

**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**

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)**

**SUPPLEMENTARY MOTION RECORD
(Returnable Thursday May 26, 2016)**

**(Transition of Certain Insolvency Administration Matters
from the Joint Liquidators to the Receiver)**

May 26, 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

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

TO: **Attached Service List**

SERVICE LIST

AND TO: **AIRD & BERLIS LLP**
Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9
Canada

Harry Fogul
Tel: 416.865.7773
Fax: 416.863.1515
hfogul@airdberlis.com

Counsel to Christopher G. Smith and 2341620 Ontario Corporation

AND TO: **MEHRABI LAW OFFICE**
150 York Street, Suite 800
Toronto, Ontario
M5H 3S5

Esmail Mehrabi
Tel: 416.862.2502
mehrabi@mehrabilawoffice.com

Counsel to Rajiv Dixit

AND TO: **Stellar Point Inc.**
27-1300 King Street, Suite 234
Oshawa, ON L1H 8J4

AND TO: **8136645 Canada Limited**
637 Merlin Court
Oshawa, ON L1K 1M3

Kelly Stinson
Tel: 905.723.5839
kellystinson66@gmail.com

Director of 8136645 Canada Limited

AND TO: **Ministry of Finance**
Collection Branch, Collections Support Operations
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

collectionsoperationsoshawa@ontario.ca

AND TO: **Department of Justice Canada**
130 King Street West
Suite 3400, Box 36
The Exchange Tower
Toronto, ON M5X 1K6

Diane Winters
Diane.winters@justice.gc.ca

(Courtesy copies of motion materials where delivery can be effected):

AND TO: Kuldip Josun
11 Lanebrook Drive
Brampton ON L6P 2H4

Kul1@hush.com

AND TO: **ONTARIO MINISTRY OF THE ATTORNEY GENERAL**
Crown Law Office – Criminal
10-720 Bay Street
Toronto, Ontario
M7A 2S9

Brian McNeely
Tel: 416 326 4654
Brian.McNeely@ontario.ca

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

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AFFIDAVIT OF PAUL ROBERT APPLETON

I, PAUL ROBERT APPLETON, of the City of London, United Kingdom, **MAKE OATH**

AND SAY:

1. Together with Miles Andrew Benham ("**Benham**"), I am a Joint Liquidator ("**Joint Liquidators**") of Banners Broker International Limited ("**BBIL**") in proceedings before the High Court of Justice in the Isle of Man, Civil Division, pursuant to Part V of the *Companies Act 1931* of the Isle of Man ("**Isle of Man Proceedings**"). I have knowledge of the matters hereinafter deposed, which knowledge is either personal to me, obtained from a review of the documents referred to herein or, where indicated, based on information and belief upon being advised by others, in which case I verily believe such information to be true.

2. The purpose of this affidavit is to evidence the Joint Liquidators' support for the relief sought in the notice of motion dated May 19, 2016 and filed by the Joint Liquidators and the Receiver as co-moving parties.

3. This affidavit may be read in conjunction with my affidavit, sworn August 6, 2014, and filed in connection with the Joint Liquidators' application for foreign recognition of the Isle of Man Proceedings in Canada ("**First Appleton Affidavit**").

A. Isle of Man Proceedings

4. On February 26, 2014, His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls of the High Court of Justice of the Isle of Man, ordered that BBIL be wound up pursuant to section 162(6) of the *Companies Act 1931*, which provides for the winding up of a company where the court is of the opinion that it is just and equitable that the company should be wound up, and appointed Benham and myself as Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL pursuant to section 174 of the *Companies Act 1931*. The Isle of Man Court granted the Joint Liquidators the following powers, among others:

- a. to carry on the business of BBIL, insofar 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 we deem necessary;
- 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 our duties;
- d. to pay any classes of creditors in full; and
- e. to bring or defend any action or other legal proceedings in the name of and on behalf of BBIL.

5. His Honour the Deemster Doyle made a further order on March 14, 2014 that Benham and myself, at that time acting as Joint Provisional Liquidators and Deemed Joint Official Receivers, be appointed as Liquidators. The court also appointed a five person committee of inspection to act with the Joint Liquidators (the "**Committee of Inspection**").

6. Subsequently, on July 2, 2014, pursuant to the authority conferred by the above referenced orders of the Isle of Man High Court and by section 184(1) of the *Companies Act 1931*, the Joint Liquidators sought authorization and instruction of the Committee of Inspection to commence an application for recognition of the Isle of Man Proceeding in Canada as a "foreign proceeding" for the purposes of Part XIII of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended.

7. The Joint Liquidators' activities, insofar as they relate to the Canadian receivership proceedings, are largely detailed in the six reports that MSI Spergel Inc., in its capacity as court-appointed receiver of BBIL ("**Receiver**") has filed with this Court.

B. Court Officer Meetings In Toronto

8. The Joint Liquidators and the Receiver met with their counsel in Toronto on April 24 and 25. The purpose of the meeting was to discuss the strategic direction and economics of the winding up of BBIL in the Isle of Man and the six associated receivership proceedings in Canada¹

9. For the reasons discussed in the Sixth Report of the Receiver dated May 19, 2016 ("**Sixth Report**"), the Joint Liquidators share the view of the Receiver that there are very likely significant cost savings and efficiencies to be gained if the residual insolvency administration of the BBIL estate can be completed by a single creditor representative.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sixth Report.

10. It would appear the Receiver is currently best positioned to resolve the wind-up of BBIL.

This is the case because:

- a. The vast majority, if not all, of BBIL's assets are currently in the hands of the Receiver;
- b. The Receiver's role and authority has been broadly recognized, including by parties outside of Canada who have cooperated with and continue to aid and assist the Receiver;
- c. The Receiver, rather than the JL's, has sought and obtained certain additional receivership powers over a collection of Canadian entities that formed part of the "Banners Broker" business, including, most significantly, Banners Broker Canada. It may be appropriate that certain of these entities be wound up in conjunction with BBIL; and
- d. The Receiver has standard Model Order receivership powers, such as would be suitable for concluding a court supervised wind-up of BBIL and / or any associated Canadian entities.

C. May 2016 Meeting with the Committee of Inspection

11. Since our appointment in March 2014, the Joint Liquidators have regularly reported to the Committee of Inspection regarding the ongoing administration of the BBIL estate. The Committee of Inspection has provided oversight of the Joint Liquidators' activities including the motions brought in the Canadian insolvency proceedings of BBIL and approval of the Joint Liquidators' fees and disbursements.

12. A meeting of the Committee of Inspection was held on May 11, 2016 to consider and if deemed advisable seek approval of a proposal to transition insolvency administration functions

from the Joint Liquidators' to the Receiver. The Receiver and Canadian counsel to the Receiver and the Joint Liquidators attended the meeting for the purpose of providing answers and advice on the nature of the Canadian receivership process, and the mechanics of a properly empowered receiver completing the wind-up of BBIL.

13. The meeting involved a broad ranging and considered discussion of the future of the BBIL insolvency proceedings, with a focus on the merits of insolvency administration functions shifting to Canada. Consideration was given as to how the Receiver could attend to ongoing creditor reporting functions currently performed by the Joint Liquidators.

14. At the conclusion of the meeting, the Committee of Inspection unanimously resolved to support the "transition to Canada strategy" and the relief sought on the within motion.

D. Transition to Canada – Next Steps

15. Benham and I have reviewed the Notice of Motion for the Transition of Certain Insolvency Administration Matters from the Joint Liquidators to the Receiver ("**Transition Motion**") and the Sixth Report in support thereof. Benham and I support the Receiver's recommendations in the Sixth Report and the relief sought on the Transition Motion.

Proposed Assignment Agreement

16. In furtherance of the transition of insolvency administration responsibilities to the Receiver, the Joint Liquidators and the Receiver have prepared a draft transition services and assignment agreement ("**Assignment Agreement**").

17. The Assignment Agreement contemplates, among other things, the Joint Liquidators assigning to the Receiver any and all residual property, assets, claims and undertakings of BBIL that has accrued to the Joint Liquidators by virtue of our appointment and activities as Joint Liquidators.

18. The Joint Liquidators and the Receiver will each seek approval from their respective supervising courts of the transition arrangements contemplated on this motion, including, specifically, an order authorizing them to enter into a transition agreement in substantially the same form as the Assignment Agreement.

19. The key terms of the Assignment Agreement are as follows:

- a. the Joint Liquidators contractually assign to the Receiver their interest in any BBIL assets, undertaking and property that has accrued to the Joint Liquidators by virtue of their appointment and activities as Joint Liquidators;
- b. the Joint Liquidators agree to transfer any Banners Broker related information held by them to the Receiver;
- c. the Receiver undertakes to post a letter on its website (www.spergel.ca/banners) advising Banners Broker stakeholders of the transition of administration responsibilities from the Joint Liquidators to the Receiver; and
- d. the Receiver agrees to take such steps as are necessary to have the terms of the Assignment Agreement approved by the Ontario court and obtain the Ontario court's authorization to execute the Assignment Agreement.

20. A copy of the Transition Agreement is attached hereto as Exhibit "A".

Intended Application to the Isle of Man High Court of Justice

21. In furtherance of the arrangements contemplated by this motion, the Joint Liquidators are in the process of obtaining a legal opinion from special insolvency counsel qualified to advise on Isle of Man law. The initial opinion of counsel is to the effect that the transition arrangements proposed broadly accord with Isle of Man common law, and that it is appropriate

that the Joint Liquidators proceed to seek any necessary approvals of the Isle of Man High Court of Justice.

22. Accordingly, should the Ontario Superior Court of Justice grant the within motion, the Joint Liquidators intend to apply to the Isle of Man High Court of Justice for an order similarly approving the Transition Agreement and releasing the Joint Liquidators from their office.

SWORN BEFORE ME at 26-28 Bedford Row
London WC1R 4HE, United Kingdom on 26
May, 2016.



Notary Public in England and Wales

5/26/16 Paul



Paul Robert Appleton



TAB A

This is Exhibit "A" referred to in the Affidavit of Paul
Robert Appleton sworn May 26th, 2016

Notary Public in England and Wales



TRANSITION SERVICES AND ASSIGNMENT AGREEMENT

TRANSITION SERVICES AND ASSIGNMENT AGREEMENT dated as of June *, 2016 (the “**Agreement**”), between Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators (the “**Joint Liquidators**”) and msi Spergel inc., in its capacity as court appointed receiver (the “**Receiver**”) of Banners Broker International Limited (“**Banners**”). The Joint Liquidators together with the Receiver are referred to in this Agreement as the “**Court Officers**”.

RECITALS:

WHEREAS, the Joint Liquidators were provisionally appointed as the joint liquidators of Banners by the High Court of Justice of the Isle of Man, Civil Division (the “**IOM Court**”) on February 26, 2014, which Court order was confirmed by the IOM Court on March 14, 2014. These two court orders are referred to in this Agreement collectively as the “**IOM Appointment Orders**” and the proceeding initiated pursuant to the IOM Appointment Orders is referred to herein as the “**IOM Administration Proceedings**”;

AND WHEREAS, on August 22, 2014, the Ontario Superior Court of Justice, Commercial List (the “**Ontario Court**”), recognized the Joint Liquidators as foreign representatives (the “**Recognition Order**”) and by separate order issued on the same day appointed msi Spergel inc. the Receiver of Banners assets and undertakings (the “**Receivership Order**”). The proceeding initiated pursuant to the Receivership Order is referred to in this Agreement as the Receivership Proceeding;

AND WHEREAS, in accordance with the terms of the Recognition Order it was the Isle of Man that was declared the centre of main interest for the purposes of the *Bankruptcy and Insolvency Act*;

AND WHEREAS, the Court Officers have worked collaboratively to obtain critical information by interviewing numerous former Banners’ employees and examining tens of thousands of documents (the “**Banners Investigation**”). From the information obtained the Court Officers have developed an international flow of funds highlighting the movement of money across numerous jurisdictions and recovering funds from six different countries;

AND WHEREAS, the Court Officers, as a result of the Banners Investigation, have reached the following conclusions in connection with the administration of Banners:

1. Canada, as opposed to the Isle of Man, was/is the centre for Banners’ business operations;
2. the steps required to complete the administration of Banners, are most effectively and efficiently achieved by the Receiver fulfilling its mandate as set out in the Receivership Order and from the Canadian jurisdiction; and

3. Banners' stakeholders around the world are best served through the efficiencies of streamlining an administration through one court officer.

AND WHEREAS, on May 11, 2016, the Joint Liquidators and their Canadian lawyers Cassels Brock and Blackwell LLP met with the committee of inspection (the "**Committee**"). The Joint Liquidators explained that as the majority of the assets, principals, related entities and proceedings, both civil and criminal, are based in Canada, continuing to administer both cross-border estates is not cost effective. It was explained that a new strategy was being contemplated by the Joint Liquidators and the Receiver whereby the Joint Liquidators would seek to conclude the administration of the liquidation and to assign and divest all powers and abilities of the Joint Liquidators to the Receiver ("The Shift to Receiver" strategy). The Committee resolved that in principle it agreed to the proposed "Shift to Receiver" strategy as set out by the Joint Liquidators and Cassels Brock and Blackwell LLP, which would reduce costs and increase the chances of a dividend to the creditors.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto hereby agree as follows:

Section 1 Receiver's Covenant with Respect to Going Forward Administration Services

- (a) The Receiver hereby acknowledges and agrees that it shall take such steps as are necessary to understand the duties, services and functions performed by the Joint Liquidators for the benefit of Banners' stakeholders and to advance the Banners' administration (the "**Banners IOM Responsibilities**") and perform the Banners IOM Responsibilities to the best of its abilities. The Receiver's mandate, as amended by the assumption of the Banners IOM Responsibilities and together with the mandate established pursuant to the Receivership Order, as amended by court orders dated October 15, 2014 and August 7, 2015, is referred to herein as the "**Receiver's Amended Mandate**".
- (b) The Court Officers acknowledge and agree that the Receiver's obligation to fulfill the Receiver's Amended Mandate is subject to the Receiver's discretion acting reasonably.

Section 2 Transition Steps – Court Officers Acknowledgements

- (a) The Court Officers acknowledge and agree that they shall take such steps as are necessary to ensure that Banners related information currently held by the Joint Liquidators (the "**Information**") is made available to the Receiver. In circumstances where the Information is confidential, the Joint Liquidators shall take steps to obtain necessary consents to transfer the Information to the Receiver, unless the Court Officers determine that the applicable confidential information isn't necessary to fulfil the Receiver's Amended Mandate.
- (b) The Court Officers acknowledge and agree that the Receiver shall take such steps as are necessary to have the Receiver's Amended Mandate, together with the terms of this Agreement, approved by the Ontario Court and obtain the Ontario

Court's authorization to execute this Agreement (the "**Ontario Court Approval Condition**").

- (c) The Court Officers acknowledge and agree that the Joint Liquidators shall take such steps as are necessary to have the terms of this Agreement approved by the Isle of Man High Court and to obtain the Isle of Man High Court's authorisation to execute this Agreement and for the court to then grant their release from office (the "Isle of Man Court Approval Condition")
- (d) The Receiver acknowledges and agrees that it shall post a letter to Banners Stakeholders on the dedicated Banners webpage that provides a clear update regarding the Court Officers' efforts to streamline the administration by transitioning the IOM Responsibilities to Canada. The Receiver's dedicated webpage is located at www.spergel.ca/banners.

The Joint Liquidators acknowledge and agree to request the Isle of Man High Court to take such steps as are necessary to postpone the dissolution of Banners, such that the timing for the dissolution shall occur concurrent with the Receiver being granted its discharge from the Ontario Court.

Section 3 Assignment

- (a) Upon execution of this Agreement by the Court Officers and upon fulfillment of the Ontario Court Approval Condition and the Isle of Man Court Approval Condition, the Joint Liquidators hereby assign, transfer, and convey to the Receiver, on an "as is where is" basis, all of their right, title and interest in and to the Banners' estate including, without limitation, any and all claims, actions, demands, causes of action, suits, debts, claims over and indemnities of any kind, whether actual, pending or potential, and whether know or unknown, and whether in equity or at law (the "**Assigned Assets**"), with the full benefit of all rights, powers and covenants required to complete the administration of the Banners' IOM Responsibilities.+
- (b) With the exception of matters already dealt with by the Joint Liquidators and Receiver the Joint Liquidators have not, previous to the execution of this Agreement, assigned, waived, forgiven, released or discharged any of their right, title or interest in and to the Assigned Assets and nothing in this Agreement should be read so as to compromise the Assigned Assets in any way, shape or form.

The assignment by the Joint Liquidators of the Assigned Assets is without recourse as by the Receiver.

Section 4 Indemnity

- (a) The Receiver shall indemnify and hold harmless the Joint Liquidators, their executors, successors and assigns, employees, officers and directors, from and

against any and all claims, damages, actions, obligations, liabilities, debts, costs, expenses, and losses whatsoever arising after the date of completion of the assignment herein, provided that any indemnity provided herein shall be limited to the funds available to the Receiver in its official capacity (the “**Indemnity**”). For certainty, the Receiver’s liability pursuant to this indemnity shall be strictly limited to Banners’ assets and the Receiver shall have no liability in its personal capacity.

Section 5 Term

The Receiver’s Amended Mandate shall continue until such time as the Ontario Court discharges it in accordance with the applicable Canadian laws.

Section 6 Successors and Assigns

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto, their executors, successors and assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever. This Agreement is not assignable by a party except with the prior written consent of the other party.

Section 7 Severability

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court with jurisdiction over the parties to this Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of this Agreement shall remain in full force and effect.

Section 8 Governing Law: Jurisdiction.

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties irrevocably attorn and submit to the non-exclusive jurisdiction of the Ontario Superior Court of Justice.

Section 9 Entire Agreement.

This Agreement, including all attachment(s) attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, between the Receiver and the Joint Liquidators, no waiver, alteration, or modification of any of the provision of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party.

Section 10 Expenses.

Except as otherwise specified in this Agreement, all costs and expenses (including, without limitation, fees and disbursements of counsel, accountants and advisors) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Receiver and approved by the Ontario Court.

Section 11 Counterparts.

This Agreement may be executed in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. This Agreement may be executed by the parties and transmitted by facsimile or email transmission and will be for all purposes effective as if the parties executed and delivered one original Agreement.

Section 12 Defined Terms.

Capitalized terms used in this Agreement, but not defined herein shall have the meaning ascribed to them in the Receivership Order, as amended, as the context requires.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

Paul Robert Appleton, in his capacity as
Joint Liquidator of Banners

Miles Andrew Benham, in his capacity
as Joint Liquidator of Banners

msi Spergel inc., in its capacity as court-
appointed receiver of Banners

By: _____
Name: Philip H. Gennis, JD, CIRP, LIT
Title: Senior Principal

[EXECUTION PAGE FOR TRANSITION SERVICES AGREEMENT]

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

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

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ONTARIO
SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

SUPPLEMENTARY MOTION RECORD

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