



Court File No. CV-21-00665375-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE CAVANAGH)
FRIDAY, THE 14th
DAY OF OCTOBER, 2022

B E T W E E N:

AMERICAN GENERAL LIFE INSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

DISTRIBUTION AND ANCILLARY MATTERS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule "B"** (the "**Real Property**") of the Appointment Order granted on August 3, 2021 (the "**Appointment Order**"), of (i) Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) the beneficial owners of the Legal Owner's Property (collectively, the "**Beneficial Owners**", and

- 2 -

together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others (together with the Legal Owner’s Property, the “**Receivership Assets**”), for an order, among other things:

- (i) approving the extension of the term of the term sheet among the Applicants and the Receiver dated as of July 9, 2021 (the “**Receiver Term Sheet**”);
- (ii) authorizing the Receiver to pay the commission of CBRE Limited (the “**Broker**”);
- (iii) authorizing the Receiver to repay the indebtedness outstanding under the Receiver’s Certificates (as defined in the Appointment Order);
- (iv) approving the activities of the Receiver, as set out in the Receiver’s Supplement to the Third Report dated May 20, 2022 (the “**Supplemental Report**”) and the Receiver’s Fourth Report to the Court dated October 4, 2022 (the “**Fourth Report**”, together with the Supplemental Report, the “**Reports**”); and
- (v) sealing Confidential Appendix “A” and Confidential Appendix “B” to the Fourth Report (collectively, the “**Confidential Appendices**”)

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Receiver’s Third Report dated May 13, 2022, the Reports and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of service of Nancy Thompson sworn October 5, 2022 (the “**Thompson Affidavit**”):

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.

RECEIVER TERM SHEET

2. **THIS COURT ORDERS** that (i) the Receiver's execution of amending agreements with the Applicants dated as of June 22, 2022 and September 21, 2022, amending the definition of "Initial Term" under the Receiver's term sheet dated as of July 9, 2021 (as amended, the "**Receiver Term Sheet**") to "December 31, 2022" is authorized and approved, and (ii) the Receiver's Borrowings Charge (as defined in the Appointment Order) shall continue to secure all amounts owing pursuant to the Receiver Term Sheet, as amended, with the same priority provided for in the Appointment Order.

REPAYMENT OF RECEIVER'S BORROWINGS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to repay all indebtedness outstanding under the Receiver's Certificate (as defined in the Appointment Order) issued under the Receiver Term Sheet from the Net Proceeds (as defined in the Fourth Report).

PAYMENT OF BROKER COMMISSION

4. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commission (as defined in the Fourth Report) to the Broker as and when the Proposed Transaction (as defined in the Fourth Report) closes, out of the Net Proceeds, in such amount as is prescribed by the terms of the Broker Engagement Agreement, as amended (as defined in the Fourth Report).

- 4 -

APPROVAL OF REPORT & ACTIVITIES

5. **THIS COURT ORDERS** that the Reports and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

SEALING ORDER

6. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record, pending further Order of this Court.

MISCELLANEOUS

7. **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.



Digitally signed by
Mr. Justice
Cavanagh

Schedule A

Individuals	Trusts
Allan Gross Errol Yim and Andrea Yim, jointly Ava Gross Karen Nakagawa and Calvin Nakagawa, jointly Carol Jaxon Carole Kai Onouye Diane Curtis Dwight Otani and Theresa Otani, jointly Edward Bugarin Ellen Fleishman Gemie Arakawa George Tamashiro Guy Pace and Caroline Berdusco, jointly Heidi Berger Henry Ko Hongwei Su James Brand Janis L. Lai Trustee Jean Morel Jian Zhang Johann Strasser John Dattomo and Daniela Dattomo Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly Randall Y.C. Ho Robert Atkinson Roberta Sunahara and Paul Sunahara, jointly Seymour Kazimirski Stanley Salcedo	Charlyn Shizue Honda Masini Trust, by and through its trustee(s) Fleishman Family Trust, by and through its trustee(s) J. Zachery Jones Trust, by and through its trustee(s) Jane Shigeta Revocable Living Trust, by and through its trustee(s) Jasen Takei Revocable Living Trust, by and through its trustee(s) Melvin Shigeta Revocable Living Trust, by and through its trustee(s) Ruth Hisaye Honda Trust, by and through its trustee(s) S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s) Wallace K. Tsuha Trust, by and through its trustee(s)
	Corporations / Partnerships 1236068 Ontario Limited 1649750 Ontario Inc. 1818019 Ontario Limited Citydrill Inc. Gross Capital Inc. Dirk and Dale IRA LLC Gross Medical Opportunities Fund LP Hybrid Activities Inc. Mark Craig Gross Holdings Inc. Randy 88, LLC Rastogi Medicine Professional Corporation RMK IRA LLC

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*
Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*
Respondents

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

DISTRIBUTION AND ANCILLIARY
MATTERS ORDER

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V

Tel: 416-863-2958

Email: pamela.huff@blakes.com

Aryo Shalviri, LSO #63867A

Tel: 416-863-2962

Email: aryo.shalviri@blakes.com

Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver