

**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., AND 1693926 ALBERTA LTD
DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

**FACTUM OF THE LITIGATION TRUSTEE
(Stay Extension Motion returnable on October 22, 2024)**

October 16, 2024

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f/k/a The Cash Store Financial Services Inc.

PART I - OVERVIEW AND FACTS

1. This is a motion for extension of the stay of proceedings against 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc. and the other Applicants (together, “**Cash Store**”).
2. Cash Store, through its Court-appointed Litigation Trustee, is pursuing three professional negligence actions against its former auditor, financial advisor, and legal counsel (the “**Defendants**”). The Actions are the only remaining material assets of Cash Store’s estate.
3. On March 27, 2024, the stay period was extended to October 25, 2024. This factum details the steps taken by the Litigation Trustee in that period. The detailed factual background to this matter is set out in the Motion Record of the Monitor.¹

Steps taken since the last stay extension

4. The current agreed-upon and court-approved timetable is as follows:

Date	Litigation Phase
March 31, 2023	Parties to complete exchange of documentary productions
TBD upon agreement with the D&Os	Deadline for delivery of documents from D&Os in accordance with the Non-Party Protocol
June 2023	Security for costs motion (if any)
January 31, 2024	Examinations for discovery and third-party examinations to be completed
March 15, 2024	Parties to deliver answers to undertakings
May 31, 2024	Refusals motion to be completed
July 31, 2024	Any re-attendances for examination or answers to written interrogatories to be completed
September 30, 2024	Delivery of Cash Store Expert Report
January 31, 2025	Delivery of Defendants Expert Report

¹ Motion Record of the Monitor dated October 15, 2024, [Tab 2, E410](#)

Date	Litigation Phase
March 31, 2025	Delivery of Cash Store Reply Report
April 8 and 9, 2025	Pre-trial conference
April 28, 2025	Six-week trial to commence
June 23 to 25, 2025	Closing Submissions

5. As of the date of the previous stay extension motion, the parties had completed the examinations for discovery of the party witnesses. As those examinations took place later than contemplated by the timetable (finishing in March of 2024 instead of January), the parties agreed to extend the deadline for answering undertakings to May 6, 2024.
6. On May 6, Cash Store delivered its answers to undertakings. In response to requests by the Defendants, Cash Store delivered a further set of answers on July 3. Cash Store has responded to approximately 380 undertakings, under advisements and refusals. Its answers span over 20,000 words across 153 pages of responses. Only 25 questions have been outright refused, some on the grounds that the question seeks privileged information.
7. The Defendants sought and were granted leave to examine for discovery 11 former directors and officers of Cash Store. Between April 29 and July 23, six were examined for discovery. No further examinations for discovery are scheduled.
8. On August 14, 2024, the parties attended a case conference before Justice Conway. The Defendants sought to schedule a refusals motion, which Justice Conway refused to schedule. The Plaintiffs sought an extension of time to deliver expert reports, which extension was also refused.
9. The Defendants have asked that Cash Store provide further answers to undertakings already answered and questions taken under advisement. While Cash Store disputes that the Defendants are entitled to further answers – particularly because much of the

information sought is contained in its expert reports described below – it expects to deliver a further set of answers on October 18, 2024.

10. The most recent deadline under the timetable was the September 30 deadline for the delivery of Cash Store’s expert reports. On September 30, Cash Store delivered four expert reports in accordance with the timetable. Those reports are from:
 - (a) Ralph Koch and Bill Jennings of Delta Consulting Group which opines on the actions and omissions of KPMG;
 - (b) Brent Walker and David Santangeli of Morrison Park Advisors which opines on the actions and omissions of Canaccord; and
 - (c) Jimmy Pappas of Delta Consulting Group which opines on Cash Store’s damages.

PART II - THE ISSUE AND ARGUMENT

11. The question on this motion is whether it is reasonable, in the circumstances, that the stay of proceedings against Cash Store be extended to July 31, 2025.
12. The court may, on the application of a party, extend the stay of proceedings in circumstances where 1) the order sought is appropriate in the circumstances, 2) the applicant has been acting in good faith and 3) the applicant has been acting with due diligence.²

² [Section 11.02\(2\)](#) of the *Companies Creditors’ Arrangement Act*, RSC 1985, c. C-36; 9354-9186 Québec Inc. v. Callidus Capital Corp., 2020 SCC 10 at [para. 49](#).

13. Since the last stay extension, the Litigation Trustee has worked diligently to answer the extraordinary number of undertakings sought. It has participated in 10 days of examinations for discovery of the third-party witnesses.
14. Most recently, it has delivered four comprehensive expert reports containing the opinion evidence it will rely upon at trial.
15. Cash Store is in compliance with the agreed-upon schedule. A pre-trial and trial are set for dates in March to June of 2025. The Litigation Trustee will be ready for pre-trial and trial on those dates.
16. An extension of the stay is appropriate in that it will allow these actions to advance to trial. The Litigation Trustee continues to advance the actions expeditiously and in good faith. It ought to be given the opportunity to bring these Actions to resolution.

PART III - RELIEF REQUESTED

17. The Litigation Trustee supports the Monitor's request for an Order extending the stay of proceedings against Cash Store up to and including July 31, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of October, 2024.



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Applicants

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

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Proceedings commenced at Toronto, Ontario

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