

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

THE HONOURABLE MR.) TUESDAY, THE 14TH DAY
)
JUSTICE KOEHNEN) OF SEPTEMBER, 2021

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

**ORDER
(Beneficial Owner Notification & Service)**

THIS MOTION made by KPMG Inc., in its capacity as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) all of the assets, undertakings and properties, including, without limitation, the properties municipally known as 304 Victoria Avenue North, Hamilton, Ontario and 414 Victoria Avenue North, Hamilton, Ontario (together, the "**Real Properties**") of 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) all right, title and interest of any beneficial owners (the "**Beneficial Owners**") in and to the Legal Owner's Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others, including the Beneficial Owners



who are Respondents in these proceedings and are listed on Schedule “A” (collectively, the “**Property**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the first report of the Receiver, dated September 7, 2021 (the “**First Report**”), the affidavit of Nancy Thompson sworn July 9, 2021 (the “**Thompson Affidavit**”), and on hearing the submissions of counsel for the Receiver 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 September 9, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof, including on any Beneficial Owner other than those Beneficial Owners with email addresses listed in the Master Contact List (as defined in the Thompson Affidavit).

NOTIFICATION PROCEDURE

2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to undertake the “**Notification Procedure**”, as defined and described in paragraphs 49 and 50 of the First Report.

SERVICE ON POTENTIAL BENEFICIAL OWNERS

3. **THIS COURT ORDERS** that as of September 24, 2021, service by the Receiver, or any other interested party in these proceedings, of any materials in these proceedings shall be good and effective service on any Beneficial Owner, upon the party making such service sending the materials to either (a) the email address provided to the Receiver as part of the Notification Procedure by the potential Beneficial Owner (a “**Disclosed Email**”), or (b) if no email address has been provided to the Receiver in connection with the Notification Procedure, then to the email address listed in the Master Contact List (as defined in the Thompson Affidavit) for any Beneficial Owner that is a natural person, a corporation or a partnership, which for the avoidance of doubt

shall be the email address to which the Notification Letter (as defined in the Notification Procedure) is sent by the Receiver in accordance with Paragraph 2 hereof (an “**Email of Record**”).

4. **THIS COURT ORDERS** that for the purposes of effecting service in accordance with Paragraph 3 on a Beneficial Owner that is a trust, service shall be good and effective only to the Disclosed Email of any one party that has identified itself to the Receiver as a trustee of such trust.

5. **THIS COURT ORDERS** that for the purposes of Paragraph 4, the party effecting service on a Beneficial Owner that is a trust shall be entitled to rely on a statement to the Receiver made by a party that the party is the duly authorized trustee of such trust.

6. **THIS COURT ORDERS** that as of September 24, 2021, (a) any Beneficial Owner in respect of whom the Receiver does not have a Disclosed Email, or in the case of a trust, a Disclosed Email and identification of a trustee, or (b) any Beneficial Owner that is a natural person, a corporation or a partnership and in respect of whom the Receiver does not have an Email of Record (other than that of the Legal Owner), including in the case of (a) and (b) any Beneficial Owner in respect of whom the Receiver has a physical mailing address but no Disclosed Email or Email of Record, (collectively, an “**Unidentified Beneficial Owner**”), shall not be entitled to further service or notice of any motions brought in these proceedings, and service on any Unidentified Beneficial Owner of any motions or materials in these proceedings is hereby dispensed with, effective on September 24, 2021; provided, however, that if an Unidentified Beneficial Owner provides a Disclosed Email (and in the case of a trust, a Disclosed Email and identification of trustee) at any time after September 24, 2021, such Unidentified Beneficial Owner shall thereby become entitled to future service and notice of motions brought in these proceedings.

7. **THIS COURT ORDERS** that email service in accordance with Paragraph 3 shall be effective immediately upon such email being sent, if sent prior to 5:00 p.m. (Toronto Time) on a business day, or, if sent after 5:00 p.m. (Toronto Time) or on a non-business day, shall be effective on the next business day thereafter.

DISCLOSURE OF BENEFICIAL OWNER INFORMATION

8. **THIS COURT ORDERS** that, pursuant to clause 7(3) of the *Canada Personal Information Protection and Electronic Documents Act*, if applicable, the Receiver is hereby authorized to

disclose the contact information of potential Beneficial Owners, including names, Disclosed Email and/or Email of Record, to any interested party who may request such information from the Receiver for the purposes of serving materials in these proceedings.

OPT-OUT

9. **THIS COURT ORDERS** that if counsel to any potential Beneficial Owner files a Notice of Appearance, then such potential Beneficial Owner shall no longer be subject to Paragraphs 3 through 8 of this Order and following receipt of such Notice of Appearance by the Receiver, the Receiver shall add such party to the Service List, and service of any court material in this proceeding may be made on such party in accordance with the E-Service Protocol of the Commercial List.

NO DEEMED ACCEPTANCE OF BENEFICIAL OWNERSHIP INTEREST

10. **THIS COURT DECLARES** that nothing herein or in the Notification Procedure, including service upon or giving of notice to, any party, shall constitute, or be deemed to constitute, (a) an admission or acceptance by the Receiver of the validity of such party's interest in any of the Legal Owner's Property (and the existence, nature and extent of any such interest shall be subject to a future determination of this Court, if necessary), or (b) an entitlement to service or notice of any materials in these proceedings.

PROTECTION OF THE RECEIVER

11 **THIS COURT DECLARES** that: (a) in carrying out the terms of this Order, the Receiver shall have all of the protections given to it by the *Bankruptcy and Insolvency Act* (Canada) and the Appointment Order granted on August 3, 2021, and (b) the Receiver shall incur no liability or obligations as a result of carrying out the provisions of this Order, including by reason of disclosing the contact information of potential Beneficial Owners in accordance with the terms hereof.

AID AND RECOGNITION

12. **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.

RLJ

SCHEDULE "A"

Individuals
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

Trusts
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

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(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**ORDER
(Beneficial Owner Notification & Service)**

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