

Court File No.

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

B E T W E E N:

**BANNERS BROKER INTERNATIONAL LIMITED and  
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.**

Plaintiffs

- and -

**RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,  
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,  
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED**

Defendants

**MOTION RECORD**

**VOLUME I OF II**

**(*Ex Parte* Motion for a *Mareva* Injunction)**

May 30, 2016

**CASSELS BROCK & BLACKWELL LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David S. Ward LSUC #: 33541W**

Tel: 416.869.5960  
Fax: 416.640.3154  
dward@casselsbrock.com

**Christopher Horkins LSUC #: 61880R**

Tel: 416.815.4351  
Fax: 416.642.7129  
chorkins@casselsbrock.com

Lawyers for the Receiver

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# Tab 1

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DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,  
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED**

Defendants

**NOTICE OF MOTION**

**(*Ex Parte* Motion for a *Mareva* Injunction)**

The plaintiff, msi Spergel inc. ("**Spergel**") in its capacity as receiver (in such capacity, the "**Receiver**") of Banners Broker International Limited ("**BBIL**") and Stellar Point Inc. ("**Stellar Point**") will make a motion, without notice, to a Judge presiding over the Commercial List, on May 31, 2016 at 9:30 a.m. or as soon after that time as the motion can be heard, at the Court House, 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

- (a) An order in the form attached hereto as Schedule "A" for an interim and interlocutory *Mareva* Injunction as against the defendants, Rajiv Dixit ("**Dixit**"), Dreamscape Ventures Limited ("**Dreamscape**"), 8643989 Canada Inc. o/a Dixit Consortium Inc. ("**Dixit Consortium**"), Dixit Holdings Inc. ("**Dixit**

**Holdings**", collectively referred to herein, with Dixit, Dixit Consortium and Dreamscape, as the "**Dixit Defendants**") and Kuldip Josun ("**Josun**");

- (b) An order scheduling the return date for the continuation of the *Mareva* Injunction before it expires and appointing a judge to remain seized of these motions;
- (c) Such further and other relief as this Honourable Court deems just.

#### **THE GROUNDS FOR THE MOTION ARE:**

##### **Overview**

- (a) This *ex parte* motion by the Receiver seeks an interim and interlocutory *Mareva* injunction restraining the defendants from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets pending the final disposition of the Receiver's recently issued action against those parties for recovery of funds which were fraudulently misappropriated from the insolvent corporations. Without the relief sought, the Receiver believes it is likely that assets will be dissipated or transferred abroad and that its right of recovery will be irreparably prejudiced.
- (b) The Receiver has recently initiated this action on behalf of the insolvent corporations, BBIL and Stellar Point, which were formerly at the centre of the now defunct Banners Broker enterprise, and their creditors, for the recovery of over \$100 million in damages, disgorgement and restitution related to the defendants' participation in the Banners Broker enterprise.

- (c) Beginning in late 2010, tens of thousands of people from over 120 countries were induced to pay hundreds of millions of dollars to Banners Broker, a purported internet advertising business, for a purported advertising "product" which promised Banners Broker members (known as "affiliates") the opportunity to double their money through participation and recruitment of others into the Banners Broker program.
- (d) Now defunct, the Banners Broker enterprise is currently subject to insolvency proceedings in Canada and the Isle of Man as well as ongoing criminal proceedings in Canada against Banners Broker's principals, including the defendant Dixit, wherein the Crown alleges that Banners Broker was an illegal pyramid scheme.
- (e) Since its appointment in August of 2014, the Receiver has undertaken extensive investigations into Banners Broker's operations and has successfully recovered tens of millions of dollars that had been unlawfully distributed out of Banners Broker entities by management. In the course of that recovery, the Receiver determined that millions of dollars spent by affiliates on Banners Broker products was misappropriated and/or wrongfully converted by the defendants.
- (f) Specifically, through its still ongoing investigations of the affairs of Banners Broker, the Receiver has determined that the defendant Dixit, a former principal and guiding mind of the Banners Broker enterprise, personally received, either directly or through corporate entities under his ownership and control over approximately USD\$4.8 million in affiliate funds spent by affiliates

on Banners Broker advertising products. The defendant, Josun, similarly received over approximately USD\$3.8 million in affiliate funds.

### **Banners Broker**

- (g) Banners Broker purported to be an internet marketing company structured as an “multi-level marketing” program engaged in the sale of ‘banner’ advertisements on the internet. Individual affiliates were told that with their money spent on Banners Broker advertising products would be contributed towards advertising space on high-traffic websites and gathering advertising revenue based on the traffic to those advertisements.
- (h) In reality, Banners Broker did not track website traffic, nor did it have access to high-volume websites. It did not have the infrastructure to track an affiliate’s success or lack thereof in investing in online advertising. Banners Broker did not earn revenue, and relied instead on recruitment and affiliate contributions for cash flow.
- (i) The Banners Broker enterprise was operated through a variety of entities which were used interchangeably and projected the image of being a singular entity. Creditors and third party service providers believed they were dealing with “Banners Broker” rather than BBIL, Stellar Point or any other individual entity. BBIL and the associated Banners Broker entities making up the Banners Broker enterprise were all managed and controlled by one or both of Dixit and Banners Broker co-founder Christopher G. Smith (“**Smith**”).
- (j) Although BBIL was legally domiciled in the Isle of Man, its operations were in fact completely controlled by Ontario residents working in Ontario who were

nominally employees of Stellar Point. Stellar Point, owned and controlled by Dixit, operated as the “face” of Banners Broker to creditors, providing worldwide customer support, IT services and training to Banners Broker affiliates and resellers.

### **Receivership of BBIL and Stellar Point**

- (k) BBIL was ordered into liquidation by the Isle of Man High Court of Justice on February 26, 2014. Miles Andrew Benham and Paul Robert Appleton were appointed as Joint Liquidators of BBIL in the Isle of Man proceedings (“**Joint Liquidators**”).
- (l) On August 22, 2014, pursuant to an application by the Joint Liquidators, the Isle of Man proceeding was recognized by this Court under the cross-border provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”) and Spergel was appointed as Reciever of BBIL in Canada.
- (m) On October 15, 2014, the Receiver’s investigatory powers were expanded to include five BBIL-associated corporations, including Stellar Point and the defendant, Dixit Holdings Inc. (“**Dixit Holdings**”).
- (n) On August 7, 2015, the Receiver’s investigatory powers were further expanded to include two other BBIL-associated corporations, the defendants 8643989 Canada Inc. o/a Dixit Consortium Inc. (“**Dixit Consortium**”) and Dreamscape Ventures Ltd. (“**Dreamscape**”).
- (o) On April 8, 2016, Spergel was appointed as Reciever of Stellar Point.

## The Flow of Funds Analysis

- (p) The Receiver and Joint Liquidators continue to prioritize the preparation of a global "Flow of Funds Analysis" sufficient to understand how affiliate contributions were received and disbursed over the period of Banners Broker's operations ("**Flow of Funds Analysis**").
- (q) The Flow of Funds Analysis has been updated as financial information becomes available. To date, the Receiver and Joint Liquidators have collected, reviewed and incorporated information obtained from approximately 100 financial institutions, 9 payment processors and 46 other third parties. The following documents, among others, have been reviewed and incorporated into the Flow of Funds Analysis:
  - (i) Productions from Canadian and foreign financial institutions used by Banners Broker;
  - (ii) Documents produced by Stellar Point;
  - (iii) Transaction details produced by Payza, an electronic payment processor used by Banners Broker;
  - (iv) Documents produced by Macdonald Sager Manis LLP ("**MSM**"), former corporate counsel to Dixit, Stellar Point, Dixit Holdings and BBIL;
  - (v) Documents produced by G Cube Media LLC ("**G Cube**"), a US-based company owned and controlled by Smith's cousin, Peter Williams, which acted as a reseller and payment processor in Banners Broker;

- (vi) Bank statements from accounts maintained by Banners Broker UK, Banners Broker's UK based reseller.
- (r) The Flow of Funds Analysis provides a current best estimate of total funds received from creditors, together with information on how such funds were utilized by Banners Broker entities and their principals.
- (s) Through its work on the Flow of Funds Analysis, the Receiver has determined that millions of dollars in affiliate funds were received and used personally by the defendants, Dixit and Josun.
- (t) The Receiver has identified at least USD\$4.06 million in unverified disbursements in respect of which the Receiver is unable to identify the recipient. The Receiver believes that the defendants were likely the recipients of these unverified disbursements.

#### **Criminal Proceedings in Respect of Banners Broker**

- (u) In September 2014, the Receiver was made aware of criminal proceedings before the Ontario Court of Justice arising from a Toronto Police Services Financial Crimes Unit investigation into Banners Broker's operations in Canada and Banners Broker principals, Christopher Smith ("**Smith**") and Dixit.
- (v) On December 9, 2015, Dixit and Smith were arrested in Toronto and charged with offences under the *Criminal Code* and the *Competition Act* in relation to fraud, possession of proceeds of crime and money laundering in relation to their operation of and profit from the Banners Broker enterprise, which is alleged by the Crown to have been an illegal pyramid scheme.



### **Dixit's Role in and Unlawful Enrichment from Banners Broker**

- (w) Dixit is a former resident of Whitby, Ontario and was a principal and guiding mind of Stellar Point, Dixit Consortium, Dreamscape and the Banners Broker enterprise. In August 2015, Dixit moved from the Toronto area to Langley, British Columbia.
- (x) The Receiver's Statement of Claim asserts that, through the apparatus of Stellar Point and Dixit Holdings, Dixit was responsible for the actions of BBIL's staff, including the misrepresentations made to affiliates in respect of Banners Broker's operations and profitability and the handling of their investment funds. In his variously described roles as the *de facto* head of BBIL and controlling director/officer of Stellar Point and Dixit Holdings, Dixit redirected Affiliate funds generally as follows:
  - (i) By causing Stellar Point on behalf of BBIL to make misrepresentations to Affiliates to induce them to purchase Banners Broker products;
  - (ii) By causing Stellar Point to bill BBIL's parent company, MGI, extraordinary amounts for its 'services';
  - (iii) By causing BBIL to pay those amounts;
  - (iv) By turning Stellar Point's funds to his own personal use; and
  - (v) By causing Stellar Point to make misrepresentations to Banners Broker affiliates as to the status of their purchases from BBIL.

- (y) The Receiver has also determined that Dixit made extensive personal use of affiliate funds contributed to and held by BBIL and Stellar Point, allowing him to live a life of extreme luxury and affluence.
- (z) As noted above, the Flow of Funds Analysis indicates that Dixit personally received approximately USD\$4.8 million from these affiliate contributions. This includes, notably:
  - (i) Dixit used funds from the bank accounts of Stellar Point, Dixit Holdings and Dixit Consortium to fund at least USD\$3.34 million in personal expenses, without ever properly accounting for or reimbursing the respective corporations. Among these, approximately USD\$2.95 million received by Stellar Point directly from Banners Broker "affiliates" was used by Dixit for predominantly personal (i.e. non-business) purposes including the purchase of clothing, designer handbags, jewelry, lingerie and personal travel.
  - (ii) Dixit received a share of the proceeds from the sale of the Banners Broker support centre located at 5 Carlow Court, Whitby, when it was sold in March 2014 for \$1.2 million. Of that, \$252,811.83 was directed and paid to Dixit Holdings.
  - (iii) At least USD\$1.28 million was transferred to Dreamscape by various Banners Broker entities. Of that, approximately USD\$240,000 remains unaccounted for on the Dreamscape bank statements from its account at the Bank of Cyprus which have been reviewed by the Receiver.

- (iv) Non-cash assets were transferred between the Banners Broker entities without any discernible business or contractual reason, and little if any documentation. Dixit appears to have taken advantage of this to purchase five Mercedes-Benz vehicles using funds from Stellar Point bank accounts and later placing the vehicles in the names of Dixit Holdings and other Banners Broker entities.
- (aa) The Receiver has also identified a number of substantial purchases made by Dixit using credit cards and debit cards which were the recipients of millions of dollars in Banners Broker funds. Non-business related purchases made by Dixit using these funds included jewellery, watches, liquor, clothing and chartered flights on private jets.

#### **Josun's Role in and Unlawful Enrichment from Banners Broker**

- (bb) Josun is a resident of Brampton, Ontario. Josun is one of the founders of the Banners Broker enterprise. Prior to Dixit joining the enterprise, Josun acted as Banners Broker's primary spokesperson. After Dixit assumed control of much of Banners Broker's Canadian operations, Josun became Banners Broker's main representative among international affiliates, predominantly in Europe.
- (cc) In that role, Josun would travel to meet with international affiliates, or potential affiliates, and conduct conference calls and seminars via videoconferencing. His day-to-day occupation with Banners Broker was to maximize Affiliate investment into the program, as well as to establish an international network Banners Broker Network. That is, he was responsible

for encouraging the development of overseas affiliates into 'super-affiliates' (or "**Resellers**"), who would establish their own networks of affiliates.

- (dd) In his role as Banners Broker's international representative, Josun would frequently fly to overseas locations with a significant amount of company funds. Those funds were used to advertise a lifestyle of success and luxury to potential affiliates. Josun spent existing affiliate funds lavishly in maintaining this façade, as he carried out a campaign to woo wealthy new affiliates to the Banners Broker enterprise.
- (ee) Josun's spending in his role as Banners Broker's international spokesperson lacked any effective oversight. No budgets were set for Josun's business trips on behalf of Banners Broker, nor was there any control over his expenses.
- (ff) The Receiver asserts that Josun would regularly receive funds from affiliates meant to be spent on Banners Broker products. Rather than remit these funds to the company, Josun would redirect the funds to his own personal accounts in offshore jurisdictions, intending to place them beyond the reach of creditors.
- (gg) The Receiver also asserts that, by in or around 2012, Josun had directly embezzled at least USD\$3.6 million of affiliate funds, which were deposited in a Swiss bank account held by the defendant, World Web Media Inc. Josun's employment was terminated by Banners Broker in or around July 2012, although the Swiss bank account funds were never recovered. The Receiver believes that Josun has since used the Swiss bank account funds

for personal purposes, including the launching of his own MLM program called "KulClub".

### **Known Assets**

- (hh) Through its investigations to date, the Receiver has become aware of a number of known assets held by the Dixit Defendants and/or Josun, which include:
  - (i) Bank accounts at Canadian financial institutions including CIBC, Royal Bank of Canada ("**RBC**"), HSBC Bank Canada ("**HSBC**"), TD Canada Trust ("**TD Bank**") and President's Choice Financial Group ("**President's Choice Financial**");
  - (ii) Credit card accounts with Canadian financial institutions including CIBC, RBC and HSBC; and
  - (iii) Bank accounts at foreign financial institutions with Canadian offices, including the Bank of Cyprus.
- (ii) The known accounts and credit cards of the Dixit Defendants and Josun are set out at Schedule "A" to the Draft Order appended hereto.
- (jj) Based on the amount at issue, the Receiver has good reason to believe the Dixit Defendants and Josun may have additional exigible accounts or assets which would be subject to the *Mareva* order sought on this motion.

### **The Receiver is Entitled to the Relief Sought**

- (kk) The Receiver is entitled to pre-judgment relief on the basis of a strong *prima facie* case of fraud and oppression. The total amount for which the defendants may be liable is expected to exceed \$100 million.
- (ll) There is a clear and present threat that the assets of the Dixit Defendants and Josun will be dissipated, concealed, transferred, sold for value, or otherwise conveyed within or outside of this jurisdiction for the purposes of evading the recovery of the plaintiff unless this Honourable Court intervenes. This is demonstrated by, among other things:
  - (i) The defendants' maintenance of bank accounts in foreign jurisdictions, such as Cyprus and Switzerland; and
  - (ii) The demonstrated capacity of the defendants to transfer funds abroad and structure the corporate affairs of the Banners Broker enterprise through entities in foreign jurisdictions (i.e. Isle of Man, Belize, British Virgin Islands, US Marshall Islands, etc.) in such a way as to put assets beyond the reach of creditors.
- (mm) The Receiver has provided an undertaking regarding damages.

### **Ex Parte Nature and Timing of the Motion**

- (nn) The nature of the motion and the surrounding circumstances make service of the within motion impracticable, as it would be genuinely impossible to give notice to the defendants, who are alleged to have perpetrated a significant fraud, without defeating the purpose of the *Mareva* injunction sought.

- (oo) Dixit stands charged of multiple criminal charges including fraud and money laundering. The Toronto Police Service has also alleged that “funds were funneled to a number of offshore accounts in Belize, St. Lucia, Cyprus and others.”
- (pp) In these circumstances, the Receiver is concerned that if notice were provided to Josun or the Dixit Defendants of the within motion they would have opportunity to move any funds remaining in Canada beyond the reach of the Receiver and outside of the jurisdiction of this court. The defendants have already demonstrated the capacity and inclination to systematically transfer funds abroad.
- (qq) The Receiver has made full and frank disclosure of all material facts. The supporting evidence for this motion was collected by the Receiver through the parallel Banners Broker insolvency proceedings, in which the defendants were invited to participate. In the case of Dixit, he was represented by counsel in those proceedings.
- (rr) The Receiver has brought this motion as expeditiously as possible, in the circumstances. Given the time and efforts required to undertake a fulsome investigation into the Banners Broker enterprise and complete the Flow of Funds Analysis, the Receiver has only recently reached a position where it could decide to pursue this action and the relief sought on this motion.
- (ss) Specifically, in January of 2016, the Receiver obtained a court order for the production of certain important banking records relevant to the claim asserted against Dixit. Since that time the Receiver has worked diligently to review and understand these additional Dixit banking records and incorporate them into

the Flow of Funds Analysis. The review and analysis of these important Dixit banking records informs the Receiver's election to proceed with this action and the within motion.

- (tt) In the course of its work on the Flow of Funds Analysis, the Receiver also only very recently determined that certain transactions noted in Stellar Point bank statements related to Visa Debit card transactions made by Dixit using Banners Broker affiliate funds. This recent discovery further informed the Receiver's decision to proceed with its action and the within motion.

#### **General**

- (uu) Part XIII of the BIA (sections 267 to 284) which govern cross-border insolvencies;
- (vv) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (ww) Rules 40 of the *Rules of Civil Procedure*; and
- (xx) Such further grounds as counsel may advise.

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

- (a) The Seventh Report of the Receiver, dated May 30, 2016;
- (b) The Receiver's previous Reports to the Court, including:
  - a. The Receiver's Third Report, dated July 30, 2015;
  - b. The Receiver's Fourth Report, dated January 8, 2016; and
  - c. The Receiver's Fifth Report, dated April 4, 2016;



- (c) The pleadings and proceedings herein and in the parallel cross-border insolvency proceedings involving BBIL and Stellar Point (Court File No. CV-14-10663-00CL); and
- (d) Such further and other evidence as counsel may advise and this Honourable Court deems just.

May 30, 2016

**CASSELS BROCK & BLACKWELL LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David S. Ward LSUC#: 33541W**

Tel: 416-869-5960  
Fax: 416-640-3154  
dward@casselsbrock.com

**Christopher Horkins LSUC #: 61880R**

Tel: 416.815.4351  
Fax: 416.642.7129  
chorkins@casselsbrock.com

Lawyers for the Plaintiffs

BANNERS BROKER INTERNATIONAL LTD. by its receiver,  
MSI SPERGEL INC., et al  
Plaintiffs

and RAJIV DIXIT et al.  
Defendants

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David S. Ward LSUC#: 33541W**  
Tel: 416-869-5960  
Fax: 416-640-3154  
dward@casselsbrock.com

**Christopher Horkins LSUC #: 61880R**  
Tel: 416.815.4351  
Fax: 416.642.7129  
chorkins@casselsbrock.com

Lawyers for the Plaintiff

Tab A

Court File No.

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DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,  
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED**

Defendants

**ORDER  
(Mareva Injunction)**

**NOTICE**

If you, the Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

**THIS MOTION**, made without notice by the Plaintiff, msi Spergel inc. ("**Spergel**") in its capacity as receiver (in such capacity, the "**Receiver**") of Banners Broker International Limited ("**BBIL**") and Stellar Point Inc. ("**Stellar Point**"), for an interim Order in the form of a *Mareva* injunction restraining the defendants, Rajiv Dixit ("**Dixit**"), Dreamscape Ventures Limited ("**Dreamscape**"), Dixit Consortium Inc. ("**Dixit Consortium**"), Dixit Holdings Inc. ("**Dixit**

**Holdings**” and collectively referred to herein with Dixit, Dixit Consortium and Dreamscape as the “**Dixit Defendants**”) and Kuldip Josun (“**Josun**”), from dissipating their assets and other relief, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the plaintiff, on hearing the submissions of counsel for the plaintiff, and on noting the undertaking of the plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order:

**Mareva Injunction**

1. **THIS COURT ORDERS** that Josun and the Dixit Defendants, and their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with them, or any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of Josun or the Dixit Defendants, wherever situated, including but not limited to the assets and accounts listed in **Schedule “A”** hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of Josun’s and the Dixit Defendants’ assets whether or not they are in their own name and whether they are solely or jointly owned. For the purpose of this order, the assets of Josun and the Dixit Defendants

include any asset which Josun or the Dixit Defendants, or any of them, have the power, directly or indirectly, to dispose of or deal with as if it were their own. Josun and the Dixit Defendants, or any of them, are to be regarded as having such power if a third party holds or controls the assets in accordance with the direct or indirect instructions of any of Josun or the Dixit Defendants.

### **Ordinary Living Expenses**

3. **THIS COURT ORDERS** that Josun and the Dixit Defendants, or any of them, may apply for an order, on at least twenty-four (24) hours notice to the plaintiff, specifying the amount of funds which Josun or the Dixit Defendants, or any of them, are entitled to spend on ordinary living expenses and legal advice and representation.

### **Disclosure of Information**

4. **THIS COURT ORDERS** that each of Josun and the Dixit Defendants prepare and provide to the Plaintiff within 30 days of the date of service of this Order, a sworn statement describing the nature, value, and location of their assets worldwide, whether in their own name or not and whether solely or jointly owned.

5. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate Josun or the Dixit Defendants, or any of them, they may be entitled to refuse to provide it, but are recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 4 herein is contempt of court and may render Josun or the Dixit Defendants, or any of them, liable to be imprisoned, fined, or have their assets seized.

### **Third Parties**

6. **THIS COURT ORDERS** Canadian Imperial Bank of Commerce ("**CIBC**"), HSBC Bank Canada ("**HSBC**"), Royal Bank of Canada ("**RBC**"), the Bank of Cyprus and any other financial institution holding monies or assets in any account or on credit on behalf of Josun or the Dixit Defendants, or any of them (collectively, the "**Banks**"), to forthwith freeze and prevent any removal or transfer of monies or assets of the Dixit Defendants held in any account or on credit on behalf of Josun or the Dixit Defendants, or any of them, with the Banks, until further Order of the Court, including but not limited to the accounts listed in **Schedule "A"** hereto.

7. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Dixit Defendants' assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Dixit Defendants, or any of them, by the Banks.

### **Variation, Discharge or Extension of Order**

8. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days notice to the Plaintiff.

9. **THIS COURT ORDERS** that the parties shall attend before this Court on \_\_\_\_\_, 2016 at 10:00 AM for the hearing of a motion by the plaintiff for the continuation of this Order, failing which this Order will terminate.

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## SCHEDULE "A"

## Bank Accounts:

BANK	BRANCH ADDRESS	ACCOUNT HOLDER	ACCOUNT NO.
CIBC	Unknown	Rajiv Dixit	Chequing Account No. [REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Dixit Consortium	[REDACTED]
CIBC	Unknown	Dixit Consortium	[REDACTED] (USD Account)
CIBC	Unknown	Dixit Consortium	[REDACTED]
CIBC	Unknown	Dixit Holdings	[REDACTED]
CIBC	540 Laval Drive Oshawa, ON L1J 0B5	Kuldip Josun	Unknown
HSBC	Unknown	Rajiv Dixit	[REDACTED]
HSBC	Unknown	Stellarpoint Ltd.	Chequing Account No. [REDACTED]
RBC	Unknown	Rajiv Dixit	[REDACTED]
RBC	Unknown	Rajiv Dixit	[REDACTED]
RBC	10098 McLaughlin Road Brampton, ON L7A 2X6	Kuldip Josun	Unknown
TD Bank	Unknown	Kuldip Josun	[REDACTED]
TD Bank	4 King Street W, P.O. Box 247	Rajiv Dixit (held jointly with Stephanie)	Chequing Account No. [REDACTED]



BANK	BRANCH ADDRESS	ACCOUNT HOLDER	ACCOUNT NO.
	Oshawa, ON L1H 7L3	Schlacht)	
President's Choice Financial Group	P.O. Box 603 Station, Agincourt Scarborough, ON M1S 5K9	Kuldip Josun	Unknown
Bank of Cyprus	658 Danforth Ave Toronto, ON M4J 5B9	Dreamscape Ventures Ltd.	
C.I.M. Banque	Unknown	World Web Media / Kuldip Josun	

**Credit Cards:**

BANK	CARD HOLDER	CARD NO.
CIBC	Rajiv Dixit	
CIBC	Rajiv Dixit	
CIBC	Rajiv Dixit	
CIBC	Rajiv Dixit	
CIBC	Rajiv Dixit	
RBC	Rajiv Dixit	
RBC	Rajiv Dixit	
HSBC	Rajiv Dixit	

BANNERS BROKER INTERNATIONAL LTD. by its receiver,  
MSI SPERGEL INC., et al  
Plaintiffs

and RAJIV DIXIT et al.  
Defendants

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David S. Ward LSUC#: 33541W**  
Tel: 416-869-5960  
Fax: 416-640-3154  
dward@casselsbrock.com

**Christopher Horkins LSUC #: 61880R**  
Tel: 416.815.4351  
Fax: 416.642.7129  
chorkins@casselsbrock.com

Lawyers for the Plaintiffs

# Tab 2

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

**May 30, 2016**

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

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990,  
c. C-43**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**AND IN THE MATTER OF THE RECEIVERSHIP OF STELLAR POINT INC.**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

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

**May 30, 2016**

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## I. Purpose of this Report

1. This Report is filed in support of an *Ex Parte* motion by msi Spergel inc., in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of Banners Broker International Limited (“**BBIL**”) and Stellar Point Inc. (“**Stellar Point**”), for an interim and interlocutory *Mareva* injunction.

2. The injunction sought is in standard Model Order form. It seeks to restrain Rajiv Dixit (“**Dixit**”), Dreamscape Ventures Limited (“**Dreamscape**”), 8643989 Canada Inc. o/a Dixit Consortium Inc. (“**Dixit Consortium**”), Dixit Holdings Inc. (“**Dixit Holdings**”), collectively referred to herein, with Dixit, Dixit Consortium and Dreamscape, as the “**Dixit Defendants**”) and Kuldip Josun (“**Josun**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets pending the final disposition of the Receiver’s recently issued action against those parties for recovery of funds which were fraudulently misappropriated from the insolvent corporations. Without the relief sought, the Receiver believes it is likely that assets will be dissipated or transferred abroad and that its right of recovery will be irreparably prejudiced.

## II. Overview

3. BBIL was central to a group of at least eight related companies and service providers. Together they were involved in and/or operated the “Banners Broker” online enterprise (“**Banners Broker**”). Banners Broker was a platform whereby registered members known as “affiliates” could advertise their businesses on websites within the Banners Broker network of publishers while, at the same time, earn revenues as an advertising publisher through specialized and targeted publisher sites created, designed and hosted by BBIL.

4. Banners Broker promised affiliates a doubling of their money if they could recruit others in a marketing program purportedly involving the sale of online advertising. In effect, the

Banners Broker “product”, which was described as “advertising”, offered affiliates the opportunity to double their money.

5. Now defunct, various of the corporate entities making up the Banners Broker enterprise, are currently subject to insolvency proceedings in the Isle of Man (in the case of BBIL), as well as in Canada (in the case of BBIL, Stellar Point and others).

6. Dixit, as well as former Banners Broker principal Christopher G. Smith (“**Smith**”), are also subject to ongoing criminal proceedings in Canada, in which Banners Broker is alleged to have been an illegal pyramid scheme.

7. Contemporaneous with the filing of this report, the Receiver will commence an action in the Ontario Superior Court of Justice (Commercial List) on behalf of the insolvent corporations, BBIL and Stellar Point, and their creditors. The Receiver’s action seeks the recovery of over \$100 million in damages for negligent and/or fraudulent misrepresentation, conspiracy, conversion, breach of fiduciary duties, breach of contract, negligence and oppression contrary to the *Canada Business Corporations Act* R.S.C. 1985, c. C-44 (the “**CBCA**”), as well as punitive damages, disgorgement and restitutionary remedies arising from the alleged misappropriation of millions of dollars in affiliate funds by Dixit, Josun and certain Banners Broker associated corporations under their ownership and control. A copy of the Receiver’s Statement of Claim, to be issued, is attached as **Appendix “A”**.

8. Since its appointment in August of 2014, the Receiver has had an opportunity to conduct an extensive investigation into Banners Broker’s business, operations and financial affairs. Using the investigatory powers granted by this Court, the Receiver has collected and reviewed thousands of documents relevant to the global flow of affiliate contributed funds through the Banners Broker enterprise over the course of its operations. The Receiver has successfully recovered millions of dollars that had been taken from Banners Broker entities by management. In the course of that recovery, the Receiver determined that millions of dollars in affiliate funds

were transferred, without any legitimate business purpose, through the various Banners Broker associated entities, such as BBIL and Stellar Point, and into the possession of Dixit and Josun with no right and virtually no observation of formality.

9. Through its still ongoing investigations, the Receiver has determined that Dixit personally received, either directly or through corporate entities under his ownership and control over approximately USD\$4.8 million in affiliate funds spent by affiliates on Banners Broker advertising products. Josun similarly received over approximately USD\$3.8 million in affiliate funds. Millions more in affiliate funds remain unaccounted for. Based on the substantial amounts the Receiver now believes were misappropriated by Dixit and Josun, and their demonstrated capacity to move funds abroad or otherwise put monies beyond the reach of creditors, the Receiver seeks the *ex parte* relief sought on this motion. The Receiver believes that the grant of a *Mareva* injunction is critical to preserving rights of recovery in respect of affiliate funds.

### **III. Receiver's Previous Reports to Court**

10. This is the Receiver's Seventh Report to the Court ("**Seventh Report**"). It follows and may be read in conjunction with the following previous reports:

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

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

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

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

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

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

(c) **Receiver's Third Report** (dated July 30, 2015)

This report was filed in support of the Receiver's motion for approval of a settlement agreement with a BBIL group entity, and for the grant of certain limited investigatory authority in respect of recently identified BBIL associated companies. The report also provided an update on the activities of the Receiver since its First Report.

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

(d) **Receiver's Fourth Report** (dated January 8, 2016)

This report was filed in support of the Receiver's motion for the production of certain banking records from the Royal Bank of Canada ("**RBC**") and the Canadian Imperial Bank of Commerce ("**CIBC**"). The Fourth Report also provides an update on the Receiver's activities since the Third Report.

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

(e) **Receiver's Fifth Report** (dated April 4, 2016)

This report was filed in support of the Receiver's motion to convert the investigatory receivership of Stellar Point into standard, possessory receivership proceedings, to declare certain funds identified by the Receiver as BBIL funds, for production of documents from certain financial institutions and for approval of the Receiver's activities and approval of its fees and its counsel's fees to date. The Fifth Report provides an update on the Receiver's activities since the Fourth Report.

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

(f) **Receiver's Sixth Report** (dated May 26, 2016)

This report was filed in support of the Receiver's motion for an order in furtherance of the transition of certain BBIL insolvency administration matters from the Joint Liquidators to the Receiver.

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

11. The Receiver relies upon the content of these previous reports to court, which describe the Receiver's activities and investigations to date, in support of the within motion. Full copies of the previous reports, with exhibits, have been filed with the court previously and will be made available at the hearing of the motion.

#### **IV. Banners Broker**

12. Banners Broker, as it was described to affiliates, was an internet marketing company structured as a “multi-level marketing” program engaged in the sale of ‘banner’ advertisements on the internet. Individual affiliates were told that their money spent on Banners Broker advertising products was contributed towards advertising space on high-traffic websites and gathering advertising revenue based on the traffic to those advertisements.

13. In reality, Banners Broker did not track website traffic, nor did it have access to high-volume websites. It did not have the infrastructure to track an affiliate’s success or lack thereof in investing in online advertising. Banners Broker did not earn revenue, and relied instead on recruitment and investment enticement for cash flow.

14. The Banners Broker enterprise was operated through a variety of entities which were used interchangeably and projected the image of being a singular entity. Creditors and third party service providers believed they were dealing with “Banners Broker” rather than BBIL, Stellar Point or any other individual entity. BBIL and the associated Banners Broker entities making up the Banners Broker enterprise were all managed and controlled by one or both of Smith and Dixit.

15. Although BBIL was legally domiciled in the Isle of Man, its operations were in fact completely controlled by Ontario residents working in Ontario who were nominally employees of Stellar Point, a non-arm’s-length service provider which in turn was majority-owned and unilaterally operated by Dixit. Stellar Point operated as the “face” of Banners Broker to creditors, providing worldwide customer support, IT services and training to Banners Broker affiliates and resellers.

## V. Receivership of BBIL and Stellar Point

16. BBIL was ordered into liquidation by the Isle of Man High Court of Justice on February 26, 2014. Miles Andrew Benham and Paul Robert Appleton were appointed as Joint Liquidators of BBIL in the Isle of Man proceedings ("**Joint Liquidators**").

17. On August 22, 2014, pursuant to an application by the Joint Liquidators, the Isle of Man proceeding was recognized by this Court under the cross-border provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") and msi Spergel inc. was appointed as Receiver of BBIL in Canada. A copy of the August 22, 2014 court orders recognizing the Isle of Man proceeding and appointing the Receiver as Receiver of BBIL is attached as **Appendix "H"**.

18. On October 15, 2014, the Receiver's investigatory powers were expanded to include certain other BBIL associated corporations identified in the course of the Receiver's initial investigations, namely:

- (a) Stellar Point;
- (b) Dixit Holdings;
- (c) 2087360 Ontario Incorporated o/a Local Management Services ("**LMS**");
- (d) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited") ("**Parrot**");
- (e) 2341620 Ontario Corporation ("**234**"); and
- (f) any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "BannersMobile" or "Banners Broker Belize".

A copy of the October 15, 2014 court order expanding the Receiver's investigatory powers is attached as **Appendix "I"**.

19. On August 7, 2015, the Receiver's investigatory powers were further expanded to include two other BBIL-associated corporations, owned and controlled by Dixit:

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

The August 7, 2015 court order also empowered the Receiver to initiate and prosecute claims on behalf of BBIL. A copy of the August 7, 2015 court order is attached as **Appendix "J"**.

20. On April 8, 2016, the investigatory receivership in respect of Stellar Point was converted to a full, possessory receivership and msi Spergel inc. was appointed as Receiver of Stellar Point in addition to BBIL. A copy of the April 8, 2016 court order is attached as **Appendix "K"**.

21. On May 26, 2016, the Receiver sought and was granted an order approving and facilitating the transition of certain insolvency administration matters from the Joint Liquidators to the Receiver, including the administration of a global claims process. A copy of the May 26, 2016 court order is attached as **Appendix "L"**.

## **VI. Flow of Funds Analysis**

22. The Receiver and Joint Liquidators continue to prioritize the preparation of a detailed accounting or "Flow of Funds Analysis" sufficient to understand how global affiliate contributions to the Banner Broker enterprise were received and disbursed over the period of Banners Broker's operations ("**Flow of Funds Analysis**"). The Flow of Funds Analysis provides a best estimate, as at March 31, 2016, of total funds received from creditors, together with information on how such funds were utilized by Banners Broker entities and their principals, including, of particular relevance to this motion, Dixit and Josun.

23. The Flow of Funds Analysis is based primarily on third party provided financial information in addition to information obtained from BBIL and related parties and is designed to

understand how the monies that were contributed by affiliates to Banners Broker were returned to them, invested, expended, diverted or otherwise utilized. A description of the Flow of Funds Analysis, and the Receiver's most recent determinations made on the basis of its work on the Flow of Funds Analysis to date, are set out in the Receiver's Fifth Report, attached hereto as Appendix "F".

24. The Receiver's ongoing work on the Flow of Funds Analysis is intended to serve three primary purposes:

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

25. To date, the Receiver and Joint Liquidators have collected, reviewed and incorporated information obtained from approximately 100 financial institutions, 9 payment processors and 46 other third parties. The following documents, among others, have been reviewed and incorporated into the Flow of Funds Analysis:

- (a) Productions from Canadian and foreign financial institutions used by Banners Broker;
- (b) Documents produced by Stellar Point;
- (c) Transaction details produced by Payza, an electronic payment processor used by Banners Broker;



- (d) Documents produced by Macdonald Sager Manis LLP ("**MSM**"), former corporate counsel to Dixit, Stellar Point, Dixit Holdings and BBIL;
- (e) Documents produced by G Cube Media LLC ("**G Cube**"), a US-based company owned and controlled by Smith's cousin, Peter Williams, which acted as a reseller and payment processor in Banners Broker; and
- (f) Bank statements from accounts maintained by Banners Broker UK, Banners Broker's UK based reseller.

26. The Receiver's investigations supporting the Flow of Funds Analysis are also informed by interviews and examinations conducted by the Receiver of key individuals connected to the Banners Broker enterprise pursuant to its court-ordered investigatory mandate. To date, the Receiver has interviewed or examined 12 key individuals, including Smith, Dixit and Josun. Examinations were conducted under oath and before a court reporter for the following individuals:

- (a) **Lorenzo Guarini:** former Vice President of Stellar Point (Examined on April 21, 2015),
- (b) **Kelly Stinson:** Director of 8136645 Canada Limited (shareholder of Stellar Point) (Examined on April 21, 2015);
- (c) **Stephanie Schlacht:** Executive Assistant to Josun (May 2012 to July 2012); Executive Assistant to Dixit (July 2012 to August 2013), current spouse of Dixit (Examined on April 29 and June 11, 2015),
- (d) **Robert Pirie (a.k.a. "Ron Anderson"):** Executive Assistant to the Director of Human Resources and Training at Stellar Point (Examined on February 25, 2015);

- (e) **Tara Reeves (née Josun):** Customer Service Representative at BBIL and Staff Trainer at Stellar Point (Examined on February 26, 2015); and
- (f) **Maxwell Morgan:** CEO of Aramor Payments, a payment processor solutions company engaged by Stellar Point and/or BBIL (Examined on April 13 and May 29, 2015).

Copies of the transcripts from these examinations are attached hereto as **Appendix "M"**.

27. The Flow of Funds Analysis is continually being updated as better and more complete financial information becomes available. Recently, the Flow of Funds has progressed to the point which allows the Receiver to reach conclusions with respect to the receipt and disposition of funds by Dixit and Josun, including much of what is alleged in the Statement of Claim.

28. By way of overview, it appears that approximately USD\$156.44 million was received from creditors, with approximately USD\$78.93 million of the funds being returned to creditors in the form of "pay-outs". Notable payments made to third parties include:

- (a) USD\$13.88 million paid to and/or at the direction of BBIL principals, Dixit, Josun and Smith;
- (b) USD\$9.23 million in fees paid to payment processors; and
- (c) USD\$9.71 million paid to Banners Broker resellers/independent contractors.

29. Disbursements attributable to operating expenses of the Banners Broker enterprise total approximately USD\$21.98 million.

30. The Receiver has identified at least USD\$4.06 million in unverified disbursements in respect of which the Receiver is unable to identify the recipient.

31. The Flow of Funds Analysis, in its then current state of completion, has been filed with court on a confidential basis on two prior occasions in the context of the ongoing Banners

Broker Canadian insolvency proceedings. The Flow of Funds Analysis is based, in part, on information obtained from Smith in accordance with the terms of the Confidentiality Order of Justice Newbould, granted October 23, 2014 and, in accordance with the terms of that Order, has been filed under seal with the approval of the Court.

## **VII. Criminal Proceedings in Respect of Banners Broker**

32. In September 2014, the Receiver was made aware of criminal proceedings before the Ontario Court of Justice arising from a Toronto Police Services Financial Crimes Unit investigation into Banners Broker's operations in Canada and Banners Broker principals, Smith and Dixit.

33. On December 9, 2015, Dixit and Smith were arrested in Toronto and charged with offences under the *Criminal Code* and the *Competition Act* in relation to fraud, possession of proceeds of crime and money laundering in relation to their operation of and profit from the Banners Broker enterprise, which is alleged by the Crown to have been an illegal pyramid scheme.

34. More specifically, Smith and Dixit were charged under the *Criminal Code* with (i) defrauding the public over \$5,000; (ii) possession of proceeds of crime; and (iii) laundering proceeds of crime. They were also both charged under the *Competition Act* with (i) operating a pyramid scheme; and (ii) making false or misleading statements.

35. The Toronto Police allege, among other things, that:

- (a) "between October 2010 and March 2013, a pyramid scheme known as 'Banners Broker' was operated out of a Church Street address in Toronto";
- (b) "by the end of 2012, over \$93 million US was obtained from thousands of participants, of which approximately \$45 million was paid back to participants in the scheme"; and

- (c) “the remaining funds were funneled to a number of offshore accounts in Belize, St. Lucia, Cyprus, and others.”

A copy of the Toronto Police Services press release dated December 9, 2015 is attached hereto as **Appendix “N”**.

36. The Receiver has continued to monitor developments in the criminal proceedings and has attended to observe criminal court attendances on January 14, 2016 and February 16, 2016. The two accused, including Dixit, are currently released on bail.

#### **VIII. Dixit Defendants**

37. Dixit is a former resident of Whitby, Ontario and was a principal and guiding mind of the Banners Broker enterprise generally, holding a controlling position in each of Stellar Point, Dixit Holdings, Dixit Consortium and Dreamscape.

38. The Receiver has been advised through interviews conducted pursuant to its investigatory mandate that Dixit joined Banners Broker in late 2010, initially serving primarily as a seminar host promoting investment in Banners Broker.<sup>1</sup> Over the following two years, his role expanded greatly, becoming one of the principals and guiding minds of the global Banners Broker enterprise. Dixit purported to hold numerous titles within the Banners Broker enterprise, but most often held himself out as the “Chief Operating Officer” of the business.

39. In August 2015, Dixit moved from the Toronto area to Langley, British Columbia. Upon learning that Dixit would be leaving Ontario, the Receiver requisitioned a parcel register for Dixit’s former personal residence in Oshawa. The parcel register indicates that Dixit sold his house on July 20, 2015. In response to a broad document production request (i.e. not specific to the residence) made by counsel for the Receiver, Dixit produced information relating to the sale

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<sup>1</sup> The Receiver has met with and interviewed 12 individuals involved in the Banners Broker enterprise, including Smith, Dixit and Josun. For a more detailed description of the Receiver’s interviews of key Banners Broker individuals, please see paragraphs 58-68 of the Receiver’s Third Report, attached hereto as Appendix “D”.

of the property. The sale proceeds were directed to pay down two mortgages and to satisfy a support order, with the balance of the monies (after transaction costs) paid to Dixit and his wife, Stephanie Schlacht ("**Schlacht**").

#### **IX. Dixit's Alleged Misappropriations from Banners Broker**

40. The Receiver alleges that, through the apparatus of Stellar Point and Dixit Holdings, Dixit was responsible for the actions of BBIL's staff, including the misrepresentations made to affiliates in respect of Banners Broker's operations and profitability and the handling of their investment funds. In his variously described roles as the *de facto* head of BBIL and controlling director/officer of Stellar Point and Dixit Holdings, Dixit redirected Affiliate funds generally as follows:

- (a) By causing Stellar Point on behalf of BBIL to make misrepresentations to Affiliates to induce them to purchase Banners Broker products;
- (b) By causing Stellar Point to bill BBIL's parent company, Monetize Group Inc. ("**MGI**"), extraordinary amounts for its "services";
- (c) By causing BBIL to pay those amounts;
- (d) By turning Stellar Point's funds to his own personal use; and
- (e) By causing Stellar Point to make misrepresentations to Banners Broker affiliates as to the status of their purchases from BBIL.

41. Using his position of authority within Banners Broker, Dixit misappropriated and/or converted to his own use millions of dollars in affiliate funds held by BBIL and Stellar Point to which he had no right. Through this misappropriation, Dixit was able to live a life of extreme luxury and affluence. The Receiver's knowledge in this regard is based on its review of bank

statements, credit card statements, receipts, invoices and other documents collected and reviewed in the course of preparing the Flow of Funds Analysis.

42. By way of example, during the course of the Receiver's review of bank accounts belonging to Stellar Point and Dixit Holdings, the Receiver identified three Visa card numbers associated with a CIBC Visa card issued to Dixit personally and held in his name ("**Dixit CIBC Visa**").

43. Through its review of documents recently produced to the Receiver from CIBC, the Receiver has determined that the Dixit CIBC Visa received over USD\$2.4 million from Banners Broker bank accounts. (Again, these bank accounts were funded by affiliate contributions). The Receiver has also determined that the Dixit CIBC Visa was frequently used by Dixit to purchase expensive personal items that could not have been for the benefit of BBIL or Stellar Point, including the following notable examples:

- (a) On December 1, 2012 Dixit purchased six watches from Weir & Sons in Dublin, Ireland: three Rolexes and three Breitlings. Two of the watches were women's watches. The total purchase price was €63,355.00 and was funded using six credit cards, including the Dixit CIBC Visa and a Stellar Point Bank of Cyprus debit card. Of the €63,355.00 purchase price, €37,700 (CDN\$50,589.63) was paid for using the Dixit CIBC Visa and €14,775 (USD\$19,971.37) was paid for using the Stellar Point Bank of Cyprus debit card. Attached as **Appendix "O"** are copies of the December 1, 2012 receipt from Weir & Sons and an excerpt from the Dixit CIBC Visa statements reflecting the purchase;
- (b) On February 26, 2013 Dixit purchased two watches, a Breitling Superocean and a Hublot Bigbang, from a Selfridges store in Manchester, England. The watches cost a total of £26,110 and were paid for using two credit cards including the Dixit CIBC Visa. Of the total purchase price, £14,910(CDN\$23,855.41) was paid for

using the Dixit CIBC Visa. Attached as **Appendix “P”** are copies of the February 26, 2013 receipt from Selfridges and an excerpt from the Dixit CIBC Visa statements reflecting the purchase;

(c) On or about April 18, 2013 Dixit purchased a £1,800 (CDN\$2,906.10) bottle of Macallan 1824 Ltd. from a World Duty Free store at Heathrow Airport. The scotch was paid for using the Dixit CIBC Visa. Attached as **Appendix “Q”** are a copy of the April 18, 2013 receipt from World Duty Free and an excerpt from the Dixit CIBC Visa statements reflecting the purchase; and

(d) On May 10, 2013 Dixit purchased two watch winders, a Hublot clock and a Montegrappa pen from the Château D'Ivoire store in Montreal, Quebec for \$21,954.62. This purchase was paid for using the Dixit CIBC Visa. Attached as **Appendix “R”** are a copy of the May 10, 2013 receipt from Château D'Ivoire and an excerpt from the Dixit CIBC Visa statements reflecting the purchase.

44. In the course of its Stellar Point records review, the Receiver also located receipts for several high value items that had been purchased using what appeared to be a credit card ending in “1601” (“**1601 Visa Card**”). The Receiver determined that the 1601 Visa was used to make tens, if not hundreds, of thousands of dollars of purchases of jewelry and other non-business related expenses. However, until very recently, the Receiver had been unable to determine who the 1601 Visa Card belonged to.

45. Upon recent further review of bank account records obtained by the Receiver for a Stellar Point bank account held with the Bank of Cyprus (“**Stellar Point Cyprus Account**”), it became apparent that the 1601 Visa Card is likely a Visa Debit card that was used by Dixit to withdraw funds and/or make payments from the Stellar Point Cyprus Account. Attached as **Appendix “S”** is a copy of the Stellar Point Cyprus Account statements that were produced to the Receiver.

46. For example, on December 11, 2012, the 1601 Visa Card was used to purchase a 2.02 carat diamond from Oshawa Jewellery Inc. for \$19,000. A copy of this receipt is attached as **Appendix "T"**. In reviewing the Stellar Point Cyprus Account statements, there is an entry on December 13, 2012, that states "Card 4\*\*\*1601 2012-12-11 19000.00 CAD... Visa CA OSHAWA Oshawa Jewellery Exchange." The Receiver has determined that the Stellar Point Cyprus Account was used to fund the purchase of the diamond from Oshawa Jewellery Inc.

47. Similarly, on March 2, 2013, the 1601 Visa Card was used to purchase \$19,000 in shoes, and suits from Harry Rosen. A copy of this receipt is attached as **Appendix "U"**. In reviewing the Stellar Point Cyprus Account statements, there is an entry on April 3, 2013, that states "Card 4\*\*\*1601 2013-03-02 19000.00 CAD ... VISA CA TORONTO Harry Rosen...."

48. As further described above, the 1601 Visa Card was also used to fund \$19,981.37 of the December 1, 2012 purchase of six watches from Weir & Sons in Dublin, Ireland.

49. There are dozens of other examples where the Stellar Point Cyprus Account, by means of the 1601 Visa Card, was used to fund what are evidently non-business expenses. These include:

- (a) On December 27, 2012, a \$33,677.00 purchase from Jim Coleman Automotive for Rajkumar Dixit. Jim Coleman is a auto dealership in Maryland. Rajkumar Dixit is Dixit's brother. Attached as **Appendix "V"** is an excerpt of the Stellar Point Cyprus Account statement evidencing the same;
- (b) On December 28, 2012, a \$18,556.70 private chartered flight. Attached as **Appendix "W"** is an excerpt of the Stellar Point Cyprus Account statement evidencing the same;<sup>2</sup>

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<sup>2</sup> It is possible that this expense was for a private flight to the Bahamas for Dixit, his ex-wife, and his mother. The Receiver has been advised by several witnesses that around this time Dixit took his ex-wife and mother to the Bahamas on vacation (See for example: Transcript from the Examination of Lorenzo



- (c) On January 1, 2013, a \$12,783.51 purchase from John Bull (according to its website, the store sells leather, perfume, cosmetics, jewelry, watches and photography equipment), in Paradise Island, Bahamas. Attached as **Appendix "X"** is an excerpt of the Stellar Point Cyprus Account statement evidencing the same; and
- (d) On February 28, 2013, a \$12,580.19 purchase from Tiffany & Co. Ltd. at Heathrow Airport. Attached as **Appendix "Y"** is an excerpt of the Stellar Point Cyprus Account statement evidencing the same.

50. As further detailed in the Receiver's Fifth Report, the Receiver has concluded through its Flow of Funds Analysis that Dixit personally received approximately USD\$4.8 million over a three to four year period. Such receipts were entirely funded by affiliate contributions. This includes, notably:

- (a) Dixit used funds from the bank accounts of Stellar Point, Dixit Holdings and Dixit Consortium to fund at least USD\$3.3 million in personal expenses, without ever properly accounting for or reimbursing the respective corporations. Among these, approximately USD\$2.95 million received by Stellar Point directly from Banners Broker "affiliates" was used by Dixit for predominantly personal (i.e. non-business) purposes including the purchase of clothing, designer handbags, jewelry, lingerie and personal travel.
- (b) Dixit received a share of the proceeds from the sale of the Banners Broker support centre located at 5 Carlow Court, Whitby, when it was sold in March 2014 for \$1.2 million. Of that, \$252,811.83 was directed and paid to Dixit Holdings.
- (c) At least USD\$1.28 million was transferred to Dreamscape by various Banners Broker entities. Of that, approximately USD\$240,000 remains unaccounted for on the

---

Guarini, April 21, 2015, at 40:4-12, attached at **Appendix "M"**). A review of the Stellar Point Cyprus Account indicates that this account was used to fund several expenses in the Bahamas during this time.

Dreamscape bank statements from its account at the Bank of Cyprus which have been reviewed by the Receiver.

- (d) Non-cash assets were transferred between the Banners Broker entities without any discernible business or contractual reason, and little if any documentation. Dixit appears to have taken advantage of this to purchase five Mercedes-Benz vehicles using funds from Stellar Point bank accounts and later placing the vehicles in the names of Dixit Holdings and other Banners Broker entities.

51. As explained in the Fifth Report, the Receiver is currently unable to locate or account for a significant amount of affiliate funds totalling over USD\$4 million. Given the information set out above regarding Dixit's spending records and diversion of Banners Broker funds, the Receiver's reasonable belief is that Dixit, either directly or indirectly, was a likely recipient of such unverified disbursements.

52. The Receiver also believes, for reasons further detailed below, that given Dixit's history of and demonstrated capacity to dissipate assets and transfer funds beyond the reach of creditors, Dixit will take steps to put assets beyond the Receiver's reach prior to a final judgment being granted if the *Mareva* order sought by the Receiver on this motion is not granted.

#### **X. Josun**

53. Josun is a resident of Brampton, Ontario. Josun is another "founder" of the Banners Broker concept and a former management level employee of the Banners Broker enterprise.

54. As is the case with Dixit, the Receiver's interviews and investigations in respect of Josun, including extensive document review and financial analysis, has recently allowed the Receiver to reach certain conclusions with respect to the nature of Josun's involvement in the

Banners Broker business. Such information informs the allegations set out in the Statement of Claim as well as in this report.

55. Prior to Dixit joining the enterprise in 2010, Josun acted as Banners Broker's primary spokesperson both in Canada and abroad. After Dixit assumed control of much of Banners Broker's Canadian operations, Josun became Banners Broker's main representative among international affiliates, predominantly in Europe.

56. In that role, Josun would travel to meet with international affiliates, or potential affiliates, and conduct conference calls and seminars via videoconferencing. His day-to-day occupation with Banners Broker was to maximize Affiliate investment into the program, as well as to establish an international network Banners Broker Network. That is, he was responsible for encouraging the development of overseas affiliates into 'super-affiliates' (or "**Resellers**"), who would establish their own networks of affiliates.

57. In his role as Banners Broker's international representative, Josun would frequently fly to overseas locations with a significant amount of company funds. Those funds were used to advertise a lifestyle of success and luxury to potential affiliates. Josun spent existing affiliate funds lavishly in maintaining this façade, as he carried out a campaign to woo wealthy new affiliates to the Banners Broker enterprise.

#### **XI. Josun's Alleged Misappropriations From Banners Broker**

58. Josun's spending in his role as Banners Broker's international spokesperson lacked any effective oversight. No budgets were set for Josun's business trips on behalf of Banners Broker, nor was there any control over his expenses.

59. The Receiver asserts that Josun would regularly receive funds from affiliates meant to be spent on Banners Broker products. Rather than remit these funds to the company, Josun

would redirect the funds to his own personal accounts in offshore jurisdictions, intending to place them beyond the reach of creditors.

60. The Receiver believes that by in or around 2012 Josun had directly embezzled at least USD\$3.6 million of affiliate funds, which were deposited in a Swiss bank account held by the defendant, World Web Media Inc. Josun's employment was terminated by Banners Broker in or around July 2012, although the Swiss bank account funds were never recovered. The Receiver believes that Josun has since used the Swiss bank account funds for personal purposes, including the launching of his own MLM program called "KulClub".

61. As with Dixit, the Receiver is of the view that, given Josun's history and demonstrated capacity to put assets beyond the reach of creditors, it is likely that, without the relief sought on this motion, Josun will take further steps to put assets beyond the Receiver's reach prior to a final judgment being granted.

## **XII. Known Assets**

62. The Receiver is aware of a number of known assets held by the Dixit Defendants and/or Josun within the jurisdiction of this Honourable Court. These include:

- (a) Bank accounts at Canadian financial institutions including CIBC, Royal Bank of Canada ("**RBC**"), HSBC Bank Canada ("**HSBC**"), TD Canada Trust ("**TD Bank**") and President's Choice Financial Group ("**President's Choice Financial**");
- (b) Credit card accounts with Canadian financial institutions including CIBC, RBC and HSBC; and
- (c) Bank accounts at foreign financial institutions with Canadian offices, including the Bank of Cyprus.

63. Details of the known bank accounts held by the Dixit Defendants and Josun, which the Receiver is aware of from its investigations, are set out below:

BANK	BRANCH ADDRESS	ACCOUNT HOLDER	ACCOUNT NO.
CIBC	Unknown	Rajiv Dixit	Chequing Account No. [REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Rajiv Dixit	[REDACTED]
CIBC	Unknown	Dixit Consortium	[REDACTED]
CIBC	Unknown	Dixit Consortium	[REDACTED] 6 (USD Account)
CIBC	Unknown	Dixit Consortium	[REDACTED]
CIBC	Unknown	Dixit Holdings	[REDACTED] 1
CIBC	540 Laval Drive Oshawa, ON L1J 0B5	Kuldip Josun	Unknown
HSBC	Unknown	Rajiv Dixit	[REDACTED]
HSBC	Unknown	Stellarpoint Ltd.	Chequing Account No. [REDACTED]
RBC	Unknown	Rajiv Dixit	[REDACTED]
RBC	Unknown	Rajiv Dixit	[REDACTED]
RBC	10098 McLaughlin Road Brampton, ON L7A 2X6	Kuldip Josun	Unknown
TD Bank	Unknown	Kuldip Josun	[REDACTED]

BANK	BRANCH ADDRESS	ACCOUNT HOLDER	ACCOUNT NO.
TD Bank	4 King Street W, P.O. Box 247 Oshawa, ON L1H 7L3	Rajiv Dixit (held jointly with Stephanie Schlacht)	Chequing Account No. [REDACTED]
President's Choice Financial Group	P.O. Box 603 Station, Agincourt Scarborough, ON M1S 5K9	Kuldip Josun	Unknown
Bank of Cyprus	658 Danforth Ave Toronto, ON M4J 5B9	Dreamscape Ventures Ltd.	[REDACTED]
C.I.M. Banque	Unknown	World Web Media / Kuldip Josun	[REDACTED]

64. Additionally, the Receiver has identified the following bank issued credit card accounts belonging to Dixit:

BANK	CARD HOLDER	CARD NO.
CIBC	Rajiv Dixit	[REDACTED]
CIBC	Rajiv Dixit	[REDACTED]
CIBC	Rajiv Dixit	[REDACTED]
CIBC	Rajiv Dixit	[REDACTED]
CIBC	Rajiv Dixit	[REDACTED]
RBC	Rajiv Dixit	[REDACTED]
RBC	Rajiv Dixit	[REDACTED]
HSBC	Rajiv Dixit	[REDACTED]

The Receiver has been advised by the relevant financial institutions that certain of the credit card numbers listed above relate to re-issued card numbers for the same credit card.

65. Given the magnitude of Banners Broker missing receipts and unaccounted for funds, the Receiver also believes that the Dixit Defendants and Josun may have accounts or assets, in addition to those listed above, which would be subject to the *Mareva* order sought on this motion.

### **XIII. *Ex Parte* Nature of Motion**

66. The Receiver seeks pre-judgment relief on the basis of a strong *prima facie* case of fraud and oppression (and related claims of wrong-doing) committed by the Dixit Defendants and Josun. The total amount for which the Dixit Defendants and Josun may be liable is expected to be in the many millions of dollars.

67. In all of the above circumstances, there is a clear and present threat that the assets of the Dixit Defendants will be dissipated, concealed, transferred, sold for value, or otherwise conveyed within or outside of this jurisdiction for the purposes of evading the recovery of the plaintiff unless this Honourable Court intervenes. This is demonstrated by, among other things:

- (a) The defendants' maintenance of bank accounts in foreign jurisdictions, such as Cyprus and Switzerland; and
- (b) The demonstrated capacity of the defendants to systematically transfer funds abroad, to utilize off-shore bank accounts and payment processors, and to generally structure the business and corporate affairs of the Banners Broker enterprise through entities in foreign jurisdictions (i.e. Isle of Man, Belize, British Virgin Islands, US Marshall Islands, etc.) in such a way as to insulate assets from the reach of creditors.

68. The nature of the motion and the circumstances surround the motion make service of court materials at this time impracticable. This is because it would be genuinely impossible to give notice to the defendants, who are alleged to have perpetrated a significant fraud, without defeating the purpose of the *Mareva* injunction sought.

69. Dixit stands charged of multiple criminal charges including fraud and money laundering. The Toronto Police Service has also alleged that “funds were funneled to a number of offshore accounts in Belize, St. Lucia, Cyprus and others.”

70. In these circumstances, the Receiver is concerned that if notice were provided to Josun or the Dixit Defendants of the within motion they would have motive and opportunity to move any funds remaining in Canada beyond the reach of the Receiver and outside of the jurisdiction of this court. The defendants have already demonstrated the capacity and inclination to systematically transfer funds abroad.

#### **XIV. Full Disclosure**

71. The Receiver has made full and frank disclosure of all material facts. The supporting evidence for this motion was collected by the Receiver through the cross-border insolvency proceedings in respect of Banners Broker and the receiverships of BBIL and Stellar Point granted in the context of those proceedings. Dixit and Josun were invited to participate in those proceedings and, in the case of Dixit, he was represented by counsel in those proceedings.

72. The Receiver has appended to this Seventh Report copies of all of its previous reports to the Court, which describe all of the activities and conclusions of the Receiver from its appointment in August 2014 to date. Copies of these materials have been made available to Dixit and Josun and can be publicly accessed from the Receiver’s website: <http://www.spergel.ca/banners>.



## **XV. Timing**

73. The Receiver has brought this motion as expeditiously as possible in the circumstances. This is the case considering the time and effort required to investigate and understand the complex Banners Broker enterprise, and the time required to develop a reasonably complete financial and accounting analysis. The Receiver has only recently reached a position in its investigations where it has the information to pursue the action and the relief sought on this motion.

74. Specifically, in January of 2016, the Receiver obtained a court order for the production of important banking records relevant to the claim asserted against Dixit. Those records were not received by the Receiver until February 2016. Since that time the Receiver has worked diligently to review and understand these additional Dixit banking records and incorporate them into the Flow of Funds Analysis. The review and analysis of these important Dixit banking records informs the Receiver's election to proceed with this action and the within motion.

75. Additionally, and as noted above, the Receiver only very recently determined that the 1601 Visa Card transactions noted in the Stellar Point Cyprus Account statements was very likely a Visa Debit card used by Dixit to make substantial, personal purchases using Banners Broker affiliate funds. This recent discovery further informed the Receiver's decision to proceed with its action against Dixit and the within motion.

## **XVI. Undertaking**

76. The Receiver undertakes to abide by any order concerning damages that this Honourable Court may make if it ultimately appears that granting the relief sought on the motion causes damages for which the Receiver ought to compensate the defendants.

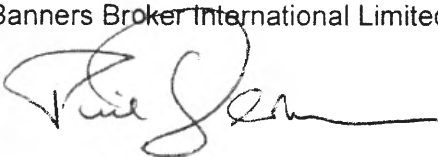
**XVII. Recommendations**

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

- (a) in the form attached to the Receiver's Notice of Motion as Schedule "A" for an interim and interlocutory *Mareva* Injunction;
- (b) scheduling the return date for the continuation of the *Mareva* Injunction before it expires and appointing a judge to remain seized of these motions; and
- (c) such further and other relief as this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30th day of May, 2016.

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



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

Tab A

Court File No.

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

B E T W E E N:

BANNERS BROKER INTERNATIONAL LIMITED and  
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.

Plaintiffs

- and -

RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,  
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,  
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar  
Address of court office: Superior Court of Justice—Commercial List  
393 University Avenue,  
Toronto, ON  
M5G 1E6

TO: **Rajiv Dixit**  
2100 208 St.  
Langley, British Columbia  
V2Z 2A6

AND TO: **Kuldip Josun**  
11 Lanebrook Drive  
Brampton, Ontario  
L6P 2H4

AND TO: **Dixit Holdings Inc.**  
150 York Street, Suite 800  
Toronto, Ontario  
M5H 3S5

AND TO: **Dixit Consortium Inc.**  
150 York Street, Suite 800  
Toronto, Ontario  
M5H 3S5

AND TO: **Dreamscape Ventures Ltd.**  
Mill Mall, Suite 6  
Wickham's Cay, 1 P.O. Box 3085  
Road Town, Tortola  
British Virgin Islands

AND TO: **World Web Media Inc.**  
Unit 117, Orion Mall  
Palm Street, P.O. Box 828  
Victoria, Mahe  
Seychelles

AND TO: **Real Profit Limited**  
1/F, Orchid House  
Lini Highway, P.O. Box 79  
VU Port Vila  
Eftate Vanuatu

AND TO: **Real Profit Limited**  
28, Negba Street  
Rishon Lezion  
7528049  
Israel

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## 1.0 CLAIM

1. The plaintiffs, Banners Broker International Limited and Stellar Point Inc. (hereinafter termed “**BBIL**” and “**Stellar Point**”, or collectively the “**Plaintiffs**”), by their receiver, msi Spergel inc. (the “**Receiver**”), claims the following:

(a) As against the defendant Rajiv Dixit (“**Dixit**”):

- i. Damages in the amount of \$200 million CAD for negligent misrepresentation, fraudulent misrepresentation, conspiracy, conversion, breach of fiduciary duty, breach of contract, negligence and oppression under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “**CBCA**”);
- ii. An Order for disgorgement and restitution of monies unlawfully received, or profits unlawfully derived from the corporate assets of BBIL and its creditors by virtue of unjust enrichment or waiver of tort;

(b) As against the defendant Kuldip Josun (“**Josun**”):

- i. Damages in the amount of \$100 million CAD for negligent misrepresentation, fraudulent misrepresentation, conspiracy, conversion, breach of fiduciary duty, negligence and oppression under the *CBCA*;

- ii. An Order for disgorgement and restitution of monies unlawfully received, or profits unlawfully derived from the corporate assets, accounts receivable or invested capital of BBIL and its creditors by virtue of unjust enrichment or waiver of tort;

(c) As against each of Dixit and Josun:

- i. Punitive, aggravated and exemplary damages in an amount that would satisfy the common law objectives of denunciation, deterrence, and causing the defendants to regret their unlawful activities;

(d) As against all defendants, including Dixit Holdings Inc., Dixit Consortium, and Dreamscape Ventures Ltd. (the “**Dixit Companies**”) and World Web Media Inc. and Real Profit Limited (the “**Josun Companies**”):

- i. An Order, injunctive or otherwise, interim and permanent, to preserve, trace and locate all funds improperly had and received by the defendants; declaring that any funds so traced are impressed with a constructive trust for the benefit of the plaintiffs; and ordering an accounting of the same;
- ii. An interim, interlocutory and permanent injunction in the form of *Mareva* relief, restraining the defendants, their servants, officers, employees, agents, assigns, directors, shareholders and anyone else acting on their behalf or in conjunction with any of them, and

any and all persons with notice of such injunction, from directly or indirectly, by any means whatsoever, selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any funds or assets of the defendants; instructing, requesting, counselling, demanding or encouraging any other person to do so, or facilitating, assisting in, aiding, abetting or participating in any acts the effect of which is to do so, otherwise than is explicitly authorized by this Honourable Court;

- iii. Costs of this action on a full indemnity basis;
- iv. Pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- v. Such further and other relief as counsel may advise and this Honourable Court may deem just.

## 2.0 OVERVIEW

### 2.1. Summary of Claims

2. The within action is brought by the court-appointed Receiver of two corporations: Banners Broker International Limited, or “**BBIL**”, and Stellar Point Inc., or “**Stellar Point**”, on behalf of the insolvent corporations and their creditors.

3. At all material times, BBIL was one of a number of related entities that between approximately 2010 and 2014 conducted operations under the trade name 'Banners Broker'.

4. At all material times, Stellar Point was essentially BBIL's 'service provider', and provided BBIL with virtually everything relevant to its operations, including staff, management and equipment.

5. The management of BBIL, including the defendants Dixit and Josun (operating at all times indistinguishably through the corporate identities of BBIL and Stellar Point), held Banners Broker out as an internet advertising service that operated on a multi-level marketing model. Investors (or "**Affiliates**") were induced to purchase advertising space on the internet through Banners Broker, which represented that it would then 'lease' that space to advertisers.

6. Affiliates were said to earn income based on the amount of internet traffic flowing to those advertisements. They were further encouraged to recruit others into the Banners Broker system in order to earn commissions on their earnings as well.

7. Despite generating hundreds of millions of dollars in investments internationally, Banners Broker was not a *bona fide* advertising business. Affiliates' accounts were manipulated to show extraordinary profits when the company in fact had no source of revenue.

8. In reality, and contrary to their representations to Affiliates, management improperly converted the invested capital of the corporations to fund extravagant lifestyles for themselves and gifts for their families and friends. Affiliates' demands for repayment from BBIL were satisfied with the invested funds of other Affiliates. Once it became impossible for BBIL to meet those demands in that way, the winding-up process was commenced.

9. Following BBIL's winding-up, an ongoing multinational investigation into Banners Broker involving Canadian and American law enforcement and regulatory authorities was concluded. That investigation has resulted in various *Criminal Code* and *Competition Act* charges against the management of Banners Broker, including BBIL's former Chief Operating Officer, the defendant Rajiv Dixit.

10. Since its appointment in August of 2014, the Receiver has undertaken extensive investigations into Banners Broker's operations and has successfully recovered tens of millions of dollars that had been unlawfully distributed out of Banners Broker entities by management.

11. In the course of that recovery, it became clear that Affiliates' investments in BBIL bled through to Stellar Point and into the possession of the defendants with virtually no observation of formality. It was thus necessary for the Receiver to obtain the receivership over Stellar Point as well.

12. The Receiver now brings the within action on behalf of both companies and their creditors, in order to recover such funds and assets as may still be held and enjoyed by the defendants, who were among the primary beneficiaries of defalcation from the accounts of BBIL and Stellar Point, the entirety of which originated from the defrauding of BBIL Affiliates and the misappropriation of their investments.

## **2.2. The Parties**

### **2.2.1. Background: Banners Broker Corporate Structure**

13. The Banners Broker network of companies, entities and unincorporated ventures appears to be highly complicated in its legal structure, involving a number of related entities either incorporated in numerous jurisdictions internationally or unincorporated altogether, all of which are bound together with various and shifting formal or informal agreements, trusts, and share ownership.

14. In practice, however, the principals of these entities did not make a practice of respecting these corporate forms or segregating their funds. As pleaded further below, affiliated corporations, entities and individuals would often pay one another's bills and invoices, sign contracts on one another's behalf, employ one another's staff, and otherwise elide the distinctions between their corporate personalities in the normal course of business.

### **2.2.2. Plaintiff: Banners Broker International Limited**

15. BBIL is a corporation incorporated pursuant to the laws of the Isle of Man. It came into existence as a shelf company originally incorporated by a legitimate

professional management service firm in that jurisdiction, the shares of which are owned by one of its subsidiaries. It was converted to its identity as 'Banners Broker International Limited' on or about March 29, 2012.

16. Although it came into this corporate form on that date, the term 'Banners Broker International Limited' was in use as a trade name for an unincorporated venture and an Ontario corporation, 2087360 Ontario Inc., for nearly two years before that trade name was applied to this Isle of Man corporation.

17. Once the company had been reconstituted as BBIL, the company's corporate directorship continued to be technically based overseas by the legitimate professional management service firm OCRA Worldwide. BBIL's shares were owned by one of OCRA Worldwide's subsidiaries, the Seychelles corporation Targus Investments Limited, in trust for a Belizean corporation, Monetize Group Inc. ("MGI").

18. Although the company was technically headquartered in the Isle of Man, its operations were in fact completely controlled by Ontario residents working in Ontario who were nominally employees of the plaintiff Stellar Point: a non-arm's-length 'service provider' which in turn was majority-owned and unilaterally operated by the defendant Dixit.

19. Despite the corporate diversion through the Isle of Man and Belize, and the artificial separation it appeared to create between BBIL and its ultimate beneficial parent, MGI, the two companies were not at arm's length. Both companies were fully controlled by the management of BBIL in Ontario, and frequently satisfied one another's obligations, both legal and financial.

20. The specifics of BBIL's incorporation, directorship and control are pleaded in further detail below at Paragraph 86 *et seq.*

21. BBIL was petitioned into liquidation in the Isle of Man on February 26, 2014.

22. That proceeding was recognized as a foreign main proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the '**BIA**') and msi Spergel inc. was appointed the receiver over BBIL in Canada, by the Orders of Justice Matheson of the Ontario Superior Court of Justice issued August 22, 2014.

23. The Receiver therefore stands in the shoes of BBIL for the purposes of the within proceeding. MGI continues to be BBIL's nominal beneficial shareholder.

### **2.2.3. Plaintiff: Stellar Point Inc.**

24. Prior to BBIL's conversion from a shelf company to its present use, the defendants were carrying on business as "Banners Broker" through a number of different entities, non-entities and companies. One of those companies, majority-owned and controlled by the defendant Dixit, was 7250037 Canada Inc.: a corporation incorporated under the *CBCA* with its headquarters in the city of Oshawa, Ontario.

25. 7250037 Canada Inc. carried on business variously as "Bannersbroker Limited", "Banners Broker Canada", "BB Canada" and other trade names during the rapid expansion of the Banners Broker enterprise and was the central corporate body driving Banners Broker's operations.



26. Although BBIL was ostensibly converted from a shelf corporation into use as the nexus of Banners Broker operations, it did not conduct any operations of its own. Rather, Bannersbroker Limited carried on as the Canadian-based operating company of Banners Broker, employing Banners Broker's staff and management, and controlling its office space and equipment.

27. Later, as information began to disseminate publicly about the nature of Banners Broker's operations, Dixit took several steps to distance himself on paper from Banners Broker's operations while in practice carrying on business as usual. One of these distancing steps was renaming "Bannersbroker Limited" to "Stellar Point Inc."

28. Bannersbroker Limited – the domestic arm of the Banners Broker project – was thus reimagined as a services provider to BBIL and rebranded, and maintains that new trade name to this day.

29. msi Spergel inc. was appointed the receiver over Stellar Point by the Order of Justice Hailey of the Ontario Superior Court of Justice issued April 8, 2016.

#### **2.2.4. Defendants: Rajiv Dixit, Dixit Holdings Inc. and Dixit Consortium**

30. Rajiv Dixit is an individual residing at Langley, British Columbia.

31. When Dixit joined the Banners Broker enterprise in late 2010, he was hired primarily to serve as a seminar host promoting investment in Banners Broker.

32. Over the following two years, his role expanded at his own behest to encompass duties as the Chief Operating Officer and Compliance Officer of the Banners Broker enterprise – both in his role as an officer of BBIL and as the President of the company that was contracted to carry out all of BBIL's day-to-day operations.

33. At the time he was hired as a Banners Broker's spokesperson and its general manager, Dixit's recent work history revolved around multi-level marketing enterprises. In the role closely preceding his role at BBIL, he served as the National Sales Manager and Compliance Officer of ICF World Homes Inc., an organization that had been ordered to cease sales by the Competition Bureau in or around 2009 for having no legitimate source of income and unlawfully relying on 'recruitment enticement' to generate capital. Through that experience, Dixit gained firsthand knowledge of the unlawful nature of recruitment enticement enterprises and the potential consequences for operating such an enterprise.

34. Dixit was originally an Affiliate of Banners Broker in its early stages, but after meeting with one of its co-founders, Christopher Smith ("**Smith**"), divested himself of his investment in the enterprise and 'came inside', assuming executive control over the Banners Broker enterprise.

35. The legal basis upon which Dixit exercised control over the Banners Broker enterprise was never completely clear. He was retained as the Chief Operating Officer and Compliance Officer by contract, which caused him to be an officer of BBIL; but he was also the President of Bannersbroker Limited (later known as Stellar Point), which was ostensibly a 'service provider' for BBIL.

36. In reality, because BBIL was almost exclusively used as an offshore company through which to route funds and Bannersbroker Limited/Stellar Point actually carried out the enterprise's operations, Dixit's operational role as President of Bannersbroker Limited/Stellar Point was indistinguishable from his operational role as Chief Operating Officer of BBIL. Accordingly, his *de facto* control over the enterprise could be said to arise from either of these overlapping roles.

37. Through the apparatus of Stellar Point, Dixit was responsible for the actions of BBIL's staff, including the misrepresentations made to Affiliates in respect of Banners Broker's operations and profitability and the handling of their investment funds. In his variously described roles as the *de facto* head of both BBIL and Stellar Point, Dixit redirected Affiliate funds generally as follows. Dixit:

- (a) caused Stellar Point on behalf of BBIL to make misrepresentations to Affiliates to induce their investment;
- (b) caused Stellar Point to bill BBIL's parent company, MGI, extraordinary amounts for its 'services';
- (c) caused BBIL to pay those amounts;
- (d) turned Stellar Point's funds to his own personal use; and
- (e) caused Stellar Point to make misrepresentations to Affiliates as to the status of their investment in BBIL.

38. As is pleaded in greater detail below, Dixit made extensive personal use of Affiliate funds held by BBIL and Stellar Point, to the extent that he was able to live a life of extreme luxury and affluence with those misappropriated funds, all while fixed with the knowledge that BBIL did not generate revenue and would never create any actual return on investment for the Affiliates with whom he and his staff dealt on a daily basis.

39. He also failed to conduct the business of BBIL and Stellar Point in a competent manner, having failed as Compliance Officer to retain legal counsel or accounting experts for the purpose of advising on Banners Broker's compliance with relevant laws and accounting standards. He also failed to cause the companies to comply with relevant laws; and in fact took active steps to ensure that proper advice was not obtained, or followed when offered, as described further below at Section 3.2.12.

40. Dixit Holdings Inc. is a company incorporated pursuant to the *CBCA* with its headquarters in Toronto, Ontario. It is owned wholly or in large part by the defendant Dixit and unlawfully received Affiliate funds, as well as personal property, vehicles and other assets derived therefrom that were put to Dixit's personal benefit.

41. The Dixit Consortium Inc. was a company incorporated pursuant to the *CBCA* and was formerly headquartered in Toronto, Ontario. It, too, was owned wholly or in large part by the defendant Dixit and unlawfully received Affiliate funds, as well as other assets derived therefrom that were put to Dixit's personal benefit. It was dissolved on March 25, 2015 – within two years of the issuance of the within claim – and accordingly has standing to be sued pursuant to Section 226(2)(b) of the *CBCA*.

42. The defendant Dreamscape Ventures Ltd. is a corporation incorporated under the laws of the British Virgin Islands, and is a corporation set up by Dixit with the investment funds of Affiliates with a view to flowing Affiliate funds through those companies, out of the reach of creditor recovery, and into ventures that would unlawfully generate further profit for Dixit personally.

**2.2.5. Defendants: Kuldip Josun, Web World Media Inc. and Real Profit Limited**

43. The defendant Kuldip Josun is an individual residing in Brampton, Ontario.

44. Josun was one of the two founders of the Banners Broker concept, along with co-founder Smith (who is not named as a defendant in this action). He was Banners Broker's primary spokesperson until Dixit joined the enterprise and usurped that role on a domestic basis. At that time, Josun became Banners Broker's main representative among international Affiliates.

45. In that role, Josun would travel to meet with international Affiliates, or potential Affiliates, and conduct conference calls and seminars via videoconferencing. His day-to-day occupation with Banners Broker was to maximize Affiliate investment into the program, as well as to establish the Banners Broker Network. That is, he was responsible for encouraging the development of overseas Affiliates into 'super-Affiliates' (or "**Resellers**"), who would establish their own networks of Affiliates, their own customer service support network, and so on.

46. In his role as Banners Broker's international representative, Josun would frequently fly to overseas locations with a significant amount of company funds. Those funds were intended to be, and were, used to advertise a lifestyle of success and luxury to potential Affiliates. Josun spent existing Affiliate funds lavishly in maintaining this façade, as he carried out a campaign to woo wealthy new Affiliates to the Banners Broker enterprise.

47. There was no oversight of Josun's spending. He did not report on the results of his business trips or prepare budgets. He merely advised fellow members of the Banners Broker management of the amount of money he expected he would need and the staff would provide him with either cash or a pre-loaded credit card. Upon his return, he might or might not make an oral report on his venture.

48. This lack of oversight led to predictable issues in respect of moral hazard. Josun was known to convince potential or existing Affiliates to invest sums of money in the Banners Broker project. He would then take possession of their funds or provide the associates with transfer information for his own personal accounts. He would then advise the Banners Broker office in Canada to credit the Affiliate's account to reflect the funds he had received, and fail to remit those funds to the company. He would then obfuscate those facts and mislead other members of Banners Broker management when confronted by these missing funds or abnormal payment instructions to customers.

49. Josun took care to redirect those funds into tax havens or into offshore corporate accounts held by corporations incorporated in remote foreign jurisdictions beyond the reach of Interpol in order to frustrate creditor recovery and criminal prosecution.

50. The defendant Web World Media Inc. is a struck-off corporation incorporated pursuant to the Republic of Seychelles *International Business Companies Act*, 1994 (Act 24 of 1994). Despite being struck off the companies register, it and its officers remain liable for all claims, debts, liabilities and obligations pursuant to Section 97(7) of that Act.

51. The defendant Real Profit Limited is a corporation incorporated and/or continued under the laws of the Republic of Vanuatu and/or the State of Israel.

52. Both Web World Media Inc. and Real Profit Limited are, or were, corporations set up by Josun with the investment funds of Affiliates with a view to flowing Affiliate funds through those companies, out of the reach of creditor recovery, and into ventures that would unlawfully generate further profit for Josun personally.

### **3.0 FACTS**

#### **3.1. Banners Broker**

##### **3.1.1. The Banners Broker Concept**

53. Banners Broker came about as a result of an idea Smith had while operating a previous multi-level marketing campaign (“**MLM**”) known as the Silverline Club. Members of that MLM were particularly interested in a feature by which they could

ostensibly obtain commissions and profits from the web traffic to their 'Silverline Club'-related member pages. That venture was also the basis for the relationship between Smith and Josun, who met and came to work for Smith as a spokesperson and webinar host for the Silverline Club.

54. Banners Broker, as it was described to Affiliates, was an internet marketing company structured as an MLM and engaged in the sale of 'banner' advertisements on popular websites. Individual Affiliates were told that with their investment dollars they were advertising on, or leasing advertising space out on, high-traffic websites and gathering advertising revenue based on the traffic to those advertisements.

55. They were not. The company did not track website traffic, nor did it have access to high-volume websites. It did not have the infrastructure to track an Affiliate's success or lack thereof in investing in online advertising. Banners Broker did not earn revenue, and relied instead on recruitment and investment enticement for cash flow.

56. Tens of thousands of people worldwide invested at least \$156 million USD in Banners Broker. Although the program appeared to grow exponentially and the staff was consistently busy, the fact remained that Banners Broker had no means of generating revenue to meet its obligations or to repay Affiliates when they sought to take profits.

57. However management may have wished to advertise the operations of Banners Broker, they could not never accurately refer to it as a business. It took an enormous volume of money in from Affiliates, but it offered no goods or services to the public and did not – could not – actually *make* money.



### 3.1.2. Banners Broker as Advertised to Affiliates

58. Banners Broker purported to offer Affiliates three distinct opportunities:

- (a) First, an **Advertiser** could purchase advertising space on certain websites, including the Banners Broker website itself, to promote its own business;
- (b) Second, a **Publisher** could offer advertising space on its own web page to Banners Broker for a per-impression fee (or alternatively, a publisher could partner with Banners Broker to invest in offering advertising space on a Banners Broker website); or
- (c) Third, an Affiliate could purchase both opportunities simultaneously (an '**Ad-Pub Combo**'), using the revenue generated from offering advertising space to offset (or even profit from) the purchase of advertising space from Banners Broker.

59. Banners Broker offered its advertising on three distinct networks:

- (a) The **Choice Network**, which was purportedly a series of several dozen websites designed and maintained by Parrot Marketing Inc. ("**Parrot Marketing**"), a non-arm's-length corporation operating on behalf of MGI, which in turn owned the shares of BBIL pursuant to a trust instrument, as pleaded above in Section 2.2.2;

(b) The **Banners Broker Network**, which consisted of the sites offered by Affiliate Publishers in exchange for their commission, which were reviewed and accepted by Banners Broker; and

(c) The **Blind Network**, run by a third-party vendor—at first a company named Yesup eCommerce Solutions and later, another company called Adzerk, Inc.—in which Advertisers would not know the identity of the websites upon which their products were being advertised. In practice, the blind network was only used sparingly at the outset of the Banners Broker project as affiliates preferred to advertise on the other networks.<sup>1</sup>

60. After investing with Banners Broker, Publishers were to be assigned blank advertising space on the websites in their chosen network.

61. At first, Affiliates were advised by sales personnel that traffic on those sites was sufficiently strong and steady that a 'revenue cap' would have to be placed on the purchased space, restricting the Affiliates' profits to double their initial investment. Once that limit was reached, a new banner would have to be purchased.

62. After the first two banners (or "**panels**") were purchased, however, Affiliates would be required to 'qualify' their panels by demonstrating sufficient traffic to begin earning income on that panel.

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<sup>1</sup> The Banners Broker database was never connected to the third party database for the purposes of determining entitlement to funds based on actual web traffic. Banners Broker attempted to process that information manually until it became too onerous and Banners Broker advertisements began to appear only on its own affiliated sites.

63. That traffic could be established by the Affiliate either making referrals to the relevant site, or by directly purchasing the 'traffic hits' necessary to qualify directly from Banners Broker. This 'qualification' process was said to be complimentary in respect of the first two panels only.

64. As a result of the foregoing system, a new Affiliate would typically find that on the first two panels purchased, (s)he had ostensibly doubled the initial investment. Purchasing more expensive panels, and purchasing 'traffic hits' to qualify them, were presented as a means of maximizing that initial investment.

65. Throughout their affiliation with Banners Broker, Affiliates were generally able to access an account summary showing a balance reflecting a positive return on investment and a collection of sales credits that could be used to purchase more panels. Their interface would also reflect an e-wallet of dollars 'available to withdraw',<sup>2</sup> and an option to purchase advertising through Banners Broker, which in turn would ostensibly increase traffic to his or her own published panels.

66. Where the Affiliate had no product or service of his or her own to advertise, the Affiliate would commonly advertise Banners Broker itself and thereby further increase traffic to its related sites, which may have been thought to increase the amount of traffic flowing to that Affiliate's panels.

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<sup>2</sup> In the later stages of the Banners Broker enterprise, as cash flow was at a premium, Affiliates were only permitted to withdraw 50% of the purported earnings in their e-wallets, and were required to recruit other investors in order to 'unlock' the remainder. As recruitment faltered in the final stages of the enterprise and cash ceased to flow into the organization, Affiliates were barred from withdrawing any funds at all.

67. If an Affiliate was having difficulty qualifying his or her own panels with adequate traffic, it was always possible either to make referrals of friends and acquaintances to Banners Broker in order to generate 'sales credits', which could be used to expedite qualification. Alternatively, the Affiliate could purchase 'traffic packs' or 'traffic boosters' that were said to somehow either direct traffic to the site containing the relevant panel, or to increase the frequency of that page receiving views.

68. In the result, Affiliates were encouraged to spend money to purchase panels, to spend money or recruit further Affiliates to 'qualify' those panels, to advertise Banners Broker on those panels, and to reinvest any dollars purportedly accrued as a result back into Banners Broker through the purchase of more panels.

### **3.1.3. Reality of Investment with Banners Broker**

69. Invariably, every panel would reach its 'revenue cap' of doubling the initial investment. The end result was that individual Affiliates were advised of overwhelmingly positive returns. In some cases, Affiliates investing \$500 would find themselves with a \$100,000 balance in virtual money. Others would invest \$50 and actually withdraw \$5,000 in a matter of a few years.

70. Affiliates were required to trust that these results were legitimate. There was no Affiliate-facing transparency to Banners Broker's revenue reporting as would be the case with legitimate advertising services. Affiliates did not know where their banners were displayed and had no direct means of verifying the amount of traffic their advertisements were receiving.

71. In reality, there was nothing to verify because Banners Broker had nothing resembling sufficient advertising volume to generate meaningful revenue. It did not actually assign panels to individuals, nor could it track traffic to each individual panel, even if this had actually occurred.

72. Banners Broker did not have access to the kind of traffic that could produce anything comparable to the results reported by the company on an Affiliate-by-Affiliate basis. Its advertisements, to the extent they were actually made, were only placed on the Choice Network of websites owned and operated by Banners Broker's affiliated corporation, the Blind Network, or the personal websites of Affiliates.

73. The websites on which these panels were placed in the Choice Network were largely inactive shells containing a few blog posts that were never updated, and that would be of no interest to the general public, or potentially, anyone. (It is, of course, extremely difficult to simply launch a website people will wish to visit, let alone dozens, when the persons launching the websites have no particular skill at writing or any interesting content to share.) Most often, the advertisements only advertised Banners Broker itself. It was a closed system.

74. The few Affiliates that actually did attempt to advertise a business through Banners Broker – that is, to hire the advertising business that Banners Broker held itself out as operating – found that it was impossible to do so. They purchased the same Banners Broker products as every other Affiliate, but actually did attempt to advertise a real business.

75. These Affiliates, however, noted that their allocated advertising 'hits' never depleted. In essence, they were never asked to pay again once their advertising time was up. It seemed that no one was keeping any track of the ostensible income stream of the business. Despite the reportedly strong traffic, complaints to authorities surfaced from *bona fide* advertisers who were attempting to participate in Banners Broker that no one ever contacted them about their business.

76. Banners Broker never actually kept track of whether or not anyone ever viewed these panels, let alone to what extent they might have done so. The legitimate third party providers, to the extent they continued to work with BBIL, actually *did* keep track of the traffic data generated by the advertising panels that *did* exist, but that information was never used by Banners Broker for any purpose.

#### **3.1.4. Disbursements and Withdrawals**

77. The funds earned by the Affiliates and reflected in their e-wallets were not true statements of the growth of an Affiliate's investment. The web traffic on the various networks, outside of traffic caused by visits from other Banners Broker Affiliates, was virtually non-existent.

78. There was no objective or automated process by which an Affiliate could withdraw the funds from his or her account. Banners Broker management would arbitrarily and capriciously determine which Affiliates would get paid, and when. The determination and payout of claims was handled manually.

79. The timing of disbursements to existing Affiliates correlated to new Affiliates putting money into the scheme, and did not reflect any increase in internet traffic. Affiliates would not be paid on demand, but rather would be paid according to who had been waiting for payment the longest or was causing management the greatest risk of liability.

80. Affiliates demanding repayment that were not at the top of management's priority list would be stalled and mollified by Banners Broker's customer service staff. Affiliates began to complain that they were only receiving automated messages; or were left on hold indefinitely; or were told they were not following instructions; or were told they were in violation of the Terms and Conditions; or would be repeatedly transferred and left to speak with a series of different representatives at different companies internationally with little or no information about Banners Broker accounts.

81. There was no correlation between the amounts Affiliates invested and the panels that were notionally distributed to them. In March of 2012, a Banners Broker staffer calculated at least a \$27 million discrepancy between the transaction records of Affiliates purchasing panels through the Banners Broker website and the number of panels ostensibly distributed.

82. At its height, Banners Broker was receiving in excess of *\$300,000 per day* from Affiliates.

### **3.1.5. Banners Broker's Corporate Structure**

83. Corporate formalities were never respected by the management of Banners Broker, with the exception of a few fringe corporations left in the hands of professional management services.

84. Banners Broker corporations would frequently pay one another's bills or forward funds to one another as necessary, without keeping proper records; or, if records were kept, these transfers were recorded under various euphemistic ledger entries.

85. The principals of these corporations, including the individual defendants Dixit and Josun, would frequently sign agreements on behalf of notional companies and only later cause those companies to be brought into existence; or would 'hire' individuals without providing them with a clear employer, fixed salary or job title, leaving them to request funds as needs arose, from whatever corporation had available cash, and to assume whatever title they felt necessary to employ in the course of their activities.

86. Accordingly, Banners Broker began without any formal existence. Josun and Smith operated the venture at first without ties to any particular entity, referring to their operations in the abstract as "Banners Broker", and when necessary, through the use of one of Smith's existing companies, "Local Management Services": an informal name for 2087360 Ontario Inc.



87. 2087360 Ontario Inc. would frequently be referred to improperly as “Banners Broker” or “Bannersbroker Limited” in agreements and formal documents despite not legally bearing either such trade name. (The latter name, “Bannersbroker Limited”, would eventually be used as a trade name for a different company: the Dixit-controlled defendant, Stellar Point Inc.)

88. Banners Broker operated in this way approximately from the date of its inception to October of 2011, when Smith came into contact with a Banners Broker Affiliate that had a record of operating MLMs at the management level.

89. That man, the defendant Dixit, became involved in Banners Broker as described immediately below in Section 3.2. Dixit and Smith signed an agreement between Dixit’s non-existent company, Dixit Consulting, and the equally non-existent ‘Banners Broker International’ (which would not formally come into existence as BBIL until the following year) to oversee the day-to-day operations of the latter entity and act, *inter alia*, as its general manager and Compliance Officer.

90. The bulk of Banners Broker’s domestic operations would eventually be transferred from Local Management Services to Dixit’s company, 7250037 Canada Inc., which would shortly be renamed ‘Bannersbroker Limited’ as the venture began to grow exponentially—and then renamed again as the plaintiff ‘Stellar Point Inc.’ (“**Stellar Point**”) as regulatory investigations into Banners Broker began and Dixit took steps to distance himself from Banners Broker. This process is described further below in Section 3.2.13.

91. As noted above at Section 2.2.2, the plaintiff BBIL—intended to be the international operating arm of Banners Broker—was incorporated in the Isle of Man. It came into existence as a shelf company called “Bedford Limited”, owned by a legitimate professional management service, OCRA Worldwide (“**OCRA**”).

92. In early 2012, Smith retained OCRA to manage for him a company named “Banners Broker International Limited” in compliance with the local laws. OCRA converted Bedford Limited to this use on March 29, 2012. Its shares were owned by a Seychelles corporation, Targus Investments Limited, a subsidiary of OCRA used for nominee shareholdings. Those shares were made subject to a trust deed in favour of BBIL’s parent company, MGI, which was incorporated by Smith in Belize.

93. In this way, as sole beneficial owner of MGI, Smith caused the corporate structure of Banners Broker to allow for MGI to beneficially own BBIL, while BBIL was nominally managed by an offshore service that had no practical relationship to the company’s operations.

94. *In theory*, BBIL was the international operating company of Banners Broker, owned beneficially by MGI and managed by OCRA. Affiliates understood themselves to be investing in BBIL, and the Terms and Conditions of their investments were entered into with BBIL. In theory, BBIL further licensed many of its operations to affiliated companies and third-party licensees, whereas Stellar Point (formerly known as 7250037 Canada Inc. and Bannersbroker Limited), ostensibly ran the Canadian domestic operations and centralized customer service operations for Banners Broker.

95. *In reality*, these corporate and legal formalities were not respected by the management of these companies and there was little, if any, formal distinction between work done for one company or the other, or the obligations of one company or the other. The companies were operated, in effect, as though they were a number of bank accounts held by the same enterprise.

### **3.2. Dixit Joins Banners Broker**

#### **3.2.1. Contact with Christopher Smith**

96. Prior to 2010, Rajiv Dixit was engaged with a number of different MLMs, and was a frequent webinar and conference host for several, including ICF, as described above at paragraph 33.

97. He joined an MLM run by Smith in 2010 as an investor, and eventually joined Banners Broker itself when the concept was reasonably new, on or about November of that year, with approximately a \$5,000 initial investment.

98. Shortly thereafter, in approximately November of 2010, Dixit was contacted by Chris Smith with an offer to act as a webinar host for the purpose of promoting Banners Broker, in exchange for a small cash consideration and 'panels' of his own.

99. After gaining Smith's confidence as a webinar host over the course of a year, in October of 2011, the two met at a Jack Astor's in Scarborough and discussed the terms upon which Dixit would come to work for Banners Broker in an 'insider' capacity.

### 3.2.2. Dixit Consulting 'Contract Agreement'

100. Subsequent to that meeting, Smith and Dixit drew up a 'Contract Agreement' effective October 15, 2011 that would ultimately be executed as between Dixit personally under his unregistered business name, Dixit Consulting ("**Dixit Consulting**") and BBIL, which had yet to come into formal existence (the "**Dixit Contract**"). Through the Dixit Contract, BBIL putatively retained Dixit to perform the following services:

Oversee the day to day operations of Banners Broker International

Coordinate and run the Reseller Program [described in further detail below]

Serve as the Compliance Officer for Banners Broker International

Develop and keep current all powerpoints [sic] for the company and create new ones as needed

Will schedule webinars, and run them

Be the official spokesperson for the Banners Broker International webinars

Will serve as President for Banners Broker Canada

Will oversee Corporate Training working in conjunction with Mr. Kuldip Josun

Will develop and maintain the Terms and Conditions for Banners Broker International and Canada

Will work directly with Mr. Christopher Smith on special projects as necessary

Will serve as General Manager for Banners Broker International and help make sure that all deadlines are met and that the company is moving in a positive direction

101. The Dixit Contract further required Dixit to resign his Banners Broker membership and restricted his ability to continue running and promoting other MLMs.

102. Dixit was retained for a monthly salary of \$4,500.00 plus 2% of gross sales in Canada (excluding e-wallet sales, taxes and fees), as well as a stipend for reimbursements for travel and business expenses.

103. The Dixit Contract was set to expire on October 15, 2013.

### 3.2.3. Reseller Agreement

104. Subsequent to the execution of the Dixit Contract, on January 1, 2012, Dixit signed an agreement with Smith establishing one of Dixit's existing companies, 7250037 Canada Inc. as a Reseller of BBIL. Just over a month later, on February 22, 2012 – four months after the meeting at the Scarborough Jack Astor's – 7250037 Canada Inc. was renamed Bannersbroker Limited.

105. This agreement (the "**Reseller Agreement**") authorized Bannersbroker Limited to be 'a legal representative of BANNERS BROKER INTERNATIONAL for any purpose, and [to have] authority to act for, bind or commit BANNERS BROKER INTERNATIONAL'.

106. The Reseller Agreement further provided as follows:

2.2 Reseller has authority to make any commitment on behalf of BANNERS BROKER INTERNATIONAL with respect to quantities, delivery, modifications, interfacing capacity, suitability of software or suitability in specific applications. Reseller has authority to modify the warranty offered with BANNERS BROKER INTERNATIONAL products...

#### 12. Merchant Account

Banners Broker International [sic] authorized Bannersbroker Limited (7250037 Canada Inc.) to serve as the Official Reseller to collect all funds globally for online sales. Bannersbroker Limited will have full authority to enter into a contract with a merchant, setup [sic] the API on Banners Broker International's site, and process all sales for the International Markets.

Bannersbroker Limited will transfer the funds designated for Banners Broker International at the set timelines to the appropriate bank accounts.

107. The Reseller Agreement was set to expire on January 1, 2017.

108. Dixit prepared and ultimately signed the draft Reseller Agreement. He understood while assisting to draft it that this agreement would be used as a template for all future resellers. He did not have it reviewed by a lawyer.

109. One of Banners Broker's concerns in expanding internationally was the challenge of navigating compliance regimes in various jurisdictions. Their solution was to license significant Affiliates – 'Resellers' – in the Banners Broker system to be responsible for front-line customer service and advertising over large, foreign geographical areas in exchange for significant commissions on the investments in that area above and beyond the standard commissions payable under the Banners Broker system. Causing these Resellers to sign these Reseller Agreements had the ancillary benefit of deputizing them as *de facto* Compliance Officers in those various jurisdictions.

110. Through Dixit's Reseller Agreement, Dixit and Smith intended for Dixit, via Bannersbroker Limited, to take control of BBIL's sales and operations domestically in Canada and to operate as the hub for all international Banners Broker commerce.

111. Conversely, on or about this time, Smith agreed to be hired by Bannersbroker Limited as its Chief Technology Officer, thus continuing to be intimately involved in both companies. He acted as an executive of both Bannersbroker Limited and of BBIL, that company's chief source of revenue.

112. In this way, both Smith and Dixit were centrally involved in the management of both BBIL and Bannersbroker Limited's operations by contract of employment.

113. Dixit ultimately caused Bannersbroker Limited to terminate the Reseller Agreement with BBIL as of June, 2012: a reorganizational step that coincided with an Ontario Securities Commission (“OSC”) investigation into the operations of Bannersbroker Limited.

#### **3.2.4. Operation and Mismanagement of Bannersbroker Limited and BBIL**

114. Once Dixit was on the ‘inside’ of Banners Broker as the principal of Bannersbroker Limited, he divested himself of his Banners Broker account and never returned to participation as an Affiliate.

115. It was approximately eight months after Banners Broker opened for business as a concept that Bannersbroker Limited took control of the enterprise’s day-to-day operations. All Banners Broker staff operated at first out of an office in downtown Toronto, and subsequently most of the staff, with the exception of a few individuals including Smith, moved to operate out of Bannersbroker Limited’s offices in Whitby.

116. Bannersbroker Limited took control over the staffing concerns of Banners Broker generally, including the management of salaries and the hiring and firing of customer support personnel in Canada.

117. As general manager of Banners Broker, Dixit never turned his mind to hiring a staffing solutions company or customer service outsourcing company other than Bannersbroker Limited. Despite the arbitrary and exorbitant fees charged by Bannersbroker Limited, Dixit did not recommend, in the best interests of BBIL, that it should consider hiring someone other than himself or the company he owned.



118. The services of Bannersbroker Limited were not tied to any market value or fixed fee schedule. Wherever there were fixed costs in the form of business expenses, Dixit would ostensibly cause Bannersbroker Limited to charge BBIL a 10% markup as a matter of course, despite the fact that BBIL was indistinguishable in any practical sense from Bannersbroker Limited. In practice, however, Dixit would simply advise Smith as to the amount of money he wished to receive from BBIL and would very infrequently remember to cause Bannersbroker Limited to draw up an invoice after having received the funds.

119. The monies paid by BBIL (or, occasionally, and without disambiguation, its parent company MGI) to Bannersbroker Limited for services rendered were ultimately withdrawn by Dixit for his own personal use, for distribution to friends and family, or for investment in his many other business ventures.

120. At no time were Affiliates' funds segregated from the operating funds of BBIL or Bannersbroker Limited. Indeed, Affiliates' funds were the sole source of operating funds of those companies. BBIL and Bannersbroker Limited funds, whatever their source or intended use, were applied to whatever ends the companies or their management required.

121. At no time during his management of BBIL's affairs, personally or through the mechanism of Stellar Point, or during his management of Bannersbroker Limited in its own right, did Dixit perform in the role of a responsible individual charged with the management of a corporation. Although Bannersbroker Limited handled 'customer service' and 'managed payments' in a manner of speaking, Dixit:



- (a) did not arrange for BBIL to be audited;
- (b) did not engage a qualified accountant to prepare financial statements;
- (c) did not raise any concerns in respect of the fact that Banners Broker did not generate profit;
- (d) did not evaluate or manage the expenses of BBIL in respect of its income; and
- (e) did not consult with lawyers or accountants about the legitimacy and sustainability of the Banners Broker enterprise, which had assets under management in excess of nine figures.

122. Neither did Dixit perform any of the foregoing actions in furtherance of his responsibilities as President of Bannersbroker Limited. In neither case did he arrange for any degree of formality, accountability, reporting or independent oversight, as would be required of any reasonable or prudent person left in charge of a corporation's affairs.

### **3.2.5. The "Good Times" for Dixit and Bannersbroker Limited**

123. Banners Broker was by any measurement an enormous success in terms of attracting investment internationally.

124. Affiliates were very interested in the program and sufficiently misled by the confusing description of the internet processes that seemed to generate such exceptional returns that hundreds of thousands of people invested significant amounts of their personal savings into the scheme.

125. Affiliates came from all over the world. Panels were purchased by Affiliates in 108 different countries, and the quantum of funds invested into Banners Broker – or intended to have been invested in the enterprise – was well in excess of \$150 million USD.

126. At its height in January of 2013, Banners Broker was collecting in excess of \$300,000 per day. Receipts of \$2 million per week were common.

127. Many online payment services were not capable of processing—or were unwilling to process—the volume of funds flowing to Banners Broker, a suspicious number of which were subject to refund demands and chargebacks.

128. Schedule I Banks and credit card companies would accept cash from Banners Broker for a time, then drop them as customers as red flags continued to be raised by the sheer volume of funds flowing through the company without adequate lawful explanation.

129. Dixit did not have the necessary education, training or experience to manage assets of this magnitude. When investment funds began to come in faster than Banners Broker was equipped to handle, Banners Broker neglected to retain competent professional advisors or to hire experienced staff.

130. The plaintiffs plead that this oversight was intentional; the defendants Dixit and Josun were aware that they were operating an unlawful enterprise and did not wish to engage individuals that would pose a risk of alerting, or threaten to alert, the authorities.

131. As a result, Affiliates' funds were not properly invested or accounted for. The funds were diverted to management's personal use; or invested in dubious business ventures proposed by their friends or family; or were directed to payment processors or, on occasion, money-changing services. Funds were directed to such ventures and services as a martial arts gymnasium and a catering company operated by a non-professional cook.

132. For his part, Dixit would request that BBIL pay Bannersbroker Limited hundreds of thousands of dollars monthly, then pull those funds out of his company for his own use, through euphemistically named 'shareholder loans', 'consulting fees' or 'business expenses'.

133. The accounting records of Bannersbroker Limited bear no resemblance to the financial reality of the company. As a single example, despite having no stock-in-trade and making no actual sales, the general ledgers of Bannersbroker Limited showed millions of dollars going out of the company for 'Cost of Goods Sold'.

134. Dixit would wire funds to himself from Bannersbroker Limited and withdraw extraordinary amounts of cash in five-figure amounts multiple times per month.

135. Rather than hiring competent staff, Dixit hired friends and family, appointing them executives of various Banners Broker-affiliated corporations without having any discernible responsibilities to the enterprise.

136. Rather than investing Affiliates' funds into a legitimate business or otherwise investing them in legitimate interest-bearing instruments, Dixit invested those funds into his own unsuccessful ventures and those of his friends, associates and family.

137. Instead of operating BBIL's business legitimately as an online advertising concern with the benefit of the enormous venture capital he had received, Dixit purchased luxury goods and services for himself, his family and friends. These purchases included, but were by no means limited to:

- (a) The chartering of private jets at a rate of hundreds of thousands of dollars per trip for his own use and that of his family;
- (b) Several Mercedes vehicles for his personal use and for the use of his friends and family;
- (c) A number of luxury timepieces, notably Breitling and Hublot watches;
- (d) Several cutting-edge, top-of-the-line home theatre systems;
- (e) Family trips to water parks and 'Chuck E. Cheese';
- (f) Multiple shipments of luxury furniture;
- (g) Bespoke suits for himself and associates at upscale menswear retailers;
- (h) Extremely valuable liquor and spirits;
- (i) Visits to high-end 'gentlemen's clubs'; and
- (j) Thousands of dollars in jewellery for his assistant-turned-wife.

### 3.2.6. Stephanie Schlacht Joins Banners Broker

138. Stephanie Schlacht ("**Schlacht**") was both a key figure in the operations of Bannersbroker Limited and a primary and ongoing beneficiary of Dixit's defalcations.

139. Schlacht was first noticed by Josun while she was waiting his table at a chain restaurant in Toronto's Eaton Centre. He offered her a job as his assistant and she accepted.

140. Schlacht's education was in the form of an Education degree from Trinity Western University, and her work experience was restricted to the service industry. On social media, she held herself out as a fitness enthusiast and wellness coach, with no suggestion of a background in business or marketing.

141. A short time after having been hired by Josun, she was reassigned to be Dixit's personal assistant.

142. Her role in working for Dixit involved handling internal communications, calculating reseller commissions, and forwarding inquiries and complaints to management. She was privy to private conversations amongst Banners Broker management personnel on a regular basis. The job also appears to have entailed an extraordinary amount of international travel with Dixit, often on private or first-class flights, and stays in luxury hotels in exotic locations, including but not limited to Italy, Cyprus, Greece, Israel, Sweden, Ireland, India, Portugal, and Belize.

143. Schlacht and Dixit commenced a relationship on or before October 29, 2013.

144. Dixit ultimately promoted Schlacht to a loosely defined managerial position in respect of the customer service staff at Bannersbroker Limited, operating on behalf of BBIL. In that role, Schlacht was responsible for – and proactively set about – training staff in respect of the representations to be made to Affiliates as they called with queries about their accounts. Despite her complete lack of any relevant training, education or experience, Dixit effectively made Schlacht the head of investor relations for an enterprise with more than \$150 million under management.

145. Over time, Schlacht came to accept shares in and directorships of Dixit's various corporations to an extent unknown to the plaintiffs but known to the defendants. This included a period of time in which she was the sole shareholder of the defendant Dixit Holdings Inc., which was in turn the majority shareholder of Bannersbroker Limited – thus causing her to briefly stand in the shoes of her own employer.

146. Without apparent consideration or legitimate juristic reason, Schlacht would accept and divest herself of Dixit's assets and power over his companies whenever it became inconvenient for Dixit to have his name associated with them; or alternatively, at her own demand in lieu of being the beneficiary of Dixit's life insurance policy.

147. In furtherance of those objectives, Schlacht would agree to sign corporate resolutions on behalf of various corporations as she came to control them without any interest in or knowledge of what she, or the company, was doing with the funds of Banners Broker Affiliates.

148. Schlacht married Dixit on June 1, 2014 and is currently his wife.

149. Dixit misappropriated hundreds of thousands of dollars in Affiliate funds for use on family expenses; and a substantial amount of Affiliates' investments were thereby converted to assets that continue to be enjoyed by Dixit and Schlacht, both jointly and individually.

### **3.2.7. Josun's Role and Spending**

150. During the 'good times' for Banners Broker, Josun assumed titles for himself that reflected his executive role with the corporation in respect of sales and marketing. He also improperly held himself out to Affiliates as an owner of Banners Broker.

151. Josun's work for Banners Broker consisted largely of enticing Affiliates to purchase as many panels as possible, at the highest rates possible, through a series of online sales conference calls via Skype and rally-style pitches to hundreds of potential Affiliates at a time. This role did not change significantly before or after Dixit joined the company; the primary difference appears to have been that Josun's role developed from a primarily North American one to a primarily international one. He began to target European Affiliates specifically.

152. Josun's representations were particularly instrumental in gaining the trust of significant and well-connected Affiliates, although there were frequent complaints that Josun could not satisfactorily describe Banners Brokers' operations, or how those operations were intended to make money.

153. Josun was compensated generously but his role had no official parameters. His job was broadly to convince as many individuals as possible to participate in Banners Broker.

### **3.2.8. Josun's International Travel**

154. When potential Affiliates showed an interest in joining Banners Broker but had questions or concerns about its operations or legitimacy, Josun would attend to their concerns and fly to their location—usually in Europe—to woo them and host recruitment seminars to encourage further investment in Banners Broker.

155. Josun was also tasked with travelling internationally to meet with Affiliates that were particularly active in recruitment, or that had invested particularly large sums of money. He maintained those relationships personally to encourage further investment, to discourage withdrawal demands and to promote further efforts on the Affiliate's part to recruit further Affiliates.

156. No budget was set for Josun's business trips. There was no oversight of Josun's activities, and no control over his spending.

157. Rather, Josun would independently advise management of what he considered to be a business priority overseas, and would be provided with tens of thousands of dollars of company money to fund his trip. (These funds would be transferred in a number of ways, including but not limited to the loading of prepaid credit cards.) Then, after one to three weeks of recruitment and relationship maintenance, he would return.



158. There was no formal accounting of Josun's expenses nor the amounts he received from Affiliates on BBIL's behalf on these trips.

159. Josun's daily occupation was to host webinars and to travel internationally to promote further Affiliate investment and involvement in Banners Broker. He did so with no accountability whatsoever in respect of the disposition of Banners Broker funds *out*, or Affiliate funds that he agreed to take *in*. At no point was he required to make a business case for these trips to other members of Banners Broker management, nor to account for the outcomes of his expenditures.

### **3.2.9. Theft and the Swiss Bank Account**

160. At some point in his tenure, Josun went beyond dubious business practices and misrepresentation and directly embezzled at least \$3.6 million USD of Affiliate funds.

161. These funds were deposited in a Swiss bank account held by one of his companies, the defendant World Web Media Inc.

162. In addition to this direct embezzlement, Josun conducted a campaign of more indirect misappropriation. On his overseas trips and webinars, he would occasionally provide Affiliates with transfer information for his own personal accounts, misrepresenting them as being the transfer information for Banners Broker accounts; or alternatively encouraging Affiliates to provide him with negotiable instruments intended by the Affiliates to be invested towards further Banners Broker panels or 'products' such as 'boosters', as described above in Section 3.1.2.

163. Josun would then advise the IT staff of Banners Broker to credit the Affiliate's account but keep the money for himself. In part due to Dixit's failure to maintain proper records, to retain anyone qualified to maintain proper records, or to exercise proper oversight over Josun or his IT department, these embezzlements went unnoticed.

164. The existence of the Swiss account was only discovered after Smith attended on a sales call with Josun, in which Josun directed the Affiliates to whom he had just made a sale to deposit their funds into a Swiss bank account of which Smith had never heard. There was, and is, no record of any such account in BBIL's name.

165. Josun was given an opportunity by BBIL's other management personnel to repay those funds, but he refused to do so. It was clear, as a result, that the Swiss bank account to which Josun directed Affiliates to forward their funds was, directly or indirectly, controlled by Josun and not BBIL.

### **3.2.10. Josun's Side Businesses**

166. In addition to his operations within Banners Broker, Josun also promoted an MLM of his own. This business venture was a German cosmetics program operating under the name 'NWA'.

167. Josun managed this other enterprise alongside his associate, John Rock, discussed further below at Section 3.2.12.

168. Josun had further solicited Dixit, who through Bannersbroker Limited (or Stellar Point, as it may have been named at the material time) and/or Dixit Consulting, to provide him with Banners Broker Affiliates' funds both for the NWA investment and a renovation of his sister's house.

169. Both requests were granted in amounts approximating \$40,000. Neither disbursement was for any legitimate business purpose. Those funds were drawn out of Banners Broker for Josun's own personal use without juristic reason for that withdrawal.

170. Dixit also provided Josun with an Audi A8 for no legitimate business purpose. Josun wrecked that vehicle at some point during the height of Banners Broker's 'success', such that it ceased to have any value.

171. It has also come to the Receiver's attention that between November of 2011 and February of 2012, payments were made out from a Banners Broker-affiliated corporation, Banners Broker (UK) Ltd. to World Web Media, one of Josun's personal companies. Those payments total at least £1,432,000.00, and also originated from Banners Broker Affiliates.

### **3.2.11. The Rise of Dissent**

172. While the defendants were in possession and enjoyment of Affiliate funds, the Affiliates themselves were beginning to grow restless.

173. Despite the overwhelmingly positive results shown on their online accounts, many Banners Broker affiliates never successfully withdrew any money. Rumours began to circulate on the internet that Banners Broker was a Ponzi scheme.

174. Dixit took responsibility for freezing the accounts of Affiliates that were saying negative things about Banners Broker online, and for taking steps in order to counteract those negative statements by posting information online about Banners Broker's success and reliability as an investment.

175. Despite his efforts, affiliates became increasingly agitated as more and more of them were unable to withdraw their funds and realize upon what was represented to them as being a financial success.

176. Telephone calls and e-mails demanding the return of funds increased steadily in number and aggression through early 2013 as Affiliates began to allege publicly that Banners Broker was a 'scam'.

### **3.2.12. Compliance Flags are Raised**

177. On or about April of 2012, Dixit finally agreed to hire one independent contractor, John Rock, in order to assist in compliance matters. Rock was a friend of Josun's with whom he had previously worked in respect of other MLMs.

178. Rock did accurately identify that the company did not appear to have any means of making money other than soliciting further investments from new or existing affiliates. He raised the concern that the Competition Bureau would order Banners Broker to cease operating if steps were not taken to provide legitimate goods or services to the public.

179. Despite having had direct experience of this phenomenon through his past venture, ICF (as described above in Section 2.2.4), Dixit took no action on Rock's advice.

180. At some point in the first half of 2012, Josun and Rock jointly proposed to Smith and Dixit that the company ought to move in a different direction, purportedly because of the compliance infractions upon which the company relied, and which ultimately did result in a criminal investigation and charges against Dixit personally.

181. Dixit again took no action on Josun and Rock's advice.

### **3.2.13. Dixit Attempts to Distance his Operations from Banners Broker**

182. In light of the rising wave of complaints from Affiliates, Bannersbroker Limited changed its name to its current nomenclature – the plaintiff 'Stellar Point, Inc.' – and further distanced itself from Banners Broker by purporting to terminate its Reseller Agreement.

183. By letter of June 13, 2012, Dixit wrote to BBIL on Stellar Point's behalf advising that 'our company has decided to go into a new direction' and that it would terminate the agreement, no longer operating as Bannersbroker Limited.

184. This ostensibly clear break with Banners Broker was not reflected in reality, as Stellar Point largely continued to operate as it had under the name Bannersbroker Limited.

185. There were a few differences. In the letter of June 13, 2012, Dixit proposed that rather than operating directly under the Banners Broker name, the new Stellar Point company would instead offer its services to Banners Broker by providing '[s]upport for your customers via Call Center, Live Chat and e-Ticketing system. But we are also planning on taking on new clients, and due to this we have chosen to chase [sic] our name as well as the services we are going to over [sic].'

186. In that letter, Stellar Point indicated that it would 'no longer process Canadian sales, serve as a processor or act on your behalf in any fashion when it comes to money transactions taking place'.

187. Despite the fact that Dixit claimed Stellar Point would no longer act on BBIL's behalf 'in any fashion when it comes to money transactions', Stellar Point's entire staff – which was also essentially Banners Broker's entire staff – was at that very time preparing for a massive sales convention in Portugal that had been promoted by the company for some time. Those preparations continued uninterrupted, and the defendants, their extended families and their growing entourage flew to Portugal first-class to attend the convention.

#### **3.2.14. The Portugal Convention**

188. The convention was hosted by renting out the five-star Tivoli Marina Vilamoura beach resort in Portugal. It was the company's first major convention in Europe. Affiliates, Resellers and potential Affiliates were enticed to register and attend by a chance to win a Mini Cooper.

189. Despite its relative insignificance as a market for BBIL Affiliates, Josun insisted upon the Portugal location because he had family connections there, and he intended to take this company-funded opportunity to fly his extended family along with him to the event for a vacation.

190. The event took place from July 7-15, 2012 and was organized largely by Tara Josun, whom Josun had arranged to be hired by Dixit as a Stellar Point employee responsible for event planning and customer service representative training. The event required the booking of the entire hotel, at a cost of more than half a million Euros.

191. More than a thousand Affiliates and potential Affiliates registered and took the trip to Vilamoura to attend the convention over the course of two weekends.

192. By this time, complaints about Affiliates being unable to withdraw their purported gains or to receive clear responses to their inquiries had reached a boiling point.

193. Dixit attended the convention with a private security detail, and advised his staff that he had received death threats from furious Affiliates and was concerned that the convention proceedings may be interrupted by Interpol. Stellar Point staff were given instructions to ensure that management's families were transported safely home in the event of their arrest.

194. During the course of the convention, on July 11, 2012, it became known to Dixit that Josun and Rock had been using their time addressing the convention to promote business other than Banners Broker: specifically, their 'NWA' business, which they represented as being more compliant with international laws than Banners Broker.

195. Dixit confronted Josun and Rock in the lobby of the hotel, engaging in a heated argument and advising Josun and Rock that their employment was terminated. He then ordered his personal security detail to eject them, as well as Josun's extended family, physically from the hotel with the exception of Tara Josun, who resigned from Stellar Point shortly after returning to Canada.

### **3.2.15. Fallout from the Portugal Convention**

196. Josun and Rock were terminated by Stellar Point shortly after this incident, on or about July 11, 2012. It is unclear from which company, or by which executive, directors', and/or shareholders' resolution these terminations were effective, because no such formalities were ever observed by any company related to the Banners Broker enterprise. As with most corporate operations in the Banners Broker Network, Dixit was simply understood to be in charge, and Josun and Rock understood themselves to have been fired.

197. Less than a year later, after having been approached by the Competition Bureau and the RCMP to provide evidence with respect to Banners Broker's operations, Josun claimed that he had been fired at this convention because he had been uncomfortable with the Ponzi scheme he had been promoting internationally, and that he had threatened other executives that he would advise Affiliates that Banners Broker was 'not 100% compliant' with the law.

198. Josun is not known by the plaintiffs to have taken any action at any point to contact Affiliates, regulators, law enforcement or the media to advise them of the true nature of Banners Broker's operations.



199. Rather, Josun is known to have approached Smith with a proposal at the point of his termination. Josun was aware of the nature of Banners Broker's business and knew, further, that he could jeopardize BBIL's operations if he were to approach regulators or law enforcement with his evidence. For his part, Smith knew that Josun had been embezzling funds.

200. A deal was therefore struck – Smith agreed that he would not pursue the millions known to have been hidden by Josun in his Swiss bank account(s), and Josun would not approach the authorities.

### **3.2.16. Dixit Resigns in Personal Capacity Only**

201. A Consulting Agreement ostensibly dated July 31, 2012 was at some point signed between BBIL and Stellar Point. Under the terms of that Agreement, Stellar Point purported to cease holding itself out as processing payments and conducting advertising directly for BBIL, and to carry on exclusively by managing its staff and operations.

202. Once again, despite the positions taken in writing, in practice, little, if anything, of Banners Broker's operations actually changed.

203. A few months later, by way of letter dated October 30, 2012, Dixit resigned from BBIL in his capacity as 'Acting Chief Operating Officer'. The letter was signed by Dixit, subscribed 'Dixit Consulting'. The letter indicated, however, that Stellar Point would continue to offer its services as usual, including 'customer service and event planning'.

204. Again, little, if anything, of Banners Broker's operations actually changed.

### 3.2.17. International Operations Continue to Grow

205. Despite the fact that Stellar Point and Dixit were attempting to create a perception of distance between themselves and Banners Broker, 'Stellarpoint Consulting India Private Limited' ("**Stellar Point India**") was incorporated as an Indian Non-Government Company on March 6, 2013. Its directors were Dixit, his cousin Rajesh Dikshit and Tanushree Cornelius.

206. This company, which attached Dixit's cousin Rajesh to the Banners Broker payroll, was intended to be the Reseller for Banners Broker's Indian operations. Contrary to Dixit's representations about the operations of Stellar Point being reduced in scope *vis-à-vis* Banners Broker, there was no obfuscation of the fact that Stellar Point India did indeed process payments and advertise for Banners Broker.

207. Dixit's cousin was named Stellar Point India's director and president, while Dixit himself remained on the masthead and payroll as a director. Three leading Indian Resellers were also put in charge of the company's daily operations.

208. Stellar Point India had a direct contractual relationship with BBIL and bore primary responsibility under that contract for the payment of commissions to Indian affiliates.

209. In May or June of 2013, however, a full commission payout was scheduled to take place for a number of Affiliates and BBIL was incapable of meeting those demands.

210. On or about this time, two of the three Indian Resellers responsible for overseeing Indian operations through Stellar Point India broke into a bitter romantic dispute. In the course of that dispute, one of the Resellers called the local police force and reported that Stellar Point India was 'running a fraud'.

211. The police subsequently raided Stellar Point India's offices and seized much of its property.

212. The status of Affiliate funds held by Stellar Point India, if any, and the whereabouts of the estranged Resellers Dixit entrusted with those funds is not known to the plaintiff, but known to Dixit.

### **3.2.18. Ontario Securities Commission Investigates Banners Broker**

213. Before or about the early part of 2013, the OSC began to investigate Banners Broker and its investment scheme, concerned that Stellar Point was selling Banners Broker securities in Canada. The OSC began to communicate with Dixit in the course of its investigation.

214. In June of 2013, Stellar Point purported to formally 'report' to BBIL that the OSC had alleged that Stellar Point was carrying on Banners Broker's business in Canada, and that it may be taking action against it.

215. On June 10, 2013, by way of a very brief letter, Smith resigned from Stellar Point as its Chief Technology Officer. The resignation was effective June 21, 2013.

216. Possibly in anticipation of possible regulatory action by the OSC, MGI signed an indemnity agreement ostensibly dated June 19, 2013 in favour of Stellar Point in respect of any such action. There does not appear to have been any consideration for this unilateral indemnity agreement.

217. The status of the OSC's investigation into Banners Broker is unknown; charges against any or all defendants personally, or their various Banners Broker-related entities, including the plaintiffs, may therefore still be pending.

### **3.2.19. Termination of the Consulting Agreement with Stellar Point**

218. On or about this time, Dixit consulted with counsel and appears to have determined that he should cease to have interactions with Banners Broker generally.

219. Shortly after the purported execution date of the indemnity agreement, a Termination, Release and Indemnity Agreement was signed between BBIL and Stellar Point, in which BBIL and MGI committed to indemnify Stellar Point and related parties from any liabilities flowing from the Banners Broker business and releasing Stellar Point from the same form of liability. (This agreement also appears to have been entered into without any consideration.)

220. Dixit then resigned from Banners Broker, without being specific as to the role in which he did so, or from which organizations he was resigning, or whether this constituted a termination of various agreements between his companies and others within the Banners Broker network.

221. The relationship between the companies, and Dixit and Banners Broker was thereby facially at an end. Despite that fact, however, Dixit arranged for BBIL to continue to pay Stellar Point's staff—when they had no tasks to perform, and were ostensibly arm's-length 'service providers'—up to and including September of 2013 for no legitimate reason.

222. Shortly after these resignations were purportedly effective, Dixit and Schlacht were continuing to travel the world in furtherance of the Banners Broker enterprise. On one such occasion, in the autumn of 2013, Dixit and Schlacht flew to Belize to conduct staff training for Banners Broker before Dixit tendered yet another 'resignation' in October.

### **3.2.20. Insolvency Proceedings**

223. A few months later, on February 26, 2014, following a claim by its shareholder, Targus Investments Limited, with the participation of an incensed Reseller, one Ian Driscoll, a winding-up order was made and liquidation proceedings began in respect of BBIL.

224. An application was made in the Isle of Man High Court of Justice by BBIL's *de jure* shareholder, Targus Holdings Limited. That Court ordered that BBIL be wound up pursuant to Part V of the *Companies Act 1931* (Isle of Man).

225. Miles Andrew Benham and Paul Robert Appleton were appointed by that Court as Joint Provisional Liquidators and Deemed Official Receivers of BBIL.

226. On August 22, 2014, the Ontario Superior Court recognized that Isle of Man proceeding as a foreign main proceeding pursuant to Section 270(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

227. Upon recognition, the Court also granted a Supplemental Order pursuant to Section 272 of that *Act* appointing MSI Spargel Inc. the Receiver of BBIL with receivership powers in respect of that company. The Receiver was further authorized to act as the investigatory receiver of Stellar Point on October 15, 2014, and as its full possessory receiver by the Order of Justice Hailey, issued April 8, 2016.

228. Pursuant to its investigations into BBIL, associated corporations and Banners Broker's operations generally, the Receiver gathered the information in the within claim. It now brings this action on behalf of both companies over which it is the possessory receiver; as well as on behalf of the victimized Affiliates of BBIL that the Receiver now represents, as they are now reduced to being creditors of the insolvent corporation.

### **3.2.21. Criminal Proceedings against Dixit**

229. On December 9, 2015, the Toronto Police Service held a press conference announcing that Dixit and Smith had been arrested that morning and that no further arrests were anticipated in respect of the Banners Broker enterprise.

230. The Toronto Police Service advised at that press conference that Dixit and Smith are charged with the following offences in respect of their activities with Banners Broker:

- (a) Defraud the Public – Over \$5,000 (*Criminal Code*, R.S.C. 1985, c. C-46 (“***Criminal Code***”), s. 380(1));

(b) Possession of the Proceeds of Crime (*Criminal Code*, s. 354(1));

(c) Launder Proceeds of Crime (*Criminal Code*, s. 462.31(1));

(d) Operate Pyramid Scheme (*Competition Act*, R.S.C. 1985, c. C-34  
("Competition Act"), s. 55.1);

(e) Make False or Misleading Representation (*Competition Act*, s. 52).

231. A trial date has not yet been scheduled.

#### **4.0 CAUSES OF ACTION**

232. The within pleaded causes of action are organized, first, by the party whose cause of action has been assumed by the Receiver (i.e., the creditors of BBIL, BBIL itself and then Stellar Point); and second, by cause of action. Each cause of action heading identifies the specific defendants against whom the Receiver brings that claim.

233. The plaintiffs seek the damages set out in Section 1 on the following grounds:

#### **4.1. Claims of the Receiver on Behalf of Affiliates as BBIL Creditors**

##### **4.1.1. Fraudulent Misrepresentation (Dixit and Josun)**

234. Banners Broker was not a *bona fide* business. It was an enterprise that relied upon false representations as to its profitability, false reports as to Affiliates' return on investment, and false statements as to the nature of its operations to induce Affiliates to invest in Banners Broker.

235. Dixit and Josun caused Affiliates to believe that they were purchasing advertising space on the internet. They were not. The majority of their invested funds were put into the pockets of Banners Broker management, who would then fraudulently misrepresent to Affiliates that their funds had been safely invested and were generating an excellent return.

236. Dixit, in setting policy for BBIL operations and speaking at conventions and various training seminars, induced Affiliates to invest in Banners Broker. He did so while being in a position that caused him to be fixed with the knowledge that none of the representations he was making, directly or indirectly through staff, to Affiliates about the company's profitability were, or could be, true.

237. Josun was largely responsible for the misrepresentations inducing investment from international affiliates. His misstatements about the company, its profitability and operations were known, or ought to have been known, by Josun to be false and were made with the intention of inducing Affiliates to invest with Banners Broker; and in turn, to ensure Josun's personal enrichment.

238. In each instance of their communications with Affiliates, Dixit and Josun:

- (a) Made false representations to Affiliates with respect to the nature of the business, its profitability, its legitimacy as a going concern, and the likelihood of Affiliate profit by investing funds with Banners Broker;
- (b) Were aware that these representations were false; or alternatively, were reckless as to whether or not the representations were false;



(c) Caused Affiliates to act upon their advice by purchasing panels, traffic boosters, traffic packs and other associated 'products', or by declining to take action to recover their investments; and

(d) Caused Affiliates to lose some or all of their investment as a result of their reliance upon those representations.

239. The Receiver therefore, in its capacity as creditor representative, claims against Dixit and Josun for the full reckoned sum of Affiliate funds invested in reliance upon their fraudulent misrepresentations.

#### **4.1.2. Negligent Misrepresentation (Dixit and Josun)**

240. In the alternative to the claim for fraudulent misrepresentation, Dixit and Josun are liable to the Affiliates *qua* creditors for negligent misrepresentation.

241. It was plainly foreseeable by both defendants that their representations as to the profitability of investment in Banners Broker would cause Affiliates to rely on those representations, and to make disastrous purchases of panels and other intangible, illusory products as a result.

242. Dixit and Josun breached their duty of care in making those representations negligently, having no good cause to believe in their truth.

243. The Affiliates did reasonably rely on their misrepresentations and lost some or all of their invested funds as a result.

244. Accordingly, the Receiver claims, in its capacity as creditor representative, the full reckoned sum of Affiliate funds invested pursuant to Dixit and Josun's negligent misrepresentations.

#### **4.1.3. Predominant Purpose Conspiracy (Dixit and Josun)**

245. Banners Broker was not operated as a legitimate business. It did not sell goods or provide legitimate services, and what services it could be said to have offered in the form of hosting web advertising were not adequately functional to be described as a going concern. Simply put, an advertising business cannot operate if it does not charge properly for advertising; or if it does not track to whom those charges should be paid.

246. Banners Broker may have resembled a company but it did not function as one. It was not concerned with budgets or business plans, did not generate profit, did not track expenses, and was never intended to do any of those things. The purpose of Banners Broker was to entice recruitment investment and to convert those invested funds to the defendants' own personal use.

247. The defendants Josun and Dixit knew that Banners Broker's purpose was to induce Affiliates to invest in a corporation that did not have any legitimate operations, and to enjoy those invested funds themselves.

248. The plaintiffs therefore plead that the management of Banners Broker, including Dixit and Josun, acted in concert for the predominant purpose of harming Affiliates, and did in fact cause, and profit from, that harm to them.

#### **4.1.4. Unlawful Act Conspiracy (Dixit and Josun)**

249. Dixit and Josun were engaged in a daily course of fraudulent misrepresentations in respect of virtually every Affiliate, Reseller or manager that they would encounter. The daily operations at Stellar Point / BBIL were conducted in knowing and intentional furtherance of those misrepresentations at the expense of Banners Broker Affiliates.

250. Those defendants are thereby responsible for the damages caused to the Affiliates of BBIL by virtue of their agreement to make and maintain these fraudulent representations as against those creditors together. They were all fixed with the knowledge that their acts were unlawful and that injury to the creditors of BBIL was inevitable.

251. That injury was ultimately done, and resulted in considerable financial harm done to the tens of thousands of Banners Broker Affiliates worldwide. The Receiver therefore claims against Dixit and Josun in an amount equivalent to the losses of Affiliates as a result of the individual defendants' conspiracy.

#### **4.1.5. Unjust Enrichment and Accounting (All Defendants)**

252. Because Banners Broker was not a *bona fide* business, virtually all of the funds coming into any of the Banners Broker entities originated in intended purchases by Affiliates. Because those purchases were for illusory goods and services and never put to their intended use, the Affiliates were thereby deprived of their funds and the defendants were correspondingly enriched without juristic cause.

253. Accordingly, virtually all of the funds passing through any of the Banners Broker entities at any time are recoverable by creditors as money had and received by the defendants but never lawfully vesting in them.

254. To the full extent that any or all of the defendants are in possession of funds originating in intended purchases by Affiliates, the Receiver therefore claims for the same in unjust enrichment on behalf of creditors, and further claims for an Order tracing the disposition of those funds and impressing the same with a constructive trust in favour of the Receiver on behalf of BBIL creditors.

255. In the alternative, Dixit and Josun collected and managed BBIL's funds, or funds intended for BBIL or associated corporations in the Banners Broker Network, in the capacity of BBIL's agent and is liable to account for the disposition of those funds.

#### **4.1.6. Aggravated Damages (Dixit and Josun)**

256. The Banners Broker enterprise targeted, in large part, individuals that did not have the financial literacy to recognize the implausibility of its claims and the dubiousness of its business model. Particularly given that Dixit and Josun had prior experience working in failed MLM operations, it was foreseeable to them that such a class of persons would invest an unreasonable proportion of their savings and put their future prosperity at risk in reliance on the representations they made.

257. As pleaded above, Dixit and Josun conspired to defraud these individuals; or alternatively acted negligently in respect of handling their invested funds, resulting in losses to Affiliates that may have been in relatively small amounts objectively, but that in most cases were of great personal significance to each individual Affiliate.

258. Put simply, Affiliates invested not only a disproportionate amount of their savings, but also a disproportionate amount of their hope for the future in the Banners Broker enterprise. Dixit and Josun encouraged and induced this line of thinking and this emotional investment in the Banners Broker project through the seminars, webinars, public appearances and private meetings they would arrange with Affiliates.

259. When the Affiliates realized that all had effectively been lost, their response was not restricted to that of an aggrieved investor in a normal business. Websites and Facebook pages were erected, and support groups formed to discuss the fallout of the collapse of Banners Broker. Many Affiliates were ruined.

260. Some were reported to have taken their own lives in despair.

261. The Receiver pleads that mere compensatory damages will not suffice to compensate Affiliates for the impact Dixit and Josun's wrongdoing had on their lives. Many of them, all these years later, continue to populate message boards and online communities, following the criminal and civil proceedings with intense interest as a result of the crushing emotional, intangible and non-pecuniary harm that was done to them as a result of their victimization at the hands of the defendants.

262. Despite the stark reality faced by Affiliates in the wake of Banners Broker's collapse, the defendants persist in denying any wrongdoing, and continue to assert that their business was legitimate, as described more fully below at paragraphs 320, 324 and 325 herein.

263. The Receiver therefore claims on behalf of the Affiliate creditors of BBIL aggravated damages in an amount that would adequately compensate those creditors for the non-pecuniary harm they suffered as a result of their participation in the Banners Broker enterprise.

#### **4.2. Claims of the Receiver on Behalf of BBIL**

##### **4.2.1. Fraudulent Misrepresentation (Dixit, Dixit Companies and Josun)**

264. As Banners Broker's General Manager and BBIL's *de facto* Chief Operating Officer, Dixit was responsible for arranging the staffing and operations of BBIL. Wherever possible, he caused BBIL to employ his own companies whenever a purported need for services arose. In so doing, he invoiced BBIL in arbitrary and capricious amounts according to his personal desires and the interests of the companies he owned.

265. Dixit represented to BBIL that these invoiced amounts were legitimate as an executive of those non-arm's-length companies and, as his own customer, caused BBIL to rely upon, accept and pay the arbitrary and capricious invoice amounts that he represented as being valid business expenses despite his knowledge that they were not.

266. For Josun's part, he claimed or was pre-paid for expenses that were not *bona fide* business expenses, including but not limited to his expenses incurred while overseas. Josun knew, or ought to have known, that these expenses were not commercially justifiable and that his representations as to their legitimacy were false. He nevertheless caused BBIL to act upon those false representations by causing BBIL to reimburse or pre-pay him for the said expenses, to the detriment of the company.

267. Both Dixit and Josun benefited, directly or indirectly, from the funds they induced BBIL to pay to them or their companies by representing that the said business expenses were legitimate when they were not.

#### **4.2.2. Breach of Fiduciary Duty (Dixit and Josun)**

268. BBIL pleads that the granting of powers to Dixit under the Dixit Contract to generally manage all aspects of BBIL's company operations and finances, his position as *de facto* Chief Operating Officer of BBIL, and his practice of holding himself out to Affiliates and other stakeholders as a member of the management of Banners Broker, gave rise to fiduciary duties upon Dixit to act in the best interests of BBIL.

269. BBIL further pleads that by holding himself out as, in turns, an owner and executive of BBIL, and thereby inducing other parties to rely on those representations, Josun took upon himself the duties of a director and officer of BBIL at common law and in equity, including the fiduciary duty to act in the best interests of the corporation.

270. In the alternative, the plaintiff pleads that Josun was a management employee of BBIL and owed an actionable fiduciary duty to the company in equity on that basis.

#### **4.2.3. Overview of Fiduciary Breaches (Dixit and Josun)**

271. Dixit and Josun operated BBIL in a manner that did not comport with the best interests of the corporation.

272. At all times, those defendants preferred their own interests to those of the company and its stakeholders. In so doing, they breached their obligations in equity, the common law and under statute to discharge their duty by operating the company in good faith, and they did so to the detriment of its stakeholders, including Affiliate-creditors.

#### **4.2.4. Breach of Fiduciary Duty: Misappropriation (Dixit, Dixit Companies and Josun)**

273. As a matter of common practice, Dixit would take advantage of his position as both General Manager of Banners Broker and Chief Operating Officer of BBIL to direct funds out of proportion to the agreements between BBIL and both Stellar Point and the Dixit Companies to those companies under his control, resulting in his own enrichment at BBIL's expense.

274. In those roles, Dixit would also cause funds held by third-party payment processors for BBIL's benefit to be redirected from BBIL or its authorized affiliates to his own business ventures or his own personal bank accounts.



275. Similarly, Josun took possession of Affiliates' investment funds intended for BBIL at a time when he was impressed with a fiduciary duty both as an executive and as agent, and diverted those funds directly to his own use in an amount known to the defendant, and known by the plaintiffs to be in the amount of at least \$4 million.

276. Each of these actions constitute misappropriations of the BBIL funds that Dixit and Josun were charged with managing in the best interests of the corporation and its stakeholders. Any direct misappropriation from a company by a fiduciary is a clear breach of duty, and BBIL pleads that it suffered damages in equal proportion to the funds improperly diverted out of the company's coffers to the defendants. The Receiver therefore claims that sum of damages on behalf of BBIL.

#### **4.2.5. Breach of Fiduciary Duty: Preferring Their Own Interests to Those of the Corporation (Dixit and Josun)**

##### *Dixit*

277. Dixit had a clear conflict between acting in the best interests of BBIL, to whom he stood as fiduciary, advancing his own personal financial interests and satisfying his duties as an executive of Stellar Point. As the President of Stellar Point, Dixit had a duty to maximize that company's profits, which conflicted with his duty as an officer of BBIL to make prudent business decisions in allocating corporate funds. Moreover, as the majority owner of Stellar Point, Dixit had a direct financial incentive to overcharge the plaintiff BBIL for services rendered.

278. At no point did Dixit take any steps to declare or mitigate the conflict between his roles as general manager of BBIL's operations and as a shareholder of Stellar Point, standing to profit personally from overcharges to that customer. He did not recuse himself from BBIL corporate decisions concerning the retention of Stellar Point. Rather, he had sole control over all decisions concerning staffing and outsourcing and wherever possible he preferred his own corporation exclusively to the detriment of BBIL.

279. The Reseller Agreement and the Consulting Agreement should never have been signed. Acting in the best interests of BBIL, it was Dixit's duty to seek out a cost-effective means of managing BBIL's operations. Instead, Dixit failed even to consider spending BBIL's money on a service provider other than the one he owned, and from which he drew a direct personal financial benefit from BBIL's business.

280. BBIL, through the Receiver, therefore claims against Dixit in his capacity of General Manager of Banners Broker and Chief Operating Officer of BBIL for all preferential transactions to Stellar Point, or any other company not at arm's length from Rajiv Dixit to which he improperly diverted company funds.

*Josun*

281. Josun had a fiduciary obligation to ensure that the corporate funds with which he was entrusted were spent prudently in the advancement of lawful business objectives.

282. Instead of fulfilling that duty, Josun preferred his own interests to those of BBIL by engaging in overseas travel and customer entertainment for unjustified and unlawful business purposes.

283. He also preferred his own interests to those of BBIL and its Affiliates by appropriating corporate funds for his own use as money had and received.

284. To whatever extent Josun's overseas expenditures cannot be commercially justified – and the Receiver pleads that if the commercial activity results in contracts void for illegality, such activity cannot be justified – then those funds were spent in breach of Josun's fiduciary duty and BBIL has suffered damages in direct proportion thereto.

285. The Receiver therefore claims against Josun for the total amount of funds spent on these excursions, from which he personally benefited, and from which there accrued no benefit to BBIL.

286. The Receiver also claims against Josun for the total amount of receipts Josun intercepted and yet retains in breach of his fiduciary duty to the corporation.

#### **4.3. Negligence (Dixit and Josun)**

287. In the alternative, if Dixit and Josun's acts were not fraudulent in nature, they were grossly negligent. Their operation of BBIL fell drastically below the standard of care expected of any corporate executive, who would be expected to gather and act upon the knowledge that BBIL did not generate profit, offer a legitimate product or service to the market, or deal truthfully with customers about the status of their accounts.

288. Dixit and Josun knew or ought to have known that Banners Broker did not generate any revenue and operated entirely on the invested capital of Affiliates. They knew, or ought to have known, that the enterprise had no legitimate advertising business and that the products and services Banners Broker offered for sale were illusory. It was incumbent upon them to exercise the care, diligence and skill expected of any prudent person to recognize that this business model was unsustainable and that the representations being made to Affiliates were false, and ought not to be made.

289. Dixit was fixed with the knowledge through his own experience with ICF and other MLM programs, and Josun was fixed with the knowledge through his experience with the Silverline Club, that ventures such as Banners Broker that relied on recruitment enticement were inherently unstable and unsustainable, and potentially illegal; and that the representations being made to customers and potential customers about the profitability of the enterprise and the prospects of their investment were not true.

290. By engaging in a course of conduct the foreseeable result of which was the near-complete loss of Affiliates' funds, a criminal investigation, and the insolvency of the company, Dixit and Josun fell below the minimum standard of care required of them: namely, to take care that the business operated lawfully, dealt with customers honestly and generated a profit.

291. The defendants further breached their fiduciary obligations to the company by failing to inquire or act in respect of laws and regulations applicable to the company – most particularly Dixit in his role as BBIL's Compliance Officer.

292. Specifically, these defendant fiduciaries acted in ongoing breach of, and failed to investigate or accept advice in respect of the breach of, applicable Canadian laws.

293. Apart from the failure to discharge the fundamental duties of compliance and operating a *bona fide* business, BBIL, through its service provider Stellar Point, simply did not offer competent customer service. There was one prevailing issue amongst Affiliates; namely, that they were unable to access their funds. It was a breach of Dixit and Josun's duty to exercise due care, diligence and skill to overlook that omnipresent issue and to continue to operate BBIL without a view to addressing that problem and the underlying issue that funds were not, and never would be accessible because BBIL paid extraordinary expenses without generating any offsetting profit.

294. Dixit, in fact, deliberately contributed to that problem by dictating Stellar Point/BBIL policy, actively silencing Affiliate communications online and making misrepresentations personally on the internet for Affiliate consumption.

295. Dixit further breached specific duties of care he took upon himself by agreeing to act as BBIL's Chief Operating Officer and Compliance Officer.

296. As the acting Chief Operating Officer of BBIL for a short time, and the *de facto* Chief Operating Officer at all material times, Dixit fell below the standard of a reasonably prudent executive by incurring hundreds of millions of dollars in liability by directing Stellar Point, on behalf of BBIL, to make fraudulent misrepresentations to Affiliates, while fixed with the knowledge that those Affiliates could not possibly profit from the company's operations.

297. He further fell below that standard through improper management of corporate funds. Without limiting the generality of that allegation, Dixit did so in the following specific ways:

- (a) He failed to arrange for the proper segregation of invested funds from operating funds;
- (b) He failed to ensure Affiliates' money was properly invested in order to preserve shareholder and stakeholder value;
- (c) He failed to engage bookkeeping or accounting staff with an appropriate degree of experience and training for an operation of BBIL's size;
- (d) He failed to engage employees of the necessary skills and experience, and instead compensated employees with inadequate skills and experience well beyond market value; and
- (e) He mismanaged BBIL's finances directly by causing it to agree to the overbilling, double-billing and arbitrarily billing he arranged through the mechanism of Stellar Point.

298. Any competent executive, observing the incredible influx of Affiliate funds and the impossibility of generating profit, would have taken steps to preserve those investments and either wind up the company or to cause it to provide lawful goods or services for sale.

299. Dixit and Josun, however, received and spent the funds on themselves, misrepresenting those facts to Affiliates. Even if their intent was not fraudulent, which the plaintiffs plead it was, that course of conduct was contrary to common sense, grossly negligent, and the catastrophic results visited upon BBIL were entirely foreseeable by any reasonable person.

300. Accordingly, the Receiver – standing in the shoes of BBIL – claims against Dixit and Josun for their failure to operate BBIL competently as a law-abiding enterprise in a quantum adequate to cover the exposure to Affiliates and regulatory, criminal and quasi-criminal penalties BBIL may face as a result of their negligence.

#### **4.3.1. Oppression (Dixit and Dixit Companies)**

301. The Receiver, standing in the shoes of BBIL, makes application under Section 241 of the *CBCA* for a remedy in relief of Dixit's oppressive acts.

302. The operations of Stellar Point were conducted in such a manner as to be oppressive, unfairly prejudicial to, and unfairly disregarding the interests of BBIL, its main creditor.

303. Dixit's regular practice of using Stellar Point to overcharge, double-bill and arbitrarily invoice BBIL, and causing BBIL to pay those unreasonable charges was done for the purpose of moving Affiliates' funds to Stellar Point *en route* to diverting those funds to himself through shareholder loans, consulting fees and other miscellaneous disbursements. In so doing, Dixit caused Stellar Point to incur massive liability to BBIL.

304. Dixit's course of conduct, which prioritized the disbursement of funds to himself and his companies over the repayment of creditors unfairly disregarded their interests and attracts a remedy under Section 241 of the *CBCA*.

305. The Receiver now seeks an order under the *CBCA* unwinding and tracing those preferential transactions out of Stellar Point, a *CBCA* company. Any monies overcharged and therefore owing to BBIL as a creditor of Stellar Point that were then diverted to Dixit, Josun or other non-arm's length ventures, friends or family, must be traced and returned to BBIL; and any monies *properly* vesting in Stellar Point that were improperly diverted to Dixit, Josun or other non-arm's length ventures, friends or family without proper regard for the interests of creditors must be traced and returned to Stellar Point for the benefit of BBIL.

#### **4.4. Claims of the Receiver on Behalf of Stellar Point**

##### **4.4.1. Fraudulent Misrepresentation (Dixit and Dixit Companies)**

306. Throughout his tenure as Chief Operating Officer at BBIL, and as President of Stellar Point, Dixit frequently charged Stellar Point for purported business expenses, and caused those expenses to be reimbursed.

307. Many of those purported business expenses were personal expenses that had no actual business justification, such as the purchase of an All-Terrain Vehicle for his sister, or flights and hotel costs for his family members to accompany him on trips.



308. Moreover, Dixit would charge Stellar Point consulting fees through various Dixit Companies for services he was required to be providing in the normal course of his employment with Stellar Point. He would also cause numerous euphemistic and deceptive ledger entries to mask his withdrawals of cash from the company for his own use, including 'shareholder loans' and 'cost of goods' (where Stellar Point was not in the business of selling goods).

309. Dixit knew, or ought to have known, that these expenses were not commercially justifiable and that Dixit's representations as to their legitimacy were false. They nevertheless caused Stellar Point to act upon those false representations by reimbursing Dixit for the said expenses or releasing the funds for these improper purposes, to the detriment of Stellar Point.

310. The Receiver therefore claims against Dixit for compensation in respect of the expenses thus incurred and charged to the plaintiffs under the false pretence of a valid business justification.

#### **4.4.2. Breach of Fiduciary Duty: Misappropriation (Dixit)**

311. As a matter of common practice, Dixit would take advantage of his position as President of Stellar Point to divert the company's funds to the Dixit Companies or otherwise to withdraw funds from the company for his own use in the form of unjustifiable 'shareholder loans'; 'cost of goods sold' (where neither Banners Broker nor Stellar Point were in the business of selling goods); or 'consulting fees' to Dixit Consulting (i.e., himself under an assumed business name), Dixit Holdings, Inc., or other Dixit Companies.

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

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

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

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

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

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

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

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

##### *Dixit*

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

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

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

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

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

*Josun*

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

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

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

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

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

## **5.0 JURISDICTION AND FORUM**

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

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

May 30, 2016

**CASSELS BROCK & BLACKWELL LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David Ward**

LSUC #: 33541W  
Tel: 416.869.5960  
Fax: 416.640.3154  
dward@casselsbrock.com

**Larry Ellis**

LSUC #: 49313K  
Tel: 416.869.5406  
Fax: 416.640.3004  
lellis@casselsbrock.com

**Jeremy Martin**

LSUC #: 61610K  
Tel: 416.860.2929  
Fax: 416.640.3188  
jmartin@casselsbrock.com

Lawyers for the Plaintiff

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

and RAJIV DIXIT et al.

Defendants

Court File No.

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

**STATEMENT OF CLAIM**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David Ward**  
LSUC #: 33541W  
Tel: 416.869.5960  
Fax: 416.640.3154  
dward@casselsbrock.com

**Larry Ellis**  
LSUC #: 49313K  
Tel: 416.869.5406  
Fax: 416.640.3004  
lellis@casselsbrock.com

**Jeremy Martin**  
LSUC #: 61610K  
Tel: 416.860.2929  
Fax: 416.640.3188  
jmartin@casselsbrock.com

Lawyers for the Plaintiff



**Tab B**



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

October 2, 2014

**msi Spergel Inc.** 505 Consumers Road, Suite 200, Toronto, Ontario M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199 • [www.spergel.ca](http://www.spergel.ca)  
Barrie 705 722 5090 • Hamilton 905 527 2227 • Mississauga 905 602 4143 • Oshawa 905 721 8251 • Toronto-Central 416 778 8811

*Member - Canadian Association of Insolvency and Restructuring Professionals*

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL  
LIMITED, UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-  
BORDER INSOLVENCIES)

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

October 2, 2014

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### APPENDICES

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## 1.0 APPOINTMENT AND BACKGROUND

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

## 2.0 PURPOSE OF THE REPORT

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

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

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

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

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

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

### 3.0 ACTIONS OF THE RECEIVER UPON APPOINTMENT

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

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

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



### Criminal Proceedings in Respect of Banners Broker

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

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

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

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

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

[...]

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

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

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

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

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

3.0.15 The RCMP Affidavits identify the Associated Corporations in respect of which the Receiver now seeks authorization to make inquiries. Certain of these corporations were previously identified in the Joint Liquidators' investigations, as described in the Appleton Affidavit.

3.0.16 The RCMP Affidavits also reference funds held by Canadian financial institutions and electronic payment processors in relation to Banners Broker.

3.0.17 The RCMP Affidavits were a sufficient evidentiary basis for Justices of the Ontario Superior Court to grant, on an *ex parte* basis, on two separate occasions, broad ranging relief requiring accounts connected with the Associated Corporations to be frozen. As indicated, the court orders granted also compel third party financial institutions to provide information to the Crown.

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

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

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

#### **Receiver’s Investigations**

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

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

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

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

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

### **Bayview Property**

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

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

- 3.0.30 The Receiver is concerned that the Bayview Property may be sold, and the proceeds of sale put beyond reach of BBIL creditors, if a CPL is not issued.
- 3.0.31 In this regard, as recently as March of this year, 234 sold its interest in another Banners Broker connected real property in Whitby, Ontario.
- 3.0.32 Specifically, on March 27, 2014, 234 and Dixit Holdings Inc., a company controlled by Dixit, sold a jointly owned property municipally known as 5 Carlow Court, Whitby, Ontario. The property was sold for \$1.2 million. The Carlow Court property had been identified as a Banners Broker "Support Center" operated by Stellar Point Inc., an Associated Corporation controlled by Dixit, which formerly operated under the name "Bannersbroker Limited" or "Banners Broker Canada" (see for example, paragraph 42(d) of the Appleton Affidavit). Copies of relevant property subsearch results are attached hereto as **Appendix "13"**.
- 3.0.33 Based on the recent sale of the Carlow Property and the listing for sale of the Bayview Property, the Receiver has reasonable grounds to believe that the status quo will not be preserved if a CPL is not issued. If a CPL is not issued, the Bayview Property will very likely be sold and the proceeds of sale may become unrecoverable to creditors having claims as against 234 and its owners, including the Receiver as representative of creditors of BBIL.

3.0.34 The Bayview Property is legally described as:

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

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

#### 4.0 RECOMMENDATIONS

4.0.1 Based upon the foregoing, the Receiver respectfully requests:

a) An order granting certain additional investigatory authority to the Receiver pursuant to section 272 of the BIA in respect of five Associated Corporations that are evidently associated with BBIL and have been identified by the Royal Canadian Mounted Police ("RCMP") as being integral to an alleged "Banners Broker" enterprise of which BBIL was a central part ("**Banners Broker**"), including:

- (i) 2087360 Ontario Incorporated o/a Local Management Services;
- (ii) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited");
- (iii) 2341620 Ontario Corporation;
- (iv) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited");



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

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

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



---

Philip H. Gennis, J.D., CIRP

Tab C

# SPERGEL

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

January 12, 2015

**msi Spergel inc.** 505 Consumers Road, Suite 200, Toronto, Ontario M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199 • [www.spergel.ca](http://www.spergel.ca)  
Barrie 705 722 5090 • Hamilton 905 527 2227 • Mississauga 905 602 4143 • Oshawa 905 721 8251 • Toronto-Central 416 778 8813

*Member - Canadian Association of Insolvency and Restructuring Professionals*

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL  
LIMITED, UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-  
BORDER INSOLVENCIES)

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

January 12, 2015

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APPENDICES

1. Initial Recognition Order of The Honourable Madam Justice Matheson made August 22, 2014
2. Supplemental Order of The Honourable Madam Justice Matheson made August 22, 2014
3. Restraint Order of the Honourable Justice Kelly, dated July 18, 2014
4. Restraint Order of the Honourable Justice Code, dated July 29, 2014
5. Affidavit of Constable Katie Judd, sworn July 17, 2014
6. Affidavit of Constable Katie Judd, sworn July 28, 2014
7. First Report of the Receiver, dated October 2, 2014 (without appendices)
8. Further Supplemental Order of the Honourable Justice Newbould, dated October 15, 2014
9. Endorsement of the Honourable Justice Newbould, dated October 15, 2014

### APPOINTMENT AND BACKGROUND

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

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

3. Prior to being ordered wound up by the Isle of Man court, BBIL was a purported internet advertising business with operations either directly or through related companies around the world. BBIL was central to a corporate network or group of companies around the world in operating the "Banners Broker" online enterprise, a platform whereby registered members known as "affiliates" could advertise their businesses on various websites within the Banners Broker network of publishers while, at the same time, earning revenues as an advertising publisher through specialized and targeted publisher sites created, designed and hosted by BBIL. These former Banners Broker affiliates now make up the vast majority of known creditors of BBIL.

### PURPOSE OF THE REPORT

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

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

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

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

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

#### ACTIONS OF THE RECEIVER UPON APPOINTMENT

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

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

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



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

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

(collectively the “Restraint Orders”)

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

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

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

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

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

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

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

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

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

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

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

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

[...]

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

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

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

(referred to herein as “Associated Corporations”)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

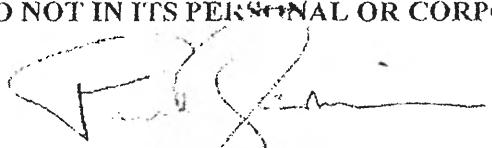
30. The Receiver is unaware of any action being taken by the Crown which would have the effect of continuing the Restraint Orders past January 18 and 29, 2015.

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

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

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

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

---

Philip H. Gennis, J.D., CIRP

Tab D

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

**July 30, 2015**



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

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

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

**July 30, 2015**

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- N. Affidavit of Larry Ellis sworn July 28, 2015
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### **Confidential Appendices**

- P. Receiver's Preliminary Analysis of the Global Flow of Funds
- Q. Report of msi Spergel inc., in its capacity as court-appointed receiver of Banners Broker International Limited to Cayman Island Department of Public Prosecution with a copy to Michael Pearson and Andrew Childe in their capacity as Official Liquidators of Clover Investment Advisors, dated April 28, 2015

## I. Overview

1. This is a foreign recognition and cross-border insolvency proceeding involving Canada and the Isle of Man. The debtor, Banners Broker International Limited ("**BBIL**"), was an internet advertising business operating both directly and through related entities and agents around the world. In many countries, BBIL contracted with local entities who acted as "independent contractors" or "resellers" for Banners Broker in a specific country or region. BBIL is believed to have hundreds of thousands of individual unsecured creditors in jurisdictions around the world.
2. Winding up proceedings commenced in the Isle of Man in January 2014. Six months later, in August 2014, the Isle of Man proceedings were recognized in Canada as a "foreign main proceeding" for the purposes of Part XIII of the *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27, s.2 ("**BIA**").
3. msi Spergel inc. was appointed receiver of BBIL in Canada ("**Receiver**"). The Receiver's mandate was expanded in October 2014 to include certain investigatory authority in respect of five corporations (and six business names/styles) believed to be closely associated with BBIL, and which had been identified by the Royal Canadian Mounted Police ("**RCMP**"), as a member of the Toronto Police Services Financial Crime Unit, as being integral to an alleged Banners Broker (defined below) criminal enterprise in which BBIL was a central part.
4. This is the Receiver's third report to the court ("**Third Report**"). It follows and may be read in conjunction with the:

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

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

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

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

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

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

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

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

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

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

## II. Foreign Recognition Proceedings

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

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

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

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

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

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

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

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

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

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

#### **A. Notices**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**D. Claim against 234**

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

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

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

#### **E. Confidentiality Order**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

#### **C. Interviews and Examinations of Key Witnesses**

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

##### **(a) Christopher G. Smith**

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

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

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

(b) **Rajiv Dixit**

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

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

(c) **Kuldip Josun**

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

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

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

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

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

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

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

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

- (a) **John Rock:** Regulatory Compliance Consultant to BBIL and/or Stellar Point (Interviewed on December 2, 2014);
- (b) **Stephanie Schlacht:** Executive Assistant to Kuldip Josun (May 2012 to July 2012); Executive Assistant to Rajiv Dixit (July 2012 to August 2013) (Examined on April 29 and June 11, 2015);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Macdonald Sager Manis LLP ("MSM")**

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Dixit Consortium.; and

(b) Dreamscape.

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

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

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

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

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

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

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

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

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

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

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

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



## VI. Asset Recoveries

### A. Settlement of 234 Claim

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

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

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

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

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

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



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

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

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

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

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

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

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

## B. Clover Funds

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

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

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

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

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

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

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

**C. St. Lucian Funds**

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

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

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

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

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

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

#### D. Allied Wallet

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

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

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

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

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

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

## **VII. Amendment of Supplemental Order**

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

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

## **VIII. Receiver's Fees and Disbursements**

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

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

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



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

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

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

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

## **XI. Recommendations**



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

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

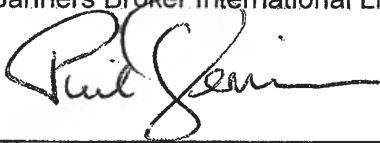
22, 2015, and Larry Ellis sworn July 28, 2015, (collectively, the "**Fee Affidavits**");

and

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

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

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



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

Tab E

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

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

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

**January 8, 2016**

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## I. Overview

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

- (a) directing that the Canadian Imperial Bank of Commerce (“**CIBC**”) and the Royal Bank of Canada (“**RBC**” with CIBC, collectively, the “**Financial Institutions**”) provide the Receiver with transaction details in respect of 50 identified account transactions sufficient for the Receiver to trace the funds disbursed by BBIL, and/or the Associated Corporations (defined below), and/or the Additional Dixit Entities (defined below), and to locate BBIL assets and any proceeds thereof;
- (b) directing CIBC to provide the Receiver with account statements for the VISA credit card accounts bearing numbers 4500 6001 0835 4253, 4500 6001 0800 2415, and 4502 2000 3806 4896 (collectively, the “**Visa Cards**”); and
- (c) such further and other relief as this Honourable Court may deem just.

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

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

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

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

## **II. Background**

### **Foreign Recognition Proceeding**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

i. Debit Memos

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

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

ii. Withdrawals

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

iii. Direct Deposits

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

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

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

iv. Illegible Documents

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

v. Transfers

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

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

C. **Visa Card Statements**

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

million from the Stellar Point and Dixit Holdings bank accounts. Visa card [REDACTED] 4253 ("**Visa 4253**") alone received over US\$1.3 million in payments.

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

59. Earlier this fall, and subsequent to the CIBC Request, the Receiver commenced its review of the Stellar Point Documents. Included in those documents are an incomplete set of account statements for Visa 4253 that confirm that the card is in Dixit's name. Further, one of the account statements for Visa 4253 that was reviewed by the Receiver also lists transactions for Visa [REDACTED] 2415 ("**Visa 2415**"). As a result, the Receiver believes that Visa 2415 is linked in some manner to Visa 4253.

60. The Receiver has not been able to identify the account holder of Visa [REDACTED] 4896 ("**Visa 4896**").

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

Visa Card	Amount Received
Visa 4253	US\$1,330,539
Visa 2415	US\$736,728
Visa 4896	US\$138,143
<b>Total:</b>	<b>US\$2,205,410</b>

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

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

- (a) Visa 4253: September 1, 2012 to December 31, 2013;
- (b) Visa 2415: September 1, 2012 to December 31, 2013; and
- (c) Visa 4896: June 1, 2012 to October 31, 2013

64. The Receiver has limited its request to this timeframe because it accords with the time period in which transfers were made from the CIBC Accounts to pay down the Visa Cards. According to the CIBC Account statements reviewed by the Receiver, Visa 4253 received payments from the CIBC Accounts from September 2012 to November 2013, Visa 2415 received payments from the CIBC Accounts from September 2012 to January 2013, and Visa 4896 received payments from the CIBC Accounts from June 2012 to September 2012. Thus, the Receiver believes that the requested time period is appropriate because it will capture any assets purchased using the Visa Cards (and ultimately paid for with funds from BBIL or the Associated Corporations).

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

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

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

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

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

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

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

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

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

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

**VI. Recommendations**

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

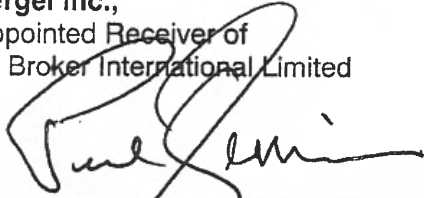
- (a) directing that the Financial Institutions provide the Receiver with transaction details in respect of the TOI;
- (b) directing that CIBC provide the Receiver with account statements for the Visa Cards;
- (c) directing that the Receiver reimburse the Financial Institutions for their reasonable costs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



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

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

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

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

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

Tab F

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

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

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

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

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

**April 4, 2016**

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- C. Letter from counsel for Dixit to counsel for the Receiver, dated August 19, 2015
- D. Notice to Cure, dated September 1, 2015
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- F. Parcel Register for Dixit's residence
- G. Evidence Registers
- H. Toronto Police Services press release, dated December 9, 2015
- I. Bank Production Order, dated January 13, 2016, as amended January 20, 2016
- J. March 30, 2016 Order
- K. Joint Liquidators' Third Report, filed March 11, 2016, without exhibits
- L. Chart of Mercedes-Benz Purchases by Stellar Point Inc. and Dixit Holdings Inc.
- M. Federal government corporate profile report for Bannersbroker Canada
- N. Corporate Organization Chart for Bannersbroker Canada, Dixit Holdings Inc., Dixit Consortium Inc. and Dreamscape Ventures Ltd.
- O. Banners Broker International Reseller Agreement, dated January 1, 2012
- P. June 13, 2012 Letter from Dixit to Smith
- Q. Consulting Agreement between Bannersbroker Canada and Banners Broker International Ltd., dated July 31, 2012
- R. Table of Invoices issued by Bannersbroker Limited, Stellar Point Inc. to MGI and BBIL
- S. Agreement dated August 1, 2013
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- U. Letter from the Receiver to HSBC, dated September 9, 2014
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- W. Email from HSBC to the Receiver, sent January 16, 2015
- X. Letter from the Receiver to HSBC, dated August 10, 2015
- Y. Email from HSBC to the Receiver sent August 13, 2015 (without attachments)
- Z. Email from Receiver to HSBC sent February 2, 2016

- AA. Letter from HSBC to the Receiver's counsel dated March 11, 2016 (without enclosures)
- BB. Affidavit of Philip Gennis, sworn April 4, 2016
- CC. Affidavit of Larry Ellis, sworn April 4, 2016
- DD. Receiver's Interim Statement of Receipts and Disbursements, as at March 31, 2016

**Confidential Appendices**

- A. Flow of Funds Diagram for Via Bank
- B. Flow of Funds Analysis
- C. Receiver's and Joint Liquidator's Preliminary Analysis of the Flow of Funds

## **I. Overview**

1. Through the Court Officers' review of tens of thousands of documents it is clear that approximately 100,000 people in more than 120 countries paid over US\$156 million<sup>1</sup> for "Banners Broker" product. The Joint Liquidators and the Receiver have focused their time, effort and resources on obtaining records and tracing funds, all with a view to recovering as much money as possible and providing creditors with the story of what actually took place.

2. In due course the Receiver will be providing a holistic overview of the Banners Broker business and what actually occurred during its three years of operation. However, for the purposes of this report, it is important to understand two key concepts: what is a "creditor" and what is the Banners Broker "product".

3. In October 2010 Banners Broker principals set up a website called bannersbroker.com that promised visitors a doubling of their money if they could recruit others in a marketing program involving the sale of online advertising. In effect the "product", which was described as "advertising", offered parties the opportunity to double their money.

4. The creditors of Banners Broker are the tens of thousands of individuals who bought the product with a view to earning returns.

## **II. Legal Proceedings**

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

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<sup>1</sup> Unless otherwise indicated, all amounts referenced in this report are in Canadian dollars.



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

7. msi Spergel inc. was appointed receiver of BBIL in Canada ("**Receiver**"). The Receiver's mandate was expanded in October 2014 to include certain investigatory authority in respect of five corporations (and six business names/styles) believed to be closely associated with BBIL. The Receiver's mandate was further expanded in August 2015 to include certain investigatory authority in respect of two additional corporations believed to be associated with BBIL.

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

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

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

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

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

(c) **Receiver's Third Report** (dated July 30, 2015)

This report was filed in support of the Receiver's motion for approval of a settlement agreement with a BBIL group entity, and for the grant of certain limited investigatory authority in respect of recently identified BBIL associated companies. The report also provided an update on the activities of the Receiver since its First Report.

(d) **Receiver's Fourth Report** (dated January 8, 2016)

This report was filed in support of the Receiver's motion for the production of certain banking records from the Royal Bank of Canada ("**RBC**") and the Canadian Imperial Bank of Commerce ("**CIBC**"). The Fourth Report also provides an update on the Receiver's activities since the Third Report.

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

10. The purpose of this Fifth Report is to provide an update to the Court with respect to developments in the receivership proceedings and to describe the relief sought by the Receiver and the evidentiary basis therefore. Relief is sought on this motion with a view to:

- (a) converting the investigatory receivership of BBIL-associated entity Bannersbroker Canada (defined below) into standard receivership proceedings;
- (b) declaring that the St. Lucian Funds (as defined below) are BBIL Funds to be used in accordance with the Receiver's mandate;
- (c) directing HSBC Bank plc, and any and all of its Canadian subsidiaries and creditors to produce any and all documents within its possession or control that relate to BBIL, the Associated Corporations (defined below) and the Additional Dixit Entities (defined below);
- (d) approving the Fifth Report and the conduct and activities of the Receiver as set out herein;
- (e) granting a sealing order with respect to Confidential Appendices "A", "B" and "C" to this Fifth Report;
- (f) approving the Receiver's interim statement of receipts and disbursements as at March 31, 2016;

- (g) approving the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), for services rendered from June 1, 2015 to February 29, 2016, as particularized in the affidavits of Phillip Gennis sworn April 4, 2016, and Larry Ellis sworn April 4, 2016, (collectively, the "**Fee Affidavits**")

11. The following section of this report (pages 4 to 11) briefly reviews the nature of the Banners Broker business, the commencement of wind-up proceedings in the Isle of Man, and the initiation of foreign recognition and receivership proceedings in Canada. It is presented by way of background to the relief requested on this motion. Developments in the receivership proceeding since the date of the Third Report (July 30, 2015), are addressed beginning at paragraph 40, page 11.

### III. Background

#### A. Foreign Recognition Proceedings

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

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

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

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

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

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

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

16. An important ground for the Canadian foreign recognition application, and the appointment of a Canadian receiver, was that BBIL appeared to have ownership and business connections to Canada, as well as financial dealings tied to Canada, that were deserving of investigation. These Canadian connections, as they were then understood, were detailed in the affidavit of Paul Robert Appleton, in his capacity as Joint Liquidator of BBIL, sworn August 6, 2014 and filed with this court at the time that foreign recognition of the Isle of Man Proceeding was sought ("**JL Affidavit**").

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

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

##### *i. Notices*

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

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

*ii. Discovery of Criminal Investigation and Restraint Orders*

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

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

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

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

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

25. Specifically, the entities identified by the RCMP Affidavits are:

- (a) 2087360 Ontario Incorporated o/a Local Management Services ("**LMS**");
- (b) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited") ("**Parrot**");
- (c) 2341620 Ontario Corporation ("**234**");
- (d) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited") ("**Bannersbroker Canada**");
- (e) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited") ("**Dixit Holdings**");  
and
- (f) any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "BannersMobile" or "Banners Broker Belize"

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

*iii. Receiver's Motion for Additional Investigative Authority*

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

27. The Honourable Mr. Justice Newbould issued an Order granting the Receiver the requested additional investigative authority in respect of the Associated Corporations on

October 15, 2014 ("**Further Supplemental Order**"). The Further Supplemental Order requires persons with notice thereof to advise the Receiver of any books, documents, or other records related to the Associated Corporations in the person's possession or control, and to provide the Receiver with or allow the Receiver to make copies of such documents. The Further Supplemental Order also approved the actions and activities of the Receiver as set out in the First Report.

*iv. Confidentiality Order*

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

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

30. Smith's concerns were acknowledged and resolved in the form of an order of this court dated October 23, 2014, entitled "Order Restricting Possession, Publication, Handling, Duplication and Use of Transcript Documents and Information".

*v. Order for Continued Restraint of Payment Processor Monies*

31. The Criminal Restraint Orders, described in paragraph 21, above, statutorily expired six months after issuance.

32. By early January 2015, the Court Officers had formed the view that the source of the restrained funds held in the payment processor accounts derived from deposits/investments made by Banners Broker creditors. The Receiver further believed, and continues to believe, that



there had been significant inter-company transfers of affiliate-contributed funds between BBIL and the Associated Corporations. Moreover, and as discussed in the Receiver's Second Report, roughly half of funds received by Banners Broker from creditors were not used to fund withdrawal requests by creditors, resulting in tens of thousands of individual creditors.

33. In these circumstances, the Receiver concludes that monies restrained by the Criminal Restraint Orders are properly claimable by creditors of BBIL and/or the Associated Corporations. The basis for this conclusion is that the Criminal Restraint Order Funds were sole sourced by Banners Broker creditor funds.

34. By motion returnable January 14, 2015, the Receiver brought a motion for an order that all monies held pursuant to the terms of the Criminal Restraint Orders (as defined in paragraph, 21, above) continue to be held pursuant to the terms of the Criminal Restraint Orders, and not be released without the written consent of the Receiver or further order of the court on notice to the Receiver. The motion was granted by order of the Honourable Mr. Justice Newbould made January 14, 2015 ("**Restraint of Funds Order**").

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

36. Pursuant to the terms of the Restraint of Funds Order, the following payment processors transferred the following funds to msi Spergel inc., in its capacity as court officer:

- (a) Beanstream Internet Commerce Inc. ("**Beanstream**"): \$537,576.31;
- (b) SolidTrust Pay ("**STP**"): \$104,260.51;
- (c) Mazarine Commerce Inc. o/a Payza.com ("**Payza**"): US\$33,374.80; and

(d) 6003061 Canada Inc. o/a UseMyServices ("**UMS**"): US\$93,336.70.

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

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

*vi. Receiver's Motion for Investigative Authority Over the Additional Dixit Entities*

38. In the course of the Receiver's review and analysis of documents received in response to its inquiries under the Supplemental Order and Further Supplemental Order, and as further detailed in the Third Report, the Receiver determined that there were two additional companies that had significant Banners Broker related dealings: 8643989 Canada Inc. o/a Dixit Consortium Inc. ("**Dixit Consortium**") and Dreamscape Ventures Ltd. ("**Dreamscape**", with Dixit Consortium, collectively the "**Additional Dixit Entities**"). The Additional Dixit Entities, as well as Bannersbroker Canada and Dixit Holdings, are controlled by Dixit.

39. The Receiver applied for and was granted investigative authority in respect of the Additional Dixit Entities ( "**Additional Authority Order**") by order dated August 7, 2015. As with the Further Supplemental Order, the Additional Authority Order requires persons with notice thereof to produce to the Receiver books, documents, or other records related to the Additional Dixit Entities in the person's possession or control. The Additional Authority Order also approved the actions and activities of the Receiver as set out in the Third Report.

#### **IV. Developments Since the Receiver's Third Report**

##### **A. "Cease and Desist" Notices from Dixit**

40. On or about August 12, 2015, the Receiver, the Joint Liquidators, and counsel for the Receiver were served with notices to "Cease and Desist" from Dixit ("**Cease and Desist**

**Notices**”). The Cease and Desist Notices require that the recipients cease and desist “grievous trespass creating great harm to the man master rajiv of the family dixit [*sic*], known to you and other third party interlopers as Mr. Rajiv Dixit.” A copy of a Cease and Desist Notice is attached as **Appendix “A”**.

41. The Cease and Desist Notices go on to state that if the Court Officers and their counsel do not cease and desist “all actions and claims against Mr. Rajiv Dixit and or Rajiv Dixit forthwith” Dixit will invoice them \$47,304,000.00 silver dollars “[p]lus, for each second starting at 12:00:01 AM until the cease and desist is complied with, each Respondent will be charged an additional \$36.000 per second.”

42. After receiving the Cease and Desist Notices, counsel for the Receiver contacted Dixit’s lawyer and asked that the notices be retracted. A copy of the letter from the Receiver’s counsel to counsel for Dixit, which is dated August 14, 2015, is attached as **Appendix “B”**.

43. Dixit’s counsel responded by letter dated August 19, 2016. He said that he did not represent Dixit with respect to the Cease and Desist Notices, only the receivership proceedings. Dixit’s counsel also advised that Dixit would not retract the Cease and Desist Notices. A copy of the August 19, 2015 letter is attached as **Appendix “C”**.

44. Approximately three weeks later, on September 9, 2015, the Receiver, Joint Liquidators and certain lawyers at Cassels each received a “Notice to Cure” from Dixit. The Notice to Cure references the Cease and Desist Notices and offered the recipients a “reminder to engage [Dixit] in communication concerning [his] rights and freedoms as duly declared in the original notice.” A copy the Notice to Cure is attached as **Appendix “D”**.

45. By letter dated September 11, 2015, counsel for the Receiver wrote to counsel for Dixit and reiterated the Receiver’s position that the notices were contrary to the stay of proceedings. Receiver’s counsel advised that the Notices were frivolous, vexatious and without legal basis

and requested that they be retracted. A copy of the September 11, 2015 letter is attached as **Appendix “E”**.

46. Despite the Receiver’s requests that the Notices be withdrawn, they remain outstanding. It is the Receiver’s position that the Cease and Desist Notices are in violation of the stay of proceedings, and as such are of no force and effect. The Receiver will further address this point at the return of this motion and the court’s assistance may be sought as is appropriate.

**B. Dixit Moves to British Columbia**

47. On August 11, 2015, Dixit’s lawyer advised the Receiver that Dixit would be moving from Toronto to Vancouver. Upon learning that Dixit would be leaving Ontario, the Receiver requisitioned a parcel register for Dixit’s personal residence in Oshawa. The parcel register indicates that Dixit sold his house on July 20, 2015. A copy of the parcel register is attached hereto as **Appendix “F”**.

48. In response to a broad document production request (i.e. not specific to the residence) made by counsel for the Receiver, Dixit produced information relating to the sale of the property. The sale proceeds were directed to pay down two mortgages and to satisfy a support order, with the balance of the monies (after transaction costs) paid to Dixit and his wife Stephanie Schlacht (“**Schlacht**”).

**C. Criminal Proceedings Against Dixit and Smith**

*i. Execution of Search Warrants Against Dixit and Smith*

49. As in the Third Report, the Receiver is aware that criminal proceedings are pending against Smith and Dixit. To that end, the Receiver learned that on February 24, 2015, eight search warrants were executed at the properties of Dixit and Smith, including personal automobiles, residences and places of business.

50. A publically available affidavit, in the form of a "Report to Justice", was filed with the Ontario Court of Justice in connection with the execution of the search warrants. The Report to Justice annexes six evidence registers listing property seized in the course of execution of the search warrants. A copy of the evidence registers is attached hereto as **Appendix "G"**.

51. The Receiver reviewed the evidence registers and concluded that certain of the documents identified therein would assist in the fulfillment of its mandate. Based on discussion with Smith's counsel and the Crown, the Receiver first determined that an application should be brought to the Ontario Court of Justice to obtain documents relevant to the implementation of the 234 Settlement (defined below). Such application proceeded with the consent of Smith and the Crown. Justice Omastu issued an order on May 4, 2015, pursuant to section 490(15) of the Criminal Code authorizing production of the documents to the Receiver.

*ii. July Records Application: Production of Documents Seized by Police*

52. Upon further consideration of the evidence registers, the Receiver brought a second application to the Ontario Court of Justice, initially returnable on July 9, 2015, seeking copies of the balance of the documents seized by the police ("**July Records Application**"). The basis for this application is that the documents listed in the evidence registers appear relevant and it is believed that they will assist the Receiver in the fulfillment of its mandate. Additionally, it is the Receiver's position that the documents sought constitute "Records" such that they are *prima facie* captured by the document production provisions of the relevant receivership orders.

53. Documents referenced in the evidence registers appear relevant to the Receiver's investigations based on the descriptions that the police have assigned to the documents. For example, the evidence registers reference documents such as "Booklet Dreamscape Ventures Ltd. British [V]irgin Islands incorporated May 22, 2012"; "Bank of Cyprus Bank Statement 2013 Dreamscape Ventures Ltd."; "Bank of America Chris Smith Bannersbroker USA"; "Cyprus Bank

re: Dreamscape Ventures Ltd.”; invoices issued to Dixit Consortium and Dreamscape; and documents regarding money “sent to Belize”.

54. Documents referenced in the evidence registers are of interest to the Receiver as they appear to relate to the business, operations and assets of Banners Broker group entities. Certain of the listed documents are of particular interest as they appear to relate to important open issues in the Receiver’s investigation, such as the business and accounting of Dreamscape, as well as Banners Broker’s Belizean investments and connections in the months following the relocation of customer service and support to that jurisdiction in late 2013.

55. Based on a review of the evidence registers it appears to the Receiver that it does not have many of the documents referenced, and that such missing documents would be of assistance to the Receiver in fulfilling its mandate if they could be obtained.

56. Smith, through counsel, raised privilege and relevancy concerns with respect to the July Records Application and has asked that he have an opportunity to review all seized documents and computer storage devices before they are made available to the Receiver. Dixit raises similar concerns.

57. The July Records Application was adjourned *sine die* in furtherance of discussions towards a document production protocol that would meet the needs of the Crown, the co-accused and the Receiver.

*iii. Criminal Charges Laid Against Dixit and Smith*

58. On December 9, 2015, Dixit and Smith were arrested in Toronto and charged with violations of the Criminal Code and the Competition Act. More specifically, they were charged under the Criminal Code with (i) defrauding the public over \$5,000; (ii) possession of proceeds of crime; and (iii) laundering proceeds of crime. They were also both charged under the

Competition Act with (i) operating a pyramid scheme; and (ii) making false or misleading statements.

59. The Toronto Police allege, among other things, that:

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

A copy of the Toronto Police Services press release dated December 9, 2015 is attached hereto as **Appendix "H"**.

60. The criminal charges were filed before the July Records Application could be returned to court for a hearing. As a consequence of this development Smith was not prepared to finalize a document production protocol and resolve the Receiver's motion until he had an opportunity to consider such disclosure in the broader context of the criminal prosecution.

61. The criminal proceedings are relevant to the Receiver's mandate and administration in several important respects. Specifically:

- (a) the publically available documents, particularly the RCMP Affidavits (described in paragraphs 22 to 25, above), have advanced the receivership by identifying certain of the Associated Corporations and describing how they formed an integral part of the Banners Broker business and operations in Canada and abroad;

- (b) the publically available Criminal Restraint Orders (described in paragraph 21 above) disclosed the Crown injunction as against the Restrained Funds. As described in paragraph 36 above, the Restrained Funds were subsequently ordered to be transferred to msi Spergel inc. to be held pending further order of this court;
- (c) information obtained from the publically available documents served to identify banks and payment processors that were valuable sources of financial information, which information advanced the Receiver's understanding of how funds flowed between Banners Broker entities; and
- (d) more generally, all of the information obtained as a consequence of the criminal proceedings has assisted the Receiver in understanding the Banners Broker enterprise and identifying potential sources of recoveries for creditors.

62. The Receiver intends to continue to monitor developments in the criminal proceedings on the basis that they are relevant parallel proceedings involving common issues and documents. It may be that there will be additional disclosures obtained and efficiencies gained from monitoring public aspects of the prosecution.

63. The Receiver attended to monitor a "show cause" hearing held immediately after Dixit and Smith were arrested and charged. The accused were released on bail. The show cause hearing is otherwise subject to a publication ban.

64. Counsel for Smith and Dixit appeared in court again on January 14, 2016, along with the Crown Attorney prosecuting the case. In the course of this hearing the Receiver learned that the Crown had provided disclosure to Smith and Dixit in the form of hard drives of documents.

65. On February 16, 2016, counsel for Smith and Dixit again appeared in criminal court in Toronto. The Crown advised the court that it had provided additional document disclosure to Smith and Dixit and that it considered disclosure to be substantially complete.



66. The Receivership orders made provide the Receiver with a *prima facie* right to access to Records including Records found within the Crown disclosure. Having said that, the Receiver understands that there may be other interests at play when it comes to providing access to Crown disclosure in the context of a parallel criminal prosecution of the principals of the debtor. The Receiver and counsel for Smith and Dixit commenced discussions regarding the appropriate timing and manner of access to Crown disclosure.

**D. Receiver's Motion for the Production of Banking Records**

67. As further detailed below, the Receiver and Joint Liquidators are working to complete an accounting of BBIL receipts and disbursements. The accounting is based primarily on financial records received from financial institutions and electronic payment processors that provided services to Banners Broker Group entities.

68. In the course of conducting an accounting in respect of Bannersbroker Canada, Dixit Holdings, and Dixit Consortium the Receiver identified 50 transactions of interest, all over \$5,000, in respect of which the Receiver had been unable to identify the recipient of the debit (withdrawal) from the Accounts ("**TOI**").<sup>2</sup> As at January 2016, the TOI collectively constituted a US\$1.7 million gap in the Receiver's accounting.

69. Additionally, in reviewing the bank accounts belonging to Bannersbroker Canada and Dixit Holdings, the Receiver identified three CIBC Visa cards that received approximately US\$2.2 million from the Bannersbroker Canada and Dixit Holdings bank accounts ("**Visa Cards**"). The Receiver asked that CIBC produce account statements for the Visa Cards. CIBC declined to do so on the basis that the accounts were not in the names of the parties identified in the orders obtained by the Receiver as of the date of the Receiver's request.

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<sup>2</sup> One of the transactions of interest was a \$10,000 transaction from a Parrot bank account held with CIBC. The remainder of the unverified disbursements were made to accounts belonging to entities controlled by Dixit.

70. Combined, the TOI and Visa Cards payments represented nearly a quarter of the US\$16.7 million received by Dixit and entities controlled by him based on the documents received to date.

71. By motion returnable January 13, 2016, the Receiver sought an order directing RBC and CIBC to provide the Receiver with transaction details relating to the TOI, and the Visa Cards (**"Bank Production Motion"**).

72. The Receiver's motion was brought on notice to RBC and CIBC. It was brought *ex parte* to Banners Broker entities and former principals.

73. The motion was brought *ex parte* out of a concern that had notice been given it may have become more difficult for the Receiver to trace and preserve assets identified by the transaction details disclosed. The Receiver made this determination because there would be an opportunity for parties with control of residual funds in Canada to move such assets outside of the jurisdiction of this Court. There is evidence that Banners Broker's former principals have a demonstrated capacity and inclination to transfer funds off-shore.

74. The Honourable Mr. Justice Penny granted the Receiver's motion for production of certain additional banking records by order dated January 13, 2016 (**"Bank Production Order"**). A copy of the Bank Production Order, as amended January 20, 2016 (to correct a transposed digit in an account number), is attached as **Appendix "I"**.

75. The respondent financial institutions complied with the Bank Production Order and produced documents responsive to the Receiver's request.

76. The Receiver and the Joint Liquidators have reviewed the additional financial institution records produced, assessed their actionability, and incorporated relevant information into its Flow of Funds Analysis (defined below). The information obtained was of significant value,

particularly as it has allowed the Receiver to advance its tracing and accounting of affiliate contributions to the Banners Broker business.

77. The Receiver returned to Court on March 30, 2016, to set aside the provision in the Bank Production Order which required that the order and the underlying motion remain confidential. A copy of the March 30, 2016 order setting aside the confidentiality provision is attached hereto as **Appendix "J"**.

#### **E. Joint Liquidators Report to Court**

78. The Joint Liquidators are required by the *Companies Act* 1931 and the *Companies (Winding-up) Rules* 1934 to report to the High Court of Justice of the Isle of Man on a regular basis.

79. The Joint Liquidators' most recent report to the Isle of Man court was filed on March 11, 2016 and covers a reporting period beginning October 20, 2014 and ending August 7, 2015 ("**JL's Third Report**"). A copy of the JL's Third Report, without exhibits, is attached as **Appendix "K"**.

80. Recognizing Banners Broker's extensive Canadian connections, the JL's Third Report mirrors the Receiver's reports filed with this Court. Reporting that is unique to the JL's includes descriptions of "United Kingdom based investigations" (page 15), "Committee of Inspection" (page 81), "Isle of Man Reporting Requirements" (page 82), and "Isle of Man Tax Return for BBIL" (page 82).

#### **V. General Observations and Conclusions With Respect to the Banners Broker Group of Companies**

81. As noted above, the Receiver sought and was granted certain limited investigatory authority in respect of five Banners Broker Associated Corporations in October 2014. The grounds for the order obtained was, among other things, that the companies were owned and controlled by the same principals as BBIL, and had been used by them interchangeably in

furtherance of the Banners Broker enterprise which is alleged by the Crown to have been a fraudulent pyramid scheme.

82. In the course of its initial investigations and the preparation of the Flow of Funds Analysis (defined below), the Receiver concluded that Dixit Consortium and Dreamscape also had Banners Broker related dealings, and that the nature and timing of the dealings was indicative of a level of involvement in the Banners Broker business consistent with that of the Associated Corporations. On this basis limited investigatory powers were sought and obtained in respect of these companies as well.

83. In every case, the Receiver's investigatory powers in respect of Banners Broker group entities were sought and obtained on full notice to those affected. The relief obtained was not opposed.

84. The Receiver's work and findings to date in respect of the Associated Corporations and the Additional Dixit Entities is set out in the following sections of this report. The companies are discussed in order of their apparent relative importance to the Banners Broker business.

85. The Receiver's conclusions with respect to the business of the Banners Broker group companies generally, including BBIL, the Associated Corporations and the Additional Dixit Entities are as follows:

- (a) between December 2010 and November 2014 almost all of the funds received by the Associated Corporations and the Additional Dixit Entities was monies received directly or indirectly (through BBIL or Monetize Group Inc. ("**MGI**"), BBIL's sole shareholder and a Belizean corporation) from Banners Broker creditors. There is no evidence that these companies had independent paying clients or sources of revenue apart from Banners Broker;

- (b) BBIL receipts from creditors generally flowed from payment processors up to the offshore parent entity (MGI). The monies were subsequently disbursed at Smith's direction and/or Dixit's request for a wide variety of business and non-business purposes. In most cases there does not appear to be a contractual, restitutionary or other basis for such payments. The transfers of funds from BBIL to MGI are reflected in the Flow of Funds at Confidential Appendix "B";
- (c) although there has not as yet been a formal claims process, creditor claims made to date consist of approximately US\$27,959,782 million in creditor claims. At least 100,000 people in 120 countries contributed amounts totaling US\$156.44 million, with a fraction of the creditors succeeding in making "withdrawals" totaling perhaps \$78.93 million. Third party arms length suppliers to the Banners Broker group were paid in due course such that the Receiver is not aware of any amounts being owed to such suppliers;
- (d) as a general matter, funds were transferred between the Banners Broker group entities (primarily BBIL, MGI, and Bannersbroker Canada) when and as needed, on an *ad hoc* basis, and without any loan or contractual basis. Such transfers were largely undocumented from a corporate records or accounting perspective. While invoices were at times created to provide support for payments, such invoices were summary in nature and were themselves unsubstantiated;
- (e) there is little if any evidence to suggest that the dozens of large intra-company transfers (totaling approximately US\$17.14 million from August 2012 to August 2014) from MGI to Parrot, 234, Bannersbroker Canada and Dreamscape represent reasonable and fair compensation for services rendered;

- (f) there are no invoices, intercompany loan agreements, or other BBIL/MGI reporting or accounting of millions of dollars of transfers, apart from bank statements maintained by the financial institutions across the transactions. A further explanation is provided in paragraphs 103-111 below;
- (g) non-cash assets were similarly transferred between Banners Broker entities without any business or contractual reason, and little if any documentation. Dixit, for example, appears to have purchased five Mercedes-Benz automobiles using funds from Bannersbroker Canada's bank accounts. The vehicles were placed in the names of Dixit Holdings and Parrot. Attached as **Appendix "L"** is a chart providing some additional details of these vehicle purchases;
- (h) Dixit used the bank accounts of Bannersbroker Canada, Dixit Holdings and Dixit Consortium to fund at least US\$3.34 million of personal expenses. These funds were spent by Dixit without ever properly accounting for or reimbursing the respective corporations;
- (i) BBIL, the Associated Corporations and the Additional Dixit Entities were all managed and controlled by one or both of Banners Broker principals Smith and Dixit. While other persons may have served as officers or directors of these companies from time to time, such persons were generally related to and nominees of Smith and Dixit;
- (j) employees within the Banners Broker group (e.g. Bannersbroker Canada and Parrot), sometimes worked for one or more Banners Broker group companies (mainly Bannersbroker Canada and Parrot), and performed various roles at the direction of Smith and Dixit. At least a dozen people, including Smith and his assistant, worked for one or more of Bannersbroker Canada, Dixit Consortium

and Parrot Marketing. It does not appear that BBIL had any employees of its own;

- (k) although Bannersbroker Canada and Dixit Holdings retained a bookkeeper to book account entries for the two companies at Dixit's direction, none of the Banners Broker entities employed the services of an accounting professional, or otherwise took steps to prepare and maintain reliable internal accounts, financial statements, or tax returns;
- (l) Banners Broker entities projected the image of being a singular entity. Creditors and third party service providers believed that they were dealing with Banners Broker, rather than BBIL or Bannersbroker Canada. Creditors had a single point of contact for Banners Broker – Bannersbroker Canada. Bannersbroker Canada was the “face” of Banners Broker providing worldwide customer support, IT services, and training to Banners Broker creditors and resellers; and
- (m) for all of the above reasons, it is difficult to trace or segregate the group's affiliate-funded assets for the purposes of determining where the assets and liabilities within the group ought to be attributed and which creditor claims are against which entity. It would take a significant amount of time and estate resources to make such determinations without any guarantee that the Receiver could conclusively trace all assets and liabilities to a given entity.

**VI. Relief Sought****A. Investigatory Receivership Update and Receiver's Recommendations With Respect to the Conversion of the Investigatory Receivership of Bannersbroker Canada to a Possessory Receivership**

86. The Receiver has concluded that the investigatory receivership of Bannersbroker Canada ought to be converted into a standard possessory receivership for the following reasons:

- (a) Bannersbroker Canada was a central and interchangeable element of the Banners Broker business operated by the Banners Broker principals to market Banners Broker "product". The company is currently inactive. Its major known asset, the Restrained Funds, has been transferred to the court officer. A wind-up of the company in conjunction with the BBIL liquidation will further and best protect the interests of creditors of the Banners Broker enterprise;
- (b) it is in the best interests of the creditors of both BBIL as well as Bannersbroker Canada that Bannersbroker Canada be wound up in a manner that is court-supervised, open and transparent. A receiver will be required to seek court approval of its activities on notice to all interested parties;
- (c) the appointment of a full receiver will position such receiver to pursue and realize upon any residual Bannersbroker Canada assets and claims. These include the \$537,000 in Bannersbroker Canada Restrained Funds;
- (d) Bannersbroker Canada and BBIL were involved in the same enterprise, projected the image of being a singular entity, and have similar if not identical creditor profiles. Bannersbroker Canada is not operating and has no employees. No person will be prejudiced by the transition to a full receivership;
- (e) Bannersbroker Canada does not oppose a possessory receivership. This has been confirmed by Dixit through his counsel in his capacity as the company's



sole director and 85% owner (through Dixit Holdings), as well as Kelly Stinson (“**Stinson**”) who owns the remaining 15% of Bannersbroker Canada through her company 8136645 Canada Limited. Dixit and Stinson were consulted in respect of the relief sought and are on notice of this motion; and

- (f) it is just, convenient and appropriate that the investigatory receiver's powers be transitioned to those of a standard model order receiver in all of the circumstances. It is submitted that both the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (s. 101) and the BIA (s.272(1)) provide jurisdiction to do so in these circumstances.

87. The Receiver's report in respect of Bannersbroker Canada is based upon a review of corporate books and records, bank account statements, financial records (albeit largely incomplete), and tax returns (also incomplete). Information was also obtained from interviews conducted with BBIL principals, answers to undertakings, and public records searches.

88. Bannersbroker Canada was incorporated as 7250037 Canada Inc. on September 28, 2009. The company was formed approximately two years before it began conducting business in conjunction with and on behalf of Banners Broker.

89. A current corporate profile report for Bannersbroker Canada indicates that its sole director is Dixit. In terms of ownership, Bannersbroker Canada was and remains majority owned by Dixit. Dixit Holdings owns 85% of the issued and outstanding shares of Bannersbroker Canada. The remaining 15% of Bannersbroker Canada is held by 8136645 Canada Limited, Stinson's company. Attached as **Appendix “M”** is the federal government corporate profile report for Bannersbroker Canada. Attached as **Appendix “N”** a corporate organization chart depicting the corporate relationship between Bannersbroker Canada, Dixit Holdings, Dixit Consortium, and Dreamscape.

90. Bannersbroker Canada has common officers and directors with BBIL and the Associated Corporations. Both Dixit and Smith have served as directors of Bannersbroker Canada. Dixit has held a position as a director of Bannersbroker Canada since its incorporation on September 28, 2009. According to Bannersbroker Canada's corporate records, Smith was appointed as a director on February 1, 2012.<sup>3</sup> Smith has advised the Receiver that he was never an officer or director of Bannersbroker Canada. Bannersbroker Canada's other directors were associates of Dixit: his mother Gloria Dixit and Kurt Kornelson.

91. In 2011, Bannersbroker Canada (or as it was then legally known, 7250037 Canada Inc.) began conducting business on behalf of Banners Broker. Initially, the company acted as a "reseller" and a "legal representative" of Banners Broker. In this capacity, 7250037 Canada Inc. was very broadly authorized to "make any commitments on behalf of Banners Broker International" and to use the Banners Broker International trademarks and trade names to promote and solicit sales".<sup>4</sup>

92. Beginning in November 2011, 7250037 Canada Inc. variously held itself out as Banners Broker Canada, Bannersbroker CA and BB Canada. 7250037 Canada Inc. changed its legal name to Bannersbroker Limited on February 22, 2012.

93. Bannersbroker Canada's role within the Banners Broker enterprise expanded throughout the first half of 2012, presumably in connection with the growth of the Banners Broker business. By mid-2012, Bannersbroker Canada's responsibilities had evolved to include providing customer service to Banners Broker creditors, managing reseller commission payments,

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<sup>3</sup> Upon review of Bannersbroker Canada's corporate books and records, it does not appear that Smith's appointment as director was ever filed with Industry Canada.

<sup>4</sup> 7250037 Canada Inc.'s role as a Banners Broker reseller was memorialized in a Banners Broker International Reseller Agreement, dated January 1, 2012 ("**Reseller Agreement**"). A copy of the Reseller Agreement is attached as **Appendix "O"**. The Receiver questions the reliability of the agreement. First, the Agreement letterhead identifies Banners Broker's head office as being in Belize. Banners Broker did not incorporate a company in Belize until July 2013, a year and a half after the date of the agreement. Second, the agreement is between Banners Broker International Inc. (an entity not known to exist) and Bannersbroker Limited, which as of the date of the agreement was known as 7250037 Canada Inc.

undertaking IT support, providing affiliate training services, providing marketing services, and providing compliance advice for Banners Broker.

94. For a period of time beginning in late 2011 and continuing until September 2013 Bannersbroker Canada was the primary source of customer support for Banners Broker creditors and resellers. During at least nine months of this period (i.e. from February 2012 to October 2012), Bannersbroker Canada collected funds directly from creditors on behalf of Banners Broker through the payment processor Beanstream.

95. Bannersbroker Canada administered Banners Broker's web presence, including by creating online content for and updating and maintaining the business website. Bannersbroker Canada also planned BBIL conventions and BBIL "World Tour" stops including events in Portugal, England, and Ireland.

96. In mid-2012, Dixit purported to change the business relationship between Bannersbroker Canada and BBIL. In a letter dated June 13, 2012, Dixit told Smith that Bannersbroker Canada "will no longer be considered the Canadian division of [BBIL]." Although Bannersbroker Canada said that it was terminating its role as a BBIL reseller, the company agreed that it would continue to provide customer support for creditors through a call centre and live chat system. A copy of the June 13, 2012 letter is attached as **Appendix "P"**.

97. Even though Bannersbroker Canada changed its name to Stellar Point Inc. on July 20, 2012, the business relationship between Stellar Point Inc. and BBIL did not much change. Dixit's company continued to provide customer service to BBIL creditors, and IT support, affiliate training, marketing services, and compliance advice to BBIL.<sup>5</sup> Bannersbroker Canada's activities continued to be described as being in relation to a territory that was "worldwide".

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<sup>5</sup> Bannersbroker Canada continued to provide these services to BBIL pursuant to a letter agreement entitled "Consulting Agreement" dated July 31, 2012. A copy of this letter agreement is attached as **Appendix "Q"**.

98. In or around October 2012, Bannersbroker Canada's relocated its operations centre from 1019 Nelson Street, Oshawa, Ontario to a newly purchased Banners Broker "Support Centre" at 5 Carlow Court, Whitby ("**BB Support Centre**"). The BB Support Centre together with four condominiums at 167 Church St., Toronto, ON ("**Church Street Property**"), functioned as the Banners Broker world headquarters for the period between October 2012 and September 2013.

99. The BB Support Centre was purchased in mid October 2012 by 234 and 8163871 Canada Limited (Dixit Holdings Inc.) as tenants-in-common, with 8163871 Canada Limited (Dixit Holdings Inc.) holding a 25% interest in the property and 234 holding the residual 75% interest. The Receiver understands that BBIL gave Dixit a 25% interest in the BB Support Centre in recognition of his work with BBIL.

100. The BB Support Centre, although owned by Smith and Dixit through holding companies, was bought and paid for with affiliate funds. The purchase price was paid from a DYZ Media Inc. ("**DYZ Media**") bank account with Caledonian Bank Limited ("**Caledonian Bank**"). The Receiver is advised by Smith that DYZ Media is an entity controlled by him and was at one time intended to be the parent company of BBIL. DYZ Media is a corporation governed by the laws of the British Virgin Islands. From October 2012 to December 2014, the DYZ Media bank account with Caledonian Bank received US\$5.2 million from MGI: US\$4.3 million in transfers from Choice Bank and US\$900,000 from Via Bank. Disbursements from the DYZ Media account totaled US\$5.13 million.

101. Between December 2012 and July 2013 approximately US\$820,000 in Bannersbroker Canada funds were spent on property renovation services. Based on discussions with both BBIL principals and former employees, the Receiver and Joint Liquidators have determined that most if not all of these funds were used to renovate and improve the BB Support Centre. It appears that 8163871 Canada Limited (Dixit Holdings Inc.) invested a further US\$33,991 in BB

Support Centre improvements. It is unclear whether or not 8163871 Canada Limited (Dixit Holdings Inc.) properly accounted for or recognized the Bannersbroker Canada investment by recording the expenditures as an intercompany receivable because Dixit Holdings did not maintain complete or reliable accounting records.<sup>6</sup>

102. Between February 2012 and August 2012, Bannersbroker Canada also paid US\$30,342 in rent for BBIL's condominiums at the Church Street Property.

103. Bannersbroker Canada variously invoiced "Bannersbroker International (Belize)", "Banners Broker International (Isle of Man)", "Monitize Group (Belize City)" and "Monetize Group Incorporate". Invoiced items were typically described in no more than one or two lines as "Cost of Goods Sold", "Consulting Services and I.T. Management" or "Support services rendered". The bills were typically for hundreds of thousands of dollars, but without any supporting documentation or detail whatsoever. A table summarizing the invoices issued by Bannersbroker Limited, Stellar Point Inc., and Bannersbroker Canada to MGI and BBIL is attached at **Appendix "R"**.

104. The description of services rendered varies widely from invoice to invoice. For example, whereas a March 15, 2013 invoice from Bannersbroker Canada to MGI lists multiple services (including consulting fees for \$38,000, computer programming for \$38,500, customer relations of \$65,600, and "Previous Outstanding Amount" of \$7,000), an invoice issued by Bannersbroker Canada 18 days later, references only "Management and Consulting fees for the month of March" in the amount of \$300,000.

105. The invoices are otherwise irregular and seemingly carelessly prepared. For example, four invoices produced to the Receiver (dated from April 2, 2013 to June 17, 2013) are indicated as being rendered from "Banners Broker LTD" to MGI. However, as at the date of such

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<sup>6</sup> It should be noted that the Receiver has also been provided with evidence that Dixit may also have renovated his personal residence during this time. Thus, it is possible that some of these funds were used to renovate Dixit's personal residence.

invoices, Bannersbroker Canada was known as Stellar Point Inc. Notwithstanding this, the business was erroneously generating invoices as "Banners Broker LTD".

106. Another invoice produced to the Receiver is from "Bannersbroker Canada" to "Bannersbroker International", and is dated January 6, 2012. Neither Bannersbroker Ltd. nor Stellar Point Inc. was ever legally known as "Bannersbroker Canada". Moreover, BBIL did not exist until March 29, 2012.<sup>7</sup>

107. Significantly, the amounts invoiced by Bannersbroker Canada to MGI do not correspond to amounts actually transferred by MGI to Bannersbroker Canada. The Receiver has been provided with six invoices that were issued from Bannersbroker Canada to MGI. These invoices were purportedly issued between March 15, 2013 and June 17, 2013, and total \$1,712,460.80. Of this amount, \$932,460.80<sup>8</sup> was for commission payments to resellers.<sup>9</sup> However, from August 2, 2012 to August 14, 2013, MGI transferred US\$11,462,200 or more than six times the amount "invoiced" to MGI.

108. The Receiver has no reason to believe that the amounts invoiced by and paid to Bannersbroker Canada bear any relationship to the fair value or cost of the services performed by Bannersbroker Canada. Rather, it appears that Dixit would simply advise BBIL or MGI (through Smith) of the total amount of funds that he required for a given period and such funds would be wired to Bannersbroker Canada from off-shore accounts held by MGI at Choice Bank and Via Bank.

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<sup>7</sup> Prior to being known as BBIL, the company was a "shelf corporation" known as Bedford Limited. As far as the Receiver is aware, Bedford Limited did not conduct business on behalf of BBIL.

<sup>8</sup> According to invoices produced to the Receiver, creditors in India were making significant sums of money with BBIL. In a span of 12 days (June 5, 2013 and June 17, 2013) Bannersbroker Canada invoiced MGI for \$658,420 for commission payments to Indian creditors.

<sup>9</sup> Although one invoice is for "Commissions owed for the month of March" for \$100,000, in the fall of 2013 it is dated April 2, 2013. By that date Bannersbroker Canada was no longer acting as the Canadian reseller of BBIL and would not have been entitled to commissions.

109. For example, in a January 2, 2013 email from Dixit to Smith, Dixit requests that Smith wire "\$150k to Cyprus I m paying all of the Bannersbroker Limited bills from this account.... Rather use this account then CIBC for wires, and this way Monetize group is being invoiced from Stellar Point for all wires [sic]." When Smith emails Dixit to clarify whether or not funds should be wired to the CIBC account, Dixit emails Smith and states "No still \$300k to CIBC, for payroll and constructions, etc." It is unclear to the Receiver what additional expenses were being paid from the Cyprus bank account.

110. In this same email Dixit advises Smith to send "[t]wo wires plus I m sending \$10k a month from BB account to CIBC so we show more than one client sending money."

111. Similarly, in a May 24, 2013 email from Dixit to Smith, Dixit advises Smith that he "need[s] a wire for \$450k am short money". According to Dixit, the funds were intended to cover the following expenses: (1) "June 7 payroll approx. \$130k"; (2) "May payroll tax approx. \$115k"; (3) "contractors \$50k"; (4) "Air Condiiton heating \$60k [sic]"; (5) "Flights and travel for coming trip \$80k". Dixit then adds that this "[l]eaves \$20k for incidentals" and advises that "[w]e will require another wire mid month [sic]".

112. Bannersbroker Canada established a wholly owned UK subsidiary, Stellarpoint Limited, in January 2013. The company was incorporated to operate as a provider of support service to internet advertising and website companies with its principal client being its parent.

113. Not much is known about Stellarpoint Limited. It appears that the company operated for about eight months before filing for Creditors' Voluntary Liquidation in the United Kingdom on September 30, 2013.

114. Filings prepared in the course of the liquidation identify Stellarpoint Limited's initial directors as Dixit and David Hooker. There is a suggestion in the insolvency filing that Dixit invested £100,000 to finance Stellarpoint Limited start-up costs.

115. Stellarpoint Limited's liquidation resulted in no realizations for creditors. At the time of filing, Stellarpoint Limited owed £5,937 to trade creditors, £17,000 to its landlord and £60,000 to Dixit evidenced by a shareholder loan. The company only had £467 in cash and £7,319 in prepaid rent deposits to its landlord.

116. In Canada, Bannersbroker Canada claims to have ended its relationship with BBIL in September 2013.<sup>10</sup> This timing is not surprising. According to the RCMP Affidavits, by April 2013, the Competition Bureau had begun interviewing former Banners Broker employees regarding the Banners Broker business. Correspondence obtained by the Receiver indicates that by June 2013 threats of legal proceedings had been made against Bannersbroker Canada in connection with its relationship with Banners Broker.

117. Consistent with a mid-2013 break, Dixit wrote to Smith (and others) on July 8, 2013 saying "[w]e are not contacting affiliates. They should all know by now that it is over. WE WILL NOT BE CONTACTING THEM. I will not spend the manpower to inform stupid affiliates. Sorry but that is how I feel [sic]."

118. Notably, Bannersbroker Canada wound down relations with Banners Broker over a period of months. By September 2013 Bannersbroker Canada was training Banners Broker International Limited (Belize) staff in Belize City so that those employees could take over the functions previously performed by Bannersbroker Canada for BBIL.

119. The BB Support Centre was sold in March 2014 for \$1,200,000. (As a point in time reference, the Joint Liquidators were appointed on February 26, 2014).

120. The proceeds of the sale of the BB Support Centre were directed and paid to Dixit Holdings (\$252,811.83) and 234 (\$826,235.51). It has not been possible to trace the funds paid

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<sup>10</sup> Bannersbroker Canada terminated the Consulting Agreement by way of agreement dated August 1, 2013. A copy of the agreement is attached as **Appendix "S"**.



to 234 post-closing. The funds paid to Dixit Holdings are largely accounted for in the Flow of Funds Analysis (defined below).

121. The Receiver and the Joint Liquidators have determined that Bannersbroker Canada's only material and consistent clients were Banners Broker group entities and affiliates during the September 2011 to September 2013 period.<sup>11</sup> The Receiver has not received any contracts or other documentation such as would indicate that the company had any other material sources of revenue at any time.

122. It follows that Bannersbroker Canada was at all times reliant on Banners Broker affiliate contributions for funding and operations. Between February 2012 and March 2014 Bannersbroker Canada received a total of US\$15.88 million in BBIL affiliate funds. The majority of money came to Bannersbroker Canada directly from creditors (approximately US\$4.10 million), or indirectly from MGI bank accounts (US\$9.86 million) located off-shore in St. Lucia and Belize.

123. Between February 2012 and October 2012 Bannersbroker Canada collected and remitted funds from and to Banners Broker creditors through the payment processor Beanstream. Affiliate payments made to Bannersbroker Canada's Beanstream account were forwarded on to Bannersbroker Canada's bank account at RBC. RBC bank records reveal Bannersbroker Canada collected a total of US\$3.7 million from creditors through the Beanstream account.

124. msi Spergel inc., court officer, received \$537,576.31 from the Beanstream account pursuant to the Order: Restraint of Funds. Such funds are held in trust pending further order of the court.

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<sup>11</sup> For a brief period of time, likely no more than several days, Bannersbroker Canada acted as a call centre for a taxi company in British Columbia. This relationship was terminated by the taxi company shortly after it started.

125. The Receiver and the Joint Liquidators believe that approximately US\$2.95 million of Bannersbroker Canada receipts were used by Dixit for predominantly personal (i.e. non – business) purposes including the purchase of clothing, designer handbags, jewelry, lingerie, and trips to water parks. This conclusion is based upon the Flow of Funds Analysis (defined below) attached as Confidential Appendix “B” to the Fifth Report.

126. Bannersbroker Canada subsists as a federal corporation in good standing. Attached as **Appendix “T”** is a *Personal Property Security Act* (Ontario) registration search summary as against the company with a file currency as of March 8, 2016. As indicated there are no PPSA registrants apart from the Ontario Ministry of Finance.

127. In all of the circumstances the Receiver believes that the conversion of the investigatory receivership of Bannersbroker Canada into a standard possessory receivership is the most appropriate course of action at this time. Going forward consideration will be given to the efficiencies of a bankruptcy proceeding as a means of most efficiently resolving creditor claims and concluding a court-supervised wind down of this entity.

**B. Investigatory Receivership Update and Receiver’s Recommendations with respect to the Other Associated Corporations and Additional Dixit Entities**

*i. Recommendation*

128. Significant progress has been made in reviewing and understanding the business and affairs of the balance of the Associated Corporations and Additional Dixit Entities. As such efforts are not yet complete, the Receiver proposes to move forward and complete its work at which time it will provide a recommendation as to what additional relief, if any, may be appropriate. No specific relief is sought with respect to the entities discussed below at this time.

ii. *Current Investigatory Receivership Findings*

a. Parrot Marketing Inc.

129. The Receiver's report in respect of Parrot Marketing Inc. is based upon a review of bank account statements. It is also based upon the Receiver's interviews with Banners Broker principals and employees, answers to undertakings, and public records searches.

130. Parrot was incorporated by Smith on August 1, 2012. Smith is the sole director.

131. Parrot is a services business that, according to its Facebook page, offers "creative and personalized services to each of [Parrot's] clients."

132. According to Smith, Parrot was dormant up until the summer of 2013. However, bank records reviewed by the Receiver indicate that Parrot began receiving transfers from Banners Broker entities in January 2013. From January to June 2013, Parrot received a total of approximately US\$1.23 million with such monies coming from MGI (US\$860,000), Dreamscape (US\$224,000), unknown credit memos and deposits (US\$110,000), and funds from a company the Receiver believes to be associated with Aramor Payments (US\$35,000). As explained in the Third Report, Aramor Payments provided payment solution services to Banners Broker in 2011 and 2012.

133. Beginning in or about June 2013, Parrot commenced providing services to BBIL. According to Smith, Parrot provided BBIL with computer programming services, IT design, security and architecture services, customer support, network support, website development, social media services, training, and event planning.

134. Smith advises the Receiver that although Parrot commenced providing services to clients other than Banners Broker in September 2013, the company's largest client was BBIL.

135. According to Rob Pirie ("**Pirie**"), a former Communications Specialist at Parrot, Parrot's other clients included Wellness Girl, Tracy B. Richards and Smoke Euphoria. Although these

are described by Pirie as Parrot clients, the Receiver has not received any documents that would confirm such a client relationship.

136. The Receiver understands that Parrot stopped providing services to BBIL in August 2014. This is the same month that the Receiver was appointed.

137. Between November 2012 and October 2014 Parrot received US\$5.12 million in BBIL affiliate funds from the Associated Corporations and the Additional Dixit Entities, and individuals or entities otherwise affiliated with BBIL.

138. Of the funds received from BBIL creditors, a total of approximately US\$4.28 million was disbursed by Parrot, predominantly to Parrot's employees and BBIL principals. Of this amount, approximately US\$1.7 million was paid to Telpay Incorporated ("**Telpay**") for payroll. The Receiver is in process of obtaining payroll records from Telpay. The remainder of Parrot's receipts were spent on what has been described to the Receiver as operating expenses.

b. 2341620 Ontario Corporation

139. 2341620 Ontario Corporation was incorporated September 7, 2012, with Smith as the sole and incorporating director. The company was set up to hold real estate assets.

140. 234 used BBIL creditor funds to purchase a mixed use commercial/residential property at 1376 Bayview Avenue in Toronto ("**Bayview Property**"), as well as the BB Support Centre. Both properties have now been sold.

141. The Receiver is pursuing several outstanding document production and law firm records requests in respect of 234.

142. The settlement of matters relating to the Bayview Property was specific to that real estate only. Work is accordingly ongoing to identify other assets that may be similarly subject to BBIL creditor claims.

c. Dixit Holdings Inc.

143. The Receiver's report in respect of Dixit Holdings Inc. is based upon a review of corporate books and records, bank account statements and financial records (albeit largely incomplete). It is also based upon meetings and interviews with BBIL principals (and their counsel), other receiver interviews including with Dixit's spouse, Schlacht, a review of answers to undertakings, and public records searches.

144. Dixit Holdings was incorporated on April 11, 2012 to function as a family holding company for interests in Bannersbroker Canada and the BB Support Centre. At various times the company also held a range of luxury vehicles, including at least two Mercedes Benz.

145. The directors of Dixit Holdings are Dixit and Jennifer Dorazio ("**Dorazio**"), with Dorazio acting as a director between April 2012 and June 2013. Dorazio was Dixit's common law spouse up until June 2013.

146. Dixit Holdings was initially wholly owned by Dixit. Dixit transferred his shareholding interest to Schlacht on May 15, 2014. Dixit and Schlacht married in June 2014. The company shares were transferred back to Dixit on November 19, 2014.

147. There is no indication that Dixit Holdings had any employees or operations. Notwithstanding this, there is evidence that Dixit Holdings invoiced Bannersbroker Canada and Durham Energy Specialist, a tenant at the BB Support Centre, for "Car Services". The invoices provide no details of the car services purportedly provided.

148. The Receiver has identified a Dixit Holdings bank account at a CIBC branch in Toronto. Between July 2012 and September 2014 this account received a total of US\$1.07 million from Bannersbroker Canada, Dreamscape, MGI, 234 and Parrot. Again, and as indicated elsewhere in this report, the Receiver believes that such entities were primarily funded by affiliate contributions. Dixit Holdings used the US\$1.07 million in its CIBC account to purchase

automobiles and to fund construction costs and intercompany transfers. A more complete accounting of the disbursements is set out in the Flow of Funds Analysis at Confidential Appendix "B".

149. Dixit Holdings also received approximately US\$260,000 from a small group of individuals and entities, including both Schlacht (US\$23,340) and RevStar Hosting Inc. (US\$33,737), a company controlled by her.<sup>12</sup>

150. As indicated, Dixit Holdings held a 25% ownership interest in the BB Support Centre at 5 Carlow Court. The property was sold in March 2014. Dixit Holdings share of the net sale proceeds amounted to \$252,811, which money was paid to Dixit Holdings on closing.

151. Dixit Holdings remains a *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 entity in good standing.

d. Dixit Consortium Inc.

152. The Receiver's report in respect of Dixit Consortium Inc. is based upon a review of corporate books and records and CIBC bank account statements. It is also based upon meetings and interviews with BBIL principals (and their counsel), other receiver interviews including with Schlacht, a review of answers to undertakings, and public records searches.

153. Dixit Consortium was incorporated September 24, 2012 as 8643989 Canada Inc. The company was dissolved by articles of dissolution filed March 25, 2015.

154. Dixit was the sole officer, director and shareholder of Dixit Consortium.

155. Dixit Consortium has been described as a "consulting company". Notwithstanding this, the Receiver's investigations to date provide no indication that the company ever had any

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<sup>12</sup> Schlacht is the sole director of Revstar Hosting Inc. According to Schlacht, the company had nothing to do with Banners Broker or Stellar Point. Despite being the sole director of the company, Schlacht did not know anything about the company, it was "just a company" her husband had asked her to put her name on. Examination for Discovery of Stephanie Schlacht, June 11, 2015, 337:2-7. The Receiver has no further information about Revstar Hosting Inc.

clients, or ever provided any consulting services other than purported services to other Banners Broker entities.

156. Dixit Consortium was funded, at least in part, with BBIL affiliate funds. Between October 2013 and March 2015, Dixit Consortium received a total of US\$262,395 from Dixit Holdings, Bannersbroker Canada and Dreamscape. As is noted elsewhere in the report the Receiver has concluded that these entities were almost entirely funded using BBIL affiliate funds.

157. Dixit Consortium received a further approximately US\$519,000 from various other individuals and entities, including at least three entities the Receiver believes to be affiliated with Aramor Payments (approximately US\$193,000). The Receiver has not yet determined why entities affiliated with Aramor Payments might have made upwards of US\$193,000 in remittances to Dixit Consortium.

158. The Receiver has identified three bank accounts that belonged to Dixit Consortium that were held with CIBC. Dixit Consortium disbursed all of the approximately US\$781,000 paid to these accounts. The majority of the disbursements were to BBIL associated entities (approximately US\$116,000), three credit cards (approximately US\$99,000), an Aramor Payments affiliated entity (approximately US\$55,000), and various purported employees of Dixit Consortium (approximately US\$114,000). A more detailed accounting of the Dixit Consortium CIBC account disbursements is set out in the Flow of Funds Analysis at Confidential Appendix "B".

159. The Receiver has not located any other Dixit Consortium assets.

e. Dreamscape Ventures Ltd.

160. Dreamscape Ventures Ltd. is a British Virgin Islands company. It was incorporated on May 29, 2012. Dreamscape's registered agent in the British Virgin Islands is ILS Fiduciary (BVI) Limited.

161. The Receiver's report in respect of Dreamscape is based upon a review of a Dreamscape shareholder's ledger, incomplete Choice Bank records (an MGI account), and an incomplete set of bank records from a Bank of Cyprus account held by Dreamscape.

162. Dixit holds 25,000 of Dreamscape's 50,000 issued and outstanding shares. The remaining 25,000 shares are believed to be held in trust by Dixit for Guarini.

163. According to emails reviewed by the Receiver, Dixit describes Dreamscape as a consulting company. The company purportedly provided management and consulting services to MGI. However, if such services were provided, there are completely undocumented.

164. Between September 2012 and September 2014, Dreamscape received approximately US\$1,050,000 from MGI's bank account with Choice Bank (according to records for MGI's account). Dreamscape received an additional US\$226,000 from Bannersbroker Canada. Because the Receiver does not have a complete set of banking records for Dreamscape, the Receiver can only trace approximately US\$810,000 of the payments from MGI to Dreamscape's bank statements. The Receiver continues to pursue Dreamscape bank records in order to complete its accounting.

165. According to Dixit Holding's bank statements, Dreamscape paid Dixit Holdings approximately US\$417,000. According to Parrot's bank statements Dreamscape paid Parrot approximately US\$344,000. Because the Receiver does not have a complete set of account statements for Dreamscape, the Receiver has been unable to verify and/or better understand the rationale for these transfers.

166. The Receiver has not identified any Dreamscape bank accounts or assets in Canada. Dreamscape accounts were likely held in off shore banks, including in Cyprus.



f. Local Management Services

167. The Receiver's report on LMS is based on the company's bank records, public records, and interviews with Smith. Additional information was drawn from the RCMP Affidavits.

168. Local Management Services was incorporated on November 25, 2005 as 2087360 Ontario Incorporated. Its sole director was and remains Edmund A. Clarke. Clarke was a lawyer who was disbarred in 2010 for committing fraud. Clarke remains listed as a director of LMS which continues to subsist under the laws of Ontario.

169. LMS was operated by Smith and was apparently used to conduct Banners Broker business prior to the time that BBIL was incorporated.

170. The company maintained account relationships with payment processors and financial institutions under the Banners Broker name. LMS retained the computer programmers that developed the Banners Broker software. The company also registered dozens of Banners Broker related internet domain names at or around the time the business was established.

171. The Receiver has identified two bank accounts held by LMS with TD Bank. Through these accounts, LMS received a total of approximately \$359,000 and disbursed a total of approximately \$200,000 between January 2010 and July 2011. The Receiver cannot trace or otherwise account for all disbursements from LMS's accounts because Smith has yet to produce a complete set of LMS bank statements to the Receiver.

**C. Declaration that St. Lucian Funds are BBIL Funds to be Used in Accordance with the Receiver's Mandate**

172. As described in the Third Report, the Receiver was successful in securing possession of certain BBIL Allied Wallet monies that were transferred from BBIL's account at Allied Wallet (a payment processor) to an off-shore account in the name of BBIL parent –entity, MGI, at Via Bank in St. Lucia.

173. The Receiver is satisfied that all realizable funds from MGI's account at Via Bank have been remitted to the Receiver.

174. The Receiver is currently holding Via Bank remittances totaling \$1,506,069.00 ("**St. Lucian Funds**"). Recognizing that such monies were nominally held in a BBIL parent entity account at Via Bank, the monies paid to the Receiver were placed in a segregated receivership account pending further court order.

175. For reasons explained in this section, the Court Officers conclude that the St. Lucian Funds are BBIL monies. This is the case for four main reasons: first, the Receiver's accounting analysis determined that the Via Bank monies were funded entirely from affiliate contributions (or payments) to the Banners Broker business; second, MGI was purely a holding company and acted as such for BBIL in relation to the St. Lucian Funds; third, MGI's sole owner, Smith, has confirmed that the St. Lucian Funds were monies generated by Banners Broker for the benefit of BBIL creditors; and fourth Smith advised that there are no creditors having competing claims to the funds at the MGI level.

176. To the first point, during the period of Banners Broker's operation, MGI's Via Bank account received a total of US\$10.11 million from BBIL's Allied Wallet account. The MGI Via Bank account received a further US\$1.39 million from MGI's account at Choice Bank, a Belizean financial institution. Choice Bank in turn received a total of US\$68.18 million from the BBIL Allied Wallet account and US\$4.8 million from other payment processors that processed payments from creditors to BBIL.<sup>13</sup> Attached as **Confidential Appendix "A"** to this Report is a diagram reflecting the flow of funds from BBIL creditors to Via Bank.

177. To the second point, MGI never operated a business. It functioned as a BBIL parent and holding company. There was no business reason or other requirement for BBIL to flow its Allied

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<sup>13</sup> Deposits to MGI's account with Choice Bank also include \$112,799 from Adzerk and \$15,576 from an individual. These two additional sources of funds account for total of 0.2% of all deposits to the Choice Bank account.

Wallet receipts to an MGI account at an off-shore bank. Smith, as the sole owner of all of MGI's issued and outstanding shares, has confirmed that this is the case. Smith has also advised the Receiver that MGI has no creditors other than BBIL. Smith (and MGI) have willingly turned the St. Lucian Funds over to the Receiver to be dealt with as a receivership asset.

178. Based on the analysis set out above, the Court Officers are satisfied that the St. Lucian Funds belong to BBIL and that there are no competing claims to such funds apart from BBIL creditor claims now advanced through the Receiver. Smith, as the sole director and shareholder of MGI, accepts this. On this basis, the Receiver concludes that the St. Lucian Funds are BBIL receivership administration general receipts and respectfully requests that this Court make a declaration to this effect.

**D. Direction that HSBC Produce Documents to the Receiver**

179. The Receiver has made written requests for the production of documents relating to BBIL, the Associated Corporations and the Additional Dixit Entities from approximately 100 financial institutions. With the exception of HSBC, the Receiver has received a reasonable level of cooperation from all parties contacted.

180. Following its appointment, the Receiver wrote to HSBC on September 9, 2014, requesting Records production in accordance with the court orders. HSBC did not respond. Attached as **Appendix "U"** is a copy of the September 9, 2014 letter from the Receiver to HSBC.

181. On October 16, 2014, upon obtaining the Further Supplemental Order, the Receiver wrote to HSBC requesting Records production in relation to BBIL and the Associated Corporations. Again, HSBC did not respond. A copy of the Receiver's October 16, 2014 letter, is attached as **Appendix "V"**.

182. The Receiver followed up with HSBC and on January 16, 2015, HSBC emailed to advise that HSBC Bank Canada did “not currently have any account in the name of ... Parrot Marketing”. A copy of the January 16, 2015 email from HSBC is attached as **Appendix “W”**.

183. While HSBC may not “currently” hold an account for Parrot, it evidently had held accounts for Parrot and would have had “Records” (as such term is defined in the relevant receivership orders). Both the RCMP Affidavits and documents produced by Smith to the Receiver indicate that Parrot held at least two bank accounts with HSBC.

184. After obtaining the Additional Authority Order, the Receiver wrote to HSBC on August 10, 2015, and requested that HSBC produce all documents relating to the Additional Dixit Entities. A copy of the Receiver’s August 10, 2015 letter is attached as **Appendix “X”**.

185. In response to the Receiver’s August 10, 2015 letter, HSBC’s counsel requested that the Receiver direct its inquiries to the bank branch which held accounts for BBIL, the Associated Corporations and the Additional Dixit Entities. Until that point, all of the Receiver’s requests were directed at HSBC’s head office. Moreover, as of August 2015, neither HSBC nor any other financial institution had suggested that the Receiver ought to direct its inquiries to individual branches. Regardless, HSBC’s counsel advised that the request would be forwarded internally to prepare the appropriate documents. Attached as **Appendix “Y”** is a copy of the August 13, 2015 email from counsel for HSBC.

186. On February 2, 2016, having still not received production of documents from HSBC, counsel for the Receiver wrote to the bank and sought a meeting to discuss the Receiver’s outstanding requests. HSBC responded reverting to the position that the Receiver must identify and pursue production of documents at a branch level. Attached as **Appendix “Z”** is a copy of the February 2, 2016 email correspondence between the Receiver and HSBC.

187. Throughout February 2016 Receiver's counsel was in regular contact with HSBC seeking a meeting to resolve all issues having to do with document production. During this period HSBC was again provided with copies of the relevant court orders.

188. Finally, on February 29, 2016, HSBC advised that it would produce account statements responsive to the Receiver's requests by the end of that week (March 4, 2016), and that supporting documentation for account statements would also be made available.

189. HSBC provided account statements for Parrot's HSBC accounts on March 18, 2016. Upon receipt of the statements, the Receiver asked again for all documents relating to the Parrot account, including supporting documents for the transactions listed. HSBC has recently advised the Receiver that fulfilling such request will take some time. Attached as **Appendix "AA"** is a copy of the HSBC letter dated March 11, 2016, which was received by the Receiver's counsel on March 18, 2016

190. To date, HSBC has not produced the requested supporting documentation to the Receiver.

**E. Approval of Receiver's Conduct and Activities Since the Date of the Third Report**

191. By way of overview, the Receiver, working closely in coordination with the Joint Liquidators, has pursued the following activities since the Third Report was filed on July 30, 2015:

- (a) completion of a substantial claims settlement, and subsequent real property sale to fund the settlement, resulting in a realization to the estate of \$2,374,345;
- (b) correspondence, discussions and meetings with Allied Wallet an online payment processing service retained by BBIL, so as to enable the Receiver to account for and recover approximately \$2.8 million in BBIL receipts;

- (c) correspondence and discussions with Via Bank, a St. Lucian financial institution, leading to the recovery of \$1.5 million in BBIL funds nominally held in the Via Bank account of BBIL parent entity MGI;
- (d) meetings with Smith (and Smith's counsel) regarding fulfillment of Smith's outstanding undertakings, and document production and other Receiver requests;
- (e) coordination of document production requests from Canadian financial institutions in respect of records relating to the Additional Dixit Entities, and the receipt and review of documents responsive to such requests;
- (f) receipt, review and analysis of documents produced by Bannersbroker Canada, and MacDonald Sager Manis LLP ("**MSM**"), former counsel to Dixit, Bannersbroker Canada, Dixit Holdings and Dixit Consortium;
- (g) undertaking real property, corporate profile, internet, and other public record searches so as to better understand the trade, dealings, and property of the Additional Dixit Entities, all in accordance with the mandate and authority of the Additional Authority Order;
- (h) general ongoing correspondence, meetings and discussion with counsel for Smith and Dixit in relation to, among other issues, the criminal proceedings, document production matters, undertakings, and the Cease and Desist Notices;
- (i) monitoring public aspects of the ongoing Banners Broker criminal investigation, including attending criminal court hearings and negotiating with the Crown and counsel for Smith and Dixit in respect of the production of relevant materials in the criminal court file;

- (j) corresponding with banks, trust companies and financial institutions in Canada and abroad in an effort to locate and secure BBIL assets and financial information relevant to Banners Broker to the extent permitted by the Supplemental Order, the Further Supplemental Order and the Additional Authority Order;
- (k) follow up correspondence and pursuit of answers to undertakings in respect of examinations conducted under oath of several executive level employees and service providers to BBIL and/or the Associated Corporations;
- (l) the pursuit of relevant BBIL, Associated Corporation, and Additional Dixit Entities corporate records and legal files from company counsel, including considering and responding to any assertions of privilege and confidentiality over such records;
- (m) the continued assembly, review and analysis of bank and accounting information, including bank statements provided by Canadian financial institutions for the Associated Corporations and the Additional Dixit Entities, as well as information obtained with the assistance of Smith regarding offshore accounts, with a view to reconstructing the source, inter-company transfers and disposition of all monies contributed by Banners Broker creditors and potential creditors of BBIL and the Associated Corporations;
- (n) the receipt and direction of creditor claims and inquiries to the Foreign Representative, who is managing claims and responding to creditor inquiries; and

- (o) the coordination of receivership administration efforts in respect of BBIL, the Associated Corporations and the Additional Dixit Entities with the Foreign Representative, including the sharing of information, accounting expertise and resources with the Foreign Representative.

192. Certain of the activities and inquiries of the Receiver and the Joint Liquidators are sensitive in nature. This is the case where the work involved is the assembly and assessment of evidence that may be used to pursue BBIL assets in circumstances where efforts have been made to put such assets beyond reach of creditors. For this reason, and where appropriate, the Receiver's work in this regard has been described in a more general way with particulars omitted.

193. The balance of this report provides an update on the Receiver's ongoing efforts to secure BBIL, Additional Dixit Entities', and Associated Corporations' books, records and accounts, as well as to recover assets in the name of BBIL, or properly belonging to BBIL but held in the name of the Associated Corporations, the Additional Dixit Entities, or third parties. Such actions are being undertaken in coordination and with the support and assistance of the Foreign Representative, as is further described below.

*i. Asset Recoveries*

*a. 234 Settlement*

194. As reported in the Third Report, the Receiver settled a claim ("**234 Settlement**") in June 2015 in relation to 234's alleged improper use of BBIL funds to purchase the Bayview Property. Pursuant to the 234 Settlement it was agreed that the Bayview Property would be sold with the majority of the sale proceeds remitted to the Receiver in consideration for a release of claims solely in respect of the Bayview Property.



195. To facilitate the 234 Settlement and the closing of the sale of the Bayview Property, an order discharging and vacating the certificate of pending litigation from title to the Bayview Property was obtained on July 30, 2015, on the consent of Smith and 234.

196. The sale of the Bayview Property closed on August 27, 2015. Upon closing, sale proceeds in the amount of \$2,347,345 were paid to the Receiver.

b. Allied Wallet Settlement

197. Allied Wallet is an electronic payment processor headquartered in London, England. BBIL maintained an account with Allied Wallet pursuant to a written account agreement dated May 16, 2012.

198. The Receiver and the Joint Liquidators' analysis indicates that between May 24, 2012 and August 28, 2014, Allied Wallet collected US\$106.3 million from creditors, and paid Banners Broker approximately US\$85.2 million (net of affiliate refunds, chargebacks and Allied Wallet fees).<sup>14</sup> Believing this to be the case, and having discussed the matter with Smith, the Court Officers concluded in late 2014 that Allied Wallet likely held certain residual funds as security for chargebacks requested by creditors who transacted with Banners Broker using Allied Wallet's services.

199. Allied Wallet cooperated with the Receiver and Joint Liquidators in identifying and accounting for the funds held by Allied Wallet. In doing so, Allied Wallet maintained the confidentiality of creditors' bank account information.

200. The Receiver assisted by the Joint Liquidators has completed its review of the accounting and documents provided by Allied Wallet. The Court Officers are satisfied that Allied Wallet has properly accounted for and remitted all amounts claimable by the Receiver.

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<sup>14</sup> From the time of the Receiver's appointment, on August 22, 2014 to August 28, 2014, BBIL's account with Allied Wallet collected \$7,867.60 and processed \$12,255.82 in chargebacks.

c. Claim Settlement

201. In the course of the Court Officers review of Parrot's banking records it was determined that Parrot gifted \$97,000 in September 2014 (after the Receiver's appointment on August 22, 2014), to a Toronto resident who had no business dealings or relationship with Parrot or BBIL. Upon making inquiries of Smith in respect of this transfer, the Receiver concluded that such monies ought to be repaid to the receivership estate of BBIL.

202. The Receiver accordingly asserted a claim against the recipient for the return of the transferred funds. Smith offered to settle the Receiver's claim and entered into discussions with the Receiver to do so. Following a period of negotiation, Smith agreed to pay the Receiver \$70,000 in full settlement of the claim.

203. The Court Officers considered Smith's \$70,000 settlement offer to be fair and reasonable in the circumstances in that it represented an efficient resolution to the matter. The Receiver accordingly accepted Smith's offer and Smith paid settlement funds to the Receiver on September 1, 2015.

ii. *Continuing Efforts to Secure Records From Dixit*

204. Securing the "Records" of BBIL, the Associated Corporations and the Additional Dixit Entities in accordance with the Receiver's court authority has continued to prove difficult and time consuming. The reasons for this were detailed in the Third Report and relate to the fact that the business did not have a document management system, company owned servers, or any other organized records retention system. Receipts and pay-outs were handled non-systematically and on an ad hoc basis. Inter-company transfers were not properly recorded, or not recorded at all. Some payments were made in cash. Although transaction records exist at the financial institution end, in certain cases the financial institutions are off-shore and such

records are not readily obtainable. In short, there is no single source of Banners Broker maintained financial records or support documentation.

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

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

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

(b) **Macdonald Sager Manis LLP**

MSM acted for Dixit, personally, as well as Associated Corporations, Bannersbroker Canada and Dixit Holdings.

206. Smith has undertaken to produce A&B law firm files and trust ledgers associated with work performed for Banners Broker entities subject to the receivership proceeding. At the same time, and as is permitted by the receivership orders, A&B has reserved its clients' rights to decline to produce certain documents on the basis of privilege claims. Although a small number of A&B documents have been produced in response to specific answers to undertakings, the majority of A&B files have not been produced, nor have any privilege objections been particularized. The Receiver understands that privilege review is underway in respect of A&B files and reserves its rights to pursue additional documentary production from A&B, including account records and trust ledgers. The Receiver intends to return to court if such records are not forthcoming.

207. Claims of privilege in respect of MSM documents have recently been resolved. In this regard, the Receiver first attended at MSM's offices in February 2015. The purpose of the meeting was to understand the nature and scope of MSM's Banners Broker related retainer(s),

and to assess what law files may be relevant and available to the Receiver. During the course of this meeting MSM provided the Receiver with 67 invoices documenting legal services rendered to Dixit and the Dixit Entities.

208. The Receiver corresponded with MSM and sought production of a large number of apparently relevant documents, many of which were referenced in the MSM invoices. MSM initially advised that although they were prepared to cooperate with the Receiver, they had been instructed by Dixit not to release any files beyond what had already been disclosed. The issue of production of MSM law firm records accordingly remained unresolved as at the date of the Receiver's Third Report.

209. On August 11, 2015, after the Additional Authority Order had been granted, counsel for Dixit contacted the Receiver's counsel and advised that Dixit and MSM would be willing to meet with the Receiver and work out a protocol (or agreement) for the production of documents within MSM's possession that may be relevant to the Receiver's mandate ("**MSM Documents**").

210. Shortly thereafter, and before a meeting could be scheduled, counsel for Dixit advised that his client had changed his position and that he would authorize the release of all but one of the MSM Documents to the Receiver. This document is subject to a privilege claim by Smith. The Receiver was specifically advised that Dixit was waiving privilege in respect of everything to be produced.

211. MSM produced the MSM Documents to the Receiver on September 8, 2015. The production consisted of seven bankers boxes containing over 1,600 documents.

212. On September 11, 2015, Dixit's counsel forwarded an additional nine bankers boxes of Bannersbroker Canada documents to counsel for the Receiver. This production consisted of approximately 7,500 documents.

213. The Receiver has completed its initial review of the MSM Documents and the Bannersbroker Canada productions. Relevant financial information has been incorporated into the Flow of Funds Analysis (defined below). Certain of the documents reviewed point to potential asset recoveries and claims and inquiries are being made accordingly.

*iii. Efforts to Secure Financial Records for Additional Dixit Entities*

214. The Receiver continues to diligently pursue production of relevant Banners Broker records. Production requests were initially specific to BBIL, but were later broadened to include the Associated Corporations and the Additional Dixit Entities.

215. Following the grant of the Additional Authority Order, the Receiver contacted major financial institutions across Canada seeking production of documents related to the Additional Dixit Entities.

216. CIBC responded positively and produced account statements for Dixit Consortium on August 26, 2015. Relevant financial information derived from available Dixit Consortium account statements have been incorporated into an updated Flow of Funds Analysis (defined below).

217. As at the date of this report, no financial institution has produced records in respect of Dreamscape.

218. Dixit has provided the Receiver with account statements for an account held by Dreamscape at the Bank of Cyprus. The account statements, relate to the period September 28, 2012 to September 4, 2013, but they are incomplete.

219. Based on the limited records available, it appears that at least US\$1.28 million was transferred to Dreamscape by Banners Broker entities, of which US\$240,000 remains unaccounted for on the Dreamscape bank statements. Moreover, approximately US\$443,000

of the disbursements made by Dreamscape remain unaccounted for on the Dreamscape bank statements.

220. The Receiver continues to pursue financial records and accounts relating to Dreamscape.

*iv. Ongoing Smith Discovery*

221. The Receiver met with Smith in late September 2015 to discuss receivership administration issues ranging from accounting matters to asset recoveries and outstanding undertakings and document production requests. At the conclusion of the meeting it was agreed that all of the Receiver's then outstanding requests would also be provided to Smith's counsel in writing.

222. The Receiver provided Smith with a list of approximately 100 questions cross-referenced to documents and prior answers to undertakings ("**October Discovery**"). Smith provided his first set of responses to the October Discovery in mid-December 2015, which response included 35 new documents.

223. Smith provided a further set of responses to the October Discovery in mid-March 2016. The March 2016 answers are incomplete and raise numerous follow up question, particularly with respect to significant transfers of affiliate sourced funds to 2350842 Ontario Limited o/a Commtrade Services and Bella Moda Inc, a Barbados corporation.

*v. Flow of Funds Analysis*

224. The Receiver and the Foreign Representative continue to prioritize the preparation of a global "Flow of Funds Analysis" sufficient to understand how affiliate contributions were received and disbursed over the period of Banners Broker's operations ("**Flow of Funds Analysis**").

225. The Flow of Funds Analysis has been updated as financial information becomes available. Since the Third Report, the Receiver and Joint Liquidators have reviewed and

incorporated information obtained from the following documents into the Flow of Funds Analysis:

- (a) MSM Documents;
- (b) Bannersbroker Canada Documents;
- (c) G Cube Media LLC ("**G Cube**") bank statements;
- (d) Payza transaction details;
- (e) Further productions from Canadian financial institutions;
- (f) Dixit Consortium bank account documents;
- (g) Banners Broker UK ("**BBUK**") bank statements;
- (h) Bank Production Documents;
- (i) Stellarpoint Limited Report to Creditors;
- (j) 234 bank account statements; and
- (k) Additional BBIL bank statements.

226. An updated Flow of Funds Analysis is attached as **Confidential Appendix "B"**.

227. **Confidential Appendix "C"** sets out the conclusions of the Receiver and Foreign Representative with respect to the Flow of Funds Analysis. The document provides a current best estimate of total funds received from creditors, together with information on how such funds were utilized by Banners Broker entities and their principals.

228. By way of overview, it appears that approximately US\$156.44 million was received from creditors, with approximately US\$78.93 million of the funds being returned to creditors in the form of "pay-outs". Notable payments made to third parties include:

- (a) US\$13.88 million paid to and/or at the direction of BBIL principals Dixit, Kuldip Josun, and Smith;
- (b) US\$9.23 million in fees paid to payment processors; and
- (c) US\$9.71 million paid to Banners Broker resellers/independent contractors.

229. Disbursements attributable to operating expenses of the Banners Broker business total approximately US\$21.98 million.

230. The Receiver's Third Report referenced US\$9.98 million in payments in respect of which the Receiver was then unable to identify the recipient of the funds. As a result of investigation and analysis since July 30, 2015, including in respect of the records obtained in response to the Bank Production Order, the Receiver has been able to trace or otherwise account for US\$8.74 million of the previously unverified US\$9.98 million. Since the Third Report, the Receiver has identified an additional US\$2.82 million in unverified disbursements.<sup>15</sup> Thus, there is a total of US\$4.06 million in unverified disbursements.

#### **F. Sealing Order with Respect to Flow of Funds Analysis**

231. The Via Bank Flow of Funds Diagram attached at Confidential Appendix "A", the Flow of Funds Analysis attached at Confidential Appendix "B" and the summary provided at Confidential Appendix "C" are prepared in part based on Smith Examination Information. For this reason, and consistent with the terms of the Confidentiality Order, the Receiver respectfully requests that these appendices be treated as confidential and sealed.

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<sup>15</sup> The total US\$4.06 million in unverified disbursements are spread across multiple accounts held by BBIL, the Associated Corporations, and the Additional Dixit Entities. The Receiver notes that the US\$4.06 million in unverified disbursements is a de minimis amount, or 2.6%, of the US\$156.35 million in disbursements made by Banners Broker.

The Receiver has not been able to account for these unverified disbursements because the descriptions of the disbursement transactions in the relevant banking records do not provide sufficient particulars of the transactions. For example, "withdrawal", "transfer", "debit memo", "payment", "Prepaid Card Loads".



**F. Approval of the Receiver's Fees and Disbursements**

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

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

234. The total fees and disbursements of the Receiver for services provided during the period of June 1, 2015 to February 29, 2016 is \$305,823.75 excluding HST. Attached as **Appendix "BB"** is an affidavit of Philip H. Gennis sworn April 4, 2016 ("**Gennis Affidavit**") regarding the Receiver's fees and disbursements. Copies of the Receiver's detailed time dockets for the period June 1, 2015 to February 29, 2016 are appended as exhibits to the Gennis Affidavit.

235. Cassels has acted as the Receiver's legal counsel on all matters related to these receivership proceedings. Cassels rendered its accounts to the Receiver for the period June 1, 2015 through to and including February 29, 2016 in the amount of \$1,632,882.80 including disbursements and HST. Attached as **Appendix "CC"** is the affidavit of Larry Ellis sworn April 4, 2016 ("**Ellis Affidavit**") regarding counsel's fees and disbursements to the Receiver. Copies of the counsel's detailed time dockets for the period June 1, 2015 to February 29, 2016 are appended as exhibits to the Ellis Affidavit. The Cassels accounts described in the Ellis Affidavit include amounts billed to the Receiver, which were paid directly by the Joint Liquidators and approved by the Committee of Inspection in accordance with the laws governing the Isle of Man Proceedings.

236. The Receiver believes that the fees and disbursements of Cassels are fair and reasonable and justified in the circumstances. The Receiver has reviewed the accounts of Cassels in light of the novel, complex, broad ranging and multi-jurisdictional nature of this

engagement. The Receiver is of the view that all work set out in the accounts was carried out and was necessary. The hourly rates of the lawyers at Cassels who worked on this matter are considered to be appropriate and reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience. The Receiver accordingly respectfully recommends approval of Cassels' accounts by this Honourable Court.

237. A copy of the Receiver's Interim Statement of Receipts and Disbursements, as at March 31, 2016, is attached hereto as **Appendix "DD"**.

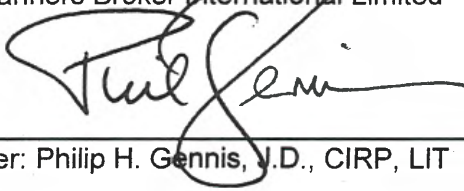
## **VII. Summary**

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

- (a) converting the investigatory receivership of Bannersbroker Canada into standard receivership proceedings;
- (b) declaring that the St. Lucian Funds are BBIL funds to be used in accordance with the Receiver's mandate;
- (c) directing HSBC Bank plc to produce documents;
- (d) granting a sealing order with respect to Confidential Appendices "A", "B" and "C" to this Fifth Report;
- (e) approving the Receiver's interim statement of receipts and disbursements as at March 31, 2016;
- (f) approving the fees and disbursements of the Receiver and its counsel, Cassels, for services rendered from June 1, 2015, to February 29, 2016 as particularized in the Fee Affidavits; and
- (g) approving this Fifth Report.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4th day of April, 2016.

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

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

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

Tab G

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

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

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

**AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C-43**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN  
WITH RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**AND IN THE MATTER OF THE RECEIVERSHIP OF STELLAR POINT INC.**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN  
THEIR CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER  
INTERNATIONAL LIMITED, UNDER PART XIII OF THE *BANKRUPTCY AND  
INSOLVENCY ACT* (CROSS-BORDER INSOLVENCIES)**

**SIXTH REPORT OF THE  
COURT-APPOINTED RECEIVER OF  
BANNERS BROKER INTERNATIONAL LIMITED AND  
STELLAR POINT INC.  
("SIXTH REPORT")**

**May 19, 2016**

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## I. Overview

1. This is the sixth report to court ("**Sixth Report**") of msi Spergel inc. in its capacity as court-appointed receiver ("**Receiver**") of Banners Broker International Limited ("**BBIL**"), Stellar Point Inc. ("**Bannersbroker Canada**") and five other Banners Broker related entities.

2. The Sixth Report is filed in support of the Receiver's motion ("**Motion**") for an order in furtherance of the transition of certain BBIL insolvency administration matters from the Joint Liquidators (defined below) to the Receiver ("**Transition**"):

- (a) authorizing the Receiver to enter into and approving the terms of an assignment agreement ("**Assignment Agreement**") pursuant to which the Joint Liquidators will assign to the Receiver any and all residual property, assets, claims and undertakings of BBIL that have accrued to the Joint Liquidators by virtue of their appointment and activities as Joint Liquidators ("**Assigned Interests**");
- (b) authorizing and empowering the Receiver to pursue, receive, collect, settle, extend or compromise any of the Assigned Interests;
- (c) authorizing and empowering the Receiver to respond to, address, or otherwise deal with BBIL creditors and BBIL creditor inquiries regardless of where such creditors are situate, and regardless of whether such inquiries are directed to the Joint Liquidators or the Receiver;
- (d) reporting to this Court in connection with the Receiver's findings as they relate to BBIL's creditors, their jurisdictional whereabouts and the quantum



of outstanding claims and to make such recommendations on the completion of a potential claims process as the Receiver's sees fit;

- (e) permitting the Receiver to receive and take possession of any BBIL related records, accounts or information in the possession of the Joint Liquidators as the Receiver considers necessary or desirable for the purposes of fulfilling the Receiver's mandate;
- (f) releasing the Joint Liquidators from their role as "Foreign Representatives" of BBIL for purposes of the *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27 ("**BIA**") in respect of the proceedings brought in the Isle of Man under section 162(6) of the *Companies Act, 1931*;
- (g) authorizing the Receiver to pay the reasonable fees and disbursements of the Joint Liquidators incurred in relation to the Transition, without further approval of this Court, provided that such fees and disbursements do not exceed \$100,000;
- (h) authorizing and empowering the Receiver to engage David Rubin & Partners Ltd. ("**DRP**") and MannBenham Advocates Ltd. ("**MannBenham**") 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;
- (i) approving the Sixth Report and the conduct and activities of the Receiver as set out herein;

- (j) approving the Receiver's interim statement of receipts and disbursements as at May 17, 2016; and
- (k) approving the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), for services rendered from March 1, 2016 to April 30, 2016, as particularized in the affidavits of Phillip Gennis sworn May 18, 2016, and Larry Ellis sworn May 18, 2016, (collectively, "**Fee Affidavits**").

3. This Sixth Report follows and may be read in conjunction with the:

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

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

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

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

- (c) **Receiver's Third Report** (dated July 30, 2015)

This report was filed in support of the Receiver's motion for approval of a settlement agreement with a BBIL group entity, and for the grant of certain limited investigatory authority in respect of recently identified BBIL associated companies. The report also provided an update on the activities of the Receiver since its First Report.

- (d) **Receiver's Fourth Report** (dated January 8, 2016)

This report was filed in support of the Receiver's motion for the production of certain banking records from the Royal Bank of Canada ("**RBC**") and the Canadian Imperial Bank of Commerce ("**CIBC**"). The Fourth Report

also provides an update on the Receiver's activities since the Third Report.

(e) **Receiver's Fifth Report** (dated April 4, 2016)

This report was filed in support of the Receiver's motion for the conversion of the investigatory receivership of Bannersbroker Canada into a standard possessory receivership and a declaration that certain funds held by an off-shore financial institution were property of the BBIL estate. The Fifth Report also provides an update on the Receiver's activities since the Third Report.

4. All court materials filed, including previous Receiver's reports and court orders and endorsements issued in these proceedings, are available on the Receiver's websites at: [www.spergel.ca/banners](http://www.spergel.ca/banners) (for BBIL) and <http://www.spergel.ca/StellarPoint> (for Bannersbroker Canada).

## II. **Background**

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

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

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

- (a) recognizing the Isle of Man Proceedings as a "foreign main proceeding" for the purposes of section 268 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("**BIA**");
- (b) recognizing the Joint Liquidators as the "foreign representatives" ("**Foreign Representatives**") of BBIL for the purposes of section 268 of the BIA; and
- (c) granting a stay of proceedings in respect of actions concerning BBIL's property, debts, liabilities or obligations.

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

- (a) appointing msi Spergel inc. as receiver of BBIL's assets, undertakings and properties, including the proceeds thereof ("**Property**");
- (b) empowering the Receiver to identify and realize upon the Property, including taking steps to access all information relating to BBIL's accounts at any financial institution;
- (c) authorizing the Receiver to conduct examinations of the former principals of BBIL, as well as any other persons that the Receiver reasonably believes may have knowledge of BBIL's trade, dealings and Property;

- (d) authorizing the Receiver to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request; and
- (e) authorizing the Receiver to coordinate the administration and supervision of BBIL's assets and affairs with the Joint Liquidators as Foreign Representative of the Isle of Man Proceeding.

8. An important ground for the Canadian foreign recognition application, and the appointment of a Canadian receiver, was that BBIL appeared to have ownership and business connections to Canada, as well as financial dealings tied to Canada, that were deserving of investigation. These Canadian connections, as they were then understood, were detailed in the affidavit of Paul Robert Appleton, in his capacity as Joint Liquidator of BBIL, sworn August 6, 2014, and filed with this court at the time that foreign recognition of the Isle of Man Proceeding was sought.

9. The Supplemental Order that appointed the Receiver provides the Receiver with the mandate to assist the Foreign Representative in the wind-up of BBIL, including the identification of and realization upon BBIL assets for the benefit of creditors. Consistent with the Model Receivership Order, the Receiver's powers in respect of BBIL extend to accessing all manner of relevant information, and the taking of possession of assets.

10. A few months later, in October 2014, the Receiver was granted certain investigatory authority over several other BBIL associated entities:

- (a) 2087360 Ontario Incorporated o/a Local Management Services;

- (b) Parrot Marketing Inc. (formerly o/a 8264554 Canada Limited) ("**Parrot Marketing**");
- (c) 2341620 Ontario Corporation;
- (d) Bannersbroker Canada;
- (e) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited") ("**Dixit Holdings**");
- (f) any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "BannersMobile" or "Banners Broker Belize"  
  
(collectively, the "**Associated Corporations**").

11. In August 2015, the Receiver's investigatory authority was further expanded to include two additional companies that had significant Banners Broker related dealings: Dixit Consortium Inc. and Dreamscape Ventures Ltd. (collectively, the "**Additional Dixit Entities**").

12. On April 8, 2016, the investigatory receivership of Bannersbroker Canada was converted to a standard possessory receivership and msi Spergel inc. was appointed receiver of Bannersbroker Canada.

### **III. Developments Since the Receiver's Fifth Report**

13. The Fifth Report was filed on April 4, 2016, and remains relatively current. It provides a comprehensive report on developments in these proceedings. A copy of the Fifth Report (without appendices) is attached as **Appendix "A"**.

**A. Production of Documents From HSBC**

14. The Receiver has sought documentary production relating to BBIL, the Associated Corporations and the Additional Dixit Entities from approximately 100 financial institutions, including HSBC Bank Canada ("**HSBC**").

15. Following on numerous requests, HSBC provided the Receiver with bank account statements for Parrot Marketing's HSBC accounts ("**Parrot HSBC Accounts**") on March 18, 2016. The statements lacked supporting documents for the transactions listed.

16. HSBC provided the Receiver with the majority of the supporting documents for the transactions listed in the Parrott HSBC Accounts on April 7, 2016. Additional documents were delivered to the Receiver by HSBC on April 19, 2016.

17. The Receiver is reviewing the Parrot HSBC Accounts documentation and incorporating relevant information into an overall accounting effort, referred to as the Banners Broker "Flow of Funds Analysis". The Receiver has no further requests of HSBC at this time.

**B. Meetings with Joint Liquidators**

18. The Joint Liquidators, the Receiver, and their counsel met at Cassels' office in Toronto on April 24 and April 25 to discuss the strategic direction of the receivership of BBIL and six associated Banners Broker entities.

19. In respect of BBIL, the outcome of the meetings was that the Court Officers resolved to implement the steps necessary to transition the Joint Liquidators' portable insolvency administration responsibilities to the Receiver.

20. As further explained below, the Court Officers conclude that significant efficiencies are gained if the administration of BBIL's estate is administered by the Receiver alone. The vast majority of BBIL administration work to be completed is domiciled in Canada. Furthermore any work required to be completed in the Isle of Man or any of the other 119 countries where creditors may reside, can appropriately and efficiently be spearheaded from the Canadian proceedings.

**C. Meeting with Committee of Inspection in Isle of Man Proceedings**

21. The Joint Liquidators report regularly to a Committee of Inspection consisting of a group of 5 creditors. The Committee of Inspection, much like inspectors to a Canadian bankrupt estate, instruct the Joint Liquidators to take whatever steps they consider appropriate in order to protect the estate and its creditors.

22. On May 11, 2016, a meeting of the Committee of Inspection was held to consider and seek approval of the proposal to transition portable insolvency administration responsibilities to the Receiver. The Receiver and Cassels attended the meeting for the purpose of providing advice and answers to questions regarding the Canadian receivership process.

23. The meeting consisted of a broad ranging and thoughtful discussion of the future course of these proceedings, with a focus on the efficiencies of shifting portable insolvency administration functions from the Joint Liquidators to the Receiver as a means of centralizing and controlling costs. Consideration was also given as to how best attend to creditor objectives and creditor reporting in circumstances where the Joint Liquidators transition insolvency administration responsibility to the Receiver.



24. The meeting concluded with the Committee of Inspection unanimously resolving to approve of and support the “transition to Canada strategy” and the relief sought on this motion.

#### **D. Criminal Proceedings**

25. The Receiver continues to monitor developments in the criminal proceedings against Christopher Smith (“**Smith**”) and Rajiv Dixit (“**Dixit**”) on the basis that they are relevant parallel proceedings involving common issues and documents.

26. The Receiver understands that a pretrial conference hearing has been scheduled for May 31, 2016. The hearing is not public and the Receiver is not permitted to attend.

### **IV. Relief Sought**

#### **A. Background**

27. As detailed in the Fifth Report, the Receiver and the Joint Liquidators have focused their time, effort and resources on scouring records and compiling information all with a view to recovering as much investor money as possible and with a view to providing parties impacted by BBIL’s business with an understanding of BBIL’s international business affairs. Through the Court Officers’ collective efforts a detailed international flow of funds has been substantially completed and recoveries made in more than six different countries.

28. Through the Court Officers’ review of tens of thousands of documents, and interviews of persons having knowledge of the operation, it appears that upwards of 100,000 people in more than 120 countries paid over US\$156 million for Banners Broker “product”. “Product”, which was described as “advertising”, initially offered

parties the opportunity to double their money. The creditors of Banners Broker are the tens of thousands of individuals who bought the product with a view to earning income.

29. Initially, at the time that these proceedings were commenced, it was believed that BBIL had stronger connections to the Isle of Man than to any other jurisdiction. A case was accordingly made that BBIL's centre of main interest was the Isle of Man.

30. The Isle of Man was recognized by this court as BBIL's centre of main interest, and the Isle of Man proceedings were declared to be a "foreign main proceeding". At the same time, the Receiver was appointed and charged with broad ranging responsibilities in relation to all of BBIL's assets, undertakings and properties in Canada.

31. However, as the insolvency administration has progressed, it has become clear that BBIL connections to Canada are far more extensive than initially believed. Indeed they vastly outweigh connections to the Isle of Man, or any other jurisdiction.

32. Perhaps most significantly, the actual business of Banners Broker was at all times conducted from Canada by resident owners, management and employees. In addition to BBIL, the principals directed a collection of related Canadian incorporated entities, some of which companies were used interchangeably with BBIL. Although the Canadian entities employed certain foreign payment processors and off-shore banking arrangements, such activities were coordinated exclusively from Canada.

33. The Banners Broker website, computer program, and back office support function were designed and managed from Toronto. From its inception in 2010, or shortly thereafter, Banners Broker was run out of four condominiums at 167 Church St.,

Toronto, Ontario. As noted in the Fifth Report, starting in October 2012, these condominiums and a commercial property at 5 Carlow Court, Whitby, functioned as the Banners Broker world headquarters.

34. Beginning in late 2011 and continuing until September 2013, Bannersbroker Canada was the primary source of customer support for Banners Broker creditors and resellers. Bannersbroker Canada administered Banners Broker's web presence, including by creating online content for and updating and maintaining the business website. Bannersbroker Canada also planned BBIL conventions and BBIL "World Tour" stops including events in Portugal, England, and Ireland. At its peak Bannersbroker Canada employed approximately 70 people.

35. Conversely, the business' Isle of Man connections now seem relatively limited. BBIL was in the nature of a "letter box company", incorporated to act as holding company in a tax haven jurisdiction. BBIL deposited funds in a bank account on the island for approximately three months, beyond which time the account was effectively left dormant. The Isle of Man operation never employed a local resident and any creditor/customer/investor communication made by any interested party was routed to Canada, with no ability to contact a BBIL employee located in the Isle of Man.

36. The predominant role that Canada and the Ontario receivership proceedings have played - and promise to continue to play - in the wind-up of BBIL and the Banners Broker business is evidenced by the following high level points:

- (a) almost all realizations in the BBIL insolvency proceedings, with the exception of the BBIL bank account in the Isle of Man, have been made by or to the account of the Receiver;

- (b) Banners Broker debtors, contract counter-parties, payment processors, and banks and financial institutions have largely recognized the authority of and cooperated with the Receiver, even in circumstances where such parties are not resident in Canada or otherwise subject to this Honourable Court's jurisdiction;
- (c) the Receiver has, where appropriate, sought and obtained additional receivership powers over seven BBIL associated entities. Certain of these entities, particularly Bannersbroker Canada, were central elements of the business of Banners Broker, arguably as or more central than BBIL. Such entities are subject to receivership proceedings in Canada alone;
- (d) with the exception of contingent litigation claims, all known BBIL assets are currently domiciled in Canada or under the current care of the Receiver. The Receiver's existing authority will allow it to effectively administer these assets together with any contingent litigation claims existing in other jurisdictions; and
- (e) looking forward, the wind-up of BBIL will have to be closely coordinated with the wind-up of Bannersbroker Canada, and perhaps certain other Canada incorporated entities, and it is only the Receiver that has jurisdiction in respect of such companion proceedings

**B. Transition of Receivership Proceedings from the Isle of Man to Canada**

37. Given the predominant and growing "Canada focus" of the BBIL receivership proceedings the Receiver and the Joint Liquidators have concluded that it is no longer

economic to administer and maintain these proceedings as a conventional cross-border foreign recognition proceeding with active insolvency representation in both Canada and the Isle of Man.

38. Moreover, there is a potential for significant cost savings should it be possible to complete the wind-up of BBIL (and associated entities such as Bannersbroker Canada), by a single insolvency jurisdiction that is appropriately positioned and empowered to realize upon and deal with residual assets and claims.

39. Accordingly, and subject to the approval of this Honourable Court and the approval of the Isle of Man High Court of Justice, the Receiver and Joint Liquidators propose that the Receiver conclude the administration of BBIL (and BBIL related entity Bannersbroker Canada).

### **C. Assignment Agreement**

40. As an Isle of Man company, BBIL's liquidation is governed by the Part V of the *Companies Act* 1931, together with the Companies (Winding Up) Rules 1934 of the Isle of Man.

41. The relevant legislation accords the Joint Liquidators broad powers that may be exercised with the sanction of either the Isle of Man court or the committee of inspection. Such powers include the ability to "sell" or "transfer" the debtor's property, to "appoint an agent" and "to do all such things as may be necessary for winding-up of the affairs of the company". The Joint Liquidators may also "apply to the court...for directions in respect of any particular matter arising under the winding-up".<sup>1</sup>

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<sup>1</sup> (*Companies Act*, 1931, s. 184 and 185.

42. To preserve the prospect of realization upon any BBIL property vested in the Joint Liquidators, the Joint Liquidators and the Receiver have concluded that it would be advantageous to enter into a transition services and Assignment Agreement whereby the Joint Liquidators will assign to the Receiver any and all residual property, assets, claims and undertakings of BBIL that have accrued to the Joint Liquidators by virtue of their appointment and activities as Joint Liquidators.

43. To this end the Court Officers are in the process of preparing the Assignment Agreement. The Court Officers are still determining what terms and conditions are necessary for the agreement. Thus, the Court Officers intend to attach the agreement as an appendix to an affidavit of the Joint Liquidators that will be filed with the Court early next week.

44. Although somewhat unique, the Assignment Agreement makes good sense in the circumstances of this case where the debtor's known remaining assets of any value are already in the hands of the Receiver, and the Receiver otherwise has the authority to receive and realize upon the debtor's property. Further, the proposed assignment is supported by the Committee of Inspection. The Receiver respectfully recommends that this Honourable Court approve the terms of the Assignment Agreement and authorize the Receiver to execute the same.

#### **D. Additional Limited Authority**

45. In the interests of international comity, and effectively coordinating these proceedings, including the transition of certain insolvency administration matters from the Joint Liquidators to the Receiver, the Receiver also seeks certain limited additional authorities sufficient to:

- (a) pursue, receive, collect, settle, extend or compromise any of the Assigned Interests;
- (b) respond to, address or otherwise deal with BBIL creditors and BBIL creditor inquiries, regardless of where such creditors reside and regardless of whether or not the inquiries are directed at the Joint Liquidators or the Receiver; and
- (c) receive and take possession of any BBIL related records, accounts or information in the possession of the Joint Liquidators as the Receiver considers necessary or desirable for the purposes of fulfilling the Receiver's mandate.

46. Pursuing claims and dealing with creditors are standard aspects of any receivership. Certainly the Supplemental Order and the Further Supplemental Order already provide the Receiver with certain of the authorities outlined above. It is primarily in recognition of the fact that the Joint Liquidators have been actively involved in this case up until now, that the Receiver considers it appropriate to seek specific revisions to its mandate and powers to address matters in the nature of a transition. This approach will also ensure that all stakeholders having an interest in this proceeding will be on notice of the intention to transition from the Joint Liquidators to the Receiver.

#### **E. Release of Joint Liquidators**

47. In the event that this motion is granted, and a companion motion brought by the Joint Liquidators in the Isle of Man is similarly allowed, the Joint Liquidators will have effectively concluded the *Companies Act*, 1931, wind-up of BBIL. It is anticipated that

the Joint Liquidators would be released and discharged from all liability pursuant to section 190(3) of the *Companies Act*, 1931.

48. The relief sought on this motion would release the Joint Liquidators from their appointment as “foreign representative” for the purposes of these proceedings. Assuming that the Transition can proceed as proposed, the conclusion of the BBIL wind-up will be administered from Canada by the Receiver, and there will be no need for the Joint Liquidators to retain an appointment as “foreign representative”.

#### **F. Funding of Joint Liquidators**

49. To obtain a discharge in the Isle of Man, and to transition the BBIL insolvency proceedings from the Isle of Man to Canada, the Joint Liquidators are required to bring an application before the High Court of Justice of the Isle of Man and have requested funding from the Receiver to do so. The Joint Liquidators have estimated that no more than \$100,000 will be needed to retain and instruct counsel in the Isle of Man to bring this application, and to cover the costs of their professional time.

50. The Receiver believes this is a reasonable estimate of the costs of concluding the Isle of Man Proceedings and is seeking this court’s permission to fund the necessary application to the High Court of Justice of the Isle of Man to conclude the BBIL liquidation process there.

#### **G. Retention of DRP and MannBenham**

51. Given the genesis and history of these proceedings, the Receiver has determined that it may be advantageous to retain DRP and MannBenham as agents



from time to time to assist with the conclusion of the wind-up of BBIL and the exercise of the Receiver's powers and duties.

52. The Receiver accordingly seeks specific authority and approval to retain DRP and/or MannBenham to assist the Receiver as may be appropriate.

#### **H. Approval of the Receiver's Fees and Disbursements**

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

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

55. The total fees and disbursements of the Receiver for services provided during the period of March 1, 2016 to April 30, 2016 is \$87,527.00 excluding HST. Attached as **Appendix "B"** is an affidavit of Philip H. Gennis sworn May 18, 2016 ("**Gennis Affidavit**") regarding the Receiver's fees and disbursements. Copies of the Receiver's detailed time dockets for the period March 1, 2016 to April 30, 2016 are appended as exhibits to the Gennis Affidavit.

56. Cassels has acted as the Receiver's legal counsel on all matters related to these receivership proceedings. Cassels rendered its accounts to the Receiver for the period March 1, 2016 through to and including April 30, 2016 in the amount of \$431,707.50 including disbursements and HST. Attached as **Appendix "C"** is the affidavit of Larry Ellis sworn May 18, 2016 ("**Ellis Affidavit**") regarding counsel's fees and disbursements

to the Receiver. Copies of the counsel's detailed time dockets for the period March 1, 2016 to April 30, 2016 are appended as exhibits to the Ellis Affidavit. The accounts described in the Ellis Affidavit include amounts billed to the Receiver, which were paid directly by the Receiver and approved by the Committee of Inspection in accordance with the laws governing the Isle of Man Proceedings.

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

58. A copy of the Receiver's Interim Statement of Receipts and Disbursements, as at May 17, 2016, is attached hereto as **Appendix "D"**.

#### **IV. Recommendation**

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

- (a) authorizing the Receiver to enter into and approving the terms of the Assignment Agreement, in substantially similar form and substance as is

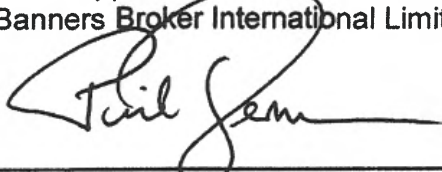
attached to this Sixth Report, pursuant to which the Joint Liquidators will assign to the Receiver the Assigned Interests;

- (b) authorizing and empowering the Receiver to pursue, receive, collect, settle, extend or compromise any of the Assigned Interests;
- (c) authorizing and empowering the Receiver to respond to, address, or otherwise deal with BBIL creditors and BBIL creditor inquiries regardless of where such creditors are situate, and regardless of whether such inquiries are directed to the Joint Liquidators or the Receiver;
- (d) authorizing and empowering the Receiver to administer such creditor claims process as may be appropriate, subject to further order of this Court;
- (e) permitting the Receiver to receive and take possession of any BBIL related records, accounts or information in the possession of the Joint Liquidators as the Receiver considers necessary or desirable for the purposes of fulfilling the Receiver's mandate;
- (f) releasing the Joint Liquidators from their role as "Foreign Representatives" of BBIL for purposes of the BIA in respect of the proceedings brought in the Isle of Man under section 162(6) of the *Companies Act, 1931*;
- (g) authorizing the Receiver to pay the reasonable fees and disbursements of the Joint Liquidators incurred in relation to the Transition, without further approval of this Court, provided that such fees and disbursements do not exceed \$100,000;

- (h) authorizing and empowering the Receiver to engage DRP and MannBenham 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;
- (i) approving the Sixth Report and the conduct and activities of the Receiver as set out herein;
- (j) approving the Receiver's interim statement of receipts and disbursements as at May 17, 2016; and
- (k) approving the fees and disbursements of the Receiver and its counsel, Cassels, for services rendered from March 1, 2016 to April 30, 2016, as particularized in the affidavits of Philip Gennis sworn May 18, 2016, and Larry Ellis sworn May 18, 2016.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19th day of May, 2016.

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



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

Tab H

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

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

THE HONOURABLE MADAM	)	FRIDAY, THE 22nd DAY
	)	
JUSTICE MATHESON	)	OF AUGUST, 2014

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

**Order Made After Application  
INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION** made by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators ("**Foreign Representative**") of Banners Broker International Limited ("**Debtor**"), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**") for an Order substantially in the form attached to the notice of application was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**ON READING** the notice of application, the affidavit of Paul Robert Appleton sworn August 6, 2014, the affidavit of Miles Andrew Benham sworn August 6, 2014, the affidavit of service efforts of Christopher Horkins sworn August 21, 2014, the affidavit of attempted service of Frank Temprile sworn August 18, 2014, the two affidavits of attempted service of Norman Ng sworn August 18, 2013, the affidavit of attempted service of Heather Johnson served August 18, 2014, the affidavit of attempted service of Christopher Maniaci sworn August 18, 2014, and the affidavit of attempted service of Mary Carreiro sworn August 21, 2014, filed, and upon being provided with certified copies of the documents required by section 269(2)(a) of the BIA,

**AND UPON BEING ADVISED** by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, as well as counsel for Christopher Smith.

#### **SERVICE**

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

#### **FOREIGN REPRESENTATIVE**

2. **THIS COURT DECLARES** that the Foreign Representative is the "foreign representative" of the Debtor for purposes of the BIA in respect of the proceedings brought in the Isle of Man under section 162(6) of the *Companies Act, 1931* ("**Foreign Proceeding**").

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. **THIS COURT ORDERS** that the centre of main interest of the Debtor is in the Isle of Man and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 268 of the BIA.

#### **STAY OF PROCEEDINGS**

4. **THIS COURT ORDERS** that until otherwise ordered by this Court no person shall commence or continue any action, execution or other proceedings concerning the Debtor's property, debts, liabilities or obligations.

#### **GENERAL**

5. **THIS COURT ORDERS** that the Foreign Representative shall cause to be published a notice substantially in the form attached to this order as **Schedule "A"**, once a week for four consecutive weeks in the Globe and Mail (National Edition) and the National Post.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Foreign Representative and its counsel and agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Foreign Representative and its counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

A handwritten signature in dark ink, appearing to read 'N Brown', is written over a horizontal line. Below the line, the name 'Matheson J.' is printed in a small, sans-serif font.

**Natasha Brown**  
**Registrar**



**SCHEDULE "A" – MEDIA NOTICE****BANNERS BROKER INTERNATIONAL LIMITED  
("BBIL")****TO ALL CREDITORS AND OTHER AFFECTED PARTIES**

TAKE NOTICE that on August 22, 2014 the Ontario Superior Court of Justice (Commercial List) ordered, pursuant to section 272 of the *Bankruptcy and Insolvency Act*, that the proceeding of BBIL In Liquidation brought before the High Court of Justice in the Isle of Man, Civil Division under section 162(6) of the *Companies Act, 1931* (the "Foreign Proceeding") be recognized as a foreign main proceeding and that msi Spergel inc., be appointed Receiver in respect of the Debtor in Canada.

The contact details for the Receiver in Canada are as follows:

msi Spergel inc.  
505 Consumers Road, Suite 200  
Toronto, ON M2J 4V8

Tel: (416) 498-4325  
Fax: (416) 498-4235  
Email: [bannersbrokerinternational@spergel.ca](mailto:bannersbrokerinternational@spergel.ca)

Attn: Philip H. Gennis

The contact details for the legal counsel for the Joint Liquidators of BBIL and the Receiver are as follows:

Cassels Brock & Blackwell LLP  
Scotia Plaza, Suite 2100  
40 King Street West  
Toronto ON M5H 3C2

Tel: (416) 869-5960  
Fax: (416) 360-8877  
Email: [dward@casselsbrock.com](mailto:dward@casselsbrock.com)

Attn: David Ward

Please communicate all interest in this matter with supporting documentation by email to [bannersbrokerinternational@spergel.ca](mailto:bannersbrokerinternational@spergel.ca)

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER  
INSOLVENCIES)

	<b>ONTARIO SUPERIOR COURT OF JUSTICE (Commercial List)</b>
	Proceeding commenced at TORONTO
	<b>ORDER</b>
	<b>Cassels Brock &amp; Blackwell LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2
	<b>David S. Ward LSUC #: 33541W</b> Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com
	<b>Christopher Horkins LSUC #: 61880R</b> Tel: 416.815.4351 Fax: 416.642.7129 chorkins@casselsbrock.com
	Lawyers for the Applicants



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

THE HONOURABLE MADAM	)	FRIDAY, THE 22nd DAY
	)	
JUSTICE MATHESON	)	OF AUGUST, 2014

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN RECOGNITION)**

**THIS APPLICATION**, made by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators and as Foreign Representative ("**Foreign Representative**") of Banners Broker International Limited ("**Debtor**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), for an Order substantially in the form attached to the notice of application, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**ON READING** the notice of application, the affidavit of Paul Robert Appleton sworn August 6, 2014, the affidavit of Miles Andrew Benham sworn August 6, 2014, the affidavit of service efforts of Christopher Horkins sworn August 21, 2014, the affidavit of attempted service of Frank Temprile sworn August 18, 2014, the two affidavits of attempted service of Norman Ng sworn August 18, 2013, the affidavit of attempted service of Heather Johnson served August 18, 2014, the affidavit of attempted service of Christopher Maniaci sworn August 18, 2014, and the affidavit of attempted service of Mary Carreiro sworn August 21, 2014, filed, and on reading the consent of msi Spergel Inc. to act as the proposed receiver.

**ON HEARING** submissions of counsel for the Applicants, and counsel for Christopher Smith, no one else appearing:

**SERVICE**

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

**INITIAL RECOGNITION ORDER**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated August 22, 2014 (the "**Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

**RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the High Court of Justice of the Isle of Man, Civil Division, Chancery Procedure, made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 272 of the BIA:

- (a) the Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued February 26, 2014, and
- (b) the Order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued March 14, 2014;

Copies of the which Orders are attached as **Schedule "A"** hereto;

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

## APPOINTMENT OF RECEIVER

5. **THIS COURT ORDERS** that pursuant to subsection 272(1)(d) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, MSI Spergel Inc. is hereby appointed receiver ("**Receiver**"), without security, of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**").

## RECEIVER'S POWERS

6. **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 access all information relating to the Debtor's accounts at any financial institution, and the Receiver shall have immediate, continuous and unrestricted access to carry out the foregoing;
- (c) to access any and all computer systems and servers, wherever located, related to the business and affairs of the Debtor and or the Property;
- (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 report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Debtor and or the Property, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable; and
- (f) 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**

7. **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.

8. **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, servers, electronic backups, 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 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.

9. **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.

10. **THIS COURT ORDERS** that the Canadian financial institutions and electronic payment processors listed in **Schedule "B"** to this Order advise the Receiver of the existence of any Property and Records in their possession or control.

#### **EXAMINATION BY RECEIVER OF SMITH AND OTHERS**

11. **THIS COURT ORDERS** that Christopher G. Smith, Rajiv Dixit, Kuldip Josun, and any other person(s) that the Receiver reasonably believes may have knowledge of the Debtor's affairs, attend at an examination under oath before an Official Examiner in Toronto, on a date to be agreed upon or selected by the Receiver, with a minimum of 10 days notice, notice to include a copy of this Order, and answer questions propounded to them by counsel for the Receiver and provide testimony including, but not limited to, the following matters:

- (a) the Debtor's trade, dealings and Property; and
- (b) the matters described in the Foreign Representative's affidavit filed in support of the within application.

#### **NO PROCEEDINGS AGAINST THE RECEIVER OR FOREIGN REPRESENTATIVE**

12. **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 or the Foreign Representative except with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

13. **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**

14. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, the Foreign Representative, 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**

15. **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.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. **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, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 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**

17. **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 ("**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.

18. **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.

19. **THIS COURT ORDERS** that prior to 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.

#### **OTHER PROVISIONS RELATING TO THE RECEIVER**

20. **THIS COURT ORDERS** that the Receiver:

- (a) is hereby authorized to provide such information and assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) is hereby authorized to otherwise coordinate the administration and supervision of the Debtor's assets and affairs with the Foreign Representative;
- (c) shall report to this Court at least once every six months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, or such other matters as may be relevant to the proceedings herein; and
- (d) in addition to the periodic reports referred to in paragraph 20(c) above, the Receiver may report to this Court at such other times and intervals as the Receiver may deem appropriate with respect to any of the matters referred to in paragraph 20(c) above.

21. **THIS COURT ORDERS** that the Foreign Representative shall (i) advise the Receiver of all material steps taken by the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Receiver in the exercise of its powers and discharge of

its obligations, and (iii) provide the Receiver with the assistance that is necessary to enable the Receiver to adequately carry out its functions.

22. **THIS COURT ORDERS** that the Receiver (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Receiver filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Receiver deems appropriate.

23. **THIS COURT ORDERS** that the Receiver may provide any creditor of the Debtor with information in response to reasonable requests for information made in writing by such creditor addressed to the Receiver. The Receiver shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Receiver believes to be privileged or confidential, the Receiver shall not provide such information to third parties, other than its counsel, the Joint Liquidators, and their counsel, unless otherwise directed by this Court.

#### **SERVICE AND NOTICE**

24. **THIS COURT ORDERS** that 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.spergel.ca/banners/>>'.

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Foreign Representative and the Receiver are 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable 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**

26. **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.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as an interim receiver, receiver, receiver and manager, proposal trustee, or a trustee in bankruptcy of the Debtor.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the Isle of Man 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.

29. **THIS COURT ORDERS** that the Foreign Representative and the Receiver be at liberty and are 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.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Receiver and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG 22 2014

NB

*Rm. Littleman*

AUG 22 2014

Matheson J.

R. Littleman, Registrar  
Superior Court of Justice

SCHEDULE "A"

**Orders of the Isle of Man High Court,  
dated February 26 and March 14, 2014**

3466415  
FLOPRON

MK SONI

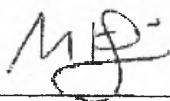
BE IT KNOWN THAT I, Manish Kumar Soni, Notary Public, duly authorised, admitted and sworn, practising in London and entitled to practise elsewhere in England and Wales,

**DO HEREBY CERTIFY AND ATTEST:**

**THAT BANNERS BROKER INTERNATIONAL LIMITED** (the "Company"), is a private company, limited by shares and incorporated, registered and existing under the laws of Isle of Man with registration number 124375C and having its registered office at Kissack Court, 29 Parliament Street, Ramsey IM8 1AT, Isle of Man;

**AND TO THE GENUINENESS** of the signature of **Paul Robert APPLETON**, whose identity I attest, a Joint Liquidator of the Company with registered address 26-28 Bedford Row, London, WC1R 4HE.

**IN TESTIMONY WHEREOF** I have hereunto set my hand and affixed my Seal of Office in London aforesaid, this 11<sup>th</sup> day of June Two Thousand and Fourteen.



Manish Kumar Soni  
Notary Public



MK SONI

M K Soni Notaries LLP St James's Park Office (Main)  
50 Broadway, London, SW1H 0DB  
DX 2303 Victoria : 0845 888 0011 : 08701 316 276  
info@mksn.co.uk : www.mksn.co.uk  
Registered No. OC379557 VAT Reg. No. 150 9032 38



<b>APOSTILLE</b> (Convention de La Haye du 5 octobre 1961)	
<b>1. Country:</b> Pays/Pais	United Kingdom of Great Britain and Northern Ireland
<b>This public document</b> Le présent acte public / El presente documento público	
<b>2. Has been signed by</b> a été signé par ha sido firmado por	Manish Kumar Soni
<b>3. Acting in the capacity of</b> agissant en qualité de quien actúa en calidad de	Notary Public
<b>4. Bears the seal/stamp of</b> est revêtu du sceau / timbre de y está revestido del sello / timbre de	The Said Notary Public
<b>Certified</b> Attesté / Certificado	
<b>5. at</b> à / en	London
<b>6. the</b> le / el día	12 June 2014
<b>7. by</b> par / por	Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs
<b>8. Number,</b> sous no / bajo el número	K101348
<b>9. Seal / stamp:</b> Sceau / timbre: Sello / timbre:	<b>10. Signature:</b> P. Forbes Signature: Firma:



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I, the undersigned, **PAUL ROBERT APPLETON**, being the Managing Partner in David Rubin & Partners, 26-28 Bedford Row, London WC1R 4HE, and the Joint Liquidator appointed on 14 March 2014 of **BANNERS BROKER INTERNATIONAL LIMITED**, a limited company incorporated in the Isle of Man with company number 124375C ("the Company"),

**HEREBY DECLARE AND CONFIRM** that

1. The attached document at Appendix 'A' is a true copy of the Winding Up Order made on 26 February 2014; and
2. The attached document at Appendix 'B' is a true copy of the Order confirming the appointment of Paul Appleton and Miles Benham as Joint Liquidators of the Company on 14 March 2014.


**IN WITNESS** whereof this document is executed in London this 10<sup>th</sup> day of June 2014.

Signed on behalf of }

**Banners Broker International Limited** }

**In liquidation by Paul Robert Appleton,** }

the duly appointed Joint Liquidator }



Witnessed By: **ADAM MAHA, ACCA**

26-28 BEDFORD ROW, LONDON WC1R 4HE  
10/6/14



*Name of Witness*



A

**CHP 14/0008**

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN  
CIVIL DIVISION  
CHANCERY PROCEDURE**

**IN THE MATTER** of the Companies Act 1931

and

**IN THE MATTER** of **BANNERS BROKER INTERNATIONAL LIMITED**

and

**IN THE MATTER** of the Claim of Targus Investments Limited ("Targus") dated the 10 January 2014 ("the Winding Up Claim")

At a Court held on  
26 February 2014

**HIS HONOUR THE DEEMSTER DOYLE  
FIRST DEEMSTER AND CLERK OF THE ROLLS**

Upon hearing the Winding Up Claim this day in the presence of Counsel for Targus and for Ian Driscoll ("Mr Driscoll") and having considered the witness statements of Stephen Porter dated 10 January 2014 Miles Andrew Benham ("Mr Benham") dated 10 January 2014 Timothy Allan Mann dated 10 January 2014 Richard Christopher Curtin dated 24 February 2014 and Kathryn Louise Clough dated the 25 February 2014 and Upon consideration had thereof **IT IS ORDERED THAT:**

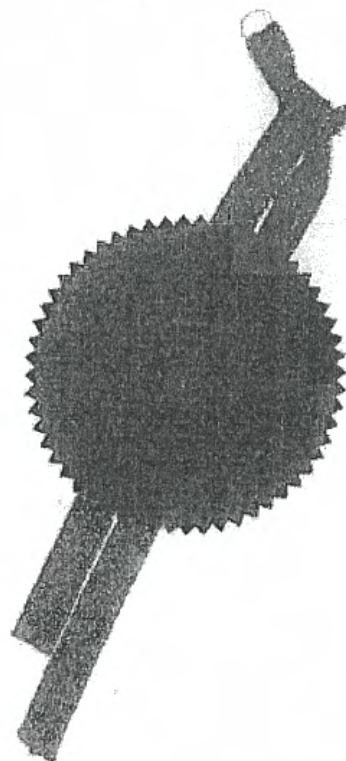
1. Banners Broker International Limited ("BBIL") be and hereby is wound up pursuant to the provisions of section 162(6) of the Companies Act 1931 ("the Act");
2. Miles Andrew Benham ("Mr Benham") of MannBenham Advocates, 49 Victoria Street, Douglas, Isle of Man and Paul Robert Appleton ("Mr Appleton") of David Rubin & Partners LLP, 26 – 28 Bedford Row, London, WC1R 4HE be and are hereby appointed Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL pursuant to section 174 of the Act. Pursuant to section 181(4) of the Act any act by the Act required or authorised to be done by the Joint Provisional Liquidators and Deemed Joint Official Receivers is to be done by both Mr Benham and Mr Appleton save as may be specifically agreed in writing (including e-mail) between them;
3. Mr Benham and Mr Appleton as Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL shall have the following powers:

- (a) To carry on the business of BBIL, in so far as may be necessary for the beneficial winding up thereof;
  - (b) To open, maintain and operate without the further consent of any other person, such bank accounts as is deemed necessary by Mr Benham and Mr Appleton;
  - (c) To appoint an advocate or such other law agent or legal advisor (whether in the Isle of Man or elsewhere) to assist in the performance of their duties;
  - (d) To pay any classes of creditors in full;
  - (e) To bring or defend any action or other legal proceedings in the name of and on behalf of BBIL;
4. Mr Benham and Mr Appleton as Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL shall forthwith advertise notice of this order in two newspapers published and circulating in the Isle of Man;
5. Meetings of creditors under section 179 of the Act shall be held within one month of the date of this order;
6. The costs of Targus and of Mr Driscoll of and incidental to the Winding Up Claim shall be payable from the assets of BBIL as an expense of the liquidation of BBIL.



**SEAL OF THE HIGH COURT**

**NOTE** — It will be the duty of such of the persons who are liable under section 175 of the Companies Act 1931 to make out or concur in making out the statement of affairs of BBIL as the Joint Provisional Liquidators and Deemed Joint Official Receivers may require, to attend on the Joint Provisional Liquidators and Deemed Joint Official Receivers at such time and place as they may appoint, and to give them all information they may require.



ISLE OF MAN COURTS  
OF JUSTICE

EXAMINED AND CERTIFIED A  
TRUE COPY

*K. Cooke*

DEPUTY ASSISTANT CHIEF REGISTRAR

27 February 2014

B



CHP 14/0024

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN  
CIVIL DIVISION  
CHANCERY PROCEDURE**

**IN THE MATTER** of the Companies Act 1931

and

**IN THE MATTER** of **BANNERS BROKER INTERNATIONAL LIMITED (IN LIQUIDATION)**

and

**IN THE MATTER** of the claim form of the Joint Provisional Liquidators and Deemed Official Receivers of Banners Broker International Limited (In Liquidation) dated 14 March 2014

**HIS HONOUR THE DEEMSTER DOYLE  
FIRST DEEMSTER AND CLERK OF THE ROLLS**

Upon considering the claim form of the Joint Provisional Liquidators and Deemed Official Receivers of Banners Broker International Limited (In Liquidation) ("BBIL") dated 14 March 2014 and the supporting witness statements of Miles Andrew Benham and Paul Robert Appleton dated 14 March 2014 and the results of the meetings of creditors and contributories and the request that this matter be dealt with administratively and without a hearing **IT IS ORDERED THAT:**

1. Miles Andrew Benham ("Mr Benham") and Paul Robert Appleton be appointed Joint Liquidators of BBIL.
2. The following persons are appointed a Committee of Inspection to act with the Joint Liquidators, namely:-
  - i. Ian Driscoll of TradeForce Building, Cornwall Place, Bradford, BD7 8JT
  - ii. Michael Bowe of 1 Cartmell Hill, Woodseats, Sheffield, S8 0RH
  - iii. Lyndon Farrington of Tynllwyn, Commins, Llanrhaeadr Ym Mochant, Powys, SY10 0BZ
  - iv. Richard Weals of 9 Oldfields Crescent, Great Haywood, Stafford, ST18 0RS
  - v. Aubrey John Bettinson of 18 Wellington Avenue, Bitterne, Southampton, SO18 5DD

3. Notice of this order is to be advertised in the London Gazette and one Isle of Man newspaper.
4. The costs of and incidental to this application be payable from the assets of BBIL as an expense of the liquidation of BBIL.

Dated 14 March 2014



**SEAL OF THE HIGH COURT**

**SCHEDULE "B"**

Companies:

- a) TD Canada Trust;
- b) CIBC;
- c) HSBC Bank Canada;
- d) Royal Bank of Canada;
- e) 677381 Canada Inc. o/a SolidTrust Pay; and
- f) UseMyServices, Inc;



# Tab I

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

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

THE HONOURABLE

WEDNESDAY, THE

JUSTICE

NEWBOLD

15th DAY OF OCTOBER, 2014

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)



**ORDER**

**(FURTHER SUPPLEMENTAL ORDER)**

**THIS MOTION**, made by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators and as Foreign Representative ("**Foreign Representative**") of Banners Broker International Limited ("**Debtor**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") and msi Spergel inc., in its capacity as receiver and manager of Banners Broker International Limited pursuant to the Order of the Honourable Justice Matheson, issued August 22, 2014 ("**Receiver**"), for an Order substantially in the form attached to the notice of motion, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**ON READING** the Receiver and Foreign Representative's Notice of Motion and the First Report of the Receiver, dated October 2, 2014 ("**First Report**"), and on hearing submissions from counsel for the Receiver and Foreign Representatives, and counsel for Christopher G. Smith:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record and Factum of the Foreign Representative and the Receiver is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **INITIAL RECOGNITION ORDER AND SUPPLEMENTAL ORDER**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated August 22, 2014 (the "**Recognition Order**") and Supplemental Order (Foreign Main Recognition), dated August 22, 2014 ("**Supplemental Order**").

3. **THIS COURT ORDERS** that the provisions of this Further Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order and Supplemental Order, provided that in the event of a conflict between the provisions of this Further Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

## **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that the Receiver's powers and authorities as set out in the Recognition Order be expanded to include the authority to make inquiries as set out below in respect of the following corporations:

- (i) 2087360 Ontario Incorporated o/a Local Management Services;
- (i) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited");
- (ii) 2341620 Ontario Corporation;

- (iii) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited");
  - (iv) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited"); and
  - (v) Any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "Banners Mobile" or "Banners Broker Belize"
- (collectively, "**Associated Corporations**").

5. **THIS COURT ORDERS** that all persons having notice of this Order 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 Associated Corporations, and any computer programs, computer tapes, computer disks, servers, electronic backups, or other data storage media containing any such information (the foregoing, collectively, "**Records**") in their possession or control in relation to the Associated Corporations 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 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 actions and activities of the Receiver as described in the First Report be and are hereby approved.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



OCT 15 2014



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IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED

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

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)

	<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> (Commercial List)  Proceeding commenced at TORONTO
	<b>ORDER</b>
	<b>Cassels Brock &amp; Blackwell LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2  <b>David S. Ward LSUC #: 33541W</b> Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com  <b>Christopher Horkins LSUC #: 61880R</b> Tel: 416.815.4351 Fax: 416.642.7129 chorkins@casselsbrock.com  Lawyers for the Receiver and Joint Liquidators

Tab J

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

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

THE HONOURABLE	)	FRIDAY, THE
	)	
JUSTICE NEWBOULD	)	7th DAY OF AUGUST, 2015

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER  
INSOLVENCIES)**

**ORDER**

**(Approval of Receiver's Activities, Fees and Disbursements, Additional Investigatory  
Authority and Approval of Settlement with 2341620 Ontario Corporation)**

**THIS MOTION**, made by msi Spergel inc., in its capacity as receiver and manager of Banners Broker International Limited ("**Debtor**") pursuant to the Order of the Honourable Justice Matheson, issued August 22, 2014 ("**Receiver**") and by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators and as Foreign Representative ("**Foreign Representative**") of the Debtor pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") for an Order approving the Receiver's activities, fees and disbursements, granting certain additional authority to the Receiver, and approving a settlement of certain claims with the respondent, 2341620 Ontario Corporation ("**234**"), was heard this day at the Court House at 330 University Avenue, Toronto, Ontario.



**ON READING** the notice of motion of the Receiver and the Foreign Representative and the Third Report of the Receiver, dated July 30, 2015 ("**Third Report**"), filed, and on hearing submissions from counsel for the Receiver and the Foreign Representative, counsel for Christopher G. Smith and 234, and counsel for Rajiv Dixit:

**Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record of the Receiver and Foreign Representative is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**Court Approval of Receiver's Activities, 234 Settlement, Fees and Disbursements**

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

3. **THIS COURT ORDERS** that the 234 Settlement (as described in the Third Report) be and is hereby authorized and approved.

4. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements, as at May 31, 2015, as appended to the Third Report, be and is hereby approved.

5. **THIS COURT FURTHER ORDERS** that the fees and disbursements of the Receiver and its counsel, Cassels Brock and Blackwell LLP, for services rendered from August 22, 2014 to May 31, 2015, as particularized in the affidavits of Philip Gennis, sworn July 22, 2015 and Larry Ellis, sworn July 28, 2015, appended to the Third Report, be and are hereby approved.

**Additional Investigatory Authority**

6. **THIS COURT FURTHER ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated August 22, 2014 (the "**Recognition Order**") and Supplemental Order (Foreign Main Recognition), dated August 22, 2014 ("**Supplemental Order**").

7. **THIS COURT FURTHER ORDERS** that the Receiver's powers and authorities as set out in the Recognition Order be expanded to include the authorities set out in paragraphs 8 and 9 below in respect of the following corporations:

(a) 8643989 Canada Inc. o/a Dixit Consortium Inc. ("**Dixit Consortium**"); and

(b) Dreamscape Ventures Ltd. ("**Dreamscape**").

8. **THIS COURT FURTHER ORDERS** that all persons having notice of this Order 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 Dixit Consortium and Dreamscape, and any computer programs, computer tapes, computer disks, servers, electronic backups, or other data storage media containing any such information (the foregoing, collectively, "**Records**") in their possession or control in relation to Dixit Consortium and Dreamscape 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 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.

9. **THIS COURT FURTHER 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.

**Amendment of Supplemental Order**

10. **THIS COURT FURTHER ORDERS THAT** paragraph 6 of the Supplemental Order be and is hereby amended to include the following additional powers:

**RECEIVER'S POWERS**

6. **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:

[...]

- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) to settle, extend or compromise any indebtedness owing to the Debtor;
- (l) 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;
- (m) 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;

(n) 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;

(o) 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 \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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, or section 31 of the Ontario Mortgages Act, as the case may be, shall not be required, and in each case the Ontario Bulk Sales Act shall not apply.

(p) 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;

(g) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(r) 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; and

(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

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.

#### **Sealing Order**

11. **THIS COURT FURTHER ORDERS THAT** Confidential Appendices "P" and "Q" to the Third Report be and are hereby sealed from the public court file in accordance with the terms of the Order of Justice Newbould, dated October 23, 2014, and in particular paragraph 4 thereof, pending further Order of this Honourable Court.

#### **Aid and Recognition**

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the Isle of Man 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.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.



AUG 07 2015





APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER  
INSOLVENCIES)

370

<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(Commercial List)</b>  Proceeding commenced at TORONTO	
<b>ORDER</b>	
<b>Cassels Brock &amp; Blackwell LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2	<b>David S. Ward LSUC #: 33541W</b> Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com
<b>Christopher Horkins LSUC #: 61880R</b> Tel: 416.815.4351 Fax: 416.642.7129 chorkins@casselsbrock.com	
Lawyers for the Receiver and Joint Liquidators	



Tab K

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

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

THE HONOURABLE	)	FRIDAY, THE
	)	
JUSTICE <i>HAINES</i>	)	8th DAY OF APRIL, 2016

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

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN  
WITH RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN  
THEIR CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER  
INTERNATIONAL LIMITED, UNDER PART XIII OF THE *BANKRUPTCY AND  
INSOLVENCY ACT* (CROSS-BORDER INSOLVENCIES)**

**ORDER  
(Motion for Receivership of Bannersbroker Limited)**

**THIS MOTION**, made by Paul Robert Appleton and Miles Andrew Benham in their capacity as Joint Liquidators and Foreign Representatives ("**Joint Liquidators**") of Banners Broker International Limited ("**BBIL**"), and by msi Spergel inc., in its capacity as receiver of BBIL and investigatory receiver of Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited") (the "**Receiver**") for an Order pursuant to section 272(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 Stellar Point Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the notice of motion of the Receiver and the Joint Liquidators dated April 4, 2016, the Fifth Report of the Receiver, dated April 4, 2016 (the "**Fifth Report**"), filed, and the consent of msi Spergel inc. to act as the Receiver, and on hearing submissions from counsel for the Receiver and the Joint Liquidators:

### **SERVICE**

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

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 272(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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (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 are hereby terminated. 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, 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 \$500,000 (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.spergel.ca/StellarPoint>.

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.

#### **ADDING RESPONDENT AND AMENDING TITLE OF PROCEEDINGS**

27. **THIS COURT ORDERS** that Stellar Point Inc. be and is hereby added as a party respondent to the within application and that the title of proceedings be and is hereby amended as set out in **Schedule "B"** annexed hereto.

#### **GENERAL**

28. **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.

29. **THIS COURT ORDERS** that the Receiver shall not act as a trustee in bankruptcy of the Debtor.

30. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to file an assignment in bankruptcy for and on behalf of the Debtor and name Grant Thornton Limited as the Debtor's trustee in bankruptcy.

31. **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.

32. **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.

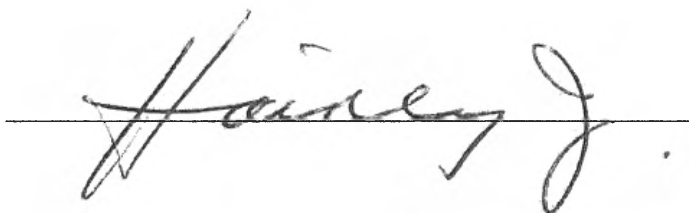
33. **THIS COURT ORDERS** that the Receiver shall have its costs of this motion, up to and including entry and service of this Order on a substantial indemnity basis to be paid from the Debtor's estate with such priority and at such time as this Court may determine.

34. **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.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 08 2016

PER / PAR:



## 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 Stellar Point Inc. (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 8th day of March, 2016 (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: \_\_\_\_\_

\_\_\_\_\_

**SCHEDULE "B"****TITLE OF PROCEEDINGS**

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

**AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.  
1990, c. C-43**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN  
WITH RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**AND IN THE MATTER OF THE RECEIVERSHIP OF STELLAR POINT INC.**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN  
THEIR CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER  
INTERNATIONAL LIMITED, UNDER PART XIII OF THE *BANKRUPTCY AND  
INSOLVENCY ACT* (CROSS-BORDER INSOLVENCIES)**

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C. 1985, c. B-3, AS AMENDED  
APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR CAPACITY AS  
JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED, UNDER PART XIII OF THE  
BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)

388

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST  PROCEEDING COMMENCED AT TORONTO</p>	<p>ORDER</p>
<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p>	<p>David S. Ward LSUC #: 33541W Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com</p>
<p>Larry Ellis LSUC#: 49313K Tel: 416.869.5406 Fax: 416.640.3004 lellis@casselsbrock.com</p>	<p>Erin Craddock LSUC#: 62828J Tel: 416.860.6480 Fax: 416.644.9324 ecraddock@casselsbrock.com</p>
<p>Lawyers for the Applicants</p>	

Tab L

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

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

THE HONOURABLE

)

THURSDAY, THE

JUSTICE *Newbould*

)

)

26th DAY OF MAY, 2016

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

AND IN THE MATTER OF SECTION 101 OF THE **COURTS OF JUSTICE ACT**, R.S.O. 1990, c.  
C-43

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED

AND IN THE MATTER OF THE RECEIVERSHIP OF STELLAR POINT INC.

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE **BANKRUPTCY AND INSOLVENCY ACT** (CROSS-BORDER  
INSOLVENCIES)

**ORDER**

(Transition of Certain Insolvency Administration Matters  
from the Joint Liquidators to the Receiver)

**THIS MOTION**, made by Paul Robert Appleton and Miles Andrew Benham in their capacity as Joint Liquidators and Foreign Representatives ("**Joint Liquidators**") of Banners Broker International Limited ("**BBIL**"), and msi Spergel inc., in its capacity as receiver of BBIL and Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited") ("**Bannersbroker Canada**") and investigatory receiver of (i) 2087360 Ontario Incorporated o/a Local Management Services; (ii) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited"); (iii) 2341620 Ontario Corporation; (iv) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited"); (v) 8643989 Canada Inc. o/a Dixit Consortium Inc.; (vi) Dreamscape Ventures Ltd.; and (vii) any other entity operating under the business names "Bannersbroker", "Banners Broker",

"Bannersbroker Limited", "Bannersmobile", "BannersMobile" or "Banners Broker Belize" (the "**Receiver**") for an Order in furtherance of the transition of certain BBIL insolvency administration matters from the Joint Liquidators to the Receiver ("**Transition**") was heard this day at the Court House at 330 University Avenue, Toronto, Ontario.

**ON READING** the notice of motion of the Receiver and the Joint Liquidators dated May 19, 2016, the Sixth Report of the Receiver dated May 19, 2016 (the "**Sixth Report**"), Affidavit of Paul Robert Appleton sworn May 26, 2016, filed, and on hearing submissions from counsel for the Receiver and the Joint Liquidators, counsel for Christopher Smith, and counsel for Rajiv Dixit:

**Service**

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

**Transition Matters**

2. **THIS COURT ORDERS** that the Assignment Agreement (as described in the Sixth Report and appended to the affidavit of Paul Robert Appleton sworn May 26, 2016) be and is hereby approved.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to pursue, receive, collect, settle, extend or compromise any and all residual property, assets, claims and undertakings of BBIL that have accrued to the Joint Liquidators by virtue of their appointment and activities as Joint Liquidators as assigned to the Receiver pursuant to the Assignment Agreement.

4. **THIS COURT ORDERS** that the Receiver is authorized and empowered to respond to, address, or otherwise deal with BBIL creditors and BBIL creditor inquiries regardless of where

such creditors are situate, and regardless of whether such inquiries are directed to the Joint Liquidators or the Receiver.

5. **THIS COURT ORDERS** that the Receiver shall report to this Court in connection with BBIL creditors and claims, including the location of creditors and the quantum of their claims, and make such recommendations on a potential creditor claims process as the Receiver sees fit.

6. **THIS COURT ORDERS** that the Receiver may receive and take possession of any BBIL related records, accounts or information in the possession of the Joint Liquidators as the Receiver considers necessary or desirable for the purposes of fulfilling the Receiver's mandate.

7. **THIS COURT ORDERS** that the Receiver is authorized and empowered to pay the reasonable fees and disbursements of the Joint Liquidators incurred in relation to the Transition, without further approval of this Court, provided that such fees and disbursements do not exceed \$100,000.

8. **THIS COURT ORDERS** that the Receiver is authorized and empowered to engage David Rubin & Partners Ltd. and/or MannBenham Advocates Ltd. 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.

#### **Receiver's Activities, Fees and Disbursements**

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

10. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements, as at May 17, 2016, as appended to the Sixth Report, be and is hereby approved.

11. **THIS COURT FURTHER ORDERS** that the fees and disbursements of the Receiver and its counsel, Cassels Brock and Blackwell LLP, for services rendered from March 1, 2016 to April 30, 2016, as particularized in the affidavits of Philip Gennis, sworn May 18, 2016 and Larry Ellis, sworn May 18, 2016, appended to the Sixth Report, be and are hereby approved.

**Aid and Recognition**

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the Isle of Man 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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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 26 2016

PER / PAR: 



IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
 R.S.C. 1985, c. B-3, AS AMENDED  
 AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43  
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 BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)

**ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
 TORONTO

**ORDER**

**CASSELS BROCK & BLACKWELL LLP**  
 2100 Scotia Plaza  
 40 King Street West  
 Toronto, ON M5H 3C2

David S. Ward LSUC #: 33541W  
 Tel: 416.869.5960  
 Fax: 416.640.3154  
 dward@casselsbrock.com

Larry Ellis LSUC#: 49313K  
 Tel: 416.869.5406  
 Fax: 416.640.3004  
 lellis@casselsbrock.com

Erin Craddock LSUC#: 62828J  
 Tel: 416.860.6480  
 Fax: 416.644.9324  
 ecraddock@casselsbrock.com

Lawyers for the Applicants

BANNERS BROKER INTERNATIONAL LTD. by its receiver,  
MSI SPERGEL INC., et al  
Plaintiffs

and RAJIV DIXIT et al.  
Defendants

Court File No.

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

**PROCEEDING COMMENCED AT  
TORONTO**

**MOTION RECORD  
VOLUME I OF II**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**David S. Ward LSUC#: 33541W**  
Tel: 416-869-5960  
Fax: 416-640-3154  
dward@casselsbrock.com

**Christopher Horkins LSUC #: 61880R**  
Tel: 416.815.4351  
Fax: 416.642.7129  
chorkins@casselsbrock.com

Lawyers for the Plaintiff