

**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 C INTERNATIONAL INC., C
INTERNATIONAL INCOME FUND, CII TRUST AND THE
COMPANIES LISTED IN SCHEDULE "A"**

Applicants

FACTUM OF THE APPLICANTS

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(Motion Returnable July 31, 2015)

PART I – INTRODUCTION

1. C International Income Fund, formerly Cinram International Income Fund (the "**Fund**"), collectively with its direct and indirect subsidiaries (the "**Company**"), was one of the world's largest producers of pre-recorded multimedia products and related logistics services. The Fund, C International Inc., formerly Cinram International Inc. ("**CII**"), CII Trust, and the companies listed in Schedule "A" hereto (collectively, the "**Applicants**") were unable to find an out-of-court solution to their financial difficulties and sought protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**").¹

Monitor's Seventeenth Report at para. 3.

2. On June 25, 2012, the Applicants obtained an Order of this Court (the "**Initial Order**") granting relief pursuant to the CCAA. The relief granted under the Initial Order included, *inter alia*: (i) a stay of proceedings against the Applicants and C International Limited

¹ Any capitalized terms that are not defined herein shall have the meaning prescribed to them in the Seventeenth Report of FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor dated July 20, 2015 (the "**Monitor's Seventeenth Report**"). All dollar amounts expressed herein, unless otherwise noted, are in United States currency.

Partnership, formerly Cinram International Limited Partnership (together with the Applicants, the “**CCAA Parties**”) and the subsidiaries of the CCAA Parties that are also party to agreements to which the CCAA Parties are parties; and (ii) the appointment of FTI Consulting Canada Inc. (“**FTI**”) as monitor of the CCAA Parties (the “**Monitor**”).

Monitor’s Seventeenth Report at para. 1.

3. The Applicants’ principal objectives of these CCAA Proceedings were: (i) to ensure the ongoing operations of the Company; (ii) to ensure the Applicants have the necessary availability of working capital funds to maximize the ongoing business of the Company for the benefit of its stakeholders; and (iii) to complete the sale and transfer of substantially all of Cinram’s core business to Cinram Group, Inc., formerly known as Cinram Acquisition, Inc. (“**CGI**”) or one or more of its nominees.

Monitor’s Seventeenth Report at para. 4.

4. On July 12, 2012, this Court made an order (the “**Approval and Vesting Order**”), *inter alia*: (i) approving the sale of substantially all of the property and assets used in connection with the business carried on by the Company in North America to CGI (the “**Asset Sale Transaction**”) contemplated by the asset purchase agreement between CII and CGI dated June 22, 2012 (the “**Asset Purchase Agreement**”); (ii) approving the sale of the shares of Cooperatie Cinram Netherlands UA (the “**Share Sale Transaction**”) pursuant to the binding purchase offer dated June 22, 2012 provided by CGI to CII and 1362806 Ontario Limited; and (iii) granting certain additional relief.

Monitor’s Seventeenth Report at para. 6.

5. On July 25, 2012, the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) approved and entered the Final Recognition Order under chapter 15 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”), granting recognition of the CCAA Proceedings as the “foreign main proceedings” of the CCAA Parties and recognizing the Initial Order on a final basis. The U.S. Court also granted an Order, *inter alia*, recognizing the Approval and Vesting Order

and authorizing the assignment and assumption of certain executory contracts and unexpired leases.

Monitor's Seventeenth Report at para. 7.

6. The Applicants completed the Asset Sale Transaction on August 31, 2012 and the Share Sale Transaction was completed on February 4, 2013.

Monitor's Seventeenth Report at paras. 8 and 9.

7. On October 19, 2012, this Court granted the Administration Reserve/Distribution/Transition Order, pursuant to which the Monitor was granted additional powers in respect of the CCAA Parties, including to, in consultation with the agent for the First Lien Lenders or its advisors, market, collect, monetize, liquidate, realize upon, sell or otherwise dispose of any of the Excluded Assets.

Administrative Reserve/Distribution/Transition Order dated October 19, 2012 at para. 14.

8. The Property, located in Louisville, Kentucky, is comprised of 12.09 acres of land, an industrial building consisting of 136,475 square feet, and all improvements thereon. The Property was an Excluded Asset under the Asset Sale Transaction and is owned by IHC Corporation (the "**IHC**"). It is the last remaining Excluded Asset of the CCAA Parties to be sold.

Monitor's Seventeenth Report at paras. 14 and 15.

9. This factum is filed in support of the Applicants' motion for an order (the "**Louisville Approval and Vesting Order**"), *inter alia*: (i) approving the sale transaction (the "**Louisville Sale Transaction**") contemplated by the Lease and Option to Purchase Agreement between IHC and Accuserve Equipment and Supply, L.L.C. (the "**Tenant**") dated at or around April 16, 2015 (the "**Lease**") as amended by the First Amendment to the Lease and Option to Purchase Agreement dated at or around June 11, 2015 (the "**First Amendment**"), and the Notice of Exercise of Option to Purchase dated July 14, 2015 (the "**Notice**", collectively with the Lease and the First Amendment, the "**Sale Agreement**"), and (ii) vesting all of IHC's right, title and interest in and to the Property

in Accuprop, L.L.C. (the “**Proposed Purchaser**”), to whom the Tenant assigned its rights to purchase the Property under the Sale Agreement, free and clear of all interests, liens, charges and encumbrances other than certain permitted encumbrances.

PART II – THE FACTS

A. SALE PROCESS AND PROPOSED SALE OF THE PROPERTY

10. CB Richard Ellis Louisville (“**CBRE**”) was engaged and has been actively marketing the Property since October 2012.

Monitor’s Seventeenth Report at para. 16.

11. CBRE actively marketed the property targeting the investor, developer and user communities. In addition to seeking purchasers through its extensive North American network, CBRE’s marketing included physical media, online marketing and multiple contacts with local and state development agencies.

Monitor’s Seventeenth Report at para. 16.

12. The lengthy and extensive marketing process resulted in a number of expressions of interest; however, none of the interested parties that engaged in discussions with respect to the Property proceeded to submit any binding offers to purchase the Property.

Monitor’s Seventeenth Report at para. 17.

13. In early 2015, the Tenant expressed interest in the Property and conducted a number of site visits supervised by CBRE.

Monitor’s Seventeenth Report at para. 18.

14. At or around April 16, 2015, IHC entered into the Lease with the Tenant, which Lease has a term of eight months.

Monitor’s Seventeenth Report at para. 19.

15. Under the Lease, the Tenant has the option to purchase the Property within 60 days of the term of the agreement for \$1.5 million, subject to obtaining court approvals.

Monitor's Seventeenth Report at para. 20.

16. The Lease provides for payment of a deposit of \$150,000, refundable at the end of the term of the Lease in the event that, *inter alia*, following exercise of the Option, the Louisville Sale Transaction is not approved by the Court.

Monitor's Seventeenth Report, Appendix A at s.4.

17. Pursuant to the First Amendment, the deadline for the Tenant to exercise the option was extended to July 31, 2015.

Monitor's Seventeenth Report at para. 20.

18. On July 14, 2015 the Tenant delivered the Notice to IHC, exercising the Option to purchase the Property with a closing date for the transaction of August 5, 2015.

Monitor's Seventeenth Report at para. 21 and Appendix C.

19. On July 20, 2015, the Tenant assigned its rights to purchase the Property to the Proposed Purchaser.

Monitor's Twelfth Report at para. 22.

B. FURTHER FACTUAL BACKGROUND

20. Facts relating to the proposed sale of the Property and the requested relief are more fully set out in the Monitor's Seventeenth Report.

PART III – ISSUES AND THE LAW

A. APPROVAL OF THE LOUISVILLE SALE TRANSACTION IS APPROPRIATE

21. The Applicants seek an Order, *inter alia*, approving the Louisville Sale Transaction in order to maximize value for the benefit of the CCAA Parties' stakeholders.

22. The Proposed Purchaser and IHC are not related persons within the meaning of the CCAA. Sections 36(1), (2), (3), (6) and (7) of the CCAA govern a sale of assets of a debtor company to a third party and the Louisville Sale Transaction meets the requirements of these sections.

Monitor's Seventeenth Report at para. 34.

CCAA, Sections 36(1), (2), (3), (6) and (7).

23. It is well established in Ontario that the Court has the jurisdiction to approve a sale of all or substantially all of the assets of a debtor company in a CCAA proceeding in the absence of a plan of arrangement where such sale is in the best interests of the stakeholders generally.

Re Canadian Red Cross Society (1998), 5 C.B.R. (4th) 299 at paras. 45-46; Book of Authorities, Tab 1.

Re Nortel Networks Corp. (2009), 55 C.B.R. (5th) 229 (Ont. Sup. Ct. J. [Commercial List]) at paras. 35-40, 48; Book of Authorities, Tab 2.

Re Brainhunter Inc. 2009 CarswellOnt 7627 (Sup. Ct. J. [Commercial List]) at paras. 12-13; Book of Authorities, Tab 3. See also *Re Brainhunter Inc.* (2009), 62 C.B.R. (5th) 41 (Ont. Sup. Ct. J. [Commercial List]) at para. 15; Book of Authorities, Tab 4.

Re Consumer Packaging Inc. (2001), 27 C.B.R. (4th) 197 (Ont. C.A.) at paras. 5 and 9; Book of Authorities, Tab 5.

CCAA, Section 36(1).

24. Section 36(3) of the CCAA sets out a non-exhaustive list of factors for the Court to consider in determining whether to grant the authorization for a debtor company to sell its assets outside of the ordinary course of business in a CCAA proceeding:

- (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.

CCAA, Section 36(3).

Re Canwest Publishing Inc./Publications Canwest Inc. (2010), 68 C.B.R. (5th) 233 (Ont. Sup. Ct. J. [Commercial List]) at para. 13; Book of Authorities, Tab 6.

Re Brainhunter Inc. (2009), 62 C.B.R. (5th) 41 (Ont. Sup. Ct. J. [Commercial List]) at para. 15; Book of Authorities, Tab 4.

Re White Birch Paper Holding Co. (2010), 72 C.B.R. (5th) 49 (Que. Sup. Ct.) at paras. 46-49; Book of Authorities, Tab 7.

25. Prior to the enactment of Section 36(3), CCAA Courts in reviewing a proposed sale of assets as part of a court supervised sales process in a CCAA proceeding considered the following factors adopted by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* relating to a sale of assets by a receiver, which factors overlap with the Section 36(3) factors and continue to be applied by CCAA Courts in conjunction therewith:

- (a) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

Royal Bank v. Soundair Corp. (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para. 16; Book of Authorities, Tab 8.

Re Nortel Networks Corp. (2009), 56 C.B.R. (5th) 224 (Ont. Sup. Ct. J. [Commercial List]) at paras. 34-36; Book of Authorities, Tab 9.

Re Canwest Publishing Inc./Publications Canwest Inc. (2010), 68 C.B.R. (5th) 233 (Ont. Sup. Ct. J. [Commercial List]) at para. 13; Book of Authorities, Tab 6.

Re White Birch Paper Holding Co. (2010), 72 C.B.R. (5th) 49 (Que. Sup. Ct.) at para. 48-54; Book of Authorities, Tab 7.

26. The Applicants submit that the Louisville Sale Transaction meets the requirements under Sections 36(2) and (3) of the CCAA and is appropriate, fair and reasonable in the circumstances because:
- (a) CBRE ran a lengthy and thorough sale process in good faith prior to identifying the Louisville Sale Transaction;
 - (b) the Monitor is satisfied that the process was fair and reasonable in the circumstances;
 - (c) an extensive marketing process was conducted and any additional marketing or auction requirement would be costly, time intensive, and not likely to result in a better offer for the Property;
 - (d) after extensive negotiations, the CCAA Parties believe the Louisville Sale Agreement represents the most certain and best offer for the Property available to maximize the benefits to the CCAA Parties and their creditors;
 - (e) the Louisville Sale Agreement represents the best alternative in the circumstances, taking into account such factors as: (i) the aggregate value to stakeholders; (ii) the timeframe within which the transaction would be closed; and (iii) the probability of closing;
 - (f) the Monitor does not believe that the sale of the Property under a bankruptcy would be more beneficial to the creditors of the CCAA Parties;

- (g) the Monitor is satisfied that the consideration to be received for the Property is fair and reasonable taking into account its market value;
- (h) the Louisville Sale Transaction is expected to close on August 5, 2015 following court approval (if obtained) in Canada and the United States;
- (i) throughout the marketing of the Property, the Monitor consulted extensively with the financial advisor to the First Lien Lenders, who are supportive of the sale of the Property to the Proposed Purchaser;
- (j) the Monitor is of the view that the CCAA Parties have acted in good faith to maximize value in attempting to divest the Property, made satisfactory efforts to obtain the best price and have not acted improvidently; and
- (k) notice of this motion has been given to the secured creditors who are likely to be affected by the Louisville Sale Transaction.

Monitor's Seventeenth Report at paras. 23, 25, 26, 27, 28, 29, 30, 31, 32, 33 and Appendix C.

27. The Applicants also seek an Order from this Court vesting all of IHC's right, title and interest in and to the Property in the Proposed Purchaser, free and clear of all Claims and Encumbrances (each as defined in the proposed Louisville Approval and Vesting Order), other than the Permitted Encumbrances (as defined in the Louisville Approval and Vesting Order).
28. The Court has the jurisdiction to make such an Order pursuant to Section 36(6) of the CCAA:

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.

CCAA, Section 36(6).

29. A sale of the Property in accordance with the terms and conditions of the Louisville Sale Agreement will generate the most definite value for the CCAA Parties and their creditors, and the Court's approval of the Louisville Sale Transaction free and clear of Claims and Encumbrances other than Permitted Encumbrances is a critical step in achieving that result.

Monitor's Seventeenth Report at para. 27.

30. Further, the Louisville Sale Transaction is in compliance with Section 36(7) of the CCAA. Pursuant to Section 36(7), "[t]he 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(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement." The Court has noted that the reference to paragraph 6(4)(a) in Section 36(7) should be to paragraph 6(6)(a).

CCAA, Section 36(7).

Re Canwest Global Communications, 2009 CarswellOnt 7169 (Sup. Ct. J. [Commercial List]) at para. 28, FN 2; Book of Authorities, Tab 10.

31. All the payments required under Sections 6(5)(a) and 6(6)(a) of the CCAA have been made.

Monitor's Seventeenth Report at para. 35.

32. The Monitor recommends approval of the Louisville Sale Transaction by this Court.

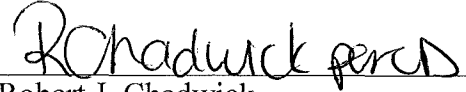
Monitor's Seventeenth Report at para. 36.

PART IV – ORDER REQUESTED

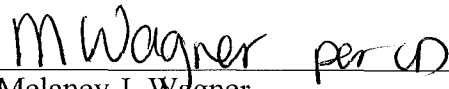
33. For the reasons set out above, the Applicants request that this Court approve the Louisville Sale Transaction and grant the requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

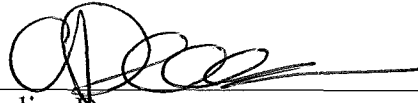
July 24, 2015



Robert J. Chadwick



Melaney J. Wagner



Caroline Descours

SCHEDULE "A"

ADDITIONAL APPLICANTS

C International General Partner Inc., formerly Cinram International General Partner Inc.

CRW International ULC, formerly Cinram International ULC

1362806 Ontario Limited

CUSH Inc., formerly Cinram (U.S.) Holding's Inc.

CIHV Inc., formerly Cinram, Inc.

IHC Corporation

CMFG LLC, formerly Cinram Manufacturing LLC

CDIST LLC, formerly Cinram Distribution LLC

Cinram Wireless LLC

CRSMI LLC, formerly Cinram Retail Services, LLC

One K Studios, LLC

SCHEDULE “B”
LIST OF AUTHORITIES

1. *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299
2. *Re Nortel Networks Corp.* (2009), 55 C.B.R. (5th) 229 (Ont. Sup. Ct. J. [Commercial List])
3. *Re Brainhunter Inc.*, 2009 CarswellOnt 7627 (Sup. Ct. J. [Commercial List])
4. *Re Brainhunter Inc.* (2009), 62 C.B.R. (5th) 41 (Ont. Sup. Ct. J. [Commercial List])
5. *Re Consumer Packaging Inc.* (2001), 27 C.B.R. (4th) 197 (Ont. C.A.)
6. *Re Canwest Publishing Inc./Publications Canwest Inc.* (2010), 68 C.B.R. (5th) 233 (Ont. Sup. Ct. J. [Commercial List])
7. *Re White Birch Paper Holding Co.* (2010), 72 C.B.R. (5th) 49 (Que. Sup. Ct.)
8. *Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)
9. *Re Nortel Networks Corp.* (2009), 56 C.B.R. (5th) 224 (Ont. Sup. Ct. J. [Commercial List])
10. *Re Canwest Global Communications*, 2009 CarswellOnt 7169 (Sup. Ct. J. [Commercial List])

**SCHEDULE “C”
STATUTORY REFERENCES**

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

s. 6(5)(a)

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.

s. 6(6)(a)

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*.

s. 36(1)

Restriction on disposition of business assets – 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.

s. 36(2)

Notice to creditors – 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.

s. 36(3)

Factors to be considered – 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.

s. 36(6)

Assets may be disposed of free and clear – 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.

s. 36(7)

Restriction – employers – 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(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

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OF C INTERNATIONAL INC., C INTERNATIONAL INCOME FUND, CII TRUST
AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM
(Motion Returnable July 31, 2015)**

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