



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 23rd DAY
)
JUSTICE NEWBOULD) OF OCTOBER, 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 RESTRICTING POSSESSION, PUBLICATION,
HANDLING, DUPLICATION AND USE OF TRANSCRIPT
DOCUMENTS AND INFORMATION**

THIS MOTION, made by msi Spergel Inc., in its capacity as court-appointed receiver (the “**Receiver**”) of Banners Broker International Limited, a company incorporated in the Isle of Man (“**Debtor**”), for an Order substantially in the form attached to the notice of motion was heard this day at the Court House, 330 University Avenue Toronto, Ontario.

ON READING the notice of application dated August 8, 2014.

AND UPON BEING ADVISED by counsel for the Receiver that the Receiver is seeking to compel Christopher G. Smith to attend for examination pursuant to the order issued by the Honourable Madam Justice Matheson, on August 22, 2014 (the “**Receivership Order**”).

AND UPON HEARING the submissions of counsel for the Receiver, as well as counsel for Christopher G. Smith.

1. **THIS COURT ORDERS** that any and all information, or documentation or material in any form whatsoever provided pursuant to or arising out of the court-compelled examination of or court-compelled production by Christopher G. Smith ("**Smith Examination**"), including but not limited to any answers provided, any documentation or other material produced, undertakings given, responses to undertakings given, documents produced as part of an undertaking or produced prior to the Smith Examination or by Court-compelled production, any notes taken by any person, any electronic or media file produced (the "**Productions**") and the transcript (the "**Smith Transcript**") from the Smith Examination (collectively with the Smith Transcript and the Productions, the "**Smith Examination Information**") shall only be used and possessed pursuant to this Order.

2. **THIS COURT ORDERS** that for the purposes of this Order, Smith Examination Information shall not include information, records, books, papers, documents or other material that:

- (a) is or becomes generally available to the public, other than as a result of any unlawful, illegal or prohibited act, including disclosure in breach of this or any other court order;
- (b) is obtained, other than as a result of any unlawful, illegal or prohibited act or in breach of any court order, by a person identified in Schedule "A" of this Order ("**Qualified Persons**") from a source other than Christopher G. Smith, regardless of whether not that same information has been or will be provided by Christopher G. Smith;
- (c) was known by a Qualified Person from a source other than Christopher G. Smith prior to the Smith Examination provided such knowledge is not the direct or indirect product of any unlawful, illegal or prohibited act, including in breach of any court order;

- (d) was independently developed by a Qualified Person without use of any Smith Examination Information provided that such development is not the direct or indirect product of any unlawful, illegal or prohibited act, including in breach of any court order; or
- (e) pertain, refer, belong or relate to, in whole or in part, the Debtor (and/or the related, affiliated or associated corporations of the Debtor), its dealings or its property (and/or the dealings or property of the related, affiliated or associated corporations of the Debtor), including, but not limited to, the corporate records, documents and tax filings of the Debtor (and/or the related, affiliated or associated corporations) but shall only be used and possessed for the sole purpose of assisting the Receiver in fulfilling its mandate established pursuant to the Receivership Order and any amendments thereto (the “**Receiver’s Mandate**”).

3. **THIS COURT HEREBY DECLARES AND ORDERS** that the compelled testimony of Christopher G. Smith or his compelled production of any document, information or thing or any evidence, matter or thing arising either directly or indirectly from such compelled testimony or production in relation to the receivership proceedings before this Court shall not be used by a Qualified Person for any purpose or manner whatsoever, including to the prejudice of Christopher G. Smith, other than to assist the Receiver in fulfilling its mandate established pursuant to the Receivership Order as it, along with the Receiver’s Mandate, may be amended from time to time on ten business days’ notice to Christopher G. Smith.

4. **THIS COURT ORDERS** that the Receiver shall be authorized to file Smith Examination Information directly with this Court at which time the filed Smith Examination Information shall be immediately sealed by this Order pending any further Court order.

5. **THIS COURT ORDERS** that if the Smith Examination Information is filed in whole or in part with this Court, it shall be immediately sealed and may only be unsealed by further order of this Court.

6. **THIS COURT ORDERS** that Qualified Persons shall not produce, provide, publish or otherwise release Smith Examination Information to any third party, other than another Qualified

Person or any person as agreed to between the parties, without further order of this Court, subject to the terms of this Order.

7. **THIS COURT HEREBY DECLARES AND ORDERS** that nothing in this Order shall prejudice the right of the Receiver or Christopher G. Smith to seek variance or amendment of this Order or seek other relief on not less than ten business days' notice to the other party.

8. **THIS COURT HEREBY DECLARES AND ORDERS** that nothing in this Order is intended to affect any right of any party to assert privilege with respect to any of the Smith Examination Information.

October 23, 2014

Let this order issue.

A handwritten signature in black ink, appearing to read "NBrown", is written over a horizontal line. The signature is stylized and cursive.

Natasha Brown
Registrar

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ON / RQUICHAQ:
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SCHEDULE "A"
QUALIFIED PERSONS

1. Paul Robert Appleton and Miles Andrew Benham in their capacity as joint liquidators of the Debtor.
2. David Rubin & Partners, together with its associates and partners.
3. MannBenham Advocates Limited, together with its directors, officers, employees and partners.
4. Independent legal counsel for the joint liquidators of the Debtor.
5. msi Spergel Inc., together with its directors, officers, employees and partners.
6. Legal counsel for the Receiver.
7. Legal counsel for Christopher G. Smith.

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Proceedings commenced at Toronto

ORDER

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