Court File No. CV-14-10518-00CL

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 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

REPLY FACTUM OF THE AD HOC COMMITTEE OF SECURED NOTEHOLDERS

(Meetings Order and Plan Filing Order)

October 2, 2015

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(Meetings Order and Plan Filing Order)

PART I – OVERVIEW

1. The only issue to be considered at the continued Meetings Order hearing to be held on October 6, 2015 is whether the Applicants have met the low threshold for filing of the Plan.

2. The Plan and the Settlement Agreements are the result of multiple mediations and months of settlement discussions among the Applicants, the CRO, the Senior Secured Lenders, the Secured Noteholders (as represented by the Ad Hoc Committee), the Securities Class Action Plaintiffs, the Consumer Class Action Plaintiffs, DirectCash and the former directors and officers of Cash Store and their insurers (collectively, the "**D&Os**") to

achieve a consensual resolution of a myriad of litigation involved in these CCAA proceedings.[1]

3. The Plan and the Settlement Agreements collectively serve to finally free-up the available assets of the Applicants for distribution to their creditors, and through the combination of the CCAA proceedings and the various class action proceedings, to bring about settlement recoveries for other important affected stakeholders of the Applicants, including the shareholders and consumer loan customers across Canada. In Ontario alone, over 47,000 consumer loan customers may receive a distribution as a result of the Plan and the Settlement Agreements.

> Monitor's Fifteenth Report to the Court dated February 26, 2015 at paras. 30-31.

4. As discussed at the initial Meetings Order hearing held on September 30, 2015, the Plan has the unanimous support of all of the foregoing parties. In particular, the Plan has the support of 100% of the Senior Secured Lenders who will be voting on the Plan in the first class, and over 70% of the Secured Noteholders who will be voting on the Plan in the second class. The Monitor fully supported the entry of the Meetings Order at the hearing held on September 30, 2015, including the proposed classification under the Plan, which was approved under the form of Meetings Order entered on September 30, 2015.

> Affidavit of William E. Aziz sworn September 23 ("**Aziz Affidavit**") at para. 29, Motion Record of the Applicants dated September 23, 2015 ("**Applicants' Motion Record**"), page 14.
>
> Aziz Affidavit at para. 32, Applicants' Motion Record, page 22.
>
> Monitor's Nineteenth Report to the Court dated September 25, 2015 ("**Monitor's Nineteenth Report**"), at paras. 30-32.

5. The threshold to be satisfied for the filing of a plan and the calling of a meeting of creditors is **low**. In *Nova Metal Products Inc. v. Comiskey (Trustee of)*, the Ontario Court of Appeal held that:

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[1] Capitalized terms used herein but not defined have the meanings ascribed to them in the Applicant's Factum dated September 25, 2015 filed in support of the Applicants' motion dated September 23, 2015 for entry of the Meetings Order.

> I agree that the feasibility of the plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors: S.E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act," at pp. 594-595. I would not, however, impose a heavy burden on the debtor company to establish the likelihood of ultimate success from the outset. As the Act will often be the last refuge for failing companies, it is to be expected that many of the proposed plans of reorganization will involve variables and contingencies which will make the plan's ultimate acceptability to the creditors and the Court very uncertain at the time the initial application is made [emphasis added].
>
> *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289, 1 C.B.R. (3d) 101 at para. 90 (Ont. C.A.); Book of Authorities of the Applicants ("**Book of Authorities**"), Tab 1.

6. The Court is not required to address the fairness and reasonableness of the Plan at this stage. Unless it is obvious that there is "**no hope**" that a plan would be approved by the affected creditors at the meeting or the court at the sanction hearing, a debtor company should not be prevented from presenting a plan to its creditors at a meeting.

> *ScoZinc Ltd., Re,* 2009 NSSC 163, 55 C.B.R. (5th) 205 at paras. 4-7; Book of Authorities, Tab 3.
>
> *Jaguar Mining Inc., Re.*, 2014 ONSC 494 at para. 48, Book of Authorities of the Ad Hoc Committee, Tab 1.

7. Given that the evidence is that the Plan will be approved by the creditors at the Meetings, the only other basis on which the CCAA Court could elect to deny the Plan Filing Order would be if the Court came to the view now that it was clear, even at this early stage, that there was "no hope" that the Plan could be approved by the Court at the Sanction Hearing scheduled for November 19, 2015, under any circumstances and irrespective of any amendments that might be made between now and the Sanction Hearing seven weeks from now. The Ad Hoc Committee is not aware of any CCAA case where a CCAA court has made that kind of determination on the kind of facts present here, and KPMG has not provided any relevant examples.

8. In order for KPMG to succeed on its objection to entry of the Plan Filing Order, KPMG must identify fundamental elements of this Plan that are so central and so clearly offside the CCAA that – regardless of their ultimate fairness and reasonableness under the

circumstances, which is to be considered at the Sanction Hearing and not now – the Plan cannot even be filed and creditors cannot even be asked to vote on it.

9. KPMG raises four arguments in their attempt to satisfy this **very high hurdle**. For the reasons discussed below, each one of their arguments fails (i) because it is incorrect factually, legally or both and (ii) because even if it were correct, none of the issues raised are significant enough to prevent the filing of the Plan at this early stage, and all such issues can and should be considered (if at all) in light of all the circumstances at the Sanction Hearing, to the extent that they are not resolved among the parties in the seven weeks that remain between now and the Sanction Hearing.

10. Most of the arguments that KPMG raises do not even concern matters that would affect KPMG as a remaining defendant or as an unsecured creditor. It is clear that KPMG asserts these positions merely for leverage in the negotiations over the true issue – the appropriate procedures and terms for the *Pierringer* provisions of the Plan and Sanction Order, which are Sanction Hearing matters they would prefer be addressed now. That tactic is not appropriate for a Meetings Order or Plan Filing Order hearing and deprives the parties of the time that is available between now and November 19th to address these matters, as needed.

11. The Ad Hoc Committee notes that in the *Sino-Forest* proceedings, the *Pierringer* provision and related production and document retention matters were not even addressed until after the CCAA plan had been sanctioned, let alone voted upon.

> See *Sino-Forest Corp., Re*, Sanction Order granted December 10, 2012 Toronto CV-12-9667-00CL (Ont. Sup. Ct. J. [Comm. List]), Book of Authorities of the Ad Hoc Committee, Tab 2.
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> See *Sino-Forest Corp., Re*, Document Retention Order granted January 15, 2013 Toronto CV-12-9667-00CL (Ont. Sup. Ct. J. [Comm. List]), Book of Authorities of the Ad Hoc Committee, Tab 3.
>
> See *Sino-Forest Corp., Re*, Production Protocol Order granted March 26, 2013 Toronto CV-12-9667-00CL (Ont. Sup. Ct. J. [Comm. List]), Book of Authorities of the Ad Hoc Committee, Tab 4.

PART II – BACKGROUND

12. This case has always been about three general matters – first, to attempt to resolve the company's issues with the pay day loan regulators so that the company could resume operations in its key Ontario market (which was not possible and led to an early and complete cessation of the key Ontario business that magnified losses for creditors), second, to sell the company's assets pursuant to Court-approved sales processes (which was concluded in April 2015 with marginal sale results that further compounded losses for creditors) and, third, to deal with all of the litigation, in one form or another.

Aziz Affidavit at paras. 6-7; Motion Record of the Applicants, pages 10-11.

13. The parties have dealt with the litigation through mediation and settlement, over the course of many long and expensive months. The Priority Motion Settlement Agreement was entered into on June 19, 2015 following a mediation with The Honourable Mr. Dennis O'Connor in early June 2015 and extended settlement discussions thereafter. The DirectCash Global Settlement Agreement was entered into on September 20, 2015 following a mediation with The Honourable Mr. Douglas Cunningham in July 2015 and extended settlement discussions thereafter. The D&O Global Settlement Agreement was entered into on September 22, 2015, following two mediations with The Honourable Mr. George Adams in 2014 and protracted settlement discussions thereafter.

Aziz Affidavit at paras. 13-24; Applicants' Motion Record, pages 13-18.

14. The Settlements concern the principal parties associated with the Cash Store – the Applicants, their directors and officers, DirectCash as a counterparty to Cash Store, and the various plaintiffs and creditor groups affected by the Applicants and DirectCash – being the Ad Hoc Committee of Secured Noteholders, the Securities Class Action Plaintiffs, the Consumer Class Actions Plaintiffs and the CCAA estate as a plaintiff as against the Cash Store, its directors and officers and DirectCash.

15. In total, the Plan and the Settlements propose to resolve all of the following litigation:

Pending CCAA estate actions against certain D&Os, DirectCash and/or certain TPLs:

(i) the Estate D&O Action – *The Cash Store Financial Services Inc. v. Gordon Reykdal, William Dunn, Edward McClelland, J. Albert Mondor, Rob Chicoyne, Robert Gibson, Michael Shaw, Barret Reykdal, S. William Johnson, Nancy Bland, Cameron Schiffner and Michael Thompson*, Ontario Superior Court of Justice (Commercial List), Court File No. CV-14-10772-00CL;

(ii) the Estate DirectCash Action – *1511419 Ontario Inc. (former The Cash Store Financial Services Inc.), 1545688 Alberta Inc. (formerly The Cash Store Inc.) and 1152919 Alberta Inc. (formerly Instaloans Inc.) v. DirectCash Bank, DirectCash Payments Inc., DirectCash Management Inc., DirectCash Canada Limited Partnership, DirectCash ATM Processing Partnership and DirectCash ATM Management Partnership*, Ontario Superior Court of Justice (Commercial List), Court File No. CV-15-531577;

(iii) the Estate Trimor TPL Action – *The Cash Store Financial Services Inc. v. Trimor Annuity Focus Limited Partnership, Trimor Annuity Focus Limited Partnership #2, Trimor Annuity Focus Limited Partnership #3, Trimor Annuity Focus Limited Partnership #4, Trimor Annuity Focus Limited Partnership #6, 367463 Alberta Ltd., 0678786 BC Ltd., Bridgeview Financial Corp., Inter-Pro Property Corporation (USA), Omni Ventures Ltd., FSC Abel Financial Inc., L-Gen Management Inc., Randy Schiffner and Slade Schiffner,* Ontario Superior Court of Justice (Commercial List) on November 27, 2014, Court File No. CV-14-10770-00CL;

(iv) the Monitor's TUV claims against TPLs – Notice of Motion by the Monitor dated September 18, 2014 in these CCAA proceedings alleging transfers at undervalue in respect of certain transactions with TPLs;

Pending securities class actions against Cash Store and certain D&Os:

(v) *Fortier v. The Cash Store Financial Services, Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV- 13-481943-00CP;

(vi) *Globis Capital Partners, L.P. v. The Cash Store Financial Services Inc: et al.*, Southern District of New York, Case 13 Civ. 3385 (VM);

(vii) *Hughes v. The Cash Store Financial Services, Inc. et al.*, Alberta Court of Queen's Bench, Court File No. 1303 07837;

(viii) *Dessis v. The Cash Store Financial Services, Inc. et al.*, Quebec Superior Court, No: 200-06-000165-137;

Pending Ontario consumer class action claims against Cash Store, *certain* ***D&Os, DirectCash and/or certain TPLs:***

(ix) *Yeoman v. The Cash Store Financial Services Inc., The Cash Store Inc., Instaloans Inc., DirectCash Bank, DirectCash ATM Processing Partnership, DirectCash ATM Management Partnership, DirectCash Payments Inc., DirectCash Management Inc., DirectCash Canada Limited Partnership,* Ontario Superior Court of Justice, Court File No. 7908/12 CP;

(x) *Payne and Yeoman v. Trimor Annuity Focus Limited Partnership, Trimor Annuity Focus Limited Partnership #2, Trimor Annuity Focus Limited Partnership #3, Trimor Annuity Focus Limited Partnership #4, Trimor Annuity Focus Limited Partnership #5 and Trimor Annuity Focus Limited Partnership #6*, Ontario Superior Court of Justice, Court File No. 4172/14 CP;

(xi) *Yeoman v. Gordon J. Reykdal, Michael J.L. Thomson, Halldor Kristjansson and Edward McClelland*, Ontario Superior Court of Justice, Court File No. 4171/14 CP;

Pending Western Canada consumer class *action claims against Cash Store, certain* ***D&Os and/or DirectCash:***

(xii) *Bodnar et al. v. The Cash Store Financial Services Inc. et al.,* Supreme Court of British Columbia, Vancouver Reg. No. S041348;

(xiii) *Stewart v. The Cash Store Financial Services Inc. et al.,* Supreme Court of British Columbia, Vancouver Reg. No. S154924;

(xiv) *Stewart v. The Cash Store Financial Services Inc. et al.,* Supreme Court of British Columbia, Vancouver Reg. No. S126361;

(xv) *Tschritter et al. v. The Cash Store Financial Services Inc. et al.,* Alberta Court of Queen's Bench, Calgary Reg. No. 0301-16243;

(xvi) *Efthimiou v. The Cash Store Financial Services Inc. et al.,* Alberta Court of Queen's Bench, Calgary Reg. No. 1201-11816;

(xvii) *Meeking v. The Cash Store Financial Services Inc. et al.,* Manitoba Court of Queen's Bench, Winnipeg Reg. No. CI 10-01-66061;

(xviii) *Rehill v. The Cash Store Financial Services Inc. et al.,* Manitoba Court of Queen's Bench, Winnipeg Reg. No. CI 12-01-80578;

(xix) *Ironbow v. The Cash Store Financial Services Inc. et al.,* Saskatchewan Court of Queen's Bench, Saskatoon Reg. No. 1452 of 2012;

(xx) *Ironbow v. The Cash Store Financial Services Inc. et al.,* Saskatchewan Court of Queen's Bench, Saskatoon Reg. No. 1453 of 2012;

DirectCash Claims against Cash Store and certain D&Os:

(xxi) DirectCash lift stay request to Applicants and Monitor dated April 27, 2015 to permit DirectCash to issue third party notices against the Applicants; and

(xxii) DirectCash lift stay request to Applicants and Monitor dated April 27, 2015 to permit DirectCash to issue third party notices against the D&Os.

16. The settlements are central to the resolution of these CCAA proceedings and are highly interconnected. For example:

    (a) The Asset Sale Proceeds could not be distributed until the Priority Motion Settlement was achieved.

    (b) The Priority Motion Settlement could not be implemented without the DirectCash Settlement because DirectCash subsequently asserted a variety of claims to the Asset Sale proceeds, which it intended to pursue absent a settlement of the myriad of claims against it. In addition, DirectCash itself was holding a significant amount of the Applicants' funds.

    (c) The D&O/Insurer Global Settlement was not achieved until the DirectCash Global Settlement was achieved because DirectCash asserted significant cross-claims against the D&Os and the D&O insurance.

    (d) The DirectCash Global Settlement was not capable of being implemented without a settlement of the Applicants' claims against DirectCash, DirectCash's claims against the Applicants, and all of the various consumer class action claims against DirectCash.

17. In addition, it is a condition precedent to each of the Settlements that the Plan be approved and the Sanction Order be entered and, without the approval of the CCAA court and the releases contemplated in exchange for the significant settlement payments and other consideration to be provided by the released parties, none of the Settlements can be implemented and the estate cannot distribute the Asset Sale Proceeds or any other recoveries the estate may have realized in the Settlements.

    See, for example, Articles 2 and 7 of DirectCash Settlement Agreement; Applicants' Motion Record, pages 111-117.

    See, for example, sections 36 and 37 of D&O/Insurer Global Settlement Agreement; Applicants' Motion Record, pages 139-141.

18. The Settlements do not include, among others, the actions that have been commenced by the Applicants against KPMG in its capacity as the auditor of Cash Store, Canaccord in

its capacity as financial advisor to Cash Store, or Cassels Brock in its capacity as former legal counsel to Cash Store (collectively, the "**Remaining Defendants**").

19. As is standard in a multi-defendant proceeding, the Plan contains a *Pierringer* provision in order to address the dynamic between settling and non-settling defendants. The Sanction Order will also contain such a provision.

See Article 7.6 of the proposed CCAA Plan; Applicants' Motion Record, pages 81-82.

20. The Plan will also create a Litigation Funding and Indemnity Reserve in an amount sufficient to protect the Remaining Defendants in the event that any adverse costs are awarded against the Applicants in favour of the Remaining Defendants in the Remaining Estate Actions.

21. Beyond that, the Remaining Defendants are nominal unsecured creditors (KPMG claims to have an outstanding invoice of approximately $15,000.00) in a case in which secured creditor claims are being severely compromised, and unsecured claims are unaffected.

PART III – ORDER REQUESTED

THE PLAN

22. The Plan affects the Claims of the Senior Secured Lenders and the Secured Noteholders. All of the Applicants' Senior Secured Lenders support the Plan and will vote in favour of the Plan. All of the members of the Ad Hoc Committee, which represents over 70% of the outstanding principal amount of the Secured Notes, support the Plan and will vote in favour of the Plan.

Aziz Affidavit at paras. 29 and 32; Applicants' Motion Record, pages 21-22.

Monitor's Nineteenth Report, at paras. 30-32.

23. The Plan does not make any distributions to unsecured creditors because the claims of the Secured Noteholders are significantly compromised under the Plan. That said, the Plan does not affect the claims of the unsecured creditors either.

Monitor's Nineteenth Report, at paras. 14-15.

24. The Plan does not make any distributions to shareholders. While one of the settlements involves a distribution for shareholders out of the D&O/Insurer Global Settlement in respect of the shareholder securities class action claims that have been settled, the Plan is express in section 4.4(a) that this distribution will be made pursuant to orders to be granted by the class action court supervising the shareholder securities class action, and pursuant to a Plan of Allocation to be approved by that class action court. Section 4.4(a) of the Plan provides that:

> **4.4 Treatment of Securities Class Action Class Members in respect of D&O/Insurer Global Settlement**
>
> (a) Pursuant to the D&O/Insurer Global Settlement and the applicable Class Action Settlement Approval Orders, the D&O/Insurer Securities Class Action Settlement Amount will be paid to Siskinds, in trust for the Securities Class Action Class Members, in accordance with sections 39(a) and 39(b) of the D&O/Insurer Global Settlement Agreement and Section 6.3(q) of the Plan, ***with such amounts to be allocated and distributed in accordance with Order(s) to be entered by the Class Action Court supervising the Ontario Securities Class Action, and substantially in accordance with the Plan of Allocation appended hereto as Schedule D***. [emphasis added]

CCAA Plan, section 4.4(a); Applicants' Motion Record, page 68.

25. The "Plan of Allocation" referenced in section 4.4(a) of the Plan is defined in the Plan as follows:

> "**Plan of Allocation**" means the plan for distributing the D&O/Insurer Securities Class Action Settlement Amount, including distribution of the Net D&O/Insurer Securities Class Action Settlement Proceeds for Certain Holders of the Secured Notes, ***which shall be presented to the Class Action Court supervising the Ontario Securities Class Action for approval substantially in the form appended as Schedule D to this Plan***. [emphasis added]

CCAA Plan, section 1.1; Applicants' Motion Record, page 53.

26. The "Plan of Allocation" for distribution of the securities class action settlement amount realized for shareholders and for certain noteholders (who claim to have relied on various misrepresentations made by the D&Os across the securities class action class period from November 24, 2010 through to February 13, 2014 (which predates the CCAA filing in April 2014)) is appended to the Plan. Noteholders as of the CCAA record date, who are the voting creditors under the CCAA Plan and may or may not also qualify as class members in the noteholder securities class action, will thereby have information regarding that aspect of the Settlements when voting on the Plan, given that the approximately $9 million of securities class action settlement proceeds for any such noteholders represent a significant amount of the overall settlement proceeds.

27. In short, the Ad Hoc Committee was of the view that, notwithstanding that the Plan of Allocation will be approved in the securities class action, it should also be appended to the Plan so that as many noteholders as possible are made aware of it, even though the noteholders receiving distributions under the Plan (which will be noteholders as of the CCAA record date, which will be the filing date of April 14, 2014 or later) may not be the same group as the noteholders receiving distributions under the class action Plan of Allocation for the securities class action period (which is from November 24, 2010 through to February 13, 2014).

28. In any event, as regards the distribution of the securities class action settlement proceeds realized for both the shareholders and the noteholders within the securities class action class period, those distributions will be made through the class action Plan of Allocation to be approved by the class action court and not the Plan, as the Plan makes clear in section 4.4(a) thereof.

29. This is the exact same structure as was used in the combined *Sino-Forest* CCAA and class action proceedings. In those proceedings, the releases for E&Y were conferred under the CCAA Plan but the $117 million of settlement proceeds was distributed to shareholders as the securities class action plaintiffs, pursuant to a "Claims and Distribution Protocol" approved by the supervising class action court as part of the class action proceedings.

See, for example, *Sino-Forest Corp., Re*, Order granted March 28, 2013 by the Ontario Superior Court of Justice approving the E&Y settlement; Book of Authorities of the Ad Hoc Committee, Tab 5.

See, for example, *Sino-Forest Corp., Re*, Order granted December 27, 2013 by the Ontario Superior Court of Justice approving the "Claims and Distribution Protocol" appended thereto as Schedule "A"; Book of Authorities of the Ad Hoc Committee, Tab 6.

30. The Plan does not compromise any of the claims listed in sections 6(3), 6(4), 6(5) or 6(6) of the CCAA.

Aziz Affidavit at para.36; Applicants' Motion Record, page 27.

31. The Plan does not compromise any of the claims listed in section 5.1(2) or 19(2) of the CCAA. The Plan only includes a procedural requirement that leave of the CCAA court be obtained before any such claims may be pursued against any of the Released Parties, which is appropriate under the circumstances for the reasons discussed below.

THE CCAA TEST FOR FILING OF A PLAN PURSUANT TO A MEETINGS ORDER

32. The Court has authority under sections 4 and 5 of the CCAA to order a meeting of creditors or classes of creditors, whether secured or unsecured.

CCAA, ss. 4 and 5.

33. The Plan has the overwhelming support of the creditors that will be affected by it. The Monitor has stated in its Nineteenth Report that it has reviewed and was consulted with respect to the development of the Meetings Order and the Plan and is of the view that it was appropriate and reasonable for the Applicants to file the Plan and to seek the approval of the Plan by the affected creditors at this time.

Monitor's Nineteenth Report, at paras. 10 and 30-33.

34. CCAA courts do not consider the fairness and reasonableness of a Plan at the Meetings Order stage.

Jaguar Mining Inc., Re., 2014 ONSC 494 at para. 48; Book of Authorities of the Ad Hoc Committee, Tab 1.

35. CCAA courts grant Meetings Orders where there is evidence of creditor support for the proposed Plan, as there is here on an overwhelming basis.

36. CCAA Courts only refuse Meetings Orders when the Plan is doomed to fail because of a lack of creditor support or because the Plan is facially not capable of being approved under the CCAA, because it obviously does not and will not meet the requirements of the CCAA. These tests are not invoked in respect of this Plan and the low threshold for the entry of the Meetings Order – and the continued progression of these CCAA proceedings in real time – has been well met.

THE ARGUMENTS RAISED BY KPMG

37. KPMG argues that a Plan Filing Order cannot be granted because the Plan is "doomed to failure" as it does not accord with the requirements of the CCAA. KPMG says that four elements of the Plan meet this high hurdle:

(a) the Plan cannot be approved under the CCAA because it provides for a payment to shareholders when unsecured creditors are not getting any recovery under the Plan, contrary to section 6(8) of the CCAA;

(b) the Plan cannot be approved under the CCAA because it makes KPMG subject to the release of the D&Os (the "**D&O Release**") without giving them a vote on the Plan;

(c) the Plan cannot be approved under the CCAA because it makes KPMG subject to D&O Release without giving them a benefit; and

(d) the Plan cannot be approved because, although it does not seek to release or compromise any claims under section 5.1(2) of the CCAA, it imposes a leave requirement on the prosecution of any such claims, which KPMG claims is so offensive to the CCAA that a Plan Filing Order cannot be granted.

38. In the Ad Hoc Committee's view, all of these issues are Sanction Hearing issues, not Meetings Order issues. Nevertheless, all of these issues are addressed below, including because each of them is either wrong based on the facts or the law or both.

39. KPMG also argues in various places that the Plan should not be put to a vote of the creditors because the third party releases are not fair and reasonable in the circumstances and should not be approved. As this is clearly a Sanction Hearing argument, that

argument is not addressed here (but for the record the Ad Hoc Committee does not agree with it either). As Ground, J. observed in *MuscleTech*:

> In any event, it must be remembered that the Claims of the Objecting Claimants are at this stage unliquidated contingent claims which may in the course of the hearings by the Claims Officer, or on appeal to this court, be found to be without merit or of no or nominal value. It also appears to me that, to challenge the inclusion of a settlement of all or some claims against Third Parties as part of a Plan of compromise and arrangement, should be dealt with at the sanction hearing when the Plan is brought forward for court approval and that it is premature to bring a motion before this court at this stage to contest provisions of a Plan not yet fully developed.

MuscleTech Research & Development, Inc. (2006), 25 C.B.R. (5th) 231 (Ont. Sup. Ct. J.) at para.11; Book of Authorities of the Ad Hoc Committee, Tab 7.

Argument 1 – The Plan does not provide for payments to shareholders in violation of section 6(8) of the CCAA

40. As discussed in paragraphs 24 to 29 above, the Plan is express in section 4.4(a), and in the definition of the "Plan of Allocation", that payment of the securities class action settlement proceeds for shareholders is to occur through, and pursuant to, the detailed Plan of Allocation to be approved by the class action court supervising the shareholder securities class action – not through the CCAA Plan. KPMG has mischaracterized the operation of the Plan.

41. As noted above, the Plan uses the same structure as in the combined *Sino-Forest* CCAA and class action proceedings where the releases for E&Y were conferred under the CCAA Plan but the $117 million of settlement proceeds was distributed to shareholders, as the securities class action plaintiffs, pursuant to orders entered by the supervising class action court.

42. Even if the Plan was to provide for this distribution to shareholders, section 6(8) of the CCAA would still not be operative because the proceeds in question do not come from the debtor; instead, they come from the released parties. For section 6(8) of the CCAA to be operative, the property being distributed must be that of the debtor directly.

See, for example, reasons of Newbould, J . in *Quadrangle Group LLC v. Canada (Attorney General)*, 2015 ONSC 1521 at paras. 43-46; Book of Authorities of the Ad Hoc Committee, Tab 8.

Argument 2 – KPMG is not entitled to vote on the Plan simply because it will be subject to the global injunction in favour of the released parties

43. The CCAA does not require that all parties impacted by a release and a related injunction vote on the Plan. KPMG cites a case from sixteen years ago for the incorrect (or outdated) proposition that a CCAA plan cannot render a party subject to a release without giving them a vote on the plan.

44. Indeed, the case they cite (*Phillip Services*) has no application for all of the following reasons:

(a) in that case, the objecting creditor was a contingent claimant who sought to vote alongside the unsecured creditors who were being given a vote – here, no unsecured creditor is voting because there is nothing available for them;

(b) in that case, the debtor subsequently filed a plan excluding all unsecured creditors and giving them all no vote, and the court approved that plan as fair and reasonable; and

(c) in that case, the court ultimately determined as follows with respect to the contingent claimant – "Here, the reality is - no matter what form of Plan is put forward, and, indeed, no matter what form of restructuring is pursued - there is no prospect that the Contingent Claimants will recover anything as against [the debtor]. They recognize this. Mr. McDougall conceded that his clients have no realistic claim against [the debtor]. **What they want is leverage, i.e., the ability to continue to pursue their object of negotiating a compromise which would enable them to obtain a release from, or at least a cap to, their exposure**."

45. In any event, the present state of the case law regarding third party releases in Canada is that where they are determined to be fair and reasonable at the sanction hearing, they apply to all "Persons" wherever and whomever they may be; and the related plan and sanction order will contain a global injunction. There is no requirement that all

"Persons" affected by that global injunction – wherever and whomever they may be – have voted on the Plan, including because that is impossible.

46. Like many other CCAA plans, the Plan proposes third party releases that will apply to all "Persons". Whether or not those releases are fair and appropriate in the circumstances of this case, particularly in light of the settlement payments and other consideration being provided for those releases, is clearly an issue for the Sanction Hearing.

47. To suggest that it is a voting issue is not correct. As in the *Sino-Forest* CCAA Plan, and all the other CCAA plans referenced below, the Plan proposes third party releases that, if approved at the Sanction Hearing, will bind all "Persons". In none of those cases were all "Persons" – which translates to everyone – given a vote on the Plan. While the extent of creditor approval for a CCAA plan that contains a release is a factor that the Court can consider in determining whether or not to approve a set of proposed releases, it is most certainly not the case that everyone in the world affected by the release and related injunction is required to or has voted on the Plan.

> *CanWest Communications Corp., Re*, Sanction Order granted July 28, 2010, Schedule C, Article 7.3, Released Parties: "**all Released Parties are released from any and all Claims that may be asserted by any Person**"; Book of Authorities of the Ad Hoc Committee, Tab 9.
>
> *Sino-Forest Corp., Re*, Sanction Order granted December 10, 2012, Schedule A, Article 7.3: "**All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims** ..."; Book of Authorities of the Ad Hoc Committee, Tab 2.
>
> *Skylink Aviation Inc., Re*, Sanction Order granted April 23, 2013, Schedule A, Article 7.3, Injunction: "**All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims** ..."; Book of Authorities of the Ad Hoc Committee, Tab 10.
>
> *Jaguar Mining Inc., Re*, Sanction Order granted February 6, 2014, Schedule A, Article 11.1, Released Claims: "**On the Plan Implementation Date, all Director/Officer Claims are released (other than section 5.1(2) claims) are released as Released Claims**; Article 11.2: **All Persons (regardless of whether or not such Persons are Affected Unsecured Creditors) are permanently and forever barred, estopped, stayed and enjoined, on and after the Implementation Time, with respect to any and all Released Claims** ...; Book of Authorities of the Ad Hoc Committee, Tab 11.
>
> *Cline Mining Corp., Re*, Sanction Order granted January 27, 2015, Schedule A, Article 7.3, Injunctions: **All Persons are permanently and forever barred, estopped, stayed**

> **and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action ...**; Book of Authorities of the Ad Hoc Committee, Tab 12.

48. All of these CCAA plans contain injunctions that bar all "Persons" (which is defined in each Plan in the broadest manner) from pursuing any released claims against the released parties. In none of these cases did all "Persons" vote on the Plan.

49. KPMG is merely one of the parties that will be affected by the release if it is approved at the Sanction Hearing. There is no requirement that they – or any other "Person" affected by the release – has voted in favour of it in order for the CCAA court to find at the Sanction Hearing that the Plan and the releases contemplated by it are fair and reasonable in all the relevant circumstances.

Argument 3 – KPMG stands to benefit from the Plan, but even if it did not, has no basis to oppose or prevent the entry of the Plan Filing Order

50. Likewise, there is no requirement for all "Persons" to be affected by a third party release to have received a direct benefit under the Plan in order for the release in the Plan to be approved.

51. In any event, as a matter of fact, KPMG will receive a benefit under the Plan in connection with the release for the D&Os because the Plan specifically contains a *Pierringer* provision.

> CCAA Plan, section 7.6; Applicants' Motion Record, pages 81-82.

52. *Pierringer* provisions provide added safety for non-settling defendants. Non-settling defendants who are found to be at fault will not be exposed to a greater apportionment of liability for the plaintiff's loss based on their joint liability with settling defendants, than would otherwise occur based on their own direct fault.

> *M(J) v. Bradley*, [2004] 71 O.R. (3d) 171 at paras. 55, 66-67 (C.A.); Book of Authorities of the Ad Hoc Committee, Tab 13.

53. As a result of the *Pierringer* provision included in the Plan, the Remaining Defendants are receiving the benefit of a provision under which the Applicants have voluntarily

waived their right to pursue joint and several damages against the Remaining Defendants for liability they may share with the Released Parties as joint tortfeasors. Instead, the Remaining Defendants will only be exposed to their several liability for any damages owed jointly by them and the Released Parties to the Applicants.

54. In these circumstances where the Released Parties are individuals with limited insurance funds against which multiple other parties have competing claims, in the absence of the *Pierringer* provision, the Remaining Defendants could be accountable for the full measure, or a large share, of joint and several damages awarded against them and the Released Parties.

55. *Pierringer* agreements have been frequently approved by Canadian courts as a means of promoting the settlement of complex, multi-party litigation. The courts have held that the non-party rules of the Rules of Civil Procedure provide adequate protections for the non-settling defendants, and any procedural inconvenience they may suffer is outweighed by the benefits of the promotion of settlement.

> *Rules of Civil Procedure*, R.R.O. Reg. 194/90, as amended, Rules 30.10 and 31.10.
>
> *Noonan v. Alpha-Vico*, 2010 ONSC 2720 at paras. 37-41; Book of Authorities of the Ad Hoc Committee, Tab 14.
>
> *Main v. Cadbury Schweppes plc*, 2010 BCSC 816 at para. 12; Book of Authorities of the Ad Hoc Committee, Tab 15.
>
> *Hollinger Inc. (Re)*, 2012 ONSC 5107; Book of Authorities of the Ad Hoc Committee, Tab 16.

56. Because of the *Pierringer* provision, the Plan's treatment of the non-settling Remaining Defendants is fair and reasonable, exactly as it was in *Sino-Forest*. In addition, the Litigation Funding and Indemnity Reserve created by the Plan will be available to protect the Remaining Defendants in the event that any costs are awarded to them.

57. In any event, these are all matters for the Sanction Hearing.

58. What is crystal clear at this stage is that there is no requirement that a CCAA plan confer a vote or a direct benefit under the Plan upon all "Persons" that may be affected by a plan

injunction and, as such, there is no reason that the Plan Filing Order cannot be entered and these cases cannot progress to the next stage.

Argument 4 – The Plan does not impose an unfair or improper restriction on remaining claims that can be made under section 5.1(2) of the CCAA

59. KPMG argues that the Plan violates the CCAA to the point that the Plan Filing Order cannot even be entered because the Plan proposes to impose a leave requirement on the pursuit of any section 5.1(2) claims against the Released Parties under the Plan.

60. It is incorrect to say that imposing a leave requirement on the pursuit of non-released section 5.1(2) claims constitutes an impermissible breach of the CCAA that is so severe that a Plan Filing Order should not be granted (or that a CCAA Plan that contains a leave requirement cannot be sanctioned).

61. The insertion of a leave requirement is appropriate in the circumstances of this case for all of the following reasons:

(a) First, the stay of proceedings created under the Amended and Restated Initial Order continues to apply and so the leave requirement is a necessary step for anyone who may want to bring a section 5.1(2) claim against a director or officer of the Applicants.

(b) Second, without a requirement for leave of the CCAA Court, any party could potentially file a new section 5.1(2) claim against any of the Released Parties in any court across the country. Given that the CCAA court will have continued jurisdiction over the Plan and the remaining actions, and the CCAA stay, it makes simple practical sense to impose this leave requirement as a matter of efficiency going forward. The leave requirement also reasonably protects the Released Parties against the risk that a released claim is simply re-cast and re-filed as a non-released section 5.1(2) claim.

(c) Third, the extent to which the leave requirement does or does not become a substantive hurdle to any such action will be up to the CCAA Court to determine and manage in the exercise of its sole discretion.

(d) Fourth, it is not uncommon for CCAA Plans to place some limitations on the prosecution of non-released claims under section 5.1(2) of the CCAA against the debtor's directors and officers. For example, in the CCAA case of *Allen-Vanguard*, counsel for KPMG represented the directors and officers of Allen-Vanguard and was successful in obtaining a provision that limited the recourse for the prosecution of non-released section 5.1(2) claims against their clients (the released directors and officers) to the amount of available insurance only. This same CCAA plan also conferred global releases of the directors and officers enforceable against all "Persons", regardless of the fact that all "Persons" had not voted on the CCAA plan. The plan was sanctioned and approved.

Allen-Vanguard Corp., Re, Plan of Arrangement and Reorganization dated December 9, 2009, Article 8.7, Injunction, ss. 8.7(i)-(ii); Book of Authorities of the Ad Hoc Committee, Tab 17.

(e) Finally, and in any event, whether or not the leave requirement is appropriate in this case is clearly an issue that can, if necessary, be considered further at a Sanction Hearing and is most certainly not the kind of issue that stops this Plan in its tracks before it is even voted upon, causing unwarranted delay and cost.

62. Meetings Order hearings are not sanction hearings. They are intended to ensure that notice of the meetings has been appropriately developed and that the Plan to be sent out has some "reasonable chance" of being approved by the creditors. That low threshold has been vastly exceeded here.

PART IV – CONCLUSION

63. The September 30, 2015 date for the Meeting Order hearing and the November 19, 2015 date for the Sanction Hearing were set at the case conference held on August 27, 2015. Since those dates were set, the parties worked intensively to complete the Settlements and the proposed Plan by September 23, 2015 so that one week's notice would be given of

the Meetings Order. No parties other than the Remaining Defendants have raised any issues of any kind since the Meetings Order materials were filed.

64. The points raised by KPMG concerning the terms of the Plan are incorrect and in any event do not displace the low threshold for a Meetings Order of a Plan Filing Order, or meet the very high threshold for saying that a Plan should not go forward to a meeting because its elements are so clearly offside the CCAA.

65. None of the matters raised by KPMG are relevant to a secured creditor voting on the Plan.

66. Discussions with counsel to the Remaining Defendants have narrowed the scope of outstanding issues with the Remaining Defendants down to a small number of open items, all of which relate to the mechanics of the *Pierringer* provision.

67. The Ad Hoc Committee submits that the threshold for filing of the Plan and entry of the Plan Filing Order has been met. The Monitor supports this position.

68. For the reasons set out above, the Ad Hoc Committee requests that this Court grant the Plan Filing Order so that the Plan can be filed, the creditor meetings convened and these proceedings can continue to progress towards a conclusion in real time, without any unnecessary delay and additional cost.

69. To the extent that open issues remain, they can be addressed in the seven weeks that remain before the Sanction Hearing date of November 19th or, if necessary, they can be addressed at the Sanction Hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 2, 2015

Goodmans LLP

GOODMANS LLP

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289, 1 C.B.R. (3d) 101 (Ont. C.A.).
2. *ScoZinc Ltd., Re,* 2009 NSSC 163, 55 C.B.R. (5th) 205.
3. *Jaguar Mining Inc., Re.*, 2014 ONSC 494.
4. *MuscleTech Research & Development, Inc.* (2006), 25 C.B.R. (5th) 231 (Ont. Sup. Ct. J.).
5. *Quadrangle Group LLC v. Canada (Attorney General)*, 2015 ONSC 1521.
6. *M(J) v. Bradley*, [2004] 71 O.R. (3d) 171 (C.A.).
7. *Noonan v. Alpha-Vico*, 2010 ONSC 2720.
8. *Main v. Cadbury Schweppes plc*, 2010 BCSC 816.
9. *Hollinger Inc. (Re)*, 2012 ONSC 5107.

SCHEDULE "B"
STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, as amended

s. 4

Compromise with unsecured creditors – Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s. 5

Compromise with secured creditors – Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s. 5.1(2)

Exception – 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.

s. 6(3)

Restriction – certain Crown claims – If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

s. 6(4)

Restriction – default remittance to Crown – If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

s. 6(5)

Restriction – employees, etc. – The court may sanction a compromise or an arrangement only if

(*a*) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(*d*) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(*b*) the court is satisfied that the company can and will make the payments as required under paragraph (*a*).

s. 6(6)

Restriction – pension plan – If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(*a*) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(*b*) the court is satisfied that the company can and will make the payments as required under paragraph (*a*).

s. 6(8)

Payment – equity claims - 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.

s. 19(2)

Exception – A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(*a*) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(*b*) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(*c*) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(*d*) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(*e*) any debt for interest owed in relation to an amount referred to in any of paragraphs (*a*) to (*d*).

SCHEDULE "C"
STATUTORY REFERENCES

RULES OF CIVIL PROCEDURE
R.R.O. Reg. 194/90, as amended

s. 30.10(1)

Order for Inspection – The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

s. 30.10(2)

Notice of Motion – A motion for an order under subrule (1) shall be made on notice,

(a) to every other party; and

(b) to the person not a party, served personally or by an alternative to personal service under rule 16.03.

s. 30.10(3)

Court may Inspect Document – Where privilege is claimed for a document referred to in subrule (1), or where the court is uncertain of the relevance of or necessity for discovery of the document, the court may inspect the document to determine the issue.

s. 30.10(4)

Preparation of Certified Copy – The court may give directions respecting the preparation of a certified copy of a document referred to in subrule (1) and the certified copy may be used for all purposes in place of the original.

s. 30.10(5)

Costs of Producing Document – The moving party is responsible for the reasonable cost incurred or to be incurred by the person not a party to produce a document referred to in subrule (1), unless the court orders otherwise.

s. 31.10(1)

General – The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.

s. 31.10(2)

Test for Granting Leave – An order under subrule (1) shall not be made unless the court is satisfied that,

(a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person the party seeks to examine;

(b) it would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and

(c) the examination will not,

(i) unduly delay the commencement of the trial of the action,

(ii) entail unreasonable expense for other parties, or

(iii) result in unfairness to the person the moving party seeks to examine.

s. 31.10(3), (4)

Costs Consequences for Examining Party – A party who examines a person orally under this rule shall serve every party who attended or was represented on the examination with the transcript free of charge, unless the court orders otherwise.

Costs Consequences for Examining Party – The examining party is not entitled to recover the costs of the examination from another party unless the court expressly orders otherwise.

s. 31.10(5)

Limitation on Use at Trial – The evidence of a person examined under this rule may not be read into evidence at trial under subrule 31.11 (1).

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 1511419 ONTARIO INC., FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS THE CASH STORE INC., 986301 ALBERTA INC., FORMERLY KNOWN AS TCS CASH STORE INC., 1152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

REPLY FACTUM OF THE AD HOC COMMITTEE OF SECURED NOTEHOLDERS (Meetings Order and Plan Filing Order)

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