

312. These funds, withdrawn from Stellar Point, were not transferred for value under any binding agreement, and the services allegedly provided by Dixit and the Dixit Companies that purportedly justified these disbursements overlapped entirely with the services Dixit was already retained to provide in the course of his employment with Stellar Point.

313. The Receiver, standing in the shoes of Stellar Point, therefore claims that Dixit breached his fiduciary duty to the company by authorizing and engaging in these unjustifiable transfers for his own benefit, and claims damages in the amount of that defalcation.

#### **4.4.3. Breach of Fiduciary Duty: Preferring Personal Interests to those of the Corporation (Dixit)**

314. As an individual collecting such things as reimbursements and consulting fees from Stellar Point, Dixit had a direct financial incentive to overcharge Stellar Point for *those* services rendered. Dixit did not declare or mitigate the conflict between himself and Stellar Point; nor did he recuse himself from the decisions involved in setting his own compensation, 'consulting fees', or the approval of business expenses. It was his responsibility to Stellar Point stakeholders to ensure the profitability and growth of the company, and to declare that conflict and to disburse dividends only in equal proportion with other shareholders.

315. The Receiver therefore claims against Dixit in his capacity of President of Stellar Point for damages equal to the sum of all preferential transactions he undertook for his own benefit or for the benefit of the Dixit Companies or any other company not at arm's length from Dixit, in breach of his fiduciary duty.

#### 4.5. Punitive and Exemplary Damages (Dixit and Josun)

316. The Receiver pleads that this is an appropriate case for punitive and exemplary damages.

317. Each of Dixit and Josun, by virtue of their leadership roles in the Banners Broker enterprise, have engaged in a malicious, oppressive, and high-handed course of conduct that ought to offend the court's sense of decency and represents a marked departure from ordinary standards of decent behaviour.

##### *Dixit*

318. **Blameworthiness of Conduct:** Dixit has engaged in more than one scheme intended to defraud the public of its savings; Banners Broker was merely the most recent, and by far the most successful. He freely and unabashedly took a veritable cascade of funds that he knew were intended to be invested into his company and used those funds to afford himself a life of extravagant luxury with a complete lack of restraint. His actions are blameworthy as they constitute a deliberate fraud on the public, with no higher aim in place other than to become rich.

319. **Harm to the Plaintiff and Wrongful Gain of the Defendant:** Many thousands of people worldwide bought into Banners Broker with enthusiasm and have lost everything. Having relied on the fraudulent misrepresentations of BBIL customer service personnel and the online e-Wallet that fraudulently suggested that their investments were growing, the creditors represented by the plaintiff BBIL suffered grave, in some cases life-altering harm upon finding that their savings had not been

invested, but rather freely spent by Dixit for his own enjoyment and that of his friends and family. The greater the harm to the public, the more Dixit benefited. As the inflow of funds came faster and faster, Dixit began to travel in greater luxury, to afford himself more expensive food and spirits, and to surround himself with masterpieces of watchmaking and automotive engineering. The more the plaintiffs suffered, the more Dixit gained.

320. **Need for Deterrence:** To date, despite having had another enterprise terminated by the Competition Bureau, the present enterprise thoroughly examined by the Receiver, and now facing indictment on serious criminal charges, Dixit still does not apprehend that he was at any point in the wrong. He still feels entitled to the Affiliates' money and has threatened the Receiver and its legal team with extraordinary monetary penalties exceeding *one billion dollars per month* if they do not 'undo' the receivership and return the recovered funds to him for his own use and enjoyment. In his threatening correspondence, Dixit takes the inexplicable position that by investigating the events surrounding BBIL and recovering misappropriated funds, the Receiver has sullied his good name and impugned the morals with which he conducts his affairs.

321. The situation warrants an unequivocal statement by the Court that Dixit's protests of being in some way the *victim* in this case – when his conduct has caused some of the Affiliates whose lives he has ruined to *take their own lives* – are intolerable and reprehensible.

*Josun*

322. **Blameworthiness of Conduct:** Whereas Dixit has misappropriated Affiliate funds rather plainly, Josun has been more clandestine and calculated in his approach to wrongfully obtained monies. Whereas Dixit purchased a great many cars, watches and luxury furniture after coming into Banners Broker money, Josun has secreted funds away in offshore locations, in amounts and by methods undetectable and unascertainable even by the rest of Banners Broker's management by ensuring he had no supervision as the funds were diverted. He has headquartered his newest operating company in Vanuatu: one of the few states in the world outside the grasp of Interpol. Josun appears to have known exactly what he was doing with Affiliates' money, how best to get it, and how he intended to get away with it.

323. **Harm to the Plaintiff and Wrongful Gain of the Defendant:** Just as was the case with Dixit, thousands of Affiliates worldwide invested significant savings into the Banners Broker project. Josun, moreso than Dixit, seems to have gone about converting Affiliates' nest eggs into his own.

324. **Need for Deterrence:** Whereas Dixit appears not to have learned any lessons from the collapse of Banners Broker, Josun appears to have learned his lessons all too well. He is operating another online, commission-based, social-networking platform at present – only this time in a remote jurisdiction more hostile to civil and criminal investigation and enforcement.

325. Both individual defendants share one final factor in common in respect of punitive damages: neither has yet been made to regret their actions, even for a moment. None has yet been given any concrete reason to reflect upon Banners Broker as anything but the adventure of a lifetime. They all continue to live in a lifestyle to which they could never have aspired prior to their involvement in the enterprise and resent the lawful authorities for their encroachment upon what they universally regard as 'theirs'.

326. Particularly for Josun, who is not being charged with offences in relation to his central role in the Banners Broker enterprise, the within proceeding may be the only opportunity the justice system will have to express its condemnation of the defendants' acts.

## **5.0 JURISDICTION AND FORUM**

327. The plaintiffs plead and rely on Rule 17.02 in respect of the foreign corporate defendants, as the claims herein pertain to torts committed, contracts made and breached, and injunctions sought to take effect in the Province of Ontario.

328. The plaintiffs propose that this action be tried in the City of Toronto.

May 30, 2016

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BANNERS BROKER INTERNATIONAL LTD. by its receiver,  
MSI SPERGEL INC.  
Plaintiff

and  
RAJIV DIXIT et al.  
Defendants

Court File No. CV-16-11413-000

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
**PROCEEDING COMMENCED AT  
TORONTO**

**STATEMENT OF CLAIM**

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**TAB B**



**FIRST REPORT OF MSI SPERGEL INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED**

**October 2, 2014**

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

**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)**

**FIRST REPORT OF THE**  
**COURT-APPOINTED RECEIVER OF**  
**BANNERS BROKER INTERNATIONAL LIMITED**  
**("FIRST REPORT")**

October 2, 2014

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APPENDICES

1. Order of The Honourable Justice Matheson dated August 22, 2014 (Initial Recognition Order-Foreign Main Proceeding)
2. Order of The Honourable Justice Matheson dated August 22, 2014 (Supplemental Order-Foreign Main Recognition)
3. Media Notice published in the Globe and Mail and National Post
4. Order of The Honourable Justice Kelly dated July 18, 2014
5. Order of The Honourable Justice Code dated July 29, 2014
6. Affidavit of RCMP Constable Katie Judd sworn July 17, 2014
7. Affidavit of RCMP Constable Katie Judd sworn July 28, 2014
8. Screenshot of “Banners Broker Ponzi Scam” Facebook Group page
9. Copy of Irish Examiner Article titled “Fears for investors as suspected pyramid scheme wound up”, by Conor Ryan, published February 27, 2014
10. Summary of Corporate Profile and Business Names Search Results in respect of Associated Corporations
11. Correspondence between the Receiver and Counsel to Smith and BBIL
12. Online Property Listing in respect of the Bayview Property
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## 1.0 APPOINTMENT AND BACKGROUND

- 1.0.1 On application made by Miles Andrew Benham and Paul Robert Appleton in their capacity as Joint Liquidators (“**Foreign Representatives**”) of Banners Broker International Limited (“**BBIL**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”) recognition was granted by this Honourable Court to Orders granted by the High Court of Justice of the Isle of Man, Civil Division, Chancery Procedure. Attached hereto as **Appendix “1”** to this First Report is a copy of the Order of The Honourable Madam Justice Matheson made August 22, 2014 pursuant to section 268 of the BIA (“**Initial Recognition Order, Foreign Main Proceeding**”).
- 1.0.2 On further application made by the Foreign Representatives, msi Spergel inc. was appointed Receiver and Manager (“**Receiver**” or “**MSI**”) of all the assets, undertakings and properties of BBIL. The Receiver was appointed pursuant to a further Order dated August 22, 2014 (“**Appointment Order**”) issued by the Honourable Justice Matheson of the Ontario Superior Court of Justice, a copy of which is attached as **Appendix “2”** to this First Report.
- 1.0.3 Prior to being ordered wound up by the Isle of Man court, BBIL was a purported internet advertising business with operations either directly or through related companies around the world.

## 2.0 PURPOSE OF THE REPORT

- 2.0.1 This report (“**First Report**”) is filed in support of the Receiver’s Motion for:
- a) An order granting certain additional investigatory authority to the Receiver pursuant to section 272 of the BIA in respect of five corporations (and six related business names or styles) that are closely associated with BBIL, are under common direction and control as BBIL, and have been identified by the Royal Canadian Mounted Police (“**RCMP**”) as being integral to an alleged

“Banners Broker” (“**Banners Broker**”) criminal enterprise in which BBIL was a central part, namely:

- (i) 2087360 Ontario Incorporated o/a Local Management Services;
- (ii) Parrot Marketing Inc. (formerly o/a “8264554 Canada Limited”);
- (iii) 2341620 Ontario Corporation;
- (iv) Stellar Point Inc. (formerly o/a “7250037 Canada Inc.” and “Bannersbroker Limited”);
- (v) Dixit Holdings Inc. (formerly o/a “8163871 Canada Limited”);  
and
- (vi) Any other entity operating under the business names “Bannersbroker”, “Banners Broker”, “Bannersbroker Limited”, “Bannersmobile”, “Banners Mobile” or “Banners Broker Belize”;

(referred to collectively herein, as in the RCMP evidence, as “**Associated Corporations**”)

- b) An order granting leave to amend the Joint Liquidators’ Notice of Application to include the relief of a certificate of pending litigation (“CPL”) over a property at 1376 Bayview Avenue in Toronto that is owned by 2341620 Ontario Corporation, one of the Associated Corporations;
- c) An order granting leave to issue a CPL for registration against 1376 Bayview Avenue;
- d) An order approving the actions and activities of the Receiver as described herein; and

e) Such further and other relief as is deemed appropriate.

### **3.0 ACTIONS OF THE RECEIVER UPON APPOINTMENT**

- 3.0.1 Immediately upon its appointment, the Receiver commenced its investigation into the business and affairs of BBIL in Canada. This was preceded by a thorough review of the documentary evidence provided to it by the Joint Liquidators in the Isle of Man Winding up proceedings.
- 3.0.2 In accordance with the Appointment Order, the Receiver established and activated the e-protocol URL, <http://www.spergel.ca/banners>.
- 3.0.3 In addition, the Receiver published the Media Notice approved by the Appointment Order on two occasions in each of The Globe and Mail and The National Post. Attached hereto as **Appendix “3”** is a copy of the advertisement
- 3.0.4 Correspondence has been sent by the Receiver to all relevant Canadian electronic payment processors, as well as to all depository Schedule I, II and III financial institutions in Canada in an effort to obtain information as to the nature and extent of BBIL’s business activities in Canada.
- 3.0.5 The Receiver has also made efforts to coordinate examinations of Christopher G. Smith and Rajiv Dixit in accordance with paragraph 11 of the Appointment Order. Messrs. Smith and Dixit are represented by counsel and are served with this motion. As of the date of this Report examinations have not taken place.

#### **Closure of the Banners Broker Website and Social Media Presence**

- 3.0.6 Shortly after the Receiver’s appointment, on September 4, 2014, the Receiver obtained information confirming that the website formerly maintained by BBIL at <http://www.bannersbroker.com/> was taken down. It appears that Banners Broker Facebook and Twitter accounts were deactivated or ceased activity on the same day.

### Criminal Proceedings in Respect of Banners Broker

- 3.0.7 Also on September 4, 2014, the Receiver was made aware of criminal proceedings before the Ontario Superior Court of Justice arising from an RCMP investigation into Mr. Christopher G. Smith (“**Smith**”) and Mr. Rajiv Dixit (“**Dixit**”) related to Banners Broker in Canada (“**RCMP Investigation**”).
- 3.0.8 Additionally, the Receiver was provided with copies of Ex Parte Restraint Orders obtained by the Ministry of the Attorney General, Crown Law Office-Criminal (“**Crown**”). Attached hereto as **Appendices “4”** and “**5**” respectively are copies of the Order of the Honourable Justice Kelly, dated July 18, 2014, and the Order of the Honourable Justice Code, dated July 29, 2014 (the “**Restraint Orders**”).
- 3.0.9 The Restraint Orders, issued pursuant to section 462.33 of the *Criminal Code of Canada*, freeze funds held by third party electronic payment processors in connection with Banners Broker. They also compel financial institutions to provide information to the Director of Asset Management – Criminal, regarding restrained accounts held by certain of the Associated Corporations.
- 3.0.10 Further to its review of the Restraint Orders, the Receiver obtained copies of the affidavit evidence filed by the Crown in support of its *ex parte* application. Counsel for the Receiver obtained copies of affidavits sworn by RCMP Constable Katie Judd on July 17, 2014 and July 28, 2014 (“**RCMP Affidavits**”). Attached hereto as **Appendices “6”** and “**7**” are copies of the RCMP Affidavits.
- 3.0.11 The RCMP Affidavits detail the basis for what is stated to be the reasonable belief of the RCMP investigators that Smith and Dixit, through their operation of Banners Broker, which, as noted in the RCMP Affidavits, includes BBIL, have committed criminal offences related to the operation of a “Pyramid Scheme”, fraud, possession and laundering of the proceeds of crime and criminal misrepresentations contrary to the *Competition Act*.

3.0.12 The position of the RCMP investigators is summarized at paragraph 6 of the July 17 RCMP Affidavit:

It is the position of investigators that this business [Banners Broker] was a pyramid scheme that over time evolved into a straight Ponzi scheme in which new victims were recruited to stave off requests for withdrawals and complaints from older ones. As the scheme progressed, Smith recruited another principal wrongdoer named Rajiv Dixit (“Dixit”) and set up a host of associated corporations to mask both their illegal activities and the flow of money. Throughout the scheme, Smith, Dixit and their associated corporations had investors pay their “investment” money to merchant account providers (i.e. legitimate corporations that process credit card payments). Those funds were then diverted by the suspects and their associated corporations to various offshore and other bank accounts controlled by them. [emphasis added]

3.0.13 BBIL is specifically identified by Constable Judd as one of Associated Corporations believed to be involved in Banners Broker’s Canadian operations. At paragraph 12.12, Constable Judd describes information obtained from a Competition Bureau interview with John Rock, a former Compliance Officer employed by Banners Broker:

Rock was told by Smith, Dixit and Josun that Smith and Josun were the owners of Banners Broker International [*associated corporation*] and Dixit was the owner of Bannersbroker Limited [*associated corporation*], later named Stellar Point Inc., which was the Canadian reseller;

[...]

Banners Broker International was operated by Smith and was registered in the Isle of Man.

3.0.14 Constable Judd also identifies a number of other entities operated by Smith and/or Dixit, most of which are incorporated in Canada, namely:

- (i) 2087360 Ontario Incorporation o/a Local Management Services;
- (ii) 8264554 Canada Limited o/a Parrot Marketing Inc.;

- (iii) 2341620 Ontario Corporation;
- (iv) 7250037 Canada Inc. o/a Stellar Point Inc. (formerly o/a “Banners Broker Canada”); and
- (v) 8163871 Canada Limited o/a Dixit Holdings Inc.

The Joint Liquidators’ independent investigations have also identified certain of the same parties as being associated with BBIL. The results of the Joint Liquidators’ investigations are in part described in the affidavit of Paul Robert Appleton sworn August 6, 2014 and filed in support of this motion (“**Appleton Affidavit**”).

- 3.0.15 The RCMP Affidavits identify the Associated Corporations in respect of which the Receiver now seeks authorization to make inquiries. Certain of these corporations were previously identified in the Joint Liquidators’ investigations, as described in the Appleton Affidavit.
- 3.0.16 The RCMP Affidavits also reference funds held by Canadian financial institutions and electronic payment processors in relation to Banners Broker.
- 3.0.17 The RCMP Affidavits were a sufficient evidentiary basis for Justices of the Ontario Superior Court to grant, on an *ex parte* basis, on two separate occasions, broad ranging relief requiring accounts connected with the Associated Corporations to be frozen. As indicated, the court orders granted also compel third party financial institutions to provide information to the Crown.
- 3.0.18 The allegation that BBIL was integral to a Banners Broker pyramid scheme or Ponzi scheme is not new to the Joint Liquidators or the Receiver. In the course of their investigations, both insolvency representatives have come across numerous references in social and on-line media to fraudulent activity allegedly undertaken by BBIL and Banners Broker, including:

- a) An active “Banners Broker Ponzi Scam” Facebook group with upwards of 11,000 members. A screenshot of the Banners Broker Ponzi Scam Facebook group page (found at URL: <https://www.facebook.com/pages/Banners-Broker-Ponzi-Scam/398614356881465>) is attached hereto as **Appendix “8”**; and
- b) Several articles in the international media, including a February 27, 2014 article in the Irish Examiner by Conor Ryan, titled “Fears for investors as suspected pyramid scheme wound up” (which can be found online at URL: <http://www.irishexaminer.com/ireland/fears-for-investors-as-suspected-pyramid-scheme-wound-up-260228.html>), a copy of which is attached hereto as **Appendix “9”**.

3.0.19 Paragraphs 103 to 105 of the Joint Liquidators’ affidavit filed in support of the application for recognition of the Isle of Man proceedings are also relevant to the relief sought on this motion in terms of the request that the receiver be empowered to make inquiries in respect of the Associated Corporations. Such paragraphs document the Joint Liquidators’ concern, based on advice received from an electronic payment processor named “Payza”, that certain Associated Corporations may have been set up as e-payment account holder “beneficiaries” designated to receive payments on behalf of BBIL.

### **Receiver’s Investigations**

3.0.20 The Receiver’s investigations have included requisitioning corporate profile and business names searches in respect of each of the Associated Corporations identified in the RCMP Affidavits. A summary of these search results is attached hereto as **Appendix “10”**.

3.0.21 Corporate search results, together with other documents previously obtained by the Joint Liquidators, confirm that four of the five Associated Corporations in respect of which the Receiver seeks investigative authority are set up such that Smith and/or

Dixit are the sole director and/or officer. The exception is 2087360 Ontario Incorporation o/a Local Management Services (“LMS”), of which Edmund A. Clarke is the sole director and officer. However, based on evidence obtained by the Joint Liquidators in their investigations, it is apparent that LMS was also operated by Smith and maintained various account relationships with payment processors and financial institutions under the Banners Broker name, as described at paragraph 103 of the Appleton Affidavit. Smith also used LMS to register a number of “Banners Broker” related internet domain names, as set out at paragraph 100(d) of the Appleton Affidavit.

- 3.0.22 The Receiver’s inquiries with Canadian financial institutions and payment processors have, to date, been restricted by the fact that the investigatory powers granted in the Appointment Order are limited to BBIL.
- 3.0.23 For example, upon requesting information from an Oshawa branch of the Canadian Imperial Bank of Commerce (“CIBC”), which is known to have held funds on behalf of Banners Broker entities and may have received transfers from BBIL’s Isle of Man bank account, the Receiver was advised that no information could be released without a court order specifically referencing the account holder. Other Canadian financial institutions maintain a similar position. Consequently the Receiver’s inquiries of financial institutions have not, to date, been met with sufficient disclosure of information to advance investigations into BBIL.
- 3.0.24 The Receiver has written to Smith’s counsel as well as other counsel at Aird & Berlis LLP known to have been retained by BBIL in the past requesting relevant information pursuant to the Appointment Order. Copies of this correspondence, and the replies received, are attached hereto at **Appendix “11”**.
- 3.0.25 To be clear, the Receiver is not at this early stage in its investigation in a position to conclude that BBIL or Banners Broker was in fact a ponzi scheme, pyramid scheme, or criminal enterprise more generally. The Receiver can, however, report that serious

allegations to that effect have been made by the RCMP and others in respect of BBIL and a small number of Associated Corporations. If such allegations are to be further considered, in accordance with the Receiver's mandate to investigate, identify, and preserve assets of BBIL, it is necessary that the Receiver have authority to make inquiries in respect of the Associated Corporations. For the time being, the Receiver is seeking investigatory – as opposed to possessory powers – in respect of the Associated Corporations.

### **Bayview Property**

- 3.0.26 The Receiver has recently become aware of a mixed use commercial / residential property on Bayview Avenue in Toronto, municipally known as 1376 Bayview Avenue, Toronto, Ontario, M4G 3A1 (“**Bayview Property**”). The Bayview Property was purchased for \$2.9 million on March 19, 2013 by 2341620 Ontario Corporation (“**234**”). 234 is an Associated Corporation identified in the RCMP Affidavits. Smith is the sole officer and director of 234. Based on investigations to date, it is believed that the Bayview Property was at one time intended to become the head office of Banners Broker.
- 3.0.27 The Bayview Property was very recently listed for sale for \$4.1 million. Attached hereto as **Appendix “12”** is a copy of an online property listing obtained by the Receiver in respect of the Bayview Property.
- 3.0.28 A property subsearch indicates that the Bayview Property is unencumbered. 234's purchase of the Bayview Property occurred during the time frame in which BBIL was actively involved in the Banners Broker enterprise. In the months prior to the purchase, regular and substantial deposits had been made to the credit of BBIL's Isle of Man bank account (see for example, paragraph 111 of the Appleton Affidavit).
- 3.0.29 On the basis of its ongoing investigations, including a review of the allegations set out in the RCMP Affidavits, the Receiver and/or the Joint Liquidators claim and intend to

assert a property interest in the Bayview Property. The basis for this assertion is and will be that the Bayview Property was purchased and/or improved with monies properly belonging to, or owing to BBIL. Alternatively, or additionally, it will be alleged that the Bayview Property was acquired in the context of the illegal scheme and diversion of funds to Associated Corporations that is described in the RCMP Affidavits. To the extent available, the Receiver and/or the Joint Liquidators intend to assert constructive trust, tracing, and other proprietary and equitable remedies in respect of the Bayview Property.

3.0.30 The Receiver is concerned that the Bayview Property may be sold, and the proceeds of sale put beyond reach of BBIL creditors, if a CPL is not issued.

3.0.31 In this regard, as recently as March of this year, 234 sold its interest in another Banners Broker connected real property in Whitby, Ontario.

3.0.32 Specifically, on March 27, 2014, 234 and Dixit Holdings Inc., a company controlled by Dixit, sold a jointly owned property municipally known as 5 Carlow Court, Whitby, Ontario. The property was sold for \$1.2 million. The Carlow Court property had been identified as a Banners Broker “Support Center” operated by Stellar Point Inc., an Associated Corporation controlled by Dixit, which formerly operated under the name “Bannersbroker Limited” or “Banners Broker Canada” (see for example, paragraph 42(d) of the Appleton Affidavit). Copies of relevant property subsearch results are attached hereto as **Appendix “13”**.

3.0.33 Based on the recent sale of the Carlow Property and the listing for sale of the Bayview Property, the Receiver has reasonable grounds to believe that the status quo will not be preserved if a CPL is not issued. If a CPL is not issued, the Bayview Property will very likely be sold and the proceeds of sale may become unrecoverable to creditors having claims as against 234 and its owners, including the Receiver as representative of creditors of BBIL.

3.0.34 The Bayview Property is legally described as:

PCL 113-3 SEC M5; PT LT 113 W/S BAYVIEW AV PL M5 TORONTO COMM AT THE S ELY ANGLE OF THE SAID LT 1113; THENCE NLY MEASURED ALONG THE ELY LIMIT OF SAID LT, 50 FT MORE OR LESS TO A POINT 102 FT MEASURED SLY FROM THE NE ANGLE OF LT 112 ON SAID PL; THENCE WLY PARALLEL WITH THE SLY LIMIT OF SAID LT 113, 120 FT; THENCE SLY PARALLEL WITH THE ELY LIMIT OF SAID LT, 50 FT MORE OR LESS TO THE SLY LIMIT OF SAID LT 113; THENCE ELY ALONG THE LAST MENTIONED LIMIT 120 FT TO THE POB; TORONTO, CITY OF TORONTO

and bears PIN 21122-0131 (LT). A copy of the PIN in respect of the Bayview Property is attached hereto as **Appendix "14"**.

#### **4.0 RECOMMENDATIONS**

4.0.1 Based upon the foregoing, the Receiver respectfully requests:

- a) An order granting certain additional investigatory authority to the Receiver pursuant to section 272 of the BIA in respect of five Associated Corporations that are evidently associated with BBIL and have been identified by the Royal Canadian Mounted Police ("RCMP") as being integral to an alleged "Banners Broker" enterprise of which BBIL was a central part ("**Banners Broker**"), including:
  - (i) 2087360 Ontario Incorporated o/a Local Management Services;
  - (ii) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited");
  - (iii) 2341620 Ontario Corporation;
  - (iv) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited");

- (v) Dixit Holdings Inc. (formerly o/a “8163871 Canada Limited”);  
and
  - (vi) Any other entity operating under the business names  
“Bannersbroker”, “Banners Broker”, “Bannersbroker Limited”,  
“Bannersmobile”, “Banners Mobile” or “Banners Broker  
Belize”;
- b) An order granting leave to amend the Joint Liquidators’ Notice of Application to assert a claim in respect of the Bayview Property and to include the relief of a Certificate of Pending Litigation (“CPL”) over the Bayview Property;
- c) An order granting leave to issue a CPL for registration against the Bayview Property; and
- d) Such further and other relief as is deemed appropriate

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2nd day of October, 2014.

**MSI SPERGEL INC.,  
AS COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED  
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**



---

Philip H. Gennis, J.D., CIRP

**TAB C**



SPERGEL

**SECOND REPORT OF MSI SPERGEL INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED**

January 12, 2015

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

**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)**

**SECOND REPORT OF THE**  
**COURT-APPOINTED RECEIVER OF**  
**BANNERS BROKER INTERNATIONAL LIMITED**  
**(“SECOND REPORT”)**

January 12, 2015

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## APPOINTMENT AND BACKGROUND

1. On application made by Miles Andrew Benham and Paul Robert Appleton in their capacity as Joint Liquidators (“**Foreign Representatives**”) of Banners Broker International Limited (“**BBIL**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”) recognition was granted by this Honourable Court to Orders granted by the High Court of Justice of the Isle of Man, Civil Division, Chancery Procedure. Attached hereto as **Appendix “1”** to this Second Report is a copy of the Order of The Honourable Madam Justice Matheson made August 22, 2014 pursuant to section 268 of the BIA (“**Initial Recognition Order**”).

2. On further application made by the Foreign Representatives, msi Spergel inc. was appointed Receiver and Manager (“**Receiver**” or “**MSI**”) of all the assets, undertakings and properties of BBIL. The Receiver was appointed pursuant to a further Order dated August 22, 2014 (“**Supplemental Order**”) issued by the Honourable Justice Matheson of the Ontario Superior Court of Justice, a copy of which is attached as **Appendix “2”** to this Second Report.

3. Prior to being ordered wound up by the Isle of Man court, BBIL was a purported internet advertising business with operations either directly or through related companies around the world. BBIL was central to a corporate network or group of companies around the world in operating the “Banners Broker” online enterprise, a platform whereby registered members known as “affiliates” could advertise their businesses on various websites within the Banners Broker 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. These former Banners Broker affiliates now make up the vast majority of known creditors of BBIL.

## PURPOSE OF THE REPORT

4. This report (“**Second Report**”) is filed in support of the Receiver’s Motion for an order restricting the disposition of certain monies and credits held by electronic payment processors

which are currently frozen pursuant to *ex parte* Restraint Orders granted in the context of a criminal investigation into the Banners Broker enterprise of which BBIL was a part.

5. The Restraint Orders were obtained by the Ontario Ministry of the Attorney General, Crown Law Office – Criminal (“**Crown**”) in relation to a criminal investigation regarding certain individuals and corporations involved in Banners Broker. The Restraint Orders have frozen funds held by third party electronic payment processors in connection with Banners Broker.

6. The Restraint Orders statutorily expire six months from the date of issuance and, accordingly, will expire on January 18 and 29, 2015. Although it is possible for the Crown to obtain an extension of the Restraint Orders, it is not clear to the Receiver that such an extension will be pursued. Regardless, the Receiver has an interest in ensuring the Property is not disposed of or otherwise put beyond the reach of proper claimants (including the Receiver) at this time.

7. Based on the Receiver’s investigations to date, the Receiver believes that the funds currently subject to the Restraint Orders are claimable by creditors of BBIL and that a claim will likely be made by the Receiver in respect of those funds.

### **ACTIONS OF THE RECEIVER UPON APPOINTMENT**

#### **RCMP Investigation and Restraint Orders in Respect of Banners Broker**

8. On September 4, 2014, the Receiver was made aware of criminal proceedings before the Ontario Superior Court of Justice arising from an RCMP investigation into the principals of Banners Broker, Christopher G. Smith (“**Smith**”) and Rajiv Dixit (“**Dixit**”), related to Banners Broker in Canada (“**RCMP Investigation**”).

9. The RCMP Investigation has, to date, resulted in the issuance of three sets of production orders by the Ontario Court of Justice, on June 3, June 17 and September 18, 2014, respectively, requiring the production of documents relevant to Banners Broker by certain financial institutions and electronic payment processors (“**Production Orders**”). Copies of the Production Orders obtained by the Ministry of the Attorney General, Crown Law Office-Criminal (“**Crown**”) and their supporting Information to Obtain material have been obtained by the Receiver.

10. The RCMP Investigation has also resulted in the issuance of two *ex parte* Restraint Orders by the Ontario Superior Court of Justice, made pursuant to section 462.33 of the *Criminal Code of Canada*, namely:

- a) The order of the Honourable Justice Kelly, dated July 18, 2014; and
- b) The order of the Honourable Justice Code, dated July 29, 2014.

(collectively the “**Restraint Orders**”)

The Receiver has obtained copies of the Restraint Orders and the supporting affidavit material filed by the Crown. Attached hereto as **Appendices “4”** and **“5”** respectively are copies of the Restraint Orders.

11. The Restraint Orders operate to freeze certain funds held by third party electronic payment processors in connection with Banners Broker, specifically:

- (i) All money or credits held by Beanstream Internet Commerce Inc. (“**Beanstream**”), 2695 Douglas Street, Suite 302, Victoria, British Columbia, V8T 4M3, in a merchant account for 7250037 Canada Inc. o/a Banner’s Broker Canada for registered account holder Rajiv Dixit, merchant ID 251440000;
- (ii) All money or credits held by SolidTrust Pay (“**STP**”), 47 William Street, P.O. Box 551, Bobcaygeon, Ontario, K0M 1A0, in a merchant account for 2087360 Ontario Inc. o/a Bannersbroker for registered account holder Chris Smith;
- (iii) All money or credits held by Mazarine Commerce Inc. o/a Payza.com (“**Payza**”), 100-8255 Mountain Sights, Montreal, Quebec, H4P 2B5, in a merchant account for Banners Broker and a merchant account for Banners Mobile, both for registered account holder Chris Smith, user ID 3809788;
- (iv) Any and all funds held by 6003061 Canada Inc. operating as UseMyServices, Inc. (“**UseMyServices**”), 1881 Steeles Avenue West, Suite 348, Toronto, Ontario to

the credit of Monetize Group Inc. for registered account holder Christopher Smith, Merchant ID SMPDAA (User ID SMPDAA paybannersbroker@gmail.com);

(all of which is referred to herein, as in the Restraint Orders, as the “Property”).

12. Following the Receiver’s review of the Restraint Orders, it obtained copies of the affidavits sworn by RCMP Constable Katie Judd on July 17, 2014 and July 28, 2014 (“RCMP Affidavits”) filed by the Crown in support of its *ex parte* application for the Restraint Orders. Attached hereto as **Appendices “6”** and **“7”** are copies of the RCMP Affidavits.

13. The RCMP Affidavits detail the basis for what is stated to be the reasonable belief of the RCMP investigators that Smith and Dixit, through their operation of Banners Broker, which, as noted in the RCMP Affidavits, includes BBIL, have committed criminal offences related to the operation of a “Pyramid Scheme”, fraud, possession and laundering of the proceeds of crime and criminal misrepresentations contrary to the *Competition Act*.

14. The RCMP Affidavits assert claims to monies held by Canadian financial institutions and electronic payment processors in relation to Banners Broker, which are believed by the RCMP to be proceeds of crime as defined by section 462.3 of the *Criminal Code*.

15. The position of the RCMP investigators is summarized at paragraph 6 of the July 17 RCMP Affidavit:

It is the position of investigators that this business [Banners Broker] was a pyramid scheme that over time evolved into a straight Ponzi scheme in which new victims were recruited to stave off requests for withdrawals and complaints from older ones. As the scheme progressed, Smith recruited another principal wrongdoer named Rajiv Dixit (“Dixit”) and set up a host of associated corporations to mask both their illegal activities and the flow of money. Throughout the scheme, Smith, Dixit and their associated corporations had investors pay their “investment” money to merchant account providers (i.e. legitimate corporations that process credit card payments). Those funds were then diverted by the suspects and their associated corporations to various offshore and other bank accounts controlled by them. [emphasis added]

16. BBIL is specifically identified by Constable Judd as one of the “Associated Corporations” believed to be involved in Banners Broker’s Canadian operations. At paragraph 12.12, Constable Judd describes information obtained from a Competition Bureau interview with John Rock, a former Compliance Officer employed by Banners Broker:

Rock was told by Smith, Dixit and Josun that Smith and Josun were the owners of Banners Broker International [*associated corporation*] and Dixit was the owner of Bannersbroker Limited [*associated corporation*], later named Stellar Point Inc., which was the Canadian reseller;

[...]

Banners Broker International was operated by Smith and was registered in the Isle of Man.

17. Constable Judd also identifies a number of other entities operated by Smith and/or Dixit, most of which are incorporated in Canada, including the following Canadian entities:

- (i) 2087360 Ontario Incorporation o/a Local Management Services;
- (ii) 8264554 Canada Limited o/a Parrot Marketing Inc.;
- (iii) 2341620 Ontario Corporation;
- (iv) 7250037 Canada Inc. o/a Stellar Point Inc. (formerly o/a “Banners Broker Canada”); and
- (v) 8163871 Canada Limited o/a Dixit Holdings Inc.

(referred to herein as “**Associated Corporations**”)

The Joint Liquidators’ independent investigations have also identified certain of the same parties as being associated with BBIL. The results of the Joint Liquidators’ investigations are in part described in the affidavit of Paul Robert Appleton sworn August 6, 2014 (“**Appleton Affidavit**”).

18. The RCMP Affidavits reference funds held by Canadian financial institutions and electronic payment processors in relation to Banners Broker which are currently restrained as a result of the Restraining Orders. In the July 17 RCMP Affidavit, Constable Judd deposes that:

Based on the information contained in this affidavit, I believe that the property is proceeds of crime as defined by section 462.3 of the *Criminal Code* and, therefore, may be subject to an order of forfeiture under section 462.37 of the *Criminal Code*. I believe further that a restraint order under s.462.33 is necessary to prevent the possible disposal of the property and to ensure that the property will be available for forfeiture at trial should the respondents be convicted.

19. The RCMP Affidavits were a sufficient evidentiary basis for Justices of the Ontario Superior Court to grant, on an *ex parte* basis, on two separate occasions, the broad ranging relief in the Restraining Orders requiring accounts connected with the Associated Corporations to be frozen.

20. The allegation that BBIL was integral to a Banners Broker pyramid scheme or Ponzi scheme is not new to the Joint Liquidators or the Receiver. In the course of their investigations, both insolvency representatives have come across numerous references in social and on-line media to fraudulent activity allegedly undertaken by BBIL and Banners Broker.

#### **Receiver's Motion for Additional Investigative Authority**

21. In order to fulfill the Receiver's investigatory mandate in respect of BBIL, it was determined that it was appropriate for the Receiver to seek information in respect of the Associated Corporations and the accounts held with Canadian financial institutions and payment processors identified in the RCMP Investigation, including information with respect to the transfer of funds between BBIL and the Associated Corporations.

22. Accordingly, on October 15, 2014, based on its investigations to date and the evidence disclosed in the RCMP Affidavits, the Receiver sought an order for the authority to require production of information from third parties in respect of the Associated Corporations, as is set out in further detail in the First Report of the Receiver, dated October 2, 2014, a copy of which (without appendices) is attached hereto as **Appendix "7"**.

23. The Honourable Mr. Justice Newbould granted the additional investigatory authority sought by the Receiver by order dated October 15, 2014 (“**Expanded Powers Order**”). A copy of the issued Expanded Powers Order is attached hereto as **Appendix “8”**. A copy of the endorsement of Justice Newbould, dated October 15, 2014 is attached hereto as **Appendix “9”**.

#### **Receiver’s Further Investigations and Necessity for Continued Restraint of Funds**

24. The Receiver’s investigations are underway. Since the issuance of the Expanded Powers Order, the Receiver has continued to collect information and documents in respect of the Banners Broker enterprise and has sought to interview key individuals involved in the operation of Banners Broker.

25. The Receiver is not presently in a position to conclude that BBIL (or the Banners Broker enterprise) was in fact a Ponzi scheme, pyramid scheme, or criminal enterprise more generally. The Receiver can, however, report that serious allegations to that effect have been made by the RCMP and others in respect of BBIL and a small number of Associated Corporations.

26. Significantly, based on a review of all information obtained from financial institutions, the Receiver believes that the source of the restrained Property held in the electronic payment processor accounts at issue very likely derives from deposits made by Banners Broker affiliates.

27. At this stage in its investigation, the Receiver does not have the information necessary to completely understand the flow of funds within the Banners Broker group of companies. It is apparent, however, that there have been significant inter-company transfers of funds contributed by Banners Broker affiliates between BBIL and the Associated Corporations. It would also appear that the majority of monies received by Banners Broker from affiliates were not used to fund withdrawal commitments, resulting in a significant number of outstanding creditors, made up of thousands of Banners Broker affiliates.

28. In the circumstances there is good reason to believe that the Property currently restrained by the Restraint Orders is properly claimable by BBIL and/or Associated Corporation creditors. The Receiver therefore intends to complete its investigatory mandate and pursue all claims as

may be appropriate in respect of the restrained Property. It is necessary and appropriate for the protection of creditors' interests that such Property be preserved while the Receiver's investigation into the affairs of BBIL and the Associated Corporations proceeds.

29. To the Receiver's knowledge, no attempt has been made by any of the Respondents to vary, revoke or set aside the Restraint Orders or otherwise seek any post-restraint relief.

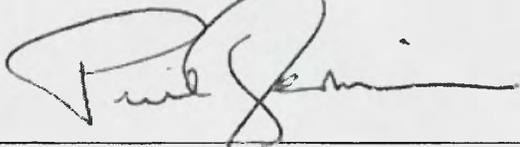
30. The Receiver is unaware of any action being taken by the Crown which would have the effect of continuing the Restraint Orders past January 18 and 29, 2015.

31. The relief sought on this motion is intended to preserve the status quo in respect of the currently restrained Property. This will ensure that the Receiver, and other potential claimants, will have an opportunity to assert an interest in the funds at issue in the fullness of time and in a coordinated manner.

32. Also to this end, should Court authority be granted, the Receiver is prepared to receive and hold the Property, as conservator, in an interest-bearing trust account, separate and apart from the BBIL receivership, not to be released without further court order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12th day of January, 2015.

**MSI SPERGEL INC.,  
AS COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED  
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**



\_\_\_\_\_  
Philip H. Gennis, J.D., CIRP

**TAB D**

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

**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)**

**THIRD REPORT OF THE  
COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED  
("THIRD REPORT")**

**July 30, 2015**

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- M. Affidavit of Philip H. Gennis, sworn July 22, 2015
- N. Affidavit of Larry Ellis sworn July 28, 2015
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## I. Overview

1. This is a foreign recognition and cross-border insolvency proceeding involving Canada and the Isle of Man. The debtor, Banners Broker International Limited ("**BBIL**"), was an internet advertising business operating both directly and through related entities and agents around the world. In many countries, BBIL contracted with local entities who acted as "independent contractors" or "resellers" for Banners Broker in a specific country or region. BBIL is believed to have hundreds of thousands of individual unsecured creditors in jurisdictions around the world.

2. Winding up proceedings commenced in the Isle of Man in January 2014. Six months later, in August 2014, the Isle of Man proceedings were recognized in Canada as a "foreign main proceeding" for the purposes of Part XIII of the *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27, s.2 ("**BIA**").

3. msi Spergel inc. was appointed receiver of BBIL in Canada ("**Receiver**"). The Receiver's mandate was expanded in October 2014 to include certain investigatory authority in respect of five corporations (and six business names/styles) believed to be closely associated with BBIL, and which had been identified by the Royal Canadian Mounted Police ("**RCMP**"), as a member of the Toronto Police Services Financial Crime Unit, as being integral to an alleged Banners Broker (defined below) criminal enterprise in which BBIL was a central part.

4. This is the Receiver's third report to the court ("**Third Report**"). It follows and may be read in conjunction with the:

(a) **Receiver's First Report** (dated October 2, 2014)

This report described the Receiver's actions upon appointment, including initial inquiries and the discovery of a criminal investigation in respect of Banners Broker. The report was filed in support of a request for additional investigatory powers extending to certain specifically identified associated corporations.

A copy of the Receiver's First Report, without exhibits, is attached as **Appendix "A"**.

(b) **Receiver's Second Report** (dated January 12, 2015)

This report was filed in support of the Receiver's motion for an order restricting the disposition of certain monies and credits held by electronic payment processors, which monies were then frozen by *ex parte* Restraint Orders granted in the context of the criminal investigation.

A copy of the Receiver's Second Report, without exhibits, is attached as **Appendix "B"**.

5. As described in the balance of this report, much progress has been made in recent months in this proceeding and the companion foreign proceeding. The Receiver accordingly believes that it is an appropriate time to report to the Court and creditors and seek approval of its actions, activities and accounts.

6. This Third Report is filed in support of a motion for or an order:

- (a) approving the Third Report and the conduct and activities of the Receiver as set out herein;
- (b) authorizing and approving the terms of a settlement between the Receiver and 2341620 Ontario Corporation ("**234**") in respect of the settlement of claims by the Receiver against 234 in relation to the Bayview Property (as defined herein);
- (c) granting the Receiver certain additional investigatory authority over the following corporations that are believed to have received significant transfers of funds from Banners Broker and to have played similar roles in Banners Broker as the Associated Corporations (as defined herein):
  - (i) 8643989 Canada Inc. o/a Dixit Consortium Inc. ("**Dixit Consortium**"); and
  - (ii) Dreamscape Ventures Ltd. ("**Dreamscape**");
- (d) granting a sealing order with respect to Confidential Appendices "P" and "Q" to this Third Report;

- (e) amending the Supplemental Order (Foreign Main Recognition) dated August 22, 2014 to conform the Receiver's powers to those set out in the Commercial List Model Receivership Order;
- (f) approving the Receiver's interim statement of receipts and disbursements as at May 31, 2015;
- (g) approving the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), for services rendered from August 22, 2014 to May 31, 2015, as particularized in the affidavits of Phillip Gennis sworn July 22, 2015, and Larry Ellis sworn July 28, 2015, (collectively, the "**Fee Affidavits**");  
and
- (h) such further and other relief as this Honourable Court may deem just.

## II. Foreign Recognition Proceedings

7. As indicated, BBIL was central to a group of several related companies and service providers. Together they operated the "Banners Broker" online enterprise, a platform whereby registered members known as "affiliates" could advertise their businesses on websites within the Banners Broker network of publishers while, at the same time, earn revenues as an advertising publisher through specialized and targeted publisher sites created, designed and hosted by BBIL ("**Banners Broker**").

8. Pursuant to an Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls of the High Court of Justice of the Isle of Man, BBIL was placed into liquidation under section 174 of the *Companies Act 1931* of the Isle of Man on February 26, 2014. Miles Andrew Benham and Paul Robert Appleton were appointed as joint liquidators ("**Joint Liquidators**" with the Receiver, collectively, the "**Court Officers**") of BBIL ("**Isle of Man Proceedings**").

9. On August 22, 2014, on application of the Joint Liquidators, the Honorable Madam Justice Matheson, of the Ontario Superior Court of Justice (Commercial List) granted an order ("**Initial Recognition Order**"):

- (a) recognizing the Isle of Man Proceedings as a "foreign main proceeding" for the purposes of section 268 of the BIA;
- (b) recognizing the Joint Liquidators as the "foreign representative" ("**Foreign Representative**") of BBIL for the purposes of section 268 of the BIA; and
- (c) granting a stay of proceedings in respect of actions concerning BBIL's property, debts, liabilities or obligations.

10. Also on August 22, 2014, Justice Matheson issued a supplemental order (foreign main recognition) ("**Supplemental Order**"):

- (a) appointing the Receiver, as receiver of BBIL's assets, undertakings and properties, including the proceeds thereof ("**Property**");
- (b) empowering the Receiver to identify and realize upon the Property, including taking steps to access all information relating to BBIL's accounts at any financial institution;
- (c) authorizing the Receiver to conduct examinations of the former principals of BBIL, as well as any other persons that the Receiver reasonably believes may have knowledge of BBIL's trade, dealings and Property;
- (d) authorizing the Receiver to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request; and

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- (e) authorizing the Receiver to coordinate the administration and supervision of BBIL's assets and affairs with the Joint Liquidators as Foreign Representative of the Isle of Man Proceeding.

11. An important ground for the Canadian foreign recognition application, and the appointment of a Canadian receiver, was that BBIL appeared to have ownership and business connections to Canada, as well as financial dealings tied to Canada, that were deserving of investigation. These Canadian connections, as they were then understood, were detailed in the Affidavit of Paul Robert Appleton, in his capacity as Joint Liquidator of BBIL, sworn August 6, 2014 and filed with this court at the time that foreign recognition of the Isle of Man Proceeding was sought ("**JL Affidavit**"). A copy of the JL Affidavit (without exhibits) is attached hereto as **Appendix "C"**.

12. The Supplemental Order that appointed the Receiver provides the Receiver with the mandate to assist the Foreign Representative in the wind-up of BBIL, including the identification of and realization upon BBIL assets for the benefit of creditors. Consistent with the Model Receivership Order, the Receiver's powers in respect of BBIL extend to accessing all manner of relevant information, and the taking of possession of assets. Additionally, the Receiver is authorized to undertake examinations under oath of persons believed to have knowledge of the Banners Broker business, including the connections to Canada described in the JL Affidavit.

### **III. Receiver's Initial Activities and Orders Obtained**

#### **A. Notices**

13. As described in the First Report, the Receiver published court approved media notices, and established and activated an e-protocol URL: <http://www.spergel.ca/banners/>.

14. Banners Broker deactivated its entire social media presence shortly after these proceedings commenced. The corporate website (<http://www.bannersbroker.com>), Facebook and Twitter accounts have been inactive since in or around early August 2014.

**B. Discovery of Criminal Investigation and Restraint Orders**

15. In September 2014, the Receiver was made aware of criminal proceedings before the Ontario Court of Justice arising from a Toronto Police Services Financial Crime Unit investigation into Banners Broker's operations in Canada and Banners Broker principals, Christopher G. Smith ("**Smith**") and Rajiv Dixit ("**Dixit**").

16. Specifically, the Receiver obtained copies of several *ex parte* restraint orders ("**Criminal Restraint Orders**") obtained by the Ministry of the Attorney General, Crown Law Office-Criminal ("**Crown**"). The orders, issued pursuant to section 462.33 of the *Criminal Code of Canada*, froze funds held by third party electronic payment processors for accounts associated with Banners Broker.

17. The Receiver subsequently obtained copies of the affidavit evidence filed by the Crown in support of its application for the Criminal Restraint Orders. The evidence consisted of affidavits sworn by RCMP Constable Katie Judd on July 17, 2014 and July 28, 2014 ("**RCMP Affidavits**").

18. As explained in the First Report, the RCMP Affidavits detail the basis for what the RCMP investigators state is their reasonable belief that Smith and Dixit, through their operation of Banners Broker – which, as noted in the RCMP Affidavits, includes BBIL – have committed criminal offences related to the operation of a "pyramid scheme", fraud, possession and laundering of the proceeds of crime and criminal misrepresentations contrary to the *Competition Act*, R.S.C. 1985, c. C-34.

19. Constable Judd identified a number of other Canadian incorporated entities believed to be operated by Smith and/or Dixit and associated with BBIL and the Banners Broker business. The Joint Liquidators' independent investigations, conducted prior to the Receiver's review of the RCMP Affidavits, identified certain of the same parties as being associated with BBIL.

20. Specifically, the entities identified by the RCMP Affidavits include:

- (a) 2087360 Ontario Incorporated o/a Local Management Services ("**LMS**");
- (b) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited") ("**Parrot**");
- (c) 234;
- (d) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited") ("**Stellar Point**");
- (e) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited") ("**Dixit Holdings**");  
and
- (f) Any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "BannersMobile" or "Banners Broker Belize"

(collectively, the "**Associated Corporations**")

### **C. Receiver's Motion for Additional Investigative Authority**

21. In reliance in part on the RCMP Affidavits, the Receiver sought and obtained an order for, among other things, the grant of certain additional investigative authority in respect of the Associated Corporations ("**Additional Powers Motion**"). The motion was returned on October 15, 2014. The Receiver filed its First Report in support of this motion.

22. The Honourable Mr. Justice Newbould issued an Order ("**Further Supplemental Order**") granting the Receiver the requested additional investigative authority in respect of the

Associated Corporations on October 15, 2014. Attached hereto as **Appendix "D"** is a copy of the Further Supplemental Order.

23. The Further Supplemental Order requires persons with notice thereof to advise the Receiver of any books, documents, or other records related to the Associated Corporations in the person's possession or control, and to provide the Receiver with or allow the Receiver to make copies of such documents.

24. The Further Supplemental Order also approved the actions and activities of the Receiver as set out in the First Report. Accordingly, the Receiver's activities for the period August 22, 2014 to October 15, 2014 have been approved.

**D. Claim against 234**

25. In addition to seeking certain authority in relation to the Associated Corporations, the Additional Powers Motion also asserted a claim against the Associated Corporation, 234, particularly with respect to 234's ownership of a mixed use commercial/residential property at 1376 Bayview Avenue, Toronto ("**Bayview Property**").

26. By way of background, the Bayview Property was purchased by 234 for \$2,900,000 on March 19, 2013. Smith is the sole officer, director and shareholder of 234. The basis for the claim against 234 was, among other things, that the Bayview Property was purchased and/or improved with monies owing or belonging to BBIL.

27. From a procedural standpoint, the Foreign Representative sought and was granted leave to amend the within notice of application to assert a claim against 234 in respect of the Bayview Property. The Foreign Representative also sought and was granted a certificate of pending litigation in respect of the land. Attached hereto as Appendices "**E**", "**F**" and "**G**", respectively, are copies of the amended notice of application, the order granting leave to issue a certificate of pending litigation dated October 15, 2014, and the certificate of pending litigation.

### **E. Confidentiality Order**

28. In furtherance of its administration, the Receiver sought evidence and documentary production from BBIL principal and founder, Smith.

29. Smith, through counsel, raised confidentiality and other concerns having to do with the use of any information or documentation produced to the Receiver in the context of the receivership. The Receiver understands that Smith's concerns in this regard have to do with his desire to avoid having the evidence provided to the Receiver under the compulsion of the Supplemental Order and the Further Supplemental Order used in the context of any other court proceeding.

30. Smith's concerns were acknowledged and resolved in the form of an order of this court dated October 23, 2014, entitled "Order Restricting Possession, Publication, Handling, Duplication and Use of Transcript Documents and Information" ("**Confidentiality Order**"). A copy of the Confidentiality Order is attached as Exhibit "H".

### **F. Order for Continued Restraint of Payment Processor Monies**

31. The Criminal Restraint Orders, described in paragraph 16, above, statutorily expired six months after issuance.

32. By early January 2015, the Receiver had formed the view that the source of the restrained funds held in the payment processor accounts very likely derived from deposits/investments made by Banners Broker affiliates. The Receiver further believed, and continues to believe, that there had been significant inter-company transfers of affiliate-contributed funds between BBIL and the Associated Corporations. Moreover, and as discussed in the Receiver's Second Report, roughly half of funds received by Banners Broker from affiliates were not used to fund withdrawal requests by affiliates, resulting in tens of thousands of individual creditors.

33. In these circumstances, the Receiver has reason to believe that monies restrained by the Criminal Restraint Orders are properly claimable by creditors of BBIL and/or the Associated Corporations.

34. By motion returnable January 14, 2015, the Receiver brought a motion for an order that all monies held pursuant to the terms of the Criminal Restraint Orders (as defined in paragraph, 16, above) continue to be held pursuant to the terms of the Criminal Restraint Orders, and not be released without the written consent of the Receiver or further order of the court on notice to the Receiver. The motion was granted by order of the Honourable Mr. Justice Newbould made January 14, 2015 ("**Order: Restraint of Funds**"). A copy of the Order: Restraint of Funds is attached hereto as **Appendix "I"**.

35. The Order: Restraint of Funds provided that, effective as of the expiry date of each underlying Criminal Restraint Order, all money or credits held pursuant to such Criminal Restraint Order(s), be transferred to msi Spergel inc., in its capacity as court officer, to be held in a separate interest-bearing trust account, separate and apart from the receivership of BBIL, pending further order of this court.

36. Pursuant to the terms of the Order: Restraint of Funds, msi Spergel inc., in its capacity as court officer, received the following payments:

- (a) Beanstream Internet Commerce Inc. ("**Beanstream**"): CAD\$537,576.31 received on January 29, 2015;
- (b) SolidTrust Pay ("**STP**"): CAD\$104,260.51 received on February 11, 2015;
- (c) Mazarine Commerce Inc. o/a Payza.com ("**Payza**"): USD\$33,374.80 received on February 13, 2015; and
- (d) 6003061 Canada Inc. o/a UseMyServices ("**UMS**"): total of USD\$93,336.70 received on February 10, 2015, February 19, 2015, and March 6, 2015.

(Beanstream, STP, Payza and UMS are collectively referred to herein as the **"Payment Processors"**)

37. msi Spergel inc. has accordingly received a total of CAD\$126,711.50 and USD\$641,836.82 from the Payment Processors, which monies are and will remain invested in an interest-bearing trust account pending further order of this court (**"Restrained Funds"**).

38. The Receiver is satisfied that the Payment Processors have provided all Restrained Funds without deduction and have also produced documents reflecting the inflow of funds into the Payment Processor accounts and the outflow of funds to various entities and individuals.

#### **IV. Summary of Receiver Activities Since the Date of the First Report**

39. By way of summary, the Receiver's activities, working closely in coordination with the Foreign Representative, since the First Report was filed on October 2, 2014 include:

- (a) pursuing a claim against 234, including registering the certificate of pending litigation against title to the Bayview Property, further investigating and assessing the merits of the claim and entering into a settlement of the claim with 234, subject to final documentation and court approval;
- (b) negotiating and obtaining the Confidentiality Order on October 23, 2014, as described in paragraph 30, above;
- (c) taking all required steps, on an ongoing basis, to safeguard the Smith Examination Information (as defined in the Confidentiality Order) in accordance with the terms of the Confidentiality Order;
- (d) implementing the Order: Restraint of Funds, by liaising with the Payment Processors to secure receipt of all Restrained Funds, with such steps being taken by msi Spergel inc., as described in paragraphs 31 to 38, above;

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- (e) undertaking real property, corporate profile, internet, and other public record searches so as to better understand the trade, dealings, and property of the Associated Corporations, in accordance with the terms of the Further Supplemental Order;
- (f) conducting examinations under oath of several executive-level employees and service providers to BBIL and/or the Associated Corporations;
- (g) obtaining and reviewing information provided in answers to undertakings given at the examinations conducted;
- (h) general ongoing correspondence, meetings and discussion with counsel for Smith, Dixit (to a lesser extent), and counsel who have been engaged by one or other of the former Banners Broker employees and contractors who have attended examinations by counsel for the Receiver;
- (i) attending meetings, not under oath, with Smith, Dixit and alleged Banners Broker principal Kuldip Josun;
- (j) monitoring public aspects of the ongoing Banners Broker criminal investigation, including seeking production of relevant materials in the criminal court file;
- (k) corresponding with banks, trust companies and financial institutions in Canada and abroad in an effort to locate and secure BBIL assets and financial information relevant to BBIL and the Associated Corporations, to the extent permitted by the Supplemental Order and the Further Supplemental Order;

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- (l) corresponding with electronic payment processors in an effort to obtain disclosure of relevant account agreements, account transaction histories and supporting documentation;
- (m) working with Smith and his counsel to coordinate and secure his full and proactive cooperation in terms of assisting the Receiver and the Foreign Representative in fulfilling their mandate, including regular weekly meetings with Smith, and the receipt and review of all manner of Banners Broker-related information and documentation from Smith, in hard copy and electronic form;
- (n) the pursuit of relevant BBIL and Associated Corporation corporate records and legal files from these companies' lawyers, including considering and responding to various assertions of privilege and confidentiality over such records;
- (o) the pursuit of BBIL and Associated Corporation tax and accounting records from tax preparation and bookkeeping firms believed to have been involved in the creation and maintenance of such records;
- (p) the pursuit of inquiries in respect of, and the recovery of BBIL assets held by, BBIL parent company Monetize Group Inc. ("**MGI**"), a Belizean entity that was the recipient of tens of millions of dollars of affiliate contributions,
- (q) in conjunction with the Foreign Representative, the assembly, review and analysis of bank and accounting information, including bank statements provided by Canadian financial institutions for the Associated Corporations as well as information obtained with the extensive assistance of Smith regarding offshore accounts, with a view to reconstructing the source, inter-company transfer(s) and disposition of all monies contributed by the estimated tens of thousands of

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Banners Broker affiliates who may be creditors of BBIL and the Associated Corporations;

- (r) the receipt and direction of creditor claims and inquiries to the Foreign Representative, who currently has primary responsibility for managing claims and responding to creditor inquiries;
- (s) more generally, the coordination of all receivership administration efforts in respect of BBIL and the Associated Corporations with the Foreign Representative, including the sharing of information, accounting expertise and resources with the Foreign Representative;
- (t) working to recover, in conjunction with the Foreign Representative, and with the assistance of Smith, a USD\$1,999,873.04 deposit, which was held nominally for the account of MGI at Clover Investment Advisors Ltd., an investment firm in the Cayman Islands that was itself subject to an unrelated criminal investigation and formal insolvency proceeding;
- (u) correspondence, discussions and meetings with Allied Wallet, Inc., an online payment processing service that had substantial dealings with BBIL and that presently holds monies on account of Banners Broker estimated to be in the range of USD\$1.06 million;
- (v) the pursuit of account agreement(s), letters of instruction, bank account statements and transaction details from G Cube Media Inc., a service provider to Banners Broker used to coordinate receipts and disbursements to and from Banners Broker affiliates as well as "commission payments" to itself as a reseller for Banners Broker;

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- (w) working with former BBIL management (particularly Smith) and information obtained from Payment Processors to begin to assemble an accurate accounting of contributions received from affiliates, collections of funds by resellers from affiliates, "pay-outs" to (or withdrawals by) affiliates and fees collected by the payment processors;
- (x) reviewing the relationship between BBIL and Stellar Point. Stellar Point was Formerly named "Banners Broker Limited" and was renamed "Stellar Point Inc." in July 2012. This Associated Corporation was the primary worldwide service provider to Banners Broker up until August 2013. The Receiver is working to secure an accounting of payments made to Stellar Point by and on behalf of BBIL, and to understand the contractual or other basis for such payments;
- (y) identifying and considering the appropriateness of certain non-core business and investments activities undertaken by BBIL, the Associated Corporations and/or the former principals of Banners Broker and the extent to which the former principals used BBIL funds for such investments. The Receiver's objective is to determine whether such investments are realizable assets that ought to be pursued on behalf of creditors;
- (z) a review of BBIL and Associated Corporation business contracts, including, employment and consulting agreements, account agreements, reseller agreements and releases and indemnities;
- (aa) inquiries into the circumstances surrounding the October 2012 purchase and the March 2014 sale of a commercial property in Whitby, which property was jointly owned by two Associated Corporations and was, for a period of time, used in the operation of the Banners Broker business;

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- (bb) efforts to understand the extent to which BBIL and the Associated Corporations conducted business on the basis of cash and other undocumented, or partially documented, transactions and arrangements;
- (cc) the review and consideration of possible claims against Banners Broker re-sellers, being persons with responsibility for promoting and selling Banners Broker's business at a national or regional level around the world;
- (dd) the consideration of possible claims against individuals who may have received transfers of money, automobiles, gifts and/or payments for services not provided, that could potentially be attacked and set aside as fraudulent transfers;
- (ee) the investigation into whether or not certain persons associated with BBIL may have established bank accounts in foreign jurisdictions in an effort to hide amounts improperly withdrawn from the company; and
- (ff) the investigation into whether or not persons associated with BBIL may have converted monies improperly taken from affiliates by means of investing, either directly or indirectly, in residential real estate including by paying off and discharging mortgage(s), and/or financing the acquisition of property for no good or valid consideration.

40. Certain of the activities and inquiries of the Receiver are sensitive in nature. This is because the work that is involved is the assembly and assessment of evidence that may be used to pursue BBIL assets in circumstances where efforts may have been made to put such assets beyond the reach of creditors. For this reason, the Receiver's work in this regard has been described at a general level with particulars omitted. Additional details of the Receiver's investigation and recommendations/conclusions will be the subject of a future report to the

court. Additionally, or in the alternative, it may be that the Receiver will pursue proceedings by way of motions litigation or an action to assert an interest in assets that the Receiver believes should properly form part of the receivership administration.

41. As has been the case from the outset, the Receiver is not in a position to express an opinion as to whether or not BBIL (or the Banners Broker enterprise) was engaged in the operation of an illegal Ponzi and/or pyramid scheme, nor is it the Receiver's mandate to reach a conclusion on this point. It is important to note that although a criminal investigation is evidently ongoing, no charges have been laid.

42. The balance of this report provides additional details of the Receiver's ongoing efforts to secure BBIL and the Associated Corporations' books, records and accounts, as well as to recover assets in the name of BBIL, or properly belonging to BBIL but held in the name of the Associated Corporations or third parties. These actions are being undertaken with the support and assistance of the Foreign Representative, as is further described below.

**A. Efforts to Secure Books, Records, Accounting**

43. Securing BBIL and Associated Corporations' "Records" in accordance with the Receiver's court authority has proved difficult and time-consuming for the following reasons:

- (a) Banners Broker's business did not have a document management system, company owned servers or any other organized records retention system;
- (b) receipts and pay-outs, including affiliate debits and credits, were frequently handled non-systematically. Inter-company transfers were not recorded properly, or at all. Other payments were made in cash. Although transaction records exist at the financial institution end, there is no single source of Banners Broker maintained financial records or support documentation;

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- (c) Banners Broker wound down operations after the commencement of the Isle of Man Proceedings and the Receiver is advised by Smith that Banners Broker ceased operating on August 6, 2014. Employees were laid off, office space was vacated and such records as did exist became more difficult to locate and retrieve as a result;
- (d) Banners Broker's main service provider, the Associated Corporation, Stellar Point, ceased operating in or about October 2013. Such Stellar Point records as existed at that time became less accessible as a result;
- (e) the Receiver understands that Stellar Point was subject to an audit by the Canada Revenue Agency ("**CRA**"), resulting in certain records being turned over to CRA and becoming unavailable as a result;
- (f) Banners Broker entities did not utilize a professional accounting firm or have an in-house accounting professional. Neither BBIL nor many of the Associated Corporations filed tax returns as may have been required during the period that is of interest to the Receiver;
- (g) as further discussed below, the police executed eight search warrants in February 2015 to assist in their investigation. Thousands of documents and over one hundred computer data and storage devices were seized and are currently not available to the Receiver for the purposes of its investigation;
- (h) in September 2013, the police made application for and obtained eight Banners Broker-related production orders under section 487.012 of the *Criminal Code*. The production orders were served on Canadian banks and financial institutions, including the Royal Bank of Canada, Scotia Bank, TD Bank Group, Canadian Imperial Bank of Commerce and HSBC Bank Canada as well as payment

processors STP and Payza. The Receiver's document production requests followed these earlier production orders, creating some uncertainty within the recipient financial institution as to how the several orders related to each other and whether or not additional work was required to respond to the Receiver. Such concerns have had to be addressed by the Receiver and its counsel on an institution-by-institution basis;

- (h) certain off-shore banks, payment processors and third parties not subject to this court's jurisdiction have declined to recognize the Receiver's authority and have failed or refused to provide documents to the Receiver; and
- (i) BBIL and the Associated Corporations have instructed counsel to assert claims of privilege over certain files in the possession of their lawyers. These privilege claims have yet to be particularized or resolved, resulting in the underlying records being unavailable to the Receiver for the time being.

44. Notwithstanding the challenges identified above, the Receiver has diligently pursued production of relevant Banners Broker records. In the months following its appointment, the Receiver has made and pursued written documentary production requests of all depository Schedule I, II and III financial institutions in Canada. The production requests made were initially specific to BBIL, but were subsequently expanded to include financial records and accounts in respect of the Associated Corporations following the granting of the Further Supplementary Order.

45. Similar document production requests, including for relevant account agreements, account statements and transaction histories, were also made of a number of offshore banks and financial institutions, as well as online payment processing companies in Canada and abroad.

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46. In total, the Receiver has made written requests for productions to approximately 100 financial institutions, 9 payment processors and 46 other third parties (including service providers, professional services firms, individuals and Associated Corporations connected to Banners Broker).

47. To date the Receiver has received financial records that are responsive to its inquiries from the following Canadian financial institutions:

- (a) CIBC;
- (b) TD Canada Trust; and
- (c) Royal Bank of Canada.

48. The Receiver has obtained information and/or financial records that are responsive to its inquiries from the following offshore banks and foreign financial institutions:

- (a) Via Bank Ltd (St. Lucia) ("**Via Bank**");
- (b) Choice Bank Limited (Belize) ("**Choice Bank**"); and
- (c) Clover Investment Advisors Ltd (Cayman Islands) ("**Clover**").

49. The Receiver has received and/or reviewed financial records that are responsive to its inquiries from the following payment processing companies and other Banners Broker service providers:

- (a) Allied Wallet, Inc.;
- (b) STP;
- (c) Beanstream;
- (d) Payza;
- (e) UMS;

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- (f) Aramor Payments;
- (g) Vector Card Services Limited; and
- (h) G Cube Media Inc.

50. In aggregate, the banks, payment processors and other third parties contacted have produced hundreds of thousands of pages of documents to the Receiver.

51. As would be expected, the financial information provided to the Receiver is of varying degrees of completeness and frequently raises additional questions requiring follow up with the relevant producing party. Focusing first on larger and related party transactions, the Receiver has and continues to seek additional explanation and supporting documentation where it considers it appropriate to do so in its preparation of the Flow of Funds Analysis, as described below, and for the purposes of identifying potential realizations.

#### **B. Flow of Funds Analysis**

52. Working closely with the Foreign Representative, the Receiver has made it a priority to prepare a global "Flow of Funds Analysis" sufficient to understand how affiliate contributions were received and disbursed over the period of Banners Broker's global operations ("**Flow of Funds Analysis**"). The analysis is based primarily on third party provided financial information in addition to information obtained from BBIL and related parties and is designed to understand how the monies that were contributed by affiliates to Banners Broker were returned to them, invested, expended, diverted or otherwise utilized.

53. The Flow of Funds Analysis is currently incomplete. The Receiver and Joint Liquidators continue to seek further information from financial institutions, payment processors and third parties to finalize the Flow of Funds Analysis on an expedited basis.

54. Once complete, the Receiver anticipates that the Flow of Funds analysis will serve three primary purposes:

- (a) to provide an overall accounting of Banners Brokers operations to creditors and the courts in Canada and the Isle of Man;
- (b) to allow the Receiver and the Foreign Representative to identify additional BBIL assets or claims that may be appropriate for realization;
- (c) to provide evidence in respect of any claims litigation that the Receiver and/or the Foreign Representative may elect to pursue against persons believed to have benefited improperly from Banners Broker.

55. **Confidential Appendix “P”** to this Report sets out the Receiver and Foreign Representative’s preliminary conclusions with respect to the Flow of Funds Analysis. This Confidential Appendix provides a reasonable estimate of total funds received from affiliates, together with how such funds were utilized. The banks, payment processors, and account holders that received monies are specifically identified.

56. By way of overview, it appears that something in the order of USD\$152.35 million was received from affiliates, with approximately USD\$75.77 million, representing approximately 50% of the monies being returned to affiliates in the form of “pay-outs”. Notable payments made to third parties include:

- (a) At least USD\$18.38 million paid to BBIL principals and Associated Corporations, particularly Stellar Point;
- (b) Approximately USD\$11.05 million in fees paid to payment processors; and

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- (c) Approximately USD\$9.66 million paid to Banners Broker resellers/independent contractors.<sup>1</sup>

Other disbursements for various expenses in the daily operation of the business and other third party expenses are in the range of USD\$12.7 million. Efforts are underway to trace and account for the balance of unverified payments, which amount to roughly USD\$9.98 million.

57. The Flow of Funds analysis, as well as the summary at Confidential Appendix "P", was prepared in part based on Smith Examination Information. For this reason, and consistent with the terms of the Confidentiality Order, the Receiver respectfully requests that the appendix be treated as confidential and sealed.

### C. Interviews and Examinations of Key Witnesses

58. In the process of seeking and obtaining foreign recognition of the Isle of Man Proceedings, the Receiver identified the following three individuals as being primary actors in Banners Broker's global business and operations ("**Principals**"):

(a) **Christopher G. Smith**

The concept of Banners Broker was created by Smith in October 2010. He is the founder of Banners Broker, President and beneficial owner of BBIL and sole officer and director of the Associated Corporations, 234 and Parrot Marketing. Smith is also the sole shareholder, director and officer of MGI, the Belizean corporation which is the ultimate parent company of BBIL. Smith appears to have also had *de facto* control, although not as a director or officer, over the Associated Corporation, LMS, which was used as an operating entity in Canada.

Smith is one of the subjects of the ongoing criminal investigation.

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<sup>1</sup> Numbers referred to herein with respect to the preliminary Flow of Funds Analysis are in draft form and are subject to further review by the Receiver.

(b) **Rajiv Dixit**

Dixit is the owner, President and Chief Executive Officer of Stellar Point (formerly Banners Broker Limited). The Receiver understands that Stellar Point had global responsibility for customer-facing aspects of the Banners Broker business, including customer service/support, training, marketing, web development and programming functions up until the Fall of 2013. For a period of time from approximately December 2011 to June 2012, Dixit, through Stellar Point, was also the Banners Broker independent contractor or "reseller" for Canada. Stellar Point was the author of the Banners Broker "Success Manual". Dixit is also the sole officer and director of the Associated Corporation, Dixit Holdings, which was used as a corporate vehicle for the purchase of real property, including Banners Broker offices in Whitby. At various times, Dixit has described himself as Chief Operating Officer, Compliance Officer, General Manager and Senior Advisor to BBIL.

Dixit is one of the subjects of the ongoing police investigation.

(c) **Kuldip Josun**

Josun was involved in Banners Broker's business from its inception until July 2012 when he was terminated by Smith and Dixit for allegedly promoting another multi-level marketing company to Banners Broker affiliates. It has also been alleged that Josun is responsible for embezzling in excess of \$4 million from the business. The Receiver understands that while employed at Banners Broker, Josun acted as the global head of sales and marketing for Banners Broker and travelled the world on behalf of and as the "face" of the business. Josun appears to have been particularly active in recruiting affiliates and resellers in Europe.

59. The Receiver contacted the Principals (or their counsel, if retained) in the weeks following the commencement of these proceedings. The purpose of the contact was to attempt to schedule in-person meetings to discuss Banners Broker's business. With a view to initiating an early and open dialogue, the Receiver indicated that it was open to "on the record" or "off the record" meetings.

60. Each of the Principals accepted the Receiver's invitation to meet.

61. Smith, with counsel in attendance, first met with the Receiver and the Foreign Representative in Toronto on December 3 and 4, 2014. The terms of this meeting were that it would be off the record.

62. Dixit, with counsel in attendance, met with the Receiver and the Foreign Representative in Toronto on December 1, 2014. This was also an off the record meeting.

63. Josun met with the Receiver and the Foreign Representative on December 2, 2014. He attended without counsel. As was the case with Smith and Dixit, this initial meeting was also off the record.

64. The meetings with Dixit and Josun ended without a mutual agreement to hold further meetings.

65. Following and building upon the Receiver's interviews with the Principals, the Receiver has conducted interviews and/or examinations under oath with eight other individuals closely associated with and believed to have knowledge of Banners Broker. Specifically:

(a) **John Rock:** Regulatory Compliance Consultant to BBIL and/or Stellar Point (Interviewed on December 2, 2014);

(b) **Stephanie Schlacht:** Executive Assistant to Kuldip Josun (May 2012 to July 2012); Executive Assistant to Rajiv Dixit (July 2012 to August 2013) (Examined on April 29 and June 11, 2015);

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- (c) **Tara Reeves (née Josun):** Customer Service Representative at BBIL and Staff Trainer at Stellar Point (Examined on February 26, 2015);
- (d) **Robert Pirie (a.k.a. "Ron Anderson"):** Executive Assistant to the Director of Human Resources and Training at Stellar Point (Examined on February 25, 2015);
- (e) **Lorenzo Guarini:** Vice President of Stellar Point (Examined on April 21, 2015);
- (f) **Kelly Stinson:** Director of 8136645 Canada Limited (shareholder of Stellar Point) (Examined on April 21, 2015);
- (g) **Maxwell Morgan:** CEO of Aramor Payments, a payment processor solutions company engaged by Stellar Point and/or BBIL (Examined on April 13 and May 29, 2015);
- (h) **Mary Febbrini:** former employee of Liberty Tax Services (Whitby Franchise) (Interviewed on January 20, 2015); and
- (i) **Harris Snyder:** former Banners Broker Computer Programmer (Interviewed on November 24, 2014).

66. Excepting Snyder, Rock and Febbrini, the examinations indicated were conducted under oath in the presence of an official examiner, with transcripts being available. The Receiver believes that each of the examinations advanced the receivership administration in that it provided an additional and unique perspective on the Banners Broker business, the role of the Principals and potential sources of realization for creditors. Undertakings to provide additional information were obtained at all interviews and examinations and the Receiver is following up to ensure that such undertakings are fulfilled. Every person who has been examined to date has also agreed to make themselves available to re-attend to be further examined (particularly on answers to undertakings) and/or to assist the Receiver in a more informal capacity.

67. The Receiver and Foreign Representative are reviewing all of the information, documents and answers to undertakings obtained at the examinations and interviews conducted. It is anticipated that examinations will be scheduled of five to ten additional persons who are considered to be knowledgeable of Banners Broker's business, particularly record keeping and accounting functions.

68. The Receiver's objectives, both in terms of oral and document discovery, are to:

- (a) obtain information sufficient to complete the Flow of Funds Analysis with a reasonable degree of confidence in its accuracy;
- (b) test the veracity of the Smith Examination Information; and
- (c) assess and prioritize potential receivership realizations.

**D. Smith's Co-operation with the Receiver**

69. The Receiver's December 3 and 4, 2014 meeting with Smith concluded with an understanding that the parties would work towards setting terms upon which Smith would provide his complete and unrestricted cooperation and assistance to the Receiver.

70. Between December 2014 and January 2015, the Receiver and Smith, through counsel, negotiated and agreed upon principles of cooperation and assistance whereby Smith would proactively assist the Receiver in the fulfillment of its mandate, and the Receiver, upon being satisfied as to the nature and extent of Smith's cooperation, would acknowledge Smith's assistance. This understanding is embodied in part by the terms of the Confidentiality Order which, as indicated, provides a degree of protection to Smith Examination Information (as defined in the Confidentiality Order).

71. To date, Smith, both in person and through counsel, has provided all requested assistance to the Court Officers. Specifically, he has:

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- (a) agreed upon the terms of the Confidentiality Order, such that it issued on consent;
- (b) met with the Court Officers on December 3 and 4, 2014, and provided information that was of great assistance to them in gaining a better understanding of Banners Broker's business and operations;
- (c) provided a series of undertakings at the December 3 and 4, 2014 meeting to locate and produce BBIL and Associated Corporation Records, including foreign bank and payment processor records that would not otherwise be available to the Court Officers without significant additional time and expense, including instituting proceedings in foreign jurisdictions;
- (d) subsequently, agreed to provide disclosure, to the Receiver's satisfaction, of personal, related party and family assets, such that the Receiver could begin to assess whether such assets were potentially subject to claims of the Court Officers on behalf of creditors of Banners Broker;
- (e) attended weekly meetings, with and without counsel, at the office of counsel for the Receiver, to be interviewed with respect to all aspects of the Banners Broker business that are of interest to the Receiver. In this context, Smith has provided in excess of 100 additional undertakings to provide information and documentation. Most of these undertakings have been answered, while others remain outstanding;
- (f) provided what the Receiver believes to be complete disclosure in respect of 234's ownership of the Bayview Property. Smith Examination Information has enabled the Receiver to enter into a settlement of the Receiver's claim against

234, as asserted in the Amended Notice of Application, subject to court approval, and as further described below;

- (g) provided the Receiver with copies of the Banners Broker back-end database in various stages to allow it to review cash receipts that were otherwise undocumented, as well as confirm the approximate gross total receipts from affiliates; and
- (h) constructively engaged with the Receiver, and worked towards terms upon which the Court Officers and Smith may fully and finally resolve all issues between them in the form of a settlement, for which court approval will eventually be sought if appropriate.

**E. Production Motions: Documents Seized by Police**

72. The Receiver was advised by Smith in March 2015 that the police had recently executed a series of search warrants in connection with their ongoing investigation into Banners Broker ("**Search Warrants**"). Smith's advice prompted the Receiver to make certain additional inquiries into the progress of the criminal investigation.

73. Information in respect of certain aspects of the police investigation is public in the sense that copies of affidavits filed, and orders issued, can be obtained through the Ontario Court of Justice Office at Old City Hall, Toronto. Other portions of the court file are sealed and cannot be reviewed.

74. Recognizing that portions of the criminal court file are public, counsel for the Receiver has attended at the Court Office from time to time in an effort to monitor the progress of the police investigation. It is through these attendances that the Receiver has been able to obtain the Restraint Orders, the RCMP Affidavits and the Production Orders.

75. A publically available affidavit, in the form of a "Report to a Justice" sworn by Detective Constable Jason Onami on April 21, 2015, has provided the Receiver with additional information as to the Search Warrants. Constable Onami swears that eight search warrants were executed in the early morning hours of February 24, 2015. The search warrants were executed at the properties of Smith and Dixit, including personal automobiles, residences and places of business.

76. A further search warrant was executed on February 25, 2015 on a seized compact disc obtained from former Banners Broker computer programmer Harris Snyder ("**Snyder**"). The disc is described in the Report to a Justice as containing "a computer program that was designed by Snyder to assist Smith and Dixit in the operation of their suspected fraudulent business".

77. Having met with Snyder in November 2014, the Receiver has obtained a copy of the computer program that would appear to have been the subject of the February 25, 2015 search warrant.

78. The Report to a Justice annexes six evidence registers, which are essentially spreadsheet listings providing particulars of property seized in the course of the execution of the Search Warrants. Based on a review of the Report to a Justice, and discussions with counsel for Smith, the Receiver determined it was prudent to bring an application to the Ontario Court of Justice, Old City Hall, on May 4, 2015. The purpose of this application was to seek production of a binder of certain documents believed to contain real estate information in respect of the Bayview Property ("**Bayview Documents**"). The application was made pursuant to section 490(15) of the *Criminal Code*, with the consent of the Crown, Smith, as well as Smith's company, 234, the owner of the Bayview Property.

79. Justice Omatsu issued an Order dated May 4, 2015 authorizing production of copies of the Bayview Documents ("**Reproduction Order**") to the Receiver. A copy of the Reproduction Order is attached as **Appendix "J"** to this Report.

80. Having considered the Report to a Justice and evidence registers further, the Receiver brought a second application to the Ontario Court of Justice, initially returnable on July 9, 2015, to seek copies of the balance of the documents obtained by the police pursuant to the executed Search Warrants. The basis of the application is that the documents sought would appear to relate to BBIL and the Associated Corporations, and it is anticipated that they will assist the Receiver in fulfilling its court-authorized mandate.

81. The Receiver's July 9 application was made on notice to the Crown, Smith and Dixit. Smith has raised privilege and relevance issues in relation to the application and asked that Smith or his representative have an opportunity to review all seized documents and computer storage devices before they are made available to the Receiver. Dixit has raised similar concerns.

82. The Receiver will work with Smith, Dixit and the Crown (as may be appropriate) to try to agree on terms whereby the application can proceed on consent. The application has been adjourned *sine die* to be returned on a future date, as may be appropriate.

83. If necessary, the parties to the application may return to court to seek approval of a form of document access protocol that would more formally address any legitimate concerns in respect of the Receiver having access to the seized documents.

#### **F. Law Firm Records and Privilege Claims**

84. Certain of the Receiver's document production requests have been directed to counsel (or former counsel) for BBIL and the Associated Corporations. Such counsel are as follows:

(a) **Aird & Berlis LLP ("A&B")**

A&B acted for BBIL and 234. It appears that A&B may have also acted for Associated Corporations, LMS and Parrot Marketing as well as the ultimate parent company, MGI. A&B has also acted for Smith, personally.

(b) **Macdonald Sager Manis LLP (“MSM”)**

MSM acted for Dixit, personally, as well as Associated Corporations, Stellar Point and Dixit Holdings.

85. In furtherance of an initial document production request, the Receiver attended at MSM's office on February 2, 2015 and met with lawyers Howard Manis and David Gray. The purpose of the meeting was to try to better understand the nature and scope of MSM's Banners Broker related retainer(s), and to assess to what extent law files may be relevant and could be made available to the Receiver. In the context of this meeting, MSM provided the Receiver with a total of 67 MSM invoices documenting legal services performed over a 20 month period between February 2013 and December 2014. The invoices document in excess of \$210,000 in billings.

86. At the initial meeting with MSM, the Receiver was advised that privilege claims may be made in respect of MSM legal files.

87. As a follow up to the meeting with MSM, the Receiver corresponded with Messrs. Manis and Gray on May 4, 2015, and sought production of a large number of apparently relevant Records, most of which were specifically referenced in one or more of the 67 MSM account statements but not provided in response to the initial document requests made of MSM. The documents requested included Associated Corporation financial statements and numerous contracts and correspondence apparently related to the business of Banners Broker, Stellar Point and the Associated Corporations. A copy of the Receiver's May 4, 2015 correspondence to MSM is attached as **Appendix “K”**.

88. MSM responded to the Receiver's May 4 correspondence by email dated June 5, 2015. MSM advised that while they were prepared to cooperate with the Receiver, they had been instructed in writing not to release any files beyond what had already been disclosed. The Receiver was further advised that Dixit's litigation counsel in this proceeding, Esmail Mehrabi,

would be bringing a motion in regards to the Receiver's Records production requests of MSM. Mr. Mehrabi was copied on MSM's June 5 email and there followed an email exchange with counsel for the Receiver wherein the parties' respective positions were set out in more detail. For completeness, a copy of the relevant email exchange is attached as **Appendix "L"**.

89. Counsel for the Receiver has had at least one discussion with Mr. Mehrabi subsequent to the June 5 email exchange. While the Receiver is prepared to work with MSM and Mr. Mehrabi in an effort to resolve any of Dixit's concerns regarding production of documents to the Receiver, it may be that certain issues, particularly privilege issues, will need to be brought forward to the court for determination. To date, Dixit's counsel has not particularized the nature and basis of any privilege claims as they may relate to the Records requested by the Receiver in the Receiver's May 4 letter to MSM.

90. The Receiver's highest level priorities have not included the pursuit of production of law firm records in respect of BBIL and the Associated Corporations. The Receiver has made requests, however, for all relevant law files, and is assessing how and when to most efficiently address any privilege or confidentiality issues raised by such production requests. It would appear likely, however, that these issues will be the subject of a further and more detailed report to the court, which report will be accompanied by recommendations and a request for such as relief as may be appropriate.

91. In the meantime, and as indicated, the Receiver is prepared to continue to discuss production of law firm records with both A&B and MSM and determine if further progress can be made without the involvement of the court.

#### **V. Request for Additional Investigatory Authority in Respect of Dixit Consortium and Dreamscape**

92. As explained above, in October 2014 the Receiver sought and was granted certain limited investigatory authority in respect of five Banners Broker Associated Corporations. The

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grounds for the order obtained was, among other things, that the companies were owned and controlled by the same principals as BBIL, and had been used by them interchangeably in furtherance of the Banners Broker enterprise which is alleged by the Crown to have been a fraudulent pyramid scheme or Ponzi scheme.

93. In the course of its more recent investigation and the preparation of the Flow of Funds Analysis, the Receiver has determined that the following two additional Dixit controlled companies had Banners Broker related dealings:

- (a) Dixit Consortium.; and
- (b) Dreamscape.

94. As with two of the five Associated Corporations – namely, Dixit Holdings and Stellar Point – Dixit Consortium and Dreamscape are believed to be owned and directed by Dixit.

95. Dixit Consortium was incorporated on September 24, 2013 with a registered office address of 150 York Street, Suite 800, Toronto, Ontario. This address is the office of the law firm, MSM, who, as noted above at paragraph 84, were also counsel to Dixit, Stellar Point and Dixit Holdings in connection with Banners Broker related matters, as detailed herein. Industry Canada corporate search reports indicate that Dixit was a director and that the company was dissolved on March 25, 2015.

96. Based on the Flow of Funds Analysis completed to date, the Receiver believes that Dixit Consortium received over \$270,500 from Associated Corporations Dixit Holdings and Stellar Point between October 2013 and April 2014. Dixit Consortium was party to over twenty intercompany transfers during this period. The Receiver has not located any account entries or notations, or other Associated Corporation records, that would provide an explanation or business rationale for these transfers, and is accordingly concerned that there may be other unexplained transfers of monies to Dixit Consortium that ought to be identified and reviewed to

determine whether such transfers were appropriate. The Receiver also believes that Dixit Consortium had Canadian banking relationships, however, efforts to pursue Banners Broker receipts in respect of these relevant transactions have been unsuccessful due to the lack of express investigatory authority over Dixit Consortium.

97. The jurisdiction and incorporation date of Dreamscape is not known. Documents obtained by the Receiver suggest that the company had a mailing address at 614 Stewart Street, Whitby, Ontario – the same address listed for Dixit in the corporate profile report for Dixit Holdings.

98. Dreamscape invoiced Banners Broker for consulting and management services similar to Dixit's other company, Stellar Point, and Dixit directed that funds be wired to offshore accounts in Cyprus and the British Virgin Islands. Between June and October 2013, Dreamscape appears to have made transfers to the Associated Corporations, Parrot Marketing (\$343,787 between June and August 2013) and Dixit Holdings (\$416,521.62 between September and October 2013), without any recorded explanation for services rendered. The Receiver believes this may have been done by Dreamscape to suggest that Parrot Marketing and Dixit Holdings had customer relationships independent of BBIL so as to create an illusion of "arm's length" dealings.

99. Choice Bank (Belize) records from BBIL parent company, MGI, disclose that Dreamscape was paid USD\$1,050,000 by way of eight wire transfers across a seven month period in late 2013. The MGI account in question was established to receive affiliate contributed funds in the months following the closure of BBIL's Isle of Man account.

100. The transfers to Dixit Consortium and Dreamscape referenced above are significant in dollar value, totaling in excess of \$1.5 million. As a general matter, the nature and timing of the dealings are indicative of a level of involvement in the Banners Broker enterprise consistent with that of the Associated Corporations. They are all owned and controlled by the same BBIL

Principals and were all to one degree or another across transactions that essentially moved affiliate funding around between Banners Broker offshore banks, service providers, payment processors and apparent personal holding companies.

101. Access to independently produced third party financial information in respect of Dixit Consortium and Dreamscape's dealings with BBIL and the Associated Corporations is important for the purposes of completion of a timely and accurate Flow of Funds Analysis. The dollar amounts are material such that it will not be possible for the Receiver to fully understand how affiliate contributions were paid forward and disbursed without such additional financial information. This additional information will assist in the identification and recovery of assets properly claimable by the Receiver on behalf of BBIL creditors.

102. In the circumstances of this case, the Receiver's strong preference is to obtain Banners Broker related business and financial information from independent third party financial institutions and service providers rather than rely on the former principals of the Banners Broker to produce records. Third party produced information can likely be more efficiently obtained and will be reliable and complete. For this reason, and given that the Receiver does not currently enjoy the same level of cooperation from Dixit as with Smith, the Receiver has not as yet made any specific requests of Dixit in respect of Dixit Consortium and/or Dreamscape. Dixit is, however, on notice of this motion.

103. Dixit did not oppose the Receiver's request to have limited investigatory authority in respect of Dixit Holdings and Stellar Point, or the other Associated Corporations. The Receiver respectfully seeks an order providing it with the ability to make the same sorts of Banners Broker related inquiries in respect of Dixit Consortium and Dreamscape as may already be made in respect of the Associated Corporations.

## VI. Asset Recoveries

### A. Settlement of 234 Claim

104. In the course of its investigations detailed above with respect to the business of BBIL and the Associated Corporations, the Receiver and the Foreign Representative determined that a cause of action existed as against 234 ("**234 Claim**") with respect to 234's use of funds properly owing to BBIL for the purchase of assets, including real property, in Canada.

105. In its Additional Powers Motion, the Receiver obtained court approval to assert the 234 Claim by:

- (a) issuing an Amended Notice of Application including the assertion of a claim against 234; and
- (b) registering a certificate of pending litigation against title to the Bayview Property, which is owned by 234;

both of which were done pursuant to Orders issued by Justice Newbould on October 15, 2014.

106. Respecting the confidentiality of the Smith Examination Information, the Receiver wishes to again emphasize that the information and documentary disclosure received from Smith over the course of the last six months has been extensive. The information extends beyond BBIL to each of the Associated Corporations. The Receiver and the Joint Liquidators have met regularly with Smith, upwards of twenty times in total. Many of these meetings have focused on 234, its role within Banners Broker and 234's company assets and liabilities.

107. Smith has cooperated fully with the Receiver as detailed in paragraphs 69 to 71 of the Report. Because Smith is the sole owner of 234, and the documentation in respect of 234 is readily available, the Receiver and Smith have made it a priority to attempt to settle the Receiver's claims against 234.

108. Smith's current counsel, A&B, acted for 234 at all times and was accordingly also in a position to provide documentation in relation to the company and the circumstances in which the Bayview Property was acquired. On Smith's instruction, A&B has provided such information, which the Receiver has reviewed. The Receiver and its counsel have also met with A&B to discuss the acquisition, financing and views on the legal and beneficial ownership of the Bayview Property and the Receiver's claims against 234 in respect of the land.

109. Subject to court approval, the Receiver has recently reached a settlement of the 234 Claim relative to the Bayview Property whereby 234 will pay approximately \$2,250,000 (subject to adjustments) to the Receiver in exchange for a release (limited to the Receiver's claim in respect of the Bayview Property) and the discharge of the certificate of pending litigation currently registered against title to the Bayview Property ("**234 Settlement**"). In order to facilitate the 234 Settlement, an order discharging and vacating the CPL from title to the Bayview Property was made on July 30, 2015, on the consent of Smith and 234.

110. In assessing the 234 Settlement, the Receiver considered, among other things, the following:

- (a) the fact that the Receiver has what it believes to be complete and accurate information in respect of the acquisition, the financing, and the use of the Bayview Property, with such information including the cooperation of both the owner of the Bayview Property, and the owner's counsel, which law firm has acted for the owner at all relevant times;
- (b) the costs and risks of pursuing the 234 Claim, absent settlement, including the possibility of lengthy contested litigation and appeals, all of which could take place during a period of time in which the Bayview Property was wasting, or otherwise incurring carrying costs and suboptimal income;

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- (c) the fact that there was a need within this otherwise complex international insolvency proceeding for the Receiver to act practically and to prioritize recovery opportunities, such that simpler local issues could be addressed first and efficiently;
- (d) the fact that the 234 Settlement generates a substantial, early, and relatively low cost recovery for the Receiver, the Foreign Representative and creditors;
- (e) the fact that the 234 Settlement builds on the significant level of cooperation that the Court Officers have received from Smith, and is possibly a precedent for negotiating and seeking approval of further, more expansive settlement agreements with Smith and others. In this regard, and as noted above, the Receiver is actively engaged with Smith and his counsel in worldwide asset recovery efforts, and to the extent that such efforts prove successful it may be that further approvals of compromises will be sought; and
- (e) the fact that the Foreign Representative, and its instructing Committee of Inspection, support the 234 Settlement.

111. The Receiver is of the view that the 234 Settlement is a fair and commercially reasonable compromise of claims in the circumstances. In this regard the agreement offers the following advantages:

- (a) it brings a relatively early and cost-efficient closure to the 234 Claim;
- (b) it avoids ongoing professional fees in relation to 234 and the Bayview Property;
- (c) it provides a source of recovery and means of funding for receivership administration costs and potential distributions to creditors; and
- (d) it advances a conclusion of the overall receivership investigation and administration.

## B. Clover Funds

112. In the course of making BBIL payment processor related inquiries, the Receiver and the Foreign Representative learned that BBIL had an account with Allied Wallet, an international payment services provider.

113. An analysis of BBIL account transaction details indicated that on March 18, 2014, BBIL instructed Allied Wallet to transfer \$1,999,873.04 ("**Clover Funds**") to Via Bank, a St. Lucian bank, for the benefit of BBIL's parent company, MGI. The transaction was to be processed through Via Bank financial intermediary, Clover. Allied Wallet transferred the funds to Clover at the direction of BBIL.

114. Subsequent inquiries revealed Clover to be an investment advisory firm in the Cayman Islands that was subject to regulatory and criminal investigations related to alleged money laundering. Further, the Receiver was advised by Via Bank that Clover was itself subject to insolvency proceedings in the Cayman Islands.

115. It appears that upon the commencement of the Clover insolvency proceedings, the Clover Funds were restrained such that they were not forwarded on to the MGI account held with Via Bank.

116. With the assistance of Smith and Via Bank, the Receiver and the Foreign Representative worked over a four month period to recover the Clover Funds. Such work culminated in the submission, on April 28, 2015, of a formal claim to the Clover Funds in the form of a report authored by the Receiver and submitted to the Cayman Island Department of Public Prosecution, with a copy to Michael Pearson and Andrew Childe in their capacity as Official Liquidators of Clover ("**Clover Funds Report**"). A complete copy of the Clover Funds Report is attached as **Confidential Appendix "Q"**.

117. The Clover Funds Report provides certain additional particulars in respect of the Receiver's investigations in respect of, and claim to, the Clover Funds.

118. The Receiver's claim to the Clover Funds was submitted as being made by and on behalf of the Joint Liquidators, as well as the Receiver. The claim was admitted and, on May 6, 2015, the Clover Funds were remitted to the Joint Liquidators in accordance with their written direction.

**C. St. Lucian Funds**

119. Also in the course of making initial inquiries of financial institutions, the Receiver and the Foreign Representative determined that BBIL parent company and Smith owned entity, MGI, had formerly operated an account at Via Bank. The MGI account was reported to have been closed in mid-2014, at which time a residual balance of approximately USD\$1.35 million was said to have been on deposit ("**St. Lucian Funds**").

120. Following the issuance of the Further Supplemental Order, Via Bank proactively contacted the Receiver regarding the St. Lucian Funds and proposed a meeting with the Receiver and Cassels to discuss the same. In fact, the Chairman of the bank flew up to Toronto from St. Lucia specifically for the meeting with the Receiver and its counsel in late 2014 (the "**Fall Meeting**").

121. At the Fall Meeting, the Chairman assured the Receiver and Cassels that it would assist with the recovery of the St. Lucian Funds to the best of its abilities, including by liaising with St. Lucian authorities to address regulatory concerns the government might have with respect to the transfer of the funds.

122. After surpassing the regulatory hurdles placed by the St. Lucian government authorities, Via Bank transferred USD\$600,000 of the St. Lucian Funds to the Receiver as soon it was legally able to do so on July 6, 2015. The Chairman has advised the Receiver that this is the first of several transfers of the St. Lucian Funds the bank will make to the Receiver.

123. The Receiver is grateful for the assistance of both Via Bank and its Chairman in recovering the St. Lucian Funds. The Receiver recognizes that the orders issued by the Ontario Court are not enforceable in St. Lucia and that Via Bank was under no legal obligation to assist the Receiver. Without the assistance of Via Bank and its Chairman, the Receiver would not have recovered and be in the process of recovering USD\$1.35 million for the benefit of the estate, a portion of which will be ultimately transferred to the Foreign Representative.

124. It is the intention of both the Receiver and the Foreign Representative, as discussed and agreed with Smith and Via Bank, to hold their respective portions of the St. Lucian Funds in separate interest bearing trust accounts pending further court order. This recognizes that the St. Lucian Funds' nominal account holder, MGI, is a BBIL affiliate (parent) entity that is not currently in any form of insolvency proceeding. Having said that, the Receiver believes the St. Lucian Funds to be beneficially owned and claimable by BBIL and its creditors. The Receiver intends to address the source and appropriate disposition of the St. Lucian Funds and other BBIL related company assets in a future report to this court. It is anticipated that completion of the Flow of Funds Analysis will be of assistance in this regard.

#### D. Allied Wallet

125. BBIL maintained an account with Allied Wallet pursuant to a written account agreement dated May 16, 2012 ("**Allied Wallet Account**").

126. The Receiver and the Foreign Representative's analysis indicates that approximately USD\$106.2 million in affiliate funds were directed to the Allied Wallet Account. Of this amount, approximately USD\$1.07 million now remains. The residual funds are being held by Allied Wallet as security for chargebacks requested by affiliates who transacted with Banners Broker using Allied Wallet's services.

127. A chargeback is a request by a customer (affiliate) for the return of funds to their bank account or credit card. The Receiver understands that a chargeback may only be requested from Allied Wallet within 10 days of an eligible purchase or transfer ("**Chargeback Period**").

128. Allied Wallet historically released monies held as security for chargebacks to BBIL on a rolling basis. However, as of the date of this Report, no funds have been released by Allied Wallet to the Receiver.

129. Allied Wallet has and continues to cooperate with the Receiver and the Receiver is hopeful that upon the expiry of all relevant Chargeback Periods, the payment processor will release any residual funds to the estate. In the meantime, the Receiver and its counsel are in ongoing contact with Allied Wallet to try and cooperatively address accounting, chargeback, and remittance issues.

130. Finally, the Receiver has recently identified a set of holdback releases from Allied Wallet that were apparently not processed through to the intended recipient. The dollar amounts are significant, being in the range of USD\$2.2 million. The Receiver is investigating this matter with the financial institutions involved, and is considering whether or not it will be possible to recover these amounts for creditors.

## VII. Amendment of Supplemental Order

131. At the time that the Initial Recognition Order was granted and the Receiver was appointed, there was no evidence that BBIL had property in Canada such that it required the Receiver to have authority beyond basic possessory and investigatory powers. This is the basis upon which the Receiver's powers section of the Supplemental Order was drafted.

132. As documented in this report, it is now apparent that BBIL had extensive dealings in Canada and off-shore, albeit in most cases through the vehicle of one or more of the Associated Corporations that were Canadian incorporated. With better information as to BBIL's business and activities now being available, the Receiver respectfully requests an amendment to the Supplemental Order so as to conform the Receiver's powers to the powers normally accorded to a Receiver in a Commercial List Model Receivership Order. The inclusion of such powers will, for example, provide the Receiver with specific authority to pursue and settle claims by and on behalf of BBIL as may be appropriate.

## VIII. Receiver's Fees and Disbursements

133. Pursuant to paragraph 18 of the Supplemental Order the Receiver and its counsel shall pass their accounts from time to time. For this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Commercial List.

134. The Receiver seeks to have its fees and disbursements, including those of its legal counsel approved by the court. The Receiver and its counsel have maintained detailed records of their professional time and costs.

135. The total fees and disbursements of the Receiver for services provided during the period of August 22, 2014 to May 31, 2015 is \$482,307.20 including HST. Attached as **Appendix "M"** is an affidavit of Philip H. Gennis sworn July 22, 2015 ("**Gennis Affidavit**") regarding the

Receiver's fees and disbursements. Copies of the Receiver's detailed time docket for the period August 22, 2014 to May 31, 2015 are appended as exhibits to the Gennis Affidavit.

136. Cassels has acted as the Receiver's legal counsel on all matters related to these receivership proceedings. Cassels rendered its accounts to the Receiver for the period August 28, 2014 through to and including May 31, 2015 in the amount of \$649,730.05 including disbursements and HST. Attached as **Appendix "N"** is the affidavit of Larry Ellis sworn July 28, 2015 ("**Ellis Affidavit**") regarding counsel's fees and disbursements to the Receiver. Copies of the counsel's detailed time docket for the period August 22, 2014 to January 31, 2015 are appended as exhibits to the Ellis Affidavit. The Cassels accounts described in the Ellis Affidavit include amounts billed to the Receiver, which were paid directly by the Joint Liquidators and approved by the Committee of Inspection in accordance with the laws governing the Isle of Man Proceedings.

137. The Receiver believes that the fees and disbursements of Cassels are fair and reasonable and justified in the circumstances. The Receiver has reviewed the accounts of Cassels in light of the novel, complex, broad ranging and multi-jurisdictional nature of this engagement. The Receiver is of the view that all work set out in the accounts was carried out and was necessary. The hourly rates of the lawyers at Cassels who worked on this matter are considered to be appropriate and reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience. The Receiver accordingly respectfully recommends approval of Cassels' accounts by this Honourable Court.

138. A copy of the Receiver's Interim Statement of Receipts and Disbursements, as at May 31, 2015, is attached hereto as **Appendix "O"**.

## **XI. Recommendations**

139. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order:

- (a) approving this Third Report and the conduct and activities of the Receiver as set out herein;
- (b) authorizing and approving the terms of a settlement between the Receiver and 234 in respect of the settlement of claims by the Receiver against 234 in relation to the Bayview Property, as detailed herein;
- (c) granting the Receiver additional investigatory authority over the following corporations believed to have received significant transfers of funds from Banners Broker and to have played similar roles in Banners Broker as the Associated Corporations:
  - (i) Dixit Consortium.; and
  - (ii) Dreamscape;
- (d) granting a sealing order with respect to Confidential Appendices "P" and "Q" to this Third Report;
- (e) amending the Supplemental Order (Foreign Main Recognition) dated August 22, 2014 to conform the Receiver's powers to those set out in the Commercial List Model Receivership Order;
- (f) approving the Receiver's interim statement of receipts and disbursements as at May 31, 2015;
- (g) approving the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), for services rendered from August 22, 2014 to May 31, 2015, as particularized in the affidavits of Phillip Gennis sworn July

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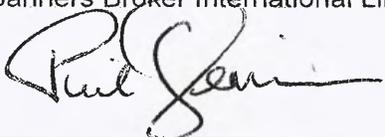
22, 2015, and Larry Ellis sworn July 28, 2015, (collectively, the "**Fee Affidavits**");

and

(h) such further and other relief as this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30th day of July, 2015.

**msi Spergel inc.,**  
Court-appointed Receiver of  
Banners Broker International Limited



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Per: Philip H. Gennis, J.D., CIRP

# TAB E

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

**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)**

**FOURTH REPORT OF THE  
COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED  
("FOURTH REPORT")**

January 8, 2016

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## I. Overview

1. This is the fourth report to court (the **"Fourth Report"**) of msi Spergel inc. in its capacity as court-appointed receiver (the **"Receiver"**) of Banners Broker International Limited (**"BBIL"**). This report is filed in support of the Receiver's motion (the **"Motion"**) for an order substantially in the form attached at Tab "3" to the motion record:

- (a) directing that the Canadian Imperial Bank of Commerce (**"CIBC"**) and the Royal Bank of Canada (**"RBC"** with CIBC, collectively, the **"Financial Institutions"**) provide the Receiver with transaction details in respect of 50 identified account transactions sufficient for the Receiver to trace the funds disbursed by BBIL, and/or the Associated Corporations (defined below), and/or the Additional Dixit Entities (defined below), and to locate BBIL assets and any proceeds thereof;
- (b) directing CIBC to provide the Receiver with account statements for the VISA credit card accounts bearing numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (collectively, the **"Visa Cards"**); and
- (c) such further and other relief as this Honourable Court may deem just.

2. This Fourth Report addresses matters relevant to the Receiver's request for the production of certain banking records from the Financial Institutions (the **"Production Request"**). The Receiver is in the process of preparing a further and more detailed report that will provide an update to the court on all matters that have transpired in the receivership proceeding since its third report to court dated July 30, 2015 (the **"Third Report"**).

3. The section of this report dealing with the Production Request begins at paragraph 27, page 7.

4. All court materials filed, including previous receiver's reports and court orders and endorsements issued in these proceedings are available on the Receiver's website at: [www.spergel.ca/banners](http://www.spergel.ca/banners).

5. The following section of this report provides a high level summary of the receivership proceedings to date.

## II. Background

### Foreign Recognition Proceeding

6. Banners Broker International Limited ("**BBIL**") was central to a group of several related companies and service providers. Together they operated the "Banners Broker" online enterprise, a platform whereby registered members known as "affiliates" could advertise their businesses on websites within the Banners Broker network of publishers while, at the same time, earn revenues as an advertising publisher through specialized and targeted publisher sites created, designed and hosted by BBIL ("**Banners Broker**").

7. Pursuant to an Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls of the High Court of Justice of the Isle of Man, BBIL was placed into liquidation under section 174 of the *Companies Act 1931* of the Isle of Man on February 26, 2014. Miles Andrew Benham and Paul Robert Appleton were appointed as joint liquidators ("**Joint Liquidators**", with the Receiver, the "**Court Officers**") of BBIL ("**Isle of Man Proceedings**").

9. On August 22, 2014, on application of the Joint Liquidators, the Honorable Madam Justice Matheson, of the Ontario Superior Court of Justice (Commercial List) granted an order ("**Initial Recognition Order**"):

- (a) recognizing the Isle of Man Proceedings as a "foreign main proceeding" for the purposes of section 268 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("**BIA**");

- (b) recognizing the Joint Liquidators as the “foreign representative” (“**Foreign Representative**”) of BBIL for the purposes of section 268 of the BIA; and
- (c) granting a stay of proceedings in respect of actions concerning BBIL’s property, debts, liabilities or obligations.

10. Also on August 22, 2014, Justice Matheson issued a supplemental order (foreign main recognition) (“**Supplemental Order**”):

- (a) appointing msi Spergel inc. as Receiver of BBIL’s assets, undertakings and properties, including the proceeds thereof (“**Property**”);
- (b) empowering the Receiver to identify and realize upon the Property, including taking steps to access all information relating to BBIL’s accounts at any financial institution;
- (c) authorizing the Receiver to conduct examinations of the former principals of BBIL, as well as any other persons that the Receiver reasonably believes may have knowledge of BBIL’s trade, dealings and Property;
- (d) authorizing the Receiver to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request; and
- (e) authorizing the Receiver to coordinate the administration and supervision of BBIL’s assets and affairs with the Joint Liquidators as Foreign Representative of the Isle of Man Proceeding.

11. The Supplemental Order that appointed the Receiver provides the Receiver with the mandate to assist the Foreign Representative in the wind-up of BBIL, including the identification of and realization upon BBIL assets for the benefit of creditors. Consistent with the Model

Receivership Order, the Receiver's powers in respect of BBIL extend to accessing all manner of relevant information, and the taking of possession of assets.

### **Discovery of Criminal Investigation and Restraint Orders**

12. In September 2014, the Receiver was made aware of criminal proceedings before the Ontario Court of Justice arising from a Toronto Police Services Financial Crime Unit investigation into Banners Broker's operations in Canada and Banners Broker principals, Christopher G. Smith ("**Smith**") and Rajiv Dixit ("**Dixit**").

13. Specifically, the Receiver obtained copies of several *ex parte* restraint orders ("**Criminal Restraint Orders**") obtained by the Ministry of the Attorney General, Crown Law Office-Criminal ("**Crown**"). The orders, issued pursuant to section 462.33 of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "**Criminal Code**"), froze funds held by third party electronic payment processors for accounts associated with Banners Broker. The Criminal Restraint Orders statutorily expire six months after issuance.

14. The Receiver subsequently obtained copies of the affidavit evidence filed by the Crown in support of its application for the Criminal Restraint Orders. The evidence consisted of affidavits sworn by RCMP Constable Katie Judd on July 17, 2014 and July 28, 2014 ("**RCMP Affidavits**").

15. The RCMP Affidavits detail the basis for what the RCMP investigators state is their reasonable belief that Smith and Dixit, through their operation of Banners Broker, have committed criminal offences related to the operation of a "pyramid scheme", fraud, possession and laundering of the proceeds of crime, and criminal misrepresentations contrary to the *Competition Act*, R.S.C. 1985, c. C-34 (the "**Competition Act**").

16. Constable Judd identified a number of other Canadian incorporated entities believed to be operated by Smith and/or Dixit and associated with BBIL and the Banners Broker business.

The Joint Liquidators' independent investigations, conducted prior to the Receiver's review of the RCMP Affidavits, identified certain of the same parties as being associated with BBIL.

17. Specifically, the entities identified by the RCMP Affidavits include:

- (a) 2087360 Ontario Incorporated o/a Local Management Services;
- (b) Parrot Marketing Inc. (formerly o/a 8264554 Canada Limited) ("**Parrot Marketing**");
- (c) 2341620 Ontario Corporation;
- (d) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited") ("**Stellar Point**");
- (e) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited") ("**Dixit Holdings**");
- (f) Any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "BannersMobile" or "Banners Broker Belize"

(collectively, the "**Associated Corporations**")

#### **Receiver's Motion for Additional Investigative Authority**

18. In reliance in part on the RCMP Affidavits, the Receiver sought and obtained an order for, among other things, the grant of certain additional investigative authority in respect of the Associated Corporations ("**Further Supplemental Order**").

19. The Further Supplemental Order requires persons with notice thereof to advise the Receiver of any books, documents, or other records related to the Associated Corporations in the person's possession or control, and to provide the Receiver with or allow the Receiver to make copies of such documents.

### **Order for Continued Restraint of Payment Processor Monies**

20. By early January 2015, the Receiver had formed the view that the source of the restrained funds held in the payment processor accounts very likely derived from deposits/investments made by Banners Broker affiliates. The Receiver further believed, and continues to believe, that there had been significant inter-company transfers of affiliate-contributed funds between BBIL and the Associated Corporations. Moreover, and as discussed in the Receiver's second report to court, dated January 12, 2015, roughly half of funds received by Banners Broker from affiliates were not used to fund withdrawal requests by affiliates, resulting in tens of thousands of individual creditors.

21. In these circumstances, the Receiver has reason to believe that monies restrained by the Criminal Restraint Orders are properly claimable by creditors of BBIL and/or the Associated Corporations.

22. As the Criminal Restraint Orders were set to expire, the Receiver brought a motion returnable January 14, 2015, for an order that all monies held pursuant to the terms of the Criminal Restraint Orders continue to be held pursuant to the terms of the Criminal Restraint Orders, and not be released without the written consent of the Receiver or further order of the court on notice to the Receiver. The motion was granted by order of the Honourable Mr. Justice Newbould dated January 14, 2015 ("**Order: Restraint of Funds**").

23. The Order: Restraint of Funds provides that, effective as of the expiry date of each underlying Criminal Restraint Order, all money or credits held pursuant to such Criminal Restraint Order(s), be transferred to msi Spergel inc., in its capacity as court officer, to be held in a separate interest-bearing trust account, separate and apart from the receivership of BBIL, pending further order of this court.

### **Receiver's Motion for Additional Investigatory Authority Over the Additional Dixit Entities**

24. As detailed in the Third Report, the Receiver prepared a global "Flow of Funds Analysis" in an effort to understand how affiliate contributions were received and disbursed over the period of Banners Broker's global operations (the "**Flow of Funds Analysis**"). In the course of this work effort, it was determined that two additional companies had significant Banners Broker related dealings: 8643989 Canada Inc. o/a Dixit Consortium Inc. ("**Dixit Consortium**") and Dreamscape Ventures Ltd. ("**Dreamscape**", with Dixit Consortium, collectively the "**Additional Dixit Entities**"). The companies are believed to be controlled by Dixit.

25. By order dated August 8, 2015, the Receiver was granted investigative authority in respect of the Additional Dixit Entities (the "**Additional Authority Order**").

26. The Additional Authority Order requires persons with notice thereof to produce to the Receiver books, documents, or other records related to the Additional Dixit Entities.

### **III. Developments Since Last Report Relevant to this Motion**

#### **A. Dixit's Cease and Desist Demand**

27. On or about August 12, 2015, the Receiver, the Joint Liquidators, and lawyers at Cassels Brock and Blackwell LLP, counsel to the Receiver and Joint Liquidators, received notices to "Cease and Desist" from Dixit (the "**Cease and Desist Notices**").

28. The Cease and Desist Notices purport to provide notice to cease and desist "grievous trespass creating great harm to the man master rajiv of the family dixit [sic], known to you and other third party interlopers as Mr. Rajiv Dixit." A copy of one of the Cease and Desist Notices is attached hereto as **Appendix "A"**.

29. The Cease and Desist Notices further state that if the Court Officers and their counsel do not cease and desist "all actions and claims against Mr. Rajiv Dixit and or Rajiv Dixit forthwith" Dixit will invoice them \$47,304,000.00 silver dollars "[p]lus, for each second starting at 12:00:01

AM until the cease and desist is complied with, each Respondent will be charged an additional \$36.00 per second.”

30. After receiving the Cease and Desist Notices, counsel for the Court Officers contacted Dixit's counsel regarding retracting the notices. The notices remain outstanding.

31. The Receiver considers the Cease and Desist Notices to be in violation of the automatic stay. Further, the fact they were delivered and not retracted is, in the Receiver's view, indicative of a lack of respect for the process and an unwillingness to cooperate fully with the Receiver on some levels. In the interests of full disclosure, counsel for Dixit has been responsive to requests of the Receiver as far as his instructions permit. This, as indicated, did not extend to explaining and addressing the Cease and Desist Notices to the Receiver's satisfaction.

32. The Receiver intends to provide additional details regarding the Cease and Desist Notices in its next and more comprehensive report to court.

#### **B. Dixit Moves to British Columbia**

33. The Receiver was advised by Dixit's counsel in mid-August 2015 that Dixit was moving from Ontario to Vancouver, British Columbia. The Receiver obtained a parcel register for Dixit's Toronto area residence shortly thereafter. The parcel register indicated that Dixit sold his house on July 20, 2015 for \$575,000. The sale proceeds have been accounted for and the Receiver understands that at least a portion of the sale proceeds were paid to Dixit (\$11,110.66).

#### **C. Dixit Produces Certain Documents to the Receiver**

34. Dixit's former counsel, MSM, provided the Receiver with certain books and records relating to BBIL, the Associated Corporations and the Additional Dixit Entities in September 2015. MSM produced a total of seven boxes containing over 1,600 documents to the Receiver (the "**MSM Documents**"). The Receiver was advised at the time that Dixit waived privilege over the documents.

35. Additionally, on or about September 11, 2015, Dixit produced nine boxes of Stellar Point records, containing over 7,500 documents (the “**Stellar Point Documents**”) to the Receiver.

36. The Receiver and its counsel are in the process of reviewing and analyzing the (over 9,000) documents received from MSM and Dixit. The Receiver is also in the process of incorporating these documents into the Flow of Funds Analysis. The most recent version of the Flow of Funds Analysis prepared by the Receiver is attached hereto as **Confidential Appendix “B”**.

37. The Flow of Funds analysis attached at Confidential Appendix “B” was prepared in part based on Smith Confidential Information. For this reason, and consistent with the terms of the October 23, 2014 Confidentiality Order, the Receiver respectfully requests that the appendix be treated as confidential and sealed. A copy of the Confidentiality Order is attached as **Appendix “C”**.

38. The fact that this document production was made by Dixit is reported in the interests of providing full disclosure and in recognition of the *ex parte* nature of this motion.

#### **D. Criminal Charges Against Dixit and Smith**

39. Dixit and Smith were arrested and charged with violations of the Criminal Code and the Competition Act on December 9, 2015. They were charged under the Criminal Code with (i) defrauding the public over \$5,000; (ii) possession of proceeds of crime; and (iii) laundering proceeds of crime. They were also charged under the Competition Act with (i) operating a pyramid scheme; and (ii) making false or misleading statements. A copy of the press release from the Toronto Police Service detailing the charges against Dixit and Smith is attached hereto as **Appendix “D”**.

40. The Toronto Police have alleged, among other things, that:

- (a) “between October 2010 and March 2013, a pyramid scheme known as ‘Banners Broker’ was operated out of a Church Street address in Toronto”;
- (b) “by the end of 2012, over \$93 million US was obtained from thousands of participants, of which approximately \$45 million was paid back to participants in the scheme”; and
- (c) “the remaining funds were funneled to a number of offshore accounts in Belize, St. Lucia, Cyprus, and others.”

41. The Receiver attended the show cause hearing which was held the same date as the arrests of Dixit and Smith. Dixit and Smith were released on bail. The show cause hearing itself is subject to a publication ban.

#### **IV. Evidence Directly Relevant to the Production Request**

##### **A. Difficulties Obtaining Documents and Records**

42. Securing the production of the records of BBIL, the Associated Corporations and the Additional Dixit Entities has continued to prove difficult and time-consuming. This is because, among other reasons:

- (a) Banners Broker lacked a document management system and records retention system;
- (b) receipts and pay-outs, including affiliate debits and credits, were frequently handled non-systematically. Inter-company transfers were not recorded properly, or at all. Other payments were made in cash. Although transaction records exist at the financial institution end, there is no single source of Banners Broker maintained financial records or support documentation;
- (c) Banners Broker wound down operations after the commencement of the Isle of Man Proceedings and the Receiver is advised by Smith that Banners Broker

ceased operating on August 6, 2014. Employees were laid off, office space was vacated and such records as did exist became more difficult to locate and retrieve as a result;

- (d) Banners Broker's main service provider, Stellar Point, ceased operating in or about October 2013. Such Stellar Point records as existed at that time became less accessible as a result;
- (e) the police executed eight search warrants in February 2015 to assist in their investigation. Thousands of documents and over one hundred electronic devices were seized and are currently not available to the Receiver for the purposes of its investigation; and
- (f) Banners Broker entities did not utilize a professional accounting firm or have an in-house accounting professional. Neither BBIL nor many of the Associated Corporations and Additional Dixit Entities filed tax returns as may have been required during the period that is of interest to the Receiver.

43. The Receiver has pursued written documentary production requests of all depository Schedule I, II and III financial institutions in Canada. The production requests were initially specific to BBIL, but were subsequently expanded to include financial records and accounts in respect of the Associated Corporations (following the granting of the Further Supplementary Order) and the Additional Dixit Entities (following the granting of the Additional Authority Order).

44. In total, the Receiver has made written requests for production to approximately 100 financial institutions, 9 payment processors and 46 other third parties (including service providers, professional services firms, individuals and Associated Corporations connected to Banners Broker).

45. To date the Receiver has received financial records that are responsive to its inquiries from the following Canadian financial institutions:

- (a) CIBC;
- (b) TD Canada Trust; and
- (c) Royal Bank of Canada.

**B. Receiver Identifies “Transactions of Interest” (or “TOI”s)**

46. The financial information provided to the Receiver is of varying degrees of completeness. Consequently, there remain material gaps in the Receiver’s ability to complete a reasonably detailed accounting of the receipt and disbursement of BBIL funds. For example, the Receiver has identified US\$1.7 million in disbursements made by Dixit or entities believed to be controlled by him that the Receiver has been unable to trace, out of a total of US\$16.7 million in receipts by Dixit or entities controlled by him.<sup>1</sup>

47. As of today’s date, the Receiver has reviewed and analyzed 7 accounts belonging to Parrot Marketing, Stellar Point, Dixit Holdings, and the Additional Dixit Entities (the “**Accounts**”, each an “**Account**”). During the course of this review, the Receiver has identified 50 transactions of interest, all over \$5,000 (“**TOI**”) in respect of which the Receiver has been unable to identify the recipient of the debit (withdrawal) from the Accounts. This, alone, results in a US\$1.7 million gap in the Receiver’s accounting. The TOI are listed in a Schedule at **Appendix “E”** to this Fourth Report.

48. The TOI can be broken down into five categories: (i) debit memos; (ii) withdrawals; (iii) direct deposits; (iv) illegible documents; and (v) transfers.

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<sup>1</sup> Of the \$1.7 million in unverified disbursements, there is a single \$10,000 transaction from a Parrot Marketing bank account held with CIBC. The remainder of the unverified disbursements were made to bank accounts belonging to entities controlled by Dixit.

i. Debit Memos

49. Of the US\$1.7 million in unverified disbursements, approximately US\$632,846.36 of the disbursements were described as “debit memos” on the Account statements (the “**Debit Memos**”). All of the Debit Memos are from accounts held with CIBC.

50. While each of the Debit Memos list a date and amount for all of the transactions, they do not list a recipient. Further, CIBC has not produced supporting documents for the Debit Memos sufficient to identify this information. However, it is logical to believe that such documentation exists in light of the quantum of the amounts transferred. Some of the Debit Memos are for large amounts of money, for example: (i) US\$100,230.87 on June 20, 2013 from Stellar Point CIBC account [REDACTED]; (ii) US\$89,436.18 on June 5, 2013, from Stellar Point CIBC account [REDACTED]; and (iii) US\$66,049.69 on July 17, 2013 from Stellar Point CIBC account [REDACTED]. Thus, the Receiver is seeking production of documents within CIBC's possession or control sufficient to identify the recipient of the funds transferred in the Debit Memos.

ii. Withdrawals

51. A total of US\$696,685.22 of the TOI were described in the Account statements as “withdrawals” (the “**Withdrawals**”). All of the Withdrawals are from Accounts held with RBC. The Receiver understands Withdrawals to be cash withdrawals from the RBC Accounts. The largest transaction of the Withdrawals is for US\$225,648.42 on May 1, 2012, from Stellar Point RBC account [REDACTED]. In light of the quantum of each of the Withdrawals from the Accounts, it is reasonable to believe that RBC may have documentation, including withdrawal slips, that would identify those individuals who made the Withdrawals from the Accounts. The Receiver is thus requesting production of the same.

iii. Direct Deposits

52. A further US\$299,911.99 of the TOI are described in the RBC Account statements as “direct deposits” (the “**Direct Deposits**”). The majority of these transactions are described as

“Pay Emp Vendor” on the Account statements. All of the Direct Deposits are from Stellar Point RBC account [REDACTED].

53. As with the Debit Memos and Withdrawals, each of the Direct Deposits on the Account statements list a date and amount, but do not list the recipient of the funds transferred. The Receiver believes that RBC may have documents reflecting the recipients of the Direct Deposits.

iv. Illegible Documents

54. After reviewing the documents produced by the Financial Institutions to date, several of the documents produced by the Financial Institutions are illegible (the “**Illegible Documents**”). The majority of the Illegible Documents are cancelled cheques from Stellar Point RBC account [REDACTED]. The Receiver believes that the Financial Institutions may have more legible copies of the documents and is seeking production of the same.

v. Transfers

55. Finally, several of the TOI are described in the Account statements as “transfers” (the “**Transfers**”). The Transfers account for US\$70,843.93 of the US\$1.7 million in disbursements to Dixit or entities controlled by him.

56. As with the Debit Memos, Withdrawals, and Direct Deposits, the descriptions of the Transfers in the Account statements list a date and the amount transferred, but do not list the recipient of the funds transferred. The Receiver believes that the Financial Institutions may have additional documents containing details sufficient to identify the recipient of the funds transferred in the Transfers and is seeking production of the same.

**C. Visa Card Statements**

57. During the course of the Receiver’s review of bank accounts belonging to Stellar Point and Dixit Holdings, the Receiver has identified three Visa Cards that received over US\$2.2

million from the Stellar Point and Dixit Holdings bank accounts. Visa card [REDACTED] (“**Visa [REDACTED] 3**”) alone received over US\$1.3 million in payments.

58. On May 13, 2015, counsel for the Receiver wrote to CIBC and requested additional information with respect to the Visa Cards as well as 21 other bank or credit card accounts (the “**CIBC Request**”). A copy of the CIBC Request is attached hereto as **Appendix “F”**. CIBC responded to the CIBC Request on May 21, 2015, and agreed to provide account documents for six of the 24 accounts. However, CIBC declined to provide account documents for the remaining 18 accounts, including the Visa Cards, because the accounts “were not in the names of the parties identified in the order and therefore determined to not be a part of the order.” A copy of CIBC’s response is attached hereto as **Appendix “G”**.

59. Earlier this fall, and subsequent to the CIBC Request, the Receiver commenced its review of the Stellar Point Documents. Included in those documents are an incomplete set of account statements for Visa [REDACTED] 3 that confirm that the card is in Dixit’s name. Further, one of the account statements for Visa [REDACTED] 3 that was reviewed by the Receiver also lists transactions for Visa [REDACTED] (“**Visa [REDACTED] 5**”). As a result, the Receiver believes that Visa [REDACTED] 5 is linked in some manner to Visa [REDACTED] 3.

60. The Receiver has not been able to identify the account holder of Visa [REDACTED] (“**Visa [REDACTED] 6**”).

61. Based on the Receiver’s review of the Stellar Point and Dixit Holdings bank accounts, the Receiver has determined that the Visa Cards received the following amounts from the CIBC Accounts:

Visa Card	Amount Received
Visa [REDACTED] 3	US\$1,330,539
Visa [REDACTED] 5	US\$736,728
Visa [REDACTED] 6	US\$138,143
<b>Total:</b>	<b>US\$2,205,410</b>

62. The payments to the Visa Cards represent 12.5% of the total amount of funds received by Dixit or entities controlled by him and accordingly constitute a significant gap in the Receiver’s ability to account for the receipt and disbursement of BBIL funds. This US\$2.2 million is in addition to the US\$1.7 million in TOI described above.

63. The Receiver is seeking statements for the Visa Cards for the following time periods:

- (a) Visa [REDACTED] 3: September 1, 2012 to December 31, 2013;
- (b) Visa [REDACTED] 5: September 1, 2012 to December 31, 2013; and
- (c) Visa [REDACTED] 6: June 1, 2012 to October 31, 2013

64. The Receiver has limited its request to this timeframe because it accords with the time period in which transfers were made from the CIBC Accounts to pay down the Visa Cards. According to the CIBC Account statements reviewed by the Receiver, Visa [REDACTED] 3 received payments from the CIBC Accounts from September 2012 to November 2013, Visa [REDACTED] 5 received payments from the CIBC Accounts from September 2012 to January 2013, and Visa [REDACTED] 6 received payments from the CIBC Accounts from June 2012 to September 2012. Thus, the Receiver believes that the requested time period is appropriate because it will capture any assets purchased using the Visa Cards (and ultimately paid for with funds from BBIL or the Associated Corporations).

**D. Reasons For Seeking Production Directly From Financial Institutions**

65. The Receiver believes that the Financial Institutions may have additional and more detailed transaction information relating to the source and disposition of each TOI (the “**TOI Records**”). Such detail, to the extent it goes beyond the summary descriptions appearing on the Account statements, will enable the Receiver to advance its mandate to locate and account for the assets of BBIL, the Associated Corporations and the Additional Dixit Entities.

66. Similarly, CIBC would likely have account statements (with the TOI Records, collectively, the “**Records**”) for the Visa Cards.

67. The Records relate to nearly a quarter of the disbursements received by Dixit or entities controlled by him and thus not only assist the Receiver in fulfilling its mandate to account for BBIL and related corporation assets, but also to locate any such assets and potentially recover on the same.

68. It is the Receiver’s strong preference to obtain Banners Broker related business and financial information from independent third party financial institutions rather than rely solely on the former principals of Banners Broker to produce records. Third party produced information is not only more likely to be efficiently obtained, but also reliable and complete.

69. To date, the Financial Institutions have cooperated with the Receiver’s requests, and the Receiver intends to work cooperatively with them going forward. The Motion is intended to provide the Financial Institutions with such appropriate legal direction and certainty as they may require to address the Receiver’s requests regarding the TOI and the Visa Cards.

70. The Receiver is willing to compensate the Financial Institutions for their reasonable costs of producing the Records.

**V. Ex Parte Nature of this Motion (in respect of Smith and Dixit)**

71. The Receiver intends to bring the Motion on notice to the Financial Institutions but without notice to Smith, Dixit, BBIL, the Associated Corporations and the Additional Dixit Entities (collectively, the “Parties”).

72. The Receiver is concerned that if the Parties are provided with notice of the Motion they would have an opportunity to move any funds remaining in Canada beyond the reach of their creditors and the Receiver, and outside the jurisdiction of this Court. Based on the Receiver’s investigation to date, and as outlined in the press release issued by the Toronto Police Service, the Parties appear to have a demonstrated capacity to transfer funds off-shore.

**VI. Recommendations**

73. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order:

- (a) directing that the Financial Institutions provide the Receiver with transaction details in respect of the TOI;
- (b) directing that CIBC provide the Receiver with account statements for the Visa Cards;
- (c) directing that the Receiver reimburse the Financial Institutions for their reasonable costs in producing the Records to the Receiver;
- (d) directing that the Financial Institutions, and any other person or entity with knowledge of the Motion and any order granted in connection therewith (the “Order”), refrain from disclosing the Motion, the Order, and any actions taken in connection therewith except as required by law;
- (e) granting a sealing order with respect to Confidential Appendix “B” to this Fourth Report; and

(f) such further and other relief as this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 8th day of January, 2016.

**msi Spergel inc.,**  
Court-appointed Receiver of  
Banners Broker International Limited

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

Per: Philip H. Gennis, J.D., CIRP

**TAB F**

**FIFTH REPORT OF MSI SPERGEL INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED**

**April 4, 2016**

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

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, 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)**

**FIFTH REPORT OF THE  
COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED  
("FIFTH REPORT")**

**April 4, 2016**

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