

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE

)

FRIDAY, THE 16th DAY

)

OF MARCH, 2018

)

HUK 10 LIMITED

Applicant

- and -

HMV CANADA INC.

Respondent

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION made by Richter Advisory Group Inc. (“**Richter**”) in its capacity as receiver (the “**Receiver**”) without security, of the undertaking, property, and assets (collectively, the “**Property**”) of HMV Canada Inc. (“**HMV**”) for an Order:

- (a) approving the Receiver’s conduct, actions and activities as set out in the second report of the Receiver dated March 9, 2018 (the “**Second Report**”);
- (b) approving the interim statement of receipts and disbursements of the Receiver for the period from January 27, 2017 (the “**Date of Appointment**”) to March 2, 2018 (the “**Receiver’s Interim R&D Statement**”);
- (c) authorizing and directing the Receiver to make a payment to the Receiver General for Canada (the “**Receiver General**”), in the amount of \$363,584.75 in respect of the Subrogated 81.4 Claims (as defined in the Second Report) (the “**Subrogated 81.4 Claims Payment**”);
- (d) authorizing and directing the Receiver to make an interim distribution to HUK10, or as HUK10 may direct, in respect of its secured claim against the Property, in the amount of \$800,000 (the “**HUK10 Distribution**”);

- (e) authorizing the Receiver to retain \$245,332 (the “**Holdback**”) from the available cash on hand remaining following the Subrogated 81.4 Claims Payment and the HUK10 Distribution, and to use such funds to pay the Outstanding Disbursements (as defined in the Second Report) without further approval of this Court;
- (f) authorizing the Receiver to settle the Outstanding Priority Claims (as defined in the Second Report);
- (g) approving the fees and disbursements of the Receiver for the period from May 15, 2017 to February 23, 2018 and the fees and disbursements of its counsel, Gowling WLG (Canada) LLP (“**Gowling WLG**”), for the period from May 12, 2017 to February 28, 2018, including the Remaining Fees and Disbursements (as defined in the Second Report);
- (h) discharging the Receiver upon completion of the Remaining Matters (as defined in the Second Report), and authorizing the Receiver to distribute any residual amounts remaining in its possession to HUK10 after the payment of the Outstanding Disbursements, subject to the Receiver filing a certificate evidencing the same with the Court;
- (i) ordering and declaring that, effective upon its discharge as Receiver, Richter is released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of Richter; and
- (j) such further relief as may be required in the circumstances and that this Honourable Court deems just and equitable.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, the fee affidavits of the Receiver and its counsel Gowling WLG as to their respective fees and disbursements (together, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver, counsel to HUK10, and those other parties listed on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of Gina Mitchell sworn March 12, 2018, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF ACTIVITIES AND R&D

2. THIS COURT ORDERS that the Second Report, and the conduct, actions, and activities of the Receiver as set out therein, are hereby approved.

3. THIS COURT ORDERS that the Receiver's Interim R&D Statement is hereby approved.

PAYMENT AND DISTRIBUTION OF FUNDS

4. THIS COURT ORDERS that the Receiver is hereby authorized and directed to make the Subrogated 81.4 Claims Payment to the Receiver General.

5. THIS COURT ORDERS that the Receiver is hereby authorized and directed to make the HUK10 Distribution.

6. THIS COURT ORDERS that the Receiver is hereby authorized and directed, following the Subrogated 81.4 Claims Payment and the HUK10 Distribution, to retain the Holdback from the available cash on hand remaining, and to use such funds to pay the Outstanding Priority Claims and the Remaining Fees and Disbursements.

7. THIS COURT ORDERS that, in the event the Receiver is unable to resolve the Residual 81.4 Claims (as defined in the Second Report) by April 30, 2018, the Receiver is hereby authorized and directed to:

- (a) amend the claim information previously submitted by the Receiver to Service Canada pursuant to WEPP for any employee with an outstanding Residual 81.4 Claim (as defined in the Second Report);
- (b) notify the affected employees of the reduction to their respective WEPP claim for the 81.4 Claim amount (as defined in the Second Report);
- (c) remit payment of the 81.4 Claim amount directly to those employees with an outstanding Residual 81.4 Claim; and
- (d) forward any unclaimed funds (i.e. returned or stale-dated cheques) relating to the Residual 81.4 Claims to the Office of the Superintendent of Bankruptcy, along with a list of names, last known mailing addresses, and the amount payable to each individual.

8. THIS COURT ORDERS that the Receiver is hereby authorized and directed to pay to HUK10 any residual amounts remaining in respect of the Holdback, or subsequently collected by the Receiver, after the payment of the Outstanding Disbursements.

APPROVAL OF FEES

9. THIS COURT ORDERS that the fees and disbursements of the Receiver for the period from May 15, 2017 to February 23, 2018, and the fees and expenses of Gowling WLG for the period from May 12, 2017 to February 28, 2018, as well as the Remaining Fees and Disbursements, as set out in the Second Report and the Fee Affidavits are hereby approved.

DISCHARGE OF RECEIVER

10. THIS COURT ORDERS that upon completion of the Remaining Matters, and upon the Receiver having filed a Discharge Certificate substantially in the form attached hereto as Appendix "A" (the "Discharge Certificate"), Richter shall immediately be discharged as Receiver of HMV, provided however that notwithstanding its discharge herein the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Richter in its capacity as Receiver, including without limitation the Administration Charge (as defined in the Receivership Order).

11. THIS COURT ORDERS AND DECLARES that upon the filing of the Discharge Certificate in accordance with paragraph 10, hereof, Richter shall be released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, upon the filing of the Discharge Certificate, Richter shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 16 2018

PER / PAR:



Court File No. CV-17-11674-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

HUK 10 LIMITED

Applicant

- and -

HMV CANADA INC.

Respondent

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated January 27, 2017 (the “**Receivership Order**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (the “**Receiver**”), without security, of the property, assets and undertaking of HMV Canada Inc. (“**HMV**”).

(B) Pursuant to an Order of the Court dated March 16, 2018 (the “**Distribution and Discharge Order**”), Richter was discharged as the Receiver of HMV, to be effective upon the filing by the Receiver with the Court of a certificate confirming that the Remaining Matters have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) Richter will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and (b) Richter will continue to have the benefit of the provisions of all

Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Richter, in its capacity as the Receiver, including, without limitation, the Administration Charge.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution and Discharge Order.

THE RECEIVER CERTIFIES the following:

1. the Remaining Matters have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the _____th day of _____,
_____.

RICHTER ADVISORY GROUP INC., solely in its capacity as the Court-appointed receiver of HMV Canada Inc. and not in its personal capacity

Per: _____
Name:
Title:

HUK 10 LIMITED
Applicant

v.

HMV CANADA LIMITED
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

DISTRIBUTION ORDER
(March 16, 2018)

GOWLING WLG (CANADA) LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

David Cohen (LSUC #33195Q)
Tel: 416.369.6667
Fax: (416) 862-7661
Email: david.cohen@gowlingwlg.com

Frank Lamie (LSUC #54035S)
Tel: (416) 862-3609
Fax: (416) 862-7661
Email: Frank.Lamic@gowlingwlg.com

Lawyers for Richter Advisory Group Inc. in its capacity as the
Court-appointed receiver of HMV Canada Limited