

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

**1951584 ONTARIO INC. (formerly DESANTE FINANCIAL SERVICES INC.) and
CWB MAXIUM FINANCIAL INC.**

Applicants

- and -

**4231 SHEPPARD AVENUE EAST INC., ABU SEIFEIN BRIMLEY PHARMA INC.,
BLESS HUI PHARMA INC., JG WINDSOR INC., JM WESTVIEW PHARMA INC.,
JUBILEE PROPERTY INVESTMENTS INC., MAPLE MEDI PHARMA INC., RIVER
HILL PHARMACY LTD., SIGMA HEALTHCARE INC., SJ EAST PHARMA INC.,
ST. MARY COOKSVILLE PHARMA INC., ST. MARY THEOTOKOS PHARMA INC.,
STONEY CREEK PHARMA INC., TORONTO APOTHECARY PHARMA INC.,
WESTWAY HOLDINGS INC. and OLDE WALKERVILLE HOLDINGS INC.**

Respondents

RECEIVER'S FACTUM

**(approval and vesting order re: Olde Walkerville; approval of receiver's report;
approval of distributions re: JG Windsor and Jubilee, returnable April 13, 2022)**

April 12, 2022

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2
Fax: (416) 597-3370

Brendan Bissell (LSO# 40354V)
Tel: (416) 597-6489
Email: bissell@gsnh.com

Joël Turgeon (LSO #80984R)
Tel: (416) 597-6486
Email: turgeon@gsnh.com

Lawyers for msi Spergel Inc. in its capacity as
court-appointed receiver of all of the assets, undertakings
and properties of the Respondents

I. NATURE OF THIS MOTION

1. This is a motion by msi Spergel Inc. (“**Spergel**”) in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of the Respondents for:
 - a. an approval and vesting order in respect of a sale transaction (the “**Transaction**”) between the Receiver on behalf of Olde Walkerville Holdings Inc. (“**Olde Walkerville**”) and 13832228 Canada Inc. (the “**Purchaser**”) in respect of all of the assets of Olde Walkerville in accordance with the draft Order attached at Tab C of the Motion Record;
 - b. an order approving the fifth report of the Receiver dated April 8, 2022 (the “**Fifth Report**”) and the activities described in it;
 - c. authorizing and directing the Receiver to make the distributions described in the Fifth Report in respect of the estates of JG Windsor Inc. (“**JGWI**”) and Jubilee Property Investments Inc. (“**Jubilee**”); and
 - d. sealing the Confidential Appendices to the Fifth Report pending the filing of the applicable Receiver’s Certificate (as defined in the relevant approval and vesting order) or further court order.
2. The Receiver is unaware of any opposition to the motion and does not expect any.

II. FACTS

A. The Respondents

3. The Receiver was appointed by orders dated November 25, 2020 and January 26, February 3, April 8, and September 7, 2021 – each adding Respondents.¹ The Respondents

¹ Fifth Report para. 18; motion record of the Receiver (“**MR**”) Tab B, page 16.

are or were either carrying on the business of different retail pharmacies or holding real estate assets.²

B. Receiver's acts subsequent to Fourth Report

4. The Receiver's reports and activities have been approved up to and including the Fourth Report dated January 27, 2022. Approval is therefore sought for the Fifth Report and the matters attended to by the Receiver since that time as described in that Report.
5. Since the Fourth Report, the Receiver has, among other things:
 - a. closed the sale of the further Bless Hui Transaction approved by the Court on February 1, 2022;³
 - b. continued the sale efforts described below in respect of the Transaction;⁴ and
 - c. closed a sale of the assets of Sigma Healthcare Inc. for amounts within the dollar value of transactions that the Receiver may conclude without court approval pursuant to that estate's appointment order.⁵

C. The Transaction

6. The appointment order for the Olde Walkerville estate is substantially per the Commercial List model order, and authorizes and empowers the Receiver to market and sell the that estate's assets.⁶

² Fifth Report paras. 1-17; MR tab B, pages 14-16.

³ Fifth Report para. 36; MR tab B, page 21.

⁴ Fifth Report paras. 37-44; MR tab B, pages 21-22.

⁵ Fifth Report paras. 46-54; MR tab B, pages 22-24.

⁶ A copy of the relevant appointment order is included at Appendix 4 to the Fifth Report; MR Tab B(4), pages 86-104.

7. The Olde Walkeville assets had been listed for sale through a business broker since April of 2021. The listing was for \$1 at first, then subsequently for a stipulated price that was then later reduced.⁷
8. The pharmacies included in the Olde Walkerville assets remained open and operational throughout and to date.⁸
9. The marketing process involved 56 non-disclosure agreements being signed by prospective purchasers who were then given access to the data room maintained by the broker. The Receiver has summarized the bids that were made in Confidential Appendix 1.⁹
10. The sale agreement for the Transaction is only conditional on the Purchaser obtaining accreditation from the Ontario College of Pharmacists and a provider number from the Ontario Drug Plan. A copy of the sale agreement with redactions for the price is attached to the Fifth Report as Appendix 10. An unredacted copy is attached as Confidential Appendix 2.¹⁰
11. The Receiver believes that the sale process for the Olde Walkerville assets was reasonable and extensively canvassed the market. The Receiver has also been advised that the Applicant supports the Transaction.¹¹

⁷ Fifth Report para. 38; MR tab B, page 21.

⁸ Fifth Report para. 39; MR tab B, page 21.

⁹ Fifth Report paras. 40-41; MR tab B, page 21.

¹⁰ Fifth Report paras. 39-42; MR tab B, pages 21-22.

¹¹ Fifth Report paras. 43-44; MR tab B, page 22.

D. Proposed Distributions

12. The Receiver seeks approval to make distributions in respect of the proceeds of sale of the real estate assets formerly held by JGWI and Jubilee.
13. Neither JGWI and Jubilee had employees so CRA's claim in those estates is for unpaid HST. The Receiver filed assignments in bankruptcy for both estates, which therefore makes claims for unremitted HST unsecured.¹²
14. There are outstanding Receiver's borrowings for each of the JGWI and Jubilee estates. The Receiver's proposed distributions repay those amounts.¹³ For amounts owing thereafter, the Receiver has otherwise been provided with an opinion by its independent counsel that mortgages registered in favour of the Applicants on the real estate formerly owned by JGWI and Jubilee are valid and enforceable as against the estates, and the Receiver therefore proposes to pay the amounts owing under those facilities subject to a reserve for the fees of the Receiver and of its counsel.¹⁴

III. ISSUES AND LAW

15. The issues are whether the court should **(A)** grant the approval and vesting order sought for the Olde Walkerville Transaction, **(B)** authorize the Proposed Distributions, **(C)** approve the Fifth Report and Receiver's activities, and **(D)** make the sealing order sought.

¹² Fifth Report paras. 55-56 and 60-61; MR tab B, pages 24 and 25.

¹³ Fifth Report paras. 57-59 and 62-64; MR tab B, pages 25 and 26.

¹⁴ *Idem*.

A. Approval and vesting

16. This court has jurisdiction to make the approval and vesting orders sought, including under s. 100 and 101 of the *Courts of Justice Act*¹⁵ (the “CJA”), s. 243 of the *Bankruptcy and Insolvency Act*¹⁶ (the “BIA”), and its equitable jurisdiction.
17. It is trite that this court’s discretion to make approval and vesting orders is guided by the *Soundair*¹⁷ criteria: **(i)** whether the receiver has made a sufficient effort to get the best price and has not acted improvidently, **(ii)** the efficacy and integrity of the process by which offers are obtained, **(iii)** whether there has been unfairness in the working out of the process, and **(iv)** the interests of all parties. The interests of all parties include those of the purchasers.¹⁸
18. In this case, a conventional public marketing process was undertaken over many months.
19. As to vesting, the Transaction is subject to this court vesting the purchased assets in the applicable purchaser free and clear. This is a “normal relief given in an asset sale” in insolvency proceedings and it is appropriate in this case for the reasons highlighted above.¹⁹
20. The suggested draft approval and vesting order provided at tab C of the Receiver’s motion record is in substantial accordance with the Commercial List model approval and vesting order. A blackline against the model order is also provided at tab D.

¹⁵ [R.S.O. 1990, c. C.43.](#)

¹⁶ [R.S.C., 1985, c. B-3.](#)

¹⁷ *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) (“*Soundair*”), p. 9.

¹⁸ *Reciprocal Opportunities Incorporated v Sikh Lehar International Organization*, [2018 ONCA 713](#), paras. 55-56 and 61-62.

¹⁹ *Nelson Education Limited (Re)*, [2015 ONSC 5557](#) (“*Nelson*”), para. 40.

B. Approval of Proposed Distributions

21. Distributions are “practically necessary for the accomplishment of the objectives of the legislation”, that is, the receivership provisions of the *Bankruptcy and Insolvency Act*.²⁰ The issue is whether, on a balance of probabilities, the Proposed Distributions are in accordance with the rank that claims must take against an insolvent estate under receivership, including in consideration of court-ordered charges and statutory remedies under fiscal statutes, as well as valid and enforceable private security interests such as purchase-money security interests and under general security agreements.
22. The proposed distributions are in accordance with such principles. The payment and provisions for receivership costs comes first, and the repayment of Receiver’s Borrowings comes second, in accordance with the receivership orders. Being non-operative holding companies, there are few creditors and no super priority creditors for PMSI’s or the like.
23. The order sought in respect of the approval of the proposed distributions are therefore appropriate in the circumstances, will greatly streamline the administration of the applicable Respondent estates, and will allow proper creditor recovery.

C. Approval of Fifth Report and Receiver’s activities

24. The last activity approval order was made on February 1, 2022 and approved the Receiver’s acts up to and including those described in the Fourth Report dated January 27, 2022. The Receiver’s Second and prior reports and available on [the Receiver’s website](#).
25. As mentioned by Morawetz J. in *Target*,²¹ a *Companies’ Creditors Arrangement Act* case, approval of a court officer’s activities and reports is a relief “routinely granted.” This is

²⁰ *Forjay Management Ltd. v 625536 B.C. Ltd.*, [2019 BCCA 368](#), para. 26.

²¹ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) (“*Target*”).

because court approval allows the Receiver to move forward with the next steps in the proceeding, brings the Receiver's activities before the court, allows an opportunity for the concerns of the stakeholders to be addressed and any problems to be rectified, enables the court to satisfy itself that the Receiver's activities have been conducted in a prudent and diligent manner, provides protection for the Receiver not otherwise provided in the BIA or the CJA, and protects the creditors from the delay in distribution that would be caused by re-litigation of steps taken and potential indemnity claims by the Receiver.²²

26. As to the approval of the Receiver's fees, the issue is whether they are fair and reasonable. Caselaw-developed criteria guiding this analysis include **(i)** the nature and extent of the proceeding, **(ii)** the complications and difficulties encountered, **(iii)** the time spent by the court officer, **(iv)** the professionals' knowledge, experience and skill, **(v)** the results achieved, and **(vi)** the costs of comparable services. Further, the caselaw requires that the fees be verified by affidavit disclosing details sufficient to allow a reasonable appreciation.²³
27. The Receiver's activities since the Fourth Report have been reported to the court and stakeholders in the Fifth Report. Those activities are appropriate, timely, commercially reasonable, and in the best interest of the Respondents' estates.
28. Fee approval is not being sought at this time.
29. For those reasons, the approval orders sought under this head of relief are appropriate and meet the requisite criteria under the caselaw.

²² *Target*, paras. 2 and 23.

²³ See *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#), paras. 42-54.

D. Sealing

30. This court has jurisdiction to make the sealing order sought, including under CJA s. 137(2). It is typical attendant relief in sales processes as a matter of “public interest”,²⁴ to protect the integrity of any future sale efforts should any of the Transactions fail to close for any reason. This has been found to “greatly outweigh” any deleterious effects.²⁵
31. The Confidential Appendices contain information that would be highly prejudicial if any future sale efforts for the Olde Walkerville assets were necessary. Copies of the Confidential Appendices are provided as part of the public motion record with minimal redactions where possible, such as full copies of the purchase agreements with only the price and deposit amount redacted.
32. The court may make the sealing orders sought which are appropriate in the circumstances.

IV. NATURE OF THE ORDERS SOUGHT

33. The Receiver therefore seeks orders in suggested accordance with the draft orders filed at tabs C (approval and vesting order) and E (balance of relief sought) of its motion record.

²⁴ *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#), para. 84; see also *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)], paras. 3, 57.

²⁵ *Elleway Acquisitions Limited v 4358376 Canada Inc.*, [2013 ONSC 7009](#), paras. 47-48.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of April, 2022.

Brendan Bissell

Brendan Bissell (LSO# 40354V)
Tel: (416) 597-6489
Email: bissell@gsnh.com

Joël Turgeon

Joël Turgeon – LSO #: 80984R
Tel: (416) 597-6486
Email: turgeon@gsnh.com

Lawyers for msi Spergel Inc. in its capacity as
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SCHEDULE A – LIST OF AUTHORITIES

Royal Bank of Canada v Soundair Corp., [1991 CanLII 2727 \(ON CA\)](#)

Reciprocal Opportunities Incorporated v Sikh Lehar International Organization,
[2018 ONCA 713](#)

Nelson Education Limited (Re), [2015 ONSC 5557](#)

Elleway Acquisitions Limited v 4358376 Canada Inc., [2013 ONSC 7009](#)

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Nortel Networks Corporation (Re), [2009 CanLII 39492 \(ON SC\)](#)

SCHEDULE B – RELEVANT STATUTES

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#)

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

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.

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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Court File No. CV-20-00650853-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

RECEIVER'S FACTUM
(approval and vesting order re: Olde Walkerville;
approval of receiver's report; approval of
distributions re: JG Windsor and Jubilee,
returnable April 13, 2022)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

Brendan Bissell (LSO# 40354V)
Tel: (416) 597-6489
Email: bissell@gsnh.com

Joël Turgeon (LSO #80984R)
Tel: (416) 597-6486
Email: turgeon@gsnh.com

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