

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1992, c. 27, s.2, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)**

**AFFIDAVIT OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED**

FACTUM OF THE APPLICANTS

(Application for Recognition of Foreign Main Proceeding, Returnable August 22, 2014)

August 19, 2014

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PART I - OVERVIEW

1. This application is brought by Miles Andrew Benham and Paul Robert Appleton, in their capacity as the Joint Liquidators ("**Joint Liquidators**") of Banners Broker International Limited ("**BBIL**"), an Isle of Man company, for recognition of liquidation proceedings with respect to BBIL currently before the High Court of Justice of the Isle of Man, Civil Division, pursuant to Part V of the *Companies Act 1931* of the Isle of Man ("**Isle of Man Proceeding**"), as a "foreign main proceeding" for the purposes of section 270 of the *Bankruptcy and Insolvency Act*, RSC 1992, c. 27, s. 2, as amended ("**BIA**") and for recognition of the Joint Liquidators as foreign representatives in that proceeding pursuant to section 268(1) of the BIA.
2. The Joint Liquidators also seek the appointment of MSI Spergel Inc. as a receiver over the assets of BBIL located in Canada ("**Receiver**") and orders compelling certain persons believed to have knowledge of the business and affairs of BBIL to attend for an examination under oath by the Joint Liquidators and/or the proposed Receiver and for third parties with prior dealings with BBIL to produce relevant information and documents.
3. Prior to being ordered wound up by the Isle of Man court, BBIL was an internet advertising business with operations around the world, either directly or through apparently related companies. Although based in the Isle of Man, BBIL's online business was international, and involved a significant Canadian dimension. In order to ensure the cooperation of all interested parties in a fair and efficient liquidation of BBIL, the protection of the interests of creditors and the maximization of the value of BBIL's assets, the Joint Liquidators seek the cooperation and assistance of the Canadian court in administering the liquidation of BBIL.
4. This Factum is provided by the Joint Liquidators in support of their application for recognition in Canada of the Isle of Man Proceeding and the further relief requested in support of their investigation of BBIL's business dealings and affairs in Canada.

PART II - THE FACTS

(a) The Joint Liquidators and Proposed Receiver

5. Paul Robert Appleton ("**Appleton**") is the Managing Partner of David Rubin & Partners ("**DRP**"), a firm of Chartered Accountants and Licensed Insolvency Practitioners based in London, United Kingdom. Appleton has over 25 years of experience in corporate recovery and insolvency work in over 20 jurisdictions, including the Isle of Man.

Affidavit of Paul Robert Appleton, sworn August 6, 2014 ("Appleton Affidavit"), Application Record of the Joint Liquidators, dated August 12, 2014 ("Application Record"), Tab 2, at para. 5

6. Miles Andrew Benham ("**Benham**") is a practicing Isle of Man advocate and a director and shareholder of MannBenham Advocates Limited, an incorporated legal practice in Douglas, Isle of Man. Benham has acted as liquidator's advocate on a number of complex liquidations from commencement to completion which have necessitated advice to the liquidator on the practice and procedure of the winding up of a company under the *Companies Act 1931* and the *Companies (Winding Up) Rules 1934* of the Isle of Man.

Appleton Affidavit, Application Record, Tab 2, at para. 6

7. Pursuant to orders made by the High Court of Justice in the Isle of Man Proceedings, as set out in further detail herein, Appleton and Benham, in their role as the Joint Liquidators, are authorized to administer the property and affairs of BBIL for the purpose of liquidation. Additionally, pursuant to the authorization and instruction of the court-appointed Committee of Inspection, as defined herein, the Joint Liquidators are authorized to act as foreign representatives in respect of the Isle of Man Proceeding for the purposes of this application.

Appleton Affidavit, Application Record, Tab 2, at para. 7

8. The Joint Liquidators also request the appointment of msi Spergel Inc. ("**Spergel**") as receiver over the assets and affairs of BBIL located in Canada and have retained Philip H. Gennis ("**Gennis**"), Trustee and Senior Principal at Spergel, in this regard. The Joint Liquidators believe the experience of Spergel and Gennis and their presence on the ground in Canada will be of assistance in effecting the liquidation of BBIL, given its potentially significant Canadian dimension. The appointment of a receiver in a cross-border recognition proceeding is specifically contemplated by subsection 272(1)(d) of the BIA.

Appleton Affidavit, Application Record, Tab 2, at para. 8

(b) BBIL

9. The ensuing sections of this factum describe the events leading to the initiation of BBIL's winding up in some detail based on information received from BBIL's former corporate service provider in the Isle of Man and creditors of BBIL. The Joint Liquidators believe these events to be relevant because it explains BBIL's Isle of Man connections and introduces a significant creditor claim.

Appleton Affidavit, Application Record, Tab 2, at para. 13

10. BBIL is a company incorporated in the Isle of Man under the *Companies Act 1931* with company number 124375C. Until January 16, 2013, BBIL had its registered office at Kissack Court, 29 Parliament Street, Ramsey, Isle of Man, IM8 1AT ("**Kissack Court**"). The Kissack Court address is the office of OCRA (Isle of Man) Limited ("**OCRA**"), a licensed trust and corporate service provider in the Isle of Man. BBIL was a former client of OCRA until, as detailed below, its business relationship was terminated in the lead up to the winding up order.

Appleton Affidavit, Application Record, Tab 2, at paras. 9-10

11. The Joint Liquidators' investigations to date indicate that BBIL is central to a corporate network or group, consisting of entities and operations around the world, including in Canada, the

United States, the United Kingdom, Portugal, India, Canada and Belize ("**BBIL Group**"). Although it is not clear to what extent the various BBIL Group entities are legally affiliated or related (e.g. in the sense of having common ownership), it is evident that they use the same "Banners Broker" trade names and are engaged in furtherance of the same business endeavour. To the Joint Liquidators' knowledge, only the Isle of Man entity, BBIL, is subject to insolvency proceedings at this time.

Appleton Affidavit, Application Record, Tab 2, at para. 11

12. The BBIL Group carries on business in the online advertising industry, connecting advertisers with effective online ad space and publishers with relevant advertisements for their websites. BBIL also marketed an "Ad-Pub" (short for "Advertiser-Publisher") combo package aimed at non-website owners as a method for members to advertise their businesses on various websites within BBIL's network of publishers while, at the same time, earning revenues as an advertising publisher through specialized and targeted publisher sites created, designed and hosted by BBIL.

Appleton Affidavit, Application Record, Tab 2, at para. 12

13. In January 2012, OCRA was approached by Christopher George Smith ("**Smith**"), a Canadian national resident in Toronto. Smith retained OCRA's services to incorporate an Isle of Man company under the name "Banners Broker International Limited" for the operation of BBIL's online advertising platform. In March 2012, OCRA was formally engaged by Smith as a corporate service provider for BBIL.

Appleton Affidavit, Application Record, Tab 2, at paras. 15-16

14. To facilitate the incorporation of BBIL in the Isle of Man, OCRA used an existing dormant shelf company, Bedford Limited, which was incorporated for a prospective client in 2010. Bedford's name was changed to BBIL on April 11, 2012. At the same time, the structure of BBIL

was also changed to give ultimate beneficial ownership of BBIL to Smith. The shareholdings of BBIL were transferred to Targus Investments Limited ("**Targus**"), another in house company of OCRA used for nominee shareholdings. Targus holds 100% of the shares of BBIL in trust for Monetize Group Incorporated ("**MGI**"), pursuant to a Deed of Trust entered into between Targus and MGI with respect to the shares of BBIL. MGI is a Belize corporation of which Smith is the sole shareholder, officer and director.

Appleton Affidavit, Application Record, Tab 2, at paras. 16-19

(c) OCRA's Concerns Leading to Winding Up Order

15. In May 2012, BBIL opened a U.S. dollar bank account ("**BBIL Account**") with the Isle of Man branch of Royal Bank of Scotland International ("**RBS**").

Appleton Affidavit, Application Record, Tab 2, at para. 24

16. Beginning in late May 2012, funds began to arrive in the BBIL Account, uninitiated by any contracts or agreements authorized by the directors of BBIL. OCRA also received a contract in June 2012 between BBIL and Allied Wallet Limited, an electronic payment processor, which was signed by Smith, purportedly in his capacity as "principal" of BBIL. Typically, the directors provided by OCRA for its administered Isle of Man companies are required to approve and sign all contracts entered into by the company and are made aware of corporate transactions. This was not the case with BBIL.

Appleton Affidavit, Application Record, Tab 2, at paras. 25, 28

17. BBIL bank statements obtained from RBS indicate that as of August 6, 2012 the BBIL Account balance had grown to over \$6.8 million. Remittances included a \$461,563.12 deposit made June 12, 2012 and noted in the statements as "FW: Banners Broker Ca." The Joint Liquidators have made inquiries of RBS and understand the reference to be to Banners Broker Canada.

Appleton Affidavit, Application Record, Tab 2, at para. 27

18. To address its concerns regarding the activity on the BBIL Account and Smith's activity on behalf of BBIL, OCRA determined that further due diligence should be carried out. OCRA made numerous requests of both Smith and his Canadian legal counsel, Aird & Berlis LLP ("**A&B**"). Despite these requests, Smith never provided the vast majority of the requested information.

Appleton Affidavit, Application Record, Tab 2, at para. 29

19. OCRA was aware that Smith had set up an account with Allied Wallet and that this account was receiving money from BBIL registered users and paying it into the BBIL Account. A review of the RBS bank statements in or about October 2012 revealed incongruously high and accumulating revenues, coupled with generally very low expenses. Internet searches revealed a myriad of complaints against BBIL. OCRA's suspicions and concerns escalated.

Appleton Affidavit, Application Record, Tab 2, at para. 30

20. On December 21, 2012, OCRA wrote to Smith and advised that they could no longer assist and process the administration of BBIL. OCRA requested the details of the new corporate service provider where BBIL was to be transferred and confirmed that they had terminated their engagement with BBIL. OCRA received a response from A&B on January 4, 2013 advising that Smith understood OCRA's decision to terminate its business relationship with BBIL and that he was in the process of locating a new corporate service provider.

Appleton Affidavit, Application Record, Tab 2, at paras. 33-36

21. On January 16, 2013, OCRA filed a Form 335a "Statement That The Company Does Not Have Authority To Maintain Its Registered Office at Specified Premises" (the "**Form 335a**") with the Isle of Man Companies Registry providing formal notice that BBIL no longer had authority to maintain its registered office at Kissack Court. On May 31, 2013, OCRA filed Form 9N notices

with the Isle of Man Companies Registry giving notice of the resignations of the directors of BBIL and secretary of BBIL. OCRA retained nominee shareholding in BBIL through Targus.

Appleton Affidavit, Application Record, Tab 2, at paras. 37, 40-41

22. On March 18, 2013, RBS advised OCRA that it no longer wished to provide banking services to BBIL and provided 60 days notice of the closure of the BBIL Account. OCRA then entered into discussions with RBS, resulting in a compromise whereby the funds held in the name of BBIL with RBS were transferred to a new OCRA client account to be held in trust for BBIL until such time as a new corporate service provider was engaged ("**OCRA/BBIL Account**"). On May 15, 2013, OCRA arranged to close the BBIL Account and have all funds transferred to the newly opened OCRA/BBIL Account. In total, USD \$6,652,132.54 was transferred to the OCRA/BBIL Account.

Appleton Affidavit, Application Record, Tab 2, at paras. 38-39

23. Throughout the summer of 2013, OCRA continued to be contacted by clients and investors of BBIL, despite the termination of the business relationship.

Appleton Affidavit, Application Record, Tab 2, at para. 42

24. Despite OCRA's attempts to obtain information regarding the business affairs of BBIL from Smith and his Canadian counsel, and OCRA's attempts to provide Smith with a reasonable opportunity to move BBIL to another corporate service provider, such information was not provided and no alternative corporate service arrangements were made.

Appleton Affidavit, Application Record, Tab 2, at para. 49

25. On December 23, 2013, and as a result of the concerns detailed above and Smith's failure to retain a new corporate service provider for BBIL, Targus passed a written resolution to apply to the Isle of Man court to have BBIL placed in liquidation. An application was subsequently commenced, as further detailed below.

Appleton Affidavit, Application Record, Tab 2, at para. 51

(c) Action by Ian Driscoll against BBIL

26. On July 22, 2013, a substantial creditor of BBIL, Ian Driscoll, commenced an action in the Isle of Man High Court to recover an outstanding debt of over USD \$3 million from BBIL.

Appleton Affidavit, Application Record, Tab 2, at paras. 52, 55

27. Driscoll is a resident of West Yorkshire, United Kingdom and a specialist in online marketing and advertising. Driscoll is a former independent contractor of BBIL pursuant to an Affiliate Agreement, dated March 4, 2011 ("**Affiliate Agreement**"), and an Independent Contractor Agreement, dated June 1, 2012 ("**Independent Contractor Agreement**" and together with the Affiliate Agreement, the "**Driscoll Agreements**"). The Driscoll Agreements provide that Driscoll was to perform certain customer service, order processing, sales and sales support functions for BBIL in the United Kingdom in exchange for a percentage share of total sales as set out in the Independent Contractor Agreement.

Appleton Affidavit, Application Record, Tab 2, at paras. 53-54

28. Driscoll's claim alleges that he performed his obligations pursuant to the Driscoll Agreements up until January 15, 2013, when the Independent Contractor Agreement was unilaterally and improperly terminated by BBIL for alleged "non-compliance" by Driscoll related to Driscoll allegedly approaching other independent contractors of BBIL with another, unspecified business opportunity. Driscoll also alleges that his Affiliate Account with BBIL was "locked", without justification, which prevented him from accessing funds to which he was entitled. Driscoll seeks payment of his "presently quantifiable loss" of USD \$3,030,106.10 or £2,007,01.66 per the exchange rate at the time the claim was filed, plus additional amounts to be calculated with respect to the increased value of Driscoll's BBIL Affiliate Account since it was locked in January 2013, as well as interest on both amounts.

Appleton Affidavit, Application Record, Tab 2, at paras. 56-58

29. Despite Smith's indication that he intended to defend Driscoll's claim, no defence was filed by the deadline of January 20, 2014.

Appleton Affidavit, Application Record, Tab 2, at para. 64

30. Driscoll's claim was ultimately stayed by the court due to Targus's pending application for the winding up of BBIL. On February 10, 2014, the Isle of Man Court ordered that Driscoll's claim against BBIL be stayed, pursuant to section 166 of the *Companies Act 1931*, pending determination of the Targus Application, as defined below. Despite his claim being stayed by the court, Driscoll has remained an active participant in BBIL's liquidation.

Appleton Affidavit, Application Record, Tab 2, at paras. 65-66

(d) Insolvency Proceedings in the Isle of Man

31. BBIL is currently subject to a court-ordered wind up and liquidation pursuant to the wind up provisions of the *Companies Act 1931* of the Isle of Man. This proceeding is the combined result of an application brought by Targus and the submissions made in that application by Driscoll as a substantial creditor in BBIL's estate.

Appleton Affidavit, Application Record, Tab 2, at para. 67

32. The *Companies Act 1931* provides that the Joint Liquidators, with the sanction of either the court or the court-appointed Committee of Inspection, are empowered to carry on the business of BBIL, bring proceedings on behalf of BBIL, pay any classes of creditors in full, compromise claims with creditors and dispose of BBIL's property, in addition to other powers set out in the *Companies Act 1931*.

Appleton Affidavit, Application Record, Tab 2, at para. 68

33. The Manx insolvency regime, under the *Companies Act 1931* and the *Companies (Winding Up) Rules 1934*, deals with the collective interests of creditors generally and involves

the control or supervision of the debtor's property by the courts for the purpose of liquidation. In the Joint Liquidators' opinion, liquidation proceedings under this regime qualify as a "foreign proceeding" as defined in section 268(1) of the BIA.

Appleton Affidavit, Application Record, Tab 2, at para. 73

34. Targus commenced an application in the High Court of Justice to wind up BBIL pursuant to Part V of the *Companies Act 1931* ("**Targus Application**") on January 10, 2014. The Targus Application was commenced as a result of the concerns noted above regarding the status of BBIL, the failure of Smith to provide the requested information or make the necessary arrangements to have the administration of BBIL transferred to a new corporate service provider, OCRA's continued, unwanted involvement due to Targus's shareholdings in BBIL and the funds held in the OCRA/BBIL Account, the prejudice which would result to BBIL and its creditors from BBIL's inability to defend the Driscoll Action and BBIL's apparent inability to pay its outstanding debts.

Appleton Affidavit, Application Record, Tab 2, at para. 75

35. The Targus Application sought the winding up of BBIL pursuant to section 162(1) of the *Companies Act 1931*, which provides for the winding up and liquidation of companies by special resolution of the company, and the appointment of Benham and Timothy Allan Mann ("**Mann**") of MannBenham Advocates Limited as Provisional Liquidators and deemed Official Liquidators of BBIL pursuant to section 174 of the *Companies Act 1931*. Targus also advertised its application in the Isle of Man Courier and Isle of Man Examiner newspapers on February 14 and 18, 2014, respectively.

Appleton Affidavit, Application Record, Tab 2, at para. 76, 80

36. The Targus Application was supported by Driscoll with certain qualifications and amendments. Driscoll took the position that the most appropriate basis for the winding up of BBIL

is the company's inability to pay debts. As such, the proceeding ought to be an insolvent liquidation in which the interests of creditors are accorded due weight. Driscoll also proposed that Appleton be appointed either jointly with Benham and/or Mann, or alternatively, alone. Finally, Driscoll voiced concern, based on reports of Smith migrating BBIL data to a new system and the locking of accounts of creditors supporting Appleton's appointment, that Smith would attempt to reorganize BBIL as a "phoenix company," enabling the principals of BBIL to continue trading while BBIL is liquidated, thereby frustrating the proper and orderly winding up of BBIL to the detriment of its creditors.

Appleton Affidavit, Application Record, Tab 2, at paras. 81-84

37. On February 26, 2014, His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls of the High Court of Justice of the Isle of Man, ordered that BBIL be wound up pursuant to section 162(6) of the *Companies Act 1931*, which provides for the winding up of a company where the court is of the opinion that it is just and equitable that the company should be wound up, and appointed Benham and Appleton as Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL pursuant to section 174 of the *Companies Act 1931*. The following powers were granted to the Joint Provisional Liquidators:

- (a) To carry on the business of BBIL, in so far as may be necessary for the beneficial winding up thereof;
- (b) To open, maintain and operate without the further consent of any other person, such bank accounts as they deem necessary;
- (c) To appoint an advocate or such other law agent or legal advisor (whether in Isle of Man or elsewhere) to assist in the performance of their duties;
- (d) To pay any classes of creditors in full; and

- (e) To bring or defend any action or other legal proceedings in the name of and on behalf of BBIL.

The court also ordered the Joint Liquidators to advertise notice of the order in two newspapers published and circulating in the Isle of Man and to hold meetings of creditors under section 179 of the *Companies Act 1931* within one month of the date of the order.

Appleton Affidavit, Application Record, Tab 2, at para. 86

38. On March 14, 2014, His Honour the Deemster Doyle made a further order that Benham and Appleton, at that time acting as Joint Provisional Liquidators and Deemed Joint Official Receivers, be appointed as Joint Liquidators. The court also appointed the following persons as a Committee of Inspection to act with the Joint Liquidators:

- (a) Ian Driscoll, of TradeForce Building, Cornwall Place, Bradford, United Kingdom, BD7 8JT;
- (b) Michael Bowe, of 1 Cartmell Hill, Woodseats, Sheffield, United Kingdom, S8 0RH;
- (c) Lyndon Farrington, of Tynllwyn, Commission, Llanrhaeadr Ym Mochant, Powys, Wales, United Kingdom, SY10 0BZ;
- (d) Richard Weals, of 9 Oldfields Crescent, Great Haywood, Stafford, United Kingdom, ST18 0RS; and
- (e) Aubrey John Bettinson, of 18 Wellington Avenue, Bitterne, Southampton, United Kingdom, SO18 5DD.

(collectively, and in this capacity, the “**Committee of Inspection**”)

The court also ordered that notice of this order be advertised in the London Gazette and one Isle of Man newspaper.

Appleton Affidavit, Application Record, Tab 2, at para. 87

39. On July 2, 2014, pursuant to the authority conferred by the above referenced Orders of the Isle of Man High Court and by section 184(1) of the *Companies Act 1931*, the Joint Liquidators sought authorization and instruction of the Committee of Inspection to commence an application for recognition of the Isle of Man Proceeding in Canada as a “foreign proceeding” for the purposes of Part XIII of the BIA. The Joint Liquidators received unanimous consent from the Committee of Inspection to act as foreign representatives and to commence the within recognition application.

Appleton Affidavit, Application Record, Tab 2, at para. 88

(e) BBIL’s Centre of Main Interest

40. In the four months that BBIL has been in liquidation, the Joint Liquidators have conducted investigations and made inquiries with respect to the business and affairs of BBIL and the BBIL Group. As an online “cloud based” business, BBIL’s operations were international in scope and it appears that its physical presence in any one jurisdiction was negligible. Having said that, based on the information and inquiries made to date, the Joint Liquidators believe that, on balance, BBIL has stronger known connections to the Isle of Man than to any other jurisdiction.

Appleton Affidavit, Application Record, Tab 2, at para. 89

41. This is demonstrated by the fact that:

- (a) BBIL is incorporated in the Isle of Man under the *Companies Act 1931*;
- (b) The only registered office ever maintained by BBIL was at Kissack Court;
- (c) BBIL consistently held itself out as being an Isle of Man company and its Isle of Man address at Kissack Court was readily ascertainable to the public, including creditors; and

- (d) The public, including significant creditors, would likely have recognized the Isle of Man as the centre of the company's operations.

Appleton Affidavit, Application Record, Tab 2, at para. 90

42. BBIL's Isle of Man incorporation and address is not merely borne out of convenience. While operating, BBIL exclusively held itself out as an Isle of Man company. Further, the Joint Liquidators believe that the public, including creditors and contractual counterparties of BBIL, would have considered the Isle of Man to be BBIL's home. Although the BBIL Group had operations and affiliated companies located in other countries, including Canada and Belize, BBIL, the Isle of Man entity, was evidently always held out as the "headquarters" of the BBIL Group's international operations.

Appleton Affidavit, Application Record, Tab 2, at paras. 92-93

(f) Canadian Matters Deserving of Investigation

43. BBIL has business connections and financial dealings tied to Canada which necessitate further investigation. The complete and effective winding up of BBIL, and the protection of creditors' interests, requires that the Joint Liquidators make inquiries in Canada (particularly of financial institutions and BBIL service providers and Group entities) with a view to identifying and better understanding the business and financial operations of BBIL, and asset transfers within the BBIL Group involving BBIL. Such inquiries are best pursued by a Receiver appointed in the context of an application for recognition of the Isle of Man Proceeding as a "foreign proceeding" pursuant to the Cross-Border Insolvency provisions of the BIA, thereby invoking the judicial cooperation and assistance mechanisms contemplated by such legislation.

Appleton Affidavit, Application Record, Tab 2, at para. 94

44. By way of example, the Joint Liquidators' investigations to date reveal that several key individuals, including Smith, who are either employed or formerly employed by BBIL Group

entities, and are believed to have knowledge of BBIL's affairs, are Canadian residents. The Joint Liquidators believe that the examinations of these people under oath is necessary in order to advance the administration of BBIL's wind-up.

Appleton Affidavit, Application Record, Tab 2, at para. 95

45. The Joint Liquidators' investigations to date have – and are continuing – to reveal connections to Canada which merit further investigation, including:

- (a) The Joint Liquidators believe that several entities within the BBIL Group were and are located in Canada.

Appleton Affidavit, Application Record, Tab 2, at para. 97

- (b) Smith retained a Toronto-based law firm, A&B, with respect to the affairs of BBIL. Lawyers at A&B were in contact with OCRA in regards to BBIL's corporate status in the Isle of Man.

Appleton Affidavit, Application Record, Tab 2, at paras. 98-99

- (c) BBIL and BBIL Group entities had account relationships with a number of Canadian-based companies, which it engaged as service providers.

Appleton Affidavit, Application Record, Tab 2, at para. 100(a)

- (d) A large number of "Banners Broker" associated domain names including bannersbroker.in, bannersbroker.us, bannersbrokercomplaints.com, bannersbrokerponzi.org and bannersbrokerscam.info are registered to a Canadian street address at 110 Cumberland Street, Suite 201, Toronto. Ten or more of these domain names list Christopher Smith and/or Local Management Services as the registered owner at the 110 Cumberland address. Local Management Services is an Ontario company directed by Smith.

Appleton Affidavit, Application Record, Tab 2, at para. 100(b),(c),(d)

- (e) BBIL and BBIL Group entities had dealings with Canadian banks including CIBC, Royal Bank of Canada, HSBC and TD Canada Trust.

Appleton Affidavit, Application Record, Tab 2, at para. 100(e)

- (f) Two “Reseller Agreements” entered into between BBIL and independent contractors in the UK and Ireland indicate that the “principal offices” of BBIL are at “100 King Street West, Suite 5700, Toronto, Ontario, M5X 1C7”.

Appleton Affidavit, Application Record, Tab 2, at para. 100(f),(g)

46. In furtherance of the winding up of BBIL, the Joint Liquidators have made written inquiries and requests for information from service providers, as well as from financial institutions with which entities within the BBIL Group are believed to have had account relationships and dealings. The Joint Liquidators are aware that Smith, BBIL and/or other entities within the BBIL Group engaged the services of a number of different electronic payment processors during the life of BBIL’s operations, including Allied Wallet, Solid Trust Pay and Payza, and that these processors were involved in collecting funds from individuals and remitting them to Canadian financial institutions. Inquiries made of these payment processors and Canadian banks raised matters deserving of further investigation

Appleton Affidavit, Application Record, Tab 2, at para. 103

47. In response to written inquiries made of Payza’s, London, England office in March and June 2014, the Joint Liquidators are advised that Smith, as Payza account holder, designated three Canadian financial institutions as recipient banks for purposes of receiving Payza remittances to BBIL. Payza has indicated that the bank accounts were set up in the names of Canadian “beneficiaries”, including Smith, Patricia London, Local Management Services and

2087360 Ontario Inc. The bank accounts which Payza indicated were set up to receive payments on behalf of BBIL's account are as follows:

- (e) Account no. 5028436 at Royal Bank of Canada branch no. 06802, held by Smith;
- (f) Account no. 268400233 at HSBC branch no. 10850, held by Smith;
- (g) Account no. 6269372 at TD Canada Trust branch no. 1084, held by Patricia London;
- (h) Account no. 5234643 at TD Canada Trust branch no. 11042, held by Local Management Services; and
- (i) Account no. 0512-7313130 at TD Canada Trust branch no. 11042, held by 2087360 Ontario Inc.

Payza also indicated that BBIL's account was associated with three different Visa credit cards held by Smith with billing addresses in Toronto.

Appleton Affidavit, Application Record, Tab 2, at para. 104

48. Based on the information received to date, the Joint Liquidators believe that the review of transfers between these electronic payment processors and Canadian financial institutions connected to BBIL is essential to the proper investigation of BBIL's affairs and the fair and efficient winding up of the company. In the circumstances, the Joint Liquidators are particularly concerned that the regular weekly deposits which were made to the BBIL Account prior to the wind up order may have been redirected to bank accounts held by other BBIL Group entities located elsewhere, including Canada.

Appleton Affidavit, Application Record, Tab 2, at para. 105

49. Thus far, the Joint Liquidators have been hindered in their ability to obtain information from the Canadian third parties disclosed herein. More specifically, the Joint Liquidators contacted certain Canadian banks, including CIBC and TD Canada Trust, enclosing copies of the relevant orders of the Isle of Man court and requesting information and documents relating to the trade, dealings and potential property of BBIL. Responses thus far have indicated that the financial institutions will not produce any information without an order from a Canadian court.

Appleton Affidavit, Application Record, Tab 2, at paras. 107-108

50. The Joint Liquidators also wrote to the Canadian-based online payment service providers believed to have had dealings with BBIL, enclosing copies of the relevant orders of the Isle of Man court and requesting information and documents relating to the trade dealings and potential property of BBIL. Although some information was received from Payza and Solid Trust Pay, as noted above, requests made to UseMyServices have not been answered, other than to advise that a court order from Canada would be necessary to provide any of the requested information.

Appleton Affidavit, Application Record, Tab 2, at paras. 109-110

51. Given the Joint Liquidators' information and belief regarding the BBIL Group's dealings with TD Canada Trust, Royal Bank of Canada ("**RBC**"), HSBC Bank Canada ("**HSBC**") and Canadian Imperial Bank of Commerce ("**CIBC**"), as set out above, the Joint Liquidators seek to obtain information from those financial institutions sufficient to determine if Canadian accounts connected to BBIL and the BBIL Group were the recipients of redirected payments from electronic payment processors connected to BBIL, following the termination of the BBIL Account. The Joint Liquidators believe that the identified financial institutions are the best, most logical, and most complete and independent source of information in this regard.

Appleton Affidavit, Application Record, Tab 2, at paras. 112

(g) Current Assets of BBIL

52. As at the date of this affidavit, BBIL is deeply insolvent. Assets consist of cash in hand totalling approximately £3.3 million. Upwards of 1000 creditors from 28 countries (including nine known creditors in Canada) have asserted claims totalling approximately £10.2 million. An Ontario personal property security registration search in respect of “Banners Broker International Limited” returned no results.

Appleton Affidavit, Application Record, Tab 2, at paras. 113-114

PART III - ISSUES AND THE LAW

53. The issues to be determined on this motion are:

- (a) Is the Isle of Man Proceeding a “foreign proceeding” pursuant to section 270 of the BIA?
- (b) Is the Isle of Man Proceeding a “foreign *main* proceeding” pursuant to section 270 of the BIA?
- (c) Is the relief sought in the Supplemental Order appropriate?

A. The Purpose of Part XIII of the BIA

54. The BIA is remedial legislation and is to be given a fair, large and liberal interpretation to facilitate its objectives.

***Re Bell*, 2013 CarswellOnt 7249, 2013 ONSC 2682, 229 A.C.W.S. (3d) 23 (Ont. Master), BOA, Tab 1, at para. 125 [*Bell*]**

55. The purpose of Part XIII of the BIA, as set out in section 267, is to effect cross-border insolvencies and facilitate and enhance international cooperation and coordination through a system under which multinational business groups can be dealt with coherently as a whole in cross-border proceedings. Section 267 of the BIA provides as follows:

The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtors;
- (d) the protection and the maximization of the value of debtors' property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 267

56. In the context of cross-border insolvencies, Canadian courts have consistently encouraged comity and cooperation with courts in other countries.

***Re Lear Canada*, 2009 CarswellOnt 4232 (S.C.J. [Commercial List]), BOA, Tab 2, at paras. 11 and 17 [*Lear Canada*]**

***Re Grant Forest Products Inc.*, 2010 ONSC 1846, 2010 CarswellOnt 2455 (S.C.J. [Commercial List]), BOA, Tab 3, at paras. 65, 76-78 [*Grant Forest*]**

***Re Babcock & Wilcox Canada Ltd.*, 2000 CarswellOnt 704 (S.C.J. [Commercial List]), BOA, Tab 4, at paras. 9, 21 [*Babcock*]**

57. Canadian courts have also found the cross-border provisions under Part XIII of the BIA to be flexible and equipped to deal with peculiar and unusual circumstances. The cross-border provisions under the BIA have been applied to recognize foreign insolvency proceedings even where the initial focus of the proceeding is not strictly in the nature of a bankruptcy proceeding.

***Re Straumur-Burdaras Investment Bank hf.*, 2009 CarswellOnt 5454, 180 A.C.W.S. (2d) 777, 57 C.B.R. (5th) 256 (SCJ [Commercial List]), BOA, Tab 5, at paras. 24-25 [*Straumur*]**

***Zayed v. Cook*, 2009 CarswellOnt 8079, 183 A.C.W.S. (3d) 328, 62 C.B.R. (5th) 114 (SCJ), BOA, Tab 6, at para. 10 [*Zayed*]**

B. The Joint Liquidators are Entitled to the Initial Recognition Order

58. In this application, the Joint Liquidators request that this Honourable Court grant an Initial Recognition Order that, among other things:

- (a) recognizes the Joint Liquidators as “foreign representatives” with respect to the Isle of Man Proceeding;
- (b) recognizes the Isle of Man Proceeding as a “foreign proceeding” for the purposes of Part XIII of the BIA;
- (c) specifies that the Isle of Man Proceeding is a “foreign *main* proceeding”; and
- (d) stays all proceedings as against BBIL in Canada.

(a) Statutory Basis for Recognition of a “Foreign Proceeding”

59. A “foreign proceeding” is a judicial or administrative proceeding commenced outside Canada in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 268(1)

60. Pursuant to subsection 269(1) of the BIA, a foreign representative may apply to the court for recognition of the foreign proceeding in respect of which it is the foreign representative.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 269(1)

61. Subsection 269(2) provides that, subject to subsection (3), the application must be accompanied by:

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

- (c) a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 269(2)

62. Subsection 269(3) provides that the court may, without further proof, accept the documents referred to in subsections (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding. Pursuant to subsection 269(4), the court may also accept any other evidence which it considers appropriate as proof of the foreign proceeding and the foreign representative's authority.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 269(3) and (4)

63. Pursuant to subsection 270(1) of the BIA, the Court *shall* make an order recognizing the foreign proceeding if (i) the proceeding is a "foreign proceeding" and (ii) the applicant is a "foreign representative" of that proceeding.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 270(1)

64. The definition of "foreign proceeding" under section 268(1) is to be given a "purposive interpretation" in support of the maximization of creditor recovery.

Zayed, supra, BOA, Tab 6, at paras. 10-11

(b) The Isle of Man Proceeding is a "Foreign Proceeding"

65. The Joint Liquidators have provided the required proof of the existence of a foreign proceeding and their authority pursuant to subsection 269(2) and (3) of the BIA, namely:

- (j) Certified copies of the following orders of His Honour the Deemster Doyle, First Deemster of the High Court of Justice of the Isle of Man, Civil Division:

- (i) The order of His Honour the Deemster Doyle, issued February 26, 2014 that (a) BBIL be wound up pursuant to section 162(6) of the *Companies Act 1931*, and (b) Benham and Appleton be appointed as Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL pursuant to section 174 of the *Companies Act 1931*; and
- (ii) The order of His Honour the Deemster Doyle, issued March 14, 2014 appointing Benham and Appleton as Joint Liquidators of BBIL and appointing the Committee of Inspection.

66. The Orders referenced above, together with the *Companies Act, 1931*, authorize the Joint Liquidators to act as foreign representatives with respect to the within application, with the authorization of the Committee of Inspection, which has been sought and obtained. Subsections 184(1) and (2) of the *Companies Act, 1931* set out the powers of a liquidator appointed by the Isle of Man court, which include:

- (a) with the sanction of the court or the committee of inspection, to bring or defend any action or other legal proceeding in the name and on behalf of the company (subsection 184(1)(a));
 - (b) with the sanction of the court or the committee of inspection, to appoint an advocate or other law agent to assist him in the performance of his duties (subsection 184(1)(c));
 - (c) to appoint an agent to do any business which the liquidator is unable to do himself (subsection 184(2)(g)); and
-
- (d) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets (subsection 184(2)(h)).

As noted above, the Joint Liquidators sought, pursuant to their powers set out above, the authorization of the Committee of Inspection to commence the within application for recognition of the Isle of Man Proceedings as a “foreign main proceeding” and received unanimous approval from the Committee.

67. The Manx insolvency regime, as set out in the *Companies Act 1931* and the *Companies (Winding Up) Rules 1934*, deals with the collective interests of creditors generally and involves the control or supervision of the debtor’s property by the courts for the purpose of liquidation. In the Joint Liquidators’ opinion, liquidation proceedings under this regime qualify as a “foreign proceeding” as defined in section 268(1) of the BIA.

(c) The Joint Liquidators are “Foreign Representatives”

68. Section 268(1) of the BIA defines a “foreign representative” as a person or body who is authorized in a foreign proceeding in respect of a debtor company to:

- (a) administer the debtor’s property or affairs for the purpose of reorganization or liquidation; or
- (b) act as a representative in respect of the foreign proceeding.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 268(1)

69. Pursuant to the certified instruments noted above, the Joint Liquidators are authorized by Isle of Man Court to administer the property of BBIL for the purpose of liquidation and are authorized by the court-appointed Committee of Inspection to act as foreign representatives for the purpose of this application.

(d) **The Isle of Man Proceeding is a “Foreign *Main Proceeding*”**

70. Once the Court has determined that a proceeding is a “foreign proceeding,” it is required to specify in its order whether the foreign proceeding is a “foreign *main proceeding*” or a “foreign *non-main proceeding*”.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 270(2)

71. A “foreign main proceeding” is a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.” For the purposes of Part XIII of the BIA, subsection 268(2) provides that in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests (“**COMI**”).

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 268(2)

72. The presumption that the COMI is the registered office of the debtor company can be rebutted if there are factors which, viewed objectively by third parties, would lead to the conclusion that the COMI is other than at the location of the registered office.

***Re Probe Resources Ltd.*, 2011 BCSC 552, 2011 CarswellBC 1043 (B.C.S.C.), BOA, Tab 7, at paras. 21-28 [*Probe Canada*]**

73. In considering whether the registered office presumption has been rebutted in *Re Lightsquared LP*, Justice Morawetz noted that the Court should consider the following factors in determining COMI:

- (a) the location is readily ascertainable by creditors;
- (b) the location is one in which the debtor’s principal assets and operations are found;
and
- (c) the location is where the management of the debtor takes place.

***Re Lightsquared LP*, 2012 ONSC 2994, BOA, Tab 8, at paras. 24-28 [*Lightsquared*]**

See also *Re Digital Domain Media Group Inc.*, 2012 BCSC 1565, BOA, Tab 9, at para. 18 [*Digital Domain*]

74. The Joint Liquidators submit that BBIL has its COMI in the Isle of Man for the following reasons:

- (a) BBIL is an Isle of Man company incorporated pursuant to and governed by the laws of the Isle of Man;
- (b) BBIL's registered office was located at Kissack Court in the Isle of Man;
- (c) The Isle of Man address was held out by BBIL as the "headquarters" of the international BBIL Group;
- (d) BBIL is part of the BBIL Group and the international head office of that group, as readily ascertainable to creditors, is the Isle of Man;
- (e) Significant numbers of international creditors have sought to enforce their claims in the Isle of Man Proceeding;
- (f) The BBIL Account was maintained in the Isle of Man and the funds previously held in that account, the principal asset in BBIL's liquidation, continue to be held in a sterling estate account in the Isle of Man controlled by, and in the name of, the Joint Liquidators.

75. For the reasons stated above, the Isle of Man Proceeding is a foreign main proceeding for the purposes of Part XIII of the BIA.

(e) Stay of Proceedings

76. The effect of recognition of a foreign main proceeding is an automatic grant of the relief set out under subsection 271(1) of the BIA:

271. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding,

(a) no person shall commence or continue any action, execution or other proceedings concerning the debtor's property, debts, liabilities or obligations;

(b) if the debtor carries on a business, the debtor shall not, outside the ordinary course of the business, sell or otherwise dispose of any of the debtor's property in Canada that relates to the business and shall not sell or otherwise dispose of any other property of the debtor in Canada; and

(c) if the debtor is an individual, the debtor shall not sell or otherwise dispose of any property of the debtor in Canada.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 271(1)

77. The Joint Liquidators also submit that a stay of proceedings would be appropriate, in any event, as the Isle of Man Proceeding include a stay of proceedings pursuant to section 171 of the *Companies Act 1931*:

171 Actions stayed on winding-up order

When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose

Accordingly, in order to give full effect to the recognition of the Isle of Man Proceeding, a stay proceedings in Canada is required.

C. The Joint Liquidators are Entitled to the Supplemental Recognition Order

78. In addition to the automatic relief provided for in section 271, section 272 of the BIA provides that the Court may, in its discretion, make any order that it considers appropriate if it is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 272

79. The Joint Liquidators request that this Honourable Court grant a Supplemental Recognition Order that, among other things:

- (a) Appoints msi Spergel Inc. as receiver (in such capacity, the “**Receiver**”) of the property of BBIL located in Canada (“**Property**”) and entrusting the administration and realization of the Property to the Receiver;
- (b) Requires the following persons to attend an examination under oath by the Joint Liquidators and/or the Receiver, pursuant to sections 272(1) and 163(1) of the BIA, as persons reasonably believed to have knowledge of the business, affairs and/or Property of BBIL:
 - (i) Christopher G. Smith;
 - (ii) Rajiv Dixit;
 - (iii) Kuldip Josun; and
 - (iv) Any other person who has been an officer, director or employee of BBIL or who the Joint Liquidators or Receiver reasonably believe to have knowledge as to the business, affairs and/or Property of BBIL; and
- (c) requires any person, including third party service providers and financial institutions, to produce or otherwise make available to the Joint Liquidators and/or the proposed Receiver any and all documents and information in their possession or control concerning BBIL’s property, affairs, debts, liabilities and obligations.

(a) Appointment of msi Spergel Inc. as Receiver

80. The Joint Liquidators’ investigations to date indicate that BBIL and other BBIL Group entities had important business dealings in Canada, including account relationships with Canadian financial institutions and service providers. There is a concern that regular and significant weekly deposits paid into the BBIL Account prior to the debtor’s winding up may have

been redirected through accounts with banks and/or payment processors located in Canada and held by entities and individuals known to be associated with BBIL and the BBIL Group, to the detriment of BBIL's creditors.

81. The Affidavit of Paul Appleton details the Joint Liquidators' largely unsuccessful attempts to date to obtain relevant information and documents from key persons and third parties located in Canada that are believed to have knowledge of BBIL's affairs. It is apparent that the Canadian parties from whom the Joint Liquidators have sought information are presently unwilling to cooperate. They are prepared to cooperate should the order sought on this application be granted.

82. Subsection 272(1)(d) of the BIA expressly contemplates that, upon recognition of a foreign insolvency proceeding, the court may make a supplemental order appointing a receiver of all or any part of the debtor's property located in Canada:

272. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

[...]

(d) appointing a trustee as receiver of all or any part of the debtor's property in Canada, for any term that the court considers appropriate and directing the receiver to do all or any of the following, namely,

(i) to take possession of all or part of the debtor's property specified in the appointment and to exercise the control over the property and over the debtor's business that the court considers appropriate, and

(ii) to take any other action that the court considers appropriate.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 272(1)(d)

83. Subsection 275(1) of the BIA also speaks to the relief that ought to be accorded in the context of recognition of a foreign proceeding as follows:

275. (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 275(1)

84. It is submitted that the appointment of a receiver in the circumstances of this recognition application is just and convenient and consistent with the purposes of the Part XII – Cross-Border Insolvencies provisions. This is the case for the following reasons:

- (a) BBIL is already in a liquidation administered by duly authorized foreign insolvency professionals. The company has no operating business, secured creditors, or employees, and the impact of the receiver will obviously not be the same as if the debtor was engaged in active business. This is not a case of a receiver being sought to preserve assets for execution before judgment, or even to manage a business. Here, the remedy is not intrusive or prejudicial to any interest;
- (b) The terms of the Supplemental Order sought reflect the investigative nature of the proposed receiver's role. The appointment is focussed and designed to address the concerns that the Joint Liquidators have identified in the context of coming to Canada to seek recognition;
- (c) Specifically, the main function of the proposed receiver will be to investigate the business and affairs of BBIL in Canada and to make sure, so far as possible, that the assets of the company and the various arrangements that it entered into in Canada are identified and fully examined and considered. This is appropriately responsive to the Joint Liquidator's concerns and will advance the effective wind-up of the business;
- (d) The Joint Liquidators have deposed that they believe that it is necessary to have a court-appointed and experienced Canadian insolvency representative, with certain of the powers of a receiver, to investigate, identify and realize upon any BBIL

assets in Canada. Beyond recognition of the Isle of Man proceeding, this is the mechanism that is required to pursue a proper and complete liquidation of BBIL;

- (e) In addition to its investigatory powers, it is contemplated that the proposed receiver will have certain possessory powers. The possessory powers are in respect of the Property of BBIL only. This recognizes and is in accordance with the powers of the Joint Liquidators under the Isle of Man High Court Orders and the *Companies Act*, 1931;
- (f) It is proposed that the receiver undertake all of the “information officer” responsibilities that are contemplated by the model Supplemental Order and that are traditionally granted in the context of Canadian judicial recognitions of foreign proceedings; and
- (g) The appointment of a receiver with the investigatory powers sought will constitute a level of cooperation and assistance consistent with the judicial cooperation obligations imposed by section 275 of the BIA.

85. Pursuant to section 101 of the *Courts of Justice Act*, the court may also appoint a receiver by interlocutory order where it appears to be just or convenient to do so. This court has used the power to appoint receivers whose main function is to monitor and investigate the assets and affairs of a party, where such an appointment is necessary to monitor the affairs of the party so that a more fulsome investigation can be undertaken.

***Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101**

***General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 CarswellOnt 5867, 2011 ONSC 4136, 204 A.C.W.S. (3d) 543, 80 C.B.R. (5th) 259, BOA, Tab 10, at paras. 88-92 [*General Electric*]**

***Loblaws Brands Ltd. v. Thornton*, 2009 CarswellOnt 1588, [2009] O.J. No.**

1228, 176 A.C.W.S. (3d) 141, 78 C.P.C. (6th) 189, BOA, Tab 11, at paras. 14-15
[Loblaw]

86. Blackline comparisons of the proposed Supplemental Order (Foreign Recognition) against this court's Model Supplemental Order and Model Receivership Order are appended at Schedule "C" to this factum.

(b) Examinations of Key Persons Located in Canada and Production of Relevant Information and Documents from Third Parties

87. The power to pursue examinations under oath of certain persons reasonably believed to have knowledge of BBIL's affairs, and the power to seek production of documents relevant to the business dealings of BBIL in Canada from third parties, are appropriate investigatory powers in the circumstances. Such efforts are essential to the investigation of BBIL's business and affairs in Canada. The Joint Liquidators have identified Smith, Dixit and Josun as three such individuals believed to be resident in Canada.

88. Subsection 272(1)(b) expressly contemplates that, upon recognition of a foreign insolvency proceeding, the court may make a supplemental order respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, debts, liabilities and obligations:

272. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

[...]

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, debts, liabilities and obligations;

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 272(1)(b)

89. Such relief is consistent with the powers granted to a trustee in bankruptcy under sections 163(1) and 164(1) of the BIA.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 163(1), 164(1)

PART IV - ORDER REQUESTED

90. The applicants therefore respectfully request an order substantially in the form of the draft orders appended to the application record:

- (a) Abridging the time for and validating service of this notice of application and the application record and dispensing with further service thereof;
- (b) Declaring that the Joint Liquidators are "foreign representatives" pursuant to section 268(1) of the BIA, and are entitled to bring this application pursuant to section 269 of the BIA;
- (c) Declaring and recognizing the Isle of Man Proceeding as a "foreign main proceeding" for the purposes of section 270 of the BIA;
- (d) Staying and enjoining any claims, rights, liens or proceedings against or in respect of BBIL and the property of BBIL;
- (e) Appointing msi Spergel Inc. as Receiver of the property of BBIL located in Canada and entrusting the administration and realization of the Property to the Receiver;
- (f) Requiring the following persons to attend an examination under oath by the Joint Liquidators and/or the proposed Receiver, pursuant to sections 272(1) and 163(1) of the BIA, as persons reasonably believed to have knowledge of the business, affairs and/or Property of BBIL:
 - (i) Christopher G. Smith;
 - (ii) Rajiv Dixit;
 - (iii) Kuldip Josun;

- (iv) Any other person who has been an officer, director or employee of BBIL or who the Joint Liquidators or proposed Receiver reasonably believe to have knowledge as to the business, affairs and/or Property of BBIL;
- (g) an order pursuant to sections 272(1) and 164(1) of the BIA requiring any person, including third party service providers and financial institutions, to produce or otherwise make available to the Joint Liquidators and/or the proposed Receiver any and all documents and information in their possession or control concerning BBIL's property, affairs, debts, liabilities and obligations;
- (h) authorizing the Joint Liquidators and /or the proposed Receiver to apply from time to time to this Court for advice and directions;
- (i) requesting the aid and recognition of any court, tribunal, regulator or administrative body having jurisdiction in Canada, the Isle of Man or elsewhere; and
- (j) such further and other relief as this Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of August, 2014.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Re Bell*, 2013 CarswellOnt 7249, 2013 ONSC 2682, 229 A.C.W.S. (3d) 23 (Ont. Master)
2. *Re Lear Canada*, 2009 CarswellOnt 4232 (S.C.J. [Commercial List])
3. *Re Grant Forest Products Inc.*, 2010 ONSC 1846, 2010 CarswellOnt 2455 (S.C.J. [Commercial List])
4. *Re Babcock & Wilcox Canada Ltd.*, 2000 CarswellOnt 704 (S.C.J. [Commercial List])
5. *Re Straumur-Burdaras Investment Bank hf.*, 2009 CarswellOnt 5454, 180 A.C.W.S. (2d) 777, 57 C.B.R. (5th) 256 (SCJ [Commercial List])
6. *Zayed v. Cook*, 2009 CarswellOnt 8079, 183 A.C.W.S. (3d) 328, 62 C.B.R. (5th) 114 (SCJ)
7. *Re Probe Resources Ltd.*, 2011 BCSC 552, 2011 CarswellBC 1043 (B.C.S.C.)
8. *Re Lightsquared LP*, 2012 ONSC 2994
9. *Re Digital Domain Media Group Inc.*, 2012 BCSC 1565
10. *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 CarswellOnt 5867, 2011 ONSC 4136, 204 A.C.W.S. (3d) 543, 80 C.B.R. (5th) 259
11. *Loblaw Brands Ltd. v. Thornton*, 2009 CarswellOnt 1588, [2009] O.J. No. 1228, 176 A.C.W.S. (3d) 141, 78 C.P.C. (6th) 189

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Rules of Civil Procedure, R.R.O. 1990, REGULATION 194

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

[...]

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 (1).

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed. R.R.O. 1990, Reg. 194, r. 3.02 (2).

[...]

VALIDATING SERVICE

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) the document came to the notice of the person to be served; or

(b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Examination of bankrupt and others by trustee

163. (1) The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

[...]

Trustee may require books and property of bankrupt to be produced

164. (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

PART XIII - CROSS-BORDER INSOLVENCIES

Purpose

267. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtors;
- (d) the protection and the maximization of the value of debtors' property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

Interpretation

Definitions

268. (1) The following definitions apply in this Part.

"foreign court"

« tribunal étranger »

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding.

"foreign main proceeding"

« principale »

"foreign main proceeding" means a foreign proceeding in a jurisdiction where the debtor has the centre of the debtor's main interests.

"foreign non-main proceeding"

« secondaire »

"foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding.

"foreign proceeding"

« instances étrangères »

"foreign proceeding" means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditor's collective interests generally under any law relating to bankruptcy or insolvency in which a debtor's property and affairs are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation.

"foreign representative"

« représentant étranger »

“foreign representative” means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding in respect of a debtor, to

- (a) administer the debtor’s property or affairs for the purpose of reorganization or liquidation; or
- (b) act as a representative in respect of the foreign proceeding.

Centre of debtor’s main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor’s registered office and, in the case of a debtor who is an individual, the debtor’s ordinary place of residence are deemed to be the centre of the debtor’s main interests.

Recognition of Foreign Proceeding

Application for recognition of a foreign proceeding

269. (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative’s authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative’s authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

Order recognizing foreign proceeding

270. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Effects of recognition of a foreign main proceeding

271. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding,

(a) no person shall commence or continue any action, execution or other proceedings concerning the debtor's property, debts, liabilities or obligations;

(b) if the debtor carries on a business, the debtor shall not, outside the ordinary course of the business, sell or otherwise dispose of any of the debtor's property in Canada that relates to the business and shall not sell or otherwise dispose of any other property of the debtor in Canada; and

(c) if the debtor is an individual, the debtor shall not sell or otherwise dispose of any property of the debtor in Canada.

When subsection (1) does not apply

(2) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor at the time the order recognizing the foreign proceeding is made.

Exceptions

(3) The prohibitions in paragraphs (1)(a) and (b) are subject to the exceptions specified by the court in the order recognizing the foreign proceeding that would apply in Canada had the foreign proceeding taken place in Canada under this Act.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the commencement or the continuation of proceedings under this Act, the Companies' Creditors Arrangement Act or the Winding-up and Restructuring Act in respect of the debtor.

Orders

272. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, imposing the prohibitions referred to in paragraphs 271(1)(a) to (c) and specifying the exceptions to those prohibitions, taking subsection 271(3) into account;

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, debts, liabilities and obligations;

(c) entrusting the administration or realization of all or part of the debtor's property located in Canada to the foreign representative or to any other person designated by the court; and

(d) appointing a trustee as receiver of all or any part of the debtor's property in Canada, for any term that the court considers appropriate and directing the receiver to do all or any of the following, namely,

(i) to take possession of all or part of the debtor's property specified in the appointment and to exercise the control over the property and over the debtor's business that the court considers appropriate, and

(ii) to take any other action that the court considers appropriate.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Companies' Creditors Arrangement Act or the Winding-up and Restructuring Act in respect of the debtor.

Terms and conditions of orders

273. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

Commencement or continuation of proceedings

274. If an order recognizing a foreign proceeding is made, the foreign representative may commence or continue any proceedings under sections 43, 46 to 47.1 and 49 and subsections 50(1) and 50.4(1) in respect of a debtor as if the foreign representative were a creditor of the debtor, or the debtor, as the case may be.

Obligations

Cooperation — court

275. (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor and an order recognizing a foreign proceeding is made in respect of the debtor, every person who exercises any powers or performs duties and functions in any proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

(a) the appointment of a person to act at the direction of the court;

(b) the communication of information by any means considered appropriate by the court;

(c) the coordination of the administration and supervision of the debtor's assets and affairs;

(d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and

(e) the coordination of concurrent proceedings regarding the same debtor.

Obligations of foreign representative

276. If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

(a) without delay, inform the court of

(i) any substantial change in the status of the recognized foreign proceeding,

(ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and

(iii) any other foreign proceeding in respect of the same debtor that becomes known to the foreign representative; and

(b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

Multiple Proceedings

Concurrent proceedings

277. If any proceedings under this Act in respect of a debtor are commenced at any time after an order recognizing the foreign proceeding is made,

(a) the court shall review any order made under section 272 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the court shall amend or revoke the order; and

(b) if the foreign proceeding is a foreign main proceeding, the court shall make an order terminating the application of the prohibitions in paragraphs 271(1)(a) to (c) if the court determines that those prohibitions are inconsistent with any similar prohibitions imposed in the proceedings under this Act.

Multiple foreign proceedings

278. (1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor, an order recognizing a foreign main proceeding is made in respect of the debtor, the court shall review any order made under section 272 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the court shall amend or revoke the order.

Multiple foreign proceedings

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor, an order recognizing another foreign non-main proceeding is made in respect of the debtor, the court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 272 in respect of the first recognized proceeding and amend or revoke that order if it considers it appropriate.

Miscellaneous Provisions

Authorization to act as representative of proceeding under this Act

279. The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

Foreign representative status

280. An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other court order.

Foreign proceeding appeal

281. A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

Presumption of insolvency

282. For the purposes of this Part, if a bankruptcy, an insolvency or a reorganization or a similar order has been made in respect of a debtor in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

Credit for recovery in other jurisdictions

283. (1) If a bankruptcy order, a proposal or an assignment is made in respect of a debtor under this Act, the following shall be taken into account in the distribution of dividends to the debtor's creditors in Canada as if they were a part of that distribution:

(a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the debtor; and

(b) the value of any property of the debtor that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if the transfer were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

Restriction

(2) Despite subsection (1), the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (1)(a) and the value referred to in paragraph (1)(b) is of that creditor's claim.

Court not prevented from applying certain rules

284. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

Courts of Justice Act, R.S.O. 1990, c. C.43**Injunctions and receivers**

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

Terms

(2) An order under subsection (1) may include such terms as are considered just.

SCHEDULE “C”

BLACKLINES OF DRAFT ORDERS TO MODEL ORDERS

Index

- 1) **Blackline of Draft Initial Recognition Order to Model Initial Recognition Order**
- 2) **Blackline of Draft Supplemental Order to Model Receivership Order**
- 3) **Blackline of Draft Supplemental Order to Model Supplemental Order**

Blackline of Draft Initial Recognition Order to Model Initial Recognition Order

Court File No.: CV-14-10663-00CL

ONTARIO

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

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| THE HONOURABLE |) | , THE |
| |) | |
| JUSTICE |) | DAY OF, 20 |

THE HONOURABLE _____) • THE • DAY
_____)
JUSTICE _____) OF AUGUST, 2014

IN THE MATTER OF THE ~~COMPANIES' CREDITORS ARRANGEMENT~~ BANKRUPTCY AND
INSOLVENCY ACT,
R.S.C. ~~1985, 1992~~, c ~~C-36~~, 27, s. 2, AS AMENDED

AND IN THE MATTER OF ~~THE~~ [the "Debtors"] CERTAIN PROCEEDINGS TAKEN IN THE
ISLE OF MAN WITH RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~
~~UNDER SECTION 46 OF THE~~
~~COMPANIES' CREDITORS ARRANGEMENT ACT~~ MILES ANDREW BENHAM AND PAUL
ROBERT APPLETON, IN THEIR CAPACITY AS JOINT LIQUIDATORS OF BANNERS
BROKER INTERNATIONAL LIMITED, UNDER PART XIII OF THE BANKRUPTCY AND
INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)

Order Made After Application
INITIAL RECOGNITION ORDER
(FOREIGN MAIN¹ PROCEEDING)

THIS APPLICATION,² made by ~~[] in its~~ Miles Andrew Benham and Paul Robert
Appleton, in their capacity as ~~the foreign representative (the "Joint Liquidators ("Foreign~~
~~Representative") of the Debtors")~~ of Banners Broker International Limited ("Debtor"), pursuant
to the ~~Companies' Creditors Arrangement~~ Bankruptcy and Insolvency Act, R.S.C. 1985, c.
~~CB-36~~, 3, as amended (~~the "CCAA"~~ "BIA") for an Order substantially in the form ~~enclosed in the~~
~~Application Record,~~ attached to the notice of application was heard this day at the Court House,
330 University Avenue, Toronto, Ontario.

¹ ~~Under section 47 the Canadian Court must be satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, and then determine if the foreign proceeding is a foreign "main" or a foreign "non-main" proceeding. If the Canadian Court recognizes a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of this model Order are minimal, and based on the mandatory relief set out in section 48 of the CCAA with respect to a foreign main proceeding. As noted below, supplemental and other relief is set out in the model Supplemental Order (Foreign Main Proceeding).~~

² ~~Part IV of the CCAA governs cross-border insolvencies.~~

ON READING the ~~Notice~~notice of ~~Application~~application, the affidavit of ~~[] sworn [],~~ ~~[the preliminary report of [], in its capacity as proposed information officer (the "Proposed Information Officer") dated [], each~~the Foreign Representative sworn August 6, 2014, filed, and upon being provided with copies of the documents required by ~~s.46~~section 269 of the ~~CCAA~~BIA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) ~~[will be/is being]~~ sought,³

AND UPON HEARING the submissions of counsel for the Foreign Representative, ~~[counsel for the Proposed Information Officer,] counsel for [], and upon being advised that no other persons were served with the Notice of Application:~~⁴

SERVICE

1. THIS COURT ORDERS that the time for service of the ~~Notice~~notice of ~~Application~~application and the ~~Application Record~~application record is hereby abridged and validated⁵ so that this ~~Application~~application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the ~~"foreign representative" as defined in section 45"~~ of the ~~CCAA~~Debtor for purposes of the ~~Debtors~~BIA in respect of ~~[] (the "the proceedings brought in the Isle of Man under section 162(6) of the Companies Act, 1931 ("Foreign Proceeding")~~.

³ In addition to the mandatory relief contained in this Order pursuant to section 48 of the CCAA, certain discretionary relief may be granted by the Court pursuant to section 49 of the CCAA. Examples of such discretionary relief are contained in a model Supplemental Order (Foreign Main Proceeding), also available on the Commercial List website.

⁴ Revise to be consistent with the service recital in the Supplemental Order, if it is being sought concurrently.

⁵ If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in the appropriate circumstances.

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. THIS COURT ~~DECLARES~~ORDERS that the centre of ~~its~~-main ~~interests for each~~interest of the ~~Debtors~~Debtor is ~~H~~⁶in the Isle of Man and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding"⁷ as defined in section ~~45~~268 of the ~~CCAA~~BIA.

STAY OF PROCEEDINGS⁸

4. THIS COURT ORDERS that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against ~~any~~the Debtor under the ~~Bankruptcy and Insolvency Act~~Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 or the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11 are stayed;
- (b) further proceedings in any action, suit or proceeding against ~~any~~the Debtor in Canada are restrained; and
- (c) the commencement of any action, suit or proceeding against ~~any~~the Debtor in Canada is prohibited.

NO SALE OF PROPERTY⁹

5. THIS COURT ORDERS that, except with leave of this Court, ~~each of the Debtors~~Debtor is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

⁶ -A "foreign main proceeding" as defined in section 45 of the CCAA is "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests". Accordingly, the Court must make this determination in concluding that the proceeding being recognized is a foreign main proceeding. This determination should be made for each individual Debtor.

⁷ -A separate model order is being developed with respect to foreign non-main proceedings.

⁸ -The provisions of this paragraph 4 are based on section 48 of the CCAA. More comprehensive stay provisions are found in the model Supplemental Order (Foreign Main Proceeding).

⁹ -Based on section 48(d) of the CCAA.

- (b) any of its other property in Canada.

GENERAL

6. THIS COURT ORDERS that ~~[without delay][within [] days from the date of this Order, or as soon as practicable thereafter]~~¹⁰; the Foreign Representative shall cause to be published a notice substantially in the form attached to this ~~Order~~order as Schedule [*]"A",¹¹ once a week for ~~two~~four consecutive weeks, in ~~[the Globe and Mail (National Edition) and the National Post]~~.¹²

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist ~~the Debtors and~~ the Foreign Representative and ~~their respective~~its counsel and agents in carrying out the terms of this Order.

~~8. — THIS COURT HEREBY REQUESTS AND DECLARES that [the Interim Initial Order made on [] shall be of no further force and effect once this Order becomes effective, and that] this Order shall be effective as of []¹³ in the date of this Order[, and while that is the case herein shall invalidate any action taken in compliance with such Interim Initial Order prior to the effective time of this Order.]~~¹⁴

8. ~~9.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the ~~Debtors and the~~ Foreign Representative and ~~their respective~~its counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

¹⁰ ~~Section 53 of the CCAA requires publication "without delay after the order is made". The alternative language, above, may provide more certainty as to when that publication must take place.~~

¹¹ ~~The notice must contain information prescribed under the CCAA (section 53(b)).~~

¹² ~~Section 53(b) of the CCAA requires that the Foreign Representative publish, unless otherwise directed by the Court, notice of the Recognition Order once a week for two consecutive weeks, in one or more newspapers in Canada specified by the Court. In addition, the Foreign Representative has ongoing reporting obligations pursuant to section 53(a) of the CCAA.~~

¹³ ~~This time should be after the effective time that the Foreign Representative was appointed in the Foreign Proceeding.~~

¹⁴ ~~If an Interim Initial Order was not made, references to an Interim Initial Order should be removed from this paragraph.~~



SCHEDULE "A" – MEDIA NOTICE

BANNERS BROKER INTERNATIONAL LIMITED
("BBIL")

TO ALL CREDITORS AND OTHER AFFECTED PARTIES

TAKE NOTICE that on August 1, 2014 the Ontario Superior Court of Justice (Commercial List) ordered, pursuant to section 272 of the *Bankruptcy and Insolvency Act*, that the proceeding of BBIL In Liquidation brought before the High Court of Justice in the Isle of Man, Civil Division under section 162(6) of the *Companies Act, 1931* (the "Foreign Proceeding") be recognized as a foreign main proceeding and that msi Spergel inc. be appointed Receiver in respect of the Debtor in Canada.

The contact details for the Receiver in Canada are as follows:

msi Spergel inc.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8

Tel: (416) 498-4325
Fax: (416) 498-4235
Email: bannersbrokerinternational@spergel.ca

Attn: Philip H. Gennis

The contact details for the legal counsel for the Joint Liquidators of BBIL and the Receiver are as follows:

Cassels Brock & Blackwell LLP
Scotia Plaza, Suite 2100
40 King Street West
Toronto ON M5H 3C2

Tel: (416) 869-5960
Fax: (416) 360-8877
Email: dward@casselsbrock.com

Attn: David Ward

[ATTACH APPROPRIATE SCHEDULE(S)]

Please communicate all interest in this matter with supporting documentation by email to bannersbrokerinternational@spergel.ca

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER
INSOLVENCIES)

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

ORDER

Cassels Brock & Blackwell LLP
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Lawyers for the Applicants

Document comparison by Workshare Compare on Monday, August 18, 2014
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| Input: | |
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| Document 2 ID | interwovenSite://CASSELS-DMS/Legal/11417309/3 |
| Description | #11417309v3<Legal> - Draft Initial Recognition Order |
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| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 243 |

Blackline of Draft Supplemental Order to Model Receivership Order

Court File No. CV-14-10663-00CL

~~ONTARIO~~**ONTARIO**
~~SUPERIOR COURT OF JUSTICE~~
~~SUPERIOR COURT OF JUSTICE~~

COMMERCIAL LIST

THE HONOURABLE)
)
JUSTICE) DAY OF, 20

PLAINTIFF¹

Plaintiff

~~—and—~~

DEFENDANT

Defendant

(Commercial List)

¹ The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This Model Order is drafted on the basis that the receivership proceeding is commenced by way of an action.

THE HONOURABLE) • THE • DAY
JUSTICE) OF AUGUST, 2014

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1992, c. 27, s.2, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER
INSOLVENCIES)

ORDER
(appointing Receiver)

SUPPLEMENTAL ORDER
(FOREIGN MAIN RECOGNITION)

~~NOTH~~ ~~Notice~~ ~~by the Plaintiff~~² ~~for an Order~~ APPLICATION, made by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators of Banners Broker International Limited, and as Foreign Representative ("Foreign Representative") 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 [RECEIVER'S NAME] as receiver [and manager] (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") ~~required for, and in relation to business carried on by the Debtor~~³ ("BIA"), for an Order substantially in the form attached to the notice of application, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the ~~affidavit of [NAME] sworn [DATE] and the Exhibits thereto~~ notice of application, the affidavits of the Foreign Representative sworn August 6, 2014, filed, and on hearing the submissions of counsel for [NAMES] the Foreign Representative, counsel for [other parties], no

² ~~Section 243(1) of the BIA; provides that the Court may appoint a receiver "in any liquidation by a secured creditor".~~

one appearing for ~~[NAME]~~any other person on the service list, although duly served as appears from the affidavit of service of ~~[NAME]~~Mary Carreiro sworn ~~[DATE]~~August 9, 2012, filed, and on reading the consent of ~~[RECEIVER'S NAME]~~msi Spergel Inc. to act as the ~~Receiver~~proposed receiver:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~notice of ~~Motion~~application and the ~~Motion~~application record is hereby abridged and validated³ so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated August 9, 2014 (the "Recognition Order").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the High Court of Justice of the Isle of Man, Civil Division, Chancery Procedure, made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 272 of the BIA:

- (a) the Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued February 26, 2014, and
- (b) the Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued March 14, 2014

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

APPOINTMENT OF RECEIVER

5. ~~2.~~ **THIS COURT ORDERS** that pursuant to ~~section 243~~ subsection 272(1)(d) of the BIA and section 101 of the ~~CJA, [RECEIVER'S NAME]~~ Courts of Justice Act, R.S.O. 1990, c. C.43, *msi Spergel Inc.* is hereby appointed receiver ("Receiver"), without security, of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to ~~at~~ the business carried on by the Debtor, including all proceeds thereof (~~collectively~~, the ~~"Property"~~).

RECEIVER'S POWERS

6. ~~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 to~~ access all information relating to the Debtor's accounts at any financial institution, and the Receiver shall have immediate, continuous and unrestricted access to carry out the foregoing;
- (c) to ~~manage, operate, and carry on the business of the Debtor, in which the powers to enter into any agreements, incur any liabilities in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts~~ access any and all computer systems and servers, wherever located, related to the business and affairs of the Debtor and or the Property,

- (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 and 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.⁴ 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;~~

⁴ This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

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

~~(i) — without the approval of this Court in respect of any transaction not exceeding \$_____, provided that the aggregate consideration for all such transactions does not exceed \$_____; and~~

~~(ii) — 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,]⁵ shall not be required, and in each case the Ontario *Public 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;~~

(e) ~~(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~~Debtor and ~~or the receivership~~Property, 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;~~

⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

~~(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~~

(f) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations_z

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

7. ~~4.~~ **THIS COURT ORDERS** that: (i) the Debtor_z, (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_z, 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.~~_z

8. ~~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, servers, electronic backups, 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.

9. ~~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.

10. ~~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 in the premises and shall be dealt with as a result between any applicant to secured creditors, such landlord and the Receiver, or by further Order of this Court, in application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~ COURT ORDERS that the Canadian financial institutions and electronic payment processors listed in Schedule "A" to this Order advise the Receiver of the existence of any Property and Records in their possession or control, and further, that they respond to the Receiver's request(s) for information in respect of the accounts listed in Schedule "A" to this Order ("Accounts") by providing all available information in respect of the application for, direction of, and transaction history in respect of, the Accounts.

EXAMINATION BY RECEIVER OF SMITH AND OTHERS

11. **THIS COURT ORDERS** that Christopher G. Smith, Rajiv Dixit, Kuldeep Josun, and any other person(s) that the Receiver reasonably believes may have knowledge of the Debtor's affairs, attend at an examination under oath before an Official Examiner in Toronto, on a date to be agreed upon or selected by the Receiver and answer questions propounded to them by counsel for the Receiver and provide testimony including, but not limited to, the following matters:

- (a) the Debtor's trade, dealings and Property; and
- (b) the matters described in the Foreign Representative's affidavit filed in support of the within application.

NO PROCEEDINGS AGAINST THE RECEIVER OR FOREIGN REPRESENTATIVE

12. ~~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 or the Foreign Representative except with ~~the written consent of the Receiver or with~~ leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

13. ~~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

14. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, the Foreign Representative, 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

15. ~~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

16. ~~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~~ centralized reservation systems, credit card processors (including, but not limited to, VISA, MasterCard and American Express), payroll services, armoured car service providers for the transport of currency, 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~~ Debtor, and that the ~~Receiver~~ Debtor 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~~ Debtor 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 or 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, in 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 17.1(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 is successful in completing 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, rehabilitation 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~~subsections 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.⁶

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.

⁶ ~~Note that subsection 243(6) of the BIA, provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

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

OTHER PROVISIONS RELATING TO THE RECEIVERSHIP RECEIVER

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 \$ _____ (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 Persons, 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.~~

- (a) is hereby authorized to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) is hereby authorized to otherwise coordinate the administration and supervision of the Debtor's assets and affairs with the Foreign Representative;
- (c) shall report to this Court at least once every six months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, or such other matters as may be relevant to the proceedings herein;

- (d) in addition to the periodic reports referred to in paragraph 18(c) above, the Receiver may report to this Court at such other times and intervals as the Receiver may deem appropriate with respect to any of the matters referred to in paragraph 18(c) above; and
- (e) may retain Cassels, Brock & Blackwell LLP as counsel, provided that should it become necessary for either of the Receiver or the Foreign Representative to obtain separate counsel appropriate arrangements shall be made for one or the other party to obtain independent legal advice.

19. **THIS COURT ORDERS** that the Foreign Representative shall (i) advise the Receiver of all material steps taken by the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Receiver in the exercise of its powers and discharge of its obligations, and (iii) provide the Receiver with the assistance that is necessary to enable the Receiver to adequately carry out its functions.

20. ~~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.~~ the Receiver (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Receiver filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Receiver deems appropriate.

~~23.~~

21. **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 issue.~~ Receiver's Certificates, may provide any creditor of the Debtor with information in response to reasonable requests for information made in writing by such creditor addressed to the Receiver. The Receiver shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the

Receiver has been advised by the Debtor is privileged or confidential, the Receiver shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Receiver, the Foreign Representative and the Debtor may agree.

SERVICE AND NOTICE

22. ~~25.~~ **THIS COURT ORDERS that** 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 ‘<@>’.

23. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Foreign Representative and the Receiver ~~is~~are 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~~Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable 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

22. ~~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.

23. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as an interim receiver, receiver, receiver and manager, proposal trustee, or a trustee in bankruptcy of the Debtor.

24. ~~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~~ Ile of Man 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.

25. ~~30.~~ **THIS COURT ORDERS** that the Foreign Representative and the Receiver be at liberty and ~~is~~ are 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.~~

26. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Debtors, the Foreign Representative, the Receiver and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

~~SCHEDULE "A"~~ SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. ~~THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] required 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, a first and paramount 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__.

[RECEIVER'S NAME], solely in its capacity
~~as Receiver of the Property, and not in its~~
personal capacity

Per: _____

Name: _____

Title: _____

Companies:

- a) TD Canada Trust;
- b) CIBC;
- c) HSBC Bank Canada;
- d) Royal Bank of Canada;
- e) 677381 Canada Inc. o/a SolidTrust Pay; and
- f) UseMyServices, Inc;

Accounts:

- a) Account no. 5028436 at Royal Bank of Canada branch no. 06802, held by Christopher G. Smith;
- b) Account no. 268400233 at HSBC Bank Canada branch no. 10850, held by Christopher G. Smith;
- c) Account no. 6269372 at TD Canada Trust branch no. 1084, held by Patricia London;
- d) Account no 5234643 at TD Canada Trust branch no. 11042, held by Local Management Services;
- e) Account no. 0512-7313130 at TD Canada Trust branch no. 11042, held by 2087360 Ontario Inc.; and

- f) Account(s) using the name "Bannersbroker" or "Banners broker" with UseMyServices, Inc. and/or SolidTrustPay.

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER
INSOLVENCIES)

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

ORDER

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Lawyers for the Applicants

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| Description | #12078628v1<Legal> - CL Model Receivership Order |
| Document 2 ID | interwovenSite://CASSELS-DMS/Legal/11418085/6 |
| Description | #11418085v6<Legal> - Supplemental Order (Foreign Main Recognition) |
| Rendering set | Standard |

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| Moved from | 6 |
| Moved to | 6 |
| Style change | 0 |
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Blackline of Draft Supplemental Order to Model Supplemental Order

Court File No. CV-14-10663-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(Commercial List)

THE HONOURABLE) , THE
JUSTICE) DAY OF , 20

THE HONOURABLE _____) • THE • DAY
_____) OF AUGUST, 2014
JUSTICE _____)

IN THE MATTER OF THE ~~COMPANIES' CREDITORS ARRANGEMENT~~BANKRUPTCY AND
INSOLVENCY ACT,
R.S.C. 1985, 1992, c ~~C-36~~27, s.2, AS AMENDED

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES]~~(the "Debtors")CERTAIN
PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH RESPECT TO BANNERS BROKER
INTERNATIONAL LIMITED

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~
UNDER SECTION 46 OF THE
~~COMPANIES' CREDITORS ARRANGEMENT ACT~~MILES ANDREW BENHAM AND PAUL
ROBERT APPLETON, IN THEIR CAPACITY AS JOINT LIQUIDATORS OF BANNERS
BROKER INTERNATIONAL LIMITED, UNDER PART XIII OF THE BANKRUPTCY AND
INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)

SUPPLEMENTAL ORDER¹
(FOREIGN MAIN² ~~PROCEEDING~~)
RECOGNITION

THIS APPLICATION, made by ~~[NAME OF FOREIGN REPRESENTATIVE]~~ in its
~~capacity as the foreign representative (the "~~Miles Andrew Benham and Paul Robert Appleton, in
their capacity as Joint Liquidators of Banners Broker International Limited, and as Foreign

¹ As noted in several footnotes in this model order, practice under Part IV of the CCAA is still developing, and as certain issues are determined by Canadian courts, this model order will be amended to reflect the development of the law in this area.

² If the Canadian Court has recognized a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of the model Initial Recognition Order (Foreign Main Proceeding) fulfill the mandatory requirements of section 48 with respect to a foreign main proceeding. Section 49 of the CCAA also allows the Court to make any order that it considers appropriate for the protection of the debtor company's property or the interests of a creditor or creditors. This Supplemental Order contains discretionary relief that might be granted by the Court in the appropriate circumstances. The Model Order Subcommittee has attempted to make the provisions of this model Order consistent with similar provisions in other model Orders. Supplemental relief (whether contained in this Order or in subsequent Orders) may also include provisions dealing with the sale of assets, the recognition of critical vendors, a claims process, or any number of other matters, or may recognize foreign orders or laws granting such relief.

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS⁵

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of ~~[NAME OF FOREIGN COURT]~~ the High Court of Justice of the Isle of Man, Civil Division, Chancery Procedure, made in the Foreign Proceeding are hereby recognized and given full force and effect⁶ in all provinces and territories of Canada pursuant to ~~Section 49~~ section 272 of the ~~CCAABIA~~:

- (a) ~~[List Foreign Orders, or portions of Foreign Orders, copies of which should be attached as schedules to this Order]~~ the Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued February 26, 2014, and
- (b) the Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued March 14, 2014

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

⁵ This model Order adopts an approach that might be applicable to some foreign proceedings, but not others. For example, U.S. proceedings will typically generate court orders that will be brought to the Canadian Courts for recognition. Other jurisdictions may have statutory or regulatory rights (rather than court orders) that need to be recognized in Canada.

⁶ Section 50 of the CCAA provides that an order made under Part IV of the CCAA may be made on any terms and conditions that the Court considers appropriate in the circumstances. Such terms and conditions would typically need to be consistent with the orders or laws applicable to the foreign proceeding subject to (i) the limitations imposed by section 48(2) (an order made under section 48(1) must be consistent with any order made under the CCAA), and (ii) the limitations imposed in section 41 (which provides that the Court may apply legal or equitable rules that are not inconsistent with the CCAA, and further that the Court may refuse to do something that would be contrary to public policy). All of the Foreign Orders should be reviewed by counsel with these issues in mind so that the Court may require confirmation from counsel that there is nothing in the Foreign Orders that is inconsistent with the CCAA or that would raise the public policy exception reference in section 61 of the CCAA.

APPOINTMENT OF ~~INFORMATION OFFICER~~⁷ RECEIVER

5. **THIS COURT ORDERS** that ~~[NAME OF INFORMATION OFFICER]~~ (the "Information Officer") ~~is hereby appointed as an officer of this Court, with the powers and duties set out herein, pursuant to subsection 272(1)(d) of the BIA and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43. msi Spergel Inc. is hereby appointed receiver ("Receiver"), without security, of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (collectively, the "Property").~~

~~NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY~~⁸

RECEIVER'S POWERS

6. **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 access all information relating to the Debtor's accounts at any financial institution, and the Receiver shall have immediate, continuous and unrestricted access to carry out the foregoing;
- (c) to access any and all computer systems and servers, wherever located, related to the business and affairs of the Debtor and or the Property;

⁷ The appointment of an Information Officer is not required by the CCAA, and is in the discretion of the Court. Information Officers are normally trustees licensed under the *Bankruptcy and Insolvency Act*.

⁸ The Model Order Subcommittee notes that a "Non-Derogation of Rights" section (found, for example, in the Model Initial CCAA Order) has not been included in this model Order. In a 'full' CCAA proceeding, which would typically include a stay of proceedings made under section 11.02 of the CCAA, a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, and 11.1(2). However, in a Part IV proceeding, section 48 of the CCAA (rather than section 11.02 of the CCAA) is being relied upon when a stay of proceedings is being sought, and despite the wording of section 48(2) and section 61, it is not clear if the restrictions applicable to a section 11.02 stay of proceedings are also applicable to a section 48 stay of proceedings, or would restrict the recognition of foreign proceedings or foreign orders that include a stay of proceedings broader than permitted in a section 11.02 stay of proceedings. These issues remain open for determination by Canadian courts.

- (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 report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Debtor and or the Property, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable; and
- (f) 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

7. 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.

8. 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, servers, electronic backups, 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 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.

9. 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.

10. THIS COURT ORDERS that the Canadian financial institutions and electronic payment processors listed in Schedule "A" to this Order advise the Receiver of the existence of any Property and Records in their possession or control, and further, that they respond to the Receiver's request(s) for information in respect of the accounts listed in Schedule "A" to this Order ("Accounts") by providing all available information in respect of the application for, direction of, and transaction history in respect of, the Accounts.

EXAMINATION BY RECEIVER OF SMITH AND OTHERS

11. THIS COURT ORDERS that Christopher G. Smith, Rajiv Dixit, Kuldip Josun, and any other person(s) that the Receiver reasonably believes may have knowledge of the Debtor's affairs, attend at an examination under oath before an Official Examiner in Toronto, on a date to be agreed upon or selected by the Receiver, and answer questions propounded to them by counsel for the Receiver and provide testimony including, but not limited to, the following matters:

- (a) the Debtor's trade, dealings and Property; and
- (b) the matters described in the Foreign Representative's affidavit filed in support of the within application.

NO PROCEEDINGS AGAINST THE RECEIVER OR FOREIGN REPRESENTATIVE

12. 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 or the Foreign Representative except with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

13. ~~6.~~ THIS COURT ORDERS that ~~until such date as this Court may order (the "Stay Period")~~ no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding") shall be commenced or continued no Proceeding against or in respect of the ~~Debtors or affecting their business (the "Business") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property")~~, Debtor, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court;⁹ and any and all Proceedings currently under way against or in respect of ~~any of the Debtors or affecting the Business~~the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. ~~7.~~ THIS COURT ORDERS that ~~during the Stay Period,~~ all rights and remedies ~~of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person")~~ against or in respect of the ~~Debtors [or~~against the Debtor, the Receiver, the Foreign Representative], or affecting the ~~Business or 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 Orderparagraph shall: (i) ~~prevent the assertion of or the exercise of rights and remedies outside of Canada,~~ (ii) ~~empower any of~~empower the ~~Debtors~~Receiver or the Debtor to carry on any business in Canada which ~~that~~the Debtor is not lawfully entitled to carry on, (iii) ~~[affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCRA]~~ (iv); (ii) exempt the

⁹ Where the Court considers it to be appropriate, it may authorize other Persons, including a Court-appointed Information Officer, to provide consent to any Proceeding. This same comment applies in paragraphs 6 through 11 of this Order.

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 (v) prevent the registration of a claim for lien.

NO INTERFERENCE WITH ~~RIGHTS~~THE RECEIVER

15. ~~8. THIS COURT ORDERS that during the Stay Period,~~ 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 ~~any of the Debtors and affecting the Business in Canada, except with~~the Debtor, without written consent of the Receiver or leave of this Court.

~~ADDITIONAL PROTECTIONS~~

CONTINUATION OF SERVICES

16. ~~9. THIS COURT ORDERS that during the Stay Period,~~ all Persons having oral or written agreements with the ~~Debtors~~Debtor, or statutory or regulatory mandates for the supply of goods and/or services ~~in Canada~~, including, without limitation, all computer software, communication and other data services, centralized banking services, ~~payroll services~~centralized reservation systems, credit card processors (including, but not limited to, VISA, MasterCard and American Express), payroll services, armoured car service providers for the transport of currency, insurance, transportation services, utility or other services ~~provided in respect of the Property and Business of the Debtors,~~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 ~~Debtors~~Debtor, and that the ~~Debtors~~Debtor shall be entitled to the continued use ~~in Canada~~ of ~~their~~the Debtor's current ~~premises~~, 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 Debtor in accordance with normal payment practices of the Debtor, or as may be ordered by this Court.¹⁰

¹⁰ Section 11.01 of the CCAA provides that no order made under section 11 or 11.02 has the effect of (a) prohibiting a person from requiring immediate payment for goods, services, etc. provided after the order is made, or (b) requiring the further advance of money or credit. It is unclear whether these provisions also apply to an order made pursuant to section 48 of the CCAA. Please see the discussion in footnote 8 above.

10. ~~— [THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.]~~¹¹

LIMITATION ON THE RECEIVER'S LIABILITY

17. ~~11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to it as a director under the CCAA, and~~ the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of 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 subsections 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 ("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.

¹¹ ~~Counsel should specifically address with the Court whether this provision is appropriate in the context of this Order.~~

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 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.

OTHER PROVISIONS RELATING TO ~~INFORMATION OFFICER~~ THE RECEIVER

21. ~~12.~~ **THIS COURT ORDERS** that the ~~Information Officer~~ Receiver:

- (a) is hereby authorized to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) is hereby authorized to otherwise coordinate the administration and supervision of the Debtor's assets and affairs with the Foreign Representative;
- (c) ~~(b)~~ shall report to this Court at least once every ~~[three]~~ six months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, ~~the Business~~, or such other matters as may be relevant to the proceedings herein;
- (d) ~~(e)~~ In addition to the periodic reports referred to in paragraph ~~1218~~ 18(~~bc~~) above, the ~~Information Officer~~ Receiver may report to this Court at such other times and intervals as the ~~Information Officer~~ Receiver may deem appropriate with respect to any of the matters referred to in paragraph ~~1218~~ 18(~~bc~~) above; and
- ~~(d) — shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and~~

- (e) ~~shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.~~ may retain Cassels, Brock & Blackwell LLP as counsel, provided that should it become necessary for either of the Receiver or the Foreign Representative to obtain separate counsel appropriate arrangements shall be made for one or the other party to obtain independent legal advice.

19. ~~13.~~ **THIS COURT ORDERS** that ~~the Debtors and~~ the Foreign Representative shall (i) advise the ~~Information Officer~~ Receiver of all material steps taken by the ~~Debtors or the~~ Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the ~~Information Officer~~ Receiver in the exercise of its powers and discharge of its obligations, and (iii) provide the ~~Information Officer~~ Receiver with the assistance that is necessary to enable the ~~Information Officer~~ Receiver to adequately carry out its functions.

20. ~~14.~~ **THIS COURT ORDERS** that the ~~Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.~~

~~15.~~ **THIS COURT ORDERS** that the ~~Information Officer~~ Receiver (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the ~~Information Officer~~ Receiver filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the ~~Information Officer~~ Receiver deems appropriate.

21. ~~16.~~ **THIS COURT ORDERS** that the ~~Information Officer~~ Receiver may provide any creditor of ~~a~~ the Debtor with information ~~provided by the Debtors~~ in response to reasonable requests for information made in writing by such creditor addressed to the ~~Information Officer~~ Receiver. The ~~Information Officer~~ Receiver shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the ~~Information Officer~~ Receiver has been advised by the ~~Debtors~~ Debtor is privileged or confidential, the ~~Information Officer~~ Receiver shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the ~~Information Officer~~ Receiver, the Foreign Representative and the ~~relevant Debtors~~ Debtor may agree.

17. — ~~THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in and out of their respective rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a [TIME INTERVAL] basis and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, retainers in the amount[s] of \$[AMOUNT OR AMOUNTS] [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

18. — ~~THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.~~

19. — ~~THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of \$[AMOUNT], as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs [21] and [23] hereof.~~

INTERIM FINANCING¹²

20. — ~~THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the [DESCRIBE DIP LOAN ORDER MADE IN THE FOREIGN PROCEEDING], provided however that the DIP Lender's~~

¹² Optional — if there is a DIP Lender which takes security over assets in Canada or in respect of Canadian Debtors. If more comprehensive interim financing provisions are required, please refer to the model CC's Initial Order for sample provisions.

Charge (i) shall not secure an obligation that exists before this Order is made,¹³ and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs [21] and [23] hereof, and further provided that the DIP Lender's Charge shall not be enforced except with leave of this Court.

~~VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER~~

~~21. — THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:~~¹⁴

~~First — Administration Charge (to the maximum amount of \$[AMOUNT]); and~~

~~Second — DIP Lender's Charge.~~

~~22. — THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.~~

~~23. — THIS COURT ORDERS that each of the Administration Charge and the DIP Lender's Charge (all as constituted or defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.~~

~~24. — THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's~~

¹³ This restriction appears in the interim financing provisions found in section 11.2(1) of the CCMA. It is unclear if this prohibits the recognition of a foreign order that creates a DIP Lender's Charge securing pre-filing obligations.

¹⁴ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the ~~priority of the Charges shall be as set out in this Order~~ ^{the ranking of the Charges shall be as set out in this Order} ~~in each case, please also note that the CCMA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

Charge, unless the Debtors also obtain the prior written consent of the Information Officer and the DIP Lender.

~~25. THIS COURT ORDERS that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:~~

- ~~(a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;~~
- ~~(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and~~
- ~~(c) the payments made by the Debtors to the Chargees pursuant to this Order, and the creation of the Charges, shall not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.~~

~~26. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor's interest in such real property leases.~~

SERVICE AND NOTICE

22. ~~27.~~ **THIS COURT ORDERS** that 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 '<@>'.

23. ~~28.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, ~~the Debtors,~~ the Foreign Representative and the ~~Information Officer~~Receiver are 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable 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

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

23. ~~30.~~ THIS COURT ORDERS that nothing in this Order shall prevent the ~~Information Officer~~Receiver from acting as an interim receiver, ~~a receiver,~~ a receiver and manager, ~~a monitor,~~ a proposal trustee, or a trustee in bankruptcy of ~~any the Debtor, the Business or the Property.~~

24. ~~31.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the ~~[JURISDICTION OF THE FOREIGN PROCEEDING],~~ Isle of Man to give effect to this Order and to assist the ~~Debtors, the Foreign Representative, the Information Officer, and their respective~~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 ~~Debtors, the Foreign Representative, and the Information Officer, the latter~~Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the ~~Debtors, the~~

Foreign Representative, and the Information Officer and their respective Receiver and its agents in carrying out the terms of this Order.

25. ~~32.~~ **THIS COURT ORDERS** that ~~each of the Debtors,~~ the Foreign Representative and the ~~Information Officer~~ Receiver be at liberty and ~~is~~ are 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.

~~33. — THIS COURT ORDERS that the Guidelines for Court-to-Court Communications in Cross-Border Cases developed by the American Law Institute and attached as Schedule [*] hereto is adopted by this Court for the purposes of these recognition proceedings.~~

26. ~~34.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the ~~Information Officer~~ Receiver and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

~~35. — THIS COURT ORDERS that this Order shall be effective as of [TIME] on the date of this Order.~~¹⁵

¹⁵ The time referenced in this Order should be the same time as the time referenced in the Recognition Order, if the two Orders are made on the same date. In the absence of such a provision, Rule 59.01 of the Ontario *Rules of Civil Procedure* appears to indicate that an Order is effective as of 12:01 a.m. on the date of the Order (Rule 59.01 provides that "An order is effective from the date on which it is made, unless it provides otherwise").

SCHEDULE "A"

Companies:

- a) TD Canada Trust;
- b) CIBC;
- c) HSBC Bank Canada;
- d) Royal Bank of Canada;
- e) 677381 Canada Inc. o/a SolidTrust Pay; and
- f) UseMyServices, Inc;

Accounts:

- a) Account no. 5028436 at Royal Bank of Canada branch no. 06802, held by Christopher G. Smith;
 - b) Account no. 268400233 at HSBC Bank Canada branch no. 10850, held by Christopher G. Smith;
 - c) Account no. 6269372 at TD Canada Trust branch no. 1084, held by Patricia London;
 - d) Account no 5234643 at TD Canada Trust branch no. 11042, held by Local Management Services;
 - e) Account no. 0512-7313130 at TD Canada Trust branch no. 11042, held by 2087360 Ontario Inc.; and
 - f) Account(s) using the name "Bannersbroker" or "Banners broker" with UseMyServices, Inc. and/or SolidTrustPay.
-

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER
INSOLVENCIES)

| | |
|---|--|
| <u>ONTARIO</u> <u>SUPERIOR COURT OF JUSTICE</u> <u>(Commercial List)</u> <u>Proceeding commenced at TORONTO</u> | |
| <u>ORDER</u> | |
| <u>Cassels Brock & Blackwell LLP</u> <u>2100 Scotia Plaza</u> <u>40 King Street West</u> <u>Toronto, Ontario M5H 3C2</u> <u>David S. Ward LSUC #: 33541W</u> <u>Tel: 416.869.5960</u> <u>Fax: 416.640.3154</u> <u>dward@casselsbrock.com</u> <u>Christopher Horkins LSUC #: 61880R</u> <u>Tel: 416.815.4351</u> <u>Fax: 416.642.7129</u> <u>chorkins@casselsbrock.com</u> <u>Lawyers for the Applicants</u> | |

[ATTACH APPROPRIATE SCHEDULES]

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| Description | #11418085v6<Legal> - Supplemental Order (Foreign Main Recognition) |
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APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER
INSOLVENCIES)

| | |
|--|---|
| | <p>ONTARIO</p> <p>SUPERIOR COURT OF JUSTICE (Commercial List)</p> <p>Proceeding commenced at TORONTO</p> |
| | <p>FACTUM OF THE APPLICANTS</p> |
| | <p>Cassels Brock & Blackwell LLP 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2</p> <p>David S. Ward LSUC #: 33541W Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com</p> <p>Christopher Horkins LSUC #: 61880R Tel: 416.815.4351 Fax: 416.642.7129 chorkins@casselsbrock.com</p> <p>Lawyers for the Applicants</p> |