Court File No. CL-26-00000173-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF

1001665935 ONTARIO INC.

of the City of Toronto, in the Province of Ontario

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3, as amended, and s. 101 of the *Courts of Justice Act,* RSO 1990, c C.43, as amended

FACTUM OF PACER AIR FREIGHT LTD.
(MOTION FOR DISTRIBUTION AND DISCHARGE ORDER)

October 23, 2026

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PART I - INTRODUCTION

1. Pacer Air Freight Ltd. ("**Pacer**") opposes the motion of Richter Inc., in its capacity as Court-appointed receiver and manager (the "**Receiver**") of 1001665935 Ontario Inc. ("**ResidualCo**."), for a declaration regarding Pacer's Statement of Claim against Synaptive Medical Inc. ("**Synaptive**").

2. ResidualCo.'s Receiver does not have a genuine interest in the interpretation of the unique language of a provision negotiated between Synaptive and Pacer, or application of that provision to their ongoing, post-closing dispute. The Receiver's own interest relates to abstract implications for future, theoretical reverse vesting orders.

3. Despite its efforts, Synaptive is not properly before the Court on this proceeding. Indeed, its motion for summary judgment underscores that there is a more appropriate procedure to resolve the dispute between Synaptive and Pacer. A motion for summary judgment on proper notice that includes the ordinary steps complying with the procedural requirements would permit both parties to submit full motion records, conduct cross-examinations, exchange comprehensive facta, and present oral argument with sufficient time.

4. The inadequacy of the Receiver's arguments also weighs against declaratory relief.

5. As an order on the consent of Pacer, Synaptive, and Richter Inc. in its former capacity as Synaptive's receiver, paragraph 21 of the Approval and Reverse Vesting Order the ("**Pacer Carveout**") should be interpreted based on its ordinary and grammatical meaning consistent with the surrounding circumstances known to the parties. The Receiver has not addressed any of those considerations.

6. The language, context, and surrounding circumstances make clear that the Pacer Carveout was objectively intended to maintain the *status quo* by preserving Pacer's broad lien

rights and anything that could affect those lien rights. That includes the ability to bring a damages claim against Synaptive while Pacer continues to warehouse Synaptive's property.

7. Finally, even if it were appropriate and correct, the declaration the Receiver seeks is overbroad. Pacer's Statement of Claim includes a claim for damages that post-date Synaptive's receivership and that Pacer continues to incur.

8. Therefore, Pacer asks this Honoruable Court to dismiss the Receiver's motion for a declaration sought in its Notice of Motion at paragraph 2(b) with costs.

PART II – SUMMARY OF FACTS

9. On November 1, 2021, Pacer provided Synaptive Medical Inc. ("**Synaptive**") with a Warehousing Proposal, including certain terms and conditions. Synaptive signed the Warehousing Proposal on November 15, 2021 (the "**Warehousing Agreement**").[1]

10. Synaptive and Pacer entered into the Warehousing Agreement in the context of Synaptive's exhibition of its equipment to potential customers in Canada, the United States, and countries outside of North America. This led to a unique arrangement in which Synaptive hired Pacer to warehouse its goods in Ontario, transport and store the goods between and in various locations, and return them to Ontario for further short-term warehousing or redelivery to Synaptive.[2]

11. Pacer understood that the warehousing of Synaptive's goods was an integral part of Pacer's overall services to facilitate Synaptive's exhibition of its products, but Pacer also

[1] Responding Motion Record of Pacer Air Freight Ltd., dated October 22, 2026 ("**Pacer RMR**"), Tab 1 – Affidavit of Michael Stopay, dated October 22, 2026 ("**Stopay Affidavit**"), at para. 2, Exhibit A
[2] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 4

understood that the warehousing in Ontario would be short-term and intermittent rather than long term.[3]

12. In the context of that unique arrangement, the rates for storing Synaptive's goods were well below market rates for high-value equipment that requires special handling, is not rackable, and must be temperature-controlled.[4] Pacer was able to provide below-market rates for warehousing because it could recoup the costs of doing so through the related transportation and storage services.[5]

13. In approximately May 2024, Synaptive stopped paying Pacer's invoices for warehousing and related transportation and storage services. In late November 2024, Synaptive ceased its exhibition of its equipment. Nonetheless, Pacer continued provide warehousing services at the rates in the Warehousing Agreement.[6]

14. Since September 2024, Pacer has been storing 70 pallets for Synaptive (the "**Pallets**").[7]

The Halifax MRI

15. On September 30, 2024, Pacer and Synaptive agreed on rates for Pacer to pick up an MRI unit in Halifax, Nova Scotia (the "**Halifax MRI**"), warehouse the Halifax MRI for six months in Mississauga, and then redeliver the Halifax MRI to Nova Scotia (the "**Halifax Agreement**").[8]

[3] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 5
[4] Pacer RMR, Tab 1 – Stopay Affidavit, at paras. 6-7
[5] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 9
[6] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 10
[7] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 11
[8] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 12, Exhibit B

16. Pacer agreed to store the Halifax MRI for $30,000 for six months. Again, based on the nature of this arrangement and the overall context discussed above, Pacer's quoted storage costs were well below market rates.[9]

17. Pacer transported the Halifax MRI from Halifax and has been warehousing it since October 2024.[10]

18. Pacer continues to warehouse Synaptive's Pallets and the Halifax MRI, which occupy a total of about 5,250 square feet.[11]

Amounts Owing prior to Initial CCAA Order

19. On March 19, 2025, this Court made an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, regarding Synaptive (the "**Initial CCAA Order**"). [12]

20. Synaptive owes Pacer $1,067,570.04 for warehousing and related transportation and storage services that Pacer rendered from May 2024 through early March 2025.[13]

Amounts Owing for Warehousing Since the Initial CCAA Order

21. By the time of the Initial CCAA Order, it had become clear that Pacer's warehousing of the Pallets would be longer-term than anticipated and agreed upon in the Warehousing Agreement. The six-month term for storing the Halifax MRI under the Halifax Agreement would also soon elapse.[14]

[9] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 13
[10] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 14
[11] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 15
[12] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 18
[13] Pacer RMR, Tab 1 – Stopay Affidavit, at paras. 16-17, Exhibits C-D
[14] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 20

22. Pacer began charging Synaptive to warehouse the Pallets at a rate of $32,500 plus tax, per month.[15] Pacer began charging Synaptive to warehouse the Halifax MRI at a rate of $20,000 plus tax, per month.[16] From time to time, Pacer has rendered further monthly invoices to Synaptive for warehousing the Pallets and Halifax MRI since June 2025.[17]

23. For April 2025 through July 2026, Synaptive owes Pacer a total of approximately $949,200 for warehousing the Pallets and Halifax MRI. Therefore, Synaptive owes Pacer a total of $2,016,770.04 for transportation and warehousing services relating to the Pallets and Halifax MRI.[18]

Discussions with Synaptive During the CCAA Proceedings

24. Shortly after the Initial CCAA Order, Synaptive asked to retrieve a component of the Halifax MRI. Pacer initially refused that request.[19]

25. Through the CCAA proceeding, Pacer and Synaptive negotiated to resolve Pacer's claim for transportation and warehousing services incurred before the Initial CCAA Order, and to negotiate rates for ongoing warehousing services.[20]

26. Pacer's objective was to ensure that it preserved its rights against Synaptive while continuing to warehouse the Pallets and Halifax MRI, which was understood by Pacer to be important to Synaptive's ongoing business. Therefore, Pacer's position was that it would oppose the approval of a subscription agreement if Pacer's claim and warehousing fees going forward were not fully resolved or preserved.[21]

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[15] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 21, Exhibit E
[16] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 22, Exhibit F
[17] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 23
[18] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 24
[19] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 25, Exhibit G
[20] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 28, Exhibits H-J
[21] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 30

27. In that context, and after further negotiations through counsel, Pacer agreed not to oppose Synaptive's motion for an approval and reverse vesting order in exchange for the preservation of Pacer's rights in that order.[22]

First Approval and Reverse Vesting Order

28. On June 18, 2025, the Court granted an Approval and Reverse Vesting Order in the CCAA proceeding (the "**First ARVO**").[23] Paragraph 13 of the First ARVO is the origin of and and is nearly identical to the Pacer Carveout in the Second ARVO.

Negotiations with Synaptive between the First ARVO and Receivership

29. From late June 2025 through early April 2026, Pacer and Synaptive continued to negotiate regarding the amounts owing by Synaptive to Pacer and release of the Halifax MRI and Pallets. Those negotiations occurred directly between Pacer and Synaptive personnel and through counsel.[24]

30. At one point, Pacer indicated that the Halifax MRI belongs to Nova Scotia Health but it is not clear if that is correct. [25] Nova Scotia Health did not respond to Pacer's notice about the Halifax MRI.[26]

31. In early April 2026, Pacer and Synaptive agreed to an all-inclusive settlement figure to resolve all of Pacer's outstanding claims against Synaptive subject to agreement on the timing of payment and release of the Pallets and Halifax MRI.[27]

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[22] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 31
[23] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 32, Exhibit K
[24] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 34
[25] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 35
[26] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 36, Exhibit L
[27] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 37

32. At the same time, Pacer was concerned about the potential expiry of the limitations period relating to part of its claim and indicated that Pacer would have to issue a statement of claim if the parties could not finalize their settlement or enter into a tolling agreement.[28]

33. Pacer and Synaptive entered into a Tolling Agreement, effective April 9, 2026.[29]

Communications with the Receiver & Synaptive's Purchaser

34. On April 28, 2026, the Court appointed Richter Inc. as receiver and manager of Synaptive's assets (the "**Receiver**").[30] Shortly thereafter, Pacer apprised the Receiver of the Pallets, the Halifax MRI, and the amount of Pacer's claim.[31]

35. On June 30, 2026, the Receiver served a motion seeking a second Approval and Reverse Vesting Order relating to Synaptive. Pacer again indicated that it would oppose that relief unless its rights were preserved.[32]

36. The Receiver and Synaptive's new purchaser agreed to add the Pacer Carveout to the order being sought, which was nearly identical to paragraph 13 of the First ARVO.[33]

37. On July 10, 2026, the Court granted an Approval and Reverse Vesting Order in the Receivership proceeding (the "**Second ARVO**").[34] Paragraph 21 of the Second ARVO contains the Pacer Carveout.

[28] Pacer RMR, Tab 1 – Stopay Affidavit, at paras. 38-39, Exhibit M
[29] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 40, Exhibit N
[30] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 41
[31] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 42, Exhibit O
[32] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 43
[33] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 44
[34] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 45, Exhibit P

Negotiations & Pleadings After the Second ARVO

38. Synaptive and Pacer continued their settlement discussions after the Second ARVO,[35] but did not come to a resolution.[36] Pacer was again concerned about the expiry of the limitations period regarding some of its claim. Therefore, on September 8, 2026, Pacer commenced a Statement of Claim against Synaptive.[37]

39. On October 1, 2026, Synaptive stated that it would bring a motion to dismiss Pacer's action while inviting further settlement discussions.[38] Synaptive filed a Statement of Defence on October 14, 2026.[39]

Synaptive's Summary Judgment Motion Brought Without Proper Notice

40. On October 21, 2026, at 5:01 pm, Synaptive's counsel served a motion record seeking summary judgment against Pacer, returnable on October 26, 2026 at 10:30 am (the "**SJM**"). The SJM arises in *Pacer Air Freight Ltd. v. Synaptive Medical Inc.*, Court File No. CV-26-0017843-0000. Synaptive's SJM was served with insufficient notice and without consulting Pacer.[40]

41. On October 21, 2026, at 8:41 pm, Pacer unequivocally objected to having a dispositive motion without the appropriate pre-hearing procedures, particularly on such abbreviated notice.[41] Pacer will suffer material prejudice should Synaptive's motion be heard on October 26, 2026.[42]

[35] Pacer RMR, Tab 1 – Stopay Affidavit, at paras. 48-49, Exhibit Q
[36] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 50
[37] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 51, Exhibit R
[38] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 52, Exhibit S
[39] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 53, Exhibit T
[40] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 54, Exhibit U
[41] Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit X
[42] Pacer RMR, Tab 1 – Stopay Affidavit, at para. 58, Exhibit X

PART III – ISSUES

42. Pacer submits that the dispositive issue on this aspect of the Receiver's motion is whether the Receiver is entitled to declaratory relief.

PART IV – LAW AND ARGUMENTS

Requirements for Declaratory Relief

43. Declaratory relief may be appropriate where: "(a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought."[43]

44. The Court's discretion "to make binding declarations of right is not a free-standing provision that allows a judge to do whatever seems fair; rather, it allows the court to confirm legal rights that already exist."[44] That discretion "cannot apply to a case where the other party has already instituted proceedings for the determination of the matter in dispute," in part, because it requires the proceeding to be brought forward for determination.[45]

45. The Court also may deny declaration relief on the bases of "standing, delay, mootness, the availability of more appropriate procedures, the absence of affected parties, the theoretical or hypothetical nature of the issue, the inadequacy of the arguments presented, or the fact that the declaration sought is of merely academic importance and has no utility."[46]

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[43] *Bryton Capital Corp. GP Ltd. v. CIM Bayview Creek Inc.*, 2023 ONCA 363 ("***Bryton Capital***"), at para. 63, quoting *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4, at para. 60
[44] *Bryton Capital*, at para. 34
[45] *Bryton Capital*, at para. 69
[46] *Bryton Capital*, at para. 64; see also, *1797472 Ontario Inc. v. Independent Electricity System Operator*, 2024 ONSC 2130, at para. 125

46. The factors regarding declaratory relief most pertinent to this cased are discussed below.

Receiver's Lack of Genuine Interest in a Theoretical Dispute

47. The Receiver no longer has a genuine legal interest or procedural mechanism to obtain the declaratory relief it seeks. Richter Inc. is no longer the Receiver of Synaptive.

48. Pursuant to the Second ARVO and the Receiver's Certificate dated August 4, 2026 (the "**Certificate**"), Synaptive has been expressly released from the purview of the Amended & Restated Receivership Order.[47] The Receiver no longer has the broad authority to seek advice and directions with respect to Synaptive.[48]

49. In this Third Report, the Receiver acknowledges that there is a dispute about the interpretation of the Pacer Carveout, which is "inherently a post-closing dispute between Synaptive/the Purchaser and Pacer."[49] In its Factum, the Receiver similarly concedes that whether Pacer's Statement of Claim should be struck is a matter between Synaptive and Pacer.[50]

50. Indeed, Synaptive has raised that dispute in its Statement of Defence to Pacer's Statement of Claim.[51] Prior to the Receiver's current motion for declaratory relief, Synaptive said it would bring a motion to have the action dismissed if the matter was not resolved.[52]

51. The Receiver is not concerned about the outcome of the post-closing dispute because of its current mandate, but because of possible "uncertainty in interpretation of reverse vesting orders, to the detriment of the practice."

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[47] Second ARVO, at para. 7(f): Pacer RMR, Tab 1 – Stopay Affidavit, at paras. 45-46, Exhibit P
[48] Receivership Order (Amended and Restated), dated May 13, 2026: Pacer's RMR – Tab 2
[49] Third Report of the Receiver dated October 15, 2026, para. 54: Motion Record of the Receiver, dated October 15, 2026 ("**Receiver's MR**"), Tab 7, at p. 664
[50] Factum of the Receiver, para 19
[51] Statement of Defence: Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit T
[52] Email from Synaptive's counsel dated October 1, 2026: Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit S

52. As discussed below, the unique language of the Pacer Carveout was negotiated between Pacer and Synaptive based on specific circumstances. Its meaning is informed, but expressly not affected by, the other provisions of the Second ARVO and Subscription Agreement. The interpretation of the Pacer Carveout will have no precedential value for the interpretation of other reverse vesting orders.

53. Therefore, while there is now a dispute between Pacer and Synaptive about the meaning and application of the Pacer Carveout, the Receiver has no genuine interest in the outcome of that dispute. Its concerns about implications for other proceedings are theoretical.

Declaration Does Not Seek to Confirm Existing Rights

54. As a corollary to its lack of genuine interest, the Receiver's proposed declaration does not seek to confirm its legal rights that already exist. Rather, the Receiver seeks to bring forward the extant dispute between Pacer and Synaptive and impose the Receiver's belated interpretation of the Pacer Carveout as though the scope of that clause has already been determined.

55. Contrary to the Receiver's assertion, Pacer is not attempting to avoid the Pacer Carveout or any provision of the Second ARVO. It is exercising the rights it negotiated in both the First ARVO and Second ARVO.

56. Indeed, from Pacer's perspective, the Receiver is attempting to vary or collaterally attack the parties' agreement in the Pacer Carveout in the Second ARVO to conform to its current interests.

Absence of Affected Parties & Availability of a More Appropriate Procedure

57. Synaptive's formal absence from this proceeding weighs against granting a declaration and underscores that there is a more appropriate procedure. Pursuant to the Second ARVO and the Certificate, Synaptive is no longer a party to this Receivership.

58. By serving its SJM without consulting Pacer, Synaptive purports to have unilaterally transferred its SJM to the Commercial List and have that motion decided on extraordinarily short notice. However, Synaptive has not submitted a request to transfer Pacer's action to the Commercial List, Synaptive has not sought or received an abridgment of the time to serve its SJM on two days' notice,[53] nor has Synaptive followed the Consolidated Practice Direction – Toronto Region for motions before the Superior Court of Justice or Commercial List. Therefore, the SJM is not properly before this Court.

59. Regardless of formalities, proceeding with the Receiver's declaration motion supported by the Synaptive SJM is patently unfair. Both Synaptive and Pacer should have the opportunity to serve full motion records, conduct cross-examinations, exchange fully researched and considered facta, and have sufficient time for oral argument. Those steps can be readily accomplished under the ordinary process for a summary judgment motion, which is a more appropriate procedure.

Inadequacy of the Arguments Presented

60. In addition to the lack of procedural fairness, the Reciver's arguments are inadequate and incomplete. The Receiver has not addressed the circumstances surrounding the inclusion of the Pacer Carveout in the Second ARVO or provided a detailed textual interpretation of that provision.

[53] Rule 37.07(6) requires a motion to be served at least seven days before the date on which the motion is to be heard. The first day, holidays, and service after 5:00 p.m. are not counted (Rule 3.01(1)(a), (b), and (d)). Synaptive served its SJM effective October 22, 2026, for a hearing on October 26, 2026.

(i) Surrounding Circumstances

61. The Pacer Carveout was included in the Second ARVO on the consent of Pacer, Synaptive, and the Receiver. As a form of consent judgment, the Pacer Carveout is an agreement elevated to an order on consent. As a contract, the Pacer Carveout should be interpreted based on the surrounding circumstances and the parties' objective intent.[54]

62. At the time the parties agreed to include the Pacer Carveout in the Second ARVO. Pacer, Synaptive, and the Receiver all had, or reasonably should have had, the following context.

(1) Context of the Pacer Carveout in the First ARVO

63. Pacer facilitated Synaptive's exhibition of its specialized medical equipment across North America by transporting and temporarily warehousing that equipment.

64. Pacer's warehousing services were governed by the Warehousing Agreement. Clause 10 is a broad indemnity for any breach of the Warehousing Agreement by Synaptive, which includes failure to pay for warehousing and ancillary services. Clause 13 requires Synaptive to pay all outstanding charges and transport its goods from the warehouse within 90 days of termination of the Warehousing Agreement.

65. Clauses 10 and 13 are secured by Clause 3, Warehouseman's Lien and Right of Retention. Clause 3 applies to all warehousing and services pursuant to other contracts between Synaptive and Pacer.

[54] *Johnston v. McLean*, 2024 ONCA 791, at paras. 14-17

66. In short, upon termination of the Warehousing Agreement, Pacer can compel Synaptive to pay all amounts outstanding to Pacer and to retrieve its cargo. Pacer also has the option to sell any cargo.

67. The Halifax Agreement was made and partially fulfilled before the Warehousing Agreement was terminated. Therefore, Clause 3 secures payment of amounts incurred for all Pacer's transportation and warehousing services, including for the Pallets and the Halifax MRI.

68. The parties were also aware that section 4[55] of the *Liens Act* grants Pacer a possessory storer's lien for all amounts owing with respect to the Pallets and Halifax MRI. Pursuant to section 6, a storer's lien "has priority over the interests of all other persons in the article."[56]

69. In late November 2024, Synaptive ceased its exhibition of its equipment.

70. By the time of the Initial CCAA Order in March 2025, Synaptive owed Pacer $1,067,570.04 for warehousing and related transportation services. Despite not having been paid for nearly a year, Pacer was still warehousing the Pallets and Halifax MRI. It had become clear that Pacer's warehousing of the Pallets would be longer-term than anticipated and agreed upon in the Warehousing Agreement. The six-month term for storing the Halifax MRI would also soon elapse.

71. Every indication was that the Pallets and Halifax MRI remained important to Synaptive's future as an ongoing concern. Synaptive asked to retrieve one part of the Halifax MRI, which Pacer refused.

72. Synaptive still required Pacer's warehousing services in any event. However, the commercial terms in the Warehousing Agreement were no longer tenable and it became clear they would have to negotiate in that regard. Therefore, Synaptive and Pacer engaged in

[55] *Repair and Storage Liens Act*, R.S.O. 1990, c. R25 ("***Liens Act***"), at s. 4
[56] *Liens Act*, s. 6

negotiations to settle Pacer's claim in exchange to access to the Pallets and Halifax MRI and to establish warehousing rates going forward.

73. When it received Synaptive's motion for the First ARVO, Pacer objected to Synaptive. Pacer would have opposed that order unless its claim and rights were resolved or preserved.

74. In short, the key surrounding circumstances at the time of Pacer's objection to the First ARVO were: (1) Pacer had a large claim secured by broad lien rights over important equipment and Pacer was not willing to abrogate those rights pursuant to the ordinary terms of an approval and reverse vesting order; and (2) the commercial terms of the Warehousing Agreement would not longer apply to Pacer's ongoing warehousing of the Pallets and Halifax MRI.

75. In that context, Synaptive proposed a bespoke clause to preserve Pacer's rights under the Warehousing Agreement and *Liens Act*. That intent is reflected in the language of the Pacer Carveout, as discussed below. Consistent with the parties' understanding that new warehousing rates needed to be finalized, the Subscription Agreement pursuant to the First ARVO added the Warehousing Agreement as an Excluded Contract.

(2) Settlement and Tolling Agreements

76. Interactions between Synaptive and Pacer between the CCAA and Receivership also form the surrounding circumstances of the Pacer Carveout in the Second ARVO.

77. Synaptive and Pacer continued to negotiate after the First ARVO through April 2026. In early April 2026, Pacer offered to accept $900,000 to satisfy its claims to date. Synaptive accepted, subject to an agreement on the timing of payment and release of the Pallets and Halifax MRI. Although Synaptive alluded to the sale value of the Pallets and Halifax MRI, the parties

reached a settlement figure based on the value of Pacer's pre-CCAA claim and the rates for warehousing since the CCAA Initial Order.[57]

78. As part of those negotiations, Pacer expressed its concern about the potential expiry of limitation periods and it threatened to issue a Statement of Claim.[58] Consistent with their objective understanding, Synaptive did not contest Pacer's right to pursue the claim against Synaptive in litigation. Rather, Synaptive agreed to toll Pacer's limitation period to do so.

79. The Tolling Agreement, dated April 9, 2026, defines the "Claim Amount" as all amounts Pacer was claiming pre and post-CCAA and notes Pacer's assertion that the Claim Amount is secured by the Warehouse Agreement and the *Lien Act*.[59] The Tolling Agreement includes the Claim Amount in the definition of the "Liens"[60] as part of the parties' "Dispute".[61] It reiterates that, pursuant to the Pacer Carveout in the First ARVO, "the Court fully preserved [Pacer's] rights to assert the Liens and [Synaptive's] rights to dispute the Liens."

80. Clause 1 of the Tolling Agreement tolls any limitation period relating to the Dispute and clause 2 expressly contemplates "the commencement of proceeding by any Party in connection with the Dispute." Thus, Synaptive contractually acknowledged that the Pacer Carveout in the First ARVO preserved Pacer's claim against Synaptive as part of its lien rights. Synaptive would not have acknowledged and tolled a claim that was extinguished by the First ARVO.

[57] Emails dated March 3 – April 2, 2026: Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit M
[58] Emails dated April 2 and 3, 2026: Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit M
[59] Tolling Agreement, Recital (g): Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit N
[60] Tolling Agreement, Recital (g): Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit N
[61] Tolling Agreement, Recital (j): Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit N

81. The Receiver was appointed on April 28, 2026. The Receiver soon became aware of the $900,000 settlement amount and the Tolling Agreement, as reflected in its First Report dated May 7, 2026.[62]

82. The Receiver served its motion seeking the Second ARVO on June 30, 2026. Pacer again intended to oppose the Second ARVO unless its rights were preserved. In the meaningful surrounding circumstances described above, Pacer, the Receiver, and Synaptive, agreed to include the Pacer Carveout in the Second ARVO.[63]

83. The surrounding circumstances are important for understanding the parties' objective intent. In failing to address those surrounding circumstances, the Receiver's arguments are inadequate to obtain the declaratory relief sought.

(ii) Receiver's Textual Interpretation of the Pacer Carveout is Perfunctory

84. The arguments on the textual interpretation of the Pacer Carveout are also inadequate to justify declaratory relief. The Receiver's presents its current position as a *fait accompli*. Since Pacer's rights are described in a reverse vesting order, the Receiver reasons that those rights must be proscribed in Synaptive's favour.

85. While a vesting order may be "the holy grail sought by every purchaser",[64] that sacred vessel may be blemished on a case-by-case basis if the Court determines that a third party interest should not be extinguished pursuant to the cascading analysis[65] or if the parties agree.

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[62] First Report, para 27: Receiver's MR Tab 1
[63] Pacer RMR, Tab 1 – Stopay Affidavit, at paras 43-44
[64] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.* ("***Third Eye***"), 2019 ONCA 508, at para. 27
[65] *Third Eye*, at para. 102; *In the Matter of CannaPiece Group Inc. et al.*, 2023 ONSC 841, at para. 55

86. In *Razor Energy*,[66] the Court of King's Bench of Alberta held as follows in dismissing an application for a reverse vesting order:

> [88] While it may be true that the best interests of all stakeholders other then Arena favour approval of the proposed RVO, and that therefore business efficiency favours that approval, as noted in *Dianor* (at para 144 of the ONCA decision), the imperatives of the purchaser should not necessarily trump the interests of a secured creditor. [emphasis added]

87. The parties then renegotiated a revised proposal to improve the position of the secured creditor, which the Court approved.[67]

88. In this case, the parties also negotiated to improve Pacer's position compared to the initial draft Second ARVO. Indeed, the surrounding circumstances in this case make it clear that the parties intended to ensure that the imperatives of Synaptive and its purchaser would not trump Pacer's interests. The Receiver's analysis does not interpret the Pacer Carveout in light of the parties' objective intent, the context of the First ARVO and Second ARVO, nor the specific language used in the Pacer Carveout.

89. For example, the Pallets and Halifax MRI are "Retained Assets" under both the First ARVO and the Second ARVO. Synaptive or the Receiver could have proposed to afford Pacer's liens the same rights as "Permitted Encumbrances" against those Retained Assets, but chose not to.

90. Rather, the Pacer Carveout is entirely exempted from the application of any other provision in the Second ARVO – it states that "nothing in this Order or the Subscription agreement affects" the Pacer Carveout.[68] The Receiver does not explain how relies on paragraph 7 on the Second ARVO despite its express agreement nothing in the Second ARVO, including paragraph 7, applies to the Pacer Carveout.

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[66] *Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)*, 2025 ABKB 30 ("***Razor Energy***"), at para. 88
[67] *Razor Energy*, at para. 3
[68] Second ARVO, at para. 21: Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit P (emphasis added)

91. A lien is not a singular legal principle. The nature and rights a lien afford depends on the context. Further, the Pacer Carveout preserves not only a "lien" but "whatever lien rights" Pacer has under the Warehousing Agreement and *Liens Act*.

92. As described above, the Warehouse Agreement has broad lien rights that encompass rights to retain cargo, sell cargo, and claim indemnity for non-payment.

93. Finally, the Pacer Carveout does not merely state that Pacer may have lien rights. It says that nothing in the Order or the Subscription Agreement "affects" those lien rights.

94. Particularly given its recent change in position, Synaptive could argue that the lack of an ability to sue for the underlying claim means that the lien secures nothing. It could also argue that an expiry of the limitations period on the underlying claim, had that happened, bars Pacer from exercising other lien rights. Thus, the inability to sue Synaptive for damages for the underlying claim could plainly "affect" Pacer's lien rights.

The Declaration Sought is Overbroad

95. Pacer pleads that it has continued to warehouse the Pallets and Halifax MRI with Synaptive's consent and agreement since the Receivership. Synaptive incurred that debt to Pacer for those warehousing services after the Certificate.[69]

PART V – ORDER REQUESTED

96. Pacer asks this Honourable Court to dismiss the Receiver's motion for the declaration sought at paragraph 2(b) of its Notice of Motion, with costs.

[69] Statement of Claim, at para. 34: Pacer RMR, Tab 1 – Stopay Affidavit, Exhibit R

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of October, 2026

Ian Breneman	Michael Furyk

Pursuant to rule 4.06.1(2.1) of the *Rules of Civil Procedure*, we certify that every authority cited in this factum is authentic and every quotation from an authority that appears in this factum accurately reproduces the text of the authority

SCHEDULE "A"

LIST OF AUTHORITIES

1. *1797472 Ontario Inc. v. Independent Electricity System Operator*, 2024 ONSC 2130, at para. 125

2. *Bryton Capital Corp. GP Ltd. v. CIM Bayview Creek Inc.*, 2023 ONCA 363, at paras. 34, 63, 64, 69

3. *In the Matter of CannaPiece Group Inc. et al.*, 2023 ONSC 841, at para. 55

4. *Johnston v. McLean*, 2024 ONCA 791, at paras. 14-17

5. *Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)*, 2025 ABKB 30, at paras. 3, 88

6. *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4, at para. 60

7. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, at paras. 27, 102

SCHEDULE “B”

TEXT OF STATUTES

1. *Repair and Storage Liens Act*, R.S.O. 1990, c. R.25, at ss. 4 and 6

2. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, at Rules 3.01(1)(a)(b) and (d), 4.06.1(2.1), and 37.076(6)

IN THE MATTER OF RECEIVERSHIP OF 1001665935 ONTARIO INC. of the City of Toronto, in the Province of Ontario

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act,* RSC 1985, C B-3, as amended, and s. 101 of the *Courts of Justice Act,* RSO 1990, c C.43, as amended

Court File No. CL-26-00000173-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF PACER AIR FREIGHT LTD.

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