

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

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

March 20, 2008

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1. Purpose of this First Supplemental Report

- 1.1 This First Supplemental Report to the Receiver and Manager's Fourth Report to the Court dated March 10, 2008 (the "Fourth Report") has been prepared for the purpose of clarifying certain information and adding context to certain of the statements contained in the Fourth Report.
- 1.2 All capitalized terms used in this First Supplemental Report are as defined in the Fourth Report.

2. Books and Records

- 2.1 Paragraph 3.2.2 of the Fourth Report provides that on or about February 6, 2008, Mr. Peter Carey (counsel for Mr. Mark Twerdun) provided a disk to the Receiver's counsel containing the documents Twerdun was prepared to release to the Receiver. Paragraph 3.2.2 of the Fourth Report also states that Mr. Carey did not provide the required listing of the documents that Twerdun was not prepared to release to the Receiver.
- 2.2 In addition, paragraph 3.2.3 of the Fourth Report states that on or about February 6, 2008, Mr. Carey delivered a small number of documents out of a banker's box full of documents with "no explanation as to why the remaining documents had been withheld".
- 2.3 The Receiver would like to clarify certain information and add context to the statements contained in paragraphs 3.2.2 and 3.2.3 of the Fourth Report.
- 2.4 On or about February 4, 2008, Mr. Carey delivered some, but not all, of the Buchan-Terrell Documents to TGF. Mr. Carey did not deliver (i) four documents over which Mr. Twerdun was alleging solicitor/client and/or litigation privilege and (ii) four file folders which Mr. Carey advised were "irrelevant to this matter", as well as privileged. A specific document list was not provided with respect to the documents that Mr. Carey removed from the Buchan-Terrell Documents on the basis that he considered them to be "irrelevant" to this matter.
- 2.5 On February 6, 2008, Mr. Carey delivered a CD that contained some, but not all, of the reviewed documentation previously provided to Mr. Carey by D&T, together with an explanation as to why certain of the documents were not yet available. Mr. Carey also advised that both the Blackberry and the laptop computer, from which these documents were derived, were the personal property of Mr. Twerdun and, as a result, were deleted as being "irrelevant".
- 2.6 On February 11, 2008, TGF wrote to Mr. Carey to, among other things, request a list of the "personal" documents which had been deleted as being irrelevant. In addition, counsel for the Receiver requested a list identifying those documents which had been removed for privilege.
- 2.7 On February 22, 2008, Mr. Carey advised by correspondence to TGF that he had no intention of creating a list of irrelevant documents which were not being produced because it was, theoretically, an "infinite subset". He also advised that it was not possible to identify the other documents as TGF requested because the materials were not documents *per se*, but rather pieces of data. In order to describe this data, Mr. Carey advised that one would have to produce the data itself, which would result in his office producing personal, irrelevant information and that the Receiver was not entitled to such information.
- 2.8 On March 11, 2008 (after the issuance of the Fourth Report), Mr. Carey provided TGF with a disc containing the remaining documents retrieved from Twerdun's Blackberry, which he considers to be "relevant" to the matter.

3. Superintendent Levy


- 3.1 Paragraphs 1.5.1(q) and the second last paragraph on page 23 of the Fourth Report each provide that the Receiver is seeking an Order declaring that “the levy payable to the Superintendent in Bankruptcy and all payments made by way of dividend or otherwise on account of the claims of creditors pursuant to Section 147 of the BIA is *now* payable in the Consolidated Estate”.
- 3.2 This statement contains a typographical error. The word *now* should read *not*, such that the paragraph states that the Receiver is seeking:

“an Order declaring that the levy payable to the Superintendent in Bankruptcy and all payments made by way of dividend or otherwise on account of the claims of creditors pursuant to Section 147 of the BIA is *not* payable in the Consolidated Estate.”

All of which is respectfully submitted this 20th day of March, 2008.

KPMG INC.
IN ITS CAPACITY AS THE COURT APPOINTED
RECEIVER AND MANAGER OF FACTORCORP
INC. AND FACTORCORP FINANCIAL INC.

Per:



J. Bradley Butcher
Vice-President

ONTARIO

**SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at Toronto

**FIRST SUPPLEMENTAL REPORT TO FOURTH
REPORT TO THE COURT
SUBMITTED BY KPMG INC.
AS RECEIVER AND MANAGER**

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and Manager of the property, assets and undertaking of
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