name: Adam Moskowitz

Title: President

(I have authority to bind the Corporation)

**SCHEDULE “A”**

**LIST OF ASSETS**

See attached

# SCHEUDLE A

I#	QTY	YEAR	MAKE	MODEL	S/N	DESCRIPTION
1	1	1990	FINCON	890-56" SOLID	90114	POLYBAG SHEETING LINE- CUT, SEAL AND FOLD
2	1	2012	FINCON	890-56" SOLID	12102	POLYBAG SHEETING LINE- CUT, SEAL AND FOLD
3	1	N/A	KONARK	EKPPL-BF	161002	55 HP, BLOW FILM EXTRUSION LINE
4	1	N/A	LUNG MENG	N/A	N/A	37 HP, BLOW FILM EXTRUSION LINE
5	1	N/A	LUNG MENG	N/A	N/A	22 HP, BLOW FILM EXTRUSION LINE
6	2	N/A	CHAMPION	N/A	N/A	25 HP, TANK MOUNTED, PISTON TYPE, AIR COMPRESSOR
7	1	N/A	ZEKS	1000ISBA100	138405	AIR DRYER
8	1	N/A	TCM	FCG25H6T	A48808528	5,000 LBS., 3 STAGE, LPG FORKLIFT WITH SIDESHIFT, 10,097 HOURS
9	1	N/A	N/A	N/A	N/A	DOCK PLATE, SNOW BLOWER, DIE LIFT CART, PUMP CART, FANS, FINISH GARBAGE BAGS, RACKING, ETC.



ROYAL BANK OF CANADA

v.

H.M POLYTHENE PRODUCTS LIMITED

Applicant

Respondent

Court File No. CV-23-00697106-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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**FIRST REPORT OF THE RECEIVER**

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**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Melinda Vine (LSO #53612R)**

Tel : (519) 679-9660  
Fax: (519) 667-3362  
Email: [mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

ROYAL BANK OF CANADA

v.

H.M POLYTHENE PRODUCTS LIMITED

Applicant

Respondent

Court File No. CV-23-00697106-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

**MOTION RECORD OF THE RECEIVER**

**HARRISON PENZA** <sup>LLP</sup>  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Melinda Vine (LSO #53612R)**

Tel : (519) 679-9660  
Fax: (519) 667-3362  
Email: [mvine@harrisonpensa.com](mailto:mvine@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.