

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

B E T W E E N:

AMERICAN GENERAL LIFE INSURANCE COMPANY,
LEXINGTON INSURANCE COMPANY, AND
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE
PURCHASER INC., AND 2413667 ONTARIO INC.

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
(Motion for Approval of Broker Engagement, Sale Process and Ancillary Matters)
Returnable October 29, 2021**

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TO: SERVICE LIST

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(as at October 22, 2021)

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**FACTUM OF THE RECEIVER
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PART I - OVERVIEW

1. This Factum is filed by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”), appointed pursuant to the Order of the Honourable Mr. Justice Dunphy of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on June 29, 2021 (the “**Appointment Order**”), in support of the Receiver’s motion for an order:

- i. approving the broker engagement agreement dated as of October 20, 2021 (the “**Broker Engagement Agreement**”) with CBRE Limited (“**CBRE**” or the “**Broker**”) and the engagement of the Broker as exclusive real estate broker in accordance with the terms therein;
 - ii. approving the proposed Sale Process set out at Schedule “A” to the form of Order contained at Tab 3 of the Receiver’s Motion Record (the “**Sale Process**”) and described in the First Report of the Receiver dated October 21, 2021 contained at Tab 2 of the Receiver’s Motion Record (the “**First Report**”);
 - iii. approving the Lease Termination Settlement (as defined below);
 - iv. sealing Confidential Appendices “A”, “B” and “C” to the First Report (collectively, the “**Confidential Appendices**”); and
 - v. granting certain other ancillary relief.
2. In the Receiver’s view, (i) the engagement of the Broker and approval of the Sale Process will enable the Receiver to undertake a comprehensive, transparent and efficient sale process for the Real Property Assets (as defined below), employing procedures that are optimized to maximize value for creditors and achieve closing of potential transaction(s) on an appropriate timeline, (ii) the Lease Termination Settlement will likewise maximize value for stakeholders, and (iii) the Confidential Appendices contain confidential, sensitive and in certain instances competitive information that if disclosed, could cause serious harm to important interests and the salutary effects of sealing them outweigh any deleterious effects.

3. Accordingly, for the reasons set out below, the Receiver is respectfully requesting that this Court: (i) approve the engagement of the Broker, the Sale Process and the Lease Termination Settlement, and (ii) seal the Confidential Appendices.

4. Capitalized terms used but not otherwise defined in this Factum shall have the meanings given to them in the First Report.

PART II - FACTS

Background

5. Pursuant to the Appointment Order, the Receiver was appointed as receiver of the Property (as defined in the Appointment Order).

First Report at para 1.

6. Prior to the Receiver's appointment, the respondents (collectively, the "**Debtors**") were engaged in the ownership, maintenance and operation of medical office buildings leased by the Debtors to primarily medical professionals and related businesses (together with the leases related thereto, the "**Real Property Assets**"). The Receiver is proposing to market the Real Property Assets as going concerns.

The Broker and Broker Engagement Agreement

7. Following its appointment, the Receiver conducted a request for proposal process ("**RFP**") inviting a number of real estate brokerage firms to submit proposals to act as a listing broker for the Real Property Assets.

First Report at para 47.

8. The RFP engaged real estate brokers with (i) sufficient reach to broadly market the assets which are located in various municipalities across Ontario, (ii) experience with these types of assets, and (iii) expertise in the sale of real property in court-supervised proceedings.

First Report at paras 47 and 48.

9. In response to the RFP, the Receiver obtained separate proposals from five real estate brokers, each setting out proposed economic terms, marketing plans, and relevant expertise. The Receiver met with each of these five brokers to engage with them on the terms of their submitted proposal. A summary of the proposals received in the RFP is attached as Confidential Appendix “B” to the First Report (the “**RFP Proposals Summary**”). Following this process, the Receiver determined that CBRE is best positioned to act as listing broker and has proceeded to engage CBRE pursuant to the Broker Engagement Agreement, which is subject to this Court’s approval.

First Report at paras 49 and 51; Confidential Appendix “B” to the First Report [“**Confidential Appendix B**”].

10. The Receiver has entered into the Broker Engagement Agreement, an unredacted version of which is appended as Confidential Appendix “C” to the First Report and a redacted version of which is appended as Appendix “C” to the First Report.

First Report at paras 52 and 53; Confidential Appendix “C” to the First Report [“**Confidential Appendix C**”]; Appendix “C” to the First Report.

11. The Broker has assisted the Receiver in preparing the proposed Sale Process and should this Court approve the Broker Engagement Agreement and the Sale Process, the Broker will assist the Receiver in conducting the Sale Process.

12. The Receiver is seeking an order sealing and treating as confidential the RFP Proposals Summary and the unredacted Broker Engagement Agreement. The Receiver is of the view that the disclosure of the commercial terms and competitive information contained in the RFP Proposals Summary would have a detrimental impact on the participants in the RFP, and that the disclosure of the economic terms of both the RFP Proposals Summary and the unredacted Broker Engagement Agreement could negatively impact the Sale Process (in the case of the RFP Proposals Summary) and the Receiver's ability to negotiate future listing agreements should it become necessary to engage a different broker in the future (in the case of both the RFP Proposals Summary and the Broker Engagement Agreement). Further, it is an explicit term of the Broker Engagement Agreement that the Receiver seek a sealing order in respect of the unredacted Broker Engagement Agreement.

First Report at paras 50 and 52; Appendix "C" to the First Report, at section 8.6.

The Sale Process

13. The Sale Process has been prepared by the Receiver in consultation with the Broker, with the objective of obtaining offers for the Real Property Assets through a comprehensive, transparent and efficient process that is designed to provide the greatest value to the Debtors, and in turn, their creditors and other stakeholders. The Sale Process provides for a robust marketing process which will thoroughly test the market.

First Report at paras 46, 56 and 59.

14. The Sale Process is comprised of two marketing phases, whereby the marketing will be initially focused on potential purchasers of the full portfolio in the first marketing phase, and thereafter focused on sub-portfolio (one or more properties, but fewer than the full-portfolio)

purchasers in the second marketing phase. The two-phase marketing approach is designed to recognize that potential portfolio purchasers may require more time to consider and diligence the opportunity and to focus marketing efforts on them first. However, notwithstanding that there are two active marketing phases, all interested parties (whether portfolio or sub-portfolio buyers) shall be entitled to participate in the process from day-one, and all interested parties will have the same bid deadline.

First Report at para 57.

15. From start to finish, the proposed Sale Process is anticipated to run for approximately 6 months, which period of time takes into account approximately 3-4 weeks around the December holiday period where a significantly lower level of market activity is anticipated. However, by the terms of the Sale Process, certain deadlines and timelines may be revised by the Receiver, in consultation with the Broker and on notice to interested parties.

First Report at para 57; Appendix “A” to the First Report.

16. The Receiver will make a motion to this Court to obtain approval of any successful bid(s) and one or more vesting orders with respect to the asset purchase agreement(s) with any ultimate successful bidder(s).

First Report at para 57.

The Lease Termination Settlement

17. Prior to the appointment of the Receiver, the Legal Owner 2478658 Ontario Ltd. (“**247 Ontario**”) and Peterborough Regional Health Centre (“**PRHC**”) were in a dispute over a purported termination of a lease.

First Report at para 41.

18. At the time the Appointment Order was granted, these parties were in advanced stages of negotiating a potential settlement.

First Report at para 41.

19. Following its appointment, the Receiver assessed and approved a settlement (the “**Lease Termination Settlement**”), the terms of which are reflected in the Minutes of Settlement dated September 29, 2021 (the “**Minutes of Settlement**”), having regard to (i) advice from its counsel following a review of the matter with litigation counsel to 247 Ontario, (ii) the proposed settlement amount of \$800,000 payable by PRHC to 247 Ontario relative to the total quantum of claim by 247 Ontario, and (iii) the resources, costs and risks associated with pursuing and ultimately litigating the claim.

First Report at para 42.

20. With the approval of the Receiver and subject to Court approval, PRHC and 247 Ontario have entered into the Minutes of Settlement, which contains certain confidential and sensitive information relating to the matters in dispute that may adversely impact the parties thereto if disclosed.

First Report at paras 43 and 45; Confidential Appendix “A” to the First Report [“**Confidential Appendix A**”].

21. As set out above and in the First Report, the Receiver has assessed the terms of the Lease Termination Settlement against the risks and costs associated with litigation and determined that the Lease Termination Settlement is in the best interest of 247 Ontario and its creditors. The Lease Termination Settlement results in material proceeds accruing to the estate of 247 Ontario.

Accordingly, the Receiver recommends and seeks approval of the Lease Termination Settlement by this Court.

First Report at para 45.

PART III - ISSUES

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

- (a) Should the engagement of CBRE as Broker be approved in accordance with the terms set out in the Broker Engagement Agreement?
- (b) Should the proposed Sale Process be approved?
- (c) Should the Lease Termination Settlement be approved?
- (d) Should a sealing order be granted in respect of the Confidential Appendices?

23. In the Receiver's respectful submission, the answer to all four questions is yes.

PART IV - THE LAW AND DISCUSSION

A. The Engagement of CBRE as Broker Should be Approved

24. The Receiver requires real estate advisory services to run the Sale Process in order to maximize realizations from the Real Property Assets. The engagement of a real estate broker in insolvency proceedings involving real property is not uncommon and the Receiver already has the authority to retain a broker pursuant to subparagraph 3(d) of the Appointment Order.

[Appointment Order](#) of this Court dated June 29, 2021, at subpara 3(d).

25. Notwithstanding the existing authority to retain a broker, given the importance of the selection of CBRE to monetization efforts and the fact that any commissions earned as a result of any successful transaction(s) would be paid from gross proceeds of sale, the Receiver has determined that it is advisable and appropriate to seek approval of the Broker Engagement Agreement.

26. While there are no explicit statutory provisions respecting a receiver's engagement of a consultant or an advisory party such as a real estate broker, section 243(1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") provides the statutory basis for the Court to exercise its discretion to approve the appointment of such a broker where it sees fit to do so. Courts have also recognized that industry experience and familiarity with the debtor company or assets subject to a sale process are important factors to consider when approving the engagement of an advisor such as a broker.

BIA, section 243(1)(c); [*Colossus Minerals Inc, Re, 2014 ONSC 514*](#) at paras 28-36, Tab A of the Book of Authorities of the Receiver ["Receiver's BOA"]

27. The Broker, if appointed, will be paid its fees and commissions from the gross proceeds of sale of the Real Property Assets. Accordingly, the factors that a Court will take into account when considering whether to approve a charge for advisor's fees are also relevant in considering approval of the Broker Engagement Agreement in the present case. These factors are:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;

- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the receiver.

[Re Canwest Publishing Inc., 2010 ONSC 222](#) at para 54 [*“Canwest”*], Tab B of Receiver’s BOA.

28. In the present case, the Receiver undertook the RFP, a comprehensive process for the selection of a broker. After carefully considering the responses received, the Receiver entered into the Broker Engagement Agreement with the Broker and is recommending approval thereof because:

- (a) the Broker is well known in the industry for its market-leading expertise and experience with commercial real estate assets;
- (b) the Broker has significant market reach, particularly with institutional purchasers and a clearly articulated marketing strategy which can be deployed in respect of the seven medical office buildings comprising the Real Property Assets;
- (c) the Broker also has familiarity with the geographic regions where the Real Property Assets are situated and has a commission fee structure that permits it to partner with local cooperating brokers;
- (d) the Broker has previously acted as a broker of distressed assets, including in the insolvency context and can assist in implementing the proposed Sale Process in a transparent and fair manner;

- (e) the Broker has commissions which are within a narrow competitive margin of the proposals received from other prospective brokers and the quantum of commissions payable under the Broker Engagement Agreement reflects an appropriate incentive to secure the highest and best bids for the Real Property Assets; and
- (f) the Receiver has consulted with the Applicants, being the senior secured creditors in these proceedings which are supportive of the engagement of CBRE, as well as other registered mortgagees.

First Report at paras 51, 53 and 54; Confidential Appendix B, *supra*; Confidential Appendix C, *supra*.

29. For all the foregoing reasons, it is appropriate for this Court to exercise the discretion provided to it under section 243(1)(c) of the BIA and approve the Broker Engagement Agreement and the engagement of the Broker as contemplated therein.

B. The Proposed Sale Process Should be Approved

30. The Receiver has, in consultation with the Broker, prepared the Sale Process with a view to maximizing value for creditors in a fair, transparent and efficient manner. The Receiver notes in particular that:

- (a) any interested party that executes a non-disclosure agreement will be afforded an opportunity to participate in the proposed Sale Process;
- (b) the proposed Sale Process is contemplated to run for a total period of approximately 6 months and is sufficiently robust to provide the Real Property Assets with adequate exposure to the market and maximize value for stakeholders; and

- (c) any “Successful Bid” that is selected pursuant to the proposed Sale Process will require this Court’s approval.

First Report at para 57.

31. As with the engagement of the Broker, this Court has the jurisdiction to approve the proposed Sale Process pursuant to section 243(1)(c) of the BIA.

BIA, section 243(1)(c).

32. Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale transaction, courts have held that the factors which a court is to consider on such motions are intertwined with and drawn from the oft-cited principles set out in *Royal Bank v Soundair Corp.*, being: (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.

[*CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd.*, 2012 ONSC 1750](#) at para 6 [“*blutip*”], Tab C of Receiver’s BOA; *Royal Bank of Canada v Soundair Corp.*, 1991 CarswellOnt 205, 91 CBR (5th) 285 (Ont CA) at para 16 [“*Soundair*”], Tab D of Receiver’s BOA; [*Choice Properties Limited Partnership v Penady \(Barrie\) Ltd.*, 2020 ONSC 3517](#) at para 16, Tab E of Receiver’s BOA; [*Yukon \(Government of\) v Yukon Zinc Corporation*, 2020 YKSC 17](#) at para 62, Tab F of Receiver’s BOA.

33. Accordingly, when reviewing a sales process proposed by a receiver a court should assess:
- i. the fairness, transparency and integrity of the proposed process;
 - ii. the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and

- iii. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

blutip, supra, at para 6, Tab C of Receiver's BOA.

34. The proposed sale process need not be perfect, only reasonable, and a court should also give significant weight to the recommendation of its receiver, a court-appointed officer with significant expertise in insolvency proceedings.

[Marchant Realty Partners Inc. v 2407553 Ontario Inc., 2021 ONCA 375](#) at paras 10, 15 and 19, Tab G of Receiver's BOA; [Re Sanjel Corporation, 2016 ABQB 257](#) at para 80, Tab H of Receiver's BOA.

35. The proposed Sale Process is consistent with similar sales processes approved in other Canadian insolvency proceedings.

[First Source Financial Management Inc. and Kingsett Mortgage Corporation v Ideal \(BC\) Developments Inc. et al](#), (CV-19-00622054-00CL), Sale Process Order dated August 19, 2019 at paras 2–4, Tab I of Receiver's BOA; [Laurentian Bank of Canada v 2145744 Ontario Limited](#), (CV-19-00631895-00CL), Order dated February 19, 2020 at paras 3—5, Tab J of Receiver's BOA; [Cortland Credit Lending Corporation v Mohawk Trail Properties Inc. et al](#), (CV-21-00666311-00CL), Sale Process Order dated August 3, 2021 at para 1, Tab K of Receiver's BOA.

36. The Receiver submits that for all of the foregoing reasons it is commercially reasonable and appropriate to approve the Sale Process.

C. The Lease Termination Settlement Should be Approved

37. The Lease Termination Settlement is a culmination of many months of intense and complex negotiations. The Lease Termination Settlement ought to be approved, including because:

- (a) the proposed settlement amount of \$800,000 payable by PRHC to 247 Ontario is reasonable relative to the total quantum of claim by 247 Ontario;

- (b) of the resources, costs and risks associated with pursuing and, ultimately, litigating the claim; and
- (c) the Lease Termination Settlement results in material proceeds accruing to the estate of 247 Ontario and the Receiver recommends and seeks its approval by the Court.

First Report at paras 42 and 45.

38. There is no doubt that there is an overriding public interest in favour of settlement. It is sound judicial policy which contributes to the administration of justice.

[Allianz v Canada \(Attorney General\), 2017 ONSC 4484](#) at para 9, Tab L of Receiver's BOA.

39. Where a settlement is the product of extensive negotiations, it should not be examined on a line-by-line basis, and the court should be reluctant to amend or alter its terms.

Grace Canada Inc., Re, 2008 CarswellOnt 6284 at para 74, 50 CBR (5th) 25 (Ont SCJ), Tab M of Receiver's BOA.

40. The *Soundair* principles have also been applied in the context of settlement approval motions in receivership proceedings. Specifically, the Court must consider:

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

[IWHL Inc., Re, 2011 ONSC 5672](#) at paras 4 and 5, Tab N of Receiver's BOA; [National Trust Co. v 1117387 Ontario Inc., 2010 ONCA 340](#) at para 46 [*"National Trust"*], Tab O Receiver's BOA.

41. The Ontario Court of Appeal has previously held, with respect to the first step of this test, that: "[w]hen the Receiver is considering how to deal with a cause of action, the Receiver can meet its responsibility by settling the matter as long as the proposed compromise is commercially reasonable."

National Trust, supra, at para 50, Tab O of Receiver's BOA.

42. In this case, the test is plainly met. The Lease Termination Settlement is commercially reasonable, in the interests of the parties involved, and was reached pursuant to a fair and reasonable process that the Receiver participated in the final stages of. For these reasons, in the Receiver's view, this Court ought to exercise its discretion to approve the Lease Termination Settlement.

D. It is Appropriate to Grant a Sealing Order Respecting the Confidential Appendices

43. In *Sierra Club of Canada v Canada (Minister of Finance)* ("*Sierra Club*"), the Supreme Court of Canada ("*SCC*") held that courts should exercise their discretion to grant sealing orders where:

- i. 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
- ii. 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.

[Sierra Club of Canada v Canada \(Minister of Finance\), 2002 SCC 41](#) at para 53, Tab P of Receiver's BOA.

44. In *Sherman Estate v Donovan*, the SCC recast the test from *Sierra Club*, 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.

[Sherman Estate v Donovan, 2021 SCC 25](#) at para 38 [*"Sherman Estate"*], Tab Q of Receiver's BOA.

45. 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.

Sherman Estate, supra, at para 41, Tab Q of Receiver's BOA.

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

[Elleway Acquisitions Ltd v 4358376 Canada Inc., 2013 ONSC 7009](#) at paras 47 and 48, Tab R of Receiver's BOA; [GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc., 2014 ONSC 1173](#) at para 32, Tab S of Receiver's BOA; *Stelco Inc. (Re)*, 2006 CarswellOnt 394 at paras 2-5, [2006] OJ No. 275 (Ont SCJ), Tab T of Receiver's BOA; *Canwest, supra*, at paras 63-65, Tab B of Receiver's BOA.

47. 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.

[Ontario Securities Commission v Bridging Finance Inc., 2021 ONSC 4347](#) at paras 23-27, Tab U of Receiver's BOA; [Laurentian University of Sudbury, 2021 ONSC 4769](#) at paras 12-14, Tab V of Receiver's BOA.

48. Confidential Appendix A contains the Lease Termination Settlement, which provides for an express confidentiality clause. Further, the Lease Termination Settlement contains certain confidential and sensitive information relating to the matters in dispute that may adversely impact the parties if disclosed.

First Report at para 45.

49. Confidential Appendix B contains confidential, commercially sensitive and competitive information regarding (i) fee structures, (ii) marketing strategy, and (iii) indications of value which, if disclosed, could adversely affect (i) the participants in the RFP process, (ii) the proposed Sale Process (and therefore recoveries for stakeholders), and (iii) any future efforts to engage a new broker, should the need arise.

First Report at para 50.

50. Confidential Appendix C contains the unredacted fee structure in the Broker Engagement Agreement. As in the case of the RFP Proposals Summary, this is competitive and commercially sensitive information and its disclosure could cause harm to the Broker and any future efforts to engage a new broker, should the need arise.

First Report at paras 53 and 54.

51. In the circumstances, the sealing order sought is the least restrictive means to maintain the confidentiality of this commercially sensitive, competitive and confidential information. Accordingly, the Receiver submits that the salutary effects of the sealing order outweigh the deleterious effects of restricting access to the Confidential Appendices, and that the sealing order is therefore appropriate.

PART V - CONCLUSION

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

- i. approve the Broker Engagement Agreement and authorize the Receiver to engage the Broker;
- ii. approve the proposed Sale Process;
- iii. approve the Lease Termination Settlement; and
- iv. seal the Confidential Appendices.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of October, 2021.



Pamela L.J. Huff/Aryo Shalviri/Chris Burr/Jules Monteyne
Lawyers for the Receiver

SCHEDULE “A”

LIST OF AUTHORITIES

<u>Case</u>	<u>Tab</u>
1. <u>Colossus Minerals Inc, Re, 2014 ONSC 514</u>	A
2. <u>Re Canwest Publishing Inc., 2010 ONSC 222</u>	B
3. <u>CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd., 2012 ONSC 1750</u>	C
4. <i>Royal Bank of Canada v Soundair Corp.</i> , 1991 CarswellOnt 205, 91 CBR (5th) 285 (Ont CA)	D
5. <u>Choice Properties Limited Partnership v Penady (Barrie) Ltd., 2020 ONSC 3517</u>	E
6. <u>Yukon (Government of) v Yukon Zinc Corporation, 2020 YKSC 17</u>	F
7. <u>Marchant Realty Partners Inc. v 2407553 Ontario Inc., 2021 ONCA 375</u>	G
8. <u>Re Sanjel Corporation, 2016 ABQB 257</u>	H
9. <u>First Source Financial Management Inc. and Kingsett Mortgage Corporation v Ideal (BC) Developments Inc. et al</u> , (CV-19-00622054-00CL), Sale Process Order dated August 19, 2019	I
10. <u>Laurentian Bank of Canada v 2145744 Ontario Limited</u> , (CV-19-00631895-00CL), Order dated February 19, 2020	J
11. <u>Cortland Credit Lending Corporation v Mohawk Trail Properties Inc. et al</u> , (CV-21-00666311-00CL), Sale Process Order dated August 3, 2021	K
12. <u>Allianz v Canada (Attorney General), 2017 ONSC 4484</u>	L
13. <i>Grace Canada Inc., Re</i> , 2008 CarswellOnt 6284 at para 74, 50 CBR (5th) 25 (Ont SCJ)	M
14. <u>IWHL Inc., Re, 2011 ONSC 5672</u>	N
15. <u>National Trust Co. v 1117387 Ontario Inc., 2010 ONCA 340</u>	O
16. <u>Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41</u>	P
17. <u>Sherman Estate v Donovan, 2021 SCC 25</u>	Q
18. <u>Elleway Acquisitions Ltd v 4358376 Canada Inc., 2013 ONSC 7009</u>	R
19. <u>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc., 2014 ONSC 1173</u>	S
20. <i>Stelco Inc. (Re)</i> , 2006 CarswellOnt 394, [2006] OJ No. 275 (Ont SCJ)	T
21. <u>Ontario Securities Commission v Bridging Finance Inc., 2021 ONSC 4347</u>	U
22. <u>Laurentian University of Sudbury, 2021 ONSC 4769</u>	V

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.

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

SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*
Respondents

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

Proceeding Commenced at Toronto

**FACTUM OF THE RECEIVER
(Motion for Approval of Broker Engagement,
Sale Process and Ancillary Matters)
Returnable October 29, 2021**

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