Court File No. CV-23-00708635-00CL

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
(Re: Approval and Reverse Vesting Order and Amended and Restated Initial Order)

November 7, 2023

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TO: THE SERVICE LIST

PART I - OVERVIEW[1]

1. The Applicants carry on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance. Through the Company's digital platform and with the support of its broker licensed employees, the Company assists its customers with shopping for and purchasing of various insurance policies from multiple insurance companies.

2. Since as early as November 2018, the Applicants had conducted two unsuccessful prior processes to secure additional capital in exchange for equity in the Company. As a result of the Applicants' continued financial difficulties, in May 2023, the Applicants and KPMG CF commenced the Sales Process to solicit interest in a sale of all or substantially all of the Company's shares and/or assets. The best offer presented in the process could only be viable if implemented through an insolvency process. Therefore, the Applicants sought and obtained relief under the CCAA by an Initial Order dated October 30, 2023.

3. This factum is filed in support of the Applicants' motion for, among other things: (a) approval of a going-concern sale transaction for the Company's business, to be implemented through the proposed draft Approval and Reverse Vesting Order; and (b) an extension to the Stay Period and authority to increase the amounts which may be borrowed by the Applicants under the DIP Facility Agreement to $1.1 million, in order to provide the Applicants with the necessary liquidity and time to complete the Transactions contemplated under the Purchase Agreement.

4. Approval of the Purchase Agreement and the Transactions contemplated therein is the best path forward for the Applicants and provides for a going concern exit from the CCAA Proceedings. The execution of the Purchase Agreement represents the culmination of extensive solicitation efforts through the Sales Process which was designed to parallel and correspond to sales processes used and approved in other CCAA Proceedings.

5. The reverse vesting structure is necessary and appropriate to preserve the going-concern value of the business. The granting of the Approval and Reverse Vesting Order is a condition of the Purchase Agreement, which is justified by, among other things: (a) the various licenses that the Company maintains in the regulated insurance industry, with such licenses being cumbersome or very time-consuming to transfer to a third-party purchaser; and (b) the

[1] Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavit of Stephen Livingstone sworn October 26, 2023 (the "**Initial Livingstone Affidavit**"), and the affidavit of Stephen Livingstone sworn November 1, 2023 (the "**Second Livingstone Affidavit**").

Company will preserve tax attributes which would otherwise be adversely impacted through an asset purchase structure.

6. The Transactions also provide tangible benefits to the Applicants and their stakeholders. Among other benefits, the Transactions provide for most of the Applicants' secured liabilities being satisfied, with all the outstanding priority Source Deductions being satisfied. The Company will also continue as a going concern, resulting in most of the Company's employees preserving their employment, a number of suppliers being able to maintain their business relationship with the Company, and the Company's customers maintaining their ongoing relationships with the Company.

PART II – FACTS

7. The facts underlying this motion are more fully set out in the Initial Livingstone Affidavit and the Second Livingstone Affidavit.

A. Background

8. As mentioned above, the Company carries on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance and, through its digital platform and with the support of its broker licensed employees, assists its customers with shopping for and purchasing of various insurance policies from multiple insurance companies.[2]

9. As a result of the Company's financial difficulties, the Applicants sought and were granted protection under the CCAA pursuant to the Initial Order granted on October 30, 2023 which, among other things,

(a) appointed KPMG as Monitor of the Applicants;

(b) granted a Stay of Proceedings in favour of the Applicants until and including November 9, 2023;

(c) approved the execution of the DIP Facility Agreement, pursuant to which the Applicants were authorized to borrow up to the Initial Advance of $350,000, which, together with the other obligations of the Applicants under the DIP Facility Agreement, will be secured by the DIP Lenders' Charge; and

[2] Initial Livingstone Affidavit, at para. 5.

(d) granted the Administration Charge in the amount of $750,000 and the D&O Charge in the amount of $250,000.[3]

10. The Company's significant net losses over the years have been funded by the ultimate parent group of the Company, Primary. From February 2018 to October 30, 2023, Primary has funded approximately $58.3 million to the Company in order for the Company to maintain its' operations as a going concern.[4]

B. The Applicants' Solicitation Efforts

(i) Prior Sales Processes

11. As a result of the Company's historical net losses, the Applicants conducted two sales processes with EY and MNP from November 2018 to January 2020. The EY Sales Process and MNP Sales Process primarily focused on securing additional capital in exchange for equity in the Company. However, neither of these processes resulted in an actionable proposal for the Company.[5]

(ii) Sales Process

12. While Primary had continued to fund the Company's significant net losses so that the Company could maintain operations as a going concern, Primary also engaged KPMG CF on March 31, 2023, to assist with conducting the Sales Process. The Sales Process was designed to parallel and correspond to sales processes used and approved in CCAA Proceedings.[6]

13. While KPMG CF, in consultation with Primary and the Applicants, considered a broad range of transactions, the Sales Process was focused on a sale of Ignite Services' business. Given the results of the EY Sales Process, the MNP Sales Process, and the Applicants' capital structure with significant amounts of debt, it was determined that a refinancing transaction was likely not actionable in the circumstances.[7]

14. KPMG CF began contacting Potential Bidders on May 11, 2023. By May 30, 2023, KPMG CF contacted a total of forty-eight (48) Potential Bidders, including Aviva (the Applicants'

[3] Second Livingstone Affidavit, at paras. 12- 13.
[4] *Ibid* at para. 19.
[5] *Ibid* at para. 9.
[6] *Ibid* at para 30.
[7] *Ibid* at para. 26.

largest secured creditor which also holds a ROFR), and provided each Potential Bidder with a teaser letter and NDA.[8]

15. KPMG CF received a total of four (4) EOIs by the Deadline of July 30, 2023, including from Southampton (the proposed purchaser). In addition to the four (4) EOIs, three (3) Potential Bidders expressed interest in specific assets of the Company. However, no formal EOIs were submitted by these parties.[9]

16. From July 11, 2023, until August 10, 2023, a period of intensive and arm's-length negotiations between KPMG CF, the Applicants, and Potential Bidder 1 took place. Despite KPMG CF's and the Applicants' best efforts, Potential Bidder 1 would not increase the total consideration under its offer beyond the amount in the LOI that was submitted.[10]

17. In accordance with the terms of the ROFR, KPMG CF and the Company contacted Aviva on August 1, 2023, to discuss whether Aviva would be exercising its rights under the ROFR.[11] On or around August 10, 2023, Aviva appointed Southampton as its nominee under the ROFR.[12] Despite Potential Bidder 1 being made aware by KPMG CF of the existence of the ROFR entered into between the Company and Aviva, Potential Bidder 1 did not contest Aviva's ability to exercise the ROFR and agreed to waive its exclusivity arrangement with the Company.[13]

18. Ultimately, after extensive deliberations and consultations with their professional advisors, the Applicants, exercising their business judgment, concluded in October 2023 that the Purchase Agreement 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. Accordingly, Ignite Holdings and Southampton entered into the Purchase Agreement on October 26, 2023.[14]

19. The Monitor, Aviva, and the Applicants' most significant unsecured creditor with over $58.3 million of indebtedness owing to it (Primary), are each supportive of the relief being

[8] *Ibid* at para. 31.
[9] *Ibid* at paras. 40-41.
[10] *Ibid* at para. 46.
[11] *Ibid* at para. 50.
[12] *Ibid* at para. 51.
[13] *Ibid* at paras. 46, 48, and 51.
[14] *Ibid* at para 55.

sought on this Motion. Notably, Primary will very likely not recover any of its indebtedness owing upon closing of the Transactions under the Purchase Agreement.[15]

PART III – ISSUES

20. The issues to be determined on this motion with respect to the proposed Approval and Reverse Vesting Order are whether this Court should:

(a) approve the Purchase Agreement and the Transactions contemplated therein;

(b) grant the requested Releases in favour of the Released Parties and Other Released Parties; and

(c) seal the Confidential Appendix "A" to the First Report of the Monitor dated November 2, 2023 (the "**First Report**") which contains a confidential summary of the economic terms of the offers received in the Sales Process, and and Confidential Appendix "B" to the First Report, which contains a summary of the commercially sensitive terms of the Purchase Agreement and the unredacted version of the Purchase Agreement.

21. The issues to be determined on this motion with respect to the proposed ARIO are whether this Court should:

(a) extend the Stay Period until and including January 31, 2024;

(b) authorize the Applicants to borrow up to the principal amount of $1.1 million under the DIP Facility and grant a corresponding increase to the DIP Lender's Charge;

(c) authority for the Applicants to make payments for certain arrears owing prior to the Filing Date to Tri-Quest Marketing Inc. ("**Tri-Quest**"), with the consent of the Monitor; and

(d) ordering that the Charges shall rank in priority to Encumbrances, provided that the DIP Lender's Charge shall not rank in priority to the CRA Priority Payables, in favour of any person, notwithstanding the order of perfection or attachment, on notice to those persons likely to be affected thereby.

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[15] *Ibid* at para. 76.

PART IV – LAW & ARGUMENT

A. The Purchase Agreement and the Transactions Should be Approved

(i) The Test to Approve a Transaction Resulting From a Pre-Filing Sales Process is the Same as the Test to Approve a Transaction Resulting From a Post-Filing Sales Process.

22. Courts have, on many occasions, approved sale transactions where the debtor company has conducted a sales process before making an insolvency filing.[16] In approving transactions of this nature, courts have held that the same principles that apply to the approval of a sale transaction resulting from a post-filing sales process apply to the approval of a sale transaction resulting from a pre-filing sales process.[17]

23. Where a debtor seeks approval of a sale transaction developed prior to an insolvency filing, the court will still consider the *Soundair* principles but with specific consideration of the economic realities of the business and the proposed transaction. Sale approval is warranted where the sale represents the best available commercial alternative in the circumstances, particularly where an extension of the process could jeopardize the continued operation of the business.[18]

24. Furthermore, the Court should consider the impact on various parties and contemplate whether their position and proposed treatment would realistically be any different if an additional process was undertaken; this is unlikely to be the case where the process actually followed is consistent with what a court would have approved if the process was conducted post-filing.[19]

25. The Court in *Karrys* determined that a pre-filing marketing process undertaken by the debtors in advance of proposal proceedings under the *Bankruptcy and Insolvency Act* had met the principles in *Soundair* as:

(a) two financial advisors were engaged in a broad and comprehensive marketing process;

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[16] *Re Nelson Education Limited*, 2015 ONSC 5557 [*Nelson Education*]; *Re Bloom Lake*, 2015 QCCS 1920 [*Bloom Lake*]; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586; *Re PT Holdco, Inc. et al.*, Approval and Vesting Order granted February 25, 2016 (Court File No. CV-16-11257-00CL); *Re Golf Town Canada et al.,* Approval and Vesting Order granted September 30, 2016 (Court File No. CV-16-11527-00CL); *Re Gesco Industries Inc. et al,* Approval and Vesting Order granted June 21, 2023 (Court File No. CV-23-00699824-00CL).

[17] *Nelson*, *supra* at paras. 31-33 and 35-59; *Bloom Lake*, *supra* at paras. 25-27 and 29.

[18] *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009 at paras. 27 and 31-32; *Karrys Bros, Ltd. (Re)*, 2014 ONSC 7465 at paras. 15-16. [*Karrys*]. This decision is attached as Schedule "C".

[19] *Re Tool-Plas Systems Inc.*, 2008 CanLII 54791 (Ont. Sup. Ct. J.) at paras. 15-19.

(b) the evidence was that the proposed sale was the best available option in the circumstances;

(c) further delay would likely have resulted in a greater erosion of value such that an immediate sale was the only way to maximize recovery; and

(d) the process actually followed by the debtors was indistinguishable from what the court might reasonably have approved had prior authorization been sought.[20]

26. For the reasons described below, the Applicants submit that the same factors in *Karrys* also exist in the case at bar. These factors, together with the *Soundair* principles and the factors that this Court should consider in granting a reverse vesting order ("**RVO**") are discussed below.

(ii) This Court has Jurisdiction to Approve a Reverse Vesting Transaction

27. An RVO generally involves a series of steps whereby: (a) the purchaser becomes the sole shareholder of the debtor company; (b) the debtor company retains its assets, including licenses and key contracts; and (c) the liabilities not assumed by the purchaser are vested out and transferred, together with any excluded assets, to a newly incorporated entity. The assets and liabilities that are vested in the separate entity (referred to in the Approval and Reverse Vesting Order as "**Residual Co.**") may then be addressed through a bankruptcy or similar process.[21]

28. An RVO can be contrasted with a traditional vesting order, as contemplated by section 36(4) of the CCAA, in which the assets of the debtor company that a purchaser acquires are transferred out of the debtor entity and vested in the purchaser free and clear of any encumbrances or claims, other than those expressly assumed by the purchaser.[22] All excluded assets and liabilities remain with the debtor company.

29. RVOs have been described as a relatively new structure to achieve the remedial objectives of the CCAA.[23] Courts have expressed the view that they should not be the "norm" and that the Monitor and the Court should consider carefully whether this approach is warranted.[24] However, RVOs have been recognized on a number of occasions as an

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[20] *Karrys*, *supra* at paras. 12-16.
[21] *Just Energy Group Inc. et. al. v Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 at para. 27. [*Just Energy*]
[22] *Arrangement relatif à Black Rock Metals Inc.*, 2022 QCCS 2828 at para. 85, leave to appeal to QCCA denied, August 5, 2022. [*Blackrock Metals*]
[23] *Ibid*.
[24] *Ibid* at para. 99, citing *Harte Gold (Re)*, 2022 ONSC 653 at para. 38. [*Harte Gold*]

appropriate way for a debtor to sell its business as a going-concern where the circumstances justify such a structure.[25]

30. Examples of recent RVOs approved by Courts include:

(a) *Acerus*: RVO granted in June 2023 by the Superior Court of Justice (Ontario) (Commercial List) in respect of a pharmaceutical business[26];

(b) *Trichome*: RVO granted in April 2023 by the Superior Court of Justice (Ontario) (Commercial List) in respect of a cannabis producer[27];

(c) *CannaPiece*: RVO granted in February 2023 by the Superior Court of Justice (Ontario) (Commercial List) in respect of a cannabis producer[28];

(d) *Fire & Flower*: RVO granted in August 2023 by the Superior Court of Justice (Ontario) (Commercial List) in respect of a cannabis retailer[29];

(e) *Blackrock Metals*: RVO granted in July 2022 by the Superior Court of Quebec in respect of a metals and materials manufacturing business[30];

(f) *Harte Gold*: RVO granted in February 2022 by the Superior Court of Justice (Ontario) (Commercial List) in respect of a gold producer operating a gold mine in northern Ontario[31]; and

(g) *Just Energy*: RVO granted in November 2022 by the Superior Court of Justice (Ontario) (Commercial List) in respect of a retail energy provider.[32]

31. As submitted further below, compelling circumstances justifying a reverse vesting structure exist in the case at bar. Referring to the factors identified in *Harte Gold* as guideposts for this Court in considering a proposed RVO[33], the Approval and Reverse Vesting Order is

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[25] To name a few examples, see Blackrock Metals, *supra*; Harte Gold, *supra*; Arrangement relatif à Nemaska Lithium inc., 2020 QCCA 1488, leave to appeal to SCC denied [*Nemaska*]; Just Energy, *supra*; Acerus Pharmaceuticals Corporation (Re), 2023 ONSC 3314. [*Acerus*]; and in respect of companies in the cannabis industry: CannaPiece Group Inc. v Marzilli, 2023 ONSC 3291 [*Cannapiece*] and Trichome Financial Corp. et al (Re), (April 6, 2023), Toronto, Court File No. CV-22-00689857-00CL (Approval and Vesting Order) (ONSC).
[26] Acerus, *supra*.
[27] Trichome, *supra*.
[28] CannaPiece, *supra*.
[29] Fire & Flower Holdings Corp. et al., 2023 ONSC 4934 [*Fire & Flower*].
[30] Blackrock Metals, *supra*.
[31] Harte Gold, *supra*.
[32] Just Energy, *supra*.
[33] *Harte Gold*, *supra* at para. 38.

necessary in this case to give effect to the best possible outcome and a going-concern restructuring of the Company's business.

32. The jurisdiction to approve a transaction that is to be implemented through an RVO is found in section 11 of the CCAA, which gives the Court broad powers to make any order it thinks fit.[34] Section 11 of the CCAA states:

> "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."

33. Section 36 of the CCAA is also sometimes seen as providing jurisdiction for RVOs and/or providing guidance in respect of factors to be considered in assessing whether to exercise discretion to approve such a transaction, as further outlined below.[35]

(iii) The Purchase Agreement and the Transactions are Appropriate in the Circumstances

34. In *Harte Gold* and *Acerus*, Justice Penny held that scrutiny of a proposed reverse vesting transaction may be informed by the following enquiries:

(a) why the reverse vesting order is necessary in this case;

(b) whether the reverse vesting transaction structure produces an economic result at least as favourable as any other viable alternative;

(c) whether any stakeholder is worse off under the reverse vesting transaction structure than they would have been under any other viable alternative; and

(d) whether the consideration being paid for the debtors' business reflects the importance and value of the licenses and permits (or other intangible assets) being preserved under the reverse vesting transaction structure.[36]

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[34] *Blackrock Metals*, *supra* at para. 87; *Quest University (Re)*, 2020 BCSC 1883, at para. 27; *Harte Gold*, *supra* at paras. 36-37.
[35] *Just Energy*, *supra* at paras. 30-31.
[36] *Harte Gold, supra* at para. 38; *In the Matter of the Companies' Creditors Arrangement Act and In the Matter of CannaPiece Group Inc.*, 2023 ONSC 841 at para. 52 [*CannaPiece*]; *Just Energy*, *supra* at para. 33.

35. When exercising its jurisdiction under section 11 of the CCAA to approve a reverse vesting transaction, this Court has also concurrently considered the non-exhaustive factors enumerated under subsection 36(3) of the CCAA and those articulated in *Royal Bank v Soundair*. Together, these factors include:

> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the Court a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties;
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> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value;
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> (g) whether sufficient effort has been made to obtain the best price and that the debtors have not acted improvidently;
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> (h) the efficacy and integrity of the process by which offers have been obtained;
>
> (i) whether the interests of all parties have been considered; and
>
> (j) whether there has been unfairness in the working out of the process.[37]

36. As described below, the foregoing considerations and factors support the approval of the Purchase Agreement and the Transactions, and the granting of the Approval and Reverse Vesting Order.

(A) *Harte Gold and Acerus Factors*

[37] *CCAA*, *supra* s. 36(3); *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (Ont. CA) at para. 16. See also, *Harte Gold*, *supra* at paras. 20-21; *CannaPiece*, *supra* at paras. 53-54; *Just Energy*, *supra* at paras. 31-32.

37. ***The proposed reverse vesting restructure is necessary in the circumstances***. Courts have held that RVOs are generally appropriate in at least three types of circumstances:

(a) where the debtor operates in a highly-regulated environment in which its existing permits, licences or other rights are difficult or impossible to assign to a purchaser;

(b) where the debtor is party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and

(c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.[38]

38. The Company operates in the regulated insurance industry. In order for the Company to carry on its business, it is required to maintain various licenses. The licenses and contracts currently held by the Company which would require transfer or re-establishment and/or new arrangements to be entered into if an asset transfer was implemented include but are not limited to:

(a) license to operate as a property and casualty insurance brokerage, issued by RIBO;

(b) license to carry on business as a corporate life insurance agency, issued by the Financial Services Regulatory Authority of Ontario;

(c) license to operate as a general insurance brokerage, issued by the ICBC;

(d) license to operate as a general insurance brokerage, issued by the AIC;

(e) contracts with certain suppliers of strategic data sources; and

(f) intellectual property.[39]

39. Accordingly, the Purchase Agreement was structured as a reverse vesting transaction for a variety of factors, including, among others:

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[38] *Blackrock Metals*, *supra* at paras. 114-116; *Harte Gold, supra* at para. 71; *Quest University*, *supra* at para. 136, referring to the RVO granted in *Re Comark Holdings Inc et al*, (July 13, 2020), Toronto CV-20-00642013-00CL (Ont. SCJ [Commercial List]) proceeding to preserve tax attributes, and para. 142, referring to the RVO granted in *JMB Crushing Systems Inc. (Re)*, 2020 ABQB 763 to preserve both licenses and tax attributes.

[39] Second Livingstone Affidavit, at paras. 66-67.

(a) the Company maintains various licenses that are required to maintain its operations. These licenses are held across Ontario, British Columbia, and Alberta;

(b) the Company has intellectual property in relation to its unique e-commerce digital platform; and

(c) the Company are facing significant liquidity constraints.[40]

40. Under a traditional asset sale transaction structure, some of the Company's licenses and intellectual property may be difficult to transfer to a purchaser and, to the extent that such transfer is possible, the steps required to proceed with such transfer will likely result in additional delays, costs and uncertainty.[41]

41. Additionally, the reverse vesting structure permits the maintenance of the Company's tax attributes, which includes its significant operating losses. The Company's tax attributes are a very important consideration for Southampton's decision to enter into the Purchase Agreement. The importance of maintaining the Company's tax attributes is also reflected in the terms of the Purchase Agreement with respect to the Pre-Closing Implementation Steps, which are proposed to be implemented in order to, among other things, preserve the tax losses in Ignite Services.[42]

42. ***The Purchase Agreement and the Transactions produce an economic result more favourable than any other alternative***. The Transactions contemplated in the Purchase Agreement represents the best possible outcome for the Applicants and their stakeholders in the circumstances.

43. The benefits of the Transactions include, among others:

(a) based on the price payable under the Purchase Agreement, most of the Applicants' secured liabilities will be satisfied, with all the outstanding priority Source Deductions being satisfied;

(b) various unsecured and contingent liabilities will be assumed;

(c) the Applicants will continue operations as a going concern, resulting in:

(i) most of the Company's employees to preserve their employment;

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[40] *Ibid* at paras. 69-70.
[41] *Ibid* at para. 68.
[42] *Ibid* at paras. 71-72.

(ii) the Company's landlord and a number of suppliers of services being able to maintain their business relationships with the Applicants; and

(iii) the Company's customers maintaining their ongoing relationships with the Company, which continues to place new insurance for customers, effect any amendments and cancellations to existing policies, and provides ongoing advice to meet its customers' insurance needs.[43]

44. The Sales Process leading up to the commencement of the CCAA Proceedings broadly canvassed the market of parties interested in the Company's business and assets. Further, the timelines under the Sales Process were reasonable. Accordingly, the purchase price payable under the Purchase Agreement represents the best possible outcome for the Applicants and their stakeholders, which resulted from a broad canvass of the market and a competitive process.[44]

45. The Monitor believes that the Purchase Agreement and the Transactions contemplated therein produce an economic result that would be at least as favourable as any other viable alternative, and likely leads to a better recovery.[45]

46. ***The RVO structure does not result in stakeholders being worse off than they would have been under any other viable alternative***. While a variety of liabilities will be vested out into Residual Co. in this structure, the same result would have occurred had the transaction been implemented in an asset transaction structure.[46]

47. The concept of Retained Liabilities in the Purchase Agreement provides a benefit for a variety of stakeholders that might not have otherwise had this benefit in a traditional asset vesting transaction structure. The Retained Liabilities include: (a) all Post-Filing Claims; (b) all liabilities of the Company arising from and after Closing that relate to events or circumstances that occurred after Closing; (c) tax liabilities attributable to any Pre-Closing Tax Period; (d) the Intercompany Loan; (e) indemnification obligations to current and former directors and officers of the Company, subject to certain conditions; and (f) those specific Retained Liabilities set forth in a Schedule to the Purchase Agreement.[47]

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[43] *Ibid* at paras. 11 and 62.
[44] *Ibid* at para. 61.
[45] First Report, at para. 44.
[46] Second Livingstone Affidavit, at para. 75.
[47] *Ibid*.

48. The Monitor believes that the reverse vesting structure produces an economic result that would be at least as favourable as any other viable alternative, and likely leads to a better recovery.[48]

49. ***The consideration payable pursuant to the Purchase Agreement is fair, reasonable, and reflects the importance of the assets being preserved under the RVO structure***. The consideration is fair and reasonable, as confirmed by the results of the Sales Process. The consideration allows for the satisfaction of most of the Applicants' secured liabilities. Further, the consideration provides the Company with the ability to implement the Transactions and exit the CCAA Proceedings as a going-concern.[49]

50. Furthermore, the Company's largest unsecured creditor, Primary (who will lose approximately $58.3 million) and likely fulcrum secured creditor, Aviva, are supportive of the Transactions contemplated under the Purchase Agreement.[50]

(B) Section 36 CCAA Factors

51. ***The process leading up to the Purchase Agreement and the Transactions was reasonable***. The execution of the Purchase Agreement represents the culmination of extensive solicitation efforts for investments beginning as early as November 2018 through the EY Sales Process and the MNP Sales Process.[51] The Sales Process which commenced in May 2023, was conducted properly, with support from the Applicants throughout, as necessary and required.[52]

52. Such efforts included, among others:

(a) the Applicants seeking refinancing or investment options;

(b) conducting the Sales Process and during the course of the Sales Process the Applicants and/or KPMG CF, as applicable;

(i) broadly canvassed the market and contacted a total of forty-eight (48) Potential Bidders;

(ii) participated in ongoing marketing calls and conducted various due diligence sessions;

[48] First Report, at para. 44.
[49] Second Livingstone Affidavit, at para. 76.
[50] *Ibid*.
[51] *Ibid* at para. 9.
[52] *Ibid* at para. 31.

(iii) provided technology demonstrations regarding the Company's digital platform;

(iv) participated in intensive, arm's-length negotiations; and

(v) carefully considered all offers received.[53]

53. The Monitor believes the process leading to the finalization of the Purchase Agreement and was reasonable in the circumstances.[54]

54. ***The Monitor approved the process leading up to the Purchase Agreement and the Transactions***. In the Monitor's view, the Sale Process was fair and robust and reasonable in the circumstances for the following reasons: (a) the Sale Process was structured in a manner similar to sale processes conducted in the context of other CCAA proceedings; (b) the Sale Process resulted in a broad canvassing of the market for potential purchasers of the Applicants' business; and (c) the Sale Process was administered by KPMG CF, which has extensive experience in marketing businesses and assets of this nature and included extensive consultation with the Applicants and Primary.[55]

55. The Purchase Agreement, in the Monitor's view, represents the best available offer arising out of the Sale Process and is anticipated to result in the highest realization for the Applicants' business and assets in the current circumstances. The Purchase Agreement benefits numerous stakeholders, including customers, employees, suppliers, insurance carriers and regulators, by facilitating a transaction that allows Ignite Services to continue operating as a going concern. In addition, the Transactions contemplated under the Purchase Agreement have the support of Aviva and Primary who are the Applicants' two largest creditors.[56]

56. ***The First Report states that the Purchase Agreement and the Transactions would be more beneficial to creditors than a sale or disposition under a bankruptcy***. The Monitor has conducted an analysis of whether the completion of the Transactions contemplated by the Purchase Agreement would be more beneficial to the Applicants' creditors and other stakeholders as compared to a sale or disposition of the business and assets of the Company under a bankruptcy.

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[53] *Ibid* at paras. 19-24, 31-43.
[54] First Report, at para. 32.
[55] *Ibid*.
[56] *Ibid* at para. 33.

57. The Monitor is of the view that the Transactions are more beneficial to the Applicants' creditors and stakeholders than a bankruptcy.[57]

58. ***Stakeholders were consulted during the sale process***. The Applicants consulted with their largest secured creditor, Aviva, and their largest unsecured creditor, Primary, throughout the Sales Process.[58]

59. ***The Purchase Agreement and the Transactions allow various stakeholders to maintain their rights***. As referenced above, the Applicants' stakeholders are no worse off than they would have been under any other viable alternative.

60. In addition, the Transactions result in creditors maintaining rights that they would otherwise have in an asset sale transaction. In the case of parties with existing contracts with the Company, though no assignment of contracts (consensual or through an assignment order) is contemplated as part of the Transactions, the Purchase Agreement provides for all contracts, other than the Excluded Contracts, to remain with the Company. The contracting parties therefore have the opportunity to continue supplying goods and services to the Company post-emergence from the CCAA Proceedings.[59]

61. While the Purchase Agreement does not require Southampton to cure pre-filing arrears under the Retained Contracts, most contract counterparties have been served with the Applicants' motion record to provide them with notice that their contracts may be retained or excluded as part of the Transactions.[60]

62. ***Sufficient effort has been made to obtain the best price and the Applicants have not acted improvidently***. As referenced above, the execution of the Purchase Agreement represents the culmination of extensive solicitation efforts for investments beginning as early as November 2018, and the most recent competitive Sales Process which commenced in May 2023.[61]

63. The Monitor believes that the Transactions are a result of the significant efforts of the Applicants and KPMG CF and represents the best possible outcome for the Company's business.[62]

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[57] *Ibid* at para. 34.
[58] Second Livingstone Affidavit, at paras. 26, 28, 31, 37, 43-44, 50, 53, 76.
[59] *Ibid* at para. 73.
[60] *Ibid*.
[61] *Ibid* at paras. 20, 31.
[62] First Report, at para. 33.

B. The Releases in the Approval and Reverse Vesting Order Should be Granted

(i) This Court has Jurisdiction to Approve the Releases Outside of a CCAA Plan of Compromise or Arrangement

64. The proposed Approval and Reverse Vesting Order includes Releases in favour of the Released Parties, being (a) the Applicants; (b) Residual Co.; (c) the Monitor; (d) KPMG CF; (e) Primary in its capacities as unsecured lender to the Applicants, the ultimate parent company of the Applicants, and the DIP Lender; and (f) Southampton, and each of their present and former directors, officers, employees, financial and legal advisors.[63]

65. The Release covers any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the Purchase Agreement, the Transactions contemplated therein, or the Applicants, their assets, business or affairs or administration of the Applicants, except any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, in connection with the Purchase Agreement or the closing documents.[64]

66. Releases for directors and officers, the Monitor and other advisors to debtor companies are a common feature of CCAA plans. The absence of a CCAA plan, however, does not deprive the court of the jurisdiction to approve releases for these parties. Section 5.1(1) of the CCAA, for example, which deals with releases relating to directors, is drafted permissively. It does not limit the jurisdiction of the Court under section 11 of the CCAA to make any order that it considers appropriate in the circumstances.[65]

67. CCAA courts have, on multiple occasions, approved releases in the absence of a CCAA plan, both on consent and in contested matters, including in the case of RVOs. These releases have been in favour of, among other parties, directors, officers, monitors, counsel, employees, shareholders and advisors.[66]

68. In *Harte Gold* and *Acerus*, Justice Penny, as part of an approval and vesting order in respect of a reverse vesting transaction, granted a release in favour of (a) the current and

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[63] Second Livingstone Affidavit, at para. 77.
[64] *Ibid* at para. 78.
[65] *CCAA*, *supra* s. 5.1(1); *Green Relief Inc. (Re)*, 2020 ONSC 6837 at paras. 23 and 25. [*Green Relief*]
[66] *Green Relief*, *supra* at para. 76; *Nelson Education Limited (Re)*, 2015 ONSC 5557 at para. 49; *Golf Town Canada Holdings Inc. (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL (CCAA Termination Order) (ONSC); *Green Growth Brands Inc. et al. (Re)*, (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL (Order Terminating CCAA Proceedings) (ONSC); *Fire & Flower Holdings Corp. (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL (Approval and Reverse Vesting Order).

former directors and officers of the debtor company and the new companies to be incorporated pursuant to the RVO, the monitor, and the purchaser and its directors and officers.[67]

69. Justice Penny in *Harte Gold*, citing Morawetz C.J.'s decision in *Lydian*, evaluated the requested release with reference to the following non-exhaustive factors:

(a) Whether the claims to be released are rationally connected to the purpose of the plan;

(b) Whether the plan can succeed without the releases;

(c) Whether the parties being released contributed to the plan;

(d) Whether the releases benefit the debtors as well as the creditors generally;

(e) Whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and

(f) Whether the releases are fair, reasonable and not overly-broad.[68]

70. Justice Penny noted that, as in most discretionary exercises, it is not necessary for each of the above factors to apply in order for a release to be granted.[69] Similarly, in *Green Relief*, Justice Koehnen granted director releases for pre-filing claims despite objections from potential claimants.[70]

71. The Releases sought by the Applicants are consistent with those that have previously been approved by this Court and as will be described below, are aligned with the factors set out in *Lydian*.

(ii) The Releases Should be Granted in the Circumstances

72. The Releases are reasonable and appropriate in the circumstances and should be granted for the following reasons:

(a) ***The claims to be released are rationally connected to the purpose of the restructuring***. The claims released are rationally connected to the Applicants' restructuring. The Releases will have the effect of diminishing claims against the

[67] *Harte Gold*, *supra* at para. 80; *Acerus*, *supra* at para. 38.
[68] *Harte Gold*, *supra* at paras. 80-86; *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54. [*Lydian*]. See also *Green Relief, supra*, where Justice Koehnen also cited Morawetz C.J.'s decision in *Lydian*.
[69] *Harte Gold*, *supra* at para. 80.
[70] *Green Relief*, *supra* at para. 76.

Released Parties, which in turn will diminish indemnification claims by the Released Parties against the Administration Charge and the D&O Charge. Given that a purpose of a CCAA proceeding is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the Applicants' restructuring.

(b) ***The Released Parties contributed to the restructuring***. The Released Parties made significant contributions to the Applicants' restructuring.[71] Among other things, the extensive efforts of the Applicants' director and management were instrumental to the conduct of the Sales Process and the continued operations of the Applicants during the CCAA Proceedings. The DIP Facility provided the Applicants with cash when the Applicants were facing an imminent liquidity crisis prior to commencement of the CCAA Proceedings Primary also funded the Company's operating losses for several years and was involved in the Sales Process and the Pre-Closing Implementation Steps with respect to the Transactions.[72] The Monitor also contributed to the CCAA Proceedings and Southampton was also involved in facilitating the Transactions.

With a proposed sale that, if approved by this Court and completed, will maintain the Company as a going concern, these CCAA Proceedings have had a successful outcome for the benefit of the Applicants' stakeholders. The Released Parties have clearly contributed time, energy and resources to achieve this outcome and accordingly, are deserving of the Releases.

(c) ***The Releases are fair, reasonable and not overly broad***. The Releases are fair and reasonable. The Releases are sufficiently narrow in the circumstances, as the Releases carve out and preserve claims that are not permitted to be released pursuant to s. 5.1(2) of the CCAA and claims arising from fraud or wilful misconduct.[73]

(d) ***The Applicants' restructuring may be jeopardized without the Releases***. The Releases will bring certainty and finality for the Released Parties. Additionally, the Applicants and the Monitor believe that the Releases are also an essential component to the Transactions.[74]

(e) ***The Releases benefits the Applicants as well as the creditors generally***. The Releases benefit the Applicants' creditors and other stakeholders by reducing the

[71] Second Livingstone Affidavit, at para. 80.
[72] *Ibid* at para. 8.
[73] *Ibid* at para. 78.
[74] *Ibid* at para. 81.

potential for the Released Parties to seek indemnification from the Applicants, thus minimizing further claims against the Applicants.

(f) ***Contract counterparties and creditors had knowledge of the nature and effect of the Releases***. Creditors on the Service List were served with materials relating to this motion. The Applicants also took additional efforts to serve other creditors who are not on the Service List. To date, no creditor has objected to the Releases.

73. The Monitor believes that the Releases are appropriate in the circumstances and are an essential component to the Transactions.[75]

C. Confidential Appendix "A" and Confidential Appendix "B" to the First Report Should be Sealed

74. 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."[76]

75. 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.[77]

76. 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. [78]

77. 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.[79] In particular:

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[75] First Report, at para. 49.
[76] *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.
[77] *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*]
[78] *Sierra Club*, *supra* at para. 55; *Sherman Estate*, *supra* at paras. 41-43.
[79] *Re Danier Leather Inc.*, 2016 ONSC 1044 at para. 82; *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras. 23-28.

(a) Chief Justice Morawetz recently granted a sealing order in *Bridging Finance* in respect of bids and a receiver's summary of the economic terms of such bids, because they contained confidential information[80];

(b) Justice Penny very recently granted a sealing order in *Acerus* in respect of a confidential summary of bids received in a SISP[81], which is substantially the same in all material respects to the confidential summary of bids in the Confidential Appendix that the Applicants are seeking a sealing order in respect of;

(c) Justice Osborne very recently granted a sealing order in *Fire & Flower* in respect of a confidential summary of the economics of competing bids received in a SISP[82], which is substantially the same in all material respects to the confidential summary of bids in the Confidential Appendix that the Applicants are seeking a sealing order in respect of; and

(d) Justice Osborne very recently granted a sealing order in *Silicon Valley Bank* in respect of an unredacted purchase agreement and a confidential summary of bids[83], which is substantially the same in all material respects to the Confidential Appendix that the Applicants are seeking a sealing order in respect of.

78. The proposed sealing order is supported by considerations of: (a) public interest[84]; (b) serious risk that public disclosure of the unredacted Purchase Agreement and confidential summary of offers could impair any efforts to remarket the Company if the Transactions do not close; (c) lack of reasonable alternative to a sealing order to mitigate the aforementioned risks[85]; and (d) proportionality, where the proposed sealing order seeks to only keep confidential only the redacted pricing and certain economic terms in the Purchase Agreement and the deal structure information contained in the confidential summary of bids received.

79. The proposed sealing order provides for the Confidential Appendix "A" to be sealed until further Order of the Court, and Confidential Appendix "B" to be sealed only until either (a)

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[80] *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857 at paras. 50-54. [*Bridging Finance*]
[81] *Acerus*, *supra* at para. 39.
[82] *Fire & Flower*, *supra* at paras. 35-36.
[83] *Attorney General of Canada v Silicon Valley Bank*, 2023 ONSC 4703. [*Silicon Valley Bank*]
[84] See for example, *Danier Leather Inc., Re*, 2016 ONSC 1044 at para. 84, *Springer Aerospace Holdings Ltd., Re*, 2022 ONSC 6581 at paras. 29-30; *Just Energy, supra*, at para. 72.
[85] *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Court File No. CV-23-00693758-00CL (Endorsement of Justice Osborne) at para. 62.

closing of the Transactions contemplated under the Purchase Agreement; or (b) by further Order of the Court.[86]

80. The Monitor supports the Applicants' request to seal the confidential appendices.[87]

D. The Stay Extension Should be Granted

81. The current Stay Period expires on November 10, 2023. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.[88]

82. The Applicants are seeking to extend the Stay Period from November 10, 2023 to and including January 31, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to provide the Applicants with continued breathing space while they attempt to maximize value for the benefit of their stakeholders through the CCAA Proceedings by expeditiously closing the Transactions contemplated under the Purchase Agreement.[89]

83. The Purchase Agreement contemplates an Outside Date of December 7, 2023, to close the Transactions.[90]

84. Since the granting of the Initial Order, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA Proceedings. Among other things, the Applicants have reached out to several of their stakeholders, including the Company's employees, suppliers, landlord, and the regulatory entities in each province for which the Company has ongoing operations.[91]

85. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to January 31, 2024.[92] As detailed in Cash Flow Forecast, the Applicants are expected to maintain liquidity to fund operations up to January 31, 2024 (subject to closing the Transactions).[93]

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[86] *Ibid* at para. 58.
[87] First Report, at para. 51.
[88] CCAA, *supra* s. 11.02(2) and (3).
[89] Second Livingstone Affidavit, at para. 82.
[90] *Ibid* at para. 59.
[91] *Ibid* at para. 83.
[92] First Report, at para. 54.
[93] Second Livingstone Affidavit, at para. 85.

86. The Monitor supports the proposed extension of the Stay Period to and including January 31, 2024.[94]

E. The Pre-Filing Payments to the Critical Supplier Should be Approved

87. The Applicants are seeking authorization to make payments for certain arrears owing prior to the Filing Date to suppliers that provide the Applicants with essential services. At this time, the only such "critical supplier" that the Applicants are aware of is Tri-Quest, the Company's Principal Broker.[95]

88. This Court has previously permitted payments to be made to unsecured creditors if certain creditors refuse to continue to supply a debtor company unless they are paid their pre-filing claims, thus imperiling the debtor company's business. In such cases, this Court has empowered the monitor to exercise its discretion in approving payments to critical unsecured creditors with respect to their pre-filing claims. [96]

89. CCAA courts have permitted the payment of pre-filing obligations owing to suppliers where those payments would be of considerable future benefit to the debtor company and to the value of the estate as a whole. [97]

90. The cooperation of Tri-Quest is necessary for the Applicants to maintain their operations, and in certain circumstances, for the Applicants to be compliant with applicable provincial insurance legislation and maintenance of regulatory licenses. [98] The Applicants do not have any readily available means to replace Tri-Quest; even if they did, doing so would be time consuming and costly. [99]

91. The proposed form of ARIO provides that payments to Tri-Quest will only be made with the express authorization of the Monitor but only to the extent such amounts are, in the opinion of the Monitor, required to be paid for the success of the Restructuring (as defined in the ARIO). This provides the necessary flexibility required to deal with the circumstances in a time-sensitive manner.[100]

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[94] First Report, at para. 54.
[95] *Ibid* at para. 58.
[96] *Re Toys "R" Us (Canada) Ltd.*, 2017 ONSC 5571 at para 9; *Air Canada (Re)*, 2003 CanLII 64280 (ONSC); *Peraso Technologies Inc. Re*, Order issued September 16, 2020 [Court File No. CV-20-00642010-00CL]
[97] *EarthFirst Canada Inc., Re*, 2009 ABQB 78 at para. 9; *Eddie Bauer Of Canada, Inc. (Re)*, 2009 CanLII 32699 (ONSC) at para. 22; *Clover Leaf Holdings Company, Re.*, 2019 ONSC 6966 at paras. 24-27.
[98] Second Livingstone Affidavit, at para. 89.
[99] *Ibid* at para. 90.
[100] *Ibid* at para. 91.

92. The Monitor[101] and the DIP Lender[102] are both support the Applicants' request to make payments to Tri-Quest.

F. This Court Should Grant Authority for the Applicants to Draw Increased Amounts Under the DIP Facility and Grant a Corresponding Increase to the DIP Lender's Charge

93. Pursuant to the Initial Order, this Court approved the Applicants' execution of the DIP Facility Agreement and granted a corresponding DIP Lender's Charge.[103] The Applicants are now seeking authority to increase the amounts which may be drawn under the DIP Facility up to the maximum principal amount of $1.1 million.[104]

94. The Applicants submit that the requested increase to the maximum amount that they can borrow and/or guarantee under the DIP Facility Agreement to $1.1 million and the corresponding increase of the DIP Lender's Charge are fair and reasonable and that the criteria from subsections 11.2(1) and 11.2(4) of the CCAA support approval of same. In particular, the Cash Flow Forecast shows that the Applicants require access to the full amount of the DIP Facility to provide the Applicants with necessary funding to continue their business and operations and to advance their restructuring efforts.[105]

95. All secured creditors who are affected by the proposed DIP Lender's Charge, including the increase thereof, have been served with a copy of the Applicants' Motion Record.[106]

96. The Monitor supports the increase to the maximum amount permitted to be drawn on the DIP Facility by the Applicants and the corresponding increase to the DIP Lender's Charge.[107]

G. The Priority of the Charges and Encumbrances, As Among Them, Should be Approved

97. With respect to the foregoing relief, the Applicants adopt and rely on their prior submissions regarding the appropriateness of the Charges and their relative priority as set out in the Applicants' Factum dated October 27, 2023. The Charges granted in the Initial Order currently rank subordinate to any Encumbrance in favour of any person who did not receive notice of the application for the Initial Order.

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[101] First Report, at para. 58.
[102] Second Livingstone Affidavit, at para. 92.
[103] *Ibid* at para. 13.
[104] *Ibid* at para. 4.
[105] First Report, at paras. 55-56.
[106] *Ibid* at para. 94.
[107] *Ibid* at para. 57.

98. The Applicants have at this time have provided notice of the within motion to all parties holding an Encumbrance. As such, the Applicants are proposing that the Charges be given priority over all Encumbrances, except that the DIP Lender's Charge shall not rank in priority to any super-priority claim of the Canada Revenue Agency, which priority is not reversed by operation of applicable law (the "**CRA Priority Payables**").[108]

99. The priority proposed in respect of the Charges is appropriate given:

(a) priority for charges of this nature is routinely provided for in CCAA proceedings;

(b) no secured creditor has advised the Applicants that they are opposed to the proposed priority of the Charges;[109] and

(c) given the authority established by the Supreme Court of Canada in *Canada v. Canada North Group Inc*,[110] where court-ordered charges were found to be superior to deemed Crown trust claims for unremitted source deductions, in support of the notion that Courts in this context have authority and broad discretionary power, namely under section 11 of the CCAA, to order priority and super-priority charges to facilitate a restructuring that it considered appropriate in the circumstances.[111]

PART V – ORDER SOUGHT

100. For the reasons set out above, the Applicants respectfully submit that the Court should grant the Approval and Reverse Vesting Order and the ARIO in the form attached to the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of November, 2023.

/s Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

[108] *Ibid* at para. 94.
[109] *Ibid*.
[110] 2021 SCC 30.
[111] *Ibid* at paras. 4 and 57.

SCHEDULE "A"
LIST OF AUTHORITIES

Cases

1. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
2. *Air Canada (Re)*, 2003 CanLII 64280 (ONSC)
3. *Arrangement relatif à Black Rock Metals Inc.*, 2022 QCCS 2828
4. *Arrangement relatif à Nemaska Lithium Inc.*, 2020 QCCA 1488
5. *Attorney General of Canada v Silicon Valley Bank*, 2023 ONSC 4703
6. *Canada v. Canada North Group Inc.*, 2021 SCC 30
7. *CannaPiece Group Inc. v Marzilli*, 2023 ONSC 3291
8. *Clover Leaf Holdings Company, Re.*, 2019 ONSC 6966
9. *Danier Leather Inc., Re*, 2016 ONSC 1044
10. *EarthFirst Canada Inc., Re*, 2009 ABQB 78
11. *Eddie Bauer Of Canada, Inc. (Re)*, 2009 CanLII 32699 (ONSC)
12. *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009
13. *Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934
14. *Green Relief Inc. (Re)*, 2020 ONSC 6837
15. *Harte Gold (Re)*, 2022 ONSC 653
16. *In the Matter of the Companies' Creditors Arrangement Act and In the Matter of CannaPiece Group Inc.*, 2023 ONSC 841
17. *JMB Crushing Systems Inc. (Re)*, 2020 ABQB 763
18. *Just Energy Group Inc. et. al. v Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
19. *Karrys Bros, Ltd. (Re)*, 2014 ONSC 7465
20. *Lydian International Limited (Re)*, 2020 ONSC 4006

21. *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586

22. *Nelson Education Limited (Re)*, 2015 ONSC 5557

23. *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857

24. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347

25. *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Ont. S.C.J. [Commercial List], (Endorsement of Justice Osborne)

26. *Peraso Technologies Inc. Re*, Order issued September 16, 2020 [Court File No. CV-20-00642010-00CL]

27. *Quest University (Re)*, 2020 BCSC 1883

28. *Re Bloom Lake*, 2015 QCCS 1920

29. *Re Danier Leather Inc.*, 2016 ONSC 1044

30. *Re Nelson Education Limited*, 2015 ONSC 5557

31. *Re Tool-Plas Systems Inc.*, 2008 CanLII 54791 (Ont. Sup. Ct. J.)

32. *Re Toys "R" Us (Canada) Ltd.*, 2017 ONSC 5571

33. *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (Ont. CA)

34. *Sherman Estate v. Donovan*, 2021 SCC 25

35. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41

36. *Springer Aerospace Holdings Ltd., Re*, 2022 ONSC 6581

37. *Target Canada Corp, Re*, 2015 ONSC 1487

SCHEDULE "B"
RELEVANT LEGISLATION

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

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Payment — equity claims

6 (8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

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.

Stays, etc. — other than 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.

11.02 (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

11.02 (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.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

***Courts of Justice Act*, R.S.O. 1990, c C.43**

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court File No. CV-23-00708635-00CL

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

AND IN THE MATTER OF 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

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