MODEL DISCHARGE ORDER

*[Current to August 1, 2015]*

No. \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_ Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[plaintiff(s)/PETITIONER(S)]

PLAINTIFFPETITIONER

AND:

[defendant(S)/RESPONDENT(S)]

DEFENDANTRESPONDENT

Action No. \_\_\_\_\_\_\_\_

Estate No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF
[NAME OF DEBTOR(S)]

**ORDER MADE AFTER APPLICATION**

**discharge order**

|  |  |  |
| --- | --- | --- |
| BEFORE THE HONOURABLE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ))) | dd/mm/yyyy |

THE APPLICATION of [RECEIVER’S NAME], in its capacity as Court-appointed [Receiver or Receiver and Manager] (the “Receiver”) of the assets, undertakings and properties of [Name of Debtor] coming on for hearing at Vancouver, British Columbia, on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_; AND ON HEARING \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the Report of the Receiver dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Report”)[1];

THIS COURT ORDERS AND DECLARES THAT:

# The activities of the Receiver, as set out in the Report, are hereby approved.

# The fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavit, are hereby approved. [2]

# After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to [NAME OF PARTY]. [3]

# Upon payment of the amounts set out in paragraph 3 hereof [and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Report] [4], the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtor, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of [RECEIVER’S NAME] in its capacity as Receiver.

# [Release of Receiver.] [5]

# Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court. [6]

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

|  |
| --- |
|  |
| Signature of🞎 Party 🗹 Lawyer for the Petitioners |
|  |
| <Print Name> |
|  |
| Signature of🞎 Party 🞎 Lawyer for <name of party(ies)> |
|  |
| <Print Name> |
|  | BY THE COURT |
|  | REGISTRAR |

**BRITISH COLUMBIA MODEL DISCHARGE ORDER -**

**EXPLANATORY NOTES**

B.C. Model Insolvency Order Committee,

Vancouver, British Columbia

These Notes are to be read together with the model Discharge Order developed by the B.C. Model Insolvency Order Committee (as described below).

[1] This model order assumes that the time for service does not need to be abridged.

[2] This model order assumes the approval of the Receiver’s fees and disbursements is done on a summary basis. If the Court determines that the assessment of the Receiver’s fees and disbursements should be assessed by a Registrar, then this paragraph should be changed to read: “The Receiver shall pass its accounts before a Registrar of the Supreme Court who shall prepare a report and recommendation to the Court.” The balance of the relief provided for in this model order should in such case be deleted and can be sought on the subsequent application for approval of the Registrar’s report.

[3] This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

[4] Counsel should consider including this provision only if the Receiver’s Report identifies any outstanding matters that should be completed before the Receiver’s discharge.

[5] The BCMIOC was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity and as the Court’s officer, so the Court may be of the view that it is appropriate to insulate the Receiver from liability by way of a general release. Some members of the BCMIOC felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership.

 Without intending to express an opinion as to whether a general release is appropriate, the BCMIOC has decided not to include the general release language in the body of the model order. Whether such language is appropriate is a matter to be considered by the presiding Judge based on the specific circumstances of the case. If this relief is being sought, stakeholders should be specifically advised and given ample notice.

 If a general release is ordered, the language approved by the BCMIOC is as follows:

# 5. [RECEIVER’S NAME] is hereby released and discharged from any and all liability that [RECEIVER’S NAME] now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of [RECEIVER’S NAME] while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, [RECEIVER’S NAME] is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

[6] If not included in a previous report, the Receiver should include in the Report filed in support of the application evidence that the Receiver satisfied its notice obligations, including under the *Bankruptcy and Insolvency Act*.