

ONTARIO

**SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF
A PLAN OF COMPROMISE OR ARRANGEMENT
OF THE MANDERLEY CORPORATION,
1310500 ONTARIO INC., LEO BEAL LTD. AND
MANDERLEY NATURAL TURF SYSTEMS INC.**

the Applicants

**THIRD REPORT OF THE MONITOR AND INTERIM RECEIVER
DOYLE SALEWSKI INC.**

July 22, 2005

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I. INTRODUCTION, PURPOSE AND QUALIFICATIONS

(a) Introduction

1. On March 18, 2005, the Applicants filed an application with the court under the *Companies' Creditors Arrangement Act* (the "CCAA"). Doyle Salewski Inc. ("DSI") was appointed as monitor (the "Monitor") and interim receiver (the "Interim Receiver") of the Applicants by order of the Honourable Mr. Justice C. Campbell dated March 23, 2005 (the "Initial Order").

2. By order dated April 22, 2005 (the "April 2005 Order") of the Honourable Mr. Justice Farley, the Initial Order was amended to, *inter alia*, include Manderley Natural Turf Systems Inc., as an applicant, authorize the Applicants to develop a marketing plan and to provide Royal Bank of Canada and Farm Credit Corporation (collectively, the "Senior Lenders") with certain financial information on a bi-weekly basis.

3. By order dated June 8, 2005 (the "June 8, 2005 Order") of the Honourable Justice Farley, the Initial Order was amended to extend the terms of that order to August 3, 2005

and to approve the marketing plan as set out in the second report of the Monitor/Interim Receiver dated June 2, 2005 (the "Second Report").

4. Further background information is outlined in the first report of the Monitor/Interim Receiver dated April 19, 2005, the supplement to the First Report dated April 18, 2005 and the Second Report (collectively, the "Reports"). Copies of the Reports, the court orders and other motion material issued to date, except those portions which have been ordered sealed by the Court are available on the Monitor/Interim Receiver's website www.doylegroup.ca.

(b) Purpose

5. The purpose of the Third Report is to provide information to the court on the results of the marketing efforts of the assets of the Applicants, to provide information with respect to the Applicants' current financial position and to provide information with respect to insurance on properties, equipment and vehicles.

(c) Qualifications

6. The information contained in this report has been obtained from the records of the Applicants and is based on discussions with, and representations made by, management of the Applicants and other professional advisors retained in this matter.

7. The financial information of the Applicants has not been audited, reviewed or otherwise verified by the Monitor/Interim Receiver as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this report may not disclose all significant matters concerning the Applicants. Accordingly, the Monitor/Interim Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein. The Monitor/Interim Receiver may refine or alter its observations as further information is obtained or is brought to its attention after the date of this report.

8. The Monitor/Interim Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use that any party makes of this report or any reliance on or decisions that are made based on this report is the sole responsibility of such party. All dollar amounts identified in this report are expressed in Canadian dollars, unless otherwise specified.

II. RECENT DEVELOPMENTS

(a) The Monitor/Interim Receiver's Activities

9. Pursuant to paragraph 7 of the April 2005 Order, the Monitor/Interim Receiver is to provide bi-weekly reporting to the Senior Lenders of the Applicants. The

Monitor/Interim Receiver has provided these reports with the last report issued being for the period ended July 3, 2005.

10. The Initial Order provides the Monitor/Interim Receiver and counsel to each of the Applicants and the Monitor/Interim Receiver a second ranking priority charge upon all present and future property of the Applicants (the “Administrative Charge”) up to the principal limit of \$250,000. With respect to the Administrative Charge, \$112,251.83 has been billed by the Monitor/Interim Receiver to June 30, 2005, which has been paid and there currently exists an estimated \$25,093 unbilled time. Counsel to the Monitor/Interim Receiver has billed \$102,341.37, \$84,908.96 has been paid and \$3,906 is unbilled. In addition, legal counsel for the Applicants has billed \$147,687.95, of which \$95,550.89 has been paid and there currently exists an estimated \$5,445.75 in unbilled time.

11. The Initial Order and subsequent April 2005 Order authorized the Applicants to borrow up to \$1,377,000 from Naples Real Estate Holding Company Ltd. (“NREC”) by way of a debtor-in-possession facility (the “DIP Facility”) which provides a first ranking priority charge upon all present and future property of the Applicants. The Applicants’ current outstanding obligations under the DIP Facility are \$687,000.

(b) Current Financial Position

12. As at July 17, 2005, the Applicants have experienced a net positive cash flow.

13. For the period March 23, 2005 to July 17, 2005, the Applicants’ net consolidated cash flows were \$106,285 as compared to a budget amount of \$126,961. Net cash flow from operations was \$464,324 better than forecasted. The cash flow information included as Exhibit “F” of the affidavit of Christopher Hope sworn July 21, 2005 (the “Hope Affidavit”) contained an error in that the calculated variances were incorrect. The net cash flow from operations of \$464,324 was correctly stated. A copy of the Applicants’ revised consolidated cash position as at July 17, 2005 is attached as Appendix 1. Below we provide commentary on the variances by category:

**The Manderley Corporation
Variance Analysis
March 23, 2005 to July 17, 2005**

	<u>Actual</u>	<u>Plan</u>	<u>Variance</u>	<u>Comments</u>
			<u>FAV/(UNFAV)</u>	
Receipts	\$4,944,420	\$4,445,540	\$498,881	This is a favourable variance as the Applicants collected \$362,000 more in receivables than was forecasted.

				Additionally, cash sales were \$136,000 over forecast.
Operating Expenses	3,712,141	3,645,371	(66,770)	This is an unfavourable variance and is a result of reduced seeding and fertilizer and machine repair costs being offset by higher equipment and real estate rentals.
Distribution Costs	888,850	864,658	(24,193)	This is an unfavourable variance as a result of increased contract trucking and fuel costs being offset by reduced truck rentals and equipment repairs.
General and Admin	705,142	689,875	(15,267)	This is an unfavourable variance due to a number of small variances in these accounts.
Direct Debits	329,002	400,675	71,673	This is a favourable variance as a result of less sales taxes being incurred and paid than was forecasted.
Total Disbursements	<u>5,635,135</u>	<u>5,600,578</u>	<u>(34,557)</u>	
Net Cash Flow	<u>\$(690,715)</u>	<u>\$(1,155,039)</u>	<u>\$464,324</u>	

(c) *Insurance*

14. At the time of the initial CCAA order we reviewed the Applicants insurance status and determined that the policies for liability coverage and vehicles and property had either expired or were about to expire. Management advised that they had arranged short-term coverage for the property and vehicles, but could not arrange any liability insurance. The Monitor/Interim Receiver arranged for coverage through its insolvency carrier Firstbrook, Cassie and Anderson.

15. The insurance on the vehicle and property expired on July 1, 2005. Management arranged to have the insurance renewed with its carrier. We contacted our carrier to determine if any savings could be achieved over the renewal amount. They could not provide coverage as the limits required by the Applicants were in excess of limits of coverage in its insolvency package. The insurance has been arranged through Zurich Canada, Royal & Sun Alliance and Aviva Insurance. The premiums for the policy aggregate \$343,551. The insurers do not allow for a monthly payment plan. The Applicants approached Cafo Inc. ("Cafo") to provide financing on the insurance. Cafo is agreeable to do so on the following basis:

- (a) A down payment of \$103,065.00 be paid;
- (b) They will finance the remainder of the policy (\$240,486.00) at an interest rate of 9.476%, being \$8,624.00, for a total commitment of \$249,110.00 payable at \$31,138.75 per month for 8 months. Cafo would remit the \$240,486.00 to the insurers; and,
- (c) Cafo be given a charge in the CCAA proceeding allowing that in the event the policy is not completed or is cancelled that Cafo will have the right to receive any unearned premium for the insurers up to the amount that is due to Cafo with any residual being returned to the Applicants. At any point in time a significant portion of the unearned premium would exist as a result of the \$240,486.00 paid by Cafo and they want to ensure these funds are returned to them.

16. A copy of the Cafo Premium Installment Contract is attached as Exhibit D to the Hope Affidavit.

17. This agreement would require that the Applicants pay \$134,203.75 by August 1, 2005 to Cafo. This represents a prepayment of 4 months on insurance. If at any time the insurance is cancelled by the insurers they will prorate the premium received and refund the excess to the Applicants. Cafo wants comfort that this amount will first go towards the monies advanced by them. This appears reasonable, as Cafo will have advanced a significant portion of the unearned premium. Failing this, the Applicants cannot arrange satisfactory insurance on its property, equipment and vehicles.

(d) Marketing Efforts

18. Pursuant to the marketing plan a dual track investor/sale process was initiated. The Applicants' investment advisor, Round Oak Management Ltd. ("Round Oak") was tasked with seeking potential investors or further financing. The Monitor/Interim Receiver sent a letter to 180 parties, primarily in the turf grass industry seeking an en bloc purchaser of the Applicants' assets.

19. Round Oak held discussions with parties seeking to invest in or finance the Applicants. Meetings with the Applicants' management were arranged with three of these parties, including one party who has emerged as a prospective purchaser. Round Oak did not receive any investor or financing proposals from any party.

20. The Applicants had retained TCS 2000 Inc. ("TCS") to seek potential investors or financing opportunities in the Ottawa area. To date, TCS has not been successful in securing any definitive agreements.

21. The 180 letters sent by the Monitor/Interim Receiver led to 7 expressions of interest being received. Of these only one party signed a confidentiality agreement to obtain additional information. All of these parties were not interested in acquiring the Applicants assets en bloc, but were interested in either certain pieces of equipment or specific farms.

(d) Letters of Intent ("LOI") to Acquire Assets

22. LOI's have been received to acquire all the assets of the Applicants under certain terms. Copies of the LOI's will be presented to the Court under separate cover and have also been provided to the Secured Lenders. To preserve the integrity of the marketing process the Monitor/Interim Receiver and the Applicants are requesting that this supplemental report be sealed.

23. The Interim Receiver/Monitor has provided other information and analysis to the court on these offers in the supplement to this Third Report which is requested to be sealed.

(e) Extension of Stay

24. Pursuant to the June 2005 Order, the stay period expires August 3, 2005. The Applicants are seeking an extension of the stay period until September 4, 2005. They are also requesting that the marketing process be modified so as to allow them to return to court on or before August 12, 2005 to seek an approval of a transaction.

25. An extension of the stay and an amendment to the sale process are necessary to allow the prospective purchasers an opportunity to complete due diligence and convert their LOI's into unconditional definitive agreements. Serious time constraints exist with respect to reseeding lands for the 2006/2007 growing seasons. In order for there to be

sufficient future crops for the prospective purchasers, the seeding must commence as early as possible in August and be completed by Labour Day. The issue of who will fund the reseeded and when it occurs has a significant impact on the monies potentially available for the assets. It is possible that if the reseeded is delayed past the requested extension date the parties will rescind the LOI's.

26. In the Monitor/Interim Receiver's view, the Applicants are acting in good faith and with due diligence during this CCAA proceeding. The Monitor/Interim Receiver is further of the view that that extension requested is appropriate in the circumstances.

III. RECOMMENDATIONS

27. The Monitor/Interim Receiver recommends that the Applicants' request for the relief contained in the Applicants' motion record dated July 21, 2005 be granted.

All of which is respectfully submitted on this 22nd day of July, 2005.

DOYLE SALEWSKI INC.

**In its capacity as Monitor/Interim Receiver
and not in its personal capacity**



**Paul E. Salewski, CA• CIRP
Senior Vice-President**

Appendix 1

March 23, 2005 to July 17, 2005

	March 23 to July 17, 2005		
	Actual	Plan	Difference
Receipts			
Collections	3,023,363	2,660,809	362,554
Cash Sales	1,921,057	1,784,731	136,326
	<u>4,944,420</u>	<u>4,445,540</u>	<u>498,881</u>
Disbursements			
<u>Operating Expenses</u>			
Wages	1,415,688	1,414,309	(1,379)
Source Deductions	702,941	691,802	(11,139)
Seed, Fertilizer , Spray & Netting	461,786	619,933	158,147
Machine Repairs	247,315	291,201	43,886
Irrigation Repairs	9,784	16,211	6,427
Building & Property	33,748	7,038	(26,710)
Fuel and Lubricants	216,008	228,416	12,408
Irrigation Fuel	31,465	34,092	2,627
Utilities	12,743	8,870	(3,873)
Pallet	176,403	129,749	(46,654)
Machine & Equip Rental	87,810	21,226	(66,584)
Real Estate Rental	247,373	144,224	(103,149)
Other Production Costs	24,184	30,472	6,288
NTS - Crew Travel Costs	22,790	6,912	(15,878)
NTS - Job Material Costs	3,079	917	(2,162)
Total Operating Expenses	<u>3,712,141</u>	<u>3,645,371</u>	<u>(66,770)</u>
<u>Distribution Costs</u>			
Contract Trucking	217,433	72,025	(145,408)
Truck Rentals	21,847	100,894	79,047
Fuel and Lubricants	290,368	202,200	(88,168)
Truck Repairs	197,594	185,888	(11,706)
Equipment Repairs	31,634	27,147	(4,487)
Insurance	95,761	253,000	157,239
Licenses	12,428	6,062	(6,366)
Tolls, Brokerage, Telephone & Other	21,785	17,442	(4,343)
Total Distribution Expenses	<u>888,850</u>	<u>864,658</u>	<u>(24,193)</u>
<u>General Administrative Expenses</u>			
Office Equipment Rental & Repairs	3,540	312	(3,228)
Maintenance Building & Property	519	950	431
Municipal Taxes & Permits	11,094	9,479	(1,615)
Office Rent & Expenses	40,410	43,818	3,408
PST on Leases	-	4,341	4,341
Office Expenses & Supplies	23,392	16,102	(7,290)
Telephone & Communication	48,589	54,669	6,080
Travel & Promotion	35,681	28,394	(7,286)
Advertising	31,273	35,086	3,813
Life Insurance	-	14,514	14,514
Group Insurance	45,950	41,943	(4,007)
Professional Fees	403,762	388,410	(15,352)
Postage and Courier	8,281	7,050	(1,230)
Trade Shows	661	92	(569)
Miscellaneous	-	-	-
Information Systems	21,206	23,103	1,896
Auto Repairs & Expenses	30,785	21,612	(9,173)
Total G&A Expenses	<u>705,142</u>	<u>689,875</u>	<u>(15,267)</u>

Prepared Without Audit--E&OE

March 23, 2005 to July 17, 2005

	March 23 to July 17, 2005		
	Actual	Plan	Difference
Long Term Debt Princ. & Int.	6,331	-	(6,331)
Direct Debit Payments	98,694	127,259	28,565
Senior Management Salaries	-	-	-
PST	28,733	55,498	26,765
GST	113,394	136,446	23,051
DIP Interest	13,474	31,474	18,000
QST	68,376	49,998	(18,378)
	<u>329,002</u>	<u>400,675</u>	<u>71,673</u>
Total Disbursements	5,635,135	5,600,578	(34,557)
Net Cashflow From Operations	<u>(690,715)</u>	<u>(1,155,039)</u>	<u>464,324</u>
Opening Cash	-	-	-
Net Cashflow From Operations	(690,715)	(1,155,039)	464,324
DIP Advanced	997,000	1,282,000	(285,000)
DIP Repaid	<u>200,000</u>	-	<u>200,000</u>
Closing Cash	<u>106,285</u>	<u>126,961</u>	<u>(20,676)</u>