Court File No. CV-25-00743136-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX FUSION, LLC

AUTHORITIES RELIED ON BY THE MONITOR
(Case Conference June 19, 2025)

June 19, 2025

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All authorities from *Canadian Western Bank v Canadian Motor Freight Ltd et al*, Ont Sup Ct, Court File No. CV-24-00728550-00CL

TAB 1

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL **DATE:** DECEMBER 2, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al

BEFORE: JUSTICE W.D. BLACK

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ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] The Receiver (EY, as set out in my previous endorsement in this matter), obtained this appointment on an expedited basis for the purpose of seeking two orders: (1) an Examination and Document Production Order; and (2) an Asset Recovery Order (together, the "Orders").

[2] The relief requested in the Examination and Document Production Order is to compel certain individuals, including members of management of the Debtors, to attend an examination under oath and to produce information and documentation, sought by the Receiver, pertaining to the Debtors' enterprise and financial affairs.

[3] There is no substantive opposition to this relief. While no responding materials were filed, I was advised that some of the information was provided over the weekend before this hearing on Monday morning, and that the respondents are prepared to provide the balance of the outstanding information.

[4] Ms. Holder, who represents some of the respondents, did ask that the examinations contemplated by the order be delayed until early January. I am not prepared to delay those examinations. Frankly I am concerned that the respondents have been actively and intentionally stonewalling the Receiver's request for information and cooperation, and I see no reasonable basis to delay mandating full cooperation any further.

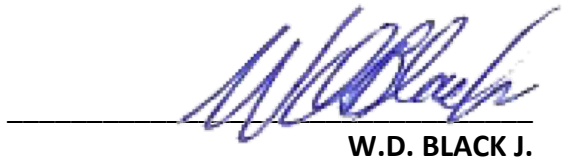
[5] To be clear, I expect that full cooperation, and this court will take a dim view of any further attempts to delay or obfuscate on the part of any respondent.

[6] The Asset Recovery Order relates to the need for the Receiver to be permitted to access a truck yard to take stock and possession of various vehicle and trailer assets belonging to the Debtors.

[7] Unfortunately, various individuals and entities that are subject to the Orders have refused to comply with the terms of this court's Receivership Orders and, instead of recognizing and cooperating with the right of the Receiver to take possession and control over all of the Debtors' property, assets, and undertakings (the "Property"), have instead engaged in behaviour that has obstructed the Receiver from carrying out its duties.

[8] I will not repeat here the details of the lack of cooperation and outright obstruction that has occurred, but I accept the uncontradicted evidence in the Receiver's record, and agree that there is an ample basis, and urgency, for the two orders to issue.

[9] Accordingly, I have signed both of the Orders, and they are attached to this endorsement.



W.D. BLACK J.

DATE: DECEMBER 2, 2024

TAB 2

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL **DATE:** December 6, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: **CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

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Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] The Receiver was before me today on an ex parte basis, which was entirely appropriate in the circumstances, with substantial evidence that the respondents in this matter are not only ignoring and refusing to comply with this court's orders in this matter, but are in fact actively taking steps to remove assets from the reach of the Receiver (and by extension this court).

[2] This conduct is wholly unacceptable.

[3] The Receiver asked for, and I have granted, the attached Substituted Service and Attendance Order (the "SSA Order"), providing for substituted service on the respondents and requiring them to attend at a case conference hearing before me on Monday, December 9, at 12:30 p.m. (by video conference). As contemplated in the SSA Order, that case conference is intended to facilitate the scheduling of a contempt motion or motions in relation to the respondents' disregard of this court's orders.

[4] I have also signed and attach a Supplemental Asset Recovery Order, intended to expedite and enhance the Receiver's ability to recover the relevant assets, including multiple trucks that have surreptitiously been relocated by one or more respondents. The need to locate and recover those trucks is amplified by virtue of the fact, as the Receiver has advised, the insurance placed for those trucks applies to them as sitting motionless in the Yard, and does not apply to them while moving, such that there is a substantial public safety risk by virtue of the respondents' conduct, over and above the concerns caused by their flouting the orders of this court.

W.D. BLACK J.

DATE: December 6, 2024

TAB 3

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: **CV-24-00728550-00CL** **DATE:** **DECEMBER 9, 2024**

NO. ON LIST: **2**

TITLE OF PROCEEDING: **CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. ET AL.**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

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Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] Today's attendance follows from the orders that I made in this matter, on an ex parte basis, on December 6, 2024.

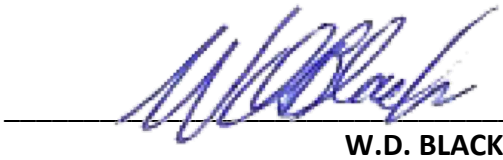
[2] The result of the Substituted Service and Attendance Order, one of the two orders of December 6, was that the responding parties, together with counsel, were in attendance before me today.

[3] After a brief break at the request of counsel to allow the parties to canvass relevant matters, I was advised that the parties had not reached any agreement(s) and that the Receiver wished to proceed to schedule the proposed contempt hearing.

[4] It was agreed that the contempt hearing will proceed before me, in person, on Friday (December 13, 2024), commencing at 8:30 a.m., at 330 University Avenue.

[5] In the meantime, the Receiver will deliver its materials, including its factum, by the end of the day tomorrow (Tuesday, December 10, 2024), and that the responding parties will deliver their materials, including their factums, by Thursday, December 12, 2024 at 10:00 a.m.

[6] Without prejudging the matter, I expect that counsel will advise their clients concerning the salutary benefits of cooperation and provision of relevant and helpful information in these circumstances.



W.D. BLACK J.

DATE: DECEMBER 9, 2024

TAB 4

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL **DATE:** December 13, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE W.D. BLACK:

Overview

[1] The Receiver was before me today seeking a contempt order against the following individuals and entities (the "Contemnors") on the basis that they have intentionally defied clear and unambiguous orders of this court: (i) Canadian Motor Freight Ltd. ("CMF"); (ii) 2568403 Ontario Inc. ("256", and, together with CMF, the "Debtors"); (iii) Imran Hussein, Satbir Singh Kahlon, and Sukhdeep Sing Arora ("Debtor Management"); (iv) United Group of Companies Ltd. ("United"); and (v) Makhan S. Bajwa, Dev Mangat and Taj Dhaliwal ("United Management"). All of the Contemnors, and their counsel, appeared in person.

[2] More specifically, the Receiver asserts that the Contemnors have refused to comply with and have willfully breached my orders of November 5, 2024 (the "Receivership Order') and December 2, 2024 (the "Asset Recovery Order" and, from time to time together with the Receivership Order, the "Orders"), within this receivership proceeding under the Bankruptcy and Insolvency Act (the "BIA").

[3] Under both Orders, the Contemnors were required to deliver to the possession of the Receiver all of the property and assets of the Debtors, without, as the Receiver puts it, "any strings attached." In particular, the Contemnors were specifically and unequivocally ordered to facilitate the Receiver's retrieval of vehicles and trailers belonging to the Debtors (the "Fleet Assets") from premises operated by United (the "United Yard").

[4] Rather than complying with the Orders, the Receiver asserts, the Contemnors have stalled and delayed the release of the Fleet Assets to the Receiver, offering up insubstantial excuses why they could not or would not do so, even in the face of increasingly stern admonitions from this court that their cooperation was not just expected but unequivocally required.

Conclusion re Contempt

[5] In the circumstances, as discussed below, I have no difficulty finding all of the Contemnors to be in contempt of this court's orders. While the Receiver argued, as alternative positions, that findings of both Civil and Criminal contempt are available and appropriate on this record, I conclude that a finding of Civil contempt relative to each Contemnor is the appropriate disposition here.

Relevant Background

[6] The Debtors are related Ontario corporations engaged in the freight trucking business. Their primary place of business and warehouse is located at 400 Brunel Road in Mississauga, Ontario ("400 Brunel").

[7] Messrs. Hussain, Kahlon and Arora (i.e. Debtor Management), are the directors, managers and shareholders of the Debtors.

[8] United operates a freight trucking and vehicle and trailer storage business. Its registered office is in Brampton, but its principal place of business is located at the United Yard (at 1911 Eglinton Avenue East in Mississauga, Ontario).

[9] Mr. Bajwa is the sole officer and director of United. Mr. Mangat and Mr. Dhaliwal are managers of United. Mr. Mangat is the Chief Executive Officer ("CEO") and Mr. Dhaliwal holds the title of Manager, Operations & Logistics.

[10] By August 28, 2024, the Debtors were in default of substantial secured loan repayment obligations to Canadian Western Bank ("CWB"). As a result, CWB applied for a receivership order under section 243(1) for the BIA, and on October 9, 2024, Justice Kimmel appointed Ernst & Young Inc. ("EY") as interim receiver of the property, assets and undertaking of the Debtors.

[11] On November 5, 2024, I appointed EY as Receiver (i.e. no longer interim receiver), effective November 15, 2024 (i.e. the Receivership Order). The effective date of the receivership was delayed, at the request of the parties, specifically for the purpose of giving the Debtor Management time to return the Fleet Assets back to 400 Brunell to allow the Receiver to take possession of them.

[12] Although there are other assets subject to the receivership, the main assets at issue on this contempt motion are the Debtors' Fleet Assets.

[13] On November 15, 2024, the Receiver attended at 400 Bunel to meet with Debtor Management and to take possession of the Fleet Assets. Debtor Management advised that the Fleet Assets were no longer at 400 Brunel, and had instead been moved to the United Yard.

[14] These facts form the basis of the Receiver's request for a contempt order against the Debtors and Debtor Management.

Breaches of Receivership Order

[15] The Receivership Order gives the Receiver the power to take possession of assets, including the Fleet Assets, without interference from any person. It also requires the Debtor and Debtor Management to advise the Receiver of the existence of any Property (as defined in the Receivership Order, and including the Fleet Assets) in their possession, and to grant immediate and continued access to such Property and to deliver it to the Receiver upon the Receiver's request.

[16] As noted, instead of allowing the Receiver to take possession of the Fleet Assets "without interference," and delivering the Fleet Assets to the Receiver as required by the Receivership Order, Debtor Management instead sent the Fleet Assets to United and United Management.

[17] I find that this was a clear breach of the Receivership Order.

[18] Counsel for the Debtors and Debtor Management took the position before me today that, once they had transferred the Fleet Assets to United and United Management, the Fleet Assets were no longer under their control, and, implicitly, no longer their problem.

[19] This misses the point. The Debtors and Debtor Management had no right to transfer the Fleet Assets in the face of the Receivership Order, and I find that to do so, intentionally and with specific knowledge of the Receivership Order and its requirements, was a clear breach.

[20] The breaches by United and United Management are equally clear.

[21] As noted, by November 15, 2024, when the Receiver attended at 400 Brunel to take possession of the Fleet Assets, those assets had already been transferred, without notice or authorization, to the United Yard.

[22] The Receiver therefore went to the United Yard that same day, November 15, to confirm and take an inventory of the Fleet Assets that had been taken there.

[23] On that day, the Receiver identified 50 Fleet Assets parked in the United Yard. The Receiver later confirmed the specific Fleet Assets at the United Yard by VIN searches, PPSA searches and information provided by third-party lessors of certain Fleet Assets.

[24] On November 15, 2024, the Receiver met with Mr. Dhaliwal and Mr. Mangat at the United Yard, and provided them with a copy of the Receivership Order. The Receiver sought to negotiate a short-term arrangement with Mr. Dhaliwal and Mr. Mangat for the use of parking spots at the United Yard until the Receiver could coordinate the removal of the Fleet Assets.

[25] There then followed, in the next few days, an exchange of proposed lease documents and provisions, during the course of which the Receiver sent United a cheque, despite no arrangement having been finalized, for the storage of Fleet Assets on a per diem basis. The Receiver explains in its evidence that although based on the clear language of the Receivership Order, it had no obligation to pay United (or anyone else), it did so as a good faith attempt to maintain a positive working relationship and arrangement with United.

[26] On November 21, 2024, the Receiver re-attended at the United Yard to discuss again with Mr. Dhaliwal and Mr. Mangat the arrangements with respect to the Fleet Assets at the United Yard. On that day, the Receiver also arranged for one of the Debtors' third-party lessors to attend at the United Yard to remove 11 of the Fleet Assets, that had been leased to the Debtors.

[27] The Receiver waited approximately six hours at the United Yard that day, accompanied for a period of that time by the third-party lessor, only to be advised by Mr. Dhaliwal that United would be denying the Receiver access to the United Yard, and that United would not release any Fleet Assets to the Receiver.

[28] Communications between the Receiver and United Management continued for the next few days, during which the Receiver reiterated that pursuant to the Receivership Order, United was obliged to grant the Receiver full and immediate access to the United Yard so that the Receiver could take possession of the Fleet Assets, without interference.

[29] United Management continued to stall, and to refuse the Receiver access to the United Yard and to the Fleet Assets, in clear violation of the Receivership Order.

Receiver Advises it will Seek Further Order

[30] On November 26, 2024, counsel for the Receiver delivered a letter to United that emphasized United's obligation to cooperate with and assist the Receiver under the Receivership Order, and advised that unless United granted the Receiver immediate access to the United Yard, the Receiver would seek a further order from the court compelling United to release the Fleet Assets.

[31] Mr. Dhaliwal responded that day, saying that United would not release the Fleet Assets until the Receiver paid alleged outstanding lien invoices up to November 26, 2024. Not only was this purported condition never raised before November 26, but the Receiver has since confirmed that no such alleged liens exist.

[32] On November 28, 2024, the Receiver advised United that a further hearing before this court had been scheduled for December 2, 2024, and that the Receiver would be seeking an order at that time compelling United to provide access to the United Yard to allow the Receiver to take possession of the Fleet Assets.

[33] On November 29, 2024, the Receiver served United with its motion materials for the December 2, 2024 hearing.

The December 2 Motion and the Asset Recovery Order

[34] I heard the Receiver's motion on December 2, 2024. Various interested parties attended before me, including Mr. Dhaliwal (by Zoom). I heard submissions from a number of those in attendance that day, including from a Mr. Surinder Singh Begda, a non-lawyer speaking on behalf of a company called IS Trucking Limited, which had an interest in the outcome of the motion. Mr. Dhaliwal made no submissions before me that day, and did not seek to do so. If he had, I would have heard any submissions he wished to make.

[35] At the conclusion of the hearing on December 2, 2024, I issued the Asset Recovery Order, which the Receiver delivered on that same day to United, Mr. Dhaliwal and Mr. Mangat.

[36] Still on the same day, after delivering the Asset Recovery Order, the Receiver contacted Mr. Dhaliwal (eventually reaching him late that day after a number of attempts). Mr. Dhaliwal, who was at that stage specifically aware of the Asset Recovery Order, told the Receiver that he understood that he had 72 hours to comply with the order, and that he needed time to consult with other representatives of United.

[37] The Receiver advised Mr. Dhaliwal that this was a misinterpretation of the Asset Recovery Order, that there was no allowance for 72 hours to comply, and that in fact United and United Management were obliged immediately to comply with the Asset Recovery Order. The Receiver scheduled a call with Mr. Dhaliwal the next morning – December 3, 2024 – to discuss the arrangements for the Receiver to remove the Fleet Assets.

[38] Also on December 2, 2024, the Receiver attended again at the United Yard, and observed that the Fleet Assets, or at least many of them, remained at the United Yard that day. The Receiver was unable to enter the United Yard to conduct a complete inventory to ensure that all 50 Fleet Assets were still present at the United Yard at that time, but did photograph some of the Fleet Assets that it could see and identify in the United Yard that day. Importantly, the Receiver filed in the record before me today date-stamped photographs taken that day to confirm the presence of Fleet Assets that the Receiver could see and photograph at that time.

[39] On December 3, 2024, the Receiver had a call, as scheduled, with Mr. Dhaliwal and Mr. Mangat, in which the Receiver repeated that, under the terms of the Asset Recovery Order, United was required to provide the Receiver immediate access to the United Yard and to release the Fleet Assets to the Receiver.

Breaches of the Asset Recovery Order

[40] Mr. Dhaliwal and Mr. Mangat told the Receiver that they were not prepared to comply with the Asset Recovery Order at that time, purportedly because they were not given an opportunity to speak during the December 2, 2024 motion before me, and because no arrangements had been made by the Receiver to pay United.

[41] I note that neither of these suggestions bears any weight. As noted, Mr. Dhaliwal was present before me on December 2, 2024 at the hearing of the Receiver's motion and did not make, or to my recollection seek to make any submissions. Moreover, neither the Receivership Order or the Asset Recovery Order requires the Receiver to make any payments as a precondition of retrieving the Fleet Assets. Although the Receiver had discussed with United Management earlier on the possibility of compensating United for storing the Fleet Assets, and had even made one gratuitous payment in that regard, the Orders are clear that there is no obligation for the Receiver to do so, a fact that the Receiver made clear to United and United Management at various points.

[42] Importantly, Mr. Dhaliwal and Mr. Mangat did not tell the Receiver, during the call on the morning of December 3, 2024, that, during the days leading up to the December 2 hearing, and following the December 2 hearing and their knowledge and receipt of the Asset Recovery Order, they and United had been surreptitiously moving the Fleet Assets away from the United Yard to undisclosed locations.

[43] Also on December 3, 2024, the Receiver had a call with certain third-party lessors of certain Fleet Assets, one of which – Volvo – had tracking devises on certain Fleet Assets it leased to the Debtors. Volvo advised the Receiver that those tracking devises indicated that four of the Fleet Assets had been moved out of the United Yard, under cover of darkness, in the middle of the night on December 1, 2024, after United having received notice of the December 2, 2024 motion. The Volvo assets with tracking devices had been moved to 1625 Shawson Drive in Mississauga, Ontario (the "Matheson/King Yard").

[44] As a result of learning from Volvo that certain Fleet Assets had been moved with notice or permission, the Receiver became concerned that other Fleet Assets had been moved to undisclosed locations beyond the reach of the Receiver and this court. The Receiver delivered to United on December 4, a letter dated December 3, 2024, advising that such conduct constituted a flagrant breach of the Orders, and requesting confirmation that United would comply with the Asset Recovery Order by 10:00 a.m. on December 4, 2024.

[45] The Receiver received no response to this letter.

[46] The Receiver conducted searches indicating that two businesses appear to occupy and operate at the Matheson/King Yard: (i) a business known as Matheson Collision; and (ii) a business known as King Towing. The Receiver also identified the officers and directors of 2488330 Ontario Inc. operating as Matheson Collision, and 2750726 Ontario Inc., which owns the land on which the Matheson/King Yard is situate. There are common directors and officers between the two entities.

[47] The Matheson/King Yard is located reasonably close to the registered office of the Debtor CMF and to the United Yard.

[48] King Towing appears to operate from the same premises as Matheson Collision, and its officers and directors also overlap with 2488330 Ontario Inc. and 2750726 Ontario Inc.

[49] The Receiver was advised at a point before today's hearing before me, by counsel for United, that King Towing was the company that had towed the Fleet Assets from the United Yard.

[50] On that note, when the Receiver attended the United Yard on December 5, 2024 to determine whether any additional Fleet Assets had been moved out of the United Yard, the Receiver could not identify any of the Fleet Assets. As subsequently confirmed in evidence filed before me by United, all of the Fleet Assets had in fact by then been moved out of the United Yard.

[51] On that same date, December 5, the Receiver attended at the Matheson/King Yard, and saw at least one of the Fleet Assets there. However, a representative of Matheson Collision refused the Receiver access to the Matheson/King Yard, and advised that Matheson Collision would not provide any information to the Receiver about the Fleet Assets.

[52] Similarly, and remarkably, during the Receiver's attendance at the United Yard that day, at which time the Receiver observed that all Fleet Assets had been moved, Mr. Dhaliwal also refused to provide any information to the Receiver about how and where the Fleet Assets had been moved.

December 6 (Ex Parte) Motion

[53] In these circumstances the Receiver brought an ex parte motion before me on December 6, 2024, seeking an order to allow for substituted service on certain proposed responding parties, and seeking a hearing date for the contempt motion which was booked to proceed before me today.

[54] As noted, the Debtors and Debtor Management, and United and United Management were all in attendance before me today and represented by counsel.

[55] Both of these sets of responding parties had filed materials.

Discussion of Positions taken today by Contemnors

[56] As noted above, the position set out in the materials filed by the Debtors and Debtor Management, and echoed in their counsel's submissions, was that once the Debtors had transferred the Fleet Assets to United on November 15, 2024, the Debtors and Debtor Management no longer had any responsibility for the Fleet Assets.

[57] Also as noted above, I disagree, and find that the steps taken by the Debtors and Debtor Management to move the Fleet Assets without notice to or authorization from the Receiver constitute a beach of the Receivership Order.

[58] United, and United Management, in their materials, actually confirm, again remarkably, that during the period November 25, 2024 to December 1, 2024, they arranged for the Fleet Assets to be removed from the United Yard and taken to the Matheson/King Yard and elsewhere. The materials filed by United gave no details concerning the current location of the Fleet Assets.

[59] Those materials also contain a number of demonstrably false statements. For example, and troublingly, the materials represent, as set out above, that all of the Fleet Assets were gone from the United Yard by December 1. In fact, as also set out above, there is photographic evidence that the Receiver filed in the record before me showing definitively that in fact at least some of the Fleet Assets remained in the

United Yard on December 2, 2024, and were obviously removed at some point following the Receiver's attendance at the United Yard that day.

[60] I suspect that the representation in the materials filed by United and United Management that all Fleet Assets had been removed from the United Yard by December 1, was an attempt to avoid the significant concerns associated with United continuing to transfer the Fleet Assets after being specifically aware of the Asset Recovery Order that I made on December 2, 2024.

[61] In his submissions before me, counsel for United and United Management purported to say that the Orders, and the Receiver's conduct and representations, somehow created confusion on the part of United and United Management as to what their obligations were.

[62] I reject these submissions entirely. The Orders are clear on their face, and were explained by the Receiver on multiple occasions. I find that the respondents were intent on playing a shell game with the Fleet Assets, and were in no way confused as to what the Orders required of them. They simply and patently chose to ignore those obligations.

[63] In fact, it is evident that United continued to move Fleet Assets following, and in direct contradiction to the Asset Recovery Order, and I find that this was a flagrant and intentional breach of the Asset Recovery Order.

[64] I also find that the movement of the Fleet Assets even before December 2 (inasmuch as it appears that some of the Fleet Assets were moved before December 2 and some after), was also a flagrant and intentional breach of the Receivership Order.

[65] In fact I find that United's conduct throughout, and that of United Management, has been in the nature of "thumbing its nose" at this court and its process, characterized by an ongoing attempt to shake down the Receiver for payments to which United is not entitled, and by way of a deliberate strategy to shield and hide the Fleet Assets from the Receiver, again in flagrant breach of the Orders.

[66] In the circumstances as described, I easily find the Debtors, Debtor Management, United and United Management to be in contempt of this court and its orders.

Receiver's Argument in Support of Contempt Orders Sought

[67] As noted, the Receiver seeks findings of criminal and/or civil contempt against the responding party Contemnors.

[68] They reference and rely on McLachlin C.J. (as she then was) in the Supreme Court of Canada's decision in *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC), in which she wrote:

> "Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect."

[69] On the basis that a receivership differs from an ordinary civil proceeding between two private parties, and takes place under the auspices of the BIA, which by its nature engages the public interest in the

administration of justice of an orderly insolvency regime involving a substantial number of stakeholders, the Receiver argues that the circumstances in this case meet the test for a criminal contempt order (and the Receiver sets out a persuasive analysis under relevant law showing that both the *actus reus* and *mens rea* for criminal contempt are made out on these facts).

[70] In its submissions, the Receiver also cites the decision of Conway J. in *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC, 4006, in which, in part, Her Honour reviewed the elements of criminal contempt that must be proved beyond a reasonable doubt to make such a finding.

[71] The Receiver fairly notes that, in order to show criminal contempt, it must be demonstrated in the context of the *actus reus* that "the accused defied or disobeyed a court order in a public way," and, for the *mens rea*, that "the accused's public defiance or disobedience of the court order was done with intent, knowledge, or recklessness as to the fact that the public disobedience will tend to deprecate the authority of the court."

[72] While it is a close call, I do not find beyond a reasonable doubt that the Contemnors' conduct involves the level of public defiance described in Conway J.'s decision in *Castillo* (and elsewhere). I appreciate that the "public" requirement here does not literally require open defiance in the public square, but in the case before me I find that, albeit that the conduct was intentionally in defiance of the Orders, it was also largely surreptitious and deceitful. In my view, the "public" nature of the BIA proceedings does not transform this surreptitious conduct – albeit disgraceful – into a public defiance of the court in the way contemplated in the case law relative to criminal contempt.

[73] However, civil contempt is another matter.

[74] The familiar test for civil contempt is set out in the Supreme Court of Canada's decision in *Carey v. Laiken*, 2015 SCC 17. It requires that:

(a) The order alleged to have been breached must state clearly and unequivocally what should and should not be done;

(b) The party alleged to have breached the order must have had actual knowledge of it; and,

(c) The party allegedly in breach of the order must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

Finding Contempt

[75] I find that the Receiver has proved each of the required elements of the test for civil contempt beyond a reasonable doubt.

[76] As set out above, I find that the terms of the Orders that have been breached by the Contemnors are clear and unequivocal, and I do not accept the submissions, in particular on behalf of United and United Management, that the Contemnors somehow did not understand these clear terms.

[77] The language of the Orders is straightforward and unambiguous. There can be no uncertainty about the power of the Receiver under the Orders to "take possession and exercise control over" the relevant property and assets "without interference from any other Person." I note that the Debtors and Debtor Management have been represented by counsel at all material times, and that United and

United Management have had counsel at least since just after the Asset Recover Order. It is simply not credible that the Contemnors did not understand the Receiver's mandate and power under the Orders.

[78] Likewise there can be no confusion as to the obligation "to grant immediate and continued access to the Property to the Receiver, and [to] deliver all such Property to the Receiver upon the Receiver's request." There is no ambiguity in this language, and no scope for the Contemnors' purported interpretation that it gave them license to negotiate and delay. This is particularly so inasmuch as the Receiver and its counsel explained on multiple occasions, including in writing, the clear obligations of the Contemnors.

[79] There is also no doubt that the Contemnors had actual knowledge of the Orders. As noted, the Debtors and Debtor Management have been represented by counsel throughout. Their counsel attended at the motion at which I granted the Receivership Order, and at the motion at which I granted the Asset Recovery Order.

[80] The United Group and United Management met with the Receiver on November 15, 2024, and received a copy of the Receivership Order that day. As noted, Mr. Dhaliwal attended at the December 2, 2024 hearing at which I granted the Asset Recovery Order, and United and United Management had a call with the Receiver on December 3 during which the Receiver explained and emphasized the need for compliance with the Orders. United and United Management engaged counsel then or soon thereafter, and so, again, there is no basis for any legitimate suggestion that they did not understand what the Orders required.

[81] In terms of the "intent" element of civil contempt, the Castillo decision confirms that "All that is required is the intentional commission (or omission) of an act that is in fact prohibited (or required) by the order. As Cromwell J.A. explained in *TG Industries*, '[t]he required intention relates to the act itself, not to the disobedience'."

[82] It is inescapable in the evidence that the Contemnors have intentionally breached the Orders. They were aware of the Orders at material times, received specific and clear explanations of the requirements of the Orders (which were in any event unambiguous) and made decisions not only to ignore their obligations under the Orders, but to take active steps to thwart the Receiver's executions of its duties thereunder.

[83] It appears that the Contemnors did so based on a misguided apprehension that doing so would give them leverage to negotiate payments from the Receiver; again the clear language of the Orders shows that this was not an interpretation that was open to them.

[84] In sum, as stated, I am easily satisfied that the Contemnors are in contempt of the Orders.

[85] Rule 60.11(6) permits the court to hold the Debtors' directors and officers liable for the civil contempt of the Debtors in their corporate capacities. They are also liable directly for civil contempt of the court as individuals, including because the Receivership Order compels "all other individuals…having notice of this Order" to "deliver [the Debtors'] Property to the Receiver."

[86] Given their intentional conduct in delivering the Fleet Assets to United instead of the Receiver, Debtor Management is liable in their capacities as individuals for civil contempt of court.

[87] With respect to United Management, Mr. Bajwa is liable for civil contempt of court in his capacity as director and officer of United, and Mr. Mangat is liable as an officer (in his case CEO) of United under

Rule 60.11(6). In addition, all of United Management are liable for civil contempt of court as individuals as a result of their breach of the Asset Recovery Order. That Order was issued against each of them individually.

[88] United Management, and each of them, failed to give the Receiver access to the United Yard, and failed to assist the Receiver in taking possession of the Fleet Assets, and on that basis, and by their continued and ongoing deliberate efforts to frustrate the Receiver's efforts, each member of United Management is liable for civil contempt of court. The Receiver also notes in this regard that Ontario courts have held employees of corporate entities accountable for breaches of court orders committed on behalf of corporate entities (see, e.g. *Goldcorp Inc. v. Globush*, 1997 CarswellOnt 5333 (Ont. Ct. Justice).

[89] Having found each of the Contemnors to be in civil contempt of court, it remains to address the remedy or remedies to be imposed.

Role and Position of Matheson Collision and King Towing

[90] Before turning to that discussion, I note that at the hearing of this motion, counsel on behalf of Matheson Collision and King Towing, Ms. Singh, attended before me.

[91] In fact, at a point in the proceedings, Ms. Singh requested a break so that she could discuss with counsel for the Receiver (and counsel for the Contemnors) what she advised was a possible resolution to the question of recovery of the Fleet Assets. I allowed a break for that discussion to take place.

[92] Following the break, both Ms. Singh and counsel for the Receiver expressly waived any privilege that would otherwise potentially attach to their discussion, and made submissions about what had been discussed.

[93] In short, it appears that Ms. Singh's clients, not surprisingly, know where the Fleet Assets are located, and were offering to provide information in that regard to the Receiver, but only at a price.

[94] There was no motion before me seeking to hold Ms. Singh's clients in contempt. There was, however, a motion seeking an order for substituted service on those parties by service on Ms. Singh. Ms. Singh confirmed her willingness to receive service on their behalf, and it is clear that her clients, through Ms. Singh and otherwise, are well aware of the status and details of these proceedings, and, as noted, are in fact purporting to negotiate concerning aspects thereof.

[95] I advised Ms. Singh that orders of this court are non-negotiable, and that I expect any parties having knowledge of the Orders to comply with their terms.

Post-Hearing Exchange of Emails

[96] Subsequent to the hearing, I received an email from Receiver's counsel with details of ongoing discussions, essentially to the effect that the Fleet Assets have been moved to various locations, some of which, apparently, are not nearby the Matheson/King Yard, such that, as a condition for providing the Fleet Assets, Matheson Collision and King Towing are demanding that the Receiver either pay certain charges, or incur the expense of retrieving the Fleet Assets from the as yet unspecified locations to which Matheson Collision and/King Towing have taken them.

[97] In response to this email, Ms. Singh asked for a brief period to respond with an email of her own, which I granted. In fact Ms. Singh ended up sending me an email co-authored with counsel for United. That email purports, among other things, to justify the conduct of United (and King Towing), repeats United's evidence about the events at issue -which I find to be largely inaccurate and contradicted by aspects of the evidence before me - and actually goes further to allege that the Receiver and its counsel have acted in bad faith in these proceedings. The response also doubles down on the suggestion, that I have rejected, that the terms of the Orders or the Receiver's explanations of them were somehow confusing.

Conclusion re Emails

[98] I categorically reject those allegations.

[99] I find no basis to support any suggestion that the Receiver has acted other than in good faith. In fact I find that the Receiver and its counsel have acted diligently and in good faith at all times.

[100] The email from Ms. Singh and Mr. Atcha astonishingly purports to demand a payment of $279,670.00 from the Receiver, allegedly comprised of amounts incurred by and/or owing to United and King Towing for actions taken by United and King Towing as "innocent third parties."

[101] I find no basis whatsoever for any such payments. The maneuvers undertaken by the Debtors, United, and King Towing were all of their own doing and at their own behest. It stretches credibility beyond breaking to suggest, as the email from Ms. Singh and Mr. Atcha does, that somehow the Receiver necessitated these actions.

[102] As set out above, I find that the conduct in question was part of the Contemnors' intentional effort to thwart the Receiver's legitimate court-ordered effort to retrieve the Fleet Assets. To seek compensation for such deceitful maneuvers is simply beyond the pale.

Overall Conclusions and Next Steps

[103] Accordingly, and in conclusion:

(a) I find the Contemnors, and each of them, to be in civil contempt of this court's Orders;

(b) Sentencing in respect of these findings of contempt is to take place on a date to be fixed in the week of January 6, 2025;

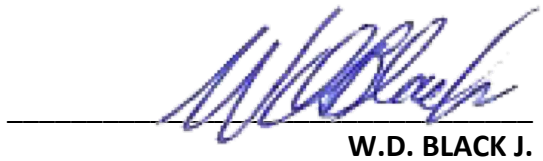
(c) In the meantime, the Contemnors will have the opportunity, and are encouraged, to purge their contempt. Specifically, to the extent that the Contemnors take active steps to comply with the Orders at their own expense by the time I next see them, that is conduct that I will take into account in determining the appropriate sentences and remedies to impose. The Contemnors are not entitled to any compensation in these circumstances, and any attempt on their part to exact such compensation will not be viewed favourably;

(d) In the case of Matheson Collision and King Towing, I grant the order for substituted service, and specifically confirm that service on Ms. Singh by email will constitute service on these parties;

(e) To the extent that the Receiver seeks relief, including potentially contempt findings, as against Matheson Collision and King Towing, the motion for such relief is to be scheduled at the same time and date as the contempt penalty proceedings against the Contemnors in early January;

(f) At that time, I will consider such steps as Matheson Collision and King Towing take, between now and then, to ensure compliance with the Orders. In that regard, I reiterate that the Orders of this court are not negotiable, and are expected to be followed to the letter of their terms. I reiterate that I find no basis on which the Receiver owes any payment to these parties; it may be that they have claims against United, but I do not have sufficient information to make a determination in that regard.

[104] I will also reserve the matter of costs to be dealt with on the return of these matters in early January of 2025.



W.D. BLACK J.

DATED: December 13, 2024

TAB 5

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL **DATE:** JANUARY 13, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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Daniel Litsos and Howard Manis (Zoom)	United Group	dlitsos@manislaw.ca, hmanis@manislaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Im	Canadian Western Bank	dim@chaitons.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] On December 16, 2024 I released a decision in respect of a hearing in this matter on December 13, 2024, at which hearing the Receiver was seeking a contempt order against various individual and corporate parties, entities and persons.

[2] In my endorsement released on December 16 I found each of the parties defined therein as "Contemnors" to be in civil contempt of various orders of this court. I will continue to use, for purposes of this endorsement, various terms as defined in that December 16 endorsement.

[3] In that endorsement, I ordered that the Contemnors would be sentenced on a date to be fixed during the week of January 6, 2025, and reminded the Contemnors of the importance of compliance with court orders which, I also reminded the Contemnors, were not negotiable.

[4] The date for sentencing was booked for January 6, 2025. The sentencing did not proceed that day, for a handful of reasons. First, and most importantly, Mr. Manis had just been engaged by United and United Management, and I was persuaded to accept his submission that he had simply not had time to get up to speed. While I was concerned about the potential for parties to manipulate the court's process by seeking to orchestrate last minute adjournments, I felt on balance it was important for United and United Management to have the benefit of the advice and representation of Mr. Manis, who is an experienced commercial counsel.

[5] It was also the case on January 6 that a number of the individual Contemnors who were to be sentenced were not in attendance at court. While again I accept that this was not intended to show disrespect for the court's process, I felt that it would be appropriate and indeed important for all of the Contemnors to attend at the sentencing hearing.

[6] It was the case on January 6 that counsel for the Debtors and Debtor Management was late for court. While it would have been possible for the matter nonetheless to proceed that day, this was another (modest) factor which inclined me to adjourn the sentencing hearing to today's date (January 13, 2025).

[7] Finally, I was advised on January 6 that the Fleet Assets, the removal and concealment of which was at the heart of the contempt findings I made, had by then been returned to the possession of the Receiver (although unfortunately one of the Fleet Assets has apparently been stolen since being delivered to the Receiver). While the return of the Fleet Assets does not obviate the need for a sentencing hearing, it did reduce some of the immediate time pressure.

[8] Today, all of the Contemnors, and their counsel, were in attendance, and I heard submissions from counsel for the Receiver, from counsel for Canadian Western Bank (the applicant), and from counsel for the two sets of Contemnors – the Debtors and Debtor Management, and United and United Management – respectively.

[9] The Receiver's position was that the appropriate sentence would be:

(a) An order committing each of Messrs. Bajwa and Mangat (of United Management) to 15 days' imprisonment;

(b) And order committing Mr. Dhaliwal (also of United Management) to 10 days' imprisonment;

(c) An order committing each member of Debtor Management to 5 days' imprisonment;

(d) An order compelling United Management to pay full indemnity costs to the Receiver in the updated amount of $68,701.74 in respect of the motion brought on December 2, 2024; and,

(e) An order compelling the Contemnors to pay, on a joint and several basis, full indemnity costs to the receiver, updated to $213,887.87 for the contempt motion on December 13, 2024 and the sentencing hearing of today's date.

[10] The Receiver also sought to have each of the Contemnors to pay fines, in the amount of $100,000 in the case of United, and $25,000 each in the case of each of the individual Contemnors, and, in the original version of its materials had asked that the fines be paid to the Receiver.

[11] By today's attendance, the Receiver had determined, and confirmed for the court, that any fines would necessarily be paid to the Provincial Treasurer for Ontario (and not to the Receiver).

[12] The Receiver also sought today an order for production by the Toronto-Dominion Bank ("TD") of certain documents relating to the Debtors and/or certain property of the Debtors. I was advised by counsel for the Debtor and Debtor Management that they did not oppose this relief, and was advised by Receiver's counsel that TD likewise does not oppose the order, and so I am granting that order, a signed copy of which is attached to this endorsement.

[13] I should also note that, between January 6 and today, United and United Management cooperated with the Receiver to provide certain biographical details relative to one of the Contemnors that the Receiver required, and cooperated in the removal/dismissal of certain lien-type claims (registered under the PPSA) that had been made by a party related to United.

[14] Regarding the consequences of the contempt, the Receiver first reminds the court of the critical importance of the "ability of the courts to enforce their process and maintain their dignity and respect" (*United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC)). The Receiver references caselaw confirming the essential operation of the rule of law for the protection of citizens in their commercial affairs (*Sussex Group v. Fangeat*, [2003] O.M. No. 3348 (Ont. Sup. Ct.).

[15] The Court of Appeal for Ontario has confirmed the two main purposes served by sentences for civil contempt: to compel obedience and to punish a contemnor's disobedience (*College of Optometrists (Ontario) v. SHS Optical Ltd.*, 2008 ONCA 685).

[16] Rule 60.11 (5) and (6) give the court wide discretion to fashion a sentence that achieves both objectives in a given case, and provide an array of alternative forms of measures, including imprisonment, fines, injunctive relief and costs.

[17] In its submissions, the Receiver acknowledges that the Court of Appeal for Ontario has held that "normally incarceration for civil contempt is a sanction of last resort" (*Chiang (Re)*, 2009 ONCA 3) but also notes caselaw confirming that, where a breach of a court order has been knowing and deliberate, and continuing over several days, and in respect to which a defendant's response is defiance without remorse, then in those circumstances a term of imprisonment may be justified, and in fact the most appropriate result (see for example *Ceridian Canada Ltd. v. Azeezodeen*, 2014 ONSC 4162).

[18] In the context of a receivership in particular, the Court of Appeal has recently held that it is "difficult to think of conduct by a litigant that is more flagrant and disrespectful of the court and the rule of law" than behaviour undermining "the Receiver's exclusive authority and power to deal with the Receivership Property" (*Castillo v. Xela Enterprises Ltd.*, 2024 ONCA 141).

[19] In this case, as the Receiver colorfully puts it in its factum, the "conduct of the Contemnors transformed this otherwise straightforward receivership process into a dramatic chase for the lost Fleet Assets across Ontario." It notes that the terms of the relevant orders were clear and uncontroversial, and simply directed the Debtor, Debtor Management and other persons to facilitate the return of the Fleet Assets to the Receiver.

[20] The Receiver fairly asserts that the Contemnors treated the clear terms of the orders issued by this court as "worthless words on a page" and argues that on the basis of the *Castillo* precedent alone, a term of imprisonment is justified here in respect of the individual Contemnors "flagrant and intentional" interference with the functions of a court-appointed officer.

[21] The Receiver says that a custodial sentence for the individual Contemnors is in fact the only penalty capable of effectively responding to the specific conduct at issue here, and of signaling the court's lack of tolerance for "disregarding what are supposed to be structured and organized insolvency processes conducted under the BIA."

[22] On the topic of "aggravating and mitigating factors", which all parties agree are appropriate touchstones in these circumstances, the Receiver points, as aggravating factors, to the "knowing and deliberate" breaches here, the "continuing contemptuous behaviour" the fact that the conduct here was willful and unrepentant as opposed to accidental, and conduct (in the case of the United Management Contemnors) that was "intended to produce some personal or financial benefit."

[23] The Receiver asserts, on the other side of the coin, that there are no mitigating factors here other than the fact that the Contemnors appear to be first time offenders. The Receiver maintains that the recent apology on the part of the United Management Contemnors is too late to constitute genuine remorse, and that the fact that the Fleet Assets were recently returned by another party (Matheson Collision/King Towing) does not count as the Contemnors, or any of them, purging their contempt.

[24] Ultimately, taking into account the factors enumerated above, and such other factors as proportionality, similarity and reasonableness articulated by the Court of Appeal for Ontario in *Boily v. Carleton Condominium Corporation 145*, 2014 ONCA 574), the Receiver advocates a fine in the amount of $100,000 for United. It argues that not only did United fail to take advantage of multiple opportunities to purge its contempt and comply with this court's orders, but that it joined Matheson Collision and King Towing in alleging that the Receiver somehow acted in bad faith, and demanded nearly $280,000 in payments in exchange for advising the Receiver as to the location of the Fleet Assets.

[25] As against Messrs. Bajwa and Mangat, the Receiver says that a 15-day term of imprisonment, plus a fine in the amount of $25,000 is appropriate. It notes that Mr. Bajwa is the sole director and officer of United, and that Mr. Mangat is the company's CEO, and argues that the "shocking conduct" of United was under their direction.

[26] It argues that this term of incarceration is in keeping with the 30-day sentence imposed by Conway J. in *Castillo*, upheld by the Court of Appeal, and in keeping with a recent order by Penny J. for five days' imprisonment for a director who had actually purged his contempt.

[27] With respect to Mr. Dhaliwal, the Receiver acknowledges that Mr. Dhaliwal was and is an employee, and not a directing mind of United, but notes that he was engaged in wilful contempt himself, and abetted the contempt of the other United parties. It points to such cases as *Fangeat*, and *Ontario*

(Attorney General) v. Clark, in which employees abetting breaches received sentences of six months (*Fangeat*) and 15-60 days (*Clark*). It argues that 10 days for Mr. Dhaliwal is reasonable, consistent and proportionate.

[28] With respect to Debtor Management, the Receiver asks that each individual Contemnor be sentenced to a term of imprisonment of 5 days, and be ordered to pay a fine in the amount of $25,000.

[29] It acknowledges a difference in the nature of the wrongdoing attributable to Debtor Management (as compared to United Management), but argues that the Debtors' transfer of the Fleet Assets to United constituted a deliberate and knowing breach of the Receivership Order, and that the Debtors and Debtor Management thereafter made no effort to assist in recovering the Fleet Assets.

[30] While again the Receiver agrees that this misconduct attracts less culpability than the conduct of United and United Management, it argues that to allow the Debtor Management to escape without a custodial sentence would amount to tacit approval of their nonetheless deliberate and continuing contempt, done with knowledge of the orders.

[31] The Receiver does not seek a fine against the Debtors, inasmuch as the Debtors, as evidenced by the receivership, are insolvent, such that to order the Debtors to pay a fine would cause the Crown to become (another) creditor of the Debtors and reduce the recovery otherwise potentially available to other innocent creditors.

[32] Finally, the Receiver argues that the Contemnors should pay the Receiver's full indemnity costs, on the basis that the moving party should not be the one to bear the financial burden of the contempt, and because the contemptuous conduct here was serious and without mitigating factors present.

[33] The position of the Debtors and Debtor Management is effectively to deny that they are in contempt, and to re-argue the underlying contempt motion. The Debtors and Debtor Management have appealed the contempt finding against them, which of course is their right, but I did not find the repetition of the argument from the contempt motion to be particularly helpful.

[34] In terms of penalty, they note that there was essentially a single finding of contempt against them, for transferring the Fleet Assets to the United Contemnors. They acknowledge that they failed to assist in the recovery of the Fleet Assets, but note that there is no evidence of the Receiver "requesting assistance from any of the Debtor Management."

[35] Again, as I noted following the contempt hearing, the position of the Debtors and Debtor Management is that, once they transferred the assets to United, it was "out of their hands" and there was nothing they could do to change anything.

[36] The Debtors and Debtor Management argue that their conduct was much less serious than that of United and United Management, that United's contemptuous conduct was "not foreseen by the Debtor Respondents", and that the Debtor Respondents "did not participate in the removal and hiding of the Fleet Assets".

[37] They argue that the appropriate penalty for them, to the extent that the contempt finding is upheld, is a fine in the range of $1,500 to $5,000 each, and that no term of incarceration would be appropriate or reasonable having regard to the less serious nature of the conduct at issue in their case.

[38] They say there is no evidence that they stood to gain from moving the Fleet Assets, and that there are mitigating factors in their case, including that they turned over "effective control" of the Fleet Assets to the Receiver by November 15, 2024, that they had previously parked assets at the United Yard due to space limitations on their own property, and that in any event moving the Fleet Assets was their sole breach of the Receivership Order.

[39] They argue that there are no aggravating factors in their case, and that there is no need, given the less serious nature of the conduct at issue in their case, for denunciation or deterrence.

[40] Finally, the Debtors and Debtor Management assert that the costs sought by the Receiver are "extraordinarily high".

[41] The Debtors and Debtor Management asked that I delay the operation of any penalty I impose (they ask that I stay any such penalty, but the Receiver suggested instead a delay in implementation, to which the Debtors and their counsel appeared to agree), to allow them to pursue their appeal and to seek a stay from the Court of Appeal for Ontario.

[42] United and United Management, for their part, do not deny their contempt. In their materials filed for sentencing they acknowledge their inappropriate conduct, and provide an apology.

[43] As noted above, the Receiver doubts the sincerity of the contrition of United and United Management, given how late in the process the purported contrition surfaced. While I understand this concern, I think it is equally possible that United and United Management, who as I noted only engaged Mr. Manis a week ago, were not being guided until that change in counsel in appropriate directions. In the circumstances, while I cannot put as much weight on United's recent apology as I would on an earlier apology, equally I do not dismiss it out of hand.

[44] With respect to the imprisonment sought for the individual United Contemnors, United first asserts that Mr. Bajwa, while technically the sole officer and director of United, is something of a "figurehead". An affidavit of Mr. Mangat deposes that although Mr. Bajwa was a founder of the company, Mr. Bajwa now in fact plays no role in the operation or direction of the business. Moreover, Mr. Bajwa, according to the materials filed by the United Contemnors for sentencing, is 71 years old and has a heart condition for which he recently underwent a transthoracic echocardiogram (with contrast) and for which he has upcoming medical appointments on January 14 and 15, 2025.

[45] It is frankly difficult to tell based on the medical information filed, just how serious Mr. Bajwa's heart condition is. That said, he clearly has heart issues that are being investigated and, albeit that the materials are late-breaking and the Receiver fairly says that it has had no opportunity to test or respond to this evidence, that evidence is also uncontradicted at this stage, and frankly seems credible. Likewise, other than his notional position with United, there is no evidence in the record that Mr. Bajwa had any involvement in the events at issue in these proceedings.

[46] With respect to Mr. Dhaliwal, United argues that he is a young man with a young family, and that, with no management authority at United, he was necessarily following directions, in his conduct in this matter, from management and in particular Mr. Mangat.

[47] In the case of Mr. Mangat, the position is essentially that he was and is the directing mind, and that he accepts responsibility for the actions of United and United Management. In his case, however, Mr. Manis

cautions that his direct participation in the day-to-day operation of the business is critical, and that if he is away for any significant length of time, the business will suffer and various employees could be out of work.

[48] United and United Management also take issue with the proposed length of the incarceration suggested by the Receiver, calling it "disproportionate and overly punitive". They refer to many of the same cases as the Receiver and the Debtors, and echo the notion that incarceration should be the penalty of "last resort".

[49] They emphasize that they have apologized and expressed remorse, and that this is the first and only time that United or United Management have been found in contempt of court.

[50] They also point out that, subsequent to January 6 (and their change of counsel), they have cooperated with the Receiver, providing information that the Receiver sought and ensuring that 43 PPSA registrations made by Edge Transport Group Ltd (an entity related to United) against the Fleet Assets were discharged. United and United Management characterize this recent cooperation as being part of an effort to purge their contempt and to mitigate further damages.

[51] United and United Management deny the existence of significant aggravating factors, arguing that the contemptuous conduct here took place over approximately three weeks (as opposed to months or years in some of the cases on which the Receiver relies).

[52] They liken their contemptuous conduct, which again they do not deny, to that evident in the *Boily* case, wherein certain directors of a condominium corporation ignored a court order to restore certain landscaping to its original design and instead continued with a new design. They note that the contemnors in that case were ordered to pay a fine of $7,500 and argue that, particularly inasmuch as they are already liable to pay a $50,000 costs award in this case, fines in the amount of $5,000, together with a period of community service, would be appropriate here.

[53] On the topic of community service, while that is a well-known and robust notion in the criminal courts, the Receiver fairly points out that there is no mechanism to allow for enforcement of such a disposition relative to a civil contempt finding.

[54] Similarly, with respect to the notion of fines, as noted above, the Receiver has confirmed, contrary to its earlier submission which contemplated that the Receiver might be able to receive fine payments itself (for the benefit of the receivership), that fines can only be paid to the provincial treasury. In my view, as discussed in a bit more detail below, here the amounts to be paid by the Contemnors should be in the category of costs, so that the Receiver is not out-of-pocket.

[55] The final position articulated by United and United Management bearing mention here is that United argues that in fact the Debtors and Debtor Management have considerable responsibility for the events that transpired here. They say that by transferring the Fleet Assets to United contrary to the Receivership Order, the Debtors and Debtor Management set in motion, the chain of events here leading to the Receiver's necessary resort to contempt proceedings, and that therefore the Debtors and Debtor Management should share responsibility, at least financial responsibility, equally with United and United Management.

[56] Having reviewed and considered the written and oral submissions on the sentencing hearing, I find:

(a) Debtor Management, i.e. the individual Contemnors Imran Hussein, Satbir Singh Kahlon and Sukhdeep Singh Arora, are each to pay to the Receiver costs in the amount of $20,000. This amount is, in each case, in lieu of a fine or a period of incarceration. While I find that these Contemnors have not cooperated with the Receiver or otherwise purged their contempt, I also find that their contempt, while serious, was not in a category sufficiently serious to require imprisonment. Their contempt largely consisted of the transfer of the Fleet Assets to United contrary to the Receivership Order. I am singularly unimpressed with the conduct of the Debtors and Debtor Management, but again do not find their conduct to warrant time in jail. I have not imposed a payment obligation on the Debtors themselves, in that they are insolvent and in receivership, but I expect these individual contemnors to pay these costs I have ordered, and that the requirement to do so will be a significant and meaningful punishment for their contempt. If they have not paid these costs within 60 days, I am prepared to convene a further hearing to consider alternate remedies, including at that stage and in those circumstances, incarceration. As requested, I forestall the operation of this aspect of the order for 10 days;

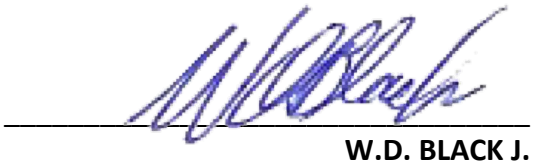
(b) For United Management, in the case of Mr. Mangat, I find that a period of incarceration of four days is appropriate, and that the sentence may be served on consecutive weekends so as not to interfere with Mr. Mangat's management role at United. I find United and United Management's contempt sufficiently serious as to warrant and require incarceration, but that a brief incarceration will be sufficient to send the messages of deterrence and denunciation required here;

(c) I decline to incarcerate Mr. Dhaliwal or Mr. Bajwa. In the case of Mr. Dhaliwal, it was a close call, but I am prepared to accept that he was "following orders" from management, and accept his acknowledgement that he regrets his actions. I am also taking into account that Mr. Dhaliwal is relatively young, and has a young family. In the case of Mr. Bajwa, I accept that he has no active role in management, and had no role in the poor decisions taken by Mr. Mangat on United's behalf;

(d) I order Mr. Dhaliwal to pay the Receiver's costs in the amount of $5,000, and Mr. Mangat to pay the Receiver's costs in the amount of $30,000, also, in each case, within 60 days;

(e) I order United to pay the balance of the Receiver's costs of $213,887.87, on a full indemnity scale (i.e. the balance of $118,887.87 taking into account the $95,000 to be paid collectively among Debtor Management and United Management), in this case within 30 days;

(f) As with the Debtor Management, I am prepared to convene a further hearing in 60 days if the Contemnors have failed to pay these amounts, to consider alternative or additional remedies.



W.D. BLACK J.

DATE: JANUARY 13, 2025

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX FUSION, LLC

Court File No. CV-25-00743136-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AUTHORITIES RELIED ON BY THE MONITOR
(Case Conference June 19, 2025)

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