

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, 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,

- 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 DEBBIE MACKIE
AFFIRMED this 29th of October, 2021

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

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, 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,

- 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 DEBBIE MACKIE

I, **DEBBIE MACKIE**, of the City of Winnipeg, in the Province of
Manitoba, AFFIRM:

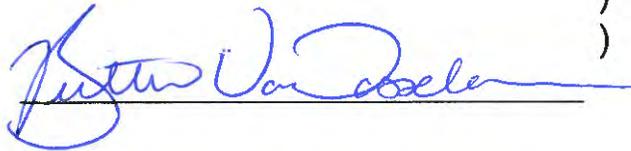
1. I am a legal assistant employed by the law firm Levene Tadman Golub
Law Corporation, counsel for the Respondents herein and as such
have personal knowledge of the facts and matters which are
hereinafter deposed to by me, except where same are stated to be
based on information and belief, and which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

2. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is an email attaching a letter from Wayne Onchulenko to Bruce Taylor on October 1, 2021.

3. Attached hereto and marked as **Exhibit "B"** to this my Affidavit, is an email attaching a letter from Bruce Taylor to Wayne Onchulenko on October 13, 2021.

4. I make this Affidavit *bona fide*.

AFFIRMED before me at the)
 City of Winnipeg, in the)
 Province of Manitoba this 29th)
 day of October, 2021)

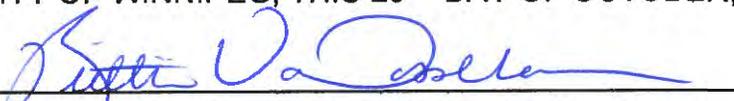




 DEBBIE MACKIE

A COMMISSIONER FOR OATHS
 IN AND FOR THE PROVINCE OF MANITOBA
 MY COMMISSION EXPIRES Dec 29, 2022

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT
OF DEBBIE MACKIE AFFIRMED BEFORE ME AT THE
CITY OF WINNIPEG, THIS 29TH DAY OF OCTOBER, 2021.


A Commissioner for Oaths in and for the Province of
Manitoba. My commission expires: Dec 29 / 22

Debbie Mackie

From: Debbie Mackie
Sent: October 1, 2021 3:35 PM
To: Bruce Taylor
Cc: Wayne M. Onchulenko; Leiba Feldman; Debby Prymak
Subject: White Oak Commercial Finance LLC v Nygard Holdings et al CI20-01-26627
Attachments: Bruce Taylor Oct 1.21.pdf; Questions to Receiver re 12th Report - Version Two Revised 1October2021.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
Winnipeg, MB R3C 3Z5
Ph: 204-957-6429
Fax: 204-957-1696
Website: www.ltglc.ca

Levene  Tadman Golub
Law Corporation

 please think green before printing this email

LEGAL NOTICE

This transmission, including its attachments, if any, may contain privileged or confidential information. Any unauthorized distribution, copying, disclosure or dissemination of this transmission or taking of any action in reliance on the contents of this transmission is strictly prohibited. If you are not (one of) the intended recipient(s), if you receive this transmission in error or if it is forwarded to you without the express authorization of Levene Tadman Golub Law Corporation, please destroy this transmission and contact us immediately.



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

October 1, 2021

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

Dear Sir:

**RE: White Oak Commercial Finance, LLC v. Nygard Holdings (USA) Limited et al
Court of Queen's Bench Winnipeg File No. CI20-01-26627**

Enclosed please find revised copy of Questions for Receiver Respecting its Twelfth Report.

Yours truly,

LEVENE TADMAN GOLUB LAW CORPORATION

Per:

WAYNE M. ONCHULENKO*

WMO:dam

encl.

Bar Admissions: Manitoba Ontario and Nunavut

*services provided through Wayne M. Onchulenko Law Corporation

Questions for Receiver Respecting Its Twelfth Report

With respect to the chart at paragraph 104, called “Separate Corporation Analysis”:

1.
 - i) under the heading “payroll”, please explain how the \$8.1 million figure was calculated for NIP;
 - ii) why was \$980,000 in payroll allocated to the US entities?
2. A rent payment of \$6.175 million is allocated to NIP and nil to NPL, yet there is an allocation of the Landlord Charge of \$1.293 million to NPL, precisely equal to the amount allocated to NIP. Please explain why NPL is responsible for any of the Landlord Charge, given that it did not pay, and was not obliged to pay, rent to any of the Landlords.
3. Among the professional fees of \$6.438 million, there is an allocation based on gross proceeds of sale to each of NIP and NPL. What actual expenses were incurred as a result of the sales of NPL properties, or otherwise directly relating to NPL?
4. An allocation of \$4.155 million is made for corporate overhead allocation to NPL. Please explain the assumptions or justifications that led to the Receiver allocating this sum, an aggregate of payroll, rent, postage, courier, bank fees, consultant fees, sales tax and the Landlord Charge, to NPL, the realty corporation, rather than to NIP, the operating business.
5. The borrowings by the Receiver totaled \$30.082 million. How much of those borrowings were expended on matters directly related to NPL?
6. How does or would the Receiver propose to book both the borrowings from and repayment to White Oak:
 - i) in the books of the US entities;
 - ii) in the books of NIP; and
 - iii) in the books of NPL?
7. What tax loss was created in NPL when NPL paid White Oak under its guarantee? Please explain the answer and document the underlying assumptions.
8. Please provide a sub-schedule of borrowing interest and fee payments on the Credit Facility that also ties into/reconciles to the Receiver's Borrowings and Distribution to Lenders set out in the Receipts and Disbursements statement.
9. With respect to the \$1,296,202 invoice related to the Falcon Lake Property and referenced at paragraph 156(e) of the 12th Report and attached as Appendix I:
 - i) is this invoice accounted for in the intercompany accounts between NIP and NPL? If so, how?

- ii) Does the Receiver agree that since Ernst & Young provided its audit opinion on the January 31, 2018 financial statements, those financial statements can be relied upon for the purpose of being satisfied that at least \$1,097,339 of the total \$1,296,202 would have been properly accounted for through the intercompany account between NIP and NPL, (given that the contract started in 2016 (per the 1st revision reference) and that, as at Jan 27, 2018, \$1,097,339 (84% of the total), had already been invoiced by the contractor)?
10. Does the Receiver have a listing of creditors, including names and amounts, by Debtor? If so, please provide that listing.
11. Have corporate tax returns for the respondent companies been filed since the receivership? If yes, produce them. If not, when are they due and when will they be filed?
12. With respect to para. 69, how does the Receiver have an interest in the proceeds of the disposition of the Falcon Lake and Fieldstone properties "to maximize unsecured creditor recoveries"?
13. Does the Receiver anticipate income tax recoveries on the basis of losses that have been sustained by some of the Debtors? If yes, which Debtors and what income tax recoveries are anticipated?
14. With respect to para. 86, which dispositions of property are expected to generate net proceeds of \$9.9 million? Please break down the proceeds by property.
15. With respect to para. 94(a), does the allocation of expenses to NPL proposed by the Receiver have the effect of readjusting the priorities of any NPL creditor?
16. With respect to para. 94(b), please elaborate on what "a more rigorous process of allocating expenses" consists of.
17. With respect to para. 94(d), please explain why corporate payroll is not allocable to a particular Debtor.
18. With respect to para. 96, please explain why the posting of security by NPL to secure the Landlord's Charge would render NPL liable for the Landlord's Charge.
19. With respect to para. 97, please elaborate on the Receiver's allocation. Please explain, in detail, how the allocation to a particular Debtor "would not yield a different outcome".
20. With respect to para. 101(c), why is only \$14.2 million of the repayment of the Lender Debt "attributable" to NPL, given that, even if one accepts that NPL is responsible for payment of \$1.293 million in Landlord's Charge (which NPL does not), the sale of NPL assets yielded \$26.979 million in proceeds, which funds were (apparently) used to repay the Lender Debt? Please document and explain any assumptions made during the Receiver's calculation.

21. With respect to para. 102, how does the existence of joint and several guarantors (NPI with an unlimited guarantee and NPL with a limited guarantee) lead to the allocation of a 50-50 split between the two guarantors?
22. How does the Receiver book the receipt of the White Oak loan advance(s) in the books of (a) NI and (b) NIP? Also, how does the Receiver's re-payment to White Oak reflected in (a) the books of NIP and (b) the books of NEL? Why has the Receiver not shown the Excess of Receipts over Disbursements of NIP in line 5 as being also a collection of the accounts receivable due to NI (Inc.) in line 1?
23. With respect to Note 4 on p.37 (¶104), what is the aggregate of the claims of NIP's unsecured creditors? What is the aggregate of the claims of NPL's unsecured creditors?
24. Does the Receiver dispute any of the contents of the most recent audited financial statements of Ernst & Young? Does it dispute inter-company balances therein? If so, which ones and why? Please update such balances from the date of the last audited financials until the date of the receivership.
25. With respect to para. 112, does the Receiver accept the inter-company balances reflected there? If not, what does the Receiver say the inter-company balances really are?
26. With respect to para. 122, please explain the Receiver's equal allocation to NIP and NPL in light of NIP, not NPL, having received the benefit of the White Oak advances.
27. With respect to para. 124, why were Fenske's compensation and the Debtors' professional fees allocated by the Receiver to NPL alone?
28. What does Receiver estimate that NPL's payment under its guarantee will generate for it as a tax loss, allocated between capital and non-capital loss? Is such loss reflected in the para.128 chart?
29. With respect to Note 1 on p. 45, please particularize what NPL expenses were paid by NIP and quantify them.
30. With respect to the statements in paras. 133, 175, 185, 192, 195 and 202 that intercorporate loans were made between related companies without the observance of typical corporate formalities, what further formalities does the Receiver believe should have been followed, beyond accounting for such loans and booking them in the intercompany accounts, as was done, and reporting such intercorporate loans in the audited financial statements and the notes to the audited financial statements, as was done?
31. What return on the dollar would CRA receive as a creditor of NPL in (a) on a non-consolidated basis; and (b) on a consolidated basis?

32. What return on the dollar would creditors of NI received in (a) on a non-consolidated basis; and (b) on a consolidated basis?
33. What return on the dollar would creditors of NIP received on (a) on a non-consolidated basis; and (b) on a consolidated basis?
34. With respect to para. 147, which operations of (a) NPL; and (b) NEL, were financed by "a single credit facility"?
35. With respect to para. 150, what evidence does the Receiver have that this was done on non-commercial terms, with respect to NPL and NEL?
36. With respect to para. 156(a), did the value of the funds or obligations incurred by NIP in respect to NPL properties exceed the rent payable in respect of those properties during the period in which the funds were paid or the obligations satisfied?
37. With respect to para. 78, 156(b) and (e), and 162(c)(i), were the maintenance and the improvements reflected in the inter-company accounting? If so, how?
38. With respect to para. 156(c) and (e):
 - i) does the property lease(s) between NIP and NPL provide that the tenant (NIP) is to maintain and repair the propert(ies), including paying for leasehold improvements?
 - ii) which specific terms are not "typical of commercial leases"?
39. With respect to para. 156(d), did NIP benefit from certain activities and expenditures incurred by NPL? If so, which benefits did NIP receive?
40. With respect to para.162:
 - i) were any expenses incurred or paid by NIP for the benefit of NPL or NEL that were *not* captured by inter-company expense transactions? If yes, provide particulars of such transactions;
 - ii) will the Receiver provide an estimate of what a reasonable cost attributable to NPL for NIP employee work done for NPL's benefit would be?
41. With respect to paragraph 168, does the Receiver know how the audited financial statements of NPL were prepared year after year if its documents were commingled within the IT system?
42. With respect to para. 170, is the Receiver aware of any creditors of NPL or NEL that are not accounted for in NPL's and NEL's accounting records and separately

disclosed on their respective trial balances? Please detail the creditors' names and claims.

43. With respect to para. 175, which material transactions were not booked, or were inaccurate?
44. With respect to para. 186, what financial benefit did NPL receive from NIP? How is that calculated? Same questions regarding NEL.
45. With respect to paras. 186-187, does the Receiver know whether NPL could have leased out its properties at rates that are higher than NIP's contractual arrangements?
46. With respect to para. 194, without which centralized services provided by NIP could NPL not have operated?
47. With respect to para. 195, (a) whose assets were commingled?
48. With respect to para. 197 (a), are there any "other direct liabilities of NPL which the Receiver knows about"?
49. With respect to para. 197 (b), does the Receiver compare 6% to 14% by ignoring the return to each corporation on the p.65 chart which will receive payment of related party liabilities if there is no consolidation (and therefore those proceeds would be distributed to such related parties' creditors)? For greater clarity, would a 6% return of related party liability to NIP be in effect a 6% return on \$33 million of such debt?
50. *42(K) the records of the Debtors are commingled within the IT System;* what does the Receiver mean by co-mingled and how does this term apply to the accounting/IT system?

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT
OF DEBBIE MACKIE AFFIRMED BEFORE ME AT THE
CITY OF WINNIPEG, THIS 29TH DAY OF OCTOBER, 2021.

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

A Commissioner for Oaths in and for the Province of
Manitoba. My commission expires: *Dec 29/22*

Debbie Mackie

From: Leiba Feldman
Sent: October 29, 2021 12:59 PM
To: Leiba Feldman
Subject: FW: Receiver's Answers to the Debtors' Revised Questions
Attachments: LT W Onchulenko re Revised Questions - October 13, 2021(7088235.1).pdf

From: Melanie LaBossiere <MML@tdslaw.com>
Sent: October 13, 2021 5:48 PM
To: Wayne M. Onchulenko <WOnchulenko@itglc.ca>
Cc: Bruce Taylor <GBT@tdslaw.com>; Ross McFadyen <RAM@tdslaw.com>
Subject: Receiver's Answers to the Debtors' Revised Questions

Wayne,

Please see the attached correspondence of Today's date.

Regards,

Mel M. LaBossiere
Associate

Pronouns: she/her

P 204-934-2508
TF 855-483-7529
F 204-934-0570
E mml@tdslaw.com
W tdslaw.com/mml
Follow us [@TDSLAW](https://twitter.com/TDSLAW)



**THOMPSON
DORFMAN
SWEATMAN**

1700 – 242 Hargrave Street • Winnipeg, Manitoba • R3C 0V1



TDS LLP is the exclusive member firm in Manitoba, Canada for Lex Mundi - the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

The contents of this e-mail message and all attachments are intended for the confidential use of the addressee and where addressed to our client are the subject of solicitor and client privilege. Any retention, review, reproduction, distribution, or disclosure other than by the addressee is prohibited. Please notify us immediately if we have transmitted this message to you in error.

Click the following links to [unsubscribe](#) or [subscribe](#) to TDS e-communications.



THOMPSON
DORFMAN
SWEATMAN

Writer's Name
Direct Telephone
E-mail Address

G. Bruce Taylor
204-934-2378
GBT@tdslaw.com

October 13, 2021

VIA E-MAIL

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

Attention: Wayne Onchulenko

Dear Sirs:

Re: Richter Advisory Group Inc. and
Nygard International Partnership et al.
Questions to the Receiver
Our Matter No. 0173004 GBT

We write on behalf of Richter Advisory 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., 4093879 Canada Ltd., 4093887 Canada Ltd. and Nygard International Partnership ("NIP", and together with the other listed entities, the "Debtors").

The Questions

On October 6, 2021, the Receiver provided the Debtors with answers (the "October 6 Answers") to certain of the questions on the questions list provided to the Receiver by the Debtors and attached as Schedule "A" to the Notice of Motion of the Debtors dated September 7, 2021 in accordance with your suggestion that the Receiver identify and provide the answers to appropriate questions.

As you will recall, the Honourable Mr. Justice Edmond indicated on September 16, 2021, that the Receiver and Debtors were to cooperate and address certain of the questions on the questions list which specifically relate to:

1. the separate corporation analysis / allocation / intercompany balances; and
2. the facts and information relied upon by the Receiver in coming to the conclusions as detailed in the Twelfth Report of the Receiver dated June 4, 2021 (the "Twelfth Report").



On October 1, 2021, the Debtors provided a revised questions list to the Receiver. The Receiver has reviewed the revised questions list. We provide the Receiver's answers to the questions on the revised questions list below.

Although we remain of the view the Receiver is not required to answer any questions for which answers are available in materials filed with the Court or otherwise made available to the public on the Receiver's website, we have included, for your convenience, certain answers which provide the reference to paragraphs in the Twelfth Report and/or other materials that are responsive to the questions. The answers provided are based on the scope of the Receiver's analysis of these matters to date, and the information available to and reviewed by the Receiver to date, as described in the Twelfth Report and such other materials. The Receiver reserves the right to supplement or elaborate upon these answers based on further analysis or information as the circumstances warrant. To be clear, the Receiver reserves the right to object to answering other questions included on the revised questions list should the Receiver consider it appropriate and proper to do so, in the context of the directions provided by Justice Edmond.

As noted at paragraphs 94(b) and 98 of the Twelfth Report, the Receiver has completed a reasonable and appropriate allocation for the purposes of the Twelfth Report and will require an opportunity to undertake a more detailed allocation should the Court find that claims are to be determined on a separate corporation basis. This further allocation exercise will be an extremely time consuming and costly exercise. In accordance with the direction of the Court, all questions which would require that the Receiver undertake a further allocation exercise have been excluded.

Answers

Question 1: With respect to the chart at paragraph 104, called "Separate Corporation Analysis":

- (i) under the heading "payroll", please explain how the \$8.1 million figure was calculated for NIP?

Answer: answered in the October 6 Answers.

- (ii) why was \$980,000 in payroll allocated to the US entities?

Answer: answered in the October 6 Answers.

Question 2: A rent payment of \$6.175 million is allocated to NIP and nil to NPL, yet there is an allocation of the Landlord Charge of \$1.293 million to NPL, precisely equal to the amount allocated to NIP. Please explain why NPL is responsible for any of the



Landlord Charge, given that it did not pay, and was not obliged to pay, rent to any of the Landlords?

Answer: You have revised this question from its original version. See paragraph 96 of the Twelfth Report. Costs (including rent) incurred in the conduct of the liquidation sale benefitted Debtors other than just NIP by generating proceeds for repayment of Lender debt and the funding of costs of the receivership proceedings, and it is accordingly equitable that such costs be borne by Debtors other than NIP alone. A different allocation of rent costs would not affect the Receiver's conclusion as to entitlement to the Net Receivership Proceeds.

Question 3: Among the professional fees of \$6.438 million, there is an allocation based on gross proceeds of sale to each of NIP and NPL. What actual expenses were incurred as a result of the sales of NPL properties, or otherwise directly relating to NPL?

Answer: You have revised this question from its original version. See paragraph 94(d) of the Twelfth Report. A further answer to this question would require that the Receiver undertake a more detailed allocation review, which, for the reasons (including complexity, cost and that a different allocation would not affect the Receiver's conclusion as to entitlement to the Net Receivership Proceeds) described in the Twelfth Report, the Receiver has not undertaken.

Question 4: An allocation of \$4.155 million is made for corporate overhead allocation to NPL. Please explain the assumptions or justifications that led to the Receiver allocating this sum, an aggregate of payroll, rent, postage, courier, bank fees, consultant fees, sales tax and the Landlord Charge, to NPL, the realty corporation, rather than to NIP, the operating business

Answer: answered in the October 6 Answers.

Question 5: The borrowings by the Receiver totaled \$30.082 million. How much of those borrowings were expended on matters directly related to NPL?

Answer: You have revised this question from its original version. As previously noted, the Receiver's borrowings were not used to accumulate cash. Please refer to the response provided to Question 19.



Question 6: How does or would the Receiver propose to book both the borrowings from and repayment to White Oak:

- I) in the books of the US entities;
- II) in the books of NIP; and
- III) in the books of NPL?

Answer: You have revised this question from its original version. The factors relevant to the Receiver's analysis are described in paragraphs 113-117 of the Twelfth Report. If it wishes to make an argument based on how the manner in which it would propose the borrowings be "booked", it is at liberty to do so.

Question 7: What tax loss was created in NPL when NPL paid White Oak under its guarantee? Please explain the answer and document the underlying assumptions.

Answer: You have revised this question from its original version. NPL is in control of its affairs other than in respect of Property described in the Receivership Order as amended by the General Order.

Question 8: Please provide a sub-schedule of borrowing interest and fee payments on the Credit Facility that also ties into/reconciles to the Receiver's Borrowings and Distribution to Lenders set out in the Receipts and Disbursements statement.

Answer: answered in the October 6 Answers.

Question 9: With respect to the \$1,296,202 invoice related to the Falcon Lake Property and referenced at paragraph 156(e) of the 12th Report and attached as Appendix I:

- I) is this invoice accounted for in the intercompany accounts between NIP and NPL? If so, how?

Answer: You have revised this question from its original version. The answer to this question is within the Debtors' own knowledge or could be determined by the Debtors by a review of the accounting and other information provided earlier by the Receiver. In any event, it is Receiver's understanding that this invoice may be included in the intercompany balance. The purpose of paragraph 156(e) of the Twelfth Report was to illustrate the fact that NPL vendors contracted directly with NIP and not NPL. It was not a commentary on the intercompany balances.



- ii) Does the Receiver agree that since Ernst & Young provided its audit opinion on the January 31, 2018 financial statements, those financial statements can be relied upon for the purpose of being satisfied that at least \$1,097,339 of the total \$1,296,202 would have been properly accounted for through the intercompany account between NIP and NPL, (given that the contract started in 2016 (per the 1st revision reference) and that, as at Jan 27, 2018, \$1,097,339 (84% of the total), had already been invoiced by the contractor?

Answer: You have revised this question from its original version. This question calls for the Receiver to speculate. The purpose of paragraph 156(e) of the Twelfth Report was to illustrate the fact that NPL vendors contracted directly with NIP and not NPL. It was not a commentary on the intercompany balances.

Question 10: Does the Receiver have a listing of creditors, including names and amounts, by Debtor? If so, please provide that listing.

Answer: This information is available to the Debtors from their own NOI filing documents and evidence. See see Notice and Statement of the Receiver dated March 27, 2020: [16-nygard-notice-and-statement-of-receiver-signed.pdf \(richter.ca\)](#)

Additionally, see NOI Creditors Package: <https://farbergroup.sharepoint.com - NOI Creditors Package>

Further, at paragraph 18 of the Second Report of the Proposal Trustee dated March 17, 2020 (attached as Exhibit "A" to the Affidavit of Laura Leigh Buley sworn March 17, 2020), the Proposal Trustee notes that "a copy of the NOI package, which includes a list of creditors provided by the Nygard Group, is attached as Exhibit "F" hereto."

The summary of liabilities described in paragraph 189 of the Twelfth Report was largely derived from the trial balances and underlying subledgers (which have already been provided to the Debtors). A creditor claims process to identify, assess and value creditor claims has not been approved by the Court.

Question 11: Have corporate tax returns for the respondent companies been filed since the receivership? If yes, produce them. If not, when are they due and when will they be filed?



Answer: This question is revised from question 32 originally included in the questions provided by the Debtors. The status of the filing of tax returns is not relevant.

Question 12: With respect to para. 69, how does the Receiver have an interest in the proceeds of the disposition of the Falcon Lake and Fieldstone properties "to maximize unsecured creditor recoveries"?

Answer: The Debtors are well-aware of the circumstances in which the Preserved Proceeds have arisen and the basis for the efforts of the Receiver in preserving proceeds from the sales of the Falcon Lake and Fieldstone properties. Please see paragraph 69 of the Twelfth Report.

Question 13: Does the Receiver anticipate income tax recoveries on the basis of losses that have been sustained by some of the Debtors? If yes, which Debtors and what income tax recoveries are anticipated?

Answer: The Receiver does not currently anticipate income tax recoveries.

Question 14: With respect to para. 86, which dispositions of property are expected to generate net proceeds of \$9.9 million? Please break down the proceeds by property.

Answer: answered in the October 6 Answers.

Question 15: With respect to para. 94(a), does the allocation of expenses to NPL proposed by the Receiver have the effect of readjusting the priorities of any NPL creditor?

Answer: No.

Question 16: With respect to para. 94(b), please elaborate on what "a more rigorous process of allocating expenses" consists of.

Answer: answered in the October 6 Answers.

Question 17: With respect to para. 94(d), please explain why corporate payroll is not allocable to a particular Debtor.



Answer: This question is answered – see paras 95, 98 and 161-164 of the Twelfth Report. For the purpose of the Separate Corporation Analysis, and for the reasons described in the Twelfth Report, the Receiver has taken the reasonable and efficient approach of allocating corporate overhead proportionately to the gross proceeds of realization of the respective assets of NIP, NI and NPL. A different allocation would not affect the Receiver's conclusion as to entitlement to the Net Receivership Proceeds) described in the Twelfth Report.

Question 18: With respect to para. 96, please explain why the posting of security by NPL to secure the Landlord's Charge would render NPL liable for the Landlord's Charge.

Answer: This is a legal question.

Question 19: With respect to para. 97, please elaborate on the Receiver's allocation. Please explain, in detail, how the allocation to a particular Debtor "would not yield a different outcome".

Answer: answered in the October 6 Answers.

Question 20: With respect to para. 101(c), why is only \$14.2 million of the repayment of the Lender Debt "attributable" to NPL, given that, even if one accepts that NPL is responsible for payment of \$1.293 million in Landlord's Charge (which NPL does not), the sale of NPL assets yielded \$26.979 million in proceeds, which funds were (apparently) used to repay the Lender Debt? Please document and explain any assumptions made during the Receiver's calculation.

Answer: This is a new question that was not included in the original list of questions. Please see paragraphs 99-102, 104, and 113-130 of the Twelfth Report, which outlines clearly the basis upon which proceeds of the sales of NPL Property have been allocated.

Question 21: With respect to para. 102, how does the existence of joint and several guarantors (NPI with an unlimited guarantee and NPL with a limited guarantee) lead to the allocation of a 50-50 split between the two guarantors?

Answer: This is a legal question.



Question 22: How does the Receiver book the receipt of the White Oak loan advance(s) in the books of (a) NI and (b) NIP? Also, how does the Receiver's repayment to White Oak reflected in (a) the books of NIP and (b) the books of NEL? Why has the Receiver not shown the Excess of Receipts over Disbursements of NIP in line 5 as being also a collection of the accounts receivable due to NI (Inc.) in line 1?

Answer: Please see the answer to question 6 above. A different allocation would not affect the Receiver's conclusion as to entitlement to the Net Receivership Proceeds described in the Twelfth Report.

Question 23: With respect to Note 4 on p.37 (¶104), what is the aggregate of the claims of NIP's unsecured creditors? What is the aggregate of the claims of NPL's unsecured creditors?

Answer: Please see paragraph 189 of the Twelfth Report and the answer to question 10 above.

Question 24: Does the Receiver dispute any of the contents of the most recent audited financial statements of Ernst & Young? Does it dispute inter-company balances therein? If so, which ones and why? Please update such balances from the date of the last audited financials until the date of the receivership.

Answer: You have revised this question from its original version. Please see paragraphs 108 to 111 of the Twelfth Report for the Receiver's commentary with respect to the reliability of intercompany balances.

Question 25: With respect to para. 112, does the Receiver accept the inter-company balances reflected there? If not, what does the Receiver say the inter-company balances really are?

Answer: answered in the October 6 Answers.

Question 26: With respect to para. 122, please explain the Receiver's equal allocation to NIP and NPL in light of NIP, not NPL, having received the benefit of the White Oak advances?

Answer: You have revised this question from its original version. Please see paragraphs 99 to 102, paragraph 104 (Note 2) and paragraphs 113-123 of the Twelfth Report. The Receiver disagrees with the premise that only NIP received



benefit from the White Oak advances. A different allocation would not affect the Receiver's conclusion as to entitlement to the Net Receivership Proceeds described in the Twelfth Report.

Question 27: With respect to para. 124, why were Fenske's compensation and the Debtors' professional fees allocated by the Receiver to NPL alone?

Answer: This question is misleading and its premise inaccurate. The Preserved Proceeds, the Debtors' professional fees and Fenske's compensation are not included in computation of the Net Receivership Proceeds described in the Twelfth Report.

Question 28: What does Receiver estimate that NPL's payment under its guarantee will generate for it as a tax loss, allocated between capital and non-capital loss? Is such loss reflected in the para.128 chart?

Answer: You have revised this question from its original version. Please see the answer to question 7 above.

Question 29: With respect to Note 1 on p. 45, please particularize what NPL expenses were paid by NIP and quantify them.

Answer: The Receiver has previously provided you with the full general ledger details and intercompany transaction details. In addition, please refer to paragraph 57 and 58 of the Supplementary Ninth Report for a non-exhaustive list of such expenses.

Question 30: With respect to the statements in paras. 133, 175, 185, 192, 195 and 202 that intercorporate loans were made between related companies without the observance of typical corporate formalities, what further formalities does the Receiver believe should have been followed, beyond accounting for such loans and booking them in the intercompany accounts, as was done, and reporting such intercorporate loans in the audited financial statements and the notes to the audited financial statements, as was done?

Answer: This is a new question, not included in your original list of questions. Please see paragraphs 108 to 111 of the Twelfth Report for the Receiver's commentary with respect to the reliability of intercompany balances. Note that the consolidated financial statements include the following statements:



"the financial statements are presented on a combined basis with all intercompany transactions and intercompany balances eliminated." (at page 1); and

"Advances from Nygard Group Companies, a company under common control, are non-interest bearing, unsecured and have no specified terms of repayment." (at page 9)

The Receiver is not aware of any formal intercorporate agreement as between NIP and NPL (other than leasing agreements). Further examples of a lack of observance of corporate formalities are included in paragraphs 152, 156 to 164, 176 of the Twelfth Report.

Third-party arrangements would also typically assume that there is a possibility for the repayment of debt. As noted in Paragraph 173 of the Twelfth Report of the Receiver. The Nygard Group Entities accumulated over \$87 million in gross intercompany receivables.

This is a non-exhaustive list.

Question 31: What return on the dollar would CRA receive as a creditor of NPL in (a) on a non- consolidated basis; and (b) on a consolidated basis?

Answer: Please see paragraphs 189, 197(a)(iii), and 198(a) of the Twelfth Report.

Question 32: What return on the dollar would creditors of NI received in (a) on a non-consolidated basis; and (b) on a consolidated basis??

Answer: Please see paragraph 189 of the Twelfth Report.

Question 33: What return on the dollar would creditors of NIP received on (a) on a non- consolidated basis; and (b) on a consolidated basis?

Answer: Please see paragraph 189 of the Twelfth Report.

Question 34: With respect to para. 147, which operations of (a) NPL; and (b) NEL, were financed by "a single credit facility"?



Answer: The Debtors know the answer to this question. Please see paragraph 147 of the Twelfth Report. The White Oak credit facility acted as the Debtors' operating facility. NPL, for example, had no separate operating bank account and no separate credit arrangement.

Question 35: With respect to para. 150, what evidence does the Receiver have that this was done on non-commercial terms, with respect to NPL and NEL?

Answer: Paragraph 150 discloses facts relating to the cash management system.

Question 36: With respect to para. 156(a), did the value of the funds or obligations incurred by NIP in respect to NPL properties exceed the rent payable in respect of those properties during the period in which the funds were paid or the obligations satisfied?

Answer: This question was not included in the original list of questions and is misleading. The premise of the question misstates the purpose of paragraph 156(a) of the Twelfth Report, which was to describe that NIP was required to and did incur obligations on behalf of NPL. As the Debtors are aware, entries booked to the Debtors' financial records, and documentation provided by the Debtors to White Oak in connection with the White Oak Credit Facility, describe that there is an intercompany obligation owing from NPL to NIP.

Question 37: With respect to para. 78, 156(b) and (e), and 162(c)(i), were the maintenance and the improvements reflected in the inter-company accounting? If so, how?

Answer: You have revised this question from its original version. The Debtors created the books and records and know how maintenance and improvements were documented. The Receiver acknowledged that certain funds paid by NIP for the benefit of NPL were recorded in as intercompany transactions. As noted in paragraphs 152, 156(c), 156(g), there are several instances where certain expenses may not be properly included in the intercompany accounts.

Question 38: With respect to para. 156(c) and (e):



- I) does the property lease(s) between NIP and NPL provide that the tenant (NIP) is to maintain and repair the propert(ies), including paying for leasehold improvements?
- II) which specific terms are not "typical of commercial leases"?

Answer: It is not typical for a commercial tenant to (i) provide administrative services for the commercial landlord; (ii) prepare and fund income taxes for the commercial landlord; (iii) bear the cost of a roof replacement; and (iv) provide a private residence for the principal of the commercial landlord; that is not addressed in the leases.

The Receiver notes that that several leases with third parties (including for the distribution centre in Toronto), the Landlord provided a leasehold improvement allowance, which was not provided within the intercorporate lease agreements.

Question 39: With respect to para. 156(d), did NIP benefit from certain activities and expenditures incurred by NPL? If so, which benefits did NIP receive?

Answer: This is a new question not included in your original list of questions, calls for the Receiver to speculate. The answer is within the Debtors' own knowledge.

Question 40: With respect to para.162:

- I) were any expenses incurred or paid by NIP for the benefit of NPL or NEL that were *not* captured by inter-company expense transactions? If yes, provide particulars of such transactions;

Answer: This a question that you have revised from its original version. The answer to this question would require further detailed analysis by the Receiver, however, please see paragraphs 108 to 111 of the Twelfth Report for the Receiver's commentary with respect to the reliability of intercompany balances. As noted in paragraphs 152, 156(c), and 156(g), describe examples where certain transactions may not be properly recorded in the intercompany accounts.

- II) were any expenses incurred or paid by NIP for the benefit of NPL or NEL that were *not* captured by inter-company expense transactions? If yes, provide particulars of such transactions;



Answer: is a new question not included in your original list of questions. The answer to this question would require further detailed analysis by the Receiver and calls for the Receiver to speculate.

Question 41: With respect to paragraph 168, does the Receiver know how the audited financial statements of NPL were prepared year after year if its documents were commingled within the IT system?

Answer: This is a new question not included in your original list of questions. It is irrelevant, misleading and argumentative, and can be answered by the Debtors themselves.

Question 42: With respect to para. 170, is the Receiver aware of any creditors of NPL or NEL that are not accounted for in NPL's and NEL's accounting records and separately disclosed on their respective trial balances? Please detail the creditors' names and claims.

Answer: This is a new question not included in your original list of questions. This question is misleading. As the Debtors are aware, no separate accounting records were maintained accounting separately for creditor obligations of NIP and NEL. As described in paragraph 170 of the Twelfth Report, the Debtors maintained only one consolidated accounts payable subledger and all creditors were tracked and managed centrally. Further, the Debtors consolidated creditor debt in their NOI filing. Please also refer to paragraph 164 of the Twelfth Report. A creditor claims process to identify, assess and value creditor claims has not been approved by the Court.

Question 43: With respect to para. 175, which material transactions were not booked, or were inaccurate?

Answer: To the extent of the Receiver's analysis to date, please see paragraphs 108-11 and 152 of the Twelfth Report.

Question 44: With respect to para. 186, what financial benefit did NPL receive from NIP? How is that calculated? Same questions regarding NEL.

Answer: This question has been revised from its original version and calls for the Receiver to speculate. Determination of an estimated dollar amount would require further costly and detailed review by the Receiver.



Question 45: With respect to paras. 186-187, does the Receiver know whether NPL could have leased out its properties at rates that are higher than NIP's contractual arrangements?

Answer: This question calls for the Receiver to speculate.

Question 46: With respect to para. 194, without which centralized services provided by NIP could NPL not have operated?

Answer: This is a new question not included in your original list of questions and is argumentative. Please see paragraphs 147-153, 155-156, 162, 164-169, 170-182, and 186-188 of the Twelfth Report.

Question 47: With respect to para. 195, (a) whose assets were commingled?

Answer: Please see paragraphs 154-156 of the Twelfth Report.

Question 48: With respect to para. 197 (a), are there any "other direct liabilities of NPL which the Receiver knows about"?

Answer: You have revised this question from its original version. Paragraph 197(a)(ii) expressly references the prospect of other direct liabilities of NPL not known to the Receiver. NPL presumably knows whether it has any such liabilities.

Question 49: With respect to para. 197 (b), does the Receiver compare 6% to 14% by ignoring the return to each corporation on the p.65 chart which will receive payment of related party liabilities if there is no consolidation (and therefore those proceeds would be distributed to such related parties' creditors)? For greater clarity, would a 6% return of related party liability to NIP be in effect a 6% return on \$33 million of such debt?

Answer: This question is confusing, misleading and argumentative.

Question 50: *42(K) the records of the Debtors are commingled within the IT System;* what does the Receiver mean by co-mingled and how does this term apply to the accounting/IT system?



THOMPSON
DORFMAN
SWEATMAN

Answer: This question is argumentative, relates to argument contained in the Motion Brief of the Receiver and accordingly is not a proper question.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

For:

G. Bruce Taylor

GBT/mml