

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED
AND SECTION 55 OF *THE COURT OF QUEEN'S*
BENCH ACT, CCSM c C280

BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.

Defendants.

NOTICE OF MOTION
DATE OF HEARING: MONDAY, NOVEMBER 8, 2021 AT 10:00 A.M.
CHARTIER, J.

TAYLOR McCAFFREY LLP
Barristers and Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba, R3B 3L3

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Client File No. 32608-6

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
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BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,

Defendants.

NOTICE OF MOTION

Deloitte Restructuring Inc. in its capacity as Receiver and Manager (the "Receiver") of the Defendants will make a motion before the Honourable Mr. Justice Chartier on Monday, the 8th day of November, 2021 at 10:00 o'clock in the forenoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg. Dial-in coordinates shall be circulated to the Service List.

Dial-in information will be forwarded to the Service List immediately upon receiving same from the Court]

THE MOTION IS FOR

1. A Distribution and Conditional Discharge Order substantially in the form attached hereto as Schedule 1 including, *inter alia*:

- a) Validating service of this Notice of Motion and the materials related thereto;
- b) Authorizing and directing the Receiver to make the Proposed Distributions as set out in the Second Report of the Receiver dated November 1, 2021 (the "Second Report");
- c) Approving the Second Report and the activities described therein including the Statement of Receipts and Disbursements for the period October 5, 2020 to October 29, 2021;
- d) Approving the Receiver's fees and disbursements including the fees and disbursements of its legal counsel, Taylor McCaffrey LLP;
- e) Upon the Receiver filing a Certificate confirming that:
 - i) The Receiver has resolved its interest in the six Co-Leased units as described in paragraph 21(e) of the Second Report (the "Co-Leased Units");
 - ii) The Proposed Distributions contemplated under paragraph 2(b) above have been completed; and
 - iii) All other matters in the administration of the Defendants' estate referred to in the Second Report have been completed including distribution of any residual funds from the Receiver's Holdback;

The Receiver shall be discharged as Receiver of the Defendants and released from its obligations and liabilities;

- f) Unsealing the Confidential Report and making it part of the public record.
2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- 1. Queen's Bench Rules 3.02(1), 14.05(2), 16.04(1), 16.08, 37.08(2) and 41.
- 2. *Bankruptcy and Insolvency Act* RSC c.B3 as amended ("BIA") s. 243.
- 3. *The Corporations Act* CCSM c.C255 s. 95.
- 4. *The Personal Property Security Act* CCSM c.P35 ("PPSA") s. 64(7).

5. By Order (Appointing Receiver) dated October 5, 2020 (the "Receivership Order"), this Court appointed Deloitte Restructuring Inc. as Receiver and Manager of all the assets and undertakings of the Defendants (the "Property") and, *inter alia*, authorized the Receiver to sell the Property or any part or parts thereof with the approval of this Honourable Court.

6. Following its appointment, the Receiver carried out its duties in accordance with the Receivership Order including, *inter alia*, taking possession of the Property and realizing on same for the benefit of the creditors.

7. On or about January 27, 2021, this Court granted an Approval and Vesting Order with respect to the Receiver's sale of substantially all of the assets of the Defendants ("Transaction"). The Receiver has completed the Transaction approved by the Court and holds the Net Sale Proceeds in accordance with paragraph 5 of the Approval and Vesting Order.

8. The Receiver has received an opinion from its independent legal counsel confirming that the Plaintiff, Toronto-Dominion Bank ("TD Bank"), has a prior perfected security interest over the Property and any proceeds thereof which includes the Net Sale Proceeds.

9. It is appropriate now that the Property has been sold that the Receiver make a distribution of the Net Sale Proceeds.

10. The Receiver has also substantially completed its duties under the Receivership Order save and except the following matters:

- a) Realization of the Receiver's interest in the six Co-Leased Units;

- b) Completion of the Proposed Distributions;
- c) Administrative matters incidental to discharge.

Once the Receiver has dealt with the above noted outstanding conditions it would be appropriate for it to be discharged by this Court and released in accordance with the terms of the Model Discharge Order.

11. Further, as the Transaction has been concluded it is appropriate to unseal the Confidential Report.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Order (Appointing Receiver) dated October 5, 2020.
2. The First Report of the Receiver dated January 21, 2021.
3. The Confidential Supplement to the First Report of the Receiver dated January 21, 2021.
4. Approval and Vesting Order dated January 28, 2021.
5. The Affidavit of Laura Leigh Buley sworn November 1, 2021.
6. The Second Report of the Receiver dated November 1, 2021.

7. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 1, 2021

TAYLOR McCAFFREY LLP
Barristers & Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba
R3B 3L3

DAVID R.M. JACKSON
CHARLES ROY

TO: THE SERVICE LIST

SCHEDULE 1

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE) MONDAY, THE 8TH
MR. JUSTICE CHARTIER) DAY OF NOVEMBER, 2021

B E T W E E N:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,

Defendants.

DISTRIBUTION AND CONDITIONAL DISCHARGE ORDER

THIS MOTION made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "Receiver") of the undertaking, property and assets of Kings Cargo Express Ltd. and Canada Cargo Lines Ltd. (the "Defendants"), for an Order authorizing distribution of Net Sale Proceeds to the Plaintiff, The Toronto-Dominion Bank ("TD Bank"), conditionally discharging the Receiver and other relief was heard this day at Winnipeg, Manitoba.

ON READING the Second Report of the Receiver dated November 1, 2021 and the Affidavit of Laura Leigh Buley sworn November 1, 2021, and on hearing the submissions of counsel for the Receiver and TD Bank, no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed:

Service

1. THIS COURT ORDERS that the time for service of the Notice of Motion and supporting materials is hereby validated.

Interim Distribution

2. THIS COURT ORDERS that the Receiver is authorized and directed to pay from the Net Sale Proceeds the amounts as set out in paragraph 43 of the Second Report.

Approvals

3. THIS COURT ORDERS that the activities of the Receiver, as set out in the Second Report, are hereby approved, including the Statement of Receipts and Disbursements for the period October 5, 2020 to October 29, 2021.

4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report, are hereby approved without the necessity of a formal passing of accounts.

Conditional Discharge

5. THIS COURT ORDERS that upon payment of the amount set out in paragraph 2 hereof and upon the Receiver filing a certificate substantially in the form attached hereto as Schedule A to this Order certifying that:

- (a) The Receiver's interest in the six Co-Leased Units referenced in paragraph 21(e) of the Second Report has been addressed to the satisfaction of the Receiver;
- (b) The Receiver has completed the Proposed Distributions as set out in the Second Report;
- (c) All other matters in the administration of the Defendants' estate have been completed including distribution of any residual funds from the Receiver's Holdback;

the Receiver shall be fully discharged as Receiver of the undertakings, property and assets of the Defendants, provided however that notwithstanding its full discharge (a) the Receiver shall remain

Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte Restructuring Inc. in its capacity as Receiver.

6. THIS COURT ORDERS AND DECLARES that Deloitte Restructuring Inc. is hereby released and discharged from any and all liability that Deloitte Restructuring Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte Restructuring Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Deloitte Restructuring Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part¹.

7. THIS COURT ORDERS AND DECLARES that no action or other proceeding shall be commenced against the Receiver, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver, and upon such terms as this Court may direct.

Miscellaneous

8. THIS COURT ORDERS AND DIRECTS that the Confidential Report shall no longer remain stored electronically on an encrypted basis with this Court and hereby directs the Registrar of this Court to make the Confidential Report accessible to the public and to form part of the public record.

I, David R.M. Jackson , of the firm of Taylor McCaffrey LLP hereby certify that I have received the consents as to form of the following parties:

¹ If this relief is being sought, stakeholders should be specifically advised, and given ample notice.

Sam Gabor, Dentons LLP, counsel for TD Bank

As directed by the Honourable Mr. Justice Chartier

SCHEDULE A

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

B E T W E E N:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,

Defendants.

RECEIVER'S DISCHARGE CERTIFICATE

A. Deloitte Restructuring Inc. was appointed receiver and manager (the "Receiver") of all of the assets, property and undertakings of the Defendants, Kings Cargo Express Ltd. and Canada Cargo Lines Ltd. ("Defendants"), pursuant to an Order of the Court of Queen's Bench dated October 5, 2020 ("Receivership Order");

B. Pursuant to the Distribution and Conditional Discharge Order of this Court pronounced November 10, 2021 ("Conditional Discharge Order") the Receiver has satisfied the conditions including having paid out any net realizations as directed by the Conditional Discharge Order and completed the administration of the Defendants' estate;

C. Unless otherwise indicated the Receiver's Certificate shall have the same meaning as given to them in the Conditional Discharge Order.

THE RECEIVER CERTIFIES the following:

1. The Receiver has paid the Net Sale Proceeds in accordance with the Conditional Discharge Order and as detailed in the Second Report.

2. The Receiver has satisfied the conditions of the Conditional Discharge Order, resolved its interest in the six Co-Leased Units, completed the outstanding activities described in the Second Report, and completed its administration of the Defendants' estate.

DATED at _____, Manitoba, this ____ day of _____, 20__.

DELOITTE RESTRUCTURING INC.
in its capacity as Receiver of
Kings Cargo Express Ltd. and Canada Cargo Lines Ltd.

Per: _____

THE QUEEN'S BENCH
WINNIPEG CENTRE

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BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.

Defendants.

SERVICE LIST
(AS AT October 19, 2021)

TAYLOR McCAFFREY LLP
Barristers and Solicitors
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Client File No. 32608-6

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BETWEEN:

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Plaintiff,

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KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.

Defendants.

SERVICE LIST

PARTY	TELEPHONE #	FAX #	STATUS
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PAVIN TAKHAR E-mail: pavin.takhar@dentons.com	403-268-3119		
DELOITTE RESTRUCTURING INC. 360 Main Street, Suite 2300 Winnipeg, MB R3C 3Z3		204-947-2689	Proposed Receiver
BRENT WARGA E-mail: bwarga@deloitte.ca	204-944-3611		
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PARTY	TELEPHONE #	FAX #	STATUS
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<p>BOUDREAU LAW 100 – 1619 Pembina Highway Winnipeg, MB R3T 3Y6</p> <p>J.R. NORMAN BOUDREAU E-mail: nboudreau@boudreaulaw.ca</p>	<p>204-318-2681</p>	<p>204-477-6057</p>	<p>Counsel to Manjinder Rehal (Guarantor) and Lavish Transport Ltd.</p>
<p>DEPARTMENT OF JUSTICE CANADA 400 St. Mary Avenue Winnipeg, MB R3C 4K5</p> <p>DINH BO-MAGUIRE E-mail: dinh.bo-maguire@justice.gc.ca</p>	<p>204-984-7652</p>	<p>204-984-5910</p>	<p>Counsel to Canada Revenue Agency</p>
<p>MANITOBA JUSTICE – CIVIL LEGAL</p> <p>SHELLEY HANER E-mail: shelleyhaner@gov.mb.ca</p>	<p>204-792-8641</p>	<p>204-948-2826</p>	<p>Counsel to the Minister of Finance Manitoba</p>

PARTY	TELEPHONE #	FAX #	STATUS
<p>AD188 – ESSEX LEASE FINANCIAL CORPORATION 960 – 13401, 108 Avenue Surrey, BC V3T 5T3</p> <p>E-mail: mcouch@elfc.ca</p>	778-395-3273		Secured Creditor
<p>AD196 – ESSEX LEASE FINANCIAL CORPORATION 770 – 10655 Southport Road SW Calgary, AB T2W 4Y1</p> <p>E-mail: mcouch@elfc.ca</p>	403-693-4060		Secured Creditor
<p>ARUNDEL CAPITAL CORPORATION Suite 201 – 3007 14th Street SW Calgary, AB T2T 3V6</p> <p>STEPHANIE GATAIANT E-mail: Stephanie@arundelcapital.com</p>	403-287-9597	403-287-9847	Secured Creditor
<p>BODKIN CAPITAL CORPORATION Unit 304 – 700 Droval Drive Oakville, ON L6K 3V3</p> <p>E-mail: customerservice@bodkin.com</p>	905-820-4550	1-866-827-1084	Secured Creditor
<p>CANADIAN DEALER LEASE SERVICES INC. 372 Bay Street, Suite 1800 Toronto, ON M5H 1H1</p> <p>E-mail: administration@cdlsi.com</p>	416-703-5765		Secured Creditor

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<p>FORD CREDIT CANADA COMPANY FORD MOTOR COMPANY OF CANADA LIMITED PO Box 2000 Oakville, Ontario L6K0C8</p> <p>E-mail: bbankrup@ford.com</p>	<p>1-905-845-2511</p>		<p>Secured Creditor</p>
<p>HONDA CANADA FINANCE INC. 180 Honda Blvd Markham, ON L6C 0H9</p> <p>E-mail: cs@honda.ca</p>	<p>1-800-387-5399</p>	<p>1-866-920-5586</p>	<p>Secured Creditor</p>
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DANIEL RAVINDRAN E-Mail: daniel.ravindran@mail.utoronto.ca			
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EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA – LABOUR PROGRAM P.O. Box 4600 Winnipeg, Manitoba, R3C 0S1 Attention: Mark Paul Santiaguél E-Mail: markpaul.santiaguél@labour-travail.gc.ca	204-259-8367		
ANURADHA SAJRMA 217 – 2390 McPhillips Street Winnipeg, Manitoba, R2V 5A3 E-Mail: safety@kingscargo.com			Officer and Director of Kings Cargo Express Ltd. and Canada Cargo Lines Ltd.