

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

BETWEEN:

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 PENETANGUISSH 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

Court File No. CV-21-00665375-00CL

**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

**JOINT FACTUM OF THE RECEIVERS IN THE ABOVE-NOTED MATTERS
(Sale Approval and Ancillary Matters)
Returnable May 24, 2022**

May 21, 2022

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Lawyers for the Receiver

TO: SERVICE LIST

SCHEDULE "A"

Individuals
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
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 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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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
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- and -

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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**

**JOINT FACTUM OF THE RECEIVERS IN THE ABOVE-NOTED MATTERS
(Sale Approval and Ancillary Matters)
Returnable May 24, 2022**

PART I - OVERVIEW

1. This factum is filed in support of motions by KPMG Inc., as receiver and manager without security of, among other things, all of the assets, undertakings and properties of (i) Victoria Avenue North Holdings Inc. (“**Victoria**”), and (ii) 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. (collectively, the “**Southmount Legal Owners**” and together with Victoria, the “**Legal Owners**”), for or used in relation to their businesses (collectively, the “**Legal Owners’ Property**”) and all right, title and interest of any beneficial owners in and to the Legal Owners’ Property and all proceeds thereof (together with the Legal Owner’s Property, the “**Property**”), seeking orders:¹

- (a) approving six asset purchase agreements (the “**APAs**”) entered into by the Southmount Receiver or the Victoria Receiver with five separate purchasers (the “**Purchasers**”), and each of the transactions contemplated thereby (the “**Proposed Transactions**”);
- (b) vesting title in and to the applicable Real Property Assets in the applicable Purchaser, free and clear of all liens, charges, security interests and encumbrances, except the Permitted Encumbrances (as defined in each of the APAs) (the “**Vesting Orders**”);
- (c) authorizing the Receivers to pay the Commissions to CBRE Limited (the “**Broker**”);

¹ Capitalized terms used in this paragraph and not otherwise defined shall have the meanings given to them further below in this Factum.

- (d) authorizing the Receivers to make the repayment of the Receiver's borrowings and distributions to the Applicants from the net proceeds of sale of certain of the Real Property Assets (the "**Proposed Distribution**");
- (e) approving the activities of the Southmount Receiver, as set out in (i) the Receiver's First Report to the Court dated October 21, 2021 in the Southmount Proceedings (the "**First Southmount Report**"); (ii) the Receiver's Second Report to the Court dated May 13, 2022 in the Southmount Proceedings (the "**Second Southmount Report**"); and the activities of the Victoria Receiver, as set out in (iii) the Receiver's First Report to the Court dated September 7, 2021 in the Victoria Proceedings (the "**First Victoria Report**"); (iv) Receiver's Second Report to the Court dated October 22, 2021 in the Victoria Proceedings (the "**Second Victoria Report**"), and (v) the Receiver's Third Report to the Court dated May 13, 2022 in the Victoria Proceedings (the "**Third Victoria Report**", and together with the First Southmount Report, the Second Southmount Report, the First Victoria Report and the Second Victoria Report, the "**Reports**" and collectively the "**Activity Approval**");
- (f) dispensing with the requirement that the Victoria Receiver, its counsel, Blake, Cassels & Graydon LLP ("**Blakes**") and its independent counsel Norton Rose Fulbright LLP ("**Norton Rose**") obtain Court approval of their fees and disbursements incurred in the Victoria Proceedings (the "**Victoria Accounts**");
- (g) authorizing the Southmount Receiver to make an assignment in bankruptcy on behalf of 180 Vine Purchaser Inc. (the "**Vine Assignment**");

- (h) authorizing the procedural consolidation of the proposed bankruptcy estates of 180 Vine Purchaser Inc. and certain Legal Owners (the “**Procedural Consolidation**”);
and
- (i) sealing confidential appendices to the Second Southmount Report, the Supplement to the Second Southmount Report dated May 20, 2022, and the Third Victoria Report (the “**Confidential Appendices**”).

2. This factum is filed jointly by the Receivers (defined below) in support of the motions in the proceedings under Court File No. CV-21-00664273-00CL (the “**Southmount Proceedings**”) and in the proceedings under Court File No. CV-21-00665375-00CL (the “**Victoria Proceedings**”), which motions will be heard jointly.

3. This factum will address the (a) Proposed Transactions, (b) Vesting Orders, (c) payment of Commissions to the Broker, (d) Activity Approval, (e) Victoria Accounts and (f) Confidential Appendices. The (a) Proposed Distributions, (b) Vine Assignment and (c) Procedural Consolidation will be addressed in a separate factum filed by the Receivers’ independent counsel, Norton Rose.

PART II - FACTS

Background

4. The background facts relevant to the Receivers’ motions are set out in detail in the Second Southmount Report and the Third Victoria Report. A summary of key facts as they relate to the relief requested by the Receivers is set out in the following section.

5. Pursuant to the order of Mr. Justice Dunphy, dated June 29, 2021 in the Southmount Proceedings (the “**Southmount Appointment Order**”), KPMG was appointed as receiver in the Southmount Proceedings (in such capacity, the “**Southmount Receiver**”). Pursuant to the order

of Mr. Justice Koehnen dated August 3, 2021 in the Victoria Proceedings (the “**Victoria Appointment Order**”, together with the Southmount Appointment Order, the “**Appointment Orders**”), KPMG Inc. was appointed as receiver in the Victoria Proceedings (in such capacity, the “**Victoria Receiver**”, together with the Southmount Receiver, the “**Receivers**”). The Property over which the Southmount Receiver and the Victoria Receiver were appointed includes the legal and beneficial ownership interests in eight medical office buildings (the “**Buildings**”) and one associated parking lot, located across Ontario (the parking lot, together with the Buildings and their associated lands, their related real property leases and the interests of the beneficial owners therein, the “**Real Property Assets**”).

Second Southmount Report at para 1 and Third Victoria Report at para 1.

6. On October 29, 2021, the Court granted orders in the Southmount Proceedings and the Victoria Proceedings (the “**Sale Process Orders**”) approving, among other things:

- (a) the broker listing agreement dated October 20, 2021 (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 (the “**Sale Process**”).

Second Southmount Report at para 3 and Third Victoria Report at para 5.

7. Following issuance of the Sale Process Orders, the Receivers, with the assistance of the Broker, took a number of steps to advance the Sale Process, including distributing interest solicitation emails to 2,171 potential interested purchasers that executed a confidentiality agreement.

Second Southmount Report at para 18 and Third Victoria Report at para 19.

8. The initial bid deadline under the Sale Process was January 25, 2022 (the “**Initial Bid Deadline**”). However, due to significant demand from potential purchasers for physical inspections and site tours of the Buildings, the Broker recommended to extend the Initial Bid Deadline to February 8, 2022 (the “**Revised Bid Deadline**”), which was communicated to all potential and known purchasers on January 20, 2022.

Second Southmount Report at paras 21-22 and Third Victoria Report at paras 22-23.

The Sale Process Results and the Proposed Transactions

9. A summary of the Sale Process results is set out in the Second Southmount Report and Third Victoria Report. Ultimately, thirty-four parties submitted non-binding letters of intent in advance of the Revised Bid Deadline, fourteen parties submitted revised non-binding letters of intent on a “best and final” basis, and eight parties submitted binding offers (each, a “**Binding Offer**”) by March 7, 2022, the qualified bid deadline.

Second Southmount Report at para 26 and Third Victoria Report at para 27.

10. Following receipt of the Binding Offers, the highest Binding Offer for each Building was selected, and the Receivers negotiated and entered into eight separate APAs with seven separate Purchasers for certain of the Real Property Assets, each of which are subject to Court approval.

Second Southmount Report at para 29 and Third Victoria Report at para 29.

11. The Proposed Transactions are in respect of the following Real Property Assets in the Southmount Proceedings:

Legal Owner	Location	Address
2478658 Ontario Ltd.	Peterborough	849 Alexander Court
2009 Long Lake Holdings Inc.	Sudbury	2009 Long Lake Road
65 Larch Holdings Inc.	Sudbury	65 Larch Street
100 Colborne Holdings Inc.	Orillia	100 Colborne Street West and 77 Wyandotte Street
240 Old Penetanguish Holdings	Midland	240 Penetanguishene Road

Inc.		
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and the following Real Property Assets in the Victoria Proceedings:

Legal Owner	Location	Address
Victoria Avenue North Holdings Inc.	Hamilton	304 Victoria Avenue North
		414 Victoria Avenue North

12. Each of the APAs are generally in the same form and are summarized in detail in paragraph 31 of the Second Southmount Report and paragraph 30 of the Third Victoria Report. Copies of each APA, redacted to maintain the confidentiality of commercially sensitive information, are also attached as appendices to the Second Southmount Report and the Third Victoria Report.

13. The Southmount Receiver is continuing discussions in respect of the sale of the Real Property Assets owned by Southmount Healthcare Centre Inc. (35 Upper Centennial Parkway, Hamilton, Ontario), 180 Vine Inc. and 180 Vine Purchaser Inc. (180 Vine Street, St. Catharines, Ontario), and intends to appear before this Court to seek approval of a transaction in respect of such properties at a later date.

Second Southmount Report at para 30.

Activity and Fee Approval

14. The Receivers' activities since the granting of the Appointment Orders are detailed in the Reports. Most recently, the activities of the Receivers to the date of the Second Southmount Report and Third Victoria Report have primarily consisted of: (i) conducting and facilitating the Sale Process; (ii) corresponding with the Purchasers and their counsel regarding negotiating and finalizing their respective APAs; (iii) liaising with counsel in respect of advancing certain litigation; (iv) liaising with the operator of the Buildings in respect of various operational matters;

(v) communicating with vendors, creditors and other parties purporting to have an interest in each of the receivership proceedings; and (vi) preparing the Second Southmount Report and Third Victoria Report.

Second Southmount Report at para 39 and Third Victoria Report at para 38.

15. The Victoria Receiver and its counsel have tracked their fees and disbursements incurred in connection with the Victoria Proceedings separate and apart from the fees and disbursements incurred in the Southmount Proceedings. In the Victoria Proceedings, the professional fees and disbursements for the period from the Victoria Receiver's appointment date (August 3, 2021) to March 31, 2022 (the "**Fee Period**") total \$317,309.60 for the Receiver, \$436,569.12 for Blakes, and \$31,241.78 for Norton Rose. Corresponding invoices and summaries thereof have been provided to the Applicants.

Third Victoria Report at paras 58-60.

PART III - ISSUES

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

- (a) Should the Proposed Transactions be approved and the Vesting Orders be granted?
- (b) Should the Receivers be authorized to pay the Broker the Commissions?
- (c) Should this Court grant the Activity Approval?
- (d) Should this Court waive the requirement to pass the Victoria Accounts?
- (e) Should sealing orders be granted in respect of the Confidential Appendices?

17. For the reasons that follow, the Receivers submit that these questions should be answered in the affirmative.

PART IV - THE LAW AND DISCUSSION

A. The Proposed Transactions should be approved and the Vesting Orders granted

18. It is settled law that when asked to approve a transaction in a receivership context, a court is required to consider the 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.

[\(1991\), 4 OR \(3d\) 1 \(ONCA\) \[Soundair\]](#).

19. 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.

[Crown Trust Co v Rosenberg \(1986\), 60 OR \(2d\) 87 \(HC\)](#) at para 83.

20. 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.

[2011 ONSC 4634](#) at para 43.

21. The Receivers submit that the *Soundair* test is readily met in respect of the Sale Process conducted in the Southmount Proceedings and the Victoria Proceedings, and that the Proposed Transactions should be approved, for the following reasons:

- (a) Efforts to Get the Best Price: The market was widely canvassed by the Receivers in accordance with the explicitly terms of the comprehensive Sale Process, resulting

in significant participation from potential purchasers and competition amongst same. The Proposed Transactions are the result of extensive negotiations with the Purchasers and their respective counsel, with input from the Broker, and represents the highest and best offers for the applicable Real Property Assets.

- (b) Interests of the Parties: The Sale Process was designed to ensure that the process would be run with integrity, transparency and fairness, and notice of the Sale Process was given to the service list and other interested parties prior to the motion seeking its approval. Mortgagees were consulted by the Receivers throughout the Sale Process (with due regard to the confidentiality of commercially sensitive information), and they support or do not oppose the Proposed Transactions. No alternatives to the Proposed Transactions have been presented that would provide for superior recoveries to stakeholders.
- (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. The Receivers have ensured that all procedural and process issues have been conducted with integrity. All interested parties have had an opportunity to participate. No objections or concerns with the Sale Process have been brought to the Receivers' attention.
- (d) No Unfairness. In the Receivers' view, there has been no unfairness in the conduct of the Sale Process, no party has been prejudiced or excluded, and the range of competitive offers received informs the Receiver's conclusion that the Proposed Transactions are the highest and best offers available for the applicable Real Property Assets.

22. The Vesting Orders sought by the Receivers are in the standard, model form (with any changes marked in blackline in the Second Southmount Report and the Third Victoria Report), and their issuance are requirements of each of the APAs. The parties with registered interests being vested out by the proposed Vesting Orders have been given notice of the Receivers' motions, and the proposed Vesting Orders provide that any interests attach to the proceeds of sale. Accordingly, the Receivers believe that the Vesting Orders are fair, reasonable, and ought to be granted.

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

23. The Receivers entered into the Broker Engagement Agreement pursuant to their authority under the Appointment Orders, and such Broker Engagement Agreement was approved by the Court in the Sale Process Orders.

Second Southmount Report at para 3 and Third Victoria Report at para 5.

24. The Broker provided valuable services to the Receivers and materially assisted with the Sale Process. The Broker has spent time and resources on the Sale Process, and in the Receivers' view, has earned the Commissions due to it pursuant to the Court-approved Broker Engagement Agreement.

25. Accordingly, in the Receivers' view, the payment of the Commissions to the Broker should be paid, as and when each Proposed Transaction closes.

C. The Court should approve the Activity Approval

26. 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.

[Re Target Canada Co., 2015 ONSC 7574](#) [*Target Canada*] at paras 2, 22-23.

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

[Re Laurentian University of Sudbury, 2022 ONSC 2927](#) [*Laurentian University*] at paras 13-14; [Target Canada Co.](#) at paras 2, 22-23.

28. 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.

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

29. This Court has jurisdiction to review and approve the activities of a receiver. If the 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.

[Bank of America Canada v Willann 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.

30. The activities of the Receivers, as set out in the First and Second Southmount Reports and the First, Second and Third Victoria Reports were necessary, consistent with the Receivers' duties and powers in the Appointment Orders and undertaken with efficiency and reasonableness in the interests of stakeholders generally. The Receivers therefore respectfully submits that the Activity Approval should be granted.

E. The Court should waive the requirement to approve the Victoria Accounts

31. The Victoria Receiver respectfully requests that this Court waive the requirement that the Victoria Receiver, Blakes and Norton Rose obtain Court approval of their Victoria Accounts for the Fee Period, and thereafter unless requested by the Applicants.

Third Victoria Report at para 63.

32. This Court has dispensed with the requirement to obtain Court approval of accounts or granted similar relief in other insolvency proceedings in Canada.

[Tilden Car Rental Inc. \(Trustee of\) v Tilden Car Rental Inc., 1996 CarswellMan 623 \(MB QB\).](#)
[Hong Kong Bank of Canada v H.E. Carson and Sons Limited \(30 May 2011\), Moncton M/M/114/98 \(NB QB\).](#)

33. In addition to its inherent jurisdiction to waive compliance with an order, the Court has the authority to amend, set aside or vary an order under Rule 59.06, and may do so on a motion brought in the proceedings in which the order was made. The obligation to pass the Victoria Accounts is created by paragraph 19 of the Order of Mr. Justice Koehnen dated August 3, 2021, and in the Receiver's submission may therefore be waived by this Court on a motion brought in the Victoria Proceedings.

Rules of Civil Procedure made under the Courts of Justice Act, Rule 59.06

34. Based on the results of the Sale Process, the Applicants are the only party who will receive a monetary recovery in the Victoria Proceedings and the deficiency in their claim is greater than the quantum of the Victoria Accounts. Put another way, if the Victoria Accounts were lower or higher, it would only impact distributions to the Applicants, and not any other party.

35. Accordingly, the Applicants are the only creditor with an economic interest in the quantum of professional fees incurred by the Victoria Receiver and its counsel. The Victoria Accounts have been disclosed to the Applicants and the Applicants have advised the Victoria Receiver that they consent to such fees and support the Victoria Receiver's request. Any formal passing of accounts would add additional costs to the Proceedings, all of which would be borne by the Applicants.

Third Victoria Report at para 62.

36. Pursuant to the terms of the order sought by the Victoria Receiver, the requirement to pass fees and disbursements incurred during the Fee Period would be waived upon the granting of the

order, and subsequently incurred fees and disbursements would not be required to be Court approved as long as the Applicants, being the fulcrum creditors, consent to them.

37. In the Victoria Receiver's view, given the foregoing, (a) it would not be a constructive use of estate funds to take steps to proceed with a fee approval motion, and (b) the waiving of the requirement to pass accounts is not prejudicial to any stakeholder and promotes efficiency.

G. The Sealing Orders should be granted in respect of the Confidential Appendices

38. In *Sierra Club of Canada v Canada (Minister of Finance)*, 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.

[2002 SCC 41 \[Sierra Club\]](#) at para 53.

39. In *Sherman Estate v Donovan*, the SCC applied 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.

[2021 SCC 25 \[Sherman Estate\]](#) at para 38.

40. 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.

41. 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.

[*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; [*Stelco Inc. \(Re\), 2006 CarswellOnt 394*](#) at paras 2-5, [2006] OJ No. 275 (Ont SCJ); [*Re Canwest Publishing Inc., 2010 ONSC 222*](#) at paras 63-65.

42. 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; [*Laurentian University of Sudbury, 2021 ONSC 4769*](#) at paras 12-14.

43. The Confidential Appendices contain confidential and commercially sensitive information, including with respect to key economic terms of the Proposed Transactions. The Confidential Appendices are comprised of (a) a summary of the commercially sensitive information redacted from the APAs, and (b) a summary of the material terms of each of the Binding Offers received. If such documents were not sealed, the information contained therein may negatively impact realizations on the applicable Real Property Assets in the event that any of the Proposed Transactions do not close and the applicable Receiver is required to go back to market. The Receivers are not aware of any party that will be prejudiced if the information is sealed.

Second Southmount Report at para 29 and Third Victoria Report at para 29.

44. In the circumstances, the sealing orders sought is the least restrictive means to maintain the confidentiality of this commercially sensitive and confidential information, as the balance of the terms of the APAs have been made available to all stakeholders on an unredacted basis. Accordingly, the Receivers submit that the salutary effects of the sealing order outweigh the deleterious effects of restricting access to the Confidential Appendices, and that the requested sealing orders is therefore appropriate.

PART V - CONCLUSION

45. For the reasons set out above, the Receivers respectfully request that this Court:

- (a) approve the Proposed Transactions;
- (b) authorize a payment of applicable Commissions to the Broker upon closing of each Proposed Transaction;
- (c) dispense with the requirement for Court approval of the Victoria Accounts;
- (d) grant the Activity Approval;
- (e) seal the Confidential Appendices.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of May, 2022



Pamela L.J. Huff/Aryo Shalviri/Chris Burr/Alexia Parente
Lawyers for the Receivers

SCHEDULE "A"

LIST OF AUTHORITIES

<u>Case</u>	
1.	<i>Royal Bank of Canada v Soundair Corp.</i>, 1991 CarswellOnt 205, 91 CBR (5th) 285 (Ont 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>Tilden Car Rental Inc. (Trustee of) v Tilden Car Rental Inc.</i>, 1996 CarswellMan 623 (MB QB).
10.	<i>Hong Kong Bank of Canada v H.E. Carson and Sons Limited (30 May 2011), Moncton M/M/114/98 (NB QB).</i>
11.	<i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41
12.	<i>Sherman Estate v Donovan</i>, 2021 SCC 25
13.	<i>Elleway Acquisitions Ltd v 4358376 Canada Inc.</i>, 2013 ONSC 7009
14.	<i>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.</i>
15.	<i>Stelco Inc. (Re)</i>, 2006 CarswellOnt 394
16.	<i>Re Canwest Publishing Inc.</i>, 2010 ONSC 222
17.	<i>Ontario Securities Commission v Bridging Finance Inc.</i>, 2021 ONSC 4347
18.	<i>Laurentian University of Sudbury</i>, 2021 ONSC 4769

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.

Amending, Setting Aside or Varying Order

Amending

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding. R.R.O. 1990, Reg. 194, r. 59.06 (1).

Setting Aside or Varying

(2) A party who seeks to,

- (a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;
- (b) suspend the operation of an order;
- (c) carry an order into operation; or
- (d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed. R.R.O. 1990, Reg. 194, r. 59.06 (2).

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Court File No.: CV-21-00665375-00CL

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

SOUTHMOUNT HEALTHCARE CENTRE INC. *et al.*
VICTORIA AVENUE NORTH HOLDINGS INC. *et al.*
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at Toronto

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(Sale Approval and Ancillary Matters)

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