

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

**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 April 19, 2021)**

Date: April 12, 2021

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*Lawyers for the Receiver*

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

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# TAB A



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*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION  
(returnable April 19, 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 Commercial List on Monday, April 19, 2021 at 9:30 a.m., or as soon after that time as the motion can be heard, by judicial videoconference via Zoom due to the COVID-19 emergency.

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

**THE MOTION IS FOR** an Order, including, among other things:

- (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 agreement between IronPlanet Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Auctioneer**”), as auctioneer, and the Receiver dated April 12, 2021 (the “**Auction Agreement**”), and authorizing the

Auctioneer to conduct the auction, as referenced in, and in accordance with the terms of, the Auction Agreement (the “**Auction**”);

- (c) vesting in each purchaser at such Auction, the Debtor’s and the Receiver’s right, title and interest in and to the Property purchased by such respective purchaser at the Auction, free and clear of any claims and encumbrances;
- (d) approving the First Report of the Receiver dated March 16, 2021 (the “**First Report**”) and approving the actions and activities of the Receiver described therein;
- (e) approving the Second Report of the Receiver dated April 12, 2021 (the “**Second Report**”) and approving the actions and activities of the Receiver described therein;
- (f) approving the Receiver’s Interim Statement of Receipts and Disbursements as at March 31, 2021 (as set out in the Second Report);
- (g) 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;
- (h) 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;
- (i) approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“**A&B**”); and
- (j) 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) pursuant to 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;
- (c) the Receiver has entered into the Auction Agreement with the Auctioneer, pursuant to which the Auctioneer shall, as agent of the Receiver and subject to the approval of this Court, offer certain of the Property (as more particularly described in the Auction Agreement) (the “**Auction Assets**”) pursuant to and subject to the terms of the Auction Agreement;
- (d) the Auctioneer is experienced in conducting similar auctions, such that the Receiver believes that the Auction will represent an appropriate canvassing of the market for the sale of the Auction Assets;
- (e) the Receiver has filed with the Court its Second Report outlining its activities since the date of the First Report, including, amongst other things:

- (i) following the issuance of the Enforcement Order on March 17, 2021, which compelled King Towing to deliver to the Receiver the Trucks;
- (ii) on March 18, 2021, with the assistance of the Peel Regional Police, the Receiver was able to retrieve the Trucks from King Towing's yard located at 1625 Shawson Drive, Mississauga;
- (iii) the Receiver asked the Auctioneer to conduct an inspection of the Trucks, which revealed that:
  - (1) the SPIF lift axles on the Trucks had been removed;
  - (2) the original tires and rims had been removed and replaced with much older and worn-out tires; and
  - (3) 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;
- (iv) at the Receiver's pre-appointment inspection of the Debtor's premises on March 5, 2021, as detailed in the Receiver's pre-filing report dated March 8, 2021 (the "**Pre-Filing Report**"), the Trucks had their SPIF lift axles along with almost brand-new tires and rims (collectively, the "**Missing Parts**");
- (v) through counsel, the Receiver has written to King Towing to request the return of the Missing Parts. To date, no response has been received;
- (vi) the Debtor's premises were cleared out prior the Receiver's appointment. Upon its appointment, the Receiver asked that Mr. Pandal, the principal of the Debtor, to advise of the location of the Debtor's books and records (including electronic records) (collectively, the "**Records**");

- (vii) despite initial promises to do so, and follow-up letters sent by the Receiver and its counsel on March 23, 2021, and March 29, 2021, respectively, Mr. Pandal has failed to advise of the location of the Books and Records. Mr. Pandal has further stopped responding to the Receiver's communications;
- (viii) the Receiver has sought to collect from approximately 187 of the Debtor's 197 customers listed on the accounts receivable listings that the Debtor submitted to The Toronto-Dominion Bank ("TD") prior to the Receiver's appointment, by issuing demand letters;
- (ix) the Receiver has received responses from at least 51 customers advising that no amounts are owing to the Debtor, and in some cases, the customer has never done business with the Debtor, or has not done business with the Debtor in years;
- (f) the Receiver has prepared an Interim Statement of Receipts and Disbursements as at March 31, 2021, which requires the approval of this Court;
- (g) the Receiver has accrued fees and expenses in its capacity as Receiver, which fees and expenses require the approval of this Court;
- (h) the Receiver's counsel, A&B, has accrued fees and expenses in its capacity as counsel to the Receiver, which fees and expenses require the approval of this Court;
- (i) the other grounds set out in the Second Report;
- (j) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (k) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (l) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (m) 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 First Report;
- (b) the Second Report;
- (c) the fee affidavit of Damian Lu sworn April 9, 2021;
- (d) the fee affidavit of Mukul Manchanda sworn April 9, 2021; and
- (e) such further and other material as counsel may submit and this Court may permit.

Date: April 12, 2021

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*Lawyers for the Receiver*

**TO: ATTACHED SERVICE LIST**

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

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

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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**

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Applicant

Respondent

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

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

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**NOTICE OF MOTION**

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*Lawyers for the Receiver*

# TAB B

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**

**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.

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**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)**

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*Lawyers for the Receiver*

# TAB C

~~Revised: January 21, 2014~~

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

THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_ DAY, THE \_\_\_\_\_ DAY  
 JUSTICE \_\_\_\_\_ ) OF \_\_\_\_\_, 20\_\_

B E T W E E N:

**PLAINTIFF**

**Plaintiff**

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

**DEFENDANT**

**Defendant**

Respondent

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

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ msi Spergel inc., in its capacity as ~~the~~ Court-appointed receiver ~~(and manager (in such capacities, the "Receiver"))~~, without security, of all the ~~undertaking, assets, undertakings and~~ property ~~and assets~~ of ~~[DEBTOR]~~ Orbit Freight Ltd. (the ~~"Debtor"~~), for an ~~order~~ Order, amongst other things: (i) approving the ~~sale transaction~~ (the ~~"Transaction"~~) ~~contemplated by an agreement of purchase and sale (the "Sale Agreement")~~ between agreement between IronPlanet Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (the "Auctioneer"), as auctioneer, and the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended "Auction Agreement"), as seller, a copy of which Auction Agreement is attached as Appendix "9" to the Second Report of the Receiver dated ~~[DATE]~~ April 12, 2021 (the ~~"Second Report"~~), ~~and;~~ (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 ~~the~~ each purchaser at such Auction (each, a "Purchaser") the Debtor's and the Receiver's right, title and interest in and to the ~~assets described~~ Property (as defined in the Sale Agreement (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 ~~at 330 University Avenue, Toronto, Ontario~~ 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, ~~[NAMES OF OTHER PARTIES APPEARING]~~ 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 ~~[NAME]~~ Damian Lu, sworn ~~[DATE]~~ April 12, 2021, filed<sup>1</sup>;

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. ~~1.~~ THIS COURT ORDERS AND DECLARES that the ~~Transaction~~ Auction is hereby approved,<sup>2</sup> and the execution of the ~~Sale~~ Auction Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized ~~and directed~~ to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the ~~Transaction and for the conveyance of the Purchased Assets to the Purchaser.~~

~~2.~~ Auction.

<sup>1</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.



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 ~~the~~ delivery ~~of a Receiver's certificate~~ by the Auctioneer to ~~the~~ such Purchaser ~~substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"~~ of a bill of sale or similar evidence of purchase and sale (each, a "Purchaser Bill of Sale"), all ~~of~~ 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 ~~the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> such Purchaser's Bill of Sale shall vest absolutely in ~~the~~ 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"<sup>5</sup>), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order ~~of the Honourable Justice [NAME] dated [DATE]~~; (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) ~~those Claims listed on Schedule C hereto (all of which are collectively referred to as the~~

<sup>4</sup> ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~



~~"Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~ all charges, security interests or claims pursuant to the *Repair and Storage Liens Act* (Ontario), and, for greater certainty, this Court orders that all ~~of the~~ ~~Encumbrances~~ Claims affecting or relating to ~~the~~ such Purchased Assets are hereby expunged and discharged as against ~~the~~ such Purchased Assets.

~~3. — THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> 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 ~~the Receiver's Certificate~~ a Purchaser's Bill of Sale all Claims ~~and Encumbrances~~ 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 ~~the~~such Purchased Assets immediately prior to ~~the~~their sale<sup>8</sup> at the Auction, as if ~~the~~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 ~~the~~their sale at the Auction.

~~5. — THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.~~

~~6. — THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

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

~~(a)~~ (a) the pendency of these proceedings;

~~(b)~~ (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)~~ (c) any assignment in bankruptcy made in respect of the Debtor~~;~~<sub>2</sub>

the vesting of each of the Purchased Assets in ~~the~~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.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

6. ~~9.~~ **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.

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Revised: January 21, 2014

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  
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Miranda Spence (LSO # 60621M)

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~~-2-~~Lawyers for the Receiver~~Schedule A—Form of Receiver's Certificate~~

Court File No. \_\_\_\_\_

~~ONTARIO~~~~SUPERIOR COURT OF JUSTICE~~~~COMMERCIAL LIST~~~~BETWEEN:~~~~PLAINTIFF~~

Plaintiff

~~-and-~~~~DEFENDANT~~

Defendant

~~RECEIVER'S CERTIFICATE~~~~RECITALS~~

~~A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").~~

~~2~~

~~B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.~~

~~C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.~~

~~THE RECEIVER CERTIFIES the following:~~

- ~~1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;~~
- ~~2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and~~
- ~~3. The Transaction has been completed to the satisfaction of the Receiver.~~
- ~~4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].~~

**~~[NAME OF RECEIVER], in its capacity as  
Receiver of the undertaking, property and  
assets of [DEBTOR], and not in its personal  
capacity~~**

~~Per:~~

~~Name:~~

|

~~-2-~~

|

Title:



~~-2-~~

~~Schedule B—Purchased Assets~~

~~-2-~~

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

~~-2-~~

~~**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**~~

~~**(unaffected by the Vesting Order)**~~

~~24921184.1~~

Document comparison by Workshare Compare on April 12, 2021 5:51:33 PM

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Description	#44096423v1<wsc.airdberlis.com> - Model Approval and Vesting Order (amended January 21_14)(31678116.1)
Document 2 ID	iManage://wsc.airdberlis.com/cm/44095922/3
Description	#44095922v3<wsc.airdberlis.com> - Approval and Vesting Order (Auction Agreement)(43357720.1)
Rendering set	Standard

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Style change	
Format change	
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Inserted cell	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:
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	Count
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Deletions	135
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	252

# TAB D

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

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

THE HONOURABLE MR.	)	MONDAY, THE 19 <sup>TH</sup>
	)	
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.

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**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*

# TAB E

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

**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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1. The Receivership Order
2. The Pre-Filing Report
3. The Enforcement Order
4. The First Report
5. The First King Towing Letter
6. RBA Inspection Reports of the Trucks
7. The Second King Towing Letter
8. The Receiver and the Receiver's Counsel letters to Mr. Pandal
9. The Auction Agreement
10. Fee Affidavit of Mukul Manchanda, sworn April 9, 2021
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 12<sup>th</sup> 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:




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Mukul Manchanda, CPA, CIRP, LIT  
Principal

# Appendix 1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 11 <sup>th</sup>
	)	
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 "McEwen", is written 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**

**Harrison Pensa** <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street, P.O. Box 3237  
London, Ontario N6A 4K3

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Applicant,  
The Toronto-Dominion Bank

# Appendix 2



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

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

**BETWEEN:**

**THE TORONTO-DOMINION BANK**

**Applicant**

**-and-**

**ORBIT FREIGHT LTD.**

**Respondent**

**PRE-FILING REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS THE PROPOSED RECEIVER  
OF ORBIT FREIGHT LTD.**

**March 8, 2021**

## Table of Contents

I.	PURPOSE OF THIS REPORT .....	1
II.	INSPECTION AND DEMAND FOR PAYMENT .....	2
III.	BANKRUPTCY OF SATNAM SINGH PANDAL .....	3
IV.	CONCLUSION AND RECOMMENDATION.....	3

## **APPENDICES**

1. Pictures of the Onsite Inspection
2. Bankruptcy documents for Mr. Satnam Pandal

## I. PURPOSE OF THIS REPORT

1. msi Spergel inc. ("**Spergel**") understands that The Toronto-Dominion Bank ("**TD**" or the "**Bank**") intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") to appoint Spergel as receiver Orbit Freight Ltd. ("**Orbit**" or the "**Company**") 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**").
2. This pre-filing report (this "**Report**") is prepared by Spergel in its capacity as the proposed receiver (in such capacity, the "**Proposed Receiver**") of all of the assets, undertakings and properties (the "**Property**") of the Company.
3. On March 5, 2021, Spergel was engaged as consultant by TD to, amongst other things, inspect the Property.
4. The purpose of this Report is to advise the Court of, amongst others:
  - a) Spergel's qualifications to act as Receiver; and
  - b) the result of the Proposed Receiver's inspection of the Property.
5. The Proposed Receiver understands that Orbit operated from a premises located at 1704 Meyerside Drive, Units 1 & 2, Mississauga, ON (the "**Company's Premises**") and that Satnam Singh Pandal ("**Mr. Pandal**") is the principal of the Company.
6. The Proposed 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 Report for any other purpose.
7. In preparing this Report, the Proposed Receiver has relied upon certain information provided to it by the Bank, and not any information or advice it has received from the Company. The Proposed 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 Proposed Receiver expresses no opinion or other form of assurance with respect to such information.

8. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

## II. **INSPECTION AND DEMAND FOR PAYMENT**

9. On March 5, 2021 around 10:00am, the Proposed Receiver attended at the Company's Premises to inspect the Property (the "**Inspection**"). During its attendance, the Proposed Receiver noted the following:
  - a) The Company's Premises was locked;
  - b) The office area visible through the glass door appeared to be cleared out; and
  - c) At least two Orbit trucks were parked on the front lawn, and one Orbit dump truck was parked in the parking lot;

Pictures taken during the Inspection are attached to this Report as **Appendix "1"**.

10. Following the Inspection, TD issued demand for payment and a Notice of Intention to Enforce Security pursuant to the section 244(1) of the BIA (the "**244 Notices**") to the Company.
11. The ten (10) day period prescribed under 244 Notices expires on March 15, 2021 and, accordingly, the return date for TD's application is set to be heard prior to the expiry of such period. However, given the status of the Company and the bankruptcy of the principal, Mr. Pandal, as discussed below, there is urgency to this application and a receiver to secure the remaining assets for the benefit of the creditors.
12. In addition, the Proposed Receiver reviewed the Company's accounts receivable listing as at January 31, 2021 provided to it by the Bank. The accounts receivable listing as at January 31, 2021 indicates CAD and USD accounts receivables of \$1,406,505.85 and USD\$359,671.42 (collectively, the "**Accounts Receivable**"), respectively.

13. At this time, Spergel has no visibility with respect to the remaining assets of the Company or the value thereof, as the business appears to have been abandoned, or at least, the Company has ceased operations.

### III. **BANKRUPTCY OF SATNAM SINGH PANDAL**

14. The Proposed Receiver has discovered that on March 2, 2021, Mr. Pandal, the principal of the Company, filed an assignment and Spergel was appointed as Licensed Insolvency Trustee (in such capacity, the “**Bankruptcy Trustee**”) of the estate of the bankrupt by the Official Receiver.
15. Mr. Pandal, in his sworn statement of affairs, indicated that he operated two trucking businesses as follows (both of which have ceased operating):

<b>Business Name</b>	<b>Start Date</b>	<b>End Date</b>
Orbit Freight Ltd.	February 13, 2012	February 15, 2021
Delta Carrier Inc.	October 25, 2004	January 31, 2021

Copies of the relevant bankruptcy documents (including the sworn statement of affairs) of Mr. Pandal are attached to this Report as **Appendix “2”**.

### IV. **CONCLUSION AND RECOMMENDATION**

16. Given the Inspection and Mr. Pandal’s disclosure in his sworn statement of affairs regarding the status of the Company’s operations, it is apparent that as at the date of this Report, Orbit has ceased operating.
17. Accordingly, the Proposed Receiver is of the view that an appointment of a receiver is just and convenient to protect the Property (including Accounts Receivable) and the interest of the stakeholders.
18. Spergel is a Licensed Insolvency Trustee within the meaning of subsection 2(1) of the BIA.
19. Spergel has consented to act as Receiver in these proceedings should the Court grant the Order appointing a receiver. A copy of Spergel’s consent to act is included in the Bank’s Application Record.

20. As noted above, Spergel was engaged by TD to assist it with reviewing and assessing the Bank's collateral position. As a result of its engagement, Spergel has acquired some knowledge of the Company's business and operations.

Dated at Toronto this 8<sup>th</sup> day of March, 2021.

**msi Spergel inc.**

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

Per:



---

Mukul Manchanda, CPA, CIRP, LIT  
Principal  
43762717.2

# APPENDIX 1









87



1















# APPENDIX 2



District of  
Division No.  
Court No.  
Estate No.

-- FORM 79 --

Statement of Affairs (Non-Business Bankruptcy)  
(Subsection 49(2) and 158(d) of the Act / Subsections 50(2) and 62(1) and Paragraph 66.13(2)(d) of the Act)

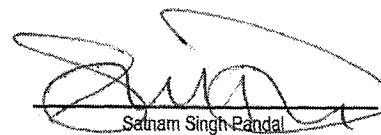
☒ Original ☐ Amended

In the matter of the bankruptcy of  
Satnam Singh Pandal  
of the City of Brampton, in the Province of Ontario  
SUMMARY ADMINISTRATION

ASSETS						
Type of assets	Description (Provide details)	Estimated Dollar Value	Exempt Property		Secured Amount/ Liens	Estimated net realizable dollar value
			Yes	No		
1. Cash on Hand						
2. Furniture		1,000.00	x		0.00	0.00
3. Personal Effects	Other	1,000.00	x		0.00	0.00
4. Policies & RRSPs	Argosy Securities RRSP - 1J6-692S1	17,640.00	x		0.00	0.00
5. Securities						
6. Real Property or Immovable	House					
	Cottage					
	Land					
7. Motor Vehicles	Automobile					
	Motorcycle					
	Snowmobile					
	Other					
8. Recreational Equipment						
9. Taxes						
TOTAL		19,640.00			0.00	0.00

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt

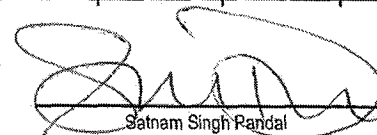
District of  
Division No.  
Court No.  
Estate No.

## FORM 79 -- Continued

LIABILITIES						
Liabilities type code (LTC): 1 Real Property or Immovable Mortgage or Hypothec 2 Bank Loans (except real property mortgage) 3 Finance Company Loans 4 Credit Cards Bank/Trust Companies Issuers 5 Credit Cards Other Issuers 6 Taxes Federal/Provincial/Municipal 7 Student Loans 8 Loans from Individuals 9 Other						
Creditor	Address including postal code	Account No.	Amount of debt			Enter LTC
			Unsecured	Secured	Preferred	
Capital One MasterCard Bankruptcies c/o FCT Default Solutions Attn: Insolvency Department	PO Box 2514, Stn B London ON N6A 4G9	5223 XXXX XXXX 8541	7,760.00	0.00	0.00	5
CIBC Visa - Bankruptcies c/o TECHCOM Managed Services	6-6150 Hwy 7, PO Box 486 Woodbridge ON L4H 0R6	4500 XXXX XXXX 8528	14,255.00	0.00	0.00	4
First West Leasing Ltd. Contingent \$ = 1.00	6470 201 Street Langley City BC V2Y 2X4		1.00	0.00	0.00	9
Meridian Onecap Credit Corporation (formerly Roynat Lease Finance - Toronto) Attn: Chelsey Spence Contingent \$ = 1.00	800-40 Sheppard Ave W North York ON M2N 6K9		1.00	0.00	0.00	9
Ontario Superior Court of Justice Attn: The Filing office	50 Eagle St West Newmarket ON L3Y 6B1	CV-21-00000206-00 00	1.00	0.00	0.00	9
Pallett Valo LLP Attn: Frances Wales	300-77 City Centre Dr, West Tower Mississauga ON L5B 1M5	42112D	0.00	0.00	0.00	9
RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen Contingent \$ = 1.00	PO Box 57100 Etobicoke ON M8Y 3Y2	4514 XXXX XXXX 9315	1.00	0.00	0.00	4
RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen	PO Box 57100 Etobicoke ON M8Y 3Y2	4514 XXXX XXXX 5408	3,210.00	0.00	0.00	4
Scotiabank c/o Canaccede International Management Ltd. Contingent \$ = 1.00	PO Box 758 Stn B London ON N6A 4Y8	4538 XXXX XXXX 5022	1.00	0.00	0.00	4
TD Canada Trust C/O FCT Default Solutions	PO Box 2514, Station B London ON N6A 4G9	1181-3249045	15,075.00	0.00	0.00	2
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	2032-5013073	1.00	0.00	0.00	2
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	1181-5007100	1.00	0.00	0.00	2
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	1968-9007100-09	1.00	0.00	0.00	2

27-Feb-2021

Date

  
Satnam Singh Randal  
Bankrupt


District of  
Division No.  
Court No.  
Estate No.

## FORM 79 - Continued

LIABILITIES						
Creditor	Address including postal code	Account No.	Amount of debt			Enter LTC
			Unsecured	Secured	Preferred	
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	8144-9007100-01	1.00	0.00	0.00	2
TD Canada Trust Visa C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	4520 XXXX XXXX 6788	1.00	0.00	0.00	4
TD Canada Trust Visa C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	4520 XXXX XXXX 4988	1.00	0.00	0.00	4
TD Canada Trust Visa C/O FCT Default Solutions	PO Box 2514, Station B London ON N6A 4G9	4520 XXXX XXXX 7718	19,730.00	0.00	0.00	4
T-Pine Leasing Capital Corporation Contingent \$ = 1.00	6050 Dixie Road Mississauga ON		1.00	0.00	0.00	9
Wells Fargo Financial Retail Services c/o InSolve Global Credit Fund I, L.P. Contingent \$ = 1.00	c/o TECHCOM Managed Services Inc 6-6150 Hwy 7, PO Box 487 Woodbridge ON L4H 0R6	460-9404728-001	1.00	0.00	0.00	9
	TOTAL	Unsecured	60,043.00			
	TOTAL	Secured		0.00		
	TOTAL	Preferred			0.00	
					TOTAL	60,043.00

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt

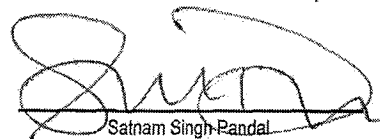
District of  
Division No.  
Court No.  
Estate No.

## FORM 79 – Continued

INFORMATION RELATING TO THE AFFAIRS OF THE BANKRUPT					
<b>A. PERSONAL DATA</b>					
1. Family name: Pandal		Given names: Satnam Singh Gender: Male		Date of birth: YYYY / MM / DD 1972/08/31	
2. Also known as:					
3. Complete address, including postal code : 31 Heslop Circle Brampton ON L6R 0M8					
4. Marital status:		Married (Specify month and year of event if it occurred in the last five years )			
5. Full name of spouse or common-law partner: Manjeet Kaur Pandal					
6. Name of present employer: None		Occupation: None (Unemployed)			
7A. Number of persons in household family unit, including bankrupt:				4	
7B. Number of persons 17 years of age or less:				2	
8. Have you operated a business within the last five years?				Yes	
Business Name		Business Type	From	To	
Orbit Freight Ltd.		Truck Transportation	13-Feb-2012	15-Feb-2021	
Delta Carrier Inc.		Truck Transportation	25-Oct-2004	31-Jan-2021	
<b>B. WITHIN THE 12 MONTHS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:</b>					
9A. Sold or disposed of any of your property?			Yes		
9B. Made payments in excess of the regular payments to creditors?			No		
9C. Had any property seized by a creditor?			No		
<b>C. WITHIN FIVE YEARS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:</b>					
10A. Sold or disposed of any property?			No		
10B. Made any gifts to relatives or others in excess of \$ 500?			No		
<b>D. BUDGET INFORMATION: Attach Form 65 to this Form.</b>					
11A. Have you ever made a proposal under the Bankruptcy and Insolvency Act?			Yes		
11B. Have you ever been bankrupt before in Canada?			Yes		
(a) Filing Date and Location		(b) Trustee/Admin	(c) Proposal Successful?	(d) Date Certificate obtained	(e) OSB Number
Satnam Singh Pandal					
Jan-07-2000	North York, Ontario	Cooper & Company Ltd.	No	Apr-25-2001	32-109773
Oct-22-2002	North York, Ontario	Rumanek & Company Ltd.	-	Feb-19-2004	32-133118
12. Do you expect to receive any sums of money which are not related to your normal income, or any other property within the next 12 months?					No
13. If you answered Yes to any of questions 9, 10 and 12, provide details:					

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt

District of  
Division No.  
Court No.  
Estate No.

## FORM 79 – Concluded

**9A:**

Various vehicle that were being leased have been surrendered or seized by the secured lenders . I had personally guaranteed these leases. The lease shortfalls have yet to be determined but I expect the financial deficiencies will be will be significant. These debts have been listed as contingent debts .

**14. Give reasons for your financial difficulties :**

I owned and operated two trucking businesses and relied on credit facilities to fund the businesses from time -to-time. I also relied on credit facilities to help support my family as well as the businesses were by -in-large unprofitable. Unfortunately both companies failed and my vehicles have been repossessed or surrendered . My debt level, which will grow as I have personally guaranteed much of my corporate debt, is significant and I have no hope of ever repaying my creditors . I file this bankruptcy with a view to regain some financial stability for myself and my family .

I, Satnam Singh Pandal of the City of Brampton in the Province of Ontario, do swear (or solemnly declare) that this statement is, to the best of my knowledge, a full, true and complete statement of my affairs on the 27th day of February 2021, and fully discloses all property and transactions of every description that is or was in my possession or that may devolve on me in accordance with the Bankruptcy and Insolvency Act.

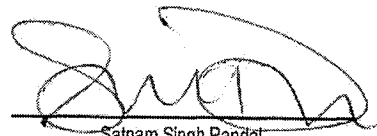
SWORN (or SOLEMNLY DECLARED)

before me at the City of Mississauga in the Province of Ontario, on this 27th day of February 2021.

Christopher Galea, Commissioner of Oaths  
For the Province of Ontario  
Expires June 27, 2022

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt

District of  
Division No.  
Court No.  
Estate No.

- FORM 65 -  
Monthly Income and Expense Statement of the Bankrupt and the Family Unit  
and Information (or Amended Information) Concerning  
the Financial Situation of the Individual Bankrupt  
(Section 68 and Subsection 102(3) of the Act; Rule 105(4))

☒ Original

☐ Amended

In the matter of the bankruptcy of  
Satnam Singh Pandal  
of the City of Brampton, in the Province of Ontario  
SUMMARY ADMINISTRATION

Information concerning the monthly income and expense statement of the bankrupt and the family unit, the financial situation of the bankrupt and the bankrupt's obligation to make payments required under section 68 of the Act to the estate of the bankrupt are as follows:

MONTHLY INCOME	Bankrupt	Other Members of the family unit	Total
Net employment income .....	0.00		
Net pension/Annuities. ....	0.00		
Net child support. ....	0.00		
Net spousal support. ....	0.00		
Net employment insurance benefits .....	0.00		
Net social assistance .....	0.00		
Self-employment income			
Gross 0.00 Net .....	0.00		
Other net income .....	0.00		
<b>TOTAL MONTHLY INCOME</b>	<b>0.00 (1)</b>	<b>0.00 (2)*</b>	
<b>TOTAL MONTHLY INCOME OF THE FAMILY UNIT ((1) + (2))</b>			<b>0.00 (3)</b>
<b>MONTHLY NON-DISCRETIONARY EXPENSES</b>			
Child support payments .....	0.00		
Spousal support payments .....	0.00		
Child care .....	0.00		
Medical condition expenses .....	0.00		
Fines/penalties imposed by the Court .....	0.00		
Expenses as a condition of employment .....	0.00		
Debts where stay has been lifted .....	0.00		
Other expenses .....	0.00		
<b>TOTAL MONTHLY NON-DISCRETIONARY EXPENSES</b>	<b>0.00 (4)</b>	<b>0.00 (5)</b>	
<b>TOTAL MONTHLY NON-DISCRETIONARY EXPENSES OF THE FAMILY UNIT ((4) + (5))</b>			<b>0.00 (6)</b>
<b>AVAILABLE MONTHLY INCOME OF THE BANKRUPT ((1) - (4))</b>	<b>0.00 (7)</b>		
<b>AVAILABLE MONTHLY INCOME OF THE FAMILY UNIT ((3) - (6))</b>			<b>0.00 (8)</b>
<b>BANKRUPT'S PORTION OF THE AVAILABLE MONTHLY INCOME OF THE FAMILY UNIT</b>			<b>100.00 % (9)</b>

- FORM 65 --- Concluded -

## MONTHLY DISCRETIONARY EXPENSES : (Family unit)

## Housing expenses

Rent/mortgage/hypothec.....	0.00
Property taxes/condo fees.....	0.00
Heating/gas/oil.....	0.00
Telephone.....	0.00
Cable.....	0.00
Hydro.....	0.00
Water.....	0.00
Furniture.....	0.00
Other.....	0.00

## Personal expenses

Smoking.....	0.00
Alcohol.....	0.00
Dining/lunches/restaurants.....	0.00
Entertainment/sports.....	0.00
Gifts/charitable donations.....	0.00
Allowances.....	0.00
Other.....	0.00

## Non-recoverable medical expenses

Prescriptions.....	0.00
Dental.....	0.00
Other.....	0.00

## Living expenses

Food/grocery.....	0.00
Laundry/dry cleaning.....	0.00
Grooming/toiletries.....	0.00
Clothing.....	0.00
Other.....	0.00

## Transportation expenses

Car lease/payments.....	0.00
Repair/maintenance/gas.....	0.00
Public transportation.....	0.00
Other.....	0.00

## Insurance expenses

Vehicle.....	0.00
House.....	0.00
Furniture/contents.....	0.00
Life insurance.....	0.00
Other.....	0.00

## Payments

Payments to the estate.....	280.00
To secured creditor.....	0.00
(Other than mortgage and vehicle).....	0.00
Other.....	0.00

TOTAL MONTHLY DISCRETIONARY EXPENSES (FAMILY UNIT)..... 280.00 (10)

MONTHLY SURPLUS OR (DEFICIT) FAMILY UNIT ((8) - (10))..... -280.00 (11)

## Information (or Amended Information) Concerning the Financial Situation of the Individual Bankrupt

## Payments to the estate as per agreement

Number of persons in household family unit, including bankrupt: 4

Total amount bankrupt has agreed to pay monthly..... 280.00 (12)

Amount bankrupt has agreed to pay monthly to repurchase assets..... 0.00 (13)

Residual amount paid into the estate ((12) - (13))..... 280.00 (14)

## Payments required by Directive No. 11R2 (Surplus Income)

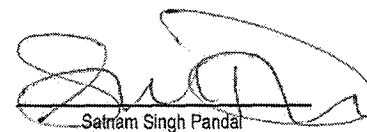
Monthly amount required by Directive No. 11R2 (Surplus Income) based on percentage established on line (9).... 0.00 (15)

Difference between amounts at lines (14) and (15)..... 280.00 (16)

Other applicable comments:

While I search for gainful employment, I am being financially supported by family, who are also funding this bankruptcy.

Dated at the City of Mississauga in the Province of Ontario, this 27th day of February 2021.

msi Spengel Inc. - Licensed Insolvency Trustee  
Per:Christopher Galea - Licensed Insolvency Trustee  
204 - 1425 Dundas St. E.  
Mississauga ON L4X 2W4  
Phone: (905) 602-4143 Fax: (905) 602-8879
  
Satnam Singh Pandai

# Appendix 3



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	WEDNESDAY, THE 17 <sup>TH</sup> 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.

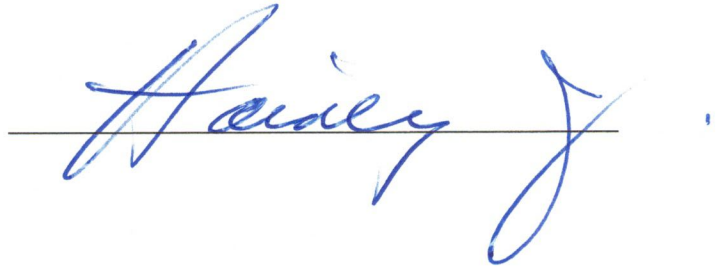
6. **THIS COURT ORDERS** that should any of the Authorities of the applicable jurisdiction locate any of the Trucks, said Authority shall advise the Receiver accordingly and assist the Receiver in seizing the Truck in question and delivering possession of the vehicle to the

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 "Hendy J", is written over a horizontal line. The signature is stylized and cursive.

**SCHEDULE "A"**

City of Toronto

Regional Municipality of York and/or York Region

Regional Municipality of Peel and/or Peel Region

Applicant

105

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 4

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

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

**BETWEEN:**

THE TORONTO-DOMINION BANK

Applicant

-and-

ORBIT FREIGHT LTD.

Respondent

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

**March 16, 2021**

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1. The Receivership Order
2. The Pre-Filing Report
3. The First Letter and the Second Letter
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## **I. APPOINTMENT AND BACKGROUND**

1. This first report (this “**First 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**”).

## **II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER**

6. The purpose of this First Report is:
  - a) to seek an order from this Honourable Court ordering King Towing to release the Trucks (as defined herein) to the Receiver; and

- b) to seek an order from this Honourable Court ordering the Sheriff of the Ontario jurisdictions, where the Trucks are located, to assist the Receiver in recovering the Trucks.

*Disclaimer*

7. 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 First Report for any other purpose.
8. In preparing this First 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.
9. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

**III. ACTIONS OF THE RECEIVER UPON APPOINTMENT**

10. A copy of the Receivership was provided to the Company and Mr. Pandal by the Receiver.
11. On March 12, 2021, the Receiver attended at the Premises and met with Mr. Pandal. Mr. Pandal advised, amongst other things, the following:
  - a) All of the trucks and trailers were returned to the respective lessors prior to the appointment of the Receiver with the exception of the following:

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

(collectively, the “**Trucks**”); and

- b) the Trucks were towed away from the Premises on request of another tenant by King Towing a few days prior to the appointment of the Receiver.
- 12. Upon discovering that the Trucks were towed away by King Towing, the Receiver immediately contacted King Towing and requested that, in accordance with the Receivership Order, King Towing release the Trucks to the Receiver without delay. The Receiver's Counsel sent a letter to King Towing (the "**First Letter**"), as follows:
  - a) attaching a copy of the Receivership Order;
  - b) asking under what authority did King Towing remove the Trucks from the Premises;
  - c) advising that pursuant to paragraph 4 of the Receivership Order, anyone having notice of the Receivership Order is required to deliver to the Receiver any property belonging to Orbit upon the Receiver's request; and
  - d) advising that in the event the Trucks were not released, the Receiver intends to report King Towing's non-compliance with the Receivership Order to the Court.
- 13. Subsequent to receipt of the First Letter by King Towing, the Receiver received and engaged in multiple telephone discussions with two personnel of King Towing, namely Happy and Sunny, who advised as follows:
  - a) Happy advised that he would like to retain the Trucks over the weekend so King Towing can accrue additional storage. Happy would not disclose the location of the Trucks; and
  - b) Sunny advised that King Towing has the right to retain possession of the Trucks pursuant to alleged liens under the *Repair and Storage Liens Act*, and further advised that King Towing will release the Trucks once the Receiver deposits \$50,000 into court.
- 14. Given the position taken by King Towing, the Receiver's Counsel sent another letter (the "**Second Letter**") summarizing the Receiver's conversation with Happy and Sunny and advising, amongst other things,

- a) that in the event King Towing has a legitimate claim for storage, the Receiver will not pay any storage accruing from March 12, 2021; and
- b) that in view of King Towing's improper actions, the Receiver will be scheduling an urgent hearing to have this matter put before the Court as soon as possible, and asking King Towing to provide contact information of its counsel so materials can be served.

Attached as **Appendix "3"** to this First Report are copies of the First Letter and the Second Letter.

- 15. On March 15, 2021, in an attempt to gain access to the Trucks, the Receiver contacted the Peel Regional Police ("**Peel Police**") and met with officer Taryn Young at the Premises. Upon review of the Receivership Order, the First Letter and the Second Letter, Peel Police concluded this to be a civil matter and advised that they are not able to get involved in assisting with retrieval of the Trucks.
- 16. On March 16, 2021, the Receiver's Counsel wrote to King Towing to advise that a court date had been secured on March 17, 2021, at 11:30 am (the "**Notice Letter**"). The Receiver's Counsel encouraged King Towing to retain counsel and advised that materials would follow. A copy of the Notice Letter is attached as **Appendix "4"** to this First Report.

### **III. CONCLUSION AND RECOMMENDATION**

- 17. The Receiver notes that the Trucks collectively are estimated to be worth over \$400,000. The Receiver further notes that it is unable to obtain insurance on the Trucks due to the fact that the location of the Trucks is unknown, and that the Receiver does not have possession of the Trucks.
- 18. Given the value of the Trucks, the inability of the Receiver to obtain insurance, the conduct of King Towing, and the Peel Police's refusal to become involved on the basis of the Receivership Order, the Receiver is of the view that an intervention by this Honourable Court on an urgent basis is necessary to protect the assets of Orbit and the interest of stakeholders.

19. Accordingly, the Receiver respectfully requests that this Honourable Court grant the relief as set out in paragraph 6 of this First Report.

Dated at Toronto this 16<sup>th</sup> day of March, 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:

A handwritten signature in black ink, appearing to read 'Mukul', written over a horizontal line.

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Mukul Manchanda, CPA, CIRP, LIT  
Principal

# APPENDIX 1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 11 <sup>th</sup>
	)	
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 "McEwen", is written 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**

**Harrison Pensa** <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street, P.O. Box 3237  
London, Ontario N6A 4K3

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Applicant,  
The Toronto-Dominion Bank

# APPENDIX 2



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

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

**BETWEEN:**

THE TORONTO-DOMINION BANK

Applicant

-and-

ORBIT FREIGHT LTD.

Respondent

**PRE-FILING REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS THE PROPOSED RECEIVER  
OF ORBIT FREIGHT LTD.**

**March 8, 2021**

## Table of Contents

I.	PURPOSE OF THIS REPORT .....	1
II.	INSPECTION AND DEMAND FOR PAYMENT .....	2
III.	BANKRUPTCY OF SATNAM SINGH PANDAL .....	3
IV.	CONCLUSION AND RECOMMENDATION.....	3

**APPENDICES**

1. Pictures of the Onsite Inspection
2. Bankruptcy documents for Mr. Satnam Pandal

## I. PURPOSE OF THIS REPORT

1. msi Spergel inc. ("**Spergel**") understands that The Toronto-Dominion Bank ("**TD**" or the "**Bank**") intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") to appoint Spergel as receiver Orbit Freight Ltd. ("**Orbit**" or the "**Company**") 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**").
2. This pre-filing report (this "**Report**") is prepared by Spergel in its capacity as the proposed receiver (in such capacity, the "**Proposed Receiver**") of all of the assets, undertakings and properties (the "**Property**") of the Company.
3. On March 5, 2021, Spergel was engaged as consultant by TD to, amongst other things, inspect the Property.
4. The purpose of this Report is to advise the Court of, amongst others:
  - a) Spergel's qualifications to act as Receiver; and
  - b) the result of the Proposed Receiver's inspection of the Property.
5. The Proposed Receiver understands that Orbit operated from a premises located at 1704 Meyerside Drive, Units 1 & 2, Mississauga, ON (the "**Company's Premises**") and that Satnam Singh Pandal ("**Mr. Pandal**") is the principal of the Company.
6. The Proposed 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 Report for any other purpose.
7. In preparing this Report, the Proposed Receiver has relied upon certain information provided to it by the Bank, and not any information or advice it has received from the Company. The Proposed 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 Proposed Receiver expresses no opinion or other form of assurance with respect to such information.

8. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

## II. **INSPECTION AND DEMAND FOR PAYMENT**

9. On March 5, 2021 around 10:00am, the Proposed Receiver attended at the Company's Premises to inspect the Property (the "**Inspection**"). During its attendance, the Proposed Receiver noted the following:
  - a) The Company's Premises was locked;
  - b) The office area visible through the glass door appeared to be cleared out; and
  - c) At least two Orbit trucks were parked on the front lawn, and one Orbit dump truck was parked in the parking lot;

Pictures taken during the Inspection are attached to this Report as **Appendix "1"**.

10. Following the Inspection, TD issued demand for payment and a Notice of Intention to Enforce Security pursuant to the section 244(1) of the BIA (the "**244 Notices**") to the Company.
11. The ten (10) day period prescribed under 244 Notices expires on March 15, 2021 and, accordingly, the return date for TD's application is set to be heard prior to the expiry of such period. However, given the status of the Company and the bankruptcy of the principal, Mr. Pandal, as discussed below, there is urgency to this application and a receiver to secure the remaining assets for the benefit of the creditors.
12. In addition, the Proposed Receiver reviewed the Company's accounts receivable listing as at January 31, 2021 provided to it by the Bank. The accounts receivable listing as at January 31, 2021 indicates CAD and USD accounts receivables of \$1,406,505.85 and USD\$359,671.42 (collectively, the "**Accounts Receivable**"), respectively.

13. At this time, Spergel has no visibility with respect to the remaining assets of the Company or the value thereof, as the business appears to have been abandoned, or at least, the Company has ceased operations.

### III. **BANKRUPTCY OF SATNAM SINGH PANDAL**

14. The Proposed Receiver has discovered that on March 2, 2021, Mr. Pandal, the principal of the Company, filed an assignment and Spergel was appointed as Licensed Insolvency Trustee (in such capacity, the “**Bankruptcy Trustee**”) of the estate of the bankrupt by the Official Receiver.
15. Mr. Pandal, in his sworn statement of affairs, indicated that he operated two trucking businesses as follows (both of which have ceased operating):

<b>Business Name</b>	<b>Start Date</b>	<b>End Date</b>
Orbit Freight Ltd.	February 13, 2012	February 15, 2021
Delta Carrier Inc.	October 25, 2004	January 31, 2021

Copies of the relevant bankruptcy documents (including the sworn statement of affairs) of Mr. Pandal are attached to this Report as **Appendix “2”**.

### IV. **CONCLUSION AND RECOMMENDATION**

16. Given the Inspection and Mr. Pandal’s disclosure in his sworn statement of affairs regarding the status of the Company’s operations, it is apparent that as at the date of this Report, Orbit has ceased operating.
17. Accordingly, the Proposed Receiver is of the view that an appointment of a receiver is just and convenient to protect the Property (including Accounts Receivable) and the interest of the stakeholders.
18. Spergel is a Licensed Insolvency Trustee within the meaning of subsection 2(1) of the BIA.
19. Spergel has consented to act as Receiver in these proceedings should the Court grant the Order appointing a receiver. A copy of Spergel’s consent to act is included in the Bank’s Application Record.

20. As noted above, Spergel was engaged by TD to assist it with reviewing and assessing the Bank's collateral position. As a result of its engagement, Spergel has acquired some knowledge of the Company's business and operations.

Dated at Toronto this 8<sup>th</sup> day of March, 2021.

**msi Spergel inc.**

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

Per:



---

Mukul Manchanda, CPA, CIRP, LIT  
Principal  
43762717.2

# APPENDIX 1









143



1















# APPENDIX 2



District of  
Division No.  
Court No.  
Estate No.

-- FORM 79 --

Statement of Affairs (Non-Business Bankruptcy)  
(Subsection 49(2) and 158(d) of the Act / Subsections 50(2) and 62(1) and Paragraph 66.13(2)(d) of the Act)


☒ Original ☐ Amended

In the matter of the bankruptcy of  
Satnam Singh Pandal  
of the City of Brampton, in the Province of Ontario  
SUMMARY ADMINISTRATION

ASSETS						
Type of assets	Description (Provide details)	Estimated Dollar Value	Exempt Property		Secured Amount/ Liens	Estimated net realizable dollar value
			Yes	No		
1. Cash on Hand						
2. Furniture		1,000.00	x		0.00	0.00
3. Personal Effects	Other	1,000.00	x		0.00	0.00
4. Policies & RRSPs	Argosy Securities RRSP - 1J6-692S1	17,640.00	x		0.00	0.00
5. Securities						
6. Real Property or Immovable	House					
	Cottage					
	Land					
7. Motor Vehicles	Automobile					
	Motorcycle					
	Snowmobile					
	Other					
8. Recreational Equipment						
9. Taxes						
TOTAL		19,640.00			0.00	0.00

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt

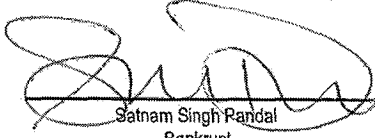
District of  
Division No.  
Court No.  
Estate No.

## FORM 79 -- Continued

LIABILITIES						
Liabilities type code (LTC): 1 Real Property or Immovable Mortgage or Hypothec 2 Bank Loans (except real property mortgage) 3 Finance Company Loans 4 Credit Cards Bank/Trust Companies Issuers 5 Credit Cards Other Issuers 6 Taxes Federal/Provincial/Municipal 7 Student Loans 8 Loans from Individuals 9 Other						
Creditor	Address including postal code	Account No.	Amount of debt			Enter LTC
			Unsecured	Secured	Preferred	
Capital One MasterCard Bankruptcies c/o FCT Default Solutions Attn: Insolvency Department	PO Box 2514, Stn B London ON N6A 4G9	5223 XXXX XXXX 8541	7,760.00	0.00	0.00	5
CIBC Visa - Bankruptcies c/o TECHCOM Managed Services	6-6150 Hwy 7, PO Box 486 Woodbridge ON L4H 0R6	4500 XXXX XXXX 8528	14,255.00	0.00	0.00	4
First West Leasing Ltd. Contingent \$ = 1.00	6470 201 Street Langley City BC V2Y 2X4		1.00	0.00	0.00	9
Meridian Onecap Credit Corporation (formerly Roynat Lease Finance - Toronto) Attn: Chelsey Spence Contingent \$ = 1.00	800-40 Sheppard Ave W North York ON M2N 6K9		1.00	0.00	0.00	9
Ontario Superior Court of Justice Attn: The Filing office	50 Eagle St West Newmarket ON L3Y 6B1	CV-21-00000206-00 00	1.00	0.00	0.00	9
Pallett Valo LLP Attn: Frances Wales	300-77 City Centre Dr, West Tower Mississauga ON L5B 1M5	42112D	0.00	0.00	0.00	9
RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen Contingent \$ = 1.00	PO Box 57100 Etobicoke ON M8Y 3Y2	4514 XXXX XXXX 9315	1.00	0.00	0.00	4
RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen	PO Box 57100 Etobicoke ON M8Y 3Y2	4514 XXXX XXXX 5408	3,210.00	0.00	0.00	4
Scotiabank c/o Canaccede International Management Ltd. Contingent \$ = 1.00	PO Box 758 Stn B London ON N6A 4Y8	4538 XXXX XXXX 5022	1.00	0.00	0.00	4
TD Canada Trust C/O FCT Default Solutions	PO Box 2514, Station B London ON N6A 4G9	1181-3249045	15,075.00	0.00	0.00	2
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	2032-5013073	1.00	0.00	0.00	2
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	1181-5007100	1.00	0.00	0.00	2
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	1968-9007100-09	1.00	0.00	0.00	2

27-Feb-2021

Date

  
 Satnam Singh Randal  
 Bankrupt


District of  
Division No.  
Court No.  
Estate No.

## FORM 79 - Continued

LIABILITIES						
Creditor	Address including postal code	Account No.	Amount of debt			Enter LTC
			Unsecured	Secured	Preferred	
TD Canada Trust C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	8144-9007100-01	1.00	0.00	0.00	2
TD Canada Trust Visa C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	4520 XXXX XXXX 6788	1.00	0.00	0.00	4
TD Canada Trust Visa C/O FCT Default Solutions Contingent \$ = 1.00	PO Box 2514, Station B London ON N6A 4G9	4520 XXXX XXXX 4988	1.00	0.00	0.00	4
TD Canada Trust Visa C/O FCT Default Solutions	PO Box 2514, Station B London ON N6A 4G9	4520 XXXX XXXX 7718	19,730.00	0.00	0.00	4
T-Pine Leasing Capital Corporation Contingent \$ = 1.00	6050 Dixie Road Mississauga ON		1.00	0.00	0.00	9
Wells Fargo Financial Retail Services c/o InSolve Global Credit Fund I, L.P. Contingent \$ = 1.00	c/o TECHCOM Managed Services Inc 6-6150 Hwy 7, PO Box 487 Woodbridge ON L4H 0R6	460-9404728-001	1.00	0.00	0.00	9
	TOTAL	Unsecured	60,043.00			
	TOTAL	Secured		0.00		
	TOTAL	Preferred			0.00	
TOTAL					60,043.00	

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt


District of  
Division No.  
Court No.  
Estate No.

## FORM 79 – Continued

INFORMATION RELATING TO THE AFFAIRS OF THE BANKRUPT				
<b>A. PERSONAL DATA</b>				
1. Family name: Pandal		Given names: Satnam Singh Gender: Male		Date of birth: YYYY / MM / DD 1972/08/31
2. Also known as:				
3. Complete address, including postal code : 31 Heslop Circle Brampton ON L6R 0M8				
4. Marital status:		Married (Specify month and year of event if it occurred in the last five years )		
5. Full name of spouse or common-law partner: Manjeet Kaur Pandal				
6. Name of present employer: None		Occupation: None (Unemployed)		
7A. Number of persons in household family unit, including bankrupt:				4
7B. Number of persons 17 years of age or less:				2
8. Have you operated a business within the last five years?				Yes
Business Name		Business Type	From	To
Orbit Freight Ltd.		Truck Transportation	13-Feb-2012	15-Feb-2021
Delta Carrier Inc.		Truck Transportation	25-Oct-2004	31-Jan-2021
<b>B. WITHIN THE 12 MONTHS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:</b>				
9A. Sold or disposed of any of your property?			Yes	
9B. Made payments in excess of the regular payments to creditors?			No	
9C. Had any property seized by a creditor?			No	
<b>C. WITHIN FIVE YEARS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:</b>				
10A. Sold or disposed of any property?			No	
10B. Made any gifts to relatives or others in excess of \$ 500?			No	
<b>D. BUDGET INFORMATION: Attach Form 65 to this Form.</b>				
11A. Have you ever made a proposal under the Bankruptcy and Insolvency Act?			Yes	
11B. Have you ever been bankrupt before in Canada?			Yes	
(a) Filing Date and Location		(b) Trustee/Admin	(c) Proposal Successful?	(d) Date Certificate obtained
Satnam Singh Pandal				(e) OSB Number
Jan-07-2000	North York, Ontario	Cooper & Company Ltd.	No	Apr-25-2001
Oct-22-2002	North York, Ontario	Rumanek & Company Ltd.	-	Feb-19-2004
32-109773				
32-133118				
12. Do you expect to receive any sums of money which are not related to your normal income, or any other property within the next 12 months? No				
13. If you answered Yes to any of questions 9, 10 and 12, provide details:				

27-Feb-2021

Date

  
Satnam Singh Pandal  
Bankrupt

District of  
Division No.  
Court No.  
Estate No.

## FORM 79 – Concluded

**9A:**

Various vehicle that were being leased have been surrendered or seized by the secured lenders . I had personally guaranteed these leases. The lease shortfalls have yet to be determined but I expect the financial deficiencies will be will be significant. These debts have been listed as contingent debts .

**14. Give reasons for your financial difficulties :**

I owned and operated two trucking businesses and relied on credit facilities to fund the businesses from time -to-time. I also relied on credit facilities to help support my family as well as the businesses were by -in-large unprofitable. Unfortunately both companies failed and my vehicles have been repossessed or surrendered . My debt level, which will grow as I have personally guaranteed much of my corporate debt, is significant and I have no hope of ever repaying my creditors . I file this bankruptcy with a view to regain some financial stability for myself and my family .

I, Satnam Singh Pandal of the City of Brampton in the Province of Ontario, do swear (or solemnly declare) that this statement is, to the best of my knowledge, a full, true and complete statement of my affairs on the 27th day of February 2021, and fully discloses all property and transactions of every description that is or was in my possession or that may devolve on me in accordance with the Bankruptcy and Insolvency Act.

SWORN (or SOLEMNLY DECLARED )  
before me at the City of Mississauga in the Province of  
Ontario, on this 27th day of February 2021.

\_\_\_\_\_  
Christopher Galea, Commissioner of Oaths  
For the Province of Ontario  
Expires June 27, 2022

27-Feb-2021

Date

\_\_\_\_\_  
Satnam Singh Pandal  
Bankrupt

District of  
Division No.  
Court No.  
Estate No.

- FORM 65 -  
Monthly Income and Expense Statement of the Bankrupt and the Family Unit  
and Information (or Amended Information) Concerning  
the Financial Situation of the Individual Bankrupt  
(Section 68 and Subsection 102(3) of the Act; Rule 105(4))

☒ Original

☐ Amended

In the matter of the bankruptcy of  
Satnam Singh Pandal  
of the City of Brampton, in the Province of Ontario  
SUMMARY ADMINISTRATION

Information concerning the monthly income and expense statement of the bankrupt and the family unit, the financial situation of the bankrupt and the bankrupt's obligation to make payments required under section 68 of the Act to the estate of the bankrupt are as follows:

MONTHLY INCOME	Bankrupt	Other Members of the family unit	Total
Net employment income .....	0.00		
Net pension/Annuities. ....	0.00		
Net child support. ....	0.00		
Net spousal support. ....	0.00		
Net employment insurance benefits .....	0.00		
Net social assistance .....	0.00		
Self-employment income			
Gross 0.00 Net .....	0.00		
Other net income .....	0.00		
<b>TOTAL MONTHLY INCOME</b>	<b>0.00 (1)</b>	<b>0.00 (2)*</b>	
<b>TOTAL MONTHLY INCOME OF THE FAMILY UNIT ((1) + (2))</b> .....			<b>0.00 (3)</b>
<b>MONTHLY NON-DISCRETIONARY EXPENSES</b>			
Child support payments .....	0.00		
Spousal support payments .....	0.00		
Child care .....	0.00		
Medical condition expenses .....	0.00		
Fines/penalties imposed by the Court .....	0.00		
Expenses as a condition of employment .....	0.00		
Debts where stay has been lifted .....	0.00		
Other expenses .....	0.00		
<b>TOTAL MONTHLY NON-DISCRETIONARY EXPENSES</b>	<b>0.00 (4)</b>	<b>0.00 (5)</b>	
<b>TOTAL MONTHLY NON-DISCRETIONARY EXPENSES OF THE FAMILY UNIT ((4) + (5))</b> .....			<b>0.00 (6)</b>
<b>AVAILABLE MONTHLY INCOME OF THE BANKRUPT</b>			
<b>((1) - (4))</b> .....	<b>0.00 (7)</b>		
<b>AVAILABLE MONTHLY INCOME OF THE FAMILY UNIT ((3) - (6))</b> .....			<b>0.00 (8)</b>
<b>BANKRUPT'S PORTION OF THE AVAILABLE MONTHLY INCOME OF THE FAMILY UNIT</b>			<b>100.00 % (9)</b>

- FORM 65 --- Concluded -

## MONTHLY DISCRETIONARY EXPENSES : (Family unit)

## Housing expenses

Rent/mortgage/hypothec.....	0.00
Property taxes/condo fees.....	0.00
Heating/gas/oil.....	0.00
Telephone.....	0.00
Cable.....	0.00
Hydro.....	0.00
Water.....	0.00
Furniture.....	0.00
Other.....	0.00

## Personal expenses

Smoking.....	0.00
Alcohol.....	0.00
Dining/lunches/restaurants.....	0.00
Entertainment/sports.....	0.00
Gifts/charitable donations.....	0.00
Allowances.....	0.00
Other.....	0.00

## Non-recoverable medical expenses

Prescriptions.....	0.00
Dental.....	0.00
Other.....	0.00

## Living expenses

Food/grocery.....	0.00
Laundry/dry cleaning.....	0.00
Grooming/toiletries.....	0.00
Clothing.....	0.00
Other.....	0.00

## Transportation expenses

Car lease/payments.....	0.00
Repair/maintenance/gas.....	0.00
Public transportation.....	0.00
Other.....	0.00

## Insurance expenses

Vehicle.....	0.00
House.....	0.00
Furniture/contents.....	0.00
Life insurance.....	0.00
Other.....	0.00

## Payments

Payments to the estate.....	280.00
To secured creditor.....	0.00
(Other than mortgage and vehicle).....	0.00
Other.....	0.00

TOTAL MONTHLY DISCRETIONARY EXPENSES (FAMILY UNIT)..... 280.00 (10)

MONTHLY SURPLUS OR (DEFICIT) FAMILY UNIT ((8) - (10))..... -280.00 (11)

## Information (or Amended Information) Concerning the Financial Situation of the Individual Bankrupt

## Payments to the estate as per agreement

Number of persons in household family unit, including bankrupt: 4

Total amount bankrupt has agreed to pay monthly..... 280.00 (12)

Amount bankrupt has agreed to pay monthly to repurchase assets..... 0.00 (13)

Residual amount paid into the estate ((12) - (13))..... 280.00 (14)

## Payments required by Directive No. 11R2 (Surplus Income)

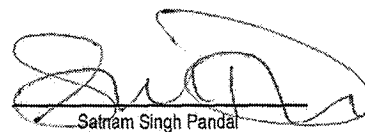
Monthly amount required by Directive No. 11R2 (Surplus Income) based on percentage established on line (9).... 0.00 (15)

Difference between amounts at lines (14) and (15)..... 280.00 (16)

Other applicable comments:

While I search for gainful employment, I am being financially supported by family, who are also funding this bankruptcy.

Dated at the City of Mississauga in the Province of Ontario, this 27th day of February 2021.

msi Spengel Inc. - Licensed Insolvency Trustee  
Per:Christopher Galea - Licensed Insolvency Trustee  
204 - 1425 Dundas St. E.  
Mississauga ON L4X 2W4  
Phone: (905) 602-4143 Fax: (905) 602-8879

  
Satnam Singh Pandai

# APPENDIX 3



**AIRD BERLIS**

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

March 12, 2021

**BY COURIER, FAX (905-282-0448) AND EMAIL (dispatch@kingtowing.ca)**

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

**Attention: Happy**

Dear Sir:

**Re: The Toronto-Dominion Bank ("TD Bank") v. Orbit Freight Ltd.  
Court File No. CV-21-00658361-00CL**

---

We are the lawyers for msi Spergel Inc. (the "**Receiver**"), in its capacity as the Court-appointed receiver of Orbit Freight Ltd. ("**Orbit Freight**"). The Receiver was appointed by way of the Order of the Honourable Justice McEwen dated March 11, 2021 (the "**Appointment Order**"). A copy of the Appointment Order is enclosed.

Orbit Freight's business premises are located at 1704 Meyerside Drive, Mississauga (the "**Premises**"). We understand that King Towing has removed from the Premises two Peterbilt Model 567 trucks, bearing VINs 1NPCX4TX8MD736670 and 1NPCX4T5MD736674 (the "**Trucks**"). The Trucks are the property of Orbit Freight. Please advise under what authority you removed the Trucks from the Premises.

Pursuant to paragraph 4 of the enclosed Appointment Order, anyone having notice of the Appointment Order is required to deliver to the Receiver any property belonging to Orbit Freight, upon the Receiver's request.

In accordance with the Appointment Order, we hereby demand that you immediately deliver the Trucks to the Receiver. Please contact Mukul Manchanda at 416.454.4246 to arrange for such delivery by **no later than the close of business on Monday, March 15, 2021.**

If you fail to deliver the Trucks as requested herein, the Receiver intends to report your non-compliance with the Appointment Order to the Court. If we are forced to take this step, we will ask the Court to order that King Towing pay the Receiver's costs associated with this non-compliance.

We look forward to your prompt attention to this matter.

March 12, 2021  
Page 2

Yours truly,

AIRD & BERLIS LLP



Miranda Spence

MS/  
Encl.

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

43842725.1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 11 <sup>th</sup>
	)	
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 "McEwen", is written 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**

**Harrison Pensa** <sup>LLP</sup>  
Barristers and Solicitors  
450 Talbot Street, P.O. Box 3237  
London, Ontario N6A 4K3

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Applicant,  
The Toronto-Dominion Bank



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

March 12, 2021 (second letter)

**BY EMAIL** (dispatch@kingtowing.ca)

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

**Attention: Happy, Sonny**

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")**

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Mr. Manchanda of the Receiver has advised that, following the issuance of our letter of earlier today, he has received telephone calls as follows:

- Happy of King Towing called to request that Mr. Manchanda leave the Trucks at King Towing for two days, so that King Towing could collect the applicable storage fees
- Sonny of King Towing called to advise that he would not release the Trucks unless and until the Receiver paid \$50,000 into court

Evidently, King Towing is not taking seriously its obligations under the Appointment Order. We reiterate our demand that King Towing return to the Trucks to the Receiver, forthwith.

We further note that, despite our request, you have not provided any information as to the authority under which King Towing removed the Trucks from the Premises. To the extent that King Towing has a claim in relation to the Trucks, which is denied on the basis of the information provided to date, it may file such claim with the Receiver in the normal course.

In any event, the Receiver will not be paying storage fees going forward, given that King Towing has not returned the Trucks in response to our demand.

Please also note that, as of the date of the Receiver's appointment, the Trucks were in good working order. We will hold King Trucking responsible for any damage to the vehicles that may exist upon their return to the Receiver.

In view of King Towing's improper actions as described herein, we will be scheduling an urgent hearing to have this matter put before the Court as soon as possible. Please provide us with contact information for your counsel, so that we may serve them with our materials.

March 12, 2021  
Page 2

Yours truly,

AIRD & BERLIS LLP



Miranda Spence

MS/

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

43848335.1

# APPENDIX 4



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

March 16, 2021

**BY EMAIL** (dispatch@kingtowing.ca)

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

**Attention: Happy, Sonny**

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")**

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We have not received any further response to our letters of March 12, 2021. Please be advised that we have secured an urgent hearing appointment before the Ontario Superior Court of Justice – Commercial List on **Wednesday, March 17, 2021 at 11:30 am**, by Zoom video conference.

At that time we will ask the Court to order that the Trucks removed from Orbit Freight's premises be released or delivered to the Receiver immediately. We will also be seeking the Receiver's costs associated with King Towing's breach of the Appointment Order previously provided to you, including, without limitation, its costs of the Court attendance.

Our motion record containing the Receiver's report, setting out the precise relief sought, and containing the Zoom details for the Court attendance, will follow later today.

We encourage you to retain counsel to address this matter.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in dark ink, appearing to read 'M. Spence'.

Miranda Spence

MS/

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

43879718.1

# Appendix 5



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

March 17, 2021

**BY EMAIL** (dispatch@kingtowing.ca)

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

**Attention: Happy, Sonny**

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")**

---

Further to our letter of yesterday, we attended before the Court this morning, and obtained the enclosed Order of the Honourable Justice Hainey.

The Court has ordered that King Towing advise the Receiver of the location of the Trucks, and immediately release them to the Receiver or its agents. The Court ordered that the Receiver shall not be required to make any payment to King Towing to secure the release of the Trucks. In addition, King Towing is required to pay the Receiver \$2,500 to compensate the Receiver for its costs in being required to go to Court.

Please contact Mukul Manchanda at 416-454-4246 to advise of the location of the Trucks, and arrange for their release.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in dark ink, appearing to read 'M. Spence', written over a light blue horizontal line.

Miranda Spence

MS/

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

43896076.1



# Appendix 6

**Mukul Manchanda**

---

**From:** Eva Smoluch <esmoluch@ritchiebros.com>  
**Sent:** March 25, 2021 10:18 AM  
**To:** Mukul Manchanda  
**Subject:** 2021 Peterbilt Dump Trucks

Good morning Mukul

Our Operations team completed inspection of the two 2021 Peterbilt dump trucks last week. We reviewed the reports with our valuations teams and here are the findings”

**Positive:**

1. Low mileage and low usage hours;
2. Allison Transmission;
3. Cummins Engine;
4. Heated Box;

**Issues:**

1. SPIF lift axles on both trucks were removed – this is a huge issue since prospective buyers would have to have the axle replaced – estimated cost to do that would be around 30K-35K;

The axle should be where the red circle is in the picture below.



2. Tires – as you can see from the inspection reports provided – original tires and rims were switched and replaced with much older and worn out;

We would recommend replacing rims and tires with new ones – approx. cost 8K/truck;  
We would also wash and detail cabs which would be around - \$550-\$700/trucks;

We would not recommend to install the SPIF lift axles since we would have send the trucks to a local dealer. Furthermore, with the shortage of parts tat many dealers an OEMs are currently faced with, sourcing of replacement parts would be very challenging.

Our next auction in Bolton, ON is scheduled for May 11<sup>th</sup> . Our preliminary brochure for the sale will be published this week and the main one will go out to the market the week of April 5ht.  
In order to maximize value for your client we would recommend featuring these units in at least the main brochure.

I am happy to arrange a call with our transportation valuator if more details are required.

Kind regards,  
Eva

**Eva Smoluch**  
Strategic Accounts Manager  
Finance Insolvency Restructuring – Canada East

T: 647.824.2080

E: [esmoluch@rbaction.com](mailto:esmoluch@rbaction.com)





**ITEM DETAILS - 2021 Peterbilt 567 Dump Truck (T/A) (DUT)**

Tuesday, March 23, 2021

**DETAILED EQUIPMENT INFORMATION**

A qualified Ritchie Bros. employee collected detailed equipment information and performed functional tests on the key components of this asset.

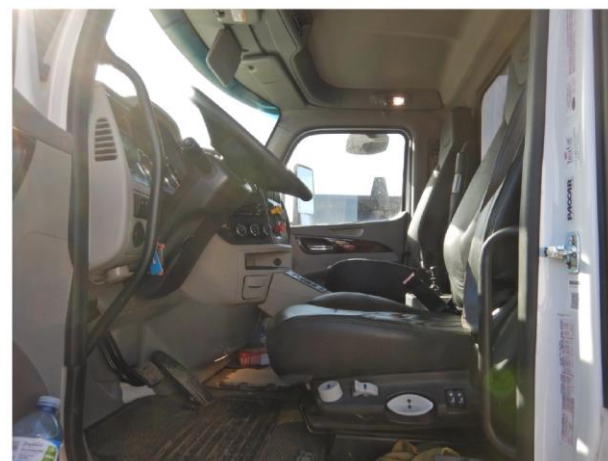
**General Description****In Yard:** Y**Year:** 2021**Manufacturer:** Peterbilt**Model:** 567**Asset Type:** Dump Truck (T/A)**Serial Number or VIN:**  
1NPCX4TX8MD736670

1NPCX4TX8MD736670

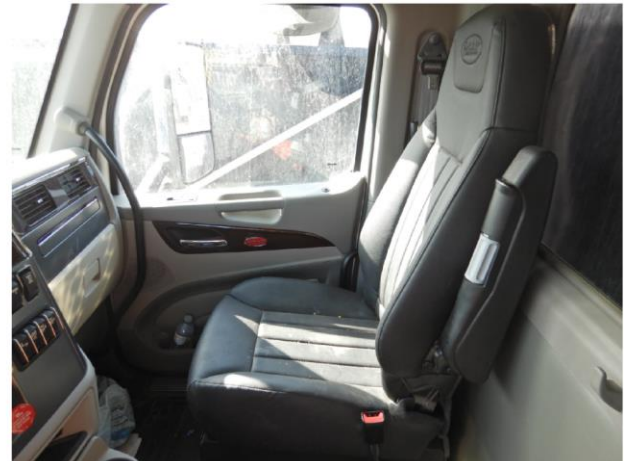
**Condition**

-- Hrs/Mil/kms: 27679 km

**Catalog Notes:** EPA LABEL PRESENT**Comes With:** Cummins X15, 500 hp, eng brake, Allison A/T, Haulmaax susp, 20000 lb frt, 46000 lb rears, 54 in. axle spread, 266 in. WB, Lanau 20 ft 6 in. heated box, WHITE









## Engine

EPA: Y

### Engine

- Engine: Manufacturer: Cummins
- Engine: Model: X15
- Engine: Horsepower: 500 hp

Engine Brake: Y





## Drive Train

### Axles

- Axles: Front Weight: 20000 lb
- Axles: Rear Weight: 46000 lb

Axle Spread: 54 in.







## Undercarriage/Suspension

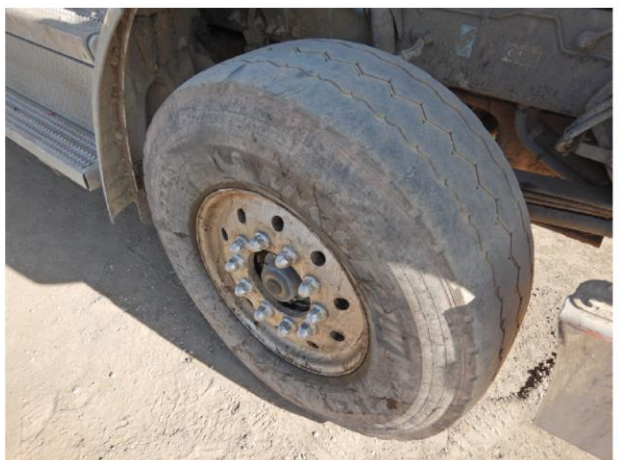
### Truck Suspension

-- Truck Suspension: Model: Haulmaax

Tire Size: 425/65R22.5, 11R22.5

Wheelbase: 266 in.

Tire Manufacturer: Mixed







## Box

### Box

- Box: Manufacturer: Lanau
- Box: Length: 20 Feet 6 Inches
- Box: Heated: heated



## Functionality Tests

**Starts:** Yes

**Drives Forward:** Yes

**Drives Backward:** Yes

**Brake Pedal Functions:** Yes

### DISCLAIMER

#### General

The detailed Equipment Information is limited in scope, and Ritchie Bros. Auctioneers has not inspected any aspects or the components of the equipment other than those expressly set forth herein. Unless expressly stated, we make no representations or warranties, express or implied, concerning the equipment or its components, including without limitation any representations or warranties concerning functionality, conformity or compliance with any safety standard or requirement of any applicable authority or regulatory body, fitness for any particular purpose, or standard or requirement or merchantability. You are strongly advised to perform your own detailed inspection of the equipment prior to bidding.

#### Functions

Equipment is not tested under load. We make no representation or warranty that equipment is operating in accordance with manufacturers specifications. No inspection has been performed with respect to any functionality aspect other than those expressly included herein. Only select photos have been provided for individual undercarriage components, and may not be indicative of the condition of the entire undercarriage as a whole.

#### Dimensions

Measurements are given as an estimate only. Actual loaded dimensions may vary based on truck/trailer height and the loaded machine configuration position. It is the buyer's responsibility to measure all loads before leaving our auction site to ensure the load is safe for transport.

All measurements should be verified by the buyer. DO NOT rely on these measurements for transportation purposes



---

**ITEM DETAILS - 2021 Peterbilt 567 Dump Truck (T/A) (DUT)**Tuesday, March 23, 2021

---

**DETAILED EQUIPMENT INFORMATION**

A qualified Ritchie Bros. employee collected detailed equipment information and performed functional tests on the key components of this asset.

**General Description****In Yard:** Y**Model:** 567**Year:** 2021**Asset Type:** Dump Truck (T/A)**Manufacturer:** Peterbilt**Serial Number or VIN:**  
1NPCX4TX5MD736674

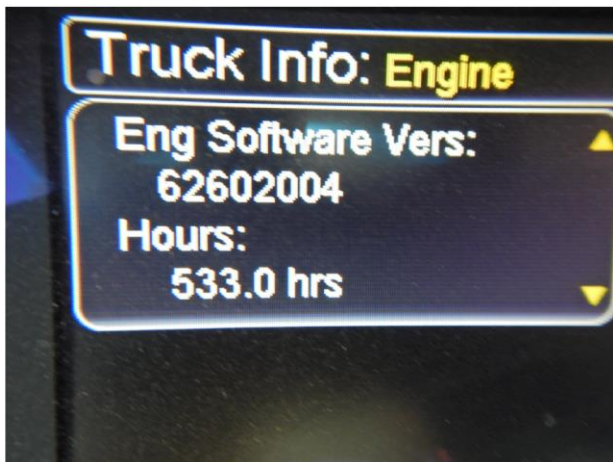
1NPCX4TX5MD736674

**Condition**

-- Hrs/Mil/kms: 20750 km

**Catalog Notes:** EPA LABEL PRESENT**Comes With:** Cummins X15, 500 hp, eng brake, Allison A/T, Haulmaax susp, 20000 lb frt, 46000 lb rears, 54 in. axle spread, 266 in. WB, Lanau 20 ft 6 in. heated box, BLACK



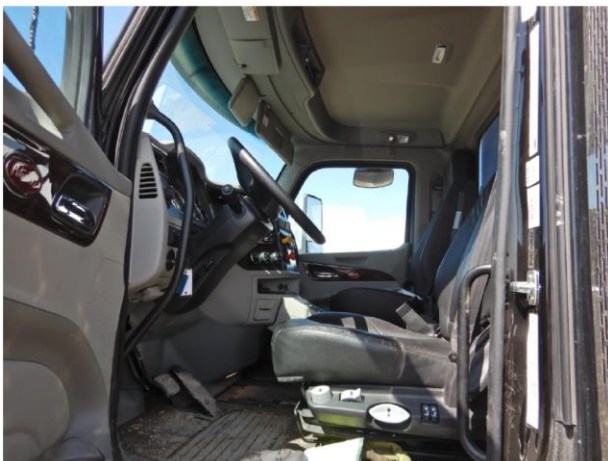




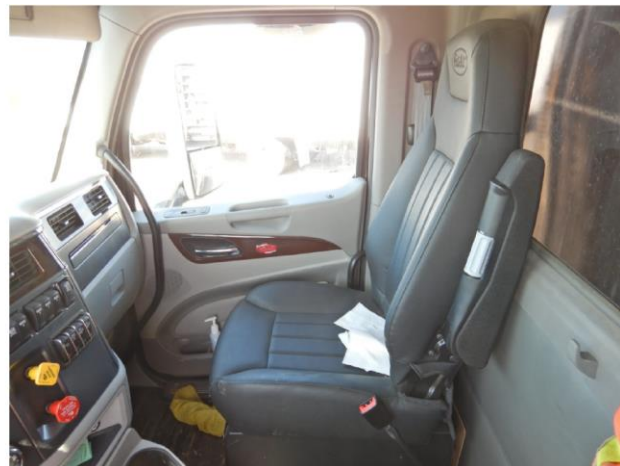
## Operator Station

### Transmission Details

- Transmission Details: Manufacturer: Allison
- Transmission Details: Type: A/T







## Engine

EPA: Y

### Engine

- Engine: Manufacturer: Cummins
- Engine: Model: X15
- Engine: Horsepower: 500 hp

Engine Brake: Y





## Drive Train

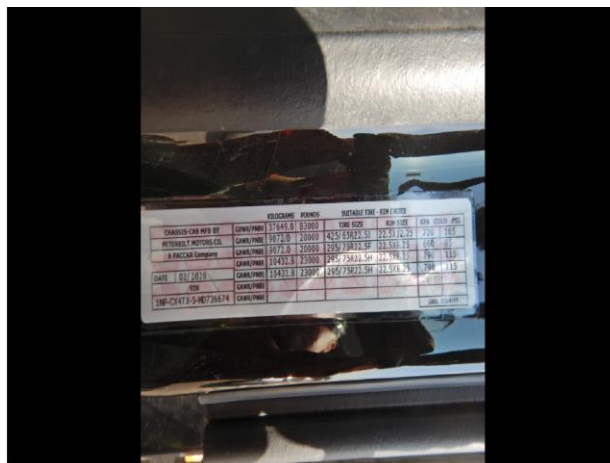
### Axles

- Axles: Front Weight: 20000 lb
- Axles: Rear Weight: 46000 lb

Axle Spread: 54 in.







## A close-up photograph of a large, worn tire on a vehicle. The tire has a deep, wavy tread pattern and is mounted on a metal wheel hub with several bolts. The tire appears to be on a heavy-duty vehicle, possibly a truck or bus, as evidenced by the surrounding mechanical components and the large, dark, rectangular object in the foreground. The image is oriented vertically, with the tire running from top to bottom.





## Box

### Box

- Box: Manufacturer: Lanau
- Box: Length: 20 Feet 6 Inches
- Box: Heated: heated







## Functionality Tests

**Starts:** Yes

**Drives Forward:** Yes

**Drives Backward:** Yes

**Brake Pedal Functions:** Yes

## DISCLAIMER

### General

The detailed Equipment Information is limited in scope, and Ritchie Bros. Auctioneers has not inspected any aspects or the components of the equipment other than those expressly set forth herein. Unless expressly stated, we make no representations or warranties, express or implied, concerning the equipment or its components, including without limitation any representations or warranties concerning functionality, conformity or compliance with any safety standard or requirement of any applicable authority or regulatory body, fitness for any particular purpose, or standard or requirement or merchantability. You are strongly advised to perform your own detailed inspection of the equipment prior to bidding.

### Functions

Equipment is not tested under load. We make no representation or warranty that equipment is operating in accordance with manufacturers specifications. No inspection has been performed with respect to any functionality aspect other than those expressly included herein. Only select photos have been provided for individual undercarriage components, and may not be indicative of the condition of the entire undercarriage as a whole.

### Dimensions

Measurements are given as an estimate only. Actual loaded dimensions may vary based on truck/trailer height and the loaded machine configuration position. It is the buyer's responsibility to measure all loads before leaving our auction site to ensure the load is safe for transport.

All measurements should be verified by the buyer. DO NOT rely on these measurements for transportation purposes

# Appendix 7



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

March 29, 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 12, 2021, we demanded the return of the two Trucks belonging to Orbit Freight, and put you on notice that we would hold King Towing responsible for any damage to the Trucks.

Regrettably, King Towing refused to return the Trucks, and we were forced to seek a court Order mandating their return. The Receiver was then required to attend with police to secure the Trucks' return.

The Receiver has now had the opportunity to have the Trucks inspected, and has learned that the Trucks are not in their original state. In particular:

- (a) the SPIF lift axle has been removed from each Truck; and
- (b) the original tires and rims have been replaced with older, worn out tires and rims.

We estimate the cost of remedying these deficiencies to be in the range of \$76,000 to \$86,000.

As indicated, the Receiver holds King Towing responsible for the foregoing deficiencies. We hereby demand that, by no later than Thursday, April 1, 2021, King Towing arrange for the return to the Receiver of the SPIF lift axles, and the original tires and rims. If King Towing fails to return these items, we expect to be instructed to commence legal proceedings against King Towing.

In addition, King Towing owes the Receiver \$2,500 for fees associated with the Court attendance on March 17, 2021, as ordered by Justice Hailey. Please advise when we can expect to receive payment.

March 29, 2021  
Page 2

Yours truly,

AIRD & BERLIS LLP



Miranda Spence

MS/

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

44030738.1



# Appendix 8



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

March 29, 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")**

---

We act for the Receiver of Orbit Freight.

Pursuant to paragraphs 4 and 5 of the Order of the Honourable Justice McEwen dated March 11, 2021 (the "**Appointment Order**"), a copy of which is enclosed, you are obligated to 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.

We understand that, to date, you have failed or refused to provide the Receiver with Orbit Freight's books and records. You have further stopped answering telephone calls from Mr. Manchanda of the Receiver's office. This constitutes a breach of the Appointment Order.

We hereby demand that you immediately contact Mr. Manchanda to arrange for the delivery of such books and records. If you fail to do so by no later than April 1, 2021, we will report such non-compliance to the Court. We reserve the right to seek such Orders as may be necessary to secure your cooperation with the Receiver, including, without limitation, an Order finding you in contempt of Court.

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

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in dark ink, appearing to read 'MS', written over a light blue horizontal line.

Miranda Spence

MS/

Encl.

March 29, 2021  
Page 2

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

44031805.1

# Appendix 9

**CONTRACT TO AUCTION**

**DATED** this 12<sup>th</sup> day of April, 2021.

**BETWEEN:**

**IRONPLANET CANADA LTD.**, having its head office at 9500 Glenlyon Parkway, in the City of Burnaby, in the Province of British Columbia, V5J 0C6

Attention: Eva Smoluch  
Telephone No.: 647-824-2080  
E-Mail Address: [esmoluch@ritchiebros.com](mailto:esmoluch@ritchiebros.com)

**(“IronPlanet”)**

OF THE FIRST PART

**AND:**

**MSI SPERGEL INC.**, having an office at 505 Consumers Road, Suite 200, in the City of Toronto, in the Province of Ontario, M2J 4V8, in its capacity as the Court-appointed receiver of all the assets, undertakings and properties of Orbit Freight Ltd.

Attention: Mukul Manchanda  
Telephone No.: 416-498-4314  
E-Mail Address: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

(in such capacity, the **“Receiver”**)

OF THE SECOND PART

For valuable consideration, and subject to the Court (as defined herein) granting the Sale Order (as defined herein), the above parties enter into this contract (the **“Contract”**) which sets out their respective rights, obligations and undertakings regarding the sale through the Marketplace of all those items described on Schedule “A” attached hereto (the **“Equipment”**).

**SECTION 1: IRONPLANET OBLIGATIONS AND RESPONSIBILITIES**

**1.01 Equipment Delivery** – IronPlanet acknowledges that the Receiver has delivered the Equipment to the Sale Site (as defined herein) and that IronPlanet shall, as agent of Receiver, offer the Equipment for sale through Marketplace-E (the **“Marketplace”**), its online listing platform, with the Equipment to be available for inspection and pickup at the Sale Site.

- 1.02 Listing and Acceptance** – IronPlanet shall list and advertise the Equipment on the Marketplace for sale to a bidder at an asking price as determined by the Receiver (the “**Asking Price**”). The listings will be scheduled to run for up to 90 consecutive days and the listing period may be extended at IronPlanet's sole discretion. In the event the Equipment remains unsold after 90 days, (a) the Equipment must be re-inspected and will incur a Re-Inspection Fee and you agree to reduce the Asking Price by 20% to continue the listing; or (b) you may elect, without penalty, to remove the listing. If the Receiver's price is not met, the Receiver has the option to (a) accept bids lower than the Asking Price; (b) counter bids lower than the Asking Price with a higher offer (“**Counter Offer**”); or (c) reject bids lower than the Asking Price at any time during a listing. Counter Offers are valid for up to two business days. However, only one Counter Offer can be valid at any time per piece of Equipment; the last Counter Offer the Receiver issues supersedes and invalidates any previous Counter Offers. Upon acceptance of the Counter Offer by the buyer, the listing is closed and the Receiver is legally bound to complete the transaction.
- 1.02 Payment** – IronPlanet shall wire transfer to the Receiver, within 21 calendar days after the sale of each piece of Equipment, the amount due and owing to the Receiver from monies collected from the sale of the Equipment after making all deductions permitted under this Contract (collectively, the “**Receiver's Payment**”).
- 1.03 Commission** – IronPlanet shall be entitled, at the time of the sale, to a commission based on the gross sale price of the Equipment or any part thereof, as follows:
- (a) 10% for any lot realizing more than \$2,500.00; and
  - (b) the greater of \$100 and 25% for any lot realizing \$2,500.00 or less.
- 1.04 Other** – IronPlanet shall:
- (a) allow the Receiver access to records concerning the sale of the Equipment at the sale;
  - (b) supervise the preparation and organization of the sale;
  - (c) provide an online listing of the lots offered for sale available through the Marketplace and promoted to potential buyers;
  - (e) supply fuel, batteries and tire repair as IronPlanet determines necessary for the demonstration and sale of the Equipment, the costs of which shall be at the expense of and paid by the Receiver, provided that such costs do not exceed \$8,000 to change tires and rims and \$700 for wash and detailing per piece of Equipment;
  - (f) use its best efforts to maximize the proceeds of sale from the Equipment and the amount payable to the Receiver;
  - (g) collect and remit any and all federal and provincial sales tax arising upon the sale of the Equipment through the Marketplace;
  - (h) comply with all legislation, regulations, or requirements of any authority of competent jurisdiction relating to the sale of the Equipment; and

- (i) be responsible for the payment of any tax or duty whatsoever that may legally be construed as being the responsibility of Receiver from the sale proceeds.

**1.05 Sale Site** – IronPlanet shall provide, at no cost to Receiver, a suitable site for the storage of the Equipment at 3 Manchester Ct., Bolton, Ontario, L7E 2Y1 (the “**Sale Site**”) while the Equipment is being offered for sale on the Marketplace.

**1.06 IronClad Assurance Certification** – IronPlanet shall produce an inspection report (“Inspection Report”) for each piece of Equipment solely for the purpose of reporting on the visible condition of the Equipment's major systems and attachments. IronPlanet inspections are NOT intended to detect latent or hidden defects or conditions that could only be found in connection with the physical dismantling of the Equipment or the use of diagnostic equipment or techniques. The Inspection Reports offer IronClad Assurance certification for the Equipment. The Receiver shall pay \$350 per piece of Equipment for an Inspection Report.

## **SECTION 2: RECEIVER’S REPRESENTATIONS AND WARRANTIES**

### **2.01 Title and Condition**

The Receiver represents and warrants that:

- (a) the Receiver is not and will not on the date of the sale be a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada);
- (b) the Receiver has been appointed as the Court-appointed receiver of all the assets, undertakings and properties of Orbit Freight Ltd. pursuant to the Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the “**Court**”) made March 11, 2021; and
- (c) the Receiver shall seek a further Order from the Court prior to the sale authorizing the Receiver to enter into this Contract and IronPlanet to conduct the sale in accordance with the terms of this Contract (the “**Sale Order**”).

**2.02 As Is, Where Is** – IronPlanet acknowledges that the Receiver is providing and IronPlanet is listing the Equipment on an “as is, where is” and “without recourse” basis, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies may exist with respect to the Equipment, whether patent or latent. IronPlanet further acknowledges and agrees that it has entered into this Contract on the basis that the Receiver has not guaranteed and will not guarantee title to or marketability, use or quality of the Equipment, that IronPlanet has conducted such inspections of the condition and title to the Equipment as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Equipment, or the right to sell, assign, convey or transfer same, save and except as expressly provided in this Contract. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by IronPlanet. The description of the Equipment contained in this Contract is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of

Initials ES

such description. Notwithstanding the foregoing, the Receiver acknowledges that IronPlanet will complete an inspection of the Equipment and such inspection shall be subject to IronClad Assurance certification pursuant to Section 1.06.

### **SECTION 3: RECEIVER'S OBLIGATIONS AND RESPONSIBILITIES**

#### **3.01** The Receiver shall:

- (a) reimburse IronPlanet for the cost of fuel, batteries and tire repair as IronPlanet deems necessary for demonstration and sale of the Equipment, provided that such costs do not exceed the amounts set out in Section 1.04(e) above;
- (b) provide to IronPlanet a copy of the Sale Order; and
- (c) provide copies of any documents in the Receiver's possession or control relating to the ownership of the Equipment, if requested by IronPlanet and determined by IronPlanet to facilitate the Sale.

#### **3.02** **Power of Attorney** – The Receiver hereby assigns Power of Attorney to IronPlanet for the sole and limited purpose of executing on the Receiver's behalf all documents required to transfer title to, and permit registration of, any part of the Equipment by the purchaser thereof.

#### **3.03** **Risk of Loss, Insurance** –

- (a) The Receiver shall be responsible for loss or damage to the Equipment (other than loss or damage arising as a result of the negligence of IronPlanet, its agents or employees) unless:
  - i. the Equipment that is lost or damaged has been removed from the Sale Site by the purchaser (regardless of whether such Equipment was lost or damaged before, during or after its removal from the Sale Site by the purchaser); or
  - ii. the Receiver has received the Receiver's Payment in respect of the Equipment that is lost or damaged (regardless of whether such Equipment was lost or damaged before, during or after the Receiver's receipt of the Receiver's Payment for such Equipment); and
- (b) The Receiver shall insure the Equipment, with IronPlanet as additional insured, to its fair market value against all perils so that in the event of damage to, or destruction of, the Equipment or any part thereof, all insurance proceeds shall be credited to the gross proceeds of the sale and payment made to IronPlanet forthwith for all deductions permitted by this Contract.

#### **3.04** **No Buybacks** – The Receiver shall not bid, directly or indirectly, nor allow any other person to bid on the Receiver's behalf or for the Receiver's benefit, by agency or otherwise, on the Equipment or any part thereof on the Marketplace.

### **SECTION 4: MUTUAL AGREEMENTS**

It is mutually agreed and understood between the parties hereto that:

#### **4.01** **Timeliness** – Time is of the essence of this Contract.

Initials ES ES



- 4.02 Waiver** – A waiver by either party of any breach of any of the provisions herein shall be limited to such particular instance and shall not operate as a waiver of, or be deemed to waive, any other or future breaches of the same or any other provisions hereof.
- 4.03 Legal Costs** – Should either party be required to participate in any action or proceeding in respect of this Contract, the prevailing party shall be entitled to recover all costs, including attorney's fees, incurred as a result thereof.
- 4.04 Prohibition of Pre-Sale** – Neither IronPlanet nor the Receiver shall sell or offer for sale any part of the Equipment except pursuant to this Contract without the written permission of the other.
- 4.05 Default by Receiver** – If the Receiver's representations and warranties set out in Section 2 hereof are not true, complete and correct in all respects then the Receiver will upon demand, reimburse IronPlanet for all out-of-pocket expenses incurred in preparation for the sale.
- 4.06 Use of Equipment** – The Receiver authorizes IronPlanet to utilize the Equipment for inspection by interested purchasers.
- 4.07 Intentionally Deleted.**
- 4.08 Collection of Proceeds** – IronPlanet shall collect the full proceeds from the sale of the Equipment and Receiver assigns to IronPlanet:
- (a) the amount required to discharge and satisfy all federal and provincial sales taxes exigible on the sale of the Equipment; and
  - (b) all amounts payable to IronPlanet hereunder, including commission, and any advances, together with interest thereon which shall be repayable at the time of the sale.
- 4.09 Uncollected Proceeds** – IronPlanet may, as it deems necessary, re-list any part of the Equipment not sold or paid for at the sale pursuant to the terms of this Contract and the Receiver acknowledges that, in such case, no monies shall be payable by IronPlanet to the Receiver for any part of the unsold or unpaid for Equipment until it has been sold by IronPlanet and paid for in full by the purchaser thereof.
- 4.10 Other Consignments** – IronPlanet may sell equipment provided by other sellers on the Marketplace.
- 4.11 Receiver's Name** – The Receiver authorizes IronPlanet to use the Receiver's name, trademark and logo in advertising the Equipment, but not in connection with any equipment other than the Equipment.
- 4.12 Entire Agreement** – This Contract:
- (a) constitutes the entire agreement between the parties and supersedes and takes the place of all prior contracts, understandings, representations or warranties;


Initials ES ES

- (b) may not be amended except in writing. There are no understandings, agreements, promises, terms, conditions, or warranties expressed or implied, whether orally or by law, statute or trade usage, other than as specifically stated herein; and
  - (c) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 4.13 **Force Majeure** – Neither IronPlanet nor the Receiver shall be liable for damages caused by failure to perform their respective obligations under this Contract due to fires, strikes, floods, adverse weather which may injure persons or damage property, acts of God or lawful acts of public authorities.
- 4.14 **Jurisdiction** – This Contract is subject to, and any dispute arising hereof will be determined by, a Judge of the Ontario Superior Court of Justice sitting on the Commercial List in Toronto, and under the laws of the Province of Ontario.
- 4.15 **Notice** – Any notice given hereunder shall be either delivered, sent by email or by prepaid registered mail to the parties hereto at the address set out on page 1.
- 4.16 **Headings** – All headings in this Contract are for reference purposes only and this Contract shall be interpreted without reference to such headings.
- 4.17 **Email** – Receipt by IronPlanet via email of a signed copy of this Contract shall, upon acceptance by IronPlanet, be effective and binding on both parties.
- 4.18 **Privacy** – Information provided in this Contract will be retained by IronPlanet in accordance with its formal Privacy Statement, provided on IronPlanet's website at [www.ironplanet.com](http://www.ironplanet.com).
- 4.19 **Payment of Funds** – All funds due and owing to the Receiver hereunder shall be paid by way of certified cheque, money order or wire payable to the order of msi Spergel inc. in trust.
- 4.20 **Capacity and Independent Legal Advice** – It is acknowledged by IronPlanet that the Receiver is entering into this Contract solely in its capacity as the Court-appointed receiver of the assets, undertakings and properties of Orbit Freight Ltd. and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Contract in any respect. Each of the parties further acknowledges and declares that: (i) it has had an adequate opportunity to read and consider this Contract and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice; (ii) it fully understands the nature and effect of this Contract; and (iii) this Contract has been duly executed voluntarily.

Initials ES ES

IN WITNESS WHEREOF this Contract has been executed by the parties hereto as of the date first above written.


**MSI SPERGEL INC., IN ITS CAPACITY AS THE COURT-APPOINTED  
RECEIVER OF ORBIT FREIGHT LTD., AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per:   
(Signature)

Mukul Manchanda, CPA, CIRP, LIT  
(Print Name of person signing)



**IRONPLANET CANADA LTD.**

Per:   
(Signature)

Eva Smoluch  
(Print Name)

Initials  \_\_\_\_\_

# Appendix 10

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**ORBIT FREIGHT LTD.**

Respondent

**AFFIDAVIT OF MUKUL MANCHANDA**  
(sworn April 9, 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 to and including March 31, 2021 fees of \$27,955.07 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 101.90 hours at an effective rate of \$242.78 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** remotely by Mukul Manchanda of )  
 the City of Brampton in the Province of )  
 Ontario, before me at the City of Toronto in )  
 the Province of Ontario, on April 9, 2021 in )  
 accordance with O. Reg 431/20, )  
 Administering Oath or Declaration Remotely. )

Damian Lu

Commissioner for Taking Affidavits (or as )  
 may be) )



MUKUL MANCHANDA

Attached is Exhibit "1"

Referred to in the  
AFFIDAVIT OF MUKUL MANCHANDA

Sworn before me

This 9th day of April, 2021

\_\_\_\_\_*Damian Lu*\_\_\_\_\_

Commissioner for taking Affidavits, etc

April 08, 2021

**Invoice #:** 12046

Orbit Freight Ltd.  
1-1704 Meyerside Drive  
Mississauga, ON L5T 1A3

**Billing Period:** Mar 31, 2021

## Invoice

**RE: Orbit Freight Ltd.****FOR PROFESSIONAL SERVICES RENDERED** as Court-Appointed Receiver from March 2, 2021 to March 31, 2021

	Hours	Hourly Rate	Total
Gillian Goldblatt, CPA, CA, CIRP, LIT	3.20	\$325.00	\$1,040.00
Mukul Manchanda, CPA, CIRP, LIT	36.20	395.00	14,299.00
Paula Amaral	1.50	250.00	375.00
Others	61.00	147.95	9,025.00
Total Professional fees	101.90	\$242.78	\$24,739.00
HST			3,216.07
<b>Total</b>			<b>\$27,955.07</b>

HST Registration #R103478103

**(AAORBI-R)**



## Filters Used:

- Time Entry Date: 1/01/70 to 3/31/21
- File ID: AAORBI-R: to AAORBI-R:
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

Printed on: 4/08/21

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

Day	Date	Memo	B-Hrs	B-Rate	Amount
<b>Frieda Kanaris (FKA)</b>					
Mon	03/15/2021	Attend post office for mail re-direction.	0.50	\$250.00	\$125.00
		<b>Frieda Kanaris (FKA)</b>	<b>0.50</b>		<b>\$125.00</b>
<b>Gillian Goldblatt (GGO)</b>					
Thur	03/11/2021	draft website copy, send copy + documents to marketing for posting; send Order to S. Downey with instructions for mail re-direction and Notice and Statement of Receiver.	1.50	\$325.00	\$487.50
Fri	03/12/2021	Draft posting for industry newsletter; vm to BNS re:bank account status; email to S. Downey re:instructions for demand letters.	1.00	\$325.00	\$325.00
Tues	03/23/2021	Draft demand letter to Sam Pandal re:books and records; emails with S. Downey re:bank statements requests.; instruct E. Sturge re:mailing of demand letter	0.50	\$325.00	\$162.50
Fri	03/26/2021	review and approve disbursements; email S. Downey Re:bank statement request.	0.20	\$325.00	\$65.00
		<b>Gillian Goldblatt (GGO)</b>	<b>3.20</b>		<b>\$1,040.00</b>
<b>Hinna Shaikh (HSH)</b>					
Fri	03/12/2021	created engagement, added docs	0.50	\$120.00	\$60.00
Wed	03/17/2021	created engagement, added docs	4.50	\$120.00	\$540.00
		<b>Hinna Shaikh (HSH)</b>	<b>5.00</b>		<b>\$600.00</b>
<b>Haran Sivanathan (HSI)</b>					
Wed	03/31/2021	General	0.20	\$150.00	\$30.00
Wed	03/31/2021	General	0.20	\$150.00	\$30.00
		<b>Haran Sivanathan (HSI)</b>	<b>0.40</b>		<b>\$60.00</b>
<b>Inga Friptuleac (IFR)</b>					
Tues	03/23/2021	BA setup, Deposit, issue cheque	1.00	\$125.00	\$125.00
		<b>Inga Friptuleac (IFR)</b>	<b>1.00</b>		<b>\$125.00</b>
<b>Mukul Manchanda (MMA)</b>					
Tues	03/02/2021	Participated in a conference call with T. Hogan and M. Benoy regarding the file. Drafted an engagement letter and emailed same to T. Hogan for review. Receipt and review of comments from T. Hogan. Receipt and review of the signed engagement letter from M. Benoy. Receipt and review of an email from M. Benoy to S. Pandal.	1.30	\$395.00	\$513.50
Wed	03/03/2021	Receipt and review of an email from T. Hogan advising that S. Pandal has filed for bankruptcy and asked me to reach out to the trustee with carriage of the file. Email exchanges with C. Galea regarding bankruptcy documents of S. Pandal. Receipt and review of the filing documents. Emailed same to T. Hogan advising that S. Pandal indicated that the Orbit business has been shut down since February 15th. Receipt and review of the RRSP details from C. Galea. Forwarded same to T. Hogan.	0.50	\$395.00	\$197.50
Thur	03/04/2021	Participated in a conference call with T. Hogan and M. Benoy regarding the file. Telephone call with C. Galea regarding obtaining additional information with respect to S. Pandal's bankruptcy. Receipt and review of various documents.	0.80	\$395.00	\$316.00

## Filters Used:

- Time Entry Date: 1/01/70 to 3/31/21
- File ID: AAORBI-R: to AAORBI-R:
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

Printed on: 4/08/21

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

Day	Date	Memo	B-Hrs	B-Rate	Amount
<b>Mukul Manchanda (MMA)</b>					
Fri	03/05/2021	Travel to the company's premises for inspection. Conducted inspection and took pictures. Sent an email to T. Hogan and M. Benoy providing the inspection report. Review of multiple emails from T. hogan and M. Benoy regarding the receivership application and the conduct of the debtor. Receipt and review of the draft receivership order. Sent an email to T. Hogan providing comments and the requested information. Email exchanges with K. Plunkett regarding the file. Telephone discussion with K. Plunkett provided whim with a background of the file. Receipt and review of the draft notice of application.	2.50	\$395.00	\$987.50
Sat	03/06/2021	Receipt and review of an email from T. Hogan providing a copy of the letter sent to BNS regarding freezing the account.	0.20	\$395.00	\$79.00
Sun	03/07/2021	Receipt and review of an email from T. Hogan containing draft affidavit of M. Benoy.	0.30	\$395.00	\$118.50
Mon	03/08/2021	Draft report to court. Sent an email to K. Plunkett containing the draft report. Receipt and review of an email from K. Plunkett containing comments on the report. Telephone discussion with K. Plunkett regarding same. Receipt and review of a further revised version of the report. Sent an email to T. Hogan containing the draft report. Telephone discussion with T. Hogan regarding the report. Finalized the report along with appendices. Prepared executed copy of the report and emailed same to K. Plunkett.	3.50	\$395.00	\$1,382.50
Tues	03/09/2021	Receipt and review of an email from L. Provost containing the Factum and Book of Authorities of TD regarding appointment of the Receiver.	1.00	\$395.00	\$395.00
Wed	03/10/2021	Multiple lengthy telephone calls with S. Pandal regarding the status of the business and the upcoming court hearing. Receipt and review of an email from T. Hogan containing the draft receivership order. Email exchanges and telephone discussions with counsel regarding upcoming hearing. Receipt and review of consent to act, prepared executed copy of same and emailed to T. Hogan. Email exchanges with T. Hogan regarding attendance at the hearing.	1.30	\$395.00	\$513.50
Thur	03/11/2021	Receipt and review of the draft interim receivership order. Email exchanges with K. Plunkett and M. Spence. Attended the court hearing. Receipt and review of an email from T. Hogan containing the signed receivership order and the endorsement. Telephone discussion with S. Pandal regarding setting a meeting to meet at the premises of the company tomorrow to inspect and take possession of the assets. Sent an email to S. Pandal containing the receivership order and confirming our time for meeting tomorrow. Lengthy telephone discussion with E. Smoluch of Ritchie Brothers regarding picking up the trucks and preparing for auction. Sent an email to T. Hogan and M. Benoy confirming that the receivership order was sent to S. Pandal and a meeting has been scheduled. Email exchanges with K. Plunkett regarding canvassing dates for seeking an approval and vesting orders for Ritchie to sell the trucks. Discussion with G. Goldblatt regarding the file. Provided instructions regarding setting up case website and starting the process of a/r collections. Email exchanges with K. PLunkett regarding the process of the auction and the AVO.	3.50	\$395.00	\$1,382.50

## Filters Used:

- Time Entry Date: 1/01/70 to 3/31/21
- File ID: AAORBI-R: to AAORBI-R:
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

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

Day	Date	Memo	B-Hrs	B-Rate	Amount
<b>Mukul Manchanda (MMA)</b>					
Fri	03/12/2021	Email exchanges with H. Sheikh regarding the case website. Review of the BNS Statements, the A/R listing. Instructions to G. Goldblatt to freeze the BNS account and find addresses for customers. Instructions to S. Downey to obtain insurance on the 2 dump trucks. Multiple telephone discussions with E. Smoluch regarding arranging for drivers to pickup the dump trucks. Sent an email to T. Hogan asking him to provide a copy of the PPSA and Corporate profile search of Orbit. Travel to the premises of the company and met with S. Pandal. Noted that the trucks were no longer parked at the premises. Upon investigation discovered that the 2 trucks were towed by King Towing to its yard. Multiple telephone conversations with Happy of King Towing regarding releasing the trucks. Telephone discussion with K. Plunkett regarding writing to King Towing regarding the trucks. Travel back. Receipt and review of a draft letter to King Towing from M. Spence. Telephone discussions with M. Spence regarding same. Receipt and review of the final letter to King Towing. Multiple telephone discussions with Sunny of King Towing after receipt of the letter by King Towing. Sunny advised that King Towing will release the trucks if the Receiver is prepared to deposit \$50,000 in the court. Further telephone discussion with Happy of King Towing who asked if the Receiver can wait to pickup the trucks on Monday so King Towing can collect storage charges on the trucks for the weekend. Telephone discussions with M. Spence regarding same. Instructed her to prepare another letter to King Towing advising that the Receiver will be seeking relief against King Towing and will be scheduling an urgent hearing regarding same. Receipt and review of the draft letter. Provided comments and reviewed the final version.	6.00	\$395.00	\$2,370.00
Sat	03/13/2021	Receipt, review and approve the draft demand letter with respect to collection of receivables.	0.20	\$395.00	\$79.00
Mon	03/15/2021	Participated in a conference call with K. Plunkett and M. Spence. Instructions to S. Downey regarding contacting the police in order to gain access to the trucks. Telephone discussion with various interested parties regarding the process. Multiple telephone discussions with the Peel Police. Receipt and review of an email from S. Downey outlining the outcome of the complaint filed with the Peel Police.	1.50	\$395.00	\$592.50
Tues	03/16/2021	Email exchanges with M. Spence regarding obtaining an urgent hearing date to compel return of trucks. Email exchanges with M. Spence regarding putting King Towing on notice of the urgent hearing. Receipt, review and approve letter to King Towing. Email exchanges with FCA regarding necessity of having possession of the assets prior to obtaining insurance on same. Drafted the report to court and prepared appendices. Email exchanges with counsel with respect to finalizing the report. Receipt, review and approve the notice of motion and the draft order. Email exchanges with counsel regarding the legal name of King Towing. Receipt and review of the final motion materials. Email exchanges with K. Plunkett regarding securing a court date for obtaining the AVO to sell the trucks. Email exchanges with FCA regarding obtaining insurance with respect to the trucks. Email exchanges and telephone discussions with N. Dewan regarding the assets of the company.	3.50	\$395.00	\$1,382.50

## Filters Used:

- Time Entry Date: 1/01/70 to 3/31/21
- File ID: AAORBI-R: to AAORBI-R:
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

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

Day	Date	Memo	B-Hrs	B-Rate	Amount
<b>Mukul Manchanda (MMA)</b>					
Wed	03/17/2021	Email exchanges with S. Downey regarding collection of accounts receivable. Receipt review and approve the Notice and Statement of the Receiver. Email exchanges with K. Plunkett and M. Spence regarding any response from King Towing. Arranged to have the motion record posted on the website. Attended the court hearing. Receipt and review of the issued enforcement order of Honourable Justice Hainey. Receipt and review of an email from M. Ryskin containing Bodkin's lease documents. FOrwarded same to K. Plunkett. Sent an email to S. Downey containing the enforcement order and instructed her to reach out to the Peel Police to seek assistance for retrieval of the trucks. Review of email exchanges with Officer Young regarding retrieval of the Trucks. Receipt and review of the draft letter to King Towing from M. SPence.	2.10	\$395.00	\$829.50
Thur	03/18/2021	Lengthy telephone discussions with Peel Police regarding retrieval of trucks from King Towing. Instructed S. Downey to attend and supervise the retrieval. Multiple telephone discussions with S. Downey regarding the ongoing issues surrounding the retrieval. Received confirmation of the release and possession of trucks. Sent an email to T. Hogan, K. Plunkett and M. Spence advising of same. Telephone discussions with (individually) T. Hogan and K. Plunkett regarding the trucks. Lengthy discussion with E. Smoluch of Ritchie Brothers regarding condition of the trucks and process going forward. Email exchanges with J. Borges and J. Ricci of TD regarding the sale of trucks. Telephone discussion with J. Ricci regarding same. Receipt and review of an email from M. Ryskin containing further information with respect to the Bodkin lease. Receipt and review of an email from K. Plunkett providing an analysis of the PPSA search.	3.00	\$395.00	\$1,185.00
Fri	03/19/2021	Receipt and review of email exchanges regarding insurance coverage. Receipt and review of the certificate of insurance. Review of email exchanges between J. Ricci and S. Singh regarding the sale of trucks. Email exchanges with E. Smoluch regarding inspection of the trucks. Email exchanges with T. Hogan regarding investigation of the financial activities of the company and the principal prior to the receivership. Receipt and review of an email from S. Downey providing an update on the a/r collection and advising that majority of the customers are responding and saying that no amounts are outstanding and that they have not done business with Orbit in a while.	0.80	\$395.00	\$316.00
Mon	03/22/2021	Email exchanges with banking regarding opening a trust account. Review of email from insurance provider regarding updating the VIN of one of the trucks on file.	0.20	\$395.00	\$79.00
Tues	03/23/2021	Receipt and review of the draft demand letter to S. Pandai. Edited, finalized and prepared a signed copy of same. Sent an email to S. Pandai containing the demand letter. Email exchanges with G. Goldblatt and S. Downey regarding retrieval of bank statements. Receipt and review of an email from K. Plunkett containing the security opinion with respect to TD's security.	1.00	\$395.00	\$395.00
Wed	03/24/2021	Receipt, review and approve payables. Lengthy telephone conversation with David from Sea Aire Warehouse regarding the occupancy of the unit leased by Orbit.	0.40	\$395.00	\$158.00

## Filters Used:

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

Day	Date	Memo	B-Hrs	B-Rate	Amount
<b>Mukul Manchanda (MMA)</b>					
Thur	03/25/2021	Receipt and review of emails from E. Smoluch containing the inspection report of the dump trucks. Receipt and review of an email from E. Smoluch providing recommendations regarding replacement of tires and providing an estimated realizable value for the dump trucks. Email exchanges with T. Hogan regarding same. Email exchanges with E. Smoluch regarding cost to replace the axle. Email exchanges with counsel regarding the impact on the value of the trucks due to the removal of tires and axles. Review of an email from S. Downey advising receipt of \$35K in HST refund.	0.80	\$395.00	\$316.00
Fri	03/26/2021	Participated in a conference call with P. Hanke, M. Benoy, T. Hogan, K. Plunkett and M. Spence. Receipt, review and approve payables. Email exchanges with K. Plunkett regarding the auction and Bodkin email.	1.00	\$395.00	\$395.00
Sat	03/27/2021	Email exchanges with P. Hanke and M. Benoy regarding the missing axles of the trucks.	0.20	\$395.00	\$79.00
Mon	03/29/2021	Receipt and review of an email from K. PLunkett to Bodkin regarding the leased equipment. Receipt, review and approve draft letters to King Towing and the Debtor. Receipt and review of an email from E. Smoluch providing quotation to replace the lift axles.	0.20	\$395.00	\$79.00
Tues	03/30/2021	Email exchanges with E. Smoluch regarding value of trucks if the necessary repairs are undertaken. Telephone discussion with J. Ricci regarding query from ROyal Trucking for sale of trucks. Receipt and review of an email from J. Ricci regarding same. Receipt and review of an email from M. Benoy containing an nsf cheque.	0.20	\$395.00	\$79.00
Wed	03/31/2021	Review of an email from the landlord asking if the receiver requires access to the premises. Email exchanges with K. PLunkett regarding same.	0.20	\$395.00	\$79.00
<b>Mukul Manchanda (MMA)</b>			<b>36.20</b>		<b>\$14,299.00</b>
<b>Paula Amaral (PAM)</b>					
Sun	03/21/2021	Send Notice and Statement of Receiver to OSB by Fax Mail Notice and Statement of Receiver. Prepare labels and envelopes.	1.50	\$250.00	\$375.00
<b>Paula Amaral (PAM)</b>			<b>1.50</b>		<b>\$375.00</b>
<b>Susan Downey (SDW)</b>					
Fri	03/12/2021	Receipt and review of Court order, PPSA, Corporate search, A/R list and drafting excel spreadsheet and draft demand letter	1.00	\$150.00	\$150.00
Sat	03/13/2021	Drafting Notice and Statement of Receiver. Creating A/R excel sheet for 200 customers. Finalized demand letter.	7.00	\$150.00	\$1,050.00
Sun	03/14/2021	Finalizing demand letters and excel spreadsheet. Merging letter and labels	5.00	\$150.00	\$750.00
Mon	03/15/2021	Calls to FCA re: insurance, travel to Orbit to meet with police officer regarding towing issue, Printing demand letters and copies of court order for 200 A/R customers. Prepared mailing.	12.00	\$150.00	\$1,800.00
Tues	03/16/2021	A/R mailings	4.50	\$150.00	\$675.00
Wed	03/17/2021	Finalized remaining A/R demand letter and sent and notice and statement of receiver and e-mail to Peel Regional Police	1.20	\$150.00	\$180.00
Thur	03/18/2021	Attend on site with Peel Regional Police to obtain possession of dump trucks	6.00	\$150.00	\$900.00
Fri	03/19/2021	Telephone calls and e-mails from companies re: A/R demand letters. Updating A/R schedule	2.00	\$150.00	\$300.00

## Filters Used:

- Time Entry Date: 1/01/70 to 3/31/21
- File ID: AAORBI-R: to AAORBI-R:
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

Printed on: 4/08/21

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

Day	Date	Memo	B-Hrs	B-Rate	Amount
<b>Susan Downey (SDW)</b>					
Sun	03/21/2021	Set up in Ascend and log calls/e-mails on tracking A/R sheet	1.20	\$150.00	\$180.00
Mon	03/22/2021	Telephone calls and e-mails from companies on A/R list	2.00	\$150.00	\$300.00
Tues	03/23/2021	Calls and e-mails from companies on A/R list. Discussion and e-mail to Scotia Bank regarding bank records.	2.50	\$150.00	\$375.00
Wed	03/24/2021	Telephone calls and e-mails from companies on A/R list	1.50	\$150.00	\$225.00
Thur	03/25/2021	Telephone discussions and e-mails regarding demand letters. Receipt of HST refund cheque and processing	2.20	\$150.00	\$330.00
Fri	03/26/2021	Telephone discussions and e-mails regarding demand letters.	2.00	\$150.00	\$300.00
Mon	03/29/2021	Responding to phone calls/e-mails re; A/R	1.50	\$150.00	\$225.00
Tues	03/30/2021	Receipt of bank statements and responding to e-mails from A/R list	0.50	\$150.00	\$75.00
Wed	03/31/2021	Responding to phone calls/e-mails re; A/R	2.00	\$150.00	\$300.00
<b>Susan Downey (SDW)</b>			<b>54.10</b>		<b>\$8,115.00</b>
<b>Total for File ID AAORBI-R:</b>			<b>101.90</b>		<b>\$24,739.00</b>
<b>Grand Total:</b>			<b>101.90</b>		<b>\$24,739.00</b>

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**

**AFFIDAVIT OF THE RECEIVER'S FEES**

**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](mailto:kplunkett@airdberlis.com)

**Miranda Spence (LSO # 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for the Receiver*

# Appendix 11



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

**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 DAMIAN LU**

(sworn April 9, 2021)

I, DAMIAN LU, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer 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 a Statement of Account in connection with its fees and disbursements as follows:

- (a) An account dated April 8, 2021, for the period from March 5, 2021 to March 31, 2021 in the amount of \$21,427.78, inclusive of HST and disbursements;

3. Attached hereto and marked as **Exhibit “A”** to this my affidavit is copy of the Statement of Account, along with a breakdown of timekeepers which have worked on this file. The average hourly rate is \$501.89.

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

**SWORN** remotely by Damian Lu stated as )  
 being located in the City of Toronto in the )  
 Province of Ontario, before me at the City of )  
 Toronto in the Province of Ontario, on April )  
 9, 2021, in accordance with O. Reg 431/20, )  
 Administering Oath or Declaration )  
 Remotely.

\_\_\_\_\_  
*Lynn Tay*  
 Commissioner for Taking Affidavits (or as )  
 may be) )

\_\_\_\_\_  
*Damian Lu*  
**DAMIAN LU**

Attached is Exhibit “A”

Referred to in the

AFFIDAVIT OF DAMIAN LU

Sworn before me

This 9th day of April, 2021

\_\_\_\_\_  
*Lynn Tay*

Commissioner for taking Affidavits, etc

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

**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

## SUMMARY OF TIME INCURRED

<b>LAWYER</b>	<b>CALL TO BAR</b>	<b>HOURS</b>	<b>RATE</b>	<b>VALUE</b>
Kyle B. Plunkett	2011	16.20	550.00	\$8,910.00
Nathan Gates	2018	0.10	375.00	\$37.50
Miranda E. Spence	2011	13.30	550.00	\$7,315.00
Damian Y. Lu	2020	4.90	325.00	\$1,592.50
<b>STUDENT</b>				
Linh Nguyen		0.10	240.00	\$24.00
<b>CLERK</b>				
P.L. Williams		0.40	225.00	\$90.00
Jenaya E. McLean		1.70	265.00	\$450.50

<b>AIRD BERLIS</b>
--------------------

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.: 703998**

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

April 8, 2021

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**Re: Orbit Freight Ltd.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended March 31, 2021:

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	05/03/21	\$550.00	2.00	\$1,100.00	Review and provide comments on draft appointment order; review and provide comments on application; attend call with client to discuss same; attend call with T. Hogan to discuss details of filing.
KBP	08/03/21	\$550.00	2.50	\$1,375.00	Review and provide comments on draft application materials; review and respond to various emails from T. Hogan; attend call with client to discuss application and file; review report.
NLG	09/03/21	\$375.00	0.10	\$37.50	Commission Affidavit for K. Plunkett
KBP	09/03/21	\$550.00	2.20	\$1,210.00	Review and provide comments on draft pre-filing report; review and provide comments on draft orders; review application record; attend call with client to discuss same; effect service.
PLW	09/03/21	\$225.00	0.40	\$90.00	Submitted Receiver's Report online
KBP	10/03/21	\$550.00	1.00	\$550.00	Review and respond to emails from T. Hogan; review and provide comments on draft orders; effect service on creditors.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	10/03/21	\$550.00	0.80	\$440.00	Review emails re service of materials; Review form of draft IR order and exchange emails with M. Manchanda and K. Plunkett re same; Prepare for court attendance
KBP	11/03/21	\$550.00	1.00	\$550.00	Review and respond to emails from client and T. Hogan regarding court orders; email exchange with client regarding next steps and approval hearing for sale of trucks.
MES	11/03/21	\$550.00	1.30	\$715.00	Review application materials and pre-filing report; Attend court hearing to address appointment
KBP	12/03/21	\$550.00	1.00	\$550.00	Attend call with client to discuss towing of trucks issue; email exchange with client; review and provide comments on letter to towing company.
MES	12/03/21	\$550.00	1.90	\$1,045.00	Numerous telephone calls with M. Manchanda re: [REDACTED] [REDACTED] [REDACTED]; [REDACTED] [REDACTED]
KBP	15/03/21	\$550.00	1.10	\$605.00	Review and respond to emails from client regarding [REDACTED] [REDACTED] [REDACTED] [REDACTED].
MES	15/03/21	\$550.00	0.70	\$385.00	Telephone call with M. Manchanda and K. Plunkett re: [REDACTED] [REDACTED] [REDACTED]; Email to court requesting urgent date
JEM	16/03/21	\$265.00	0.20	\$53.00	Order, review and report on profiles and business names searches
LN	16/03/21	\$240.00	0.10	\$24.00	Email from D. McMillan on behalf of M. Spence re: creation of Sync.com link; Creation of said link; Email to D. McMillan with sync link.
KBP	16/03/21	\$550.00	1.10	\$605.00	Review and consider court materials for urgent motion; various emails with client.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	16/03/21	\$550.00	4.40	\$2,420.00	Prepare for urgent motion to address [REDACTED]: correspondence with court office, revise First Report of the Receiver, draft notice of motion and order, legal research, calls and emails with K. Plunkett and M. Manchanda, arrange for service and filing of motion record
JEM	17/03/21	\$265.00	0.10	\$26.50	Order PPSA search
KBP	17/03/21	\$550.00	0.60	\$330.00	Review and consider letter from Bodkin team regarding leased equipment; email to D. Lu regarding [REDACTED].
MES	17/03/21	\$550.00	1.80	\$990.00	Prepare for and attend at motion before Justice Hailey to address King Towing issues; Letter to King Towing and arrange for service of order; Exchange emails re: Bodkin lease issue
JEM	18/03/21	\$265.00	0.20	\$53.00	Review and report on high volume PPSA search
KBP	18/03/21	\$550.00	1.00	\$550.00	Review and respond to emails from client regarding seizure of vehicles; discuss next motion; email exchange with D. Lu regarding [REDACTED].
MES	18/03/21	\$550.00	0.50	\$275.00	Review emails re repossession of dump trucks, review of Bodkin lease security, drafting security review
DYL	22/03/21	\$325.00	3.10	\$1,007.50	[REDACTED]; review leases; prepare draft response; email to K. Plunkett and M. Spence
JEM	22/03/21	\$265.00	1.00	\$265.00	Prepare security opinion for Trustee; Review and report on certified PPSA search
KBP	22/03/21	\$550.00	0.40	\$220.00	Review and consider summary on Bodkin leases; instruct D. Lu regarding [REDACTED].
DYL	23/03/21	\$325.00	1.50	\$487.50	Draft acknowledgement; email to client

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JEM	23/03/21	\$265.00	0.20	\$53.00	Revise draft security opinion
KBP	23/03/21	\$550.00	0.40	\$220.00	Review and provide comments on [REDACTED]; review and consider email from client regarding [REDACTED]
MES	25/03/21	\$550.00	0.40	\$220.00	Review emails re [REDACTED], and exchange emails re same
KBP	26/03/21	\$550.00	1.00	\$550.00	Review and consider emails from client regarding [REDACTED]; attend call with client, TD and T. Hogan to discuss response to [REDACTED]; email exchange with client regarding Bodkin and approval motion.
MES	26/03/21	\$550.00	0.60	\$330.00	Call with TD and Spergel [REDACTED], and discussion with K. Plunkett re same
DYL	29/03/21	\$325.00	0.30	\$97.50	Receive instructions from K. Plunkett; communications with Doc Pro; initial preparation of motion materials
KBP	29/03/21	\$550.00	0.60	\$330.00	Review and circulate email to [REDACTED]; review and respond to emails from client regarding approval motion and auction agreement.
MES	29/03/21	\$550.00	0.90	\$495.00	Draft letters to King Towing and debtor; Exchange emails with M. Manchanda re same; Issue letters
KBP	31/03/21	\$550.00	0.30	\$165.00	Email exchange with LL regarding [REDACTED] review and consider emails from client regarding same.

**TOTAL:**

36.70 \$18,419.50

**OUR FEE**

HST at 13%

\$18,419.50

\$2,394.54

**DISBURSEMENTS**

**COST INCURRED ON YOUR BEHALF AS AN AGENT**

Search Under P.P.S.A.

\$16.00



**Subject to HST**

Binding and Tabs	\$39.00
Deliveries/Parss	\$395.72
Photocopies	\$5.25
Corporate Search	\$72.00
Service Provider Fee	\$17.00

Total Disbursements	\$528.97
HST at 13%	\$68.77


**AMOUNT NOW DUE**

**\$21,427.78**

**SUMMARY**

Name	Year of Call	Hours	Rate	Value
Kyle B. Plunkett (KBP)	30/07/11	16.20	\$550.00	\$8,910.00
Nathan L. Gates (NLG)	01/09/18	0.10	\$375.00	\$37.50
Patrick L. Williams (PLW)		0.40	\$225.00	\$90.00
Miranda E. Spence (MES)	01/08/11	13.30	\$550.00	\$7,315.00
Jenaya E. McLean (JEM)		1.70	\$265.00	\$450.50
Linh Nguyen (LN)		0.10	\$240.00	\$24.00
Damian Y. Lu (DYL)	11/09/20	4.90	\$325.00	\$1,592.50

THIS IS OUR ACCOUNT HEREIN  
Aird & Berlis LLP



Kyle B. Plunkett

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.  
44142000.1

Applicant

Respondent

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

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

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**AFFIDAVIT OF FEES**

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**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](mailto:kplunkett@airdberlis.com)

**Miranda Spence (LSO # 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for the Receiver*

# Appendix 12

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 March 31, 2021

	<b>Total</b>
<b>RECEIPTS</b>	
HST refund	35,943.01
	<hr/>
<b>TOTAL RECEIPTS</b>	35,943.01
	<hr/>
<b>DISBURSEMENTS</b>	
Fees paid to the Official Receiver	71.54
HST paid on disbursements	22.17
Mail redirection	170.55
Insurance	765.20
	<hr/>
<b>TOTAL DISBURSEMENTS</b>	1,029.46
	<hr/>
<b>Net Receipts over Disbursements</b>	\$     34,913.55
	<hr/> <hr/>

E&OE

# TAB F

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

**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 April 12, 2021)**

<b>Harrison Pensa LLP</b> 450 Talbot Street London, Ontario N6A 5J6  <i>Lawyers for the Applicant</i>	<b>Tim Hogan</b> <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a>  Tel: (519) 661.6743 Fax (519) 667-3362
<b>Aird &amp; Berlis LLP</b> Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9  <i>Lawyers for the Court-appointed receiver</i>	<b>Kyle Plunkett</b> <a href="mailto:kplunkett@airdberlis.com">kplunkett@airdberlis.com</a>  <b>Miranda Spence</b> <a href="mailto:mspence@airdberlis.com">mspence@airdberlis.com</a>  Tel: (416) 863-1500 Fax: (416) 863-1515
<b>MSI SPERGEL INC.</b> 509 Consumers Road, Suite 200 North York, ON M2J 4V8  <i>Court-appointed receiver</i>	<b>Mukul Manchanda</b> <a href="mailto:mmanchanda@spergel.ca">mmanchanda@spergel.ca</a>  Tel: (416) 498-4314 Fax: (416) 498-4314
<b>2551760 Ontario Inc. o/a King Towing</b> 1225 Matheson Blvd. E. Mississauga, ON L4W 1B6	<a href="mailto:dispatch@kingtowing.ca">dispatch@kingtowing.ca</a>

<b>ORBIT FREIGHT LTD.</b> 1704 Meyerside Drive Unit 1-2 Mississauga, ON L5T 1A3  <i>Respondent</i>	
<b>SANTAM S. PANDAL</b> 31 Heslop Circle Brampton, ON L6R 0M8	<b>Satnam Singh Pandal</b> <a href="mailto:pandalsam@gmail.com">pandalsam@gmail.com</a>
<b>THE BANK OF NOVA SCOTIA</b> Legal Department 40 King Street West, 8 <sup>th</sup> Floor Toronto, ON M5H 1H1	<b>Lee Waxberg</b> Senior Legal Counsel <a href="mailto:lee.waxberg@scotiabank.com">lee.waxberg@scotiabank.com</a>  Tel: (647) 294.7507
<b>CANADA REVENUE AGENCY</b> c/o Department of Justice Ontario Regional Office 120 Adelaide St. W., Suite 400 Toronto, ON M5H 1T1 .	<b>Rakhee Bhandari</b> <a href="mailto:rakhee.bhandari@justice.gc.ca">rakhee.bhandari@justice.gc.ca</a>  Tel: (416) 952-8563
<b>Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Finance</b> Revenue Collections Branch – Insolvency Unit 33 King Street W., P.O. Box 627 Oshawa, ON L1H 8H5	<a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>
<b>MERCADO CAPITAL CORPORATION</b> Suite 1900, 13450 102 <sup>nd</sup> Avenue Surrey, BC V3T 5Y1	<b>Angela Nalliah</b> <a href="mailto:Angela.Nalliah@prospera.ca">Angela.Nalliah@prospera.ca</a>  Tel: (604) 519-4303 Fax: (604) 953-0027
<b>WELLS FARGO EQUIPMENT FINANCE COMPANY</b> 1290 Central Parkway W, 11 <sup>th</sup> Fl Mississauga, ON L5C 4R3	
<b>BODKIN, A DIVISION OF BENNINGTON FINANCIAL CORP.</b> 100-1465 North Service Rd E Oakville, ON L6H 1A7	<b>Marina Ryskin</b> <a href="mailto:marinar@benningtonfinancial.ca">marinar@benningtonfinancial.ca</a>  Tel: (905) 901-6258 Fax: 1-866-405-4869

<b>CLE CAPITAL INC.</b> 3390 South Service Rd., Unit #104 Burlington, ON L7N 3J5	
<b>BANK OF MONTREAL</b> 5750 Explorer Ave Mississauga, ON L4W 0A9  <b>TFG FINANCIAL CORPORATION</b> 501, 4180 Lougheed Hwy Burnaby, BC V5C 6A7	
<b>CANADIAN WESTERN BANK</b> 285 2880 Glenmore Trail SE Calgary, AB T2C 2E7	<b>Dave Miller</b> <a href="mailto:dave.miller@cwbank.com">dave.miller@cwbank.com</a>  Tel: (403) 998-0276 Fax: (403) 920-0204  (incorrect street address)
<b>RIORDAN LEASING INC.</b> 1158 King St. E. Kitchener, ON N2G 2N4	
<b>FIRST WEST LEASING LTD.</b> <b>(a division of First West Credit Union)</b> First West Credit Union Regional Office Head Office #200-19933 88 <sup>th</sup> 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	<b>Alea Whitesell</b> <a href="mailto:awhitesell@firstwestcu.ca">awhitesell@firstwestcu.ca</a>  Tel:( 250) 487-7218



**EMAIL SERVICE LIST**

[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com); [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [mspence@airdberlis.com](mailto:mspence@airdberlis.com);  
[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca); [dispatch@kingtowing.ca](mailto:dispatch@kingtowing.ca); [pandalsam@gmail.com](mailto:pandalsam@gmail.com) ;  
[lee.waxberg@scotiabank.com](mailto:lee.waxberg@scotiabank.com) ; [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca);  
[Angela.Nalliah@prospera.ca](mailto:Angela.Nalliah@prospera.ca); [marinar@benningtonfinancial.ca](mailto:marinar@benningtonfinancial.ca) ; [dave.miller@cwbank.com](mailto:dave.miller@cwbank.com);  
[awhitesell@firstwestcu.ca](mailto:awhitesell@firstwestcu.ca);

Applicant

Respondent

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

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

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

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**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*