

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

**FIFTH REPORT OF THE MONITOR AND INTERIM RECEIVER
DOYLE SALEWSKI INC.
AUGUST 17, 2005**

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I. INTRODUCTION AND PURPOSE

(a) *Introduction and Summary of Proceedings to Date*

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, to 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 2005 Order") of the Honourable Mr. 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"). The marketing/sale process stipulated that (a) offers were to be received on or before July 15, 2005; and (b) the Applicants were to return to Court before July 31, 2005 to obtain approval of a transaction.

4. Letters of Intent ("LOI") to purchase the assets of the Applicants were received and were reported upon in the Third Report and the Supplements to the Third Report issued on July 22, 2005.

5. By order dated July 26, 2005 (the "July 2005 Order") of the Honourable Justice Echlin, the terms of the Initial Order including the stay of proceedings were extended to August 19, 2005. The July 2005 Order also changed the deadline for Court approval of a transaction from July 31, 2005 to August 12, 2005. Mr. Justice Echlin's endorsement further stipulated that the parties were to return to court at a 9:30 a.m. appointment on August 10, 2005 to advise the Court on the status of the marketing process.

6. By the Order of Justice Hoy dated August 10, 2005 (the "August 10th Order") the time to obtain court approval of a transaction was extended to August 19, 2005.

7. Revised LOI's were received and were reported upon by the Monitor/Interim Receiver in the Fourth Report and the Supplement to the Fourth Report issued August 11, 2005.

8. By order dated August 12, 2005 (the August 12th Order") of the Honourable Justice Klowak, the powers of the Monitor/Interim receiver were expanded to allow the Monitor/Interim receiver the ability to deal with any offers received. The August 12th Order required that all offers to purchase the assets of the Applicants were to be delivered to the Monitor/Interim Receiver by 3 P.M., August 15, 2005. The Monitor/Interim Receiver, RBC and FCC (the "Senior Lenders") and any other parties the court required to be present were to participate in a conference call at 4 P.M. on August 15, 2005 to review any offers to purchase which were received. The Monitor/Interim Receiver was to then make a recommendation regarding the preferred offer by 5 P.M. August 15, 2005 and to forthwith notify all parties on the service list. The date for Court approval of any recommended sale remained at August 19, 2005. In the event the court did not approve a sale of the assets on August 19, 2005 the firm of Grant Thornton Inc. would be substituted as Monitor and Receiver and a receivership would ensue.

9. 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; the Second Report; Third Report and the Supplement to the Third Report; and, the Fourth Report and the Supplement to the Fourth Report (collectively, the "Reports"). Copies of all the Reports, the court orders and other motion material issued to date, except those reports which have been ordered sealed by the Court are available on the Monitor/Interim Receiver's website www.doylegroup.ca. Copies of all Orders will be provided to the Court at the hearing.

(b) Purpose

10. The purpose of this Fifth Report of the Monitor/Interim Receiver to this Court is:

- (a) to report to the Court on the results of the marketing efforts in respect of the assets of the Applicants; and,
- (b) to seek the approval of this Honourable Court for the sale of substantially all the assets of the Applicants and for the vesting of the Applicants assets in 6418937 Canada Inc. (“641”).

(c) Qualifications

11. Certain of 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.

12. 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.

13. 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

14. 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 31, 2005.

15. The Initial Order provides the Monitor/Interim Receiver and counsel to each of the Applicants and the Monitor/Interim Receiver a priority charge ranking after the payment of any amount due to the DIP Lender upon all present and future property of the Applicants (the “Administrative Charge”) up to the principal limit of \$250,000. We do not believe that currently the amount secured under the Administrative Charge exceeds this amount.

16. 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 \$737,000.

17. As at July 31, 2005, the Applicants have experienced a net positive cash flow.

18. For the period March 23, 2005 to July 31, 2005, the Applicants’ net consolidated cash flows were \$288,759 as compared to a budget amount of \$475,052. Net cash flow from operations was \$478,402 better than forecasted. The cash flow information is included as Appendix 7 of this report. Below we provide commentary on the variances by category:

**The Manderley Corporation
Variance Analysis
March 23, 2005 to July 31, 2005**

	<u>Actual</u>	<u>Plan</u>	<u>Variance</u>	<u>Comments</u>
			<u>FAV/(UNFAV)</u>	
Receipts	<u>\$6,238,779</u>	<u>\$5,719,629</u>	<u>\$519,150</u>	This is a favourable variance as the Applicants collected \$403,000 more in receivables than was forecasted. Additionally, cash sales were \$116,000 over forecast.
Operating Expenses	4,188,481	4,141,514	(46,968)	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	1,103,336	1,095,468	(7,868)	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	890,098	824,241	(65,857)	This is an unfavourable variance due to professional fees paid during being higher than forecasted and a number of small variances in various accounts.
Direct Debits	365,104	445,049	79,945	This is a favourable variance as a result of less sales taxes being incurred and paid than was forecasted.
Total Disbursements	<u>6,547,020</u>	<u>6,506,272</u>	<u>(40,748)</u>	
Net Cash Flow	<u>\$(308,241)</u>	<u>\$(786,643)</u>	<u>\$478,402</u>	

(b) Marketing Efforts with Respect to the Assets of the Applicants

19. Pursuant to the marketing plan a dual track investor/sale process was initiated. Manderley's investment advisors, 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 Manderley's assets.

20. Round Oak held discussions with 11 parties seeking to invest in or finance Manderley. Meetings with Manderley's management were arranged with three of these parties, including one of the prospective purchasers. Round Oak did not receive any investor or financing proposals from any party.

21. Manderley 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 prospects although they did identify a potential acquirer who, because of time constraints did not make an offer for the assets.

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

23. The dual track approach contemplates that in the event Manderley is not able to attract new investors/financing an orderly liquidation of its assets would ensue.

24. In its Fourth Report, the Monitor/Interim Receiver advised of two Letters of Intent (“LOI’s”), which had been received to purchase the assets of the Applicants.

25. At the return of the July 26, 2005 hearing, the Applicants and the Monitor advised the Court that additional time was required to allow for the completion of the prospective purchasers' due diligence and to complete a transaction. Accordingly, the deadline to obtain Court approval of a transaction was extended by the July 2005 Order from July 31, 2005 to August 12, 2005, which has now been extended to August 19, 2005.

26. On August 8, 2005, revised LOI’s were received from each potential purchaser. The LOI’s received were not in a form which would allow the Monitor/Interim Receiver to make a recommendation on the acceptance of any offer. On August 11, 2005 the court was provided with the Monitor/Interim Receiver’s Fourth Report and the Supplement to the Fourth Report. The Senior Lenders made a motion for the substitution of the Monitor/Interim Receiver. In the August 12th Order, Justice Klowak ordered that the Monitor/Interim Receiver should not be substituted prior to August 19, 2005. The court ordered that the powers of the Monitor/Interim Receiver be expanded; and, a deadline of August 15, 2005 be set to receive final offers. The Monitor/Interim Receiver would recommend a preferred offer by August 15, 2005 and seek court approval of the preferred offer on August 19, 2005.

27. By 3 P.M. on August 15, 2005 each party re-submitted their offers. Copies of the offers and commentary by the Monitor/Interim Receiver on the offers and alternatives to the offer will be presented to the Court under separate cover in a supplemental report and have also been provided to the Applicants' senior lenders, Royal Bank of Canada and Farm Credit Canada and to GE Capital and Alter Monetta (the “Attending Creditors”). To preserve the integrity of the marketing process the Monitor/Interim Receiver is requesting that this supplemental report be sealed.

28. At 4 P.M. the Monitor/Interim Receiver convened a conference call as ordered by the Court. In attendance were the Monitor, its counsel, RBC and its counsel, FCC and its counsel, a representative of GE Capital and the solicitor for Alter Monetta. During the

conference call both offers were reviewed and certain items in each of the offers were clarified. The Monitor/Interim Receiver polled the creditors as to their preferred offer. Based upon the views of the Attending Creditors and the review of these offers, the Monitor/Interim Receiver made a recommendation that the offer of 641 be the preferred offer (the "Preferred Offer") for the purchase of substantially all the assets of the Applicants which recommendation was relayed to the Service List pursuant to the terms of the August 12th Order.

29. The Preferred Offer, in the view of the Monitor/Interim Receiver provides the best recovery for the stakeholders.

III. RECOMMENDATIONS

30. The Monitor/Interim Receiver recommends that the Honourable Court Grant a vesting Order, substantially in the form attached as Appendix A to this report approving the sale of the Applicants assets pursuant to the Preferred Offer.

All of which is respectfully submitted on this 17th day of August, 2005.

DOYLE SALEWSKI INC.

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

A handwritten signature in black ink, appearing to read "Paul Salewski". The signature is written in a cursive, flowing style.

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

