

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

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

December 27, 2007

Listing of Appendices

Appendix "A" - Initial Document Delivery Protocol

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1. Introduction

1.1 Purpose of this Supplemental Report

1.1.1 This Supplemental Report (the “Supplemental Report”) to the Receiver and Manager’s Third Report to the Court dated December 19, 2007 (the “Third Report”) has been prepared for the purpose of:

- (i) providing the Court with a copy of the Initial Document Delivery Protocol attached hereto as **Appendix “A”** (the “Document Delivery Protocol”), which has been revised from the version attached as Appendix “B” to the Third Report; and
- (ii) advising the Court of the outstanding issues with respect to the Document Delivery Protocol.

1.1.2 All capitalized terms used herein which are not otherwise defined have the same meaning as set forth in the Third Report.

2. Initial Document Delivery Protocol

2.1 Initial Document Delivery Protocol

- 2.1.1 Since the issuance of the Third Report, the Receiver and TGF have met with a potential independent third party Privilege Officer (as defined in the Third Report), together with Peter Carey Barristers (“Carey”). This meeting took place on Friday, December 21, 2007.
- 2.1.2 It is the Receiver’s understanding that Carey represents Twerdun in his personal capacity.
- 2.1.3 It is also the Receiver’s understanding that Twerdun, in his capacity as the sole director and officer of the Companies, wishes to assert claims of privilege on behalf of the Companies in respect of the Books and Records.
- 2.1.4 During this meeting it was agreed that the retention of a Privilege Officer is not necessary at this point in time.
- 2.1.5 The Receiver and Carey have agreed to the approval of the Document Delivery Protocol attached hereto as **Appendix “A”**, with the exception of paragraph 14 of the Document Delivery Protocol which provides that: “Twerdun shall be responsible for all costs associated with the review of the Records by Twerdun and Carey as well as the costs incurred by the Third Party Imager in conducting the searches of the Imaged Documents”.

3. Recommendations

3.1 Recommended Resolution

- 3.1.1 The Receiver is of the view that all of the Companies' Books and Records should be delivered forthwith to the Receiver and should not be subject to review by Twerdun for privilege.
- 3.1.2 The Receiver is also of the view that since Twerdun will not agree, on behalf of the Companies, to the delivery of all of the Books and Records of the Companies to the Receiver, that Twerdun should bear any costs associated with reviewing such documents for privilege, whether such review is conducted by himself, Carey and the Third-Party Imager who must conduct searches of the Imaged Documents in accordance with the Document Delivery Protocol.
- 3.1.3 In the interest of time and subject to the Receiver's right to, among other things, challenge any claim of privilege which is asserted on behalf of the Companies with respect to the Books and Records and/or take the position that the Companies' Books and Records are not subject to any claim for Privilege, the Receiver is of the view that the Document Delivery Protocol in the form attached hereto as **Appendix "A"** should be approved and implemented.
- 3.1.4 The Receiver recognizes that an examination of Twerdun is unlikely to occur as initially contemplated between Carey and TGF in the latter half of January, 2008 and is working towards scheduling such examination forthwith upon its receipt and review of the Books and Records.
- 3.1.5 Delivery of all of the Books and Records of the Companies on a bi-weekly basis, to be concluded on or before Friday, February 22, 2008, would assist the Receiver in preparing for the examination of Twerdun. The Receiver has agreed to the date of February 22, 2008 in response to Carey's concerns that there may be thousands of documents to be reviewed by Twerdun and Carey.
- 3.1.6 The Receiver requests that this Honourable Court make an Order:
- (i) approving the Document Delivery Protocol attached hereto as **Appendix "A"**; and
 - (ii) ordering and directing that Twerdun shall be responsible for all costs associated with the review of the Books and Records by Twerdun and Carey as well as the costs incurred by the Third Party Imager in conducting the searches of the Imaged Documents.

All of which is respectfully submitted this 27th day of December, 2007.

KPMG INC.

IN ITS CAPACITY AS THE COURT APPOINTED
RECEIVER AND MANAGER OF FACTORCORP
INC. AND FACTORCORP FINANCIAL INC., and not
in its personal capacity

A handwritten signature in black ink, reading "Elizabeth J. Murphy". The signature is written in a cursive style with a large, stylized initial "E".

Per: Elizabeth J. Murphy
Title: Vice President

Appendix “A”

Initial Document Delivery Protocol

- A. 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.
- B. Mr. Mark Twerdun (“Twerdun”), in his capacity as the sole officer and director of the Companies, wishes to review the Records for solicitor-client privilege (hereinafter referred to as “Privilege”) solely on behalf of the Companies prior to the delivery of the Records to the Receiver.
- C. The Records which are subject to this Initial Document Delivery Protocol (the “Protocol”) are those defined as the Imaged Documents and the Buchan-Terrell Documents in the Third Report of the Receiver dated December 19, 2007 (the “Third Report”).
- D. This Protocol is intended to serve as an initial protocol only and it is understood that the Receiver reserves its rights to, among other things, request the delivery of additional Records, challenge any claim of Privilege which is asserted on behalf of the Companies with respect to the Records and/or take the position that the Records are not subject to any claim for Privilege.

The Buchan-Terrell Documents

1. Cassels, Brock & Blackwell LLP (“Cassels”) shall deliver the Buchan-Terrell Documents to Peter Carey Barristers (“Carey”), counsel for Mr. Twerdun, on or before 5:00 p.m. on Wednesday, January 2, 2008.
2. Twerdun shall have until Friday, January 25, 2008 to review the Buchan-Terrell Documents in order to determine whether Twerdun wishes to assert Privilege on behalf of the Companies in respect of any of the Buchan-Terrell Documents.
3. Twerdun shall prepare a list of the Buchan-Terrell Documents over which Privilege is being asserted, describing such privileged documents with sufficient specificity to permit them to be identified and stating the basis for the claim to Privilege (the “Buchan-Terrell List and Description”).
4. On or before 5:00 p.m. on Friday, January 25, 2008, Twerdun and/or Carey, shall deliver to the Receiver:
 - a. the Buchan-Terrell Documents over which Twerdun has not claimed Privilege; and
 - b. the Buchan-Terrell List and Description.
5. The determination with respect to Privilege asserted on behalf of the Companies in respect of any of the Buchan-Terrell Documents shall be reserved for a later date to be determined.

The Imaged Documents

6. The Receiver shall deliver a preliminary list of search terms and key words and phrases (the “Search Terms”) to Deloitte & Touche Forensic & Investigative

Services Inc., the Third Party Imager (as defined in the Third Report), on or before Thursday, January 3, 2008.

7. It is anticipated that the Third Party Imager shall conduct a search of the Imaged Documents based upon the Search Terms provided by the Receiver to be completed on or before Friday, January 4, 2008.
8. The Third Party Imager shall deliver all of the Imaged Documents which are produced as a result of the search conducted (the "Searched Documents") to Carey on or before Monday, January 7, 2008.
9. Provided that the Third Party Imager delivers all of the Searched Documents to Twerdun by Monday, January 7, 2008, Twerdun shall have until Friday, February 22, 2008 to review the Searched Documents in order to determine whether Twerdun wishes to assert Privilege on behalf of the Companies in respect of any of the Searched Documents.
10. Twerdun shall prepare a list of the Searched Documents over which Privilege is being asserted on a bi-weekly basis, describing such privileged documents with sufficient specificity to permit them to be identified and stating the basis for the claim to Privilege (the "Searched Documents List and Description").
11. On a bi-weekly basis, to be concluded on or before 5:00 p.m. on Friday, February 22, 2008, Twerdun and/or Carey, shall deliver to the Receiver:
 - a. the Searched Documents over which Twerdun has not claimed Privilege;
and
 - b. the Searched Documents List and Description.

12. The determination with respect to Privilege asserted on behalf of the Companies in respect of any of the Searched Documents shall be reserved for a later date to be determined.
13. The Receiver shall be entitled to conduct further searches of the Imaged Documents after reviewing the Searched Documents and the same process shall be followed with respect to any of the Imaged Documents which are subsequently searched by the Receiver.

Costs and Other Issues

14. Twerdun shall be responsible for all costs associated with the review of the Records by Twerdun and Carey as well as the costs incurred by the Third Party Imager in conducting the searches of the Imaged Documents.
15. Once the Buchan-Terrell Documents and the Searched Documents have been delivered to the Receiver, Privilege is deemed to be waived with respect these documents.
16. The delivery date of February 22, 2008 may be extended by the Receiver and Carey, subject to mutual agreement in writing between the Receiver and Carey, but in any event, shall be no later than March 19 2008, unless otherwise ordered by the Ontario Superior Court of Justice (Commercial List).

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

**SUPPLEMENTAL REPORT TO
THE THIRD REPORT OF THE
RECEIVER (December 27, 2007)**

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