

**THE QUEEN'S BENCH  
Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C., C.B-3, AS AMENDED, AN SECITON 55  
OF THE COURT OF QUEEN'S ENCH ACT,  
C.C.S.M., C. C280, AS AMENDED

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,

Respondents.

**AFFIDAVIT OF WAYNE ONCHULENKO**  
AFFIRMED this 3rd day of October, 2022

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**LEVENE TADMAN GOLUB LAW CORPORATION**

Barristers and Solicitors  
700 - 330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5

**WAYNE M. ONCHULENKO**  
Telephone No. (204) 957-6402  
Fax No. (204) 957-1696  
File No. 113885/WMO

QB BOX 105

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Respondents.

**AFFIDAVIT OF WAYNE ONCHULENKO**

I, WAYNE ONCHULENKO, of the City of Winnipeg, in the Province of  
Manitoba, Barrister and Solicitor, AFFIRM THAT:

1. I am Manitoba counsel for the Respondents herein and as such have  
personal knowledge of the facts and matters which are hereinafter  
deposed to by me, except where same are stated to be based on  
information and belief, in which I believe same to be true. I am a partner  
with the law firm of Levene Tadman Golub Law Corporation (LTGLC).

2. This Affidavit is made at the direction of this Honourable Court and in support of LTGLC's motion seeking, approval of the fees and disbursements of LTGLC for the period from November 29, 2021 through August 29, 2022 ( 9 months). Pursuant to paragraph 138 of the reasons for judgment pronounced in this proceeding on March 10, 2022 whereby the Respondents reasonable fees and disbursements at their standard rates are to be paid.
3. LTGLC has prepared an excel spread sheet approximately breaking down the work into 10 areas set out below for each month and for the entire time. Attached hereto and marked as Exhibit "**A**" is an approximate summary of time spent each month and the areas on which time was spent each month. Further the approximate dollar value of the time spent each month in each area is set out.
4. Copies of the LTGLC amended invoices for the Billing Period December 2021 until August 2022, which have been redacted for privilege, are attached hereto, marked as Exhibits "**B**" through "**J**". The original accounts, which were provided to the Respondents, have been approved for payment by the Respondents director, Greg Fenske. The

original accounts have been amended/reduced by approximately \$57,000 CAD in fees to take out any time spent that may not be related to the Receivership. The original accounts have not been filed.

5. The LTGLC Invoices disclose in detail (i) the name and time expended for each person who rendered services; (ii) the date the services were rendered; (iii) the time expended each day; and (iv) the total charges for the services rendered by LTGLC professionals for the relevant time period.
6. 7. During the Billing Period, the total fees billed by LTGLC were \$391,903.00, plus disbursements of \$6,137.84 and applicable taxes of \$47,306.36, for an aggregate amount of \$445,347.35.
7. I have been actively involved in this matter. I have reviewed the LTGLC Invoices and consider the time expended and legal fees charged to be fair and reasonable for the services performed, and either consistent with or below prevailing market rates for legal services of the nature involved in this proceeding. The LTGLC Invoices reflect fees and disbursements at standard rates and charges.



8. Attached is a copy of the deponent's letter dated September 16, 2022 explaining the numbering system in the Statements of Account, marked as Exhibit "K".
9. As of the writing of this affidavit, the Receiver has not advised your deponent what portion of the accounts they are prepared to pay other than to indicate it will not be zero. They have advised "the Receiver accepts that the accounts from your firm referenced in that correspondence clearly reflect some work relating directly to the receivership for which your firm should be paid in accordance with the Order of Justice Edmond."

#### Chronological History

10. On December 21st and 22nd of 2021 there were two days of contested hearings before this Honourable Court. The materials filed prior to the hearing and the materials filed after the hearing through January 6th, 2022, are in the possession of the Court.
11. The bills work product has been broken down follows:

- 1) Communications with receiver, counsel, and the court
- 2) Where you see a 2 it should read 7
- 3) Communications with Toronto South Detention Centre (TSDC)
- 4) Communications dealing with Building in China
- 5) Intercompany debt communications
- 6) Tax communications
- 7) Matters related to the consolidation order and appeals
- 8) Director's fees communications
- 9) Review of asset ownership
- 10) Matters dealing with the December hearing

12. Each billing item is accompanied by one of the above numbers.

There is a more detailed description for each number in Exhibit "K" which was provided to the Receiver.

13. The December 2021 Statement of Account (Nov 29-Dec20) covers part of the period of the two-day (Dec 20 and Dec 22) contested motion. In December the following documents were filed: Dec 1 Motion by the Receiver and a supplemental report number 12; Dec 14 Motion by the Respondents, an affidavit in support and Motions briefs by the Respondents and the AG of Canada; and Dec 17 a motion filed by the Receiver; The first day of the two-day hearing occurred on Dec 20. Most of the time spent was dealing with the hearing. There was also a significant amount of time involved in communicating with TSDC attempting to increase the amount of time available to communicate with Peter Nygard.

14. Mr. Peter Nygard is the owner of the Canadian companies and including Nygard Enterprises Ltd. (NEL) which is the sole shareholder of Nygard Properties Ltd. (NPL). It is in this capacity that he has an interest in the financial well-being of these two entities. (See Receivers first report paragraph 17 doc 39).

15. Greg Fenske is the director of the Respondent corporations. (See affidavit of Greg Fenske dated September 13, 2020, doc 122.)

16. In December of 2020 Mr. Nygard was arrested and was held in custody at the Headingly Correctional Centre (HCC) until September 2021 when he was transferred to the Toronto South Detention Centre (TSDC). To communicate with Mr. Nygard, we had to make arrangements through TSDC. The two ways in which we can communicate with Mr. Nygard are by phone and through video conferencing. Their video conferencing program is referred to as the Judicial Video Network (JVN). It is a proprietary software of the Ontario government and is restricted to lawyers and their clients who are in detention in Ontario.
17. When LTGLC first became involved, we were advised that only Ontario lawyers could participate in JVNs. After further negotiations it was agreed that lawyers from other jurisdictions could also participate in JVNs.
18. As set out in Exhibit "K" when we first became involved, Mr. Nygard's communication with lawyers was limited to a lawyer calling TSDC and then determining if Mr. Nygard was available to come to the phone. Through negotiations between September and the end of

December 2021, we were able to increase his telephone access to approximately four hours a day between 9:30 and 1:30 p.m.

19. With respect to the JVN's Mr. Nygard was originally allowed twenty minutes per day. Through negotiations that has been incrementally increased to the point where since January of 2022 he has been receiving 50 minutes of JVN time per weekday and 100 minutes of JVN time per weekend day.
20. We are continuing to try to increase his phone time and JVN time to the equivalent amount of time that he received at the HCC which was eleven hours of phone time per day and two hours of JVN time per weekday and three hours of JVN time per weekend day.
21. We are in the process of putting together a court application to make this request on Mr. Nygard's behalf so he can have adequate time to receive information and discuss, with counsel and with Greg Fenske, how NEL and NPL should proceed.
22. Mr. Nygard has several limitations in this regard. I am advised by Peter Nygard and do verily believe he finds it more difficult to receive information and discuss that information over the phone. He has

advised and I do verily believe that it is easier and quicker for him to understand documents when he reads them. I am advised by Mr. Nygard and do verily believe that it is easier for him to ask questions once he has read documents. Mr. Nygard reads the documents on the screen during a JVN and asks questions about the documents, so he can discuss with Greg Fenske what he thinks is the best course for NEL and NPL.

23. I am informed by Peter Nygard and do verily believe he is 81 years old; his vision is deteriorating, he has difficulty seeing which makes it more difficult for him to read, and this also slows his reading.

24. As also set out in Exhibit "K" we are only able to book appointments on the timetable given to us by TSDC.

25. As set out in Exhibit "K" there are numerous complications in that regard.

26. I wrote Exhibit "K" and believe it to be accurate.

27. The January bill (Dec 21-Jan 27) covers part of the time dealing with the December contested motion including one day of the hearing, the Receiver filing a brief on Dec 31 and the respondents filing a brief

on Jan 6. This represents approximately 30% of the bill. After Jan 6 most of the time was spent dealing with TSDC.

28. The February bill (Jan 27-Feb27) covers a period of time when we were working with TSDC and preparing for the anticipated appeal (either defending or appealing the decision) . A potential consolidation order could also trigger a dispute over ownership of assets (NPL vs other Respondents or Respondents v others). One example is the building in China. Was it owned by NPL or not. Research was started accumulating evidence as to the ownership of assets and intercompany debts. Most of the time was spent dealing with TSDC.

29. The March bill (Feb 25-Mar 29) covers the time dealing with the appeal from the Mar 10 judgement. After the Decision on March 10, 2022, an Appeal was filed on March 22, 2022, which said Appeal was held in abeyance while a Motion for an extension of time to file the Notice of Appeal was filed, which was contested and argued. The Motion was filed on March 25 along with an affidavit in support and a brief. Most of the time this month was spent on the Appeals. Find attached and marked as exhibits the Notice of Motion, the Affidavit of Liam Valgardson and the Motion Brief without attachments.

30. The April bill (Mar29-Apr 25) covers the time of filing a supplemental brief of the Respondents and dealing with TSDC and preparing for the leave hearing which took place on May 5. The Receiver filed their brief on April 28. Most of the time spent this month was dealing with TSDC. Find attached the supplemental brief of the Respondent's and the Receiver's Motion Brief without attachments.
31. The May bill (Apr26-May29) covers the time dealing with the motion heard on May 5. On May 2, 3 and 4, 2022 correspondence was exchanged with the court and a hearing was held on May 5, 2022. The court granted an extension of time to file the Notice of Appeal which had been held in abeyance. The Notice of Appeal was deemed to be filed on May 5, 2022. Most of the time spent this month was dealing with the appeal. Find attached a copy of the filed Notice of Appeal.
32. Correspondence was exchanged between counsel regarding an amended Notice of Appeal in May. The receiver agreed to some amendments and not others. A motion requesting leave to amend the Notice of Appeal was filed on June 6 with an Affidavit in support and a Motions brief.



33. The June bill (May30-June29) covers the time dealing with two motions. On June 6, a Notice of Motion was filed requesting permission to amend the Notice of Appeal which motion was contested. After correspondence on June 10 and 13, a further motion and Motions brief were filed requesting a longer factum (44 pages) and the ability to file the Appeal book digitally. Both requests were opposed. The third Motion and brief were filed on June 22 and the Receiver's brief was filed on June 23. We determined we needed to file a draft Factum to support the motions. The motions were to be heard on June 30 but were adjourned to Aug 10, because it was determined, in consultation with the court, they were unlikely to be heard on June 30. Most of the time spent this month was dealing with the appeals. Find attached Notice of Motion, the Affidavit of Debbie Mackie and Motions brief filed June 6, 2022, Notice of Motion and Motion brief filed June 22 and the Receivers Motion Brief filed June 23 all without attachments.
34. The July bill (June29-July27) covers a period when the majority of work done was dealing with TSDC.
35. The August bill (July28-Aug 29) covers the period when the second and third Notices of Motion were heard. The decision, given

orally on August 11, 2022, granted most of the amendments and approved the filing of a digital Appeal Book. Some of the requested amendments were not approved and permission was not granted to file a longer factum. The Respondents Factum and Appeal book were filed on August 17, 2022, and the Book of Authorities was filed on August 24, 2022. Find attached a copy of the Factum, Appeal book index, and Book of Authorities Index.

36. The Receiver's factum and Appeal book was filed on September 19 and the book of authorities was filed on September 26. Find attached the Receivers Factum, Appeal Book Index and Book of Authorities Index.

37. Find attached and marked as Exhibits "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB" "CC" the following Court of Appeal documentation:

L. Notice of Appeal that was filed in abeyance and ultimately deemed to be filed on May 5, 2022 (initially attempted to be filed March 22);

M. Notice of Motion requesting extension of time to file Notice of Appeal filed March 25, 2022;

- N. Brief supporting the Motion without attachments (the number of pages of the attachments is 50 pages) March 25, 2022
- O. Affidavit of Liam Valgardson in support of the motion filed March 25, 2022
- P. Supplemental Motion Brief of the Appellant filed April 1, 2022
- Q. Motions Brief of the Receiver filed April 28, 2022
- R. Second Notice of Motion seeking leave to amend the Notice of Appeal filed June 6, 2022;
- S. Affidavit of Debbie Mackie in support of the Second Notice of Motion filed June 6, 2022.
- T. Second Brief without attachments (the number of pages of the attachments is 35 pages) filed June 6, 2022.
- U. Third Notice of Motion, filed June 22, 2022;
- V. Third Brief without attachments (the number of pages of the attachments is 92 pages) filed June 22, 2022
- W. Receiver's Brief with respect to all three Motions without attachments;

X. 43 page Factum;

Y. 30 page Factum;

Z. Appeal Book Index without attachments;

AA. Book of Authorities Index without attachments;

BB. Respondent's Appeal Book index without attachments;

CC. Respondent's Book of Authorities without attachments.

38. I make this Affidavit *bona fide*.

AFFIRMED before me at the City of )  
Winnipeg, in the Province of )  
Manitoba this 3<sup>rd</sup> day of October, )  
2022. )



A Commissioner for Oaths in and  
for the Province of Manitoba

My commission expires: *March 6/24*



WAYNE ONCHULENKO

This is Exhibit "A" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. M. H.", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

	1	2	3	4	5	6	7	8	9	10
December	0	40	6805.15	200	2050	320	0	200	0	21310
January	273	0	19167	145	2407	2142	2858	40	12660	15767
February	42	0	14577.5	0	1038	1967	978	294	5031	0
March	755	75	14681	325	375	2060	22768.5	0	4393	50
April	1621	462	19651	2249	42	1223	12221.5	0	5683.5	1510
May	1101.5	46.5	23120	0	209	2855	29796	126	4922	0
June	2246.5	1577	21554	306.5	714	2036.5	26450.5	0	2452	0
July	252	168	13675	746	1000	1270	6498	42	2420	0
August	3893		13716	584	252	42	21660	42	1990	4830
Total	10184	2368.5	146946.7	4555.5	8087	13915.5	123230.5	744	39551.5	43467

#### HOURS

December	0.1		18.9	0.5	5.5	0.8		0.5		59.1
January	0.7		82.2	0.4	8	5.1	11.8	0.1	48.9	67.6
February	0.2	0	48.7	0	3.2	6.1	3.3	0.7	15.5	0
March	2.2	0.3	54	1.3	1.5	6.3	82.7		13.9	0.2
April	3.9	1.2	72.3	4.8	0.1	3.6	38.9	0	16.8	5.7
May	3.4	1.9	91.2		0.7	9.2	110.4	0.3	18.7	0
June	5.7	5.3	85.5	0.8	1.7	5.2	111.5	0	6.4	0
July	0.6	0.4	46.6	2.3	2.8	3.6	19.4	0.1	7.7	0
August	9.9		50.1	1.6	0.6	0.1	70.9	0.1	5	11.5
Total	26.7	9.1	549.5	11.7	24.1	40	448.9	1.8	132.9	144.1

1	2	3	4	5	6	7	8	9	10								
0.1	40	0.5	200	0.1	40	0.2	80	0.2	84	0.5	200	0.1	40	1.3	325	1.5	600
0.1	40	0.9	360	0.2	80	0.5	200	0.2	84	1.1	440			1.4	350	0.4	160
0.1	42	1.3	520	0.1	25	0.1	40	0.2	84	0.3	120			0.1	25	0.3	120
0.2	84	0.5	125			3.8	950	0.1	42	0.4	160			0.9	225	0.2	80
0.1	25	0.4	75			0.4	100	1	420	1.2	480			3.3	825	0.1	40
0.1	42	10	125			0.1	40	0.1	42	0.2	80			0.8	200	0.6	240
	273	0.1	40			1.1	275	0.3	126	0.4	168			0.2	50	0.2	50
		0.1	25			0.5	210	2.3	966	0.2	84			1.5	375	0.5	125
		0.3	120			0.1	42	0.5	210	0.8	336			0.7	175	0.2	25
		0.1	40			0.1	42	0.1	42	2.3	575			1.5	375	0.7	280
		0.2	80			0.2	50	0.1	42	0.6	150			1.1	275	0.2	80
		0.4	160			0.2	84	5.1	2142	0.3	126			1.8	450	5.4	2160
		0.1	40			0.1	42			0.1	42			3.9	975	0.3	75
		2	800			0.1	42			0.1	42			1.3	546	0.1	40
		1.7	680			0.5	210			0.1	42			4.9	1225	0.1	40
		0.7	175			8	2407			0.4	168			2.3	575	0.1	40
		0.3	75							0.2	84			2.6	650	0.2	80
		0.7	175							0.4	168			2.7	675	1.3	520
		0.3	120							0.2	84			2.3	575	0.1	40
		0.7	175							0.1	42			1.1	275	0.3	120
		2.1	525							1	42			0.8	336	1.1	275
		0.5	200							0.9	225			7.7	1925	0.2	80
		2.8	700							11.8	3858			1.8	400	0.6	240
		0.3	120											0.3	75	0.2	50
		0.2	65											0.2	50	0.2	80
		0.4	160											0.3	75	0.1	40
		0.1	25											0.7	175	0.1	40
		0.2	50											0.1	42	0.2	80
		0.1	40											0.1	42	2.7	675
		0.1	40											0.2	84	0.2	25
		0.2	80											0.3	126	3.6	450
		0.1	40											0.2	84	0.7	280
		1	400											0.1	25	2.3	287.5
		0.2	80											0.4	75	0.2	84
		0.1	40											48.9	12660	0.3	126
		0.3	75													0.4	168
		1.2	150													0.1	42
		0.5	210													0.1	42

0.2	84
0.9	378
0.1	42
0.2	84
0.3	75
0.5	210
0.2	50
0.1	25
0.1	25
0.2	50
0.1	42
0.2	84
0.1	42
1.3	436
0.8	200
1.4	588
0.5	125
0.3	75
0.1	25
0.2	84
0.2	84
0.5	210
0.9	374
0.7	175
0.1	42
0.3	126
0.4	168
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0.3	75
0.7	175
1	420
0.6	252
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14	350
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2.8	350
1.4	588
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1.1	462
0.6	252
3.1	1302
0.2	50
1.1	275
0.9	225
6.1	762.5
0.1	12.5
0.2	84
0.1	42
1.7	714
0.3	75
0.9	378
2	840
0.1	42
67.6	15767



0.3	75
1	250
0.3	126
0.1	42
0.9	378
0.1	25
0.3	126
1.9	798
0.8	200
1.4	588
0.3	126
1.1	275
0.7	294
0.7	175
0.7	294
1	798
0.2	84
0.2	84
0.9	225
0.2	50
0.2	84
0.1	42
0.2	84
19	475
0.2	84
0.1	25
0.4	75
0.3	75
82.2	19167

1	2	3	4	5	6	7	8	9	10
0.1	42	0.5 210		0.2 84	0.1 42	0.5 210	0.2 84	0.5 210	
		0.3 126		0.1 25	0.1 25	0.2 50	0.1 42	0.1 42	
		0.2 84		0.3 126	0.1 42	0.1 42	0.1 42	0.2 84	
		0.7 294		0.1 42	0.3 126	0.2 25	0.1 42	0.1 42	
		0.1 25		0.3 126	0.1 42	0.2 84	0.1 42	0.3 126	
		0.1 25		0.1 42	0.1 25	0.1 42	0.1 42	0.4 168	
		0.5 125		0.2 84	0.1 42	0.6 175	0.7 294	0.1 42	
		0.2 50		0.1 42	0.1 42	0.1 25		0.2 50	
		0.1 42		0.2 50	0.8 200	0.7 175		0.2 84	
		0.3 126		0.1 42	0.1 25	0.3 75		0.4 100	
		0.1 42		0.2 50	0.7 294	0.3 75		0.2 50	
		0.7 174		0.7 175	0.5 210	3.3 978		0.3 126	
		0.8 200		0.6 150	0.2 84			0.2 50	
		0.8 336		3.2 1038	0.1 42			0.3 126	
		0.1 42			0.3 75			0.7 175	
		0.1 42			0.3 75			0.4 168	
		0.1 25			0.7 175			0.1 25	
		0.7 175			0.1 42			0.1 42	
		0.1 25			0.6 150			0.3 126	
		0.2 50			0.1 42			0.5 125	
		0.4 100			0.5 125			0.7 175	
		0.3 126			0.1 42			0.1 25	
		0.3 126			6.1 1967			0.1 25	
		0.5 210						0.3 126	
		0.3 75						0.2 84	
		0.9 225						0.2 84	
		0.2 50						0.2 84	
		0.6 252						0.5 125	
		0.2 84						0.2 84	
		0.3 126						1 250	
		0.2 84						0.1 25	
		0.3 126						0.1 42	
		0.2 84						0.2 84	
		0.3 126						0.1 25	
		0.2 84						0.2 50	
		0.2 50						0.2 50	

0.1	75
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2.9	725
0.1	42
0.4	100
0.1	42
0.3	126
0.2	84
0.2	50
1.1	275
1.7	425
0.1	42
1	250
0.5	210
0.5	210
0.1	42
0.3	75
0.4	100
0.5	125
0.7	125
0.1	25
1.3	546
0.1	42
0.1	25
1.4	350
0.2	50

0.6	150
0.3	126
0.1	25
0.3	126
0.4	168
0.3	126
0.3	75
0.3	75
0.7	175
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0.1	42
0.8	200
0.2	84
0.1	42
0.1	42
0.5	125
0.3	126
15.5	5031

0.1	25
0.1	42
0.3	126
0.1	42
0.8	200
0.5	125
0.2	84
0.1	42
0.2	50
0.2	50
0.5	125
0.6	150
0.4	126
0.2	50
0.4	100
0.1	25
0.4	168
0.5	210
0.4	100
0.4	100
0.8	200
0.8	200
0.2	84
0.6	150
0.3	126
0.2	50
2.3	575
0.3	75
0.7	175
0.7	175
0.2	84
0.1	42
0.5	125
1.2	300
0.1	42
48.7	14577.5

1	2	3	4	5	6	7	8	9	10									
0.1	42	0.3	75	0.4	100	0.8	200	0.3	75	0.1	42	0.4	100		0.5	125	0.2	50
0.1	42			0.1	25	0.5	125	0.4	100	0.1	25	0.7	175		0.8	200		
0.7	294			0.7	175	1.3	325	0.1	25	0.5	125	0.8	100		0.1	42		
0.2	84			0.1	25			0.2	50	0.4	168	0.1	42		1	250		
0.2	84			0.5	210			0.5	125	0.1	42	0.3	75		0.2	84		
0.3	75			0.6	150			1.5	375	0.2	25	0.8	200		0.4	168		
0.1	12.5			0.1	25					0.3	75	0.2	25		0.6	150		
0.3	37.5			0.2	50					0.1	42	0.1	25		0.1	25		
0.1	42			0.5	210					0.1	25	0.5	125		0.1	25		
0.1	42			0.2	50					0.1	42	0.3	126		0.8	200		
2.2	755			0.2	50					0.4	100	2.9	725		0.5	210		
				0.1	42					0.1	42	1.1	275		0.2	84		
				0.5	150					1.3	546	1.5	187.5		0.1	42		
				0.4	168					0.1	25	0.2	50		0.1	25		
				0.6	150					0.2	50	0.3	75		0.4	100		
				1.5	375					0.4	100	0.1	25		0.1	42		
				0.5	125					0.1	42	0.1	25		0.1	42		
				1	420					0.1	25	0.4	100		0.2	84		
				0.6	150					0.4	100	0.8	336		0.5	125		
				0.8	200					0.1	42	3.6	1512		0.6	252		
				1	250					0.2	50	0.4	100		0.8	336		
				0.2	84					0.3	75	0.1	25		0.4	100		
				0.6	150					0.2	84	0.1	25		0.1	25		
				0.3	75					0.1	42	0.1	25		1.5	375		
				0.3	75					0.2	84	0.2	50		1	420		
				0.8	200					0.1	42	1.9	798		0.1	42		
				0.5	210					6.3	2060	0.6	150		1.6	400		
				3.3	825							0.9	225		0.2	84		
				0.4	100							0.3	75		0.2	84		
				0.3	75							0.3	126		0.5	210		
				0.4	100							0.3	75		0.1	42		
				0.3	126							0.2	50		13.9	4393		
				0.3	75							0.7	175					
				0.4	100							0.6	150					
				0.1	25							0.5	125					
				0.4	100							0.9	225					
				0.8	200							3.6	1512					
				0.3	126							0.1	25					

0.1	42
0.5	125
0.5	125
1.8	450
1	250
0.1	25
0.3	75
0.4	100
0.1	25
0.7	175
0.3	75
0.5	125
0.4	100
0.3	126
0.2	50
0.5	125
0.2	50
0.2	50
1.4	350
1.7	425
0.9	225
0.2	50
1	250
0.4	100
0.4	100
0.6	150
0.1	25
1	250
0.4	100
1.9	475
3.3	825
0.4	100
1.9	475
0.1	42
0.2	84
0.1	25
1.7	425
0.7	175
1	250

0.3	75
1.2	300
2.3	287.5
1	125
2.3	966
1.6	672
1.6	672
1.1	275
0.1	25
1.5	375
5.7	712.5
2.7	337.5
2.9	1218
1.1	462
0.2	84
0.3	75
0.6	150
0.1	25
0.2	50
3.2	800
0.2	25
1.8	225
0.2	25
5.9	737.5
1	420
2.2	924
0.1	42
0.2	25
4	500
5	2100
0.7	294
0.3	75
0.2	50
0.6	150
0.1	25
0.1	25
0.5	125
0.1	25
1.4	588

0.1	25
0.4	100
0.7	175
0.5	125
0.1	25
0.8	200
0.1	25
0.1	42
0.5	210
0.1	42
0.2	84
0.2	84
1.2	504
0.1	25
0.5	125
0.4	100
0.1	25
0.1	25
54	14681

1.1	462
82.7	22768.5

1		2		3		4		5		6		7		8		9		10	
0.1	42	0.1	42	0.2	84	0.4	168	0.1	42	0.4	168	0.1	42			0.1	25	0.5	210
0.1	42	0.4	168	0.2	84	0.1	42			0.2	50	1	250			0.1	25	1.9	475
0.4	168	0.3	126	0.2	84	0.2	84			0.2	84	0.1	42			0.5	125	2	500
0.2	84	0.1	42	0.1	25	2.3	966			0.1	42	0.8	336			0.5	210	1.3	325
0.1	42	0.1	42	0.1	25	0.1	42			0.1	42	0.1	25			0.2	84	5.7	1510
0.2	84	0.1	42	0.3	75	0.1	42			0.6	150	4.6	1150			0.3	126		
0.2	84	1.1	462	0.5	125	0.1	42			0.2	84	0.5	210			0.3	126		
0.2	84			0.3	75	0.2	84			0.2	84	1.8	756			0.1	25		
0.1	42			0.5	210	0.3	126			0.2	50	0.6	252			0.2	84		
0.3	126			0.2	50	0.3	126			0.1	25	0.6	252			0.4	168		
0.2	84			0.3	126	0.3	75			0.4	100	0.2	84			0.1	42		
0.2	84			0.3	126	0.2	50			0.1	25	0.1	42			0.5	210		
0.1	25			2	840	0.2	84			0.3	126	0.3	126			0.6	150		
0.1	42			1.1	462	0.1	42			0.3	126	0.3	126			0.1	42		
0.1	42			0.2	84	0.2	50			0.1	25	0.5	210			0.1	25		
0.1	42			0.2	84	0.3	126			0.1	42	0.1	42			1.1	275		
0.1	42			0.5	210	0.4	100			3.6	1223	0.3	126			0.9	378		
0.1	42			0.9	225	5.8	2249					0.3	126			0.2	84		
0.3	126			1.5	375							0.2	84			0.2	50		
0.2	84			0.1	42							0.4	100			0.3	75		
0.3	126			0.3	126							4.7	1175			0.4	100		
0.1	42			0.2	50							0.2	50			0.2	50		
0.1	42			0.8	200							1.8	450			0.2	50		
3.9	1621			0.2	84							2.9	725			0.7	175		
				0.9	225							0.4	100			0.2	50		
				1.6	400							0.2	50			0.2	50		
				0.6	252							1.5	630			0.1	42		
				0.4	168							0.5	125			0.2	84		
				2.7	1134							0.3	37.5			0.1	42		
				0.4	169							0.5	210			0.1	42		
				0.2	84							0.2	50			0.2	50		
				1.3	325							0.5	210			0.1	25		
				2	500							0.3	126			0.2	50		
				0.3	75							0.5	210			0.1	12.5		
				0.6	150							0.5	210			0.3	126		
				0.1	42							0.5	125			0.7	294		
				0.6	150							0.6	150			0.5	125		
				0.4	100							1.1	275			0.1	42		



1	250
0.8	336
0.2	84
0.2	50
0.2	84
1	420
0.2	84
0.1	42
0.3	75
0.1	25
2.2	550
0.4	100
1.1	462
0.9	225
0.4	100
0.4	100
1.3	325
0.4	168
0.4	168
0.6	150
0.1	25
1	250
0.7	175
0.1	42
0.3	126
0.5	210
2.9	725
0.4	168
0.3	126
2.8	700
0.2	84
0.1	42
0.1	25
0.1	25
0.3	75
1.2	300
0.3	75
2.5	625
0.5	125

0.8	336
0.1	42
0.1	42
0.1	42
0.3	126
0.7	175
0.2	84
0.1	42
0.1	42
1	420
0.1	25
0.1	25
0.3	37.5
0.4	168
0.1	42
0.2	50
0.5	125
0.1	12.5
0.1	42
0.1	42
0.1	42
0.2	84
0.3	126
0.3	126
0.2	84
0.2	50
0.4	100
1.2	300
0.4	100
38.9	12221.5

0.2	84
0.2	50
0.3	126
0.9	225
0.1	25
0.1	42
0.3	126
2	840
0.3	126
0.1	42
0.4	100
0.1	42
0.1	42
0.3	75
16.8	5683.5

0.2	84
0.3	75
0.2	50
0.8	200
0.4	100
0.3	126
0.2	84
0.1	42
0.1	25
10	250
1	420
0.3	126
0.2	84
0.5	210
0.3	126
2.8	700
0.4	100
0.1	42
0.3	126
1	420
0.3	126
0.4	168
0.1	42
0.4	100
0.1	42
0.1	42
0.2	50
0.1	25
0.8	200
0.4	100
72.3	19651

1	2	3	4	5	6	7	8	9	10						
0.1	42	0.1	42	0.9	378	0.5	125	0.2	84	0.5	210	0.3	126	0.1	25
0.2	84	0.3	75	0.1	22.5	0.2	84	0.1	25	0.9	225			0.9	225
0.2	84	0.1	25	0.9	225	0.7	209	1	420	0.3	75			0.2	84
0.1	42	0.1	12.5	0.8	200			0.9	378	0.2	84			0.2	85
0.2	50	0.1	42	1.6	672			0.1	25	0.9	225			0.6	150
0.4	100	0.1	25	0.2	84			0.7	294	0.5	125			0.3	126
0.3	126	0.2	50	0.8	200			0.5	125	0.1	42			0.1	42
0.1	42	0.3	75	0.5	125			0.1	25	0.3	126			0.9	225
0.2	50	0.2	25	0.3	126			0.5	125	0.2	84			0.1	25
0.1	25	0.2	25	0.5	210			0.3	37.5	1.9	475			0.1	25
0.1	25	0.2	50	0.2	84			0.3	37.5	0.6	75			0.3	75
0.2	50	1.9	446.5	0.3	126			0.1	42	0.1	42			0.5	210
0.1	25			0.1	42			0.2	25	0.2	84			0.1	42
0.1	25			0.3	75			0.9	225	0.6	150			0.1	42
0.2	84			0.1	25			0.2	25	2.5	1050			0.2	84
0.2	84			0.3	75			0.2	84	1.4	350			0.5	125
0.1	42			1.2	300			0.1	42	0.1	25			0.2	84
0.1	42			0.2	84			0.1	42	0.6	150			0.1	12.5
0.1	42			0.2	84			0.9	225	1.2	300			0.2	84
0.3	37.5			1	420			0.1	42	2	250			0.2	84
3.4	1101.5			0.4	168			0.9	225	0.4	168			0.6	252
				0.1	42			0.2	50	5.3	662.5			0.2	50
				0.3	75			0.1	42	0.5	210			0.2	25
				0.4	100			0.1	42	0.1	42			1.7	425
				1.1	275			0.4	168	0.1	12.5			1.2	150
				0.1	25			9.2	2855	0.2	84			0.2	25
				0.4	100					0.5	210			0.1	25
				0.1	25					0.9	378			0.1	25
				3.5	1470					0.2	84			0.7	87.5
				0.1	25					0.1	42			0.3	75
				0.2	50					0.2	50			0.2	50
				0.1	25					0.6	150			1	250
				0.7	175					1.2	300			0.9	225
				0.2	50					5.7	1425			0.2	25
				0.6	252					0.1	25			0.9	378
				2.5	300					0.4	100			0.3	75

0.7	175
0.1	42
0.3	75
0.5	210
0.7	175
1	250
1	420
0.3	75
1.5	375
1	250
1.3	162.5
0.1	42
0.2	84
1.1	275
0.2	50
0.2	50
0.4	100
0.1	42
0.1	12.5
0.2	84
0.1	42
0.3	126
1.2	300
0.4	100
0.8	200
0.5	125
0.3	37.5
0.2	84
0.3	37.5
0.1	42
0.7	294
0.2	25
1.1	275
0.5	125
0.2	25
0.4	50
0.3	126

1.2	150
0.1	42
2.6	1092
1	420
0.7	175
0.3	75
1.7	425
0.1	12.5
3.5	1470
0.3	75
0.3	75
1.5	375
0.9	225
0.3	75
2.9	362.5
7	2940
1.4	350
0.5	125
5.9	1475
4.7	587.5
1.1	462
0.4	168
2.8	700
0.8	200
0.4	100
0.5	210
0.3	126
0.2	84
0.4	100
1	420
0.3	75
2.5	625
2.4	350
0.6	75
0.1	12.5
0.4	168
0.2	50

0.3	37.5
0.2	50
0.1	12.5
0.1	25
0.2	25
1.1	275
0.4	100
0.3	75
0.3	75
1	250
18.7	4922

1.1	275
1.2	300
0.3	75
0.1	12.5
0.2	25
0.4	50
0.1	12.5
0.6	252
0.7	294
1.2	300
0.6	150
0.4	100
2	500
1.1	275
0.7	87.5
3	275
0.2	84
0.2	50
0.2	25
0.6	75
0.3	37.5
0.4	168
0.3	126
0.3	75
1	250
1.6	300
0.2	50
2	250
0.4	168
0.1	42
0.2	50
1.1	275
0.9	225
1.1	137.5
0.3	37.5
0.2	84
0.9	225

0.1	25
2.3	575
0.5	62.5
0.4	168
1.1	275
0.2	50
0.5	125
0.5	72.5
0.3	126
0.3	126
0.2	25
0.4	100
0.4	100
0.4	100
0.1	42
0.7	294
0.2	25
1.1	462
0.3	75
0.1	25
0.3	37.5
1.1	137.5
0.1	42
0.9	225
0.3	75
0.4	100
0.8	100
0.4	168
1.1	275
0.9	225
0.3	37.5
0.2	25
0.6	252
0.9	378
0.1	42
0.3	75
1.9	475

0.6	150
0.5	67.5
0.6	252
1.1	267.5
0.2	84
0.9	378
0.3	126
1.8	450
2.1	525
0.4	50
1.9	237.5
0.1	42
0.3	75
0.4	168
0.1	25
0.5	125
0.2	50
0.1	25
0.5	125
0.5	62.5
0.1	12.5
0.2	84
0.4	100
0.4	100
0.7	175
1.3	162.5
0.1	42
0.3	75
0.3	37.5
0.3	37.5
0.3	37.5
1.2	150
0.7	175
1.1	275
0.8	100
0.3	126
0.2	50

0.4	50
1.2	150
0.1	42
0.1	42
0.3	126
0.3	75
0.5	67.5
0.2	84
0.6	150
0.6	252
1.1	275
0.2	84
1	250
0.2	84
110.4	29796

0.3	75
0.4	100
0.5	125
1.1	275
1	125
91.2	23120

1	2	3	4	5	6	7	8	9	10						
0.2	84	0.8	100	0.9	378	0.2	84	0.7	294	0.3	126	0.3	126	0.3	126
0.1	42	1.1	137.5	0.1	42	0.5	210	0.4	168	0.1	42	0.5	210	0.6	252
0.1	42	0.1	12.5	0.3	126	0.1	12.5	0.2	84	0.6	252	0.4	168	0.3	126
0.1	42	0.1	42	0.2	50	0.8	306.5	0.1	42	0.2	84	2.4	600	0.2	25
0.2	84	3	1260	0.6	150			0.2	84	0.1	42	0.4	50	0.3	126
0.3	126	0.2	25	0.4	50			0.1	42	0.1	12.5	0.4	168	0.9	378
0.1	42	5.3	1577	0.4	50			1.7	714	0.3	126	0.6	252	0.4	50
0.1	42			0.1	12.5					0.7	294	0.5	210	0.9	378
0.1	42			1.1	462					0.1	42	0.3	126	0.7	294
0.2	84			1	420					0.1	12.5	0.5	125	1	420
0.2	25			0.5	210					0.1	42	0.6	75	0.1	12.5
0.3	126			0.1	42					0.3	37.5	1.4	588	0.1	12.5
0.3	37.5			0.7	175					0.2	84	0.3	126	0.4	168
0.1	42			1.5	375					0.2	84	0.1	12.5	0.1	42
0.6	252			1	125					0.2	84	0.3	126	0.1	42
0.1	42			0.4	168					0.7	294	0.1	42	6.4	2452
0.4	168			0.1	42					0.2	84	0.4	168		
1	420			1.6	400					0.3	126	0.3	75		
0.6	252			1	125					0.1	42	0.3	75		
0.4	168			0.7	294					0.1	42	0.4	100		
0.2	84			0.2	84					0.1	42	0.2	25		
5.7	2246.5			0.3	126					0.1	42	0.4	50		
				0.1	42					5.2	2036.5	0.1	12.5		
				1.5	375							0.5	210		
				0.8	200							0.2	84		
				0.5	125							0.8	336		
				0.1	25							0.4	168		
				1	250							0.5	125		
				0.5	62.5							1.4	175		
				0.4	50							0.2	25		
				0.8	336							0.3	37.5		
				0.2	84							0.2	25		
				0.2	84							1.2	150		
				0.4	100							0.1	12.5		
				1.5	375							1.1	137.5		
				0.5	62.5							0.7	294		



0.5	62.5
0.3	37.5
0.4	50
2	840
0.5	210
0.1	42
0.2	84
0.2	25
1.1	137.5
0.2	50
0.6	252
0.6	252
0.1	12.5
0.7	294
0.2	84
2.4	600
0.5	62.5
1.1	137.5
0.3	126
0.6	252
0.3	126
0.1	12.5
0.6	75
0.5	210
0.2	84
0.5	210
0.1	20
1	125
0.7	294
1	420
1	420
0.3	126
0.4	80
1.2	150
4.3	537.5
0.7	295
0.6	252

0.8	336
0.4	168
0.1	42
2	500
1.2	300
2.9	362.5
0.2	25
2.1	267.5
0.4	100
0.2	25
1.4	175
0.1	42
1.5	630
0.1	42
2	250
0.4	50
0.7	294
1.7	212.5
0.5	210
0.3	126
0.1	42
0.5	210
0.3	126
0.2	84
1	125
0.7	294
0.5	62.5
0.2	84
0.8	336
0.2	25
0.4	168
0.1	42
0.5	210
0.1	12.5
3.3	412.5
0.2	84
0.2	84

1.1	462
1.5	187.5
1.7	212.5
0.8	336
0.6	75
0.3	126
0.4	168
0.2	84
0.5	210
0.5	210
0.1	42
0.4	80
2.4	300
0.3	126
0.2	84
0.1	42
0.4	168
0.2	84
0.5	1
0.3	50
0.4	50
0.2	84
0.5	210
0.1	42
0.1	20
0.9	137.5
0.3	126
0.1	20
0.9	137.5
0.4	50
0.4	168
2.5	312.5
0.1	42
0.8	336
0.6	252
1	125
0.5	210

2.1	420
0.1	42
1.5	630
0.5	210
2.4	480
0.3	37.5
0.4	168
0.2	84
0.3	126
0.3	126
1	125
0.3	126
0.2	84
0.3	126
0.4	80
1	150
0.7	294
0.4	168
0.2	84
0.3	126
4.6	575
1	420
3.1	1302
2.2	440
6.4	800
3.9	1638
5.8	725
2.3	287.5
0.2	84
0.3	37.5
0.2	25
2.5	312.5
1.1	462
0.2	84
0.2	25
0.6	75
0.9	112.5

0.3	126
0.5	67.5
0.8	100
0.3	126
0.2	84
0.1	12.5
0.2	25
0.2	84
0.1	42
0.8	100
1.2	150
0.5	210
2.4	300
0.2	84
0.8	100
0.8	100
0.1	20
0.3	37.5
0.1	42
0.3	126
0.2	84
0.4	168
0.5	210
0.1	42
1	200
0.1	12.5
1.6	200
0.5	100
0.5	67.5
0.3	37.5
85.5	21554

0.5	210
0.2	84
0.5	210
0.8	100
0.3	37.5
0.2	84
0.8	336
0.1	42
0.6	252
0.2	84
0.5	210
0.1	42
2.4	480
1	125
0.8	100
1.1	137.5
0.2	84
2.4	480
2.8	350
0.2	25
0.3	37.5
111.5	26450.5

1		2		3		4		5		6		7		8		9		10
0.1	42	0.3	126	0.2	84	0.1	20	0.1	42	0.2	84	0.2	84	0.1	42	0.4	168	
0.1	42	0.1	42	0.4	168	0.2	40	0.3	126	0.2	84	0.3	126			0.5	210	
0.1	42	0.4	168	0.1	42	0.1	20	0.3	126	0.1	42	0.4	168			0.7	294	
0.1	42			0.4	168	0.3	126	0.1	42	0.2	84	1	420			0.6	120	
0.1	42			1.2	504	0.1	42	0.3	60	0.1	42	0.8	160			0.2	40	
0.1	42			0.2	84	0.2	84	0.2	84	0.1	42	1	420			0.1	42	
0.6	252			0.7	140	0.1	20	0.1	42	0.3	126	0.4	168			1	200	
				0.6	75	0.4	80	0.5	210	0.1	42	0.4	168			0.5	100	
				0.5	210	0.1	42	0.1	42	0.1	42	0.5	100			0.7	294	
				0.1	20	0.1	20	0.4	80	0.4	168	0.1	42			0.1	42	
				1	420	0.5	210	0.1	20	0.3	60	0.1	42			0.7	140	
				0.2	84	0.1	42	0.3	126	0.1	42	0.6	120			0.7	140	
				0.7	140	2.3	746	2.8	1000	0.1	20	0.1	42			0.5	210	
				0.9	180					0.1	42	0.2	84			0.7	294	
				0.2	84					0.1	20	0.1	42			0.2	84	
				1	420					0.5	100	0.5	100			0.1	42	
				0.1	42					0.1	42	0.1	42			7.7	2420	
				0.1	20					0.1	20	0.1	20					
				0.5	100					0.2	84	0.7	294					
				0.9	378					0.1	42	0.1	20					
				0.2	84					0.1	42	0.6	120					
				0.4	168					3.6	1270	1.3	546					
				1.6	320							0.2	84					
				4.6	920							0.1	20					
				0.1	42							0.3	126					
				0.2	84							0.3	126					
				0.4	168							0.1	42					
				0.1	20							0.4	168					
				0.2	40							0.4	80					
				0.2	84							0.4	168					
				0.3	126							0.1	20					
				0.2	84							0.5	210					
				0.6	120							0.2	84					
				0.4	168							0.1	42					
				0.7	294							0.4	168					
				1	200							0.1	42					

1.3	546
0.6	120
0.6	120
0.1	42
1.2	504
0.1	42
2	400
0.6	120
0.2	40
0.2	84
0.3	60
0.5	100
0.2	84
0.2	84
0.1	42
0.5	210
0.1	20
0.6	120
0.5	210
0.1	20
0.7	140
0.6	252
0.7	294
0.9	378
0.2	40
0.6	120
0.1	20
0.6	120
0.3	60
0.1	42
0.8	160
0.5	100
0.3	126
0.1	42
0.1	42
0.2	84
0.1	20

0.3	60
0.1	20
1.9	380
0.7	294
0.7	140
0.7	140
0.4	168
0.5	210
0.7	294
0.2	84
19.4	6498

0.4	80
0.5	210
0.1	42
0.2	40
0.1	20
0.3	60
0.1	20
0.6	252
1.6	320
0.5	210
0.1	42
0.3	60
0.6	252
0.2	84
0.3	126
0.2	84
0.5	100
1.8	360
0.1	20
46.6	13675

1	2	3	4	5	6	7	8	9	10
0.6	252	1.5	630	0.5	210	0.2	84	0.3	126
0.2	84	0.1	20	0.3	126	0.8	336	0.5	210
0.2	40	1.7	714	0.3	60	0.5	100	0.4	168
0.9	378	4.4	880	0.1	20	0.6	120	0.5	210
0.1	20	0.1	42	0.4	168	0.5	210	0.1	42
0.1	42	2.6	520	1.6	584	0.2	84	0.5	100
0.1	20	0.5	210			1.8	360	0.3	126
0.1	42	0.5	100			0.5	210	0.1	42
0.5	210	1.9	380			2.3	460	0.2	84
0.5	210	0.7	140			0.1	20	0.2	84
0.1	42	0.7	294			0.2	84	1	420
0.4	80	1.7	340			1	200	0.9	378
0.1	42	0.4	80			1.1	220	5	1990
0.1	20	0.5	210			0.5	210		
0.1	42	0.2	84			0.5	210		
0.2	84	0.2	40			2	840		
0.2	40	0.2	84			0.7	294		
0.1	42	0.5	210			2.2	924		
0.5	210	0.2	84			0.9	180		
0.1	20	0.9	378			3.7	1554		
3.3	1385	0.2	84			0.2	40		
0.2	84	0.9	180			0.3	60		
0.3	126	0.9	180			3.5	1470		
0.8	336	0.6	120			0.3	126		
0.1	42	0.3	60			0.1	42		
9.9	3893	0.8	160			2.5	500		
		0.2	40			0.2	40		
		0.1	42			1.3	546		
		2.1	420			0.2	84		
		0.6	252			1	200		
		0.4	80			0.2	40		
		0.2	40			0.5	210		
		1.3	260			0.9	180		
		2	840			2	400		
		0.2	40			0.7	140		
		0.2	84			1	200		
		1.1	220			1.3	546		
		0.1	42			0.1	20		

0.2	40
0.5	100
0.6	120
0.4	168
0.2	40
0.6	120
0.1	42
0.4	80
0.6	252
5	1000
0.1	42
1.3	260
0.1	20
0.2	84
0.9	180
0.5	210
0.1	42
0.1	42
2	400
0.2	84
0.1	42
0.3	126
2	840
1	420
0.8	336
0.1	42
50.1	13716

0.5	210
0.3	126
2.1	420
0.9	180
4.5	1890
2.1	420
3.8	760
1.7	714
1.1	220
4.4	880
4	1680
0.1	42
0.5	100
0.2	84
0.1	42
0.6	120
0.1	42
2.7	540
0.1	42
0.1	42
1.3	260
0.5	210
0.4	168
1	420
0.8	336
0.2	84
0.2	84
70.9	21660



	1	2	3	4	5	6	7	8	9	10
December	0	40	6805.15	200	2050	320	0	200	0	21310
January	273	0	19167	145	2407	2142	2858	40	12660	15767
February	42	0	14577.5	0	1038	1967	978	294	5031	0
March	755	75	14681	325	375	2060	22768.5	0	4393	50
April	1621	462	19651	2249	42	1223	12221.5	0	5683.5	1510
May	1101.5	46.5	23120	0	209	2855	29796	126	4922	0
June	2246.5	1577	21554	306.5	714	2036.5	26450.5	0	2452	0
July	252	168	13675	746	1000	1270	6498	42	2420	0
August	3893		13716	584	252	42	21660	42	1990	4830
Total	10184	2368.5	146946.7	4555.5	8087	13915.5	123230.5	744	39551.5	43467

#### HOURS

December	0.1		18.9	0.5	5.5	0.8		0.5		59.1
January	0.7		82.2	0.4	8	5.1	11.8	0.1	48.9	67.6
February	0.2	0	48.7	0	3.2	6.1	3.3	0.7	15.5	0
March	2.2	0.3	54	1.3	1.5	6.3	82.7		13.9	0.2
April	3.9	1.2	72.3	4.8	0.1	3.6	38.9	0	16.8	5.7
May	3.4	1.9	91.2		0.7	9.2	110.4	0.3	18.7	0
June	5.7	5.3	85.5	0.8	1.7	5.2	111.5	0	6.4	0
July	0.6	0.4	46.6	2.3	2.8	3.6	19.4	0.1	7.7	0
August	9.9		50.1	1.6	0.6	0.1	70.9	0.1	5	11.5
Total	26.7	9.1	549.5	11.7	24.1	40	448.9	1.8	132.9	144.1

## December

- 2
  - 0.1 - 40
- 3
  - 18.9 hours, \$6805.15
- 5
  - 5.5 hours, \$2050
- 4
  - .5 hours - \$200
- 6
  - .8 hours - 320
- 8
  - .5 hours - \$200
- 10
  - 59.1 hours, \$21310

## January 27 invoice

- 1
  - .7 hours, total of 273
- 3
  - 82.2 hours, \$19 167
- 4
  - .4, total of \$145
- 5
  - 8 hours, total of 2407
- 6
  - 5.1 hours, total of 2142
- 7
  - 11.8 hours, 3858
- 8
  - 0.1 hours, \$40
- 9
  - 48.9 hours, \$12660
- 10
  - 67.6 hours, \$15767

## Feb 28 invoice

- 1
  - 0.1 hours, \$42
- 3
  - 48.7 hours, 14577.50
- 5
  - 3.2 hours, \$1038
- 6
  - 6.1 hours, \$1967
- 7
  - 3.3 hours, \$978
- 8
  - 0.7 hours, \$294
- 9
  - 15.5 hours, \$5031

#### March 30 invoice

- 1
  - 2.2 hours, \$755
- 2
  - 0.3, \$75
- 3
  - 54 hours, \$14681
- 4
  - 1.3, \$325
- 5
  - 1.5, \$375
- 6
  - 6.3, \$2060
- 7
  - 82.7, \$22,768.50
- 9
  - 13.9, \$4393
- 10
  - .2, 50

#### April 25 invoice

- 1
  - 3.9 hours, \$1621
- 2
  - 1.1 hours, \$462
- 3
  - 72.3 hours, \$19,651
- 4

- 5.8 hours, \$2249
- 5
- 0.1 hours, \$42
- 6
- 3.6 hours, \$1223
- 7
- 38.9 hours, \$12,221.5
- 8
- 9
- 16.8 hours, \$5683.50
- 10
- 5.7 hours, \$1510

#### May 30 invoice

- 1
- 3.4 hours, \$1101.50
- 2
- 1.9 hours, \$46.50
- 3
- 91.2 hours, \$23,120
- 4
- 
- 5
- .7 hours, \$209
- 6
- 9.2 hours, \$2855
- 7
- 110.4 hours, \$29,796
- 8
- 0.3 hours, \$126
- 9
- 18.7 hours, \$4922
- 10

#### June 29 invoice

- 1
- 5.7 hours , \$2,246.50
- 2
- 5.3 hours, \$1577
- 3
- 85.5 hours, \$21,554
- 4
- 0.8 hours, \$306.5
- 5

- 1.7 hours, \$714
- 6
  - 5.2 hours, \$2036.5
- 7
  - 111.5 hours, \$26,450.50
- 8
- 9
  - 6.4 hours, \$2452.00
- 10

#### July 28 invoice


- 1
  - 0.6 hours, \$252
- 2
  - 0.4 hours, \$168
- 3
  - 46.6 hours, \$13,675
- 4
  - 2.3 hours, \$746
- 5
  - 2.8 hours, \$1000
- 6
  - 3.6 hours, \$1270
- 7
  - 19.4 hours, \$6498
- 8
  - 0.1 hours, \$42
- 9
  - 7.7 hours, \$2420
- 10

#### August 30 invoice

- 1
  - 9.9 hours, 3893
- 2
- 3
  - 50.1 hours, 13,716
- 4
  - 1.6 hours, \$584
- 5
  - 0.6 hours, \$252
- 6
  - 0.1 hours, \$42
- 7

- 70.9 hours, \$21660
- 8
  - 0.1 hours, \$42
- 9
  - 5 hours, \$1990
- 10
  - 11.5 hours, \$4830
-

This is Exhibit "B" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. M. O'Neil", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

LEVENE TADMAN GOLUB LAW CORPORATION  
 700 - 330 St. Mary Avenue  
 Winnipeg, Manitoba R3C 3Z5  
 Phone: 204-957-0520 / Fax: 204-957-1696  
 Website: www.ltgcl.ca

Nygard Enterprises Ltd.  
 750 John Bruce Road E  
 Winnipeg, Manitoba R3X 1Y2

GST R840918429

## STATEMENT OF ACCOUNT

**Attention: Peter Nygard - Private & Confidential**

December 21, 2021

**Re: Credit Agreement and Debenture and related financial matters**

File#: 113885

Invoice #: 214439

DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT
Nov-29-21	E-mails to (X 2) 3	WMO3	0.10	40.00
	E-mails to Greg Fenske (X 5) 5	WMO3	0.50	200.00
	E-mails to TSDC (X 5) 3	WMO3	0.50	200.00
	E-mails from (X 2) 3	WMO3	0.20	80.00
	E-mails from Greg Fenske (X 2) 4	WMO3	0.20	80.00
	E-mail to Leiba Feldman re: JVN 10	WMO3	0.10	40.00
	JVN with client 10	WMO3	0.40	160.00
	E-mail to Leiba Feldman 10	WMO3	0.10	40.00
Nov-30-21	E-mails from Greg Fenske (X 4) 8	WMO3	0.40	160.00
	E-mail from Leiba Feldman 10	WMO3	0.10	40.00
	E-mail from 3	WMO3	0.10	40.00



	E-mail to Greg Fenske	5	WMO3	0.10	40.00
	E-mails JVN	3	WMO3	0.40	160.00
	E-mails to Greg Fenske (X 2)	5	WMO3	0.20	80.00
	E-mail to Bruce Taylor	10	WMO3	0.10	40.00
	E-mail to Fred Tayar	10	WMO3	0.10	40.00
	Telephone attendance with Bruce Taylor	10	WMO3	0.30	120.00
	Letter to Greg Fenske	8	WMO3	0.10	40.00
	E-mails from Brian Whitehead (X 2)	3	WMO3	0.20	80.00
	E-mail from Melanie LaBossiere	10	WMO3	0.10	40.00
	Call to Cheryl Laniuk	10	LF3	0.20	50.00
	Review QB registry; email to W. Onchulenko	10	LF3	0.20	50.00
Dec-01-21	JVN with client	10	WMO3	0.40	160.00
	E-mails to Greg Fenske (X 2)	5	WMO3	0.20	80.00
	E-mails from Fred Tayar (X 2)	10	WMO3	0.20	80.00
	E-mails from (X 3)	3, 10	WMO3	0.20	80.00
	E-mails from Greg Fenske (X 2)	10, 3	WMO3	0.20	80.00
	E-mail from Colby Linthwaite	10	WMO3	0.10	40.00

	Review of Receiver's Supplemental Brief	10	LF3	0.20	50.00
Dec-02-21	Prepare and attend JVN with client	10	WMO3	0.40	160.00
	E-mails from (X 3)	3	WMO3	0.10	40.00
	E-mails from Greg Fenske (X 2)	3	WMO3	0.20	80.00
Dec-03-21	JVN with client	3	WMO3	0.40	160.00
	E-mail from Brian Whitehead	3	WMO3	0.10	40.00
	E-mails from Greg Fenske (X 3)	3	WMO3	0.30	120.00
	E-mails from (X 4)	3	WMO3	0.20	80.00
	E-mail from TSDC	3	WMO3	0.10	40.00
	E-mails from TSDC (X 3)	3	WMO3	0.30	120.00
	E-mails to (X 5)	3	WMO3	0.50	200.00
	E-mail to Brian Whitehead	3	WMO3	0.10	40.00
	E-mail to TSDC	3	WMO3	0.10	40.00
	E-mail to Greg Fenske	3	WMO3	0.10	40.00
	E-mail from Bruce Taylor	10	WMO3	0.10	40.00
	E-mails from TSDC (X 4)	3	WMO3	0.40	160.00

	E-mails to	(X 2)	10	WMO3	0.20	80.00
	E-mails to Fred Tayar		10	WMO3	0.10	40.00
Dec-04-21	Prepare and attend JVN with client		10	WMO3	1.00	400.00
	E-mail from		10	WMO3	0.10	40.00
Dec-05-21	Prepare and attend JVN with client		10	WMO3	1.00	400.00
	E-mail from Greg Fenske		3	WMO3	0.10	40.00
	E-mail to		3		0.10	40.00
	E-mails to Greg Fenske (X 3)		10,10,10	WMO3	0.30	120.00
Dec-06-21	E-mails from	(X 3)	10, 10, 10	WMO3	0.30	120.00
	E-mails from Greg Fenske (X 3)		10, 10, 10	WMO3	0.30	120.00
	E-mails to Fred Tayar (X 3)		10	WMO3	0.30	120.00
	E-mail to		10	WMO3	0.10	40.00
	E-mails from TSDC (X 6)		3	WMO3	0.50	200.00
	E-mails to TSDC (X 4)		3	WMO3	0.30	120.00
	E-mails from Fred Tayar (X 2)		10	WMO3	0.20	80.00
	Telephone attendance with Fred Tayar re: payment of legal fees		10	WMO3	0.30	120.00
	Telephone attendances with client (X 3)		10	WMO3	1.00	400.00
	Telephone attendance with Fred Tayar		10	WMO3	0.20	80.00
	E-mail from Joe Albert		10	WMO3	0.10	40.00

· Dec-07-21	E-mails from Fred Tayar (X 2)	10	WMO3	0.20	80.00
	E-mails from Joe Albert (X 2)	10	WMO3	0.20	80.00
	E-mail from Greg Fenske	10	WMO3	0.10	40.00
	E-mails from TSDC	3	WMO3	0.10	40.00
	E-mail from	10	WMO3	0.10	40.00
	E-mail to TSDC	3	WMO3	0.10	40.00
	E-mail from Richard Good	10	WMO3	0.10	40.00
	E-mail from Colby Linthwaite	10	WMO3	0.10	40.00
	Prepare draft settlement proposals	10	WMO3	0.20	80.00
	JVN with client	10	WMO3	0.50	200.00
	Telephone attendance with Joe Albert	10	WMO3	0.20	80.00
	E-mail from Joe Albert	10	WMO3	0.10	40.00
	E-mail to Joe Albert	10	WMO3	0.10	40.00
	E-mail to Bruce Taylor	10	WMO3	0.10	40.00
	E-mail from Bruce Taylor	10	WMO3	0.10	40.00
	Meeting with Leiba Feldman re: update	10	WMO3	0.10	40.00
	Email to Colby re research	10	LF3	0.10	25.00
	Email from Colby	10	LF3	0.10	25.00
	Compile documents; email to Tayar	10	LF3	0.50	125.00
Dec-08-21	JVN with client	10	WMO3	0.40	160.00
	Telephone attendance with Greg Fenske	10	WMO3	0.20	80.00
	E-mail from Greg Fenske	10	WMO3	0.10	40.00
	E-mails from	(X 6) 3, 10	WMO3	0.60	240.00
	E-mails from Fred Tayar (X 2)	10	WMO3	0.20	80.00
	E-mail from Colby Linthwaite	10	WMO3	0.10	40.00

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	E-mail from Brian Whitehead	3	WMO3	0.10	40.00
	E-mail to Fred Tayar	10	WMO3	0.10	40.00
	E-mails to (X 2)	10	WMO3	0.10	40.00
	E-mail to Richard Good	5	WMO3	0.10	40.00
	Telephone attendance with Richard Good	10	WMO3	0.20	80.00
	Meet with W. Onchulenko	10	LF3	0.20	50.00
	Review of Brief; gather tabs	10	LF3	0.50	125.00
Dec-09-21	Review Colby Linthwaite's brief	10	WMO3	1.00	400.00
	E-mails from Leiba Feldman (X 2)	10	WMO3	0.20	80.00
	E-mails from Colby Linthwaite (X 6)	10	WMO3	0.60	240.00
	E-mails from (X 3)	10, 3, 3	WMO3	0.30	120.00
	E-mails from Fred Tayar (X 4)	10	WMO3	0.40	160.00
	E-mails from Greg Fenske (X 3)	10, 3, 3	WMO3	0.30	120.00
	E-mails from TSDC (X 3)	3	WMO3	0.30	120.00
	E-mails to TSDC (X 4)	3	WMO3	0.40	160.00
	JVN with client	10	WMO3	0.40	160.00
	E-mails from Sam Cole	3	WMO3	0.20	80.00
	E-mails to Sam Cole	3	WMO3	0.20	80.00
	E-mail to Sam Cole	3	WMO3	0.10	40.00
	E-mail to Joe Albert	10	WMO3	0.10	40.00
	E-mail to Bruce Taylor	10	WMO3	0.10	40.00

	E-mails from Joe Albert (X 2)	10	WMO3	0.20	80.00
	E-mail from Bruce Taylor	10	WMO3	0.10	40.00
	E-mail to Leiba Feldman	10	WMO3	0.10	40.00
	E-mails to Bruce Taylor (X 2)	10	WMO3	0.20	80.00
	E-mails to Fred Tayar (X 2)	10	WMO3	0.20	80.00
	E-mails to Colby Linthwaite (X 2)	10	WMO3	0.20	80.00
	E-mails to Sam Cole	3	WMO3	0.20	80.00
	E-mails to TSDC (X 4)	3	WMO3	0.40	160.00
	Email from D. Mackie	10	LF3	0.10	25.00
	Emails from/to Colby; prepare Brief for filing; research re Mareva and use of funds; gathering and preparation of authorities	10	LF3	3.90	975.00
	Further revisions; emails from Colby; email to D. Mackie	10	LF3	0.70	175.00
	Further revisions and prepare Brief for filing; email to Colby	10	LF3	0.90	225.00
Dec-10-21	JVN with client	10	WMO3	0.40	160.00
	Telephone attendance with Leiba Feldman	10	WMO3	0.30	120.00
	Telephone attendance with Joe Albert	10	WMO3	0.20	80.00
	Telephone attendance with Greg Fenske	10	WMO3	0.20	80.00
	E-mails to Joe Albert (X 2)	10	WMO3	0.20	80.00
	E-mails to Greg Fenske (X 3)	5	WMO3	0.30	120.00
	E-mails from Greg Fenske (X 7)	5	WMO3	0.50	200.00
	E-mails from (X 3)	5	WMO3	0.30	120.00
	E-mails from Colby Linthwaite (X 3)	10	WMO3	0.30	120.00
	E-mail to Colby Linthwaite	10	WMO3	0.10	40.00

	E-mails from Leiba Feldman (X 5)	10, 10, 10, 10, 10	WMO3	0.50	200.00
	E-mails to Leiba Feldman (X 7)	10, 10, 10, 10, 10	WMO3	0.50	200.00
	Telephone attendance with Colby Linthwaite	10	WMO3	0.20	80.00
	E-mail from Jason Gorrie	6	WMO3	0.10	40.00
	E-mail from Melody Pegg	3	WMO3	0.10	40.00
	E-mail to Ling Luo	4	WMO3	0.10	40.00
	E-mail to	5	WMO3	0.10	40.00
	E-mails to Jason Gorrie (X 3)	5	WMO3	0.30	120.00
	E-mail to Brian Whitehead	3	WMO3	0.10	40.00
	E-mail to TSDC	3	WMO3	0.10	40.00
	Emails from Colby; emails from W. Onchulenko; discussion with Colby; discussion with W. Onchulenko; revisions of Brief; preparation of Brief for filing; preparation of service documents; further revisions of Brief; further preparation for service	10	LF3	3.40	850.00
	Call with W. Onchulenko; revisions of asset sheet and cash flow sheet; email to W. Onchulenko	10	LF3	2.60	650.00
Dec-11-21	Amend asset listing	5	WMO3	0.30	120.00
	Amend cash flow listing	5	WMO3	0.20	80.00
	JVN with client	10	WMO3	1.00	400.00
	E-mail to Leiba Feldman	10	WMO3	0.10	40.00
	E-mails to TSDC (X 10)	3	WMO3	0.50	200.00
	E-mails to Greg Fenske (X 8)	all 3	WMO3	0.50	200.00

	E-mails from Greg Fenske (X 3) 5	WMO3	0.20	80.00
	E-mails from TSDC (X 12) 3	WMO3	0.50	200.00
	E-mail from Leiba Feldman 10	WMO3	0.10	40.00
	Email from W. Onchulenko; email to W. Onchulenko 3	LF3	0.60	150.00
Dec-12-21	E-mails from Greg Fenske (X 4) 3	WMO3	0.40	160.00
	E-mails from (X 2) 5	WMO3	0.20	80.00
	E-mail from TSDC 3	WMO3	0.10	40.00
	E-mails to Greg Fenske (X 4) 5	WMO3	0.40	160.00
	E-mails to (X 3) 3	WMO3	0.30	120.00
	E-mail to Peter Anderson 6	WMO3	0.10	40.00
	E-mail to TSDC 3	WMO3	0.10	40.00
Dec-13-21	Calls with client (X 10), e-mails from Eric Gibson (X 3) and e-mails to Eric Gibson (X 4) 10	WMO3	3.00	1,200.00
	E-mails to Peter Anderson (X 2) 5	WMO3	0.20	80.00
	E-mail to Brian Greenspan 10	WMO3	0.10	40.00
	E-mails to (X 6) 10	WMO3	0.20	80.00
	E-mail to Greg Fenske 10	WMO3	0.10	40.00
	E-mails to TSDC (X 2) 3	WMO3	0.20	80.00
	E-mails to Colby Linthwaite (X 2) 10	WMO3	0.20	80.00
	E-mails from Leiba Feldman 10	WMO3	0.20	80.00
	E-mail from Greg Fenske 2	WMO3	0.10	40.00
	E-mail from Bruce Taylor 10	WMO3	0.10	40.00
	E-mail from TSDC 3	WMO3	0.10	40.00
	E-mails from Peter Anderson (X 2) 6	WMO3	0.10	40.00
	E-mail from Ling Luo 4	WMO3	0.10	40.00



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E-mail from	3	WMO3	0.10	40.00
JVN with client	10	WMO3	0.40	160.00
E-mail to Peter Anderson	6	WMO3	0.10	40.00
E-mail from Leiba Feldman	10	WMO3	0.10	40.00
Meeting with Leiba Feldman	10	WMO3	0.30	120.00
E-mail to	5	WMO3	0.10	40.00
Email from/to registry	10	LF3	0.10	25.00
Review of AG Brief	10	LF3	0.20	50.00
Revise asset sheet; gathering of support documents	5	LF3	0.80	200.00
Review and complete authorization form.	3	LOV3	0.20	25.00

Dec-14-21

E-mail to Leiba Feldman	10	WMO3	0.10	40.00
JVN and prepare	10	WMO3	0.40	160.00
Telephone attendance with client	10	WMO3	1.40	560.00
E-mails from	(X 4) 3	WMO3	0.30	120.00
E-mails from Greg Fenske (X 3)	4, 3, 5	WMO3	0.30	120.00

	E-mail from Peter Anderson	6	WMO3	0.10	40.00
	Telephone attendance with Peter Anderson	6	WMO3	0.20	80.00
	E-mail from Leiba Feldman	10	WMO3	0.10	40.00
	Revise asset sheet; email to W. Onchulenko	10	LF3	0.30	75.00
	Email from Greg Fenske; revise assets	10	LF3	0.20	50.00
	Gather supporting documents re assets sheet	10	LF3	0.60	150.00
	Email from W. Onchulenko; email from court	10	LF3	0.20	50.00
Dec-15-21	E-mails to (X 3)	3	WMO3	0.30	120.00
	E-mails to TSDC (X 4)	3	WMO3	0.40	160.00
	JVN with client	10	WMO3	0.40	160.00
	Calls with client (X 7)	10	WMO3	2.30	920.00
	E-mail from Brian Whitehead	3	WMO3	0.10	40.00
	E-mails from TSDC (X 3)	3	WMO3	0.30	120.00
	E-mail from Greg Fenske	3	WMO3	0.10	40.00
	E-mail from Carlos Santos	3	WMO3	0.10	40.00
	E-mail from Leiba Feldman	3	WMO3	0.10	40.00
	E-mail from Fred Tayar	10	WMO3	0.10	40.00
	E-mail from Colby Linthwaite	10	WMO3	0.10	40.00
	E-mail from JVN	3	WMO3	0.10	40.00
	E-mail from Joe Albert	10	WMO3	0.10	40.00
	Email from/to W. Onchulenko; email to L. Valgardson	10	LF3	0.30	75.00

	Email re video meetings.	3	LOV3	0.10	12.50
	Call with LF.	3	LOV3	0.10	12.50
	Email to coordinator.	3	LOV3	0.10	12.50
	Email from coordinator (x2).	3	LOV3	0.20	25.00
Dec-16-21	JVN with client	10	WMO3	0.40	160.00
	E-mail from Melanie LaBossiere	10	WMO3	0.10	40.00
	E-mail from Olivia Toma	5	WMO3	0.10	40.00
	E-mail from	3	WMO3	0.10	40.00
	E-mails to (X 5)	3	WMO3	0.50	200.00
	E-mails to JVN (X 2)	3	WMO3	0.20	80.00
	E-mail to Greg Fenske	3	WMO3	0.10	40.00
	E-mail to Gulshan Sethna of Ontario Justice Video Network	3	WMO3	0.10	40.00
	Voice mail message from Gulshan Sethna	3	WMO3	0.10	40.00
	E-mail to Bruce Taylor	10	WMO3	0.10	40.00
	E-mails from TSDC (X 7)	3	WMO3	0.50	200.00
	E-mails from (X 5)	3, 3, 3 ,3,	WMO3	0.30	120.00
	E-mail from Gulshan Sethna	3	WMO3	0.10	40.00
	Videocall with detention center	3	LF3	0.50	125.00
	Test and prepare system for training session.	3	LOV3	0.20	25.00
	Attend training session.	3	LOV3	0.50	62.50
	Email from JVN.	3	LOV3	0.10	12.50
Dec-18-21	JVN with client	10	WMO3	1.00	400.00
	E-mails from Greg Fenske (X 2)	5, 3	WMO3	0.20	80.00
	E-mail from	3	WMO3	0.10	40.00

	E-mail from Brian Greenspan	3	WMO3	0.10	40.00
	E-mails to Carlos Santos	3	WMO3	0.20	80.00
Dec-19-21	E-mails from Colby Linthwaite (2)	10	WMO3	0.10	40.00
	E-mails from (X 2)	3	WMO3	0.20	80.00
	Telephone attendance with client (X 5)	10	WMO3	1.70	680.00
	E-mail from Fred Tayar	10	WMO3	0.10	40.00
	E-mails to Fred Tayar (X 2)	10	WMO3	0.20	80.00
	JVN with client	10	WMO3	1.00	400.00
	Exchange of e-mails with Fred Tayar	10	WMO3	0.20	80.00
Dec-20-21	Telephone attendance with Fred Tayar	10	WMO3	0.30	120.00
	E-mails to Fred Tayar (X 2)	10	WMO3	0.20	80.00
	E-mails from Fred Tayar (X 5)	10	WMO3	0.50	200.00
	E-mails to Colby Linthwaite (X 2)	10	WMO3	0.20	80.00
	E-mails from Colby Linthwaite (X 2)	10	WMO3	0.20	80.00
	To attend contested motion 10-12:00 and 1:30 - 4:15	10	WMO3	5.30	2,120.00
	Voice mail message from Fred Tayar (X 2)	10	WMO3	0.10	40.00
	JVN with client	10	WMO3	0.40	160.00
	E-mails to (X 5)	10	WMO3	0.20	80.00
	E-mail to TSDC	3	WMO3	0.10	40.00
	E-mails to Greg Fenske (X 5)	10	WMO3	0.50	200.00
	E-mail from Melane LaBossiere	10	WMO3	0.10	40.00
	E-mail from Joe Albert	10	WMO3	0.10	40.00
	E-mails to Greg Fenske (X 6)	10	WMO3	0.50	200.00
	E-mail to Leiba Feldman	10	WMO3	0.10	40.00
	Email from/to W. Onchulenko	10	LF3	0.20	50.00

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Email from opposing counsel	10	LF3	0.10	25.00
Email from BMO	5	LF3	0.10	25.00
Email from W. Onchulenko re asset list	5	LF3	0.10	25.00
Dec-21-21 Reporting letter to client		WMO3	0.20	80.00

Wayne M. Onchulenko	Total Time Spent=	63.30	Hours @ \$400.00	\$25,320.00
Leiba Feldman	Total Time Spent=	17.90	Hours @ \$250.00	\$4,475.00
Liam O. Valgardson	Total Time Spent=	1.50	Hours @ \$125.00	\$187.50

**Total Fees** **82.70** **29,982.50**

GST on Fees \$1,499.13

RST on Fees \$2,098.78

**DISBURSEMENTS****Disbursements**

Facsimile	2.00
Photocopying charge	37.25
Telephone call	46.00
Notice of Motion Nygard*	100.00

**Total Disbursements** **\$185.25**

GST on Disbursements \$4.26

**ENTS GST & RST** **\$33,769.92**

**\$33,769.92**

Total Tax: \$1,503.39 \$2,098.78

\* tax-exempt

E.&O.E.

Wayne M. Onchulenko

*Accounts which are outstanding for more than one month after the date of delivery of same to the client shall bear interest at the rate established under section /61 o/The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*

This is Exhibit "C" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. M. O'Neil", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

LEVENE TADMAN GOLUB LAW CORPORATION  
 700 - 330 St. Mary Avenue  
 Winnipeg, Manitoba R3C 3Z5  
 Phone: 204-957-0520 / Fax: 204-957-1696  
 Website: www.ltgld.ca

GST R840918429

## STATEMENT OF ACCOUNT

Nygard Enterprises Ltd.  
 750 John Bruce Road E  
 Winnipeg, Manitoba R3X 1Y2

January 27/2022

				File#:	113885
<b>Re: Credit Agreement and Debenture and related financial matters</b>				Invoice #:	215129
DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT	
Dec-21-21	Telephone attendance with client (X 5) 10	WMO3	1.50	600.00	
	JVN with client 10	WMO3	0.40	160.00	
	E-mails to (X 8) 3	WMO3	0.50	200.00	
	E-mails from X 4) 10, 3	WMO3	0.30	120.00	
	E-mails to Greg Fenske (X 4) 5, 10	WMO3	0.40	160.00	
	E-mails from Greg Fenske (X 7) 5	WMO3	0.50	200.00	
	E-mail from the court 1	WMO3	0.10	40.00	
	E-mails from Leiba Feldman (X 8) 3	WMO3	0.50	200.00	
	E-mails from Liam Valgardson (X 4) 3	WMO3	0.40	160.00	
	E-mail from Colby Linthwaite 10	WMO3	0.10	40.00	
	E-mail from Olvia Toma 5	WMO3	0.10	40.00	
	E-mail from Fred Tayar 10	WMO3	0.10	40.00	
	E-mails to Leiba Feldman (X 8) 10	WMO3	0.50	200.00	
	E-mails from TSDC (X 11) 3	WMO3	0.50	200.00	
	E-mails to Liam Valgardson (X 3) 3	WMO3	0.30	120.00	
	E-mails to TSDC (X 8) 3	WMO3	0.50	200.00	
	Emails/calls from/to W. Onchulenko; 3 scheduling of JVN 3	LF3	0.50	125.00	

Emails from Colby	10	LF3	0.20	50.00
Prepare authorities for submission; email to W. Onchulenko	10	LF3	0.40	100.00
Email to JVN	10	LF3	0.10	25.00
Revisions to assets sheet; gathering and making of supporting documents	5	LF3	3.80	950.00
Call from W. Onchulenko; emails to Santos	3	LF3	0.20	50.00
Email from	3	LOV3	0.20	25.00
Email from WMO.	10	LOV3	0.10	12.50
Email from LF.	10	LOV3	0.10	12.50
Discuss JVN scheduling with LF. Review instructions. Complete forms.	3	LOV3	0.50	62.50
Email to JVN Coordinator.	3	LOV3	0.10	12.50
Email from JVN Coordinator.	3	LOV3	0.10	12.50
Email to WMO.	3	LOV3	0.10	12.50
Call with LF.	3	LOV3	0.10	12.50
Email to JVN Coordinator.	3	LOV3	0.10	12.50

Dec-22-21

Telephone attendance with Colby Linthwaite	10	WMO3	0.20	80.00
Prepare for motions	10	WMO3	0.50	200.00
E-mail from Carlos Santos of Correctional Services	3	WMO3	0.10	40.00
E-mails from Fred Tayar (X 4)	10	WMO3	0.20	80.00
Instructions to Debbie Mackie re: ACU	8	WMO3	0.10	40.00
Prepare for and attend and argue motion	10	WMO3	4.00	1,600.00
E-mails to Fred Tayar (X 2)	10	WMO3	0.20	80.00
E-mails to Colby Linthwaite (X 2)	10	WMO3	0.20	80.00
JVN with client	10	WMO3	1.00	400.00
Fix formatting on asset sheet	5	LF3	0.40	100.00
Email from RDA	3	LF3	0.10	25.00
Emails from/to W. Onchulenko re JVN/ discussion with W. Onchulenko	10	LF3	0.30	75.00

Dec-23-21

Telephone attendance with Fred Tayar	10	WMO3	0.10	40.00
E-mail to Greg Fenske	4	WMO3	0.10	40.00



E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	120.00
E-mail to Fred Tayar	10	WMO3	0.10	40.00
E-mail to TSDC	3	WMO3	0.10	40.00

E-mail to Fred Tayar	10	WMO3	0.10	40.00
E-mails from Greg Fenske (x 4)	3. 4	WMO3	0.40	160.00
E-mails from Leiba Feldman (X 4)	3	WMO3	0.40	160.00

E-mails from Fred Tayar (X 2)	10	WMO3	0.20	80.00
E-mail from TSDC	3	WMO3	0.10	40.00

Voice mail messages from Bruce Taylor (X 2)	10	WMO3	0.10	40.00
JVN with client	10	WMO3	0.40	160.00
Dec-24-21 JVN with client	10	WMO3	0.80	320.00

E-mails from (X 8)	3	WMO3	0.50	200.00
E-mail from Adrien Lafrate	3	WMO3	0.10	40.00
E-mails from Leiba Feldman (X 12)	3	WMO3	0.50	200.00
E-mails from Greg Fenske (X 7)	3	WMO3	0.50	200.00

E-mails from TSDC (X 4)	3	WMO3	0.40	160.00
E-mail to Fred Tayar	10	WMO3	0.10	40.00
E-mail to TSDC	3	WMO3	0.10	40.00
E-mails to (X 6)	3	WMO3	0.50	200.00
E-mails to Leiba Feldman (X 8)	3	WMO3	0.50	200.00
E-mails to Greg Fenske (X 7)	3	WMO3	0.50	200.00
		WMO3	0.10	40.00

	Emails to /from JVN	3	LF3	0.30	75.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Email from W. Onchulenko; emails from/to JVN	3	LF3	0.30	75.00
	Email to W. Onchulenko re asset list	4	LF3	0.10	25.00
	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Email to JVN	3	LF3	0.10	25.00
	Email to JVN	3	LF3	0.10	25.00
	Further emails from/to JVN/email from/to W. Onchulenko; email from client	3	LF3	0.70	175.00
Dec-25-21	E-mails from (X 2)	3	WMO3	0.20	80.00
	E-mail from Greg Fenske	3	WMO3	0.10	40.00
	Email from client 3		LF3	0.10	25.00
	Email from client 3		LF3	0.10	25.00
	Email to TSDC 3		LF3	0.10	25.00
	Call to TSDC 3		LF3	0.20	50.00
	Email from/to G. Fenske 3		LF3	0.20	50.00
	Call to TSDC; email from TSDC attendance at JVN; revision of asset sheet; formatting of sheet	3, 9	LF3	2.10	525.00
Dec-26-21	E-mails to Leiba Feldman (X 3)	7	WMO3	0.50	200.00
	E-mail to Fred Tayar	10	WMO3	0.10	40.00
	E-mails from Fred Tayar (X 2)	10	WMO3	0.20	80.00
	E-mails from Leiba Feldman (X 5)	3	WMO3	0.50	200.00
	Revision of Asset sheet	10	LF3	1.10	275.00
	Calls from client; email to Santos; 2nd email to Santos; revision of asset sheet	3	LF3	2.80	700.00
	JVN with client and revision of asset sheet	9	LF3	1.30	325.00
Dec-27-21	E-mail from	3	WMO3	0.10	40.00
	E-mail from Greg Fenske	3	WMO3	0.10	40.00
	E-mail from Leiba Feldman	3	WMO3	0.10	40.00

	E-mail to Leiba Feldman	3	WMO3	0.10	40.00
	Email from G. Fenske	3	LF3	0.10	25.00
	JVN with client and revision of asset sheet; email from G. Venske	9	LF3	1.40	350.00
Dec-28-21	E-mails from Leiba Feldman (X 4)	3	WMO3	0.40	160.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email from G. Fenske	9	LF3	0.10	25.00
	Call to G. Fenske; revise asset sheet re John Bruce; gather documents re transaction	9	LF3	0.90	225.00
	Email re JVN scheduling change	3	LF3	0.20	50.00
	Calls from client; call to G. Fenske; revision of asset sheet	9	LF3	3.30	825.00
	JVN with client; revise asset sheet	9, 4, 9	LF3	0.80	200.00
Dec-29-21	E-mails from Fred Tayar (X 3)	10	WMO3	0.20	80.00
	E-mail from Olivia Toma	5	WMO3	0.10	40.00
	E-mail from	3	WMO3	0.10	40.00
	E-mails from Leiba Feldman (X 2)	10	WMO3	0.10	40.00
	Telephone attendance with Leiba Feldman	10	WMO3	0.50	200.00
	E-mail to Leiba Feldman	3	WMO3	0.10	40.00
	Email from Tayar	10	LF3	0.10	25.00
	Email from Linthwaite	10	LF3	0.10	25.00
	Revise asset sheet; discussion with W. Onchulenko; email to TSDC; gathering re source documents; JVN with client; email to W. Onchulenko;	5	LF3	1.10	275.00
Dec-30-21	Telephone attendance with Leiba Feldman	10	WMO3	0.20	80.00
	E-mails from Leiba Feldman (X 2)	3, 10	WMO3	0.10	40.00
	E-mails to Leiba Feldman (X 3)	3, 10	WMO3	0.30	120.00
	E-mail from Melanie LaBossiere	1	WMO3	0.10	40.00
	Telephone attendance with Joe Albert	10	WMO3	0.10	40.00
	E-mail from Joe Albert	10	WMO3	0.10	40.00

	E-mail from Greg Fenske	7	WMO3	0.10	40.00
	Find and scan source e-mails to Leiba Feldman	7	WMO3	1.00	400.00
	E-mails from Leiba Feldman (X 4)	7, 3	WMO3	0.30	120.00
	E-mails to Greg Fenske (X 2)	7	WMO3	0.20	80.00
	E-mails from Greg Fenske (X 2)	7	WMO3	0.20	80.00
	Email to/from G. Fenske	9	LF3	0.10	25.00
	Emails from G. Fenske	9	LF3	0.10	25.00
	Revision of asset sheet and source document; email to W. Onchulenko	9	LF3	1.50	375.00
	Letter to client		LF3	0.20	50.00
	Review Receiver Brief; call from W. Onchulenko; notes re reply brief	10	LF3	0.80	200.00
	Email from ; review and preparing further source documents; email from W. Onchulenko	10	LF3	1.90	475.00
	JVN with client; revise asset sheet	9	LF3	0.70	175.00
	Email from LF.	10	LOV3	0.10	12.50
	Email to LF.	10	LOV3	0.10	12.50
	Call with LF.	10	LOV3	0.30	37.50
	Begin research of s 119 of the Corporations Act. Begin drafting memo to LF re findings.	10	LOV3	3.30	412.50
Dec-31-21	Telephone attendances with client (X 2)	10	WMO3	0.70	280.00
	E-mails to Leiba Feldman (X 2)	3	WMO3	0.10	40.00
	E-mails from Leiba Feldman (X 2)	7	WMO3	0.20	80.00
	E-mails to Debbie Mackie (X 55) and meeting with Debbie Mackie re: affidavit	3, 7	WMO3	2.00	800.00
	Text from Greg Fenske	3	WMO3	0.10	40.00
	Text to Greg Fenske	3	WMO3	0.10	40.00
	E-mails from (X 2)	7	WMO3	0.20	80.00
	E-mail from Adrien Iafrate 3		WMO3	0.10	40.00
	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Emails from/to W. Onchulenko; email from	3	LF3	0.20	50.00
	Revision to asset sheet	9	LF3	1.50	375.00

	Email to book JVN	3	LF3	0.20	50.00
	Email from Pegg	3	LF3	0.10	25.00
	Email from	3	LF3	0.10	25.00
	Emails from/to W. Onchulenko	3	LF3	0.20	50.00
	Email to Pegg	3	LF3	0.20	50.00
	Email from/to TSDC	3	LF3	0.10	25.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email to G. Fenske	3	LF3	0.10	25.00
	Email from Iafrate	3	LF3	0.10	25.00
Jan-01-22	JVN with client; revise asset sheet; email to TSDC	9	LF3	1.10	275.00
	Continue research of s 119 of the Corporations Act. Draft and send summary to LF.	10	LOV3	2.30	287.50
	E-mail to Leiba Feldman	10	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2)	7	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 2)	7	WMO3	0.20	84.00
	Telephone attendance with Greg Fenske	7	WMO3	0.20	84.00
	Draft TSDC Affidavit	3	WMO3	0.50	210.00
	Email from G. Fenske; call from G. Fenske	9	LF3	0.20	50.00
	Revise asset sheet and prepare source documents	9	LF3	1.60	400.00
	JVN with client; email from ; revise asset sheet; further preparation of source documents; email to W. Onchulenko	9	LF3	3.90	975.00
Jan-02-22	E-mails from Leiba Feldman (X 4)	3, 7	WMO3	0.40	168.00
	E-mails to Leiba Feldman (X 3)	10 ,3	WMO3	0.30	126.00
	E-mail to Leiba Feldman (X 3)	9	WMO3	0.90	378.00
	E-mails to Greg Fenske (X 2)	9	WMO3	0.20	84.00
	E-mails to Greg Fenke (X 2)	9	WMO3	0.20	84.00
	Call from G. Fenske; email from G. Fenske; calls from client; revision of asset sheet; email to G. Fenske; emails from/to W. Onchulenko;	9	LF3	4.90	1,225.00

	further calls from client; further revisions of asset sheet				
	JVN with client; call to G. Fenske; further revisions of asset sheet	9	LF3	2.30	575.00
	Further revisions of asset sheet	9	LF3	2.60	650.00
Jan-03-22	E-mails to Leiba Feldman (X 2)	3, 7	WMO3	0.50	210.00
	E-mails from Leiba Feldman (X 6)	3, 7	WMO3	0.60	252.00
	Telephone attendance with Leiba Feldman re: affidavits	3, 7	WMO3	0.60	252.00
	Draft argument	10	WMO3	0.40	168.00
	E-mails to Peter Anderson (X 3)	6	WMO3	0.20	84.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mails to Peter Anderson (X 2)	6	WMO3	0.20	84.00
	E-mails to Greg Fenske (X 2)	3	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	3	WMO3	0.10	42.00
	Revisions of asset sheet; email from G. Fenske; emails from/to W. Onchulenko; preparation of Affidavit of Wayne Onchulenko; preparation of various other affidavits	9, 4	LF3	2.70	675.00
	Email to TSDC	3	LF3	0.10	25.00
	Email from W. Onchulenko; email to TSDC	3	LF3	0.20	50.00
	Revisions of asset sheet; emails from/to W. Onchulenko; discussion with W. Onchulenko; preparation of Affidavit of Peter Anderson; preparation of exhibits to Peter Anderson Affidavit	9	LF3	2.30	575.00
	JVN with client; revision of asset sheet	7	LF3	1.80	450.00
	Emails from/to W. Onchulenko; revisions of asset sheet and Peter Anderson Affidavit	7	LF3	0.50	125.00
Jan-04-22	Telephone attendance with Peter Anderson	6	WMO3	0.20	84.00
	E-mail from Leiba Feldman	10	WMO3	0.10	42.00

E-mail to Debbie Mackie	10	WMO3	0.10	42.00
E-mail from Peter Anderson	6	WMO3	0.10	42.00
E-mails from Debbie Mackie (X 2)	10	WMO3	0.20	84.00
Instructions to Debbie Mackie	10	WMO3	0.20	84.00
E-mail from Greg Fenske	5	WMO3	0.10	42.00
Telephone attendance with Jason Burbank	5	WMO3	0.20	84.00
E-mails to Jason Burbank (X 2)	5	WMO3	0.20	84.00
E-mail to Colby Linthwaite	10	WMO3	0.10	42.00
Review and amend Brief	10	WMO3	0.30	126.00
Telephone attendance with Peter Anderson	6	WMO3	0.20	84.00
Telephone attendance with Peter Anderson	6	WMO3	0.80	336.00
E-mail to Peter Anderson	6	WMO3	0.10	42.00
Drafting of Brief; review memo; email to W. Onchulenko; email to L. Valgardson	10	LF3	0.90	225.00
Email to/from L. Valgardson		LF3	0.20	50.00
Email to L. Valgardson; email from W. Onchulenko	10	LF3	0.20	50.00
Email from Colby	10	LF3	0.10	25.00
JVN with client; revision of asset sheet; calls with W. Onchulenko	9	LF3	1.10	275.00
Email from LF.	10	LOV3	0.10	12.50
Email to LF.	10	LOV3	0.10	12.50
Review memo re s 119. Draft section in supplemental brief. Send to LRF.	10	LOV3	1.70	212.50
Call with LRF.	10	LOV3	0.20	25.00
Format and draft supplemental brief.	10	LOV3	0.90	112.50
Email to LRF.	10	LOV3	0.10	12.50
Compile and organize tabs.	10	LOV3	0.20	25.00
Email to LF.	10	LOV3	0.10	12.50
Email from LF.	10	LOV3	0.10	12.50

	Email from WMO.	10	LOV3	0.10	12.50
	Research case law re corporation's paying for the criminal defence legal fees of a former employee or officer. Email from WMO re case law. Research case law requested by WMO.		LOV3	2.70	337.50
	Summarize cases. Draft and send email to WMO re research.	10			
Jan-05-22	Prepare for and calls with client (X 4)	10	WMO3	1.20	504.00
	Telephone attendance with Leiba Feldman	10	WMO3	0.20	84.00
	E-mails to Leiba Feldman (X 19)	10, 3	WMO3	1.00	420.00
	Telephone attendance with Peter Anderson	6	WMO3	0.30	126.00
	E-mail to Dom Magisano	10	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 21)	10	WMO3	1.00	420.00
	To amend Affidavits of Peter Anderson and telephone attendance with Peter Anderson and to amend Affidavits and e-mails to Peter Anderson (X 3)	6	WMO3	2.00	840.00
	Facetime with Peter Anderson	6	WMO3	0.30	126.00
	E-mails to Greg Fenske	10	WMO3	0.20	84.00
	E-mails from Greg Fenske	10	WMO3	0.20	84.00
	Telephone attendance with Greg Fenske (X 2)	10	WMO3	0.20	84.00
	Amend Affidavit of Peter Anderson and draft a second Affidavit	9	WMO3	0.80	336.00
	Amend Brief and e-mail to and from Liam Valgardson	10	WMO3	2.50	1,050.00
	Telephone attendance with Leiba Feldman (X 6)	10	WMO3	0.60	252.00
	Call with W. Onchulenko and revision of asset sheet	7	LF3	0.60	150.00



Email to/from TSDC	3	LF3	0.20	50.00
Email to/from L. Valgardson		LF3	0.10	25.00
Review case summaries	10	LF3	0.20	50.00
Email from	3	LF3	0.10	25.00
Emails from/to W. Onchulenko; email to	9	LF3	0.20	50.00
Email from W. Onchulenko and revision of asset sheet	9	LF3	0.80	200.00
Further revision of asset sheet and source documents; calls from client; discussion with W. Onchulenko	9	LF3	3.10	775.00
Revision of asset sheet and prepare source documents;	9	LF3	3.60	900.00
Call with L. Valgardson re Brief; email from L. Valgardson; review Brief; email to L. Valgardson	10	LF3	0.60	150.00
JVN with client	10	LF3	0.50	125.00
Email to TSDC	3	LF3	0.20	50.00
Prepare Brief for filing; filing and service of Brief	10	LF3	0.90	225.00
Call from W. Onchulenko; revise asset sheet; email to Peter Anderson	9	LF3	0.80	200.00
Further revisions of asset sheet; calls from W. Onchulenko	9	LF3	0.80	200.00
Complete research requested by WMO.	10	LOV3	1.00	125.00
Email to LRF.	10	LOV3	0.10	12.50
Email from LRF.	10	LOV3	0.10	12.50
Email to WMO and LRF.	10	LOV3	0.10	12.50
Emails from WMO (x2).	10	LOV3	0.20	25.00
Revise and continue drafting motion brief.		LOV3	1.80	225.00
Compile and organize additional tabs.	10	LOV3	0.10	12.50
Call with LF.		LOV3	0.10	12.50
Call with WMO - revise brief.	10	LOV3	0.40	50.00
Continue to revise, edit, format and proof brief.	10	LOV3	0.50	62.50
Email from LF.	10	LOV3	0.10	12.50
Make final revisions to brief. Edit and proof.	10	LOV3	0.50	62.50

	Correspondence with LF.	10	LOV3	0.10	12.50
Jan-06-22					
	Letter and two boxes from Fillmore Riley				
	Letter to receiver	5	WM03	0.10	42.00
	E-mail from	1	WM03	0.10	42.00
	Telephone attendance with Leiba Feldman	3	WM03	0.10	42.00
		10	WM03	0.20	84.00
	E-mail to	3			
	E-mail to Greg Fenske	3	WM03	0.10	42.00
	Telephone attendance with Bruce Taylor	3	WM03	0.10	42.00
	Letter to Bruce Taylor	1	WM03	0.10	42.00
	Letter from Fillmore Riley	1	WM03	0.10	42.00
		5	WM03	0.10	42.00
	Prepare for and telephone attendance with Peter Anderson	6	WM03	0.50	210.00
	E-mail to Peter Anderson	6	WM03	0.10	42.00
	E-mail from Greg Fenske	10	WM03	0.10	42.00
	Emails from/to W. Onchulenko		LF3	0.10	25.00
	Email from court; email to D. Prymak	1	LF3	0.10	25.00
	Email from W. Onchulenko; call with W. Onchulenko	5	LF3	0.20	50.00
Jan-07-22	Telephone attendances with client (X 5)	10	WM03	1.70	714.00
	E-mail from Adrien Lafrate	3	WM03	0.10	42.00

	E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from	3	WMO3	0.10	42.00
	E-mails to	3	WMO3	0.30	126.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.40	168.00
Jan-08-22	Call with W. Onchulenko; review of emails	3	LF3	0.80	200.00
	E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mail to TSDC	3	WMO3	0.10	42.00
	E-mail to Greg Fenske		WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.50	210.00
	E-mails from (X 2)	3	WMO3	0.30	126.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	Emails from/to G. Fenske	3	LF3	0.20	50.00
	Email from	3	LF3	0.10	25.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	JVN with client	3, 9,, 10	LF3	0.90	225.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Revise document; email to G. Fenske/	9	LF3	0.20	50.00
Jan-09-22	E-mails to TSDC (X 2)	3	WMO3	0.20	84.00

	E-mails from TSDC (X 2)	3	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 5)	3, 7	WMO3	0.50	210.00
	E-mails from (X 2)	3	WMO3	0.20	84.00
	E-mails to (X 3)	3, 7	WMO3	0.30	126.00
	E-mails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	JVN with client;	19	LF3	1.10	275.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from	3	LF3	0.10	25.00
	Emails from Greg; email from W. Onchulenko	3	LF3	0.20	50.00
	Email from emails from/to W. Onchulenko	3	LF3	0.20	50.00
Jan-10-22	Voice mail messages from client (X 2)	3	WMO3	0.10	42.00
	Telephone attendance with client	10	WMO3	0.70	294.00
			WMO3	0.20	84.00
	E-mail to (X 2)	3	WMO3	0.20	84.00
	E-mails to Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mail from	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	Telephone attendance with client	3	WMO3	0.30	126.00
	E-mails to TSDC (x 2)	3	WMO3	0.20	84.00
	E-mails from (X 3)	3	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mail from Adrian Lafrate	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from Debbie Mackie	5	WMO3	0.10	42.00
	Letter to Fillmore Riley	5	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00

	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mails from TSDC (X 2)	3	WMO3	0.20	84.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to Debbie Mackie	5	WMO3	0.10	42.00
	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Letter to Fillmore Riley	9	LF3	0.30	75.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	Email from/to W. Onchulenko; JVN with client; email to	3, 9, 7	LF3	0.70	175.00
Jan-11-22	Review re: JVN time	3	WMO3	0.20	84.00
	E-mail from TSDC	3	WMO3	0.10	42.00
	JVN with client	3	WMO3	0.40	168.00
	E-mail to Adrian Lafrate	3	WMO3	0.20	84.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	Telephone attendance with client (X 2)	3	WMO3	0.60	252.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to TSDC	3	WMO3	0.10	42.00
Jan-12-22	Email from Iafrate	3	LF3	0.10	25.00
	Discussion with W. Onchulenko	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from TSDC; email to W. Onchulenko	3	LF3	0.10	25.00
Jan-13-22	Letter from Greg Fenske	7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	7	WMO3	0.20	84.00

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	E-mail to client		7	WMO3	0.10	42.00
	E-mails from	(X 2)	3	WMO3	0.10	42.00
	E-mail from Greg Fenske		7	WMO3	0.10	42.00
	E-mail from Leiba Feldman		3	WMO3	0.10	42.00
	JVN with client		3	WMO3	0.40	168.00
	E-mail to Adrian Lafrate		3	WMO3	0.20	84.00
	Email from/to W. Onchulenko		3	LF3	0.10	25.00
	JVN with client; email other emails	; notes re	3, 9	LF3	0.70	175.00
Jan-14-22	E-mail from TSDC		3	WMO3	0.10	42.00
	E-mail from Leia Feldman		3	WMO3	0.10	42.00
	E-mail to Leiba Feldman		3	WMO3	0.10	42.00
	E-mail from Leiba Feldman		3	WMO3	0.10	42.00
	E-mails from	(X 2)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2)		3	WMO3	0.20	84.00
	E-mails to Leiba Feldman		3	WMO3	0.20	84.00
	E-mail to		7	WMO3	0.10	42.00
	E-mails from Adrian Lafrate (X 3)		3	WMO3	0.30	126.00
	E-mail from Adrian Lafrate		3	WMO3	0.10	42.00
	Email from		3	LF3	0.10	25.00
	Email to W. Onchulenko; email to RDA		3	LF3	0.20	50.00

	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Email from counsel TSDC	3	LF3	0.10	25.00
	JVN with client	3	LF3	0.60	150.00
	Email from [REDACTED]	3	LF3	0.10	25.00
	Email from counsel	3	LF3	0.10	25.00
Jan-15-22	E-mail to [REDACTED]	7	WM03	0.10	42.00
	E-mails from [REDACTED] (X 4)	7	WM03	0.30	126.00
Jan-16-22					
	E-mail from [REDACTED]	7	WM03	0.10	42.00
	E-mail to Greg Fenske	7	WM03	0.10	42.00
Jan-17-22	E-mail to Greg Fenske	3	WM03	0.10	42.00
	E-mail to TSDC	3	WM03	0.10	42.00
	E-mail from Greg Fenske	3	WM03	0.10	42.00
	Voice mail message from Stuart Blake	5	WM03	0.10	42.00
	Voice mail message to Stuart Blake	5	WM03	0.50	210.00
	E-mail re TSDC	3	WM03	0.10	42.00
	Telephone attendance with Leiba Feldman	3	WM03	0.20	84.00
	Draft response and e-mail to Leiba Feldman	3	WM03	0.20	84.00
	E-mail to TSDC	3	WM03	0.10	42.00
	E-mails from [REDACTED] (X 2)	3	WM03	0.20	84.00
	E-mail from Adrian Lafrate	3	WM03	0.10	42.00
	E-mail from TSDC	3	WM03	0.10	42.00
	Email from Greg Fenske;	3	LF3	0.10	25.00

Jan-18-22

E-mail from Greg Fenske	3	WMO3	0.10	42.00
E-mails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
E-mail from Buce Taylor	1	WMO3	0.10	42.00

Jan-19-22

E-mail to Greg Fenske	3	WMO3	0.10	42.00
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Jan-20-22

E-mails from TSDC	3	WMO3	0.10	42.00
E-mails to TSDC	3	WMO3	0.10	42.00
E-mail to Greg Fenske	3	WMO3	0.10	42.00
E-mails to Leiba Feldman (X 2)	3	WMO3	0.20	84.00

E-mail to	3	WMO3	0.10	42.00
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Telephone attendance with Greg Fenske	3	WMO3	0.20	84.00
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		WMO3	0.20	84.00
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E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
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E-mails from Greg Fenske (X 2)	3	WMO3	0.20	84.00
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E-mails from (X 3)	3	WMO3	0.20	84.00
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E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
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Email from G. Fenske; email to/from W. Onchulenko	3	LF3	0.30	75.00
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Emails from W. Onchulenko	3	LF3	0.20	50.00
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Review emails from G. Fenske	3	LF3	0.10	25.00
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Prepare scheduling form; email to TSDC	3	LF3	0.20	50.00
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Jan-21-22

E-mail from Stephen Shub	9	WMO3	0.10	42.00
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	E-mails to Greg Fenske and (X2)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mails from TSDC (X5)	3	WMO3	0.50	210.00
	E-mails to TSDC (X 4)	3	WMO3	0.40	168.00
	Telephone attendance with Stephen Shub	9	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mails from Greg Fenske and X 4)	7	WMO3	0.40	168.00
	Email from client	3	LF3	0.10	25.00
	Discussion with W. Onchulenko; emails from TSDV; emails from/to W. Onchulenko	3	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.20	50.00
	Emails from TSDC; email to W. Onchulenko	3	LF3	0.20	50.00
	Email from	3	LF3	0.10	25.00
	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	Email to client	3	LF3	0.10	25.00
Jan-22-22	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mails from (X 5)	3	WMO3	0.50	210.00
	Email from	3	LF3	0.10	25.00
	Email re legal counsel	3	LF3	0.30	75.00
	Email to TSDC	3	LF3	0.20	50.00
	Second email from	3	LF3	0.10	25.00
Jan-23-22	E-mail to TSDC	3	WMO3	0.10	42.00
	E-mail to TSDC	3	WMO3	0.10	42.00
	E-mails to (X 2)	3	WMO3	0.20	84.00
	E-mails from (X 2)	3	WMO3	0.20	84.00
	E-mails from TSDC (X 2)	3	WMO3	0.10	42.00

Jan-24-22	E-mails to Leiba Feldman	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 3)	3,7	WMO3	0.30	126.00
	E-mail to TSDC	3	WMO3	0.10	42.00
	Telephone attendances with client (X 4)	3	WMO3	1.30	546.00
	E-mail from Peter Anderson	6	WMO3	0.10	42.00
	E-mails from (X 2)	7	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.20	84.00
	Instructions to Shannon Forest	9	WMO3	0.10	42.00
	E-mail to Greg Fenske	9	WMO3	0.10	42.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.20	84.00
	E-mail from Stephen Shubs	9	WMO3	0.10	42.00
	Letter to City of Vaughan re: 40 Fieldstone Drive	9	WMO3	0.10	42.00
	E-mail from Greg Fenske	9	WMO3	0.10	42.00
	Text from	7	WMO3	0.10	42.00
	Review emails from TSDC; emails from W. Onchulenko	3	LF3	0.20	50.00
	Email from	3	LF3	0.10	25.00
	Call from W. Onchulenko	3	LF3	0.10	25.00
	JVN with client	3, 9	LF3	0.50	125.00
	Email to TSDC	3	LF3	0.20	50.00
	Voice mail messages from client (X 3)	3	WMO3	0.10	42.00
Jan-25-22	Telephone attendance with Leiba Feldman and client	3	WMO3	0.10	42.00

E-mails to Leiba Feldman	3	WMO3	0.10	42.00
		WMO3	0.10	42.00
Telephone attendance with Greg Fenske	9	WMO3	0.20	84.00

E-mails from	(X 2)	3	WMO3	0.20	84.00
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Email from	3	LF3	0.10	25.00
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Email from G. Fenske	3	LF3	0.10	25.00
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JVN with client; email to TSDC; call to W. Onchulenko; email from	3	LF3	0.70	175.00
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Jan-26-22

E-mails from Greg (X 2)	3	WMO3	0.20	84.00
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Email from G. Fenske	3	LF3	0.10	25.00
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Email from G. Fenske	3	LF3	0.10	25.00
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Email from G. Fenske	3	LF3	0.10	25.00
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JVN with client	3, 9	LF3	0.50	125.00
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Email to TSDC	3	LF3	0.30	75.00
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Email from counsel	3	LF3	0.10	25.00
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Jan-27-22

Reporting letter to client	10, 7	WMO3	0.20	84.00
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Email from G. Fenske; email from	3, 9	LF3	0.20	50.00
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from W. Onchulenko

Emails from G. Fenske	3	LF3	0.10	25.00
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Discussion with W. Onchulenko	3, 9	LF3	0.20	50.00
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Discussion with W. Onchulenko	3, 9	LF3	0.20	50.00
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Email from W. Onchulenko; email re documents	9	LF3	0.20	50.00
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Email to TSDC	3	LF3	0.20	50.00
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Review of settlement documents; discussion with W. Onchulenko	7	LF3	0.90	225.00
Email to F. Fenske	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00

Wayne M. Onchulenko	Total Time Spent =	31.70	Hours@	\$400.00	\$12,680.00
Wayne M. Onchulenko	Total Time Spent =	47.80	Hours @	\$420.00	\$20,328.00
Leiba Feldman	Total Time Spent=	62.70	Hours @	\$250.00	\$15,675.00
Liam O. Valgardson	Total Time Spent=	18.80	Hours@	\$125.00	\$2,350.00

<b>Total Fees</b>	<b>\$51,033.00</b>
GSTon Fees	\$2,551.65
RSTon Fees	\$3,572.31

<b>DISBURSEMENTS</b>	<b>Disbursements</b>
Courier charge	9.92
Facsimile	3.00
Photocopying charge	364.75
Purolator courier	22.56
Telephone call	220.00
Invoice 44244	495.00
<b>Total Disbursements</b>	<b>\$1,115.23</b>
GST on Disbursements	\$55.76

<b>TOTAL FEES, DISBU</b>	<b>\$58,327.95</b>
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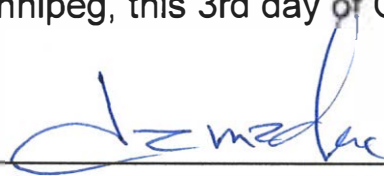
<b>AMOUNT DUE FRO</b>	<b>SACCOUNT</b>
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Total Tax: GST \$2,613.71 RST \$3,581.13

\* tax-exempt

E.&O.E.  
Wayne M. Onchulenko

This is Exhibit "D" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. Z. M. H.", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

LEVENE TADMAN GOLUB LAW CORPORATION  
 700 - 330 St. Mary Avenue  
 Winnipeg, Manitoba R3C 3Z5  
 Phone: 204-957-0520 / Fax: 204-957-1696  
 Website: www.ltgic.ca

GST R840918429

## STATEMENT OF ACCOUNT

**Nygard Enterprises Ltd.**  
 750 John Bruce Road E  
 Winnipeg, Manitoba R3X 1Y2

**Attention: Peter Nygard - Private & Confidential**

February 28, 2022

				File#:	113885
<b>Re: Credit Agreement and Debenture and related financial matters</b>				Invoice #:	215885
DATE	DESCRIPTION		LAWYER	HOURS	AMOUNT
Jan-27-22	Telephone attendance with client (X 5)	3, 7, 9	WMO3	1.50	630.00
	E-mail to	9	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 5)	3	WMO3	0.30	126.00
	E-mails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.20	84.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
Jan-28-22	E-mails from Greg Fenske (X 2)	3	WMO3	0.20	84.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	Email from G. Fenske	3	LF3	0.10	25.00

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	Email from G. Fenske	3	LF3	0.10	25.00
	JVN with client	3, 5 6	LF3	0.50	125.00
	Email to TSDC	3	LF3	0.20	50.00
Jan-30-22	E-mails to Greg Fenske (X 2)	5	WMO3	0.20	84.00
	E-mail to Peter Anderson	6	WMO3	0.10	42.00
Jan-31-22	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	Meeting with Liam Valgardson and Leiba Feldman	9	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	Telephone attendance with Greg Fenske	3, 9	WMO3	0.20	84.00
	Emails from Greg Fenske (2)	3	LF3	0.20	50.00
	Email from G. Fenske	3	LF3	0.30	75.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email from ;	3	LF3	0.10	25.00
	Discussion with W. Onchulenko	7	LF3	0.20	50.00
	JVN with client; call to Fenske	3	LF3	0.50	125.00
	Call to Iafrate 3		LF3	0.20	50.00
	Email from Williamson 3		LF3	0.10	25.00
Feb-01-22	E-mails from (X 2)	9	WMO3	0.20	84.00
	E-mail to	9	WMO3	0.10	42.00
	E-mails to Sargent Jones (X 3) 3		WMO3	0.30	126.00
	E-mails from Sargent Jones (X 5) 3		WMO3	0.50	210.00
	E-mails from Greg Fenske (X 3)	8	WMO3	0.10	42.00
	E-mail to Greg Fenske	8	WMO3	0.10	42.00

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	Telephone attendance with Greg Fenske	8	WMO3	0.10	42.00
	E-mail to Adrian Lafrate	3	WMO3	0.10	42.00
	E-mails to (X 4)	9	WMO3	0.40	168.00
	E-mails from Leiba Feldman (X 2)	3, 9	WMO3	0.20	84.00
	E-mail from Greg Fenske	8	WMO3	0.10	42.00
	E-mail to Greg Fenske	8	WMO3	0.10	42.00
	Email from Williamson	3	LF3	0.10	25.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Emails from W. Onchulenko	3	LF3	0.20	50.00
	Emails from W. Onchulenko; emails from TSDC	3	LF3	0.40	100.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from W. Onchulenko	5	LF3	0.10	25.00
	JVN with client	3, 9	LF3	0.40	100.00
	Email to Pegg; email from Pegg; discussion with W. Onchulenko	3	LF3	0.40	100.00
Feb-02-22	Telephone attendance with client	3	WMO3	0.30	126.00
	E-mails to Leiba Feldman (X 3)	5	WMO3	0.30	126.00
	E-mail from Greg Fenske	8	WMO3	0.10	42.00
	E-mail from Sargent Jones	3	WMO3	0.10	42.00
	E-mails to Brian Whitehead, counsel for Ministry of the Solicitor General (X 2)	3	WMO3	0.20	84.00



	E-mail to RDA	3	WMO3	0.10	42.00
	E-mails from Brian Whitehead (X 2)	3	WMO3	0.20	84.00
	E-mail from RDA	3	WMO3	0.10	42.00
	E-mail to RDA	3	WMO3	0.10	42.00
	Emails to/from Pegg	3	LF3	0.30	75.00
	E-mails from opposing counsel; email from W. Onchulenko	3	LF3	0.40	100.00
	JVN with client	3	LF3	0.50	125.00
	Email to Iafrate	3	LF3	0.20	50.00
Feb-03-22	E-mails to Sargent Jones (X 4)	3	WMO3	0.30	126.00
	E-mails from Sargent Jones (X 3)	3	WMO3	0.30	126.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mail from Bruce Taylor	1	WMO3	0.10	42.00
			WMO3	0.20	84.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to	3	WMO3	0.10	42.00
	E-mail from	3	WMO3	0.10	42.00
	Telephone attendance with Greg Fenske and client	3	WMO3	0.20	84.00

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E-mail to Sargent Jones	3	WMO3	0.10	42.00
E-mail from Brian Whitehead	3	WMO3	0.10	42.00
E-mail from Debbie Mackie	3	WMO3	0.10	42.00
E-mails from Greg Fenske (X 2)	9	WMO3	0.20	84.00
E-mail from RDA	3	WMO3	0.10	42.00
E-mail to RDA	3	WMO3	0.10	42.00
E-mails from Leiba Feldman (X 3)	3	WMO3	0.20	84.00
E-mail from Adrian Lafrate	3	WMO3	0.10	42.00
E-mails to Leiba Feldman (X 2)	3	WMO3	0.10	42.00
E-mail to	3	WMO3	0.10	42.00
E-mail to Debbie Mackie re: IDP	7	WMO3	0.10	42.00
Email from	3	LF3	0.10	25.00
Email from G. Fenske	3	LF3	0.10	25.00
		LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from Anderson; email to W. Onchulenko	6	LF3	0.10	25.00
Email from	3	LF3	0.10	22.50
E-mails from G. Fenske x 4	9	LF3	0.40	100.00
Email from W. Onchulenko; email to G. Fenske	3	LF3	0.10	25.00
Email from Whitehead	3	LF3	0.10	25.00
Email to W. Onchulenko	9	LF3	0.10	25.00
Email from G. Fenske	3	LF3	0.10	25.00
E-mails to/from W. Onchulenko	9	LF3	0.10	25.00

	Email to Williamson	3	LF3	0.20	50.00
	JVN with client	3	LF3	0.50	125.00
	Email to TSDC	3	LF3	0.20	50.00
Feb-04-22	E-mail from RDA	3	WMO3	0.10	42.00
	E-mail to	3	WMO3	0.10	42.00
	E-mail from	3	WMO3	0.10	42.00
	E-mail from	3	WMO3	0.10	42.00
	E-mails to (X 2)	3	WMO3	0.20	84.00
	E-mail from Leiba Feldman re: TDSC	3	WMO3	0.10	42.00
	E-mail from JVN	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 3)	9	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.20	84.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to Iafrate and TSDC	3	LF3	0.20	50.00
	Email from	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to TSDC; Iafrate	3	LF3	0.20	50.00
	Email from Santos	3	LF3	0.10	25.00

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Email to G. Fenske	3	LF3	0.20	50.00
Email from RDA	3	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Note to file	3	LF3	0.10	25.00
Note to file	3	LF3	0.10	25.00
Email to G. Fenske	3	LF3	0.10	25.00
Email from G. Fenske	3	LF3	0.10	25.00
Email to Pegg	3	LF3	0.20	50.00
Email to Crimson	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to Williamson	3	LF3	0.10	25.00
JVN with client	3, 9	LF3	0.40	100.00
Call to Sargent	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Email to G. Fenske	3	LF3	0.10	25.00
Call to Sargent TSDC	3	LF3	0.30	75.00
Call from Sargent TSDC	3	LF3	0.30	75.00
Email to G. Fenske	3	LF3	0.10	25.00

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Feb-05-22	E-mails from Leiba Feldman (X 5)	9	WMO3	0.30	126.00
	E-mail to Greg Fenske	5	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	5	WMO3	0.20	84.00
	E-mail to Greg Fenske	5	WMO3	0.10	42.00
	Email from	9	LF3	0.10	25.00
	Email to	9	LF3	0.10	25.00
	Emails to/from	9	LF3	0.20	50.00
	Emails from 3	9	LF3	0.30	75.00

Feb-06-22

	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 4)	9	WMO3	0.40	168.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email from G. Fenske	9	LF3	0.10	25.00

	Prepare for JVN re documents; JVN with client;	3	LF3	2.90	725.00
Feb-07-22	E-mail to Liam Valgardson	8	WMO3	0.10	42.00
	E-mails to Greg Fenske (X 2)	5	WMO3	0.20	84.00

Invoice#:

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	Meeting with Liam Valgardson	9	WMO3	0.10	42.00
	E-mail from JVN	3	WMO3	0.10	42.00
	E-mail re: EY	5	WMO3	0.10	42.00
	E-mail from Greg Fenske	6	WMO3	0.10	42.00
	Telephone attendance with Greg Fenske re: Fred taxes	6	WMO3	0.30	126.00
	Emails from G. Fenske	3	LF3	0.20	50.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Discussion with W. Onchulenko	3	LF3	0.10	25.00
	JVN with client; email to W. Onchulenko	3, 9 6	LF3	1.10	275.00
	Email from WMO.	7	LOV3	0.10	12.50
	Discuss with WMO and get instructions.	7	LOV3	0.10	12.50
Feb-08-22	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from	6	WMO3	0.10	42.00
	E-mails from Leiba Feldman ( 2)	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mails to Debbie Mackie re: authorization	3	WMO3	0.10	42.00
	E-mail from Debbie Mackie	9	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	9	WMO3	0.20	84.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	Emails from D. Prymak; email from D. Mackie	5, 6	LF3	0.10	25.00
	Review emails from Burbank; email to Burbank	5, 6	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.20	50.00

	Email from G. Fenske	3	LF3	0.10	25.00
	Emails from TSDC	3	LF3	0.10	25.00
	Email from W. Onchulenko	9, 3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	JVN with client	3	LF3	0.90	225.00
	Email to TSDC	3	LF3	0.20	50.00
	Emails to/from W. Onchulenko	3	LF3	0.20	50.00
Feb-09-22	E-mail from Blake Stuart	5	WMO3	0.10	42.00
	E-mail from Fred Tayar	7	WMO3	0.10	42.00
	E-mail to Fred Tayar	7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.10	42.00
	E-mail from Fred Tayar	7	WMO3	0.10	42.00
	E-mail from Greg Fenske	6	WMO3	0.10	42.00
	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	JVN with client	9, 3	LF3	0.90	225.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Email to W. Onchulenko	9	LF3	0.10	25.00
Feb-10-22	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.40	168.00

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	E-mails from Leiba Feldman (X 5)	3	WMO3	0.50	210.00
	E-mail from Melody Pegg	3	WMO3	0.10	42.00
	Email from Fred	7	LF3	0.10	25.00
	Revision of authorization	7	LF3	0.30	75.00
	Email from G. Fenske	7	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from/to Pegg	3	LF3	0.10	25.00
	Email to W. Onchulenko	7	LF3	0.10	25.00
	Letter to Blake	5	LF3	0.20	50.00
	Email from/to Pegg	3	LF3	0.20	50.00
	Email to Iafrate	3	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.20	50.00
	Notes re JVN	3	LF3	0.30	75.00
	JVN with client; call with W. Onchulenko; email to W. Onchulenko;	3 ,9, 7	LF3	2.20	625.00
	Email to Greg	3	LF3	0.10	25.00
Feb-11-22	E-mails from Leiba Feldman (X 6)	3	WMO3	0.60	252.00
	E-mail from	3	WMO3	0.10	42.00
	E-mails from Brian Whitehead (X 2)	3	WMO3	0.20	84.00
	E-mail from Mel Peggy	3	WMO3	0.10	42.00
	Meeting with Liam Valgardson and Leiba Feldman	33	WMO3	0.30	126.00



	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
		3			
	Email from		LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from Pegg	3	LF3	0.10	25.00
	Email from Whitehead	3	LF3	0.10	25.00
	Email to Whitehead	2	LF3	0.10	25.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from Whitehead	3	LF3	0.10	25.00
	Email re courier documents	3	LF3	0.20	50.00
	Email from/to Pegg	3	LF3	0.10	25.00
	Email from W. Onchulenko;	3	LF3	0.10	25.00
	Email from G. Fenske	9	LF3	0.10	25.00
	Discussion with W. Onchulenko	3	LF3	0.20	50.00
	Email from Whitehead	3	LF3	0.10	25.00
	Email from Kobre Kim	9	LF3	0.10	25.00
Feb-12-22	Text from Greg Fenske	3	WMO3	0.10	42.00
	E-mails to Leiba Feldman	3, 9	WMO3	0.30	126.00

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	E-mails from Leiba Feldman (X 2 )	9	WMO3	0.20	84.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
Feb-13-22	E-mails from Greg Fenske (X 2)	9	WMO3	0.20	84.00
	E-mails to Greg Fenske (X 2)	9	WMO3	0.20	84.00
	Emails (4) from G. Fenske	9	LF3	0.40	100.00
	Email from G. Fenske	9	LF3	0.10	25.00
Feb-14-22	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mails from Greg Fenske (X 2)	9	WMO3	0.20	84.00
	E-mail from Fred Tayar	6	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	Calls from client; emails from Fred Tayar; 6, 3, 9		LF3	2.60	650.00
	Form and request re JVN	3	LF3	0.30	75.00
	Emails from/to TSDC	3	LF3	0.20	50.00
	Prepare scan; email to Fred Tayar	9, 6	LF3	0.20	50.00
Feb-15-22	Telephone attendance with Leiba Feldman re: witness	9	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mails to Leiba Feldman (X 3)	9	WMO3	0.20	84.00

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	E-mail from JVN	3	WMO3	0.10	42.00
	Discussion with WMO	3	LF3	0.20	50.00
	Discuss with Greg, email from Greg	3	LF3	0.20	50.00
	Email to Greg	9	LF3	0.10	25.00
	Email to WMO	9	LF3	0.10	25.00
	Email from Greg, email to WMO	9	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Email to WMO	9	LF3	0.10	25.00
	Email from/to CL	9	LF3	0.10	25.00
	Email from LV, email to LV, email to TSDC	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	JVN with client, notes re tasks	3,9	LF3	1.20	300.00
Feb-16-22	E-mails from Leiba Feldman (X 3)	3, 9	WMO3	0.30	126.00
	E-mails JVN	3	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	3, 9	WMO3	0.20	84.00
	E-mail from Fred Tayar	9	WMO3	0.10	42.00
	Email to Williamson	3	LF3	0.20	50.00
	Preparation of IDP re Tayar	7	LF3	0.30	75.00
	Email from/to Williamson	3	LF3	0.10	25.00
	Call from Greg	9	LF3	0.10	25.00
	Email to Greg	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00

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Feb-17-22	Email from Greg	3	LF3	0.10	25.00
	Telephone attendance with Fred Tayar	9	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 8)	3, 9	WMO3	0.80	336.00
	E-mail from William Travis	3	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 3)	3	WMO3	0.30	126.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	E-mail from Jason Masimore	9	WMO3	0.10	42.00
Feb-18-22	E-mails from Fred Tayar (X 5)	9	WMO3	0.10	42.00
	E-mails to Fred Tayar (X 5)	9	WMO3	0.10	42.00
	Email from Greg	3	LF3	0.10	25.00
	Email to Greg	3	LF3	0.20	50.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to Greg/	9	LF3	0.20	50.00
	Email from CL	9	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from Masimore, email from Fred	9	LF3	0.20	50.00
	Email from WMO	9	LF3	0.10	25.00
	Email to WMO	3	LF3	0.10	25.00
	JVN with client, discussion with WMO, emails to Greg	9, 3	LF3	1.50	375.00

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	E-mail from Fred Tayar	6	WMO3	0.10	42.00
	E-mail from Greg Fenske	6	WMO3	0.10	42.00
	E-mails from Fred Tayar	6	WMO3	0.20	84.00
	E-mail from Greg Fenske	6	WMO3	0.10	42.00
	E-mail from Leiba Feldman	6	WMO3	0.10	42.00
	E-mail to Leiba Feldman	6	WMO3	0.10	42.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from Greg	3	LF3	0.10	25.00
	Email to Greg	3	LF3	0.10	25.00
	Email from Fred	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Signing of order, instructions to send	7	LF3	0.20	50.00
	Email from Fred	7	LF3	0.10	25.00
Feb-19-22	E-mail from Greg Fenske	6	WMO3	0.10	42.00
	E-mail to Greg Fenske	6	WMO3	0.20	84.00
	Telephone attendance with Greg Fenske	6	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.20	84.00
	Email to Greg	3	LF3	0.10	25.00
	Email to Greg	3	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.30	75.00
Feb-20-22	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	Email from Greg	9	LF3	0.10	25.00
	Email to WMO	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00

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	JVN with client, emails to TSDC	3	LF3	2.30	575.00
Feb-21-22	E-mails from Leiba Feldman (X 5)	6, 9	WMO3	0.30	126.00
	E-mail to Leiba Feldman	6	WMO3	0.10	42.00
	Email from Greg	6	LF3	0.10	25.00
	Emails from/to TSDC	3	LF3	0.30	75.00
	Voice mail from Greg	6	LF3	0.10	25.00
	Emails from Greg	6	LF3	0.20	50.00
	Emails from TSDC	3	LF3	0.20	50.00
	Revision of order, email to TSDC	3	LF3	0.30	75.00
	Emails from	3	LF3	0.20	50.00
	Email from Fred	6	LF3	0.10	25.00
	Email from Greg	6	LF3	0.10	25.00
	Email from Greg	6	LF3	0.10	25.00
Feb-22-22	Emails from Greg, email from JVN with client, email to Fred, emails to Anderson, email from/to WMO	3, 5, 6, 9	LF3	2.90	725.00
	E-mail from Fred Tayar	6	WMO3	0.10	42.00
	Email from G. Fenske	5, 6	LF3	0.10	25.00
	Emails from G. Fenske and Tayar	5, 6	LF3	0.40	100.00
	Email from Tayar	5, 6	LF3	0.10	25.00
	Further emails from Tayar	5, 6	LF3	0.20	50.00
	Texts from G. Fenske	5, 6	LF3	0.20	50.00
Feb-23-22	Review emails from MT and email from Tayar	5, 6	LF3	0.20	50.00
Feb-24-22	E-mails to Leiba Feldman	9	WMO3	0.20	84.00

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E-mails from Leiba Feldman (X 4)	3	WMO3	0.20	84.00
E-mail to Greg Fenske	9	WMO3	0.10	42.00
E-mail from Greg Fenske	6	WMO3	0.10	42.00
E-mail from CHRM	9	WMO3	0.10	42.00
E-mail from	3	WMO3	0.10	42.00
Emails from G. Fenske (3)	3	LF3	0.30	75.00
Email to G. Fenske	3	LF3	0.10	25.00
Voicemail from G. Fenske	3	LF3	0.10	25.00
Emails from/to TSDC	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Email from	3	LF3	0.10	25.00
Email to G. Fenske	3	LF3	0.10	25.00
JVN with client; email to G. Fenske;	3, 9, 6	LF3	1.50	375.00
Feb-25-22				
E-mail from Leiba Feldman	3	WMO3	0.10	42.00
E-mails from Greg Fenske (X 2)	9	WMO3	0.20	84.00
E-mail to Greg Fenske	9	WMO3	0.10	42.00
Feb-26-22 E-mail from Greg Fenske	6	WMO3	0.10	42.00
Feb-28-22 Reporting letter to client	9	WMO3	0.20	84.00
Wayne M. Onchulenko	Total Time Spent=	27.70	Hours @ \$420.00	\$11,634.00
Leiba Feldman	Total Time Spent =	50.90	Hours @ \$250.00	\$12,725.00
Liam O. Valgardson	Total Time Spent =	0.20	Hours@ \$125.00	\$25.00
<b>Total Fees</b>			<b>78.80</b>	<b>\$24,384.00</b>
GST on Fees				\$1,219.20
RST on Fees				\$1,706.88

**DISBURSEMENTS****Disbursements**

Photocopying charge	77.25
Telephone call	14.00
<b>Total Disbursements</b>	<b>\$91.25</b>
GST on Disbursements	\$4.56

**&RST****\$27,405.89****AMOUNT DUE FROM****BALANCE DUE AND O'****\$27,405.89**

Total Tax:

\* tax-exempt

E.&amp;O.E.

Wayne M. Onchulenko

*Accounts which are outstanding/or more than one month after the date of delivery of same to the client shall bear interest at the rate established under section /6/ of The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*



This is Exhibit "E" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "Denzel", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

LEVENE TADMAN GOLUB LAW CORPORATION  
 700 - 330 St. Mary Avenue  
 Winnipeg, Manitoba R3C 3Z5  
 Phone: 204-957-0520 / Fax: 204-957-1696  
 Website: www.ltgic.ca

GST R840918429

## STATEMENT OF ACCOUNT

Nygard Enterprises Ltd.  
 750 John Bruce Road E  
 Winnipeg, Manitoba R3X 1Y2

**Attention: Peter Nygard - Private & Confidential**

March 30, 2022

**Re: Credit Agreement and Debenture and related financial matters**

File#: 113885  
 Invoice #: 216784

DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT
Feb-25-22	JVN with client, email to Tayar, email to TSDC, note re tomorrow JVN	3, 9, 7	1.30	325.00
	Email from Williamson	3	0.10	25.00
Feb-26-22	JVN with client, email to G. Fenske	3, 9, 7	2.20	550.00
	Email from Williamson	3	0.10	25.00
Feb-28-22	Letter to Greg Fenske	9	0.10	42.00
	E-mails from Leiba Feldman (X 4)	3	0.40	168.00
	E-mail to Leiba Feldman	3	0.10	42.00
	Email to G. Fenske	3	0.10	25.00
	Email from G. Fenske	3	0.10	25.00
	Email re bookings	3	0.20	50.00
	Email to counsel	3	0.20	50.00

Email to G. Fenske	3	LF3	0.10	25.00
Email from G. Fenske; review emails from Campbell	10	LF3	0.20	50.00
Email from G. Fenske	3	LF3	0.10	25.00

Email to TSDC	3	LF3	0.10	25.00
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Mar-01-22

E-mails from Leiba Feldman (X 5)	3	WMO3	0.50	210.00
E-mail to Leiba Feldman	6	WMO3	0.10	42.00
Email from G. Fenske	3	LF3	0.10	25.00

Email to W. Onchulenko	3	LF3	0.10	25.00
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Email from G. Fenske	6	LF3	0.10	25.00
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Email to TSDC/Iafrate	3	LF3	0.20	50.00
Call from G. Fenske; email from G. Fenske; email to ; email to W. Onchulenko	6	LF3	0.40	100.00
Email from Fred; email to W. Onchulenko	6	LF3	0.10	25.00

Mar-02-22

E-mail from Leiba Feldman	3	WMO3	0.10	42.00
Telephone attendance with Greg Fenske	6	WMO3	0.20	84.00
E-mails from Greg Fenske (X 3)	6	WMO3	0.20	84.00

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	E-mail to Peter Anderson	6	WMO3	0.10	42.00
	Email from Greg	6	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email to G. Fenske	3	LF3	0.20	50.00
	Prepare scheduling form; email to G. Fenske	3	LF3	0.30	75.00
Mar-03-22	E-mails from Leiba Feldman (X 4)	3	WMO3	0.30	126.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	Emails from G. Fenske	3	LF3	0.20	50.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email form to TSDC	3	LF3	0.30	75.00
	Letter to Trotter and associates	6	LF3	0.30	75.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Email to TSDC and attachments	3	LF3	0.80	200.00
Mar-04-22	Email from G. Fenske	3	LF3	0.10	25.00
	Voicemail from G. Fenske	3	LF3	0.10	25.00

Invoice#:

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	Revise email; email to lawyers; revise form	3	LF3	0.50	125.00
	Read recent MBQB decision on Privacy Act.	7	LOV3	0.80	100.00
Mar-05-22	E-mail from Jason Masimore	6	WMO3	0.10	42.00
	E-mails from (X 2)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 6)	3	WMO3	0.60	252.00
	E-mail to	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	Email from TSDC	3	LF3	0.10	25.00
	Email from client	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Emails to TSDC	3	LF3	0.20	50.00
	Email from W. Onchulenko	9 3	LF3	0.10	25.00
	Emails from TSDC x 2	3	LF3	0.20	50.00
	Email from TSDV; email to TSDC	3	LF3	0.10	25.00
	Email from W. Onchulenko		LF3	0.10	25.00
	Notes re JVN's booked	3	LF3	0.30	75.00
	JVN with client; emails from W. Onchulenko; notes re JVN for tomorrow; revise documents to send to TSDC to print	3, 9	LF3	2.00	500.00
Mar-06-22	E-mails to Leiba Feldman (X 4)	9, 3	WMO3	0.40	168.00
	E-mail to	9	WMO3	0.10	42.00
	E-mails to Greg Fenske (X 3)	9	WMO3	0.30	126.00

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E-mails from (X 2)	7	WMO3	0.10	42.00
Emails from TSDC (x 4); email to TSDC	3	LF3	0.40	100.00
Email to TSDC	3	LF3	0.20	50.00
Email from W. Onchulenko	9	LF3	0.10	25.00
Review stricken documents prepare documents for JVN	9	LF3	0.50	125.00
Email from G. Fenske; review attachment; email to W. Onchulenko	7	LF3	0.30	75.00
Email from TSDC	3	LF3	0.10	25.00
Email from	3	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email from	9	LF3	0.10	25.00
Email to TSDC	3	LF3	0.30	75.00
Email from/to W. Onchulenko	9	LF3	0.10	25.00
Prepare documents for JVN with client and JVN with client; revise letter to Rubinfeld	3, 7, 9, 4	LF3	3.20	800.00
Mar-07-22 E-mail from	9	WMO3	0.10	42.00
E-mails from Fred Tayar (X 4)	9	WMO3	0.40	168.00
E-mails from Leiba Feldman (X 5)	3	WMO3	0.50	210.00
E-mail from Jason Burbank	9	WMO3	0.10	42.00
E-mail to Fred Tayar	9	WMO3	0.10	42.00

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E-mail to Jason Burbank	9	WMO3	0.10	42.00
Email to Greg/	9	LF3	0.10	25.00
Email to TSDC	3	LF3	0.30	75.00
Email from Greg	3	LF3	0.10	25.00
Revise letter to Rubinfeld	3	LF3	0.80	200.00
Review postage; review Twitter search; revise letter to Calitri-Bellus	3	LF3	0.60	150.00
Email to Greg	3	LF3	0.10	25.00
Prepare for call re documents and letters; call from Greg; revise letter to Rubinfeld and Calitri-Bellus	3	LF3	0.90	225.00
Call to Williamson	3	LF3	0.20	50.00
Email to Williamson	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00

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Email from Burbank; review documents	5	LF3	0.30	75.00
Call from Williamson	3	LF3	0.30	75.00
Email from Williamson	3	LF3	0.10	25.00
Prepare for JVN with client and JVN with client;	3,5,9	LF3	1.10	275.00
Email from W. Onchulenko	5	LF3	0.10	25.00
Calls to Williamson (x3)	3	LF3	0.40	100.00
Finish reading decision regarding Privacy Act. Complete summary.	7	LOV3	0.20	25.00
Mar-08-22				
E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
E-mail from Greg Fenske	9	WMO3	0.10	42.00
E-mail from Greg Fenske	9	WMO3	0.10	42.00
Email to Iafrate and TSDC Email	3	LF3	0.20	50.00
from	3	LF3	0.10	25.00
Email from	6	LF3	0.10	25.00
Call to Travis, email from Travis	3	LF3	0.40	100.00



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	Email from W. Onchulenko; revise letter to Rubinfeld; email to W. Onchulenko	5	LF3	0.20	50.00
	Email from Iafrate	3	LF3	0.10	25.00
	Email to W. Onchulenko	7	LF3	0.10	25.00
	Prepare for JVN with client; email to	3, 5, 7	LF3	1.40	350.00
	Revise letter; email to	3	LF3	0.80	200.00
Mar-09-22	Telephone attendance with Leiba Feldman	9	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mail from Peter Anderson	6	WMO3	0.10	42.00
	E-mail to Leiba Feldman E	3	WMO3	0.10	42.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Call and text to Greg Email	3	LF3	0.20	50.00
	to TSDC	3	LF3	0.20	50.00
	Prepare for attendance at JVN and attendance at JVN with client; discussion with W. Onchulenko	6, 3, 9	LF3	1.40	350.00
Mar-10-22	Voice mail message from Peter Anderson	6	WMO3	0.10	42.00
	Review Judgment	7	WMO3	0.30	126.00
	E-mail to client	7	WMO3	0.10	42.00
	E-mails from Fred Tayar (X 2)	7	WMO3	0.20	84.00

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Mar-11-22	E-mails from (X 2)	7	WMO3	0.20	84.00
	E-mail from Leiba Feldman	7	WMO3	0.10	42.00
	Revision decision; notes for client for JVN	7	LF3	1.90	475.00
	Email from WMO; review act and rules re Court of Appeal; discussion with L. Valgardson	7	LF3	0.50	125.00
	Emails from	7	LF3	0.20	50.00
	Email from Fred 2	7	LF3	0.10	25.00
	Email from	7	LF3	0.10	25.00
	Email from	7	LF3	0.10	25.00
	Review case law re TSDC action; prepare correspondence to TSDC re interference to access	3	LF3	1.80	450.00
	Prepare for JVN with client; JVN with client; revise letter to Rubinfeld; revise letter to TSDC; emails to Greg	3, 7	LF3	2.10	525.00
	Read decision of Edmond J.	7	LOV3	1.00	125.00
	Instructions from LF.	7	LOV3	0.10	12.50
	Review Court of Appeal Rules. Summarize timelines and send to WMO.	7	LOV3	0.40	50.00
Mar-11-22	E-mails from Leiba Feldman (X 5)	3	WMO3	0.50	210.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman Email	3	WMO3	0.10	42.00
	from G. Fenske	3	LF3	0.10	25.00
	Review report	7	LF3	0.20	50.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Emails from G. Fenske (2)	3	LF3	0.20	50.00

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	Emails to W. Onchulenko	3	LF3	0.20	50.00
	Prepare form re TSDC	3	LF3	0.20	50.00
	Prepare document and email to Rubinfeld; email to Rubinfeld	4	LF3	0.50	125.00
	Email to G. Fenske	3	LF3	0.10	25.00
	Email from W. Onchulenko	7	LF3	0.10	25.00
	Discussion with W. Onchulenko	7	LF3	0.20	50.00
	Revise email to TSDC	3	LF3	0.40	100.00
	Emails to/from G. Fenske (3)	3	LF3	0.30	75.00
	Call from G. Fenske	7	LF3	0.10	25.00
	TSDC form and email	3	LF3	0.30	75.00
	Email from L. Valgardson	7	LF3	0.10	25.00
	Emails from TSDC re JVN's	3	LF3	0.40	100.00
	Email to TSDC	3	LF3	0.10	25.00
	Prepare for JVN with client and JVN with client	7, 9, 3	LF3	1.20	300.00
Mar-12-22	Telephone attendance with client	7	WMO3	0.70	294.00
	Voice mail messages from client (X 2)	7	WMO3	0.10	42.00

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E-mails to Peter Anderson	6	WMO3	0.30	126.00
E-mail from Peter Anderson	6	WMO3	0.10	42.00
Telephone attendance with Peter Anderson	6	WMO3	0.30	126.00
E-mails to Greg Fenske (X 2)	6	WMO3	0.20	84.00
E-mails from Greg Fenske (X 4)	6, 7	WMO3	0.40	168.00
E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
Review decision and e-mail to Leiba Feldman	7	WMO3	3.00	1,260.00
E-mails from Leiba Feldman (X 3)	7	WMO3	0.30	126.00
E-mails to Leiba Feldman (X 3)	7	WMO3	0.30	126.00
Email to TSDC	3	LF3	0.20	50.00
Text from	7	LF3	0.20	50.00
Text from G. Fenske	7	LF3	0.20	50.00
Email from G. Fenske	3	LF3	0.10	25.00
Email to G. Fenske summarizing re JVN's	3	LF3	0.30	75.00
Email from G. Fenske	3	LF3	0.10	25.00
Email from W. Onchulenko	6	LF3	0.10	25.00
Voicemail from G. Fenske	7	LF3	0.10	25.00
Call from G. Fenske	3	LF3	0.20	50.00
Text to W. Onchulenko	7	LF3	0.10	25.00
Email from Dom	9	LF3	0.10	25.00
Text from W. Onchulenko	7	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email from W. Onchulenko	7	LF3	0.20	50.00
Prepare for JVN with client and JVN with client; emails from W. Onchulenko; emails to/from TSDC;	9, 3	LF3	2.90	725.00
Mar-13-22 Search re: engagement letter	9	WMO3	0.80	336.00
E-mails to Fred Tayar	9	WMO3	0.20	84.00

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	E-mails to Fred Tayar	9	WMO3	0.10	42.00
	Prepare for JVN with client and JVN with client; revise email to TSDC; emails to G. Fenske	9, 3	LF3	3.30	825.00
Mar-14-22	E-mail from Fred Tayar	7	WMO3	0.10	42.00
	E-mail to Fred Tayar	7	WMO3	0.10	42.00
	E-mail to Debbie Mackie	7	WMO3	0.10	42.00
	E-mails to and Leiba Feldman	7	WMO3	0.50	210.00
	Telephone attendance with Fred Tayar	7	WMO3	0.70	294.00
	E-mails to Leiba Feldman	7	WMO3	0.20	84.00
	E-mail from Leiba Feldman	7	WMO3	0.10	42.00
	E-mail to Leiba Feldman	7	WMO3	0.10	42.00
	Appearance in court; email to OC	7	LF3	0.50	125.00
	Text from G. Fenske	7	LF3	0.10	25.00
	Email from Greg, revise email to TSDC	3	LF3	0.90	225.00
	Emails from	6	LF3	0.20	50.00
	Emails to/from W. Onchulenko	3	LF3	0.20	50.00
	Revise letter to TSDC, prepare for JVN with client, prepare docs for JVN with client	3, 7	LF3	1.90	475.00

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Mar-15-22	JVN with client, email to counsels	3,7,6	LF3	1.10	275.00
	Telephone attendance with Leiba Feldman	7	WMO3	0.20	84.00
	E-mail from Leiba Feldman	7	WMO3	0.10	42.00
	Review Brief; discussion with L. Valgardson	7	LF3	0.30	75.00
	Email from	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.30	75.00
	Discussion with W. Onchulenko	7	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client; email to TSDC; email to W. Onchulenko	7,3	LF3	1.30	325.00
Mar-16-22	E-mails from Leiba Feldman (X 2)	9	WMO3	0.20	84.00
	E-mail from Bruce Taylor	1	WMO3	0.10	42.00
	Letter to Jason Masimore	6	WMO3	0.10	42.00
	E-mail to Greg Fenske	9	WMO3	0.10	42.00
	E-mail from Leiba Feldman	9	WMO3	0.10	42.00
	Email from Whitehead	3	LF3	0.10	25.00

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Email to W. Onchulenko	6	LF3	0.10	25.00
Prepare form re RDA	3	LF3	0.20	50.00
Email to counsel re access and further bookings	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Email from Iafrate	3	LF3	0.10	25.00
Text to Whitehead	3	LF3	0.20	50.00
Email from Whitehead	3	LF3	0.10	25.00
Review pleadings; call with W. Onchulenko	7	LF3	0.60	150.00
Prepare for JVN with client and JVN with client; email to W. Onchulenko	3, 7, 6	LF3	1.30	325.00

Mar-17-22

Mar-18-22

Emails from TSDC	3	LF3	0.50	125.00
Email to G. Fenske	3	LF3	0.10	25.00
Text from G. Fenske	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Login; email to TSC	3	LF3	0.50	125.00
Email to TSDC	3	LF3	0.20	50.00
Email from G. Fenske	3	LF3	0.10	25.00

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Text to Whitehead	3	LF3	0.20	50.00
Call from G. Fenske	3	LF3	0.20	50.00
Email from counsel	3	LF3	0.10	25.00
Call from G. Fenske	3	LF3	0.20	50.00
Email from G. Fenske	3	LF3	0.10	25.00
Text messages to/from G. Fenske	3	LF3	0.20	50.00
Review correspondence; prepare email to counsel and TSDC	3	LF3	0.90	225.00
Email to G. Fenske/		LF3	0.10	25.00
Email from G. Fenske	3	LF3	0.10	25.00
Drafting email to TSDC	3	LF3	0.40	100.00
Call from G. Fenske	3	LF3	0.10	25.00
Email from G. Fenske; email to TSDC	3	LF3	0.30	75.00
Email to TSDC	3	LF3	0.10	25.00
	3, 2	LF3	0.20	50.00
Email from TSDC; note re 50 minutes		LF3	0.10	25.00
Email from TSDC	3			
Mar-19-22				
Email to G. Fenske	3	LF3	0.10	25.00
Emails from TSDC x 2	2	LF3	0.20	50.00



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Mar-21-22	Email from TSDC	3	LF3	0.10	25.00
	Email from x 2	3	LF3	0.20	50.00
	Emails to TSDC	3	LF3	0.10	25.00
	Prepare for JVN with client and JVN with client; revise email to Whitehead	3, 7	LF3	1.90	475.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mails from Peter Anderson	6	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	3	WMO3	0.20	84.00
	E-mail from Leiba Feldman	9	WMO3	0.10	42.00
	E-mail to Leiba Feldman	9	WMO3	0.10	42.00
	E-mail from Leiba Feldman	9	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 2)	9	WMO3	0.20	84.00
	E-mail to Bruce Taylor	1	WMO3	0.10	42.00
	E-mail from Leiba Feldman	9	WMO3	0.10	42.00
	Email to G. Fenske	3	LF3	0.10	25.00
	Email to Whitehead; emails to G. Fenske/	3 1	LF3	0.60	150.00
	TSDC request form	3	LF3	0.20	50.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Emails from G. Fenske x 2	3	LF3	0.20	50.00
	Revise email to Whitehead	3	LF3	0.30	75.00
	Text to Whitehead and Iafrate	3	LF3	0.30	75.00

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	Text to and G. Fenske	3	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.10	25.00
	Email from/to W. Onchulenko	3	LF3	0.10	25.00
	Calls to TSDC; text to TSDC; call to Greenspan	3	LF3	0.30	75.00
	JVN with client; email to Whitehead; text to recipients	7, 3	LF3	1.90	475.00
Mar-22-22	Telephone attendance with Leiba Feldman	7	WMO3	0.20	84.00
	E-mail from and to Bruce Taylor, telephone attendance with Fred Tayar and Colby Linthwaite, e-mails from Fred Tayar and Colby Linthwaite, e-mails to Fred Tayar, draft appeal, file appeal, telephone attendance with Greg Fenske, and e-mail to Greg Fenske	7	WMO3	3.00	1,260.00
	E-mails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	E-mails to Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Email from Anderson; email from W Onchulenko	6	LF3	0.20	50.00
	Email to/from W. Onchulenko	7	LF3	0.10	25.00
	Email from Whitehead	3	LF3	0.10	25.00
	Call from G. Fenske; email to G. Fenske	7	LF3	0.20	50.00
	Emails from G. Fenske x 2	3, 7	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.20	50.00
	Email from TSDC	3	LF3	0.10	25.00

	Discussion with W. Onchulenko	7	LF3	0.20	50.00
	Email to/from L. Valgardson	7	LF3	0.10	25.00
	Call from G. Fenske	7	LF3	0.20	50.00
	E-mails to L. Valgardson	7	LF3	0.20	50.00
	JVN with client	7	LF3	0.50	125.00
	Instructions from WMO. Draft notice of appeal. Coordinate with WMO and LF. File notice of appeal at QB.	7	LOV3	2.30	287.50
	Scan filed notice of appeal and send to WMO.	7	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Emails from WMO (x4).	7	LOV3	0.40	50.00
	Begin reading caselaw received from WMO.	7	LOV3	0.40	50.00
Mar-23-22	Meeting with Liam Valgardson (X 2)	7	WMO3	0.20	84.00
	E-mails from Liam Valgardson (X 5)	7	WMO3	0.50	210.00
	Telephone attendance with Fred Tayar (X 2)	7	WMO3	0.30	126.00
	Telephone attendance with client (X 2)	7	WMO3	0.70	294.00
	E-mails from Greg Fenske (X 3)	7	WMO3	0.30	126.00
	Telephone attendance with Tana Christianson of LSM	7	WMO3	0.10	42.00
	Telephone attendance with Leiba Feldman	7	WMO3	0.20	84.00

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Review draft of Notice of Motion, Affidavit and Brief re: extension of time	7	WMO3	0.50	210.00
E-mails from Fred Tayar (X 4)	7	WMO3	0.40	168.00
E-mails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
E-mails from Leiba Feldman (X 2)	7	WMO3	0.20	84.00
E-mails from Bruce Taylor (X 3)	7	WMO3	0.30	126.00
Telephone attendance with Bruce Taylor	1	WMO3	0.20	84.00
E-mails to Bruce Taylor (X 3)	1	WMO3	0.30	126.00
Telephone attendance with Court of Appeal	1	WMO3	0.20	84.00
Review Notice of Motion, Affidavit 2nd	7	WMO3	0.20	84.00
E-mails to Fred Tayar (X 2)	7	WMO3	0.20	84.00
			0.20	84.00
E-mails from (X 2)	7	WMO3	0.20	84.00
E-mails to Liam Valgardson (X 4)	7	WMO3	0.40	168.00
E-mails to Leiba Feldman (X 2)	7	WMO3	0.20	84.00
E-mail to	7	WMO3	0.10	42.00
E-mail to Greg Fenske	7	WMO3	0.10	42.00
Discussion with L. Valgardson	7	LF3	0.20	50.00
Discussion with W. Onchulenko	7	LF3	0.20	50.00
Email from	7	LF3	0.10	25.00
Email from	7	LF3	0.10	25.00
Email from	7	LF3	0.10	25.00
Email from W. Onchulenko; email from Fred	7	LF3	0.10	25.00
Review Motion and Affidavit; discussion with L. Valgardson	7	LF3	0.10	25.00
Emails to/from Colby	7	LF3	0.20	50.00

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Emails from/to L. Valgardson	7	LF3	0.10	25.00
Review documents from Campbell	6	LF3	0.30	75.00
Email to W. Onchulenko	7	LF3	0.00	0.00
Prepare for RDA form	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email to counsel re lack of access	3	LF3	0.30	75.00
Letter from opposing counsel	3	LF3	0.10	25.00
Prepare for JVN with client; JVN with client	7	LF3	1.10	275.00
Email to W. Onchulenko; email from W. Onchulenko	7	LF3	0.10	25.00
Text to recipients	7	LF3	0.20	50.00
Email to Greg	7	LF3	0.10	25.00
Instructions from WMO.	7	LOV3	0.10	12.50
Draft notice of motion and affidavit/ Briefly discuss with LF.	7	LOV3	1.50	187.50
Emails to WMO (x2).	7	LOV3	0.20	25.00
Emails from WMO (x2).	7	LOV3	0.20	25.00
Begin research for Motion Brief.	7	LOV3	0.60	75.00
Emails from LF (x2).	7	LOV3	0.20	25.00
Email from C. Linthwaite.	7	LOV3	0.10	12.50
Begin drafting Motion Brief.	7	LOV3	0.70	87.50
Email to LF.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Continue drafting Motion Brief. Meet with WMO. Make revisions to affidavit and Notice of Motion.	7	LOV3	1.80	225.00
Email to WMO.	7	LOV3	0.10	12.50

	Research case law for Motion Brief. Continue drafting Motion Brief. Make revisions to Motion Brief. Edit and proof draft. Email to WMO.	7	LOV3	2.60	325.00
			LOV3	0.10	12.50
Mar-24-22	Telephone attendance with Greg Fenske	7	WMO3	0.10	42.00
	Telephone attendance with Leiba Feldman and Liam Valgardson	7	WMO3	0.20	84.00
	Prepare for and telephone attendance with Ross McFadyen, Bruce Taylor and Melanie LaBossiere	7	WMO3	0.40	168.00
	E-mails from (X 3)	7	WMO3	0.30	126.00
	E-mails from Greg Fenske (X 2)	7	WMO3	0.20	84.00
	E-mails from Fred Tayar (X 4)	7	WMO3	0.30	126.00
	E-mails from Liam Valgardson (X 10)	7	WMO3	1.00	420.00
	E-mails from Colby Linthwaite	7	WMO3	0.40	168.00
	E-mails from Melanie LaBossiere	1	WMO3	0.20	84.00
	E-mails to Fred Tayar (X 2)	7	WMO3	0.20	84.00
	E-mails to Liam Valgardson (X 5)	7	WMO3	0.50	210.00
	E-mails to Leiba Feldman (X 4)	7	WMO3	0.40	168.00
	E-mails to Melanie LaBossiere	1	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2)	7	WMO3	0.20	84.00
	Emails from TSDC	3	LF3	0.50	125.00
	Email from Colby; email from Liam	7	LF3	0.10	25.00
	Email from G. Fenske	7	LF3	0.10	25.00
	Email from W. Onchulenko	7	LF3	0.10	25.00
	Call with Receiver's counsel	1	LF3	0.30	75.00
	Call from W. Onchulenko	7	LF3	0.20	50.00
	Call from W. Onchulenko	7	LF3	0.20	50.00
	Call to G. Fenske	7	LF3	0.20	50.00

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Email to TSDC	3	LF3	0.10	25.00
Call from G. Fenske	7	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email from	3	LF3	0.10	25.00
Emails to TSDC	3	LF3	0.30	75.00
Email to G. Fenske/	3	LF3	0.20	50.00
Emails from W. Onchulenko; emails from Fred	7	LF3	0.10	25.00
Call to G. Fenske	7	LF3	0.10	25.00
Email to /G. Fenske		LF3	0.20	50.00
		LF3	0.20	50.00
Emails from/to TSDC	3	LF3	0.10	25.00
Discuss with L. Valgardson; emails from Colby; email from Fred; call with W. Onchulenko; revisions to Brief	7	LF3	1.10	275.00
Emails from/to L. Valgardson; email from Colby; discussions with L. Valgardson; revisions to Brief; research re case law	7	LF3	2.10	525.00
Email from WMO.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Email from M. LaBossiere.	1	LOV3	0.10	12.50
Emails from WMO (x2).	7	LOV3	0.20	25.00
Email from C. Linthwaite.	7	LOV3	0.10	12.50
Email to C. Linthwaite.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Continue research and drafting of motion brief. Make revisions suggested by WMO and C. Linthwaite.	7	LOV3	1.30	162.50
Meet with Receiver's counsel.	1	LOV3	0.30	37.50
Call with WMO and LF.	7	LOV3	0.20	25.00

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	Email to C. Linthwaite.	7	LOV3	0.10	12.50
		7			
	Email from WMO.		LOV3	0.10	12.50
		7			
	Email to C. Linthwaite.		LOV3	0.10	12.50
		7			
	Email from F. Tayar.		LOV3	0.10	12.50
		7			
	Continue preparing motion brief. Make revisions to notice of motion and affidavit.		LOV3	1.40	175.00
	Email to WMO.	7			
			LOV3	0.10	12.50
	Emails from C. Linthwaite.	7			
			LOV3	0.20	25.00
	Email to WMO and LF.	7			
			LOV3	0.10	12.50
	Email from LF.	7			
			LOV3	0.10	12.50
	Email to LF.	7			
			LOV3	0.10	12.50
	Continue preparing motion brief. Make revisions based on comments from WMO and C. Linthwaite. Call with LF. Read and research caselaw. Discuss questions for WMO. Make additions to motion brief.	7			
	Email to WMO.		LOV3	3.40	425.00
Mar-25-22	E-mails to Leiba Feldman (X 6)	7	WMO3	0.60	252.00
	E-mails to Liam Valgardson (X 4)	7			
			WMO3	0.40	168.00
	E-mail to Greg Fenske	3			
			WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 11)	7			
			WMO3	1.00	420.00
	E-mails from Liam Valgardson ( 6)	7			
			WMO3	0.50	210.00
	E-mails from Greg Fenske (x 4)	7			
			WMO3	0.40	168.00
	Telephone attendance with Greg Fenske	7			
			WMO3	0.20	84.00
	E-mail from Debbie Mackie	7			
			WMO3	0.10	42.00
	E-mails from TSDC (X 5)	3			
			WMO3	0.50	210.00
	E-mail from Colby Linthwaite	7			
			WMO3	0.10	42.00
	Email from WMO.	7			
			LOV3	0.10	12.50
	Email to C. Linthwaite.	7			
			LOV3	0.10	12.50



	Email to WMO.	7	LOV3	0.10	12.50
	Email from C. Linthwaite.	7	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Email to D. Mackie.	7	LOV3	0.10	12.50
	Review additions and additions to brief from C. Linthwaite. Make changes and additions to pleadings. Review, proof and edit pleadings.	7	LOV3	1.70	212.50
	Email to WMO.		LOV3	0.10	12.50
	Prepare pleadings for filing.	7	LOV3	0.50	62.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email to D. Mackie.	7	LOV3	0.10	12.50
	File pleadings at Court of Appeal. Discuss service with D. Mackie.	7	LOV3	0.60	75.00
	Email from D. Mackie re service.	7	LOV3	0.10	12.50
Mar-26-22	E-mail to Peter Anderson	6	WMO3	0.10	42.00
	E-mail from Peter Anderson	6	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to Greg Fenske	6	WMO3	0.10	42.00
	Prepare for meeting with client	7	WMO3	3.00	1,260.00
	Meeting with client on JVN	7	WMO3	2.00	840.00
	E-mails from TSDC	3	WMO3	0.20	84.00
	E-mails to TSDC	3	WMO3	0.20	84.00
	E-mails from Greg Fenske ( 2)	6	WMO3	0.20	84.00

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	E-mail from	6	WMO3	0.10	42.00
Mar-27-22	E-mails from Greg Fenske (X 5)	3	WMO3	0.20	84.00
	E-mails to Greg Fenske (X 4)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.40	168.00
	E-mail from TDSC	3	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	126.00
Mar-28-22	E-mail from Bruce Taylor	1	WMO3	0.10	42.00
	E-mail from William Macadam	7	WMO3	0.10	42.00
	E-mails from Debbie Mackie (X 3)	7	WMO3	0.30	126.00
	E-mails to Debbie Mackie (X 3)	7	WMO3	0.30	126.00
	Emails from L. Valgardson; emails from Colby	7	LF3	0/30	75.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Email from W. Onchulenko	7	LF3	0.10	25.00
	Email from L. Valgardson	7	LF3	0.10	25.00

Email from W. Onchulenko	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Call to G. Fenske	7	LF3	0.20	50.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Emails to/from TSDC x 4	3	LF3	0.40	100.00
Email from TSDC	3	LF3	0.10	25.00
Emails re service	7	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Emails from/to W. Onchulenko	7	LF3	0.10	25.00
Emails from/to W. Onchulenko; prepare documents for W. Onchulenko; email to W. Onchulenko	7	LF3	0.50	125.00
Emails from G. Fenske; emails from TSDC	3	LF3	0.20	50.00
Email from	3	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email to TSDC	3	LF3	0.10	25.00

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	Text from	3	LF3	0.10	25.00
Mar-29-22	E-mails from Fred Tayar (X 3)	7	WMO3	0.30	126.00
	E-mails to Fred Tayar (X 3)	7	WMO3	0.30	126.00
	Telephone attendance's with Leiba Feldman (X2)	7	WMO3	0.40	168.00
	Telephone attendance with Greg Fenske	7	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 2)	7	WMO3	0.20	84.00
			WMO3	0.10	42.00
	E-mail to Bruce Taylor	1	WMO3	0.10	42.00
	E-mails from Debbie Mackie	7	WMO3	0.10	42.00
	E-mails to Debbie Mackie	7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 5)	7	WMO3	0.50	210.00
	E-mails to Leiba Feldman (X 2)	7	WMO3	0.20	84.00

Mar-30-22	Reporting letter to client	7	WMO3	0.20	84.00
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Wayne M. Onchulenko	Total Time Spent=	48.40	Hours@	\$420.00	\$20,328.00
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Leiba Feldman	Total Time Spent=	87.10	Hours @	\$250.00	\$21,775.00
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Liam O. Valgardson	Total Time Spent=	26.90	Hours@	\$125.00	\$3,362.50
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<b>Total Fees</b>	<b>162.40</b>	<b>\$46,465.50</b>
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GST on Fees	\$2,323.28
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RST on Fees	\$3,252.59
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**DISBURSEMENTS****Disbursements**

Photocopying charge	420.00
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Purolator courier	72.15
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Telephone call	100.00
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Wire fees*	15.00
Notice of Appeal*	200.00

Notice of Motion Nygard *	75.00
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<b>Total Disbursements</b>	<b>\$882.15</b>
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OST on Disbursements	\$29.61
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<b>TOTAL FEES, DIS</b>	<b>\$52,953.13</b>
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**AMOUNT DUE FR'**

<b>BALANCE DUEA</b>	<b>\$52,953.13</b>
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Total Tax:	\$2,352.89	\$3,252.59
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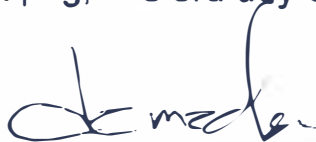
\* tax-exempt

E.&O.E.

Wayne M. Onchulenko

*Accounts which are outstanding for more than one month after the date of delivery of same to the client shall bear interest at the rate established under section 161 of The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*

This is Exhibit "F" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "C. Macdonald", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024



LEVENE TADMAN GOLUB LAW CORPORATION

700 - 330 st. Mary Avenue

Winnipeg, Manitoba R3C 3Z5

Phone: 204-957-0520 / Fax: 204-957-1696

Website: www.ltglc.ca

GST R840918429

## STATEMENT OF ACCOUNT

Nygaard Enterprises Ltd.  
750 John Brnce Road E  
Winnipeg, Manitoba R3X 1Y2

Attention: Peter Nygard - Private & Confidential

April 25, 2022

File#: 113885

Invoice #: 217687

**Re: Credit Agreement and Debenture and related financial matters**

DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT
Mar-29-22	To email to Fred Tayar; email to Brnce Taylor	2,1 WMO3	0.20	84.00
	E-mail to Debbie Mackie	7 WMO3	0.10	42.00
	Email from W. Onchulenko; email from D. Prymak	7 LF3	0.10	25.00
	Email from Tayar; email from W. Onchulenko	7 LF3	0.10	25.00
	Email from - [REDACTED]	7 LF3	0.10	25.00
	Discussion with W. Onchulenko	7 LF3	0.20	50.00
	Email from - [REDACTED]	7 LF3	0.10	25.00
	Email from/to W. Onchulenko	7 LF3	0.10	25.00
	Email from Tayar	7 LF3	0.10	25.00
	Discussion with W. Onchulenko re Brief	7 LF3	0.20	50.00
Mar-30-22	E-mail from Bruce Taylor	1 WMO3	0.10	42.00
	E-mail from Fred Tayar	7 WMO3	0.10	42.00

	E-mail from Leiba Feldman	7	WMO3	0.10	42.00
	E-mails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	Review Brief	7	WMO3	0.40	168.00
	Email from Tayar	7	LF3	0.10	25.00
	Email from - [REDACTED]		LF3	0.10	25.00
	Drafting of Supplemental Brief; emails from/to W. Onchulenko; email from Colby; revisions to Brief	7	LF3	4.60	1,150.00
Mar-31-22	Review brief and amend, instructions to file	7	WMO3	0.50	210.00
	E-mails to Brnce Taylor (X 3)	1	WMO3	0.30	126.00
	E-mail from Brnce Taylor	1	WMO3	0.10	42.00
	E-mail to Fred Tayar	7	WMO3	0.10	42.00
	E-mails from Fred Tayar (X 4)	7	WMO3	0.40	168.00
	E-mails to Leiba Feldman (X 3)	7	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 10)	7	WMO3	1.00	420.00
Apr-01-22	E-mail from [REDACTED]	3	WMO3	0.10	42.00
	E-mail to [REDACTED]	3	WMO3	0.10	42.00
	E-mails from Fred Tayar (X 3)	7	WMO3	0.30	126.00
	E-mails to Fred Tayar (X 3)	7	WMO3	0.30	126.00
	Telephone attendance with Brnce Taylor and the Comt	1	WMO3	0.20	84.00
	E-mails from Colby Linthwaite (X 3)	7	WMO3	0.30	126.00
	E-mails to Colby Linthwaite (X 3)	7	WMO3	0.30	126.00
	Telephone attendance with Colby Linthwaite	7	WMO3	0.20	84.00
	E-mail to Comt of Appeal	1	WMO3	0.10	42.00



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Instructions to Debbie Mackie	7	WMO3	0.10	42.00
E-mail to Brnce Taylor	1	WMO3	0.10	42.00
E-mail from Brnce Taylor	1	WMO3	0.10	42.00
Telephone attendance with Leiba Feldman	7	WMO3	0.30	126.00
Letter to Brnce Taylor	1	WMO3	0.20	84.00
E-mail from [REDACTED]	3	WMO3	0.10	42.00
E-mail to [REDACTED]	3	WMO3	0.10	42.00
E-mails from Fred Tayar (X 3)	7	WMO3	0.30	126.00
Telephone attendance with Brnce Taylor and the Comt	1	WMO3	0.20	84.00
E-mails from Colby Linthwaite (X 3)	7	WMO3	0.30	126.00
Telephone attendance with Colby Linthwaite	7	WMO3	0.20	84.00
E-mail to Comt of Appeal	1	WMO3	0.10	42.00
Instructions to Debbie Mackie	7	WMO3	0.10	42.00
E-mail to Brnce Taylor	1	WMO3	0.10	42.00
E-mail from Brnce Taylor	1	WMO3	0.10	42.00
E-mail from Comt of Appeal	1	WMO3	0.10	42.00
Telephone attendance with Leiba Feldman	7	WMO3	0.30	126.00
Letter to Brnce Taylor	1	WMO3	0.20	84.00
E-mails from Greg Fenske (X 3)	7	WMO3	0.30	126.00

E-mails from Leiba Feldman (X 2)	7	WM 0 3	0.20	84.00
E-mail from TSDC	3	WM 0 3	0.10	42.00
E-mail to TSDC	3	WM 0 3	0.10	42.00
Email from W. Onchulenko	7	IF3	0.10	25.00
Email to Colby/Fred	7	LF3	0.20	50.00
Email to W. Onchulenko	7	LF3	0.10	25.00
Email to TSDC	3	LF3	0.10	25.00
Revisions to Brief; preparation of tabs; emails to Colby/Fred; instructions to D Mackie; further revisions to Brief	7	IF3	4.70	1,175.00
Email from Fred		LF3	0.20	50.00
Revision of Brief; email to W. Onchulenko	7	LF3	1.80	450.00
Email to TSDC	3	LF3	0.10	25.00
Revision of Brief; calls with W. Onchulenko; emails from/to W. Onchulenko; further revisions to Brief; instructions re filing; email from D. Mackie; discussion with D. Mackie	7	LF3	2.80	700.00
Email from Monis		LF3	0.10	25.00
Correspondence to TSDC	3	LF3	0.30	75.00
Email from Taya	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from Taya	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Text from - [REDACTED]	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email to Gae [REDACTED]		LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00

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	Discussion with W. Onchulenko	7	LF3	0.20	50.00
		3			
	Email to TSDC		LF3	0.20	50.00
	Email to/from W. Onchulenko	3	LF3	0.10	25.00
Apr-02-22	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	Email from TSDC; email to Gre	3	LF3	0.20	50.00
Apr-03-22	E-mails to Greg Fenske (X 3)	3	WMO3	0.30	126.00
	E-mails from Greg Fenske (X 3)	3	WMO3	0.30	126.00
	Prepare and call 2 NN	3, 9, 7	WMO3	2.00	840.00
Apr-04-22	Voice mail messages from client (X 2), telephone attendance with client (X 4), e-mail to Peter Anderson, voice mail message to Peter Anderson, e-mail to Greg Fenske letter to CRA requesting all PJN files, JVN Tuesday, Thmsday and Sunday	7, 6, 3	WMO3	1.50	630.00
	E-mail from [REDACTED]	3	WMO3	0.10	42.00
	E-mail to TSDC	3	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 4)	3	WMO3	0.40	168.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mail to [REDACTED]	3	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.20	84.00
	Telephone attendance with Bmce Taylor	1	WMO3	0.20	84.00

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E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
Telephone attendance with Greg Fenske (X 2)	2	WMO3	0.40	168.00
E-mail from Greg Fenske	3	WMO3	0.10	42.00
E-mail to Greg Fenske	3	WMO3	0.10	42.00
E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
Email from CA	1	LF3	0.10	25.00
Email from Greg	9	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Emails from W. Onchulenko x 3	3	LF3	0.30	75.00
Email from TSDC	3	LF3	0.10	25.00
Review filed document	3	LF3	0.10	25.00
Emails from TSDC	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Email from - [REDACTED]	9	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to/from W. Onchulenko	3	LF3	0.10	25.00
Email from/to W. Onchulenko	3	LF3	0.20	50.00
Emails to TSDC	3	LF3	0.30	75.00
Emails from Gre email from W. Onchulenko	3	LF3	0.20	50.00
Text from - [REDACTED]	3	LF3	0.10	25.00
Prepare for JVN with client and JVN with client; email Greg; call W. Onchulenko	3, 9, 7	LF3	1.50	375.00

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	Email from I.F.	7	LOV3	0.20	25.00
	Review supplemental brief documents.	7	LOV3	0.10	12.50
Apr-05-22	E-mail from [REDACTED]	9	WMO3	0.10	42.00
	E-mails from [REDACTED] (X2)	9	WMO3	0.20	84.00
	E-mails to [REDACTED] (X2)	9	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	7	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 2)	7	WMO3	0.20	84.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	Telephone attendance with Peter Anderson (X2)	6	WMO3	0.40	168.00
	Telephone attendance with Greg Fenske	9	WMO3	0.20	84.00
	Prepare for and JVN with client	9,3,6	WMO3	1.00	420.00
	E-mail to Greg Fenske	9	WMO3	0.10	42.00
	E-mails to [REDACTED] (X2)	9	WMO3	0.20	84.00
	Email from TSDC	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email from - [REDACTED]	9	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.20	50.00
	Discussion with W. Onchulenko	3	LF3	0.20	50.00
	Emails from W. Onchulenko	3	LF3	0.20	50.00
	Email to W. Onchulenko	3	LF3	0.20	50.00
Apr-06-22	E-mails to [REDACTED] (X2)	9	WMO3	0.20	84.00

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	Voice mail message from client	3	WMO3	0.10	42.00
	Meeting with Leiba Feldman	3	WMO3	0.10	42.00
	Emails from W. Onchulenko	6	LF3	0.20	50.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Email from - [REDACTED]	3	LF3	0.10	25.00
	Email from G. Fenske	3	LF3	0.10	25.00
	Texts from/to G. Fenske	3	LF3	0.20	50.00
	Emails from G. Fenske x 2	3	LF3	0.20	50.00
	Text from - [REDACTED]	3	LF3	0.10	25.00
	Email to G. Fenske	3	LF3	0.10	25.00
	Discussion with W. Onchulenko; email from W. Onchulenko	7	LF3	0.20	50.00
	Emails to TSDC x 4	3	LF3	0.40	100.00
	Email from Iafrate	3	LF3	0.10	25.00
	Prepare for JVN with client and attempt to connect to JVN with client	3	LF3	0.60	150.00
	Emails to TSDC	3	LF3	0.30	75.00
	Emails from TSDC	3	LF3	0.20	50.00
Apr-07-22	Voice mail message from client (X 2)	3	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail to TSDC	3	WMO3	0.10	42.00
	E-mail from TSDC	3	WMO3	0.10	42.00
	E-mails Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Prepare for and telephone attendance with client (X 4)	3,9,7	WMO3	1.30	546.00
	Voice mail message from Fred Tayar	2	WMO3	0.10	42.00
	Voice mail message to Fred Tayar	2	WMO3	0.10	42.00
	Voice mail message from Fred Tayar	2	WMO3	0.10	42.00

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	E-mail to Peter Anderson	6	WMO3	0.10	42.00
	E-mail from Peter Anderson	6	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from Brian Whitehead	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.30	126.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mails to TSDC (X 10)	3	WMO3	1.00	420.00
	E-mail from TSDC	3	WMO3	0.10	42.00
	Attend call to TSDC	3	WMO3	0.10	42.00
Apr-08-22	E-mails to TSDC (X 3)	3	WMO3	0.30	126.00
	E-mails from [REDACTED] (X4)	3	WMO3	0.40	168.00
	E-mails to [REDACTED] (X2)	3	WMO3	0.20	84.00
	E-mails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2)	7	WMO3	0.10	42.00
	E-mail from Andrew Torbiak	9	WMO3	0.10	42.00
	Prepare for and telephone attendances with client (X 4)	9,7,3	WMO3	1.40	588.00
	E-mail from Peter Anderson	6	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 7)	7, 3, 9	WMO3	0.50	210.00
	E-mail from Peter Anderson	6	WMO3	0.10	42.00

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	<b>3</b>			
Email from W. Onchulenko		LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Discuss with W. Onchulenko; call from client; email to TSDC	3	LF3	0.60	150.00
Email to/from W. Onchulenko	3	LF3	0.10	25.00
Email from Whitehead	3	LF3	0.10	25.00
Email from Whitehead	3	LF3	0.30	75.00
Emails from Colby	7	LF3	0.20	50.00
Email to Colby	7	LF3	0.20	50.00
Email from Colby	7	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from - [REDACTED]	3	LF3	0.10	25.00
[REDACTED]				
Email from - [REDACTED]	3	LF3	0.10	25.00
Call from Greg Fenske	3	LF3	0.20	50.00
Emails from W. Onchulenko	3	LF3	0.20	50.00
Email from Iafrate	3	LF3	0.10	25.00
Email from Iafrate	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to W. Onchulenko	3	LF3	0.10	25.00
Emails from W. Onchulenko	3	LF3	0.20	50.00
Emails from - x [REDACTED]	3	LF3	0.20	50.00
Emails from TSDC x 2	3	LF3	0.20	50.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to W. Onchulenko	3	LF3	0.20	50.00



			LF3	0.10	25.00
	Email to/from W. Onchulenko	3	LF3	0.10	25.00
	Text from- [REDACTED]	3	LF3	0.10	25.00
	Prepare for JVN and JVN with client; emails from/to W. Onchulenko; email to counsel; JVN form; email from late; text to Greg and-	3, 6, 7, 9	LF3	2.40	600.00
Apr-09-22	E-mail s from Leiba Feldman (X 5)	3, 9, 7	WMO3	0.10	42.00
	E-mail from [REDACTED]	3	WMO3	0.10	42.00
	Call from Greg; call to Greg	3	LF3	0.20	50.00
	Email to Greg- [REDACTED]	3	LF3	0.10	25.00
	Email from- [REDACTED]	3	LF3	0.10	25.00
	Text from- [REDACTED]	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to W. Onchulenko	9	LF3	0.10	25.00
	E-mails from TSDC x 4	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.30	75.00
	Prepare for JVN with client; log in 430 and JVN with client; emails dictated by client; email to TSDC	3, 9, 7	LF3	3.20	800.00
Apr-10-22	Prepare for JVN and calls with Leiba Feldman	3, 9, 7	WMO3	2.50	1,050.00
	E-mails from Peter Anderson (X 2)	6	WMO3	0.20	84.00
	E-mail from [REDACTED]	3	WM●3	0.10	42.00
	E-mail from Greg Fenske	3	WM●3	0.10	42.00
	E-mails to Leiba Feldman (X 2)	9	WM●3	0.20	84.00
	E-mail to Peter Anderson	6	WM●3	0.10	42.00
	E-mail to [REDACTED]	6	WMO3	0.10	42.00

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Apr-11-22	E-mail to Lung Luo	4	WMO3	0.10	42.00
	Call from W. Onchulenko	6	LF3	0.20	50.00
	Call from W. Onchulenko	9	LF3	0.20	50.00
	Call from W. Onchulenko	3	LF3	0.20	50.00
	Review asset sheet; saving of sheet re PJN edits	9	LF3	0.30	75.00
	Voice mail message to Fred Tayar	7	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from [REDACTED]	3	WMO3	0.10	42.00
	Prepare for and telephone attendances with client (X 4)	3,6, 7	WMO3	1.00	420.00
	Telephone attendance with CRA	7	WMO3	0.10	42.00
	E-mail to Brnce Taylor	1	WMO3	0.10	42.00
	E-mail to Fred Tayar	7	WMO3	0.10	42.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	E-mail from Travis Williamson	3	WMO3	0.10	42.00
	Telephone attendance with Fred Tayar	7	WMO3	0.30	126.00
	E-mail from Leiba Feldman	3	WMO3	0.10	42.00
	Email from Greg	3	LF3	0.10	25.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00

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Email from TSDC	3	LF3	0.10	25.00
Email from - [REDACTED]	6	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Text from [REDACTED]	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Emails to/from W. Onchulenko	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Email to Williamson	3	LF3	0.20	50.00
Email from Greg	3	LF3	0.10	25.00
Email from/to Williamson	3	LF3	0.10	25.00
Email from [REDACTED]	3	LF3	0.10	25.00
Email from/to W. Onchulenko	3	LF3	0.10	25.00
Email from [REDACTED]	3	LF3	0.10	25.00
Email to Iafate and Whitehead	3	LF3	0.20	50.00
Prepare documents re RDA;	3	LF3	0.30	75.00
Email from [REDACTED]	3	LF3	0.10	25.00
Prepare document; email TSDC	3	LF3	0.30	75.00

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Apr-12-22	Prepare for JVN with client and JVN with client	3,6,9	LF3	1.20	300.00
	E-mails from Greg Fenske (X 3)	3	WMO3	0.30	126.00
	E-mails to Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	3	WMO3	0.20	84.00
	E-mail from TDSC	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	Text from [REDACTED]	3	[REDACTED]	0.10	25.00
	Text from Greg	3	LF3	0.10	25.00
	Call from/to Greg	3	LF3	0.20	50.00
	Text from Greg	3	LF3	0.10	25.00
	Call with W. Onchulenko	3	LF3	0.20	50.00
	Email to Greg	3	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email from Greg	9	LF3	0.10	25.00
	Email from Greg	9	LF3	0.20	50.00
	Email from Greg	9	LF3	0.10	25.00
	Text from Greg	9	LF3	0.10	25.00
	Call from Greg	9	LF3	0.20	50.00

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	Prepare f01m; email to TSDC	3	LF3	0.40	100.00
	Email from TSDC	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	Email to all counsel	3	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client	3, 9	LF3	1.30	325.00
Apr-13-22	E-mails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.40	168.00
	E-mail from Brnce Taylor	1	WMO3	0.10	42.00
	E-mail from Travis Williamson	3	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	Email to W. Onchulenko	3	LF3	0.10	25.00
	Text from Greg	3	LF3	0.10	25.00
	Text from Greg	3	LF3	0.10	25.00
	Email to TSDC	3	LF3	0.10	25.00
	Email to Williamson	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email from Greg	9	LF3	0.10	25.00
	Email from Greg	9	LF3	0.10	25.00



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	E-mails to Greg Fenske (X 3)	3	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 3)	3	WMO3	0.30	126.00
	Voice mail message from Fred Tayar	2	WMO3	0.10	42.00
	Review documents in preparation for call	4	WMO3	0.30	126.00
	Telephone attendance with client	4	WMO3	2.00	840.00
	E-mail to Fred Tayar	2	WMO3	0.10	42.00
	E-mail to Leiba Feldman	4	WMO3	0.10	42.00
	Email to TSDC	3	LF3	0.20	50.00
	Call with W. Onchulenko	3	LF3	0.20	50.00
	Review re sheet	3	LF3	0.20	50.00
	Drafting of email to TSDC; compile argument and prepare f01m	3	LF3	1.90	475.00
	Text from Greg	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email from W. Onchulenko	3	LF3	0.20	50.00
	Emails from Greg x 2	9	LF3	0.20	50.00
Apr-16-22	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mail; from Leiba Feldman	3	WMO3	0.10	42.00
Apr-17-22	E-mails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	E-mail to Leiba Feldman	4	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 3)	3	WMO3	0.30	126.00
	E-mail to Leiba Feldman	4	WMO3	0.10	42.00
	Review and revise re freeze; prepare for with client and JVN with client	3, 4, 9	LF3	2.80	700.00
	Email to W. Onchulenko	9	LF3	0.20	50.00

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Apr-18-22	E-mail from client	9	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 4)	4,3	WMO3	0.40	168.00
	Telephone attendance with client	4	WMO3	0.30	126.00
	Telephone attendance with Leiba re: estate and bill	10	WMO3	0.20	84.00
	Review documents re: NPL source	7	WMO3	0.50	210.00
	E-mail to Shannon Forest	7	WMO3	0.10	42.00
	Telephone attendance with Greg Fenske	7	WMO3	0.30	126.00
	E-mail from Shannon Forest	7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 5)	10, 7, 3, 4	WMO3	0.50	210.00
	E-mails from Greg Fenske	9	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 3)	3, 4	WMO3	0.30	126.00
	E-mail to Greg Fenske	9	WMO3	0.10	42.00
	E-mail from Travis Williamson	3	WMO3	0.10	42.00
	Email from Greg	7	LF3	0.10	25.00
	Email from TSDC	3	LF3	0.10	25.00
	Email from Greg	9	LF3	0.10	25.00
	Email from Greg	9	LF3	0.10	25.00
	Email from W. Onchulenko	7	LF3	0.10	25.00



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Review Shanghai documents; email to L. Valgardson	4	LF3	0.30	75.00
Email to Williamson	3	LF3	0.10	25.00
Email from L. Valgardson	4	LF3	0.10	25.00
Email to W. Onchulenko		LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.10	25.00
Email from/to W. Onchulenko	6	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.70	175.00
Email from Whitehead	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.10	25.00
Emails to/from W. Onchulenko	3	LF3	0.20	50.00
Email from Greg	9	LF3	0.10	25.00
Email to W. Onchulenko		LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from Williamson	3	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Redacting of bills	10	LF3	1.90	475.00
Emails from W. Onchulenko	9	LF3	0.20	50.00

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	Prepare for JVN with client and JVN with client	3,9, 7,4	LF3	2.50	625.00
	Emails to W. Onchulenko; email from Williamson; email to Williamson	3	LF3	0.50	125.00
	Emails from LF (x2).	7	LOV3	0.20	25.00
	Email to LF.	7	LOV3	0.10	12.50
	Email from S. Forest.	9	LOV3	0.10	12.50
Apr-19-22	Telephone attendance with client (X 2)	3,4,9	WMO3	0.70	294.00
	E-mails from Leiba Feldman (X 2)	7	WMO3	0.20	84.00
	E-mails to Leiba Feldman (X 2)	7	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 3)	9	WMO3	0.30	126.00
	E-mails to Greg Fenske	9	WMO3	0.20	84.00
	E-mail from Greg Fenske	9	WMO3	0.10	42.00
	E-mail to Greg Fenske	9	WMO3	0.10	42.00
Apr-20-22					
	E-mail to Leiba Feldman	7	WMO3	0.10	42.00
	Email to W. Onchulenko and redacting of accounts	10	LF3	1.80	450.00
	Email from W. Onchulenko	10	LF3	0.10	25.00
	Text from Greg	10	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email to Greg	3	LF3	0.20	50.00

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		<b>3</b>	LF3	0.20	50.00
	Call from Greg				
		<b>3</b>	LF3	0.20	50.00
	Emails to TSDC	<b>3</b>	LF3	0.20	50.00
	Emails from TSDC		LF3	0.20	50.00
		<b>3</b>	LF3	0.20	50.00
	Email to TSDC	<b>3</b>	LF3	0.20	50.00
	Emails from TSDC		LF3	0.20	50.00
	Emails from L. Valgardson, W. Onchulenko	<b>7</b>	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client	<b>7, 3, 9</b>	LF3	1.40	350.00
	Email from WMO.	<b>7</b>	LOV3	0.10	12.50
Apr-21-22	Telephone attendance with client	<b>3</b>	WMO3	0.30	126.00
	E-mail from client	<b>9</b>	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	<b>9</b>	WMO3	0.20	84.00
	E-mail from Fred Tayar	<b>7</b>	WMO3	0.10	42.00
	E-mail from Bmce Taylor	<b>1</b>	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	<b>3</b>	WMO3	0.20	84.00
	E-mail from Peter Anderson	<b>6</b>	WMO3	0.10	42.00
	Telephone attendance with Peter Anderson	<b>6</b>	WMO3	0.20	84.00

	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	<div></div>				
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email to W. Onchulenko	9	LF3	0.20	50.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email to Greg	3	LF3	0.20	50.00
	Emails from Greg x 2	3	LF3	0.20	50.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Call from Greg	3	LF3	0.30	75.00
Apr-22-22	Telephone attendances with client (X 3)	3	WMO3	1.00	420.00
	E-mail from Colby Linthwaite	7	WMO3	0.10	42.00
	E-mail from Brnce Taylor	1	WMO3	0.10	42.00
	E-mail from Ling Luo	4	WMO3	0.10	42.00
	E-mail to client	3	WMO3	0.10	42.00
	E-mails to <div> (X2)</div>	3	WMO3	0.20	84.00
	E-mails to Ross McFadyen (X 2)	1	WMO3	0.20	84.00
	E-mail to Brnce Taylor	1	WMO3	0.10	42.00
	E-mails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Email to Colby Linthwaite	7	WMO3	0.10	42.00
	E-mail to Sandra	5	WMO3	0.10	42.00
	E-mails to Peter Anderson (X 2)	6	WMO3	0.20	84.00
			WMO3	0.10	42.00

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E-mails from Leiba Feldman (X 7)	3	WMO3	0.50	210.00
E-mails from Ross McFadyen (X 2)	1	WMO3	0.20	84.00
E-mail from Brian Whitehead	3	<b>WM03</b>	0.10	42.00
E-mails from TSDC (X 2)	3	WMO3	0.20	84.00
E-mail fro	9	WMO3	0.10	42.00
E-mails from Greg Fenske (X 2)	9	WMO3	0.20	84.00
Text from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email to Greg	3	LF3	0.10	25.00
Email to/from W. Onchulenko	3	LF3	0.10	25.00
Text to Greg	3	LF3	0.20	50.00
Prepare for JVN with client and JVN with client	3,9	LF3	1.90	475.00
Emails from W. Onchulenko x 3	3	LF3	0.30	75.00
Email from TSDC	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from -	4	LF3	0.10	25.00
Email from Whitehead	3	LF3	0.10	25.00
Email from W. Onchulenko	4	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00

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	Email from W. Onchulenko	6	LF3	0.10	25.00
	Email from W. Onchulenko	9	LF3	0.10	25.00
	Emails from W. Onchulenko	3	LF3	0.20	50.00
	Email to TSDC	3	LF3	0.20	50.00
Apr-23-22	E-mails to and from IT Convergence	7	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.10	42.00
	E-mail from Greg Fenske	9	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	E-mails from [REDACTED] (X 3)	9	WMO3	0.30	126.00
Apr-24-22	Set up a OneDrive Folder re: Nygard, Leiba and Lloyd	3	WMO3	1.00	420.00
	Prepare for and JVN with client	9	WMO3	2.00	840.00
	E-mails from Leiba Feldman (X 4)	3,9	WMO3	0.40	168.00
	Email from Greg Fenske	3,9	WMO3	0.10	42.00
	E-mail from [REDACTED]	3,9	WMO3	0.10	42.00
	E-mails to Leiba Feldman (X 4)	3	WMO3	0.40	168.00
	E-mails to IT Convergence (X 2)	3,9	WMO3	0.20	84.00
	Call with W. Onchulenko		LF3	0.40	100.00
	Configuring one drive; emails from/to W. Onchulenko	3,9	LF3	0.80	200.00
Apr-25-22	E-mails from Leiba Feldman (X 3)	7	WMO3	0.30	126.00
	E-mail to Abe Rubinfeld	4	WMO3	0.10	42.00
	E-mails from Domenico Magisano (X 2)	4	WMO3	0.10	42.00
	E-mail to Domenico Magisano	4	WMO3	0.10	42.00
	E-mail to TSDC	3	WMO3	0.10	42.00

E-mail from [REDACTED]	3	WMO3	0.10	42.00
E-mail from Greg Fenske	9	WMO3	0.10	42.00
Telephone attendance with Colby Linthwaite	7	WMO3	0.20	84.00
Telephone attendance with Fred Tayar	7	WMO3	0.10	42.00
Prepare for and telephone attendance with Comt of Appeal, Ross McFadyen, and Melanie LaBossiere	1	WMO3	0.30	126.00
E-mail from Mel LaBossiere	1	WMO3	0.10	42.00
E-mail to Sandra Fawcett	6	WMO3	0.10	42.00
E-mail from Mel LaBossiere	1	WMO3	0.10	42.00
E-mail from Leiba Feldman	9	WMO3	0.10	42.00
Reporting letter to client	7	WMO3	0.20	84.00
Email fr o m - [REDACTED]	3	LF3	0.10	25.00
Emailfrom [REDACTED]	3	LF3	0.10	25.00
Email from Greg	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
[REDACTED]				
[REDACTED]				
Email from Lloyd	7	LF3	0.10	25.00
Emails to/from Lloyd	7	LF3	0.20	50.00
Email from Lloyd	7	LF3	0.10	25.00
Emails to W. Onchulenko; email t email to Greg	3	LF3	0.30	75.00
Email from TSDC	3	LF3	0.30	75.00
Email to Greg	3	LF3	0.20	50.00

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Email to W. Onchulenko; review case law and redacting of accounts	7,10	LF3	2.50	625.00
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Prepare for JVN with client and JVN with client	7,4,3,9	LF3	1.50	375.00
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Wayne M. Onchulenko	Total Time Spent=	58.50	Hours@	\$420.00
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Leiba Feldman	Total Time Spent=	80.50	Hours@	\$250.00
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Liam O. Valgardson	Total Time Spent=	0.80	Hours@	\$125.00
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\$24,570.00

\$20,125.00

\$100.00

<b>Total Fees</b>	<b>139.80</b>	<b>\$44,795.00</b>
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GST on Fees	\$2,239.75
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RST on Fees	\$3,135.65
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**DISBURSEMENTS****Disbursements**

Facsimile	2.00
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Photocopying charge	528.50
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Telephone call	48.00
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<b>Total Disbursements</b>	<b>\$578.50</b>
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GST on Disbursements	\$28.93
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<b>TOTAL FEES, DISBURSMENTS</b>	<b>\$50,777.83</b>
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<b>BALANCE DUE AND OWING</b>	<b>\$50,777.83</b>
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Total Tax	GST \$2,268.68 RST \$3,135.65
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\* tax-exempt

E.&amp;O.E.

Wayne M. Onchulenko

*Accounts which are outstanding for more than one month after the date of delivery of same to the client shall bear interest at the rate established under section 161 of The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*



This is Exhibit "G" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. Macdonald", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

LEVENE TADMAN GOLUB LAW CORPORATION  
700 - 330 St. Mary Avenue  
Winnipeg, Manitoba R3C 3Z5  
Phone: 204-957-0520 / Fax: 204-957-1696  
Website: www.ltglc.ca  
GST R840918429

## STATEMENT OF ACCOUNT

Nygard Enterprises Ltd.  
750 John Bruce Road E.  
Winnipeg, Manitoba R3X 1Y2

**Attention: Peter Nygard - Private & Confidential**

May 30, 2022

**Re: Credit Agreement and Debenture and related financial matters** File#: 113885  
Invoice #: 218327

DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT
Apr-20-22	Email to W. Onchulenko 3	LF3	0.10	22.50
Apr-26-22	Instructions to Debbie Mackie re: account 7	WMO3	0.20	84.00
	E-mail to Leiba Feldman 7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2) 3	WMO3	0.20	84.00
	E-mails from TSDC (X 2) 3	WMO3	0.10	42.00
	E-mails from (X 3) 3	WMO3	0.30	126.00
	E-mail from Leiba Feldman 7	WMO3	0.10	42.00
	E-mail to Greg Fenske 3	WMO3	0.10	42.00
	E-mail to TSDC 3	WMO3	0.10	42.00
	E-mail to Leiba Feldman 7	WMO3	0.10	42.00
	E-mail from Leiba Feldman 3	WMO3	0.10	42.00
	Setting up one drive 7	LF3	0.90	225.00

Apr-27-22	Email from W. Onchulenko	3	LF3	0.10	25.00
	Instructions to D. Mackie	7	LF3	0.20	50.00
	Email from [REDACTED]	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email from [REDACTED]	3	LF3	0.10	25.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from [REDACTED]	3	LF3	0.10	25.00
	Email to W. Onchulenko	7	LF3	0.10	25.00
	[REDACTED]				
	Email to Greg	9	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email to Greg	3	LF3	0.10	25.00
	Prepare for JVN with client and JVN with client;	9, 7, 3	LF3	2.60	650.00
	Telephone attendances with client (X 3)	3	WMO3	1.00	420.00
	E-mails from [REDACTED] (X 2)	3, 9	WMO3	0.20	84.00
	E-mail to TSDC	3	WMO3	0.10	42.00
	E-mail from TSDC	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.10	42.00
	E-mails to [REDACTED] (X 3)	3,9	WMO3	0.30	126.00
	E-mail from Brian Whitehead	3	WMO3	0.10	42.00

	E-mails to Leiba Feldman (X 2) 9	WMO3	0.20	84.00
	E-mails to Debbie Mackie (X 2) 7	WMO3	0.20	84.00
	E-mails to Greg Fenske (X 2) 3	WMO3	0.20	84.00
	Email from [REDACTED] 3	LF3	0.10	25.00
	[REDACTED]			
	Emails from W. Onchulenko x 3 3	LF3	0.30	75.00
	Text from [REDACTED] 3	LF3	0.10	25.00
	Email from/to W. Onchulenko 3	LF3	0.10	25.00
	Email to TSDC 3	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client; compile emails 5,3,7,9	LF3	2.10	525.00
Apr-28-22	Meeting with Leiba Feldman re: Tax and JVN 5,3,7	WMO3	0.20	84.00
	E-mail from Melanie LaBossiere 1	WMO3	0.10	42.00
	Telephone attendance with Colby Linthwaite and Fred Tayar 7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2) 7	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 2) 7,9	WMO3	0.20	84.00
	E-mails to Greg Fenske (X 4) 7,9	WMO3	0.40	168.00
	Prepare for JVN with client and JVN with client 7,9	LF3	1.90	475.00
	Read brief of the Receiver. 7	LOV3	0.60	75.00
Apr-29-22				
	E-mails from Greg Fenske (X 3) 6,7	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 6) 3,7	WMO3	0.50	210.00

E-mail from [REDACTED] 7	WMO3	0.10	42.00
Telephone attendance with client (X 3) 7	WMO3	1.00	420.00
E-mail from Liam Valgardson 7	WMO3	0.10	42.00
Review Brief 3	WMO3	0.50	210.00
E-mails from Adrien Iafrate (X 2) <sup>3</sup>	WMO3	0.20	84.00
E-mail from Tim Doyle 7	WMO3	0.10	42.00
Telephone attendance with Leiba Feldman 2	WMO3	0.10	42.00
E-mail from TSDC 3	WMO3	0.10	42.00
E-mails to Leiba Feldman (X 3) 3,9	WMO3	0.30	126.00
E-mail to Liam Valgardson 7	WMO3	0.10	42.00
E-mail to Greg Fenske 3	WMO3	0.10	42.00
E-mail to [REDACTED] 7	WMO3	0.10	42.00
E-mail to Tim Doyle 7	WMO3	0.10	42.00
Telephone attendance with Greg Fenske 7	WMO3	0.20	84.00
Meeting with Leiba Feldman 7	WMO3	0.20	84.00
E-mail to Fred Tayar 7	WMO3	0.10	42.00
E-mail from Fred Tayar 7	WMO3	0.10	42.00
E-mail to Colby Linthwaite 7	WMO3	0.10	42.00
Letter to CRA 7	WMO3	0.20	84.00
Emails from Greg 7	LF3	0.20	50.00
Note re one drive 7	LF3	0.10	25.00
Text from Greg 7	LF3	0.10	25.00
Email from W. Onchulenko 7	LF3	0.10	25.00
Discussions with W. Onchulenko 7	LF3	0.10	25.00

Email from W. Onchulenko	9	LF3	0.10	25.00
Email to W. Onchulenko	9	LF3	0.20	50.00
Email from/to W. Onchulenko	9	LF3	0.20	50.00
Discussion with W. Onchulenko	9	LF3	0.20	50.00
Email from Greg	9	LF3	0.10	25.00
Email to Greg	9	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Text from [REDACTED]	3	LF3	0.10	25.00
 Email from [REDACTED]	3	LF3	0.10	25.00
Email from Iafrate	7	LF3	0.10	25.00
Review Receiver's Brief	7	LF3	0.70	175.00
Email from L. Valgardson; review Herold Decision	7	LF3	0.50	125.00
Email to W. Onchulenko	7	LF3	0.10	25.00
Email from Iafrate	3	LF3	0.10	25.00
 Email from W. Onchulenko	9	LF3	0.10	25.00
Email to W. Onchulenko	7	LF3	0.10	25.00
Email from Greg	6	LF3	0.10	25.00
 Call from Greg	3	LF3	0.30	75.00
Email from/to W. Onchulenko	7	LF3	0.10	25.00
Email from D. Mackie; email to D. Mackie; email from W. Onchulenko	7	LF3	0.20	50.00
Email from Tayar; email from W. Onchulenko	7	LF3	0.20	50.00
Email from Greg	7	LF3	0.10	25.00

	Email from Fred 7	LF3	0.10	25.00
	Email from Colby; review appeal document; 7 prepare for JVN with client	LF3	1.10	275.00
	Attempting to log in to JVN 3	LF3	0.90	225.00
	Email to TSDC 3	LF3	0.20	50.00
	Email to TSDC 3	LF3	0.10	25.00
	Discussion with WMO. Research case law re rules for amending notice of appeal. Draft notice of motion. 7	LOV3	1.60	200.00
	Email to WMO and LF. 7	LOV3	0.20	25.00
	Instructions from WMO re Receiver's caselaw and brief. 7	LOV3	0.10	12.50
	Memo to file. 7	LOV3	0.10	12.50
Apr-30-22	E-mail from Liam Valgardson 7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3) 7	WMO3	0.20	84.00
	E-mail from Greg Fenske 7	WMO3	0.10	42.00
	Read caselaw submitted by the Receiver. Summarize and determine accuracy of caselaw. Draft memo. Research test for amending notice of appeal. Summarize in memo. Send memo to WMO and LF. 7	LOV3	5.30	662.50
May-01-22	Review memo 7	WMO3	0.20	84.00
	Amend Notice of Motion 7	WMO3	0.20	84.00
	E-mail to Fred Tayar 7	WMO3	0.10	42.00
	E-mail to TSDC 3	WMO3	0.10	42.00
	E-mail from Greg Fenske 7,3	WMO3	0.10	42.00
	E-mail from Leiba Feldman 7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2) 3	WMO3	0.20	84.00
	Call office of ombudsman, Greg letters 6,3	WMO3	2.00	840.00
	Email from WMO. 7	LOV3	0.10	12.50
May-02-22	Telephone attendance with Court of Appeal 1	WMO3	0.20	84.00
	Telephone attendance with Fred Tayar, Colby Linthwaite and Leiba Feldman 7	WMO3	0.20	84.00

E-mails from Greg Fenske (X 2) 3	WMO3	0.20	84.00
E-mails to Leiba Feldman (X 3) 3,7	WMO3	0.20	84.00
E-mails from Leiba Feldman (X 7) 7,3	WMO3	0.50	210.00
E-mails from Fred Tayar (X 2) 7	WMO3	0.20	84.00
Telephone attendance with Leiba Feldman and e-mails to Court of Appeal 7	WMO3	0.20	84.00
Review documents and e-mail 7	WMO3	0.50	210.00
E-mail to the Court of Appeal 1	WMO3	0.20	84.00
E-mail from Liam Valgardson 7	WMO3	0.10	42.00
Voice mail message from Fred Tayar 7	WMO3	0.10	42.00
E-mail from Melanie LaBossiere 1	WMO3	0.10	42.00
E-mail from TSDC 3	WMO3	0.10	42.00
E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
Email to TSDC 3	LF3	0.30	75.00
Email from Greg 7	LF3	0.10	25.00
Email from Greg 7	LF3	0.10	25.00
Email from Greg 9	LF3	0.10	25.00
Email from Greg 3	LF3	0.20	50.00
Email from L. Valgardson; review memo and review Alberta Treasury case 7	LF3	0.40	100.00
Emails from Greg x 2 3	LF3	0.20	50.00
Emails from W. Onchulenko x 2 7	LF3	0.20	50.00
Call with Fred and Colby; discussion with W. Onchulenko 7	LF3	0.80	200.00
Emails to/from Greg 7	LF3	0.20	50.00
Emails to/from Colby 7	LF3	0.20	50.00



Email from Greg 3	LF3	0.10	25.00
Email to Greg 7	LF3	0.10	25.00
Email from W. Onchulenko 7	LF3	0.20	50.00
Email to W. Onchulenko 7	LF3	0.20	0.00
Email from W. Onchulenko 7	LF3	0.10	25.00
Email to W. Onchulenko 7	LF3	0.10	25.00
Email from Greg 7	LF3	0.10	25.00
Email from Fred 2, 7	LF3	0.10	25.00
Prepare for Court of Appeal 7	LF3	2.30	575.00
Call with L. Valgardson 7	LF3	0.10	25.00
Email from TSDC 3	LF3	0.10	25.00
Call with W. Onchulenko 7	LF3	0.20	50.00
Revision of letter to registrar; revision of Motion; revision of Notice of Appeal	LF3	1.50	375.00
Discussion with L. Valgardson 2,7	LF3	0.20	50.00
Email from Colby 2,7	LF3	0.10	25.00
Email from Greg 3	LF3	0.10	25.00
Emails from TSDC x 2 3	LF3	0.20	50.00
Email from L. Valgardson; review Affidavit 2,7	LF3	0.20	50.00
Emails from/to L. Valgardson 2,7	LF3	0.30	75.00
Prepare attachments; email to W. Onchulenko 2,7	LF3	0.40	100.00
Email from L. Valgardson 2,7	LF3	0.10	25.00
Text from Greg 3	LF3	0.10	25.00
Call from Greg 3	LF3	0.30	75.00
Email to TSDC 3	LF3	0.20	50.00
Email from W. Onchulenko 7	LF3	0.10	25.00

May-03-22	Email from Greg 3	LF3	0.10	25.00
	Email from receiver's counsel 1	LF3	0.20	50.00
	Email from W. Onchulenko 7	LF3	0.10	25.00
	Prepare for JVN with client and JVN with client 7,3,9,1	LF3	1.50	375.00
	Call with LF. Cross reference case law with cases previously submitted. 7	LOV3	0.40	50.00
	Call with LF. Read draft email to registrar. 7	LOV3	0.80	100.00
	Draft affidavit. Email to WMO and LF. 7			
	Correspond with LF. 7			
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail to Court 1	WMO3	0.20	84.00
	E-mail from Court 1	WMO3	0.10	42.00
	Voice mail message from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail from Leiba Feldman 7	WMO3	0.10	42.00
	E-mail from [REDACTED] 7	WMO3	0.10	42.00
	E-mails from Colby Linthwaite (X 2) 7	WMO3	0.10	42.00
	E-mails to Colby Linthwaite (X 2) 7	WMO3	0.10	42.00
	Prepare for hearing 7	WMO3	2.00	840.00
	E-mail from CRA 7	WMO3	0.10	42.00
	E-mail from Melanie LaBossiere 1	WMO3	0.10	42.00
	E-mail from [REDACTED] 7	WMO3	0.10	42.00
	Prepare for hearing 7	WMO3	1.00	420.00
	Email to W. Onchulenko 7	LF3	0.20	50.00
	Email from Colby x 3 7	LF3	0.30	75.00
	Email from W. Onchulenko 7	LF3	0.10	25.00
		LF3	0.10	25.00

	Email from Registrar x 3	7	LF3	0.30	75.00
	██████████				
	Email from opposing counsel	1	LF3	0.20	50.00
	Email from ██████████	3	LF3	0.10	25.00
	Email from Receiver's counsel	1	LF3	0.10	25.00
	Email from Receiver's counsel	1	LF3	0.10	25.00
	Prepare for JVN with client and JVN with client; email to Greg	7	LF3	1.70	425.00
	Instructions from WMO.	7	LOV3	0.10	12.50
May-04-22	E-mail to Brian Whitehead, e-mail to Collby Linthwaite, e-mail from Colby Linthwaite, e-mail from Douglas McCoy, prepare for hearing, telephone attendances with Colby Linthwaite (X 2), telephone attendance with Fred Tayar, telephone attendance with Leiba Feldman, meeting with Liam Valgardson, telephone attendance with Greg Fenske re update motion, e-mails from Greg Fenske, e-mails from ██████████ (X 2), (X 2), e-mail to Brian Whitehead, prepare Case Books, prepare Notice of Motion and Affidavit, e-mails from Greg Fenske (X 3), e-mails from Liam Valgardson (X 2), e-mails from Leiba Feldman (X 2), E-mail to Fred Tayar, e-mails to Liam Valgardson (X 5)	3, 7	WMO3	7.00	2,940.00
	Email from Greg		LF3	0.10	25.00
	Discussion with W. Onchulenko	7	LF3	0.30	75.00
	Email to McCoy	1	LF3	0.20	50.00
	Email from W. Onchuelnko	7	LF3	0.10	25.00
	Text from Greg	7	LF3	0.10	25.00
	Email from Greg	3	LF3	0.10	25.00
	Email from/to IT	7	LF3	0.10	25.00

	Prepare for JVN with client and JVN with client 7	LF3	1.50	375.00
	Email from W. Onchulenko 1	LF3	0.10	25.00
	Review pleadings; email from L. Valgardson; 7 call with L. Valgardson	LF3	0.90	225.00
	Email from [REDACTED] 3	LF3	0.10	25.00
	Email from [REDACTED] 3	LF3	0.10	25.00
	Email from L. Valgardson x 3 7	LF3	0.30	75.00
	Instructions from WMO. 7	LOV3	0.10	12.50
	Meet with WMO and LF re appeal of the registrar's decision. Draft notice of motion, affidavit and case book. Send to LF.	LOV3	1.90	237.50
	Call with LF. Make revisions to pleadings. 7	LOV3	0.40	50.00
	Email to D. Mackie. 7	LOV3	0.10	12.50
	Email to WMO and LF. 7	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	<b>0.10</b>	12.50
	Revise notice of motion. 7	LOV3	0.10	12.50
	Email to D. Mackie. 7	LOV3	0.10	12.50
May-05-22	Prepare for hearing, attend hearing, report to client, e-mails from Greg Fenske (X 2), e-mails from Leiba Feldman (X8), e-mails from Dom Magisano (X 4), e-mails from Greg Fenske (X 8), e-mails from Colby Linthwaite (X 5), e-mails from J. J. Burnell, e-mail from Doug McCoy, e-mail from Liam Valgardson, e-mails to Dom Magisano (X 3), e-mails to Greg Fenske (X 3), e-mail to Debbie Mackie, e-mails to Colby Linthwaite (X 7), e-mail to Liam Valgardson	WM03	7.00	2,940.00
	Email from Colby	LF3	0.10	25.00
	Emails from/to L. Valgardson; emails from/to W. Onchulenko 7	LF3	0.30	75.00
	Email to Colby 7	LF3	0.20	50.00
	Call from W. Onchulenko 7	LF3	0.20	50.00
	Calls with L. Valgardson; call with BVD; 7 emails from L. Valgardson; emails from BVD 7	LF3	0.60	150.00

Prepare pleadings for service	7	LF3	0.50	125.00
Email from Greg	3	LF3	0.10	25.00
Email from court	1	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Email from court	1	LF3	0.10	25.00
Email to TSDC	3	LF3	0.10	25.00
Voicemail from Greg	3	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Emails from Greg x 2	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.10	25.00
Virtual attendance at Court of Appeal Motion and notes re Motion	7	LF3	2.40	600.00
Email from/to W. Onchulenko	7	LF3	0.10	25.00
Email from/to TSDC	7	LF3	0.10	25.00
Discussions with W. Onchuelnko	7	LF3	0.20	50.00
Email to W. Onchulenko	7	LF3	0.20	50.00
Prepare reporting letter to client; email to W. Onchulenko	7	LF3	0.50	125.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from Greg	7	LF3	0.10	25.00
Emails from Lloyd x 2	7	LF3	0.20	50.00
Prepare for JVN and JVN with client	7	LF3	1.30	325.00
Email from WMO.	7	LOV3	0.10	12.50
Email from LF (x2).	7	LOV3	0.20	25.00
Email to LF (x2).	7	LOV3	0.20	25.00

May-06-22	Email to Brittni re case book. 7	LOV3	0.10	12.50
	Call with LF. Scan affidavit and notice of motion. Send to LF. Attend Court of Appeal appearance with WMO. 7	LOV3	4.60	575.00
	E-mails from [REDACTED] (X 2) 7	WMO3	0.20	84.00
	E-mail from JJ Burnell 1	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 11) 3,7	WMO3	0.50	210.00
	E-mails to Leiba Feldman (X 6) 7,3	WMO3	0.30	126.00
	E-mail to [REDACTED] 3	WMO3	0.10	42.00
	E-mails to IT (X 4) 7	WMO3	0.40	168.00
	E-mail from Liam Valgardson 7	WMO3	0.10	42.00
	E-mail to Liam Valgardson 7	WMO3	0.10	42.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail from Greg Fenske 9	WMO3	0.10	42.00
	Telephone attendance with Greg Fenske 7	WMO3	0.20	84.00
	E-mail from TDSC 3	WMO3	0.10	42.00
	E-mail to Bruce Taylor 1	WMO3	0.10	42.00
	E-mails from IT 7	WMO3	0.40	168.00
	Email from [REDACTED] 3	LF3	0.10	25.00
	Email to W. Onchulenko 3	LF3	0.10	25.00

Call to Debbie	3		LF3	0.20	50.00
		3			
Email to TSDC			LF3	0.20	50.00
Email to W. Onchulenko	3		LF3	0.10	25.00
Email to IT	7		LF3	0.10	25.00
Emails from/to W. Onchulenko; emails from .....; call from client	3		LF3	0.90	225.00
Text from Greg; call from Greg	3		LF3	0.20	50.00
Letter to CRA; instructions to D. Mackie	7		LF3	0.40	100.00
Review Appeal document from Colby	7		LF3	0.30	75.00
Emails from Greg; emails from W. Onchulenko; emails from L. Valgardson; discussion with W. Onchulenko	7		LF3	0.60	150.00
Call to Greg	7		LF3	0.2.0	50.00
Email to TSDC	3	3	LF3	0.20	50.00
Email to W. Onchulenko	3		LF3	0.10	25.00
		3			
Email to TSDC	3		LF3	0.10	25.00
Emails from/to W. Onchulenko; emails from/to IT	3		LF3	0.30	75.00
Emails from/to TSDC	3	3	LF3	0.20	50.00
Email from Greg	7		LF3	0.10	25.00
Prepare for JVN with client and JVN with client; emails from/to W. Onchulenko	7,3		LF3	1.50	375.00
Email from WMO.	7		LOV3	0.10	12.50
Email to WMO.	7		LOV3	0.10	12.50
Read amended Notice of Appeal. Compare to previous draft. Draft document highlighting changes and deletions.	7		LOV3	0.80	100.00
Email to WMO.	7		LOV3	0.10	12.50
E-mail from [REDACTED]	3		WMO3	0.10	42.00

May-07-22

May-08-22	Prepare for JVN with client and JVN with client 7,3,8	LF3	2.50	625.00
	Emails from Greg, text from Greg; 7,3 email from/to W. Onchulenko	LF3	.60	150
	E-mails to Greg Fenske 9,3,7	WMO3	0.50	210.00
	Prepare for and JVN with client 3,7	WMO3	2.00	840.00
	Emails and texts from Greg 3	LF3	0.50	125.00
	Emails and texts from Greg 3	LF3	0.50	125.00
	Email from/to W. Onchulenko 6	LF3	0.10	25.00
May-09-22	Emails from Greg/emails from Dave 7	LF3	0.30	75.00
	Email from W. Onchulenko 7	LF3	0.10	25.00
	Emails from TSDC 3	LF3	0.50	125.00
	Email to TSDC 3	LF3	0.20	50.00
	Telephone attendance with Greg Fenske 7	WMO3	0.20	84.00
	E-mails from Fred Tayar (X 3) 7	WMO3	0.30	126.00
	E-mails to Greg Fenske (X 4) 6	WMO3	0.40	168.00
	E-mails from Greg Fenske (X 5) 6	WMO3	0.50	210.00
	E-mails from Leiba Feldman (X 8) 3	WMO3	0.50	210.00
	E-mails from IT (X 10) 7	WMO3	0.50	210.00
	Emails from Dave; call from Dave 7	LF3	0.40	100.00
	Emails from Greg 3	LF3	0.20	50.00
	Email from Greg 3	LF3	0.10	25.00



Email to W. Onchulenko	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Discussion with L. Valgardson; emails from Greg; texts from Greg; note to file	7	LF3	1.30	325.00
Email from/to Greg	3	LF3	0.20	50.00
Text from Greg	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Call from Greg	3	LF3	0.20	50.00
Email to Greg; text from Greg; email to Greg	3	LF3	0.30	75.00
Emails from/to D. Mackie;	3	LF3	0.10	75.00
Prepare for JVN with client and JVN with client; email to Greg	3,7	LF3	1.90	475.00
Emails from Greg and Dave	7	LF3	.20	50.00
Emails from G. Fenske (x3).	7	LOV3	0.30	37.50
Text from G. Fenske.	7	LOV3	0.10	12.50
Call with P. Nygard.	3	LOV3	0.10	12.50
Email to LF.	3	LOV3	0.10	12.50
Call with LF re JVN process.	3	LOV3	0.70	87.50
Memo to file. Email to D. Mackie.	3	LOV3	0.20	25.00
Email from G. Fenske.	3	LOV3	0.10	12.50
Text from G. Fenske.	3	LOV3	0.10	12.50
Email from LF	7	LOV3	0.10	12.50
Email from LF.	7	LOV3	0.10	12.50

Email from D. Mackie.	7	LOV3	0.10	12.50
May-10-22				
E-mails from Leiba Feldman (X 2)	3,9	WMO3	0.20	84.00
E-mail to Debby Prymak	7	WMO3	0.10	42.00
Voice mail message from Fred Tayar	7	WMO3	0.10	42.00
E-mail from IT	7	WMO3	0.20	84.00
E-mail from Greg Fenske	3	WMO3	0.10	42.00
E-mails from Leiba Feldman (X 2)	3,9	WMO3	0.20	84.00
E-mail from Bruce Taylor	1	WMO3	0.10	42.00
E-mail from Fred Tayar	1	WMO3	0.10	42.00
Email to Greg	7	LF3	0.10	25.00
Email from <span style="background-color: black; color: black;">[REDACTED]</span>	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Email from/to Dave	7	LF3	0.10	25.00
Email from Whitehead	3	LF3	.10	25.
Email from Greg	3	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Call and voicemail from Greg	3	LF3	0.10	25.00
Call from Greg	3	LF3	0.40	100.00
Email from Williamson	3	LF3	0.10	25.00

	Email from Greg 7	LF3	0.10	25.00
	Email to TSDC 3	3	LF3	0.20
				50.00
	Emails from Dave 7	LF3	0.20	50.00
	Call with Dave 7	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client; 7	LF3	1.50	375.00
	Emails from Greg, Dave 7	LF3	0.20	50.00
	Email to Fred 7	LF3	0.20	50.00
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Text from G. Fenske. 7	LOV3	0.10	12.50
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Email from LF (x2). 7	LOV3	0.20	25.00
May-11-22	Telephone attendance with Fred Tayar 7	WMO3	0.20	84.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2) 9	WMO3	0.20	84.00
	E-mail IT 7	WMO3	0.10	42.00
	E-mail from Leiba Feldman 9	WMO3	0.10	42.00
	Email from Dave 7	LF3	0.10	25.00
	Email from Fred 3	LF3	0.10	25.00
	Emails from Greg 7	LF3	0.20	50.00
	Call from Greg; set up sharing 7	LF3	0.50	125.00
	Email from Whitehead 3	LF3	0.10	25.00
	Emails from Greg; email from Dave 7	LF3	0.30	75.00

Invoice#:

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	Emails from Greg and Fred	7	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client	7,9,3	LF3	1.40	350.00
	Emails from	(x3). 7	LOV3	0.30	37.50
	Email from G. Fenske.	7	LOV3	0.10	12.50
	Email from F. Tayar.	7	LOV3	0.10	12.50
May-12-22	E-mails from Leiba Feldman (X 5)	7,9	WMO3	0.50	210.00
	E-mails IT (X 2)	7	WMO3	0.20	84.00
	E-mail from Greg Fenske	7	WMO3	0.10	42.00
	E-mail from	3	WMO3	0.10	42.00
	Email from LF.	7	LOV3	0.10	12.50
	Email from	3	LOV3	0.10	12.50
	Email from LF.	9	LOV3	0.10	12.50
	Email from LF.	7	LOV3	0.10	12.50
May-13-22	E-mails from Leiba Feldman (X 4)	3,9	WMO3	0.40	168.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00

E-mail to Peter Anderson	6	WMO3	0.10	42.00
E-mail to [REDACTED]	3	WMO3	0.10	42.00
Voice mail message from Bill Trotter	6	WMO3	0.10	42.00
Voice mail message to Bill Trotter	6	WMO3	0.10	42.00
E-mail to Leiba Feldman	3	WMO3	0.10	42.00
Telephone attendance with Bill Trotter	6	WMO3	0.40	168.00
E-mail to Leiba Feldman	3	WMO3	0.10	42.00
Email from Greg	3	LF3	0.10	25.00
Emails from/to Dave	7	LF3	0.20	50.00
Prepare for JVN with client and JVN with client	3,7,6	LF3	1.30	325.00
Email to TSDC	3	LF3	0.20	50.00
Email to W. Onchulenko	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Text from [REDACTED]	3	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Email from/to Dave	7	LF3	0.20	50.00

Email to TSDC	3	LF3	0.20	50.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to W. Onchulenko	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.20	50.00
Email from Greg	6	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Prepare for JVN with client and JVN with client	3,6,7	LF3	1.40	350.00
.				
Emails from G. Fenske (x3).	6,3	LOV3	0.30	37.50
Texts from G. Fenske (x3).	6,3	LOV3	0.30	37.50
May-14-22				
E-mail to Leiba Feldman	3	WMO3	0.10	42.00
E-mail from Leiba Feldman	3	WMO3	0.10	42.00
E-mails from Greg Fenske (X 2)	9	WMO3	0.20	84.00
Emails from G. Fenske (x3).	6,3	LOV3	0.30	37.50
Texts from G. Fenske (x3).	6,3	LOV3	0.30	37.50
May-15-22				
E-mail from JJ Burnell	1	WMO3	0.10	42.00
Prepare and attend JVN with client	3,9,7	WMO3	2.00	840.00
E-mail from Greg Fenske	3	WMO3	0.10	42.00
E-mail to Greg Fenske	6	WMO3	0.10	42.00
E-mail to Liam Valgardson	7	WMO3	0.10	42.00

	Emails from G. Fenske (x2). 6,3	LOV3	0.20	25.00
	Texts from G. Fenske (x2). 6,3	LOV3	0.20	25.00
	Emails from WMO (x2). 7	LOV3	0.20	25.00
May-16-22	E-mail from Greg Fenske 7	WMO3	0.10	42.00
	Review Court of Appeal Rules and BIA General rules re: factum 7	WMO3	0.20	84.00
	E-mail from Liam Valgardson 7	WMO3	0.10	42.00
	Meeting with Liam Valgardson 7	WMO3	0.10	42.00
	E-mail to Greg Fenske 7	WMO3	0.10	42.00
	E-mails from Fred Tayar (X 2) 7	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2) 7	WMO3	0.20	84.00
	E-mail from Greg Fenske 7	WMO3	0.10	42.00
	Email to TSDC; 3	LF3	.70	175.00
	Emails from TSDC 3	LF3	0.40	100.00
	Texts from [REDACTED] and Greg 6	LF3	0.40	100.00
	Emails from Greg 6	LF3	0.50	125.00
	Emails from W. Onchulenko; 7	LF3	.1	25.00
	Emails from Colby; Email to W. Onchulenko 7	LF3	.2	50.00
	Text from Greg; call from Greg 3	LF3	0.20	50.00
	Call from Greg 3	LF3	0.30	75.00
	Email to Fred 7	LF3	0.10	25.00
	Review Notice of Appeal. Send to JJ Burnell. 7	LOV3	0.20	25.00
	Email from C. Linthwaite. 7	LOV3	0.10	12.50

	Research BIA, BIA General Rules, and CA Rules for timelines for filing factums. <sup>7</sup>	LOV3	1.10	137.50
	Summarize research. Send summary to WMO. Emails from G. Fenske (x2). 3,6	LOV3	0.20	25.00
	Texts from G. Fenske (x2). 3,6	LOV3	0.20	25.00
	Call with G. Fenske. 3,6	LOV3	0.10	12.50
	Discuss JVN schedule with LF. 3	LOV3	0.30	37.50
May-17-22	E-mails from Leiba Feldman (X 3) 3	WMO3	0.30	126.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	Email to Lloyd; email from Greg 7	LF3	0.20	50.00
	Email from Fred 7	LF3	0.10	25.00
	Email to Fred 7	LF3	0.10	25.00
	Email to TSDC; Iafrate, Whitehead 3	LF3	0.30	75.00
	Email from Dave; email from Lloyd 7	LF3	0.20	50.00
	Call with Liam; email with Liam 3	LF3	0.20	50.00
	Email from/to Greg 3	LF3	0.20	50.00
	Email to Dave 7	LF3	0.10	25.00
	Email from Fred 7	LF3	0.10	25.00
	Email from TSDC 3	LF3	0.20	50.00
	Email to Fred 7	LF3	0.10	25.00
	Email to TSDC 3	LF3	0.20	50.00



Email from Liam	7	LF3	0.10	25.00
Text from [REDACTED]	7	LF3	0.10	25.00
Text from Greg	7	LF3	0.10	25.00
Email from/to Greg	9	LF3	0.20	50.00
Email to RDA	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Email to TSDC; email to L. Valgardson	3	LF3	0.20	50.00
Emails from Fred	3	LF3	0.20	50.00
Email from Greg	3	LF3	0.10	25.00
Emails to Greg	3	LF3	0.20	50.00
Emails from Greg	3	LF3	0.20	50.00
Email from Fred	2	LF3	0.10	25.00
Emails re sharepoint; sharing of OneDrive; email from L. Valgardson; Email from TSDC; email to Greg	7	LF3	0.40	100.00
		LF3	0.20	50.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from G. Fenske.	3	LOV3	0.10	12.50
Emails from LF (x4).	7	LOV3	0.40	50.00
Email from F. Tayar.	2	LOV3	0.10	12.50
Emails from LF (x4).	7	LOV3	0.40	50.00
Emails from G. Fenske (x2).	3	LOV3	0.20	25.00
Texts from G. Fenske (x2).	9	LOV3	0.20	25.00
Text from G. Fenske.	9	LOV3	0.10	12.50
Emails from LF (x3).	3	LOV3	0.30	37.50
Call with G. Fenske.	3	LOV3	0.10	12.50

	Email from LF. 3	LOV3	0.10	12.50
May-18-22	E-mail from Brian Whitehead 3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 6) 3	WMO3	0.50	210.00
	E-mails from Fred Tayar ( 4) 7	WMO3	0.40	168.00
	Telephone attendance with Leiba Feldman re: Peter and JVN/e-mail 3	WMO3	0.20	84.00
	E-mail from Leiba Feldman 3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3) 3	WMO3	0.30	126.00
	E-mail to Leiba Feldman 3	WMO3	0.10	42.00
	Email from Greg 3	LF3	0.10	25.00
	Call with RDA 3	LF3	0.30	75.00
	Email to RDA 3	LF3	0.20	50.00
	Email from Fred 7	LF3	0.10	25.00
	Email to Fred 3	LF3	0.10	25.00
	Email from Fred; email from TSDC 7, 3	LF3	0.20	50.00
	Emails to Greg 3	LF3	0.20	50.00
	Emails from/to Fred; call with Fred; calls to RDA- Registration; emails to RDA 3, 7	LF3	1.20	300.00
	Prepare form; email to Fred 7	LF3	0.30	75.00
	Email from Greg 3	LF3	0.10	25.00
	Call to Greg 3	LF3	0.10	25.00
	Call to RDA 3	LF3	0.20	50.00
	Email to Iafrate and Whitehead 3	LF3	0.20	50.00
	Email from Whitehead 3	LF3	0.10	25.00

Email to Whitehead	3	LF3	0.10	25.00
Call to Greg	3	LF3	0.30	75.00
Discussion with W. Onchulenko	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Email to Iafrate	3	LF3	0.20	50.00
Email to L. Valgardson	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.20	50.00
Email from JVN info	7	LF3	0.10	25.00
Email from Whitehead	3	LF3	0.10	25.00
Email from Whitehead	3	LF3	0.10	25.00
Email to Whitehead	3	LF3	0.20	50.00
Email from/to L. Valgardson	3	LF3	0.20	50.00
Prepare for attendance and attendance at JVN	3,7	LF3	1.50	375.00
Discussion with L. Valgardson	3	LF3	0.20	50.00
Email to TSDC and form	3	LF3	0.30	75.00
Texts from Greg and <span style="background-color: black; color: black;">[REDACTED]</span>	3	LF3	0.10	25.00
Email from/to Lloyd	7	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Emails from F. Tayar (x3).	7	LOV3	0.30	37.50
Emails from LF (x6).	3	LOV3	0.60	75.00
Email from G. Fenske.	3	LOV3	0.10	12.50

Text from G. Fenske. 3	LOV3	0.10	12.50
Call with LF. 3	LOV3	0.10	12.50
Email from LF. 3	LOV3	0.10	12.50
Email from B. Whitehead. 3	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Text from G. Fenske. 3	LOV3	0.10	12.50
Email from LF. 3	LOV3	0.10	12.50
Email from TSDC. 3	LOV3	0.10	12.50
Emails from LF (x3). 3	LOV3	0.30	37.50
Save May18.22 emails to OneDrive. 3	LOV3	0.10	12.50
Email from B. Whitehead. 3	LOV3	0.10	12.50
Email to LF. 3	LOV3	0.10	12.50
Email from LF. 3	LOV3	0.10	12.50
Email to LF. 3	LOV3	0.10	12.50
Emails from LF (x2). 3	LOV3	0.20	25.00
Attend JVN with Nygard and LF. Discuss training with LF. 3	LOV3	1.20	150.00

May-19-22

E-mail from Peter Anderson 6			
	WMO3	0.10	42.00
E-mail from Liam Valgardson 6			
	WMO3	0.10	42.00
E-mail from JVN 3			
	WMO3	0.10	42.00
E-mails from Leiba Feldman (X 2) Email 3			
from/to Lloyd; email from L. Valgardson 7	WMO3	0.10	42.00
	LF3	0.10	25.00

Call with Liam	3	LF3	0.20	50.00
Emails from/to Liam; configuration of one drive; call from Greg; call to Greg	9	LF3	0.50	125.00
Emails from Greg	9	LF3	0.30	75.00
Text from Greg	9	LF3	0.10	25.00
Email from Liam	9	LF3	0.10	25.00
Voicemail from Greg	9	LF3	0.10	0.00
Emails to/from Liam	9	LF3	0.20	50.00
Email from Greg;	9	LF3	0.10	25.00
Email from L. Valgardson	9	LF3	0.10	25.00
Emails from L. Valgardson	9	LF3	0.20	50.00
Email from LF.	9	LOV3	0.10	12.50
Emails from G. Fenske (x2).	9	LOV3	0.20	25.00
Text from G. Fenske.	9	LOV3	0.10	12.50
Email from G. Fenske.	9	LOV3	0.10	12.50
Email to G. Fenske.	9	LOV3	0.10	12.50
Email from LF.	9	LOV3	0.10	12.50
Email from G. Fenske.	9	LOV3	0.10	12.50
		LOV3	0.10	12.50
Voice message from G. Fenske.	9	LOV3	0.10	12.50
Email to G. Fenske.	9	LOV3	0.10	12.50
Call with G. Fenske.	9	LOV3	0.20	25.00
Email to LF and WMO.	7	LOV3	0.20	25.00
Emails from LF (x2).	3	LOV3	0.20	25.00

	Email to TSDC. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from LF. 3	LOV3	0.10	12.50
	Email from LF. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email from LF. 9	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to LF. 9	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
May-20-22	E-mails from Greg Fenske (X 2) 3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 2) 3	WMO3	0.20	84.00
	E-mail from Adrien Lafrate 3	WMO3	0.10	42.00
	E-mail from Peter Anderson 6	WMO3	0.10	42.00
	E-mails from JVN (X 2) 3	WMO3	0.20	84.00
	Text from Greg 3	LF3	0.10	25.00
	Text from Greg 3	LF3	0.10	25.00
	Email from/to IT 9	LF3	0.10	25.00
	Email from Liam 3	LF3	0.10	25.00

Emails from/to Liam	3	LF3	0.30	75.00
Email from	3	LF3	0.10	25.00
Email from Greg; email from Liam	3	LF3	0.20	50.00
Email from Iafrate	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Email from/to Lloyd	9	LF3	0.10	25.00
Email to L. Valgardson	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from	3	LF3	0.10	25.00
Discussion with L. Valgardson; email to TSDC	3	LF3	0.30	75.00
Email from	3	LF3	0.10	25.00
Emails from/to L. Valgardson	3	LF3	0.30	75.00
Emails from Greg and Liam	3	LF3	0.20	50.00
Email from L. Valgardson	3	LF3	0.10	25.00
Call with L. Valgardson	3	LF3	0.20	50.00
Email from/to Liam; call with Liam	3	LF3	0.30	75.00

Email from/to L. Valgardson	3	LF3	0.20	50.00
Email from LF.	3	LOV3	0.10	12.50
Email from	3	LOV3	0.10	12.50
Email to G. Fenske and	3	LOV3	0.10	12.50
Text from G. Fenske.	3	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Text from G. Fenske.	3	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Email from LF.	3	LOV3	0.10	12.50
Email from	3	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Email to TSDC.	3	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Email to LF.	3	LOV3	0.10	12.50
Email to LF.	3	LOV3	0.10	12.50
Call with LF.	3	LOV3	0.10	12.50
Save emails to OneDrive.	3	LOV3	0.10	12.50
Prepare for JVN with P. Nygard.	3	LOV3	0.30	37.50
JVN with P. Nygard.	3,9	LOV3	0.70	87.50



May-21-22	E-mail from Liam Valgardson	3	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 3)	3	WMO3	0.30	126.00
	E-mail to	6	WMO3	0.10	42.00
	E-mail to Liam Valgardson	3	WMO3	0.10	42.00
	Texts from	9	LF3	0.30	75.00
	Call with Greg	3	LF3	0.20	50.00
	Emails from/to L. Valgardson	9	LF3	0.20	50.00
	Texts from/to L. Valgardson; voicemail from Greg	3	LF3	0.30	75.00
	Emails from	3	LF3	0.40	100.00
	Further emails from ; TSDC, and Greg,	3	LF3	0.20	50.00
	Emails from	3	LF3	0.20	50.00
	Prepare for JVN with client and JVN with client; tasks following JVN	3,9,6	LF3	2.80	700.00
	Email to LF.	3	LOV3	0.10	12.50
	Emails from (x2).	3	LOV3	0.20	25.00
	Voice message from P. Nygard.	3	LOV3	0.10	12.50
	Call with G. Fenske.	3	LOV3	0.10	12.50
	Email from LF.	3	LOV3	0.10	12.50
	Email from	3	LOV3	0.10	12.50
	Text from client.	3	LOV3	0.10	12.50
	Email from	3	LOV3	0.10	12.50
	Text from client.	3	LOV3	0.10	12.50
	Email from LF.	3	LOV3	0.10	12.50

	Emails from LF (x3).	3	LOV3	0.30	37.50
May-22-22	E-mail to Peter Anderson	6	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	Prepare for JVN with client and JVN with client; tasks following JVN	6,9,3	LF3	2.70	675.00
	Emails from/to W. Onchulenko	6	LF3	0.20	50.00
	Texts from Greg [REDACTED]	3	LF3	0.60	150.00
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Emails from LF (x4).	3	LOV3	0.40	50.00
May-23-22	Prepare for JVN and JVN with Peter and e-mails to Greg Fenske postage meeting	9,3,7	WMO3	2.20	924.00
	E-mails from Greg Fenske (X 4)	3,9	WMO3	0.40	168.00
	E-mail from [REDACTED]	3,9	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mail to [REDACTED]	6	WMO3	0.10	42.00
	Email from LF.	3	LOV3	0.10	12.50
	Email from [REDACTED]	9	LOV3	0.10	12.50
	Text from client.	3	LOV3	0.10	12.50
	Email from WMO.	9	LOV3	0.10	12.50
	Emails from G. Fenske (x2).	3	LOV3	0.20	25.00
	Texts from client (x2).	3	LOV3	0.20	25.00
	Email from LF.	3	LOV3	0.10	12.50
	Emails from G. Fenske (x3).	3	LOV3	0.30	37.50
	Text from client.	3	LOV3	0.10	12.50
May-24-22	Telephone attendance with Fred Tayar	7	WMO3	0.60	252.00
	E-mails from Greg Fenske (X 2)	3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.40	168.00

Voice mail message from Bil Trotter (X 2)	6	WMO3	0.10	42.00
E-mails to Leiba Feldman (X 3)	3	WMO3	0.30	126.00
E-mail to Bruce Taylor	1	WMO3	0.10	42.00
E-mail to Greg Fenske	6	WMO3	0.20	84.00
Telephone attendance with Greg Fenske	6	WMO3	0.20	84.00
E-mail to Fred Tayar	7	WMO3	0.10	42.00
Email to Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email to/from Fred	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Follow up on Tayar; email to RDA Registration	3	LF3	0.20	50.00
Email from Whitehead	3	LF3	0.10	25.00
Email from [REDACTED]	3	LF3	0.10	25.00
Email to TSDC	3	LF3	0.30	75.00
Email from W. Onchulenko	3	LF3	0.10	25.00
6 emails from Greg	3,9	LF3	0.60	150.00
Email from [REDACTED]	3	LF3	0.10	25.00

Email from L. Valgardson 3	LF3	0.10	25.00
Email from Greg 3	LF3	0.10	25.00
Discussion with L. Valgardson 3	LF3	0.20	50.00
Email from W. Onchulenko 3	LF3	0.10	25.00
Email to W. Onchulenko 3	LF3	0.10	25.00
Emails from Greg 3	LF3	0.20	50.00
Email from W. Onchulenko 3	LF3	0.10	25.00
Email to Greg 3	LF3	0.10	25.00
Call with L. Valgardson 3	LF3	0.20	50.00
Text from Greg 3	LF3	0.10	25.00
Email from Greg 3	LF3	0.10	25.00
Email to L. Valgardson 3	LF3	0.10	25.00
Discussion with L. Valgardson 3	LF3	0.10	25.00
Email from L. Valgardson 3	LF3	0.10	25.00
Email from L. Valgardson; email from W. Onchulenko 3	LF3	0.10	25.00
Email from TSDC 3	LF3	0.10	25.00
Email to RDA 3	LF3	0.20	50.00
Email from 3	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Email from LF. 3	LOV3	0.10	12.50

Emails from LF (x2). 3	LOV3	0.20	25.00
Email from G. Fenske. 3	LOV3	0.10	12.50
Complete RDA request form. 3	LOV3	0.10	12.50
Discuss JVN schedule with LF. 3	LOV3	0.30	37.50
Diarize RDAs. 3	LOV3	0.20	25.00
Email from LF. 3	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Text from G. Fenske. 3	LOV3	0.10	12.50
Discuss OneDrive editing with LF. 9	LOV3	0.20	25.00
Email from LF. 9	LOV3	0.10	12.50
Complete and submit RDA requests. 3	LOV3	0.20	25.00
Email from LF. 3	LOV3	0.10	12.50
Emails from TSDC (x2). 3	LOV3	0.20	25.00
Email to G. Fenske and [REDACTED] 3	LOV3	0.10	12.50
Email from LF. 3	LOV3	0.10	12.50

May-25-22

E-mail to Liam Valgardson 3	WMO3	0.10	42.00
E-mails from [REDACTED] (X 2) 3,6	WMO3	0.20	84.00
E-mails from Greg Fenske (X 2) 3,9	WMO3	0.20	84.00
E-mail from Colby Linthwaite 2	WMO3	0.10	42.00
Emails from RDA; email from Tayar 3	LF3	0.30	75.00

Text from Greg 3	LF3	0.10	25.00
Emails to Greg 9	LF3	0.20	50.00
Email to Fred 2	LF3	0.10	25.00
Email to TSDC 3	LF3	0.20	50.00
Emails from W. Onchulenko, Colby, Fred, 7,3 TSDC	LF3	0.60	150.00
Emails to Greg, TSDC 3	LF3	0.20	50.00
Call with Fred 2	LF3	0.20	50.00
Email to TSDC 3	LF3	0.10	25.00
Emails from/to Fred, and TSDC 2,3	LF3	0.30	75.00
Email to/from W. Onchulenko 7	LF3	0.20	50.00
Email from W. Onchulenko; email to Liam 7	LF3	0.20	50.00
Email from D. Mackie; call with Liam 7	LF3	0.40	100.00
Email from Liam; email from Greg 7	LF3	0.20	50.00
Review appeal; email from/to Liam 7	LF3	0.70	175.00
Call with Fred 7	LF3	0.20	50.00
Email to W. Onchulenko 3	LF3	0.10	25.00
Email from/to L. Valgardson 3	LF3	0.20	50.00
Emails from/to W. Onchulenko; emails 3 from/to L. Valgardson	LF3	0.20	50.00
Emails from LF (x5). 3,7	LOV3	0.50	62.50
Email from G. Fenske. 9	LOV3	0.10	12.50
Email from F. Tayar. 2	LOV3	0.10	12.50
Email from WMO. 7	LOV3	0.10	12.50
Email from LF. 7	LOV3	0.10	12.50
Email from F. Tayar. 2	LOV3	0.10	12.50
Emails from LF (x2). 7	LOV3	0.20	25.00

	Email from WMO.	7	LOV3	0.10	12.50
	Call with LF re CRA.	7	LOV3	0.20	25.00
	Email to G. Fenske and [REDACTED]	3	LOV3	0.10	12.50
	Email from G. Fenske.	7	LOV3	0.10	12.50
	Emails to LF (x2).	7	LOV3	0.20	25.00
	Review amended notice of appeal.	7	LOV3	0.30	37.50
	Email to LF.	7	LOV3	0.10	12.50
	Email from LF.	7	LOV3	0.10	12.50
	Email to C. Linthwaite.	7	LOV3	0.10	12.50
May-26-22	E-mail from Debbie Mackie	1	WMO3	0.10	42.00
	E-mail from Liam Valgardson	7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 3)	8	WMO3	0.30	126.00
	E-mail from Liam Valgardson	7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2)	3	WMO3	0.20	84.00
	E-mail from Colby Linthwaite	7	WMO3	0.10	42.00
	E-mails to Liam Valgardson (X 2)	7	WMO3	0.20	84.00
	Emails from/to L. Valgardson	3	LF3	0.20	50.00
	Emails from W. Onchulenko	3	LF3	0.20	50.00
	Email from Colby	7	LF3	0.10	25.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from W. Onchulenko	3	LF3	0.10	25.00
	Email from L. Valgardson	3	LF3	0.10	25.00
	Email from/to D. Mackie	7	LF3	0.20	50.00
	Email to Greg	3	LF3	0.10	25.00

Discussion with L. Valgardson	3	LF3	0.20	50.00
Email from/L. Valgardson	3	LF3	0.20	50.00
Emails from/to W. Onchulenko	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Email from C. Linthwaite	7	LOV3	0.10	12.50
Email from LF.	3	LOV3	0.10	12.50
Email from WMO.	3	LOV3	0.10	12.50
Email from LF.	3	LOV3	0.10	12.50
Email from WMO.	3	LOV3	0.10	12.50
Email from [REDACTED]	3	LOV3	0.10	12.50
Email to WMO.	3	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Call with LF.	3	LOV3	0.20	25.00
Complete TSDC form.	3	LOV3	0.10	12.50
Email to TSDC.	3	LOV3	0.10	12.50
Complete CRA form.	2	LOV3	0.20	25.00
Email to WMO.	3	LOV3	0.10	12.50
Draft letter to B. Taylor.	1	LOV3	0.30	37.50
Email to LF.	3	LOV3	0.10	12.50
Email from LF.	3	LOV3	0.10	12.50
Email to WMO.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Email to D. Mackie.	7	LOV3	0.10	12.50
Email from D. Mackie.	7	LOV3	0.10	12.50
Email from LF.	7	LOV3	0.10	12.50
May-27-22 E-mail from Leiba Feldman	3	WMO3	0.10	42.00



E-mail from Leiba Feldman 7	WMO3	0.10	42.00
E-mail from Liam Valgardson 7	WMO3	0.10	42.00
Email from TSDC 3	LF3	0.10	25.00
Email to Greg 3	LF3	0.10	25.00
Email from/to L. Valgardson 3	LF3	0.10	25.00
Email from [REDACTED] 9	LF3	0.10	25.00
Emails from/to L. Valgardson; emails from Greg; discussion with L. Valgardson 7	LF3	0.60	150.00
Email from LF. 3	LOV3	0.10	12.50
Email to LF. 3	LOV3	0.10	12.50
Email from LF. 3	LOV3	0.10	12.50
Emails from [REDACTED] 9	LOV3	0.20	25.00
Call with LF. 3	LOV3	0.30	37.50
Complete JVN scheduling form. 3	LOV3	0.20	25.00
Email to TSDC. 3	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Call with LF. 3	LOV3	0.20	25.00
Email from LF. 3	LOV3	0.10	12.50
Complete JVN scheduling form. 3	LOV3	0.20	25.00
Prepare for RDA. 3	LOV3	0.30	37.50
Attend RDA with P. Nygard. 3	LOV3	0.90	112.50
May-28-22			
E-mail to Liam Valgardson 7	WMO3	0.10	42.00
E-mails from Leiba Feldman (X 2) 7	WMO3	0.20	84.00
E-mails from Liam Valgardson 7	WMO3	0.30	126.00

	Text from Greg 3	LF3	0.10	25.00
	Call from Greg 3	LF3	0.30	75.00
	Discussion with L. Valgardson 3	LF3	0.30	75.00
	Prepare for JVN with client; JVN with client; 3,7,9 tasks following JVN with client	LF3	3.40	850.00
	Emails from G. Fenske (x2). 3	LOV3	0.20	25.00
	Text from G. Fenske. 3	LOV3	0.10	12.50
	Email from LF. 3	LOV3	0.10	12.50
	Emails from LF (x4). 3	LOV3	0.40	50.00
May-29-22	E-mails from Liam Valgardson (X 3) 3	WMO3	0.30	126.00
	E-mails to Leiba Feldman (X 2) 7	WMO3	0.20	84.00
	Email from opposing counsel 9			
	Email from TSDC 3	LF3	0.10	25.00
		LF3	0.10	25.00
	Email from Greg 9			
	Letter to opposing counsels Email 9	LF3	0.10	25.00
	from L. Valgardson 3	LF3	0.20	50.00
		LF3	0.10	25.00
	Email from Greg 9			
	Emails from L. Valgardson 3	LF3	0.10	25.00
		LF3	0.20	50.00

Emails from Greg 9		LF3	0.20	50.00
Email from W. Onchulenko 9		LF3	0.10	25.00
Email from W. Onchulenko 3		LF3	0.10	25.00
Email from L. Valgardson 3		LF3	0.10	25.00
Email to Fred 2		LF3	0.20	50.00
Email to L. Valgardson 3		LF3	0.20	50.00
Notes re week; re JVN 3		LF3	0.40	100.00
Emails from/to W. Onchulenko 9		LF3	0.30	75.00
Email from Greg 3		LF3	0.10	25.00
Prepare for JVN with client; tasks following JVN 3,7,9		LF3	3.10	775.00
Emails from LF (x7). 3		LOV3	0.70	87.50
Complete RDA scheduling form. 3		LOV3	0.20	25.00
Email to TSDC. 3		LOV3	0.10	12.50
May-30-22	Reporting letter to client 7	WMO3	0.20	84.00
Wayne M. Onchulenko	Total Time Spent=	62.90	Hours @ \$420.00	\$26,418.00
Leiba Feldman	Total Time Spent =	122.48	Hours @ \$250.00	\$30,620.00
Liam O. Valgardson	Total Time Spent=	52.80	Hours@ \$125.00	\$6,600.00
<b>Total Fees</b>			<b>241.68</b>	<b>\$63,638.00</b>
GST on Fees				\$3,181.90
RST on Fees				\$4,454.66

**DISBURSEMENTS****Disbursements**

Facsimile	14.00
Photocopying charge	620.75
Telephone call	52.00
Ontario searches and registrations*	38.51
<b>Total Disbursements</b>	<b>\$725.26</b>
GST on Disbursements	\$34.34

**TOTAL FEES,****\$72,034.16****DISBURSEMENTS, TAX****BALANCE DUE AND OWING****\$72,034.16**

\* tax-exempt

E. &amp; O. E.

Wayne M. Onchulenko

*Accounts which are outstanding/or more than one month after the date of delivery of same to the client shall bear interest at the rate established under section 161 of The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*

This is Exhibit "H" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "De Meek", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

LEVENE TADMAN GOLU... LAW CORPORATION

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r'f,c,r1<1:: 20+4-;S7-QS.20 I Fo < ,; 04-95; 1 -96

GST R840918429

STATEMENT OF ACCOUNT

**Nygard Enterprises Ltd.**  
750 John Bruce Road E  
Winnipeg, Manitoba R3X 1Y2

**Attention: Peter Nygard - Private & Confidential**

June 29, 2022

**Re: Credit Agreement and Debenture and related financial matters** File#: 113885  
Invoice #: 218999

DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT
May-30-22				
	Telephone attendance with client 7	WMO3	0.30	126.00
	E-mail to Bruce Taylor and e-mail to Melanie LaBossiere 1	WMO3	0.10	42.00
	E-mail to Greg Fenske 3	WMO3	0.10	42.00
	E-mail from Bruce Taylor 1	WMO3	0.10	42.00
	Telephone attendance with Greg Fenske 3	WMO3	0.20	84.00
	Meeting with IT re: one drive change 7	WMO3	0.50	210.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	E-mails from TSDC (X 3) 3	WMO3	0.30	126.00
	Meeting with Liam Valgardson 7	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman 3	WMO3	0.20	84.00
	E-mail from Leiba Feldman 3	WMO3	0.10	42.00

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E-mails from Greg Fenske (X 2)	4	WMO3	0.20	84.00
E-mail from Liam Valgardson	3	WMO3	0.10	42.00
E-mail from Bruce Taylor	1	WMO3	0.10	42.00
Prepare/attend JVN meeting with client	3,6,7	WMO3	1.00	420.00
Telephone attendance with Lloyd Huys E-	7	WMO3	0.10	42.00
Email to Fred Tayar	7	WMO3	0.10	42.00
Voice mail message from Colby Linthwaite	7	WMO3	0.10	42.00
Voice mail message from Bill Trotter	6	WMO3	0.10	42.00
Emails from <div></div>	3	LF3	0.20	50.00
Email from W. Onchulenko; review documents from receiver	7	LF3	0.30	75.00
Email from Dave	7	LF3	0.10	25.00
Email from L. Valgardson	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Email to L. Valgardson	3	LF3	0.10	25.00
Email to Greg <div></div>	3	LF3	0.10	25.00
Discussions with W. Onchulenko	7	LF3	0.20	50.00
Emails to Lloyd; texts to Lloyd; emails from Lloyd	7	LF3	0.40	100.00
Discussion with L. Valgardson	7	LF3	0.10	25.00
Discussion with L. Valgardson; emails with Lloyd; discussion with Lloyd	7	LF3	0.90	225.00
Email from L. Valgardson;	7	LF3	0.10	25.00
Texts to/from Lloyd	7	LF3	0.30	75.00
Emails from TSDC (x4).	3	LOV3	0.40	50.00

	Emails from (x2).	3	LOV3	0.20	25.00
	Email from WMO.	3, 7	LOV3	0.10	12.50
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Emails from LF (x2).	3,7	LOV3	0.20	25.00
	Call with LF re OneDrive access.	7	LOV3	0.20	25.00
	Email to TSDC.	3	LOV3	0.10	12.50
May-31-22	Telephone attendances with client (X 2)	7,3,6	WMO3	0.70	294.00
	Telephone attendance with Greg Fenske	3,7	WMO3	0.20	84.00
	Telephone attendance with IT	7	WMO3	0.30	126.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	JVN with client	7,3,6	WMO3	1.00	420.00
	E-mails from Leiba Feldman (X 5)	3	WMO3	0.50	210.00
	E-mails from Liam Valgardson (X 4)	3	WMO3	0.40	168.00
	E-mails from IT (X 2)	7	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 3)	7,9	WMO3	0.30	126.00
	E-mail from	3	WMO3	0.10	42.00
	E-mails from TSDC (X 4)	3	WMO3	0.40	168.00
	E-mails from Fred Tayar (X 2)	7,6	WMO3	0.20	84.00
	E-mail to IT	7	WMO3	0.10	42.00
	E-mail to Leiba Feldman	3	WMO3	0.10	42.00
	E-mails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	E-mail to Fred Tayar	7,6	WMO3	0.10	42.00
	E-mails to (X 2)	3	WMO3	0.20	84.00



Invoice#:

218999

E-mail to Liam Valgardson 3	WMO3	0.10	42.00
E-mail to Fred Tayar 7,6	WMO3	0.10	42.00
Emails from/to Liam; email from TSDC 3	LF3	0.30	75.00
Email to Fred 3	LF3	0.20	50.00
Emails from L. Valgardson x 2 7	LF3	0.20	50.00
Email from TSDC 7	LF3	0.10	25.00
Email from Lloyd 7	LF3	0.10	25.00
Email from L. Valgardson 3	LF3	0.10	25.00
Email from Fred 7	LF3	0.10	25.00
Email from L. Valgardson 3	LF3	0.10	25.00
Email to TSDC 3	LF3	0.20	50.00
Email from W. Onchulenko 3	LF3	0.10	25.00
Emails from TSDC 3	LF3	0.20	50.00
Discussion with L. Valgardson 3	LF3	0.20	50.00
Email from TSDC; email from Fred 3	LF3	0.20	50.00
Email to Greg 3	LF3	0.10	25.00
Email from 3	LF3	0.10	25.00
Email from W. Onchulenko 3	LF3	0.10	25.00
Email to W. Onchulenko 3	LF3	0.10	25.00
Email to TSDC 3	LF3	0.20	50.00

	Email from TSDC.	3	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Emails to LF (x2).	3	LOV3	0.20	25.00
	Email from LF.	3	LOV3	0.10	12.50
	Email from F. Tayar.	7	LOV3	0.10	12.50
	Email to F. Tayar.	7	LOV3	0.10	12.50
	Email from F. Tayar.	7	LOV3	0.10	12.50
	Emails from LF (x2).	3	LOV3	0.20	25.00
	Call with LF.	3	LOV3	0.10	12.50
	Email to LF.	3	LOV3	0.10	12.50
	Email from LF.	3	LOV3	0.10	12.50
	Email from	3	LOV3	0.10	12.50
	Scan CRA form.	6	LOV3	0.10	12.50
	Emails to WMO (x2).	7	LOV3	0.20	25.00
Jun-01-22	Telephone attendance with Fred Tayar and Peter	7	WMO3	0.20	84.00
	Telephone attendance with Fred Tayar	7	WMO3	0.20	84.00
	Telephone attendance with Fred Tayar and Colby Linthwaite	7	WMO3	0.20	84.00
	E-mails from Fred Tayar (X 3)	7	WMO3	0.30	126.00
	Telephone attendance with Fred Tayar and Greg Fenske	7	WMO3	0.50	210.00
	E-mails from Greg Fenske (X 7)	5	WMO3	0.70	294.00
	E-mails from Leiba Feldman (X 4)	3	WMO3	0.40	168.00
	E-mails from	(X 3) 3,9	WMO3	0.30	126.00
	E-mail from Bruce Taylor	1	WMO3	0.10	42.00

	E-mails to Greg Fenske (X 4) 5	WMO3	0.40	168.00
	E-mails to Fred Tayar (X 15) 7,5	WM03	0.50	210.00
	E-mail to 3	WMO3	0.10	42.00
	Email to TSDC 3	LF3	0.20	50.00
	Discussion with L. Valgardson 3	LF3	0.20	50.00
	Emails from L. Valgardson x 3 3	LF3	0.30	75.00
	Email from TSDC 3	LF3	0.10	25.00
	Email to Greg Fenske 3	LF3	0.10	25.00
	Email from 3	LF3	0.10	25.00
	Email to TSDC 3	LF3	0.10	25.00
	Email from 3	LF3	0.10	25.00
	Email from 3	LF3	0.10	25.00
	Email from 3	LF3	0.10	25.00
	Email from 3	LF3	0.10	25.00
	Email from W. Onchulenko 3	LF3	0.10	25.00
	Email from 3	LF3	0.10	25.00
	Emails from LF (x2). 3	LOV3	0.20	25.00
	Emails from (x3). 3	LOV3	0.30	37.50
	Email from WMO. 7	LOV3	0.10	12.50
	Email from 3	LOV3	0.10	12.50
	Emails from LF (x2). 3	LOV3	0.20	25.00
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to LF. 3	LOV3	0.10	12.50
Jun-02-22	Telephone attendance with Leiba Feldman and Liam Valgardson 3	WMO3	0.20	84.00
	E-mails from Leiba Feldman (X 7) 3	WMO3	0.50	210.00

E-mails to Leiba Feldman (X 2)	3	WMO3	0.20	84.00
E-mails from Greg Fenske (X 6)	7,3	WMO3	0.60	252.00
E-mails to Greg Fenske (X 2)	7,3	WMO3	0.20	84.00
Voice mail message to Bruce Taylor	1	WMO3	0.10	42.00
E-mails to Liam Valgardson	7	WMO3	0.20	84.00
E-mails from Liam Valgardson	7	WMO3	0.20	84.00
Email from/to L. Valgardson	7	LF3	0.20	50.00
Email from/to Colby	7	LF3	0.10	25.00
Email to L. Valgardson		LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to W. Onchulenko	3	LF3	0.10	25.00
Email from L. Valgardson	3	LF3	0.10	25.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email to Greg	3	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Email to/from W. Onchulenko	3	LF3	0.20	50.00
Email to/from Greg	3	LF3	0.20	50.00
Email from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00
Text from Greg	3	LF3	0.10	25.00
Email from Greg	3	LF3	0.10	25.00

Emails from Greg	3	LF3	0.20	50.00
Call with Greg	3	LF3	0.20	50.00
Discussion with W. Onchulenko	3	LF3	0.20	50.00
Discussion with L. Valgardson	3	LF3	0.20	50.00
Email to TSDC	3	LF3	0.20	50.00
Voicemails from Greg	3	LF3	0.20	50.00
Email from TSDC	3	LF3	0.10	25.00
Email to W. Onchulenko	3	LF3	0.10	25.00
Email from Liam	7	LF3	0.10	25.00
Emails from L. Valgardson, W. Onchulenko	7	LF3	0.20	50.00
Text from Greg	3	LF3	1.00	250.00
Email from Greg	7	LF3	0.10	25.00
Email from L. Valgardson; review Motion	7	LF3	0.30	75.00
Emails from LF (x2).	3	LOV3	0.20	25.00
Email from G. Fenske.	3	LOV3	0.10	12.50
Text from G. Fenske.	3	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Email from LF.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Emails from G. Fenske (x3).	3	LOV3	0.30	37.50
Texts from G. Fenske (x2).	7	LOV3	0.20	25.00
Emails from LF (x2).	7	LOV3	0.20	25.00

	Email from LF. 7	LOV3	0.10	12.50
	Instructions from WMO. Draft letter to service list re notice of appeal. Send to WMO. 2	LOV3	0.80	100.00
	Email from WMO.	LOV3	0.10	12.50
Jun-03-22	Telephone attendance with Leiba Feldman re: JVN's 7	WMO3	0.50	210.00
	Letter to Bruce Taylor 1	WMO3	0.20	84.00
	Service List 7	WMO3	0.10	42.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	Letter to Service List 7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 9) 7,3	WMO3	0.50	210.00
	E-mails to Greg Fenske (X 5) 7,3	WMO3	0.50	210.00
	E-mails from Liam Valgardson (X 8) 3,7	WMO3	0.50	210.00
	E-mail from Leiba Feldman 3	WMO3	0.10	42.00
	E-mail from 3	WMO3	0.10	42.00
	E-mail to Fred Tayar 7	WMO3	0.10	42.00
	Meeting with Liam Valgardson re: Court of Appeal and memoranda preparation from Liam Valgardson 7	WMO3	0.30	126.00
	E-mail to Liam Valgardson 3	WMO3	0.10	42.00
	E-mail to Leiba Feldman 3	WMO3	0.10	42.00
	Email from W. Onchulenko 3	LF3	0.20	50.00
	Email from W. Onchulenko 3	LF3	0.20	50.00

Email from W. Onchulenko	3	LF3	0.20	50.00
Email from W. Onchulenko	3	LF3	0.20	50.00
Discussion with L. Valgardson		LF3	0.20	50.00
Emails from L. Valgardson x 2		LF3	0.20	50.00
Email from W. Onchulenko	3	LF3	0.10	25.00
Email from L. Valgardson	3	LF3	0.10	25.00
Discussion with W. Onchulenko		LF3	0.30	75.00
Emails from L. Valgardson; email from TSDC; email from Brittini; email from	3	LF3	0.40	100.00
Emails from/to W. Onchulenko, Morris, L. Valgardson	3	LF3	0.40	100.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from L. Valgardson	7	LF3	0.10	25.00
Email from W. Onchulenko	7	LF3	0.10	25.00
Email from L. Valgardson	7	LF3	0.10	25.00
Email from G. Fenske.	3	LOV3	0.10	12.50
Text from G. Fenske.	7	LOV3	0.10	12.50
Draft Notice of Motion. Send to WMO.	7	LOV3	0.50	62.50
Meet with WMO re Notice of Motion and RDAs.	7	LOV3	0.30	37.50
Call with LF.	7	LOV3	0.10	12.50
Email to TSDC.	3	LOV3	0.10	12.50
Revise service letter.	7	LOV3	0.20	25.00
Email to WMO.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Meet with WMO and LF re RDAs.	3	LOV3	0.30	37.50

Jun-04-22	Email to D. Mackie.	7	LOV3	0.20	25.00
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to G. Fenske and	3	LOV3	0.10	12.50
	Email from	3	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email from LF.	7	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Review the CA rules and summarize timelines for WMO. Send to WMO.	2	LOV3	1.10	137.50
	Email from WMO.		LOV3	0.10	12.50
	Complete RDA request form.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Email from WMO.	3	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.20	25.00
	Complete RDA request form.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Complete RDA request form.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Research case law on notice of appeal amendments. Begin drafting motion brief.	7	LOV3	1.20	150.00
	JVN with Liam Valgardson to phone	3,6,9	WMO3	2.00	840.00
	E-mails from Liam Valgardson (X 5)	3	WMO3	0.50	210.00
	E-mail from	3,7,9	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 2)	3	WMO3	0.20	84.00



	E-mails to Liam Valgardson (X 3) 6,3	WMO3	0.30	126.00
	Emails from G. Fenske (x2). 3	LOV3	0.20	25.00
	Email from 7	LOV3	0.10	12.50
	Prepare for RDA with P. Nygard and WMO. 3,7	LOV3	0.40	50.00
	Attend RDA with P. Nygard and WMO. 3,7	LOV3	1.70	212.50
	Email to WMO. 7	LOV3	0.10	12.50
	Complete RDA request form. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
Jun-05-22	JVN with client 3,6,7	WMO3	2.00	840.00
	Telephone attendance with Leiba Feldman 3	WMO3	0.20	84.00
	E-mail from Leiba Feldman 3	WMO3	0.10	42.00
	E-mail from Greg Fenske 6,3	WMO3	0.10	42.00
	E-mail to Sargent Cole 3	WMO3	0.10	42.00
	E-mail to TSDC 3	WMO3	0.10	42.00
	Email from LF. 3	LOV3	0.10	12.50
Jun-06-22	Voice mail message from client 3	WMO3	0.10	42.00
	E-mails from TSDC (X 5) 3	WMO3	0.30	126.00
	E-mails from Leiba Feldman (X 2) 3	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman 3	WMO3	0.10	42.00
	Review Notice of Motion, Affidavit and Brief 7	WMO3	0.30	126.00
	E-mail to Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mails from Leiba Feldman (X 2) 3	WMO3	0.20	84.00
	E-mails to Liam Valgardson (X 3) 7	WMO3	0.30	126.00

E-mails from Liam Valgardson (X 3) 7	WMO3	0.30	126.00
E-mail from 7	WMO3	0.10	42.00
E-mail from Liam Valgardson 7	WMO3	0.10	42.00
Email from Greg 3	LF3	0.10	25.00
Emails from L. Valgardson 7	LF3	0.20	50.00
Call with W. Onchulenko 7	LF3	0.20	50.00
Email to TSDC 3	LF3	0.20	50.00
Email from TSDC 3	LF3	0.10	25.00
Email to TSDC 3	LF3	0.10	25.00
Email from TSDC 3	LF3	0.10	25.00
Email to TSDC 3	LF3	0.20	50.00
Email from Whitehead 3	LF3	0.10	25.00
Email from L. Valgardson 3	LF3	0.10	25.00
Email from 3	LF3	0.20	50.00
Email to TSDC 3	LF3	0.20	50.00
Discussion with W. Onchulenko 7	LF3	0.20	50.00
Email from TSDC 3	LF3	0.10	25.00
Email from Greg 7	LF3	0.10	25.00
Email to Greg 7	LF3	0.10	25.00
Email from L. Valgardson; review materials 7	LF3	0.60	150.00
Emails from/to ; emails from/to L. Valgardson 7	LF3	0.50	125.00
Email from W. Onchulenko 7	LF3	0.10	25.00
Email from L. Valgardson 3	LF3	0.10	25.00
Email to L. Valgardson 3	LF3	0.10	25.00
Email from L. Valgardson 3	LF3	0.10	25.00

Emails from L. Valgardson	3	LF3	0.20	50.00
Email from L. Valgardson	3	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email to W. ●nchulenko	7	LF3	0.10	25.00
Email from [REDACTED]	3	LF3	0.10	25.00
Email from TSDC	3	LF3	0.10	25.00
Email to TSDC	7	LF3	0.10	25.00
Email from L. Valgardson; review revised materials	7	LF3	0.60	150.00
Email from D. Mackie; email from L. Valgardson	7	LF3	0.20	50.00
Email to L. Valgardson	7	LF3	0.10	25.00
Email from L. Valgardson	7	LF3	0.10	25.00
Email from TSDC.	3	L●V3	0.10	12.50
Emails from LF (x2).	3	L●V3	0.20	25.00
Complete RDA form.	3	L●V3	0.10	12.50
Email to TSDC.	3	L●V3	0.10	12.50
Draft motion brief and affidavit. Research case law re amending notice of appeals.	7	L●V3	2.90	362.50
Email to WM●.		L●V3	0.20	25.00
Email from LF.	3	L●V3	0.10	12.50
Emails from [REDACTED]	3	L●V3	0.20	25.00
Email from LF.	3	L●V3	0.10	12.50
Email to LF.	3	L●V3	0.10	12.50
Email from LF.	3	L●V3	0.10	12.50
Emails from LF (x2).	3	L●V3	0.20	25.00

	Email to LF.	7	L●V3	0.10	12.50
	Email to F. Tayar.	7	L●V3	0.10	12.50
	Email from [REDACTED]	3	L●V3	0.10	12.50
	Email from WM●.	7	L●V3	0.10	12.50
	Make revisions to pleadings.	7	L●V3	0.20	25.00
	Email from C. Linthwaite.	7	L●V3	0.10	12.50
	Email to WM●.	7	L●V3	0.10	12.50
	Further revise, edit and proof pleadings.	7	L●V3	0.20	25.00
	Email to WM●.	7	L●V3	0.10	12.50
	Send pleadings to D. Mackie. Discuss filing with WM●.	7	L●V3	0.30	37.50
	File pleadings at the Court of Appeal.	7	L●V3	0.90	112.50
	Email to F. Tayar	7	L●V3	0.10	12.50
Jun-07-22	Telephone attendance with client	3	WMO3	0.20	84.00
	E-mail from Greg Fenske		WM●3	0.10	42.00
	E-mail from [REDACTED]	3	WM●3	0.10	42.00
	E-mail from Debbie Mackie	1	WM●3	0.10	42.00
	Letter to Bruce Taylor	1	WM●3	0.10	42.00
	E-mail to Debbie Mackie	1	WM●3	0.10	42.00
	Emails from L. Valgardson, Tayar, [REDACTED]	7	LF3	0.40	100.00
	Email from F. Tayar.	7	L●V3	0.10	12.50

	Email from	LOV3	0.10	12.50
	Email from F. Tayar. 7	LOV3	0.10	12.50
Jun-08-22	Research rules for amendment in QB. Draft 7 summary for WMO.	LOV3	1.40	175.00
	E-mail from Liam Valgardson 7	WMO3	0.10	42.00
	E-mails to Greg Fenske (X 4) 3	WMO3	0.40	168.00
	E-mails from Greg Fenske (X 2) 3	WMO3	0.20	84.00
	E-mails from Liam Valgardson (X 5) 7	WMO3	0.50	210.00
	E-mails from Fred Tayar (X 3) 7	WMO3	0.30	126.00
	Amend redacted bills 7	WMO3	0.40	168.00
	E-mails from Joe Albert (X 2) 7	WMO3	0.20	84.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail to Brian Whitehead 3	WMO3	0.10	42.00
	E-mail from Brian Whitehead 3	WMO3	0.10	42.00
	E-mail from RDA 3	WMO3	0.10	42.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	Continue research of amendments to pleadings. Summarize research. 7	LOV3	1.10	137.50
	Email to WMO. 7	LOV3	0.20	25.00
	Email from WMO. 7	LOV3	0.10	12.50
	Email from F. Tayar. 7	LOV3	0.10	12.50
	Email to F. Tayar. 7	LOV3	0.10	12.50
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Emails from F. Tayar (x2). 7	LOV3	0.20	25.00
	Text from G. Fenske. 7	LOV3	0.10	12.50
	Email from B. Whitehead. 3	LOV3	0.10	12.50

	Email to TSDC.	3	LOV3	0.10	12.50
	Email to F. Tayar.	7	LOV3	0.10	12.50
	Emails from F. Tayar (x2).	7	LOV3	0.20	25.00
	Email to F. Tayar.	7	LOV3	0.10	12.50
	Email from B. Whitehead.	3	LOV3	0.10	12.50
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Emails from TSDC (x2).	3	LOV3	0.20	25.00
Jun-09-22	E-mails from Greg Fenske (X 6)	3,4	WMO3	0.50	210.00
	E-mails to Greg Fenske (X 5)	3,4	WMO3	0.50	210.00
	E-mail to Liam Valgardson	3	WMO3	0.10	42.00
	E-mail to Liam Valgardson	3	WMO3	0.10	42.00
	E-mail to Colby Linthwaite	7	WMO3	0.10	42.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mail from Dom Magisano	7	WMO3	0.10	42.00
	E-mail to Dom Magisano	7	WMO3	0.10	42.00
	E-mail to Liam Valgardson	3	WMO3	0.10	42.00
	E-mail from Liam Valgardson	3	WMO3	0.10	42.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	E-mails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	E-mails to Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	Letter to Bruce Taylor	1	WMO3	0.10	42.00
	E-mail from Adrien Iafrate	3	WMO3	0.10	42.00

	CORRESPONDENCE - emails regarding JVN access	3	JAR3	0.10	20.00
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Text from G. Fenske.	4	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Email from G. Fenske.	7	LOV3	0.10	12.50
	Email from G. Fenske.	7	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Review Court of Appeal rules and practice guidelines.	7	LOV3	0.50	62.50
	Call Court of Appeal registrar.	7	LOV3	0.20	25.00
	Email to WMO.	3	LOV3	0.10	12.50
	Discuss RDA scheduling with JR.	3	LOV3	0.10	12.50
	Email to JR.	7	LOV3	0.20	25.00
	Email from WMO.	7	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Complete RDA request form.	3	LOV3	0.20	25.00
	Email to TSDC.	3	LOV3	0.10	12.50
	Emails from TSDC (x2).	3	LOV3	0.20	25.00
	Email to G. Fenske and	7	LOV3	0.10	12.50
	Diarize RDAs.	3	LOV3	0.20	25.00
Jun-10-22	E-mails from Fred Tayar (X 6)	7	WMO3	0.50	210.00

E-mail from Mel LaBossiere 1	WMO3	0.10	42.00
E-mails from Joel Refvik (X 3) 7	WMO3	0.30	126.00
E-mails from Greg Fenske (X 11) 3	WMO3	0.70	294.00
E-mails from Liam Valgardson (X 17) 3	WMO3	1.00	420.00
E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
E-mail from Bruce Taylor 1	WMO3	0.10	42.00
JVN by phone 3,7	WMO3	1.00	420.00
E-mails to Liam Valgardson (X 10)	WMO3	0.50	210.00
E-mails to Fred Tayar (X 2) 7	WMO3	0.20	84.00
	WMO3	0.10	42.00
E-mails to Colby Linthwaite (X 2) 7	WMO3	0.20	84.00
E-mails to Greg Fenske (X 6) 3	WMO3	0.50	210.00
E-mails to Bruce Taylor (X 2) 1	WMO3	0.20	84.00
E-mail from Peter Anderson 6	WMO3	0.10	42.00
E-mail from Adrien Iafrate 3	WMO3	0.10	42.00
E-mails to Adrien Iafrate (X 2) 3	WMO3	0.20	84.00
CORRESPONDENCE - emails regarding JVN access 3	JAR3	0.10	20.00
CORRESPONDENCE - discussion with WMO 3	JAR3	0.10	20.00
Correspondence- filling out and sending in forms for JVN access 3	JAR3	0.20	40.00
Email from P. Anderson. 6	LOV3	0.10	12.50
Email from WMO. 3	LOV3	0.10	12.50
Prepare RDA request form. 3	LOV3	0.20	25.00
Email to TSDC. 3	LOV3	0.10	12.50
Prepare RDA request form. 3	LOV3	0.20	25.00



Email to TSDC. 3	LOV3	0.10	12.50
Prepare RDA request form. 3	LOV3	0.20	25.00
Email to TSDC. 3	LOV3	0.10	12.50
Email to TSDC. 3	LOV3	0.10	12.50
Email from TSDC. 3	LOV3	0.10	12.50
Discuss file proceedings with J. Refvik. 7	LOV3	0.20	25.00
Email from WMO. 7	LOV3	0.10	12.50
Email to F. Tayar. 7	LOV3	0.10	12.50
Email from F. Tayar. 7	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Email from WMO. 3	LOV3	0.10	12.50
Email to WMO. 3	LOV3	0.10	12.50
Email from B. Taylor. 7	LOV3	0.20	25.00
Emails from G. Fenske (x2). 3	LOV3	0.20	25.00
Emails from WMO (x2). 3	LOV3	0.20	25.00
Emails to TSDC (x2). 3	LOV3	0.20	25.00
Email from WMO. 3	LOV3	0.10	12.50
Email from TSDC. 3	LOV3	0.10	12.50
Email to WMO. 3	LOV3	0.10	12.50
Email from WMO. 3	LOV3	0.10	12.50
Email to TSDC. 3	LOV3	0.10	12.50

	Email from WMO.	3	LOV3	0.10	12.50
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to WMO.	3	LOV3	0.10	12.50
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Email to G. Fenske.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to WMO.	3	LOV3	0.10	12.50
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to J. Refvik.	7	LOV3	0.10	12.50
	Read RDA memo.	3	LOV3	0.10	12.50
	Email to WMO.	3	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email from A. Iafrate.	3	LOV3	0.10	12.50
	Email from WMO.	3	LOV3	0.10	12.50
	Email from F. Tayar.	2	LOV3	0.10	12.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email from J. Refvik.	3	LOV3	0.10	12.50
	Prepare for RDA appointment.	3	LOV3	0.40	50.00
	Attend RDA with P. Nygard.	3	LOV3	0.90	112.50
	Email from M. LaBossiere.	1	LOV3	0.20	25.00
Jun-11-22	Prepare for and JVN	7,3,9	WMO3	2.00	840.00
	E-mails from Greg Fenske (X 4)	3	WMO3	0.40	168.00
	E-mails from Liam Valgardson (X 9)	3,9	WMO3	0.50	210.00

	E-mails from (X 2) 3,6	WMO3	0.20	84.00
	E-mails from TSDC (X 3) 3	WMO3	0.30	126.00
	E-mails to Liam Valgardson (X 4) 3	WMO3	0.20	45.00
	E-mails to Greg Fenske (X 4) 3	WMO3	0.40	90.00
	E-mail to 3	WMO3	0.10	22.50
	Emails from WMO (x3). 3	LOV3	0.30	37.50
	Email from G. Fenske. 6	LOV3	0.10	12.50
	Email from 6	LOV3	0.10	12.50
	Email from G. Fenske. 6	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Email from G. Fenske. 3	LOV3	0.10	12.50
	Emails from WMO (x4).7	LOV3	0.40	50.00
	Email to WMO. 3	LOV3	0.10	12.50
	Complete RDA scheduling form. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Emails from WMO (x2). 3	LOV3	0.20	25.00
	Prepare for RDA. 3	LOV3	0.40	50.00
	Attend RDA with WMO and P. Nygard. 3,6,9,7	LOV3	1.70	212.50
	Make revisions requested by WMO to excel document. 9	LOV3	0.20	25.00
Jun-12-22	E-mail to Fred Tayar 7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 3) 9	WMO3	0.30	126.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	Prepare and post JVN 3,7,9	WMO3	2.50	1,050.00
	Email from G. Fenske. 3	LOV3	0.10	12.50

	Email from .	LOV3	0.10	12.50
	Email to WMO. 7	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Complete RDA scheduling form. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to WMO. 3	LOV3	0.10	12.50
Jun-13-22	E-mail to Mellanie LaBossiere 1	WMO3	0.10	42.00
	E-mail from Melanie LaBossiere 1	WMO3	0.10	42.00
	E-mail from the Court of Appeal 1	WMO3	0.10	42.00
	E-mails to Colby Linthwaite (X 2) 7	WMO3	0.20	84.00
	Telephone attendance with Colby Linthwaite 7	WMO3	0.20	84.00
	E-mails from Peter Anderson (X 2) 6	WMO3	0.20	84.00
	E-mails to Liam Valgardson (X 3) 3	WMO3	0.30	126.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mails from Liam Valgardson (X 4) 3	WMO3	0.40	168.00
	E-mails from Joel Refvik (X 2) 3	WMO3	0.20	84.00
	E-mail from TSDC 3	WMO3	0.10	42.00
	E-mail from Fred Tayar 2	WMO3	0.10	42.00
	E-mails to Greg Fenske (X 4) 3	WMO3	0.40	168.00
	Prepare Agenda and JVN on phone 7,3	WMO3	1.00	420.00

E-mail from Adrien Iafrate 3	WMO3	0.10	42.00
CORRESPONDENCE - scheduling time to set up JVN training 3	JAR3	0.20	40.00
CORRESPONDENCE - discussion with WMO regarding appeal hearing 3	JAR3	0.10	20.00
Correspondence- sending forms to facilitate JVN training 3	JAR3	0.10	20.00
Instructions from WMO. 7	LOV3	0.10	12.50
Make revisions to excel sheet. 9	LOV3	0.20	25.00
Emails from (x2). 9	LOV3	0.20	25.00
Email from G. Fenske. 7	LOV3	0.10	12.50
Text from G. Fenske. 3	LOV3	0.10	12.50
Email to WMO. 3	LOV3	0.10	12.50
Emails from WMO (x2). 3	LOV3	0.20	25.00
Email to WMO. 3	LOV3	0.20	25.00
Complete RDA request forms (x2). 7	LOV3	0.20	25.00
Emails to TSDC. 3	LOV3	0.20	25.00
Email from WMO. 3	LOV3	0.10	12.50
Email from G. Fenske. 3	LOV3	0.10	12.50
Emails from TSDC (x2). 3	LOV3	0.20	25.00
Emails to G. Fenske 7	LOV3	0.10	12.50
Text from G. Fenske. 7	LOV3	0.10	12.50
Email from M. LaBossiere. 1	LOV3	0.20	25.00
Emails from WMO (x2). 7	LOV3	0.20	25.00
Email from WMO. 7	LOV3	0.10	12.50
Email from D. McCoy. 1	LOV3	0.10	12.50
Emails from WMO (x7). 7	LOV3	0.70	87.50
Instructions from WMO re notice of motion. Research extension of pages. Draft notice of motion. 7	LOV3	1.80	225.00

	Prepare for RDA with P. Nygard. 3	LOV3	0.30	37.50
	Attend RDA with P. Nygard and WMO. 3	LOV3	0.90	112.50
Jun-14-22	E-mails from Greg Fenske (X 4) 7,3,9	WMO3	0.40	168.00
	E-mails to Greg Fenske (X 5) 9	WMO3	0.50	210.00
	Voice mail message from Greg Fenske 6,3	WMO3	0.10	42.00
	Voice mail message from Bill Trotter 3	WMO3	0.10	42.00
	E-mails from Debby Prymak (X 5) 6,3	WMO3	0.20	84.00
	E-mail from Bruce Taylor 1	WMO3	0.10	42.00
	E-mail from Liam Valgardson 7	WMO3	0.10	42.00
	E-mail from RDA 3	WMO3	0.10	42.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	Telephone attendance with Bill Trotter 6	WMO3	0.20	84.00
	Telephone attendance with Greg Fenske 3	WMO3	0.20	84.00
	E-mail from Greg Fenske 5	WMO3	0.10	42.00
	E-mails from Fred Tayar (X 2) 7	WMO3	0.10	42.00
	E-mail from Fred Tayar 7	WMO3	0.10	42.00
	File review - QB decision/notice of appeal/ 7	JAR3	2.10	420.00
Jun-15-22	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mails from Peter Anderson (X 2) 6	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 5) 6	WMO3	0.50	210.00
	E-mails from Fred Tayar (X 5) 7	WMO3	0.50	210.00
	Zoom meeting with Fred Tayar and Greg Fenske 7	WMO3	1.00	420.00
	E-mail from JVN 3	WMO3	0.10	42.00
	E-mails from Liam Valgardson (X 2) 5	WMO3	0.20	84.00

	Voice mail message from Bill Trotter 6	WMO3	0.10	42.00
	E-mail to Peter Anderson 6	WMO3	0.10	42.00
	E-mails to Fred Tayar (X 7) 7	WMO3	0.50	210.00
	E-mails to Greg Fenske (X 3) 3	WMO3	0.30	126.00
	E-mail to TSDC 3	WMO3	0.10	42.00
	Telephone attendance with Bill Trotter 6	WMO3	0.10	42.00
	Telephone attendances with client (X 2) 6,3	WMO3	0.40	168.00
	E-mail from Adrien Iafrate 3	WMO3	0.10	42.00
	JVN training 3	JAR3	0.50	100.00
	Reviewing materials for June 30 CA hearing 7	JAR3	2.40	480.00
	Email from LV 3	JAR3	0.10	20.00
	Email from JVN 3	JAR3	0.10	20.00
	System test for JVN training 3	JAR3	0.10	20.00
	Emails from WMO (x2). 3	LOV3	0.20	25.00
	Email from A. Iafrate. 3	LOV3	0.20	25.00
	Email from WMO. 7	LOV3	0.10	12.50
	Emails to WMO (x2). 7	LOV3	0.20	25.00
Jun-16-22	Prepare for and telephone attendance with Fred Tayar and Greg Fenske 7	WMO3	0.40	168.00
	E-mail to Adrien Iafrate 3	WMO3	0.10	42.00
	E-mail from Williamson Travis 3	WMO3	0.10	42.00
	E-mails from Colby Linthwaite (X 2) 7	WMO3	0.20	84.00
	Telephone attendance with Colby Linthwaite 7	WMO3	0.10	42.00
	E-mails from Greg Fenske (X 4) 3	WMO3	0.40	168.00
	E-mails from Fred Tayar (X 2) 7	WMO3	0.20	84.00
	E-mail from RDA 3	WMO3	0.10	42.00
	Voice mail message from Bill Trotter 6	WMO3	0.10	42.00

	E-mail from Bill Trotter	6	WMO3	0.10	42.00
	E-mail to Colby Linthwaite	7	WMO3	0.10	42.00
	E-mails to Fred Tayar (X 2)	7	WMO3	0.20	84.00
	E-mail to Williamson Travis	3	WMO3	0.10	42.00
	Email regarding RDA's	3	JAR3	0.10	20.00
	Email to TSDC. Email	3	LOV3	0.10	12.50
	to IT.	7	LOV3	0.10	12.50
	Email from TSDC.	3	LOV3	0.10	12.50
	Email to G. Fenske	3	LOV3	0.10	12.50
	Prepare for RDA.	3	LOV3	0.10	12.50
	Email from .....	3	LOV3	0.40	50.00
	Attend RDA	with P Nygard. 3	LOV3	0.10	12.50
	E-mails from Fred Tayar (X 3)	7	LOV3	0.90	112.50
Jun-17-22	E-mails to Liam Valgardson (X 6)	3,7	WMO3	0.30	126.00
	E-mail to Bruce Taylor	1	WMO3	0.60	252.00
	E-mail to Colby Linthwaite	7	WMO3	0.10	42.00
	E-mail from Colby Linthwaite	7	WMO3	0.10	42.00
	E-mails from Liam Valgardson (X 10)	3,7	WMO3	0.10	42.00
			WMO3	0.50	210.00
	E-mail from Greg Fenske	6	WMO3	0.10	42.00
	Emails from LV regarding RDA's	3	JAR3	0.10	20.00
	Review of motions brief	7	JAR3	0.40	80.00



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	Emails from WMO (x2).	3	LOV3	0.20	25.00
	Email to WMO.	3	LOV3	0.10	12.50
	Complete TSDC forms (x3).	3	LOV3	0.30	37.50
	Emails to TSDC (x3).	3	LOV3	0.30	37.50
	Email from WMO.	7	LOV3	0.10	12.50
	Email to F. Tayar.	7	LOV3	0.10	12.50
	Draft CA Order.	7	LOV3	0.70	87.50
	Email to WMO.	3	LOV3	0.10	12.50
	Emails from G. Fenske (x2).	3	LOV3	0.20	25.00
	Email to G. Fenske and	3	LOV3	0.10	12.50
Jun-18-22	E-amil from Liam Valgardson	3	WMO3	0.10	42.00
	E-mails to Liam Valgardson	3	WMO3	0.30	126.00
	Email from	3	LOV3	0.10	12.50
	Email to WMO.	7	LOV3	0.10	12.50
	Emails from WMO (x2).	3	LOV3	0.20	25.00
	Prepare for RDA with P. Nygard.	3	LOV3	0.40	50.00
	Attend RDA with P. Nygard.	3	LOV3	1.70	212.50
	Email from WMO.	3	LOV3	0.10	12.50
Jun-19-22	E-mail from Greg Fenske	3	WMO3	0.10	42.00

	E-mails to Liam Valgardson	3	WMO3	0.20	84.00
	E-mail from Liam Valgardson	3	WMO3	0.10	42.00
	E-mails to Liam Valgardson (X 4)	3	WMO3	0.40	168.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	JVN with client	3,7,9	WMO3	2.00	840.00
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Emails from WMO (x4).	3	LOV3	0.40	50.00
	Email from WMO.	3	LOV3	0.10	12.50
	Email to WMO.	3	LOV3	0.10	12.50
	Email from WMO.	3	LOV3	0.10	12.50
	Complete TSDC scheduling form.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
Jun-20-22	Voice mail message from Fred Tayar	7	WMO3	0.10	42.00
	Instructions to Liam Valgardson	7	WMO3	0.10	42.00
	E-mail from Fred Tayar	7	WMO3	0.10	42.00
	Instructions to Debby Prymak	7	WMO3	0.10	42.00
	Letter to Sandra Fawcett	5	WMO3	0.10	42.00
	E-mail from Greg Fenske	3	WMO3	0.10	42.00
	E-mail from TSDC	3	WMO3	0.10	42.00
	E-mails from Liam Valgardson (X 2)	3	WMO3	0.20	84.00
	E-mail to Greg Fenske	3	WMO3	0.10	42.00
	Review and amend motion	7	WMO3	0.20	84.00

	Meeting with Liam Valgardson re: motion and factum 7	WMO3	0.20	84.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail to Bruce Taylor 1	WMO3	0.10	42.00
	JVN with client 7,3,9	WMO3	1.00	420.00
	E-mails from Liam Valgardson (X 3) 3	WMO3	0.30	126.00
	Amend Notice of Motion and Factum and draft Brief 2	WMO3	3.00	1,260.00
	Instructions from WMO re excel. 9	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email from 9	LOV3	0.10	12.50
	Voice message from 3	LOV3	0.10	12.50
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Make revisions to Excel spread sheet. Draft affidavit language. 9,7	LOV3	1.90	237.50
	Instructions from WMO re factum. 7	LOV3	0.10	12.50
	Review appeal factum. Revise appeal factum. Add legal fees argument. Format factum. 7	LOV3	2.10	262.50
	Highlight issues for WMO. Send to WMO. Emails from WMO (x4). 7	LOV3	0.40	50.00
Jun-21-22	Telephone attendance with Fred Tayar 7	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 2) 9	WMO3	0.20	84.00
	E-mail from 9	WMO3	0.10	42.00
	E-mail to 9	WMO3	0.10	42.00
	E-mails from Liam Valgardson (X 2) 7	WMO3	0.20	84.00
	E-mails from Court of Queen's Bench (X 2) 7	WMO3	0.20	84.00
	E-mails from Fred Tayar (X 4) 7	WMO3	0.40	168.00

E-mail to Fred Tayar 7	WMO3	0.10	42.00
Meeting with Liam Valgardson re: Brief 7	WMO3	0.20	84.00
Amend Factum, Brief, and Notice of Motion 7	WMO3	2.00	840.00
E-mails to Fred Tayar (X 2) 7	WMO3	0.10	42.00
E-mails from Fred Tayar (X 2) 7	WMO3	0.10	42.00
E-mails from Fred Tayar (X 6) 7	WMO3	0.60	252.00
Email from Liam regarding motions brief for court of appeal 7	JAR3	0.10	20.00
Caselaw research regarding increasing page limits of factum 7	JAR3	0.50	100.00
Email to Wayne and Liam about increasing page limits of factum 7	JAR3	0.10	20.00
Further case law research 7	JAR3	1.20	240.00
email from Liam and review of motions brief 7	JAR3	0.30	60.00
Meet and discuss pleadings with WMO. Revise NOM. Draft Motion Brief. Research caselaw. Instructions to JR. Read memo from JR. Draft affidavit. Draft annotated Notice of Appeal. 7	LOV3	3.70	462.50
Email to WMO. 7	LOV3	0.10	12.50
Discuss pleadings with WMO. Make revisions to pleadings. 7	LOV3	1.10	137.50
Email to WMO. 7	LOV3	0.10	12.50
Email to D. Mackie. 7	LOV3	0.10	12.50
Email from WMO. 7	LOV3	0.10	12.50
Email to WMO. 7	LOV3	0.10	12.50
Email to D. Mackie. 7	LOV3	0.10	12.50
Make changes to proposed factum. 7	LOV3	0.40	50.00
Email from WMO. 7	LOV3	0.10	12.50
Email to WMO. 7	LOV3	0.10	12.50
Email from WMO. 7	LOV3	0.10	12.50
Emails from F. Tayar. 7	LOV3	0.20	25.00

	Revise factum. 7	LOV3	0.10	12.50
Jun-22-22	E-mails from Liam Valgardson (X 4) 7	WMO3	0.40	168.00
	Amend draft Factum, Notice of Motion, and Brief and telephone attendance with Fred Tayar and Colby Linthwaite and meeting with Liam Valgardson 7	WMO3	2.40	1,008.00
	Voice mail message from Fred Tayar 7	WMO3	0.10	42.00
	Prepare for and telephone attendance with Greg Fenske and Fred Tayar 7	WMO3	1.00	420.00
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Discuss proposed factum with WMO. Revise proposed factum. 7	LOV3	1.10	137.50
	Emails to WMO (x2). 7	LOV3	0.20	25.00
	Discuss pleadings with WMO. 7	LOV3	0.10	12.50
	Research Detour Gold ONCA decision. Draft submissions. Send to WMO. 7	LOV3	0.60	75.00
	Research Manitoba reply factum procedure. 7	LOV3	0.20	25.00
	Email to WMO. 7	LOV3	0.10	12.50
	Emails from C. Linthwaite. 7	LOV3	0.20	25.00
	Discuss pleadings with WMO. Make additions and revisions to pleadings. Send to WMO and D. Mackie. 7	LOV3	0.80	100.00
	Revise cover page and index. 7	LOV3	0.30	37.50
	Email to D. Mackie. 7	LOV3	0.10	12.50
	Review Motion Brief for errors. Prepare brief for filing. 7	LOV3	0.50	62.50
	File pleadings at Court of Appeal. 7	LOV3	0.90	112.50
	Email to Brittni. 7	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Email to WMO. 7	LOV3	0.10	12.50
	Email from Brittni. 7	LOV3	0.10	12.50
	Email to WMO and Brittni. 7	LOV3	0.10	12.50
	Email from Brittni. 7	LOV3	0.10	12.50

Review filed motion and brief for service. 7	LOV3	0.20	25.00
Complete RDA scheduling forms (x2). 3	LOV3	0.20	25.00
Emails to TSDC (x2). 3	LOV3	0.20	25.00
Email from TSDC. 3	LOV3	0.10	12.50
Email to G. Fenske and 7	LOV3	0.10	12.50
Email from TSDC. 3	LOV3	0.10	12.50
Email to WMO. 7	LOV3	0.10	12.50
Instructions from WMO re appeal book. 7	LOV3	0.10	12.50
Email from WMO. 7	LOV3	0.10	12.50
Email to TSDC. 3	LOV3	0.10	12.50
Begin preparing appeal book. 7	LOV3	1.60	200.00
Email from TSDC. 3	LOV3	0.10	12.50
Email to WMO. 7	LOV3	0.10	12.50

Jun-23-22

E-mail to IT 7	WMO3	0.10	42.00
E-mail from IT 7	WMO3	0.10	42.00
E-mails to Greg Fenske (X 4) 3	WMO3	0.20	84.00
E-mails from Liam Valgardson (X 3) 3	WMO3	0.10	42.00
E-mail from Michelle LaBossiere with Brief and to review 1	WMO3	0.40	168.00
E-mails from Liam Valgardson (X 2) 3	WMO3	0.20	84.00
Email to IT. 7	LOV3	0.10	12.50
Emails from WMO (x2). 7	LOV3	0.20	25.00
Email from G. Fenske. 3	LOV3	0.10	12.50

	Text from G. Fenske. 7	LOV3	0.10	12.50
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Discuss weekend RDAs with WMO. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Continue drafting and organizing Appeal Book. 7	LOV3	1.20	150.00
	Email to WMO. 7	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Continue drafting and revising Appeal Book. 7	LOV3	1.00	125.00
	Email to C. Linthwaite. 7	LOV3	0.10	12.50
Jun-24-22	E-mails to Greg Fenske (X 2) 3	WMO3	0.20	84.00
	E-mails from Liam Valgardson (X 10) 7	WMO3	0.50	210.00
	Telephone attendance with client 7	WMO3	0.30	126.00
	Meeting with Liam Valgardson 7	WMO3	0.20	84.00
	E-mail from Colby Linthwaite 7	WMO3	0.10	42.00
	E-mail from Peter Anderson 6	WMO3	0.10	42.00
	E-mail from Greg Fenske 3	WMO3	0.10	42.00
	Telephone attendance with Colby Linthwaite 7	WMO3	0.20	84.00
	Email from C. Linthwaite. 7	LOV3	0.10	12.50
	Email to C. Linthwaite. 7	LOV3	0.10	12.50
	Complete RDA scheduling forms (x3). 3	LOV3	0.30	37.50
	Emails to TSDC (x3). 3	LOV3	0.30	37.50
	Email to G. Fenske and 3	LOV3	0.10	12.50
	Discuss RDA schedule with WMO. 3	LOV3	0.10	12.50

	Complete RDA scheduling form. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Complete RDA scheduling form. 3	LOV3	0.20	25.00
	Email to TSDC. 3	LOV3	0.10	12.50
	Diarize Jun27-Jull RDAs. 3	LOV3	0.20	25.00
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to TSDC. 3	LOV3	0.10	12.50
	Email from G. Fenske. 7	LOV3	0.10	12.50
	Text from G. Fenske. 7	LOV3	0.10	12.50
	Email to WMO. 7	LOV3	0.10	12.50
	Email from TSDC. 3	LOV3	0.10	12.50
	Email to G. Fenske and 7	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Email from G. Fenske. 3	LOV3	0.10	12.50
	Text from G. Fenske. 3	LOV3	0.10	12.50
Jun-25-22	E-mails from Greg Fenske (X 2) 9,3	WMO3	0.20	84.00
	E-mails from TSDC (X 2) 3	WMO3	0.20	84.00
	E-mails from Liam Valgardson (X 2) 3	WMO3	0.20	84.00
	Email from G. Fenske. 3	LOV3	0.10	12.50
	Text from G. Fenske. 3	LOV3	0.10	12.50
	Prepare for RDA with P. Nygard. 3	LOV3	0.40	50.00
	Attend RDA with P. Nygard. 3	LOV3	1.70	212.50
	Email to WMO. 3	LOV3	0.10	12.50
Jun-26-22	E-mail from Liam Valgardson 3	WMO3	0.10	42.00



	E-mail from Greg Fenske	9	WMO3	0.10	42.00
	E-mail from TSDC	3	WMO3	0.10	42.00
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Email from G. Fenske.	3	LOV3	0.10	12.50
	Complete RDA scheduling form.	3	LOV3	0.10	12.50
	Email to TSDC.	3	LOV3	0.10	12.50
	Prepare for RDA with P. Nygard.	3	LOV3	0.40	50.00
	Attend RDA with P. Nygard.	3,7	LOV3	1.70	212.50
Jun-27-22	E-mails from (X 5) and meeting with Liam Valgardson	7	WMO3	0.50	210.00
	E-mails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	E-mail to Liam Valgardson	7	WMO3	0.10	42.00
	Review Order	7	WMO3	0.10	42.00
	E-mail to Liam Valgardson	7	WMO3	0.10	42.00
	Review Respondent's Brief	7	WMO3	0.20	84.00
	Email from LV regarding scheduling of RDA's	3	JAR3	0.10	20.00
	Email from	.			
	Email to WMO and J. Refvik.	7	LOV3	0.10	12.50
	Email from C. Linthwaite.	7	LOV3	0.10	12.50
		7	LOV3	0.10	12.50
	Email from C. Linthwaite.	7	LOV3	0.10	12.50
	Review draft CA Order.	7	LOV3	0.10	12.50

Jun-28-22	Email to WMO. 7	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Email to WMO. 7	LOV3	0.10	12.50
	Email to G. Fenske. 3	LOV3	0.10	12.50
	Emails from G. Fenske (x2). 3	LOV3	0.20	25.00
	Emails from WMO (x3). 7	LOV3	0.30	37.50
	Meeting with Liam Valgardson and Joel Refvik re: Appeal Book and Factum, Order and lake property reporting letter 7	WMO3	0.20	84.00
	E-mail from Liam Valgardson 3	WMO3	0.10	42.00
	Telephone attendances with Bruce Taylor (X 3) 1	WMO3	0.40	168.00
	E-mails to Court of Appeal (X 2) 1	WMO3	0.20	84.00
	E-mails from Court of Appeal (X 4) 1	WMO3	0.40	168.00
	E-mails to Bruce Taylor (X 3) 1	WMO3	0.30	126.00
	E-mails from Bruce Taylor (X 2) 1	WMO3	0.20	84.00
	E-mail to Service List 1	WMO3	0.10	42.00
	E-mail from Debbie Mackie re: ledger 7	WMO3	0.10	42.00
	E-mail to Fred Tayar re: ledger 7	WMO3	0.20	84.00
	E-mail from Fred Tayar 7	WMO3	0.20	84.00
	E-mails from Liam Valgardson (X 5) 3,7	WMO3	0.50	210.00
	E-mail to Liam Valgardson 3	WMO3	0.10	42.00
	E-mails from Court of Appeal (X 2) 1	WMO3	0.20	84.00
	E-mails to Court of Appeal (X 2) 1	WMO3	0.20	84.00
	E-mails from Greg Fenske (X 2) 3,7	WMO3	0.20	84.00

E-mail from	3	WMO3	0.10	42.00
E-mails to Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
E-mails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
Telephone attendance with Colby Linthwaite	7	WMO3	0.20	84.00
E-mails to Greg Fenske (X 3)	3	WMO3	0.30	126.00
E-mail to	3	WMO3	0.10	42.00
Meeting with Liam Valgardson	7	WMO3	0.20	84.00
JVN with client	7,3	WMO3	1.00	420.00
Telephone attendance with Court of Appeal	1	WMO3	0.20	84.00
Telephone attendance with Greg Fenske	7,3	WMO3	0.20	84.00
Email from LV regarding RDA scheduling	3	JAR3	0.10	20.00
Drafting appeal book	7	JAR3	2.00	400.00
meeting with LV regarding appeal book	7	JAR3	0.20	40.00
meeting with WMO	7	JAR3	0.20	40.00
RDA	3	JAR3	1.00	200.00
Email to WMO.	3	LOV3	0.10	12.50
Email to D. Mackie and D. Prymak.	7	LOV3	0.10	12.50
Prepare and revise CA draft order.	7	LOV3	0.30	37.50
Email from D. Prymak.	7	LOV3	0.10	12.50
Email from D. Mackie.	7	LOV3	0.10	12.50
Instructions from WMO.	7	LOV3	0.30	37.50

Email to IT.	7	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Email from D. Prymak.	3	LOV3	0.10	12.50
Emails to WMO (x2).	3	LOV3	0.20	25.00
Email from T. Doyle.	7	LOV3	0.10	12.50
Email from G. Fenske.	3	LOV3	0.10	12.50
Emails from G. Fenske.	3	LOV3	0.20	25.00
Email from	3	LOV3	0.10	12.50
Complete RDA scheduling form.	3	LOV3	0.10	12.50
Emails to TSDC (x2).	3	LOV3	0.20	25.00
Email from TSDC.	3	LOV3	0.10	12.50
Email from WMO.	3	LOV3	0.10	12.50
Email to J. Refvik.	3	LOV3	0.10	12.50
Email from TSDC.	3	LOV3	0.10	12.50
Email from G. Fenske and	3	LOV3	0.10	12.50
Further revise CA draft order.	7	LOV3	0.10	12.50
Email to D. Mackie.	7	LOV3	0.10	12.50
Email to D. Mackie.	7	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Email to WMO.	7	LOV3	0.10	12.50
Read correspondence from WMO.	7	LOV3	0.10	12.50
Email to J. Refvik.	7	LOV3	0.10	12.50

	Review factum. Continue Appeal Book references. 7	LOV3	0.80	100.00
	Attend RDA with WMO and P. Nygard. 3,7	LOV3	0.30	37.50
Jun-29-22	Reporting letter to client 7	WMO3	0.20	84.00
	Preparing appeal book 7	JAR3	1.80	360.00
	review of appeal book 7	JAR3	0.20	40.00
	Phone call with IT regarding access to one drive 7	JAR3	0.40	80.00
	Review of affidavit for upcoming RDA 3	JAR3	0.50	100.00
	Email from IT re OneDrive. 7	LOV3	0.10	12.50
	Email from J. Refvik. 7	LOV3	0.10	12.50
	Prepare revised appeal book. Send to WMO. 7	LOV3	2.40	300.00
	Email to WMO. 7	LOV3	0.10	12.50
	Email from WMO. 7	LOV3	0.10	12.50
	Email to T. Williamson. 3	LOV3	0.10	12.50
	Email from T. Williamson. 3	LOV3	0.10	12.50
	Email to WMO. 3	LOV3	0.10	12.50
	Instructions to D. Mackie re TSDC documents. 3	LOV3	0.10	12.50
	Email from D. Mackie. 7	LOV3	0.10	12.50
	Email from D. Mackie. 7	LOV3	0.10	12.50
	Email from WMO. 3	LOV3	0.10	12.50

Email to T. Williamson.	3	LOV3	0.10	12.50
Email from WMO.	7	LOV3	0.10	12.50
Email to WMO re Dean Affidavit.	2	LOV3	0.20	25.00
Emails from WMO (x2).	7	LOV3	0.20	25.00
Email to T. Williamson.	3	LOV3	0.10	12.50
Email from T. Williamson.	3	LOV3	0.10	12.50

Wayne M. Onchulenko	Total Time Spent=	87.80	Hours@ \$420.00	\$36,876.00
		.7	@ \$225.00	157.50
Joel A.E. Refvik	Total Time Spent=	15.50	Hours@ \$200.00	\$3,100.00
Leiba Feldman	Total Time Spent =	21.50	Hours@ \$250.00	\$5,375.00
Liam O. Valgardson	Total Time Spent =	99.10	Hours@ \$125.00	\$12,387.50

<b>Total Fees</b>	<b>\$57,896.00</b>
GST on Fees	\$2,894.80
RST on Fees	\$4,052.72

**DISBURSEMENTS****Disbursements**

Facsimile	2.00
Photocopying charge	612.00
Telephone call	29.00
Nygaard Motion Court of Appeal*	75.00
Notice of Motion Court of Appeal*	75.00
<b>Total Disbursements</b>	<b>\$793.00</b>
GST on Disbursements	\$32.15

<b>TOTAL FEES, DISBURSEMENT</b>	<b>\$65,668.77</b>
<b>AMOUNT DUE FROM PREVIOUS</b>	
<b>BALANCE DUE AND OWING</b>	<b>\$65,668.77</b>

\* tax-exempt

E.&O.E.

Wayne M. Onchulenko

*Accounts which are outstanding for more than one month after the date of delivery of same to the client shall bear interest at the rate established under section 161 of The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*

This is Exhibit "I" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. M. Zolner", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024



700-330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5  
Phone 204-957-0527 Fax 204-957-1696  
Website: www.ltgic.ca  
GST R840918429

**Nygard Enterprises Ltd.**  
750 John Bruce Road E  
Winnipeg, Manitoba R3X 1Y2

## STATEMENT OF ACCOUNT

**Attention: Peter Nygard - Private & Confidential**

July 28, 2022

**Re: Credit Agreement and Debenture and related financial matters** File#: 113885  
Invoice #: 219584

DATE	DESCRIPTION	LAWYER	HOURS	AMOUNT
Jun-29-22	Email to Joel Refvik	7, 3 WMO3	0.10	42.00
	Email from Joel Refvik	7, 3 WMO3	0.10	42.00
	Emails from Liam Valgardson (X 2)	7,3 WMO3	0.20	84.00
	Emails from Joel Refvik ( 2)	7 WMO3	0.20	84.00
	Emails to Liam Valgardson (X 2)	3 WMO3	0.20	84.00
	Emails to Joel Refvik (X 2)	3 WMO3	0.20	84.00
	Email to Debbie Mackie	7 WMO3	0.10	42.00
	Emails to Liam Valgardson (X 2)	6 WMO3	0.20	84.00
	Email to Chevron Griffiths	3 WMO3	0.10	42.00
	JVN with client and Joel Refvik	7, 3 9 WMO3	1.00	420.00
	Telephone attendance with Greg Fenske	7, 3 WMO3	0.20	84.00
Jun-30-22	Email from Bill Trotter	6 WMO3	0.10	42.00
	Voice mail message from Bill Trotter	6 WMO3	0.10	42.00

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	Emails from Joel Refvik (X 6)	3	WMO3	0.60	252.00
	Emails to Joel Refvik (X 5)	3	WMO3	0.50	210.00
	Email TSDC	3	WMO3	0.10	42.00
	Email from Liam Valgardson	6	WMO3	0.10	42.00
	Email from Debbie Mackie	1	WMO3	0.10	42.00
	Email from Chevon Griffithis	3	WMO3	0.10	42.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Scheduling week of RDA's/confirmation emails	3	JAR3	0.50	100.00
	Meeting with WMO	3	JAR3	0.20	40.00
	Email to T. Williamson.	3	LOV3	0.10	12.50
	Email to J. Refvik.	3	LOV3	0.10	12.50
	Email from T. Williamson.	3	LOV3	0.10	12.50
	Email to WMO.	3	LOV3	0.10	12.50
	Email from J. Refvik.	3	LOV3	0.10	12.50
	Email from WMO.	3	LOV3	0.10	12.50
Jul-01-22	Email to Fred	3	WMO3	0.10	42.00
	Review emails from Wayne/Greg		JAR3	0.10	20.00
	Review email from Fred	3	JAR3	0.10	20.00
Jul-02-22	Email to Greg Fenske	3	WMO3	0.10	42.00
	Emails from Greg Fenske (X 2)	3	WMO3	0.20	84.00

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	Email from	3	WMO3	0.10	42.00
	JVN with client	3, 7	WMO3	2.00	840.00
	Emails from Joel Refvik (X 2)	3	WMO3	0.20	84.00
	Review email from	3	JAR3	0.10	20.00
	Text conversation with Greg regarding RDA	3	JAR3	0.10	20.00
	Scheduling July 5 RDA	3	JAR3	0.10	20.00
	Confirming RDA	3	JAR3	0.10	20.00
	RDA with Mr. Nygard	3,7	JAR3	1.80	360.00
	Draft letter to Adrien Iafrate regarding phone access	3	JAR3	0.30	60.00
Jul-03-22	Telephone attendance with Joel Refvik	3	WMO3	0.20	84.00
	JVN with client	3, 7	WMO3	2.00	840.00
	Email from	3	WMO3	0.10	42.00
	Email from Greg Fenske	8	WMO3	0.10	42.00
	Email from	3	JAR3	0.10	20.00
Jul-04-22	Email from Colby Linthwaite	7	WMO3	0.10	42.00
	Email to Colby Linthwaite	7	WMO3	0.10	42.00
	Email to Joel Refvik	7	WMO3	0.20	84.00
	Emails from (X 2)	6, 3	WMO3	0.10	42.00
	Voice mail message from Bill Trotter	6	WMO3	0.10	42.00
	Email from	3	JAR3	0.10	20.00
	Email from Wayne	3	JAR3	0.10	20.00
	Email from Wayne	3	JAR3	0.10	20.00
	Review email from Greg	3	JAR3	0.10	20.00

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	Review email from Greg	3	JAR3	0.10	20.00
Jul-05-22	Emails from Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Emails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Emails from Joel Refvik (X 4)	3	WMO3	0.30	126.00
	Emails to Joel Refvik (X 2)	3	WMO3	0.20	84.00
	Prepare for meeting	3, 7, 9	WMO3	0.30	126.00
	JVN meeting with client	3, 7, 9	WMO3	1.00	420.00
	Email from Joel Refvik (X 2)	3	WMO3	0.20	84.00
	Drafting letter to Colby Linthwaite regarding appeal book	7	JAR3	0.50	100.00
	Email to and from Wayne	3	JAR3	0.10	20.00
	Email to Greg	3	JAR3	0.10	20.00
	Email to Greg	3	JAR3	0.10	20.00
	Email to Wayne	3	JAR3	0.10	20.00
	JVN	3	JAR3	1.10	220.00
	Text messages from Greg	3	JAR3	0.10	20.00
	Preparing affidavit of WMO	3	JAR3	4.60	920.00
Jul-06-22	Telephone attendance with Joel Refvik re: affidavit	7	WMO3	0.10	42.00
	Email from	3	WMO3	0.10	42.00
	Email from Bruce Taylor	1	WMO3	0.10	42.00
	Email from Greg Fenske	6	WMO3	0.10	42.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Emails from Joel Refvik (X 2)	3	WMO3	0.20	84.00
	Email from Bill Trotter	6	WMO3	0.10	42.00
	Emails from Adrien Iafrate (X 3)	3	WMO3	0.30	126.00
	Email to Greg Fenske	3	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	JAR3	0.10	20.00

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Jul-07-22	Emails from Fred Tayar/Greg Fenske	7	JAR3	0.10	20.00
	Review voicemail from Fred Tayar/Greg Fenske	7	JAR3	0.10	20.00
	Email to WMO	7	JAR3	0.10	20.00
	Phone call with Fred Tayar/Greg Fenske	7	JAR3	0.20	40.00
	Email to ICT regarding one drive for Fred Tayar	7	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Fred Tayar regarding one drive access	3	JAR3	0.10	20.00
	Email to Fred Tayar	3	WMO3	0.10	42.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email to	3	WMO3	0.10	42.00
	Telephone attendance with Fred Tayar	7	WMO3	0.20	84.00
	Email to Joel Refvik	3	WMO3	0.10	42.00
	Emails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Voice mail message from Greg Fenske	7	WMO3	0.10	42.00
	Emails from Greg Fenske (X 3)	6	WMO3	0.30	126.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	WMO3	0.10	42.00
	Email from	3	JAR3	0.10	20.00
	Review voice mail from Greg Fenske/email to Greg Fenske	3	JAR3	0.10	20.00
	Appeal book letter for Colby Linthwaite	7	JAR3	0.50	100.00

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	Email from Greg Fenske regarding JVN	3	JAR3	0.10	20.00
	Review email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Adrien Iafrate	3	JAR3	0.10	20.00
	Review emails from Greg	3	JAR3	0.10	20.00
Jul-08-22	Email from Bill Trotter	6	WMO3	0.10	42.00
	Emails from Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Email to Fred Tayer	7	WMO3	0.10	42.00
	Emails from Joel Refvik (X 3)	3	WMO3	0.30	126.00
	Emails to Joel Refvik	3	WMO3	0.40	168.00
	Email from	3	JAR3	0.10	20.00
	Email from	3	JAR3	0.10	20.00
	Emails to TSDC arranging following weeks JVN's	3	JAR3	0.50	100.00
	Email to Greg and	3	JAR3	0.10	20.00
	Emails to and from WMO	3	JAR3	0.10	20.00
	Email from	3	JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
Jul-09-22	Prepare for and attend JVN with client	3, 7, 9	WMO3	2.00	840.00
	Telephone attendance with Joel Refvik	3	WMO3	0.20	84.00
	Email from TSDC	3	WMO3	0.10	42.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Emails to Joel Refvik (X 3)	3	WMO3	0.30	126.00
	Review confirmation emails from TSDC	3	JAR3	0.10	20.00
	Email to TSDC regarding Fred Tayar's confirmation for his JVN	7	JAR3	0.10	20.00
	Drafting affidavit of WMO	3	JAR3	0.50	100.00
	JVN with Peter Nygard	3,7,9	JAR3	1.80	360.00

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Jul-10-22	Email from Greg Fenske	3	WMO3	0.10	42.00
	Prepare for and JVN with client and emails to Adrien Iafrate (X 2)	3, 7	WMO3	2.50	1,050.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
Jul-11-22	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email from TSDC	3	WMO3	0.10	42.00
	Affidavit of WMO	3	JAR3	2.00	400.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Confirmation email to Greg	3	JAR3	0.10	20.00
	Emails regarding Saturday July 16 JVN	3	JAR3	0.20	40.00
	RDA scheduling email	3	JAR3	0.10	20.00
	Email From Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg/	3	JAR3	0.10	20.00
Jul-12-22	Email from Greg Fenske	6	WMO3	0.10	42.00
	Email to Joel Refvik	5	WMO3	0.10	42.00
	Email to Bruce Taylor	1	WMO3	0.10	42.00
	Emails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Email to Fred Tayar	7	WMO3	0.10	42.00
	Email from Greg Fenske	5	WMO3	0.10	42.00
	Emails to Joel Refvik (X 2)	5	WMO3	0.20	84.00
	Prepare and JVN with Joel Refvik	7, 5, 6	WMO3	1.00	420.00
	Telephone attendance with Joel Refvik	7, 5	WMO3	0.20	84.00
	Emails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Email from Joel Refvik		WMO3	0.10	42.00
	Email to Fred Tayar	7	WMO3	0.10	42.00
	Email from IT	7	WMO3	0.10	42.00

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	Email to WMO	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	RDA with Peter Nygard	7,5,6	JAR3	1.00	200.00
Jul-13-22	Emails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Emails from Fred Tayar (X 4)	7,3	WMO3	0.40	168.00
	Emails from Greg Fenske (X 2)	5	WMO3	0.20	84.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg/	3	JAR3	0.10	20.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Email from Ivlis regarding onedrive	7	JAR3	0.10	20.00
	Reviewing documents for upcoming RDA	3	JAR3	0.50	100.00
	Email from Greg Fenske	9	JAR3	0.10	20.00
	Email from Fred Tayar	9	JAR3	0.10	20.00
Jul-14-22	Email from Greg Fenske	5	WMO3	0.10	42.00
	Telephone attendances with Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Emails from Greg Fenske (X 5)	5	WMO3	0.50	210.00
	Emails to Fred Tayar (X 3)	7	WMO3	0.30	126.00
	Emails from Joel Refvik (X 2)	3	WMO3	0.20	84.00



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	Prepare for and JVN with client	3,7,9	WMO3	0.50	210.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	WMO3	0.10	42.00
	E-mails to Joel Revfik	3	WMO3	0.20	84.00
	E-mails to Greg Fenske (X 3)	3	WMO3	0.30	126.00
	Email to Michelle LaBossiere	1	WMO3	0.10	42.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Reviewing documents and affidavit for RDA	9	JAR3	1.00	200.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
	RDA	3,9	JAR3	1.00	200.00
Jul-15-22	E-mails from Joel Refvik (X 7)	3, 7	WMO3	0.70	294.00
	E-mails from Greg Fenske (X 2)	3	WMO3	0.10	42.00
	E-mails to Joel Refvik (X 2)	6,3	WMO3	0.20	84.00
	Email to Colby Linthwaite	7	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	JAR3	0.10	20.00
	Email to Greg/	3, 6	JAR3	0.10	20.00
	Email to Wayne Onchulenko	7	JAR3	0.10	20.00
	Review correspondence from Fred Tayar	7	JAR3	0.20	40.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Scheduling emails to TSDC	3	JAR3	0.50	100.00
	Email from Colby Linthwaite on appeal book	7	JAR3	0.10	20.00

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Jul-16-22	Email to Wayne Onchulenko for appeal book	7	JAR3	0.10	20.00
	Email from Greg Fenske	7	JAR3	0.10	20.00
	Appeal book edits	7	JAR3	1.70	340.00
	Prepare for and attend JVN	7,3,9	WMO3	2.00	840.00
	Emails from Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Emails from TSDC (X 2)	3	WMO3	0.20	84.00
	Emails from Greg Fenske (X 2)	3, 9	WMO3	0.20	84.00
	Emails to Greg Fenske (X 4)	3	WMO3	0.40	168.00
	Email to TSDC	3	WMO3	0.10	42.00
	Emails to Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Text message from Greg Fenske	3	JAR3	0.10	20.00
	RDA preparation	7,3,9	JAR3	0.50	100.00
	RDA with Peter Nygard	7,3,9	JAR3	1.50	300.00
Jul-17-22	Email from Wayne Onchulenko regarding RDA	3	JAR3	0.10	20.00
	Prepare for and attend JVN	3, 7, 9	WMO3	2.00	840.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
Jul-18-22					
	Email/text from Greg Fenske	3	JAR3	0.10	20.00
	Email from TSDC	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	4	JAR3	0.10	20.00
	Email from Greg Fenske	3	WMO3	0.10	42.00

Invoice#:

219584

Jul-19-22	Reviewing and saving exhibits from Ling Lou	4	JAR3	0.20	40.00
	Additions to affidavit of WMO	3	JAR3	0.60	120.00
	Emails from Greg Fenske	3	JAR3	0.20	40.00
	Text from Greg Fenske	4	JAR3	0.10	20.00
	Reviewing emails for additions to affidavit of WMO	3	JAR3	0.50	100.00
	Prepare for and attend JVN with client	4, 3, 7	WMO3	1.00	420.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Emails from Greg Fenske (X 4)	3, 5, 6, 4	WMO3	0.40	168.00
	Email to Ling Luo	4	WMO3	0.10	42.00
	Emails to Ling Luo (X 2)	4	WMO3	0.10	42.00
	Emails to Joel Refvik (X 2)	3	WMO3	0.20	84.00
	Email from Greg Fenske	6	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email and text from Greg Fenske	4	JAR3	0.10	20.00
	Preparation for RDA	3,5,6,4	JAR3	0.70	140.00
	RDA with PJN	3,5,6,4	JAR3	1.00	200.00
	Email from Greg Fenske	5	JAR3	0.10	20.00
Jul-20-22	Telephone attendance with client	3	WMO3	0.20	84.00
	Email to Adrien Iafrate	3	WMO3	0.20	84.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Email from Bill Trotter	6	WMO3	0.10	42.00
	Email from Greg Fenske	4	WMO3	0.10	42.00
	Emails from (X 2)	3	WMO3	0.10	42.00
	Email from	3	JAR3	0.10	20.00
	Email from	3	JAR3	0.10	20.00
	Email from Greg	4	JAR3	0.10	20.00

Invoice#:

219584

	Email to Wayne	3	JAR3	0.10	20.00
	Email from Bill Trotter	6	JAR3	0.10	20.00
Jul-21-22	Emails from Greg Fenske (X 3)	5, 6	WMO3	0.30	126.00
	Emails from Fred Tayar (X 3)	2	WMO3	0.30	126.00
	Email from Bruce Taylor	1	WMO3	0.10	42.00
	Email from Fred Tayar	2	WMO3	0.10	42.00
	Adding additional emails to affidavit of WMO	3	JAR3	0.30	60.00
	Email from Wayne	3	JAR3	0.10	20.00
Jul-22-22	Emails from Joel Refvik (X 8)	3	WMO3	0.50	210.00
	Emails from Greg Fenske	3	WMO3	0.10	42.00
	Email to Greg/	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Preparing RDA scheduling forms	3	JAR3	0.70	140.00
	Emails to TSDC booking RDA's for the week	3	JAR3	0.10	20.00
	Email to Greg/	3	JAR3	0.10	20.00
	Email to Greg	3	JAR3	0.10	20.00
	Email to Greg/	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg Fenske	3	JAR3	0.10	20.00
Jul-23-22	Prepare and attend JVN	4, 3, 7, 9	WMO3	2.00	840.00
	Emails from Bill Trotter (X 2)	6	WMO3	0.20	84.00
	Email from	3	WMO3	0.10	42.00
	Email from Greg Fenske	6	WMO3	0.10	42.00

Invoice#: 219584

	Email from	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
Jul-24-22	Prepare and attend JVN	9, 3, 7	WMO3	2.00	840.00
	Emails from Greg Fenske (X 4)	3,9	WMO3	0.40	168.00
	Email from Ling Luo	4	WMO3	0.10	42.00
	Email to Debby Prymak Emails	6	WMO3	0.10	42.00
	to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Email to	3	WMO3	0.10	42.00
Jul-25-22					
	Emails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from TSDC	3	JAR3	0.10	20.00
	Email to Wayne/Greg	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to TSDC	3	JAR3	0.10	20.00
Jul-26-22					
	Email from Greg Fenske	9	WMO3	0.10	42.00
	Preparing for RDA	3	JAR3	0.50	100.00
	RDA with client	3	JAR3	1.00	200.00
	Meeting with Wayne Onchulenko	3	JAR3	0.30	60.00

Invoice#: 219584

	Emails from Wayne Onchulenko	9	JAR3	0.10	20.00
Jul-27-22					
	Email from Bruce Taylor	1	WMO3	0.10	42.00
Jul-28-22	Reporting letter and Statement of Account to client	7	WMO3	0.20	84.00
Wayne M. Onchulenko	Total Time Spent =	45.10	Hours @ \$420.00		\$18,942.00
Joel A.E. Refvik	Total Time Spent=	38.20	Hours@ \$200.00		\$7,640.00
Liam O. Valgardson	Total Time Spent=	.60	Hours@ \$125.00		\$75.00
	<b>Total Fees</b>			<b>83.9</b>	<b>\$26,657.00</b>
	GST on Fees				\$1,332.85
	RST on Fees				\$1,865.99

#### DISBURSEMENTS

#### Disbursements

Facsimile	14.00
Photocopying charge	68.50
Telephone call	9.00
<b>Total Disbursements</b>	<b>\$91.50</b>
GST on Disbursements	\$4.58

#### TOTAL FEES, DISBURSEMENTS

**\$29,951.92**

#### AMOUNT DUE FROM PREVIOUS A

#### BALANCE DUE AND OWING

**\$29,951.92**

Total Tax: \$1,337.43 \$1,865.99

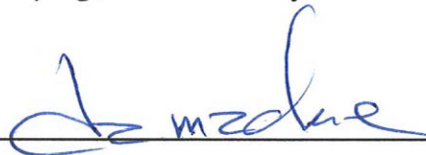
\* tax-exempt

E.&O.E.

Wayne M. Onchulenko

*Accounts which are outstanding for more than one month after the date of delivery of same to the client shall bear interest at the rate established under section 161 of The income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*

This is Exhibit "J" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022



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A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

GST R840918429

## STATEMENT OF ACCOUNT

**Nygard Enterprises Ltd.**  
750 John Bruce Road E  
Winnipeg, Manitoba R3X 1Y2

**Attention: Peter Nygard - Private & Confidential**

August 30, 2022

**Re: Credit Agreement and Debenture and related financial matters**

File #: 113885  
Invoice #: 220685

DATE	DESCRIPTION		LAWYER	HOURS	AMOUNT
Jul-28-22	Email to Bruce Taylor	1	WMO3	0.50	210.00
	Email to the Court	1	WMO3	0.10	42.00
	Email from Debbie Mackie	7	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	WMO3	0.10	42.00
	Email to Greg Fenske	3	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	JAR3	0.10	20.00
Jul-29-22	Emails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Email to Joel Refvol	3	WMO3	0.10	42.00
	Emails from TSDC (X 3)	3	WMO3	0.30	126.00
	Emails from Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	EmailfromGregFenske	8	WMO3	0.10	42.00
	Email from	3	WMO3	0.10	42.00
	Emails from TSDC (X 2)	3	WMO3	0.20	84.00



	Email from Fred Tayar	7	WMO3	0.10	42.00
	Emails from Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Email from	3	JAR3	0.10	20.00
	Email to TSDC	3	JAR3	0.10	20.00
	Email to Greg/	3	JAR3	0.10	20.00
	Email from Greg	3	JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	RDA scheduling	3	JAR3	0.60	120.00
	Email to Fred Tayar	7	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
	Email from TSDC	3	JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
Jul-30-22	Emails from Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Emails to Joel Refvik (X 3)	3	WMO3	0.30	126.00
	Affidavit of Wayne Onchulenko	3	JAR3	0.50	100.00
	Preparing RDA	3	JAR3	0.50	100.00
	RDA	3	JAR3	2.00	400.00
	Email to Wayne	3	JAR3	0.10	20.00
	Email from Wayne	3	JAR3	0.10	20.00
	Email to Adrien Iafrate	3	JAR3	0.10	20.00
Jul-31-22	Telephone attendance with client and Joel Refvik	3,7,9	WMO3	1.00	420.00
	Emails from Joel Refvik (X 3)	3,7	WMO3	0.30	126.00
	Emails from Greg Fenske (X 3)	3,7	WMO3	0.30	126.00
	Email to Joel Refvik	3	WMO3	0.10	42.00

	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Affidavit of Wayne Onchulenko	3	JAR3	1.30	260.00
	JVN preparation	3	JAR3	0.50	100.00
	JVN with client	3,7	JAR3	1.00	200.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
Aug-01-22	JVN with client	4,5,3,7	WMO3	2.00	840.00
	Email from Crystal Chu	4	WMO3	0.10	42.00
	Email to BMO	5	WMO3	0.10	42.00
	Email to Tracy Yiu	4	WMO3	0.10	42.00
	Email to Crystal Chu	4	WMO3	0.10	42.00
	Text to and from	3,4	JAR3	0.10	20.00
	Text from	3	JAR3	0.10	20.00
	Email and text to	3	JAR3	0.10	20.00
	Organizing exhibits for affidavit	3	JAR3	0.20	40.00
	Email from Wayne Onchulenko	4	JAR3	0.10	20.00
	Email from Wayne Onchulenko	4	JAR3	0.10	20.00
	Email from Wayne Onchulenko	4	JAR3	0.10	20.00
Aug-02-22	Email from the Court	1	WMO3	0.10	42.00
	Email from Melanie LaBossiere	1	WMO3	0.10	42.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email to Greg Fenske	7	WMO3	0.10	42.00
	Email from Crystal Lai	4	JAR3	0.10	20.00
	Affidavit of WMO	3	JAR3	1.40	280.00
	Affidavit of Wayne Onchulenko	3	JAR3	0.50	100.00

		1			
	Email from Douglas McCoy		JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Email from Mel Labossiere	1	JAR3	0.10	20.00
	Appeal hearing preparation	7	JAR3	1.70	340.00
Aug-03-22	Email from the Court	1	WMO3	0.10	42.00
	Email to the Court	1	WMO3	0.10	42.00
	Emails from Bruce Taylor (X 2)	1	WMO3	0.10	42.00
	Emails from the Court (X 2)	1	WMO3	0.20	84.00
	Emails from Bruce Taylor (X 2)	1	WMO3	0.20	84.00
	Email to Debbie Mackie	7	WMO3	0.10	42.00
	Email to Service List	7	WMO3	0.10	42.00
	Service List emails	7	WMO3	0.20	84.00
	Email to Court of Appeal	1	WMO3	0.10	42.00
	Email from Court of Appeal	1	WMO3	0.10	42.00
	Telephone attendance with Fred Tayar	7	WMO3	0.10	42.00
	Appeal hearing preparation	7	JAR3	1.80	360.00
	Email to Greg and	7	JAR3	0.10	20.00
	Affidavit of Wayne Onchulenko	3	JAR3	0.50	100.00
	Email from	7	JAR3	0.10	20.00
	Email from Debbie	7	JAR3	0.10	20.00
	Email from Debbie	7	JAR3	0.10	20.00
	Email from Debbie	7	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00

	Email from Douglas McCoy	1	JAR3	0.10	20.00
	Email to	7	JAR3	0.10	20.00
Aug-04-22	Meeting with Joel Refvik re: Factum and Appellant's Book of Authorities	7	WMO3	0.20	84.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Email to Greg Fenske	3	WMO3	0.10	42.00
	Email from the Court	1	WMO3	0.10	42.00
	Emails from Joel Refvik (X 8)	3	WMO3	0.40	168.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Email to	3	JAR3	0.10	20.00
	Email from	3	JAR3	0.10	20.00
	RDA scheduling forms	3	JAR3	0.40	80.00
	Text messages to and from Greg Fenske (X3)	3	JAR3	0.30	60.00
	Meeting with Wayne Onchulenko	7	JAR3	0.10	20.00
	Email from Greg Fenske	7	JAR3	0.10	20.00
	Email to Greg Fenske	7	JAR3	0.30	60.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
	Meeting with Wayne Onchulenko	7	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to TSDC	3	JAR3	0.10	20.00
	Email from TSDC	3	JAR3	0.10	20.00
	Scheduling emails to TSDC	3	JAR3	0.30	60.00
	Email to Greg Fenske	3	JAR3	0.10	20.00

	Emails from TSDC (x3)	3	JAR3	0.30	60.00
	Email from TSDC	3	JAR3	0.10	20.00
	Email to Greg	7	JAR3	0.10	20.00
	Draft QB order		JAR3	1.00	200.00
	Email from Doug McCoy	1	JAR3	0.10	20.00
Aug-05-22	Email from Court of Appeal	1	WMO3	0.10	42.00
Aug-06-22	Prepare for and JVN with client	3,7,1,9	WMO3	2.00	840.00
	Review Abe emails	4	WMO3	0.40	168.00
	Emails to Greg Fenske (X 4)	9	WMO3	0.40	168.00
	Email to Joel Refvik	3	WMO3	0.10	42.00
	Email to Adrian Iafrate	3 3	WMO3	0.10	42.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
Aug-07-22	Email to Greg Fenske	3	WMO3	0.10	42.00
	Email from	3	WMO3	0.10	42.00
	JVN with client	7,3,1,9	WMO3	2.00	840.00
	Review two Notice of Motions, 2 Briefs and Affidavit, review Receiver's brief and notes	7	WMO3	2.00	840.00
	Emails to Joel Refvik (X 2)	3	WMO3	0.10	42.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Email to Bruce Taylor	1	WMO3	0.10	42.00
	Email to Adrien Iafrate	3	WMO3	0.10	42.00
Aug-08-22	Emails from Greg Fenske (X 5)	7	WMO3	0.50	210.00
	Email to Greg Fenske	3	WMO3	0.10	42.00
	Amend Affidavit	3	WMO3	0.50	210.00
	Emails from Joel Refvik (X 2)	3	WMO3	0.20	84.00
	Emails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00

	Emails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Email from Adrien Iafrate	3	WMO3	0.10	42.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Prepare for Court of Appeal motion	7	WMO3	2.00	840.00
	Email to Wayne Onchulenko x2	3	JAR3	0.20	40.00
	Email from Wayne Onchulenko x 2	3	JAR3	0.20	40.00
	Draft QB order	7	JAR3	0.60	120.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Text message from Greg Fenske	3	JAR3	0.10	20.00
	Meeting with Wayne Onchulenko	7	JAR3	0.30	60.00
	Review of affidavit	3	JAR3	0.20	40.00
Aug-09-22	To prepare for motions	7	WMO3	2.50	1,050.00
	To telephone attendance with Colby Linthwaite	7	WMO3	0.30	126.00
	Email from Greg Fenske	7	WMO3	0.10	42.00
	Email from Colby Linthwaite	7	WMO3	0.10	42.00
	Telephone attendance with Colby Linthwaite	7	WMO3	0.20	84.00
	Prepare for motion	7	WMO3	0.50	210.00
	Affidavit of Wayne Onchulenko	3	JAR3	0.40	80.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Voicemail from Greg Fenske	7	JAR3	0.10	20.00
	Email to TSDC	3	JAR3	0.10	20.00
	Email from TSDC	3	JAR3	0.10	20.00
	Email to Greg and	3	JAR3	0.10	20.00
	Email to IT helpdesk	3	JAR3	0.10	20.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00

	Review of edits to affidavit from Fred Tayar	3	JAR3	0.50	100.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
	RDA with Peter Nygard	3,7,1	JAR3	1.00	200.00
Aug-10-22	Emails from and to Bruce Taylor, email to JJ Burnell, prepare for motion in Court of Appeal, attend motion in Court of Appeal, report on motion, meeting to discuss Appeal, and telephone attendance with Colby Linthwaite,	7	WMO3	3.50	1,470.00
	Email from Joe Albert	7	WMO3	0.10	42.00
	Email to Fred Tayar	7	WMO3	0.10	42.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email from JJ Burnell	1	WMO3	0.10	42.00
	Email from Brittney Van Daaselaar	7	WMO3	0.10	42.00
	Email from IT helpdesk	3	JAR3	0.10	20.00
	Email from Brittni	3	JAR3	0.10	20.00
	Appeal hearing preparation	7	JAR3	0.50	100.00
	Court of Appeal hearing	7	JAR3	2.00	400.00
	Phone call with Colby Linthwaite and Wayne Onchulenko	3	JAR3	0.30	60.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg Fenske	3	JAR3	0.10	20.00
	RDA registration email to Sydney and Myra	3	JAR3	0.10	20.00
	Email from Court of Appeal	1	JAR3	0.10	20.00
	Meeting with Wayne Onchulenko	7	JAR3	0.20	40.00
Aug-11-22	Prepare for and attend decision and report to client	7	WMO3	1.00	420.00
	Telephone attendance with Colby Linthwaite	7	WMO3	0.20	84.00
	Email from Greg Fenske	7	WMO3	0.10	42.00

	Email from Andrew Torbiak	9	WMO3	0.10	42.00
	Meeting with Joel Refvik re: Appeal Book	7	WMO3	0.20	84.00
	Appeal motion decision	7	JAR3	1.00	200.00
	preparing affidavit for RDA	3	JAR3	0.20	40.00
	Email from	7	JAR3	0.10	20.00
	meeting with Wayne Onchulenko	7	JAR3	0.10	20.00
Aug-12-22	Meeting with Joel Refvik re: Appeal Book, Book of Authorites, Facctum filing and message to Court of Appeal and review documents	7	WMO3	0.50	210.00
	Email from TSDC	3	WMO3	0.10	42.00
	Appeal book	7	JAR3	0.90	180.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg Fenske	3	JAR3	0.10	20.00
	Meeting with Wayne Onchulenko on appeal book	7	JAR3	0.50	100.00
	Email to TSDC	3	JAR3	0.10	20.00
	Draft order of Justice Lemaistre	7	JAR3	0.50	100.00
	Amending notice of appeal	7	JAR3	0.90	180.00
	Email to Greg Fenske	3	JAR3	0.10	20.00
	Meeting with Wayne on Book of Authorities	7	JAR3	0.10	20.00
	Putting together book of authorities	3	JAR3	1.20	240.00
	RDA bookings	3	JAR3	0.50	100.00
Aug-13-22	Emails from Joel Refvik	3	WMO3	0.50	210.00
	Email from TSDC	3	WMO3	0.10	42.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	EMail from Greg Fenske	3	JAR3	0.10	20.00
	EMail from	3	JAR3	0.10	20.00
	Emails from TSDC	3	JAR3	0.10	20.00



	Confirmation emails to Greg and	3	JAR3	0.10	20.00
	Email to Greg and	3	JAR3	0.10	20.00
	Amended notice of appeal edits	7	JAR3	0.20	40.00
	Book of authorities preparation	7	JAR3	0.50	100.00
	RDA preparation	3	JAR3	0.30	60.00
	RDA with Peter Nygard	3,7	JAR3	2.00	400.00
Aug-14-22	Emails from Joel Refvik (X 4)	3	WMO3	0.40	168.00
	Prepare for JVN with client	7,3	WMO3	2.50	1,050.00
	Email to Greg Fenske	3	WMO3	0.10	42.00
	Email to Adrien Iafrate	3	WMO3	0.10	42.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Email to Joel Refvik (X 2)	3	WMO3	0.10	42.00
	Email from Wayne Onchulenko	3	JAR3	0.10	20.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
	Email to Wayne Onchulenko	7	JAR3	0.10	20.00
Aug-15-22	Email to Joel Refvik	7	WMO3	0.10	42.00
	Emails from Joel Refvik (X 4)	7	WMO3	0.40	168.00
	Emails from Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Emails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	Email from Melanie LaBossiere	1	WMO3	0.10	42.00
	Compiling book of authorites for the appeal	7	JAR3	0.50	100.00
	edits to the amended notice of appeal after the motion decision	7	JAR3	0.30	60.00
	Compiling appeal book	7	JAR3	0.70	140.00
	Review of revised factum	7	JAR3	0.50	100.00
	Text from Greg Fenske	7	JAR3	0.10	20.00

	Email to TSDC	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to TSDC	3	JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Email from TSDC	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Review of letter from Michelle Duncan for affidavit of Wayne Onchulenko	3	JAR3	0.20	40.00
	Email to ICT help desk	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	edits to factum	7	JAR3	0.50	100.00
	Email to ICT help desk	7	JAR3	0.10	20.00
	Email from ICT help desk	7	JAR3	0.10	20.00
	Email to Greg Fenske and Fred Tayar	7	JAR3	0.10	20.00
Aug-16-22	Review new Factum	7	WMO3	2.00	840.00
	Review new Factum	7	WMO3	2.00	840.00
	Emails from Joel Refvik (X 3)	7	WMO3	0.30	126.00
	Email to Joel Refvik	7	WMO3	0.10	42.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Appeal Book drafting	7	JAR3	0.80	160.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg Fenske	3	JAR3	0.10	20.00
	Edits to factum, drafting book of authorities	7	JAR3	1.00	200.00
	Meeting with Wayne and Brittni	7	JAR3	0.30	60.00

	RDA registrations	3	JAR3	0.50	100.00
	Email to and From Fred Tayar	7	JAR3	0.10	20.00
	Confirmation emails from TSDC	3	JAR3	0.10	20.00
	Confirmation emails to Greg and	3	JAR3	0.10	20.00
	Inserting references into factum	7	JAR3	1.00	200.00
	RDA with Peter Nygard	7	JAR3	1.00	200.00
	Email from Greg	3	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email to Greg Fenske	3	JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Inserting references into appeal book	7	JAR3	1.70	340.00
Aug-17-22	Meeting with Joel Refvik	7	WMO3	0.20	84.00
	Emails from Joel Refvik (X 2)	7	WMO3	0.20	84.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Emails from (X 4)	3	WMO3	0.40	168.00
	Emails from Colby Linthwaite (X 2)	7	WMO3	0.20	84.00
	Emails from Joel Refvik (X 2)	7	WMO3	0.20	84.00
	Meeting with Joel Refvik (X 3)	7	WMO3	0.30	126.00
	Amend Order	7	WMO3	0.10	42.00
	Meeting re: filing of Factum and Appeal Book	7	WMO3	0.20	84.00
	Telephone attendance with Debbie Mackie	7	WMO3	0.10	42.00
	Email from Greg Fenske	7	WMO3	0.10	42.00
	Factum references	7	JAR3	1.00	200.00
	Email from	3	JAR3	0.10	20.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Email from Greg Fenske	3	JAR3	0.10	20.00

	Email from Fred Tayar	7	JAR3	0.10	20.00
	Emails from (x2)	3	JAR3	0.20	40.00
	Email to Greg and	3	JAR3	0.20	40.00
	Email from Fred Tayar	7	JAR3	0.10	20.00
	Email from Colby Linthwaite	7	JAR3	0.10	20.00
	Edits to factum	7	JAR3	0.40	80.00
	Book of authorities	7	JAR3	0.20	40.00
	Email from Greg	3	JAR3	0.10	20.00
	Email from Colby Linthwaite	7	JAR3	0.10	20.00
	references for factum	7	JAR3	1.50	300.00
	Email from Greg	3	JAR3	0.10	20.00
	QB order, email to Wayne	7	JAR3	0.10	20.00
	Finalizing factum and appeal book	7	JAR3	1.70	340.00
	Emails regarding JVN registration	7	JAR3	0.10	20.00
Aug-18-22	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email from	3	WMO3	0.10	42.00
	Prebills for review by Justice Edmond	7	WMO3	4.00	1,680.00
	Emails from JVN Registration (x3)	7	JAR3	0.30	60.00
	Email from JVN Registration	7	JAR3	0.10	20.00
	Email from	3	JAR3	0.10	20.00
	Email from Greg	3	JAR3	0.10	20.00
	Email from Marie Pacheco	7	JAR3	0.10	20.00
	Email to ICT help desk	3	JAR3	0.10	20.00
	Email to Greg/	3	JAR3	0.10	20.00
Aug-19-22	Meeting with Joel Refvik re: Order #1	7	WMO3	0.10	42.00
	Meeting with Joel Refvik re: Order #2	7	WMO3	0.10	42.00

	JVN - Joel Refvik this week	3	WMO3	0.10	42.00
	JVN - Joel Refvik next week	3	WMO3	0.10	42.00
	Meeting with Joel Refvik re: JVN	3	WMO3	0.10	42.00
	Email from Joel Refvik	3	WMO3	0.10	42.00
	Email from Adrien Iafrate	3	WMO3	0.10	42.00
	Email from Joel Refvik	7	WMO3	0.10	42.00
	Email from	3	WMO3	0.10	42.00
	Email to Melanie LaBossiere	1	WMO3	0.10	42.00
	Letter to Bruce Taylor	1	WMO3	0.10	42.00
	Email from ICT	3	JAR3	0.10	20.00
	Email from	3	JAR3	0.10	20.00
	Scheduling JVN's	3	JAR3	0.10	20.00
	Email to Adrien Iafrate	3	JAR3	0.10	20.00
	Meeting with Wayne Onchulenko	7	JAR3	0.30	60.00
	Email from Wayne Onchulenko	7	JAR3	0.10	20.00
	Drafting order from Court of appeal motion	7	JAR3	0.20	40.00
	Email to opposing counsel	1	JAR3	0.10	20.00
	Email from Debbie	1	JAR3	0.10	20.00
	Email to Greg and	3	JAR3	0.10	20.00
	Memo for Wayne Onchulenko regarding his affidavit	3	JAR3	0.50	100.00
	Meeting with Wayne Onchulenko	3	JAR3	0.10	20.00
	JVN preparation	3	JAR3	0.30	60.00
	JVN	3	JAR3	1.00	200.00
	Email to Wayne Onchulenko	3	JAR3	0.10	20.00
Aug-20-22	JVN preparation	3	JAR3	0.50	100.00
	JVN	3	JAR3	2.00	400.00

Aug-21-22	Email from Joel Refvik	3	WMO3	0.10	42.00
	Redact bills	10	WMO3	2.50	1,050.00
	Email to Debby Prymak	7	WMO3	0.10	42.00
	Book of Authorities	7	JAR3	1.70	340.00
	JVN preparation	3	JAR3	0.30	60.00
	JVN	3,7	JAR3	2.00	400.00
Aug-22-22	Redact bills and emails to Debby Prymak and from Debby Prymak	10	WMO3	1.00	420.00
	Email from Melanie LaBossiere	1	WMO3	0.10	42.00
	Email from Debby Prymak	10	WMO3	0.10	42.00
	Emails to Debby Prymak	10	WMO3	0.10	42.00
	Email to Greg/	3	JAR3	0.10	20.00
Aug-23-22	To review bills for meeting with Justice Edmond	10	WMO3	3.00	1,260.00
	Telephone attendance with Bruce Taylor	1	WMO3	0.20	84.00
	Email from Fred Tayar	7	WMO3	0.10	42.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Emails from Melanie LaBossiere (X 3)	1	WMO3	0.30	126.00
	Email from	3	WMO3	0.10	42.00
	Email from Debbie Mackie re: Appeal Book	7	WMO3	0.10	42.00
	Email from Greg Fenske	3	JAR3	0.10	20.00
	Email from Mel Labossiere	1	JAR3	0.10	20.00
	JVN preparation	3	JAR3	0.30	60.00
	JVN	3,9	JAR3	1.00	200.00
Aug-24-22	Meeting with Joel Refvik re: filing Book of Authorities	7	WMO3	0.10	42.00
	Review bills for meeting	10	WMO3	2.50	1,050.00
	Emails from TDSC (X 3)	3	WMO3	0.30	126.00
	Emails from Greg Fenske (X 2)	3	WMO3	0.20	84.00

Email from Joel Refvik 3	WMO3	0.10	42.00
Emails from Debby Prymak 10	WMO3	0.20	84.00
Emails from Debby Prymak (X 10) and telephone attendance with Debby Prymak 10	WMO3	0.50	210.00
Emails to Joel Refvik 3	WMO3	0.10	42.00
Email to Greg/ 3	JAR3	0.10	20.00
phone call with Greg Fenske 3	JAR3	0.10	20.00
Email to Greg/ 3	JAR3	0.10	20.00
filing book of authorities 7	JAR3	0.50	100.00
email to Debbie Mackie 7	JAR3	0.10	20.00
Email to Wayne Onchulenko 7	JAR3	0.10	20.00
Emails to TSDC x 2 3	JAR3	0.20	40.00
Email from Greg Fenske 3	JAR3	0.10	20.00
Email to IT help desk regarding one drive 7	JAR3	0.10	20.00
Email from Debbie Mackie 7	JAR3	0.10	20.00
Text from Greg Fenske 3	JAR3	0.10	20.00
Email to Greg Fenske 3	JAR3	0.10	20.00
Email to and from IT Help desk 7	JAR3	0.10	20.00
Email to Wayne Onchulenko 7	JAR3	0.10	20.00
Email from Greg Fenske 3	JAR3	0.10	20.00
Confirmation emails from TSDC 3	JAR3	0.10	20.00
Email from Greg Fenske 3	JAR3	0.10	20.00
Phone call with Marie Pacheco 7	JAR3	0.10	20.00
Email to TSDC 3	JAR3	0.10	20.00
JVN scheduling emails to TSDC 3	JAR3	0.70	140.00
Confirmation emails to Greg/ 3	JAR3	0.10	20.00
Email from Wayne Onchulenko 7	JAR3	0.10	20.00

Aug-25-22	Telephone attendance with Greg Fenske	3	WMO3	0.20	84.00
	Telephone attendance with Fred Tayar	7	WMO3	0.20	84.00
	Emails from Fred Tayar (X 2)	7	WMO3	0.20	84.00
	Email to Fred Tayar	7	WMO3	0.10	42.00
	Letter to Bruce Taylor and attachments	1	WMO3	3.00	1,260.00
	Emails from Melanie LaBossiere (X 3)	1	WMO3	0.30	126.00
	Telephone attendance with Melanie LaBossiere (x 2)	1	WMO3	0.20	84.00
	Emails from Debby Prymak (X 4)	7	WMO3	0.20	84.00
	Emails to Debby Prymak (X 4)	7	WMO3	0.20	84.00
	Notices of Assessment from CRA (X 3)	9	WMO3	0.30	126.00
	Letter to Andrew Torbiak	9	WMO3	0.10	42.00
	Letter to Peter Anderson	6	WMO3	0.10	42.00
	Telephone attendance with Andrew Toriak	9	WMO3	0.20	84.00
Aug-26-22	Telephone attendance with IT re: Remote JVN	3	WMO3	0.10	42.00
	Emails from Andrew Torbiak (X 2)	9	WMO3	0.10	42.00
	Emails to Andrew Torbiak (X 2)	9	WMO3	0.10	42.00
	Email from Greg Fenske	3	WMO3	0.10	42.00
	Emails to Greg Fenske (X 2)	3	WMO3	0.20	84.00
	Telephone attendance with Leiba Feldman	10	WMO3	0.10	42.00
	To prepare for and attend JVN	3	WMO3	2.00	840.00
Aug-27-22	Prepare and attend JVN and emails to get access and from Greg Fenske emails TSDC (X 4)	3,7,9	WMO3	3.00	1,260.00
Aug-28-22	Prepare and attend JVN, emails to TSDC, and emails from TSDC	3,7,9	WMO3	2.50	1,050.00
	Clarify per bill	10	WMO3	1.50	630.00
	Reporting letter to client	7	WMO3	0.20	84.00
Aug-29-22	Emails to Bruce Taylor	1	WMO3	0.10	42.00
	Emails to Melanie LaBossiere (X 2)	1	WMO3	0.20	84.00



Emails from Melanie LaBossiere (X 2)	1	WMO3	0.20	84.00
Emails to Court	1	WMO3	0.00	0.00
Email from Court	1	WMO3	0.20	84.00
Voice mail message from Ross McFadyen	1	WMO3	0.10	42.00
Voice mail message to Bruce Taylor	1	WMO3	0.10	42.00
Telephone attendance with Ross McFadyen (X 2)	1	WMO3	0.20	84.00
Voice mail message from Peter	3	WMO3	0.10	42.00
Email to Ross McFadyen	1	WMO3	0.10	42.00
Telephone attendance with Colby Linthwaite	7	WMO3	0.10	42.00
Email to Colby Linthwaite	7	WMO3	0.10	42.00

Wayne M. Onchulenko	Total Time Spent =	77.60	Hours @ \$420.00	\$32,592.00
Joel A.E. Refvik	Total Time Spent =	72.30	Hours @ \$200.00	\$14,460.00

<b>Total Fees</b>	<b>\$47,052.00</b>
GST on Fees	\$2,352.60
RST on Fees	\$3,293.64

**DISBURSEMENTS****Disbursements**

Photocopying charge	1,534.75
Telephone call	21.00
USBs x3	45.00
USB 5 @ 15.00	75.00
<b>Total Disbursements</b>	<b>\$1,675.75</b>
GST on Disbursements	\$83.79

**TOTAL FEES, DISBURSEMENTS, GST & RST** **\$54,457.78**

**BALANCE DUE AND OWING** **\$54,457.78**

\* tax-exempt

E.& O.E.

Wayne M. Onchulenko

*Accounts which are outstanding for more than one month after the date of delivery of same to the client shall bear interest at the rate established under section 161 of The Income Tax Act (Canada) on the day that the account is delivered, which interest shall be payable on the amount outstanding from time to time on the said account and which interest shall be payable until the account is paid in full.*

This is Exhibit "K" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. Z. M. Z. L. I. N. E.", written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024



# Levene Tadman Golub

LEVENE TADMAN GOLUB LAW CORPORATION

700 - 330 St. Mary Avenue  
Winnipeg, Manitoba R3C 3Z5  
Phone: 204-957-0520 / Fax: 204-957-1696  
Website: www.ltglc.ca

September 16, 2022

Wayne M. Onchulenko  
Reply: (204) 957-6402  
Wonchulenko@ltglc.ca  
File: 113885

Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
1700 – 242 Hargrave Street  
Winnipeg, MB R3C 0V1

By email

**Attention: Bruce Taylor and Melanie Labossiere**

Dear Sir:

**RE: Nygard Receivership and Professional Accounts**

Please find enclosed herewith the bills for December 2021 through August 2022.

These accounts reflect work done for the respondents and directly related to the receivership. They are different from the original bills which contain work done for the respondents and directly and indirectly related to the receivership. The time contained in the accounts are at the regular hourly rates of the lawyers involved.

We have added to the accounts numbers at the end of each itemized work-related timeline. These numbers describe the topic of the work product and are described hereinafter.

- #1 Communications with counsel for the Receiver and counsel for other opposite parties. Communications with the Court. The Receiver's counsel was a party to all of these communications.
- #2 Not used
- #3 All communications with Toronto South Detention Centre (TSDC) and its administrators.

The judicial video network (JVN) is a Ontario Government proprietary communication software program that works much like either ZOOM or TEAMS. Inmates are allowed to book video meetings with their legal counsel. They are

only able to book meetings with legal counsel. The software allows for the sharing of documents as is the case for viewing documents onscreen.

Initially only Ontario counsel were able to use the network. We were able to negotiate expanding this policy to all recognized legal counsel regardless of where they practice.

TSDC has a policy that one is not allowed to book JVN's more than five days in advance. Sometimes they allow you to book further in advance. On other occasions they will not let you book five days in advance. The reasoning for their position is other inmates might require the time and it is a first come, first served booking system. On numerous occasions we had asked them to give us a regular time each day. They have refused. When we book we ask for the same time for each day. When that time is not available we have to have further communications to arrange alternate times. Sometimes when times are booked they write back and indicate they must be changed for a variety of reasons. Those reasons can include changes in mealtime, other appointments scheduled by TSDC for Mr. Nygard and a variety of one-off situations. When the JVN's have to be cancelled on short notice, or no notice, they then once again have to be rearranged. The result is weekly, and sometimes daily communications with TSDC as it relates to JVN's. Mr. Nygard has daily JVN's. We book the JVN's for both our office and Tayar and Associates. Other counsel book their own JVN's.

Mr. Nygard also has four hours of dedicated telephone time between approximately 9:30 and 1:30 each day. Sometimes this telephone time is disrupted and we have to communicate to rebook the time. During this telephone time he often speaks with third parties who provide instructions to my firm and Mr. Tayar's firm with respect to the receivership which instructions we respond to and carry out. One of the people he talks to, who in turn emails or calls us, is Greg Fenske. He also contacts our office by phone directly.

When he was incarcerated at the Headingley Correctional Centre (HCC) facility he was allowed to have telephone access for approximately eleven hours a day. He was also allowed to have two hours of the equivalent of JVN time per weekday and three hours on the weekends (each day). This was an adequate amount of time to conduct his business. When he was moved to the TSDC he was initially not allowed any phone time other than when a call was made to him and twenty minutes of JVN time per day when available. Gradually we were able to negotiate increased phone time and increased JVN time so that by the beginning of January 2022 he was granted the four hours of phone time per day and one hour of JVN time per day and two hours of JVN time on each weekend day. We have continued to argue for an equivalent amount of time as was afforded at HCC. They have continued to refuse. We have been in the process of putting together an application to Court to have the Court order an increased amount of access to his phone and JVN to the equivalent of what he obtained at HCC because on numerous occasions he has not been able to fully receive advice and give instructions.

By way of explanation in this regard Mr. Nygard uses the JVN's to read materials as they are being prepared and when they are completed so that he can ask questions about them and give instructions. Mr. Nygard is 81 years old, has failing eyesight and failing health and so this process is slow. He finds it difficult to fully understand documents when they are read to him. He wants to be fully engaged in all of his legal proceedings, be they related to himself personally or related to the companies which he owns by virtue of being the sole shareholder. On more than one occasion he has not been able to completely review documents prior to hearings. It is for this reason he likes to anticipate hearings that will be litigated in the future and prepare for that litigation in advance. Examples of this include the Consolidation Hearing and Appeals and the building in China.

As it relates to his telephone time and JVN's on a weekly basis there are problems with: him being brought to the JVN meetings; to the equipment not working; and to him losing part or all of a day's meeting time. There are resulting communications about making that time up during the same day or on a different day on a regular basis. There are also communications with the administration about changing their policy in terms of how JVN's are booked and the amount of time afforded to Mr. Nygard.

A typical JVN involves first confirming who will be in attendance at the JVN for the next day and if that is not someone from the writer's office, when the next attendance is with this writer's office. At the end of the JVN, the last thing done is confirming when the writer's office will next have a JVN and those items that Mr. Nygard would like to discuss at that JVN.

After that is completed, usually an update is given on what is happening with the receivership and then we move to what documents he would like to review in that regard. This could either include emails or materials that had been filed by one side or the other or materials that are being prepared for the next receivership process. The majority of most JVN's involve the review of documents.

- #4 All matters dealing with the selling of a building in Shanghai. The collection of documents proving ownership. There is dispute as to if this building is ultimately owned by Nygard or NPL. There is also a concern that when and if the building is able to be sold whether there will be an ability to transfer the proceeds out of China.
- #5 To all matters dealing with the calculation of the Nygard inter-company debts and the contributions made by Mr. Nygard personally to the finances of these companies and what impact that would have or could have on NEL and NPL.
- #6 To all matters dealing with the potential tax consequences of the results of the litigation including settlement discussions and a Consolidation Order or NEL and NPL not being part of a Consolidation Order of bankruptcy and how money could be dealt with if paid to NPL.
- #7 All matters dealing with a potential Consolidation Order or how to proceed if there was not a Consolidation Order. You will recall the judge predicated an appeal by

one side or the other at the December hearings. All matters dealing with the appeal of Consolidation Order or a judgment where there was no Consolidation Order. All matters dealing with the appeal including the three pre-appeal contested motions dealing with:

- 1) an extension of time to file the Notice of Appeal;
- 2) amending the Notice of Appeal;
- 3) the request to have a Factum in excess of thirty pages in length and to file the Appeal Book in a digital form

including all preparation of materials which included preparing the 45 page Factum to be reviewed by the Court and then the 30 pages Factum for the Court; to preparation of the Appeal Book and the Book of Authorities; to preparation of the Notice of Motion, Affidavits in support and Briefs with respect to the three contested motions and attendance at Court to argue the motions and preparation of Orders subsequent to the motions and communications with client, opposite counsel and co-counsel with respect to all of the above and reviewing same with client and obtaining instructions. All administrative communications with staff to prepare materials and dealing with IT personnel with respect to the transfer of documents when we move to Microsoft 365.

- #8 To all communications with respect to director's fees.
- #9 To all communications involved in review of the assets of the respondent companies, how they would be affected by an Order of Consolidation and what assets are owned by those respondent companies and which assets are not owned by the respondent companies what assets are owned by the other non-respondent companies in the Nygard Group of Companies and Mr. Nygard and preparation of a list of assets which are included and excluded from ownership with respect to the respondent companies and collection of documentation to prove same. To that same review with respect to the respondent companies vis-à-vis Nygard Enterprises Ltd. and Nygard Properties Ltd.
- #10 To all matters dealing with the December contested hearing and documents filed subsequent to the December hearing related to the December hearing including all preparation of materials, review of materials from the Receiver, attending at the hearings and preparing materials after the hearings; reviewing materials with clients, answering questions, giving advice, obtaining instructions.

If you have any questions please feel free to contact the writer.

Yours truly,  
**LEVENE TADMAN GOLUB LAW CORPORATION**  
Per:

**WAYNE M. ONCHULENKO**

WMO/dam  
encls.

This is Exhibit "L" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. Madore", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

FILE NO. AI 22-30-09741  
FILE NO. CI20-01-26627

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF THE COURT OF QUEEN'S BENCH  
ACT, C.C.S.M., C. C280, AS AMENDED

**FILED**  
**COURT OF APPEAL**  
**MAR 22 2022**  
**LAW COURTS**  
**WINNIPEG**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**NOTICE OF APPEAL**

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

700 - 330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5  
**WAYNE M. ONCHULENKO**  
Telephone No. 204-957-6402  
Fax No. 204-957-1696  
Email: wonchulenko@ltglc.ca  
File No. 113885/WMO



FILE NO. AI  
FILE NO. CI20-01-26627

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant (Respondent),

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

Respondents (Appellants).

**NOTICE OF APPEAL**

**TAKE NOTICE** that a motion will be made on behalf of the (Respondents)  
Appellants NYGARD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA  
LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL

PARTNERSHIP before the Court of Appeal of Manitoba, at the next sitting therefor or as soon thereafter as the Appeal can be heard, by way of Appeal from the Order of the Honourable Mr. Justice Edmond (the “**Judgment**”) sitting as a judge of the Court of Queen’s Bench (the “**Court Below**”), Winnipeg Centre, pronounced on the 10<sup>th</sup> day of March, 2022, whereby the learned Judge did order:

- a) Each of the Debtors is declared to be jointly liable for the Common Liabilities of each of the other Debtors, and the Debtors are hereby joint Debtors respecting Common Liabilities;
- b) The Common Assets of each of the Debtors are declared to be treated as Common Assets subject to the Common Liabilities;
- c) The assets and liabilities of the Debtors are declared to be substantively consolidated for the purpose of addressing the claims of creditors of each of the Debtors;
- d) The allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property are approved;

- e) The Receiver is authorized to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;
- f) The Receiver is authorized to file applications for bankruptcy orders in this court in relation to the Debtors, NPL and NEL, on a basis that reflects the Common Assets and the Common Liabilities and the substantive consolidation of the estates of the Debtors;
- g) The stay of proceedings granted in the Receivership Order is hereby lifted to permit bankruptcy applications to be made and the court directs that, for the purpose of such assignments and applications, the locality of the Debtors shall be Winnipeg, Manitoba;
- h) The Receiver is hereby appointed as Trustee in bankruptcy (the "Trustee");
- i) The Receiver/Trustee is authorized to apply for an order for procedural and substantive consolidation of

the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the *B/A*;

- j) Upon completion of its duties as the Receiver and making the necessary filings in bankruptcy on behalf of the Debtors, the Receiver is hereby directed to pay or transfer the Net Receivership Proceeds to the Trustee for the purposes of administering the consolidated estates in bankruptcy of the Debtors;
- m) The respondents' motion to authorize or permit payment of reasonable legal fees and disbursements from the Preserved Proceeds or the Net Receivership Proceeds to defend the criminal charges against Mr. Nygard is dismissed.

**ON THE APPEAL**, this Court will be asked to set aside the Order pronounced by the Honourable Mr. Justice Edmond on the 10<sup>th</sup> day of March, 2022, as set out in paragraphs a-m of the paragraph above, on the following grounds:

1. The Court erred in law in finding that substantive consolidation should be applied in the facts and circumstances of this case;
2. The Court made palpable and overriding errors in applying the facts to the law as it relates to the finding of substantive consolidation;
3. The Court erred in law in finding that there was a proper allocation of revenues generated from the sale of assets during the receivership and receivership costs and expenses;
4. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding there was a proper allocation of revenues generated from the sale of assets during the receivership and receivership costs and expenses;
5. The Court erred in law in finding what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;
6. The Court made palpable and overriding errors in applying the facts to the law as it relates to what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;

7. The Court erred in law in finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;
8. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;
9. The Court erred in law in finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario;
10. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario.

***THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:***

1. The appellants submit that this appeal is to the Court of Appeal, as the appeal arises out of an order of a judge under the *B/A* which involves future rights, which is likely to affect the rights of other parties of a similar nature in the proposed proceeding and which involves matters of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole. Should leave to appeal be necessary or an extension of time to file an appeal be necessary, the appellants request such leave.
2. The appellants rely on section 193 (a) (b) (c) and (e) of the *B/A*.
3. Such further and other grounds as counsel may advise and this Honourable Court permits.
4. As it relates to an extension of time for leave to appeal, the parties:
  - i) The Appellants formed the intention to appeal the decision prior to the expiration of time to file an appeal;
  - ii) Advised the Receiver's counsel of their intention to appeal within the time to file an appeal;
  - iii) The reason for not filing the appeal is due to inadvertence and believing that there was 30 days to file an appeal;
  - iv) There is no prejudice to the Respondents in filing an appeal one day late

- v) It is in the interests of justice that an extension be granted to file this Appeal; and
- vi) The Appeal is meritorious.

**ON THE APPEAL**, this Honourable Court will also be asked to order the following:

1. For an order dismissing the Receiver's Notice of Motion being document #207, to be heard originally on June 17, 2021, in its entirety;
2. For an order dismissing the Receiver's Net Receivership Proceeds Motion being document #207, as it relates to an order of substantive consolidation and to assign into bankruptcy NEL and NPL; and
3. Such further and other relief as to this Honourable Court may seem just.

**Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?**

Yes                      ☐ No                      X Not required

**Has a court order or legislation imposed a publication ban in relation to the trial or other proceeding that is the subject of the appeal?**

Yes                      X No

If yes, attach a copy of the order if available or provide details on the publication ban:



**Has access to the court file been restricted by court order or legislation?**

Yes

☒ No

If yes, attach a copy of the order if available or provide details on the restriction to the court file:

Date: March 22, 2022



---

**LEVENE TADMAN GOLUB  
LAW CORPORATION**

Barristers and Solicitors

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Winnipeg, MB R3C 3Z5

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**Lawyers for the Appellants**

**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**

Barristers & Solicitors

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Email: [gbt@tdslaw.com](mailto:gbt@tdslaw.com)

Ross A. McFadyen (204-934-2378)

Email: [ram@tdslaw.com](mailto:ram@tdslaw.com)

Lawyers for the Receiver, Ritcher Advisory Group Inc.

**IN THE COURT OF APPEAL  
RULE 112**

**NOTICE OF INTENT TO EXERCISE LANGUAGE RIGHT**

The attached document begins a proceeding in the Court of Appeal. Your rights may be affected in the course of the proceeding. You have a right to use either the English or the French language even where the attached document is in the other language, but in order to exercise your right you are required within 21 days of service of this document on you to file with the registrar of the court a notice of your intention to do so and to leave with the registrar an address for service. If you file such a notice, you will be notified, in the language indicated in your notice, of further stages in the proceeding by registered mail addressed to your address for service. If you do not file a notice of your intention to exercise your right, the appeal will continue in the language of the attached document. The time limited for your filing of notice may be enlarged or abridged at any time by order of a judge made on application in either English or French.

Registrar  
Manitoba Court of Appeal  
Room 100E Law Courts Building  
408 York Avenue  
Winnipeg, MB R3C 0P9

**COUR D'APPEL  
RÈGLE 112**

**AVIS RELATIF AU DROIT D'UTILISATION D'UNE LANGUE**

Le document ci-joint constitue un document introductif d'instance devant la Cour d'appel. Les procédures dans l'instance pourront porter atteinte à vos droits. Vous avez le droit d'utiliser l'anglais ou le français aux différentes étapes de l'instance même lorsque le document ci-joint est rédigé dans l'autre langue. Si vous désirez exercer votre droit d'utiliser l'une ou l'autre langue, vous devez, dans les 21 jours de la signification qui vous est faite de ce document, déposer auprès du registraire de la Cour d'appel un avis à cette fin et lui indiquer un domicile élu aux fins de signification. Si vous déposez cet avis, vous serez avisé(e) des procédures subséquentes par lettre recommandée envoyé à votre domicile élu aux fins de signification, dans la langue que vous aurez indiquée dans l'avis. Si vous ne déposez pas un avis de votre intention d'exercer votre droit, toutes les procédures subséquentes en appel se dérouleront dans la même langue que celle du document ci-joint. Suite à une demande présentée en anglais ou en français, le juge peut, en tout temps, par ordonnance, proroger ou abréger le délai prescrit pour le dépôt de l'avis.

Registraire  
Cour d'appel du Manitoba  
Palais de justice  
408, avenue York, pièce 100E  
Winnipeg, MB  
R3C 0P9

This is Exhibit "M" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "de macke", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**FILED  
COURT OF APPEAL**

**MAR 25 2022**

**LAW COURTS  
WINNIPEG**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Applicants.

---

**NOTICE OF MOTION  
BEFORE A JUDGE IN CHAMBERS**  
Hearing Date: Thursday, April 7, 2022, at 10:00 a.m.

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

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Winnipeg, MB R3C 3Z5  
**WAYNE M. ONCHULENKO**  
Telephone No. 204-957-6402  
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**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
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*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
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ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Applicants.

**NOTICE OF MOTION**

TAKE NOTICE that a motion will be made on behalf of the (Respondents)  
Applicants, NYGARD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA  
LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL

PARTNERSHIP (collectively, the “Applicants”) before a Judge of the Court of Appeal sitting in chambers on Thursday, April 7, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order extending the time for filing the Notice of Appeal; and
2. Such further and other relief as the nature of this case requires and this Honourable Court deems just and appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. Rule 42 of the *Court of Appeal Rules*, Man Reg 555/88;
2. Rule 31(1) of the *Bankruptcy and Insolvency General Rules*;
3. Section 187(11) of the *Bankruptcy and Insolvency Act*;
4. The Applicants filed their Notice of Appeal one day after the expiration of the prescribed 10-day time limit set out in Rule 31(1) of the *Bankruptcy and Insolvency General Rules*;
5. There was a *bona fide* intention to appeal before the expiration of the appeal period;
6. The Applicants informed the Respondent of their intention to appeal;

7. The Respondent was aware of the Applicants' intention to appeal;
8. The Respondent will not be unduly prejudiced by an extension of time;
9. There is merit in the appeal in the sense that there is an arguable ground of appeal;
  - a. The Court erred in law and made palpable and overriding errors respecting the order in which the issues before the Court were to be considered. This resulted in the application of faulty premises, both legal and factual, to those issues, which led to erroneous conclusions;
  - b. The Court erred in law and made palpable and overriding errors in applying the incorrect legal test to the question of substantial consolidation;
    - i. The Court erred in law and made palpable and overriding errors by accepting that a debt for the provision of services is a creditor asset "commingled" with the assets of the debtor.
    - ii. The Court erred in law and made palpable and overriding errors by conflating intercompany loan guarantees with intercompany debt;



- iii. The Court erred in law and made palpable and overriding errors by accepting, without sufficient written reasons, that a secured creditor (NPL) could have its assets taken and its security disregarded due to the claims of the unsecured creditors of other companies, which unsecured debts NPL did not guarantee.
- c. The Court erred in law and made palpable and overriding errors by applying the incorrect legal test in analyzing the Receiver's allocation in the twelfth report;
  - i. The Court erred in law and made palpable and overriding errors by accepting, without analysis, the Receiver's discretion to allocate the proceeds from the sale of assets belonging to separate corporations as among those corporations.
  - ii. The Court erred in law and made palpable and overriding errors by accepting an irrelevant distinction between payments to the relevant credit facility and payment on the Receiver's borrowing charge, and the conclusion that payment of the borrowing charge wasn't payment of the guarantee.

- iii. The Court erred in law and made palpable and overriding errors by reading the word “deducting” into the guarantee.
- d. The Court erred in law and made palpable and overriding errors in finding that the intercompany debts owed by NPL could be set off against NPL’s subrogated rights;
- e. The Court erred in law and made palpable and overriding errors by finding that NPL and NEL be assigned into bankruptcy based on faulty premises and erroneous conclusions in the prior analysis;
- f. The Court erred in law and made palpable and overriding errors by failing to provide sufficient reasons on substantive points;
- g. The Court erred in law in finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Ontario; and
- h. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held

pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario.

10. It is right and just in all of the circumstances that time for commencing the appeal be extended;
11. The interests of justice would not be served by precluding the Applicants from arguing their appeal; and
12. Such further and other grounds as the Applicants may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. Affidavit of Liam O. Valgardson, affirmed March 25, 2022; and
2. Such further and other documentary evidence as the lawyers for the Applicants may advise and as this Honourable Court may permit.

Dated: March 25, 2022



**LEVENE TADMAN GOLUB  
LAW CORPORATION**

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**Lawyers for the Applicants**

**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**

Barristers & Solicitors

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Lawyers for the Receiver, Ritcher Advisory Group Inc.

This is Exhibit "N" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. M. O'Neil", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
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*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

— and —

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
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INTERNATIONAL PARTNERSHIP,**

(Respondents) Applicants.

---

**MOTION BRIEF OF THE (RESPONDENTS) APPLICANTS**

Hearing Date: Thursday, April 7, 2022, at 10:00 a.m.

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

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File No. 113885/WMO

**FILED**  
**COURT OF APPEAL**  
**MAR 25 2022**  
**LAW COURTS**  
**WINNIPEG**

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
                              PURSUANT TO SECTION 243 OF THE  
                              *BANKRUPTCY AND INSOLVENCY ACT*,  
                              R.S.C., c.B-3, AS AMENDED, AND SECTION  
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                              ACT, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

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ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Applicants.

**MOTION BRIEF OF THE (RESPONDENTS) APPLICANTS**

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PART 3: INTRODUCTION AND BACKGROUND	3
PART 4: LIST OF ISSUES	6
PART 5: ARGUMENT	6

## **PART 1: LIST OF DOCUMENTS**

Affidavit of Liam O. Valgardson, affirmed March 25, 2022

## **PART 2: LIST OF AUTHORITIES**

- Tab 1      *Bankruptcy and Insolvency General Rules*, CRC, c 368
- Tab 2      *Court of Appeal Rules*, Man Reg 555/88 R
- Tab 3      *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3
- Tab 4      *Bannerman Lumber Ltd et al v. Goodman*, 2021 MBCA 13 (in Chambers)
- Tab 5      *Moss, Re* (1999), 138 Man R (2d) 318 (Man CA (in Chambers))
- Tab 6      *Singh v Pierpont*, 2015 MBCA 18
- Tab 7      *Flair Construction Ltd., Re*, 1981 CarswellBC (BC CA (in Chambers))
- Tab 8      *Siler (Re)*, 2017 ABQB 810
- Tab 9      *Atlantic Pressure Treating Ltd. v Bay Chaleur Construction (1981) Limited*, [1987] NBJ No 528 (NB CA)



### **PART 3: INTRODUCTION AND BACKGROUND**

1. On March 22, 2022, the (Respondents) Applicants filed a Notice of Appeal with this Honourable Court regarding the Judgment of the Honourable Justice Edmond of the Court of Queen's Bench, dated March 10, 2022.

2. The Applicants have now filed a Notice of Motion to be heard by a Judge of this Honourable Court in Chambers, along with the Affidavit of Liam O. Valgardson, affirmed March 25, 2022 (the "Valgardson Affidavit").

3. As set out in its Notice of Motion, the Applicants are seeking an Order extending the time to file the Notice of Appeal.

4. On March 10, 2022, Edmond J. of the Court of Queen's Bench delivered his reasons for Judgment on the Receiver's Net Receivership Proceeds motion regarding substantive consolidation, the proper allocation of revenues generated from the sale of assets, the (Respondents) Applicants' rights of subrogation, the assignment of the (Respondents) Applicants into bankruptcy, and the (Respondents) Applicants' motion regarding the payment of legal fees and disbursements (the "Judgment").

Valgardson Affidavit, at para 2.a., Exhibit "A"

5. When the Motion was argued before Edmond J. on December 22, 2021, as part of the discussion at the end of submissions, and as part of the

argument regarding the payment of fees of the (Respondents) Applicants, the parties referred to the probability that Edmond's J. decision would be appealed by the unsuccessful party.

Valgardson Affidavit, at para 2.b.

6. When the Judgment was pronounced, Peter Nygard, the individual described by Edmond J. as having authority and direction over the (Respondents) Applicants, was in jail in Ontario awaiting a decision on his extradition to the United States, and was in the process of appealing his bail application in Ontario, in addition to needing to review and consider the 87-page decision of Edmond J.

Valgardson Affidavit, at para 2.d.

7. Soon after receiving Edmond's J. Judgment, the lawyers for the Applicants began engaging in discussions, E-mail correspondence and research regarding the prescribed time limits for filing a notice of appeal.

Valgardson Affidavit, at para 2.e., Exhibit "B"

8. At the conclusion of those discussions, the lawyers for the Applicant believed they had 30-days to file an appeal as per Rule 11(1)(c) of the *Court of Appeal Rules*. As a result, the lawyers for the Applicants diarized Friday, April 8, 2022, as the deadline to file a notice of appeal.

Valgardson Affidavit, at para 2.f.

9. On March 10, 2022, the lawyers for the Applicants received instructions to appeal the Judgment, however, the details of the points of the notice of appeal were still being considered.

Valgardson Affidavit, at para 2.g.

10. On March 21, 2022, at 8:56 p.m., Mr. Wayne Onchulenko (lawyer for the Applicants), informed Mr. Bruce Taylor (lawyer for the Receiver), that he had received instructions from his client to appeal Edmond's J. March 10, 2022, Judgment.

Valgardson Affidavit, at para 2.h., Exhibit "C"

11. The next day, on March 22, 2022, at 1:53 p.m., Mr. Taylor informed Mr. Onchulenko that Rule 31(1) of the *Bankruptcy and Insolvency General Rules* creates a 10-day time limit to appeal an order or judgment.

Valgardson Affidavit, at para 2.i., Exhibit "D"

*Bankruptcy and Insolvency General Rules*, Rule 31(1) **[TAB 1]**

12. Upon receipt of Mr. Taylor's 1:53 p.m. E-mail, the Applicants promptly drafted and filed the Notice of Appeal, which the Court of Appeal Registrar has advised is currently being held in abeyance by the Court of Appeal pending the outcome of this Motion.

Valgardson Affidavit, at para 2.j., Exhibit "E"

13. The Notice of Appeal has not been served on any of the parties, but the lawyers for the Applicants have informed the Receiver of its filing.

#### **PART 4: LIST OF ISSUES**

14. The issue before this Honourable Court is whether an order extending the time for filing the Notice of Appeal is appropriate in the circumstances.

#### **PART 5: ARGUMENT**

##### **Authority**

15. Rule 42 of the *Court of Appeal Rules* gives this Honourable Court broad authority to grant extensions:

##### **Extension of abridgement of time**

**42** Except where these rules otherwise provide, where an application is made, the court or a judge may, by order, extend or abridge the time limits set out in these rules for doing any act or taking any proceeding, and that power may be exercised whether the application is made before or after the expiration of the prescribed time limit.

*Court of Appeal Rules*, Rule 42 [TAB 2]

16. Additionally, Rule 31 (1) of the *Bankruptcy and Insolvency General Rules* gives this Honourable Court the authority to grant an extension:

**31 (1)** An appeal to a court of appeal referred to in subsection 183(2) of the Act must be made by filing a notice of appeal at the office of the registrar of the court appealed from, within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of appeal stipulates.

*[Emphasis Added]*

*Bankruptcy and Insolvency General Rules, Rule 31(1) [Tab 1]*

17. Finally, section 187 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, (the “BIA”) gives Courts the power to extend time:

**Formal defect not to invalidate proceedings**

**187(9)** No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

[...]

### **Court may extend time**

**187(11)** Where by this Act the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof on such terms, if any, as it thinks fit to impose.

*Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, section 187 **[TAB 3]**

### **The Test**

18. The test for granting an extension of time to appeal was recently set out in *Bannerman Lumber Ltd et al v. Goodman*, 2021 MBCA 13, at para 13 where Beard J.A. said:

[13] [...] In summary, the criteria to be applied in determining whether to extend the time to commence an appeal under r 42 of the CA Rules are:

1. whether there was a continuous intention to appeal from a time within the period when the appeal should have been commenced;
2. whether there was a reasonable explanation for the delay;

3. whether there are arguable grounds of appeal;
4. whether any prejudice suffered by the other party can be addressed; and
5. whether it is right and just in all of the circumstances that the time for commencing the appeal be extended.

[14] This same test was applied by this Court in the context of a motion to extend the time to appeal a decision under the BIA in *Western Grain Cleaning and Processing Ltd v LC Taylor & Co Ltd* 2005 MBCA 68 at paras 15-21.

*Bannerman Lumber Ltd et al v. Goodman*, 2021 MBCA 13 at para 13 [*Bannerman*]

**[TAB 4]**

19. Regarding these factors, at paragraph 17, Beard J.A. cited the reasons of Manilla J.A. in *Delichte v Rogers*, 2018 MBCA 79 (in Chambers) (at para 17):

These factors are not intended to be a rigid straightjacket as to the exercise of judicial discretion. Regardless of whether or not all four criteria are met, the Court may still grant or refuse the extension of time if it is right and just in

all of the circumstances to do so .... I agree with the comments of MacPherson JA in *Monteith v Monteith*, 2010 ONCA 78, [in Chambers], that [the fifth criterion] is an "umbrella" (at para 20); the Court must look broadly at the relevant circumstances and do what justice requires.

*Bannerman*, at para 17 [Tab 4]

20. The Applicants submit that all five questions in the test can be answered in the affirmative.

### **Analysis**

**Whether there was a continuous intention to appeal from a time within the period when the appeal should have been commenced?**

21. The Applicants submit there was an intention to appeal within the 10-day period when the appeal should have been commenced.

22. On March 10, 2022, within a couple of hours of the Judgment being provided to counsel by the Court, the client confirmed his instructions in writing to appeal.

Valgardson Affidavit, at para 2.g.



23. Additionally, when the motion was argued before Edmond J. on December 22, 2022, the parties referred to the probability that Edmond's J. decision would be appealed by the unsuccessful party.

Valgardson Affidavit, at para 2.b.

24. As part of the submissions regarding the payment of legal fees of the (Respondents) Applicants, the issue of an appeal was contemplated. In the Judgment, Edmond J. said the following regarding the payment of fees in the event of an appeal:

[138] The same governing legal principle as noted above applies in connection with the second issue. In my view, providing statements of account for legal fees and disbursements are submitted to the Receiver or Trustee in bankruptcy for approval and are reasonable, the fees and disbursements may be paid from the Net Receivership Proceeds. The respondents are entitled to mount a defence and advance legal positions challenging the Receiver and if they elect to do so, the respondents may proceed with an appeal of this decision. If the legal fees and disbursements exceed the remaining balance of the Preserved Proceeds, a portion of the Net

Receivership Proceeds may be set aside to cover reasonable fees and disbursements incurred by the respondents.

*[Emphasis Added]*

Valgardson Affidavit, at para 2.c., Exhibit "A"

25. The Applicants submit that on the day of the Judgment having been delivered, and before the expiry of the 10-day limit, they had formed the intention and provided instructions to appeal the Judgment.

**Whether there was a reasonable explanation for the delay?**

26. The Applicants submit the reasonable excuse for the delay is that they were under the mistaken understanding that Rule 11(1)(c) of the *Court of Appeal Rules* applied to an appeal of the Judgment.

27. In *Bannerman*, the Beard J.A. continued the Court of Appeal's consistency towards the issue of 'counsel inadvertence' and noted the following:

[22] In terms of a reasonable explanation, the courts have accepted inadvertence of counsel as a reasonable explanation. (See, for example, *Branum v Branum*, 1998

CarswellMan 251 at para 10 (CA (in Chambers)); and  
*Singh v Pierpont*, 2015 MBCA 18 at para 41).

*Bannerman*, at para 22 [Tab 4]

28. Additionally, in *Moss, Re* (1999), 138 Man R (2d) 318 (Man CA (in Chambers)), the applicant brought a motion for an extension of time to file an appeal from an order annulling an assignment in bankruptcy. In the brief reasons granting the motion, Monnin J.A. said the following:

[4] In the case before me, there is evidence that clearly establishes that the failure to file a notice of appeal was due to the applicant's then counsel being under the erroneous impression that the time limit for filing such an appeal commenced running not from the time the annulment was granted, but from the time the order was signed.

[5] I am satisfied, without proceeding to a detailed review of the circumstances of this case, that the applicant meets the test set out in *Flair Construction Ltd., Re*. Accordingly, the applicant is granted an extension of time in which to file her appeal. [...]

*Moss, Re* (1999), 138 Man R (2d) 318 (Man CA (in Chambers)) **[TAB 5]**

29. In *Singh v Pierpont*, 2015 MBCA 18, the Court dealt with a dispute regarding the physical care and control of a child and the child's residence in either Winnipeg or Hawaii. In 2014, the Manitoba Court ordered the father to return the child to Winnipeg. The father appealed but failed to submit his factum within the prescribed time period. The father brought a motion to extend his time for filing the factum. In granting the father's motion, Beard J.A. said the following:

[41] [...] the court has an overriding discretion to grant or refuse an extension if it is right and just in the circumstances. [*Citations omitted*]. Further, inadvertence of counsel is an accepted explanation. (See *Arndt v Arndt* (1987), 46 Man. R. (2d) 234 (Man. C.A.) at para. 8; and *Branum v Branum* (1998), 129 Man. R. (2d) 142 (Man. C.A. [In Chambers]) at para. 10.)

[*Emphasis Added*]

*Singh v Pierpont*, 2015 MBCA 18 [TAB 6]

30. Upon receiving the Judgment on March 10, 2022, lawyers for the Applicants engaged in discussions, E-mail correspondence, and research regarding the time constraints for filing and serving a notice of appeal. The

lawyers for the Applicants mistakenly concluded that they had 30 days to file a notice of appeal as per Rule 11(1) of the *Court of Appeal Rules*.

Valgardson Affidavit, at para 2.e-f.

31. Unfortunately, the parties proceeded on the mistaken understanding that the Applicants had until Friday, April 8, 2022, to file their notice of appeal.

32. In addition to the Applicants' lawyers mistaken understanding, logistical limitations existed regarding communication with their clients. When the Judgment was pronounced, Peter Nygard, the individual described by Edmond J. as having authority and direction over the (Respondents) Applicants, was in jail in Ontario awaiting a decision on his extradition to the United States and was in the process of appealing his bail application in Ontario. On top of the above responsibilities, Mr. Nygard needed to review the 87-page Judgment and discuss same with his lawyers.

Valgardson Affidavit, at para 2.d.

33. In *Flair Construction Ltd., Re*, 1981 CarswellBC (BC CA (in Chambers)), counsel for the bank was unaware of the 10-day limitation to bring an appeal and believed, erroneously, that the *Court of Appeal Act* governed, that is, that there was a 45-day period. In granting the application for extension, Craig J.A. noted the following:

[8] [...] Some considerations should be given to this fact in a case where the client is not immediately available to give appeal instructions. I think, too, that some latitude must be given when we are considering whether the client had a bona fide intention to appeal before the expiration of the appeal period.

*Flair Construction Ltd., Re*, 1981 CarswellBC (BC CA (in Chambers)) at para 8 **[TAB 7]**

**Are there are arguable grounds of appeal?**

34. The Applicants intend on filing a supplemental brief that will expand on this section, namely that there are arguable grounds of appeal.

35. In their Notice of Appeal, filed March 22, 2022, the Applicants raise the following grounds:

- a. The Court erred in law in finding that substantive consolidation should be applied in the facts and circumstances of this case;
- b. The Court made palpable and overriding errors in applying the facts to the law as it relates to the finding of substantive consolidation;

- c. The Court erred in law in finding that there was a proper allocation of revenues generated from the sale of assets during the receivership and receivership costs and expenses;
- d. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding there was a proper allocation of revenues generated from the sale of assets during the receivership and receivership costs and expenses;
- e. The Court erred in law in finding what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;
- f. The Court made palpable and overriding errors in applying the facts to the law as it relates to what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;
- g. The Court erred in law in finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;

- h. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;
- i. The Court erred in law in finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Ontario; and
- j. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario.

Valgardson Affidavit, at para 2.j. Exhibit X

36. The Applicants intend on filing an amended notice of appeal which will expand on and further specify the grounds of appeal.



37. On the question of whether there are arguable grounds of appeal, the standard is not high. The Applicants must show that there is an arguable case. In *Bannerman*, Beard J.A. said the following on this criterion:

[15] An important criterion is that of whether there are arguable grounds of appeal. This was described by Steel JA as “a realistic ground which, if established, appears of sufficient substance to be capable of convincing a panel of the court to allow the appeal” (*C(S) v C(AS)*, 2011 MBCA 70 at para 8). As explained by Rothstein J in *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at paras 72-75, the test will be met where the ground of appeal cannot be dismissed after a preliminary examination of the grounds. It is not a high standard to meet.

[*Emphasis Added*]

*Bannerman*, at para 15 [Tab 4]

38. In *Siler (Re)*, 2017 ABQB 810, Graesser J. said the following on the standard to be applied when considering whether the applicant has raised an arguable ground of appeal:

[78] This matter involves counsel apparently missing a somewhat unusual limitation period. The delay between

the expiry of the limitation period and bringing this application was brief. The Walkers had an intention to appeal within the limitation period, and the grounds for appeal are not without some merit. They are not bound to fail, and have a reasonable chance of success, recognizing that a reasonable chance of success does not equate to a balance of probabilities.

*Siler (Re)*, 2017 ABQB 810 at para 78 **[TAB 8]**

39. In summary, the Applicants submit that Edmond J. erred in the following ways. His Lordship misunderstood the issues before him, which caused him to misdirect himself respecting the order in which those issues should be considered. This resulted in the application of faulty premises, both legal and factual, to those issues, which ultimately led him to erroneous conclusions.

40. The Applicants submit that the analysis Edmond J. was required to perform was as follows:

- a. Firstly, his Lordship was required to decide whether NPL had rights of subrogation due to its payments to the Lenders. If so, he was required to find against whom and for how much. To make these findings, his Lordship needed to decide (1) how

much NPL had paid on its guarantee; (2) the legal test for the allocation of the proceeds from the sale of assets in a multi-party receivership; (3) the “just proportion” of the debt for which NPL was liable, and whether NPL’s payments had exceeded that proportion; and (4) whether there are rights of set-off against subrogated rights.

- b. Secondly, his Lordship had to determine, as a result of the above analysis, whether NPL was solvent, and a creditor of the other respondents. If it was, his Lordship had to decide whether he had the jurisdiction under the *Bankruptcy and Insolvency Act* (Canada) to consolidate solvent companies with the other, insolvent, respondents, or to permit the Receiver to attempt to assign those solvent companies into bankruptcy.
- c. If he determined that NPL was insolvent, or if he determined that he had the jurisdiction to consolidate a solvent NPL and NEL with insolvent companies, Edmond J. then had to decide whether the legal test for substantial consolidation of NPL and NEL with the other seven respondents could be met.

41. The Honourable Justice Edmond instead proceeded as follows:

a. He decided that substantial consolidation was appropriate because it was equitable, which is not the established test. Further, in his consideration of the established factors, his Lordship made a series of legal errors, each of which allowed him to decide the sub-issue against the (Respondents) Applicants. As examples:

- i. In paragraph 32 of his Reasons, Edmond J erroneously accepts that a debt for the provision of services is a creditor asset “commingled” with the assets of the debtor. This allows him to decide the point against NPL.
- ii. In paragraph 38, Edmond J erroneously conflates intercompany loan guarantees with intercompany debt. This allows him to decide the point against NPL.
- iii. In paragraphs 43(b) and 44, Edmond J accepts, but does not explain how in law it is possible that, a secured creditor (NPL) can have its assets taken from it and its security disregarded due to the claims of the unsecured creditors of other companies, which unsecured debts NPL did not guarantee. This allows him to decide the issue against NPL.

b. Edmond J decided that the Receiver's allocation of the proceeds from the sale of NPL's assets was "fair and equitable", which the Applicants' respectfully submit is not the legal test. In so doing, his Lordship made a series of other crucial legal and factual errors. For example:

- i. In his paragraphs 54 (and 113), Justice Edmond misstates the argument made by NPL. It was not that NPL had overpaid on its guarantee, it was that it had overpaid the *just proportion* for which they were liable relative to the other co-guarantors. This "unjust proportion" is what should give NPL subrogated rights against the co-guarantor NIP. This misunderstanding (that the issue was whether they overpaid the guarantee, not the relative just proportions) appears to have caused Edmond J to closely examine the issue of what the guarantee was worth, rather than how much NPL had *actually paid* on the guarantee and whether that sum exceeded its just proportion, which was the legal issue that required resolution pursuant to the *Mercantile Law Amendment Act*.

- ii. His Lordship accepted without analysis the Receiver's position that, in advance of an order for substantial consolidation, it had the unilateral discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations. This was an error in law, as it violated the separate personhood of corporations recognized since *Salomon v Salomon*. For example, in his paragraph 64, Edmond J appears to hold that rights of subrogation must yield to the Receiver's discretion to make a fair allocation of assets, which is a proposition contrary to the jurisprudence.
- iii. In his paragraphs 70, 74-77, and 117, his Lordship accepts an irrelevant distinction between payments to the relevant credit facility and payment on the Receiver's borrowing charge, and the conclusion that payment of the borrowing charge wasn't payment of the guarantee. In paragraph 87-88, Justice Edmond records NPL's position that payments of the Receiver's Borrowings are payments on the guarantee. In paragraph 90, he agrees with that NPL was liable for "obligations" including costs incurred in debtor

relief proceedings. His Lordship does not explain, however, why payments toward the Receiver's borrowing charge are not payments of obligations for the purpose of the guarantee. Since his Lordship does not analyze or resolve the issue, he leaves open the issue of how much NPL paid on its guarantee, from which should flow the rest of the subrogation analysis. This was erroneous in law.

- iv. In paragraph 96, Edmond J reads the word "deducting" into the guarantee (as in "the realized value after deducting all costs and expenses including enforcement costs"). His Lordship then treats "after" as if it meant "after deducting", which was erroneous.
- c. His Lordship decided that, on the basis of the Receiver's purportedly discretionary allocation of the proceeds from the sale of NPL's properties, and his acceptance of an erroneous argument that intercompany debts owed by NPL could be set off against NPL's subrogated rights, that NPL did not have rights of subrogation.
- d. Additionally, his Lordship decided on the basis of all the above that the Receiver could seek to put NPL and NEL into bankruptcy

on the basis of their responsibility for the consolidated debts of the other respondents.

42. Although Edmond's J. reasons were lengthy, they were insufficient to allow for appellate review on most of the substantive points. Although Edmond J. often commenced a section by quoting from the relevant law, there is typically little or no careful application of that law to the facts, which would allow a reviewing Court to understand *why* the decision was made.

43. For example: Justice Edmond accepted without discussion the Receiver's arguably irrelevant distinction between payments to the "Credit Facility" and payments to the "Receiver's Borrowing Charge". This caused Edmond J. to implicitly decide, but not actually consider, a series of crucial legal and factual issues, such as:

- a. Was a payment by NPL of the Receiver's Borrowing Charge a payment pursuant to NPL's Guarantee? (Edmond J seems to accept, without discussion, that it was not. The contract says they were both "Obligations", for which NPL was liable under its guarantee.) If it was, why does such payment *not* give NPL rights of subrogation against the borrowers and co-guarantors?
- b. If payment of the Borrowing Charge was not a payment toward the guarantee entitling NPL to subrogation, what was it? On what



legal authority could NPL be compelled to pay to the Lenders if those payments were *not* guarantee payments?

- c. If the terms of the Receivership Order are invoked to compel the payments of the Borrowing Charge, how in law is this possible? This would amount to a judgment against NPL in a sum limited only by the maximum value of its assets, granted without pleadings or argument at the outset of a proceeding in which NPL was involved only because of its status as guarantor.
- d. In law, is there a right of setoff against subrogated rights? (Edmond J proceeds as if there are. The law is otherwise.)
- e. If there are not, how are intercompany debts owed by NPL and NEL, (upon which Edmond J relies in part to conclude that NPL does not have rights of subrogation and should be consolidated), relevant?
- f. Are the intercompany debts asserted by the Receiver as set-off part of the security that should be assigned to NPL pursuant to the subrogation? If so, what is the result?
- g. If NPL's payments to the Lenders were payments on the guarantee entitling NPL to rights of subrogation against NIP and the other respondents, is NPL (and by extension NEL) solvent

on a balance sheet test, or otherwise? If NPL is solvent, how does Edmond have jurisdiction under either the *BIA* or (by analogy the CCAA) to substantially consolidate a solvent company with insolvent companies?

44. In summary, if the order in which Edmond J. decided the issues created an illogical cascade of dispositions, the elements of that cascade are not adequately described or explained, and the conclusions are erroneous.

**Whether any prejudice suffered by the other party can be addressed?**

45. In the circumstances, the Applicants submits there is no prejudice to the Respondent. The Receiver's counsel was aware that an appeal was likely forthcoming and received confirmation of same one day after the 10-day limit had expired.

Valgardson Affidavit, at para 2.h-i.

46. The Applicants stress that given that it was a late filing by only one day, and not for instance a longer period, this element of the test is met. In *Bannerman*, the motion for extension was filed in excess of the 30-day *Court of Appeal Rules* limit. However, the Court felt that the appellant had pursued his appeal with adequate diligence.

*Bannerman*, at para 20-21 [Tab 4]

47. Upon learning of their mistake, the Applicants promptly prepared and filed a Notice of Appeal two days after the 10-day limit had expired.

48. In the alternative, in the event there is prejudice to the Respondent, same can be addressed. Given the speed at which the Applicants addressed their error, any prejudice to the Respondent is minimal.

**Whether it is right and just in all of the circumstances that the time for commencing the appeal be extended?**

49. In *Bannerman*, Beard J.A. said the following on this criterion:

[16] Scott CJM explained the fifth criterion regarding the justice of the case in *Hunter v Hunter*, 2000 MBCA 134, as follows (at para 11):

... In *Frey v MacDonald* (1989), 33 CPC (2d) 13 (Ont CA), it was emphasized, as it were by Freedman C.J.M. in *Children's Aid Society v Lambert* that the justice of the case may lead to a disposition quite independent of the determination of the first two criteria. Thus, in *Frey* leave to appeal was granted even though the court was not persuaded that there was an

intention to appeal within the appeal period nor any reasonable explanation for the delay, the converse, of course, is also true. ...

*Bannerman*, at para 16 [Tab 4]

50. In *Bannerman*, Beard J.A. continued saying:

[21] [...] The 10-day appeal period under the *BIA* is unusually short, and has caused late-filing problems in other cases – see, for example, *Braich (Re)*, 2007 BCCA 641 (in Chambers); and *Moss, Re*, 1999 CarswellMan 482 (CA (in Chambers)).

*Bannerman*, at para 21 [Tab 4]

51. Further, in *Atlantic Pressure Treating Ltd. v Bay Chaleur Construction (1981) Limited*, [1987] NBJ No 528 (NB CA), Ryan J.A. considered two appeals, one which was filed within the 30-day period prescribed by the Rules of Court but not within the 10 days prescribed by the Bankruptcy Rules. Ryan J.A. made the following comments on the issue of what is just and right in the circumstances:

[8] Over 100 years ago it was determined that the basic rule to be followed in dealing with an application to extend time for appeal is that leave should be granted if

justice requires that it be given. Brett M.R. in *Re Manchester Economic Building Society* (1883) 24 CH D 488 at 497 said:

... I know of no rule other than this, that the Court has power to give the special leave, and exercising its judicial discretion is bound to give the special leave, if justice requires that leave should be given.

Generally, an intention to appeal must be formulated prior to the time for an appeal expiring. But if any rule is necessary, it would have to be that the judge hearing the motion is bound, above all other considerations, to do justice in each particular case. By extending the times on both motions, the trustee is not prejudiced. Not to extend the times may well prejudice the intended appellant.

*[Emphasis Added]*

*Atlantic Pressure Treating Ltd. v Bay Chaleur Construction (1981) Limited,*

[1987] NBJ No 528 (NB CA) at para 8 **[TAB 9]**

52. In the event the Applicants are unable to appeal the Judgment, they will suffer significant prejudice. The Judgment contains final orders that impact the rights of the Applicants.

53. Additionally, as set out above, the Applicants' appeal is arguable and is realistically capable of convincing a panel of this Honourable Court to allow the appeal. Given the legitimate concerns the Applicants have with the Judgment, their intention and willingness to appeal, and in light of the fact that the prejudice the Applicants would suffer far outweighs any prejudice suffered by the Respondent, the interests of justice dictate that the Applicants should be allowed to bring their appeal.

54. Accordingly, the Applicants submit they pursued their appeal with reasonable diligence and that it is right and just in all the circumstances that the time for filing the Notice of Appeal be extended.

### **Conclusion**

55. The Applicants submit that all five questions in the test can be answered in the affirmative and that a consideration of all the above factors strongly favour an extension of time for filing the Notice of Appeal.

56. The Applicants submit that their Motion be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of  
March 2022.

**LEVENE TADMAN GOLUB LAW CORPORATION**

Per: 

*Per.*

**Wayne M. Onchulenko**

Lawyer for the (Respondents) Applicants

This is Exhibit "0" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. Z. Madsen", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024



**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Applicants.

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**AFFIDAVIT OF LIAM O. VALGARDSON**

Affirmed the 25<sup>th</sup> day of March, 2022

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**LEVENE TADMAN GOLUB LAW CORPORATION**

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File No. 113885/WMO

**FILED**  
**COURT OF APPEAL**  
**MAR 25 2022**  
**LAW COURTS**  
**WINNIPEG**

This is Exhibit "P" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. Demchuk", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:                    THE APPOINTMENT OF A RECEIVER PURSUANT  
TO SECTION 243 OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C., c.B-3, AS AMENDED,  
AND SECTION 55 OF *THE COURT OF QUEEN'S  
BENCH ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**FILED  
COURT OF APPEAL**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

**APR 01 2022**

(Applicant) Respondent,

**LAW COURTS  
WINNIPEG**

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES,  
INC., NYGARD NY RETAIL, LLC., NYGARD ENTERPRISES LTD., NYGARD  
PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and  
NYGARD INTERNATIONAL PARTNERSHIP,**

(Respondents) Applicants.

**SUPPLEMENTAL MOTION BRIEF OF THE (RESPONDENTS) APPLICANTS**

Hearing Date: Thursday, April 7, 2022, at 10:00 a.m.

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File No. 113885/WMO

FILE NO. AI22-30-09741

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## **PART 2: SUPPLEMENTAL ARGUMENT**

1. This is a supplemental motion brief to the motion brief of the Applicants filed on March 25, 2022.
2. This brief will supplement the Applicants' argument on the arguable grounds of appeal as it relates to their Notice of Motion to Extend by one day the time for filing the appeal.

### ***Ground of Appeal: Allocation***

3. The Court erred in law and made palpable and overriding errors in finding there was a proper allocation as between NIP and NPL in respect of revenues generated from the sale of assets of the receivership.
4. As set out before the lower court (hereinafter "the Court"), the leading decision on the allocation of proceeds in these circumstances is *Re Nortel Networks Corp.*<sup>1</sup> the ratio *decidendi* of which was contrary to the Court's conclusion.
5. In *Re Nortel*, Justice Newbould, (formally head of the Commercial List in Toronto), heard an extended trial respecting the cross-border liquidation of the assets of multiple corporations within the Nortel enterprise, and the proper allocation of those proceeds as among those entities (and thus their creditors). Concerning the proceeds themselves (referred to as the "lockbox funds"), Newbould J. held as follows.

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<sup>1</sup> 2015 ONSC 2987 ("*Re Nortel*") (Tab 1), leave to appeal refused 2016 ONCA 332 (Tab 2), application for leave to appeal filed (and discontinued) 2016 CarswellOnt 14117 (Tab 3)

[202] This is an unprecedented case involving insolvencies of many corporations and bankrupt estates in different jurisdictions. **The intangible assets that were sold, being by far the largest type of asset sold, were not separately located in any one jurisdiction or owned separately in different jurisdictions. They were created by all of the RPEs [Residual Profit Entities] located in different jurisdictions.** Nortel was organized along global product lines and global R&D projects pursuant to a horizontally integrated matrix structure and no one entity or region was able to provide the full line of Nortel products and services. **R&D took place in various labs around the world in a collaborative fashion.** R&D was organized around a particular project, not particular geographical locations or legal entities, and was managed on a global basis. The fact that Nortel ensured that legal entities were properly created and advised in the various countries in which it operated in order to meet local legal requirements does not mean that Nortel operated a separate business in each country. It did not.

6. In short, the lockbox funds were the proceeds of the assets of the collective, not of assets belonging to specific entities. This was the fact upon which the allocation decision turned. After observing that the CCAA grants the Court a broad jurisdiction to do justice between the parties, Justice Newbould held that the lockbox funds should be distributed *pro rata*, in accordance with the ratio of the respective debts of each estate.

[250] *The allocation each Debtor Estate will be entitled to receive from the lockbox funds is the percentage that all accepted claims against that Estate bear to the total claims against all Debtor Estates.*

7. Justice Newbould settled on a *pro rata* distribution because the lockbox funds represented the property of the collective.

[214] *A pro rata allocation in this case would not constitute a substantive consolidation, either actual or deemed, for a number of reasons. First, and most importantly, the lockbox funds are largely due to the sale of IP and no one Debtor Estate has any right to these funds. It cannot be said that these funds in whole or in part belonged to any one Estate or that they constituted separate assets of two or more Estates that would be combined. Put another way, there would be no “wealth transfer” as advocated by the bondholders. The IFSA, made on behalf of 38 Nortel debtor entities in Canada, the U.S. and EMEA, recognized that the funds would be put into a single fund undifferentiated as to the Debtor Estates and*

*then allocated to them on some basis to be agreed or determined in this litigation. Second, the various entities in the various Estates are not being treated as one entity and the creditors of each entity will not become creditors of a single entity. Each entity remains separate and with its own creditors and its own cash on hand and will be administered separately. The inter-company claims are not eliminated.*

*[...]*

*[222] In considering these factors, it is clear beyond peradventure that Nortel has had significant difficulty in determining the ownership of its principal assets, namely the \$7.3 billion representing the proceeds of the sales of the lines of business and the residual patent portfolio. This amount constitutes over 80% of the total assets of all of the Nortel entities. This issue has taken several years of litigation and untoward costs in the parties attempting to establish an entitlement to it. As the MRDA does not govern how the sales proceeds are to be allocated, there is no one right way to separate them. **It cannot be said that there is no question which entity is entitled to the sale proceeds or in what amount. It is clear that these assets are in the language of Dr. Janis Sarra “so intertwined that it is difficult to separate them for purposes of dealing with different entities.”**<sup>2</sup>*

8. The import of *Re Nortel* is clear: since NPL’s real properties were owned by NPL alone, (rather than by a collective), the proceeds of the sales of those properties “belonged” to NPL’s estate: NPL had a “right” to those funds.

9. The Applicants argued before the Court that it may not, therefore allocate those proceeds, in whole or in part, to the estate of another entity, as such would constitute an unjustifiable “wealth transfer”. Those proceeds certainly cannot be “allocated” to the credit of another estate simply by fiat of the Receiver.

10. In the twelfth report, the Receiver began by presuming that a substantial consolidation order had been made, and that it therefore had discretion to allocate the proceeds of the sale of properties belonging to different legal entities as among those

<sup>2</sup> Emphasis added



legal entities. The Receiver then used that allocation to declare that NPL did not have rights of subrogation. It used that conclusion to argue that substantial consolidation is appropriate.

11. In other words, and as set out in the Applicants' Motion Brief before the Court, the Receiver's logic was circular. Its argument for substantive consolidation presumed, at its first step, the existence of substantive consolidation and thus the discretion arising therefrom.

12. The Court accepted this entirely. The Honorable Mr. Justice Edmond (hereinafter "the Judge") nowhere questions the Receiver's entitlement to allocate the proceeds of sale of assets belonging to a number of legal entities in a manner which does not respect the separate legal personhood of those distinct corporations, and thus their entitlement to the proceeds from the sales of their own assets.

13. The Judge compounds the error by applying the wrong legal test to his assessment of the Receiver's allocation: at paragraph 59, he observes (correctly) that the "*allocation of costs amongst related corporations is an exercise of discretion and the result must be fair and equitable.*" This is fine, but the allocation of the costs of a multi-party receivership is not at all the same thing as the allocation of the *proceeds from the sales of the assets* of those multi-parties.

14. Throughout the Judge's analysis of the Receiver's allocation, he repeats that the Receiver's allocation is "*fair and equitable*", as if that decides the matter. He later explicitly states, at paragraph 75, "*the legal principles applicable to allocations noted above, apply*

*equally to the allocation of costs and the allocation of proceeds of the sale of assets."*

There is simply no analysis on this point.

15. The issue is not whether the Receiver's allocation was fair and equitable, but (a) whether the Receiver had the discretion to allocate proceeds, not costs, and (b) whether the allocation of the proceeds was available in law, in advance of a substantial consolidation order.

16. Resolving the second issue would require the Judge to explain why it was that (unlike *Re Nortel*, which the Judge simply distinguished on its facts, without commentary on the applicability of the general principles articulated therein) the Receiver could (in the absence of a substantial consolidation order or any other order of the court explicitly giving it this jurisdiction) disregard the separate corporate personhood of NPL and NEL.

17. It is therefore submitted that there are arguable grounds of appeal as it relates to the Judge's decision regarding allocation of proceeds by the Receiver.

***Ground of Appeal: Subrogation***

18. The Court erred in law and made palpable and overriding errors regarding the NPL's rights of subrogation and the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120.<sup>3</sup>

<sup>3</sup> *Mercantile Law Amendment Act*, C.C.S.M. c. M120 (Tab 4)

(i) ***The Law of Subrogation Generally***

19. As argued before the Court, due to its payment on its guarantee, NPL is entitled to the Lenders' security to the extent of \$28 million, and to stand in the Lenders' place relative to the other respondents. This is due to section 2 of the *Act*, and the jurisprudence surrounding this statute and its counterparts in other provinces.

*Surety entitled to assignment*

2. ***Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays the debt or performs the duty, is entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security that is held by the creditor in respect of the debt or duty, whether the judgment, specialty, or other security is or is not deemed at law to have been satisfied by the payment of the debt or performance of the duty; and that person is entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding, at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who has so paid the debt or performed the duty, and the payment or performance so made by the surety is not pleadable in bar of any such action or other proceeding by him.***<sup>4</sup>

20. The leading Canadian textbook on guarantee, McGuinness' *The Law of Guarantee* (Tab 5), elaborates on the significance of the *Act*.

***§10.40 [...] Under the present rule not only is a surety who pays off his principal's debt entitled to a transfer of securities held by the creditor, but he or she is also in all respects entitled to all the equities which the creditor could have enforced.***

*[...]*

***§10.42 A surety is entitled to stand in place of the creditor, and to use all the remedies and, on proper indemnity, to sue in the name of the creditor in any action or other proceeding in order to obtain from the principal debtor,***

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<sup>4</sup> Emphasis added

*or any co-surety, co-contractor or co-debtor, indemnification for the advances made or loss sustained by such person, and the payment or performance made by him is not a defence to such action or other proceeding by him. However, no co-surety, co-contractor or co-debtor is entitled to recover from any other co-surety, co-contractor or co-debtor more than a just proportion to which, as between themselves, the last mentioned person is justly liable. There is no statutory limit on recovery against the principal, since the principal is obliged to indemnify his sureties in full.*

[...]

*§10.44 [...] A surety for a limited amount has in respect of that amount the same rights as the creditor. To the extent of his liability, therefore, the surety is entitled to the benefit of any security held by the creditor in respect of the whole debt.<sup>5</sup>*

21. The leading Canadian textbook on insolvency, *The Annotated Bankruptcy and Insolvency Act* (Tab 6), by L.W. Houlden, Geoffrey B. Morawetz, and Janis P. Sarra, agrees.

*If a guarantor pays in full the indebtedness of the principal debtor, **the guarantor is entitled to any security held by the principal creditor and becomes a secured creditor.** There is no necessity for any formal transfer of the security to the guarantor; the guarantor stands in the place of the creditor [citations omitted].<sup>6</sup>*

22. In *Re Windham Sales Ltd.* (Tab 7), Justice Henry quoted section 2 of the *Mercantile Law Amendment Act* of Ontario (which is identical to section 2 of the Act), and then held:

*5 The law appears to be well settled that upon implementation of the guarantee in a situation such as that before me **the guarantor stands in the place of the original creditor without the necessity of any formal transfer of any security interest to the guarantor.** [citations omitted]<sup>7</sup>*

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<sup>5</sup> Kevin McGuinness, *The Law of Guarantee*, Third Edition, 2013, ("**The Law of Guarantee**"), at §10.40-10.44, pages 722-726, citations omitted, emphasis added (Tab 2)

<sup>6</sup> *Annotated Bankruptcy and Insolvency Act*, by L.W. Houlden, Geoffrey B. Morawetz, and Janis P. Sarra at G§59(1), emphasis added (Tab 3)

<sup>7</sup> (1979), 31 C.B.R. (N.S.) 130 at paragraph 5, emphasis added (Tab 4)

23. In *Alberta Treasury Branches v Weatherlock Canada Ltd.*<sup>8</sup>, the Court of Appeal for Alberta held:

**33 That subrogation [of the guarantor to the creditor] gives the paying guarantor every remedy, every security, and every means of payment which the creditor had against the other guarantors. That subrogation is automatic, and does not depend in any way on contracts, such as an assignment [citations omitted].**

24. The Applicants therefore argued before the Court that NPL is legally entitled to an assignment of the Lenders' security over the other respondents' assets, and to stand in the place of the Lenders relative to those respondents, to the extent of those respondents' just liability.

**(ii) Subrogation in Receivership**

25. Receivership does not change the law of subrogation. The guiding case on this point is *Bank of Montreal v. Ladacor AMS Ltd.*<sup>9</sup>, in which the facts were as follows. Three companies ("**Ladacor**", "**Nomads**" and "**236**") were in receivership. Nomads had been an Alberta company which manufactured modular buildings and structures. Ladacor was a wholly-owned subsidiary of Nomads, to which Nomads had effectively (but informally) transferred its entire business enterprise. Nomads also owned 90% of 236, which owned and operated a hotel in Ontario. The Bank of Montreal ("**BMO**") had loaned approximately \$4 million to Ladacor. Guarantees of Ladacor's debt to BMO were provided by Nomads, 236 and Nomads' majority shareholder. Eventually, the receivership order was made, and

<sup>8</sup> 2011 ABCA 314 (Tab 8)

<sup>9</sup> 2019 ABQB 985 (Tab 9)

the receiver sold the physical assets of Nomads and Ladacor, yielding \$682,000. Justice Graesser continued:

*[24] Since 236 was also put into receivership, the Receiver took steps to sell 236's main asset, the Days Inn Hotel in Sioux Lookout. **Of the roughly \$5,000,000 sale proceeds, \$4,000,000 were paid by the Receiver to BMO.***

*[25] Ultimately, the time of the Fourth Report, the Receiver had paid off the secured debt to BMO, the Receiver's borrowings from BMO to enable it to carry on the Receivership, the WEPP claims, CRA and Service Canada trust/priority claims, along with its and its lawyer's fees and disbursements.*

*[26] The supplemental report and Fifth Report update the figures. As at the time of that report, October 25, the Receiver was holding \$10,398 for Nomads, \$722,661 for Ladacor, and \$637,241 for 236. **The Receiver proposes to allocate all of the available proceeds currently in Ladacor's and Nomads' accounts to 236.***

26. Concerning 236's position, Justice Graesser held as follows:

*46 BMO was a secured creditor, subject only to the superior WEPP claims and CRA source deduction claims, and the costs of the receivership. **The Receiver argues on this application that guarantors (such as Nomads and 236) are entitled to be subrogated to the claims they have paid out on behalf of the principal debtor, Ladacor.***

*47 In this case, Nomads and 236 have paid off BMO's claims against Ladacor. Nomads and 236 are entitled to be subrogated to BMO's claim, and to stand in BMO's shoes with respect to any security BMO held against Ladacor. **That means, according to the Receiver, that Nomads and 236 are now the primary secured creditors on any of Ladacor's remaining assets.***

*48 Additionally, as between guarantors who have paid out on their guarantees, Nomads and 236 are entitled to be treated proportionately, so the debt paid off should be apportioned between them. Where guarantors are equally liable to the obligee, the guarantors are considered to be responsible for equal shares of the debt.*

*49 Here, that would mean that each of Nomads and 236 should have paid off half of the debt owed to BMO. **Since 236 paid more than half of the BMO debt, there should be an adjustment as between Nomads and 236, in 236's favor.***

50 *The way the Receiver has accounted for this is that the excess of collections over required payments has left a surplus, some of which now stands to the credit of Ladacor. **Because 236 paid more than its half of the obligation, 236 is entitled to recover that excess from Ladacor.***

51 *Of the \$5,834,882 paid to satisfy BMO's claims, \$4,000,000 came from 236. The remainder came from Nomads. Because of contribution principles between guarantors, each of the guarantors should have paid \$2,917,441. 266 overcontributed by \$1,082,559. That amount is owed to it by Nomads.*

*[...]*

53 *This analysis and position is well supported by the Receiver's first brief for this application [citations omitted]*

*[...]*

55 *I am satisfied that for the purposes of finalizing the Receivership accounts, **the monies the Receiver holds to the account of Ladacor and Nomads should be transferred to 236's account as a function of a guarantor's right to subrogation and to contribution rights and obligations as between co-guarantors.***<sup>10</sup>

27. Like the receiver in *Ladacor*, the Receiver should have understood that NPL's payment of \$28.59 million toward the debt owed by the Borrowers to the Lenders gave NPL subrogated claims, which claims are in the nature of secured claims, against the Borrowers and the Unlimited Guarantors. Like the receiver in *Ladacor*, the Receiver should have asked this Court for an order compensating NPL in respect of those subrogated claims.

28. The Judge compounds his errors regarding allocation by accepting without question the Receiver's distinction between payments on the Receiver's Borrowing Charge and payments toward the Credit Facility.

<sup>10</sup> Emphasis added

29. In its second supplementary twelfth report, the Receiver took the position that the dates of the payments meant that none of the proceeds from NPL's properties were used to satisfy amounts owed under the Credit Facility, but instead were used to make payments towards the Receiver's Borrowing Charge. The Applicants made two arguments before the Court against this position.

30. The first was that the distinction between "*payments to the Credit Facility*" and "*payments of the Receiver's Borrowing Charge*" was irrelevant. The analysis must proceed on the basis of the Guarantee and the Credit Facility. For the reasons set out in the Applicants' Reply Motion Brief at great length, the Guarantee obligated NPL to repay "*Obligations*", which obligations included enforcement costs, which enforcement costs explicitly included Receiver's fees and its borrowings. Therefore, the payment of NPL proceeds to the Receiver's Borrowing Charge were payments pursuant to the Guarantee, and entitled NPL to rights of subrogation according to the Act.

31. Further, if the distinction between payments on the Credit Facility and payments on the Receiver's Borrowing Charge were relevant (which is denied) the Credit Facility required that payment of the Receiver's Borrowings be paid ahead of payments of the amounts due to the lenders. Exactly the opposite occurred in this case, which means that the Receiver *prima facie* breached the terms of the Credit Agreement. If they had observed the terms of the Credit Agreement, the Receiver's Borrowing Charge would have been paid off by the time the NPL properties were sold, and therefore the proceeds of the NPL properties all would have been paid toward the repayment of the Credit Facility.



32. All this was put to the Judge in writing and orally, but he simply does not address any of it. The Judge acknowledges that NPL had challenged the Receiver's assertions (see paragraphs 87 and 88) and agrees (in paragraph 90) that "*NPL guaranteed the repayment of Borrowers' obligations, which included "fees, costs, expenses and indemnities that accrue after the commencement by or against any loan party or any affiliate thereof of any proceeding under any Debtor relief laws."*" However, the Judge does not assign any significance to that fact, instead spending the rest of this section (paragraph 91 through paragraph 98) on the issue of whether the Guarantee was limited to \$20 million inclusive of costs enforcement or \$20 million plus costs and enforcement. This was a relevant issue, but it is not the issue that was of importance to the court at that time: that issue was whether, and in what amount, NPL had made payments on its Guarantee. This issue is nowhere decided.

33. The Judge does not find as fact how much NPL paid towards its Guarantee, and whether all of its payments were payments under its Guarantee. If they were not payments under the Guarantee, as suggested by the Receiver, then there is no explanation of what those payments were, in law. On what legal basis could NPL be required to pay down the Receiver's Borrowing Charge, if those payments were not payments towards its Guarantee? Was it simply on the basis of the Receivership Order? If so, the Receivership Order was in effect a judgment for tens of millions of dollars against NPL at the outset of the proceeding. How does the court have jurisdiction to do that?

34. In paragraph 113, the Judge states that "*As previously stated, I do not accept that the entire amount of \$28,579 million was paid to the Lenders pursuant to the Credit Facility.*" If so, how much was paid pursuant to the Credit Facility? Why is payment

"pursuant to the Credit Facility" relevant, and why did the court not conduct its analysis on the basis of the payment of obligations, having agreed that that is what we were to pay? In paragraph 117, the Judge says "*The entire amount of proceeds received from the sale of NPL's properties was not paid to the Lenders to satisfy the Borrowers' obligations.*" But the Judge does not give any reasons for concluding that payment of the Receiver's Borrowings would not be payment of the obligation, given the terms of the Credit Facility.

35. Paragraph 122 is a clear error in law because the Judge concludes that "*even if some of the Net Receivership Proceeds should be allocated to NPL, those funds are subject to claims of NPL's creditors which, in all probability, exceed the proceeds available to satisfy those claims.*" This misstates the legal factors here. As the Judge stated at paragraphs 103 - 104, "*once a surety or a guarantor makes payment of a Borrower's debt, that person or entity becomes subrogated to the rights of the creditor as against the Borrower and any co-guarantor or surety ... A claim against a Co-Guarantor is limited to the proportion of the total debt for which each Co-Guarantor is justly liable.*"

36. The Ontario Court of Appeal has established that there is no available set off against the subrogated claim, because the claims were not in the same right (i.e., NPL is making a claim having stepped into White Oak's shoes, and NIP cannot set off a claim against NPL a right originating with White Oak). Further, we argued that the intercompany debts were part of the security assigned to White Oak and therefore by stepping into White Oak's shoes NPL assumed the right to enforce those debts (or conceptually to forgive them). Again, this is nowhere addressed by the Judge.

### **Ground of Appeal: Consolidation**

37. The Court erred in law and made palpable and overriding errors in its order of substantive consolidation.

#### **(i) Substantive Consolidation Generally**

38. In a substantive consolidation, a number of affiliated legal entities, typically corporations, are treated as if they were one entity, resulting in the assets of the various debtors being pooled to create a common fund out of which claims of creditors of all the debtors are jointly satisfied:<sup>11</sup> “[i]n effect, under substantive consolidation, claims of creditors against separate debtors instantly become claims against a single entity.”<sup>12</sup>

39. NPL and NEL should not have been subject to a consolidation order. NPL is asset rich: it has a secured claim against the Borrowers, and a secured claim against the Unlimited Guarantors for contribution. Depending on the accounting, it may have millions in cash to its credit. The Receiver conceded that NPL is solvent.<sup>13</sup> NEL owns NPL.

40. It is *because* NPL is solvent, asset-rich and a secured creditor of other respondents that the Receiver wants to make it subject to a consolidation order. The Receiver wants access to NPL’s assets and the extinguishment of NPL’s rights so that NIP’s unsecured creditors can receive a better return. (NPL has not, of course, guaranteed payment of NIP’s unsecured debt.<sup>14</sup>) The Receiver has been frank about this:

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<sup>11</sup> *Re Redstone Investment Corp. (Receiver of)* 2016 ONSC 4453 (“**Re Redstone**”) at paragraph 7 (**Tab 10**)

<sup>12</sup> *Re Nortel* at paragraph 213 (**Tab 1**)

<sup>13</sup> Receiver’s Brief at paragraph 50(b)

<sup>14</sup> General Order, April 29, 2020 at provisions 2 – 3

*[I]f assets and liabilities of each Debtor are treated separately the remaining assets of NPL would not be available to pay (e.g.) employees of NIP who have unsecured claims for unpaid employment amounts, but would only be available to pay unsecured creditors, if any, of NPL. [...] In the result, overwhelmingly the unsecured creditors affected by these proceedings...will have debts owed "directly" to them by NIP or Nygard Inc.<sup>15</sup>*

*...employees, landlords, suppliers and other vendors, gift card purchasers, and taxing authorities who are owed debts by NIP, NI and other Debtors (not including NPL) are economically advantaged by substantive consolidation..."<sup>16</sup>*

41. One of the primary reasons that US and Canadian Courts have made substantive consolidation an extraordinary remedy is that they are loath to badly prejudice a particular creditor in order to increase the return for others. In the guiding Canadian case on substantive consolidation, *Re Redstone Investment Corp. (Receiver of)*<sup>17</sup>, G.P. Morawetz J. (now Chief Justice of the Ontario Superior Court) conducted a lengthy analysis of the jurisprudence, and observed that in two prior cases in which consolidation had been ordered, *"the court in each decision explicitly noted that consolidation would not be to the prejudice or expense of a particular creditor."* Similar statements (as in *"[a]lthough expediency is an appropriate consideration it should not be done at the potential prejudice or expense of any particular creditor"*) are made in the authorities relied upon by the Receiver.<sup>18</sup>

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<sup>15</sup> Ninth Report at paragraph 120, page 36, emphasis added

<sup>16</sup> Receiver's Brief at paragraph 43(b), emphasis added

<sup>17</sup> *Re Redstone* at paragraph 74 (Tab 10)

<sup>18</sup> *Bacic v Millennium Educational* 2014 ONSC 5875 at paragraph 112 (Tab 11); *Ashley v Marlow Group* 2006 CanLII 31307 at paragraph 78 (Tab 12); *JP Capital Corp. (Re)* (1995), 31 C.B.R. (3d) 102 at paragraph 18 (Tab 13)

42. Accordingly, in refusing to order consolidation in *Re Redstone*, Justice Morawetz held:

[86] [...] In this case, **substantive consolidation eliminates the secured inter-company receivable, while it is the only material asset of RCC**. The result is, therefore, from an objective standpoint, extremely prejudicial to the RCC Investors [...]

[88] As Trainer J. explained in *Northland*, “**it would be improper for the court to interfere with or appear to interfere with the rights of the creditors,**” and that such an appearance would be created if the estates are ordered merged for all purposes. This caution rings true in this case. [...]

[90] In this case, I have concluded that it is not appropriate to invoke this extraordinary remedy. The assets are held separately and audited financial statements exist for RIC and RCC. The governing loan documents clearly set out that the corporations are separate and that the obligations of RIC to RCC are subject to a GSA. Referencing *Northland*, the “elements of consolidation” are not present. **Furthermore, there would also be significant financial prejudice to creditors of RCC if substantive consolidation were ordered.**<sup>19</sup>

43. The facts before Justice Morawetz are in this respect very similar to the facts that were before the Court: one creditor (NPL here, the RCC Investors in *Re Redstone*) has a secured claim that would be eliminated by a consolidation order, and this *by itself* militates against the making of the order sought. The additional factor in this case is that the Receiver’s sales of NPL’s real properties have created a tax obligation for NPL, which obligation has not been satisfied by the Receiver. As a result, the Receiver is forced to concede that “*CRA and perhaps other direct unsecured creditors of NPL, if any, are economically prejudiced by substantive consolidation...*”

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<sup>19</sup> Emphasis added

44. In short, by selling NPL's properties, the Receiver has paid off the Lenders and created an NPL creditor in CRA. The Receiver now proposes to extinguish the rights granted by statute to NPL as a result of those payments, and to all-but-extinguish CRA's rights against NPL. It proposes to do this for the benefit of NIP's unsecured creditors. This is obviously inequitable.

45. Furthermore, the Receiver cannot, in respect of NPL and NEL, pass any aspects of the legal test for consolidation.

**(ii) The Balance of the Test**

46. Having completed his review of the law, Justice Morawetz held as follows.

*78 The following general principles respecting the doctrine of substantive consolidation represent a summary of Canadian case law:*

- (i) Are the elements of consolidation present, such as the intertwining of corporate functions and other commonalities across the group?*
- (ii) Do the benefits of consolidation outweigh the prejudice to particular creditors?*
- (iii) Is consolidation fair and reasonable in the circumstances?*

47. With respect to the aforementioned "elements of consolidation", the factors are as follows.

- (i) difficulty in segregating assets;*
- (ii) presence of consolidated financial statements;*
- (iii) profitability of consolidation at a single location;*
- (iv) co-mingling of assets and business functions;*

*(v) unity of interests in ownership;*

*(vi) existence of inter-corporate loan guarantees; and*

*(vii) transfer of assets without observing corporate formalities.<sup>20</sup>*

48. The test articulated by Justice Morawetz has not been met in the within case:

(i) The elements of consolidation are not present.

- a. There is no difficulty in segregating NPL's assets from those of the other respondents. Its assets consist of the realty and its proceeds. Most of the proceeds were paid to the Lenders, leaving a balance in the hands of the Receiver.<sup>21</sup> NEL's assets consist only of the shares in NPL.<sup>22</sup>
- b. NPL and NEL each had their own financial statement. Their financials were not part of the consolidated financial statement of the other respondents.<sup>23</sup>
- c. NPL is a real-estate holding company, and did not conduct an active business. NEL is a holding company that does not conduct an active business.<sup>24</sup> There is, thus, no "single location" at which their business could be consolidated.
- d. NPL's assets and business functions (real property and the holding of real property) had not been co-mingled with those

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<sup>20</sup> *Re Redstone* at paragraph 47 and 79-85 (**Tab 10**)

<sup>21</sup> Ninth Report at paragraph 11, page 3; Order of this Honourable Court dated August 10, 2020; Ninth Report, at paragraph 9, page 3; Order of this Honourable Court dated June 30, 2020; Twelfth Report, at paragraphs 14 and 20, pages 4-5; Twelfth Report, at paragraph 21, page 5; Twelfth Report, at page 36, "Nygard Group – Separate Corporation Analysis"; Twelfth Report, at paragraph 82, page 27, "Distribution to Lenders"

<sup>22</sup> Affidavit of Robert Dean affirmed March 9, 2020 at paragraph 32(e)

<sup>23</sup> Affidavit of Greg Fenske sworn November 5, 2020, at paragraphs 15 - 17

<sup>24</sup> Affidavit of Robert Dean affirmed March 9, 2020 at paragraph 32(a) and (e), Affidavit of Greg Fenske sworn November 5, 2020, at paragraphs 15 - 17

of the other respondents. The Credit Agreement distinguished between the respondents and their respective liabilities to the Lenders.

- e. There is no “unity” of ownership. NPL is owned by NEL, which does not directly own any of the other respondents, save 879.<sup>25</sup>
- f. NPL’s intercorporate loan guarantee has been satisfied. It does not have any outstanding guarantees of the other respondents’ debts.<sup>26</sup> NEL did not guarantee the debts of the other respondents. [Of course, the effect of the Judge’s consolidation order is equivalent to NPL having guaranteed the debts of the other respondents].
- g. There have been no transfers of assets to or from NPL without corporate formalities.

(ii) NPL (which is subrogated to the Lender’s rights) is a secured creditor of the Unlimited Guarantors and a secured creditor of the Borrowers. There can be no argument that NPL will not be seriously prejudiced by an order for consolidation.

(iii) In these circumstances, the answer to Justice Morawetz’ third question, (Is consolidation fair and reasonable on all of the circumstances?), must be no. The assets of the respondents should not be substantively consolidated in order to benefit the unsecured creditors of NIP at the expense of NPL, NIP’s secured creditor, and NPL’s owner, NEL.

49. The Receiver attempted to buttress its argument by citing a series of decisions respecting the “common employer” doctrine. The doctrine is irrelevant to this matter: the

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<sup>25</sup> Affidavit of Robert Dean affirmed March 9, 2020 at paragraph 30

<sup>26</sup> General Order, April 29, 2020 at provisions 2 – 3



Ontario Court of Appeal has made clear, in a case relied upon by the Receiver, that the doctrine applies only "*in the realm of employment law*".<sup>27</sup>

50. The result before the Court should have been the exclusion of NPL and NEL from the order for substantive consolidation or, stated differently, the dismissal of the motion as against NPL and NEL.

51. Regarding specific references to the Judgment itself, the Applicants submit:

- a. Paragraph 26(f): the Judge relies on a single individual having effective control. However, as set out in *Redstone*, this is not enough. The Judge departed from *Redstone's* principle without affording any reason for doing so.
- b. Paragraphs 30-31: the Judge made a legal error by misdirecting himself. The Judge should have decided whether NPL was subrogated to the Lenders' security before moving on to the substantive consolidation test. As the Lenders' subrogee, consolidation is clearly inappropriate. Further, the statement "I am in substantial agreement with the 12th report" is an example of the Judge not giving any or adequate reasons for decisions he made.
- c. Paragraph 32(a): the Judge misdirects himself. Even if NIP has a debt claim against NPL, that does not mean that NIP's assets are legally "commingled" with NPL's assets. The Judge also failed to consider (a)

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<sup>27</sup> *Downtown Eatery (1993) Ltd. v Ontario*, (2001) 54 O.R. (3d) 161 (C.A.) at paragraph 36; see also paragraphs 30-31 (**Tab 14**)

terms of the lease (which obliged NIP to improve the properties) and (b) that some of the properties (Falcon Lake) are not in receivership.

- d. Paragraph 33(b): the Judge did not properly consider the absence of consolidated statements as a significant factor weighing against consolidation.
- e. Paragraph 34(c): there was no NPL business to consolidate: it owned real property, all of which had been sold. The active business was done by the other respondents.
- f. Paragraph 35(d) – 36: most or all of this was also present in *Redstone*, (see para. 56 and 58) but the Judge's conclusions do not follow. At paragraph 77 of *Redstone*, Morawetz J cautions against imposing a consolidation order that avoids the priority arrangement created by contract. If the Judge had done the subrogation analysis first, as he should have, then NPL would have assumed White Oak's rights and a consolidation order would not be available.
- g. Paragraph 37(e): The Judge states that "the evidence satisfies me that..." What evidence? This is not a sufficient reason. This "directly or indirectly controlled" argument was rejected in *Redstone* at para. 83.
- h. Paragraph 38(f): The Judge conflates "intercorporate loan guarantees" (of which there are none) with intercompany loans – which is not the same thing. This is a clear legal error.
- i. Paragraph 43(b): the prejudice if NPL is secured is patently clear.

- j. Paragraph 44: there is no material or legal difference between a third-party creditor and a party that has stepped into the shoes of a third-party creditor.

52. Based on the law and argument as set out above, the Applicants submit that the Judge's order for substantive consolidation is incorrect.

53. The Applicants submit that all five questions in the test can be answered in the affirmative and therefore the motion to extend the time for filing the Notice of Appeal by one day should be granted.

***Ground of Appeal: Legal Fees to Criminal Defence Counsel***

54. The Court misdirected itself in disallowing NPL from using its money to pay the fees of the criminal defence counsel for Peter Nygard.

55. As submitted before the Court, it is the position of NPL that because Peter Nygard is the ultimate owner of NPL, it is in NPL's best interests that Peter Nygard be acquitted.

56. If Peter Nygard is convicted, NPL's assets would likely be used to pay a judgment obtained by anyone who is successful in the prosecution of a civil claim after a successful criminal prosecution against Peter Nygard. Further, NPL may be added to the criminal proceedings and the work done in defence of Peter Nygard could be useful to NPL (as set out in the Affidavit of Brian Greenspan, affirmed December 9, 2021).

57. The Applicants submit that the Court made palpable and overriding errors regarding NPL's request to indemnify Mr. Nygard for legal costs incurred to defend his criminal charges. The Applicants submit that the Court misdirected itself (at paragraphs 150-151) regarding the best interests of NPL to defend against the criminal allegations

and the application of the case law regarding indemnification. The Applicants submit that based on the law as set out before the Court, the Court should have allowed for the requested indemnification.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1<sup>st</sup> DAY OF APRIL, 2022.

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This is Exhibit "Q" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. Z. Madhrie", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C.  
1985 c. B-3, AS AMENDED AND SECTION 55 OF  
THE COURT OF QUEEN'S BENCH ACT, C.C.S.M.  
c. C280**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

*Respondent*  
(Applicant) ~~Debtor~~,

- and -

**NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC,  
NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD.,  
4093879 CANADA LTD., 4093887 CANADA LTD., and  
NYGARD INTERNATIONAL PARTNERSHIP,**

*Respondents*  
(~~Debtors~~) Appellants.

**MOTION BRIEF OF THE RECEIVER  
(EXTENSION OF TIME TO FILE  
NOTICE OF APPEAL)**

**FILED**  
**COURT OF APPEAL**  
**APR 28 2022**  
**LAW COURTS**  
**WINNIPEG**

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***INSOLVENCY ACT***  
***QUEEN'S BENCH ACT***

***BANKRUPTCY AND***  
***THE COURT OF***



III.	INTRODUCTION AND BACKGROUND	3
IV.	STATEMENT OF ISSUE	6
V.	ARGUMENT	6

## **I. LIST OF DOCUMENTS**

1. Notice of Motion dated March 25, 2022
2. Affidavit of Liam O. Valgardson affirmed March 25, 2022 attaching the Proposed Notice of Appeal
3. Motion Brief of the (Respondents) Applicants dated March 25 2022
4. Supplementary Motion Brief of the (Respondents) Applicants dated April 1, 2022;

## **II. LIST OF AUTHORITIES**

### **Tab**

1. Rule 31 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368
2. *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269
3. Rules 4(g), 9 and 11(2) of the *Court of Appeal Rules*, M.R. 555/88
4. *Bannerman Lumber Ltd. et al. v. Goodman*, 2021 MBCA 13
5. *Ontario Wealth Management Corp. v. Sica Masonry and General Contracting Ltd.*, 2014 ONCA 500
6. *National Telecommunications Inc. v Stalt Telcom Consulting Inc.*, (2018) 297 ACWS (3d) 28 (Ont. CA)

7. *7451190 Manitoba Ltd. v CWB Maxium Financial Inc.*, 2019 MBCA 28
8. *Fabrikant v. Canada*, 2018 CAF 171
9. *Griffin v. Prince Edward Island School Board, Regional Administrative Unit No. 3*, [1988] P.E.I.J. No. 62 (PEI CA)
10. *Alberta Treasury Branches v Conserve Oil 1st Corp.*, 2016 ABCA 213
11. *Penner v. Montcalm (Rural Municipality)*, 2020 MBCA 97
12. *Delichte v. Rogers*, 2018 MBCA 79
13. *White Oak Commercial Finance LLC v Nygard Holdings (USA) Ltd. et al.*, 2020 MBCA 128
14. *8640025 Canada Inc. (Re)*, 2019 BCCA 473
15. *Krawczynski v. Ralph Culp and Associates Inc.*, 2019 ONCA 399

### **III. INTRODUCTION AND BACKGROUND**

1. On March 18, 2020, Richter Inc. (formerly Richter Advisory Group Inc.) was appointed receiver (in such capacity, the “**Receiver**”) over the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. (“**NEL**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”) pursuant to an Order (the “**Receivership Order**”) of the Honourable Mr. Justice Edmond of the Court of Queen’s Bench (the “**Judge**”). The Receivership Order was subsequently amended by a General Order made by the Judge on April 29, 2020, which clarified the scope of the Receivership Order in relation to the property, assets and undertakings of the Debtors NEL and NPL.

2. On December 20 and 22, 2021, the Judge heard certain contested motions brought in the receivership proceedings (the “**Receivership Proceedings**”).

3. On March 10, 2022, the Judge issued lengthy and comprehensive reasons for judgment (the “**Judgment**”) and made an Order (the “**Net Receivership Proceeds Order**”), pursuant to which he, *inter alia*:

- (a) declared the assets and liabilities of the Debtors to be substantively consolidated for the purpose of addressing the claims of creditors of each of the Debtors;
- (b) authorized the Receiver to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;
- (c) authorized the Receiver to file applications for bankruptcy orders in the Court of Queen's Bench Manitoba in relation to NPL and NEL on a basis that reflects the substantive consolidation of the estates of the Debtors;
- (d) appointed the Receiver as Trustee in bankruptcy;
- (e) authorized the Receiver, in its capacity as Trustee, to apply for an order for procedural and substantive consolidation of the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3, as amended (the "**BIA**");
- (f) approved the allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property;

- (g) granted the Debtors' motion to authorize or permit payment of the Debtors' reasonable legal fees and disbursements and professional costs incurred and to be incurred in the Receivership Proceedings from certain Preserved Proceeds, as described in the Judgment, and, if necessary, the net proceeds of the Receivership; and
- (h) dismissed the Debtors' motion to authorize or permit payment of legal fees and disbursements from the Preserved Proceeds or the net proceeds in the Receivership to defend the criminal charges against Mr. Peter J. Nygard.

4. On March 22, 2022, the Debtors attempted to file a Notice of Appeal dated March 22, 2022 (the "**Proposed Notice of Appeal**") with this Honourable Court ("**this Court**") pursuant to sections 193(a)(b)(c) and (e) of the BIA in connection with their proposed appeal from the Net Receivership Proceeds Order.

5. However, the filing of the Proposed Notice of Appeal has not been processed as the attempt to file occurred after the expiry of the 10 day

appeal period provided pursuant to Rule 31(1) of *the Bankruptcy and Insolvency General Rules*, C.R.C. c. 368 [Tab 1].

6. The Debtors have now filed a Notice of Motion for an extension of time to file the Proposed Notice of Appeal, along with the Affidavit of Liam O. Valgardson affirmed March 25, 2022 (the “**Valgardson Affidavit**”) attaching the Proposed Notice of Appeal, the Motion Brief of the (Respondents) Applicants dated March 25, 2022 (the “**Brief**”), and the Supplementary Motion Brief of the (Respondents) Applicants dated April 1, 2022 (the “**Supplementary Brief**”).

7. The Receiver opposes the Debtors’ motion for an extension of time to file the Proposed Notice of Appeal on the basis of the Debtors’ failure to sufficiently or properly identify any errors of law and/or palpable and overriding errors in the exercise of discretion by the Judge. The Debtors’ failure results in the Receiver or interested parties being unable to respond and this Court being unable to determine the merits of the proposed appeal.

8. Accordingly, the Receiver files this Brief to outline the legal basis for its opposition to the Debtors’ request for an extension of time to file the Proposed Notice of Appeal pursuant to Rule 31(1) of the BIA.

## **VI. ISSUE**

9. Should the Debtors be granted an extension of time to file the Proposed Notice of Appeal?

## **V. ARGUMENT**

### **The Applicable Appeal Period**

10. As the Receivership Order was made pursuant to s. 243 of the BIA and s. 55 of *The Court of Queen's Bench Act*, C.C.S.M., c. C280, the 10 day appeal period prescribed by Rule 31(1) of the BIA Rules applies to the Debtors' proposed appeal.

11. In *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269, Zarnett J.A. confirmed that the 10 day appeal period under the BIA Rules applies in receivership proceedings that engage both the BIA and provincial legislation:

In cases like this, where the court's power may be grounded in the BIA or the CJA, the doctrine of paramountcy would prevent an appellant from resorting to the CJA appeal provisions as they are in operational conflict with those of the BIA in respect of timing and leave requirements. To the question "May one appeal without leave and do so after 10 days have expired?" one enactment says "yes" and the other says "no", meeting the test for operational conflict: ... The only manner in which the appeal provisions could be found not to conflict is if it were possible to comply with both schemes. Because



the BIA provisions are more restrictive than the CJA provisions, complying with both schemes entails complying with the BIA provisions. Either way, SusGlobal was required to follow the BIA appeal route. [Citations omitted]

*Business Development Bank of Canada v. Astoria Organic Matters Ltd.*,  
2019 ONCA 269 at para 67 [Tab 2]

12. Moreover, Rule 11(2) of the *Court of Appeal Rules*, M.R. 555/88 [Tab 3] (the “**CA Rules**”), provides that “[a]n appeal arising under any Act shall be commenced within the time prescribed by that Act.”

*Court of Appeal Rules*, M.R. 555/88, r 11(2) (the “**CA Rules**”) [Tab 3]

13. In the Proposed Notice of Appeal the Debtors acknowledge that the appeal “arises out of an order of a judge under the *BIA*...” and expressly rely upon ss.193(a)(b)(c) and (e) of the BIA as the basis for this Honourable Court’s jurisdiction to hear the appeal.

14. In the circumstances, the 10 day appeal period under the BIA Rules applies.

### **Extension of Time to File the Proposed Notice of Appeal**

15. Pursuant to Rule 31(1) of the BIA Rules, this Court may grant an order extending the time for filing a notice of appeal.

*Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, r 31(1) (the “**BIA Rules**”) [Tab 1]

16. The factors to be considered by this Court in determining whether to grant the extension of time to file the Proposed Notice of Appeal are:

- (a) whether the appellants had a *bona fide* or continuous intention to appeal before the expiration of the appeal period;
- (b) the length of and explanation for the delay;
- (c) any prejudice to the responding parties; and
- (d) the merits of the proposed appeal.

The overarching principle is whether the justice of the case requires that an extension be granted.

*Bannerman Lumber Ltd. et al. v. Goodman*, 2021 MBCA 13  
at paras 13 - 14 [Tab 4]

*Ontario Wealth Management Corp. v. Sica Masonry and General Contracting Ltd.*,  
2014 ONCA 500 at para 26 [Tab 5]

*National Telecommunications Inc. v Stalt Telcom Consulting Inc.*, (2018) 297  
ACWS (3d) 28 (Ont. CA) at para 16 [Tab 6]

17. The primary basis of the Receiver's opposition to the Debtors' request for an extension of time to file the Proposed Notice of Appeal is the failure of the Debtors to sufficiently or properly identify any errors of law and/or any palpable and overriding errors in the exercise of discretion by the Judge in a manner such that the Receiver or interested parties are unable to respond, and this Court is unable to properly consider the motion for an extension of time to file the Proposed Notice of Appeal or the merits of the

proposed appeal. Nonetheless, the Receiver will provide certain observations regarding the length of the delay, the insufficiency of the Debtors' materials, including the Proposed Notice of Appeal, and the Debtors' explanation for the delay.

18. As well, the Receiver submits that the justice of this case requires that the Debtors' motion be dismissed.

### **The Length of and Explanation for the Delay**

#### **Length of the Delay**

19. As the Judgment was issued on March 10, 2022, the Debtors were required to file the Proposed Notice of Appeal on or before March 21, 2022 (given that March 20, 2022 was a Sunday).

20. In *7451190 Manitoba Ltd. v CWB Maxium Financial Inc.*, 2019 MBCA 28, Mainella J.A. stated with respect to the interpretation of rule 31 of the BIA Rules:

The language of the *BIA Rules* and the objective of the BIA make it clear that the appeal period runs from the day on which the decision was pronounced. That is so because expediency is important to protect the integrity of the restructuring process under the BIA. The wording of section 31(1) of the *BIA Rules* is such that a final order or written reasons of the decision pronounced by the court are not required for the appeal period to begin (see *Moss, Re*, 1999 CarswellMan 482 (Man. C.A. [In Chambers]) at para

4; and *Koska, Re*, 2002 ABCA 138 (Alta. C.A.) at para 16). ...

*7451190 Manitoba Ltd. v CWB Maxium Financial Inc.*, 2019 MBCA 28  
at paras 13-15 [Tab 7]

21. The Debtors attempted to file the Proposed Notice of Appeal on March 22, 2022. But they did not provide a copy of the Proposed Notice of Appeal to the Receiver or other interested parties until March 25, 2022, when the Notice of Motion, Brief and the Valgardson Affidavit were filed and served. The Debtors subsequently filed and served the Supplemental Brief on April 1, 2022.

22. As well, on March 25, 2022, the Debtors stated their intention to amend the Proposed Notice of Appeal to particularize the grounds of appeal contained therein. The Receiver has repeatedly requested that the Debtors provide the proposed amendments but they have neglected to do so.

23. The Receiver submits that the Proposed Notice of Appeal is not in compliance with subrule 4(g) of the CA Rules as it does not contain “the grounds to be argued” as contemplated under the CA Rules.

CA Rules, *supra*, r 4(g) [Tab 3]

24. In *Fabrikant v. Canada*, 2018 CAF 171, Stratas J.A. considered the requirement to provide a “statement of the grounds intended to be argued” in a notice of appeal filed in the Federal Court, noting as follows:

In the context of notices of application, this Court has made it clear that this is a very serious requirement: *JP Morgan Asset Management (Canada) Inc. v. Minister of National Revenue*, 2013 FCA 250, [2014] 2 F.C.R. 557 (F.C.A.). Bald, unparticularized and vague statements of the grounds will not suffice. Nor will irrelevant grounds or grounds that do not give rise logically to the relief sought. As well, the grounds cannot be frivolous or vexatious.

These requirements apply equally to notices of appeal and, thus, apply in this particular case: *Wong v. Canada (Minister of Citizenship and Immigration)*, 2016 FCA 229, 487 N.R. 294 (F.C.A.) at para. 26.

Given the nature of the decision that Dr. Fabrikant wishes to appeal — a discretionary one — his notice of appeal must identify an error of law or extricable legal principle or palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 (S.C.C.). Palpable and overriding error is a very high test: *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352 (S.C.C.) at para. 38, citing *South Yukon Forest Corp. v. R.*, 2012 FCA 165, 4 B.L.R. (5th) 31 (F.C.A.) at para. 46; see also the extensive discussion in *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 (F.C.A.).

In a case like this, it is not enough to use the bald phrase “palpable and overriding error.” The Court must be assured that the concept of palpable and overriding error, as understood in the above authorities, is being asserted. And the grounds must be relevant in the sense that they are legally capable of leading to this concept. Otherwise, the notice of appeal is incomplete...

*Fabrikant v. Canada*, 2018 CAF 171, at paras 18-22 [Tab 8]

25. Similarly, in *Griffin v. Prince Edward Island School Board, Regional Administrative Unit No. 3*, [1988] P.E.I.J. No. 62 (PEI CA), the Court cited *Maritime Electric Company Limited and International Brotherhood of Electrical Workers Local 1432* (1980), 25 Nfld. & P.E.I.R. 274, wherein Chief Justice McDonald stated:

In drafting a notice of appeal it is not sufficient to merely allege that the judge misdirected himself as to the facts or law. The notice must state in what manner the judge misdirected himself, that is, what facts the appellant perceives ought to have been found or what error was made in point of law. ...

*Griffin v. Prince Edward Island School Board, Regional Administrative Unit No. 3*,  
[1988] P.E.I.J. No. 62 (PEI CA) at paras 6 [Tab 9]

26. Here, the Proposed Notice of Appeal is essentially a number of bald assertions regarding general issues considered by the Judge. The grounds of appeal in the Proposed Notice of Appeal are vague and ambiguous, and subject to the addition of further grounds and/or particulars, such that the Receiver, other interested parties and this Court are required to guess as to the specific findings of fact the Debtors perceive to amount to palpable and overriding error by the Judge, and to the specific errors of law made by him.

27. For example, ground 5 (as set out in the Proposed Notice of Appeal) states that “the Court erred in law in finding what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120” [sic], but does not identify:

- (a) the rights of subrogation the Debtors say apply;
- (b) the rights of subrogation that the Judge found to apply;
- (c) how the Judge’s finding as to what rights of subrogation apply to the Debtors constitutes an error of law; or
- (d) what provisions the Judge allegedly interpreted incorrectly; and
- (e) how the Judge’s interpretation constitutes an error in law.

28. Similarly, grounds 1, 3, 7 and 9 state that the Judge “erred in law” in connection with various issues considered by the Judge, however, neither the specific error nor how the alleged error constitutes an error in law are identified.

29. Grounds 2, 4, 6, 8 and 10 in the Proposed Notice of Appeal merely state that the Judge “made palpable and overriding errors in applying the facts to the law” in connection with various issues but fail to identify the palpable and overriding error(s), the findings of fact the Debtors perceive

ought to have been found, and how the Judge's application of the facts to the law constitute palpable and overriding error(s).

30. The Judgment is comprehensive. It contains an extensive review of the law and analysis concerning the application of the law to the relevant facts contained in approximately 58 of 245 court filings which the Judge stated are relevant to the issue before the Judge. The 58 court filings were put before the Judge in the course of the Receivership Proceedings spanning a two year period. As such, it is improper and unreasonable to expect the Receiver, other interested parties and this Court to guess which specific findings form the basis of the alleged errors in law, and palpable and overriding errors.

31. While the Debtors have indicated an intention to amend the grounds of appeal, the Proposed Notice of Appeal cannot be amended without leave of this Court. The Receiver notes that the Debtors have not sought leave to amend the Proposed Notice of Appeal, nor put the proposed amendments before this Honourable Court.

CA Rules, *supra*, r 9 [Tab 3]

*Penner v. Montcalm (Rural Municipality)*, 2020 MBCA 97 at para 15 [*Penner*] [Tab 11]

32. The Receiver submits that the Motion Brief and Supplemental Motion Brief should not be considered to the extent that they raise grounds



of appeal which are not set out in the Proposed Notice of Appeal. For example, in the Motion Brief and the Supplemental Brief the Debtors appear to allege, among other things, that the Judge failed to provide sufficient reasons for judgment and/or misdirected himself as to the issues to be decided, which grounds are not identified in the Proposed Notice of Appeal and, in any event, are not sufficiently particularized.

33. The Receiver respectfully submits that Rule 31(1) of the BIA Rules is not intended to permit an appellant to file an ambiguous “placeholder” notice of appeal which does not provide sufficient notice of the grounds intended to be argued by an appellant to interested parties.

34. The intention of Rule 31(1) is to provide an appellant that has acted in good faith and with diligence an opportunity to bring their appeal after the appeal period has expired on the basis that they have taken care to avoid further delays.

*Alberta Treasury Branches v Conserve Oil 1st Corp.*, 2016 ABCA 213 at para 10 [Tab 10]

35. The Receiver does not take issue with delay in relation to the timing of the hearing of this motion. Rather, the Receiver submits that the delay in filing is ongoing as:

- (a) the Proposed Notice of Appeal is not in compliance with the BIA Rules and/or the CA Rules as it does not disclose the grounds intended to be argued;
- (b) the Debtors have not sought leave to amend the Proposed Notice of Appeal notwithstanding that the Debtors indicated an intention to amend the Proposed Notice of Appeal in late March of 2022; and
- (c) the Debtors have failed to provide to the Receiver, creditors and this Honourable Court a notice of appeal setting out the grounds of appeal that the Debtors intend to argue and particulars of those grounds.

### **Explanation for the Delay**

36. The Receiver makes the following observations with respect to the explanation for the delay set out in the Valgardson Affidavit:

- (a) the Debtors are represented by experienced insolvency counsel, including two lawyers who practice out of a bankruptcy, insolvency and commercial litigation firm in Toronto, Ontario;
- (b) in November of 2020, the Debtors filed and served a notice of appeal in connection with a decision made in these same

Receivership Proceedings within the 10 day appeal period provided for under the BIA Rules;

- (c) notwithstanding the reference to “research” conducted regarding the applicable appeal period, the Debtors have not provided any authority which supports the application of the 30 day appeal period under the CA Rules in the context of receivership proceedings under the BIA;
- (d) while it is indicated that Mr. Peter J. Nygard was addressing various pressing legal matters when the Judgment was issued, the Debtors acknowledge that “the client” gave written instructions to appeal the Judgment “within a couple of hours of the Judgment being provided to counsel”;
- (e) while the Receiver received notice of the Debtors’ intention to appeal by way of correspondence between respective counsels for the Receiver and Debtors on March 22, 2022, creditors were not provided with notice of the Debtors’ intention to appeal until March 25, 2022, when the Debtors’ served the Notice of Motion, Brief, and Valgardson Affidavit;

- (f) while the Debtors' attempted to file the Proposed Notice of Appeal only one day after the appeal period expired, the Debtors have not been expedient or diligent in particularizing the grounds of appeal contained in the Proposed Notice of Appeal, have neglected to provide the intended amendments to interested parties, and have not sought leave to amend the Proposed Notice of Appeal.

37. The Receiver submits that the length of the delay ought to be considered unacceptable as:

- (a) experienced insolvency counsel for the Debtors previously filed an appeal within the 10 day appeal period in these proceedings;
- (b) written instructions to appeal had been received by counsel within hours of the Judgment being issued; and
- (c) while the attempt to file the Proposed Notice of Appeal was made shortly after counsel accepted that the 10 day appeal period applied, there has been no sense of urgency shown by the Debtors in providing the Receiver, creditors or this Honourable Court with particularized grounds of appeal thereby giving notice to interested parties of the specific grounds of appeal that the Debtors actually

intend to proceed upon such that the delay in filing a proper and sufficient notice of appeal is ongoing.

### **Merits of the Appeal**

38. At the outset, the Receiver notes that the materials filed by the Debtors, including the Proposed Notice of Appeal, are not sufficient to allow for a review of the merits of the appeal. More specifically:

- (a) the Proposed Notice of Appeal does not provide sufficient particulars in respect of each alleged error; and
- (b) the Debtors have failed to put the relevant portions of the record before this Honourable Court.

39. In the absence of sufficiently particularized grounds of appeal and the relevant portions of the record, the strength of any of the proposed grounds of appeal cannot be discerned.

40. As noted above, on March 25, 2022, the Debtors communicated an intention to amend the Proposed Notice of Appeal to particularize the grounds of appeal. The Receiver has repeatedly requested that the Debtors provide the proposed amendments in order to facilitate a review of the merits of the appeal. However, the Debtors have neglected to do so.

41. In *Penner v. Montcalm (Rural Municipality)*, 2020 MBCA 97, Mainella J.A. considered whether a proposed notice of appeal was sufficient to allow for a review of the grounds of appeal on its merits, noting as follows:

While demonstration of an arguable ground of appeal is a relatively low threshold to meet, I am not persuaded that an arguable ground of appeal has been identified by Penner in the materials filed on this motion. In particular, the state of Penner's notice of appeal is derelict.

Rule 4 of the *CA Rules* sets out the requisite content of a notice of appeal which includes that "the grounds to be argued" be set out (r 4(f)). To comply with this requirement, an appellant must particularize in the notice of appeal the nature of each alleged error being appealed in a discernible fashion, even if imperfectly done. New grounds may not be added later without leave of the Court.

\*\*\*

In order to establish an arguable ground of appeal on a motion for an extension of time, an applicant must do more than simply rely on a bald assertion of "trust me" as to the merits of their appeal (*Delichte* at para 28). The absence of proposed grounds of appeal or a basis to support an arguable ground of appeal in the materials Penner has filed on his motion for an extension of time favours finality concerns (see *Paulsson v. Cooper*, 2017 CarswellOnt 16613 (Ont. C.A.) at paras 2-3).

*Penner, supra* at paras 14-15 and 19 [Tab 11]

42. As such, the Receiver is not in a position to provide a substantive response on the merits of the appeal as the ten grounds of appeal set out in

the Proposed Notice of Appeal are vague and ambiguous such that the Receiver would be required to guess what specific facts the Debtors perceive ought to have been found or applied, or what error was made in point of law.

43. The Motion Brief and the Supplemental Brief do not clarify, or properly or sufficiently, particularize the grounds of appeal set out in the Proposed Notice of Appeal. Instead, the Debtors simply attempt to reargue the entirety of the motions before the Judge.

44. The Debtors' materials are further confused by general statements as to certain factual findings made by the Judge, without any indication as to whether the Debtors are asserting that such findings constitute an error, what the alleged error is, and how the finding constitutes an error in light of the applicable standard of review.

45. Moreover, while the Debtors reference various filings that were before the Judge, the Debtors have not put any portion of the record (including any of the 58 filings expressly referred to by the Judge at paragraph 14 of the Judgment) before this Honourable Court.

46. In *Delichte v. Rogers*, 2018 MBCA 79, a motion to extend time for filing was dismissed where the appellant failed to provide this Court with

the relevant portions of the record. In dismissing the motion, Mainella J.A. stated as follows:

27 I also have concerns as to the sufficiency of the merit of the appeal despite that factor being a low threshold to meet. In examining the merits of the proposed appeal, my role is not to consider the full merits of the case but, rather, to conduct a preliminary examination of the grounds of appeal mindful of the applicable standard of review. If there is an arguable ground of appeal, the threshold is met (see *Boryskiewich* at para 9).

28 It is difficult for me to make a preliminary assessment of the merits of the petitioner's proposed grounds of appeal because little information has been placed before me by her in support of her application. I have nothing at all as to why she seeks to re-open the 2008 contempt order. I have no transcripts or other material that support her claims of a reasonable apprehension of bias against the judge. I do not have a transcript of the contempt hearing to assess the strength of the alleged grounds of appeal although the parties told me the hearing was brief. While the threshold of arguable merit is not a stringent one and it is not necessary for an applicant to compile the complete record to succeed on an application for an extension of time, an applicant must do more than a bald assertion of "trust me".

\*\*\*

34 The problem for the petitioner is that it is difficult to succeed with such arguments on an appeal given the standard of review, nor are such arguments particularly compelling in the assessment of arguable merit absent demonstration of the judge making an obvious material error (see *Fishman v.*



*Shaward*, 1987 CarswellMan 573 (Man. C.A.) at para 5).

37 The petitioner could not point me to anything in the record she put forward on her application which would lead me to conclude that there is a reasonable prospect of the petitioner convincing a panel of this Court that the judge made a palpable and overriding error of fact regarding his findings of contempt.

*Delichte v. Rogers*, 2018 MBCA 79, at paras 27-28, 34 and 37 [Tab 12]

47. The Receiver submits that the failure of the Debtors to put the relevant portions of the record before this Honourable Court precludes the parties from engaging a review of the merits of the Debtors appeal.

48. The standard of review to be applied on an appeal from a discretionary decision of a judge in a receivership proceeding was set out by leMaistre J.A. in *White Oak Commercial Finance LLC v. Nygard Holdings (USA) Ltd. et al.*, 2020 MBCA 128:

The merits of the appeal must be assessed in light of the applicable standard of review. The motion judge's decision was discretionary and, absent an error in law or a material misapprehension of the evidence, is entitled to deference on appeal, unless the decision is so clearly wrong as to amount to an injustice (see *Perth Services Ltd v Quinton et al*, 2009 MBCA 81 at para 25; and *Paletta* at para 8).

Errors of law are assessed on the standard of correctness. Errors of mixed fact and law, or fact alone, are reviewable for palpable and overriding

error, unless an error of mixed fact and law involves an error relating to an extricable principle of law, in which case the standard of correctness applies to that extricable question (see *Housen v Nikolaisen*, 2002 SCC 33 at paras 8-37; and *Homestead Properties (Canada) Ltd v Sekhri et al*, 2007 MBCA 61 at para 13).

*White Oak Commercial Finance LLC v Nygard Holdings (USA) Ltd. et al.*,  
2020 MBCA 128 at paras 29-30 [Tab 13]

49. It is important to bear in mind that the Judge was specifically appointed to deal with the Receivership Proceedings as a whole and has in fact been actively involved in that exercise since March 9, 2020. In fact, in December of 2020, leMaistre J.A. stated as follows with respect to the Judge's engagement in these same Receivership Proceedings:

The receiver asserts that there are compelling reasons to cancel the stay. It argues that there is little merit to the appeal. It says that the motion judge's decision was discretionary and is entitled to significant deference. The receiver points out that the motion judge has heard 18 motions and reviewed nine reports filed by the receiver. He has considered the detailed credit agreement and has intimate knowledge of the factual matrix underpinning this case.

\*\*\*

The record demonstrates that the motion judge has a detailed and intimate knowledge of the appellants' affairs in the B/A proceedings. He carefully outlined and understood the positions of the parties on the motions. He also understood the implications of his conclusions. I am satisfied that he properly applied

the appropriate jurisprudence in making the orders that he did. I am not persuaded that he erred in his analysis of the facts or the conclusions he drew based on the application of the law to the facts. Moreover, the arguments raised on appeal were all before the motion judge and were addressed by him.

It was in that context that the motion judge exercised his discretion. Therefore, in my view, the likelihood of a successful appeal is very low.

*Nygard Holdings, supra*, at paras 25 and 39-40 [Emphasis added] [Tab 13]

50. Obviously, the fact the Judge has been intimately involved in the Receivership Proceedings to date does not shield his decision from appellate review where an obvious error has been committed. However, given the nature of insolvency matters such as the Receivership Proceedings, and the level of engagement of the Judge to date, it is respectfully submitted that as a starting point, significant deference is owed to the decision of the Judge.

*8640025 Canada Inc. (Re)*, 2019 BCCA 473 at para 80 [Tab 14]

51. The Receiver submits that the grounds of appeal set out in the Proposed Notice of Appeal do not disclose any appealable errors and, in the absence of the record, the Debtors cannot establish that any alleged errors have merit.

### **Justice of the Case**

52. The Receiver submits that the justice of this case favours the

dismissal of the Debtors' motion to extend time for filing the Proposed Notice of Appeal.

53. The Debtors have not acted with diligence in filing a proper and sufficient notice of appeal and have effectively tied the hands of the Receiver, other interested parties, and this Honourable Court by limiting their ability to provide a substantive response to the motion due to the manner in which the Debtors' materials have been drafted. The Debtors have had ample opportunity to provide the Receiver, other interested parties and this Honourable Court with sufficiently particularized grounds of appeal and the relevant portions of the record but have failed and/or refused to do so.

54. Respectfully, Rule 31(1) of the BIA Rules is not intended to allow parties to file a notice of appeal with vague and unspecified grounds of appeal as a placeholder for a subsequent amended notice of appeal containing the grounds that a party actually intends to proceed upon after they have been tested by this Honourable Court on a preliminary motion.

55. Moreover, it is important to note that the Judgment provides for the legal costs incurred by the Debtors and by the Receiver in connection with this motion, any future motion to amend the Proposed Notice of Appeal and the proposed appeal to be borne by the unsecured creditors of the Debtors.

56. As such, the Debtors' failure to file the Proposed Notice of Appeal within the appeal period and identify and particularize the actual grounds of appeal that the Debtors intend to proceed with has resulted in costs being incurred by both the Debtors and the Receiver, which are to be satisfied from the remaining proceeds of the Receivership, to the detriment of unsecured creditors. As such, an extension of time to file the Notice of Appeal is prejudicial.

*Krawczynski v. Ralph Culp and Associates Inc.*, 2019 ONCA 399 at para 14 [Tab 15]

57. Additionally, the Debtors have failed to direct this Honourable Court to any appealable error in the Judgment. Instead, the Debtors filed vague and confusing materials which appear as an attempt to simply reargue the matters heard by the Judge with the goal of obtaining a new outcome. The materials contain bald assertions as to the alleged errors and the merits of the appeal which are not supported by the record before the Court on this motion.

58. The Receiver respectfully submits that it would be unjust to subject unsecured creditors to further costs by granting the Debtors' motion.

59. Accordingly, the Receiver submits that the Debtors' motion ought to be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of April, 2022.

THOMPSON DORFMAN SWEATMAN LLP

Per: 

G. Bruce Taylor / Ross A. McFadyen  
/ Mel M. LaBossiere  
Lawyers for Richter Advisory Group  
Inc., the Court-Appointed Receiver

This is Exhibit "R" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "Damir", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**NOTICE OF MOTION**  
**BEFORE A JUDGE IN CHAMBERS**  
Hearing Date: Thursday, June 30, 2022, at 10:00 a.m.

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

700 - 330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5  
**WAYNE M. ONCHULENKO**  
Telephone No. 204-957-6402  
Fax No. 204-957-1696  
Email: [wonchulenko@ltglc.ca](mailto:wonchulenko@ltglc.ca)

**FILED**  
**COURT OF APPEAL**  
**JUN 22 2022**  
**LAW COURTS**  
**WINNIPEG**



**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

**NOTICE OF MOTION**

TAKE NOTICE that a motion will be made on behalf of the  
(Respondents) Appellants, NYGARD HOLDINGS (USA) LIMITED,  
NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC.,  
NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL

PARTNERSHIP (collectively, the “Appellants”) before a Judge of the Court of Appeal sitting in chambers on Thursday, June 30, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. an Order granting the Appellants leave to file a factum exceeding 30 pages, but not exceeding 44 pages;
2. alternatively, an Order granting the Appellants leave to file a reply factum;
3. an Ordering permitting the use of the digital documents filed electronically in the Court of Queen’s Bench File No. CI20-01-26627 and a corresponding index as part of the Appeal Book; and
4. such further and other relief as the nature of this case requires and this Honourable Court deems just and appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. rule 29(3) of the *Court of Appeal Rules*, Man Reg 555/88;
2. Guideline 3.5 of the “*Court of Appeal Practice Guidelines*” (July 2003), online (pdf): *Manitoba Courts*

<[www.manitobacourts.mb.ca/site/assets/files/1139/practice\\_guidelines.pdf](http://www.manitobacourts.mb.ca/site/assets/files/1139/practice_guidelines.pdf)> (date accessed: June 13, 2022);

3. The 20-page extension is required in the interests of procedural fairness and justice to advise the Respondents of the issues in dispute so it can properly prepare for the appeal and to assist the panel of the Court that hears the appeal to deal effectively with the issues;
4. the issues on appeal are complex;
5. the proposed extension does not prejudice the Respondent;
6. the Court of Appeal has the inherent authority to control its own process;
7. the record in the proceedings under appeal includes 237 documents, pleadings, and affidavits; and
8. such further and other grounds as the Appellants may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. the digital documents referred to above;
2. the Affidavit of Debbie Mackie, affirmed June 6, 2022; and

3. such further and other documentary evidence as the lawyers for the Appellants may advise and as this Honourable Court may permit.

Dated: June 22, 2022



---

**LEVENE TADMAN GOLUB  
LAW CORPORATION**

700-330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5

**WAYNE M. ONCHULENKO**

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**FRED TAYAR & ASSOCIATES  
Professional Corporation**

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**FRED TAYAR**

**COLBY LINTHWAITE**

T: 416-363-1800

F: 416-363-3356

Lawyers for the Appellants

TO: **THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

AND TO: **THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**

Barristers & Solicitors

1700-242 Hargrave Street

Winnipeg, MB R3C 0V1

G. Bruce Taylor (204-934-2566)

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Melanie LaBossiere (204-934-2508)

Email: [mml@tdslaw.com](mailto:mml@tdslaw.com)

Lawyers for the Receiver, Ritcher Advisor

This is Exhibit "S" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. M. Zdzien", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
ACT, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

**FILED  
COURT OF APPEAL**

**JUN 06 2022**

**LAW COURTS  
WINNIPEG**

**AFFIDAVIT OF DEBBIE MACKIE**

Affirmed the 6th day of June, 2022

**LEVENE TADMAN GOLUB LAW CORPORATION**

700 - 330 St. Mary Avenue

Winnipeg, MB R3C 3Z5

**WAYNE M. ONCHULENKO**

Telephone No. 204-957-6402

Fax No. 204-957-1696

Email: [wonchulenko@ltglc.ca](mailto:wonchulenko@ltglc.ca)

File No. 113885/WMO

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
                              PURSUANT TO SECTION 243 OF THE  
                              *BANKRUPTCY AND INSOLVENCY ACT*,  
                              R.S.C., c.B-3, AS AMENDED, AND SECTION  
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                              ACT, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

— and —

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

**AFFIDAVIT OF DEBBIE MACKIE**

I, DEBBIE MACKIE, of the City of Winnipeg, in the Province of  
Manitoba, AFFIRM AND SAY:

1.     I am a legal assistant with the law firm Levene Tadman Golub Law  
Corporation, counsel for the (Respondents) Appellants, NYGARD  
HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC.,



NYGARD NY RETAIL, LLC., NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP, and as such, have personal knowledge of the facts and matters which are hereinafter deposed to by me, except where same are stated or implied to be based upon statements made to me or documents shown to me, in which case I do verily believe same to be true.

2. Attached hereto and marked as Exhibit “**A**” is a Proposed Amended Notice of Appeal, to be filed.

3. Attached hereto and marked as Exhibit “**B**” is a copy of a letter to counsel for the Receiver, enclosing the proposed Amended Notice of Appeal, dated May 26, 2022.

4. Attached hereto and marked as Exhibit “**C**” is a copy of the email and attachments sent to the Service List on June 3, 2022.

A Commissioner for Oaths  
in and for the Province of Manitoba  
My Commission expires: December 29, 2022

FILE NO. A122-30-09741  
FILE NO. C120-01-26627

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.


---

**AMENDED NOTICE OF APPEAL**

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

700 - 330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5  
**WAYNE M. ONCHULENKO**  
Telephone No. 204-957-6402  
Fax No. 204-957-1696  
Email: wonchulenko@ltgllc.ca  
File No. 113885/WMO

This is Exhibit "A" referred to in the  
Affidavit of Debbie Mackie  
sworn before me at Winnipeg, this 6<sup>th</sup>  
day of June, 2022  
  
A Commissioner for Oaths in and  
for the Province of Manitoba. My  
commission expires Dec 29/22

FILE NO. AI22-30-09741  
FILE NO. CI20-01-26627

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
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*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant (Respondent),

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

Respondents (Appellants).

**AMENDED NOTICE OF APPEAL**

**TAKE NOTICE** that a motion will be made on behalf of the (Respondents)  
Appellants NYGARD PROPERTIES LTD. (“NPL”) and NYGARD  
ENTERPRISES LTD. (“NEL”) before the Court of Appeal of Manitoba, at the  
next sitting therefor or as soon thereafter as the Appeal can be heard, by  
way of Appeal from the Order of the Honourable Mr. Justice Edmond (the

**“Judgment”**) sitting as a judge of the Court of Queen’s Bench (the **“Court Below”**), Winnipeg Centre, pronounced on the 10<sup>th</sup> day of March, 2022, whereby the learned Judge did order:

- a) Each of the Respondents NPL, NEL, NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP (collectively, **“the Debtors”**) is declared to be jointly liable for the Common Liabilities (as that term is defined in the Judgment) of each of the other Debtors, and the Debtors are hereby joint Debtors respecting Common Liabilities;
- b) The Common Assets of each of the Debtors are declared to be treated as Common Assets subject to the Common Liabilities;
- c) The assets and liabilities of the Debtors are declared to be substantively consolidated for the purpose of addressing the claims of creditors of each of the Debtors;

- d) The allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property are approved;
- e) The Receiver is authorized to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;
- f) The Receiver is authorized to file applications for bankruptcy orders in this court in relation to the Debtors, NPL and NEL, on a basis that reflects the Common Assets and the Common Liabilities and the substantive consolidation of the estates of the Debtors;
- g) The stay of proceedings granted in the Receivership Order is hereby lifted to permit bankruptcy applications to be made and the court directs that, for the purpose of such assignments and applications, the locality of the Debtors shall be Winnipeg, Manitoba;
- h) The Receiver is hereby appointed as Trustee in

bankruptcy (the "Trustee");

- i) The Receiver/Trustee is authorized to apply for an order for procedural and substantive consolidation of the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the *BIA*;
- j) Upon completion of its duties as the Receiver and making the necessary filings in bankruptcy on behalf of the Debtors, the Receiver is hereby directed to pay or transfer the Net Receivership Proceeds to the Trustee for the purposes of administering the consolidated estates in bankruptcy of the Debtors;
- m) The respondents' motion to authorize or permit payment of reasonable legal fees and disbursements from the Preserved Proceeds or the Net Receivership Proceeds to defend the criminal charges against Mr. Nygard is dismissed.

**ON THE APPEAL**, this Court will be asked to set aside the Order pronounced by the Honourable Mr. Justice Edmond on the 10<sup>th</sup> day of March,

2022, as set out in paragraphs a-m of the paragraph above, on the following grounds.

*The Court Below Misdirected Itself*

1. The Court Below erred in law by misdirecting itself respecting the analysis it had to perform to resolve the issues before it.

2. The inquiry actually conducted by the Court Below in its reasons for decision dated March 10, 2022 (the “Reasons”) turned on a series of discrete legal errors, each of them prejudicial to NPL and NEL.

- a) The Court Below never attempted to determine whether substantive consolidation of NPL and NEL was available in law. Stated differently, it did not ask itself whether it had the jurisdiction under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3 (the “BIA”) to make an order for the substantive consolidation of NPL and NEL with the other Debtors.

Bankruptcy or insolvency is a pre-condition to substantive consolidation, and thus to the Court’s jurisdiction. NPL and NEL are solvent. The Court held that consolidation was appropriate even if NPL was a secured creditor of the other Debtors, and then, much later, that NPL and NEL were insolvent on the basis of the consolidation itself.



As the Court Below did not have the jurisdiction to consolidate NPL and NEL, it lacked the discretion to do so for any reason, and its order to that effect is a nullity.

- b) The Court Below offered no reviewable analysis in support of the decision upon which the rest of the matter turned, being that NPL and NEL should be substantively consolidated with the other respondents even if NPL was a secured creditor of those respondents.

That decision was itself legally erroneous: the Court does not have the discretion to eliminate security held by A over B in order to allow B's unsecured creditors access to A's assets, in circumstances where A had not guaranteed payment of B's unsecured debts.

- c) The Court Below decided the issue of subrogation on the basis of four legal errors.
- i. It held without analysis that, prior to the making of an order for substantive consolidation, the Receiver had the discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations.
  - ii. It accepted without analysis both of two mutually-contradictory allocations of the proceeds from the sales of NPL's assets done by the Receiver.

- iii. It held that even rights of subrogation must yield to the Receiver's discretion to make a "fair" allocation of the proceeds from the sale of assets.
  - iv. It accepted and applied, without analysis, a distinction between "payments to the Credit Facility" and "payments to the Receiver's Borrowing Charge" that was contrary to the terms of the Credit Agreement and Guarantee actually executed by NPL and NEL.
- d) Without analysis, the Court Below granted the Receiver leave to apply for the bankruptcy of NPL and NEL on a basis (their liability for the consolidated debts of the other Debtors) contrary to their status as separate corporate persons.
- e) The basic logic of the dispositions was flawed. In sum, the Court Below held as follows.
- a. Even if NPL has a secured claim against the other Debtors, that claim is outweighed by the unsecured claims of the other Debtors' creditors and substantive consolidation is fair and reasonable.
  - b. As the Court has ordered substantive consolidation, it does not need to consider the Receiver's allocation of the proceeds from the sale of NPL's assets. If the Court was wrong to order substantive consolidation, it accepts the Receiver's allocation.

- c. If the Court was wrong to accept the Receiver's allocation, it has nevertheless ordered substantive consolidation.
- d. NPL is insolvent on the basis of substantive consolidation. If that is incorrect, then the dispute about its entitlement to funds held by the Receiver should be resolved in the bankruptcy proceedings.
- e. Leave is granted to apply for bankruptcy orders against NPL and NEL, on the basis of the substantive consolidation of their estates with those of the other Debtors, (which eliminates the possibility of competition between separate legal entities respecting their relative entitlement to funds in the receivership).

3. In addition to the above-discussed errors in the analysis, NPL and NEL submit that the Court Below made the following specific errors.

#### Substantive Consolidation

4. The Court erred in law in finding that substantive consolidation should be applied in the facts and circumstances of this case;

- a. The Court Below treated a possible debt claim against NPL by NIP as an asset of NIP's that is not segregated from (i.e. is commingled with) NPL's assets.
- b. The Court Below repeatedly departed from the holdings in *Re Redstone Investment Corp. (Receiver of)*, 2016 ONSC 4453.

(“*Redstone*”), the leading case on substantive consolidation, without articulating a reasonable basis for doing so. The Court Below committed this legal error with respect to key aspects of the test for substantive consolidation:

- i. The imperatives to avoid re-arranging priorities among creditors, and to avoid seriously prejudicing a secured creditor.
  - ii. The significance of the fact that NPL and NEL prepared their own audited financial statements, whereas the other Debtors prepared a consolidated financial statement.
  - iii. The significance of certain alleged “commingling” of corporate affairs as among the Debtors.
  - iv. The significance of the actual ownership, as opposed to effective control, of the Debtors.
- c. The Court Below conflated intercorporate loan guarantees with intercompany loans.
- d. Contrary to the *The Mercantile Law Amendment Act*, CCSM c M120, s. 2, the Court Below proceeded as if there was a dispositive legal distinction between a third-party creditor and a party that has stepped into the shoes of a third-party creditor by virtue of the law of subrogation.

Allocation

5. The Court erred in law in finding that there was a proper allocation of revenues generated from the sale of assets during the receivership;

6. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding there was a proper allocation of revenues generated from (a) the sale of the Debtors' assets during the receivership and (b) receivership costs and expenses;

7. The Court Below erred by applying incorrect legal principles to its assessment of the Receiver's allocation. The Court Below approved the allocation on the basis that it was "*fair and equitable*". This was erroneous in two ways.

- a) It was a novel holding, (the first to apply the test for the allocation of receivership costs to the allocation of the proceeds from the sales of the assets of separate corporations), and it was made without analysis.
- b) It was wrong in principle. The issue was not the equities of the allocation, but whether in law the Receiver had the discretion to allocate proceeds from the sales of the assets of separate corporations as among the group of corporations, and by so doing disregard the separate corporate personhood of NPL and NEL, prior to the making of a substantive consolidation order. The jurisprudence demonstrates that the Receiver did not have that discretion.

### Subrogation

8. The Court erred in law in finding what rights of subrogation apply to the Respondents and what the correct interpretation and application of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;

9. The Court made palpable and overriding errors in applying the facts to the law as it relates to what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;

10. The Court Below erred in law by treating rights of subrogation (potentially) held by NPL as subject to, and offset by, the claims of NPL's unsecured creditors.

11. The Court Below erred in law by ignoring the terms of the Credit Agreement, pursuant to which:

a) the debts owed to the secured lender ("**White Oak**") (and thus obtained via subrogation) were not subject to any set-off whatsoever; and

b) the intercompany debts (the bulk of the creditor claims against NPL) were part of the security assigned to White Oak (and therefore, by stepping into White Oak's shoes, NPL would have assumed the rights to enforce those debts).

12. The Court Below made a palpable and overriding error of fact and law when it decided that NPL's Guarantee was unlimited on the basis that NPL

had, in addition to pledging certain real property to a limit of \$US 20 million, “after all costs and expenses”, pledged certain shares and “there is no such limited recourse to the pledged shares.” The share pledge says on its face that it is security for the limited guarantee, not in addition to it.

#### Bankruptcy

13. The Court erred in law in granting leave to assign NPL and NEL be into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;

14. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;

15. The Court erred in law in finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario;

16. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr.

Nygard in connection with the criminal charges laid against him in Toronto, Ontario.

***THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:***

1. The appellants submit that this appeal is to the Court of Appeal, as the appeal arises out of an order of a judge under the *BIA* which involves future rights, concerns property exceeding \$10,000 in value, which is likely to affect the rights of other parties of a similar nature in the proposed proceeding and which involves matters of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole. Should leave to appeal be necessary or an extension of time to file an appeal be necessary, the appellants request such leave.
2. The appellants rely on section 193 (a) (b) (c) and (e) of the *BIA*.
3. Such further and other grounds as counsel may advise and this Honourable Court permits.

**ON THE APPEAL**, this Honourable Court will also be asked to order the following:

1. For an order dismissing the Receiver's Notice of Motion being document #207, to be heard originally on June 17, 2021, in its entirety;



2. For an order dismissing the Receiver's Net Receivership Proceeds Motion being document #207, as it relates to an order of substantive consolidation and to assign into bankruptcy NEL and NPL; and
3. Such further and other relief as to this Honourable Court may seem just.

**Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?**

Yes                      ☐ No                      X Not required

**Has a court order or legislation imposed a publication ban in relation to the trial or other proceeding that is the subject of the appeal?**

Yes                      X No

If yes, attach a copy of the order if available or provide details on the publication ban:

**Has access to the court file been restricted by court order or legislation?**

Yes                      X No

If yes, attach a copy of the order if available or provide details on the restriction to the court file:

Date: June 6, 2022

**LEVENE TADMAN GOLUB  
LAW CORPORATION**  
Barristers and Solicitors  
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**FRED TAYAR**

**COLBY LINTHWAITE**

T: 416-363-1800

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**Lawyers for the Appellants**

**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**

Manitoba Court of Appeal

Law Courts Building

100E, 408 York Avenue

Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**

Barristers & Solicitors

1700-242 Hargrave Street

Winnipeg, MB R3C 0V1

G. Bruce Taylor (204-934-2566)

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Lawyers for the Receiver, Ritcher Advisory Group Inc.

## Liam Valgardson

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**From:** Debbie Mackie  
**Sent:** May 26, 2022 4:58 PM  
**To:** Bruce Taylor  
**Cc:** Wayne M. Onchulenko; Liam Valgardson; Leiba Feldman; Debby Prymak  
**Subject:** White Oak Commercial Finance and Nygard - Notice of Appeal  
**Attachments:** To B. Taylor - 26May2022.pdf; Amended Notice of Appeal - 26May2022.pdf

Please find attached correspondence and enclosure forwarded on behalf of Wayne Onchulenko.

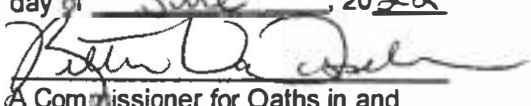
Debbie Mackie  
Legal Assistant to Wayne M. Onchulenko Leiba R. Feldman and Liam O. Valgardson  
Levene Tadman Golub Law Corporation  
700 - 330 St. Mary Avenue  
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### LEGAL NOTICE

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This is Exhibit "B" referred to in the  
Affidavit of Debbie Mackie  
sworn before me at Winnipeg, this 6th  
day of June, 2022  
  
A Commissioner for Oaths in and  
for the Province of Manitoba. My  
commission expires Dec 29/22



# Levene Tadman Golub

LEVENE TADMAN GOLUB LAW CORPORATION

700 – 330 St Mary Avenue  
Winnipeg, Manitoba R3C 3Z5  
Phone 204-957-0520 / Fax 204-957-1696

**Wayne M. Onchulenko**  
Reply: (204) 957-6402  
wonchulenko@ltglc.ca  
File No. 113885/WMO

May 26, 2022

Thompson Dorfman Sweatman LLP  
1700 – 242 Hargrave Street  
Winnipeg, MB R3C 0V1

Via Email: GBT@tdslaw.com

Attention: Bruce Taylor

Dear Sir:

**RE: White Oak Commercial Finance, LLC and Nygard Holdings (USA) Limited et al. Court of Appeal in Bankruptcy and Insolvency File No. A122-03-09741**

Further to the above noted matter, please find enclosed a proposed Amended Notice of Appeal.

Once you have had a chance to review the enclosure, please advise whether your client will consent to the proposed amendments.

Yours truly,

**LEVENE TADMAN GOLUB LAW CORPORATION**

Per:

**WAYNE M. ONCHULENKO\***

\*Services provided through Wayne M. Onchulenko Law Corporation

Encl.

FILE NO. AI  
FILE NO. CI20-01-26627

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**AMENDED NOTICE OF APPEAL**

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

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**WAYNE M. ONCHULENKO**  
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File No. 113885/WMO

FILE NO. AI  
FILE NO. C120-01-26627

**IN THE COURT OF APPEAL  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant (Respondent),

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
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INTERNATIONAL PARTNERSHIP,**

Respondents (Appellants).

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**TAKE NOTICE** that a motion will be made on behalf of the (Respondents)  
Appellants NYGARD PROPERTIES LTD. (“NPL”) and NYGARD  
ENTERPRISES LTD. (“NEL”) before the Court of Appeal of Manitoba, at the  
next sitting therefor or as soon thereafter as the Appeal can be heard, by  
way of Appeal from the Order of the Honourable Mr. Justice Edmond (the

**“Judgment”**) sitting as a judge of the Court of Queen’s Bench (the **“Court Below”**), Winnipeg Centre, pronounced on the 10<sup>th</sup> day of March, 2022, whereby the learned Judge did order:

- a) Each of the Respondents NPL, NEL, NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., 4093879 CANADA LTD., 4093887 CANADA LTD. and NYGARD INTERNATIONAL PARTNERSHIP (collectively, **“the Debtors”**) is declared to be jointly liable for the Common Liabilities (as that term is defined in the Judgment) of each of the other Debtors, and the Debtors are hereby joint Debtors respecting Common Liabilities;
- b) The Common Assets of each of the Debtors are declared to be treated as Common Assets subject to the Common Liabilities;
- c) The assets and liabilities of the Debtors are declared to be substantively consolidated for the purpose of addressing the claims of creditors of each of the Debtors;

- d) The allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property are approved;
- e) The Receiver is authorized to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;
- f) The Receiver is authorized to file applications for bankruptcy orders in this court in relation to the Debtors, NPL and NEL, on a basis that reflects the Common Assets and the Common Liabilities and the substantive consolidation of the estates of the Debtors;
- g) The stay of proceedings granted in the Receivership Order is hereby lifted to permit bankruptcy applications to be made and the court directs that, for the purpose of such assignments and applications, the locality of the Debtors shall be Winnipeg, Manitoba;
- h) The Receiver is hereby appointed as Trustee in



bankruptcy (the "Trustee");

- i) The Receiver/Trustee is authorized to apply for an order for procedural and substantive consolidation of the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the *BIA*;
- j) Upon completion of its duties as the Receiver and making the necessary filings in bankruptcy on behalf of the Debtors, the Receiver is hereby directed to pay or transfer the Net Receivership Proceeds to the Trustee for the purposes of administering the consolidated estates in bankruptcy of the Debtors;
- m) The respondents' motion to authorize or permit payment of reasonable legal fees and disbursements from the Preserved Proceeds or the Net Receivership Proceeds to defend the criminal charges against Mr. Nygard is dismissed.

**ON THE APPEAL**, this Court will be asked to set aside the Order pronounced by the Honourable Mr. Justice Edmond on the 10<sup>th</sup> day of March,

2022, as set out in paragraphs a-m of the paragraph above, on the following grounds.

*The Court Below Misdirected Itself*

1. The Court Below erred in law by misdirecting itself respecting the analysis it had to perform to resolve the issues before it.

2. The inquiry actually conducted by the Court Below in its reasons for decision dated March 10, 2022 (the “Reasons”) turned on a series of discrete legal errors, each of them prejudicial to NPL and NEL.

- a) The Court Below never attempted to determine whether substantive consolidation of NPL and NEL was available in law. Stated differently, it did not ask itself whether it had the jurisdiction under the Bankruptcy and Insolvency Act RSC 1985, c B-3 (the “BIA”) to make an order for the substantive consolidation of NPL and NEL with the other Debtors.

Bankruptcy or insolvency is a pre-condition to substantive consolidation, and thus to the Court’s jurisdiction. NPL and NEL are solvent. The Court held that consolidation was appropriate even if NPL was a secured creditor of the other Debtors, and then, much later, that NPL and NEL were insolvent on the basis of the consolidation itself.

As the Court Below did not have the jurisdiction to consolidate NPL and NEL, it lacked the discretion to do so for any reason, and its order to that effect is a nullity.

- b) The Court Below offered no reviewable analysis in support of the decision upon which the rest of the matter turned, being that NPL and NEL should be substantively consolidated with the other respondents *even if* NPL was a secured creditor of those respondents.

That decision was itself legally erroneous: the Court does not have the discretion to eliminate security held by A over B in order to allow B's unsecured creditors access to A's assets, in circumstances where A had not guaranteed payment of B's unsecured debts.

- c) The Court Below decided the issue of subrogation on the basis of four legal errors.
- i. It held without analysis that, prior to the making of an order for substantive consolidation, the Receiver had the discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations.
  - ii. It accepted without analysis both of two mutually-contradictory allocations of the proceeds from the sales of NPL's assets done by the Receiver.

- iii. It held that even rights of subrogation must yield to the Receiver's discretion to make a "fair" allocation of the proceeds from the sale of assets.
  - iv. It accepted and applied, without analysis, a distinction between "payments to the Credit Facility" and "payments to the Receiver's Borrowing Charge" that was contrary to the terms of the Credit Agreement and Guarantee actually executed by NPL and NEL.
- d) Without analysis, the Court Below granted the Receiver leave to apply for the bankruptcy of NPL and NEL on a basis (their liability for the consolidated debts of the other Debtors) contrary to their status as separate corporate persons.
- e) The basic logic of the dispositions was flawed. In sum, the Court Below held as follows.
- a. Even if NPL has a secured claim against the other Debtors, that claim is outweighed by the unsecured claims of the other Debtors' creditors and substantive consolidation is fair and reasonable.
  - b. As the Court has ordered substantive consolidation, it does not need to consider the Receiver's allocation of the proceeds from the sale of NPL's assets. If the Court was wrong to order substantive consolidation, it accepts the Receiver's allocation.

- c. If the Court was wrong to accept the Receiver's allocation, it has nevertheless ordered substantive consolidation.
- d. NPL is insolvent on the basis of substantive consolidation. If that is incorrect, then the dispute about its entitlement to funds held by the Receiver should be resolved in the bankruptcy proceedings.
- e. Leave is granted to apply for bankruptcy orders against NPL and NEL, on the basis of the substantive consolidation of their estates with those of the other Debtors, (which eliminates the possibility of competition between separate legal entities respecting their relative entitlement to funds in the receivership).

3. In addition to the above-discussed errors in the analysis, NPL and NEL submit that the Court Below made the following specific errors.

Substantive Consolidation

4. The Court erred in law in finding that substantive consolidation should be applied in the facts and circumstances of this case;

- a. The Court Below treated a possible debt claim against NPL by NIP as an asset of NIP's that is not segregated from (i.e. is commingled with) NPL's assets.
- b. The Court Below repeatedly departed from the holdings in *Re Redstone Investment Corp. (Receiver of)*, 2016 ONSC 4453,

(“Redstone”), the leading case on substantive consolidation, without articulating a reasonable basis for doing so. The Court Below committed this legal error with respect to key aspects of the test for substantive consolidation:

- i. The imperatives to avoid re-arranging priorities among creditors, and to avoid seriously prejudicing a secured creditor.
  - ii. The significance of the fact that NPL and NEL prepared their own audited financial statements, whereas the other Debtors prepared a consolidated financial statement.
  - iii. The significance of certain alleged “commingling” of corporate affairs as among the Debtors.
  - iv. The significance of the actual ownership, as opposed to effective control, of the Debtors.
- c. The Court Below conflated intercorporate loan guarantees with intercompany loans.
- d. Contrary to the *The Mercantile Law Amendment Act*, CCSM c M120, s. 2, the Court Below proceeded as if there was a dispositive legal distinction between a third-party creditor and a party that has stepped into the shoes of a third-party creditor by virtue of the law of subrogation.

#### Allocation

5. The Court erred in law in finding that there was a proper allocation of revenues generated from the sale of assets during the receivership;

6. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding there was a proper allocation of revenues generated from (a) the sale of the Debtors' assets during the receivership and (b) receivership costs and expenses;

7. The Court Below erred by applying incorrect legal principles to its assessment of the Receiver's allocation. The Court Below approved the allocation on the basis that it was "fair and equitable". This was erroneous in two ways.

- a) It was a novel holding, (the first to apply the test for the allocation of receivership costs to the allocation of the proceeds from the sales of the assets of separate corporations), and it was made without analysis.
- b) It was wrong in principle. The issue was not the equities of the allocation, but whether in law the Receiver had the discretion to allocate proceeds from the sales of the assets of separate corporations as among the group of corporations, and by so doing disregard the separate corporate personhood of NPL and NEL, prior to the making of a substantive consolidation order. The jurisprudence demonstrates that the Receiver did not have that discretion.

Subrogation

8. The Court erred in law in finding what rights of subrogation apply to the Respondents and what the correct interpretation and application of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;

9. The Court made palpable and overriding errors in applying the facts to the law as it relates to what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;

10. The Court Below erred in law by treating rights of subrogation (potentially) held by NPL as subject to, and offset by, the claims of NPL's unsecured creditors.

11. The Court Below erred in law by ignoring the terms of the Credit Agreement, pursuant to which:

a) the debts owed to the secured lender ("**White Oak**") (and thus obtained via subrogation) were not subject to any set-off whatsoever; and

b) the intercompany debts (the bulk of the creditor claims against NPL) were part of the security assigned to White Oak (and therefore, by stepping into White Oak's shoes, NPL would have assumed the rights to enforce those debts).

12. The Court Below made a palpable and overriding error of fact and law when it decided that NPL's Guarantee was unlimited on the basis that NPL



had, in addition to pledging certain real property to a limit of \$US 20 million “after all costs and expenses”, pledged certain shares and “there is no such limited recourse to the pledged shares.” The share pledge says on its face that it is security for the limited guarantee, not in addition to it.

### Bankruptcy

13. The Court erred in law in granting leave to assign NPL and NEL be into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;

14. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;

15. The Court erred in law in finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario;

16. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr.

Nygard in connection with the criminal charges laid against him in Toronto, Ontario.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The appellants submit that this appeal is to the Court of Appeal, as the appeal arises out of an order of a judge under the *B/A* which involves future rights, concerns property exceeding \$10,000 in value, which is likely to affect the rights of other parties of a similar nature in the proposed proceeding and which involves matters of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole. Should leave to appeal be necessary or an extension of time to file an appeal be necessary, the appellants request such leave.

2. The appellants rely on section 193 (a) (b) (c) and (e) of the *B/A*.

3. Such further and other grounds as counsel may advise and this Honourable Court permits.

**ON THE APPEAL**, this Honourable Court will also be asked to order the following:

1. For an order dismissing the Receiver's Notice of Motion being document #207, to be heard originally on June 17, 2021, in its entirety;

2. For an order dismissing the Receiver's Net Receivership Proceeds Motion being document #207, as it relates to an order of substantive consolidation and to assign into bankruptcy NEL and NPL; and
3. Such further and other relief as to this Honourable Court may seem just.

**Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?**

Yes                      ☐ No                      X Not required

**Has a court order or legislation imposed a publication ban in relation to the trial or other proceeding that is the subject of the appeal?**

Yes                      X No

If yes, attach a copy of the order if available or provide details on the publication ban:

**Has access to the court file been restricted by court order or legislation?**

Yes                      X No

If yes, attach a copy of the order if available or provide details on the restriction to the court file:

Date: May 2, 2022

---

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**Lawyers for the Appellants**

**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**

Barristers & Solicitors

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Ross A. McFadyen (204-934-2378)

Email: [ram@tdslaw.com](mailto:ram@tdslaw.com)

**Lawyers for the Receiver, Ritcher Advisory Group Inc.**

This is Exhibit "C" referred to in the  
Affidavit of Debbie Mackie  
sworn before me at Winnipeg, this 6th  
day of June, 20 22

Brian J. O'Connell

A Commissioner for Oaths in and  
for the Province of Manitoba. My  
commission expires Dec 29/22

## Liam Valgardson

---

**From:** Brittni Van Dasselaar  
**Sent:** June 3, 2022 12:19 PM  
**To:** 'nchung@sidley.com'; 'cegleson@sidley.com'; 'lattanasio@sidley.com'; 'sshackleford@susmangodfrey.com'; 'ggutzler@dicellolevitt.com'; 'alevitt@dicellolevitt.com'; 'akeller@dicellolevitt.com'; 'mad@dicellolevitt.com'; 'rfdicello@dicellolevitt.com'; 'jhawal@dicellolevitt.com'; 'lisahaba@habalaw.com'; 'esserman@sbep-law.com'; 'legaldept@nygard.com'; 'hyded@orlandocorp.com'; 'dasilval@orlandocorp.com'; 'magedmourice@bishara.com.eg'; 'co.sec@burberry.com'; 'press.office@burberry.com'; 'David.graham@chicos.com'; 'billing.and.collection@zurichna.com'; 'jbregman@bg.law'; 'adam.bialek@wilsonelser.com'; 'ben.adamson@conyers.com'; 'JDivack@hahnhausen.com'; 'sshaw@calljensen.com'; 'bleinbach@zeklaw.com'; 'schristianson@buchalter.com'; 'ngoldberg@amglaw.com'; 'mwasserman@osler.com'; 'jdacks@osler.com'; 'drosenblat@osler.com'; 'howden@pitblado.com'; 'blouw@pitblado.com'; 'JDivack@hahnhausen.com'; 'jamato@hahnhausen.com'; 'Bruce Taylor'; 'Ross McFadyen'; 'sreisman@katten.com'; 'jerry.hall@katten.com'; 'sajjad.hudda@Nygard.com'; Wayne M. Onchulenko; 'MBTax@gov.mb.ca'; 'minfin@leg.gov.mb.ca'; 'kevin.ohara@ontario.ca'; 'ministre@justice.gouv.qc.ca'; 'informations@justice.gouv.qc.ca'; 'ministre@justice.gouv.qc.ca'; 'philippe.theriault2@gnb.ca'; 'justice.comments@gnb.ca'; 'justice.comments@gnb.ca'; 'fin.minister@gov.sk.ca'; 'jus.minister@gov.sk.ca'; 'Denise.Dickson@novascotia.ca'; 'FinanceWeb@novascotia.ca'; 'Pamela.Branton@novascotia.ca'; 'justmin@novascotia.ca'; 'justweb@gov.ns.ca'; 'ministryofjustice@gov.ab.ca'; 'associateminister-rtr@gov.ab.ca'; 'tbf.minister@gov.ab.ca'; 'sean.boyd@gov.mb.ca'; 'lgalessiere@cglegal.ca'; 'jwuthmann@cglegal.ca'; 'mcitak@grllp.com'; 'kmuys@darcydeacon.com'; 'vdare@foglers.com'; 'pcho@weirfoulds.com'; 'ebisceglia@lawtoronto.com'; 'richarddesgagnes@brissettbishop.com'; 'gphoenix@loonix.com'; 'dullmann@blaney.com'; 'jharvey@tappercuddy.com'; 'haight@dehslaw.com'; 'dmagisano@lerners.ca'; 'asherman@richter.ca'; 'gbenchaya@richterconsulting.com'; 'efinley@richter.ca'; 'rakhee.bhandair@justice.gc.ca'; 'robertjbasil@rjbasil.com'; 'lwinton@foglers.com'; 'akemp@centrecorp.com'; 'abatalion@centrecorp.com'; 'matt.tweedie@plaza.ca'; 'edmond.lamek@dlapiper.com'; 'cletus@lymanash.com'; 'leasing@lanthos2019.com'; 'lwilliams@tgf.ca'; 'kirrym.hashmi@fcr.ca'; 'mcmullend@orlandocorp.com'; 'sskorbinski@mindengross.com'; 'marie-claude.theriault@revenuquebec.ca'; 'nguizani@millerthomson.com'; 'bolivenstein@tidan.com'; 'jreymaud@stikeman.com'; 'Melanie LaBossiere'; 'andrei@iolaw.ca'; 'ana@anaklegal.com'; 'tdumn@mindengross.com'; 'jburnell@mltaikins.com'; 'martin@martindiegel.com'; 'ellen.williamson@cadillacfairview.com'; 'fred@fredtayar.com'; 'AGLSBRevTaxInsolvency@gov.bc.ca'; 'bgelman@albertgelman.com'; 'tmcelroy@albertgelman.com'; 'ekolers@stikeman.com'; 'zqureshi@sidley.com'; 'shafaq.hasan@sidley.com'; 'don@dondouglaslaw.com'; 'tlambert@loonix.com'; 'colby@fredtayar.com'; 'jeff.larry@paliareroland.com'; 'mabramowitz@dicellolevitt.com'; 'ggutzler@dicellolevitt.com'; 'Timothy Doyle'; 'Rose.Cugliari@aig.com'; timothy.doyle@justice.gc.ca  
**Cc:** Wayne M. Onchulenko; Leiba Feldman; Debbie Mackie; Debby Prymak; Liam Valgardson  
**Subject:** RE: White Oak Commercial Finance, LLC v Nygard Holdings (USA) Limited et al - File No. A122-30-09741  
**Attachments:** June 3.22 Service List and Notice of Appeal.pdf; 1. Notice of Appeal - filed May5.22.pdf; Notice of Motion - Draft - Jun3.22.pdf

To: The Service List

Good afternoon,

Attached please find, for service upon you, the following documents:

1. June 3, 2022 correspondence;
2. Notice of Appeal, filed May 5, 2022; and
3. Draft Notice of Motion.

Thank you,

**Brittni VanDasselaar** (she/her)  
Legal Assistant to Timothy J. Valgardson and Nunziata Masi  
Levene Tadman Golub Law Corporation  
700 – 330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5  
Telephone: 204-957-6442  
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**Levene Tadman Golub**  
Law Corporation

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# Levene Tadman Golub

LEVENE TADMAN GOLUB LAW CORPORATION

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**Wayne M. Onchulenko**  
Reply: (204) 957-6402  
[wonchulenko@ltglc.ca](mailto:wonchulenko@ltglc.ca)  
File No. 113885/WMO

**June 3, 2022**

**TO: The Service List:**

**RE: White Oak Commercial Finance, LLC and Nygard Holdings (USA) Limited et al. Court of Appeal in Bankruptcy and Insolvency File No. A122-03-09741**

Further to the above noted matter, please find enclosed the Notice of Appeal, which was filed with the Manitoba Court of Appeal on May 5, 2022, for service upon you.

Please be advised that on May 26, 2022, the Appellants sent a proposed Amended Notice of Appeal to counsel for the Receiver and asked for their consent as to the amendments. We will not receive a response within the 30-day timeline for service of the Notice of Appeal. As a result, the Appellants are serving the enclosed Notice of Appeal on the service list so that there is no question as to the Appellants' compliance with the requirement for service under the *Manitoba Court of Appeal Rules*. Additionally, the Appellants intend to file the enclosed Notice of Motion to amend the Notice of Appeal on Monday, June 6, 2022.

Should you have any questions, please do not hesitate to contact the writer.

Yours truly,

**LEVENE TADMAN GOLUB LAW CORPORATION**

Per:

**WAYNE M. ONCHULENKO\***

\*Services provided through Wayne M. Onchulenko Law Corporation

Encls.



FILE NO. AI 22-30-09741  
FILE NO. CI20-01-26627

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF THE COURT OF QUEEN'S BENCH  
ACT, C.C.S.M., C. C280, AS AMENDED

FILED  
COURT OF APPEAL

MAR 22 2022

LAW COURTS  
BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**NOTICE OF APPEAL**

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

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**WAYNE M. ONCHULENKO**  
Telephone No. 204-957-6402  
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File No. 113885/WMO

FILE NO. AI  
FILE NO. CI20-01-26627

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

Applicant (Respondent),

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

Respondents (Appellants).

**NOTICE OF APPEAL**

**TAKE NOTICE** that a motion will be made on behalf of the (Respondents)  
Appellants **NYGARD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA  
LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL**

PARTNERSHIP before the Court of Appeal of Manitoba, at the next sitting therefor or as soon thereafter as the Appeal can be heard, by way of Appeal from the Order of the Honourable Mr. Justice Edmond (the “**Judgment**”) sitting as a judge of the Court of Queen's Bench (the “**Court Below**”), Winnipeg Centre, pronounced on the 10<sup>th</sup> day of March, 2022, whereby the learned Judge did order:

- a) Each of the Debtors is declared to be jointly liable for the Common Liabilities of each of the other Debtors, and the Debtors are hereby joint Debtors respecting Common Liabilities;
- b) The Common Assets of each of the Debtors are declared to be treated as Common Assets subject to the Common Liabilities;
- c) The assets and liabilities of the Debtors are declared to be substantively consolidated for the purpose of addressing the claims of creditors of each of the Debtors;
- d) The allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property are approved;

- e) The Receiver is authorized to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;
- f) The Receiver is authorized to file applications for bankruptcy orders in this court in relation to the Debtors, NPL and NEL, on a basis that reflects the Common Assets and the Common Liabilities and the substantive consolidation of the estates of the Debtors;
- g) The stay of proceedings granted in the Receivership Order is hereby lifted to permit bankruptcy applications to be made and the court directs that, for the purpose of such assignments and applications, the locality of the Debtors shall be Winnipeg, Manitoba;
- h) The Receiver is hereby appointed as Trustee in bankruptcy (the "Trustee");
- i) The Receiver/Trustee is authorized to apply for an order for procedural and substantive consolidation of

the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the *BIA*;

- j) Upon completion of its duties as the Receiver and making the necessary filings in bankruptcy on behalf of the Debtors, the Receiver is hereby directed to pay or transfer the Net Receivership Proceeds to the Trustee for the purposes of administering the consolidated estates in bankruptcy of the Debtors;
- m) The respondents' motion to authorize or permit payment of reasonable legal fees and disbursements from the Preserved Proceeds or the Net Receivership Proceeds to defend the criminal charges against Mr. Nygard is dismissed.

**ON THE APPEAL**, this Court will be asked to set aside the Order pronounced by the Honourable Mr. Justice Edmond on the 10<sup>th</sup> day of March, 2022, as set out in paragraphs a-m of the paragraph above, on the following grounds:

1. The Court erred in law in finding that substantive consolidation should be applied in the facts and circumstances of this case;
2. The Court made palpable and overriding errors in applying the facts to the law as it relates to the finding of substantive consolidation;
3. The Court erred in law in finding that there was a proper allocation of revenues generated from the sale of assets during the receivership and receivership costs and expenses;
4. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding there was a proper allocation of revenues generated from the sale of assets during the receivership and receivership costs and expenses;
5. The Court erred in law in finding what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;
6. The Court made palpable and overriding errors in applying the facts to the law as it relates to what rights of subrogation apply to the Respondents and what is the correct interpretation of the provisions of *The Mercantile Law Amendment Act*, CCSM c M120;

7. The Court erred in law in finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;
8. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that NPL and NEL be assigned into bankruptcy, and that the Receiver be appointed as Trustee in bankruptcy;
9. The Court erred in law in finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario;
10. The Court made palpable and overriding errors in applying the facts to the law as it relates to finding that a portion of the Net Receivership Proceeds or the Preserved Proceeds held pursuant to the NPL Proceeds Preservation Agreement not be used to fund legal fees and disbursements incurred to Mr. Nygard in connection with the criminal charges laid against him in Toronto, Ontario.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The appellants submit that this appeal is to the Court of Appeal, as the appeal arises out of an order of a judge under the *BIA* which involves future rights, which is likely to affect the rights of other parties of a similar nature in the proposed proceeding and which involves matters of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole. Should leave to appeal be necessary or an extension of time to file an appeal be necessary, the appellants request such leave.
2. The appellants rely on section 193 (a) (b) (c) and (e) of the *BIA*.
3. Such further and other grounds as counsel may advise and this Honourable Court permits.
4. As it relates to an extension of time for leave to appeal, the parties:
  - i) The Appellants formed the intention to appeal the decision prior to the expiration of time to file an appeal;
  - ii) Advised the Receiver's counsel of their intention to appeal within the time to file an appeal;
  - iii) The reason for not filing the appeal is due to inadvertence and believing that there was 30 days to file an appeal;
  - iv) There is no prejudice to the Respondents in filing an appeal one day late



v) It is in the interests of justice that an extension be granted to file this Appeal; and

vi) The Appeal is meritorious.

**ON THE APPEAL**, this Honourable Court will also be asked to order the following:

1. For an order dismissing the Receiver's Notice of Motion being document #207, to be heard originally on June 17, 2021, in its entirety;
2. For an order dismissing the Receiver's Net Receivership Proceeds Motion being document #207, as it relates to an order of substantive consolidation and to assign into bankruptcy NEL and NPL; and
3. Such further and other relief as to this Honourable Court may seem just.

**Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?**

Yes                      ☐ No                      ☒ Not required

**Has a court order or legislation imposed a publication ban in relation to the trial or other proceeding that is the subject of the appeal?**

Yes                      ☒ No

If yes, attach a copy of the order if available or provide details on the publication ban:

**Has access to the court file been restricted by court order or legislation?**

Yes

☒ No

If yes, attach a copy of the order if available or provide details on the restriction to the court file:

Date: March 22, 2022



---

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**Lawyers for the Appellants**

**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**

**Barristers & Solicitors**

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**Lawyers for the Receiver, Ritcher Advisory Group Inc.**

**IN THE COURT OF APPEAL  
RULE 112**

**NOTICE OF INTENT TO EXERCISE LANGUAGE RIGHT**

The attached document begins a proceeding in the Court of Appeal. Your rights may be affected in the course of the proceeding. You have a right to use either the English or the French language even where the attached document is in the other language, but in order to exercise your right you are required within 21 days of service of this document on you to file with the registrar of the court a notice of your intention to do so and to leave with the registrar an address for service. If you file such a notice, you will be notified, in the language indicated in your notice, of further stages in the proceeding by registered mail addressed to your address for service. If you do not file a notice of your intention to exercise your right, the appeal will continue in the language of the attached document. The time limited for your filing of notice may be enlarged or abridged at any time by order of a judge made on application in either English or French.

**Registrar  
Manitoba Court of Appeal  
Room 100E Law Courts Building  
408 York Avenue  
Winnipeg, MB R3C 0P9**

**COUR D'APPEL  
RÈGLE 112**

**AVIS RELATIF AU DROIT D'UTILISATION D'UNE LANGUE**

Le document ci-joint constitue un document introductif d'instance devant la Cour d'appel. Les procédures dans l'instance pourront porter atteinte à vos droits. Vous avez le droit d'utiliser l'anglais ou le français aux différentes étapes de l'instance même lorsque le document ci-joint est rédigé dans l'autre langue. Si vous désirez exercer votre droit d'utiliser l'une ou l'autre langue, vous devez, dans les 21 jours de la signification qui vous est faite de ce document, déposer auprès du registraire de la Cour d'appel un avis à cette fin et lui indiquer un domicile élu aux fins de signification. Si vous déposez cet avis, vous serez avisé(e) des procédures subséquentes par lettre recommandée envoyé à votre domicile élu aux fins de signification, dans la langue que vous aurez indiquée dans l'avis. Si vous ne déposez pas un avis de votre intention d'exercer votre droit, toutes les procédures subséquentes en appel se dérouleront dans la même langue que celle du document ci-joint. Suite à une demande présentée en anglais ou en français, le juge peut, en tout temps, par ordonnance, proroger ou abréger le délai prescrit pour le dépôt de l'avis.

**Registraire  
Cour d'appel du Manitoba  
Palais de justice  
408, avenue York, pièce 100E  
Winnipeg, MB  
R3C 0P9**

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**NOTICE OF MOTION**  
**BEFORE A JUDGE IN CHAMBERS**  
Hearing Date: Thursday, \_\_\_\_\_, 2022, at 10:00 a.m.

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

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Telephone No. 204-957-6402  
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**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
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55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

**NOTICE OF MOTION**

TAKE NOTICE that a motion will be made on behalf of the (Respondents)  
Appellants, NYGARD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA  
LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL

PARTNERSHIP (collectively, the “Appellants”) before a Judge of the Court of Appeal sitting in chambers on Thursday, \_\_\_\_\_, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. an Order granting leave to amend the Notice of Appeal, filed May 5, 2022; and
2. such further and other relief as the nature of this case requires and this Honourable Court deems just and appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. rule 9 of the *Court of Appeal Rules*, Man Reg 555/88;
2. the proposed amendments do not involve arguments in relation to which it might have been necessary to adduce evidence in the court below;
3. the proposed amendments do not prejudice the Respondent; and
4. the interests of justice would not be served by precluding the Appellants from amending the Notice of Appeal, filed May 5, 2022; and

5. such further and other grounds as the Appellants may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. affidavit of Debbie Mackie, to be filed; and
2. such further and other documentary evidence as the lawyers for the Appellants may advise and as this Honourable Court may permit.

Dated: June 3, 2022

---

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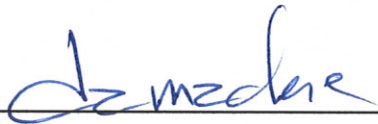


**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**  
Barristers & Solicitors  
1700-242 Hargrave Street  
Winnipeg, MB R3C 0V1  
G. Bruce Taylor (204-934-2566)  
Email: [gbt@tdslaw.com](mailto:gbt@tdslaw.com)  
Ross A. McFadyen (204-934-2378)  
Email: [ram@tdslaw.com](mailto:ram@tdslaw.com)  
Lawyers for the Receiver, Ritcher Advisor

This is Exhibit "1" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. M. Zedler", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF:** THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 248 OF THE  
BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
35 OF THE COURT OF QUEEN'S BENCH  
ACT, C.C.S.M., c. C280, AS AMENDED

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**MOTION BRIEF OF THE (RESPONDENTS) APPELLANTS**

Hearing Date: Thursday, June 16, 2022, at 10:00 a.m.

30

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**LEVEENE TADWAIN GOLUB LAW CORPORATION** FILED

700--380 St. Mary Avenue

Winnipeg, MB R3C 3Z5

**WAYNE M. GOLUB**

Telephone No. 204 957 6302

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Email: [wgonchulenko@ltd.ca](mailto:wgonchulenko@ltd.ca)

File No. 113885/WMO

COURT OF APPEAL

WINN 062222

LAW COURTS  
WINNIPEG

## **PART 1: LIST OF DOCUMENTS**

Affidavit of Debbie Mackie, affirmed June 6, 2022

## **PART 2: LIST OF AUTHORITIES**

- Tab 1      *Court of Appeal Rules, Man Reg 555/88 R*
- Tab 2      *Herold v Wasserman, 2021 SKCA 142*
- Tab 3      *Zelinski v Pidkowich, 2020 SKCA 42*
- Tab 4      *Perka v R, [1984] 2 SCR 232 (SCC)*

## **PART 3: INTRODUCTION AND BACKGROUND**

1. On March 10, 2022, the Honourable Mr. Justice Edmond of the Court of Queen's Bench delivered his reasons for Judgment on the Receiver's Net Receivership Proceeds motion regarding substantive consolidation, the proper allocation of revenues generated from the sale of assets, the (Respondents) Appellants' rights of subrogation, the assignment of the (Respondents) Appellants into bankruptcy, and the (Respondents) Appellants' motion regarding the payment of legal fees and disbursements (the "Judgment").

2. On March 21, 2022, the Appellants informed the Receiver that the Appellant would be appealing Edmond's J. March 10, 2022, Judgment. The Appellant would be appealing Edmond's J. March 10, 2022, Judgment. The

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF THE COURT OF QUEEN'S BENCH  
ACT, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

**MOTION BRIEF OF THE (RESPONDENTS) APPELLANTS**

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PART 5: ARGUMENT	4

next day the Receiver informed the Appellants that the deadline to appeal the judgment had expired the day before.

3. The Appellants promptly drafted and filed the Notice of Appeal, which the Court of Appeal Registrar advised would be held in abeyance by the Court of Appeal pending the outcome of the Motion to extend.

4. On May 5, 2022, the Honourable Madam Justice LeMaistre heard the Motion and granted the Appellants' Motion to extend the time to file a Notice of Appeal. Upon pronouncement of the Order, the Notice of Appeal being held in abeyance was officially filed with the Court registry.

5. On May 26, 2022, the Appellants submitted a proposed amended notice of appeal to the Receiver for their consideration.

6. The Notice of Appeal, filed May 5, 2022, was formally served on the Service List on June 3, 2022. In the covering letter enclosing the Notice of Appeal, the Appellants informed the Service List that the Appellants had submitted proposed amendments to the Receiver and that a motion to amend may need to be commenced.

7. On May 26, 2022, the Appellants sent counsel for the Receiver a proposed Amended Notice of Appeal and asked for their consent.

8. On the date of filing this Brief, the Appellants filed the Affidavit of Debbie Mackie, affirmed June 6, 2022, which attaches a proposed Amended Notice of Appeal.

#### **PART 4: LIST OF ISSUES**

9. The issue before this Honourable Court is whether the Notice of Appeal may be amended.

#### **PART 5: ARGUMENT**

##### **Law:**

10. Rule 9 of the *Court of Appeal Rules* gives this Honourable Court broad authority to permit a notice of appeal to be amended:

##### **Amending notice of appeal**

9 A notice of appeal may be amended by leave of the court, a judge or the registrar on such terms as may be considered just.

*Court of Appeal Rules, Rule 9 [TAB 1]*

11. In *Herold v Wasserman*, 2021 SKCA 142, the Saskatchewan Court of Appeal considered whether it was appropriate to grant the appellants orders permitting them to amend their notice of appeal and extending the time for

filing the factum. Regarding the question of whether it was just to grant leave to amend the notice of appeal, Kalmakoff J.A., in Chambers said:

[21] In light of that, I am also satisfied that it is appropriate to permit the Herold Plaintiffs to amend the notice of appeal. Rule 113 of *The Court of Appeal Rules* provides that a notice of appeal may be amended at any time with the leave of the Court or a judge. As noted by Richards C.J.S. in *Phillips Legal Professional Corporation v Vo*, 2016 SKCA 82 at para 27, 480 Sask R 311, the Court usually takes a liberal approach to proposed amendments of notices of appeal. In broad terms, amendments are generally allowed unless they involve a new ground or argument in relation to which it might have been necessary to adduce evidence in the court below or unless they would otherwise prejudice the respondent. Neither of those considerations weigh against permitting the proposed amendment in this case.

[Emphasis added]

*Herold v Wasserman*, 2021 SKCA 142 at para 21 [Tab 2]



12. Rule 113 of the Saskatchewan Court of Appeal Rules sets out that a notice of appeal "may be amended at any time with leave of the court or a judge."

13. In *Zelinski v Pidkowich*, 2020 SKCA 42, Leurer J.A., in Chambers, considered the appellants motion to amend their notice of appeal. In deciding to allow the amendment, Leurer J.A. referred to above reasoning in *Phillips Legal Professional Corporation v Vo*, and then discussed the more general approach taken to the amendment of pleadings generally. The Court referred to the following passage in *International Minerals & Chemical Corp. (Canada) Ltd. v Commonwealth Insurance Co. (1990)*, 85 Sask R 304 (Sask QB):

[3] It has been held consistently by Saskatchewan Courts that, while leave to amend is a discretionary right to be exercised by the Court, the practice is to allow amendments to pleadings whenever it can be done without injustice to the other side and where it is necessary to determine the issues [citations omitted]. [...]

*Zelinski v Pidkowich*, 2020 SKCA 42 at para 3 [Tab 3]

**Application:**

**A. Does the Amended Notice of Appeal introduce an argument in relation to which it might have been necessary to adduce evidence in the court below?**

14. The grounds of appeal identified in the Amended Notice of Appeal relate only to issues and questions which were directly before Edmond J.

15. With respect to raising an entirely new argument on appeal the controlling principle was articulated by the Supreme Court of Canada in *Perka v R*, [1984] 2 SCR 232, 1984 CarswellBC 2518 (SCC), where Dickson J., speaking for the Supreme Court of Canada stated at paragraph 9:

In both civil and criminal matters it is open to a respondent to advance any argument to sustain the judgment below, and he is not limited to appellants' points of law. A party cannot, however, raise an entirely new argument which has not been raised below and in relation to which it might have been necessary to adduce evidence at trial. [...]

*Perka v R*, [1984] 2 SCR 232, 1984 CarswellBC 2518 at para 9 (SCC) [Tab 4]

16. The Appellants submit that the Amended Notice of Appeal does not introduce arguments to which it may have been necessary to adduce evidence in the court below. All the issues are fully manageable on the present evidentiary record.

17. The first issue regarding whether the Court below misdirected itself on certain points relates specifically to the reasoning process in the Judgment. Answering the questions surrounding misdirection requires no further evidence.

18. The second issue regarding substantive consolidation was squarely before the Court below and is dealt with explicitly in the Judgment. Answering the questions regarding substantive consolidation requires an examination of the evidentiary record, the legal principles of substantive consolidation, and the Judgment. No further evidence is required.

19. The third issue regarding allocation was similarly before the Court below and is dealt with in the Judgment. Answering the questions regarding allocation requires an examination of the evidentiary record, the legal principles of allocation, and the Judgment. No further evidence is required.

20. The fourth issue regarding subrogation is also dealt with expressly in the Judgment. Answering the questions regarding subrogation requires an

**examination of the evidentiary record, the legal principles of subrogation, and the Judgment. No further evidence is required.**

**21. The final issue regarding bankruptcy is also dealt with in the Judgment. Answering the questions regarding bankruptcy requires the reviewing Court to examine the evidentiary record, the legal principles, and the Judgment. No further evidence is required.**

**22. As a whole, the proposed Amended Notice of Appeal sets out grounds of appeal which require the reviewing court to review the evidentiary record which was before Edmond J., the Judgment, and the relevant legal principles.**

**B. Does the amended Notice of Appeal introduce an argument which would prejudice the Respondent?**

**23. The proposed amendments seek to clarify the grounds of appeal to be argued. The Appellants submit that the proposed amendments define the issues, inform the parties of the case they must meet, and identifies the true matters in dispute between the parties. The proposed amendments do not prejudice the Respondent. The issues to be raised by the amendments were before Edmond J. and the evidentiary record is settled. Therefore, there is no unfairness or prejudice to the Respondent if the amendment is granted.**

24. Upon considering all the relevant factors, the Appellants submit that the interests of justice would not be served by precluding the Appellants from amending the Notice of Appeal, filed May 5, 2022.

25. Finally, it cannot be said that there has been a delay in bringing the notice of motion to amend.

26. Accordingly, the Appellants submit that the Motion ought to be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of June, 2022.

**LEVENE TADMAN GOLUB LAW CORPORATION**

Per: 

**Wayne M. Onchulenko**

**Lawyer for the (Respondents) Appellants**

This is Exhibit "U" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. McNeil", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., c.B-3, AS AMENDED, AND SECTION  
55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

(Applicant) Respondent,

– and –

NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,

**FILED**  
**COURT OF APPEAL**

**JUN 06 2022**

(Respondents) Appellants.

**LAW COURTS**  
**WINNIPEG**

**NOTICE OF MOTION**  
**BEFORE A JUDGE IN CHAMBERS**

Hearing Date: Thursday, June 16, 2022, at 10:00 a.m.

*30*

**LEVENE TADMAN GOLUB LAW CORPORATION**

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**IN THE COURT OF APPEAL**  
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**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

**(Applicant) Respondent,**

**– and –**

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

**(Respondents) Appellants.**

**NOTICE OF MOTION**

**TAKE NOTICE that a motion will be made on behalf of the (Respondents)  
Appellants, NYGARD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA  
LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL**



**PARTNERSHIP (collectively, the “Appellants”) before a Judge of the Court of Appeal sitting in chambers on Thursday, June 16, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.**

**THE MOTION IS FOR:**

1. an Order granting leave to amend the Notice of Appeal, filed May 5, 2022; and
2. such further and other relief as the nature of this case requires and this Honourable Court deems just and appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

1. rule 9 of the *Court of Appeal Rules*, Man Reg 555/88;
2. the proposed amendments do not involve arguments in relation to which it might have been necessary to adduce evidence in the court below;
3. the proposed amendments do not prejudice the Respondent; and
4. the interests of justice would not be served by precluding the Appellants from amending the Notice of Appeal, filed May 5, 2022; and

5. such further and other grounds as the Appellants may advise and as this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. affidavit of Debbie Mackie, to be filed; and
2. such further and other documentary evidence as the lawyers for the Appellants may advise and as this Honourable Court may permit.

Dated: June 6, 2022



---

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LAW CORPORATION**  
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Toronto, ON M5H 2M5  
**FRED TAYAR**  
**COLBY LINTHWAITE**  
T: 416-363-1800  
F: 416-363-3356  
**Lawyers for the Appellants**

**TO: THE REGISTRAR OF THE COURT OF APPEAL OF MANITOBA**  
Manitoba Court of Appeal  
Law Courts Building  
100E, 408 York Avenue  
Winnipeg, MB R3C 0P9

**AND TO: THE SERVICE LIST**

**AND TO: THOMPSON DORFMAN SWEATMAN LLP**  
Barristers & Solicitors  
1700-242 Hargrave Street  
Winnipeg, MB R3C 0V1  
G. Bruce Taylor (204-934-2566)  
Email: [gbt@tdslaw.com](mailto:gbt@tdslaw.com)  
Ross A. McFadyen (204-934-2378)  
Email: [ram@tdslaw.com](mailto:ram@tdslaw.com)  
Lawyers for the Receiver, Ritcher Advisor

This is Exhibit "V" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. M. Zolner", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
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R.S.C., c.B-3, AS AMENDED, AND SECTION  
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*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

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VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
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CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

---

**MOTION BRIEF OF THE (RESPONDENTS) APPELLANTS**

Hearing Date: Thursday, June 30, 2022, at 10:00 a.m.

---

**LEVENE TADMAN GOLUB LAW CORPORATION**

700 - 330 St. Mary Avenue

Winnipeg, MB R3C 3Z5

**WAYNE M. ONCHULENKO**

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File No. 113885/WMO

FILED  
COURT OF APPEAL  
JUN 22 2022  
LAW COURTS  
WINNIPEG

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:     THE APPOINTMENT OF A RECEIVER  
                              PURSUANT TO SECTION 243 OF THE  
                              *BANKRUPTCY AND INSOLVENCY ACT*,  
                              R.S.C., c.B-3, AS AMENDED, AND SECTION  
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                              ACT, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
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INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

**MOTION BRIEF OF THE (RESPONDENTS) APPELLANTS**

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**PART 1: LIST OF DOCUMENTS**

Affidavit of Debbie Mackie, affirmed June 6, 2022

**PART 2: LIST OF AUTHORITIES**

- |        |   |
|--------|---|
| Tab 1  | Proposed Amended Notice of Appeal   |
| Tab 2  | Proposed Factum of the Appellants   |
| Tab 3  | "Court of Appeal Practice Guidelines" (July 2003), online (pdf):<br><i>Manitoba Courts</i><br>< <a href="http://www.manitobacourts.mb.ca/site/assets/files/1139/practice_guidelines.pdf">www.manitobacourts.mb.ca/site/assets/files/1139/practice_guidelines.pdf</a> > (date accessed: June 21, 2022) |
| Tab 4  | <i>Court of Appeal Rules</i> , Man Reg 555/88 R   |
| Tab 5  | <i>McLeod Estate v Cole et al.</i> , 2021 MBCA 80   |
| Tab 6  | <i>OZ Merchandising Inc. v Canadian Professional Soccer League Inc.</i> , 2020 ONCA 532   |
| Tab 7  | <i>R v General Electric Capital Canada Inc.</i> , 2010 CAF 92   |
| Tab 8  | <i>R v Port Chevrolet Oldsmobile Ltd.</i> , 2008 BCCA 443   |
| Tab 9  | <i>Jachimowicz v Jachimowicz</i> , 2009 NSCA 36   |
| Tab 10 | <i>Prism Resources Inc. v Detour Gold Corporation</i> , 2022 ONCA 4   |

### **PART 3: INTRODUCTION AND BACKGROUND**

1. This is a Motion Brief of the Appellants in addition to the Motion Brief filed on June 6, 2022.
2. In addition to their Motion for leave to amend the Notice of Appeal, filed on June 6, 2022, the (Respondents) Appellants have filed a Notice of Motion for an order granting the Appellants leave to file a factum exceeding 30 pages, but not exceeding 44 pages. Additionally, the Motion asks the Court to permit the use of the digital documents filed electronically in the Court below.
3. Since the Appellants filed their material on June 6, 2022, Counsel for the Court-appointed Receiver has consented to some of the proposed amendments to the Amended Notice of Appeal. Attached at Tab 1 is the proposed amended Notice of Appeal identifying those clauses in dispute. The clauses in dispute are bolded.

Proposed Amended Notice of Appeal **[TAB 1]**

### **PART 4: ISSUES**

4. The issues before this Honourable Court are:
  - A. Whether the Appellants are entitled to leave to file a factum exceeding 30 pages, but not exceeding 44 pages.



- B. Whether it is appropriate to grant an order permitting the use of the digital documents filed electronically in the Court of Queen's Bench File No. CI20-01-26627 and a corresponding index as part of the Appeal Book.

## **PART 5: ARGUMENT**

### **Issue A:**

5. Guideline 3.5 of the "Court of Appeal Practice Guidelines" (July 2003), sets a 30-page limit for a factum:

3.5 The Court reserves the right to reject factums of excessive length. Any factum exceeding 30 pages is subject to review. If rejected, a more concise factum must be filed on a timely basis.

"Court of Appeal Practice Guidelines" (July 2003), online (pdf): *Manitoba Courts*

<[www.manitobacourts.mb.ca/site/assets/files/1139/practice\\_guidelines.pdf](http://www.manitobacourts.mb.ca/site/assets/files/1139/practice_guidelines.pdf)>

(date accessed: June 21, 2022) **[TAB 3]**

6. Rule 29(3) of the *Court of Appeal Rules* provides for judicial discretion to deal with factums of an excessive length:

#### **Content of factum**

[...]

**29(3)** A judge may, without a hearing, reject a factum on the grounds of excessive length and may give directions regarding the maximum length, in which case the factum shall be redone and refiled within the next 10 days.

*Court of Appeal Rules*, Rule 29(3) [TAB 4]

7. In *McLeod Estate v Cole et al.*, 2021 MBCA 80, Mainella J.A., in Chambers, discussed the relevant considerations when deciding whether to grant leave to a party to file a factum exceeding the 30-page limit.

8. First, the moving party has the onus of demonstrating a reasonable basis for a lengthier factum. The Appellants have provided this Honourable Court with a copy of the proposed factum so that an informed assessment can be undertaken. Find attached at Tab 2 a copy of the proposed factum.

*McLeod Estate v Cole et al.*, 2021 MBCA 80 at para 12 [*McLeod Estate*] [TAB 5]

Proposed Factum of the Appellants [TAB 2]

9. Second, although the Court has “the final say”, significant weight should be given to the opinion of counsel for the moving party and counsel for the responding party.

*McLeod Estate* at para 13 [TAB 5]

10. While leave to file a lengthier factum is a remedy that is seldom granted, Mainella J.A. cited the following passage from Roberts’ J.A.

decision in *OZ Merchandising Inc. v Canadian Professional Soccer League Inc.*, 2020 ONCA 532 at para 6:

The overarching question is whether the extension is required in the interests of procedural fairness and justice 'to advise the other side of the issues in dispute so it can prepare properly for the appeal and to assist the division of the Court that hears the appeal to deal effectively with the issues.

*McLeod Estate* at para 15 [TAB 5]

*OZ Merchandising Inc. v Canadian Professional Soccer League Inc.*,

2020 ONCA 532 at para 6 [TAB 6]

11. In *R v General Electric Capital Canada Inc.*, 2010 CAF 92 at para 5(f), Stratas J.A. made the following point on procedural fairness in these cases:

(f) A paramount principle that guides the Court's discretion under subrule 70(4) is the need for procedural fairness: a party must be permitted to present its whole case effectively. I do accept that submissions about reversible errors in fact-finding and procedural errors often require more detailed development and exposition. In addition, based on the reasons for judgment of the trial judge, I do accept that the facts of this case seem to be significantly more intricate and complex than those of many other cases and that this Court would benefit from a longer memorandum. Therefore, a relaxation of the thirty-page limit is warranted in this appeal. [...]

[*Emphasis added*]

*General Electric Capital Canada Inc.*, 2010 CAF 92 at para 5(f)

[*General Electric*] [TAB 7]

12. Due to the length of the Judgment (87 pages), the size of the record in the proceedings (237 documents representing thousands of pages of material), the complexity of the matters, and the nature and number of issues in this Appeal, the Appellants' proposed factum is necessary to present its whole case effectively. Despite being 44 pages, it remains concise, informative, and user-friendly.

13. The proposed factum identifies and discusses specific errors in the Judge's decision. The proposed factum does not attempt to relitigate or retry the factual findings decided in the Court below.

14. As an example, substantial consolidation is the dispositive issue. To effectively explain why the Court below erred in their decision on this point, the Appellants are required to:

- A. Explain that uniform insolvency is a pre-requisite to consolidation due to the jurisdiction granted to the Court by the *Bankruptcy and Insolvency Act* (the "BIA") and to the BIA by the *Constitution Act*, and per all the pre-existing jurisprudence;
- B. Show that the evidence before the Court below was to the effect that NPL was solvent as to the BIA test;
- C. Explain why the Court's failure to explain how the Court could consolidate a possibly solvent company was erroneous;

- D. Explain why the test cited for solvency was erroneous;
- E. Explain that the Court's statement of the guiding law (that secured creditors could be prejudiced for the benefits if unsecured creditors) was contrary to the case law;
- F. Explain why the Court's attempt to distinguish *Redstone*, the leading case on the issue, was predicated upon a clear legal error; and
- G. Explain why the Court's analyses of each of the seven elements of the consolidation was either legally erroneous, illogical, or contrary to *Redstone* for no clear reason.

15. Clearly and effectively explaining the above points in a way that advises the other side of the issues in dispute and assists the division of the Court that hears the appeal to deal effectively with the issues requires length in excess of the 30-page limit.

16. In *R v Port Chevrolet Oldsmobile Ltd.*, 2008 BCCA 443, Chiasson J.A. in Chambers, considered an application for leave to file a 97-page factum. In deciding to allow the appellants to file a 55-page factum, Chiasson J.A. noted the considerable length of the record, the complexity and importance of the case, and that the Crown conceded that 50 pages would not be inordinate.

*R v Port Chevrolet Oldsmobile Ltd.*, 2008 BCCA 443 at paras 7 and 12 [TAB 8]

17. In *Jachimowicz v Jachimowicz*, 2009 NSCA 36, J. Hamilton J.A. in Chambers, considered the appellant's motion to file a factum exceeding the 40 page-limit. J. Hamilton J.A. noted several factors including the number of legal issues, the time set for the hearing, and that the trial decision was 76 pages long. In granting the appellant's permission to file a 60-page factum, J. Hamilton J.A. said the following:

[9] Nevertheless, given the number of issues raised in the appeal and the fact one full day was set for it to be heard, I am satisfied that the appellant should be given permission to file a longer factum but that it should not exceed 60 pages. I hereby give that permission. The appellant's factum is in all other respects to comply with the provisions of *Rule 90.32*.

*Jachimowicz v Jachimowicz*, 2009 NSCA 36 [TAB 9]

18. Accordingly, the Appellants submit that a 44-page limit is sufficient for the fair and effective presentation of the Appellants' appeal.

19. The Appellants submit that in the event this Honourable Court does not grant leave to file a factum exceeding 30 pages, that they grant the Appellants leave to file a reply factum.

20. In *Prism Resources Inc. v Detour Gold Corporation*, 2022 ONCA 4, Brown J.A. granted the Appellant's motion for leave to file a reply factum of five pages. Justice Brown noted that a gap exists in appellate written

advocacy that causes inefficiency and unnecessary costs. Justice Brown explained that the current culture of the Court of Appeal is for all panel members to be well-briefed on any given appeal before its oral hearing. At paragraph 10, Justice Brown noted that except in the most complex of cases, the time for oral submissions is best used addressing the questions posed by the panel members, rather than providing the basics of the appeal. In Brown's J.A. view, the absence in both the civil and criminal appeal rules of a right to deliver a reply factum may prevent the panel from utilizing the oral submissions time in the most effective manner.

---

*Prism Resources v Detour Gold Corporation*, 2022 ONCA 4 [TAB 10]

**Issue B:**

21. The Court of Appeal has the inherent authority to control its own process.

22. Due to the size of the record (including the 50+ documents to which Justice Edmond indicated he consulted) and size of some of the individual documents before the Court below, an order permitting the use of the digital documents filed electronically in the Court of Queen's Bench File No. CI20-01-26627 and a corresponding index (which would identify both the document and the sections to which counsel intends to refer) as part of the

Appeal Book would represent the most effective, expeditious, and environmentally friendly way of presenting the Appeal Book and hearing the Appeal.

**Conclusion:**

23. Accordingly, the Appellants submit that the orders sought in the Notice of Motion filed June 6, 2022, and the Notice of Motion filed June 21, 2022, ought to be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of June, 2022.

LEVENE TADMAN GOLUB LAW CORPORATION

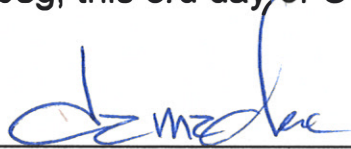
Per:

  
\_\_\_\_\_  
**Wayne M. Onchulenko**

Lawyer for the (Respondents) Appellants



This is Exhibit "W" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. M. Z. K.", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C.  
1985 c. B-3, AS AMENDED AND SECTION 55 OF  
THE COURT OF QUEEN'S BENCH ACT, C.C.S.M.  
c. C280**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

**(Applicant) Respondent,**

**- and -**

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC,  
NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD.,  
4093879 CANADA LTD., 4093887 CANADA LTD., and  
NYGARD INTERNATIONAL PARTNERSHIP,**

**(Respondents) Appellants.**

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**MOTION BRIEF OF THE RECEIVER  
(AMEND NOTICE OF APPEAL AND  
EXTENSION OF FACTUM)**

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**Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
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**FILED  
COURT OF APPEAL  
JUN 23 2022  
LAW COURTS  
WINNIPEG**

Winnipeg, MB R3C 0V1  
(Matter No. 0173004 GBT)  
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**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT  
TO SECTION 243 OF THE *BANKRUPTCY AND  
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(Respondents) Appellants.

**MOTION BRIEF OF THE RECEIVER**  
**(AMEND NOTICE OF APPEAL AND**  
**EXTENSION OF FACTUM)**

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## **I. LIST OF DOCUMENTS**

1. Notice of Appeal filed May 5, 2022
2. Affidavit of Liam O. Valgardson affirmed March 25, 2022
3. Notice of Motion dated June 6, 2022
4. Motion Brief of the (Respondents) Appellants dated June 6, 2022
5. Affidavit of Debbie Mackie affirmed June 6, 2022
6. Notice of Motion dated June 22, 2022
7. Motion Brief of the (Respondents) Appellants dated June 22, 2022

## **II. LIST OF AUTHORITIES**

### **Tab**

1. Copy of the Proposed Amended Notice of Appeal with highlighting
2. Rules 9 and 24(1) of the *Court of Appeal Rules*, Man Reg 555/88
3. *Easy Loan Corp. v. Base Mortgage Investments Ltd.*, 2016 ABCA 163
4. *Herold v. Wasserman*, 2021 SKCA 142
5. *McLeod Estate v. Cole et al.*, 2021 MBCA 80

### **III. INTRODUCTION AND BACKGROUND**

1. On March 18, 2020, Richter Inc. (formerly Richter Advisory Group Inc.) was appointed receiver (in such capacity, the **"Receiver"**) over the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. (**"NEL"**), Nygard Properties Ltd. (**"NPL"**), 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the **"Debtors"**) pursuant to an Order (the **"Receivership Order"**) of the Honourable Mr. Justice Edmond of the Court of Queen's Bench (the **"Judge"**). The Receivership Order was subsequently amended by a General Order made by the Judge on April 29, 2020, which clarified the scope of the Receivership Order in relation to the property, assets and undertakings of the Debtors NEL and NPL.

2. On December 20 and 22, 2021, the Judge heard certain contested motions brought in the receivership proceedings (the **"Receivership Proceedings"**).

3. On March 10, 2022, the Judge issued lengthy and comprehensive reasons for judgment (the **"Judgment"**) and made an Order (the **"Net Receivership Proceeds Order"**), pursuant to which he, *inter alia*:

- (a) declared the assets and liabilities of the Debtors to be substantively consolidated for the purpose of addressing the claims of creditors of each of the Debtors;
- (b) authorized the Receiver to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;
- (c) authorized the Receiver to file applications for bankruptcy orders in the Court of Queen's Bench Manitoba in relation to NPL and NEL on a basis that reflects the substantive consolidation of the estates of the Debtors;
- (d) appointed the Receiver as Trustee in bankruptcy;
- (e) authorized the Receiver, in its capacity as Trustee, to apply for an order for procedural and substantive consolidation of the estates of each of the Debtors in bankruptcy for all purposes in the administration of the said estates under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3, as amended (the "BIA");
- (f) approved the allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property;



(g) granted the Debtors' motion to authorize or permit payment of the Debtors' reasonable legal fees and disbursements and professional costs incurred and to be incurred in the Receivership Proceedings from certain Preserved Proceeds, as described in the Judgment, and, if necessary, the net proceeds of the Receivership; and

(h) dismissed the Debtors' motion to authorize or permit payment of legal fees and disbursements from the Preserved Proceeds or the net proceeds in the Receivership to defend the criminal charges against Mr. Peter J. Nygard.

4. On March 22, 2022, the Debtors attempted to file a Notice of Appeal dated March 22, 2022 (the "**Proposed Notice of Appeal**") with this Honourable Court ("**this Court**") pursuant to sections 193(a)(b)(c) and (e) of the BIA in connection with their proposed appeal from the Net Receivership Proceeds Order.

5. However, the filing of the Proposed Notice of Appeal had not been processed as the attempt to file occurred after the expiry of the 10 day

appeal period provided pursuant to the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368.

6. On March 25, 2022, the Debtors filed a Notice of Motion in this Honourable Court (the “**Court**”) seeking for an Order extending the time for filing the Proposed Notice of Appeal (the “**First Motion**”).

7. The Proposed Notice of Appeal contained ten unparticularized grounds of appeal. However, the Debtors’ evidence and argument on the First Motion indicated that “[i]t is the intention of the Applicants to amend the Notice of Appeal so that it better particularizes the points of appeal.”

Affidavit of Liam O. Valgardson affirmed March 25, 2022, at para 2(l)

8. The Receiver repeatedly requested that the Debtors provide their proposed amendments in advance of the First Motion; however, they did not provide a copy of any proposed amendments to the Court or any interested parties until they were in Court at the hearing of the First Motion on May 5, 2022.

9. The Debtors provided the Honourable Madame Justice LeMaistre with a copy of a proposed Amended Notice of Appeal but indicated that they were not seeking to have the amended version of the Proposed

Notice of Appeal filed at that time and were simply providing it to assist the Court in following their argument.

10. On May 5, 2022, the Debtors were granted extension of time to file the Proposed Notice of Appeal such that the Proposed Notice of Appeal being held in abeyance was accepted for filing in its original form (the **"Filed Notice of Appeal"**).

11. The Receiver advised the Debtors that they would not consent to the amendments to the Filed Notice of Appeal as presented at the hearing on May 5, 2022, but invited the Debtors to provide a copy of any proposed amendments to the Filed Notice of Appeal which particularized or clarified the grounds of appeal in the Filed Notice of Appeal (in accordance with the representations in their evidence) for the Receiver's consideration.

12. On May 26, 2022, twenty-one days after the hearing of the First Motion and the filing of the Filed Notice of Appeal, the Debtors provided the Receiver with a copy of the proposed Amended Notice of Appeal (the **"Amended Notice of Appeal"**).

13. On June 10, 2022, the Receiver provided its consent to the proposed amendments set out in the Amended Notice of Appeal which constitute further particulars or clarifications of the grounds of appeal contained in the Filed Notice of Appeal. It is unclear whether the Debtors have sought or received consent from any other interested parties.

14. The Debtors attach a copy of the Amended Notice of Appeal with certain paragraphs in bold which the Debtors assert are still at issue at Tab 1 to the Motion Brief of the (Respondents) Appellants dated June 22, 2022 (the "**June 22 Brief**"). The Receiver notes that certain of the paragraphs that are emphasized in bold are grounds of appeal from the Filed Notice of Appeal to which no amendments were made and which the Receiver does not (and did not purport to) contest. Attached hereto at Tab 1 is a copy of the Amended Notice of Appeal with the amendments that the Receiver has not consented to highlighted.

15. The Debtors have now filed:

- (a) a Notice of Motion for leave to amend the Filed Notice of Appeal (the "**Second Motion**"), along with the Affidavit of Debbie Mackie affirmed June 6, 2022 attaching the proposed Amended Notice of

Appeal, the Motion Brief of the (Respondents) Appellants dated June 6, 2022 (the “**June 6 Brief**”); and

- (b) a Notice of Motion for leave to extend the page limit of the Debtors’ Factum or, in the alternative, granting leave to file a “reply brief”, and an Order that the documents electronically filed in the Receivership Proceedings (as contained in Court of Queen’s Bench File No. CI20-01-26627) with an index to be accepted as their Appeal Book (the “**Third Motion**”), along with the June 22 Brief.

16. The Receiver opposes the Second Motion for leave to amend the Filed Notice of Appeal with respect to the amendments which are not simply particulars of the grounds in the Filed Notice of appeal on the basis that the amendments expand the scope of the appeal such that they are not true amendments, but are properly considered as new grounds which would require that the Court grant another extension of time to the Debtors to file.

17. The Receiver opposes the Third Motion on the basis that the Debtors ought not to be permitted to circumvent the *Court of Appeal Rules*, Man Reg 555/88 (the “**Rules**”) in a manner which invites mischief, increased

costs, and continued delay by the Debtors.

18. Accordingly, the Receiver files this Brief to outline the legal basis for its opposition to the Second Motion and the Third Motion.

## **VI. ISSUES**

- (a) Should the Debtors be granted leave to amend the Filed Notice of Appeal?
- (b) Should the Debtors be granted leave to extend the page limit in respect of their Factum?
- (c) Should the Debtors be permitted to file a “reply factum”?
- (d) Should the documents electronically filed in the Receivership Proceedings (as contained in Court of Queen’s Bench File No. CI20-01-26627) with an index be accepted as the Debtors’ Appeal Book?

## **V. ARGUMENT**

### **The Proposed Amendments**

19. While the Receiver has consented to certain of the proposed amendments in the Amended Notice of Appeal, it is unclear whether the Debtors have sought or received consent from any other interested parties.

As a result, leave is required in order for any of the proposed amendments contained in the Amended Notice of Appeal, including those to which the Receiver has provided its consent, to be accepted.

20. Rule 9 of the Rules, provides that a notice of appeal may be amended with leave of the Court “on such terms as may be considered just.”

*The Court of Appeal Rules, Man. Reg. 555/88, r 9 (the “Rules”) [Tab 2]*

21. In *Easy Loan Corp. v. Base Mortgage Investments Ltd.*, 2016 ABCA 163, Wakeling J.A. reviewed the law as it relates to amendments to a notice of appeal and stated as follows:

46 An application to amend a notice of appeal is available to deal with an appeal that is properly before the Court.

47 It may focus the appeal by abandoning an appeal against a portion of the decision under appeal by the filed notice of appeal.

48 This is a positive development, a point Chief Justice McLachlin made in a different context, addressing the merits of a court’s power to strike out claims: “It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some prospects of success go on to trial”.

...

50 The finality principle — it is desirable to end litigation — supports the proposition that an appellant cannot use the amendment device to enlarge the scope of a filed appeal — what is appealed against.

This means that an appellant cannot amend a notice of appeal to challenge a specific part of a decision, another element of which has already been identified in the filed notice of appeal. By implication, the appellant states in its filed notice of appeal that it does not appeal against other parts of the decision and accepts as final the parts of the decision it has not appealed. ...

51 For the same reason an application that is, properly characterized, an application for permission to file a late appeal cannot masquerade as an application to amend a notice of appeal. [Emphasis added]

*Easy Loan Corp. v. Base Mortgage Investments Ltd.*, 2016 ABCA 163  
at paras 46-48 and 50-51 [Tab 3]

22. In *Herold v. Wasserman*, 2021 SKCA 142, leave to amend a notice of appeal and leave to appeal the amended ground of appeal was granted. In granting leave to amend and leave to appeal, Kalmakoff J.A. stated as follows:

The Herold Plaintiffs then sought leave to amend their notice of appeal. In particular, they sought to amend the ground of appeal relating to the Queen's Bench judge's treatment of the strike application. Rather than alleging that the judge erred by failing to determine the strike application, they wished to assert that he failed to *properly* determine it.

...

I am also satisfied that it is appropriate to permit the Herold Plaintiffs to amend the notice of appeal. Rule 13 of The Court of Appeal Rules provides that a notice of appeal may be amended at any time with



the leave of the Court or a judge. As noted by Richards C.J.S. in *Phillips Legal Professional Corporation v Vo*, 2016 SKCA 82 at para 27, 480 Sask R 311, the Court usually takes a liberal approach to proposed amendments of notices of appeal. In broad terms, amendments are generally allowed unless they involve a new ground or argument in relation to which it might have been necessary to adduce evidence in the court below or unless they would otherwise prejudice the respondent. ... [Emphasis added]

*Herold v. Wasserman*, 2021 SKCA 142 at paras 9 and 21 [Tab 4]

23. On March 25, 2022, the Debtors stated their intention to amend the Proposed Notice of Appeal to particularize the grounds of appeal contained therein. The Receiver repeatedly requested that the Debtors provide the proposed amendments but they neglected to do so in advance of the hearing of the First Motion.

24. As a result of the Debtors evidence and argument on the First Motion, it was understood that any amendments to the Filed Notice of Appeal would be particulars or clarifications of the grounds of appeal that were subject to the merits test in connection with the First Motion to extend time for filing the Notice of Appeal, and which were approved by the Court. It was anticipated that the further particulars would work to narrow the focus of the Debtors' appeal to specific aspects of the findings appealed, not expand the scope of the appeal or introduce entirely new grounds of appeal.

25. The Receiver contests the proposed amendments at paragraphs 1, 2, and 3 (or any portion thereof) and the portion of paragraph 7(a) which reads “and it was made without analysis” of the Amended Notice of Appeal (the “**Contested Amendments**”).

26. The Filed Notice of Appeal makes no reference to issues of jurisdiction, insufficiency of reasons, or any misdirection by the Judge. As such, the Contested Amendments raise new grounds of appeal, expand the scope of the appeal, and go beyond clarifying or further particularizing the grounds of appeal contained in the Filed Notice of Appeal.

27. Moreover, it is clear that paragraphs 1, 2, and 3 of the Amended Notice of Appeal are not particulars of the grounds of appeal in the Filed Notice of Appeal as they are under an entirely new heading. The other amendments are all subparagraphs or further particulars of the grounds of appeal in the Filed Notice of Appeal.

28. Additionally, the Contested Amendments are new grounds of appeal which work to expand the scope of the appeal to essentially every finding made by the Judge.

29. The Debtors were aware that they intended to amend the Filed Notice of Appeal in March of 2022. However, they chose to seek an

extension of time to file the Filed Notice of Appeal, rather than put the Amended Notice of Appeal before the Court to be considered and subject to the test in connection with the First Motion, including the delay and merit aspects of the test. The Debtors did so on the basis that any future amendments would constitute further particulars of the grounds of appeal in the Filed Notice of Appeal.

30. As such, the Debtors cannot be permitted to use a motion to amend the Filed Notice of Appeal with respect to the Contested Amendments to circumvent the test in connection with a motion to extend the time for filing a notice of appeal.

31. In this respect, the Receiver notes that:

- (a) the delay in providing the Contested Amendments to the Receiver was 66 days from the expiry of the appeal period;
- (b) the delay in providing the Contested Amendments to parties to the Service List was 74 days from the expiry of the appeal period;
- (c) no explanation has been provided as to why the Contested Amendments were not included in the Filed Notice of Appeal or provided to interested parties in advance of the First Motion; and

- (d) the Contested Amendments are devoid of merit and appear as an attempt to simply reargue the matters heard by the Judge with the goal of obtaining a new outcome.

32. In an effort to cooperate with the Debtors and prevent unnecessary costs, the Receiver has consented to the amendments which constitute further particulars of the grounds of appeal in the Filed Notice of Appeal.

33. It is important to note that the Judgment provides for the legal costs incurred by the Debtors and by the Receiver in connection with this motion, any future motion to amend the Proposed Notice of Appeal and the proposed appeal to be borne by the unsecured creditors of the Debtors.

34. As such, the Debtors' failure to include the Contested Amendments in the Filed Notice of Appeal or seek approval of the Contested Amendments at the First Motion continues to cause significant delay in proceeding with the appeal and has resulted in costs being incurred by both the Debtors and the Receiver, which are to be satisfied from the remaining proceeds of the Receivership, to the detriment of unsecured creditors. As such, the Debtors must be stopped from engaging in tactics which will only cause the continued delay and mischief that has resulted in three motions

being brought before the Court, two of which could have (and ought to have) been dealt with together at the First Motion.

35. Based on the foregoing, the Receiver submits that the Second Motion as it pertains to the Contested Amendments ought to be dismissed with costs to the Receiver.

**Extension of Page Limits and “Reply Factum”**

36. The Receiver submits that the extension of the Debtors’ Factum by at least 14 pages is not appropriate.

37. The “Court of Appeal Practice Guidelines” (at Tab 3 to the June 22 Brief) sets out the certain requirements with respect to the preparation of a factum, including:

- (a) the factum must be typed in font size 14, double spaced with a maximum of 26 lines per page;
- (b) quotations from authorities shall be indented and single spaced (which may permit an increase in the number of lines per page); and
- (c) a factum cannot be longer than 30 pages.

38. In *McLeod Estate v. Cole et al.*, 2021 MBCA 80, the appellants sought leave to file a lengthier factum where the decision from the court

below was 138 pages long and was issued based evidence and argument put before the court below during the course of a five-week trial involving 18 witnesses, 212 exhibits, and 488 pages of written argument. The trial transcript was 2,951 pages long. The respondents did not take a position on the motion, but asked that if the appellants motion was granted that they receive an equal page limit for their factum.

39. In dismissing the appellant's motion, the Court stated as follows with respect to motions for leave to file a lengthier factum:

11 Several principles are well-established in relation to exercising the discretion as to whether to grant leave to file a lengthier factum. In reaching my decision, I have taken these principles into account.

12 First, the discretion to grant leave to file a lengthier factum cannot be exercised in a vacuum. The moving party has the onus of demonstrating, not merely asserting, a reasonable basis for a lengthier factum (see *Canada v General Electric Capital Canada Inc*, 2010 FCA 92 at para 5(b)). Normally, a copy of the proposed factum should be provided to the chambers judge so that an informed assessment of whether to grant leave to file a lengthier factum can be undertaken (see *ibid* at para 5(h); *Van Wissen* at para 4; and *Ma v Vansanten*, 2017 BCCA 441 at para 14). That has occurred here.

13 Second, significant weight should be given to the opinion of counsel for the moving party and counsel for the responding party for the need for a lengthier factum, but ultimately the court has "the final say" as to whether an exception should be made and to what extent (*R v Candir*, 2008 ONCA 773 at

para 5; see also *General Electric Capital* at paras 2, 5(c); and *OZ Merchandising Inc* at para 8).

14 Third, complicated appeals are common. Prescribed page limits are accepted to be adequate to argue a reasonably complex appeal; history teaches that the quality of a factum does not turn on its length (see *OZ Merchandising Inc* at para 4). There are no automatic exceptions to page limits for matters which may raise “important and complicated questions” (*General Electric Capital* at para 5(d)), such as lengthy jury trials for serious offences (see *Candir*, and *Van Wissen*); sophisticated commercial cases (see *OZ Merchandising Inc*); important public law cases (see *Chief Mountain v Canada (AG)*, 2012 BCCA 69 at paras 6-7; and *Sagkeeng v Government of Manitoba et al*, 2020 MBCA 100 at para 14); or an appeal having a lengthy record or judgment in the court below (see *Ma* at para 14; and *OZ Merchandising Inc* at para 7).

15 Fourth, leave to file a lengthier factum is a remedy that is seldom granted. As Roberts JA explained in *OZ Merchandising Inc*, such relief “is exceptional and granted sparingly in special circumstances” (at para 5). Roberts JA went on to explain, “The overarching question is whether the extension is required in the interests of procedural fairness and justice ‘to advise the other side of the issues in dispute so it can prepare properly for the appeal and to assist the division of the Court that hears the appeal to deal effectively with the issues’” (at para 6). [Emphasis added]

*McLeod Estate v. Cole et al.*, 2021 MBCA 80 at paras 11-15 (“*McLeod Estate*”) [Tab 5]

40. The Court went on to note as follows:

27 While I place significant weight on the opinion of counsel as to the need for a lengthier factum, particularly in light of an extensive record and

reasons of the trial judge, in my respectful view, the plaintiffs have also not yet sufficiently prioritized which arguments are their best ones to challenge the trial judge's findings of fact. That has yet to occur, given that counsel believes the trial judge made 20 to 30 palpable and overriding errors. The plaintiffs are not entitled to a lengthier factum simply to pursue a "shotgun approach to appellate advocacy"; the plaintiffs are obligated to focus their appeal (*R v Henderson (WE)*, 2012 MBCA 93 at para 51; *OZ Merchandising Inc* at para 10; and *Van Wissen* at para 7; see also paras 5-6).

28 Finally, the proposed factum gives the impression that the plaintiffs are requesting leave to file a lengthier factum to make extensive arguments about the evidence in the hope that this Court will retry the factual findings decided against them by the trial judge. That is not an appropriate basis for leave to file a lengthier factum (see *Van Wissen* at para 8). [Emphasis added]

*McLeod Estate, supra* at paras 27 and 28 [Tab 5]

41. There are no special circumstances in this case that support the Debtors request for leave to file a lengthier factum.

42. The Debtors have chosen to appeal the entirety of the Judgment. This is especially true if leave to amend the Filed Notice of Appeal to include the Contested Amendments is granted.

43. The proposed Factum of the Debtors attached at Tab 2 to the June 22 Brief displays that the Debtors are requesting leave to file a lengthier factum to make extensive arguments about the evidence in the hope that the



Court will retry the factual findings decided against them by the Judge. That is not an appropriate basis for leave to file a lengthier factum.

44. There is no basis in law to allow the Debtors' request for alternative relief of allowing the Debtors to file a "reply factum" in these circumstances. It is abundantly clear that the alternative relief is sought in an effort to circumvent the 30 page limit as true reply materials are only permissible where the responding party has raised issues that the moving party could not have anticipated when they filed their original materials. As the Receiver has not filed its factum, there is no basis for authorizing any "reply" from the Debtors at this stage.

45. The Debtors' repeated attempts to circumvent the Rules which all other parties are required to comply with should not be accepted by the Court. Allowing the Debtors to file a lengthier factum or file a "reply factum" will only facilitate and encourage further mischief and result in increased costs and further delay in this matter, to the detriment of unsecured creditors.

#### **Use of Electronic Filings**

46. The Receiver submits that there is no basis to allow the documents filed electronically in the Receivership Proceedings with a corresponding index to be accepted as the Debtors' appeal book.

47. Rule 24(1) of the Rules restricts the materials that may be included in an appeal book:

24(1) The parties shall attempt to reduce the bulk of the appeal book by excluding from it material that is not relevant to the appeal.

The Rules, *supra*, r. 24(1) [Tab 2]

48. The language in Rule 24(1) is mandatory. It is clear that parties have a positive obligation to reduce the bulk of an appeal book.

49. Respectfully, the Debtors' ought to be required to comply with the Rules. Although this may require that the Debtors' invest time into determining which materials they view as relevant, it is necessary to ensure that the hearing of the appeal is orderly, timely, and cost effective.

50. Additionally, there is considerable danger in allowing the use of the entirety of the electronic file in the Receivership Proceedings as the Debtors' appeal book as it may facilitate the expansion of the scope of the appeal through reliance on any of documents, regardless of their relevance in relation to the grounds of appeal pled, by the Debtors.

51. The Debtors have not acted with diligence in this appeal. There have already been three motions filed due to the Debtors' failure to proceed reasonably and in accordance with the Rules.

52. The Debtors' repeated attempts to avoid compliance with the Rules should not be rewarded or encouraged. There is a clear need in this case to strongly enforce the Rules due to the Debtors repeated attempts to circumvent them. Any continued delay and costs which would result from the Debtors' motions being granted is unacceptable and unjust.

53. Accordingly, the Receiver submits that the Debtors' Third motion ought to be dismissed with costs to the Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day  
of June, 2022.

THOMPSON DORFMAN SWEATMAN LLP

Per: 

G. Bruce Taylor / Ross A. McFadyen  
/ Mel M. LaBossiere  
Lawyers for Richter Advisory Group  
Inc., the Court-Appointed Receiver

This is Exhibit "X" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. Z. M. H. E.", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.,  
c.B-3, AS AMENDED, AND SECTION 55 OF *THE*  
*COURT OF QUEEN'S BENCH ACT*, C.C.S.M., C.  
C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

---

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

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**FACTUM OF THE (RESPONDENTS) APPELLANTS**

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File No. 113885/WMO

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

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## **PART I: INTRODUCTION**

1. This is an appeal from an order of Justice Edmond in the court of Queen's Bench (the "**Court Below**") substantively consolidating the appellants, Nygard Properties Ltd. ("**NPL**") and Nygard Enterprises Ltd. ("**NEL**"), with the estates of the seven other respondent companies, which are now bankrupt, such that the assets and liabilities of the nine companies are treated as common assets and liabilities. The order under appeal also granted the companies' receiver leave to apply for bankruptcy orders in respect of NPL and NEL, on the basis of the substantive consolidation.

2. The appellants submit that the Court Below misdirected itself concerning the analysis it had to perform in order to resolve the issues before it. Further, the inquiry actually conducted turned on a series of discrete legal errors, each of them prejudicial to NPL and NEL.

a) There was no attempt to determine if the substantive consolidation of NPL and NEL was available in law. As it was not, the Court Below lacked the jurisdiction to make such an order.

b) The central decision, that NPL and NEL should be substantively consolidated with the other respondents *even if* NPL was a secured creditor of those respondents, was unprecedented, contrary to authority and basic principles, and made without reviewable analysis.

- c) The decision that the “elements of consolidation” were present was made on the basis of extricable legal errors or erroneous departures from guiding precedent.
- d) The issue of subrogation was decided against the appellants on the basis of four legal errors.
- i. The Court Below held that, prior to the making of an order for substantive consolidation, the Receiver had the discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations, provided that the allocation was “*fair and reasonable*”. This was erroneous in two ways.
- a) It was a novel holding, (the first to apply the test for the allocation of receivership costs to the allocation of the proceeds from the sales of the assets of separate corporations), and it was made without analysis.
- b) It was wrong in principle. The issue was not the equities of the allocation, but whether in law the Receiver could allocate proceeds from the sales of the assets of separate corporations among a group of corporations prior to making a substantive consolidation order. The jurisprudence demonstrates that the Receiver did not have that discretion.



- iii. It accepted without analysis both of two mutually-contradictory allocations of the proceeds from the sales of NPL's assets done by the Receiver, and applied both to deny NPL rights of subrogation.
  - iii. It accepted and applied a distinction between "payments to the Credit Facility" and "payments to the Receiver's Borrowing Charge" that was contrary to the terms of the Credit Agreement and Guarantee actually executed by NPL and NEL.
  - iv. It held that, if NPL did have subrogated rights to certain funds, its claim to those funds would be subject to the claims of its creditors. This was, in effect, the application of a set-off defence to NPL's subrogated rights. Such a defence is not available in law.
- e) Without analysis, the Court Below granted the Receiver leave to apply for the bankruptcy of NPL and NEL on a basis (their liability for the consolidated debts of the other Debtors) contrary to their status as separate corporate persons and unknown to the *Bankruptcy and Insolvency Act*<sup>1</sup>.

3. The decision below<sup>2</sup> should be set aside in respect of NPL and NEL.

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<sup>1</sup> RSC 1985, c B-3 (the "*BIA*")

<sup>2</sup> *White Oak Commercial Finance, LLC v Nygard Holdings et al.*, 2022 MBQB 48 (the "*Decision Below*")

## **PART II: THE FACTS**

4. On March 18, 2020, the Court Below appointed Richter Advisory Group Inc. receiver (the “**Receiver**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., (“**NEL**”) Nygard International Partnership, (“**NIP**”), Nygard Properties Ltd., (“**NPL**”), 4093879 Canada Ltd. and 4093887 Canada Ltd. The Appointment Order was granted pursuant to an application made by White Oak Commercial Finance, LLC (as agent for itself and Second Avenue Capital Partners, LLC, (together the “**Lenders**”)) pursuant to its rights under a credit agreement dated December 30, 2019 (the “**Credit Agreement**”) and certain security agreements between the Lenders and the respondents.<sup>3</sup>

5. NPL is a real-estate holding company. It is wholly owned by NEL, itself a holding company without an active business.<sup>4</sup> NPL and NEL were subject to the Appointment Order because they were limited guarantors of the debt owed by the borrower companies (Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., and Nygard NY Retail, LLC, (the “**Borrowers**”)) to the Lenders, and were at the time unable to satisfy their guarantees. Recourse to NPL was limited to assets specifically secured to a realized value, after all costs and expenses, including

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<sup>3</sup> Decision Below at paragraphs 1-2, page 2; Twelfth Report of the Receiver dated June 4, 2021, (the “**Twelfth Report**”), at paragraphs 1-3, page 1

<sup>4</sup> Corporate Organization Chart – Updated, Appendix E to the Twelfth Report

enforcement costs, of US \$20 million<sup>5</sup> (the “**Guarantee**”). Recourse to NEL was limited to shares it held in the respondent 4093879 Canada Ltd.<sup>6</sup> It appears that no value has been ascribed to those shares; there has certainly been no effort to realize upon them. The Lenders had full recourse against NIP, 879 and 887 (hereinafter the “**Unlimited Guarantors**”).

6. Neither NPL nor NEL guaranteed the payment of debts owed by the other respondents to their respective unsecured creditors.

7. The Receiver subsequently sold a number of real properties wholly owned by NPL; it reported to the Court Below that the aggregate proceeds were \$28,579,000 (the “**NPL Proceeds**”).<sup>7</sup> A total of approximately \$66 million derived from the property of the respondents was paid by the Receiver to the Lenders,<sup>8</sup> which satisfied them in full.<sup>9</sup> After paying the Lenders, the Receiver had approximately \$12.8 million on hand.<sup>10</sup> Of that sum, the Receiver estimated that approximately \$9.9 million would remain after the payment of the receivership expenses (the “**Net Receivership Proceeds**”).<sup>11</sup>

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<sup>5</sup> Credit Agreement, clause 11.05, page 122; Twelfth Report at paragraph 100, page 34

<sup>6</sup> Credit Agreement, clause 1.01, pages 6 and 28, “Canadian Holdings” and “Limited Recourse Guarantors”; clause 11.09, “Guarantee”; section 2.2 and Exhibit C of the Canadian Pledge Agreement dated as of December 30, 2019, Exhibit “F” to the Dean Affidavit, at page 4

<sup>7</sup> Twelfth Report, at page 36, “Nygard Group – Separate Corporation Analysis” NPL column, appended to the Decision Below as part of Schedule “A” at pages 76-78 (the “**Proceeds Chart**”)

<sup>8</sup> Decision Below at paragraph 5, page 3

<sup>9</sup> Decision Below at paragraph 5, page 3; Twelfth Report at paragraph 83(d), page 28

<sup>10</sup> Decision Below at paragraph 5, page 3

<sup>11</sup> Twelfth Report at paragraph 86(b), page 29

8. NPL and NEL were the only respondents to oppose the Receiver's motion for substantive consolidation, and for leave to take proceedings in bankruptcy.<sup>12</sup>

### **PART III: THE ISSUES**

9. The issues before this Honourable Court are as follows.

1. Did the Court err in law by misdirecting itself concerning the analysis it had to perform?
2. Did the Court err in law by ordering the substantive consolidation of NPL and NEL with the other respondents?
3. Did the Court err in law in deciding that NPL did not possess rights of subrogation pursuant to the *Mercantile Law Amendment Act*?<sup>13</sup>
4. Did the Court err in law in granting the Receiver leave to apply for bankruptcy orders in respect of NPL and NEL on the basis of their liability for the consolidated debts of the other respondents?
5. Did the Court err in law and fact by not allowing fees for the criminal defence of Peter Nygard to be paid from the net receivership proceeds?

10. This Honourable Court has the jurisdiction to decide these issues pursuant to section 25.1(1) of the *Court of Appeal Act* and section 183 of the *BIA*. Issues 1-4 are

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<sup>12</sup> Decision Below at paragraphs 12-13, page 6

<sup>13</sup> C.C.S.M. c. M120 (the "*MLAA*")

reviewable on a correctness standard. Issue 5 is reviewable on both a standard of correctness and a palpable and overriding error standard.<sup>14</sup>

## **PART IV: ARGUMENT**

### **ISSUE ONE: THE COURT BELOW MISDIRECTED ITSELF**

10. The Court Below erred in law by misdirecting itself respecting the analysis it had to perform to resolve the legal issues before it. This resulted in the application of faulty legal premises to those issues. The failure to embark on the correct inquiry was an extricable legal error, reviewable on a correctness standard.<sup>15</sup> The inquiry the Court Below should have performed was as follows.

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#### **1. Determine if Substantive Consolidation was Available in Law**

a. Firstly, the Court Below had to determine whether NPL was solvent in a manner recognized by the *BIA*. If it was, then the Court had to decide whether it had the jurisdiction under the *BIA* to consolidate a solvent company or companies with the other, insolvent, respondents, or to permit the Receiver to attempt to assign those solvent companies into bankruptcy.

b. As part of the solvency analysis, the Court Below had to decide whether NPL had rights of subrogation due to its payments to the Lenders. If so, it was required to find against which and for how much. To make these findings, it needed to decide (1) how much NPL had paid on its guarantee; (2) the legal test for the allocation of the proceeds from the sale of assets in a multi-party

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<sup>14</sup> *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 at paragraphs 1, 8, 10, 25 and 36-37.

<sup>15</sup> *Pirani v. Pirani*, 2022 BCCA 65, at paragraph 111; see also *Deslaurier Custom Cabinets Inc. v 1728106 Ontario Inc.*, 2017 ONCA 293 (“*Deslaurier*”) at paragraph 66, and *Newfoundland and Labrador v Chiasson*, 2020 NLCA 28 (“*Chaisson*”) at paragraphs 16, 20, and 23.

receivership; (3) the “just proportion” of the debt for which NPL was liable, and whether NPL’s payments had exceeded that proportion; and (4) whether there are rights of set-off against subrogated rights.

2. (If the Court Concluded that it had Jurisdiction) To Consider the Merits of the Substantive Consolidation Test with respect to NPL and NEL

a. If it determined that NPL was insolvent or that it had the jurisdiction to consolidate a solvent NPL and NEL with insolvent companies, the Court Below then had to decide whether the legal test for substantive consolidation of NPL and NEL with the other respondents could be met.

3. (If the Substantive Consolidation Test was Met) To Decide Whether the Receiver should be given Leave to apply for Bankruptcy Orders in Respect of NPL and NEL

a. The making of a substantive consolidation order including NPL and NEL would determine the answer to this question, as it would render NPL and NEL liable for the debts of the other respondents and would thus effectively dissolve their corporate personhoods. If a substantive consolidation order was not made, and was not made on the basis that NPL and/or NEL were solvent, then there could be no justification for the granting of leave.

11. The inquiry actually conducted by the Court Below in its reasons for decision dated March 10, 2022 (the “Reasons”) is described in the Statement of Issues, above, and was legally erroneous for the reasons stated broadly therein, and specifically below. The analysis conducted by the Court Below was also internally illogical, which was an independent legal error.<sup>16</sup> In sum, the Court Below held as follows.

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<sup>16</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paragraphs 101-104: “a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside.” The “internal rationality of a decision may be called

- a. Even if NPL has a secured claim against the other Debtors, that claim is outweighed by the unsecured claims of the other Debtors' creditors and substantive consolidation is therefore fair and reasonable.<sup>17</sup>
- b. As the Court has ordered substantive consolidation, it does not need to consider the Receiver's allocation of the proceeds from the sale of NPL's assets.<sup>18</sup> If the Court was wrong to order substantive consolidation, it accepts the Receiver's allocations.<sup>19</sup>
- c. If the Court was wrong to accept the Receiver's allocation(s), it has nevertheless ordered substantive consolidation.<sup>20</sup> *((a) – (c) collectively demonstrate circular reasoning on the dispositive issue).*
- d. NPL and NEL are insolvent on the basis of substantive consolidation.<sup>21</sup> *(This is an absurd premise.)* Any dispute about their entitlement to funds held by the Receiver should be resolved in the bankruptcy proceedings.<sup>22</sup>
- e. Leave is granted to apply for bankruptcy orders against NPL and NEL, on the basis of the substantive consolidation of their estates with those of the other Debtors,<sup>23</sup> (which consolidation eliminates the possibility of competition between separate legal entities respecting their relative entitlement to funds in the receivership). *(The premise of the bankruptcy application in (e) defeats the purpose of the bankruptcy proceeding articulated in (d)).*

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*into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise."*

<sup>17</sup> Decision Below at paragraphs 43-47, pages 24-26

<sup>18</sup> Decision Below at paragraph 50, page 27

<sup>19</sup> Decision Below at paragraphs 64, page 34, and 77-78, pages 38-39

<sup>20</sup> Decision Below at paragraph 78(b), page 39

<sup>21</sup> Decision Below at paragraph 126, page 61

<sup>22</sup> Decision Below at paragraph 122, page 60

<sup>23</sup> Decision Below at paragraph 130, page 62

## ISSUE TWO: SUBSTANTIVE CONSOLIDATION

### (i) *Substantive Consolidation Generally*

12. In a substantive consolidation, a number of affiliated legal entities, typically corporations, are treated as if they were one entity, resulting in the assets of the various debtors being pooled to create a common fund out of which claims of creditors of all the debtors are jointly satisfied.<sup>24</sup> Substantive consolidation is an extraordinary remedy primarily because courts are loath to prejudice one creditor in order to increase the return for others.<sup>25</sup>

13. For substantive consolidation to be available, each of the entities proposed to be consolidated must be insolvent or (typically) bankrupt: the Court cannot consolidate a solvent company with insolvent companies. This is because the Court's jurisdiction to make an order for substantive consolidation comes from either the *BIA* or the *Companies' Creditors Arrangement Act*,<sup>26</sup> both of which were promulgated pursuant to the federal government's exclusive jurisdiction to enact

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<sup>24</sup> *Re Redstone Investment Corp. (Receiver off)*, 2016 ONSC 4453 ("*Redstone*") at paragraph 8; see also *Re Nortel Networks Corp.*, 2015 ONSC 2987 ("*Re Nortel*"), leave to appeal refused 2016 ONCA 332, application for leave to appeal filed (and discontinued) 2016 CarswellOnt 14117, at paragraph 213

<sup>25</sup> *Redstone* at paragraph 74; *Northland Properties Ltd., Re*, 1988 CanLII 2924, (BC SC) at paragraph 39; *Northland Properties Ltd., Re*, 1988 CanLII 3250 (BC SC), ("*Re Northland*"), aff'd *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.*, 1989 CanLII 2672 (BC CA), at paragraphs 49-50 and 69-71; *Bacic v Millennium Educational* 2014 ONSC 5875 ("*Bacic*") at paragraph 112; *Ashley v Marlow Group* 2006 CanLII 31307 (ONSC) ("*Ashley*") at paragraph 78; *JP Capital Corp. (Re)* (1995), 31 C.B.R. (3d) 102 ("*JP Capital*") at paragraph 18

<sup>26</sup> RSC 1985, c C-36 (the "*CCAA*")



laws in relation to “*bankruptcy and insolvency*”.<sup>27</sup> In each of *Redstone*,<sup>28</sup> *Bacic*,<sup>29</sup>, *Baillargeon*,<sup>30</sup> *D’Addario*,<sup>31</sup> and *Ashley*,<sup>32</sup> the Court describes the jurisdiction to make a consolidation order as relating to bankrupt estates. In *J.P. Capital*<sup>33</sup> the discussion of jurisdiction occurs within the context of pre-existing corporate bankruptcies. In *Re Nortel*<sup>34</sup> and *Re Northland*,<sup>35</sup> the Court’s equitable jurisdiction under the CCAA is said to permit the making of a substantive consolidation order.

14. This is a *BIA* case. The *BIA* applies to debtors, their creditors, and to court-appointed officers such as trustees in bankruptcy and receivers. Section 2 defines “debtor” as including “*an insolvent person and [...] where the context requires, includes a bankrupt*”. An “*insolvent person*” is defined thusly:

*a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and*

*(a) who is for any reason unable to meet his obligations as they generally become due,*

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<sup>27</sup> Houlden, Morawetz, and Sarra, *Bankruptcy and Insolvency Law of Canada*, Fourth Edition, (“*Bankruptcy and Insolvency Law of Canada*,”) at §1:11, Constitutionality of the *Bankruptcy and Insolvency Act*. Nothing turns on the distinction between *BIA* and CCAA. In the words of Duff C.J.C., who spoke for the Court in *A.G. Can. v. A.G. Que.*, 1934 CanLII 72 (SCC): “*the aim of the Act [the CCAA] is to deal with the existing condition of insolvency, in itself, to enable arrangements to be made, in view of the insolvent condition of the company, under judicial authority which, otherwise, might not be valid prior to the initiation of proceedings in bankruptcy. Ex facie it would appear that such a scheme in principle does not radically depart from the normal character of bankruptcy legislation.*”

<sup>28</sup> *Redstone*, at paragraph 8

<sup>29</sup> *Bacic*, at paragraph 107

<sup>30</sup> *A. & F. Baillargeon Express Inc., Re*, (1993) 27 C.B.R. (3d) 36 (Que. Sup. Ct.) (“*Baillargeon*”), at paragraph 23

<sup>31</sup> *D’Addario v. Ernst & Young Inc.*, 2014 ABQB 474, (“*D’Addario*”), at paragraph 17

<sup>32</sup> *Ashley*, at paragraphs 69-71

<sup>33</sup> *JP Capital*, at pages 1-5

<sup>34</sup> *Re Nortel*, at paragraph 216

<sup>35</sup> *Re Northland*, at paragraphs 32-34

*(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or*

*(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due*

15. Someone who is solvent cannot become bankrupt,<sup>36</sup> make a proposal (or have a proposal made for them by a receiver),<sup>37</sup> or be the subject of a receivership order<sup>38</sup>.

16. In *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*,<sup>39</sup> the Supreme Court of Canada confirmed that a court exercising jurisdiction granted by the *BIA* in a receivership cannot make an order which exceeds the mandate granted by the *Act*. The Supreme Court held that section 47(2) did not confer authority on the bankruptcy court to make unilateral declarations about the rights of third parties affected by other statutory schemes,<sup>40</sup> that the effect of section 72(1)<sup>41</sup> is that the *BIA* “*is not intended to extinguish legally protected rights unless those rights are in conflict with the [Act]*”,<sup>42</sup> and that, in the absence of explicit statutory language, section 47 could not be interpreted “*to permit interference with all rights which, though protected by law, represent an inconvenience to the bankruptcy process*”.<sup>43</sup> The only material difference between section 47(2) and the provision

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<sup>36</sup> *Kormos v. Fast*, 2019 ONCA 430 at paragraphs 9-10

<sup>37</sup> *BIA*, s. 50(1)

<sup>38</sup> *BIA*, s. 243(1)

<sup>39</sup> 2006 SCC 35 (“*GMAC*”)

<sup>40</sup> *GMAC*, at paragraph 45

<sup>41</sup> “*The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act [...]*”

<sup>42</sup> *GMAC*, at paragraph 47

<sup>43</sup> *GMAC*, at paragraph 51.

pursuant to which the Receiver was appointed, section 243, is that section 47(2) deals with the Court's authority to supervise an interim receiver, and section 243 with its supervision of receivers generally.

17. There is no “*explicit statutory language*” in the *BIA* permitting the substantive consolidation of a solvent company with insolvent companies. As a result, no Canadian court has ever held that a solvent company may be included within a substantive consolidation order: in *Bacic*,<sup>44</sup> *Baillargeon*,<sup>45</sup> and *D'Addario*<sup>46</sup> the consolidated companies were all bankrupt; in *Ashley*<sup>47</sup>, and *J.P. Capital*<sup>48</sup> (in which consolidation orders were not made), the companies were bankrupt; in *Redstone* (in which a consolidation order was not made) two of the three relevant companies were bankrupt and the third was insolvent and in receivership<sup>49</sup>; in *Re Nortel* (in which a consolidation order was not made), the US companies were bankrupt, and the Canadian companies were insolvent and had been liquidated while under *CCAA* protection;<sup>50</sup> and in *Re Northland*, the companies were insolvent at a 2:1 ratio of debts to liabilities.<sup>51</sup>

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<sup>44</sup> *Bacic*, at paragraph 117

<sup>45</sup> *Baillargeon*, at paragraph 1

<sup>46</sup> *D'Addario*, at paragraph 1

<sup>47</sup> *Ashley*, at paragraphs 69-71

<sup>48</sup> *JP Capital*, at pages 1-5

<sup>49</sup> *Redstone*, at paragraph 11

<sup>50</sup> *Re Nortel*, at paragraphs 2-3

<sup>51</sup> *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.*, 1989 CanLII 2672 (BC CA), at paragraph 3

*(ii) NPL's Solvency*

18. The Receiver sought a substantive consolidation in order to access NPL's assets for the benefit of the unsecured creditors of NIP and NI, despite the fact that NPL had not guaranteed payment of NIP or NI's unsecured debt. The Receiver confirmed this in its Reports to the Court Below.<sup>52</sup>

19. As NPL was asset-rich, the Receiver could not, and did not, advise the Court that NPL was insolvent on any of the tests set out in the *BIA* definition of "*insolvent person*". Indeed, the Receiver clearly understood that NPL was solvent on the statutory tests.

(a) In its Twelfth Report, the Receiver stated that "*NPL is estimated to have approximately \$1.5 million remaining after payment of known direct liabilities...*"<sup>53</sup> This estimate was predicated upon NPL owing \$4.978 million to the Canada Revenue Agency,<sup>54</sup> (NPL's single third-party creditor), which estimate was subsequently reduced by the Receiver to \$3 million,<sup>55</sup> with the necessary result that at the time of the hearing NPL had assets of a value exceeding its liabilities by \$3.5 million. In short, NPL was solvent pursuant to the third of the tests set out in the definition of "*insolvent person*".<sup>56</sup>

(b) In the Twelfth Report, the Receiver also stated that "*on the basis of the Separate Corporation Analysis* [i.e. an analysis that respected NPL's separate

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<sup>52</sup> Ninth Report at paragraph 120, page 36; Twelfth Report at paragraph 98(b), page 72

<sup>53</sup> Decision Below, Schedule "A", page 87

<sup>54</sup> Decision Below, Schedule "A", page 86 (Note 1, "NPL Tax Liability") and page 87

<sup>55</sup> Decision Below at paragraph 6

<sup>56</sup> "[T]he aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations..."

corporate personhood] *and the books and records of the Nygard Group: (i) each of the Debtors other than NPL is insolvent*".<sup>57</sup>

(c) Instead of seeking leave to make applications for bankruptcy orders in accordance with section 43(1) of the BIA<sup>58</sup> (a creditor asserts that a debtor owes a debt of a thousand dollars *to the creditor*), the Receiver sought and received leave to "*file applications...for bankruptcy orders in relation to the Debtors NPL and NEL, on [a] basis that reflects the common liabilities*" of the respondent companies.<sup>59</sup> As such, the Receiver was tacitly admitting that it could only obtain bankruptcy orders against NPL and NEL if they were made legally responsible for NIP's and Nygard Inc's debts to their unsecured creditors *as a term of the application*.

20. The Receiver tried to qualify the above concessions with speculation: that NPL might have other, unknown, creditors<sup>60</sup> (which had not surfaced 21 months into a highly-publicized receivership and were not recorded in "*the books and records of the Nygard Group*"), and that a hypothetical new allocation of receivership expenses (i.e. one *other* than the allocation the Receiver had chosen to put before the Court on its motion) might render NPL insolvent.<sup>61</sup> In the end, however, the Receiver concluded that it was "*not purporting, by this Separate Corporate Analysis to determine the solvency or insolvency of NPL*".<sup>62</sup>

<sup>57</sup> Twelfth Report at paragraph 197(a)(i), emphasis added; there is a similar statement in paragraph 208

<sup>58</sup> "[O]ne or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that (a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application"

<sup>59</sup> Decision Below at paragraph 9(e), page 5, emphasis added

<sup>60</sup> Twelfth Report at paragraph 197(a)(ii); Second Supplementary Twelfth Report at paragraph 61(d), quoted in the Decision Below at paragraph 119

<sup>61</sup> Twelfth Report at paragraph 197(a)(ii)

<sup>62</sup> Decision Below Schedule "A", page 87

21. The question of whether NPL had rights of subrogation pursuant to the *MLAA*, and was therefore a secured creditor of the other respondents has not been addressed. This is due to the terms of the decision by the Court Below on the issue of substantive consolidation, in which NPL's solvency and (possible) secured status were treated as immaterial.

**(b) The Decision Below**

**(i) Solvency**

22. The Court Below did not squarely address NPL's solvency during its discussion of substantive consolidation. Instead, the Court Below held that *even if* NPL was a secured creditor of the other respondents, substantive consolidation was appropriate because it was "*fair and reasonable*" that unsecured creditors of NIP and Nygard Inc be paid from NPL's assets, or from assets subject to NPL's security. The following is the passage upon which the Decision Below turned.

*[43] Ultimately, the court must weigh the various factors and apply the general principles outlined by the court in Redstone at para. 78. [...]*

*a) While I accept that some of the factors outlined above do not support granting an order of substantive consolidation of the estates of the respondents, a review of all of the factors and the detailed evidence presented in the unique circumstances of this case satisfies me that the elements required to order a substantive consolidation are present;*

*b) In my view, the benefits of substantive consolidation outweigh the prejudice to particular creditors, including NPL pursuant to its potential right of subrogation. [...] If I accept NPL's submission that it is a secured creditor and has a priority interest in the Net Receivership Proceeds then I agree that NPL may be prejudiced as a result of a substantive consolidation order. The prejudice that may be suffered by*

***NPL, and its parent corporation NEL, must be weighed against the claims of the employees, landlords, suppliers and other vendors, gift card purchasers and taxing authorities who are owed debts by NIP, NI and other Debtors who are economically advantaged by substantive consolidation of the Debtors for creditor purposes.***

***c) In my view, all of the Debtors, including NPL, carried on a common enterprise [...] I agree with the Receiver that treating the Debtors and in particular NPL as separate entities for creditor purposes would result in inequitable treatment for creditors and unfairly deprive them of the benefit of pooled assets and resources of the Nygard Group of Companies.***

***[44] [...] While I agree NPL's potential secured claim would be eliminated by a substantive consolidation order, that prejudice must be weighed against the prejudice of all of the other creditors of the respondents that remain unpaid who advanced products, services and resources to the Nygard Group of Companies.***

***[...]***

***[47] Based on the recommendation of the Receiver, I agree that it is fair and reasonable to substantively consolidate the Debtors for the purpose of addressing claims of all creditors and that the overall benefit to the stakeholders arising from such a consolidation outweighs the prejudice to any particular creditor.<sup>63</sup>***

23. The general principles set out in *Redstone*<sup>64</sup> are as follows: (i) Are the elements of consolidation present, such as the intertwining of corporate functions and other commonalities across the group? (ii) do the benefits of consolidation outweigh the prejudice to particular creditors? (iii) Is consolidation fair and reasonable in the circumstances? The Court Below erred in law by failing to appreciate that these principles can be applied *only* once the condition precedent of the uniform bankruptcy or insolvency of the relevant entities has been satisfied, thereby granting

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<sup>63</sup> Emphasis added

<sup>64</sup> *Redstone*, at paragraph 78

the court the authority to consolidate. This can be characterized either as a failure to consider a required element of the legal test, a failure to consider a relevant factor,<sup>65</sup> or a failure to turn attention to the “*underlying legal issues*”.<sup>66</sup> The Court Below never attempted to determine whether NPL, understood (as it necessarily must be) as a separate corporate person, was solvent as at the date of the hearing. The result was that that condition precedent was never satisfied, and the Court was without authority to make the order sought.

24. The failure to explain how a solvent company can be substantively consolidated with insolvent companies was a legal error<sup>67</sup> While there is a brief discussion of NPL’s solvency in the Reasons, this occurs some 78 paragraphs after the holding of substantive consolidation, during the Court’s treatment of the Receiver’s request for leave to issue applications for bankruptcy orders against NPL and NEL. The decision on solvency does not support or explain the consolidation holding, as the Court Below is clear that one is predicated upon the other: “*I accept that NPL and NEL are insolvent on a consolidated basis*”.<sup>68</sup>

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<sup>65</sup> *Deslaurier*, 2017 ONCA 293, at paragraph 55; see also paragraphs 66 and 68

<sup>66</sup> *Chaisson*, 2020 NLCA 28 at paragraph 13; see also paragraphs 20-23

<sup>67</sup> *R. v. Sheppard*, 2002 SCC 26, at paragraph 46; see also *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, at paragraph 101

<sup>68</sup> Decision Below, at paragraph 126



(ii) *Security*

25. The Court Below treated the possible elimination of NPL's security (over the companies with which it would be consolidated) as simply "*prejudice [that] must be weighed against the prejudice of all of the other creditors of the respondents*".<sup>69</sup> This was legally erroneous: implicit in it is the novel conclusion that the Court may eliminate security held by A (NPL) over B (NIP) in order to allow B's unsecured creditors access to A's assets, even though A had not guaranteed payment of B's unsecured debts. To the contrary, this Court has held, in a case respecting the sale of assets by a receiver:

*Given the outstanding amounts owing to the secured creditors, and the amounts that would be generated from the sale of assets, there will inevitably be a significant shortfall in this case. As a result, the secured creditors are the only parties with a material and direct commercial interest in the proceeds of the sale. Thus, it was reasonable for the Receiver not to take into account the portion of the offer dealing with unsecured creditors.*<sup>70</sup>

26. The Court Below led itself into this error by misstating the applicable law: "*Courts in both the US and Canada have found that orders of substantive consolidation are an extraordinary remedy, based in part on the fact that secured creditors may be prejudiced in order to increase the overall return to other creditors, including unsecured creditors.*"<sup>71</sup> In fact, the Decision Below was the first

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<sup>69</sup> Decision Below, at paragraph 44

<sup>70</sup> *Royal Bank of Canada v Keller & Sons*, 2016 MBCA 46, at paragraph 15, emphasis added

<sup>71</sup> Decision Below, at paragraph 29, emphasis added

in Canada which a (hypothetically) secured creditor was prejudiced *for the benefit of unsecured creditors* (much less in which security was eliminated outright).

27. The following are Canadian cases in which substantive consolidation orders were made. Each is cited in the Decision Below; none support the “*secured creditors may be prejudiced*” statement of the law.

- **Re Northland**: the consolidated plan maintained the secured positions and their relative priority, and the contest was *between* secured creditors (one class of mortgagee would “*recover the entire amount of their indebtedness*”, whereas the second class of mortgagee would recover only “*the market value of the subject property of their respective security*”).<sup>72</sup>
- **Atlantic Yarns**: (which dealt with only “*a consolidation of the Companies’ creditors for the purpose of voting on the proposed [CCAA plan of arrangement]*”), the contest was between one secured creditor, General Electric, and the other creditors. GE never faced the prospect of its security being compromised for the benefit of the unsecured creditors: it stood to “*recover the most of any secured creditor...almost the entire amount due to it*” and, in the view of the Monitor, would not be prejudiced.<sup>73</sup>
- **Baillargeon**: the Court emphasized that “*it is important that the Banks, which are secured, realize the maximum possible on their claims*”, and that this could be most cost-effectively achieved through consolidation.<sup>74</sup>
- **D’Addario**: the only creditor with a prospect of recovery was the senior secured, and so “*no creditor would benefit from consolidation at the expense*

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<sup>72</sup> 1989 CanLII 2672 (BC CA) at paragraph 11

<sup>73</sup> *Atlantic Yarns Inc. (Re)*, 2008 NBQB 144, at paragraphs 57-58

<sup>74</sup> *Baillargeon*, at paragraph 17

*of any other [and] consolidation would be the most expedient and cost[-] effective approach in the circumstances".<sup>75</sup>*

- *PSINet*: the "[s]ecured creditors were not affected by the [consolidated] plan".<sup>76</sup>
- *Bacic*: there were no secured creditors.
- *Redstone*: although the order sought by the moving parties in *Redstone* would have eliminated a secured position, that motion was dismissed in part because of this effect. The motion sought to consolidate three related companies. "RCC" held a general security agreement over "RIC's" assets.<sup>77</sup> Justice Morawetz decided the "*relative prejudice to creditors*" factor weighed against consolidation because "*substantive consolidation eliminates the secured inter-company receivable, while it is the only material asset of RCC*", and that this result would be prejudicial to investors in RCC. He agreed with the principle that "*it would be improper for the court to interfere with or appear to interfere with the rights of the creditors,*"<sup>78</sup> and in the dispositive paragraph referred both to the fact that "*the obligations of RIC to RCC are subject to a GSA*" and to the fact that RCC's creditors would be significantly prejudiced by a consolidation order.<sup>79</sup>

28. The Court Below failed to acknowledge that its decision to eliminate NPL's (hypothetical) security was contrary to the extant jurisprudence. Rather, it attempted to distinguish *Redstone* on a legally erroneous basis: Morawetz RSJ's "*reference to creditors of RCC is a reference to third party investors/creditors who would have*

<sup>75</sup> *D'Addario*, at paragraphs 5 and 15

<sup>76</sup> *PSINet Ltd., Re.* (2002), 33 C.B.R. (4th) 284 (Ont. Sup. Ct. – Commercial List), at paragraph 4

<sup>77</sup> *Redstone*, at paragraphs 1, 5 and 25

<sup>78</sup> *Redstone*, at paragraph 88

<sup>79</sup> *Redstone*, at paragraph 90

suffered a significant financial prejudice”, whereas “[i]n this case, the alleged significant financial prejudice is being suffered by one of the affiliated corporations within the Nygard Group of Companies [...]”<sup>80</sup>

29. The error in this passage is clear. If NPL was secured, it was secured as a result of rights of subrogation accorded it by the *MLAA*. This would mean that NPL stood in the place of the third-party Lenders: “and that person is entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding, at law or in equity”.<sup>81</sup> In the enforcement of that security there would, therefore, be no distinction between NPL and the Lenders. The Court Below knew this: elsewhere in its Reasons, it quoted the relevant section of the *MLAA* and accurate commentary on its meaning.<sup>82</sup> The Court Below thus distinguished *Redstone* on a basis (a meaningful contrast between “third party investors/creditors” and “one of the affiliated corporations”) which could not exist in law pursuant to the governing statute. *Redstone* applies squarely, and the result should be the same.

30. As with the issue of solvency, the eventual discussion of NPL’s claim to secured status further to the *MLAA* does not support the substantive consolidation decision, as that decision would have been the same notwithstanding the holding on

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<sup>80</sup> Decision Below, at paragraph 44, emphasis added

<sup>81</sup> *MLAA*, section 2

<sup>82</sup> Decision Below, at paragraphs 103-05

NPL's security: "[w]hile I agree NPL's potential secured claim would be eliminated by a substantive consolidation order, that prejudice must be weighed against the prejudice of all of the other creditors of the respondents."<sup>83</sup>

**(iii) The Elements of Consolidation**

31. The decision of the Court Below respecting each of the elements of consolidation was either predicated upon a legal error or departed from *Redstone*, the leading precedent, without articulating cogent reasons for doing so, which was a legal error.<sup>84</sup> NPL and NEL submit that each element militates against their substantive consolidation with the other respondents.

**(i) Difficulty in Segregating Assets**

32. The Court Below erred in law by treating a possible debt claim against NPL by NIP as an asset of NIP's that is not segregated from NPL's assets. NPL, the Court found, "*held title to assets that can be segregated from the assets of the other respondents*", but "*those assets cannot readily be 'segregated' from the substantial investments in those properties and costs thereof being borne by NIP.*"<sup>85</sup> That this was erroneous is clear from *Redstone*, in which RSJ Morawetz held that a receivable owed by RIC to RCC was "*not co-mingled with any assets of RIC or RMS*".<sup>86</sup> To the same effect was a decision of the US District Court, which held that loans to married

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<sup>83</sup> Decision Below, at paragraph 44

<sup>84</sup> *Canada (Citizenship and Immigration) v. Kassab*, 2020 FCA 10, ("*Kassab*") at paragraphs 35-36

<sup>85</sup> Decision Below, at paragraph 32

<sup>86</sup> *Redstone*, at paragraph 82

bankrupts by a corporation wholly owned by one of the bankrupts did not signal a commingling of assets between corporation and bankrupts.<sup>87</sup>

**(ii) *The Presence of Consolidated Financial Statements***

33. In *Redstone*, RSJ Morawetz held that “*financial statements [...] were prepared on an entity-by-entity basis [...] This factor supports maintaining the status quo.*”<sup>88</sup> He commenced his concluding full paragraph by stating “[i]n this case, I have concluded that it is not appropriate to invoke this extraordinary remedy. The assets are held separately and audited financial statements exist for RIC and RCC.”<sup>89</sup> As in *Redstone*, NPL and NEL had separate audited financial statements and so, as in *Redstone*, this element should have weighed heavily against consolidation. However, without offering cogent reasons for so doing, the Court Below discounted the element, (“[t]his is a factor that favours the respondents’ submission but in my view, it is not a significant factor”),<sup>90</sup> which was an error.<sup>91</sup>

**(iii) *Profitability of Consolidation at a Single Location***

34. This factor is prospective: it anticipates that the business enterprise could be more efficiently run from one place. In this case, there was no business to run: all of NPL’s real property had been sold, and the operating companies were headed to

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<sup>87</sup> *PaeTec Commc’ns, Inc. v. Bull (In re Bull)*, 528 B.R. 473 (M.D. Fla. 2015) at pages 479 and 500

<sup>88</sup> *Redstone*, at paragraph 81

<sup>89</sup> *Redstone*, at paragraph 90

<sup>90</sup> *Decision Below* at paragraph 33, emphasis added

<sup>91</sup> *Kassab*, 2020 FCA 10, at paragraphs 35-36

bankruptcy. The Court Below erroneously treated the factor as retrospective, and weighed it in favour of consolidation: “[t]he services required for the Nygard fashion business as well as NPL’s business, including the business functions and accounting was completed primarily at the Inkster property by NIP’s employees.”<sup>92</sup>

**(iv) Co-mingling of Assets and Business Functions**

35. The issue here was not whether the assets and business functions of “*the Debtors*” were commingled, (seven of the nine respondents did not oppose substantive consolidation), but whether the assets and business functions of NPL and NEL had been commingled with those of the other companies. The Court Below did not analyze or decide that issue: its discussion<sup>93</sup> is about undifferentiated “*Debtors*”, without distinction between operating companies and holding companies (the participation of which in the “*business functions*” described would have been *de minimus* when it did exist). The Court Below did hold that “[o]ther than as explained below, NPL’s assets were not necessarily comingled with the assets of the other respondents”.<sup>94</sup> However, the explanation is that “NIP advanced substantial funds or paid specific amounts in relation to the development and maintenance of NPL’s real property assets”,<sup>95</sup> which is a repetition of erroneous conflation of debt claims with non-segregated (commingled) assets. Further, most of the commingling

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<sup>92</sup> Decision Below at paragraph 34

<sup>93</sup> Decision Below at paragraph 36

<sup>94</sup> Decision Below at paragraph 35

<sup>95</sup> Decision Below at paragraph 36(vii)

cited by the Court Below was also present in *Redstone*,<sup>96</sup> and yet the result in this case differed, without the Court Below offering a cogent defence of the difference.

*(v) Unity of Interests in Ownership*

36. The Court Below decided this element weighed in favour of consolidation. Although “*NPL is owned by NEL, which does not directly own any of the other named respondents, except 879*”, which “*arguably supports a finding that there is no unity of interest in ownership*”, the Court was satisfied that “*NPL and all of the respondents were controlled, directly or indirectly, by Mr. Nygard and he had general authority and direction over all of the Debtors.*”<sup>97</sup> However, “*general authority and direction*” is not the test. In *Redstone*, a Mr. So had created each of RIC, RCC and RMS, owned all or part of the shares in each, had sole signing authority over their accounts for the purpose of transfers among them, and had served as president and CEO of RIC and RMS until “*he resigned from these roles following his incarceration for unrelated criminal charges*” a few months before the receivership.<sup>98</sup> He had, in short, the “*general authority and direction*” relied upon by the Court Below. RSJ Morawetz nevertheless made his decision based on the legal ownership of the companies, and held that “*[t]here is no unity of interest in*

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<sup>96</sup> *Redstone*, at paragraphs 56 and 58

<sup>97</sup> Decision Below at paragraph 37

<sup>98</sup> *Redstone*, at paragraphs 18-22



*ownership.*”<sup>99</sup> The result should have been the same in this case, and the Court Below did not offer an explanation for its departure from the guiding precedent.

***(vi) Existence of Inter-corporate Loan Guarantees***

37. The Court Below correctly observed that NPL had executed a limited Guarantee of the Credit Agreement. The Court Below *did not* observe that that Guarantee had been satisfied in full, and that neither NPL nor NEL had any outstanding guarantees of the other respondents’ debts. Instead, the Court Below repeatedly conflated intercorporate loans with intercorporate loan *guarantees*, a clear legal error: “[t]he Receiver reported that the Debtors recorded in excess of \$87 million in aggregate *intercompany loans* as among the Debtors [...] the Nygard business generated *intercompany loans* [...] NPL has an *intercompany loan* owing to NIP [...] and an *intercompany loan* owing to 887 [...] NEL (NPL’s parent company) has an *outstanding intercompany loan* owing to NIP [...]”<sup>100</sup>

***(vii) Transfer of Assets Without Observing Corporate Formalities***

38. The error here was straightforward: the discussion by the Court Below nowhere described the necessary “*transfer of assets*” between NPL and NEL and the other respondents.<sup>101</sup> Absent such a transfer, this element should have counted against substantive consolidation.

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<sup>99</sup> *Redstone*, at paragraph 83

<sup>100</sup> Decision Below at paragraph 38, *emphasis added*

<sup>101</sup> Decision Below at paragraphs 39 and 40

### ISSUE THREE: ALLOCATION AND SUBROGATION

39. Due to the “*even if NPL is secured*” logic of the disposition on substantive consolidation, the decisions by the Court Below respecting the Receiver’s allocation of sale proceeds and NPL’s rights of subrogation were *obiter dicta*, as the recent jurisprudence treats only matters “*essential to the interpretive analysis*” as *ratio decidendi*.<sup>102</sup> That said, the Court Below decided the issue of subrogation (the Receiver’s allocation being its argument on subrogation) on the basis of four legal errors, and a palpable and overriding error of fact.

#### (i) *The Receiver’s Discretion to Allocate Proceeds*

40. The Court Below held without analysis that, prior to the making of an order for substantive consolidation, the Receiver had the discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations, provided that the allocation was fair and equitable. (the “**Discretion**”)<sup>103</sup> This was an unprecedented application to *sales proceeds* of the principles governing the Court’s evaluation of a receiver’s allocation of the *costs* of a receivership.<sup>104</sup> It was erroneous.

41. The underlying facts were as follows. In the Twelfth Report, filed in support of its motion for substantive consolidation, the Receiver did not describe how the

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<sup>102</sup> *Duggan v Durham Region*, 2020 ONCA 788, at paragraphs 61-62

<sup>103</sup> Decision Below at paragraphs 59, 60, 64, and 75

<sup>104</sup> Decision Below at paragraph 75

indebtedness to the Lenders had been repaid (that is, which sums from which sources went to the Lenders.) Instead, the Receiver offered its own “allocation” of the funds used to satisfy the Lenders. This allocation was incorporated by the Court Below into its Decision as part of Schedule “A” (the “**First Allocation**”).<sup>105</sup> According to the Twelfth Report, the sale of NPL’s real properties yielded \$28,579,000 (again, the “**NPL Proceeds**”).<sup>106</sup> However, in the First Allocation, NPL was given credit for supplying only \$14,192,000 for the “*Distribution to Lenders*”.<sup>107</sup> The remaining \$14,192,000 was “allocated” to NIP,<sup>108</sup> *as if* NIP had supplied the remaining 49.65% of the NPL Proceeds to the Lender, which did not occur. (NI was given credit for paying \$8 million to the Lenders.) The following was the Twelfth Report’s complete explanation for (rather than description of) the First Allocation.

*102. The Receiver considers that its allocation of repayment of the Lender Debt is fair and equitable, given that, pursuant to the Credit Agreement, the Lenders would have no obligation to seek recourse first to either NIP or NPL and would, in fact, have the ability to fully recover the Lender Debt from either, subject only to the limited amount of the NPL guarantee.*

[...]

*104. The Receiver considers the allocations forming the basis of the Separate Corporation Analysis, for the purposes aforesaid, to be fair and equitable, and otherwise consistent with the basis on which the Receiver is to exercise its discretion and the principles on which such allocations are to be made.*<sup>109</sup>

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<sup>105</sup> Decision Below at pages 76-80, Schedule “A”, paragraphs 103-104, Proceeds Chart and notes

<sup>106</sup> Decision Below at page 77, Schedule “A”, Proceeds Chart, NPL column, “Accounts Receivable, Real Estate and Other Collections”

<sup>107</sup> Decision Below at page 77, Schedule “A”, Proceeds Chart, NPL column, “Distribution to Lenders”

<sup>108</sup> Decision Below at page 77, Schedule “A”, Proceeds Chart, NIP column, “Distribution to Lenders”

<sup>109</sup> Twelfth Report at paragraphs 101, 102, and 104 pages 34-35, emphasis added

42. The First Allocation was significant because it was the basis for the Receiver's successful argument *against* NPL having subrogated secured rights, and a key part of its argument *for* the substantive consolidation of NPL and its owner NEL (NPL could not possibly be insolvent if it held security over the millions held by the Receiver.) Indeed, the Court Below reproduced the Receiver's argument<sup>110</sup> almost verbatim as its conclusion on subrogation: "[s]ince I have accepted the Receiver's allocations and specifically the repayments to the Lenders have been allocated equally to NIP and NPL, I agree that neither NIP nor NPL can seek contribution from the other under the Act."<sup>111</sup>

43. Crucially, in the First Allocation the Receiver simply *presumed* that it had the Discretion in advance of the making of a substantive consolidation order.<sup>112</sup> When this presumption was accepted (without analysis) as dispositive, the Decision Below became the first in which a receiver was permitted to exercise such Discretion. This decision was incorrect in principle for two reasons. 1) There was no legal basis for the Discretion, and strong reasons to believe that such discretion *could not* exist. 2)

The effect of the discretionary acts and the Decision approving them was to disregard the separate legal personhood of NPL (an incident of which was exclusive legal title in the proceeds from the sale of its wholly-owned assets) on a basis, fairness, that

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<sup>110</sup> Twelfth Report at paragraph 116, page 41

<sup>111</sup> Decision Below at paragraph 113, emphasis added

<sup>112</sup> Twelfth Report at paragraph 104, page 35

has been repeatedly rejected as a justification for so doing.

44. Firstly: the *BIA* does not grant the Receiver the Discretion, and there was no previous case in which a receiver had been allowed to exercise such discretion. (The Receiver relied upon cases approving receivers' discretionary allocations of the *costs of receivership*, a fundamentally different matter.)<sup>113</sup> This is, no doubt, because basic legal principles weigh heavily against the Discretion being lawful. The appointment by the Court of a receiver does not alter title to the assets of the debtor. The receiver simply takes possession of these assets with authority to deal with them in accordance with the powers conferred by the Court (itself constrained by statute and authority). Where property is sold by the receiver, the proceeds of realization in the possession of the receiver take the place of the assets which were sold and become subject to the security interests of secured creditors. The entitlement to such proceeds is determined by the Court, if contested, on a motion for distribution.<sup>114</sup> It follows that a receiver is not entitled to do a preliminary "allocation" of those proceeds in a manner which does not respect legal title or separate corporate personhood, and to then present that allocation to a deferential Court for approval.

45. The Supreme Court of Canada has held that the Alberta Energy and Utilities Board lacked jurisdiction to allocate the proceeds from the sale of a public utility's

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<sup>113</sup> Decision Below at paragraph 65

<sup>114</sup> *Adelaide Capital Corp. v. St. Raphael's Nursing Homes Ltd.*, (1995) 42 C.B.R. (3d) 17 (Ont. Sup. Ct. – Commercial List), at paragraphs 55-56, cited for these principles in *Bankruptcy and Insolvency Law of Canada*, at § 12:20, "Sale of Assets by a Receiver and Manager"

(ATCO's) property *for any reason*, including equity and the public interest.<sup>115</sup> The governing legislation granted the Board the power to approve a sale, but was silent as to its power to deal with sale proceeds. The majority held that “[i]t would be absurd to allow the Board an unfettered discretion to attach any condition it wishes to an order it makes”;<sup>116</sup> that ATCO was correct in its submission that “[t]he property in question is as fully the private property of the owner of the utility as any other asset it owns” and so “any taking such as ordered by the Board is confiscatory”;<sup>117</sup> and that “[i]t is well established that [a] potentially confiscatory legislative provision ought to be construed cautiously so as not to strip interested parties of their rights without the clear intention of the legislation.”<sup>118</sup> A receiver appointed pursuant to the *BIA* has less authority than did the Energy and Utilities Board, as it must obtain Court approval before selling material assets. It cannot be the case that, with the *BIA* similarly silent about a receiver's discretion to allocate proceeds, a receiver nevertheless has *more* authority to perform an allocation than did the Board in *ATCO*.

46. Secondly: both the British Columbia Court of Appeal,<sup>119</sup> and the Court of Appeal for Ontario<sup>120</sup> have confirmed that a corporation's separate legal personality

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<sup>115</sup> *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, (“*ATCO*”), at paragraphs 31-34

<sup>116</sup> *ATCO*, at paragraph 46

<sup>117</sup> *ATCO*, at paragraph 69

<sup>118</sup> *ATCO*, at paragraph 79

<sup>119</sup> *Edgington v. Mulek Estate*, 2008 BCCA 505, at paragraphs 20-26, quoted in *Consbec Inc. v. Hollow Water Weri Construction Ltd.*, 2021 MBQB 32

<sup>120</sup> *Yaiguaje v. Chevron Corporation*, 2017 ONCA 741, at paragraph 50

cannot be set aside simply because doing so is “fair”. As stated by the British Columbia Court: “any argument to the effect this Court must disregard the separate legal personality of Westpark because a failure to do so will result in “unfairness” cannot stand.”<sup>121</sup> NPL and NEL are holding companies which are in receivership because they were unable to satisfy their guarantees when demand was made. The Lenders have now been completely satisfied. There was no basis for disregarding NPL’s legal personhood and giving its assets to NIP’s unsecured creditors.

47. The leading decision on the allocation of proceeds in receivership, *Re Nortel*, was similarly respectful of separate corporate personhood. In *Re Nortel*, Justice Newbould heard an extended trial respecting the cross-border liquidation of the assets of multiple corporations within the Nortel enterprise, and the proper allocation of those proceeds as among those entities (and thus their creditors). Newbould J. held that the proceeds (referred to as the “lockbox funds”), were the proceeds of the assets of the collective, not of assets belonging to specific entities.<sup>122</sup> Justice Newbould then held that the lockbox funds should be distributed *pro rata*, in accordance with the ratio of the respective debts of each estate,<sup>123</sup> because the lockbox funds represented the property of the collective: “no one Debtor Estate has any right to these funds. It cannot be said that these funds in whole or in part

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<sup>121</sup> *Edgington v. Mulek Estate*, 2008 BCCA 505, at paragraph 26

<sup>122</sup> *Re Nortel*, at paragraph 202 and 220

<sup>123</sup> *Re Nortel*, at paragraph 250

*belonged to any one Estate or that they constituted separate assets of two or more Estates that would be combined. Put another way, there would be no “wealth transfer” [...]”*<sup>124</sup> The import of *Re Nortel* is clear: since NPL’s real properties were owned by NPL alone, (rather than by a collective), the proceeds of the sales of those properties “*belonged*” to NPL’s estate: NPL had a “*right*” to those funds. (To the same effect is *Bloom Lake*, in which the Court approved an allocation of more than \$160 million in proceeds from the sales of assets belonging to a number of companies under CCAA protection on the basis that “[r]ealizations [...] would be allocated amongst specific assets and specific CCAA parties as set out in each transaction agreement”).<sup>125</sup> The Court Below departed from *Re Nortel* on the basis of its “*unique fact situation*”<sup>126</sup> and said that it did not “*assist the court with principles that apply in this case*” (on which more below).<sup>127</sup>

**(ii) The Acceptance of Mutually-Contradictory Allocations**

48. The First Allocation, which the Court Below accepted, relied upon, and incorporated as Schedule “A” to its Decision,<sup>128</sup> is contrary in its substance to a second allocation the Court relied upon elsewhere in its decision on *the same issues*.<sup>129</sup> In the First Allocation, *none* of the NPL Proceeds were used to repay the

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<sup>124</sup> *Re Nortel*, at paragraph 214

<sup>125</sup> *Arrangement relatif à Bloom Lake*, 2017 QCCS 3529, aff’d 2018 QCCA 551, application for leave to appeal dismissed 2019 CanLII 3746 (SCC), at paragraphs 5-7(a) and 37

<sup>126</sup> Decision Below at paragraph 72

<sup>127</sup> Decision Below at paragraph 73

<sup>128</sup> Decision Below at paragraphs 53, 56, 64, and 114 and Schedule “A”, pages 76-80

<sup>129</sup> Decision Below at paragraphs 53, 64, 76-78, 83, 85



“Receiver’s Borrowings”,<sup>130</sup> and \$14.192 million of the NPL Proceeds were paid by NPL as a “Distribution to Lenders”<sup>131</sup> or (elsewhere) as its “Contribution” to the satisfaction of the “Lender’s Debt” remaining *after* payment of the Receiver’s Borrowings and NI’s contribution.<sup>132</sup> Later in its discussion of the allocation and subrogation issues,<sup>133</sup> however, the Court Below adopted as correct a second allocation by the Receiver pursuant to which “*none of the NPL asset sale proceeds were used to repay the Credit Facility and [...] approximately \$11.9 million of the NPL asset sale proceeds were used to repay the Receiver’s Borrowings.*”<sup>134</sup> (This is hereinafter the “**Second Allocation**”).

49. The allocations cannot both be correct, yet both were employed by the Court Below to dismiss NPL’s claims that it had rights in, or flowing from, the NPL Proceeds. As set out above, the First Allocation was the basis for the dismissal of NPL’s claim to a subrogated (secured) position.<sup>135</sup> The Second Allocation was the basis for the dismissal of NPL’s claim that the proceeds from the sale of NPL’s properties belonged to NPL.

*[70] I disagree with the respondents that these authorities [primarily Re Nortel] assist to establish governing legal principles and specifically that*

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<sup>130</sup> Decision Below at Schedule “A”, page 78, chart, “Payment of Remaining Debt by Guarantors”. The Court Below observed that in this allocation, “the Receiver did not allocate Receiver’s Borrowings to any particular Debtor” (at paragraph 56(c)). If one includes the “Corporate Overhead” attributed to NPL in the amount paid to the Receiver’s Borrowings, NPL indirectly paid \$4,155,000 to those Borrowings: Schedule “A”, page 77, third column, “Receiver’s Borrowings”

<sup>131</sup> Decision Below at Schedule “A”, page 78, chart, “Payment of Remaining Debt by Guarantors”

<sup>132</sup> Decision Below at Page 79, “Debt Repayment Summary”

<sup>133</sup> Decision Below at paragraphs 74, 76 and 85

<sup>134</sup> Decision Below at paragraph 74

<sup>135</sup> Decision Below at paragraph 114”

*they support a finding that the sale proceeds of NPL assets belong to NPL alone. The respondents' submission is based on the incorrect assumption that all of the NPL asset sale proceeds in the amount of \$28.579 million was paid to the Lenders pursuant to the Credit Facility. As the Receiver points out, that is contrary to what actually happened.*

*[...]*

*[74] The Receiver points out in the Second Supplementary Twelfth Report what actually happened upon the sale of the assets and states that **none of the NPL asset sale proceeds were used to repay the Credit Facility and that approximately \$11.9 million of the NPL asset sale proceeds were used to repay the Receiver's Borrowings.** [...] I disagree with the position advanced by the respondents that the allocation involves any transfer of assets or proceeds as between NI, NIP and NPL.*

50. The logic in this passage is, respectfully, flawed. It appears that the Court Below has confused the First and Second Allocations, and the arguments thereupon. NPL had argued that the First Allocation transferred "*assets or proceeds*" between NPL and NIP because in that allocation it appeared that half the NPL Proceeds had been credited to NIP (as set out above). The Receiver had later argued that pursuant to the Second Allocation, NPL made payments only to the Receiver's Borrowings, that such payments were not payments further to NPL's Guarantee, and that such payments could not therefore entitle NPL to rights of subrogation. The Court Below accepted the Receiver's argument on the Second Allocation. However, that result could not mean that the NPL Proceeds did not belong to NPL: the issue decided was *the rights created by payment* of those funds, if any, rather than *ownership of the funds paid*. (Even in the Receiver's account of events, the relevant funds all came from the sale of NPL's assets.) In short, the Court Below erred in concluding that

the Second Allocation meant that NPL was incorrect to argue that “*the sale proceeds of NPL assets belong to NPL alone*”.<sup>136</sup>

**(iii) Payments toward the Obligations**

51. The decision that there was a legally meaningful distinction between an NPL payment to the “*Credit Facility*” (which could entitle NPL to rights in the NPL Proceeds) and a payment to the “*Receiver’s Borrowing Charge*” (which apparently could not) was contrary to the terms of the relevant contract, and in significant tension with one of the Court Below’s own holdings.

52. The Guarantee, pursuant to which NPL’s properties were sold by the Receiver and their proceeds remitted to the Lender, is for “*the due and punctual performance of all Obligations of each other Loan Party*”.<sup>137</sup> “Obligations” are defined so as to include “*interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws*”.<sup>138</sup> Collectively, these and a chain of further definitions (“*Loan Party*”,<sup>139</sup> “*Guarantor*”,<sup>140</sup> “*Limited Recourse Guarantors*”,<sup>141</sup> “*Canadian Holdings*”,<sup>142</sup> and “*Debtor Relief Laws*”<sup>143</sup>), as well as the

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<sup>136</sup> Decision Below at paragraph 70

<sup>137</sup> Credit Agreement, clause 11.01, page 120. This is subject to the limit on recourse.

<sup>138</sup> Credit Agreement, clause 1.01, page 29, emphasis added

<sup>139</sup> Credit Agreement, clause 1.01, page 28

<sup>140</sup> Credit Agreement, clause 1.01, page 24

<sup>141</sup> Credit Agreement, clause 1.01, page 28 and Credit Agreement, clause 11.05, page 122

<sup>142</sup> Credit Agreement, clause 1.01, page 6

<sup>143</sup> Credit Agreement, clause 1.01, page 12

terms of a debenture securing NPL's payment of the Obligations pursuant to its Guarantee,<sup>144</sup> (the "Debenture"), established the following. NPL guaranteed the repayment of Obligations, subject to a limit on recourse; Obligations included costs or expenses incurred after the commencement of a receivership under the *BIA*; among the security granted in the Debenture was the right to appoint a receiver; and the Debenture made the receiver's borrowings "*a charge upon the Property*",<sup>145</sup> to be paid to the Lender in priority to interest and principal due to the Lenders. The necessary result was that a payment to the Lender by NPL, be it characterized as a payment toward the Credit Facility or toward the Receiver's Borrowings, was the payment of an Obligation, and so a payment on the Guarantee, entitling NPL to whatever rights attended upon payments on the Guarantee.

53. The Court Below agreed that NPL had guaranteed the repayment of "*Borrowers' obligations*" including the costs of proceedings under Debtor Relief Laws,<sup>146</sup> but erred by failing to ascribe any significance to these facts. The Court instead moved on to a discussion of whether the Guarantee was limited to US \$20 million or to that sum plus costs.<sup>147</sup> As a result, the Court Below never decided the basic factual issue of how much NPL had paid toward its Guarantee, or explained the legal nature and results of payments made to the Receiver's Borrowing Charge.

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<sup>1444</sup> Debenture, clause 1, page 1

<sup>1455</sup> Debenture, clause 7

<sup>1466</sup> Decision Below at paragraph 90; see paragraphs 88-90 generally

<sup>1477</sup> Decision Below at paragraph 91-98

Stated differently, the Court Below nowhere measured NPL's rights according to its payments toward the Obligations, but instead measured them according to the Receiver's *characterization* of those payments, being the First and Second Allocations. This is to say that the Court Below did not enforce the Guarantee and the Debenture but the First and Second Allocations, which was a clear legal error.

*(iv) Set-off*

54. The Court Below concluded its discussion of subrogation by holding that “even if some of the Net Receivership Proceeds should be allocated to NPL, those funds are subject to claims of NPL's creditors which, in all probability, exceed the proceeds available to satisfy those claims.”<sup>148</sup> Stated plainly, the Court Below held that NIP<sup>149</sup> had a defence of set-off to NPL's claim for contribution further to the MLAA. Such a defence was not available, in law or on the facts, for the simple reason that through subrogation NPL would not be asserting its own rights against NIP, but those of the Lenders.<sup>150</sup>

55. The law is clear: the Court of Appeal for Ontario has held that in subrogation, set-off is not available, because the claims to be set-off are not in the same right: the debts are not mutual in the manner required for set-off.<sup>151</sup> The facts are similarly

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<sup>148</sup> Decision Below at paragraph 122

<sup>149</sup> Decision Below at paragraph 119(a)-(b)

<sup>150</sup> As the Court Below stated in paragraphs 103-104, “once a surety or a guarantor makes payment of a Borrower's debt, that person or entity becomes subrogated to the rights of the creditor as against the Borrower and any co-guarantor or surety ... A claim against a Co-Guarantor is limited to the proportion of the total debt for which each Co-Guarantor is justly liable.”

<sup>151</sup> *Colonial Furniture Co. (Ottawa) Ltd. v. Saul Tanner Realty Ltd.* (2001), 52 O.R. (3d) 539, (C.A.), cited in *Bankruptcy and Insolvency Law of Canada*, at G§36(18) “Subrogation of Claims”

clear: set-off against NPL's subrogated rights cannot occur pursuant to the terms of the Credit Agreement. Clause 10.22(b) of the Credit Agreement states that "*the obligations of each Loan Party...shall not be subject to any defence or setoff*",<sup>152</sup> clause 11.02 waives "*any other defence of any Loan Party... other than payment and performance in full of the Obligations*",<sup>153</sup> and clause 11.05 states that the liability of each Guarantor "*shall not be subject to any ... setoff*".<sup>154</sup> Therefore, as subrogation would cause NPL to step into the shoes of the Lenders, NPL would, on the terms of the Credit Agreement, be entitled to enforce those subrogated rights against the Borrowers and the Unlimited Guarantors (including NIP) without being subject to any set-off (or defense of any kind whatsoever.) Lastly, the rights that the Court Below held could be set off against NPL's subrogated rights would in fact be among the security assigned to NPL via subrogation. Clause 11.08(e) of the Guarantee states in part that "*[a]ll present and future monies payable by any Loan Party to any Guarantor [...] are assigned to the Agent for its benefit and for the ratable benefit of Lenders as security for such Guarantor's liability to the Agent*".<sup>155</sup> As each of NEL, NIP, NPL and the numbered companies were Guarantors, any money owed to any of those Guarantors by any other Guarantor was assigned to the Lenders as security for the indebtedness of that Guarantor. Hence,

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<sup>152</sup> Credit Agreement at pages 117-118

<sup>153</sup> Credit Agreement at pages 120-121

<sup>154</sup> Credit Agreement at pages 121

<sup>155</sup> Credit Agreement at pages 123

NIP assigned the receivables owed to it by NEL and NPL to the Lenders. As subrogation would entitle NPL to all the Lenders' security, NPL would be the assignee of the receivables owed to NIP by NPL and NEL. Therefore, those receivables could not, setting all other arguments aside, be available to NIP to set off against NPL's subrogated rights.

(v) *The Extent of the Guarantee*

56. The Court Below decided that NPL's Guarantee was unlimited on the basis that NPL had, in addition to pledging certain real property to a specified limit on recourse, pledged certain shares, and "*there is no such limited recourse to the pledged shares.*"<sup>156</sup> This was erroneous in fact. The Canadian Pledge Agreement executed by NPL and NEL as "Grantors" in favour of the Lenders (the "**Share Pledge**") secured payment of the Guarantee, rather than payment of an amount *exceeding* the Guarantee. The Share Pledge stated on its first page, in its "Preliminary Statement", that it was being entered into "*to secure the Secured Obligations [...] of such Grantor.*"<sup>157</sup> The error was significant because it caused the Court Below to hold that "*NPL and NEL both participate as 'co-sureties' on the same proportionate basis as the other Guarantors of the Credit Facility*",<sup>158</sup> which

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<sup>156</sup> Decision Below at paragraph 112

<sup>157</sup> There was a similar statement in section 2.2, "Pledge of Pledged Securities". The relevant section of the "Secured Obligations" definition read: "*all Obligations and other amounts now or subsequently owing by the Grantor, including by way of Guarantee or indemnity*".

<sup>158</sup> Decision Below at paragraph 112

in turn was employed as support for the conclusion that “*neither NIP nor NPL can seek contribution from the other under the [MLAA]*”.<sup>159</sup>

#### **ISSUE FOUR: BANKRUPTCY**

57. The Court Below held that if it had erred in denying NPL subrogated rights to the Net Receivership Proceeds, “*the competing claims to the Net Receivership Proceeds are best left to be resolved and determined during a bankruptcy proceeding.*”<sup>160</sup> It then granted the Receiver leave “*to file applications for bankruptcy orders in this court in relation to NPL and NEL, on a basis that reflects the Common Assets and the Common Liabilities and the substantive consolidation of the estates of the Debtors*”.<sup>161</sup>

58. The granting of leave on these terms, in this context, was erroneous in three ways. (1) The substantive consolidation of the estates makes impossible the competition for the Net Receivership Proceeds which the Court Below cited as a reason for denying NPL rights of subrogation. (2) It denies NPL and NEL’s existence as separate corporate persons: “*[i]n effect, under substantive consolidation, claims of creditors against separate debtors instantly become claims against a single entity*”,<sup>162</sup> and the BIA simply does not contemplate the situation created by the Decision Below (seven bankrupt estates and two non-bankrupt

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<sup>159</sup> Decision Below at paragraphs 113-114

<sup>160</sup> Decision Below at paragraph 122

<sup>161</sup> Decision Below at paragraph 130

<sup>162</sup> *Re Nortel* at paragraph 213



companies, all simultaneously possessing the same assets and liable for the same debts.) (3) No cogent explanation was provided for this novel approach. Although the Court in *Ladacor*<sup>163</sup> assigned each of the consolidated companies into bankruptcy, it made the order because “[w]hat is left with the three debtor corporations is a paucity of assets and a mountain of claims against them.”<sup>164</sup> That is not the case here: NPL is solvent even if rights of subrogation are not factored in, especially as the Receiver has now reduced its estimate of the company’s tax liability to three million dollars.<sup>165</sup> NPL’s owner, NEL, benefits from this solvency. It is the other respondents that were subject to “a mountain of claims”, and they did not object to the making of a consolidated bankruptcy order.

#### **ISSUE FIVE: LEGAL FEES RELATING TO CRIMINAL CHARGES**

59. The Court below erred in law and made palpable and overriding errors of fact in finding that a portion of the Net Receivership Proceeds held pursuant to the NPL Proceeds Preservation Agreement cannot be used to fund legal fees and disbursements incurred to defend Mr. Nygard in connection with criminal charges laid against him. In so doing, the Court Below improperly decided it was not in NPL’s best interests that Mr. Nygard be acquitted of the criminal charges,

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<sup>163</sup> *Bank of Montreal v. Ladacor AMS Ltd.*, 2019 ABQB 985

<sup>164</sup> *Ladacor*, at paragraph 143

<sup>165</sup> Supplementary Twelfth Report at paragraph 38, page 7

notwithstanding the possibility that claimants against Mr. Nygard might someday try to assert rights against NPL's assets.

**TIME FOR ARGUMENT**

60. The Appellants estimate that 2.5 hours will be required for oral argument on their behalf.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this \_\_\_\_ day of June, 2022.

**LEVENE TADMAN GOLUB LC**

Per: \_\_\_\_\_  
**Wayne Onchulenko**  
Lawyer for the (Respondents) Appellants

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**FRED TAYAR & ASSOCIATES PC**

Per: \_\_\_\_\_  
**Colby Linthwaite**  
Lawyer for the (Respondents) Appellants

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This is Exhibit "Y" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "D. M. M. M.", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      **THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C.,  
c.B-3, AS AMENDED, AND SECTION 55 OF THE  
COURT OF QUEEN'S BENCH ACT, C.C.S.M., C.  
C280, AS AMENDED**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

**(Applicant) Respondent,**

**– and –**

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

**(Respondents) Appellants.**

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**FACTUM OF THE (RESPONDENTS) APPELLANTS**

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**File No. 113885/WMO**

"FILED  
COURT OF APPEAL  
AUG 17 2022  
LAW COURT  
WINNIPEG"

**IN THE COURT OF APPEAL**  
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**FACTUM OF THE (RESPONDENTS) APPELLANTS**

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## PART I: INTRODUCTION

1. This is an appeal from an order of the court of Queen's Bench (the "**Court Below**") substantively consolidating the appellants, Nygard Properties Ltd. ("**NPL**") and Nygard Enterprises Ltd. ("**NEL**"), with the estates of the seven other respondent companies, which are now bankrupt, such that the assets and liabilities of the nine companies are treated as common assets and liabilities. The order under appeal also granted the companies' receiver leave to apply for bankruptcy orders in respect of NPL and NEL on the basis of the substantive consolidation.

2. The order was the result of a series of discrete legal errors, each of them prejudicial to NPL and NEL. In summary:

- a) The Court Below did not attempt to determine if the substantive consolidation of NPL and NEL was available in law. It was not, and so the Court Below lacked the jurisdiction to make such an order.
- b) The central decision, that NPL and NEL should be substantively consolidated with the other respondents *even if* NPL was a secured creditor of those respondents, was contrary to authority and basic principles and made without reviewable analysis.
- c) The decision that the "elements of consolidation" were present was made on the basis of extricable legal errors.

d) The issue of subrogation was decided against the appellants on the basis of four legal errors.

i. The Court Below held that, prior to the making of an order for substantive consolidation, the Receiver had the discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations, provided that the allocation was "*fair and reasonable*". This was erroneous in two ways.

a) It was wrong in principle. The issue was not the equities, but whether the Receiver was legally able to perform the allocation. It was not.

b) It was a novel holding, and it was made without analysis.

ii. It accepted without analysis both of two mutually-contradictory allocations done by the Receiver, and applied both to deny NPL its rights.

iii. It applied a distinction between "payments to the Credit Facility" and "payments to the Receiver's Borrowing Charge" that was contrary to the terms of the relevant contract.

iv. It held that, if NPL did have subrogated rights to certain funds, "*those funds are subject to claims of NPL's creditors*". This was the

application of a set-off defence to NPL's subrogated rights. Such a defence is not available in law.

- e) Without analysis, the Court Below granted the Receiver leave to apply for the bankruptcy of NPL and NEL on a basis (their liability for the consolidated debts of the other Debtors) contrary to their status as separate corporate persons and unknown to the *Bankruptcy and Insolvency Act*.<sup>1</sup>

3. The decision below<sup>2</sup> should be set aside in respect of NPL and NEL.

## **PART II: THE FACTS**

4. On March 18, 2020, the Court Below appointed Richter Advisory Group Inc. receiver (the "Receiver") of Nygård Holdings (USA) Limited, ("Holdings") Nygard Inc., ("NI"), Fashion Ventures, Inc., ("Ventures"), Nygard NY Retail, LLC, ("Retail"), NEL, Nygard International Partnership, ("NIP"), NPL, 4093879 Canada Ltd. and 4093887 Canada Ltd. The Appointment Order was granted pursuant to an application made by White Oak Commercial Finance, LLC (as agent for itself and Second Avenue Capital Partners, LLC, (together the "Lenders")) pursuant to its rights under a credit agreement dated December 30, 2019 (the "Credit Agreement") and certain security agreements between the Lenders and the respondents.<sup>3</sup>

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<sup>1</sup> RSC 1985, c B-3 (the "BIA")

<sup>2</sup> *White Oak Commercial Finance, LLC v Nygard Holdings et al.*, 2022 MBQB 48 (the "Decision Below") Appeal Book - Tab 7, pages 276 - 362

<sup>3</sup> Decision Below at paragraphs 1-2, Appeal Book - Tab 7, page 277; Twelfth Report of the Receiver dated June 4, 2021, (the "Twelfth Report"), at paragraphs 1-3, Appeal Book - Tab 5, page 181



5. NPL is a real-estate holding company. It is wholly owned by NEL, itself a holding company.<sup>4</sup> NPL and NEL were subject to the Appointment Order because they were limited guarantors of the debt owed by the borrower companies (Holdings, Ventures, NI, and Retail) to the Lenders, and were unable to satisfy their guarantees. Recourse to NPL was limited to assets specifically secured to a realized value, after all costs and expenses, including enforcement costs, of US \$20 million<sup>5</sup> (the “Guarantee”). Recourse to NEL was limited to shares it held in the respondent 4093879 Canada Ltd.<sup>6</sup> There has been no effort to realize upon those shares. The Lenders had full recourse against NIP, 879 and 887. Neither NPL nor NEL guaranteed the payment of debts owed by the other respondents to their respective unsecured creditors.

6. The Receiver sold a number of real properties wholly owned by NPL; the aggregate proceeds were \$28,579,000 (the “NPL Proceeds”).<sup>7</sup> A total of approximately \$66 million was paid by the Receiver to the Lenders,<sup>8</sup> which satisfied them in full.<sup>9</sup> After paying the Lenders, the Receiver had approximately \$12.8

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<sup>4</sup> Corporate Organization Chart– Updated, Appendix E to the Twelfth Report, Appeal Book – Tab 5, pages 260-261

<sup>5</sup> Credit Agreement, clause 11.05, Appeal Book – Tab 1, pages 67-68; Twelfth Report at paragraph 100, Appeal Book – Tab 5, page 214

<sup>6</sup> Credit Agreement, clause 1.01, “Canadian Holdings” and “Limited Recourse Guarantors”, Appeal Book – Tab 1, pages 17 and 49; clause 11.09, “Guarantee”, Appeal Book – Tab 1, page 44; section 2.2 and Exhibit C of the Canadian Pledge Agreement dated as of December 30, 2019, Exhibit “F” to the Dean Affidavit, Appeal Book – Tab 1, page 74

<sup>7</sup> Twelfth Report, at page 36, “Nygard Group – Separate Corporation Analysis” NPL column, appended to the Decision Below as part of Schedule “A” (the “Proceeds Chart”). Appeal Book – Tab 7, pages 351-353

<sup>8</sup> Decision Below at paragraph 5, Appeal Book – Tab 7, page 278

<sup>9</sup> Decision Below at paragraph 5, Appeal Book – Tab 7, page 278; Twelfth Report at paragraph 83(d), Appeal Book, – Tab 5, page 208

million on hand,<sup>10</sup> of which approximately \$9.9 million will remain after the payment of the receivership's expenses (the "Net Receivership Proceeds").<sup>11</sup>

7. NPL and NEL were the only respondents to oppose the Receiver's motion for substantive consolidation, and for leave to take proceedings in bankruptcy.<sup>12</sup>

### **PART III: THE ISSUES**

8. The issues before this Honourable Court are as follows.

1. Did the Court err in law by ordering the substantive consolidation of NPL and NEL with the other respondents?
2. Did the Court err in law in deciding that NPL did not possess rights of subrogation pursuant to the *Mercantile Law Amendment Act*?<sup>13</sup>
3. Did the Court err in law in granting the Receiver leave to apply for bankruptcy orders in respect of NPL and NEL on the basis of their liability for the consolidated debts of the other respondents?

10. This Honourable Court has the jurisdiction to decide these issues pursuant to section 25.1(1) of the *Court of Appeal Act*<sup>14</sup> and section 183 of the *BIA*<sup>15</sup>. The issues

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<sup>10</sup> Decision Below at paragraph 5, Appeal Book - Tab 7, page 278

<sup>11</sup> Twelfth Report at paragraph 86(b), Appeal Book - Tab 5, page 209

<sup>12</sup> Decision Below at paragraphs 12-13, Appeal Book - Tab 7, page 281

<sup>13</sup> C.C.S.M. c. M120 (the "MLAA"), Appellant's Authorities, Tab 1

<sup>14</sup> C.C.S.M. c. C240, Appellant's Authorities, Tab 2

<sup>15</sup> RSC 1985, c B-3 (the "BIA"), Appellant's Authorities, Tab 3

are reviewable on a correctness standard, save for one finding of fact relevant to issue three, which is reviewable on a palpable and overriding error standard.<sup>16</sup>

## **PART IV: ARGUMENT**

### **ISSUE ONE: SUBSTANTIVE CONSOLIDATION**

#### **(i) *Substantive Consolidation Generally***

9. In a substantive consolidation, a number of affiliated legal entities, typically corporations, are treated as if they were one entity, resulting in the assets of the various debtors being pooled to create a common fund out of which claims of creditors of all the debtors are satisfied.<sup>17</sup> Substantive consolidation is an extraordinary remedy primarily because courts are loath to prejudice one creditor in order to increase the return for others.<sup>18</sup>

10. For substantive consolidation to be available, each of the entities proposed to be consolidated must be insolvent or bankrupt: the Court cannot consolidate a solvent company with insolvent companies. This is because the Court's jurisdiction to make a such an order comes from either the *BIA* or the *Companies' Creditors*

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<sup>16</sup> *Housen v. Nikolaisen*, 2002 SCC 33, at paragraphs 1, 8, 10, 25 and 36-37. Appellant's Authorities, Tab 4

<sup>17</sup> *Re Redstone Investment Corp. (Receiver of)*, 2016 ONSC 4453 ("*Redstone*") at paragraph 8, Appellant's Authorities, Tab 5; see also *Re Nortel Networks Corp.*, 2015 ONSC 2987 ("*Re Nortel*"), Appellant's Authorities, Tab 6, leave to appeal refused 2016 ONCA 332, Appellant's Authorities, Tab 7, application for leave to appeal filed (and discontinued) 2016 CarswellOnt 14117, at paragraph 213

<sup>18</sup> *Redstone* at paragraph 74; *Northland Properties Ltd., Re*, 1988 CanLII 2924, (BC SC) at paragraph 39, Appellant's Authorities, Tab 8; *Northland Properties Ltd., Re*, 1988 CanLII 3250 (BC SC), Appellant's Authorities, Tab 9, ("*Re Northland*"), aff'd *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.*, 1989 CanLII 2672 (BC CA), at paragraphs 49-50 and 69-71, Appellant's Authorities, Tab 10; *Bacic v Millennium Educational* 2014 ONSC 5875 ("*Bacic*") at paragraph 112, Appellant's Authorities, Tab 11; *Ashley v Marlow Group* 2006 CanLII 31307 (ONSC) ("*Ashley*") at paragraph 78, Appellant's Authorities, Tab 12; *JP Capital Corp. (Re)* (1995), 31 C.B.R. (3d) 102 ("*JP Capital*") at paragraph 18, Appellant's Authorities, Tab 13

*Arrangement Act*,<sup>19</sup> both of which were promulgated pursuant to the federal government's jurisdiction to enact laws in relation to "*bankruptcy and insolvency*".<sup>20</sup>

Accordingly, in each of the Canadian cases the Court either describes the jurisdiction to make a consolidation order as relating to bankrupt estates,<sup>21</sup> discusses jurisdiction within the context of corporate bankruptcies,<sup>22</sup> or cites its jurisdiction under the *CCAA* as making a substantive consolidation order possible.<sup>23</sup>

11. This is a *BIA* case. The *BIA* applies to debtors, their creditors, and to court-appointed officers such as trustees in bankruptcy and receivers. Section 2 defines "*debtor*" as including an insolvent person and, where the context requires, a bankrupt. An "*insolvent person*" is defined, in part, as a person who is not bankrupt who (a) is for any reason unable to meet his obligations as they generally become due, or (b) has ceased paying his current obligations in the ordinary course of business as they generally become due, or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and

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<sup>19</sup> RSC 1985, c C-36 (the "*CCAA*")

<sup>20</sup> Houlden, Morawetz, and Sarra, *Bankruptcy and Insolvency Law of Canada*, Fourth Edition, ("*Bankruptcy and Insolvency Law of Canada*,") at §1:11, Constitutionality of the *Bankruptcy and Insolvency Act*, Appellant's Authorities, Tab 37; see also *A.G. Can. v. A.G. Que.*, 1934 CanLII 72 (SCC)

<sup>21</sup> *Redstone*, at paragraph 8; *Bacic*, at paragraph 107; *A. & F. Baillargeon Express Inc., Re*, (1993) 27 C.B.R. (3d) 36 (Que. Sup. Ct.) ("*Baillargeon*"), at paragraph 23, Appellant's Authorities, Tab 14; *Envision Engineering & Contracting Inc (Re)*, 2014 ABQB 474, ("*Envision*"), at paragraph 17, Appellant's Authorities, Tab 15; *Ashley*, at paragraphs 69-71

<sup>22</sup> *JP Capital*, at pages 1-5

<sup>23</sup> *Re Nortel*, at paragraph 216; *Re Northland*, at paragraphs 32-34

accruing due. Someone who is solvent cannot become bankrupt,<sup>24</sup> make a proposal (or have a proposal made for them by a receiver),<sup>25</sup> or be the subject of a receivership order.<sup>26</sup>

12. The Supreme Court of Canada has held that a court exercising *BIA* jurisdiction in a receivership cannot make an order which exceeds the mandate granted by the *Act*.<sup>27</sup> That mandate is limited: the *BIA* “*is not intended to extinguish legally protected rights unless those rights are in conflict with the [Act]*”,<sup>28</sup> and, in the absence of explicit statutory language, the *BIA* cannot be interpreted “*to permit interference with all rights which, though protected by law, represent an inconvenience to the bankruptcy process*”.<sup>29</sup>

13. There is no “*explicit statutory language*” in the *BIA* permitting the substantive consolidation of a solvent company with insolvent companies. No Canadian court has ever held that a solvent company may be included within a substantive consolidation order.<sup>30</sup>

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<sup>24</sup> *Kormos v. Fast*, 2019 ONCA 430 at paragraphs 9-10, Appellant’s Authorities, Tab 16

<sup>25</sup> *BIA*, s. 50(1), Appellant’s Authorities, Tab 3

<sup>26</sup> *BIA*, s. 243(1), Appellant’s Authorities, Tab 3

<sup>27</sup> *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, 2006 SCC 35 (“*GMAC*”), Appellant’s Authorities, Tab 17

<sup>28</sup> *GMAC*, at paragraph 47

<sup>29</sup> *GMAC*, at paragraph 51. The only material difference between section *BIA* 47(2), discussed in *GMAC*, and the provision pursuant to which the Receiver was appointed, section 243, is that section 47(2) deals with the Court’s authority to supervise an interim receiver and section 243 with its supervision of receivers generally.

<sup>30</sup> In *Bacic*, (at paragraph 117), *Baillargeon*, (at paragraph 1) and *Envision*, (at paragraph 1), the consolidated companies were bankrupt. In *Ashley*, (at paragraphs 69-71), and *J.P. Capital*, (at pages 1-5), in which consolidation orders were not made, the companies were bankrupt. In *Redstone*, in which a consolidation order was not made, two of the three relevant companies were bankrupt and the third was insolvent and in receivership (at paragraph 11). In *Re Nortel*, in which a consolidation order was not made, the US companies were bankrupt, and the Canadian companies were insolvent and had been liquidated while under *CCAA* protection (at paragraphs 2-3). In *Re Northland*, the

***(ii) NPL's Solvency***

14. The Receiver sought a substantive consolidation primarily for the purpose of making NPL's assets available to the unsecured creditors of NIP and NI.<sup>31</sup> (Again, NPL had not guaranteed payment of NIP or NI's unsecured debt.) The Receiver did not advise the Court that NPL was insolvent; the evidence was that NPL was solvent.

15. The Receiver reported that "*NPL is estimated to have approximately \$1.5 million remaining after payment of known direct liabilities*".<sup>32</sup> This estimate was predicated upon NPL owing \$4.978 million to the Canada Revenue Agency,<sup>33</sup> (NPL's single third-party creditor), which estimate was subsequently reduced by the Receiver to \$3 million,<sup>34</sup> with the result that at the time of the hearing NPL had assets of a value exceeding its liabilities by \$3.5 million, making NPL solvent pursuant to the third of the tests in the BIA definition of "*insolvent person*", above. The Receiver also reported that "*each of the Debtors other than NPL is insolvent*".<sup>35</sup>

16. Further, instead of seeking leave to make applications for bankruptcy orders in accordance with the BIA (a creditor asserts that a debtor owes a debt of a thousand

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companies were insolvent at a 2:1 ratio of debts to liabilities (see *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.*, 1989 CanLII 2672 (BC CA) at paragraph 3).

<sup>31</sup> Ninth Report at paragraph 120, Appeal Book – Tab 4, page 1175; Twelfth Report at paragraph 198(b), Appeal Book – Tab 7, page 252

<sup>32</sup> Decision Below, Schedule "A", Appeal Book – Tab 7, page 362

<sup>33</sup> Decision Below, Schedule "A", (Note 1, "NPL Tax Liability"), Appeal Book – Tab 7, pages 361, 362

<sup>34</sup> Decision Below at paragraph 6, Appeal Book – Tab 7, page 278

<sup>35</sup> Twelfth Report at paragraph 197(a)(ii), emphasis added; there is a similar statement in paragraph 208, Appeal Book – Tab 5, pages 251 and 255; see also the Decision Below at Schedule "A", Appeal Book – Tab 7, page 362

dollars *to the creditor*),<sup>36</sup> the Receiver sought and received leave to “*file applications...for bankruptcy orders in relation to the Debtors NPL and NEL, on [a] basis that reflects the common liabilities*” of the nine respondent companies.<sup>37</sup> This was the Receiver tacitly admitting that it could obtain bankruptcy orders against NPL and NEL only if they were first made responsible for NIP’s and NI’s debts.

17. The Receiver tried to qualify the above concessions with speculation: that NPL might have unknown creditors<sup>38</sup> (which had not surfaced 21 months into a highly-publicized receivership), and that a hypothetical new allocation of receivership expenses (one *other* than the allocation the Receiver had chosen to put before the Court) might render NPL insolvent,<sup>39</sup> but this was *only* speculation, which should have been disregarded by the Court Below.

### ***The Decision Below***

#### ***(i) Solvency***

18. The Court Below did not address NPL’s solvency during its discussion of substantive consolidation. Instead, the Court Below held that *even if* NPL was a secured creditor of the other respondents, substantive consolidation was appropriate because it was “*fair and reasonable*” that unsecured creditors of NIP and NI be paid

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<sup>36</sup> BIA, section 43(1), Appellant’s Authorities, Tab 3

<sup>37</sup> Decision Below at paragraph 9(e), emphasis added, Appeal Book – Tab 7, page 280

<sup>38</sup> Twelfth Report at paragraph 197(a)(ii), Appeal Book – Tab 5, page 251; Second Supplementary Twelfth Report at paragraph 61(d), quoted in the Decision Below at paragraph 119, Appeal Book – Tab 7, pages 333-334

<sup>39</sup> Twelfth Report at paragraph 197(a)(ii), Appeal Book – Tab 5, page 251

from NPL's assets, or from assets subject to NPL's security. The following are the passages upon which the Decision Below turned.

*If I accept NPL's submission that it is a secured creditor and has a priority interest in the Net Receivership Proceeds then I agree that NPL may be prejudiced as a result of a substantive consolidation order. The prejudice that may be suffered by NPL, and its parent corporation NEL, must be weighed against the claims of the employees, landlords, suppliers and other vendors, gift card purchasers and taxing authorities who are owed debts by NIP, NI and other Debtors who are economically advantaged by substantive consolidation of the Debtors for creditor purposes.*

[...]

*Based on the recommendation of the Receiver, I agree that it is fair and reasonable to substantively consolidate the Debtors for the purpose of addressing claims of all creditors and that the overall benefit to the stakeholders arising from such a consolidation outweighs the prejudice to any particular creditor.*<sup>40</sup>

19. The Court Below erred in law by failing to appreciate that substantive consolidation is available *only* once the condition precedent of the uniform insolvency of the relevant entities has been satisfied, thereby granting the court the authority to consolidate. This was a failure to consider a required element of the legal test,<sup>41</sup> a failure to turn attention to the underlying legal issues,<sup>42</sup> or a failure to conduct the correct inquiry.<sup>43</sup> The Court Below never attempted to determine whether NPL, understood (as it necessarily must be) as a separate corporate person,

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<sup>40</sup> Decision Below, at paragraphs 43(b) and 47, emphasis added, Appeal Book – Tab 7, pages 209, 301

<sup>41</sup> *Deslaurier Custom Cabinets Inc. v 1728106 Ontario Inc.*, 2017 ONCA 293 (“*Deslaurier*”) at paragraph 55; see also paragraphs 66 and 68, Appellant’s Authorities, Tab 18

<sup>42</sup> *Newfoundland and Labrador v Chiasson*, 2020 NLCA 28 (“*Chaisson*”) at paragraph 13; see also paragraphs 20-23, Appellant’s Authorities, Tab 19

<sup>43</sup> *Pirani v. Pirani*, 2022 BCCA 65, (“*Pirani*”), at paragraph 111, Appellant’s Authorities, Tab 20; *Deslaurier* at paragraph 66; *Chiasson* at paragraphs 16, 20, and 23



was solvent or insolvent as at the date of the hearing. The result was that the condition precedent of uniform insolvency was never satisfied, and the Court was without authority to make the order sought.

20. The failure to explain how a solvent company can be substantively consolidated with insolvent companies was a separate legal error.<sup>44</sup> While there is a brief discussion of NPL's solvency in the Reasons, this occurs some 78 paragraphs after the holding of substantive consolidation, and does not explain that holding, as the Court Below is clear that one is predicated upon the other: "*I accept that NPL and NEL are insolvent on a consolidated basis*".<sup>45</sup>

(ii) *Security*

21. The Court Below treated the possible elimination of NPL's security over the companies with which it would be consolidated as simply "*prejudice [that] must be weighed against the prejudice of all of the other creditors of the respondents*".<sup>46</sup> This was legally erroneous: implicit in it is the novel conclusion that the Court may eliminate security held by A (NPL) over B (NIP) in order to allow B's unsecured creditors access to A's assets, even though A had not guaranteed payment of B's unsecured debts. Security is not so meaningless: this Court has held that when the sale of assets by a receiver produces a shortfall, "*the secured creditors are the only*

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<sup>44</sup> *R. v. Sheppard*, 2002 SCC 26, at paragraph 46, Appellant's Authorities, Tab 21; see also *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, at paragraph 101, Appellant's Authorities, Tab 22

<sup>45</sup> Decision Below, at paragraph 126, emphasis added, Appeal Book – Tab 7, page 336

<sup>46</sup> Decision Below, at paragraph 44, Appeal Book – Tab 7, page 300

*parties with a material and direct commercial interest in the proceeds” and that as a result “it was reasonable for the Receiver not to take into account the portion of the offer dealing with unsecured creditors.”<sup>47</sup>*

22. The Court Below led itself into this error by misstating the applicable law: *“Courts in both the US and Canada have found that orders of substantive consolidation are an extraordinary remedy, based in part on the fact that secured creditors may be prejudiced in order to increase the overall return to other creditors, including unsecured creditors.”<sup>48</sup>* In reality, the Decision Below was the first in Canada in which a (hypothetically) secured creditor was prejudiced *for the benefit of unsecured creditors*.<sup>49</sup> Although the order sought in *Redstone* would have eliminated a secured position, that motion was dismissed in large part because of this result.<sup>50</sup>

23. The Court Below failed to acknowledge that its decision to eliminate NPL’s (hypothetical) security was contrary to the extant jurisprudence. Rather, it attempted

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<sup>47</sup> *Royal Bank of Canada v Keller & Sons*, 2016 MBCA 46, at paragraph 15, emphasis added, Appellant’s Authorities, Tab 23

<sup>48</sup> Decision Below, at paragraph 29, emphasis added, Appeal Book – Tab 7, page 291

<sup>49</sup> The following are the cases in which substantial consolidation was ordered: *Re Northland* (the consolidation maintained the secured positions and their relative priority, and the contest was *between* secured creditors (1989 CanLII 2672 (BC CA) at paragraph 11)); *GE Canada Finance Holding Company* (the contest was between one secured creditor, General Electric, and the other creditors; GE’s security was not compromised for the benefit of the unsecured creditors. (*Ge Canada Finance Holding Company (Re)*, 2008 NBOB 144, at paragraphs 57-58)) Appellant’s Authorities, tab 24; *Baillargeon* (the Court held that the secured creditors should realize the maximum on their claims, and that this could be most effectively achieved through consolidation (at paragraph 17)); *Envision* (the only creditor with a prospect of recovery was the senior secured, and consolidation was therefore expedient (at paragraphs 5 and 15)); *PSINet* (the secured creditors were not affected by the consolidation (*PSINet Ltd., Re*, (2002), 33 C.B.R. (4th) 284 (Ont. Sup. Ct.), at paragraph 4), Appellant’s Authorities, Tab 25; and *Bacic* (there were no secured creditors).

<sup>50</sup> *Redstone*, at paragraphs 88 and 90

to distinguish *Redstone* on a legally erroneous basis: *Redstone* refers to “third party investors/creditors who would have suffered a significant financial prejudice”, whereas “[i]n this case, the alleged significant financial prejudice is being suffered by one of the affiliated corporations within the Nygard Group of Companies”.<sup>51</sup> The error in this passage is clear. If NPL was secured, it was due to rights of subrogation granted by the *MLAA*. This would mean that NPL “is entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding”.<sup>52</sup> The Court Below knew this: elsewhere in its Reasons, it quoted the relevant section of the *MLAA* and accurate commentary on its meaning.<sup>53</sup> The Court Below thus distinguished *Redstone* due to a distinction between “third-party” and “affiliated” creditors which was contrary to the governing statute. *Redstone* applies squarely, and the result should be the same.

24. The Court Below’s later discussion of NPL’s claim to subrogated status does not support the substantive consolidation decision, as the Court Below held that that decision would have been the same even if NPL was secured.<sup>54</sup>

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<sup>51</sup> Decision Below, at paragraph 44, emphasis added, Appeal Book – Tab 7, page 300

<sup>52</sup> *MLAA*, section 2, Appellant’s Authorities, Tab 1

<sup>53</sup> Decision Below, at paragraphs 103-05, Appeal Book – Tab 7, pages 323-325

<sup>54</sup> Decision Below, at paragraph 44, Appeal Book – Tab 7, page 300

**(iii) The Elements of Consolidation**

25. The decision of the Court Below respecting six of the seven elements of consolidation was either based upon a legal error or departed from *Redstone*, the leading precedent, without articulating cogent reasons for doing so, which was a legal error.<sup>55</sup> The six elements should have weighed against consolidation.

**(a) Difficulty in Segregating Assets**

26. The Court Below erred in law by treating a possible debt claim against NPL by NIP as an asset of NIP's that was not segregated from NPL's assets. NPL, the Court found, "*held title to assets that can be segregated from the assets of the other respondents*", but "*those assets cannot readily be 'segregated' from the substantial investments in those properties and costs thereof being borne by NIP.*"<sup>56</sup> In *Redstone*, to the contrary, it was held that a debt owed by one company in the corporate group (RIC) to another (RCC) was "*not co-mingled with any assets of RIC or RMS [the third company in the group]*".<sup>57</sup>

**(b) The Presence of Consolidated Financial Statements**

27. In *Redstone*, it was held that consolidation should not occur in part because financial statements had been prepared on an entity-by-entity basis.<sup>58</sup> NPL and NEL

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<sup>55</sup> *Canada (Citizenship and Immigration) v. Kassab*, 2020 FCA 110, ("*Kassab*") at paragraphs 35-36, Appellant's Authorities, Tab 26

<sup>56</sup> Decision Below, at paragraph 32, Appeal Book – Tab 7, page 292

<sup>57</sup> *Redstone*, at paragraph 82

<sup>58</sup> *Redstone*, at paragraph 81 and 90

had separate audited financial statements and so, as in *Redstone*, this element should have weighed heavily against consolidation. However, without offering reasons for so doing, the Court Below discounted the element, (“*it is not a significant factor*”),<sup>59</sup> which was an error.<sup>60</sup>

**(c) Co-mingling of Assets and Business Functions**

28. The issue here was not whether the assets and business functions of “*the Debtors*” were commingled, but whether the assets and business functions of NPL and NEL had been commingled with those of the other companies. The Court Below did not analyze or decide that issue: its discussion<sup>61</sup> is about undifferentiated “*Debtors*”. The Court Below did hold that “*NIP advanced substantial funds or paid specific amounts in relation to the development and maintenance of NPL’s real property assets*”,<sup>62</sup> but this is a repetition of its erroneous conflation of debt claims with non-segregated (commingled) assets. Further, most of the commingling cited by the Court Below was also present in *Redstone*,<sup>63</sup> and yet the result in this case differed, without the Court Below offering a defence of the difference.

**(d) Unity of Interests in Ownership**

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<sup>59</sup> Decision Below at paragraph 33, emphasis added, Appeal Book – Tab 7, page 293

<sup>60</sup> *Kassab*, 2020 FCA 10, at paragraphs 35–36

<sup>61</sup> Decision Below at paragraph 36, Appeal Book – Tab 7, page 294

<sup>62</sup> Decision Below at paragraph 36(viii), Appeal Book – Tab 7, page 295

<sup>63</sup> *Redstone*, at paragraphs 56 and 58

29. The Court Below decided this element in favour of consolidation because Peter Nygard “*had general authority and direction over all of the Debtors.*”<sup>64</sup> Such is not the test. In *Redstone*, a Mr. So had general authority and direction over the relevant companies,<sup>65</sup> but the Court nevertheless made its decision based on *legal* ownership, and held that there was no unity of interest.<sup>66</sup> The Court Below did not explain its departure from the guiding precedent.

***(e) Existence of Inter-corporate Loan Guarantees***

30. The Court Below correctly observed that NPL had executed a limited Guarantee of the Credit Agreement, but *did not* observe that that Guarantee had been satisfied in full, and that neither NPL nor NEL had any outstanding guarantees of the other respondents’ debts. Instead, the Court Below decided the issue by repeatedly conflating intercorporate loan *guarantees* with intercorporate loans, a clear legal error.<sup>67</sup>

***(f) Transfer of Assets Without Observing Corporate Formalities***

31. The Court Below nowhere described the necessary “*transfer of assets*” between NPL and NEL and the other respondents.<sup>68</sup> Absent such a transfer, this element must count against substantive consolidation.

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<sup>64</sup> Decision Below at paragraph 37, Appeal Book – Tab 7, page 296

<sup>65</sup> *Redstone*, at paragraphs 18-22

<sup>66</sup> *Redstone*, at paragraph 83

<sup>67</sup> Decision Below at paragraph 38, emphasis added, Appeal Book – Tab 7, page 296

<sup>68</sup> Decision Below at paragraphs 39 and 40, Appeal Book – Tab 7, pages 297-298

**(iii) The Logic of the Decision**

32. The analysis of the substantive consolidation and subrogation issues conducted by the Court Below was internally illogical, which was a legal error.<sup>69</sup> In sum, the Court Below held as follows.

a. Even if NPL has a secured claim against the other Debtors, that claim is outweighed by the unsecured claims of the other Debtors' creditors and substantive consolidation is therefore fair and reasonable.<sup>70</sup>

b. As the Court has ordered substantive consolidation, it does not need to consider the Receiver's allocations of the proceeds from the sale of NPL's assets.<sup>71</sup> If the Court was wrong to order substantive consolidation, it accepts the Receiver's allocations.<sup>72</sup>

c. If the Court was wrong to accept the Receiver's allocations, it has nevertheless ordered substantive consolidation.<sup>73</sup>

33. This logic demonstrates circular reasoning on the dispositive issue.

**ISSUE TWO: ALLOCATION AND SUBROGATION**

34. The Court Below decided the issue of subrogation (the Receiver's allocations being its argument on subrogation) on the basis of four legal errors and a palpable and overriding error of fact.<sup>74</sup>

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<sup>69</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paragraphs 101-104, Appellant's Authorities, Tab 27; see also *Pirani*, at paragraph 111; *Deslaurier* at paragraph 66; and *Chiasson* at paragraphs 16, 20, and 23

<sup>70</sup> Decision Below at paragraphs 43-47, Appeal Book – Tab 7, pages 299-301

<sup>71</sup> Decision Below at paragraph 50, page 27, Appeal Book – Tab 7, page 203

<sup>72</sup> Decision Below at paragraphs 64, and 77-78, Appeal Book – Tab 7, pages 309, 313-314

<sup>73</sup> Decision Below at paragraph 78(b), Appeal Book – Tab 7, page 314

<sup>74</sup> Due to the “*even if NPL is secured*” logic of the disposition on substantive consolidation, the decisions by the Court Below respecting the Receiver's allocation of sale proceeds and NPL's rights of subrogation were *obiter dicta*, as only matters “*essential to the interpretive analysis*” are *ratio decidendi*: *Duggan v Durham Region*, 2020 ONCA 788, at paragraphs 61-62, Appellant's Authorities, Tab 28

(i) *The Receiver's Discretion to Allocate Proceeds*

35. The Court Below held without analysis that, prior to the making of an order for substantive consolidation, the Receiver had the discretion to allocate the proceeds from the sales of assets belonging to separate corporations as among those corporations, provided that the allocation was fair and equitable (the “**Discretion**”).<sup>75</sup> This was unprecedented and erroneous.

36. The facts were as follows. In the report filed in support of its motion, the Receiver had not described how the indebtedness to the Lenders had been repaid (that is, which sums from which sources went to the Lenders.) Instead, the Receiver had offered its own “allocation” of the funds used to satisfy the Lenders. This allocation was incorporated by the Court Below into its Decision (the “**First Allocation**”).<sup>76</sup> The sale of NPL’s real properties had yielded \$28,579,000 (the “**NPL Proceeds**”).<sup>77</sup> However, in the First Allocation, NPL was given credit for supplying only \$14,192,000 for the “*Distribution to Lenders*”.<sup>78</sup> The remaining \$14,192,000 was “allocated” to NIP,<sup>79</sup> as if NIP had supplied the remaining 49.65% of the NPL Proceeds to the Lender, which did not occur. The Receiver’s explanation

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<sup>75</sup> Decision Below at paragraphs 59, 60, 64, and 75, Appeal Book – Tab 7, pages 306-309, 312

<sup>76</sup> Decision Below at, Schedule “A”, paragraphs 103-104, Proceeds Chart and notes, Appeal Book – Tab 7, pages 323-324, 351-362

<sup>77</sup> Decision Below at, Schedule “A”, Proceeds Chart, NPL column, “Accounts Receivable, Real Estate and Other Collections”, Appeal Book – Tab 7, page 352

<sup>78</sup> Decision Below at page 77, Schedule “A”, Proceeds Chart, NPL column, “Distribution to Lenders”, Appeal Book – Tab 7, page 351-353

<sup>79</sup> Decision Below at page 77, Schedule “A”, Proceeds Chart, NIP column, “Distribution to Lenders”, Appeal Book – Tab 7, pages 351-353



for the First Allocation was limited to the assertion that it was “*fair and equitable, and otherwise consistent with the basis on which the Receiver is to exercise its discretion and the principles on which such allocations are to be made*”.<sup>80</sup>

37. The First Allocation was the basis for the Receiver’s argument *against* NPL having subrogated secured rights,<sup>81</sup> which argument the Court Below accepted as its conclusion on the issue: “[s]ince...the repayments to the Lenders have been allocated equally to NIP and NPL, I agree that neither NIP nor NPL can seek contribution from the other under the Act.”<sup>82</sup>

38. Crucially, the Receiver had simply *presumed* that it had the Discretion,<sup>83</sup> and the Decision Below did not question that presumption. This was incorrect in principle. 1) There was no legal basis for the Discretion, and strong reasons to believe that such discretion *could not* exist. 2) Exercise of the Discretion disregarded the separate legal personhood of NPL (an incident of which was exclusive legal title in its assets) on a basis, *fairness*, that has been repeatedly rejected as a justification for so doing.

39. Firstly: the *BIA* does not grant the Receiver the Discretion, and there was no previous case in which a receiver had been allowed to exercise such discretion.<sup>84</sup>

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<sup>80</sup> Twelfth Report at paragraphs 101, 102, and 104, Appeal Book – Tab 5, pages 214-215

<sup>81</sup> Twelfth Report at paragraph 116, Appeal Book – Tab 5, page 221

<sup>82</sup> Decision Below at paragraph 113, Appeal Book – Tab 7, page 330

<sup>83</sup> Twelfth Report at paragraph 104, Appeal Book – Tab 5, page 215

<sup>84</sup> The Receiver relied upon cases approving receivers’ discretionary allocations of the costs of receivership, a fundamentally different matter: Decision Below at paragraph 65, Appeal Book – Tab 7, page 309

Basic principles weigh heavily against the Discretion being lawful. The appointment by the Court of a receiver does not alter title to the assets of the debtor. Where property is sold by the receiver, the proceeds of realization take the place of the assets which were sold and become subject to the interests of secured creditors. The entitlement to such proceeds is determined by the Court, if contested.<sup>85</sup> It follows that a receiver is not entitled to do a preliminary "allocation" of those proceeds in a manner which does not respect legal title or security interests.

40. Further, the Supreme Court of Canada has held that the Alberta Energy and Utilities Board lacked jurisdiction to allocate the proceeds from the sale of a public utility's property *for any reason*, including equity and the public interest.<sup>86</sup> The governing legislation granted the Board the power to approve a sale, but was silent as to its power to deal with sale proceeds. The majority held that "*[i]t would be absurd to allow the Board an unfettered discretion to attach any condition it wishes to an order it makes*";<sup>87</sup> and that "*any taking such as ordered by the Board is confiscatory*".<sup>88</sup> A receiver appointed pursuant to the *BIA* has *less* authority than did the Board, as it must obtain Court approval before selling material assets. It cannot be the case that, with the *BIA* similarly silent about a receiver's discretion to allocate

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<sup>85</sup> *Adelaide Capital Corp. v. St. Raphael's Nursing Homes Ltd.*, (1995) 42 C.B.R. (3d) 17 (Ont. Sup. Ct. – Commercial List), at paragraphs 55-56, Appellant's Authorities, Tab 29, cited for these principles in *Bankruptcy and Insolvency Law of Canada*, at § 12:20, "Sale of Assets by a Receiver and Manager", Appellant's Authorities, Tab 37

<sup>86</sup> *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, ("*ATCO*"), at paragraphs 31-34, Appellant's Authorities, Tab 30

<sup>87</sup> *ATCO*, at paragraph 46

<sup>88</sup> *ATCO*, at paragraph 69; see also paragraph 79

proceeds, a receiver nevertheless has *more* authority to perform an allocation than did the Board.

41. Secondly: the Courts of Appeal for British Columbia<sup>89</sup> and Ontario<sup>90</sup> have confirmed that a corporation's separate legal personality cannot be set aside simply because doing so is "*fair*". The leading decision on the allocation of proceeds in receivership, *Re Nortel*, was similarly respectful of separate corporate personhood. Therein, the Court held that the key assets of corporations within the Nortel enterprise were in fact assets of the collective, not assets belonging to specific entities,<sup>91</sup> and that the proceeds from their sale should be distributed in accordance with the ratio of the respective debts of each estate,<sup>92</sup> because "*no one Debtor Estate has any right to these funds...[and so] there would be no "wealth transfer"*".<sup>93</sup> The import of *Re Nortel* is clear: since NPL's real properties were owned by NPL alone, (rather than by a collective), NPL had a "*right*" to the proceeds from those properties. (To the same effect is *Bloom Lake*, in which the Court approved an allocation of more than \$160 million from the sale of assets belonging to companies under CCAA protection on the basis that the proceeds were allocated to the assets and their

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<sup>89</sup> *Edgington v. Mulek Estate*, 2008 BCCA 505, at paragraphs 20-26, Appellant's Authorities, Tab 31, quoted in *Consbec Inc. v. Hollow Water Werri Construction Ltd.*, 2021 MBQB 32, Appellant's Authorities, Tab 32

<sup>90</sup> *Yaiguaje v. Chevron Corporation*, 2017 ONCA 741, at paragraph 50, Appellant's Authorities, Tab 33

<sup>91</sup> *Re Nortel*, at paragraph 202 and 220

<sup>92</sup> *Re Nortel*, at paragraph 250

<sup>93</sup> *Re Nortel*, at paragraph 214

owners.)<sup>94</sup> The Court Below nevertheless said that *Re Nortel* did not “assist the court with principles that apply in this case” (on which more below).<sup>95</sup>

(ii) *The Acceptance of Mutually-Contradictory Allocations*

42. The First Allocation<sup>96</sup> is contrary in its substance to a second allocation the Court relied upon elsewhere in its decision on *the same issues*.<sup>97</sup> In the First Allocation, *none* of the NPL Proceeds were used to repay the “Receiver’s Borrowings”,<sup>98</sup> and \$14.192 million of the NPL Proceeds were paid by NPL as a “Distribution to Lenders”<sup>99</sup> or (elsewhere) as its “Contribution” to the satisfaction of the “Lender’s Debt” remaining *after* payment of the Receiver’s Borrowings.<sup>100</sup> Later in its discussion of the allocation and subrogation issues,<sup>101</sup> however, the Court Below adopted as correct a second allocation by the Receiver pursuant to which “*none of the NPL asset sale proceeds were used to repay the Credit Facility and [...]*

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<sup>94</sup> *Arrangement relatif à Bloom Lake*, 2017 QCCS 3529, aff’d 2018 QCCA 551, Appellant’s Authorities, Tab 34, application for leave to appeal dismissed 2019 CanLII 3746 (SCC), at paragraphs 5-7(a) and 37, Appellant’s Authorities, Tab 35

<sup>95</sup> Decision Below at paragraph 73, Appeal Book – Tab 7, page 312

<sup>96</sup> Decision Below at paragraphs 53, 56, 64, and 114 and Schedule “A”, Appeal Book – Tab 7, pages 303-304, 309, 331, 351-355

<sup>97</sup> Decision Below at paragraphs 53, 64, 76-78, 83, 85, Appeal Book – Tab 7, pages 303, 309, 313-314, 316-317

<sup>98</sup> Decision Below at Schedule “A”, chart, “Payment of Remaining Debt by Guarantors”. The Court Below observed that in this allocation, “the Receiver did not allocate Receiver’s Borrowings to any particular Debtor” (at paragraph 56(c)). If one includes the “Corporate Overhead” attributed to NPL in the amount paid to the Receiver’s Borrowings, NPL indirectly paid \$4,155,000 to those Borrowings: Schedule “A”, third column, “Receiver’s Borrowings”, Appeal Book – Tab 7, pages 352-353

<sup>99</sup> Decision Below at Schedule “A”, chart, “Payment of Remaining Debt by Guarantors”, Appeal Book – Tab 7, page 353

<sup>100</sup> Decision Below, “Debt Repayment Summary”, Appeal Book – Tab 7, page 354

<sup>101</sup> Decision Below at paragraphs 74, 76 and 85, Appeal Book – Tab 7, pages 312-313, 317

*approximately \$11.9 million of the NPL asset sale proceeds were used to repay the Receiver's Borrowings.*"<sup>102</sup> (This is hereinafter the "**Second Allocation**").

43. The allocations cannot both be correct, yet both were employed by the Court Below to dismiss NPL's claims that it had rights in, or flowing from, the NPL Proceeds. The First Allocation was the basis for the dismissal of NPL's claim to a subrogated position.<sup>103</sup> The Second Allocation was the basis for the dismissal of NPL's claim that the proceeds from the sale of NPL's properties belonged to NPL. The Court Below stated that *Re Nortel* did not "*support a finding that the sale proceeds of NPL assets belong to NPL alone*"<sup>104</sup> because what had actually happened was that "*none of the NPL asset sale proceeds were used to repay the Credit Facility and [...] approximately \$11.9 million of the NPL asset sale proceeds were used to repay the Receiver's Borrowings*", with the result that "*the allocation*" did not involve a transfer of assets or proceeds "*as between NI, NIP and NPL*".<sup>105</sup>

44. This logic is, respectfully, flawed; the Court Below has confused the arguments respecting the First and Second Allocations. NPL had argued that the First Allocation transferred "*assets or proceeds*" between NPL and NIP because it appeared that half the NPL Proceeds had been credited to NIP. The Receiver had later argued that pursuant to the Second Allocation, NPL made payments only to the

<sup>102</sup> Decision Below at paragraph 74, Appeal Book – Tab 7, page 3112

<sup>103</sup> Decision Below at paragraph 114, Appeal Book – Tab 7, page 3311

<sup>104</sup> Decision Below at paragraph 70, Appeal Book – Tab 7, page 3111

<sup>105</sup> Decision Below at paragraphs 70 and 74, Appeal Book – Tab 7, pages 3111-3112

Receiver's Borrowings, that such payments were not payments further to NPL's Guarantee, and that such payments could not therefore entitle NPL to rights of subrogation. The Court Below accepted this argument. However, that result could not mean that the NPL Proceeds did not belong to NPL: the issue decided was *the rights created by payment of those funds, if any, rather than ownership of the funds paid*. The Court Below therefore erred in concluding that the Second Allocation meant that NPL was incorrect to say that "*the sale proceeds of NPL assets belong to NPL alone*".<sup>106</sup>

*(iii) Payments toward the Obligations*

45. The decision that there was a legally meaningful distinction between an NPL payment to the "*Credit Facility*" (which could entitle NPL to rights in the NPL Proceeds) and a payment to the "*Receiver's Borrowing Charge*" (which apparently could not) was contrary to the terms of the relevant contract, and in significant tension with one of the Court Below's own holdings.

46. The Guarantee signed by NPL and NEL is for "*the due and punctual performance of all Obligations of each other Loan Party*".<sup>107</sup> "*Obligations*" include "*interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party [...] of any proceeding under any Debtor Relief*

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<sup>106</sup> Decision Below at paragraph 70, Appeal Book – Tab 7, page 311

<sup>107</sup> Credit Agreement, clause 11.01, This is subject to the limit on recourse. Appeal Book – Tab 1, page 66

*Laws*".<sup>108</sup> Collectively, these and a chain of further definitions,<sup>109</sup> as well as the terms of a debenture securing NPL's payment of the Obligations,<sup>110</sup> (the "Debenture"), establish the following. NPL guaranteed the repayment of Obligations, subject to a limit on recourse; Obligations included costs of a receivership under the *BIA*; among the security granted in the Debenture was the right to appoint a receiver; and the Debenture made the receiver's borrowings "a charge upon the Property",<sup>111</sup> to be paid to the Lender. The necessary result was that a payment to the Lender by NPL, be it characterized as a payment toward the Credit Facility or toward the Receiver's Borrowings, was the payment of an Obligation, and so a payment on the Guarantee, entitling NPL to the rights attendant upon such payments.

47. The Court Below agreed that NPL had guaranteed the repayment of "Borrowers' obligations", including the costs of proceedings under Debtor Relief Laws,<sup>112</sup> but erred by failing to ascribe any significance to these facts. As a result, the Court Below nowhere measured NPL's rights according to its payments toward the Obligations, but instead measured them according to the Receiver's

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<sup>108</sup> Credit Agreement, clause 1.01, Appeal Book – Tab 1, page 50

<sup>109</sup> "Loan Party" (Credit Agreement, clause 1.01), Appeal Book – Tab 1, page 49; "Guarantor" (clause 1.01.), Appeal Book – Tab 1, page 45; "Limited Recourse Guarantors" (clause 1.01, and clause 11.05), Appeal Book- Tab 1, page 49 and 69; "Canadian Holdings" (clause 1.01), Appeal Book – Tab 1, page 27; and "Debtor Relief Laws" (clause 1.01), Appeal Book – Tab 1, page 33

<sup>110</sup> Debenture, clause 1, Appeal Book – Tab 1, page 97

<sup>111</sup> Debenture, clause 7, Appeal Book – Tab 1, page 99

<sup>112</sup> Decision Below at paragraph 90; see paragraphs 88-90 generally, Appeal Book – Tab 7, pages 318-319

*characterization* of those payments, being the First and Second Allocations. This is to say that the Court Below did not enforce the Guarantee and the Debenture but the First and Second Allocations, which was a clear legal error.

**(iv) Set-off**

48. The Court Below concluded its discussion of subrogation by holding that “even if some of the Net Receivership Proceeds should be allocated to NPL, those funds are subject to claims of NPL’s creditors which, in all probability, exceed the proceeds available to satisfy those claims.”<sup>113</sup> Stated plainly, the Court Below held that NIP<sup>114</sup> had a defence of set-off to NPL’s claim for contribution further to the MLAA. Such a defence was not available, in law or on the facts, because through subrogation NPL would not be asserting its own rights, but those of the Lenders.<sup>115</sup>

49. The law is clear: in subrogation set-off is not available, because the claims to be set off are not in the same right; the debts are not mutual.<sup>116</sup> The facts are similarly clear: set-off cannot occur pursuant to the terms of the Credit Agreement, which states that “the obligations of each Loan Party...shall not be subject to any defence or setoff”,<sup>117</sup> and elsewhere that the liability of each Guarantor “shall not be subject to any ... setoff”.<sup>118</sup> As the MLAA would move NPL into the Lender’s shoes, a

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<sup>113</sup> Decision Below at paragraph 122, Appeal Book – Tab 7, page 335

<sup>114</sup> Decision Below at paragraph 119(a)-(b), Appeal Book – Tab 7, pages 333-334

<sup>115</sup> See the Decision Below at paragraphs 103-104, Appeal Book – Tab 7, pages 323-324

<sup>116</sup> *Colonial Furniture Co. (Ottawa) Ltd. v. Saul Tanmer Realty Ltd.* (2001), 52 O.R. (3d) 539, (C.A.), Appellant’s Authorities, Tab 36, cited in *Bankruptcy and Insolvency Law of Canada*, at § 6:116 Claims Provable - Subrogation of Claims”, Appellant’s Authorities, Tab 37

<sup>117</sup> Credit Agreement, clause 10.22(b), see also clause 11.02, Appeal Book – Tab 1, pages 63-64, 66-67

<sup>118</sup> Credit Agreement, clause 11.05, Appeal Book – Tab 1, page 67



subrogated claim against NIP by NPL could not be subject to set-off. Finally, NIP's unsecured claims against NPL would be *among* the security assigned to NPL *via* subrogation. The Guarantee states that all monies payable by any Loan Party to any Guarantor are assigned to the Lenders "*as security for such Guarantor's liability*".<sup>119</sup> As each of NEL, NIP, and NPL were Loan Parties and Guarantors, any debts amongst them were assigned to the Lenders as security, which would be assumed by NPL due to subrogation. Stated differently, NPL would be the assignee of the receivables owed to NIP by NPL and NEL, and those receivables could not be available to NIP to set off against NPL's subrogated claim.

(v) *The Extent of the Guarantee*

50. The Court Below decided that NPL's Guarantee was unlimited on the basis that NPL had pledged certain shares and "*there is no such limited recourse to the pledged shares.*"<sup>120</sup> This was erroneous in fact. The Canadian Pledge Agreement executed by NPL and NEL as "Grantors" secured payment of the Guarantee, rather than payment of an amount *exceeding* the Guarantee. The share pledge said on its first page that it was being entered into "*to secure the Secured Obligations [...] of such Grantor.*"<sup>121</sup> The error was significant because it caused the Court Below to

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<sup>119</sup> Credit Agreement, clause 11.08(e), Appeal Book – Tab 1, page 68-69

<sup>120</sup> Decision Below at paragraph 112, Appeal Book – Tab 7, page 329-330

<sup>121</sup> There was a similar statement in section 2.2, "Pledge of Pledged Securities". The relevant section of the "Secured Obligations" definition read: "*all Obligations and other amounts now or subsequently owing by the Grantor, including by way of Guarantee or indemnity*". Appeal Book – Tab 1, page 74

hold that “*NPL and NEL both participate as ‘co-sureties’ on the same proportionate basis as the other Guarantors of the Credit Facility*”,<sup>122</sup> which in turn was employed as support for the conclusion that “*neither NIP nor NPL can seek contribution from the other under the [MLAA]*”.<sup>123</sup>

### **ISSUE THREE: BANKRUPTCY**

51. The Court Below held that if it had erred in denying NPL subrogated rights, “*the competing claims to the Net Receivership Proceeds are best left to be resolved and determined during a bankruptcy proceeding.*”<sup>124</sup> It then granted the Receiver leave “*to file applications for bankruptcy orders [...] in relation to NPL and NEL, on a basis that reflects the Common Assets and the Common Liabilities and the substantive consolidation of the estates of the Debtors*”.<sup>125</sup> The granting of leave on these terms, in this context, was erroneous in three ways. (1) Substantive consolidation makes impossible the competition for the Net Receivership Proceeds which the Court Below cited as a reason for denying NPL rights of subrogation. This is illogic in the Decision Below. (2) It denies NPL and NEL’s existence as separate corporate persons,<sup>126</sup> and the BIA cannot accommodate the situation created (seven bankrupt estates and two non-bankrupt companies, all simultaneously possessing the

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<sup>122</sup> Decision Below at paragraph 112, Appeal Book – Tab 7, page 329-330

<sup>123</sup> Decision Below at paragraphs 113-114, Appeal Book – Tab 7, pages 330-331

<sup>124</sup> Decision Below at paragraph 122, Appeal Book – Tab 7, page 335

<sup>125</sup> Decision Below at paragraph 130, Appeal Book – Tab 7, page 337

<sup>126</sup> *Re Nortel* at paragraph 213

same assets and liable for the same debts.) (3) No cogent explanation was provided for this novel approach.

**TIME FOR ARGUMENT**

52. The Appellants estimate that 3.0 hours will be required for oral argument on their behalf.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this \_\_\_\_ day of August, 2022.

**LEVENE TADMAN GOLUB LC**

Per: \_\_\_\_\_

**Wayne Onchulenko**

Lawyer for the (Respondents) Appellants

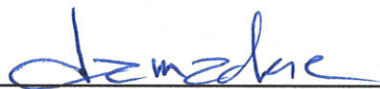
**FRED TAYAR & ASSOCIATES PC**

Per: \_\_\_\_\_

**Colby Linthwaite**

Lawyer for the (Respondents) Appellants

This is Exhibit "Z" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. M. Zelenka", is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

FILE NO. AI22-30-09741

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER  
 PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
 R.S.C., c.B-3, AS AMENDED, AND SECTION  
 55 OF *THE COURT OF QUEEN'S BENCH*  
*ACT*, C.C.S.M., C. C280, AS AMENDED

BETWEEN:

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

– and –

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION  
 VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD  
 ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879  
 CANADA LTD., 4093887 CANADA LTD., and NYGARD  
 INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

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**APPEAL BOOK OF THE (RESPONDENTS) APPELLANTS**

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**LEVENE TADMAN GOLUB LAW CORPORATION**

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 Winnipeg, MB R3C 3Z5

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File No. 113885/WMO

FILE NO. AI22-30-09741

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**APPEAL BOOK OF THE (RESPONDENTS) APPELLANTS**

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**WAYNE M. ONCHULENKO**  
**LEVENE TADMAN GOLUB LAW CORPORATION**  
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 Lawyers for the Appellants

**COLBY LINTHWAITE**  
**FRED TAYAR & ASSOCIATES PC**  
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 Toronto, ON M5H 2M5  
 Lawyers of the Appellants

This is Exhibit "AA" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read 'J. M. Zedke', is written over a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

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INTERNATIONAL PARTNERSHIP,**

Appellants

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**APPELLANT'S BOOK OF AUTHORITIES**

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INTERNATIONAL PARTNERSHIP,**

Appellants

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- Tab 36     *Colonial Furniture Co (Ottawa) Ltd v Saul Tanner Realty Ltd*, 2001 CarswellOnt 286
- Tab 37     Houlden, Morawetz, and Sarra, Bankruptcy and Insolvency Law of Canada, Fourth Edition, ("Bankruptcy and Insolvency Law of Canada,")

This is Exhibit "BB" referred to in the  
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Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "Demedne", is written above a horizontal line.

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A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

**IN THE COURT OF APPEAL**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.  
1985 c. B-3, AS AMENDED AND SECTION 55 OF  
*THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M.  
c. C280**

**BETWEEN:**

**WHITE OAK COMMERCIAL FINANCE, LLC,**

(Applicant) Respondent,

- and -

**NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC.,  
FASHION VENTURES, INC., NYGARD NY RETAIL, LLC,  
NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD.,  
4093879 CANADA LTD., 4093887 CANADA LTD., and  
NYGARD INTERNATIONAL PARTNERSHIP,**

(Respondents) Appellants.

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**APPEAL BOOK OF THE RESPONDENT RICHTER INC.**

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Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
1700 – 242 Hargrave Street  
Winnipeg, MB R3C 0V1  
(Matter No. 0173004 GBT)



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CANADA LTD., 4093887 CANADA LTD., and NYGARD  
INTERNATIONAL PARTNERSHIP,**

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This is Exhibit "CC" referred to in the  
Affidavit of WAYNE ONCHULENKO  
Affirmed before me at the City of  
Winnipeg, this 3rd day of October, 2022

A handwritten signature in blue ink, appearing to read "J. Zmedic", is written above a horizontal line.

A Commissioner for Oaths  
In and for the Province of Manitoba  
My Commission Expires: March 6, 2024

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**BOOK OF AUTHORITIES OF RICHTER INC.**

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Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
1700 – 242 Hargrave Street  
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(Matter No. 0173004 GBT)

FILED  
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LAW COURTS  
WINNIPEG

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1. *White Oak Commercial Finance LLC v. Nygard Holdings (USA) Ltd.  
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2. *JP Morgan Chase Bank N.A. v. UTTC United Tri-Tech Corp.*, [2006]  
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