

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

B E T W E E N:

**THE TORONTO DOMINION BANK**

Applicant

- and -

**BUCHH HOLDING INC., 2371561 ONTARIO INC., BRITMAN SPECIALTY  
PRODUCTS INC., ROTALEC INTERNATIONAL INC. AND ROTALEC  
CANADA INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**FACTUM OF THE RECEIVER  
(Motion re: Sale Approval and Distribution Order)**

September 13, 2024

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Richter Inc.

## PART I - OVERVIEW<sup>1</sup>

1. This factum is filed by Richter Inc. (“**Richter**”) in its capacity as court-appointed receiver and manager (in such capacity the “**Receiver**”) of Buchh Holding Inc. (“**Buchh Holding**”), Britman Specialty Products Inc. (“**BSP**”), Rotalec International Inc. (“**Rotalec International**”) and Rotalec Canada Inc. (“**Rotalec Canada**”, and collectively with Buchh Holding, BSP and Rotalec International, the “**Debtors**”), in support of the Receiver’s motion for:

- (a) an Approval and Vesting Order (the “**First AVO**”) substantially in the form attached at Tab 1-A of the Motion Record, among other things:
  - (i) abridging the time for service of the notice of motion and the motion record herein, if necessary, and validating service thereof;
  - (ii) approving a sale transaction (the “**Bucch Holding Transaction**”) for the sale of all of Buchh Holdings’ shares in 2371561 Ontario Inc., which represents 50% of all outstanding and issued shares (the “**Purchased Shares**”), to Pamposh Holdings Inc. (the “**Bucch Purchaser**”), as set out and described in a share purchase agreement (the “**SPA**”) between the Receiver, as vendor, and the Bucch Purchaser, as purchaser; and
  - (iii) vesting all of the Receiver and Buchh Holding’s rights, title and interest in and to the Purchased Shares (as defined in the First AVO), in the Bucch

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the First Report, defined herein.

Purchaser, free and clear of and from all Claims (as defined in the First AVO);

(b) an Approval and Vesting Order, substantially in the form attached at Tab 1-B of the Motion Record (the “**Second AVO**”, and, together with the First AVO, the “**AVOs**”), among other things:

(i) approving a sale transaction (the “**Rotalec Canada Transaction**”, and, collectively with the Buchh Transaction, the “**Transactions**”) for the sale of the assets (“**Purchased Assets**”) of Rotalec Canada to Continental Capital Investments Inc. (the “**Rotalec Purchaser**”), as set out and described in an asset purchase agreement (the “**APA**”) between the Receiver, as vendor, and the Rotalec Purchaser, as purchaser; and

(ii) vesting all of the Receiver and Rotalec Canada’s rights, title and interest in and to the Purchased Assets (as defined in the Second AVO), in the Rotalec Purchaser, free and clear of and from all Claims (as defined in the Second AVO);

(c) an order granting certain ancillary relief, substantially in the form attached to the Motion Record at Tab 1-C, among other things:

(i) approving the first report of the Receiver dated September 9, 2024 (the “**First Report**”) and the appendices thereto, and the actions, conduct and activities of the Receiver described therein;

- (ii) authorizing the Receiver to distribute to The Toronto-Dominion Bank (the “**Bank**”), or as it may in writing direct, \$315,000 in partial satisfaction of its secured claims against the Debtors, and such further amounts as the Receiver may determine are available for distribution to the Bank, without further Court Order, provided the aggregate distributions to the Bank do not exceed the secured indebtedness owed to the Bank by the Debtors;
  - (iii) approving the Receiver’s interim statement of receipts and disbursements for the period from August 1, 2024 to September 5, 2024, as set out in the First Report;
  - (iv) approving the fees and disbursements of the Receiver for the period from July 12, 2024 to August 16, 2024 in the total amount of \$197,361.10 and of the Receiver’s legal counsel, Fasken Martineau DuMoulin LLP, for the period from July 29, 2023 to August 31, 2024 in the total amount of \$41,321.45, as set out in the First Report and in Appendices “I” and “J” thereto;
  - (v) sealing Confidential Appendix “G” to the First Report (the “**Confidential Appendix**”), subject to further order of the Court; and
- (d) such further and other relief as to this Honourable Court may seem just.

2. The Receiver respectfully submits that the relief requested on this motion should be granted on the following grounds:

- (a) The Buchh Transaction provides for the greatest recovery available in the circumstances for the Purchased Shares and is the best option available for the Debtors' stakeholders;
- (b) The Rotalec Canada Transaction, which is the culmination of a comprehensive and fair sale process that canvassed interested parties, provides for the greatest recovery available in the circumstances and is the best option available for the Debtors' stakeholders;
- (c) The AVOs are substantially in the form of the model order and are necessary to close the Transactions;
- (d) The Confidential Appendix contains commercially-sensitive information about the identity of the bidders in the sale process for the Rotalec Canada assets and includes details about the bids, the disclosure of which would undermine the integrity of the Sale Process and the Receiver's ability to monetize the Debtors' assets if the Transactions do not close; the salutary effects of sealing the Confidential Appendices until the closing of the Transactions outweighs any deleterious effects;
- (e) The Receiver has undertaken several activities in connection with its mandate, all of which have been necessary and consistent with its duties and powers, and have been undertaken with efficiency and reasonableness in the interests of the Debtors' stakeholders generally; and
- (f) The fees and disbursements incurred by the Receiver and its counsel are reasonable and appropriate in the circumstances.

## **PART II - FACTS**

3. The relevant facts are set out in detail in the First Report, Tab 2 of the Motion Record, and are only briefly summarized herein.

4. Upon application by the Bank, on July 19, 2024, the Ontario Superior Court of Justice (the “**Court**”) issued an order appointing Richter as Interim Receiver of all of the assets, undertakings and properties of the Debtors as well as UGP.

**First Report, s. 1, Motion Record of the Receiver (Motion re: Sale Approval and Distribution) dated September 9, 2024 (“MR”), Tab 2.**

5. Pursuant to an order (the “**Receivership Order**”) issued by the Honourable Justice Kimmel of the Court dated July 31, 2024, Richter was appointed Receiver, without security of the Debtors’ property. As noted in the endorsement of the Honourable Justice Kimmel, UGP was carved out of the Receivership Order at that time. UGP is not subject to these Receivership Proceedings.

**First Report, s. 2-3, MR, Tab 2; Endorsement of the Honourable Justice Kimmel dated July 31, 2024, MR, Tab 2-C.**

### ***The Buchh Transaction***

6. The Buchh Transaction contemplates the sale of all of Buchh Holding’s shares in UGP (the “**Shares**”) to the Buchh Purchaser, a nominee corporation for Mr. Buchh. Buchh Holding owns 50% of the shares of UGP, while Mr. Buchh owns the remaining 50% personally.

**First Report, s. 13-14, MR, Tab 2.**

7. Although no sale process was conducted for the sale of the Shares, the Buchh Transaction resulted from a bona fide offer by the Buchh Purchaser.

**First Report, s. 58, MR, Tab 2**

8. The Buchh Transaction contemplates the sale of the Shares to the Buchh Purchaser in exchange for payment to the Receiver of \$315,000 in cash at closing. The closing of the Buchh Transaction is conditional upon, among other conditions: (a) the issuance of an order substantially in the form of the First AVO; (b) a release of Mr. Buchh's personal guarantee held by the Bank for \$500,000 and replacement with a new personal guarantee for \$200,000; and (c) the assignment of UGP's 2023 SR&ED tax credits and refunds to the Bank, who agreed to release and discharge its security interest in UGP's assets save and except for any tax refunds.

**First Report, s. 17-23, MR, Tab 2; Share Purchase Agreement, Appendix F to the First Report, MR, Tab 2-F.**

9. Although the sale proceeds are vastly insufficient to repay the Bank, the Bank is supportive of the Buchh Transaction. The Business Development Bank of Canada ("BDC"), the second ranking creditor of Buchh Holding, is also supportive of the Buchh Transaction.

**First Report, s. 18-19, MR, Tab 2.**

***The Rotalec Canada Transaction***

10. On August 26, 2024, the Receiver launched an expedited sale process for the sale of Rotalec Canada's assets (the "Sale Process"). The deadline to submit offers was September 4, 2024 at 12:00 p.m.

**First Report, s. 24-25, MR, Tab 2.**

11. The Sale Process canvassed the market broadly (45 potentially interested parties received a teaser and 12 parties signed a non-disclosure agreement), and yielded three offers.

**First Report, s. 24-29, MR, Tab 2; Bids Summary, Appendix G to the First Report, MR, Tab 2-G.**

12. After detailed review of the offers, the Receiver accepted the “en bloc” offer from the Rotalec Purchaser.

**First Report, s. 30, MR, Tab 2.**

13. The Rotalec Canada Transaction contemplates the sale of Rotalec Canada’s assets for a purchase price of \$225,360. This is the highest and best offer received in the sale process. The closing of the Rotalec Canada Transaction is conditional upon the issuance of the Second AVO.

**First Report, s. 32, MR, Tab 2; Asset Purchase Agreement, Appendix H to the First Report, MR, Tab 2-H.**

14. Although the sale proceeds from the Rotalec Canada Transaction are insufficient to repay the Bank, the Bank supports the Transaction.

**First Report, s. 59, MR, Tab 2.**

***Disbursement to the Bank***

15. The Debtors granted several security agreements in favour of the Bank including general security agreements which were perfected by registration under the *Personal Property Security Act* (Ontario), as well as an investment property pledge agreement which pledged to the Bank, among other collateral, Buchh Holdings’ shares in UGP.

**First Report, s. 43, MR, Tab 2.**

16. The Receiver requested that Fasken provide it with a security opinion to confirm the validity and enforceability of the Bank’s security. At the time of service of the Receiver’s Motion Record Fasken had not yet completed its review of the Bank’s security. Fasken has now completed its review and has provided the Receiver with an opinion that, subject to customary



assumptions and qualifications, the Bank has a valid and enforceable security interest in the personal property of the Debtors in the Provinces of Ontario and Québec.

**First Report, s. 44, MR, Tab 2.**

17. The current indebtedness owing by the Debtors to the Bank, as at September 6, 2024, is \$3,597,520 plus accrued interest and costs. The proceeds of sale of the Shares and the Rotalec Canada Assets is not sufficient to repay the indebtedness in full.

**First Report, s. 45, MR, Tab 2.**

**PART III - ISSUES**

18. This motion raises the following issues:

- (a) Should the Court grant the AVOs?
- (b) Should the sealing order be granted in respect of the Confidential Appendices?
- (c) Should this Court approve the Receiver's activities as described in the First Report?
- (d) Should this Court approve the Receiver's and its counsel's fees and disbursements as described in the First Report, the Benchaya Affidavit, and the Bayus Affidavit?
- (e) Should this Court authorize the Receiver to distribute the sale proceeds to the Bank?

19. The Receiver respectfully submits that this Court should grant all of the foregoing relief for the reasons that follow.

**PART IV - LAW & ARGUMENT**

***The First AVO Should be Granted***

20. Pursuant to the Receivership Order, the Receiver was authorized to market any and all of the Debtors' property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate

**Receivership Order, para. 4(j), Appendix B to the First Report, MR, Tab 2-B.**

21. In reviewing a proposed sale of assets in the context of a receivership, a court must consider the factors set out by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*:

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

**[Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 \(ON CA\)](#) ("*Soundair*") at para. 46.**

22. In making this assessment, the court must also uphold the business judgment of the receiver and only reject its recommendations in the most exceptional circumstances. To do otherwise would, as held by the Court in *Crown Trust Co. et al. v Rosenberg et al.*, have "immensely damaging results" to the disposition of assets by court-appointed receivers. The Court elaborated:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the

conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval.

[Crown Trust Co. et al. v Rosenberg et al., 1986 CanLII 2760 \(ON SC\)](#) at para. 84.

23. As set out in the First Report, the Receiver respectfully recommends that this Court approve the Buchh Transaction for the following reasons:

- (a) The proposed Buchh Transaction results from a *bona fide* offer by the Buchh Purchaser;
- (b) A UGP receivership and the costs related thereto would not be required should the Buchh Transaction be completed;
- (c) The Buchh Transaction appears to be the most advantageous in the circumstances. The Bank and the Receiver are of the view that the Buchh Transaction represents the greatest value for the shares held in Buchh Holding. Among other factors, the Receiver has considered: (i) Buchh Holding's nominal performance over the past several years; and (ii) it is unlikely that any third party would be interested in purchasing the shares held by Buchh Holding in UGP given that Buchh Holding only holds 50% of the shares of UGP, and that Mr. Buchh holds the remaining 50%;
- (d) UGP would continue to operate, and the Buchh Transaction would preserve employment of at least 9 employees of UGP;
- (e) The alternative to a sale of the Buchh Holding shares would be a liquidation of the UGP assets which will most likely not generate net proceeds greater than the contemplated Buchh Transaction; and

- (f) The Bank, the primary secured lender, supports the Buchh Transaction notwithstanding the fact that it will not be repaid in full.

**First Report, s. 58, MR, Tab 2.**

24. Taking these considerations into account, the Receiver respectfully submits that the *Soundair* principles are satisfied

- (a) *Sufficient effort was made to obtain the best price:* The Buchh Transaction results from a *bona fide* offer made by the Buchh Purchaser, which was negotiated between the Buchh Purchaser, the Receiver and the Bank. Although no sale process was completed with respect to the Shares, the Buchh Transaction achieves the best price possible outcome considering UGP's nominal performance over the past several years and the fact that they represent only a 50% interest in a privately-held company.
- (b) *The interests of all parties have been served:* The Buchh Transaction provides for the best possible outcome in the circumstances. Although the proceeds of sale will be insufficient to repay the Bank in full, the Buchh Transaction will allow UGP to continue operating as a going concern and preserve employment of at least 9 employees of UGP. The alternative to the Buchh Transaction would be a costly receivership proceeding for UGP and a liquidation of its assets, which would most likely not generate net proceeds greater than the proceeds contemplated as part of the Buchh Transaction. Furthermore, the Bank, the Debtors' primary secured creditor, supports the transaction despite the fact that it will not be repaid in full.

- (c) *The Sale Process was run with integrity.* Considering the nature of the Shares being sold, namely that they represent a 50% interest in a privately-held company, it is unlikely that third parties would have been interested in purchasing the shares. In this context, the Receiver determined, in its business judgment, that a formal sale process for the sale of the Shares would not have yielded a better price.
- (d) *There was no unfairness in the process:* In the Receiver's view, there has been no unfairness in the process resulting in the Buchh Transaction. None of the Debtors' stakeholders will be prejudiced by the Buchh Transaction. The Receiver had direct involvement in negotiating the terms and conditions of the Buchh Transaction and believes that it is fair and reasonable in the circumstances.

**First Report, para. 58, MR, Tab 2.**

25. For the foregoing reasons, the Receiver requests that this Court grant the First AVO approving the Buchh Transaction.

***The Second AVO Should be Granted***

26. As set out in the First Report, the Receiver respectfully recommends that this Court approve the Rotalec Canada Transaction for the following reasons:

- (a) The proposed Rotalec Canada Transaction results from a *bona fide* offer by the Rotalec Canada Purchaser following a complete, albeit accelerated sale process;
- (b) The Receiver does not expect that a further marketing of the Rotalec Canada assets will result in any superior offers to the offer contained in the APA;
- (c) The Rotalec Canada Transaction offers the best and highest recovery to the Bank;

- (d) The Rotalec Canada Transaction is fair and reasonable in the circumstances; and
- (e) The Bank, the primary secured lender, supports the Rotalec Canada Transaction notwithstanding that the Bank will not be repaid in full.

**First Report, s. 59, MR, Tab 2.**

27. Taking these into account, the Receiver respectfully submits that the *Soundair* principles are satisfied:

- (a) *Sufficient effort was made to obtain the best price:* The Sale Process was comprehensive and Rotalec Canada's assets were marketed broadly. 45 potential bidders were solicited, 12 interested parties signed non-disclosure agreements and three offers were received. The Rotalec Canada Transaction represents the best of those offers, and, in the circumstances, the Receiver does not expect that further marketing efforts would result in a superior transaction;
- (b) *The interests of all parties have been served:* The Rotalec Canada Transaction provides for the best possible outcome in the circumstances. The Bank, as primary secured lender, supports the Rotalec Canada Transaction notwithstanding that it will not be repaid in full.
- (c) *The Sale Process was run with integrity:* The Sale Process was run in accordance with best practices, and the Receiver ensured that all steps were conducted with integrity. All interested parties were given a meaningful opportunity to participate in the process and were provided with equal information. The Rotalec Canada Transaction was negotiated in good faith and with due diligence. The Receiver has

not received any objections or concerns regarding the Sale Process or the manner in which it was conducted.

- (d) *There was no unfairness:* In the Receiver's view, there has been no unfairness in the conduct of the Sale Process. The Sale Process was robust. None of the interested parties have been prejudiced or excluded. Further, the Receiver had direct involvement in negotiating the terms and conditions of the Rotalec Canada Transaction and believes that it is fair and reasonable in the circumstances.

**First Report, s. 59, MR, Tab 2.**

28. For the foregoing reasons, the Receiver requests that this Court grant the Second AVO approving the Rotalec Canada Transaction.

***The Sealing Order Should be Granted***

29. The Receiver is seeking an order from this Court sealing Appendix G of the First Report (the "**Confidential Appendix**") which contains a confidential bid summary summarizing the offers received throughout the Sale Process and their economic terms (the "**Bid Summary**").

30. Pursuant to the *Courts of Justice Act*, the Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record.

**[Courts of Justice Act, R.S.O. 1990, c C. 43, s. 137\(2\).](#)**

31. The Supreme Court of Canada has set forth two common law tests for the granting of sealing orders in civil matters.

32. In *Sierra Club of Canada v. Canada (Minister of Finance)*, commonly applied in the insolvency context, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where:

- (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

[Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41 at para. 53.](#)

33. More recently, in *Sherman Estate v. Donovan*, the Supreme Court reiterated that it is a fundamental element of Canadian democracy that court proceedings are open to the public. The Court noted that a person asking the court to exercise discretion in a way that limits the open court presumption must establish the following pre-requisites:

- (a) court openness poses a serious risk to an important public interest (which captures a broad array of public objectives, including commercial interests);
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[Sherman Estate v. Donovan, 2021 SCC 25 at paras. 30, 38, 41.](#)



34. In regards to the first pre-requisite, Courts have acknowledged that there is a public interest in the “general commercial interest of preserving confidential information” and in maximizing recoveries in an insolvency, each of which goes beyond the individual’s case.

See [\*Sherman Estate v. Donovan\*, 2021 SCC 25 at para. 41](#); [\*Danier Leather Inc., Re\*, 2016 ONSC 1044 at para. 84](#).

35. The *Sierra Club* test and the *Sherman Estate* test have both commonly been applied in the insolvency context to authorize sealing orders over confidential or commercially-sensitive documents to protect the interests of debtors or other stakeholders.

See e.g., the Court’s application of the *Sierra Club* test in [\*Elleway Acquisitions Ltd v 4358376 Canada Inc.\*, 2013 ONSC 7009 at paras. 47 and 48](#); [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*, 2014 ONSC 1173 at paras. 32-37](#); [\*Stelco Inc., Re\*, 2006 CanLII 1772 \(ON SC\)](#); [\*Re Canwest Publishing Inc.\*, 2010 ONSC 222 at paras. 63-65](#).

See e.g., the Court’s application of the *Sherman Estate* test in [\*Ontario Securities Commission v Bridging Finance Inc.\*, 2021 ONSC 4347 at paras. 23-27](#).

36. The Court in *Yukon (Government of) v. Yukon Zinc Corporation* held that it is standard practice in a sale process to keep all aspects of the bidding or sales process confidential. The Court found that sealing this information ensures the integrity of the sales and marketing process and avoids misuse of information by bidders to obtain an unfair advantage in any subsequent sale process (which may be necessary if the initial process fails in some respect). In essence, the sealing order puts all bidders on a level playing field until a transaction has been approved and consummated.

[\*Yukon \(Government of\) v Yukon Zinc Corporation\*, 2022 YKSC 2 at para. 39](#).

37. If the Confidential Appendix was not sealed, the information contained therein (which includes commercially-sensitive information and the identities of the other Bidders and the terms of their bids) could negatively impact any future transactions for Rotalec Canada’s assets, if

the Rotalec Canada Transaction does not close for any reason. The Receiver is not aware of any party that will be prejudiced if the Confidential Appendix is sealed on the terms requested.

**First Report, s. 62, MR, Tab 2.**

38. The sealing order sought is the least restrictive means to maintain the confidentiality of the commercially-sensitive, competitive, and confidential information found in the Bid Summary.

39. Further, the sealing order will preserve the integrity of the Sale Process, which greatly outweighs any negative effects that will result from limiting public access to a small amount of information.

40. Given the foregoing, the Receiver respectfully submits that the proposed sealing order satisfies both the tests in *Sierra Club* and *Sherman Estate* and that it is therefore appropriate for this Court to grant the sealing order, subject to further order of this Court.

***The Activities of the Receiver as described in the First Report Should be Approved***

41. Where a court-appointed receiver meets the objective test of demonstrating that it has acted reasonably, prudently, and not arbitrarily, this Court has the inherent jurisdiction to approve the receiver's activities as set out in its reports.

**[Lang Michener v. American Bullion Minerals Ltd., 2005 BCSC 684 at para. 21.](#)**

42. In *Target Canada*, this Court identified several good policy and practical reasons for monitors in *Companies' Creditors Arrangement Act* ("CCAA") proceedings to routinely seek court approval of their reports and activities, and for courts to grant such approval. These include: (a) allowing the monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the monitor's

activities have been conducted in a prudent and diligent manner; (d) providing protection for the monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the monitor.

[Target Canada Co., \(Re\), 2015 ONSC 7574 at paras. 2, 22-23.](#)

43. This Court has determined that these policy and practical reasons apply equally to receivership proceedings and motions seeking approval of a receiver's report and activities.

[Hangfen Evergreen Inc., \(Re\), 2017 ONSC 7161 at para. 15.](#)

44. All of the Receiver's activities, as set out in the First Report, were reasonable, necessary, and undertaken in good faith and in accordance with the Receiver's powers and duties as set out in the Receivership Order, and were undertaken in the best interests of the Debtors' stakeholders. Accordingly, the First Report and the activities of the Receiver described therein should be approved.

#### ***The Fees of the Receiver and its Counsel Should be Approved***

45. Pursuant to the Receivership Order, the Receiver and its legal counsel are entitled to be paid their reasonable fees and disbursements, and are required to pass their accounts from time to time.

46. In *Confectionately Yours Inc. (Re)*, the Court summarized the requirements for the substance or content of the accounts:

- (a) the accounts must disclose in detail the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged, and the total charges for each of the categories of services rendered;

- (b) the accounts should be in a form that can be easily understood by those affected by the receivership so that such person can determine the amount of time spent by the receiver's employees (and others the receiver may have hired) with respect to the various discrete aspects of the receivership; and
- (c) the receiver's accounts and solicitor's accounts should be verified by affidavit.

[Confectionately Yours Inc. \(Re\), 2002 CanLII 45049 \(ON CA\) at paras. 37-38.](#)

47. The accounts of the Receiver and its counsel, Fasken, meet each of these requirements.

48. The general standard of review for the accounts of a court-appointed receiver is “whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable.”

[Confectionately Yours Inc. \(Re\), \[2002\] O.J. No. 3569 \(C.A.\) at para. 42.](#)

49. The Court is to consider all of the relevant factors in a holistic manner and need not examine “dockets, hours, explanations, or disbursements line by line.” The focus on such a review should be the fair and reasonable assessment of what was accomplished, not the time it took.

[Bank of Nova Scotia v Diemer, 2014 ONSC 365 at para. 19; Bank of Nova Scotia v Diemer, 2014 ONCA 851 at para. 45.](#)

50. The Ontario Court of Appeal has endorsed a non-exhaustive list of factors to be considered in determining whether a receiver's fees are fair and reasonable, including: (a) the nature and extent of the value of the assets 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 by the receiver; (g) the responsibilities assumed; (h) results of the receiver's efforts; and (i) the cost of comparable services.

[Federal Business Development Bank v Belyea and Fowler, 1983 CanLII 4086 \(NB CA\) at para. 9; Bank of Nova Scotia v Diemer, 2014 ONCA 851 at para. 33; Confectionately Yours Inc. \(Re\), \[2002\] O.J. No. 3569 \(C.A.\) at paras. 45-46.](#)

51. Richter is a specialized licensed insolvency trustee, and has staffed this matter with insolvency specialists at various levels of seniority. Likewise, Fasken is a sophisticated full-service law firm, which has staffed this matter with subject matter experts, including insolvency experts, at various levels of seniority. Richter's and Fasken's hourly rates are consistent with the rates charged by comparable firms practicing in the area of insolvency in the Toronto market and the Receiver is of the view that Richter's and Fasken's fees and disbursements are reasonable and appropriate in the circumstances.

**First Report, s. 53-57, MR, Tab 2.**

52. Accordingly, the Receiver respectfully requests approval of its fees and the fees of its legal counsel, Fasken, during the applicable period (of July 12, 2024 to August 31, 2024) as set out in the Benchaya Affidavit and the Bayus Affidavit.

**Benchaya Affidavit, Appendix I to the First Report, MR, Tab 2-I; Bayus Affidavit, Appendix J to the First Report, MR, Tab 2-J.**

***Distribution to the Bank***

53. The Receiver seeks an order allowing a distribution to the Bank in the amount of \$315,000 in partial satisfaction of the Debtors' obligations to the Bank, as well as such further amounts as the Receiver may determine are available for distribution to the Bank, without further Court Order, provided the aggregate distributions to the Bank do not exceed the secured indebtedness owed to the Bank by the Debtor.

54. Canadian and Ontario Courts have routinely granted interim distributions with a reserve for undetermined priority claims in insolvency proceedings and receiverships, and the Receiver respectfully submits that the factors set out in *Re AbitibiBowater Inc.* (albeit in relation to an interim distribution under the *Companies' Creditors' Arrangement Act*) and elsewhere favour Court's approval of the distributions recommended by the Receiver in the First Report.

[Windsor Machine & Stamping Ltd., Re., 2009 CarswellOnt 4505, at para. 8; Re AbitibiBowater Inc., 2009 QCCS 6461, para. 70-75.](#)

55. The Receiver is satisfied that, after making the proposed distribution to the Bank, there will be sufficient funds in the estate to pay in full any and all amounts that rank, or may rank, in priority to the Bank's security, which is subject to potential prior charges and claims in respect of the Debtors' Property. These claims include (i) a Canada Revenue Agency claim of \$14,000 in BSP under subsection 222(3) of the *Excise Tax Act*; (ii) unpaid wages and vacation pay in Rotalac Canada pursuant to Section 81.4 in the BIA in the amount of \$52,000 and (iii) amounts subject to the Receiver's Charge (as defined in the Receivership Order). The Receiver continues to investigate these amounts, and as discussed above, will ensure there are sufficient proceeds in the estate to pay any claims that rank in priority to the Bank's security.

**First Report, para. 46-47, MR, Tab 2.**

56. The Receiver is of the view that the approval of the proposed distribution to the Bank is appropriate in the circumstances. The Receiver is also seeking approval to make further distributions to the Bank as the Receiver may determine from time to time are available, without further Order of the Court, provided the aggregate distributions to the Bank do not exceed the secured indebtedness owed to the Bank by the Debtors.

**First Report, para. 46-47, MR, Tab 2.**

**PART V - ORDER REQUESTED**

57. For the reasons set out above, the Receiver respectfully requests that this Court grant the relief sought by the Receiver in this Motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13th day of September, 2024.

Per: *Fasken Martineau DuMoulin LLP*

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Fasken Martineau DuMoulin LLP

**FASKEN MARTINEAU DuMOULIN LLP**

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Richter Inc.

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. [\*Royal Bank of Canada v Soundair Corp.\*, 1991 CanLII 2727 \(ON CA\)](#)
2. [\*Crown Trust Co. et al. v Rosenberg et al.\*, 1986 CanLII 2760 \(ON SC\)](#)
3. [\*Sierra Club of Canada v Canada \(Minister of Finance\)\*, 2002 SCC 41](#)
4. [\*Sherman Estate v Donovan\*, 2021 SCC 25](#)
5. [\*Danier Leather Inc., Re\*, 2016 ONSC 1044](#)
6. [\*Elleway Acquisitions Ltd v 4358376 Canada Inc.\*, 2013 ONSC 7009](#)
7. [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*, 2014 ONSC 1173](#)
8. [\*Stelco Inc., Re\*, 2006 CanLII 1772 \(ON SC\)](#)
9. [\*Canwest Publishing Inc.\*, 2010 ONSC 222](#)
10. [\*Ontario Securities Commission v Bridging Finance Inc.\*, 2021 ONSC 4347](#)
11. [\*Yukon \(Government of\) v Yukon Zinc Corporation\*, 2022 YKSC 2](#)
12. [\*Bank of America Canada v Willann Investments Ltd.\*, 1996 CanLII 2782 \(ON CA\)](#)
13. [\*Lang Michener v American Bullion Minerals Ltd.\*, 2005 BCSC 684](#)
14. [\*Target Canada Co., \(Re\)\*, 2015 ONSC 7574](#)
15. [\*Hangfen Evergreen Inc., \(Re\)\* 2017 ONSC 7161](#)



16. [\*Confectionately Yours Inc. \(Re\)\*, 2002 CanLII 45049 \(ON CA\)](#)
17. [\*Bank of Nova Scotia v Diemer\*, 2014 ONSC 365](#)
18. [\*Bank of Nova Scotia v Diemer\*, 2014 ONCA 851](#)
19. [\*Federal Business Development Bank v Belyea and Fowler\*, 1983 CanLII 4086 \(NB CA\)](#)
20. [\*Windsor Machine & Stamping Ltd., Re.\*, 2009 CarswellOnt 4505](#)
21. [\*Re AbitibiBowater Inc.\*, 2009 QCCS 6461](#)

**SCHEDULE "B"**

**TEXT OF STATUTES, REGULATIONS & BY - LAWS**

*Courts of Justice Act, R.S.O. 1990, c C. 43*

**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.

THE TORONTO DOMINION BANK

BUCHH HOLDING INC., 2371561 ONTARIO INC., BRITMAN  
SPECIALTY PRODUCTS INC., ROTALEC INTERNATIONAL  
INC. AND ROTALEC CANADA INC.

Applicant

Respondents

Court File No. CV-24-00723986-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceeding commenced at  
Toronto**

**FACTUM OF THE RECEIVER  
(Motion re: Sale Approval and Distribution Order)**

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