

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF IGNITE HOLDINGS INC., IGNITE SERVICES INC., and IGNITE  
INSURANCE CORPORATION**

Applicants

**FACTUM OF THE APPLICANTS**

October 27, 2023

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TO: THE SERVICE LIST

## PART I - OVERVIEW<sup>1</sup>

1. Ignite Services carries on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance. Through the Company's digital platform, the Company assists its customers with shopping for various insurance policies from multiple insurance companies.
2. The Company has been operating at a loss since it began operating in 2018. From commencement of operations to March 31, 2023, the Company has suffered total net losses of over \$59.8 million, and most recently the Company has suffered net losses of over \$10.1 million for each of the fiscal years ended March 31, 2022, and March 31, 2023.
3. While the Company's financial difficulties were driven by a variety of factors, the significant net losses suffered by the Company over the years are largely due to the Company operating as a multi-carrier insurance brokerage with suboptimal rates being offered by insurance companies, significant customer acquisition costs in the insurance brokerage industry generally, and significant capital investments in its technology.
4. Further, as of August 2022, the ultimate parent company of the Company who has been funding the Company's net losses, ceased further funding to support marketing efforts. As a result, monthly traffic and revenue dropped off significantly.
5. Without protection under the CCAA, a shut-down of operations or the commencement of self-remedy measures by creditors will occur, which would be extremely detrimental to the Applicants' employees, customers, and other stakeholders. Without the CCAA protection, the Applicants will also be unable to implement the sale of their business for the benefit of all their stakeholders.
6. Accordingly, the Applicants seek protection from their creditors and certain other ancillary relief pursuant to an Initial Order made under the CCAA, substantially in the form of the draft order attached to the Application Record at Tab 3.
7. If granted the Stay of Proceedings and the protections of the CCAA, the Applicants intend to, among other things: (a) maintain operations, for the benefit of most of its employees

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<sup>1</sup> Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the affidavit of Stephen Livingstone sworn October 26, 2023 (the "**Initial Livingstone Affidavit**"). All references to currency in this factum are to Canadian dollars, unless otherwise noted.

and other stakeholders; (b) streamline their remaining operations with a view to generating a profit; and (c) return to the Court to seek approval of the offer and resulting Purchase Agreement (the terms of which are described in greater detail in the Initial Livingstone Affidavit), and certain related relief, at a later date on notice to appropriate parties.

## **PART II - FACTS**

8. The facts with respect to this application are briefly summarized below and more fully set out in the Initial Livingstone Affidavit.

### **A. CORPORATE STRUCTURE**

9. Each of the Applicants are private companies incorporated under the OBCA; the Companies' registered head office is located in Waterloo, Ontario.<sup>2</sup>

10. Ignite Services is the only operating entity with respect to the Companies and carries on business as a digital insurance brokerage under the business name of "aha insurance". Ignite Services provides services in Ontario, British Columbia, and Alberta; and it holds all the required licenses with the applicable regulatory authorities which are required for it to carry on business as an insurance brokerage.<sup>3</sup>

11. Ignite Holdings is a non-operating company and holds all the issued and outstanding shares of Ignite Services and Ignite Insurance (a non-operating company).<sup>4</sup>

12. The Companies' ultimate parent company, Primary, is a company incorporated pursuant to the laws of Bermuda.<sup>5</sup>

### **B. THE COMPANIES' BUSINESS AND OPERATIONS**

#### **(i) Operations**

13. Ignite Services carries on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance. Ignite Services operates from a leased office space located in Waterloo.<sup>6</sup>

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<sup>2</sup> Initial Livingstone Affidavit at para. 14.

<sup>3</sup> *Ibid* at para. 16.

<sup>4</sup> *Ibid* at para. 15.

<sup>5</sup> *Ibid* at para 17.

14. Through the Company's digital platform, the Company assists its customers with shopping for various policies from multiple providers. Customers are able to obtain quotes on various insurance policies, speak to the Company's insurance brokers, and ultimately have their requested insurance policies bound.<sup>7</sup>

15. As such, the Company is party to several Brokerage Agreements that generally permit the Company to act as a broker and sell insurance policies on behalf of insurance companies to the Company's customers. Pursuant to the Brokerage Agreements, the Company earns a commission when its customers successfully obtain insurance coverage through the Company's digital platform.<sup>8</sup>

16. The Company has an ongoing relationship with each of its customers. During the CCAA Proceedings, the Company will continue to place new insurance for customers, effect any amendments and cancellations to existing policies and provide ongoing advice to meet its customers' insurance needs.<sup>9</sup>

**(ii) Licenses**

17. The Companies operate in a highly regulated environment, in accordance with applicable provincial legislation.<sup>10</sup>

18. The Applicants hold all required licenses to operate as a digital insurance brokerage in Ontario, British Columbia and Alberta.<sup>11</sup>

**(iii) Principal Broker**

19. In order for the Company to maintain its licenses and carry out its operations, it is required to have a Principal Broker, who a fully licensed individual be associated with the business.<sup>12</sup>

20. RIBO requires a Principal Broker to be: (a) registered as an insurance broker; and (b) a director and/or officer of the insurance brokerage, and/or have the authority to act in the name

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<sup>6</sup> *Ibid* at para. 19.

<sup>7</sup> *Ibid* at para. 22.

<sup>8</sup> *Ibid* at paras. 20, 23.

<sup>9</sup> *Ibid* at para. 25.

<sup>10</sup> *Ibid* at para. 27.

<sup>11</sup> *Ibid* at paras. 29-32.

<sup>12</sup> *Ibid* at para. 34

of, and on behalf of the insurance brokerage. There are similar requirements mandated by the ICBC in British Columbia and the AIC in Alberta.<sup>13</sup>

21. Pursuant to the Principal Broker Agreement between Ignite Services and Tri-Quest, Ignite Services engaged John Leslie to be the Company's Principal Broker.<sup>14</sup>

**(iv) Intellectual Property**

22. Ignite Insurance owns the trademarks associated with "aha insurance", which are registered trademarks in Canada with the Canadian Intellectual Property Office.<sup>15</sup>

**(vi) Cash Management System**

23. In the ordinary course of business, the Company uses its' Cash Management System to, among other things, collect funds and pay expenses associated with its operations. This Cash Management System provides the Company with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.<sup>16</sup>

24. As part of this Cash Management System, the Company maintains an Operating Account and a Trust Account with TD Canada Trust.<sup>17</sup>

25. The Trust Account is used for premiums paid by policyholders and remitted by Ignite Services to the applicable carriers and remitted by Ignite Services to policyholders upon a policy cancellation.<sup>18</sup>

26. The Company is able to transfer commissions received in its Trust Account to its Operating Account, from which the majority of the Companies' operating expenses are paid from, except for certain tax amounts which are remitted directly from the Trust Account.<sup>19</sup>

**(vii) Employees**

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<sup>13</sup> *Ibid* at para. 35.

<sup>14</sup> *Ibid* at para. 37.

<sup>15</sup> *Ibid* at para. 41.

<sup>16</sup> *Ibid* at para. 44.

<sup>17</sup> *Ibid* at para. 45.

<sup>18</sup> *Ibid* at para. 46.

<sup>19</sup> *Ibid* at para. 47.

27. As at October 18, 2023, Ignite Services employed a total of 32 employees and consultants, all of which are located in Ontario with the exception of one employee being located in Alberta. Of the 32 individuals, two are employed on a part-time basis, three are consultants, and the remaining are employed on a full-time basis.<sup>20</sup>

28. None of Ignite Services' employees are subject to a collective bargaining agreement.<sup>21</sup>

29. As at October 18, 2023, accrued vacation payable was \$94,672. As at October 30, 2023 there will be 9 days of payroll outstanding inclusive of October 27, 2023.<sup>22</sup>

### **C. THE COMPANIES' FINANCIAL POSITION**

30. Ignite Services has been operating at a loss since they began operating in 2018. The Companies suffered operating losses of:

- (a) over \$6.1 million for the fiscal year ended March 31, 2018;
- (b) over \$11.2 million for the fiscal year ended March 31, 2019;
- (c) over \$10.3 million for the fiscal year ended March 31, 2020;
- (d) over \$8.8 million for the fiscal year ended March 31, 2021;
- (e) over \$10.1 million for the fiscal year ended March 31, 2022; and
- (f) over \$10.1 million for the fiscal year ended March 31, 2023.<sup>23</sup>

31. From April 1, 2023, to September 30, 2023, Ignite Services suffered net losses of approximately \$5.8 million, with losses continuing until the date of the Initial Livingstone Affidavit.

32. Ignite Services lacks working capital. Ignite Services went from having nearly \$1.5 million in cash on March 31, 2022, to having only \$28,525 in cash on March 31, 2023. The Company's cash position further deteriorated and it had only \$22,103 in cash on September 30,

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<sup>20</sup> *Ibid* at para. 48.

<sup>21</sup> *Ibid* at para. 49.

<sup>22</sup> *Ibid* at para. 51.

<sup>23</sup> *Ibid* at para. 54.

2023, with over \$7.9 million in current liabilities (all amounts referenced herein exclusive of amounts held in trust).<sup>24</sup>

33. Ignite Services' significant net losses over the years have been funded by the ultimate parent of the Companies, Primary through Primary Subsidiary. From February 2018 to the date of this affidavit, Primary Subsidiary has funded approximately \$57.7 million to Ignite Services in order for Ignite Services to maintain operations as a going concern despite the significant net losses noted above.<sup>25</sup>

**(i) Assets**

34. As at September 30, 2023, the assets of the Company comprised an unaudited net book value of approximately \$5,797,361 (of which \$4,723,137 consisted of non-tangible assets).<sup>26</sup>

**(ii) Liabilities**

35. As at September 30, 2023, the liabilities of the Company comprised an unaudited net book value of approximately \$72,778,061.<sup>27</sup>

**D. THE COMPANIES' DEBT STRUCTURE**

**(i) Secured and Priority Obligations**

36. The Companies' only secured financing has come from the Aviva Loan Agreement and Aviva Facility, pursuant to which Aviva made a \$3 million non-revolving credit facility available to Ignite Services. The Aviva Loan Agreement was subsequently amended on two occasions, to provide for, among other things, an increased principal amount which may be borrowed by Ignite Services from \$3 million to \$5.94 million.<sup>28</sup>

37. Ignite Services' obligations under the Aviva Loan Agreement are guaranteed by Primary and Ignite Insurance. Additionally, Ignite Holdings executed a limited recourse guarantee in respect of its shares, in favour of Aviva.<sup>29</sup>

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<sup>24</sup> *Ibid* at para. 57.

<sup>25</sup> *Ibid* at para. 58.

<sup>26</sup> *Ibid* at para. 59.

<sup>27</sup> *Ibid* at para. 60.

<sup>28</sup> *Ibid* at para. 61.

<sup>29</sup> *Ibid* at para. 63.

38. Ignite Services' obligations under the Aviva Loan Agreement are secured by (i) security agreements executed by Ignite Services and Ignite Insurance granting a first-ranking charge on all their assets in favor of Aviva, and (ii) a securities pledge agreement executed by Ignite Holdings pledging all issued and outstanding common shares in Ignite Services and Ignite Insurance to Aviva.<sup>30</sup> Aviva and Primary agreed to cap Primary's obligations under the guarantee at \$4.5 million.

39. As of October 26, 2023, the outstanding principal amount under the Aviva Facility was \$5.94 million.<sup>31</sup>

40. As described in greater detail in the Initial Livingstone Affidavit, the CRA issued a notice of assessment to Ignite Services, in relation to the outstanding Source Deductions in the approximate amount of \$3.8 million.<sup>32</sup>

41. In addition to Aviva and the CRA, the Minister of Finance (Ontario) has registered its security interest in Ignite Services' in respect of outstanding liabilities for employer health tax and retail sales tax.<sup>33</sup>

#### **(ii) Unsecured Obligations**

42. The majority of Ignite Services' obligations are unsecured.<sup>34</sup>

43. Ignite Services, along with Ignite Holdings and Primary Subsidiary, are party to the Intercompany Loan Agreements, pursuant to which, among other things, Ignite Holdings provided Ignite Services with a credit facility whereby Ignite Services could make monthly drawdowns not exceeding \$500,000.<sup>35</sup>

44. The First Intercompany Loan Agreement and the Second Intercompany Loan Agreement function as a "back-to-back" loan, whereby any and all amounts drawn by Ignite Holdings under the First Intercompany Loan Agreement are drawn by Ignite Services under the Second Intercompany Loan Agreement.<sup>36</sup>

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<sup>30</sup> *Ibid* at para. 64.

<sup>31</sup> *Ibid* at para. 66.

<sup>32</sup> *Ibid* at para. 68-69.

<sup>33</sup> *Ibid* at para. 71.

<sup>34</sup> *Ibid* at para. 72.

<sup>35</sup> *Ibid* at paras. 72-73.

<sup>36</sup> *Ibid* at para. 74.

45. The maturity date under the Intercompany Loan Agreements is February 6, 2028. As at September 30, 2023, Ignite Services was indebted to Ignite Holdings in the amount of \$57.7million under the Second Intercompany Loan Agreement (which was indebted to Primary Subsidiary, and ultimately Primary, in the same amount).<sup>37</sup>

46. The Company has outstanding obligations to its employees, in the aggregate approximate amount of \$253,788.<sup>38</sup>

47. The Company also has outstanding obligations to trade creditors, in the aggregate approximate amount of \$2.1 million.<sup>39</sup>

## **E. THE COMPANIES' FINANCIAL DIFFICULTIES**

48. While the Company's financial difficulties were driven by a variety of factors, the significant net losses suffered by the Company over the years are largely due to the Company operating as a multi-carrier insurance brokerage with suboptimal rates being offered by insurance companies, significant customer acquisition costs in the insurance brokerage industry generally, and significant capital investments in its technology.<sup>40</sup>

49. As a result of the Company operating as a multi-carrier insurance brokerage, carriers did not offer optimal rates to the Company and drove traffic to other platforms, including their own proprietary ones (if applicable). The Company's lack of marketing efforts and expenditures resulted in the Company being unable to offer policies at competitive rates.

50. The complexity and cost to develop the platform was heightened due to significant customer acquisition costs and challenges converting leads due to additional fixed costs required to service customers.<sup>41</sup> Furthermore, a significant portion of the Companies' market was influenced by changing consumer behaviours during the COVID-19 pandemic, with fewer customers shopping for personal insurance during this time and resulting in customer acquisition costs to jump during this period.<sup>42</sup>

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<sup>37</sup> *Ibid* at para. 77.

<sup>38</sup> *Ibid* at para. 78.

<sup>39</sup> *Ibid* at para. 79.

<sup>40</sup> *Ibid* at para. 81.

<sup>41</sup> *Ibid* at paras. 86-87.

<sup>42</sup> *Ibid* at para. 88.

51. Moreover, as of August 2022, the ultimate parent of the Company ceased further funding to support marketing efforts, causing monthly traffic and revenue to drop significantly.<sup>43</sup>

#### **F. RESPONSE TO FINANCIAL DIFFICULTIES**

52. In response to the Company's financial difficulties, pre-filing sales processes were conducted by EY and MNP proposing a minority investment structure to secure incremental capital for the Company, from November 2018 to March 2019 and September 2019 to January 2020, respectively. Both the EY Sales Process and MNP Sales Process failed to generate sufficient interest or an acceptable offer for an investment in the Company.<sup>44</sup>

53. On March 31, 2023, Primary engaged KPMG CF to conduct the Sales Process, for the sale of all of the Company's shares and/or assets. On May 11, 2023, the Applicants and KPMG CF commenced the Sales Process and conducted a broad canvass of the market by reaching out to 48 strategic parties.<sup>45</sup>

54. KPMG CF received a number of expressions of interest during the Sales Process. Ultimately, the Sales Process culminated in the receipt of two (2) letters of intent, including from Southampton.<sup>46</sup>

55. During the course of the Sales Process, KPMG CF and the Company enquired as to whether Aviva would exercise its rights under the ROFR. In response, in August 2023, Aviva appointed Southampton as its nominee under the ROFR, as permitted by the Aviva Loan Agreement.<sup>47</sup>

56. Ultimately, after extensive deliberations and consultations with their professional advisors, the Applicants concluded, further to and on the basis of their commercial and business judgment, that the Transactions contemplated in the Purchase Agreement entered into between Ignite Holdings and Southampton on October 26, 2023, represented the best offer available in the circumstances and that proceeding with the Transactions was in the best interest of the Applicants and their stakeholders.<sup>48</sup>

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<sup>43</sup> *Ibid* at para. 84.

<sup>44</sup> *Ibid* at paras. 89-93.

<sup>45</sup> *Ibid* at paras. 94-95.

<sup>46</sup> *Ibid* at para. 96.

<sup>47</sup> *Ibid* at paras. 98-99.

<sup>48</sup> *Ibid* at para. 100.

## G. THE DIP FACILITY AGREEMENT

57. In order to fund the operations of the Applicants during these CCAA Proceedings, the Applicants commenced negotiations with Primary to provide debtor-in-possession financing. For various reasons, the Applicants did not believe that any other third party would be interested in providing such financing on similar terms and on the timeline required by the Applicants.<sup>49</sup>

58. Accordingly, on October 26, 2023, the DIP Facility Agreement was entered into between Ignite Services, as borrower, Ignite Holdings and Ignite Insurance, as guarantors, and Primary, as the DIP Lender.<sup>50</sup>

59. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Applicants to the DIP Lender. Among other things, the DIP Facility Agreement provides for the following:<sup>51</sup>

- (a) DIP Facility: non-revolving loan up to the maximum amount of \$1.1 million.
- (b) Advances: The DIP Facility shall be available by three advances, as follows:
  - (i) an initial advance in the amount of \$350,000, as to be advanced by no later than October 31, 2023 to finance working capital requirements and professional fees and expenses for the 10-day period immediately following the date of the Initial Order, and
  - (ii) subsequent advances in the amount of \$400,000, to be advanced by no later than November 10, 2023, and \$350,000, to be advanced by no later than November 13, 2023, representing the balance of the DIP Facility.
- (c) Interest Rate: The loans made under the DIP Facility Agreement shall be interest free.
- (d) Recoverable Expenses: Ignite Services shall pay all fees and expenses incurred by Primary in connection with the preparation, registration and ongoing administration of the DIP Facility Agreement, the Initial Order, the ARIO, the DIP

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<sup>49</sup> *Ibid* at para. 134.

<sup>50</sup> *Ibid* at para. 135.

<sup>51</sup> *Ibid* at para. 136.

Lender's Charge, including all reasonable fees and expenses incurred by the Primary in connection with the CCAA Proceedings including in connection with the proposed Transactions or any other transaction and all Court attendances in respect thereof.

60. Per the DIP Facility Agreement, the DIP Facility must be repaid in full by the date that is the earliest of: (a) the date on which the Stay of Proceedings is lifted or terminated; (b) December 7, 2023 (or such other date as may be agreed to in writing by the DIP Lender); and (c) the date on which the DIP Lender elects to terminate the DIP Facility as a result of an event of default under the DIP Facility Agreement.<sup>52</sup>

### **PART III – ISSUES**

61. The issues in respect of the relief being sought under the Initial Order are whether:
- (a) the Applicants are entitled to seek protection under the CCAA and should be granted creditor protection, by way of a Stay of Proceedings;
  - (b) the DIP Facility Agreement and the DIP Lender's Charge should be approved and granted, respectively;
  - (c) this Court should exercise its discretion to grant the Administration Charge and the D&O Charge; and
  - (d) sealing the Confidential Appendix (which contains an unredacted copy of the Purchase Agreement) to the pre-filing report of KPMG, in its capacity as Proposed Monitor (the "**Pre-Filing Report**"), to be filed.

### **PART IV – LAW AND ANALYSIS**

#### **A. The Remedial Purpose of the CCAA is to Restructure Insolvent Corporations to Avoid the Social and Economic Losses Which Would Result from a Liquidation**

62. Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect Parliament's intention that those statutes minimize the wide ranging and potentially catastrophic impacts insolvency can have on the stakeholders of insolvent debtors. As part of this framework, the CCAA generally prioritizes avoiding the social and economic losses

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<sup>52</sup> *Ibid* at para. 137.

resulting from liquidation of an insolvent corporation by allowing it to restructure its business and financial affairs. The CCAA also has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by a debtor's financial distress and enhancement of the credit system generally.<sup>53</sup>

63. To fulfill these remedial objectives, Parliament chose to keep two legislations where one benefits from significant flexibility to meet the ever-growing challenges of reorganizing debtors in a complex world which required creative and effective decisions. The CCAA has been and remains the engine of this evolution and adaptation that is required to restructure debtors nowadays.<sup>54</sup>

64. A restructuring under the CCAA may take any number of forms, limited only by the creativity of those proposing the restructuring. The courts have developed new and creative remedies to ensure that the objectives of the CCAA are met.

65. Since the enactment of the CCAA in 1933, restructuring has evolved from the survival of a debtor in an operational state to the survival of the business conducted by a debtor under a different corporate form or ownership, including some form of liquidation of a debtor's assets. The latter are referred to as "liquidating CCAAs" and are commonplace in the Canadian restructuring landscape.<sup>55</sup>

66. Such evolution of the concept of restructuring is recognition of the number of stakeholders in a CCAA context that extend beyond the insolvent corporation's creditors and include its employees, directors, the parties doing business with the insolvent corporation, the general public and the community in which the insolvent corporation operates.<sup>56</sup>

## **B. The Applicants are Entitled to Seek and Should Obtain Protection Under the CCAA**

### **(i) The Applicants are Debtor Companies Having Debts Totaling More than \$5 million to Which the CCAA Applies**

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<sup>53</sup> 9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10 [Bluberi] at paras. 40-42.

<sup>54</sup> Ted Leroy Trucking [Century Services] Ltd. (Re), 2010 SCC 60 at para. 21. [Century Services]

<sup>55</sup> Blueberi, supra at paras. 41-43, 45-46.

<sup>56</sup> Century Services, supra at para. 60; Air Canada, Re, 2003 CanLII 49366 (Ont. SCJ) at para. 13, leave to appeal to the CA refused (2003 CarswellOnt 5213).

67. The CCAA applies to a “debtor company” or “affiliated debtor companies” where the total of claims against the debtor or its affiliates exceeds \$5 million.<sup>57</sup> The Applicants are all affiliated debtor companies with total claims against them that far exceed \$5 million.<sup>58</sup>

68. The CCAA defines “company” as, among other things,

Any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated ( ... )<sup>59</sup>

69. Each of the Applicants are companies incorporated by or under an Act of Parliament or of the legislature of a province.<sup>60</sup> Accordingly, each of the Applicants meet the CCAA definition of “company” and are thus debtor companies for the purposes of the CCAA.

70. Pursuant to section 2 of the CCAA, a “debtor company” means, among other things, any company that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) or the expanded concept of insolvency accepted by the *Stelco* test (the “**Stelco test**”).<sup>61</sup> In *Stelco*, Justice Farley applied an expanded definition of insolvent in the CCAA context to reflect the “rescue” emphasis of the CCAA, modifying part (a) of the BIA’s definition of “insolvent person” to include a financially troubled corporation that is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.<sup>62</sup>

71. The Applicants are currently insolvent under both the BIA test for solvency and the *Stelco* test because the Applicants are unable or are expected to soon become unable to meet their obligations generally as they become due.<sup>63</sup> Therefore, the CCAA applies to the Applicants.

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<sup>57</sup> CCAA, s. 3(1).

<sup>58</sup> Initial Livingstone Affidavit, *supra* at paras. 61-79.

<sup>59</sup> CCAA, s. 2(1).

<sup>60</sup> Initial Livingstone Affidavit, *supra* at para. 14.

<sup>61</sup> CCAA, s. 2(1) and s. 3(1).

<sup>62</sup> *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (Ont. Sup. Ct. J.) [Commercial List] at paras. 25-26. [*Stelco*]

<sup>63</sup> Initial Livingstone Affidavit, *supra* at para. 116.

**ii. This Court has Jurisdiction Over the Applicants**

72. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its “head office or chief place of business.” If “the head office is in one province or territory and its chief operations are located in another, an application can be made in either jurisdiction.”<sup>64</sup>

73. Each of the Applicants’ head office is located in Waterloo, Ontario.<sup>65</sup>

74. The Applicants do not own any real property; business operations are carried out from a leased office space located in Waterloo, Ontario.<sup>66</sup>

75. Accordingly, the Ontario court is the appropriate venue for these CCAA Proceedings.

**iii. The Relief Sought is Reasonably Necessary**

76. Pursuant to s. 11.001 of the CCAA, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period. The stated purpose of s. 11.001 is to “limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players.”<sup>67</sup>

77. As detailed in the Initial Livingstone Affidavit, the Applicants have worked with its advisors and the Proposed Monitor to limit the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of its businesses. In each case, the Applicants considered whether the requested relief is necessary for the immediate stabilization of their businesses to protect them and the interests of its various stakeholders. In cases where immediate relief is necessary, the Applicants have attempted to limit any authorizations from the Court to what is required within the proposed initial stay period and will only seek additional authorization on the Comeback Motion.

**C. The Stay of Proceedings is Necessary**

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<sup>64</sup> CCAA, s. 9(1); J. P. Sarra, *Rescue! The Companies’ Creditors Arrangement Act* 2nd ed. (2013), at p. 128.

<sup>65</sup> Initial Livingstone Affidavit, *supra* at para. 14.

<sup>66</sup> *Ibid* at para. 39.

<sup>67</sup> CCAA, s. 11.001, 11.02(1) and (3); *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26.

78. Pursuant to section 11.02(1) of the CCAA, a Court may grant an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.<sup>68</sup>

79. Exercising discretionary authority to grant a stay pursuant to the CCAA must be informed by the purpose behind the CCAA, which should be broadly and liberally interpreted.<sup>69</sup>

80. The purpose of the CCAA is to, amongst other things, maintain the status quo for the debtor company for a period while it consults with its stakeholders with a view to continuing operations for the benefit of both the debtor company and its stakeholders. The Supreme Court of Canada has held that when exercising judicial discretion under the CCAA, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company.<sup>70</sup>

81. The Applicants intend to utilize the Stay of Proceedings and the protections of the CCAA to, among other things, (a) maintain operations, for the benefit of its employees and other stakeholders and (b) streamline their remaining operations with a view to generating a profit; and (c) return to the Court to seek approval of the offer and resulting Purchase Agreement, and certain related relief, at a later date on notice to appropriate parties.

82. Without the protection of the CCAA and the relief available thereunder, the Applicants will be unable to meet their obligations as they become imminently due. If the Applicants are not afforded the protection of the CCAA, the Applicants would be forced to shut down operations, which would be extremely detrimental to the Applicants' landlord, lenders, customers, and their employees.<sup>71</sup>

83. For the foregoing reasons, the initial Stay of Proceedings up to November 9, 2023 should be granted on the terms sought herein.

**D. The DIP Facility Agreement and DIP Lender's Charge Should be Approved and Granted, Respectively**

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<sup>68</sup> CCAA, s. 11.02(1).

<sup>69</sup> *Stelco Inc. (Re)*, 2005 CarswellOnt 1188 (Ont. C.A.) at paras 23-26; *Nortel Networks Corporation (Re)*, 2009 CarswellOnt 4467 (Ont. Sup. Ct. J. [Commercial List]) at paras. 31 and 47 [*Nortel*]; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 at para. 40 [*Sino-Forest*].

<sup>70</sup> *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60 at para. 60; *Nortel*, *supra* at para. 47.

<sup>71</sup> Initial Livingstone Affidavit, *supra* at para. 118.

84. The Applicants are facing a liquidity crisis. The Cash Flow Statement demonstrates that the Applicants expect the need for interim financing to fund these CCAA Proceedings, including during the 10-day Stay Period prior to the Comeback Motion. The Applicants are requesting approval of the DIP Facility Agreement between Ignite Services, as borrower, Ignite Holdings and Ignite Insurance, as guarantors, and Primary, as the DIP Lender, the terms of which are further described in the DIP Facility Agreement attached as Exhibit "O" to the Initial Livingstone Affidavit.<sup>72</sup>

85. Based on: (a) the results of the Company's previous efforts to seek additional liquidity dating back to November 2018; and (b) Primary being the parent company of the Applicants, the Applicants, in consultation with their legal and financial advisors, did not believe that any third party would be able to providing the financing the Companies urgently require on significantly better terms or on the timeline required by the Applicants. Therefore, the Applicants entered into the DIP Facility Agreement with Primary.<sup>73</sup>

86. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Facility Agreement the DIP Lender's Charge, and that the DIP Lender's Charge rank in priority over the claim of any secured creditor of the company.<sup>74</sup> Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a super-priority charge in respect of the DIP Facility:

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;

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<sup>72</sup> Initial Livingstone Affidavit, *supra* at para. 135.

<sup>73</sup> *Ibid* at para 134.

<sup>74</sup> CCAA, s. 11.2.

- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report.<sup>75</sup>

87. In *Canwest Publishing*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in section 11.2(4), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount to be granted under a DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP was made.<sup>76</sup>

88. The criteria from sections 11.2(1) and 11.2(4) of the CCAA, support approving the DIP Facility Agreement and granting the DIP Lender's Charge on the terms sought in the Initial Order, as:

- (a) the notice requirements under section 11.2(1) of the CCAA have been met;
- (b) given the Applicants' circumstances, they cannot obtain alternative financing outside of these CCAA proceedings;
- (c) the DIP Facility is necessary in order for the Applicants to pursue its restructuring efforts, which will preserve its maintenance as a going-concern for the benefit of all its stakeholders;
- (d) without the DIP Facility, the Applicants may not be able to continue operating;
- (e) the quantum of the DIP Facility is reasonable and appropriate having regard to the Cash Flow Statement; and
- (f) the Proposed Monitor is supportive of the approval of the DIP Facility Agreement and corresponding DIP Lender's Charge.<sup>77</sup>

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<sup>75</sup> CCAA, s. 11.2(4).

<sup>76</sup> CCAA, s. 11.2(1); *Canwest Publishing Inc. Re*, 2010 ONSC 222, at paras. 42-44 [*Canwest Publishing*].

89. Ultimately, it is essential that the DIP Facility Agreement is approved, so that the Applicants may be certain that adequate financing is available from the first day of these CCAA proceedings to support their continued operations.

**E. The Administration Charge Should be Granted**

90. The Applicants request that this Court grant a super-priority Administration Charge on the Property in favour of the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Applicants. Pursuant to the Initial Order, the Administration Charge will be requested in the amount of \$750,000 in respect of the Stay Period.

91. This Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA. In *Canwest Publishing*, Justice Pepall identified six non-exhaustive factors that the Court may consider when determining whether to grant an administration charge:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.<sup>78</sup>

92. The Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

- (a) the Applicants operate in a highly regulated environment, with a significant number of complex issues to address;
- (b) the Applicants employ 32 people;<sup>79</sup>

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<sup>77</sup> Pre-Filing Report at para. 64.

<sup>78</sup> *Canwest Publishing*, *supra* at para. 54.

<sup>79</sup> Initial Livingstone Affidavit, *supra* at para. 48.

- (c) the beneficiaries of the Administration Charge will provide essential legal and financial advice throughout these CCAA proceedings;
- (d) there is no anticipated unwarranted duplication of roles;
- (e) the Applicants' advisors have engaged in a significant amount of work on a pre-filing basis; and
- (f) the Proposed Monitor is supportive of the proposed Administration Charge and believes that the proposed quantum of the Administration Charge is reasonable.<sup>80</sup>

#### **F. The D&O Charge Should be Granted**

93. The Applicants request that this Court grant a priority D&O Charge on the Property in favour of the Applicants' current and future directors and officers in the amount of \$250,000 ranking subordinate to the Administration Charge but ahead of the DIP Lender's Charge.

94. The Directors' Charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of the Applicants after the commencement of the CCAA Proceedings, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

95. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the D&O Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.<sup>81</sup>

96. In *Jaguar Mining Inc., Re*, Justice Morawetz (as he then was) stated that, in order to grant a D&O Charge, the Court must be satisfied of the following factors:

- (a) notice has been given to the secured creditors likely to be affected by the charge;
- (b) the amount is appropriate;

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<sup>80</sup> Pre-Filing Report at para. 70.

<sup>81</sup> CCAA, s. 11.51.

- (c) the applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and
- (d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.<sup>82</sup>

97. With respect to the Applicants, the D&O Charge is reasonable in the circumstances because:

- (a) the Applicants will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring;
- (b) the Applicants cannot be certain whether the existing insurance will be applicable or respond to any claims made, and the Applicants do not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities;
- (c) the D&O Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct;
- (d) absent approval by this Court of the D&O Charge in the amounts set out above, some or all of the Applicants' directors and officers may resign; and
- (e) the Proposed Monitor is of the view that the D&O Charge is reasonable and appropriate in the circumstances.<sup>83</sup>

#### **G. The Confidential Appendix to the Pre-Filing Report Should be Sealed**

98. Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record."<sup>84</sup>

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<sup>82</sup> *Jaguar Mining Inc. Re*, 2014 ONSC 494 at [para. 45](#).

<sup>83</sup> Pre-Filing Report at para. 75.

<sup>84</sup> *Courts of Justice Act*, R.S.O. 1990, c C.43, [s. 137\(2\)](#). See also *Target Canada Corp. Re*, 2015 ONSC 1487 at [paras. 28-30](#).

99. The test to determine if a sealing order should be granted is set out in *Sierra Club* as recast in *Sherman Estate*:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>85</sup>

100. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an “important public interest” for purposes of this test.<sup>86</sup>

101. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors.<sup>87</sup> In particular, each of these considerations support the proposed sealing order:

- (a) *Public Interest*: The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing order.<sup>88</sup> CCAA courts have approved sealing orders where they are required to protect commercially sensitive information and to preserve the integrity of a sale process.<sup>89</sup>
- (b) *Serious Risk to Identified Interest*. Southampton and the Monitor have agreed to treat the redacted terms of the Purchase Agreement confidentially, including on the basis that not sealing the information would create the risk of impairing any efforts to remarket the Applicants.

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<sup>85</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at [para. 53](#) [*Sierra Club*]; *Sherman Estate v. Donovan*, 2021 SCC 25 at [paras. 38](#) and [43](#). [*Sherman Estate*]

<sup>86</sup> *Sierra Club*, *supra* at [para. 55](#); *Sherman Estate*, *supra* at [paras. 41-43](#).

<sup>87</sup> *Re Danier Leather Inc.*, 2016 ONSC 1044 [*Danier*] at [para. 82](#); *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at [paras. 23-28](#).

<sup>88</sup> *Ibid*, *Danier* at para. 84.

<sup>89</sup> See, for example, *Springer Aerospace Holdings Ltd., Re*, 2022 ONSC 6581 at paras. 29-30; *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354 at para. 72.

(c) *Lack of a Reasonable Alternative*: CCAA courts have found that no reasonable alternative to a sealing order exists where declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders.<sup>90</sup>

(d) *Proportionality*: CCAA courts have approved sealing orders where the information over which confidentiality is sought to be maintained is “discrete, proportional, and limited.”<sup>91</sup> The proposed sealing order seeks to keep confidential only the redacted information in the Purchase Agreement. In addition, it is open to parties with a legitimate, future interest in the sealed information to seek an order lifting the proposed sealing order, in whole or in part, if and when it is no longer needed (and provided they can establish a *bona fide* interest in the sealed information).

102. The Applicants respectfully request that this Court seals the Confidential Appendix to the Pre-Filing Report, which contains a summary of the economic terms of the Purchase Agreement. This document contains commercially sensitive information that may, if the Transaction fails to close, affect the integrity of any future sale of the assets and/or business of the Applicants.

103. The Applicants are only seeking to have the Confidential Appendix sealed until the earlier of (a) closing of the Transactions contemplated under the Purchase Agreement; or (b) further Order of this Court.

104. The salutary effects of the sealing order, which provides the Applicants with the ability to maximize value for its assets at a future date, far outweighs the deleterious effects of the public not knowing the purchase price in the Purchase Agreement.

105. The Proposed Monitor supports the Applicants’ request to seal the Confidential Appendix to the Pre-Filing Report.<sup>92</sup>

## **PART V – ORDER SOUGHT**

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<sup>90</sup> *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL (Endorsement of Justice Osborne), at para. 60 [*Original Traders*].

<sup>91</sup> *Ibid* at para 63.

<sup>92</sup> Pre-Filing Report at para. 83.

106. For all of the foregoing reasons, the Applicants request an Order substantially in the form of the draft Initial Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27 day of October, 2023.



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**STIKEMAN ELLIOTT LLP**  
Counsel for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Cases**

1. *9354-9186 Québec inc v Callidus Capital Corp.*, 2020 SCC 10
2. *Air Canada, Re.*, 2003 CanLII 49366 (Ont. SCJ)
3. *Canadian Red Cross Society, Re.*, 1998 CanLII 14907 (Ont. SCJ)
4. *Canwest Publishing Inc. Re.*, 2010 ONSC 222
5. *Jaguar Mining Inc. Re.*, 2014 ONSC 494
6. *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354
7. *Lydian International Limited (Re)*, 2019 ONSC 7473
8. *Nortel Networks Corporation (Re)*, 2009 CarswellOnt 4467 (Ont. Sup. Ct. J. [Commercial List])
9. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347
10. *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Ont. S.C.J. [Commercial List], (Endorsement of Justice Osborne)
11. *Re Danier Leather Inc.*, 2016 ONSC 1044
12. *Sherman Estate v. Donovan*, 2021 SCC 25
13. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
14. *Sino-Forest Corporation (Re)*, 2012 ONSC 2063
15. *Springer Aerospace Holdings Ltd., Re.*, 2022 ONSC 6581
16. *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (Ont. Sup. Ct. J.) [Commercial List])
17. *Stelco Inc. (Re)*, 2005 CarswellOnt 1188 (Ont. C.A.)
18. *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60

**Other Authorities**

19. J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* 2nd ed. (2013), at p. 128

**SCHEDULE “B”  
RELEVANT LEGISLATION**

**Companies’ Creditors Arrangement Act, RSC 1985, c C-36**

**Definitions**

**2 (1)** In this Act,

**aircraft objects** [Repealed, [2012, c. 31, s. 419](#)]

**bargaining agent** means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

**bond** includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

**cash-flow statement**, in respect of a company, means the statement referred to in [paragraph 10\(2\)\(a\)](#) indicating the company’s projected cash flow; (*état de l’évolution de l’encaisse*)

**claim** means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of [section 2](#) of the [Bankruptcy and Insolvency Act](#); (*réclamation*)

**collective agreement**, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

**company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of [section 2](#) of the [Bank Act](#), telegraph companies, insurance companies and companies to which the [Trust and Loan Companies Act](#) applies; (*compagnie*)

**court** means

- **(a)** in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,
- **(a.1)** in Ontario, the Superior Court of Justice,
- **(b)** in Quebec, the Superior Court,
- **(c)** in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench,
- **(c.1)** in Newfoundland and Labrador, the Trial Division of the Supreme Court, and

- (d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

**debtor company** means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the [Bankruptcy and Insolvency Act](#) or is deemed insolvent within the meaning of the [Winding-up and Restructuring Act](#), whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the [Bankruptcy and Insolvency Act](#), or
- (d) is in the course of being wound up under the [Winding-up and Restructuring Act](#) because the company is insolvent; (*compagnie débitrice*)

**director** means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called; (*administrateur*)

**eligible financial contract** means an agreement of a prescribed kind; (*contrat financier admissible*)

**equity claim** means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

**equity interest** means

- (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in

respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)

**income trust** means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act; (*fiducie de revenu*)

**initial application** means the first application made under this Act in respect of a company; (*demande initiale*)

**monitor**, in respect of a company, means the person appointed under [section 11.7](#) to monitor the business and financial affairs of the company; (*contrôleur*)

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

**prescribed** means prescribed by regulation; (*Version anglaise seulement*)

**secured creditor** means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds; (*créancier garanti*)

**shareholder** includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

**Superintendent of Bankruptcy** means the Superintendent of Bankruptcy appointed under [subsection 5\(1\)](#) of the [Bankruptcy and Insolvency Act](#); (*surintendant des faillites*)

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under [subsection 5\(1\)](#) of the [Office of the Superintendent of Financial Institutions Act](#); (*surintendant des institutions financières*)

**title transfer credit support agreement** means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

**unsecured creditor** means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds. (*créancier chirographaire*)

### **Application**

**3 (1)** This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with [section 20](#), is more than \$5,000,000 or any other amount that is prescribed.

### **Jurisdiction of court to receive applications**

**9 (1)** Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

### **General power of court**

**11** Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

### **Relief reasonably necessary**

**11.001** An order made under [section 11](#) at the same time as an order made under [subsection 11.02\(1\)](#) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

### **Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Burden of proof on application**

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

### **Priority — secured creditors**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;

- **(b)** how the company's business and financial affairs are to be managed during the proceedings;
- **(c)** whether the company's management has the confidence of its major creditors;
- **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- **(e)** the nature and value of the company's property;
- **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
- **(g)** the monitor's report referred to in [paragraph 23\(1\)\(b\)](#), if any.

#### **Additional factor — initial application**

**(5)** When an application is made under subsection (1) at the same time as an initial application referred to in [subsection 11.02\(1\)](#) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

#### **Security or charge relating to director's indemnification**

**11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

#### **Priority**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

#### **Restriction — indemnification insurance**

**(3)** The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

#### **Negligence, misconduct or fault**

**(4)** The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

#### **Authorization to act as representative of proceeding under this Act**

**56** The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36,  
AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IGNITE HOLDINGS INC.,  
IGNITE SERVICES INC., and IGNITE INSURANCE CORPORATION

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANTS**

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