

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

BETWEEN:

**STAR AMERICA DPGI ACQUISITION COMPANY, INC.**

Applicant

and

**DEMAND POWER GROUP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**FACTUM OF THE RECEIVER  
Returnable December 17, 2024**

December 11, 2024

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## TABLE OF CONTENTS

<b>PART I – INTRODUCTION .....</b>	<b>1</b>
<b>PART II – FACTS .....</b>	<b>3</b>
<b>(A) The Parties and Background .....</b>	<b>3</b>
<b>(B) The Sale Process and the Proposed Transaction .....</b>	<b>4</b>
<b>(C) The Proposed Sealing .....</b>	<b>6</b>
<b>(D) The Receiver’s Borrowings .....</b>	<b>6</b>
<b>(E) The First Report and the Receiver’s Activities .....</b>	<b>7</b>
<b>(F) Fees and Disbursements of the Receiver and its Counsel .....</b>	<b>8</b>
<b>PART III – ISSUES AND LAW .....</b>	<b>9</b>
<b>(A) The Partnership Units Should be Added to the “Property” Subject to the Receivership Order .....</b>	<b>10</b>
<b>(B) The Proposed Transaction Should be Approved .....</b>	<b>11</b>
<b>(C) Sealing of the Confidential Appendices is Appropriate .....</b>	<b>13</b>
<b>(D) The Receiver’s Borrowing Power and related Borrowing Charge should be Increased .....</b>	<b>15</b>
<b>(E) The First Report and the Receiver’s Activities Described therein Should be Approved .....</b>	<b>16</b>
<b>(F) The Fees of the Receiver and Goodmans Should be Approved.....</b>	<b>17</b>
<b>PART IV - RELIEF REQUESTED .....</b>	<b>20</b>

## PART I – INTRODUCTION<sup>1</sup>

1. On November 22, 2023 (the “**Appointment Date**”), the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Receivership Order**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended (the “**CJA**”), of all of the assets, undertakings and properties (collectively, the “**Property**”) of Demand Power Group Inc. (the “**Company**” or “**Demand Power**”).<sup>2</sup>

2. Since the Appointment Date, the Receiver has, among other things, developed and implemented a sale process (the “**Sale Process**”) to sell certain assets of the Company and advanced various litigation matters involving the Company.

3. As discussed further below, the Sale Process has culminated in the Proposed Transaction (as defined below). Accordingly, in connection with the Sale Process, the Receiver is seeking an order (the “**Approval and Vesting Order**”) that, *inter alia*:

- (a) appoints the Receiver as receiver, without security, of the Partnership Units (as defined below) and orders that the Partnership Units shall form part of the Property under the Receivership Order;
- (b) approves the sale transaction (the “**Proposed Transaction**”) contemplated by the Asset Purchase Agreement dated December 4, 2024 (the “**APA**”), between the

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<sup>1</sup> All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the First Report of the Receiver dated December 10, 2024 (the “**First Report**”).

<sup>2</sup> *Star America DPGI Acquisition Company, Inc. v. Demand Power Group Inc.*, CV-23-00709164-00CL (Order ([appointing Receiver](#))) dated October 9, 2020 [*Receivership Order*].

Receiver, as vendor, and Narrows Green LP, as purchaser (the “**Purchaser**” or “**Narrows Green**”), pursuant to which the Receiver will sell the Purchased Assets (as defined below) to the Purchaser;

- (c) sealing Confidential Appendix “1” and Confidential Appendix “2” to the First Report (collectively, the “**Confidential Appendices**”), being a summary of bids received by the Receiver and an unredacted version of the APA, pending the delivery of the Receiver’s Certificate or further Order of this Court;
- (d) amends the Receivership Order to: (i) increase the Receiver’s borrowing power under the Receivership Order; and (ii) correspondingly increase the Receiver’s Borrowing Charge (as defined in the Receivership Order);
- (e) approves the First Report and the activities of the Receiver described therein; and
- (f) approves the fees and disbursements of the Receiver and those of its counsel, as described in the First Report and the related fee affidavits of representatives of the Receiver and its counsel.

4. For the reasons specified herein and in the First Report, the Receiver respectfully requests that this Court grant the proposed Approval and Vesting Order.

## **PART II – FACTS**

### **(A) The Parties and Background**

5. Demand Power, is a corporation incorporated pursuant to the laws of Ontario and carried on business as a developer and operator of power supply systems.<sup>3</sup>

6. Demand Power has a number of subsidiaries, including 2711173 Ontario Inc. (“**271 Ontario**”), which were incorporated for the purpose of holding interests in structured entities. 271 Ontario and affiliates of Star America formed Narrows Green (who is the Purchaser in the Proposed Transaction) to acquire interests in certain Projects. 271 Ontario is a holding company with no assets, except for its Partnership Units in Narrows Green.<sup>4</sup>

7. Star America is a significant shareholder of Demand Power’s issued and outstanding share capital. Star America, through Narrows Green (i.e., the Purchaser), invests in power supply projects in Ontario.<sup>5</sup>

8. On November 22, 2023, pursuant to section 101 of the CJA, Star America brought an application seeking the appointment of Deloitte as Receiver of the Property of Demand Power. In connection with Star America’s application, Star America, as lender, provided the Receiver with a revolving facility up to \$1,000,000 to fund the receivership. This initial financing was secured by the Receiver’s Borrowing Charge (as defined in the Receivership Order) over the Property.<sup>6</sup>

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<sup>3</sup> First Report at para 10 [E20:E20].

<sup>4</sup> First Report at para 11 [E20:E20].

<sup>5</sup> First Report at para 2 [E17:E17].

<sup>6</sup> First Report at paras 1, 5 [E17:E17]; [Receivership Order](#) at para 22.

**(B) The Sale Process and the Proposed Transaction**

9. Since the Appointment Date, the Receiver has developed the Sale Process for the sale of certain assets of Demand Power, namely: (i) a Supervisory Control and Data Acquisition system (the “**SCADA Technology**”); (ii) tax losses and credits; and (iii) a Fluke power meter.<sup>7</sup>

10. Given that Demand Power operated in a niche market and provided tailored assets and services, the Receiver was of the view that an expansive court-approved sale and investor solicitation process would not have provided the highest value to the Company’s stakeholders. Accordingly, the Receiver took steps to complete a targeted marketing process for the sale of the Company’s assets.<sup>8</sup>

11. Commencing in December 2023 and continuing intermittently to September 2024, the Receiver conducted the Sale Process. The Sale Process is described in detail in the First Report.<sup>9</sup>

12. Following the Sale Process and the Bid Deadline (as defined in the First Report), the Receiver concluded that the Proposed Transaction represented the best opportunity available to the Company’s stakeholders. In light of this, on December 4, 2024, the Purchaser and the Receiver, as vendor, entered into the APA in respect of the following assets (collectively, the “**Purchased Assets**”):

- (a) the SCADA Technology;

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<sup>7</sup> First Report at para 24 [[E24;E24 – E25;E25](#)].

<sup>8</sup> First Report at paras 25, 35 [[E25;E25, E28;E28 – E29;E29](#)].

<sup>9</sup> First Report at paras 26 – 32 [[E25;E25 – E27;E27](#)].

- (b) all hardware components related to the SCADA Technology to the extent applicable;
- (c) all manuals, booklets, features and other documents related to the Purchased Assets and necessary for the Purchaser to use the Purchased Assets, including the services agreements, as listed in Schedule 2.1(b) of the APA;
- (d) the Company's license with Inductive Automation as reflected in the Software License Certificates, as appended as Schedule 2.1(c) of the APA; and
- (e) the Partnership Units held by Demand Power's wholly owned subsidiary, 271 Ontario.<sup>10</sup>

13. As stated above, the APA includes partnership units in Narrows Green (the "**Partnership Units**") as a Purchased Asset. The Partnership Units are the only assets of Demand Power's wholly-owned subsidiary, 271 Ontario, and are units in the Purchaser. In order to convey the Partnership Units under the APA, the Receiver is seeking to be appointed as receiver, without security, of the Partnership Units in Narrows Green owned or held by Demand Power's subsidiary, 271 Ontario, such that Partnership Units shall form part of the Property under the Receivership Order.<sup>11</sup>

14. The APA provides for the sale of all of the Company's right, title and interest, if any, in and to the Purchased Assets by the Receiver to the Purchaser. The closing of the Proposed

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<sup>10</sup> First Report at para 34 [E27:E:27 – E28:E28].

<sup>11</sup> First Report at para 39 [E29:E:29].

Transaction is subject to customary closing conditions, including the granting of the proposed Approval and Vesting Order.<sup>12</sup>

**(C) The Proposed Sealing**

15. The proposed Approval and Vesting Order seeks to seal a summary of the bids received by the Receiver as part of the Sale Process as well as the unredacted form of APA, pending closing of the Proposed Transaction.

16. The unredacted form of APA discloses the purchase price for the Purchased Assets. In the event the Proposed Transaction fails to close, disclosure of the summary of the bids received and the unredacted form of APA could harm the integrity of, and the Receiver's efforts to maximize the value in, a subsequent competitive sales process for the Purchased Assets.<sup>13</sup>

17. Sealing of the Confidential Appendices is necessary to prevent this risk, and reasonable alternative measures will not prevent the risk. As a matter of proportionality, the Receiver is of the view that the benefits of the proposed sealing order outweigh its negative effects.

**(D) The Receiver's Borrowings**

18. The Receiver requires additional funding to, among other things, support various on-going litigation involving the Company. Under the Receivership Order, the Receiver is permitted to borrow up to \$1,000,000, in aggregate, without further Court approval. As of December 10, 2024, the Receiver's borrowings have totaled \$950,000 to fund the receivership proceedings.<sup>14</sup>

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<sup>12</sup> First Report at para 34 [E27;E:27 – E28;E28].

<sup>13</sup> First Report at paras 44-45 [E30;E30].

<sup>14</sup> First Report at para 83 [E38;E38].



19. Star America provided the initial \$1,000,000 to fund the receivership and it has provided an additional \$500,000 to further fund the receivership, subject to this Court's approval. Accordingly, the Receiver recommends that the Receiver's borrowing powers under the Receivership Order and the related Receiver's Borrowing Charge be increased from \$1,000,000 to \$1,500,000.<sup>15</sup>

**(E) The First Report and the Receiver's Activities**

20. The Receiver is seeking approval of the First Report and its activities described therein. As further detailed in the First Report, the efforts and activities of the Receiver to date include, among other things:

- (a) implementing the Sale Process, including corresponding and meeting with interested parties, reviewing bids, and negotiating the terms of the APA, a licensing agreement and a bill of sale;
- (b) coordinating with the Company's former litigation counsel to obtain their litigation records pertaining to the Company's ongoing litigation and evaluating, and where necessary or appropriate, advancing the Company's litigation matters with the assistance of its counsel;
- (c) attending to various matters relating to the termination of former employees; and
- (d) reviewing and responding to inquiries from stakeholders.<sup>16</sup>

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<sup>15</sup> First Report at paras 84-85 [E38;E38 – E39;E39].

<sup>16</sup> First Report at para 23 [E22;E22 – E25;E24].

21. The foregoing activities have been necessary, are consistent with the Receiver's duties and powers granted pursuant to the Receivership Order, have been undertaken with efficiency and reasonableness, and are in the interest of the Demand Power's stakeholders.

**(F) Fees and Disbursements of the Receiver and its Counsel**

22. The Receiver and its counsel have sought to ensure that the work required to be performed in this receivership proceeding has been undertaken in the most efficient manner possible, including by utilizing consistent core personnel throughout the mandate.<sup>17</sup>

23. The total number of hours worked by the Receiver's professionals from November 22, 2023 to October 31, 2024 was 579.9, giving rise to fees totaling \$363,025.00, together with disbursements and HST in the amount of \$52,300.78, totaling \$415,325.78.<sup>18</sup>

24. The total number of hours worked by Goodmans' professionals from November 22, 2023 to July 15, 2024 was 528.7, giving rise to fees totaling \$429,631.50 together with disbursements and HST in the amount of \$77,279.41 totaling \$571,910.91.<sup>19</sup>

25. The Receiver's fees and disbursements, as well as those of its counsel, have been presented to Star America, who has advanced funding to the Receiver for the purpose of funding the Receiver's mandate, and Star America has no objections or concerns with the fees presented.<sup>20</sup>

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<sup>17</sup> Affidavit of Andrew Harmes sworn December 10, 2024 at para 7 and Exhibit C [[E226:E226](#), [E267:E267 - E269:E269](#)] [*Harmes Affidavit*]; Affidavit of Warren Leung sworn December 10, 2024 at para 6 and Exhibit A [[E161:E161 - E162:E162](#), [E163:E163](#)] [*Leung Affidavit*].

<sup>18</sup> First Report at para 79 [[E38:E38](#)].

<sup>19</sup> First Report at para 80 [[E38:E38](#)].

<sup>20</sup> First Report at para 81 [[E38:E38](#)].

26. The fees and disbursements charged by the Receiver and its counsel are consistent with market professional rates for significant commercial restructuring and receivership matters.<sup>21</sup>

### **PART III– ISSUES AND LAW**

27. The issue to be decided on the motion is whether the Court should grant the Approval and Vesting Order, which, among other things:

- (a) appoints the Receiver as receiver, without security, of the Partnership Units and orders that the Partnership Units shall form part of the Property under Receivership Order;
- (b) approves the Proposed Transaction and vests the Purchased Assets in the Purchaser;
- (c) seals the Confidential Appendices to the First Report;
- (d) increases the principal amount of the Receiver's borrowing power and corresponding Receiver's Borrowings Charge from \$1,000,000 to \$1,500,000 million;
- (e) approves the First Report and the activities of the Receiver described therein; and
- (f) approves the fees and disbursements of the Receiver and its counsel, as described in the First Report and the related fee affidavits of representatives of the Receiver and its counsel.

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<sup>21</sup> *Harmes Affidavit* at para 7 [[E226;E226](#)]; *Leung Affidavit* at para 6 [[E161;E161 - E162;E162](#)].

**(A) The Partnership Units Should be Added to the “Property” Subject to the Receivership Order**

28. Section 101 of the CJA affords the Court broad discretion over the powers it may grant a Receiver so long as the terms are “just or convenient”.<sup>22</sup>

29. It is well established that the court may appoint a receiver over a company which is intricately involved with a company already subject to an existing receivership proceeding, even where the new party is not itself a debtor of the parties that initiated the receivership.<sup>23</sup>

30. Under the present circumstances, Demand Power and 271 Ontario are intricately involved with one another, as 271 Ontario is a wholly-owned subsidiary of Demand Power. As discussed above, 271 Ontario is a holding company that was incorporated solely to hold interests in structured entities. 271 Ontario carries out no other business and has no assets other than the Partnership Units in Narrows Green. In addition, counsel to the Receiver has performed personal property registry searches in Ontario against 271 Ontario, which confirm that no party has a security interest in the assets of 271 Ontario, including the Partnership Units.<sup>24</sup>

31. Accordingly, it is respectfully submitted that it is just and convenient to appoint the Receiver as receiver over the Partnership Units in order to enable the Receiver to transfer the Partnership Units to Narrows Green as part of the Proposed Transaction.

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<sup>22</sup> CJA, [s. 101\(2\)](#).

<sup>23</sup> See e.g., *Kingsett Mortgage Corporation et al v. Vandyk – Uptowns Limited et al.*, CV-23-709180-00CL ([Endorsement of Black J.](#)) dated June 13, 2024 at para 1(b).

*WestLB AG v. Rosseau Resort Developments Inc.*, CV-09-8201-00CL ([Endorsement of Peppal J.](#)) dated September 9, 2009 at paras 37-38.

<sup>24</sup> First Report at para 11 ([E20:E20](#)).

**(B) The Proposed Transaction Should be Approved**

32. The principles for the Court to consider on a motion for the approval of a sale of assets in a receivership are well established. The Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* considered the following factors relating to a sale of assets by a receiver:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been any unfairness in the working out of the process.<sup>25</sup>

33. Absent a violation of the *Soundair* principles, the Court should place particular weight on the Court-appointed officer's business judgment and recommendation with respect to a proposed transaction.<sup>26</sup>

34. The Receiver submits that the Proposed Transaction satisfies the *Soundair* principles for the following reasons:

- (a) The Receiver has made a sufficient effort to obtain the best price. The Proposed Transaction is the result of the Sale Process, which consisted of a targeted marketing process given the niche market and tailored assets in question. The Sale

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<sup>25</sup> *Royal Bank v. Soundair Corp.* (1991), [83 D.L.R. \(4th\) 76 \(Ont. C.A.\)](#) at para [16](#).

<sup>26</sup> *Re Eddie Bauer of Canada* (2009), [57 C.B.R. \(5th\) 241](#) (Ont. S.C.J. [Commercial List]) at para [22](#) [*Eddie Bauer*]; *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), [12 C.B.R. \(4th\) 87](#) (Ont. S.C.J. [Commercial List]) at paras [3](#) and [7](#) [*Skyepharma*].

Process was structured flexibly to obtain the best possible price for the Debtors' assets while also managing costs. As part of these efforts, the Receiver identified a targeted list of purchasers who may be interested in the tailored assets, prepared a marketing document to be circulated to prospective purchasers and established an electronic data room containing relevant financial and operational information. In total, eight parties were provided with the marketing documents, all of whom were sourced based on Demand Power's knowledge of industry participants and outreach to the Receiver based on public knowledge of the receivership proceedings. Of the eight parties contacted, five of them signed non-disclosure agreements and gained access to the data room. All five parties submitted bids to the Receiver. The Receiver, with assistance of its counsel, reviewed the five bids and concluded that the bid from the Purchaser represented the superior bid. The Receiver believes that the Purchased Assets were appropriately exposed to the market through this process.<sup>27</sup>

- (b) The Proposed Transaction satisfies the interests of all parties. The Proposed Transaction will result in incremental value being realized for creditors and facilitate the ongoing winddown of the Company by divesting multiple assets owned by Demand Power. In addition, to the knowledge of the Receiver, no party is objecting to the Proposed Transaction.<sup>28</sup>

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<sup>27</sup> First Report at paras 25-27, 30, 35 [E25:E25 – E26:E26, E26:E26, E28:E28-E29:E29].

<sup>28</sup> First Report at para 35 [E28:E28-E29:E29].

- (c) The Sale Process was efficacious and fair. The results of the targeted Sale Process demonstrate that the consideration payable pursuant to the APA is fair and reasonable in the circumstances. As noted above, a court must give due consideration to both the business judgment rule and the recommendation of the Court-appointed officer in deciding whether a sale should be approved.<sup>29</sup> The decision of the Receiver to enter into the APA was made on an informed basis, with professional advice, and constitutes a valid and proper exercise of business judgment, considering the various factors and considerations outlined above.<sup>30</sup>

35. For the reasons referenced above, it is submitted that the *Soundair* principles have been satisfied and that the Proposed Transaction represents a commercially reasonable result in the circumstances. Accordingly, the Receiver submits that it is appropriate for the Court to approve the Proposed Transaction and grant the Approval and Vesting Order.

**(C) Sealing of the Confidential Appendices is Appropriate**

36. This Court has discretion pursuant to Section 137(2) of the *CJA* to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.<sup>31</sup>

37. The Supreme Court of Canada recently refined the seminal sealing test where it held that three prerequisites must be established in order to obtain a sealing order: (a) court openness poses a serious risk to an important public interest; (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent

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<sup>29</sup> *Eddie Bauer* at para [22](#); *Skyepharm* at paras [3](#) and [7](#).

<sup>30</sup> First Report at paras 30, 35(e) [[E26:E26](#), [E28:E28](#)].

<sup>31</sup> *CJA*, [s. 137\(2\)](#).

this risk; and (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.<sup>32</sup>

38. Courts have acknowledged that there is a public interest in maximizing recoveries in an insolvency that goes beyond the individual case and also that sealing of information could undermine the integrity of a sale process.<sup>33</sup>

39. Under the Approval and Vesting Order, the Receiver is seeking the sealing of the Confidential Appendices to the First Report, which contain a comparative summary of the bid offers and an unredacted version of the APA.

40. In the event the Proposed Transaction fails to close, disclosure of these materials would harm the integrity of, and the Receiver's efforts to maximize value in, a subsequent competitive marketing process for the Purchased Assets as interested parties will know the purchase price the Receiver was prepared to accept for the Purchased Assets and the identity and terms of proposed by other potentially interested parties. The proposed sealing will facilitate the objective of maximizing value by ensuring that this information is maintained as confidential until the Proposed Transaction closes, following which the sealing will be lifted.

41. In light of the forgoing, the Receiver respectfully submits that the benefits of sealing the Confidential Appendices greatly outweigh any negative effects that result from temporarily limiting public access to the Confidential Appendices.

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<sup>32</sup> *Sherman Estate v Donovan*, [2021 SCC 25](#) at para [38](#).

<sup>33</sup> *Danier Leather Inc, Re*, [2016 ONSC 1044](#) at para [84](#); *Elleway Acquisitions Ltd v 4358376 Canada Inc*, [2013 ONSC 7009](#) at para [48](#).



**(D) The Receiver's Borrowing Power and related Borrowing Charge should be Increased**

42. As previously discussed, section 101 of the CJA grants the Court considerable flexibility in determining the powers it can assign to a Receiver, provided the conditions are deemed 'just or convenient.'<sup>34</sup>

43. In other non-contested motions by receivers, this Court has frequently extended a receiver's borrowing limit in response to increased funding needs.<sup>35</sup>

44. To enable the Receiver to be able to complete its mandate, which, primarily, is to advance ongoing litigation involving Demand Power, the Receiver requires that its borrowing powers be increased in aggregate by \$500,000. The additional borrowings will be on terms similar to the powers granted pursuant to the Receivership Order, including empowering the Receiver to borrow a specified amount and securing the funds borrowed by a Borrowing Charge.<sup>36</sup>

45. Star America provided the initial \$1,000,000 of funding, and has provided an additional \$500,000 to the Receiver to further fund the receivership, subject to this Court's approval.<sup>37</sup>

46. In light of the forgoing, the Receiver submits that increasing the Receiver's borrowing limit, and the corresponding Borrowing Charge, is necessary, just and convenient in the circumstances.

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<sup>34</sup> CJA, [s. 101\(2\)](#).

<sup>35</sup> For example, see *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, CV-20-00637297-00CL ([Endorsement of Conway J.](#)) dated October 9, 2020).

<sup>36</sup> First Report at para 84 [[E38:E38 – E39:E39](#)].

<sup>37</sup> First Report at para 85 [[E39:E39](#)].

**(E) The First Report and the Receiver's Activities Described therein Should be Approved**

47. This Court has the inherent jurisdiction to approve the activities of a court-appointed receiver if the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily.

There are good policy and practical reasons for this, including that Court approval:

- (a) allows the court-officer to move forward with next steps in the proceeding;
- (b) brings the court-officer's activities before the court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court-officer's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the court-officer; and
- (f) protects the creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the court-officer.<sup>38</sup>

48. This Court has held that the same observations apply to the activities of a Court-appointed receiver because the activities of any court officer "can and should be considered by the Court as against the mandate, powers and authority of that officer."<sup>39</sup>

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<sup>38</sup> *Target Canada Co, Re*, [2015 ONSC 7574](#) at para [12](#); *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras [13-14](#) [*Laurentian University*].

<sup>39</sup> *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para [66](#) [*Triple-I*].

49. In these receivership proceedings, all of the Receiver's activities were reasonable and carried out in accordance with the powers and duties under the Receivership Order. As it relates to the activities described in the First Report, the Receiver's key activities consist of, conducting the Sale Process of the Purchased Assets and negotiating the APA and related definitive transactional documents, advancing the Company's litigation matters with the assistance of its counsel and attending to various matters relating to the termination of former employees.<sup>40</sup>

50. The above-mentioned activities have been necessary, are consistent with the duties and powers granted to the Receiver pursuant to the Receivership Order, have been undertaken with efficiency and reasonableness, and are in the interest of Demand Power's stakeholders. Accordingly, the First Report and the activities described therein ought to be approved.

**(F) The Fees of the Receiver and Goodmans Should be Approved**

*(i) Jurisdiction and Test*

51. The jurisdiction of this Court to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: "the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice."<sup>41</sup>

52. On a motion to pass accounts, the Court must consider the "overriding principle of reasonableness", focusing on the overall value contributed by the Receiver and its counsel. As stated by this Court, "the Court does not engage in a docket-by-docket or line-by-line assessment

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<sup>40</sup> First Report at para 23 [\[E22:E22 – E24:E24\]](#).

<sup>41</sup> [Receivership Order](#) at para 20.

of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”<sup>42</sup> Likewise, the Ontario Court of Appeal has stated “the focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took.”<sup>43</sup>

53. Critically, Courts considering fee approval consider both what was accomplished as well as any obstacles to the Receiver’s mandate. This Court held that the “measurement of accomplishment may include consideration of complications and in difficulties encountered in the receivership.”<sup>44</sup>

54. The following factors assist courts in evaluating the quantum of a court-appointed officer’s and its counsel’s fees. These factors are not intended to be an exhaustive list and other factors may be material in any particular case:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Receiver’s knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;

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<sup>42</sup> *Laurentian University* at para [9](#); citing to *Nortel Networks Corp. (Re)*, [2017 ONSC 673](#).

<sup>43</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at para [45](#) [*Diemer*].

<sup>44</sup> *Diemer* at para [45](#); *Triple-I* at para [26](#).

- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.<sup>45</sup>

(ii) *The Fees of the Receiver and its Counsel are Reasonable*

55. Applying these factors to the present case, it is respectfully submitted that the accounts of the Receiver and its counsel, as described in the First Report and the related fee affidavits of representatives of the Receiver and its counsel, are fair reasonable and should be approved:

- (a) the Receiver's fees and disbursements, as well as those of its legal counsel, have been presented to Star America, and Star America has no objections or concerns with the fees presented;
- (b) While the Receiver anticipates the ongoing administration of the Company for a further period of time, the Receiver has worked to diligently "close out" matters where possible, including negotiating and entering into the APA to sell multiple assets owned by Demand Power and advancing ongoing litigation. The breadth of matters detailed in the First Report further demonstrate the diligence and thoroughness displayed by the Receiver and its counsel.

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<sup>45</sup> *Laurentian* at para [10](#); *Triple -I*, at para [23](#).

- (c) The Receiver and its counsel are experienced restructuring professionals who have been integral in these receivership proceedings and have at all times demonstrated diligence and thoroughness throughout.
- (d) Both the Receiver and its counsel, to the best of their knowledge, charge rates that are comparable to the rates charged by similar accounting and law firms in the Toronto market for the provision of similar services.
- (e) The Receiver and its counsel have sought to ensure that the work required to be performed in the case has been undertaken in the most efficient manner possible. In respect to fees of the Receiver's counsel, the fees incurred reflect services performed in accordance with the instructions of the Receiver.<sup>46</sup>

56. Accordingly, for the reasons set out above, a consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

#### **PART IV - RELIEF REQUESTED**

57. For the reasons set out herein, the Receiver respectfully requests that the Court grant the Approval and Vesting Order.

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<sup>46</sup> See *Harmes Affidavit* [E224;E224]; *Leung Affidavit* [E160;E160].

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11th day of December, 2024.

*Goodmans LLP*

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**Goodmans LLP**

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Lawyers for Deloitte Restructuring Inc., in its  
capacity as court-appointed Receiver

## SCHEDULE A - LIST OF AUTHORITIES

1. *Kingsett Mortgage Corporation et al v. Vandyk – Uptowns Limited et al.*, CV-23-709180-00CL ([Endorsement of Black J.](#)) dated June 13, 2024.
2. *Royal Bank v. Soundair Corp.* (1991), [83 D.L.R. \(4th\) 76 \(Ont. C.A.\)](#)
3. *Re Eddie Bauer of Canada* (2009), [57 C.B.R. \(5th\) 241](#) (Ont. S.C.J. [Commercial List])
4. *Skyepharm PLC v. Hyal Pharmaceutical Corp.* (1999), [12 C.B.R. \(4th\) 87](#) (Ont. S.C.J. [Commercial List])
5. *Sherman Estate v Donovan*, [2021 SCC 25](#)
6. *Danier Leather Inc, Re*, [2016 ONSC 1044](#)
7. *Elleway Acquisitions Ltd v 4358376 Canada Inc.*, [2013 ONSC 7009](#)
8. *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, CV-20-00637297-00CL ([Endorsement of Conway J.](#)) dated October 9, 2020).
9. *Target Canada Co, Re*, [2015 ONSC 7574](#)
10. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
11. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#)
12. *Nortel Networks Corp. (Re)*, [2017 ONSC 673](#)
13. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)

I certify that I am satisfied as to the authenticity of every authority cited in this Factum.

Date: December 11, 2024

  
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Signature



## **SCHEDULE B - STATUTORY REFERENCES**

### ***COURTS OF JUSTICE ACT*** **R.S.O. 1990, c. C.43**

#### **Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

#### **Terms**

**101 (2)** An order under subsection (1) may include such terms as are considered just.

#### **Sealing Documents**

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

STAR AMERICA DPGI  
ACQUISITION COMPANY, INC  
Applicant

- and - DEMAND POWER GROUP INC.  
Respondent

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

FACTUM OF THE RECEIVER  
(Returnable December 17, 2024)

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