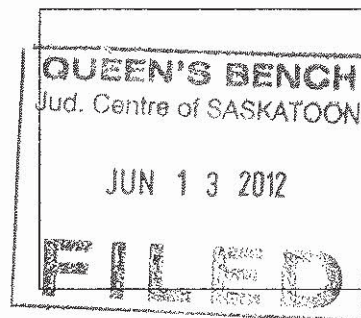


Clerk's stamp:



Court File Number	Q.B. No. 721 of 2012
Court	COURT OF QUEEN'S BENCH OF SASKATCHEWAN
Judicial Centre	SASKATOON
Plaintiff	THE TORONTO-DOMINION BANK
Defendants	101142701 SASKATCHEWAN LTD. AND CAVA SECRETA WINES AND SPIRITS LIMITED
Document	THIRD REPORT OF PRICEWATERHOUSECOOPERS INC. in its capacity as Interim Receiver of 101142701 Saskatchewan Ltd. and Cava Secreta Wines and Spirits Ltd. dated June 12, 2012

Address for Service and
Contact Information of
Party Filing this Document:

WMCZ LAWYERS
901, 119 – 4TH Ave S.
Saskatoon, Sask. S7K 5X2

Attention: Gary Mescishnick, Q.C.
Telephone: (306) 659-1226
Facsimile: (306) 933-2006

INTRODUCTION

1. This report (the "Third Report") is filed by PricewaterhouseCoopers Inc. ("PwC"), in its capacity as interim receiver (the "Receiver") of all of the assets, undertakings and properties of 101142701 Saskatchewan Ltd. ("1011") and Cava Secreta Wines and Spirits Ltd. ("Secreta"), (collectively "Cava" or the "Companies").
2. The Receiver was appointed by an Order granted by the Court of Queen's Bench of Saskatchewan (the "Court") on May 8, 2012 ("Interim Receivership Order").
3. In preparing this Third Report, the Receiver has relied upon unaudited financial information, the Companies' records and information obtained from the Companies. Other than conducting a physical count of the inventories found at the Cava locations identified below, the Receiver has not performed an audit, review or other verification of such information. The Receiver does not express an opinion on the financial information contained herein.
4. It is recommended that this report be read in conjunction with the Receiver's First Report dated May 16, 2012 (the "First Report") and the Second Report dated June 4, 2012 ("Second Report"). Capitalized words in this Third Report not otherwise defined carry the same meaning as in the First Report and Second Report.
5. The purpose of this report is to provide the Court and interested parties with:
 - (i) an update on the activities of the Receiver pursuant to the Order (Property Claims Procedure) made May 18, 2012 ("Claims Process Order") and in preserving and protecting the Debtors interest in the wine futures; and
 - (ii) information that may be of interest when considering whether to terminate or extend the interim receivership or expand the powers of the Receiver.

ACTIVITIES OF THE RECEIVER

6. The Receiver continues to secure the assets of the Companies.

CLAIMS PROCESS

7. In the Claims Process Order this Honourable Court directed that:
 - (i) On or before May 23, 2012 the Receiver send to the Claimants known to the Receiver, a notice informing them of their right to file a Notice of Claim;
 - (ii) On or before May 23, 2012 a notice be placed in the Saskatoon Star-Phoenix notifying potential Claimants of the Claims Process;
 - (iii) All Claimants were to file claims by 5:00 pm CST on May 31, 2012;
 - (iv) The Receiver was to determine the validity of the claims and advise the Claimants and those on the Service List of the Receivers decision by June 5, 2012;
 - (v) Any Claimant or interested party who wishes to contest the Receiver's decision is to file a Notice of Motion to that effect by June 11, 2012; and
 - (vi) Such Notice of Motion is to be returnable before this Honourable Court on June 14, 2012.
8. The Claims Process Order excluded Canada Revenue Agency as a Claimant. On May 25, 2012 this Honourable Court directed that the Claims Process Order be amended so that "the claims of employees of the Companies pursuant to Sections 81.4 and 81.6 of the BIA, claimants relying on security interests, trusts or deemed trust created by statute" were also excluded.
9. The Receiver received 62 Proofs of Claim. Of those, 13 were received from Wine of the Month Club Members and 15 were filed against wine futures. The balance were claims by creditors (14), claims against wine ordered and paid for by claimants who were not Wine of the Month Club Members (4) and claims to property that was not wine inventory (16).
10. Proofs of Claim Responses were provided by the Receiver to all Claimants on June 5, 2012. Of the 16 claims to non wine inventory 11 were allowed. All other claims were denied.
11. Pursuant to the Claims Process Order anyone wanting to dispute a Proof of Claim Response, could do so by filing a Notice of Motion by June 11, 2012 returnable before this Honourable Court on June 14, 2012.
12. On June 11, 2012 the following served on the Receiver Notices of Motion to dispute a Proof of Claim Response:
 - (i) Ren Holdings Ltd. – claim against wine futures.
 - (ii) Cellar Master Enterprise Inc. – one claim against wine in inventory and one claim against wine futures.

- (iii) Cameron Rizos – claim against personal property, wine in inventory and wine futures.
- (iv) John Thronberg and Christie Kurtz – claim against wine pursuant to a Wine of the Month Club membership.

13. The Proofs of Claim filed with the Receiver by Ren Holdings Ltd and Cellar Master Enterprise Inc. were earlier filed with the Court. The Proofs of Claim filed by Cameron Rizos and John Thronberg/Christie Kurtz and all with the Proof of Claim Responses under dispute are found at Schedule A to this report.

WINE FUTURES

14. The Receiver has located numerous purchase orders to acquire wine from vendors, primarily in France. In total the Receiver has located approximately €2.9 million in purchase orders or invoices from wine producers. It appears that €2,026,331 have been paid against those invoices.
15. Utilizing information from the Companies' records, as well as information provided from Mr. Cameron Rizos, Cellar Master Enterprises Ltd., Ren Holdings Ltd. and the Claims Process, the Receiver has compiled a list of those who assert they have advanced funds to the Debtors for the purpose of acquiring Wine Futures. That amount appears to exceed CDN \$3.4 million.
16. We have retained counsel in France to assist with securing the wine futures. French counsel are in the process of having the Court Order translated into French, and serving all parties in France with a copy of the Order, advising them that the Receiver is aware of the business that has been transacted between them and the Debtors, may be looking to complete those transaction where possible and requesting they do not take any further action without discussion with the Receiver. A translation of the draft notification is found at Schedule B to this report.
17. A notification similar to that being sent to vendors in France has been sent by the Receivers counsel to vendors located in North America.
18. Any process which includes the potential delivery of wine under the wine futures will require the consent of SLGA to extending the liquor license. While we have not sought an extension of the license, we have had continuing discussions with SLGA and have been assured of its cooperation in both realizing on existing inventory and securing delivery and realization of wine which has not yet been delivered.

PROPOSED MARKETING

19. In our First Report, the Receiver provided options with respect to the most likely manner to receive the highest value for the assets.
20. Until such time as the Claims Process is concluded (including any Notices of Motion that may be heard on June 14, 2012) and SLGA has provided an assessment of what it will pay for the wine inventory if returned, it is uncertain which of those options might achieve the highest net value for the assets. SLGA has advised that it will not be able to provide the amount it will pay to buy back the inventory until approximately June 21, 2012.
21. One of the other variables that will affect the realizations options is the amounts secured and to be secured by the Receiver's Charge and the Receiver's Borrowing Charge. Estimate of these amounts depending on the method of realization (which in turn depends on the outcome of the Claims Process and SLGA's assessment of the amount it will pay to buy back the inventory) were provided at Schedule A to the Second Report.
22. We advise that as of June 11, 2012, when the Proof of Claim Responses were completed and served, the Receivers Fees and those of its counsel charged at their standard rates are approximately \$205K, expenses of approximately \$12.5K and that \$37K in costs were paid by the Receiver and secured by the Receiver's Borrowing Charge.
23. We remain confident that the total costs to be secured by the Receiver's Charge and the Receiver's Borrowing Charge as estimated in Schedule A to the Second Report remain reasonable estimates.

REALIZATIONS OF THE ESTATE

24. Until the Matters regarding the Receiver's denial of claims under the Claims Process is concluded, it is uncertain who has priority to the assets and for what amounts. There is a possibility there are insufficient assets to satisfy the amounts secured by the Receivers Charge and the Receivers Borrowings Charge.
25. Based on the draft realization schedule in our Second Report at Appendix A, the secured creditors could suffer a shortfall of \$653K or a potential recovery of \$2.1 million. These realizations are preliminary estimates as there are numerous issues to be determined, and the actual results could be materially higher or lower depending on the circumstances.

Respectfully submitted,

PricewaterhouseCoopers Inc.

PRICEWATERHOUSECOOPERS INC.
in its capacity as Interim Receiver of
101142701 Saskatchewan Ltd. and
Cava Secreta Wines and Spirits Ltd.

SCHEDULE A1

to the Third Report of the Interim Receiver, June 12, 2012



SCHEDULE A
to the Third Report of the Interim Receiver, June 12, 2012

Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROOF OF CLAIM RESPONSE

To: Ren Holdings Ltd.
c/o Gabruch Legal Group
201, 129 – 3 Avenue North
Saskatoon, SK S7K 2H4

E-Mail r.gabruch@gabruchlegal.ca

And to: Counsel on the enclosed Service List

Take notice that your Proof of Claim filed with PricewaterhouseCoopers Inc., interim receiver ("Receiver") of all of the property, assets and undertaking of the Debtors has been

☐ allowed

☒ disallowed for the following reasons:



APPROACH TO ANALYSIS

The approach to analysing the competition between of the rights of a secured creditor and the claims to ownership of property asserted to have been purchased from a debtor was established by the Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254.

In that case the Court employed the policy objective of commercial certainty embedded in the *Saskatchewan Personal Property Security Act* ("PPSA") and the legal requirements established by s. 30 of the PPSA for claims of ownership to succeed.

For a Claimant to successfully assert ownership of wine in the possession of the debtors on May 8, 2012, and receive property free and clear of the interests of a secured creditor, there must have been completed by that date a sale and purchase of the property in the ordinary course of the seller's business. Otherwise, a secured creditor will have priority to the property, be it goods in the debtor's inventory or money received from a buyer for the purchase of an article.

To determine if a purchase and sale had been complete by a certain date, the Court of Appeal then looked to and employed the Saskatchewan *The Sale of Goods Act* ("SOGA" or the "Act") to determine if a sale has been completed such that property in the goods has passed from the seller to the buyer.

Pursuant to s. 3(4) of the Act, a sale is made when property in the goods is transferred from the seller to the buyer. Where the transfer of property in the goods is to take place at a future time, the contract is simply an agreement to sell. According to s. 3(5), the agreement to sell only becomes a sale when the property in the goods is transferred.



ANALYSIS GENERALLY

A) Wine is an Unascertained Good

In accordance with s. 18 of the Act, no property in goods is transferred to the buyer unless and until the goods are ascertained. If the goods are ascertained, they become "specific goods" as defined in the Act and property in the goods passes when the parties intended it to be transferred under the contract (s.19(1)).

The Act defines the term "specific goods" as goods identified and agreed upon at the time a contract of sale is made (s. 2(1)(m)). Anything which is not a specific good is, by default, unascertained. Professor Fridman in *Sale of Goods in Canada Fifth Edition*, describes specific goods as follows at page 53:

They are manifestly identified as the only good which may be delivered by the seller in performance of his obligations. No others will do. For example, if the contract is for the sale of a particular car or horse no other may be delivered by the seller in pursuance of the contract, even if it may be argued that what has been delivered is the exact equivalent of what was contracted for by the parties.

At its largest identifiable quantity, wine begins as a "batch" of liquid dedicated for common fermentation and treatment. At some stage, that batch is packaged into smaller units – normally barrels and then bottles. Generally, each bottle of wine that comes from the original single batch bears precisely the same label as every other bottle that is filled from the same batch. Each of those bottles bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle



The nature of wine suggests that an undelivered bottle of wine, in most cases, is an unascertained good because each bottle bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle. In the debtor's inventory, the same inventory number is assigned to all wines bearing the same label – there is no unique marker to identify one bottle from the other.

The sale of a bottle of wine by description only can only be an agreement to sell. Section 18 of the Act is engaged. It directs that "where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained". Something more is needed to make an agreement to sell a completed "sale" i.e. something must be done to identify or "ascertain" the goods.

B) When unascertained wine can become ascertained

The Act provides further guidance in determining when goods are ascertained. Absent a clear statement of intention between the parties in their contract respecting when property passes, section 20 Rule V of the Act governs. It states:

(1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller the property in the goods thereupon passes to the buyer.



Thus, unconditional appropriation of goods of the description contained in the contract that are in a deliverable state becomes the test for when property in goods has passed, that is, the unascertained goods become ascertained.

On the need for certainty in appropriation Prof. Fridman, says at page 86 "If there is any equivocality about the appropriation, it will be ineffective to pass property." He further states at page 87:

In the absence of any express terms as to the mode of application, it follows that the method of appropriation must be inferred from the terms of the contract, the circumstances of the case, and, if any, the usual practice of contracts of the kind that is involved or the usual practice operative as between the parties in question.

RESPECTING YOUR PURCHASE OF WINE FUTURES

In order for property in the wines you claim to pass from the Debtors to you, the wines must be ascertained. In order for these wines to be ascertained they must, according to s. 20 Rule V(1) of the Act, be in a deliverable state in the Debtors' possession, and must be unconditionally appropriated to your contract. See also Prof. G.H.L Fridman, Q.C., *Sale of Goods in Canada Fifth Edition*, (Thomson Canada Limited: 2004) at page 82 respecting the transfer of property in unascertained and future goods.

The Receiver has conducted a thorough review of the inventory in the Debtors' possession and has concluded that the wines, as described in your Property Proof of Claim, that you claim to have purchased from the Debtors were not in the Debtors' possession as of May 8th, 2012.



Your claim seems to be indistinguishable from one dealt with by the Saskatchewan Court of Appeal in *Royal Bank v. 216200 Alberta Ltd.*, 1986 CarswellSask 264, [1987] 1 W.W.R. 545, 6 P.P.S.A.C. 277. In dealing with a situation where purchasers had paid the full or a portion of the purchase price for property not in the possession of a vendor at the time of vendor's receivership, the Court concluded at paragraph 30:

In my opinion, the money was paid as a deposit or a partial payment for the purchase price of future goods. The purchaser, in the ordinary course of business, would be entitled to return of the amount paid [to the vendor] in the event of default. It is a payment made to secure the transaction and is a debt due from [the Vendor] to the proposed purchasers in the event of default. As between the appellant, as the holder of a perfected security interest, and the persons in the class of transactions described in 1 and 3, the appellant takes priority.

Your contract with the Debtors constituted an agreement to sell future or unascertained goods. The wines you have claimed are not in the Debtors' possession and, as a result, property in the wines claimed did not pass to you.

If you object to the decision set out in this Proof of Claim Response you must on or before June 11, 2012, file with the Court of Queen's Bench at the Court House in Saskatoon, 520 Spadina Crescent East, and serve on:

- The Receiver and its legal counsel
- All legal counsel on the Service List
- The Claimant, if the Proof of Claim is allowed

A Notice of Motion returnable June 14, 2012 at 10:00 a.m. before Madam Justice A.R. Rothery, and an affidavit in support, appealing this determination.



If you fail to file a Notice of Motion within the time period stated herein you are deemed to have conclusively accepted the decision set out in the Proof of Claim Response.

We refer you to the May 18, 2012 Court Order (copy enclosed) which sets out the process to appeal the decision set out in this Proof of Claim Response and the process for service and delivery of documents.

Dated at Saskatoon, Saskatchewan the 5th day of June, 2012.

PricewaterhouseCoopers Inc.

SCHEDULE A2

to the Third Report of the Interim Receiver, June 12, 2012



Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROOF OF CLAIM RESPONSE

To: Cellar Masters
c/o Gabruch Legal Group
201, 129 – 3 Avenue North
Saskatoon, SK S7K 2H4

E-Mail: r.gabruch@gabruchlegal.ca

And to: Counsel on the enclosed Service List

Take notice that your Proof of Claim filed with PricewaterhouseCoopers Inc., interim receiver ("Receiver") of all of the property, assets and undertaking of the Debtors has been

☐ allowed

☒ disallowed for the following reasons:



APPROACH TO ANALYSIS

The approach to analysing the competition between of the rights of a secured creditor and the claims to ownership of property asserted to have been purchased from a debtor was established by the Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254.

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B) When unascertained wine can become ascertained

The Act provides further guidance in determining when goods are ascertained. Absent a clear statement of intention between the parties in their contract respecting when property passes, section 20 Rule V of the Act governs. It states:

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Thus, unconditional appropriation of goods of the description contained in the contract that are in a deliverable state becomes the test for when property in goods has passed, that is, the unascertained goods become ascertained.

On the need for certainty in appropriation Prof. Fridman, says at page [] "If there is any equivocality about the appropriation, it will be ineffective to pass property." He further states at page []:

In the absence of any express terms as to the mode of application, it follows that the method of appropriation must be inferred from the terms of the contract, the circumstances of the case, and, if any, the usual practice of contracts of the kind that is involved or the usual practice operative as between the parties in question.

FACTS AS PRESENTED BY CMEI

In the Property Proof of Claim CMEI asserts that the Debtors, at May 8, 2012, were in possession of certain wines that CMEI had ordered from the Debtors and paid for on the understanding that the wines would be stored by the Debtors until further delivery instructions were provided. In particular, in Exhibit C to its Property Proof of Claim, CMEI says the Debtors had 1028 of such bottles in its warehouse and 91 of these bottles of wine in its retail store. CMEI acknowledges in Exhibit C that 81 bottles of wine which it expected that Cava had in storage for it were not found.

Further documentation filed by CMEI in support of its claim is intended to establish that:

1. Between Sept 6, 2009 and May 10, 2010 CMEI purchased wines from the Debtors on its own behalf. According to Exhibit C 280 bottles of that wine are still in the Debtors' warehouse and 12 of those bottles are in its retail store. None of the



invoices for these purchases as noted in Exhibit C are produced with the claim. Nor does Exhibit C show that any payment has been made on those invoices. Further, it is not apparent that any of the Bank transfers on Exhibit E are directed to payment for these wines.

2. After May 10, 2010 and before August 10, 2010 CMEI changed the arrangements with both its clients and the Debtors. Starting August 10, 2010 CMEI says its interest in the wines it purchased from the Debtors was as trustee for CMEI's clients/beneficiaries who had placed orders with CMEI ("CMEI Trust Process"). This relationship is established by Exhibit B to the Property Proof of Claim which CMEI says is the form of agreement that CMEI enters into with its clients. Article 3.1.a of this agreement says that CMEI does not hold legal title to the wine purchased for its clients.
3. Exhibit J to this Property Proof of Claim goes on to say, in the last paragraph that "...CMEI and Cava have acted specifically as agents for client...".
4. After August 10, 2010 the Debtors were aware that CMEI was purchasing the wine as Trustee for its clients. Throughout Exhibit D to the Property Proof of Claim, CMEI produced invoices from the Debtors for the wines ordered. The Cava invoices state "Cellar Master Orders for Participating Clients In-Trust".
5. Of the wines purchased and paid for under the CMEI Trust Process, 748 remain in the Debtors' warehouse and 72 bottles are located in the retail store. In Exhibits C, in portions of Exhibit D (wire transfer instructions) and Exhibit F CMEI provides evidence that it paid the Debtors for the wines ordered under the CMEI Trust Process.



6. According to the summary documents found throughout Exhibit D, under the CMEI Trust Process, the imported value of the wine to the Debtors was in turn charged by the Debtors to CMEI. Added to that was one half of the amount which CMEI and the Debtors would be charged for a profit margin and storage fees for two years. In other words, the Debtors and CMEI were sharing equally in the profit (mark up and storage fees).

RECEIVERS OBSERVATIONS

The Receiver determined that the Debtors in their warehouse had three separate storage locations. One was for general inventory, a second was for wines ordered for commercial licensees and the third was for wines ordered for CMEI. Wines moved into the CMEI warehouse location had been there, for the most part, since their arrival. No employee of the Debtors consulted by the Receiver could recall a CMEI client picking up wine from the Debtors.

On April 27, 2012 one of the Debtors employees whose duties included management of the warehouse had taken an inventory of the wines in storage for CMEI. While conducting that audit, a representative of CMEI arrived at the warehouse and was given a copy of the results of the inventory count. That representative then collected those wines and wrapped them on a pallet.

The CMEI representative then attended at the Debtors retail location to search for other wines that CMEI believed it had purchased from the Debtors. As outlined on Exhibit C, CMEI believes it found 91 such bottles in the retail store.

The financial records kept by the Debtors had separate accounts for wine in general inventory, wine in inventory for commercial licensees and another for CMEI wines. It



appears from these records that when a wine was moved to the ledger for CMEI wines it was taken out of general inventory. It appears the ledger for CMEI wines was an inventory of wines that were sold and in storage. In other words these wines were not included as an asset on the balance sheet.

The employee who counted the wine in the warehouse space for CMEI wines advised that upon return to the retail location she updated the ledger for CMEI wines to reflect her count on April 27, 2012. No doubt, it is for this reason the wines listed in Exhibit C to the Proof of Property Claim are an exact match to the wines shown in the Debtors ledger of wines sold to CMEI.

Of the wines claimed by CMEI as being in possession of the Debtors on May 8, 2012, the Receiver notes that additional bottles of many of those same products were found inventory.

With respect to the wine claimed by CMEI that are located in the retail store, the Debtors Warehouse Supervisor advised that they would have been sent to the retail store on the instructions of Mr. Rizos. Of the bottles of wine claimed by CMEI that were not found in either the retail store or the warehouse, the only plausible explanation offered for their disappearance is that they were sold from the retail location.

CMEI TRUST PROCESS

There does not appear to be a written trust agreement between CMEI and the Debtors. There is no indication in any of the material that when payments were made to the Debtors that the funds were impressed with any form of trust obligation. This is further confirmed in paragraph 7.3 of the CMEI Proof of Property Claim where it asserts that after a payment was made to the Debtors, CEMI then "...operated on the assumption that they



[Cava] would pay the supplier/SLGA, take delivery of the product, and store the product for Cellar Master and its client.”

No evidence is found in the material that indicates the payments made to the Debtors were subject to an express condition, trust or otherwise. It made payment on an invoice received from the Debtors and assumed that the Debtors would pay the supplier. It is apparent the CMEI also left the ordering of the product to the Debtors.

The Debtors did acknowledge that the product it was selling to CMEI was being sold to it as Trustee and for the benefit of its clients. But, this acknowledgment cannot be extended, in the Receiver’s view, to be an acknowledgement that the Debtors’ ordering and invoicing CMEI for wines pursuant to any trust arrangement. Certainly, as mentioned, payments sent were not sent on express condition. Nor, when they were received were they held by the Debtors until satisfaction of some condition. Rather, CMEI had the payments deposited directly into the Debtors’ general operating bank account and these funds were thereafter used by the Debtors as operating capital.

The Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.* at paragraphs 30 -32 specifically rejected recognizing trust claims as a device that would defeat the claim of a secured creditor.

The Receiver concludes that to the extent CMEI may be asserting its claim to ownership through a trust arrangement that such a trust arrangement does not exist.

WINES LOCATED IN WAREHOUSE

The Receiver is of the view that the wines claimed by CMEI and Identified as being located in the warehouse has been appropriated to the contracts of sale and are in a



deliverable state. There is no proof that CMEI has paid for the wines identified under the Pre CMEI Trust Process. On this basis alone this claim would be disallowed.

CMEI has paid for the wines identified under the CMEI Trust Process. If it were not for the question of whether these wines were sold in the usual and ordinary course of business, the Receiver would allow CMEI's claim to the wines identified as being purchased under the CMEI Trust Process.

WINES LOCATED IN RETAIL STORE

It is the Receivers view that once a wine was moved from the CMEI warehouse location to the retail store they could no longer be identified as a bottle of wine that was unequivocally appropriated to the sales contracts. The Receiver disallows the claims by CMEI to any wines located in the retail store under with the Pre CMEI Trust Process and the CMEI Trust Process.

ORDINARY COURSE OF BUSINESS

Other than the information found on the first page of Exhibit C, no documentation is found in the CMEI Property Proof of Claim supporting the Pre CMEI Trust Process claim. No invoices are provided, no proof of payment is found and no indication is given as to the terms of these alleged purchases and sales ie. were storage charges included, did the Debtors charge a markup to CMEI for this product, were the Debtors aware at this time that CMEI was reselling this product to customers, if so, what were the terms? The Receiver is of the view that CMEI has not established that these purchases were made in the ordinary course of the Debtors business.



In the CMEI Trust Process claim, CMEI acknowledges that it has purchased wine in its capacity as trustee for its clients.

In this portion of the claim, CMEI supports its position with invoices received from the Debtors, proof of payment to the Debtors and, among other things, spreadsheet showing the breakdown of the price charged by CMEI to its customers and the sharing of profits between CMEI and the Debtors on these transactions.

Sales under the CMEI Trust Process are unique. The Debtors did not charge their own mark up to CMEI. Together, the Debtors and CMEI agreed on a mark up and a storage fee to be charged to CMEI customers. These profits were split equally between CMEI and the Debtors. This arrangement would seem to indicate that CMEI and the Debtors conducted this portion of the business in a form of joint venture.

CMEI further advises that it and the Debtors acted as “agents” for CMEI’s clients.

No other claimant to inventory in the Debtors’ possession asserts a claim on a similar basis. Rather, all other claims are based on an arrangement where the Debtors sourced, purchased and added its own mark up to the price it invoiced to its customers.

In these circumstances, the Receiver cannot say that the sales by the Debtors to CMEI under either process were sales by the Debtors in the ordinary course of their business as that term has been interpreted and applied by court in Saskatchewan in cases such as *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254 (Sask CA); *Estevan Credit Union v. Dyer* (1997) 155 Sask. R. 186, 1997 CarswellSask 178 (Sask Q.B.) and *Camco Inc. Frances Olson Realty* (1979) Ltd. [1986] 50 W.W.R. 258, 50 Sask. R. 161 (Sask CA).



If you object to the decision set out in this Proof of Claim Response you must on or before June 11, 2012, file with the Court of Queen's Bench at the Court House in Saskatoon, 520 Spadina Crescent East, and serve on:

- The Receiver and its legal counsel
- All legal counsel on the Service List
- The Claimant, if the Proof of Claim is allowed

A Notice of Motion returnable June 14, 2012 at 10:00 a.m. before Madam Justice A.R. Rothery, and an affidavit in support, appealing this determination.

If you fail to file a Notice of Motion within the time period stated herein you are deemed to have conclusively accepted the decision set out in the Proof of Claim Response.

We refer you to the May 18, 2012 Court Order (copy enclosed) which sets out the process to appeal the decision set out in this Proof of Claim Response and the process for service and delivery of documents.

Dated at Saskatoon, Saskatchewan the 5th day of June, 2012.

Price Waterhouse Coopers Inc.

SCHEDULE A3

to the Third Report of the Interim Receiver, June 12, 2012



Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROOF OF CLAIM RESPONSE

To: Cellar Masters
c/o Gabruch Legal Group
201, 129 – 3 Avenue North
Saskatoon, SK S7K 2H4

E-Mail: r.gabruch@gabruchlegal.ca

And to: Counsel on the enclosed Service List

Take notice that your Proof of Claim filed with PricewaterhouseCoopers Inc., interim receiver ("Receiver") of all of the property, assets and undertaking of the Debtors has been

☐ allowed

☒ disallowed for the following reasons:



APPROACH TO ANALYSIS

The approach to analysing the competition between the rights of a secured creditor and the claims to ownership of property asserted to have been purchased from a debtor but not yet delivered was established by the Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254.

In that case the Court employed the policy objective of commercial certainty embedded in the *Saskatchewan Personal Property Security Act* ("PPSA") and the legal requirements established by s. 30 of the PPSA for claims of ownership to succeed.

For a Claimant to successfully assert ownership of wine in the possession of the Debtors on May 8, 2012 in order to receive wine free and clear of the interests of a secured creditor, there must have been completed on that date a sale and purchase of the wine in the ordinary course of the seller's business. Otherwise, a secured creditor will have priority to the property currently within the Debtors' possession, be it wine in the Debtors' inventory or money received from a buyer for the purchase of an article.

To determine if a purchase and sale had been completed by a certain date, the Court of Appeal then looked to, and employed the Saskatchewan *The Sale of Goods Act* ("SOGA" or the "Act") to determine if a sale had been completed such that property in the goods has passed from the seller to the buyer.

Pursuant to s. 3(4) of the Act, a sale is made when property in the goods is transferred from the seller to the buyer. Where the transfer of property in the goods is to take place at a future time, the contract is simply an agreement to sell. According to s. 3(5), the agreement to sell only becomes a sale when the property in the goods is transferred.



ANALYSIS GENERALLY

A) Wine is an Unascertained Good

In accordance with s. 18 of the Act, no property in goods is transferred to the buyer unless and until the goods are ascertained. If the goods are ascertained, they become “specific goods” as defined in the Act and property in the goods passes when the parties intended it to be transferred under the contract (s.19(1)).

The Act defines the term “specific goods” as goods identified and agreed upon at the time a contract of sale is made (s. 2(1)(m)). Anything which is not a specific good is, by default, unascertained. Professor Fridman in *Sale of Goods in Canada Fifth Edition*, describes specific goods as follows at page 53:

They are manifestly identified as the only good which may be delivered by the seller in performance of his obligations. No others will do. For example, if the contract is for the sale of a particular car or horse no other may be delivered by the seller in pursuance of the contract, even if it may be argued that what has been delivered is the exact equivalent of what was contracted for by the parties.

At its largest identifiable quantity, wine begins as a “batch” of liquid dedicated for common fermentation and treatment. At some stage, that batch is packaged into smaller units – normally barrels and then bottles. Generally, each bottle of wine that comes from the original single batch bears precisely the same label as every other bottle that is filled from the same batch. Each of those bottles bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle



The nature of wine suggests that an undelivered bottle of wine, in most cases, is an unascertained good because each bottle bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle. In the Debtor's inventory, the same inventory number is assigned to all wines bearing the same label – there is no unique marker to identify one bottle from the other.

The sale of a bottle of wine by description only can only be an agreement to sell. Section 18 of the Act is engaged. It directs that "where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained". Something more is needed to make it an agreement to sell a completed "sale" i.e. something must be done to identify or "ascertain" the goods.

B) When unascertained wine can become ascertained

The Act provides further guidance in determining when goods are ascertained. Absent a clear statement of intention between the parties in their contract respecting when property passes, section 20 Rule V of the Act governs. It states:

- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller the property in the goods thereupon passes to the buyer.

Thus, unconditional appropriation of goods of the description contained in the contract, which are in a deliverable state, forms the test for when property in goods has passed, that is, the unascertained goods become ascertained.



On the need for certainty in appropriation Prof. Fridman, says at page 86 "If there is any equivocality about the appropriation, it will be ineffective to pass property." He further states at page 87:

In the absence of any express terms as to the mode of application, it follows that the method of appropriation must be inferred from the terms of the contract, the circumstances of the case, and, if any, the usual practice of contracts of the kind that is involved or the usual practice operative as between the parties in question.

RESPECTING YOUR PURCHASE OF WINE FUTURES ON A TRUST RELATIONSHIP

CMEI is alleging it has purchased wine futures from the Debtors. In paragraph 8.1 of its Property Proof of Claim it asserts that it has entirely paid the Debtors for these wines "on behalf of its clients". It does not rely on any trust agreement with its clients in making this claim. At least none is tendered with its' claim. But all invoicing from Cava to CMEI for wine futures contains the following notation: "Cellar Master Transfer on Orders for Participating Clients In Trust". This acknowledgment cannot be extended, in the Receiver's view, to be an acknowledgement that the Debtors' ordering and invoicing to CMEI for these wines was pursuant to any trust arrangement between the Debtors and CMEI.

There does not appear to be a written trust agreement between CMEI and the Debtors. No evidence is found in the material that indicates the payments made to the Debtors were subject to an express condition, trust or otherwise. It made payment on an invoice received from the Debtors. It is apparent the CMEI left the ordering of the product to the Debtors as it was the legally licensed retailer. See paragraph 10 of Exhibit E to the claim.



Despite the allegation made by CMEI in the closing paragraph of Exhibit E that "...that funds transferred to Cava were not funds for use in any manner whatsoever beyond paying for specific wine ordered" when payments made by CMEI were received by the Debtors they were not held until satisfaction of some condition. Rather, CMEI had the payments deposited directly into the Debtors' general operating bank account and these funds were thereafter used by the Debtors as operating capital.

In these circumstance the Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.* at paragraphs 30 -32 specifically rejected recognizing trust claims as devices that would defeat the claim of a secured creditor.

RESPECTING YOUR PURCHASE OF WINE FUTUTES ON THE BASIS OF A COMPLETED PURCHASE

In assessing CMEI's claim on the basis that it asserts ownership to the wine on the basis that it has completed a purchase and sale of the product, the Receiver observes from the spreadsheets found at Exhibit B that the Debtors did not charge their own mark up to CMEI. Together, the Debtors and CMEI agreed on a mark up to be charged to CMEI customers. These profits were split equally between CMEI and the Debtors. No other claimant to inventory in the Debtors' possession asserts a claim on an arrangement other than one where the Debtors sourced, purchased and added its own mark up to the price it invoiced to its customers.

This arrangement would seem to indicate that CMEI and the Debtors conducted this portion of the business in a form of joint venture. CMEI further advises that it and the Debtors acted as "agents" for CMEI's clients.



In these circumstances, the Receiver cannot say that the sales of wine futures by the Debtors to CMEI were sales by the Debtors in the ordinary course of their business as that term has been interpreted and applied by court in Saskatchewan in cases such as *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254 (Sask CA); *Estevan Credit Union v. Dyer* (1997) 155 Sask. R. 186, 1997 CarswellSask 178 (Sask Q.B.) and *Camco Inc. Frances Olson Realty* (1979) Ltd. [1986] 50 W.W.R. 258, 50 Sask. R. 161(Sask CA).

Further, in order for property in the wines you claim to pass from the Debtors to you, the wines must be ascertained. In order for these wines to be ascertained they must, according to s. 20 Rule V(1) of the Act, be in a deliverable state in the Debtors' possession, and must be unconditionally appropriated to your contract. See also Prof. G.H.L. Fridman, Q.C., *Sale of Goods in Canada Fifth Edition*, (Thomson Canada Limited: 2004) at page 82 respecting the transfer of property in unascertained and future goods.

The Receiver has conducted a thorough review of the inventory in the Debtors' possession and has concluded that the wines, as described in your Property Proof of Claim, that you claim to have purchased from the Debtors were not in the Debtors' possession as of May 8th, 2012.

Your claim seems to be indistinguishable from one dealt with by the Saskatchewan Court of Appeal in *Royal Bank v. 216200 Alberta Ltd.*, 1986 CarswellSask 264, [1987] 1 W.W.R. 545, 6 P.P.S.A.C. 277. In dealing with a situation where purchasers had paid the full or a portion of the purchase price for property not in the possession of a vendor at the time of vendor's receivership, the Court concluded at paragraph 30:

In my opinion, the money was paid as a deposit or a partial payment for the purchase price of future goods. The purchaser, in the ordinary course of business, would be entitled to return of the amount paid [to the vendor] in the event of



default. It is a payment made to secure the transaction and is a debt due from [the Vendor] to the proposed purchasers in the event of default. As between the appellant, as the holder of a perfected security interest, and the persons in the class of transactions described in 1 and 3, the appellant takes priority.

Your contract with the Debtors constituted an agreement to sell future or unascertained goods. The wines you have claimed are not in the Debtors' possession and, as a result, property in the wines claimed did not pass to you.

If you object to the decision set out in this Proof of Claim Response you must on or before June 11, 2012, file with the Court of Queen's Bench at the Court House in Saskatoon, 520 Spadina Crescent East, and serve on:

- The Receiver and its legal counsel
- All legal counsel on the Service List
- The Claimant, if the Proof of Claim is allowed

A Notice of Motion returnable June 14, 2012 at 10:00 a.m. before Madam Justice A.R. Rothery, and an affidavit in support, appealing this determination.

If you fail to file a Notice of Motion within the time period stated herein you are deemed to have conclusively accepted the decision set out in the Proof of Claim Response.



We refer you to the May 18, 2012 Court Order (copy enclosed) which sets out the process to appeal the decision set out in this Proof of Claim Response and the process for service and delivery of documents.

Dated at Saskatoon, Saskatchewan the 5th day of June, 2012.

PricewaterhouseCoopers Inc.

SCHEDULE A4

to the Third Report of the Interim Receiver, June 12, 2012

Schedule B

Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROPERTY PROOF OF CLAIM

All notices or correspondence regarding this claim are to be forwarded to the following address:

664 Saskatchewan Cres. E.

Saskatoon Sk.

S7N 0L1

I, Cameron Rizos of the City of Saskatoon in the Province of
Saskatchewan do hereby certify:

1. That I am the claimant, (or That I am) _____ (position or title) of
_____ (name of claimant).
2. That I have knowledge of all the circumstances connected with the claim referred to below.

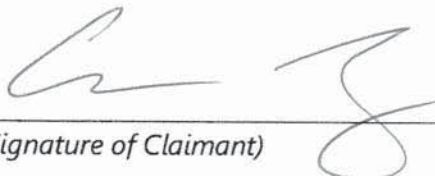
3. That on the 8th day of May, 2012, an order was made appointing PricewaterhouseCoopers Inc. as interim receiver of all of the property, assets and undertakings of the Debtors.
4. That, on May 8, 2012, the property enumerated in the document(s) attached and marked as Appendix "A" to this Property Proof of Claim was in the possession of the Debtors, and still remains in the possession of the Debtors or the Interim Receiver.
5. That the claimant hereby claims that property, or interest in it, by virtue of the document(s) attached and marked "A", namely: *A Hacked document*
(set out the particulars of all documents serving as proof of the claim, giving (i) the grounds on which the claim is based and (ii) sufficient particulars to enable the property to be identified; if the particulars do not appear on the face of the documents, attach an additional statement marked "B" setting them forth)
6. That the claimant is entitled to demand from the Interim Receiver the return of the property enumerated in these document(s).

Sworn before me at the City of)
Saskatoon, in the Province of)
Saskatchewan, this 31 day of)
May, 2012.)
_____)

A Commissioner for Oaths in and for the
Province of Saskatchewan

Being a Solicitor - OR K.S.

My Commission Expires: March 31/2016


(Signature of Claimant)

Personal Property of Cameron Rizos

Location: Cava Wines and Spirits Retail Store

110 - 19th Street West, Saskatoon

Items

Music CD's

Black I-Pod

Wood Wine Shelf Stand

Various Maps, art, posters

Kitchen Utensils

Wine Books, Magazines and Reference Materials

Metal spiral candle stick

Personal files and records

Dynasty Stove/Range

Pine Armoire

Location

Near Sound System

Near Sound System

Cellar Room

throughout store

Kitchen

throughout store

Cellar Room

Cellar Room/offices

Kitchen

Back Entryway

Personal Property of Cameron Rizos

Location: Cava Cuisine Retail Store and Cava Warehouse

103 - 120 Sonnenschein Way

Cornuefe 110 Demo Stove - black and nichel

Cornuefe 90 Demo Stove - white and copper

Cornue Range Hood - Stainless Steel

Plateware and cutlery -

All paid on Cam's Personal Visa

All paid on Cam's Personal Visa

All paid on Cam's Personal Visa

\$500 paid on Cam's Amex

Personal Property of Cameron Rizos

Location: Cava Wines and Spirits Retail Store

110 - 19th Street West, Saskatoon

Wines personal property of Cameron Rizos - not purchased from Cava

Mondo Vino Barbaresco 20th Anniversary Magnum	1
Pichon Lalande 1975	1
Pichon Lalande 1995	1
Pichon Lalande 1996	1
Pichon Lalande 2003	1
Pichon Lalande 2004	1
Pichon Lalande 2007	1
Comtesse de Lalande 2006	2
Ch. Bernadotte 2006	2
Dunn Cabernet Sauvignon 2007	3
Ehler's 1886 Cab Sauv 2008	1
Val Soltillo Ribera del Duero 1999	6
Teofilo Reyes Ribera del Duero 1999	4
Banfi Poggio al'Oro 2004	6
Banfi Poggio alla Mura 2004	3
Domus Aurea 1998	1
HDV Chambolle Fuesellottes 2009	1
HDV Nuits St. Georges 2008	1
HDV Savigny les Beaune 2009	2
HDV Mazis 2008	2
HDV Grands Echezaux 2008	2
HDV Volnay 2008	1
Penfolds Bin 707 2005	1
Shea Homer Pinot Noir	2
Painted Rock Syrah	2
Painted Rock Merlot	3
Giorgio Primo 2004	6
Lisin Brunello 2001	1
Fuligni Brunello 2003	1
Chateaux Margot 1991	1
Gaja Ca'Marcanda Magari 2007	2
David Bruce Pinot Noir 2006	1
Deerfield Ransom Merlot 2006	1
Ch. Romanin 2004	1
Retzina	7
Metaxa 7 Star Brandy	1

Personal Property of Cameron Rizos
Location: Cava Wines and Spirits Retail Store
110 - 19th Street West, Saskatoon

Wines Purchased from Cava by Cameron Rizos

Wines	# of Bottles
Chappelle D'Ausone 2008	3
Mouton Rothschild 2000	6
Mouton Rothschild 2008	3
Mouton Rothschild 2007	1
Cheval Blanc 2007	3
La Mission Haut Brion 2008	3
Giorgio Primo 2008	6
Giorgio Primo 2007	6
Giorgio Primo 2006	6
Giorgio Primo 2007 Magnums	1
Giorgio Primo 2007 3.0 Litre	1
Giorgio Primo 2008 Magnums	1
Giorgio Primo 2008 3.0 Litre	1
Dow's Vintage Port 2007	6
Solaia 2002	1
Solaia 2007	3
Sassacaia 2006	2
Sassacaia 2007	6
Speri Amarone Vertical six-pack	12
Speri Amarone 2001	3
Speri Amarone 2004	5
Speri Amarone 2000 Magnum	1
Speri Amarone 2001 Magnum	1
Domus Aurea 2006 Magnum	3
Domus Aurea 2005 Magnum	3
Jacques Prieur Clos Vougeot 2004	3
Pichon Lalande 1975	3
Caymus Special Edition 2007	1
Ducru Beaucaillou 2008	6
Pagodes de Cos 2008 Magnums	3
Domaine Serene Evenstad Pinot Noir Magnums	2
Troplong Mondot 2007	6
Ch. Pavie 2002	3
Ch. Pavie 2000	3
Gaja Barbaresco 2005 Magnums	2
Gaja Speers 2005 Magnums	1
Gaja Sori San Lorenzo 2005	2
Gaja Sugarille Brunello 2000	3
Gaja Sugarille Brunello 2001	3
Gaja Sugarille Brunello 2004	3
Gaja Ca'Marcanda Bolgheri 2006	6

Wines Purchased from Cava by Cameron Rizos - Continued

Tignanello 2005	4
Tignanello 2006	3
Tignanello 2007	3
Fuligni Brunello 2005	3
Fuligin Brunello Riserva 2004	6
Cakebread Cabernet Sauvignon 2007	2
Ch. La Conseillante 1995	1
Ch. Fleur de Gay 1996	1
Clos de L'Oratoire 1996	2
Wolf Blass Black Label 1999	1
Totanoy 2007	6
Clos L'Eglise 2008	6
Pontet Canet 2004	7
Ch. Margaux 1996	1
Pichon Lalande 1996	6
Ch. Malescot St. Exupery Marguax 1998	5



INVOICE/

#593

Date: November 14, 2011

To: Cameron Rizos
664 Saskatchewan Crescent East
Saskatoon, Sk
S7N 0L1

<u>Item - Payment for 2010 Bordeaux Futures</u>	<u>Amount</u>
- Deposit on 2010 Bordeaux Futures - as per detailed listing	\$100,000.00
TOTAL	\$100,000.00

A handwritten signature in cursive script, appearing to read "Cameron Rizos", written over a horizontal line.

Cameron Rizos
Managing Partner



INVOICE/

#597

Date: December, 2011

To: Cameron Rizos
664 Saskatchewan Crescent East
Saskatoon, Sk
S7N 0L1

<u>Item - Selected Wines Inventory Purchase</u>	<u>Amount</u>
- Wine Total	
- as per detailed listing attached	\$ 26,086.95
LCT	\$ 2,608.70
G.S.T - 85228 0189 RT0001	\$ 1,304.35
TOTAL	\$ 30,000.00

A handwritten signature in cursive script, appearing to read "Cameron Rizos".

Cameron Rizos
Managing Partner

Wines	# of Bottles	Price	Net Total	GST	LCT	Gross Total
Cakebread Cabernet Sauvignon 2007	2	\$ 53.69	\$ 107.38	\$ 5.37	\$ 10.74	\$ 123.49
Caymus Special Edition 2007	1	\$ 94.67	\$ 94.67	\$ 4.73	\$ 9.47	\$ 108.87
Ch. Fleur de Gay 1996	1	\$ 76.58	\$ 76.58	\$ 3.83	\$ 7.66	\$ 88.07
Ch. La Conseillante 1995	1	\$ 129.02	\$ 129.02	\$ 6.45	\$ 12.90	\$ 148.37
Ch. Malescot St. Exupery Marguax 1998	5	\$ 56.24	\$ 281.20	\$ 14.06	\$ 28.12	\$ 323.38
Ch. Margaux 1996	1	\$ 283.19	\$ 283.19	\$ 14.16	\$ 28.32	\$ 325.67
Ch. Pavie 2000	3	\$ 399.00	\$ 1,197.00	\$ 59.85	\$ 119.70	\$ 1,376.55
Ch. Pavie 2002	3	\$ 149.00	\$ 447.00	\$ 22.35	\$ 44.70	\$ 514.05
Chappelle D'Ausone 2008	3	\$ 126.51	\$ 379.53	\$ 18.98	\$ 37.95	\$ 436.46
Cheval Blanc 2007	3	\$ 338.03	\$ 1,014.09	\$ 50.70	\$ 101.41	\$ 1,166.20
Clos de L'Oratoire 1996	2	\$ 68.77	\$ 137.54	\$ 6.88	\$ 13.75	\$ 158.17
Clos L'Eglise 2008	6	\$ 63.87	\$ 383.22	\$ 19.16	\$ 38.32	\$ 440.70
Domaine Serene Evenstad Pinot Noir Magnums	2	\$ 85.29	\$ 170.58	\$ 8.53	\$ 17.06	\$ 196.17
Domus Aurea 2005 Magnum	3	\$ 64.19	\$ 192.57	\$ 9.63	\$ 19.26	\$ 221.46
Domus Aurea 2006 Magnum	3	\$ 64.19	\$ 192.57	\$ 9.63	\$ 19.26	\$ 221.46
Dow's Vintage Port 2007	6	\$ 84.78	\$ 508.68	\$ 25.43	\$ 50.87	\$ 584.98
Ducru Beaucaillou 2008	6	\$ 94.69	\$ 568.14	\$ 28.41	\$ 56.81	\$ 653.36
Fuligni Brunello 2005	3	\$ 57.82	\$ 173.46	\$ 8.67	\$ 17.35	\$ 199.48
Fulignin Brunello Riserva 2004	6	\$ 66.88	\$ 401.28	\$ 20.06	\$ 40.13	\$ 461.47
Gaja Barbaresco 2005 Magnums	2	\$ 264.51	\$ 529.02	\$ 26.45	\$ 52.90	\$ 608.37
Gaja Ca'Marcanda Bolgheri 2006	6	\$ 74.41	\$ 446.46	\$ 22.32	\$ 44.65	\$ 513.43
Gaja Sori San Lorenzo 2005	2	\$ 334.89	\$ 669.78	\$ 33.49	\$ 66.98	\$ 770.25
Gaja Speers 2005 Magnums	1	\$ 328.46	\$ 328.46	\$ 16.42	\$ 32.85	\$ 377.73
Gaja Sugarille Brunello 2000	3	\$ 136.88	\$ 410.64	\$ 20.53	\$ 41.06	\$ 472.24
Gaja Sugarille Brunello 2001	3	\$ 140.56	\$ 421.68	\$ 21.08	\$ 42.17	\$ 484.93
Gaja Sugarille Brunello 2004	3	\$ 101.05	\$ 303.15	\$ 15.16	\$ 30.32	\$ 348.62
Giorgio Primo 2006	6	\$ 48.92	\$ 293.52	\$ 14.68	\$ 29.35	\$ 337.55
Giorgio Primo 2007	6	\$ 53.92	\$ 323.52	\$ 16.18	\$ 32.35	\$ 372.05
Giorgio Primo 2007 3.0 Litre	1	\$ 220.03	\$ 220.03	\$ 11.00	\$ 22.00	\$ 253.03
Giorgio Primo 2007 Magnums	1	\$ 106.38	\$ 106.38	\$ 5.32	\$ 10.64	\$ 122.34
Giorgio Primo 2008	6	\$ 59.88	\$ 359.28	\$ 17.96	\$ 35.93	\$ 413.17
Giorgio Primo 2008 3.0 Litre	1	\$ 256.61	\$ 256.61	\$ 12.83	\$ 25.66	\$ 295.10
Giorgio Primo 2008 Magnums	1	\$ 135.65	\$ 135.65	\$ 6.78	\$ 13.57	\$ 156.00
Jacques Prieur Clos Vougeot 2004	3	\$ 106.81	\$ 320.43	\$ 16.02	\$ 32.04	\$ 368.49
La Mission Haut Brion 2008	3	\$ 218.29	\$ 654.87	\$ 32.74	\$ 65.49	\$ 753.10

Wines		# of Bottles	Price	Net Total	GST	LCT	Gross Total
Mouton Rothschild 2000	6	\$ 872.43	\$ 5,234.58	\$ 261.73	\$ 523.46	\$ 6,019.77	
Mouton Rothschild 2007	1	\$ 447.90	\$ 447.90	\$ 22.40	\$ 44.79	\$ 515.09	
Mouton Rothschild 2008	3	\$ 299.25	\$ 897.75	\$ 44.89	\$ 89.78	\$ 1,032.41	
Pagodes de Cos 2008 Magnums	3	\$ 88.92	\$ 266.76	\$ 13.34	\$ 26.68	\$ 306.77	
Pichon Lalande 1975	3	\$ 179.99	\$ 539.97	\$ 27.00	\$ 54.00	\$ 620.97	
Pichon Lalande 1996	6	\$ 198.30	\$ 1,189.80	\$ 59.49	\$ 118.98	\$ 1,368.27	
Pontet Canet 2004	7	\$ 48.04	\$ 336.28	\$ 16.81	\$ 33.63	\$ 386.72	
Sassacaia 2006	2	\$ 90.93	\$ 181.86	\$ 9.09	\$ 18.19	\$ 209.14	
Sassacaia 2007	6	\$ 90.93	\$ 545.58	\$ 27.28	\$ 54.56	\$ 627.42	
Solaia 2002	1	\$ 68.31	\$ 68.31	\$ 3.42	\$ 6.83	\$ 78.56	
Solaia 2007	3	\$ 189.99	\$ 569.97	\$ 28.50	\$ 57.00	\$ 655.47	
Speri Amarone 2000 Magnum	1	\$ 173.45	\$ 173.45	\$ 8.67	\$ 17.35	\$ 199.47	
Speri Amarone 2001	3	\$ 80.91	\$ 242.73	\$ 12.14	\$ 24.27	\$ 279.14	
Speri Amarone 2001 Magnum	1	\$ 162.26	\$ 162.26	\$ 8.11	\$ 16.23	\$ 186.60	
Speri Amarone 2004	5	\$ 37.78	\$ 188.90	\$ 9.45	\$ 18.89	\$ 217.24	
Speri Amarone Vertical six-pack	12	\$ 74.99	\$ 899.88	\$ 44.99	\$ 89.99	\$ 1,034.86	
Tignanello 2005	4	\$ 54.64	\$ 218.56	\$ 10.93	\$ 21.86	\$ 251.34	
Tignanello 2006	3	\$ 54.64	\$ 163.92	\$ 8.20	\$ 16.39	\$ 188.51	
Tignanello 2007	3	\$ 54.64	\$ 163.92	\$ 8.20	\$ 16.39	\$ 188.51	
Totano 2007	6	\$ 104.78	\$ 628.68	\$ 31.43	\$ 62.87	\$ 722.98	
Troplong Mondot 2007	6	\$ 61.12	\$ 366.72	\$ 18.34	\$ 36.67	\$ 421.73	
Wolf Blass Black Label 1999	1	\$ 82.00	\$ 82.00	\$ 4.10	\$ 8.20	\$ 94.30	
Grand Total		\$ 26,086.96	\$ 1,304.35	\$ 2,608.70	\$ 30,000.00		



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VALUE PLUS ACCOUNT - 6312311 (\$3,903.30)

More Activity (Up to 18 Months Available)

Display days Starting

Balance as of May 05, 2011: \$81,420.05

Bottom

<u>▼ Date</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
May 05, 2011	IW024 TFR-TO 5000276	2,000.00		\$ [REDACTED] .05
May 05, 2011	IJ291 TFR-TO 5000276	3,000.00		\$ [REDACTED] .05
May 05, 2011	[REDACTED]	[REDACTED]		\$ [REDACTED] .05
May 03, 2011	[REDACTED]	[REDACTED]		\$ [REDACTED] .05
May [REDACTED]	[REDACTED] SA	[REDACTED]		\$ [REDACTED] .05
May [REDACTED]	[REDACTED]		[REDACTED]	\$ [REDACTED] .05
May 02, 2011	GE [REDACTED]		[REDACTED]	\$ [REDACTED] .05
Total:		[REDACTED]	450.44	

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Nov 23, 2011	CHO 40070 100051012		\$10,000.01
Nov 23, 2011	ISA		\$1,000.01
Nov 18, 2011	35		\$10,000.01
Nov 17, 2011			\$1,000.15
Nov 17, 2011			\$1,000.00
Nov 16, 2011			\$1,000.00
Nov 16, 2011			\$1,000.00
Nov 15, 2011			\$1,000.00
Nov 15, 2011	ISA		\$1,000.00
Nov 15, 2011	WO033 TFR-TO 5000276	50,000.00	
Nov 15, 2011	WO033 TFR-TO 5000276	5,000.00	
Nov 14, 2011		1,721.92	
Nov 14, 2011	RR345 TFR-TO 5000276	50,000.00	
Nov 14, 2011	STARRIDGE 14605		1,000.01

▼ **Date** **Description** **Debit** **Credit** **Balance**

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VALUE PLUS ACCOUNT - 6312311 (\$3,903.30)

More Activity (Up to 18 Months Available)

Display 31 days Starting November 14 2011

Balance as of Dec 15, 2011: \$47,847.00

Bottom

<u>▼ Date</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
Dec 15, 2011	CNO 100172 0030			
Dec 13, 2011				
Dec 12, 2011				
Dec 09, 2011				
Dec 09, 2011				
Dec 09, 2011				
Dec 09, 2011				
Dec 08, 2011				
Dec 08, 2011	IR334 TFR-TO 5000276	10,000.00		
Dec 08, 2011				
Dec 08, 2011				
Dec 08, 2011				
Dec 07, 2011				
Dec 07, 2011				
Dec 06, 2011				
Dec 06, 2011				
Dec 06, 2011				
Dec 05, 2011				
Dec 02, 2011				
Dec 02, 2011				
Dec 02, 2011				
Dec 02, 2011				
Dec 01, 2011				
Dec 01, 2011	IJ104 TFR-TO 5000276	10,000.00		
Dec 01, 2011				
Nov 30, 2011				
Nov 30, 2011				
Nov 29, 2011				
Nov 29, 2011				
Nov 28, 2011				
Nov 28, 2011				
Nov 25, 2011				
Nov 25, 2011				
Nov 24, 2011				
Nov 24, 2011				
Nov 24, 2011				



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VALUE PLUS ACCOUNT - 6312311 (\$3,903.30)

January 2012

Balance as of Jan 31, 2012: \$37.29

Bottom

▼ Date	Description	Debit	Credit	Balance
Jan 31, 2012	VALUE PLUS FEE	10.95		37.29
Jan 31, 2012				26.34
Jan 31, 2012	INTEREST		9.00	35.34
Jan 31, 2012				35.34
Jan 31, 2012	ISA	3.00		32.34
Jan 31, 2012	000276			32.34
Jan 30, 2012	S			32.34
Jan 30, 2012	83			32.34
Jan 27, 2012	60			32.34
Jan 27, 2012	ISA			32.34
Jan 25, 2012				32.34
Jan 25, 2012				32.34
Jan 25, 2012	85			32.34
Jan 24, 2012	REM			32.34
Jan 24, 2012	01			32.34
Jan 23, 2012				32.34
Jan 19, 2012				32.34
Jan 19, 2012		186.86		32.34
Jan 18, 2012				32.34
Jan 18, 2012	00276			32.34
Jan 13, 2012				32.34
Jan 12, 2012				32.34
Jan 11, 2012				32.34
Jan 11, 2012	078			32.34
Jan 11, 2012	8676			32.34
Jan 09, 2012	00404 TFR TO 5000271	2,500.00		32.34
Jan 06, 2012	JG132 TFR-TO 5000276	5,000.00		32.34
Jan 06, 2012	JG132 TFR-TO 895	3,000.00		32.34
Jan 06, 2012				32.34
Jan 06, 2012				32.34
Jan 03, 2012	SASRATON TRANS	169.00		32.34

Total: \$

▼ Date	Description	Debit	Credit	Balance
Top About This Statement - May 31, 2012				

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SCHEDULE A5

to the Third Report of the Interim Receiver, June 12, 2012



Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROOF OF CLAIM RESPONSE

To: Cameron Rizos
664 Saskatchewan Crescent E.
Saskatoon, SK S7N 0L1

E-Mail: cameronr@epicuregroup.ca

And to: Counsel on the enclosed Service List

Take notice that your Proof of Claim filed with PricewaterhouseCoopers Inc., interim receiver ("Receiver") of all of the property, assets and undertaking of the Debtors has been

☐ allowed

☒ disallowed for the following reasons:



APPROACH TO ANALYSIS

The approach to analysing the competition between of the rights of a secured creditor and the claims to ownership of property asserted to have been purchased from a debtor was established by the Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254.

In that case the Court employed the policy objective of commercial certainty embedded in the *Saskatchewan Personal Property Security Act* ("PPSA") and the legal requirements established by s. 30 of the PPSA for claims of ownership to succeed.

For a Claimant to successfully assert ownership of wine in the possession of the Debtors on May 8, 2012 and receive property free and clear of the interests of a secured creditor, there must have been completed by that date a sale and purchase of the property in the ordinary course of the seller's business. Otherwise, a secured creditor will have priority to the property, be it goods in the Debtors' inventory or money received from a buyer for the purchase of an article.

To determine if a purchase and sale had been complete by a certain date, the Court of Appeal then looked to and employed the Saskatchewan *The Sale of Goods Act* ("SOGA" or the "Act") to determine if a sale has been completed such that property in the goods has passed from the seller to the buyer.

Pursuant to s. 3(4) of the Act, a sale is made when property in the goods is transferred from the seller to the buyer. Where the transfer of property in the goods is to take place at a future time, the contract is simply an agreement to sell. According to s. 3(5), the agreement to sell only becomes a sale when the property in the goods is transferred.



ANALYSIS GENERALLY

A) Wine is an Unascertained Good

In accordance with s. 18 of the Act, no property in goods is transferred to the buyer unless and until the goods are ascertained. If the goods are ascertained, they become “specific goods” as defined in the Act and property in the goods passes when the parties intended it to be transferred under the contract (s.19(1)).

The Act defines the term “specific goods” as goods identified and agreed upon at the time a contract of sale is made (s. 2(1)(m)). Anything which is not a specific good is, by default, unascertained. Professor Fridman in *Sale of Goods in Canada Fifth Edition*, describes specific goods as follows at page 53:

They are manifestly identified as the only good which may be delivered by the seller in performance of his obligations. No others will do. For example, if the contract is for the sale of a particular car or horse no other may be delivered by the seller in pursuance of the contract, even if it may be argued that what has been delivered is the exact equivalent of what was contracted for by the parties.

At its largest identifiable quantity, wine begins as a “batch” of liquid dedicated for common fermentation and treatment. At some stage, that batch is packaged into smaller units – normally barrels and then bottles. Generally, each bottle of wine that comes from the original single batch bears precisely the same label as every other bottle that is filled from the same batch. Each of those bottles bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle



The nature of wine suggests that an undelivered bottle of wine, in most cases, is an unascertained good because each bottle bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle. . In the Debtors' inventory, the same inventory number is assigned to all wines bearing the same label – there is no unique marker to identify one bottle from the other.

The sale of a bottle of wine by description only can only be an agreement to sell. Section 18 of the Act is engaged. It directs that "where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained". Something more is needed to make an agreement to sell a completed "sale" i.e. something must be done to identify or "ascertain" the goods.

B) When unascertained wine can become ascertained

The Act provides further guidance in determining when goods are ascertained. Absent a clear statement of intention between the parties in their contract respecting when property passes, section 20 Rule V of the Act governs. It states:

- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the ascent of the buyer or by the buyer with the assent of the seller the property in the goods thereupon passes to the buyer.



Thus, unconditional appropriation of goods of the description contained in the contract that are in a deliverable state becomes the test for when property in goods has passed, that is, the unascertained goods become ascertained.

On the need for certainty in appropriation Prof. Fridman, says at page 86 "If there is any equivocality about the appropriation, it will be ineffective to pass property." He further states at page 87:

In the absence of any express terms as to the mode of application, it follows that the method of appropriation must be inferred from the terms of the contract, the circumstances of the case, and, if any, the usual practice of contracts of the kind that is involved or the usual practice operative as between the parties in question.

WITH RESPECT TO CLAIM FOR WINE FUTURES

In order for property in the wines you claim to pass from the Debtors to you, the wines must be ascertained. In order for these wines to be ascertained they must, according to s. 20 Rule V(1) of the Act, be in a deliverable state in the Debtors' possession, and must be unconditionally appropriated to your contract. See also Prof. G.H.L Fridman, Q.C., *Sale of Goods in Canada Fifth Edition*, (Thomson Canada Limited: 2004) at page 82 respecting the transfer of property in unascertained and future goods.

The Receiver has conducted a thorough review of the inventory in the Debtors' possession and has concluded that the wines, as described in your Property Proof of Claim, that you claim to have purchased from the Debtors were not in the Debtors' possession as of May 8, 2012.



Your claim seems to be indistinguishable from one dealt with by the Saskatchewan Court of Appeal in *Royal Bank v. 216200 Alberta Ltd.*, 1986 CarswellSask 264, [1987] 1 W.W.R. 545, 6 P.P.S.A.C. 277. In dealing with a situation where purchasers had paid the full or a portion of the purchase price for property not in the possession of a vendor at the time of vendor's receivership, the Court concluded at paragraph 30:

In my opinion, the money was paid as a deposit or a partial payment for the purchase price of future goods. The purchaser, in the ordinary course of business, would be entitled to return of the amount paid [to the vendor] in the event of default. It is a payment made to secure the transaction and is a debt due from [the Vendor] to the proposed purchasers in the event of default. As between the appellant, as the holder of a perfected security interest, and the persons in the class of transactions described in 1 and 3, the appellant takes priority.

Your contract with the Debtors constituted an agreement to sell future or unascertained goods. The wines you have claimed are not in the Debtors' possession and, as a result, property in the wines claimed did not pass to you.

WITH RESPECT TO OTHER WINES

The Receiver has determined that your claim to other wines purportedly in Debtors' possession must also be disallowed for the following reasons:

- 1) Under the current circumstances assessed by the Receiver, it cannot be said that the wines you have claimed were unconditionally appropriated to your purported purchase. The reasons for this conclusion are:
 - a. The Receiver conducted a thorough review of the wine in the Debtors' possession and found that although some of the wines described in your



claim by labels were in the Debtor's possession, none of the bottles were marked, labeled or otherwise distinguished as wines which belonged to you, nor were any of the boxes, crates or shelves marked with your name or with an distinguishing mark of any nature.

- b. Any of the wines matching the description in your claim were found among various other wines in the Debtors' possession, including other bottles of wines with the same labels as those you have claimed. The wines were intermingled and co-located with others of the same wines in the Debtors' possession, which, presumably, were destined for sale to other customers. Since any bottle could have been delivered to satisfy your invoice, the wine you allege to have purchased was not identified to the degree necessary to have it ascertained.

2) The purchase you purportedly made respecting the wines was not conducted in the ordinary course of the seller's business as required by section 30 of the PPSA for the following reasons:

- a. The visible portions of the copy of the printout respecting TD Canada Trust Value Plus Account 6312311 indicates that payments of \$2,000.00 and \$3,000.00 were transferred to the Debtors TD Canada Trust deposit account 5000276 on May 5, 2011. The copy of the invoice respecting the purchase of wine futures is dated November 14, 2011 and the invoice respecting the wine purportedly purchased was not issued until some unknown date in December, 2011. These payments predate these invoices by some eight or nine months. No credit is shown on the invoice for these payments.
- b. The visible portions of the copy of the printout respecting TD Canada Trust Value Plus Account 6312311 provides only a record of further lump sum transfers made to the Debtors TD Canada Trust deposit account 5000276 of \$50,000 on each of November 14 and November 15, and \$10,000 on each of December 1 and December 8. While the total amount of the



transfers equals the total amount of the two invoices you tendered to support your claim, it is not clear which payments are directed to which invoice.

- c. Given that it appears that your invoice for the purchase of wine in the amount of \$26,086.95 plus GST of \$2,608.70 for a total of \$30,000 conveniently produces an invoice total of the amounts transferred into the Debtors' bank account, the credibility of this invoicing is called into question. Furthermore, the purported purchase prices listed in the copy of the Invoice provided in your claim shows the purchase price you purportedly paid was significantly lower than the Debtors' normal list price in its retail system for some of the wines listed;
- d. The copy of "Invoice 597" provided in your claim does not appear to be an invoice generated by the Debtors' normal retail system and was not entered into the Debtors' sales retail sales records;
- e. You purport to have paid for the wines by direct transfers from one deposit account to another, which transfer appears to have been conducted outside of the Debtors' normal retail system, and which type of payment was not offered to other customers as an acceptable method of payment;
- f. The Debtors did not undertake, for any other customer, to store wines for free in the volumes you purportedly have left in the Debtors' possession, and you have tendered no evidence of a storage agreement or any other evidence respecting the Debtors' acknowledgment that it has stored wines which belong to you;
- g. The alleged purchase appears to be a private purchase;
- h. The alleged purchase was between the Debtors and its majority shareholder. It was not an arm's length transaction.



WITH RESPECT TO OTHER ITEMS OF PERSONAL PROPERTY

The items of property claimed which are not wine, if they were in the Debtors' possession, were found throughout the Debtors' locations intermingled among various other goods and equipment, and was not identified as property belonging to you. The Dynasty Stove/Range claimed appears to be the stove/range installed in the kitchen at the Debtors' retail location and was used in the conduct of the Debtors' business, as were the other items of property listed in your claim.

The Receiver has determined that your claim to the other personal property purportedly in Debtors' possession must also be disallowed, for the following reasons. You have not tendered documentary evidence which would establish how you came to be the owner of any of the property claimed, nor documentary evidence respecting the storage, use or possession of the property as between yourself and the Debtors.

If you object to the decision set out in this Proof of Claim Response you must on or before June 11, 2012, file with the Court of Queen's Bench at the Court House in Saskatoon, 520 Spadina Crescent East, and serve on:

- The Receiver and its legal counsel
- All legal counsel on the Service List
- The Claimant, if the Proof of Claim is allowed

A Notice of Motion returnable June 14, 2012 at 10:00 a.m. before Madam Justice A.R. Rothery, and an affidavit in support, appealing this determination.

If you fail to file a Notice of Motion within the time period stated herein you are deemed to have conclusively accepted the decision set out in the Proof of Claim Response.



We refer you to the May 18, 2012 Court Order (copy enclosed) which sets out the process to appeal the decision set out in this Proof of Claim Response and the process for service and delivery of documents.

Dated at Saskatoon, Saskatchewan the 5th day of June, 2012.

PricewaterhouseCoopers Inc.

SCHEDULE A6
to the Third Report of the Interim Receiver, June 12, 2012

Attn: Legal Counsel
(8 pages total)

Schedule B

Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROPERTY PROOF OF CLAIM

All notices or correspondence regarding this claim are to be forwarded to the following address:

305 Avenue I North

Saskatoon, SK

S7L 2G5

I, Christie Kurtz of the 23rd of May ²⁰¹², in the Province of
Saskatchewan do hereby certify:

1. That I am the claimant, (or That I am) _____ (position or title) of
_____ (name of claimant).
2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That on the 8th day of May, 2012, an order was made appointing PricewaterhouseCoopers Inc. as interim receiver of all of the property, assets and undertakings of the Debtors.
4. That, on May 8, 2012, the property enumerated in the document(s) attached and marked as Appendix "A" to this Property Proof of Claim was in the possession of the Debtors, and still remains in the possession of the Debtors or the Interim Receiver.
5. That the claimant hereby claims that property, or interest in it, by virtue of the document(s) attached and marked "A", namely:

(set out the particulars of all documents serving as proof of the claim, giving (i) the grounds on which the claim is based and (ii) sufficient particulars to enable the property to be identified; if the particulars do not appear on the face of the documents, attach an additional statement marked "B" setting them forth)

6. That the claimant is entitled to demand from the Interim Receiver the return of the property enumerated in these document(s).

Sworn before me at the _____ of _____)
Saskatoon in the Province of _____)
 Saskatchewan, this 23 day of _____)
May, 2012.)

Roberta Bernett)
 A Commissioner for Oaths in and for the)
 Province of Saskatchewan)
 Being a Solicitor - OR -)
 My Commission Expires: May 31 / 2016 .)

Christie Kintz
 (Signature of Claimant)



My husband, John Thronberg, purchased for my birthday a Cava Wine Club membership in December 2011. The membership was for 3 bottles of wine, not be worth less than \$30 CDN/bottle, per month for one year. I received the first month's installment of wine in December 2011 and the last wine that I was allowed to pick up was for March 2012. There are eight months outstanding of our 3 bottle wine club membership. So, left owing to Christie Kurtz and John Thronberg is:

8 months

x

3 bottles/month

24 bottles of wine, not to be worth less than \$30/bottle.

We would prefer the debt to be paid out in product, however, ww would also be willing to accept the cash equivalent of outstanding wine.

Christie Kurtz



May 23rd, 2012

This is a true copy of the original.

From: Christie Kurtz <glummuffin@gmail.com>
Subject: Fwd: WOTM
Date: May 17, 2012 10:28:52 PM CST
To: John Thronberg <jthronberg@gmail.com>
▶ 4 Attachments, 1.5 MB

Begin forwarded message:

From: Sandra Svenkeson <sandras@cavasecreta.com>
Subject: FW: WOTM
Date: 25 February, 2012 12:55:42 PM CST
To: Sandra Svenkeson <sandras@cavasecreta.com>

From: Sandra Svenkeson
Sent: February-25-12 10:48 AM
To: Sandra Svenkeson
Cc: Mike Tory
Subject: WOTM

Hello to all,

Finally January & February wines are in.

Thank you for your patience.

Please find tasting notes attached. I have attached notes for all the wines for the 2 months.
Some of you will receive all of these wines , others only 1 or 2 depending on your WOTM.

See you soon!

Cheers,
Sandra

Sandra J Svenkeson
Director of Retail Operations& Administration
Cava Wines & Spirits
306-664-2282



WOTM tastin...ocx (959 KB)

MAIN DIVIDE

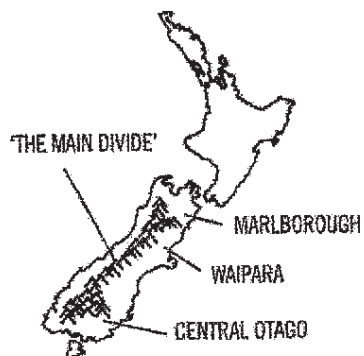
MERLOT CABERNET 2006
TASTING NOTE

This is a true copy of the original.

MAIN DIVIDE



Main Divide is the local name for the Southern Alps and is the backbone of the South Island, where grapes for Main Divide are exclusively sourced. Vineyards have been selected for their quality and ability to express unique regional flavours.



The vines came into leaf a little earlier than usual due to warm spring weather. There was good accumulation of heat during the summer and the autumn was long and dry. We picked at the normal time which meant the berries had extra 'hang time' on the vines so that the fruit was especially ripe.

This consists of a classic blend of Bordeaux red grape varieties and in making it we have used the traditional methods of that region and its internationally celebrated wine (claret). Hand selection of the fruit, so that only the best was retained, was followed by primary fermentation in stainless steel vats. These were drained twice daily, during which time the fermenting juice was aerated by falling into a vat, after which it was pumped back over the floating 'cap' of grape skins to keep them moist and healthy. When the fermentation had finished the grape remnants were left in contact with the new wine to help give it structure and texture. It was then drained, put into barriques and left to mature in the cellar. In the summer after harvest, when the temperature warmed, it underwent spontaneous natural secondary (malolactic) fermentation due to the grape's indigenous micro-organisms. The wines from the different grape varieties were kept separate and after 2 years in barrique they were carefully blended, according to taste, before bottling.

It has a bright ruby hue. The merlot has a given, sweet raspberry and purple plum fruit flavours while the cabernet sauvignon and cabernet franc have added cassis and spice. In the mouth it initially appears plump and soft but underneath there is a backbone of taut muscley tannins which draw out its length and add a savoury dry finish.

Wine is a natural health food

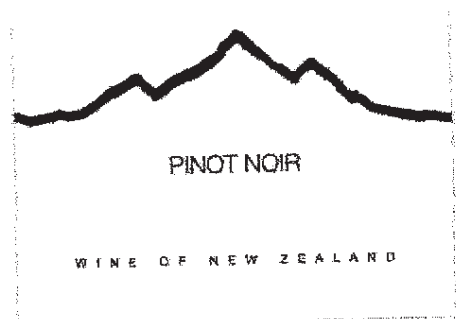
263 Stockgrove Road, Waipara, RD 2 Amberley 7482, New Zealand • Ph +64 3 314 6889 • Fax +64 3 314 6881 • info@maindivide.com • www.maindivide.com

MAIN DIVIDE

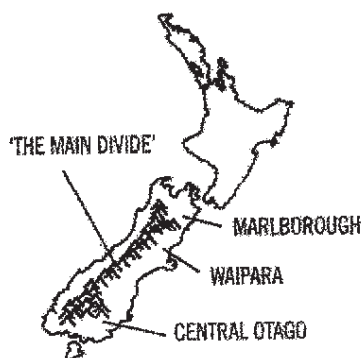
PINOT NOIR 2009 TASTING NOTE

The Season: An early bud-burst was followed by a very mild spring, a warm summer and a balmy dry

This is a true copy of the original.



Main Divide is the local name for the Southern Alps and is the backbone of the South Island, where grapes for Main Divide are exclusively sourced. Vineyards have been selected for their quality and ability to express unique regional flavours.



A very mild spring, a warm summer and a sunny dry autumn. The weather allowed us to leave the fruit on the vine until it was optimally ripe. It was a splendid season in general and an exceptional one for pinot noir resulting in high quality wines.

The Vineyard and the Vines: The grapes were grown on a mixture of clay and stony soils. The fruit was exposed to the sunlight to optimise ripening and keep the berries well ventilated and healthy.

Harvest and Wine Making: We use traditional Burgundian winemaking methods. After picking in late April – early May, the grapes, without stems, were put into small fermenting vats, retaining as many whole berries as possible. They were kept cool for several days, but then started to ferment due to the action of their indigenous yeasts. During the fermentation the floating cap of grape skins was twice daily gently manually pushed back under the wine to keep it moist and healthy. After fermentation had stopped the wine remained in contact with the grape remnants for several weeks, the exact time was determined for each vat separately by regular tasting. This period was to help the wine's structure and depth. The wine was then separated and put into oak barriques from selected artisan Burgundian coopers where it matured for 18 months. During this time it underwent natural malo-lactic (secondary) fermentation by the action of its own micro-organisms. It was carefully blended according to taste prior to bottling.

The Wine: On release the wine has a bright ruby hue. Its vibrant aromas and flavours suggest black cherries, blackberries, raspberries, mulberries and purple plums. There are intertwining hints of grilled mushrooms, liquorice and black olives. The wine is rich, yet velvety and elegant with a core of fine grained, ripe tannins which help to draw out its lingering flavour.

Wine is a natural health food

263 Stockgrove Road, Waipara, RD 2 Amberley 7482, New Zealand • Ph +64 3 314 6969 • Fax +64 3 314 6961 • info@maindivide.com • www.maindivide.com

This is a true copy of the original.

From: Christie Kurtz <glummuffin@gmail.com>
Subject: **Fwd: Wine Of the Month for March**
Date: May 17, 2012 10:29:26 PM CST
To: John Thronberg <jthronberg@gmail.com>
2 Attachments, 23.8 KB

Begin forwarded message:

From: Mike Tory <miket@cavasecreta.com>
Subject: **Wine Of the Month for March**
Date: 20 April, 2012 12:50:58 PM CST
To: Mike Tory <miket@cavasecreta.com>, Sandra Svenkeson <sandras@cavasecreta.com>
Cc: Cameron Rizos <cameronr@cavasecreta.com>

Good day all!

I hope you are well and managing to stay out of the rain!
The wine of the month for March has at last arrived. Please find attached tasting notes to wet your appetites. Everything is ready for collection anytime during store hours.
For those of you who are 1 or 2 bottle members, April is here too.
For those with 3 or 6 bottles, the wine will be arriving very soon!
As ever, thank you for your patience...
We look forward to seeing you soon
Kind regards
Mike

Mike Tory
Manager of Retail Operations
Cava Wines & Spirits
306-664-2282



1
 JESTER Tasti...ocx (22.3 KB)

This is a true copy of the original.

From: Christie Kurtz <glummuffin@gmail.com>
Subject: **Fwd: Star Phoenix Article**
Date: May 17, 2012 10:29:48 PM CST
To: John Thronberg <jthronberg@gmail.com>
1 Attachment, 1.5 KB

Begin forwarded message:

From: Sandra Svenkeson <sandras@cavasecreta.com>
Subject: **Star Phoenix Article**
Date: 21 April, 2012 10:26:39 AM CST
To: Sandra Svenkeson <sandras@cavasecreta.com>

Good Morning WOTM Members,

As some you have seen the article this AM, I would just like assure you of a couple of things.
I what to assure everyone that Cam is in negotiations with SLGA, we should know exactly what is happening by the end of next week or 2nd week of May.

There are two things that can happen:

- We win and keep the licence and everything stays the same
- We lose the licensee, if that happens all the WOTM's will be given out in May.

So please do not worry about your wines, either way you will receive them.

You a can call me anytime.

Cheers,
Sandra

Sandra J Svenkeson
Director of Retail Operations& Administration
Cava Wines & Spirits
306-664-2282



This is a true copy of the original.

SCHEDULE A7

to the Third Report of the Interim Receiver, June 12, 2012



Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED
(collectively, the "Debtors")**

Defendants

PROOF OF CLAIM RESPONSE

To: Christie Kurtz
305 Avenue I North
Saskatoon, SK S7L 2G5

E-Mail glummuffin@gmail.com

And to: Counsel on the enclosed Service List

Take notice that your Proof of Claim filed with PricewaterhouseCoopers Inc., interim receiver ("Receiver") of all of the property, assets and undertaking of the Debtors has been

☐ allowed

☒ disallowed for the following reasons:



APPROACH TO ANALYSIS

The approach to analysing the competition between of the rights of a secured creditor and the claims to ownership of property asserted to have been purchased from a debtor was established by the Saskatchewan Court of Appeal in *Royal Bank of Canada v. 216200 Alberta Ltd.*, 51 Sask. R. 146, 1986 CarswellSask 254.

In that case the Court employed the policy objective of commercial certainty embedded in the *Saskatchewan Personal Property Security Act* ("PPSA") and the legal requirements established by s. 30 of the PPSA for claims of ownership to succeed.

For a Claimant to successfully assert ownership of wine in the possession of the debtors on May 8, 2012, and receive property free and clear of the interests of a secured creditor, there must have been completed by that date a sale and purchase of the property in the ordinary course of the seller's business. Otherwise, a secured creditor will have priority to the property, be it goods in the debtor's inventory or money received from a buyer for the purchase of an article.

To determine if a purchase and sale had been complete by a certain date, the Court of Appeal then looked to and employed the Saskatchewan *The Sale of Goods Act* ("SOGA" or the "Act") to determine if a sale has been completed such that property in the goods has passed from the seller to the buyer.

Pursuant to s. 3(4) of the Act, a sale is made when property in the goods is transferred from the seller to the buyer. Where the transfer of property in the goods is to take place at a future time, the contract is simply an agreement to sell. According to s. 3(5), the agreement to sell only becomes a sale when the property in the goods is transferred.



ANALYSIS GENERALLY

A) Wine is an Unascertained Good

In accordance with s. 18 of the Act, no property in goods is transferred to the buyer unless and until the goods are ascertained. If the goods are ascertained, they become "specific goods" as defined in the Act and property in the goods passes when the parties intended it to be transferred under the contract (s.19(1)).

The Act defines the term "specific goods" as goods identified and agreed upon at the time a contract of sale is made (s. 2(1)(m)). Anything which is not a specific good is, by default, unascertained. Professor Fridman in *Sale of Goods in Canada Fifth Edition*, describes specific goods as follows at page 53:

They are manifestly identified as the only good which may be delivered by the seller in performance of his obligations. No others will do. For example, if the contract is for the sale of a particular car or horse no other may be delivered by the seller in pursuance of the contract, even if it may be argued that what has been delivered is the exact equivalent of what was contracted for by the parties.

At its largest identifiable quantity, wine begins as a "batch" of liquid dedicated for common fermentation and treatment. At some stage, that batch is packaged into smaller units – normally barrels and then bottles. Generally, each bottle of wine that comes from the original single batch bears precisely the same label as every other bottle that is filled from the same batch. Each of those bottles bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no



bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle

The nature of wine suggests that an undelivered bottle of wine, in most cases, is an unascertained good because each bottle bearing the same label contains identical wine: one bottle could be substituted for another without consequence. Virtually no bottles bearing the same label carry independent markings that would identify one specific bottle from another specific bottle. In the debtor's inventory, the same inventory number is assigned to all wines bearing the same label – there is no unique marker to identify one bottle from the other.

The sale of a bottle of wine by description only can only be an agreement to sell. Section 18 of the Act is engaged. It directs that "where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained". Something more is needed to make an agreement to sell a completed "sale" i.e. something must be done to identify or "ascertain" the goods.

B) When unascertained wine can become ascertained

The Act provides further guidance in determining when goods are ascertained. Absent a clear statement of intention between the parties in their contract respecting when property passes, section 20 Rule V of the Act governs. It states:

- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the ascent of



the buyer or by the buyer with the assent of the seller the property in the goods thereupon passes to the buyer.

Thus, unconditional appropriation of goods of the description contained in the contract that are in a deliverable state becomes the test for when property in goods has passed, that is, the unascertained goods become ascertained.

On the need for certainty in appropriation Prof. Fridman, says at page 86 "If there is any equivocality about the appropriation, it will be ineffective to pass property." He further states at page 87:

In the absence of any express terms as to the mode of application, it follows that the method of appropriation must be inferred from the terms of the contract, the circumstances of the case, and, if any, the usual practice of contracts of the kind that is involved or the usual practice operative as between the parties in question.

ANALYSIS WINE OF THE MONTH CLUB ("WOM") CLAIMS GENERALLY

WOM Members ("Members") paid a specified amount of money representing a specified average retail price per bottle for a specified number of bottles throughout the year to be made available for pickup or delivered on a monthly basis. Memberships were generally sold for one year, although on occasion, six month memberships were sold. The full cost of membership was paid to the Debtors at the time the membership was purchased. There were Premium memberships and Basic memberships. The Premium membership included bottles with an average retail value of \$60 per bottle, while the Basic membership provided bottles with an average retail value of \$30 per bottle.



Memberships were sold for 6, 3 or 2 bottles per month for the duration of the Member's membership.

Members were promised a certain number of bottles of wine per month at the specified average value per bottle. At the time of a sale of a membership the Debtors did not specify the variety, origin, producer, distributor, origin or label of wine that was purchased under the membership. Virtually any wines of the Debtors' choosing could satisfy its obligation under the contract, so long as the bottles fell within the average per-bottle price specified for that membership. The Debtors might have made an informal commitment to some members to supply an approximate number of red wines, white wines, sweet wines and sparkling wines throughout the year. However, none of the wines were described by type, label, variety, origin, producer or distributor at the time of the formation of the contract.

When a WOM membership was purchased, the purchaser received a credit for the value of the membership which was either reflected in a credit in the Debtors' retail accounting system, or in a Gift Certificate issued to the Member. As Members received wines, their credits were deducted and the transactions were recorded in the Debtors' normal retail system as sales against the Member's credit.

The Debtors had complete discretion to select the wines it felt its Members would enjoy and would notify Members at the beginning of each month what wines The Debtors had selected to make available to Members for that month, complete with "Tasting Notes" describing the wines. The wine selections were typically uniform for all Members of the same type of Membership. Members were notified of the wine selections by a common email to all Members. From that point forward, Members could pick-up their monthly selections from the Debtors' retail location, or otherwise arrange with the Debtors to have the wines shipped.



The Debtors would often order wines with the intention that the wines be provided to Members. However, wine shipments were often unpredictable, and the Debtors normally had alternative selections in mind to fulfill Memberships. Much of the wine provided to Members was also sold as regular retail inventory by the Debtors. Wine orders made by the Debtors to suppliers would not correspond in description or number with the WOM needs, as some of the shipment may be sold in regular inventory, or the shipment might ultimately be sold as regular inventory as opposed to satisfying WOM as a result of timing and retail needs. The first time customers received any notification of the specific wines allocated to them was when they receive the "Tasting Notes" email from the Debtors.

Wines that had been designated for Members were often set-aside in cases marked "WOM" or "Wine of the Month". When a Member entered the store, the clerk on duty would retrieve the requisite number of bottles from the designated lot of WOM wines and provided them to that Member. Premium Members, or those receiving six bottles per month, sometimes received a variety of bottles, and they were sometimes packed into cases and labeled for the Members in advance of their entry into the store

The last and final email notifying Members of their WOM selections was sent April 20, 2012 which advised that March wines were in for all Members, and that for one and two bottle Members, April wines were in as well. The email had "Tasting Notes" attached. The wines were to come from the Australian maker Mitolo and were of the Jester line of labels. The same product was displayed for retail sale and was sold in the Debtors' retail store at the same time.

On April 21, 2012, an article was printed by the Saskatoon StarPhoenix newspaper in which it was made public that the Debtors may be losing its licence to sell alcohol. On the same day, Ms. Sandra Svenkeson, an employee of the Debtors', began allocating



wine from regular retail inventory to WOM Members, by moving some wines into paper bags, boxes or piles. Also, on the same day, she advised Members by a common email that the Debtors were negotiating with Saskatchewan Liquor and Gaming Authority (SLGA) respecting the licence and that, either way, Members would receive their wines. The email did not specify, in any further measure, the type, variety, label, or source of the wine the Members were to receive, or when it would be made available.

Ms. Svenkeson did place some wines from regular inventory into bags, boxes and loose accumulations and in some cases affixed hand-written notes to the bag, box or group of bottles bearing the name of a Member. Wines were not uniformly allocated for all Members – she simply chose to allocate some wines to some members. She advised that she began allocating wines because she knew the Debtors had sufficient wines in inventory to fulfill most of the WOM needs. She decided to commence allocating wines for the two and three bottle per month Members first, as they required less time and effort. For the Members to whom she chose to allocate wine, she allocated wines for the duration of their Memberships, varying from one or two months, to nearly 12 months of wine. She advised it was not normal practice to allocate wines for WOM for more than one month in advance.

For WOM, the operative practice between the parties was that Members would not know which wines they were to receive until they were notified by email each month. Only at that point, when the monthly email was sent, were the wines selected by the Debtors available for pick-up by Members.

DETERMINATION OF YOUR CLAIM

In your case, you purchased a WOM membership entitling you to the delivery of wine in the future. You were advised by email dated April 20, 2012 that certain wines had been



allocated to your membership and were available for pick up and by email dated April 21, 2012 you were advised that you would receive all wine to which you were entitled for the duration of your membership although no description of said wines was provided in that email.

No bottles of wine were segregated on April 21, 2012 into a bag, box or grouping of bottles and tagged with your name.

Under the current circumstances assessed by the Receiver, it cannot be said that the wines were unconditionally appropriated to your WOM contract. The reasons for such conclusion are as follows:

- 1) Some of the wines selected by the Debtors for WOM Members as described in the April 20, 2012 email were found in the Debtors' inventory but any particular bottle of the described wines, even if segregated in a box labeled WOM, could be delivered to any Member or could be revoked, exchanged or substituted for the bottles of any other Member, or with regular inventory in the same wine as one bottle bearing a precise label was the same as any other bottle bearing that label.
- 2) Wines that were described in the April 20, 2010 email were also sold as regular retail inventory, and were, in fact, counted as regular retail inventory until they were actually delivered to Members.
- 3) The value of your Membership was not reduced until you took delivery of a wine and the value was deducted from the Members' credit.
- 4) Until delivery of the wines described in the April 20, 2012 email it remained available to the Debtors to substitute any wine of a similar value.
- 5) There is no evidence that you assented to the selection of the wines described in the April 20, 2012 email.



- 6) In the April 21, 2012 email the Debtors advised that you would receive all wine pursuant to your WOM membership. Any claim to ownership of wine for months beyond April, 2012 in the email of April 21, 2012 for the same reasons as set out above. Your claim to those wines also fails because it was not the Debtors' normal practice to designate wines to WOM Members beyond the current month or, on occasion, for a month in advance.

For these reasons, your claim to ownership of the wine which remained in the Debtors' possession on May 8, 2012 is disallowed.

If you object to the decision set out in this Proof of Claim Response you must on or before June 11, 2012, file with the Court of Queen's Bench at the Court House in Saskatoon, 520 Spadina Crescent East, and serve on:

- The Receiver and its legal counsel
- All legal counsel on the Service List
- The Claimant, if the Proof of Claim is allowed

A Notice of Motion returnable June 14, 2012 at 10:00 a.m. before Madam Justice A.R. Rothery, and an affidavit in support, appealing this determination.

If you fail to file a Notice of Motion within the time period stated herein you are deemed to have conclusively accepted the decision set out in the Proof of Claim Response.



We refer you to the May 18, 2012 Court Order (copy enclosed) which sets out the process to appeal the decision set out in this Proof of Claim Response and the process for service and delivery of documents.

Dated at Saskatoon, Saskatchewan the 5th day of June, 2012.

PricewaterhouseCoopers Inc.

SCHEDULE B

to the Third Report of the Interim Receiver, June 12, 2012

SCHEDULE B

to the Third Report of the Interim Receiver, June 12, 2012

Etablissements Thunevin
6, rue Guadet – BP 88
33330 Saint-Emilion

Paris,  June 2012

By registered letter

RE: 101142701 Saskatchewan Ltd & Cava Secreta Wines and Spirits Limited

Our reference number: 256107.000034

To whom it may concern,



We are the legal counsel for PriceWaterhouseCoopers Inc.

By judgment rendered May 8th, 2012 by the Queens Bench of Saskatchewan, Judicial Centre of Saskatoon, of which a copy is attached to the present letter together with a sworn translation, PriceWaterhouseCoopers Inc. was appointed as Interim Receiver (hereafter, the "Interim Receiver") of the companies 101142701 Saskatchewan Limited and Cava Secreta Wines and Spirits Limited, companies governed under the law of Saskatchewan, Canada, and whose business is distribution of wines and spirits (hereafter, the "Company").

We would like to assess your commercial relationship with the Company accordingly.

- 1. According to the information that we have been provided with, the Company placed the following orders with your company:*

[list of invoices – date – amount – quantities]

As of today, it appears that the balance of the above-listed orders is at  Euros and that the Company has made to this effect payments to a total value of  Euros.

- 2. It emerges that the invoices no.  were settled in full.*

To our knowledge the goods corresponding to these invoices have not been delivered to the Company.

Please confirm with us that the goods have not been delivered, or send all documents proving delivery of all or part of said goods to the Company.

With regard to the goods that have not been delivered yet, please provide us with the calendar of delivery agreed upon with the Company.

3. *With regard to the invoices no. [REDACTED] which have not yet been settled in full by the Company, and which, for the most part, relate to 2010 future wines, please provide us with the dates for payment to come, as well as the agreed calendar of delivery.*

After analysis of these elements by the Interim Receiver, we will be in a position to discuss the steps to be taken in regards to these orders.

In the meantime, we urge you to refrain from any action which could jeopardize the interests of the Company with respect to these orders.

We remain at the disposal of your legal counsel to discuss the above.

Yours sincerely,

[name]

Encl.