

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

**FARM CREDIT CANADA**

Applicant

- and -

**GLOBAL FOOD AND INGREDIENTS INC. and GFI BRANDS INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 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 for Approval of SISP and Key Consultant Retention Plan,  
returnable August 19, 2024)**

August 15, 2024

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**FACTUM OF THE RECEIVER**

**PART I—OVERVIEW**

1. FTI Consulting Canada Inc. is the receiver (the “**Receiver**”) over the FCC Secured Property of Global Food and Ingredients Inc. and GFI Brands Inc. (the “**Debtors**”). On this motion, the Receiver seeks approval of a Sale and Investment Solicitation Process (“**SISP**”), developed in consultation with the Sale Agent,<sup>1</sup> and a Key Consultant Retention Plan (“**KCRP**”) and related court charge (the “**KCRP Charge**”).

2. The SISP is a straightforward, two-phase process that has been developed with a view to ensuring that the value of the FCC Secured Property is maximized for the benefit of all stakeholders. It seeks to market the FCC Secured Property, which includes the Debtors’ interest in land and food

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<sup>1</sup> Capitalized terms not otherwise defined have the same meanings as in the First Report of the Receiver, dated August 13, 2024 (the “**First Report**”).

processing facilities in Saskatchewan. In the interests of time, the Receiver has already commenced the marketing process.

3. The KCRP is also straightforward. It was developed to provide an incentive to three former employees of the Debtors who have been retained as consultants by the Receiver. The three Key Consultants have been retained to provide certain services, including assistance with site preservation and maintenance, and due diligence activities in the SISP such as conducting site visits and providing information to potential bidders. The aggregate award for all three consultants under the KCRP is \$53,450. It is not a large amount but it provides an important incentive to secure continued services from the Key Consultants.

4. The Receiver submits that the relief sought is appropriate and necessary for realizing upon the FCC Secured Property subject to the receivership, and respectfully requests that the proposed order be granted.

## **PART II—FACTS**

### **Background**

5. Each of the Debtors were members of the GFI group of companies. The business included, among other things, purchasing and processing plant-based food such as peas, beans, lentils and chickpeas and buying and outsourcing pasta production.<sup>2</sup>

6. As a result of various financial difficulties, the Debtors ceased operations in March, 2024, and began an orderly liquidation and wind-down, including laying off employees.<sup>3</sup>

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<sup>2</sup> First Report of the Receiver dated August 13, 2024, Motion Record of the Receiver, Tab 2 (“**First Report**”) at paras. 13-15.

## **The stakeholders**

7. The primary secured creditors of the Debtors are:
- (a) FCC, which (as of May 13, 2024), was owed approximately \$15 million in respect of its senior secured credit facility;<sup>4</sup> and,
  - (b) Siena Lending Group Canada LLC (“**Siena**”).
8. FCC and Siena each have priority over different collateral. In particular, FCC has priority over the FCC Secured Property, over which the Receiver has been appointed, including the Real Property; and Siena has priority over all other collateral. Richter Inc. has been appointed by the Court as the receiver of assets of the Debtors which are secured in favour of Siena, not including the FCC Secured Property.<sup>5</sup>
9. The Real Property included in the FCC Secured Property, includes three high-speed ingredient processing and storage facilities in Saskatchewan, located on the following lands:
- (a) 100 Elevator Road, Zealandia Saskatchewan (the “**Zealandia Lands**”);
  - (b) R.M. of Lajord No 128, Lajord Saskatchewan (surface parcel #111788219) (the “**Sedley Lands**” or “**Vigro Lands**”, and together with the Zealandia Lands, the “**Mortgaged Lands**”); and
  - (c) 100 South Railway Avenue, Lajord No. 128, Saskatchewan (the “**Leasehold Lands**” or “**Lajord Property**”), which property is owned by Stewart Southern Railway Inc. and leased to Global Foods Canada pursuant to a Lease and Assignment of Lease.<sup>6</sup>

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<sup>3</sup> First Report at para. 16.

<sup>4</sup> First Report at para. 20.

<sup>5</sup> First Report at para. 21.

<sup>6</sup> First Report at para. 22.

**SISP**

10. The Receiver has engaged FTI Capital Advisors Canada (the “**Sale Agent**”), an affiliate of FTI, to assist in the development and execution of the SISP and related marketing strategy.<sup>7</sup>

11. The SISP contemplates a broad marketing process in conjunction with a two-phase process for the solicitation of offers to purchase the FCC Secured Property.<sup>8</sup>

12. The SISP commenced with the preparation of a list of known potential bidders and broad marketing of the opportunity. The Sale Agent’s initial outreach and marketing efforts began during the week of July 15, 2024, with parties first provided copies of a confidential information memorandum (“**CIM**”) and virtual data room access on July 19, 2024. To date, thirty-four (34) parties have delivered executed non-disclosure agreements (“**NDA’s**”), been granted access to the virtual data room, and received a copy of the CIM. Site visits are scheduled to commence during the week of August 19, 2024.<sup>9</sup>

13. The SISP provides criteria for the evaluation of bids at each stage of the SISP, which include, among other things, the purchase price and evidence of the ability to consummate a transaction.

14. The key milestones and dates under the SISP are summarized in the following table:

<b>Milestone</b>	<b>Date(s)</b>
Phase 1: Formal Marketing Process and Initial Due Diligence Period	July 15, 2024 – September 13, 2024
Phase 1 Bid Deadline	5:00 p.m. (Eastern Time) on September 13, 2024

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<sup>7</sup> First Report at para. 26.

<sup>8</sup> First Report at para. 27.

<sup>9</sup> First Report at para. 31.

Phase 2: Due Diligence Period for Selected Bidders	September 14, 2024 – October 4, 2024
Phase 2 Bid Deadline	5:00 p.m. (Eastern Time) on October 4, 2024
Court Approval of Successful Bid	Target the week of October 21, 2024
Outside Date	November 15, 2024

15. Certain deadlines may be extended by the Receiver if it considers it appropriate to do so, after consultation with the Sale Agent.<sup>10</sup>

### **Development of the KCRP**

16. Prior to the Receiver’s appointment, the Debtors began to take steps to wind down operations, liquidate inventory, and layoff their employees.<sup>11</sup>

17. The Receiver identified the three (3) Key Consultants, who were previously employees of the Debtors, who have experience working for the Debtors, and whose involvement is anticipated to be integral to, among other things, the operation and security of the Debtors’ processing facilities and certain other FCC Secured Property in relation to the SISF.<sup>12</sup>

18. The Receiver entered into consulting agreements (collectively, the “**Consulting Agreements**”) with the Key Consultants, pursuant to which the Receiver engaged the Key Consultants to provide certain consulting services in exchange for a consulting fee at a fixed rate (the “**Consulting Fees**”), payable every two (2) weeks.<sup>13</sup>

19. In connection with entering into the Consulting Agreements, the Key Consultants and the Receiver entered into KCRP arrangements. The KCRP contemplates the payment of certain

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<sup>10</sup> First Report at para. 30.

<sup>11</sup> First Report at para. 35.

<sup>12</sup> First Report at para. 36.

<sup>13</sup> First Report at para. 38.

Retention Awards, approximately equal to 20% of the applicable Key Consultant's annualized Consulting Fees, which would be payable on the earlier of the following dates (the "**Milestone Date**"):

- (a) the closing date of a transaction or transactions for all or substantially all of the FCC Secured Property;
- (b) the date of an order terminating these receivership proceedings;
- (c) the termination of the engagement of the applicable Key Consultant, by the Receiver, if such termination is not the result of an Event of Default (as defined in the Consulting Agreements);
- (d) December 31, 2024; or,
- (e) any other date the Court may establish for the purpose of implementing the KCRP.<sup>14</sup>

20. To remain eligible for the Retention Award, the Key Consultant must be retained by the Receiver and have provided services to the Receiver in accordance with the relevant Consulting Agreement and the performance and availability expectations of the Receiver, on a continuous and satisfactory basis, for the entire period from the date the KCRP is approved by the Court until the Milestone Date.<sup>15</sup>

21. If the Key Consultant is terminated by the Receiver as a result of an Event of Default (as defined in the Consulting Agreements), or terminates their engagement under the Consulting

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<sup>14</sup> First Report at para. 39(b).

<sup>15</sup> First Report at para. 39(c).

Agreements, or otherwise ceases to assist the Receiver prior to the Milestone Date, the Key Consultant shall have no further entitlement to the applicable Retention Award.<sup>16</sup>

22. The KCRP contemplates that the Key Consultants will be granted the KCRP Charge, to secure their respective entitlements under the KCRP. Such KCRP Charge will rank subsequent to the Receiver's Charge and the Receiver's Borrowings Charge (each as defined in the Receivership Order) and certain statutory charges which have priority over the Receiver's Charge and the Receiver's Borrowings Charge, but in priority to all other claims and encumbrances, including secured claims, against the FCC Secured Property.<sup>17</sup>

23. The total Retention Amounts for the three Key Consultants is \$53,450 for all three Key Employees, which is the size of the proposed KCRP Charge.<sup>18</sup> The Receiver requests the Confidential Schedule "1" containing the names and Consulting Fees for the three Key Consultants be sealed to protect their privacy.

### **Activities of the Receiver**

24. The activities of the Receiver, since its appointment, are set out in further detail in the First Report. Such activities include, among other things:

- (a) negotiating a resolution in respect of insurance financing;
- (b) taking possession of the Mortgaged Lands and Leasehold Lands and providing for the safety and security of the sites;
- (c) creating new utilities accounts for gas, hydro, and telecommunications at the Mortgaged Lands and Leasehold Lands;

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<sup>16</sup> First Report at para. 39(c).

<sup>17</sup> First Report at para. 40.

<sup>18</sup> First Report at para. 41.



- (d) corresponding with the Debtors' insurance broker and arranging for the Receiver to be added to the Debtors' policies as a named-insured;
- (e) opening a new estate trust account under the Receiver's name (the "**Receiver's Estate Account**");
- (f) issuing a Receiver's Certificate to borrow funds from FCC to deal with the FCC Secured Property as authorized by the Receivership Order;
- (g) managing the cash receipts to, and approving the disbursements from, the Receiver's Estate Account;
- (h) retaining the Key Consultants to provide services to the Receiver, including in respect of the Real Property and negotiating the Consulting Fees and KCRPs;
- (i) preparing the SISP and commencing the marketing process thereunder;
- (j) responding to inquiries from various stakeholders;
- (k) reviewing court materials and attending in Court in relation to a distribution motion by the Siena Receiver;
- (l) coordinating with the Siena Receiver in respect of various matters;
- (m) sending the Notice and Statement of the Receiver to (i) all creditors on record, and (ii) the Office of the Superintendent of Bankruptcy pursuant to section 245(1) and 246(1) of the BIA;
- (n) establishing a website in relation to this receivership and posting materials relating to the receivership proceedings;
- (o) facilitating the sale of certain FCC Secured Property abandoned at the Debtors' former head office, including but not limited to, office furniture and equipment, the value of which was approximately \$5,000;
- (p) attending to other administrative matters relating to these proceedings; and,
- (q) preparing this First Report and the corresponding motion materials.<sup>19</sup>

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<sup>19</sup> First Report at paras. 41-49.

### PART III—ISSUES AND THE LAW

#### **The issues**

25. There are four issues on this motion, each of which the Receiver submits should be answered in the affirmative:

- (a) Should the SISP be approved, *nunc pro tunc*?
- (b) Should the KCRP and KCRP Charge be approved?
- (c) Should the Confidential Schedule “1” containing private consultant information be sealed subject to a further order of the Court?
- (d) Should the First Report of the Receiver, and the activities of the Receiver described therein, be approved?

#### **A. The SISP should be approved**

26. The test for approval of a SISP is set out in *CCM Master Qualified Fund v. blutip Power Technologies*.<sup>20</sup> The Court should assess:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,

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<sup>20</sup> [2012 ONSC 1750](#).

- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>21</sup>

27. The CCM test is based on the test in *Royal Bank of Canada v. Soundair Corp.*<sup>22</sup> for approval of a sale by a receiver.

***Fairness, transparency, and integrity of the SISP***

28. The marketing process was designed by the Receiver, with the expert assistance of the Sale Agent, considering the nature of the Properties and the FCC Secured Property generally.

29. The two-step sales process is typical for sales processes in restructuring proceedings. The process allows the Sale Agent and the Receiver to first determine market interest without undue delay, then to focus efforts on due diligence and negotiations with the parties that have the best potential to compete a successful transaction, in order to maximize the value of the Final Bids in an efficient manner.

30. Taking into consideration the time at which marketing the FCC Secured Property first began, Phase 1 of the SISP will run for nearly 9 weeks. Phase 2 of the SISP will then run for 3 weeks.

31. The timing of the SISP (approximately 11.5 weeks in total) is reasonable and consistent with timelines in other SISPs involving real estate and/or food production businesses, including:

- (a) 10 weeks (consisting of a four-week Phase 1 and a six-week Phase 2) for the sale of a meat processing and cold storage business with real estate holdings;<sup>23</sup>

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<sup>21</sup> *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#) at [para. 6](#). The CCM test has been applied in a variety of cases, including *West End Motors v. 189 Dundas Street West Inc.*, [2019 ONSC 5124](#) at [para. 14](#).

<sup>22</sup> [\(1991\), 4 O.R. \(3d\) 1 \(C.A.\)](#).

- (b) 6.5 weeks (24 days for Phase 1 and 21 days for Phase 2) for the sale of five processing plants owned by a grain trading company in Alberta;<sup>24</sup>
- (c) 8 weeks (34 days for Phase 1 and 23 days for Phase 2) for the sale of a partially constructed condominium project in Toronto;<sup>25</sup>
- (d) 10 weeks for a dual track process (continuation of construction while seeking a buyer) for a 24-storey condominium project in Winnipeg;<sup>26</sup>
- (e) 13 weeks (45 days for Phase 1 and 46 days for Phase 2) for the sale of a portion of the Strategic Group's properties;<sup>27</sup>
- (f) 14 weeks (98 days over two phases) for the sale of early construction semi-detached homes.<sup>28</sup>

32. The Receiver is of the view that the timelines are an appropriate balance between timeliness and providing a sufficient period to achieve appropriate market exposure for the FCC Secured Property.<sup>29</sup> Moreover, there is flexibility in the process that can be exercised by the Receiver, in consultation with the Sale Agent, if required.

33. Deference is to be afforded to a receiver respecting its proposed sale process:

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<sup>23</sup> *In the Matter of a Plan of Compromise or Arrangement of Eastern Meat Solutions Inc., et al.* (May 31, 2024), Ontario [CV-24-00720622-00CL](#) (Ont. Sup. Ct. (Comm. List)).

<sup>24</sup> *ATB Financial v W.A. Grain Holdings Inc., et al.* (June 9, 2021), Calgary [2101-05782](#) (Alta. K.B.) and First Report of the Receiver, filed May 31, 2021 at Appendix "A".

<sup>25</sup> *BCIMC Construction Fund Corporation and Otera Capital Inc. v 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership* (June 4, 2020), Ontario [CV-20-00637297-00CL](#) (Ont. Sup. Ct. (Comm. List)).

<sup>26</sup> *Caisse Populaire Group Financier Ltee v. 390 Assiniboine Avenue* (23 February 2017), Winnipeg [17-01-06300](#).

<sup>27</sup> *Sun Life Assurance Company of Canada v. Sundance Place II Ltd.* (27 March 2020), Calgary [1901-18029](#) (Alta K.B.).

<sup>28</sup> *CIBC v. Urbancorp Leslieville Developments Inc.*, (2 May 2017), Ontario [16-11409-00CL](#) (Ont. Sup Ct).

<sup>29</sup> First Report at para. 32.

Where a receiver or manager has acted reasonably, prudently and not arbitrarily, as is the case here, a court ought not to sit in appeal from a receiver or manager's decision or review in every detail every element of the procedure by which the receiver or manager made its decision. To do so would be futile, duplicative and would neutralize the role of the receiver or manager.<sup>30</sup>

34. In this case, the process will expose the properties to the market for a reasonable duration that will allow the maximum number of interested purchasers to undertake due diligence and submit competitive offers. It will also provide a clear and transparent process while also providing flexibility for the Receiver to return to court for further directions or to take further steps if doing so becomes appropriate at any time.

35. As such, it is the Receiver's view (in consultation with the Sale Agent) that the SISP reflects an appropriate process to identify the highest/best offer in the circumstances and to maximize the value of the FCC Secured Property for the benefit of all stakeholders.

### **B. The KCRP and KCRP Charge should be approved**

36. This Court has jurisdiction to approve a key employee retention plan within receivership proceedings. As stated by the Honourable Chief Justice Morawetz:

Courts have frequently recognized the utility and importance of KERPs in restructuring proceedings and have approved KERPs in numerous debtor-in-possession proceedings under both the Companies' Creditors Arrangement Act (the "CCAA") and receivership proceedings pursuant to the Bankruptcy and Insolvency Act (the "BIA") and the Courts of Justice Act (the "CJA").

The CCAA, the BIA and the CJA, as well as the Securities Act are silent with respect to the approval of KERPs and the granting of a charge to secure a KERP. Counsel to the Receiver submits that as such, the approval of a KERP and a KERP Charge are matters within the discretion of the court, grounded in the court's inherent and/or statutory jurisdiction to make any orders it sees fit. (See, for example: *Aralez Pharmaceuticals*

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<sup>30</sup> *Bank of Montreal v. Dedicated National Pharmacies Inc.*, [2011 ONSC 4634](#) at [para. 43](#).

*Inc., (Re)*, 2018 ONSC 6980; *Cinram International Inc., (Re)*, 2012 ONSC 3767 and *Grant Forest Products Inc., (Re)*, [2009] O.J. No. 3344.)<sup>31</sup>

37. In *Aralez Pharmaceuticals Inc. (Re)*, Justice Dunphy set out the following factors to be considered in determining whether a key employee retention plan is appropriate:

My review of the limited case law on the subject of KERP (or KEIP) approvals suggests that there are no hard and fast rules that can be applied in undertaking this task. However the principles to be applied do emerge. Morawetz J. suggested a number of considerations in *Cinram International Inc. (Re)*, 2012 ONSC 3767, relying on the earlier decision of Newbould J. in *Grant Forest Products Inc. (Re)*, 2009 CanLII 42046. I reproduce here the synthesis of Morawetz J. (*Cinram*, para. 91):

- a. whether the Monitor supports the KERP agreement and charge (to which great weight was attributed);
- b. whether the employees to which the KERP applies would consider other employment options if the KERP agreement were not secured by the KERP charge;
- c. whether the continued employment of the employees to which the KERP applies is important for the stability of the business and to enhance the effectiveness of the marketing process;
- d. the employees' history with and knowledge of the debtor;
- e. the difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies;
- f. whether the KERP agreement and charge were approved by the board of directors, including the independent directors, as the business judgment of the board should not be ignored;
- g. whether the KERP agreement and charge are supported or consented to by secured creditors of the debtor; and
- h. whether the payments under the KERP are payable upon the completion of the restructuring process.<sup>32</sup>

38. While the Key Consultants in this case are not employees, but rather consultants, it is respectfully submitted that the same considerations should be applied in determining whether the KCRP should be approved, with appropriate reframing to reflect the receivership context.

39. The services of the Key Consultants are anticipated to be critical to the Receiver and Sale Agent's ability to conduct the SISF in an efficient and expeditious manner. The Receiver seeks

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<sup>31</sup> *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#) at [paras. 13 – 14](#).

<sup>32</sup> *Aralez Pharmaceuticals Inc. (Re)*, [2018 ONSC 6980](#) at [para 29](#).

approval of the KCRP and the KCRP Charge to secure the continued services of the Key Consultants throughout these proceedings.

40. The approval of the KCRP and KCRP Charge is just and appropriate as, among other reasons:

- (a) the beneficiaries thereof, the Key Consultants, are anticipated to be critical to the Receiver and Sale Agent's ability to conduct the SISP in an efficient and expeditious manner and they have specialized knowledge of the Debtors' business and assets that cannot easily be replaced;<sup>33</sup>
- (b) the KCRP was developed by the Receiver through a consultative process, contains appropriate safeguards and is supported by FCC and the Receiver;<sup>34</sup>
- (c) the Retention Payments are payable only upon the occurrence of certain terminating events, which generally coincide with the completion of a sale or the termination of these receivership proceedings;<sup>35</sup> and,
- (d) there is a risk that the Key Consultants would consider other consulting, contracting, or employment options in the event that the KCRP is not approved.<sup>36</sup>

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<sup>33</sup> First Report at paras. 42 and 44(b).

<sup>34</sup> First Report at para. 44(c)

<sup>35</sup> First Report at para. 39.

<sup>36</sup> First Report at para. 44(a).

### **C. Sealing should be Approved**

41. The Receiver seeks an order sealing Confidential Schedule “1” to the First Report, which contains the names and compensation details of individual consultants, pending further order of the Court.

42. The Supreme Court in *Sherman Estates v. Donovan* sets out the test that must be met by an applicant for a sealing order. Such an applicant must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>37</sup>

43. Confidential Schedule “1” contains individual names of the KCRP recipients and the amounts received as Consulting Fees and Retention Awards.

44. Courts have recognized in numerous cases that it would be detrimental to the operations of the company to disclose the identities of Key Employee Retention Plan (“KERP”) beneficiaries and the quantum of payments.<sup>38</sup> This includes finding that disclosing the employee names and compensation information would violate the privacy interest of those employees and could create a risk for employee retention.<sup>39</sup>

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<sup>37</sup> *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#), [2021] 2 SCR 75 at [para 38](#).

<sup>38</sup> See for example *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#), 90 C.B.R. (6th) 102, at [paras. 23–28](#) and *Just Energy Corp, (Re)*, [2021 ONSC 1793](#) at [paras. 123–24](#).

<sup>39</sup> *Just EnergyGroup Inc. et al., (Re)*, [2021 ONSC 7630](#) at [para. 28](#).



45. In the recent case of *MJardin*, Chief Justice Morawetz accepted that compensation for a consultant retained by a receiver is akin to an employee's salary and that the request is akin to a request to seal individual KERP information.<sup>40</sup>

46. In this case, the sealing order is proportional as the Receiver has publicly disclosed the aggregate amount of the KCRP (\$53,450) to balance the principle of court openness while minimizing risks to retention and privacy. The salutary effects of granting this order outweigh any deleterious effects. The three factors of *Sherman Estate* have been satisfied and the sealing order should be granted.

#### **D. The Activities and First Report of the Receiver should be approved**

47. The Court has the inherent jurisdiction to review the activities of a court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently, and not arbitrarily, to approve the activities set out in the applicable receiver's report(s). This assessment is made on an objective basis.<sup>41</sup>

48. There are good policy reasons for the Court to provide a level of protection to a receiver by approving its activities, provided that the benefit of approval is limited to the receiver itself. These reasons include allowing the Receiver to move forward with the next steps in the proceedings; bringing the Receiver's activities before the Court; allowing an opportunity for any stakeholder concerns to be addressed; enabling the Court to satisfy itself that the Receiver's activities have been undertaken in a prudent and diligent manner; providing protection for the Receiver; and, protecting

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<sup>40</sup> *PricewaterhouseCoopers Inc. v. MJardin Group, Inc.*, [2022 ONSC 3603](#) at [para 18](#). [*MJardin*]

<sup>41</sup> *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855](#), at [para. 54](#), citing *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Ct. J.) at paras. 3-5, *aff'd* [1996] O.J. No. 2806 (C.A.).

the creditors from the delay caused by re-litigation of steps taken to date (as well as potential indemnity claims from the Receiver).<sup>42</sup>


49. The Receiver has undertaken efforts to secure the FCC Secured Property, prepare and commence the SISP, and realize upon and maximize the value of the FCC Secured Property, in a timely manner, to the benefit of all of the Debtors' stakeholders.

50. Accordingly, the Receiver submits that it has acted reasonably, prudently and not arbitrarily, in carrying out its activities, as described in its First Report, and this Honourable Court should exercise its inherent jurisdiction to approve the activities and conduct of the Receiver, as described in the First Report.

#### **PART IV—ORDER REQUESTED**

51. For the reasons set out herein, the Receiver seeks an order approving the SISP, the KCRP the KCRP Charge and other ancillary relief.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**



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Lawyers for the Receiver

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<sup>42</sup> *Hanfeng Evergreen Inc. (Re)*, [2017 ONSC 7161](#), at [paras. 15 – 17](#); *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras. 20 – 23](#).

## SCHEDULE “A” – LIST OF AUTHORITIES

1. *Aralez Pharmaceuticals Inc. (Re)*, [2018 ONSC 6980](#).
2. *ATB Financial v W.A. Grain Holdings Inc., et al.* (June 9, 2021), Calgary [2101-05782](#) (Alta. K.B.)
3. *Bank of Montreal v. Dedicated National Pharmacies Inc.*, [2011 ONSC 4634](#)
4. *BCIMC Construction Fund Corporation and Otera Capital Inc. v 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership* (June 4, 2020), Ontario [CV-20-00637297-00CL](#) (Ont. Sup. Ct. (Comm. List))
5. *Caisse Populaire Group Financier Ltee v. 390 Assiniboine Avenue* (23 February 2017), Winnipeg [17-01-06300](#)
6. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
7. *CIBC v. Urbancorp Leslieville Developments Inc.*, (2 May 2017), Ontario [16-11409-00CL](#) (Ont. Sup Ct)
8. *Hanfeng Evergreen Inc. (Re)*, [2017 ONSC 7161](#)
9. *In the Matter of a Plan of Compromise or Arrangement of Eastern Meat Solutions Inc., et al.* (May 31, 2024), [Ontario CV-24-00720622-00CL](#) (Ont. Sup. Ct. (Comm. List))
10. *Just Energy Corp, (Re)*, [2021 ONSC 1793](#).
11. *Just EnergyGroup Inc. et al., (Re)*, [2021 ONSC 7630](#).
12. *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855](#)
13. *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#), 90 C.B.R. (6th) 102.
14. *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 2840](#) (Ont. S.C.J., [Commercial List]).
15. *PricewaterhouseCoopers Inc. v. MJardin Group, Inc.*, [2022 ONSC 3603 \(CanLII\)](#).
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20. *West End Motors v. 189 Dundas Street West Inc.*, [2019 ONSC 5124](#).

**SCHEDULE "B" – TEXT OF STATUTES**

None.

**FARM CREDIT CANADA**

Applicant

and

**GLOBAL FOOD AND INGREDIENTS  
INC. and GFI BRANDS INC.**

Respondents

Court File No.: CV-24-00720526-00CL

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

Proceeding commenced at Toronto

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