

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

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

December 19, 2007

Listing of Appendices

- 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 - Document Delivery Protocol
- Appendix C - Copy of correspondence dated November 7, 2007 from TGF to Cassels
- Appendix D - Copy of correspondence dated November 29, 2007 from TGF to Cassels
- Appendix E - Exchange of e-mails dated November 23, 2007 between TGF and Grant Buchan-Terrell

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1. Introduction

1.1 Appointment of Receiver

- 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"). 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 "Act").
- 1.1.2 The Receiver has relied upon information and records available from the Companies and from third parties. The Receiver's review of this information does not constitute an audit of the financial position or operating results of the Companies. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the administration of the receivership.
- 1.1.3 KPMG Inc. was initially engaged as 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 Companies had been operating since July 6, 2007 under conditions imposed by Orders made by the OSC (the "Temporary Orders"). Those conditions included: (i) the appointment of a Monitor, (ii) a moratorium 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.

1.2 FFI Receivership

- 1.2.1 The shares of FFI are owned by Mr. Mark Twerdun ("Twerdun") and certain of Twerdun's family members. Twerdun is the sole officer and director of FFI.
- 1.2.2 FFI is an Ontario corporation. FFI is not a reporting issuer and is not registered with the OSC. According to FFI's Offering Memorandum (the "FFI OM"), the Debentures were to be sold pursuant to the accredited investor exemption from the prospectus requirement of Section 53 of the Act. FFI raised approximately \$58 million by issuing non-prospectus qualified debentures (the "Debentures") to approximately 700 Ontario investors over the last approximately four years (the "Debenture Holders"). Approximately \$50 million of the Debentures remain outstanding and are held by approximately 625 Debenture Holders. FFI pooled the funds raised from the issuance of the Debentures.

- 1.2.3 FFI received significant redemption requests, but was unable to meet all outstanding requests for redemptions. FFI suspended redemptions in May, 2007.
- 1.2.4 FFI represented in the FFI OM that all funds raised by the sale of the Debentures would be invested in secured loans. The Receiver understands that the funds raised were either loaned to various borrowers or invested in preferred shares. A significant portion of the funds raised were lent to various borrowers (the "Borrowers"). Some of the Borrowers, in turn, loaned funds to various small to mid-sized businesses.
- 1.2.5 As noted above in 1.1.3, the OSC made the first Temporary Order on July 6, 2007. The First Temporary Order was continued and amended by subsequent Temporary Orders. While subject to the Temporary Orders and the monitoring engagement, FFI made attempts to obtain new financing to fund, amongst other things, the redemption of the Debentures. The Companies' efforts were unsuccessful. As a result, the OSC sought and obtained the appointment of the Receiver on October 17, 2007.

1.3 FCI Receivership

- 1.3.1 FCI is an Ontario corporation registered under Ontario securities law as a Limited Market Dealer ("LMD").
- 1.3.2 Twerdun is the sole officer, director and shareholder of FCI.
- 1.3.3 The Receiver understands that FCI was involved in the initial distribution of the Debentures approximately four years ago, but since that time FCI has been essentially inactive.

1.4 Previous Reports to the Court

- 1.4.1 The Receiver filed its First Report to the Court on October 29, 2007.
- 1.4.2 On October 30, 2007, this Honourable Court issued the following Orders:
 - i) 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
 - ii) an Order approving the Receiver's conduct and activities as described in the First Report and declaring that the Order dated October 5, 2007, which dealt with certain confidentiality issues, terminated upon the making of the Appointment Order.
- 1.4.3 The Receiver filed its Second Report to the Court on November 21, 2007 and its Supplemental Report to the Second Report on November 26, 2007 (collectively, the "Second Report") to provide the Court with an evidentiary basis to make an Order authorizing the Receiver to issue and proceed with an application for a Bankruptcy Order against the Companies on a consolidated basis, directing the payment of the amount of approximately \$16,583.74 from Stockwoods LLP to

the Receiver, approving the BMO Reimbursement Agreement (as defined in the Second Report) and directing Twerdun to attend an examination under oath.

- 1.4.4 On November 27, 2007, this Honourable Court issued an Order:
- i) approving the activities and conduct of the Receiver as described in the Second Report;
 - ii) 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;
 - iii) ordering and directing Stockwoods LLP to pay the amount of \$16,583.74 to the Receiver; and
 - iv) approving the BMO Reimbursement Agreement, as described in the Second Report.
- 1.4.5 The Receiver and counsel for Twerdun agreed to work towards a date for the examination of Twerdun for the end of January, 2008.

1.5 Purpose of this Report to the Court

- 1.5.1 The purpose of this Third Report of the Receiver (the "Third Report") is to provide the Court with an evidentiary basis to make an Order:
- i) approving the Document Delivery Protocol attached hereto as **Appendix B** (the "Document Delivery Protocol"); and
 - ii) appointing an independent third-party privilege officer (the "Privilege Officer"), to be identified by the Receiver on or before December 28, 2007.

2. Document Delivery

2.1 Status of Document Delivery to Date

- 2.1.1 From August 1, 2007 to October 16, 2007, the Monitor made requests for copies of certain of the Companies' books and records in order to fulfill its mandate pursuant to the terms of the Engagement Letter. The Monitor was provided with copies of certain of the books and records of the Companies which were in the possession of Twerdun.
- 2.1.2 As previously stated, the Receiver was appointed on October 17, 2007. The Receiver made its first request for delivery of all of the books, records, documents, computers (including laptops and Twerdun's BlackBerry) and all other information pertaining to the Companies, whether stored on computers owned by the Companies or otherwise, the Companies' banking records, tax returns, financial statements and all of the customer files which were returned to Twerdun during the monitoring engagement (collectively, the "Books and Records"). This request was made by the Receiver's counsel, ThorntonGroutFinnigan LLP ("TGF"), to counsel for the Companies, Cassels Brock & Blackwell LLP ("Cassels").
- 2.1.3 On October 19, 2007, Cassels first raised a concern that there may be a number of documents of the Companies, whether in hard copy or electronic form, which are subject to a claim for privilege. TGF and Cassels agreed that a protocol to protect from disclosure any documents which contain privileged information was appropriate. TGF also requested an inventory list of all the documents which Cassels proposed to sequester so that the issue of privilege may be determined at a later date and requested delivery of all other Books and Records to the Receiver forthwith.
- 2.1.4 Cassels delivered seven boxes of files to the Receiver on October 22, 2007. The Receiver and TGF do not know how many documents were removed from these boxes of files.

2.2 The Imaged Documents

- 2.2.1 On October 19, 2007, TGF and Cassels agreed that the Companies' laptop and Twerdun's BlackBerry be delivered to a neutral third party for imaging (the "Imaged Documents"). TGF and Cassels agreed to the engagement of a neutral third party for the purpose of imaging the Imaged Documents and the imaging of such documents was completed by Deloitte & Touche Inc. (the "Third-Party Imager") on Friday, October 26, 2007.
- 2.2.2 On or about October 31, 2007, the Third-Party Imager provided Cassels with copies of the Imaged Documents so that Cassels could review the documents and catalogue the e-mails/files which they believed to be privileged or personal.
- 2.2.3 On November 12, 2007, Cassels delivered the documents from the laptop and USB flash drive of Twerdun which Cassels considered to be relevant to the

business of the Companies and were, therefore, not privileged, together with a list of those documents which it considered to be privileged communications.

- 2.2.4 The documents delivered by Cassels on November 12, 2007 did not contain any of the emails from Twerdun's BlackBerry.
- 2.2.5 On November 23, 2007, TGF contacted Cassels to inquire as to when the Receiver could expect to receive the emails that were imaged by the Third-Party Imager. Cassels subsequently advised that, due to the large number of emails and the formatting thereof, they were experiencing considerable difficulties in getting this information to the Receiver. Cassels also advised that they would attempt to get a first batch of emails to the Receiver early the following week.
- 2.2.6 On November 27, 2007, TGF advised Cassels to refrain from reviewing any of the emails for privilege until further notice as the Receiver was of the view that privilege was being claimed in respect of far too many documents and the process was taking far too much time.
- 2.2.7 On December 7, 2007, Cassels delivered a hard copy of emails from 2004 and 2005 only, and the Receiver and TGF do not know how many pages were held back by Cassels pending a determination as to privilege/personal communications by Cassels. The Receiver has not received any emails from 2006 and 2007.

2.3 The Buchan-Terrell Documents

- 2.3.1 On October 23, 2007, TGF contacted Grant Buchan-Terrell, former corporate counsel for the Companies, to advise that the Receiver had been appointed and to make arrangements to pick up Grant Buchan-Terrell's documents with respect to the Companies (the "Buchan-Terrell Documents").
- 2.3.2 The Buchan-Terrell Documents were delivered to TGF's offices on October 25, 2007. On the same date, TGF contacted Cassels to determine whether Cassels had any issues with TGF reviewing such files. Cassels advised that it would like to review such files for privileged communications.
- 2.3.3 The Buchan-Terrell Documents were contained in three banker's boxes.
- 2.3.4 On October 29, 2007, a representative of Cassels attended at TGF's offices to begin reviewing the first of three boxes of the Buchan-Terrell Documents for privileged documents. The Buchan-Terrell Documents were transferred to Cassels' office on November 2, 2007 to enable Cassels to continue to review such documents for privilege.
- 2.3.5 On November 7, 2007, TGF wrote to Cassels to advise that the Receiver had instructed TGF to bring a motion before this Honourable Court should the Imaged Documents and the Buchan-Terrell Documents not be delivered to the Receiver by 10:00 a.m. on Tuesday, November 13, 2007, together with a complete list of all of the documents over which Cassels claimed solicitor-client

privilege which had been removed from the Books and Records. A copy of this correspondence is attached hereto as **Appendix C**.

- 2.3.6 On November 12, 2007, Cassels delivered certain of the Buchan-Terrell Documents to TGF, together with a list of Buchan-Terrell Documents which were subject to solicitor-client and/or litigation privilege.
- 2.3.7 The list of Buchan-Terrell Documents over which Cassels asserted solicitor-client and/or litigation privilege included 937 documents. Cassels removed these 937 documents from the three banker's boxes of Buchan-Terrell Documents.
- 2.3.8 On November 14, 2007 TGF wrote to Cassels requesting additional information with respect to some of the removed documents, as well as delivery of 57 of the 937 documents (as an initial request) which, based upon the description provided by Cassels, appeared to pertain to customers of the Companies and, in the Receiver's view, are not subject to a claim of privilege by the Companies.
- 2.3.9 The Receiver is not able to ascertain whether the remainder of the 937 Buchan-Terrell Documents are properly subject to a claim of privilege based upon the limited description provided by Cassels.
- 2.3.10 On Monday, November 26, 2007, Cassels advised that they were working towards gathering more information with respect to the request made by TGF on November 14, 2007. The Receiver has not yet received such information.
- 2.3.11 On November 29, 2007, TGF wrote to Cassels and requested that Cassels advise as to when TGF could expect delivery of the 57 requested Buchan-Terrell Documents. In addition, TGF referred Cassels to correspondence from Grant Buchan-Terrell dated November 9, 2007, which was addressed to the Receiver (and received by the Receiver on November 23, 2007) and copied to Cassels, wherein Grant Buchan-Terrell set forth his position with respect to any privilege that might exist in respect of it's the Buchan-Terrell Documents. Specifically, Grant Buchan-Terrell stated:

"I am of the view that there is no privilege as between Mark Twerdun and this firm in any of my files with FFI, but if I am not correct in this view, then any such privilege shall continue to exist notwithstanding my turnover of the files to you."

A copy of this correspondence is attached hereto as **Appendix D**.

- 2.3.12 In addition, in an email from Grant Buchan-Terrell to TGF on November 23, 2007, Mr. Buchan-Terrell advised that he had not been advised by Cassels that they were going to review his files for privilege or other reasons. He indicated that he had been contacted by Cassels who asked about privileged documents in the files and that he advised Cassels that all of the files turned over for the Receiver's review and copying were FactorCorp Financial Inc. files and did not include the files of FactorCorp Inc. or Twerdun. He reiterated in his emails of November 23, 2007 that his position on privilege had been given earlier and that

nothing had changed in that respect. A copy of this email is attached hereto as **Appendix E**.

2.4 Document Delivery Protocol

2.4.1 The Receiver wishes to obtain possession of all of the Books and Records in a timely and efficient manner.

2.4.2 The Receiver is of the view that a Document Delivery Protocol in the form attached hereto as **Appendix B** should be approved and implemented.

2.4.3 The proposed Document Delivery Protocol provides for the appointment of a Privilege Officer, who is an independent third party, to review any of the Books and Records over which Twerdun and/or the Companies assert solicitor-client privilege and to make a determination in respect of same.

2.4.4 The Document Delivery Protocol also provides for:

i) delivery of all of the Books and Records over which Twerdun has not claimed Privilege and a list and description of those over which he has claimed privilege to the Receiver on or before Friday, January 4, 2008; and

ii) delivery of all of the Books and Records which the Privilege Officer does not consider to be subject to privilege to the Receiver no later than Friday, January 11, 2008, together with a list of the Books and Records over which privilege has been determined.

2.4.5 The Document Delivery Protocol also provides that Twerdun shall be responsible for all costs associated with the review of the Books and Records by Twerdun, Carey, Cassels and the Privilege Officer.

2.5 Recommended Resolution

2.5.1 The approval and imposition of the Document Delivery Protocol would allow the Receiver to review the Books and Records of the Companies in a timely and efficient manner.

2.5.2 As previously stated, the Receiver and Carey are working towards setting a date for an examination of Twerdun for January 2008. In an effort to schedule such examination for a latter half of January 2008, the Receiver requires delivery of all the Books and Records of the Companies on or before Friday, January 11, 2008.

The Receiver requests that this Honourable Court make an Order:

- i) approving the Document Delivery Protocol; and
- ii) appointing an independent third-party Privilege Officer.

All of which is respectfully submitted this ²²19th day of December, 2007.

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



Per: Michael Creber
Title: President

Appendix “A”

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

) TUESDAY THE 30th DAY

JUSTICE MORAWETZ

) OF OCTOBER, 2007

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

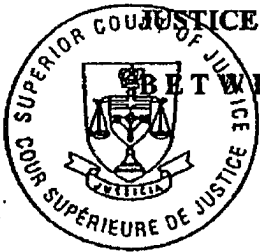
FACTORCORP INC. and FACTORCORP FINANCIAL INC.

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:



SCHEDULE "A"

Court File No. 07 CL-7124

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.)

WEDNESDAY, THE 17th

JUSTICE MORAWETZ)

DAY OF OCTOBER, 2007

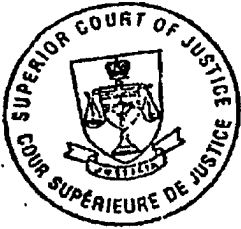
ONTARIO SECURITIES COMMISSION

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

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").

and XPMG Inc. in its capacity as Monitor incurred to date, JB

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

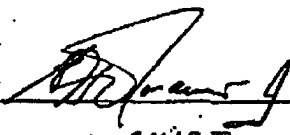
27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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.



POIRAUULT

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

OCT 18 2007

PÉR/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

ONTARIO SECURITIES COMMISSION

- AND -

**FACTORCORP INC. AND
FACTORCORP FINANCIAL INC**

APPLICANT

RESPONDENTS

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

ORDER

**Ontario Securities Commission
20 Queen Street West
Suite 1903
P.O. Box 55
Toronto, ON M5H 3S8**

**Melissa J. MacKewn
Sr. Litigation Counsel
LSUC #39166E**

**Tel: 416-593-3652
Fax: 416-593-2319
E: mmackewn@osc.gov.on.ca**

Appendix “B”

Appendix "B"

Document Delivery Protocol

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 "Companies") wishes to obtain possession of all of the Companies' books, records and documents (collectively, the "Records") in a timely and efficient manner, in accordance with the Orders of the Ontario Superior Court of Justice (Commercial List) dated October 17 and 30, 2007.

1. Mark Twerdun ("Twerdun") shall have until 5:00 p.m. on Thursday, January 3, 2008 to review the Records in order to determine whether Twerdun wishes to assert solicitor-client privilege ("Privilege") in respect of any of the Records.
2. Twerdun shall prepare a list of the Records over which Privilege is being asserted, describing the Records with sufficient specificity to permit them to be identified and stating the basis for the claim to Privilege (the "List and Description").
3. On or before 10:00 a.m. on Friday, January 4, 2008, Twerdun and/or his counsel, Cassels Brock & Blackwell LLP ("Cassels") and Peter Carey Barristers ("Carey"), shall deliver to the Receiver:
 - a. the Records over which Twerdun has not claimed Privilege; and
 - b. the List and Description.
4. On or before 10:00 a.m. on Friday, January 4, 2008, Twerdun shall deliver the List and Description, together with all of the Records over which Twerdun asserts Privilege (the "Privileged Records"), to an independent third-party Court-Appointed Privilege Officer (the "Privilege Officer"), to be identified by the Receiver.

5. The Privilege Officer shall review the Privileged Records for Privilege and shall deliver all Records which the Privilege Officer does not consider to be subject to Privilege to the Receiver no later than 5:00 p.m. on Friday, January 11, 2008, together with a list of the Records over which Privilege has been determined. A copy of this list shall also be provided to Mr. Twerdun.
6. Twerdun shall be responsible for all costs associated with the review of the Records by Twerdun, Cassels, Carey and the Privilege Officer.
7. Once Privilege is claimed, subject to any disputes, Privilege is deemed to be waived with respect to any remaining Records.
8. For greater certainty, the Records shall include, but are not limited to, all imaged documents, emails and documents in the possession of Cassels.

Appendix “C”

ThorntonGroutFinnigan
THE INSOLVENCY & LITIGATION BOUTIQUE

Rachelle F. Moncur
Direct: (416) 304-0538 E-mail: rmoncur@tgf.ca
File No.: 508-023

November 7, 2007

VIA FACSIMILE

Cassels Brock & Blackwell LLP
Scotia Plaza
2100-40 King Street West
Toronto, ON M5H 3C2

**Attention: Mr. Arthur Hamilton
Ms. Caroline Mingfok**

Dear Madam/Sir:

Re: FactorCorp Inc. and FactorCorp Financial Inc. (collectively, the "Companies")

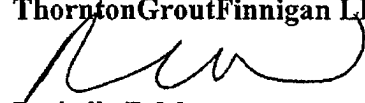
You have raised the issue of solicitor-client privilege which you claim may attach to certain of the Companies' books. In this respect, we understand that you are currently reviewing the following documents:

- 1) those which were imaged from the Companies' and/or Mr. Twerdun's laptop and/or BlackBerry (the "Imaged Documents"); and
- 2) those which were delivered by the offices of Grant Buchan-Terrell (the "Buchan-Terrell Documents").

The Receiver wishes to have access to all of the Companies' books and records as soon as possible. Accordingly, the Receiver has instructed us to bring a motion before the Honourable Mr. Justice Morawetz should the Imaged Documents and the Buchan-Terrell Documents not be delivered to the Receiver by 10 a.m. on Tuesday, November 13, 2007. At the same time, please provide us with a complete list of all of the documents over which you claim solicitor-client privilege and have removed from the books and records.

As you can appreciate, time is of the essence and the Receiver must review the Companies' books and records forthwith.

Yours truly,
ThorntonGroutFinnigan LLP



Rachelle F. Moncur
RFM/rm

ThorntonGroutFinnigan LLP

Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 320, Toronto-Dominion Centre, Toronto, Canada M5K 1K7
Phone: (416) 304-1616 Fax: (416) 304-1313 www.tgf.ca

Appendix “D”

ThorntonGroutFinnigan

THE INSOLVENCY & LITIGATION BOUTIQUE

Rachelle F. Moncur
Direct: (416) 304-0538 E-mail: rmoncur@tgf.ca
File No.: 508-023

November 29, 2007

VIA FACSIMILE

Cassels Brock & Blackwell LLP
Scotia Plaza
2100-40 King Street West
Toronto, ON M5H 3C2

Attention: Mr. Arthur Hamilton

Dear Sir:

Re: FactorCorp Inc. and FactorCorp Financial Inc. (collectively, the "Companies")

This letter is further to our correspondence to you dated November 14, 2007 wherein we (i) requested more information with respect to the relationship of certain individuals to the Companies and (ii) requested delivery of certain documents which the Receiver is of the view are not subject to a claim of privilege by the Companies and should be delivered to the Receiver immediately.

In a telephone conversation on Monday, November 26, 2007, you advised that you were working towards gathering more information with respect to the relationship of certain individuals to the Companies. In this regard, please advise us as to when we can expect to receive such information.

With respect to our request for delivery of certain documents which the Receiver is of the view are not the subject to a claim of privilege, please advise as to when we can expect delivery of these documents.

We also refer you to correspondence dated November 9, 2007 addressed to KPMG Inc. and copied to Caroline Mingfok. In this this correspondence, Grant Buchan-Terrell set forth his position with respect to any privilege that might exist in respect of his documents. Specifically, he stated: "I am of the view that there was no privilege as between Mark Twerdun and this firm in any of my files with FFI, but if I am not correct in this view, then any such privilege shall continue to exist notwithstanding my turnover of the files to you."

In addition, in an email from Grant Buchan-Terrell to our office on November 23, 2007, Mr. Buchan-Terrell advised that he had not been advised by your office that you were going to review these files for privilege or other reasons. He has indicated that he was contacted by Caroline Mingfok who asked about privileged documents in the files and he advised her that all

ThorntonGroutFinnigan LLP

Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Canada M5K 1K7
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ThorntonGroutFinnigan

THE INSOLVENCY & LITIGATION BOUTIQUE

of the files turned over for the Receiver's review and copying were FactorCorp Financial Inc. files and did not include the files of FactorCorp Inc. or Mark Twerdun. He reiterated in his email of November 23, 2007 that his position on privilege has been given earlier and nothing had changed in that respect.

In order to avoid further delay, please forward to us all of the requested documents in respect of the files delivered by Grant Buchan-Terrell and, in addition, please forward to us all of Mr. Twerdun's emails which have already been reviewed for privilege. With respect to those emails that remain to be reviewed, we reiterate our position set forth in our email of November 27, 2007 that your office is to refrain from reviewing any further emails for privilege until further notice.

Yours truly,

ThorntonGroutFinnigan LLP



Rachelle F. Moncur
RFM/rm

cc: Elizabeth Murphy, KPMG Inc. *(via email)*
Brad Butcher, KPMG Inc. *(via email)*
James Grout *(via email)*

Appendix “E”

Rachelle Moncur

From: Grant Buchan-Terrell [grant@gbtlaw.com]
Sent: November 23, 2007 3:33 PM
To: Rachelle Moncur
Cc: Seema Aggarwal; Stuart, Raegan B
Subject: Re: FactorCorp

Thanks for your response. I don't anticipate any need for such files, but nevertheless, I wanted to know if the premise for their removal and return had changed.

I have not been advised by Cassels Brock that they were going to review these files for privilege or other reasons. I had one call from Minghok, but she did not say this would be done, but I don't think this is a problem per se. My position on privilege has been given earlier in our initial meeting and my later letter, and nothing has changed in that respect.

Regards,
Grant Buchan-Terrell

Rachelle Moncur wrote:

Grant,
Seema Aggarwal forwarded your email to me as I have been dealing with this file. You can expect to receive your files back, realistically, the week of December 3rd. Please advise as to whether this is acceptable on your end.

We apologize for the delay, but we first had to allow Cassels Brock to review your files for documents which may be subject to solicitor-client or litigation privilege. Cassels Brock removed a number of files from your boxes, many of which we do not agree are privileged. They were supposed to speak with you about removing files from your boxes prior to doing so. The documents in Cassels' possession may take longer to deliver to you as they may be subject to a motion in the near future.

With respect to the documents now in our possession, it will not take us long to finish reviewing them and return them to your office.

Please give me a call if you have any questions.
Regards,

Rachelle F. Moncur

ThorntonGroutFinnigan LLP
Suite 3200, Canadian Pacific Tower, Toronto Dominion Centre
100 Wellington Street West
Toronto, Ontario M5K 1K7

Direct Dial: 416.304.0538
Facsimile: 416.304.1313

18/12/2007

From: Grant Buchan-Terrell [<mailto:grant@gbtlaw.com>]
Sent: November 23, 2007 2:08 PM
To: Seema Aggarwal
Cc: Stuart, Raegan B
Subject: Re: FactorCorp - legal files return?

Seema:

A month or so has passed since you took away all of my FactorCorp Financial files with a promise to return in about a week.

Please advise on the status of this aspect, and when I can expect to get the files back.
Thanks,

W. Grant Buchan-Terrell
Business Attorney
480 Morden Road, Oakville L6K 3W4
905-847-9707 www.gbtlaw.com

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

THIRD REPORT TO THE COURT
SUBMITTED BY KPMG INC.

ThorntonGrouFinnigan 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