

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

B E T W E E N:

**MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI
KYOHODO CO., LTD. and TORU FUKIAGE**

Applicants

- and -

**CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA
ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II
INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V
INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL
MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL
MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL
MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL
MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC. and FORT ERIE HILLS
CAPITAL MANAGEMENT INC.**

Respondents

FACTUM OF THE RECEIVER

October 14, 2025

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Lawyers for the Receiver

PART I - OVERVIEW

1. KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (the “**Receiver**”) of, *inter alia*, the assets, undertakings and properties of various companies pursuant to an application made by a group of investors. These investors had invested in certain land banking projects in the Niagara and London regions, and had brought a receivership application as a result of, amongst other things, the alleged improper transfer of certain real properties. KSV was appointed as Receiver under section 101 of the *Courts of Justice Act* (the “**CJA**”) pursuant to an Order granted on March 6, 2025,¹ as is anticipated to be amended and restated on October 23, 2025 prior to the hearing of the within motion (the “**Appointment Order**”).

2. Since its appointment, the Receiver has, amongst other things, (i) sought and obtained five approval and vesting orders, each in respect of certain real property, and closed the sales thereof,² (ii) taken significant steps to investigate the allegations raised in the receivership application and to protect investors’ interests by pursuing assets of the Respondents, including by litigation,³ (iii) corresponded with stakeholders to keep them informed and understand their interests,⁴ and (iv) marketed for sale the sixth and final real property over which the Receiver is currently appointed.⁵

3. At this time, the Receiver seeks one or more order(s) as follows:

- (a) an approval and vesting order (the “**AVO**”) in respect of the sale of certain real property fronting on Colonel Talbot Road in London, Ontario and legally described under PIN 08207-0222 (LT) (the “**Specified Real Property**”) pursuant to an agreement of purchase and sale dated September 24, 2025 between the Receiver, Farhi Farming Corporation and Farhi Holdings Corporation (the “**Transaction**”);
- (b) a claims process and interest holdings identification order (the “**Claims Procedure Order**”) to assist the Receiver in identifying certain claims against the Respondents and confirming with Interest Holders certain Interest Holder Holdings Information

¹ Fourth Report of KSV Restructuring Inc. as Receiver and Manager, dated October 14, 2025, Motion Record of the Receiver dated October 14, 2025 (the “**Fourth Report**”), Appendix A, Appointment Order.

² Fourth Report at paras 1.0.3-1.0.4.

³ Fourth Report at paras 6.0.1(j)-(o).

⁴ Fourth Report at paras 6.0.1(h), (q)-(t) and (w).

⁵ Fourth Report at section 4.

(as defined in the form of Claims Procedure Order included in the Receiver's Motion Record); and

- (c) an order (the "**Ancillary Order**"), in substance, (i) approving each of the Third Report of the Receiver dated August 1, 2025 (the "**Third Report**"), the Supplement to the Third Report of the Receiver dated August 5, 2025 (the "**Supplement to the Third Report**"), the Second Supplement to the Third Report of the Receiver dated August 13, 2025 (the "**Second Supplement to the Third Report**"), and the Fourth Report of the Receiver dated October 14, 2025 (the "**Fourth Report**" and collectively with Third Report, the Supplement to the Third Report and the Second Supplement to the Third Report, the "**Reports**"), and the actions of the Receiver and its counsel described therein; and (ii) approving the fees and disbursements of the Receiver and its counsel to and including September 30, 2025, as set out in the applicable fee affidavits.

- 4. Capitalized terms not expressly defined in this Factum are defined in the Fourth Report.

PART II - SUMMARY OF FACTS

A. Background

4. Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the "**Kobayashi Group**") and other members of their family had made investments in certain land banking projects.⁶

5. Various companies were formed to hold title to various pieces of real estate in Ontario as nominees and bare trustees. The investments made by Kobayashi Group and other investors (known as "**Co-Owners**") were used to finance the acquisition of such real estate.⁷

6. The Kobayashi Group became concerned over, amongst other things, the alleged improper transfer and sale of the real estate subject to these land banking projects (without the approval of the requisite percentage of Co-Owners) and the alleged improper distribution of sale proceeds

⁶ Fourth Report at paras 2.0.1-2.0.2.

⁷ Fourth Report at para 2.0.3.

(without the knowledge or approval of the Co-Owners). Accordingly, the Kobayashi Group initiated these receivership proceedings.⁸

B. Marketing and Proposed Sale of the Specified Real Property

7. Following its appointment, the Receiver engaged Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”), a prominent national real estate brokerage with significant experience selling real properties similar to the Specified Real Property.⁹ The Receiver worked with JLL to carry out a marketing process for the sale of the Specified Real Property as described in the Fourth Report.¹⁰

8. JLL launched the sale process on August 7, 2025 by widely canvassing the market and directly soliciting potentially interested parties, including Farhi Farming Corporation and Farhi Holdings Corporation (together, “**Farhi**”), which, over the past several months, successfully closed on the purchase of a number of other properties subject to these receivership proceedings.¹¹

9. Three offers were received by the bid deadline of September 10, 2025. The Receiver reviewed these offers in consultation with JLL, and requested that JLL approach all bidders to improve their offers and submit unconditional bids. Farhi increased its purchase price to the amount now proposed for the sale of the Specified Real Property. One other bidder also increased its purchase price but was unable to waive its material conditions.¹²

10. In consultation with JLL, the Receiver determined that Farhi’s offer was the strongest given (i) the offer is unconditional, (ii) Farhi’s reputation as the most prominent purchaser of real estate in London, Ontario and surrounding areas, (iii) Farhi’s demonstrated financial wherewithal to complete a transaction, (iv) the Receiver’s experience closing the sale of certain other real properties with Farhi, and (v) the risk of losing competitive tension if the Receiver executed a conditional offer and the bidder did not waive its conditions.¹³

⁸ Fourth Report at para 2.0.4.

⁹ Fourth Report at para 4.1.1.

¹⁰ Fourth Report at section 4.

¹¹ Fourth Report at para 4.2.1.

¹² Fourth Report at para 4.2.6.

¹³ Fourth Report at para 4.2.7.

11. For the foregoing reasons, and the further reasons described in the Fourth Report, the Receiver accepted Farhi's bid subject to Court approval (and recommends that the Court approve the proposed transaction).¹⁴

C. Proposed Claims Procedure

12. Capitalized terms not expressly defined in this section are defined in the form of Claims Procedure Order included in the Receiver's Motion Record.

13. The Receiver is seeking Court approval of the proposed Claims Procedure Order to:

- (a) identify and quantify certain Claims against the Respondents; and
- (b) confirm with Interest Holders certain Interest Holder Holdings Information based on the books and records of the Respondents, including the identities of such Interest Holders and the value of any interests held by them.

14. Completion of the Claims Procedure (as defined by the Fourth Report) will assist the Receiver in distributing the proceeds of the Property to Interest Holders and other stakeholders of the Respondents in accordance with legal entitlements.

15. The Claims Procedure contemplates that Interest Holders are not required to take any steps to confirm the interests they hold in the Respondents other than to advise the Receiver of any redemption payments received by an Interest Holder and to correct any errors contained in the Interest Holder Notice to be delivered to each Interest Holder. For certain properties, the Receiver has information regarding the beneficial interest of each Interest Holder.¹⁵ Interest Holders are not otherwise required to take any steps in connection with any Interest Holder Claims, being claims that Interest Holders may have against the Respondents that are derived from their beneficial ownership or other interest(s) in any Property held by or through the Respondents. Interest Holder Claims are Excluded Claims under the Claims Procedure Order.¹⁶

¹⁴ Fourth Report at section 4.4.

¹⁵ Fourth Report at para 3.7.3-3.7.4.

¹⁶ Fourth Report at para 3.10.1.

16. Other than those holding an Excluded Claim, all others that may have a Claim against the Respondents as at the Appointment Date or that arose after the Appointment Date but prior to the Claims Bar Date are required to prove their Claim pursuant to the Claims Procedure Order. Failure to prove a Claim in accordance with the Claims Procedure Order will extinguish such party's entitlement to any distribution of the proceeds of the Property.

17. The following provides an overview of the key stages of the Claims Procedure Order:

- (a) **Interest Holder Notice.** Within seven (7) business days following the granting of the Claims Procedure Order, the Receiver, through Representative Counsel, will deliver an Interest Holder Notice to each Interest Holder, summarizing the applicable Interest Holder Holdings Information.¹⁷
- (b) **Notice to Claimants.** The Receiver will send a Claims Package to (i) each Known Claimant within five (5) business days following the granting of the Claims Procedure Order; and (ii) each party who has requested a Claims Package within five (5) business days of such request. The Receiver will publish the Notice to Claimants in The Globe and Mail (National Edition) and on Canadian and U.S. Newswire. The Receiver will also post the Notice to Claimants, the Claims Package and the Claims Procedure Order on the Receiver's website.¹⁸
- (c) **Amendment Request.** Interest Holders who disagree with the Interest Holder Holdings Information provided in their Interest Holder Notice must deliver to the Receiver an Amendment Request prior to 5:00 p.m. on the Claims Bar Date, failing which such Interest Holder Holdings Information shall be deemed correct and confirmed.¹⁹
- (d) **Proof of Claim.** All Claimants are required to deliver to the Receiver a Proof of Claim, including all relevant supporting documentation, prior to 5:00 p.m. on the Claims Bar Date. Any Person who fails to file a Proof of Claim in respect of any Claim prior to 5:00 p.m. on the Claims Bar Date shall be forever barred from

¹⁷ Fourth Report at para 3.6.1.

¹⁸ Fourth Report at paras 3.6.2-3.6.5.

¹⁹ Fourth Report at para 3.7.4.

asserting such Claim against the Respondents and such Claim shall be forever barred and extinguished.²⁰

- (e) **Review of Proofs of Claim & Amendment Requests.** The Receiver will review all Proofs of Claim and Amendment Requests that are received prior to 5:00 p.m. on the Claims Bar Date and may request additional information from a Claimant and/or Interest Holder and accept, revise or disallow (in whole or in part) the validity, amount and/or status of any Claim or Interest Holder Holdings Information, as applicable. The Receiver will deliver a Notice of Revision or Disallowance to an Interest Holder or Claimant, as applicable, if an Amendment Request or Proof of Claim is revised or disallowed. An Interest Holder or Claimant, as applicable, who wishes to dispute a Notice of Revision or Disallowance must respectively deliver a Notice of Interest Holder Holdings Information Dispute or a Notice of Dispute within fourteen (14) calendar days of receipt of the Notice of Revision or Disallowance.²¹
- (f) **Disputes.** Disputed Claims and Disputed Interest Holder Holdings Information that are not consensually resolved will be adjudicated in a manner to be determined by further Order of the Court.²²

18. The Claims Procedure is not intended to address the priority of Interest Holder Claims or Proven Claims. The Receiver will work with its legal counsel to address any priority issues that may result from the Claims Procedure, which will be subject to further Court order.

19. The Receiver has consulted with Gowling, as proposed representative counsel, and the Kobayashi Group's counsel in developing the Claims Procedure Order, and both sets of counsel are supportive of the relief sought in connection therewith.

20. The establishment of a Claims Procedure is critical at this time as the Receiver has now realized on five real properties (in addition to the Specified Real Property in respect of which the AVO is sought herein) and has a consolidated cash balance of approximately \$11 million. Claims

²⁰ Fourth Report at paras 3.7.2 and 3.8.1.

²¹ Fourth Report at section 3.9.

²² Fourth Report at para 3.9.3.

against these funds need to be determined in order to understand legal entitlements, at which point the Receiver would be in a position to bring a distribution motion.²³

D. Steps Taken to Protect Investors Interests

21. As further set out in the Fourth Report, the Receiver, on behalf of one of the Respondents, London Valley IV Inc. (“**LV IV**”), commenced an action (the “**Pilehver Action**”) in August 2025 and obtained a *Mareva* Injunction and *Norwich* Order²⁴ against Mr. Behzad Pilehver and against his former spouse, Ms. Mahtab Nali, as well as against 2621598 Ontario Inc. doing business as Nali and Associates. Ms. Nali is the President and a director of Nali and Associates.²⁵

22. The Pilehver Action was commenced by the Receiver, and injunctive orders obtained, given the evidence obtained by the Receiver and set out in, *inter alia*, the Third Report, which demonstrates that Mr. Pilehver improperly directed the sale of 6211 Colonel Talbot Road, London, Ontario (the “**LV IV Property**”) in February 2025 (prior to the Receiver’s appointment), and directed that the proceeds of sale be transferred to certain persons and entities, including to Ms. Nali and Nali and Associates, who appear to have had no entitlement to such proceeds.²⁶

23. The Receiver continues to advance the Pilehver Action and certain other litigation as outlined in the Fourth Report in an effort to recover funds rightfully belonging to LV IV and its stakeholders.

E. Support for Appointment of Representative Counsel

24. The Respondents’ Investors comprise hundreds of foreign investors, including, without limitation, the Kobayashi Group, many of which are individual investors, and/or are located in Japan, China and Taiwan.²⁷ Absent representative counsel, it may be cost- and language-prohibitive for individual foreign Investors to retain Canadian legal counsel.²⁸ Likewise, absent representative counsel, the Receiver is concerned about its ability to reasonably identify and

²³ Fourth Report at para 3.5.4.

²⁴ Fourth Report at section 5.2

²⁵ Fourth Report at para 3.2.5.

²⁶ Fourth Report at para 3.2.6.

²⁷ Fourth Report at para 3.1.1.

²⁸ Fourth Report at para 3.4.1(b).

contact all or a substantial majority of Investors in a streamlined process or cost-effective manner and, as a result, will not be in a position to carry out the Claims Procedure as efficiently.²⁹

25. The Receiver understands that 46 Taiwanese investors (the “**Taiwanese Investors**”) retained Gowling WLG (Canada) LLP (“**Gowling**”) for the purposes of (i) bringing a motion to expand the scope of the Appointment Order to include additional entities and/or real properties within the subject land banking structure and in which the Taiwanese Investors are invested, and (ii) seeking the appointment of Gowling as representative counsel for all Investors (other than Opt-Out Investors).³⁰

26. The Kobayashi Group is supportive of Gowling’s appointment as representative counsel, subject to the Kobayashi Group being Opt-Out Investors.

27. For the reasons herein, and the additional reasons set out in the Fourth Report, the Receiver recommends that Gowling be appointed as Representative Counsel.

PART III - ISSUES

28. The issues on this motion by the Receiver are:

- (a) whether the AVO (and the limited sealing order therein) should be granted;
- (b) whether the Claims Procedure Order should be granted;
- (c) whether the Reports should be approved; and
- (d) whether the fees of the Receiver and its counsel should be approved.

PART IV - LAW AND ARGUMENT

A. The Transaction Should Be Approved

(i) *The Legal Framework*

29. In *Soundair*, the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the Receiver has made a sufficient effort

²⁹ Fourth Report at para 3.4.1(l).

³⁰ Fourth Report at para 3.1.2.

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.³¹

30. Courts will generally defer to a court-appointed receiver's business expertise in reviewing a sale and will not second-guess their recommendation absent exceptional circumstances.³² Where a receiver has acted reasonably, prudently and not arbitrarily, the court will not conduct a detailed review of each aspect of the procedure by which a receiver's decision was made with respect to a sales process.³³

31. In the Receiver's view, the marketing process conducted by JLL was fair and reasonable, such that the *Soundair* principles have been satisfied.

(ii) The *Soundair* Principles have been satisfied

32. Each of the foregoing factors are satisfied in respect of the proposed Transaction:

- (a) **Fairness, Transparency, and Integrity:** JLL's marketing process was commercially reasonable as it marketed the Specified Real Property for a period of more than 30 days.³⁴ The Receiver understands from JLL that the Specified Real Property was listed on Multiple Listing Services and the marketing brochure was emailed to JLL's list of over 1,542 prospective purchasers.³⁵ In the Receiver's view, JLL's marketing process was commercially reasonable given that it canvassed the market thoroughly, engaged in negotiations with multiple bidders to obtain the highest and best offer, and did all of this in the context of other recent sales of comparable real property within these receivership proceedings, which were recently approved by the Court. The marketing methodology employed by JLL is consistent with customary ways in which real estate is marketed and sold inside and outside of formal insolvency proceedings.³⁶

³¹ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) [*Soundair*].

³² *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at para. 15 citing *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA) at para. 23. See also *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras. 43-45.

³³ *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, 2011 ONSC 4634 at para 43.

³⁴ Fourth Report at paras 4.2.1 and 4.2.3.

³⁵ Fourth Report at para 4.2.1.

³⁶ Fourth Report at para 4.4.1(a).

- (b) **Commercial Efficacy:** In the Receiver’s view, extending the marketing process for the Specified Real Property will add incremental cost and, critically, put the current proposed Transaction at risk.³⁷
- (c) **Best Possible Price:** Based on feedback from JLL, the purchase price is reasonable, particularly in the context of the other real properties sold earlier in these receivership proceedings and approved by the Court.³⁸

33. In the Receiver’s view, further marketing efforts are not required given that the process conducted by JLL has met the *Soundair* principles. For the reasons set out above and in the Fourth Report, the Receiver recommends that the Court approve the proposed Transaction.

B. The AVO should be granted

(i) The Legal Framework

34. The Receiver seeks an approval and vesting order to convey the Purchased Assets free and clear of any claims and encumbrances, other than Permitted Encumbrances, as set out in the sale agreement. The sale agreement provides for the sale of the real property and chattels, if any, on the property.³⁹

35. The Court has the power to grant approval and vesting orders pursuant to section 100 of the CJA. This section states that:

A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.”⁴⁰

36. Vesting orders are a routine part of insolvency practice.⁴¹ As set out by the Ontario Court of Appeal in *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.* (“Third Eye”), the court will adopt a rigorous cascade analysis. It will consider the nature and strength of the interest that is proposed to be extinguished, which can be determinative. The court

³⁷ Fourth Report at para 4.4.1(b).

³⁸ Fourth Report at para 4.4.1(c).

³⁹ Fourth Report, Appendix “D”, Redacted Agreement of Purchase and Sale between Farhi and the Receiver. An unredacted copy can be found at Confidential Appendix “2” to the Fourth Report.

⁴⁰ *Courts of Justice Act*, RSO 100, c. C.42, s. 100.

⁴¹ Third Eye, 2019 ONCA 508 at para 106.

can also consider if the parties have consented to the vesting of the interest at the time of sale before the court, or through prior agreement.⁴² If these factors proved inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.⁴³

(ii) Encumbrances

37. The only interest registered on title to the Specified Real Property that the Receiver proposes to extinguish is the registration of the Appointment Order.⁴⁴

38. As is customary with vesting orders of this nature, the proposed form of vesting order specifically extinguishes *Personal Property Security Act* (Ontario) registrations, though the Receiver notes that there are no such registrations against the registered owner of the Specified Real Property, 2533430 Ontario Inc.⁴⁵

39. For the reasons set out above and in the Fourth Report, the Receiver believes it is appropriate for the Court to issue the proposed form of AVO.

(iii) The Sealing Order Should Be Granted

40. The Receiver also seeks a sealing order with respect to the Confidential Appendices.

41. The applicable legal test for granting a sealing order is that the party seeking such relief must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁴⁶

42. This Court has granted sealing orders in respect of commercial information that could negatively impact any sales process in the event that the proposed transaction does not close and

⁴² Third Eye, 2019 ONCA 508 at paras 103-106.

⁴³ Third Eye, 2019 ONCA 508 at para 110.

⁴⁴ Fourth Report at para 4.3.2(f).

⁴⁵ Fourth Report at para 4.3.2(j).

⁴⁶ *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38.

the property must undergo another marketing process.⁴⁷ This Court has also observed that disclosure of items such as realization estimates may have a negative impact on future realizations and be detrimental to efforts to maximize value for shareholders.⁴⁸ This Court has further held that, in such circumstances, there is no reasonable alternative to a sealing order; stakeholders will not be materially prejudiced; and any deleterious effects are outweighed by the benefits of granting such relief.⁴⁹

43. Disclosure of the contents of the Confidential Appendices could have a detrimental impact on any future sales process, should one be required if the Transaction is not approved or otherwise does not close. The Confidential Appendices contain, amongst other things, i) details regarding JLL's marketing efforts and interest received for the Specified Real Property;⁵⁰ and ii) an unredacted copy of the agreement of sale for the proposed Transaction including, without limitation, the purchase price and deposit information.⁵¹ Disclosure of this information could impact any future realizations in a future sales process, should one be required.

44. There is no reasonable alternative to any sealing order here, and stakeholders will not be materially prejudiced by this sealing order. The benefits of maximizing value for stakeholders outweigh any deleterious effects of the relief sought. The proposed sealing is appropriately limited to the earlier of closing of the proposed transactions or further order of the Court.

D. The Claims Procedure Order should be granted

45. The general purpose of a claims process is to identify and determine the universe of claims against a debtor company and “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-effective manner.”⁵²

⁴⁷ *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911 at paras 104-107.

⁴⁸ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-53.

⁴⁹ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-53.

⁵⁰ Fourth Report at para 4.2.4.

⁵¹ Fourth Report para 4.3.1.

⁵² *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 40.

46. Courts have routinely approved claims processes in the context of receiverships under the *Bankruptcy and Insolvency Act* (the “**BIA**”), the CJA, and the *Securities Act* (Ontario), and in the context of proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).⁵³

47. The BIA, CJA, *Securities Act* (Ontario) and CCAA are all silent with respect to the approval of claims processes. As such, the approval of a claims process is a matter within the discretion of the Court, grounded in the Court’s statutory and/or inherent jurisdiction to control its own process and make an order it sees fit in the circumstances.

48. Claims procedure orders should be both flexible and expeditious, in order to achieve the remedial objectives of the statutes under which the proceedings were commenced and to ensure that stakeholders are treated as fairly as the circumstances permit.⁵⁴ The order must be drafted carefully to ensure that it is fair and reasonable to all stakeholders, including those who may be directly impacted by the acceptance of other claims.⁵⁵ This Court has the authority to approve a “bespoke” claims process where the situation calls for it.⁵⁶

49. The proposed Claims Procedure Order satisfies all of these requirements. The Claims Procedure Order was developed following consultations with the Kobayashi Group’s counsel and Gowling as proposed representative counsel to the Investors (other than the Opt-Out Investors), and the form of Order addresses the complex nature of these receivership proceedings in a fair and efficient manner.

50. In particular, the Claims Procedure Order has been designed to make the process by which Interest Holders confirm and verify their Interest Holder Holdings Information as simple and efficient as possible. To that end, a significant feature of the Claims Procedure Order is the incorporation of a “negative process” for the confirmation of such Interest Holder Holdings Information.

⁵³ See, for example, *Laurentian University of Sudbury*, 2021 ONSC 3885 at paras 15-53 (“**Laurentian**”); *Legacy Lifestyles Destin LP et al. v. Legacy Lifestyles Destin Property*, CV-22-00674717-00CL, Claims Procedure Order of Justice Steele dated June 26, 2024 (“**Legacy Lifestyles**”); and *Just Energy Group Inc. et al*, CV-21-00658423-00CL, Claims Procedure Order of Justice Koehnen dated September 15, 2021 (“**Just Energy**”).

⁵⁴ *Laurentian* at paras 30-31.

⁵⁵ *Laurentian* at para 32.

⁵⁶ *Laurentian* at para 41.

51. As described above, if an Interest Holder agrees with the Interest Holder Holdings Information set out in the Interest Holder Notice delivered to them by the Receiver (and, where applicable, through Gowling as representative counsel), the Interest Holder does not need to take any further steps to prove or otherwise confirm the validity of their Interest Holder Holdings Information or any Interest Holder Claim they may have. This process will eliminate the requirement (and the associated administrative time and expense) for over one thousand Interest Holders to file documentation with the Receiver to prove their Interest Holder Holdings Information unless they identify an error therein or have received redemption payments which they must report to the Receiver. It will also ensure that no Interest Holder Claim “falls through the cracks” due to the failure of a particular Interest Holder to confirm their Interest Holder Holdings Information with the Receiver. Similar “negative processes”, including with respect to investor claims, were approved by this Court in the receiverships of Legacy Lifestyles⁵⁷, Bridging Finance⁵⁸ and Go-To Developments⁵⁹, as well as in the CCAA proceedings of Just Energy.⁶⁰

52. The Claims Procedure also provides for a fair and efficient process for Interest Holders to correct their Interest Holder Holdings Information (to the extent an error is identified) and for Claimants to take steps to prove their Claims through the traditional method of filing a Proof of Claim prior to the Claims Bar Date contemplated therein.

53. The proposed Claims Procedure appropriately balances fairness and efficiency and will ensure that all stakeholders are treated in accordance with the remedial objectives of section 101 of the CJA. Most importantly, it will allow the Receiver to continue to move forward to making a distribution to Interest Holders and other stakeholders in accordance with a methodology to be approved by the Court.

54. The Receiver therefore submits that the proposed Claims Procedure Order should be granted. The Kobayashi Group and Gowling, as proposed representative counsel, support the relief sought.

⁵⁷ Legacy Lifestyles, Claims Procedure Order of Justice Steele dated June 26, 2024.

⁵⁸ *Ontario Securities Commission v. Bridging Finance Inc. et al.*, CV-21-00661458-00CL, Claims and Unitholdings Identification Order of Chief Justice Morawetz dated July 19, 2022 (“**Bridging Finance**”),

⁵⁹ *Ontario Securities Commission v. Go-To Developments Holdings Inc. et al.*, CV-21-00673521-00CL, Claims Procedure Order of Justice Conway dated April 7, 2022 (“**Go-To Developments**”).

⁶⁰ Just Energy, Claims Procedure Order of Justice Koehnen dated September 15, 2021.

D. The Ancillary Order should be granted

(i) The Reports and the Activities Therein Should be Approved

55. The Receiver also seeks an Ancillary Order approving the Reports, along with the actions, conduct and activities of the Receiver and its counsel described therein.

56. The Court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver has met the objective test that it has acted reasonably, prudently and not arbitrarily.⁶¹ The principles espoused by Justice Morawetz in *Re Target Canada Co*, a case involving proceedings under the *Companies Creditors' Arrangement Act*, are applicable here. His Honour noted that requests to approve a court-appointed officer's reports are not unusual, and that there are good policy and practical reasons for such approval to provide a level of protection.⁶² In particular, Justice Morawetz also noted that Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.⁶³

57. Subsequent case law has confirmed that these considerations apply equally to the reports and activities of a receiver,⁶⁴ and such approval is commonly granted as part of orders in receivership proceedings.⁶⁵

⁶¹ *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855 at para 54.

⁶² *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 2 and para 22.

⁶³ *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23.

⁶⁴ *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 at para 15.

⁶⁵ See e.g., *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para 65.

58. The activities of the Receiver and its counsel have been reported to the Court and stakeholders in the Reports. These activities were all necessary and undertaken in good faith in accordance with the Appointment Order, and in the best interests of the stakeholders generally.

(ii) Approval of the Fees of the Receiver and its Counsel

59. The Receiver also submits that the fees of the Receiver and its counsel described in the Fourth Report should be approved.

60. The Court of Appeal in *Bank of Nova Scotia v. Diemer* set out a non-exhaustive list of factors that provide useful guidance in considering fees of a receiver and its counsel. These include:

- (a) the nature, extent and value of the assets;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the debtor;
- (d) the time spent;
- (e) the receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results of the receiver's efforts; and
- (i) the cost of comparable services when performed in a prudent and economical manner.⁶⁶

61. Should the proposed Transaction be approved, the Receiver will have realized on all known real estate properties still owned by the Respondents and subject to these proceedings. The nature of the interests, including with respect to property no longer owned by the Respondents, are complex. The Receiver has made substantial efforts to obtain information regarding the Respondents and their assets, and to pursue such assets for the benefit of stakeholders, including by taking steps to commence litigation against certain principals of the Respondents and/or their related parties.

⁶⁶ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33.

62. The Receiver respectfully submits that its fees, and its counsel's fees, are fair, reasonable and justified in the circumstances.⁶⁷ They accurately reflect the work done in the course of these proceedings. The activities of the Receiver were carried out in accordance with the Appointment Order, and the Receiver has acted reasonably and in good faith throughout the receivership.

PART V - RELIEF SOUGHT

63. For the reasons set out above, the Receiver requests that this Court grant the proposed AVO, Claims Procedure Order and Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of October 2025.

Per: 

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Lawyers for the Receiver

⁶⁷ Fourth Report at section 7.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634
2. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
3. *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161
4. *Just Energy Group Inc. et al*, CV-21-00658423-00CL, Claims Procedure Order of Justice Koehnen dated September 15, 2021
5. *Laurentian University of Sudbury*, 2021 ONSC 3885
6. *Legacy Lifestyles Destin LP et al. v. Legacy Lifestyles Destin Property*, CV-22-00674717-00CL, Claims Procedure Order of Justice Steele dated June 26, 2024
7. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855
8. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375
9. *Ontario Securities Commission v. Bridging Finance Inc. et al.*, CV-21-00661458-00CL, Claims and Unitholdings Identification Order of Chief Justice Morawetz dated July 19, 2022
10. *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857
11. *Ontario Securities Commission v. Go-To Developments Holdings Inc. et al.*, CV-21-00673521-00CL, Claims Procedure Order of Justice Conway dated April 7, 2022
12. *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA)
13. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911
14. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)
15. *Sherman Estate v. Donovan*, 2021 SCC 25
16. *Target Canada Co. (Re)*, 2015 ONSC 7574
17. *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508
18. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400

Certificate of Authenticity

I, Calvin Horsten, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

14 – OCT – 2025

DATE



Calvin Horsten

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Courts of Justice Act, RSO 1990, c. C.43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100

Documents public

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

Sealing documents

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

Court lists public

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

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

MIZUE FUKIAGE et al.

- and -

CLEARVIEW GARDEN ESTATES INC. et al.

Applicants

Respondents

Court File No. CV-25-00736577-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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