

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

BETWEEN:

AMERICAN GENERAL LIFE INSURANCE COMPANY and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA.

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC. and THE PARTIES LISTED ON
SCHEDULE "A"

Respondents

**APPLICATION UNDER section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985,
c. B-3, as amended, and under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43**

**FACTUM OF THE RECEIVER
(Sale Approval, Discharge, Distribution and Ancillary Matters)
Returnable May 30, 2023**

May 25, 2023

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TO: SERVICE LIST

SCHEDULE "A"

Individuals
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Errol Yim and Andrea Yim, jointly
Ava Gross
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Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

Trusts
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
Corporations / Partnerships
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

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PART I - OVERVIEW

1. This factum is filed in support of a motion by KPMG Inc., in its capacity as Court-appointed receiver and manager (the "**Receiver**"), without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule "B"** (the "**Real Property**") of the Appointment Order granted on August 3, 2021 (the "**Appointment Order**"), of (i) Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) the beneficial owners of the Legal Owner's Property (collectively, the "**Beneficial Owners**"), and together with the Legal Owner, the "**Debtors**"), but solely in respect of

all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others (collectively, the "**Beneficial Owners' Property**") and together with the Legal Owner's Property, the "**Property**"), seeking the following Orders:

- (a) an Order (the "**AVO**"), among other things:
 - (i) approving the asset purchase agreement dated April 28, 2023 (the "**Sale Agreement**") among the Debtors (by the Receiver) and Bou-Zaid General Contracting Inc. ("BZGC Inc." with BZGC Inc. or any designated assignee thereof pursuant to Section 9.17 of the Sale Agreement being, the "**Purchaser**"), and the proposed transaction contemplated thereby (the "**Proposed Transaction**");
 - (ii) authorizing and directing the Receiver to take such steps as necessary to complete the Proposed Transaction; and
 - (iii) vesting title in and to the Purchased Assets (as defined herein) in the Purchaser on closing of the Proposed Transaction, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances; and
- (b) an Order (the "**Discharge, Distribution and Ancillary Matters Order**"), among other things:
 - (i) authorizing the Receiver to pay the commission of its real estate broker, CBRE Limited (the "**Broker**"), from the net proceeds of the Proposed Transaction, upon closing of the Proposed Transaction (the "**Commission**");
 - (ii) authorizing the Receiver to make further distributions to the Applicants;

- (iii) discharging the Receiver upon filing of the Discharge Certificate (as defined herein);
- (iv) approving the activities of the Receiver (the “**Activity Approval**”) as set out in the Receiver’s sixth report to the Court dated May 18, 2023 (the “**Sixth Report**”);
- (v) releasing the Receiver and its counsel;
- (vi) sealing Confidential Appendix “A” and Confidential Appendix “B” to the Sixth Report (the “**414 Confidential Appendices**”); and
- (vii) unsealing the 414 Confidential Appendices and the confidential appendices to the Receiver’s fourth report to the Court dated October 4, 2022 (the “**Fourth Report**”) (the “**304 Confidential Appendices**”) upon closing of the Proposed Transaction.

2. This factum will address the requested relief in connection with: (a) the approval of the Proposed Transaction and the AVO, (b) the payment of the Commission to the Broker, (c) the Activity Approval, (d) the discharge of the Receiver and the release of the Receiver and its counsel, and (e) the sealing of the 414 Confidential Appendices and the unsealing of the 414 Confidential Appendices and 304 Confidential Appendices upon closing of the Proposed Transaction. The relief requested in connection with the payment of further distributions to the Applicants will be addressed in a separate factum filed by the Receiver’s independent counsel, Norton Rose Fulbright Canada LLP.

PART II - FACTS

Background

3. A summary of the background of these receivership proceedings (the “**Proceedings**”) is set out in the Sixth Report.

4. Pursuant to the Appointment Order, KPMG Inc. was appointed as Receiver of the Property, which primarily consisted of interests in two medical office buildings, located at 304 Victoria Avenue North in Hamilton, Ontario and 414 Victoria Avenue North in Hamilton, Ontario (the “**Buildings**”) and their related real property leases (the “**304 Victoria Real Property Assets**” and the “**414 Victoria Real Property Assets**”, respectively, and collectively, the “**Real Property Assets**”).¹

5. On June 29, 2021, KPMG Inc. was appointed as Receiver, among other things, of the properties of Southmount Healthcare Centre Inc. and certain other entities (“**Southmount Et Al.**”) pursuant to an order of this Court. The primary assets of the respondents in the Southmount Et Al. receivership proceedings were seven medical office buildings in the same asset class as the Buildings subject to these Proceedings. Southmount Et Al. are affiliated with the Legal Owner, and they are all indirect subsidiaries of Gross Capital Inc., which was assigned into bankruptcy on June 25, 2021.²

6. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) approving, among other things:

¹ Sixth Report at paras 1-2.

² Fourth Report at para 7.

- (a) the broker listing agreement dated October 20, 2021 (as amended from time to time, the “**Broker Engagement Agreement**”) and the engagement of the Broker as exclusive real estate broker for the Real Property Assets; and
- (b) a sale process for the Real Property Assets, as appended to the Sale Process Order (the “**Sale Process**”).³

7. On October 29, 2021, the Court also granted an order approving a substantially similar sale process for, and the engagement of the Broker, in respect of the Southmount Et Al. Real Property Assets, which were marketed by the Broker and the Receiver alongside the Real Property Assets that are the subject of these Proceedings.⁴

The Sale Process

8. Details of the conduct of the Sale Process by the Receiver and the Broker are set out in the Receiver’s third report to the Court dated May 13, 2022 (the “**Third Report**”), the Fourth Report and the Sixth Report. A summary of key facts as they relate to the Sale Process is set out in this section.

9. Following the issuance of the Sale Process Order, the Receiver, with the assistance of the Broker, took a number of steps to implement and advance the Sale Process, including distributing interest solicitation emails to in excess of 2,100 potential interested parties.⁵

10. The initial bid deadline under the Sale Process was extended due to significant demand from potential purchasers for physical inspections and site tours at the Buildings.⁶

³ Sixth Report at para 6.

⁴ Fourth Report at para 8.

⁵ Third Report at para 19.

⁶ Third Report at para 23.

The previously approved May 24 Transaction

11. After receiving twelve non-binding letters of intent and binding offers from ten separate bidders, the Receiver selected the highest offer for the Real Property Assets and entered into an asset purchase agreement in respect thereof (the transaction contemplated by such asset purchase agreement, being the “**May 24 Transaction**”).⁷

12. At a hearing before the Court on May 24, 2022 (the “**May 24 Hearing**”), the Court granted an approval and AVO in respect of the May 24 Transaction, which transaction was subject to a due diligence condition in favour of the relevant purchaser.⁸

13. Subsequent to the May 24 Hearing and prior to the expiry of the due diligence period, the May 24 Transaction purchaser declined to waive its due diligence condition and proceed towards closing the May 24 Transaction on the terms approved at the May 24 Hearing.⁹

14. The May 24 Transaction purchase agreement was terminated and shortly thereafter, the Receiver pursued further marketing efforts in respect of the Real Property Assets. These efforts included re-engaging with other parties which had previously submitted bids for the Real Property Assets during the Sale Process or who had otherwise expressed interest in the Real Property Assets.¹⁰

The October 14 Transaction

15. After a period of approximately two weeks following the foregoing re-marketing efforts, a firm offer was received in respect of the 304 Victoria Real Property Assets and the Receiver, in consultation with the Broker and the Applicants, commenced negotiations with the party that

⁷ Third Report at paras 24 to 29.

⁸ Fourth Report at para 22.

⁹ Fourth Report at para 23.

¹⁰ Fourth Report at para 25.

submitted such offer (the “**304 Purchaser**”), during which time re-marketing efforts for each of the Buildings continued.¹¹ Ultimately on September 1, 2022, the Receiver entered into an asset purchase agreement with the 304 Purchaser in respect of the 304 Victoria Real Property Assets.¹²

16. At a hearing that took place before the Court on October 14, 2022 (the “**October 14 Hearing**”), the Court granted an approval and vesting order in these Proceedings, among other things, approving a sale transaction (the “**October 14 Transaction**”) in respect of the 304 Victoria Real Property Assets, and authorizing and directing the Receiver to take such steps as necessary to complete same.¹³

17. Also at the October 14 Hearing, the Court granted an order in these Proceedings, among other things:

- (a) authorizing and directing the Receiver to pay the Broker its brokerage commission in connection with the October 14 Transaction, upon closing thereof;
- (b) approving the supplement to the Third Report and the Fourth Report and the Receiver’s activities described therein; and
- (c) sealing the 304 Confidential Appendices.¹⁴

18. The October 14 Transaction closed on December 6, 2022.¹⁵

The Proposed Transaction

19. The primary remaining assets in these Proceedings are the 414 Victoria Real Property Assets. While certain interest was expressed by several parties since remarketing efforts commenced in June 2022, no formal offers with respect to the 414 Victoria Real Property Assets

¹¹ Fourth Report at para 27.

¹² Fourth Report at para 28.

¹³ Sixth Report at para 12.

¹⁴ Sixth Report at para 13.

¹⁵ Report filed by the Receiver on February 23, 2023 (the “**Fifth Report**”) at para 25.

were received by the Receiver until March 2023, at which point the Receiver received offers from three separate bidders to acquire the 414 Victoria Real Property Assets.¹⁶

20. Following the receipt of these formal offers and a second round of bidding whereby each bidder was provided with a final opportunity to submit its “best and final” bid, the Receiver, in consultation with the Broker and the Applicants, selected the highest and in the Receiver’s view, best bid, taking into account, among other things, closing certainty and timing.¹⁷

21. On April 28, 2023, the Receiver entered into the Sale Agreement with the Purchaser in respect of the 414 Victoria Real Property Assets, all as set out in greater detail in the Sale Agreement (collectively, the “**Purchased Assets**”).¹⁸

Discharge of the Receiver

22. Provided that the Court grants the AVO, the Receiver will have certain remaining activities (the “**Remaining Activities**”) to complete to conclude the administration of these Proceedings, all as set out in greater detail in the Sixth Report:¹⁹

- (a) close the Proposed Transaction;
- (b) pay the Commission to the Broker;
- (c) make additional distributions to the Applicants;
- (d) file an assignment in bankruptcy on behalf of the Legal Owner; and
- (e) attend to various outstanding tax-related matters, including filing outstanding tax returns.

¹⁶ Sixth Report at para 29.

¹⁷ Sixth Report at para 29.

¹⁸ Sixth Report at paras 30-32.

¹⁹ Sixth Report at para 54.

PART III - ISSUES

23. The following issues are before the Court on this Motion:

- (a) Should the Proposed Transaction be approved and the AVO be granted?
- (b) Should the Receiver be authorized to pay the Broker its Commission?
- (c) Should this Court grant the requested Activity Approval?
- (d) Should the Receiver be discharged and should the Receiver and its counsel be released?
- (e) Should a sealing order be granted in respect of the 414 Confidential Appendices, pending the closing of the Proposed Transaction or upon further Order of the Court?
- (f) Should the 414 Confidential Appendices and 304 Confidential Appendices be unsealed on closing of the Proposed Transaction?

24. For the reasons that follow, the Receiver submits that these questions should be answered in the affirmative.

PART IV - THE LAW AND DISCUSSION

A. The Proposed Transaction should be approved and the AVO should be granted

25. It is settled law that when asked to approve a transaction in a receivership context, a court is required to consider the following factors set out in *Royal Bank of Canada v Soundair Corp*:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.²⁰

²⁰ [*Royal Bank of Canada v Soundair Corp* \(1991\), 4 OR \(3d\) 1 \(CA\).](#)

26. Deference is to be afforded to a receiver respecting its proposed sale process. Absent a violation of the *Soundair* principles or other exceptional circumstances, the court should uphold the business judgment of the receiver, as its court officer.²¹

27. As set out in *Bank of Montreal v Dedicated National Pharmacies Inc.*:

Where a receiver or manager has acted reasonably, prudently and not arbitrarily, as is the case here, a court ought not to sit in appeal from a receiver or manager's decision or review in every detail every element of the procedure by which the receiver or manager made its decision. To do so would be futile, duplicative and would neutralize the role of the receiver or manager.²²

28. The Receiver submits that the *Soundair* test is readily met in respect of the Sale Process conducted in these Proceedings and the further marketing efforts leading up to the Proposed Transaction and that the Proposed Transaction should be approved, for the following reasons:

- (a) Efforts to Get the Best Price: The market was widely canvassed by the Receiver and the Broker in accordance with the terms of the comprehensive Sale Process, resulting in significant participation from potential purchasers and competition amongst same. The Proposed Transaction is the result of extensive negotiations with the Purchaser and its respective counsel, with input from the Broker, and represents the highest and best offer that is available for the Purchased Assets.²³
- (b) Interests of the Parties: The Sale Process was designed to ensure that the process would be robust and run with integrity, transparency and fairness, and notice of the

²¹ [Crown Trust Co v Rosenberg \(1986\), 60 OR \(2d\) 87](#) at 112 (HC).

²² [Bank of Montreal v Dedicated National Pharmacies Inc, 2011 ONSC 4634](#) at para 43.

²³ Sixth Report at para 33(a)-(b).

Sale Process was given to the service list and other interested parties prior to the motion seeking its approval, with no objections being raised in respect thereof. Prior to entering into the Proposed Transaction, the Receiver consulted with the Applicants, being the senior secured creditors in these Proceedings, who are the only parties anticipated to realize a recovery in these Proceedings. Further, prior to entering into the May 24 Transaction (which as set out above, did not proceed to closing), the Receiver consulted with the other secured mortgagee of the Real Property Assets.²⁴

(c) Efficacy and Integrity of the Process. The Court has already been satisfied with, and approved the Sale Process, which was implemented in accordance with the approved terms thereof.²⁵ The Receiver has ensured that all procedural issues have been conducted with integrity. All interested parties have had ample opportunity to participate. No objections or concerns with the Sale Process have been brought to the Receiver's attention.

(d) No Unfairness. In the Receiver's view, there has been no unfairness in the conduct of the Sale Process, no party has been prejudiced or excluded, and the range of offers received informs the Receiver's conclusion that the Proposed Transaction is the highest and best offer available for the Purchased Assets.²⁶

29. The AVO sought by the Receiver is in the standard, model form (with changes thereto marked in a blackline included in the Receiver's Motion Record) and substantially in the form

²⁴ Sixth Report at para 33(f).

²⁵ See the [Order](#) of the Honourable Justice Gilmore granted on May 24, 2022 in these Proceedings in connection with the May 24 Transaction.

²⁶ Sixth Report at para 33(b).

already granted by this Court in connection with the May 24 Transaction and the October 14 Transaction.

30. The issuance of the AVO is a requirement of the Sale Agreement. The parties with registered interests being vested out by the proposed AVO have been given notice of the Receiver's motion and the proposed AVO provides that any interests that are vested out attach to the proceeds of sale in accordance with their respective priorities. Accordingly, the Receiver believes that the AVO is fair, reasonable, and ought to be granted.

B. Payment of the Broker's Commission should be authorized

31. The Receiver entered into the Broker Engagement Agreement pursuant to its authority under the Appointment Order, and such Broker Engagement Agreement was expressly approved by the Court in the Sale Process Order.

32. The Broker has provided valuable services to the Receiver and materially assisted with the Sale Process. Further, the Broker has spent time and resources on the Sale Process and, in the Receiver's view, has earned the Commission due to it pursuant to the Court approved Broker Engagement Agreement, which is only due and payable should the Proposed Transaction close.

33. Accordingly, in the Receiver's view, the payment of the Commission to the Broker should be paid, as and when the Proposed Transaction closes.

C. The Court should grant the requested Activity Approval

34. In *Target Canada*, the Court noted that there are good policy and practical reasons to grant the approval of Monitor's reports and activities, including (a) allowing the Monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (d) providing protection for the Monitor not otherwise provided by the

Companies' Creditors Arrangement Act; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the Monitor.²⁷

35. Recently, the principles set out in *Target Canada* were reaffirmed by Chief Justice Morawetz in *Laurentian University*.²⁸

36. These comments and the policy considerations identified by the Court apply with equal force to receivership proceedings, and motions seeking approval of a receiver's report and activities described therein.²⁹

37. This Court has jurisdiction to review and approve the activities of a receiver. If a receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, the court may approve the activities set out in its report.³⁰

38. The activities of the Receiver that are set out in the Sixth Report were necessary, consistent with the Receiver's duties and powers granted in the Appointment Order and undertaken with efficiency and reasonableness in the interests of stakeholders generally. The Receiver therefore respectfully submits that the Activity Approval should be granted.

D. The discharge of the Receiver and the release of the Receiver and its counsel should be approved

39. Other than the Remaining Activities, the Receiver has completed its administration of these Proceedings, as contemplated by the Appointment Order and the BIA.³¹

²⁷ [Re Target Canada Co, 2015 ONSC 7574](#) at paras 12, 22-23 [*Target Canada*].

²⁸ [Re Laurentian University of Sudbury, 2022 ONSC 2927](#) at paras 13-14; [Target Canada](#) at paras 12, 22-23.

²⁹ [Re Hanfeng Evergreen Inc, 2017 ONSC 7161](#) at para 15.

³⁰ [Bank of America Canada v Willam Investments Ltd, \[1993\] OJ No 1647 \(Gen Div\)](#) at paras 2-5, [aff'd \[1996\] OJ No 2806 \(CA\)](#); [Lang Michener v American Bullion Minerals Ltd, 2005 BCSC 684](#) at para 21.

³¹ Sixth Report at para 53.

40. The Receiver respectfully submits that it is appropriate to discharge the Receiver upon the filing of a certificate of the Receiver, certifying that all matters to be attended to in connection with the within Proceedings have been completed to its satisfaction (the “**Discharge Certificate**”).

41. The Receiver respectfully submits that it is also appropriate to grant a limited release in favour of it and its counsel. In *Pinnacle v Kraus*, this Court granted an Order discharging and releasing a Court-appointed receiver. In doing so, the Court noted that such a release is expressly contemplated by the Commercial List Model Discharge Order and that in the absence of improper or negligent conduct on the part of the Receiver, such releases should be granted.³²

42. The proposed Discharge, Distribution and Ancillary Matters Order seeks (i) a limited release in favour of the Receiver and its counsel which is temporally circumscribed by the period up to the date of the Discharge, Distribution and Ancillary Matters Order, and (ii) a limited subsequent release up to the date that the Discharge Certificate is filed, provided that parties of interest are given notice of same and have an opportunity to object to such subsequent release.

43. This bifurcated approach is intended to achieve a mechanism whereby parties of interest are given full and transparent disclosure of the releases being sought and an opportunity to raise any issues with the same.

44. Similar releases have been granted by this Court in other proceedings in favour of receivers, monitors and their counsel.

45. Throughout these Proceedings, the Receiver and its counsel have acted prudently and contributed substantially to the administration of these Proceedings, with the activities of the Receiver having been thoroughly disclosed throughout the Proceedings. Accordingly, the Receiver

³² [Pinnacle v Kraus, 2012 ONSC 6376](#) at para 47.

respectfully submits that the requested releases are reasonable in the circumstances, will provide the Receiver and its counsel with finality, and should be granted.

E. The sealing order should be granted in respect of the 414 Confidential Appendices

46. In *Sierra Club of Canada v Canada (Minister of Finance)*³³, the Supreme Court of Canada (“SCC”) held that courts should exercise their discretion to grant sealing orders where (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk, and (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

47. In *Sherman Estate v Donovan*³⁴, the SCC recast the test from *Sierra Club* differently, without altering its essence. According to *Sherman Estate*, a person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (i) court openness poses a serious risk to an important public interest.
- (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.

48. Although the SCC was considering issues of personal privacy in *Sherman Estate*, it noted in citing *Sierra Club* that the term “important interest” can capture a broad array of public objectives including commercial interests.³⁵

³³ [2002 SCC 41](#) at para 53.

³⁴ [2021 SCC 25](#) at para 38.

³⁵ *Ibid* at para 41.

49. In the insolvency context, courts have commonly applied the *Sierra Club* test and granted sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.³⁶

50. The test for a sealing order as recast in *Sherman Estate* has similarly been recently employed in the insolvency context to authorize sealing orders over confidential or commercially sensitive documents.³⁷

51. The 414 Confidential Appendices contain confidential and commercially sensitive information, including with respect to key economic terms of the Proposed Transaction. The 414 Confidential Appendices are comprised of (a) a summary of the key economic terms redacted from the Sale Agreement, and (b) a summary of the material terms of each binding offer received in respect of the 414 Victoria Real Property Assets. The disclosure of the information contained in such documents would be prejudicial to, and negatively impact any future negotiations or marketing efforts in respect of the Purchased Assets, should the Proposed Transaction not be approved or not close as anticipated.

52. In the circumstances, the sealing order sought, which seals the 414 Confidential Appendices pending the closing of the Proposed Transaction or upon further order of the Court, is the least restrictive means to maintain the confidentiality of this commercially sensitive and confidential information, as (a) the balance of the terms of the Sale Agreement have been made available to all stakeholders on an unredacted basis, and (b) the Discharge, Distribution and Ancillary Matters Order expressly contemplates that the 414 Confidential Appendices, together

³⁶ [Elleway Acquisitions Ltd v 4358376 Canada Inc, 2013 ONSC 7009](#) at paras 47-48; [GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc, 2014 ONSC 1173](#) at para 32; [Re Stelco Inc, 2006 CarswellOnt 394](#) at paras 2-5, [2006] OJ No 275 (SCJ); [Re Canwest Publishing Inc, 2010 ONSC 222](#) at paras 63-65.

³⁷ [Ontario Securities Commission v Bridging Finance Inc, 2021 ONSC 4347](#) at paras 23-27; [Laurentian University of Sudbury, 2021 ONSC 1453](#) at paras 13-14.

with the 304 Confidential Appendices, are to be unsealed upon closing of the Proposed Transaction.

53. Accordingly, the Receiver submits that the salutary effects of the sealing order outweigh the deleterious effects of restricting access to the 414 Confidential Appendices, and that the requested sealing order is therefore appropriate.

PART V - CONCLUSION

54. For the reasons set out above, the Receiver respectfully requests that this Court:

- (a) approve the Proposed Transaction and grant the AVO;
- (b) authorize the payment of the Commission to the Broker upon closing of the Proposed Transaction;
- (c) grant the requested Activity Approval;
- (d) discharge the Receiver and release the Receiver and its counsel;
- (e) seal the 414 Confidential Appendices; and
- (f) unseal the 414 Confidential Appendices and 304 Confidential Appendices upon the closing of the Proposed Transaction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of May 2023.

DocuSigned by:

Aryo Shalviri

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Aryo Shalviri/Alexia Parente
Lawyers for the Receiver

SCHEDULE "A"

LIST OF AUTHORITIES

<u>Case</u>	
1.	<i>Royal Bank of Canada v Soundair Corp</i> (1991), 4 OR (3d) 1 (CA)
2.	<i>Crown Trust Co v Rosenberg</i> (1986), 60 OR (2d) 87 (HC)
3.	<i>Bank of Montreal v Dedicated National Pharmacies Inc</i>, 2011 ONSC 4634
4.	<i>Re Target Canada Co</i>, 2015 ONSC 7574
5.	<i>Re Laurentian University of Sudbury</i>, 2022 ONSC 2927
6.	<i>Re Hanfeng Evergreen Inc</i>, 2017 ONSC 7161
7.	<i>Bank of America Canada v Willann Investments Ltd</i>, [1993] OJ No 1647 (Gen Div) aff'd [1996] OJ No 2806 (CA)
8.	<i>Lang Michener v American Bullion Minerals Ltd</i>, 2005 BCSC 684
9.	<i>Pinnacle v Kraus</i>, 2012 ONSC 6376
10.	<i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41
11.	<i>Sherman Estate v Donovan</i>, 2021 SCC 25
12.	<i>Elleway Acquisitions Ltd v 4358376 Canada Inc</i>, 2013 ONSC 7009
13.	<i>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc</i>, 2014 ONSC 1173
14.	<i>Re Stelco Inc</i>, 2006 CarswellOnt 394
15.	<i>Re Canwest Publishing Inc</i>, 2010 ONSC 222
16.	<i>Ontario Securities Commission v Bridging Finance Inc</i>, 2021 ONSC 4347
17.	<i>Laurentian University of Sudbury</i>, 2021 ONSC 1453

SCHEDULE "B"

RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 243

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.

Bankruptcy and Insolvency General Rules, C.R.C., c. 368: Section 3

General

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

Rules of Civil Procedure, R.R.O., 1990, Reg 194: Rule 1.04

Interpretation

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*
Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC. *et al.*
Respondents

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

Proceeding Commenced at Toronto

**FACTUM OF THE RECEIVER
(Sale Approval, Discharge, Distribution
and Ancillary Matters)
Returnable May 30, 2023**

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