

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C.S.5, AS AMENDED

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

– and –

FACTORCORP INC. and FACTORCORP FINANCIAL INC.

Respondents

MOTION RECORD
(Returnable March 18, 2009)

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MOTION RECORD INDEX

<u>Tab</u>	<u>Document</u>
1	Notice of Motion returnable March 18, 2009
2	Fifth Report to the Court of the Receiver dated March 12, 2009
3	Fee Affidavit of J. Bradley Butcher sworn March 12, 2009 (exhibits to be sealed)
4	Fee Affidavit of James H. Grout sworn March 11, 2009 (exhibits to be sealed)
5	Draft Order

Tab 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C.S.5, AS AMENDED

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

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FACTORCORP INC. AND FACTORCORP FINANCIAL INC.

Respondents

NOTICE OF MOTION
(Returnable March 18, 2009)

KMPG Inc., in its capacity as the Court-appointed receiver and manager (the “Receiver”) of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc. (collectively, the “Debtors”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, March 18, 2009 at 10:00 o’clock in the morning or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

1. abridging the time for service of the Notice of Motion and Motion Record herein such that this Motion is properly returnable today, that all parties entitled to notice of the Motion have been duly served with notice, that no other parties are affected by the proposed Order, and that any requirement for service of the Notice of Motion and the Motion Record upon any party other than the parties served is unnecessary and is dispensed with and that the service of the Notice of Motion and the Motion Record is validated in all respects;
2. approving the Receiver's conduct and activities as set out in the Fifth Report of the Receiver dated March 12, 2009 (the "Fifth Report");
3. approving the Receiver's Statement of Receipts and Disbursements for the period October 17, 2007 to March 10, 2009;
4. authorizing the Receiver to remit to KPMG Inc., in its capacity as Trustee (the "Trustee") of the Consolidated Estate of FactorCorp Inc. and FactorCorp Financial Inc. (the "Consolidated Estate"), the funds held by the Receiver, less the holdback referred to in paragraph below, for a net distribution of \$943,824.24;
5. authorizing the Receiver to retain in its bank account a holdback in the amount of \$15,000 with respect to the Receiver's further fees and expenses and those of its solicitors for the period from March 1, 2009 up to and including the effective date of the Receiver's discharge;
6. declaring that Cassels Brock & Blackwell LLP has an unsecured claim against the Companies and does not have a priority claim to the funds in the Receiver's account or against the Receiver for outstanding legal fees;
7. approving the fees and disbursements of the Receiver and the Receiver's legal counsel for the period October 17, 2007 to February 28, 2009, plus any estimated amount to complete the administration of the estate, and authorizing and directing the Receiver to pay all such fees and disbursements of the Receiver and its legal counsel;

8. sealing the Receiver's and its legal counsel's accounts as attached to their respective fee affidavits pending completion of the administration of the Consolidated Estate by KPMG Inc., in its capacity as trustee of the Companies, bankrupt corporations;
9. discharging the Receiver upon payment of the amounts set out in paragraph 5 of the proposed Order and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Fifth Report, provided however that notwithstanding its discharge (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KMPG Inc. in its capacity as Receiver;
10. releasing and discharging KMPG Inc. from any and all liability that KMPG Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KMPG Inc. while acting in its capacity as Receiver herein and, without limiting the generality of the foregoing, releasing and discharging KMPG Inc. from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings; and
11. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

1. the reasons described in the Fifth Report; and
2. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

1. the Fifth Report of the Receiver dated March 12, 2009;
2. the Affidavit of J. Bradley Butcher sworn March 12, 2009, with exhibits (to be sealed);

3. the Affidavit of James H. Grout sworn March 11, 2009, with exhibits (to be sealed); and
4. such further and other evidence as counsel may advise and this Honourable Court permit.

March 12, 2009

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TO: THIS HONOURABLE COURT

AND TO: THE SERVICE LIST

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ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

NOTICE OF MOTION
(returnable March 18, 2009)

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as Receiver and Manager

Tab 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C.S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

FACTORCORP INC. AND FACTORCORP FINANCIAL INC.

Respondents

FIFTH REPORT TO THE COURT
SUBMITTED BY KPMG INC.
AS RECEIVER AND MANAGER

March 12, 2009

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- Appendix A - Order of the Ontario Superior Court of Justice (Commercial List) dated October 17, 2007 and the Order of the Ontario Superior Court of Justice (Commercial List) dated October 30, 2007
- Appendix B - Order of the Ontario Superior Court of Justice (Commercial List) dated March 25, 2008
- Appendix C - Order of the Ontario Superior Court of Justice (Commercial List) dated February 12, 2009 re Settlement with Wasserman Associates Inc.
- Appendix D - Receiver and Manager's Statement of Receipts and Disbursements for the period October 17, 2007 to March 10, 2009 re FactorCorp Financial Inc.
- Appendix E - Receiver and Manager's Statement of Receipts and Disbursements for the period October 17, 2007 to March 10, 2009 for FactorCorp Inc.

1. Purpose and Background

1.1 Introduction

- 1.1.1 Pursuant to the Order of the Honourable Mr. Justice Morawetz dated October 17, 2007, KPMG Inc. was appointed Receiver and Manager (the "Receiver") of all of the property, assets and undertaking (collectively, the "Property") of FactorCorp Inc. ("FCI") and FactorCorp Financial Inc. ("FFI") (collectively, the "Companies") for an initial period of fifteen days. Pursuant to the Order of the Honourable Mr. Justice Morawetz dated October 30, 2007, the appointment of the Receiver was extended until further Order of this Court. The Orders dated October 17, 2007 and October 30, 2007 are collectively referred to herein as the "Appointment Order". A Copy of the Appointment Order is attached hereto as **Appendix A**. The application for the appointment of the Receiver was made by the Ontario Securities Commission ("OSC") pursuant to Section 129 of the *Securities Act* (Ontario) (the "Securities Act").
- 1.1.2 KPMG Inc. was initially engaged as monitor (the "Monitor") pursuant to a letter of engagement dated August 1, 2007 (the "Engagement Letter") between the Companies and KPMG Inc. The Engagement Letter was entered into pursuant to an Order made by the OSC on July 6, 2007 (the "First Temporary Order"). The Companies operated after the issuance of the First Temporary Order under certain conditions imposed by the OSC and in accordance with further temporary orders (the First Temporary Order together with the further temporary orders are hereinafter referred to as the "Temporary Orders"). The conditions imposed by the OSC under the Temporary Orders included: (i) the engagement of the Monitor, (ii) a prohibition on redemptions of debentures and (iii) a prohibition on the sale of further debentures. The Monitor's primary mandate was to review the business, operations and affairs of the Companies between August 1, 2007 and the appointment of the Receiver.
- 1.1.3 The Receiver has relied upon information and records available from a variety of sources including, without limitation, the Companies' books and records, documents provided by the Companies' bank and from information and documents provided by third parties. The Receiver's review of this information does not constitute an audit of the financial position or operating results of the Companies.
- 1.1.4 In this Fifth Report, unless otherwise defined, all capitalized terms shall have the meanings set forth in the Court Orders issued in this proceeding. All references to dollars are Canadian dollars unless otherwise noted.

1.2 Overview of the FactorCorp Companies

- 1.2.1 Mark Twerdun ("Twerdun") is the sole officer, director and shareholder of FCI, which is an Ontario corporation incorporated on August 13, 2002. FCI is registered as a limited market dealer under the *Securities Act* (Ontario) (the "Securities Act"). Twerdun was registered as the sole trading officer and the sole compliance officer of FCI.

- 1.2.2 Twerdun is the sole officer and director and majority shareholder of FFI. Certain of Twerdun's family members own the remaining shares. FFI was incorporated in Ontario on May 26, 2003. FFI was not registered in any capacity under the Securities Act.
- 1.2.3 In all but one instance, FFI advanced funds in the form of loans to third parties (collectively, the "Customers") and, in some instances, the Customer, in turn, used the funds advanced by FFI to make loans to, or enter into other credit arrangements with, third party borrowers of the Customer (collectively, the ultimate end borrowers of all of the funds advanced by FFI are referred to herein as "End Borrowers"). In some instances, the Customers used the funds advanced by FFI in their own businesses and did not lend funds to an End Borrower. In one instance, FFI purchased preferred shares in a third party.
- 1.2.4 The Companies raised approximately \$58 million by issuing approximately 700 non-prospectus qualified debentures (the "Debentures") to Ontario investors (the "Debenture Holders" or the "Investors"). Approximately \$50 million of the Debentures remain outstanding and are held by approximately 625 Debenture Holders. According to FFI's Offering Memoranda (the "FFI OM"), the Debentures were to be sold pursuant to the Accredited Investor ("AI") exemption from the prospectus requirement of Section 53 of the Act. The Receiver understands that the Companies first issued Debentures in late 2003 and that the Companies pooled the funds raised from the issuance of the Debentures.
- 1.2.5 Investors purchased Debentures primarily through registered market fund dealers and limited market dealers. Farm Mutual Financial Services Incorporated (now bankrupt) was the intermediary for most of the Debentures. Interglobe Financial Services Corp. was also one of the dealers.
- 1.2.6 The operations and affairs of FFI and FFC were inextricably intertwined and were conducted as one business. Their affairs could not be separated.

1.3 Financial Difficulties

- 1.3.1 During the Spring of 2007, FFI received numerous redemption requests from Debenture Holders which it was not able to honour. On May 7, 2007, FFI gave written notice to the Debenture Holders who had submitted redemption requests that it could not redeem their Debentures. FFI continued to make monthly interest payments to the Debenture Holders until October 2007.
- 1.3.2 While subject to the Temporary Orders and the monitoring engagement, FFI made attempts to obtain new financing to fund, among other things, the redemption of the Debentures. The Companies' efforts to obtain new financing were unsuccessful. As a result, the OSC sought and obtained the appointment of the Receiver on October 17, 2007.

1.4 Previous Reports to the Court

- 1.4.1 The Receiver filed its First Report to the Court on October 29, 2007. On October 30, 2007, the Court issued an Order confirming and extending the appointment of the Receiver until further Order of the Court (a copy of this Order is included in

Appendix A) and declaring that the Order dated October 5, 2007, which dealt with certain pre-receivership confidentiality issues, terminated upon the making of the Appointment Order.

1.4.2 The Receiver filed its Second Report to the Court on November 21, 2007 and its Supplemental Report thereto on November 26, 2007 (collectively, the “Second Report”). On November 27, 2007, the Court issued an Order:

- approving the activities and conduct of the Receiver as described in the Second Report;
- authorizing the Receiver to issue and proceed with an application for a Bankruptcy Order against the Companies on a consolidated basis and ordering the Official Receiver to open one estate file with respect to the consolidated estate;
- ordering and directing Stockwoods LLP to pay the amount of \$16,583.74 to the Receiver; and
- approving the BMO Reimbursement Agreement.

1.4.3 On December 19, 2007, the Receiver issued its Third Report to the Court in connection with a motion to approve a document delivery protocol between the Receiver and Twerdun, which was amended in the Receiver’s Supplemental Report to the Third Report dated December 27, 2007 (the “Document Delivery Protocol”). On December 28, 2007, the Court issued an Order approving the Document Delivery Protocol.

1.4.4 On March 10, 2008, the Receiver issued its Fourth Report to the Court (the “Fourth Report”) to provide this Honourable Court with:

- a detailed description of the activities of the Receiver since the Receiver’s Third Report;
- a detailed update in respect of the progress of the Receivership generally including information on the known assets and liabilities of the Companies; and
- the evidentiary basis upon which to make:
 - a) an Order approving the activities of the Receiver as described in the Fourth Report;
 - b) a Bankruptcy Order against the Companies on a consolidated basis both substantially and procedurally naming KPMG Inc. as the Trustee of the Estate of the Companies, bankrupts (the “Consolidated Estate”);
 - c) an Order declaring that the Consolidated Estate is a “securities firm” within the meaning of and governed by the provisions of Part XII of the BIA;

- d) an Order declaring that the date of the initial bankruptcy event for the Consolidated Estate is December 4, 2007;
- e) an Order authorizing and directing the Trustee to rely on the best available records in its possession for the purposes of mailing the Notice Documents (as defined in the Fourth Report);
- f) an Order directing the Trustee to send the Notice Documents to all Investors and the Other creditors via regular mail;
- g) an Order directing the Trustee to publish the Notice Documents in the Globe and Mail;
- h) an Order declaring that the quantum of each Investor's provable claim for the purposes of voting at meetings of the creditors of the Consolidated Estate and for the purpose of receiving allocations from the Trustee shall be the amount invested by the Investor plus any accrued and unpaid interest thereon to the date of bankruptcy, less any redemption proceeds received by the Investor from the Companies prior to the date of Bankruptcy;
- i) an Order directing the Trustee to deliver to each Debenture Holder, together with the Notice Documents, a statement setting out the Trustee's calculation of each Debenture Holders' claim (the "Investment Statement"). The Investment Statement would be based upon the books and records of the Companies and shall include a summary of all amounts invested by the Debenture Holder, less any redemption proceeds received by the Debenture Holder from the Companies prior to the date of the Receivership, plus the Receiver's calculation of unpaid interest;
- j) an Order declaring that the Trustee is authorized to accept a proof of claim from each Investor based upon the Investor Statement delivered to each Investor unless the Investor disputes the Investor Statement by filing a proof of claim, setting out the Investor's calculation of its claim against the Consolidated Estate;
- k) an Order declaring that the cash in the hands of the Receiver and all amounts realized from the Loan Portfolio, the ECS Preferred Shares, any other assets of the Companies and from any fraudulent preferences, fraudulent conveyances, settlements and other reviewable transactions constitute cash and securities and comprise the customer pool fund of the Consolidated Estate all within the meaning of Part XII of the BIA;
- l) an Order authorizing the Receiver to advance sufficient funds to the Trustee to fund the administration of the Consolidated Estate;
- m) an Order authorizing the Trustee to pay out of the funds in the Trustee's possession and control, upon the direction of the inspectors

of the Consolidated Estate, the amount of any allocation to the Investors out of the customer pool fund of the Consolidated Estate;

- n) an Order declaring that the Appointment Orders remain in full force and effect unamended and unaffected;
- o) an Order declaring that the BMO Reimbursement Agreement, previously approved by the Court, be binding upon the Trustee and the Consolidated Estate; and
- p) an Order declaring that the levy payable to the Superintendent in Bankruptcy on all payments made by way of dividend or otherwise on account of the claims of creditors pursuant to section 147 of the BIA is now payable in the Consolidated Estate.

1.4.5 On March 25, 2008, this Honourable Court made an Order wherein the Companies were adjudged bankrupt and granted certain other relief sought by the Receiver (as set out in section 1.4.4 above) (the "Bankruptcy Order"). A copy of the Bankruptcy Order is attached as **Appendix B** to this Report.

1.4.6 Pursuant to the Bankruptcy Order, KPMG Inc. was appointed Trustee of the Consolidated Estate.

1.5 Purpose of this Report

1.5.1 This Fifth Report to the Court (the "Fifth Report") has been prepared to provide this Honourable Court with:

- an update on the Receiver's activities since the Fourth Report; and
- the evidentiary basis upon which to make an Order:
 - a) approving the Receiver's conduct and activities to the date of this Fifth Report;
 - b) approving the Receiver's Statements of Receipts and Disbursements for the period October 17, 2007 to March 10, 2009;
 - c) authorizing the Receiver to remit to the Trustee the funds held by the Receiver, less certain holdbacks, for a net distribution of \$943,824.24;
 - d) authorizing the Receiver to retain in its bank account a holdback in the amount of \$15,000.00 with respect to the Receiver's further fees and expenses and those of its solicitors for the period from March 1, 2009 up to and including the effective date of the Receiver's discharge;
 - e) declaring that Cassels Brock & Blackwell LLP ("Cassels") may have an unsecured claim against the Companies, but it does not have a priority claim to the funds in the Receiver's account or against the Receiver for outstanding legal fees;

- f) approving the fees and disbursements of the Receiver and the Receiver's legal counsel for the period October 17, 2007 to February 28, 2009 plus any estimated amount to complete the administration of the estate and authorizing and directing the Receiver to pay all such fees and disbursements of the Receiver and its legal counsel;
- g) sealing the Receiver's and TGF's accounts as attached to their respective fee affidavits pending completion of the administration of the Consolidated Estate by the Trustee;
- h) discharging the Receiver, subject to the Receiver completing its administration of the estate as described herein and filing a Certificate with this Honourable Court;
- i) authorizing the Receiver to distribute to the Trustee the remaining funds held by the Receiver after the aforementioned distribution of \$943,824.24 and the payment, from the holdback, of the further fees and expenses of the Receiver and its solicitors; and
- j) releasing KPMG Inc. from any and all liability arising out of the acts or omissions of KPMG Inc. while acting in its capacity as Receiver, and barring all claims against the Receiver by any person upon the Receiver's discharge.

2. Receiver's Activities

2.1 Allocation of Responsibilities between the Receiver and the Trustee

2.1.1 Upon the issuance of the Bankruptcy Order and the appointment of the Trustee, the Receiver and the Trustee determined that on an interim basis, until the Inspectors were appointed, the administration of the proceedings would be divided as follows:

- the Receiver would continue to deal with the Customers in its ongoing effort to maximize recovery for the Investors; and
- the Trustee would proceed with its statutory duties related to providing notice to the creditors, arranging the first meeting of creditors, receiving proofs of claim and proxies, etc.

2.1.2 Once the Inspectors were elected at the First Meeting of Creditors, the administration of the Consolidated Estate was fully assumed by the Trustee. The First Meeting of Creditors was held on April 25, 2008 and, at that meeting, five Inspectors were elected. A brief First Meeting of Inspectors was held immediately following the First Meeting of Creditors, at which time the Inspectors were provided with a briefing package in anticipation of a fulsome discussion at the Second Meeting of Inspectors to be held on April 28, 2008. Since the Second Meeting of Inspectors, the Receiver has not undertaken any activities, except as described herein. Such activities were primarily limited to the administration of the Receiver's bank accounts and the preparation of this Fifth Report.

2.2 Claim by Wasserman Associates Inc. ("Wasserman")

2.2.1 Wasserman is the Trustee of the Estate of Lisa Dawn Robbins ("Robbins"), a former employee of Capmor Financial Services Inc., a company related to Romco Capital Partners ("Romco"). FFI made a series of advances to Romco and/or Capmor which were to be secured by assignments of equipment leases entered into by Capmor with third party lessees. Robbins misappropriated certain funds held by Capmor which had been advanced by various investors, including FFI. Robbins made an assignment in bankruptcy in January 2005 and Wasserman was appointed as Trustee of the Robbins estate.

2.2.2 Wasserman filed and served Notices of Motion dated March 17, 2008 and August 8, 2008 (the "Wasserman Motions") wherein Wasserman was seeking, among other things, costs against the Receiver and/or the Trustee in the amount of approximately \$20,000.

2.2.3 Wasserman, the Trustee and the Receiver reached a settlement on January 5, 2009 and such settlement was approved by the Court on February 12, 2009. As a result, the Wasserman Motions have been dismissed. A copy of the Order dismissing the Wasserman Motions is attached hereto as **Appendix C**.

3. Receiver's Financial Position

3.1 Statement of Receipts and Disbursements - FFI

- 3.1.1 The Receiver's Statement of Receipts and Disbursements with respect to FFI for the period October 17, 2007 to March 10, 2009 is included as **Appendix D** to this Report. This statement indicates total funds on hand of \$953,319.26, of which \$877,934.90 has been invested in guaranteed investment certificates.
- 3.1.2 Pursuant to paragraph 16 of the Bankruptcy Order, the Receiver was authorized to advance to the Trustee funds sufficient to fund the administration of the Consolidated Estate. An amount of \$5,000 was advanced to the Trustee for this purpose. As the Trustee collected interest and principal payments from Borrowers subsequent to March 25, 2008, it did not need to obtain further funds from the Receiver.

3.2 Cash – FCI

- 3.2.1 The Receiver's Statement of Receipts and Disbursements with respect to FCI for the period October 17, 2007 to March 10, 2009 is included as **Appendix E** to this Report. There is a balance in the Receiver's account for FCI of \$5,504.98. This account has essentially been inactive since the date of the Appointment Order.

3.3 Receiver's Fees and Legal Fees

- 3.3.1 Paragraph 20 of the Appointment Order requires that the Receiver have its accounts approved by the Court from time to time and have its fees, and those of its solicitors, approved by the Court. Further, paragraph 21 of the Appointment Order permits the Receiver to take advances against its fees and disbursements, and those of its solicitors, from time to time. Since the commencement of the receivership, the Receiver and TGF have prepared invoices on a periodic basis. As noted below, all accounts rendered by the Receiver and TGF in respect of the receivership proceedings to February 28, 2009 have been paid out of funds held by the Receiver.
- 3.3.2 The Receiver has prepared and filed with the Court the affidavit of J. Bradley Butcher sworn March 12, 2009 (the "Butcher Affidavit") in support of its application for approval of the Receiver's fees for the period October 17, 2007 to February 28, 2009. Similarly, TGF has filed with the Court the affidavit of James H. Grout sworn on March 11, 2009 (the "Grout Affidavit") in support of TGF's fees and disbursements for the period October 17, 2007 to February 28, 2009. Both the Butcher Affidavit and the Grout Affidavit include, as exhibits, summaries of all hours, rates and fees charged by each representative of the Receiver and TGF, as well as copies of all of the invoices rendered by each firm for the periods covered by the respective affidavits.
- 3.3.3 The professional fees and disbursements incurred to February 28, 2009 and paid to the Receiver and TGF, as reflected in **Appendix D** and as presented in the Butcher Affidavit and the Grout Affidavit, total \$588,206.76 and \$291,068.79 respectively (before GST).

- 3.3.4 The Receiver and TGF have estimated their remaining fees for the period March 1, 2009 to discharge based on the assumption that this Honourable Court will grant the Receiver's motion for all relief sought in the Notice of Motion, including the Receiver's discharge and release upon completion of the residual matters set out in section 4.3.1. Further information on the fee reserves for the Receiver and TGF is presented in the Butcher Affidavit and the Grout Affidavit, respectively.
- 3.3.5 There are a number of ongoing matters in the administration of the Consolidated Estate by the Trustee, including realization with respect to certain of the assets in the Consolidated Estate, which may be adversely affected should detailed and potentially sensitive information with respect to the Receiver's efforts to realize on such assets (prior to the Second Meeting of Inspectors) be made public. Accordingly, the Receiver and TGF have filed complete affidavits, including copies of all accounts, with the Court but they have removed the copies of the accounts from the versions of the fee affidavits distributed to the service list and made available to the public. The Receiver seeks an Order from this Court sealing the Receiver's and TGF's accounts as attached to their respective fee affidavits pending completion of the administration of the Consolidated Estate by the Trustee or until further order of the Court.

4. Outstanding Matters

4.1 Administration of the Estate

- 4.1.1 As noted herein, the administration of the Consolidated Estate is being conducted by the Trustee in consultation with the Inspectors and, accordingly, the Receiver does not have an active ongoing role.

4.2 Cassels Brock and Blackwell LLP's Claim

- 4.2.1 Cassels has requested payment of its outstanding accounts, in the amount of approximately \$44,193.29 in priority to payments to any creditors of the Consolidated Estate.
- 4.2.2 The Receiver understands that the basis for this request is that, following the issuance of the Appointment Order, any work undertaken by Cassels was limited to tasks where the Receiver and TGF could not act. For example, following the issuance of the Appointment Order, the Companies asserted privilege with respect to a large volume of documents prior to releasing such documents to the Receiver. Cassels is of the view that it was acting in a limited capacity in assisting the Receiver in vetting these documents and ensuring that any privileged documents were not disclosed to the Receiver. The claim for privilege asserted on behalf of the Companies was done so by Twerdun and was not at the request of the Receiver.
- 4.2.3 On October 15, 2007, two days prior to the issuance of the Appointment Order, FFI paid \$100,000 to Cassels (in addition to the substantial amounts paid to Cassels by the Companies between the date of the First Temporary Order and October 15, 2007). While the Receiver recognizes that a review of the documents for privilege may have been required to be conducted on behalf of the Companies, the Receiver understood that the \$100,000 paid by FFI to Cassels was sufficient to cover any costs incurred by Cassels at the request of Twerdun. Further, the Receiver and TGF advised Cassels that it did not agree with the Companies' claim for privilege over all of the documents being reviewed.
- 4.2.4 As described in section 2.4.1 of the First Report, the Receiver, with the concurrence of Cassels, retained the services of the forensic technology group of Deloitte & Touche LLP ("D&T") on October 26, 2007 to image the data on Twerdun's laptop and blackberry. The Receiver paid all of D&T's fees in respect of the imaging work.
- 4.2.5 Cassels did not advise the Receiver or TGF that it did not have any funds available to pay for the continued review of the documents until approximately November 27, 2007. It was at this point that TGF immediately advised Cassels to cease reviewing any documents.
- 4.2.6 In December 2007, the Receiver and TGF were advised that Twerdun had retained Mr. Peter Carey, Barrister and Solicitor, in place of Cassels.

- 4.2.7 The Receiver then continued to take up the issue of the delivery of documents directly with Mr. Carey.
- 4.2.8 As mentioned herein, a Document Delivery Protocol was approved by this Court on December 28, 2007, pursuant to which Twerdun was to fund his own expenses with respect to document review on behalf of the Companies for privilege.
- 4.2.9 The Receiver is of the view that Cassels's claim for payment of its outstanding accounts is an unsecured claim in the Consolidated Estate.
- 4.2.10 Cassels has advised TGF that it intends to file materials to seek payment of its outstanding accounts in these proceedings. The Receiver may file a response to Cassels's materials once it has received and reviewed same.

4.3 Other Outstanding Matters

- 4.3.1 The outstanding matters to be completed in connection with the administration of the estate are as follows:
 - (a) attending at Court on the distribution and discharge motion;
 - (b) remitting the remaining funds to the Trustee; and
 - (c) preparation and distribution by the Receiver of the Receiver's final report and statement of accounts, in prescribed form, as required by Section 246(3) of the BIA. The Receiver intends to post such report on its website.

5. Recommendations

- 5.1 The Receiver respectfully requests that this Honourable Court make an Order:
- approving the Receiver's conduct and activities to the date of this Fifth Report;
 - approving the Receiver's Statements of Receipts and Disbursements for the period October 17, 2007 to March 10, 2009;
 - authorizing the Receiver to remit to the Trustee the funds held by the Receiver, less certain holdbacks, for a net distribution of \$943,824.24;
 - authorizing the Receiver to retain in its bank account a holdback in the amount of \$15,000.00 with respect to the Receiver's fees and expenses and those of its solicitors for the period from March 1, 2009 up to and including the effective date of the Receiver's discharge,;
 - declaring that Cassels may have an unsecured claim against the Companies, but it does not have a priority claim to the funds in the Receiver's account or against the Receiver for outstanding legal fees;
 - approving the fees and disbursements of the Receiver and the Receiver's legal counsel for the period October 17, 2007 to February 28, 2009, plus an estimated amount of \$15,000.00 to complete the administration of the estate and authorizing and directing the Receiver to pay all such fees and disbursements of the Receiver and its legal counsel;
 - sealing the Receiver's and TGF's accounts as attached to their respective fee affidavits pending completion of the administration of the Consolidated Estate by the Trustee
 - discharging the Receiver, subject to the Receiver completing its administration of the estate herein and filing a Certificate with this Honourable Court;
 - authorizing the Receiver to distribute to the Trustee the remaining funds held by the Receiver after the aforementioned distribution of \$943,824.24 and the payment, from the holdback, of the further fees and expenses of the Receiver and its solicitors; and
 - releasing KPMG Inc. from any and all liability arising out of the acts or omissions of KPMG Inc. while acting in its capacity as Receiver, and barring all claims against the Receiver by any person upon the Receiver's discharge.

All of which is respectfully submitted this 12th day of March, 2009.

**KPMG INC.
IN ITS CAPACITY AS COURT
APPOINTED RECEIVER AND
MANAGER OF FACTORCORP INC.
AND FACTORCORP FINANCIAL INC.**

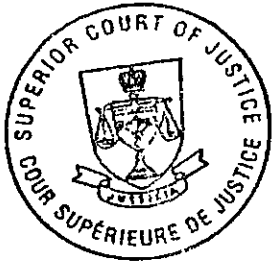


Per: J. Bradley Butcher
Vice President

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 17th
)
JUSTICE MORAWETZ) DAY OF OCTOBER , 2007



ONTARIO SECURITIES COMMISSION

Applicant

- and -

FACTORCORP INC. and FACTORCORP FINANCIAL INC.

Respondents

ORDER

THIS MOTION, made by the Ontario Securities Commission (the "Commission") for an Order pursuant to Section 129 of the *Securities Act* (the "Act") appointing KPMG Inc. as the Receiver and Manager, without security, of all of the property, assets and undertaking of the Respondents (collectively the "Debtor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record, Volumes 1 to 3, the Affidavit of André J. Moniz sworn August 3, 2007 and the Exhibits thereto, filed, the Affidavit of André J. Moniz sworn October 3, 2007, filed under seal and the Seventh Report of KPMG Inc. (unredacted), filed under seal, and on hearing the submissions of counsel for the Commission and counsel for the Debtor, counsel for KPMG Inc. being in attendance, and on reading the consent of KPMG Inc. to act as the Receiver and Manager:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to Section 129 of the Act, KPMG Inc. (the "Receiver") be and it is hereby appointed as the Receiver and Manager, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that, pursuant to Section 129 of the Act, the appointment of the Receiver shall be for a period of fifteen days subject to further Order of this Court.

4. **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 Debtor, 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 Debtor;

- (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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (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 Debtor, 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 \$1,000,000, provided that the aggregate consideration for all such transactions does not exceed \$10,000,000;
- (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*, or Section 31 of the Ontario *Mortgages Act*, as the case may be, 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 such secured and unsecured creditors of, investors or potential investors in and other stakeholders of the Debtor and their advisors as the Receiver deems appropriate on all matters relating to the Property and the receivership and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) without limiting the generality of (n), to report to, share information with, meet with and discuss with any regulatory bodies, including the Commission, and their advisors as the Receiver deems appropriate with respect to all matters relating to the affairs of the Debtor, the Property and the conduct of the receivership on such terms of confidentiality as the Receiver deems appropriate;

(p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(q) 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 Debtor;

(r) to enter into arrangements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor and the power to lend money to or indemnify any such trustee, such trustee's borrowings or indemnity not to exceed \$1,000,000 unless otherwise increased by this Court;

(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

(t) to examine, under oath, any person reasonably thought to have knowledge of the affairs of the Debtor or any person who is or has been an agent, an officer, a director, a shareholder and/or an employee of the Debtor, respecting the Debtor or the Debtor's dealings or property; and

(u) to take any steps reasonably incidental to the exercise of these powers,

and, in each 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, including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, 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.

6. **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 Debtor, 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 access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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.

7. **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.

8. **THIS COURT ORDERS** that Internet Service Providers and other persons which provide email, world wide web, file transfer protocol, Internet connection or other similar services to the Debtor and/or its present and former directors, officer, 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, email correspondence or other information sent or received by such directors, officers, employees or agents in the course of their association with the Debtor.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no 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 DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court provided that nothing herein shall prevent the commencement or continuation of any proceedings by the Commission against the Debtors or any of them including, without limitation, the proceedings commenced by Notice of Hearing issued by the Commission on July 6, 2007, the Temporary Order issued by the Commission on July 6, 2007 and the Temporary Order issued by the Commission on July 27, 2007.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, or (iii) prevent the filing of any registration to preserve or perfect a security interest or 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, arrangement, agreement, licence or permit in favour of or held by the Debtor without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor'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 normal payment practices of the Debtor 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 Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor'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 BIA, the Receiver shall not be liable for any amount that is or could be due to an employee by the Debtor including, without limitation, any amount calculated by reference to any period of employment, service or seniority that precedes the date of this Order. Nothing in this Order shall derogate from the protections afforded 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 Debtor, 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 the Receiver shall promptly advise the Ontario Ministry of the Environment of any obvious or known environmental condition existing on or in any of the Property in accordance with 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 in fact takes 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 the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

RECEIVER'S ACCOUNTS

and KPMG Inc. in its capacity as monitor incurred to date, RB

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 disbursements of its legal counsel, incurred at the normal 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 in priority to all security interests, 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 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 \$500,000 (or such greater amount as this Court may by 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 shall be and is 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 the 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.

26. **THIS COURT ORDERS** that the Receiver may at any time apply for its discharge in the event that the Property is not, in the opinion of the Receiver, sufficient to indemnify the Receiver for its remuneration, borrowings, costs, expenses and liabilities.

GENERAL

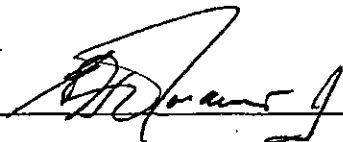
27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

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 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 located, 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.



MAURICE

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

OCT 18 2007

PER/PAR: 

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

32. THIS IS TO CERTIFY that KPMG Inc., the Receiver and Manager (the "Receiver") of all of the assets, undertakings and properties of FactorCorp Inc. and FactorCorp Financial Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the • day of July, 2007 (the "Order") made in an action having Court file number 07-CL-_____, 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.

33. 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 1st day of each month after the date hereof at a notional rate per annum equal to the rate of 1 per cent above the prime commercial lending rate of HSBC Bank of Canada from time to time.

34. 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 (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.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. 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.

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

38. 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 (as defined in the
Order), and not in its personal capacity

Per: _____
Name:
Title:



ONTARIO SECURITIES COMMISSION
Applicant

and

**FACTORCORP INC. and FACTORCORP FINANCIAL
INC.**

Respondents

Court File No.:

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced in Toronto

ORDER

ONTARIO SECURITIES COMMISSION
20 Queen Street West
Suite 1900
Toronto, ON M5H 3S8

Melissa J. MacKewn
Litigation Counsel, Enforcement Branch
L.S.U.C. #39166E

Tel: 416-593-3652
Fax: 416-593-2319

Court File No. 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, C.S.5, AS AMENDED

THE HONOURABLE
JUSTICE MORAWETZ

) TUESDAY THE 30th DAY
)
) OF OCTOBER, 2007

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

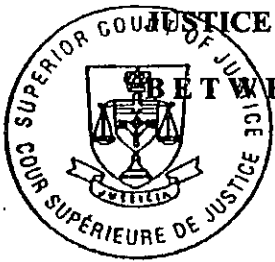
FACTORCORP INC. and FACTORCORP FINANCIAL INC.

Respondents

ORDER

THIS MOTION made by the Ontario Securities Commission (the "Commission") for an Order pursuant to Section 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, confirming and extending the appointment of KPMG Inc. as Receiver and Manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Factorcorp Inc. and Factorcorp Financial Inc. (collectively, "Factorcorp") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Commission and the consent of the Receiver, filed, and on hearing the submissions of counsel for the Commission, counsel for the Respondents and counsel for the Receiver,



SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for the service of the Notice of Motion and the Motion Record be and it is hereby abridged to the date of actual service, this Motion is properly returnable today and service upon any other party other than those served with the Notice of Return of Motion be and it is hereby dispensed with.

APPOINTMENT

2. **THIS COURT ORDERS** that the appointment of KPMG Inc. as Receiver and Manager pursuant to the Order of this Honourable Court dated October 17, 2007, a copy of which is attached hereto as Schedule "A", be and it is hereby confirmed and extended until further Order of this Honourable Court.



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

OCT 30 2007

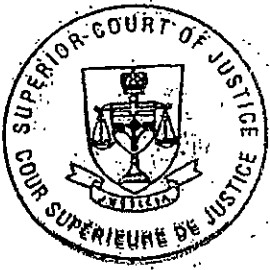
PER/PAR:



Appendix “B”

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE MR.)
JUSTICE GEOFFREY B. MORAWETZ) TUESDAY, THE 25th DAY
OF MARCH, 2008



IN THE MATTER OF THE BANKRUPTCY OF
FACTORCORP INC. AND FACTORCORP FINANCIAL
INC., each of which is a corporation incorporated pursuant to
the *Business Corporations Act* (Ontario) with its principal
place of business in the City of Mississauga, in the Province of
Ontario.

ORDER

THIS MOTION made by KPMG Inc., in its capacity as the Receiver and Manager (the “Receiver”) of all of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc. (collectively, “the Companies”), for a Bankruptcy Order against the Companies on a consolidated basis was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Application for a Consolidated Bankruptcy Order dated December 4, 2007, the Affidavit of Verification dated December 4, 2007, the First Report of the Receiver dated October 29, 2007, the Second Report of the Receiver dated November 21, 2007, the Supplemental Report to the Second Report of the Receiver dated November 26, 2007 (the “Second Supplemental Report”), the Fourth Report of the Receiver dated March 10, 2008 (the “Fourth Report”) and on hearing the submissions of counsel for the Receiver and counsel for the Ontario Securities Commission and Farm Mutual Financial Services.

AND UPON this Honourable Court being satisfied that, during the six month period immediately prior to the date of the Application for a Bankruptcy Order, the Companies committed the following acts of bankruptcy:

- (a) ceased to meet their liabilities generally as they became due, and
- (b) gave notice to their creditors that they have suspended payment of their debts.

1. **THIS COURT ORDERS AND DECLARES** that the time for the service of the Notice of Motion, the Motion Record, the Fourth Report of the Receiver and the Fourth Supplemental Report be and it is hereby abridged to the date of actual service, this Motion is properly returnable today and service upon any other party other than those served with the Notice of Motion be and it is hereby dispensed with.
2. **THIS COURT ORDERS** that the Fourth Report and the activities and conduct of the Receiver described therein be and they are hereby approved.
3. **THIS COURT ORDERS** that the Companies, of the City of Mississauga, in the Province of Ontario, be and they are hereby adjudged bankrupt and a Bankruptcy Order be and it is hereby made against the Companies on a consolidated basis.
4. **THIS COURT ORDERS** that KPMG Inc., of the City of Toronto, in the Province of Ontario, shall be and it is hereby appointed Trustee of the Consolidated Estate of the Companies (the "Consolidated Estate").
5. **THIS COURT ORDERS AND DECLARES** that the Companies are "securities firms" within the meaning of and governed by the provisions of Part XII of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA").
6. **THIS COURT ORDERS AND DIRECTS** that the Consolidated Estate be administered pursuant to and in accordance with Part XII of the BIA.

7. **THIS COURT ORDERS AND DECLARES** that the date of the initial bankruptcy event for the Consolidated Estate is December 4, 2007 (the "Effective Date of Bankruptcy").

8. **THIS COURT ORDERS AND DECLARES** that the form and substance of the Notice Documents attached hereto as Schedule "A" shall be and they are hereby approved.

9. **THIS COURT ORDERS** that the Trustee be and it is hereby authorized and directed to rely on the best available records in its possession for the purposes of mailing the Notice Documents.

10. **THIS COURT ORDERS** that the Trustee be and it is hereby authorized and directed to send the Notice Documents to all persons who purchased debentures from the Companies (the "Investors") and other creditors by way of regular mail.

11. **THIS COURT ORDERS** that the Trustee be and it is hereby authorized and directed to publish the Notice Documents in the *Globe and Mail* in accordance with the provisions of subsection 103(4) of the BIA.

12. **THIS COURT ORDERS AND DECLARES** that the proposed methodology for the calculation of the provable claims (the "Claims") of the Investors as set out in the Fourth Report, whereby Claims will be calculated on the basis that the amount of an Investor's Claim shall be the amount invested by the Investor plus any accrued and unpaid interest thereon to the Effective Date of Bankruptcy less any redemption proceeds received by the Investor from the Bankrupts prior to the Effective Date of Bankruptcy be and it is hereby approved.

13. **THIS COURT ORDERS AND DECLARES** that notice of paragraph 12 of this Order is to be given to Investors through the inclusion of a statement in the Notice Documents (the "Investment Statement") prepared using the prescribed methodology for the calculation of Claims.

14. **THIS COURT ORDERS** that the Trustee is authorized to accept a proof of claim from each Investor based upon the Investor Statement delivered to each Investor unless the Investor disputes the Investor Statement by filing a proof of claim in the prescribed form, with the prescribed schedules thereto, setting out the Investor's calculation of its claim against the Consolidated Estate.

15. **THIS COURT ORDERS** that the funds in the possession of KPMG Inc., in its capacity as Receiver and Manager of all of the property, assets and undertaking of the Companies, and all amounts recovered from any fraudulent preferences, fraudulent conveyances, settlements and other reviewable transactions constitute cash and securities and comprise the customer pool fund of the Consolidated Estate all within the meaning of Part XII of the BIA.

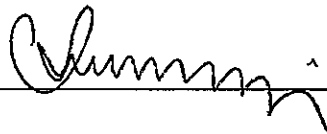
16. **THIS COURT ORDERS** that the Receiver be and it is hereby authorized to advance sufficient funds to the Trustee to fund the administration of the Consolidated Estate.

17. **THIS COURT ORDERS AND DECLARES** that nothing contained herein shall affect the Orders of this Honourable Court dated October 17, 2007 and October 30, 2007 made in the proceeding commenced by the Ontario Securities Commission against the Companies in which KPMG Inc. was appointed the Receiver and Manager of all property, assets and undertaking of the Companies and that those Orders shall remain in full force and effect unamended by this Order.

18. **THIS COURT ORDERS** that the Reimbursement Agreement between the Receiver and Bank of Montreal dated November 13, 2007 is binding upon the Trustee and the Consolidated Estate.

19. **THIS COURT ORDERS AND DECLARES** that nothing contained herein shall affect the validity, enforceability and/or priority of the Receiver's Charge established by paragraph 19 of the Order of this Honourable Court appointing KPMG Inc. Receiver and Manager of all of the property, assets and undertaking of the Companies dated October 17, 2007 (the "Appointment Order").


20. **THIS COURT ORDERS AND DECLARES** that the levy pursuant to Section 147 of the BIA is not payable upon allocations made by the Trustee from the customer pool fund to the customers of this Consolidated Estate pursuant to subsection 262(1) of Part XII of the BIA.



Christina Irwin
Registrar, Superior Court of Justice

1000 UNIVERSITY AVENUE TORONTO
ON / DOG. NO:
LE / DANS LE REGISTRE NO.:

MAR 27 2008

PER/PAR: 

ONTARIO

**SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at Toronto

ORDER

ThorntonGroutFinnigan LLP
Barristers and Solicitors
100 Wellington St. West
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, ON M5K 1K7

James H. Grout (LSUC #22741H 1B)
Rachelle F. Moncur (LSUC #45474I)
Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity as Receiver
and Manager of the property, assets and undertaking of
FactorCorp Inc. and FactorCorp Financial Inc.

Appendix “C”

Court File No. 32-OR-149151
Estate No. 32-OR-149151

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,
C. B-3, AS AMENDED

IN THE MATTER OF THE BANKRUPTCY OF LISA DAWN ROBBINS, AKA LISA DAWN
BONNEVILLE, AKA LISA DAWN TILSON, LISA DAWN ROBBINS CARRYING ON
BUSINESS AS POWER MASTER EQUIPMENT SALES OF THE CITY OF MISSISSAUGA,
IN THE PROVINCE OF ONTARIO

C O N S E N T

THE PARTIES hereto, none of whom are under any disability, do for themselves or
by their solicitors, hereby agree to an Order in the attached form.


DATED this 10th day of February, 2009.

DATED this 10th day of February, 2009.

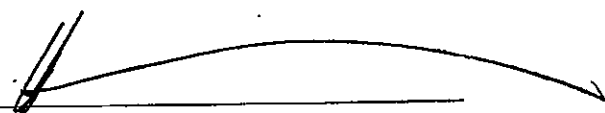
THORNTONGROUTFINNIGAN LLP

WASSERMAN ASSOCIATES INC.,
in its capacity as Trustee of the Estate of
Lisa Dawn Robbins, a bankrupt

PER:

Per 

Rachelle F. Moncur
Solicitors for the KPMG Inc., in its
capacity as Trustee of the
Consolidated Estate of Factor Corp
Inc. and FactorCorp Financial Inc.,
bankrupt corporations

Per: 

Howard M. Wasserman
(I have authority to bind the
corporation)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

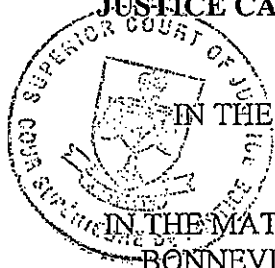
THE HONOURABLE MR.

) THURSDAY, THE 12TH DAY OF

)

JUSTICE CAMERON

) FEBRUARY, 2009



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,
C. B-3, AS AMENDED

IN THE MATTER OF THE BANKRUPTCY OF LISA DAWN ROBBINS, AKA LISA DAWN
BONNEVILLE, AKA LISA DAWN TILSON, LISA DAWN ROBBINS CARRYING ON
BUSINESS AS POWER MASTER EQUIPMENT SALES OF THE CITY OF MISSISSAUGA,
IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by Wasserman Associates Inc., in its capacity as Trustee of the Estate of Lisa Dawn Robbins, a bankrupt (the "Robbins Trustee"), for an Order approving the form of Settlement Agreement attached hereto as Schedule "A" (the "Settlement"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Consent, filed, the Settlement and proceedings herein:

1. **THIS COURT ORDERS** that the Settlement attached hereto as Schedule "A" be and it is hereby approved.
2. **THIS COURT ORDERS** that the Mutual Release attached hereto as Schedule "B" be and it is hereby approved.

3. **THIS COURT ORDERS** that each of the Notices of Motion dated March 17, 2008 and August 8, 2008 filed on behalf of the Robbins Trustee and the Notice of Motion dated October 16, 2008 filed on behalf of KPMG Inc., in its capacity as the Trustee of the Consolidated Estate of FactorCorp Inc. and FactorCorp Financial Inc., bankrupt corporations (collectively, the "Companies") and receiver and manager of the property, assets and undertaking of the Companies, be and are hereby dismissed without costs to any party, provided that the Robbins Trustee shall not be prohibited from seeking costs from any party other than KPMG Inc .

A handwritten signature in cursive script, appearing to read "Donald P. Lawrence J.", is written over a horizontal line.

Dec 22 2008 6:14PM

854-454-7125

p.3

SCHEDULE "A"**Estate of Lisa Robbins Proposal of Settlement to KPMG
December 22, 2008****Settlement Offer**

1. In the event that (i) Fred Tayar and Associates ("FTA") recovers any funds on account of the Property Claim of FactorCorp Financial Inc. ("FFI") in the Lisa Robbins Estate ("Robbins"), which claim was assigned to FTA by KPMG Inc., in its capacity as the trustee of the consolidated estate of FFI and FactorCorp Inc. (the "Trustee") pursuant to a Section 38 Order dated June 27, 2008 (the "Recovery"), and (ii) there is a surplus payment made by FTA to the Trustee as a result of the Recovery (the "Surplus"), then the Trustee shall pay to Wasserman Associates Inc., in its capacity as the trustee of Robbins ("WAI"), within 10 days of receipt of the Surplus, an amount which is equal to the lesser of:

(a) the Surplus; or

(b) the sum of \$25,000,

which amount is hereinafter referred to as the "Settlement Amount";

2. All outstanding motions between WAI and the Trustee and/or KPMG in its capacity as the Receiver of FFI (the "Receiver") shall be dismissed without costs, by mutual consent, subject to the exchange of releases as discussed below;

3. The Trustee shall acknowledge and accept WAI's unsecured claim against in the Consolidated Estate in the amount of \$55,000;

4. The Trustee, the Receiver and WAI shall exchange full and final mutual releases in respect of any actions/motions between the Trustee, the Receiver, WAI and/or the two estates;

5. WAI, in its capacity as Robbins Trustee, shall release KPMG both in its capacity as Receiver and Trustee for the FactorCorp Consolidated Estate, from any and all claims relating to the periods before and after January 5, 2005;

2 
Wasserman
Associates
Inc.

Dec 22, 2008 8:14PM

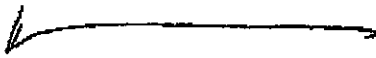
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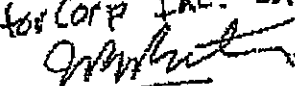
- 6. WAI shall agree to postpone any examination of the FactorCorp Consolidated Estate records until WAI, in its sole discretion, may be required to do so for reasons of obtaining information related to any other actions not involving KPMG;
- 7. WAI shall agree to withdraw its request to cross-examine Mr. Brad Butcher in respect of the affidavit materials filed in these proceedings;
- 8. The aforementioned shall be subject to court approval in the Robbins proceedings;
- 9. The aforementioned shall be subject to Inspector approval in the FactorCorp proceedings; and
- 10. This offer shall be open for acceptance by KPMG until 5pm on January 5, 2009, after which this offer shall become null and void.

Signed: December 22, 2008

Wasserman Associates Inc.,
Trustee for The Estate of Lisa Robbins

Per: 
Howard M. Wasserman

Accepted: January 5, 2009

KPMG INC.
Trustee of the Consolidated Estate
of FactorCorp Inc. and FactorCorp Financial Inc.
PER: 
J. BRADLEY BUTCHER
VICE PRESIDENT



3 Wasserman Associates Inc.

SCHEDULE "B"

MUTUAL RELEASE

NOW THEREFORE THIS AGREEMENT WITNESSETH that KPMG Inc., in its capacity as the Trustee of the Consolidated Estate of FactorCorp Inc. and FactorCorp Financial Inc., bankrupt corporations (collectively, the "Companies"), and receiver and manager of the property, assets and undertaking of the Companies, and all of its officers, directors, shareholders, agents, employees, administrators, successors, and assigns (hereinafter collectively referred to as the "FactorCorp Trustee") and Wasserman Associates Inc., in its capacity as Trustee of the Estate of Lisa Dawn Robbins, a bankrupt, and all of its officers, directors, shareholders, agents, employees, administrators, successors, and assigns (hereinafter collectively referred to as the "Robbins Trustee"), in consideration of the mutual covenants set forth in the Settlement Agreement attached hereto as Schedule "A", and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby fully and forever, irrevocably and unconditionally, release, remise, acquit, quitclaim and discharge each other from any and all actions, causes of actions, suits, proceedings, debts, liabilities, duties, accounts, bonds, covenants, contracts, claims, demands, damages, losses, expenses, sums of money, promises, grievances, executions, judgments, obligations and liabilities whatsoever whether in law or in equity, whether claimed or unclaimed implied or expressed, liquidated or unliquidated whatever known or unknown, which they ever had, now have, or may have in the future for any reason, including those which arise from, incidental to or are in connection with the Notices of Motion dated March 17, 2008 and August 8, 2008 filed on behalf of the Robbins Trustee and the Notice of Motion dated October 16, 2008 filed on behalf of the FactorCorp Trustee, and any matters that could have been raised therein by the Robbins Trustee and/or the FactorCorp Trustee.

AND FOR THE SAID CONSIDERATION the parties hereto further agree not to initiate or maintain any claim or take any proceeding, legal, administrative or otherwise, against any other person, firm, corporation or other entity of any kind whatsoever which might be entitled to claim contribution, indemnity or other relief or remedy whether under the provisions of the *Negligence Act* or otherwise or otherwise from each other with respect to any of the matters which are released by this Release.

223352-5

AND IT IS UNDERSTOOD AND AGREED that nothing in this Release shall affect the Robbins Trustee's rights, if any, to assert a claim in the Robbins bankruptcy proceeding against any of the frozen funds (such frozen funds being in the amount of approximately \$170,000).

AND FOR THE SAID CONSIDERATION the parties represent and warrant that they have not assigned to any other person, firm, corporation, or other legal entity any of the matters which it releases by this Release, or with respect to which it agrees not to make any claim or take any proceedings herein.

AND IT IS FURTHER UNDERSTOOD AND AGREED that this Release is binding upon all of the parties to it, their heirs, executors, administrators, successors and assigns, and shall extend to and enure to the benefit of all of the parties to this Release, their officers, directors, agents, representatives, employees, successors and assigns.

AND IT IS HEREBY DECLARED that the terms of this Release are fully understood and that the said Release is given voluntarily for the purpose of making a full and final compromise, adjustment and settlement of all claims between the parties.

THE PARTIES HERETO acknowledge that each has signed this Release without duress, coercion or undue influence and fully understands the nature and consequence of this Release.

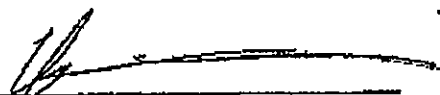
IN THE EVENT that any provision or portion of any clause of this Release shall be held invalid, illegal or unenforceable under any applicable law, the invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remainder of this Release.

THIS RELEASE shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.


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IN WITNESS WHEREOF and for consideration received, the undersigned have duly executed this Release this 10th day of February, 2009.

WASSERMAN ASSOCIATES INC., in its capacity as Trustee of the Estate of Lisa Dawn Robbins, a bankrupt, with no personal or corporate liability

Per: 
Name: Howard M. Wasserman
Title:
(I have authority to bind the Corporation.)

KPMG INC., in its capacity as the Trustee of the Consolidated Estate of FactorCorp Inc. and FactorCorp Financial Inc., bankrupt corporations, and receiver and manager of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc., with no personal or corporate liability

Per: 
Name: J. Bradley Butcher
Title: Vice President
(I have authority to bind the Corporation.)



IN THE MATTER OF THE BANKRUPTCY OF LISA DAWN ROBBINS, AKA LISA DAWN BONNEVILLE, AKA LISA DAWN
TILSON, LISA DAWN ROBBINS CARRYING ON BUSINESS AS POWER MASTER EQUIPMENT SALES OF THE CITY OF
MISSISSAUGA, IN THE PROVINCE OF ONTARIO

Court File No. 32-OR-149151

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced in Toronto

ORDER

ThorntonGroutFinnigan LLP
Canadian Pacific Tower
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Rachelle F. Moncur • LSUC# 45474I
Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity as
Trustee of the Consolidated Estate of FactorCorp Inc.
and FactorCorp Financial Inc., bankrupt corporations

Appendix “D”

FACTORCORP FINANCIAL INC.

**SUMMARY STATEMENT OF RECEIVER AND MANAGER'S
RECEIPTS AND DISBURSEMENTS
for the period October 17, 2007 to March 10, 2009**

RECEIPTS:

Interest Receivable (Note 1)	\$842,316.89
Transfer from Company accounts	666,136.20
Repayment of Principal (Note 2)	455,958.82
Refund of Retainer	16,583.74
Deposit interest	<u>32,190.52</u>

Total receipts \$2,013,186.17

DISBURSEMENTS:

Monitor's fees	\$85,684.34
Receiver's fees	588,206.77
Legal fees	291,068.79
GST paid	56,505.17
Professional Services	19,437.32
Computer Consulting fees	10,373.95
Transfer to Trustee account	5,000.00
Miscellaneous and office expenses	1,933.91
Mail Expense	1,476.66
Redirection of mail	110.00
Filing fees	<u>70.00</u>

Total disbursements \$1,059,866.91

Excess of Receipts over Disbursements \$953,319.26

Represented By:

Balance in Receiver's Accounts	\$75,384.36
GIC maturing October 26, 2009	414,000.00
GIC maturing November 6, 2009	51,700.00
GIC maturing March 27, 2009	<u>412,234.90</u>
	<u>\$953,319.26</u>

Notes

1 Interest payments received are comprised of:

Customer	Amount
Breken Financial	\$86,437
CanFactor Inc.	47,174
Capmor Financial	20,110
Forbes Hutton I	423,500
Forbes Hutton II	66,666
Forbes Hutton III	48,918
Lease Capital	<u>149,511</u>
	<u>\$842,317</u>

2 Principal payments received are comprised of:

Customer	Amount
Integra	\$293,466
Capmor Financial	<u>162,493</u>
	<u>\$455,959</u>

Appendix “E”

FACTORCORP INC.

**SUMMARY STATEMENT OF RECEIVER AND MANAGER'S
RECEIPTS AND DISBURSEMENTS
for the period October 17, 2007 to March 10, 2009**

RECEIPTS:

Transfer from Company accounts	\$5,665.00
Deposit interest	-

Total receipts	<u>\$5,665.00</u>
----------------	-------------------

DISBURSEMENTS:

Filing fees	70.00
Miscellaneous and office expenses	<u>90.02</u>

Total disbursements	<u>\$160.02</u>
---------------------	-----------------

Excess of Receipts over Disbursements	<u>\$5,504.98</u>
---------------------------------------	-------------------

Represented By:

Balance in Receiver's Accounts	\$5,504.98
--------------------------------	------------

	<u>\$5,504.98</u>
--	-------------------

ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

FIFTH REPORT TO THE COURT
SUBMITTED BY KPMG INC.,
AS RECEIVER AND MANAGER

ThorntonGroutFinnigan LLP
Canadian Pacific Tower
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Rachelle F. Moncur
LSUC# 45474I

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity
as Receiver and Manager

Tab 3

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

FACTORCORP INC. and FACTORCORP FINANCIAL INC.

Defendants

AFFIDAVIT OF J. BRADLEY BUTCHER DATED MARCH 12, 2009

I, J. Bradley Butcher, of the City of Mississauga, in the Province of Ontario, make oath and say as follows:

1. I am the Vice-President of KPMG Inc., the Court-Appointed Receiver and Manager of FactorCorp Inc. and FactorCorp Financial Inc. (the “Debtors” or the “Companies”) and as such have personal knowledge of the matters hereinafter deposed to.

2. By Orders of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) dated October 17 and 30, 2007 (collectively, the “Appointment Order”), KPMG Inc. was appointed as Receiver and Manager (the “Receiver”) of all of the property, assets and undertakings of the Companies. The appointment was made pursuant to an application by the Ontario Securities Commission (“OSC”).

3. For the period October 17, 2007 to February 28, 2009 (the “Application Period”), the Receiver has engaged in various activities in connection with the administration of the receivership of the Debtors, including:

(a) Securing and Preserving the Property/General:

- retaining ThorntonGroutFinnigan LLP (“TGF”) as the Receiver’s independent counsel, ongoing liaison with TGF throughout the receivership;
- correspondence, telephone conversations and meetings with representatives of Cassels, Brock & Blackwell LLP and Peter Carey, solicitors for the Debtors and for Mr. Mark Twerdun, the principal of the Debtors, regarding access to hardcopies and electronic versions of the Debtors’ records, issues regarding privilege;
- notification to the Debtors’ banker, Bank of Montreal (“BMO”) to freeze the funds in all of the Debtors’ accounts, subsequent instructions to BMO to transfer the funds in such accounts to the Receiver’s accounts at Canadian Imperial Bank of Commerce (“CIBC”); and
- establishing arrangements with Regus, operator of the office suite locale, to forward mail and faxes to the Receiver.

(b) Dealings with Borrowers and Investee:

- notification of borrowers and subsequent follow-up telephone conversations, meetings and correspondence to effect collections and obtain information necessary to complete account reconciliations, including:
 - in connection with Express Commercial Services Inc. (“ECS”), attending at Royal Reef Resort in Turks & Caicos, retaining local counsel, meeting with Mr. P. Paatz, the principal of ECS;
 - in connection with W3 Connex Inc. (“W3”), numerous meetings and telephone conversations with W3 and other secured lenders, participation in the of retention of Fuller Landau LLP to act as adviser to the secured lenders, eventually participating in application to have Fuller Landau LLP appointed as receiver and manager of W3, development of tentative allocation scheme for net proceeds; and
 - in connection with Sydcom Wireless, making inquiries of The Bank of Nova Scotia, Randall Aquino and others as to whereabouts of assets, background to the loan, status of business;
- consideration of certain settlement offers;
- calculation of debt amounts; and
- in connection with the bankruptcy of Lisa Dawn Robbins, various dealings with the Trustee of the Robbins Estate, including Court attendances.

- (c) Dealings with Debtors and Related Entities:
- meeting with Mr. Mark Twerdun on October 19, 2007 at the Debtors' Mississauga office to obtain possession of certain records;
 - meetings and correspondence with Mr. Peter Carey in attempts to obtain records and responses to queries on certain transactions; and
 - establishment of a records protocol.
- (d) Dealing with Creditors and Debenture Holders:
- issuance of the Receiver's statutory statement and report to creditors pursuant to s.245(1) and s.246(1) of the *Bankruptcy and Insolvency Act* ("BIA");
 - various telephone conversations and correspondence with Debenture Holders and other unsecured creditors;
 - arranging for preparation of 2007 T5 forms re interest paid, various inquiries regarding same;
 - establishment of a website with respect to information on the FactorCorp receivership which website is accessible to creditors, Debenture Holders and the public; and
 - preparation and issuance of update letters to Debenture Holders dated October 29, 2007, November 14, 2007, January 29, 2008 and February 29, 2008.
- (e) Investigation of Companies' Affairs:
- liaison with Farnham & Company, Chartered Accountants; review accounting and corporate tax information received;
 - investigation of the appropriateness of the Company's treatment of dividends received from the preferred shares in ECS as capital gains dividends; advise Canada Revenue Agency ("CRA") of concerns;
 - correspondence with Mr. G. Buchan-Terrell, former solicitor to the Companies; attendance at his office to obtain files;
 - ongoing correspondence with BMO to obtain copies of Companies' banking documents, prepare reconstruction of Companies' bank accounts to identify receipts and disbursements, follow-up on questionable payments; and
 - retain Deloitte & Touche to act as independent party to image documents on Twerdun's laptop and blackberry.

- (f) Financial Management and Administration:
- establishing and administering the Receiver's bank account, including preparation of periodic reconciliations and investment of surplus funds;
 - dealing with audits, by CRA, of the Debtor's GST account for the pre-receivership periods;
 - attendance to various other administrative matters, including filing of GST returns; and
 - extensive activity related to electronic funds transfer payments inadvertently made by BMO effective November 1, 2007 to Debenture Holders and others.

- (g) Reporting and Court Applications:
- preparation of and/or assistance to TGF, in the preparation of various Reports to the Court as summarized below, and attending on the related motions;

Reference	Date
First Report	October 29, 2007
Second Report	November 21, 2007
Supplement to Second Report	November 26, 2007
Third Report	December 19, 2007
Supplement to Third Report	December 27, 2007
Fourth Report	March 10, 2008
First Supplement to Fourth Report	March 20, 2008
Second Supplement to Fourth Report	March 20, 2008
Fifth Report	March 12, 2009

- (h) Litigation:
- review of litigation commenced by New Solutions against Twerdun and FactorCorp, and the payment, by FactorCorp, in the eve of the receivership, of cost awards in favour of New Solutions; and
 - review of an action for damages commenced by the Companies just prior to the receivership against Farm Mutual Financial Services Inc.

- (i) Other:
- preparation for bankruptcy of the Companies, including consultations with the Office of the Superintendent of Bankruptcy and TGF;
 - investigating the backgrounds of certain individuals and entities associated with the Companies;

- liaising with regulatory authorities, including attendance at certain relevant hearings and meetings with the Ontario Securities Commission and the Mutual Fund Dealers Association; and
- dealing with inquiries from prospective purchasers.

4. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a summary of the accounts rendered by the Receiver in respect of the proceedings (the "Accounts") for the Application Period. Attached hereto and marked as **Exhibit "B"** are copies of the Accounts.

5. In the course of its administration of the receivership during the Application Period, the Receiver's staff has expended 1,274.5 hours of time, which aggregates to fees of \$574,448.18 based on KPMG Inc.'s hourly billing rates and yields an average hourly rate of \$450.72. In addition, the Receiver has incurred out-of-pocket expenses of \$13,758.58 for transportation, postage, courier, telephone, printing and photocopying costs. The dollar amounts referred to in this paragraph are before GST.

6. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other large accounting firms in the Toronto market for the provision of similar services and reflect a discount normally provided by KPMG Inc. on engagements initiated by the OSC.

7. I verily believe that the Accounts are fair and reasonable in the circumstances.

8. The Receiver's fees and disbursements for the period from March 1, 2009 up to and including the effective date of the Receiver's discharge will be calculated and billed at KPMG Inc.'s current rates for this matter. Barring unforeseen circumstances, and assuming that the matters which the Receiver must attend to are not substantially greater than those set out in the Outstanding Matters section of the Receiver's Fifth Report to the Court, I estimate that those additional fees and disbursements will not exceed \$10,000.

9. Attached as Exhibit "A" to the Affidavit of James Grout sworn and filed in support of the within motion, is a summary of the accounts rendered by TGF, counsel to the Receiver, for the period October 17, 2007 to February 28, 2009.

10. TGF rendered services throughout these proceedings in a manner consistent with instructions from the Receiver. I verily believe that the fees and disbursements of TGF are fair and reasonable in the circumstances.

11. This Affidavit is sworn in support of the Receiver's motion for approval of its fees, disbursements and activities for the Application Period.

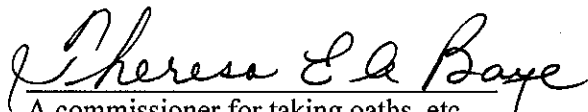
SWORN BEFORE ME

at the City of Toronto, in the
Province of Ontario this 12th
day of March, 2009.

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J. BRADLEY BUTCHER



A commissioner for taking oaths, etc.

**THERESA EVA ANNE BAYE, A
Commissioner, etc., City of Toronto,
for KPMG LLP, Chartered Accountants,
KPMG Inc. Trustee in Bankruptcy and
KPMG Management Services LP.
Expires February 6, 2011.**

COURT APPOINTED RECEIVER OF FACTORCORP INC. AND FACTORCORP FINANCIAL INC.

Summary of Time by Person
for the period September 16, 2007 to February 28, 2009

Staff	Rate	Oct 17 Nov 15/07	Nov 30/07	Dec31/07	Jan 31/08	Feb 29/08	Mar 31/08	Apr 30/08	Feb 28/09	Total Hours	Total \$	
Partner:												
M. Creber	\$585	5.0	1.5	4.0	0.7	4.7	5.9			21.8	\$ 12,753.00	
R. Rusko	\$585	1.5				4.5		2.4		8.4	\$ 4,914.00	
J. Hunter	\$585		1.4							1.4	\$ 819.00	
Associate Partner:												
E. Murphy	\$550	41.3	18.4	38.1	37.1	42.6	45.3	12.1		234.9	\$ 129,195.00	
Senior Manager:												
J.B. Butcher	\$530	109.8	53.6	76.3	94.8	75.6	56.9	43.2	7.9	518.1	\$ 274,593.00	
J. Bradley	\$480	2.0								2.0	\$ 960.00	
M. Moszynski	\$530				1.0					1.0	\$ 530.00	
S. Lefort	\$530						2.0			2.0	\$ 1,060.00	
Manager:												
T. Zakharova	\$340		24.0							24.0	\$ 8,160.00	
Specialist												
R. Stuart	\$335	100.3	23.6	53.5	43.5					220.9	\$ 74,001.50	
S. Mohr	\$335				4.4	14.4	2.0	8.7		29.5	\$ 9,882.50	
Y. Gutmanovitz	\$285		2.0							2.0	\$ 570.00	
S. Mandrapilias	\$335						0.5			0.5	\$ 167.50	
Analysts												
J. Bastian	\$220		1.2							1.2	\$ 264.00	
J. Trent	\$220		2.1							2.1	\$ 462.00	
Technician:												
A. Rzhovsky	\$220	14.9	0.9	3.1	4.0	25.1	12.4	7.9	18.6	86.9	\$ 19,118.00	
Staff Accountant												
S. Kim	\$105						8.8			8.8	\$ 924.00	
Administrative												
	\$80	34.0	11.5	6.0	14.0	23.0	19.5		1.0	109.0	\$ 8,720.00	
		308.8	140.2	181.0	199.5	189.9	153.3	74.3	27.5	1,274.5	\$ 547,093.50	
Add 5% Administration											\$27,354.68	
Total											\$ 574,448.18	
											Average Rate	\$450.72
Add Out of Pocket Expenses including:												
Transportation		254.00	60.64	5,622.00	170.16			89.15	89.15		6,195.95	
Courier charges & postage				953.00	4.00		1,818.00				2,775.00	
Printing charges		3,375.00		210.00							3,585.00	
Searches			1,104.30								1,104.30	
Other					62.00		36.33				98.33	
		3,629.00	1,164.94	6,785.00	236.16		1,854.33	89.15	89.15		13,758.58	
											\$ 588,206.76	
Add GST @ 6% (5% as of Jan 1/08)											31,361.47	
											\$ 619,568.23	

THIS IS EXHIBIT "A"
REFERRED TO IN THE AFFIDAVIT OF
J. BRADLEY BUTCHER

SWORN BEFORE ME THIS 12
DAY OF MARCH 20 09
Cheresa E. Baye
A COMMISSIONER, ETC.

EXHIBIT "B"

**RECEIVERSHIP OF FACTORCORP INC.
AND FACTORCORP FINANCIAL INC.**

**COPIES OF RECEIVER'S ACCOUNTS
FOR THE PERIOD OCTOBER 17, 2007 TO FEBRUARY 28, 2009**

NOTE: AS DESCRIBED IN THE RECEIVER'S FIFTH REPORT TO THE COURT, THE ACCOUNTS ARE NOT INCLUDED HEREIN AS THE RECEIVER INTENDS TO SEEK AN ORDER SEALING THE ACCOUNTS UNTIL THE COMPLETION OF THE ADMINISTRATION OF THE CONSOLIDATED BANKRUPTCY.

ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

AFFIDAVIT OF J. BRADLEY BUTCHER

ThorntonGroutFinnigan LLP
Canadian Pacific Tower
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Rachelle F. Moncur
LSUC# 45474I

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity
as Receiver and Manager

Tab 4

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C.S.5, AS AMENDED

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

FACTORCORP INC. and FACTORCORP FINANCIAL INC.

Respondents

AFFIDAVIT OF JAMES H. GROUT

Sworn March 11, 2009

I, **James H. Grout**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Barrister and Solicitor qualified to practice law in the Province of Ontario and am a partner with ThorntonGroutFinnigan LLP (“TGF”), solicitors for KPMG Inc., in its capacity as Receiver and Manager (the “Receiver”) of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc. (collectively, the “Companies”) and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. True copies of the invoices forwarded to the Receiver by TGF for fees and disbursements incurred by TGF in the course of the receivership of the Companies between October 17, 2007 and February 28, 2009 (the “Invoices”) will be filed with the Court at the return of this motion. The Receiver intends to seek an order sealing the Invoices until

completion of the administration of the Consolidated Estate of the Companies, bankrupt corporations, by the Trustee in Bankruptcy, or until further order of this Court.

3. The total amount of professional fees being claimed for work performed by TGF for the period from October 17, 2007 to February 28, 2009 inclusive is \$280,477.50, plus disbursements of \$10,621.29 (excluding GST). Attached hereto as Exhibit "A" is a schedule summarizing each of the Invoices, the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

4. Attached hereto as Exhibit "B" is a schedule summarizing the respective years of call and billing rates of each of the solicitors at TGF who acted for the Receiver.

5. TGF's fees have been calculated and billed at a discount of approximately 20% from the firm's standard rates. To the best of my knowledge, the rates charged by TGF throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

6. The hourly billing rates outlined in Exhibit "B" to this affidavit are comparable to the hourly rates charged by TGF for services rendered in relation to similar proceedings.

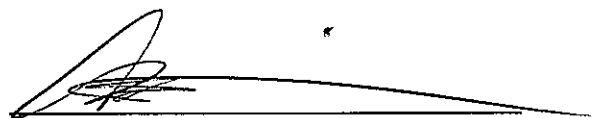
7. TGF's fees and disbursements for the period from March 1, 2009 up to and including the effective date of the Receiver's discharge will be calculated and billed at a discount of approximately 20% from the firm's standard rates. Barring unforeseen circumstances, I estimate that those fees and disbursements will not exceed \$5,000.00.

8. I make this affidavit in support of a motion by the Receiver for, *inter alia*, approval of the fees and disbursements of the Receiver's counsel.

SWORN BEFORE ME
at the City of Toronto, in the
Province of Ontario this 11th
day of March, 2009.

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)


James H. Grout


A commissioner for taking oaths, etc.

Annette Melinda Fournier, a Commissioner, etc.,
City of Toronto, for ThorntonGroutFinnigan LLP,
Barristers and Solicitors.
Expires November 8, 2010.

EXHIBIT "A"

Calculation of Average Hourly Billing Rates of
ThorntonGroutFinnigan LLP
for the period October 17, 2007 to February 28, 2009

Invoice No.	Fees	Disbursements	GST	Hours	Average Rate	Total
18445	\$32,650.50	\$ 1,442.21	\$ 2,032.54	83.9	\$389.16	\$36,125.25
18635	50,771.50	1,544.94	3,118.71	139.3	364.48	55,435.15
18703	27,453.50	1,530.05	1,440.43	102.1	268.89	30,423.98
18963	78,357.50	4,142.56	4,099.61	232.2	337.46	86,599.67
19376	88,670.50	1,886.66	4,518.31	275.5	321.85	95,075.47
20212	945.00	12.87	47.89	5.4	175.00	1,005.76
20380	1,137.50	0.00	56.88	6.5	175.00	1,194.38
20643	461.50	62.00	26.18	1.3	355.00	549.68
	\$280,447.50	\$10,621.29	\$15,340.55			\$306,409.34

EXHIBIT "B"

Billing Rates of ThorntonGroutFinnigan LLP

For the period October 17, 2007 to December 31, 2007

	<u>Rate</u>	<u>Year of Call</u>
James H. Grout	\$600.00	1983
Leanne M. Williams	\$425.00	1999
Rachelle F. Moncur	\$330.00	2002
Seema Aggarwal	\$225.00	2005
Danny Nunes	\$175.00	2007
Annette Fournier	\$175.00	Law Clerk
Sara Wilson	\$175.00	Student-at-Law

For the period January 1, 2008 to February 28, 2009

	<u>Rate</u>	<u>Year of Call</u>
James H. Grout	\$625.00	1983
Rachelle F. Moncur	\$355.00	2002
Larry Ellis	\$275.00	2004
Danny Nunes	\$200.00	2007
Sara Wilson	\$175.00	2008
Annette Fournier	\$175.00	Law Clerk
Sara Wilson	\$175.00	Student-at-Law
Stephen Wolpert	\$175.00	Student-at-Law

**Invoices to be filed with the Court and sealed from
public record.**

ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

AFFIDAVIT OF JAMES H. GROUT
(Sworn March 11, 2009)

ThorntonGroutFinnigan LLP
Canadian Pacific Tower
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Rachelle F. Moncur
LSUC# 45474I

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity
as Receiver and Manager

Tab 5

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE _____) WEDNESDAY, THE 18TH DAY
JUSTICE _____) OF MARCH, 2009

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

FACTORCORP INC. AND FACTORCORP FINANCIAL INC.

Respondents

ORDER

THIS MOTION, made by KPMG Inc. in its capacity as the Court-appointed receiver and manager (the "Receiver") of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc. (collectively the "Debtors"), for an order, among other things, approving the activities of the Receiver as set out in the Fifth Report of the Receiver dated March 11, 2009 (the "Fifth Report") and discharging the Receiver, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report, the Fee Affidavits (as defined herein), and on hearing the submissions of counsel for the Receiver and Cassels Brock & Blackwell LLP ("Cassels"), no one else appearing although served as evidenced by the Affidavit of Roxana Manca sworn March 12, 2009, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that this Motion is properly returnable today, that all parties entitled to notice of the Motion have been duly served with notice, that no other parties are affected by this Order, and that any requirement for service of the Notice of Motion and the Motion Record upon any party other than the parties served is unnecessary and is hereby dispensed with and that the service of the Notice of Motion and the Motion Record is hereby validated in all respects.

2. THIS COURT ORDERS that the conduct and activities of the Receiver, as set out in the Fifth Report, be and are hereby approved.

3. THIS COURT ORDERS that the Receiver's Statements of Receipts and Disbursements for the period of October 17, 2007 to March 10, 2009 be and is hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its legal counsel, as set out in the Fifth Report and the fee affidavits of J. Bradley Butcher sworn March 12, 2009 and James H. Grout sworn March 11, 2009 (collectively, the "Fee Affidavits"), be and are hereby approved.

5. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to KPMG Inc. in its capacity as trustee in bankruptcy (the "Trustee") of the consolidated estate of the Debtors, less a holdback amount of \$15,000 with respect to the Receiver's further fees and expenses and those of its legal counsel for the period from March 1, 2009 up to and including the effective date of the Receiver's Discharge.

6. THIS COURT ORDERS that the Receiver's and its legal counsel's accounts attached as Exhibits to the Fee Affidavits be sealed pending completion of the administration of the consolidated estate by the Trustee or until further Order of the Court.

7. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 5 hereof, and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report, the Receiver shall be discharged as Receiver of the property, assets and undertaking of the Debtors, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required

to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KPMG Inc. in its capacity as Receiver.

8. THIS COURT ORDERS AND DECLARES that KPMG Inc. is hereby released and discharged from any and all liability that KPMG Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG Inc. while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, KPMG Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

9. THIS COURT ORDERS AND DECLARES that Cassels does not have a priority claim to any funds in the Receiver's account or against the Receiver with respect to the outstanding legal fees owing by the Debtors to Cassels.

ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

ORDER

ThorntonGroutFinnigan LLP
Canadian Pacific Tower
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Rachelle F. Moncur
LSUC# 45474I

Tel: (416) 304-1616

Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity
as Receiver and Manager

ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced in Toronto

MOTION RECORD
(Returnable March 18, 2009)

ThorntonGroutFinnigan LLP
Canadian Pacific Tower
100 Wellington Street West
Suite 3200, P.O. Box 329
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Rachelle F. Moncur
LSUC# 45474I

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for KPMG Inc., in its capacity as
Receiver and Manager of the property, assets and
undertakings of FactorCorp Inc. and FactorCorp
Financial Inc.