

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

**1951584 ONTARIO INC. (formerly DESANTE FINANCIAL SERVICES INC.) and
CWB MAXIUM FINANCIAL INC.**

Applicants

- and -

**4231 SHEPPARD AVENUE EAST INC., ABU SEIFEIN BRIMLEY PHARMA INC.,
BLESS HUI PHARMA INC., JG WINDSOR INC., JM WESTVIEW PHARMA INC.,
JUBILEE PROPERTY INVESTMENTS INC., MAPLE MEDI PHARMA INC., RIVER
HILL PHARMACY LTD., SIGMA HEALTHCARE INC., SJ EAST PHARMA INC.,
ST. MARY COOKSVILLE PHARMA INC., ST. MARY THEOTOKOS PHARMA INC.,
STONEY CREEK PHARMA INC., TORONTO APOTHECARY PHARMA INC.,
WESTWAY HOLDINGS INC. and OLDE WALKERVILLE HOLDINGS INC.**

Respondents

RECEIVER'S FACTUM

**(approval and vesting orders; approval of receiver's report, fees and activities;
declaration re: terminated transaction and deposit retained; approval of
distributions; discharge in respect of certain Respondents; sealing)
(motion returnable November 10, 2021)**

November 8, 2021

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Lawyers for msi Spergel Inc. in its capacity as
court-appointed receiver of all of the assets, undertakings
and properties of the Respondents

I. NATURE OF THIS MOTION

1. This is a motion by msi Spergel Inc. (“**Spergel**”) in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of the Respondents for approval and vesting orders (“**AVOs**”) in respect of the following sale transactions (together, the “**Transactions**”) in which the Receiver is the vendor:
 - a. to George Chan (“**Mr. Chan**”) in trust for a company to be incorporated, dated September 24, 2021, for assets of the Respondent Jubilee Property Investments Inc. (the “**Jubilee Transaction**”).
 - b. to Mr. Chan in trust for a company to be incorporated, dated October 6, 2021, for assets of the Respondent JG Windsor Inc. (the “**JGWI Transaction**”).
 - c. to 2868783 Ontario Inc., dated September 24, 2021, for assets of the Respondent Abu Seifein Brimley Pharma Inc. (the “**Brimley Transaction**”).
2. Suggested draft AVOs are respectively provided at tabs C, E and G of the Receiver’s motion record. The drafts are all in substantial accordance with the Commercial List model approval and vesting order. Comparisons are at tabs D, F and H.¹
3. This Receiver’s motion is also for an order in suggested accordance with the draft filed at tab I of the motion record:²
 - a. approving the third report of the Receiver dated November 3, 2021 (the “**Third Report**”), including the Receiver’s activities described and the statements of receipts and disbursements appended for each Respondent estate.
 - b. approving the Receiver’s fees, costs and expenses and those of its counsel as set

¹ Receiver’s motion record returnable November 10, 2021 (the “**MR**”), at respective pages 742, 753, 767, 779, 796 and 808.

² Page 825 of the MR.

out in the fee affidavits of Mukul Manchanda sworn November 2, 2021 and Joël Turgeon sworn November 3, 2021.

- c. declaring that the transaction contemplated by the pharmacy purchase agreement dated June 14, 2021 between the Receiver, as vendor, and Raouf Basilious in trust for a company to be incorporated (assigned to Guide Pharma Inc.), as purchaser (the “**Bless Hui PPA**”), for assets of the Respondent Bless Hui Pharma Inc. (the “**Bless Hui Transaction**”), has been terminated, and that the Receiver is entitled to retain the deposit paid under the Bless Hui PPA as liquidated damages, in accordance with the Bless Hui PPA.
- d. authorizing the Receiver to make the distributions, subject to final determination where applicable, described at paragraphs 79 to 124 of the Third Report (the “**Proposed Distributions**”), and summarized in a table at p. 10-12, below.
- e. upon the filing of the respective Receivership Completion Certificate (as defined in the draft order), discharging Spergel as Receiver of the Respondents St. Mary Theotokos Pharma Inc., Westway Holdings Inc., St. Mary Cooksville Pharma Inc., SJ East Pharma Inc. and JM Westview Pharma Inc. (together, the “**Completed Estates**”).
- f. sealing the confidential appendices to the Third Report pending the filing of the applicable Receiver’s Certificate (as defined in the relevant approval and vesting

order) or further court order. The documents for which sealing is sought are:

- i. in respect of the Jubilee and JGWI Transactions: appraisal reports³ and unredacted copies of the sale agreements.⁴
 - ii. in respect of the Brimley Transaction: summary of offers received⁵ and unredacted copy of the sale agreement.⁶
- (collectively, the “**Confidential Appendices**”)

II. FACTS

A. The Respondents

4. The Receiver was appointed by orders dated November 25, 2020 and January 26, February 3, April 8, and September 7, 2021 – each adding Respondents.⁷ The Respondents are or were either carrying on the business of different retail pharmacies or holding real estate assets.⁸

B. Receiver’s acts subsequent to Second Report

5. To summarize what is more fully set out in the Third Report,⁹ subsequent to the activities described in the Receiver’s second report dated August 4, 2021¹⁰ (the “**Second Report**”) and approved by this court by order dated August 12, 2021,¹¹ the Receiver has, among other things:
 - a. closed five of the six transactions for which this court granted approval and vesting orders on August 12, 2021, save the Bless Hui Transaction, as discussed below.

³ Third Report, confidential appendices 1 and 3 (omitted from the publicly filed MR).

⁴ Third Report, confidential appendices 3 and 4 (omitted from the publicly filed MR).

⁵ Third Report, confidential appendix 5 (omitted from the publicly filed MR).

⁶ Third Report, confidential appendix 6 (omitted from the publicly filed MR).

⁷ Third Report, tab B (p. 14) of the MR, para. 18.

⁸ Third Report, tab B (p. 14) of the MR, paras. 1-17.

⁹ See the Third Report, tab B (p. 14) of the MR, paras. 30-39 and 59-72.

¹⁰ A copy of which is available on [the Receiver’s website](#).

¹¹ A copy of the August 12, 2021 order is at page 152 of the MR.

- b. directed and overseen the sale efforts described below in respect of the Transactions.
- c. did all the things attendant to the proper handling of the matters described below.
- d. performed the additional tasks set out at paragraphs 59 to 72 of the Third Report in respect of non-operating Respondents (including the Completed Estates) and those operating Respondents in respect of which no transaction is sought to be approved on this motion.

C. The Transactions

- 6. The appointment orders are substantially per the Commercial List model order, and authorize and empower the Receiver to market and sell the Respondents' assets.¹²

i. The Jubilee and JGWI Transaction¹³

- 7. The Respondents Jubilee Property Investments Inc. and JG Windsor Inc. have virtually no operations and their sole assets are respectively a commercial condominium unit located at 280 West Beaver Creek, Unit 11, Richmond Hill (the "**Jubilee Property**") and a medical building located at 2780 Totten Avenue, Windsor (the "**JGWI Property**", and together with the Jubilee Property, the "**Properties**"). The Receiver concluded that monetizing the Properties was in the best interests of stakeholders.
- 8. Mr. Chan is the owner of two companies who each operate a pharmacy under respective leases of the Jubilee Property and part of the JGWI Property (together, the "**Leases**"). The

¹² Copies of the appointment orders are included at pages 55, 74, 93, 113, and 132 of the MR.

¹³ See the Third Report, tab B (p. 14) of the MR, paras. 40-50.

Leases appear to be non-arm's length, 40-year leases, which the Receiver believes may negatively impact the value of the Properties.

9. The Receiver obtained two full-narrative, independent appraisals for each of the Properties.¹⁴
10. Mr. Chan showed interest in purchasing the Properties and the Receiver negotiated with him towards the same. The Receiver considers that the terms of the Jubilee and JGWI Transactions reached are fair and reasonable in the circumstances, considering among other things the appraisals obtained, the costs involved in conducting a sale process, the possible results of a sale process considering that the Properties are subject to the Leases, and the costs and risks associated with any litigation to set aside the Leases.
11. A copy of the Jubilee and JGWI Transaction sale agreements are respectively included, with redactions for the purchase price and deposit, at pages 201 and 231 of the Receiver's motion record. Copies without redactions are at confidential appendices 2 and 4 to the Third Report, excluded from the publicly filed motion record, and subject to the sealing order sought.
12. The Receiver recommends the approval of the Jubilee and JGWI Transactions.¹⁵

ii. The Brimley Transaction¹⁶

13. After stabilizing operations, the Receiver concluded that any sale transaction allowing the Respondents' pharmacies to continue as going concerns located through a commercially

¹⁴ Those appraisals are confidential appendices 1 and 3 to the Third Report (omitted from the publicly filed MR).

¹⁵ Third Report, tab B (p. 14) of the MR, para. 130.

¹⁶ See the Third Report, tab B (p. 14) of the MR, paras. 40-50.

reasonable sale process would be an option to consider in the best interest of stakeholders, including creditors, customers, suppliers, and employees.

14. The Brimley Transaction is such a transaction and is in respect of substantially all the assets of the Respondent Abu Seifein Brimley Pharma Inc., which generally include the operation of a retail pharmacy located at 123 Montezuma Trail, Scarborough, and attendant assets.
15. The Receiver retained Maged Bebawy, a broker with ReMax West Realty Inc. recognized in the industry as having experience with the sale of pharmacy assets, to conduct a sale process which the Receiver has found extensive, commercially reasonable and satisfactory.
16. An online data room was set up and accessible to interested parties subject to confidentiality agreements. 20 parties executed confidentiality agreements and conducted due diligence. The Receiver received multiple bids.¹⁷
17. The Receiver identified the Brimley Transaction as the best transaction located and locatable, and considers that its terms are fair and reasonable in the circumstances.
18. A copy of the Brimley Transaction sale agreement is included, with redactions for the purchase price and deposit, at page 284 of the Receiver's motion record. A copy without redactions is at confidential appendix 6, excluded from the publicly filed motion record, and subject to the sealing order sought.
19. The Receiver recommends the approval of the Brimley Transaction.¹⁸

¹⁷ A summary of bids received is confidential appendix 5 to the Third Report (omitted from the publicly filed MR).

¹⁸ Third Report, tab B (p. 14) of the MR, para. 130.

iii. Outstanding conditions

20. The only notable outstanding closing condition for the JGWI and Jubilee Transactions is this court's granting the AVOs sought. The Brimley Transaction is also conditional on accreditation from the Ontario College of Pharmacists and the obtaining of a provider number from the Ontario Drug Benefit Plan. The Receiver expects the latter conditions to be fulfilled forthwith in the normal course, as they have for the other pharmacy transactions closed in this proceeding. The draft AVO provides in the usual manner that no vesting occurs unless and until the Receiver files a Receiver's Certificate confirming that all the closing conditions have been fulfilled or waived.

D. Bless Hui Transaction termination¹⁹

21. The Bless Hui Transaction had been approved by an approval and vesting order of this court dated August 12, 2021, of which copies are available on [the Receiver's website](#).
22. The purchasers in the Bless Hui Transaction (the "**Bless Hui Purchasers**") are in default of their obligation to complete and close the Bless Hui Transaction in accordance with the Bless Hui PPA, notwithstanding that all the conditions to which the Bless Hui Transaction was subject under the Bless Hui PPA had been fulfilled or waived.
23. The Bless Hui Purchasers apparently ground their unilateral decision to not complete the Bless Hui Transaction on the departure or anticipated departure of the designated manager of the pharmacy, as first mentioned in correspondence to the Receiver on September 9, 2021. There is no term in the Bless Hui PPA dealing with any employee

¹⁹ See the Third Report, tab B (p. 14) of the MR, paras. 31-39 and 62, 63.

staying on after a sale, much less authorizing the Bless Hui Purchasers to not complete the Bless Hui Transaction for that or any similar reason.

24. Moreover, by September 9 and 10, 2021, all closing documents were prepared, executed and exchanged, including an assignment of lease. An inventory count had been arranged by the Receiver and performed on September 9.
25. On September 9 and 10, 2021, the Receiver's counsel wrote to the Bless Hui Purchasers' counsel to put the Bless Hui Purchasers on notice of their obligation to fulfil the Bless Hui Transaction in accordance with the Bless Hui PPA, and setting out in detail, *inter alia*, that the Receiver was willing and able to close and that all the conditions had been fulfilled or waived. The Receiver also offered, without prejudice, an extension of the closing date, which was never accepted.²⁰
26. Under the terms of the Bless Hui PPA and at law, the above entitles the Receiver to consider the Bless Hui Transaction failed due to the Bless Hui Purchasers' fault, to retain the deposit paid as liquidated damages, and to immediately remarket the assets in the interest of the estate. The Receiver's counsel so stated to the Bless Hui Purchasers' counsel in an email on September 16, 2021.
27. The Receiver seeks declarations regarding the above in order to stabilize the ongoing, renewed sale efforts for the assets.

²⁰ Copies of such correspondence are included at pages 189, 191, 193 and 195 of the MR.

E. Completed Estates

28. The below table summarizes what more fully appears from paragraphs 66-72 and 128-129 of the Third Report.

Completed Estate	Status and tasks remaining
St. Mary Theotokos Pharma Inc. and Westway Holdings Inc.	Receiver advised that operations were commingled with those of Respondents Bless Hui Pharma Inc. and River Hill Pharmacy Ltd., respectively, prior to receivership. No more substantive acts to be performed by Receiver as Receiver.
St. Mary Cooksville Pharma Inc., SJ East Pharma Inc., and JM Westview Pharma Inc.	Operations ceased in November 2020 in this first two cases and in January 2021 in the other. Receiver assigned Respondents in bankruptcy and acts as trustee thereto. No more substantive acts to be performed by Receiver as Receiver.
All	Receiver to prepare/file final returns, perform a final assessment of Canada Revenue Agency (“CRA”) claims, if any, and finalize residual/administrative matters.

F. Proposed Distributions

29. The below table summarizes what more fully appears from paragraphs 79 to 127 of the Third Report. The amounts sought to be distributed are available in the applicable estates and include proceeds of sales approved by the court by the approval and vesting orders dated August 12, 2021. All Proposed Distributions are subject to receivership costs, including the Receiver’s and its counsel’s fees and disbursements, as well as a reasonable reserve therefor, as determined by the Receiver, in accordance with the receivership appointment orders. Unless otherwise mentioned in the “prior items” column, the Receiver has obtained security opinions from its independent counsel in respect of the private security interests mentioned, confirming that, subject to the usual assumptions and qualifications, such security interests are valid and enforceable against the relevant estate.

Estate(s) concerned	Proposed payment	Creditor	Nature of claim	Prior items
Bless Hui Pharma Inc., Maple Medi Pharma Inc., River Hill Pharmacy Ltd., St. Mary Theotokos Pharma Inc., Stoney Creek Pharma Inc., Toronto Apothecary Pharma Inc., Westway Holdings Inc., Olde Walkerville Holdings Inc., SJ East Pharma Inc., JM Westview Pharma Inc., St. Mary Cooksville Pharma Inc., JG Windsor Inc., Jubilee Property Investments Inc., 4231 Sheppard Avenue East Inc.	Total \$440,000 (see breakdown at paras. 79-80 of Third Report)	Canadian Western Bank ("CWB")	Repayment of "Receiver's Borrowings" secured by "Receiver's Borrowings Charge" under appointment orders	n/a
4231 Sheppard Avenue East Inc.	\$4,073.07	CRA	To be held in trust on account of possible outstanding harmonized sales tax remittances ("HST")	Filing of formal claim and review ("PC")
	\$268,369.28	CWB	Mortgage and general security agreement ("GSA")	Security opinion
Maple Medi Pharma Inc.	\$4,073.07	CRA	To be held in trust on account of possible outstanding source deductions remittances ("SD")	PC
	\$2,280.99	CRA	Wage Earner's Protection Program secured amounts ("WEPP")	n/a
	\$61,709.82	McKesson Canada Corporation ("McKesson")	Purchase-money security interest under <i>Personal Property Security Act</i> ("PMSI")	n/a
	Any remaining amount ("Balance")	CWB	GSA	n/a

Estate(s) concerned	Proposed payment	Creditor	Nature of claim	Prior items
Stoney Creek Pharma Inc.	\$6,189.62	CRA	SD	PC
	\$3,580.45	CRA	WEPP	n/a
	\$84,688.09	McKesson	PMSI	n/a
	Balance	CWB	GSA	n/a
River Hill Pharmacy Ltd.	\$12,946.74	CRA	SD	PC
	\$2,509.94	CRA	WEPP	n/a
	\$21,238.76 and \$38,896.38	Respectively, McKesson and Kohl & Frisch Limited ("K&F")	PMSIs	n/a
	Balance	CWB	GSA	n/a
Toronto Apothecary Pharma Inc.	\$3,137.25	CRA	SD	PC
	\$1,328.46	CRA	HST	PC
	\$2,000	CRA	WEPP	n/a
	\$7,085.65 and \$17,996.26	Respectively, McKesson and K&F	PMSIs	n/a
	Balance	CWB	GSA	n/a

III. ISSUES AND LAW

30. The issues are whether the court should (A) make the AVOs sought, (B) make the declaration sought in respect of the Bless Hui Transaction termination, (C) authorize the Proposed Distributions, (D) approve the Third Report and Receiver's fees and activities, (E) make the discharge orders sought in respect of the Completed Estates, and (F) make the sealing order sought.

A. Approval and vesting

31. This court has jurisdiction to make the approval and vesting orders sought, including under s. 100 and 101 of the *Courts of Justice Act*²¹ (the "CJA"), s. 243 of the *Bankruptcy and Insolvency Act*²² (the "BIA"), and its equitable jurisdiction.

32. It is trite that this court's discretion to make approval and vesting orders is guided by the *Soundair*²³ criteria: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently, (ii) the efficacy and integrity of the process by which offers are obtained, (iii) whether there has been unfairness in the working out of the process, and (iv) the interests of all parties. The interests of all parties include those of the purchasers.²⁴

33. Here, for clarity, the sale processes undertaken by the Receiver and leading to the Transactions were not pre-approved by this court by way of a sale process order *per se*. The sale processes were undertaken under the authority of the receivership orders.

²¹ [R.S.O. 1990, c. C.43.](#)

²² [R.S.C., 1985, c. B-3.](#)

²³ *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) ("*Soundair*"), p. 9.

²⁴ *Reciprocal Opportunities Incorporated v Sikh Lehar International Organization*, [2018 ONCA 713](#), paras. 55-56 and 61-62.

34. The caselaw is that a preapproved sale process may be ideal, but it is not necessary.²⁵ The process may even predate any filing.²⁶ The threshold is reasonableness, not perfection; the same *Soundair* criteria apply.²⁷ Courts have also considered whether additional sale efforts could realistically lend a better result, taking costs and opportunity costs into account. If not, this supports the approval of the transaction at hand.²⁸
35. An important factor is that the Receiver is satisfied of the process' thoroughness and fairness in the circumstances. The court "should place a great deal of confidence in the receiver's expert business judgement",²⁹ especially when, as here, the Receiver managed the processes from the outset as an officer of the court.³⁰
36. As to the Jubilee and JGWI Transactions, the Leases are a central factor. The Receiver's reasonable conclusion is that they might diminish the market value for the Properties, including in a larger sale process. The other side of the coin is that any litigation to set aside the Leases would involve costs and risks and prolong the time before any recoveries are made in those estates. Considering the above and having obtained two independent valuations for each of the Properties and negotiated with Mr. Chan, the Receiver considers that the terms of the Jubilee and JGWI Transactions are fair and reasonable in all the circumstances and meet the requisite criteria for approval and vesting orders. Among other considerations, the Receiver believes those transactions are the most economical way of monetizing the Properties, and that the likelihood of obtaining a superior consideration

²⁵ *Bloom Lake, g.p.l. (Arrangement relatif à)*, [2015 QCCS 1920](#) ("*Bloom Lake*"), para. 29; *Soundair*, p. 17-18.

²⁶ *Nelson Education Limited (Re)*, [2015 ONSC 5557](#) ("*Nelson*"), paras. 31-33.

²⁷ *Bloom Lake*, para. 59; see also para. 39; *Soundair*, p. 8; see also p. 17-19.

²⁸ *Elleway Acquisitions Limited v 4358376 Canada Inc.*, [2013 ONSC 7009](#) ("*Elleway*"), paras. 33-34, 37.

²⁹ *Skyepharma PLC v Hyal Pharmaceutical Corp.*, [1999 CanLII 15007 \(ON SC\)](#), paras. 3, 7.

³⁰ *Tool-Plas Systems Inc. (Re)*, [2008 CanLII 54791 \(ON SC\)](#), paras. 4, 5, 18.

following a larger sale process is too remote or speculative to warrant incurring the costs and time to attempt the exercise. Overall, the Receiver opines that approval of those transactions is in the best interest of the estates.

37. As to the Brimley Transaction, as recounted above and in the Third Report, the sale process followed the typical sequence developed by the insolvency practice and bench to maximize market exposition as well as fairness, transparency and integrity. Ultimately, the Brimley Transaction offer was accepted by the Receiver as the best transaction located and locatable for the specialized, retail pharmacy assets involved.
38. As to vesting, the Transactions are all subject to this court vesting the purchased assets in the applicable purchaser free and clear. This is a “normal relief given in an asset sale” in insolvency proceedings and it is appropriate in this case for the reasons highlighted above.³¹
39. The suggested draft AVOs provided at tabs C, E and G of the Receiver’s motion record are all in substantial accordance with the Commercial List model approval and vesting order. Comparisons are provided at tabs D, F and H of the motion record.³²
40. Overall, the Receiver recommends the issuance of the sought AVOs.³³
41. The court may make the AVOs sought.

B. Declaration re: Bless Hui Transaction termination

42. The factual circumstances are described above and demonstrate that the Receiver was willing and able to close the Bless Hui Transaction, that the failure of the Bless Hui

³¹ *Nelson*, para. 40.

³² Those draft AVOs and comparisons are at respective pages 742, 753, 767, 779, 796 and 808 of the MR.

³³ Third Report, tab B (p. 14) of the MR, para. 130.

Transaction is due solely to the Purchasers' unilateral and unjustified refusal to close, that the Purchasers were put in demand to remedy the same and provided with a reasonable time to do so, and that the Receiver acted in a commercially reasonable manner throughout.

43. The above entitles the Receiver to retain the deposit at law. Moreover, the Bless Hui PPA provides as follows:³⁴

2.3 Payment of Purchase Price

The Purchaser shall pay the Purchase Price to the Vendor as follows:

- (a) the sum of CDN \$ 90,000.00 [...] as a deposit (the "Deposit") which shall be dealt with in accordance with Section 2.4;

[...]

2.4 Deposit

[...]

- (b) If this Agreement:

- (i) is terminated or the Closing otherwise fails to occur for any reason other than a breach by the Purchaser of its obligations under this Agreement, then the Purchaser shall be entitled to the return of the Deposit without interest within five (5) Business Days and the Purchaser shall have no recourse against the Receiver and this Agreement shall become null and void;
- (ii) is terminated or the Closing otherwise fails to occur as a result of the breach of the Purchaser of its obligations under this Agreement, then the Vendor shall be entitled to retain the Deposit as liquidated damages, and shall be entitled to pursue all of its other rights and remedies against the Purchaser.

[Emphasis added.]

44. The declaration sought in this regard follows the language and intent of the Bless Hui PPA:

THIS COURT ORDERS AND DECLARES that the Bless Hui Transaction (term defined in the Third Report) has been terminated as of September 10, 2021 due to the purchasers' failure to close the transaction in accordance with the Bless Hui APS (term defined in the Third Report), and that the Receiver is hereby authorized and directed to retain the deposit paid to the Receiver in accordance with the Bless Hui APS as liquidated damages for the same, the whole without prejudice to any other remedy that the Receiver may now or hereafter have whether under the Bless Hui APS or at law.

[Emphasis added.]

³⁴ A copy of the Bless Hui PPA, with the purchase price redacted, is at page 157 of the MR.

45. The rationale for this declaration is to confirm the Receiver's right to retain the deposit and stabilize the ongoing, renewed sale efforts for the assets, such that interested parties would not need to worry about any Purchasers' claims over the assets or the Receiver's ability to re-market them.
46. The declaration sought is therefore reasonable and appropriate in the circumstances, so as to be within this court's jurisdiction to make.

C. Approval of Proposed Distributions

47. Distributions are "practically necessary for the accomplishment of the objectives of the legislation", that is, the receivership provisions of the *Bankruptcy and Insolvency Act*.³⁵ The issue is whether, on a balance of probabilities, the Proposed Distributions are in accordance with the rank that claims must take against an insolvent estate under receivership, including in consideration of court-ordered charges and statutory remedies under fiscal statutes, as well as valid and enforceable private security interests such as purchase-money security interests and under general security agreements.
48. The Proposed Distributions are in accordance with such principles. The payment and provisions for receivership costs comes first, and the repayment of Receiver's Borrowings comes second, in accordance with the receivership orders. This is followed by statutory tax claims which are enforceable in priority in the absence of bankruptcy, such as here, and then by private security interests, with PMSIs priming other personal property security in accordance with the *Personal Property Security Act* (Ontario). Aside from one case, which is identified, the Receiver has obtained security opinions, as described above.

³⁵ *Forjay Management Ltd. v 625536 B.C. Ltd.*, [2019 BCCA 368](#), para. 26.

49. As to the amount of each claim, the Proposed Distributions all involve the Receiver's review and acceptance of the applicable creditor's claim(s). The Receiver's determination of such amounts is set out in the Third Report (paras. 79 to 127). The cases where a formal CRA proof of claim or a security opinion are pending are identified, and the applicable Proposed Distributions are subject to the same.
50. No prejudice could reasonably occur from the Proposed Distribution, since the "Balance" amounts noted in the table above will not be sufficient to fully repay the applicable CWB secured claims – as set out in the Third Report (paras. 79 to 127) – such that there will be no possible distribution to below-ranking creditors (such as unsecured creditors) or equity holders.
51. The orders sought in respect of the approval of the Proposed Distributions are therefore appropriate in the circumstances, will greatly streamline the administration of the applicable Respondent estates, and will allow proper creditor recovery.

D. Approval of Third Report and Receiver's fees and activities

52. The last activity approval order was made on August 12, 2021 and approved the Receiver's acts up to and including those described in the Second Report dated August 4, 2021. The Receiver's Second and prior reports and available on [the Receiver's website](#).
53. As mentioned by Morawetz J. in *Target*,³⁶ a *Companies' Creditors Arrangement Act* case, approval of a court officer's activities and reports is a relief "routinely granted." This is because court approval allows the Receiver to move forward with the next steps in the proceeding, brings the Receiver's activities before the court, allows an opportunity for

³⁶ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) ("*Target*").

the concerns of the stakeholders to be addressed and any problems to be rectified, enables the court to satisfy itself that the Receiver's activities have been conducted in a prudent and diligent manner, provides protection for the Receiver not otherwise provided in the BIA or the CJA, and protects the creditors from the delay in distribution that would be caused by re-litigation of steps taken and potential indemnity claims by the Receiver.³⁷

54. As to the approval of the Receiver's fees, the issue is whether they are fair and reasonable. Caselaw-developed criteria guiding this analysis include (i) the nature and extent of the proceeding, (ii) the complications and difficulties encountered, (iii) the time spent by the court officer, (iv) the professionals' knowledge, experience and skill, (v) the results achieved, and (vi) the costs of comparable services. Further, the caselaw requires that the fees be verified by affidavit disclosing details sufficient to allow a reasonable appreciation.³⁸
55. The Receiver's activities since the Second Report have been reported to the court and stakeholders in the Third Report. Those activities are appropriate, timely, commercially reasonable, and in the best interest of the Respondents' estates.
56. Filed with the Third Report are affidavits of Mr. Mukul Manchanda, licensed insolvency trustee at the Receiver,³⁹ and Joël Turgeon, lawyer at Goldman Sloan Nash & Haber who are the Receiver's independent counsel,⁴⁰ each being supported by true copies of detailed bills and confirming that the fees charged are comparable to those charged by similar firms in similar proceedings. A summary of the Receiver's acts, broken down by Respondent

³⁷ *Target*, paras. 2 and 23.

³⁸ See *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#), paras. 42-54.

³⁹ The affidavit of Mr. Manchanda is at p. 339 of the MR.

⁴⁰ The affidavit of Mr. Turgeon is at p. 487 of the MR.

estate, is provided at para. 74 of the Third Report. The Receiver believes that all lawyer fees of which approval is sought relate to work that was carried out and was necessary, with reasonable hourly rates and services performed by lawyers with the appropriate level of experience.⁴¹

57. Included with the Third Report are also the Receiver's interim statements of receipts and disbursements as at October 27, 2021, which are provided for each of the Respondent estates as is appropriate to facilitate stakeholder's review.⁴²
58. For those reasons, the approval orders sought under the head of relief are appropriate and meet the requisite criteria under the caselaw.

E. Discharge in respect of Completed Estates

59. The status and remaining tasks in respect of the Completed Estates are summarized above and more fully set out in the Third Report at paragraphs 66-72 and 128-129. It is therefore appropriate for Spergel to be discharged as Receiver of the Completed Estates, upon filing Receivership Completion Certificates certifying that the administration is complete.
60. The discharge orders sought are in the form of the Commercial List model order, including the release language, in respect of which this court held that "in the absence of any evidence of improper or negligent conduct, the release should issue."⁴³ Throughout the receivership, the Receiver's activities have been appropriate and transparently reported to the court and stakeholders, as set out above and as evidenced by the prior activity approval order made

⁴¹ Third Report, tab B (p. 14) of the MR, para. 77.

⁴² The statements of receipts and disbursements are at p. 722 of the MR.

⁴³ *Pinnacle v Kraus*, [2012 ONSC 6376](#), para. 47.

on August 12, 2021.⁴⁴ For those reasons, this court may grant the orders sought under this head of relief.

F. Sealing

61. This court has jurisdiction to make the sealing order sought, including under CJA s. 137(2). It is typical attendant relief in sales processes as a matter of “public interest”,⁴⁵ to protect the integrity of any future sale efforts should any of the Transactions fail to close for any reason. This has been found to “greatly outweigh” any deleterious effects.⁴⁶
62. The Confidential Appendices contain information that would be highly prejudicial if any future sale efforts were necessary. Copies of the Confidential Appendices are provided as part of the public motion record with minimal redactions where possible, such as full copies of the purchase agreements with only the price and deposit amount redacted.⁴⁷
63. The court may make the sealing orders sought which are appropriate in the circumstances.

IV. NATURE OF THE ORDERS SOUGHT

64. The Receiver therefore seeks orders in suggested accordance with the draft orders filed at tabs C, E and G (AVOs) and I (balance of relief sought) of its motion record.

⁴⁴ A copy of this order is at page 152 of the MR.

⁴⁵ *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#), para. 84; see also *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)], paras. 3, 57.

⁴⁶ *Elleway*, paras. 47-48.

⁴⁷ Third Report, tab B (p. 14) of the MR, para. 58.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of November, 2021.

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undertakings and properties of the Respondents

SCHEDULE A – LIST OF AUTHORITIES

1. *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
2. *Reciprocal Opportunities Incorporated v Sikh Lehar International Organization*, [2018 ONCA 713](#)
3. *Bloom Lake, g.p.l. (Arrangement relatif à)*, [2015 QCCS 1920](#)
4. *Nelson Education Limited (Re)*, [2015 ONSC 5557](#)
5. *Elleway Acquisitions Limited v 4358376 Canada Inc.*, [2013 ONSC 7009](#)
6. *Skyepharma PLC v Hyal Pharmaceutical Corp.*, [1999 CanLII 15007 \(ON SC\)](#)
7. *Tool-Plas Systems Inc. (Re)*, [2008 CanLII 54791 \(ON SC\)](#)
8. *Forjay Management Ltd. v 625536 B.C. Ltd.*, [2019 BCCA 368](#)
9. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
10. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#)
11. *Pinnacle v Kraus*, [2012 ONSC 6376](#)
12. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
13. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#)

SCHEDULE B – RELEVANT STATUTES

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#)

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

1951584 ONTARIO INC. (formerly DESANTE FINANCIAL SERVICES INC.) and CWB MAXIUM FINANCIAL INC., Applicants, and 4231 SHEPPARD AVENUE EAST INC., ABU SEIFEIN BRIMLEY PHARMA INC., BLESS HUI PHARMA INC., JG WINDSOR INC., JM WESTVIEW PHARMA INC., JUBILEE PROPERTY INVESTMENTS INC., MAPLE MEDI PHARMA INC., RIVER HILL PHARMACY LTD., SIGMA HEALTHCARE INC., SJ EAST PHARMA INC., ST. MARY COOKSVILLE PHARMA INC., ST. MARY THEOTOKOS PHARMA INC., STONEY CREEK PHARMA INC., TORONTO APOTHECARY PHARMA INC., WESTWAY HOLDINGS INC. and OLDE WALKERVILLE HOLDINGS INC., Respondents

Court File No. CV-20-00650853-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO**

**RECEIVER'S FACTUM
(approval and vesting orders; approval of receiver's report,
fees and activities; declaration re: terminated transaction and
deposit retained; approval of distributions; discharge in
respect of certain Respondents; sealing)
(motion returnable November 10, 2021)**

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