

**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
TOYS "R" US (CANADA) LTD. / TOYS "R" US (CANADA) LTEE (the "Applicant")**

**AIDE MEMOIRE OF MSI SPERGEL INC., IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND TRUSTEE IN BANKRUPTCY of 1322297 ONTARIO
INC. C.O.B. AS EVEREST TOYS**

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capacity as Court-appointed Receiver
and Trustee in Bankruptcy of 1322297
Ontario Inc. c.o.b. as Everest Toys**

TO: THE SERVICE LIST

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1. msi Spergel Inc., in its capacity as Court-appointed receiver and trustee in bankruptcy (the "**Receiver**" or the "**Trustee**", and in both capacities, "**Spergel**") of 1322297 Ontario Inc. o/a Everest Toys ("**Everest**"), files this Aide Memoire in connection with the motion by Toys "R" Us (Canada) Ltd. ("**TRU**") for, among other things, approval of the Agreement of Purchase and Sale dated June 11, 2026 (the "**APS**") between TRU and 2625229 Ontario Inc. ("**262**"), a Putman-related entity and the DIP lender in these CCAA proceedings.
2. Spergel does not oppose the completion of the transaction contemplated by the APS, provided the Purchased Assets do not include any claims or causes of action in relation to the Impugned Transactions (as defined herein). Spergel seeks only to ensure that approval of the APS does not release, compromise or otherwise prejudice any claims that Everest, Spergel, any creditor of Everest, TRU, the Monitor, any receiver, trustee in bankruptcy or creditor of TRU may have against TRU and/or 11572288 Canada Inc. o/a Famous Toys ("**Famous**"), and their respective directors, officers, management and employees, including Putman, or any other persons who were

involved in or privy to, among other things, the purchase or transfer of inventory from Everest to TRU and Famous, and their failure to pay for such inventory, any misrepresentations by such persons to The Toronto-Dominion Bank (“**TD Bank**”) and any potential Voidable Transactions identified by the Monitor in its Report on Related Party Transactions dated June 12, 2026 (collectively, the “**Impugned Transactions**”).

3. Spergel’s concern arises from the breadth of the “Claims” proposed to be purchased by 262 under the APS by way of a credit bid, which, on its face, includes claims and causes of action for breach of fiduciary duty and breach of duties imposed by law or equity, whether known or unknown.

4. It is not clear whether, as a matter of law, a secured creditor's security extends to claims for misconduct, including breach of duty, breach of fiduciary duty, or representation against the secured creditor or its officers, directors, shareholders, management and employees such that the secured creditor may acquire such claims by way of a credit bid.

5. Spergel is investigating significant inventory transfers by Everest to TRU and Famous before Everest’s receivership. Everest was placed into receivership by this Court on August 27, 2025 on the application by TD Bank. Based on the books and records of Everest made available to Spergel:

- (a) TRU owed Everest approximately \$10.4 million as at January 31, 2025;
- (b) TRU owed Everest approximately \$16.5 million as at August 27, 2025;

- (c) between February 1, 2025 and the Receiver's appointment, Everest transferred approximately \$10.6 million of additional inventory to TRU, for which it appears payments totaling approximately \$3.9 million were made;
- (d) approximately \$4.9 million of inventory was transferred to Famous, another Putman entity, within days before the receivership and after Everest's directors had resigned en masse. Famous has not paid for any of this inventory; and
- (e) Everest failed to comply with its reporting requirements to TD Bank thereby concealing disclosure of its financial distress while borrowing substantial sums from the bank in excess of authorized borrowing limits.

6. These facts, if proven, may give rise to claims against persons privy to those transactions and/or against directors and officers of TRU, including Putman, for oppression or otherwise.¹

7. Spergel's concern is that the transfer of all "Claims" to 262, a Putman-related entity, will have the practical effect of releasing claims against Putman and others involved in or privy to improper transactions as 262 would obtain control over the claims.

8. While this Court has approved the sale of claims or causes of action to secured creditors by way of a credit bid,² it has not been clearly established as a matter of law by a panel of the Ontario Court of Appeal whether a claim or cause of action against a secured creditor falls within the scope of the general security held by such secured creditor and, therefore, whether the secured

¹ *Business Corporations Act*, R.S.O. 1990, c B.16, section 248(1); *Prime Computer of Canada Ltd. v. Jeffrey* (1991), 1991 CanLII 7157.

² *8527504 Canada Inc. v. Liquibrands Inc.*, 2015 ONSC 5912 at paras 10, 18, 20-22, leave to appeal refused, *8527504 Canada Inc. v. Sun Pac Foods Limited*, 2015 ONCA 916.

creditor may use a credit bid to acquire such claim or cause of action.³ On June 17, 2026, the Ontario Court of Appeal granted leave to appeal that very issue in another proceeding.⁴

9. The Ontario Court of Appeal has confirmed that third-party releases may be approved in a CCAA proceeding where they are reasonably connected to the restructuring.⁵ In determining whether a proposed third-party release is appropriate, this Court considers a number of factors, including the following:⁶

- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released were contributing to the plan; and
- (e) whether the release benefited the Applicants as well as the creditors generally.

10. In *PaySlate Inc. (Re)*, the British Columbia Supreme Court refused to approve broad transaction relief, including waiver, bar and release provisions, where the evidentiary record was insufficient to determine the value, fairness and impact of the relief sought. The Court held that

³ [1239745 Ontario Ltd. v. Bank of America Canada](#) (1999), 1999 CarswellOnt 2665 at paras 71-76 (ONSC); [Isabelle v. The Royal Bank of Canada](#), 2008 NBCA 69 at para 48.

⁴ [Avida 2015 Inc. \(Re\)](#), 2026 ONCA 426 at paras 8-9.

⁵ [Metcalfe & Mansfield Alternative Investments II Corp., \(Re\)](#), 2008 ONCA 587 at para 43.

⁶ [Lydian International Limited \(Re\)](#), 2020 ONSC 4006 at paras 53-54; [Growthworks Canadian Fund Ltd.](#), 2026 ONSC 2488 at paras 27-28.

there must be an evidence-based rationale for value.⁷ Without sufficient evidence, the Court could not determine whether consideration was appropriate, whether alternatives existed, or whether stakeholders were no worse off.⁸ The Court also held that, given the insufficient evidence, it could not accept that the waiver, bar, release and contractual-rights restrictions were fair and reasonable.⁹

11. In this case, the record does not identify all potential claims that may be included in the “Claims” to be purchased by 262, whether any such claims involve Putman or related parties, or the amount of consideration being provided for what may amount, in substance, to a release of the impugned claims.

12. Spergel therefore requests that this Court decline to approve the APS unless the Purchased Assets expressly exclude, or the Court otherwise confirms that the Purchased Assets do not include, any claims or causes of action against TRU and Famous, and their respective directors, officers, management and employees, including Putman or any other persons who were involved in or privy to the Impugned Transactions.

⁷ [PaySlate Inc. \(Re\)](#), 2023 BCSC 608 at para 141.

⁸ [Ibid](#) at para 142.

⁹ [Ibid](#) at para 143.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2026.

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