



Court File No. ~~CV-087793-00CL~~
08-CL-7793

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE MR.) TUESDAY THE 4TH DAY
JUSTICE MORAWETZ) OF NOVEMBER, 2008**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

ASL DIRECT INC.

Respondent

ORDER

THIS MOTION made by the Applicant Ontario Securities Commission for an Order pursuant to Section 129 of the *Securities Act*, R.S.O. c. S5, as amended (the "Securities Act") appointing KPMG Inc. as Receiver and Manager (in such capacities, the "Receiver"), without security, of all of the property, assets and undertaking of the Respondent ASL Direct Inc. (the "Company") was heard this day at 330 University Avenue, in the City of Toronto, Ontario.

ON READING the affidavit of Joseph Della Mannon sworn October 20, 2008, the Affidavit of David Sharpe sworn October 20, 2008, the Affidavit of John Humphreys sworn October 20, 2008, the Affidavit of Adrian Samuel Leemhuis sworn October 27, 2008, the Affidavit of David Sharpe sworn October 30, 2008, the Affidavit of Laura Milliken sworn October 31, 2008, the Affidavit of Adrian Samuel Leemhuis sworn November 4, 2008 and on

hearing the submissions of counsel for the Applicant and counsel for the Respondent and on reading the Consent of KPMG Inc. to act as the Receiver:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record upon the Company be and it is hereby abridged so that this motion is properly returnable today and service upon any other party be and it is hereby dispensed with.

APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to Section 129 of the Securities Act, KPMG Inc. is hereby appointed Receiver, without security, of all of the property, assets and undertakings of the Company of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the

taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to settle, extend or compromise any indebtedness owing to the Company;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (i) to undertaking environmental or workers' health and safety assessments of the Property and operations of the Company;

- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) to report to, meet with and discuss with creditors, customers and other stakeholders of the Company and their respective advisors as the Receiver deems appropriate on all matters relating to the Property, the affairs of the Company, the receivership and the accounts of the customers of the Company including, without limitation, trailer fees and trailer fee rebates, and to share information with such parties subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Company;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Company;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Company may have;
- (s) without limiting the generality of clause 3(n) above, to share information with, meet with and discuss with any regulatory bodies and their advisors including, without limitation, the Commission and the Mutual Fund Dealers Association of Canada (the "MFDA"), as the Receiver deems appropriate on all matters relating to the Property, the affairs of the Company, the receivership and the accounts of the customers of the Company including, without limitation, trailer fees and trailer fee rebates subject to such terms as to confidentiality as the Receiver deems advisable;

- (t) to direct any issuer of securities held in nominee name for customers of the Company to register those securities in the name of the customers in question and to notify those customers that such securities have been registered in their respective names;
- (u) to examine under oath any person the Receiver reasonably considers to have knowledge of the affairs of the Company including, without limitation, any present or former director, officer, shareholder, employee or person registered or previously registered with the Commission or subject or formerly subject to the jurisdiction of the MFDA or any other regulatory body respecting the Property, the affairs of the Company and/or the accounts of the customers of the Company including, without limitation, trailer fees and trailer fee rebates;
- (v) to take any steps reasonably incidental to the exercise of these powers,

and in each such case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Company, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Company, (ii) all of its current and former directors, officers, employees, persons registered or previously registered with the Commission, subject or formerly subject to the jurisdiction of the MFDA or any other regulatory body, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that any claim of privilege attaching to solicitor-client communications or to disclosure of Records being prohibited by statute shall be determined by

this Honourable Court upon motion brought by the Receiver on notice to the Company and any other affected person.

8. **THIS COURT ORDERS** that Internet Providers and other persons who provide email, world wide web, file transfer protocol, Internet connection or other similar services to the Company any/or its present and former directors, officers, employees and agents shall deliver to the Receiver all documents, server files, archive files and any other information in any form in any way recording messages, emails or other information sent or received by such directors, officers, employees or agents in the course of their association with the Company.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no action, suit, proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Company or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Company or the Property are hereby stayed and suspended pending further Order of this Court provided that a Proceeding does not include any action, suit or proceeding outstanding or subsequently commenced by or before any regulatory body including, without limitation, the Commission and the MFDA which are not stayed by this Order.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Company, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written

consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) exempt the Receiver or the Company from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, without written consent of the Receiver of leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Company shall remain the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction provided that, pursuant to subsection 14.06 (1.2) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA"), the Receiver shall not be liable to any amount that is or could be due to an employee by the Company including, without limitation, any amount calculated by reference to any period of that employment, service or seniority that precedes the date of this order. Nothing in this Order shall derogate from the protections afforded to the Receiver by Section 14.06 of the BIA.

16. **THIS COURT ORDERS** that, pursuant to clause (7)(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursement of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property and the funds held in trust as security for the claims of certain of the customers of the Company for rebates of trailer fees (the "Trailer Fee Account") in priority to all security interest, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

20. **THIS COURT ORDERS** the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may be further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property and the Trailer Fee Account shall be and are hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that that Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

TRAILER FEE ACCOUNT

26. **THIS COURT ORDERS** that the Receiver shall review and report to this Court with respect to the status of trailer fee rebates owing by the Company to certain of the customers of the Company and recommend to this Court a process to identify the customers entitled to such rebates, the amount each such customer is entitled to and a process to distribute such amounts to such customers out of the Trailer Fee Account subject to the Receiver's Charge and the Receiver's Borrowing Charge.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or in the British Virgin Islands, the Cayman Islands or elsewhere in the world to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever situate, for the recognition of this Order and for assistance in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



G. Argyropoulos, Registrar
Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 17 2008

PER/PAR: TV

SCHEDULE "A"**RECEIVER'S CERTIFICATE**

CERTIFICATE NO.

AMOUNT \$

1. **THIS IS TO CERTIFY** that KPMG Inc., the Receiver and Manager (the "Receiver") of all of the property, assets and undertaking of ASL Direct Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 4th day of November 2008 (the "Order") made in an action having Court File Number 08-CV-08-7793-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$●, being part of the total principal sum of \$● which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the ● day of each month after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property and the Trailer Fee Account (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property and the Trailer Fee Account (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 200●.

KPMG Inc., solely in its capacity as Receiver of the Property and the Trailer Fee Account (as defined in the Order), and not in its personal capacity

Per:

Name:

Title:

ONTARIO SECURITIES COMMISSION
Applicant

and

ASL DIRECT INC.

Respondent

Court File No.: CV-087793-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

ORDER

ONTARIO SECURITIES COMMISSION
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