

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

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**MOTION RECORD
(returnable September 28, 2021)**

Date: September 21, 2021

AIRD & BERLIS LLP
Barristers and Solicitors
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Lawyers for the Receiver

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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

THE TORONTO-DOMINION BANK

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**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION
(returnable September 28, 2021)**

msi Spergel inc. (“**Spergel**”), in its capacity as the Court-appointed receiver and manager (in such capacities, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Orbit Freight Ltd. (the “**Debtor**”), will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) on September 28, 2021 at 12:30 p.m., or as soon after that time as the motion can be heard, via judicial videoconference at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by emailing Miranda Spence / Kyle Plunkett at mspence@airdberlis.com / kplunkett@airdberlis.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form of draft order attached at Tab “3” of the Motion Record, *inter alia*:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) approving the Third Report of the Receiver dated September 21, 2021 (the “**Third Report**”) and the conduct and actions of the Receiver set out therein;
- (c) approving the Receiver’s Interim Statement of Receipts and Disbursements to September 20, 2021;
- (d) approving the Receiver’s fees and disbursements for the period of April 1, 2021 to and including September 20, 2021, and those of its legal counsel, Aird & Berlis LLP (“**A&B**”), as set out in Appendices “9” and “10” to the Third Report, and accruals thereof through to the discharge of the Receiver (the “**Fee Accrual**”);
- (e) authorizing and directing the Receiver, after payment of the fees and disbursements of the Receiver and A&B (including, without limitation, the Fee Accrual), to make a final distribution of the remaining proceeds realized by the Receiver to Toronto-Dominion Bank (“**TD**”), in the amounts set out in the proposed distribution (the “**TD Distribution**”) within the Third Report;
- (f) authorizing the Receiver to make an assignment in bankruptcy on behalf of the Company;
- (g) effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, discharging Spergel as Receiver of the assets, undertakings and properties of the Debtor;
- (h) releasing Spergel from any and all liability as set out in the draft Order; and
- (i) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) pursuant to an Order of the Honourable Mr. Justice McEwen of this Court made March 11, 2021 (the “**Receivership Order**”), Spergel was appointed as the Receiver, without security, of all the Property of the Debtor;
- (b) the Receivership Order was obtained on the application of TD, the Debtor’s largest secured creditor;
- (c) the Debtor was a Canadian-owned, private corporation carrying on business as a transporter of goods, and operated from an office space located in Mississauga;
- (d) as at September 21, 2021, the Debtor was indebted to TD in the amount of \$2,063,699.67;
- (e) pursuant to the terms of the Receivership Order, the Receiver was authorized to, amongst other things:
 - (i) sell, convey, lease or assign the Property or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$5,000 (provided that the aggregate consideration for all such transactions does not exceed \$25,000), and otherwise with the approval of this Court; and
 - (ii) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation, those conferred by the Receivership Order;
- (f) pursuant to the Order of the Honourable Mr. Justice Hainey dated April 19, 2021 (the “**Approval and Vesting Order**”), the Court granted certain relief, including:

- (i) approval of the auction services agreement dated April 12, 2021 entered into between the Receiver and IronPlanet Canada Ltd. (the “**Auctioneer**”) with respect to certain Property of Orbit (the “**Auction Agreement**”);
 - (ii) authorizing the Auctioneer to conduct a public auction (and, if applicable, re-auction) as referenced in, and in accordance with the terms of the Auction Agreement (the “**Auction**”); and
 - (iii) vesting, in each purchaser at the Auction, Orbit’s right, title and interest in and to the Property purchased by such respective purchaser at the Auction free and clear of all liens, charges and security interest and other encumbrances;
- (g) Following the issuance of the Approval and Vesting Order, the Receiver assisted the Auctioneer in completing the auction of the Equipment (as defined in the Auction Agreement), with a full accounting and payment of proceeds to the Receiver;
- (h) the Receiver has filed with the Court its Third Report outlining, amongst other things: (i) the background of the Debtor’s assets, business, and these proceedings; (ii) the actions of the Receiver since its last attendance before the Court; (iii) the distribution of funds owing to TD, as discussed therein; and (iv) the professional fees and disbursements of the Receiver and A&B;
- (i) the Receiver and A&B have accrued fees and expenses in their capacity as the Receiver and legal counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Receivership Order;
- (j) the Receiver’s activities have been reasonable and responsible in accordance with the Receiver’s mandate as provided by the Receivership Order;
- (k) the administration of the receivership is now substantially complete;

- (l) the Receivership Order authorizes the Receiver to pass its accounts from time to time, and to include any necessary solicitor fees and disbursements in the passing of the accounts;
- (m) the other grounds and facts set out in the Third Report;
- (n) the terms of the Receivership Order;
- (o) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (p) the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (q) rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 17 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (r) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Third Report, filed herewith;
- (b) such further and other material as counsel may submit and this Court may permit.

Date: September 21, 2021

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Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

SCHEDULE “A”
CONFERENCE DETAILS TO JOIN MOTION VIA ZOOM

Join Zoom Meeting

<https://us06web.zoom.us/j/81819411235?pwd=dGY5L0FLNlVFcW5lbEpHVWpJQzYyQT09>

Meeting ID: 818 1941 1235

Passcode: 864045

One tap mobile

+17207072699,,81819411235#,,, *864045# US (Denver)

+12532158782,,81819411235#,,, *864045# US (Tacoma)

Dial by your location

+1 720 707 2699 US (Denver)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

Meeting ID: 818 1941 1235

Passcode: 864045

Find your local number: <https://us06web.zoom.us/j/kxFfud8MP>

THE TORONTO-DOMINION BANK

- and -

ORBIT FREIGHT LTD.

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Receiver

TAB B

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

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

ORBIT FREIGHT LTD.

Respondent

**THIRD AND FINAL REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER
OF ORBIT FREIGHT LTD.**

September 21, 2021

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APPENDICES

1. The Receivership Order
2. Enforcement Order dated March 17, 2021
3. Approval and Vesting Order of Honourable Mr. Justice Hainey dated April 19, 2021
4. Ancillary Order of Honourable Mr. Justice Hainey dated April 19, 2021
5. The Second Report (without appendices)
6. The April 21st Pandal Letter
7. Copies of Post Receivership HST returns filed by Mr. Pandal
8. The April 21st King Towing Letter
9. Fee Affidavit of Mukul Manchanda, sworn September 21, 2021
10. Fee Affidavit of Kyle Plunkett, sworn September 20, 2021
11. The Interim R&D
12. Printout from CRA of the Company's Payroll Account

I. APPOINTMENT AND BACKGROUND

1. This third report dated September 21, 2021 (this “**Third Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Orbit Freight Ltd. (“**Orbit**” or the “**Company**”).
2. Orbit was a Canadian-owned, private corporation carrying on business as a transporter of goods. Orbit operated from an office space located at 1704 Meyerside Drive, Units 1 & 2, Mississauga, ON (the “**Premises**”). Satnam Singh Pandal (“**Mr. Pandal**”) is the principal of the Company.
3. Spergel was appointed as the Receiver of all the assets, undertakings and properties of Orbit (collectively, the “**Property**”) by Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made March 11, 2021 (the “**Receivership Order**”). The Receivership Order was made upon the application of Orbit’s general secured creditor, The Toronto-Dominion Bank (“**TD**”). Attached as **Appendix “1”** to this Third Report is a copy of the Receivership Order.
4. The Receiver retained Aird & Berlis LLP as its independent counsel (the “**Receiver’s Counsel**”).
5. On March 17, 2021, the Receiver brought a motion to the Court for an order, amongst other things, compelling 2551760 Ontario Inc. o/a King Towing (“**King Towing**”) and/or its representatives to immediately advise the Receiver of the location of two assets described as follows (the “**Truck(s)**”):

Year	Model	Make	VIN
2021	Peterbilt	567	1NPCX4TX8MD736670
2021	Peterbilt	567	1NPCX4TX5MD736674

By order of the Honourable Justice Hainey dated March 17, 2021 (the “**Enforcement Order**”) the Court granted the relief sought by the Receiver.

Attached as **Appendix “2”** to this Second Report is a copy of the Enforcement Order.

6. With the assistance of the Peel Regional Police, the Receiver retrieved the Trucks from King Towing’s yard on March 18, 2021.
7. On April 19, 2021, the Receiver brought two motions to the Court for:
 - a) an Order approving, amongst other things, the auction services agreement dated April 12, 2021 entered into between the Receiver and IronPlanet Canada Ltd. (the “**Auctioneer**”) with respect to the Trucks (the “**Auction Agreement**”), authorizing the Auctioneer to conduct a public auction (and, if applicable, re-auction) as referenced in, and in accordance with the terms of, the Auction Agreement (the “**Auction**”), and vesting in any purchaser Orbit’s right, title and interest and to the Trucks (the “**Approval and Vesting Order**”); and
 - b) an Order compelling Mr. Pandel to immediately advise the Receiver of the location of certain records which he had failed to produce to the Receiver, compelling King Towing to return to the Receiver certain parts that were missing from the Trucks upon their being retrieved from King Towing’s yard, and approving the fees of the Receiver and its counsel (the “**Ancillary Order**”).
8. On April 19, 2021, the Honourable Mr. Justice Hainey granted both the Approval and Vesting Order and the Ancillary Order. Copies are attached to this Third Report as **Appendix “3”** and “**4**”, respectively.

II. PURPOSE OF THIS THIRD REPORT AND DISCLAIMER

9. The purpose of this Third Report is to advise the Court as to the steps taken by the Receiver in these proceedings since the Receiver’s Second Report dated April 12, 2021 (the “**Second Report**”) in these proceedings and to seek Orders from this Court:
 - a) approving this Third Report and the actions of the Receiver described herein, including, without limitation, the Receiver’s interim statement of receipts and disbursements as at September 20, 2021 (the “**Interim R&D**”);

- b) approving the fees and disbursements of the Receiver and the Receiver's Counsel for the period to and including August 31, 2021 for the Receiver, and June 29, 2021 for the Receiver's Counsel;
- c) authorizing and directing the Receiver to make the distributions proposed in this Third Report;
- d) authorizing the Receiver to make an assignment in bankruptcy on behalf of the Company; and
- e) effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Company have been completed to the satisfaction of the Receiver, discharging Spergel as the Receiver and granting certain ancillary relief in relation thereto.

Attached as **Appendix "5"** to this Third Report is a copy of the Second Report (without appendices).

Disclaimer

- 10. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Third Report for any other purpose.
- 11. In preparing this Third Report, the Receiver has relied upon certain information provided to it by Mr. Pandal. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
- 12. Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

III. ACTIONS OF THE RECEIVER SINCE THE SECOND REPORT

13. Following the issuance of the Approval and Vesting Order, the Receiver assisted the Auctioneer in completing the auction of the Equipment (as defined in the Auction Agreement). The Auction was completed with a full accounting and payment of proceeds to the Receiver.

Books and Records

14. As reported in paragraph 18 of the Second Report, Mr. Pandal, despite multiple promises to do so, did not provide the location of the books and records of the Company. Pursuant to the Ancillary Order, the Court ordered and directed Mr. Pandal to immediately advise the Receiver of the location of the books and records of the Company and to deliver the books and records to the Receiver by no later than April 20, 2021. On April 21, 2021, the Receiver's Counsel sent a letter to Mr. Pandal enclosing the Ancillary Order and requesting that in accordance with the Ancillary Order, Mr. Pandal deliver the books and records of the Company to the Receiver by no later than April 30, 2021 (the "**April 21st Pandal Letter**"). Mr. Pandal did not respond to the April 21st Pandal Letter. As at the date of this Third Report, the Receiver has yet to receive the books and records of the Company. A copy of the April 21st Pandal Letter is attached as **Appendix "6"** to this Third Report.

Canada Revenue Agency

15. As part of the administration of the receivership estate, the Receiver opened a *Harmonized Sales Tax* ("**HST**") account (the "**Receiver's HST Account**") with Canada Revenue Agency ("**CRA**"). The purpose of the Receiver's HST Account is to report to CRA all transactions subject to HST within the receivership proceedings. On or about August 24, 2021, the Receiver noticed that an unknown person had filed HST returns with CRA with respect to the Receiver's HST Account. The returns filed were as follows:

ORBIT FREIGHT LTD.			
HST RETURNS - 826669285 RT0002			
Reporting Period	Sales	ITCs	Refund
March 11 2021 to March 31, 2021	350,110.00	24,233.30	24,233.30
April 1, 2021 to April 30, 2021	530,750.00	34,707.54	34,707.54
May 1 2021 to May 31 2021	544,900.00	36,227.81	36,227.81
June 1 2021 to June 30 2021	564,500.00	35,751.20	35,751.20
July 1 2021 to July 31 2021	572,975.00	33,628.40	33,628.40
Total			164,548.25

Copies of the above HST returns are attached as **Appendix “7”** to this Third Report. On the same day, the Receiver reached out to CRA and notified CRA of the foregoing. CRA advised the Receiver that Mr. Pandal had called CRA towards the end of July 2021 and requested a mailing address change on the file. Subsequently, Mr. Pandal filed the above returns and received the HST refunds from CRA. CRA further advised the Receiver that an agent of CRA spoke with Mr. Pandal, and that Mr. Pandal promised to return the HST refund to CRA.

16. Given Mr. Pandal’s unwillingness to provide the Company’s books and records to the Receiver, in breach of this Court’s orders; significant discrepancies in Mr. Pandal’s reporting to TD in relation to the Company’s accounts receivable (as reported by the Receiver in paragraph 19 of the Second Report); and the misleading HST returns filed by Mr Pandal in respect of the Receiver’s HST Account, described above, the Receiver is requesting that the Court grant an order authorizing the Receiver to file an assignment in Bankruptcy on behalf of the Company. In the Receiver’s view, the additional investigative powers of a Trustee in Bankruptcy will be helpful in obtaining the relevant information from Mr. Pandal.

King Towing

17. Pursuant to the Ancillary Order, the Court ordered and directed King Towing to immediately return to the Receiver the SPIF lift axles and the original tires and rims (the “**Missing Parts**”) belonging to the Trucks. On April 21, 2021, the Receiver’s Counsel sent a letter to King Towing (the “**April 21st King Towing Letter**”) providing a copy of the Ancillary Order and demanding that King Towing immediately return the Missing Parts to the Receiver. A copy of the April 21st King

Towing Letter is attached as **Appendix “8”** to this Third Report. King Towing did not respond to the April 21st King Towing Letter. As at the date of this Third Report, the Receiver has yet to receive a response and/or the Missing Parts from King Towing.

IV. FEES AND DISBURSEMENTS OF THE RECEIVER

18. Attached hereto as **Appendix “9”** is the Affidavit of Mukul Manchanda, sworn September 21, 2021, which incorporates by reference a copy of the Receiver’s time dockets pertaining to the receivership, for the period from April 1, 2021 to and including August 31, 2021 in the amount of \$14,354.81 inclusive of disbursements and HST. This represents a total of 39.30 hours at an average rate of \$322.80 per hour.

V. FEES AND DISBURSEMENTS OF THE RECEIVER’S COUNSEL

19. Attached hereto as **Appendix “10”** is the Affidavit of Kyle Plunkett, sworn September 20, 2021, which incorporates by reference a copy of the accounts rendered by the Receiver’s Counsel to the Receiver for the period from April 1, 2021 to and including June 29, 2021 in the amount of \$16,493.23 inclusive of disbursements and HST.

VI. RECEIVER’S INTERIM R&D

20. Attached hereto as **Appendix “11”** is a copy of the Receiver’s Interim R&D.

VII. FEE ACCRUAL

21. Provided that there is no opposition to the relief sought in this Third Report and that such relief is granted, the Receiver estimates that the additional fees and disbursements for itself and the Receiver’s Counsel necessary to complete the proceedings of Orbit will be \$22,500.00 not including disbursements and HST (the **“Fee Accrual”**).

22. TD holds certain security over Orbit including a general security agreement dated June 27, 2019 and a security agreement for specified assets dated June 22, 2020 (**"TD's Security"**).
23. The Receiver's Counsel has reviewed TD's Security, and, subject to the usual assumptions and qualifications of an opinion of such nature, has opined that TD's Security is validly perfected and enforceable in accordance with its terms (the **"Security Opinion"**).¹
24. A review of the Company's payroll account with CRA indicates a balance owing of \$1,871.94 for 2021. The Company appears to be up-to-date on payment for source deductions prior to year 2021. In year 2020, the Company reported three employees on payroll with the total source deductions of \$5,257.24 for the year. Given the Company stopped operating in February 2021, the Receiver anticipates that the amount outstanding for source deductions, if any, should not exceed \$1,871.94. Accordingly, the Receiver is proposing to holdback \$2,000 in lieu of any source deductions outstanding for 2021 (the **"Deemed Trust Holdback"**). A copy of the CRA printout with respect to the Company's payroll account is attached to this Third Report as **Appendix "12"**.
25. With respect to HST obligations, the Company has always been in a refund position due to the nature of the business. The services provided by the Company were not subject to HST, accordingly the Company was only claiming input tax credits to generate a refund. Accordingly, the Receiver does not anticipate any amounts outstanding with respect to HST (other than the post receivership HST amounts mentioned in paragraph 15).
26. On September 21, 2021 TD provided details of the amounts due by Orbit to TD (with the exception of the amounts due to TDEF which were stated as at August 20, 2021), including legal expenses, which together total \$2,063,699.67 (plus further amounts for the continued accrual of interest and recovery expenses).

¹ A copy of the Security Opinion may be provided upon request.

27. Accordingly, the Receiver recommends that, after payment of the fees and disbursements of the Receiver and the Receiver's Counsel, and after retaining an amount equivalent to the Fee Accrual to satisfy any further fees that may be incurred in carrying out the Receiver's residual activities and retaining an amount equal to the Deemed Trust Holdback, the Receiver be authorized and directed to pay the balance of any and all funds available in Orbit's estate to TD, on account of Orbit's secured indebtedness owing to TD for principal, interest and costs up to the amount of Orbit's indebtedness owing to TD (the "**TD Distribution**").

IX. DISCHARGE OF THE RECEIVER

28. Subsequent to the date of this Third Report, and prior to the Receiver's discharge, the Receiver proposes to attend to the following:
- a) the payment of distributions as identified above;
 - b) other residual and/or administrative matters in connection with Spergel's appointment as the Receiver; and
 - c) filing of the final Receiver's certificate of discharge.

X. RECOMMENDATIONS

29. The Receiver respectfully requests that this Court grant the relief sought in this Third Report.

Dated at Toronto this 21st day of September, 2021.

msi Spergel inc.

in its capacity as the Court-appointed Receiver
of Orbit Freight Ltd., and not in its personal or
corporate capacity.

Per:



Mukul Manchanda, CPA, CIRP, LIT
Principal

Appendix 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 11th

JUSTICE MCEWEN

)

DAY OF MARCH, 2021

)

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**ORDER
(Appointing Receiver)**

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

ON READING the affidavit of Michelle Benoy sworn March 11, 2021 and the Exhibits thereto, the report of msi Spergel inc. as proposed receiver, dated March 8, 2021 and on hearing the submissions of counsel for the Applicant, no one else appearing, although duly served as appears from the affidavit of service of Lindsay Provost sworn March 8, 2021, and on reading the consent of msi Spergel inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$5,000, provided that the aggregate consideration for all such transactions does not exceed \$25,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with

leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as

may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information

provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise

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

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

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

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$75,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

A handwritten signature in blue ink, appearing to read "McE T.", is positioned above a horizontal line.

Justice, Ontario Superior Court of Justice

Commercial List

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$_____

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____

Name:

Title:

THE TORONTO-DOMINION BANK

-and-

ORBIT FREIGHT LTD.

Applicant

Respondent

Court File No. CV-21-00658361-00CL

11 March 21

T. Hogan
L. Provost
M. Spence

The Order shall go as per the draft filed and signed.
It is unopposed.

The Respondent has ceased operations and is in default. The principal of the Respondent, Mr. Pandal, is bankrupt.

The Applicant has a right, under its security, to move for the Order.

Further, there is urgency, as set out in the motion materials.

The relief sought is just and equitable.

I note, however, that the Respondent and other stakeholders were short-served.

Mr. Pandal has spoken with the proposed Receiver and knows of today's hearing but did not attend, and he is meeting with the Receiver tomorrow.

If, however, Mr. Pandal or other stakeholders wish to make submissions, I will hear them.



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at
Toronto, Ontario

ORDER

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Barristers and Solicitors
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rdanter@harrisonpensa.com

Solicitors for the Applicant,
The Toronto-Dominion Bank

Appendix 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 17TH DAY
JUSTICE HAINEY) OF MARCH, 2021

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

ORDER

THIS MOTION, made by msi Spergel inc. in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of Orbit Freight Ltd. (the “**Debtor**”) was heard this day by judicial videoconference via Zoom, at 330 University Avenue, Toronto, Ontario.

ON READING the notice of motion and the first report of the Receiver dated March 16, 2021 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, and such other parties as were present,

1. **THIS COURT ORDERS** that the time for service and manner of service of the notice of motion and motion record is hereby abridged and validated such that the motion is properly returnable on this date, and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that 2251760 Ontario Inc. o/a King Towing and/or its representatives (collectively, “**King Towing**”) shall immediately advise the Receiver of the location of the assets described as follows (the “**Truck(s)**”):

Year	Model	Make	VIN
2021	Peterbilt	567	1NPCX4TX8MD736670
2021	Peterbilt	567	1NPCX4TX5MD736674

3. **THIS COURT ORDERS** that any person having possession of the Trucks shall immediately release the Trucks to the Receiver and/or its agents.

4. **THIS COURT ORDERS** that the Receiver shall not be required to make any payment to King Towing, or any other person, to secure the immediate release of the Trucks to the Receiver and/or its agents.

5. **THIS COURT ORDERS AND DECLARES** that the Sheriff, the police, or other law enforcement entity of the Ontario jurisdictions set out in Schedule “A” hereto, including, without limitation, the Peel Regional Police (collectively, the “**Authorities**”) shall assist the Receiver in recovering the Trucks. The within Order shall be sufficient authority for the Receiver to request and receive the cooperation of the Authorities in the applicable jurisdiction and no further order, writ or other document shall be required.

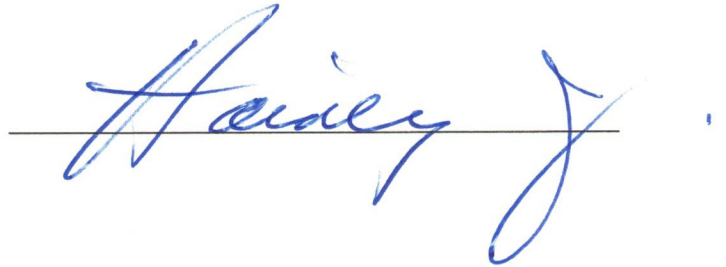
6. **THIS COURT ORDERS** that should any of the Authorities of the applicable jurisdiction locate any of the Trucks, said Authority shall advise the Receiver accordingly and assist the Receiver in seizing the Truck in question and delivering possession of the vehicle to the

Receiver. In such circumstances, notwithstanding paragraph 4 above, the Receiver may be required to pay to the applicable Authority any applicable fee(s).

7. **THIS COURT ORDERS** that the Receiver is empowered and authorized to file a missing vehicles report with the appropriate Authorities and that this Order shall constitute sufficient authority for such report to be filed and accepted by the appropriate authority.

8. **THIS COURT ORDERS** that 2251760 Ontario Inc. o/a King Towing shall pay to the Receiver its costs of this motion in the sum of \$2,500.

9. **THIS COURT ORDERS** that this Order is effective from the date it is made without any need for entry and filing.

A handwritten signature in blue ink, appearing to read "Hendry", is written over a horizontal line. The signature is stylized and extends to the right of the line.

SCHEDULE "A"

City of Toronto

Regional Municipality of York and/or York Region

Regional Municipality of Peel and/or Peel Region

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

ORDER

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*Lawyers for msi Spengel inc. in its capacity as receiver
and manager of Orbit Freight Ltd.*

Appendix 3

Court File No. CV-21-00658361-00CL

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

THE HONOURABLE MR.)	MONDAY, THE 19TH
)	
JUSTICE HAINEY)	DAY OF APRIL, 2021

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent



**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(Re Auction Agreement)**

THIS MOTION, made by msi Spergel inc., in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all the assets, undertakings and property of Orbit Freight Ltd. (the “**Debtor**”), for an Order, amongst other things: (i) approving the agreement between IronPlanet Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Auctioneer**”), as auctioneer, and the Receiver (the “**Auction Agreement**”), as seller, a copy of which Auction Agreement is attached as Appendix “9” to the Second Report of the Receiver dated

April 12, 2021 (the “**Second Report**”); (ii) appointing the Auctioneer as the Receiver’s attorney-in-fact with limited power of attorney and authorizing the Auctioneer to offer and sell the equipment listed therein, and conduct the auction, as referenced in, and in accordance with the terms of, the Auction Agreement (collectively, the “**Auction**”); and (iii) vesting in each purchaser at such Auction (each, a “**Purchaser**”) the Debtor’s and the Receiver’s right, title and interest in and to the Property (as defined in the Order (appointing Receiver) made by this Court in this proceeding on March 11, 2021 (the “**Receivership Order**”)) purchased by such respective Purchaser at the Auction (in each case, the “**Purchased Assets**”), free and clear of any claims and encumbrances, was heard this day by judicial videoconference via Zoom due to the COVID-19 emergency.

ON READING the Second Report (including the appendices thereto), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Damian Lu, sworn April 12, 2021, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion, the motion record and the Second Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Auction is hereby approved, and the execution of the Auction Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Auction.

3. **THIS COURT ORDERS AND DECLARES** that upon the Auctioneer completing a sale to a Purchaser at the Auction of one or more Purchased Assets, upon receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auction and upon delivery by the Auctioneer to such Purchaser of a bill of sale or similar evidence of purchase and sale (each, a **“Purchaser Bill of Sale”**), all the Debtor’s and the Receiver’s right, title and interest in and to the Purchased Assets purchased by such Purchaser at the Auction and described in such Purchaser’s Bill of Sale shall vest absolutely in such Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **“Claims”**), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) all charges, security interests or claims pursuant to the *Repair and Storage Liens Act* (Ontario), and, for greater certainty, this Court orders that all the Claims affecting or relating to such Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets at the Auction shall stand in the place and stead of the Purchased Assets sold at the Auction, and that from and after the delivery of a Purchaser’s Bill of Sale all Claims shall attach to the net proceeds from the sale of the Purchased Assets sold at the Auction and described in such Purchaser’s Bill of Sale with the same priority as they had with respect to such Purchased Assets immediately prior to their sale at the

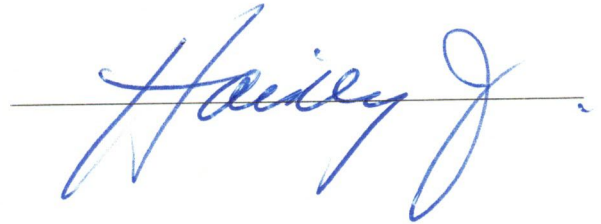
Auction, as if such Purchased Assets had not been sold at the Auction and remained in the possession or control of the person having that possession or control immediately prior to their sale at the Auction.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of each of the Purchased Assets in its respective Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



THE TORONTO-DOMINION BANK

- and -

ORBIT FREIGHT LTD.

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER
(Re Auction Agreement)

AIRD & BERLIS LLP
 Barristers and Solicitors
 Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, ON M5J 2T9

Kyle B. Plunkett (LSO # 61044N)
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Lawyers for the Receiver

Appendix 4

Court File No. CV-21-00658361-00CL

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

THE HONOURABLE MR.

)

MONDAY, THE 19TH

)

JUSTICE HAINEY

)

DAY OF APRIL, 2021

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent



**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

ANCILLARY ORDER

THIS MOTION, made by msi Spergel inc. (“**Spergel**”), in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all the assets, undertakings and property of Orbit Freight Ltd. (the “**Debtor**”), for an Order, *inter alia*: (i) approving the First Report of the Receiver dated March 16, 2021 (the “**First Report**”) and the actions and activities of the Receiver described therein; (ii) approving the Second Report of the Receiver dated April 12, 2021 (the “**Second Report**”) and the actions and activities of the Receiver described therein;

(iii) approving the Receiver's Interim Statement of Receipts and Disbursements as at March 31, 2021 (as set out in the Second Report), (iv) directing Satnam Singh Pandal ("**Mr. Pandal**") to immediately advise the Receiver of the location of the Records (as defined below) and deliver the Records to the Receiver by no later than April 30, 2021; (v) ordering and directing 2551760 Ontario Inc. o/a King Towing ("**King Towing**") to return to the Receiver the Missing Parts (as defined below) it has in its possession forthwith; and (vi) approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP ("**A&B**"), was heard this day by judicial videoconference via Zoom due to the COVID-19 emergency.

ON READING the Motion Record of the Receiver, including the Second Report and the appendices thereto, the affidavit of Damian Lu sworn April 9, 2021 and the affidavit of Mukul Manchanda sworn April 9, 2021, and on hearing the submissions of counsel for the Receiver and The Toronto-Dominion Bank, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Damian Lu sworn April 12, 2021, filed,

SERVICE

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

APPROVAL OF THE FIRST REPORT AND SECOND REPORT

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver described therein be and are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$27,955.07 (inclusive of HST), as set out in Appendix "10" to the Second Report, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, A&B, totalling \$21,427.78 (inclusive of HST), as set out in Appendix "11" to the Second Report, are hereby approved.

APPROVAL OF INTERIM RECEIPTS AND DISBURSEMENTS

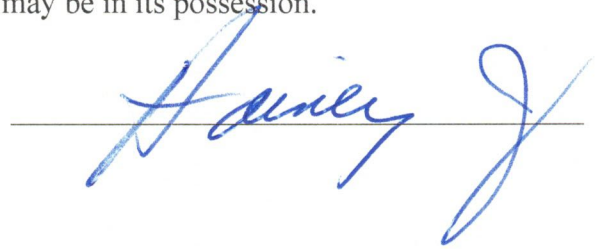
6. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period of March 11, 2021 to March 31, 2021, as set out in Appendix "12" of the Second Report, be and is hereby approved.

DEBTOR'S BOOKS AND RECORDS

7. **THIS COURT ORDERS AND DIRECTS** Mr. Pandal to immediately advise the Receiver of the location of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") and to deliver such Records to the Receiver by no later than April 30, 2021.

MISSING TRUCK PARTS

8. **THIS COURT ORDERS AND DIRECTS** King Towing to immediately return to the Receiver the SPIF lift axles and the original tires and rims belonging to the 2021 Peterbilt 567 trucks, bearing VIN Numbers 1NPCX4TX8MD736670 and 1NPCX4TX5MD736674, respectively (collectively, the “**Missing Parts**”), as may be in its possession.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to read "H. Hiney".

THE TORONTO-DOMINION BANK

- and -

ORBIT FREIGHT LTD.

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

ANCILLARY ORDER

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Lawyers for the Receiver

Appendix 5

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

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

ORBIT FREIGHT LTD.

Respondent

**SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER
OF ORBIT FREIGHT LTD.**

April 12, 2021

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9. The Auction Agreement
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11. Fee Affidavit of Damian Lu, sworn April 9, 2021
12. The Interim R&D

I. APPOINTMENT AND BACKGROUND

1. This second report dated April 12, 2021 (this “**Second Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of Orbit Freight Ltd. (“**Orbit**” or the “**Company**”).
2. Orbit was a Canadian-owned, private corporation carrying on business as a transporter of goods. Orbit operated from an office space located at 1704 Meyerside Drive, Units 1 & 2, Mississauga, ON (the “**Premises**”). Satnam Singh Pandal (“**Mr. Pandal**”) is the principal of the Company.
3. Spergel was appointed as the Receiver of all the assets, undertakings and properties of Orbit (collectively, the “**Property**”) by Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made March 11, 2021 (the “**Receivership Order**”). The Receivership Order was made upon the application of Orbit’s general secured creditor, The Toronto-Dominion Bank (“**TD**”). Attached as **Appendix “1”** to this First Report is a copy of the Receivership Order.
4. Prior to its appointment as the Receiver, on March 8, 2021, Spergel in its capacity as the Proposed Receiver filed a pre-filing report (the “**Pre-Filing Report**”) outlining, amongst other things, the results of the inspection of the premises conducted on March 5, 2021. Attached as **Appendix “2”** to this First Report is a copy of the Pre-Filing Report.
5. The Receiver retained Aird & Berlis LLP as its independent counsel (the “**Receiver’s Counsel**”).
6. On March 17, 2021, the Receiver brought a motion to the Court for an order, amongst other things, compelling 2551760 Ontario Inc. o/a King Towing (“**King Towing**”) and/or its representatives to immediately advise the Receiver of the location of the assets described as follows (the “**Truck(s)**”):

Year	Model	Make	VIN
2021	Peterbilt	567	1NPCX4TX8MD736670
2021	Peterbilt	567	1NPCX4TX5MD736674

By order of the Honourable Justice Hainey dated March 17, 2021 (the “**Enforcement Order**”) the Court granted the relief sought by the Receiver. Attached as **Appendix “3”** to this Second Report is a copy of the Enforcement Order.

II. **PURPOSE OF THIS SECOND REPORT AND DISCLAIMER**

7. The purpose of this Second Report is to advise the Court as to the steps taken by the Receiver in these proceedings since the Receiver’s First Report dated March 16, 2021 (the “**First Report**”) in these proceedings and to seek Orders from this Court:
 - a) approving the First Report and the actions of the Receiver described therein;
 - b) approving this Second Report and the actions of the Receiver described herein, including, without limitation, the Receiver’s interim statement of receipts and disbursements as at March 31, 2021 (the “**Interim R&D**”);
 - c) approving the contract to auction between IronPlanet Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (“**RBA**” or the “**Auctioneer**”), as auctioneer, and the Receiver dated April 12, 2021 (the “**Auction Agreement**”), and authorizing the Auctioneer to conduct a reserved public auction (and, if applicable, re-auction) as referenced in, and in accordance with the terms of, the Auction Agreement (the “**Auction**”);
 - d) vesting in each purchaser at such Auction the Company’s right, title and interest in and to the Property purchased by such respective purchaser at the Auction, free and clear of claims and encumbrances;

- e) ordering that King Towing return to the Receiver such Missing Parts (as defined herein) as may be in its possession;
- f) ordering that Mr. Pandal shall advise the Receiver of the location of the Records (as defined in the Receivership Order) and deliver the Records to the Receiver by no later than April 30, 2021; and
- g) approving the fees and disbursements of the Receiver and the Receiver's Counsel for the period to and including March 31, 2021.

Attached as **Appendix "4"** to this Second Report is a copy of the First Report.

Disclaimer

- 8. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Second Report for any other purpose.
- 9. In preparing this Second Report, the Receiver has relied upon certain information provided to it by Mr. Pandal. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
- 10. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

III. ACTIONS OF THE RECEIVER SINCE THE FIRST REPORT

The Trucks

- 11. Following the issuance of the Enforcement Order, on March 17, 2021 the Receiver's Counsel sent a letter to King Towing providing a copy of the Enforcement Order and asking King Towing to provide the location of the Trucks and arrange for their release (the "**First King Towing Letter**"). Attached as **Appendix "5"** to this Second Report is a copy of the First King Towing Letter. The Receiver and/or the Receiver's Counsel did not get a response from King Towing.

12. Accordingly, on March 18, 2021 the Receiver contacted the Peel Regional Police (“**Peel Police**”) for assistance with retrieval of the Trucks. On the same day, with the assistance of Peel Police (incident# 210097028), the Receiver was able to retrieve the Trucks from King Towing’s yard located at 1625 Shawson Drive, Mississauga, ON.
13. After retrieving the Trucks from King Towing’s possession, the Receiver asked RBA to conduct an inspection of the Trucks. RBA’s inspection report for the Trucks indicated, amongst other things, that:
 - a) the SPIF lift axles on the Trucks had been removed;
 - b) the original tires and rims had been removed and replaced with much older and worn-out tires; and
 - c) it would cost approximately \$8,000 per Truck to replace the rims and tires and approximately \$35,000 per Truck to replace the SPIF lift axle.

Attached as **Appendix “6”** to this Second Report are copies of the RBA inspection reports related to the Trucks.

14. **Appendix “1”** of the Pre-Filing Report contains pictures of at least one of the two Trucks taken during the inspection conducted on March 5, 2021. It is evident in the pictures that the Truck had the SPIF lift axle and that the Truck had almost brand-new tires and rims.
15. It appears to the Receiver that the SPIF lift axles and the original tires and rims (collectively, the “**Missing Parts**”) were removed from the Trucks at some point between March 5, 2021, and March 18, 2021 (i.e. the date the Peel Police assisted the Receiver with retrieving the Trucks from King Towing’s yard). For the bulk of this period of time, the Trucks were within the possession of King Towing.
16. Accordingly, on March 29, 2021, the Receiver’s Counsel sent a letter to King Towing (the “**Second King Towing Letter**”) advising, amongst other things:
 - a) that the inspection of the Trucks has revealed that:
 - the SPIF lift axles have been removed from each Truck; and

- the original tires and rims have been replaced with older, worn out tires and rims;
- b) the estimated cost to remedy these deficiencies is in the range of \$76,000 to \$86,000;
- c) that, as indicated in a previous letter, the Receiver holds King Towing responsible for these deficiencies; and
- d) demanding that King Towing return the Missing Parts to the Receiver by no later than April 1, 2021.

As at the date of this Second Report, the Receiver and the Receiver's Counsel have yet to receive a response from King Towing. Attached as **Appendix "7"** to this Second Report is a copy of the Second King Towing Letter.

17. The Receiver believes that it is likely that the Missing Parts are in the possession of King Towing. Should the Receiver be unable to retrieve the Missing Parts prior to the sale of the Trucks, the Receiver anticipates that it will be seeking an order for the payment of damages equivalent to the value of the Missing Parts.

Books and Records

18. As reported in paragraph 9 of the Pre-Filing Report, the Premises were cleared out prior to the appointment of the Receiver. Accordingly, upon the issuance of the Receivership Order, the Receiver asked Mr. Pandal to advise of the location of the books and records (including electronic records) of the Company. Despite multiple promises to do so, Mr. Pandal did not advise the Receiver of the location of the Records (as defined in the Receivership Order). Accordingly, on March 23, 2021 the Receiver sent a letter to Mr. Pandal advising him of his obligation under paragraph 5 of the Receivership Order and demanding that the Records be provided to the Receiver. On March 29, 2021 the Receiver's Counsel sent a letter to Mr. Pandal asking, amongst other things, Mr. Pandal to provide the Records. The Receiver and the Receiver's Counsel did not receive a response from Mr. Pandal. Attached as **Appendix "8"** to this Second Report are copies of the letters sent to Mr. Pandal.

Accounts Receivable

19. With no available Records, the Receiver reviewed the Company's accounts receivable listings as at January 31, 2021 (the "**A/R Listings**") provided to TD by the Company and Mr. Pandal as part of its monthly reporting. The A/R Listings indicated an accounts receivable balance of CAD \$1,406,505.85 and USD \$359,671.42, respectively. The Receiver found publicly-available mailing addresses for certain of the customers listed on the A/R Listings, and sent demand letters to at least 187 of the 197 customers. As at the date of this Second Report, the Receiver has received responses from at least 51 customers (owing approximately \$521,000 as per the A/R Listings) advising as follows:
- a) no amounts are outstanding to Orbit;
 - b) have not done business with Orbit in at least 2 years; and
 - c) never did business with Orbit;
20. Given the above responses from customers and the unwillingness of Mr. Pandal to provide Records, the Receiver is of the view that the reporting provided to TD by the Company and Mr. Pandal was inaccurate.

IV. AUCTION AGREEMENT

21. The Receiver has entered into the Auction Agreement for the proposed sale of the Trucks by the Auctioneer at the Auction. The Auction Agreement remains subject to the approval of this Court. A copy of the Auction Agreement is attached hereto as **Appendix "9"**.
22. The Receiver believes that the rates and commissions provided in the Auction Agreement are fair and reasonable. Further, the Receiver believes that a public auction is a commercially reasonable method for disposing of the Trucks, given, amongst other things, the disadvantageous economies of scale that would result if the Receiver were to conduct its own sale process for the two Trucks.
23. The net proceeds of sale from the Auction would be held by the Receiver and distributed pursuant to further order of this Court. In the event either of the Trucks

is not sold within 90 days of listing, the Auction Agreement provides that the listing can be renewed for a subsequent 90 days if the asking price is reduced by 20%.

V. FEES AND DISBURSEMENTS OF THE RECEIVER

24. Attached hereto as **Appendix “10”** is the Affidavit of Mukul Manchanda, sworn April 9, 2021, which incorporates by reference a copy of the Receiver’s time dockets pertaining to the receivership, for the period to and including March 31, 2021 in the amount of \$27,955.07 inclusive of disbursements and HST. This represents a total of 101.90 hours at an average rate of \$242.78 per hour.

VI. FEES AND DISBURSEMENTS OF THE RECEIVER’S COUNSEL

25. Attached hereto as **Appendix “11”** is the Affidavit of Damian Lu, sworn April 9, 2021, which incorporates by reference a copy of the accounts rendered by the Receiver’s Counsel to the Receiver for the period to and including March 31, 2021 in the amount of \$21,427.78 inclusive of disbursements and HST.

VII. RECEIVER’S INTERIM R&D

26. Attached hereto as **Appendix “12”** is a copy of the Receiver’s Interim R&D.

VIII. RECOMMENDATIONS

27. The Receiver respectfully requests that this Honourable Court grant the relief sought in this Second Report.

Dated at Toronto this 12th day of April, 2021.

msi Spergel inc.

in its capacity as the Court-appointed Receiver
of Orbit Freight Ltd., and not in its personal or
corporate capacity.

Per:



Mukul Manchanda, CPA, CIRP, LIT
Principal

Appendix 6



Miranda Spence
Direct: 416.865.3414
E-mail: mspence@airdberlis.com

April 21, 2021

BY EMAIL (pandalsam@gmail.com)

Satnam Singh Pandal
31 Heslop Circle
Brampton, ON L6R 0M8

Dear Sir:

**Re: The Toronto-Dominion Bank ("TD Bank") v. Orbit Freight Ltd.
Court File No. CV-21-00658361-00CL
msi Spergel Inc. (the "Receiver"), in its capacity as the Court-appointed receiver
of Orbit Freight Ltd. ("Orbit Freight")**

As you are aware, we act for the Receiver of Orbit Freight.

We did not receive any response to our letter of March 29, 2021, requesting that you deliver to the Receiver copies of all of Orbit Freight's books and records, together with any other property of Orbit Freight that is within your possession.

On April 19, 2021, the Honourable Justice Hainey of the Ontario Superior Court of Justice – Commercial List (the "**Court**") ordered that you immediately advise the Receiver of the location of any books, documents or other records of any kind related to the business or affairs of Orbit Freight, and that you deliver such records to the Receiver by no later than April 30, 2021 (the "**Order**"). A copy of the Order is enclosed.

We look forward to hearing from you. As you are aware, Mr. Manchanda may be reached at 416.454.4246.

Please be advised that we will report any non-compliance with the Order to the Court, and reserve the right to seek such further relief as may appropriate.

Yours truly,

AIRD & BERLIS LLP

Miranda Spence

MS/

Encl.

c. Kyle Plunkett, Aird & Berlis LLP
Mukul Manchanda, msi Spergel Inc.

Appendix 7



Canada Revenue Agency

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View expected and filed returns - summary

Business number: **826669285 RT0002**
Business name: **ORBIT FREIGHT LTD.**
Reporting period: **2021-03-11 to 2021-03-31**
Filing date: **2021-08-03**
Return type: **GST34**
Status: **Assessed**

GST/HST return summary

Line 101	Sales and other revenue	\$350,110.00
Line 135	Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136	Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105	Total GST/HST and adjustments for period	\$0.00
Line 108	Total ITCs and adjustments	\$24,233.30
Line 109	Net tax	-\$24,233.30
Line 110	Instalments and other annual filer payments	\$0.00
Line 111	Rebates	\$0.00
Line 205	GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405	Other GST/HST to be self-assessed	\$0.00
Line 114	Refund claimed	\$24,233.30
Line 115	Amount owing	\$0.00

Screen ID: B-RT-VR-02

Date modified: 2021-08-25



Canada Revenue Agency

[Logout](#)

View expected and filed returns - summary

Business number: **826669285 RT0002**
Business name: **ORBIT FREIGHT LTD.**
Reporting period: **2021-04-01 to 2021-04-30**
Filing date: **2021-07-30**
Return type: **GST34**
Status: **Assessed**

GST/HST return summary

Line 101	Sales and other revenue	\$530,750.00
Line 135	Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136	Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105	Total GST/HST and adjustments for period	\$0.00
Line 108	Total ITCs and adjustments	\$34,707.54
Line 109	Net tax	-\$34,707.54
Line 110	Instalments and other annual filer payments	\$0.00
Line 111	Rebates	\$0.00
Line 205	GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405	Other GST/HST to be self-assessed	\$0.00
Line 114	Refund claimed	\$34,707.54
Line 115	Amount owing	\$0.00

Screen ID: B-RT-VR-02

Date modified: 2021-08-25



Canada Revenue Agency

[Logout](#)

View expected and filed returns - summary

Business number: **826669285 RT0002**
Business name: **ORBIT FREIGHT LTD.**
Reporting period: **2021-05-01 to 2021-05-31**
Filing date: **2021-08-03**
Return type: **GST34**
Status: **Assessed**

GST/HST return summary

Line 101	Sales and other revenue	\$544,900.00
Line 135	Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136	Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105	Total GST/HST and adjustments for period	\$0.00
Line 108	Total ITCs and adjustments	\$36,227.81
Line 109	Net tax	-\$36,227.81
Line 110	Instalments and other annual filer payments	\$0.00
Line 111	Rebates	\$0.00
Line 205	GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405	Other GST/HST to be self-assessed	\$0.00
Line 114	Refund claimed	\$36,227.81
Line 115	Amount owing	\$0.00

Screen ID: B-RT-VR-02

Date modified: 2021-08-25



Canada Revenue Agency

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View expected and filed returns - summary

Business number: **826669285 RT0002**

Business name: **ORBIT FREIGHT LTD.**

Reporting period: **2021-06-01 to 2021-06-30**

Filing date: **2021-08-03**

Return type: **GST34**

Status: **Assessed**

GST/HST return summary

Line 101	Sales and other revenue	\$564,500.00
Line 135	Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136	Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105	Total GST/HST and adjustments for period	\$0.00
Line 108	Total ITCs and adjustments	\$35,751.20
Line 109	Net tax	-\$35,751.20
Line 110	Instalments and other annual filer payments	\$0.00
Line 111	Rebates	\$0.00
Line 205	GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405	Other GST/HST to be self-assessed	\$0.00
Line 114	Refund claimed	\$35,751.20
Line 115	Amount owing	\$0.00

Screen ID: B-RT-VR-02

Date modified: 2021-08-25



Canada Revenue Agency

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View expected and filed returns - summary

Business number: **826669285 RT0002**
Business name: **ORBIT FREIGHT LTD.**
Reporting period: **2021-07-01 to 2021-07-31**
Filing date: **2021-08-19**
Return type: **GST34**
Status: **Assessed**

GST/HST return summary

Line 101	Sales and other revenue	\$572,975.00
Line 135	Total GST/HST new housing rebates (included in line 108)	\$0.00
Line 136	Deduction for pension rebate amount (included in line 108)	\$0.00
Line 105	Total GST/HST and adjustments for period	\$0.00
Line 108	Total ITCs and adjustments	\$33,628.40
Line 109	Net tax	-\$33,628.40
Line 110	Instalments and other annual filer payments	\$0.00
Line 111	Rebates	\$0.00
Line 205	GST/HST due on purchases of real property or purchases of emission allowances	\$0.00
Line 405	Other GST/HST to be self-assessed	\$0.00
Line 114	Refund claimed	\$33,628.40
Line 115	Amount owing	\$0.00

Screen ID: B-RT-VR-02

Date modified: 2021-08-25

Appendix 8



Miranda Spence
Direct: 416.865.3414
E-mail: mspence@airdberlis.com

April 21, 2021

BY EMAIL (dispatch@kingtowing.ca)

King Towing
1225 Matheson Blvd E
Mississauga, ON L4W 1B6

Attention: Happy, Sonny

Dear Sirs:

**Re: The Toronto-Dominion Bank ("TD Bank") v. Orbit Freight Ltd.
Court File No. CV-21-00658361-00CL
msi Spergel Inc. (the "Receiver"), in its capacity as the Court-appointed receiver
of Orbit Freight Ltd. ("Orbit Freight")**

As you are aware, we act for the Receiver of Orbit Freight.

By way of our letters dated March 29, 2021, we demanded the return of the SPIF lift axles, and the original tires and rims (collectively, the "**Missing Parts**") belonging to the two Trucks owned by Orbit Freight that the Receiver retrieved from King Towing's premises, by no later than April 1, 2021. We did not receive any response to our demand.

On April 19, 2021, the Honourable Justice Hainey of the Ontario Superior Court of Justice – Commercial List (the "**Court**") ordered that King Towing immediately return to the Receiver the Missing Parts (the "**Order**"). A copy of the Order is enclosed.

We hereby demand the return of the Missing Parts, in accordance with the Order. We will report any non-compliance the Order to the Court, and reserve the right to seek such further relief as may be appropriate.

We further repeat our demand that King Towing immediately pay to the Receiver the \$2,500 previously ordered to be paid.

Yours truly,

AIRD & BERLIS LLP

Miranda Spence

MS/
c. Kyle Plunkett, Aird & Berlis LLP
Mukul Manchanda, msi Spergel Inc.

Appendix 9

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**AFFIDAVIT OF MUKUL MANCHANDA
(sworn September 21, 2021)**

I, **MUKUL MANCHANDA**, of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Licensed Insolvency Trustee with msi Spergel inc. ("**Spergel**"), the Court-Appointed Receiver (the "**Receiver**") of Orbit Freight Ltd. (the "**Debtor**") and as such have knowledge of the matters to be deposed herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.
2. The Receiver was appointed, without security, of all of the assets, undertakings and properties of the Debtor by Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) made on March 11, 2021.
3. In connection with the receivership of the Debtor for the period from April 1, 2021 to and including August 31, 2021 fees of \$14,354.81 inclusive of HST and disbursements were charged by Spergel as detailed in the billing summary and

time dockets attached hereto as **Exhibit "1"** to this my Affidavit. This represents 39.30 hours at an effective rate of \$322.80 per hour.

4. The hourly billing rates detailed in this Affidavit are comparable to the hourly rates charged by Spergel for services rendered in relation to similar proceedings.
5. This Affidavit is made in support of a motion to, *inter alia*, approve the receipts and disbursements of the Receiver and its accounts.
6. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at the City)
of Toronto, in the Province of)
Ontario, this 21st day of September,)
2021.)


A Commissioner, etc.)

Barbara Eileen Sturge, a Commissioner, etc.,
Province of Ontario, for msi Spergel inc.
and Spergel & Associates inc.
Expires September 21, 2022



MUKUL MANCHANDA

**This is Exhibit "1" of the Affidavit of
MUKUL MANCHANDA**

Sworn before me on this 21st day of September, 2021



A Commissioner, Etc.

Barbara Eileen Sturge, a Commissioner, etc.,
Province of Ontario, for msi Spergel Inc.
and Spergel & Associates inc
Expires September 21, 2022



SPERGEL

July 20, 2021

Invoice #: 12118

Orbit Freight Ltd.

Invoice

RE: Orbit Freight Ltd.

	Hours	Hourly Rate	Total
Deborah Hornbostel, CPA, CA, CFE, CIRP, LIT	0.10	\$465.00	\$46.50
Gillian Goldblatt, CPA, CA, CIRP, LIT	1.50	325.00	487.50
Mukul Manchanda, CPA, CIRP, LIT	23.00	395.00	9,085.00
Eileen Sturge	0.70	250.00	175.00
Paula Amaral	0.40	250.00	100.00
Others	9.00	152.06	1,368.50
Total Professional fees	34.70	\$324.57	\$11,262.50
HST			1,464.13

Total

\$12,726.63

HST Registration #R103478103

(AAORBI-R)

msi Spergel inc. Licensed Insolvency Trustees 505 Consumers Road, Suite 200, Toronto, ON M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199

• Barrie 705 722 5090 • Hamilton 905 527 2227 • Mississauga 905 602 4143 • Oshawa 905 721 8251 • Toronto-Central 416 778 8813
• Brampton 905 874 4905 • London 519 902 2772 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Saskatchewan 306 341 1660

Member **CAIRP** Canadian Association of Insolvency
and Restructuring Practitioners

www.spergel.ca

Member **ICIN** The Independent Canadian Insolvency Network

Filters Used:

- Time Entry Date: 1/01/70 to 6/30/21
- File Client ID: AAORBI-C to AAORBI-C
- Time Entry Bill Status: Un-Billed to Un-Billed

MSGG - Detailed Time Dockets

Printed on: 7/20/21

Page 1 of 5

File Name (ID): Orbit Freight Ltd. (AAORBI-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Deborah Hornbostel (DHO)					
Tues	04/13/2021	Review and approve disbursement	0.10	\$465.00	\$46.50
		Deborah Hornbostel (DHO)	0.10		\$46.50
Eileen Sturge (EST)					
Thur	04/08/2021	Admin on file	0.70	\$250.00	\$175.00
		Eileen Sturge (EST)	0.70		\$175.00
Gillian Goldblatt (GGO)					
Thur	04/01/2021	review and approve disbursement	0.10	\$325.00	\$32.50
Mon	04/05/2021	finish review of BNS and TD bank statements and highlight transactions of interest.	0.90	\$325.00	\$292.50
Tues	04/27/2021	review and approve disbursement	0.10	\$325.00	\$32.50
Wed	05/19/2021	review & approve disbursement	0.10	\$325.00	\$32.50
Tues	05/25/2021	review and approve disbursements.	0.30	\$325.00	\$97.50
		Gillian Goldblatt (GGO)	1.50		\$487.50
Hinna Shaikh (HSH)					
Tues	04/13/2021	updated site	0.10	\$120.00	\$12.00
Tues	04/20/2021	updated site	0.10	\$120.00	\$12.00
		Hinna Shaikh (HSH)	0.20		\$24.00
Haran Sivanathan (HSI)					
Wed	06/30/2021	General	0.20	\$150.00	\$30.00
		Haran Sivanathan (HSI)	0.20		\$30.00
Inga Friptuleac (IFR)					
Thur	04/15/2021	Issue cheque; Deposit	0.40	\$125.00	\$50.00
Tues	04/27/2021	Issue cheques;	0.20	\$125.00	\$25.00
Mon	05/17/2021	Issue cheque	0.20	\$125.00	\$25.00
Wed	05/26/2021	Issue cheques	0.10	\$125.00	\$12.50
		Inga Friptuleac (IFR)	0.90		\$112.50
Jeff Adiken (JAD)					
Mon	04/19/2021	March 31, 2021 - Review and sign cheques .1	0.10	\$385.00	\$38.50
Mon	06/28/2021	April 6, 2021 - sign cheques	0.10	\$385.00	\$38.50
		Jeff Adiken (JAD)	0.20		\$77.00
Mukul Manchanda (MMA)					
Thur	04/01/2021	Email exchanges with M. Spence regarding any response from King Towing to the letter requesting the Missing Parts.	0.10	\$395.00	\$39.50
Mon	04/05/2021	Email exchanges with K. Plunkett regarding report to court. Email exchanges with P. Amaral regarding filing the business consent form and opening HST RT2 account. Review and approve the required forms.	0.30	\$395.00	\$118.50
Tues	04/06/2021	Receipt and review of an email from S. Yan of fuel transport advising that there are no outstanding amounts to Orbit and that Fuel transport did business with Orbit last in 2017. Telephone discussion with S. Yan regarding same. Participated in a lengthy call with P. Hanke regarding the sale of dump trucks. Email exchanges with P. Hanke regarding release of trucks to TDEF.	0.50	\$395.00	\$197.50

Filters Used:

- Time Entry Date: 1/01/70 to 6/30/21
- File Client ID: AAORBI-C to AAORBI-C
- Time Entry Bill Status: Un-Billed to Un-Billed

MSGG - Detailed Time Dockets

Printed on: 7/20/21

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File Name (ID): Orbit Freight Ltd. (AAORBI-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Wed	04/07/2021	Receipt and review of an email from E. Smoluch containing the auction agreement. Sent an email providing comments. Forwarded the contract to K. Plunkett for comments. Drafted the report to court and emailed same to K. Plunkett and M. Spence for comments. Sent an email to P. Hanke providing a copy of the draft report.	3.90	\$395.00	\$1,540.50
Thur	04/08/2021	Receipt and review of an email from P. Hanke requesting copies of appendices to the draft report. Sent an email to P. Hanke providing the requested information. Receipt and review of an email from K. Plunkett containing the draft approval and vesting order, backline to the model AVO and comments on the RBA Auction Agreement. Receipt and review of an email from M. Spence containing comments with respect to the report. Email exchanges with E. Smoluch regarding amendments to the auction agreement. Email exchanges with E. Smoluch regarding providing access to J. Cassidy for inspection of the trucks. Receipt and review of an email from M. Spence providing comments on the report. Email exchanges with M. Spence regarding serial numbers of the missing parts. Receipt and review of an email from K. Plunkett containing A&B's account for March 2021.	1.60	\$395.00	\$632.00
Fri	04/09/2021	Finalize the report, fee affidavit and other appendices and emailed same to K. Plunkett. Email exchanges with E. Smoluch regarding finalizing the auction agreement. Email exchanges with K. Plunkett and D. Lu regarding swearing the fee affidavit. Receipt and review of the ancillary order. Provided comments regarding same. Telephone discussion with M. Spence regarding the relief against King Towing and Pandal. Lengthy telephone discussion with Sarwin regarding the sale process in a receivership. Telephone discussion with J. Ricci regarding same. Multiple calls with P. Hanke regarding the go forward plan. Email exchanges with D. Cooke regarding the sale of trucks. Email exchanges and telephone discussions with K. Plunkett and M. Spence regarding delaying serving our materials pending the outcome of the inspection of assets and offer from Clearlite. Telephone discussion with E. Smoluch regarding delaying publishing the trucks in the brochure and potentially pulling them off the auction. Sent an email to P. Hanke advising that we have paused the sales process pending inspection of the assets by Clearlite.	3.30	\$395.00	\$1,303.50

Filters Used:

- Time Entry Date: 1/01/70 to 6/30/21
- File Client ID: AAORBI-C to AAORBI-C
- Time Entry Bill Status: Un-Billed to Un-Billed

MSGG - Detailed Time Dockets

Printed on: 7/20/21

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File Name (ID): Orbit Freight Ltd. (AAORBI-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Mon	04/12/2021	Receipt and review of an offer from Clearlite. Sent an email to P. Hanke providing comments regarding the offer. Receipt and review of an email from D. Cooke regarding Clearlite's offer. Telephone discussion with P. Hanke regarding same. Sent a comprehensive email to D. Cooke providing analysis of the Clearlite offer and recommending that we sell the trucks at an auction with Ritchie. Receipt and review of an email from D. Cooke regarding Clearlite's offer. Drafted an email to D. Cooke regarding the sale process. Telephone discussion with D. Cooke regarding same. Telephone call with E. Smoluch regarding placing a reserve price on the dump trucks. Receipt and review of an email from E. Smoluch containing information regarding the online reserve auction. Telephone discussion with P. Hanke regarding same. Sent an email to D. Cooke providing the information regarding the reserved auction. Telephone discussion with T. Hogan regarding the sale of assets. Receipt and review of an email from D. Cooke and P. Hanke providing the consent to move forward with the reserved auction. Telephone discussion with E. Smoluch regarding amending the auction agreement. Email exchanges with K. Plunkett regarding serving out materials today. Telephone discussion with E. Smoluch regarding the revised auction agreement. Telephone discussion with K. Plunkett regarding serving materials after 5:00pm. Receipt and review of the revised auction agreement from E. Smoluch. Finalized and prepared a fully executed copy of the auction agreement and emailed same to M. Spence and K. Plunkett. Revised the report and send an executed copy of same to K. Plunkett and M. Spence.	3.60	\$395.00	\$1,422.00
Tues	04/13/2021	Receipt, review and approve payables.	0.10	\$395.00	\$39.50
Wed	04/14/2021	Telephone call from landlord of the premises. Telephone discussion with E. Smoluch regarding the trucks.	0.50	\$395.00	\$197.50
Thur	04/15/2021	Email exchanges with D. Cooke regarding the auction. Email exchanges with S. Downey regarding receipt of receivables. Review of financial information provided by T. Hogan related to S. Pandal and the origination of the loan. Receipt and review of an email from E. Smoluch providing a sample listing.	1.20	\$395.00	\$474.00
Fri	04/16/2021	Receipt and review of an email from T. Hogan forwarding an email from Wells Fargo. Review of email exchanges between K. Plunkett and N. Bishop of Wells Fargo. Receipt and review of the signed release from Bodkin. Email exchanges with M. Spence regarding King Towing.	0.30	\$395.00	\$118.50
Mon	04/19/2021	Telephone discussion with M. Spence regarding the hearing and the relief sought. Attended the court hearing. Receipt and review of an email from D. Lu containing the signed orders. Arranged to have same posted on the case website. Email exchanges with M. Spence regarding communication to King Towing and S. Pandal.	1.20	\$395.00	\$474.00
Tues	04/20/2021	Sent an email to E. Smoluch containing the approval and vesting order and instructing her to move ahead with listing the trucks for auction. Email exchanges with A. Coluccio regarding payment of insurance premiums. Receipt, review and approve letters to King Towing and S. Pandal from M. Spence.	0.40	\$395.00	\$158.00
Wed	04/21/2021	Telephone discussion with M. Spence regarding the letters to King Towing and S. Pandal.	0.20	\$395.00	\$79.00
Tues	04/27/2021	Receipt, review and approve payable.	0.20	\$395.00	\$79.00
Wed	04/28/2021	Receipt, review and execute the power of attorney and email same to E. Smoluch of Ritchie Bros.	0.20	\$395.00	\$79.00

Filters Used:

- Time Entry Date: 1/01/70 to 6/30/21
- File Client ID: AAORBI-C to AAORBI-C
- Time Entry Bill Status: Un-Billed to Un-Billed

MSGG - Detailed Time Dockets

Printed on: 7/20/21

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File Name (ID): Orbit Freight Ltd. (AAORBI-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Fri	04/30/2021	Email exchanges with E. Smoluch regarding listing of the dump trucks. Telephone discussion with E. Smoluch regarding same.	0.30	\$395.00	\$118.50
Mon	05/03/2021	Receipt and review of an email from E. Smoluch containing the listing pages for the dump trucks. Telephone discussion with E. Smoluch regarding same.	0.30	\$395.00	\$118.50
Fri	05/07/2021	Receipt and review of an email from N. Bishop providing the signed release forms from Wells Fargo.	0.10	\$395.00	\$39.50
Mon	05/10/2021	Email exchanges and telephone discussion with E. Smoluch regarding value of the trucks and data with respect to recent sale of similar trucks. Receipt and review of further offers.	0.30	\$395.00	\$118.50
Tues	05/11/2021	Email exchanges and telephone discussions regarding counter offers. Discussion with M. Benoy regarding same.	0.40	\$395.00	\$158.00
Wed	05/12/2021	Participated in a conference call with K. Plunkett and M. Spence regarding the go forward strategy on the file. Receipt and review of an email from D. Lu containing draft release to Wells Fargo. Sent an email providing comments.	0.80	\$395.00	\$316.00
Mon	05/17/2021	Email exchanges with E. Smoluch regarding status of counter offers.	0.10	\$395.00	\$39.50
Wed	05/19/2021	Email exchanges with K. Plunkett regarding the release to Wells Fargo.	0.10	\$395.00	\$39.50
Thur	05/20/2021	Receipt and review of an email from E. Smoluch providing an offer for both trucks. Sent an email to M. Benoy recommending that we accept the offers. Receipt and review of an email from M. Benoy regarding the offers. Sent an email to E. Smoluch advising the receiver will accept the offers. Telephone discussion with E. Smoluch regarding same.	0.40	\$395.00	\$158.00
Tues	05/25/2021	Receipt, review and approve payables.	0.20	\$395.00	\$79.00
Wed	05/26/2021	Email exchanges with Ritchie regarding discharge of liens registered against the company.	0.30	\$395.00	\$118.50
Wed	06/16/2021	Email exchanges with K. Plunkett regarding the file. Email exchanges with M. Benoy regarding status of payment from Ritchie brothers.	0.10	\$395.00	\$39.50
Thur	06/17/2021	Email exchanges with M. Benoy. Email exchanges with K. Plunkett.	0.20	\$395.00	\$79.00
Fri	06/18/2021	Email exchanges with E. Smoluch regarding funds from the sale of assets. Receipt and review of statement of account.	0.20	\$395.00	\$79.00
Wed	06/23/2021	Email exchanges with D. Lu and K. Plunkett regarding location of trucks subject to Wells Fargo's security.	0.20	\$395.00	\$79.00
Fri	06/25/2021	Email exchanges with Ritchie brothers regarding release of the vehicles to the purchaser. Lengthy telephone discussion with Ritchie regarding expunging security interest from the title and the vesting order.	0.90	\$395.00	\$355.50
Tues	06/29/2021	Receipt, review and execute the release form related to Wells Fargo's equipment. Email exchanges with D. Liu regarding same.	0.50	\$395.00	\$197.50
Mukul Manchanda (MMA)			23.00		\$9,085.00
Paula Amaral (PAM)					
Mon	04/05/2021	Fill out RC59 form and Consent to File HST form and submit to Mukul for signature	0.40	\$250.00	\$100.00
Paula Amaral (PAM)			0.40		\$100.00
Susan Downey (SDW)					
Thur	04/01/2021	Responding to phone calls/e-mails re; A/R	1.00	\$150.00	\$150.00
Mon	04/05/2021	Respond to e-mails/phone calls and update A/R list	1.00	\$150.00	\$150.00
Tues	04/06/2021	Updating A/R spreadsheet	0.50	\$150.00	\$75.00

Filters Used:

- Time Entry Date: 1/01/70 to 6/30/21
- File Client ID: AAORBI-C to AAORBI-C
- Time Entry Bill Status: Un-Billed to Un-Billed

MSGG - Detailed Time Dockets

Printed on: 7/20/21

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File Name (ID): Orbit Freight Ltd. (AAORBI-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Susan Downey (SDW)					
Wed	04/07/2021	Respond to e-mails/phone calls and update A/R list	0.50	\$150.00	\$75.00
Thur	04/08/2021	Responding to e-mails and phone calls re: A/R	0.50	\$150.00	\$75.00
Tues	04/13/2021	Processing A/R receipt.	0.20	\$150.00	\$30.00
Wed	04/14/2021	Responding to telephone and e-mails re: A/R	0.50	\$150.00	\$75.00
Thur	04/15/2021	Responding to phone calls/e-mails re: A/R, Updating spreadsheet and tracking of deposit cheque.	0.50	\$150.00	\$75.00
Fri	04/16/2021	Responding to e-mails/telephone calls and updating A/R list	1.00	\$150.00	\$150.00
Wed	04/21/2021	Responding to e-mails/phone calls and updating A/R sheet	0.50	\$150.00	\$75.00
Sat	04/24/2021	File review/email management	0.50	\$150.00	\$75.00
Wed	05/12/2021	Updating A/R spreadsheet	0.20	\$150.00	\$30.00
Tues	05/25/2021	Processing disbursement	0.10	\$150.00	\$15.00
Tues	06/01/2021	Review of mail/paperwork and updating A/R spreadsheet	0.30	\$150.00	\$45.00
Mon	06/28/2021	Processing receipt of cheque from Ritchie Bros.	0.20	\$150.00	\$30.00
Susan Downey (SDW)			7.50		\$1,125.00
Total for File ID AAORBI-R:			34.70		\$11,262.50
Grand Total:			34.70		\$11,262.50

September 21, 2021

Invoice #: 12151

Orbit Freight Ltd.

Billing Period: Aug 31, 2021

Invoice

RE: Orbit Freight Ltd.

FOR PROFESSIONAL SERVICES RENDERED as Court-Appointed Receiver from July 1, 2021 to August 31, 2021.

	Hours	Hourly Rate	Total
Gillian Goldblatt, CPA, CA, CIRP, LIT	0.30	\$325.00	\$97.50
Mukul Manchanda, CPA, CIRP, LIT	2.80	395.00	1,106.00
Paula Amaral	0.10	250.00	25.00
Others	1.40	139.29	195.00
Total Professional fees	4.60	\$309.46	\$1,423.50
HST			185.06
Reimbursable Expenses			
Courier			\$17.36
Total Reimbursable expenses			\$17.36
HST on expenses			\$2.26
Total			\$1,628.18

HST Registration #R103478103

(AAORBI-R)

Filters Used:

- Time Entry Date: 1/01/70 to 8/31/21
- File Client ID: AAORBI-C to AAORBI-C
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

MSGG - Detailed Time Dockets

Printed on: 9/21/21

Page 1 of 1

File Name (ID): Orbit Freight Ltd. (AAORBI-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Gillian Goldblatt (GGO)					
Mon	07/12/2021	review and approve disbursement.	0.10	\$325.00	\$32.50
Tues	07/13/2021	review and approve disbursement.	0.10	\$325.00	\$32.50
Wed	08/11/2021	review and approve disbursements.	0.10	\$325.00	\$32.50
Gillian Goldblatt (GGO)			0.30		\$97.50
Haran Sivanathan (HSI)					
Tues	07/20/2021	Bank reconciliation/Posting cheques/Deposit	0.40	\$150.00	\$60.00
Haran Sivanathan (HSI)			0.40		\$60.00
Inga Friptuleac (IFR)					
Mon	07/05/2021	Issue cheques	0.20	\$125.00	\$25.00
Tues	07/13/2021	Deposit	0.20	\$125.00	\$25.00
Mon	08/09/2021	Issue cheque	0.20	\$125.00	\$25.00
Inga Friptuleac (IFR)			0.60		\$75.00
Mukul Manchanda (MMA)					
Tues	07/06/2021	Email exchanges regarding payment of the BNS invoice. Receipt and review of an email from M. Benoy asking for information with respect to sale of the trucks. Sent an email to M. Benoy containing the requested information. Receipt, review and approve for payment legal invoice.	0.40	\$395.00	\$158.00
Fri	07/09/2021	Email exchanges with FCA regarding cancellation of insurance.	0.20	\$395.00	\$79.00
Mon	07/12/2021	Receipt review and approve payables.	0.10	\$395.00	\$39.50
Fri	07/30/2021	Receipt, review and approve payables.	0.10	\$395.00	\$39.50
Wed	08/04/2021	Email exchanges with T. Hogan regarding auction proceeds and accounting of same.	0.20	\$395.00	\$79.00
Tues	08/10/2021	Receipt, review and approve payables.	0.10	\$395.00	\$39.50
Wed	08/11/2021	Receipt, review and approve payables.	0.10	\$395.00	\$39.50
Tues	08/17/2021	Email exchanges and telephone discussions with T> Hogan regarding bankrupting the company.	0.50	\$395.00	\$197.50
Wed	08/18/2021	Email exchanges with T> Hogan regarding the discharge of the receiver.	0.10	\$395.00	\$39.50
Tues	08/24/2021	Lengthy telephone discussion with CRA regarding HST returns filed and refund received post receivership.	1.00	\$395.00	\$395.00
Mukul Manchanda (MMA)			2.80		\$1,106.00
Paula Amaral (PAM)					
Tues	07/20/2021	Prepare cheque requisition for Receiver's fees.	0.10	\$250.00	\$25.00
Paula Amaral (PAM)			0.10		\$25.00
Susan Downey (SDW)					
Fri	07/09/2021	Cancellation of insurance on trucks	0.20	\$150.00	\$30.00
Mon	08/30/2021	Discussion with CRA re: fraudulent HST filings.	0.20	\$150.00	\$30.00
Susan Downey (SDW)			0.40		\$60.00
Total for File ID AAORBI-R:			4.60		\$1,423.50
Grand Total:			4.60		\$1,423.50

Appendix 10

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

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

AFFIDAVIT OF KYLE PLUNKETT

(sworn September 20, 2021)

I, **KYLE PLUNKETT**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP has acted as counsel for msi Spergel Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of Orbit Freight Ltd. (the “**Debtor**”), and continues to do so
2. Aird & Berlis LLP has prepared in connection with its fees and disbursements as follows (collectively, “**Statements of Account**”):

- (a) an account dated April 30, 2021, which captures the fees rendered for the period from April 1, 2021 to April 23, 2021 in the amount of \$13,868.80, inclusive of HST and disbursements;
- (b) an account dated June 30, 2021, which captures the fees rendered for the period from May 7, 2021 to May 25, 2021 in the amount of \$2,367.35, inclusive of HST and disbursements; and
- (c) an account dated July 30, 2021, which captures the fees rendered for the period from June 23, 2021 to June 29, 2021 in the amount of \$257.08, inclusive of HST and disbursements.

3. Attached hereto and marked as **Exhibit "A"** to this affidavit is copy of the aforementioned Statements of Account.

4. Attached hereto and marked as **Exhibit "B"** to this affidavit a summary with a breakdown of timekeepers which have worked on this file for the period referenced above. The average hourly rate is \$439.61.

5. Assuming that this Honourable Court grants an Order as requested, without opposition, the proposed accrual of legal fees and disbursements to capture the period from and after June 29, 2021 to the discharge of the Receiver is \$10,000, exclusive of HST.

6. This Affidavit is made in support of a motion to, *inter alia*, approve the attached Statements of Account of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose.

SWORN before me at the City of
Toronto, in the Province of Ontario,
this 20th day of September, 2021

Commissioner for Taking Affidavits (or as
may be)



KYLE PLUNKETT

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF KYLE PLUNKETT

Sworn before me

This 20th day of September, 2021

A handwritten signature in blue ink, consisting of several loops and flourishes, is written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 706986

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/162453
Client No.: 13225
Matter No.: 162453

April 30, 2021

Re: Orbit Freight Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended April 23, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	01/04/21	\$550.00	0.20	\$110.00	Exchange emails with M. Manchanda re response from King Towing
MES	04/04/21	\$550.00	0.10	\$55.00	Review emails from T. Hogan re information received from TD
DYL	05/04/21	\$325.00	3.10	\$1,007.50	Prepare draft motion materials for approval motion
KBP	05/04/21	\$550.00	1.00	\$550.00	Review and consider draft court materials; discuss same with D. Lu.
MES	06/04/21	\$550.00	0.20	\$110.00	Exchange emails re AVO motion
KBP	07/04/21	\$550.00	1.10	\$605.00	Review and provide comments on draft materials for approval motion; email exchange with client regarding same.
MES	07/04/21	\$550.00	0.10	\$55.00	Receive proposed auction agreement from M. Manchanda
DYL	08/04/21	\$325.00	2.10	\$682.50	Draft ancillary order; swear affidavit
KBP	08/04/21	\$550.00	2.20	\$1,210.00	Review and provide comments on auction agreement; review and

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					provide comments on draft court materials; email exchanges with client regarding same.
MES	08/04/21	\$550.00	1.50	\$825.00	Revise second report; Telephone conversation with M. Mukul and exchange emails with K. Plunkett re: same; Further revise second report and circulate; Review emails re preparing and serving AVO motion materials
DYL	09/04/21	\$325.00	1.20	\$390.00	Review correspondence; revise fee affidavit of the receiver; commission fee affidavit of the receiver; redact A&B fee affidavit;
KBP	09/04/21	\$550.00	1.40	\$770.00	Review and revise court materials for service; attend call with client to discuss latest bid from TD; email exchange with T. Hogan.
MES	09/04/21	\$550.00	1.40	\$770.00	Revise draft Orders and exchange emails with M. Manchanda and K. Plunkett re same; Revise notice of motion for AVO motion; Review emails re finalizing materials for service; Telephone call with M. Manchanda and K. Plunkett re offer received and strategy re same
DYL	12/04/21	\$325.00	2.40	\$780.00	Prepare for service; compile motion record; revised service list; revise motion record based on revised auction agreement; serve and file motion record;
KBP	12/04/21	\$550.00	0.70	\$385.00	Review and respond to emails from client regarding updated auction agreement and materials; attend call with client to discuss finalize it.
MES	12/04/21	\$550.00	1.10	\$605.00	Review and revise amended auction agreement and second report of the Receiver for AVO motion; Telephone call with M. Manchanda re same; Assist with finalizing materials for service of AVO motion

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DYL	13/04/21	\$325.00	0.30	\$97.50	Emails re filing and uploading to sync.com / CaseLines and service to non-email parties
MES	13/04/21	\$550.00	0.10	\$55.00	Telephone call with T. Hogan re fee affidavit
DYL	14/04/21	\$325.00	0.60	\$195.00	Prepare, swear and send affidavit of service to D. McMillen for uploading
LHT	14/04/21	\$325.00	0.10	\$32.50	Commission affidavit with D. Lu
DYL	16/04/21	\$325.00	0.10	\$32.50	Emails from K. Plunkett; manage files and service list
KBP	16/04/21	\$550.00	0.40	\$220.00	Review and consider email from Wells; email to Wells team regarding equipment.
MES	16/04/21	\$550.00	0.60	\$330.00	Exchange emails with K. Plunkett, M. Manchanda, T. Hogan re: release of vehicles, and AVO motion; Correspondence with court re filed motion record
MES	18/04/21	\$550.00	0.70	\$385.00	Review materials for AVO motion and prepare submissions
DYL	19/04/21	\$325.00	0.10	\$32.50	Serve orders of Justice Hailey
MES	19/04/21	\$550.00	1.00	\$550.00	Telephone call with M. Manchanda re court attendance; Attend AVO motion before Justice Hailey; Arrange to enter orders issued by Justice Hailey; Circulate to M. Manchanda and T. Harrison
PLW	19/04/21	\$225.00	0.80	\$180.00	Submitted 2 Orders for entry online
MES	20/04/21	\$550.00	0.40	\$220.00	Draft letters to S. Pandal and King Towing re enforcement of order, and email to M. Manchanda re: same
MES	21/04/21	\$550.00	0.20	\$110.00	Issue letters to debtor and King Towing by email and courier
TOTAL:			25.20	\$11,350.00	

OUR FEE

\$11,350.00

HST at 13% \$1,475.50

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application \$320.00

Subject to HST

Deliveries/Parss \$351.61
Agency Fee \$25.00
Reproduction Services \$263.48

Total Disbursements \$640.09
HST at 13% \$83.21

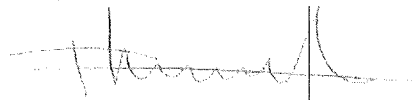
AMOUNT NOW DUE

\$13,868.80

SUMMARY

Name	Year of Call	Hours	Rate	Value
Miranda E. Spence (MES)	01/08/11	7.60	\$550.00	\$4,180.00
Damian Y. Lu (DYL)	11/09/20	9.90	\$325.00	\$3,217.50
Kyle B. Plunkett (KBP)	30/07/11	6.80	\$550.00	\$3,740.00
Lynn H. Tay (LHT)	18/09/20	0.10	\$325.00	\$32.50
Patrick L. Williams (PLW)		0.80	\$225.00	\$180.00

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Kyle B. Plunkett
/ph
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 713930

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/162453
Client No.: 13225
Matter No.: 162453

June 30, 2021

Re: Orbit Freight Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended May 25, 2021:

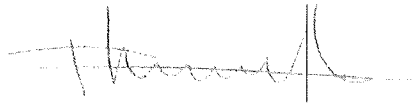
LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	07/05/21	\$550.00	0.30	\$165.00	Review and consider email from Wells Fargo; email exchange with client regarding same.
KBP	11/05/21	\$550.00	0.20	\$110.00	Review and consider emails from WF on PMSI; email exchange with D. Lu regarding same;
DYL	12/05/21	\$325.00	3.10	\$1,007.50	Review Wells Fargo leases to determine whether they are true leases or financing leases; draft PMSI acknowledgement; emails to and from K. Plunkett; email to client; email to Wells Fargo
KBP	12/05/21	\$550.00	0.60	\$330.00	Attend update call with client to discuss next steps and auction; review and consider updated acknowledgment.
MES	12/05/21	\$550.00	0.40	\$220.00	Conference call with M. Manchanda and K. Plunkett re next steps; Review emails re Wells Fargo lease
KBP	19/05/21	\$550.00	0.30	\$165.00	Email exchange with WF regarding acknowledgment.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DYL	25/05/21	\$325.00	0.30	\$97.50	Review PMSI acknowledgment; email to N. Bishop
TOTAL:			5.20	\$2,095.00	

OUR FEE	\$2,095.00
HST at 13%	\$272.35

AMOUNT NOW DUE	<u>\$2,367.35</u>
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THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



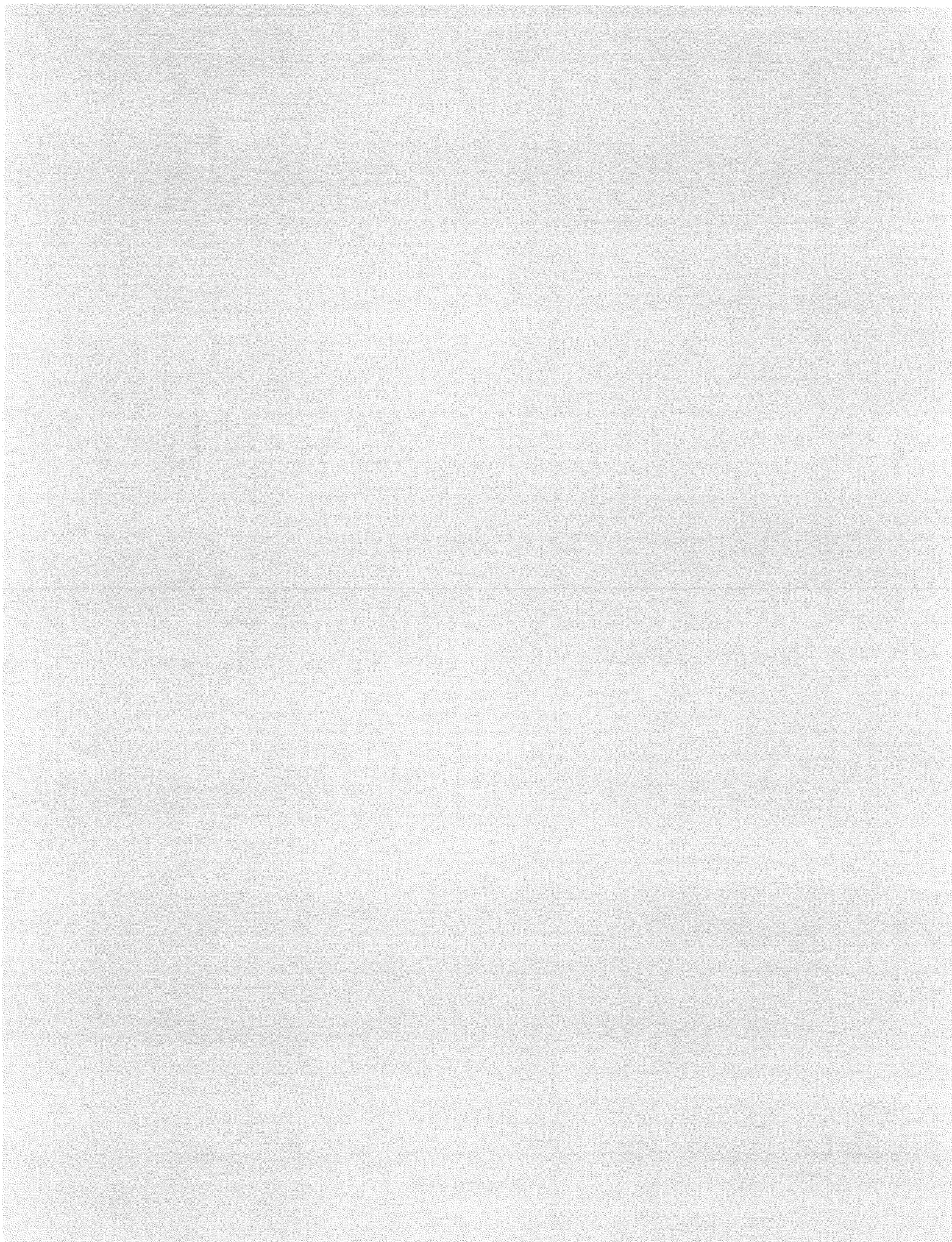
Kyle B. Plunkett
/ph
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.



IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 717237

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/162453
Client No.: 13225
Matter No.: 162453

July 30, 2021

Re: Orbit Freight Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended June 29, 2021:

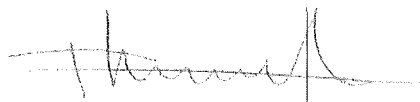
LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DYL	23/06/21	\$325.00	0.40	\$130.00	Review release sent by Wells Fargo; draft and send response
DYL	28/06/21	\$325.00	0.10	\$32.50	Communications with N. Bishop re Schedule "B" to release
DYL	29/06/21	\$325.00	0.20	\$65.00	Communications with Wells Fargo and client re release
TOTAL:			0.70	\$227.50	

OUR FEE	\$227.50
HST at 13%	\$29.58
AMOUNT NOW DUE	\$257.08

SUMMARY

Name	Year of Call	Hours	Rate	Value
Damian Y. Lu (DYL)	11/09/20	0.70	\$325.00	\$227.50

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Kyle B. Plunkett
/ph
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.


Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF KYLE PLUNKETT

Sworn before me

This 20TH day of September, 2021

A large, stylized handwritten signature in blue ink, written over a horizontal line. The signature is highly cursive and loops around itself.

Commissioner for taking Affidavits, etc

ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF CLAIREVILLE PROPERTY HOLDINGS INC.
A CORPORATION INCORPORATED UNDER
THE ONTARIO *BUSINESS CORPORATIONS ACT***

SUMMARY OF TIME INCURRED

LAWYER	CALL TO BAR	HOURS	RATE	VALUE
Kyle B. Plunkett	2011	8.2	550.00	\$4,510.00
Miranda E. Spence	2011	8.0	550.00	\$4,400.00
Damian Y. Lu	2020	14.0	325.00	\$4,550.00
Lynn H. Tay	2020	0.1	325.00	\$32.50
CLERK				
Patrick L. Williams		0.8	225.00	\$180.00

THE TORONTO-DOMINION BANK

- and -

ORBIT FREIGHT LTD.

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

NOTICE OF MOTION

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle B. Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Miranda Spence (LSO # 60621M)
Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

Lawyers for the Receiver

Appendix 11

District of	Ontario
Division	09-Toronto
Court No.	CV-21-00658361-00CL

**In the Matter of the Receivership of
ORBIT FREIGHT LTD.**

Receiver's Interim Statement of Receipts and Disbursements
as at September 20, 2021

	Total
RECEIPTS	
Accounts receivable	1,661.10
Sale of assets	270,797.21
HST refund	35,943.01
Interest allocation	256.75
	<hr/>
TOTAL RECEIPTS	<hr/> 308,658.07 <hr/>
DISBURSEMENTS	
Fees paid to the Official Receiver	71.54
Insurance	2,295.60
Receiver's fees and costs	36,001.50
HST on Receiver's fees and costs	4,680.20
Legal fees	33,597.06
HST on legal fees	4,171.97
HST paid on disbursements	185.85
Mail redirection	170.55
Travel	155.76
Accounting services	90.00
Ascend licensing fees	275.00
HST on Ascend licensing fees	35.75
	<hr/>
TOTAL DISBURSEMENTS	<hr/> 81,730.78 <hr/>
Net Receipts over Disbursements	<hr/> \$ 226,927.29 <hr/>

E&OE

Appendix 12



Canada Revenue Agency

[Logout](#)

View and pay account balance

Payroll deduction account:

826669285RP0001

Business name:

ORBIT FREIGHT LTD.

The following account information is not a complete statement of account.

Tax year balances

Select link to view detail

Tax year ?	(\$) Amount paid ?	(\$) Amount unpaid ?	(\$) T4 return amount	(\$) Balance adjustment ?	(\$) Balance ?
2021	\$0.00	\$1,800.00 Cr	\$0.00	\$0.00	\$1,800.00 Cr
2020	\$6,600.00 Cr	\$0.00	\$7,269.12 Dr	\$0.00	\$669.12 Dr
2019	\$13,500.00 Cr	\$0.00	\$13,500.00 Dr	\$0.00	\$0.00
2018	\$11,206.59 Cr	\$0.00	\$11,206.59 Dr	\$0.00	\$0.00
2017	\$16,857.00 Cr	\$0.00	\$16,857.00 Dr	\$0.00	\$0.00
2016	\$52,890.85 Cr	\$0.00	\$52,890.85 Dr	\$0.00	\$0.00
2015	\$21,741.45 Cr	\$0.00	\$21,741.48 Dr	\$0.03 Cr	\$0.00
2014	\$10,722.79 Cr	\$0.00	\$10,722.80 Dr	\$0.01 Cr	\$0.00
2013	\$3,386.40 Cr	\$0.00	\$2,468.78 Dr	\$917.62 Dr	\$0.00

Note: The outstanding balance below may not reflect the total amount owing, see [View and pay Canada Emergency Wage Subsidy \(CEWS\)](#) and [Canada Recovery Hiring Program \(CRHP\)](#) balance for additional payroll amounts.

Arrears account balances

Current total amount owing: \$1,871.94

Select link to view detail

Tax year ?	(\$) Amount owing ?	(\$) Uncharged interest ?	(\$) Law cost ?
2021	\$1,839.91 Dr	\$32.03 Dr	\$0.00
2020	\$0.00	\$0.00	
2019	\$0.00	\$0.00	
2018	\$0.00	\$0.00	
2017	\$0.00	\$0.00	
2016	\$0.00	\$0.00	
2015	\$0.00	\$0.00	
2014	\$0.00	\$0.00	
2013	\$0.00	\$0.00	
Total	\$1,839.91 Dr	\$32.03 Dr	\$0.00

Need assistance or want to make a payment?

If you need assistance, [request a call back](#).

For payment options, see [Make a payment](#).

Note: Electronic payments will be applied to your account in approximately 48 hours. It may take longer to process payments mailed or made at financial institutions.

Screen ID: B-RP-AB-01

Date modified: 2021-05-17

TAB C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	TUESDAY, THE 28 TH
)	
JUSTICE PENNY)	DAY OF SEPTEMBER, 2021

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**DISCHARGE ORDER
(returnable September 28, 2021)**

THIS MOTION, made by msi Spergel inc. ("**Spergel**") in its capacity as the Court-appointed receiver and manager (in such capacities, the "**Receiver**") of the undertaking, property and assets of Orbit Freight Ltd. (the "**Debtor**"), for an order:

1. approving the third report of the Receiver dated September 21, 2021 (the "**Third Report**") and the activities of the Receiver set out therein;
2. authorizing Spergel to make an assignment in bankruptcy on behalf of the Debtor;
3. approving the fees and disbursements of the Receiver and those of its legal counsel, Aird & Berlis LLP for the period of April 1, 2021 to and including September 20, 2021 ("**A&B**"),

including an accrual for fees and disbursements to be incurred to the completion of these proceedings;

4. authorizing and directing the Receiver to distribute certain funds to the Toronto-Dominion Bank (“TD”) on account of the Debtor’s secured indebtedness owing to TD for principal, interest and costs;

5. approving the Receiver’s Interim Statement of Receipts and Disbursements as at September 20, 2021 (as appended to the Third Report);

6. discharging Spergel as Receiver of the undertaking, property and assets of the Debtor, effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as **Schedule “A”** (the “**Discharge Certificate**”); and

7. releasing Spergel from any and all liability, as set out in paragraph 9 of this Order,

was heard this day by judicial videoconference.

ON READING the Motion Record of the Receiver, including the Third Report and the appendices thereto, the affidavits of the Receiver and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing although served as evidenced by the Affidavit of **NAME** sworn **DATE**, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein is abridged such that the Motion is properly returnable today, and hereby dispenses with further service thereof.

APPROVAL OF THE FINAL REPORT

2. **THIS COURT ORDERS** that Third Report and the conduct and activities of the Receiver described therein be and are hereby approved.

APPROVAL OF RECEIPTS AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements as set out in Appendix 10 to the Third Report and as at September 20, 2021, be and is hereby approved.

ASSIGNMENT IN BANKRUPTCY

4. **THIS COURT ORDERS** that the Receiver be, and is hereby, authorized to make an assignment in bankruptcy on behalf of the Debtor.

APPROVAL OF FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period April 1, 2021 to and including August 31, 2021, being \$14,354.81 inclusive of disbursements and HST, as set out in Appendix "9" to the Third Report, are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, A&B, for the period April 1, 2021 to and including June 29, 2021, being \$16,493.23 inclusive of disbursements and HST, as set out in Appendix "10" to the Third Report, are hereby approved.

7. **THIS COURT ORDERS** that the Fee Accrual of \$22,500, exclusive of disbursements and HST (as defined in the Third Report), representing the Receiver's and its legal counsel's fees to the completion of these proceedings, is hereby approved.

APPROVAL OF DISTRIBUTION

8. **THIS COURT ORDERS** that, after payment of the fees and disbursements set out in paragraphs 5 and 6 above and herein approved, the Receiver is hereby authorized and directed to make the proposed distribution to TD (the "**TD Distribution**") with the monies remaining in its hands to TD on account of the Debtor's secured indebtedness owing to TD, as outlined in the Third Report, for principal, interest and costs, after provision for any amounts that are required to be paid to any other party in priority to TD, if any, under the *Bankruptcy and Insolvency Act* (Canada).

DISCHARGE AND RELEASE

9. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 6 above and the filing of the Discharge Certificate by the Receiver in the form attached hereto as **Schedule “A”**, Spergel shall be discharged as Receiver of the assets, undertakings and properties of the Debtor, provided however that notwithstanding its discharge herein (a) Spergel shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of its mandate, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Spergel in its capacity as Receiver.

10. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, Spergel is hereby released and discharged from any and all liability that Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, Spergel is hereby forever released and discharged from and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on the Receiver’s part.

11. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

SCHEDULE “A”

Court File No. CV-21-00658361-00CL

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

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made March 11, 2021 (the “**Appointment Order**”), msi Spergel Inc. (“**Spergel**”) was appointed as receiver (in such capacity, the “**Receiver**”), of all the assets, undertakings and properties of Orbit Freight Ltd. (the “**Debtor**”).

(B) Pursuant to an Order of the Court made September 28, 2021 (the “**Distribution and Discharge Order**”), Spergel was discharged as the Receiver of the Debtor to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of these receivership proceedings; and (b) the Receiver will continue to have the

benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Spergel, in its capacity as the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution and Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the _____ day of _____, 2020.

msi Spergel Inc., solely in its capacity as the Court-appointed receiver of the Respondent, and not in its personal capacity

Per:

Name:

Title:

THE TORONTO-DOMINION BANK

- and -

ORBIT FREIGHT LTD.

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

DISCHARGE ORDER

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Lawyers for the Receiver

TAB D

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

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**SERVICE LIST
(As of September 21, 2021)**

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Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Finance Revenue Collections Branch – Insolvency Unit 33 King Street W., P.O. Box 627 Oshawa, ON L1H 8H5	insolvency.unit@ontario.ca
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CANADIAN WESTERN BANK 285 2880 Glenmore Trail SE Calgary, AB T2C 2E7	Dave Miller dave.miller@cwbank.com Tel: (403) 998-0276 Fax: (403) 920-0204 (incorrect street address)
RIORDAN LEASING INC. 1158 King St. E. Kitchener, ON N2G 2N4	
FIRST WEST LEASING LTD. (a division of First West Credit Union) First West Credit Union Regional Office Head Office #200-19933 88 th Avenue Langley, BC V2Y 4K5 Alea Whitesell Lean Greenbelt <i>Special Accounts Manager</i> First West Credit Union 184 Main Street Penticton, BC V2A 8G7	Alea Whitesell awhitesell@firstwestcu.ca Tel:(250) 487-7218

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Applicant

Respondent

Court File No. CV-21-00658361-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto**

**MOTION RECORD
(returnable April 19, 2021)**

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