

RICHTER

File No. CI 20-01-26627

**THE KING'S BENCH
WINNIPEG CENTRE**

**IN THE MATTER OF THE RECEIVERSHIP OF
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**

**RICHTER INC. (FORMERLY, RICHTER ADVISORY GROUP INC.)
FOURTEENTH REPORT OF THE RECEIVER**

MAY 15, 2023

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MAY 15, 2023

I. INTRODUCTION

1. On March 18, 2020 pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (now the Court of King’s Bench) (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Inc. (formerly, Richter Advisory Group Inc.) (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd. (“**879**”), and 4093887 Canada Ltd. (“**887**”, and together with NEL, NIP, NPL and 879, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygard Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, (“**White Oak**”) as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (collectively, the “**Lenders**”), pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
3. The Credit Facility was provided to the Debtors pursuant to a credit agreement dated December 30, 2019, which is attached as Exhibit “D” to the Affidavit of Robert Dean affirmed March 9, 2020, and filed in these proceedings.
4. Also on March 18, 2020, the Receiver, as the duly appointed foreign of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”) by filing, among other things, petitions on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the U.S. Court of the Canadian Proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the U.S. Court entered, among other things, a provisional recognition order and, on April 23, 2020, the U.S. Court granted a final order recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.

5. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved a consulting and marketing services agreement between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**”), and White Oak, pursuant to which Hilco provided certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate the Nygard Group’s retail inventory and owned furniture, fixtures and equipment through temporarily re-opened stores (the “**Liquidation Sale**”), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group’s retail stores (the “**Landlords**”) were not capable of being known with any precision or certainty at that time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.
6. On April 29, 2020, the Manitoba Court made two (2) further Orders: (i) an Order addressing, among other things, various general matters, including certain amendments to the Receivership Order (limiting the scope of the Receivership Order in relation to the property, assets and undertakings of NEL and NPL) and the procedure for landlord access to properties leased to Nygard Inc. by certain non-Debtor members of the Nygard organization, and (ii) an Order establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard Organization (as defined in the Receiver’s First Report dated April 20, 2020) or directors, officers and employees of the Nygard Group.
7. On May 15, 2020, Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**” and collectively with Edson’s, the “**Gardena Landlords**”) filed a notice of motion (the “**Gardena Motion**”) with the Manitoba Court for an order requiring the Receiver to, among other things, lift the stay of proceedings granted by the Manitoba Court in these proceedings so that the Gardena Landlords may terminate leases for properties located in Gardena, California at 312 and 332 East Rosecrans Avenue (“**East Rosecrans**”), 14401 South San Pedro Street (“**14401**”), and 14421 South San Pedro Street (“**14421**” and together with East Rosecrans and 14401, the “**California Properties**”) for failure of the Receiver to pay occupancy rent and retake possession of the California Properties. The Gardena Motion did not proceed as a result of the E/B Settlement Agreement (as hereinafter defined), which was dealt with in the Receiver’s Seventh Report dated September 10, 2020.

8. On June 2, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale, where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions), the Manitoba Court made an Order addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.
9. On June 30, 2020, the Manitoba Court made an Order approving, among other things, the sale of certain NPL real property located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street in Winnipeg, Manitoba.
10. On June 30, 2020, the Manitoba Court also made an Order approving, among other things, the terms of an agreed Settlement Agreement and Release of Claims between the Receiver and Dillard's Inc.
11. On August 10, 2020, the Manitoba Court made an Order approving, among other things, the sale of certain NPL real property located at 1 Niagara Street in Toronto, Ontario.
12. On September 15, 2020, the Manitoba Court made an Order approving, among other things, the terms of a settlement agreement (the "**E/B Settlement Agreement**") between the Receiver, the Gardena Landlords, the Lenders, NPL, and Mr. Peter J. Nygard ("**PJN**") and other members of the Nygard Organization.
13. Also, on September 15, 2020, the Manitoba Court made an Order (the "**NOI Withdrawal Order**") withdrawing the NOI Proceedings (as defined in the NOI Withdrawal Order) in accordance with the E/B Settlement Agreement.
14. On October 21, 2020, the Manitoba Court made an Order approving, among other things, the abandonment of certain documents and property located in the California Properties and the Nygard Group retail stores.
15. On November 19, 2020, the Manitoba Court made an Order (the "**Inkster Approval and Vesting Order**") approving, among other things, the sale of certain NPL real property located at 1771 Inkster Blvd, Winnipeg Manitoba (the "**Inkster Property**") and authorizing the Receiver to make such arrangements as it considered reasonable and appropriate for the preservation of over 5,000 boxes of physical documents (the "**Physical Records**"), and the data (the "**Electronic Records**") and programs (the "**Programs**") stored or accessible on the Nygard Group's central information technology system (the "**IT System**", and together with the Physical Records, Electronic Records and Programs, the "**Records**").
16. On November 27, 2020, the Nygard Group appealed certain of the relief granted pursuant to the Inkster Approval and Vesting Order, including the authorization of the sale of the Inkster Property (the "**Inkster Appeal**").

17. On December 8, 2020, the Manitoba Court provided additional direction and clarification of the Order pronounced on November 19, 2020, in respect of the preservation of the Records as well as the provision of certain Electronic Records to the Debtors and/or PJN. The Receiver considers that the direction of the Manitoba Court as to those matters is properly described within the Inkster Approval and Vesting Order.
18. On December 31, 2020, the Manitoba Court of Appeal (the “**Court of Appeal**”) made an Order (the “**Lift Stay Order**”) cancelling any stay imposed as a result of section 195 of the BIA with respect to the Inkster Approval and Vesting Order.
19. Subsequent to the making of the Lift Stay Order, on January 8, 2021, the Debtors discontinued the Inkster Appeal, which the Receiver agreed to accept on a without costs basis.
20. On January 28, 2021, the Manitoba Court made an Order approving, among other things, the sale of certain NPL real property located at 702 and 708 Broadway Avenue in Winnipeg, Manitoba.
21. On March 3, 2021, the Manitoba Court made an Order detailing the process to quantify and resolve the claims of Landlords for any Unpaid Rent (as defined in the Receiver’s Eleventh Report dated February 4, 2021) in respect of the lease for each retail store secured by the Landlords’ Charge.
22. On April 16, 2021, the Receiver filed a notice of motion with the Manitoba Court returnable May 12, 2021 (the “**Preservation of Proceeds Motion**”) in respect of the preservation of proceeds realized from the sale of certain real property owned by NPL (the “**Preserved Proceeds**”) in accordance with an agreement (the “**NPL Proceeds Preservation Agreement**”) reached between the Receiver and NPL pending a final determination by the Manitoba Court of certain issues with respect to (i) the state the Debtors’ intercompany accounts, (ii) the respective claims of NPL and NIP (if any) to be subrogated to the security held by the Lenders and the extent and/or amount of such subrogation, (iii) the consolidation of the Debtors for creditor purposes, and (iv) the potential bankruptcy of the Debtors, including NPL (collectively, the “**Consolidation Issues**”). Ultimately, the Receiver and NPL were able to resolve their dispute with respect to the matters which were to be argued at the May 12, 2021 hearing and, as such, the Preservation of Proceeds Motion was adjourned to be heard, if necessary, on June 17, 2021, which date had already been secured to deal with the Consolidation Issues.
23. On June 4, 2021, the Receiver filed a notice of motion with the Manitoba Court returnable June 17, 2021 (the “**Net Receivership Proceeds Motion**”) seeking an Order(s), among other things, substantively consolidating the assets and liabilities of the Debtors for the purpose of addressing the claims of creditors of each of the Debtors and authorizing the Receiver to file assignments in bankruptcy in respect of each of the Debtors (including the

US Debtors) on a substantially consolidated basis. The Net Receivership Proceeds Motion (and the Preservation of Proceeds Motion, if necessary) were subsequently adjourned to November 5, 2021.

24. On July 26, 2021, the Receiver filed a further notice of motion with the Manitoba Court returnable November 5, 2021, seeking advice and direction from the Manitoba Court with respect to whether the additional uses of the Preserved Proceeds, as requested by the Respondents, were proper and consistent with the terms of the NPL Proceeds Preservation Agreement.
25. On September 8, 2021, the Debtors filed a notice of motion with the Manitoba Court returnable September 16, 2021 (the “**Questions Motion**”) seeking an Order, among other things, compelling certain representatives of the Receiver to attend for cross examination on the Receiver’s Twelfth Report dated June 4, 2021 (the “**Twelfth Report**”) or, in the alternative, directing the Receiver to answer all of the questions (as well as any follow-up questions) (collectively, the “**Questions**”) attached as Schedule “A” to the Questions Motion (in excess of 260 questions). On September 16, 2021, the Manitoba Court provided the Receiver and the Debtors guidance regarding the nature and type of questions properly put to the Receiver (generally, questions related to allocation of receivership expenses or intercompany obligations). The Manitoba Court directed that the Receiver and the Debtors cooperate to identify any questions related to the separate corporation analysis, allocation, and/or intercompany balances which relate to the facts and information relied upon by the Receiver in coming to its conclusions as detailed in the Twelfth Report and which were not already answered in the Twelfth Report or any other previously filed materials.
26. On November 5, 2021, the Manitoba Court made an order approving the NPL Proceeds Preservation Agreement and the distribution of certain amounts from the Preserved Proceeds adjourned the Net Receivership Proceeds Motion to December 20, 2021, and set deadlines for the Receiver and the Debtors (or any interested party) to file responsive materials. On December 20, 2021, the Manitoba Court heard the contested Net Receivership Proceeds Motion.
27. On March 10, 2022, the Honourable Mr. Justice Edmond of the Manitoba Court issued lengthy and comprehensive reasons for judgment and made an Order (the “**Net Receivership Proceeds Order**”) that, among other things:
 - (i) declared the assets and liabilities of the Debtors to be substantively consolidated for the purposes of addressing the claims of creditors of each of the Debtors;
 - (ii) authorized the Receiver to file assignments in bankruptcy on behalf of the Debtors, other than NPL and NEL;

- (iii) authorized the Receiver to file applications for bankruptcy orders in the Manitoba Court in relation to NPL and NEL on a basis that reflects the substantive consolidation of the estates of the Debtors (and lifted the stay of proceedings under the Receivership Order for the purpose of allowing this to occur);
 - (iv) appointed the Receiver as trustee in bankruptcy (the “**Trustee**”) of each of the Debtors;
 - (v) 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 BIA;
 - (vi) approved the allocations made by the Receiver respecting receivership costs and the proceeds of sale of the Property;
 - (vii) 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 and, if necessary, the net proceeds of the Receivership (the “**Net Receivership Proceeds**”) (subject to the Receiver’s review and approval of such professional costs); and
 - (viii) 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 PJN.
28. On March 22, 2022, the Debtors attempted to file a Notice of Appeal dated March 22, 2022 (the “**Proposed Notice of Appeal**”) with the Court of Appeal pursuant to sections 193(a)(b)(c) and (e) of the BIA in connection with their proposed appeal of the Net Receivership Proceeds Order (the “**NRPO Appeal**”). The filing of the Proposed Notice of Appeal was not, however, accepted, as the attempt to file the Proposed Notice of Appeal occurred after the expiry of the 10-day appeal period provided pursuant to the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 268.
29. On March 25, 2022, the Debtors filed a Notice of Motion with the Court of Appeal seeking an Order extending the time for filing the Proposed Notice of Appeal.
30. On May 5, 2022, the Debtors were granted an 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 (“**Filed Notice of Appeal**”).

31. On June 6, 2022, the Debtors filed a notice of motion with the Court of Appeal (the “**Debtors’ June 6 Motion**”) seeking leave to amend the Filed Notice of Appeal (the “**Amended Notice of Appeal**”). On June 22, 2022, the Debtors filed a further motion with the Court of Appeal seeking, among other things, leave to extend the page limit of the Debtors’ factum, to be filed in support of the NRPO Appeal, or, in the alternative, granting leave to file a “reply brief”, and an Order permitting the use of the documents filed electronically with the Manitoba Court in the Receivership Proceedings as part of the Debtors’ Appeal Book (the “**Debtors’ June 22 Motion**” and together with the Debtors’ June 6 Motion, the “**Debtors’ Appeal Motions**”).
32. Although the Receiver consented to certain of the proposed amendments set out in the Amended Notice of Appeal, which provided further particulars or clarified the grounds of appeal contained in the Filed Notice of Appeal, the Receiver opposed the Debtors’ June 6 Motion on the basis that certain of the proposed amendments sought to expand the scope of the NRPO Appeal such that they were not true amendments, but rather should be considered as new grounds that would require the Court of Appeal to grant another extension of time to the Debtors. The Receiver opposed the Debtors’ June 22 Motion, as, in its view, there were no special circumstances in this case to permit the Debtors to depart from the usual provisions of the *Court of Appeal Rules*, Man Reg 555/88.
33. On August 11, 2022, the Court of Appeal largely dismissed the Debtors’ Appeal Motions and provided additional direction and clarification regarding the permitted amendments to the Filed Notice of Appeal.
34. The NRPO Appeal was heard on April 19, 2023. As at the date of this Fourteenth Report (as hereinafter defined), the Court of Appeal has not released its decision in respect of the NRPO Appeal.
35. In addition to the above matters in respect of the NRPO Appeal, following the issuance of the Net Receivership Proceeds Order, the Receiver was requested to approve various of the Debtors’ legal fees and disbursements in accordance with the direction provided by the Manitoba Court in that Order. Unfortunately, based on the information provided to the Receiver, the Receiver was not in a position to approve certain of the Debtors’ legal accounts.
36. On October 3, 2022, the Debtors filed a notice of motion with the Manitoba Court returnable November 3, 2022 (the “**LTGLC Professional Fee Motion**”) seeking an Order (i) determining the quantum of reasonable legal fees, disbursements and professional costs incurred by PJN in the receivership and bankruptcy proceedings and (ii) authorizing the full payment of legal fees and disbursements and professional costs of PJN from the Preserved Proceeds and, if necessary, the Net Receivership Proceeds.

37. On November 4, 2022, the Honourable Mr. Justice Edmond of the Manitoba Court issued oral Reasons for Judgement (the “**November 4 Reasons**”) regarding the LTGLC Professional Fee Motion. Among other things, the November 4 Reasons (i) accepted that the Receiver was not in a position to “responsibly approve or disapprove fees based on services identified and detailed in the LTGLC accounts or assess their connection to the matters at issue in the receivership proceedings or determine their reasonableness”, and (ii) set out the approved amount and calculation of the Debtors’ legal fees and disbursements. A transcript of the November 4 Reasons is attached hereto as **Appendix “A”**.
38. Following release of the November 4 Reasons, the Receiver has again been requested to approve various of the Debtors’ legal fees and disbursements as incurred by their counsel at Levene Tadman Golub Law Corporation (“**LTGLC**”) and Fred Tayar & Associates Professional Corporation (“**Tayar**”). Unfortunately (and similar to the previous legal accounts submitted to the Receiver for approval), based on the information provided to the Receiver, the Receiver is not in a position to approve certain of the Subject Accounts (as hereinafter defined) for payment from the Net Receivership Proceeds.
39. On May 10, 2023, the Debtors filed a notice of motion with the Manitoba Court initially returnable for May 15, 2023 (the “**Debtors’ Professional Fee Motion**”) seeking an Order (i) determining the quantum of reasonable legal fees, disbursements and professional costs incurred by the Debtors in the Receivership Proceedings, and (ii) authorizing the full payment of legal fees and disbursements and professional costs of the Debtors from the Net Receivership Proceeds. The hearing of the motion was subsequently adjourned with the consent of the Receiver to May 18, 2023.
40. In accordance with the Receivership Order, the Receiver has established a website (the “**Receiver’s Website**”) for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
41. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits and appendices sealed by Order of the Manitoba Court, and the various Orders issued by the Manitoba Court are posted to and available for review at the Receiver’s Website.
42. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings, and the various Orders issued by the U.S. Court are also posted to and available for review at the Receiver’s Website.
43. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) (“**TDS**”) as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) (“**Katten**”) as its U.S. counsel.

II. PURPOSE OF REPORT

44. The Receiver has previously filed thirteen reports (and, collectively with ten additional supplementary reports, the “**Prior Receiver’s Reports**”) with the Manitoba Court in connection with the Receivership Proceedings. Copies of the Prior Receiver’s Reports are available on the Receiver’s Website.
45. This report (the “**Fourteenth Report**”) is filed by the Receiver to provide the Manitoba Court with additional information in respect of the Debtors’ Professional Fee Motion.

III. TERMS OF REFERENCE

46. In preparing this Fourteenth Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and/or internal financial information, the Debtors’ books and records, discussions with representatives of the Debtors, including current and former employees, legal counsel to PJN, the Debtors and certain related non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Fourteenth Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
47. The Receiver has prepared this Fourteenth Report in its capacity as a Court-appointed officer to provide the Manitoba Court with information in relation to the Debtors’ Professional Fee Motion. Parties using this Fourteenth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
48. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Net Receivership Proceeds Order.
49. Unless otherwise noted, all monetary amounts contained in this Fourteenth Report are expressed in Canadian dollars.

IV. THE DEBTORS' PROFESSIONAL ACCOUNTS

50. As detailed in the Thirteenth Report of the Receiver dated October 12, 2022 (the "**Thirteenth Report**"), which was filed by the Receiver to provide the Manitoba Court with additional information in respect of the LTGLC Professional Fee Motion, the Net Receivership Proceeds Order ordered that the Debtors (also referred to as the Respondents in the Net Receivership Proceeds Order) have access to certain funds, being the Preserved Proceeds and the Net Receivership Proceeds, to pay "reasonable legal fees and disbursements and professional costs incurred...in the Receivership Proceedings", after review and approval by the Receiver of such legal fees and disbursements and professional costs.
51. As further noted in the Thirteenth Report (and as confirmed by the November 4 Reasons), in the view of the Receiver, the Manitoba Court authorized and permitted the payment of the Debtors' reasonable legal fees and disbursements in respect of services reasonably related to the Receivership Proceedings, either in connection with the participation of the Debtors in the court proceedings or in respect of matters that are currently at issue in the Receivership Proceedings. The Net Receivership Proceeds Order contains no permission for the Debtors to have access to the Net Receivership Proceeds for legal services directed to other business or interests of NPL or to other business or interests of PJN.
52. The Receiver has now been provided with and reviewed the accounts of (i) LTGLC for the period commencing August 24, 2022 and ending April 30, 2023 (the "**LTGLC Accounts**") and (ii) Tayar for the period commencing September 6, 2022 and ending April 30, 2023 (the "**Tayar Accounts**" and together with the LTGLC Accounts, the "**Subject Accounts**"). The LTGLC Accounts total approximately \$69,054 (exclusive of taxes and disbursements) and the Tayar Accounts total approximately \$110,643 (exclusive of taxes and disbursements). Collectively, the Subject Accounts total approximately \$179,697 (exclusive of taxes and disbursements). Copies of the Subject Accounts are included with the Affidavits of Wayne Onchulenko affirmed May 9 and 12, 2023 (the Receiver notes there is a difference of approximately \$8 between the amounts reported on the LTGLC Accounts and the amount of LTGLC fees as re-calculated by the Receiver. The Receiver has been unable to reconcile this difference. The amount reflected above (\$69,054) represents the amount re-calculated by the Receiver).
53. During March and early-April 2023, there were several communications between TDS, LTGLC and Tayar, where the matter of the Subject Accounts was discussed in connection with a potential resolution of all further matters as between the Receiver and the Debtors, including the NRPO Appeal (the "**Proposed Settlement**"). As the parties were unable to reach an overall agreement, TDS, on behalf of the Receiver, issued a letter dated May 3, 2023 to LTGLC and Tayar detailing the Receiver's findings and concerns from its review of the Subject Accounts for the months of September, October, November and December 2022 and January 2023 (the "**TDS May 3**").

Letter”). At the time the TDS May 3 Letter was issued, the Receiver had not yet been provided with all of the Subject Accounts for the months of March and April 2023. A copy of the TDS May 3 Letter is attached hereto as **Appendix “C”**.

54. As advised in the TDS May 3 Letter (and detailed below), of the \$101,385 total fees charged in the Subject Accounts for the months of September to December 2022 and January 2023, the Receiver was prepared to approve approximately \$36,325 for work that appears reasonable and relates to the Receivership Proceedings. However, given the scope of redactions and insufficient detail supporting the accounts of LTGLC and Tayar for those months, the Receiver was unable to assess whether certain entries in the corresponding Subject Accounts were reasonable or incurred in connection with the Receivership Proceedings. In addition, the Subject Accounts for those months include significant fees for work related to the LTGLC Professional Fee Motion. As detailed below, in the Receiver’s view, such fees do not appear reasonable. As such, based on the information available, the Receiver was not in a position to approve the balance of fees in the Subject Accounts for those months.
55. As detailed in the Thirteenth Report, the Receiver has repeatedly communicated to LTGLC and Tayar that the accounts submitted to the Receiver for approval must be in a form that would allow the Receiver to assess the reasonableness of the fees and the connection to the Receivership Proceedings. The Receiver also communicated to LTGLC and Tayar (as noted in the Thirteenth Report) that, while it is understood, and the Debtors were at liberty to redact their accounts to maintain confidentiality/privilege, the account information disclosed would still need to be sufficient to enable the Receiver to consider the reasonableness of the accounts and that if the Receiver was unable to determine the reasonableness of the accounts or otherwise considered that it could not approve an account or accounts, the matter would need to be referred to Mr. Justice Edmond, either by case conference or motion, as Mr. Justice Edmond may direct.
56. Absent further information, it is not possible for the Receiver to conclude whether certain of the services detailed in the Subject Accounts relate to the Receivership Proceedings. It is worth noting that the November 4 Reasons included certain comments about the highly redacted nature of the Debtors’ accounts for legal services:

I accept the conclusion of the receiver that is not practicable for the receiver to responsibly approve or disapprove fees based on services identified and detailed in the LTGLC accounts or assess their connection to the matters at issue in the receivership proceedings or determine their reasonableness. (November 4 Reasons at T9 lines 2-5)

57. Unfortunately, the scope of the redactions and the lack of detail in the Subject Accounts remains an issue and a challenge to the Receiver in approving the Subject Accounts. It is understood some level of redaction may be

necessary and appropriate to protect privileged information. However, the redactions found in the Subject Accounts (particularly with respect to the Tayar Accounts) still appear to go beyond what might be necessary to protect privilege. In the circumstances, the Receiver has no ability to assess the reasonableness and approve fully-redacted entries, and only a limited ability to address partially-redacted entries.

V. RECEIVER'S CONSIDERATIONS REGARDING THE DEBTORS' PROFESSIONAL ACCOUNTS

58. The Receiver is an officer of the Court and is charged with considering the interests of all stakeholders, including those of third-party creditors of the Debtors. In the circumstances, the Receiver is required to review the Subject Accounts carefully to ensure that any approval as to payment is in strict accordance with the direction provided by the Manitoba Court in the Net Receivership Proceeds Order and November 4 Reasons.
59. In an effort to facilitate the Receiver's review of the Subject Accounts, the Receiver converted the Subject Accounts to a format that permitted the Receiver to consider the details provided therein (the "**Receiver Workbook**"). The table that follows is a schedule prepared by the Receiver that summarizes the value of work performed by LTGLC and Tayar in each "work category" for each of the Subject Accounts based on (i) LTGLC's categorization of time entries, as provided in the LTGLC Accounts and (ii) the Receiver's categorization of time entries, determined from the information provided/available in the Tayar Accounts.

Nygard Receivership										
Debtor Professional Fees Summary										
For the Period August 24, 2022 to April 30, 2023										
(In CAD; unaudited)	Sept	Oct	Nov	Dec¹	Jan¹	Feb	Mar¹	Apr¹	Sep to Apr TOTAL	% of Total
LTGLC										
Category										
NRPO Appeal matters	1,900	648	3,928	2,271	42	606	1,356	11,196	21,947	32%
Shanghai Property matters	422	768	146	966	168	1,134	714	84	4,402	6%
Ancillary matters	-	-	-	-	-	-	2,928	1,404	4,332	6%
Fee Motion & prof. fee matters	13,134	13,594	6,474	1,915	1,512	606	42	870	38,147	55%
Other ²	20	42	62	-	-	60	42	-	226	0%
Total³	15,476	15,052	10,610	5,152	1,722	2,406	5,082	13,554	69,054	100%
TAYAR⁴										
Category										
NRPO Appeal matters	10,944	8,768	4,916	263	-	-	30,376	16,128	71,393	65%
Shanghai Property matters	-	176	-	-	-	-	-	-	176	0%
Ancillary matters	-	-	-	-	-	63	3,969	430	4,462	4%
Fee Motion & prof. fee matters	866	2,150	3,117	53	53	543	-	-	6,780	6%
Other ²	1,023	18,240	1,991	275	543	595	4,730	438	27,833	25%
Total³	12,832	29,333	10,023	590	596	1,200	39,075	16,995	110,643	100%
LTGLC + TAYAR COMBINED										
Category										
NRPO Appeal matters	12,844	9,416	8,844	2,534	42	606	31,732	27,324	93,340	52%
Shanghai Property matters	422	944	146	966	168	1,134	714	84	4,578	3%
Ancillary matters	-	-	-	-	-	63	6,897	1,834	8,794	5%
Fee Motion & prof. fee matters	14,000	15,744	9,591	1,968	1,565	1,149	42	870	44,927	25%
Other ²	1,043	18,282	2,053	275	543	655	4,772	438	28,059	16%
Total³	28,308	44,385	20,633	5,742	2,318	3,606	44,157	30,549	179,697	100%
Fees per invoice	28,308	44,343	20,633	5,776	2,318	3,606	44,157	30,549	179,689	
Unreconciled difference ⁵	-	42	-	(34)	-	-	-	-	8	

(1) Tayar issued one invoice for fees incurred during December 2022 and January 2023. For purposes of this analysis, the fees have been allocated to the respective month based on the date indicated on the invoice. Tayar's March 2022 invoice includes fees incurred during the first two weeks of April, however, for purposes of this analysis, they are presented under the month of March 2023. The April fees presented in the analysis are for the period April 16 to 30, 2023.

(2) Other includes uncategorized accounts (or accounts the Receiver could not reasonably categorize), accounts that are too redacted or otherwise lack sufficient detail to determine what the work relates to, as well as accounts that, in the Receiver's view, are not reasonable (i.e., preparing accounts).

(3) Represents the total fees billed for each time entry, excluding disbursements and taxes, according to the Receiver's analysis.

(4) Tayar's invoices did not categorize its entries. For purposes of this analysis, the Receiver assigned a category to each time entry based on the information provided/available in the invoices.

(5) Represents the difference between the total fees (excl. disbursements and taxes), based on the Receiver's analysis and the amount claimed for each invoice. The Receiver has been unable to reconcile these differences

60. The Receiver notes the following with respect to the Subject Accounts:

- (i) **NRPO Appeal Matters** – Approximately \$21,947 and approximately \$71,393 of fees in the LTGLC Accounts and Tayar Accounts, respectively, relate to the NRPO Appeal (on a combined basis, approximately \$93,340 or 52% of the total fees in the Subject Accounts). As noted in the Thirteenth Report and above, the Manitoba Court heard the Net Receivership Proceeds Motion on December 20, 2021, and the Net Receivership Proceeds Order was made on March 10, 2022. Following the issuance of the Net Receivership Proceeds Order, the primary ongoing matter to be dealt with in the Receivership Proceedings

remains NPL's claimed rights and entitlements to the Net Receivership Proceeds. Accordingly, the Receiver would expect that overwhelmingly the professional services rendered by both LTGLC and Tayar to the Debtors would be related to or in connection with that matter, including the NRPO Appeal;

- (ii) **Sale of Property (the "Shanghai Property") Owned by Nygard Business Consulting (Shanghai) Co, Ltd.** – Approximately \$4,402 and approximately \$176 of fees in the LTGLC Accounts and Tayar Accounts, respectively, relate to matters in connection with the sale of the Shanghai Property (on a combined basis, approximately \$4,578 or 3% of the total fees in the Subject Accounts). As noted in the Receiver's Twelfth Report dated June 4, 2021 (the "**Twelfth Report**"), NPL's books and records include a \$2 million receivable due from Nygard Business Consulting (Shanghai) Co. Ltd. ("**NBCS**") as well as an investment of approximately \$3 million in NBCS. As further noted in the Twelfth Report, the funds invested in NBCS appear to have been loaned (the "**NIP Loan**") from NIP to NPL (or an affiliate) to NBCS in connection with the 2013 acquisition and improvement of the Shanghai Property.

In or around January 2023, Mr. Onchulenko of LTGLC advised TDS that a sale of the Shanghai Building was completed and there remained approximately \$2 million in net sale proceeds ("**Shanghai Net Proceeds**") on deposit in an account of NBCS in Shanghai, China. In the circumstances, the Receiver claims an interest in the Shanghai Net Proceeds and in ensuring the use of those proceeds towards either payment of the NIP Loan or payment to NPL for the purposes of consolidated creditor claims. While it appears logical to the Receiver that NBCS ought properly to be able to use funds on deposit in Shanghai to pay a creditor such as NPL (and, by means of a direction from NPL, to NIP), the Receiver understands from Mr. Onchulenko that there are restrictions and obstacles in "repatriating" the Shanghai Net Proceeds to Canada. Notwithstanding these potential restrictions and obstacles, the Receiver is prepared to approve the accounts for work relating to the Shanghai Property by LTGLC/Tayar, as noted in the Subject Accounts, which includes corresponding with agents/professionals in China, Hong Kong or elsewhere that are dealing with this matter, and providing updates to TDS;

- (iii) **Ancillary Matters** – Approximately \$4,332 and approximately \$4,462 of fees in the LTGLC Accounts and Tayar Accounts, respectively, relate to matters in connection with the Proposed Settlement and corporate tax matters concerning NEL (collectively, the "**Ancillary Matters**") (on a combined basis, approximately \$8,794 or 5% of the total fees in the Subject Accounts). The Receiver is of the view that such accounts are reasonable;
- (iv) **LTGLC Professional Fee Motion and Other Professional Fee Matters** – Approximately \$38,147 and approximately \$6,780 of fees in the LTGLC Accounts and Tayar Accounts, respectively, relate to the

LTGLC Professional Fee Motion and other matters concerning the Debtors' professional fees/accounts, (on a combined basis, approximately \$44,927 or 25% of the total fees in the Subject Accounts). The Receiver has concerns about the reasonableness of the amount of fees incurred by LTGLC in connection with the LTGLC Professional Fee Motion as this time pertains to a motion that (a) the Debtors were largely unsuccessful on and (b) repeated communications were made regarding the need to include sufficient detail in the Debtors' professional accounts from as early as April of 2022 up to the hearing date for the motion. In addition, as the Receiver understands the LTGLC Professional Fee Motion was brought specifically for the approval of LTGLC's accounts, and did not relate to Tayar accounts, it is unclear why fees in excess of \$6,000 have been charged by Tayar in relation to the LTGLC Professional Fee Motion. No representatives from Tayar's office provided any submissions at the hearing of the LTGLC Professional Fee Motion.

The LTGLC Accounts and Tayar Accounts also include fees relating to seeking payment of their respective professional accounts and preparing for the Debtors' Professional Fee Motion. In the Receiver's view, these accounts are not costs that should be borne by the Debtors' creditors and therefore is not in a position to approve them;

- (v) **Other** – Approximately \$226 and approximately \$27,833 of fees in the LTGLC Accounts and Tayar Accounts, respectively, relate to entries for work that was either uncategorized (or could not reasonably be categorized by the Receiver), too redacted or otherwise lack sufficient detail to assess the reasonability and relevance to the Receivership Proceedings, or are unreasonable (i.e., preparing accounts) (on a combined basis, approximately \$28,059 or 16% of the total fees in the Subject Accounts). Subject to LTGLC and Tayar providing further information in support of the reasonability and relevance to the Receivership Proceedings, the Receiver is not in a position to approve these accounts; and
- (vi) **Comparison to Receiver's counsel's fees** – The fees of TDS for the period commencing September 26, 2022 and ending April 30, 2023, totaled approximately \$183,268 (exclusive of disbursements and taxes), which is nearly equivalent to the fees in the Subject Accounts (\$179,697, exclusive of disbursements and taxes) for the comparable period.

TDS' fees for the period from September 1 to 25, 2022 were considered as part of the calculation used to fix the Debtors' Professional Accounts (as defined in the Thirteenth Report) pursuant to the November 4 Reasons. It would, therefore, be duplicative to include those fees in comparison to the Subject Accounts. The Receiver also notes that its U.S. counsel, Katten, did not incur fees during the period of the Subject Accounts that pertain to issues in connection with the Receivership Proceedings in which NPL and NEL are engaged. As such, it would not be relevant to include Katten's fees when comparing the Receiver's counsel's fees to the Subject Accounts.

The Receiver notes that, in the November 4 Reasons, Mr. Justice Edmond stated he "would expect the fees of the receiver and receiver's counsel to exceed the legal fees and disbursements of the respondents by a very significant amount given that the duties and responsibilities of the receiver exceed, by far, the mandate of the respondents' counsel." (November 4 Reasons, at T9, paras 17-21). While the work of TDS over the period from September 26, 2022 through April 30, 2023 has included dealing with matters other than the NRPO Appeal (such as issues relating to income tax liability and potential recovery and realization of other assets of the US Debtors), the majority of fees incurred by TDS over that period of time were incurred in dealing with the NRPO Appeal and related matters. In the circumstances, the fees reflected in the Subject Accounts in relation to work on the NRPO Appeal appear reasonable by comparison. However, the Receiver remains unable to approve amounts for fees where it is not clear they were incurred directly in relation to matters at issue in the Receivership Proceedings.

VI. CONCLUSION AND RECOMMENDATION

61. In consideration of all the above, the Receiver accepts the total value of \$106,712 (excluding disbursements and taxes), comprised of (each excluding disbursements and taxes):

- (i) \$93,340 for work relating to the NRPO Appeal;
- (ii) \$4,578 for work relating to the Shanghai Property matters; and
- (iii) \$8,794 for work relating to the Ancillary Matters;

to be reasonable legal fees and disbursements and professional costs incurred in the Receivership Proceedings and recommends that these fees be approved for payment from the Net Receivership Proceeds.

62. The Receiver respectfully submits that it is not in a position to approve for payment from the Net Receivership Proceeds the remainder of the Subject Accounts as they are currently presented. It is the responsibility of the Debtors' counsel to provide enough information to allow the Receiver to satisfy itself, with reasonable certainty,

that their accounts satisfy the requirements for approval as provided in the Net Receivership Proceeds Order and the November 4 Reasons.

63. As set out in this Fourteenth Report, large portions of the Subject Accounts remain heavily redacted and otherwise lack sufficient detail to enable the Receiver to reach a conclusion as to their relationship to the Receivership Proceedings and their reasonableness.

All of which is respectfully submitted on this 15th day of May, 2023.

**Richter Inc. (formerly, Richter Advisory Group Inc.)
in its capacity as Receiver of
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., any Nygard International Partnership
and not in its personal capacity**



**Adam Sherman, MBA, CIRP, LIT
Senior Vice President**



**Adam Zeldin, CPA, CA, CIRP, LIT
Vice President**

Appendix “A”

File No. CI20-01-26627
Appeal No. _____

IN THE COURT OF KINGS'S BENCH FOR MANITOBA
JUDICIAL CENTRE OF WINNIPEG

BETWEEN

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant

and

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

Respondents

REASONS FOR JUDGMENT
(Pages T1 - T14)

November 4, 2022
Winnipeg, Manitoba

Royal Reporting, A Veritext Company
120 - 330 St. Mary Avenue
Winnipeg, Manitoba
R3C 3Z5
Phone: 204-306-9149
Fax: 204-306-9154

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1 Proceedings taken in the Court of King's Bench, Winnipeg, Manitoba

2

3

4 November 4, 2022

Afternoon Session

5

6 The Honourable Mr. Justice

The Court of King's Bench

7 J. Edmond

for Manitoba

8

9 W. Onchulenko

For the Respondents

10 C. Linthwaite

For the Respondents

11 R. McFadyen

For the Receiver

12 M. Labossiere

For the Receiver

13 L. Galessiere

For Interested Creditors

14 J. Wuthmann

For Interested Creditors

15 K. Pohorily

Court Clerk

16

17

18 **Discussion**

19

20 THE COURT:

Good afternoon. Just give me a moment,

21 I am just opening up my computer and I will be ready to proceed in a second.

22

23 Why don't we just start briefly with appearances. Mr. Onchulenko, I see you on
24 the line there.

25

26 MR. ONCHULENKO:

Yes, My Lord.

27

28 MS. LABOSSIÈRE:

My Lord, you also have Ross McFadyen,

29 Melanie Labossiere, counsel for the receiver, and Adam Sherman and Shane
30 Connolly from (INDISCERNIBLE).

31

32 THE COURT:

All right. Good afternoon. And I see Mr.

33 Linthwaite there as well.

34

35 MR. LINTHWAITE:

Good afternoon, Your Honour.

36

37 THE COURT:

Good afternoon.

38

39 MS. GALESSIÈRE:

Your Honour, this is Linda Galessiere

40 and Jessica Wuthmann are on the line as well.

41

1 THE COURT: Okay. Good afternoon.

2

3 **Reasons for Judgment**

4

5 THE COURT: All right. I am ready to get started.

6 Thanks for appearing on short notice. As I indicated yesterday, I intended to have
7 reasons for decision ready quickly. I have done that and I am delivering my
8 reasons for decision orally this afternoon. If a copy of the transcript of the reasons
9 for decision is ordered, I reserve the right to make some edits to the oral decision
10 for grammatical or clarification purposes but not in relation to any substantive
11 matter or issue.

12

13 Just by way of introduction, the respondents filed a notice of motion and seek an
14 order determining and approving the quantum of reasonable legal fees,
15 disbursements and professional costs incurred by Mr. Nygard in the receivership
16 and bankruptcy proceedings.

17

18 The respondents also seek an order authorizing the full payment of legal fees and
19 disbursements and professional costs of Mr. Nygard from the preserved proceeds
20 and, if necessary, the net receivership proceeds as those terms are defined in
21 previous decisions of this Court.

22

23 In support of the notice of motion, the respondents filed an affidavit of Wayne
24 Onchulenko affirmed October 3, 2022. His affidavit addresses the legal fees and
25 disbursements incurred by the respondents and billed by the law firm of Levene,
26 Tadman, Gulub Law Corporation (LTGLC), and Mr. Onchulenko's affidavit
27 attaches an Excel spreadsheet breaking down the work into ten areas and also
28 attaches amended invoices for the billing period December 2021 until August
29 2022. He states that the accounts have been approved by the respondents' director,
30 Mr. Greg Fenske.

31

32 During the billing period, he affirms that the total fees billed by LTGLC were
33 \$391,903 plus disbursements of \$6,137.87 and applicable taxes of \$47,306.36, for
34 an aggregate amount of \$444,647.35. Mr. Onchulenko states that the legal fees
35 charged are fair and reasonable for the services performed and are either consistent
36 with or below prevailing market rates for legal services of the nature involved in
37 this proceeding. He provides particulars of the actions of his firm in connection
38 with this proceeding and all steps that have been taken before the Court of Appeal
39 to appeal the decision of this Court regarding what has been referred as the
40 "substantive consolidation order", or the "net receivership proceeds order."

41

1 On March 10, 2022, I granted the net receivership proceeds order dealing with the
2 respondents' legal fees and disbursements as follows:

- 3
- 4 (a) Authorizing or permitting payment of the respondents' reasonable legal fees
5 and disbursements and professional costs incurred, and to be incurred in the
6 receivership proceedings and to be incurred in the bankruptcy proceeding from
7 the preserved proceeds and, if necessary, the net receivership proceeds; and
8
- 9 (b) Dismissing the respondents' motion to authorize or permit payment of
10 reasonable legal fees and disbursements from the preserved proceeds or the net
11 receivership proceeds to defend the criminal charges against Mr. Peter J.
12 Nygard, Mr. Nygard.
- 13

14 It is important to recognize that no order was made to authorize or permit the
15 payment of reasonable legal fees and disbursements and professional costs
16 incurred by Mr. Nygard personally. The order previously granted dealt with
17 reasonable legal fees, disbursements and professional costs incurred by the
18 respondents to defend the position advanced by the receiver in the contested
19 proceedings in the receivership proceedings and nothing more.

20

21 The relevant findings made in my reasons for decision in *White Oak Commercial*
22 *Finance, LLC v. Nygard Holdings (USA) Limited et al*, 2022 MBQB 48, are worth
23 repeating to put the relief sought by the respondents in proper context.

24

25 As stated at paragraphs 133 to 134, 137 to 138, and 151 to 154, as follows:

26

27 [133] The general legal principle governing payment of a
28 debtor's legal costs is that the court has discretion to
29 authorize an advance by the Receiver out of a debtor's
30 assets to pay legal costs required to defend an application
31 providing the defence is not frivolous or vexatious. (See
32 Lloyd W. Houlden, Geoffrey B. Morowetz and Janis P.
33 Sarra's *Annotated Bankruptcy and Insolvency Act*, 4th ed
34 (Canada: Carswell, 2009) at para. 3.62; *King Petroleum*
35 *Ltd. (Re)*(1973), 18 C.B.R. (N.S.) 270, [1973] O.J. No.
36 1324 (Ont. Sup. Ct.) and *Royal Bank of Canada v. West-*
37 *Can Resource Finance Corp. Ltd.*, [1990], 77 Alta. L.R.
38 (2d) 43 3 C.B.R. (3d) 55).

39

40 [134] In my view, the submissions advanced by the
41 respondents have not been frivolous or vexatious. The
42 issues have been complex, and the respondents deserve to

1 be represented to advance their best legal position. I agree
2 with the respondents that putting forth a defence would be
3 hollow without an ability to retain and pay experienced
4 legal counsel in insolvency matters to represent their
5 interests.

6

7 [137] In my view, there is no reason to depart from the
8 general principle that the respondents are entitled to
9 representation in the receivership and bankruptcy
10 proceedings. Accordingly, subject to providing statements
11 of account to the Receiver or Trustee in bankruptcy for
12 approval on the basis the costs claimed are reasonable, the
13 Preserved Proceeds may be used to satisfy legal fees and
14 disbursements and professional fees incurred in
15 connection with the receivership and bankruptcy
16 proceedings.

17
18 [138] The same governing legal principle as noted above
19 applies in connection with the second issue. In my view,
20 providing statements of account for legal fees and
21 disbursements are submitted to the Receiver or Trustee in
22 bankruptcy for approval and are reasonable, the fees and
23 disbursements may be paid from the Net Receivership
24 Proceeds. The respondents are entitled to mount a defence
25 and advance legal positions challenging the Receiver and
26 if they elect to do so, the respondents may proceed with an
27 appeal of this decision. If the legal fees and disbursements
28 exceed the remaining balance of the Preserved Proceeds, a
29 portion of the Net Receivership Proceeds may be set aside
30 to cover reasonable fees and disbursements incurred by
31 the respondents.

32

33 [151] Mr. Nygard is seeking indemnification and priority
34 respecting funds held for the benefit of all of the creditors
35 of the respondents and he has not established that the
36 criminal charges have anything to do with acting as an
37 officer or director of the Debtors. Nor does the evidence
38 satisfy me that he acted honestly and in good faith with a
39 view to promoting the best interests of NPL. I agree that
40 the criminal charges are unproven allegations and Mr.
41 Nygard is innocent unless he is proven guilty beyond a

1 reasonable doubt. However, the allegations simply cannot
2 relate to performing any duties of an officer or director or
3 former officer or director who owes duties to act honestly
4 and in good faith and to exercise the care, diligence and
5 skill that a reasonably prudent person would exercise in
6 comparable circumstances.

7
8 [152] The fact that the criminal charges relate to incidents
9 alleged to have occurred at one or more of the properties
10 owned by NPL does not assist the respondents' argument.
11 The location of alleged criminal conduct is not part of the
12 test to seek entitlement to indemnification.

13
14 [153] The respondents' reference to the civil action is a
15 reference to the Jane Doe proceeding, a class action law
16 suit commenced in the US and referenced in the
17 Receivership Order. NPL is not named as a defendant in
18 the Jane Doe proceeding and I disagree with the
19 submission that NPL's assets will likely be used to satisfy
20 any judgment obtained in that case. Even if I accept that
21 NPL is entitled to the Net Receivership Proceeds, which I
22 do not, the submission advanced is speculative. In light of
23 my ruling in this case, the Net Receivership Proceeds,
24 which includes NPL's assets, will be used to satisfy
25 Common Liabilities of the respondents' creditors in the
26 bankruptcy proceedings. Mr. Nygard has no prior claim or
27 entitlement to any of NPL's assets, including the
28 Preserved Proceeds or the Net Receivership Proceeds.

29
30 [154] To conclude on the indemnification issues, the
31 respondents' motion to authorize or permit payment of
32 reasonable legal fees and disbursements and professional
33 costs in the receivership or bankruptcy proceedings is
34 granted. The respondents' motion to authorize or permit
35 payment of reasonable legal fees and disbursements from
36 the Preserved Proceeds or the Net Receivership Proceeds
37 to defend the criminal charges against Mr. Nygard is
38 dismissed.

39
40 General Factors Considered

41
42 The parties agree that the general factors to be considered when deciding to
43 approve reasonable fees and disbursements in the context of receivership

1 proceedings are reviewed in *Bakemates International (Re)*, [2002] O.J. No. 3569,
2 219 D.L.R. (4th) 72 (QL), Ontario Court of Appeal where the Court addresses (a)
3 the procedure to be followed in assessing legal fees and disbursements including
4 the requirements that pertain to the substance and content of accounts; and (b) the
5 factors to be considered in determining whether remuneration is “fair and
6 reasonable.”

7
8 The Ontario Court of Appeal, starting in para. 37 addresses these two issues. I do
9 not intend to read into the record the quotes that I have in my reasons for decision
10 taken from the Ontario Court of Appeal case. In the interest of time and given that
11 the parties are familiar with the various paragraphs that I intend to refer to, I have
12 included in my reasons for decision paragraphs 37, 38, 39, 40, 41, 42, 43, 44, 45,
13 46, 47, 48, right through to and including to the end of paragraph 54 from the
14 *Bakemates International (Re)* decision.

15
16 I agree that the factors considered when passing accounts of the receiver and its
17 counsel are factors that ought to apply equally to the accounts submitted by the
18 respondents in this case. The respondents referred the Court to *Friesen v. Bennell*,
19 [1999] 139 Man.R. (2d) 119, [1999] M.J. No. 297, as authority for the manner in
20 which the Court should interpret the terms “fair and reasonable”.

21
22 The *Friesen* case was a contested assessment of a lawyer’s account, and the
23 Master referenced the factors listed in the Code of Ethics in Manitoba Governing
24 Legal Accounts which list the factors to be considered to assess and determine
25 what is a fair and reasonable fee. See para. 3.6-1 as follows:

- 26
27 (a) the time and effort required and spent;
28 (b) the difficulty of the matter and the importance of the
29 matter to the client;
30 (c) whether special skill or services has been required and
31 provided;
32 (d) the results obtained;
33 (e) fees authorized by statute or regulation;
34 (f) special circumstances, such as the postponement of
35 payment, uncertainty of reward, or urgency;
36 (g) the likelihood, if made known to the client, that
37 acceptance of the retainer will result in the lawyer’s
38 inability to accept other employment;
39 (h) any relevant agreement between the lawyer and the client;
40 (i) the experience and ability of the lawyer;
41 (j) any estimate or range of fees given by the lawyer; and
42 (k) the client’s prior consent to the fee.

1
2 Analysis and Decision
3

4 The receiver filed its 13th report and supplementary 13 report, both of which
5 address the legal fees and disbursements and professional costs incurred by the
6 respondents and the receiver conducted an extensive review to determine the
7 reasonableness of the legal fees and disbursements claimed. The receiver reviewed
8 redacted legal accounts submitted by the respondents, requested through counsel
9 additional information from the respondents' counsel, the detail of which is set
10 forth in the 13th report starting at para. 49.

11
12 I do not intend to review the receiver's concerns in detail. The receiver ultimately
13 concluded that it was unable to approve or disapprove the fees based on services
14 detailed in the LTGLC accounts. The receiver was also unable to assess the
15 LTGLC accounts as to reasonableness. Some of the accounts relate to services
16 performed in the receivership proceedings and the appeal of the net receivership
17 proceeds order. There is no doubt that LTGLC and Tayar & Associates submitted
18 accounts during the course of the receivership, a number of which were approved
19 and paid out of the preserved proceeds.

20
21 The receiver identified that approximately \$873,500 has been paid to LTGLC and
22 Tayar from the preserved proceeds. I point out that the receiver has approved the
23 legal fees and disbursements claimed by Tayar as reasonable.

24
25 In essence, it is only necessary for the Court to assess whether the fees and
26 disbursements claimed by LTGLC are fair and reasonable. That said, as I will
27 explain, the total fees and disbursements claimed by the respondents is relevant to
28 that determination.

29
30 The 13th report states that since there is approximately \$160,272 remaining in the
31 preserved proceeds fund, payment of the respondents' legal accounts will require a
32 significant contribution from the net receivership proceeds. That, of course, will
33 reduce the amount that may be payable for distribution to the other creditors,
34 including CRA, and the unsecured creditors in the bankruptcy proceeding.

35
36 Applying the principles outlined above and assessing whether legal accounts are
37 fair and reasonable involves a detailed analysis of the accounts, the manner and
38 circumstances in which the services were provided, the time it took to perform the
39 services and the hourly rates applied to the time expended. Other factors include
40 the reasonableness of the time expended, the necessity of doing the work as well as
41 the complexity of the services performed in the receivership proceedings.

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I agree with the submissions made on behalf of the receiver and the other interested parties and specifically counsel for CRA that in assessing the legal fees and disbursements claimed by the respondents there is a balancing of the interests of the respondents who are entitled to be represented in the receivership and bankruptcy proceedings and the interest of the creditors who will suffer a prejudice by way of a reduced payout if legal fees and disbursements and professional fees are approved in an amount that is higher than reasonable fees, disbursements and professional fees.

I agree that the assessment of reasonableness of the fees claimed must take into account the creditors interests in this case. I agree with the observations made by the receiver in the 13th report and the supplementary 13 report regarding many of the time entries and specifically relating to time spent in engaging, strategizing and taking instruction from Mr. Nygard personally.

According to Mr. Onchulenko, Mr. Nygard has an interest in the financial wellbeing of the two entities previously defined as NEL and NPL. This must be contrasted with previous statements made by the respondents in these receivership proceedings that Mr. Nygard resigned as a director of these entities, is not the directing mind of NPL and that Mr. Fenske is the sole director of NPL and NEL. Mr. Fenske has been and continues to be paid \$6500 per month from the preserved proceeds to serve in that capacity, principally for the purpose of instructing respondents' counsel. The extensive efforts that have been made to contact and receive instructions from Mr. Nygard in the circumstances do not fall into the category of what I would consider to be reasonable legal fees, disbursements and professional costs that should be entirely reimbursed from the funds held by the receiver.

One of the objectives of reviewing and seeking approval of accounts is to ensure fair compensation for the services performed relating to the receivership proceedings and to discourage unproductive and unnecessary services.

I find the amount claimed to engage, strategize, and take instruction from Mr. Nygard in the magnitude of approximately \$117,000 during the relevant timeframe to be excessive and unreasonable.

Further, and perhaps more importantly, is that the order of the Court did not authorize payment of reasonable legal fees and disbursements and professional costs of Mr. Nygard. The order authorized and directed payment of reasonable legal fees and disbursements and professional costs of the respondents.

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I accept the conclusion of the receiver that is not practicable for the receiver to responsibly approve or disapprove fees based on services identified and detailed in the LTGLC accounts or assess their connection to the matters at issue in the receivership proceedings or determine their reasonableness.

I have the same issue when I review the accounts and the affidavit material filed. I accept some of the fees claimed by LTGLC and the fees of Tayar relate to services performed in their participation in the receivership proceedings. However, the amount claimed is far in excess of the amount of fees claimed by the receiver's counsel during the same relevant period of time.

I disagree with the respondents' submission that it is reasonable to examine the total fees and disbursements claimed by the receiver and/or the receiver's counsel during the entire course of the receivership and calculate an amount of fees and disbursements per month as a basis to determine whether the respondents' fees claimed during the relevant timeframe are reasonable. I would expect the fees of the receiver and receiver's counsel to exceed the legal fees and disbursements of the respondents by a very significant amount given that the duties and responsibilities of the receiver exceed, by far, the mandate of the respondents' counsel.

Respondents' counsel contested some, but not all, of the conduct and activities that were performed by the receiver and its counsel during the course of the receivership. The receiver, as an officer of the court, was tasked with liquidating all of the substantial assets of the respondents and reporting to the Court in as detailed in its numerous reports. Using an average of all receivership billings per month during the course of a complex receivership for the purpose of assessing the respondents' accounts during the fixed timeframe is not a reasonable comparison.

I agree with the receiver's assessment that a fair and reasonable way to assess the respondents' accounts is to compare them with what receiver's counsel has billed for legal fees and disbursements, to deal with receivership issues during the relevant timeframe, to appear and argue the net receivership proceeds motion and respond to the steps taken by respondents' counsel to appeal the decision of this Court.

For the purposes of comparison, the receiver reported on the aggregate legal fees and disbursements of both the receiver and the respondents for the period leading up to the net receivership's motion, approximately November 2021 to approximately August or September of 2022. See paras. 97 to 99 of the 13th report

1 and paras. 47 to 52 of the supplementary 13th report.
2

3 The receiver prepared a table which outlined the comparison in the 13th report as
4 amended in the supplementary report. The receiver recommends that the Court
5 consider approving the respondents' professional accounts in a total amount
6 equivalent to the amount of the accounts issued by TDS and Katten as Canadian
7 and US counsel for the receiver, plus an additional factor of 15 percent to
8 recognize the arrangements required for contact with Mr. Nygard and some
9 expected overlap in services.

10
11 I accept this recommendation as a reasonable manner in which to fix what I
12 consider to be a fair and reasonable assessment of the legal fees and disbursements
13 and professional costs incurred by the respondents to be paid out of the funds held
14 by the receiver with some minor amendments to take into account matters that
15 were raised during the course of submissions yesterday which I will detail in a
16 moment.

17
18 I also agree with the receiver that only a portion of the legal fees and
19 disbursements payable to Katten deal with the issues that were before the Court
20 and should be used for comparison purposes. The receiver estimated the legal fees
21 submitted by Katten relating to matters in the receivership proceedings in which
22 NPL and NEL are engaged to be approximately \$16,000 US dollars.

23
24 I agree with the receiver as recommended in the supplementary 13th report that the
25 amount of the receiver's legal fees should be increased to take that into account.
26

27 Further, counsel for the respondents submitted that the TDS accounts used for
28 comparison did not include the services provided by the receiver's counsel to file
29 its factum and responding material in the Court of Appeal and that professional
30 time ought to have been included for comparison purposes.

31
32 I questioned counsel for the receiver and he acknowledged yesterday that the
33 additional time billed in September 2022 amounted to \$65,000 for fees. In my
34 view, a fair a reasonable comparison should include time to deal with the motion
35 heard in December 2021 up to and including time spent and billed to respond to
36 and finalize filings in the Court of Appeal.

37
38 Both the receiver's counsel and counsel for the respondents filed material relevant
39 to this Court's net receivership proceeds motion prior to November 30, 2021. And
40 I agree it is reasonable to not include the earlier timeframe for comparison
41 purposes.

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I recognize that no comparison is perfect. The test is not perfection. It is what is fair and reasonable in the circumstances. In my view, comparing the fees during the timeframe chosen is a fair and reasonable manner to assess the respondent's legal accounts.

Accordingly, considering the submissions of all parties and balancing the interest of the creditors and the respondents, I find that legal fees and disbursements claimed by the respondents shall be calculated and approved as follows:

- (a) Based on TDS fees and applicable taxes of \$330,026 plus 25,000 being the approximate equivalent of the Katten accounts in Canadian dollars as \$16,000 US dollars plus 65,000 to account for amounts that were incurred to respond to the respondents' appeal not included in the 330,026 which totals \$420,026.
- (b) Plus a premium of 15 percent of \$420,026 for a total payment of reasonable legal fees of the respondents in the amount of \$483,030, plus any additional taxes incurred because the amount has been increased.
- (c) The proven disbursements, professional costs and any additional taxes payable shall be reviewed by the receiver and paid so long as they were incurred to deal with matters at issue in the receivership proceedings and the appeal pending in the Court of Appeal; and
- (d) I further grant an order authorizing the payment of the amounts approved from the preserved proceeds first and then from the net receivership proceeds. The manner in which the approved fees, disbursements and professional costs are allocated between LTGLC and Tayar & Associates shall be left to the respondents' counsel to agree upon and advise the receiver.

That completes my reasons for decision. I will pause here and just ask if there is any questions regarding the direction of the Court.

MR. MCFADYEN: My Lord, it's -- it's Mr. McFadyen. Just one comment, the \$65,000 number that we were talking about yesterday was actually inclusive of taxes and disbursements through that period and not simply fees. I'm not sure that that results in any kind of major change, but I just wanted to -- to add that clarification.

THE COURT: I wondered about that. I thought it was --

MR. MCFADYEN: Yes.

THE COURT: -- the fee amount. But that certainly

1 could be taken into account in doing the calculation. I left the calculation of the
2 taxes because increasing the number by the 15 percent amount will result in
3 additional taxes as well. So that certainly could be taken into account.
4

5 My intent was to add up the total fee amount first, multiply that by 15 percent. The
6 taxes will flow on whatever the final number is.
7

8 MR. MCFADYEN: Okay. Thank you, My Lord.
9

10 THE COURT: So if there is any questions about that, I
11 certainly think the parties can work that out but the intent, as I say, was to use the
12 fees to start, calculate the number, in other words the reasonable comparison that
13 we are using to determine what the total fees are that are payable to the
14 respondents and then include taxes as well and then of course proven
15 disbursements that have been submitted to the receiver and approved by the
16 receiver. I do not imagine there is a dispute about the actual disbursements and
17 professional costs that have been claimed, but I did not review those because I
18 believe the main complaint that was advanced was that the total fees that were
19 claimed were not reasonable and that is what I focused on. The taxes will flow
20 from whatever the number is that I have approved.
21

22 MR. MCFADYEN: Thank you, My Lord.
23

24 THE COURT: So just to -- to finalize that point, my
25 suggestion is that we take out of your \$65,000 number the taxes, include it in the
26 calculation and then round it up by the premium of 15 percent, come up with a
27 number, then add the taxes and add the disbursements, if that makes sense.
28

29 MS. LABOSSIÈRE : My Lord, just -- just a clarification on
30 the period of time of these accounts, when did this period of time end? So the
31 receiver's fees would have been up to the end of September, but I believe the
32 accounts of the respondents that we received were to the end of August. So does
33 this mean this number is intended to capture just to the end of August for the
34 respondents' fees?
35

36 THE COURT: It is intended to cover whatever the
37 respondents submitted for review.
38

39 MS. LABOSSIÈRE: Okay.
40

41 THE COURT: And I only used your accounts, the

1 accounts of TDS as a comparator, which I considered to be a reasonable
2 comparator, but I agreed with the submission of the respondents that it should
3 include the time to perfect whatever filings were required in the Court of Appeal.
4

5 MS. LABOSSIERE: Thank you, My Lord.

6
7 THE COURT: All right. Thank you. Any questions, Mr.
8 Onchulenko?

9
10 MR. ONCHULENKO: No, My Lord.

11
12 THE COURT: All right. Thanks very much for your
13 submissions and I will have a disposition sheet available. And of course, counsel
14 can order a copy of the transcript if they choose.

15
16 Thank you. Good afternoon.

17
18 MR. ONCHULENKO: Thank you, My Lord.

19 _____
20
21 PROCEEDINGS CONCLUDED

IN THE MATTER OF WHITE OAK COMMERCIAL FINANCE, LLC V.
NYGARD HOLDINGS (USE) LIMITED, NYGARD INC., FASHION VENTURES
INC., NYGARD NY RETAIL, LLC, 4093879 CANADA LTD., 4093887 CANADA
LTD., NYGARD PROPERTIES LTD., AND NYGARD ENTERPRISES LTD.

I, MEGAN REYNARD, Court Transcriber, HEREBY MAKE OATH AND SAY that the foregoing typewritten pages being numbered T One (T1) to T Thirteen (T13), inclusive, contain a true and correct transcription of the recorded proceedings taken herein to the best of my knowledge, skill and ability.

COURT TRANSCRIBER

Appendix “B”



Writer's Name Mel M. LaBossiere
Direct Telephone 204-934-2508
E-mail Address MML@tdslaw.com

May 3, 2023

VIA E-MAIL

Levene Tadman Golub Law Corporation
700-330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5

Attention: Wayne Onchulenko

Attention: Fred Tayar

Dear Sirs:

Re: Richter Inc.
(formerly Richter Advisory Group Inc.) and
Nygard International Partnership et al.
Approval of Accounts
Our Matter No. 0173004 GBT

We write on behalf of Richter Inc. (formerly, Richter Advisory Group Inc.) in its capacity as Court-appointed receiver (the "**Receiver**") of Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd. ("**NPL**"), 4093879 Canada Ltd., 4093887 Canada Ltd. and Nygard International Partnership (together, the "**Debtors**"). The receivership proceedings of the Debtors is herein referred to as the "**Receivership Proceedings**".

As you are aware, pursuant to the March 10, 2022 judgment of Mr. Justice Edmond (the "**Judge**") of the Court of the King's Bench (Winnipeg Centre) (the "**Court**"), it was ordered that the respondents (i.e. the Debtors) have access to certain funds, defined as the Preserved Proceeds and the Net Receivership Proceeds, to pay "reasonable legal fees and disbursements and professional costs incurred ... in the Receivership Proceedings", after review and approval by the Receiver of such legal fees and disbursements and professional costs (the "**March 10 Judgment**").

On November 4, 2022, the Judge gave oral Reasons for Judgment in respect of a motion (the "**Fee Motion**") brought by Levene Tadman Golub Law Corporation ("**LTGLC**") for the approval of certain of the professional accounts rendered in respect of services provided to the Debtors (the "**November 4 Judgment**"). A copy of the transcript of the November 4 Judgment is enclosed for your convenience.



The Receiver has been provided and reviewed the accounts of (i) LTGLC for the period commencing September 6, 2022 and ending January 31, 2023 (the “**LTGLC Accounts**”); and (ii) Fred Tayar & Associates Professional Corporation (“**Tayar**”) for the period commencing September 6, 2022 and ending January 31, 2023 (the “**Tayar Accounts**” and together with the LTGLC Accounts, the “**Accounts**”).

As you are aware, there were several communications between our offices over the course of March and early April 2023 where the matter of the Accounts were discussed in connection with a potential resolution of all further matters as between the Receiver and the Debtors, including the appeal of the primary relief provided by the Judge in connection with the March 10 Judgment. As the parties were unable to reach an overall agreement, we are now providing you with this letter detailing the Receiver’s concerns with the Accounts as presented.

Based on the information currently available, the Receiver is not in a position to approve certain amounts set out in the professional accounts of LTGLC and Tayar. As set out in this letter, given the scope of redactions and insufficient detail supporting the accounts of LTGLC and Tayar, the Receiver is unable to assess whether certain entries in the Accounts are reasonable or incurred in connection with the Receivership Proceedings.

The Accounts

The LTGLC Accounts total \$48,012.00 (exclusive of taxes and disbursements) and the Tayar Accounts total \$53,372.50 (exclusive of taxes and disbursements). Collectively, the Accounts detail fees of \$101,384.50 (exclusive of taxes and disbursements).

The Receiver is presently prepared to approve payment of \$36,325.00 (plus taxes and disbursements).

The Receiver accepts the total value of \$36,325.00 to be reasonable legal fees and disbursements and professional costs incurred in the Receivership Proceedings. The total amount approved is comprised of:

1. \$2,470.00 of LTGLC fees and \$176.00 of Tayar fees relating to the Shanghai Building; and
2. \$8,789.00 of LTGLC fees and \$24,890.00 of Tayar fees relating to Appeal matters.



Concerns with the Accounts

Scope of Redactions and Need for Detail

Certain of the Accounts are so heavily redacted that it is not practically possible to assess the reasonability and relevance to the Receivership Proceedings of the fees billed therein. In particular, approximately \$21,125.50 of the Tayar Accounts pertain to time entries which are completely or largely redacted.

Other entries in both the Tayar Accounts and the LTGLC Accounts that are not redacted are limited in their descriptions such that it is not possible for the Receiver to reasonably assess what the fees relate to. In particular, Mr. Onchulenko and Mr. Refvik often simply add abbreviations (i.e. FM (fee motion), CA (Court of Appeal Matter), and China/Rec (relating to the Shanghai Building)) to entries without any meaningful description. Ms. Feldman's time entries include more detail and include the abbreviations, which make it easier to assess the reasonableness of the entries.

The use of abbreviations without further descriptions is problematic. For example, there are certain entries which suggest the descriptions may not be accurate or the abbreviation used to identify what the work related to is inaccurate.

Absent further information, it is not possible for the Receiver to conclude whether certain of the services detailed in the Accounts relate to the Receivership Proceedings.

We note that the November 4, 2022 Judgment included certain comments about the highly redacted nature of the Accounts:

I accept the conclusion of the receiver that it is not practicable for the receiver to responsibly approve or disapprove fees based on services identified and detailed in the LTGLC accounts or assess their connection to the matters at issue in the receivership proceedings or determine their reasonableness.

I have the same issue when I review the accounts and the affidavit material filed. I accept some of the fees claimed by LTGLC and the fees of Tayar relate to services performed in their participation in the receivership proceedings. However, the amount claimed is far in excess of the amount of fees claimed by the receiver's counsel during the same relevant period of time. (November 4 Judgment at T9 lines 2-11)



Unfortunately, the scope of the redactions and the lack of detail in the Accounts remains an issue and a challenge to the Receiver in approving the Accounts. It is understood some level of redaction may be necessary and appropriate to protect privileged information. However, the redactions found in the Accounts still appear to go beyond what might be necessary to protect privilege. In the circumstances, the Receiver has no ability to assess the reasonableness and approve fully-redacted entries, and only a limited ability to address partially-redacted entries.

Total Amounts Charged

It is noted that the fees of Thompson Dorfman Sweatman LLP (“TDS”) for the period commencing September 26, 2022 and ending January 31, 2023, totaled \$43,805.00 (exclusive of taxes and disbursements).

The fees of counsel to the Debtors continue to greatly exceed the fees of TDS.

The Receiver notes that the Judge stated he “would expect the fees of the receiver and receiver’s counsel to exceed the legal fees and disbursements of the respondents by a very significant amount given that the duties and responsibilities of the receiver exceed, by far, the mandate of the respondents’ counsel.” (November 4 Judgment, at T9, paras 17-21).

It is difficult to conclude that the amounts set out in the Accounts are reasonable in light of the above-noted finding of the Judge.

Amounts attributed to the Fee Motion

The Receiver notes that approximately \$36,629.00 of fees in the LTGLC Accounts relate to the Fee Motion and approximately \$6,237.00 of the fees in the Tayar Accounts relate to the Fee Motion.

The Receiver understands the Fee Motion was brought specifically for the approval of LTGLC accounts, and did not relate to Tayar accounts. Additionally, no one from Tayar’s office provided any submissions at the hearing of the Fee Motion. As such, it is unclear why fees in excess of \$6,000.00 have been charged by Tayar in relation to the Fee Motion.

The Receiver has concerns about the reasonableness of the amount of fees incurred by LTGLC in connection with the Fee Motion as this time pertains to a motion that (i) the Debtors were largely unsuccessful on; and, (ii) repeated communications were made regarding the need to include sufficient detail in the Accounts from as early as March of 2022 up to the hearing date.



Summary of Receiver's Concerns and Information Needed

It is your responsibility to provide enough information to allow the Receiver to satisfy itself, with reasonable certainty, that your accounts satisfy the requirements for approval as articulated by the Judge in the March 10 Judgment and the November 4 Judgment.

As set out above, large portions of the Accounts remain heavily redacted and otherwise lack sufficient detail to enable the Receiver to reach a conclusion as to their relationship to the Receivership Proceedings and their reasonableness.

As you are aware, the Receiver is an officer of the Court and is charged with considering the interests of all stakeholders, including those of third-party creditors of the Debtors. In the circumstances, the Receiver is required to review the Accounts carefully to ensure that any approval as to payment is in strict accordance with the direction provided by the Court in the March 10 Judgment and November 4 Judgment.

The Receiver remains prepared to accept further information and continue to engage in discussions with respect to approval of the Accounts. We remain hopeful that an agreement can be reached such that it will not be necessary to again escalate the matter of approval of the Debtors' professional accounts to a contested hearing.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

Mel M. LaBossiere

MML/mml